A CRITICAL ASSESSMENT ON PROVISIONS OF THE FEDERAL CONSTITUTION OF ETHIOPIA WITH REGARD TO FEDERAL-REGIONAL GOVERNMENTS RELATIONSHIP ON LAND LAW

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ABSTRACT

The Federal Democratic Republic of Ethiopian Constitution has stipulated that the Nations, Nationalities and Peoples of Ethiopia are owners of land, which is one of the invaluable resources for the exercise of sovereign and self-determination rights of the people, who are also the building bricks of the federation under the Constitution. The Constitution demands the existence of land policy that respect and enforce the self-determination right of the people over the land resource. The resource is a subject matter over which both federal and regional governments have power under the Constitution. However, it does not provide a clear division of power between them. The purpose of this article is to analyze the land law-making relationship between the two levels of government in light of the Constitution. The researcher has employed a qualitative approach that is mainly doctrinal legal research. Accordingly, the FDRE Constitution does not require all Regional States to administer land resources based on a single and uniform land policy of the Federal Government. A central land legislation making process, under the monopoly of the Federal Government, is far from the spirit of the Constitution. The Constitution requires the presence of a decentralized land policy process that reflects the peculiar land policy interest of each Nation, Nationalities and Peoples. Unlike the practice, the FDRE Constitution demands the formulation and implementation of land policy that is the result of harmonious coordination between the Federal Government and the Regional States. Thus, the Federal Government is not the only source of land law in Ethiopian federal system as land lawmaking is a concurrent power under the Constitution.

Key Terms: *FDRE Constitution, Land Resource, Federal Government, Regional States, Land Administration, Rural Land Law, and Urban Land Law.*

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I. INTRODUCTION

Many jurisdictions do not regulate land issues as the subject matter of their constitution.[1] The land resource has an invaluable place for the socio-economic and political life of Ethiopians. This has made the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution hereinafter) to be much more sensitive on the issue of land resources. Accordingly, the Constitution has declared that Ethiopian Nations, Nationalities and Peoples (NNP hereinafter) are owners of both urban and rural land.[2] This fundamental declaration of the Constitution requires the formulation and implementation of land policy which ultimately make NNP principal economic beneficiaries of land resource.

The Constitution requires a land policy which respects and enforces "NNP land" to NNP. It also imposes a duty on both Federal and Regional Governments to formulate and implement a land policy that ensures the benefits of all Ethiopians from land resources.[3] Land resource is a subject matter over which both Federal and Regional Governments can exercise power, as provided under Art 51 (6) and Art 52 (2) of the FDRE Constitution. The former provision stipulates that the Federal Government enacts the law on the utilization and conservation of the land resource. The latter provision, on the other hand, stipulates that the Regional States administer land in accordance with federal law. Hence, the scope of regional state land administration power and the degree they should administer land in accordance with federal law under the Constitution is the core issue.

The objective of this article is to evaluate the relationship between the Federal and Regional Governments concerning land law in light of the FDRE Constitution. To this end, the author has employed a qualitative approach, which is mainly doctrinal legal research that analyzes the Ethiopian legal framework on land rights. To expose the nature and scope of the rights in Ethiopia, the relevant FDRE laws as a secondary data have been collected and analyzed. These include the FDRE Constitution, Federal Land Proclamations, and land policy documents. Besides, for explicating the theories behind reliance was made on literature. Finally, the author has analyzed all relevant laws and other authoritative documents.

[1]Daniel Weldegebriel, Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights (Research Paper presented on FIG Working Week Conference, Italy , Rome, 6-10 May 2012), P 5.
[2]FDRE Constitution, Art 40 (3)
[3] FDRE Constitution, Art. 9 cum Art. 89.

II. FEDERAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

FDRE Constitution has made land resource as a subject-matter over which both levels of government can exercise power under Art 51 (6) and Art 52 (2). The former provision of the Constitution stipulates the Federal Government enacts law on the utilization and conservation of the land resource. The latter stipulates that the Regional States administer land in accordance with federal law. These two different provisions are concerned with one single subject matter i.e. land resources and provide interrelated powers for the two tires of government. The power is "land administration" and "land lawmaking."

The core issue of this section is whether there is constitutional ground to consider land lawmaking power as the exclusive power of the federal government or not. To provide an answer to the question, it is important to assess whether the Constitution bans the regional states from enacting land laws or not. Under this section, the meaning of the federal government's land law-making power will be addressed. In the following two sub-sections, this issue will be addressed in light of the general approach of the Constitution, and the relational and scope of Federal Government power. In the next section, the issue of the Regional Government's land law-making power will be addressed.

A. THE IMPLICATION OF POWER ALLOCATION APPROACH UNDER THE FDRE CONSTITUTION

Federal constitutions allocate power between central and constitute units based on two major approaches. The first approach is called *dual federalism* that is followed by the older federations like the USA, Australia, and Canada.[4] The dual approach underlines the principle that each level of government retains the executive responsibility in those matters in which it exercises the legislative power.[5] In addition, both the legislative and the executive powers concerning a given subject matter lie with the same level of government. This method works with the assumption that the two levels of authority retain autonomy concerning their respective powers.

