Land law lecture note: H.N.J

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In this course, 5 main issues or questions will be effectively addressed;

1. The subject of land: this issue will answer the question “who will own a land. ““Do everyone allowed to own a land? “
2. What is land by itself? This issue will also define what the land is in the sense of law. Land might have its own definition in different courses. EGG. Geography can have its own definition, geology as different field of study can have its own definition and law too. The answer of this question will be given in terms of law. How the law defines a land?
3. The rights of the owner of land: since a land is a property interest, we need to know the nature of the right (how the owner acquired the property interest over land?) by this issue, we will answer the question “can we specify the owners

property interest?" (Is he/she the owner, usufructure or mortgager?).

4. Restriction of rights over the property interest of land: are the owners enjoying absolute property interest over the object (plot of land)?
5. Justification: The fifth issue will be the justification issue. Why the Ethiopian government allowed property interest over plot of land and prevent ownership right?

1. The subject of land:

When we say subject of land right, we mean that who is entitled to have access to or retain land under current Ethiopian land policy and different land laws including proclamations. So, the focus here is on the question of "who" (bearers of land right).The very general answer to the above question is "every Ethiopian citizen is entitled to have agricultural land for a living." This is a kind of constitutional promise or to offer a tract of plot of

agricultural land to every Ethiopian citizen who needs for a living. This very broad egalitarian principle should be a kind of there demand. Then do we have any legal authority for this principle? Yes: for legal authorization of the principle, it's enough of seeing art.40 [4 and 5] of the FDRE constitution. Those sub articles of the constitution contains terms like Ethiopian peasants (4) and Ethiopian pastoralists (5). Sub article 4 of the same article gives to every Ethiopian peasant the right to have an agricultural land and sub 5 gave the same to pastoralists. This kind of constitutional entitlement is something we get for free (without payment). So, if we are an Ethiopian citizen, don't have other means of earning and want to live of agriculture then we will have a piece of land and we'll get that piece of land for free (without payment) from the authorities. Our authorities for the above broad principle is not only limited to the FDRE Constitution but there are also other land proclamations

like the federal land use administration proclamation, regional rural land and administration proclamation and etc. but these laws are subsidiary laws beyond peasants and pastoralist for they say “every Ethiopian citizen” or general than saying “peasants and pastoralists” as that of the constitution which is deemed to be very special.

Categories of land right holders:

We have three broad categories of rural land holders in Ethiopia which could be put in terms of hierarchy. They are;

(A)Peasants and pastoralists;

(B) Agricultural Investors;

(C) Others. This is just a kind of ranking and not a mere classification. Especially in relations to agricultural land, peasant and pastoralists come first according to the constitution. They got a priority by the constitution. Investors come next. When we say investors, we are referring to both

domestic and foreign investors. Whether they are foreigners or domestic, it doesn’t matter. And then as the final ranking, we will have others (persons or entities who need land for purposes other than investment and living).

Purposes/reasons for such ranking: the purpose of giving a land to peasants and pastoralists is primarily for survival. We are not saying they should use a land only for subsistence or survival rather it should be primarily. We expect them to produce surplus to the market for consumption, industry and export. But land is primarily given to peasants or pastoralists for subsistence or survival.

The purpose of giving land to investors is for capital formation. Here, the issue is not subsistence. We expect an investor to generate income more than in the case of subsistence or survival. Here, we are talking about asset building and capital formation. Since land is obviously a means of

production, we need to have labor and knowhow to create capital.

We have 5 sub-categories in others category: these are;

i. Foreigners of Ethiopian origin: this refers likely to the Diaspora's. These people have an original links or they are originally Ethiopian's but acquired foreign nationality. Now, they are no more Ethiopian's for they have gained a foreign nationality or technically speaking, they are foreigners. After all, these Diaspora's are equally treated with any citizens of the country especially for the purpose of land acquisition. Whether they are investors or not, it doesn't matter the requirement is just having an Ethiopian origin. Here, what we need to prove is the foreign nationality of the person and the having of Ethiopian origin (route). If the 2 things are proven then the person is similar to any other Ethiopian citizen. But regarding to this

foreign nationality of Ethiopian origins, one and main important exception is that “participation in public office”. They are neither elect nor be elected for the public or political office. But in relation to other spheres of life egg acquiring property including land and other immovable properties, they are put in an equal footing with all Ethiopian citizens.

ii. Foreigners pure and simple: they are neither investors nor Ethiopian origins. They are not also beneficiaries of government (executive) discretion. They are simply foreign nationals. Despite this, there may be situations where we might give this foreigner to have access to immovable property (land). The law says to this foreign pure and simple people “you cannot acquire immovable property of a permanent nature. “The reasons for such prohibition includes; colonial history, lack of stability, prevalence of justice in the precision of natural resource.

iii. Governmental/inter-governmental/non-governmental entities: when we say governmental entities, we are referring to embassies. Enter-governmental entities are those reside as a result of treaties between two or more states. Whereas, non-governmental entities refers to some humanitarian and developmental entities. These entities can have accesses to both urban and rural land. Unlike those of foreigners pure and simple, the exception (prohibition of immovable properties of permanent nature) does not apply to these entities. The justification for this might include; international laws, international diplomacies, prosperity, etc.

Iv. Ethiopian's who are neither peasants and pastoralists nor investors: these people need land not for survival, or capital formation but for other purposes. These are simply Ethiopian citizens who need land for

other purposes other than substance (survival) or capital formation.

Purpose/reasons in this category: The “other” category of land right holders needs land for commercial purposes. They want to engage in trade activities in urban areas. They also need to engage in service activities. Unlike to that of trade activity, service activity may be carried out both in urban and rural areas.

The Ethiopian land law says that “rural land must be given first to the category of peasants and pastoralists.”Without undermining peasant’s right to have access to land, investors come next and other at the end. Do we have any legal authority for such kind of hierarchical ranking? Yes; because art.40 [6] of the FDRE Constitution states that “without the 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.” Basically, this type of rough ranking comes out of this law. One important difference which could be sited from this article is that in case of peasant and pastoralists, they got land for free whereas investors will take a land by paying for it. This and other difference between the two can show us the Ethiopian’s government favor of peasants and pastoralists as a first ranking than investors. What is the justification for such ranking? The answer for this question should be drawn on the basis of purpose. On this account, the policy seems to say first to subsistence. The primary objective we should presume in using land is subsistence and then capital raising. As we have said above, in relation to ownership of immovable property (land) whether in rural or urban areas, Ethiopian’s of foreign origin are treated in a similar fashion with any ordinary Ethiopian citizens. For treating the case of Ethiopian Diaspora’s, the Ethiopian

government had issued proclamation no.270/2002 more than a decade ago. In principle, it’s possible to classify the Diaspora’s in to two as those who have live abroad for several years but failed to acquire foreign nationality and those who have lived abroad and acquired foreign nationality. The application of the above proclamation to those who didn’t acquired foreign nationality is not questionable or has no problem. But the proclamation is not applied only on this sect of Diaspora’s but also to those who have acquired foreign nationality too who is deemed to be confusing or questionable. Because once those Diaspora’s have gained foreign nationalities and no more Ethiopian’s, there equal treatment with the other classification is questionable. After all, what is the reason for giving such kind of privilege to the Diaspora’s? The simple answer for this question is “for their route“. Even if they got a foreign nationality, their ancestors’ are living here and their blood

tie put them equal with any Ethiopian citizens.Not only these Diaspora's but foreigners when they are on the Ethiopian territory can also acquire any property interest in principle except a property interest having a permanent (enduring) nature on the basis of art.393 of the Ethiopian Civil Code.

The guiding principle of subject of land right in Ethiopia is "every Ethiopian citizen is entitled to have access to agricultural land for living." (Land for all); let's try to analyze this principle on the basis of different issues;

a. Is it justiciable? This issue should be seen in light of art.37 of the FDRE Constitution. It's a justiciable for it is the legal or constitutional commitment and the barrier of the duty is the government. But this government or a state might fail to enforce that right due to other defects. The main important thing, then, is we have to enforce our right through legal means. The state

will fulfill the principle when circumstance work-out. The implementation of this principle is contingent on some conveniences on the part of the state.

b. The “how” question distribution redistribution: there are mechanisms through which the state may implement this principle. These mechanisms could be “land distribution” and “land redistribution”.

c. Is it realistic? When we say realistic we mean something implementable or practicable. The issue of feasibility arises for different reasons, Among others;

Population growth: we are experiencing the most population growth rate (3%) purr annum in the world.

Agricultural land is “at best” constant: we cannot invade other territories to expand our agricultural land. It is “at best” constant because in fact we are losing agricultural land for different reasons; erosion, land

degradation, flooding, the expansion of town and cities, etc.

