This thesis examines the legislative protection of the right to food in Ethiopia. It evaluates the country’s relevant laws including the FDRE constitution and land expropriation laws in light of international human rights standards governing the right to food. It shows the need to link land rights of smallholders and indigenous peoples to the right to adequate food. Moreover, it demonstrates the significance of adopting a framework law on the right to food to tackle hunger and malnutrition.
LINKING THE RIGHTS TO FOOD AND LAND IN ETHIOPIA

THE NEED TO REFORM THE RELEVANT LEGAL FRAMEWORK TO ENHANCE FOOD AND NUTRITION SECURITY
Husen Ahmed Tura

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Attaining the Sustainable Development Goal 2 (achieving food and nutrition security by 2030) is one of the most pressing global agendas of our time. The right to food, which is the legal term for food security policy, has been recognised as a human right under the Universal Declaration of Human Rights (UDHR) and other human rights instruments since 1948. In particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines the right to adequate food and the fundamental right to be free from hunger. It obliges state parties to adopt suitable measures, including an appropriate legal framework, to progressively realise economic and social rights to the extent allowed by available resources. Legislative steps per Article 2(1) of the ICESCR that directly or indirectly support the realisation of this right would empower the poor by creating their legal entitlements (claims) and corresponding duties of the state. Legislative measures that a state should adopt in this regard may include ratifying relevant international human rights instruments, constitutionally recognising the right to food, enacting a framework law on the right to food, and/or protecting the right to food via sectoral laws.

This thesis critically analyses the legislative protection of the right to food and land rights in Ethiopia. It emphasises the significance of adopting a suitable legal framework on the right to food to enhance food and nutrition security. The thesis seeks to achieve two objectives. First, it examines how the law positively contributes to the progressive realisation of the right to food. Secondly, it seeks to demonstrate how the law itself can be used and abused by an authoritarian state in a manner causing violation of the right to food of smallholders.

The thesis is a combination of four peer-reviewed articles that have been published in international journals. The first article draws lessons on various ways of constitutional and legal recognition of the right to food. It also identifies factors that contribute to the success of the justiciability of this right in developing countries. The second article reviews and critically analyses Ethiopia’s laws and policies governing the right to food and food and nutrition security. As sectoral laws have a direct impact on the realisation of the right to food, the third article critically analyses the implications of Ethiopia’s land laws on food security and the livelihoods of smallholders. In particular, it discusses the link between land rights and the right to food and evaluates the rights of peasants, pastoralists and indigenous peoples under the Federal Democratic Republic of Ethiopia (FDRE) constitution, as well as rural land administration and expropriation laws, and evaluates them against relevant international human rights
standards. The fourth article further examines whether the existing land expropriation laws facilitate or constrain the right to food and food security of rural communities in the State of Oromia, the largest regional state of Ethiopia.

The thesis finds that the right to food is not explicitly recognised as a justiciable right under Ethiopian law. In addition, land expropriation laws legalise and facilitate forced evictions of rural land users, including indigenous peoples, without their free, prior and informed consent and agreement on payment of just compensation. Urbanisation is promoted at the expense of smallholders. Therefore, the thesis recommends that Ethiopia should introduce a framework law on the right to food and/or food and nutrition security, and argues for reforming land expropriation laws in the light of Ethiopia’s commitments under international human rights law to realise the right to food and ensure freedom from hunger. Employing a human rights approach would facilitate the achievement of sustainable development goal 2 (achieving food and nutrition security by 2030).

**Keywords:** Food Insecurity, Food Security, Nutrition, Right to Food, Freedom from Hunger, Land Rights, Expropriation, Land Grabbing, Sustainable Development Goal 2, Ethiopia
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TIIVISTELMÄ

Kestävän kehityksen tavoitteeseen nro 2 (saavutetaan ruoka- ja ravitsemusturva vuoteen 2030 mennessä) pääseminen on yksi aikamme pakottavista globaaleista töimintaohjelmista. Oikeus ruokaan, mikä on ruokaturvapolitiikan oikeudellinen termi, on tunnustettu ihmisoikeudeksi ihmisoikeuksien yleismaailmallisessa julistuksessa ja muissa ihmisoikeussopimuksissa vuodesta 1948 lähtien. Erityisesti taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia koskevaan kansainväliseen yleissopimukseen on kirjattu oikeus riittävään ruokaan ja perusoikeus olla vapaa nälästä. Siinä velvoinnitaeta sopimusvaltiot ryhtymään soveltuviin toimenpiteisiin, asiaankuuluva oikeuskehys mukaan lukien, toteuttaakseen asteittain taloudellisia ja sosiaalisia oikeuksia käytettävissä olevien voimavarojen mukaan. Tässä väitöskirjassa arvioidaan, onko Etiopia toteuttanut yleissopimuksen 2 artiklan 1 kohdan mukaisia riittäviä lainsäädäntötoimenpiteitä toteuttaakseen oikeuden ruokaan. Tämän oikeuden toteutumista suoraan tai välillisesti tukevat lait voimamettaisivat köyhää luomalla heille lakisääteisiä oikeuksia ja valtiolle vastaavia velvollisuuksia. Lainsäädäntötoimenpiteitä, joita valtion pitäisi toteuttaa tässä yhteydessä, voivat olla esimerkiksi asianoikeuvien kansainvälisten ihmisoikeussopimusten ratifiointi, oikeuden ruokaan tunnustaminen perustuslaissa, oikeutta ruokaan koskevan puitelain säättäminen ja/tai oikeuden ruokaan suojamaan aloikahdalla laeilla.


Avainsanat: Puutteellinen ruokaturva, ruoka- ja ravitsemusturva, oikeus ruokaan, vapaus näälstää, maa- ja oikeudet, pakkolunastus, maanvaltaus, kestävän kehityksen tavoite nro 2, Etiopia
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This thesis is a combination of four published articles, which were presented at various seminars, conferences and workshops organised by the following organisations: the Institute for Global Law and Policy (IGLP) of the Harvard Law School (January 2019), UEF Law School (May 2017 and May 2018), Oromo Studies Association in Oslo (April 2017), Elsevier in Cape Town (December 2017), University of Helsinki (February 2017), Åbo Akademi University Institute for Human Rights (April 2016, November 2016 and June 2018), and Peking University in Beijing (June 2016). The papers benefited greatly from the constructive comments of participants at the seminars, conferences and workshops. I thank all those who gave me invaluable comments on the draft version of the papers. Moreover, the articles were published in Haramaya Law Review, Third World Quarterly, Nordic Journal of Human Rights, and Land Use Policy. I thank the editors of the journals for their helpful comments, and the publishers for their permission to include the articles in this thesis.

I also attended an advanced course on the Justiciability of Economic, Social and Cultural Rights, and a PhD course on Law and Development at the Institute for Human Rights at Åbo Akademi University in November 2016 and June 2018, respectively. In addition, I completed a PhD course on Human Rights Research Methods at the University of Copenhagen Faculty of Law (organised in collaboration with the Danish Institute for Human Rights) in November 2016. The courses were taken as partial fulfilment of my doctoral degree in law at UEF Law School and were also very helpful for writing this thesis. I thank the organisers of the courses at both universities and the participants of the courses, who gave me constructive comments on the draft papers that I presented while attending the courses.

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Joensuu, October 2019
Husen Ahmed Tura
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CESCPR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on Rights of Persons with Disabilities</td>
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<tr>
<td>EPRDF</td>
<td>Ethiopian People’s Revolutionary Democratic Front</td>
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<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant Economic Social and Cultural Rights</td>
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<tr>
<td>IDLO</td>
<td>International Development Law Organisation</td>
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<tr>
<td>NGO</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>PUCL</td>
<td>People’s Union for Civil Liberties</td>
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<tr>
<td>TPLF</td>
<td>Tigray People’s Liberation Front</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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1 INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Hunger and malnutrition are critical problems of our time. About 821 million people lacked access to adequate food to satisfy their dietary needs in 2018.¹ This means that one in nine people globally is food insecure. This data represents 12.9% of people in developing countries and 23% of people in sub-Saharan Africa.² Undernourishment causes 45% of deaths in children under five (3.1 million children every year). One in four children are stunted globally and 66 million primary school-age children (23 million in Africa alone) are food-insecure in the global South.³

Despite having ample natural resources, including fertile farmland and water resource that could be utilised to modernise small-scale agriculture, Ethiopia is one of the most food-insecure countries in the world. More than 8 million people need emergency food aid in 2019.⁴ Out of this figure, three million are internally displaced people due to ethnic-based conflicts.⁵ Historically, the country also encountered catastrophic famines in 1973 and 1984. Studies indicate that ‘between two and five million people died between 1958 and 1977 as a cumulative result of the destitution induced by drought, bad harvests, and famine.’⁶ The famine of 1982–85, which some scholars refer to as the ‘big famine’⁷ caused the deaths of about a million people.⁸

Multiple factors have contributed to the past famines and current state of food insecurity in Ethiopia. First, climate change (droughts) caused a decline in food availability. The production and productivity of small-scale farming, which is rain-fed (irrigation supports only 5% of agriculture), declined following droughts in arid areas of the country.⁹ Nevertheless, the shortage of food cannot fully explain why famines occur time and again in Ethiopia. Hunger is mainly a crisis of power relations

³ IFPRI, ‘Global Hunger Index’ (n 2).
⁸ Joachim von Braun and Tolulope Olofinbiyi, ‘Famine and Food Insecurity in Ethiopia’ in Per Pinstrup-Andersen and Fuzhi Cheng (eds), Food Policy for Developing Countries: Case Studies (2007); Kumar (n 6) 190.
that causes a lack of access to food. People are exposed to hunger due to the absence of economic means to produce or procure sufficient food to feed themselves. Hunger and malnutrition may also occur when people lack entitlement to food arising from the law, such as social security law and/or human rights law.

Amartya Sen observes a strong link between the political organisation of society and extreme situations of food insecurity. He argues that ‘[n]o famine has ever taken place in the history of the world in a functioning democracy’ because it creates institutional checks and balances that in turn avoid the deteriorating of food insecurity situations, which might transition to famine. On the other hand, in authoritarian states where elections are conducted to fulfil a formality requirement contained in a constitution, periodic elections play an insignificant role to shape the behaviour of an authoritarian government, since their results are rigged in most cases. Authorities may not care much about fulfilling the interests and rights of citizens. The Ethiopian People’s Revolutionary Democratic Front (hereafter EPRDF), which has been in power since 1991, can be taken as a good example in this regard. It declared itself a winner in all elections previously conducted, although international observers reported electoral irregularities and evidence showing that the elections were rigged. The elections hardly shaped the design and implementation of food and agriculture policies.

The lack of timely responses to hunger emergencies during the Haile Selassie I regime (1930–1974) and the Derg military junta (1974–1991) contributed to the severity of famines that occurred in the 20th century in Ethiopia. Kumar explains how a lack of response from the government exacerbated the 1973 Wollo famine as follows:

> By early 1973, there were signs of the distress in Wollo spilling over to the other regions in the form of migration and roadside destitution: sick and hungry people lined parts of the north-south highway through Wollo, stopping vehicles to beg for food; a march by 1,500 peasants to Addis Ababa to plead for food was turned back by the police and attempts by intellectuals at Addis Ababa University to rouse the authorities into acting against the spreading famine were brusquely brushed aside by the imperial government, which denounced the reports of distress as ‘fabrication’. Later in the year, the emperor voiced his views about the famine in an interview: ‘Rich and poor have always existed and always will. Why? Because there are those that work and those that prefer to do nothing, everyone is responsible for his misfortunes, his fate.’

The regime knew of the existence of the famine because starved peasants tried their best to get emergency food aid from the government. In addition, the staff of Addis Ababa University warned the government regarding the deteriorating situation of food insecurity and the occurrence of famine. However, the government intentionally chose not to respond. It rejected the reports regarding the famine as fabrication. It also blamed the hungry peasants for being exposed to famine although it knew that the cause of the famine was drought, which was beyond the peasants’ control.

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11 Sen (n 10), 52.
13 Kumar (n 6); Tura, ‘Achieving Zero Hunger’ (n 9).
14 Kumar (n 6) 180.
But why did the government fail to provide food aid to people exposed to hunger? Studies show that the lack of a proper response was triggered by the political considerations of the regimes.

The delay in coordinating a response to the crisis was on account of political expediency: the imperial regime tried to minimize the severity of the developing famine because it felt its own crumbling power base might be completely exposed by a crisis of this magnitude; the Dergue, on the other hand, was engaged in a process of consolidating power and did not want to let the untimely news of famine disturb the progress of populist celebrations. Both regimes initially used state resources for the purpose of self-aggrandizement, both were fighting a costly and debilitating war on the borders, and both ultimately were forced to rely on massive foreign aid to relieve a starving population.15

Despite the history of deliberate failure to respond to emergencies, governments of Ethiopia have implemented some policies and strategies to tackle hunger and malnutrition since 1974. For instance, the Derg regime distributed farmland to the tillers in 1975 and implemented a resettlement programme in which food-insecure people were relocated to places that are suitable for smallholder farming.16 In 1993, the country ratified the ICESCR. This covenant is the main international human rights treaty that recognises the right to food along with other economic, social and cultural rights. In 1995, the FDRE constitution adopted. It recognises all international treaties ratified by the country as ‘an integral part of the law of the land’.17 Accordingly, the constitution introduced a monist system where international and domestic laws constitute an integral part of a single legal system. This means that ratified human rights treaties such as the ICESCR, which explicitly recognise the right to food, are part and parcel of the domestic law of Ethiopia. The constitution also stipulates that its provisions enshrining fundamental rights and freedoms must be interpreted in the light of ‘principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia’.18 In other words, the domestic laws must be interpreted in the light of international human rights laws. This compliments the monism and provides a strong legal basis for the direct application of international human rights law at the domestic level.19

Several international human rights instruments that Ethiopia has ratified or adopted recognise the right to food and freedom from hunger. The UDHR enshrines the right to adequate food as a component of the right to an improved standard of living as follows:

15Kumar (n 6) 181.
18FDRE Constitution (n 17), Art. 13(2).
Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.20

The ICESCR, which was adopted in 1966 and entered into force in 1976, enshrines the right to adequate food and a fundamental right to be free from hunger. This covenant is binding on its state parties and requires them to adopt measures necessary to ‘improve methods of production, conservation and distribution of food’ to achieve food security and the right to food in a sustainable manner. Article 11 of the ICESCR stipulates:

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
   a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources.
   b. Taking into account the problems of both food-importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 11 of the ICESCR should be read in tandem with Article 2(1) of the same covenant, in which every state party undertakes ‘…to take steps…to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant.’ Other UN human rights treaties also acknowledge the right to food of specific groups such as children,21 women22 and persons with disabilities.23 In addition, the right to food has been acknowledged implicitly or explicitly as a component of other rights such as the right to self-determination, non-discrimination provisions, the right to health, the right to life, and the right to social security, among others. Furthermore, this right is recognised in various binding and non-binding regional human rights instruments.


Ethiopia is a founding member of the African Union and a State Party to the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights, and the Rights of Women in Africa as well as the African Charter on the Rights and Welfare of the Child. Also, humanitarian law recognises the right to food for medical personnel of a neutral country assisting one of the parties in a conflict, prisoners of war in general, prisoners of war who are being evacuated or transferred, civilians, detained civilians, and persons whose liberty is restricted.

The development of the right to food has been shaped by world food conferences and summits organised by United Nations (UN) bodies such as the Food and Agriculture Organization (FAO), general comments of the Committee on Economic, Social and Cultural Rights (CESCR) as well as by the reports of the UN Special Rapporteurs on the Right to Food. The Declaration on the Eradication of Hunger and Malnutrition, adopted in 1974 at the World Food Conference, emphasised achieving food availability to combat hunger and malnutrition. As the problem of food insecurity persisted, the World Food Summit was organised again by the FAO and convened in 1996. It adopted the Rome Declaration on World Food Security, which envisioned to halve the proportion of undernourished people worldwide by 2015. The same goal was also endorsed in the Millennium Declaration of 2000. The 1996 World Food Summit set an interesting goal: “to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, … and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all.”

Based on objective 7.4 of the plan of actions of the World Food Summit, the CESCR introduced General Comment No. 12 on the right to adequate food in 1999. The General Comment states that “the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.” It also precisely defines ‘adequate food’ as ‘the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable

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25 See First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, Articles 32 (2) to Article 27; Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, Articles 20, 26, 28, 46, 51, 72; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Articles 15, 23, 49, 50, 55, 59, 76, 87, 89, 100, 108, 127; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Articles 54, 69, 70; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non International Armed Conflicts, 8 June 1977, Articles 5, 14, 18.
28 UN General Assembly Resolution, A/55/L.2, 18 September 2000, para 19.
29 FAO, ‘Rome Declaration on World Food Security’ (1996), objective 7.4
within a given culture’; and ‘the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights’.31

The FAO organised the second World Food Summit in June 2002, which culminated in the adoption of the Declaration of the World Food Summit: Five Years Later.32 This Declaration tasked the FAO to ‘establish an International Working Group […] to draw a set of voluntary guidelines to support the Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security’.33 In response, the Intergovernmental Working Group was established and prepared the ‘voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security’ that was adopted with the consensus of the FAO’s Member States in November 2004. The Voluntary Guidelines comprise practical guidance on 19 topics relating to the adequacy, availability and accessibility dimensions of food security.34 The Guidelines also underlined the importance of implementing a human rights-based approach to food security (the need to link food security policies with the right to food) and suggests the establishment of an adequate legal framework on the right to food at domestic levels.

The third World Food Summit (World Summit on Food Security) adopted a declaration reiterating the goal of halving the number of food-insecure people by 2015. It outlined the commitments and actions needed to achieve food security.35 According to the FAO’s report on the state of food security in 2015, the first goal of halving the number of people suffering from hunger and malnutrition was achieved.36 Nevertheless, the level of food insecurity remains high on the global community’s agenda, as close to a billion people were food-insecure by then. Thus, the UN included the goal of achieving zero hunger everywhere by 2030 as a core component of the seventeen Sustainable Development Goals adopted in December 2015.37 Nonetheless, the sustainable development goals do not regard access to food as a human right.

The UN Commission on Human Rights, which is replaced by the Human Rights Council in 2006, established the mandate of ‘Special Rapporteur on the right to food’ under its special procedures in 2000.38 The Office of the Special Rapporteur has been held by Jean Ziegler (2000–2008), Oliver De Schutter (2008–2014) and Hilal Elver (2014–present).39 Mr Asbjørn Eide also worked as Special Rapporteur for the United Nations

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31 CESCR, General Comment 12, para 8.
Sub-Commission on the Prevention of Discrimination and Protection of Minorities and conducted research intensively on the right to food.\textsuperscript{40} Eide elaborated the obligations of states arising from the right to food as comprising a tripartite typology of duties to respect, protect and fulfil, which was later accepted by the CESCR and incorporated into General Comment No. 12.

The Special Rapporteurs have contributed significantly to the development of the right to food. For instance, Jean Ziegler defined the right to food as:

\textit{The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.}\textsuperscript{41}

Oliver De Schutter, the second Special Rapporteur on the right to food, also conducted a study on the right to food, particularly regarding its linkages to access to land and tenure security.\textsuperscript{42} His works hugely influenced the adoption of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.\textsuperscript{43}

In general, the development of the right to food took three pillars. The first pillar involved treaties and treaty-based organisations and their relevant works. For instance, the CESCR adopted the General Comment No 12 on the Right to Adequate Food based on Article 11 of the ICESCR. Second, the FAO organised three World Food summits from which declarations and voluntary guidelines concerning the right to food and food security were formulated. Third, the UN Special Rapporteurs on the right to food created under the thematic mandates of the UN Human Rights Council (formerly known as the Human Rights Commission) also played a critical role in explaining and studying the right to food.

Obligations of states arising from the right to food (per Article 2 of the ICESCR) are the focus of this thesis. Article 2 of the ICESCR stipulates general obligations of a state party to (1) ‘take steps, … to the maximum of its available resources, with a view to achieving progressively the full realization of the rights…by all appropriate means, including particularly the adoption of legislative measures’ and (2) to ‘guarantee that the rights … will be exercised without discrimination of any kind’.\textsuperscript{44} The obligations of states contained in Article 2 of the ICESCR can be classified as obligations which must be implemented immediately, regardless of a state’s economic status, and those which must be realised progressively, depending on availability of resources. For example, the obligation to start taking appropriate steps (including adopting appropriate


\textsuperscript{44} International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Art 2.
policies and laws) and ensuring non-discrimination do not require many resources by their nature; thus, they must be observed immediately by all state parties to the ICESCR. Besides, all state parties must fulfil the minimum core obligation regarding the right to food, i.e. they must ensure freedom from hunger. Under Article 11 of the ICESCR, states undertake to adopt measures that are necessary to ensure the right to be free of hunger by:

- [improving] methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

The right to food entails three specific duties of states: (1) to respect (non-interference), (2) to protect (from obstruction by third parties), and (3) to fulfil (promote, facilitate and provide in cases of emergency). First, the duty to respect the existing access to food (negative obligation) requires a state to restrain from taking any measure that would have a retrogressive effect on the enjoyment of this right. For example, limiting access to productive natural resources such as land, forests and fisheries, or the arbitrary intervention of a government in a well-functioning market amounts to an encroachment on the right to food.

Second, the duty to protect is a positive state obligation and requires proactive steps to be taken to prevent third parties (non-state actors) from violating the right to food. This means a state must protect this right from being violated by individuals, groups and corporations. It should be noted that corporations might evict local people from their land and other natural resources or distort the market by introducing unfair trade practices, which would restrict access to adequate food through procurement. Companies might also abuse their market dominance position and unduly increase food prices, which would create economic inaccessibility of food. They might hoard food and restrict the physical accessibility of food in the market as well. They might also place defective (unsafe) food on the market, which can cause food-borne diseases and consequently undermine public health in general. In these situations, a state must regulate business organisations to avoid violation of the right to adequate food and freedom from hunger. In particular, it must adopt legislative and regulatory measures to ensure that access to sufficient and safe food will not be inhibited by unfair trade practices and illegal actions of non-state actors. Adoption and enforcement of food safety laws, consumer protection laws and criminal laws are good examples of legislative measures to be taken by a state to discharge its duty to protect the right to food.

The third level of obligations of a state involves the duty to fulfil the right to food. This duty, in turn, comprises three interrelated obligations: to facilitate, promote and provide. As the duty to protect, the duty to facilitate the right to food is a positive obligation. Thus, a state must take proactive steps including policy, legislative, educational, investment and trade, and a direct provision of food during emergencies for people exposed to hunger due to reasons beyond their control. The duty to facilitate

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46 ICESCR (n 44), Art 2(2).
also requires a state to take several actions including formulating, implementing and monitoring policies, strategies, programmes and laws on food and agriculture, investment, trade, environmental protection, labour, food safety, nutrition and social security, among others. Some countries that adopt a rights-based approach to food security constitutionally recognise the right to food expressly or implicitly as a right of everyone. For instance, South Africa, Nepal and several Latin American countries explicitly recognise the right to food in their constitutions, while the constitutions of Ethiopia and many other jurisdictions contain provisions that implicitly stipulate the right to food. Many states have also introduced framework laws on the right to food or food security and nutrition. In addition to constitutions and framework laws, sectoral laws such as agriculture law, labour law, trade law, land and other natural resources law, and social security law may also facilitate the progressive realisation of the right to food.

As part of the duty to fulfil the right to food, a state should also promote the right to adequate food and freedom from hunger by raising the awareness of rights holders to claim their rights, by educating (training) food producers on how to increase food production via small-scale farming and commercial agriculture, by creating conducive conditions and incentives for entrepreneurship and job creation, as well as regarding the proper utilisation of food.

Markets sometimes fail, even in affluent countries. People can be exposed to hunger due to various reasons beyond their control. For instance, people might be internally displaced due to conflicts or civil war, or because of an occurrence of natural and/or man-made disasters. People might also lose their jobs due to various factors, which in turn creates a loss of a means to purchase food. Some vulnerable group including children, older people and those with disabilities could be exposed to hunger when they are unable to work and earn incomes. In these and other similar situations, the state must provide food directly to those in need. Furthermore, it needs to create an effective social security system and introduce safety net programmes to feed the people from its own available resources, or find resources from the international community during food emergencies. It should be noted that the state’s obligation to progressively realise economic, social and cultural rights are extraterritorial. States are generally obliged to provide essential foodstuffs to needy people, which is the minimum core obligation related to the right to food. The provision of basic foodstuffs to a starved people is important in order to protect not only the right to food but also other rights, such as the right to life, health and human dignity, among other things.

There have been debates concerning the justiciability of economic, social and cultural rights in general and the right to food in particular. Scholars who argue against the justiciability of these rights regard them as ‘imprecise, resource-demanding, and subject to available resources and progressive realization’. It is argued that economic

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49 Tura, ‘The Right to Food’ (n 47).

50 CESCR, General Comment No. 3, para 10.

and social rights, which are second-generation rights, refer more to mere policy goals or directive principles than judicially-enforceable human rights. By their nature, they differ from civil and political rights (first generation rights) that are precise and suitable for litigation.52

Other scholars reject such sweeping arguments against the justiciability of economic and social rights as ‘conceptually wrong and empirically unfounded’.53 First, the argument based on the nature of socio-economic rights (as imprecise and unsuitable for litigation) disregards the very nature of obligations of states stemming from these rights. Like civil and political rights, socio-economic rights involve both negative and positive obligations of states. As such, the negative obligation (for instance, the duty to respect the right to food) that requires the state not to interfere in an existing means to produce or procure food is justiciable.54 Secondly, the argument that tends to dismiss the justiciability of social and economic rights based on the principle of progressive realisation and their conditionality to available resources is also untenable. While litigation is not a sole and main strategy to realise the right to food, it is essential to empower victims of violations of this right to seek effective judicial remedies. For example, it is possible to sue a state when it fails to adopt an appropriate legislative measure to progressively realise the right to food by utilising maximum available resources, or where its actions have a retrogressive impact on the enjoyment of this right.

In this regard, Courtis argues that:

One should not underestimate the possibilities of justiciability […] as the right to food has multiple aspects or components, most of them offer possibilities for judicial protection, both directly and indirectly. Courts throughout the world have dealt with a range of different claims related to the right to food, sometimes directly invoking this right, sometimes framing violations to duties, stemming from the right to food as violations of other rights, such as, inter alia, the right to life, the right to a vital minimum, the respect for human dignity, the right to health, the right to an income, the right to land, the respect for ethnic and cultural rights, the right to housing and consumer rights.55

The core issues involved in the adjudication of the right to food include a state’s failure to ensure freedom from hunger, deprivation of a means to produce and procure food, and several cases involving violation of the right to food of vulnerable, disadvantaged or marginalised groups such as children, women, prisoners, refugees and asylum seekers.56 Experiences of countries tackling hunger through strategic litigation also demonstrate that all three types or levels of state obligations (to respect, protect and fulfil the right to food) are justiciable.57

53 Courtis (n 51), 337.
54 Courtis (n 51), 337.
55 Courtis (n 51), 337.
56 IDLO (n 48).
57 IDLO (n 48).
The right to food has not been litigated in Ethiopia based on relevant international human rights treaties such as the ICESCR or on domestic laws. The direct applicability of international human rights treaties in the domestic courts is not outright. This is attributed to various factors.

First, despite being a monist legal system, Ethiopia’s constitution says nothing about the hierarchy of international treaties vis-à-vis domestic laws. Some scholars rank international treaties below the FDRE constitution and put it in an equal position with proclamations that are passed by Parliament. The argument that places the constitution above all other laws, including international human rights treaties, stems from the constitutional supremacy clause enshrined under Article 9(1). The uncertainty of the position of treaties within the domestic legal system can limit their direct applicability, especially when their contents do not conform to constitutional provisions.58

Second, the power of constitutional interpretation is vested in the House of Federation (the upper house).59 In other words, the regular courts do not have a constitutional mandate to interpret the FDRE constitution. Unfortunately, the constitution does not recognise the right to food as a self-standing justiciable human right, although this right may be implied from other rights such as the right to an adequate standard of living, the right to sustainable development, or the right to life. The fact that the House of Federation is a political institution rather than an independent constitutional court complicates the justiciability of an implied right to food.

Third, the FDRE constitution acknowledges access to food under its directive principle of state policy.60 The problem with the directive principles of state policy is that they are not justiciable in practice.61

Fourth, other rights relevant to the enforcement of the right to food, such as the right to an adequate standard of living and sustainable development, are recognised as group rights (rights of nations, nationalities and peoples of Ethiopia) rather than individual freedoms. Even so, the litigation of group rights is complicated because of a restrictive requirement of standing under Article 33 of the Civil Procedure Code of Ethiopia (that a person must have a vested interest to claim rights judicially). Public interest litigation has also been constrained due to the repression of civil and political rights and the restriction of non-governmental organisations (NGOs) working on human rights protection and promotion over the last three decades in the country.62

The right to food and food security can also be discussed from the perspective of the human rights-based approach to development. Human rights and development were considered separate fields until the United Nations formally recognised the link between democracy, human rights and development in its ‘Declaration on the Right to Development’ in 1986.63 The Declaration redefines development as a human-centred,

58 Tura, ‘Linking Land Rights’ (n 19).
59 FDRE Constitution (n 17), Art. 83.
60 FDRE Constitution (n 17), Art 90 (1).
62 Tura, ‘Achieving Zero Hunger’ (n 9).
participatory process and links human development to the realisation of international human rights obligations. The Declaration stipulates that ‘[t]he right to development is an inalienable human right by which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized.’

Moreover, the World Conference on Human Rights of 1993, which convened in Vienna, recognised the nexus between human rights and development, and underlined that ‘development and respect for human rights and fundamental freedoms are interdependent and mutually enforcing’. Amartya Sen takes this idea further in his book, ‘Development as Freedom’, and argues that the main factors that restrict freedom, such as ‘poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states’ must be removed. Sen considers freedom as concurrently ‘instrumental, constitutive, and constructive for development’. These ideas have made incredible advances in international development discourse.

A human rights-based approach to development ‘sets the achievement of human rights as an objective of development’ and considers human rights as the benchmarks of development policies and programmes. This approach ‘invokes the international apparatus of human rights accountability in support of development action’ that involves civil, political, economic, social and cultural rights. The United Nations Development Program has elaborated the rights-based approach as a ‘conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights’. This approach replaces development thinking based on need and charity with a development approach where ‘plans, policies, and processes of development are anchored in a system of rights and corresponding obligations established by international law’.

According to Uvin, the rights-based approach has two crucial functions. First, it creates claims, duties and means of effective remedies for the violation of rights. Thus, it encourages ‘the move from needs to rights, and from charity to duties, and also implies an increased focus on accountability’. The mechanism of accountability that distinguishes charity from claims is a key thrust of any rights-based approach.

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64 UN, ‘Declaration on the Right to Development’, Art. 1.
69 ODI (n 68).
70 UN, Frequently Asked Questions on a Human Rights Based Approach to Development Cooperation (United Nations 2006).
71 UN ‘Frequently asked questions’ (n 70).
72 Peter Uvin, Human Rights and Development (Kumarian Press 2004).
73 Uvin ‘From right to development’ (n 67).
as claims cannot bear fruit without adequate means of their enforcement, such as justiciable legal remedies, administrative mechanisms, and/or open discussions amongst others. Second, this approach emphasises that the ‘process by which development aims are pursued should […] respect and fulfil human rights’. Any process of development should be ‘participatory, accountable, and transparent, with equity in decision-making and sharing of the fruits or outcome of the processes’, Furthermore, a development process should respect the human dignity of vulnerable groups, including the poorest and the most marginalised.

A human rights approach to food security takes into account the human right to adequate food and freedom from hunger. It is based on ‘a priori commitment to the value of human dignity’ and ‘makes the individual an agent of change in a way that enables him or her to hold governments accountable’, and to obtain remedies for violations of their right to food. A rights-based approach to food security requires a state to implement its legal obligations to respect, protect and fulfil the right to food and to uphold human rights principles during the design and implementation of food security and nutrition policies.

