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ARTICLE

Understanding the Local Complexities in Land Law Reforms: The Case of Land Inalienability in Ethiopia, 1991–2018

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Abstract

Postcolonial governments often restrict the market alienability of land rights for various policy reasons. One policy aims to treat all citizens equivalently and safeguard vulnerable social communities equally, as an unrestrained land market could allow one affluent social group to buy out one that is less affluent. Another policy is to set a standard that is easy to apply in the same way in every case, as a bright-line rule banning land alienation is simpler to administer than a standard that requires case-by-case considerations. Today, in Ethiopia, such laws face opposition from proponents of a free market economy and private property rights. Thus, international development institutions and influential Ethiopians are spearheading an ambitious reform to Ethiopia's post-socialist law that bans land alienability, arguing that the law has impeded social and economic progress. This article shows, however, that the legal ban has never prevented land transfers. Many people have utilized legal constructs such as gifts, bequests, loans, and leases to sell their land. Such transfers have circumvented the ban amidst aggressive land expropriation by the state and other agents. These intricate local and national dynamics undercut the misleading sense of regularity created by the inalienability law, raising serious questions about the persistent demand by

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international development institutions to privatize land rights and create land markets through law reform without paying close attention to the lived experiences at the local level.

Introduction

One cannot overstate the importance of land in rural economies. Across the whole of sub-Saharan Africa, where economies are mainly based on rain-fed smallholder farming,[1] whether one can eat or not may depend on whether one has a plot of land to cultivate. Sally Falk Moore (1998, 46) aptly underscored this fact, stating that "as far as the logic of a rural agricultural population of smallholder is concerned, if you do not have a piece of productive land you do not have food, and you and your family may die." An intricate web linking poverty, health, and social peace shapes people's real experiences, where having land rights or some actualizable claim over a piece of land could mean the difference between life and death. Household lives and livelihoods are tethered to land for sustenance, and communities could disintegrate without a piece of land they can call home, for they derive their coherence from the land they collectively cherish (Gilbert 2016). Moreover, multiple, often conflicting, state policies address issues of the land, including agricultural productivity, food security, environmental conservation, cultural pluralism, gender justice, intergenerational equity, and other economic and social objectives. Over the last several decades, governments and international development institutions across Africa have enacted numerous law reforms to promote these policies (Collins and Mitchell 2018). However, an escalating scarcity of productive land, fueled by a confluence of environmental, societal, and political shifts across the continent, poses profound challenges to individuals, households, communities, and established laws and policies (Peters 2004).

The scholarly effort to untangle the complexities at the intersection of land, law, and social relations in Africa is marked by rich and diverse theoretical, methodological, and interpretive approaches (Shipton 1994; Whitehead and Tsikata 2003, 67–76; Peters 2013). However, the research and scholarship are characterized by a pronounced divide: on one side, "critical scholarship" embraces legal pluralism and empirical methodologies to shed light on the multifaceted local realities *vis-à-vis* top-down reforms;[2] on the other, "policy-oriented research," which is typically rooted in international law and development policies and priorities, champions prescriptive "top-down" law reforms (Peters 2013, 542–45).

Since the 1990s, mainstream law and development doctrines, alongside concurrent policy-oriented studies, have exalted the ethos of a free market economy and liberal rule of law (Manji 2006, 1–21). These doctrines have unfurled external, donor-driven

[1] One report states that smallholder farming is "the lifeblood" of African economies and societies, where over half a billion Africans, or about 65 percent of the population (over 80 percent in some countries), rely on it as their main source of livelihood. This includes pastoralists and landless people but primarily consists of smallholder farmers, 80 percent of whom cultivate less than two hectares (African Smallholder Farmers Group 2010).

[2] As Pauline Peters (2013) shows, critical scholarship includes various analytical and normative studies that document the ways in which land conflicts connect with rival claims over political power and how citizenship or community belonging shapes access to land and local land-use dynamics—specifically, the ways in which "customary" land tenures evolve in relation to steadily intensifying scarcity or ecological changes (see also Boone 2014; Berry 2017).

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land reforms in the sub-Saharan region aimed at expanding private property, formal titles, and collateralization (McAuslan 1998, 529). Such reforms strive to create Western-style private property rights in land by significantly downplaying the social, political, and cultural dimensions inherent in land in agrarian economies (Berry 2009), while overemphasizing the economic advantages of market-transferable land rights (see Platteau 1996). I describe them as "property-ordering" reforms to highlight that they aim to create alienable land rights based on the concept of property as a system that facilitates access to land through free market exchanges.[3]

Some recent studies have shifted focus from this concept of property. Timothy Mulvaney and Joseph Singer (2022, 624, 639–55) reveal how the concept of property has masked and perpetuated poverty in the United States, calling for structural reforms that prioritize circumstance sensitivity and social justice. They advocate reconceptualizing property in relation to broader social fields, emphasizing the need to focus on "facts about how things are rather than how we imagine them to be" (639). The traditional property-ordering models crafted by agricultural and development economists, based on a purely "economic" conception of land rights, are losing ground (Bryant 1998). The idea that land reforms must account for distribution and intersectionality has gained traction in the scholarship on land rights in the sub-Sahara (see, for example, Cousins 2017). A recent milestone in this trend is a book by Steven Lawry and colleagues (2023, 16–17), which proposes a new methodology—a "realist synthesis"—to incorporate critical scholarship into the policy-making field. This approach aims to recenter land law and policy reforms in Africa on a path that takes the present lived realities of rural people seriously and pays close attention to distributive outcomes rather than assuming a single model of private land rights.

This article broadly aligns with a realist methodology. I examine the dynamics of property-ordering reform promoted by the World Bank and other international development organizations in Ethiopia, an agrarian nation with the second-largest population in Africa and the thirteenth largest in the world (World Bank 2024). The country stands at a crossroads due to the concerted efforts of influential domestic elites and international development institutions to change a constitutional restraint on the land market, steering the nation toward privatized land ownership and deregulated land markets. Proponents of this idea believe that market-alienable land rights bolster agricultural investment, access to credit, and overall socioeconomic progress (see, for example, Ali, Dercon, and Gautam 2011, 76–77; Admassie 2000). They contend that existing legal restrictions over land alienability must be abolished to unleash peace and prosperity.

However, evidence from fieldwork indicates that existing legal prohibitions have not prevented people from selling their landholdings through gifts, bequests, loans, leases, and other legal fictions. Despite the state's ostensible legal control over market alienation of land, these legal prohibitions have failed in practice. Individuals have navigated formal legal constraints to sell their land amid aggressive expropriation and market-centered

[3] Since pre-independence, African land policies have been shaped by an emphasis on land markets and private property rights; a trend reinforced by the neoliberal pro-market and property rights theories of the 1970s and 1980s. Despite recognizing that customary tenure does not block investment, institutions like the World Bank still advocate a shift from customary rights to private titles and have attracted widespread criticism over time (Bromley 2009; Stein 2020).

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policies that have eroded the land rights of vulnerable rural dwellers. The disparity between real-life practices, the land inalienability law, and reformers' assertions demonstrate that all-or-nothing solutions rarely unfold as reformers anticipate. This disconnect underscores the need for a nuanced understanding of local land use practices before policy makers embark on ambitious land law reforms.

Furthermore, as a growing body of scholarship shows, making land rights fully alienable has costs as well as benefits (Lavoie 2016; Carpenter and Riley 2019). As Deborah James (2006) has documented, the success of novel, market-centered legal reforms in universally securing land rights remains a matter of debate. Karla Hoff and Joseph Stiglitz (2005) have shown that privatization without robust institutions to enforce the law may incentivize those with power and resources to maintain a weak and corrupt state that would not interfere with their theft. This article argues, building on this scholarship, that reforming the law to privatize land rights and foster a land market while simultaneously safeguarding vulnerable populations presents a formidable challenge. Such reforms may prove more disruptive to the social peace and livelihoods of rural dwellers than the current legislation, which aims to maintain fair and equitable access to land.

The fundamental issue with Ethiopia's land policy is not the presence of legal restrictions on the land market—land markets do exist. Instead, the core problem lies in the state's inability to effectively implement legal rules designed in the capital across disparate places and diverse rural economies and societies. This is compounded by the government's disregard for both the law and the basic needs of rural dwellers (Lavers 2024, 112–50). The situation is further exacerbated by the increasing scarcity of productive land (Jayne et al. 2014) and the growing precarity of rural livelihoods under austerity-driven, free-market agricultural development policies (Hall, Scoones, and Tsikata 2015, 210–16).

Land is integral to the cultural, social, economic, political, and other structural currents in Ethiopia's rural society (Lavers 2018; Gebremichael 2019). Hence, efforts to address issues of land rights must first tackle the structural problems that entangle rural dwellers in dire poverty. These include entrenched "crony capitalism" (Kennedy 2012; Geda 2023), inadequate rural infrastructure and agricultural services, low levels of education among rural dwellers, under-investment in agricultural research, limited use of fertilizers, slow adoption of high-yield crop varieties, lack of access to small-scale irrigation and credit, and restricted opportunities for trade in both domestic and international markets for agricultural products (African Development Bank 2012, 5–6). Without addressing these underlying issues, any reforms to privatize land rights would be futile, if not destructive.

This article draws on interviews, court decisions, and research on land rights and land markets in Ethiopia. I conducted intensive field research for two years from 2013 to 2015 in rural parts of Ethiopia. I traveled back to Ethiopia in 2018 to follow up my sources about developments since 2015 and, since then, have maintained regular contact with some of my interlocutors through WhatsApp and phone calls. As I myself have a rural background and have worked as a judge in a rural part of the country, keeping abreast of major developments in land laws and practices has not been difficult for me. I have discussed my field research locale, techniques, evidence interpretations, and other related matters in a previously published article (Ayano 2018, 1064–66).

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The rest of the article is structured as follows. The second section contextualizes global land law and development doctrines within Ethiopia's unique socio-political landscape, highlighting the country's diminishing reluctance to privatize land rights due to local and global influences. The third section describes the purpose and theoretical orientation of the article. It delineates my tripartite aim: to provide a cautionary perspective on land law reform; to reveal the disconnection between law and social practices; and to argue for a closer examination of local realities when engaging in policy making. The fourth section delves into the theoretical and practical complexities of land inalienability laws, examining the rationale and evolutions of restraint on land alienations and contrasting local with national legislation to set the broad context. The goal here is to illuminate the criticisms of Ethiopia's constitutional ban on land markets. The fifth section analyzes Ethiopia's constitutional framework and shows the political and economic considerations that underpin the land inalienability law and its intended goals. The sixth section describes the practices that are influenced by various forces and that occur through a range of formal and informal transactions that challenge the notion that one cannot buy or sell land in Ethiopia. Examining the creative, informal transactions designed to evade the restriction on land sales, as well as the legal enactments that have enabled these land alienations, this section shows how land registration and expropriation policies have fostered land sales. The seventh section examines how protagonists have interpreted the inalienability law, revealing the disconnect between the legal intent, the complex realities of local land markets, and a misalignment with local conditions that do not necessarily warrant sweeping legal reforms. The article concludes with reflections on the need for nuanced reform that takes account of local complexities, cautioning against oversimplified changes to the law that could exacerbate existing sociopolitical tensions.

