

LAND TENURE INSECURITY IN POST-CERTIFICATION AMHARA, ETHIOPIA

1. Introduction

Land registration and certification has taken place on a grand scale in most parts of Ethiopia. Tegray region was first out, but the Amhara, Oromiya and SNNP regions implemented similar reforms in the early 2000s. This is part of an international trend, a second wave of land reforms aiming at land titling, tenure security and marketability, a marked contrast to the concerns of the 1960s to abolish exploitation by large landowners. Titling reforms, while theoretically sound, have often had disappointing results. They have been expensive and led to corruption and land grabbing, not the least in Africa. By contrast, the Ethiopian reform stands out by efficient implementation, peasant participation and basic social fairness. Deininger, World Bank expert on land reforms, concluded that ‘large-scale and rapid delivery of land certificates in a participatory way is possible’ and saw the Ethiopian reform as a potential model (Deininger *et al.* 2007: 19).

There were also some critical voices. Many reports raised problematic issues, although usually of a somewhat technical nature—like the lack of precise measurements and the challenges of keeping the records up-to-date. A more fundamental issue was raised by Dessalegn Rahmato: the land certificates did not change the nature of peasant rights-in-land, which are still limited to use rights (Dessalegn 2008a: 219; and 2009: 52). This was taken one step further by Chinigò, who argued that land certification is ‘a deeply political project’ (Chinigò 2015: 186). He left aside the economic aspects of the reform and saw certification as part of a policy to strengthen administrative control over the peasantry. The control aspects are certainly strong in the recent legislation, but in the current paper I shall focus on the social and economic implications, notably land conflicts and tenure insecurity.

The early studies of certification focused on potential problems of implementation, especially to what extent women and poor people had lost out. The conclusions were overwhelmingly positive. This is not surprising since these issues have been policy concerns for some decades, and they were very prominent in the legislation regulating the reform.¹

The impact on tenure security, on the other hand, was in the early stages more based on beliefs and ideology than on evidence. The international economists who wrote these reports presented the theoretical arguments that land titling should lead to increased tenure security and thus create good conditions for investments. Several Ethiopian researchers, on the other hand, thought that tenure security had not improved (Berhanu & Fayera 2005: 21-22, 26-27; Dessalegn 2008b: 139, 145; Birhanu & Mamo 2010: 87-88). But soon there were a number of studies claiming to show various positive impacts on tenure security and economic development. They found improved tenure security, increased investments in the land (Deininger *et al.* 2011: 323-26; Abate *et al.* 2012: 263-64), and a better-functioning land market, specifically more land rentals (Holden 2007: 15; and 2011: 33; Deininger *et al.* 2011: 326-29).²

On this background, it is easy to think that certification led to tenure security and that this paved the way for the recent economic upsurge in Ethiopia, with strong growth also in the agricultural sector. However, a critical review of the literature would show that the evidence is far from conclusive. In the current study I shall not discuss the literature in any depth, but rather present an alternative take on current issues of tenure security.

For me, tenure insecurity became an urgent research issue during a brief field visit to Ethiopia in November 2014. The intention was mainly to follow up impressions from 2012 that my 'home area', Wäyr Amba in North Shäwa, was actually on the verge of comprehensive agricultural transformation (Ege 2015). Increased productivity also meant that more people can live from the land. I was therefore surprised to find that the land issue was hotter than at any time in recent years.³ In more or less every house there was a land conflict or worries about potential conflicts. It is these local perspectives, so much lacking in most of the literature, which I shall seek to bring out in the current paper.

This study is based on material from Wäyr Amba, located in T'arma Bär (Mafud, Däbrä Sina) district in North Shäwa.⁴ My first fieldwork in this area was in 1989, and it was here that I learnt about peasant life, although much of my research was in other areas. In 2009 I built a house and lived there with my daughter during the rainy season. I have a fair amount of quantitative data from several survey rounds, but for the issues at hand I prefer to privilege recent qualitative interviews, partly with household representatives about their farms, and partly with key informants about the area in

general. These interviews are strongly coloured by current peasant concerns, notably inheritance and the related conflicts.⁵

My argument is that tenure insecurity consists of various types of insecurity, that these have different properties and trajectories, and that we need to consider all in order to assess the impact of reforms on overall tenure security. On this background, supported by evidence from Wäyr Amba, I conclude that tenure insecurity may actually have increased, or more moderately, that there is much we do not know about peasant land tenure, and that the land question is still unsettled.

2. A theory of tenure insecurity

I shall define tenure insecurity as the risk of being evicted from a parcel of land. This is arguably how we think about tenure insecurity, but this straightforward definition is not so easy to operationalize. First of all, any precise method will record information on a parcel level, acknowledging that tenure security may vary between types of parcels in ways we do not necessarily understand. The common method, however, is to measure insecurity on a holding basis, leading to serious overestimation of the problem, as well as giving us weak tools for understanding the specific reasons for insecurity. Secondly, eviction is a problematic concept. In the Ethiopian context, we certainly want to capture land confiscation caused by land redistribution or other administrative measures. It is less clear that we want to include allocation of part of the household land to an adult son, even if the parents had to be forced. Finally, eviction refers to eviction from any kind of right-in-land, not just to the loss of ownership. We should of course include the classical element of tenure insecurity, the insecurity of the tenant farmer. Less obvious, but in Ethiopian land tenure of great importance, are the rights of family or household members in the land registered in the name of the household head. These rights are difficult, perhaps impossible, to capture in surveys, but they are of no less importance for a good understanding of tenure insecurity.

For our purpose, we may therefore identify three types of rights exposed to potential tenure insecurity:

- (1) Rights of possession (ownership): the rights of the primary holders vis-à-vis the government.
- (2) Rental rights: the secondary rights of farmers renting from local landowners.⁶

- (3) Latent rights: the potential rights of possession, e.g. the rights of a young man farming land of his parents on *gulma* terms, i.e. practically as his own but under the formal title of his parents.

Rights of possession are very valuable and give the title-holder from one third to half the produce of the land virtually for free. They are also fairly secure. Rental rights are much less valuable as the produce, after deducting the share of the landowner, barely covers the cost of production. They are also inherently insecure and the farmer has to strive hard to prevent eviction. Latent rights are, more or less by definition, somewhat ephemeral and difficult to grasp. But it is these rights that are at the heart of current peasant conflicts over land.

