

PART II -- CORRECTED TRANSLATION OF LAND PROCLAMATION

PROCLAMATION NO. 58/1994

A PROCLAMATION TO REFORM THE SYSTEM OF LAND TENURE IN ERITREA, TO DETERMINE THE MANNER OF EXPROPRIATING LAND FOR PURPOSES OF DEVELOPMENT AND NATIONAL RECONSTRUCTION, AND TO DETERMINE THE POWERS AND DUTIES OF THE LAND COMMISSION.

Preamble

Whereas the systems of land tenure and use, and the concomitant laws and traditions existing in Eritrea have been rendered obsolete and incompatible with the contemporary demands of the country;

Whereas consequent to the obsolete system of land tenure and land laws:

- the programs of reconstruction and development are getting on the verge of becoming non-functional;
- land disputes and frictions are increasing from time to time;
- our country's land is being eroded, its productivity is being diminished, forests are being destroyed, and the country's agricultural resource is generally devitalized;

Whereas the existing land tenure system in our country can not accommodate our increasing population growth, can not provide opportunities for improved and modern systems of land-use, and impedes raising the living standard of our village population;

Whereas in order for the Eritrean land tenure system to meet contemporary demands and pave way for the progress of our country's socio-economic situation, it should:

- assure agricultural and industrial development;
- promote or assure initiative and motivation among beneficiaries and producers;
- encourage private investment and initiative;
- avoid contradiction, friction, and dispute;
- pave way for the improvement of the living standard of the people of Eritrea;
- be standard and applicable throughout the nation; and

Whereas these objectives can only be attained by replacing the existing progress-impeding system of land tenure in Eritrea by a new and dynamic system;

Now, therefore, the Government of Eritrea has promulgated a Proclamation aimed at reforming the system of land tenure in Eritrea, determining land use, determining the manner of expropriating land to be utilized for development and national reconstruction, and determining the powers and responsibilities of the Land Commission.

Article 1. Short Title

This Proclamation may be cited as the "Proclamation No. 58/1994 to Reform the System of Land Tenure in Eritrea, to Determine the Manner of Expropriating Land for Purposes of National

Development, and to Determine the Powers and Duties of the Land Commission"; or it may be cited as "Land Proclamation No. 58/1994."

Section One

General

Article 2. Definitions

- 1) "Government" means the Government of the State of Eritrea.
- 2) "Appropriate government body" means administrations, ministries, authorities, commissions, offices, or other governmental bodies or institutions of the Government of Eritrea.
- 3) Land being owned by the State, "Usufruct" shall have the meaning given to immovable property by Articles 1309 – 1358 of the Transitional Civil Code.
- 4) "Land-use policy" means Government policy which categorizes and classifies, according to quality and contents, land in Eritrea, including the contents and natural resources found above and below the surface, to be utilized for various purposes.
- 5) "System of land tenure" means existing rights pertaining to land in Eritrea, such as *Tzimi*, *Desa*, *Public Domain*, *Quah Mahtze*, *Meret Worki*, and the new system of land tenure which shall enter into force pursuant to this proclamation.
- 6) "Agricultural activities or farming" means agricultural activities, including farming and pastoralism.
- 7) "Village" means a place customarily known as an organized village or a site or area classified as such for purposes of administrative efficiency. It may be an existing one or any village that may be formed henceforth.
- 8) "Expropriation of Land" means the taking of land, in accordance with this proclamation, from holders of right to land by the Government or appropriate government body for purposes of development and national reconstruction.
- 9) "Land requisite for development and reconstruction" means land held or expropriated by the Government, pursuant to this proclamation, from a usufructuary or from a lessee or from any person who has legal right over land for purposes of:
 - urban expansion and development;
 - all kinds of capital investment;
 - industrial, trade and tourism development projects;
 - agricultural development, including all land, forestry and animal conservation projects;
 - all projects of mining, quarry, salt extraction, and others to be determined by law as mining;
 - all energy and water development projects;
 - programs pertaining to social development (such as schools, clinics, etc.);
 - government land requisite for other similar development and national reconstruction programs.
- 10) "Eritrean Citizen" means a person who has proved his Eritrean nationality in accordance with the relevant Eritrean laws.

11) "Land administrative body" means a body established to manage land use and allotment in accordance with this proclamation and governmental and administrative directives issued based on this proclamation.