According to Cotula and others,

- a rights-based approach redefines food security as a legal obligation than a government’s policy discretion;
- it emphasises not only improving food availability at national, local and household levels but also ensuring access to adequate food and freedom from hunger for vulnerable groups at the individual level;
- the normative content of the right to food serves as a benchmark for policy evaluation, and
- the process of realising the right to food is as important as the outcome (achieving food security).

The concept of food security has changed over time from the physical availability of food to economic and physical access to adequate, safe and nutritious food to everyone regularly, everywhere. The widely-accepted definition of food security was adopted at the World Food Summit in 1996. It reads: ‘[f]ood security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life’. Food security involves four interrelated dimensions: physical availability of food at all levels, physical and economic access to adequate food, proper utilisation of food,

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74 Uvin ‘From right to development’ (n 67).
75 Uvin ‘From right to development’ (n 67).
78 Cotula and others (n 77).
and stability of its supply over time. Food insecurity exists where the four elements of food security are not fulfilled simultaneously. The four components of food security are interrelated and food security policy may be designed in a way that has multiple effects. For instance, policies regarding agricultural development, rural finance and land tenure affect both food availability and accessibility. Likewise, policies related to food imports and food aid deliveries might affect food availability, accessibility and stability.

Food and agriculture policies, if properly designed, implemented and monitored, are useful tools for reducing poverty and enhancing access to food for most people, particularly those who live in rural areas. The success of such policies, in fact, depends on the nature and commitment of a government that formulates and implements them. Authoritarian states might misuse or abuse the policy or law as an instrument of repression of rights instead of using it as a tool for advancing rights and social justice. For instance, the Tigray People’s Liberation Front (hereafter TPLF), which controlled the ruling coalition of EPRDF from May 1991 to April 2018, passed and implemented land expropriation laws that induce the dispossession of small-scale farmers and indigenous peoples without adequate due process of law. In particular, the laws legalise the expropriation of farm and grazing lands without just compensation. Using flawed laws, the regime has transferred more than three million hectares of land to foreign and local investors between 2008 and 2011. This practice gave rise to ‘land grabbing’, a phenomenon that has adversely affected the public interest (the pretext under which the land was taken from rural landholders and transferred to investors). Land grabs exposed millions of people to hunger.

While human rights are generally interdependent and indivisible, it is impossible to realise the right to food without protecting land rights, especially in developing countries where the livelihoods of most people depend on access to land. Arbitrary displacements from land or land grabs are threats to food security. Deprivation of access to productive land would amount to a deprivation of a means to produce food. Expropriating smallholders without adequate compensation and resettlement options means exposing them to hunger and threatening their right to life. Thus, the legislative protection of the right to land matters to legally empowering poor and vulnerable groups, not only to claim the enforcement of their property rights but also to hold the state and/or non-state actors accountable for human rights violations. The legislative protection of rights is crucial, because the law creates and implies ‘a normative claim (what ought to be the case) but also the idea that others have specific obligations to assure the realization of this right [to food] and the establishment of concrete institutional arrangements to ensure the realization of the right’. Through law, ‘rights of social security can be made to stand as guarantees of minimal protection and survival’.

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80 FAO, ‘Right to Food Guidelines’ (n 34) 5.
83 Tura, ‘Land Rights’, (n 82).
1.2 OBJECTIVES OF THE STUDY

This thesis aims to analyse and evaluate the food and land laws of Ethiopia in the light of international human rights standards on the right to food. It seeks to review, analyse and evaluate laws in force (lex lata). In this regard, it examines whether Ethiopia has adopted appropriate laws to realise the right to food. It also intends to indicate what an appropriate future law (lex ferenda) governing the right to food should look like. As per Article 2(1) of the ICESCR, appropriate legislative steps that should be taken by a state may include adoption and ratification of relevant international human rights instruments, constitutionally recognising the right to food, introducing a framework law on food and nutrition security, and/or incorporating the right to food in sector-specific legislation such as land law and/or labour law.

The study draws lessons on different approaches to constitutional and legal recognition of the right to food and seeks to understand what contributes to the success of justiciability of this right in developing countries. It also seeks to review and critically analyse Ethiopia’s laws and policies governing the right to food and food security and intends to show the need to introduce a framework law on the right to food to support ending hunger from a rights-based perspective. As sectoral laws have a direct impact on the realisation of the right to food, the thesis also critically analyses the implications of Ethiopia’s land laws on food security, livelihoods and human rights in general. In particular, it discusses the link between land rights and the right to food and evaluates the rights of peasants, pastoralists and indigenous peoples under the FDRE constitution, as well as land administration and expropriation laws against relevant international human rights standards. It further examines whether the existing land expropriation laws facilitate or constrain the right to food and food security of rural people. The thesis builds on the existing literature and seeks to fill a gap regarding research into the role of law and rights in facilitating or constraining the progressive realisation of the right to food.

Specifically, the thesis aims to:

- Provide an understanding of constitutional, legal and judicial protection of the right to food in developing countries,
- Examine the legal framework for the right to food and highlight the need to introduce a framework law on the right to food in Ethiopia,
- Explore the link between land rights and the right to food and implications of land laws for food security in Ethiopia, and
- Assess the impact of land grabbing on food security and the livelihoods of smallholders and pastoralists.

1.3 RESEARCH QUESTIONS

This thesis is written with the assumption that laws and rights can facilitate and/or inhibit the attainment of the right to food and food security. Thus, it assesses whether Ethiopia adopts ‘appropriate’ laws to alleviate food insecurity and evaluates its laws governing rights to food and land against international human rights instruments providing for the right to food. The thesis was designed to enable the writing and publishing of four interrelated peer-reviewed articles on the right to food and land
rights, as well as their linkages to and implications for achieving food security by answering the following specific research questions:

- **Article 1:** How do countries constitutionally and legally recognise the right to food at the domestic level? What lessons can be drawn from successful litigations of the right to food in developing countries?
- **Article 2:** What laws and policies govern the right to food and food security in Ethiopia and why should the country adopt a framework law on the right to food or food security?
- **Article 3:** Why should Ethiopia link land rights of smallholders to the right to food, and what are implications of land laws in force on the achievement of food security?
- **Article 4:** Do Ethiopia’s land laws and their enforcement facilitate or prevent land grabs, and why is land grabbing a threat to food security?

The above four research questions are not mutually exclusive. They are part of a general research question about whether Ethiopia has adopted and implemented appropriate legislative measures to ensure the progressive realisation of the right to food. Based on the specific research questions, four original articles have been published in reputable peer-reviewed journals.

### 1.4 RESEARCH METHODOLOGY

This study employs a qualitative legal research method. It uses the doctrinal research (legal dogmatics) method to ‘identify, analyse and synthesize the content of the law’. In the doctrinal research, ‘arguments are derived from authoritative sources such as existing rules, principles, precedents, and scholarly publications’. This thesis is based on the positive theory of law, which involves descriptive, analytical and explanatory approaches. According to the theory of legal positivism, the law involves ‘only the rules set by the organs endowed with rule-making’ and that ‘rights exist only when recognized by the law’. The existence of a legal framework (form, structure and recognition) within a legal system is essential for realising the right to food and food security. Rights that are not legally recognised in the form of a treaty, customary law,
constitution and/or legislation cannot be judicially enforced for lack of a clear legal basis, supporting claims of rights holders and obligations of duty bearers, particularly, in civil law legal systems. The thesis also adopts the deliberative school of thought of human rights, which considers rights as ‘agreed upon’. Dembour argues that:

[T]he deliberative school of thought...conceives of human rights as political values that liberal societies choose to adopt [...] and human rights come into existence through societal agreement. ...Deliberative scholars often hold constitutional law as one of the prime ways to express the human rights values that have been agreed upon.

Accordingly, the thesis systematically reviews and analyses legal documents and selected cases relating to the right to food and land rights. Besides reviewing and analysing existing laws (lex lata), it investigates what law should be adopted in the future (lex ferenda) to achieve food security in a right to food approach. Primary sources of law, including human rights instruments, constitutions, legislation and cases, are critically reviewed. In particular, the thesis critically analyses relevant Ethiopian laws, including the FDRE constitution and land administration and expropriation laws, as well as food and agriculture policies, and evaluates them against the international legal framework on the right to food. Also, it consistently reviews related literature and uses secondary sources of data including books, journal articles and other electronic resources to substantiate the primary materials.


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92 Dembour proposed four schools of human rights. She argues that natural school conceives human rights as given, deliberative school as agreed upon; protest school as fought for; and discourse school as talked about. See Marie-Bénédicte Dembour, ‘What Are Human Rights? Four Schools of Thought’ (2010) 32 Human Rights Quarterly 1.
93 Dembour (n 92) 3.
95 FDRE Constitution (n 17), Arts. 9(4) and 13(2).
Legal materials, covered by a library-based or desk research method to answer the key research questions in the four articles constituting this thesis, are described as follows:

1. Comparative study of laws and cases in developing countries: The first article\(^8\) investigates experiences of developing countries that have used human rights law and courts in their efforts to tackling hunger and malnutrition. It appraises various ways of constitutional and legal recognition of the right to food in Africa, Asia and Latin America. Thus, constitutions, framework laws and sectoral laws of selected countries are explored. In addition, cases concerning this right which were litigated in or originated from Brazil, India, Kenya, Nepal, Malaysia, Nigeria and South Africa are reviewed and analysed to draw important lessons on the justiciability of the right to food.

2. Legal framework for the right to food in Ethiopia: The second article\(^9\) analyses relevant provisions of the FDRE constitution as well as food and agriculture policies that Ethiopia has implemented since 1993. Article 11 of the ICESCR is also overviewed. As ratified by the country in 1993, the ICESCR is an important treaty regarding the enforcement of the right to food. The second article argues that a rights-based approach should be adopted to end hunger and malnutrition in the country. Although food and agriculture policies are an integral part of the state’s duty to facilitate the progressive realisation of the right to food, they play a limited role in empowering vulnerable groups to claim freedom from hunger. This is because unlike laws, policies do not normally create claims of right holders and corresponding obligations of states. Policies are not binding on the government and cannot create a legal basis for accountability. The article examines not only the law in force as it is (\textit{lex lata}) but also investigates what the law governing the right to food ought to be (\textit{lex ferenda}) in the future.

3. The link between land rights and the right to food in Ethiopia: The third article\(^10\) examines the link between secure land rights and the right to food in Ethiopia. Thus, it critically evaluates Ethiopia’s land laws in force against international human rights instruments adopted by the country. Although no treaty explicitly recognises the right to land as a self-standing right, land rights of smallholders and indigenous peoples are instrumental to realising the right to food. In the Ethiopian context, where more than 80% of the population depend on access to land for their livelihood, it is unthinkable to achieve the right to food and food security without securing the land rights of smallholders. Displacements from the farm and grazing lands lead to poverty and hunger. Thus, land law facilitates or constrains food security and constitutes one of the main sectoral laws in which the right to food can be protected or violated.

The right to land is also linked to other rights such as the right to property, the right to housing, the right to self-determination and the right to development. The third article analyses relevant provisions of the FDRE constitution related to the right to economic self-determination, ownership of land, regional states’ law-making powers and their implications on the right to food of smallholders and pastoralists. It also critically analyses rural land expropriation laws and

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\(^8\) Tura, ‘The Right to Food’ (n 47).

\(^9\) Tura, ‘Achieving Zero Hunger’ (n 9).

\(^10\) Tura, ‘Linking Land Rights’ (n 19).
urban land lease law, and highlights their impact on the livelihoods and food security of the rural population. Moreover, it reviews the literature to highlight how large-scale land transfers exacerbate land grabbing and food insecurity.

Land rights are also emerging as independent rights in various soft laws, such as the FAO’s voluntary guidelines adopted in 2004\textsuperscript{101} and 2012\textsuperscript{102}, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas adopted in 2018\textsuperscript{103}, the UN Declaration on the Rights of Indigenous Peoples adopted in 2007\textsuperscript{104}, and the Declaration of Rights of Peasants - Women and Men (La Via Campesina).\textsuperscript{105}

4. Land rights and land grabbing in Oromia: Land grabbing is a threat to food security. The fourth article\textsuperscript{106} is an extension of the third article on the link between the right to food and land rights. It examines how land expropriation laws and large-scale land transfers legalise and facilitate arbitrary evictions of smallholders and pastoralists in Oromia Regional State, which is the largest region of Ethiopia and the most affected by dispossession and land grabbing over the last decade. Thus, it critically examines the implications of some provisions of the FDRE constitution as well as federal and regional state land laws on the rights of rural land users, including the right to food. It also provides an overview of why large-scale land transfers to investors result in land grabbing in Oromia.

1.5 SCOPE AND DELIMITATION

The thesis focuses on laws adopted by the ruling coalition (the Ethiopian People’s Revolutionary Democratic Front) from May 1991 to April 2018. During this period, the Tigray People’s Liberation Front (TPLF) has dominated and influenced the process of law and policy-making and their implementation. In April 2018, the EPRDF elected Abiy Ahmed Ali as the Prime Minister of Ethiopia, who has been undertaking legal reforms affecting political, economic and social spheres. The land expropriation law was also amended in July 2019.

The thesis evaluates whether Ethiopia adopts appropriate legislative steps in relation to Article 2(1) of the ICESCR. The appropriateness of laws is assessed in terms of their impact on the progressive realisation of the right to food. Laws that directly or indirectly support the realisation of this right are considered appropriate legislative steps. Such laws would empower the poor by creating their legal entitlement (claim) to food and

\textsuperscript{101} FAO, ‘Voluntary Guidelines to Support the Progressive Realization’ (n 34).


\textsuperscript{106} Tura, ‘Land Rights’ (n 82).
corresponding duties of the state. Appropriate laws would also create a mechanism for legal recourse related to the violation of rights and strengthen the accountability of duty bearers. Legislative measures in this regard may include ratifying relevant international human rights instruments, constitutionally recognising the right to food, enacting a framework law on the right to food, and/or protecting the right to food via sectoral laws.

On the other hand, laws and practices that have a retrogressive effect on the enjoyment of the right to food are deemed inappropriate legislative steps. Land expropriation laws in force in Ethiopia have the effect of legalising dispossession and the economic marginalisation of smallholders, which have negative effects on their livelihoods and on food security.

The thesis also focuses on the link between the right to food and land rights. In Ethiopia and several other developing countries, the vast majority of rural people depend on access to land to produce food to sustain themselves. This means access to land and tenure security are indispensable for the enjoyment of the right to food. That is why this thesis argues that land rights must be reformed in the light of international human rights standards. The thesis also shows not only how the human right to food and land are interdependent and indivisible, but also the need to take land rights seriously.
2 SYNTHESIS OF ARTICLES

This article-based doctoral thesis is a combination of four interrelated articles on the right to food and land rights, and their linkages to and implications for food security. The articles examine the role of the law in facilitating or constraining the progressive realisation of the right to food in the context of national food security. The first two articles investigate the importance of constitutional and legal recognition of the right to food in domestic legal systems, with specific reference to Ethiopia. The first article assesses various modes of constitutional and legal recognition of the right to food and draws lessons on what contributes to the success of justiciability of this right in developing countries. The second article investigates the causes of historical famines in Ethiopia and examines recently adopted legal and policy frameworks on the right to food and food security. It also proposes the introduction of a framework law on the right to food to end hunger in the country. The third and fourth articles appraise the link between the right to food and land rights, and assess the impacts of arbitrary evictions of small-scale farmers from their farm and grazing lands without adequate due process of law and just compensation. In the following sections, we shall summarise the core issues investigated in the articles and the findings of the thesis.

2.1 LEGAL AND JUDICIAL RECOGNITION OF THE RIGHT TO FOOD IN DEVELOPING COUNTRIES: LESSONS FROM EXPERIENCES

The legal recognition of the right to food at domestic levels is important for tackling hunger and malnutrition through a rights-based approach. Legal recognition of this right at domestic levels may involve ratifying and adopting relevant international human rights instruments, incorporating it into constitutions, adopting framework laws on this right, and/or its inclusion and protection in sectoral laws such as agriculture law, land law, labour law, trade law or social security law. The right to food can be constitutionally recognised in four ways: (1) explicitly as a self-standing right, (2) implicitly as a component of other broad rights, such as the right to an improved standard of living, (3) under a constitution’s directive principles of state policy, and/or (4) through the recognition of the direct applicability of international human rights treaties in domestic legal systems. Constitutional recognition of this right matters for at least two reasons. First, as the supreme laws in legal systems, constitutions are supposed to be respected by all organs of governments. Any practice or law contradicting a constitutional provision will be of no effect (null and void). Second, as amending a constitution requires a rigorous procedure, it is hard for a government to repeal this right once it is afforded constitutional protection.107

The direct applicability of human rights treaties depends on the nature of a domestic legal system. In monist legal systems, international treaties automatically become an integral part of domestic laws as soon as they are adopted by a state. However, extra steps, such as an Act of Incorporation, must be taken for their direct

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107 Tura, ‘The Right to Food’ (n 47).
application in dualist legal systems. The direct applicability of a human rights treaty also differs between self-executing and non-self-executing treaties.\textsuperscript{108} Human rights treaties, such as the International Covenant on Civil and Political Rights and the CRC are self-executing treaties by their nature (as they can be directly applied by a court), while the ICESCR is non-self-executing treaty because it requires additional specific implementing legislation that determines details of the nature of normative claims and corresponding obligations of states (for instance, as elaborated in the General Comment No. 12 on the right to adequate food).

Constitutional recognition of the right to food is crucial for its protection. Nevertheless, constitutions use general terms by their nature and their judicial interpretation by regular courts is highly limited in many jurisdictions. Thus, the adoption of a framework legislation on the right to food or food and nutrition security is desirable to facilitate the enforceability of this right. Several countries including Brazil and India have introduced framework laws on the right to food. On the other hand, some states have opted to use sectoral laws like agricultural law, labour law or natural resources laws to realise the right to food. For instance, in Mali and South Africa, sectoral laws governing agriculture and fisheries protect the right to food.

The justiciability of economic, social and cultural rights in general and the right to food in particular is debatable. There have been sweeping arguments against the justiciability of the right to food that are based on the ‘imprecise nature of economic and social rights’, their subjectivity to available resources and the progressive realisation. However, there is increasing empirical evidence showing the justiciability of obligations of states arising from the right to food in many developing countries, including Brazil, India, Kenya, Malaysia, Nepal and South Africa. The first article\textsuperscript{109} draws lessons regarding factors that positively contributed to the justiciability of this right. It finds that the existence of a clear and sufficient legal framework governing the right to food, liberal rules of standing and the possibility of easily filing public interest litigations, an active involvement of non-governmental organisations (NGOs) in the promotion and protection of human rights, and the availability of remedies within a domestic legal system contribute to the success of justiciability of the right to food.

In particular, the availability of an explicit legal framework governing the right to food in a constitution, framework law and/or sectoral law is crucial for the judicial enforcement of this right at the domestic level. However, not all studied countries recognise the right to food explicitly as a self-standing human right. While the constitutions of Brazil, Kenya, Nepal and South Africa explicitly stipulate the right to food, the Indian constitution enshrines the government’s duty to ensure access to food under the directive principles of state policy. Interestingly, a ground-breaking case on the right to food was adjudicated in India based on directive principles of the Indian constitution and as a derivative right based on the right to life.\textsuperscript{110} At least three factors have contributed to the success of litigation of the right to food in India. First, there is a liberal system of public interest litigation under India’s constitution. Second, NGOs played a crucial role in promoting and initiating public interest litigations concerning violation of the right to be free from hunger. Third, the Indian Supreme Court has the mandate to interpret the constitutional provisions and acted in a responsive way to


\textsuperscript{109}Tura, ‘The Right to Food’ (n 47).

\textsuperscript{110}Tura, ‘The Right to Food’ (n 47).
enforce a right to food, which is implicitly enshrined in the constitution. Nonetheless, in jurisdictions like Ethiopia where the domestic courts lack the mandate to interpret the constitution, it is difficult to enforce implied rights through judicial interpretation of directive principles of state policy.

The constitutional and/or legal basis for collective and public interest litigation is also key to the success of litigations concerning the right to food. In Brazil, India, Kenya and South Africa, there are provisions in the domestic legal systems that allow the filing of collective/public interest litigations without necessarily having a vested interest in cases involving collective or public interests. The cases brought before courts by NGOs were successfully admitted, and victims of violations of the right received various remedies including restitution, compensation, satisfaction, and orders of guarantees of non-repetition. The role of civil society in the promotion and protection of the right to food has been significant. The following NGOs have filed cases involving the right to food: The People’s Union for Civil Liberties (PUCL) in India, the Forum for Protection of Public Interest in Nepal, the Centre for Minority Rights in Kenya, and the Civil Liberties Organization in Nigeria.111

As far as the justiciable matters regarding the right to food are concerned, the courts handled several issues relating to the normative contents of this right and corresponding obligations of states. The violation of the freedom from hunger (which is construed as the minimum core standard and part of the duty to provide food in emergencies) was the core issue in PUCL vs. Union of India.112 The violation of children’s right to food was also litigated in Brazil and India; whereas the link between access to land of indigenous peoples and the right to food was subject of litigations in Malaysia and Nigeria. The violation of three levels of obligations of states arising from the right to food (duties to respect, protect and fulfil) have also been invoked in some of the cases reviewed. In particular, the Nigerian government was held accountable for violating its duties to respect and protect the Ogoni people’s right to food.

2.2 FOOD INSECURITY AND THE RIGHT TO FOOD IN ETHIOPIA

Ethiopia is not poor in terms of natural resources. Most of its land is fertile and suitable for farming throughout the year. It also has untapped surface and underground water resources. Unfortunately, it is a food-insecure country. The problem manifests in four dimensions of food security: availability, accessibility, utilisation and stability of supply. Food availability is constrained due to the fall of production from and productivity of small-scale farming, which is traditional (backward) and rain-fed. Because of frequent droughts and population pressure, small-scale farming could not produce enough food to feed the population of over 100 million, whose livelihoods hugely depend on it. The country’s recent efforts to introduce large-scale commercial farming also failed to improve the overall availability of food in the country. Most commercial farming projects have not been implemented as planned. Rather, large-scale land transfers to foreign and domestic investors created another problem:

111 Tura, ‘The Right to Food’ (n 47).
112 People’s Union for Civil Liberties v Union of India & Ors, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No196 of 2001 (Supreme Court of India).
land grabbing. For this reason, the country imports food and seeks food aid from international donors on a yearly basis. This means a decline in food availability is a critical problem of food insecurity in the country. In addition, most people lack the economic means to access adequate food. Food prices have been rising over the years and this exacerbates food insecurity for both rural and urban populations. In fact, food insecurity is the outcome of multifaceted factors, including widespread rural poverty, an entitlement failure (lack of a right to adequate food), and displacements from the land without just compensation. In specific incidents, external factors such as the Structural Adjustment Programmes (SAP) of international financial institutions and international trade have exacerbated the problem of food insecurity of smallholders and pastoralists, who have limited bargaining power and capacity to compete in the global market.

The government of Ethiopia has adopted several legal and policy measures to tackle the problem of hunger and malnutrition since 1974. In 1975, the Derg military regime introduced a public land ownership policy and distributed the land to the tillers. This measure was crucially significant because it enabled smallholders and pastoralists to have access to farm and grazing land. Access to land, in turn, allowed them to produce food for family consumption and provide the surplus for purchase on the market. After the collapse of the Derg regime in 1991, Ethiopia ratified the ICESCR that enshrines the right to adequate food and freedom from hunger in 1993. It has also adopted human rights treaties that protect the right to food of specific groups (children, women and people with disabilities) such as the CRC, the CEDAW and the CRPD. In 1995, the country introduced the FDRE constitution, which explicitly acknowledges the ratified treaties as an integral part of the law of the land. Thus, Ethiopians can invoke the ratified treaties to claim the realisation of the right to food. In other words, it is possible to sue the government when it violates its duties to respect, protect and fulfil the right to adequate food and freedom from hunger based on ratified human rights treaties.

Despite incorporating the treaties into the domestic legal system through ratification and interpretation, the FDRE constitution does not recognise the right to food as a self-standing right. However, this right can be implied from other rights such as the right to life, the right to an improved standard of living, the right to health, the right to land and the right to self-determination, among others. The constitution also overtly enshrines the obligation of the government to ensure access to food for every citizen under its directive principles of state policies.

The country has intensively used policy tools to achieve food security. Food and agriculture policies and strategies implemented since 1991 include the Agricultural Development Led Industrialisation (ADLI), the Growth and Transformation Plans (GTP), as well as specific food security strategies and programmes. The ADLI (1993–2010) focused on improving the production and productivity of small-scale agriculture to reduce overall poverty and improve household food security. The GTP (2010–2020),

113 Tura, ‘Achieving Zero Hunger’ (n 9).
114 Tura, ‘Achieving Zero Hunger’ (n 9).
116 Tura, ‘Linking Land Rights’ (n 19).
117 FDRE Constitution (n 17), Art. 90(1).
on the other hand, pays special attention to the need to transform the economy by shifting the focus from small-scale agriculture towards the promotion of commercial farming and industrialisation. Through the implementation of the GTP, Ethiopia aims to lift itself from a least developed country (LDC) to a middle-income economy by 2025. The country has also implemented specific food security strategies since 1996. The strategies comprise four important interventions: a productive safety net programme, a voluntary resettlement programme, building household assets, and on-farm activities.

Although the policies constitute an integral part of ‘appropriate’ measures that the state parties to the ICESCR should adopt and may also play a crucial role in facilitating the progressive realisation of the right to food, they are not binding on the government since they cannot create claims (of rights holders) and corresponding obligations of the state. Thus, the second article argues that the problems of hunger and malnutrition should be addressed from a rights-based approach. According to this approach, the purpose, process and outcome of development should be human-centred and geared towards realising human rights. The process of policy formulation and implementation needs to mainstream human rights standards and principles such as human dignity, public participation, accountability, the rule of law, non-discrimination and the empowerment of vulnerable groups. A right to food approach pays attention to the creation and enforcement of claims of rights holders and corresponding obligations of duty bearers (mainly states) to respect, protect and fulfil the human right to food. Rights are normally created by the law, which must be binding on governments.

As mentioned earlier, the right to food is not expressly recognised as a justiciable right under the FDRE constitution. The ratified treaties are hardly applied by the courts. The justiciability of directive principles of state policy is yet to be established. The courts lack independence and have been passive in protecting human rights recognised in the constitution and ratified treaties. This is partly because the courts are powerless to interpret the constitution. This means it is not feasible to invoke the right to food as implied under the constitution. Thus, there is a need to introduce specific legislation that would enshrine the right to food domestically. A right to food framework law would determine the core contents of the right to food and obligations of the state. It would also bridge the gap relating to the legal framework governing the right to food.

2.3 LINKING LAND RIGHTS TO THE RIGHT TO FOOD

There is a strong link between the right to food and access to land in developing countries. Most people who live in rural areas depend on access to land and other natural resources for their livelihoods. Small-scale agriculture is a source of food, employment and income for the vast majority of rural people. Despite feeding the world, small-scale farmers are mostly food-insecure themselves. Small-scale farming is vulnerable to droughts and other climatic shocks, including floods and pesticides. Also, peasants, pastoralists and indigenous peoples do not own the land they rely

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118 Tura, ‘Achieving Zero Hunger’ (n 9).
119 Tura, ‘Achieving Zero Hunger’ (n 9).
on to feed themselves. On the other hand, many governments and corporations displace small-scale farmers and indigenous peoples from their lands under the guise of promoting private investments, including large-scale commercial farming. Land expropriations without just compensation expose small-scale farmers and pastoralists to hunger and malnutrition.\textsuperscript{120}

Therefore, the third article\textsuperscript{121} examines the link between land tenure security and food security from a human rights perspective. It reviews relevant international laws governing the land rights of rural land users and the right to food. It pays special attention to the rights of smallholders and indigenous peoples. Although there is no binding treaty that expressly recognises the right to land, there are legal developments within international human rights law, predominantly as non-binding or soft laws. For instance, the UN Declaration on the Rights of Indigenous Peoples, which prohibits displacements of indigenous peoples from lands without free, prior and informed consent, was adopted in 2007.\textsuperscript{122} In 2018, the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas was adopted.\textsuperscript{123}

Ethiopia’s laws undermine the right to land of peasants, pastoralists and indigenous peoples. First, the FDRE constitution excludes an economic aspect of the right to self-determination. As per Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and of the ICESCR, land is indispensable to realise the right to economic self-determination, which refers to people’s right to freely dispose of their natural resources and their freedom not to be deprived of means of subsistence. Thus, the exclusion of this right under the FDRE constitution would harm food security of the Ethiopian peoples. Second, under Article 40(3) of the FDRE constitution, the land is owned by the state and peoples jointly. The public ownership of land is a contentious issue. The EPRDF government and some scholars argue that public ownership of the land protects smallholders from losing their land tenure to a few individuals who would buy if it were privatised. This, in turn, would cause landlessness and exacerbate livelihoods and food insecurity of the rural population. Others oppose public land ownership and criticise it as an instrument of the ruling party to control smallholders politically. In practice, the government displaces smallholders from their ancestral land without adequate compensation.

Third, although forced evictions violate human rights and undermine livelihoods, the EPRDF government used the law to forcefully displace smallholders from their farmland. It should be noted that international law (mainly soft law), in particular the UN Declaration on the Rights of Indigenous Peoples, prohibits forced evictions without due process of law. It stipulates that free, prior and informed consent should be secured from the indigenous peoples concerned before displacement takes place. Furthermore, it enshrines that an agreement should be reached regarding just and fair compensation. In a similar vein, section 16(2) of the Voluntary Guidelines on the Responsible Governance of Tenure of Land and other natural resources encourage member states of the FAO to ‘ensure that the planning and process of expropriation

\textsuperscript{120}Tura, ‘Linking Land Rights’ (n 19); Lorenzo Cotula, Moussa Djiré and Ringo W Tenga, \textit{The Right to Food and Access to Natural Resources Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor} (FAO 2008).

\textsuperscript{121} Tura, ‘Linking Land Rights’ (n 19).

\textsuperscript{122}UN ‘Declaration on Rights of Indigenous Peoples’, (n 104).

\textsuperscript{123}UN, ‘Declaration on the Rights of Peasants’ (n 103).
are transparent and participatory’ and that ‘anyone likely to be affected should be identified, and properly informed and consulted at all stages’. The guidelines also invite states to avoid or minimise forced evictions. Nevertheless, Ethiopia’s land expropriation law (Proclamation No. 455/2005, Article 4) authorises the government authorities to forcefully evict landholders without their free, prior and informed consent or agreement on payment of compensation. Forced evictions contravene Article 43(2) the FDRE constitution which recognises the people’s right to participation and consultation regarding ‘policies and projects affecting their community’. In addition, forced evictions violate Article 40 (4–5) of the constitution, which guarantees the smallholders and pastoralists against evictions from their possessions.

Fourth, the expropriation law does not entitle smallholders to just compensation. Normally, expropriations must fulfil two requirements. Firstly, there must be genuine grounds for advancing public purpose (interest) that justifies the taking of private property. Secondly, just compensation must be paid before the expropriation takes place. Nonetheless, Ethiopia’s land expropriation law is problematic in terms of defining the public purpose. Article 2(5) of Proclamation No. 455/2005 broadly defines the ‘public interest’ as referring to the ‘interest of the peoples to acquire direct or indirect benefits from the use of land and to consolidate sustainable socio-economic development’. This definition is vague and can be subject to misinterpretation, which enables government authorities to take land from smallholders without limitation.

