

# Local Community Rights and Trends Of Land Policy Reforms Under The Governance Of Large-Scale Rural Land Investment In Amhara National Regional State Ethiopia

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**Abstract:** For the last two decades, land and land-related problems are more complicated ever before. Especially the proliferation of large-scale rural land investments and the vulnerability of the local communities in land abundant developing countries instigated researchers, human right activists, and international and regional organizations to proposed governance guidelines, principles, and codes of conduct for large-scale land investments. To identify policy flaws on the protection of local community rights under the governance process of large-scale rural land investment in Amhara National Regional State Ethiopia the commonalities of those international and regional accepted governance guiding lines and principles are taken as a point of reference to examine the land governance policies of the region through the approach of document analysis. The result shows all legislation with regard to the governance of large-scale rural land investment is flawed throughout the land policy reform processes and identified five ways in which the de jure land-related rights of the local communities are compromised and exacerbated the vulnerability of their livelihoods.

**Keywords:** - Amhara region, land policy reforms, governance of large-scale rural land investments, and rights of local community

## 1. INTRODUCTION

The proliferation of large-scale rural land investment in land abundant developing countries had viewed globally in different perspectives. This has led what (Borras, Franco, & Wang, 2013) acknowledged three lines of political arguments among states and non-state actors with regard to international governance of large-scale rural land investments. The first line of argument is regulating to promote land acquisitions, second is regulate to minimize risks and maximize benefits of investment projects, and the third is regulate to ban and rollback land deals.

However in the last decades because of the majority of developing countries have tendencies to continue promoting large-scale land acquisition for agriculture investment and failures of the majority of investment projects, the global focus is tilted towards the second line of argument. As a result to minimize the risks, maximize benefits of investment projects, and protect land-related rights of the local communities researchers, human right activists, international and regional organizations proposed a set of principles, guidelines, and codes of conduct for the governance of large-scale rural land investments (ACTUAR, 2012; AU, ADB, & UN Economic Commission for Africa, 2014; De Schutter, 2009; Schutter, 2015; UNCTAD, FAO, IFAD, & World Bank Group, 2010; Voget-Kleschin & Stephan, 2013).

These efforts had intends to support developing countries and serve as a springboard for their national policy

framework platforms. Consequently some African countries, for example, Malawi and Mali are reacted positively through operationalized those proposed guiding principles on their land policies (International Land Coalition, 2018).

Thus, by taking these international and regional accepted principles, guidelines, and norms in to consideration this paper examined the substantive policy contents and trends of land policy reforms in Ethiopia with the particular emphasis of Amhara National Regional State and argues that all legislations on the governance of large-scale rural land investment are flawed throughout the land policy reform process and identified five ways in which the de jure land-related rights of the local communities are compromised and exacerbated the vulnerability of their livelihoods.

## 1.1 BACKGROUND

The economy of Ethiopia basically depends on the agricultural sector. It accounts for 80% of employment and 38.5% of the total GDP contribution (The Federal Democratic Republic of Ethiopia, 2016). Besides, agriculture in Ethiopia is dominated by smallholder farmers who produce their livelihood mainly from subsistence rain-fed agriculture with only inadequate use of inputs and technologies. The highlands of Ethiopia, where the majority of the country's population live, characterized by, fragmented and small land holding size, erratic rainfall

patterns and low level of productivity (Tamrat, 2010). Hence, the question of land tenure has been a center of economic and political gravity for the last decades. Especially the recurrent drought, famine, and hunger exacerbate the struggle of land tenure (Ibid.).

During the imperial period (Adal, 2002) the land policy divides the rural land in to three categories, such as private land, state land, and church land, which was private land means a land owned by landlords or nobilities, whereas the state land was under the direct control of the emperor and the church land was belongs to the Ethiopian Orthodox church. In the meantime, rural land was owned by the above mentioned few bodies. Majority of the population of Ethiopia was tenants and have not held right of land for their livelihood production (ibid.).

At the middle of the 1970s as a result of lack of clear and secure property right to land, limited investment and promotion of productivity-enhancing infrastructures and low level of irrigation led the country to food shortage and hunger and cause the immediate outbreak of the revolution. Consequently, the imperial regime was overthrown by the socialist revolutionary military junta (Dergue). Meanwhile, Ethiopia moved from a predominantly feudal system that concurrently renowned kinship tenancy and private form of land tenure to a socialist command that established public ownership of land through nationalization and reallocation of land to tenant household's on use-right (usufruct) basis (Tamrat, 2010; Kebede, 2006).

The land proclamation of 1975 nationalized all Ethiopian land and banned to sale, lease, and collateralization of land. It also prohibited farmers from contracting labor to work their farm field. The land was reallocated, transferred and collectivized in addressing landlessness. Commercial large-scale modern farms were also turned into state farms (Belete, Dillon, & Anderson, 1991).

During the socialist regime, however majority of the tenant population got land holding right for their livelihood production; the land reform didn't serve as a panacea for countries deep-rooted food shortage. It was accompanied by a major loss in productivity, famine, increased poverty and even casualty of life in the case where farmer's settlement in arid malaria infested lowlands (ibid).

As a result, Ethiopia instantaneously becomes a major food aid recipient nation (Belete, Dillon, & Anderson, 1991; Bodurtha, et al. 2003). Besides, the question of land is not the only agenda but also the issue of property right still remained a crosscutting political agenda throughout the ruling time of the regime. Meanwhile, the military regime was also overthrown by Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991.