[4]Solomon Negussie, Ethiopia's Fiscal Federalism: A Constitutional Overview (Ethiopian Constitutional Law Series, Vol. III, Law Faculty AAU, 2010).
[5] *Ibid.*

The second approach results in the division of labor where the legislative power is reserved for one of the tiers of government and its administration to the other. The approach involves a strong relationship between the Federal Government and the states. The best illustration for this method of allocating executive powers is the practice in Germany where the Federal Government is primarily concerned with policy initiation, formulation, and legislation, while the states are mainly responsible for implementation and administration. As a result, German federalism is described as functional federalism.[6]

On one hand, in Ethiopian federation, Art 50 (2) of the FDRE Constitution provides that both Federal and Regional Governments have the legislative and executive powers on matters that fall under the respective jurisdictions. Each tier of government shall respect the powers of the other as per Article 50 (8). To this effect, the powers and functions of the Federal Government and the states are listed under Articls 51 and 52 of the Constitution, respectively. In addition to Article 51, the scope of the legislative and the executive powers of the Federal Government are indicated under Articles 55, 74 and 77.

On the other hand, Regional States are endowed by the Constitution with legislative, executive and judicial powers. States have the power to establish their administrative levels which they consider necessary. The State Council is the highest organ of state authority and elects the regional president who is the Head of the state administration (the highest state executive organ). States hold residual power in addition to the brief account of powers stated under the Constitution (Article 52). They are also empowered to draft, adopt and amend state constitutions. From the above provisions of the FDRE Constitution, it is clear that it follows the USA model of a dual structure; which is by reserving the executive responsibility to each level of government on matters in which they exercise the legislative power.

Articles 51 (6) and 52 (2) of the Constitution has made land resource as a subject matter over which both levels of government can exercise power. It requires the Regional States to administer land in accordance with federal law. But, it is not safe to conclude that the division formula of the Constitution as to land resource follows the functional model. The two models are general and simply imply the constitutional approaches for the division of legislative and executive powers. This

[6] *Ibid.*

is affirmed by another scholar who states the applicability of one approach cannot exclude the other and recent federations are tending to design their constitutions in between the two approaches.[7]

Besides, the principle formula employed to divide power between the Federal and Regional Governments under the FDRE Constitution is a dual model. And the idea of implementing federal land policies via regional state institutions is far from the power division principle of the Constitution. In support of this, one scholar has underlined the reason for adopting the dual approach under the FDRE Constitution to be the high emphasis given by the Constitutional Assembly for the values on self-rule.[8]

Based on the above line of arguments and reasoning, it would be safe to conclude that the dual formula of power allocation under the FDRE Constitution has no exception concerning land resources between federal and regional governments. Thus, there is no constitutional ground that makes land lawmaking power as the exclusive power of the federal government or that ban the regional states from enacting land laws.

B. RATIONAL AND SCOPE OF FEDERAL GOVERNMENT POWER

The FDRE Constitution is the result of a bargain among NNP, who are sovereign and have the bearers of the right to land. The economic significance of land resources for Ethiopian NNP is invaluable and incalculable. This is why the Constitution has considered land to be one of fundamental resource for the exercise of NNP self-determination rights. This right becomes impracticable unless the land resource is properly conserved and utilized. To change into practice such NNP sensitive land policy of the constitution, it is essential to have an effective legal framework, which enforces the rule of law on land resources.

Putting differently, the rationale behind Federal Government land legislative intervention under the Constitution is not needed for having a uniform land policy in Ethiopia. Rather, the Federal Government is made responsible under the Constitution to make legislative intervention which ensures the existence of an

[7] Solomon, *Supra* note 4

[8]Assefa Fiseha, Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet, Regional & Federal Studies (2012), 22:4, 435-473, P446.

effective land administration framework for the conservation and utilization of land resources for each of NNP. Hence, despite the Constitution subject the Regional States to administer land in accordance with federal law, this wouldn't mean that land law-making power is a federal matter.

The Constitution has required federal intervention to introduce some means of uniformity. The ultimate end of this uniformity is to conserve and utilize land resources for the economic and political benefit of NNP. The purpose of legislative intervention by the Federal Government on land matters, which is a subject matter assigned to states under the Constitution, should not be confined to achieve uniformity of land law and policy in all Regional States. The place has given under the Constitution to protect and promote the interest of NNP in terms of land ownership, land right and federalism supports decentralization land policy.

Besides, under the Constitution, there is no mechanism enabling to reflect and represent the interest of NNP up on federal government policymaking. This is possible in other federations via the Second Chamber. In the Ethiopian federation, the House of Federation (the Second Chamber) has not shared legislative power with the House of Peoples Representative (the First Chamber). It is also important to mention that NNP is the bearers of sovereign power under the Constitution. The constitution supports land policy or law-making process which reflects the peculiar interest of each of NNP. This requires a making process that gives wide involvement of government which is closer to each of NNP.