Global land law and development agenda in a local context

The idea that land rights must be private and market alienable is centuries old, at least in European legal cultures (Waldron 1988), and it has dominated global land law and development discussions following the end of the Cold War and the consequent triumph of "Western imaginations about national identity" (Eppinger 2018, 83–84). This agenda, which essentially means that individuals may own natural resources and exchange them through the market, took the lead in controlling land reform programs in African countries with the introduction of structural adjustment programs and, subsequently, the "rule of law" and "good governance" programs (Mkandawire 2011). Western governments and international development institutions have invested massively in promoting these programs (Nellis 2008), although only some countries were actually committed to fully private, market-alienable land rights, and some were ambivalent about privatizing land rights (McAuslan 1998, 529–31).

This ambivalence was most pronounced in Ethiopia, a Cold War battleground in the Horn of Africa. In 1991, when Ethiopia announced its transition to capitalism, Ethiopians who had rebelled against the Ethiopian variety of socialism appeared poised to gain what they had fought for in a bloody, decades-long civil war—a liberal democracy and a free market economy (Selassie 1992). There was little reason to expect the outcome would be significantly different. As the *New York Times* reported at the time, the United States was an ally of those rebelling against the socialist government

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and acted as a midwife to the birth of the post-socialist leadership (Perlez 1991). This leadership, the Ethiopian People's Revolutionary Democratic Front (EPRDF), was a coalition of rebels that had ousted the socialist government (de Waal 1992). Those opposing socialism had little doubt that the EPRDF government would discard every socialist law and policy in the country (Henze 1981). Under the new arrangement, the 1975 land proclamation that nationalized land was meant to wither away.[4]

The EPRDF government did indeed announce it was embarking on a free market economic policy (Demissie 2008). But it rejected calls to discard the land laws and policies, which its opponents called a "communist hangover" (Haile 1996, 67–69). Instead, it vested the ownership of land in ethnic collectives and banned the market alienability of land rights in a constitutional clause that provided that "[t]he right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange."[5]

This ban has resulted in a major fault line in the country's politics and in its relations with Western financial agencies. Prominent Ethiopian intellectuals—predominantly, economists and consultants advising global development organizations—alongside opposition parties' political figureheads have criticized the ban as a major roadblock to social and economic progress in the country (USAID 2004). Western observers frequently blame the ban for the many wars and violence in the country (Worstall 2016). The World Bank and the US Agency for International Development (USAID) have argued, in public as well as behind closed doors where major policies are negotiated, that the Constitution must be amended to privatize land ownership and remove the ban on land alienability (Deininger 2003, 86).

Ethiopia is once again at an inflection point. A civil war in the country, largely driven by rival claims over land and ethnic territory, has ended (Blanchard 2021; Van Schaack 2023). Although armed conflicts are taking place in different parts of the country (Center for Preventive Action 2023), many people are anticipating constitutional reform to privatize land ownership (Tegenu 2020). Proponents of this reform have raised various ideological, political, and practical arguments to convince the public that it would alleviate the poverty and violence that have long afflicted the country. However, although the real impetus for the reform comes from state and elites, and, this time, the ordinary citizens who are disenchanted with the status quo, it is important to reexamine the premises of the proposed reform and clearly understand the present legal and practical realities before amending the Constitution to lift the ban on land alienability.

Purpose and theoretical orientation

The aim of this article is threefold. Its practical purpose is to warn against embarking on ambitious land law reform to abolish the ban on land alienability and privatize land rights in Ethiopia without clearly understanding the present lived experiences of citizens. The article shows that, if the international development agencies truly

[4] Public Ownership of Rural Lands Proclamation no. 31/1975, 1975.

[5] Federal Democratic Republic of Ethiopia Constitution, 1995, Art. 40(3) (FDRE Constitution).

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intend to improve Ethiopia's land law and agricultural development policy, the problem is not that the law restricts markets in land. Instead, it is the disconnect between the law and social practices that is the problem, and this is unlikely to be resolved by the introduction of a new law reform. Before amending the Constitution to lift the ban on land alienability, we need to ask exactly what were the results of the existing law. Why did the Constitution restrict land sales? What sort of land markets does this rule ban? For whose benefit was it enacted? How has the inalienability law worked in practice? Have the expected benefits materialized? If, as research demonstrates, a simple, half-century-old inalienability rule has failed to achieve its stated goals, can we assume that a new private property system will work? Answering these questions could clarify distorted perceptions about the ubiquitous land markets in the country and quell unrealistic expectations of the anticipated constitutional change and the new land laws in creating a private property system.

I also intend to make a point about property law and social practices that might resonate beyond Ethiopia—namely, that individuals can get around formal legal rules more easily than we may think. This point is important for policy makers and scholars of land law and international development, especially in Africa. In theory, international development agencies recognize the need to pay close attention to local contexts. They recognize that context matters, that "one size does not fit all," and that "local ownership" is essential in designing effective law and development programs (von Billerbeck 2016, 28–47; Lindell 2020). In practice, land law and development policy specialists ignore or underestimate the significance of local realities. For instance, the premier United Nations (UN) agency in the field of land tenure—the Food and Agriculture Organization (FAO)—defines land tenure through the lens of rules (normative rules) as "the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land" (FAO 2002). However we construe what the term "legally or customarily defined" relations denotes in this definition, it is difficult to use it to take into account practices that are neither legal nor customary. Not all relationships between individuals or groups with respect to land are consistent with *ex ante* rules. Land rights are situational in that their meanings and practical force depend on the place, the moment, the social setting, the history, and many other variables. As Moore (2016, 301) puts it, "to say that someone has a right to land is to summarize in one word a complex and highly conditional state of affairs which depend on the social, political, and economic context." Seeing land rights through the lens of formal laws distorts our ability to perceive existing social conditions on the ground, leading to superfluous or even more disruptive law reforms.

The article also makes a point about law and social change that might have a theoretical significance—namely, that wide distances in space and time separate the law itself from its real effects, creating ample opportunities to refract, inflect, abuse, pervert, or ignore laws. Humans have unlimited ingenuity for bending the rules, and legal rules are inadequate in preventing opportunistic manipulations and deliberate evasions. This is a "universal problem of law and human institutions," which common legal systems attempt to mitigate by employing equity as a meta-law source of legal authority (Smith 2021, 1057–58, 1071–81). For instance, treatises on North American property law provide ample evidence of the ways in which individuals have used legal forms and fictions to get around property law rules (Singer et al. 2022, 591).

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To be sure, the disconnect between the law and the practice is neither new nor unique to Ethiopia. Generations of law and society scholars have documented many of the ways in which laws can become dissociated from social realities. Doreen Warriner (1969, 15), for instance, noted many decades ago that land laws "that have been carried out to the letter, with full control of their execution, are uncommon." Often, laws lag behind social change, as did most English common law rules about the landlord-tenant relationship.[6] Social values and practices may also vary from the law. Many studies point to cultural differences in failed efforts to transplant Western-style laws and institutions in other settings. However, Amy J. Cohen (2009, 514) shows that even "neocultural" reforms rooted in winning the hearts and minds of the local population can fail. A population that is highly receptive to a new law may still use it directly contrary to the law: "[T]hey can set law against itself; they can use obedience to the law and the legitimacy it bestows to sharpen conflict, promote local unrest, and mobilize violent social struggles" (A. Cohen 2009, 514). It may also be that, as Warriner noted, new laws lack efficacy because governments lack the resources and capacity required to implement them (Moore 1998). Moore (2016, 302) expounds this theory based on empirical evidence concerning Africa's postcolonial state to actualize its policies or, in her words, "the way, under various conditions, little people can dismember state policy."

Some laws may be impractical because there was no genuine intention to implement them to start with. Warriner (1969, 50) notes that the lack of a genuine intention by governments to implement the law in poor countries has undermined the impact of land laws that had been adopted to fulfill the desires and preferences of rich countries. Furthermore, intentions change, even when a law is enacted with a genuine desire to implement it. Officials may espouse a new objective that no longer resonates with the existing law. When an old law no longer serves new beliefs and intentions, official actions or inactions convey messages that contradict the law, which could mean that the law lacks efficacy as people lose faith in existing rules. Warriner's comment on the lack of a genuine intention to implement land laws in poor countries is still prescient. Her observations about colonial and postcolonial land reforms in the 1960s are echoed in recent studies. Alisha C. Holland (2016, 236–37) argues that officials may choose not to enforce the law when non-enforcement offers better strategic advantages than a formal repeal of the law. The law may lack efficacy when the officials no longer communicate messages consistent with the law (Friedman 2016, 21–32). This is not necessarily done for a selfish, private end. As Bernadette Atuahene (2023) shows, officials may ignore the law or manipulate its enforcement to generate state revenue at the cost of private rights and interests.

Each of these observations can explain why Ethiopia's ban on land alienability has had little practical impact. The later parts of this article will show that not only have individuals been creative about getting around the rule, but the official initial intention has also changed mainly due to the popularity of a free market and private dispensation of the economy among influential Ethiopian intellectuals and policy makers. Furthermore, the government has been ambivalent about enforcing the rule partly because the World Bank, USAID, and other powerful institutions and individuals have opposed restraint on land alienability. A government that relies

[6] *Javins v. First National Realty Corp.*, 428 F.2d 1071 (DDC 1970).

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heavily on loans and development aid to provide basic public services cannot consistently antagonize donors. Even if the government were committed to enforcing the ban, its lack of human and financial resources may stifle its capacity to police land sales and transfers proactively. Most importantly, time and place create gaps that allow individuals to get around the law. Designing law reforms based on theories of private property and market exchanges in Ethiopia's capital based on recommendations from Washington, DC, and Brussels to implement it in the diverse rural parts of the country would require the sort of capacity and legitimacy to control places and peoples over a sustained time that the Ethiopian government does not currently have.

The hubris of the land alienability concept

Property-ordering reformers presume that alienability is the norm underlying the regulation of land and social relations. They exaggerate the benefits and prevalence of alienability. However, inalienable land rights are far more common, even in Western legal cultures, than reformers think, and inalienability serves important economic, social, and political purposes.

Inalienability and the world-wide ubiquity of inalienable lands

Land inalienability laws, broadly defined as "any restriction on the transferability, ownership, or use of an entitlement," serve important economic as well as moral values (Rose-Ackerman 1985, 31). Some resources are too integral to our personhood or identity to be exchanged for a market-based price (see Radin 1987). Additionally, some resources are better managed through a non-market governance regime than a free market exchange (Ostrom 1990; Armitage, Charles, and Berkes 2017). Such restrictions are common in industrialized as well as developing economies. For instance, communal lands and state-owned lands, such as protected forests, parks, and many other types of land, are generally market inalienable. Community land trusts providing affordable housing for low-income households in urban settings are also typically inalienable (DeFilipps, Stromberg, and Williams 2017). Indigenous land rights in many postcolonial countries are inalienable (McNeil 2008). This includes Native peoples' land in North America, Australia, and New Zealand (Lavoie 2016, 3).