After the overthrown of the military government by EPRDF, Ethiopia adopted a federal system of government structure that permits for substantial autonomy to the regional states and decentralized decision making up to the lowest level in political, economic and social affairs (FDRE,

1995). Concomitantly the constitution under article 40/3 heralded that, the right to ownership of rural land is totally vested under the State and in the peoples of Ethiopia and considered as a common property and shall not be subject to sale or to other means of exchange.

However the land reform seems to the former regime with respect to state ownership, it has considerable developments on such as rural land usufruct right for investors in lease base, and the issue of compensation in time of expropriation and disposition of smallholder farmers from their holding rights, which were denied in former regimes.

The FDRE 1995 constitution (FDRE, 1995) article 52/a-d indicated the power of decision making of the regional state over political, economic and social affairs including administering land and natural resources within their jurisdiction under the guiding principles of the federal constitution. In addition Proclamation, No. 456/2005 of Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation article 5/1-4 proclaimed the right of peasant farmers and pastoralists engaged in agriculture for a living shall be given rural land free of charge and the holding right of women also granted without affirmative action. Simultaneously, it declared with the precondition of priority of smallholder farmers and pastoralists allowed to investors to get rural land in lease bases for investment in accordance with the investment policies and laws at federal and regional levels (FDRE pro.no. 456/2005, 2005). Moreover the regulation privileged investors through providing a right of collateralization of their leased land. According to the proclamation, the time limit of the land lease had determined by the respective regional states.

As compared to the imperial and military regimes, although the then government had brought considerable changes in addressing the tenure rights of the local community, the proliferation of large-scale rural land investment caused to live them in a threat of eviction. Still there are institutional dysfunctions and de jure flaws on the land governance policy frameworks at different levels of the government. However, the majority of previous researches in Ethiopia has been focused on de facto governance situations of large-scale land investments and geographically confined in central and southwestern lowlands of Ethiopia.

In the governance of large-scale rural land investments, the substantive policy contents which determine the de jure rights of stakeholders on land didn't get enough consideration. Although the Amhara region is contained 28% of the national large-scale investment projects and the majority of the population is engaged on smallholder farming there is a limited study in this regard.

Under such circumstances to identify policy flaws on the right protection of local communities in the governance process of large-scale rural land investments; the commonalities of international and continental accepted governance principles, guidelines and norms on large-scale rural land investment are taken as a point of reference.

Hence, this paper examined the substantive policy contents and trends of policy reforms on the governance of large-scale rural land investment in Amhara Regional State Ethiopia since 2006.

The Amhara Regional State is one of the nine national regional states under Ethiopian federalism located in the northern parts of Ethiopia at 11°39'39"N and 37°57'28"E. It shares an international boundary with Sudan to the west and northeast, and inside Ethiopia, it is bordered by Tigray to the north, Afar to the east, Benishangul-Gumuz to the west and southwest, and Oromiya to the south. According to 2017 population projection the region has 21.1 million people which is the second populated region next to Oromya and of which (82.5%) 17.4 million peoples live in rural area. The area coverage is estimated 154,708.96 square kilometer and its population density is 108.2 people per square kilometer. The rural average household is estimated at 4.5 with the average household land holdings of 1.09 ha and its economic activity is highly agrarian dependent society (CSA, 2018). Thus the issue of land governance is the center of economic and political gravity for the regional state.

## **2. REVIEW ON GLOBAL PARADIGM ON THE GOVERNANCE OF LARGE-SCALE LAND BASED INVESTMENTS**

Albeit large-scale land investment for agriculture is not the recent phenomenon The 2007/2008 global food and energy crisis caused the rapid expansion of it with a centerpiece of sub-Saharan Africa which was accompanied by some burdens on the local smallholders in social and environmental contexts (FAO, 2014). Concomitantly, this situation triggered the need to develop principles and guidelines for agricultural investment. It also reflects the concern of global national and local stakeholders with managing land responsibly since large-scale land investment had appeared as continues issue globally over the last decade (Ibid.).

As a result three guidelines and principles such as principles for responsible agriculture investment, voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security and guiding principles on large-scale land-based investments in Africa had successively designed and prescribed as a remedy for the drawback of national land governance policies (ACTUAR, 2012; African Union et al., 2014; UNCTAD et al., 2010). The following sections provide details of each principle and guidelines.

### **2.1 PRINCIPLES FOR RESPONSIBLE AGRICULTURE INVESTMENT (PRAI)**

The idea of principles of responsible agriculture investment is first coined by UNCTAD, FAO, IFAD, and World Bank Groups together in 2010. Those principles are the result of in-depth study of the World Bank in 2009 on "large-scale land acquisition of land rights for agricultural or natural resource-based use" in 20 most engaged nations with an emphasis on policy frameworks, overall scales and

detailed analysis on social, economic and environmental impacts of large-scale agricultural investments (UNCTAD et al., 2010). The aim of the principles is to promote agricultural investments which simultaneously enhance food security nutrition and sustainable development without compromising the rights of local communities. In this respect, sustainability indicates that the agricultural investments must address economic social and environmental concerns which will have to be integrated with the whole process of community participation (FAO, 2014; UNCTAD et al., 2010).

PRAI has seven basic principles in the governance process of large-scale rural land investments which are emphasized on recognizing the existing rights, friendly with food security, transparency, and accountability, prior information, and consultation, benefit sharing, minimizing vulnerability and resilience (UNCTAD et al., 2010, pp 2-18)<sup>1</sup>.

In general proponents of the principles of responsible agriculture investment believed that agricultural investment is not a simple trade business, not mere profit dependent and It must be viewed in multidimensional considerations and should respect 'rights', 'livelihoods' and 'resources'. Therefore every investment projects expected to respect land and resource rights, ensuring food security, discussion, and involvement of stakeholders, fulfilling criteria's of good governance, 'responsible agro-enterprise investing', 'social sustainability and environmental sustainability' preconditions.

