



The Roles and the Challenges of Legal and Institutional Frameworks on the Use and Governance of Communal Land and Land Rights of Farmers

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Abstract

This study aimed to assess the roles and the challenges of legal and institutional frameworks on the use and governance of communal lands, as well as the protection of land rights of farmers in the Baso Liben District. Employing a qualitative approach with a case study design, data were collected through key informant interviews and focus group discussions with purposively selected participants, as well as document reviews. The findings show that there are no adequate provisions included in the legal and institutional frameworks of Ethiopia related to communal land in the agrarian societies. Although community bylaws (*Yebere SarTebaki*, *Kilkil*, and *Sheha*) are preventing communal lands from encroachment, resolving land-related disputes, and protecting the bundles of communal land rights of farmers in the study area, they are eroded and substituted by the formal rules. Hence, it is possible to recommend that the roles of those indigenous institutions for governing communal lands must be promoted.

Keywords: Communal grazing lands, community bylaws, institutional frameworks, land governance

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1. Introduction

1.1 Background of the study

In conventional thinking, there is a dualistic view of access to the land. One of these is the modern formalized land rights system, which was introduced during the colonial period based on the principles of private property, and the other is customary land law, which is based on the principles of historical principles of common property and management (Claessens et al., 2021). The concept of commons refers to common property systems, community-based resource governance, and institutional setups used to share resources, in addition to the physical quality of the resources (Vivero-Pol et al., 2018).

Communal lands are essential for sustaining the lives of the rural poor. They are sources of fuel, water, building materials, animal fodder, and traditional medicine. Because of these significances and the increasing population pressure and demand for such resources, there is always strong competition to control and scramble such types of land (Knight et al., 2013). The trend towards privatizing communal lands is another threat to communal lands (Bekele, 2021).

There are two discourses on the commons in Sub-Saharan Africa. The first romanticizes the commons. This highlights the potential of communal land management in terms of economic productivity, conflict resolution, and ecological sustainability. The second discourse defends private land appropriation and uses an evolutionary perspective on property rights to portray collective governance as traditional, chaotic, and unproductive (Claessens et al., 2021). Similarly, the FAO (2010) stated that communal property rights are less robust than private property rights.

In Ethiopia, communal lands are indicated in the Federal Rural Land Administration and Use Proclamation (RLAUP) of 2005, which is now repealed by the Proclamation No. 1324/2024, as they have belonged to the community's social and economic benefits, but are at the same time subject to expropriation with compensation. Displacement compensation has also been issued in the Proclamation No. 1161/2019 for the expropriation of land holdings for public purposes, payments of compensation, and resettlement of displaced people. However, vast areas of communal lands are expropriated and encroached upon by the government and individuals without compensation to the users because of the absence of strong institutions to protect these lands (Behailu&Kasa, 2018; Bekele, 2021).

According to Eba and Sircely (2020), there are no effective governance bodies or rules responsible for managing the access, use, and protection of communal lands in Ethiopia. However, there are still some traditional associations like '*Idirs*' in the highlands, the *Serit*

system in the Tigray region, and 'Dheeda' in the lowlands, particularly around the Borana area, to manage communal grazing lands at the village level (Yami&Mekuria, 2013; Robinson & Flintan, 2022). Users are penalized by the principles of the bylaws when they encroach on and privatize communal grazing lands. However, the government can use these lands for any purpose, including distributing part of the land to youths as part of employment creation, which is implemented in many parts of the region. As a result, the size of many communal grazing lands shrink over time, and the lives of people who depend on them are affected.

In addition to using these lands for various purposes, the government is favouring large-scale land investments in its policies and eroding communal land rights in various areas of pastoral communities. As communal land is encroached on from time to time, communal land users face significant challenges (Behailu & Jacobs, 2022).

The formalization process of communal lands does not yield intended tenure security and maintains the protection of communal lands from encroachment. For instance, the Amhara National Regional State (ANRS) RLAUP No. 252/2017, Article 5, 35 (9), as well as the new rural land Proclamation of the region, which is under publication in its Article 3, 36 (1-3), states about the process of registering and certifying communal landholders. The law states that the registration of communal lands is done by the wereda rural land administration and use office, and the holding certificate shall be given in the name of the community using the land jointly. However, in some areas, the certificate is done with the name of the kebele administration, and individuals and communities have no awareness of their rights to communal lands (Behailu & Kasa, 2018). This practice leads to encroachment and ineffective management of communal land. It is thought that the possession of a Communal Land Rights Certificate principally provides tenure security (Matthaei & Mandimika, 2014). However, the practice is different, and communal lands are still expropriated without compensation as if they are ownerless. In addition to expropriation, customary property interests are not recognized, and decision-making power is shifted from communities to the state and officials (Ayano, 2018).