Section Two

A. Principles

Article 3. State ownership of land

1. In Eritrea, land is owned by the State.
2. Any right over land shall be effective upon Government recognition and approval; the right shall be recorded in a land register to be determined by law.
3. Where the Government deems it necessary, it may allow the lease of usufruct or other similar rights over land.
4. Where the Government or the appropriate government body grants such rights over land, it may provide preconditions and criteria pertaining to the use and management of the land.
5. The Government or appropriate government body may conduct joint works with the party who is granted right to land.
6. The right to land referred to under sub-article (3) of this Article may only be granted by the Land Commission or by a body delegated by it.

Article 4. Usufruct right to land

1. Every Eritrean citizen shall have a usufruct right over land.
2. Any Eritrean citizen shall have, pursuant to this proclamation and government authorization, the right to obtain land for housing or farming or both for housing and farming activities in existing villages, or villages or other places to be established henceforth.
3. Any Eritrean citizen may obtain land for housing or business purposes in urban areas in accordance with the regulation pertaining to management and distribution of urban land to be issued on the basis of this proclamation.
4. Every Eritrean citizen shall enjoy these rights equally with no discrimination on the ground of sex, belief, race and clan.

Article 5. Urban land

1. The management and distribution of urban land shall be determined by a regulation to be published in the Gazette of Eritrean Laws pursuant to this proclamation.

2. Where land is required for purposes of urban development and expansion, the manner and condition of expropriating land from villages shall be determined by regulation to be issued in the Gazette of Eritrean laws.

3. The articles on compensation as provided in section three of this proclamation shall only be applicable to usufructuaries who are granted usufruct right pursuant to this proclamation.

Article 6. Rural land

1. The Government shall classify land for housing and farming activities in the villages of Eritrea for village residents and persons whose livelihood depends on land, and shall distribute rural land in accordance with this Proclamation and rules and regulations to be issued by the Land Commission.

2. Subject to article 11(2), usufruct rights to land for farming activities in village areas of Eritrea shall be granted only to those Eritrean citizens who are permanent residents of Eritrean villages and whose livelihood depends on land, and to those Eritrean citizens who are granted Government permission to settle in villages and live by using the land.

3. Without prejudice to sub-article 2 of this Article and Article 29(4) of this Proclamation, every Eritrean citizen shall have the right to obtain *tiesa land* (land for housing) in his home village.

4. Where Eritrean citizens are unable to obtain *tiesa land* pursuant to sub-article (3) of this Article, they are entitled to apply for and obtain *tiesa land* in accordance with Article 29(4).

5. In case of a shortage in the distribution of land for housing or farming activities, the land administrative body shall, according to the relevant sections of this Proclamation and the directives of the Land Commission, arrange a list of priorities for distributing land.

6. All land left over after distribution shall be administered by the Government. Such land shall be used in accordance with directives and formalities issued by the Land Commission.

7. Any person or citizen who obtains usufructuary right over *tiesa land* outside his home village shall be deemed to have waived his right of obtaining such right in his home village. The land administrative body may distribute such land to others. However, a person who has been allotted *tiesa land* shall not be prohibited from purchasing or renting a village house.

8. Any discrimination on account of sex, belief, or origin while implementing the rights described under this Article shall be absolutely prohibited by law.

Article 7. Age limit

Any person who has attained the age of majority, a person who is above the age of eighteen or a person who is deemed as emancipated pursuant to Articles 329-334 of the Transitional Civil Code of Eritrea, shall be entitled to right to land in accordance with this Proclamation.

Article 8. Foreigners

Individuals who do not have Eritrean citizenship or entities which are not incorporated in Eritrea may only obtain usufruct, lease, or other legally authorized right to land by special permission of the President of the State of Eritrea.

B. Land Distribution

Article 9. Classification

1. The Land Administrative Body shall classify land to be distributed pursuant to this Proclamation into arable and non-arable land.
2. The Land Administrative Body shall classify and prepare for distribution arable land by its quality.
3. The Land Administrative Body shall adequately classify the non-arable land for housing and buildings and areas required for various social and development activities, such as cemetery, mosque, church, school, village assembly hall, road, etc. , forestry, pasture, and sites required by the Government for governmental works.

