

Natural Resources Conservation and Development

Level-II

Learning Guide-56

**Unit of Competence: Promote Implementation of
Property right, Land Laws and Regulations**

**Module Title: Promoting Implementation of
Property right, Land Laws and Regulations**

LG Code: AGR NRC2 M13 LO-1 LG-56

TTLM Code: AGR NRC2 M13 TTLM 0919v1

**LO1: Develop awareness about property right,
land laws and regulations**

This learning guide is developed to provide you the necessary information regarding the following content coverage and topics:

- Accessing and utilizing relevant information sources on property right, land laws and regulations.
- Creating community awareness on property right, land laws and regulations with consideration of culturally diverse community.
- Applied the existing land laws, legislation and property rights based on the regulations and existing situation
- Identifying types of ownership and use rights

This guide will also assist you to attain the learning outcome stated in the cover page. Specifically, upon completion of this Learning Guide, you will be able to:

- Access and utilize relevant information sources on property right, land laws and regulations.
- Create community awareness on property right, land laws and regulations with consideration of culturally diverse community.
- Apply the existing land laws, legislation and property rights based on the regulations and existing situation
- Identify types of ownership and use rights

Learning Instructions:

1. Read the specific objectives of this Learning Guide.
2. Follow the instructions described below 3 to 6.
3. Read the information written in the information “Sheet 1, Sheet 2, Sheet 3 and Sheet 4”.
4. Accomplish the “Self-check 1, Self-check t 2, Self-check 3 and Self-check 4” **in page -6, 9, 12 and 14** respectively.
5. If you earned a satisfactory evaluation from the “Self-check” proceed to “Operation Sheet 1, Operation Sheet 2 and Operation Sheet 3 ” **in page -15.**
6. Do the “LAP test” **in page – 16** (if you are ready).

1.1. Accessing and utilizing information source

Types and sources of information for property right may include government proclamations and regulations, organizational guidelines, internet, related books and materials, technical manuals, sharing best practice, workplace guidelines, and recorded documents/logo/history.

1.1.1. Property rights

What is “property”?

The term “property” is often identified with a tangible thing that people have (e.g. a piece of land, a house, a watering can, a shovel). In legal terms, however, property is not an object; it is a relationship between a person and things. “Property” is also the relationship between different people with respect to things; it refers to the interest or the right to exclude or to include others in the use or benefits of certain things. It is any physical or virtual entity that is owned by an individual or jointly by a group of individuals. An owner of property has a right to consume, sell, rent, mortgage, transfer and exchanges his or her property.

Property rights: - refer to rules that specify who may do what with a particular place or thing, for how long and under what conditions (e.g. who may sell, rent or destroy an object).

Various interests or rights in land and other assets can be pictured as consisting of a bundle of sticks, each of which represents a different right (or interest) associated with land or a thing. For example, a bundle of rights existing on a piece of land can be disaggregated into:

- The right to derive benefit from the land (e.g. through cultivation or grazing, which is a use right);
- The right to decide how to use the land and to decide who shall be permitted to use it and under what conditions (management right);

- The right to derive income from the use of the land (income right);
- The right to transform it (capital right);
- The right to convey the land to others (e.g. through intra-community reallocations) or to heirs (i.e. by inheritance), to sell it or to give it away (transfer right); and
- The right to exclude others from using the land or otherwise interfering with it.

The term “property” is often identified with a tangible thing that people have (e.g. a piece of land, a house, a watering can, a shovel). In legal terms, however, property is not an object; it is a relationship between a person and things. “Property” is also the relationship between different people with respect to things; it refers to the interest or the right to exclude or to include others in the use or benefits of certain things. It is any physical or virtual entity that is owned by an individual or jointly by a group of individuals. An owner of property has a right to consume, sell, rent, mortgage, transfer and exchanges his or her property.

In other words, “property rights” refers to the interests or rights which a person can claim and exercise over certain things (i.e. “proper” to a person or group of people). It can be the interest or the right to use a thing, to dispose of it in different ways, to sell it or to give it away.