In a broad review of studies on the relationship between tenure security and investments in the land, mainly in Africa, Arnot *et al.* (2011: 297) concluded that empirical findings varied much and attributed this to differences in definitions of tenure security and the use of inappropriate proxy variables. The point is an important one—and with general relevance. Most studies of tenure security do not even try to conceptualize the concept of tenure security and reflect on how the theoretical definition is captured by the measures used. The problem is compounded by the fact that also the dependent variable, investments, is represented by some kind of proxy, e.g. tree planting or terracing, although here the literature has shown more awareness of the complexity.

Also the Ethiopian literature on the impact of tenure security suffers from unsatisfactory measures. Sometimes the previous history of land redistribution in the community is used as a proxy for tenure security, although it is far from clear how this variable would affect tenure security. Similarly, the fact that some areas have received certificates while others have not, may be used as proxy. Such elements are important in order to understand the land tenure system and the peasant world, but they may not be good proxies for what we really want to capture, individual beliefs about the future, to be correlated with some other variable. These are certainly not easy issues, and we shall have to live with compromises, but it is important to be aware that there is a huge gap between the seemingly straightforward definition of tenure insecurity above and the practical definitions applied in the literature.

2.1 Rights of possession

The modern literature on tenure security in Ethiopia has focused more or less exclusively on the rights of peasant landowners. This has its background in the

common understanding of recent land tenure history. According to this narrative, land tenure under the Därg was characterized by periodic land redistribution to accommodate new generations of farmers. This resulted in equality but also in high tenure insecurity. The more market-friendly EPRDF regime curtailed land redistribution and ultimately implemented the land certification reform, giving peasant farmers documents confirming their title to their land (e.g. Holden *et al.* 2011: 33).⁷

I disagree with much of this but here I shall limit myself to a few observations on land tenure under the Därg. A system of periodic land redistribution has never been documented or seriously argued, only assumed. Available evidence indicates that by far the most common method for peasants to acquire land was through inheritance and other household processes, although, in order to make these transfers official, they had to be confirmed by the peasant association or other relevant administrative bodies. I have described what appears to be a common variant of this system, with empirical material from the *qäbälé* of Ayné (now included in Yezaba), referring to it as the *dersha* system by its most prominent element, the right of each household member to a share (*dersha*) in the land of the household (Ege 2011).⁸

On this background, and by way of conventions, we may distinguish between the original ‘distribution’ (rather than redistribution) of land from landlords to the tillers, any later ‘periodic redistribution’ (i.e. periodic adjustment to accommodate new households), ‘specific-purpose redistribution’ (due to border changes, afforestation projects and above all the formation of producer cooperatives), and ‘reallocation’ (smaller-scale land reallocations for a host of different reasons, actually the typical social content of *shegesheg*, which in the literature is routinely rendered as ‘redistribution’). These are not clear-cut distinctions, and especially *shegesheg* as used in the sources is imprecise and may cover any of the processes identified above. In this paper, ‘redistribution’ always refers to a comprehensive process, while ‘reallocation’ concerns a small amount of the land. If this terminology is accepted, there are rather few cases of redistribution under the Därg, perhaps none of periodic redistribution; if it is not accepted, widely different social processes are lumped together as ‘redistribution’.

This reinterpretation has considerable implications for our take on the current situation. If the common understanding of periodic land redistribution is valid, it may seem self-evident that land certification and an end to redistribution led to improved tenure security. My revisionist interpretation of land tenure history would, on the other

hand, make this an open question and consequently ask for specific evidence. This radically changes the impression also of the recent literature.

Under the Ethiopian system of state land ownership, peasants have less than full ownership rights of their land, but they clearly have more than usufruct rights. I have called this ‘conditional private property’. Technically we may refer to the rights of the peasant landowners as rights of possession. In normal times, when the peasant community is left alone, these rights are remarkably secure, but there have been variable limits on transfer rights—be it sale, inheritance or renting out. Rights of possession under state land ownership shape the state-peasant nexus, and this is a political rather than an economic relationship. Risk of eviction comes almost exclusively from possible changes in government policy. From the point of view of the peasant community, this is an external relationship, and the risk is fundamentally unpredictable.

Recent research has focused on improved security for the landowners. The question is whether the resulting image of tenure security is supported by the evidence. First of all, it is surprising that few of the studies critically investigate the impact of certification on tenure security but rather take this for granted. Secondly, we may ask how easy it is to capture peasant perceptions of tenure security. This is further aggravated by the fact that some of the studies use retrospective questions, always problematic, especially for soft variables regarding politically sensitive issues. Thirdly, the literature also contains many scattered elements of counterevidence. My own reason for scepticism, however, is the contrast between the literature, creating the impression of a major reform in favour of peasant land tenure security, and the low level of interest Wäyr Amba peasants showed for this issue, which should presumably have been of vital interest to them.

The land tenure history I outlined above in the form of the *dersha* system in the Amhara region, and even more so the prevalence of inheritance in SNNP (Dercon & Daniel 2007: 14), would indicate fair tenure security within the peasant community even before the recent reforms. Specific evidence in many studies from the Därg and early EPRDF period confirms this. Furthermore, available data on tenure security after certification show so high levels of insecurity that it is difficult to reconcile this with the narrative of improved tenure security.

The most interesting data are provided by Deininger *et al.* (2011) in a study from East Gojam. The study contained the same question on the perceived risk of administrative land reallocation in four different survey rounds from 1999 till 2007.

This is a unique data set with contemporary measures on perceptions, starting before the reform process. The authors emphasize the decline in tenure insecurity by measuring the risk of change in the land holding, but if we limit ourselves to the risk of losing land, according to the definition of tenure insecurity, the figures remained about 20%, arguably with a spike due to uncertainties created by the process itself (Deininger *et al.* 2011: 320). The latter is a phenomenon captured more or less well in several reports. Based on bitter peasant experience, any land registration is likely to create rumours and uncertainties about government intentions.