### **2.2 VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES, AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY**

The guideline is formulated by the FAO Committee on World Food Security in 2012. The main concern of this voluntary guideline is to support the global and national effort of anti-hunger and poverty campaign in light of sustainable development principles at the centerpiece of 'land for development' with respect to ensuring rights of tenure and 'equitable access to land' and land-based resources (ACTUAR, 2012). Moreover, the guideline envisioned to serve as a benchmark for the advancement of national policy frameworks and its implementation of the governance of tenure of land, fishes, and forests.

The guiding principles of responsible tenure governance are respecting both formal and informal right of tenure right holders, protecting tenure right holders from any loss of tenure rights, ensuring to exercise their rights, securing dispute settlement mechanisms over their rights, freeing corruption and equitable access to justice. By taking those guiding principle in to consideration their implementation or any decision making on land and land-based resources need to be guided by keeping the following

<sup>1</sup> (UNCTAD et al., 2010, pp 2-18) see detail explanation of each principle

ten principles such as ‘human dignity, non-discrimination, equity and justice, gender equity, holistic and sustainable approach, consultation and participation of stakeholders, rule of law, ‘transparency, accountability, and continues improvement’(ACTUAR, 2012). This voluntary guideline is ideally interesting because of its consistency with UN universal declaration of human rights.

### 2.3 GUIDING PRINCIPLES ON LARGE-SCALE LAND BASED INVESTMENTS IN AFRICA

As Africa is a centerpiece of large-scale land-based investments the AU member state designed a guiding principle for large-scale land-based investments with the major concern of achieving sustainable development in the continent through creating vibrant, transparent and responsible policy framework on the governance of large-scale land-based investment projects(African Union et al., 2014).

The fundamental principles of the AU guiding principles on large-scale land-based investments rests up on keeping the tenure rights of vulnerable communities with responsible land governance, consistent with agricultural policy in eradicating poverty food security and enhancing growth, gender equity, existence of independent body in decision making on the “desirability and feasibility” of investment projects in light of sustainable development and member states cooperation and mutual answerability (ibid.).

The guiding principle has six fundamental principles<sup>2</sup> and 19 detailed and subsidiary principles<sup>3</sup> are included for the realization of fundamental principles. The major emphasis of those principles are respecting the rights of local communities through ensuring land access right, engagement and empowerment of women and youth, prior information and consultation, benefit sharing, transparency and accountability, community participation, involvement of independent institutions and civic societies, and recognizing the existing rights in the governance process to ensure the benefits for African economy and their people (ibid.).

The concern of proposing minimum requirements, principles, and guidelines on the governance of large-scale rural land investments did not end up by the aforementioned organizations. It was also the most pressing agenda for others. For example (De Schutter, 2009) recommended codes of conduct to protect the rights of local communities in the process of negotiation on large-scale land-based investments. His recommendations<sup>4</sup> are emphasized on benefit sharing from investment projects to local community, the importance of impact assessment before negotiation,

<sup>2</sup> ( African Union et al., 2014,pp.5-6) see the fundamental principles.

<sup>3</sup> (African Union et al., 2014,pp.8-26) see the details of subsidiary principles.

<sup>4</sup> (De Schutter, 2009, pp. 13 - 15)The 11 recommendation’s or codes of conduct by Mr. Olivier De Schutter Special Rapporteur on the right to food, FAO

labor protection, about the obligation of investors, the importance of labor-intensive technology, the importance of transparent and prior informed participation and negotiation process, and the importance of detail legislation in protecting the rights of local community.

On the other hand in the near past, the Swedish FAO committee made a great effort to amend the document of principles for responsible agricultural investment in 2014(CFS, 2014). The committee redefines the 2010 version of the PRAI document explicitly and adds three extra principles which were unseen in the first version such as the engagement and empowerment of youth, the issue of gender equity and women empowerment, and the issue of respecting cultural heritage and traditional knowledge together with supporting diversity and innovation are included<sup>5</sup>.

These endeavors also instigate researchers to think over about the governance of large-scale land-based investment projects in designing codes of conduct for investment projects in light of sustainability criteria. For example (Voget-Kleschin & Stephan, 2013) proposed "sustainability standards and code of conducts" for the governance of large-scale land acquisitions intended to minimize the negative impacts of those investment projects. As a result in light of sustainable development principles and the above-mentioned guidelines, they proposed three minimal standards that projects should fulfill for viability such as “efficiency, consistency, and resilience”<sup>6</sup>.

The center of gravity for the above efforts is providing precautions and minimal standards for land abundant and capital dearth countries to pay attention to their national land policy framework in maximizing the benefit and minimize the risk of large-scale rural land investment projects through prime considerations of the rights of local communities.

It was believed that states should adopt detail legislation to protect the rights of local community based on the above mentioned internationally accepted principles, guidelines, and other norms of rights concessions and agreements by the UN and regional agreements (ACTUAR, 2012; African Union et al., 2014; CFS, 2014; De Schutter, 2009; UNCTAD et al., 2010).

In the near past African policymakers called to revised or devise sound land governance policies based on the aforementioned global land governance paradigms (Future Agricultures, 2014). However, the majority of African countries are reluctant to use those principles and guidelines as a benchmark for their national land policy framework. For example, the recent comparative study by (Harding, Chamberlain & Giger, 2018) on eight African countries (Uganda, Senegal, Cameroon, Zambia, Sierra

<sup>5</sup> (CFS, 2014 pp.11-18) see the detail explanation of revised PRAI document

<sup>6</sup> (Voget-Kleschin & Stephan, 2013, pp. 1157-1179) see how they developed the codes of conduct based on international principles and guidelines.

