

Human Rights Approach to Land Rights in Ethiopia

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Introduction

For an agrarian country like Ethiopia, land has always been considered to have social, cultural and economic value, not to mention its political value. The state-owned tenure system has been constitutionally entrenched since the 1975 land reform legislation.¹ Whether or not such tenure structure best guarantees the interests of farmers from the human rights point of view has not been adequately examined. Moreover, the very fact of addressing land rights from the human rights perspective is in itself a neglected topic that requires scrutiny.

Few have tried to look into land rights from the angle of such basic human rights issues as right to adequate housing², right to adequate food as a component of the right to adequate standard of living.³ Ethiopia is a country that has been labelled as one of the least developed countries on the planet whose population is living on less than one dollar a day⁴ and over 85% of the population is rural

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¹ After the down fall of the Ethiopian Imperial rule by the forces of the military, the new socialist-oriented regime issued a proclamation called 'A Proclamation to Provide for the Public Ownership of Rural Lands', Proclamation No. 31, 1975, *Negarit Gazeta* No. 34, (4 March 1975) that put all land and other natural resources under the state ownership and the present regime too followed suit by providing under the Constitution that 'the right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the State and in the peoples of Ethiopia.' See 'Federal Democratic Republic of Ethiopia (FDRE) Constitution (1995), Proc. No 1/1995, *Negarit Gazeta*, Addis Ababa, Article 40(3)

² See for instance the UN Special Rapporteur on the right to adequate housing, Mr. Rajindar Sachar, who has expounded on some relevant indicators concerning the right to housing and land in his report. See specially his 1995 report E/C.4/Sub.2/1995/12, 12 July 1995, in particular Paras 97-122

³ See the Report of the UN Special Rapporteur on the Right to Food, Mr. J., Ziegler, , A/56/210, 23 July 2001, Para 27

⁴ The 2005 World Bank Annual Report describes the country as the one whose population still lives on 1 USD per day. See <http://go.worldbank.org/YLTBMVE5Y0> , accessed on 12 June 2007

poor which produces only for consumption. That is why Yohannes remarked 'land is...for the rural Ethiopia, meant economy, politics, culture, religion, and more, much more.'⁵

Many social science researchers have tried to address the land issue from the economic, social as well as demographic perspectives, while the human rights aspect remains insufficiently addressed. Especially a contribution on how to make use of the newly emerging human rights-based approach to this invaluable resource in light of the internationally guaranteed human rights is a matter of necessity. This Article, therefore, seeks to make a modest contribution by discussing the norms, concepts and sample indicators with regard to the human rights approach to land rights in Ethiopia. It closes with conclusions and recommendations.

I Human Right to Land: The Normative Framework

1.1. General Overview on the Global and National Human Rights Norms

Neither the International Covenant on Civil and Political Rights (ICCPR)⁶ nor the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷ has a provision on property rights even if the Universal Declaration of Human Rights (UDHR)⁸ has devoted one article in relation to this particular right, which reads: *Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.*⁹

During the discussions on the formulation of the two covenants mentioned here, a draft provision based on Article 17 of the UDHR was put forward by the USA¹⁰, though unsuccessfully, which proposed the inclusion of 'property' along the right to life so that it could read '*No one shall be deprived of his life, liberty, or property, without due process of law.*'¹⁰ In July 1951, France also submitted a proposal on the right to property¹¹ which reads:

⁵ Negatu, Et al, (Eds), 'The Socio-Cultural fabrics of the Rural Amhara Community,' (Yohannes Berhanu), Proceedings of the Workshop on 'Current Issues on Land Tenure in Ethiopia', ADR, Addis Ababa University, April 6-7, 2001

⁶ International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. res 2200(XXI), UN GAOR, 21st Sess., Supp. No. 16, UN doc A/6316, (1966), 993 U.N.T.S. 3 (*entered into force 3 Jan. 1976*)

⁷ International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, 993, U.N.T.S. 3, Annex to G.A. res 2200(XXI), (*entered into force 3rd Jan. 1976*)

⁸ Universal Declaration of Human Rights, UNGA, res 217A(III), (10 Dec. 1948)

⁹ UDHR, Ibid, Article 17

¹⁰ See UN Doc.E/CN.4/L.313

¹¹ See UN

Doc.E/CN.4/L.66

*The states parties to this Covenant undertake to respect the right of everyone to own property alone as well as in association with others. This right shall be subject to the laws of the country in which the property owned is situated. Expropriation may not take place except in cases of public necessity or utility in circumstances defined by law and subject to fair compensation.*¹¹

Due to serious disagreement on the issues of expropriation and compensation, the draft texts were rejected with a vote of seven to six, with five abstentions.¹² Thus, there is no express recognition of the right to property in anyone of those international covenants. Theo quite properly commented that 'the failure to include the right to property can be considered as a failure of the Member States of the United Nations, particularly since there was limited opposition to its inclusion.'¹³

Moreover, the double requirement for the existence of states' obligations under customary international law as provided in the ICJ statute¹⁴ and as confirmed by the same court in the *Nicaragua case*¹⁵, i.e., state practice (objective element) and *opinio juris* (subjective element), make it less likely that Article 17 of the UDHR might have developed to that status. It has been argued, though less convincingly, by the Inter-American Commission of Human Rights that there at least exists a customary international law with regard to property rights to land of indigenous people. The Inter-American Human Rights Court, however, did not follow this line of argument even if it ruled in favour of the claimants in that particular case.¹⁶

When we see the three regional human rights instruments, all have provided for property rights. The First Protocol to the European Convention for the Protection of Human Rights¹⁷ provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.

¹² See Craven, M., 'The International Covenant on Economic, Social and Cultural Rights: A perspective on its Development', Clarendon Press, 1995, page 25; See also H. J., Steiner & P. Alston, 'International Human Rights in Context: Law, Politics and Morals,' 2nd ed., (2000), Oxford, page 246

¹³ See Van Banning, Th., 'The Human Right to Property', Intersentia, Antwerpen/Oxford/New York, 2002, at p. 45

¹⁴ See Article 38(1) (b) of the Statute of the International Court of Justice.

¹⁵ *Nicaragua v USA* (Martts), ICJ Rep. 1986, 14, at 97

¹⁶ See *The Case of The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, The Inter-American Court of Human Rights, Judgment of August 31, 2001, Para 140(b)

¹⁷ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952, see Art 1

The Preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 21 of the American Convention on Human Rights also called Pact of San Jose, Costa Rica¹⁸ has also provided the following:

- 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.*
- 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.*

Finally, the African Charter of Human and Peoples' Rights¹⁹ under Article 14 provides: *The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate law.*

These could hardly be considered as state practice basically because of the differences that we see in each of the instruments as well as the variations that exist at national level.²⁰ Thus, there exist neither treaty-based nor customary international law-based obligations on States as far as property rights are concerned at the global level that binds all members of the UN identically. Even if one might be tempted to argue that the UDHR is a codification of general rules of international law, it is premature to claim that its Article 17 could be one of those 'fundamental principles violation of which involves violation of general international law.'²¹

¹⁸American Convention on Human Rights, adopted on November 22, 1969, 9 I.L.M. 673 (1970)

¹⁹ African Charter on Human and People's Rights (also called the 'Banjul Charter'), adopted 27 June 1981 in Nairobi, Kenya, OAU.Doc. CAB/LEG/67/3, Rev.5, reprinted in 21 I.L.M. 59 (1981)

²⁰ As the jurisprudence of the International Court of Justice tells us, for the formation of a rule of customary international law, the State practice concerned 'should have been both extensive and *virtually uniform*'. See ICJ, *North Sea Continental Shelf cases*, Judgement, 20 February 1969, *ICJ Reports 1969*, p. 43, Para 74; Apart from the textual variations that we see in these instruments, the practices in each region is tremendously at bar than uniform. For instance, the First Protocol to the European Human Rights Convention never uses the term 'property' while it merely talks about 'possession'; While the American one is clear on the nature of the right to property, i.e., 'use and enjoyment', the African Charter merely says that 'the right to property shall be guaranteed' without any specific mention as to the nature of such guarantee.