We usually think of land registration as registration of existing land rights. It is then a problem that there were significant elements of redistribution of rights contained within the act of registration, processes that are not captured by the certification literature. Land rights were inherently somewhat fluid, with many latent rights covered by the formal tax name (*semä geber*) of the household head. Registration, on the other hand, was basically a snapshot, redefining the rights of household members and assigning rights to some members who were in the right position at just this point, while others who had been or might be in a similar position at other times, were left out. It was also part of a deliberate policy to favour women, orphans and handicapped persons. Thus, one study from Wälo showed positive results for these groups, while the situation grew much worse for youngsters (Abate *et al.* 2012: 263). This seems consistent with my evidence from Wäyr Amba, as we shall see below.

On the face of it, land redistribution is unlikely to happen in the future. The Amhara land legislation stresses the need for tenure security and the permanent rights of the landholders. Land redistribution remains a theoretical possibility, but with such stringent requirements that it would seem practically impossible (Proclamation Art. 8). There are good reasons to warn against redistribution and many peasants agree that it would solve no problems.⁹ Despite this, my impression from Wäyr Amba was that there was more demand for a fresh redistribution than ever in the past.¹⁰ The ideal was clearly the Därg land distribution in the late 1970s (the *deledel*), still the gold standard of fair redistribution.¹¹ Most youngsters reportedly favour this, while elderly landowners fear it.¹² But in Wäyr Amba, as in East Gojam, youngsters have little faith that there will be redistribution because this is now consistently rejected by the cadres.¹³

However, while the Proclamation and Regulation seem to close the door for future redistribution, the Directives signal different thinking. A full-scale redistribution may seem unlikely,¹⁴ but various instances of land reallocation¹⁴ are likely and have to

some extent already happened. I observed this in Chebena, North Wälo in 2003, and Dessalegn reported this from Däsé Zuriya about 2005 (2008: 223). Small instances of reallocation also seem to have taken place in Wäyr Amba.¹⁵

Article 10 of the Directives states that the *qäbälé* land administration shall make, and regularly update, a list of priority land-seekers who will get whatever land becomes available. The regular source of land will be those who inherit land but are found not to qualify as landowners. The Directives even specify that land confiscated shall be registered as government land and transferred to a 'land bank' (Art. 13.10).

Reallocation of land from deceased persons is rather similar to what has usually been captured as 'redistribution' under the pre-certification system, but which I refer to as reallocation due to the different social implications.

A particularly ominous prospect is represented by the plans for a second round of registration with GPS instruments. I shall here leave out any technical criticism of these plans, although such criticism is highly appropriate. The administration and the peasants agree that precise measurements will reveal discrepancies between the registered area of plots and the new measures. The surplus shall be confiscated and allocated to the youngsters.¹⁶ This leads to great tenure insecurity whether the policy is implemented or not, and if fully implemented, it would lead to large-scale land redistribution and the confiscation of much investment in the land. Another element, frequently raised by peasants in meetings but so far rejected by the administration, is to confiscate the holdings of urban landowners, who are usually much better off than their tenant farmers.¹⁷

Certification did not give the holders any new rights, and it is far from obvious that it improved peasant perception of tenure security. We may, however, regard it as a policy statement, an expression that tenure security is of concern and that the previous commitment of the EPRDF to land redistribution has been abandoned. The problem is that improved tenure security requires a weakening of state control over the peasants, the end to state land ownership. Control has to be replaced by more fundamental legitimacy, the belief that the land tenure rules are fair and good for the development of the locality.

For the time being priority is given to control, be it in the form of forced environmental protection and economic development, or by issues of party control over the peasantry in order to fend off any attack by opposition parties. Therefore,

irrespective of certification, tenure security will vary with policy statements and practice—as peasants try to divine the intentions of the government.

2.2 Rental rights

Rental rights concern the rights of farmers in the land they rent from title-holders. These rights come in two basic variants, sharecropping (*mägazo*) and fixed cash rent (*kontrat*).¹⁸ Sharecropping is usually an open-ended arrangement with annual sub-periods. If we consider it as consisting of periods of one year, there is high chance of renewal. However, since renewal is usually automatic, farmers think of the loss of sharecropped land as eviction. Fixed cash rent is now usually for two to four years. The period is often extended, but there is a high chance of non-renewal.

If we are interested in the tenure security of farmers, which seems the most relevant issue for agricultural production and land management, rental rights are of key importance. A measure for total tenure security would then refer to the security of farmers for the plots they operate themselves and their security on any plots they rent. In the classical literature on land tenure, land rentals were problematic both from the point of view of social justice and from economic theory, which argued that sharecropping created disincentive to investments.¹⁹ The recent economic literature has been more concerned with land rentals as a compromise form of the land market, and therefore sees this as a desirable aspect of the land tenure system (notably Holden *et al.* 2009).

The security of farmers who rent land is a blind spot in the recent studies of land tenure in Ethiopia. The threat of eviction has even become a positive element because it forces the sharecroppers to work hard, perhaps even more so on rented land than on their own land. The perspective is that of the landowner, seen as poor, not that of the farmer. However, if the threat of eviction has become a positive element, it would seem that something is lacking (e.g. Holden & Mintewab 2009: 180, 194-95).

There is also evidence that the threat of eviction is increasing. My impression from Wäyr Amba is that there may be a shortening of rental periods, here understood as the total number of years the renter keeps the land. There is also some evidence that may indicate that landowners increasingly perceive sharecropping as a one-year contract and that they can take back the land without prior warning. This is in marked contrast to customary practice, by which the sharecropper should be informed in advance and

have the opportunity to sow sorghum in order to reap the fruits of labour invested in the intensive weeding of the *t'éf* field.²⁰

Land rentals seem to be spreading, and in the literature this is seen as a positive result of certification. The evidence is not conclusive, and due to inconsistent measures it is difficult to describe trends even of this much-studied phenomenon. In a report from Tegray, Holden *et al.* found that the share of households who rented in land increased from 8% in 1998 to 26% in 2006 (Holden *et al.* 2007: 13). In their study from East Gojam, Deininger *et al.* found more moderate change but high, and rising, levels (Deininger *et al.* 2011: 321). With the exception of the very special circumstances immediately after the 1975 land reform, land rentals were always part of the farming system. The change is almost certainly less dramatic than indicated by the figures from the Tegray study, but I do believe that it has increased in recent years.