People can acquire land and other assets in many ways. These may include transfers from the state (e.g. land reform programs, resettlement and redistribution schemes and anti-poverty programs), occupation, purchases, gifts or inheritance. In its most complete legal form – ownership – the property right over land or a thing grants its holder control of all the sticks in the bundle. In less complete forms – leasehold, rent, mortgage, use right – some sticks in the bundle are controlled by one right holder (e.g. the right to use, the right to derive benefit), while others are controlled or held by different parties (e.g. a landlord who owns the land, the state as the ultimate owner of all land or other individuals or a group of individuals such as a lineage, a Chief or a company). In practice, different kinds of rights often exist over the same asset at the same time. Because many people may have different kinds of interests over the same asset at the same time, disputes are likely to occur, especially when resources are scarce. People may quarrel about who can take shovels, who can collect plants in the forest, who can walk across the land and for what reason, who should be allowed to cultivate a piece of

the land or who can take the fruits from a particular tree or groups of trees. When property rights are clear, people can agree on various uses of assets and things, and disputes and conflicts can be avoided or more easily resolved.

1.1.2. Land laws and regulations

Why are norms and rules necessary?

The norms and rules in any society serve to govern human behavior and mediate social life and disputes. Without norms and rules, it would be impossible to achieve the level of cooperation necessary for everyday life. Most rules and norms have authority and legitimacy because they reflect social norms and values that are commonly accepted by most people in the society. Some, however, may be imposed from outside the social group or country, and may then be perceived as either legitimate or illegitimate by different groups of people. If people perceive the norms and rules as legitimate, there is less probability of conflict than if they perceive them to be illegitimate. What are the two main ways to establish rules? Rules regulating property or property rights can be established in two main ways: customarily and statutorily. It is also sometimes said that property rights are regulated through “customary regimes” or “statutory or state regimes”. When referring specifically to rules regulating access to, use and control of land, the terms “customary tenure” and “formal tenure” are also used. How are these rules established, and what is the difference between customary and statutory rules? In general terms, statutory systems of property rights are usually based on written laws and regulations adopted by the state, acts of government agencies and judicial decisions. A great variety of laws and policies pertaining to land and property rights exist in each country. In developing countries with a colonial history, many of the systems include concepts and rules rooted in the colonial country; therefore, the statutory systems may not necessarily be based on the norms and values of most of the people in the society. Of particular interest are: land laws and regulations; rural codes; inheritance laws; family codes; marriage laws; land administration laws and civil codes. The laws and rules are managed and administered by government officials; land and property rights are allocated and confirmed through the issuance of titles or other forms of registration of ownership. Put simply, the title or certificate of registration serves to prove the existence of a property right over a piece of land. In many cases, title to land

is also required for membership to cooperatives and other rural organizations, which can enable a person to access credit, training and advice. Customary systems are largely unwritten, derive from the norms and values of the society or its subcomponents (e.g. specific ethnic or cultural groups) and are duly regulated by an authority that is different from the state (e.g. a community or clan leadership). In most African countries, access to land for most people is largely determined by customary laws because state land administrations are often weak and not able to impose the statutory system over existing local practices which are widely regarded as more legitimate. Customary systems also govern personal status, communal resources and local organizations. Customary systems may appear to be traditional and lacking in modern techniques and approaches, but in most countries, they include well-established and effective internal institutions and a system of administration. Unlike statutory systems, they tend to be flexible and continually evolve under the influence of various factors (e.g. cultural interactions, political changes and processes). Customary rules are managed by a village chief, traditional ruler or council of elders; the system is flexible, negotiable and location-specific.

What is the relationship between customary and statutory law? Formally, the relationship between statutory and customary law is determined by the status of customary law within the legal system of the state. This varies across countries, ranging from official recognition to abrogation. In practice in many countries, land and property rights are regulated by both state (statutory) law and customary (traditional) systems. This phenomenon is called "legal pluralism". In some countries, different traditional systems have been legally recognized as legitimate ways of acquiring and managing land and resource rights.

Self-Check - 1	Written Test
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Directions: Answer all the questions listed below. Use the Answer sheet provided in the next page:

1. Define property rights.(3pts)
2. Identify information source for property rights and land laws.(3pts)
3. Discuss about land laws and regulations.(4pts)

Note: Satisfactory rating - 5 and above, points

Unsatisfactory - below 5 points

You can ask you teacher for the copy of the correct answers.

