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Recent Developments in Land Tenure Law in Eritrea, Horn of Africa

Luca G. Castellani



Land Tenure Center

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RECENT DEVELOPMENTS IN LAND TENURE LAW IN ERITREA, HORN OF AFRICA

by

Luca G. Castellani¹

After presenting a historical sketch of the evolution of land tenure systems in the Eritrean highlands, this paper describes the main features of the new Eritrean land law. Its operative assumption is that the legislation is meant to extend state control over land. The legal devices employed by the law are widely used in sub-Saharan Africa (and were largely inspired by colonial policies).

1. BACKGROUND

Eritrea is located in the Horn of Africa, bordering Sudan, Ethiopia, and Djibouti, and facing Yemen across the Red Sea (see map 1). It is the most recent African state to gain independence, *de facto* in 1991 and formally in 1993, as a result of a 30-year struggle against Ethiopia. With a population of about 3.5 million and a territory of approximately 36,170 square miles, the country can be divided into four main geographic areas: the eastern and western lowlands, the highlands, and the Danakil desert.

Modern Eritrea comprises nine main peoples (Afar, Bilen, Hedareb, Kunama, Nara, Saho, Rashaida, Tigre, and Tigrinya). Their distribution nearly reflects the historical juxtaposition between Christian highlanders, who were mostly sedentary agriculturists belonging to the Tigrinya ethnic group, and Muslim lowlanders, who were mostly nomadic herders belonging to other ethnic groups. This distinction may be useful to roughly identify cultural areas, though it does not account for local variations or smaller ethnic groups.

Kebesa (ክበሳ), the area inhabited by the highland Tigrinyas, is traditionally divided into three regions, Hamasien (ሐማሴን), Seraye (ሰራዩ), and Akele Guzay (አክላ ጉዛይ), with some differences in customs and language. Since 1995, however, administrative regions have not followed this partition.

¹ The author is grateful to “Adewey” Zewdi, Lyda Favali, Beverly Moran, Roy Pateman, and Rodolfo Sacco for their valuable comments. Guido Battaglini kindly provided the illustrations.

2. CUSTOMARY SYSTEMS OF LAND TENURE IN THE ERITREAN HIGHLANDS

Tigrinya customary land law is contained in a number of codes, some in written form, and presents a variety of rules regarding rights over land. A remarkable feature of the Tigrinya land area is that, unlike most of the rest of Africa, overpopulation and excessive exploitation of land had already taken place in pre-colonial times and had led to a complexity in customary law as it tried to cope with resulting problems. There are three main land tenure systems: *resti* (ርስቲ), *gulti* (ጉልቲ), and *diesa* (ዴሳ) or *shekh'na* (ሸክና).

Resti (ርስቲ) is the land held by an extended family (*enda* - እንዳ, or related to a common ancestor). Each head of a nuclear family belonging to the *enda* is for his lifetime entitled to a plot when periodic allocation occurs. The holders of such title (*resteynatat* - ረስተይናታት) are considered to be the original occupants of the village and enjoy high social status.

MAP 1



Source: http://www.sas.upenn.edu/African_Studies/CIA_Maps/Eritrea_19872.gif.

Under special circumstances, and after an offer to other members of the *enda*, *resti* land can be sold (becoming *meriet worki* - መሬት ወረቂ, literally “land of gold,” or land [purchased] with money). A still unsettled scholarly controversy pertains to the diffusion of *meriet worki* in pre-colonial times.

Gulti (ጉልቲ) indicates a right to land given by the Ethiopian emperor to individuals distinguished for services rendered, such as collection of land taxes and military support. The lord (*shum gulti* - ሸም ጉልቲ), who is both military chief and administrator, is entitled to keep a share of the tribute and to oblige the peasants to cultivate his personal land. Although the emperor could at any time demote the *shum gulti*, in practice the title remained with the members of a few powerful families. The effectiveness and extension of *gulti* in the *kebesa*, of course, varied with the political influence of the emperor, which was never absolute and unchallenged. *Gulti* that was granted to religious institutions is more properly called *rim* (ሪም).

Diesa (ደዳ) or *shekh'na* (ሸክና) is a tenure system under which the land of the village is periodically distributed among the residents, that is, male heads of household of families belonging to the village, as well as permanent immigrants. Sometimes women are also entitled to land. The land is common property of the community.