Leone, Liberia, United Republic of Tanzania and Madagascar) showed that the land governance policies of case study countries have emphasized on only attracting investments. In addition, they have not operationalized the international and continental principles and guidelines on their land policies. But some countries, for example, Malawi and Mali provide a positive response through taking an action to operationalize the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests and the AU guiding principles on their land policies (International Land Coalition, 2018).

Although, those principles and guidelines still lack enforcing mechanisms for accountability, they have great importance for responsible governments serving as national policy framework platform and will help to evaluate the nation's contemporary policies, systems, and practice of governance of large-scale land-based investments.

Those abovementioned principles, guidelines, and codes of conducts have basic intercommunion on five themes of local community rights on the process of governance of large-scale rural land investment that nations are expected to consider in their national land governance policy framework platform. Those commonalities are; - (1) The right to access lands (2) The right to getting benefits from investment projects (3) The right to engagement and empowerment of women and youth (4) The right to prior information, consultation and participation in decision making processes (5) The involvement of independent institutions and civic societies during pre and post project evaluations. Those 5 commonalities had taken as a framework of analysis to examine the policy frameworks of the governance of large-scale rural land investment Amhara Regional State since 2006.

## 2.4 EMPIRICAL EVIDENCES

### 2.4.2 The Governance and Policy Reforms on Large-Scale Rural Land Investment in Africa

In the late 19<sup>th</sup> century Large-scale rural land investment was considered as the way to the modernization of agriculture sector (Collier & Dercon 2009). Since the 1950s and 1960s, most African countries had tried to 'modernize' their agriculture through large-scale farming, facilitating credit service, and by providing machinery and land (Deininger & Byerlee, 2011). Meanwhile the junction of global financial, food, energy and environmental crisis in 2007/2008 (Borras Jr. & Franco, 2010; Deininger & Byerlee, 2012; World Bank, 2009) caused for the increase in demand for agricultural land by national and transnational investors in land abundant developing countries.

As a result, most of land abundant developing countries especially Africans, to get advantage in employment creation, capital accumulation, technology transfer and to rehabilitate decades of failure of agriculture investment designed welcoming policy environment and motivated investors for large-scale land acquisition (Behnassi & Yaya,

2011; Cotula, 2011; Deininger & Byerlee, 2011; Moreda, 2017; Nolte, Chamberlain, & Giger, 2016; Rahmato, 2011; Behailu, 2016 are among many others).

At this end, 1004 investment deals on 26.7 million hectares of land had been settled from 2000 to April 2016 globally (Nolte et al., 2016), of which Africa is the most targeted continent with 422 concluded land investment deals comprising a total size of 10 million hectares of land. At the same period, Ethiopia was ranked 7<sup>th</sup> among the top 20 countries of the world in large scale land investment deals (ibid.).

Together with this proliferation of large-scale rural land investment dozen of research's are conducted on the efficiency, effectiveness, justice and equity issues in association with the rights of local communities in Africa. The most recent research findings for example the study in Sera Leon (Palliere & Cochet, 2018; Yengoh & Armah, 2016; Yengoh, Steen, Armah, & Ness, 2016), Ghana (Acheampong & Campion, 2014), Sudan (Suliaman, 2015), Tanzania (Brüntrup, Absmayr, Dylla, Eckhard, & Remke, 2016), Uganda (Kandel, 2015), Malawi (Deininger & Xia, 2018), and Mozambique (Deininger & Xia, 2016; German, Cavane, Siteo, & Braga, 2016) shows the failure of majority of investment projects in benefiting the local communities. It was expected to perk up the agriculture of Africa and benefited the local community livelihoods through creating employment opportunity, technology transfer, infrastructure development, and market linkages. However, it failed to achieve the expectations rather it exacerbates the vulnerability of local community livelihoods through compromising their land-related rights.

According to a lessons from 38 case study results in four African countries (Ethiopia, Ghana, Nigeria, and Zambia) the failure of majority of investment projects is associated with poor governance such as flawed legislation, 'elite capture', 'cooption and conflict of interest', lack of potential and accountability, 'high modernist ideology', 'lack of collective action and contestation', and discordancy of production system (Schoneveld, 2017). Besides in the governance process of large-scale rural land investment other studies such as (Batterbury & Ndi, 2018; Conigliani, Cu, & Agostino, 2018; Deininger, Hilhorst, & Songwe, 2014<sup>7</sup>; Harding, Chamberlain & Giger, 2018<sup>8</sup>) found out the existence of weak right protection, disruption of the local

<sup>7</sup> Klaus Deininger, Thea Hilhorst, Vera Songwe, 2018, Identifying and addressing land governance constraints to support intensification and land market operation: Evidence from 10 African countries. Journal, Food Policy, Volume 48, Page 76 - 87

<sup>8</sup> Harding, Chamberlain & Giger 2018, Towards Normalization Comparison and Evolution of Land Acquisitions in Eight African Countries, Paper prepared for presentation at the "2018 World Bank Conference on Land And Poverty" The World Bank - Washington DC, March 19-23, 2018

livelihoods, institutional incapability, a large gap in women land access and limited outreach, and unsuccessful policy reforms in most African countries respectively.