(d) The issue of “equity”: it refers to the fairness in the distribution of natural assets of the country. The sentiment behind this broad principle is undoubtly fairness. If so, is the principle meeting its sentiment?

(e) The question of “efficiency”: here, our intention is avoiding ideal labor. Because we are pairing land with labor. When we are trying to pair land with labor under this principle, we are saying we don’t want to see ideal labor. This pairing of land with labor is with the context of house-hold labor. It is not employment we get from corporations rather from ourselves. Since we have a land, control process of production and become the owner of that production, then, we are a master of our production.

So, in principle, we will be motivated to use our energy to the maximum. Because the land, labor and most importantly the product is ours.

Significance of the principle: a significant stock of asset must be held by citizens not concentrated in the hands of this or that section of the population. Because having access to land is a stepping-stone for acquisition of other assets. We should not look at it narrowly. In fact, it gives a voice to millions of house-hold. It is a right/just/fair thing to do: because it brings about social and political stability, makes millions of house-hold productive and etc.

The linkage of the principle to the concept of land: there are some sorts of relationships between the principle and Locke’s concept of land. Locke’s theory of property is divided in to two; the state of nature and civil society. In the state of nature, there were no common government and people have not formed the society; they are living in their natural conditions based on human reason. Whereas, in civil society people have abandoned for good reasons, the state of nature and moved to the formation of civil society. In a sense,

they have formed a common government. In both case, there is a property. But the point is in the state of nature; Locke says “all natural things (land, plants, air, and water) belong to humanity.” By this he means that “humanity is a common ruler of nature.” All human beings have commonly own nature. The relationship of Locke’s model of state of nature and the principle at hand is equitable distribution of nature “land” in our case for all human beings. If all land is declared in a state of nature to be owned by one person Mr. X, then all other human beings will be working for him (Mr. X). As we have said earlier, in order for us to have ownership over a piece of land, we must use our own labor. So, it would be impossible for an individual to develop the whole nature. Alike the Lockian case, we have to use it for the land continued to be ours in our case too.

Generally, there are two important similarities between the lockian theory and the principle at hand; 1. The land or the

property belongs to all of us and 2. Maintenance of the right is contingent on us. Once we have acquired the land, we might use it. In order for us to keep-on retaining a right over a piece of land as a citizen (in our case) and human being (in Lockian theory of property), we have to invest our labor.

2. Object of land law:

In general, property right must have a subject matter. This subject matter can be tangible or intangible thing or movable or immovable. But the point is that there has to be a seat of right. Property right is seat on a given thing.

> As our subject matter is land, land right have also a seat. That seat of land right is obviously a land itself. Then the question is "how do we define a land?" land could be defined in different way in different field of studies; geography, biology, economics, law and etc. all these disciplines may characterize land for there own

purposes. But the question here is “how do we characterize land in law specially in the context of Ethiopian law?” one sources of defining land law are proclamations like rural land administrations and use proclamation. Proclamation no.456/2005 rural land administration and use; is there a definition of land in this proclamation? This proclamation talks about classifications and sub-classifications of land holding. But the question is based on what legal authority, criteria and reason? Most regional proclamations came to divide land holding in to private land holdings, communal land holdings and state land holdings. Art.2, 10 and 11 of proclamation no.456 dealt with this classification of land holdings. A. Private land holding; Private holding can also be further divided in to fee, lease and squatter private holdings. These are essentially holdings of peasants and pastoralists or holdings which could be gained without payments. We may find these holdings in urban areas but they are

massively found in rural areas for they are agricultural and pastoralist land to some extent. Squatter private holders are legal and illegal right holders at the same time. These squatter holdings are land holdings which are not acquired through lawful means. To squat means to take-over someone's property. It is just an acquiring land without the permission of a legal holder. We can think of a mixture of these three classifications of private land holdings for our part of land can be fee, squat and lease land at the same time. We might have a plot of land which is acquired from a fee system, can annex land by a lease system and then we can try to expand our land by squatting others land without there permission. This specific situation of our own act can show us the presence of mixture of the three classifications of private land holdings. So, in relation to a single person's holding, we can have these three sub-categories. This act of holding

land is prevalent and common especially in towns and cities.

Coming-back to our original topic, still what is classified and sub-classified here is not a land rather a holding of land. The proclamation has a definition of land holding but not land. So, it is more of entertaining land rights than the subject matter “land” over which the right is constituted. Now, we are after a subject matter over which is constituted. But what is being defined or classified and sub-classified by this law (proclamation) is not land but land holding. B. Communal land holding; this is mostly the holding of land by communes. When we go through rural area especially in the settled part of the country, which accounts for 2 3$^{rd}$ of the population of the country, we find the grazing areas and each peasant having his own farm. Apart from that there are also open areas used for variety of purposes including grazing. When we moved out of

this settled part of the country and moved to the population who based their livelihood on shifting cultivation or pastoralist livelihood, the main mode of land holding is a communal. Communal in a sense means that in a certain community, the whole members have the right to access concurrently to that resource (land). One member of the society cannot say “this is mine, I’m going to face you at, going to enclose it for my own end and etc”. Everybody can have an access to for certain purpose. C. State land holding; the proclamations we are dealing with are proclamations which are talking about rural land areas. But we are expanding our conceptual thinking to urban lands too. In fact, the state owns land both in urban and rural areas for variety of purposes. We can sub-classify state land holding in to land in public domain, land for public services and land used by the state for commercial purposes. Some lands held by the state belong to the public. They hold land in the

public domain. The typical examples are streets and highways. They consume land without land holdings. But the fact is that these streets and highways are accessible for everyone. But they are managed by the state using public expenditure (tax). The accessibility to everyone without distinction is the concern of state land in the public domain. So, state land in the public domain means that land under the control and management of the state but nobody can be kept out. It has no restriction in terms of citizenship. Whether we are Ethiopian citizens or not, we can have access to state land in the public domain so long as we find ourselves in the Ethiopian soil. There are also state lands which are provided for public services; those of government institutions. We can simply take AAU as an example of state land for the public service as one government institution. It has consumed a lot of land. But AAU as of campus and its facilities are not open to everyone. There are a lot of requirement;

being a student, being a seeker of some sorts of services and etc. all ministries and government institutions having land holdings fail under this sub-category. Land held by government for commercial purposes; these are simply state enterprises like share companies and public enterprises. In the first sub-classification of state land holding (land for the public domain), the state's responsibility is managing a common resource or it's a custodian of the public resource a resource common to everyone on the Ethiopian territory. In the second sub-classification (land for the public service), the state is acting as a sovereign; enacting laws, implementing those laws, imprisoning people, training them, teaching the society,providing services, etc, for that land is obviously important. In the third case (land for the commercial purpose), the state is acting as a trader/investor in that capacity to hold land.

In principle, every taxonomy must have a base or some sort of foundation. So, the criteria here for classifying land holding is the question “who is the holder?”. In the first case (private land holdings), we have private person whether as a natural person or artificial, in the second case (communal land holdings), we have the communities and in third case (state land holding), we have the state. So, the standard for classifying land holder in this law (proclamation no.456) is the identity of the holder (who is the holder?).

The legal effects of these classification of land holdings: the general point that we should kept in mind before going deep in to the legal effects of these classification is that the rules which are applied for the three classifications are not similar. The rule which is applied for private land holding is different from that of communal land holding and the rule which is applied for communal land holding is different from

that of state land holding and etc. but the difference may not necessarily be 100 percent; there might be some sorts of similarities in the nature or application of the rule but they are not also completely similar.

A. Nature of rights; the type of right we obtain as a lease holder is different from the rights we obtain from fee holder. Egg. Use right can be mortgage if we have the right of lease holder. If our land holding falls under sub-classification of lease holding, mortgage will be our use right. But if our land holding falls under the fee holding, we cannot collateralize our land use right.

b. Duration of the right; in the lease holding, the duration is defined, might be 10, 15, 20 and etc. but in relation to fee holding (if we are peasant), it's for the indefinite period of time.

C. payment; we are obliged to pay in a lease holding. Whereas in the case of fee

holding as we are a peasant, we are not expected to pay anything. We get a holding for free.

D. expropriation; in relation to expropriation, there is a different in the treatment of these 2 sub-classification (lease and fee) of land holding.

E. land redistribution; land redistribution might be relevant in relation to fee land holding. It might also be relevant in communal land holding.

After all, “what is land?”

