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

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*When you take someone's land, you take away the means to an entire family's livelihood, wellbeing and future.<sup>1</sup>*

### **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 disposessions 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 the light of its legal obligations under the international human rights law to respect, protect and fulfill the right to adequate food and ensure freedom from hunger.

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

### **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 it is closely linked to peoples' identities. Moreover, it has profound implications for the protection of civil rights including the right to

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<sup>1</sup> Evadne Grant and Onita Das, 'Land Grabbing, Sustainable Development and Human Rights' (2015) 4(2) *Transnational Environmental Law* 289, 292.

life, the right to property and the right to human dignity.<sup>2</sup> 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’<sup>3</sup> in Ethiopia do not have adequate legislative protection as land and other natural resources are currently owned by the state.<sup>4</sup> 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<sup>5</sup>, 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.<sup>6</sup> The FDRE Constitution excludes the right of ethnic groups to economic self-determination and exclusively empowers the federal government to enact laws on utilisation of land and obliges the regional states to administer land and other natural resources in accordance with federal laws.<sup>7</sup>

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 the purpose of 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.<sup>8</sup> ‘Land grabbing’<sup>9</sup> has created a situation where some smallholders are being exposed to hunger because of loss of land, is their only means of livelihood.<sup>10</sup> 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

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<sup>2</sup> Muradu Abdo, ‘Reforming Ethiopia’s Expropriation Law’ (2015) 9(2) *Mizan Law Review* 301, 334-35.

<sup>3</sup> ‘Indigenous peoples’ is used in this article to refer to nations, nationalities and peoples in Ethiopia who have their own identities. See *The Constitution of the Federal Democratic Republic of Ethiopia*, Proclamation No 1/1995. *Fed.Neg.Gaz* Year 1. No 1 (1995) (hereafter FDRE Constitution) art 39(5).

<sup>4</sup> *Ibid*, art 40(3).

<sup>5</sup> *Ibid*, art 40(4-5).

<sup>6</sup> UNCHR, ‘Report of the Special Rapporteur on the Right to Food, Jean Ziegler’ (2005) UN Doc E/CN.4/2005/47/Add.1 para 34; Alexander Attilio Vadala, ‘Understanding Famine in Ethiopia: Poverty, Politics and Human Rights’ (Proceedings of the 16th International Conference of Ethiopian Studies Trondheim 2009) 1085.

<sup>7</sup> 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.

<sup>8</sup> Abdo (n 2).

<sup>9</sup> ‘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.

<sup>10</sup> Grant and Das (n 1).

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.<sup>11</sup> 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 the 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 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)<sup>12</sup>, International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>13</sup>, Convention on the Right of the Child (CRC)<sup>14</sup>, Convention on the Rights of Persons with Disabilities (CRPD)<sup>15</sup>, and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).<sup>16</sup> 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'.<sup>17</sup> Moreover, the ICESCR, to which Ethiopia is a legally bound treaty member, recognises that the

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<sup>11</sup> Abdo (n 2); Zewdie (n 7); Muradu Abdo, 'Legislative Protection of Property Rights in Ethiopia: An Overview' (2013) 7(2) *Mizan Law Review* 165-206; Belachew Mekuria Fikre, 'Human Rights Approach to Land Rights in Ethiopia' (2009) 3 *Ethiopian Business Law Series* 45.

<sup>12</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 25.

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3 ICESCR) art 11.

<sup>14</sup> Convention on the Rights of the Child (1989) UNTS 1577 (CRC) art 24.

<sup>15</sup> Convention on the Rights of Persons with Disabilities (2006) UNTS 2515 (CRPD) art 28(1).

<sup>16</sup> Convention on the Elimination of all forms of Discrimination against Women (1988) UNTS 1249 13 (CEDAW) arts 12 and 14.

<sup>17</sup> UDHR, (n 12) art. 25.

right to food encompasses the right to adequate food (as an element of the right to adequate standard of living)<sup>18</sup> and the fundamental right of everyone to be free from hunger.<sup>19</sup> Similarly, the right to adequate food is recognised as an implied right under the African human rights system.<sup>20</sup> 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 the enjoyment and fulfilment of such other rights as health, education, work and political participation.'<sup>21</sup>

## 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.<sup>22</sup> 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'.<sup>23</sup> 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'.<sup>24</sup> 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).<sup>25</sup>

The Committee emphasised that the right to adequate food is vital 'for the enjoyment of all rights' and that 'it is indivisibly linked to the inherent dignity of the human person'.<sup>26</sup> 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.

