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**TOWARDS IMPROVED TRANSACTIONS OF LAND USE RIGHTS IN
ETHIOPIA**

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Key words: legal instrument, public property, land use right, transaction, tenure security

I. BACKGROUND AND CONTEXT

Ethiopia experienced different land tenure systems. Without further going to old times and only looking at the past one century, it is possible to classify the land tenure systems of the country into two. Pre-1974 period could be characterized as a feudal system where a mixture of private, government, church and communal land holdings coexisted. These land tenure systems had various kinds of landholding arrangements. The two prominent kings of the country in the contemporary era – Emperor Minlik and Emperor Hailesilassie introduced written land laws, which were believed to benefit certain land lords and to affect majority of the farming communities (Solomon 1994 and Witten 2007:158). However, the laws during the emperors' time allowed sale, exchange and mortgage of individual holdings.

The post-1974 period could be characterized by public ownership of all land. With the dawn fall of Emperor Hailesilassie, all rural and urban lands were declared to be a state property abolishing all private and communal land holding rights without compensations. Individuals and communities were given only use rights. In 1991, the current Government took power after defeated the socialist oriented Military Government. Despite the introduced political and economic changes, land remained public property. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) unequivocally states that land shall not be individual's property.

“The right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia.” (TGE¹ 1995: Article 40)

¹ TGE – Transitional Government of Ethiopia

Land is a common property of the Nations, Nationalities, and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.”(ibid.)

“Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development.” (ibid.)

There have been critics against these constitutional provisions and the land administration proclamations derived from it. Many believe that limiting land holders ownership to certain use rights not only infringe basic property rights, but also restrict users in many ways. According to UNECA²'s (2002) economic report in Africa, as cited by Gebresilasie (2006:2), the Ethiopian Government land policy has been a reflection of a centralized and top-down approach, which has not taken into consideration the need of the farmers, civil society and businesses. However, the Ethiopian Government argued that free property rights including sale of land could lead to distress migration of the poor.

This paper brings up potential land use rights in terms of transactions. The paper aims at promoting discussions and more studies in the land transaction aspect of the land tenure system of the country. Doing so would help to encourage good practices and to indicate areas requiring improvements.

II. LAND TRANSFER RIGHTS IN THE LAND ADMINISTRATION AND USE PROCLAMATIONS

Ethiopia has not enacted a document in the name of land policy; rather proclamations have been serving as policy documents. Federal and regional land administration and land use proclamations provide unlimited period of use right to farmers, pastoralists and semi-pastoralists (FDRE 2005, ANRS³ 2006, ONRS⁴ 2007, SNNPRS⁵ 2007 and TNRS⁶ 2007). The proclamations give rights to the rural landholders to inherit, bequeath and lease. However, there are restrictions on the modalities and period of land transfers (see Table 1). The Amhara Regional State tends to be more liberal in terms of lease period and size of land and the Southern Regional State also

² UNECA – United Nations Economic Commission for Africa

³ ANRS – Amhara National Regional State

⁴ ONRS – Oromia National Regional State

⁵ SNNPR – Southern Nations Nationalities and Peoples Regional State

⁶ TNRS – Tigray National Regional State

provides a bit relaxed transfer rights. However, all regional proclamations seem to encourage renting out to investors using modern technologies than transactions among farmers themselves.

The legal frameworks provide a mixed signal about land transactions. On the one hand the proclamations and regulations tend to encourage farmers to rent out their holdings or use rights. On the other hand they don't give adequate freedom to practice legal land transactions. Restrictions on size of holdings to be rented out and limited time bound are most likely to put the farmers in an uncertain situation particularly in the Oromia, Southern and Tigray Regions. Moreover, none of the federal and regional proclamations talk about collateral of land use rights for farmers. Rather some of the legislations, Federal, Amhara and Southern Regions, allow investors to collateral rented land for credit services. These and other limitations brought about critics on the inconsistency of legislative frameworks and unfair provision of transaction of use rights.

Because landholders do not feel secure and are unable to get timely information, they prefer the informal market system than the formal during land transactions (ILD⁷ 2008:15). With these all restrictions and mixed messages of legislative frameworks, farmers may tend to use unofficial market systems to transfer land through renting, sharecropping and bequeathing. Although all the legislative instruments fail to put provisions in mortgaging of farmers land use rights, recent practices indicated that Micro Finance Institutions (MFIs) have been using holding certificates as collateral to release credit to the farmers. The MFIs, being government affiliated organizations, seem to work in an informal way although there is no legal provision to refer and make such transactions legally binding.