#### 2.4.3 The Governance and Policy Reforms on Large-Scale Rural Land Investment in Ethiopia

Since 2000 the government of Ethiopia had aggressively involved in allotting and providing vast swathes of land for large-scale commercial agriculture to domestic and foreign investors (Rahmato, 2011; Tamrat, 2010). According to (Deininger, 2015) 1.33 million ha of land transferred to 6612 investors for commercial agriculture investment in Ethiopia until 2015. From 6612 farm investments the regional share is Amhara 28%, SNNPR 25%, Tigray 15%, Benishangul 12%, Oromya 11%, Afar, Gambella and Somali (together 9%) respectively (ibid.).

On the other hand Ethiopia has been exerted an effort to design and implement land policies at federal and state levels on large-scale rural land investment (FDREpro.no. 456/2005,2005;FDRE Council of Ministers, 2013; ANRS, 2006;ANRS, 2017) and establish enforcing institutions from national up to grassroots level in the last decades. In particular, the Amhara National Regional State is the pioneer of introducing modern land administration system since 2006. Besides, the state enacted successive regulations and directives on the governance of large-scale rural land investments.

However, the governance of large-scale land-based investment is still a crucial agenda today. Currently, how land-based investments are managed as well as the rules and regulations that govern who gets to use which and how much land resources under which circumstance is a controversial development policy agenda in the region. Even though the regional government conducted successive policy reforms on land governance majority of research findings for example (Cotula et al., 2014;D. A. Ali, Deininger, & Harris, 2017; D. Ali, Deininger, & Harris, 2016; D. Ali, Deininger, Harris, Bank, & Dc, 2015; Teklemariam, Azadi, Nyssen, Haile, & Witlox, 2016) indicates the presence of policy goal disagreements. For example, the community claimed that priority should be given to landless rural youth rather than the provision of land for investors. Because they are not benefited from investment projects in different benefit sharing mechanisms.

In relation to local community rights like other many African countries, there is no as such a good track record on the governance of large-scale rural land investment projects. In benefiting the local community previous research findings on the large-scale land investment situation of Ethiopia shows unsuccessful stories of investment projects. For example, the study findings of (Daniel W., 2015; Daniel W., 2013; Rahmato, 2011) portrayed the abrogation of rights of the local people through disposition expropriation and compensation issues. Others also (Moreda, 2017; Moreda & Spoor, 2015; Ojulu, 2013) depicted about the confusions on state mandate under ethnic federalism on the provision of large-scale land investments.

In addition almost all studies disagree with the government claim that the land transferred to investors is 'unused' or 'undeveloped' and 'belongs to anyone'. They argued most of the transferred land either expropriated with unfair compensation from individual farmers or it is a communal ownership for farmers or pastoralists whom they used for grazing and shifting cultivation.

On the other hand recently (Cotula et al., 2014;D. A. Ali, Deininger, & Harris, 2017; D. Ali, Deininger, & Harris, 2016; D. Ali, Deininger, Harris, Bank, & Dc, 2015; Teklemariam, Azadi, Nyssen, Haile, & Witlox, 2016) studied the scale and distribution push factors and features, transparency of deal process, efficiency and occupant security of investments, sustainability of transnational investments respectively. All findings indicate that the existence of de facto economic marginalization and weak right protection of the local communities in large-scale rural land investment processes.

### 3. METHODS

This study followed qualitative research method with document analysis technique. According to (Bowen, 2009) document analysis is a reliable approach when documents provide a means of tracking changes and developments and where there is the availability of various drafts of a particular document, the researcher can compare them to identify overall changes.

In this inquiry process the document analysis combined the elements of content and thematic analysis techniques. Content analysis is the process of arranging and gathering information in relation with the central theme of the research, whereas thematic analysis is a form of pattern recognition with in the data for analysis (Ibid.). Hence the central theme of this study is local community rights under the governance of large-scale rural land investments in Amhara region and the contents are the policy contents under the land governance policies of Amhara region with respect to local community rights.

In light of this understanding to identify de jure flaws and normative defects of the policies regarding the rights of local community in the governance of large-scale rural land investments of Amhara National Regional State, the content of 3 international and continental governance guidelines and principles documents on LSRLIs (ACTUAR, 2012; African Union et al., 2014; UNCTAD et al., 2010) and 2 proposed documents of codes of conduct for the governance of LSRLIs (De Schutter, 2009; Voget-Kleschin & Stephan, 2013) are thematically reviewed and their 5 thematic commonalities had taken as a lens to examine the policy contents of the land governance policies of Amhara National Regional State.

The policy content evaluation method<sup>9</sup> helps to determine the clarity of policy content articulation, compare similarities and differences of policies across communities or

<sup>9</sup> (CDC, USA) Brief 3: Evaluating Policy Content (p,1)

jurisdictions, improve policy execution and future policy design, and provide information for policy interpretation. It examines the substantive information and materials contained within a policy in relation to policy's requirements to other policies, the context in which it is developed and contained.

To this end national and regional state land governance policy documents are systematically analyzed and evaluated in juxtaposition to international and continental land governance principles, guidelines and other accepted norms and codes of conduct. Hence, 2 constitutions (national and regional), 3 land proclamations (national and regional), 2 land regulations (regional), and 5 land provision and annual performance evaluation directives (regional) totally the policy contents of 12 policy documents are systematically evaluated and analyzed as per the 5 thematic commonalities.

#### 4. RESULT AND DISCUSSION

##### 4.1 TRENDS OF POLICY REFORMS AND LOCAL COMMUNITY RIGHTS UNDER THE GOVERNANCE OF LARGE-SCALE RURAL LAND INVESTMENT IN AMHARA NATIONAL REGIONAL STATE

In light of the autonomy of regional states to design and implement policies on political social and economic spheres in accordance with the federal laws, the Amhara National Regional State constitution (S. C. ANRS, 2001) under article 40/3 promulgated land as a common property under the ownership of the state. In addition, since 2006 the regional state enacted successive land administration and use policies together with their successive regulations and directives and established enforcing institution up to grassroots.

