# THE LEGAL STATUS OF COMMUNAL LAND TENURE SYSTEM IN ETHIOPIA AND ITS CONGRUENCY WITH THE FDRE CONSTITUTION

***Nigatu Bekele*** [1]

## ABSTRACT

*The article investigates the factors behind the dwindling condition of communal lands and their legal status in Ethiopia in light of the country`s international and regional commitments. As the nation is comprised of an overwhelming proportion of agrarian community, who in addition to their individual farmlands for crop production are highly dependent on communal land and resources such as timber, firewood, traditional medicine, fodder and thatching grass and places for ritual ceremonies. Currently, a nationwide, communal land on which the life of the rural mass is based on is admitted to be on the brink of literal disappearance. Even though a number of factors ranging from climate change, population growth and others may be ascribed to the dwindling of communal lands and landed resources, this study argues, through a doctrinal analysis, that the denial of legislative recognition on its part, categorically adds fuel to an unfettered extinction. Thus, the writer urges government both at federal and regional (state) level ought to accord sufficient legislative recognition of communal land tenure as well as protection of legitimate tenure rights of the rural poor which has survived for ages.*

**Key words**: *Communal Land, Land Tenure, Land Rights, Indigenous Peoples, Rural Community, Livelihood*

## I. INTRODUCTION

Land is naturally limited resource whereas interests upon it are numerous. Individuals desire to have land for personal purposes such as building dwelling house, business premises and farming. The state on its part seeks to

[1] LL.B (Mekelle University); LL.M (Hawassa University); Lecturer of Law at Wolaita Sodo University, School of Law. Email: debbybekele@yahoo.com . As my first journal article, in directing the how-to-write, a sheer part of the credit goes to Dr. MuraduAbdo, Associate Professor of Law at Addis Ababa University.

establish public institutions under its private domain and roads, railways, airports, recreation centers etc…falling under the public domain. Indigenous agrarian and pastoral communities also desire to make use part of the same parcel for pasture, source of water, timber, medicines, and the list goes on… Based on a number of different rationales[2], states across the world[3] adopt one form of land tenure system[4] or another so as to successfully respond to the differentiated interests over the land. Such land tenure systems (forms of landholding) having been manifested in governmental policies, get blessings of the lawmakers so that contrary activities will be effectively sanctioned.

Internationally, the rights of indigenous agricultural, pastoral and mixed tenure holders have got recognition in major human rights instruments. Among others, the United Nations Declaration on Rights of Indigenous People[5] (UNDRIP) affirms that indigenous people have the right to the full enjoyment, collectively or individually, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), and International Human Rights Law.

[2]Parker Shipton, Mortgaging the Ancestors: Ideologies of Attachment in Africa (Yale University Press, 2009), P2.

[3] For example, Shipton claims that numerous African governments, with advice, support, and some arm twisting from outside Africa, have been gearing up at the start of the millennium to title farmland as private property in the hands of individual or group owners to make it more marketable and able to be mortgaged.

[4]Throughout the world, there are four very well-known land tenure systems. The first one is a private land tenure which assigns rights over land to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. The second one is communal land in which a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture. The third one is open access land tenure system, where specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc… where there may be free access to the resources for all. The last type, state land tenure, is a category in which property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralized level of government.

[5] Resolution adopted by the General Assembly on the 107th plenary meeting 13 September 2007, which is not ratified by a few states, including Ethiopia.

The UNDRIP has included the rights of the indigenous people to self-determination; freedom from discrimination; control over the development that affects them; cultural rights in economic, social, and political including education, art, and literature; recognition of their customary laws; and redress rights in the event of takings of indigenous knowledge and property.[6] It confirms the right to traditional knowledge; collective rights; the right to self-determination; the right to be consulted and as a state`s duty to consult; rights to lands, territories, and resources, including to strengthen and maintain their spiritual ties to the land traditionally owned, occupied, and used; and *recognition of their land tenure.*[7] In a related manner, the International Convention on Civil and Political Rights (ICCPR), under article 1(2), prescribes that:

> *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

In contemporary Ethiopia, the issue of land tenure system hangs on the private versus state land tenure dichotomy. Scholars have fiercely argued against each other's side usually ignoring or at least not prioritizing issues of communal land tenure systems, which are practised in over 61% of the nation's total landmass by pastoralists and other indigenous communities. Even though there is a meager provision in subordinate laws regarding communal holdings[8], these laws denied a concrete and practical basis which the state and private holdings retained as such. In other words, communal

[6] UNDRIP, Preamble.