As we have tried to assess it, this proclamation (proc.no.456) does not define land. It has basically classified and sub-classifies land holdings. What is defined in this proclamation is “land holding” under art.2 [13] but not “land”. But there are other parts of the proclamation which tend to imply some sorts of elements of the definition of land. Still they did not give as a definition rather than elements. This

failure of defining land is not only limited to proclamation number 456/2005 but the other proclamation like the lease did not also define what the land is than referring land in there provision when they dealwithissues like measuring and surveying of land. While dealing with the measuring and surveying of land, the proclamations did not still expressly define what the land is. But we simply infer that for the capable thing to be measured is land than land holding. Then the next question we should raise here is that “will the civil code help us at defining land?”We cannot really find the single article which could in satisfactorily manner defines land. But we can read and put certain provision together to come-up-with an inferential definition of land in the context of Ethiopian property law. For managing the case, we have articles like art.1126-38 and art.1209-1212 of book three of the Ethiopian civil code. The result of that inference lead us to a definition of land which could be expressed

in the following way; “Land” is an individualized/isolated/demarcated portion of the earth which includes the surface, sub-surface, directly below that individualized space (below is to mean to the extent necessary for the exploitation and use of that space) and directly above a space (above is to mean to the extent necessary for the exploitation and use of that space). In law, this seems to be what land means.

The elements of this definition; A. First the land should be individualized. The individualization might be carried-out through a modern or traditional means. It is not a movable thing and can’t move to somewhere but we are trying to treat as if this space is a movable thing and susceptible to transaction. Specially using a modern technique as mentioned earlier, people of knowledge go to the field, measure it and surveyed it, they register what was measured and surveyed and they

issue a paper that signifies or represents that measured place. We might call that paper entitlement or a certificate of possession. Whatever the name may be, the point is we should carry that paper around. Because the land is represented by that paper. After all, individualization is an important thing.

B. “It also includes the surface or sub-surface”; of course this is a surface or sub-surface of that demarcated land. This surface is also qualified by the phrase “directly below”. We cannot expand to encroach on the neigh boring’s land. It must be directly below.

C. “To extent necessary for the exploitation or use of the space”; this direct below should be to the extent necessary for the use. We cannot go down indefinite. The downward movement has its own limit which is “to the extent necessary for the exploitation and use of the land”. This phrase is mostly used in

articles 1209-1212of the Ethiopian civil code. The rule “to the extent necessary for the exploitation and use of the land” is applicable for upward movement which is directly above too.

D. Accessories and intrinsic elements of land:

There are things which are attached to the land by law physically. These things are treated as part and parcel of the land. Some of these things might be movable things. But they are said to be immovable things because of the special relationship to the plot of land, they are immobilized. In the eyes of the law, these things are treated as if they are immovable things even if they can be movable things.

3. The Nature of property right:

After addressing the questions of “who is the bearer of land right?” and “what is land?”, the next crucial and most important question to be addressed is “what constitute property rights?” there are too

many approaches towards the concept of property. But we will try to see 2 approaches of property for our purpose. These are the exclusive right approach and the bundle of right approach. I. The exclusive right approach; we say a property exclusive right, when someone has control a thing and can do certain things with that property. This can make certain decisions over that property. Egg. If the person is the exclusive right owner of a chair, he has the right to break in to pieces, leave it unused, burnt-down, etc. the point is he can do whatever he wants over that property since he is the exclusive right owner of the chair. We cannot exhaustively list the things a person may do with his property “chair” in the above example. In the case of land, it is doing certain things by the person himself or authorizing some other person to use a land. So, this involves some sorts of physical interaction/involvement with the object “land”. And it can also be inaction or doing nothing (leaving the thing “land”

idle). Generally, the exclusive right approach gave a person three important things over his property; A. to subject it to juridical act (donate, sell, rent it and etc), B. to take-out certain activities and C. non-interference (all persons in the world including the state other than him have no right over that property.

Open ended nature of exclusive approach; in this approach, the rights cannot be exhaustively listed-down specially to do or not to do certain things, to deal with in certain way on the land etc. Under this approach, the core rights might be mentioned.

Shrinkage of the land; in this approach, shrinking of the land is limited. Shrinkage or contraction by the state through practices, legislations and policies is in principle prohibited. If the country adopted an exclusive right approach, the state is prohibited from contracting, diminishing, minimizing or reducing the content of

property rights through the enactment of legislations, formulation of policies and endorsement of practices. To some extent, the state has a room. But the state does not have a wide legislative room to limit the rights. Generally, this is the freedom zone of an individual which is exercised in relation to things “land” in our case and that freedom zone cannot be undermined by anyone.

ii. Bundle of rights approach; according to this approach, its property rights are bundles of rights over things including land. It is a metaphor; “sticks tie together.” A bundle might be a thick, allots of sticks in it. It might also be a thin, a few sticks in it. Whatever the rights are (thin or thick), the rights are close ended in this approach. They are exhaustively listed. What a person can do with a thing is limited. We know for sure our right; A, B C or D. the peculiar feature of this approach which makes it different from the previous one is that

shrinkage and expansion is possible, so is contraction of the right.

Which one of the two approaches does the Ethiopian land law currently following?

Land right under the FDRE Constitution; ownership over the land: art.40 [3] of the Ethiopian civil code states that “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.” As it is possible to easily understand from this article, the state and the people of Ethiopia have given the right to own a land. The land is to be held in custody by the state on the behalf of the people. Generally, the constitution of FDRE gave the ownership of land to the state, people of Ethiopia and nations, nationalities and peoples. The state assumes the existence of government, people, territory and sovereignty. Among these four elements, the most important one being the people.Because we can have

people without territory+government+effective and realizable sovereignty. We do have different states without government for a government of that state may fail at certain occasion and fail to come-back again.

Art.40 [3] of FDRE Constitution canhavetwo possibilities by giving the ownership of the land to the state and peoples anyways.The first possibility is state land ownership or people land ownership as the people is the fundamental thing in the notion of the state. It’s owned collectively without specifying as to that and these citizen, these and that generation and etc. By just saying the “PEOPLE”, It should include both the past, current and future generations. The second possibility is the “state” will be one or distinct entity and the “peoples” is different communities for people is used in the article in its plural form “peoples”. The communities that came together in accordance to the constitution

to establish the federal government. Generally, the possibility of understanding art.40 [3] of FDRE constitution is either peoples of state ownership of land or state+peoples ownership of land (if we have 90 comunities in Ethiopia+state equals 91, then, we will have 91 entities owning land.) if we take the second possibility for the matter of our purpose, the type of ownership the constitution is giving for the people is communal ownership. This type of ownership could be authorized by the second line of art.40 [3] of the FDRE Constitution saying “land is a common property”. So, the people own the land within Ethiopian territory in common. Then, how did this form of common ownership over land by people and state came to being? We cannot own something without a block. We have 91 entities owning Ethiopian territories. The naturally growing plants, minerals and the land itself are given in the form of common ownership to these entities. The common ownership of

Ethiopian land by both state and peoples is the result of partnership agreement by virtue of which they confirm upon themselves this form of ownership over the Ethiopian territory by using the 1995 FDRE Constitution as a legal document. So, this is an important constitutional analytic. By that constitution, they had said“before the adoption of this constitution, we use to own exclusively our own territory. But at the time of the signing/ratification of this constitution, we have agreed to join our astrictive resources for the realization of the cause of partnership. As a result 91 of us will use the land which is found in Ethiopian territory in common”. From this agreement of the state, it is easy to understand that the agreement is the free will or full consent of those 90 comunities+astate for the partnership by itself presupposes the existence of consent.It is also possible to know as the communities are willing to be treated equally with each other for they are eager

of owning the resources (land in our case) commonly or together.

Land right under FDRE constitution:

Ownership; Features of ownership; 1. Exclusivity, 2. Inalienability, 3. Indivisibility and 4. Nullity.

Proportionality/equality: as a general principle, the land is owned by the commoners. There share may be equal or unequal. It depends upon their agreement. But if they are not agreed, the law will determine their share based upon the so called the principles of presumption.

What is the importance of knowing the share of or the amount of the land at stake when several persons jointly own? In the case of land as well as in corporation, one can't say "I own the land" rather he only says "I have a share on it."

For this reason, determining the share of the commoners from the land at stake is the main important task. Generally,

determining the share of the commoners serve for 2 interrelated purposes; 1. Determine the profit and 2. For the sake of voting. The more share the more the vote will be. What is the size of their share? Is it proportional or equal? For answering this question, we need to see ar.3 [2], 47 [2], 62 [4] and 88 [2] of FDRE Constitution Versesart.55 [1-3], 62 [2] of the same Constitution.

Perpetuity; it is a perpetual agreement and it could not easily be brought to an end. In principle, it seems that it is not a perpetual arrangement. Opting out is allowed through: amendment and secession.

Agency: it requires at least the involvement of two individuals: principal and agent. Obligation of an agent is acting on behalf of the principal.