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<sup>18</sup> ICESCR (n 13) art. 11(1).

<sup>19</sup> Ibid art 11(2).

<sup>20</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) (African Charter) arts. 4, 16 and 22.

<sup>21</sup> *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* (2001) 155/96 ACHPR 65 (SERAC case); *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (African Commission on Human and Peoples' Rights) (2011) paras 83-86.

<sup>22</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment No 12: The Right to Adequate Food' (1999) UN Doc E/C.12/1999/5 (GC 12) para 6.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid; emphasis added.

<sup>25</sup> Ibid, paras 7-13; UN OHCHR, 'Toolkit on the Right to Food' <<http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>>.

<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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*.<sup>29</sup> 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’.<sup>30</sup> 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.’<sup>31</sup> 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).<sup>32</sup> 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.<sup>33</sup> 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 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.<sup>34</sup> 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.<sup>35</sup>

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<sup>27</sup> ICESCR (n 13) art 2(1).

<sup>28</sup> Ibid art 2(2).

<sup>29</sup> UNCHR, ‘The Right to Adequate Food as a Human Right, Report by A. Eide’, (1983) UN Doc E/CN.4/Sub.2/1983/25; Oliver De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press, 2010) 242.

<sup>30</sup> Kristin Mechlem, ‘Food Security and the Right to Food in the Discourse of the United Nations’ (2004) 10(5) *European Law Journal* 631, 639.

<sup>31</sup> Oliver De Schutter, UN Special Rapporteur on the Right to Food, ‘Large-scale Land Acquisitions and Sales: A Set of Core Principles and Measures to Address the Human Rights Challenge’ (2009) 2.

<<http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>>.

<sup>32</sup> Ibid.

<sup>33</sup> Mechlem, (n 30).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

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’.<sup>36</sup> 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’.<sup>37</sup> 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’.<sup>38</sup>

### 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 ‘[g]iven 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.’<sup>39</sup> 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’.<sup>40</sup> Moreover, the UN stressed that the enjoyment of the right to food is closely linked to access to land and tenure security.<sup>41</sup>

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.’<sup>42</sup> 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.<sup>43</sup> 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

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<sup>36</sup> GC 12 (n 22) para 6.

<sup>37</sup> Ibid para 17.

<sup>38</sup> Mechlem (n 30) 640.

<sup>39</sup> Economic Commission for Africa, ‘Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa’ ECA/SDD/05/09 (Addis Ababa, 2004) ix.

<sup>40</sup> The World Bank, ‘Land Tenure Policy: Securing Rights to Reduce Poverty and Promote Rural Growth’ (Working Paper 83199, 2011) 1.

<sup>41</sup> UNGA ‘The right to food, Note by the Secretary-General’ UN Doc. A/65/281 (2010).

<sup>42</sup> Keyman, ‘Drawing Links Between Food Security and Land Rights in an Era of Globalization’, *E-International Relations* (17 July 2014) <<http://www.e-ir.info/2014/07/17/drawing-links-between-food-security-and-land-rights-in-an-era-of-globalization/>>.

<sup>43</sup> Ibid.

the population’ in the region.<sup>44</sup> 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.<sup>45</sup> 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.’<sup>46</sup> Expropriation without adequate compensation in the State of Oromia has caused displacements of smallholders from their lands and exacerbated their food insecurity.<sup>47</sup>

#### **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.’<sup>48</sup> 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**

There is no provision in international human rights law that 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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> Similarly, the Basic Principles and Guidelines on Development-Based Evictions

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<sup>44</sup> Lorenzo Cotula and others, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*, (FAO, IIED and IFAD 2009) 20.

<sup>45</sup> Felix Horne, ‘Understanding Land Investment Deals in Africa: Ethiopia’ (*The Oakland Institute*, 2011) <[http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_Ethiopia\\_Land\\_Investment\\_report.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Ethiopia_Land_Investment_report.pdf)>.