[7] Article 26 specifically provides that (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (3)States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned

[8] For example, Proc. No.456/2007, Art.2 (12); Proc. No. 110/2007(SNNPRS), Art. 2(14).

land is both given by, and subject to conversion to private holding at the prerogatives of the state.

As a distinct category, communal land tenure is a system which is characterized by non-exclusive use in which a group of people have co-equal rights.[9] The resources falling in this category may include community pastures, forests, wastelands, common dumping and threshing grounds, watershed drainage, village ponds, rivers, as well as their banks and beds.[10] Since access to such land is exclusive to the identified local community, management would be carried out by the community by developing certain locally crafted norms.

The writer contends that the neglect of the concept of communal land tenure in the FDRE Constitution, the supreme law of the land and its subordinates might result in a situation of communal land tenure insecurity, and thus total/partial loss of livelihood in the rural society of Ethiopia. Against this backdrop, the article intends to examine the existing legal framework in addressing the problem and the kind of legislative mechanism so as to stop the dwindling of communal lands.

This article is organized into four sections. Accordingly, the first section is an introduction, aimed at showing the framework of the concept in general, and acting as a blueprint to navigate through. The second section is devoted to an investigation into the legal status of communal lands in Ethiopia, on the one hand, and the driving forces behind the dwindling pace of the same resources, on the other. At the end, conclusions and recommendations follow.

## II. NATURE AND FORM OF LIVELIHOOD PERSPECTIVES VIS-À-VIS CLTS

Rural livelihood is almost completely based on agriculture, whether farming, animal rearing or their combined form. Rural households often pursue diverse livelihood strategies, including farming, herding, off-farm

[9] Liz Alden Wily, The Tragedy of Public Lands: The Fate of the Commons under Global Commercial Pressure (International Land Coalition, 2011) ILC 4.
[10] *Ibid.*

employment, and the exploitation of natural resources through hunting, fishing, and gathering. According to Chambers and Conway, livelihood comprises the capabilities, assets (stores, resources, claims and access), and activities required for a means of living: a livelihood is sustainable which can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the long and short term.[11]

Central to the framework is the understanding that the relative availability of various "capital assets" shapes the livelihood options of rural households in developing countries. These assets include financial, physical, human, social, and natural capital.

Livelihood perspectives with regard to communal lands try to explain the role of such lands as an alternative resort in easing the burden attached to the lands of the peasant primarily used for crop farming.

## III. THE LEGAL ASPECTS OF COMMUNAL LAND RIGHTS IN ETHIOPIA

As far as the Ethiopian jurisprudence on land tenure in general is concerned, countless critics were forwarded on matters such as the denial of the government in loosening the awkward restrictions in the transfer of land rights. This does not, however, connote that communal land rights are not affected in a decisive manner. From top to bottom, almost all legislations exhibit fundamental problems from the perspective of recognizing and protecting communal lands on which a sheer number of the rural poor depend on. Therefore, the FDRE Constitution and pertinent laws on rural land will be the subject of rigorous scrutiny in the above context.

### 3.1.THE FDRE CONSTITUTION

The recent Constitution (unlike its predecessors which inculcated a tradition of a highly centralized state structure) substantially brought about decentralization of governmental power based on ethnic federalism, from

[11]Chambers, R. and Conway, G.R., Sustainable Rural Livelihoods: Practical Concepts for the 21st Century (Brighton: Institute for Development Studies, 1991, IDS Discussion paper #296).

which local governance over resources can be assumed. A renowned personality recited:

> *Since 1991, Ethiopia has embarked upon a bold experiment in the conduct of public life. The hallmark of experiment is a readiness to face the fact of ethnic diversity. New political arrangements aim to shape the Ethiopian identity around the country's constituent nations and nationalities . . . Even in this era of politics of identity, Ethiopia's resolve to extend full public recognition to her varied national communities is unique. It [the right to self-determination including and up to secession] is now a constitutional entitlement. All cultural communities are entitled to fair representation in the institutions of state and federal government. Territorially based nationalities exercise wide powers of self-government in political, economic, cultural and educational affairs. The result is a political order open to cultural diversity, self-expression and autonomy.*[12]