The justifications for restraining land alienability have varied across time and place, often raising serious theoretical and political controversies (Carpenter and Riley 2019). British colonists in Africa restricted land alienability by creating two different legal processes—one for the subjects of restricted land alienability (the original inhabitants) and another for the settlers who promoted the concept of land alienability, with the goal of dispossessing the former (Berry 1992, 341–45). This policy later accumulated paternalistic features as well as features intended to protect the interests of Indigenous peoples (Adnan and Dastidar 2011).

Postcolonial restrictions on land alienability emerged across postcolonial Africa as part of what Jo Guldi (2022) describes as the global redistributive wave of land reforms in the twentieth century. Driven by a global movement, these reforms produced radical agrarian changes in many regions. In some countries, revolutions produced radical land reforms, resulting in the nationalization of land ownership together with inalienable occupancy rights for the citizens (56). More than two dozen African

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countries enacted laws to nationalize land following independence from colonial rule (Bruce 1998, 5). In their less radical instances, long before the shift to fundamentalist neoliberalism in the 1980s, land reforms driven by liberal global organizations such as the World Bank, the World Food Programme, USAID, and other bilateral donors fostered and distributed smallholder-oriented occupancy rights in the name of agricultural and economic development (Guldi 2022, 56).

Local versus National Inalienability Laws

One aspect that distinguishes the land inalienability laws that were introduced by way of revolutionary reforms from the colonial ones is the scale of these laws. Colonial inalienability rules targeted specific locales, people, and uses within a jurisdiction. Thus, native possession was to be inalienable, while settler possession was to be alienable. Land suitable for commercial farming would be alienable; land subject to collective or communal use would not. Thus, in Canada and the United States, for instance, inalienability rules apply to the land held by Native peoples. In many countries, revolutionary land reforms introduced inalienability rules in the form of simple national legislation rather than being tailored for specific locales, land uses, or communities (Bruce 1998). Such rules were preferred to local ones for ideological and practical reasons. Ideologically, most reformers were inspired by ideas about equality, economic gains (development), and society or by "nation building," which militated against the local variations of customary land use practice (Allott 1984, 70). In practical terms, standard inalienability rules are easier to administer than locally specific rules. This consideration is particularly important for governments that rely on land as the key basis of their national law and development plans.

Indeed, few people dispute the importance of having uniform land laws that apply beyond local settings. As leading theorists demonstrate, laws that apply beyond the local setting are better suited for addressing problems that arise in disparate places (Merrill and Smith 2000), and laws limited to a local community are not only difficult to administer; they are likely to be inadequate for dealing with problems that are broadly connected to land (Singer 2010, 84). A major reason for standardizing land laws is that land rights are intertwined with values and policies that intersect with disparate places and communities. Food insecurity is deeply connected to land rights, as are gender and social inequality as well as environmental issues like deforestation, soil erosion, and water supplies. Each of these issues requires interventions beyond the local setting.

Ethiopia's post-socialist laws restricting land markets

The Ethiopia Constitution, which was adopted in 1995, defines private property as a function of labor, enterprise, and capital.[7] This definition indirectly excludes land from the class of private property because land can neither be created by labor nor generated by an enterprise or capital. Further, it explicitly bans land markets and vests "the common ownership" of land in Ethiopian "nations, nationalities, and peoples," without defining in the Constitution or any other subsequent law what is

[7] FDRE Constitution, Art. 43(1).

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meant by the common ownership of land. The Constitution describes "nations, nationalities, and peoples" collectively as a vague constellation of social groupings "who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."[8] This description designates the ethnic groups in the country, of which there are officially more than eighty-six.

In a different chapter, the Constitution gives more concrete meaning to the abstract rules for land ownership by entrusting the federal government with "the duty to hold on behalf of the People, land and other natural resources and to deploy them for their common benefit and development."[9] Federal and state governments have enacted various land statutes and regulations based on this clause. These laws do not elaborate the specific obligations entailed by the government's trustee status, but they do guarantee smallholders and pastoralists the right to use land, which includes the right to transfer land rights through inheritance; the right to rent out a portion of their holdings for a limited time; and the testamentary or intestate transfer of land among close relatives, typically offspring, spouses, parents, and siblings. The Constitution and subsequent laws recognize that a private property right exists in structures and improvements "produced by the labor, creativity, enterprise, or capital of an individual as citizen.[10] This right covers the investments or improvements people make on their land, which typically means their houses, crops, vegetation, and other valuable structures. A community cannot legally own private property "unless it has been specifically empowered by law to own property in common"—that is, unless it is incorporated as a legal person with a right to own property.[11]

Many questions about what the common ownership of land means in practice and the kind of legal authority that federal and state governments have over land remain unanswered. For instance, when global investors rushed to acquire agricultural land in Africa following the 2008 financial crisis, the federal government took over the entire matter of regulating land investments, arousing protests and resentment from both local authorities and rural dwellers. Local authorities are charged with the most routine forms of land administration. Although the federal authorities are supposed to enact broad policy and general legislation, the legal materials defining the powers and responsibilities of federal and state governments are incomplete. It is evident that the constitutional framing has embedded land rights in multiple sovereignties and codified multiculturalism through a federal arrangement (Mamdani 2019).

This arrangement entails that, upon gaining legal recognition under the Constitution, an ethnic group's right to self-determination, including the authority to administer land based on federal rules and guidelines, follows automatically. Such authority is vested in ethnic groups organized as a state in the federal structure or as an autonomous administrative unit, typically as a *woreda* (the equivalent of a county) or zones, which rank above *woreda* within a state. It is widely accepted in the formal legal narrative that ethnic groups own land—however vague the notion of what

[8] FDRE Constitution, Art. 39(5).
[9] FDRE Constitution, Art. 89(5).
[10] FDRE Constitution, Art. 40(2).
[11] FDRE Constitution, Art. 40(2).

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owning land as an ethnic group may mean—and that land cannot be alienated through market mechanisms. Consequently, a root cause of the numerous "ethnic" conflicts within the country stems from disputes between "Indigenous" groups who assert collective ownership and "settlers" who are perceived as outsiders (Lavers 2018, 462). Similarly, as discussed later in this article, the drive for property-ordering reform is largely fueled by the prevailing narrative, disseminated chiefly by development economists, that land is market inalienable.

Why did the constitution ban land markets?

When the socialist government fell in 1991, the EPRDF declared that Ethiopia was to have a free-market economy and multicultural constitutional democracy. However, the EPRDF government constitutionally banned land alienability for various political and economic reasons. The next sections describe some of the reasons for this decision.

Political reasons

Prominent EPRDF leaders believed that the existence of private and alienable land rights would allow well-off individuals and ethnic groups to dispossess smallholders and pastoralists in historically marginalized groups. The drafters of the Ethiopian Constitution also believed that banning the market alienability of land rights would promote equality among ethnic groups in the country.[12] If Ethiopian smallholders and pastoralists had the legal right to alienate their land freely, they thought, individuals from well-off ethnic communities would buy land from rural dwellers in historically marginalized communities, leading to their dispossession along ethnic lines. These beliefs were informed by the country's ethnic diversity and its long history of land dispossession along ethnic lines.

Before 1975, Ethiopia had what liberal and Marxist commentators alike describe as a feudal land tenure and social structure (Ellis 1980, 91–97). Studies classify the traditional land tenures in the country into two broad categories: an inalienable communal arrangement in the northern parts, where the Amhara and Tigray ethnic groups who have historically occupied the political and economic center of the Ethiopian state largely reside, and a private and alienable tenure and hierarchical social ordering in the eastern, southern, and western parts of the country (Kebede 2002). The studies generally describe the latter as the "South." Major communal land tenure systems among the Amhara and Tigrayan ethnic groups are broadly described as *rist* and *gult* systems (Crummey 2000). As Allan Hoben's (1973, 130–42) seminal book explains, a person acquires *rist* land rights primarily by establishing their descent from the person who is believed to have founded the land. But *rist* land can also be acquired by gift or inheritance from one's immediate family or kin, and one's *rist* right does not necessarily mean having an actual right to the land because a person's ability to actualize such a right depends on various social and political factors as well as on the location of the land. People who have political power can more easily assert their right to *rist* land than those with less power. *Gult*, on the other hand, is a right arising

[12] Constitutional Assembly, *The Ethiopian Constitutional Assembly Minutes*, vol. 4, November 24–29, 1994.

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from a land grant by a king or other governmental authority in exchange for service, usually military service. A *gult* right can be for a limited or for an indefinite length of time, and it can be created on *rist* land. Both these categories are a simplified presentation of complex and changing land tenure systems. Land tenures have always been extremely varied, even in the Amhara and Tigray regions. A study in one province of Amhara, for example, has identified more than one hundred land tenure systems in existence (Schiller 1969).

In the South, the land tenure systems were very different from those in the North. Here, wherever the state occupied an area and asserted authority over it, the officials not only subjected it to alienable private property rights in land, but they also imposed on it the lords who owned the land and kept the Natives on as tenants. The army and functionaries of the kings, emperors, and local leaders—who were typically traditional heads of these communities—had facilitated the northerners' imperial march to the south and had in return received these lordships, together with title to large swaths of land. The tenants who tilled the land were required to pay service swaths and rents to the landlords, taxes to the state, and tithes to the church (Tibebu 1995, 71). The monarchs were at the apex of this structure. Next was the Ethiopian Orthodox Church, which owned one-third of the land in the country, followed by the nobles and other people with special status as intermediate authorities who collected and shared the taxes, rent, tithes, and other legal and non-legal fees from these tenants. Since the economy was entirely based on agriculture, the tenants' rents and dues supported all those higher up the social ladder.

In 1974, a military group (the Derg) overthrew Haile Selassie's monarchy (which lasted from 1930 to 1974) and nationalized the ownership of land and natural resources.[13] Inspired by the redistributive global currents of the time, and under the slogan "Land to the Tiller,"[14] this proclamation banned land sales, restricted the hiring of farm labor except by widows and elderly people, and limited household landholdings to a maximum of ten hectares. Before the reform, only a small number of people owned land, and most rural dwellers were tenants (Brietzke 1976). The law encouraged tenants to seize the land they had tilled and assured the new smallholders that they had a perpetual right to use it. It charged local peasant associations with enforcing the reforms and village-level social courts with the resolution of land disputes (Kamm 1975). The drafters of the Constitution even floated a clause that would privatize land rights.[15] But the most members of the Constitutional Council

[13] Public Ownership of Rural Lands Proclamation no. 31/1975.

[14] A common misconception (shared by Robert Ellickson) is that communists crafted the proclamation. See Ellickson (1993, 1315), where he characterizes the proclamation as a communist reform). In fact, the drafters of the proclamation and those who had first-hand information about the reform process report that the communists actually opposed nationalizing land to avoid the mistake of prematurely implementing a communist policy in a peasant economy. Interpreting the Ethiopian pre-land reform system as pre-capitalist, they argued that Karl Marx's thesis on "the Nationalization of the Land" (see Marx 2021) should not apply until capitalist agriculture had matured in the country. The proclamation was drafted by Zegeye Asfaw and his colleagues, who had studied at Wisconsin Law School in the liberal legal tradition. That even USAID and many Western institutions supported the proclamation at the time confirms this point (Cohen 1985). The liberals thought this approach resonated well with a classical liberal theory of private property land (Mill 2004).