The impact of these tendencies on the agrarian structure is negative. Most young farmers depend overwhelmingly on rented land, partly from close relatives on rather secure terms, but otherwise on highly insecure terms. These farmers therefore have strong incentives to maximize their production for as long as they can. This is more or less without exception also the primary interest of the landowners. The tragedy is that these young farmers are the most dynamic rural element. Much potential investment in the land is lost due to an unfortunate incentive structure. The worst combination is that of an old landowner with a short time perspective or an urbanite with insecure rights on the owner side, and a hardworking farmer holding the land on insecure terms for a few years on the other side. In such situations, it is rational for both parties to mine the soil, a point that is well understood by peasants.²¹

2.3 Latent rights

There are many individuals with some rights-in-land but who are not the formally recognized landowners. Latent rights refer primarily to inheritance rights in its widest sense, the prospective transfer of land from one generation to the next. The rights of women at marriage and divorce are a somewhat distinct but closely related, even overlapping, topic. Latent rights can, some time in the future, be converted to formal title, but here the same basic principle applies as that identified by Hoben in the case of Gojam *rest* tenure: the amount of latent rights outweighs the amount of land, and some will lose out (Hoben 1973: 19). The transition from latent rights to land title is therefore often a period of intense struggle. It was always this struggle which created most tenure

insecurity, be it in traditional *rest*, in the land tenure system of the Därg period, and, perhaps more than ever, under current conditions.

Clear and fair inheritance rights are a necessary element for a system to produce long-term tenure security.²² The formal recognition of inheritance rights in recent land laws is therefore seen as an important good. The problem here is that we know very little about how inheritance actually works. My argument is that current practices produce great conflict, social unease and tenure insecurity.

Policies affecting the security of titles concern state-peasant relations and have thus a certain external flavour. They are not so damaging to community relations. But the local struggle over whose latent rights will become titled is internal to the peasant community, even to the family, and leads to bitter peasant-on-peasant conflicts. These are also conflicts with high stakes. First of all, the winners get a very valuable resource virtually for free. Secondly, there is a certain tendency that a winner takes all. Thirdly, a loss in an inheritance case may condemn a person to poverty for the rest of his life, especially since there is no alternative path into landownership in the form of buying land. There is currently a strong process of eviction, a strange result of a land tenure regime that refuses the peasants the right to buy and sell land lest they sell out their holding and end up among the urban destitute.

3. Inheritance

The rules of inheritance structure the land tenure system and shape peasant strategies. This is a most challenging policy issue. There will always be inheritance disputes, but it would seem that the current laws are not well thought through. They produce an exceptional level of uncertainties and conflict.

What struck me most about inheritance cases during my recent fieldwork was the intense pain felt by members of the local community. When we did fieldwork to update my land map and came to a parcel under dispute, my guide lowered his voice and seemed somewhat hesitant about how much to tell. The pain is especially felt by elderly people, who do not want their children to quarrel.²³ The current situation makes this difficult. Some parents shy away from making any decision and leave it to be settled after they die.²⁴ Many make a will, and the norm seems to be in favour of dividing the land equally between all children, whether or not that will be upheld by the

court.²⁵ Some bequeath their land in return for care in old age. Other children, or persons who think they have a strong claim, are then likely to feel left out, and they stop visiting their parents and break off normal kinship relations with the lucky inheritor. ‘Now many have lost love. It has become the time of *t’eqem* [lit.: ‘benefits’, here rather ‘self-interest’].’²⁶

The reason for the increase in inheritance conflicts in the peasant community is partly due to the high stakes. This is accentuated by rules that may sometimes lead to rather surprising outcomes. Such rules pave the way for dirty tricks, or at least strategies that are seen by the losing party as dirty tricks. In such cases, the sense of betrayal may create extreme bitterness. In the worst of cases there is fear that somebody may be killed. One case, told in some detail by a respected elder, may illustrate these conflicts. The story was recorded over ten pages. It was vividly remembered since it ended just two days before the interview. In the following I shall leave out most details.²⁷

Bäzawelätaw was a poor woman, and therefore her three children grew up with her brother, who was childless. The two boys, Asamärä and Wärqé, were farmer (*gäbäre*) and herdsboy respectively, while the girl, Bogaläch, did women’s work in the house. Bogaläch then gave birth to a child, and therefore she was counted as a separate household in the 1997 land redistribution and got 4 *t’emad* of land, the maximum allocation for a household at the time. Asamärä for various reasons returned to his mother, Bäzawelätaw. The uncle was a trader and womanizer and he contracted AIDS. Before he died, he made a will (*nuzazé*), apparently orally only, giving 2 *t’emad* of land to Wärqé, while the rest was left for his wife. Bogaläch did not get any land since she already had her own full holding.

Bogaläch resented this and created so many problems that Wärqé preferred to leave the house. She then persuaded the widow of their uncle to say that she knew nothing about the *nuzazé*, and then to bequeath the land to the daughter of Bogaläch.²⁸ The girl therefore got the certificate for all the land. Bogaläch ‘snatched the land of her brother, Wärqé . . .’.

Then their grandmother, mother of Bäzawelätaw, died. There was a confrontation at the funeral, and Bäzawelätaw hit Bogaläch, her daughter, so that she started bleeding. For this, Bogaläch had her mother sent to prison in Däbrä Berhan. Bäzawelätaw fell ill during her prison term and never completely recovered. She died

in November 2014, nine days before the interview was made. She had made *nuzazé* that Bogaläch ‘shall not be present at my funeral’. Bogaläch came with a large following, however, and again there was a showdown at the funeral. The situation grew so ugly that one militia-member fired his gun to save Bogaläch, his mistress, from her relatives.

Those concerned were taken to the Armanya police station where they were told to get reconciled. The elders assembled, two days before my interview. Despite an exceptionally large committee of elders, all concerned refused reconciliation. The matter was serious, and to cool matters down two priests were called to make our protagonists swear on the cross not to harm each other. They were forced to comply, but there was suspicion that one of the brothers had not repeated the oath properly. According to my informant (one of the two priests), perhaps they will not kill each other, but they are not likely to live together like brothers and sister.

A principal reason for the increase in conflicts is the legal system. This has changed much in recent years. The *dersha* system was basically a variant of inheritance, although it formally focused on household membership, not kinship. After the reforms of 1990, the inheritance rights of kinsmen were recognized, but many elements of the *dersha* system continued to operate and I even found remnants of it in a land conflict in 2014. The current system brings in some new elements, but also this is a hybrid system.