The manner in which the principle of popular sovereignty is articulated in the Constitution influences the rights of communities as reflected in various provisions such as those related to federal structure as well as the supremacy of the Constitution. Constitutional laws normally guarantee rights and freedoms and are thus considered as 'rights documents'. In this regard, the FDRE Constitution is no exception, and almost one-third of its provisions are designated to 'Fundamental Rights and Freedoms" . In light of the inclusion of group rights to which the Constitution anticipated the rural farming and pastoral communities as the main beneficiaries, they have the right to self-determination under the Constitution which encompasses, among other things, the right to a full measure of self-government. Such a right can be taken to mean that the Constitution is liberal as far as the exercise of communal land rights is concerned.

[12] Andreas Eshete, Ethnic Federalism: New Frontiers in Ethiopian Politics (In Proceedings of the First National Conference on Federalism, Conflict and Peace Building, Ministry of Federal Affairs of the Government of the FDRE, Addis Ababa, 2003), P142.

Nonetheless, a critical look into the Constitutional provisions display that the above assertion is not always true. In this regard, the definition of private property in the FDRE Constitution is a crystal clear example:

> *Private property is any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen… Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvement he brings about on the land by his capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.*[13]

The gist of this sub-provision shows an emphasis on improvement. In other words, unless an improvement is made on land which exists naturally, it becomes hard to establish a legally enforceable right. In the words of Muradu:

> *The Constitution has thus adopted the concept of improvement. Under this Constitution, for any person to have a legal claim over land, they must show that they have made an improvement traceable to their labor and/or capital. One cannot claim land without establishing improvements thereon. Unimproved land in this sense belongs to the state. Those who merely extract the bare natural fruits of communal land cannot under this approach claim to have a right over those resources for they have not met the requisite condition for claiming such right.*[14]

It is evident that one can arrive at a probability that the FDRE Constitution recognizes communal land rights by way of positive interpretation of the contents of Article 39 in a holistic approach. However, such an articulation invites a heavy debate over the issue of communal land rights. In other words, it may be argued that the collective rights mentioned under Article 39

[13] The 1995 FDRE Constitution (hereafter the Constitution), Art.40 (2 & 7).
[14]Muradu Abdo, State Policy and Law in Relation to Land Alienation in Ethiopia(University of Warwick, 2014), P 204.

can effectively be exercised only if the rights of NNP to own, possess and manage their communal lands using their own system are also explicitly recognized as a distinct tenure system.

Despite the fact that an abstract form of joint ownership of the people and the state over land is proclaimed in the Constitution, it was also established in black and white that the government is the only personality with the power to administer the land.[15] To put it in a nutshell, the concept of communal land tenure has no constitutional recognition in the Ethiopian legal system. Many other writers on this point stress that this kind of standing inculcates a perpetual disregard for communal land tenure:

> *This perpetuates the perception that community land tenure is less important and therefore, less secure form of tenure relative to private and public land tenure which are already provided for under the Land Act and Land Registration Act (of Kenya). References to community land in these laws in a sense pre-empts innovating landing of issues under the yet to be enacted Community Land Bill. It is therefore likely that the perception of community tenure as transient, and the parceling out of community land into individually held pieces, ostensibly as a defense against future land-grabbing, will persist. This raises the possibility that constitutional recognition of community land rights might eventually be inconsequential as the subject matter itself is fast disappearing before the necessary law can be enacted.* [16]

As will be seen immediately below in conjunction with the data obtained from the field research, the few segments of communal lands and resources for which legal scholars and other developmental partners are lobbying on the brink of literal disappearance.

[15]FDRE Constitution, Art.40 (3).
[16]Constitution of the Republic of South Africa (No.108 of 1996), Art. 25 (5-8).

## 3.2. SUBSIDIARY LEGISLATIONS: FEDERAL VS REGIONAL DISCREPANCIES

### 3.2.1. The Federal Rural Land Law

On the contrary, it has been long since a handful of African[17] and other states have duly recognized the relevance of communal land tenure system into their formal legal system with the view to move in tandem with international and regional commitments pledged towards observing the rights of indigenous pastoral and small-scale agricultural as well as forest dependent communities. Concomitantly, framework legislation on land was subsequently issued by the Ethiopian Federal Government which sets the basic tenets for the regional governments to administer the land under their respective jurisdiction.