The Constitution is interested in an institutional framework that enhances NNP democratic participation, facilitates effective policy development and delivery. The role of federal land law under the Constitution is to enable land resources is utilized and conserved for the benefit of each of NNP found in the nine Regional States. The scope of Federal Government land lawmaking should not extend beyond ensuring that landholders, the NNP and Ethiopian citizens are secure in their occupation, they are not dispossessed without due process and compensation, and so on. The scope of federal land law cannot provide limitations or introduce changes that affect the relationship of NNP with the land.

Finally, it is important to mention that the idea of implementing federal land policies via regional state institutions is incompatible with the dual principle of the power division formula of the Constitution. Consequently, the phrase that demands the Regional States to administer land in accordance with federal law under Article

52 (2) neither provides monopoly land lawmaking power to Federal Government nor imposes an obligation on all regions to administer land only based on laws passed by The Federal Government. The Constitution has no intention to ban or to narrow policy-making space Regional Governments concerning land resources. The power of the Federal Government is only to pass general on land conservation and utilization that cannot restrict to respond and make practicable the peculiar interests, rights, and ownership of NNP on land resources. In short, FDRE Constitution has not given exclusive land lawmaking power to Federal Government.

III. REGIONAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

Article 52 (2) (b) of the FDRE Constitution provides that land resources are administered by the Regional States. The Constitution uses the term administer in different provisions. To understand the significance and meaning of the term under the above proviso, it is necessary to highlight the use of the term under the other provisions of the Constitution and its implication in practice. Hence, before looking for the meaning and scope of this power based on the Constitution, it is important to clarify the conceptual meaning of the term land administration. Then, constitutionality or legal aspect of land administration is considered.

A. DEFINITION OF LAND ADMINISTRATION

Land is a fundamental input into agricultural production and is directly linked to food security and livelihood. The land is also a primary source of collateral for obtaining credit from institutional and informal providers, and the security of tenure provides a foundation for economic development.[9] Scholars assume that people must relate to land in some way and the relationships tend to get more and more organized as they evolve. Based on this assumption land administration is conceptualized as the study of how people organize land which includes the way

[9] Tony Burns, Land Administration Reform: Indicators of Success and Future Challenges (The International Bank for Reconstruction and Development/The World Bank, USA, Washington, DC 2, 2007), P6.

people think about land, the institutions and agencies people build, and the processes these institutions and agencies manage.[10]

Land administration is also considered as the basis for conceptualizing rights, restrictions, and responsibilities related to people, policies and places.[11] Land administration is concerned with the social, legal, economic and technical framework within which land managers and administrators must operate.[12] Land administration systems, therefore, need high-level political support and recognition, and land administration activities are, not just about technical or administrative processes.[13] The activities are political and reflect the accepted social concepts concerning people, rights, and land objects concerning land tenure, land markets, land taxation, land-use control, land development, and environmental management. [14]

From the above literature, it can be concluded that the scope of the term land administration is a wide concept. Land administration informs the 'how', the 'what', the 'who', the 'when' and the 'where' of land tenure, land use, land value, and land development. [15] Land administration is defined as the activities that relate to organizing land tenure, land value, land use, and land development.[16] This definition of land administration encompasses the determination of policy, legal, tenure, administrative, technical, and capacity development elements on land resources. This definition is concordant with the more recent definition provided in the international standard for the land administration standard, which is also known as the Land Administration Domain Model (LADM).[17]

[10]Ian Williamson Stig Enemark Jude Wallace Abbas Rajabifard, Land Administration for Sustainable Development (Esri Press, 380 New York Street, Redlands, California U.S.A, 2010).
[11]Stig Enemark, Land Administration Systems- Managing Rights, Restrictions and Responsibilities in the Land (Paper Presented on the International Federation of Surveyors: Map World Forum, Hyderabad, India, 2009), Pp10-13 .
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid*
[15]United Nations, Framework for Effective Land Administration, Committee of Experts on Global Geospatial Information Management (UN-GGIM), 2019) P 10.
[16] Ian Williamson Stig Enemark, *Supra* note 10.
[17]ISO 19152, Geographic Information Land Administration Domain Model (Edition 1, International Standards Organization, Geneva, Switzerland, 2012).

B. THE MEANING UNDER THE CONSTITUTION

Article 52 (2) (b) of the FDRE Constitution provides that land resources are administered by the Regional States. The Constitution uses the term administer in different provisions. To understand the significance and meaning of the term under the above proviso, it is reasonable to highlight the use of the term under the other provisions of the Constitution and its implication in practice. For example, the Constitution employs the term 'administer" while listing and describing some of the power of the Federal Government under Art. 51.

Accordingly, Article 51 (6), (7), (10), (13), and (18), respectively vest power to the Federal Government to *administer* national defense and public security forces as well as a federal police force; *administer* the National Bank, print and borrow money, mint coins, regulate foreign exchange and money in circulation, *administer* the Federal Government's budget, *administer* and expand all federally funded institutions that provide services to two or more states, and *administer* all matters relating to immigration, the granting of passports, entry into and exit from the country, refugees and asylum.

