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### Article

*Rim Transactions of liqe Bätre: A Preview of the Transactions on Lands in  
the mäzgäb of Ḥamärä Noh*

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## Bibliographical abbreviations used in this volume

- AE* *Annales d'Éthiopie*, Paris 1955ff.
- ÄthFor* Äthiopistische Forschungen, 1–35, ed. by E. HAMMERSCHMIDT, 36–40, ed. by S. UHLIG, Stuttgart: Franz Steiner (1–34), 1977–1992; Wiesbaden: Harrassowitz (35–40), 1994–1995.
- AethFor* Aethiopistische Forschungen, 41–73, ed. by S. UHLIG, Wiesbaden: Harrassowitz, 1998–2011; 74–75, ed. by A. BAUSI and S. UHLIG, *ibid.*, 2011f.; 76ff. ed. by A. BAUSI, *ibid.*, 2012ff.
- AION* *Annali dell'Università degli studi di Napoli "L'Orientale"*, Napoli: Università di Napoli "L'Orientale" (former Istituto Universitario Orientale di Napoli), 1929ff.
- BSOAS* *Bulletin of the School of Oriental and African Studies*, London 1917ff.
- CSCO* *Corpus Scriptorum Christianorum Orientalium*, 1903ff.
- EAE* S. UHLIG (ed.), *Encyclopaedia Aethiopica*, I: A–C, Wiesbaden: Harrassowitz, 2003; II: D–Ha, Wiesbaden: Harrassowitz, 2005; III: He–N, Wiesbaden: Harrassowitz, 2007; (in cooperation with A. BAUSI), IV: O–X, Wiesbaden: Harrassowitz, 2010; A. BAUSI (ed. in cooperation with S. UHLIG), V: Y–Z, *Supplementa, Addenda et Corrigenda, Maps, Index*, Wiesbaden: Harrassowitz, 2014.
- EFAH* Deutsches Archäologisches Institut, Orient-Abteilung, Epigraphische Forschungen auf der Arabischen Halbinsel, herausgegeben im Auftrag des Instituts von NORBERT NEBES.
- EMML* Ethiopian Manuscript Microfilm Library, Addis Ababa.
- IJAHS* *International Journal of African Historical Studies*, Boston, MA – New York 1968ff.
- JAH* *The Journal of African History*, Cambridge 1960ff.
- JES* *Journal of Ethiopian Studies*, Addis Ababa 1963ff.
- JSS* *Journal of Semitic Studies*, Manchester 1956ff.
- NEASt* *Northeast African Studies*, East Lansing, MI 1979ff.
- OrChr* *Oriens Christianus*, Leipzig – Roma – Wiesbaden 1901ff.
- OrChrP* *Orientalia Christiana Periodica*, Roma 1935ff.
- PICES 15* S. UHLIG – M. BULAKH – D. NOSNITSIN – T. RAVE (eds.) 2005, *Proceedings of the XV<sup>th</sup> International Conference of Ethiopian Studies, Hamburg July 20–25, 2003* = *AethFor* 65, Wiesbaden: Harrassowitz.
- PICES 16* H. ASPEN – BIRHANU TEFERRA – SHIFERAW BEKELE – S. EGE (eds.) 2010, *Research in Ethiopian Studies: Selected papers of the 16<sup>th</sup> International Conference of Ethiopian Studies, Trondheim July 2007* = *AethFor* 72, Wiesbaden: Harrassowitz.
- PO* *Patrologia Orientalis*, 1903ff.
- RIÉ* É. BERNAND – A. J. DREWES – R. SCHNEIDER 1991, *Recueil des inscriptions de l'Éthiopie des périodes pré-axoumite et axoumite*, I: *Les documents*, II: *Les planches*, Paris: [Académie des inscriptions et belle-lettres] Diffusion de Boccard.
- RSE* *Rassegna di Studi Etiopici*, Roma 1941–1981, Roma – Napoli 1983ff.
- SAe* *Scriptores Aethiopici*.
- ZDMG* *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, Leipzig – Wiesbaden – Stuttgart 1847ff.

*Aethiopica* 17 (2014)

*Rim* Transactions of *liqe* Bätre:  
A Preview of the Transactions on Lands in the  
*mäzgab* of Ḥamärä Noḥ\*

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### Introduction

The complexity of the land tenure system in Ethiopia has attracted the interest of many scholars studying land charters and the social impact of the land tenure system. The study of land charters has focused on the making of legal documents and on scribal practices,<sup>1</sup> while works that were more oriented towards social impact have stressed the effect of land tenure systems on agrarian societies.<sup>2</sup> Yet other studies have given attention to strictly legal constructions such as *rim*, *rəst* and *g<sup>w</sup>əlt*.<sup>3</sup> These later studies are nevertheless relative to the 19<sup>th</sup> and early 20<sup>th</sup> centuries and are mainly listing definitions of the categories in this recent context. The present paper considers the scribal practices and text structures only to support the comprehension of the specific land right called *rim*. The approach tends to be conciliatory in linking legal mechanisms such as charters or land titles to their social impact.

The Oriental 508 (Or. 508) manuscript originated from the church of Ḥamärä Noḥ, established by the king Təwoflos in 1709 in an estate that belonged to a certain *däğğazmač* Basəlyos.<sup>4</sup> The church received *g<sup>w</sup>əlt* lands, ie attribution of lands for purposes of religious services and the maintenance of the clerics attached to the church. The manuscript was confiscated from the church in December 1866 when all churches were sacked by King Tewodros.<sup>5</sup> The Ḥamärä Noḥ church was burnt, along with other churches in Gondär, in January 1888 by the Mahdists who were at war with

\* I would like to thank Angela M. Müller and Anaïs Wion for their constructive comments.

<sup>1</sup> See HUNTINGFORD 1965 for the presentation of land charters from the 14<sup>th</sup> to the 19<sup>th</sup> centuries; WION 2011: 59–83 analyses the structure of charters donating land to the church.

<sup>2</sup> For an account that singles out methods that zoom in on a selected area to trace the history of land tenure in its relation to institutions and the lives of peasants, see SHIFERAW BEKELE 2001: 44ff.

<sup>3</sup> GÄBRÄ WÄLD ĒNGĒDAWÄRQ 1955; MAḤTÄMÄ ŠĪLLASE WÄLDA MÄSQÄL 1954.

<sup>4</sup> FIACCADORI 2005: 987a

<sup>5</sup> CRUMMEY et al. 2011: 925b–931°.

the Christian empire of Ethiopia.<sup>6</sup> Or. 508 has however survived in becoming a part of the British library's collection as the result of numerous manuscripts entering into dispersed British archives after the looting of Tewodros' Mäqdäla collection in 1868.<sup>7</sup>

Or. 508 tracks the administration of the initial lands donated by Tewoflos as well as other lands that the church of Ḥamärä Noḥ was granted by consecutive kings. The manuscript (Wright 1877: 29f.) contains the Four Gospels. It presents a collection of legal texts from the 18<sup>th</sup> century which may shed light on questions of land holding. About 100 transactions of sales of *rim* are found registered in the manuscript. Due to this significant number of marginalia and texts concerning *rim* within the codex, the study of the manuscript is interesting in regards to this type of right.

*Rim* is defined by Dästa Täklä Wäld (1970: 957) as a small part of a *räst* (freehold estate that can be bequeathed) that has been given to a person who has rendered services to a friend or a priest. Kane defines the term as a "land around a church deeded to it by the founder and assigned by the church to those who serve it for their upkeep (in lieu of pay). This land did not pass out of the possession of the church" (Kane 1990: 372). This is similar to d'Abbadie's (1881: 126) definition of *rim* as an ecclesiastical fief. Based on various accounts on *rim* Joseph Tubiana (2001) adds that its tenure is of a precarious nature that can imply payment of a fee or rent; this summarizes a tradition that considers *rim* as attached to the church.

Berhanou Abbebe<sup>8</sup> mainly describes *rim* occurring in two types of circumstances: *rim* on the land owned by the crown and *rim* adjoining ecclesiastic domain. In the first case, the *rim* would give usufruct rights to the peasant who has to pay a dime to the crown; the peasant is given the *rim* as compensation to his services. In the second case *rim* is a complement to land parcels given to church dignitaries, or land rented for a mediocre sum to peasants. Joanna Mantel-Niećko distinguishes between small *rim* given to the *ṭisāña*<sup>9</sup> in exchange for his services and big *rim*-s, given to dignitaries for reason of their functions or their office. She concurs with Berhanou Abbebe's (1971: 18) analysis in considering that "Land which *rim* was divided off from was private, church or crown" (Mantel-Niećko 1980: 109). Both authors give regard to the possibility of the *rim* becoming a property: Berhanou Abbebe (1971: 72) re-

<sup>6</sup> ERLICH 2007: 657b–659a.

