Conceptualizing Peasants' Property Rights over Land under the FDRE Constitution

Gizachew Silesh Chane[♣]

Abstract

The question of who can use what resources of the land remained one of the most contentious subjects in policy debates and constitutional design. The FDRE Constitution has put in place a property regime acknowledging, inter alia, the State, the peoples of Ethiopia, peasants and pastoralists as having recognized interests/rights over land. Yet the reaches and limits of entitlements of these various stakeholders have not been resolved with a degree of certainty. This article examined the entitlements of peasants pertaining to land, based on doctrinal research method where the contents of Constitutional rules are exposed in light of general principles and concepts in property law. From this examination, it is concluded that while the letters of subsidiary laws and general rhetoric espouse the view that all potential powers and/or rights are put in the bucket of ownership and exclusively vested to the state, a closer look into the Constitutional provisions demonstrates that the state remained with a vacuum title in relation to land allocated to peasants and pastoralists individually or communally.

Key words: peasants, property, property rights, land, ownership, landholding rights

Introduction

Land continues to be one of the essential, perhaps the most essential, economic resources across communities in the globe. Reflecting this fact, land tenure[1], the

---

♣ LL B, LLM (Addis Ababa University), LL M (University of Oslo), Assistant Professor in Law, Bahir Dar University, School of Law. The author would like to thank the two anonymous assessors of this article for their constructive comments. The author can be reached via: gizachewsc@gmail.com or gizachewsc@yahoo.com.

[1] Samantha Hepburn, Principles of Property Law, (2nd ed., Cavendish Publishing Pty, Sydney, Australia), (2001), p.41.

system that "determines who can use what resources of the land for how long, and under what conditions,"[2] takes the center stage in policy debates.

A cursory review of Ethiopian land tenure system over the century shows that, it has been a major policy issue with the system changing with changing ideologies.[3] Leaving aside the remote past, the constitutional norms[4] during the Imperial time purported to uphold private ownership of land until they were superseded by declaration of public ownership of land[5] during the Derg regime.[6] Public ownership of land was upheld and continued during the transitional period.[7]

The 1995 FDRE Constitution[8] came up with its own design on the question of 'who can use what resources of the land'. The Constitution lists the State, *the peoples of Ethiopia*,[9] peasants, pastoralists, and investors as having vested interest in land though the bounds of their entitlement with respect to land

---

[2] FAO, Access to Rural Land and Land Administration after Violent Conflicts, Land Tenure Studies 8, Rome (2005), p.19.

[3] See generally Daniel Weldegebriel, Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights, Peer Reviewed Working paper, 2012.

[4] Constitution of Ethiopia, (1931), Article 27; The Revised Constitution of Ethiopia, (1955), Article 44.

[5] See Proclamation to Provide for the Public Ownership of Rural Lands, Proclamation No. 31/1975, *Negarit Gazetta*, (1975) (hereinafter, Proc. No. 31/1975); see also Government Ownership of Urban Lands and Extra House Proclamation, Proclamation No. 47 of 1975, *Negarit Gazetta,* (1975) (hereinafter Proc. No. 47/1975).

[6] On September 12, 1974, military leaders of Ethiopia's creeping coup d'etat placed Emperor Haile Selassie I under arrest and quickly formed a provisional military government. In March 1975, the Provisional Military Administrative Council (PMAC) officially terminated the ruling monarchy and began to promulgate a series of radical socialist measures. John M. Cohen& Peter H. Koehn, Rural and Urban Land Reform in Ethiopia, *African Law Studies*, No.14, (1977), p. 3.

[7] The period between the eviction of Derg from power in 1991 and the adoption FDRE Constitution in 1995. The then economic policy (issued in December 1991) of Transitional Government that declared land would remain under state ownership.

[8] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gazetta*, (1995) (hereinafter FDRE Const.), Article 40.

[9] Id., Article 40(3), second sentence. The Nations, Nationalities and Peoples of Ethiopia are also mentioned as owners of land rights. We will not delve into the bewildering issue of defining who they are, and perhaps that no one precisely understands. The design of the provision suggests the term Ethiopian peoples sums up the triple designations.

remained uncertain and controversial. Article 40, on the Right to Property, provides:[10]

1. *Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.*
2. *"Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.*
3. *The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.*
4. *Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.*
5. *Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by*
6. *Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.*
7. *Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or 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. Particulars shall be determined by law.*

[10] The provision is reproduced here, for each of the sub-provisions are inter-related, so as to provide the glimpse of the whole design.

8. Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

The interplay of this Constitutional precept and a number of federal and regional legislations subsequently enacted, in their own sphere,[11] determines property rights on land. Both the federal and regional governments produced a number of legislations[12] owing to the Constitutional proviso allowing the particulars to be specified by law.[13] The laws change from time to time,[14] from region to region,[15] and so do the rights of peasants.[16] Thus, the rights remain volatile in conceptualization, actual enforcement, and exercise.

Perhaps, nothing has been more controversial, in relation to entitlements in land, than the issue of expropriation and compensation of peasants' landholding rights. The government's growing demand for expropriation of land to develop infrastructure and to attract foreign investment[17] resulted in the displacement of

---

[11] See FDRE Const., *supra* note 8, Article 51(5) cum Article 52(2). Federal Government is vested with the power to "… enact laws for the utilization and conservation of land…. while states' domain is to "administer land" in accordance with Federal laws. See Article 51(5) cum Article 52(2).

[12] See generally Rural Land Administration and Land Use Proclamation of Federal Democratic Republic of Ethiopia, Proclamation No. 456/2005, *Federal Negarit Gazetta*, (2005) (hereinafter Proc. No. 456/2005), Article 2(2); Expropriation of land Holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation, Proclamation No.1161/2019, *Federal Negarit Gazetta*, (2019) (hereinafter Proc. No.1161/2019). The Regional States as well enacted their legislation on land. See for instance, Amhara National Regional State Revised Rural Land Administration and Use Proclamation, Proclamation No. 252/2017 (hereafter Amhara State Rural Land Proc. No. 252/2017).

[13] See FDRE Const., *supra* note 8, Article 40(4) & (5).

[14] Land Administration and Use Proclamation No. 87/1997, *Federal Negarit Gazetta*, (1997). It was later replaced by Proc. No. 456/2005; Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, Proclamation No. 455/2005, *Federal Negarit Gazetta*, (2005) (hereinafter Proc. No.455/2005), which in turn is replaced by Proc. No.1161/2019).

[15] Montgomery Wray Witten, The Protection of Land Rights in Ethiopia, *Afrika Focus*, Vol. 20, Nr. 1-2, (2007), p. 156.

[16] Compare, for instance, Proc. No. 455/2005, *supra* note 14, Article 8(1) *vis-a-vis* Proc. No.1161/2019, *supra* note 12, Article 13. On displacement compensation, while the former provided for displacement compensation of a value equivalent to 10 years annual produce, the latter increased it to 15 years.

[17] Muradu Abdo, Reforming Ethiopia's Expropriation Law, *Mizan Law Review*, Vol. 9, No.2 (December 2015), pp.301, 328.

thousands of peasant households, leaving them without meaningful livelihood. While the debate at international level concerns how far expropriation accompanied by adequate compensation itself should be constrained, sadly, the political and legal discourse in Ethiopia has been whether the government owes legal obligation to pay compensation for peasant landholdings. The state officials, legal scholars and judges seem to have succumbed to the idea of, legally speaking, non-compensability of peasant's landholding during expropriation.[18] While considerable research has been made in articulating and restatement of the subsequent legislations regarding peasants' land rights, not much has been expended in tracing the rights and their protections in their very foundation - in the Constitution. It appears that, scholars have given up and perceived that not much could be fetched from the Constitution to crystallize the content of peasants' right in relation to land, to which this author begs to differ.

Relying on doctrinal research method, with an in-depth analysis of the constitutional provisions, this research attempted to address three basic questions: what relationship exists between the state and the people of Ethiopia with respect to land, given that land ownership is "exclusively vested in the State and in the peoples of Ethiopia"? Second, what is the relationship between the state and/or the people of Ethiopia *vis-a-vis* peasants and pastoralists with respect to land? Third, is landholding rights of peasants rendered legally non-compensable under the current legal setting? Moreover, wordings like 'property', property right, and 'ownership', though apparently vernaculars of property law, need closer examination and contextualized understanding.

Finally, the author would like to note that this research principally aims at examining the peasants' right in relation to land but it also makes mention of pastoralists' right in land scarcely. However, since peasants and pastoralists are treated more or less similarly in the Constitution,[19] the discussion and conclusion as regards peasants by and large applies to pastoralists.

The article is organized under six sections. Section one offers an account of the concept/conceptions of property. Particularly, it presents a general framework within which the provisions of Ethiopian Constitution on property could be analyzed and contextualized. The second section is dedicated to examining the conception of property under the FDRE Constitution. The third section

[18] Id., pp,303, 312, 319.

[19] FDRE Const., Article 40(4) & (5). Peasants and pastoralists are treated similarly in the Constitution. Of course, there might be technical differences in the actual implementation of the rights.

explicates the nature of relationship between the state and people of Ethiopia in relation to land by inquiring into the implication of their designation in the Constitution as owners of land. The question over the nature of peasants' rights in relation to land, in particular the apportionment of interests in land between the state and the peasants, has taken significant portion of the work and constituted section four in the overall structure of the research. Section five assesses the various arguments pertaining to the compensability or otherwise of peasant land holdings, upon expropriation, under the prevailing legal set up. Through the critical examination of the arguments, an attempt is made to clarify misgivings on the subject and reasons thereto. Finally, a brief concluding remark is provided.