²¹ See generally Rodley, N.S., 'Human Rights and Humanitarian Intervention: The Case Law of the World Court', 38 *I.C.L.Q.* 321-333, 1989; See also Humphrey, J.P., 'The Universal Declaration of Human Rights: Its History, Impact and Juridical Character', 48

However, one can infer this right to property from various provisions of the ICESCR. The first is the one relating to self-determination of people, specifically 'the right not to be deprived of its means of subsistence, which may encompass land.'²² As we shall see later on, the most important principle of non-discrimination also underpins rights relating to land.²³ The right to property is also an intrinsic element of other specific rights such as housing, food, etc embodied in ICESCR. Accordingly, a brief examination of the possible linkages between land rights and other fundamental human rights is very pertinent to address the matter from a wider human rights perspective.

1.2. Linkages between Property Rights to Land and other Human Rights

It is needless to state that human rights are interdependent.²⁴ Apart from the interdependence of human rights, property rights to land have been treated as an element of other fundamental rights and freedoms such as the right to adequate food,²⁵ the right to adequate housing,²⁵ minorities' rights²⁶, the right to work²⁷, the right to development²⁸ and rights of women.²⁹ Moreover, 'a key principle which would apply to all types of legislation, policies and programmes in the field of land-related rights is the prohibition of discrimination.'³⁰ While there exists direct or indirect correlation between all

in B.J. Ramcharan (Ed.), *Human Rights: Thirty Years After the Universal Declaration* (1978), pp. 21-37

²² See Article 1(2) of ICESCR, supra note 7; see also Coomans, F., 'Agrarian Reform as a Human Rights Issue in the Activities of United Nations Human Rights Bodies and Specialised Agencies,' 24(1) *The Netherlands Quarterly of Human Rights* 7-31, 2006, p.10

²³ See Article 2(2) and 3 of ICESCR and Coomans, Ibid

²⁴ See 'Vienna Declaration and Programme of Action', Adopted by World Conference on Human Rights, 14-25 June 1993-Vienna, UN doc. A/CONF. 157/23

²⁵ As provided under Article 11(1) of the ICESCR, supra note 7

²⁶ Article 27 of the ICCPR, supra note 6; Also see ILO Convention C169 Concerning Indigenous and Tribal Peoples, adopted in its Session 76, (27 June 1989), (*entered into force 5 Sept. 1991*), particularly, see Part II; See also General Recommendation No 23 by the UN Human Rights Committee on Article 27 of the ICCPR, (1994), Para 7

²⁷ Article 6 of the ICESCR, as 'access to land enables peasants to exercise their right to work' (Conf Coomans, supra note 22)

²⁸ See *Declaration on the Right to Development*, specially Article 8(1) which obliges states to 'undertake at national level all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources...' which naturally includes land.

²⁹ 'Convention on the Elimination of All Forms of Discrimination against Women' adopted 18 Dec. 1979, G.A. res. 34/180, U.N. Doc. A/34/36 (1980) (entered into force 3 Sept. 1981), see Article 14(2)(g)

³⁰ Coomans, Supra note 22, p.10; also see Art 2 of ICESCR and Arts 2 and 26 of ICCPR, which prohibit discrimination on the grounds of, among others, property, sex and social origin.

these rights and right to land, the ones that one can observe with regard to the right to adequate food and housing appears to be enormously apparent and they are in many respects interdependent with one another. In the interest of space and avoidance of repetition, this Article is confined to the establishment of the linkages land rights have with the right to adequate food and the right to housing.

1.2.1. The Nexus between Land Rights and the Right to Adequate Food

While establishing the nexus between the right to food and the right to land at all the levels reiterating the obligations of states parties' in this regard,³¹ the Special Rapporteur on the Right to Food wrote in his 2001 Report as:

...Violations of the obligation to respect would occur, for example, if the Government arbitrarily evicted or displaced people from their land, especially if the land was their primary means of feeding themselves...If the Government does not intervene when a powerful individual evicts people from their land, then the Government violates the obligation to protect the right to food...The obligation to fulfil means that the Government must take positive actions to identify vulnerable groups and to implement policies to ensure access to adequate food by facilitating their ability to feed themselves. That could mean...introducing an agrarian reform programme for landless groups...³²

In support of this link, the UN Food and Agriculture Organisation (FAO) in its Voluntary Guidelines has stated that 'in order to achieve progressive realisation of the right to adequate food in the context of national food security...states should pursue inclusive, non-discriminatory and sound...land-use, and as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers...to earn a fair return from their labour, capital and management...'³³ The Guideline even has gone further and provided that 'States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to

³¹ These levels are described as the obligation 'to respect, protect and fulfil' by the Committee on Economic, Social and Cultural Rights. See especially its General Comment No. 12 on the right to food, E/C. 12/1999/5

³² See the Report of the UN Special Rapporteur on the Right to Food, Mr. J. Ziegler, A/56/210, 23 July 2001, Paras 27, 28, & 29

³³ See the FAO, (2004), 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security', Adopted by the 127th Session of the FAO Council, Nov. 2004, Guideline 2, Para 2.1 & 2.5

inherit.³⁴ This latter wording of the Guideline not only speaks of the guarantee of the right to land, but also prescribes the particular ownership structure as 'full right to own and inherit', which might not be easier to comply with for many states.³⁵

And 'according to the UN Committee on Economic, Social and Cultural Rights (1999), the ability of an individual to feed himself/herself depends on the opportunity granted to him/her by society in terms of 'exploiting productive land or other natural food resources, or by means of food distribution, processing and marketing systems that function adequately and are capable of transforming food from where it is produced to wherever the need may be.'³⁶ Thus, the right to food would require the guarantee of the property rights to land and it is hardly possible to realise the former without the latter.

1.2.2. The Linkage between Land Rights and the Right to Adequate Housing

Land rights have also been tied to the right to adequate housing. And it has been rightly asserted that there exists a strong link between these two. It is clear that secured right to housing can be realised where access to land is guaranteed. The Special Rapporteur on the Right to Adequate Housing has expressed this interdependence in the following terms:

The Special Rapporteur...views land and housing rights as congruent entitlements. When housing is viewed as the right to a place to live in security and dignity...it necessarily encompasses security of tenure and equitable access to land resources. The violations that affect access and entitlement to land also have an impact upon housing security... The Special Rapporteur would like to argue that the two rights need to be viewed holistically...The denial of housing and land rights through the destruction of the natural resource base, the prevalence of forced evictions and the existence of inadequate resettlement and compensation policies reduces people and communities to a state of landlessness and homelessness that leads to hunger and malnutrition.³⁷

³⁴ See Guideline 8B, Ibid

³⁵ Such measures involve major reforms on land policies that are already in place and from the discussions of member states while adopting Article 11(2)(a) of the ICESCR, states had 'reserved the right to determine for themselves whether, and if so, to what extent, agrarian reform was necessary.' See Craven, M., supra note 12, page 322

³⁶ See the Committee on Economic, Social and Cultural Rights (1999) in Campesina, L.V., et al, 'Agrarian Reform in the Context of Food Sovereignty, the Right to Food and Cultural Diversity: Land, Territory and Dignity', Civil Society Issue Paper, Presented at the FAO Conference, Porto Alegre, Brazil, 7-10 March 2006, page 7

³⁷ Report of the UN Special Rapporteur on the Right to Adequate Housing, Mr. R. Sachar, E/CN.4/Sub.2/1995/12, 12 July 1995, Paras 54 & 55

The current Special Rapporteur on the subject has also repeatedly asserted these linkages and especially his recent report argues that the human right to land is a 'normative gap' within the international human rights framework.³⁸ In this report, he has comprehensively described the importance of the human rights to land in the following words.