<sup>7</sup> WRIGHT 1877: 29f.

<sup>8</sup> BERHANOU ABBEBE 1971; it is mainly in two occurrences that the author evokes *rim*, in explaining the organization of the domain of the State and the one of the Church.

<sup>9</sup> A *ṭisāña* is a person with no rights on *räst* who stays on the land of another person according to different types of contractual arrangements; see GÄBRÄ WÄLD ƐNGƏDA WÄRQ 1955: 35.

marks that the person who was granted a *rim* could exceptionally benefit from a perpetual usufruct right and Mantel-Niećko (1980: 109) writes that “*Rim* could be granted to the user to be his own property”. Habtamu Tegegne’s (2011) view on *rim* as a form of land property owned exclusively by the social elite seems to add to the significance of the study on *rim*. Particularly in the institution of guaranties to stabilize the *rim*, his conclusions can apply to the transactions in the Or. 508.

Crummey in his synthetic article<sup>10</sup> for the *Encyclopaedia Aethiopica*, notes the different meanings that the term may have had over time as well as geographically. One of the issues he discusses is the transferability of *rim* by succession in some places while in others, *rim* holding lasted as long as the holder acquitted the duties attached to the land (generally church services). He proposes a solution in suggesting an initial definition of the *rim* as *madärya*, a tenure given to an official or administrator because of his office; according to him, this primary definition of *rim* may have evolved and given way to tenures that resemble rights on land that are trans-generational. Based on evidence from Goğgam and Gondär, Crummey considers that *rim* in the 18<sup>th</sup> century meant a privileged kind of right to the land given to the grantee after the displacement of its ancient owner; he claims that the *rim* holder had the right to the land itself not only to a portion of its products. It is on this point of the nature of the *rim* holder’s rights that the documents under study challenge Crummey’s views; the *rim* holder’s right to the land itself is questioned in this article although it appears to have been admitted that the *rim* holder can dispose of his rights (by sale or will).

This article examines a series of *rim* sales in the manuscript Or. 508 as a token of the type of legal transactions registered in this codex and also as indicative of the type of questions that this collection of texts could raise. The texts are accounts of sales to *liqe*<sup>11</sup> Bätre. The texts related to *liqe* Bätre will be discussed based on the folio 283 of the manuscript. The article will also use Guidi’s edition of Or. 508 (Guidi 1906). The analysis will be based on the views held by scholars on the notion of *rim*<sup>12</sup> and refer to Maḥtämä Šöllase Wäldä Mäsqäl’s (1954) and Gäbrä Wäld Engöda Wäraq’s (1955) synthesis on land holding systems, although covering a later historical period.

<sup>10</sup> CRUMMEY 2011b: 390a–391b.

<sup>11</sup> A *liq* may be a supreme counselor, a minister (see ISENBERG 1841: 7) while *liqe* may be more precise in designating the ecclesiastic who renders judgements and is one of the chief judges of the royal court (see KANE 1991: 60).

<sup>12</sup> BAUSI – DORE – TADDIA 2001; particular attention will be given to the contributions on *rim* for this workshop in Bologna in 2001.

The objective herein is to describe the requirements of the transfer of *rim* and the rights of the buyer as a result of the transfer of *rim*. This description will in turn allow to better conceive the notion of *rim*. The study will try to demonstrate that the selling of *rim*, in the specific cases presented in the article, does not imply transfer of land ownership. The buyer of a *rim* only benefits from a restricted type of ownership.

### 1. *Liqe* Bätre and the Manuscript under Study

The texts under study refer to sales of *rim*-s located on lands which are named by one of the first documents of the manuscript as lands granted to the church of Ғamärä Noḥ. The deed document granting these lands is reproduced to draw the context in which the sellers came into the ownership of the *rim*-s in the first place. This institutional grant was the origin for a significant number of sales of land rights that followed.

Two of the sales to *liqe* Bätre are then presented to allow a glance at the structure of the texts. The texts of the rest of the sales are produced progressively as the argument develops. Guidi’s edition of the texts was not entirely respected: in this paper the sales are considered separately except when they are related to the same *rim* (see document 2 *infra*); reproducing all the sales at once would have complicated the presentation of each text’s comment.

#### 1.1 The Deed Document

All the *rim*-s mentioned in the sales to *liqe* Bätre are situated on the lands of the church of Ғamärä Noḥ that were granted by King Tewoflos. These lands are ecclesiastical and this characteristic may reflect on any rights attached to the lands.

Document 1, British Library, Orient 508, folio 278r, grant to Ғamärä Noḥ, by Tewoflos<sup>13</sup>

ንሕነ ፡ ንጉሠ ፡ ነገሥት ፡ ቴዎፍሎስ ፡ ዘስመ ፡ መንግሥትነ ፡ አጽራር ሰገድ ፡ ነዋ ፡ ሐነፅነ ፡ ቤተ ፡ ክርስቲያን ፡ በስመ ፫፻፲፱፡ ሊቃውንት ፡ ወአእላፍ ፡ መላእክት ፡ ወነቢያት ፡ ወስመ ፡ ደብሩ ፡ ሐመረ ፡ ኖኅ ፡ ወጉልቄ ፡ አህጉር ኒ ፡ ዘወሀብነ ፡ ለካህናት ፡ ጉሪዝባ ፡ ጣሕነ ፡ አርዋ ፡ ቀላይ ፡ ክማርዋ ፡ እርፅን ሆ ፡ ሳሚ ፡ ጀሕጀሕ ፡ ጭላ ፡ ፱ ምድር ፡ ከመንቲ ፡ የራስ ፡ ገባያንም ፡ እንጨት ፡ ቀረፅ ፡ ለቀኑርባን ፡ ዘንተ ፡ ከሎ ፡ ዘገበረነ [sic] ፡ በእንተ ፡ ሕይወተ ፡ ነፍስነ ፡ ወእለ ፡ መጽኡ ፡ እምድኅሬነ ፡ ከመ ኢይንሥቱ ፡ ዘንተ ፡ ከሎ ፡ ዘሠራፅ ናሁ ፡ ወዘወሀብናሁ ፡ ከመ ፡ ያውግዙ ፡ አዘዝናሆሙ ፡ ለአቡነ ፡ ማርቆስ ፡ ወለ

<sup>13</sup> GUIDI 1906: 6.

መምሕረ : ደብረ : ሊባኖስ : ወሊሊቃውንት : ቤተ ክርስቲያን : ውእቶሙኒ :  
አውገዙ : በቅድመ : ኩሎሙ : መኳንንት : ወሊቃውንት ።

We, King of Kings Tewoflos, whose throne name is Aṣrar Säḡäd, have built a church dedicated to the 318 *liq*-s [of the council of Nicaea] and to myriads of angels and prophets. The church's name is Ḥamärä Noḥ. We have granted to its priests the following number of lands [<sup>3</sup>*abgur*]: G<sup>w</sup>ärizba Ṭaḥnä Arwa, Qälay, Kəmarwa, Ḥrṣenḥo Sami, Ġähḡäh Ġəla 9 lands from Mänti. [We have] also [granted] the tax from *ras* Gäbaya's woods for the service of the Eucharist. All that we deed [may be] for the salvation of our soul. So that those coming after us shall not abolish (destroy) what we have done and granted; we have ordered Abunä Marqos, the *māmbər* of Däbrä Libanos and the *liq*-s of the church to anathematize the trespassers. And they anathematised them in the presence of all the *māk<sup>w</sup>ännən*-s<sup>14</sup> and *liq*-s.

Many transactions of land and *rim*-s follow the granting of lands to a church (Crummey 2000: 180). In this regards, this text seems to be the origin of the property that enabled commerce on land rights. The significant accounts of transactions, after the grant, present however morphological differences with other texts in the same period. For this reason, it was considered important to briefly describe the form of the sales.

## 1.2 Form of the texts registering sales to *liqe* Bätre

A note in the right margin of one of the texts on the folio 283 bears the name of a person mentioned 56 times in the collection, *liqe* Bätre. The two first columns of the folio are consecutive accounts of property transaction in which *liqe* Bätre participated. This note with the name of the person involved in the transaction is unique; it may be an indication of the importance of *liqe* Bätre due to his function,<sup>15</sup> or due to his taking part in multiple transfers of ownership as a buyer or seller.