III. WHY TRANSACTION OF LAND USE RIGHTS?

To justify the need for improved land use transactions in Ethiopia, a number of reasons can be mentioned. Starting from the need to provide all possible basic land tenure and property rights to a wide range of economic factors, improving land use rights transactions appear to be very important and timely. Although there are already some perceptions on the need of amending legal instruments and lifting up major restrictions to improve land transfers, it is still important to flag out the problems and encourage those improvements for the way forward.

⁷ ILD - Instituto Libertad y Democracia

1. Improved tenure security and property rights

Ethiopia is one of few countries disallowing sell of land and freehold statuses. Taking into consideration that some country specific situations and political ideology prohibited exercising freehold land tenure system, it is important to relax land use rights and encourage land holders to practice land use rights transactions. This would allow improving tenure security and introducing some level of property rights without infringing basic constitutional provisions.

The limitations in land sizes to be rented out and time of renting still restrict people's movement to alternative livelihood and income options. Unless people are given to make choices by their own and engage in activities they like, it would be difficult to ensure productivity of the labor force with the increasing population pressure and diminishing agriculture sector opportunities. Relaxing land use transaction rights would encourage people with small plots of land to try other alternatives and decrease further sub-division of holdings.

If transaction of use rights develops, it most probably becomes one source of government revenue. With ongoing land certification practices and to be developed land information systems, land administration offices can handle transactions allowing government to collect taxes and service fees in a more objectively verifiable measurement. As long as the payments are set at an affordable rate, the rural landholders would use the service because they need legal protections and recognitions.

Official land use transactions can only develop and overtake the informal market role if most of the restrictions on land transfers are loosened. Broader and detailed studies could come up with some encouraging results if comparison is made between the old and amended land laws. In a discussion held with key informants in Damot Gale District of the Southern Region, all believe that amendments in land transfers are always welcome by the rural communities. Most of the rural land holders would like to enjoy more loosened land transfer rights.

2. Reduce the rate of diminishing and fragmentation of landholdings

The FDRE Constitution reveals that sell or any other means of exchange of land is not allowed because land is a property of the Government and people of Ethiopia (TGE 1995). One of the arguments in favor of this clause was the need to safeguard the farmers from evictions and

displacements as a result of distress sales of land. The Federal Government and regional authorities have been mentioning that the non-farming sector has not yet developed to absorb landless rural people and provide alternative livelihoods. As a result, unexpected out migration of people to towns would cause problems.

Nevertheless, with increasing population number and low rate of urbanization, landholding size per a holder is decreasing. As over 80% of the rural people reside in the highland areas which comprise about 40% the country's land mass, population density is alarmingly high in these areas. As indicated in Table 2, significant numbers of people hold below half a hectare of farming land. With high number of youngsters waiting to inherit or access land through sub-division of parents' holdings, the average landholding size is expected to get lesser and lesser.

Those who hold less than one tenth of a hectare mostly use the land for house construction and gardening. It is, thus, hardly possible to classify these people as farmers. In a recent study conducted in the Southern region, it was identified that either these kind of people depend on farm labor or share cropping with others or farm with parents. The portion of rural people having half and less than half a hectare is over 31%. Although further analysis should be done to determine if these people can produce enough to feed family members throughout a year, it is possible to visualize how small their holding is to make a living. With this diminishing size of holdings, it is difficult to ignore the importance of looking for options to improve holding sizes and increase alternative livelihoods. Unfortunately the non-agricultural sector in the rural areas has not yet started to develop.

Comparing the percent of land holder in the year 2009/10 and 2010/11 alone, one can understand how fast the number of people having reduced size of land is increasing. According to CSA (2010, 2011), the people who had less than 0.1 hectare in 2009/10 were estimated at 7.32 percent, but this figure increased to 9.13 percent in 2010/11. About 1.8 percent increase means a total of 250,000 landholders have joined the category of less than 0.1 hectare people in a year. A five-year interval comparison between 2005/06 and 2010/11 showcases dramatic increase of people with small landholdings. As can be seen in Fig 1 and Table 2, the percentage of people having 0.5 hectare and less increased by 5.6 percent in five years bringing down about 1.7 million landholders to this category. At the same time, the number of people with over 0.5 and below 5 hectare decreased by about 6 percent.