There is little research on the role of legal and institutional frameworks in communal land governance. Academicians and policymakers in Ethiopia favor either a private or state landholding system, and the issues of communal landholding are ignored, although it is practiced in more than 61% of the country's total landmass (Abdulahi, 2007). Some of the available studies, such as Srur (2013), Gebreammanuel and Mekebo (2018), Dessalegn (2016), and Gashe and Kassa (2018), examined the legal status of communal lands in the

country and found that less legal recognition is accorded to communal lands, and they are under the tragedy of the commons. However, there is a research gap in the roles of legal and institutional frameworks, as well as community bylaws, in communal land governance and the protection of farmers' communal land rights.

1.2 Objectives of the research

The purpose of this study is to explore the roles and the challenges of legal and institutional frameworks on the use and governance of communal land and land rights of farmers. More specifically, this study is intended:

- To assess the legal and institutional frameworks in farmers' communal landholding rights,
- To scrutinize the roles of community bylaws in governing communal lands,
- To examine the registration processes of communal lands and assess their role in preventing such lands from encroachment.

Besides knowledge transfer to the academic community and the existing body of knowledge, the study will be pertinent to land administration and land policymakers in introducing the roles of legal and institutional frameworks, community bylaws, and their registration process for the governance of communal lands and the protection of users' land rights.

Theoretically, the study aligns with the elements of the new institutionalism theory (North 1990) and Ostrom's (1990) theory of self-governance. While the new institutionalism theory emphasizes the importance of informal institutions in regulating users' behavior towards communal land governance, the theory of self-governance advocates the governance of communal lands by self-governed institutions by the local communities, by avoiding state regulation and privatization. Ostrom (1990) describes this as the 'third way' of governance in which common-pool resources, including communal lands, can be sustainably governed by the community itself through its established rules. Eight design principles are established for the successful governance of community institutions: clearly defined boundaries of both the beneficiaries and the CPRs; congruence between appropriation and provision rules and local conditions; collective-choice arrangements; monitoring; graduated sanctions and minimal recognition of rights to organize and nested enterprises. However, the government must respect the exclusivity of these rights and protect against further encroachment of outsiders (Bromley & Cernea, 1989; Basurto & Ostrom, 2008; Ostrom, 1990).

1.3 Research methods

1.3.1 The study area

BasoLiben is one of the 18 districts in the eastern Gojjam Zone of the Amhara region, which is located 292 km from the regional capital, Bahir Dar, and 307 km northwest of Addis Ababa. It is bounded by the Oromia Region to the south, Gozamin District to the north and west, and Aneded District to the east. Organized into 22 rural kebeles and 4 urban and semi-urban kebeles, the district lies between $9^{\circ}48'30''$ and $15^{\circ}0'0''$ N Latitudes and $37^{\circ}30'0''$ and $37^{\circ}50'0''$ E longitude (Figure 1). The capital Yejubie is 27 km southeast of DebreMarkos town, which is the capital of the East Gojjam Zone.

The total population of the district is 170,387, of which 47.4% are men and 52.6% are women. The majority of the population (92.1%) were rural residents, and the remaining 7.9% were urban residents (BLWBoFED, 2019). The total area of the district was 113,284 ha. There are two agro-climatic zones in the district, where 54% of the area is lowland, which is below 1500 m above sea level, and the remaining 46% of the area is highland with an altitude greater than 2500 m. Mixed farming is the primary economic activity in this area (BLWAO, 2017).

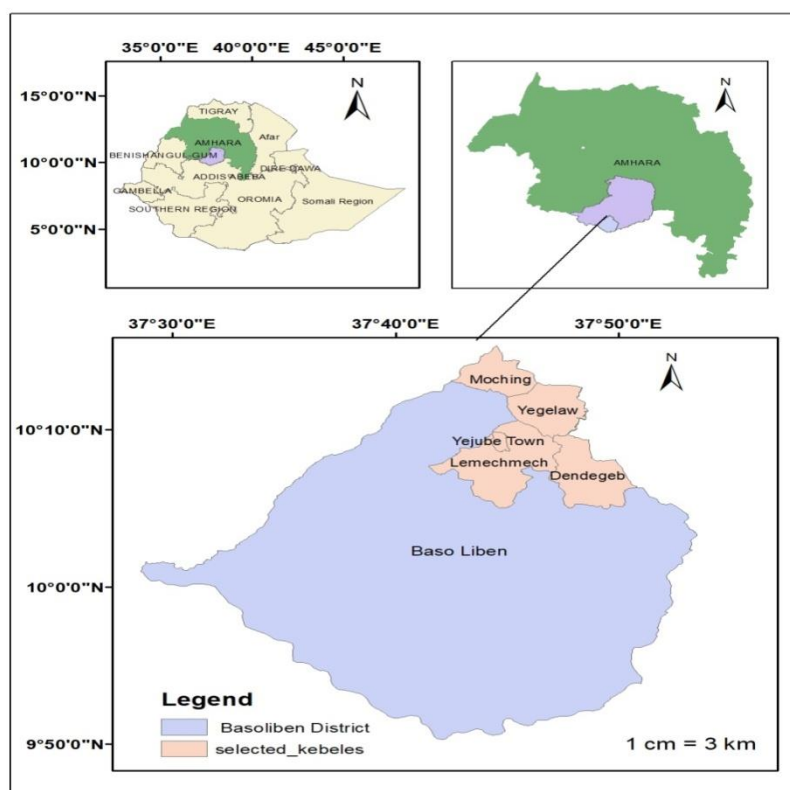


Figure 1: Location of the study area

1.3.2 Research approach and design

A qualitative approach with a case study design was employed to address the research objectives of this study. The case study research design enables an in-depth investigation of one unit, which could be an individual, group, institution, organization, program, or document (Gay et al., 2012; Yin, 2018). Land laws, community bylaws, and communal grazing lands are the established units or case studies that are the themes of analysis in the present study.

