

Eritrea: Proclamation No. 95/1997

A Proclamation to Provide For the Registration of Land and Other Immovable Property

Whereas the Government of Eritrea has promulgated Proclamation No. 58/1994, aimed at changing the system of land tenure in Eritrea; and given that the Proclamation states that all land belongs to the State, but provides for the allocation of certain private rights over land, such as tiesa, agricultural usufruct and leasehold;

Whereas effective implementation of Proclamation No. 58/94 and expediting of the national economic development require introduction of an efficient, simple and modern system for the registration of land and other immovables;

The following is, therefore, proclaimed.

Article 1. Short Title

This Proclamation may be cited as the "Proclamation to Provide for the Registration of Land and Other Immovable Property."

Article 2. Repealed Laws

Laws, Proclamations, Provisions, regulations and directives that have been hitherto applicable to registration of land and immovable property erected over land shall be repealed and replaced by the provisions of this proclamation.

Article 3. Cadastral Office

1. Pursuant to this Proclamation, a Cadastral Office shall be established under the Ministry of Land, Water and Environment to register all land, rights over land and duties that emanate from such rights, and transfer of property through sales, donation, succession or other manner.

2. The Cadastral Office may designate Eritrea as one registration district or, as may be necessary, establish registration districts to open and consolidate registries, and may issue directives pertaining to the administration and monitoring of the registration districts.

3. The Cadastral Office shall properly register, as necessary, all tiesa land, agricultural usufruct, leasehold, as well as land being utilized by the Government and unutilized Government land, and may register timely any legal injunction, change or transfer, and cancel and correct obsolete entries or vivid errors that require correction. Any correction of wrongs that affect right shall be effected with the knowledge and consent of the interested parties.

4. The registration system, being uniform and simple, shall use the application forms and certificate proclaimed pursuant to Legal Notice No. 31/1997, and shall contain identity of right holder, description of land and immovable property erected over the land, type of right and its restrictions and supporting documents.

5. The registration system shall, according to the level and development of the area, cause to be produced and documented a map or plan that clearly shows parcel features and boundaries. Whenever land relating dispute arises and (the registration system) is requested for documentary information, it shall have the duty to submit same to the court. The court shall not have obligation to pass decision on boundary location on the basis of plan only. Where the parties in boundary dispute settle their

dispute amicably or through arbitration and the settlement is accepted by the Ministry of Land, Water and Environment, the agreement or arbitral award shall be registered.

6. The Cadastral Office, being the sole office that serves as national reference and to maintain security of right and ownership, shall have the duty to give information to persons who desire the transfer of right over immovable property erected on land whether the property has any encumbrance or is free from any encumbrance, by charging appropriate service fee.

7. A Mortgage of immovable property shall be registered, in accordance with the form prescribed by law. When mortgaged property is released the registration shall indicate cancellation.

Registration of land and other immovable property

1. Any land shall not be allocated without being lawfully registered and given an identification number. After allocation, immovable property erected over land shall be registered upon obtaining of habitation license.

2. Land allocated prior to the promulgation of this proclamation and which is being utilized by right holders together with immovable property erected over it and restrictions thereof shall be registered in accordance with directive to be issued by the Cadastral Office, based on this Proclamation.

3. Causing the registration of any subsequent change or transfer made on registered land in accordance with the formalities prescribed by law and within (prescribed) time shall be the responsibility of the transferee.

4. Where land allocated for agricultural usufruct is converted into leasehold, pursuant to 18(3) of the Land Proclamation No. 58/1994, a new lease agreement shall be entered into and registered.

5. Where immovable property erected over tiesa land is transferred, the tiesa land shall be converted into lease; and the transferee shall sign a lease contract.

6. Where land allocated for agricultural usufruct is sub-leased to others for a year or more, pursuant to Article 27 of Land Proclamation number 58/1994, the land shall be registered in the land registry in the form prescribed by law.

7. Mortgage of immovable property shall be registered in the Cadastral Office, in accordance with the form prescribed by law. When mortgaged property is released, cancellation of the registration shall be indicated.

Article 5. Transfer of Immovable Property Erected Over Land

1. All transfer of immovable property erected over land shall be registered in accordance with this Proclamation.

2. When an immovable property is transferred through sales, donation, succession or other manner, the interest attached therewith shall also be transferred together. In the event of a partial transfer of property, the part of interest attached shall be clearly distinguished and registered. In the event where land is merged, the interest shall likewise merge.

3. Any registration of transfer of an immovable property erected over land shall be effected in accordance with the application form and formalities prescribed by law.

4. Transfer of legally encumbered or mortgaged property shall not be registered.
5. Any transfer of immovable property not registered instantly may be presented for registration by the transferee within a time of two months (from the execution of the instrument). Where the period of limitation expires without good cause, a penalty of 20% shall be charged monthly over the original service fee. In addition, the transferee shall be liable in accordance with Articles 428 and 758 of the Penal Code.

Article 6. **Miscellaneous Provisions**

1. In the event of dispute over right, the rights of interest holder, once registered duly, shall override over unregistered interest or interest registered subsequently.
2. Even when not registered, lawful restrictions on rights to pass through adjoining land, install facilities such as electric lines, telephone lines, water pipes etc ... use of air, light, water etc.. shall be observed.
3. Where the law prescribes affixing of stamp duties on contracts and documents pertaining to rights over property erected on land, such contracts or documents shall not be acceptable for registration without paying the appropriate stamp duty.
4. Any person who have fulfilled duties required of him may cause the registration of lawful restriction, change or transfer through the legally authorized land allocation agent.
5. Any interested person may obtain a copy of registration, upon application and payment of the fee prescribed by the Ministry of Land, Water, and Environment.
6. Any person who is dissatisfied by the decision or measure of the Cadastral Office may submit his appeal to the Ministry of Land, Water, and Environment within 15 days, and if not satisfied by the decision of the Ministry, he may appeal to the court of appropriate jurisdiction within a time of 30 days commencing from the date of decision.
7. Upon payment of the amount prescribed by the Ministry of Land, Environment, and Water, interested persons may apply and obtain certificate, copies of documents, forms etc...
8. Without contradicting the spirit of this proclamation, the Ministry of Land, Water and Environment may issue regulations and directives which it deems necessary to implement the provisions of this proclamation.
9. This proclamation shall come into force commencing from the date of its publication on the Gazette of Eritrean Laws.

Asmara, 19 May 1997
Government of Eritrea