<sup>46</sup> Maru Shete and Marcel Rutten, ‘Impacts of large-scale farming on local communities’ food security and income levels: empirical evidences from Oromia region, Ethiopia’ (2015) 47 *Land Use Policy* 282.

<sup>47</sup> Girma Kassa Kumsa, ‘Issues of Expropriation: The Law and the Practice in Oromia’ (LL.M Thesis, Addis Ababa University 2011) 107.

<sup>48</sup> Oliver De Schutter, ‘The Emerging Right to Land’ (2010) 12 *International Community Law Review* 303.

<sup>49</sup> UDHR (n 12) art 7(2); African Charter (n 20) art. 14.

<sup>50</sup> 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’.

<sup>51</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment 7, The Right to Adequate Housing (art. 11.1 of the Covenant): forced evictions’ (1997) UN Doc E/1998/22-E/C.12/1997/10, annex IV.

and Displacement<sup>52</sup> 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.<sup>53</sup> The FAO *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*<sup>54</sup> 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.<sup>55</sup> The Voluntary Guidelines also reiterate the states' obligations to respect, protect and fulfil the right to food in relation to land and other productive resources.<sup>56</sup>

The FAO also adopted the Voluntary Guidelines on Responsible Governance of Tenure in 2012.<sup>57</sup> 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.<sup>58</sup>

#### 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'.<sup>59</sup> For instance, the International Labour Organization (ILO) Convention No. 169

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<sup>52</sup> UN Human Rights Council, 'Basic Principles and Guidelines on Development-Based-Evictions and Displacement: The report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living' (2007) Annex 1, UN Doc. A/HRC/4/18A/HRC/4/18 (by Miloon Kothari).

<sup>53</sup> 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.

<sup>54</sup> FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, (Rome 2005).

<sup>55</sup> Ibid Guideline 8.

<sup>56</sup> Ibid.

<sup>57</sup> FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, (Rome 2012).

<sup>58</sup> 'Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas', (Geneva Academy of International Humanitarian Law and Human Rights, 2015). <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Session2/ChristopheGolay.pdf>>.

<sup>59</sup> 'Report of Special Rapporteur on the Right to Food, by Oliver De Schutter' (2010) UN Doc. GA/65/28 7.

recognises land rights of indigenous and tribal peoples in independent states.<sup>60</sup> 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’.<sup>61</sup>

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 their lands, territories or resources’.<sup>62</sup> 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’.<sup>63</sup> In addition, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) recognises the right of indigenous communities to their lands.<sup>64</sup> 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’.<sup>65</sup>

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 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

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<sup>60</sup> ILO, Indigenous and Tribal Peoples Convention (ILO C169, adopted on 27 June 1989, into force 5 September 1991) arts 13-19.

<sup>61</sup> Ibid art. 14 (1).

<sup>62</sup> UN Declaration on the Rights of Indigenous Peoples, (2007) UNGA Res A/RES/61/295.

<sup>63</sup> UN Report on Right to Food (n 59) 8.

<sup>64</sup> International Convention on the Elimination of All Forms of Racial Discrimination (CERD). (1969) UN Doc 660 UNTS.195. art 5 (d).

<sup>65</sup> SERAC case (n 21) paras. 42, 54 and 55.

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.

The FDRE Constitution incorporates the 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'.<sup>66</sup> 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.<sup>67</sup> 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 hinder the domestic application of international human rights treaties in Ethiopia.<sup>68</sup>

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).<sup>69</sup> This position argues that the supremacy of clause of the FDRE Constitution<sup>70</sup> 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.'<sup>71</sup> According to this camp, the first position is the outcome of an erroneous legal approach that

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<sup>66</sup> Ibid art. 13(2).

<sup>67</sup> Vadala (n 6) 1075; Rakeb Messele, *Enforcement of Human Rights in Ethiopia*, (Research subcontracted by Action Professionals' Association for the People (APAP) 2002).

<sup>68</sup> Sisay Alemahu Yashenew, 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia' (2008) 8(2) African Human Rights Law Journal 273; Ibrahim Idris, 'The Place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution' (2002) 20(1) Journal of Ethiopian Law 113, 132; Messele (n 67) 15.