Under *diesa*, any male villager is entitled to land whenever a new household is started. The size of the allotted share is determined by a complex set of rules, which take individual status and family conditions into account. Residence is normally transmitted through the patrilineal line, though some exceptions are found where both patrilineal and matrilineal transfer may concur, provided no peasant holds land in more than one village.

Redistribution of land (*warieda* - ዋሪዳ) usually takes place every three, five, or seven years. One panel of elders (*ghelafo* - ገላፎ) decides on the eligibility of individuals as residents; another panel (*acquaro* - ጻፂሮ) allots the plots, which are equal in size and quality, through a lottery. The members of the panels are either elected by the village council or appointed by the chief. Some land is kept in communal property to meet the needs of people who may qualify for it in the time between *wariedas*.

Besides these three main land regimes, a number of temporary titles to land exist including lease contracts (*grat ferkha* - ግራት ፈረቅ; *krai* - ክራይ) and gratuities for the benefit of a member of the family (*grat messah* - ግራት ምላሕ) or of neighboring peoples at large to seal a relation of political domination (*sedbi* - ሰድቢ).

In summary, Tigrinya customary land law has a variety of legal devices of remarkable complexity and flexibility to satisfy social needs.

3. ITALIAN COLONIAL RULE

Eritrea was officially constituted as a colony by the Italian royal government in January 1890; only six months later, the first act dealing with Eritrean colonial land tenure was passed by the Italian parliament.

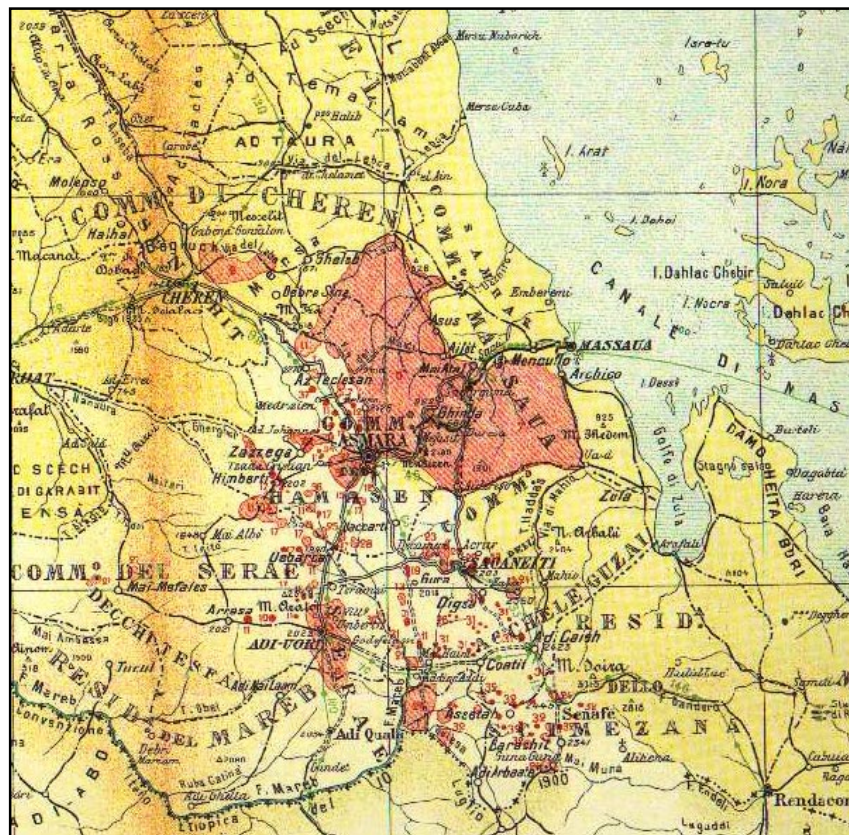
The approach to the legislation was deeply influenced by the desire to provide poor Italian peasants with new fertile land, where they could settle permanently. To achieve this goal, traditional systems of land tenure were disregarded to the point that their existence was sometimes denied by government officials. The confusion was increased by the fact that persistent warfare and famine caused many villages to lose population, which gave the false impression of large tracts of free land.