1. Brief Account of the Concept/conception of Property

Providing a universally working definition of the term *property* is not an easy task. According to Hart, triple problems underlie the difficulty of dealing with property: "the problem of its definition, the problem of its justification, and the problem of its distribution".[20] As a way to deal with the difficulty of definition, some scholars seem to take the relative nature of the term. Jeremy Waldron, following this approach, holds that "[t]he concept of property is the concept of a system of rules governing access to and control of material resources."[21] As such conceptions of property differ as long as there are different legal systems.

Adriano Zambon concedes the troubling nature of defining the term property. Yet he calls for a distinction between the concept of property and conceptions of property,[22] the former one being universal while the latter is a relative one. For Zambon, the concept of property is "more precisely, the minimal sense of the term property"[23] that serves as minimum common denominator for all theorists and legal system alike whereas conception of property is a declension of the concept of property. According to Zambon, in its proper legal parlance, the concept of property is "a set of one or more deontic modalities that regulate the relations between persons in connection with one or more goods."[24] Similarly,

---

[20] Adriano Zambon, « Property: A conceptual analysis », Revus [Online], 38 | 2019, Online since 23 September 2019, connection on 04 February 2020. URL: http://journals.openedition.org/revus/5208; DOI: 10.4000/revus.5208, p.55.

[21] J. Waldron, What is Private Property? *Oxford Journal of Legal Studies*, Vol.5, No. 3, (1985), cited in Id., p. 61.

[22] Zambon, *Supra* note 20, p.56.

[23] Id.

[24] Id., p. 62.

Hohfeld holds that "property does not consist of things, but rather fundamental legal relations between people…sets of claims and entitlements in tension with each other, held by people against one another."[25] In simple terms, in its minimal sense and as a universal concept, property is a set of legal relation between persons with respect to things.

Zambon further notes the prevalence of two improper uses of the term property. The first one is concerning the use of the term property as designator of a thing, which is common in the ordinary course of communication. [26] He expresses his discontent with the reference to things as the meaning of the term property stating that it "makes us immediately think of a thing, and it thereby makes it easier for us to think of property as a single right over a thing" as opposed to a set of rights or norms in relation to a thing.[27] Thus, he emphasizes that the description of the term property as designator of things should not be used in the legal lexicon. Second, while property is a set of legal relation between persons with respect to things, there is this inappropriate characterization of property as a relation between a person and a thing which is deeply rooted in the Roman conception of property.

Legal systems and legal theorists may develop their own conception of property based on that minimal sense - the *concept* of the term property. [28] Indeed, there are accounts of property, by legal philosophers, that identify property with just one right[29] and characterizations of "property" as aggregate of rights.[30] And yet,

---

[25] Denise R. Johnson, Reflections on the Bundle of Rights, *Vermont Law Review,* (2007), Vol. 32 (2007), p.251.

[26] Id., p.65.

[27]Id.

[28] Zambon, *supra* note 20, p. 56.

[29] Id., P.62. According to James E. Penner, "property is the right to determine how particular things will be used", and "exclusion is […] the formal essence of the right." Penner's definition of property as the right of exclusive use gives the impression that it is permitted only to someone to determine how particular things will be used.

[30] Munzer, S. R., Property and Disagreement, in J. Penner & H. E. Smith (eds.), *Philosophical Foundations of Property Law*, (2013), Oxford University Press. Cited in, Id., p. 61. Stephen R. Munzer stated that:

The idea of property […] involves a constellation of Hohfeldian elements, correlatives, and opposites; a specification of standard incidents of ownership and other related but less powerful interests; and a catalog of "things" (tangible and intangible) that are the subjects of these incidents. Hohfeld's conceptions are normative modalities. In the more specific form of Honoré's incidents, these are

beyond the minimal sense, general categorization and comparison of the *conception* of property is still necessary and possible.

It is worthwhile to cite Pierre's remark that "an understanding of a different approach to the similar problem faced by a society governed by the rules of another tradition, therefore, has the distinct advantage of avoiding narrow-mindedness in the search for possible solutions."[31] The insights to make this categorization and comparison are drawn from established legal traditions which crystallize the conceptions. To this end, the customary Common law-Civil law division of legal systems is employed here for comparison. In the common law, especially in the United States, the conventional view takes "property" "as a bundle of rights" -collection of various rights with respect to a resource, metaphorically called "bundle of sticks".[32] The sticks could be owned by different persons. This conception of property is characterized by fragmentation of title where one is not regarded as owning the thing itself but a right pertaining to the thing which is enforceable against all persons.[33] Emphasizing this conception in the common law tradition, Johnson explains that "[t]he bundle of rights metaphor was intended to signify that property is a set of legal relationships among people and is not merely ownership of 'things' or the relationships between owners and things."[34]

In contrast, in the civil law legal systems such as France, the concept of property is constructed on the Roman idea of total dominion over a thing whereby all the uses of a thing are united in the single concept of ownership and vested in the same person. Under this conception, ownership comprises the union of three attributes: *usus, fructus* and *abusus.*[35] From this characterization of property rights, one can observe that scholars in the civil law tradition confine the conception of the rights to ownership. Chang and Smith remarked that "when civil law property scholars define property rights, they think of only

the relations that constitute property. Metaphorically, they are the "sticks" in the bundle called property.

[31] B. Pierre, Classification of Property and Conceptions of Ownership in Civil and Common Law, *Revue Générale De Droit,* Vol. 28, No. 2, (1997), p.238, available at https://doi.org/10.7202/1035639ar.

[32] Yun-chien Chang & Henry E. Smith, An Economic Analysis of Civil versus Common Law Property, *Notre Dame L. Rev.*, Vol. 88, No. 1, (2012), p.5, available at http://scholarship.law.nd.edu/ndlr/vol88/iss1/1.

[33] Pierre, *supra* note 31, p. 251.

[34] Johnson, *supra* note 27, p, 249.

[35] Pierre, *supra* note 31, p.249

ownership."[36] Unlike the common law system, where entitlements in a thing are treated as separate object of ownership, thereby recognizing plurality of owners in relation to the thing, the civilian notion of ownership is anchored in the conception that there can be "only one "owner" in respect of each thing."[37]

Of course, this does not mean that only a single person can have rights in a thing in the civil law legal systems. There could be cases whereby the "owner" may split and give parts of what is in his exclusive control thereby creating rights such as usufruct and servitudes. And yet each right created thereto is *"a right in the land (thing) owned by another*".[38]

Adriano Zambon made a passing remark that the concept of property right is a subset of the concept of property. We use the wording "property right" when we do not want to signal that the holder of the right has a legal position that is not an advantageous position while property embraces both advantageous and disadvantageous relationships. [39]

2. Conceptualizing Property Rights over Land under the FDRE Constitution

Constitutional level framing of property rights is so fundamental that it shapes the entire conceptualization of this right across spheres of peoples' lives. The FDRE Constitution takes such a stature requiring critical examination. The pertinent provisions on property rights in the constitution are always points of scholarly preoccupation raising such questions as: how is the term property conceived in the Constitution? Is it similar to the common law conception of property or that of civil law legal system? What things could be the object of property? Is the conception of property in the Constitution in congruity with the pre-existing legal framework as envisaged in Civil Code of Ethiopia?

In this section of the article, an attempt has been made to explicate these issues as a way to demonstrate the prevailing conception of property in land in the context of the Constitution. The Constitutional provision on property right opens its first sentence by stating "[e]very Ethiopian citizen has *the right to the ownership* of private property", and *ownership* is described as inclusive of the

[36] Chang and Smith, *supra* note, p.32.
[37] Pierre, *supra* note 31, p.256.
[38] Id., p.257.
[39] Zambon, *supra* note 20, p.66

triple elements of *usus, fructus,* and *abusus*.[40] The notion of property is just attached to the concept of ownership in the constitution - as it is simply stated that "[e]very Ethiopian citizen has *the right to the ownership* of private property." Yet this begs such questions as: how about the right to other property rights lesser than ownership? Does it mean only ownership right is recognized? Or does it mean other rights are not private property rights? What is private property in the first place? In an attempt to define "private property," Article 40 (2) of the Constitution stipulates:

> *Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.*

A closer look into this definition shows that, it fails to articulate the notion of property in itself while it purports to define "private property." It is simply a description of just one of the property regimes well recognized in legal jurisprudence. According to Honoré and Harris,[41] "every legal system no matter its politico-economic genesis,"[42] recognized four property regimes: (i) private

[40] *Usus, fructus, abusus* are the three constituent elements of ownership as conventionally recognized in civil law legal tradition. The FDRE Constitution also states that the right shall include "the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise." The usufruct element is not apparent from the letters of the Constitutions but it is logical to conclude it is there; the Constitution recognized the right to dispose and as such, for stronger reason lesser rights such as usufruct are recognized. See FDRE Const., Article 40 (2).

[41] Paul T Babie, John V Orth, and Charlie Xiao-chuan Weng, The Honoré-Waldron Thesis, A Comparison of the Blend of Ideal-Typic Categories of Property in American, Chinese and Australian Land Law, *TUL. L. REV.*, Vol. 91, (2016-2017), p.2. Private property includes those held by individuals, or jointly by more than one individual or group, or by a corporation..