The new law implicitly recognizes inheritance as the main method of transfer between generations.²⁹ A person can now inherit land even if he already has a tax name, right up to the ceiling of 7 ha (10 ha in the lowlands).³⁰ This is a major system change and contributes to increased conflict levels since there is, seen with local eyes, no practical limit to accumulation. The household with most land in Wäyr Amba, spread over a number of certificates, own just above half the maximum amount.

There are four generational transfer variants recognized by the law. All are conditional upon acceptance by the district court. For simplicity I shall refer to them as follows:³¹

- (1) *wers* (inheritance, but in my use here, only in cases without a will)
- (2) *nuzazé* (will, bequeathment)
- (3) *set’ota* (donation: in return for care in old age)
- (4) *set’ota* (donation to child etc.)

These are quite different practices, but the terminology in the recent laws is not very clear. *Wers* may refer to both type 1 and type 2. In the general usage in the 1990s *wers*

in practice often referred to type 3. Type 3 and 4 are covered by the same rather imprecise term, *set'ota*. Locally this is used for any kind of gift, and sometimes for an informal transfer of use right without pay, perhaps for one season only.

In general the new legal system is somewhat opaque. One problem is that it consists of three legal levels, Proclamation, Regulation and Directives. There is much repetition between them, but also some differences, sometimes apparently random differences, and sometimes perhaps by intention. None of the documents are very clear, although the Directives are sometimes extremely detailed. The Proclamation starts with a great number of definitions, which are not really followed up, while some key concepts, such as farmer, orphan, equal rights of women, are never well defined. The following is my understanding of the current legal situation, based mainly on the three legal texts but also on local information.

Only farmers or would-be farmers residing in the Amhara region can acquire land. This is less clear than what it may appear. A farmer is defined as ‘any person whose regular or steady earning is based on agricultural activities’ (Proclamation Art. 2.1). Later, in the context of who can inherit land, this is extended to urbanites with low income (Art. 16.2). Practice indicates that this excludes nobody—unless they are unlucky. In one case, a nine-year old girl who had lived with her aunt in Addis Ababa since she was one year old, was proclaimed the official inheritor.³² Persons with good government jobs, formally excluded from holding land, sometimes inherit land in the name of a child.³³ And even when somebody who holds land in his own name is found to have permanent work, part of the land can be saved in the name of the wife, since half the household holding belongs to her.³⁴ However, an urbanite may at any time be disqualified, and this adds a considerable element of insecurity to the generational transfer. There is the risk that a child may win the struggle with kinsmen but later lose the family land to the ‘land bank’, something that can leave a bitter legacy.

If the parents die without leaving a will, the basic Amhara inheritance rule applies, i.e. equal inheritance between all children, but now with some limitations. Household members come first, then children living separately but without tax name, and finally children with land. If there are no children, parents may inherit.³⁵ If there are no legitimate inheritors, the land reverts to the *qäbälé* (Proclamation Art. 16.9; Regulation Art. 11.13). While this may appear to open up for much potential land confiscation, the option of *nuzazé* limits this.

A title-holder may make *nuzazé* and bequeath his land to any farmer and thus overcome the limitations indicated above. However, the will should not infringe on the rights of household members. It would thus seem that if one child has married and lives separately, this child may not receive land if there are other children living with the parents. For children living separately, the law seems to give the parents permission to assign all the land to one child. When this happens, conflict normally ensues.

Set'ota (donation) is specified in two variants (Proclamation Art. 17; Directives Art. 12.2 and 3).³⁶ The first type refers to what was previously known as *yä-qum wers* ('standing inheritance'), by which an elderly person agreed to transfer the land to somebody in return for care during old age. According to the Directives, the recipient of the land should have cared for the old person for at least three years. There is no apparent limitation on who can receive such land. I have not yet come across any such type and I believe the peasants would rather use the more familiar *nuzazé*, which can have much the same effect but leave the holder in more control.

The other variant of *set'ota* refers to donations of land to children, grandchildren or other household members who are landless or have very little land. This would appear to imply formalization of *gulma* grants. The peasants seemed ignorant about this option, perhaps because it is of little interest and has usually been taken care of by informal *gulma* practice and the traditional *nuzazé*.³⁷

There are many possible conflicts here and my field notes are full of them. The really problematic element is, however, the rules about minor children, despite its good intentions. The legislation puts great emphasis on protecting women, disabled and orphans. Orphan is not defined, but it would appear that this concern underlies the rule that children under the age of eighteen have priority claim to land.³⁸ This has a somewhat surprising effect. Traditionally land was assigned to children as they came of age. In the 1997 land redistribution, only those above eighteen had land rights. Now suddenly the rule is reversed and many children above eighteen will be disinherited while a younger sibling receives all the family holding.

The problem here is not that minor children have land rights, but that they have exclusive rights, and especially that somebody, in the name of a child, can take everything. This seems implied in the law, and it is even clearer by local practice. The rule would be problematic even if limited to the children of the deceased, but 'child' has a wide practical definition. In the Proclamation it is defined to include adopted children (Art. 2.3). I have never come across formal adoption during my fieldwork, but it is very

common for old persons to include a grandchild or other young relative in their household. These are considered as children by the court. Since they have priority claims to land, they play a strategic role in the struggle for land, sometimes by accident only, when the effect was not known in advance, but increasingly by intention.

Peasants learn these games fast. The new rules will presumably influence household strategies and relations between siblings. Already one young farmer complained that his uncles wanted to expel him from the compound of their parents. The danger they saw was that the young farmer had minor children and when their mother dies, the land may be assigned to the minors, not to the direct children, i.e. the uncles of the farmer.³⁹ This threat is very real, and the answer cannot be known until it is too late.⁴⁰

Sometimes this takes forms that would be ridiculous if it were not for the grave consequences for those involved. In one disputed inheritance case the grandchild was examined at the hospital in Däbrä Berhan to ascertain whether he was under eighteen. He was found to be, and therefore he got all the land. If he had been above eighteen, or if his grandfather had lived a few months longer, he would have received little or no land.⁴¹ Rules with such strange and dramatic effects have little local legitimacy.