<sup>69</sup> Chi Mgbako and others, 'Silencing the Ethiopian Court: Non-Judicial Constitutional Review and Its Impact on Human Rights' (2008) 15(1) Fordham International Law Journal 713.

<sup>70</sup> FDRE Constitution (n 3) art 9(1).

<sup>71</sup> Takele Soboka Bulto, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia' (2009) 23(1) Journal of Ethiopian Law 159.

‘allows domestic law to determine the position of treaties at the national level’.<sup>72</sup> 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’<sup>73</sup> 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.<sup>74</sup>

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 *Federal Police Department v. Naod et al*<sup>75</sup>, and *Dr. Negaso v. House of Federation and House of Peoples of Peoples’ Representatives*.<sup>76</sup> 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 treaties 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.

## **6. Normative Gaps Regarding Land Rights in Ethiopia: Legalising Dispossession?**

The Ethiopian Constitution of 1995 recognises several human rights including the right to life, property, labor and adequate standard of living,<sup>77</sup> and group rights such as the right of self-determination and the right to sustainable development among many others.<sup>78</sup> 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.<sup>79</sup> Moreover, the ‘Ethiopian farmers and pastoralists have the right to receive fair price for their

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<sup>72</sup> *ibid* 160.

<sup>73</sup> *ibid* 159.

<sup>74</sup> *ibid* 159-160.

<sup>75</sup> *Federal Police Department v. Naod and others* Federal High Court of Ethiopia File No. 17705 (2003).

<sup>76</sup> *Dr. Negaso v. House of Federation and House of Peoples Representatives* Federal High Court of Ethiopia File No. 41183 (2005).

<sup>77</sup> FDRE Constitution (n 3) arts 15, 40, 41 and 42.

<sup>78</sup> *Ibid* arts 39 and 44.

<sup>79</sup> *Ibid* art 40(4) and 40(5).

products that would lead to improvement in their conditions of life and to enable them obtain an equitable share of the national wealth commensurate with their contribution.’<sup>80</sup>

However, there are critical normative limitations regarding the land rights of ethnic groups and smallholders.<sup>81</sup> 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.

### **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’.<sup>82</sup> 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).<sup>83</sup> 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. 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’

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<sup>80</sup> Ibid art 41(8).

<sup>81</sup> Abdo (n 2); Zewdie (n 7).

<sup>82</sup> ICESCR (n 13), art. 1.

<sup>83</sup> FDRE Constitution (n 3) art 39 (1-3).

and ‘the right not to be deprived of means of subsistence’.<sup>84</sup> 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.<sup>85</sup> Similarly, expropriations without just compensation in the State of Oromia have worsened the food insecurity of displaced smallholder farmers.<sup>86</sup>

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 of 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 the light of articles 1 of the ICCPR and the ICESCR.<sup>87</sup>

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.<sup>88</sup> 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 relative to the FDRE Constitution.<sup>89</sup> 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.<sup>90</sup>

## **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’.<sup>91</sup> This means that the subnational states

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<sup>84</sup> Zewdie (n 7) 14-22.

<sup>85</sup> ‘Ethiopia: Forced Relocations Bring Hunger, Hardship: Donor Funds Should Not Facilitate Abuse of Indigenous Groups’ (*Human Rights Watch*, 2012) <<https://www.hrw.org/news/2012/01/16/ethiopia-forced-relocations-bring-hunger-hardship>>; Horne (n 45).

<sup>86</sup> Kumsa (n 47).

<sup>87</sup> FDRE Constitution (n 3) art 13(2).

<sup>88</sup> *Ibid* art 83.

<sup>89</sup> Bulto (n 71) 159-160.

<sup>90</sup> *Ibid*.

<sup>91</sup> FDRE Constitution (n 3) art 52 (2) (d).

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.<sup>92</sup>

As Ethiopia is currently an ethnic-based<sup>93</sup> 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.<sup>94</sup>

### 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 in the peoples of Ethiopia' and that '[I]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.'<sup>95</sup>

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<sup>96</sup> 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'.<sup>97</sup> As the Amharic version of the Constitution prevails over the English version in cases of contradiction between the two versions,<sup>98</sup> 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

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<sup>92</sup> Zewdie (n 7) 1, 16.