*Liqe* Bätre may well be the person mentioned in Sərgəw Hablä Səllase's Amharic Church Dictionary as the person who was sent to bring message on behalf of king Bäkaffa to people begging for forgiveness. He is said to have served the church of Ḥamärä Noḥ for a long time (Sərgəw Hablä Səllase 1977–78: 12).

<sup>14</sup> A *māk<sup>w</sup>ännən* may be a judge, a governor or a ruler, see ISENBERG 1841: 35, KANE 1991: 301.

<sup>15</sup> Besides the term 'liqe' that may indicate a function of a judiciary nature (see no. 15 supra), *Liqe* Bätre is said to be the *wänbär* [ወንበሩ] in two other sales; cf. text no. 24. and text no. 29 in GUIDI 1906: 13f., 16.



Outlines of these texts selling *rim* to *liqe* Bätre would enable an easier reading and comprehension of the transfers. The first two sales will be described as samples below, to present briefly the forms of the texts.

The first contract selling *rim* to *liqe* Bätre reads as follows:

Document 2, British Library, Orient 508, folio 283r, sale of the *rim* of *abba* Marqos to *liqe* Bätre<sup>16</sup>

[ዘሊቄ ፡ በትሬ ፡]<sup>17</sup> በዘመኖሙ ፡ ለንጉሠ ፡ ነገሥት ፡ በካፋ ፡ ሊቄ ፡ በትሬ ፡ ያባ ፡ ማርቆስን ፡ ሪም ፡ ገዙ ፡ ባዛኸር ፡ ድሜጥሮስ ፡ ሹመት ፡ መድኑ ፡ እስክን ድሮስ ፡ መሳክርቱ ፡ ያማረ ፡ ኖኅ ፡ ደብተሮች ፡ ዋጋው ፡ ፮ ወቄት ፡ (...) የዚህ ነንም ፡ ሲሰውን ፡ ባለቃ ፡ ያቦ ባርያ ፡ ሹመት ፡ ባዬ ፡ ተክለ ጊዮርጊስ ፡ መንግሥት ፡ እስጢፋኖስ ፡ ኃይሉ ፡ ያባኒ ፡ ሲሶ ፡ በ፯ ፡ ድሪም ፡ ለወይዘሮ ፡ ዲናር ፡ ሸጠ ፡ መድኑ ፡ ሲኖዳ ፡ ያባ ፡ ታናሽ ፡ ልጅ ፡ ነው ፡ የመፃን ፡ ሁሉ ፡ ይከለክላል ፡ ግብር ፡ የለበትም ፡ መሳክርት ፡ ደብተሮች ፡ ሁሉ ፡ ናቸው ።

Of *Liqe* Bätre – During the time of *nəguṣä nägäšt* Bäkaffa, *liqe* Bätre bought the *rim* of *abba* Marqos when the *azzaḥ* was Dəmetros. The guarantor is Ἐσκəndəros; the witnesses are all the *däbtära*-s from Ḥamärä Noh and the price is 6 *wäqet*-s. [...] One third of this [*rim*] was sold during the reign of *aṣe* Täklä Giyorgis and the *ṣəmət* of Abbo Barya. Ἐṣṭifanos Ḥaylu has sold one third of this [*rim*] of *abba* for 7 *drim* to *wäyzäro* Dinar. The guarantor is Sinoda, *abba*'s youngest son. He would protect from all claims. He owes no debt<sup>18</sup>. The witnesses are all the *däbtäras*.

This contract is the earliest sale in the manuscript to mention *liqe* Bätre as a buyer; it takes place during the reign of Bäkaffa (r. 1721–30). *Liqe* Bätre is buying *abba* Marqos' *rim* of which one third will be sold to *wäyzäro* Dinar. The date for the first sale could apply to the second sale. The second sale written by another hand and added in the right margin of the text does not however give any temporal precision; this makes it difficult to ascertain its date.

This text therefore registers a couple of transactions on this *rim* designated by its relation to *abba* Marqos. Both in the first and second contracts, it is *abba* Marqos' *rim* that is being sold.

The form of the first sale follows a structure often found in the manuscript:

<sup>16</sup> GUIDI 1906: 25.

<sup>17</sup> Note added in the left margin.

<sup>18</sup> Another possible translation for this sentence is: “The *rim* ownership rights do not imply any debts”. This would be contractual clause guaranteeing against any creditor of the owner selling the *rim*. The sentence comes just after the description of the warrant's duty; it is therefore probable that the subject of the verb “owed” is the warrant and not ‘the *rim* ownership rights”.



1. The date is given by the reference to the king in power at the moment of the transaction and the name of the *azzaž* or *aläqa* or *šum*<sup>19</sup> at the time.
2. The buyer's name and the *rim*'s owner who is selling are then mentioned.
3. The guarantor's name.
4. The *däbtära*-s<sup>20</sup> as witnesses
5. The price

A variant for this structure can be seen in another sale to *liqe* Bätre:

Document 3, British Library, Orient 508, folio 283r, sale of the *rim* of Täklä-Haymanot to *liqe* Bätre<sup>21</sup>

ደግሞም ፡ የገዙ ፡ ሊቁ ፡ በትሬ ፡ ከቆማ ፡ ተክለ ፡ ሃይማኖት ፡ ልጃች ፡ የቀላ  
ይ ፡ ሪማቸውን ፡ በጀ ፡ ወቄት ፡ ገዙት ፡ ካመተ ፡ ኢየሱስ ፡ ከወለተ ፡ ኢየሱስ ።  
መድናቸው ፡ ጉልማ ፡ ወንድማቸው ። በዘመነ ፡ ንጉሥ ፡ ኢያሱ ፡ በመልአክ ፡  
ገነት ፡ አንስጣስዮስ አለቅነት ፡ መሳክርቱም ፡ የሐመረ ፡ ኖኅ ፡ ደብተሮች ።  
ሊቃውንቱም ፡ አሳኝ ፡ ተደስዮስ ሊቁ ፡ ተክለ ሃይማኖት ሊቁ ፡ ነጮ ፡ ሊቁ  
ኢሳይያስ አሳኝ ፡ ባሕርይ ፡ ሊቁ ፋሲሎ ።

*Liqe* Bätre also bought from the children of Täklä-Haymanot from Qoma his *rim* of Qälay<sup>22</sup> for 2 *wäqet* he bought it from Amätä-Iyäsus and Wälättä-Iyäsus. The guarantor was their brother Gulma. [This was] during the reign of Iyasu, under the *aläqənnät* of *Mäl'akä-Gännät* Anṣasyos. The witnesses were the *däbtära*-s of Ḥamärä Noḥ. The *liq*-s were *azzaž* Tädosyos, *liqe* Täklä-Haymanot, *liqe* Näčo, *liqe* Isayäyas, *azzaž* Baḥrəy [and] *liqe* Fasilo.

The structure in this other sale is slightly different:

1. The name of the buyer and the sellers
2. Localisation of the *rim*
3. The price
4. The guarantor
5. The date: the king in power and the name of the *aläqa* at the time
6. The *däbtära*-s as witnesses
7. Names of other officials at the time of the contract.

<sup>19</sup> An *azzaž* is a commander, chief, ruler, see ISENBERG 1841: 132 and KANE 1991: 1281; a *šum* is a chief, an official, an officer, see KANE 1991: 611 or ISENBERG 1841: 64 but if it is an abbreviation for *čəqa šum*, it could designate a person who is placed over a territory and who is receiving land taxes see ISENBERG 1841: 64 *aläqa* refers to the office or dignity of a high priest, see ISENBERG 1841: 113 and KANE 1991: 1107.

<sup>20</sup> A *däbtära* is a person well versed in traditional church learning; see ISENBERG 1841: 166 and KANE 1991: 1785.

<sup>21</sup> GUIDI 1906: 25.

<sup>22</sup> Qälay, the land on which the *rim* rights are exercised is one of the lands granted by Tewoflos, see document 1.

Both structures of the sales are, as seen above, quite simple. The geographical localization of the *rim* can be very succinctly described if at all. This may be justified by the fact that the *rim* is designated in its relation to the buyer; it is always referred to as a person *p*'s *rim*.

A salient characteristic of the sales is that guarantors are necessarily cited: this may be one aspect that could allow to recognize authentic *rim* sales. The presence of guarantors may serve as an indication of authenticity in the context of studies on the texts' diplomatic. The guarantor's intervention may also point out the importance of the object of sale, ie of *rim* holding considering that only certain types of sales could require such precautions.