The Constitution has assigned all of these matters to the Federal Government, by using umbrella term- administer. The Constitution made all decision making on any aspect of such matters far from the Regional States, and in practice, it is only the Federal Government that has jurisdiction to deal with them independently. Administration of these matters requires the formulation of policies and strategies, as well as the institutional and legal framework. In practice, the Federal Government has passed legislation and established institutions to properly and effectively determine and direct the necessary policies the federal institutions follow while administering the above matters. The Constitution also underscored under Art. 55 the need for legislation to administer all matters assigned to Federal jurisdiction.

Similarly, the use of the term "*administer"* under the Constitution and the federal practice imply the presence of wide room for the entity empowered to administer to make deal with the subject matter. In addition, there is no reason to interpret less favorably and differently the meaning of the term *administer* under Article 52 (2) (b) of the Constitution. The Regional States administer land resources "in accordance with federal law does not mean that land resource is a subject matter that falls under the jurisdiction of the federal government. This can be also

supported based on an inference made from Article 51 (11) of the Constitution, which exceptionally assigns natural resource-related jurisdiction of the Federal Government. This provision limits the jurisdiction of the Federal Government only to determine and administer the utilization of the waters or rivers and lakes linking two or more states or crossing the boundaries of the national territorial jurisdiction.

The same can be understood from Article 49 of the Constitution which states the special interest of the State of Oromia in Addis Ababa, regarding the utilization of natural resources. This indirectly confirms the intention of the Constitution to vest legislative power at the hand of each regional state to determine land resource use policy in their boundary. Further, the Federal Government has no power under the Constitution concerning the determination of regional state revenue from the land; since the power to levy and impose a land tax is given for the Regional States under Art 97 (2) and (6).

Finally, the element used to define the term NNP under the Constitution support the relevancy of Regional States legislative role concerning land resource. This can be inferred from the definition of NNP under Article 39 of the Constitution. This provision defines NNP as a group of people who settled in the contingent territory with natural resources including land which is also owned by them. Proper enforcement of the NNP land right requires the regional legal framework enforces rule of law by taking into account the peculiar economic, social, cultural and political aspiration of each of the NNP. All land situated within the respective state boundaries are vested to NNP and their political institutions have the power to enact a law that deals with it. The land law-making power of the Federal Government is necessary to make practicable the peculiar interests, rights, and ownership of NNP on land resources.

The Federal Government cannot address all details and it is a regional state which can adopt feasible subsidiary land legislation to implement federal laws considering the prevailing facts in the region.[18] Consequently, the phrase that demands the Regional States to administer land in accordance with federal law under Article 52 (2) neither provides monopoly land lawmaking power to Federal Government nor imposes an obligation on all Regions to administer land only based on laws passed by Federal Government. In sum, from the reading of Article 52 (2), (b) and 51 (6) of the FDRE Constitution, Regional Governments have

[18] *Ibid*

meaningful and wide power on land law. In addition to this, there are other constitutional dimensions and policies which support the need for land policy decentralization or regional land policy/law. This issue is addressed in the next section.

IV. PRIMACY OF THE REGIONAL GOVERNMENT'S LEGISLATIVE POWER AS TO LAND RESOURCE

In comparison with the Federal Government, the FDRE Constitution provides wide space to the Regional States on the formulation of land policy. The Constitution is not interested to make all regional states administer land based on a single land policy passed by the Federal Government. This assertion is by linking the land administration power of the regional states with two key land resource-related factors of the Constitution. The first factor requires us to assume land policymaking under the umbrella of economic policymaking power. The second requires us to assume a look at land lawmaking power as an important component of NNP right. In the following sub-sections, an attempt is made to look at these two issues.

A. DEVELOPMENT RELATED POLICY FORMULATION AUTONOMY OF REGIONAL GOVERNMENTS

The role of land in the process of development is invaluable. The issue of the land resource should be the starting point in any meaningful process of policy development and reform. Today, the accepted theoretical framework for all land administration is the delivery of sustainable development – the triple bottom line of economic, social, and environmental development, together with the fourth requirement of good governance.[19] Land administration is the basis for conceptualizing rights, restrictions, and responsibilities related to people, policies and places. [20]

The land policy has a strong link with economic policy since the land resource is one important variable for shaping an economic policy of a country. Consequently,

[19]Property rights are normally concerned with ownership and tenure whereas restrictions usually control use and activities on land. Responsibilities relate more to a social, ethical commitment or attitude to environmental sustainability and good husbandry (Stig Enemark, *Supra* note 11).

[20]Property rights are normally concerned with ownership and tenure whereas restrictions usually control use and activities on land. Responsibilities relate more to a social, ethical commitment or attitude to environmental sustainability and good husbandry (*Ibid*).

it is essential to admit the absence of strong reason to treat the land resource as an irrelevant subject matter for the formulation of economic policy. Article 52 (2) (c) of the FDRE Constitution provides regional states power to formulate and implement their respective economic and development policy. There is no clue under the FDRE Constitution that limits us not to look at land policy-making power under the umbrella of economic policymaking power. Because, the land resource has significant factors that determine the type of development (both urban and rural) as well as for the distribution of income and wealth, for the rate of economic growth, and the incidence of poverty.[21] The influence of land policy on the development of Ethiopia is also recognized.[22]

Hence, it is sound to recognize the significance of land resources to influence and shape the nature of the regional economic policy of Ethiopia. The regional states cannot properly exercise their economic policymaking power unless they take into account land issues upon the formulation of their respective economic and developmental policy. Because the land resource is one important input which likely to influence and shape the kind and the nature of regional state economic policy. In effect, it is unreasonable to consider land policymaking as a remote subject matter of regional economic policymaking power. Article 52 (2) (c) of FDRE is one important ground in support of regional states' power to formulate land policy.