4. Implications

The trend is towards a problematic agrarian structure. The spread of rental arrangements have been noted above. A flexible land tenure system does of course require the option to rent out the land, but beyond a certain point this becomes a problem, due to the inherent tenure insecurity and to implications for investments. The situation is made worse by the fact that many of the non-farming landowners are urbanites. They can scarcely be said to qualify even by the wide definition of 'farmer' in the land law. They will therefore feel insecure, strengthened by occasional confiscation of land from other urbanites. Thus both landowner and farmer have short-term perspectives.

Certification sought to bring order to land tenure, but this has not really been achieved. The former system was not well regulated by law and it was easily subject to administrative abuse. But within the peasant community it was simple, centred on the tax name, with much trust in evidence from community members when conflicts arose. This worked rather well. Certification solved problems which did not exist and created

some new ones. The current system is much more formal in its approach and the law takes precedence over common sense and legitimacy. Furthermore, the system becomes chaotic when one household may be registered with several different certificates, in which case the limitation on holding size becomes meaningless. The response should not be more administrative controls, but reforms that increase the legitimacy of the system.

Certification registered all land in a remarkably swift process. Inheritance was permitted, but future holdings shall not be smaller than 1 *t'emad*. This may seem to be a sensible policy to prevent fragmentation and to limit the pressure on the administration to multiply certificates. The problem is that many holdings are already small and will be affected by this rule. Small holdings have to be held jointly by the inheritors. Thus, within a very short time there develops a layer of land ownership, officially recognized but not properly registered, under the level represented by the land certificates. The long-term implications are unclear. The system is likely to be open for manipulation, but worst of all, minor changes in laws or legal practice may suddenly dispossess large groups of people.

It has often been stated that land redistribution under the Därg led to fragmentation. This seems to be more based on logics than on evidence, but partible inheritance constitutes an obvious challenge. Now the holding is first split between husband and wife, and then their respective children or other claimants inherit them. There are certainly strong signs of fragmentation, but it is too early to say how this will play out and whether this will have much negative impact on farm productivity. One warning: these elements are virtually impossible to capture in surveys. I get them in qualitative information, especially from neighbours, but they rarely show up in my survey data.

The really serious elements of fragmentation and tenure insecurity come from the pressure on farmers with little land who are forced to rent whatever land they can get, often at considerable distances from their house. They are often strong and able farmers in their prime age. They combine, however, the two great concerns of the Wäyr Amba peasants, the increasing level of conflicts over land and the emergence of more or less landless youngsters. This situation creates demands for land redistribution.

The obvious policy alternatives are either, within state land ownership, to redistribute land to reduce the pressure for some time or, much more promising, to strengthen peasant rights. While land-poor youngsters would prefer redistribution, to

get land for free, they tend to see the right to buy land and thus build up a viable holding, as a good alternative.⁴²

FIELD NOTES, DIARIES AND INTERVIEWS

Note: D-numbers refer to document identification in my private archive. All interviews have been recorded in writing. Informants are local peasants. Also the reports and diaries of my field assistants (Berhanu Bétä, Lesanäwärq Bétä and Mäsärät Kenfä) have been included in the list below, as have my own diary.

Alämayähu Rāda, *Qés* (2014) ‘Bä-märét wers yätänäsa yä-bétäsäb s’äb’, 8 Hedar 2007, D11058. 10pp.

— (2013) Interview, Hamlé 2005, D10995. 72pp

Asäfa Dägefä (2009) ‘Ersha’, 26 Hedar 2001, D10708. 20pp.

Aycheluhem Bälachäw (2013) ‘Yä-kontrat märét’, 12 Mäskäräm 2006, D11126. 3pp.

Bälät’äw Täklä-Yohanes, *Qés* (2013) ‘Yä-qum wers’, 24 Säné 2005. D10992. 3pp.

Berhanu Bétä (2012) ‘Masho’, 30 T’eqemt 2005, D10902. 10pp.

— (2013) ‘Märét lä-mädan t’erät’, 15 Miyazeya 2005, D10969. 4pp.

Berqnäsh Mogäs (2014) Note to survey Y2007, 11 Hedar 2007, D11139. 4pp.

Ege, S. (2014) Diary 2014, D11057. 72pp.

Haylu Asfaw (2013) Interview, Tahsas 2006, D11044. 7pp.

Käbädä Haylä-Mäsqäl (2014) ‘Yä-t’éf tarik’, 10 Hedar 2007, D11062. 8pp.

Lesanäwärq Bétä (2014) Diary, Hedar-Tahsas 2007, D11135. 28pp.

Mäkonen Fantayé (2013) Interview, 7-21 Säné 2005, D10986. 70pp.

Mäsärät Kenfä (2009) Notes to survey 2001 E.C., D10882. 111pp.

Qäs’äla Täklé (2014a) ‘Yä-märét yezota’, 3 Tahsas 2007. D11120. 8pp.

— (2014b) ‘Yä-märét wers’, 4 Tahsas 2007, D11121. 7pp.

Säyfa Täsäma (2009) Interview, Tahsas 2001. D10710. 44pp.

Yägelé Tadäsä (2014) ‘Yä-märét cheger’, 21 Tahsas 2007, D11127. 7pp.

Zäbänä Abaynääh (2014) ‘Yä-märét yezota’, 28 Hedar 2007, D11114. 5pp.

LITERATURE AND OFFICIAL DOCUMENTS

Ethiopian authors by their first name, not by second (father's) name.

Abate Tsegaye *et al.* (2012) 'Impact of land certification on sustainable land resource management in dryland areas of eastern Amhara Region, Ethiopia', *Journal of Agricultural Science*, 4 (12): 261-268.

Amhara Region

- (2006) Amhara Regional Council. 'Proclamation No. 133/1998EC (2006 GC)'. (English and Amharic) in Amhara Region 2010.
- (2007) Amhara Regional Council. 'Regulation No. 51/1999 EC (2007 GC)'. (English and Amharic) in Amhara Region 2010.
- (2008) [Amhara National Regional State Environmental Protection, Land Administration and Use Authority]. 'Yä-gät'är märét astädadär-ena at'äqaqäm awaj qut'er 133/98en ena-dänb qut'er 51/99en lä-masfäs'am yä-wät'a mämäriya' n.d. [2008] in Amhara Region 2010. (I refer to this as 'Directives').
- (2010) Amhara Regional Government. 'Yä-gät'är märét astädadär-ena at'äqaqäm awaj, dänb-ena mämäriya'. Bahir Dar: Amhara Regional Government, Akababi t'ebäqa, märét astädadär-ena at'äqaqäm biro, Genbot 2002 [2010 GC].