In fact, despite the federal framework legislation governing the whole land of the nation, regional states always enact a similar legislation with an equal footing with that of the federal law. Some critics say that it is unconstitutional for regions to enact law on land, which is reserved to the federal government. The regional governments are supposed only to administer land based on the federal laws for that matter. In the next sub-section, the author tries to show whether the legislation on land endorsed the concept of communal land tenure (which has long been practised by the rural society)[18].

This law is entitled as "FDRE Rural Land Administration and Land Use Proclamation." It was adopted in July, 2005 replacing its predecessor, Proclamation No. 89/1997. The scope of application of the law is throughout the country, as envisaged under Article 4 of the proclamation. Regional governments are given the power to enact rural land administration and use laws, which consists of the detailed provisions necessary to implement this

[17]In this regard, the Communal Land Rights Act of the Republic of South Africa, the Community Land Bill and 2010 Constitution of Kenya are the prominent ones.

[18]Up to now, we have been concerned with norm changes initiated by the law to be followed by behavioral changes. But, unless we define social change tautologically as identical with norm changes, which seem unjustifiable, we must accept three possible types of change– norm change followed be behavioral change, behavioral change followed by norm change or law as response to change.

proclamation.[19] The proclamation states "peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge".[20] Any person who is a family member of a peasant farmer, semi pastoralist or pastoralist having the right to use rural land may obtain rural land from his family by donation, inheritance or from the competent authority.[21]

Thus, the means of acquisition of rural land is either through family inheritance or donation, or through government provision. Since land is owned by the State and the people, peasants' title to the land is only of a usufruct in nature. The proclamation defines "communal holding" as "a rural land which is '*given by the government'* to local residents for common grazing, forestry and other social services".[22] It is a bare fact that human community preceded government in its modern form. It follows therefore, that such communities maintained certain identifiable plots of land for common purpose. In the ancient and medieval times, kings have accorded due regards for such communal possessions in different parts of the world.[23] For example, the Kawo (king) of Gofa ethnicity in Ethiopia believed that communal land is sacred, as such. The book entitled *yegamo-gofa hizboch tarik* has this to say:

> *There were also reported to be different kinds of lands in addition to the family holdings. Basically, land is classified as agricultural, grazing, settlement and other social services such as fields for funeral (bale), (qaa'e) wedding (yaagano) fortress (ola-mitha) and ritual ceremonies. Generally speaking, lands of special relevance such as mentioned above are under the supervision of the bitantte (landlord).*[24]

The definition of communal land in the federal rural land proclamation is an assertion that the government is the '*giver'* of communal holding and thus, it

[19] Federal Rural Land Use and Administration Proclamation No. 456/2006 (here in after FRLUA), Art. 17(1).
[20]FRLUA, Art.5 (1)(a).
[21]FRLUA, Art.5 (2).
[22]FRLUA, article 2(12)
[23]*Ye Gamo-Gofa hizboch tarikketinteske 1974* (Gamo-Gofa Zone Information Department, 2002), P75.
[24]*Ibid.*

is an act of putting the cart before the horse. A government which did not exist when traditional communities came into being since time immemorial can in no way claim of giving communal land. Rather, it would have better recognized that there were lands long been possessed by communities for various common purposes.

### 3.2.2. The SNNPRS Rural Land Use and Administration Proclamation No.110/2007

Practically, to administer rural land, the regional states enact land law based on the framework legislation of the federal government.[25] However, the wordings of the constitution in this regard does not entrust them to enact a law, rather simply administer based on the federal law.[26] Be that as it may, SNNPRS rural land use and administration proclamation seems a little bit aware of the age old possession of communal lands and thus followed an approach directed towards recognizing communal lands being used for long time by a given community.[27] In light of the age old trend of regional states reflecting a carbon copy of federal laws, such a trend of clearly recognizing communal land is highly commendable.