A few years after occupation, the Italian colonial government began declaring vast amounts of land to be public property. This applied, by default, to all of the lowlands and only those densely populated highlands where a temperate climate together with fertility of the ground was deemed favorable for prospective Italian settlers. This policy led to armed revolts by the local population, and this reaction made the Italian authorities more cautious in the expropriation of land. In fact, from 1896 onward, some land was returned to the original Eritrean owners.

The colonial government progressively abandoned the policy of settlement in the highlands, replacing it with a grant to major investors in land of the lowlands. Due to the lack of Italian immigrants, state land in the highlands was increasingly given in concession to Tigrinya cultivators.

Royal Decree 31st January 1909, n. 378, gave a comprehensive legal framework to colonial land policy. It stated that all land in the colony belonged to the state, except for indigenous customary rights of ancient origin and property rights issued or acknowledged by the Italian government. Accordingly, all land fell under either Italian or customary law. Grazing lands were declared state property (or *demaniale*; see map 2), albeit, at least in theory, the law recognized nomadic peoples' customs.

MAP 2



Source: M. Checchi, G. Giardi, A. Mori. *Terreni demaniali e linee telegrafiche nella colonia Eritrea. Anno 1907*. Published by Direzione Generale degli Affari Coloniali. Roma (?): 1907. Detail of the Eritrean highland: dark shading is the land declared under “demaniale” regime by the Italian colonial administration.

Royal Decree 7th February 1926, n. 269 (“*Ordinamento fondiario del 1926*”), consolidated and refined the existing land statutes. Although the status of customary rights was not changed, some protection was added in the expropriation process. The major innovation was in the field of concessions. The colonial government abandoned the idea of peasant colonization in the highlands and provided for only two kinds of concession: grants to individual Italian peasants personally in charge of the cultivation and requiring only a small amount of capital; and grants to major investors, companies, or charities. The technical legal aspects of the two types of concession were, on the whole, common to other African colonies.

Royal Decree n. 269 also changed the effects of inscription in the cadastral books of deeds and other acts of disposition of real property. Whereas previously the inscription was mandatory for validity of the act itself, the new law gave the inscription only the effect of a public notice.

The impact of colonial rule on customary land law was to repeal all *gulti*, which was converted into state property (*demaniale*) since, in the Italian administrators’ view, it had originally been owned by government officials (that is, the emperor’s representatives). The rights belonging to religious institutions were also converted into *demaniale*. Both local chiefs and missionary institutions received land distributed by the Italian government according to the new law in exchange for their support to the new rulers.

At the request of local peasants, colonial rulers sometimes converted *resti* into *diesa* in order to redress the uneven distribution of land among *endas*. Indeed, in many cases different demographic expansion over time had challenged the original partition of village land into equal parts for every family. Thus, a number of conflicts arose over the control of land held by smaller *endas*. The goal of this conversion was to make the land available to all of the families of the village, regardless of their *enda*.

On the other hand, during this period some villages stopped the periodic distributions of *diesa*. This attitude would spread during Ethiopian domination and give rise to significant social discontent.

4. IMPERIAL AND SOCIALIST ETHIOPIAN RULE

In 1952, after a decade of British administration, Eritrea joined a federation with Ethiopia, which was then ruled by Emperor Haile Selassie. In 1962, the federation was dissolved and Eritrea became a province of the empire of Ethiopia.

In order to give legal framework to the efforts of modernization of the country, in 1960 Ethiopia adopted a Civil Code (ECC) which was strongly inspired by the French model. The code is still largely in force today in both Ethiopia and Eritrea.

The matter of land law was dealt with in the title dedicated to immovable property. The code introduced a number of innovations, such as a registration system for property rights (with effects limited to third parties and not affecting the validity of the transactions), rules on expropriation, and basic provisions on town-planning areas. Most of these rules never entered into force except in urban areas. Preventing a foreseeable delay in the full implementation of the new discipline, ART. 3363 and ART. 3364 of the ECC applied, on a

temporary basis, local customary rules to the transfer of immovable property. In Eritrea this meant the perpetuation of the Italian system, which in fact shared a common French origin with the new code.

The ECC (ART. 1489–1500) also contained provisions for agricultural communities—a new device specifically aimed at smoothing the transition from customary common property to modern property law—to operate under the control of the Ministry of Interior. It is doubtful that these provisions ever became effective.