1.3.3 Sources of data and instruments of data collection

Key informant interviews: Key informant interviews (KIIs) are among the data collection methods for qualitative research. The interviews were held with district land administration experts, land law experts from regional and federal offices as well as universities, experts from agriculture and rural development offices, elderly farmers, community representatives, the kebele administration, youths who benefited from the 2010 communal land distribution and the kebele land administration and use committee members (KLAUC) who participated in the communal land distribution conducted in the region. The interview questions focused on assessing the roles of legal and institutional frameworks, as well as community bylaws, in the governance of communal lands and the protection of farmers' land rights. A total of 15 KIIs were conducted until data saturation was reached.

FGD: FGDs provide a deeper understanding of the issue under investigation and insights into how people think about the problem (Flick, 2009). Four FGDs were held (one in each selected *kebele*), consisting of 12, 10, 9, and 11 participants in Yegelaw, Limichem, Dendegeb, and Michegkebeles, respectively. The discussants were purposively selected farmers who participated in the communal land distribution program, as well as committee members of the kebele land administration and use. This discussion aimed to obtain detailed information about the roles of community bylaws in communal land governance, the protection of farmers' communal land rights, and the role of communal land registration for protecting farmers' land rights.

Document review: It includes a qualitative data collection method (Mertens, 2010) that enables the collection of secondary data from various written materials, such as books, articles, newspapers, magazines, journals, legal frameworks, and reports. In this case, different legal frameworks of both regional and Federal Governments of Ethiopia including, the FDRE constitution of 1995, the 2005 Federal RLAUP, the 2007 Amhara Region Rural Land Proclamation, the Revised Amhara Region Land Proclamation of 2017, the Payments of Compensation and Resettlement Proclamation No. 1161/2019; the ANRS Payments of

Compensation and Resettlement Proclamation and guidelines and directives issued for the enforcement of the above land laws were reviewed.

Sampling procedures and sample size: Both the study area and participants were selected using a purposive sampling technique. The Baso Liben district was selected because of the large volume of communal lands, the presence of expropriation, and the large-scale distribution of communal grazing lands to youths for agricultural purposes. Four kebeles (Yegelaw, Limichem, Dendegeb, and Micheg) were selected from the district for various reasons. According to preliminary data from the head of the district land administration and use office, Yegelaw Kebele has vast areas of communal grazing land (1263.5 ha). Communal lands in this kebele are governed and protected by *Idir*. However, there are unresolved cases of communal-land-related disputes and claims within the kebele and with neighboring kebeles. These lands are enclosed during the rainy season (from the beginning of July to mid-October) and open to cutting thatch and grazing after the rainy season ends. With 1381.9 ha of communal grazing land, Limichem Kebele also has vast areas of communal land but no communal land or governance practices. Dendegeb and Micheg Kebeles have relatively low communal grazing land areas with weak communal grazing land management practices. Agro-ecologically, Yegelaw, Limichem, and Dendegeb are parts of *Woyinadega* (mid-highland), and Micheg is mostly in the *Kola* (temperate) area.

Methods of data analysis: Thematic and document analysis techniques were used for data analysis. Thematic analysis, according to Jupp (2006), emphasizes the content of the text; what is said is more important than how it is said. Thematic analysis is a qualitative method for identifying, analyzing, and reporting patterns (themes) within the data. However, it frequently goes beyond this and interprets various aspects of the research topic (Braun & Clarke, 2006). According to Braun and Clarke (2006), thematic analysis is a method used to identify, analyze, and report patterns (themes) within the data. Thus, the data collected from interviewees were structured into themes and patterns to provide a clear analysis of the results based on the established objectives.

Document analysis, according to Zegeye et al. (2009), refers to the process of using any kind of document, film, television programs, and photographs, as well as written sources, such as books, papers, and letters, for analysis with a particular research question. The Federal Rural Land Administration and Use Proclamation of 2005, Proclamation No. 1324/2024, the 2007 Amhara Region Land Law, the revised Amhara region Rural Land Administration and Use Proclamation of 2017, the new Rural Land Proclamation of Amhara Region, the 1995

Constitution of FDRE, Amhara National Regional State Environmental Protection, Land Administration and Use Authority Establishment Proclamation No. 47/2000, the Amhara National Regional State Proclamation Issued to Determine the Administration and Use of the Rural Land in the Region, Proclamation No. 46/2000, Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 and various guidelines and directives issued to enforce land laws were among the documents reviewed.