The fact that the land is publicly owned does not mean that the landholders do not have any claim or right over their possessions. The constitution and rural land administration and use law enshrines the rights of smallholders and pastoralists to acquire land free of charge and to use it indefinitely and transfer the same to a family member in the form of donation or inheritance. The FDRE constitution (Art. 40(4–5)) also explicitly protects smallholders and pastoralists from arbitrary evictions. Thus, it is not logical to argue that land use rights are excluded from the domain of compensable interests during land expropriations. Denying a right to just compensation for expropriation of use rights over rural land under Proclamation No. 455/2005 demonstrates a misinterpretation of ‘public’ or ‘state’ ownership of the land, or a deliberate misuse or abuse of the law by the TPLF regime to advance its political and economic interests.

Ethiopia’s land expropriation regime is flawed in terms of recognising and enforcing a right to just compensation of smallholders and pastoralists. For instance, ‘the amount of displacement compensation stipulated under the law is insufficient; and the laws are vague concerning the jurisdiction of courts and administrative tribunals on determining public purposes and compensation’. There have also been practical problems such as ‘weak administration of public purpose, poor notification system, lack of advance payment of full compensation, lack of having uniform valuation methods and grievance handling mechanisms, and poor rehabilitation support’. It should be noted that the FAO’s Voluntary Guidelines on Responsible Governance of

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124 FAO, (n 102).


127 Tura, ‘Land Rights’ (n 82); Nadhaa (n 126).
Tenure of Land and other natural resources set standards that should be observed by states with respect to expropriation and compensation. In particular, a law governing expropriation and compensation needs to:

- Clearly define the concept of public purpose in law, to allow for judicial review,
- Recognise the right to fair compensation for the taking of land use rights,
- Limit how much and what kind of land the government can take,
- Establish transparent and participatory expropriation processes,
- Compensate those who hold land under customary tenure, and
- Not legalise forced evictions without providing for relocation allowances, and alternative housing and access to productive land.128

Fifth, the urban land law (Proclamation No. 721/2011) promotes urbanisation at the expense of undermining the rights of smallholders. Rural and urban developments are not well integrated. Smallholders are displaced from their farmlands in accordance with the rural land laws that do not entitle them to fair compensation, while urban land is leased out for higher lease prices to those who can afford to pay. The urban land lease law has a negative impact on the livelihoods and food security of displaced smallholders. Studies indicate that the smallholders who were displaced from the vicinity of Addis Ababa are exposed to a myriad of socio-economic problems due to lack of just compensation and robust rehabilitation support.129 Families have disintegrated; children have dropped out of schools and are forced to lead a devastating life on streets, while many former farmers became guards of residential houses and businesses built on the land expropriated from them.130 The lease-based urban land transfer also creates a situation where the majority of people are excluded from getting access to land for the construction of residential houses, while few people could buy the land from the government in the name of a lease.

2.4 LAND GRABS AND FOOD INSECURITY

The government of Ethiopia has leased out more than 3.6 million hectares of land to foreign and domestic investors to promote food and biofuel production on large-scale commercial farming land since 2008. It argues that the large-scale land transfers were aimed at improving food availability, creating job opportunities and enhancing the country’s overall economic growth. Nevertheless, the practice has had the effect of land grabbing.131

The practice of large-scale land transfers is criticised for various reasons. First, it enabled the forced relocation of small farmers and pastoralists without their free, prior and informed consent or an agreement on advance payment of just compensation. For instance, indigenous peoples in the Gambella region were evicted from their fertile lands and relocated to infertile lands. They lost coping strategies and means of livelihoods. This trend exacerbated poverty and food insecurity of the displaced

129 Tura, ‘Land Rights’ (n 82); Tura, ‘Linking Land Rights’ (n 19).
130 Tura, ‘Linking Land Rights’ (n 19).
131 Tura, ‘Land Rights’ (n 82).
peoples. Second, the investors are encouraged to produce crops and biofuels for the export market, even though domestic food production is insufficient to satisfy the national food security need. While the country is a commercial food importer and relies on food aid to sustain its people during emergencies on an annual basis, promoting food production mainly for the export market does not make sense. Third, despite collecting a lot of money from investors as a leasing cost, the government hardly reinvests any of the proceeds to rehabilitate and economically empower the displaced peoples.\textsuperscript{132} Fourth, most proposed large-scale investments in commercial farming have not been implemented as agreed in land lease contracts. For example, in the Oromia region, only 46\% of such projects were implemented as initially proposed.\textsuperscript{133} For these reasons, the government of Ethiopia is criticised for manufacturing poverty and hunger through the promotion of land grabs.\textsuperscript{134}

\textsuperscript{132} Tura, ‘Land Rights’ (n 82).
\textsuperscript{133} Tura, ‘Land Rights’ (n 82).
\textsuperscript{134} Tura, ‘Land Rights’ (n 82).
3 CONCLUSION

The thesis examines the law governing the right to food and land rights in Ethiopia. The country has ratified various human rights treaties providing for the right to food, and has incorporated them into its domestic legal system through ratification and interpretation. The FDRE constitution recognises the right to food implicitly as part of the right to an improved standard of living, and obliges the government to ensure access to food for everyone under its directive principles of state policy. Nevertheless, the justiciability of the implied constitutional right to food and directive principles has not been established so far. Regular courts are not authorised to interpret the constitution and there is no constitutional court in the country. In addition, the country is yet to introduce a framework law on the right to food and does not link the land laws to human rights, including the right to food.

The law can facilitate and/or constrain the progressive realisation of the right to food. This thesis finds that constitutional and legal recognition of the right to food empowers vulnerable groups to claim their right to food. A framework law on this right is one of the important laws that support the realisation of the right to be free from hunger. On the other hand, the impact of sectoral laws cannot be overstated. In particular, land laws directly affect the enjoyment of this right in developing countries, where the vast majority of the people depend on access to land and other natural resources for their livelihoods. The thesis finds that Ethiopia’s expropriation laws have a retrogressive effect on the right to food of smallholders as they perpetuate the dispossession without just compensation. Land grabs and arbitrary evictions of rural landholders undermine their food security and expose them to a myriad of economic and social problems. At least three underlying factors have triggered the adoption and enforcement of faulty expropriation laws in the country over the last three decades. First, the TPLF’s dominance of the ruling coalition of the EPRDF enabled it to pass and enforce laws and policies without sufficient legal and procedural scrutiny. Second, following the 2005 election, the ruling party securitised the development and used the law to get access to land without necessarily paying just and fair compensation to landholders. Third, the state ownership of land is misinterpreted by the ruling party to make the government the owner of land, along with other natural resources of the country. The ruling party is also criticised for using land tenure to politically control the rural landholders.

In order to end hunger and thereby attain the Sustainable Development Goal 2 (by achieving food and nutrition security by 2030), Ethiopia should:

• Introduce and enforce a framework law on the right to food;
• Reform land laws in the light of its obligations arising from international human rights law to respect, protect and fulfil the right to food and other relevant human rights; and
• Revise policies and practices that facilitate land grabs.
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ARTICLES

ARTICLE I

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ARTICLE IV


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ARTICLE I


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THE RIGHT TO FOOD AND ITS JUSTICIABILITY IN DEVELOPING COUNTRIES
Husen Ahmed Tura*

Abstract

This Article examines legal and jurisprudential developments on the right to food. It reviews relevant laws and selected cases relating to the right to food and its justiciability in Africa, Asia and Latin America with a view to drawing lessons that could be important for food-insecure countries that strive to improve their legal and institutional frameworks to combat hunger and malnutrition. The right to food was first recognized in the Universal Declaration of Human Rights (UDHR) in 1948 and reaffirmed in subsequent UN and regional human rights instruments. An increasing number of countries have introduced concrete legislative and judicial measures to realize the right to food after General Comment No. 12 and the Right to Food Voluntary Guidelines were adopted in 1999 and 2004 respectively. Nowadays, at least 30 constitutions explicitly recognize the right to food as a justiciable human right. Moreover, 74 constitutions contain provisions that implicitly protect the right to food and that the International Covenant on Economic, Social and Cultural Rights (ICESCR), which expressly recognizes the right to food, has been ratified by 167 States. In addition, many countries have adopted framework laws on the right to food or food security and several cases relating to the right to food have been litigated and victims of violations of the right have received judicial remedies in several developing countries such as Brazil, India, Kenya, Nepal, and South Africa. It is learned that existence of a strong legal framework at a domestic level, availability of liberal standing procedures that allow the filing of collective and public interest litigations, and active participation of NGOs in human rights protection have contributed to the success of the justiciability of the right to food at domestic levels.

Keywords: Right to food, Freedom from hunger, Food security law, Justiciability of the right to food

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I. INTRODUCTION

The right to food was first recognized as a component of the right to an adequate standard of living in Article 25(1) of the UDHR in 1948. Furthermore, Article 11 of the ICESCR recognizes the right to adequate food and the fundamental right to be free from hunger as two interconnected components of the right to food. In addition, the 1996 World Food Summit (WFS) underlined the need for explaining the normative contents of the right to food and corresponding State obligations. In response, in 1999, the UN Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No.12 on ‘Right to Adequate Food’ that explains the core contents of the right to food and corresponding States’ obligations.

Moreover, the need to implement a right-based approach to combating hunger and malnutrition was emphasized in the Food and Agriculture Organization’s (FAO) Right to Food Guidelines that was adopted by consensus of 180 States in 2004. The Guidelines invite all Member States of the FAO, among others, to mainstream the right to food in the design and implementation of national food security policies and programs. In particular, the Voluntary Guidelines recommend the establishment of sufficient legal framework at domestic levels, which may involve the inclusion of the right to food in constitutions, adoption of a right to food or food security framework legislation, and empowerment of judicial and quasi-judicial institutions to adjudicate the right to food.

Following the implementation of the Right to Food Guidelines, an increasing number of countries have incorporated the right to food into their constitutions. The FAO’s database on the level of recognition of the right to food (as of 25 August 2018) shows that at least 30 constitutions recognize the right to food explicitly as a self-standing right while 74 constitutions contain provisions that implicitly protect the right to food as part of other broader rights. Moreover, 97 countries recognize “international commitments as having the same status as constitutional provisions or the primacy of international obligations over national laws” which paved the way for the direct applicability of international instruments protecting the right to food at a domestic level. The constitutional recognition of the right to food demonstrates the strongest commitment of a country to realize the right. Several countries including Angola, Armenia, Azerbaijan, Bolivia, Brazil, Burkina Faso, Colombia, Indonesia, Mexico, Mozambique, Peru, India, and Tanzania have also adopted specific framework laws on the right to food or food security. Furthermore, the Latin American Parliament (PARLATINO)

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4 id.
6 id.
introduced the Regional Framework Law on the Right to Food, Food Security and Food Sovereignty in November 2012 that represents a consensus among the continent’s countries to implement a human rights-based approach to combatting food and nutrition insecurity.\textsuperscript{8}

In 2009, the Additional Protocol to ICESCR\textsuperscript{9} was adopted. It enshrines complaint and inquiry procedures for filing violations of economic, social and cultural rights before the CESCR and facilitates the justiciability of the right to food at the international level. Moreover, the judicial enforcement of the right to food at the domestic level has been increasing over the last two decades. A study conducted by the International Development Law Organization (IDLO) shows that more than 60 cases involving the right to food have been litigated in many countries.\textsuperscript{10} The adjudicated cases encompass three main issues: the failure to ensure freedom from hunger, the means to produce or procure food and the protection of vulnerable, marginalized and disadvantaged groups.\textsuperscript{11}

Despite remarkable legal and jurisprudential developments regarding the right to food at national and international levels, most countries have not yet introduced appropriate measures in this regard. Lack of political will, lack of awareness relating to the right to food as well as institutional and structural constraints challenge the progressive realization of the right to food at domestic levels.\textsuperscript{12} Despite widespread poverty and food insecurity in the world, many countries are still reluctant to constitutionally recognize the right to food as a justiciable human right.

This article reviews international and national legal frameworks and cases relating to the right to food in developing countries. The purpose of the article is twofold. First, it builds on the literature that supports the justiciability of socio-economic rights in general and the right to food in particular. Thus, it seeks to take forward the thesis that the right to food is not a mere directive principle of state policy, but a justiciable human right. Second, it discusses good practices regarding the adoption of legislative and judicial measures on the enforceability of the right to food and aims at drawing lessons that could be important for food-insecure countries that would utilize the law and courts as tools of combatting hunger and malnutrition. Accordingly, it assesses constitutional and legal recognition of the right to food and draws lessons from experiences of countries in Africa, Asia, and Latin America whose courts have enforced the right to food.

The remaining part of the article is organized as follows. Following this introduction, the second and third sections review the UN and regional human rights treaties and soft laws that provide for the right to food and explains corresponding States’ obligations. The fourth section discusses several ways of incorporating the right to food into constitutions, adoption of

\textsuperscript{8} id.
\textsuperscript{11} id. at 39.
framework laws on right to food or food security and the inclusion of the right to food in sector-specific laws. The fifth section reviews and analyses selected cases on the right to food and draws lessons that could be important for developing countries that seek to adjudicate the right to food. The last section presents the conclusion.

II. THE RIGHT TO FOOD UNDER INTERNATIONAL LAW

A. The UN Human Rights System

Article 25(1) of the UDHR recognizes the right to adequate food as an element of the right to an adequate standard of living stipulating that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food”. Moreover, the ICESCR, which is ratified by 167 States, enshrines two interrelated components of the right to food: the right to adequate food and the fundamental right to be free from hunger. Article 11(1) of ICESCR specifies that “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food”. The States Parties are required to adopt all appropriate steps to progressively ensure the full realization of the right to food to the extent of maximum resources available to them including any resource that could be accessible from the international community.13 Likewise, sub-article 2 of the same provision enshrines the fundamental right of everyone to be free from hunger and requires States Parties to take appropriate measures that can improve methods of production, conservation, and distribution of food.

The right to food of specific groups including that of children, women, and persons with disabilities has also been recognized under international human rights treaties. For instance, the Covenant on the Rights of the Child (CRC) stipulates the right to food and nutrition of children.14 Article 24(c) of the CRC obliges States Parties to combat disease and malnutrition through the provision of adequate and nutritious food and clean drinking water. Article 27 of the CRC further enshrines a child’s right to an adequate standard of living. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains two provisions that protect the right to food of women. Article 12 of CEDAW entitles women to adequate nutrition during pregnancy and lactation. Article 14 emphasizes the need to protect women’s access to land, credit, income and social security programs as depriving women of such resources can lead to a violation of their right to food.15 Similarly, the Convention on the Rights of Persons with Disabilities recognizes the right to health and to an adequate standard of living which also implicitly includes the right to food.16

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13 ICESCR, supra note 1, Arts. 11(1) and 2(1).
14 Convention on the Rights of the Child (CRC), UNTS 1577, Arts. 24(c) and 27, (1989).
B. Regional Human Rights Instruments

Besides the aforementioned UN human rights treaties, there are also regional human rights instruments that explicitly or implicitly acknowledge the right to food.

1. Africa’s Human Rights System

Although the African Charter on Human and Peoples’ Rights does not expressly recognize the right to food, it enshrines that all peoples shall freely dispose of their wealth and natural resources,\(^{17}\) and access to and control over natural resources is crucial to realize the right to food. In fact, the African human rights system explicitly recognizes the right to food of women and children. In this respect, the right to food security of women is recognized in a protocol to the African Charter on Human Rights that obliges States Parties to “provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food and to establish adequate systems of supply and storage to ensure food security”.\(^{18}\)

Additionally, the African Charter on the Rights and Welfare of the Child stipulates children’s right to adequate nutrition as a component of the right to health.\(^{19}\)

The African human rights system also acknowledges the right to food of Internally Displaced Persons. To this end, the States Parties to Kampala Convention are obliged to provide these persons with adequate humanitarian assistance, including food and water\(^{20}\) and that members of armed groups must not deny internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health, and shelter.\(^{21}\)

2. The Inter-American Human Rights System

Though the American Convention on Human Rights predominantly covers civil and political rights, the Protocol of San Salvador expressly encloses the right to food.\(^ {22}\) Article 12 of the Protocol clearly states that everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. It further stipulates that:

In order to promote the exercise of this right [the right to adequate nutrition] and eradicate malnutrition, the states parties undertake to improve methods of production, supply, and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.\(^ {23}\)

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\(^{20}\) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), (22 October 2009), Art. 9 (2) (b).

\(^{21}\) id. at Art 7 (5) (c).


\(^{23}\) id. Art 14. Arts 15 and 17, in particular, protect the right to food of children and the elderly.
The Protocol requires States to introduce domestic legislation based on their constitutional processes and the Protocol which may be necessary for making the rights a reality.\textsuperscript{24}

3. **The European Social Charter**

Unlike the African and the Inter-American human rights systems, the European counterpart does not explicitly recognize economic, social and cultural rights in general and the right to food in particular. However, the European Social Charter,\textsuperscript{25} revised in 1996,\textsuperscript{26} contains some provisions which are relevant to the enjoyment of the right to food, including “the right to safe and healthy working conditions” (Article 3), “the right to a fair remuneration sufficient for a decent standard of living for themselves and their families” (Article 4), “the right to protection of health” (Article 11), “the right to social security” (Article 12), and “the right to benefit from social welfare services” (Article 14).

4. **ASEAN Human Rights System**

There is no binding regional human rights instrument in Asia. However, Article 28 (a) of the ASEAN (Association of Southeast Asian Nations) Human Rights Declaration enshrines that “[e]very person has the right to an adequate standard of living for himself or herself and his or her family including the right to adequate and affordable food, freedom from hunger and access to safe and nutritious food”.\textsuperscript{27} The Declaration explicitly provides for the right to food. Its downside is being a non-legally binding instrument, which makes its enforceability questionable. Its scope of application is also limited to 10 Member States of the ASEAN (i.e., Brunei Darussalam, Cambodia, Indonesia, the Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam).\textsuperscript{28}

C. **Non-Binding International Instruments**

In addition to the human rights instruments overviewed earlier, several non-binding instruments have been adopted under the UN human rights system to define the normative contents of the right to food and corresponding States’ obligations. For instance, the Rome Declaration on Global Food Security, which was adopted by delegates of 180 States at the World Food Summit in 1996, played a remarkable role in redefining the international policy on food security where States agreed to “halve the number of undernourished people by 2015”.\textsuperscript{29} The Rome Declaration reaffirms the right of everyone to have access to safe and nutritious food, which is consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.\textsuperscript{30} It defines food security as “existing when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”.\textsuperscript{31} This definition

\textsuperscript{24} id. at Art 2.
\textsuperscript{25} European Social Charter, Turin, in European Treaty Series 35 (18 October 1961).
\textsuperscript{26} European Social Charter (revised), Strasbourg, in European Treaty Series 163 (3 May 1996).
\textsuperscript{28} id. at Preamble, para 1.
\textsuperscript{29} FAO, Rome Declaration on World Food Security and the World Food Summit Plan of Action (13-17 November 1996), paragraph 18 of the Plan of Action.
\textsuperscript{30} id.
\textsuperscript{31} id.
involves four dimensions of food security: availability, access, utilization, and stability. The FAO explains that “a state of food security requires that: sufficient food is available; all people have economic and physical access to the food they need; access and availability are ensured over time (stability), and the food is effectively utilized”. These pillars are applied cumulatively, and food insecurity exists where one of the four dimensions is not realized.

The 1996 World Food Summit adopted a Plan of Action that outlines objectives and measures deemed to be crucial for the implementation of the commitments contained in the Rome Declaration. The Summit also underlined the need to “clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger... and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all”.

In response, the UN Committee on Economic, Social and Cultural Rights (CESCR) introduced the General Comment No. 12 on the Right to Adequate Food in 1999. General Comment No. 12 forms the most authoritative interpretation of the right to food. It outlines the core contents of the right to food and explains the corresponding States' obligations. In 2002, Member States of the FAO gathered in Rome to convene the World Food Summit after five years and demanded the formulation of “voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security” to attain the progressive realization of the right to food. In November 2004, the FAO Council adopted the Right to Food Voluntary Guidelines by consensus to be used as a practical tool by States in developing legislation, strategies, policies, and programs to achieve food security and realize the right to food domestically. In particular, Guideline 7 invites States to:

- include provisions in their domestic law which may include their constitutions, bill of rights or legislation that directly implement the right to adequate food,
- consider administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies, particularly for members of vulnerable groups, and
- inform the public of all available rights and remedies within states that have already established a right to adequate food within their legal system.

The Guidelines are significant to improve legal and accountability frameworks of States. The FAO’s recent database shows that at least 30 countries include the right to food in their

33 id. at 4.
35 id. see objective 7.4.
36 General Comment No. 12, supra note 2.
38 FAO, "Right to Food Guidelines" supra note 3.
constitutions explicitly as a justiciable human right and that 74 constitutions contain provisions that protect the right to food implicitly as a component of other broader rights. Dozens of countries have also enacted framework laws on the right to food or food security over the last few years.

In 2012, the FAO Council adopted another voluntary guidelines regarding access to productive resources such as land, fisheries, and forests to support the progressive realization of the right to food in the context of national food security. Likewise, the UN Human Rights Council introduced the Guiding Principles on Extreme Poverty and Human Rights in 2012 which contain a section exclusively dedicated to the right to food in the context of people living in extreme poverty.

Table 1: Development of International Legal and Policy Instruments on the Right to Food

<table>
<thead>
<tr>
<th>Year</th>
<th>Binding and nonbinding international instruments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>Universal Declaration on Human Rights (Art. 25) recognised the right to adequate food.</td>
</tr>
<tr>
<td>1976</td>
<td>The International Covenant on Economic, Social, Cultural Rights, including Art. 11 on the right to adequate food entered into force.</td>
</tr>
<tr>
<td>1987</td>
<td>The Committee on Economic, Social, and Cultural Rights established and began legal interpretation of economic, social and cultural rights.</td>
</tr>
<tr>
<td>1988</td>
<td>The Right to Food was included in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Art. 12).</td>
</tr>
<tr>
<td>1996</td>
<td>FAO Food World Summit convened and adopted the Rome Declaration on World Food Security - the first coherent plan to make the right to food a reality.</td>
</tr>
<tr>
<td>1999</td>
<td>The CESCR adopted General Comment N.12 on ‘The Right to Adequate Food’.</td>
</tr>
<tr>
<td>2000</td>
<td>The mandate of Special Rapporteur on the Right to Food was established by the Commission on Human Rights.</td>
</tr>
<tr>
<td>2000</td>
<td>The Millennium Development Goals, including Goal 1 to eradicate extreme poverty and hunger by 2015 adopted.</td>
</tr>
<tr>
<td>2002</td>
<td>Rome Declaration was adopted at the World Food Summit calling for the establishment of an intergovernmental working group to develop voluntary guidelines to achieve the progressive realization of the right to food.</td>
</tr>
<tr>
<td>2004</td>
<td>FAO Voluntary Guidelines on the Right to Food which offers guidance to States on how to implement their obligations on the right to food adopted.</td>
</tr>
<tr>
<td>2009</td>
<td>Optional Protocol to the International Covenant on Economic, Social and Cultural Rights adopted, making the right to food justiciable at the international level.</td>
</tr>
<tr>
<td>2015</td>
<td>The Sustainable Development Goals, including goal 2 to achieve food and nutrition security by 2030 adopted.</td>
</tr>
</tbody>
</table>

40 FAO, "The Right to Food around the Globe", supra note 5.
41 FAO, "Legal Developments" supra note 7.
III. Meaning of the Right to Food and Corresponding Obligations of States

A. Meaning of the Right to Food

In its General Comment No. 12, the UN Committee on Economic, Social, and Cultural Rights (CESCR) states that:

The right to adequate food is realized when every man, woman, and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins, and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.44

Furthermore, Jean Ziegler, the first UN Special Rapporteur on the Right to Food, explained the right to food in the following manner:

The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.45

Oliver De Schutter, the second former Special Rapporteur on the Right to Food also emphasized that: “The right to food is not primarily the right to be fed after an emergency. It is the right for all to have legal frameworks and strategies in place that further the realization of the right to adequate food as a human right recognized under international law”.46

Article 11(2) of the ICESCR recognizes the right to be free from hunger, which is the minimum core content of the right to food. The CESC underlined that a State must “ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”47 It also stressed that States violate the ICESCR when they fail to “ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger.”48 Some scholars have also attempted to define the right to be free from hunger. For instance, Alston defines it as “the minimum content of the right to food.”49 Moreover, Texier defines freedom from hunger as “the minimum

44 General Comment No. 12, supra note 2, at para 6.
47 General Comment No 12 supra note 2, at para 14.
48 id. at para 17.
threshold below which one should never, in principle, fall under any circumstances”.50 Golay, on his part, defines it as “the right to have access to the minimum essential food which is sufficient and adequate to ensure everyone is free from hunger and physical deterioration that would lead to death.”51

B. Obligations of States

Like other economic, social and cultural rights, there are general and specific obligations related to the right to food.

1. General Obligations of States

General obligations relating to the progressive realization of economic, social and cultural rights are contained in Article 2(1) of the ICESCR and explained in General Comment No 3.52 States must take all appropriate steps, including legislative measures, to progressively achieve the full realization of economic and social rights. The measures must be “deliberate, concrete and targeted.”53 While the States are free to determine the appropriate steps in their contexts, appropriate measures may comprise enacting laws or implementing economic, administrative, educational, financial or social reforms.54 To ensure the full realization of the right to food, the States Parties must “move as expeditiously and effectively as possible”.55 A State which might argue that it lacks resources to meet the minimum core obligation (i.e., to provide essential foodstuff) must show that it has made every effort by using resources at its disposal and resources obtained from the international community.56

There are also some obligations which must be applied immediately regardless of resource availability.57 The obligations to ensure non-discrimination and the fundamental right to be free from hunger must be applied immediately. Articles 2(2) and 3 of the ICESCR enshrine that all States Parties must ensure equal enjoyment of economic and social rights, including the right to food, by providing objective and reasonably same protection for all persons regardless of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”58 This obligation also requires States to “identify the most vulnerable groups within its jurisdiction and take proactive steps, usually referred to as ‘special measures’, to bring the level of enjoyment of the right to food of these groups in line with the rest of the population”.59

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51 id.
53 id. at para 9.
55 General Comment No. 3, supra note 52, at para 9.
56 General Comment No. 12, supra note 2, at para 36.
57 id. at para 5.
58 ICESCR, supra note 1, at Art 2.2.
59 IDLO, supra note 10, at 20.
2. Specific Obligations of States

The CESCR explained the specific nature of State obligations in its General Comment No. 12. Like other human rights, the right to food imposes three types of specific obligations of States: to respect, protect and fulfill, which the CESCR explained as follows:

The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfill (facilitate) means the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States must fulfill (provide) that right directly. This obligation also applies to persons who are victims of natural or other disasters.60

The obligation to respect the right to food is a negative obligation and a State is required not to take any action that would impede people’s existing access to food through production or procurement.61 For instance, any government intervention that restricts people’s access to natural resources that they use as a source of food, or threatening a well-functioning market may lead to a violation of the obligation to respect the right to food.62 A State also violates the obligation to respect if it introduces a law or policy that would cause an arbitrary eviction of people from their land, particularly, where the land is their main source of livelihood.63 Likewise, a suspension or repeal of social security benefits in a situation where vulnerable people do not have an alternative means to provide for themselves might cause a violation of the obligation to respect the right to food.64

With respect to the obligation to protect, a State must take a proactive measure to regulate the conduct of non-state actors (third parties including private individuals, corporations, and other entities) that can violate the right to food.65 For instance, a State should take a regulatory measure against a company that grabs land or other natural resources that peasants and indigenous populations depend on to feed themselves.66 Enacting laws and policies governing consumer protection and food safety can also be regarded as part of the obligation to protect the right to food.

The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right to food. This obligation involves two elements: facilitate and provide. The duty to facilitate the right to food

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60 General Comment No. 12, supra note 2, at para 15.
62 id.
64 id.
65 id. at para 28.
66 id.
requires States to take steps that are aimed at enhancing people’s ability to have means and resources to support their subsistence, for example, by adopting and implementing food and agriculture policies or enforcing minimum wage regulations.\textsuperscript{67} In addition, the duty to facilitate the right to food requires States to implement policies that take into account the special need of vulnerable groups and create a conducive environment to ensure access to food or a means of procuring it.\textsuperscript{68}

Furthermore, a State must directly provide food for persons who cannot provide for themselves due to reasons beyond their control. A State would violate the obligation to fulfill if it fails to provide an emergency food aid for a starving population in its territory in a situation where they do not have any other means to provide for themselves.\textsuperscript{69} The obligation to provide is crucial to realize freedom from hunger, which is the minimum core obligation of the right to food.

\textbf{IV. ESTABLISHING APPROPRIATE LEGAL FRAMEWORK AT DOMESTIC LEVELS}

To invoke a violation of the right to food, it must first exist in applicable law (domestic, regional, international or combination of these). Therefore, the Right to Food Guidelines urges States to “include provisions in their domestic law, which may include their constitutions, bills of rights or legislation, to directly implement the progressive realization of the right to adequate food.”\textsuperscript{70}

There are several mechanisms of incorporating the right to food into a domestic legal system, including:

- Creation of a constitutional right to food,
- Adoption of a framework law on the right to food or food security and nutrition,
- Introducing sector-specific legislation that facilitates the enforcement of the right to food, and/or
- Constitutional or legal recognition of direct applicability of international human rights treaties providing for the right to food.

In the following sub-sections, we shall discuss the legal basis for the right to food at the domestic level which takes the form of constitutional recognition, framework legislation and/or sectoral laws.

\textbf{A. Incorporating the Right to Food into Constitutions}

The inclusion of human rights in a constitution provides the strongest protection since constitutions are the supreme laws of the land. Any legislative or administrative action that contradicts a constitution is of no effect, and laws or a State’s conduct which contradicts constitutional provisions could be quashed through a judicial review procedure.\textsuperscript{71} Moreover, it is not easy to amend a constitution that makes the removing of the right to food hard.