In 1974, the imperial regime was overthrown by a military coup. The adoption of socialist rule soon followed, and the new government, led by Mengistu Hailemariam, became known as the Derg (from the Amharic word for committee).

In 1975, the socialist government passed comprehensive legislation dealing with both urban and rural landed property. In rural areas, the goal of the new policy was confiscation of large estates held by the church and aristocracy and redistribution of land to the peasants through newly established local associations (that is, in the form of cooperatives or collective farms).

This land reform was implemented to a small extent in Eritrea, since in the highlands traditional communities capable of resisting external pressure occupied the land while in the lowlands, where the population could have been more favorable to the new rules given the existing gap between large landowners and landless peasants, the government had no control over the territory due to the liberation struggle. The attempt to redefine existing borders between villages was bound to fail.

Other factors in the failure of the Derg land reform in Eritrea included excessive tax burden (necessary to finance the war against Eritrean liberation forces), identification between the newly established associations and the foreign rulers of the country, and corruption and excessive favor for party supporters in the allocation process.

5. LAND TENURE POLICIES OF LIBERATION FORCES

The Eritrean struggle for liberation from Ethiopia began in 1961. Two movements had the power to control significant parts of the territory where they could apply their own administration and rules, the Eritrean People's Liberation Front (EPLF, which eventually led the country to independence), and the Eritrean Liberation Front (ELF).

For almost two decades, the EPLF controlled the northeastern part of the country and exercised the basic functions of a nation-state. Land policies of EPLF thus enjoyed widespread and consistent application through several pieces of legislation, including its Civil Code.

The goal of EPLF was to replace customary systems of land tenure with new, more equitable institutions. It was therefore necessary to increase the political awareness of peasants to make them able to properly manage the land having been confiscated from the church and noblemen and redistributed to them. In fact, the peasants were already asking for adjustments in the customary systems of land tenure, such as the re-establishment of periodic land distributions, but not for the more far-reaching reforms supported by EPLF, such as the entitlement of women to land.

Since 1974, the EPLF had been implementing a three-step program in liberated villages. First, the customary administration was replaced by overt cells made up of politically conscious poor and middle-income peasants and fighters; during this stage, villagers received extensive political education. Eventually, the overt cells were replaced by resistance committees and, at a later stage of political awareness, by an executive committee that was elected by a people's assembly made up of all villagers, both men and women. In 1988, only 15 percent of Eritrean village had no EPLF structure, while in the 1976–1981 period, EPLF-driven land redistribution had taken place in 162 villages.

Although the EPLF Civil Code was in force in villages where party organs were already in place, ART. 343 of the Civil Code provided for the use of customary law in the other villages.

Rules adopted by the EPLF were generally based on a modern version of *diesa*, featuring the abolition of privileged groups and a wider entitlement of women to land. Moreover, compensation for improvements made between land distributions became widespread (the ambiguity of customary law on the issue had prevented peasants from making long-term investments, since they had no security of title to the specific plot).



Peasant tilling land
near Mai Habar, Eritrean highland

Another important issue addressed by the EPLF was the definition of borders between villages. Peasants often had significant *resti* rights in land formerly belonging to neighboring villages. It was therefore possible to redistribute such land to achieve more

clarity and efficiency. To assure popular support, such steps were always taken with the consent of the concerned villagers.

The EPLF also did some experiments with agricultural cooperatives, which were later abandoned due to their poor economic returns. Moreover, it implemented a policy of land reform in the lowlands; the 1977 liberation of the city of Afabet, for instance, was followed by the prompt confiscation of land belonging to landlords and its redistribution to landless peasants.

ELF's attitude toward land was more ambiguous. Before 1975, ELF had resisted land reform due to its receiving political and economic support from large landowners. Later, in the territories it controlled, ELF adopted a policy similar to that of EPLF, based on the modernization of the *diesa* system.

6. INDEPENDENT ERITREA'S CHOICES IN LAND TENURE

In 1991, as soon as Eritrea gained de facto independence after its 30-year struggle with Ethiopia, the government passed several comprehensive acts to harmonize existing legislation with new governmental policy. Proclamation n. 2/91, enacting Eritrean Transitional Civil Code (ETCC, the content of which was drawn from the EPLF Civil Code), contains several articles dedicated to land law.