Article 10. Land Administrative Body

1. The Land Administrative Body shall be headed by a representative of the Land Commission, and shall be constituted of members from the village assembly and various governmental bodies of the locality.
2. The Land Administrative Body, being a subordinate executive body with respect to land distribution, shall carry out its functions in accordance with orders and directives of the Land Commission.
3. The Land Administrative Body in order to perform its works efficiently and rightly, it shall carry out its responsibilities in an open and transparent manner in accordance with work procedures issued by the Land Commission.
4. Any member of the Land Administrative Body or the Land Commission who distributes or encourages the distribution of land with the intent to procure private or group benefit contrary to the provisions and spirit of this Proclamation, and regulations, rules, and directives thereof shall be punishable with the gravest relevant provision of the Penal Code and shall also be liable for the consequences of his acts.
5. Where any member of the Land Administrative Body or the Land Commission employs the powers and responsibilities vested in him pursuant to this Proclamation for private, sectional or other similar illegal benefit, he shall be punishable with the gravest relevant provision of the Penal Code of Eritrea.

Article 11. Equal Allotment of Land for Farming

1. Taking into account the fact that the area of land available for distribution may vary from place to place, the land to be distributed for farming activities in any place shall as much as possible be distributed equally to those who are eligible by virtue of this Proclamation and who make a living by farming.

2. The equal allotment shall not be applicable to those who are granted land by special authorization of the Government or appropriate government body, in such forms as lease, concession, or other forms of governmental contract or permit, for purposes of commercial agriculture, industry, tourism or other kinds of capital investment.

3. While implementing equal distribution of land, there shall be no discrimination on account of race, sex or religion among those who are legally entitled to right to land.

4. While distributing land for farming, taking into account the differences between fertile and poor land, the Land Administrative Body shall be responsible to implement such distribution in a balanced manner.

5. Subject to sub-article (4) of this Article, usufructuaries who intend to farm collectively or who intend to utilize their farm equipment collectively, upon prior notice to the Land administrative Body, may be allotted land in the same area.

Article 12. Allotted land

1. Land allotted pursuant to this Proclamation shall be registered and granted in the name of the recipient usufructuary.

2. Subject to the provisions of this Article, the usufructuary shall use the land for his lifetime.

3. Land distributed to spouses with minor children shall, in the event of the death of either spouse, be retained by the surviving parent and may be utilized in the interests of the child or children. The Land Administrative Body shall have the right to take the necessary measures to ensure the implementation of this sub-article.

4. Where both spouses are deceased and survived by two or more children, the usufruct right over land held by the deceased parents shall be transferred to the children. In case where the deceased parents are survived by one child only, the usufruct right of only one of the deceased parents shall transfer to the child.

While making such a decision, the Land Administrative Body shall have the responsibility to give priority to the children's interest. A guardian shall be appointed in accordance with the relevant provisions of the Civil Code of Eritrea to administer the land in the name and interest of the children.

Article 13. Conditions for restoration of allotted land to the Government

1. Where a usufructuary who has been allotted land for farming pursuant to this Proclamation fails, without good cause, for more than two years, the land shall be restored to the Government.

2. Where a usufructuary leaves his village and settles in another place, and ceases to use the land allotted to him, the land shall be restored to the Government two years after the usufructuary leaves the land and ceases to use the land.

3. Where a usufructuary who resides in his village ceases to use the land for two years because of sufficient means of livelihood from other source, the land allotted to him shall be restored to the Government.

4. The provisions of sub-articles 1-3 of this Article shall apply to spouses who leave their villages to reside anywhere else and cease utilizing their land, as well as to spouses who cease utilizing their land because of other sufficient source of livelihood for them and their children.

5. Subject to the provisions of Article 24 of this Proclamation, where a usufructuary dies and is not survived by a minor child or where pursuant to Article 24(3) of this Proclamation there are no children to claim the right of pre-emption, the land shall be restored to the Government.

6. Subject to the provisions of Article 5 of this Proclamation, where land held by a usufructuary is required, in accordance with section three of this Proclamation, for programmes of national reconstruction or development, the land shall be restored to the Government.

Article 14. Prioritization in distribution of land

1. In distributing rural land, permanent village residents shall have priority, in accordance with this Proclamation, to obtain *tiesa land* or land for housing, or land for agricultural activities.

2. In accordance with Article 6(3), all citizens who apply *tiesa land* in their home village, be them permanent residents of the particular village or others who live outside the village, shall have equal right of priority to obtain *tiesa land*.

3. Where there is shortage of land for housing or farming, the Land Administrative Body shall, in accordance with the directives and regulations to issue pursuant to Article 6(5) of this Proclamation, refer the applicant to an alternative solution.