## 2. Requirements for *rim* Sale Contracts

In contemporary legislation, drafters like René David proposed the civil law system for Ethiopia observing that it best suited the former traditional practices of contractual relations. A contract of sale, as known in Ethiopia and other civil law legislations today, requires two elements for its formation: an agreement on price and an agreement on the thing that is being sold.<sup>23</sup> These agreements result in basic obligations for the seller and the buyer. A simple model for sale involves a vendor (seller) who transfers rights to the buyer who pays a price as a counterpart to this transfer.

The contracts of sale in the manuscript Or. 508 present a complicated pattern both in terms of the meaning given to the term 'vendor' and the sum paid by the buyer. The vendor is not clearly identified/named in all of the sales; the *rim* is said to be sold to the *liqe* Bätre and it seems that an implicit contract of representation (also called 'agency') allowed the formation of contract in the name of the seller:<sup>24</sup> the seller was not present at the formation of contract but rather represented by another person. As to the payment, although it clearly includes price, it seems to cover other expenses as well.

The vendor shall be identified through the description of the sales given by these texts. This means analyzing syntax but also giving attention to the usual practice as deduced from other texts in the manuscript. This identification will be useful to grasp the nature of rights that the seller has on *rim*.

<sup>23</sup> Article 2266 of the Civil Code of the Empire of Ethiopia, Proclamation no. 165 of 1960 states: "A contract of sale is a contract whereby one of the parties, the seller, undertakes to deliver a thing and transfer its ownership to another party, the buyer, in consideration of a price expressed in money which the buyer undertakes to pay him"; it is inspired by civil law legislations; see explanation in DAVID 1973.

<sup>24</sup> A contract of agency in the Ethiopian civil law is "a contract allowing to act on behalf of another person"; see article 2179 of the Civil Code of the Empire of Ethiopia, Proclamation no. 165 of 1960.

The payment will then be examined as the obligation of the buyer that is decisive for the transfer of ownership. This will also enable a better awareness of the type of contracts existing on *rim*.

## 2.1 Identification of the seller and ability to sell

The main interest for this study in identifying the seller is to define the principles allowing a person to sell a *rim*. The question relies upon the fact that legal systems or constructions can impose restrictions on to the persons selling rights, especially certain rights such as land rights.

Indications as to the principles governing the ability to sell during the time of *liqe* Bätre could be given by the identification of the seller. This is however not evident in the sales registered in the *mäzgäb* of Ḥamärä Noḥ: the seller is not always named and/or he is not selling his own rights on *rim*.

### 2.1.1 Does the seller have to be a dignitary of the church?

A first reading of the sales to *liqe* Bätre can lead to think that the sellers ought to be related to the church of Ḥamärä Noḥ. The lands mentioned are those enumerated in the donation of Tewoflos, the sellers are sometimes (as in the documents 2 and 5) obviously church dignitaries and the witnesses are the *däbtära*-s. This should comfort Joseph Tubiana's (2001) statement based on the observation of Antoine d'Abbadie that *rim* is church land on which tenure is precarious.

Document 2 suggests that those transferring *rim* rights are priests. Both sales concern the *rim* of *abba* Marqos: in the first sale, the seller is *abba* Marqos himself and in the second, although the seller is not mentioned, the third of the *rim* that is being sold remains designated as the property of *abba* ቃባኒ ፣ ሲሶ – one third of *abba*'s *rim*.

Applying the adage that no one can transfer more rights than he himself has,<sup>25</sup> it is plausible to designate *abba* Marqos as the owner of *rim*; otherwise the genitive construction [one third of *abba*'s *rim*] could not be justified. *Abba* Marqos must have been the seller in the second sale as well.

This means that priests, like *abba* Marqos had rights on *rim*. This remark is confirmed by another text:

<sup>25</sup> The latin adage *Nemo plus juris transferre ad alium potest quam ipse habet* is a principle that receives applicability in ancient Ethiopian Law, cf. Fጥጥራ ስጋግጥ 1998, § 33.

Document 4, British Library, Orient 508, folio 283r, sale of *abba* Surahe's *rim* to *liqe* Bätre<sup>26</sup>

ወበዘመኖሙ ፡ ለንጉሠ ፡ ነገሥት ፡ ኢያሱ ፡ ያባ ፡ ሱራሄን ፡ ሪም ፡ ሊቄ ፡ በት  
ሬ ፡ ገዙ ፡ መድኑ ፡ መምር ፡ እስክንድስ ፡ አለቃ ፡ አባ ፡ አብሰለዲስ ፡ መሳክር  
ቱ ፡ ያመረ ፡ ኖሳ ፡ ደብተሮች ፡ ዋጋው ፡ ፮ ፡ ወቄት ።

During the time of *nəguṣä nägästä* Iyasu, *liqe* Bätre bought the *rim* of *abba* Surahe, the guarantor was *Mämər* ʾEskəndəs, the *aläqa* was *abba* Absälädīs and the witnesses were the *däbtära*-s of Ḥamärä Noḥ. The price [for this *rim*] was 6 *wäqet*.

However, the fact that the sellers are clearly priests in these three sales does not suffice by itself to assume that *rim* is, as understood by certain scholars (e.g. Crummey 2011a: 1–43), an ‘ecclesiastic fief’. Two observations oppose the statement that the sellers ought to be related to church. Firstly, the relationship of the seller to the church is not always apparent.<sup>27</sup> Secondly, the intervention of church dignitaries could be explained by the fact that the lands on which the *rim*-s are located are church lands, at least partly used for the church’s services.<sup>28</sup> But unless *rim* is synonymous to ‘land’, this does not imply that *rim* rights are necessarily ecclesiastical and that the seller is at the service of the church.

### 2.1.2 Does the seller have to be present at the formation of contract?

Those with rights on *rim* are not always present for the formation of contract, perhaps not even alive. They are represented, in cases studied herein, by their descendant(s).

#### An apparent representation

In one of the sales to *liqe* Bätre, the *rim* of Qäläṭiro Yoḥannəs is sold by the sons and daughter of the owner of the *rim*. In another sale, *azzaž* Kalid’s *rim* is sold by his daughter and her son.

<sup>26</sup> GUIDI 1906: 25.

<sup>27</sup> In the sales to the *liqe* Bätre, see documents 3 and 6; for an example of other sales where the seller is not clearly a person at the service of the church, see for instance the text no. 29 *ibid.* 16.

<sup>28</sup> In 92 of the 146 complete texts on sale, *däbtära*-s intervene as witnesses and many of the witnesses’ names refer to church dignitaries. The lands of Qälāy and Gurizba of which the *rim*-s are sold are enumerated as church lands in the grant of Tewoflos.

Document 5, British Library, Orient 508, folio 283r, sale of Qälaṭiṛo Yoḥannäs' *rim* to *liqe* Bätre<sup>29</sup>

ደግሞም ፣ የገዙት ፣ የዓንቸን ፣ የቀላጢሮ ፣ የሐንሰን ፣ ሪም ፣ ሊቄ ፣ በትሬ ፣ በጁ  
ወቄት ፣ ልጆቻቸው ፣ ወለቱ ዘፈሩ ፣ አባ ፣ ታዲዎስ ፣ ሸጡ ፣ የወለቱ ፣ መድን ፣  
አባ ፣ ታዲዎስ ፣ ያባ ፣ ታዲዎስ መድን ፣ ወለቱ የዘፈሩ ፣ መድን ፣ ደብሳን ፣ ዝክሬ

*Liqe* Bätre also bought Qälaṭiṛo Yoḥannäs' *rim* of Ancän. The price of the *rim* was 6 *wäqet* and it was sold by Wälätu, Zäfäru and *abba* Tadewos, sons and daughter [of Qälaṭiṛo Yoḥannäs]. The guarantor for Wälätu is *abba* Tadewos, the guarantor for *abba* Tadewos is Wälätu and the guarantor of Zäfäru is Däbsan Zäkre.