At the same time, there was widespread awareness of the need for more radical reform. A resolution passed at the February 1994 congress of the EPLF defined the existing land law, both state and customary, as "archaic, imposed by colonialism, incompatible with the nation's demands of the moment, and self-contradictory"; it called for thorough reform based on the principles of state property of land and equality of all citizens in the state's distribution of usufructuary rights to land, with due compensation paid for all expropriated property.

The fundamental lines of land reform were reiterated in official macroeconomic policy. Their ultimate confirmation was the Eritrean Constitution ratified in May 1997, ART. 23 of which states:

1. Subject to the provisions of Sub-Article 2 of this Article, any citizen shall have the right, anywhere in Eritrea, to acquire and dispose (of) property, individually or in association with others, and to bequeath the same to his heirs or legatees.
2. All land and all natural resources below and above the surface of the territory of Eritrea belong to the State. The interests citizens shall have in land shall be determined by law.
3. The State may, in the national or public interest, take property, subject to the payment of just compensation and in accordance with due process of law.

Today, however, the importance of this affirmation is mainly political since the constitution has not yet entered into force.

7. LAND PROCLAMATIONS OF INDEPENDENT ERITREA

7.1 GENERAL FEATURES

Land policy directives of independent Eritrea were implemented in framework legislation, Proclamation n. 58/1994 of 24th August 1994, Proclamation n. 95/1997 of 19th May 1997, and Legal Notice n. 31/1997 of 19th May 1997. In drafting the statutes, some remarkable features inspired by the Common Law interact with a rich Civil Law substrate derived from the Italian property law used during colonial times and its French counterpart, transplanted through the Ethiopian Civil Code. All official texts (referred to below) were published in Tigrinya only; hence, the present analysis is based on unofficial English translations.

The basic tenet of land policy in Eritrea is that all land is owned by the state; therefore, every legal right on land must be granted by the Eritrean government.

Besides state property, the law recognizes three main types of land rights: usufruct on land in farms, housing land in rural areas (*tiesa* – ብሔር), and leasehold. By definition all rights are derived from state property and therefore are temporary. All valid titles are issued by the state and duly registered in the cadastral office.

Under penalty of revocation, land will be effectively used for the purpose for which it was granted. With the sole exception of rural housing, an annual rent, to be determined by law or by regulation of the Ministry of Finance, is paid.

Rights cannot be transferred, except where expressly provided for by law. Illegal transactions are null and void and are punishable as a crime.

All rights on land will be granted by the Land Commission through its local branch, the Land Administration Body (LAB), which is to be established in every province (*n'us-Zoba*). The Land Commission was originally intended to be an independent authority but was eventually incorporated into the Ministry of Land, Water, and Environment (MLWE).

The LAB is charged with classifying land according to its farming quality and with allocating farming and nonfarming land to its various productive and social activities. It is intended that cadastral maps will identify every plot with a specific number. Once the classification process is complete, every person wishing to qualify can submit an application for land allotment to the LAB (discrimination in the distribution of land is a criminal offense). If the application is successful, the LAB issues a written title in the name of the holder; otherwise, a written notice of rejection is forwarded to the applicant, who may later submit a second application.

The Cadastral Office, a department of the MLWE, keeps a registry of existing and future rights to land. Registration is requisite for validity of title (the same rule had been adopted by Italian administration until 1926, but was abandoned due to its inefficiency in practice). Other technical details of the registration process are left unchanged from the Italian model that was in operation in the major towns during colonial times. It is possible to appeal against registrations, first in the MLWE, and then before the High Court.

The Cadastral Office is also charged with preparing the maps to be used by LABs for land identification and allocation.

The rules on land expropriation are applicable only to rights granted according to the new land proclamations. The power to expropriate is given to the Office of the President of the state or to a body delegated by the president.

Expropriations can be ordered only for “purposes of development and capital investment projects aimed at national reconstruction or other similar purposes.” The decision to expropriate is final and not justiciable.

Compensation for expropriated land is to be paid in cash or in kind. The amount will be commensurate with the damage experienced and will be paid before the holder relinquishes the land. Its amount is agreed upon between the party and the government. In case of disagreement, the expropriated titleholder can bring a suit before the High Court. Judicial redress is also available when government occupies the land before paying compensation.