Finally, the data were analyzed through the data analysis stages of Huberman and Miles (1994), that is, data reduction, data display, and conclusion drawing and verification. Qualitative data analysis techniques, including transcription, coding, abstraction, drawing generalizations, and contrasting generalizations with theories (Deneke et al., 2011), were also undertaken. The data in the form of in-depth interviews and FGD were recorded on a digital device and transcribed verbatim by the researcher.

Informed consent

Since human subjects are engaged in the process of this study, informed consent for participation in the study has been obtained. The participants were asked if they were willing to participate in this study, and they expressed their willingness orally. The reason to secure the informed consent orally was the inability of most of the participants to read and write. In addition to this, although some participants can read and write, informed consent from them was also secured orally.

2. Results and discussion

2.1 Communal land distribution in the Amhara region from the context of legal and institutional frameworks

Local land governance practices since the colonial period are analysed through a Western lens, which gives precedence to private property systems. The customary system of land governance is considered traditional, whereas the formal system of land governance is modern and based on the principles of private property. This dichotomy is also practical during the post-independence period, with statutory systems of land governance being more prominent than customary land governance in most African countries (Claessens et al., 2021).

As a result of the less attention given to the customary systems of land governance, there is ambiguity regarding the legal status of communal lands, which contributes to the outbreak of land-related conflicts in Africa, like the DRC (Claessens et al., 2021). Ethiopia is no exception

in this regard. The major legal frameworks in the country, including the 1997 and 2005 rural land laws and the 2005 expropriation law, give little recognition to communal land (Srur, 2013). This contributes to the outbreak of communal land-use conflicts in many areas of the country, particularly in the Amhara region (Tessema et al., 2024). Even the recent Federal Rural Land Proclamation No. 1324/2024 of the country gives little attention to communal lands in the agrarian communities.

Moreover, the communal land distribution program for youth lacks adequate legal and institutional support. The revised Rural Land Administration and Use Determination Proclamation No. 252/2017, Article 2 (33) of the ANRS defines distribution as an operation in which a plot of land is given to the landless or those who have a little plot of land from a given rural *kebele* where free land is registered following the decision of the resident population and provisions of this proclamation. This law allows the distribution of free land, not communal lands in the *kebele*, to landless youths. The recent rural land Proclamation of the region, which is under publication, has also prohibited the distribution of communal lands. However, in practice, communal grazing lands are considered in the study area as free and ownerless. This is attested by the data obtained from the FGD participants at Yegelaw *Kebele*. Discussants raised that communal grazing lands are ownerless properties and everybody is using them without responsibility. Farmers who have farmlands adjacent to these lands encroach and cultivate part of the communal lands from year to year, and nobody is asking them. Even the Kebele administration allocates this land to various groups of organized youths, investors, and public purposes.

The Federal Rural Land Proclamation of both 2005 and 2024, as well as the Amhara Region Land Proclamation of 2017, explicitly stated that communal lands are given to the community for grazing and other social services, which means that they are not free or open-access properties. However, they are abused by the government and other actors through expropriation, distribution, and encroachment, even without compensation.

The interview with the district land administration head shows that communal lands are understood as free and open access by the local community, and the government can easily expropriate and distribute the land for various purposes. The attachment of the community to communal lands and the sense of ownership seem low, as it is a group property.

2.2 The role of legal and institutional frameworks in protecting communal land rights of farmers

This section discusses various legal and institutional frameworks concerning communal grazing lands. There are both formal and informal institutions, as well as legal frameworks endorsed by formal institutions and community bylaws in the region. Common legal frameworks related to land in the country include the constitution, land administration use proclamations, implementation guidelines, and regulations. Institutions are the government sectors of both the federal government and the regions, with their respective departments, although there is no specific institution responsible for land at the Ministry level in the Federal Government of Ethiopia. The informal institutions that have a stake in rural land are community associations, including *Idir* and other local institutions with different names in various localities. Community bylaws are rules designed by informal institutions and communities to govern land resources and other affairs (Figure 2).