However the ownership right of land is already declared in the 1994 federal constitution, the detail land use and administration policies had designed and passed through reforms from federal up to regional level since 2005. We have looked the trend by dividing into two policy regimes. The first policy regime had covered about the core substantive policy content of the revised rural land administration and use proclamation no. 133/2006 and its successive subsidiary regulation and directives. Whereas the second policy regime is covered the revised rural land administration and use proclamation no. 252/2017 and its subsidiary regulation and directive as well.

The purpose of categorization is to have a clear picture about the developments in the process of policy reforms in the last policy regimes with regard to the protection of rights of local communities in the process of large-scale rural land investments.

As it has already mentioned in the previous sections of this paper in the governance of large-scale rural land investment national and sub-national land policies should have expected to verify the right to access land, the right to benefit-sharing from investment projects, the right to participate in the overall decision making process, the right to get prior information and consultation before negotiation

of investment deals, the right of engagement and empowerment of youth and women, and the involvement of independent institutions and civic societies in pre and post project feasibility evaluations for the benefit of local communities. For example, the World Bank land governance assessment framework manual had taken those mentioned rights into consideration directly or indirectly as criteria of evaluation of land policy frameworks of nations (World Bank, 2012)<sup>10</sup>. The core substantive policy contents of the land policies of Amhara national regional state are evaluated by these criteria's as follows.

##### 4.1.1 The Right to Access Land

The land is the most important natural endowments for the survival and fortune of humankind (M. Behnassi et al. (eds.), 2011). Since land is a source of diet, shelter, revenue and social equity, it is a center of gravity for development choice of every society (ibid). It is a primary fundamental resource, for poverty alleviation, food security and sustainable development in developing countries like Ethiopia. Particularly for local communities land is not only a basic factor of economic production but also it is a foundation for communal, traditional and spiritual values and practices (ibid.). Therefore the right to access land is a question of the survival of local communities.

The federal rural land policy of Ethiopia proclamation no.452/2005 under article 5/1-4 verified the right of farmers and pastoralists to get land for their livelihoods free of charge with unlimited time. In addition, the proclamation heralded the necessity of prime consideration of the land access rights of local smallholders in the process of land lease for large-scale rural land investments (FDRE, 2005). However the substantive policy content is streamlined with internationally accepted norms, it has de facto limitations.

On the other hand, the Amhara national regional state land policy also mirrored the federal proclamation on land access rights of the local community under its rural land proclamation no.133/2006. According to (ANRS, 2006) the first land policy regime proclamation no. 133/2006, the right to ownership of land is vested under the state and the public with no time limit individual holding right. Hence, it is not allowed to transfer the holding right in sale or exchange. Meanwhile, it allowed the right to rent holding rights to others and use their holding right as collateral with a time limit of 25 years. With regard to the right to access land, any person who lives in the regional state with the age of above 18 and needs to engage in agriculture have a right to get land free of charge either in time of land redistribution or through inheritance of holding rights from his/her ancestors or families. Besides, the law ensures the right of investors to get rural land from farmers who had land holding right and the government for agricultural investment in lease basis. Simultaneously, investors privileged in a mortgage of rural land use right or an asset produced on it or both for the

<sup>10</sup> (World Bank, 2012) see page 90 - 100

permissible period of the lease (25 Years) obtained in the lease system.

Although the land proclamation verified land access rights for the local communities, it is only confined through inheritance and in time of land redistribution. The right of local communities getting public land is not mentioned. It is only allowed for investors. The lease process for large-scale rural land investment had also taken without the consideration of the rights of local communities which is unlikely with the federal land proclamation.

Currently public land is the most debatable issue. The government claimed public lands are the land which is not developed and "unused" and it belongs to anyone. However (Borras et al., 2013) argued *“the trend in state discourse around land grabs seems to be: if the land is not formally privatized, then it is state-owned; if an official census did not show significant formal settlements, then these are empty lands, if the same official census did not show significant farm production activities, then these are unused lands”*. This approach hinders land access rights of the local community and exacerbates land grabbing.

The policy contents of subsidiary regulation and directives of this policy regime such as regulation no.51/2007, investment land provision directive no.11/2014 and directive no.25/2017, and investment projects annual performance evaluation directive no.1/2017 and directive no.2/2018 didn't declare about the rights of the local community to access public lands. Rather the focuses of the core substantive policy contents are on the process of large-scale land acquisition and its management process without due considerations of the rights of local communities (ANRS, 2016; B. ANRS, 2017, 2018, S. C. ANRS, 2007, 2014).

In the near past the regional state after 12 years the first land policy regime rural land administration and use proclamation no.133/2006 had changed and replaced by new policy regime rural land administration and use proclamation no.252/2017(S. C. ANRS, 2007, 2017). The reason for amendments of the policies is to expand the rights of farmers and semi-pastoralists on land use to accommodate their living standards with the regional and national political, social and economic developments, the need of ensuring the right of pastoralists on land use incongruent with the continental and global agreements which is signed by the country and to keep their traditional land use and protection system for greater contribution, to strength the participation of investors and pertinent organizations on the development objectives of the regional state, and to realize it based on the power vested by the federal government to administer natural resource of the region, it is getting important issuing explicit land administration system together with avoiding the limitations of the previous policies.