4. An Eritrean citizen who desires to obtain usufruct right over *tiesa land* and/or land for farming activities may apply to the Land Administrative Body in his intended place of residence. The Land Administrative Body may allot land to such an applicant from land held by the Government.

Article 15. Married persons

1. Spouses who are eligible to obtain usufruct right over farm land, pursuant to this Proclamation, shall be granted individual rights from land allocated for farming activities. Subject to the provisions of Article 25(1), spouses shall obtain land for farming in either their place of permanent residence or the place they choose to reside permanently.

2. A wife who resides in the village of her husband shall be entitled, in accordance with Article 6 of this Proclamation, to obtain usufruct right over *tiesa land* in her home village.

3. A man who resides in the village of his wife shall likewise obtain usufruct right over *tiesa land* in his home village. Therefore, each spouse shall be allotted *tiesa land*, to be registered in their individual name, in their respective village.

4. In addition to their entitlement for *tiesa land*, by virtue of this Proclamation, spouses shall have the right to obtain usufruct right over land for farming in or in the vicinity of the place they choose for permanent residency.

5. Where spouses build house on *tiesa land* obtained prior to their marriage, it shall be registered as personal property.

Article 16. Divorced spouses

1. Subject to divorce provisions of the Civil Code of Eritrea, where spouses who are residents of a village are divorced, each spouse shall retain his/her individual usufruct right over land allotted in accordance with this Proclamation.
2. Subject to divorce provisions of the Civil Code of Eritrea, where spouses who are residents of a village are divorced, each may settle in the *tiesa land* granted to them in accordance with Articles 6 and 16 of this Proclamation.
3. A divorced wife who returns to her *tiesa land* and is unable, for good cause, to use the farm land allotted to her in her former husband's village, may obtain land for farming around her *tiesa land* by applying to the Land Administrative Body. The farm land she obtained priorly shall be restored to the Government.
4. A divorced husband who returns to his home village may likewise obtain a replacement usufruct right to land for farming around his *tiesa land*.

Article 17. Land registry and certification

1. The Land Administrative Body shall keep a proper land registry and shall submit a copy of the registry to the Land Commission.
2. The registry shall contain clear information on the size and boundary of all arable and non-arable land, distributed and non distributed land, residential areas, buildings and sites required for conducting various social and development works (such as schools, hospitals, mosque, church, village assembly halls, offices, etc.) forest and pasture areas, sources of water, roads, and the name of every person to whom land has been distributed, the size and boundaries thereof, the date of distribution and change of distribution thereof, and other important information.
3. The land Administrative Body shall issue a certificate which discloses the allotment of land, date of allotment, size and boundaries of the allotted land to every person who has been allotted land.
4. Registration procedure and certificate issuance and the fee to be paid by the usufructuary for registration and certificate shall be determined by the Land Commission.

C. Rights and duties of persons to whom land has been distributed

Article 18. Rights of usufructuary

- 1) A person to whom a usufruct right over farming land has been granted, in accordance with this Proclamation, by the Land Administrative Body shall, by entering his name in the land register, have a private usufruct right over such land.
- 2) Subject to the provisions of Article 13(1), (2) and (3) of this proclamation, this proclamation grants to the usufructuary a lifetime right to use the land in accordance with this proclamation, to make improvements on the land and enjoy the fruits of the land.

3) A citizen who has been granted a usufruct right over a farming land in accordance with this proclamation may convert his usufruct right over the land allotted to him to a lease right. The duration and terms of the lease shall be determined by a contract to be concluded by the usufructuary and the Land Administrative Body in accordance with the relevant provisions of the Eritrean Civil Code. The contract shall be recorded in the land registry.

Article 19. The right to fence

The usufructuary shall have the right to fence the land allotted to him.

Article 20. Right to delimit boundary

1. The usufructuary shall have the right to delimit the boundary of his land.
2. Boundary limits between usufructuaries shall be confirmed by the land registry to be kept by the Land Administrative Body.

Article 21. Branches and roots springing from adjoining land

The usufructuary shall have the right to cut branches and roots rising on his land from adjoining land.