Arnot, C. D., M. K. Luckert, and P. C. Boxall (2011) 'What Is tenure security? Conceptual implications for empirical analysis'. *Land Economics*, 87 (2): 297-311.

Aspen, Harald (1993) *Competition and Co-operation: north Ethiopian peasant households and their resource base*. Trondheim: University of Trondheim, Centre for Environment and Development.

Atakilte Beyene (2003) 'Soil Conservation, Land Use and Property Rights in Northern Ethiopia: understanding environmental change in smallholder farming systems'. PhD dissertation, Uppsala: Swedish University of Agricultural Sciences, Acta Universitatis Agriculturae Sueciae, Agraria 395.

Ayele Behaylu and Tahir Hussain (2015) 'Land registration vis-a-vis land management: the case of Gische Rabel district, Amhara State, Ethiopia', *Journal of Environment and Earth Science*, 5 (5): 30-35.

- Berhanu Adenew and Fayera Abdi (2005) *Land registration in Amhara Region, Ethiopia*. London: International Institute for Environment and Development, Research Report No. 3.
- Birhanu Megersa and Mamo Hebo (2010) *Exploring the Dynamic Linkages: land tenure systems, agricultural investment and food security among smallholder farmers in Sululta, Oromia Regional State*. Saarbrücken: VDM Verlag Dr. Müller.
- Chinigò, Davide (2015) 'The politics of land registration in Ethiopia: territorialising state power in the rural milieu', *Review of African Political Economy*, 42 (144): 174-189.
- Deininger, K. *et al.* (2007) 'Rural Land Certification in Ethiopia: process, initial impact, and implications for other African countries'. Washington D.C.: World Bank Policy Research Working Paper 4218.
- Deininger, K. *et al.* (2011) 'Impacts of land certification on tenure security. Investment, and land market participation: evidence from Ethiopia', *Land Economics*, 87: 312-334.
- Dercon, S and Daniel Ayalew (2007) 'Land Rights, Power and Trees in Rural Ethiopia'. Oxford: Centre for the Study of African Economies: WPS2007-07.
- Dessalegn Rahmato (2008a) *The Peasant and the State: studies in agrarian change in Ethiopia 1950s-2000s*. N.p.: Custom Books Publishing.
- (2008b) 'Ethiopia: agriculture policy review' in Taye Assefa (ed.), *Digest of Ethiopia's National Policies, Strategies and Programs*. Addis Ababa: Forum for Social Studies.
- (2009) 'Peasants and agrarian reforms: the unfinished quest for secure land rights in Ethiopia' in Janine M. Ubink *et al.* (eds), *Legalising Land Rights: local practices, state responses and tenure security in Africa, Asia and Latin America*, Leiden: Leiden University Press.
- Directives: See Amhara Region 2008
- Ege, S. (2011) 'The *dersha* system of land tenure'. Paper presented at the workshop on 'Land Tenure and Development in the North Ethiopian Highlands', Trondheim 27-28 October 2011.
- (2012) 'The history of land tenure in Baba Sää, North Wälo'. Paper presented at the 18th International Conference of Ethiopian Studies, Dire Dawa 2012.
- (2015) 'The new economy'. Paper presented at the 19th International Conference of Ethiopian Studies, Warsaw 24-28 August 2015.

- Hoben, A. (1973) *Land Tenure among the Amhara of Ethiopia: the dynamics of cognatic descent*. Chicago and London: University of Chicago Press.
- Holden, S. and Mintewab Bezabih (2009) 'Gender and land productivity on rented land in Ethiopia' in Holden *et al.* 2009.
- Holden, S. *et al.* (2007) 'Impact of Land Certification on Land Rental Market Participation in Tigray Region, Northern Ethiopia'. MPRA Paper No. 5211 <http://mpra.ub.uni-muenchen.de/5211/1/MPRA_paper_5211.pdf, accessed 1.12.1011>.
- Holden, S. *et al.* (eds) (2009) *The Emergence of Land Markets in Africa: assessing the impacts on poverty, equity and efficiency*, Washington D.C.: Resources for the Future Press.
- Holden, S. *et al.* (2011) 'Tenure insecurity, gender, lowcost land certification and land rental market participation in Ethiopia'. *Journal of Development Studies* 47 (1): 31-47.
- Mann, H.S. (1965) *Land Tenure in Chore (Shoa)*. Addis Ababa: Institute of Ethiopian Studies and the Faculty of Law, Haile Selassie I University, in association with Oxford University Press, Monographs in Ethiopian Land Tenure Number 2.
- Mastewal Yami and K. A. Snyder (2015) 'After All, Land Belongs to the State: Examining the Benefits of Land Registration for Smallholders in Ethiopia'. *Land Degradation and Development*.
- Pankhurst, H. (1992) *Gender, Development and Identity: an Ethiopian study*. London and New Jersey: Zed Books.
- Proclamation: see Amhara Region 2006.
- Regulation: see Amhara Region 2007.

ABSTRACT

It is generally believed that tenure security has improved due to the programme of land certification. In this paper I argue the opposite. Tenure security concerns three different rights: possession, renting and latent rights. Rights of possession are believed to have improved, but the evidence is weak and conflicting. Land rentals are expanding and farmers face high tenure insecurity. The main problem, though, is latent rights, with great insecurity and increased conflict levels. Despite rapid economic development there is considerable social malaise, an unfortunate agricultural structure, and considerable pressure for land redistribution due to unresolved land tenure issues. The paper is based on the certification literature and primary material from North Shāwa.

NOTES

¹ The relevant legal documents have been published in a book which has been widely distributed to local administrations (*qäbälé*). The book (Amhara Region 2010) consists of three sections: Proclamation (Amhara Region 2006), Regulation (Amhara Region 2007), and Directives (Amhara Region 2008), hereafter referred to as Proclamation, Regulation and Directives.

² For some recent contributions along the same lines, see Ayele & Tahir 2015: 33-34; Mastewal & Snyder 2015: 2.

³ Ege 2014, diary: 30.

⁴ Wäyr Amba is now the northern third of Armanya *qäbälé* in T'arma Bär *wäräda*. The church, centrally located, is 9°53'53'' North, 39°48'49'' East, at an altitude of 2,000 meters.