*Without the adequate legal recognition of individual as well as collective land rights, the right to adequate housing, in many instances, cannot be effectively realized. The right to land, however, is not just linked to the right to adequate housing but is integrally related to the human rights to food, livelihood, work, self-determination, and security of the person and home and the sustenance of common property resources. The guarantee of the right to land is thus critical for the majority of the world's population who depend on land and land-based resources for their lives and livelihoods. In the urban context legal recognition of land rights is often critical to protecting the right to adequate housing, including access to essential services and livelihoods, especially for the urban poor.*³⁹

The United Nations Human Settlement Programme, UN-HABITAT,⁴⁰ in its 2003 'Habitat Agenda Goals and Principles, Commitments and Global Plan of Action'⁴¹, affirmed the Special Rapporteur's position on the clear linkage between land rights and housing. It has stated that 'access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements affecting both urban and rural areas.'⁴² While it acknowledges that there might be variations in the choice of the appropriate land policies at national level, there still exists, however, an obligation on every government to show 'commitment to promoting the provision of an adequate supply of land in the context of sustainable land use policies [...] and strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under the law.'⁴³

³⁸ See the Report of the UN Special Rapporteur on the Right to Adequate Housing, Mr. M. Kothari, A/HRC/4/18, 5 February 2007, Paras 25-31

³⁹ See Ibid, Para 29

⁴⁰ See UN-HABITAT website <http://www.unhabitat.org> , accessed on 22nd June 2007

⁴¹ See Ibid

⁴² The UN-HABITAT Plan of Action, Ibid, Para 75

⁴³ Ibid; the issue of gender biases in terms of access to land and other natural resources remains to be quite a vast area of research, especially when it comes to African land tenure systems in general. The matter deserves a separate and extensive research. In this respect, see R., Giovarelli, 'Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property', 4 *Seattle J. for Soc Just.* 801, Spring/Summer 2006

The United Nations Committee on Economic, Social and Cultural Rights has, in conformance with the Special Rapporteur's insightful work on housing rights, tried to explain the meaning of adequacy in the following terms.

*The right to housing should not be interpreted in a narrow or restrictive sense which equates with, for example, the shelter provided by merely having a roof over one's head. Rather it should be seen as the right to somewhere to live in security, peace and dignity.*⁴⁴

Thus, there is no doubt that the individual cannot have secured, peaceful and dignified place of living without secured access to land. It is only where the right to land, irrespective of how that might be defined under the national law, (i.e., either collective, public, or private) has been guaranteed that a person may have a secured and peaceful place to live in. It is also true that 'without adequate legal tenure [to land] the threat of eviction or displacement never ceases and possibilities for all sectors to exercise individual self-determination and plan for the future are severely curtailed.'⁴⁵

Therefore, the right to land has been recognized, as an inseparable element of the right to adequate food and housing and, as one of the international human rights of individuals.

With these possible linkages of land rights with other human rights, the next sub-section tries to see where Ethiopia is located in light of both international and national human rights framework.

1.3. International Human Rights Law-based Norms in Ethiopia

Ethiopia is a party to the ICESCR, the ICCPR, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and the African Charter on Human and People's Rights.⁴⁶ Even if it has ratified 21 conventions of the ILO

⁴⁴ See General Comment No. 4, UN Committee on Economic, Social and Cultural Rights (CESCR), Supp. (No.3), Para 7, UN Doc.E/1992/23, (1992), Para 135

⁴⁵ See Progress Report of the UN Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. D., Turk, UN Doc., E/CN.4/Sub.2/1990/19, (6 July 1990)

⁴⁶ See the UN Office of the High Commissioner for Human Rights web site on status of ratification, at <http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=59-59>, accessed on 22nd June 2007, and also that of the African Commission on Human and People's Rights web site, at http://www.achpr.org/english/_info/index_ratifications_en.html, accessed on 20th June 2007

to date, it has not yet ratified Convention C169 concerning Indigenous and Tribal Peoples.⁴⁷

Some of the relevant provisions from these international instruments can be mentioned here in relation to property rights to land; Arts 2, 3 and 11 of ICESCR; Arts 2, 3, 17 and 27 of ICCPR; Art 5 of ICERD; Art 14 of CEDAW; Arts 16(1) & (2), 19(1), and 27 of CRC; Art 14 of the African Charter on Human and People's Rights; and the ILO Convention 169, especially part II, Arts 13-19 which specifically deals with land issues of indigenous people.⁴⁸

In Ethiopia, the power to conclude international agreements is entrusted to the executive branch of government and the House of Peoples' Representatives (Parliament) has then to ratify them.⁴⁹ Once they are ratified, all international agreements, including human rights instruments, are integral parts of the law of the land.⁵⁰ No additional measure to be taken by the legislature is provided for in the Constitution which apparently resembles that of the monist approach to international law.⁵¹ However, the Federal *Negarit Gazeta* Establishment Proclamation No. 3/1995 provides that all laws of the federal government shall be published in the Federal *Negarit Gazeta*, and goes on to state that all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal *Negarit Gazeta*.⁵² According to these provisions, Ethiopia could be classified as dualist as a national legislation needs to be published in order for the provisions of international instruments to be

⁴⁷ See <http://www.ilo.org>, accessed on 12 July 2007; probably the failure on ratifying this convention could be attributed to the fact that Ethiopia's having or not having indigenous people is not a settled issue.

⁴⁸ There are also a handful of the UN resolutions and declarations which have relevance to land rights. The most important ones being Art 8 of the Declaration on the right to Development; Commission on Human Rights Resolution 2005/25, on Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing; and Forced Evictions, Commission on Human Rights Resolution 1993/77

⁴⁹ See Supra Note 1, Art 55(12) of the Constitution of Federal Democratic Republic of Ethiopia (1995)

⁵⁰ Ibid, Art 9(4)

⁵¹ At present the 'monist-dualist' distinction is considered as outdated and the preferred approach is rather to take a sort of mid-way approach. For discussions on this matter see Martin Schenin International Human Rights in National Law pp 417-428 in Raija Hanski and Markku Suksi (Eds.), 'An International Protection of Human Rights, A Textbook', (2nd Edition), Institute for Human Rights, Åbo Akademi University (1999), p 418

⁵² See the Federal *Negarit Gazeta* Establishment Proclamation, No 3/1995, Addis Ababa, 1st Year No. 3, (22 August 1995), Arts 2(2) & (3); moreover one of the powers of the President of the Republic is to proclaim laws on the *Negarit Gazeta*. See the FDRE Constitution Article 71(2) supra note 49

implemented at the domestic level. Thus, the approach that the Ethiopia's legal system follows appears to be neither a pure dualist nor a monist one.