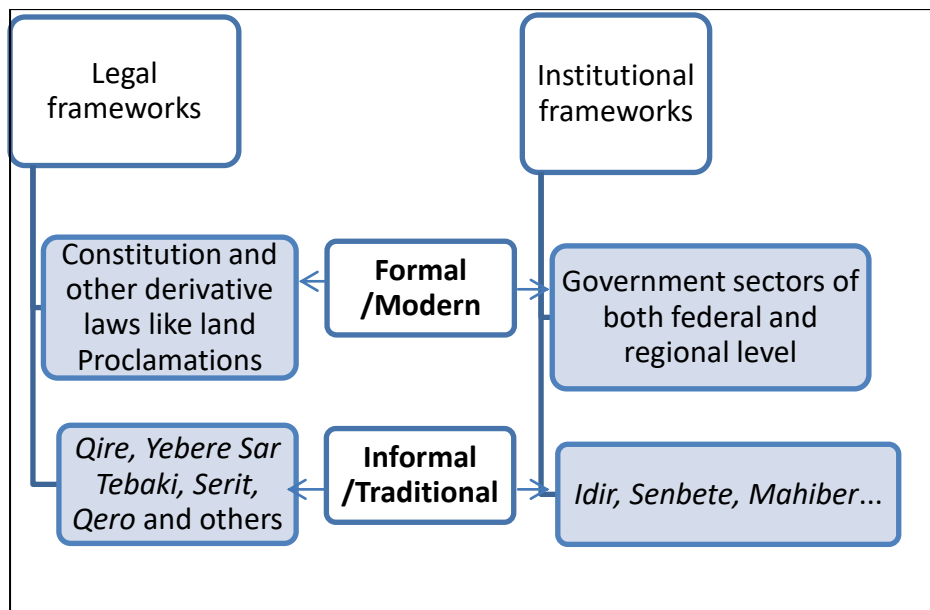


Figure 2: Legal and institutional frameworks related to land

Institutions played an important role in governing communal lands effectively, especially self-organized ones rather than public ones (Ostrom, 1990). African countries such as Ghana, Kenya, South Africa, and Uganda have established a public or communal land act through their land commission acts that define the rights and duties of the state, individuals, and communities. However, in Ethiopia, where land is the source of livelihood for approximately 80% of the population, there is no comprehensive national land policy, and more

specifically, the issues of communal lands are overlooked (Wabelo, 2020). In addition, there is no specific Ministry assigned to rural land in the country's federal institutional structure (Figure 3). The Ministry of Agriculture is the organ most responsible for land matters.

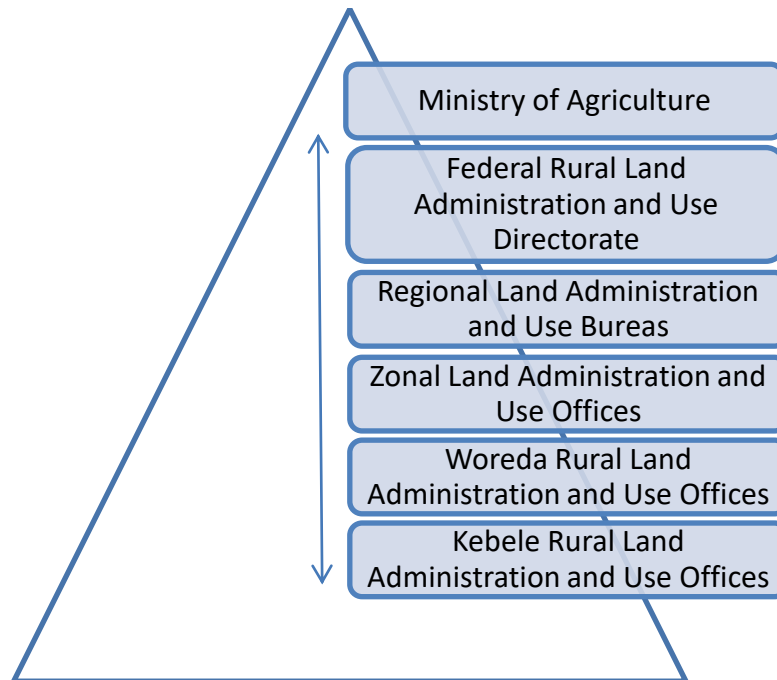


Figure 3: Institutional structure of land in the Ethiopian federal system

The first legal document to govern communal lands in Ethiopia, next to the constitution of 1995, was the FDRE RLAUP of 2005. The proclamation in Article 1 (12) explicitly defines communal lands as part of communal holdings, particularly in rural areas that are given to residents for common grazing, forestry, and other social purposes. Like other types of landholdings, communal holdings are also subject to being expropriated or changed to private holdings whenever necessary, according to the proclamation. The 2005 Proclamation is replaced with Proclamation No. 1324/2024 and includes various statements on communal lands compared to its predecessors. Prohibition of redistribution (Article 25), certification (Article 24), issuance of communal land administration and use law (Article 35), prohibition of privatization (Article 36), recognition of customary land administration and use systems (Article 37), the possibility of leasing the land upon the consent of the community (Article 38), communal land income management (Article 39) and criminal liability for encroaching on communal lands (Article 62) are some of the inclusions regarding communal lands. Among these provisions, Articles 35, 36, 37, 38, and 39 specifically apply to pastoralist communities. Communal lands in the pastoralist areas have received better entitlements, at

least by de jure, compared to the previous legal frameworks. The problem of the tragedy of the commons is still persistent in those lands under the agrarian societies in the highlands.

In line with the Federal Rural Land Proclamation, the Amhara region Revised Rural Land Administration and Use Proclamation No. 133/2006 explained that communal lands are the type of holdings that are out of the control of the state and private holdings, and the Kebele Land Administration and Use Committee is authorized to administer such lands (Article 7 (27)). Later in the Revised Proclamation No. 252/2017, as the law was enacted to prevent further invasion of communal lands, among other things, it prohibits the distribution of communal lands unless it is for public interest, and with the consent of the users. Similarly, the new rural land Proclamation of the region (which is under publication) introduced a communal land administration and use system in Article 8, and distribution/privatization of communal lands is still prohibited except in the interest of the users. However, the local government is distributing communal land in many parts of the region as part of employment creation, using the vague public interest. Communal grazing lands are expropriated without compensation, unlike the private holdings (Tessema et al., 2024).