### 3.2.3. The Amhara National Regional State Rural Land Administration and Use Proclamation of 2017

This Proclamation mandated rural land management and rights and use of rural land in Amhara National Regional State. In principle, it applies to all rural lands but provisions of special laws (relating to forestry, wildlife protection, bio-diversity resources, natural resource and environmental protection, mines developments etc.) shall continue to apply. The legislation concerns, mainly; the right to acquire land; land re-distribution; the right to hold land; land use; measurement of land and certification and registration of landholding rights; expropriation of land for public use; dispute resolution; transfer of a landholding right; obligations of the land user. Whereas the right to ownership of land is vested in the state and the public,it is impossible to transfer the land holding to other in sale or in exchange by another

[25] See the FDRE Constitution, Art. 51 (5).
[26]See the FDRE Constitution, Art.52(2).
[27]SNNPRS Rural Land Use and Administration Proclamation No.110/2007, Art.2 (14).

property. Any farmer residing in the region, regardless of gender or any other reasons of difference, have equal right to landholding.

With regard to communal landholding, the vision of the law seems exactly similar with that of the SNNPRS rural land use and administration proclamation. As a result, a clear recognition of communal landholding can be deduced from the definitional part of the legislation which goes:

> *"Communal Holding" means rural land which is out of the ownership of the government or private holding and used by the local people in common for grazing, forestry and other social services."*[28]

11/ "Communal landholding" means land which is neither state owned nor individually held; and which is held and used by communities for grazing, forestry, and other social services, etc.

### 3.2.4. Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019

This proclamation has also taken account of the existing realty of rural livelihood which is supported by communal lands to greater extent. Like its Amhara and SNNPRS counterparts, it explicitly recognizes communal land tenure system. The proclamation reads:

> *"Communal landholding" means land which is neither state owned nor individually held; and which is held and used by communities for grazing, forestry, and other social services, etc;*[29]

The proclamation further goes to the extent of awarding Displacement Compensation for Communal Landholding. According to the proclamation, the valuation method and manner of payment to permanent and temporary expropriation of communal land holdings is determined in a directive to be issued by Regional States, Addis Ababa, Dire Dawa City Administrations

[28] See the Revised Rural Land Administration and Use Determination Proclamation No.133/2006, Art. 2 (5).
[29] Expropriation of Land Holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No.1161/2019, Art. 2 (11).

and take into consideration: a) Valuation of displacement compensation for communal landholding based on the use of the communal land; or the lost benefits and livelihood of the displaced People. b) based on the clearly identified members of the community using the communal land c) based on the clearly determined method of allocating the displacement compensation money or the use of it in kind to all members of the communal landholding community.

With respect to compensation for expropriation of communal land, the intergenerational nature of the later makes it impossible to compensate the future generation. Therefore, the lack of clarity of the law in this regard deserves rethinking so that compensations are not oriented only to the current generation.

### 3.2.5. The Revised Draft Federal Rural Land Legislation

The previous successive laws on rural land including the federal constitution, to date, experienced blatant opposition by the advocates of private ownership on accounts of lack of efficiency and refusing to release the people from indefinite, involuntary attachment to the rural land.[30] Unlike the traditional expression of *the law and practice,* a critical look at the draft law will uncover whether the quest of communal land tenure is satisfied or not. This stems from the fact that the community is ahead of the statutory law in maintaining communal land tenure as a third distinct type. Therefore, such an incident forces one to analyze a certain empirical phenomenon in a vice-versa, i.e, *the practice and the law* fashion. Put in a nutshell, statutory laws are in a gradual process of endorsing the behavior of the rural community as a norm deserving sanction.

## IV. MAJOR ISSUES ADDRESSED

*a) Abandonment of the one-size-fits-all approach.*

The absurdity of governing the whole nation by a single, uniform legislation is clearly felt by everyone. The referrals in the draft federal rural land law that majority of the details of the rules governing the land shall be decided based on laws to be enacted by regional states according to their specific

[30] Draft Federal Rural Land Proclamation of 2014, Preamble, Paragraph 2.

circumstances may be aimed to show the departure from the one-size-fits-all approach pursued by the previous laws.

b) *Dedication to observe international commitments on pastoral land rights.*

The draft land law, in its preamble reiterated that due emphasis will be accorded to the customary land use and management practices of the pastoral community. The duty imposed on regional land laws to accord due recognition to customary institutions, land use, management and conflict resolution mechanisms and the attendant tasks of support and follow up[31] is a good turn. This will in the future, put a tougher task on the government to follow a hands-off approach as far as respecting the integrity of communal lands on which the livelihood of the pastoralists is based.