As one can easily understand from the reading of art.89 [2] of the FDRE Constitution, the phrase “on behalf “is used to symbolize agency by a clear agency

language. “On behalf” in the same article may represent common benefit. From the reading of different provisions of the Constitution, one can also conclude that the mandate of agency is given for both federal and regional governments. Then one of the possible question which could be raised here is that “Why not for one of them?”“What are the considerations that are taken to account in allocating Federal,regional or regional federal? Let’s assume region X want to enact a constitution regarding land matters solely. This power can’t be exercised exclusively by X. because land is both local due to its location as well as it has also a national importance for land is fundamental to national economy. It conditioned security, foreign trade, etc. A land has both local and federal content. To the extent it has local content it should be given for regional governments, to the extent it has a national content, and it should left to the federal government. In short, we allocate based on

whether the matter is local, national or both.

Land right less than ownership:

Land rights are divided in to two; ownership and right less than ownership. Naming, is their any term in the constitution that describes land rights less than ownership? Yes there is; possession art.40 [4], art.40 [5]-, grazing cultivation implies us+fruit=usufruct art.35 [7] use administration…of land. Art.40 [6] the use of land. See 40 [7]. We don’t have a single name adopted for ownership land right less than ownership. Generally, either impliedly or expressly, after the reading of art.40 [4-7] of the FDRE Constitution, one can find terms like use, control, possession and management of land which are deemed to be land rights less than ownership.

Art.89 [5] have also used the term “hold” which could also represent land rights less than ownership like the above terms. But this term (hold) is a week term by its

nature. Because we might hold something which does not belong to us. We will act as an agent or we don’t have a right to derive certain interest from what we hold. Because we are holding on behalf of somebody else.But a very strong term is used in art.87 [2] of the FDRE Constitution which is “usufructury”. This sub-article of the constitution reads as; “states shall determine and collect fees for land “usufructury” rights.” Of course this article deals with taxation. But we need to extend the application of this provision which is relevant to taxation to other matters including land. This article is a very general one to infer the point at hand anyways. But the term “usufructury” is important for our purpose. What is a “usufructury”? Usufructury is a person who will be benefited by using something’s or a beneficiary of usufruct. We may have a usufruct right over something. If we have usufruct right over something, then we will also have the right to collect and own the

fruits thereof. Egg. If we are a usufructure of a house, we can use that house for certain purpose and can also rent it out to collect the rent. The rent of that house is a fruit. So, the term “usufruct” is binding concept; it combines two things; using something+collecting fruit out of it. Having a this much general background of usufruct enables us to easily understand the confusion of the term “beneficiary” with the “right” in this Constitution particularly in this provision. The appropriate term should have been here (art.97 [2]) “usufruct”. Collect fees for land use is a land usufruct not usufructury right. Because usufructury is not a right rather a person.

Exceptions: 1. Freedom of eviction; this term has horizontal and vertical damage. Horizontal damage; eviction/dispossession or displacement might come from entities other than the state or person other than the states. This means that fellow members and even our neighbor can evict us.

Foreseeable eviction might also come from corporation or private actors. They might violently try to take our land as a peasant. Because they knew the land for there own purpose. This is the first threat. The next and the most important threat is government. Government might also dispossess our land by using actions (we mean by "action" practices, laws, and policies). The government might issue policies, pass legislations and generate practices having the implication of eviction without resorting to expropriation. Art.40 [4] and [5] of the FDRE Constitution deal with both dimensions of dispossession. This obligation having the constitutional status is imposed on government. In other words, what these constitutional provisions say is that "1. the government whether the federal or regional cannot take actions in this form which lead to the dispossession or displacement of land which is deemed to be the negative one for it supposes the refrainment of the government from taking

any kind of action and 2. They should have also stoppedhorizontal eviction which is assumed to be the positive. “

The right to receive fair price for the produce; this feature of right is authorized by art.41 [8] of the constitution. This article reads as; “Ethiopian farmers and pastorals have the right to receive fair prices for their products that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution. This objective shall guide the State in the formulation of economic, social and development policies.”If we produce something as a farmer and if the fruit is foresee ably taken-away from user if the products are sold below the average market price, then, this act will be a form of indirect expropriation. Under this article, we should assume a constitutional obligation not to restore those earlier exploitative relationships

which we had experienced in history. Not only this, we will assume a positive obligation to make sure that certain systems and institutions are put in place so that these social groups (the producers) would get not market price for there product but fair price. Fair in a sense that they cannot get more than they deserve. Because if they do so, the urban or towns will suffer. They should not also get less than what they deserve. Because if that is the case, the rural population will also suffer in return and the urban population too. Therefore, article 41 [8] is a central article that links the economy with politics.

Restriction on the rights of pastorals and peasants;

1. The first restriction comes from art.40 [8] of the constitution which is expropriation clause.

2. Secondly art.44 of the constitution which is the environmental clause for protection

of environment can imply the limitation on land right.

3. Art.40 [4 and 5] redistribution. Why these 2 sub-articles imply land redistribution? By “land redistribution” we mean that taking a part of farmer’s land to give it to somebody without land or somebody with insufficient land. This is what we call “partial dispossession of land”. These 2 sub-articles of the constitution refer to those who reside in the countryside who might be called peasant or pastoralist today and in the future. Both the present and future pastoralists and peasants are entitled to get rural land without payment (for free). So the implication will be obvious by raising the question “what will be the source of land for the state to give to these future peasants and pastoralists?” the first source could be a state land; land held by the state, The second source is the communal land; taking land from a community and the third source will be land

from existing rollers. The point is art.40 [4 and 5] definitely suggest the possibility of land redistribution.

4. We have also restrictions coming from art.97 [1 and 2] which a land use fees. These land users are supposed to pay a land use fees.

5. Art.41 [8] has also impose an obligation on farmers to make a contribution to the national economy.

To which category of right do we categorize usufruct right? A. human or B. democratic??

One of the unique features of the FDRE Constitution is introducing the dichotomy of dividing the human and democratic right in to two parts. As we can easily see from the structure of the FDRE Constitution, chapter three of the constitution is divided in to two parts. Some of the rights are put under the human right umbrella and some other are under democratic right umbrella. The

possible answer which could be drawn for the above question is emanated from this structure of the constitution. Usufruct or land right of the FDRE Constitution fall under the democratic right box. This is because of the very structure of article 40. Article 40 falls under part two of chapter three. Generally the place of article 40 of the FDRE Constitution leads us to conclude that art.40 in general and land right (usufruct) in particular is a democratic right.

Suspensions of land right; the main important question that will be addressed in this sub-topic is, “is it possible to suspend land rights?”Since art.93 of the FDRE Constitution exhaustively lists-down the right which could not be suspended by state emergency, answering this question could not be a difficult task for us. As clearly stated in art.93 [4] C of FDRE Constitution, only art.1, 18, 25, and 39 [1 and 2] of the Constitution could not be

suspended. Since art.40 of the constitution is not listed here, it can be suspended and land right are a subject of suspension at the time of state emergency.

Land rights less than ownership not addressed in the constitution:

1. Duration; duration of the right is not addressed in the constitution. If so, “for what long does one use a “usufruct?”
2. Purpose; purpose of the right is not also addressed. Then, “for what purpose this right (usufruct) is given to certain groups?” is it for subsistence or…
3. Nature of the usufruct right; “Are we supposed to continuously and actively use a land?” suppose Mr. X has failed to use his farm land for 3 or 4 years. He will say that “this is my farm land”. But he is not tilling or farming it. Then, “would the government take-away from Mr. x that farm land?”.It is not still answered by the constitution.

4. Dispute settlement; if dispute arises relating to the use of land, “how are we going to solve it?”.Are we going to use customary law, courts, both or… suppose Mr.X’s usufruct right is infringed by Mr. y. Mr. Y without Mr. x’s authorization has interfered with his usufruct right which is given by the constitution. What recourses are available to Mr.X? Will be a burning question which is left unanswered by the FDRE Constitution.
5. Transfer; can we transfer our usufruct right??

After all, the point here is that these detail things imply that the state has legislative space to play a role. So, from time to time different issues could be addressed in legislations. In other words, these are areas left for legislative intervention.

Land rights less than ownership addressed in different subordinate legislations:

Under this topic, we will mainly focus on two proclamations which are proclamation

no.456/2005 and 721/2011 lease proclamation. These proclamations are basically a representative of the two sects/parts of the country one stands for rural (proc no.456/2005) and the other stands for urban (proc no.721/2011).

Naming: this sub-topic will answer the question “what name is given to land rights under these subordinate legislations?”.If we go through these and other regional legislation, we could find terms like land holding and possession to represent land right. Egg. The Federal rural land proclamation and the SNNPR rural land proclamation use the term land holding. But the Oromia rural land proclamation use different term which is possession. Where we have two different names in different federal and regional legislations or not, the point is we have two names as an indicator of land right in those subordinate legislations. After getting the names which were given to the

land rights, the next question will be “what this naming represent?” which is the content.