Article 22. Protection of allotted land

1. A usufructuary may prohibit any person from entering on the land allotted to him.
2. Where persons can not escape from danger except by entering on the usufructuary's land, the usufructuary thereof shall have the duty to permit access. The usufructuary may claim compensation for any damage thereby caused.
3. The usufructuary shall have the duty to permit access where it is necessary for purposes of fencing adjoining land or repairing a building on adjoining land. The usufructuary may claim compensation for any damage thereby caused.
4. Where things or animals belonging to someone else have entered on the usufructuary's land fortuitously or by the operation of natural force, the usufructuary shall allow the owner of the thing or animal to enter on his land for purpose of regaining his thing or animal. The usufructuary may claim compensation for any damage thereby caused.
5. The usufructuary shall allow the installation of facilities such as water pipes, gas or electric lines on his land for the purpose of communal use. The usufructuary may claim compensation from the relevant authority for any damage thereby caused.

Article 23. Obligations of a usufructuary

1. Any person to whom a usufruct right over land is granted by virtue of this proclamation shall be responsible for using the land properly and with due care, and shall comply with all obligations that are consistent with his usufruct right.

2. A usufructuary shall not farm beyond the land allotted to him or prohibit others from enjoying rights granted by the Government, or trespass on State-owned pastures, or obstruct the works and decisions of the Land Administrative Body.

Article 24. Transfer of usufruct right

1. Subject to Articles 26 and 27, land allotted to a usufructuary for farming shall not be sold or donated.

2. Where a deceased usufructuary leaves behind uncollected produce or accessories, such produce or accessories shall be transferred to his heirs when the land is restored to the Government in accordance with Article 13(5) of this proclamation.

3. Without prejudice to sub-article 2 of this Article, the Land Administrative Body shall give priority to surviving children who desire to obtain usufruct right over the land held by the deceased usufructuary when re-distributing the land.

Partition of such land among surviving children is prohibited.

The children of a deceased usufructuary may agree to use the land of their deceased parent in the name of one of them or leave the land to one of them. A child of a deceased usufructuary who has obtained a usufruct right over a farm land shall not be permitted to retain his deceased parent's land. Where he chooses to retain the land of his deceased parent, the land allotted to him on his own right shall be surrendered to the Government.

In applying such priority, the land administration Body shall give special consideration to the deceased's children of minor age. In instance where the deceased had made substantial improvement by utilizing capital and effort, the Land Administrative Body shall give special weight to the priority.

4. Where land of deceased usufructuary who made substantial improvement over his land by utilizing capital and effort is not transferred to his child in accordance with sub-article 3 of this Article, the value of the improvement shall be paid to the heirs of the deceased. The compensation shall be paid by the new usufructuary who is not the child of the deceased usufructuary. Where the new usufructuary is incapable of paying the value of the improvement made, the value of the improvement shall be paid by the Government. The Government shall have the right to recover the amount of compensation paid from the new usufructuary's income by way of long term instalment scheme.

Article 25. Usufruct right over land permitted in one place only

1. No person shall be allotted land for farming and granted usufruct right in more than one place. Likewise, a person shall be allotted *tiesa* land only in one village or place. The provisions of this sub-article shall not apply to citizens who can not survive and graze their cattle without utilizing land located in distant places.

2. The provisions of sub-article 1 of this Article shall not apply to those who may be granted land in different places by special authorization of the Government or appropriate Government body by, for example, contract, concession, or other forms of government contract or permit for modern agriculture, industry, tourism, or other capital investment.

Article 26. Share-cropping

1. A usufructuary may, in exchange for a fixed quantity of agricultural products, grant the right to use part or all of his land to any person who would contribute labour or oxen, or both or other farming equipment.
2. The quantity of agricultural products to be exchanged shall be fixed by contract to be concluded by the parties.
3. The Land Administrative Body shall ensure that such contracts are not made in contradiction to the spirit of this proclamation and the custom of the locality, and are not to the detriment of any one of the contracting parties.

Article 27. Right of usufructuary to lease his right

1. A usufructuary may lease his usufruct right over land in whole or in part.
2. Lease duration and rent shall be determined by an agreement to be made between the parties.
3. The termination of such lease due to various reasons shall be determined in accordance with the relevant provisions of the Civil Code.
4. Such lease agreement shall be recorded in a registry kept by the Land Administrative Body. The Land Administrative Body shall make necessary monitoring and control, and take measure to ensure that lease agreements are not concluded in contradiction with the spirit and objectives of this proclamation.