In this sale, the children of Qälaṭiṛo Yoḥannäs – Wälätu, Zäfäru and *Abba* Tadewos are selling their father's *rim*. Since the *rim* is designated as their father's, and not theirs, it seems that they are not acting as his successors but rather representing him. This is also the case in yet another sale to *liqe* Bätre:

Document 6, British Library, Orient 508, folio 283r, sale of *azzaž* Kalid's *rim* to *liqe* Bätre<sup>30</sup>

በዘመነ ፣ ማቴዎስ ፣ ባዌ ፣ ኢዮአስ ፣ መንግሥት ፣ በግንቦት ፣ በ፱ ፣ ቀን ፣ በሢመ  
ተ ፣ መልአስ ፣ ሰላም ፣ አደራ ፣ ጊዮርጊስ ፣ ያዣዥ ፣ ካሊድን ፣ የጉሪዝባንና ፣  
የቀላይን ፣ እኩሌታ ፣ ልጅዎ ፣ አንዲት ልጅዎም ፣ ወልደ ፣ ማርያም ፣ በ፫ ፣ ወቄ  
ት ፣ ካላድ ፣ ወርቅ ፣ ለሊቄ ፣ በትሬ ፣ ሼጠዋሉ ፣ መድኑም ፣ ምዕዳን አዕቁ ፣  
ጠለፋው ፣ ልጅዎ ፣ ወልደ ፣ ማርያም ፣<sup>31</sup> መሳክርቱም ፣ ደብተሮች ፣ ሁሉ ፣

In the year of Matewos, during the reign of *aše* Iyoas, on the 9<sup>th</sup> of Gənbot and when the *mäl'akä sälam* was Adära Giyorgis, half of *azzaž* Kalid's [*rim*]<sup>32</sup> of Gurizba and Qälay were sold by [*azzaž* Kalid's] daughter 'Andit and her son Wäldä Maryam to *liqe* Bätre. [These *rim* were sold] for 3 *wäqet* and 1 *alad* of gold. The guarantor was *mə'ədan* Ašqu. The warrant of the guarantor was her son Wäldä Maryam. The witnesses are all the *däbtära*-s.

The existence of a mechanism of representation (or agency) poses no particular problem. It may seem justified by practical reasons: if the one with the rights to be transferred is not able to be present himself (or form the contract

<sup>29</sup> *Ibid.* 25.

<sup>30</sup> *Ibid.* 26.

<sup>31</sup> This punctuation has not been reproduced *ibid.*

<sup>32</sup> Only the *rim* and not the land is sold, this *rim* is the one being donated by *liqe* Bätre to his son, see document 7 *infra*.

himself), he can be represented. The manuscript includes however cases of sales where the determination of the identity of the seller is less certain.

### A deducted representation

There may not be mention of representation. It could be the designation of a person – not present at the formation of the contract – as the owner of the *rim* that may lead to deduct a representation. The deduction relies upon a custom observed in the manuscript of having family members of the seller who intervene as his guarantors.<sup>33</sup> The seller's identification can be assumed from the identification of his relatives as guarantors in the sales.

In the second sale of the document 2, Ḥaylu may be intervening as a seller, representing *abba* Marqos. Sinoda, the cadet of *abba*'s children in the first sale, acts as the guarantor of the second sale. The following scheme is a summary of the text of document 2, narrating the sale of the *rim* of *abba* Marqos to *liqe* Bätre and the sale of the third of the same *rim* to *wäyzäro* Dinar:

#### 1<sup>st</sup> Sale in document 2:

°*abba* Marqos (seller) — Sale of *rim a* — *liqe* Bätre (buyer)

#### 2<sup>nd</sup> Sale in document 2:

Ḥaylu — Sale of the third of *rim a* — *wäyzäro* Dinar (buyer)

↗

Son of *abba* Marqos (guarantor)

Fig. 1: Representation of the sale of *abba* Marqos' *rim*

The first logical reaction to this observation may be that Ḥaylu is at best representing *liqe* Bätre. *Abba*'s son guarantees the transfer of ownership because the first transaction between *liqe* Bätre and his father *abba* Marqos has established enough acquaintance.

The choice of *abba* Marqos' son as a guarantor and the designation of the *rim* as *abba* Marqos' *rim* create doubt because of the explanation above. In addition, among the sales registered by this manuscript for which no text is missing, 20 % of the sales use representation. The question therefore would be: can a representation be assumed from the intervention of the son of the

<sup>33</sup> In one out of five sales in this manuscript, the familial relation between the seller and the guarantor is clearly stated; the designation of the seller and the guarantor as 'sellers' in some of the sales indicate this solidarity in the debt towards the buyer.

first seller as a guarantor? There is this practice of giving guaranties for relatives that would support this idea. This rather peculiar assumption gains more credibility when compared to another text presenting the same scheme. The text no. 90 in Guidi's (1906: 31) edition states:

አዩ ፡ ኢዮአስ ፡ በነገሡ ፡ በ፰ ፡ አመት ፡ በዘመነ ፡ ሉቃስ ፡ በወርቃ ፡ ሰኔ ፡ በአለ  
ቃ ፡ አደራ ፡ ጊዮርጊስ ፡ ሲመት ፡ ያዛጅ ፡ ጎሼ ፡ እሪም ፡ ፃፊ ፡ ዋሴ ፡ ገዝቶት ፡  
የነበረውን ፡ ከልጅዎ ፡ ከአበርቱ የሪሙን ፡ እኩሌታ ፡ በ፬ ፡ ወቂት ፡ አቤቶ ፡  
እንግዳ ፡ ገዙት ፡ ለዜህ ፡ መድኑ ፡ ያዛጅ ፡ ጎሹ ፡<sup>34</sup> ልጅ ፡ መአዛ ፡ ነው ፡ መሳ  
ክርቱ ፡ ሊቁ ፡ በትሬ ፡ (...)

In the eighth year of *aše* Iyoas' reign, in the year of Luke, in the month of Säne, and when the *aläqa* was Adära Giyorgis, the *rim* bought by *šafi* Wase from *azzağ* Goše from his daughter Šäbärtu for 4 *wäqet*, bought it *‘abeto* ፎጎጎጎ. The guarantor was *azzağ* Gošo's son Mä<sup>3</sup>aza. The witnesses were *liqe* Bätre (...)

The sales can be schematized as follows:

*azzağ* Goše (seller) — sale 1 of *rim* b — *šafi* Wase  
*azzağ* Goše's daughter, Šäbärtu<sup>35</sup> (seller) — sale 2 of *rim* b — *‘abeto* ፎጎጎጎ

In other sales, *azzağ* Goše's son Mä<sup>3</sup>aza is mentioned at the side of Šäbärtu as her guarantor. Considering the custom of having family members who act as guarantor for the seller, the genitive construction [his daughter] probably refers to *azzağ* Goše and not to *šafi* Wase. If the first seller is represented in the second sale of the same *rim*, this means that the first buyer may not have the rights to sell it. The explanation for this may as well be that this first person has kept rights on to the sale of the *rim*.

Maḥtämä Šellase when presenting lands for *ṭisäñña* on a much later period of history says that the land owner can give a land to the *ṭisäñña* as *rəst* or *g<sup>w</sup>əlt*. The land could also be organized in the form of *rim*; evoking that situation the author uses the words ‘በሪምነት ፡ ቁርጥ ፡ የተተከለ’,<sup>36</sup> which can be translated as meaning ‘given partially’. *Rim* as opposed to *rst* or *g<sup>w</sup>əlt* would not therefore transfer all rights. Can this type of organization of land ownership apply to older sales like the ones to *liqe* Bätre? Is the sale of *rim* a type of dismemberment of ownership? Is it the sale that creates the dismemberment?

<sup>34</sup> The text in the manuscript is not clear but I read the letter ‘ሰ’ making the word nearer to ጎሽ than ጎሹ.

<sup>35</sup> See text no. 88 and no. 90 in Guidi 1906: 35.

<sup>36</sup> See MAḤTÄMÄ ŠELLASE WÄLDÄ MÄSQÄL 1949–1950: 118.



The term implying ownership seems to be *mədər* [ምድር]<sup>37</sup> rather than *rim*. Although there is no account of numerous sales of the same *mədər* in the present manuscript, the term can be found a couple of times.<sup>38</sup> If this is verified, the seller would have to be the person owning the *mədər* and not just the *rim*.

Nevertheless, the contract seems to be transfer rights for which *liqe* Bätre has to pay. Examining the payment will provide a clearer image of the transaction.

## 2.2 Expenses covered by *liqe* Bätre's payment

The payment in contemporary legislation is understood broadly as the performance of the obligations of the parties to a contract;<sup>39</sup> in a contract of sale, payment implies performance/execution of the buyer's and the seller's obligations. The study is focused on the obligation of *liqe* Bätre to pay a sum of money: it will determine if the sum is understood as the payment of price, but also if the payment covers more expenses than price.