\textsuperscript{67} OHCHR and FAO, Fact Sheet No 34: The Right to Adequate Food (2010), at 18.
\textsuperscript{68} Ziegler, supra note 63, at para 29.
\textsuperscript{69} Husen, supra note 61; Ziegler supra note 66, at para 29.
\textsuperscript{70} FAO, "Right to Food Guidelines", supra note 3, at Guideline 7.
\textsuperscript{71} De Schutter, supra note 46.
States may constitutionally recognize the right to food in four ways: 1) explicit and direct recognition as a self-standing right, 2) implicit recognition as part of other rights, 3) explicit recognition as a goal or directive principle of state policy, and/or 4) recognition of the direct applicability of international or regional treaties providing for the right to food.72

1. Explicit Recognition as a Self-Standing Right

Explicit recognition of the right to food paves the way for its enforcement because it avoids the ambiguity of judicial interpretation. At least 30 countries expressly recognize the right to food for all, or specific groups including children, prisoners or indigenous peoples.73 These include but not limited to Brazil, Colombia, Costa Rica, Republic of Congo, Egypt, Fiji, Guatemala, Honduras, Kenya, Malawi, Maldives, Mexico, Moldova, Nepal, Nicaragua, Niger, Panama, Paraguay, Philippines, South Africa, and Zimbabwe.74

In this regard, Mexico’s constitution enshrines that “[e]very person has the right to food that is nutritious, sufficient, and of quality. The state shall guarantee this right.”75 Article 27 of the South African constitution also states that “[e]veryone has the right to have access to (…) b. sufficient food and water c. social security, including, if they are unable to support themselves and their dependents, appropriate social assistance”, and that “[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.”76 In the same vein, Article 36(1-2) of the constitution of Nepal enshrines that “[e]ach citizen shall have the right to food” and that “[e]very citizen shall have the right to be protected from a state of starvation, resulting from lack of foodstuff”. It also stipulates that “[e]very citizen shall have the right to food sovereignty as provided for in law”.77

Some constitutions explicitly recognize the right to food of certain groups such as children, indigenous peoples or prisoners. For instance, Article 44 of the Columbian constitution stipulates that “children have fundamental rights to life, integrity, health and social security and adequate food”.78 Similarly, the constitutions of Cuba, Guatemala, Honduras, Panama, and Paraguay contain explicit provisions protecting the right to food of children.79 The right to food of prisoners and detainees is protected in the South African Constitution.80

2. Implicit Recognition as Part of Broader Human Rights

The right to food is linked to other several human rights. Thus, constitutional recognition of broader rights such as the right to an adequate standard of living, the right to development and

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73 FAO, "The Right to Food around the Globe: Level of Recognition", supra note 5.
74 FAO, "Legal Developments", supra note 7.
75 Constitution of the Mexican United States, 1917 (as amended to 2010).
80 Constitution of South Africa, supra note 76, at s 35.2(e).
the right to human dignity leads to an implicit recognition of the right to food. A FAO study finds that the constitutions of Algeria, Burundi, Cuba, Cyprus, the Czech Republic, the Dominican Republic, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Indonesia, Iraq, Malawi, Senegal, Peru, Sao Tome and Principe, Seychelles, Syria, Thailand, Togo, Turkey, and Bolivia implicitly recognize the right to food.81

For instance, Article 42 of the Constitution of Belarus provides that

Employees shall be guaranteed a just share of remuneration for the economic results of their labor in accordance with the quantity, quality and social significance of such work, but it shall not be less than the level which shall ensure independent and dignified living for them and their families.82

Likewise, Article 43 of the 1995 Constitution of Ethiopia enshrines that the “Peoples of Ethiopia as a whole, and each Nation, Nationality, and People in Ethiopia in particular, have the right to improved standards of living and sustainable development”83, and that “the basic aim of development activities shall be to enhance citizens’ capacity for development and to meet their basic needs.”84

3. Directive Principles of State Policy
The right to food can also be included in “directive principles”85 of state policy in which States are committed to realizing economic, social and cultural rights for all citizens without stipulating claims of rights holders. At least 102 constitutions stipulate State obligation to facilitate access to food under directive principles of state policy.86

Although the inclusion of access to food in directive principles of state policy does not automatically create a legal basis for the justiciability of the right to food, courts can use such principles as tools of judicial interpretation and thereby protect the right.87 For example, the Indian Supreme Court, while interpreting Article 47 of the Indian Constitution,88 in Olga Tellis v. Bombay Municipal Corporation, ruled that “the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country.”89 Subsequently, the Court enforced the right to food as part of the right to life (Article 21) by interpreting Article 47 (that obliges the government to improve the level of nutrition of its people).90

81 FAO, "Legal Developments" supra note 7, at 3; FAO, "The Right to Food around the Globe: Level of Recognition" supra note 5.
82 Belarus’s Constitution of 1994 (as amended to 2004).
84 id. at Art 43(4).
85 Directive principles of state policy are “the values to which a society aspires although at the time of drafting they may not reflect a broad societal reality, which guides governmental action but do not necessarily provide individual or justiciable rights.” Knuth and Vidar, supra note 79, at 33.
86 FAO, "The Right to Food around the Globe: Level of Recognition", supra note 5.
87 IDLO, supra note 10, at 24.
4. Direct Applicability of International Treaties in Domestic Legal Systems

Several countries have incorporated international and regional human treaties into their domestic laws via their constitutions and paved the way for the direct applicability of ratified treaties in their jurisdictions. International treaties have a different status in monist and dualist systems. In countries that adopt a monist system, for example, France and the Netherlands, international human rights treaties are directly applicable as the international law is automatically included in domestic law. On the other hand, in dualist systems, including the UK and Australia, international law does not immediately become part of the domestic law; additional steps must be taken to include treaties into the domestic legal system.\(^91\)

Even though the status of international human rights instruments varies depending on legal systems, the inclusion of statements in constitutions regarding the direct applicability of international standards at the domestic level has resulted in the adjudication of the right to food in some countries. For instance, the Kenyan Supreme Court cited the ICESCR and the African Charter besides the Kenyan Constitution to render its judgment in *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security*.\(^92\)

B. Adoption of Legislation on the Right to Food or Food Security

The constitutional recognition of economic, social and cultural rights is significant, but insufficient condition to put the rights into practice. As constitutional provisions are normally written in general terms\(^93\), it is important to enact specific legislation and/or regulations, which “set out in more detail mechanisms for implementation, assign specific responsibilities, and provide for redress mechanisms in the event of violations.”\(^94\) There are two approaches to adopting national legislation on the right to food or food security: introducing overarching framework legislation or including the right to food into sector-specific legislation.

1. Framework Laws on the Right to Food or Food Security

Specific framework legislation is crucial to operationalize the right to food as it elucidates on the general principles.\(^95\) A framework law on the right to food or food security:

- can determine the scope and content of the right,
- sets out obligations for state authorities and private actors,
- establishes necessary institutional mechanisms,
- provides for a legal basis for subsidiary legislation and other necessary measures, and
- provides grounds for redress.\(^96\)

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94 Oliver De Schutter, A Rights Revolution: Implementing the Right to Food in Latin America and the Caribbean: Briefing Note 6 (2012).
95 Bultrini et al, *supra* note 40, at 56.
96 *id.* at 53–65.
The FAO methodology for assessing framework laws pinpoints two distinctive sets of framework laws: 1) framework laws that acknowledge and support the realization of the right to food, and 2) framework laws that are not overtly founded on human rights but specify an institutional framework for coordination and implementation. A food security framework law under the first category must satisfy the following criteria: 1) an explicit recognition of the right to food as a human right, the objective of the law being the realization of the right to food, or substantive provisions of the right to food; and 2) incorporation and consideration of at least three human rights principles for the implementation of the law, including participation, accountability, non-discrimination, transparency, human dignity, empowerment, rule of law, and equality.


Furthermore, the Latin American Parliament (PARLATINO) implemented the “Regional Framework Law on the Right to Food, Food Security, and Food Sovereignty” in 2012. This framework law demonstrates a heightened commitment of the Latin American countries to implement a human rights-based approach to combating hunger and malnutrition.

2. Sectoral Laws

Sectoral laws can also play a positive role to realize the right to food. For instance, legislation pertaining to access to land and other natural resources can enhance access to food for rural populations who produce food not only to feed themselves but also supply a surplus to the market for procurement to feed urban dwellers. Trade legislation also affects food affordability. Agricultural laws scaffold situations for food production. Labour laws are also significant to regulate a minimum wage and social protection to sustain an adequate standard of living. Other examples of sectoral legislation which could facilitate the progressive realization of the right to food include:

- Legislation creating entitlements to food subsidies and transfers in cash or kind for food security (India, 2013),
- Food safety and consumer protection legislation (Montenegro, 2007), and
- School feeding legislation (Brazil, 2009 and Peru 2013).

97 id.
98 FAO, "Legal Developments", supra note 7, at 5.
99 id.
100 id. 6; Husen, supra note 61.
101 FAO, "Legal Developments", supra note 7, at 7-8.
V. JUSTICIABILITY OF THE RIGHT TO FOOD

Justiciability can be defined as “the possibility of a human right, recognized in general and abstract terms, to be invoked before a judicial or quasi-judicial body that can, first, determine, in a particular concrete case presented before it, if the human right has, or has not, been violated; and second, decide on the appropriate measures to be taken in the case of violation.”

Several international human rights instruments provide for the justiciability of economic, social and cultural rights in general and the right to food in particular. For instance, the UDHR enshrines that everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted to him by the constitution or law. Similarly, the General Comment No. 9 of the CESCR states that appropriate means of redress or remedies must be available to any aggrieved individual or group and appropriate means of ensuring governmental accountability. Moreover, the General Comment No 12 enshrines that any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies including those provided by quasi-judicial mechanisms.

The success of justiciability of the right to food depends on three main conditions: existence of a strong legal basis that can be invoked by rights holders, availability of legal remedies and their application to protect the victims from violations of the right to food and the recognition of the right to food by implementing bodies and their ability to ensure the respect, protection, and fulfilment of the right.

Some scholars who consider economic, social and cultural rights as imprecise, resources demanding, and subject to available resources and progressive realization argue that the right to food is not justiciable. There are also practical obstacles to the justiciability of the right which stem from lack of government’s political will, lack of awareness of rights holders, and structural as well as institutional constraints. Cases involving the right to food are limited in practice although an increasing number of countries are enforcing the right to food over the last few years. In this regard, the International Development Law Organization reviewed more than 60 cases involving a government’s failure to ensure: the right to be free from hunger, the means to produce or procure food, and the protection of vulnerable, marginalized and disadvantaged groups. The cases relating to the States’ failure to ensure freedom from hunger were brought before courts in Argentina, Brazil, Colombia, India, and Nepal. Moreover, cases involving the means to produce or procure food have focused on land and fishing as

102 id. at 9.
103 Universal Declaration of Human Rights (1948), Art 8.
104 CESCR, General Comment No. 9, E/C.12/GC/19, para 9, (4 February 2008).
105 General Comment No. 12, supra note 2, at para 32.
107 FAO, "Legal Developments", supra note 7, at 12.
108 Elver, supra note 12.
109 IDLO, supra note 10, at 39.
110 id. at 37-40.
sources of livelihood and the economic means to obtain food and the role of the State. In addition, cases concerning the protection of vulnerable, marginalized or disadvantaged groups have targeted the right to food of prisoners or detained persons, indigenous peoples, children, and refugees or asylum seekers.

A. Cases Involving the Right to Food

This section reviews selected cases involving the right to food which were brought before courts in Asia, Latin America, and Africa. The cases were selected purposely based on important issues involved in them such as the justiciability of core contents of the right to food and corresponding State obligations discussed earlier.

1. India

India has taken exemplary steps in enforcing the right to food in general and the right to be free from hunger in particular. Its parliament adopted the Food Security Act in 2013 and the Indian Supreme Court has enforced the constitutional right of food as a part of the right to life since 2001. The People’s Union for Civil Liberties v. Union of India is one of the most cited cases in relation to the right to food. This case was brought before the Indian Supreme Court regarding the occurrence of chronic famines and hunger-related deaths in drought-affected regions of the country, in particular, the State of Rajasthan.

People’s Union for Civil Liberties (PUCL), which is a prominent human rights organization in India, instituted a public interest petition before the Supreme Court in 2001 alleging that the government has failed to provide essential foodstuff to the people exposed to hunger due to successive droughts for three years. The PUCL contended that the right to food, which obliges the State to provide food to people in drought-affected areas who cannot purchase or produce it themselves, is implicitly recognized in the right to life under Article 21 of the Constitution. The PUCL requested the Court to order the government to enforce food distribution schemes, policies and legislation in force that stipulate the release of grain stocks in times of famine. The petitioners emphasized that it was unacceptable for the government not to tackle hunger and starvation in the situation where there were surplus grain supplies which remained unexploited and depreciated in warehouses because of insufficient storage facilities.

The Supreme Court notably recognized that “plenty of food is available, but the distribution of the same amongst the very poor and the destitute is scarce and non-existent”. It found that the basic cause of hunger and malnutrition was hardly a lack of resources, but

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111 id. at 40-44.
112 id. at 45-48.
115 People’s Union for Civil Liberties v Union of India, supra note 13, at para 50.
116 id. at paras 49 and 50.
117 id. at para 11.
118 People’s Union for Civil Liberties v Union of India and Others, Interim Order of 23 July 2001(2001).
ineptitudes and failure to apply legislation and policies in force. The Court further argued that “mere schemes without any implementation are of no use and emphasized that “what is important is that the food must reach the hungry.” The Court issued numerous interim orders demanding the government to apply existing policies, schemes, and legislation. It also specified actions to be adopted, particularly regarding vulnerable groups, to safeguard the implementation. Among others, the Court ordered that every state government must afford cooked mid-day meals for all children in public schools or government-assisted school programs. It also computed the minimum amounts of food to be allocated to each child.

The Court also gave numerous interim orders in subsequent years. For instance, in 2003, the Court ordered, inter alia, that:

- grain allocation for the Food for Work schemes be doubled and financial support for schemes be increased;
- ration shop licensees must stay open and provide grain to families below the poverty line at the set price;
- the government should publicize the rights of families below the poverty line to grain to ensure that all eligible families are covered; and
- all individuals without means of support (older persons, widows, disabled adults) are to be granted a ration card for free grain.

Interim orders of the Supreme Court eventually resulted in the transformation of the government’s food schemes in place into legal entitlements deriving from the right to food that is embedded in the Constitution, and the beneficiaries into “stakeholders of justiciable rights.”

2. Nepal

The 2007 Interim Constitution of Nepal protects the right to food and the country has ratified the ICESR. Thus, the Supreme Court of Nepal has interpreted this right in the light of the right to adequate food and the right to be free from hunger that are enshrined in Article 11 of the ICESCR. In Kumar Basnet v. Prime Minister & Ors, the petitioners instituted a writ before the Supreme Court to order the government of Nepal to provide food for populations exposed to hunger in numerous areas. Although the Court clearly acknowledged that the government is responsible to protect the right to life, it failed to eventually pass the order that was sought by the petitioners.

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120 People’s Union for Civil Liberties v Union of India and Others, supra note 113.
122 id.
123 IDLO, supra note 10, at 40.
125 id.
127 Kumar Basnet v Prime Minister & Ors, Writ No 3341, (1998).
128 Langford and Bhattarai, supra note 126, at 402; IDLO, supra note 10, at 40.
Another case involving the violation of the right to food in Nepal was brought before the Supreme Court in 2008. In Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v. Government of Nepal, the petitioners claimed that the shortage of food, inefficiencies in food distribution, and the dissemination of rotten food caused pervasive hunger and disease in some parts of the country. The petitioners sought the adoption of a sufficient legal framework, the establishment of infrastructures, storage facilities, and the introduction of an effective food distribution scheme. The Supreme Court stayed a final judgment but issued an interim order that acknowledged the fundamental right to a dignified life and demanded the concerned government bodies to directly provide food in affected districts. Moreover, the Court passed the final judgment in 2010 and reiterated that the right to food, health... social security is all basic human rights and that the State is obliged to realize them. It is worth noting that Article 36 of the Constitution of Nepal (as amended in 2015) explicitly recognizes the right to food and food sovereignty.

3. Malaysia

In 2002, a case concerning the link between land and indigenous people’s means of livelihood was brought before the Malaysian Court of Appeal. In Kerajaan Negeri Johor v. Adong bin Kuwau, members of the Orang Asli indigenous community in Malaysia invoked a violation of their right to life following the “Malaysian government’s decision to build a dam on their ancestral land”. Their claim was based on provisions of the constitution, in particular, the right to life, domestic legislation (i.e., the Aboriginal Peoples Act), and common law. The Malaysian Court of Appeal ruled in favor of the claimants and found that the community’s livelihood depended on hunting animals and collecting forest products on their land and argued that “it was settled beyond argument in our jurisdiction that deprivation of livelihood may amount to a deprivation of life itself and that state action that produces such a consequence may be impugned on well-established grounds.”

4. Brazil

Brazilian courts have adjudicated cases involving the state’s failure to realize the right to food and tackle extreme poverty. For instance, a case was filed against the Municipality of Maceió in 2007 concerning the deteriorating living conditions affecting about 1,500 families.

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129 Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v Government of Nepal, as cited in id. at 402-403.
130 IDLO, supra note 10, at 40.
131 Langford and Bhattarai, supra note 126, at 403.
132 IDLO, supra note 10, at 40; B Adhikari, Nepalese Supreme Court Decision on the Right to Food, Right to Food and Nutrition Watch, CLAIMING HUMAN RIGHTS: THE ACCOUNTABILITY CHALLENGE (2011) at 94-95.
134 id.
135 IDLO, supra note 10, at 41.
136 Kerajaan Negeri Johor, supra note 133, at para 7.
case becomes an important precedent regarding the justiciability of economic, social and cultural rights of vulnerable communities in the country.138

The National Rapporteur on the Right to Food, Water, and Land studying the community’s condition discovered that residents of the *Orla Lagunar favelas* in the city of Maceió subsisted “in extreme poverty, used mud and plastic sheeting for housing, lacked basic infrastructure and adequate sanitation, and children suffered from severe malnutrition.”139 The principal sources of subsistence were found to be a garbage dump and small-scale fishing.140 Not all residents were beneficiaries of the social benefits programs in force, especially those who did not have the necessary documents for eligibility, including a birth certificate or identity card were ineligible.141 According to an FAO study, public programs particularly focusing on the community were insufficient and programs in force were underfunded.142 Moreover, the community did not qualify as a “high approach priority” region because it was an urban community inside the State capital.143

In reaction, some public prosecutors from the State Public Ministry (Ministério Público Estadual) brought public interest litigation against the municipality asking the fulfillment of the right to food, life, and well-being of children and teenagers living within the area.144 The court rendered a judgment in September 2007 which is later described as “one of the sharpest defenses of economic, social and cultural rights in Brazilian jurisprudence to date”.145 The court held the Municipality of Maceió accountable for violating the rights to food, health, and education of the children and teenagers of the *Orla Lagunar* communities. Both international human rights treaties146 and domestic provisions stipulating the right to food147 were utilized in the court’s reasoning and judgment.

Several specific remedies were ordered to remedy the violations of the right to food, housing, health, and education of the children of the affected communities. The court fixed a 60-day due date for the municipality to stretch out social administrations to the inhabitants of the affected communities.148 The court also required the district to submit a proposal for the usage of an extensive variety of public policies and strategies, including

- establishing a multidisciplinary commission to analyze the socio-economic profile of children and adolescents living in the favelas within 30 days.

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138 As commented by De Schutter, *supra* note 45, at 11.
139 FAO, Right to Food Case Study Brazil, UN Doc. IGWG RTFG /INF 4/APP.1 (2004); IDLO, *supra* note 10.
140 De Schutter, *supra* note 45, at 11.
141 FAO, Brazil, *supra* note 139, at 56.
142 IDLO, *supra* note 10, at 38.
143 *id.*
144 The claim was filed with the District Court for Children and Adolescents (28ª Vara Cível Da Capital - Infância e Juventude, Estado de Alagoas).
146 The rights of the child protected in Article 19 of the American Convention on Human Rights.
147 Article 277 of the Brazilian Federal Constitution (as amended by Constitutional Amendment No 65, 2010) recognizes the right to food of children and adolescents.
148 Action No 4.830/07, *supra* note 137, at 70.
149 IDLO, *supra* note 10, at 51.
ensure that sufficient resources are allocated to these solutions in the municipality’s budget and prepare a contingency plan if enough resources cannot be found, and expediting the registration of children and adults.

5. **Kenya**

The Kenyan High Court considered the link between the right to food and the right to housing in *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security*. The Kenyan government forcefully evicted more than 1,000 people from their homes on public land that they had to possess since the 1940s. Their homes were eventually demolished and building materials and family goods had been destroyed in the course.

The High Court realized that after the eviction, the claimants have been forced to “stay and sleep in the open without housing, meals, water, sanitation, and healthcare” and moved to an environment “where there was no single basic necessity of life” and disabled not to feed themselves. The Court held that the right to life and the right to be free from hunger were violated along with the right to adequate housing, the right to water and sanitation among others. The Court primarily grounded its ruling on the Kenyan constitution, the ICESCR, and the African Charter emphasizing that any international treaty ratified by Kenya is a part of the domestic law.

The court passed a mandatory injunction obliging the state to return the petitioners to the land from which they were displaced and to rebuild their homes and/or deliver substitute housing and other facilities such as schools. Moreover, the government was ordered to restrain from taking similar conduct in the future and to compensate all petitioners.

6. **South Africa**

*Kenneth George and Others v. Minister of Environmental Affairs & Tourism (South Africa)* involved a marine resources law that introduced a quota system for fishing. Several communities lost access to the sea and their means of survival. Their nutritional condition worsened considerably as they encountered growing food insecurity and poverty. Some NGOs assisted the communities to bring a class action against the Minister of Environmental Affairs and Tourism before the High Court (Cape of Good Hope Provincial Division). After extensive negotiation, the fishing communities and the government reached a settlement that allowed the traditional fishermen to fish and sell their products. The High Court, moreover,
gave an order entailing the assignment of permits to the fishermen and the introduction of a new legislative and policy framework that would “accommodate traditional fishers more effectively”.162 The court specified that such a framework “should take into account international and national legal obligations and policy directives to accommodate the socio-economic rights of these fishers and to ensure equitable access to marine resources for those fishers”.163

A commercial fishermen’s association later opposed an agreement between the South African government and small-scale fishermen that discharged the latter from legislation outlawing some fishing practices and fishing of certain species such as lobsters.164 Nevertheless, the agreement was upheld by the Western Cape High Court that endorsed the claim that the “small-scale fishermen relied on the resources delivered by the sea and traditional fishing methods as the only means to feed themselves and their families”.165

7. Nigeria

A case was brought before the African Commission alleging that the Nigerian government had violated the right to food of indigenous communities. In the SERAC v. Nigeria,166 the claimants contended that:

The Nigerian government destroyed and threatened Ogoni food sources through a variety of means. The government participated in irresponsible oil development that poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops, and animals created malnutrition and starvation among certain Ogoni communities.167

The claimants alleged that the Nigerian government had violated its obligations to respect and protect the right to food of the Ogonis by directly destroying the food sources of the people and by failing to monitor and control the actions of oil companies on the Ogoni land that had violated the right to food.

The African Commission, on its part, argued that the right to food is implicitly recognized under the African Charter concerning the right to life (Article 4), the right to health (Article 16) and the right to economic, social and cultural development (Article 22)168 and held that:

The right to food requires that the Nigerian Government should not destroy or contaminate food sources. The government has destroyed food sources through its security forces and State Oil Company and terror, has created significant obstacles to

162 *id.* at para 8.
163 *id.*
165 IDLO, *supra* note 10, at 44.
167 *id.*
168 *id.* at paras 64-66.
Ogoni communities trying to feed themselves. The Nigerian Government, hence, is in violation of the right to food of the Ogonis.169

The Commission ordered the Nigerian government to implement various activities including payment of compensation and tidying up dirtied or damaged soil and rivers.170 The Commission also requested the government to undertake social and ecological impact assessments before implementing future oil projects.171 The Commission also encouraged the government to provide information to the community on the health and environmental effects of oil operations.172

B. Lessons Learned from the Litigation of the Right to Food

In general, the following lessons can be drawn from the cases reviewed earlier.

**Legal Framework:** The existence of a clear and sufficient legal framework is essential to claim the enforcement or violation of the right to food. In the countries where the right to food was litigated successfully, there has been a strong legal basis deriving from both international and domestic laws. The countries have ratified international conventions stipulating the right to food and explicitly recognize the right in their constitutions that form the legal basis for claims of the petitioners and judgments of the courts. For instance, constitutions of Brazil, Kenya, Nepal, and South Africa explicitly recognize the right to food as a justiciable human right. Moreover, their parliaments have enacted specific framework legislation on the right to food or food security. The courts have applied international human rights instruments such as the ICESCR in addition to domestic laws while adjudicating cases involving the right to food.

**Widening Standing** has a huge impact on the justiciability of socio-economic rights. The success of strategic litigations concerning the right to food is strongly linked to legal procedures that allow individuals or groups to file suits before courts without necessarily having a vested interest in a case particularly relating to collective interests of certain groups or public interest litigations. For instance, many Latin American countries including Argentina, Brazil, and Columbia have introduced the “Amparo (protection) procedure in which any person can file a claim before the courts, including constitutional court, to request measures to stop or prevent unlawful act by a public authority violating a constitutionally protected right”.173 Argentina and Brazil, in particular, allow filing of collective complaints by any person. In Brazil, collective interest is protected by the ação civil pública (public civil action), which can be initiated by the public prosecutor or trade unions and NGOs regarding environmental rights, consumer rights or any other “collective interest”.174

In India and Nepal, domestic laws (including constitutions or other legislations) or judicial practice empower the courts to entertain public interest litigation or collective claims filed by any person without necessarily being a victim or representing all victims.175 Legal standing requirements in Kenya, which allow initiation of the public interest litigation by every person

169 *id.* at paras 65-66.
170 *id.* at paras 70-72.
171 *id.* at para 71.
172 *id.*.
174 *id.*.
175 *id.*.
representing himself or others including an association acting in the interest of one or more of its members, are enclosed in Article 22 of the Constitution. In general, the experience demonstrates that introducing a legal procedure that would facilitate the filing of collective interest or public interest litigation plays a crucial role in enhancing the judicial enforcement of economic and social rights.

**Justiciable matter:** The reviewed cases involve several issues relating to the core contents of the right to food and corresponding State obligations. For instance, the government’s failure to ensure freedom from hunger has been the basic issue in the cases adjudicated in India and Nepal. The protection of the right of children was also subject to litigation in the cases of the People’s Union for Civil Liberties v. Union of India and the Maceio case in Brazil. Moreover, violations of state obligations to respect, protect and fulfill the right to food have been the subject of litigation in the cases. For instance, the High Court of Cape of Good Hope Province held that the government of South Africa had violated its duty to respect the right to food of fishing communities by limiting their access to marine resources since it adopts a repressive marine law. In the Ogoni case, the African Commission held the Nigerian government responsible for violating the obligation to respect by destroying the Ogoni’s food resources. Moreover, the Nigerian Government was held accountable for violating its obligation to protect the right to food of the Ogonis by failing to control the oil companies that had destroyed and contaminated food sources of the communities. Furthermore, the justiciability of the obligation to facilitate the right to food has been established in cases litigated in Brazil, India, and Nepal among others. The protection of the right to food of indigenous peoples, which is greatly linked to their access to land (in Malaysia and Kenya), fishing communities (South Africa), and the food assistance programs based on the right to life (Indian case), has been adjudicated at national levels. The government’s failure to distribute available food to areas where there had been starvation due to a shortage of physical availability of food has also been a justiciable matter in India and Nepal.

Therefore, a lesson that could be drawn from the experiences is that various issues related to the right to food can be justiciable matters. The right to food can be violated when a government fails to ensure the fundamental right to be free from hunger (the minimum core obligation of the right to food) by not providing an essential foodstuff for people exposed to starvation due to reasons beyond their control; when the government restricts an existing access to natural resources (such as land, fishery, and forest) that people use as basic sources of food or its procurement; when a government fails to control and monitor private entities who encroach access to food; and when a government fails to protect the right to food of specific groups such as children, women, prisoners, indigenous peoples, and refugees.

**Role of NGOs:** The success of litigations concerning the right to food was also enhanced by the active participation of NGOs. As discussed earlier, most public interest or collective litigations were brought before the courts by various NGOs. For instance, the People's Union for Civil Liberties (PUCL) in India, Forum for Protection of Public Interest in Nepal, Centre

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177 *Kenneth George and Others v Minister of Environmental Affairs and Tourism*, *supra* note 161, at paras 94-96.  
178 *SERAC v Nigeria*, *supra* note 166, at paras 65-66.  
179 *id.*
for Minority Rights (Kenya) and Civil Liberties Organization in Nigeria have actively participated in the public interest litigations on behalf of vulnerable, marginalized or disadvantaged groups. In particular, the PUCL has extensively promoted the right to food and its justiciability in India since 2001 by conducting a series of awareness-raising campaigns. Thus, poor countries should not underestimate the role of NGOs in protecting and promoting socio-economic rights.

**Remedies:** The availability of remedies in a national legal system enhances the judicial enforcement of the right to food. Victims of violations of the right must be entitled to adequate remedies which may take the form of restitution, compensation, satisfaction, or guarantees of non-repetition.\(^{180}\) Existing remedies at the domestic level may vary based on the facts of the case and the legal, political and social setting where judges work.\(^{181}\) Some constitutions comprise provisions on remedies. For instance, the Constitution of India stipulates that “Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari which may be appropriate for the enforcement of any of the rights conferred by this Part [i.e., Part III.—Fundamental Rights].”\(^{182}\) The South African Constitution also gives the judges enough discretion to determine effective remedies, enshrining that “when deciding a constitutional matter within its power, a court may make any order that is just and equitable.”\(^{183}\) In the aforementioned cases, more conventional remedies such as compensation, restitution, and declarations were issued. In addition, detailed orders (including interim orders and mandatory injunctions) were delivered.

**VI. Conclusion**

The ICESCR and other UN and regional treaties recognize the right to adequate food and the fundamental right to be free from hunger. Over the last two decades, the right to food has developed as a judicially enforceable human right. In fact, this development has passed through three important phases. First, the 1996 World Food Summit decided that the normative contents of the right to food and the corresponding state’s obligations must be defined. In response, the UN CESCIR adopted General Comment No. 12 on the Right to Adequate Food in 1999. Moreover, the FAO adopted a comprehensive Right to Food Guidelines in November 2004. Among others, the Voluntary Guidelines encourage States to take legislative and judicial steps to ensure the progressive realization of the right to food. Following the Right to Food Guidelines, an increasing number of countries have amended their constitutions and afford constitutional protection to the right to food. While some countries explicitly recognize the right to food as a justiciable human right, others implicitly recognize it as part of broader human rights such as the right to an adequate standard of living, the right to a dignified life or the right to development. Some constitutions include food security in directive principles of state policies that oblige governments to facilitate access to food without enshrining claims of rights.

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\(^{180}\) General Comment No.12, *supra* note 2, at para 32.


\(^{182}\) Constitution of the Republic of India, Art 32(2) (1950).

holders. In some counties such as India, directive principles are transformed into justiciable human rights through judicial interpretation of the right to life.

Including the right to food in constitutions is an important step but insufficient condition in itself to enforce it. Thus, scores of countries have adopted specific right to food or food security framework laws that define the normative contents of the right to food and corresponding State obligations and establish a legal basis for judicial enforcement of the right at domestic levels. Some countries such as Mali include provisions on the right to food in sectoral laws.

The justiciability of economic, social and cultural rights has been contentious. Obstacles such as lack of political will, lack of awareness, and institutional as well as structural constraints hinder the justiciability of the right to food in many countries. This article shows, however, that an increasing number of countries are using the right to food as a tool for combating hunger and malnutrition in their jurisdictions. Several cases involving violation of the right have been successfully litigated and victims have received effective remedies in many countries in Africa, Asia and Latin America.

It is found that a clear and sufficient legal framework at a domestic level, widening of standing rules, active participation of NGOs in the protection and promotion of human rights and availability of remedies in a domestic legal system enhance the justiciability of the right to food. Thus, States should strive to strengthen their legal frameworks on the right to food and empower courts to adjudicate cases involving economic and social rights. In particular, they should work towards incorporating the right to food into their constitutions and strive to adopt framework laws on the right to food or food security to define the contents of the right and recognize its justiciability. To ensure accountability for violation of the right to food, States should also amend their procedural laws to allow the initiation of public interest litigations by any person including NGOs thereby ease the requirement of legal standing. States should also raise the awareness of rights holders concerning their right to food. Moreover, governments should renew their political commitment to adopt and implement policies that ensure the progressive realization of the right to food.
ARTICLE II

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Achieving Zero Hunger: Implementing a Human Rights Approach to Food Security in Ethiopia

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Abstract:
A human rights approach to food security seeks to empower vulnerable groups to claim their rights. It also reinforces a government’s obligations to respect, protect and fulfil the right to food. Furthermore, it encourages the integration of the right to food into the design and implementation of food security policies. This article examines the human rights approach to food security, with specific reference to Ethiopia. It assesses the historical causes of Ethiopia’s food insecurity and examines the legislative and policy measures that the country has adopted over the three decades in order to improve food security. Food insecurity in the country is largely explained by the absence of governmental commitment and accountability. In 1973 and 1984, the hunger caused by drought was transitioned to famine, not because of overall unavailability of food in the country but because the government failed to provide food aid to the starved people, and instead concealed the occurrence of famines from the international donors. Despite designing some food security policies over the last three decades, the country has not yet adopted sufficient legislative and judicial measures to enforce the right to food. This article argues that Ethiopia should introduce a framework law on the right to food to end hunger in the context of achieving national food security.