Besides, there is no principle- exception relationship- between Article 51(5) and Article 52 (2) (b), and Art 52 (2) (c) of the FDRE Constitution. These provisions stipulate the land policy-making power of the Federal Government, and the economic policymaking power of regional states respectively. There is reasonable ground to consider the land policy as an important component of economic policy, on which the regional states have constitutional power under article 52 (2) (c) of the FDRE Constitution. Also, it is important to underscore the absence of a hierarchy of norms among different clauses provided under the FDRE Constitution. In effect, there is no ground to consider land lawmaking power as the exclusive federal power; based on Article 51(5) of the FDRE Constitution and at the expense of Article 52 (2) (c).

[21]Lorenzo Cotula *etal*, Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues, (FAO workshop, June 2003, Ghana, Accra).

[22]Getnet Alemu and Mehrab Malek, Implications of Land Policies for Rural-Urban Linkages and Rural Transformation in Ethiopia (Working Paper, 2, No. 15, Food Policy Research Institute, Addis Ababa, 2010), P10.

The FDRE Constitution, under Article 52(2) (c) suggests that the regional states are endowed not merely with administrative power. The Constitution places primary responsibility on the Federal Government to determine major policy directions and standards. It cannot exhaustively and exclusively legislate on all matters fall under the umbrella of economic and developmental policymaking. It is not an exaggeration to consider land resources as an element of economic and development policymaking. The regional states have Constitutional ground to play a meaningful legislative role concerning land resource since the proper determination of regional economic and development policy need their legislative/ policy-making involvement land resource. The same conclusion can be made from the following constitutional grounds.

B. THE NEED TO INSTITUTIONALIZE PEOPLE'S LAND RIGHT

FDRE Constitution has considered land to be one fundamental resource for the exercise of NNP self-determination rights. The Constitution has provided both substantive and procedural limitations which indirectly guide and determine land resource-related powers and relationship of both governments. On one hand, the Constitution provides substantive limitations; namely, NNP land ownership right under Article 40, NNP right of self-determination under Article 39, and NNP right to development under Article 44. On the other hand, there are procedural limitations under the Constitution that amplify NNP's say on land resource namely, the principle of accountability and transparency under Article 12, and the procedure of public consultation under Articles 44 and 89.

The power of both the federal and regional governments concerning land resources cannot be ascertained properly by disregarding the above assumption and limitations of the Constitution. A total and cumulative reading of the above limitations reveals the significance of both Federal and Regional Government intervention on land policymaking. Although the Constitution stipulates land should be administered in accordance with federal law, this wouldn't mean that the Federal Government can strip the say of NNP concerning land resources. The Constitution does not allow the enactment of a land law, which ignores the spatial and socio-cultural distinctions of NNP.

The Constitution is interested to have a land policy which accommodates the possible distinctions among each of Ethiopian NNP interest on land resource. That is why the Constitution, instead of the Federal Government, has preferred and vested to the regional states the power to administer land and other natural resources. This preference has been also strengthened under the provision of the Constitution which vests the power to the regional states on economic policy formulation and implementation. The Constitution is in favor of federal legislative intervention on land resources, which is legitimate and general, as well as not ignores possible distinctions of interest among NNP. Thus, Federal Government land law and policy intervention have to leave meaningful policymaking space for the Regional States, enabling them to plan and allocate land resources; which protect and sustain the economic interest of NNP.

C. THE LIMITATION OF FEDERAL LAW MAKING INSTITUTIONAL FRAMEWORK

The FDRE Constitution has established two chambers parliament; namely, the House of People's Representative and the House of Federation. The composition and power of the latter House (the HoF) is expected to represent regional states. The members of the House of Federation are composed based on a majoritarian principle which is contrary to the composition principle of other federal states such as the U.S.A, Switzerland, Canada, and others. These federations employ the composition formula which is principled on equality states whereby each of the members of the federation (the constituent units of the federations) have equal seat in the Senate.

Most federal constitutions have also shared legislative power between two chambers, i.e., the House of People’s Representatives and the senate. Contrary to this, the federal law making process is not bi-cameral as the House of Federation is a non-legislative organ under the FDRE Constitution. Hence, there is no institutional framework that enables all regional states to make meaningful participation in the process of Federal Government land policymaking.

The Constitution also has no provision which requires the establishment of an institution that might serve as a land policy coordinating body (allow the involvement of regional states) at the national level. However, the involvement of NNP, who are owners of land resources, who are sovereign and eligible to exercise

self-determination rights up on land policy-making is unquestionable under the Constitution. Hence, the absence of clear constitutional provision for the establishment of NNP sensitive land policy coordination institutions doesn't mean that the land policy making process should be monopolized by the Federal Government.