### 2.2.1 Payment of price: *rim* considered as commodity

If *liqe* Batre pays a price for the *rim*, then *rim* is transferrable. There could be two objections to the idea that *rim* could be commercialized: (a) *rim* is, at least according to accounts for the 19<sup>th</sup> century,<sup>40</sup> a gift of land to loyal servants; (b) *rim* was defined by some scholars as a land rental.<sup>41</sup>

In the Or. 508, among the texts which are complete, seventy one of them are *rim* sales using the word ሸጠ ስጥጥ, ie 'he has sold'. In addition, the naming of a price, as in the case of sales to *liqe* Bätre, as opposed to an annuity

<sup>37</sup> See GÄBRÄ WÄLD ẼNGDA WÄRQ 1955: 35f. describing the relation of the *tisāña* to the land owner and the donation of part of the land to the *tisāña* designates the owners who could give *rəst* or *rim* to their servants as persons owning the *mədər*, ባለምድር – *balāmədər*.

<sup>38</sup> See e.g. GUIDI 1906: 31, no. 77, and 47, no. 136.

<sup>39</sup> René David defines payment as follows: "The word 'paiement' is used in French legal language with a broader meaning than it has in common language. It refers to the performance of any obligation, not just the obligation to pay money", DAVID 1973: 39. Authors have also explained the broad sense of the term by its etymology coming from the latin 'paco-are' meaning to appease, to satisfy; see MALAURIE – AYNÈS – STOFFEL-MUNCK 2007: 595.

<sup>40</sup> See e.g. GÄBRÄ WÄLD ẼNGDA WÄRQ 1955: 36.

<sup>41</sup> See TUBIANA 2001, BERHANOU ABBEBE 1971: 72f., n. 2.

or a monthly-due rent, demonstrates that *rim* is conceived as a marketable commodity.<sup>42</sup>

Hence, the sum of money disbursed by *liqe* Bätre is partly due as payment of price. In the manuscript under study payment can be made in money or in kind. In some texts, the form of price; sacs of seeds are considered as payments.<sup>43</sup> In the sales to the *liqe* Bätre, payment is only done in money expressed in the units called *drim*, *wäqet* and *alad*. *Wäqet* and *drim* are respectively Arabic and Greek measurements. A *wäqet* is equivalent to an ounce.<sup>44</sup> A *drim* is said to have been equal to 1/6<sup>th</sup> to 1/10<sup>th</sup> of a *wäqet* depending on the location. It was said to be equal to 40 grains.<sup>45</sup> An *alad* is half a *wäqet* and equivalent to five *drim*.<sup>46</sup>

### 2.2.2 Payment for public officers: *rim* related to land rights

According to a broad understanding of ‘payment’, *liqe* Bätre could owe expenses in lieu of a fee due to the officer operating the transfer. There is a striking similarity with the actual scheme of payment where the buyer has to pay the costs of payment, and in particular stamp taxes.<sup>47</sup>

One of the texts in folio 283 states that the payment covers not only the price for the *rim* but also fees that ought to be paid to the *wämbär* for the transfer. The term ‘*Wänbär*’ or ‘*Wämbär*’ can be found three times in the manuscript, out of which two in relation to *liqe* Bätre’s name.<sup>48</sup> *Wänbär* according to Dästa Täklä Wäld (1970: 834) is a judge; the word could be used to designate the judge sitting on each side of the king; Kane’s dictionary gives an identical meaning to the word ‘*Wämbär*’ as “the superior judge of a province” (Kane 1990: 1497).

<sup>42</sup> A commercialization of land and land rights without no precedent is said to be recorded, starting in the 1740s to the mid-19<sup>th</sup> century; see CRUMMEY 2000: 166.

<sup>43</sup> See for instance texts no. 54 or 91 in GUIDI 1906.

<sup>44</sup> Its weight was based on a coin and varied in time. It would have been equivalent to English troy weight, see PANKHURST 1970: 60 referring to BRUCE OF KINNAIRD <sup>2</sup>1790: 64.

<sup>45</sup> See PANKHURST 1970: 56.

<sup>46</sup> See PANKHURST 1970: 61.

<sup>47</sup> René David explains that the article 1760 Ethiopian Civil Code was drafted in conformity with the idea that the debtor is to meet the costs of payment; ‘the rule is also found in the codes of France (article 1248), Lebanon (article 1196), Italy (article 1196) and Egypt (article 348)’; DAVID 1973: 50.

<sup>48</sup> The other person mentioned as *wämbär* is Wäldä Kəsos, folio 284; see GUIDI 1906: 31, n. 77; this may be the *Bäğəron*d Wäldä Kəsos of another sale, see *ibid.* 22, n. 48 and/or *Blaten Geta* Wäldä Kəsos acting as a *šemagalle* (an elder) judging a conflict, see *ibid.* 30, n. 74.

Document 7, British Library, Orient 508, sale of the *rim* of *mämbär* Ḥskändäs to the *liqe* Bätre<sup>49</sup>

የመምህር ፡ እስክንድስን ፡ እሪም ፡ የጉሪዝባውንና ፡ የቀላዩን ፡ መደብ ፡ አድርጎ ፡ የወምበሩን ፡<sup>50</sup> ጨምሮ ፡ በጁዓት ፡ ወቄት ፡ ወርቅ ፡ ሊቄ ፡ በትሬ ፡ ገዙ ፡ ለዚህ ፡ መሳክርቱ ፡ ሊቄ ፡ ፋሲሎ ፡ አዛዥ ፡ አቤሴሎም ፡ ፅንቆ ፡<sup>51</sup> አቤሴሎም ፡ አለቃ ፡ ፋሲል ፡ ከደብተሮች ፡ ጋራ ፡ ናቸው ፡ በሐመረ ፡ ኖላ

*Liqe* Bätre paid 7 *wäqet* of gold for the *rim* of *mämbär* Ḥskändäs, based on Gurizba and Qälay [lands]<sup>52</sup> and including [the fee for] the officer [judge] of province. The witnesses were *liqe* Fasilo, *azzaž* Abeselom, Ṣənqo Abeselom, *aläqa* Fasil with the *däbtära*-s in Ḥamärä Noḥ.

The transfer of *rim* could thus imply payment of fees to the judge. Payments of fee could also be due to other dignitaries. These payments could be justified by the aforementioned principle that the buyer bears all costs related to payment.

A distinct feature of *rim* may consequently be that its selling involves public officers. This is not a requirement for all types of sales. The commodity is thought to be very important (for economical or even political reasons) if its sale is transcribed by public officers. For instance, this type of registration is prescribed nowadays for real or immovable property, ie lands and buildings.<sup>53</sup> The presence of the *wämbär* in a few cases of *rim* sales shows, although extensively commercialized (cf. Crummey 2000: 182–187), *rim*-s are seen as different from small commodities. This can easily be explained by *rim*'s relation to land which was the basis of an economy relying upon agriculture.

Unlike other phrasings lacking this precision, the document 4 evokes, once again, the idea that the rights transferred are not property rights of the land. The terms used in the identification of the *rim* lead to think that it is not the land itself that is being sold. It is said that *liqe* Bätre is buying the *rim* based on Gurizba and Qälay. The question remains as to the rights of the seller of this type of holding.

<sup>49</sup> *Ibid.* 26.

<sup>50</sup> A text has been erased.

<sup>51</sup> Guidi's edition reads 'ጎንቆ', see *ibid.* 26, n. 60.

<sup>52</sup> Qälay and G<sup>w</sup>arizba are both lands granted by Tewoflos, see document 1.

<sup>53</sup> See article 1723 of the Ethiopian civil code requiring registration of all contracts creating or assigning rights on immovable; for similar dispositions see MALAURIE – AYNÈS – STOFFEL-MUNCK 2006: 263.

### 2.3 The Rights of the Buyer of *rim*

The notion of *rim* is one that has significantly evolved through time. Even within the same historical period, scholars do not seem to agree.<sup>54</sup> A determination of the nature of *liqe* Bätre's rights of *rim* will be attempted, based on the comparison with texts evoking other types of rights.

The sales to *liqe* Bätre draw attention on the precautions surrounding the formation of contract. Also the accounts on the *rim*-s bought by *liqe* Bätre after he had bought them are of particular interest. This may allow the deduction of rules that were then prevailing concerning *rim* rights.

#### 2.3.1 The right to use the land

As demonstrated in the analysis of the document 2, *liqe* Bätre is not mentioned as the seller in the contract selling the third part of the *rim* that he has bought. Instead the first seller seems to have been the one selling the *rim*. Since the son of the first seller (and not *liqe* Bätre) is said to have sold the *rim*, one can exclude that *rim* does not transfer ownership of land.