Keywords: food security, right to food, freedom from hunger, human rights-based approach to food security, Ethiopia

1. Introduction

Ensuring freedom from hunger is not only a moral responsibility and a policy choice but also ‘a legally binding human rights obligation’. The States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are committed to progressively realising the right to food by adopting the appropriate steps. These steps include taking legislative, judicial, budgetary and administrative measures. Like other human rights, the right to food imposes state obligations to respect, protect and fulfil. In 2004, the Food and Agriculture Organisation (FAO) of the UN adopted Right to Food Guidelines, which invited its member states to create a legal framework on the right to food. It suggested that the design and implementation of food security...
policies should consider ‘human rights principles such as participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law’.3

Over the last three decades, there has been more investment in small-scale farming within many food-insecure countries. Alongside this, social protection interventions have improved household food security. This has led to a remarkable increase in food production. Despite this, more than 821 million people still do not have the means with which to access adequate nutrition.4 Therefore, the global community’s chief concern has been to combat hunger and malnutrition. Following the implementation of the Millennium Development Goals (MDGs) over fifteen years (2000-2015), the UN adopted the Paris Agreement (to combat and mitigate the impacts of climate change)5 and the 2030 Agenda for Sustainable Development. The latter consisted of seventeen interrelated sustainable development goals (SDGs), with a view to: ending poverty, achieving food security, promoting inclusive and sustainable economic growth and decent work, reducing inequalities, ensuring sustainable consumption and production patterns, combating climate change and its consequences, and fostering peace and access to justice, amongst others.6 The SDG 2 in particular aims ‘to end hunger, achieve food security and improved nutrition and promoting sustainable agriculture’.7

The MDGs had inspired the Government of Ethiopia to adopt policies aimed at reducing poverty and ensuring food security. Reports indicate that the country has achieved the MDG 1 by cutting ‘the proportion of the population who are undernourished from 75 per cent to 35 per cent over two decades.’8 Because of ‘public investments in agricultural development and the provision of safety nets, food security has improved at both the national and the household levels.’9 Despite widespread droughts and food shortages in some parts of the country, improvements have been made over the years regarding the disaster response and emergency risk management system. These improvements have significantly helped to prevent and avert catastrophic famines.10 Nevertheless, a third of Ethiopians are still undernourished; millions of people subsequently still need emergency food aid on a yearly basis.11

This article reviews and analyses Ethiopia’s law and policy pertinent to food security in the right to food perspective. Particularly, it examines whether the country has adopted sufficient legal and policy frameworks on the right to food and food security.

2. An Overview of a Human Rights-Based Approach

A human rights-based approach to development (RBA) ‘sets the achievement of human rights as an objective of development’ and considers human rights as the benchmarks of development policies and programmes.12 It ‘invokes the international apparatus of human rights accountability in support of development action’ that involves civil, political, economic, social and cultural rights.13 The United Nations Development Programme has described the RBA as a ‘conceptual
framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The RBA replaces a development thinking based on need and charity, with a development approach where ‘plans, policies, and processes of development are anchored in a system of rights and corresponding obligations established by international law.’

In a nutshell, an RBA:
- envisages that fulfilling rights is the essential purpose of development policies and programs,
- pinpoints the rights holders, their entitlements and corresponding duty-bearers, and their obligations, and/or
- seeks to empower the rights-holders to make their claims and ensure that the duty-bearers meet their obligations.

A human rights-based approach to food security takes into account the human right to adequate food and freedom from hunger. It is based on ‘an apriori commitment to the value of human dignity’ and ‘makes the individual an agent of change in a way that enables him or her to hold governments accountable’. It also seeks to remedy violations concerning a right to food. This approach requires that States Parties to ICESCR meet their obligations to respect, protect and fulfil the right to food. It also binds them to uphold human rights principles during the design and implementation of food security policies.

### 3. The Right to Food and Food Security

This section reviews international legal and policy frameworks governing the right to food and food security. It also highlights the similarities and differences between the two concepts.

#### 3.1 The Right to Food

The right to food is a human right that protects an individual’s access to sufficient, safe and nutritious food. This right evolved from the ‘freedom from want’ concept, enunciated by President F.D Roosevelt in his 1941 ‘annual message to congress on the state of the union’. The right to food has also been established as a fundamental human right in various international instruments. The Universal Declaration on Human Rights (UDHR) is the first instrument that embodied this right. Article 25 of the Declaration recognizes the right of all people to adequate food, as part of the right to an improved standard of living. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates the right of everyone to an adequate standard of living, which also includes the right to adequate food. Furthermore, Article 11(2) of the Covenant recognizes ‘the fundamental right of everyone to be free from hunger’. Other international human rights conventions also protect the right of specific groups such as children.
women\textsuperscript{21}, and persons with disabilities\textsuperscript{22} to access adequate nutrition. In addition, some regional human rights treaties recognize this right. For instance, the Protocol to the African Charter on Human and Peoples‘ Rights on the Rights of Women in Africa recognizes the right of women to nutritious food and places an obligation on states to acknowledge such a right.\textsuperscript{23} In addition to binding treaties, soft laws such as the General Comment No 12 on the Right to Adequate Food,\textsuperscript{24} and the Right to Food Guidelines,\textsuperscript{25} explain the normative contents of the right to food. They also encourage States to enforce this within the context of national food security.

In general, social and economic rights should be enforced progressively while making the most of all resources available to States Parties. This includes access to resources from the international community.\textsuperscript{20} Article 2(1) of the ICESCR obliges States Parties to:

\begin{quote}
\ldots take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources to achieving the full realisation of the rights progressively […] by all appropriate means, including particularly the adoption of legislative measures.
\end{quote}

The term ‘all appropriate means’ may include ‘legislative, administrative, judicial, economic, social and educational measures.’\textsuperscript{27} Furthermore, the ‘steps should be deliberate, concrete and targeted as clearly as possible towards the meeting of the obligations recognised in the Covenant.’\textsuperscript{28} They should also avoid taking any deliberate retrogressive steps that contradict with the principle of progressive realisation of the right to food.\textsuperscript{29} Furthermore, Article 11(2) of the ICESCR requires States to take the appropriate measures needed, using scientific research and knowledge, to improve the methods of food production, conservation and distribution and ensure freedom from hunger. The General Comment No.12 also recognizes the obligations of States to take steps to act expeditiously to achieve the realization of the right to food.

States Parties to the ICESCR are obliged to implement some measures immediately. For instance, States shall respect the right to food of individuals who have access to food, or a means of its procurement. They must also adopt measures to enforce individual rights and ensure freedom from hunger. This is the minimum core obligation of the right to food, regardless of a Party‘s economic status.\textsuperscript{30} Moreover, the duty of non-discrimination must be observed by the States immediately. Articles 2(2) and 3 of the ICESCR dictate that all States Parties must ensure equal enjoyment of economic and social rights, including the right to food.\textsuperscript{31}

Furthermore, the right to food imposes three levels of specific State obligations: the duty to respect existing access to adequate food, the duty to take measures to prevent individuals or corporations from violating the right to food of others and the duty to fulfil the right to food. The duty to fulfill, in turn, represents three levels of interrelated obligations: to facilitate, promote and provide.\textsuperscript{32}
3.2 Food Security

Food security was first defined at the World Food Conference as the ‘availability at all times of adequate world food supplies of basic foodstuffs […] to sustain a steady expansion of food consumption […] and to offset fluctuations in production and prices’. However, the most commonly used definition of food security was adopted at the World Food Summit in 1996. This reads as follows: ‘[f]ood security exists when all people at all times have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.’ Food security involves four dimensions: the physical availability of food, economic and physical access to food, food utilization, and the stability of these three dimensions over time. The four pillars of food security are applied cumulatively. Therefore, food insecurity exists when one of these elements is not realized. Factors such as climate change, plant disease, loss of biodiversity, soil degradation due to industrial activities, and population growth, all have an adverse impact on the realization of food security.

There is a remarkable similarity between notions of food security and the right to food. Both notions aim to secure access to sufficient, nutritious and safe food through production or procurement at household and/or individual levels. Both concepts require essential components such as food availability, accessibility, utilization and stability (sustainability) of the food supply. However, there is a difference between an entitlement deriving from a food security policy, and the right to food. Food security policies do not bind governments in any way, as they do not have the authority to create the rights and corresponding State obligations. On the other hand, the right to food obligates States to respect, protect and fulfil it. It also empowers rights holders to assert their right to be free from hunger and to seek effective remedy from any violation of their right to food. The right to food is ‘a compass to ensure that policies are geared towards alleviating hunger and malnutrition.’ In a right to food approach, the design and implementation of food security policies should espouse ‘human rights principles such as participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law’.

4. Operationalising the Right to Food at Domestic Level

The States Parties to the ICESCR are encouraged to adopt concrete and deliberate legislation, as well as implement judicial, policy and administrative measures to operationalise the right to food. Many crucial measures can be taken to localize and enforce the right to food. These measures include constitutionally recognizing the right to food, adopting a right to food framework law, empowering courts to adjudicate cases involving the right to food, adopting human rights national action plans, and designing and implementing food security programmes.
several countries, including Brazil, India, Nicaragua, Ecuador, Tanzania, Guatemala, South Africa and Nepal, have already adopted concrete legislation and other measures to implement the right to food at the domestic level.

Table 1: Progress in Legal Developments on the Right to Food at National Levels

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>South Africa includes the right to food in its Constitution.</td>
</tr>
<tr>
<td>2001</td>
<td>India’s Constitutional Court recognizes the right to food in the People’s Union for Civil Liberties (PUCL) case, transforming policy choices into enforceable rights.</td>
</tr>
<tr>
<td>2005</td>
<td>Guatemala adopts a framework law on the right to food.</td>
</tr>
<tr>
<td>2005</td>
<td>South Africa: a case was brought before the South African Equality Court demanding the protection of the right to food of traditional fishermen.</td>
</tr>
<tr>
<td>2006</td>
<td>Brazil adopts a framework law on the right to food.</td>
</tr>
<tr>
<td>2007</td>
<td>Brazil’s National Rapporteur on the Right to Food, Water, and Rural Land files successful class action on behalf of Favela residents.</td>
</tr>
<tr>
<td>2007</td>
<td>South Africa: The Equality Court demands an alteration of the fishery policy to comply with the right to food.</td>
</tr>
<tr>
<td>2008</td>
<td>Ecuador includes the Right to Food in its Constitution.</td>
</tr>
<tr>
<td>2008</td>
<td>Nepal: A case on the right to food is filed in the Nepalese Constitutional Court, which issues an interim order for the immediate provision of food to hungry communities.</td>
</tr>
<tr>
<td>2009</td>
<td>Nicaragua adopts a framework law on the right to food.</td>
</tr>
<tr>
<td>2009</td>
<td>Ecuador develops a Food Sovereignty Framework Law.</td>
</tr>
<tr>
<td>2009</td>
<td>Nepal includes the right to food sovereignty in its interim constitution.</td>
</tr>
<tr>
<td>2010</td>
<td>Brazil: The House of Representatives votes a Constitutional amendment on the right to food.</td>
</tr>
<tr>
<td>2011</td>
<td>Tanzania (Zanzibar) adopts food security bill.</td>
</tr>
<tr>
<td>2013</td>
<td>India adopts food security bill.</td>
</tr>
</tbody>
</table>


5. The Case Study of Ethiopia: Food Insecurity, and Legal and Policy Measures to Tackle Hunger and Malnutrition

Ethiopia has an abundance of natural resources. It is generally a fertile, arable land, with a plentiful underground and surface water resource that makes it the ‘water tower of Africa’. Through much of the country, its weather conditions are ideal for year-round farming. However, “it is the tragic images of death and destitution caused by famines, recurring time and again, that stay in mind.” Peter Gill observes that ‘no country in the world confronts the threat of famine more painfully and more frequently than Ethiopia’ and that ‘for many Ethiopians, their country’s
association with hunger evokes personal embarrassment and official frustration.\textsuperscript{46} In this section, we shall discuss the causes of this specific food insecurity from a historical perspective. We will also explore the laws and policies that the country has adopted to combat hunger and malnutrition over the last two decades.

5.1 Causes of Famine and Food Insecurity: A Historical Perspective

Ethiopia was exposed to catastrophic famines, particularly during the Haile Sellassie I regime (1972-74), and the military Derg regime (1984-85), which caused the death of more than one million people.\textsuperscript{47} The famines were caused by multifaceted economic, political and social factors,\textsuperscript{48} the main cause being the recurrent droughts that resulted from climate change. These droughts devastated both the production and productivity of food crops.\textsuperscript{49} Two main factors have exacerbated the detrimental effects of these droughts. Firstly, the livelihoods of more than 80\% of the population depend on rain-fed, traditional farming that is greatly susceptible to seasonal shocks and frequent climate changes. Secondly, despite the constitutional recognition of a right to sustainable development and a healthy and clean environment, Ethiopia could not in practice meaningfully adapt to climate change. Furthermore, factors such as military conflict, poor infrastructure, entitlement failures, lack of accountability, lack of effective early warning systems, use of famine as a political weapon, repression of human rights, and detrimental economic policies have all contributed to the severity and impact of famine and food insecurity in Ethiopia.\textsuperscript{50} (See Table 2 for historical causes of famines in Ethiopia).

Studies show that food shortages and resource constraints do not fully explain the Ethiopian famines. They also reveal that entitlement failure cannot be overstated. According to Sen (1981), the 1973 Wollo famine was the result of a direct entitlement failure. Based on the 1972-73 report of Ethiopia’s Ministry of Agriculture, which classified districts based on their aggregate production for main crops as ‘below normal’, ‘substantially below normal’, ‘normal’, and ‘above normal’, Sen found that there had been 65\% of normal production, and 7\% of ‘substantially below normal’ output districts. He argued that a 7\% ‘decline in production of food crops is hardly a food availability decline’.\textsuperscript{51} Sen then explained how the entitlement failure exacerbated the Wollo famine of 1973:

The fall in food output in Wollo resulted in a direct entitlement failure on the part of the Wollo farmers and a trade entitlement failure for other classes in Wollo e.g. labourers and providers of services. There was not merely a decline in the food output to which the Wollo population was directly entitled out of its production but also a collapse of income and purchasing power and of the ability of the Wollo population to attract food from elsewhere in Ethiopia.\textsuperscript{52}
Table 2: Causes of Ethiopian Famines and Food Insecurity (1888-2016)

<table>
<thead>
<tr>
<th>Date</th>
<th>Affected area</th>
<th>Attributed causes and severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1888-92</td>
<td>Ethiopia</td>
<td>Rinderpest affected the cattle population. An estimated 90 per cent of livestock lost, and approximately 2 million people dead</td>
</tr>
<tr>
<td>1972-74</td>
<td>Ethiopia</td>
<td>A sequence of rain failures and consequent droughts, poor infrastructure, weak agricultural growth and absence of a specific disaster response strategy, governments’ reluctance to admit the severity of the situation. An estimated quarter million dead and 50 per cent of livestock lost in Tigray and Wollo.</td>
</tr>
<tr>
<td>1984-85</td>
<td>Ethiopia</td>
<td>Military conflict, drought and crop failure, government policies regarding land reform and investment and market failures. Eight million affected; an estimated 1 million dead, and many livestock loss.</td>
</tr>
<tr>
<td>1990-92</td>
<td>Northern, eastern and southwestern Ethiopia</td>
<td>Rain failure and regional conflicts. Approximately 4 million people suffered a food shortage.</td>
</tr>
<tr>
<td>1993-94</td>
<td>Tigray, Wollo, and Addis Ababa</td>
<td>Due to droughts, 4 million people required food assistance, including the demobilised army and Somali refugees.</td>
</tr>
<tr>
<td>1997-2000</td>
<td>Northern Tigray</td>
<td>Localised food shortages because of conflicts</td>
</tr>
<tr>
<td>1999-2000</td>
<td>Somali region</td>
<td>Rain failures and the decline in prices of livestock, the main source of pastoralists’ livelihood</td>
</tr>
<tr>
<td>2008-09</td>
<td>Southern Ethiopia</td>
<td>Drought: 6.4 million people were affected</td>
</tr>
<tr>
<td>2015-16</td>
<td>Ethiopia</td>
<td>El Nino effect (drought): more than 10 million people affected</td>
</tr>
</tbody>
</table>


Other scholars associate the famines with the lack of accountability attributed to the country’s successive governments. Both the Haile Sellassie I (1930-1974) and the Derg (1974-1991) regimes failed not only to provide an emergency food aid to the starving people, but they also concealed the famines from the sight of the international community. During the Imperial regime, although the starved peasants desperately requested Emperor Haile Sellassie I to provide them with food aid during the 1973 Wollo famine, the regime failed to provide them with emergency food aid for political considerations. Similarly, the Derg regime deliberately declined to provide emergency food aid to the starving people in some parts of the country, particularly, where rebels were actively operating. In relation to this issue, Overby observes that:

Human beings starve in Ethiopia not only because of famine but because the repressive political regime makes the acquisition of this basic right dependent on the individual’s
willingness to be placed in a detention camp. Food is used as a weapon of war in Ethiopia but also managed by the government in such a way as to discourage economic development in a country that desperately needs such reform.\textsuperscript{57}

Under the present (Ethiopia’s Peoples’ Revolutionary Democratic Front-EPRDF) regime, which has been ruling the country since 1991, food insecurity is exacerbated by a lack of rights and empowerment for the poor, inadequate access to justice and proper policies, as well as a dearth of institutions that support food sovereignty.\textsuperscript{58} Research shows also that ‘local authorities have indeed used, or have threatened to use, land, food aid, fertilizers, and improved seeds as political leverage especially against (suspected) opposition party members.’\textsuperscript{59}

In general, the Ethiopian economy relies hugely on subsistence (and rain-fed) agriculture. The country’s inability to adapt to climate change, coupled with the absence of the government’s accountability and commitment to ensure freedom from hunger, have been largely responsible for both past famines and the present chronic food insecurity within the country. Specific factors such as recurrent droughts, population pressure, tenure insecurity, food price inflation (which adversely affects both urban and rural poor), weak institutions, and the repression of civil and political rights, have all (directly or indirectly) contributed to food insecurity in the country.\textsuperscript{60}

\section*{5.2 Legal and Policy Measures for Combatting Hunger and Malnutrition}

This section discusses Ethiopia’s laws and policies pertaining to the right to food and food security that have been adopted since 1993.

\subsection*{5.2.1 Legal Framework for the Right to Food}

The Federal Democratic Republic of Ethiopia (FDRE) Constitution of 1995 does not explicitly recognise the right to food as a justiciable human right. Nevertheless, three possibilities would invoke the violation and enforce the right to adequate food and freedom from hunger under the FDRE Constitution. As the country has not yet enforced any specific law governing the right to food or food security, we shall discuss the relevant provisions of the Constitution in the following sections.

First, Ethiopia ratified the ICESCR in June 1993. The ratification, or adoption, of international human rights treaties by Ethiopia, incorporates international legal obligations into the domestic legal system. To this end, Article 9(4) of the FDRE Constitution enshrines that ‘all international agreements ratified by Ethiopia are an integral part of the law of the land’. Moreover, Article 13(2) of the same Constitution stipulates that its provisions governing human rights must be interpreted in the light of the international human rights instruments adopted by the country. As a State party to the ICESCR, Ethiopia must respect, protect and fulfil the right to adequate food, which is
contained in Article 11 of the ICESCR. It must, therefore, adopt the appropriate legislative, judicial, policy, budgetary, and administrative measures to ensure the progressive realisation of the right to food. To fulfil this right, in particular, the country must ‘pro-actively engage in activities intended to strengthen people’s access to and utilisation of resources and means to ensure their livelihood, including food security’. 61 Nevertheless, the direct application of human rights treaties in the Ethiopian courts is poor in practice. For instance, no single case involving the right to food has ever been litigated in the courts since the ratification of the ICESCR. The courts also lack judicial independence, which limits their ability to hold the government accountable for violating human rights in general, as well as the right to food in particular. 62

Second, the right to food can be impliedly or implicitly recognized as part of other rights. The FDRE Constitution protects the right to life, the right to property, the right to labour, the right to an improved standard of living, the right to sustainable development, and the right to a clean and healthy environment. These rights are all intrinsic to protecting the right to food. 63 In particular, Article 41 of the Constitution enshrines economic, social and cultural rights, stating that ‘every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory’. 64 The Constitution also stipulates the right to equal access to publicly funded social services. It also outlines the government’s duty to pursue policies that will create gainful job opportunities. 65 Nevertheless, Article 41 is crude and vague. It is hard to pinpoint its normative contents such as the right to food, the right to clean water or the right to social security.

The FDRE Constitution also enshrines the right to an adequate standard of living and sustainable development. In this regard, Article 43(1) states that ‘[t]he Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia, in particular, have the right to improved living standards and sustainable development.’ The right to adequate food is a component of the right to an adequate standard of living. Nonetheless, it is difficult to rely on Article 43(1) of the FDRE Constitution as evidence of an individual’s right to adequate food because this provision assigns the rights to improved living standards and sustainable development to ethnic groups and peoples of Ethiopia, rather than as individual freedoms. It should be noted that international human rights law recognises the right to an adequate standard of living, and the right to adequate food, in particular, as individual rights. It is a right of every man, women and child to be free from hunger and have access to sufficient, safe and nutritious food either individually or in community with others. On the contrary, the Ethiopian Constitution recognises the right to an adequate standard of living as a group right, not as an individual right. The ambiguity of Article 43(1) of the FDRE Constitution certainly invites interpretation. Unfortunately, the Ethiopian courts do not have the authority to interpret the constitution, as this power is vested in the House of Federation pursuant to Article 83. It is therefore difficult for vulnerable groups to invoke Article 43 in cases where their right to adequate food (as an implied right) has been violated.
Adding to the confusion, it is hard to judicially implement group rights in Ethiopia. Firstly, a restrictive requirement of standing under the Ethiopian Civil Procedure Code complicates the litigation of group rights. It is unclear as to who shall represent the ‘Peoples of Ethiopia as a whole, and each Nation, Nationality and People in particular’ to enforce the right to both improved standards of living and sustainable development. Secondly, despite a constitutional basis for public interest litigation under the FDRE Constitution (Article 37(2)), the operation of non-governmental organisations (NGOs) in the area of human rights education and enforcement is highly restricted by the 2009 Charities and Societies Proclamation (No. 621/2009). This law prohibits international NGOs from becoming involved in the protection and promotion of human rights in Ethiopia. It also forbids domestic charities and societies that engage in human rights protection and promotion from receiving funding that exceeds 10% of their overall budget from external sources. It should be noted that civil societies play a crucial role in promoting the judicial enforcement of economic, social and cultural rights. In Brazil, India and Nepal, amongst others, civil societies have filed public interest litigations before courts and promoted the justiciability of these rights by raising the awareness of rights holders who have tried to assert their rights.

Third, the FDRE Constitution explicitly recognises access to food within its directive principles of the state policy. To this end, Article 90(1) of the Constitution obligates the Government of Ethiopia to design and implement policies that would facilitate ‘access to […] food and social security’. Economic policies must ensure an equitable sharing of any benefits arising from the country’s intellectual and material resources, in order to improve the economic condition of citizens and promote an equitable distribution of wealth among them. The Government is also obliged to ‘take measures to avert any natural and man-made disasters’ and to ‘provide timely assistance to the victims in the event of disasters.’

Nevertheless, the justiciability of directive principles of the state policy has again not ever been addressed within a courtroom. As they are not promulgated under the bill of rights of the FDRE Constitution, directive principles of state policy do not have the authority to create legal claims, even though they oblige the government to formulate and implement policies that could enhance access to food. Although courts of some countries, such as the Supreme Court of Ghana, have ruled that a directive principle of state policy can be justiciable, the Ethiopian courts have yet to take a similar position.

In general, Ethiopia has not yet adopted sufficient legislative and judicial measures to implement the right to food at a domestic level. Neither the FDRE Constitution nor subordinate legislation, expressly stipulate a judicially enforceable right to food. Unlike countries like Brazil, India and Kenya, Ethiopia has not yet implemented a food security framework law that could have localised the States’ obligations to respect, protect and fulfil the right to food arising from the international human rights treaties. In addition, the national courts are weak and unresponsive to human rights protection in general. There also exist laws and practices that have a retrogressive effect on the
enjoyment of the right to food. For instance, Ethiopia’s land expropriation laws facilitate dispossessions of smallholders without a right to just compensation. Arbitrary land dispossessions and tenure insecurity, in turn, violate the State’s obligation to respect the right to food of farmers and pastoralists, who rely on land to provide food for themselves.

5.2.2 Policy Framework for Food Security

Ethiopia has implemented various policies, generally targeting poverty reduction and agricultural development. It has adopted specific food security programmes since 1993. The following subsections explore the policies and strategies that the country has recently adopted in order to improve food security.

Ethiopia’s economy depends on subsistence smallholder farming, which is the primary source of food and livelihood for more than 80% of the population. The agriculture sector contributes 43% to the gross domestic product (GDP), and 90% to export. Considering the importance of this sector to the overall economy, the country implemented the ADLI strategy in 1993 as a long-term strategy. It aimed to accelerate growth by using labour-intensive technologies including fertilisers and improved seed varieties. The ADLI considers the development of smallholder agriculture to be the main force for the country’s economic development. Its main objectives have been to improve agricultural extension services, promote better use of land and water resources, enhance access to financial services, improve access to domestic and export markets, and provide rural infrastructure.

The country has implemented two poverty reduction strategies (the Sustainable Development and Poverty Reduction Program-SDPRP, and the Plan for Accelerated and Sustainable Development to End Poverty-PASDEP) in the 2000s, under the auspices of the ADLI strategy. The SDPRP was designed following the adoption of the Millennium Development Goals and was implemented from 2002 to 2005. It emphasised the role of agriculture in igniting economic development through the application of technology, environmental conservation, and human capacity building. It focused on food production, the productivity of small-scale agriculture, off-farm employment, rapid export growth through the intensification of high-value crops, agricultural research, water harvesting and small-scale irrigation. The PASDEP, which was implemented between 2005/06 and 2009/10, took forward most of the measures included in the SDPRP, such as food security, rural development, human development and capacity building.

In 2010 and 2015, Ethiopia launched Growth and Transformation Plans (GTP I and II) to end extreme poverty and transforming the country into a middle-income economy by 2025. In the GTP I, the country envisioned to ‘build an economy which has a modern and productive agricultural sector with enhanced technology and industry that plays a leading role in the economy.’ The GTP II promotes private investments in large-scale commercial farms and industrialisation with a
view to transforming the economy.\textsuperscript{85} It also emphasises achieving food security as a major component of the country’s development plan. In 2015, the country increased its budget of agriculture sector and food security to 11.3\%.\textsuperscript{86} The proportion of people living in extreme poverty has dropped from 45.5\% in 1995/96 to 27.8\% in 2011/12, meaning that the MDG 1 has been achieved.\textsuperscript{87}

Following the overthrow of the Imperial regime in 1974, Ethiopia has adopted several programme initiatives in order to tackle food insecurity.\textsuperscript{88} It has implemented specific national food security programmes, particularly since 1996. The first comprehensive ‘Food Security Strategy’ was introduced in 1996 in order to bring a paradigm shift from food aid in-kind, towards food or cash transfers for work and local purchases. It achieved this by outlining the criteria of entitlement and stipulating how food aid was to be distributed to beneficiaries.\textsuperscript{89} This strategy was revised in 2002, with a focus on addressing the underlying causes of the chronic and transitory food insecurity at both national and household levels. The 2002 food security strategy seeks to achieve the following three objectives:

- Increase the availability of food through domestic (own) production (with a particular focus on areas with adequate moisture, moisture deficit, and pastoral areas)
- Ensure access to food for food-deficit households (via market and infrastructure development)
- Strengthen emergency response capabilities.\textsuperscript{90}

It emphasised that improving the production and productivity of smallholder agriculture (both crop and livestock) in all agro-ecological zones of the country was crucial to tackling the problem of food shortages. Moreover, along with its development partners, Ethiopia launched a ‘Coalition for Food Security in Ethiopia’ in 2003, which introduced long-term strategies such as the productive safety net programme (including building community assets), household assets building through on-farm and off-farm activities, and a voluntary resettlement programme to enhance household food security.\textsuperscript{91} Under the voluntary resettlement programme, people residing in drought-prone and degraded areas were helped to resettle in areas having under-utilized productive land.\textsuperscript{92}

In 2006, the country revised its food security strategy for the second time, with the main objective of tackling chronic shortages of food production, and decreasing vulnerability to falls in consumption and incomes by adopting long-term strategies.\textsuperscript{93} Two principles guided the implementation of the 2006 food security programme: helping farmers use their resources to overcome food insecurity, and moving away from a reliance on food aid. The programme has retained major interventions that were designed in 2002/03 to attain household food security, including:

a) The Safety Net Programme, which helps bridge food gaps while building community assets...
b) Supporting voluntary resettlement to more productive areas

c) Building household assets through on-farm activities

d) Introducing non-farm activities

It promoted the development-oriented and multi-annual cash-based safety net programmes in order to address the chronic food insecurity. It also implemented the interventions necessary to improve nutrition, making it the most comprehensive food security strategy that the country has ever adopted. Furthermore, the country launched the National Nutrition Strategy (NNS) in 2008, amending it in 2013, to ‘secure adequate and nutritional status in a sustainable manner’.

Table 3: Ethiopia’s Food Security Policies since 1996

<table>
<thead>
<tr>
<th>Year</th>
<th>Changes and continuities in food security policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>First Food Security Strategy introduced. It brought a shift from imported in-kind food aid to cash assistance and imported food aid/ local purchases; it incorporates food aid for chronically food-insecure (food for work).</td>
</tr>
<tr>
<td>2002</td>
<td>Revised strategy with the National Food Security Program (FSP) to address the underlying causes of food insecurity at national and household levels.</td>
</tr>
<tr>
<td>2003</td>
<td>New Coalition for Food Security: introduced new interventions such as voluntary settlement program, safety nets and building household and community assets.</td>
</tr>
<tr>
<td>2006</td>
<td>Revised food security strategy with the Productive Safety Net Program (PSNP): created a paradigm shift from annual emergency appeals to development-oriented and multi-annual cash-based safety net programmes. Nutrition included as a component of the food security programme.</td>
</tr>
<tr>
<td>2008</td>
<td>The National Nutrition Strategy: harmonised various isolated and uncoordinated interventions and created a single comprehensive sector-wide intervention. It emphasised direct nutrition interventions and nutrition mainstreaming in other sectors.</td>
</tr>
<tr>
<td>2010+</td>
<td>The PSNP remains the major tool for addressing food insecurity. Private investments in large-scale agriculture and industrialisation are also emphasised in the GTP.</td>
</tr>
</tbody>
</table>


In its Right to Food Guidelines, the FAO invites States to ‘consider, to the extent that resources permit, establishing and maintaining social safety and food safety nets to protect those who are unable to provide for themselves.’ As mentioned earlier, Ethiopia has implemented productive safety nets programmes (PSNP) since 2002. The purpose of the PSNP was twofold. Firstly, it was designed to help bridge the income gap for chronically food insecure households. Secondly, it aimed to engage food-insecure households in community asset-building endeavours to earn income during the time of droughts. The PSNP affords multi-annual predictable transfers (food, cash or a combination of both) to support people through times of food shortfall, and avoid exhausting their productive resources while striving to meet their essential food needs. By
incorporating vulnerable groups such as elderly, disabled persons and others who face chronic food insecurity, the PSNP added a social perspective to a predominantly economic problem.

Ethiopian PSNP is one of the largest safety-net programmes in developing countries.\textsuperscript{102} The PSNP has improved access to food, reduced dependency on food aid and transitioned rural populations from chronic food insecurity to sustainable food production.\textsuperscript{103} However, the impact of the PSNP has been insignificant for female-headed households, as it did not reduce women’s workload\textsuperscript{104}. In addition, the programme did not reach as many beneficiaries as had been initially anticipated\textsuperscript{105}.