Less clear is, however, the hierarchy of the Constitution with that of the international treaties ratified by the country in case the two standards do conflict each other. Of some help would be Article 13(2) of the Constitution, which is a prelude to the catalogues of fundamental human rights and freedoms that go through Articles 13 to 44⁵³, which stipulates:

The fundamental rights and freedoms specified in this Chapter shall 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.

There is no consensus as to the exact import of this provision for some believe that it clearly gives primacy to these international human rights instruments, while others vehemently disagree with such interpretation on the ground of the supremacy clause of Article 9(1) which states 'The constitution is the supreme law of the land. Any law⁵⁴... which contravenes this constitution shall be of no effect.' Thus, the confirmative interpretation that Article 13(2) permits must be subject to this clause and only where there is a room for confirmative interpretation in light of those instruments that Article 13(2) might be of any use. Where there is clear contradiction of standards, there is no possibility of employing those global standards in disregard of the supremacy clause of the constitution. Be that as it may, the denial of the courts to interpret the constitution makes case-based jurisprudential development unlikely and therefore any viable understanding of those disputable provisions remains a matter of solely academic discourse.

Therefore, there is no much hope in relying on the country's international human rights obligations for the purpose of establishing the society's enforceable property rights to land. In addition to lack of sufficient compliance with its reporting obligations, due to absence of ratification of any of the Protocols for individual complaints mechanisms, a person who might have suffered violation of his/her property rights to land cannot file complaint against the Ethiopian state with the UN and the regional human rights forums.⁵⁵

⁵³ The Fundamental Rights and Freedoms take up the largest part of the constitution, i.e., they cover nearly one-third of the overall text.

⁵⁴ By 'any law' it is understood to refer to both national as well as international.

⁵⁵ The African Commission on Human and Peoples' Rights and the recently established Court do have their own Optional Protocols to which Ethiopia has not yet become a party. Moreover, the UN Human Rights Council may receive complaints

On various occasions, the treaty bodies have been urging the country to clarify the status of the international human rights norms under the domestic jurisdiction and move forward in ratifying the protocols. The statement made by the Committee on the Elimination Racial Discrimination (CERD) in its Concluding Observations⁵⁶ based on information, *inter alia*, from other UN bodies, is worth noting.

*While noting that article 13 of the constitution provides “that fundamental rights and freedoms specified [in the constitution] shall be interpreted in a manner conforming to the principles of [...] international instruments adopted by Ethiopia”, the Committee lacks information about the status of the Convention in the domestic legal order, the possibility of invoking directly the Convention before national courts and on any legislation implementing the provisions of the Convention...The Committee recommends that the State party provide, in its overdue report, information on the status of the Convention in domestic law, the possibility of invoking its provisions directly before national courts and on the existence of specific legislation implementing the provisions of the Convention.*⁵⁷

A similar recommendation was made by the Human Rights Council in February 2007 that considered a country mission report on Ethiopia by the Independent Expert on Minority issues.⁵⁸ Her recommendation states that no single international human rights instrument has been published in the official legal gazette which is the only formal source of enforceable legislation in the

only from States parties to its optional protocol again Ethiopia has not yet ratified same.

⁵⁶ The Observations were made without the State submitting its overdue reports, which it hasn't done since 1992 against its obligation that it has undertaken by Art 9 of the Convention. See 'International Convention on the Elimination of all Forms of Racial Discrimination', adopted 21 Dec 1965, G.A. res 2106(XX); Also see Concluding Observations of CERD, in its meeting held from 17th February to 9th March 2007, UN Doc., CERD/C/ETH/CO/15, 20 June 2007; it is however very promising to realise the current massive reporting project that is underway by the Ethiopian government though much remains uncertain as many of the reports are still on draft stage and not yet submitted.

⁵⁷ Concluding Observations, Ibid, Para 15

⁵⁸ See Human Rights Council, Report of the Independent Expert on Minority issues, Gay McDougall, Add., Mission to Ethiopia (28 November-12 December 2006), UN Doc., A/HRC/4/9/Add.3, 28 Feb 2007, of special interest with this regard is Para 99, which recommends to 'ensure effective implementation and application of the international human rights instruments to which Ethiopia is a party and that are incorporated into the federal constitution, the texts of the treaties should be published in the official Gazette.'

country.⁵⁹ In addition to the reluctance that emanates from lack of a clear constitutional power to resolve disputes on the basis of the constitutional provisions, the very fact that those international human rights instruments are not published in the official newsletter is cited by a handful of judges for not applying them in actual cases.⁶⁰ Therefore, as far as international human rights provisions are concerned, it is not a promising ground for protection of property rights to land in the country.

2.4. Property Right to Land under Ethiopian Constitution

The Constitution classifies the fundamental rights and freedoms into Human and Democratic rights.⁶¹ While most of the civil and political rights such as the right to life, liberty, security of person, equality, privacy, etc are grouped under the former, right to association, freedom of movement, right to elect and be elected, right to self-determination, few economic, social and cultural rights, right to labour, property right, right to development and environment, etc are grouped as democratic rights. Even if they are classed into these categories, there are no standard rules to distinguish the two sets of rights except in most part of the democratic rights there is an element of collectivity. Chapter 10 of the Constitution contains few national policy principles and objectives which also include basic principles in relation to socio-economic rights.⁶²

Article 40 of the Constitution provides the right to property in general. First, it provides the right to ownership of private property relating to tangible and intangible goods which, subject to the limitations to be imposed by law in the interest of the public, includes the right to acquire, use and transfer.⁶³ Secondly, and more importantly, Article 40 (3-8) of the Constitution enunciates on land rights. Reaffirming one of the socialist tenets of the *previous* ⁶⁴ regime,

⁵⁹ A law becomes binding and enforceable before the courts where it has been published on the official *Negarit Gazeta*, supra note 52

⁶⁰ This is without considering the information gap on the part of the public itself, most of which doesn't have the knowledge of the language of any of the international human rights instruments and thus the very existence of the rights.

⁶¹ Articles 14-28 are on Human Rights while Articles 29-44 are on Democratic rights.

⁶² These are provided under Arts 85-92, supra note 49

⁶³ See Article 40(1) & (2), supra note 49

⁶⁴ 'Derg' or 'Dergue' was a military Junta that came to power in Ethiopia following the ousting of the last King-Emperor *Haile Selassie*. *Derg*, which means 'Committee' or 'Council' in *Ge'ez* (the Ethiopian Orthodox Church language), is the short name of the *Coordinating Committee of the Armed Forces, Police, and Territorial Army*, a committee of junior military officers which ruled the country from 1974-1987.' See Getachew Kibreth (2001), 'The Fate of Andromeda: Ethiopia and the Superpowers', page 7; immediately after assuming power, it had issued a proclamation entitled 'A Proclamation to Provide for the Public Ownership of Rural Lands', Proclamation No. 31, 1975, *Negarit Gazeta* No. 34, (4 March 1975) and 'A Proclamation to Provide for Public Ownership of Urban Land', Proc. No. 47, *Negarit Gazeta* Year 34, No. 26 which

57

the current Constitution has also declared public ownership of rural and urban land while use right is reserved to individuals. Since the country is structured along the line of a federal setup with nine autonomous regional states, the use and administration of land is left to each regional government within the framework of the federal parliament's legislation.⁶⁵ Individuals shall have the full right to the immovable property they build and to the permanent improvements they bring about on the land by using labor or capital.⁶⁶ At the same time the government has the prerogative to expropriate any private property for *public purposes* with payment in *advance of compensation commensurate to the value of the property*.⁶⁷

One of the most debated parts of the Constitution during its drafting periods as well as after its coming into effect is the one on the form of ownership of land. In the process of drafting, there had been two major positions. The arguments in support of those two positions are reproduced below. These arguments sides are obtained from the discussions of the sub-committee in charge of the land question of the Constituent Assembly's.⁶⁸ First, those who were arguing in favour of the current arrangement had presented a long list of justifications in response to their opponents among which the most appealing ones are summarised as follows.⁶⁹

1. The underdeveloped nature of the country's present agriculture sector renders private ownership of land a non-viable option. The supporting facts for this assertion are:

abolished the previously heterogeneous land tenure system that prevailed in the country for centuries in favour of a homogenous public ownership of all lands, undertook extensive distribution and redistribution measures and nationalized all privately owned farm lands and extra-houses without compensation.