The comparison with the sale of another type of rights, rights on *bota* [ቦታ],<sup>55</sup> reasserts this later deduction and distinguishes *rim* from full ownership. The text number 76 in Guidi's (1906: 31) edition states:

በዘመነ ፊደል ስም፡ ኢየሱስ ፡ ንጉሥ ፡ ባለቃ ፡ አደራ ፡ ጊዮርጊስ ፡ ሽመት ፡ የሻለቃ ፡ ወሰን ፡ ካባ ፡ ሲኖዳ ፡ የገዙትን ፡ ላቤቶ ፡ የማርያም ፡ ባርያ ፡ በጅ ፡ ወቄት ፡ ሲሸጡ ፡ መድኑ ፡ አባ ፡ ሲኖዳ ፡ ሊቁ ፡ ሊቁ ፡ በትሬ (...)

During the reign of our king Iyoas, when the *aläqa* was *adära* Giyorgis, *šaläqa* Wäsän sold the *bota* that he had bought from *abba* Sinoda to *abeto* Yämaryam Barya for 5 *wäqet*. The guarantor was *abba* Sinoda, the *liq* was *liqe* Bätre (...)

In this case, the first seller (*abba* Sinoda) is, as in document 2, the guarantor in the second sale. According to the practice that the seller himself or his relatives acts as guarantor(s) to the sale, *abba* Sinoda could have been the seller in the second sale. But contrary to this assumption, *šaläqa* Wäsän is said to be the one selling the *bota*. The first sale seems to have transferred

<sup>54</sup> See GÄBRÄ WÄLD ENGEDA WÄRQ 1955: 36 giving *rim* as synonymous to *räst* or *madärya* when the definition of MAḤTÄMÄ ŠELLASE WÄLDÄ MÄSQÄL 1954: 118 considers *rim* as a kind of usufruct given to the *ṭisäñä* which the *baläräst mälkäñä* (officer who has holding of *räst*) could end whenever he desires.

<sup>55</sup> *Bota* could be defined as the land on which a land stands and the garden plot surrounding it; see CRUMMEY 2000: 186.

ownership rights of the *bota* and the intervention of the first seller as guarantor would be a formality or even a simple coincidence.

Comparing the sales of *rim* to this sale of *bota*, a couple of hypotheses can be made:

1. *liqe* Bätre when buying *rim*, has bought usufruct rights of the land and no ownership rights were transferred by the sale.
2. *liqe* Bätre could be evicted from the land when the landowner decides to do so.

The common definition of property in civil law systems comprises three elements: *usus* (the right to use), *fructus* (the right to the fruits/revenues) and *abusus* (the rights to dispose, ie sell or transfer). Following the first hypothesis, *liqe* Bätre's rights related to the *rim* are rights to use and enjoy revenues from the land; but it does not include rights to dispose (sell or transfer) the land. He has usufruct rights. This in turn suggests a definition of *rim* that is nearer to the etymology of the word than one would expect: *liqe* Bätre has rights of using the land for agriculture.<sup>56</sup> In his dictionary *Dästa Täklä Wäld* (1970: 957, 1144) gives the verb **ረገጠ** *arrämä* as the origin for *rim*, *arrämä* defined as the "removal of bad herbs, and the cultivation by weeding".

*Liqe* Bätre in regard to these *rim*-s seems to be in a precarious condition. The contractual scheme is nevertheless more complex and the usufruct is not strictly restrictive as to disposition: a possible right of devolution of *rim* is evoked in one of the texts involving *liqe* Bätre.

### 2.3.2 The devolution of *rim*

The transference of rights can be accomplished in two manners: devolution by succession whether or not there is a testament (will); or donation. Transferences by will or by donation are considered as acts by which a person disposes of a thing. As such, donation and transfer by testament ought to be prohibited to *liqe* Bätre who has the usufruct of the land and not the ownership of it.

If *liqe* Bätre has solely usufruct rights, he cannot sell the land. Only the owner is enabled to sell the land. However rules concerning usufruct differ on the possibility for a usufruct beneficiary to transfer rights by donation or by testament (or will).

In one of the texts in the folio 283, *liqe* Bätre is said to have distributed his rights on *rim*-s to his children, spiritual or real:

<sup>56</sup> He has the rights to the use and the fruits of the land but not the right of disposing of the land.

Document 8, donation of *rim* rights by *liqe* Bätre to his children<sup>57</sup>

ሊቄ ፡ በትሬ ፡ ለልጆቻቸው ፡ ሲያድሉ ፡ የመምህር ፡ እስክንድስን ፡ የተክሉ ፡ ያዛ  
ጅ ፡ ካሌድን ፡ የኃይሉ ፡ የጌታዬ ፡ ማኅተመ ፡ ክሶስን ፡ የወይዘሮ ፡ ዲናር ፡  
ያባ ፡ ሱራሄን ፡ የወይዘሮ ፡ ወለተ ፡ ተክለ ፡ ሃይማኖት

When the *liqe* Bätre has distributed [his *rim* rights] to his children, [he has given] [the *rim* of] *māmbəṛ* ጸskəndəs to Tāklu, [the *rim* of] *azzağ* Kaled to Ḥaylu, [the *rim* of] *getaye* Maḥtämä Kəsos to *wäyzäro* Dinar [and the *rim* of] *abba* Surahe to *wäyzäro* Wälättä Täklä Haymanot.

This ‘distribution’ of rights may mean that *liqe* Bätre is allowed to donate or pass to his heirs his *rim*, ie his usufruct rights. This means that his right to usufruct could be transferred. But the term ‘distribute’ is not clear on the time the transfer occurs; whether the transfer is a donation or a legacy.

The transfer nonetheless in this case is gratis with no mention of a price. The possibility for *liqe* Bätre to sell *rim*-s is not ascertained by these texts. The *rim*-s are not designated as *liqe* Bätre’s; they are rather identified in their relation to the sellers. This hints to the rights that these sellers have preserved. In turn, the persons benefiting from *liqe* Bätre’s distribution may have to submit to the same insecurity concerning the *rim*.

The only precaution for the unmeasured right of the owner of the land to sell or give the land to another buyer or tenant seem to be the guaranty. This questions the value and meaning of the guarantee given.

### 3. The Guaranty

In every sale of *rim* in the Ḥamärä Noḥ manuscript, there is the presence of a መድን *mädən*, a guarantor. A guaranty or surety in law is a promise by a third party to a contract to discharge the obligation of the debtor if he fails to perform his obligation.<sup>58</sup> As the person paying in a contract of sale is the buyer, in the usual circumstances there would be a guarantor for the performance of the buyer’s obligation, and especially for the payment of price. In these contracts however the *mädən* guarantees the duty of the seller up to the point that even he is confused with the sellers and named as one of them in some of the sales.<sup>59</sup>

<sup>57</sup> GUIDI 1906: 26.

<sup>58</sup> For an example of definition of surety, see article 1920 of the Civil Code of the Empire of Ethiopia, Proclamation no. 165 of 1960 that states: “Whosoever guarantees an obligation shall undertake towards the creditor to discharge the obligation, should the debtor fail to discharge it”.

<sup>59</sup> See e.g. one of the first sales in the collection in GUIDI 1906: 6, no. 2; a person enumerated as seller is in reality (or is also) the guarantor.

In the *māzgāb* of Ḥamärä Noh, it is in effect common for the seller to act as the guarantor of his own obligation or the obligation of the person selling with him. This could be explained partly by the fact that transactions related to land were not that frequent<sup>60</sup> before this gondärine period. Another reason for the need of guaranty may be the distinction between eminent domain and private holding. The idea of eminent domain sustains that the king's superior ownership of any land in the kingdom allows him rights, such as taxation or expropriation. A person or an institution could only hold right of land-use at the sufferance of the crown. This distinction implied restrictions on the sale (disposition, *abusus*) by the person enabled to have the private use of the land.<sup>61</sup>

The manuscript is particularly rich in regard to the types of guaranties. The key difference in guaranties is the scope of their cover (to which extent the creditor, in this case the buyer, could feel secured by the guaranty). The analysis of role of the guarantor could give indications on the distinction of guaranties according to their effects.

### 3.1 The Types of Guaranty

Document 5 suggests a type of guaranty applicable to the case where there is a plurality of sellers acting as guarantors for each other. In this document, three sellers, two brothers and their sister are selling the father's *rim*. Two of them are each other's guarantor (see document below).