Article 28. Ensuring the rights of a usufructuary

Where the rights of a usufructuary as conferred under Articles 18-27 of this proclamation are violated, the usufructuary may bring a legal action to enforce his right in the competent court.

D. Housing on rural land

Article 29. Allotment of land for housing

1. Where land is allocated for building houses pursuant to Article 9(3), the Land Administrative Body shall to the extent possible allocate such land in a contiguous area, and shall ensure that the size of the allocated area take into account future expansion of the village.
2. Land for housing shall be allotted in a manner prescribed and reviewed periodically by the Land Administrative Body to all permanent and temporary village residents who are eligible for obtaining right to land by virtue of this proclamation.
3. The size of each house and its compound shall be determined by the Land Administrative Body.
4. Where a usufructuary who has been allotted land for housing fails without good cause to build the house within a period of three years, the land shall be surrendered to the Land Administrative

Body. A usufructuary whose land has been surrendered in such a manner shall not be prohibited from applying *tiesa* land at another time.

Article 30. Rights of a house owner

A person who has been allotted land for housing pursuant to this proclamation shall be entitled to build house thereon, to rear domestic animals, and like any other possessor to protect his possession from any intruder.

Article 31. Right to sell a house

1. A person who is allotted land for housing may sell the house he built thereon. A usufructuary who sells his house in such manner shall be prohibited from obtaining another *tiesa* land. However, he shall be entitled to buy another house in a village.
2. The buyer shall acquire usufruct right only over the land where the house is built on.
3. Where a buyer has another land for housing allotted to him, the purchased house shall be recognized as extra or additional house and recorded as such in the register.

Article 32. Lease of house

A person who has built a house on rural land in accordance with this proclamation may lease it in whole or in part for an unlimited period.

Article 33. Mortgage of house

Any person who has built a house may mortgage it in whole or in part to secure a loan in cash or property.

Article 34. Succession

1. The owner of a house may transfer his house to his heirs in accordance with the provisions of the Transitional Civil Code of Eritrea pertaining to succession.
2. Where the heirs have other land for housing priory allotted to them, the house bequeathed to them shall be recognized as extra or additional house and recorded as such in a register.

Article 35. Protection of rights of neighbours

Any person who has built a house on a rural land shall not disturb his neighbours by causing excessive smoke, soot, unbearable smells, noise or nuisance. In the event of such occurrences, the neighbours may bring a legal action against such faulty neighbour and require him to refrain from causing such occurrences.

Article 36. Neighbouring houses with a common wall

1. Where two neighbours or relatives build houses with common wall, neither shall, without the consent of the other, demolish, raise or lower the common wall, annex another structure to it, or make an opening in it.
2. Where a common wall collapses or is destroyed, even if one of the owners refuses to reconstruct the wall, the other owner may rebuild it.
3. Any wall rebuilt in accordance with the provisions of sub-article 2 above shall be the sole property of the person who rebuilt it, notwithstanding that it is built partly on land allotted to the neighbour who refused to rebuild the wall.
4. The neighbour who refused to rebuild the common wall may at any time cause such wall to become a common wall by paying to the other half of the expenses incurred in rebuilding the wall.

Article 37. Registration and certification of house

The provisions of Article 17 of this proclamation pertaining to registration and certification shall also apply to housing land or houses.

Article 38. Urban houses

Subject to the provisions of Article 5 of this proclamation, Articles 30-36 of this proclamation shall also apply to urban houses.

E. Previous land laws

Article 39. Repeal of previous land tenure systems

1. Except for laws, customs and systems explicitly preserved by this proclamation, all land tenure systems previously in application, such as *Diesa*, *Tslmi*, *Public domain land*, *Quah Mahtze*, *Meret worki* and others together with their laws and customary procedures are hereby repealed and replaced by this proclamation.
2. All improvements or systems pertaining to land distribution or administration introduced on the prior system of land tenure in Eritrea by colonial regimes or forces of the Eritrean revolution shall be repealed by this proclamation.

Article 40. Boundaries between villages

Since the Government is authorized by virtue of this proclamation to introduce new system of land distribution and to permit the establishment of new villages, previously existing boundaries shall be invalidated.

Article 41. Previous land disputes

All land disputes among individuals or villages shall be cancelled by this proclamation.