Content: normally, we have three things as the content of land right in these subordinate legislations. These contents are;

1. Use for agricultural purpose; use can be one content but there are conditions for that use. We cannot use rural land for any purpose but for specified purpose. We can use land for different purposes other than agriculture. But this use right in these proclamations is limited only to agricultural purpose

2. Transfer in the form of donation and inheritance; we have the right to bequeath/inherit/donate that use right (not the property on the land but the use right).

When we either inherit or donate, there is no consideration to that effect. And

3. Ownership of property on the land; this property is not any property on the land but the property on the land which is

related to either capital or labor. This means that any mineral resource or wild animals could not be part of our claim. Because wild animals and mineral resources are not traceable to our effort rather they are traceable to their nature; they exist in their natural condition on our land.

Even if there are some differences between different federal and regional rural land proclamations in terms of naming (nomenclature), their content is more or less similar in nature. So, in all federal and regional rural land proclamations, there are 3 dimensions as to content; use, transfer and ownership dimension.

Under these subsidiary laws, we have generally two problems as to naming:1. Lack of a uniform term in naming; because as we said it above we have at least two names for the same content of land which are holding and possession. This creates some sort of confusion in academic aspects.

Because we are talking about the same thing but using different names (designation).And 2. Confusing land right with property on the land; because the use and transfer right are related to land use right but the ownership aspect is related to the property on the land not the land. This means that there are two things; land+property on the land. Because our right in or over the land is conceptually different from our right over the property on the land. So the point is, despite there is such kind of conceptual difference between the two, they were fallen under the same holding right. So, ideally, when we talk about land right, we should exclude the right of the property on the land for it has its own field of study which is general property's subject matter.

When we see proclamation no. 721/2011, the term used for land right is lease right. This name is given for this proclamation for it covers urban land than that of rural land.

Under art.2 (1) of this proclamation, lease is defined as a system of land tenure by which a right of use of urban land acquired under contract of definite period. This definition of lease tells us that in relation to urban land, what we get as a right is use right. This is what makes this definition better than the definition of land rights given by the other proclamations like 456/2005. Because it does not talk about the property on the land. Whether these two things are conceptually coherent or not, it is not a business of land law. The other point what this definition signifies to us is that the use right will be gotten by the lease system and we have to pay for it.

Conditions/restrictions under use right: continuity; as clearly elaborated in different regional land laws/proclamations, the use of that land must be continuous. We have to normally use the land without interruption for agricultural purpose. The maximum time to be tolerated for unused of land is 3

years normally between 2 and 3 years. This means that we should not left-out the land unused for more than 3 years let’s say several decades. In addition to continuous use of the land, our use should also be proper. So, the condition are; use for agricultural land, use continuously and use it properly. Generally, improper use and non-use of the land might lead to lose of that land. Then the basic question we need to ask with regards to these three conditions is that “why do we need these 3 conditions for the use of land?” or “what is the justification behind these conditions?”

In relation to proclamation no.721/2011 or urban land proclamation, the conditions area.Use for the purpose specified in the contract of lease. The purposes might be manufacturing, residence, etc. the issue is what is specified or indicated in the lease contract?.If we want to change the purpose of the land from what was specified in the contract to anything else, we should apply

and need to the amendment of the lease contract. B. We have to make the necessary payment. The payment might be once or installments. We have to pay the installment when the time is due. C. we have to complete the project within the time frame indicated in the lease contract. In fact we have to commence the project within a time indicated in the lease contract and complete it within a time as well. So, commencement and completion of a contract within a time specified in the lease contract was a third condition for urban land's right. The same question of justification for these conditions will also be raised here.

The regular notion of land rights would say "these conditions would not make sense." If A acquires land through lease, He may use or may not use it. It is Mr.X's frame either to use the land for these and that purpose or late it unused. Either to use in a time or not is not determined by the authorities

rather by the master who is the lease owner Mr.X in our case.

Lease and rent:

These two concepts are included in the law. Egg. Proclamation 456/2005 uses these two terms in its different provisions. Proclamation no.456/2005 allows small scale farmers to lease-out their land. They are also allowed to rent their land. But there are conditions attached to these transactions. Rent and lease are a form of transfer. The transfer is transfer of use right for certain periods of time.

Under proclamation no.721/2011, sub-lease is possible. A lease of an urban land can sub-lease his land. “Does the peasants allowed to mortgage their land under the proclamations?” the peasants are not allowed to mortgage land under proclamation no.456/2005 and other regional and rural proclamations. But investor’sspeciallyagricultural investors can sell-out their land use right. They can either

mortgage or sell-out it. In relation to urban land, whether the leasee is an investor or non-investor, he can mortgaged or sold-out that lease right which is time bound and payment based freely without any distinction.

Contribution of land use right; the question which will be addressed in this sub-topic will be “is it possible to contribute land use right to business?”.If we want to be a member of a given business association whether it is cooperative or share company where at least two individuals are involved intending to engage in a profitable activity, we will have three possibilities; A. we will contribute in cash in return of membership. B. we might contribute labor; intellectual or physical. In fact, we have some expertise in managing some of the affairs of that business. Since we don’t have money or any other asset, then we would say “I would contribute my skill/knowledge in managing the business.” C. we may made in kind

contribution or property. It might be intellectual property, land or some other property. D. the last possibility might be the combination of all the three possibilities mentioned above; some cash, labor and assets. The whole point behind this is that what we get in return by all these contribution is membership which brings about rights and obligations. Let’s suppose that Mr. X who is a peasant who has no cash/money to be contributed, no quality labor that needed for a business and no assets except land use right. Now, Mr. X is intending to join a given business association with other fellows. Then the question is “is it possible for (Mr. X) in our case or any (Farmer) make this kind of contribution (the land use right) to become a member of that business association?” yes; it is possible for a small scale farmer to develop his land jointly with an investors or other individuals.

This is a form of land alienation of land use right. Because after the formation of the business, the business association gets its own legal personality distinct from the members. The land use right was being transferred from the small scale farmer (peasant) to the association. After the formation of that business partnership and the necessary requirements for acquiring legal personality, the holder of that land become the business association. Because the farmer has exchanged the land use right with membership right. That membership right brings about voting, participation management and getting profits. So, in relation to proclamation no.721 (urban land proclamation), yes it is possible; land use right obtained through lease can be contributed to a business association. This is trading land use right with a set of rights and obligations to be enjoyed and holed in that business association or it’s a tradability of land use right to a certain need even in relation to

rural land like share-cropping.“share-cropping“isa situation where a person called Mr. X who has a land use right on certain plot of land lacks certain agricultural inputs other than land; seeds, fertilizers, labor, etc and agrees Mr Y to produce those agricultural inputs other than land to till Mr. X’s land for a certain period of time and then shares the fruit of that land proportionally or in accordance to their agreement.

Whatever the arrangement may be, the land is still controlled by Mr. x who is the original holder of the use right or Mr. X is still possessing a land. It is only the management aspect which is compacted-out for a given period of time. The major difference that could be drawn in relation to this between lease and share cropping is that; in the case of lease, the possession right is transferred to the leasee let’s say Mr. Y. the land is put under the controlee of that lease till the period of time which is

specified in the lease contract expires but it is not the case in share cropping.

Out grower arrangement; in case of share cropping, the arrangement is an ordinary arrangement between farmers. But in the case of out-grower arrangement, it’s a relationship between peasants and pastoralist and agricultural investors. Here we have a company in the picture. The point is, the company has a limited amount of land. It cannot produce sufficient enough for its need. The company cannot obtain an additional land due to several reasons. If not, the next possible resort for the company will be approaching farmers and interring in to an out-grower agreement. That agreement might essentially state “these farmers will produce these quantity and quality of a product” and that would be at certain time interval be delivered to that company at a certain price. But they will do all these on their own land. The obligation of company will be to pay price for the

quality and quantity delivered and to train those farmers’scientific techniques of production and supply certain inputs like pesticides, fertilizers, selected-seeds and etc.

This is basically a mechanism whereby a company controls the production of certain agricultural products by farmers. This kind of practice is increasingly visible in rural parts of Ethiopia. Egg. In relation to Sugar factories, there are certain farmers undertaken to produce sugarcane to that factory. Dashin beer factory has also came with this sort of arrangement.

Generally, the point here is, this is not something which is hypothetically stated in the law rather it is a developing evolution in a rural areas.

Land consolidation; to consolidate means to bring together or to merge together certain scattered things. In relation to land, if X have 4 plots of land in different places which are far away from the other let’s in

10 Kilo meters, If Y have the same plots of land in different places and Z too, now the question is “Can X, Y and Z somehow inter in to an arrangement so that their plots of land consolidated and the distance among different plots will be reduced?” first, what is the problem with X’s four different plots of land located indifferent Kebeles? Surely, it involves some sort of costs. Because if X wants to use a plots with 10 kilo meters away from the other plots, he has to transport seeds, labor or generally inputs. In order to take good care of the plots through out the season, he has to travels to several times to that place. So, this distance imposes cost. If it is the case, we want to minimize this cost. One way of minimizing this cost is plot consolidation which involves land exchange or trading land (land for land). Because selling land is not possible.