[42] Babie *et al, supra* note 41, pp.6-7. It claimed every legal system contains each of the four categories "no matter its politico-economic genesis," and differences between systems is not related presence or absence of any one or more of them rather but of the degree of those types of property in each system.

property;[43] (ii) public/state property;[44] (iii) communitarian property;[45] and (iv) common property /non-property.[46]

The FDRE Constitution has acknowledged three of these property regimes: private property,[47] communitarian/communal property[48], and state/public

[43] Barrie Needham, *Planning, Law and Economics: An Investigation of the Rules We Make for Using Land* (Routledge, 2006), p.42. Individual owners have the right to undertake socially acceptable uses, and have the duty to refrain from socially unacceptable uses. Others (non-owners) have the duty to refrain from preventing socially acceptable uses and have the right to expect that only socially acceptable uses will occur.

[44] See also D.W. Bromley, Environment and Economy: Property Rights and Public Policy, Cambridge MA: Blackwell, (1991), as cited in Needham, Id., p.42. Individuals have duty to observe use and access rules determined by the controlling or managing state agency. The agency has the right to determine the use and access rules.

[45] Needham, *supra* note 43, p.42. The management group (the owners) has the right to exclude non-members, and non-members have the duty to abide by the exclusion. Individual members of the management group (the co-owners) have both rights and duties with respect to use rates and maintenance of the thing owned.

[46] Babie *et al*, *supra* note 41, p.6; Needham, *supra* note 41, p.42. No defined group of users of owners and the benefit stream is available to anyone. Individuals have both privilege and no rights with respect to use rates and maintenance of the asset. The asset is an open-access resource. A public park is an example. The concepts of privilege and no rights (a non-property regime) refer to the idea that someone has presumptive rights. There is a difference in the use of terminology in the Honere-Hariris classification on the one hand and Bromley's terminology on the other hand. Common property in the first classification corresponds to non-property regime in the second while the term communitarian in the first corresponds to common property in the second case.

[47] FDRE Const., *supra* note 8, Article 40(2). The notion of "Private Property," hinges on what does property mean by "private" on the one hand, and what does property mean on the other hand. The term 'private', according to Harris, signifies a case where property rights are held by individuals, or jointly by more than one individual or group, or by a corporation. See Babieet al, *supra* note 39, p.6. The Constitution's description of "private" more or less corresponds to this conventional characterization except that the Constitution subsumed the phrase 'communities specifically empowered by law to own property in common' with in the category of persons privately entitled to private property.

[48] Id., Article 40(2). The notion of 'communities specifically empowered by law to own property in common' in the FDRE Constitution best fits communitarian property regime within the general legal literature. [48] Needham, *supra* note 43, p.42. However, the Constitution subsumed the phrase 'communities specifically empowered by law to own property in common' with in the category of persons

property regimes[49] but the fourth one, common/non-property regime, did not find its way into the FDRE Constitution. Of course, scholars have also branded it non-property regime, and thus it makes little sense to incorporate a non-property regime in the limited space of the constitution dealing with property.

Even though the above cited definition failed to articulate the notion of property in itself, some important elements surrounding the conception of property are still discernible from this definition. The first one pertains to the nature of things that can be the subject of property to which the definitions responds by referring to any tangible or intangible product having some value. Second, the definition makes a clear mention of as to who can have the right to private property. To this end, individual citizens, juridical persons, and "communities specifically empowered by law to own property in common" are the category of persons entitled to private property. Third, the definition attempts to address the issue of what justifies entitlement to private property. As such, entitlement to private property draws its justification in so far as the tangible or intangible things are the produce of the labour, creativity, enterprise or capital of the person. Moreover, it surfaces that the term property is employed in the Constitution to designate a thing— *tangible or intangible*, which is the use of the term in ordinary language as opposed to the peculiar use of the term in legal parlance. Of course, the Civil Code also suffers from such limitation.[50]

Finally, the notion of "private property" in Article 40(2) does not encompass all other property rights that can be privately enjoyed but lesser than ownership. The list and description in the definition is rather confined to ownership, just one of the possible property rights. For instance, the definition can hardly cover property rights in other sub-provisions of Article 40, such as recognition of peasants' right to obtain land, the investors' right over land after acquisition against payment, etc.

---

privately entitled to private property. Yet this does not change the fact that the Constitution recognized communitarian property regime. In other words, though Constitution seemingly reduced the recognized property regimes in to private property and state property, communitarian property regime is also acknowledged as it is included within the description of private property.

[49] The Constitution endorsed public/state property regime in that Article 40(3) declared "the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia". See FDRE Const., *supra* note 8, Article 40(3).

[50] Civil Code Proclamation, 1960 (hereinafter Civil Code). See generally Book III that begins with goods in general, and specifically see the description of ownership in Arts 1204 and 1205.

Yet it is important to note that, this does not mean that the Constitution denies recognition for the other property rights lesser than ownership; they are recognized as property rights in the Constitution itself because they are subsumed under the caption "the right to property" under Article40. In addition, since the Constitution has recognized ownership —the widest property right— for stronger reason, other property rights lesser than ownership are recognized. Thus, it only means that other entitlements in land that are lesser than ownership still constitute property rights but they are not *private property* due to the fact that the Constitution equated *private property* with full ownership over a thing, which is similar to civilian conception of property.

Generally, the definition in the FDRE Constitution is by far deficient. For instance, Chinese law[51] appears to employ the term "property" to refer to things, which is simply a use in the ordinary sense of the term. But that deficiency is complemented by making distinction between "property" and "property rights," and Chinese law described property rights as inclusive of *ownership, usufructuary and security right* in property rights." Thus, Chinese law is far better explicit in recognizing property rights other than ownership as opposed to Ethiopian Constitution. Nonetheless, in the Ethiopian case, the Constitution could be and should be complemented by the Civil Code and other relevant legislations to get the real picture of the laws on property.

3. The Nature of Relationship between the State and the Peoples of Ethiopia with Respect to Land

The Constitution excludes land from the domain of private ownership, and rather it states the right to ownership of land is "exclusively vested in the State and in the peoples of Ethiopia."[52] So, what is the relationship between the state and the people of Ethiopia with respect to land? Are they joint owners? This article argues that "state ownership "and "public ownership" of land are alternatives instead of distinct category of property regimes inviting the conjunction "and". On the other hand, some scholars interpret that

[51] The Property Rights Law of the People's Republic of China, (2007), National People's Congress of the People's Republic of China, LLX Translation (Unofficial Translation) (hereinafter Chinese Property Rights Law of 2007), Article 2. Article 2 provided that the word "property". .. includes movable and real property. Where there are *laws stipulating rights as the objects of property rights,* they shall be observed." And it then stated "[t]he phrase "property rights" as a term used in this Law refers to the exclusive right enjoyed by the obligee to directly control specific properties including *ownership, usufructuary and security right* in property rights."

[52] FDRE Const., *supra* note 8, Article 40(3).

Constitutional clause as one depicting a kind of joint ownership, and they also build more arguments based on that description.

Daniel made a good account of state ownership of land within the framework of generally recognized property regimes, and concluded that "[p]ractically, there are no real differences between the dichotomy of the "state or government" (ownership), on the one hand, and the "collective or public" ownership of land on the other."[53] He maintained that this conception holds true for Ethiopia as well in that, under the FDRE Constitution, the "state" and the "people" are considered as two joint owners of land but the state is the representative of the people to administer the resource.[54] Yet, Daniel failed to take his argument to its logical end and to apply this conception in the actual interpretation and application of the constitutional provisions; he made a couple of assertions recounting joint ownership of land by the state and the people, portraying state and the people as two distinct entities establishing a kind of co-ownership.[55] Muradu Abdo also made a passing remark arguing the Constitution's stipulation that vests ownership of land in the state and the people signifies shared interests in land,[56] which implies a kind of co-ownership. These references to joint

[53] Daniel Weldegebriel Ambaye, Land Rights and Expropriation in Ethiopia, Doctoral Thesis, Royal Institute of Technology, (KTH), Stockholm, (2013), pp32-38.

[54] Id., p.38.

[55] Id. On page 230, Daniel held that "fallacy is created because of the conflicting sub-articles of Article 40 of the FDRE Constitution. The constitution on the one hand creates the joint ownership of land by the people and the state, but on the other it denies the holder a market-based compensation for the land in the event of expropriation." Also at page 255, he stated "...the first problem (in relation to compensation for loss of land) stems from the constitutional right to the land itself.... land belongs to the joint ownership of the state and the people. To ensure this right, the constitution and the rural land proclamations provide equal access to rural land and the protection against arbitrary eviction. Farmers are recognized as collective owners of the land and entrusted with holding right which is not limited in time and which provides all land rights except sale... When land is taken for public purposes, the damage that is caused to the holders is not equally compensated by the average value of ten years′ production.

[56] Muradu, *supra* note 17, pp.311-312. Muradu stated this: "The Constitution says land is the joint property of the state and the people. If land is really a joint property, it means your right as a landholder is short of ownership including the right to reap the economic value of your land use rights. But the expropriation law does not permit you to capture enhanced value of land. Yet, the individual shall be allowed to share the enhanced value of the land instead of being diverted to state treasury as a whole."

ownership and arguments based thereon could result in misconceptions giving the sense of co-ownership, which is a mode of private ownership,[57] and hardly conceivable between the state and the people collectively.