5.3 Challenges of Realising the Right to Food

Although the Ethiopian food and agriculture policies have improved the food security of vulnerable households and protected their assets, the living standards of most people have not yet meaningfully enhanced\textsuperscript{106}. The country is still one of the most food-insecure countries in the world and ‘depends on both commercial imports and food aid.’\textsuperscript{107} Its global hunger index (GHI) score for 2016 is 33.4\textsuperscript{108}, which indicates a critical level of hunger and malnutrition. The economy also still depends on a traditional method of farming that is vulnerable to recurrent drought, which in turn creates food shortages on a yearly basis. Irrigation supports only 5\% of agriculture: ‘crop yields from small farms are below regional averages’ and ‘market linkages are weak, and the use of improved seeds, fertilisers and pesticides remains limited’.\textsuperscript{109} In addition, arbitrary land disposessions exacerbate the food insecurity of millions of smallholders and indigenous peoples\textsuperscript{110}.

5.4 The Need for Framework Law on Food Security

As discussed earlier, Ethiopia has not yet introduced specific legislation pertaining to the right to food or food security. Since the ICESCR is not a self-executing treaty, its ratification should have been followed by the adoption of a framework law that could have defined normative contents of the right to food and corresponding State obligations. Such law is desirable in the context of Ethiopia, as the FDRE Constitution does not explicitly recognize the right to food as a justiciable right. Furthermore, courts lack a mandate with which to interpret the Constitution. The lack of a clear and adequate legal framework hinders the progressive realisation of the right to food. It firstly discourages the rights holders from seeking judicial remedies for the violation of their right to food. Secondly, courts would reject such cases for a lack of sufficient legal basis, even in cases where courageous victims might file suits. The courts also lack judicial independence and are unresponsive in protecting human rights. It appears that this lacking within the law has already restricted the justiciability of the right to food; there is no available case on the subject despite the prevalence of hunger and malnutrition, as well as several incidents of the government’s failure to fulfil its obligation to respect, protect and fulfil the right to food.
A framework law on the right to food can be adopted either as an overarching framework law, or as sector-specific legislation (for instance, legislation on agriculture, fisheries, or environment). Such legislation may take the form of proclamation, secondary or delegated legislation or regulations. The FAO Guide on Legislating for the Right to Food encompasses a wide-ranging synopsis of methods available for implementing national legislation. Several countries including Brazil, Guatemala, Ecuador, Argentina, Bolivia, India and Nicaragua have already implemented the right to food, or food security framework legislation. For example, Brazil has introduced an exemplary National Food and Nutrition Security Framework legislation. Its main provisions are summarized as follows:

- Adequate food is a basic human right, inherent to human dignity and indispensable for the realization of the rights established by the Federal Constitution. The government shall adopt the policies and actions needed to promote and guarantee food and nutrition security for the population.
- The government shall respect, protect, promote, provide, inform, monitor, supervise and evaluate the realization of the human right to adequate food, as well as guarantee the institution of a specific claim and recourse mechanisms.
- The national food and nutrition security system seeks to formulate and implement policies and plans on food and nutrition security, motivate the integration of efforts between the government and civil society, as well as promote the examination, monitoring, and evaluation of Brazil’s food and nutrition security.

On the other hand, counties like Mali and Mexico refer to the right to food in legislation governing specific sectors. For instance, the right to food, food security and food sovereignty are included in Mali’s Agricultural Policy Act. The Act defines food sovereignty as ‘the right of a State to define and implement an independent food and agriculture policy guaranteeing sustainable agriculture based on local production and the accountability of producers who dispose of the appropriate resources to that effect, notably land, water, credit and markets.’ Relevant provisions incorporated into sector-specific legislation can play an important role in compelling a state to realize the right to food.

In several countries throughout the third world, framework laws have facilitated the justiciability of the right to food. For instance, the right to food has been successfully litigated in countries which have adopted the laws on the subject including India and Brazil. Many of the cases involving the right to food covered issues concerning violations of the right to be free from hunger, the means to produce or procure food, and the protection of vulnerable, marginalized or disadvantaged groups.

A framework law on the right to food is essential when enforcing the right to adequate nutrition and to ensure freedom from hunger.
• Defines the content of the right to food and the obligations of state authorities
• Allocates responsibilities across different branches of government
• Establishes a right to a remedy, clarifies the role of human rights institutions, and provides the basis for a subsidiary legislation
• Ensures government accountability by providing for better monitoring, access to courts and administrative recourse mechanisms
• Sets precise time-bound targets (benchmarks) to be achieved, and encourages permanent evaluation
• Improves the legitimacy of policies where the laws are adopted following an adequate participatory process

Adopting a framework law on the right to food in Ethiopia would localise the State obligations stemming from international human rights treaties related to the right to food (e.g. duties to respect, protect and fulfil), which the federal government and regional states must implement. In addition, it would stipulate the guiding human rights principles (such as participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law) that must be considered in the design and implementation of food security and nutrition policies. Therefore, the framework law would empower the poor and vulnerable groups to claim their right to food, encourage active public participation, promote the government’s accountability and transparency, and increase the legitimacy of its policies. It would also help to eliminate and prevent the discrimination of marginalised groups when distributing food. It would also help address the vulnerability, whilst also having an enormous potential to link policies to outcomes.

6. Conclusion

This Article discussed a human rights approach to food security with specific reference to Ethiopia. In a human rights-based approach, food security policies and programmes are formulated and implemented to ensure the progressive realisation of the right to food. This approach seeks to empower rights holders to claim their rights, and duty-bearers to meet their obligations. The State Parties to the ICESCR must adopt appropriate legislative and other steps in order to operationalise the right to food at a domestic level. To this end, they must constitutionalise a justiciable right to food, enact a framework law on the right to food or food security, and implement food security and nutrition policies that would facilitate the progressive realisation of the right to food in their jurisdictions. Moreover, the States must establish and empower institutions including courts and national human rights organisations that should be responsible for implementing laws and policies relating to food security. Lessons can be drawn from experiences of countries such as Brazil and India, which have adopted concrete legislative and judicial measures to enforce the right to food.

Over the last three decades, Ethiopia has designed some policies and strategies in order to boost food production and achieve food security. In particular, the Productive Safety Net Programme
has helped to improve the food security of smallholder farmers and the most vulnerable households. However, food and agriculture policies have not eliminated food insecurity. This is due to climate change (droughts) and the lack of governmental accountability, which fails to secure freedom from hunger. In addition, the country’s huge reliance on policy tools to achieve food security could not create a mechanism for the legal empowerment of the poor, as policies do not normally create rights (claims) and the corresponding obligations of the government.

Although Ethiopia ratified the ICESCR in 1993, the FDRE Constitution does not overtly recognise the right to food as a justiciable human right. Neither has parliament adopted a right to food framework. The lack of adequate legal framework discourages victims of violations of the right from seeking a judicial remedy. This is why no case involving a violation of the right to food has ever been litigated in the country. Furthermore, the country rarely respects and mainstreams human rights principles such as public participation, the rule of law, transparency, accountability and non-discrimination in the process of formulating and implementing the national food security policies.

Implementing a human rights-based approach to food security in Ethiopia could play a crucial role in achieving the zero-hunger goal of SDG by 2030. It would also facilitate public participation, and strengthen the government’s accountability and transparency in the decision-making process. By creating a legal framework for obligations to respect, protect and fulfil the right to food at the national level, a right to food framework law would empower the poor and vulnerable groups to claim their rights in the courts of law. Likewise, it would link the purpose, process and outcome of food security policies. Therefore, Ethiopia should enact a right to food framework law, and establish an institution that would be responsible for formulating and implementing food security policies in the right to food perspective. Furthermore, the country should empower the courts to adjudicate cases involving economic, social and cultural rights in general, and the right to food in particular.
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Notes on contributor

Notes

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23 "Protocol to the African Charter."
24 “General Comment No. 12.”
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28 “General Comment No. 3,” para 3-4.
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30 “General Comment No. 3,” para 10; UN, "General Comment No. 12," para 17.
31 International Covenant on Economic, Social and Cultural Rights, Art 2.2.
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37 Guha-Khasnobis, Acharya, and Davis, Food Insecurity, Vulnerability and Human Rights Failure.
38 Ibid.
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45 Kumar, "Ethiopian Famines," 177.
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49 von Braun and Olofinbiyi, "Famine and Food Insecurity in Ethiopia," 11.
50 Kumar, "Ethiopian Famines"; Graham, Rashid, and Malek, "Disaster Response and Emergency Risk Management."
51 Sen, Poverty and Famines, 90.
52 Ibid, 93-94.
53 The current situation of food insecurity in Ethiopia is associated with several factors including “population pressure, drought, shortage of farmland, soil erosion, lack of oxen, deterioration of food production capacity, outbreak of plant and animal disease, poor soil fertility, frost attack, chronic shortage of cash income, poor farming technologies, weak extension services, high labor wastage and poor social and infrastructural facility and pre and post-harvest loss.” See Birara et al "Assessment of Food Security Situation in Ethiopia" 62.
54 Kumar, "Ethiopian Famines."
55 Ibid; Graham, Rashid, and Malek, "Disaster Response and Emergency Risk Management."
56 Kumar, "Ethiopian Famines."
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60 Ramanujam, Caivano, and Abebe, "From Justiciability to Justice”; Ziegler et al., The Fight for the Right to Food; Ziegler, “Report of the Special Rapporteur.”
61 “General Comment No. 12,” para 8.
63 FDRE Constitution, Arts 15, 37, 40, 42, 43 and 44.
64 Ibid, Art 41(1).
65 Ibid, Art 41(2-8).
66 Universal Declaration of Human Rights, Art 25; International Covenant on Economic, Social and Cultural
Rights, Art 11.
67 “General Comment No. 12,” para 6.
68 Civil Procedure Code of Ethiopia (1965), Article 33(2) enshrines that ‘No person may be a plaintiff unless
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ARTICLE III

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Linking Land Rights and the Right to Adequate Food in Ethiopia: Normative and Implementation Gaps

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Abstract:
The enjoyment of the human right to adequate food depends on access to and control over land and other natural resources and tenure security. However, smallholders and indigenous peoples in many developing countries face forced evictions or displacements from their lands with impunity. Ethiopia often displaces smallholders from their lands without adequate due process of law for stated objectives of promoting large-scale agricultural investments, urbanization and industrial developments. This article explores the link between land rights and the right to adequate food, and appraises normative and implementation gaps in Ethiopia’s laws regarding land rights and analyses their impact on the enjoyment of the right to adequate food. It finds that, instead of protecting individual and collective land rights of smallholders and indigenous peoples, Ethiopia’s laws and practices facilitate dispossessions without adequate compensation and relocation options. Expropriation without just compensation has a huge negative impact on the livelihoods and food security of displaced land users and has resulted in a political crisis in the State of Oromia. I argue that Ethiopia should reform land laws in light of its legal obligations under the international human rights law to respect, protect and fulfil the right to adequate food and ensure freedom from hunger.

Keywords: Right to Food; Right to Land; Land Grabbing; Forced Evictions; #OromoProtests; Ethiopia

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When you take someone’s land, you take away the means to an entire family’s livelihood, wellbeing and future.  

1. Introduction

The linkages between the smallholders’ land rights and the right to adequate food in Ethiopia, where most of the population’s livelihood is based on subsistence agriculture, cannot be overstated. Access to land and tenure security are essential for food production and source of employment for more than 83 percent of the population. Thus, land is crucial to economic rights, but also key to realising social and cultural rights as agriculture is closely linked to peoples’ identities. Moreover, it has profound implications for the protection of civil rights including the right to life, the right to property and the right to human dignity. Land is also decisive for the enjoyment of collective rights of the Ethiopian Nations, Nationalities and Peoples including the right to self-determination and the right to development.

However, smallholders and ‘indigenous peoples’ in Ethiopia do not have adequate legislative protection as land and other natural resources are currently owned by the state. Although the Federal Democratic Republic of Ethiopia (FDRE) Constitution recognises the right of peasants and pastoralists to obtain land free of charge and freedom against eviction from their possessions, the existing land laws legalise and facilitate evictions from lands without adequate due process of law and just compensation. Critics also argue that state ownership of land in effect gives the Government too much power to control the smallholders. The FDRE Constitution excludes the right of ethnic groups to economic self-determination and exclusively

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4 Ibid, art 40(3).
5 Ibid, art 40(4-5).
empowers the federal government to enact laws on the utilisation of land and obliges the regional states to administer land and other natural resources in accordance with federal laws.\textsuperscript{7}

In addition to normative gaps, there have also been several cases of forced evictions of smallholders from their ancestral lands without adequate alternative means of livelihood. Due to increasing demand for land for large-scale agricultural investments, urbanisation, construction of industry zones and public infrastructures, the government expropriates smallholders and indigenous peoples in the context where the laws are insufficient to protect their land rights.\textsuperscript{8} ‘Land grabbing’\textsuperscript{9} has created a situation where some smallholders are being exposed to hunger because of loss of land, is their only means of livelihood.\textsuperscript{10} This reality clearly means that hunger and malnutrition cannot be explained only in terms of resource constraints or food availability decline due to natural disasters (such as drought). In this context, the food security of some individuals (at household or community levels) deteriorates because of land expropriation and forced evictions, which can be construed as a violation of the human right to adequate food.

Studies show that Ethiopia’s land laws facilitate dispossession of smallholders without adequate compensation and resettlement options.\textsuperscript{11} The existence of such laws apparently contravenes Ethiopia’s obligations to adopt appropriate legislative measures toward the progressive realisation of social and economic rights including the right to adequate food. Nevertheless, little research has been conducted regarding the impacts of the existing land laws on the smallholders’ and indigenous peoples’ right to adequate food in Ethiopia. This article explores the normative and implementation gaps in the Ethiopian land regime and evaluates them in light of state obligations under international human rights law to progressively realise the right to adequate food and to ensure freedom from hunger. The article begins with an exploration of the normative

\begin{itemize}
\item \textsuperscript{7} FDRE Constitution (n 3) arts 39, 51(5) and 52(2) (d); Fasil A. Zewdie, ‘Right to Self-Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession’ (2013) 1(1) Law, Social Justice & Global Development Journal 1, 23.
\item \textsuperscript{8} Abdo (n 2).
\item \textsuperscript{9} ‘Land grabbing’ is defined as ‘[a] global enclosure movement in which large areas of arable land change hands through deals often negotiated between host Governments and foreign investors with little or no participation from the local communities who depend on access to those lands for their livelihoods’, See Oliver De Schutter, ‘The Green Rush: The Global Race for Farmland and the Rights of Land Users’ (2011) 52 Harvard International Law Journal 503, 504.
\item \textsuperscript{10} Grant and Das (n 1).
\end{itemize}
framework of the right to food and its connection to the right to land. Then, it assesses normative gaps in Ethiopia’s Constitution and other laws pertinent to the right to land and the impact of land expropriation when there is no consideration of protecting people’s livelihood or providing alternative sources of livelihood. Moreover, this article shows the practical challenges of enforcing the law, particularly, why land grabbing exacerbates food insecurity in some parts of the country and how land grabbing caused the recent Oromo protests (2014-2016). The last section suggests some legal reform possibilities, from a right-to-adequate-food perspective, in order to address the growing problem of land grabbing in Ethiopia.

2. An Overview of the Right to Adequate Food

2.1 The Legal Foundation

The right to adequate food and freedom from hunger are recognised under several binding and nonbinding international human rights instruments including the Universal Declaration of Human Rights (UDHR)\textsuperscript{12}, International Covenant on Economic, Social and Cultural Rights (ICESCR)\textsuperscript{13}, Convention on the Right of the Child (CRC)\textsuperscript{14}, Convention on the Rights of Persons with Disabilities (CRPD)\textsuperscript{15}, and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).\textsuperscript{16} The UDHR stipulates that ‘[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food’.\textsuperscript{17} Moreover, the ICESCR, to which Ethiopia is a legally bound treaty member, recognises that the right to food encompasses the right to adequate food (as an element of the right to an adequate standard of living)\textsuperscript{18} and the fundamental right of everyone to be free from hunger.\textsuperscript{19} Similarly, the right to adequate food is recognised as an implied right under the African human rights system.\textsuperscript{20} To this end, the African Human and Peoples’ Rights Commission states that ‘[t]he right to food is inseparably linked to the dignity of human beings and is therefore essential for

\begin{itemize}
\item[\textsuperscript{12}] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 25.
\item[\textsuperscript{15}] Convention on the Rights of Persons with Disabilities (2006) UNTS 2515 (CRPD) art 28(1).
\item[\textsuperscript{17}] UDHR, (n 12) art. 25.
\item[\textsuperscript{18}] ICESCR (n 13) art. 11(1).
\item[\textsuperscript{19}] Ibid art 11(2).
\end{itemize}
the enjoyment and fulfilment of such other rights as health, education, work and political participation.”

2.2 Normative Contents

Following the 1996 World Food Summit, the Committee on Economic, Social and Cultural Rights (hereafter Committee) adopted the General Comment No. 12 (hereafter GC 12), an authoritative interpretation of the right to food. The GC 12 stipulates that ‘[t]he right to adequate food is realised when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement’.

The Committee explained the core content of the right to adequate food as implying ‘[t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture’ and ‘[t]he accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights’. The core elements of the right to adequate food include availability (food must be available from natural resources or in markets for purchase), adequacy (food must satisfy dietary needs, free from adverse substance and culturally acceptable), accessibility (physical and economic access to food must be guaranteed), and sustainability (food must be accessible for both present and future generations).

The Committee emphasised that the right to adequate food is vital ‘for the enjoyment of all rights’ and that ‘it is indelibly linked to the inherent dignity of the human person’. Thus, a violation of the right to food would necessarily lead to the violation of other rights, including - but not limited to - the right to life and the right to health, and directly affect human dignity.

23 Ibid.
24 Ibid; emphasis added.
26 GC12, (n 22) para 1, 4.
2.3 State Obligations under ICESCR

State parties to the ICESCR and other relevant human rights instruments must adopt all appropriate measures to ensure the progressive realisation of the right to adequate food depending on maximum resources available to them including any resource available from the international community in the form of development cooperation and aid.\textsuperscript{27} Article 2(1) of the ICESCR emphasises the adoption of appropriate legislative measures which may involve enacting new laws that facilitate the fulfillment of the right to food or amending and/or repealing existing laws that may retrogressively impact on the enjoyment of the right to food. The ICESCR also enshrines the obligation of non-discrimination, which state parties must observe immediately.\textsuperscript{28}

The right to food is often misconceived as entailing only the obligation to provide food for the needy population of a country. However, like all other human rights, the right to food involves three levels of state obligations: respect, protect and fulfil.\textsuperscript{29} The obligation to respect the right to food entails that states must refrain from limiting or denying access to food or 'interfering arbitrarily with existing arrangements'.\textsuperscript{30} For instance, the ‘right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives.'\textsuperscript{31} The duty to protect refers to the state obligation to control private actors such as individuals, groups and corporations to avoid their actions leading to violations of the right to food (e.g. food traders who hoard food and speculate on food prices).\textsuperscript{32} A state must also take appropriate legislative and administrative measures, for example food safety measures, to control and limit the activities of non-state actors.\textsuperscript{33} The obligation to fulfill the right to food refers to the state’s commitment to take positive measures to facilitate, promote and provide the right to adequate food. In this regard, the state must create an enabling

\textsuperscript{27} ICESCR (n 13) art 2(1).
\textsuperscript{28} Ibid art 2(2).
\textsuperscript{32} Ibid.
\textsuperscript{33} Mechlem (n 30).
environment by putting in place laws, policies, strategies and programs that gradually facilitate the implementation of the right to food and allow more people to have access to adequate food. Furthermore, states are required to provide food for individuals who are unable to feed themselves due to reasons beyond their control by introducing measures such as food safety nets and providing food aid directly to vulnerable groups.

Freedom from hunger is a fundamental right of everyone and requires more immediate and urgent steps for its realisation. The ESCR Committee emphasised that ‘States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters’. States are obliged to ensure freedom from hunger immediately regardless of their economic status. A state violates the right to food if it ‘fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger’. Moreover, the duty to respect the right to food and the duty not to discriminate must be fulfilled immediately as they are ‘not constrained by limited resources’.

3. The Link between Secure Land Rights and the Right to Adequate Food

In developing countries, land is crucial for food production and to preserve the livelihoods of present and future generations. The Economic Commission for Africa finds that ‘given that land plays an important role in the livelihoods of most Africans, food security and poverty reduction cannot be achieved unless issues of access to land, security of tenure and the capacity to use land productively and in a sustainable manner are addressed’. The World Bank also notes that ‘security of property rights is central to preserving livelihoods, maintaining social stability, and increasing incentives for investment and for sustainable, productive land use’. Moreover, the UN stressed that the enjoyment of the right to food is closely linked to access to land and tenure security.

34 Ibid.
35 Ibid.
36 GC 12 (n 22) para 6.
37 Ibid para 17.
38 Mechlem (n 30) 640.
41 UNGA ‘The right to food, Note by the Secretary-General’ UN Doc. A/65/281 (2010).
Most food-insecure people in the world share three features: ‘they live in rural areas, rely on agricultural labour to survive, and do not own the land that they cultivate.’ Smallholders are evicted from their lands without adequate compensation or resettlement options while their land is supplied to private entities, notably multinational corporations that poses a threat to the food security of most populations in Africa. Cotula and others note that the phenomenon of land grabbing that ‘has recently taken hold in sub-Saharan Africa, and has been accelerating since the World Food Price Crisis of 2008, […] constitutes an alarming threat to overall food security for the population’ in the region. In Ethiopia, land grabbing has caused relocation of indigenous peoples from their lands without suitable alternative means of livelihood and adversely affected their food security in the Gambella Regional State. Furthermore, the case study of an agricultural investment project in Bako Tibe district in the State of Oromia, which has leased out 12000 hectares of land for 45 years, show that large-scale land transfers ‘reduces local communities’ food security and results in loss of income among local people.’ Expropriation without adequate compensation in the State of Oromia has caused displacements of smallholders from their lands and exacerbated their food insecurity.

4. The Right to Land under International Law

De Schutter finds that ‘the right to land may be seen as a self-standing right […] or may be said to be instrumental to the right to food.’ As described below, land rights of smallholders and indigenous peoples are protected under several binding and nonbinding international human rights instruments, particularly with respect to their linkages to the right to adequate food.
4.1 Land Rights of Smallholders

No provision in international human rights law expressly recognises smallholders’ right to land as a human right. Yet, it is implied in other human rights such as the right to property, the right to adequate food and the right to adequate housing. For instance, the UDHR and the African Charter on Human and Peoples’ Rights recognise the right to property and protection from arbitrary evictions. An eviction must not be permitted unless in exceptional cases where it is justified for legitimate public purposes upon satisfying the requirement of due process and accompanied by just compensation. The ESCR Committee, in its General Comment No. 7 (the right to adequate housing), sets out standards that must be met before any forced evictions are allowed. Similarly, the Basic Principles and Guidelines on Development-Based Evictions and Displacement stipulate useful tools for states to avoid forced eviction (or adopt it as a last resort measure) and provide effective remedies for victims of human rights violations.

The importance of secure land rights for the enjoyment of the right to adequate food has been emphasised in two voluntary guidelines adopted by the Food and Agriculture Organization of the United Nations (FAO) in 2005 and 2012. The FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security recognise that the right to food protects the right of smallholders and other rural communities to access productive resources or means of food production, including land. The

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49 UDHR (n 12) art 7(2); African Charter (n 20) art. 14.

50 African Commission’s Principles and Guidelines, para 79 stipulates that States are required to ‘[E]nsure that evictions only occur in exceptional circumstances. Any eviction must be (a) authorised by law; (b) carried out in accordance with international human rights law; (c) undertaken solely in the public interest; (d) reasonable and proportionate; (e) regulated so as to ensure full and fair compensation and rehabilitation’.


53 The FAO voluntary guidelines are not binding on the States per se but they compile best practices that the States may voluntarily adopt and use as benchmarks to reform their domestic laws and policies.


55 Ibid Guideline 8.
Voluntary Guidelines also reiterate the states’ obligations to respect, protect and fulfil the right to food in relation to land and other productive resources.\textsuperscript{56}

The FAO also adopted the Voluntary Guidelines on Responsible Governance of Tenure in 2012.\textsuperscript{57} These guidelines document best practices on expropriation and compensation under Section 16. The guidelines call upon states to not expropriate land unless it is required for a clearly defined public purpose to allow for judicial review; underline the need for limiting the amount of land that governments can expropriate; emphasise the significance of establishing transparent and participatory processes; specify the need to pay just compensation for all affected populations; and urge states to avoid or minimise resort to evictions.

Furthermore, the UN Human Rights Council is negotiating a proposal to include the right to land in the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.\textsuperscript{58}

\textbf{4.2 Land Rights of Indigenous Peoples}

International law also recognises land rights of indigenous peoples who are ‘increasingly victims of the exploitation of natural resources on their lands, which are often regarded as belonging to the State’.\textsuperscript{59} For instance, the International Labour Organization (ILO) Convention No. 169 recognises land rights of indigenous and tribal peoples in independent states.\textsuperscript{60} It stipulates that ‘the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised’ and that ‘measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities’.\textsuperscript{61}

Similarly, Article 8 (2) (b) of the UN Declaration on the Rights of Indigenous Peoples in 2007 obliges states to prohibit any activity which has the effect of displacing ‘indigenous peoples of

\textsuperscript{56} Ibid.
\textsuperscript{61} Ibid art. 14 (1).
their lands, territories or resources’. 62 Furthermore, article 10 of the Declaration imposes the ‘requirements of free, prior and informed consent, agreement on just and fair compensation, and where possible the option for return for relocations’ and restricts ‘any forcible eviction of indigenous peoples from lands or territories’.

More importantly, the right of all peoples to freely dispose of their natural wealth and resources and the right of every people not to be deprived of their means of livelihood are recognised as part of the right of self-determination in common articles 1 of the ICESCR and the ICCPR. The right of economic self-determination ‘entails the protection of indigenous peoples from certain forms of dispossession from their territories or from resources on which they depend’. 63 In addition, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) recognises the right of indigenous communities to their lands. 64 Moreover, the African Commission on Human and Peoples Rights has recognised the right of indigenous peoples ‘to the official recognition and registration of their territories’ and that ‘the right of indigenous communities to their lands includes the right to the natural resources contained therein’. 65

Overall, both the UN and the African human rights systems, to which Ethiopia is a state party, recognise the human right to land, particularly regarding its linkages to the right to adequate food and other socio-economic rights. Thus, any land legal reform in Ethiopia should conform to the international human rights standards discussed above. The next section overviews the status of international human rights treaties under Ethiopia’s legal system.

5. The Status of Human Rights Treaties under the Ethiopian Law

Ethiopia is one of the founding members of the UN and the African Union. It was among the 48 countries that adopted the UDHR in 1948. Moreover, it has assumed legal obligations to respect, protect and fulfil the right to adequate food and to ensure freedom from hunger by ratifying the ICESCR without reservation since 1993. It also ratified the CERD in 1976 and adopted other human rights covenants protecting the specific groups’ right to adequate food including the CEDAW in 1981, CRC in 1991, and CRPD in 2010. Also, Ethiopia has been a state party to the African Charter on Human and Peoples’ Rights since 1998.

63 UN Report on Right to Food (n 59) 8.
65 SERAC case (n 21) paras. 42, 54 and 55.
The FDRE Constitution incorporates international treaties into the domestic legal system by adoption and interpretation. Pursuant to article 9(4) of the Constitution ‘all international agreements ratified by Ethiopia are an integral part of the law of the land’. More importantly, the human rights provisions contained in the Constitution must be interpreted ‘in a manner conforming to the principles of the Universal Declaration of Human Rights, international covenants on human rights and international instruments adopted by Ethiopia’. Therefore, in theory, Ethiopia is obliged to respect, protect and fulfill the right to adequate food and ensure freedom from hunger. However, the application of the ratified international human rights treaties in the domestic courts is very limited. So far, no single case involving the right to food has been presented before the courts in Ethiopia and the courts rarely refer to the international human rights conventions in the adjudication of cases involving human rights. Factors such as lack of legal awareness, ambiguity on justiciability of economic, social and cultural rights, restrictive requirement of standing, uncertainties regarding the status of the human rights treaties vis-à-vis the FDRE Constitution and confusion about how ordinary courts may interpret the Constitution to hinder the domestic application of international human rights treaties in Ethiopia.

Legal scholars disagree on the hierarchy of the human rights treaties under the Ethiopian legal system and they seem to hold three different positions. The first position sets the Constitution ‘above all laws (including ratified human rights treaties) and treaties on equal footing with proclamations’ (laws issued by the parliament). This position argues that the supremacy of clause of the FDRE Constitution applies to both domestic laws and all ratified international treaties.

The second position maintains that ‘treaties share at least the same status as the Constitution.’ According to this camp, the first position is the outcome of an erroneous legal approach that

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66 Ibid art. 13(2).
67 Vadala (n 6) 1075; Rakeb Messele, *Enforcement of Human Rights in Ethiopia*, (Research subcontracted by Action Professionals’ Association for the People (APAP) 2002).
70 FDRE Constitution (n 3) art 9(1).
‘allows domestic law to determine the position of treaties at the national level’.\textsuperscript{72} In this regard, Bulto argues that the ratification of a treaty is ‘unmistakable and unequivocal indicator of […] intent to abide by ratified international treaties in Ethiopia’\textsuperscript{73} and that:

The principle of good faith and the resultant states’ duty of ensuring compatibility between its national laws and international obligations, the substantive independence of international law, and Ethiopia’s duty to provide domestic remedies for violations of treaty-based rights warrant the conclusion that treaties are above any proclamation.\textsuperscript{74}

The third position tries to reconcile the above two views and places the ratified human rights treaties below the FDRE Constitution, but above all other domestic laws of the country. The Federal High Court of Ethiopia upheld this view while resolving the \textit{Federal Police Department v. Naod et al}\textsuperscript{75}, and \textit{Dr. Negaso v. House of Federation and House of Peoples Representatives}.\textsuperscript{76} In both cases, the Federal High Court applied provisions of the ICCPR with respect to the right to bail and the right to be a member of a political party, respectively. In so doing, the Court argued that the ratified human rights conventions prevail over proclamations.

I argue in favor of the second position and that human rights treaty shall prevail over the FDRE Constitution in cases of contradictions between the two. The textual interpretation of article 13(2) of the Constitution demonstrates that the ratified human rights treaties are afforded a special status despite its supremacy clause. Interpreting the human rights provisions of the Constitution in conformity with the international human rights instruments in effect places the human rights treaties above the Constitution in cases where the constitutional provisions are incomplete or vague. Thus, article 13(2) of the Constitution should be considered as an exception to the supremacy clause. Nevertheless, the exceptional status accorded to the human rights treaties should be narrowly interpreted.


The Ethiopian Constitution of 1995 recognises several human rights including the right to life, property, labor and an adequate standard of living,\textsuperscript{77} and group rights such as the right of self-

\textsuperscript{72} Ibid 160.
\textsuperscript{73} Ibid 159.
\textsuperscript{74} Ibid 159-160.
\textsuperscript{75} \textit{Federal Police Department v. Naod and others} Federal High Court of Ethiopia File No. 17705 (2003).
\textsuperscript{76} \textit{Dr. Negaso v. House of Federation and House of Peoples Representatives} Federal High Court of Ethiopia File No. 41183 (2005).
\textsuperscript{77} FDRE Constitution (n 3) arts 15, 40, 41 and 42.
determination and the right to sustainable development among many others.\textsuperscript{78} It also enshrines land rights of the smallholders. It stipulates that peasants and pastoralists have the right to obtain land free of charge and the right to protection against evictions from their possessions.\textsuperscript{79} Moreover, the ‘Ethiopian farmers and pastoralists have the right to receive a fair price 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.’\textsuperscript{80}

However, there are critical normative limitations regarding the land rights of ethnic groups and smallholders.\textsuperscript{81} The FDRE Constitution is silent on the smallholders’ right to just compensation when land is expropriated by the government. Subordinate land laws do not protect/enforce the constitutional guarantee against eviction and pay little heed to peasants’ right to land.