[15] Constitutional Assembly, *Ethiopian Constitutional Assembly Minutes.*

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(the body that adopted the Constitution) rejected this proposal on the grounds that private, alienable land rights would recreate the baneful past.

The objection against alienable land rights was especially pronounced in the South. A study conducted at the time reported that

> [a] high official of the Oromo People's Democratic Organization (OPDO) says the main concerns of farmers in Oromia are preventing former landlords from reclaiming the land they lost in the land reform [1975 Land Reform]; [and] opposing the sale of land, which would enable outsiders from the city to take away their land. ... There are strong sentiments that, if land is controlled centrally, urban Amhara interests will prevail in matters of land allocation. (Bruce, Hoben, and Rahmato 1994, 52)

Indeed, people's reaction to land inalienability often depends on their ethnic identity. In 2002, the Ethiopian Economics Association conducted a survey and reported that the support for individual market-alienable land rights varied across ethnicities and regions (Ethiopian Economics Association and Ethiopian Economic Policy Research Institute 2002). Respondents in Amhara, Tigray, and a few other regions favored the agenda, while most respondents belonging to politically less powerful ethnic groups objected to it (Githinji and Mersha 2007). Proponents of the constitutional framework consider this to have been a legacy of the historical marginalization of the peoples in the periphery (Lewis 1993). Their argument rests on the view that Ethiopian ethnic groups are still unequal and that markets in land may further disempower marginalized groups. Proponents of the inalienability law have argued that land alienability would impoverish rural households and destroy communities. This distributional argument stems from the fact that many rural dwellers depend on land not only as an economic resource but also as the social, political, and cultural foundation of community life. If land were allowed to be a marketable commodity, they argue, rural people with few assets would be obligated to sell it whenever there was a major crisis, such as death, drought, or locust plague.

Another distributional argument against alienable land rights is that it would undermine the social function of land in rural societies where local land use norms discourage land sales. As Jan Hultin (1987, 182–87) notes in the context of a community in the western part of the country, "a man who sold land was regarded, not as an economic man who made rational choices, but as an embezzler who destroyed resources on which his kin and future generations depend for subsistence."[16] Across Africa, land alienation is often viewed as harmful to community and clan life despite frequent transfers. This tension arises from deep-seated beliefs that are skeptical of land alienation; yet sometimes, due to unavoidable circumstances or decisions by more powerful individuals, land alienation does occur (see Chimhowu and Woodhouse 2006). Rural dwellers view land intergenerationally; they seek to use and govern its use accordingly rather than to sell it and earn an income from it (Nahum 1997, 54).

[16] But see Crummey (2000, 182–87), who argues that the practice of selling land in parts of the country dates as far back as the eighteenth century).

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Economic reasons

On the economic front, the drafters intended to deploy land for national economic development. This is based on the view that a free-market system is less suitable than administrative mechanisms as a way to allocate land to alleviate rural poverty, unemployment, and environmental degradation (Ministry of Finance and Economic Development, Economic Policy, and Planning Department 2003, 15). The theory is that land must be allocated in relation to labor rather than capital. Two constitutional clauses are directed at actualizing this theory. One provides that "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession" and another that "Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands."[17]

Government policy documents have illuminated this theory. According to the 2003 policy document, guaranteeing access to rural land to anyone who wanted to farm would create distributed smallholder farming and broad-based employment rather than having a few people owning large farms as a result of market exchanges (Ministry of Finance and Economic Development, Economic Policy, and Planning Department 2003, 23–27). The drafters considered that the country has abundant land and abundant unskilled labor; while more than 85 percent of the country's population resides in rural areas depending on having land for producing food and other crops, the document shows a policy preference to generate capital and economic development by combining the two through governmental agencies rather than free market exchange. Furthermore, it was thought that a simple rule banning land sales would be easy to apply to address concerns about social justice (especially ethnic equality) and economic development. According to this logic, a bright-line rule banning land sales, rather than one that allowed market-alienable land rights, would be easier to administer.

Criticisms of the land inalienability law

From the very start, many people have criticized the constitutional land inalienability rule for being anachronistic. As in many other settings, the Ethiopian transition in 1991 was intended by many to end socialism and dictatorship (Haile 1996). This aspiration meant that policies restricting free markets did not sit well with the vision and the wishes of those who wanted the new post-communist era to be a complete break from any restriction on the right to private property in land and the freedom to alienate it. Restrictions on land markets have faced resistance from opposition political parties and Western development agencies on various economic grounds. Western donors insist, often with a threat of withholding aid, that a constitutional ban on the sale of land is bad for Ethiopia's development (Githinji and Mersha 2007). Echoing the classical "doux commerce" thesis that a free market is gentler than any other form of social ordering (Hirschman 1982, 1464–66), critics argue that this constitutional clause has allowed the state to control the lives and livelihoods of rural dwellers (Ali, Dercon, and Gautam 2011, 75–86). They believe, therefore, that the 1975 Land Proclamation, whence the constitutional inalienability rule came, converted

[17] FDRE Constitution, Art. 40(4).

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rural dwellers from being the tenants of absentee landlords to becoming tenants of the state. This belief stems from the theory that private, market-alienable land rights will make individuals less vulnerable to state power by increasing their economic power and freedom. However, as Larissa Katz (2012) has shown, formalizing private property rights can actually bolster the state's power, thereby making individuals more vulnerable to state control.

USAID (2004) has also argued that the ban on the sale of land has stunted the efficient allocation of land rights, fragmented smallholder landholdings, tied smallholders to rural land, disincentivized long-term investment land and ecological conservation, limited landholders' access to credit, and undermined food security and the economic and social development of the country generally. Other opponents have argued that restricting land markets includes inhibiting social mobility (by tying farmers to the land), fragmenting smallholder landholdings (thereby undermining productive land use), fostering deforestation, and encouraging the overexploitation of the soil (Legesse, Jefferson-Moore, and Thomas 2018, 494–99). Typical arguments are that Ethiopia's development demands a free-market economy and the existence of private property and that price, profit, and an independent judicial system are essential for a market economy; therefore, land and other resources must be capable of being owned by individuals and "freed from state control" (Teferra 2005, 45–46). Specific arguments include the view that the clause has inhibited rural dwellers' desire to invest in their land, increase their harvest, and conserve land and the environment for sustainable use; that it distorts the allocation of land rights to the best user and the most efficient use; and that it restricts rural-urban labor mobility and other social changes (Assefa 1999).

The Constitution's coupling of land rights and ethnicity has also raised a different set of objections (Addis 2022, 216–19). Critics believe that codifying ethnic differences and embedding land rights in such differences tend to ossify cultural differences and foster conflicts among people of different ethnicities. In the eyes of these detractors, this combination of ethnic sovereignty and restrictions on the alienability of land has fragmented national citizenship. Despite all these arguments, the constitutional ban has scarcely, if at all, prevented people from selling and buying land. The next sections explain this point.

Land sales in practice

Muhyiddin Yunus sued Nazi Aliyi and Ali Abdo to recover a six-hectare piece of farmland that he said he had transferred to Nazi Aliyi as a usufruct.[18] A usufruct is a legal right that gives the holder the right to use and enjoy things or rights subject to the duty to preserve their substance.[19] Yunus argued that he had transferred the land to Aliyi but that Aliyi had then rented it out to Abdo, who refused to return it. Abdo, on the other hand, argued that he had bought the land from Aliyi and his wife and that he had possessed it for a longer time than the statute of limitations. The court found that the disputed land belonged to Aliyi's spouse, who had inherited it from her

[18] *Muhyiddin Yunus v. Nazi Aliyi and Aliyi Abdo*, House of Federation, 5th Term, 2nd Year, 1st Regular Meeting, 2017.

[19] Civil Code of the Empire of Ethiopia, 1960, Art. 1309.

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father and then sold it to Abdo. This meant that Yunus had no legal interest in the land and that he could not recover it. As a result, the court ruled that Abdo would retain the land. After several appeals and reviews, Yunus took the case to the Ethiopian House of Federation (HoF), a body charged with the final review of questions of constitutional law in the country. He argued that the transaction violated a constitutional ban on the market alienability of land rights.

In September 2017, the HoF rendered a decision that might strike one as unusual in light of conventional property law jurisprudence. First, it ruled that land rights are constitutionally inalienable and that land titles acquired through sales are void. Second, the HoF faulted the trial and appellate courts for their decision to award the land to Aliyi Abdo. The HoF declared that Aliyi Abdo had no legally cognizable title to the disputed land because he had acquired the title through unconstitutional means—that is, a sale. Third, the HoF held that the disputed land must be given to a government agency rather than to any of the litigants.[20] None of the litigants could have anticipated this outcome. The plaintiff lost his case, although there is no evidence that he ever had any interest in the disputed land from the start. The second defendant lost land he had presumably possessed for more than a decade, while a local government administration received a windfall asset, potentially lucrative for leasing to land speculators (see, for example, Rahmato 2011; Lavers 2012; Gemeda, Abebe, and Cirella 2020, 3–9). The HoF's ruling left an opportunity for Aliyi's wife to recover the land, contingent on her filing a new claim, which would depend on various factors including her financial resources and ability to navigate local norms and informal pressures.

One can draw on the case to highlight criticisms of the ban on land alienability. This case, involving a dispute over land exchange among poor smallholders, led to lengthy and expensive litigation that benefited no one. For smallholders in Ethiopia, litigating land disputes at the HoF is a considerable burden, especially for parties like those in this case, who resided over five hundred kilometers from the capital, Addis Ababa, where the HoF is located. Furthermore, land disputes must navigate a complex journey through multiple levels of appeal and review before reaching the HoF: starting at a village court, then moving to the state High Court, followed by the state Supreme Court, then the state Supreme Court Cassation Division, and, finally, the Federal Supreme Court Cassation Division, before reaching the Council of Constitutional Inquiry, which reviews the case and makes a recommendation to the HoF. Critics might argue that this decision exemplifies the flaws in the land inalienability policy, suggesting it creates transaction costs and fosters rent seeking without improving rural welfare. However, they have not cited this case, or any other court decision, in their arguments against the inalienability law. Instead, their criticisms are typically based on rational choice theories, rent seeking, and transaction cost arguments, supported by econometric analyses of opinion survey data (see, for example, Deininger et al. 2005; Holden and Ghebru 2016; Gebru, Holden, and Tilahun 2019).

In reality, the *Muhyiddin Yunus v. Nazi Aliyi and Aliyi Abdo* case is an outlier and a recent development. On its own, it does not tell us much about the alienability of land rights in the country in practice. For a long time, the assumed virtues of a free market,

[20] *Muhyiddin Yunus.*

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deregulation, individual enterprise, and private property have dominated political discussion among the country's urban elite. The administrative agencies have encouraged land transfers by putting in place various statutes and regulations, and the judiciary has acquiesced to them. Researchers have documented how local agricultural development officers, land administration and use committees, and trade and industry offices have exploited the financial vulnerability of rural dwellers to broker land sales on behalf of buyers and in light of their official ability to legalize a buyer's title to the land (Abdo 2020, 248–50).