Most of the farmers claimed during the interview that the government decided on the use and management of communal lands. 'It expropriates and distributes our grazing lands to investors and youths.' Hence, it is difficult to call the available grazing lands in the study area communal lands because there are no exclusive rights given to the community to use and manage that particular land (KII with farmers, Yejubie Town, Jan. 2015). The institutional setup of communal lands in the study area is still a problem as far as communal land governance is concerned. A land law expert from the Ministry of Agriculture said that "the land law gives the mandate of administering communal lands to the local government, not to the community." Legal protection accorded to communal lands found under the agrarian societies is low; they are considered open lands, and everybody scrambles, including the state, investors, and farmers (Ministry of Agriculture, February 30, 2025, Addis Ababa).

The literature has also supported the above statement in that, besides the physical and biophysical degradation of communal grazing lands, the legal support given to collective landholding is not equivalent to that of private landholding, even though customary rights are acknowledged in the legal systems of some African countries, such as Ethiopia and Sierra Leone (Wily, 2018). Communal land rights lack legal protection, and there is tension between customary and formal land laws in many African countries (Lemke & Claeys, 2020).

In addition to tension between the customary and formal legal and institutional frameworks, the lack of institutional uniformity across the country is another challenge. For example, although communal lands are less protected in the Ethiopian constitution, they are considered sacred places in different areas of southern Ethiopia, as in the Gofa ethnicity. Land for special relevance, such as for funerals, weddings, fortresses, and ritual ceremony purposes, is under the supervision of the landlord (Bekele, 2021). However, many communal lands are used by local communities in the Amhara and Tigray regions. Most of these areas are in a state of soil erosion and require conservation (Oniki et al., 2020). This shows that there is no uniform communal land governance system across the country.

Overall, in relation to communal landholding and governance and the role of legal and institutional frameworks, a significant legal gap persists that weakens the equitable and effective management of common property resources. Communal landholding arrangements lack full legal recognition unless they are formally transformed into statutory land rights (Wily, 2011). This shows that the formalization and registration of communal lands are a prerequisite for the enjoyment of communal landholding rights, unlike private holdings. Registration is held by the government and not by community representatives or institutions. Again, the government requires formal entitlement to secure community lands, including payment of compensation and protection from enclosures. This legislative recognition denial for communal lands has resulted in the deterioration of communal land resources (Bekele, 2021; Behailu & Kasa, 2018). To the researcher's knowledge, there are no legal frameworks that support communal land distribution in the study area. They are distributed simply at the incumbent government's political discretion (Derseh & Belay, 2019; Gebremedhin et al., 2018; Tessema et al., 2024).

Ensuring the payment of adequate compensation to land users is another role of legal and institutional frameworks. Compensation must be paid to the expropriated communal lands issued by the legal system. However, KII with the *kebele* land administration and use officers shows that there is no compensation paid to the community when communal lands are distributed and expropriated, since these lands are considered public. Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019 recognizes that the existence of communal holdings is neither owned by the state nor held by individuals; they are used by communities for various purposes. It declares compensation for the displacement of communal landholdings, although it has not been fully implemented. "There is a vast area of communal land that is transferred to investors without compensation given to landholders in Baso Liben District (Baso Liben

District Land Administration and Use Office, Feb. 01, 2025). The FGD discussants in Michig Kebele added that compensation is generally not an issue when the government expropriates communal land in the area. Even communities are not asking for compensation since there are no certificates on that particular land. It is perceived that the communal lands belonged to the state (January 2025).

This situation shows that a lack of awareness of existing land legislation among both peasants and local officials, which can lead to the violation of farmers' rights to land and tenure insecurity. For instance, the land laws of many regions in Ethiopia (ANRS, Tigray, Oromia, SNNPRS, Benishangul-Gumuz, and Afar) define communal holdings as rural land that is out of the ownership of the government or private holdings and is used by the local people commonly for grazing, forestry, and other social services. Despite these legal provisions, large-scale expropriations and confiscations of communal land occur by both communities and the government, often in the name of investment and without compensation.

Above all, the frequent changes in land laws and discrepancies between federal and regional land laws concerning communal land tenure governance are the added constraints of the legal and institutional frameworks' role (Rahmato, 2009; Bekele, 2021).

2.3 The Role of Community Bylaws in Governing Communal Lands

In addition to formal legal and institutional frameworks, informal rules and institutions, such as community chiefs and bylaws, are required for communal land governance. Assessing their role in communal land governance is pertinent. This section focuses on the role of community bylaws in communal land governance.

In many areas of the world, most communal holdings are governed by traditional rules and bylaws. The local society is entitled to establish bylaws based on local circumstances and regulations (Hailu, 2016). Community rules/bylaws refer to regulations enacted by local governments that are elected or by executive institutions (Alinon & Kalinganire, 2008). These traditional institutions of communal lands are important for saving communal lands both in size and quality (Gebreamanuel & Mekebo, 2018; Bekele, 2021), and for effective natural resource management (NRM), including the governance of communal lands (Mowo et al., 2016).