With this rate of diminishing land sizes, the proportion of rural people holding tiny plots is most likely to escalate in the future too. Ethiopia being one of the developing countries having low agriculture yield per a unit of land, labor and capital, these fragmented and small plots could not provide adequate space for agricultural activities and productivity. This situation alerts to introduce and strengthen improved land transactions providing opportunities for farm plots consolidation and creation of non-farming activities as alternative livelihoods.

Regional land proclamations and regulations put limits of 0.25 to 0.5 hectare minimum holding depending on access to irrigation and type of use. These restrictions are particularly applied during transactions and any other ways of land transfers. As shown in Fig 1, significant portion of the rural population hold less than what has been put as a minimum limit. The de facto, thus, calls for further study and amendment of land laws to take into consideration the existing situation.

Diminishing holding size tends to contribute for increased land transactions. The more the size of land per a holder gets lesser, the more it becomes difficult to use it for agriculture and afford inputs within an economy of scale. Holders of such small plots either need to rent in other plots or rent out to others to form a viable farming parcel of land. In discussions held with community members in Damot Gale District of the Southern Region, it was noted that many small land holders prefer to lease out what they have if they cannot afford renting in land. With increased practices of land transactions, it would be possible to encourage land consolidation, pull resources and increase productivity.

3. Tackle restraints on capital, labor and productivity

Although land shortage is the most prevailing problem, there are also land holders who lack labor, capital and time to cultivate their lands. Many of the small land holders lack oxen for plowing and input for planting. Elderly, disadvantaged groups, women headed households, ultra-poor and absentee holders mostly rent out their holdings or arrange share cropping with capable ones. The traditional farming system is heavily labor based for plowing, planting, weeding, harvesting, threshing and soil and water conservation activities. These activities happen to be difficult for women and other vulnerable groups. Absentee landholders may also prefer to work on other activities and rent out their land to others.

To increase yield per unit, it is advisable to use improved inputs. But the inputs are highly expensive for small scale farming. Some improved inputs like fertilizer are not available in an affordable package for small holdings. With these all constraints, renting out appears to be a viable option for small size land holders. On the other hand, those who took the opportunity to consolidate small plots would invest and produce for household consumption and market. They may also hire some of the land renters as agriculture laborers. With these circumstances, land transactions seem to grow and benefit both the landholders and the landless or those with small plots of land. The transaction obviously helps to balance allocation of labor and capital to the land.

There are recently observed practices in which MFIs used land use certificates as collateral to provide capital for inputs. The credit access may also help to rent in additional land. This situation also benefits those who rent out land and use the income to engage in non-farming activities. The land transaction helps to appropriate capital and labor on the land and avoid lands from staying fallow. As there is no legal backing in the use of land use rights as collateral (see Table 1), the formal institutions like MFIs seem to work in the informal market. This happens to be a showcase complementing the idea how much the legal instruments are not reflecting the need of the users and the level of the need for more improved use rights. The promotion of such practices rather helps the poor to have improved access to financial services and prevent any distress migration, if happens, as the Ethiopian Government argues, as a result of unrestricted land transactions. Supporting such an idea, Deininger and Binswanger (1999: 264), indicated that the Government can also encourage the poor to cultivate and avoid distress sales by facilitating credit services for inputs.

4. Encourage out migration and engagement in non-agriculture economy

Land transactions could allow small land holders to leave the agriculture sector and engage in other sectors. With an increasing awareness that small holdings cannot provide at least a level of subsistence living condition, many would like to try other livelihood options. The rural areas are not yet developed to provide non-agriculture alternatives. In some areas like Wolayita, inheritance of farming land before the death of parents is culturally not allowed; in other places, the smallness of holdings of some parents (see Table 2) does not encourage further sub-divisions and it is also legally not acceptable. However, in the absence of other job options, the children coming to adolescent stage may still hope to inherit parents land or get sub-divisions or work with

parents. With improved land transactions, youngsters may prefer to move to towns either on a temporary or permanent basis and work in micro enterprises, construction, industry and service sectors.

Despite the arguments of high influx of people to urban areas, relaxed transactions would help to allow those rural residents with small holding to leave rural areas. When some move to towns, it is possible that the remaining people can have better opportunities to plow increased size of land or minimize risk of decreasing holdings. Although some regional land laws still put restrictions on movement of people and portion of holding to be rented out, the real situation shows that significant number of people with small holdings leave for towns to augment their livelihood or engage in a new way of life. The interesting thing, many do not want to totally abandon their holding unless they have a reliable income source. A recent data collected in Damot Gale District indicated that many small landholders prefer to rent it out or arrange share cropping or lend it to a family member or informally delegate family members to manage their holding if they move to towns. Since sell of land is not allowed, most migrants remain tangled to rural land in their absence even.

Land transactions help to encourage out migration of very small size land holders and engage in other sectors. Data collected in major cities revealed that most migrants work in the construction sector, micro enterprises and retailing activities. By doing so, the migrants learn new skills, save money and support rural families. Data collected for a study of rural-urban migration in Ethiopia revealed that out of the contacted 20 migrants from Amhara region 60% save money to rent in farming land and buy inputs (own survey 2012). These migrants work in urban areas during agricultural off-seasons and go back home in pick agricultural season. There are conditions also these migrants invest back in the rural areas and work with family without them necessarily going to rural areas. Land transaction, thus, became necessary to help out migration and work in the non-agriculture sector.

5. Ensure fair use rights in communal areas

The pastoral areas of the country are occupied by different ethnic groups relying on livestock production through a communal landholding system. Although the size of the pastoral areas remained vast, they are prone to drought and climatic variations. The pastoralists move to water and grass areas to cope up the changing climatic situation and to effectively use available

resources. The increasing vulnerability of these areas to drought and climate changes left many people poor. The poor gradually dropped out from the pastoral system. But these dropouts do not have other livelihood options to try. With weakening social structures and increasing number of dropouts, the traditional community level support is not any more able to absorb the growing problem and help the poor. On the other hand, few rich pastoralists seem to emerge and use available resources in monopoly.

The Federal Land Administration and use Proclamation (FDRE 2997) does not have adequate provisions to determine pastoral land administration and use. All lands of farmers, agro-pastoralists and pastoralists are mentioned together to indicate rights and obligations. This situation seems to provide less clarity on the administration and use of communal areas. Although pastoral regions like Afar and Somali have just developed land laws, they may not be able to properly regulate land uses and ensure individual rights in communal arrangements.

If each individual is believed to have equal right in the use of communal lands, there should be a system ensuring and protecting such rights. In the absence of livestock rearing activities, the dropouts do not have sufficient mechanisms to benefit from the grazing lands and other resources. Unlike the cropping areas, individuals in the pastoral areas cannot rent out land or use rights. This to happen, the community structure should allow and there should be a legal backing. If the Federal Government and regions develop pastoral-relevant laws and pave a path for communal land leasing, the poor and dropouts could benefit from the land transactions through available capital to buy livestock or try other activities, jobs to be created and knowledge and skills to be transferred.

In the highland areas, if the rich want to expand their farms, they may rent in land from the poor; while in the pastoral areas, the reach can increase their herds and expand grazing areas without paying to the other. With appropriate legal instruments and strengthened sense of communal land use rights, land transaction can help to arrange a contract between land leasers and communities in a way that ensuring fair and equal benefits among the members.

IV. THE DYNAMICS IN LAND TRANSACTIONS

The aforementioned and other related factors are believed to lead into increased rate of land transactions. Following constitutional obligations not to sell land, the awareness on land use right

transactions remained unclear and regional laws did not have adequate room to encourage or allow such practices. With introduction of land use certificates for the first time in early 2000s, a legal evidence for tenure security was given for the first time and landholders started to realize the possibility of exercising land transactions officially.

The Federal Government of Ethiopia issued an amended land administration and land use proclamation providing detail provisions on land use transfers in 2005 (FDRE 2005). Consequently, based on changes in the Federal proclamations, four of the major regions made amendments in their land administration and land use proclamations (ANRS 2006, ONRS 2007, SNNPR 2007 and TNRS 2007). The changes gave better options allowing renting of land use rights among farmers and with investors. Some regions like Amhara gave longer lease periods. The previous land proclamation of the Federal Government was limited to general scopes and unable to give adequate directions for the regions to enact their laws accordingly (FDRE 1997).

Ethiopian farmers have a tradition of renting land or arranging share cropping among themselves. Such land transactions have hardly been reported to official land administration offices. The rural people arrange such deals through elders and kinship structures. With legal restriction on sizes and time, it is less likely that people would report all transactions to official bodies. The informal market seems to persist for some time. Nevertheless, unofficial transactions may negatively affect women and other vulnerable people because it does not provide them legal backing when local land grabbers snatch their holdings.