⁶⁵ See Article 52(2) (b) of the Constitution. Such framework legislation had been issued in 1997 as 'Federal Rural Land Administration Proclamation', No. 89/1997, *Federal Negarit Gazeta*, No. 54, (7th July 1997), and then amended later by Proclamation No. 456/2005 entitled 'Federal Rural Land Administration and Land Use Proclamation', *Federal Negarit Gazeta* No. 44, Year 11 (1st July 2005); with regard to urban lands, the currently applicable piece of legislation is the 'Re-enactment of Urban Lands Lease Holding Proclamation No. 272/2002', *Federal Negarit Gazeta* No. 19, Year 8 (14th May 2002)

⁶⁶ See Article 40(7), *supra* note 49

⁶⁷ See Article 40(8), *supra* note 49

⁶⁸ A Committee of 11 members had been considering this matter which was chaired by the current Minister of Finance and Economic Development, Mr. *Girma Biru* and the current Deputy Prime Minister Mr. *Addisu Legesse* served as its Secretary. See Minutes of the sub-committee established to draft the Constitution, (Unpublished Amharic version), Addis Ababa University, Law Faculty, 1993

⁶⁹ This is an extract from the Ethiopian Constitutional Assembly Minute No. 4, Nov. 14-20/1987 EC, Addis Ababa, on file at the Archives of the House Peoples' Representatives. (Translation is all mine.)

➤ More than 85% of the Ethiopian population lives in the rural areas and is dependent on subsistence agriculture. At present, this same agriculture takes up more than 50% of the country's GDP.

➤ Taking these facts into account coupled with the underdeveloped industrial and service sectors of the country, letting the agrarian poor sell the land and migrate to the nearby towns will have the effect of escalating unemployment since those sectors are absolutely unable to accommodate the expected influx of migrants.

➤ To draw analogy with other countries of the world as examples is a misnomer for in most of those countries, for instance, in the USA and most European countries, the agriculture sector forms 2-5% of their economy while the industrial, service and other sectors are very much developed. Thus, there is a difference in context as far as the property rights to land are concerned.

2. There exists a large portion of the Ethiopian land which is not yet cultivated and occupied. Thus, the government will have the opportunity to let investors cultivate those areas and the benefits to be reaped from such centralized measures will tremendously outweigh the harm that will ensue from unwanted migration of peasants after selling their piece of land. When asked to support their assertion with facts they had the following that were put on record:

➤ The whole country is with an area of about 111.5 million hectares out of which only 66% is arable while only 16.5 million hectares has so far been used for agriculture, which is only 14.8% of the total area of the country. In one farming season, it is only 7 million hectares of land which is ploughed. This shows that only a very insignificant portion of the land is currently used and private property rights to land would do nothing but to mobilize those who are working on these 7 million hectares of land.

➤ Thus, it is preferable for the state to have control of the land and create conducive environment for investors in those areas which are not used or underutilized rather than letting the poor farmer sell his small plot.

3. In Ethiopian context, even if we go for privatization, uniform private property rights to land across the country may not be possible to realize. In this regard the discussant had raised the case of the pastoralists who are in a continuous mobility in search of the seasonally varying water sources and cattle foods.

4. Since land is a resource which is limited by nature in line with the ever-increasing demands from new comers it is rather preferable to leave it under the government control with the possibility of distribution and redistribution to have it equitably shared among the whole members of the needy society.

5. Politically, letting the sell and free transfer of land rights will have the effect of destroying the identity of few minorities within the country.

On the other hand, the arguments in support of private ownership of land in the country have many dimensions, i.e., economic, social and rights-based grounds. The arguments are summarized as follows.

1. The private ownership of land must be considered as a human rights question as provided under the UDHR. The struggle made in mid 20th century by students with the motto 'land to the tiller' can adequately be answered if private ownership is guaranteed. It was meant to emancipate the tenant from the landlord's control and not for replacing the then landlord by another landlord-the government, not for contractual tenancy and not for distribution of land through auction.
2. It would be very difficult to establish a democratic society and state if private ownership of land is not guaranteed.
3. Free market economy and public ownership of land are diametrically incompatible. The latter was a socialist conception that only proved to be ineffective for most of the former socialist countries which have made policy shifts with regard to land ownership.
4. The American 3% farmers succeed to produce beyond what is enough for local consumption and are able to provide agricultural products through aid to the developing world because, among others, they are guaranteed with private ownership and have sense of belongingness to the land they are farming.
5. The productivity of land is inextricably linked with individual effort/labor and capital. The exertion of effort can be made possible if the farmer is made to develop sense of belongingness which in turn necessitates a guarantee by the constitution of private ownership of land.
6. Particularly, with respect to rural land, the farmer should be given the choice of either remaining on the land or to transfer it to others and migrate to town if she/she wishes to. If not, then it would tantamount to say 'as you are born a farmer so should you remain without education and betterment of life styles.' Moreover, this would be imposing a restriction on his right of movement.
7. The fear of unprecedented influx of rural people to towns cannot be a justification for public ownership because so long as the relevant infrastructures such as roads, health care services, education, etc are fulfilled, the farmer may not decide to leave his plot to which he would have not only economic linkage but also psychological attachments

The whole debate had been resolved after the Constitutional Assembly's decision of 8 December 1994 which voted for the approval of the current

Constitution. Though the public-private ownership debate has been disputed more vigorously, there are other critical problems overcoming of which would have addressed the society's problems irrespective of the ownership type. In other words, it is the writer's belief that whether the country has public or private ownership would not have as much significance as addressing the critical problems mentioned herein below by way of conclusion. Moreover, the adoption of the human rights approach to land rights is neutral to the choice that a state makes with regard to types of ownership.

1.5. Concluding remarks

A brief account of the problems that are associated with the human rights to land in Ethiopia can be summed up in four points. The first relates with *tenure insecurity*. This is the most sensitive topic in every discourse relating to property rights to land. There is no doubt that a secured tenure to land 'increases the future value of the land, encourages long-term investment on the land, can reduce environmental degradation, and allows reduction of private spending on security of property rights.'⁷⁰ Some of the elements of secured tenure are duration of the right, existence of clearly defined boundaries and enforcement institutions.⁷¹ The shorter, or uncertain the duration, the insecure the right will be thereby discouraging long-term investment, reducing the value of the land and all assets on it as well as providing less incentive for the user to care for the environment. The same is true in relation to the obscurity of the boundaries and absence of enforcement institutions. All these problems prevail in the Ethiopian property rights system. For instance, the previous federal land statute had given the regional councils the prerogative to undertake limitless distribution and redistribution measures even though the present legislation has come up with some restrictions on possibilities of distribution.⁷² Distribution of holdings was defined as 'a rural land allocation taken at intervals...'⁷³ with no clear indication of how frequent such intervals might be and thus rendering the tenure very much insecure. However, as the current legislation appears to be very strict with regard to distribution, that threat can be considered as being held to the minimum.⁷⁴

⁷⁰ See 'Land Policies for Growth and Poverty Reduction', World Bank Policy Research Report, (2003) pp. 36-43

⁷¹ Ibid, p. 25

⁷² See Article 2(4) & the various sub-articles of Article 6 of Proc. 89/1997 and Article 9 of Proc. 456/2005, supra note 64

⁷³ See Article 2(4) of Proc. 89/1997, supra note 64

⁷⁴ To see but one example of such regional law, the Amhara National Regional State law on land administration has in principle prohibited land distribution. See the Region's Rural Land Administration and Use Proclamation No. 133/2006, Article 5(3) and 8(1)

Moreover, the boundaries of each fragmented plots is unclear so much so that there prevails disputes that often are resolved by bloodshed, which is partly because of absence or inadequacy of institutions to resolve the disputes. This latter point leads us to the second problem associated with Ethiopia's property rights to land.