\textbf{6.1 Exclusion of Peoples’ Right to Economic Self-determination under the FDRE Constitution}

The normative contents of the right to self-determination are defined under the common articles 1 of ICCPR and ICESCR, which stipulate that ‘all peoples have the right of self-determination’ and the right to ‘freely determine their political status and freely pursue their economic, social and cultural development’. By the right to self-determination, ‘all peoples may, for their own ends, freely dispose of their natural wealth and resources’ and that ‘in no case may a people be deprived of its own means of subsistence’.\textsuperscript{82} Thus, the right of self-determination comprises the economic aspect in addition to its political and cultural elements. The right of economic self-determination, in turn, consists of two important components: the collective right of peoples to freely dispose of their natural wealth and resources, and the right of every people not to be deprived of its means of subsistence.

The FDRE Constitution grants the right of self-determination to every nation, nationality and people in Ethiopia. It states that the named groups have political rights (to establish and participate in regional and federal governments) and cultural rights (to speak, write and develop their language and preserve their history).\textsuperscript{83} However, article 39 of the FDRE Constitution does not conform to the normative contents of the right of self-determination of the UN Covenants. The Constitution inexplicably excludes the economic aspect of the right to self-determination.

\textsuperscript{78} Ibid arts 39 and 44.
\textsuperscript{79} Ibid art 40(4) and 40(5).
\textsuperscript{80} Ibid art 41(8).
\textsuperscript{81} Abdo (n 2); Zewdie (n 7).
\textsuperscript{82} ICESCR (n 13), art. 1.
\textsuperscript{83} FDRE Constitution (n 3) art 39 (1-3).
The ILO Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples also have not yet been incorporated into the domestic laws of Ethiopia.

The exclusion of the economic aspect of the right to self-determination under article 39 of the FDRE Constitution undermines the right of ethnic groups’ to the ownership of land and natural resources, ‘control and regulatory authority over land and natural resources’, ‘the right to freely pursue economic and social development’, ‘ability to freely dispose of one’s land and resources’ and ‘the right not to be deprived of means of subsistence’. It can also lead to a violation of the right to adequate food as local peoples do not have a constitutional guarantee not to be deprived of their own means of livelihoods. Besides, it may pave the way for the government to displace smallholders from their lands and other natural resources under the guise of promoting large-scale agricultural investments and other development projects. For instance, local peoples in the Gambella Regional State have been forcefully displaced from their lands because of land grabbing. Similarly, expropriations without just compensation in the State of Oromia have worsened the food insecurity of displaced smallholder farmers.

In theory, the government cannot rely on the incomplete version of the right of self-determination under the FDRE Constitution to deny the Ethiopian peoples’ right to freely dispose of their lands and other natural resources. It does not have the authority to deprive peoples’ means of subsistence either. Whether the exclusion of the right of economic self-determination was deliberate or unintended omission, article 39 of the FDRE Constitution must be interpreted in light of articles 1 of the ICCPR and the ICESCR.

In practice, however, the mechanism of constitutional interpretation under the FDRE Constitution is one of the most controversial. First, the regular courts lack the power to interpret the Constitution as such power is entrusted to the House of Federation. There are concerns that the House of Federation lacks impartiality as members of both the House of Peoples’ Representatives (lawmaker) and that of the House of Federation (interpreter of the Constitution) currently represent a single political party (Ethiopian Peoples’ Revolutionary Democratic Front - EPRDF). Second, there is a lack of consensus on the hierarchy of ratified human rights treaties

84 Zewdie (n 7) 14-22.
86 Kumsa (n 47).
87 FDRE Constitution (n 3) art 13(2).
88 Ibid art 83.
relative to the FDRE Constitution. As discussed in section 5 of this article, the trend of ranking the human rights treaties below the FDRE Constitution may have a restrictive effect on their domestic judicial enforcement.

6.2 Subnational States are Powerless to Enact Laws on Utilisation of Land in their Regions

Article 51 (5) of the FDRE Constitution stipulates that the power to ‘enact laws for the utilization and conservation of land and other natural resources, historical sites and objects’ is vested in the federal government. On the other hand, the subnational states are obliged to ‘administer land and other natural resources in accordance with Federal laws’. This means that the subnational states cannot pass laws that are substantially inconsistent with the federal land laws. Thus, the states may not enact land laws that would accommodate the specific circumstances in their respective regions and thereby improve the living conditions of local peoples.

As Ethiopia is currently an ethnic-based The Federal Republic, the subnational States' legislative councils ought to have the power to enact laws concerning the utilisation and conservation of land and other natural resources in their regions in order to fully implement the peoples’ right to economic self-determination at the state's level. The subnational States' power to administer land in accordance with federal laws does not exist in practice because the federal government takes over this power.

6.3 Ambiguities Concerning the State Ownership of Land

The land in Ethiopia is owned jointly by the State and the Ethiopian peoples. The FDRE Constitution stipulates that ‘[t]he right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and the peoples of Ethiopia' and that '[l]and is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.'

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89 Bulto (n 71) 159-160.
90 Ibid.
91 FDRE Constitution (n 3) art 52 (2) (d).
92 Zewdie (n 7) 1, 16.
93 Ethiopia's federalism is predominantly based on the ethnic identity of peoples and that 9 regional States are demarcated based on the “settlement patterns, language, identity and consent of the peoples concerned”. See FDRE Constitution (n 3) arts. 46, 47; John M. Cohen, ‘Ethnic Federalism in Ethiopia’ 1995 2(2) North East African Studies 157.
94 Ibid at 18.
95 FDRE Constitution (n 3) art. 40(1).
This provision lacks clarity and has attracted certain controversies. First, as the Constitution recognises the land as a *common* property of Nations, Nationalities and Peoples, it is not clear as to whether the subnational states[^96] are entitled to the ownership of land and other natural resources in their respective regions. Second, this legal uncertainty is complicated by the Amharic version of Article 40(3) of the Constitution which uses the term *people* instead of *peoples*. This seems to reinforce the 1975 law that stipulated ‘all rural lands shall be the collective property of the Ethiopian people’.[^97] As the Amharic version of the Constitution prevails over the English version in cases of contradiction between the two versions,[^98] the owner of land in Ethiopia appears to be the federal state or all peoples of Ethiopia irrespective of their nationality or ethnic identities or geographic locations. Zewdie argues that:

> [I]t should have been the regional states, if states have to be the owners at all, that are established and sustained by the nations, nationalities and peoples that should have been the owners of land and other natural resources and not the federal state; unless states cede some of their land and resources to it.[^99]

Adding to the confusion, article 5(3) of the Rural Land Administration and Use Proclamation No. 456/2005 stipulates that “… Government is the owner of rural land.” This provision directly contravenes the FDRE Constitution. The substitution of the term ‘State’ with ‘Government’ under the subordinate law violates article 40(3) of the FDRE Constitution.

The state ownership of land has been a controversial issue since the adoption of the FDRE Constitution in 1995. Proponents of state ownership of land, particularly the EPRDF argue that:

> [P]rivate ownership of land will lead to concentration of land in the hands of few people who have the ability to buy, resulting in the eviction of poor peasants and thus aggravating landlessness and potentially leading to massive rural to urban migration of people left without any alternative means of livelihood.[^100]

Opponents of state ownership of land dismiss this argument as unjustifiable paternalism and as the ruling party’s pretext to use land to politically control the smallholders. For instance, Vadala

[^96]: Members of the Federation established by peoples as per Article 47 of the FDRE Constitution.


[^98]: FDRE Constitution (n 3) art. 106.

[^99]: Zewdie (n 7) 15.

argues that article 40(3) of the FDRE Constitution ‘gives a lot of power to the Government, and hence the ruling party [...] to impose their will by controlling the peasantry politically.’

Ambaye finds that the state and peoples’ joint ownership of land has not been realised ‘in terms of land accessibility, enjoyability, and payment of fair compensation in the event of expropriation’. Ziegler also notes that the state ownership of land in Ethiopia is criticised for ‘reducing peoples’ willingness to invest in land, preventing the consolidation of landholdings, giving the Government too much control over the peasant population, and preventing migration to the cities.’

Nega and others find that ‘farmers feel largely insecure on their current holdings.’ Moreover, Zewdie concludes that ‘the Constitution fails to incorporate clear and adequate guarantees on the ownership and control of land by nations, nationalities and peoples’; that ‘the laws that are intended to implement land tenure are based on the assumption that the Government is the sole owner of land’; and that ‘the laws, including the Constitution, are serving as instruments to perpetuate and legalise the dispossession rather than redress it.’

In general, the alleged tenure security and social equity rationales for adopting the state ownership of land in Ethiopia have not been realised in practice. The government is criticised for using the laws to displace smallholders from their lands under the guise of promoting ‘public purposes' without adequate alternative means of livelihoods. This trend, in turn, worsens the food insecurity of the evicted smallholders. The implementation of the Land Certification Policy also fails to adequately protect land use rights of the smallholders, including those who have received certificates of rural land possession, because the government expropriates their land without just compensation and robust rehabilitation.

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101 Vadala (n 6) 1079.
103 Ziegler (n 6) paras 34 and 55.
104 Nega and others (n 100) 103.
105 Zewdie (n 7) 23.
106 Ethiopia implemented rural land registration programme in 2003 to ‘issue every rightful holder of farmland a certificate of use rights and to have his/her plots recorded in a registry kept at the local kebelle office’ to ensure tenure security and ‘establish an effective framework for land administration at the local level.’ Land registration was meant to ‘reduce land disputes and litigation, to bring about the empowerment of women, and to lead to increased investments in the land’. See Dessalegn Rahmato, ‘Land rights and tenure security: Rural land registration in Ethiopia’ in Janine M. Ubink and others (eds), Legalizing Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America (Leiden University Press, 2009) 159.
107 Dessalegn Rahmato, Land to Investors: Large-Scale Land Transfers in Ethiopia (Forum for Social Studies 2011); Kumsa (n 85); Ambaye (n 102).
6.4 Forced Evictions of Farmers without Due Process of Law

Forced evictions can lead to violation of socio-economic rights including the right to food, the right to housing and the right to property. Nevertheless, land expropriation laws in Ethiopia allow the government to use force to vacate land. After notifying landholders to vacate their lands within 90 days, the expropriating authorities (district or urban administrators) ‘may use police force to take over the land where a landholder who has been served with an expropriation order refuses to handover the land’.\(^{108}\) Pursuant to article 4 of Proclamation No. 455/2005, decisions to expropriate land and amount of compensation are made by the government authorities without prior consultation with the evicted landholders.

Ethiopia’s expropriation law contravenes section 16(2) of the Voluntary Guidelines on the Responsible Governance of Tenure of 2012 which urge States to ‘ensure that the planning and process of expropriation are transparent and participatory’ and that ‘anyone likely to be affected should be identified, and properly informed and consulted at all stages’. These guidelines also suggest that states should avoid or minimise forced eviction as it has adverse impacts on human rights and livelihoods.\(^{109}\) Forced evictions of smallholders without due process of law also violate article 43(2) the FDRE Constitution which upholds peoples' right to participation and consultation ‘with respect to policies and projects affecting their community.’ Moreover, the expropriation of smallholders without adequate alternative means of livelihood violates article 40(4-5) of the Constitution which protects peasants and pastoralists from dispossession.

6.5 Lack of Just Compensation

In terms of government land expropriation, the FDRE Constitution and other relevant laws exclude land use rights from the list of compensable rights. The Constitution stipulates that ‘without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property’.\(^{110}\) Land and other natural resources, which are supposed to be owned by the public are excluded from the domain of private property.

The subordinate land legislations and cases also confirm that expropriation of land use rights is not a compensable interest. According to Proclamation No. 455/2005, compensation shall be made good for the expropriation of ‘property situated on the land and for permanent


\(^{109}\) FAO (n 57) Sec 16(8).

\(^{110}\) FDRE Constitution (n 3) art 40(8); emphasis added.
improvements … made to such land’ and that ‘the amount of compensation for property situated on the expropriated land shall be determined based on replacement cost of the property’. Thus, the law recognises a right to compensation not for the loss of the land itself but private property situated on the land (such as crops, trees). It is not clear from the law as to whether displaced smallholders are entitled to compensation for housing or residences. Furthermore, the Cassation Bench of the Federal Supreme Court of Ethiopia (whose decisions constitute binding precedents as per Proclamation No. 454/2005) ruled in *Ethiopian Roads Authority v. Issa Mohammed* that there was no right to compensation for expropriation of land use rights as land and other natural resources are jointly owned by the state and the peoples.

Research confirms that there is no right to just compensation for the expropriation of land use rights in practice. Ambaye concludes, ‘land is excluded from the compensation package and has no value for the holder’ and that ‘the denial of compensation for the value of the land is categorically in contradiction with the very principle of joint ownership of land by the people and the state.’ The lack of just compensation and rehabilitation of evicted peoples due to expropriation adversely impacts their livelihoods. Abdo finds normative gaps including ‘broader definition of public purpose, lack of legally required public hearings and consultations’ and challenges pertaining to enforcement of the law such as ‘compensation scheme that is widely regarded as insufficient, limited judicial scrutiny of issues of expropriation and lack of institutional rehabilitation scheme to help those who have lost their livelihood to secure alternative means’ that affect rights of smallholders. Abdo emphasises the need for redefining land use rights as a human right and argues that ‘when property such as land is taken from smallholders, the Government is depriving them of a livelihood asset […] as land rights of smallholders are indispensable for the right to life’.

The expropriation without just compensation violates not only the international human rights standards but also the Ethiopian Constitution. For instance, the land laws in force are inconsistent with Article 44(2) of the FDRE Constitution, which states that ‘[a]ll persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes

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114 Ambaye (n 102).
115 Abdo (n 2) 338; Kumsa (n 47).
116 Abdo (n 2) 333.
117 Ibid.
have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.’

5.6 Urbanisation at the Expense of Smallholder Farmers

Ethiopia is rapidly becoming more urbanized, leading to an increase in demand for urban land. To cope with this development, Ethiopia has enacted legislations that empowered the government authorities to expropriate rural lands but did not set legal requirements for urban and rural development integration.118

Both rural and urban land laws in force do not take into account the interests of smallholders. While the smallholders are forced to leave their lands in accordance with the rural land laws, which do not sufficiently protect their tenure rights, the expropriated land is leased out in accordance with the Urban Land Lease Holding Proclamation No.721/2011 with higher lease prices. For example, the government expropriated land from the Oromo smallholders who used to live in the Special Zone of Oromia Surrounding Finfinne for only 0.90 ETB per square meter in 2011119, but it leased out the urban land in Addis Ababa for 305,000 ETB per square meter in 2014.120

The peri-urban smallholders who were dispossessed of their land without adequate compensation and alternative means of livelihoods were impoverished and exposed to hunger, and faced a myriad of economic, social and cultural problems.121 Most of the evicted were forced to work as maids and guards of rich individuals who had built residences and business centers on the land the government had expropriated from them. Their children dropped out of school to support their families as day laborers.122 There is a lack of public policy and development planning that considers both the urban and rural development, which poses a serious threat to the livelihoods and food security of the smallholders who live in peri-urban areas.

119 Ibid.
122 Ibid.
In sum, as Dias and Paul already noted in 1984, land law in Ethiopia is being used and abused to ‘maintain patterns of development which produce economic impoverishment, physical deprivation, and political impotence’. Ethiopia should reform the existing land laws in the light of its obligations to respect, protect and fulfill the right to adequate food. The relevant provisions of the FDRE Constitution should be interpreted in a manner conforming to the international human rights instruments adopted by the country. The subordinate land laws must respect and protect the constitutional right of smallholders not to be evicted from their possessions.

7. Practical Challenges

7.1 Land Grabbing and Food Insecurity

Since 2008, Ethiopia has leased out about 3.6 million hectares of land to domestic and international investors for food and agrofuel production. The government maintains that it promotes large-scale farming to increase food production, create job opportunities and enhance the country’s economic growth. However, studies find that the policy has had the effect of displacing small-scale farmers and indigenous peoples from their lands, harming the environment and exacerbating poverty and food insecurity.

Critics argue that large-scale land transfer has caused ‘land grabbing’ for two main reasons. First, it causes forced the relocation of local people from their lands without alternative means of livelihood. For example, farmers and pastoralists in the Gambella Regional State who used to produce their food along rivers were evicted and relocated to infertile lands ‘to clear land to investors’. The loss of access to irrigable lands and means of sustainable livelihood have worsened peoples’ food insecurity. As investors clear the forests for large-scale farming, they deprive local peoples of access to such resources as nuts, seeds, fruit and wildlife, which serve as a supplemental source of food during harvest failure. In addition, large-scale land transfers

124 Grant and Das (n 1); Rahmato (n 107).
125 Ibid.
126 Ibid.
127 Cotula and others (n 44) 37; Grant and Das (n 1) 289, 296
128 Grant and Das (n 1).
129 Ibid.
130 Ibid.
affect fishing, another important source of food during food scarcity, because of the reduction of water volume and limitation of access to sufficient water.\(^{131}\)

Second, large-scale agricultural investors are encouraged to cultivate crops for the export market instead of satisfying local food security needs. For example, Karuturi Global Ltd.\(^{132}\) and Saudi Star Agricultural Development plc were given millions of hectares of land to cultivate rice, palm oil, maize and sugar for the export market.\(^{133}\)

The promotion of large-scale agricultural investments in Ethiopia is not a bad policy per se. The problem is that the land is supplied for the international or local investors to produce crops for the export market while the country has been suffering from shortage of foods, mass hunger and malnutrition for years. Worst of all, the government does not reinvest the proceeds that it collects by leasing out the land to investors to improve the living conditions of local communities.\(^{134}\)

7.2 Land Grabbing and the Oromo Protests (2014 -2016)

In April 2014 and particularly since November 2015, students and smallholders throughout the State of Oromia have marched in mass protests against land grabs and the systematic, longstanding political and economic marginalisation of the Oromo people in Ethiopia.\(^{135}\) The Oromo protests started when the federal government introduced the ‘Addis Ababa Integrated Regional Development Plan’ (hereafter Master Plan\(^{136}\)) in April 2014 to expand the boundary of Addis Ababa, the capital, by incorporating several towns of the State of Oromia.\(^{137}\) From the

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131 ibid.
132 This contract is in danger of being cancelled by the government, because not enough land is being developed.
133 Grant and Das (n 1) 289.
134 Rahmato (n 120).
135 ‘More than one in three Ethiopians hails from the Oromo ethnic group. The Oromo have their own language and culture distinct from the Amharic language, which is employed as Ethiopia’s official dialect.’ Conor Gaffey, ‘Oromo Protests: Why Ethiopia’s Largest Ethnic Group Is Demonstrating’ Newsweek, (26 February 2016) <http://europe.newsweek.com/oromo-protests-why-ethiopias-biggest-ethnic-group-demonstrating-430793?rm=eu>.
136 This plan was aimed at expanding Addis Ababa and known as Addis Ababa Master Plan.
standpoint of the protestors, the Master Plan was a pretext for land grabbing that would result in the eviction of millions of Oromo smallholders.138

Ararssa presents four legal arguments against the Master Plan. He contends that the implementation of the Master Plan would lead to violation of the principle of federalism, the procedure for constitutional amendment, human rights and ignores the state duty to ensure good governance.139 In particular, the implementation of the Master Plan would violate several socio-economic rights of Oromo farmers including the right to obtain land without payment and the protection against eviction from their possessions140, the right to livelihood, adequate living standard, chosen work141, the right of farmers to participate in the design of development plans,142 the right of farmers to a clean and healthy environment,143 the right of displaced persons or those whose livelihoods have been adversely affected as a result of government programs to commensurate monetary or alternative means of compensation including relocation with adequate State assistance.144 Moreover, the enforcement of the Master Plan would violate the group rights of the Oromo people including the right of self-determination145, the right to joint ownership of land by the peoples and the State146, the right to development147, the right to participation in policy formulation,148 and the right to consultation and expression of views in the design of development policies.149

The government is accused of using excessive lethal force to suppress the largely peaceful protesters and committing gross violations of human rights against the Oromo people including


140 FDRE Constitution (n 3) art 40(4-6).

141 Ibid art 41.

142 Ibid art 89(6).

143 Ibid arts 44 cum 92(1).

144 Ibid art 44(2).

145 Ibid art 39.

146 Ibid art 40(3 and 6).

147 Ibid art 43.

148 Ibid art 90(6).

149 Ibid art 92(3).
extra-judicial killings, arbitrary arrests, unlawful detentions and torture.\textsuperscript{150} Reports show that at least 1000 protesters have been killed by the government’s security forces\textsuperscript{151}, and that ‘hundreds, likely more, have been victims of enforced disappearances’ while the majority of ‘those killed or detained by security forces are students’.\textsuperscript{152}

The government has also prosecuted many protestors including senior leaders and members of the Oromo Federalist Congress (one of the legally registered opposition political parties) under the anti-terrorism law of 2009\textsuperscript{153} because of their opposition to the Master Plan.\textsuperscript{154} The human rights groups claim that human rights violations have escalated following the declaration of state of emergency, which has been in place since October 8, 2016.\textsuperscript{155}

In general, the plight of the Oromo people demonstrates that an encroachment of land adversely affects the livelihoods of smallholders and indigenous peoples and causes economic exclusion and marginalisation. Marginalised people are further subjected to gross violations of human rights when protesting state policies that undermine their livelihoods, and systemically legalise and perpetuate their economic and political marginalisation.


\textsuperscript{152} HRW (n 150).


\textsuperscript{154} ‘News: Ethiopia Prosecutors Bring Multiple Criminal Charges Against Opposition Leader Dr. Merera Gudina, Two Others’ \textit{Addis Standard} (Addis Ababa, 23 February 2017); ‘Breaking – Ethiopia Charges Prominent Opposition Member Bekele Gerba, Others with Terrorism’ \textit{Addis Standard} (Addis Ababa, 22 April 2016).

8. Conclusion

This article finds serious normative deficits and violation of norms regarding land rights of smallholders and indigenous peoples in Ethiopia. The FDRE Constitution excludes the right of economic self-determination, which encompasses the collective right of peoples to own and control their natural resources, and the people’s right not to be deprived of their own means of survival. The state ownership of land creates ambiguities as to whether local peoples actually own the land. It is also criticised for enabling the ruling party to use the land as an instrument of political control and to evict local peoples from their ancestral lands without due process of law.

The FDRE Constitution and other subordinate laws do not recognise the farmer’s right to just compensation during expropriation of land use rights. The expropriation law does not limit the amount and type of land that the government can take; establish transparent and participatory processes for the expropriation of land; respect the legitimate tenure rights of all current land users; nor minimise forced evictions or provide displaced persons with a relocation allowance, alternative housing, or access to productive land. Likewise, the lack of a public policy that integrates the urban and rural developments adversely impacts on the livelihoods of smallholders residing around the capital, Addis Ababa, and other towns.

By enacting and enforcing laws that facilitate arbitrary dispossession of the smallholders, Ethiopia violates its obligations to respect, protect and fulfil the right to adequate food. Instead of progressively realising the right to adequate food, Ethiopia has taken retrogressive legislative and administrative measures that interfere with or limit the citizens’ ability to provide food for themselves. Ethiopia has also violated land rights of ethnic groups by excluding the right of economic self-determination under its Constitution of 1995 despite its ratification of the ICESCR in 1993.

Ethiopia should reform its existing land laws in accordance with its legal obligations under international human rights law and its Constitution to respect, protect and fulfil the right to adequate food. As a state party to the ICESCR, Ethiopia should not deprive its peoples of access to productive resources such as land. It should facilitate the full enjoyment of the right to food by repealing or amending the existing laws that legalise the forced eviction of smallholders and indigenous peoples from their lands without adequate due process of law and alternative means of livelihoods. To this end, land laws that directly or indirectly violate the provisions of the FDRE Constitution stipulating the right to life, the right to property, the farmers’ and

pastoralists’ right to land and freedom from dispossession, the right to adequate compensation and rehabilitation, the right to improved standard of living, the right to development, and the right to economic, social and cultural developments should be repealed or amended. Moreover, the right of Ethiopian Nations, Nationalities and Peoples to freely dispose of their natural resources as well as their freedom from being deprived of means of subsistence, as recognised under articles 1 of the ICCPR and the ICESCR, should be respected. The human rights provisions of the FDRE Constitution, including article 39, must be interpreted in a manner conforming to the UDHR and other human rights instruments that Ethiopia has adopted. In cases of any contradiction between a ratified human rights instrument and the FDRE Constitution, the former should prevail over the latter.\textsuperscript{157}

\textsuperscript{157} FDRE Constitution (n 3) art 13(2); Bulto (n 71) 159. Ibrahim Idris argues that ‘where international human rights and principles are used as guidance for interpretation they are accorded a status higher or, at least equivalent with the Constitution’ and that ‘in the event of a conflict between these two sets of legal regimes, the international law prevails because it serves as guidance’ Idris (n 68) 113, 132.
ARTICLE IV


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1. Introduction

The Oromo people are the largest ethnic group in Ethiopia and the Horn of Africa. They constitute about 40 million of the estimated overall 100 million population of Ethiopia (Central Statistics Agency, 2007; Gaffey 2016). The Oromo people have suffered a longstanding “systematic discrimination and oppression” under the successive regimes of Ethiopia for more than a century (Gnamo, 2014; Hassen, 2002; Jalata, 2001). Following the occupation of Oromia by the Abyssinian ruler, Menelik II, in the late 19th Century, the Oromo had been forced to abandon their indigenous egalitarian and democratic system known as Gadaa (Legesse, 1973) and lost the ownership and control rights over their natural resources (Jalata, 2001; Hassen, 2002). The regimes also banned an official use of the Oromo language until 1991 and imposed the Amhara language and identity on the Oromo people (Bulcha, 1997).

The need to control and utilise land and other natural resources has been the main cause for the Abyssinian’s occupation of the Oromo and their homeland, Oromia (Gnamo, 2014; Hassen, 2002). The rulers of the Ethiopian Empire were also accused of using the land tenure as an instrument of oppression, dispossession and political and economic marginalisation of the Oromo people (Hassen, 2002). For instance, the Haile Selassie I regime (1930–1974) institutionalised an oppressive land tenure system in which the Oromo peasants were reduced to gabbars (tenants) of the State and the handful privileged groups known as balabats (landlords) (Markakis, 1974). Although the military socialist Derg regime nationalised the rural land in 1975 and distributed it to the tillers (Ethiopia, 1975), it exploited the Oromo farmers and pastoralists by restricting their economic freedom under the guise of promoting the communism (Jemma, 2004; Hassen, 2002).

The Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), which has controlled the political power since 1991, retains the state (public) ownership of land that was introduced during the Derg regime. It adopted the Federal Democratic Republic of Ethiopia (FDRE) Constitution, which recognises several individual freedoms and group rights in 1995. However, there are serious normative deficits in the law and violation of norms in practice regarding land rights. For instance, Article 39 of the FDRE Constitution limits land rights and the right to economic self-determination of ethnic groups. The Constitution also exclusively empowers the Federal Government to enact laws concerning the utilisation of land and other natural resources. Moreover, the Federal Government claims the ownership right over the land and other natural resources in its recent land law (FDRE, 2005a, Art. 5(3)) in contravention to the FDRE Constitution, which stipulates that the peoples and the State own the land and other natural resources jointly (FDRE, 1995, Art. 40(3)).

In practice, the Federal Government, which is controlled by the

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been taken from the farmers (Kumsa, 2012). Second, the expansion of private and public investments, millions of hectares of lands have been leased out more than one million hectares of land in Oromia to foreign and domestic investors who are supposed to cultivate food and biofuels (Tura, 2017; Nadhaa, 2015). Third, the Government of Ethiopia has triggered huge rural land expropriations in Oromia (Kumsa, 2012; Tura, 2017; Nadhaa, 2015). Fourth, outrages over land expropriation has much negative effects on the Oromo people for the following reasons. First, due to the location of the State of Oromia and its suitability for large-scale farming (Horne, 2011). The right to land as a human right is recognised under several international human rights instruments, which protect land rights of smallholders (peasants and pastoralists) and private investors do not have any right to land. Pursuant to Article 40(6) of the FDRE Constitution, private investors have the right to use the land based on “payment arrangements”. Moreover, peasants and pastoralists have the right to acquire land free of charge, the right to not be evicted from their possessions (FDRE, 1995 art. 40(4-5)), and a right to use the land for an indefinite period (FDRE, 2005). The right to use rural land includes:

- the right of any peasant or pastoralist or semi-pastoralist … to use rural land for agricultural purposes and natural resources development, lease out and bequeath to members of his family and includes the right to acquire property produced on his land thereon by his labor or capital and to [sale], exchange and bequeath same (Cafcee Oromia, 2007, Art 2(7)).

The right to land possession and use of peasants and pastoralists is perpetual as it cannot be restricted except in cases of expropriation by the government authorities. To this end, Article 7(1) of the Federal Rural Land Proclamation No. 456/2005 states that “the rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit”. Article 6(1) of the Oromia Rural Land Proclamation No. 130/2007 also stipulates that smallholders have the right to “use and lease out their holdings, transfer it to their family members and dispose property produced thereon, and to sell, exchange and transfer the same without any time-bound”. Urban residents may also get access to the urban land subject to payment of lease prices (FDRE, 2011).

In general, land laws enshrine bundles of property rights, particularly, of the peasants and the pastoralists, including:

- The right to acquire land without payment,
- The right to not be evicted from possessions,
- The right to use land for agricultural production without time limitation,
- The right to transfer their land use rights to family members through inheritance or donation, and
- The right to rent up to half of their landholding to other persons (Oromia Rural Land Proclamation No. 130/2007, Arts 5, 6, 9 and 10; Federal Rural Land Proclamation No. 456/2005, Arts 5, 7).

However, expropriation laws adopted by the same government substantially contradict with the legislations above which list a bundle of rights of the smallholders. For instance, the FDRE Constitution does not expressly guarantee a right to just compensation during expropriation of rural land use rights. Pursuant to Article 40(8) of the Constitution, Articles 7 and 8 of the Federal Rural Land Proclamation No. 456/2005, Article 6(10, 11 and 12) of the Oromia Rural Land Proclamation No. 130/2007, the Federal Land Expropriation Proclamation No. 455/2005, and the Federal Land Expropriation Regulation No. 135/2007, a smallholder whose land is expropriated for public purposes is entitled to compensation for three things: property situated on the land, permanent improvement made to the land, and/ or displacement compensation. The laws do not, however, specify whether taking of the land itself is a compensable interest. A displacement compensation is calculated based on Article 8(1) of the Federal Expropriation Proclamation No. 455/2005 and Article 16(3) of the Federal Expropriation Regulation No. 135/2007, which must be “equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land”. Scholars find that the displacement compensation does not represent a compensation for the loss of land use rights (Ambaye, 2013; Abdo, 2015). The calculation method is neither scientific nor justifiable. The amount of displacement compensation is inadequate compared to the right of smallholders (which is granted for an indefinite period) (Ambaye, 2013). It also disregards the constitutional right of smallholders to not be displaced from their possessions. Furthermore, the Ethiopian
Land expropriation and the emerging large-scale land transfer to investors in Ethiopia have far-reaching adverse impacts on the livelihood of rural populations and the environment (Abdo, 2015; Ambaye, 2013; Tura, 2017; Grant, 2015). Studies identify several factors that triggered the design of flawed expropriation laws and facilitated the arbitrary land grabbing in Ethiopia which include the party politics, the political ideology of the ruling party and the state ownership of land.

First, the design and enforcement of the land laws are hugely influenced by the party politics and authoritarianism in Ethiopia (Clapham, 2006). The EPRDF “aims at legitimising a political and economic structure which de facto implies the resilience of authoritarianism” (Bach, 2011: 641). Moreover, the EPRDF has been dominated by the TPLF that extensively uses the law and policy to achieve its political and economic hegemony in the country (McCracken, 2004; Abbink, 2011). Most political parties that administer the regional states are nominal, weak, and lack roots in the society compared to the TPLF that “has developed structures of central control and top-down rule that preclude local initiative and autonomy” (Abbink, 2011: 596). For instance, the OPDO is “characterised as an artificial creation of the EPRDF to implement federal policy, in contrast to the administrations in Tigray” (Lavers, 2012a).