7.2 RIGHTS ON LAND

Every Eritrean who has fulfilled his or her military duties is entitled to land for housing in the home village. That right does not apply to urban areas, which still lack pertinent legislation.

According to ART. 31 of Proclamation n. 58/1994, immovable property that is built on land can be sold, exchanged, or otherwise transferred or mortgaged. However, ART. 4, 5 Proclamation n. 95/1997, states that selling a rural house built on *tiesa* automatically converts the right to leasehold and that the buyer should conclude a new lease contract with the state. In short, when a rural house is sold, the *tiesa* right is terminated.

Every Eritrean peasant has a usufructuary right to farmland provided s/he matches the requirements of majority of age, residence in a rural area, dependence on agriculture, and completion of military duty.

The reference by Proclamation n. 58/1994 to the definition of usufruct (in ART. 1309ff. of the Ethiopian Civil Code) is misleading. According to political will, and given the substitution of state for village authority, usufruct is the modern equivalent of *diesa*. However, the content of the usufructuary right is closer to an administrative concession than to a property right, as is usufruct in the ECC or continental Europe. The fate of an administrative concession is infrequently predictable compared with the stability of a property right.

Usufruct cannot be transferred, but it can be leased under the strict control of the LAB. Contracts of sharecropping, too, are valid if monitored by the LAB. Usufruct can be converted, upon request of the holder, into leasehold, with the accompanying advantages of security of duration (that is, for a fixed number of years and not for a lifetime) and freedom of disposal.

Agricultural usufruct terminates with the death of the holder. In the case of the death of one spouse, the surviving parent retains the usufructuary right in the interests of the children (more detailed rules deal with the case of the death of both parents). Surviving children of majority age have priority in the allocation of plots held by deceased parents.



A view of the fields outside Dongollo Tahatai, at the eastern border of the Eritrean highland

Leasehold, which is reserved for investments and large public services, is available to both Eritrean nationals and foreigners, though the latter need specific permission granted by the president of the state. The immediate effect of that rule, however, was to curb the legal capacity of Eritreans living abroad in countries that had adopted the principle of reciprocity. That is, since foreigners living in Eritrea no longer had a legal capacity to own real estate (except with presidential permission), the same capacity was automatically denied to Eritrean nationals living abroad.

The goal of leasehold is to foster economic development through private enterprise but under the control and supervision of the state. Besides rules specific to the contract, a set of legal tools (such as zoning and expropriation), inspired by western models though implemented in national spirit, assists the government in this task.

The duration of leasehold varies from 10 to 60 years, and the contract can be renewed at the discretion of the LAB. Leasehold can be freely transmitted, provided the new lessee registers the act of transfer.

8. SOME REMARKS ON THE NEW ERITREAN LAND LAW

Independent Eritrea set a priority on land law reform (one of the few areas where comprehensive legislation had already been passed). However, the mere enactment of law, as is often the case, does not amount to its implementation. In fact, attempts to initiate land distribution in a few villages ran into major obstacles with the technical difficulties of

conducting the cadastral surveys necessary for land classification. The possibility of using advanced technologies in the land classification process, moreover, was deemed too difficult because of financial constraints. At this point, the breakout of full-fledged war with Ethiopia in May 1998 utterly froze every initiative in the field.

In addition to the practical problems of implementation, the new land legislation of Eritrea raises a number of theoretical issues.

The prospective land tenure system aims at introducing strong governmental control over land. This control, however, is not matched by an effective “checks and balances” system to counter possible administrative indiscretion. A similar situation has in fact been common in many African countries and can be regarded as normal for a state led by a military élite. Experience has shown that this choice of strong governmental control over land is not the best way to achieve economic efficiency and social justice.

The use of the term “usufruct, as disciplined in ART. 1309ff. of ETCC,” to describe the rights to farmland (and to rural housing) granted under the new legislation stresses the temporal limits of the right to use land, as opposed to the stability of property rights to land. Indeed, administrative interference with land “enjoyment” is so extensive that these rights can hardly be classified as “property.”