The Constitution supports land policy formulation institutions, which promotes active and formal involvement of representatives of NNP. In this regard, the key question is to identify or choose an institution that has the utmost support to represent NNP under the FDRE Constitution. The main institutions under consideration are like HPR, HoF, CoM, Regional Council, and Regional Executive. Regional states are the most relevant organ which represent NNP and participate in the land policy-making process at the federal level. Their relevancy, for example, can be inferred as, ethnic criteria, which is formally recognized under the Constitution as NNP to be the principal formula that the nine regional states are established.

Besides, the fact that the Constitution is a bargain between NNP and concerning matters which are not negotiated and articulated under the Constitution are given to the regional states, which is the residual power. Article 50 (3) of the Constitution also recognizes the same. It stipulates that the State Council is the highest organ of state authority. It is responsible for the People of the State, i.e., the NNP.

Finally, the high preference of regional states to represent NNP than Federal Government also inferred from the FDRE Constitution which recognizes NNP as the authors of the Constitution, the owners of land resource, and the holders of sovereign power, and the holders of self-determination rights; allow delegation of Federal Government power to Regional Government. The prohibitions of a reverse delegation from Regional Government to Federal and other governments amplify the relevancy of regional states to represent NNP in any affair, which includes their interest in the land resource. Hence, the limitation of the federal land making process justifies regional states' meaningful involvement in land policy/ lawmaking.

V. COMPARISON OF SOME FEDERAL LAND LEGISLATIONS OF ETHIOPIA

Since the 1990s the Federal Government of Ethiopia has enacted different federal land laws that have been influencing the scope of regional states' land policy/law making scope. The federal land legislations have two distinct classes of laws that govern rural land and urban land. The legislations are Rural Land Proclamation No 89/1997 and Rural Land Proclamation No 456/2005, and Urban Land Proclamation No. 80/1993, Urban Land Proclamation No 272/ 2002, and Urban Land Proclamation No 721/2011.

There are also other federal legislations which influence the land policy space of regional states like the Expropriation Proclamation, Urban Planning Proclamation, Industrial Parks Proclamation, Industrial Parks Regulation, and Urban Landholding Registration Proclamation. But, these specific legislations are not the subjects of comparison under this article, as they are enacted to govern specific administrative, technical and strategic issues. They are not more concerned with wide policy issues which can be considered as constitutional rights and powers as to land resource. On the other hand, the above mentioned federal government land legislations are more relevant for this article. The article is more concerned with constitutional issues on the relationship between Federal and Regional Government and the comparison is targeted to clarify the principles, nature, and scope of the federal legislation and its implication on the power of regional states as to land administration and land policy.

The main purpose of the comparison is to understand the extent of the regional states and Federal Government role on land policy and law-making. The comparison is essential to clarify the practical meaning of the phrase "land administration in accordance with federal law" which is stipulated under Article 52 (2) of the Constitution. Besides, there is a significant time difference between the enactments of the selected federal legislation. This is important to compare and understand the relationship between Federal and Regional Governments legislative power concerning land resource by taking into account the evolution of the federal systems and political reforms. The selected legislations are also wide in terms of their scope of application, content, and places as they are enacted to govern the major policy aspects of both urban and rural land resource exist in all regional states. Therefore, the selected legislations are relevant provisions to understand the

meaning of land administration in accordance with federal law. In the following two sub-sections, the author compares the rural land and the urban land laws.

A. FEDERAL RURAL LAND PROCLAMATIONS

In Ethiopia, since the introduction of the federal system, rural land administration of the pattern of regional states has been regulated based on the two federal rural land proclamations. These are Proclamation No. 89/1997 (which is already repealed), and Proclamation No 456/2005. These two federal land legislations have a significant difference in the scope of regional states' rural land law-making power. First, this can be inferred from the definition provided under federal rural land legislations for the term land administration. Accordingly, the first federal rural land proclamation,[23] defined the term "Land Administration" as *the assignment of holding rights and the execution of distribution of holdings*. Under the current federal rural land proclamation[24], the term "Land Administration" is defined as *a process whereby rural landholding security is provided, land use planning is implemented, disputes between rural landholders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing landholders are gathered, analyzed and supplied to users*.

The first federal rural land proclamation even if provides a short and precise definition for the term land administration, it recognizes the existence of a wide role at the hand of the regional states. Since the proclamation has considered the regional states land administration roles to include a determination of policies on the manner of assignment of rural landholding rights and the execution of distribution of rural landholdings. On the contrary, the current proclamation has provided a specific and narrow definition for the term. By doing so, this proclamation narrowed the role of regional states on the land administration that has systematically excluded determination assignment of holding rights and the execution of distribution of holdings from the concept of land administration.

Hence, under the current rural land proclamation, land administration's role of regional states as a process, after the substantive matters and policies on the manner of assigning rural land is determined by the Federal Government. Under

[23] Rural Land Administration Proclamation of the Federal Government of Ethiopia, Proc. No 89/ 1997, Art 2(6)

[24]Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, Proc. No, 456/2005

the first proclamation, the land administration role of the regional states is not only the procedure or process role to be played but also the determination assignment of holding rights and the execution of the distribution of holdings. Thus, unlike the first rural land proclamation, the current one is enacted based on an assumption that the regional states have no/ low involvement on the determination of land policy, which systematically widens the role of the Federal Government on the determination of regional land policy.