Besides the subsidiary of this policy, regulation no159/2018 (S. C. ANRS, 2018) has issued for the full-scale implementation of proclamation no.252/2017. It also aims to correct the limitation of previous regulations and explicitly

address land administration and use constraints in the region. Investment projects annual performance evaluation directive no.6/2018(B. ANRS, 2018) also issued to maximize the efficiency of large-scale rural land investments.

Those policy changes are the overall changes in land administration and use across the region. The reform process has brought several amendments, for example the issue of compensation in time of expropriation, the clarification of ambiguities of previous policy contents, the introduction of clear and transparent guidelines and criteria's for land provision and project performance evaluation, and the effort to consider international and continental agreements in policy formulations are some of the major achievements. However, the de jure rights of the local community to access public land didn't still consider in these mentioned legislations.

#### 4.1.2 The Right to Get Benefit Sharing from Investment Projects

In the process of large-scale rural land investment, it was expected to compensate the burden of investment projects through benefit sharing to local communities and government policies were expected to verify explicitly about the benefit sharing mechanisms of investment projects to the local community. However in the first policy regime before the enactment of rural land provision for investment directive no.11/2014 investment land was transferred without predefined rules and regulations. Rural investment land was provided only by the consent and decisions of higher officials of the regional state.

Meanwhile to maintain the optimal use of limited land resource of the region, to provide land information to potential investors, to avoid redundant projects on similar land, to identify developmental investors from rent seekers, to reinforce government support to investors for the benefit of technology transfer, employment creation, and foreign exchange, to strengthen agricultural investment and transparent service delivery to land supply, and to control rent seeking and corruption, investment land provision directive no.11/2014 was issued. But after two years with the intention of consolidating scattered directives and guidelines and to include non-agricultural investment land provision in addressing the ever increasing rural investment flow in support of industrial sector development directive no.11/2014 is amended and changed by rural land investment provision directive no.25/2017.

Table 1 Summary of Land provision criteria for agricultural investment based on directive no.11/2014 and directive no.25/2017

No.	Criteria	Weight
1	The capacity of processing primary products into secondary product	20
2	Project potential in benefiting the local community	10
3	Project potentials in natural resource protection and conservation	10

4	Experience, educational background, and investor’s capability	28
5	Project potential in creating a conducive working environment for workers	4
6	For investors whom they establish group/stock	3
7	Financial potential of investor granted with a bank statement	25
<b>Total</b>		100

According to directive no.11/2014 and directive no.25/2017, large-scale rural land investment project proposals are evaluated based on the criteria’s mentioned on table 1. If we look at the criteria’s the weight of project obligation to share benefits for local communities is only 10%. Great emphasis is given for producing capacity and experience, financial potential, and product processing capacity of investors and it accounts for 73 % of the total weight of criteria's. It means that a given project is viable enough without any consideration and preconditions of benefit-sharing obligations. Because based on the declaration of these directives a project is viable and can compete for land acquisition if the project proposal scores 50% and above of the criteria.

To have a complete understanding of legislation in the first policy regime towards protecting the rights of local communities for getting benefits from investment projects it had better to look also the project performance evaluations criteria at this regard. To confirm investments whether they used the land for the intended project objective or not and to ensure the optimal use of land resources and its contribution for the local, regional, and national economy the regional government issued annual project performance evaluation Directive no. 1/2017 and Directive no. 2/2018 successively. Directive no.2/2018 is the revised version of Directive no.1/2017. These two consecutive directives were issued by the Amhara national regional state rural land administration and use bureau with its autonomy on proclamation no.133/2006 at article 33/2.

The main difference between the two directives is about the assignment of enforcing institutions. In Directive no.1/2017 only technical committees were assigned to conduct field observation and evaluation of investment projects whereas Directive no.2/2018 includes coordinating committee above the technical committee. Besides the evaluation criteria's are explicitly issued according to investment type for example crop production, animal husbandry, forestry, and likes.

Table 2 Summary of annual investment project performance evaluation criteria based on Directive no. 1/2017 and Directive no. 2/2018

No.	Criteria	Weight
1	Institutional arrangement of the project	30
2	Overall development performance	42

	of the project	
3	Input utilization	20
4	Workers handling	8
	Total	100

It can be deduced from Table 2 how the concerns of benefit sharing of investment projects are neglected. In the evaluation criteria, the issue of benefit sharing weighed 8% only. Based on those directives investment projects are expected to score 50% and above of the criteria as the minimum requirement for their continuity and sustainability. From this scenario, it can be deduced that legislation is more of investment and investors affiliated. The rights of local communities on benefit sharing are highly compromised by the pre and post project evaluation legislation. It is a common problem in other aspects of rights in the land policy of Ethiopia. This argument is also supported by (Tura, 2018) how Ethiopian land legislation and practices are legalized and institutionalized economic marginalization of the poor through their lawfulness.

In the second policy regime also there is no promising advancement of legislation regarding the protection of rights of the local community in the rural land investment process. Some of the major reasons for the overall amendment of the first policy regime (proclamation no.133/2006 and its subsidiary legislation) and replacement of the second policy regime (proclamation no.252/2017 and its subsidiary legislation) were to expand the rights of farmers and semi-pastoralists on land use to accommodate their living standard with the regional and national political, social and economic development, and to ensure the pastoralists on land use incongruent with the continental and global agreements which is signed by the country and to keep their traditional land use and protection system for greater contribution. However, with regard to the rights of the local community, the details of the subsidiary legislation such as regulation no.159/2018 and Directive no.6/2018 issued without any change from the previous legislation.