Institutions that existed during the previous regime had been dismantled, with no substitutes, as part of wholesome political restructurings that the current government has undertaken.⁷⁵ Currently, there are more than one political institution having a say on the land rights of individuals which include local Development Agents (DAs), the *Kebele*⁷⁶ Council, officials from the Bureau of Agriculture, and Land Administration and Use Authority. With no defined areas of prerogatives all these institutions pressurize the land-users in various ways creating too much uncertainty on the right.

The third problem concerns lack of participation in the decision-making processes relating to this precious natural resource that affects everyone's life. For example, public takings are practiced frequently and time and again valuation of the property that is expropriated has to be made for compensation purposes.⁷⁷ There are many cases where the government has dispossessed farmers of their land for investment purposes, most of which relate to the flower industries owned by multinational corporations.⁷⁸ While there exists schisms of opinions on the long-term impact of such farms on the fertility of the soil and thus whether such takings can be justified on the ground of 'public interest' exception is questionable, the government is pushing hard to attract as many investors as possible from both inside and outside with shining incentives, one of which is the breathtaking rent level of land.

The valuation of the land for compensation purposes is done by a committee whose members are appointed by the local administration, either urban or

⁷⁵ There were *Land Tribunals* at grassroots levels that used to hear and decide land-related grievances during the *Derg* regime.

⁷⁶ This is the lowest administrative level which can roughly be understood as 'village' or 'district'

⁷⁷ The compensation is paid for '*permanent improvements on the land, for property on the land, as well as displacement compensation.*' See Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, No. 455/2005, Federal *Negarit Gazeta*, No. 43, (13 July 2005) ; see also the Council of Ministers Regulations No. 135/2007 on Payment of Compensation for Property situated on land holding expropriated for public purposes, *Negarit Gazeta*, 13th Year No. 36 (18th July 2007) which details type, amount and mode of payment of compensation during expropriation

⁷⁸ Giant flower industries such as Golden Rose Agro Farms Ltd., SAI and Xpressions, have recently moved to Ethiopia covering a huge tract of land for their flower farms. In the last couple of years, 70 new flower farms have sprung in the country.

rural which is a political organ.⁷⁹ Thus, the right-holder will have no opportunity to participate either directly or indirectly in the decisions of both to expropriate as well as in the valuation of his property for the purpose of compensation.⁸⁰ Such monopoly of decisions and denial of the right to participate in a decision that affects the individual's fundamental human rights goes contra to the principles of human rights-approach to development.⁸¹

Last, but not least is the problem relating to discriminations that exist in access, use and transfer of rights relating to land. Women suffer from chronic problems of discrimination emanating from customs and traditions in and outside home. For the last many decades, the husband was the chief executive of the household which extended up to the determination of his wife's career, administrator of the family property and the sole decision-maker of where the family should live.⁸² Land used to be distributed on the basis of household and thus for most parts of Ethiopia, the registered right-holder remains to be the husband. And since ploughing is a task that the society has assigned for a man, it is very hard to find a female-headed family using the land by herself. Accordingly, she is usually compelled to give up the land for sharecropping with terms of contracts that are extremely unfair and her being a certificate holder remains to be just nominal.⁸³ Even if there are promising signs expressed in law and policy towards alleviating the gender-related problems, much remains to be done.⁸⁴

⁷⁹ See Article 10 of the Proclamation, supra note 76

⁸⁰ The decision to expropriate is to be made exclusively by the same government organ that appoints the committee members for the valuation of the property to be expropriated. See Article 3, supra note 76

⁸¹ It is stated that the expropriation of landholdings is to be undertaken for the purposes of 'ensuring the interests of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.' See Article 2(6) of the Proclamation, supra note 76. If it is a development initiative, then the 'active and informed participation...is not only consistent with but also demanded by the human rights-based approach, because the international human rights normative framework affirms the right to take part in the conduct of public affairs.' See UN, OHCHR, 'Principles and Guidelines for a human rights approach to poverty reduction strategies', HR/PUB/06/12, (Autumn 2006),

⁸² It was only in 2000 that the family law of the country that has such discriminatory provisions had been replaced by another code at the federal level and to which the regions are expected to follow suit. Of course some four regional states also issued their own family laws as this is a power left to them by the federal constitution.

⁸³ Prof. H.W.O. Okoth Ogendo, 'Documenting the Amhara Land Administration Reform Experience and Drawing Lessons for the Tigray Certification', Final Report submitted to the Swedish International Development Cooperation Agency, Embassy of Sweden, Nairobi, Kenya (25 April, 2007), see particularly pages 48-49

⁸⁴ For constructive recommendations with this regard, see Centre on Housing Rights and Evictions (COHRE), 'Bringing Equality Back Home: Promoting and Protecting

The majority of these problems can adequately be alleviated by adopting the human rights approach in the formulation, implementation and monitoring of land-related policies. And in the following portion of this Article, we shall consider what we mean by a human rights approach to land rights

II Human Rights Approach to Land Rights: Concepts, Principles and Norms

2.1. Conceptual Introduction

In recent works of the human rights actors, it has become quite normal to try to link specific issues of their engagement to the human rights-based approach.⁸⁵ It is, however, in relation to development and poverty reduction strategies that this concept has gained the utmost popularity, though in his 2006 Report, the Special Rapporteur on the right to the highest attainable standard of physical and mental health has reiterated the relevance of this approach to the particular right under his mandate as well.⁸⁵ Moreover, 'access to services , for example, in the field of health and education and access to assets such as credit and access to land are identified as core elements in a poverty reduction strategy.'⁸⁶ And the Ethiopian poverty reduction strategy has considered land access an important factor in the endeavour to end poverty.⁸⁷

There is growing evidence that secured property rights, specifically in land and housing, are an important condition for development.¹³ For most developing countries in general and African states like Ethiopia in particular, the need for a secured property rights is a basic development issue.⁸⁸ Hunger, the extreme form of poverty, is essentially a rural problem whereby out of 1.2 billion people that are estimated to be living in extreme poverty, 75% are rural and 'many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot

the Inheritance Rights of Women, a Survey of law and practice in Sub-Saharan Africa', (2004), pp. 47-55

⁸⁵ See the Report of March 2006 of the Special Rapporteur in the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, 3 March 2006, especially Paras 25-28

⁸⁶ See Van Banning, *supra* note 13, at 341 and also UNDP, *Human Development Report 2000, Human Rights and Human Development*, Oxford University Press (New York, 2000), p. 33-34

⁸⁷ See Ministry of Finance and Economic Development (MoFED), 'Ethiopia: Building on Progress A Plan for Accelerated and Sustained Development to End Poverty' (PASDEP, 2005/06-2009/10', Sept. 2006, Addis Ababa, p. 67