According to the general classification of property regimes (briefly discussed under section 2 above), public/state property is one of four typical categories of property regimes.[58] The feature of public/state property (also sometimes called collective property) is that the people collectively own the resource; and they are represented by the state regarding the utilization of the resources.[59] It must be noted that the state acts in differing capacity depending on the resource in use.[60] There are resources in which the state may hold title to the resource and uses it in similar manner as a private property owner, with the proviso that no self-seeking exploitation is allowed but resource must be deployed for social function. On the other hand, there are resources open to use for the whole collective but under state administration on behalf of the collective. Roads, streets, canals, railways, seashores are some of the examples that fit into this category. These are resources that the Civil Code of Ethiopia referred to as "public domain."[61]

Therefore, interpretations depicting joint ownership between the state and the people are misleading; there is no practically conceivable and legally sensible joint ownership of land between the state and the people. It is practically inconceivable because the whole people cannot act in concert to exercise their joint ownership with the state, and that is why state stepped in as agent. It is not legally sensible because the state is the representative (agent) and the people are the principals, and they cannot be depicted as two distinct entities regarding legal engagements but only the principal. That is why Art 40(3) of the Constitution itself dropped the word "state" in the second sentence and simply declared "land is a common property of the Nations, Nationalities and Peoples of Ethiopia...," that collectively constitute the reference to peoples of Ethiopia in the first sentence. Moreover, Article 89(5) of the Constitution unequivocally asserts the principal-agent relationship between the people and the state declaring that "[g]overnment has the duty to hold, *on behalf of the People,* land and other natural resources and to deploy them for their common benefit and development." This is not unique to Ethiopia. Chinese law similarly

[57] Babie et al, *supra* note 41, p.4.
[58] Id., p.2.
[59] Id., p.7.
[60] See generally Id.
[61] See Civil Code, *supra* note 50, arts. 1444-1459.

acknowledges state ownership, collective ownership (a kind of communal ownership), and private ownership. And then it confirmed that property owned by the state is property owned by the whole people. [62] Thus, there is no joint ownership but just only public (or state)[63] ownership of land.

Nevertheless, as a matter of principle of legal interpretation, if a meaning must be ascribed to the phrase "the right to ownership of... land... is... vested in the State and in the peoples of Ethiopia" so that the seemingly "joint ownership" description is not totally without meaning in the Constitution, the author would say that it must have been the product of a mind-set that takes into account the dual role of state in exercising its capacity as an agent of the people: cases where it acts in similar fashion to private proprietor, and a case where it is a passive guardian of public resources (public domain). The terms public ownership and state ownership are, thus, alternatives and the nature of relationship between the state and the peoples of Ethiopia with respect to land is that of agent-principal relationship.

4. On the Question of the Nature and Scope of Property Rights of Peasants Regarding Land

Given the constitutional stipulations on property rights in general and the contending arguments over the underlying meaning thereof, it is compelling to further raise more questions such as what is the relationship between the state and/or the people of Ethiopia *vis-a- vis* peasants /pastoralists? On the one hand, the state owns land (on behalf of the whole public), as we concluded above. On the other hand, the Constitution acknowledged the rights of peasants and pastoralists with respect land. Peasants and pastoralists are subset of the peoples of Ethiopia that collectively own land. Yet, they are given special status and privilege in relation to land owing to the fact that their livelihood is indispensably attached to land more than other categories of the Ethiopian

[62] Chinese Property Rights Law of 2007, *supra* note 51. See generally Arts. 45-69. Article 45 provided that "[w]ith regard to the properties belong to the State according to law, they are owned by the State, that is, by the whole people. The State Council shall, on behalf of the State, exercise the ownership with respect to the State properties; if there are provisions otherwise provided, they shall be observed.

[63] Of the alternatives, public ownership or state ownership, I prefer to use state ownership, a preference to name the agent instead of the principal. This is because property implies relations between persons regarding things, and it is the agent (the state) that actively engages in these relations. That would provide vivid picture of actors in the legal relation and ease comprehending discourse on property.

people such as urban dwellers and investors. Hence, the question of who gets what resources of the land would be between the state (on behalf the general public) *vis-a-vis* peasants and pastoralists.

The Constitution, after acknowledging the rights of peasants and pastoralists with respect to land, left the implementations to be detailed by subsequent legislation.[64] Efforts to that effect have been made both at federal and regional level. The laws termed the right of peasants and pastoralist regarding land as "holding right"[65] and defines it as:

> *The right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.*

So far, content analysis of peasants' right regarding land is mostly focused on articulation of the laws enacted subsequent to the Constitution. We noted above that, the laws have been changing a couple of times and there are also variations across regional legislation, giving rise to differing rights and treatments of peasants across time and place. And practically, the peasants' entitlement on land has continued diminishing from time to time due to population pressure, absence of redistribution for the new generation, and expanding demand for expropriation without adequate compensation. Moreover, even though the state has recognized landholding right of peasants, the right remained malleable-such as where compensation amount varying in time horizon as legislation changes.[66] All these conflate to render the rights of peasants in land unstable and unpredictable.

However, pretty obvious as it is, the scope and content of rights of peasants should not merely depend on what the subordinate legislation ascribed to it. The very nature of the right as endorsed in the Constitution deserves adequate attention and exposition so that the minimum threshold of the right would be recognized as constitutionally well founded, be stable and predictable.

[64] See FDRE Const., *supra* note 8, Article 40(4) & (5).

[65] Proc. No. 456/2005, *supra* note 12, Article 2 (4).

[66] Cf. Proc. No. 455/2005, *supra* note 14, Article 8(1) and Proc. No.1161/2019, *supra* note 12, Article 13. Displacement compensation was 10 years annual produce, latter increased to 15 years.

We have concluded that the FDRE Constitution's conception of property is oriented by the civilian notion of property that equates private property with that of full ownership over a thing. As such there might be a temptation to conclude all rights and powers in land, under the FDRE Constitution goes to the state (on behalf of the people) since land is under public ownership. Moreover, the Constitution uses the term property to designate a thing, so tempting to "think of property as a single right over a thing",[67] thereby gravitating that single right on land toward the state. In addition, Ethiopia is a civil law country, at least in relation to the Civil Code, and the civilian notion of property might be deeply rooted. Thus, the ramifications of the Roman conception of property as absolute dominion over a thing, that there can be "only one 'owner' in respect of each thing,"[68] could have permeated into the way we think of property. The Ethiopian trained legal professionals might have a mind-set unperceptive of property rights other than ownership. Maybe, the remark that "when civil law property scholars define property rights, they think of only ownership"[69] applies to them. Scholars also point out such dangers of over simplifying property by confining it to narrow conceptualizations. To this end, Barrie Needham noted that "discussion about property rights often limit themselves to one of the many possible rights, namely the right of ownership. This simplification then causes a simplification in the discussion about the practical implications of property rights."[70] All these factors stand against concretizing the constitutional rights of peasants.

And yet, even though the state is owner of the land pursuant to the Constitution, the same Constitution affirms Ethiopian peasants' right to obtain land and the right is guaranteed against eviction. Can we make good sense of these provisions and concretize the rights? This author responds affirmatively, and argues for that.

As Needham explained, there can be a variety of property rights over land even though the list of all possible property rights that could be established at a particular time depends on what is recognized and protected by particular legal system. We noted that common law conception of property depicts it as the bundle of rights acknowledging the possibility of many different and non-competing ways of using the same thing. Besides, the civil law legal system is not alien to the prospect of accommodating several persons with respect to a

[67] Zambon, *supra* note 20, p.65.
[68] Pierre, *supra* note 31, p.256.
[69] Chang and Smith, *supra* note 31, p.31.
[70] Needham, *supra* note 43, p.35.

thing that there can be dismemberments of ownership.[71] This holds true in the Ethiopian property law as well, as endorsed in the 1960 Civil Code which adopted the civilian notion of ownership.[72] Usufruct constitutes typical example of such legally recognized dismemberment of ownership in the Civil Code,[73] and other dismemberments of that widest right are permitted subject to statutory blessing.

In the same vein, although the Constitution vested ownership of land to the peoples of Ethiopia collectively, that right of ownership is short of full ownership and charged with special rights of peasants and pastoralists—certain property rights are ripped off and vested to peasants and pastoralists by the operation of the law, the Constitution itself.[74]

Then, the remaining issue would be: what is the scope of rights dismembered from ownership and granted to the peasants and pastoralists? In other words, of the triple elements of ownership, i.e. *usus*, *fructus*, and *abusus*, which of them goes to peasants and what remains with the owner - the peoples of Ethiopia collectively? The Constitution has guarantees peasants free access to land and protection against eviction from their possession.[75] Consequently, the rural land laws confirmed that peasants have the right to use rural land for purposes of agriculture and natural resource development, lease (for limited period) and bequeath same to limited category of persons.[76] Added to that, landholding right of peasants is stated to be without time limit.[77] Therefore, it appears that, of the

---

[71] Pierre, *supra* note 31, p.257.

[72] Civil Code, *supra* note 50, Article 1204(2). It states that ownership "may *neither be divided* or restricted *except in accordance with the law*." The term *neither be divided* but only if permitted by law indicates the possibility of dismemberments. As per the Civil Code, the triple element (usus, fructus, and abusus) are vested to the owner. Also, Article 1204(1) reads that "Ownership is the widest right that may be had on a corporeal thing. It is to be noted that the Code mention corporeal things only as if intangibles cannot be owned. But this is the influence of Roman law that attached ownership to things with material existence and capable of physical possession. This is one of the most criticized conception of property in Roman law tradition. See for instance, Johnson, *supra* p.250; Pierre, Classification of Property, *supra* note 43, p. 252.

[73] See Id., arts.1309 ff.

[74] It is also possible to say that the dismemberment is also by contract because a constitution is a pact between the people and the government.

[75] FDRE Const., *supra* note 8, Article 40(3).

[76] See Proc. No. 456/2005, *supra* note 12, arts. 2(4).