Answer Sheet

Score = _____
Rating: _____

Name: _____

Date: _____

Short Answer Questions

Information Sheet-2	Creating community awareness
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2.1 importance of awareness creation

Awareness-building activities are required to ensure that communities are mobilized as participants in the process formulating new property rights and fair distribution of property among individuals and groups. Information disclosure and community awareness are essential for maintaining public or community support and redressing grievances during the implementation period. Awareness building and education activities will target all communities and relevant stakeholder groups within the project area with an emphasis on pro-poor, gender-sensitive activities.

Self-Check - 1	Written Test
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Directions: Answer all the questions listed below. Use the Answer sheet provided in the next page:

1. What is the importance of creating community awareness?(5pts)

Note: Satisfactory rating - 5 and above, points

Unsatisfactory - below 5 points

You can ask you teacher for the copy of the correct answers.

Answer Sheet

Score = _____
Rating: _____

Name: _____

Date: _____

Short Answer Questions

Information Sheet-3	Applying the existing land laws, legislation and Property rights
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3.1 The existing land laws (FDRE proclamation)

For many people, land rights and their protection are central to life. But then reserves to three classes of people specific rights to land:

- 40.4. Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession.

The implementation of this provision shall be specified by law;

- 40.5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law;
- 40.6. Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.
- Proclamation No. 89/1997, Rural Land Administration Proclamation of the Federal Democratic Republic of Ethiopia (FDRE); Proclamation No. 456/2005, FDRE Rural Land Administration and Land Use Proclamation.

Land ownership is legally vested in the Ethiopian state and public. Hence, land cannot be sold or exchanged. Peasant farmers, pastoralists and semi-pastoralists who are or who wish to be engaged in agriculture have only usufruct rights and cannot sell, exchange or mortgage the land. Land administration is the responsibility of regional governments. Recently the federal government designated the federal Ministry of Agriculture and Rural Development (MoARD) to be in charge of large-scale land deals, defined as over 5,000 ha, and smaller deals are administered by regional states. The legal framework for rural land acquisition, transfer, redistribution, removal of a holding right, administration and security is set out in the 1995 Constitution and Proclamation No. 456/2005. These documents state that every citizen from 18 years of age who wants to make a living from agriculture should be accorded free access to land. The implementation of this federal proclamation rests with the regional states³ (Federal

Democratic Republic of Ethiopia (FDRE), Proc. No. 456/2005, (Art. 17). Thus, any regional-level proclamations, regulations and directives are part of the legal framework. Below we summarize the major features of Ethiopia's land-tenure system that provide the legal framework and are relevant to rural transformation and food self-sufficiency. We focus on federal government proclamations and three major regional states, Amhara National Regional State (ANRS), Oromia National Regional State (ONRS) and Southern Nations, Nationalities and Peoples Regional State (SNNPRS) as together they represent 80.4% of the total population and 84.5% of rural population.

Acquisition of rural land

Rural land will be given free of charge and for an indefinite period to peasants, pastoralists and semi-pastoralists who are or wish to be engaged in agriculture (FDRE, Proc. No. 456/2005, Art.5 sub Art. 1. A), and to investors through lease/rent for a specified period of time. According to the proclamation, rural land can be acquired either by distribution (distribution of government land, communal land, other unoccupied land and land with no inheritor), redistribution, settlement program, donation or inheritance. Based on this, rural kebele administrations allocate land within their jurisdiction to farming households, and regional states allocate land through resettlement program. Farming households can also rent in land either in the form of fixed rent or sharecropping and acquire land as a gift or inheritance. Most of the land used by farming households is allocated by rural kebele administrations. Investors can lease farmland from woreda administrations, regional states or federal government depending on how much land they wish to acquire.

In recognition of the fragmentation of land parcels and poor technology (poor farm management with limited improved seeds, fertilizer, irrigation and pesticide application), the federal proclamation determined a minimum area of land that is granted through different forms (FDRE, Proc. No. 456/2005, Art. 11.1). The other major feature is that unlike the federal proclamation Art. 4, which states 'this proclamation shall apply to any rural land in Ethiopia', regional government proclamations restrict access to rural land by making residence in that particular region a condition for acquiring rural land free of charge. The only exception is the ANRS, which relaxes this condition to some extent, stating that a person residing in an urban centre for education, national service, or

similar duty on a temporary basis can be considered a rural resident and be eligible for rural land free of charge (ANRS, Reg. No. 51/2007, Art. 4.1 and 4.2).