After all, “does this kind of land arrangement possible in different federal

and regional land proclamations?” yes; proclamation no.456 of federal rural land use and administration proclamation under art.11 (2) recognizes such kind of land consolidation. This article signifies for as the tradability of land. Because price is not involved but in kind consideration is involved.

Factors for dispersement of one farmers land; A. market consideration, B. water availability, C. security, D. infrastructure availability and E one of the most important factor among other is agro ecology which is linked to fertility. When we say agro ecology, it is the suitability of climate, fertility of a given location to different kinds of crops. So, in broadly speaking, this way of having different plots of land in different places of farmers is risk reduction venture. The underlying reason behind this deliberate plot dispersement is risk reduction or a mechanism in which the

rural population use to cope up with changing weather (drought).

Land exchange; is it possible to exchange land for land other than for the purpose of land consolidation and undertaking some sort of business in the two proclamations (456/2005 and 721/2011)?If Mr. A has a plot of land in Addis and Mr. B has another land elsewhere outside of Addis in rural areas. If Mr. X wants to go to and live in rural areas and Mr. B wants to come to the urban areas, can they exchange or switch their land for one another?Art.40 (3) of the FDRE constitution say that “land shall not be subject to sale or to other means of exchange.” This article is tending to ban in addition to sell other means of exchange. Because sell implies some sorts of consideration like money; when it say other means its implication is just to ban other sorts of land exchange other than some consideration of money for we can trade land without using money. Even if there are

some restriction or conditions attached to it, both inheritance and exchange of land is possible in both proclamation no.456 or 721 urban and rural lands. One of the instances from the proclamations is, art.11 (3) of proclamation no.456. This article states that “In order to make small farm plots convenient for development, farmers are encouraged to voluntarily exchange farmlands.”

Management; the power to manage the land is given to the land user. One who has a land use right can also has a management right. In relation to rural land, “managing land” is taking care of the land. This care of the land might answer the questions like “what kind of crops to be grown?, When to grow?, what type of inputs shall be used? Etc.” of course, there are some restrictions imposed by authorities. These questions are questions which needs some sorts of decision by the land use right owner.

Conditions to management include; we cannot grow whatever plant we want like marijuana. We cannot fail to undertake conservation measures that use to protect land from erosion. If we fail to do so, we might lose that land. The authorities might come and say “you are not taking good care of the land and we are going to get it back.”At getting back, they might use different procedures. But the decision making power basically lay on the land users.

What is the purpose of land right??Our first focus will be on rural land. Since the use right cannot be an end by itself, there is another end for use right. That end is explicitly mentioned in subordinate laws. Those laws specify the purpose of use right by saying “for a living”. Proclamation no.456/2005 says that “land use right is given to peasants and pastoralists for a living.” Land use right is primarily a subsistence asset. The law is saying to citizens “you are

better, we cannot give you pension or an employment benefit rather we can give you what we have which is this natural asset [land use right] and we give you this natural asset primarily forsubsistence or survival."

In relation to urban land, land use right is not a survival asset. That is why the constitution fails to guarantee land for urban dwellers. The urban population can subsist on something elsenot on agricultural production. The reason for a constitution to single out the two social groups (peasant and pastoralist) for land use right for free primarily for subsistence is this one.The two social groups do not get only the land use right for free primarily for subsistence but they are also awarded immunity against eviction by the constitution.

Land use right is the base for the continuity of the two social groups (pastoralists and peasants) life. This purpose of land use right for the groups is extended to survival as autonomous being which means the right to

life. Survive by itself symbolize to exist in life. For physical existence, we need some basic necessities. So, the point here is, the law says for a living but we are ultimately tracing it to the right to life. Land use right can reasonably extended to right to life which means we can move out the land use right arguably from section 2 of chapter three and put it in section one of chapter three of the FDRE Constitution. If we look at section one of the third chapters of the constitution, the rights put in those sections are rights which are endowed in nature. Then, such kind of artificial distinction between section one and two of chapter three might disappear if we read it in this way.

This land use rights for living is explicitly put in subsidiary laws. All the regional rural land laws and federal rural land administration proclamation explicitly put why land is given for land users. But the constitution is implicit. Of course, singling out these small scale rural producers tellsus allot. The land use right is

not given to urban dwellers or these and that social groups rather it is given to poor people in rural areas who lives without alternative means of livelihood. So, instead of focusing on the absence of the term “survival” or the phrase “for living” in the FDRE Constitution, we have to contextually lead two sub-articles of art.40 (4 and 5) which confirm land right for free and which also gives non-eviction right to similar purposes with subsidiary laws.

What are the implications of this way of reading land use right? A. the first thing is alienation is not possible. Alienation “in a market place” of this land use right is impossible. Because we are alienating the foundation of our existence.The distinction should be made here; alienation is “tradability” or “donation” and “inheritance” does not included in alienation. Generally, it implies that the land use right is put beyond the reach of the market. But not the ownership because the ownership belongs to

nobody.It is put beyond the reach of any actor in the country. So, we cannot talk about transfer of something which we do not have. What we can talk about is the land use right which we have in our hand.

B. We will get the land use right, if we don’t have a permanent means of income other than agriculture. If we do, we are no longer entitled to retain keep-on the land use right. Because we don’t need it for survival for we have another permanent source of income which could assure our existence. The right is linked to our right to life or survival and that link is broken for we become a trader, government employee, self-employed, etc., and the government assured that we have a permanent means of earning. Then, we have to leave that land or we cannot say “it is my ancestral land.” Generally, this is not a personal value judgment but the implication of the FDRE Constitution in art 40 [4 and 5].

Joint right: The use right which is given to rural producers is not in principle given to an

individual rather the right is given to household. It is a household property. It is not the property of one of the members of that household.That is why we say it is a joint use right property. Simply speaking, it is a family property. In a family, we might have 5, 6, 7 or 8 individuals, but the point is, it doesn’t matter; it is to the household. In Ethiopia, we have 5 individuals per family in average. So, the land use right is given to them jointly.

What is the implication of understanding this land use right not as individual but as a joint property? The implications are;

A. inter household distribution is possible. One of the family members might come-out when he/she is of age and demand a piece of land. He/she is entitled to make such kind of claim. So, land distribution is obligatory under custom and arguably feasible under the law. Because land use right is a joint right.

B. Consent is important; the consent of all the family members is important when key decisions relating to land is made. The husband or the wife considering themselves as a head of the family cannot legally alienate the land without the consent of the other family members. So, if the land is to be leased out, the consent of all of them is necessary. Because they have a property stake in the land.So, if that consent is absent, the agreement is subject to invalidation.

C. it creates a kind of fixation/dependency; the tradition of fixation might be generated. People would say “if I am entitled to have a portion of this land, why I take my education seriously?, Why I am tired of searching other means of income?, etc. because I’ve this land.”

Non-interference: the land laws did not deal with the idea of non-interference. Land use right gives rise to demanding non-interferencefor the land right users. All other person other than the land right user is

supposed to respect the right by abstaining (not acting). If they try to act in relation to that land by moving to the land, totally taking the land, making difficult to land user to use the land or obstruct his land use right, then these infringements lead to “self-help” which is indicated in 1148 of the civil code. The article empowers the property owner to use lawful force when there is an infringement of his right. So, some of this interference’s might under narrow circumstances able the land use right holder to repel them. Some others might entail to mobilize a civil action or possessory action as provided under 1149 of the civil code. Some other may also entail penal action under the criminal code. So the point is, “this is my territory the land user is declaring and I have land use right over this plot of land, this means among others, all of you without my consent are legally prevented from interfering with my land. If you interfere, I am going to mobilize the different ways which were given to me by law to prevent my property from others; it could be

penal action, self-help, pituitary action or civil action.

Modes of getting, losing and proving land rights:

Under this topic, we will try to answer questions like “what are different modes of getting land rights?”, “how do these rights get extinguished?” and “how do we establish these right if they are contested in a court room?”

Getting; there are different modalities of getting land rights; among others, the followings are a widely used ways of getting it;

A. Administrative allocation; in this modality, the source of the land is the authorities. For getting land from the authorities, we need to fulfill certain requirements.
B. Social transfer mechanisms; these includes; donations and inheritance. We call these transfer mechanisms

“social”,because of the non-involvement of consideration. Social relation is the underlying purpose behind certain land transfer mechanisms including “donations” and “inheritance”.

C. Market mechanisms; these include; lease,mortgage and etc. Mortgaging and leasing land use right is allowed under the existing Land Laws.