[77] See Id. Article 7(1). It reads as "the rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit."

constituent elements, according to the Roman law conception of ownership, the state is left with *abusus* while *usus* and *fructus* go to the peasants. In deeded, as Needham opined, a person worth taking the name owner must have the right to capital,[78] which corresponds to the *abuses* elements of *dominium* according to the Roman law conception of ownership. Yet, according to the FDRE Constitution, the owner does not have *abusus* right from the beginning; the Constitution affirmed land "shall not be subject to sale or to other means of exchange."[79] This results in a straight forward but untenable conclusion that the state has no any recognizable interest in land, and that 'no one owns land in Ethiopia'. We arrived at this indefensible conclusion due to extended application of private ownership conception to public ownership. Otherwise, restriction on alienation of publicly held land is not uncommon. [80]

The characterization of ownership as consisting of just three general elements (*usus, fructus* and *abusus)* has failed us; it is unable to explain what interests remain with the state. Perhaps, the elements of full ownership in Honere's list could be of help. In his influential essay on ownership, written in the early 1960s, Honore' listed what he calls incidents of full ownership that have come to be known as the bundle of rights.[81] He made an inventory of eleven incidents[82] that consists of the right to possess, the right to use, the right to

---

[78] Needham, *supra* note 43, p.39.
[79] FDRE Const., *supra* note 8, Article 40(3).
[80] Babie et al, *supra* note 41, p.12.
[81] Johnson, *supra* note 27, p. 253. Honore alleged that his list of incidents of full ownership were "common to all 'mature' legal systems."
[82] Id., p.253. The list of the incidents consists of the following:

1. *The right to possess*—the right to "exclusive physical control of the thing owned.
2. *The right to use*—the right "to personal enjoyment and use of the thing as distinct from" the right to manage and the right to the income.
3. *The right to manage*—the right "to decide how and by whom a thing shall be used."
4. *The right to the income*—the right "to the benefits derived from foregoing personal use of a thing and allowing others to use it."
5. *The right to capital*— "the power to alienate the thing," meaning to sell or give it away, "and to consume, waste, modify, or destroy it."
6. *The right to security*— "immunity from expropriation," that is, the land cannot be taken from the right-holder.
7. *The power of transmissibility*— "the power to devise or bequeath the thing," meaning to give it to somebody else after your death.

manage, the right to the income, the right to capital, the right to security, the power of transmissibility, the absence of term, the prohibition of harmful use, liability to execution, and rights of residuary character.

Honere's eleven incidents are further decomposition of the triple elements of ownership and in aggregate they constitute full ownership. Putting the ownership right of the state, on the one hand, and the land holders' right one the other end of the continuum, it is possible to determine which of the rights are dismembered and vested to peasants.

Peasants in Ethiopia do have incident of the right to possession and the right to use since the Constitution guarantees them access to land and protection against eviction from their possession. With respect to 'the right to manage—the right "to decide how and by whom a thing shall be used"— it is vital to look at this issue in two layers. The whole stock of land is under the control of the state to hold it in trust for the general public. The state retains decisive power, due to generality of the Constitution, in determining who should be eligible in the allocation of land to peasants depending on the realities on the ground. The constitutional proviso allowing the implementation to be specified by law signifies that. But once a peasant has got his fair share, it is logical to conclude that he has control over that plot, can decide how and by whom it shall be used subject to the regulatory control aiming at preservation of capital. Consequently, the subsequent legislations have guaranteed peasants not only the right to use but also the right to income —rights to lease. They can decide how and who can use. Therefore, peasants have the right to income and shared right as regards the right to manage.

In relation to 'the right to security'—immunity from expropriation— it is maintained that there is no absolute immunity from expropriation but the government's power to expropriate must be limited to certain class of thing and only for limited purposes, even if it is against compensation. Otherwise, a

---

8. *The absence of term*— "the indeterminate length of one's ownership rights," that is, that ownership is not for a term of years, but forever.
9. *The prohibition of harmful use*—a person's duty to refrain "from using the thing in certain ways harmful to others."
10. *Liability to execution*—liability for having "the thing taken away for repayment of a debt."
11. *Residuary character*— "the existence of rules governing the reversion of lapsed ownership rights"; for example, who is entitled to the property if the taxes are not paid, or if some other obligation of ownership is not exercised.

general power to expropriate against compensation would render ownership of material objects (rights in *rem*) into monetary claims. Peasants' right in land being a right in *rem*, they deserve the right to security.[83]

As regards duration (term), the Constitutions talks of peasants at individual level, and access to land is contingent on someone being a peasant[84] and continuing to maintain that status. Hence, in terms of duration the Constitution assured at least lifetime enjoyment starting from the time one is eligible as a peasant, normally from the age of 18 years,[85] until death or one cease to be a peasant. That is the minimum security the constitution guarantees. This also implies that peasants lack 'power of transmissibility'— "the power to devise or bequeath the thing," meaning to give it to somebody else after death. However, subsequent legislation confirmed use right without term (indefinite time use right) and permitted some degree of power of transmissibility as a matter of policy to ensure tenure security.

The Constitution entitles neither the state nor the peasants with the right to capital— "the power to alienate the land." We noted that such a restriction is common in resources held in trust for the general public. Yet normally the people are sovereign and can decide on their fate; they can decide to make land saleable or otherwise exchangeable. In fact, this is not possible under the existing constitutional pact, and if they wish so, they must amend the Constitution. A related incident is 'liability to execution'—liability for having "the thing taken away for repayment of a debt." Again, neither the state nor the landholders could avail land for this purpose owing to the fact that this right presupposes the right to capital.

Still the other important incident of ownership pertains to what Honere' termed as 'residuary character'— consists in the reversion of lapsed ownership rights. It is exemplified as reclaiming the thing where certain obligations such as default on payment of tax or failure to exercise ownership. This is typically the right reserved to the state. The federal rural land laws stipulated several grounds

[83] A.M. Honere', The Nature of Property and the Value of Justice, available at http://fs2.american.edu/dfagel/www/OwnershipSmaller.pdf, accessed on 5 May 2020, p.373.

[84] See Proc. No. 456/2005, *supra* note 12, Article 2 (7) reads that "peasant" means a member of a rural community who has been given a rural landholding right and, the livelihood of his family and himself is based on the income from the land.

[85] Id. Article 5 (1)(b).

where by a landholder would lose entitlement thereto and the land reverts to the state.[86]

Based on the above analysis, it seems that, of the eleven elements of full ownership according to Honere's list,, the peasants have constitutionally secured several of them, and the state remained only with the residuary character incident of ownership and a shared right to manage.[87] It is conceivable, therefore, to hold that such a right of the state generally exist even in the absence of state ownership. The power to regulate and impose restrictions on property right (the power to tax, to expropriate or other restrictions in the public interest) are inherently inbuilt in the idea of *imperium* as it is called in the civil law legal system or eminent domain and police power as used in the common law legal system.[88] Consequently, the analysis revealed that the usual assertion labelling the state as exclusive owner of land is more of a rhetoric than a reality.

At this point, it is also important to note that not all land in the Ethiopian territory is allocated to peasants and pastoralists; there would be a bulk of it in urban areas and in rural areas as well. This corresponds to what the rural land laws referred to as "state holding" and defined it as "rural land demarcated and

---

[86] See Id., Article 10(1); see also Daniel, 2013, *supra* note 57, p. 82. He reviewed the Federal as well as Regional rural land laws and summarized the reasons for the loss or termination of rural land rights that includes:

- Permanent employment of the farmer that brings him an average salary determined by government
- Engagement in professions other than agriculture and for which tax is paid
- Absence of a farmer from the locality without the knowledge of his whereabouts and without renting the land for more than 5 years
- Fallowing the land for three consecutive years without sufficient reasons
- Failure to protect land from flood erosion
- Forfeiting land right upon written notification
- Voluntary transfer of land through gift
- Land distribution (the loss will be partial).
- Expropriation of land without replacement of another land

[87] Peasants have the right to possession of land allocated, to make use of it, decide how to use in so far as its normal use of land and by whom, and there by derive income. They have right to security during their tenure and they owe the duty to abstain from harmful use. The power of transmissibility and absence of term beyond life time are not strictly speaking constitutional rights of peasants but in effect the state is discharging is duty to allocate land to every new generation of peasants. The right to capital and the ability to use the thing for execution of liability belongs neither to the peasants nor the state. An important right that remained with the owner is the residuary character incident of ownership

[88] Needham, *supra* note 43, p.46.

those 'lands' 'to 'be demarcated in the future as federal or regional states holding; and includes forestlands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands.”[89] Thus, on state holdings, both in urban and rural areas, the state exercises every possible use as that of a private land holder or as passive guardian of resources in open use (public domain). Yet the state remains with a vacuum title of ‘residuary character’ in relation to land assigned to individual peasants or communal holders.[90]

It is also worthwhile to contrast the land tenure system under the FDRE Constitution against tenure systems elsewhere. As regards rural land, the current land tenure system of Ethiopia closely resembles what is known as free estates in common law countries.[91] In these countries, the individual tenant is given from the Crown a freehold estate in the land. The absolute ownership remain with the Crown and as such “an estate held by a tenant is not the land itself or the dominium, but a conceptual, abstract portion of ownership, the scope of which depends on the particular form it assumes and the length of time for which it is to exist.”[92] For instance, in Australia, the freehold estate takes three forms: fee simple, fee tail and life estate.[93] A fee simple will exist absolutely and indefinitely, and the holder of fee simple has the power to deal with the estate as he thinks fit signifying the highest form of ownership that an individual can have subject to the nominal title of the Crown. In fee tail, on the other hand, inheritance of the freehold estate is restricted to particular lineages of the holder. Where that specified lineage is absent, the right shall be extinguished, unlike fee simple where heirs who could inherit the estate were unrestricted. The life estate is freehold estate that will exist for a duration of a life, and therefore, not capable of inheritance by an heir.