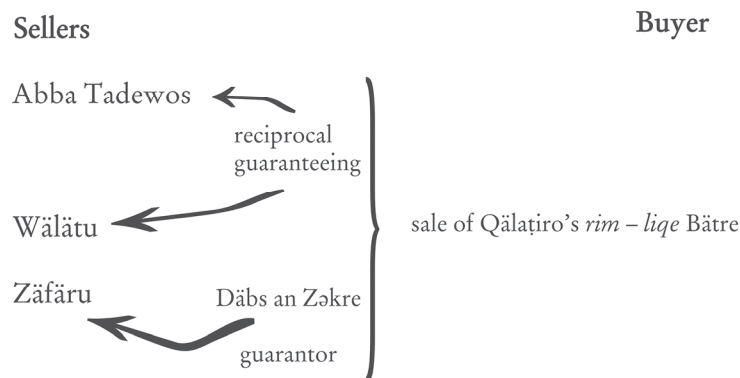


Fig. 2: Representation of the sale of Qälaṭiro's *rim* to *liqe* Bätre

<sup>60</sup> See CRUMMEY 2000 on the sudden massive commercialization of land.

<sup>61</sup> See BERHANOU ABBEBE (1971: 5ff.) for the distinction between the two types of ownership that still prevailed in the 19<sup>th</sup> century in Šäwa.



The guaranties reciprocally given by the sellers affect the nature of their obligations. This guaranty seems to be creating, at least for these two sellers, joint and several debts. That is to say that in case the transfer of *rim* is not operated, or if the usufruct is obstructed, the fact that two of the three sellers guaranteed each other's debt results (at the least) in the payment of the value of two third of the *rim*. This would also mean that if the buyer (*liqe* Bätre) does not benefit from the expected rights on the *rim*, he could recover two third of the payment from either of these two sellers because the reciprocal guaranteeing created 'joint' debts.

A second classification of guarantees can be based on the identification of the debt for which the guaranty is given. In document 5, *azzaž* Kalid's daughter and her son Wäldä Maryam are selling *azzaž* Kalid's *rim*. Wäldä Maryam in this case is acting as ጠለፋ *täläfa*. This word according to Kane means "second bondsman or guarantor who protects the first bondsman".<sup>62</sup> Wäldä Maryam as the second guarantor is protecting the first guarantor, Aşqu who does not seem to have a familiar relation to the sellers. With the intervention of Wäldä Maryam as second bondsman, we have a sale falling under the group of sales where the seller and guarantor are family members.

The precautions surrounding the sales of *rim* lead to questions on the reason for the guaranties. Why did the parties need guaranties? Why did they need to even get a second bondsman? Were the sellers disrespecting their duty to let the buyer enjoy and use the property? How could the sellers prevent the buyer from benefiting from the *rim* he had bought?

### 3.1.1 The Role of the Guarantor

There is an indication on the role of the guarantor in document 2. The expression 'የመጻን ሁሉ ይከለክላል' reminds of the immunity clause in deeds. The guarantor would protect the *rim* from all other claims. Conflicts related to property claims presented to judges would therefore include the guarantor.

In document 2, the guarantor is also said to be a person who is not indebted to anybody. This last precision gives the idea that the guarantor, if he does not fulfil his duty, may be called to compensate the buyer.

These precisions do not come as a relief when we consider that the buyer of the *rim* could, eventually with compensation, be removed from the land anytime the landowner decides to do so. However, the prices in the second

<sup>62</sup> The definition given by Dästa Täklä Wäld for *täläfa* does not seem appropriate herein; he refers to a guarantor to whom the parties did not think of in advance, a guarantor that the parties happened to agree upon. Since there is already a first guarantor, there does not seem to be a problem of not having thought of guarantors soon enough, see DÄSTA TÄKLÄ WÄLD 1962: 556, and KANE 1990: 2095.

document may clarify the relationship between the buyer and the seller. One third of the *rim* bought by *liqe* Bätre from *abba* Marqos is sold, so it seems by *abba* Marqos, to *wäyzäro* Dinar. The latter is mentioned in document 7, as the ‘daughter’<sup>63</sup> of *liqe* Bätre. She is paying 7 *drim* for one third of the *rim* that cost 7 *wäqet* to *liqe* Bätre. According to Pankhurst’s (1970: 56) conversion, 1 *wäqet* is equivalent to 10 *drim*-s. The price she is paying would therefore be less than the value of one third of the *rim*. This could mean that, as the daughter of *liqe* Bätre, she has a kind of right of first refusal that would qualify her to buy the *rim* before any other third party can, or at least a right enabling her to renew the *rim* in her favour.

### Conclusions

The study of the requirements to sell *rim* has given information as to the establishment of *rim*. The sellers need not to be priests or church dignitaries although the fact that the *rim*-s are located on church lands seem to imply that these *rim*-s benefit prelates or at least servants of the church of Ḥamärä Noḥ.

The complex scheme of representation in the sales suggests that the seller keeps the ownership rights and transfers only the usufruct of the land to *liqe* Bätre. *Rim* in these contracts is not equivalent to the plot of land granted/sold to a person. As a usufruct, *rim* is a dismemberment of property applied, in the documents, to church lands. It has been observed however that this does not necessarily mean that *rim* is established uniquely on church land; nothing seems to prevent applying the mechanism of *rim* to other types of lands, whether they are private lands or they belong to the King himself.

The rights kept by the owner of the land appear to be drastic to the point that guaranties are an indispensable component of the contracts. As there is no stipulation limiting *liqe* Bätre’s rights in time, the *rim* could have well been his property till the end of his life or of his functions within the lands of Ḥamärä Noḥ. Nevertheless the *rim* bought by *liqe* Bätre is being sold by the owner who sold it to him in the first place. The *rim* seems to have created the equivalent of an eminent domain at another level than that of the state/Crown: here it is any seller who by selling solely the usufruct, is enabled to expropriate the beneficiary of the land. The guaranties thus serve as a more or less efficient compensation to this precarious nature of *rim* and oppose limitations to the owner’s rights.

<sup>63</sup> The mentioning of her name as one of *liqe* Bätre’s children receiving donation in a registered transaction seems to lean in favour of *wäyzäro* Dinar being his real daughter rather than a spiritual one.

Although the temporary nature of the *rim* is not doubtful, *liqe* Bätre is said to have ‘distributed’ rights to his descendants. Adding to the limits of the owner’s rights, this bequeathing of the *rim* echoes the commercialization of land rights with the multiplication of *rim* sells. The new market creates remedies for a system that is becoming too prohibitive by imposing restrictions on the selling of land, on the transfer of land, and on the making of profit from the land. The sales draw a delicate balance between the interests of the owner and those of the beneficiary of the usufruct of the land.

There remain questions in regard to the relation between the owner of the land and the buyer of the usufruct as well as to the value of the guaranties used to stabilize the system of transfers. The absence of an expressive mention of rent would waive the hesitation on the nature of the contract: the transactions are selling *rim*, not renting it. However, the owner may have rights to impose taxes on the benefiter of the usufruct.

The duty of the buyer of the *rim* to the Crown needs further clarification. The *rim*-s located on a land that supposedly is not submitted to royal taxes, may result in an exemption for *liqe* Bätre as a beneficiary of these *rim*-s. The extent of the exemption, if ever, is also one of the many issues raised by the manuscript of Ḥamärä Noḥ. This manuscript could help to refine the studies of land administration during the Gondärine kingdom era, adding to it with its numerous and rich descriptions of land rights’ transfers.

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### Summary

The *māzgāb* of Ḥamärä Noḥ, also known as the collection of documents preserved in the manuscript, London, British Library, Oriental 508 and edited by Guidi in 1906, comprises legal texts registered adjoining religious texts. This manuscript is a Four Gospel manuscript from the church of Ḥamärä Noḥ founded by Tewoflos in 1709. The accounts of the texts date from the 18<sup>th</sup> century, from the reign of *aše* Tewoflos to the reign of *aše* G<sup>w</sup>alu, and take place in Gondär. One buyer who was very active in transactions around Ḥamärä Noḥ was *Liqe* Bätre. The contracts of sale in which he is named use complicated patterns and suggest a refined legal conception of land ownership, with the employ of the notion of *rim*. This type of tenure has received diverging interpretations by scholars. The study of *Liqe* Bätre's contracts from Oriental 508 allows an understanding of *rim* as a type of tenure that may not include ownership of land. The justification for the exaggerated precaution of establishing guaranties in sales lies in the precarious tenure that this notion can imply.