As I have shown elsewhere, the courts and the HoF seldom enforced this constitutional restriction of the sale of land until 2014, when protests fueled by dispossessions of ethnic land spread throughout the country and eventually led to a change of government officials in 2018 (Ayano 2020). The HoF mounted a policy against land sales to stave off the violence and the anti-government movements produced by the land dispossessions. The HoF's recent move to enforce the ban on land alienability represents a swing in the judicial pendulum that started in 2014, which was forced by the violent protests arising from land dispossession. But the *Muhyiddin Yunus* decision does prove a point that anyone familiar with the country could scarcely doubt—namely, that the existence of a land market is ubiquitous in rural as well as urban areas (Soboka 2022). Several studies show that land markets are driven by legal, non-legal, and illegal practices. One study has shown that land cases constitute as much as 60 percent of court dossiers, and most are about land sales (Moreda 2022, 16–17). Moreover, numerous homes in cities and towns across the country are built on land purchased from smallholders (Asnakew et al. 2024). If the law were to be enforced rigorously, whole cities and towns built on land purchased from smallholders would have to be demolished.

The constitutional ban on land alienability has thus not in any meaningful way prevented people from selling and buying land. To understand why and how the law has failed to ban land sales, we need to highlight the context and factors that have fostered land markets.

Forces driving land markets

The needs and desires that drive land sales are numerous and unending. But we can say that, in general, they are induced by necessity and social mobility goals. Smallholders sell their land to feed their families or fulfill other basic needs when a severe drought destroys their crops and kills their livestock.[21] The necessities that lead to land sales include drought, the lack of draft animals, the lack of cash to buy fertilizer and seed, and emergency family and related expenses, as well as the lack of labor to work the farm.[22] In one case, for instance, a mother mortgaged her farmland to raise the money she needed to look for her missing child.[23] Some smallholders sell land to urban dwellers or commercial farmers to avoid losing it at a lower

[21] *Kelebe Tesfa v. Ayelign Deribew*, CCI File no. 693/07, August 2014; *Ketefo Gebreyesus et al. v. Besufikad Ayele*, Council of Constitutional Inquiry, File no. 1663/08, July 2017.

[22] *Alemitu Gebre v. Chane Dessalegn*, House of Federation, 5th Parliamentary Period, 1st Year, 2nd Regular Meeting, 2016.

[23] *Banchalem Dersolign v. Abebaw Molla*, House of Federation, 5th Parliamentary Period, 1st Year, 2nd Regular Meeting, February 2016.

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compensation by expropriation. When local governments expropriate farmland for urban or industrial development, smallholders sell their remaining possessions for a better price, in anticipation of further expropriation. Some may also sell land to finance their upward mobility, especially those who have some education and exposure to urban life. Typically, a smallholder sells land to build and rent out a house in a nearby town or to start a new commercial business. These practices are widely known, and there is a dramatic gap between practice and the constitutional ban on land alienability and the statutes and regulations. The prevalence of the informal land market and the existence of landholders, landless buyers, entrepreneurs, and everyone else is well known to government officials.

Land sales are hard to regulate for two major reasons. First, the authorities lack the resources to proactively police the land sales that take place in the form of rental, loans, bequests, the sale of houses or structures on the land, and other creative transactions designed to disguise the real intent of the buyer and seller and thereby evade the formal ban on land sales. Most land sales occur in the shadow of formal law where government authorities do not have the financial, institutional, or human resources to regulate them. Second, and most importantly, government officials are ambivalent about, or deliberately indifferent to, regulating the informal land market because of the pressures of international financial institutions, local elites, and government programs and the steadily increasing grip of the free market ideology on the bureaucratic consciousness. Rather than enforcing the ban, the EPRDF government officials, with the support of USAID, the now-defunct British Department for International Development, the World Bank, and many other Western development agencies, have implemented laws and programs to promote land markets. A prime example of these is the national rural land registration program that was introduced in the early 2000s to clarify land rights and promote the land tenure security of rural dwellers (Yami and Snyder 2015). While promoting the land market is not a clearly stated objective of this program, it has had the effect of facilitating informal land sales as land buyers have discovered legal and illegal ways to register and formalize buyers' titles. When the state is committed to the free market exchange of goods and overarching neoliberal policies, carving out land as a non-alienable common good is difficult to enforce.

Typology of land sales

Evidence from fieldwork and a review of the decisions of the Federal Supreme Court Cassation bench show there are two major ways in which rural dwellers may sell land. The first category of land transfer occurs by strategically using the constitutional definition of property rights in land. The second occurs by using the mode of land transfers that the federal and state governments have created within the limits of the constitutional ban on land sales, such as short-term leases, bequests, and exchanges permitted by statutes.

Land sales disguised as transfers of private property on land

The most common method of effecting these transfers is by disguising land sales as the sale of private property on the land. As the Constitution guarantees landholders

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the private, alienable right to the improvements they make on their land, the sale of land is simply represented as the sale of the improvements on it. A grass-thatched hut on the outskirts of a fast-growing city can fetch millions of birr (Ethiopian currency; one birr is equivalent to 0.018 US dollar) precisely because the transaction is presented as the sale of the house while, in reality, it is a sale of the land. The most secure way to purchase land is by a contract transferring a building or other structures on the land. The contract does not mention the real price so the seller signs a loan agreement for the real price (or even higher) of the transaction,[24] which serves elsewhere as security against the seller's reneging on the arrangement. The only risk for the buyer in this case is complying with the municipal plan. This arrangement raises hardly any legal questions over non-urban land sales where planning and design compliance is not required.

Over the last three decades, urbanization has changed the land and the people (Lamson-Hall et al. 2019, 1238–49), and some towns and cities have expanded at rates as high as 19 percent per annum (Fenta et al. 2017). Many smallholder villages have disappeared because they have been swallowed up by the rapidly expanding towns and cities. Most land sales occur in rural villages located near these expanding towns and cities. Urban municipalities have the power to expropriate rural land under urban land lease laws that authorize officials to take land from rural dwellers and lease it out for urban housing. The leasing can be performed by auction, but, usually, the city officials give this land to government employees, ruling political party members, and other well-connected individuals without conducting an auction or following transparent procedures. When rural land is taken for such a purpose, the rural landholder has the right to receive compensation and a five-hundred-square-meter parcel of land. In major cities where land is scarce, the parcel size may be less than that. Any landholder's children who are eighteen years old and older will also receive a 250-square-meter plot or less, depending on the type of the municipality.

When the town or city border is near a rural village, the rural people do not sit and wait for the municipality to exercise their power and take the land. They parcel out their possessions, selling their land for any sum that exceeds the compensation they would get when the municipality expropriates it. There is a large pool of land-hungry buyers ready to pay. One such category of buyers is the townspeople. These people work and live in towns and have saved enough to buy a piece of land but not enough to buy a home, and they do not have the necessary connections or status to qualify for land awarded in the municipal leasing program. Women, apart from those who reside abroad, rarely buy land in this way, reflecting the inequality of wealth between the genders. Ethiopian men and women who reside abroad are also in the market for land, and women working in Arab countries as domestic servants buy land through their relatives at home through such transactions.

[24] In a typical transaction, the process would be as follows: A smallholder (L) sells a plot of his land to the buyer (B)—say, a restaurant owner in the nearby town—for a price (P). B will contact a town zoning officer to ensure that the plot is consistent with the town's zoning laws and plans. This sale is illegal—hence, the officer should not cooperate, but they will. L will sign a (fictitious) loan agreement saying that they have borrowed an amount higher than P from B. The loan will guarantee that L will not change their mind before B acquires a legal title from the town or the land record office. So B is the creditor under the fictitious loan agreement. The chronology may vary, but this is typically how the process goes.

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The buyers run the risk of any loss that might result if their plot deviates from the municipal plan. To avoid this risk, sellers parcel out the land into sizes that meet municipal plans and designs—500, 250, and 105 square meters—or in places like Addis Ababa, 75 square meters. Buyers then immediately build a house, foundation, or some permanent structure to enhance their bargaining position if municipal officials refuse to recognize the plot. Officials may destroy the structure if the plot contradicts the town plan. But they may be reluctant to destroy a house because demolishing homes and other substantial investments would attract media attention and criticisms by foreign and local organizations and individuals. Local and international human rights organizations have criticized local governments' efforts to demolish homes built on land purchased from rural dwellers (often called "*chereka bet*" in Amharic, which means "moon house" because those houses are usually built at night), leading to serious backlash against the officials. If the political backlash is severe, higher officials may punish local officials who demolish such buildings. Since rural-urban demographic divisions have ethnic aspects, opposition to such demolitions is framed in ethnic terms. A case in point is the recent decision by the Sululat city administrators to demolish houses built on land purchased from rural dwellers in the area, whereby human rights organizations, including Human Rights Watch, characterized the policy as anti-Amhara by Oromo officials (Endale 2023; Human Rights Watch 2023). This practice shows that investment in illegally purchased land may create property, especially if the investor has political influence. Of course, the buyer can always negotiate with officials using other legal and non-legal means. Sometimes, municipal officials may unofficially and illegally give their "expert advice" on the viability of the plot before the buyer concludes the purchase. They may even help survey it and provide an accurate layout that conforms to the plan before the transaction is completed. Giving such advice or assistance is formally illegal because buying and selling are illegal.

However, buyers need to take one more step before they get full legal title to such plots: they must negotiate with rural or municipal land record officials, depending on the location of the land, to acquire a certificate of title. One way to obtain the title is by producing evidence of their residence in the village where the land is situated and of their title to the land as rural landholders in that village. In this case, municipal officials treat the buyer as a rural dweller who is merely converting his rural landholding to municipal land. Another option is to deal directly with municipal officials. Here, the buyer asks for the title deed and negotiates with municipal officials without having any paperwork or evidence of valid title. Since giving an official title to such plots is illegal, the negotiation typically involves greasing the official's palm. This process does not necessarily involve the mayor or any high-ranking official; a record keeper or surveyor can do the work.

In many parts of the country, especially in the smallholder communities surrounding towns and cities, a rural dweller who wants to sell their land may transfer the land as a "gift" to the buyer. This is because the constitutional ban on land alienability does not include transfers by way of bequests and gifts to close family members. In this arrangement, a buyer may pose as an heir or renter in an arrangement that looks like a rental transaction but is, in fact, the sale of the land beneath the property. In this case, the recipient of the gifted land would then enter a loan agreement with the rural dweller whereby the latter promises to repay the loan

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based on the terms and conditions in the agreement. The loan is the price for the land, and the loan agreement (a promise to repay) is the means of securing the land transaction in case the landholder reneges on the arrangement. Cases where parties in such arrangements renege on the deal and end up in litigation are common, and most land cases decided by the country's highest court deal with such disputes.