⁵ I have about 140 qualitative interviews from my two most recent fieldworks in 2012 and 2014, most of them undertaken by my field assistant Berhanu Bétä. Only those directly cited in the text are included in the bibliography, but the total material has influenced my analysis. All interviews are in writing, stored in my private archive. The full title and precise date (Ethiopian calendar) is found in the list of sources.

⁶ I use 'peasant' to refer to rural inhabitants, 'landowner' to refer to the holder of the land title, and 'farmer' for the person who works the land.

⁷ This is now an oft-repeated standard account of recent land tenure history. For a somewhat different version of the periodic redistribution narrative, see Dessalegn 2008a: 298-310.

⁸ Ayné is about one hour walk west of Wäyr Amba, on the steep escarpment ranging from 1700 to 3000 meters above sea level.

⁹ E.g. Qäs'äla Täklé 2014a, 'Yä-märét yezota': 3; Zäbänä Abaynä 2014, 'Yä-märét yezota': 2-4.

¹⁰ Ege 2014, diary: 27, 54; Haylu Asfaw 2013, interview: 5; *Qés Alämayähu Räda* 2013, interview: 66.

¹¹ Ege 2014, diary: 27, 40.

¹² Ege 2014, diary: 27.

¹³ Aycheluhem Bälachäw 2013, 'Kontrat': 2. Deininger *et al.* (2011: 321) report that in East Gojam the share of farmers who expected to gain land in redistribution declined from 55 to 4% from 1999 to 2007.

¹⁴ Based on the legislation, comprehensive redistribution is unlikely, but there is so much tension in the current land tenure system that major changes are likely to happen. It is impossible to predict the direction of these changes.

¹⁵ *Qés Alämayähu Räda* 2013, interview: 66; Aycheluhem Bälachäw 2013, 'Kontrat': 3.

¹⁶ Qäs'äla Täklé 2014a, 'Yä-märét yezota': 3.

¹⁷ Berqnäsh Mogäs 2014, note to survey Y2007: 4.

¹⁸ Local terms and specific institutions vary between regions and over time. *Mägazo* and *kontrat* are the two most common terms.

¹⁹ This was prominent in the Ethiopian discussion about land reform in the 1960s, and the argument was well presented by Mann 1965. The impact on various rental contracts on incentives have later been much discussed in the economic literature.

²⁰ Ege 2014, diary: 26; Haylu Asfaw, in Mäsärät Kenfä 2009, notes to survey 2001 E.C., household 13, land 2061. For a controversial eviction of the sharecropper, see also Yägelé Tadäsä 2014, 'Yä-märét cheger': 2-5. For the concerns of a farmer depending mostly on rented land, see Gétahun Gäbrä-S'adiq in Mäsärät Kenfä 2009, notes to survey 2001 E.C., household 147.

²¹ E.g. Säyfa Täsäma 2009, interview: 8; Ege 2014, diary: 51.

²² The right to sell the land is another prerequisite, but this argument is beyond the scope of the current paper.

²³ The rest of this paragraph is much based on Berhanu Bétä 2012, 'Masho': 8-9, supplemented by some concrete examples.

²⁴ My old neighbour Asäfa was very much concerned about what would happen to his land and children after his death, but did not leave a will due to a complicated family situation; see Asäfa Dägefä 2009, 'Ersha': 20; also Mäkonen Fantayé 2013, interview: 64.

²⁵ Käbadä Haylä-Mäsqäl 2014, 'Yä-t'éf tarik': 7-8; Qés Bälät'äw Täklä-Yohanes 2013, 'Wers': 1. In the latter case the old person said he wanted to divide the land equally among his children, even if the government might later confiscate the land of those who did not qualify, since 'that is the power of the government'.

²⁶ Berhanu Bétä 2012, 'Masho': 8. For a case, see Negatu Wäsäné in Mäsärät Kenfä 2009: Notes to survey 2001 E.C., household 150.

²⁷ Qés Alämayähu Räda 2014, 'Wers': 1-10.

²⁸ This was to circumvent the rule that somebody with tax name could not inherit another holding, a rule that applied until the new land legislation.

²⁹ Proclamation Preamble Par. 9 defined this as an integral part of the 'holding right'. The specific paragraphs dealing with methods of acquiring land are less clear. The Proclamation mentions both land

distribution and inheritance (Art. 7), while the Regulation only lists land redistribution and other administrative land grants (Art. 5.6). This has little practical consequences, but it tends to show the dominance of the ideology of state land ownership and weak analysis of the implication of specific rules for the land tenure system that will emerge.

³⁰ This is explicit in the rules governing inheritance (*wers*), by which children or parents with land, implicitly tax name, can inherit (Regulation Art. 11.7). But it does not apply for donations to children (type 4, see below).

³¹ In the later discussion I refer to the title-holder and children as a men, the spouse as woman, but the law, and Amhara practice, is rather gender neutral.

³² Lesanäwäraq 2014, 'Diary Hedar-Tahsas 2007': 18.

³³ For an example, *Qés Alämayähu Räda* 2013, interview: 24-26.

³⁴ Aycheluhem Bälachäw 2013, 'Kontrat': 2-3; Berhanu Bétä 2013, 'Märét lä-mädan': 1.

³⁵ Proclamation Art. 16.6; Regulation Art. 11.7. Siblings are not mentioned, which may have grave consequences in some cases. They may of course receive land in bequeathment, as anybody else, if there are no household members.

³⁶ This institution is not dealt with in the Regulation.

³⁷ Ege 2014, diary: 33.

After writing this paper, in October 2015 I got access to the full land registration protocols for Wäyr Amba. I then spotted a number of cases of *set'ota*, which I intend to investigate. The statement in the text is based on fieldwork among the peasants in 2014, which identified many cases of *wers* and *nuzazé* but none of the *set'ota* types.

³⁸ The most specific rules are found in Regulation Art. 11.7, which refers to 'minor children'. The age limit of eighteen is very explicit in local practice. See also Proclamation Art. 16 and Directives Art. 13.

³⁹ Ege 2014, diary: 30.

⁴⁰ For two examples with shocking outcomes, see Qäs'äla Täklé 2014b, 'Wers': 5-7.

⁴¹ *Ibid.* 5.

⁴² Ege 2014, diary: 54.