c) *Indications that land and other resources could be held communally*

Article 2(4) of the draft legislation; while defining government holding *by definition through exclusion* implied that communal lands do in fact exist irrespective of governmental provision.[32] This positive tendency is reinforced by a robust recognition of communal land *per se* in article 2(11) as a land held by local people for social, economic and other purposes. Accordingly, the phrase 'given by' is changed by the phrase 'held by'. The categories of land tenure as expressed in article 5 of the draft law are also unequivocal indication that recognition of communal land tenure is increasingly becoming an imperative.

d) *Registration and certification of communal lands*

The previous legislation simply provided that communal land is a land given by the government to local residents for a number of purposes. It did not provide for the registration and certification of communal lands *per se*. In the draft legislation, however, in addition to the recognition of communal land

[31] Draft Federal Rural Land Proclamation of 2014, chapter 7, Art.19.

[32] The draft law defines government holding as a holding which is neither private nor communal, but includes governmental holdings (which is a viscous definition resulting from poor draftsmanship), forest lands, wildlife sanctuaries and protected areas, lakes, rivers and others held in a similar nature.

tenure as a distinct type of its own, registration and certification creates an opportunity through which a wholesale appropriation or gradual contraction in the size of communal lands will be abated.[33] In this connection, security of communal landholdings at the time of registration is taken to be the duty of the registering organ.[34]

*e) Conversion of communal land to private holding prohibited.*

The previous legislations on land put the option of turning communal land tenure at the will and whim of the government. In other words, the mere fact that the government believes that it is feasible to do the conversion suffices to make it a reality. However, the draft law has made an unequivocal departure indicating that regional governments can dictate neither partition nor conversion of communal land to private on their own. Conversion will only be effected after having conducted sufficient research with affirmative findings and concerted willingness on the part of pastoral and farming community. However, in a situation where genuine progress of rule of law is at a stake, the probability of manipulating the pure consent of the community through elite capture is feared to materialize.

## V. PENDING ISSUES

*a) The concern of small-scale peasants and other communal land dependent communities*

The benefit that communal land yields to small-scale farmers and other poorer sections of the rural community shall not be underestimated. Even though expanding agriculture on communal lands is not as bad as such, it benefits only the farmer and his/her family blocking the fortunes of the greater multitude who lived on the resources of the communal holding. Their issue needs to be clearly and unequivocally considered in the rural land laws to be enacted in the future.

[33]Draft Federal Rural Land Proclamation of 2014, Arts. 1 and 2.
[34]Draft Federal Rural Land Proclamation of 2014, Art.32 (3) (c)).

*b) Rental of communal lands of pastoral and small-scale peasants*

In a time when the existing communal lands are far less beyond the demands of the rural population, the possibility of renting such resources may facilitate manipulation of the interests of the mass by a few corrupt political and economic elites.[35] In addition to that, the draft legislation does not clearly indicate the modality of sharing benefit gained from rental of communal lands among the inhabitants surrounding a communal land. Even though the presumption is that the local community, not the state is direct beneficiary to that end, an unequivocal indication on the issue brings about certainty at the time of enforcement.

*c) Separate legislation on communal land tenure*

The global, regional and local threats on communal land tenure system as exercised by indigenous peoples in Sub-Saharan Africa in general and Ethiopia in particular is of such a nature that a separate legislation capable of addressing their concerns in a wholesale manner is of prime importance. Therefore, a legislation addressing solely the subject matter of communal land tenure and attendant problems need to stand on its own.

## VI. CONCLUSIONS AND RECOMMENDATIONS

### 6.1. CONCLUSIONS

The Article has investigated the legal status of communal land rights in Ethiopia from the point of view of livelihood perspective. Accordingly, the article has investigated to test the doctrinal congruency between the commitments the country has made while signing normative instruments to observe at international and regional level on the one hand and the municipal laws on the other. The bill of human rights and other soft laws of global and regional origin require that the state should not intervene in certain people's link with what they have traditionally been attached for livelihood.

After a critical look into the Ethiopian laws, unfortunately, it can be said that neither recognition nor protection is accorded to the concept of communal land rights. Even though recent legislation on rural land tends to regard

[35]Draft Federal Rural Land Proclamation of 2014, Art. 21.

communal landholding as distinct in itself, the provisions carry with themselves a number of pitfalls. Last but not least, without having the wordings for the definition of private property in the FDRE Constitution reshuffled in a way which gives full recognition to the lands to which local communities have traditional attachment, land rights as a sub-category of human rights cannot be free from obstruction.