Article 42. Repealed laws

1. The provisions of Articles 182-214 of the Transitional Civil Code of Eritrea pertaining to rural land are replaced by this proclamation.
2. In Article 343 of the Transitional Civil Code of Eritrea, the clause that states, "in villages where a People's assembly has not yet been constituted..... the laws of the village or area which were in force before coming of the E.P.L.F. shall be applicable" is hereby deleted.
3. The provision of any existing law pertaining to land which is not in conformity with the contents and spirit of this proclamation shall be repealed by this proclamation.

Article 43. Transitory provision

1. The Government shall gradually implement the system of land tenure provided in Section Two of this proclamation by formulating implementation procedures and standards.
2. The land laws and land tenure system that existed at the time of Eritrean independence shall remain in force until such time that the proclamation is implemented in areas of the country in which this proclamation has not yet been implemented.

Article 44. Complaints and petitions

1. Subject to the provisions of Article 28 of this proclamation, all complaints or petitions arising out of the implementation of Section Two of this proclamation shall be resolved administratively.
2. Such complaints or petitions shall be made at the Land Administrative Body and may be appealed to the Land Commission.
3. The decision of the Land Commission shall be final.

Article 45. Effects of non-compliance with obligations

1. Where a usufructuary mishandles or fails to give due care to the land allotted to him or uses it contrary to the purpose of the land allotment and for an unacceptable purpose, the Land Administrative Body may, in accordance with the gravity of the fault, take measures ranging from warning to fine.
2. Where non-compliance occurs repeatedly or is criminal, the Land Administrative Body may recommend that the Land commission revoke the usufructuary's right to land. Notwithstanding the decisions of the Land Administrative Body and the Land Commission, where the usufructuary commits a crime he may be accused at a court with appropriate jurisdiction.
3. Where a usufructuary violates the provisions of Article 23(2) of this proclamation, particularly when such violation is committed in an organized manner, the Land Administrative Body shall immediately revoke the usufructuary's right to land. Where the usufructuary's acts result in fighting, brawl or other forms of violence, according to the gravity of the consequences thereof, he shall be criminally sued under the gravest relevant provision of the Transitional Penal Code of Eritrea in the appropriate court.

F. Miscellaneous provisions

Article 46. Land use policy

1. The Government shall have supreme authority to formulate land use policy or to determine general or special policy that draws the allocation of land for different purposes.
2. The power provided in sub-article 1 above being applicable on all rights and powers over land, shall include the authority to determine the classification of land and its general and special usage, as well as to limit the size and area of land to be distributed to holders of all types of right to land.

Article 47. Use of water

1. As regards the use of water, Articles 1228-1256 of the Transitional Civil Code of Eritrea shall be applicable.
2. The appropriate government body may issue regulations pertaining to water use in conformity with the contents and spirit of this proclamation.

Article 48. Use of pasture and wood

1. All villages in Eritrea shall, according to local custom, use their own pasture and wood.
2. The Government or appropriate administration body may issue general and special regulations and directives pertaining to the use of pasture and wood.

Article 49. Roads

All existing village laws, procedures, and customs pertaining to roads shall remain effective.

Section Three

Land Expropriated for National Reconstruction and Development Purposes

Article 50. Expropriation from usufructuaries

1. The Government or appropriate government body shall have the right and power to expropriate land, where people have been settling on or land that has been used by others, for purposes of various developments and capital investment projects aimed at national reconstruction or other similar purposes. This right and power shall be enforced only upon the approval of the Office of the President or a body delegated by the President.

2. The Government or appropriate government body, prior to expropriating such land, shall undertake the necessary study to ascertain that the land is fit for the purpose it is to be expropriated.

3. Where it is decided that such land is to be expropriated, the holder of the right shall be obligated to leave the land. The decision of the Government shall be final and not appealable in any court. The decision shall be directly enforced by appropriate administration body.

4. A government body that expropriates land in accordance with this proclamation shall pay compensation as allowed by this proclamation to the holder of a right who leaves the land.

5. Notwithstanding the provisions of this article, land allotted in a manner prohibited by Article 10(4) shall be restored to the Government without any compensation.

Article 51. Compensation

1. Where the Government or appropriate government body expropriates land from holder(s) of right to land, the compensation, in cash or substitute land, shall be commensurate to the loss accruing to the holder of the right.

2. The extent or type of compensation shall be decided by agreement between the two parties.

3. Where the two parties agree on the extent and type of compensation, and the compensation is paid, the settlement shall be recorded in the register maintained by the Land Administrative Body. A copy of the record shall be submitted to the Land Commission.