Land sales under statutory loopholes

Federal and state governments have carved out exceptions to the constitutional inalienability rule using statutes and regulations, allowing individuals to transfer land rights legally. These exceptions include land leases, exchanges, bequests, and rents. The federal government enacted a statute declaring that rural dwellers with a certificate of land title can lease their holdings to other farmers or investors "in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions."[25] The proclamation required such transfers to be registered with local authorities and states that, if the transfer is to an investor, the investor may use the land as collateral.[26] Building on federal law, state governments have adopted similar statutes allowing land leases for specific periods. Examples include the 2006 Revised Rural Land Administration and Use Determination Proclamation in Amhara, the 2012 Oromiya Regional National State Rural Land Administration and Use Regulation, and similar laws in other states.[27]

People have used these statutory exemptions to sell their landholdings. Muradu Abdo's (2020) case study of land sales under the guise of rent in the Sidama region, one of the recent ethnic groups that acquired statehood in the country's federal arrangement, offers an example of a common mode of land sale. Abdo describes the *kontrat*, which is a colloquial expression for a contract for the sale of land, as follows:

> [A kontract] is enshrined in written agreements concluded between an akonatari (transferor) and a tekonatari (transferee) regarding the permanent transfer of agricultural land by the former to the latter. ... The use of the written form and attempts to inject validity into it through both authentication and reference to State law give kontract a semblance of modernity. Yet, kontract is clothed with components of Sidama customary land tenure: it involves elders as witnesses, it ends with a fenter (special feast to mark the conclusion of a kontract), it imposes hefty fines should parties break their promise, and it makes elders responsible for reconciling the parties

[25] Rural Land Administration and Land Use Proclamation, Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation no. 456/2005, 11th Year, no. 44, 2005, Art. 8.1.

[26] Recent reports indicate that the federal government is deliberating a bill that would not only enhance the authority of regional governments in land administration but also lift some state restrictions on rural land transfers and mortgages, allowing foreigners (investors) to own land (Bogale 2023; Sahlu 2023; *Reuters* 2024).

[27] Revised Rural Land Administration and Use Determination Proclamation no. 133/2006, 2006, Art. 15; Oromiya Regional National State Rural Land Administration and Use Regulation, Proclamation to Amend the Proclamation no. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration Proclamation no. 130/2007, 2012, Art. 7, 8, 9, 19.

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> should they disagree on the kontract and ostracizing those who resort to invalidation. (235)

Similar practices exist in other parts of the country. In Oromia, especially in areas where coffee and other cash crops are grown and in villages near towns or cities, smallholders sell their land under this rent-like arrangement (see Abate 2020; Kebede and Singh 2022). In the cash-cropping areas, commercial farmers buy land from smallholders under the guise of this arrangement and deploy state and customary forces to enforce their claims.

Laws and policies driving land sales

Local critics and the international development agencies have won a great deal of ground in their struggle against the constitutional ban on land inalienability as the government has enacted varieties of market-centered laws and programs without officially abolishing the land inalienability law. Seed, fertilizer, and other farm input markets have been privatized, squeezing, albeit indirectly, cash-strapped rural dwellers into selling their lands when no other asset is available to pay for commercial seed and fertilizers (Spielman, Kelemework Mekonnen, and Alemu 2013). A major success in promoting the land market without directly changing the law came from the combined effect of the land registration program and the expropriation policies. This section shows how these two have catalyzed informal land markets.

Land registration has created conditions that incentivize rural dwellers to sell their landholdings and investors and urban dwellers to buy rural land in the shadow of the formal inalienability law. Clearly, the land registration program was a concession to donors' demands to promote land markets. Rather than amending the relevant sections of the Constitution by debating the matter in Parliament, the government delegated the design and implementation of the program to technocrats, who channeled it through technical processes.[28] Not only did Parliament not deliberate on the land registration program, but the program itself, which was part of the World Bank and USAID land-titling initiative that arose from Hernando de Soto's (2020) popular theory, started as a minor administrative reform in the Tigray region in 1998 with no specific announcement.[29] No one mentioned the question of land alienability in relation to this registration program. Neither academic studies nor the consultants' reports examined whether land titling would be compatible with the clauses restricting the sale and market exchanges of land. However, the intention to

[28] The reluctance to discuss the issue as constitutional or major legislative change is partly because amending the Constitution would require a rigorous procedure. A proposal to amend the Rights and Freedoms Chapter of the Constitution, which includes the property and land rights clause and provisions concerning the procedures to amend the Constitution, requires several specific approvals. First, the proposed amendment must be approved by a majority vote in all State Councils. Second, it must receive a two-thirds majority vote in the House of Peoples' Representatives. Finally, it must also receive a two-thirds majority vote in the House of the Federation (FDRE Constitution, Arts. 104, 105).

[29] Hernando de Soto (2020) claims that formalizing property unleashes the credit market and spurs economic development. However, numerous studies have shown that this claim is simplistic and that programs formalizing property rights have failed in many settings (Musembi 2013; Goldfinch 2015).

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steer the country's land laws toward free market policies was not entirely hidden. As one policy document states, "the objective is to realize accelerated economic development in the context of an economic system characterized by a market orientation" (Ministry of Finance and Economic Development, Economic Policy and Planning Department 2003, 15).

The land registration program was agreeable to many across the political divide. From the standpoint of those who objected to private and alienable land rights, registration was meant to be a means to protect the land rights of rural dwellers and promote activities that support the protection of the natural environment—that is, to inhibit deforestation and soil degradation. Davide Chinigò (2015, 181–83) shows how the registration program has served as a tool to enhance the legibility of local land use practices in one locale from the standpoint of the state. But it can also be seen as a step toward individualizing land rights. ARD Incorporated, a consulting firm based in the United States that was commissioned by USAID to assess Ethiopia's land policy and administration, reports that the registration was intended to be a transitional step toward individualizing land rights (USAID 2004).

Nevertheless, the program was ill-conceived from the beginning. Hernando de Soto's (2020, 5) justification for formalizing land rights—namely, fostering land market and credit access—could not have been applied in Ethiopia without contradicting the constitutional clauses that stood in its way. The main purpose of formalizing land titles has always been to promote land markets and the security of land transactions (Merrill, Smith, and Brady 2022, 847). It is meant to facilitate an impersonal land market by creating a centralized repository of information about titles and encumbrances pertaining to a parcel of land so that buyers and real estate lenders can rely on it. There is little use in having a formal title in a setting where the national Constitution bars the sale and other means of exchanging land. Furthermore, in practice, the land registration program has facilitated land sales in many ways. To explain this, we must start with the land expropriation laws and practices as the use of land registration to transfer land rights usually occurs in response to the expropriation practices. The next section explains the expropriation laws and policies, and the subsequent sections take up the link between the registration program and land markets.

Land expropriation

The greatest threat to the rural dwellers' security of land tenure is expropriation—the compulsory acquisition of rural land by government authorities for urban development, industrial plants, and large commercial farms (Miller and Tolina 2008, 362). This became evident when a wave of agricultural land deals unfolded across Africa following the financial crisis in the West, and researchers began to pay serious attention to the issue (Zoomers 2010). Millions of hectares of land in Ethiopia have been leased out to local and foreign private individuals (Rahmato 2011). Equally large amounts of rural land have been expropriated for urban housing, industrial, and other private and commercial uses. Ethiopian cities and towns have grown by about 14 percent per year recently (Vandercasteelen et al. 2018, 384). One consequence of this growth is the continual enclosure of rural land for urban use and the expansion of municipal boundaries. The manufacturing and service industries, which have been

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growing at the rate of about 10 percent per annum over recent years, and expanding industrial parks as well as the sugarcane and cotton plantations, have also converted a sizable quantity of rural land for these purposes (Wubneh 2018, 170–83).

Rather than help rural dwellers fight expropriation, the registration program facilitates this expropriation by simplifying the information about land and landholders available for government officials. Indeed, rural land expropriation increased after 2005 when the land registration program was widely implemented. I offer a brief background to show how widespread it had become at the precise time when the EPRDF government had promised greater tenure security for rural dwellers. During the 2005 national election, opposition parties promised to privatize land by amending the Constitution,[30] whereas the EPRDF officials campaigned to maintain the current constitutional framework. Meles Zenawi, the late prime minister, declared on national television that "nobody manufactured land; therefore, it shall remain a non-commercial collective resource of the people" (*New Humanitarian* 2002). Initially, the election results indicated that the opposition parties had won unprecedented parliamentary seats, especially in the cities (Harbeson 2005, 149–52) and among what is often characterized as "the middle class" in Ethiopian politics (see Vaughan and Tronvoll 2003; Bach and Nallet 2018). However, both the opposition parties and the EPRDF contested the results, and the EPRDF eventually regained full control of the parliamentary seats through the use of violence and criminal justice processes (Lyons 2010, 114–15).

The opposition party's popularity among the urban middle class turned land into a political weapon for the EPRDF. The government and ruling party officials began using land laws, particularly the land registration program, to punish opposition sympathizers by confiscating their land and reallocating it to their supporters (Rahmato 2009, 181–201). More significantly, the EPRDF government enacted a new land expropriation law just a couple of months after they "won" the election. This law granted local authorities the power to confiscate rural land for a nominal compensation if they "believed it should be used for a better development project by public entities, private investors, cooperative societies, or other organizations, or if such expropriation was decided by the appropriate higher regional or federal government organ for the same purpose.[31]

The stated official objective of this law was to attract local and foreign capital for national economic development. However, it was clearly intended to create a loyal middle class and wrestle the existing middle-class vote away from the opposition forces. The EPRDF had always faced strong resistance from an urban middle class that identified itself with Amhara culture and was nominally opposed to ethnic politics. As Ezra Rosser (forthcoming, 7) notes, "[a] strong middle class requires access to land," which became evident to the EPRDF officials during the 2005 election process that revealed high political stakes in the middle-class votes. This law also streamlined land expropriation. In a typical takeover, officials would acquire land after giving short notice informing the landholders that a specific piece of land would be taken and

[30] One of the opposition leaders declared: "The land issue is a priority for us and we will go for land privatisation for the rural farmers" (Gebeyehu 2003).

[31] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation no. 455/2005, Federal Negarit Gezeta, 11th Year, no. 43, Art. 3.1 (Land Expropriation Proclamation).

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what compensation would be offered (Ocheje 2007). In theory, the landholder can appeal against the amount of compensation offered but cannot appeal against the decision to expropriate the land. The statute does not recognize rural land rights as compensable property rights. The state "owns" all land, according to the officials' understanding of the law, so that rural dwellers get compensation only for their crops, their immovable property, and the permanent improvements they make on the land.[32] Their land rights, often called "use rights," are not compensable property rights.[33]

Compensation is calculated at the replacement cost of the crops on the land in addition to displacement compensation, which is equal to ten times the average annual income earned from the land over the preceding five years.[34] The statute envisages the possibility of giving land in replacement, but this rarely happens due to its scarcity. Furthermore, only farmland, homesteads, and areas of protected grass or grazing land held under individual or household titles qualify for compensation. The rights of rural communities who use land collectively, such as open grazing land, fishing, hunting grounds, and other similar uses are not recognized as compensable rights. Urban developers and commercial farmers are treated as investors and hold land rights under a category of titles described as leasehold rights. The investors acquire these rights through a contractual arrangement with government officials. The legal arrangement does not allow rural dwellers to reap increased value when rural land is transferred for other, higher value uses. The formal law is designed so that the government acquires land and then transfers it to investors under leasehold arrangements. Based on the terms of the lease agreement, surplus from the increased value of rural land thus goes to the government and the investors. In this context and in these transfers, government officials, especially local officials, rely on their legal power of expropriation to extract private gain.