⁸⁸ See in particular H., De Soto, 'The Mystery of Capital' Black Swan, 2000; and see also Bruce and Migot Adholla, 'Searching for Land Tenure Security in Africa', Kendall Hunt, IOWA 1993

grow enough food to feed themselves.⁸⁹ Thus, the concepts and principles that are developed for poverty reduction strategies are all the more relevant for land rights. In other words, considering the question of land as a human rights issue is another way of addressing development and poverty reduction concerns.⁹⁰

The human rights approach in its broader application provides the necessary tool whereby as much emphasis is given to processes as are for the outcomes of developmental policies and strategies. While describing this distinctive feature of the approach, a WHO 2005 booklet stated the following:

*A human rights-based approach...differs from conventional approaches in that it emphasizes the process by which it is undertaken as much as the outputs or measurable results. Crucial to this process is the principle of the right of all stakeholders to participate in the design and implementation of any policies affecting them. In addition, it is stressed that human rights-based policies and programmes must address the immediate, underlying and structural causes behind the non-realization of human rights.*⁹¹

The application of the basic principles of the human rights approach to land rights is a matter of necessity considering its multidimensional nature. It encompasses various rights that we have discussed in the previous parts of this article. The quest for this approach becomes even more pertinent for developing countries where access to resources such as land is riddled with many problems. Van Banning points out the imperativeness of property rights protection as a human right for developing countries by comparing the problems that the developed and the developing world are facing with regard to the matter. And one of his main points is in relation to how assets are held in the two worlds; while the developed world has accumulated assets not so much in land as it does in other assets such as houses, equipment, factories, machines and non-tangible assets such as shares, credit, social security and intellectual property, by contrast most of the property in low income countries is land.⁹² While rights are relatively secure in the developed world the

⁸⁹ Report of the UN Special Rapporteur on the Right to Food, Mr. J. Ziegler, submitted to the General Assembly, A/57/356, 27 August 2002, Para 23

⁹⁰ Van Banning rightfully argues that discussing 'property' as a matter of right has been considered a taboo for a long period and rather than calling 'a spade a spade', the word 'assets' are usually used by a number of World Development Reports. See Van Banning, supra note 13, p.340-41

⁹¹ See WHO, 'Human Rights, Health and Poverty Reduction Strategies', Health and Human Rights Publications Series, Issue No 5, April 2005 WHO/ETH/HDP/05.1, p.07 available at <http://www.who.int/hhr/news/HRHPRS.pdf> accessed on 12 June 2008; See also the UN-OHCHR Guidelines and Principles, supra note 80, Para 23

⁹² Van Banning, Supra note 13, p. 341

situation is different in developing countries where land is held in an insecure manner with limited access to justice especially for the disadvantaged groups of the society such as women.⁹²

What a human rights approach does when applied to the land question has been summarised by Coomans while he discusses the issue from an agrarian reform perspective in the following words:

*A human rights approach to agrarian reform implies the identification of right holders (individuals, communities) and duty bearers (States) on the basis of a legal framework. It should also provide for ways and means to hold other actors (transnational corporations, intergovernmental organisations) accountable...Other elements that are part of such an approach include the principle of non-discrimination and equal treatment; the inter-relatedness of civil and political rights; participation of the stakeholders and transparency in decision-making...In short, social inclusion, participation, the fulfilment of obligations and accountability are basic principles of a human rights approach.*⁹³

These are the basic elements of a human rights approach as developed by the guidelines of the UN-OHCHR too.⁸¹ Herein below is a brief discussion of each of these points in light of the land rights issues within the Ethiopian context.

2.2. Basic Elements of Human Rights Approach to Land Rights and the Ethiopian Case

2.2.1. Participation in Land Policy Design, Implementation and Monitoring

Participation is a right described in Article 20 of the UDHR, which states that “everyone has the right to freedom of peaceful assembly and association.”⁹⁴ Clearly, the participation of persons in public affairs is a hallowed principle and is the basis of democracy...At another level, and perhaps most importantly, the lack of participation in development is an outrage to human dignity, particularly the dignity of individuals wishing to take charge of their own lives. It also perpetuates poverty, dependency and lack of choice.⁹⁵

Moreover, the right to participation is strongly dependent on the realisation of other human rights. If individuals and communities are to actively participate at each levels of a land policy life, ‘they must be free to organise without

⁹³ Coomans, supra note 22, p. 13

⁹⁴ See UDHR, supra note 8, Article 20(1)

⁹⁵ See ‘Participation, Development and Human Rights’, Working Paper Submitted by Mr. Jose Bengoa to The UN Commission on Human Rights, E/CN.4/Sub.2/SF/2005/3, 27 June 2005

restriction (right to association), to meet without impediment (right of assembly), and to say what they want without intimidation (freedom of expression); they must know the relevant information (freedom of information) and they must enjoy an elementary level of economic security and well-being (right to a reasonable standard of living and associated rights).⁹⁶ Therefore, these are the platforms that ensure the active, informed and effective participation of individuals and groups in relation to the formulation, implementation and monitoring of land-related policies.

The Ethiopian Federal Constitution has guaranteed those freedoms that are considered relevant for the effective participation of individuals and groups in general, such as freedom of association⁹⁷, right to assembly⁹⁸, freedom of expression⁹⁹, etc. Moreover, even if not as one of the fundamental rights and freedoms, ensuring participation as an obligation of the government is provided as one of the economic objectives within the section of the Constitution that deals with National Policy Principles and Objectives. The Constitution provides that 'Government shall at all times promote the participation of the People in the formulation of national development policies and programmes...Government shall ensure the participation of women in equality with men in all economic and social development endeavours.'¹⁰⁰

Even if there is this form of domestic legal recognition apart from the international human rights framework, what one finds on the ground is far from the paper-based declarations. Apart from the barriers that hold many marginalised groups of the society from participation, such as culture¹⁰¹, lack of education, infrastructure or problems of access, etc remain to be the biggest challenges with this regard. Moreover, resource constraint also plays its role when and if there exists the will on the part of the government for a wider participation in various policy issues. For instance, in the major PRSP preparation, the government only managed to hold 'consultations' in only 117 districts which constituted only 25% of the total districts in the country and the attempt was made only within 3 days.¹⁰²

⁹⁶ See Report of the UN Secretary-General on 'Human Rights and Extreme Poverty', A/57/369, 30 August 2002

⁹⁷ See Art 31, supra note 49

⁹⁸ See Art 30, Id

⁹⁹ See Art 29, Id

¹⁰⁰ See Art 89(6) & (7), Id

¹⁰¹ It is a taboo for a rural woman to go to public meetings and/or speak before a gathering.