There is also a substantial difference between the proclamations in terms of their structural arrangement and contents. The structure of the first federal rural land proclamation has encompassed 8 general provisions; the current one, however, encompasses 21 detailed provisions. From this, it can be inferred that the first rural land proclamation had recognized a wide regional state legislative role, and very much limited Federal Government legislative role. The content of the first rural land proclamation is also enacted based on the principle that the intervention of Federal Government legislation is very much undesirable. This is inferred from Article 5 and Article 6 of the first federal rural land proclamation.

Accordingly, Article 5 of the proclamation which is titled as “Conditions of Land Administration", stipulates under its sub- article (1) the regional states shall administer rural land in accordance with the general provisions of the proclamation. Sub-article (2) requires each Regional Council to enact a law on land administration for purposes of implementation of sub-article (1) of Article 5. The next provision sub- article (3) stipulates land administration law of a region to be in conformity with the provisions of laws on environmental protection and shall observe the federal land utilization policies. Finally, under sub-article (4) the land administration law of a region to confirm the equal rights of women in respect of the' use, administration of land.

Article 6 of the proclamation which is entitled as “Contents of a Land Administration Law" allows the regional councils to enact land legislation, by respecting the following conditions. As per Article 6 (1), the regional land law should ensure free assignment of holding rights both to peasants and nomads, without differentiation of the sexes; as well as secure against eviction and displacement from holdings on any grounds other than total or partial distribution of holdings affected according to decision by the Regional Council. As per Article 6 (6), the regional law should provide demarcation of land for house-building, grazing, forests, social services, and such other communal use shall be carried out

in accordance with the particular conditions of the locality and through communal participation. Most importantly, Article 6 (12) of the proclamation allows the regional states to enact provisions, which are not inconsistent with the federal proclamation, for other general or particular matters as found necessary under the peculiar circumstances of the locality.

Thus, Article 5 and Article 6 of the first rural proclamation support the legislative role of the regional states concerning land resource and administration. The proclamation has simply provided general guidelines on the conditions and contents of regional land administration. In other words, under the first rural land proclamation, the land policy-making role of the Federal Government was very much limited. The very assumption under the proclamation was the intervention of the Federal Government is undesirable. The previous proclamation had provided wide say to regional states to determine the appropriate land policy and execute the same in context to their region.

On the contrary, the Federal Government has enacted the current proclamation having detailed provisions. This proclamation is enacted by reversing the assumption taken under the previous proclamation, which had given wide recognition on the regional state land policy-making role. The Federal Ministry of Agriculture and Rural Development is in charge to initiate the development of new rural land policy ideas, and the amendment of the existing policy, as necessary; under Art 16 of the current proclamation. The Federal Ministry is also responsible to implement the rural land use and administration policies of the Proclamation.

Article 6 (6) and (12) of the first proclamation have recognized the policy-making power of the regional states. On the contrary, under the current rural land proclamation, the regional states have no legislative and policy-making room, to accommodate their peculiarity at the regional level. Even if Article 17 of the proclamation provides power to each regional council to enact rural land administration and land use law, they have no power to deviate from the land policy of the Federal Government as provided in detail under the proclamation. At worst, Article 17 of the proclamation “recognizes" Regional Councils to enact “rural land law” which consists of *detailed provisions necessary to implement the federal Proclamation*.

B. FEDERAL URBAN LAND PROCLAMATIONS

The first Urban Land Proclamation No. 80/1993 was passed before the inception of the FDRE Constitution; by the Transitional Government of Ethiopia.[25] The Proclamation has introduced a new urban land policy in Ethiopia which is an urban land lease policy. Proclamation No. 272/2002 repealed the Transitional Government urban land proclamation.[26] Under its preamble, the proclamation states lease will be the cardinal and exclusive urban land-holding system. As provided under Article 3, the scope of the proclamation applies to an urban land held by the permit system, or by the lease-hold system. As an exception to the scope of application of lease system, the proclamation under Article 3 (2) provides legislative space to the regional states to decide as to the time, manner and conditions for the applicability of lease system.

The current urban land proclamation is Federal Urban Land Proclamation No. 721/2011.[27] The proclamation, under Art 5 induces all of the nine regional states of Ethiopia to implement a lease system on urban land exists within their respective boundary without exception. The proclamation provides detailed provisions concerning the procedure of land administration via lease system including the lease price, lease period, and other issues concerning urban land. The proclamation is also considered the principal method of fixing lease price via "tender" under Article 7, which is a modality of transferring lease of urban land to a bid winner fulfilling the competition requirements issued based on the rule of market competition of urban land tenure as defined under Article 2(9) of the same.