The political will of the state of Eritrea is to replace all colonial (Italian, British, imperial, and socialist Ethiopian) land law with a modern version of *diesa*. Agricultural usufruct, however, seems more like a new version of small-scale administrative concessions than an update of *diesa*. It reproduces the core rules typical of colonial land law, including exceptional bureaucratic control over the enjoyment of property rights. The effective participation of individuals in the land allocation process, which somehow was assured under customary law, is now lost in political maneuvering. The appointment of local officials in the LABs is essentially a political issue, and there is no guarantee in the Eritrean legislation that the allocating process will not be politically guided or even corrupt—despite the reputation of integrity that EPLF officials have had so far. It would be advisable to insert rules that are aimed at preventing the government-led reform from failure due to a lack of grassroots participation, as has happened in other African endeavors.

On the other hand, granting agricultural usufruct for a lifetime addresses the issue of the peasants’ tenure security, since a life span is long enough to harvest the fruits of improvements on plots—and, in any case, the value of such improvements is made heritable.

The entitlement of every peasant to farmland is a political necessity to avoid social unrest. It also somehow reproduces the familiar tenure schemes of *diesa* and *resti*, since it is granted through belonging to a social group (in a wider sense, the Eritrean state). Of course, such a right can also be illusory when local conditions do not allow allocation due to scarcity of land. This physical limitation cannot, however, be overcome under any system.

Rural housing reproduces the right given under the customary law of the *kebesa*, with the changes necessary to retain the bureaucratic controls of the LABs in land allocation and use.

The new land law repeals all previous legislation, including customary law and legislation enacted by Eritrean liberation forces. The governmental power to define

boundaries between villages and to establish new villages for administrative purposes is a strong weapon for disrupting traditional institutions. However, such a step has been taken successfully in the past only with the active participation of concerned peasants, not against their will. The resistance to change of customary patterns in Africa can never be underestimated.

Women play an important role in the confrontation between state and customary law. The new law stresses the equality of sexes according to deep-rooted liberation policy. Yet, the overall social attitude toward women is still extremely unfavorable.

Although the new legislation aims at comprehensiveness, a number of significant gaps can be identified. Minor technical flaws due to lack of coordination between contradicting dispositions can also be found.

New land policies overlook the condition of the lowlands (the Danakil desert, being too harsh for permanent settlement, is not relevant). Historically, it was difficult for the state to enforce land law in the lowlands due to the lifestyle of nomadic people. Therefore, customary law had extensive application in the lowland areas. The new law merely endorses the *de facto* situation without proposing innovative developments expressly designed for migrant herders.

Another important gap involves urban housing and the expropriation of existing urban property, a subject that is to be covered by future legislation. Political uncertainties over these sensitive points produce technical confusion.

According to existing legislation, private property in urban houses is allowable. ART. 38 of Proclamation n. 58/1994 temporarily applies several sections regarding the transferability of the right of rural housing to existing urban housing, provided that due registration is completed. However, a later disposition, which converts the right of *tiesa* into leasehold in case of sale, does not apply to urban housing, which can still be sold, leased, mortgaged, and bequeathed.

In addition, land illegally distributed “due to war or the past colonial regime” is confiscated by the government without compensation (though the exact meaning of the text is obscure). According to local interpretation, the rule applies only to land distributed by the Derg regime and not to the vast quantity of urban property titles distributed under Italian and imperial Ethiopian rule. This view is supported by the fact that Legal Notice n. 13/1993 specifically deals with the return of some land in HalHale, which had been illegally distributed by the Derg regime, to the Ministry of Agriculture.

As a matter of fact, a thriving real estate market exists in Asmara, the capital city, where houses are sold at high prices and sometimes with the support of a re-born housing finance sector.

On the other hand, in light of the new land legislation, mandatory state property in land can no longer be seriously challenged. Therefore, the expropriation of property “in its fullest extension,” that is, of titles to property of urban houses issued during the Italian period or following that model, has already taken place. It only awaits technical settlement.

It is evident that the real issue at stake is the political will of the Eritrean government. Given that a number of legal solutions are compatible with mandatory state property in land, the intent of the state is to extend state control no matter whether the route taken is to

deprive present homeowners of their estates or to introduce state control over urban houses only for future buildings.

The new expropriation rules—though applicable only to rights given according to the new land law—do not give adequate guarantees to rights-holders. Grounds for expropriation are vague, being defined as “purposes of various development and capital investment projects aimed at national reconstruction or other similar purposes” (ART. 50, 1 Proclamation n. 58/1994). In addition, the law states that the governmental decision to expropriate cannot be challenged in court, for an action of the High Court is granted only in case of disagreement on the compensation, the amount of which, in cash or in kind, should be proportionate to the inflicted loss. The holder has the right only to retain the land until compensation is paid.