Moreover, leaseholders are given greater legal protection than smallholders and pastoralists. For instance, while local authorities can expropriate the rural dwellers' land for "any better development purpose," they can expropriate the leasehold titles of investors only for "public use."[35] In addition, while rural dwellers cannot legally sell or mortgage their landholdings to borrow money via formal legal channels, investors can transfer and mortgage their leasehold titles and raise financing on them. In this way, investors attract many kinds of preferential treatment, such as a generous package of benefits in the form of tax holidays, duty-free imports and exports, foreign currency allocations, and low-interest loans from the Development Bank of Ethiopia as well as other incentives.

[32] Land Expropriation Proclamation, Art. 7.1.

[33] A 2019 statute, enacted after mass protests over rural dispossession and slightly improved compensation and grievance hearing procedures. Federal Democratic Republic of Ethiopia Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement Proclamation no. 1161/2019, 2019. However, it maintains that compensation is essentially limited to the value of one's labor and investment on the land.

[34] Land Expropriation Proclamation, Arts. 7.2, 8.

[35] Land Expropriation Proclamation, Art. 3.2.

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Registration, expropriation, and their impact

Before the land registration program was implemented, rural dwellers had often relied on informal practices to mitigate threats of expropriation. Because understanding the complex local land use practices that determine who has what right to a piece of land is hard for officials, rural dwellers have been able to make use of the existing informality to increase their compensation for being expropriated. The evidence I gathered during fieldwork in eastern Shewa from 2013 to 2015 shows that rural dwellers sold their landholdings through informal markets on terms directly negotiated with the developers to bypass the authorities because such deals fetched more money than they would receive from the authorities, based on the expropriation laws. These sales were made in anticipation of being expropriated, and they were common in villages that were close to roads, water sources, and other infrastructure, thus attracting developers. Rural dwellers transferred their possessions through informal markets whenever expropriation looked imminent because of impending urban expansion or industrial investment. Land brokers mediated the transactions between the rural dwellers and speculators who acquired the land and then negotiated better deals with the authorities.

Other researchers also show local government officials are directly involved in facilitating land sales. Abdo (2020, 248–50) documents the way in which local agricultural development officers, land administration and use committees, and trade and industry offices have exploited the financial vulnerability of rural dwellers to broker land sales on behalf of buyers and used their official position to legalize the buyer's title to the land. Another strategy, if expropriation was foreseen or feared, was to build permanent structures or plant trees that fetch high compensation. During my research, I met two siblings. The younger one worked for a city government institution in the capital and was visiting the older one, a farmer in a village close to a sprawling town. I had known the younger one for a long time. The older one, sharing his concern about the intensifying land expropriation for urban housing and industries in the area, expressed collective local concerns about the possible loss of their land.[36] The younger brother suggested that by growing a high-yield crop they could fetch better compensation. The older brother agreed with the advice but was not surprised by it. Everyone in the village knew that the local authorities would pay higher compensation if you had a perennial crop on your land. A few years previously, many had claimed and were compensated for their (fictitious) coffee and banana plantations instead of the farmland that the government took to build a university, even though those crops never actually grew in the area.

This practice has been documented in various regions (Deininger and Jin 2006). Smallholders converted wheat and barley fields to planting eucalyptus trees and other cash crops. While the implication of this for food security and ecological conservation is also debatable, and the eucalyptus is known for draining underground water, land registration itself did not provide any meaningful safeguard against being expropriated. On the contrary, the land registration program proved to be an effective weapon for officials to wield against the informal practices employed by the rural dwellers. The story shared by M. D.,[37] who was an official in charge of rural land

[36] Interview and discussion with K. F. and A. F., June 15, 2014.

[37] Interview with M. D., June 20, 2014.

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administration in the Dugda district, illustrates this point. M. D. has been involved in most of the land expropriations in the community. One such expropriation was undertaken to provide a site for a European firm that grew flowers for the export market. M. D. recalled that the government's decision to grant the firm a specific size of land came from senior officials in Addis Ababa, the capital. He and other officials at the local land administration office were instructed to execute the decision. Accordingly, his team identified the land to be expropriated and advised the rural dwellers to file claims for compensation and hand over the land within a couple of months after gathering their harvest.

When the time came, the rural dwellers claimed more compensation than the officials expected. The crops that grew in the area were wheat and corn. The compensation should have been the market price for such crops multiplied by a few years. But the rural dwellers claimed that they had planted different, more expensive kinds of crops and vegetables on their land, and people who probably had no title to the land claimed rights to it and the corresponding compensation. The officials had no authoritative record of the land and landholders at the time; hence, they could not verify or identify who had rights and what rights the claimants to the land actually had. They could tell what kind of crops the smallholders harvested in these areas, but they did not know who had harvested them and how much they had harvested. Smallholders who had left their land fallow could claim compensation for the most expensive crop, and the officials were unable to refute their claim. They relied on land tax receipts and the testimonies of the village officials to determine the eligible claimants and claims. But these procedures were cumbersome, the process was protected, and the cost of expropriating such land was high.

However, once the land registration program had been implemented, the officials' work became much easier and cheaper. Instead of going through old tax receipts and contradictory oral testimonies, they could rely on the land record for information about land and landholders. According to M. D., the records used to identify eligible individuals and eligible claims for compensation were collected and recorded by the same officials during the land registration program. Thus, in a way, the land registration program accomplished a big chunk of the work that the officials had to carry out to expropriate rural land. After the land registration program had been implemented in the area, rural dwellers had to produce a certificate of title when they filed a compensation claim. If they could not present such a certificate, the officials could refuse to compensate them. However, M. D. remarked that "registration has not solved all the problems." Rural dwellers often contested information in the land records because records were out of date, landholding and land-use practices had changed, or the information about the land was incomplete. Furthermore, some farmers could not claim compensation in some cases. Some smallholders, especially those with sizeable landholdings who could influence the *kebele* (village) administrators, did not register the real size of their holdings, mainly to avoid taxes and fees. However, since officials now required a registration certificate to file compensation claims, unregistered land could be taken without compensation.

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Interpretations of the law and the local complexities

The proponents of reforming Ethiopia's restriction on the market transfer of land rights argue that private ownership and market transfers of land rights promote efficient land allocation, investment, and economic growth. These arguments are driven by *a priori* theories and models and narrow, causal interpretations of the link between law and social practices. Their baseline is the rule that restricts the market alienability of land rights. They overestimate the practical currency of the formal rules and ignore the local variations of law and social practices. Thus, many prominent researchers have concluded, by looking at the land inalienability law, that Ethiopians cannot sell and buy land. Sosina Bezu and Stein Holden (2014, 259–72), for instance, argue that young Ethiopians have limited access to land because land "cannot be bought in the market nor can it be rented on a long-term basis from other farmers." A senior economist at the World Bank and an economics professor at a US university argue that Ethiopia's land inalienability law is anachronistic—hence, it must be abolished to allow a free-market land transfer. They say this law contradicts the government's commitment to "a free market philosophy" (Deininger and Jin 2006, 1254). They claim that rural dwellers' land rights today are the same as they were under Mengistu Haile Mariam's "Marxist" era in which, in their own words,

> [t]he transferability of the land rights received was highly restricted; transfer through lease sale, exchange, or mortgage, among others, was prohibited and inheritance possible only to immediate family members. The ability to use land was contingent on proof of permanent physical residence, thereby preventing migration. More importantly, tenure security was undermined by the PAs' [peasant associations'] and other authorities' ability to redistribute land, an ability that was in some cases used for political reasons. ... The government that took power in 1991, though committed to a free-market philosophy, has made few substantive changes to the land rights held by Ethiopian farmers. (Deininger and Jin 2006, 1254–55)

Almost every development economist who has written about land and agricultural development in the country has reached the same conclusion—that is, that economic growth and social progress require private and market-transferable land rights, which Ethiopia lacks because of the law. So have Western institutional actors. USAID has advised that the legal restriction on the land market should be lifted, saying that the EPRDF "that took power in 1991 following the fall of the Derg—while committed to a free market philosophy—has made little substantive change to farmers' land rights" (USAID 2004, x).

Economists usually deploy opinion surveys and econometric models to prove the "superior" efficiency of a free market and private property regimes and to bolster arguments against the country's legal restrictions on the land market (Deininger and Jin 2006). Western development agencies have enlisted moral or human rights as well as efficiency arguments to design and implement market-based programs, explicitly stating that their objective is to increase rights and social justice. A case in point is the UK Foreign, Commonwealth and Development Office's Land Investment for Transformation Program, which is being implemented to empower women and

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other vulnerable people through a "market systems approach" to land rights (Grant, Munyeche, and Rose 2018).

To support arguments against the inalienability law, researchers point to the plight and many deprivations afflicting Ethiopians. Poverty, violence, displacement, and environmental degradation are represented as the direct consequences of the law, often in vocabularies and styles that resonate with the now popular neoliberal consciousness. Thus, Tim Worstall, a senior fellow at the Adam Smith Institute, purports to list the death and destruction that follow it to make a case against the alienability law. Citing a news report, he says that "up to 140 Oromo protestors have been killed by security forces during protests over the expansion of the capital city, Addis Ababa, onto farmland" (Worstall 2016). This fact has never been contested. It is indeed true that the security forces killed hundreds of people, and the unrest that started in 2014 displaced millions of people, particularly the ethnic Oromo residents of the Somali region (Jafer et al. 2022). But what is distressing is the way in which Worstall (2016) interprets this plight and links it to the land inalienability law, as I quote:

> The underlying cause of this [violence and death] is the country's very strange policy of insisting that all land belongs to the government: essentially a feudal method of land management. If land were privately owned there simply would not be this problem, would not be these protests and of course would not have been these deaths. . . . And that of course it [*sic*] what leads to the protests and the deaths. Simply because land is not privately owned. . . . Think of what would happen if the land were privately owned: whether by the farmers themselves or by landlords they rented from. If more people wanted to live in Addis, or people wished to build factories near or by the town, then those who wished to do so would have to purchase lots of land from the current owners. The price paid for those lots would have to be high enough that it was a voluntary transaction. And when there are voluntary transactions then people don't protest about them: nor do security forces then kill protesters. . . . Think of what is happening now: government decides which piece of land is used for what. Thus any change in use is inevitably a political decision: and as we've noted the current system isn't quite as representative as we might wish. Thus the only way people have of making their displeasure known is through those public protests. . . . This really is not about ethnic grievances, land use or governmental power. At root this is about the fact that there is no land market in the country therefore changes in the use of land cannot come about through voluntary exchange.

Worstall (2016) presents arguments against land alienability law in a way that conforms to the popular sentiment of the moment, which is marked by disenchantment with the existing lack of stability and economic development, to promote a belief in the idea of a free market and private property system. But the key problem with the argument is the assertion that the legal restrictions on the land markets are practical. As the preceding section in this article shows, people sell and buy land in a variety of legal and non-legal ways, both inside and outside formal law. The fact that these transactions often occur in the shadow of formal inalienability does not mean they do not occur or that they are not significant. In fact, the land sales

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and transfers that occur outside formal law can have a major impact on whether and how policies affect people's daily lives.