<sup>93</sup> Ethiopia's federalism is predominantly based on 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.

<sup>94</sup> Ibid at 18.

<sup>95</sup> FDRE Constitution (n 3) art. 40(1).

<sup>96</sup> Members of the Federation established by peoples as per Article 47 of the FDRE Constitution.

<sup>97</sup> Ethiopia, *Public Ownership of Rural Lands Proclamation No 31/1975* (1975) art. 3.

<sup>98</sup> FDRE Constitution (n 3) art. 106.

the owners of land and other natural resources and not the federal state; unless states cede some of their land and resources to it.<sup>99</sup>

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 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.<sup>100</sup>

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 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.'<sup>101</sup> 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'.<sup>102</sup> 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.'<sup>103</sup> Nega and others find that 'farmers feel largely insecure on their current holdings.'<sup>104</sup> 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.'<sup>105</sup>

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

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<sup>99</sup> Zewdie (n 7) 15.

<sup>100</sup> Birhanu Nega and others, 'Current land policy issues in Ethiopia' (Ethiopian Economic Policy Research Institute 2003) <<ftp://ftp.fao.org/docrep/fao/006/y5026e/y5026e02.pdf>>.

<sup>101</sup> Vadala (n 6) 1079.

<sup>102</sup> Daniel W. Ambaye, 'Land Rights and Expropriation in Ethiopia' (Doctoral Thesis in Land Law, Royal Institute of Technology (KTH) Stockholm 2013) i.

<sup>103</sup> Ziegler (n 6) paras 34 and 55.

<sup>104</sup> Nega and others (n 100) 103.

<sup>105</sup> Zewdie (n 7) 23.

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 food insecurity of the evicted smallholders. The implementation of the Land Certification Policy<sup>106</sup> 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.<sup>107</sup>

#### **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’.<sup>108</sup> 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.<sup>109</sup> 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, 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*

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<sup>106</sup> Ethiopia implemented rural land registration programme in 2003 to ‘issue every rightful holder of farm land a certificate of use rights and to have his/her plots recorded in a registry kept at the local kebele 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.

<sup>107</sup> Dessalegn Rahmato, *Land to Investors: Large-Scale Land Transfers in Ethiopia* (Forum for Social Studies 2011); Kumsa (n 47); Ambaye (n 102).

<sup>108</sup> FDRE, Proc No. 455/2005, art 4(3).

<sup>109</sup> FAO (n 57) Sec 16(8).

*property* for public purposes subject to payment in advance of compensation commensurate to the value of the property'.<sup>110</sup> 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 improvements* [he] 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'.<sup>111</sup> Thus, the law recognises a right to compensation not for the loss of the land itself but for 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<sup>112</sup>) 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.<sup>113</sup>

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.'<sup>114</sup> The lack of just compensation and rehabilitation of evicted peoples due to expropriation adversely impact their livelihoods.<sup>115</sup> 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.<sup>116</sup> 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'.<sup>117</sup>

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<sup>110</sup> FDRE Constitution (n 3) art 40(8); emphasis added.

<sup>111</sup> FDRE, Expropriation of Landholdings and Payment of Compensation Proclamation No 455/2005, *Fed. Neg. Gaz.* Year 11 No. 3. art. 7; emphasis added.

<sup>112</sup> *Federal Courts Re-Amendment Proclamation, Proc. No.454/2005, Fed. Neg. Gaz. Year 11 No. 42. Art 2.*

<sup>113</sup> *Ethiopian Roads Authority V. Issa Mohammed*, File No. 30461 (2008). Federal Supreme Court Cassation Division.

<sup>114</sup> Ambaye (n 102).

<sup>115</sup> Abdo (n 2) 338; Kumsa (n 47).

<sup>116</sup> Abdo (n 2) 333.

<sup>117</sup> *Ibid.*

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 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 which empowered the government authorities to expropriate rural lands, but did not set legal requirements for urban and rural development integration.<sup>118</sup>

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 2011<sup>119</sup>, but it leased out the urban land in Addis Ababa for 305,000 ETB per square meter in 2014.<sup>120</sup>

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.<sup>121</sup> 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.<sup>122</sup> 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.