9. CONCLUSIONS

The State of Eritrea frequently asserts that its recent independence gives it the opportunity to learn from other developing countries’ mistakes and to avoid them. The basic patterns of the new land law, however, are common to the rest of Africa, notwithstanding the evident poor results.

The central government wants its control to be widespread and pervasive. The fight against traditional social groups controlling land, at least in the highlands, is severe. Apart from a formal repeal of customary law, the state’s acquisition of the power to modify village boundaries according to a scheme already completed at higher administrative levels and to introduce equal rights on land for women entails a disruption of the villages’ social identity.

In addition, nomadic lowlanders are neglected, reproducing the attitude common to all land reform passed in Eritrea by all *de jure* or *de facto* rulers.

Mandatory state control over landed property in Eritrea is, as usual, motivated by the necessity to address higher social needs. The ultimate intent, of course, is that the evolution from communal property to state property will eventually result in the widespread introduction of individual property once a sufficient level of economic development is achieved.

This unfavorable attitude toward communal property is not supported by the evidence, which shows that, in fact, efficient land management can be obtained through renovation of traditional institutions. Experience shows, moreover, that the passage of landed property to the state in independent Africa has usually been an irreversible action.

The Government of Eritrea, now an expression of a single party, has an aggressive attitude toward property belonging to competing social bodies. This is a legitimate behavior for a sovereign state and, again, is a consistent pattern of African law. However, given the limited capacity of African states to triumph in the clash with customary systems, this course of action is associated with economic inefficiency, social unrest, and environmental degradation, all of which contribute to fostering continued underdevelopment. To minimize such dangers, a more cooperative attitude toward existing social structures would be a preferable stance for the state.

10. SELECTED BIBLIOGRAPHY

On main trends in African land law:

Sacco, Rodolfo (and Marco Guadagni, Roberta Aluffi Beck-Peccoz, Luca Castellani). 1995. *Il diritto africano*. UTET: Torino. 199 ff.

On customary land law:

Conti Rossini, Carlo. 1916. *Principi di diritto consuetudinario dell'Eritrea*. Roma: Tipografia dell'Unione Editrice.

Pollera, Alberto. 1913. *Il regime della proprietà terriera in Etiopia e nella Colonia Eritrea*. Roma: Tipografia Nazionale di G. Bertero e C.

Sertoli Salis, Renzo. 1932. *L'ordinamento fondiario eritreo*. Padova: CEDAM.

On colonial Italian land law and policy:

Taddia, Irma. 1986. *L'Eritrea-colonia 1890–1952*. Milano: Franco Angeli.

On land law of Eritrean liberation movements:

Abraham, Tesfay (and Abraha, Tekle, advisor). 1998. "The Diesa Land Tenure System and the Land Proclamation No. 58/1994 in the Kebesa Rural Areas." Asmara: University of Asmara Law Program. Paper submitted in partial fulfillment of bachelor of law degree; on file with author.

Pateman, Roy. 1998. *Eritrea. Even the Stones Are Burning*. Lawrenceville, N.J.: Red Sea Press. (Chapter 8: "The Impact of Land Reform," pp. 157–177.)

On independent Eritrea's land reform:

See the literature cited by Thomas French, "Legal Literature of Eritrea: A Bibliographical Essay," 24 *N.C.J. Int'l L. & Com. Reg.* 417 (1999), at 442 (footnote 170) and 443.

Government of the State of Eritrea. *A Macro-economic Policy for Eritrea*. Asmara, 1994. 34ff.

Kidane Mengisteab, "Eritrea's Land Reform Proclamation: A Critical Appraisal," 2 *Eri. Stud. Rev.* 1 (1998).

Arafaine G. Yohannes, "Housing Finance in Eritrea," 3 *Eri. Stud. Rev.* 1 (1999).

On communal systems of land tenure:

Bromley, Daniel. 1999. *Sustaining Development: Environmental Resources in Developing Countries*. Cheltenham, Eng.: E. Elger Pub.

Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge, Eng.: Cambridge University Press.