Loose of land rights; simply, all meanses which were listed as modes of getting land use rights could also be a means of loosing the right. In the first place, the authorities might take- back the land use right if we are not using it appropriately or through expropriation. When someone transfers his land use right to someone via donation or inheritance, he is loosing his right and giving to other person. The same is true, in the market mechanisms; when the one who possesses land through lease or mortgage get the land use right, the one who leased or mortgaged his land is losing it at the same time.

Proving; proving is essential when dispute arises between individuals over the possession of the same plot of land. The answer as to the question of proving property including land is derived from the whole reading of book 3 of the 1960 civil code.

Historical development of land use right:

The 1960 civil code of Ethiopia tried to eliminate some aspects of a feudal land law which had existed before the coming in to force of the code. But it was not able to eliminate them. When we say land right under the feudal land law, we are referring those rightlike“rest land”, “gult land”,lease, tenancy and land ownership. “Rest land” is a kind of customary land right. “Gult land” is a kind of feudal form of tenure. Tenancy is a right of tenant or “Geber”. So, we had variety forms of land rights under a feudal land regime. But then, the civil code came-up-with with its own notion of land rights which were

primarily founded on private ownership of land.

Then, we have proclamation 31/1975. To refer to land rights which are recognized, it used what we call possessory right. It says “ownership over land was vested in the peoples of Ethiopia.” Rights less than ownership were given to different social forces under that proclamation and that right was called “possessory” right. That possessory right could not be transferred through any means. Generally, transfer was prohibited under that proclamation (31/1975). This transfer contains both the social and the market transfer. So, in principle, the land use right under that proclamation could not be leased-out, donated, inherited, sold-out, etc.

Then brief period of mixed economy came in to role. Land rights are a little bit relaxed; for instance, renting-out and leasing-out of land rights were allowed for mixed economy. This type of mixed economy was adopted just in 1990 and

lasted for the next one year and ended-up with the coming in to power of “EPRDF”. There are some laws which were enacted in this year (1990) tending to relax the rigid nature of land rights by then.

Since 1991, we have been talking about land rights under the constitution and various laws. As we know, different kinds of land rights have emerged since 1991. Since proclamation 31/1975 have replace by other laws, we are witnessing some sorts of expansion or shrinking in land rights. Then we need to rays a “why” question. First, we have to find-out a land rights by considering different laws including civil code.

Categorization of our land rights either in bundle or exclusive land right approach:

We have identified two approaches of land rights at the beginning of the third issue. Now, the question is, after considering our third major issue in the course, “which approach is envisaged under the FDRE Constitution and other

subsidiary laws?”“Is it a bundle of right approach, exclusive right approach or something else which is difficult to describe?”

Informal land rights:

So far, we have considered formal land rights; land rights which are given to different individual under the state laws. It was a legal right which was emanating from the state law.

But people also generate land rights based on social practices. They give land rights to themselves through informal social arrangements; not necessarily compatible with what is written in the law. In fact, in contradiction with what is written in the constitution or subsidiary laws.

For instance, donation of usufruct rights over land; the law says “if you are a farmer, you cannot lawfully donate your land use right up to a family member who was not dependent on the land.” “It should be donated to somebody else who

is dependent on a land.” The law could also say “you can neither sell nor mortgage your land use right if you are a peasant.”

But when we say informal land right or land rights emanating from social practices, they completely disregard of these legal provisions For either these people are unaware of the existence of such law with such kinds of restriction or even if they are aware they disregard the laws. They may even trade a land.

In informal land rights, a person acquires land in a lawful manner or in accordance with the state law. So, access to the land is lawful but afterwards that person deals with a land in a way contrary to the state law. So one instance of informal land right is, lawful access to a land plus unlawful social or market transactions.The second instance is; even the land might be acquired through unlawful manner. The state calls such kinds of individuals act “illegal

possession”. Once the land is acquired unlawfully, the transfer will also be unlawful there to.

There are two perspectives on what to deal with these situations. The first perspective says “we have to enforce the law.” So, there is a violation of the law that undermines the rule of law and we have to cracked-down the activity of these peoples (informal land right holders).

The distinction between usufruct right over land in the civil code and usufruct in the existing laws: here, the question is, “is their distinction between usufruct under the code and usufruct over land under the existing land laws?”There is one chapter in the civil code which deals with usufruct and the nature of usufruct is articulated their. Now we have an emerging concept of usufruct specially after 1975. So, we have to find out those distinctions if their any.

Securing land rights of usufruct:

The question here is, “how we secure our right of usufruct over a land?” “What do we mean by land insecurity or security?”.Security of land use right is, in the first place, implies non-eviction or the right not to be evicted from our land. Land use right insecurity, on the other hand, implies that the existence of unlawful restrictions. Even if it is difficult to give one acceptable definition for land insecurity, it is the existence or absence of unlawful restrictions as to land use rights of an individuals.

People might feel insecure even if there is no actual dispossession. The authorities are not dispossessing as a matter of fact or there are no significant unlawful dispossessions in a given community. But people may still fear as they are insecure because of their past history or bad memories of ineffective protection in the past.

People might also feel secure in their possession despite the fact that there are

significant unlawful dispossessions. They might think that it is just what happens once and it is not something which is going to be repeated. But the point is, land tenure insecurity, generally, property insecurity is a matter of feeling. Of course, a feeling must have a general foundation either present or past.

Factors contribute to tenure insecurity:these factors can be classified as legal and non-legal factors.

Legal factors;

A. Absence of non-eviction principle;
B. Absence of land certification; land certification involves I. the surveying of the plot; the land should be measured through either traditional means or modern technology. Ii. Registration of the plot; what has been measured and surveyed should be registered.

The essence of this land certification is that serving as a prove in a court of law

when dispute arises between two individuals over that registered plot.

C. The absence of effective land dispute settlement system; this land settlement system could be either the traditional/customary or state law dispute settlement mechanisms or adopting a mixture of the two.

D.

Administrative measures; administrative measures might undermine security of usufruct right over land. They may also enhance depending on the way they set those policy measures. Administrative authorities here have something to do with land. We can mention three points of contact which emerge from the laws. The first point of contact will be in relation to expropriation; in such system, compensation is determined by the administrative authorities. The executive branch fixes the amount of compensation in course of expropriation. Furthermore,

the existence of public purpose in relation to expropriation is also determined by administrative authorities. Before they take land, they have to decide whether there is public purpose.

The second point of contact will be the taking over of individuals land when there is disuse for certain period of time; if, for instance, a farmer fails to use his land over a certain period of time, the administrative authorities might take his land.

The third point of contact is the misuse of the land; the land is being used but not being used properly. This might also led to the take-over of individual's right by administrative authorities. So, the point is, if there is a good governance of administrative authorities on the basis of land laws, their will be secured land tenure.But, if not, the reverse will be true.

E. Land redistribution; there are legal basis for a government to undertake

land redistribution. The existence of land redistribution in itself may not inherently cause insecurity.

F. Good land law; the laws which govern land should not be poor.

G. Communal landholding; “how could communal landholding be responsible for land security or insecurity?” this communal landholdings are not recognized by the law. If the law allows the state to take such communal resources easily in disregard of the interest of the local population, it could be one source of insecurity. The federal rural administration and land use proclamation defines Communal land-holding as “rural land which is given by the government to local residents for common grazing, forestry and other social services under art.2 (12). The one and the most important elements which need an emphasis from this article is that the giver of the land. As clearly stated in this article, the communal landholding is given to pastoralist by the “government”. This means that, pastoralists as local residents may use land for common grazing as communal holding only upon the authorization of the

“government”. Here one possible question that should be raised with regards to this point is, “given the customary and historic rights of pastoralists to grazing land, why such authorization of the government is required as prerequisite to use land for common grazing as communal holding only upon the authorization of the government?”Here, the confusion arises from the customary nature of this pastoralist’s right. Since they have already empowered by customs and traditions to use such land commonly, what is the importance of government intervention as to authorization of the land?.The legislators should have been confused with the terms “giver or granter” and “recognizer”. Here the question is, is the government acting as a “granter” or “recognizer” of communal landholding? These concepts are totally two different concepts. When we recognize something, we are saying that it has been there under tradition or culture. But if we consider ourselves as “granter”, we can deny it or we can give to the extent we want to give. The recognition of land as the property of the state and the people was broken in art.5 (3)

of the federal rural land proclamation. This sub article states that “government being the owner of rural land, communal rural landholdings can be changed to private holdings as may be necessary;
From this article, the first main important element is “government being the owner of rural land”. As clearly stated in art.40 (3) of the FDRE Constitution, whether the land is rural or not, it is owned by the state and people together. So, by this article, the federal rural administration and land use proclamation is violating the constitutional recognition of communal landholding. If it is so, it will be responsible for land insecurity. In this article, the government can change the communal landholding in to private. When the government deems necessary, they can turn the communal resource in to private land. They might turn it to investors, rural residents; it is not specified. But the central message of this sub-article is that it is the overriding discretionary power of the government.
Non-legal factors of usufruct right insecurity over land;

A. Awareness; if the people are aware of different land laws or their rights in those laws, they could challenge the unlawful practices of the administrative authorities to their usufruct right over land.If they don’t know the content of their land in those laws, it will be difficult for them to defend their rights.