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

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<sup>118</sup> Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 and Urban Land Lease Holding Proclamation No.721/2011.

<sup>119</sup> Muradu (n 2) and Kumsa (n 47).

<sup>120</sup> Fasika Tadesse, ‘What is behind Zeway’s Incongruous offer for Merkato Plot?’ *Addis Fortune* (Addis Ababa, 14 December 2014) <<http://addisfortune.net/articles/what-is-behind-zeways-incongruous-offer-for-merkato-plot/>>.

<sup>121</sup> William Davison, ‘The Shadow over Ethiopia’s Construction Boom’ (*Bloomberg*, 21 March 2016) <<http://www.bloomberg.com/news/articles/2016-03-21/evictions-unrest-cast-shadow-over-ethiopia-s-construction-boom>>.

<sup>122</sup> *Ibid.*

deprivation, and political impotence'.<sup>123</sup> 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.<sup>124</sup> The government maintains that it promotes large-scale farming to increase food production, create job opportunities and enhance the country's economic growth.<sup>125</sup> 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.<sup>126</sup>

Critics argue that large-scale land transfer has caused 'land grabbing' for two main reasons. First, it causes forced relocation of local people from their lands without alternative means of livelihood.<sup>127</sup> 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'.<sup>128</sup> The loss of access to irrigable lands and means of sustainable livelihood have worsened peoples' food insecurity.<sup>129</sup> 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.<sup>130</sup> In addition, large-scale land transfers affect fishing, another important source of food during food scarcity, because of reduction of water volume and limitation of access to sufficient water.<sup>131</sup>

Second, large-scale agricultural investors are encouraged to cultivate agricultural crops for the export market instead of satisfying the local food security needs. For example, Karuturi Global

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<sup>123</sup> D Dias and J Paul, 'Developing the Human Right to Food as a Legal Resource for the Rural Poor. Some Strategies for NGOs' in Alston and Tomasevski (eds), *The Right to Food*, (Martinus Nijhoff Publishers 1984) 203.

<sup>124</sup> Grant and Das (n 1); Rahmato (n 107).

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Cotula and others (n 44) 37; Grant and Das (n 1) 289, 296

<sup>128</sup> Grant and Das (n 1).

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

Ltd.<sup>132</sup> 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.<sup>133</sup>

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.<sup>134</sup>

## 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.<sup>135</sup> The Oromo protests started when the federal government introduced the ‘Addis Ababa Integrated Regional Development Plan’ (hereafter Master Plan<sup>136</sup>) in April 2014 to expand the boundary of Addis Ababa, the capital, by incorporating several towns of the State of Oromia.<sup>137</sup> From the standpoint of the protestors, the Master Plan was a pretext for land grabbing that would result in the eviction of millions of Oromo smallholders.<sup>138</sup>

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.<sup>139</sup> 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 possessions<sup>140</sup>, the right to livelihood, adequate living standard, chosen work<sup>141</sup>, the right of farmers to participate in the design of development

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<sup>132</sup> This contract is in danger of being cancelled by the government, because not enough land is being developed.

<sup>133</sup> Grant and Das (n 1) 289.

<sup>134</sup> Rahmato (n 120).

<sup>135</sup> ‘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>>.

<sup>136</sup> This plan was aimed at expanding Addis Ababa and known as Addis Ababa Master Plan.

<sup>137</sup> Samantha Spooner, ‘Ethiopia’s volcano: The Oromo are resisting the regime and its bid to grab their land’ (*Mail and Guardian Africa*, 17 August 2016 <<http://mgafrica.com/article/2016-08-17-00-ethiopias-volcano-the-oromo-are-resisting-the-regime-and-its-bid-to-grab-their-land-1>>.

<sup>138</sup> Jeffrey Gettleman, ‘A Generation Is Protesting in Ethiopia, Long a U.S Ally’ *The New York Times* (12 August 2016); Endalk Chala, ‘Ethiopia scraps Addis Ababa “Master Plan” after Protests Kill 140’ *The Guardian* (Ethiopia, 14 January 2016).

<sup>139</sup> Tsegaye T. Ararssa, ‘Ethiopia: Why Resist the Master Plan? A Constitutional Legal Exploration’ *Addis Standard* (Addis Ababa, 20 August 2015).