Of these alternatives, the rural land tenure system in Ethiopia is closer to the fee tail system in Australia mainly in that inheritance and donation are permitted only to certain category of people and subject to conditions in Ethiopia. Of course, such a deduction needs to be taken with caution. To begin with, the holder in Ethiopia lacks the power to alienate. Again though the right is purportedly indefinite and guaranteed against eviction, a holder in Ethiopia is

[89] Proc. No. 456/2005, *supra* note 12, Article 2(13).
[90] Id. Article 2(12). It reads as: "communal holding" means rural land which is given by the government to local 'residents for common grazing, forestry and other social services.”
[91] Hepburn, *supra* note 1, p.52.
[92] Id.
[93] Id., pp.52-54.

less secured for there might be redistribution of land while the nominal owner (the Crown in common law) lacks this authority.

We noted, from the close examination and juxtaposition made, that most of the Ethiopian state's interests in ownership title are dismembered and constitutionally assigned to peasants/pastoralists individually or communally. One may wonder whether the prevailing landholding right depicted in the Constitution fit into any of the dismemberments of ownership rights already known to us via the Civil Code or whether the Constitution has come up with a *sui generis* right to peasants. Usufruct is the potential nominee for comparison here.

Article 1309 of the Civil Code defines usufruct as "the right of using and enjoying things or rights subject to the duty of preserving their substance." Juxtaposing this definition of *usufruct* with peasants' entitlement to land in the Constitution and expounded in the definition of landholding rights by subsequent legislation, one can observe that these property concepts share basic attributes: they are both rights in *rem*, as opposed to rights in *personam*; and the beneficiary of the right in both cases is vested with the right of *usus* and *fructus*, subject to the duty of preserving the substance. These are the essences of both rights. In spite of potential differences in the details[94], peasants' right with respect to land as stipulated in the Constitution is in essence similar to usufruct as depicted in the Civil Code. Therefore, this similarity would allow us to build the jurisprudence of land holding rights in the current land tenure system of Ethiopia in light of the well-developed philosophy of usufruct. The rules on

[94] Usufruct is conceived in Roman law as personal servitude in that it is attached to the person to whom it is established and ends with his death or expiry of fixed period. Usufruct is time bounded while landholding right is characterized by its indefiniteness and transferable to a certain extent in the subsequent laws. But we noted that the Constitution talks about peasants at individual level and peasants' minimum assurance is lifetime enjoyment starting from the time one is eligible as peasant. The characterization of landholding right as indefinite entitlement and vesting power of transmissibility in subordinate legislation are not strictly speaking in the text of the constitution. Rather they are pragmatic designs of the state to discharge its responsibility of recollecting land from old generation (applying reversion right-residuary character) and allocating to the new generation of peasants. Also, specific attributes of landholding include issues of possibility of land redistribution, restrictions such as lease duration limit and collateral limits on landholding right as cap on the right to income. Cf. generally Civil Code, *supra* note 50, arts.1309-1358 and Proc. No.456/2005, *supra* note 12, arts. 5-14; See also Girma Kassa Kumsa, Issues of Expropriation: The Law and the Practice in Oromia, LLM Thesis, Addis Ababa University, (November, 2011), pp.33-37..

acquisition, transfer, extinction of the right and the rights and duties of the *usufructuary* and the grantor/bare owner as enshrined in the Civil Code[95] would be of immense help where the specific land legislation left us in predicament.

5. Peasants' Rural Landholding Rights and Expropriation: Compensable or Otherwise of Loss of Landholding Rights

The expropriation of landholding rights of peasants constitutes one of the sensitive issues that have commanded the attention of researchers in the field of land tenure system in Ethiopia. Several researchers documented the expansive expropriation ventures of the governments, and this is likely to continue due to mounting pressure for infrastructure development and for attracting foreign investment.[96] These apparently beneficent development initiatives of the government resulted in the displacement of thousands of peasant households, leaving them without meaningful livelihood.[97] As Muradu summed up, while the impact of maladministration in the implementation of expropriation could not be neglected, the real problems are rooted in the legal setting itself: unduly broad definition of 'public purpose' as a justification for expropriation; lack of judicial scrutiny; narrow conception of compensable interests that rendered peasants' land holding right non-compensable. [98]

The scholars called for a narrower definition of public purpose element of expropriation. True that this demand must be on the stage, this author contends, not just only in our cases where expropriation becomes regular act of government against nominal compensation but also in legal systems with strong hold on private property over land whereby expropriation is constrained by adequate compensation and more stringent due process rules. Others proposed redefining land rights of small land holders as human right, specifically the right to life.[99] Given land is basic livelihood for small land holders, the argument goes on, deprivation of land to these category of peasants amounts to little less than deprivation of right to life. While this argument is compellingly sound, inculcating this jurisprudence is so evolutionary that redefining and developing it can barely be an antidote to chronic and fatal plights of peasants.

---

[95] Civil Code, *supra* note 50, arts. 1309-1358.
[96] Muradu, *supra* note 17, pp.301, 328.
[97] Belachew Yirsaw Alemu, Expropriation, Valuation and Compensation in Ethiopia, Royal Institute of Technology, (KTH), Stockholm, (2013), pp.128-139,180; Muradu, *supra* note 17, pp.309-323.
[98] Muradu, *supra* note 17, p. 311.
[99] Id., pp. 333-334.

Scholars exposed the limitations of the compensation scheme as presented in the expropriation law and put forward available alternative methods of compensation potentially resulting in higher compensation. The endeavours on this topic expended less on compensability of loss of landholding due to expropriation. As noted above, the scholars in academia, the judges in court and state officials alike seem to have conceded to the narrative that peasant landholding is non-compensable during expropriation, and they perceive that is so in the law itself. Given that, no matter how novel the compensation approach designed is, it can hardly redress the plights of expropriated peasants in so far as compensability of landholding remains dubious, to say the least.

This is more of a misconception than a defect in the legal setting, the author firmly argues here. While most scholars have articulated the subordinate laws on rural land, they seem to have perceived that not much could be fetched from the Constitution to obtain concrete shape and content of peasants' right in relation to land, to which the author begs to differ. This section examines the issues pertaining to whether peasants' landholding is compensable, under the existing legal setting. For instance, Muradu maintained that "the current expropriation laws are inadequate to protect small landholders because...the Ethiopian *state is not legally obliged* during expropriation to pay compensation for land use rights nor is it obligated (or at times not feasible) to give a substitute land."[100] He explained that both the Constitution and the Expropriation Proclamation[101] rebuffed compensability of loss of landholding itself but property on the land. Daniel also claimed that Article 40 of the FDRE Constitution consists of conflicting sub-provisions that, on the one hand, create the joint ownership of land by the people and the state while, on the other hand, a landholder is denied a market-based compensation for the land in the event of expropriation.[102]

Turning to the arguments on the exclusion of land from the set of compensable interests, we observe that they mainly rely on the silence (with respect to land) of the constitutional provisions dealing with expropriation. Daniel rightly pointed out that the Constitution says nothing about expropriation of land but construed the silence as denial of compensation for peasant landholders.[103] The

[100] Muradu, *supra* note 17, p. 303

[101] Proc. No.455/2005, *supra* note, 14. It is replaced by Proc.No.1161/2019, *supra* note 12, but the content remained similar as regards the issue in discussion.

[102] Daniel, 2013, *supra* note 53, p.230

[103] Daniel, 2013, *supra* note 53, pp.237-238. Daniel maintained that "the Ethiopian..Constitution doesn't say anything about the loss of land. In other words, government is not supposed to pay commensurate compensation for loss

author contends that such interpretation is unwarranted. The Constitution doesn't deal with land expropriation, at least explicitly, and as such it is not expected to deal with compensation thereto.[104]

Muradu sought support from the definition of private property and tempted to conclude that the adoption of the labor theory[105]that recognizes only produces of labor as private property (object of property in the proper legal context)—signifies the exclusion of land from the compensable categories of interests, given that rights in land can barely fit into this theorization. Though Lockean theory of labor is manifestly observable from that provision of the Constitution, it does not seem to be complete explanation of theories espoused by the Constitution.[106] For instance, labor theory can hardly explain acquisition of property via capital endorsed in the same sentence in Article 40 (1). Moreover, property rights in other sub-provisions of Article 40 such as recognition of peasants' right to obtain land cannot be explained based on labor theory. Rather it would be the utilitarian view —property rights are a matter of legal recognition in specific jurisdiction[107]— that can explain these rights. Thus, the argument advanced based on the lens of Lokean labor jurisprudence to exclude

of land." It is postulated that the silence of the Constitution might have been due to state ownership of land for it would be inconceivable to expropriate oneself. But we uncovered in the forgoing analysis that the state remains with vacuum title in respect of plots allocated to peasants or communally held land.

[104] FDRE Const., *supra* note 8, Article 40 (8) reads as "[w]ithout prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property". This provision raises neither the expropriation of landholdings, and consequently, nor its compensability.

[105] Muradu, *supra* note 17, p. 311; According to Muradu, private property as defined in FDRE Const., Article 40 (2), is linked to the produce of labor or capital or enterprise and compensation is limited to value added via labor or capital on lawfully possessed land.

[106] Indeed, the definition of "private property" in Article 40(2) of the Constitution is not definition of property *per se*, it is rather definition of private ownership, as explicated in section 3. The definition does not encompass all other property rights lesser than ownership but still recognized as property rights as they are subsumed under the caption "the right to property" in Article 40.