## 6.2. RECOMMENDATIONS

Legal and policy documents dealing with land tenure in Ethiopia are based more or less, on the theory of *the tragedy of the commons*. Consequently, from the two alternatives offered by the proponents of this theory, i.e., privatization or state control of the commons, the latter approach (*the revisionist perspective*) is opted for by the Ethiopian government. Researchers such as Clarke and others have found that "theoretically sound policies in sub-Saharan Africa have either been unworkable in practice or have failed to achieve the intended objectives". In this regard, the Ethiopian legal and practical scenario is no exception. It has, therefore, prompted the author to recommend the following:

*First and foremost*, there is a pressing need to make communal land rights equal in weight and standing to the other two forms of tenure regimes. With this conviction, the law should clearly define 'community' by making use of parameters such as: how the community is organized; the rules that hold the community together; and who holds the rights within that community. It is important note that the definition adopted for 'community' is very flexibly so as to be non-exclusionary and to allow for evolution, flexibility and adaptability over time. Definitions simply based on culture or ethnicity alone should be avoided as it can ignite inter-ethnic tensions, conflict or violence. It is also important that membership to a community should be based on use of land and not on family lineage or transfer of title. In this regard, legal proof of claims on communal land should be aligned at least, by formalizing landscape-based evidence.

*Secondly*, the law should clearly provide for demarcation of communal land such as maps and boundaries, in order to protect community land from encroachment. Special attention should be accorded to communal land in or around urban areas in order to ensure that they are properly vested and used.

Within the communal lands, communal areas, customary rights of way and shared land use and access rights should be legally protected.

*Third*, the principles of protection should be clearly spelt out. These should detail among other things, how the community rights are recognized and protected; registration of rights to land; multiple land users including women and children; land use planning and sustainability issues; processes of compulsory acquisition of community land; rights of way and grazing rights; and conversion of communal land to other uses. Of particular interest is the urgent need to explicitly establish and protect women's and children's right to exercise a meaningful use right over communal land as this has traditionally been opted out in many customary practices.

*Fourth*, the laws should clearly state who can transact the community land on behalf of the community and the nature of permissible transactions. Here, it is important that the ultimate land rights to community land be vested in communities and not under the name of any individual members of the community to avoid cases of misappropriation of community land by group representatives as was the case in the past. The laws should also provide for and encourage the creation of community bylaws and land and natural resource management plans.

*Fifth,* the laws should provide on how rights are to be enforced including rights and entitlements of individual members within communities.

*Sixth*, the laws should state clearly how the community land rights are to be delivered i.e. registration of titles.

*As a matter of practical intervention, the author recommends the following:*

In a state where transformation from agriculture towards industry in its infancy, the importance of land, especially rural land is a way out to meet the needs of the ever expanding young population. Thus some portions of the Communal lands may be granted for venturing into agriculture with careful scrutiny. In other words, the government shall have the duty to protect the Communal lands from being grabbed by individuals who are not in a pressing need for land to meet basic items of livelihood.

The existing normative conflict between the federal and regional governments in recognizing communal lands is also worth noting. In light of the SNNPRS and ANRS rural land laws which boldly recognize communal land laws, the federal counterpart is lagging behind. To be in tune with the FDRE Constitution which claims to create a one economic community, it becomes imperative to amend the land laws so that sufficient recognition is accorded to communal lands *per se.*

To save communal lands both in size and quality, traditional institutions of communal lands administration need to come back to their revival by the assistance of the government. A strong traditional leadership in land administration with effective and conclusive decision-making power needs to be entrenched into the rural society.

Given the pressures of projected population growth, increased resource demand and a trend towards privatization of communal land, the commons are under increasing threat. Unclear and ineffective tenure arrangements only exacerbate the situation. Practical solutions are therefore needed now more than ever. This paper advocates for recognizing their legitimacy and empowering communities to manage the commons through secure tenure and mandating state agencies to build the effectiveness and accountability of local institutions. If the implementation issues can be overcome, increasing security of communal tenure can provide a basis for more sustainable management of the commons and offers hope that the sustainable development promised under international law can be more than rhetorical.