<sup>140</sup> FDRE Constitution (n 3) art 40(4-6).

<sup>141</sup> *Ibid* art 41.

plans,<sup>142</sup> the right of farmers to a clean and healthy environment,<sup>143</sup> 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.<sup>144</sup> Moreover, the enforcement of the Master Plan would violate the group rights of the Oromo people including the right of self-determination<sup>145</sup>, the right to joint ownership of land by the peoples and the State<sup>146</sup>, the right to development<sup>147</sup>, the right to participation in policy formulation,<sup>148</sup> and the right to consultation and expression of views in the design of development policies.<sup>149</sup>

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 extra-judicial killings, arbitrary arrests, unlawful detentions and torture.<sup>150</sup> Reports show that at least 1000 protesters have been killed by the government's security forces<sup>151</sup>, and that 'hundreds, likely more, have been victims of enforced disappearances' while the majority of 'those killed or detained by security forces are students'.<sup>152</sup>

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<sup>153</sup> because of their opposition to the Master Plan.<sup>154</sup> 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.<sup>155</sup>

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<sup>142</sup> Ibid art 89(6).

<sup>143</sup> Ibid arts 44 cum 92(1).

<sup>144</sup> Ibid art 44(2).

<sup>145</sup> Ibid art 39.

<sup>146</sup> Ibid art 40(3 and 6).

<sup>147</sup> Ibid art 43.

<sup>148</sup> Ibid art 90(6).

<sup>149</sup> Ibid art 92(3).

<sup>150</sup> "Such a Brutal Crackdown": 'Killings and Arrests in Response to Ethiopia's Oromo Protests' (*Human Rights Watch*, 15 June 2016) <<https://www.hrw.org/report/2016/06/15/such-brutal-crackdown/killings-and-arrests-response-ethiopia-oromo-protests>>; Paul Schemm, 'A Year after Obama's visit, Ethiopia is in turmoil' *The Washington Post* (Addis Ababa, 9 August 2016).

<sup>151</sup> Andrea Carboni, 'Ethiopia on the brink? Politics and protest in the Horn of Africa' (*Transconflict*, 2 February 2017) <[www.transconflict.com/2017/02/ethiopia-on-the-brink-politics-and-protest-in-the-horn-of-africa-022](http://www.transconflict.com/2017/02/ethiopia-on-the-brink-politics-and-protest-in-the-horn-of-africa-022)>.

Although the Government of Ethiopia dismisses the report of human rights groups on the number of protesters killed in relation to the #OromoProtests, Prime Minister Hailemariam Dessalegn admitted to the deaths of more than 500 protesters. Watch video at [https://www.youtube.com/watch?v=ewO4qpc\\_F4M](https://www.youtube.com/watch?v=ewO4qpc_F4M); John Anlionby, 'Ethiopia admits death toll in anti-regime protests may exceed 500' *Financial Times* (11 October 2016).

<sup>152</sup> HRW (n 150).

<sup>153</sup> FDRE, 'Anti-Terrorism Proclamation No.652/2009', *Fed.Neg.Gaz.* 15<sup>th</sup> Year No. 57.

<sup>154</sup> 'News: Ethiopia Prosecutors Bring Multiple Criminal Charges Against Opposition Leader Dr. Merera Gudina, Two Others' *Addis Standard* (Addis Ababa, 23 February 2017); 'Breaking – Ethiopia Charges Prominent Opposition Member Bekele Gerba, Others with Terrorism' *Addis Standard* (Addis Ababa, 22 April 2016).

<sup>155</sup> 'Legal Analysis of Ethiopia's State of Emergency' (*Human Rights Watch*, 30 October 2016) <<https://www.hrw.org/news/2016/10/30/legal-analysis-ethiopia-state-emergency>>.

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.

## 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.<sup>156</sup> 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 dispossessions of the smallholders, Ethiopia violates its obligations to respect, protect and fulfill 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

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<sup>156</sup> Nicholas Tagliarino, 'Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards' World Resources Institute Working Paper (2016).

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 dispossessions, 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.<sup>157</sup>

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<sup>157</sup> 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.