Second, the securitization of development and the ideology of developmental state in Ethiopia (Clapham, 2017) have contributed to the expropriation of massive lands from smallholders. [The EPRDF frames] poverty as an existential threat to Ethiopia and it secures development. The securitisation of a public issue gives credence to the immediate need for wider state powers and the aggressive mobilisation of (natural, financial and human) resources – at times by ignored agreed-upon conventions – to combat a perceived existential threat. Thus, the argument is that the securitisation of development is rationalising the drive to aggressively extract and mobilise resources as well as increasing the power and stature of the ruling coalition (Gebreesenbet, 2014:119).

The government of Ethiopia justifies the expropriation and the transfer of large-scale agricultural lands to private investors for “transforming the national economy and local livelihoods and transforming ‘uncultivated’ or ‘unused’ land into a ‘productive’ resource” (Hindeya, 2017:1). However, the policy and the practice have had adverse impacts on livelihoods, food security, environment and human rights of local populations (Ambaye, 2013; Grant, 2015; Lavers, 2012a; Rahmato, 2011; Zewdie, 2013).

Third, the state ownership of land in effect gives the ruling party too much power to control the land users (Vadala, 2009). Although the government defends the state ownership of land to protect tenure security and ensure social equity (Crewett and Korf, 2008), land expropriation laws and practices are criticised for violating a the smallholders’ constitutional right to land and the protection against an arbitrary dispossession (Ambaye, 2013; Abdo, 2015; Zewdie, 2013; Tura, 2017). Moreover, the government considers the land as its own property and implements the law that does not recognise a smallholder’s right to just compensation during land expropriations (Ambaye, 2013; Abdo, 2015; Tura, 2017; Zewdie, 2013).

4. Normative deficits regarding land rights and land grabbing in Oromia

The Oromia Regional State is the largest state in Ethiopia in terms of area coverage and the number of population (Central Statistics Agency, 2007). It has a fertile farmland and other natural resources including coffee, minerals, livestock, and abundant underground and surface water resources. More than 90% of the Oromo people live in the rural area, and depend on the smallholder agriculture for livelihood and the Oromia Region contributes 51.2% of the crop production, and 44% of the total livestock population of Ethiopia (Central Statistics Agency, 2007).

Land expropriations without a just compensation in the Oromia Region has given a rise to the recent Oromo Protests (2014–2017), which were triggered by the Federal Government’s move to implement the Addis Ababa Integrated Regional Development Plan (hereafter the Master Plan) (Ararssa, 2015; Tura, 2017). The implementation of the Master Plan is feared to cause the eviction of millions of the Oromo smallholders from their farmlands in the Special Zone of Oromia Surrounding Finfinnee (Addis Ababa) without an adequate compensation and resettlement options (Carboni, 2017; Ararssa, 2015; Fortin, 2015). Thus, the protesters consider the Master Plan as a pretext of the Federal Government for land grabbing in Oromia (Carboni, 2017; Lefort, 2016; Ararssa, 2015). Although the Master Plan has been the immediate cause of the protests, the Oromo resisted “their continued marginalisation and persecution” in Ethiopia (All, 2016; Lefort, 2016). The protests have been largely peaceful but the Government of Ethiopia is accused of using excessive lethal forces, which led to mass extra-judicial killings, arbitrary detentions, tortures and enforced disappearances of the Oromo people (Human Rights Watch, 2016; Carboni, 2017; US Department of State, 2016).

The following sections analyze the Ethiopia’s legal and institutional frameworks, which facilitate an arbitrary land expropriation and induce an economic marginalisation in Oromia. It should be noted that the laws subject of discussion in this paper are not passed to displace the Oromo people specifically. The reality in Oromia is also true for most historically marginalised peoples in Ethiopia. For instance, there have been cases of arbitrary evictions of peasants and pastoralists from their lands in the Gambella, Benishangul Gumuz, Afar, and Amhara Regional States (Balehegn, 2015; Rahmato, 2014; Hindeya, 2017; Lavers, 2012a; Moreda, 2017; Lavers, 2012b; Moreda, 2015).

4.1. Oromia’s legislative and administrative powers on land and other natural resources

Ethiopia has adopted an ethnic federalism since 1995. It comprises the Federal Government and nine regional State members of the Federation (FDRE, 1995, Arts. 1, 45, 46, 47, 50(1)). The Federal and the regional States have legislative, executive and judicial powers (ibid Art. 50(2)). The FDRE Constitution defines the Federal and the State governments’ powers and specifies that both levels of governments must respect the powers of each other (FDRE, 1995, Arts. 50 (8), 51, 52).

Under Article 51(5) of the FDRE Constitution, the Federal Government is empowered to “enact laws for the utilisation and conservation of land and other natural resources.” On the other hand, the regional States have powers and obligations “to administer land and other natural resources in accordance with Federal laws” (FDRE, 1995, Arts. 52(2) (d)).

The rationale for reserving of the legislative power concerning the utilisation of land and other natural resources to the federal government, but the administrative powers of the same to the regional States appears to be the constitutional objective of creating “one economic community”, which is supposed “to create sustainable and mutually supportive conditions” and indispensable for the promotion of collective interests of the Ethiopian peoples (FDRE, 1995 Preamble para 6).

The lack of a legislative power of the regional States regarding the utilisation of land and other natural resources may limit their ability to protect land rights of local or indigenous peoples. For instance, the regional States may not be able to protect the “right of indigenous peoples not to be removed from their lands and territories” without their “free, prior and informed consent” as recognised under Article 10 of the United Nations Declaration on the Rights of Indigenous peoples (UN, 2007). In particular, Oromia is encountering challenges to protect smallholders from arbitrary evictions as the Federal Land Expropriation

expropriation law is flawed in terms of defining public purpose and compensation (Abdo, 2015; Ambaye, 2013; Nadha, 2015; Tura, 2017).

3. Causes of flawed expropriation laws and land grabs in Ethiopia

Land expropriation and the emerging large-scale land transfer to investors in Ethiopia have far-reaching adverse impacts on the livelihood of rural populations and the environment (Abdo, 2015; Ambaye, 2013; Tura, 2017; Grant, 2015). Studies identify several factors that triggered the design of flawed expropriation laws and facilitated the arbitrary land grabbing in Ethiopia which include the party politics, the political ideology of the ruling party and the state ownership of land.
Proclamation No. 455/2005 (FDRE, 2005s) and the Urban Land Lease Holding Proclamation No. 721/2011 are applied to expropriate farmers and pastoralists without just compensation and robust rehabilitation. Because of the constitutional supremacy clause, the regional States including the legislative council of the State of Oromia (also known as Caaffee) may not be able to enact land laws that would substantially contradict with Federal land laws (FDRE, 1995, Art. 9(1)). However, there are two possibilities under the existing constitutional arrangement for the State of Oromia to protect the Oromo people’s right to land and other natural resources. First, the Oromo members of parliament (MP) constitute at least 32.5% in the federal lawmaker (178 of 547 MPs in the House of Peoples’ Representatives are supposed to represent the Regional State of Oromia and the Oromo people). If they act in the best interest of the Oromo people, it appears that they can influence the making of federal laws in general and regarding the utilisation of land and other natural resources in particular. Nonetheless, the OPDO members who participate in the federal government are criticised as nominal and agents of the TPLF than actually representing the State of Oromia and the Oromo people (Abbink, 2011; McCracken, 2004). The OPDO is also criticised for acting in complicity with the Government of the State of Oromia and should focus on enacting laws that would create a favourable condition for the economic empowerment of the poor and local communities. The country may not be able to ensure a sustainable development unless the regional and local authorities are empowered to make decisions without an influence of the Federal Government that is dominated by the TPLF. Poverty and hunger may not be alleviated meaningfully unless most Ethiopians (smallholders, pastoralists and the youth) are benefited from the country’s natural resources equitably.

In general, Oromo representatives in the Federal Government and the Government of the State of Oromia should exercise their constitutional powers in the best interest of the Oromo people. The State of Oromia should be able to lease out the land to private investors including for large-scale agricultural investments. On the other hand, the Federal Government must cease usurping of constitutional powers of the regional States regarding land and other natural resources administration, and should focus on enacting laws that would create a favourable condition for the economic empowerment of the poor and local communities. The country may not be able to ensure a sustainable development unless the regional and local authorities are empowered to make decisions without an influence of the Federal Government that is dominated by the TPLF. Poverty and hunger may not be alleviated meaningfully unless most Ethiopians (smallholders, pastoralists and the youth) are benefited from the country’s natural resources equitably.

4.2. The ownership of land

All rural and urban lands in Ethiopia are owned jointly by the State and the Peoples. The FDRE Constitution stipulates that “land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange” (FDRE, 1995, Art. 40(3)). However, it is unclear from the Constitution as to whether the terms State and Peoples refer to the regional States (such as the State of Oromia) and ethnic groups (such as the Oromo people) respectively. By using “common property”, the Constitution seems to entitle all Ethiopian peoples to land ownership (Zewdie, 2013). However, there is no clear justification as to why the Federal Government should be entitled to the ownership of land and other natural resources to the exclusion of the regional States (members of the Federation that form the federal government itself). In other words, it is unclear as to why the Federal Government would own land and other natural resources in Oromia while there is a local Government (the State of Oromia), which is responsible for taking care of the State matters. Although Article 40(3) of the FDRE Constitution uses terms “common property”, Article 52 (2) (d) of the same Constitution exclusively reserves the power of land and other natural resources administration to the regional States. A cumulative reading of Articles 40(3), 51(5) and 52(2) (d) of the FDRE Constitution shows that both the Federal Government and the nine regional States have a shared power on the utilisation of land and other natural resources in the country. While the Federal Government enacts laws concerning the utilisation and conservation of natural resources, the regional States are empowered to administer the same in accordance with federal laws.

Thus, the terms State and peoples incorporated in Article 40(3) of the FDRE Constitution should be construed to refer to the regional States and local communities. Article 40(3) should also be read in conjunction with Articles 50, 52(1) and 52(2) (d) of the FDRE Constitution and Articles 47, 49 and 55 of the Revised Constitution of Oromia. It should be noted that there is no constitutional basis for the Federal Government to own land and other natural resources to the exclusion of the regional States, which form the federal government itself and that have a constitutional mandate of land and other natural resources administration, the State of Oromia should facilitate and promote the economic empowerment of the Oromo people. It should make sure that private investments benefit local communities and must closely monitor private investors to carry out their corporate social responsibilities (to provide community services, to protect the environment, and to respect and protect human rights in general and those of their employees in particular). Furthermore, the State of Oromia must design policies and strategies, which would pave a way for local communities to exploit their natural resources. The youth, farmers, pastoralists and women should be supported to utilise natural resources in Oromia including trade in coffee, chat, minerals and other resources. In addition, Oromia should provide adequate training and facilitate access to finance that would enable the poor to use and conserve natural resources sustainably and equitably.

Pursuant to Articles 50, 52 (1, 2 (c, d, e)), 97 and 98 of the FDRE Constitution and Articles 47, 49 and 55 of the Revised Constitution of Oromia (Oromia, 2000), Oromia has legal and constitutional mandates to:

- Ensure equitable access to land and other natural resources for smallholder farmers and pastoralists in Oromia,
- Protect the constitutional right of the smallholders to not be arbitrarily evicted from their land possessions,
- Compensate, resettle and rehabilitate farmers and pastoralists whose land has been expropriated for public purposes,
- Plan and implement transfers of the land to private investors in Oromia,
- Conserve natural resources and protect the environment from pollutants,
- License and regulate private investors in land and agriculture in Oromia,
- Determine and collect fees for land usufructuary rights, levy and collect taxes on the incomes of private farmers and farmers incorporated in cooperative associations, levy and collect taxes on income derived from mining operations, and royalties and land rentals on such operations,
- Facilitate the exploitation of natural resources by local populations, and jointly (with the Federal Government) levy and collect taxes on incomes derived from large-scale mining and all petroleum and gas operations, and royalties on such operations, and
- Redistribute resources through proper investments in public goods.

While exercising its constitutional power of land and other natural resource administration, the State of Oromia should facilitate and
resource administration. Therefore, the State of Oromia should be able to own, along with the local peoples, and administer the land and other natural resources within its boundaries.

4.3. Land rights and the right to economic self-determination

The land is indispensable for ethnic groups and indigenous peoples to enjoy their right to self-determination. The United Nations defines the normative content of the right of self-determination in Articles 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Accordingly, the right of self-determination includes political, economic, social and cultural elements. The common Articles 1 of the ICCPR and ICESCR similarly stipulate that “all peoples have the right of self-determination” and that they can freely determine their political status and pursue their economic, social and cultural development (ICCPR, 1966; ICESCR, 1966 Art. 1(1)). Moreover, the two covenants emphasise an economic aspect of the right of self-determination that refers to the right of peoples to dispose of their natural resources freely. The covenants state, “All peoples may, for their own ends, freely dispose of their natural wealth and resources” and that “in no case may a people be deprived of its means of subsistence” (Ibid Art. 1(2)). Ethiopia ratified the two covenants in 1993 and has incorporated them into its domestic laws via the FDRE Constitution (Arts. 9(4) and 13(2)) since 1995. Therefore, the right of self-determination is recognised under the international human rights law is applicable to the Oromo and other peoples of Ethiopia. Accordingly, the Oromo people have the right to freely determine their political status and to pursue their economic, social and cultural development. By the right of economic self-determination, the Oromo people have the right to own, control, manage and use the land and other natural resources in Oromia.

However, there are normative and practical limitations regarding the enjoyment of the right of economic self-determination by the Oromo people even after the promulgation of the FDRE Constitution in 1995. First, Article 39 of the FDRE Constitution, which stipulates the right to self-determination of Nations, Nationalities and Peoples, excludes the economic aspect of this right. Despite the recognition of the political, social and cultural elements of the right, the Constitution is silent on the right of economic self-determination whose content refers to a people’s right to ownership, control and utilisation of land and other natural resources. The exclusion of the economic right to self-determination under the FDRE Constitution has a huge negative impact on the ownership and use of land and other natural resources by ethnic and indigenous peoples. It restricts their right to pursue economic and social development freely; limits their ability to dispose of land and other resources freely and violates the right to not be deprived of a means of subsistence of ethnic groups in Ethiopia (Tura, 2017; Zewdie, 2013). Secondly, there are serious challenges regarding the judicial enforcement of human rights in Ethiopia because of the lack of judicial independence, and due to uncertainties concerning the status of international treaties under the Ethiopian legal system (Bulto, 2006; Tura, 2017). Thus, the legal and implementation problems surrounding the right of economic self-determination under Ethiopia’s law may hinder the Oromo people’s ability to freely control and use their land and other natural resources. It has also paved the way for the ruling party to the Oromo people.

4.4. Expropriation without just compensation

The power of expropriation is a prerogative of any government. Governments may use this power (also known as eminent domain) to take a private property to advance public purposes such as the construction of common goods including hospitals, schools, roads, railways or for the promotion of private investments, it must make sure that an adequate due process is followed to determine whether a purpose for which the private property is taken will actually benefit the public and must pay a just compensation in advance (Ambaye, 2013; Reynolds, 2010). Where properly exercised, expropriation is a crucial tool to promote economic development in general and to provide public goods and services in particular. On the other hand, the power of expropriation is susceptible to misuse and abuse by governments and may lead to violations of several human rights including the right to property, the right to livelihood, the right to housing, and the right to food. As mentioned above, a lawful expropriation must be accompanied by a just, prompt and advance payment of compensation and that it must not be exercised unless there is a genuine ground to implement public purposes (Holzman-Gazit, 2007; Ambaye, 2013; Abdo, 2015).

The international human rights law recognises potential adverse impacts of expropriations on livelihoods of rural land users and their human rights. For instance, the United Nations Food and Agriculture Organisation (FAO, 2012), in its Voluntary Guidelines on the Responsible Governance of Tenure of land and other natural resources, establishes standards on expropriation and compensation that encourage the States to carefully and responsibly exercise the power of expropriation. Among other things, Section 16.1 of the Voluntary Guidelines on Responsible Governance of Tenure of land and other natural resources stipulate essential principles regarding expropriation and compensation and urge the States to:

• Clearly define the concept of public purpose in law, in order to allow for judicial review,
• Recognise the right to fair compensation for taking of land use rights,
• Limit how much and what kind of land government can take,
• Establish transparent and participatory expropriation processes,
• Compensate those who hold land under customary tenure, and
• Not legalise forced evictions without providing for relocation allowances, and alternative housing and access to productive land (Taglizarino, 2016).

The Voluntary Guidelines on Responsible Governance of Tenure of land and other natural resources is officially endorsed by the UN.

16.1 “[…] States should appropriately only where rights to land, […] are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review. […] They should respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law. 16.2 “States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations, consistent with the principles of these Guidelines, should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable. 16.3 “States should ensure a fair valuation and prompt compensation in accordance with national law. Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination.” 16.5 “Where the land […] are not needed due to changes of plans, States should give the original right holders the first opportunity to re-acquire those resources. In such a case the re-acquisition should take into consideration the amount of compensation received in return for the expropriation. 16.6 “All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal. 16.8 “States should, prior to expropriation or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties, […] with a view to avoiding, or at least minimizing, the need to resort to expropriation. 16.9 “[…] States should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land.”
Committee on Food Security in 2012 and governments widely accept it just as private companies and other stakeholders as a new standard on land tenure in general, and expropriation and compensation in particular (Tagliarino, 2016). For instance, India has adopted an expropriation law that can be considered as a model for other developing countries. The Indian expropriation law clearly defines public purpose to allow for judicial review, limits the amount and types of lands that the government can expropriate, requires the government to survey, inform and consult affected populations prior to expropriation, recognises customary tenure rights, provides right to prompt payment of compensation, a right to negotiate compensation amounts, and a right to challenge compensation decisions before courts and tribunals and provides robust rehabilitation and resettlement procedures (India, 2013).

As highlighted under Section 2 of this paper, land expropriation under the Ethiopia’s law is one of the problematic. The law defines ‘public purpose’ very broadly as referring to the “interest of the peoples to acquire direct or indirect benefits from the use of land and to consolidate sustainable socio-economic development” (FDRE, 2005b Art 2.5). This vague and broad definition of “public purpose”, in turn, allows the government to expropriate land without limitation. It is also unclear, with the law and the practice, as to whether courts have a material jurisdiction to review cases involving disputes on what constitutes a public purpose under the law (Abdo, 2015; Kumsa, 2012; Nadhaa, 2015).

Despite the constitutional recognition of rights of farmers and pastoralists to acquire land free of charge and the right to protection against evictions from their possessions, Article 40(8) of the FDRE Constitution seems to exclude a right to just compensation for an expropriation of land and other natural resources, which are supposed to be owned by the State and peoples. It seems to limit a right to compensation only to the expropriation of “private property”. Land does not constitute a private property under the Ethiopian Constitution and that private landholders cannot sell or transfer it (FDRE, 1995 Art. 40(3)). The subordinate land laws also do not entitle smallholders to receive a just compensation for expropriation of their land use rights. For instance, Proclamation No. 455/2005 stipulates that a smallholder may receive compensation for his/her property situating on the land and for any permanent improvement that he/she has made on the land to be expropriated (FDRE, 2005b Art 7). The Proclamation also states that a smallholder whose land has been expropriated may receive a "form of inheritance or donation" (FDRE, 2005aArt 7(1); Caeeff Oromia, 2007 Arts 5, 6, 10).

A study conducted on the expropriation law and its implementation in the Oromia Regional State unveils several legal and practical problems. This study combines doctrinal and empirical research methods to explore both legal gaps and practical problems stemming from the implementation of the law. It finds that the expropriation law is flawed because of the following reasons:

- the amount of displacement compensation stipulated under the expropriation law is insufficient;
- the expropriation laws are vague on the jurisdiction of courts and administrative tribunals with respect to determining public purposes and compensation; and
- the Oromia Regional State has not yet adopted a directive that enshrines a procedure for entertaining grievances in administrative tribunals and a working procedure for valuating committee (Nadhaa, 2015).

In addition, the study identifies some practical problems that exacerbates an arbitrary land grabs by government authorities in Oromia including:

- weak administration of public purpose,
- poor notification system,
- lack of advance payment of full compensation,
- lack of having uniform valuation methods and grievance handling mechanisms, and
- poor rehabilitation support (Nadhaa, 2015).

In general, the expropriation of rural land without just compensation in Oromia violates Article 40(4-5) of the FDRE Constitution and Article 40 (4-5) of the Oromia Regional State Constitution, which recognise the rights of farmers and pastoralists to obtain land free of charge and protect them from evictions from their lands.

4.5. Forced evictions of smallholders

Forced evictions of land users have huge adverse impacts on their livelihoods and negatively affect the enjoyment of human rights including the right to life, the right to food, the right to housing, the right to health, and the right to property. In this regard, several international human rights instruments recognise a smallholder’s right to land, and its indispensability to realise other human rights. For instance, the FAO’s Voluntary Guidelines call upon States to respect, protect and fulfil land rights of smallholders with respect to the right to adequate food (FAO, 2005). The Guidelines recommend that “States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination” (ibid). Moreover, the FAO has adopted the Voluntary Guidelines on the Responsible Governance of Tenure of land and other natural resources. Among many principles and recommendations regarding a responsible governance of tenure, the Voluntary Guidelines prohibit States from expropriating land without adequate due process of law and just compensation (Section 16) (FAO, 2012).

Similarly, the international law recognises land rights of tribal and indigenous peoples not to be evicted from their lands without their consent. For example, the International Labour Organisation (ILO) Convention No. 169/1991 recognise land rights of indigenous and tribal peoples in independent countries (ILO, 1989). Moreover, the United Nations adopted the Declaration on the Rights of Indigenous Peoples in 2007, which prohibits the States from forcefully displacing indigenous peoples from their lands, territories or resources (UN, 2007: Art 8(2) (b)). The Declaration prohibits forced evictions of indigenous peoples from their land “without their free, prior and informed consent, and agreement on just and fair compensation” (ibid Art 10). In addition, the International Convention on the Elimination of All Forms of Racial Discrimination, to which Ethiopia has been a State party since 1976, recognises the right of local communities to their property including to land (UN, 1969 Art 5(b)).

In a similar vein, the FDRE Constitution (Art. 40(4-5)) explicitly recognises the right of peasants and pastoralists to not be evicted from their lands. In practice, however, the constitutional rights of smallholders and ethnic groups and their legal protection against forced evictions have not been respected (Abdo, 2015; Ambaye, 2013; Kumsa, 2012; Nadhaa, 2015). Research shows that the Government of Ethiopia evicts smallholders for stated purposes of promoting private
investments including for the promotion of large-scale commercial agriculture and urbanisation without adequate due process of law (Abdo, 2015; Kuma, 2012; Rahmato, 2011; Geisler, 2011; Zewdie, 2013; Lavers, 2012a). Unfortunately, Ethiopia has not yet ratified the Indigenous and Tribal Peoples ILO Convention of 1989. In addition, the UN Declaration on the Rights of Indigenous Peoples of 2007 is not binding on Ethiopia.

Article 40(4–5) of the FDRE Constitution and the Oromia Regional State Constitution must be respected. Particularly, Ethiopia should protect smallholder farmers and pastoralists from forced evictions including in cases of expropriations of land for public purposes. Smallholders must be paid a just, advance and prompt compensation during an expropriation of land to translate the constitutional protection against evictions into practice meaningfully.

4.6 Urban land lease holding law and exclusion of the poor

Ethiopia’s Urban Land Lease3 Holding Proclamation No. 721/2011 prohibits a possession of the urban land without a lease-holding permit (FDRE, 2011, Art 5). This law is problematic for at least three reasons. First, it diminishes the social equity objective of the public (state) ownership of land and undermines the tenure security of smallholder farmers (Crews and Kort, 2008). As the joint owners of the land, the Ethiopian peoples have a right to get benefits from the implementation of the Urban Land Lease Holding Proclamation. To realize this right, land must be accessible and affordable to all citizens who need it for the construction of residential houses and business purposes. Nevertheless, the Urban Land Lease Holding Proclamation restricts the poor people’s access to urban land because the lease price is unaffordable to them. As the regional State governments are obliged to administer land by federal law, it could be difficult for them to protect the interest of the poor and to make sure that the urban land lease policy serves the interest of all citizens without discrimination based on incomes. In the opinion of the author, it is unfair to allow a few individuals to buy the land in the name of lease holding without a limitation and it is unjust to exclude the most population from living in towns due to their financial inability to compete with a few wealthy individuals.

Second, the Urban Land Lease Holding Proclamation does not integrate urban and rural developments and it fails to protect the rights of smallholder farmers (Tura, 2017). Massive rural lands are expropriated from farmers residing in the peri-urban areas based on the rural land expropriation laws, which do not protect a farmer’s right to just, advance and prompt compensation and rehabilitation support (Kuma, 2012; Abdo, 2015; Ambaye, 2013). On the other hand, the urban land is leased out to investors (by the Government) for much higher prices compared to an amount of compensation that the evicted smallholders ought to receive as per provisions of the relevant laws. In practice, the government does not sufficiently redistribute the urban land lease proceeds to improve the economic and social conditions of local peoples. Expropriating land at the expense of smallholders may give rise to the practice that impoverishes the poor majority cannot be justified in terms of “public purpose”. Smallholders must be paid just compensation and must be adequately supported to rehabilitate to meaningfully start a new life after evictions. In particular, a farmer’s right to adequate food and housing must be respected, protected and fulfilled during expropriation of lands by the government.

Thirdly, the current trend of urban land transfer through the lease procedure to a few individuals would have adverse effects on the right to self-determination of local peoples because it can lead to a demographic change in the long-run. For instance, the current practice in the Regional State of Oromia indicates that most of persons who are taking land through the urban land lease procedure are non-Oromos. This practice in effect detaches the cities in Oromia from the mainstream Oromo rural population. While the Oromo will mostly remain as residents of the countryside or in small towns, major towns/cities of Oromia such as Addis, Assela, Nekemte, Bishoftu, Jimma, Shashamane, Ambo and several towns in the Special Zone of Oromia Surrounding Finfinne (Addis Ababa) are occupied by other ethnic groups. This means that the Oromo people’s right to social and cultural self-determination is adversely affected.

The Government of Ethiopia should reform the Urban Land Lease Holding Proclamation in the light of Ethiopia’s legal obligations under the international human rights law. The right to adequate housing is a human right of every Ethiopians pursuant to the FDRE Constitution and the International Covenant on Economic, Social and Cultural Rights, to which Ethiopia is a state party, must be respected, protected and fulfilled by the Government. Both constitutional and human rights obligations stemming from the right to adequate housing require Ethiopia to facilitate an equitable access to urban lands for everyone without discrimination based on any ground. In addition, urban and rural developments should be integrated, and the law should be reformed in a manner facilitating an equitable and inclusive development in the country. Furthermore, the Urban Land Lease Holding Proclamation should not be implemented in a manner affecting the Oromo people’s right to live in towns and cities of Oromia and should not cause an alienation of the Oromia urban centres from the Oromo people.

4.7 Land grabbing or large-scale commercial agriculture?

Ethiopia has leased out more than 3.6 million hectares of productive farmland to foreign and a few local investors since 2008 (Horne, 2011, Rahmato, 2011). In Oromia alone, about 1,319,214 ha of lands have been leased out to investors mainly for food and agro-fuel production for the export market (Horne, 2011, 20, 24). The Government of Ethiopia argues that the promotion of the large-scale agricultural investment boosts food security, creates job opportunities, increases foreign earnings, facilitates the transfer of technology to smallholders and enhances the economic growth and transformation (Rahmato, 2011, Lavers, 2012a, Hindeya, 2017). On the other hand, the large-scale land transfer in the country has led to a debate as to whether it is a tool for development or dispossession (Horne, 2011; Geisler, 2011; Hindeya, 2017; Moussau, 2016, Lavers, 2012a). There have been huge concerns that the large-scale land transfers adversely affect the social, environmental and food needs and rights of local populations (Horne, 2011, Rahmato, 2011, Moussau, 2016; Hindeya, 2017). The Oakland Institute argues that the large-scale land transfer in Ethiopia manufactures hunger and poverty because the “government takes away key coping strategies from its people, destroys natural resources, and impacts the livelihoods of millions” (Moussau, 2016 9). Das and Grant also find that the large-scale land transfer in Ethiopia “displaces poor and vulnerable populations and damages environment, which in turn exacerbates poverty and food insecurity” (Grant, 2015 289).

Moreover, Rahmato argues that the large-scale land transfers to investors “will marginalise small producers, and cause immense damage to local ecosystems, wildlife habitats and biodiversity” in the long run (Rahmato, 2011 viii).

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3 “Lease” refers to “a system of land tenure by which the right of use of urban land is acquired under a contract of definite period” (FDRE, Urban Lands Lease Holding Proclamation No. 721/2011, art 2(3)).
In general, the practice of the large-scale land transfer in Oromia and other regional States of Ethiopia has been criticised for at least five reasons. First, it leads to the displacement of local communities from their lands without just, advance and prompt compensation, which in turn undermines their livelihoods and food security (Grant, 2015; Hindeya, 2017, Lavers, 2012a; Tura, 2017). Second, the government promotes large-scale agricultural investments to produce crops for the export market despite the critical food shortages in the country (Birome, 2011; Grant 2015; Rahmato, 2011). As millions of Ethiopians are exposed to hunger on a yearly basis due to climate change/drought, it is unclear as to why the government promotes investments in agriculture for the export market. Third, the large-scale agricultural investment policy is implemented in a manner excluding local populations and harming the environment (Grant, 2015; Rahmato, 2011, Lavers, 2012a). Unfortunately, the government does not sufficiently reinvest the money that it collects from leasing out the land to private investors to rehabilitate and economically empower local peoples. Fourth, the federal government has leased out the land to private entities by usurping the constitutional power of regional States regarding land and other natural resources administration that is stipulated under Article 52(2) (d) of the FDRE Constitution (Zewdie, 2013). Fifth, most investors have failed to implement their projects for which they take lands in accordance with terms agreed in land lease contracts (Abdo, 2015; Kumsa, 2012). For instance, only 46% of the land has been utilised as agreed between the Government and private investors in the Regional State of Oromia (Addis-Fortune, 2017).

The policy and practice of the large-scale agricultural investment should primarily target the economic empowerment of the poor and local communities. Its processes and outcomes must be evaluated in terms of their potential advantages to the poor smallholders and indigenous peoples whose livelihoods solely depend on their lands. Moreover, private investors should be encouraged to produce crops that would contribute to boost the local and national food security needs. In addition, Ethiopia should closely monitor the proper implementation of investment projects for which the land has been taken from small-scale farmers.

5. Conclusion

This paper finds critical normative deficits and violations of norms regarding land rights in Ethiopia in general and in the State of Oromia in particular. Ethiopia designs land laws in vague and incomplete terms. For instance, it is ambiguous as to whether the regional States and local peoples (ethnic groups) have a right to own the land and other natural resources pursuant to Article 40(3) of the FDRE Constitution. Article 39 of the Constitution also enshrines an incomplete version of the right of peoples (ethnic groups) to own the land and other natural resources in their territories and utilise them for the development of their economies and societies subject to norms and regulations, which substantially contradict with the federal land laws governing land expropriation and compensation. Furthermore, the regional States do not have the authority to pass and implement land laws in the country and obliges the regional States to administer the lands pursuant to an earlier draft of this paper. The paper has benefited from constructive comments of three external reviewers and the editor of Land Use Policy.

References

This thesis examines the legislative protection of the right to food in Ethiopia. It evaluates the country's relevant laws including the FDRE constitution and land expropriation laws in light of international human rights standards governing the right to food. It shows the need to link land rights of smallholders and indigenous peoples to the right to adequate food. Moreover, it demonstrates the significance of adopting a framework law on the right to food to tackle hunger and malnutrition.