Transfer of rural land-use rights

The federal government states that peasant farmers, pastoralists and semi-pastoralists can transfer their rural land-use rights through donation (FDRE, Proc. No. 456/2005, Art.5.2) or inheritance (FDRE, Proc. No. 456/2005, Art. 8.5) to members of their family and can also rent/lease part of their holdings to other farmers or investors for a specified period (FDRE, Proc. No. 456/2005, Art.8.1). The federal rural land proclamation on land transfer through donation and inheritance clearly states that being a rural resident and engaged or wishing to engage in agriculture is a condition of eligibility, while transfer through rent/lease can be for rural and urban residents who are or wish to be engaged in agriculture.

The same is true of rural land proclamations by different regional states. Rural land proclamations by ANRS state that holders of rural land may transfer their land-use rights through inheritance to family members who are or wish to be engaged in agriculture (ANRS, Proc. No. 133/2006, Art. 16.1). Succession only comes into effect on the death of the landholder (EPLAUA, 2008:14). In the SNNPRS, the proclamation says that transfer through inheritance only applies to rights holders in the family (SNNPRS, Proc. No. 110/2007, Art. 8.5). The same is true in ONRS (ONRS, Proc. No. 130/2007, Art.9.1). The proclamations in ONRS and SNNPRS make being a rural resident a condition for inheriting rural land. Rural land that is transferred through inheritance must be in compliance with the minimum size of holding (FDRE, Proc. No. 456/2005, Art.11.2).

Based on this guide, regional governments decide on the minimum size. For instance, the regulation of ANRS states that when land is granted the size should not be less than 0.2 ha if the land is rain-fed and 0.06 ha if the land is irrigated (ANRS, Regulation No. 51/2007 Art. 7). Similarly, the proclamation of ONRS, Proc. No. 130/2007 also fixes the minimum size: 0.5 ha for annual crops and 0.25 ha for perennial crops (Art. 7). The SNNPRS proclamation (Proc. No. 110/2007 Art. 11.1), provides 0.5 ha if the land is rain-fed and ≤ 0.5 ha if the land granted is cultivable through irrigation constructed by government.

Unlike the federal proclamation, the condition of being a rural resident to inherit rural land is relaxed. Persons living in urban centers and engaged in small income activities to support their rural livelihoods can be considered farmers in terms of succession (FDRE, Proc. No. 456/2005, Art. 16.2).

In ANRS, if the size of land to be transferred among different inheritors is below the minimum size, alternatives like collective use, offering for rent, exchanging with another person, or any other kind of agreement which satisfies the minimum size can be explored (ANRS, Reg. No. 51/2007, Art. 11.11). Furthermore, transfer of rural land through inheritance cannot be put into effect if the total land to be possessed by any person at the time of inheritance exceeds 7 ha in the highlands and semi-highlands, and 10 ha in the lowland areas (ANRS, Reg. No. 51/2007 Art. 5.3 and 11.12). In addition, the rural land directive, issued by the Environmental Protection, Land Administration and Use Authority of the ANRS (EPLAUA, 2008:12) in order to implement Proclamation No. 133/2006 and Regulation No. 51/2007, states that in the case of divorce, if one of the partners is engaged in non-agricultural activity and earns more than the minimum salary of a government employee, the partner cannot transfer the land to the children as source of income for them. The same is true in the SNNPRS.

The rural land proclamation (SNNPR), Proc.No.110/2007, Art.11.1 and 11.2) states that when rural land is transferred through inheritance, it must meet the conditions of minimum and maximum size.