The tradition of community bylaws governing communal lands goes back to Ostrom (1990). Administering communal land under government rule or privatization is not feasible, and Ostrom (1990) established her theory to govern CPRs, which are called self-governed institutions by locals. However, in many parts of the world, common property institutions are

not officially recognized by formal legal institutions (Rose, 2013), and there is tension between them (Lemke &Claeys, 2020). Rural communities and local governments in different areas of the country have established various rules and regulations to govern communal land (Halberstam&Reiman, 2013). They are created by government laws in most countries (Wily, 2018). This will negatively affect the autonomy of the bylaws and the institution's role in governing the communal lands.

In Ethiopia, community bylaws are an effective mechanism for governing communal lands, especially in southern Ethiopia and some parts of the Oromia region. They are recognized by the existing local government structure and respected by members of the community (Bekele, 2021). In the northern and northwestern parts of the country where the study area is located, statutory tenure is more dominant, and community bylaws have limited roles. An interview with the head of the Zonal Land Administration and Use Bureau shows that the role of community bylaws in governing communal lands in ANRS is limited and dominated by formal rules (Zonal Land Administration and Use Bureau Head, Feb. 2025).

The interview with the Baso Liben District Land Administration expert was also similar to the above statement.

“Though there are community bylaws and institutions that can govern communal lands, they are not strong and are less accepted by the local people. People prefer, most of the time, the formal institutions and rules to the informal ones. There are also interventions from the government on the informal institutions. It is the kebele land administration and use committee members who manipulate the Idir, for instance (January 2025).

Similarly, Bekele (2021) found that community bylaws are eroded and substituted by formal governmental structures and rules. Communal lands that lack legal recognition and are governed under customary tenure, even those that are under the private tenure system, face significant challenges.

The FGD discussants mentioned that there are various informal institutions, community bylaws, and governing communal lands in the study area. These included *Idir*, *Yebere Sar Tebaki*, *Kilkil*, and *Sheha*. *Idir* is a traditional social organization that is established to facilitate cooperation and mutual support during mourning times; *Yebere Sar Tebaki* which means the protector of grasses for oxen is an informal social organization responsible for keeping the grasses from open grazing; *kilkil* (enclosure) is an area that is closed from animal contact where the farmers feed their cattle through cut and carry systems; *Sheha* is also an

informal association of communities to preserve communal lands. However, such institutions and community bylaws have been eroded and replaced by formal ones.

This shows that community rules or community bylaws have a limited role in governing communal lands, since they are eroded and dominated by the formal ones. In other areas of the region, such as the Lake Tana biosphere community, bylaws together with the government play an important role in establishing enclosures and introducing stall feeding to reduce communal land degradation (Amare et al., 2017). Kenrick et al. (2023) found that communal lands are better protected by indigenous people and their bylaws than by international or national state agents. They challenge the evictions and expropriations of communal land by investors and the government.

Generally, customary land tenure, which is important for governing communal lands through village chiefs and leaders, has been found to be effective, though little support has been provided for such communities in three consecutive regimes in Ethiopia since the Imperial period (Rahmato, 2007). Yami et al. (2011) also pointed out that informal institutions are crucial in reversing the shortage of grazing land by regulating access to communal grazing land and enhancing controlled use of grass in Tigray region, Ethiopia. However, there is tension between customary land and formal land laws in many African countries, including Ethiopia (Lemke & Claeys, 2020), and in some areas of the country, such traditional bylaws are replaced by formal ones, as is the case in the study area.

The roles of formal and informal institutions for communal land governance are summarized in Table 1. These lists of roles are compiled from literature reviews, FGD, and interviews. The rating is based on the perceptions of the participants. Accordingly, both formal and informal institutions are working to ensure the rights of communal grazing land users. In addition, the informal institutions are engaged in preventing outsiders from benefiting from the community's management activities, devising rules for access to and maintenance of the Communal lands, preventing inappropriate use of the lands, giving time for regeneration, and resolving communal grazing land-related conflicts. The formal institutions are engaged in the distribution of communal grazing lands and impose punishments on encroachers.

Table 1: Roles of formal and informal institutions for communal land governance

Sr. No.	Roles	Formal institutions	Informal institutions	Both
1.	Ensure the rights of communal grazing land users.			√
2.	Prevent outsiders from benefiting from the community's management activities.		√	
3.	Devise rules for access to and maintenance of the Communal lands.		√	
4.	Impose punishments on encroachers.	√		
5.	Prevent inappropriate use of the lands and give time for regeneration.		√	
6.	Establish restricted grazing lands.		√	
7.	Resolving communal grazing land-related conflicts.		√	
8.	Distribution of communal grazing lands.	√		

2.4. Registration of communal lands and its role in preventing encroachment

Preventing communal lands from encroachment is also a role expected from legal and institutional frameworks. In this section, the contribution of communal land registration to preventing land from encroachment is discussed.