[107] Sukhninder Panesar, Theories of Private Property in Modern Property Law, *The Denning Law Journal,* Vol. 15 No. 1 (*2012)*, available at http://bjll.org/index.php/dlj/issue/view/36, accessed on 5 May 2020, P.132. "The utilitarian theory of property regards property as a positive right created instrumentally by law to achieve wider social and economic objectives. Property is said to be a positive right as opposed to a natural right."

landholding rights from the compensable categories of interests is oversimplification.

There are also attempts to establish a ground of justification for land expropriation on account of Article. 40(7) of the Constitution which partly reads: "[e]very Ethiopian shall have the full right to... property.... This right shall include the right to alienate, to bequeath, and, *where the right of use expires*, ... claim compensation for it." This does not apply to peasants given that their right is protected against eviction, and we cannot use termination or expiration without apparently contravening the rules guaranteeing protection against eviction. Perhaps this could be applicable for investors and urban dwellers since their use right is time bounded. But if the right expires, there remains no land use right to be expropriated and compensated. Unfortunately, there are arguments that incorrectly[108] interpret this provision to imply expropriation of land without compensation, including peasants' landholdings. The provision deals with "private property" rights in things other than land on which the owner has *usus, fructus* and *abusus*.[109] As such there is no issue of expropriation of land to be inferred from this provision but the right to recollect assets on land on expiry of land use right.[110]

Generally, the misconception that peasants' landholding is not compensable under the Constitution stems principally from the silence of the constitution on expropriation of land. However, land rights in Ethiopia could not be so unique to impede expropriation. First, we cannot totally ignore the classic jurisprudence

---

[108] Daniel for instance, in explaining Article 40 (8) of FDRE Constitution, maintained that "the Ethiopian Constitution recognizes any property on the land as private property but not the land itself. Owners of property on the land are guaranteed with commensurate compensation to the loss of their private property in the event of expropriation. The Constitution doesn't say anything about the loss of land. In other words, government is not supposed to pay commensurate compensation for loss of land." Daniel, 2013, *supra* note 53, pp.237-238. But Article 40 (8) of the Constitution raises neither the expropriation of landholdings, and consequently, not its compensability.

[109] The provision dealing with expropriation repeats the elements of ownership (*usus, fructus, abusus*) in the definition of private property. As such expropriation in art 40(8) does not concern itself with rights less than full ownership (private property); thus did not have in view expropriation and compensation of land use rights that are obviously less than full ownership

[110] If at all this provision implies termination due to expropriation, and if we apply it to investors and urban dwellers, it is absurd to claim that an investor who paid for land use right, say for 50 years but used just 25, would be forced to leave without a penny for land use right but for property on land.

asserting a simply presumed power of eminent domain even in the absence of authorizing constitution or subsidiary statutes,[111] and in Ethiopia, we have at least statutes empowering the state on expropriation. Also, Brightman justified the legitimacy of such state power tracing Constitutional provisions here and there, that he believes empowers the state to expropriate land, both urban and rural land.[112] One among the arguments he advanced is that the Constitution provided for expropriation of private property (private ownership) and, for stronger reason, property rights less than ownership are subject to the state's power of eminent domain.[113] Apart from the argumentative inferences, if at all there exists explicit constitutionally founded basis for expropriation of rural land holding, it is Article 44(2) of the FDRE Constitution which declares "[a]ll persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance."[114] From the reading of this provision, most important of all, it must be underscored that compensation is concomitant with power of expropriation.

Brightman explained that Article 44(2) can be invoked to establish power of expropriation in relation to land rights of peasants and pastoralists, particularly from the clause "persons whose livelihood is affected by the state programmes." He added, the phrase "…who have been displaced…" could be appealed to in search of constitutional power for expropriation of residential land in urban centres.[115] The author concurs to these deductions. Brightman further argued that constitutional foundation for the power of land expropriation as regards investors could be established based on Article40(8) of the FDRE Constitution that provides for expropriation of private property. He claimed that the investors' rights on land normally emanate from acquisition by capital (due to acquisition by payment), and as such rights so acquired would qualify as intangible private property within the definition of Article 40(2). He added, the investors have "ownership right over their property rights to land".[116]

---

[111] Brightman Gebremichael Ganta, The Power of Land Expropriation in the Federation of Ethiopia: The Approach, Manner, Source and Implications, *Bahir Dar University Journal of Law,* Vol.7, No.1, (December 2016), p.7.
[112] Id., pp. 15-20.
[113] Id., p. 17.
[114] FDRE Const., *supra* note 8, Article 44(2). For details, see Id., p.19.
[115] Brightman, *supra* note 111, p.19.
[116] Id.

However, the author differs as regards this argument striving to establish the basis of land expropriation in relation to investors. First, according to the Constitution, intangibility refers to a certain thing onto which a property right is attached, not the rights themselves for they are always intangible. In the case at hand, the object is land itself which is tangible. His second assertion— ownership right over their property rights to land— would have been sensible in the context of a constitution that endorses bundle of rights notion of property[117] but not under a constitution such as the FDRE Constitution that espouses the civilian notion of one thing — one owner line of thinking, and in which the state is already the recognized owner. In other words, the Constitution recognizes ownership of a thing, not ownership of a right that inheres in a thing already owned, as discussed in section 3 above.

Therefore, Article 40 (8) of the FDRE Constitution doesn't in any case provide a basis for land expropriation, be it for inventors, urban dwellers or peasants. Thus, the constitutional basis of expropriation of land as regards investors is still not clearly established. Either the presumed power of eminent domain theory[118] should be invoked; or one needs to rely on the *argumentum a fortiori*—that if ownership (the widest property rights) is subject to expropriation, for stronger reason, lesser property rights must be; or else other provisions of the Constitution such as those on economic and social policy objectives must be called into, as some argued.[119]

In any case, it must be capitalized, where the Constitution deals with expropriation of land, it also recognized compensation. The Constitution did not render expropriation of peasant landholdings non-compensable: either it doesn't deal with land expropriation, at least explicitly, and as such it is not expected to deal with compensation thereto; [120] or where it does, such as in Article 44(2) of the FDRE Constitution, compensation is concomitant with power of expropriation. The Constitution grantees peasants' access to land in the very provisions dealing with the right to property signifying they are property rights in things that must be of some economic value. Thus, it is inconceivable to hold

[117] The claim that they have ownership of rights with respect to land would have been sensible had it not been that constitution defined private property as a kind of full ownership where the usus, fructus and abusus of a certain thing fully vested to one owner

[118] See Brightman, *supra* note 111, p.7

[119] Id., p.18.

[120] See FDRE Cons., *supra* note 8, Article 40 (8). This provision of the Constitution deals with neither the expropriation of landholdings nor its compensability.

that peasant landholdings are property rights in things of economic value (land), but its taking away entails no cost. Moreover, we concluded that the jurisprudence of usufruct can be employed to peasants' landholding right under the current legal set up. To this end, Article 1319. (2) of the Civil Code affirms that "[t]he usufruct shall extend to the equivalent value of the thing in case of its expropriation or requisition."

Well, the Constitution is safe, so to speak; either doesn't deal with land expropriation and compensation, at least explicitly, and where it does, compensation is concomitant with power of expropriation. How about the subordinate laws? Both the recent Proclamation No.1161/2019 as well as its predecessor, proclamation no.455/2005, addressed issues of expropriation and compensation. Proclamation No.455/2005 had subtly evaded the compensability or otherwise of landholding expropriation; it failed to include loss of landholding in the very definition of compensation that determines for interests compensation is to be paid but the subsequent provisions have provided for a nominal compensation of 10 years annual produce (based on preceding five years average value).[121]

On the other hand, the new legislation, Proclamation No.1161/2019, admits that it is not anymore possible to evade compensability of loss of landholding. As such, it avoids a restrictive definition of compensation and included landholding right within the six categories of compensable interests.[122] It raised the quantum of compensation from 10 to 15 years' produce (based on the highest annual income in the preceding three years),[123] provided there is no substitute land. In any case, both laws recognized displacement compensation as compensation to

[121] Proc.No.455/2005, *supra* note 13 Article 2(1) had provided that "compensation" means, payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding. However, Art 8 recognized compensation for land-displacement compensation. It provided that "[a] rural landholder whose landholding has been permanently expropriate shall, in addition to the compensation payable under Article 7(compensation for his property situated on land, permanent improvement on land and costs) of this Proclamation, be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land.

[122] Proc. No.1161/2019, *supra* note 11, Article 2 (3). This provision talks of 'displacement compensation' which is defined as "payment to be made to a landholder for the loss of his use right on the land as a result of expropriation."

[123] Id. Article 13.

loss of land due to expropriation though inadequate and without clear basis for setting the quantum.

Over all, the drafters of the Constitution on property rights were preoccupied with private property in the sense of full ownership, from the beginning to the end, excepting instances such as the provisions on peasants' entitlement in relation to land. Yet who said ownership is the only property right worth recognition, protection, and articulation? True that, as Stephen R. Munzer writes, "the idea of property... involves...... ownership *and other related but less powerful interests....*" Less powerful interests don't in anyway mean undeserving of attention. The drafters recognized the interests lesser than ownership in article 40(3), (4) & (5) but forgot them in the expropriation part; and they forgot them not only in relation to their compensability but unfortunately as regards their expropriatability, so to speak.