As mentioned, rural land can be transferred through donation. In ANRS, a farming household can donate use rights to a person who resides in the same region as long as this person is a family member who is or wants to be engaged in agriculture (ANRS, Proc. No. 133/2006, Art. 17.1). This prohibits individuals in higher education from being able to transfer their use rights through donation (EPLAUA, 2008:13). In ONRS, land can also be transferred through donation to family members whose livelihood depends on it and who have no other source of income (ONRS, Proc. No. 130/2007, Art.9.5). The law makes being a rural resident and a family member of the landholder a condition of eligibility to acquire rural land through donation. The other form of land transfer is rent/lease. The federal rural land proclamation states that a rural landholder who has a holding certificate can rent/lease the land to any person (rural or urban) who is or

wishes to be engaged in agriculture for a specific period of time in a manner that shall not displace the landholder (FDRE, Proc. No. 456/2005, Art.8.1).

The rural land proclamation in ANRS allows any rural landholder to transfer land through rent/lease to any person (ANRS, Proc. No. 133/2006, Art. 18.1) for a maximum of 25 years with the possibility of renewal (ANRS, Proc. No. 133/2006, Art. 18.6-7). There is also a possibility of a lessee re-renting the land partially or fully to a third party (ANRS, Proc. No. 133/2006, Art. 18.9). The procedure in the ONRS is different. Although any peasant farmer, whether pastoralist or semi-pastoralist, has the right to rent/lease their holding (ONRS, Proc. No. 130/2007, Art.6.1), the amount is limited to a maximum of half of the holding (Art.10.1) and the duration of the lease may not exceed three years for those who apply traditional farming and 15 years for mechanized farming (ONRS, Proc. No. 130/2007, Art. 10.1-2).

The rural land proclamation in SNNPRS (SNNPRS, Proc. No. 110/2007, Art.8.1) also allows any rural landholder who has a holding certificate to transfer the land through rent/lease to any person in a manner that it shall not displace the landholder. The remaining holding should be enough to produce enough food for the family's annual needs. The duration of the contract between farming households is up to five years, from farming household to investors up to 10 years and from farming households to investors who cultivate perennial crops up to 25 years.

Redistribution and consolidation of farmland

The federal proclamation on rural land clearly promises land redistribution¹⁵ only when the community agrees (FDRE, Proc. No. 456/2005, Art. 9.3). Land to be cultivated by irrigation is, however, subject to redistribution 'in order to use irrigable land properly and equitably' (FDRE, Proc. No. 456/2005, Art. 9.2). Regional state proclamations follow suit. Redistribution of rural land in ANRS, ONRS and SNNPRS can be carried out only when the community agrees and the size of land to be redistributed complies with the stipulations. Irrigated land is, however, automatically subject to redistribution. The federal government encourages land consolidation but this can only be achieved on the basis of voluntary exchange.

Most regional states provide holding certificates to farm households as a means of ensuring tenure security. If the landholder has another source of livelihood such as

'working as labourer, being hired by the investor, or to make business or any other better job opportunity, he can rent all of his holding' (SNNPRS, Proc. No. 110/2007, Art.8.1.c). The main objective of this is to give land to the landless.

In the case of ANRS, for instance, redistribution is possible only when at least 80% of landholders residing in the PA (kebele) agree on the need for redistribution (ANRS, Proc. No. 133/2006, Art.8.2). There is minimum and maximum size. For instance, in Oromia the maximum size is 0.5 ha and the minimum is 0.25 ha (ONRS, Proc. No. 130/2007, Art. 14.4). In the case of SNNPRS, irrigated land is redistributed only when the government supplies the irrigation (SNNPRS, Proc. No. 110/2007, Art. 9). Farm households using their own irrigation are not subject to redistribution. See FDRE, Proc. No. 456/2005, Art. 11.3; ONRS, Proc No. 130/2007, Art.8 and SNNPRS, Proc. No. 110/2007, Art. 11.4.

Conditions for losing landholding rights

Farming households can lose their land-use rights for different reasons, in particular the failure to use and protect the land (FDRE, Proc. No. 456/2005, Art. 10.1). This condition applies to regional states. Regional proclamations may stipulate further conditions. In ONRS rural land users can lose their right if they leave the land idle for two consecutive years (ONRS, Proc. No. 130/2007, Art. 6.16). In SNNPRS, users can be deprived of their rights if the land lies fallow for three consecutive years provided that they are not sick or in prison. Rural landholding rights given in accordance with the Proc. No. 133/2006 of **ANRS** can be deprived for any of the following reasons (see Art. 12.1):

1. If the landholder earns a living from non-farming activity
2. If the landholder disappears for five consecutive years without giving notification of their whereabouts or renting out the land;
3. If the landholder allows the land to lie fallow for three consecutive years for rain-fed land and one year for irrigated land; and
4. If the landholder grossly mismanages the land.