4. Where the parties disagree on the compensation, a petition or suit may be brought to the attention of the High Court in accordance with the relevant provisions of the Transitional Civil Code of Eritrea.

Article 52. Mode of compensation payment

1. Compensation shall be paid to a holder of right whose land is expropriated in accordance with the above provisions before he leaves the land.

2. Where any government body that expropriated land take measures to hold the land or initiate work on the land or disclose indications to initiate work prior to payment of compensation, the holder of right may petition the High Court for an injunction against such measures.

Article 53. Illegally acquired state land

1. All land which was illegally allotted due to war or the past colonial regime, or held by others in any illegal manner shall, in accordance with the directive of the Land Commission, be directly surrendered to the Government without any compensation.

2. The previous holder of such right may petition the High Court for compensation for any installation or improvement thereon.

Article 54. Jurisdiction

Where land is taken away for national reconstruction or development projects in accordance with this proclamation, disputes involving compensation issues shall be entertained by the High Court of Eritrea.

Section Four Powers and Responsibilities of the Land Commission

Article 55. Objectives of the Land Commission

Whereas the land tenure system proclaimed by this Proclamation shall:

- ensure agricultural and industrial development;
- ensure the initiative and motivation of usufructuaries and producers;
- encourage private investment and initiative;
- avoid contradiction, dispute, and friction;
- pave the way towards improving the living standard of the Eritrean people;
- be standardized and applicable throughout the nation;

The objectives of the Land Commission shall be :

a. to endeavour to implement the new land tenure system in a just and equitable manner, and to coordinate Government efforts aimed at such implementation;

b. to implement this efficiently:

- formulate efficient and effective method of land distribution;
 - ensure the just and lawful expropriation of land required for programmes of reconstruction and development by the Government;
 - formulate land use and classification policies and follow up the implementation of same;
 - introduce and develop efficient, simple and modern system of rural and urban land registration;
- and

c. in general, considering that the new land tenure system shall play a decisive role in the development of our nation and its future, ensure the cooperation and coordination between the people and the Government in working for the success and implementation of the new land tenure system.

Article 56. Organization of the Land Commission

1. The Land Commission shall be directly accountable to the Office of the President and shall have the structure and management which will enable it to implement this Proclamation.

2. The Land Commission shall have a commissioner and a deputy commissioner to be appointed by the President of the State of Eritrea.

Article 57. Powers and responsibilities of the Land Commission

1. The Land Commission, being accountable to the Office of the President of the State of Eritrea, shall have supreme authority on matters pertaining to land.

2. In implementing the new land tenure system, the Land Commission shall:

- a. formulate devices for the implementation of the Proclamation, and issue general and special directives;
- b. coordinate, direct, and execute in the implementation of the law in close collaboration with relevant administrative and other government bodies;
- c. conduct a continuous study and follow up with respect to problems which may arise in the process of implementing this new land tenure system, and issue recommendations and directives to resolve them;

3. The Land Commission shall:

- a. ensure that land is expropriated from holders of right to land in a just and lawful manner;
- b. keep proper record on land that is held by holders of right to land or land restored to the Government from holders of right, and conduct studies pertaining to land use; and receive requests and give its opinions and directives;
- c. gather studies conducted on land use and classification from various government bodies; and conduct its own studies and endeavour to develop a complete picture and *modus operandi*;
- d. submit its opinions, after making scrutiny and study, on requests, programmes, and cases pertaining to land that are required, by a directive of the Office of the President, to be scrutinized and studied.
- e. transmit directives and decisions pertaining to land to relevant parties, and follow up their execution.

4. The Land Commission shall conduct the necessary study and endeavour to introduce efficient, simple, and modern registration system of rural land, and urban land and houses; it shall procure that land registry be maintained at various levels of rural and urban areas and keep a central land registry.

5. The Land Commission shall introduce modern surveying method to ensure the reliability of the efficient and complete nature of the information it gathers and the detail study it conducts on utilization and classification, distribution and management, as well as registration of land.

Section Five

Supremacy and Applicability of this Proclamation

Article 58. Supremecy

1. This Proclamation shall supersede all laws, regulations, customs, and systems pertaining to land.
2. All laws, regulations, directives, and systems which are inconsistent with the content and spirit of this Proclamation shall be repealed.

Article 59. Effective date

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean Laws.

Asmara 24 August, 1994
Government of Eritrea