Then, where did all that misconception in the academia conceiving the legal setting as denying compensability of peasant landholdings stem from? Why should the silence of the Constitution on adverse action (expropriation) be interpreted as implying expropriation without compensation? Is it not inattention to interpret silence on adverse action (expropriation) as signifying confirmation of that adverse action accompanied by a more debilitating action (denial of compensation)? Is that not a common problem of Civil law lawyers to be inattentive of rights lesser than ownership? Those tempted to question the compensability of these rights lesser than full ownership, merely relying on a provision totally dedicated to expropriation and compensation of private property (full ownership), need to reconsider their view in this regard.

Pretty obvious that the subordinate laws provided insufficient quantum of compensation and the standard is unverifiable. Why it was 10 and now raised to 15 years of annual produce value? Why not more or even less? The genesis of this value determination, based on random numbers such as 10 or 15, could be traced in Chinese practice[124]but hardly in economics science. The Chinese law recognized communal (collective) ownership of land along with public ownership (state ownership), and it purported to have recognized full

[124] Land Administration Law of the People's Republic of China, (1999), Article 47, sec. 2 cited in Zhang Xian, Seeking Just Compensation for Collective-owned Land Expropriation in China, Short Academic Paper, PKU, STL, (----) (hereinafter Land Administration Law of the People's Republic of China, (1999)), p.6.

compensation in case of expropriation of collective ownership.[125] However, the amount of compensation for loss of land ownership by the collective ranges from 6 to 10 times of the average output value of the preceding three years,[126] excluding compensation for other property on the land.

Yet the Chinese system is better than the Ethiopian in some respects. First, the Chinese law clearly recognized ownership of land by the collective (communal ownership) and compensability of such land as opposed to the exclusively public ownership of land in the Constitution of Ethiopia and the hesitant subsidiary laws about compensability of peasants' landholding rights. Second, individual peasants in China does not have indefinite period use right expectation but only a contractual right for limited period (30years) and the law seems to assure fair compensation to the specific individual contractor in case of expropriation before lapse of his contractual term.[127] Third, where land owned by the collective is expropriated, the burden is usually shared within members of the collective,[128]not just the individual peasant shoulders misfortune of low compensation as opposed to the case of Ethiopia where peasants take the burden individually owing to increasing shortage of substitute land and absence of readjustment/redistribution.

Then, back to the quantum of compensation under Ethiopian law, we are still far way in making the peasants' right predictable and in proffering the state an optimal standard for compensation. What can be done with arbitrary numbers like 15 years of annual produce value?

---

[125] Chinese Property Rights Law of 2007, *supra* note 51, arts.42, 58, 132.

[126] Land Administration Law of the People's Republic of China, (1999), *supra* note 124, Article 47, sec. 2 cited in Xian, *supra* note 124, p.6.

[127] Chinese Property Rights Law of 2007, *supra* note 51, Article132. It reads "[t]he contractor of the right to land contractual management shall, pursuant to the provisions of the 2nd paragraph of Article 42 of this Law, obtain the relevant compensations in the event of expropriation of its contracted land."

[128] Xiuqing Zou and Arie J. Oskam, New Compensation Standard for Land Expropriation in China, China &World Economy, Vol. 15, No. 5, (2007), p. 112. It is stated that "although the amount of compensation paid to collective owners has increased substantially over time, peasants continue to receive extremely low levels of compensation, and in many cases no cash compensation at all, in return for their land rights. Usually, the collective retains all of the cash compensation on the pretext of developing the collective economy, and shares *the burden of the land loss among all village peasants by conducting a large readjustment*. Therefore, those peasants who initially lose all or much of their land receive a somewhat lower compensation at the expense of the land allocations for everybody else. This process has increasingly led to complaints by peasants."

Scholars are often engaged in articulation and exposition of deficiency of subsidiary laws in setting the nominal compensation while such subsidiary laws should have been challenged in light of the Constitution. Of course, some scholars who view the Constitution deficient in recognizing compensability of loss of landholdings argue that the peasants deserve compensation based on the clause that land is jointly owned by the people and the state.[129] Yet, this line of argument can hardly be defensible. In the first place, the prescription of joint ownership is proved unsound. Second, not only peasants but every Ethiopian including urban dwellers and investors belong to the generic reference of "the peoples of Ethiopia". This would put everyone at par as regards acquisition and loss of rights related to land, which is not the case as the Constitution has already differentiated among them. To succumb to this view renders Constitutional provisions specifically devoted to peasants and pastoralist entitlements in land pointless.

At times scholars do appeal to equity/justice[130] that peasants are being unfairly treated. Nevertheless, the state being often in budgetary deficit, it can hardly head appeals to equity. Rather, this author contends, the state must be informed and compelled to learn that it is constitutionally encumbered with the duty to compensate adequately. How and what is that adequate amount? It could be traced in the very conceptualization of the nature of peasants' property rights in land: it is a right in *rem* entailing the 'right to security' according to Honere's description; it is virtually similar to usufruct and that it is compensable in case of expropriation.

We noted from this analysis that the Constitution talks of peasants at individual level and peasants' minimum assurance is lifetime enjoyment starting from the time one is eligible as a peasant. During this period, the state retains vacuum title of residuary character, bereft of the use right. We recount that the state has only reversion right after such period and during such period, all use values goes to the landholder. Therefore, the minimum amount of compensation to peasants would be equivalent to one's life expectancy, based on national standard, subject to adjustments like deduction of production cost etc. This offers a verifiable and predictable standard instead of random numbers such as 10 and 15.

Well, based on life span formula, young expropriatees will fetch higher value. What if one is close or already over the national standard of life expectancy? And in the absence of redistribution, how fair would it be depriving value to

[129] Id., pp 311-312; Daniel, 2013, *supra* note 53, p. 230.
[130] Muradu, *supra* note 17, p. 309, 311.

potential heirs on the mere fact of shorter life expectancy of landholder? Several arrangements could be of help: single equation of compensation to everyone which is equivalent to duration of between 18 years to life expectancy (more than about forty years) of annual produce or the fair market value of use right for such period. Fair market value for the use right of peasants is government's land transferring fees to developers/investors as determined in land auction (for the period we fixed- based on life expectancy).[131]

Compensation based on life span use right might lead to huge budgetary demand on the state. But not necessarily insurmountable! Every landholder must share the burden of expropriation in so far as expropriation is for public benefit. There could be a surcharge to be levied together with land use fee, and deposited in separate fund, we can call it expropriation compensation fund (ECF). The government must plan its annual land demand and estimate the cost of expropriation, levy surcharge, pay expropriatees from the ECF. We can employ the analogy of insurance fund as envisaged in Proclamation No.799/2013[132] and similar arrangements like pension fund. These thoughts require further development and refinement but time and space constraint halted the journey, forced us to park here.

Conclusion

The Ethiopian land tenure system has not been stable for several decades of years or so mainly due to changing ideologies. The FDRE Constitution declared right to ownership of land is exclusively vested in the State and in the peoples of Ethiopia. On the other hand, the Constitution confirmed the right of peasants and pastoralists to obtain land without payments and guaranteed protection against eviction. This has given rise to perplexing issues of the relation between the State and the peoples of Ethiopia as well their relation with respect to

[131] This uniform standard, for the young and aged ones alike, means the potential heirs/donees of expropriated old ones who are expecting land via heirship will get a value of compensation transferred via succession. Or else, a different approach could be adopted by differentiating compensation based on remaining expected duration of life. This requires continuation of redistribution for the next generation; that every one fetches only what is due for his remaining part of life if expropriated; there should be arrangement to support those alive after the speculated span of life; government should recollect land after the death of landholder or where one ceases to be a peasant; every new generation expects land allocation, and other details.

[132] Vehicle Insurance against Third Part Risks Proclamation, Proclamation No.799/2013, *Federal Negarit Gazetta*, (2013), Arts.19-24.

peasants/pastoralists. The research found out that there is only one owner- the public (peoples of Ethiopia collectively). This is also conventionally referred to as state ownership but practically state is just an agent instead of a distinct entity entitled to co-ownership. The analysis in this work revealed that state's interests in ownership title are dismembered and constitutionally assigned to peasants/pastoralists so much so that the usual assertion labelling the state as exclusive owner of land is more of a rhetoric than reality; the state remains with a vacuum title of 'residuary character' in relation to land assigned to individual peasants/pastoralists or communal holders. However, not all land in the Ethiopian territory is allocated/ granted to the peasants and pastoralists; there would be a bulk of unallocated land in urban areas and in rural areas as well- "state holding-"on which the state exercises every possible use as that of a private land holder or as a passive guardian of open access resources on behalf of the general public.

Due to poor conceptualization, there prevailed dubious status of whether landholding rights of peasants are compensable at times of expropriation. This research disclosed that peasants' landholding rights, as envisaged in the FDRE Constitution, are property rights: rights in *rem*; worth of the right to security; fits into the jurisprudence of *usufruct*. Thus, not only that peasants' landholding rights entail payment of commensurate compensation during expropriation but also that the constraints on expropriation as applicable to ownership similarly applies to them. The author has concluded, in fixing amount of compensation for loss of landholding right, that peasants as usufractuary deserve a minimum of life time use value (minus cost of production) instead of random numbers such as 15 years of annual produce.

The author further observed scholars suggesting alternatives that would improve quantum of compensation; some appeal to equity, others call for narrower definition of public purpose as a justification for expropriation, still others recommend redefining small landholders' right as human rights. While all these could contribute to that intended goal, the author proposes and advises the scholars in the field that it is better to defend from one's own fortress; properly conceptualize the nature of the existing property rights over land as established in the Constitution, and thereby dismantle the rhetoric on exclusive control/ownership of state over land; liberate judges, the pubic officials, and others who succumbed to that ill-conception; then it would be alright, the subsidiary laws would be updated to address the concerns.