#### 4.1.3 The Right to Engagement and Empowerment of Women and Youth

National policies are expected to assert the rights of women and youth for their engagement and empowerment in the overall development process. The global land governance paradigm on large-scale rural land investment also dictate investment projects should not jeopardize the vulnerability of the local community especially women and youth (ACTUAR, 2012; African Union et al., 2014; UNCTAD et al., 2010). In the process of large-scale rural land investment in the federal land policy of Ethiopia under proclamation no.456/2005 article 5/4 also states priority should be given for local peasants and pastoralists in land acquisition for investments (FDRE, 2005).

However, in the two land policy regimes of Amhara national regional state, there is no policy content (article) which explains about the rights of peasant women and youth engagement and empowerment in the development process

of large-scale rural land investment in particular. All legislation in two policy regimes didn't consider the issue of disadvantaged community groups such as women and youth in the process of large-scale rural land investments. It shows the seclusion of them from local development benefits.

#### **4.1.4 The Right to Prior Information, Consultation, and Participation**

The global and continental governance paradigms on large-scale rural land investment portray the importance of prior information and consultation of the local community, and the need of their participation in the overall decision-making process of land acquisition (ACTUAR, 2012; African Union et al., 2014; UNCTAD et al., 2010). the UN declaration of indigenous people's right under article 18 and 19 also explains State's obligation to consult and cooperate in a good faith with the local peoples concerned through their representative's and institutions in order to obtain their free prior and informed consent before adopting and implementing legislation and administrative measures that may influence their livelihoods and participate in decision making process in matters which affect their rights through their representatives whom they elected by their good will and as well as establish their own decision making institutions ((UN, 2007).

Likewise, public participation is considered as a basic principle in land-related decision making processes in both land policy regimes of the regional state. in the first policy regime under regulation no.51/2007 article 34 states prior to any decisions on land such as land certification process, communal land distributions, and land use shifts the local community should participate and consult in a consistent manner. Likewise in the second policy regime under regulation no.159/2018 article 35 reaffirmed it without amendment. However, this right of the local people is restricted on their land holdings and communal lands whereas they have no right to participate and to be consulted in time of land use shift for public use and investment land acquisition process.

#### **4.1.5 The Involvement of Independent Institutions and Civic Societies During Pre and Post-Project Evaluations**

The greater demand for land by investors together with evidence that majority of large-scale rural land investment projects are often failing to realize their expectation in productivity and benefiting the local community, has emerged concern about the losses of the local livelihoods through alienation of land rights and their involvement in the process(Deininger et al., 2014) led to international and regional organizations to promote the involvement of independent institutions and civic societies in pre and post-project evaluation of large-scale land acquisitions.

Since investment projects are directly or indirectly affect the rights of the local community, devising mechanisms for right protection and allowing the involvement of independent institutions and civic societies in

the governance process of large-scale rural land investments are considered as the mechanisms for ensuring transparency and accountability, which are the basic principles of good governance and simultaneously an attribute of responsible government.

In this regard, the overall legislation in the two land policy regimes of Amhara region didn't ratify the involvement of independent institutions and civic societies in its governance processes. Although agricultural investment project proposals are evaluated by members of the cross-departmental committee within the institution, the land is provided by one institution called rural land administration and use bureau. In a similar fashion, the annual performance of investment projects is evaluated by a cross-sectorial coordinated committee organized from different public institutions. However, both investment land provision and investment project performance evaluation legislation in the two land policy regimes didn't verify the involvement of independent institutions and civic societies in the overall rural land investment processes.

## **5. CONCLUSION**

The government of Ethiopia particularly the Amhara National Regional State had been passed through several land policy reform processes with regard to the governance of large-scale rural land investments, with the intention of responding the ever increasing rural investment flow, ensuring the optimal use of limited land resource, and ensuring the greater contribution of investment projects for local and regional developments. Practically it is evidenced that majority of investment projects are failed to contribute for local developments. Rather their expansion exacerbated the vulnerability of local community livelihoods.

As the findings of this paper shown, as per the eyes of standards of international and continental accepted governance guidelines and principles, all land policy reform processes of the regional state with regard to the protection of the rights of the local communities in the process of large-scale rural land investments were substandard and designed ostentatiously. The de jure land-related rights are systematically marginalized. Although the effort of the regional government is appreciated with the enactment of detail guidelines and procedures for large-scale rural land provision and annual project performance evaluation, all legislations throughout the policy reform processes emphasized on promoting investments and ignored or sidelined the protection of local community rights. This indicates that there exist policy monopoly and the whole reform processes are captured by policy elites. The local communities have no room to reflect their needs and aspirations.

Whatever the case the land policy reform processes had a big step to ensure transparency and accountability in project desirability and feasibility evaluation. But with regard to local community rights, the obligations of investment projects and the rights of local communities are

poorly defined in all legislations throughout the land policy reform processes.

In general, as far as the protection of rights of the local community concerned, all legislation in land policy reform processes of the regional state is flawed and ostracized. The de jure rights of the local communities such as the right to access land, the right to getting benefits from investment projects, the right to engagement and empowerment of women and youth, the right to prior information, consultation and participation in decision making processes, and the involvement of independent institutions and civic societies during pre and post-project evaluations are sidelined and not defined in all legislation. These poor definitions of rights and obligations weakened the overall governance system of large-scale rural land investments and will be caused for corruption, jeopardize food insecurity, social polarization, prevent the right to access land of the local community and political instability. Therefore the regional government needs to revisit the existing land governance policies, redefine policy grey areas, and to create an opportunity for full-scale community participation in overall policy process through taking an action to operationalize internationally and continentally accepted governance guidelines and principles in its policy framework platform.

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