To recap, land is owned by the state and cannot be owned by private individuals. Smallholder farmers have the right to cultivate land, but they cannot sell, exchange, or mortgage it. Investors can lease land from smallholders and regional states and large-

scale investors can lease but not purchase land from the government. The transfer of land is contractual (leasing, renting and share-cropping) and time-bound.

NB: -The regional states will adapt their own regulations based on the federal proclamation.

Self-Check – 2	Written Test
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Directions: Answer all the questions listed below. Use the Answer sheet provided in the next page:

1. How Ethiopian peasants and pastoralists can acquire rural land according to FDRE proclamation? (2pts)
2. What are the conditions at which a farmer can lose land holding rights? (2pts)
3. Is it possible to transfer landholding rights to a third party? If your answer is yes, to whom and what extent? (2pts)
4. What are rights and obligations of land user? (4pts)

Note: Satisfactory rating - 5 and above, points

Unsatisfactory - below 5 points

You can ask you teacher for the copy of the correct answers.

Answer Sheet

Score = _____
Rating: _____

Name: _____

Date: _____

Short Answer Questions

4.1 Types of ownership and use rights

The types of ownership in land can be classified as:

- I. **Private:** assignment of rights to the private party.
- II. **Communal:** a right of common may exist in the community
- III. **State:** property rights are assigned to some authority in the public sector
- IV. **Open access:** specific rights are not assigned to any one and no one can be excluded.

Property Rights –any rights that a person holds in or on land may be considered as property. The properties where these rights are to be exercised can be:

Real Property = Immovable Property

Personal Property = Movable Property

Since there can be a multiple of property rights associate with land and the resources on it/under it, we often refer to a “bundle of rights”.

These include:

- **Use rights**–rights to use land for grazing, growing crops, gathering NTFPs, hunting.
- **Control rights**–rights to make decisions how the land should be used including decisions on what activities will happen, and who is to benefit;
- **Transfer rights**–rights to sell or mortgage the land/resource and convey it to others.

On the other hand the property rights may be:

Property rights may be delimited as:-

- a) **Easement:** easement or servitude is a term rights exercisable by owners of one parcel of land over the other land. The creation of an easement often requires that there should be a dominant and servitude property.
- b) **Encumbrance:** it is a right adversely affecting the land. It includes a number of burdens. Many are registrable in formal real estate registration systems.

Self-Check – 1	Written Test
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Directions: Answer all the questions listed below. Use the Answer sheet provided in the next page:

1. Differentiate easement and encumbrance. (3pts)
2. Discuss on types of ownership rights. (3pts)
3. What is the difference between communal property and open access? (4pts)

Note: Satisfactory rating - 5 and above, points

Unsatisfactory - below 5 points

You can ask you teacher for the copy of the correct answers.

Answer Sheet

Score = _____
Rating: _____

Name: _____

Date: _____

Short Answer Questions

Operation Sheet 1	The techniques of describing land laws and regulations
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1.1. The techniques for describing land laws and regulations are;

Steps 1- Review preliminary activities: check existing land laws and regulations, type of data needed, resources (finance, material and time), etc.

Step 2- List out and compare statutory laws with that of customary laws.

Step 3- Compare the local land law and regulation with the Federal land law and proclamation and implement the collection of information

Step 4- Identify the stakeholders and invite them to participate.

Step 5- Complete your work and report the result to supervisor/ concerned body

LAP Test	Practical Demonstration
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Name: _____ Date: _____

Time started: _____ Time finished: _____

Instructions: Given necessary templates, tools and materials you are required to perform the following tasks within 8-12 hours.

Task 1: Describe land laws and regulations

List of Reference Materials

1. Ethiopian Land Policy and Administration Assessment by:
ARD, Inc.159 Bank Street, Suite 300 Burlington, VT 05401 USA
2. www.ardinc.com
3. FDRE Rural Land Laws and Proclamation document
4. Rural Land Laws and Use Rights (of Amhara, Oromia, Tigray, SNNPR, Afar, Bengul regions)