Registration of communal land is an effective means of maintaining tenure security (Dhlakama, 2017). Bekele (2021) concluded that land laws in Ethiopia should issue demarcationsof communal lands through maps and boundaries to prevent these lands from encroachment. In line with the ANRSRLAUP No. 252/2017, Article 5(35), the process of registering and certifying communal landholders has begun, and the practice and process varied from locality to locality (Adenew&Abdi, 2005). The law states that the registration of communal lands is done by the *kebele*, and the holding certificate shall be given in the name of the community using the land jointly.

However, in some areas, communal land certificates are issued in the name of the kebele administration, or individuals and communities have no awareness of their rights to communal lands (Behailu & Kasa, 2018).

The Head of the District Land Administration and Use Office said that the registration process of communal land was finalized, and certificates were given to the representatives of the local community. A question regarding the issuance of communal land certificates was also posed to the FGD discussants in the study area. They reported that communal land registration had been conducted, but no one knew who held the certificates. They further added that expropriation, encroachment, and distribution of communal lands continued without compensation. Participants indicated the existence of boundary conflicts between users of adjacent communal grazing land, primarily due to the lack of registration. This leads to the ineffective management of communal land.

It is believed that the possession of a communal land rights certificate provides tenure security, at least in principle (Matthaei & Mandimika, 2014). However, the practice is different, and communal lands are still expropriated without compensation as if they are ownerless. In addition to expropriation, customary property interests are not recognized, and decision-making power is shifted from communities to the state and officials (Ayano, 2018).

Moreover, the Ethiopian legal system does not specify which land category is communal (land, forest, water, and others). However, the land laws of other countries, such as Laos, Nicaragua, and Mali, consider communal lands to be vital spaces comprising water, forests, pastures, and woodlands (Wily, 2018). Although formalization or registration of communal lands in some highland parts of the country has commenced, there are no provisions to prevent the enclosure of communal lands, and compensation for the expropriation of public lands is not effectively implemented (Wabelo, 2020). The new rural land Proclamation of the Amhara region (which is under publication), is better than its predecessors in listing the measures to be taken against the encroachment of communal lands. These are indicated in Article 35 (3 and 4). The measures stretched from written warnings up to the denial of communal land use rights permanently. However, there are practical limitations. For instance, the district administration was able to restore only 0.5 hectares of communal land, which were encroached by individuals until the budget year of 2022/23, which is very low compared to the amount of land infringed (Tessema et al., 2024).

3. Conclusion

The purpose of this study was to explore how rural land laws and institutional frameworks contribute to the management of communal land and the protection of the communal land rights of farmers, as well as their challenges. The contribution of communal land registration in preventing communal lands from encroachment was also discussed.

The findings revealed that although there are various formal and informal legal and institutional frameworks, there are limitations in governing the affairs of communal lands. The tension between customary and formal legal and institutional frameworks, the frequent change of land laws, and the lack of institutional uniformity across the country are some of the shortcomings. As a result, communal lands are considered ownerless properties and are subjected to expropriation, encroachment, and distribution without any legal background and with no compensation. Community bylaws are an important means of governing communal land in some areas of the country. However, they have been eroded and replaced by formal land laws, and their roles are limited in the study area. Although the registration of communal lands is pertinent to the tenure security of communal landholders, enforcement problems, and communal lands are still confiscated without compensation in the study area.

In a nutshell, communal lands under the agrarian societies are less recognized in Ethiopia's legal system and by users. The concepts of bundles of rights, such as access, withdrawal, management, and exclusion, have not been fully integrated into communal lands. Although there are improvements in the new Federal Rural Land Proclamation No. 1324/2024, it is all about the communal lands of the pastoralist areas. Communal lands found in agrarian societies are overlooked by the legal frameworks.

Therefore, it is possible to conclude that there are many divergences regarding communal land tenure, which will pave the way for the worsening of the commons' tragedy. Hence, integrated practical intervention is needed for the sustainable governance of these common resources, at least in endorsing a national policy and legal framework that recognizes them as community resources, such as the communal land acts of many African countries.

In addition to using registration to prevent communal land from encroachment, adhering to the principle of free, prior, and informed consent (FPIC) contributes to the protection of communal land rights. FPIC is enshrined in the communal lands of some countries (Panama, The Philippines, and Venezuela with respect to Indigenous Peoples, and South Africa, Peru, and Colombia) before interference in community lands, which gives community lands stronger protection than granted to private lands.

Effective state support, instead of replacing the traditional community bylaws and institutions, will also help them enforce how land is used and the enforcement of the bundles of communal land rights. In addition to this, encouraging and integrating these traditional systems into formal management frameworks could enhance sustainable resource management in Ethiopia.

Conflict of interest

The authors certify that there is no actual, potential, or perceived conflict of interest in relation to this study and have carried out our duties with the highest degree of objectivity and integrity.

Authors' contribution

1: Writing—original draft, Data Collection, Methodology, Formal analysis, Data curation, Conceptualization. 2: Writing—review & editing, Supervision. 3: Writing—review & editing, Supervision.

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