Instead of speculating about the benefits of lifting the ban on land alienability, we should focus on understanding clearly why the ban has failed to take effect. The assertion that the law has banned a market in land is misleading, and it is one that can only be reached by focusing exclusively on formal rules. This focus has created an illusion of regularization—that is, the belief that the inalienability rule reflects the reality of land markets in the country, which is one that has misled discussions on the country's land laws and policies. Failing to analyze the situation on land in rural areas has only reinforced this illusion and validated the mistaken conviction that the Constitution must be changed to abolish the ban on land alienability.

Dynamics of local land markets

The dynamic, non-legal land market raises important legal and policy questions and interpretations. For those committed to a free market ideology and private property as the proper means of ordering societies and economies, non-legal or illegal market currents imply the direction that the law must follow. According to this logic, the fact that land markets exist, in spite of the inalienability law, only proves the theory that market exchanges are a natural phenomenon and that the legal restriction on market exchanges is an artificial barrier that must be removed to let this natural event flow freely. Proponents of market-alienable land rights propose amending the Constitution by taking the ubiquity of informal land markets in the country as an indicator of the direction in which the law should be changed. They argue that the existence of informal land sales in the country is evidence that the inalienability law is suboptimal. While this argument may be theoretically compelling, it does not mean that repealing the inalienability rule would produce a better outcome. We need to consider whether a new alienability rule would work in the way it is intended to, and we have no evidence as to how it could impact the land markets that exist in the shadow of the formal inalienability law.

Thus, the ubiquity of land markets should not be taken as an indicator of why or how the law should be reformed. The existence of gaps between the law and practice does not necessarily mean that inalienability is a bad policy or that a legal reform is required to legalize land sales. What the gap shows, as the previous section of this article shows, is that individuals have circumvented the law amidst aggressive land expropriation and that the land registration program and local officials have enabled smallholder land alienations. Land sales have been difficult to regulate in Ethiopia, partly because no legal or institutional means to police land transfers exists, while, simultaneously, existing land expropriation practices in the country convey the message that you might lose your land for a lower compensation than you could get if you sell it and that land registration facilitates the process that allows you to sell it. Moreover, no government agency directly polices the sale of land. There is no punishment or fine for violating the constitutional ban. The drafters of the Constitution have said that prohibiting land sales is essential for peace and equality, but they have not said it is so essential as to warrant criminalizing the sale of land or attracting direct regulatory sanctions for violations. The clause is only brought into

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force when private individuals—the seller, the buyer, spouses, and any other people with a vested interest in the matter—are litigating against each other in court.

In theory, courts could regulate land transactions by annulling such contracts using the Civil Code contract doctrine of illegal object, which specifies that a contract undertaken to perform an illegal object cannot be enforced (Abdo 2020, 248–50). However, judicial regulation is *ex facto* and costly and requires a private initiative to mobilize the legal processes. In a few cases, when one party has sued another party to annul a land sale, lower courts have differed on whether such contracts are void, voidable, or valid. Some courts have treated land sales as illegal and unenforceable by looking at the underlying intention of the parties, and others have held that they are enforceable by looking at the parties' expressions (249). Most lower courts look at the declared intention—which is typically the rental, lease, bequest, or sale of structures on the land—and hold that it is enforceable. A minority has looked at the underlying intention, which is a sale, and held that such transfers are illegal and unenforceable. As the *Muhyiddin Yunus* decision shows, the HoF has recently rendered decisions holding that land transactions that have the effect of permanent land transfers are illegal and unenforceable. However, the decision concerns only the transactions that are disputed in court. Land transfers frequently do not become the subject of a court case.

Even if the state's incapacity and its contradictory laws and policies were not an issue, wide distances in time and space often separate the law from its real effects, creating ample opportunities to refract, inflect, abuse, pervert, or ignore the laws. The constitutionally enacted land inalienability law, intended to protect vulnerable rural dwellers and promote equity among the country's multitude of ethnic groups, no longer serves its intended goals. Government officials have exploited the constitutional rule that vests the ownership of land in the "State and peoples of Ethiopia" to expropriate rural dwellers' land, aiming to attract capital for national economic development and secure political support for the ruling party. Expropriation laws are frequently deployed perversely to enrich unscrupulous speculators. Constitutional rules guaranteeing rural dwellers the right to free access to land and protection against eviction have been refracted in the interest of national development. Rural dwellers are also selling their holdings, flouting the constitutional land inalienability rule, amidst rapidly changing government policies that foster dispossession by state and private agents. The potential for opportunistic use of the law is limitless. Contrary to the critics of the inalienability law, these problems cannot be resolved by enacting a law that privatizes land rights and lifts the inalienability rule. Most importantly, creating a private property system and land markets, which would require more resources and institutional capabilities than enforcing a simple inalienability rule, may not address the real problem. I will explain these points further in the next section.

Pitfalls of the top-down vision

Critics of the land inalienability law believe changing the law would change the practice. They look at land rights through the law. But looking at land rights through the lens of formal legal rules oversimplifies complex realities. This is because land rights are situational; their meanings and practical force depend on the place, the moment, the social setting, the history, and many other situational variables.

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Advocates of the proposal to privatize land ownership believe that private and market-alienable land rights are natural and that legal restrictions interfere with that natural order. They believe that regulation is a construct by a government to "do something," whereas the market is what would naturally occur when the state chooses to "do nothing" (Schlegel 2022, 292–315). If the legal restriction on land alienability were removed, these advocates think, private property and land markets would flourish spontaneously, generating social harmony and prosperity.

However, as John Schlegel's (2022, 292–315) recent book explains in great detail, the reductive do nothing/do something distinction wrongly simplifies a complex regulatory apparatus that creates and runs markets and private property systems. The deregulation movement gained traction in the Euro-American legal cultures mainly because property and contract laws are believed to be part of common law or "pre-existing." Not only is this logic inapplicable to places like Ethiopia, where land markets and private land rights are formally illegal, but, as Schlegel argues, characterizing privatization as "doing nothing" or "leaving the market to its own devices" is profoundly wrong even in the common law legal cultures (295). This is because the market and private property are legal creations, and creating private and market-alienable land ownership requires much more than a simple piece of legislation. As a senior leader of a former Soviet country remarked, "it is easier to make a revolution than to write 600 to 800 laws to create a market economy" (Echikson 1990, quoted in Singer et al. 2022, xxxiii). It is certainly much harder in Ethiopia where the society is heavily divided by linguistic and cultural differences; where the economy is predominantly agrarian, consisting of smallholders, pastoralists, and hunting and fishing communities that depend on traditional customs and practices; and where government agencies attract neither legitimate authority nor the institutional capability to implement laws and policies beyond the perimeters of capital and the capital cities (Zerssa et al. 2021).

Thus, a critical question arises: why should one expect a new private property system to work if a simple inalienability rule has failed to protect smallholders, pastoralists, women, and other vulnerable groups against dispossession? Privatization has already wreaked havoc on these vulnerable groups despite the formal law that bans land markets. Women, pastoralists, and millions of existing rural landholders are losing land and livelihoods due to steadily intensifying privatization and the growth of land markets. Many researchers have documented the impact of this phenomenon. For instance, based on extensive fieldwork, Fiona Filtan (2003, 8–9) remarks thus about the state of land rights of vulnerable groups in Ethiopia:

> Women have suffered disproportionately from the increasing shift of control over land from community-based ownership to smaller male-dominated elites. Privatization of property has broken down the support mechanisms that helped poor households by providing gifts and loans of livestock in times of need. Cooperative work groups, upon which women particularly depended for access to additional labour, have also broken down. Thus, women are suffering from loss of animals, labour and land. The insecurity of pastoralists and their vulnerability to famine means that women are often more concerned with fulfilling short-term needs than thinking of long-term sustainable development and management of natural resources. Though sedentarisation of

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> pastoralists in Ethiopia is in its early stages, there have already been a number of negative impacts on women, e.g. the move to agricultural-based livelihoods means that women have to spend more time collecting water and working in the fields. Well-defined gender roles still characteristic of these societies mean that men rarely help women with their increased labour burdens. The products that women produce, such as dairy products, are often used as a "payment" for grazing on farmed land.

Legal rules are often inadequate for regulating social practices. This has amply shown itself in a magnified form in a setting like Ethiopia, where complex economic, social, and political currents produce sudden changes and intractable challenges. Ethiopia's economy predominantly relies on rain-fed, smallholder agriculture that covers 90 percent of cultivated land. In a society made up of multiple ethnic groups that share common histories as well as conflicting narratives and territorial claims, 80 percent of its nearly 120 million population are smallholder households, each with an average landholding of fewer than two hectares (Holden and Tilahun 2020; World Bank 2024). Pastoral communities whose livelihoods depend primarily on livestock and land for grazing constitute 10 percent of the rural population, while they claim title to about 60 percent of the country's land mass. Land use varies across the country depending on the local climate conditions and customs as well as access to urban centers and transportation infrastructure. Rapid urbanization and population, which have steadily increased over the last two decades, have had a profound impact on the rural population and on rural land use. Emigration has also shaped households in some parts of the country. Violence and internal displacement have affected most of the households in the country. The recent war in Tigray, which led to the death of over six hundred thousand non-combatants and the displacement of millions in just two years (from November 3, 2020 to November 3, 2022), constitutes the deadliest war in the world in recent years (van Niekerk 2023).

Conclusion

Ethiopia's constitutional promise to give rural dwellers free access to land and to protect them against dispossession has been broken right across the country. Urban and industrial developers and speculators have dispossessed the millions of smallholders whose grievances and protests led to a change of government in 2018. Crop production continues to be depressed by frequent droughts, and, consequently, many rural dwellers still depend on emergency food aid. Competing and conflicting claims over land by various ethnic groups have fomented war and violence in the country, while millions have lost, or face the threat of losing, land. It is within this context that Western donors and development institutions, along with some of the influential politicians and intellectuals in the country, recommend a radical law reform to abolish the legal ban on land markets and create private, market-alienable land rights. They believe that such a reform could create a private property legal regime that promotes social harmony and economic development. However, not only is this recommendation driven by an excessive focus on formal law, but it is also oblivious to the ubiquitous land markets that go on in the shadow of formal law.

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The point of this article is not whether restricting land alienability is desirable or whether protecting the cultural existence of vulnerable communities by preventing them from losing their land through market transfers is a legitimate policy. Instead, it is the fact that the formal restraint on land alienability has never prevented people from selling their land amidst aggressive expropriation and other market-centered policies and practices. This disconnect raises questions about the feasibility of creating private, market-alienable land rights, which requires far more than enacting a statute that says so. If a long-standing inalienability rule is not able to inhibit speculators from dispossessing smallholders through informal markets, a free market in private land rights would not stop them either. Instead, it may actually foster dispossession and aggravate the existing tension among the country's ethnic groups, and well-off groups may easily buy out the less well-off ones, recreating exactly the sort of problems that the inalienability rule was intended to prevent.

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