B. Political power; if they have a connection with local and national politics, they could able to defend their right.

Effects of land insecurity:

One of the major effects of land insecurity would be;

Less improvement of the land; the users of the land might say “if I’m insecure for my land might be taken at anytime, why should I develop or improve the land?” because it might be taken with the improvement at anytime.

4. Land right restrictions:

Now, we have covered the 3 major areas of the course and we are after the restrictions or limitations to the land right of land usufructures. By restrictions, we mean that what are the boundaries of our

land use right. The fact that we have the land use right does not mean that we can exercise an absolute right over that land like polluting an environment.
Generally, there are two types of restrictions; the first type of land use restriction is self-imposed restriction; restriction can be self-imposed or we can impose restriction on ourselves. This type of restriction comes from our own decision as a right holder. For instance, in relation to lease, we can lease our land to some other person for certain periods of time. In the course of that specified year, let’s say 5 years, we cannot use our land for the sole fact that we have assigned our land use right to somebody else. Self-imposed restriction is not really a restriction. Because we can decide to restrict or not to restrict ourselves.This type of restriction could also be avoided or come to an end within an elapse of certain period of time.
The second type of restriction is external imposed restrictions. These external imposed restrictions are imposed by the law.

Reasons for restriction on usufruct over land; the reasons might differ from restriction to restriction. We cannot have the same reason for all kinds of restrictions. But we do have several kinds of restrictions on every legal rights or usufruct right. We might, for example, restrict land use right for the purpose of averting danger.

Among different kinds of land use restrictions, our focus will be only on the 2 major restrictions; expropriation and redistribution. But this does not means that these 2 restrictions are the only restrictions that we should deal with. Rather there is too much other restriction incorporated in different federal and regional rural land laws. For instance, art.13 of the federal land use and administration proclamation is devoted to deal with this issue.

Land redistribution:land redistribution, in the first place, is refers to rural land; it does not cover urban land. So, land redistribution is Rural land taking of state from those who have relatively large amount and given to those without land or to those with

insufficient amount of land. It involves a compulsory taking.

The difference between distribution and redistribution of land should be made clear; these two concepts might be similar in terms of purpose. But in terms of source of land, they  are different. In redistribution, the reduction of land is conducted by taking land from land users who have relatively a large amount of it. But in relation to land distribution, we don’t have an insight. Because the land is comes from the I. state land which is not private land and communal land neither. The state is giving its own land to the land poor or to the landless or, ,Ii. The source might be the land which is abandoned by the existing landholder on their volitionor, Iii. If someone has died without an heir or there is an heir but that heir cannot fall in the scope of a family member or, IV. The person in the holding of lands either disuse or misuseshis land and the government take-over and give to some other land seekers. Scope of land redistribution; in relation to rain fed land, the law tends to say “lands

redistribution should be considered as a last resort.”So, the authorities might resort to land redistribution in relation to rain fed land after exhausting all possible options.
Generally, there are three sources of water for land; rain, traditional irrigation facilities and modern irrigation facilities. In relation to the first 2 sources, no land redistribution is going to be conducted unless the exhaustion is made. But in relation to the third, the discretion to resort to other means or not is reserved. “Why is the legislatures made such kind of distinction between the sources?” The entire distinction is rests on the source of water. It is also possible to bring the land size issue as another justification. In relation to irrigable land, the minimum landholding is less than 25 Hectare. But in relation to rain fed agriculture, a minimum landholding set by law is 0.5 hectare. So, where we get the water from is critically matters.The nature of rain in rain in the rain fed agriculture is not imaginable. We will not be in a position to produce more than once in a year. It

entirely depends on the nature of water (rain). We cannot either control or induce it. This means that the rain is irregular even in a summer. Here the link might even goes to household income; we suffer when the rain is irregular. So, the household, in relation to rain fed agriculture, does not have a continuous and reliable sources or income. But, in relation to irrigation, irrigable agricultures are an opposite. Because it is inducible; we can control the amount of water coming to our farm and we can also control the continuity of the water. In other words, controlling regular supply of water to the farm is insured in which we can produce three times in a year. Conditions for land redistribution in relation to rain fed agriculture; the followings could be included in those conditions; A. consent; the consent of the community might be needed. B. The land redistribution should not reduce the landholdings of those involved below the minimum specified by the respective regional and federal laws. C. it should not lead to land degradation.

Compensation of land redistribution; different regional land laws have a compensation to someone who has lost his land by land redistribution. For instance, art.14 (4) [e] of the oromia regional rural land proclamation states that “any peasant, pastoralists and semi-pastoralist whose irrigable landholding is redistributed to others shall be compensated with reasonable rain fed land by the user.” As it’s clear from this article, the compensation should come from the beneficiary “user” of the distributed land but not the state. If there is a compensation which is obviously made by the beneficiary, the next question is, “to what the compensation is made?” A. to the property over the land or, B. the land itself?The  compensation should be made by the “beneficiary” to the property on the land bit not for the lose of the land. Even when the compensation is not possible, the person might get additional land.

We are saying compensation should be made by the beneficiary for the reason that the beneficiary of that redistributed land is

enriching himself unlawfully unless he pays compensation to the looser of the land.
Expropriation: Expropriation is nothing, but, the taking of private property by the state without the consent of the owner or possessor by following certain procedures. We have different legal provisions for the authorization of expropriation; these include; art. 40 (8) of the FDRE Constitution, art. 1460-88 of the civil code, the lease proclamation, land expropriation proclamation no. 455/2005, etc.
Types of expropriation; there are different types of expropriation on the basis of different criteria's. Among others, the followings are the most visible in our laws;

A. Partial verses full expropriation; this classification of expropriation is one of the possible classification which have been derived from art. 1469 of the civil code. By partial expropriation, we mean, the taking of parts of individuals land by the state. The government does not take the total land of an individual rather it takes the part of it. Whereas, in full expropriation, the government will take the total land of an individuals.

B. Direct verses indirect expropriation; this classification has still been derived from art.1485 of the civil code than the proclamations. Direct expropriation involves the direct physical seizure of the land.In indirect expropriation, on the other hand, there will be some interference as to the use right of land holder by the state.

C. Conditional verses unconditional expropriation; it is still envisaged in the civil code.

D. Permanent verses temporary expropriation; this classification is envisaged in proclamation no.455 of the land expropriation proclamation in contrary to the first three classifications. In case of permanent expropriation, the party or the holder of the land could not get back his land after certain use. The land could not be returned to him. Whereas, in case of temporary expropriation, the state want to use it for certain period of time. But at certain point of time, in the future, the property (land) will return back to the holder.

The taker of the land; the constitution generally puts the government as the taker of the land. But the proclamation more specified it by making Woreda Administration as a taker of the land. Since the Woreda Administration itself can authorize other specified bodies like private companies to undertake expropriation, it could be over extended to small institution less than Woreda Administrations. But they should have been explicitly authorized by the Woreda administration.

The purpose of land expropriation; the state justifies the taking of land by “public purpose”. Because the government is taking the lands of individuals for construction of certain infrastructures like road.This is indirectly intended to protect the interest of the public at large. The law is saying that “where there is no public purpose, the state cannot undertake land expropriation.”

The land expropriation is justified by “public purpose for the fact that “strengthening the power of the government.”

Compensation; compensation is simply the payment made by one person to another for the purpose of making a certain unlawful damage better. It could be derived from tort, expropriation, contract, etc. The purpose of compensation is to restore a balance. It should not be less than or more than what a victim requires just what he really deserves for the damage sustained to him or it should be to the extent of the damage done.

Compensation for land expropriation might strength private investors to invest in the countryside. If they are assured that they will get a compensation for their property even if the land is taken, they will not have a fear of losing their property and encouraged to invest.

The decider of the amount of compensation; compensation is decided by the Woreda administration by using experts. The compensation which will be decided could be either in cash or in kind. The decided compensation if any should be paid before the state dispossesses the land of an individual. The compensation has to be also made by the Woreda administration.

Aspects of compensation in land expropriation; the first aspect is when the government believes a person whose land is taken-over is getting more compensation than he really deserves, they can reduce it to the appropriate amount.
The second aspect is denial of compensation; it is a total denial of compensation. The state might say “I’m not going to pay compensation for you”. Here the question is not the matter of amount rather it is the matter of not rewarding compensation at all.
Then, the question is, “is it possible for individuals to challenge administrative grievances in relation to land expropriation probably in the court rooms?”

5. Justification: