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ETHIOPIA: CADASTRAL SURVEY AND REGISTRATION

(Submitted by the Imperial Ethiopian Government)
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1. Introduction

Of the nation's 122.2 million hectares of total area, 84.1 million hectares of land and 12.1 million hectares of water and water courses comprise the potentially productive cultivable land and water resources of the nation. At present, only 10.4 per cent of the total land area, i.e. 12.9 million hectares is put under cultivation of which 9 to 9.5 million hectares have actually been planted and harvested.

Agriculture, the dominant sector of the country's economy, is not only a goldmine in terms of potential but also a real source of wealth. It contributes about 60 per cent of the Gross Domestic Product and accounts for about 95 per cent of the exports. Above all, this sector of the economy is the only and meaningful source of employment for the large masses of the Ethiopian people. For years to come agriculture will remain to be the "sine qua non" of Ethiopia's sustained economic development.

Although Ethiopia has a huge agricultural potential, there are several fundamental obstacles that stand in the way to the realization of such potential. One of these obstacles is the lack of adequate information regarding the major aspects of our land resources. It is common knowledge that at the initial stages of economic development, agriculture sustains the whole burden of providing capital to initiate economic growth through taxation. As such, land is a major agricultural resource that should, in the early stages of development, be intensively taxed. To date, about 67.4 million hectares of land remain untaxed at the rates in force for measured lands, largely because the owners of these lands posses much larger areas than are recorded in their names, not to mention unmeasured areas of the South and the Communal areas of the North.

A second and still more fundamental obstacle is the lack of security in the land and the existence in great numbers of out-moded tenurial patterns which have made land, as they have, the subject of numerous disputes and endless litigation. The social and economic costs of these problems are rather obvious and need no elaboration.

In as much as agriculture forms the largest sector of Ethiopia's economy, the importance of land reform in any programme designed to increase agricultural production can hardly be over-emphasized. And to a significant extent many of the reforms sought to be accomplished in the field of land reform and the achievement of agricultural development will depend for their success on the introduction of a scientific system of land registration and cadastral survey.

2. Land measurement

Land measurement in Ethiopia is recorded to have started in the late 17th century in Gondar during the reign of Adiam Seged Eyassesu. However, the purpose for and the manner in which this early land measurement was carried
out remains merely a matter of conjecture. In addition, this early scheme of land measurement was territorially limited to one of the 14 provinces of the Empire.

This modest scheme of cadastre was not followed up subsequently until it was taken up by Emperor Menelik II in the year 1879-1880. Land measurement which was carried out during this period had a wider coverage in terms of land area and was designed for administrative and fiscal purposes. Although the type of measurement which was carried out during the reign of Menelik has continued to this day, modifications have been introduced from time to time with regard to instruments and units of measurement. In the early days, measurement was carried out using special leather cord - "Kelad" which had a length of 133 cubits or about 88 meters. The length of the "Kelad" was not uniform through the regions where measurement was effected. Later, chains of standard length were introduced. The use of the traditional "Kelad" system together with its crude version, the "eyne gemed", which depended on no instrument except the "human eye" has continued to be used in parts of Ethiopia, up to the present time.

The unit of area measurement adopted by Emperor Menelik was the "gasha" which literally means shield. The size of the "gasha" varied from place to place not only because of the variation in the length of the instrument - "Kelad" but also because uniform criteria were not used in fixing the size of one gasha in different regions. Size of one gasha varied from place to place depending on the productivity of the land, its proximity to markets and the climatic zone in which it was situated. Thus, a gasha of fertile land is smaller than poor land and the classification was fixed as follows:

1. land which was fertile measured 7 kelad in width and 11 kelad in length (or 350,831 m²).
2. land of fair fertility measured 8 kelad by 12 kelad (or 437,000 m²).
3. third class land with inferior fertility measured 9 kelad by 12 kelad (or 615,094 m²).
4. Poor or infertile land measured 9 kelad by 20 kelad (or 826,200 m²).

Accordingly when the area of a gasha of fertile land is compared to that of poor land the difference is 475,369 square meters or greater than the area of the fertile land. In view of the inconvenience created by such a variation, attempts have been made to standardize the size of the unit of measurement. In 1936 E.C. (1943) a gasha was standardized to 40 hectares (400,000 sq.km) by government order. The 40 hectares unit has been in practice for over two decades, still variations in the size of the gasha have been retained in many regions, the three most common sizes being 437,000 m²; 400,000 m² and 350,831 m². With the adoption of the 40 hectares units modern methods of surveying were also introduced together with modern instruments such as steel tapes, compasses etc. But the progress made so far is considered inadequate, for land measured since 1936 E.C. (1943 G.C.) is less than ten percent of the country's measurable area.
Although attempts have been made in the past to introduce changes in the system of measurement, it has not been carried out satisfactorily and large areas still remain unmeasured. Besides being slow, the system of measurement is prone to inaccuracies and gross errors. For instance, land recorded as 60,610 gashas was revealed 131,220 gashas upon remeasurement. And the government is now convinced of the need for more accurate and better surveys.

3. **New systems of cadastre**

The establishment of up-to-date cadastral system and land registration is considered essential to proper improvement of agriculture. In order to undertake measures of land improvement and establish security of ownership, as well as lay out the basis for an equitable and efficient tax collection, accurate and quicker systems of land surveys have to be introduced. Basically there are two phases in any cadastral system consisting of administration and surveys. The administration phase is concerned with the actual registration of parcels and the maintenance of parcels, while the survey phase deals with demarcation of boundaries, preparation of plans and measurement. The Ethiopian Government is in the process of adopting a new cadastral system incorporating these two phases. The new system which consists of adjudication, land surveys and registration is designed to be applicable throughout the country.

Techniques to be adopted for the cadastral survey of Ethiopia will rely heavily on the use of aerial photographs and photogrammetry. Demarcation maps (or cadastral plans) of parcels will be prepared from controlled aerial photographic mosaics. And registry maps will be compiled from the demarcation maps showing boundaries of each parcel of registered land and other information. The availability of a registry map would:

- enable holdings shown in the register to be identified on the ground,
- enable relocation of boundaries if moved or lost,
- facilitate subsequent subdivisions of land and
- provide a basis for more accurate calculation of areas for assessment of land tax.

At present, Ethiopia is covered by aerial photographs at 1:50,000 scale for basic topographic mapping. But as this scale is small for cadastral purposes it will be necessary to acquire new material photographs of larger scale viz. 1:10,000, in order to prepare cadastral plans. Work on cadastral surveys was planned to commence in 1968 in areas where private ownership of land is prevalent and people have already been exposed to the advantages of land measurement. But, it has not been made possible to start surveys using the new system and had to be postponed, until the laws providing for registration of immovable property are proclaimed by parliament.
4. Register of rights in land

Broadly speaking, there are in Ethiopia two forms of ownership of land: individual and communal. The former is the most predominant form of ownership and is found most extensively in the southern provinces of the Empire while the latter is to be found in some four northern provinces of the same. As the terms themselves signify, individual ownership carries with it the right recognized by law, and within the limits thereof, to dispose of a holding as the owner alone sees fit whereas in the communal areas "ownership" of land gets in a community of persons with a common descent from a founding father who is acknowledged as the first settler and owner of estates.

In the special context of the situation prevalent in the North, and although paradoxically land measurement is believed to have started therein, there exists no record of rights capable of proving one's connection to land. The list of names of taxpayers maintained by the Ministry of Finance in these areas is useful only for facilitating the collection of taxes but is utterly incompetent to prove ownership of land particularly since in these areas the payment of taxes relating to land does not entitle the payer to acquire ownership of land by usucaption. For this reason, proof of ownership is often difficult and is invariably done orally by tracing one's descent to the founding father with the aid of local genealogists.

In the south, on the other hand, various records relating to land have for a long time been maintained. Generally, these records fall into two categories: the revenue records and the records of land rights maintained, respectively by the Ministries of Finance and Land Reform Administration.

The basic revenue record is a register of taxpayers which is separately maintained by the Church in respect of taxes due to it and by the Ministry of Finance in respect of taxes due to Government. These registers are maintained at district level and contain, inter alia, a set of columns wherein the name of the taxpayer, the size of his land, the classification of his land and his consequent tax liability are recorded. Often, these registers do also contain information regarding the names of persons owning continuous holdings and the tenure on which land is held.

The registers are compiled for purposes of taxation every ten years but because of a time-gap between compilations the registers often contain the names of persons many of them dead.

Changes in land ownership are recorded through a system of registration of documents now maintained by the Ministry of Land Reform and Administration. These records fall into three general categories:

1. Records of original grants of land;
2. Records of conversion from one tenure to another; and
3. Records of mutations.
Records of original grants include register of grants of maderia 1/, made since 1942 E.C. and separate registers of grants of land made under various announcements and proclamations since 1942 E.C. to patriots, Italian War veterans, and landless persons. A grant is given validity by the issue of a document in prescribed form by the governor of the province in which the land is located, and a copy is sent to the Ministry of Finance for entry in the tax registers. Entries in the register of original grants are made chronologically as the documents of grant are received. A file is kept for each grantee and indexed alphabetically.

Records of conversion from one form of tenure to another (i.e. maderia to rist) have a similar form and purpose. Holders of maderia land complete a document in prescribed form, which is examined at province and sub-province level and, if the conversion is approved, the Ministry of Land Reform and Administration issues a document of authority for the conversion. This is then registered in the same way as the documents for original grants.

Records of mutations are kept in a register similar to that for deeds. When land changes hands by inheritance, sale or gift, the parties to the transaction are required to complete several copies of a document in prescribed form which is examined at the various levels of administrative hierarchy. The original copy is eventually lodged in the Ministry of Land Reform and Administration, which is the approving authority, particulars of this document are then entered in a register, the document itself being filed and indexed in the name of the transferee. A copy of the document is then sent to the Ministry of Finance for amendment of the tax registers, and other copies are sent to provincial governors.

Currently, the Ministry of Land Reform and Administration has plans to bring these registers up-to-date primarily for an easier administration of Government land and particularly for reserving areas of Government land above 8 sq.km for development purposes.

5. **Title X of the civil code**

In 1952 Ethiopia promulgated one of the most modern codes in the world, the Civil Code of Ethiopia. In this Code, Title X, a most comprehensive system for the registration of Immovable Property was provided. However, its application was indefinitely suspended until such time as an Order was published to bring it into force. Meanwhile, it was provided in the Code itself, that the customary rules relating to the registration of immovable property were to be compiled in order that real rights "may be set up against third parties".

No one knows for certain the reasons for suspending the application of Title X of the Civil Code. One can however assign several reasons why it might have been thought inadvisable to bring it into force. Title X, it is

1/ Maderia - Maderia land is government land that used to be granted to government employees in place of salary or as a pension for the period of office or for life without title to the land passing to the grantee.
clear from the provisions of the Civil Code, provided for the system that is commonly known as documents registration. It did not provide for the kind of adjudicated, much more secure and unattackable title to land that is the function of the system of title registration. Unlike the Torrens system, as the latter system is otherwise known, the validity of documents such as deeds of sale or gift, contracts of lease or mortgage and other acts creating or extinguishing rights in land is not determined and it is even expressly stated that "the registration of an act in the registers of immovable property shall not constitute a decision as to its validity". It is abundantly clear that such a system offers little security to the owner and practically none to an intending purchaser or lender who wishes to take a deed or a mortgage. A compulsory system of registration of documents such as Title X, under which it is provided that an act such as a sale or mortgage shall not affect third parties unless it has been registered, affords some protection against concealed dealings in land, but it is obvious that it is not a good substitute for registration of title, in which the mere fact of registration proves the interest defined in the register and guarantees that no adverse interests shall have any effect unless they are also recorded in the register. Let it be mentioned, however, that these comments are made only in relation to the Ethiopian situation and are not intended to reflect favourably or adversely about situations elsewhere.

6. Future programmes

One of the legislative proposals of the Imperial Ethiopian Government in the field of agrarian reform is the draft bill for the registration of title. The Ministry of Land Reform and Administration has already submitted the final draft of this legislation to the Council of Ministers, and it is hoped that the same would be submitted to the Ethiopian Parliament for its deliberation.

The proper implementation of this legislation has its own prerequisites among which an up-to-date cadastral survey and adjudication proceedings are of first rate importance. Registration of title requires the certainty of rights that are registerable, and without a scheme purporting to assure this needed certainty, there can be a danger of doing a real injustice to a great many people. In view of this, the draft registration proclamation has a detailed chapter on adjudication or rights over land. Such a thorough and careful approach to determining rights prior to the initial registration of title is an absolute prerequisite in any country where proof of rights in land is as difficult, and records of rights in land so inadequate, as in Ethiopia. The initial compilation of information before the actual adjudication commences is a very difficult task, and even though the existing tax records and land grant records cannot be taken as conclusive evidence as to who the exact owners of a particular plot of land are they can be a starting point for the recording officer to compile the necessary information to facilitate adjudication proceedings.
A necessary condition for the proper carrying out of adjudication of
rights over land, is the presence of an adequate and scientific cadastral
survey. This will help to determine the location and extent of the lands in
which the rights to be registered are held. The need of cadastral survey is
of a greater magnitude, especially in the Ethiopian context, where the
traditional methods of land measurement have produced gross errors as we have
already mentioned in the first part of the paper. In this field of cadastral
survey the roll of the Mapping and Geography Institute would be of considerable
importance. It is this agency which would take responsibility in carrying out
cadastral surveys using up-to-date instruments one modern methods.

There are a few problem areas for which the registration does not
provide a ready solution. Registration, being a legal process, does not
necessarily create new rights or modify existing land rights. It will only
recognize land rights that are already defined by the Civil Code, and which
is for the most part not well understood by all people since they do not
conceptualize their rights in land in Civil Code terminology. This problem
would tend to be very acute if the registration proclamation is intended to
be applied in some parts of the Empire where tenurial patterns are complex
inasmuch as they do not tender themselves translatable into the legal terms
used in the Civil Code.

In view of this difficulty, and until adequate research is done to
increase the depth of the Ministry's knowledge of tenures throughout the
country, the application of this registration proclamation might have to be
limited to parts of the Empire where rights in land are similar in structure
and purpose to rights in land under the provisions of the Civil Code.

Several historical factors have contributed to make "ownership" of land
in the communal areas a very complex concept. In this regard the concept
of "ownership" as it is understood in the Western legal tradition is devoid
of meaning. Because of these historical factors several restrictions surround
the "ownership" of land so much so that land is inalienable by gift, sale or
in any other way. The difficult task of registration in this area is the
ascertainment and the translation of these into more easily ascertainable
modern legal terms. As one may observe, Ethiopia's experience in this field is,
for all practical purposes, negligible. Some of these problems that are raised
are for which international experience will be sought and solicited.