In Damot Galie District of the Southern Region, considerable portion of landholders are involved in land transactions. With observed awareness level and suspicion of the rural people to mention such sensitive data, the identified transaction rate seems fair enough to show the reality on the ground. As can be seen in Fig 2 2, with a 52 percent awareness level, over 27 percent were able to rent in and 11 percent to rent out land.

In Amhara Region, the move to official land use transactions has been increasing. The Region allowed land renting for up to 25 years and renewal of such contracts among farmers since 2007. Discussions held with some farmers in Achefer District of Amhara Region indicated that farmers are empowered to report land rent deals to local administrative bodies or the District land administration offices after the land law allowed them to rent land for such an extended period. According to them, official transactions are helping to protect their use rights and make

accountable any defaulters in the transaction processes. The reporting and documentation of official transactions are managed with very minimal costs.

Although none of the land laws (see Table 1) mentions about farmers' right in mortgaging use rights, following landholding certifications, land use collateral seemed to expand in some regions. In field visits made to the Amhara and Southern Regional States, most of the lenders who accessed credit services from MFIs used their holding certificates as collateral. The MFIs give preference to certificate holders and even some time put certificates as an important collateral requirement. Despite the absence of legal references on using certificates as collateral, both parties seem to accept and respect the deal. The situation might have started to alert policy makers and been insisting to include such land transactions in the land laws.

V. PROMOTING LAND USE RIGHT TRANSACTIONS

The need for improved land use transactions could be justified in many ways. In the Ethiopian context, the mentioned factors such as land fragmentation, shortage of capital and labor, movement of people and engagement in non-agriculture economy and the need for increased tenure security and property rights call for promoting land use rights' transactions. With the dynamic political, social and economic environments, the land sector also requires changes. Although the constitutional frames are not allowing looking outward, the provisions provide some spaces to play around with an innovative approach. The Constitution has a wide spectrum of land use rights. If the Federal and regional land laws try to accommodate as much use rights as possible and craft suitable and workable legal instruments, it is possible to promote a wide range of land use rights transactions.

The informal land tenure systems have been providing an alternative to facilitate exchange of land in the rural areas. According to key informants contacted in Damot Galie District of the Southern Region, many people use the informal market because they cannot meet the legal land transaction requirements. Most of the landholders have half a hectare or below in this district. If they respect to fulfill legal requirements of ensuring that a land feeding their family members for a year should be left, they cannot find any extra land to rent out. With these controversial legal requirements, the reported official land transactions appear to be very minimal or even nil.

The practice of land renting seems to expand with the increasing factors mentioned above. Many of the farmers would like to access money for agricultural inputs and non-agricultural activities. Unless they have any other means to generate income, their land is the basic fixed asset helping them to access the needed money. The growing use of land as collateral and the acceptance of such collateral by credit institutions can be taken as a good signal for a move towards increased land transactions. However, the legal instruments remained deviating from the de facto.

As long as the Constitutional provisions on land tenure and property rights are not trespassed and land use right holders wish to practice a relaxed use rights, the Federal and regional governments may need to revise existing legal instruments. The rural landholders already demonstrated the need for improved land transactions. Although, unlike many other countries' land holders, the rural landholders in Ethiopia cannot enjoy freehold ownership, they should be allowed to practice relaxed use rights. Credit institutions' growing interest and practice to use land as collateral should be seen as a signal for a need to make changes in the legal frameworks.

The issues of pastoral communities and individual rights in communal land arrangements need to get adequate emphasis. The promotion of land transaction should not be limited to crop farming areas; the pastoral areas can also benefit from improved legal provisions in land use rights transfers. The poor and pastoral dropouts could benefit from land use rights' transactions and doing so would ensure fair and equal opportunities among communal land users.

Overall, it seems there is a growing understanding of the need to improve land use rights transactions in Ethiopia. The step taken in Amhara Region in extending lease period and removing restrictions on size of land to be leased is expected to alert other regions to follow similar practices. Taking into consideration the existing factors driving towards land transactions, many remain optimistic to see changes in legal instruments of the land sector.

With improved land use rights transactions, there is a hope to allow significant portion of rural people with small lands and pastoral dropouts to move to different sectors and become productive. The rural areas would also see non-agricultural activities growing through improved access to finance as a result of transactions of land. Although land ownership remains fragmented, the land lease would help to encourage consolidating farms and to apply economically feasible technologies including improved inputs.