Similarly, Article 33 of the current proclamation requires the regional states to administer land, based on the lease system and lease policy formulated by the federal legislator, which is provided in detail under the proclamation. The proclamation also allows the direct involvement of Federal Government Executive organs both on the formulation and implementation of the lease policy. Accordingly, under Article 32 Ministry of Construction and Urban Development has the power to follow up and ensure the implementation of the lease system in all

[25]Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993,.*Negarit Gazeta* of the Transitional Government of Ethiopia, Year 53, No. 40.
[26]Re-Enactment of Urban Lands Lease Holding Proclamation, Proclamation No 272/2002, *Negarit Gazeta*, Year 8, No 19.
[27] Urban Lands Lease Holding Proclamation, Proclamation No 721/2011, *Negarit Gazeta*, Year 8, No 19.

regions. The Ministry is also in charge to prepare model regulations, directives, and manuals for the implementation of the lease system.

From the above, it is clear that the federal urban land legislation before 2011 is principled on the absence of Federal Government monopoly on the determination of urban land policy. Such practice had allowed regions to select and implement appropriate urban land policy by taking into consideration their respective interest on land at the regional or local level. On the contrary, Proclamation No. 721/2011 has encompassed several detailed and mandatory provisions on the application of the lease policy and system on all urban land in Ethiopia.

VI. CONCLUSION

The land law under the FDRE Constitution allows for diversity and also uniformity of law and policy. Ironically, the current Ethiopian land administration programs are highly affected by federal land policies and laws. Federal land proclamations have already covered and determined land policies, based on which the law expected the regions to administer the land. The proclamations provide the manner and procedure of land access for investors, citizens; and land rights guarantee for investors, and holders. The list of requirements and procedures are also provided, which guide regional state on land administration *viz.*, land transfer, consolidation, tender, negotiations and so on. Surprisingly, the proclamations have also allowed the intervention of federal executive organs (namely, Ministry of Agriculture, Investment, and Construction and Urban Development); both on the formulation and implementation of land policy in all regions of the Ethiopian federation.

Such heavy central bias present in the federal land legislation/policymaking practice has created imbalances between the Federal Government and regional state concerning land administration. This is the encroachment of regional states' autonomy on land resources guaranteed by the FDRE Constitution. Land policy interest of each of NNP, who are landowners and sovereign, is institutionalized better at a regional level. There is no way to institutionalize NNP land policy interest upon federal land policy/law-making process/. The HoF, even if it has been assumed as representatives of NNP, it does not represent each of the NNP. At worst, the HoF has no legislative role.

Regional states shoulder the utmost responsibility to protect and respect the land resource policy interest of NNP. This is the reason why the FDRE Constitution

provided land administration power.to the regional states. However, without their involvement in land policymaking, the right to exercise self-government and the right of NNP to self-determination is valueless and doubtful. By the same token, in absence of such power, the regional states cannot properly formulate and implement regional economic and development policies. As the land resource is one microeconomic factor, which significantly influences and shape regional economic and developmental policy options.

Hence, land law/policy-making involvement of regional states is indispensable; to accommodate the distinct interest of NNP. And, in Ethiopia land administration should not be guided by the interest of the Federal Government. Rather the federal land law/land policy has to leave meaningful decision-making space for the regional states. The Federal Government should also not ignore the stipulation of the Constitution which explicitly stipulates the possibility of a delegation of powers from the Federal Government to the regional states, not vice versa. Ironically, in practice, the HPR has passed uniform and inflexible federally dominated urban and rural land legislation/policy by ignoring constitutionally recognized rights of NNP and procedure of delegation.

VII. RECOMMENDATIONS

The author provides the following recommendations. First, the provision of the existing federal urban and rural land proclamations which already determined land policy in a detailed manner should be revised. The provisions of the proclamations that provide wide power to institutions of the Federal Government on the determination of land policy should be amended. The amendment should give meaningful decision-making space to each of the regional states. The amendment should also oblige the government to consult the section of society to identify land policy options in each region.

Second, it is essential to establish an inter-governmental relation (IGR) Institution which serves as a forum for negotiation between federal and regional governments on land policymaking. To this end, primarily there should be a political consensus on the significance of establishing formal and democratic IGR institutions, in safeguarding and promoting the land rights and interest of NNP under the Constitution. The objective of the institution should be principled on the accommodation of the specific land policy interests and policy options of each of

the nine regional states. The procedure of the institution should allow each regional state to make formal and independent land policy negotiations with the Federal Government.

Third, the government should enact procedural legislation that ensures the land policy formulation process of Ethiopia with meaningful participation of NNP. The objective of the legislation should be principled on accommodating the different views of each of NNP. Thus, the procedural rule should allow each NNP of Ethiopia to reflect their voices concerning land policy options at regional, zonal, local levels. The procedural rule should enable active and informed participation of NNP who pursue their lives in urban centers/municipalities/ or towns.

Fourth, it is necessary to conduct a preliminary study that investigates the view of the public and identifies key variables to make the consultation on land policy options. The study should understand the economic as well as the political views of NNP on the policy. The study should be conducted individually for towns/cities by an independent body.

Finally, if the Federal Government is unable or unwilling to make amendment that implements the above recommendations and suggestions regional states have to challenge the Constitutionality of the federal land laws before the House of Federation.