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Annex 1: Tables

Table 1: Legal instruments and vested in transfer rights

Legal Instrument/ Transfer Rights	Federal Proclamation	Amhara Region Proclamation	Oromia Region Proclamation	Southern Region Proclamation	Tigray Region Proclamation
Inheritance	Allowed (to family members)	Allowed (to farmers and urban dweller with small income)	Allowed (family members)	Allowed	Allowed (restricted to dependents who don't have land)
Bequest	Not mentioned	Allowed (restricted to farmers in the region)	Allowed (family members)	Allowed	Not mentioned
Lease between peasant farmers	Allowed (but without causing displacement)	25 years (without size limit)	3 years for traditional farming (up to half a holding)	5 years (remaining holding should be sufficient for annual consumption)	3 years for traditional farming (up to half a holding and with no displacement)
Lease from peasant farmers to investors	Allowed (but without causing displacement)	25 years (without size limit)	15 years for modern farming (up to half a holding)	10 years for annual crops and 25 years for perennials (remaining holding should be sufficient for annual consumption)	10 years for modern farming (up to half a holding and with no displacement)
Mortgage of use right (farmers)	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Mortgage of use right (investors)	Allowed	Allowed	Not mentioned	Allowed	Not mentioned

Source: Federal (2005) and regional (2007) land administration and use proclamations

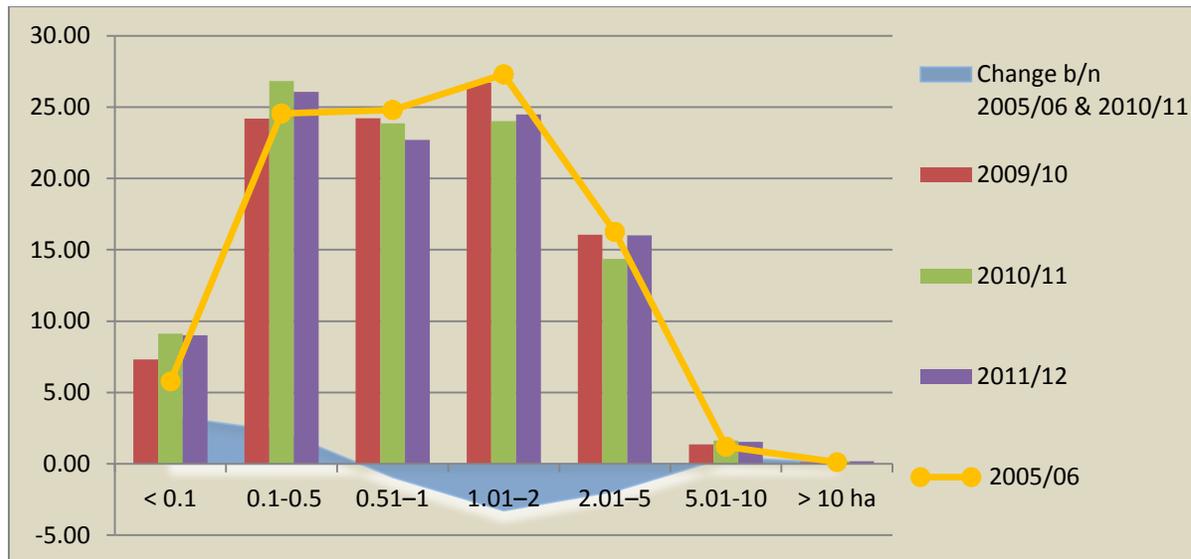
Table 2: Changes in landholding sizes

Landholding Size in Hectare	Holders in Percent				Change b/n 2005/06 and 2010/12
	2005/06	2009/10	2010/11	2011/12	
< 0.1	5.79	7.32	9.13	9.01	3.34
0.1-0.5	24.55	24.20	26.82	26.07	2.27
0.51-1	24.79	24.22	23.85	22.69	-0.94
1.01-2	27.29	26.72	24.01	24.48	-3.27
2.01-5	16.26	16.07	14.36	16.02	-1.91
5.01-10	1.20	1.36	1.64	1.55	0.44
> 10	0.12	0.11	0.19	0.18	0.07

Source: Own analysis based on FDRE Central Statistics Authority (CSA) data

Annex 2: Graphs

Figure 1: Landholding size versus percent of holders



Source: Own analysis based on FDRE Central Statistics Authority (CSA) data

Figure 2: Land renting in Damot Gale District of the Southern Region



Source: Own survey data from field for a study on rural-urban migration