¹⁰² See F., Stewart & M., Wang, 'Do PRSPs Empower Poor Countries and Disempower the World Bank, or is it the Other way Round?', *108 QEH Working Paper Series*, Oct 2003, p. 13

The need for participation has utmost significance especially in relation to decisions or policies that one way or another result in the evictions of individuals or groups from their land. Apart from its being a last resort measure in the sense that 'States should explore fully all possible alternatives to evictions'¹⁰³ a forum for the participation of those affected must be created by the state. While describing this condition, the Special Rapporteur on the right to adequate housing stated the following:

*All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider.*¹⁰⁴

It is to be noted that the right to participation can be considered effective and meaningful where, as stated in this quoted paragraph of the Special Rapporteur, individuals are given the opportunity to propose alternatives that will be given due regard by the authorities.¹⁰⁵ It would be worth noting with this regard Jean Zeigler's comment that he made after his country visit to Ethiopia:

*The lack of participation in the design and implementation of policies and programmes is ...an obstacle to the right to food, where this inhibits the adaptation of programmes to local social and ecological conditions. There is a need to incorporate the human rights principles of participation, transparency, accountability and non-discrimination in all programmes, including for women. Effective remedies and compensation should be provided where government policies may negatively affect people's right to food.*¹⁰⁶

2.2.2. Monitoring and Accountability Mechanisms

There are two objectives of monitoring, which is a precondition for accountability: first, to help identify, on an on-going basis, the areas on which duty-bearers may need to concentrate on in order to attain their targets for the realization of human rights in the most expeditious manner; and second, to

¹⁰³ See supra note 38, Annex 1 'Basic Principles and Guidelines on Development-Based Evictions and Displacement', Para 38

¹⁰⁴ Ibid

¹⁰⁵ This is particularly lacking from the current trends of consultations that the government of Ethiopia is sometimes making, which, more often than not, are just brief introduction of what is going to be done by the authorities without any form of inclusive public opinion gathering, which fact highly affects the willingness of peoples to go to such meetings as well.

¹⁰⁶ See Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, mission to Ethiopia, E/CN.4/2005/47/Add.1, 8 February 2005, Para 56

enable a right-holder to hold a duty-bearer to account for its failure to discharge its duties.¹⁰⁷ And by accountability 'duty-bearers are made answerable for their acts or omissions in relation to their duties.'¹⁰⁸ The broader view of accountability tells us that there exists not only *judicial* but also *quasi-judicial*, *administrative* as well as *political* accountability.¹⁰⁹ When it comes to anti-poverty strategies and projects the guidelines state that 'all duty-bearers (primarily the state and the international community at large¹¹⁰) are encouraged to devise, in close collaboration with people living in poverty, innovative and non-formal monitoring and accountability mechanisms that secure the active and informed participation of the poor.'¹¹¹ This has also been stressed by the Committee in its statement which said that 'the human rights approach...emphasizes obligations and requires that all duty-holders, including States and international organizations, are held to account for their conduct in relation to international human rights law.'¹¹²

While discussing the need for strengthening accountability in relation to the right to health, the Special Rapporteur has described its nature in the following words:

*All too often, 'accountability' is used to mean blame and punishment...But this narrow understanding of the term is much too limited. A right to health accountability mechanism establishes which health policies and institutions are working and which are not, and why, with the objective of improving the realisation of the right to health for all. Such an accountability device has to be effective, transparent and accessible.*¹¹³

Thus, with a broader understanding of the term accountability and also with the need for it to be effective, transparent and accessible, one can also apply same ideas for land and its related rights. With due regard to the interconnectedness of development initiatives with that of property rights as discussed above, accountability and monitoring mechanisms compel the state to provide with the relevant institutional infrastructure for preventing violations, and when and if

¹⁰⁷ See Guidelines and Principles, supra note 80, Para 75

¹⁰⁸ Id, Para 76

¹⁰⁹ Id, Para 77; See also generally Hunt, P., 'Reclaiming Social Rights: International and Comparative Perspectives', Ashgate Publishing Limited, (1996)

¹¹⁰ These include 'global actors-such as donor community, intergovernmental organisations, international non-governmental organisations and transnational corporations.' See the Guidelines & Principles, supra note 80, Para 81

¹¹¹ See the Guidelines & Principles, Para 79

¹¹² See 'Poverty and the International Covenant on Economic, Social and Cultural Rights', Statement adopted on 4 May 2001 by the Committee on Economic, Social and Cultural Rights, E/2002/22-E/C.12/2001/17, Para 14

¹¹³ See Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, submitted to the General Assembly, A/59/422, 8 Oct 2004, Para 37

they occur for remedying those violations. It is now well recognised that 'in pursuing development a state has an obligation to prevent, compensate or minimize negative effects in each case in which individual rights are affected.'¹¹⁴ The discussions on institutional gaps within the Ethiopian context apply here too as accountability and monitoring mechanisms that a human rights approach demand requires well functioning institutions.¹¹⁵

2.2.3. Equality and Non-discrimination

The right to equality and the principle of non-discrimination are among the most fundamental elements of international human rights law.¹¹⁶ In this regard, it is stated that:

*The right to equality guarantees, first,...that all persons are equal before the law, which means that the law shall be formulated in general terms applicable to every individual and shall be enforced in an equal manner. Secondly, all persons are entitled to equal protection under the law against arbitrary and discriminatory treatment by private actors. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination...*¹¹⁷

The issue of equality and non-discrimination becomes very much relevant in relation to the land rights of women and indigenous peoples. Equality, when considered from a gender perspective, the question of equality has generally two aspects; first, gender equality in a just society, in which equality of rights over productive assets is an important factor, and secondly, equality in land rights as an indicator of women's economic empowerment and as a facilitator in challenging gender inequalities in other areas of society.¹¹⁸ Thus, the adoption of the human rights approach makes it indispensable for the proper consideration of the principles of equality and non-discrimination in addressing such marginalised groups of the society.

When considered within the Ethiopian context, especially in terms of access to resources, such as land, the issue of gender-based discrimination and inequality is very much apparent. This emanates both from the previously existing legal

¹¹⁴ Van Banning, supra note 13, p. 355

¹¹⁵ See second Para of section 2.5 of this essay

¹¹⁶ See the Guidelines and Principles, supra note 80 which provide a comprehensive list of relevant International Human Rights standards on equality and non-discrimination, p. 10-11

¹¹⁷ See the Guidelines and Principles, supra note 80, Para 42

¹¹⁸ B., Agarwal, 'A field of One's Own', cited in P., Koskinen, 'To Own or to Be Owned: Women and Land Rights in Rural Tanzania', in 'Human Rights in Development Yearbook, 2002', supra note 51, p. 152-3

framework as well as the deeply entrenched patriarchal culture. The independent expert on minority issues reported that:

While women generally face discrimination in Ethiopian society due to patriarchal systems and traditional gender roles and practices, women from different ethnic communities may face multidimensional obstacles, based on the particularities of the customary or religious practices of their communities and the relative status of their ethnic group within the ethnic hierarchy in their region and nationally...In rural areas, traditional or customary law practices and patriarchal family and community structures are prevalent and often incompatible with non-discrimination legislation. Cultural or religious practices, such as polygamy and male-only ownership of property, are still unofficially sanctioned in some states.¹¹⁹

And she further reiterates this fact in her recommendation, particularly in relation to land rights, by requiring the government to ‘Ensure, in legislation and in practice, that protection of the property rights of women are equal to those of men, including rights to own and inherit property. In particular, the rights to property of widows, divorced women, and those affected by conflict should be legally protected.’⁵⁸ And Jean Zeigler, too, stressed this same issue whereby he stated:

Discrimination against women remains a particular problem [in Ethiopia], despite the progress in addressing the legal framework at the federal level. The failure to strictly enforce existing legislation that addresses inequalities amounts to a failure to protect women against violations of the right to food, particularly in relation to inheritance and control over resources, including land. It is not acceptable that de facto discriminatory practices persist throughout the country, particularly when the Constitution affirms equality.¹⁰⁶

And, finally, he recommends ‘Serious efforts should be made to address discrimination, particularly against women. This will require the implementation of federal law, especially the Family Code, throughout all regions of the country.’¹⁰⁶

2.2.4. Interdependence of Rights

While describing this aspect of the human rights approach in relation to poverty reduction strategies, it is stated that:

Although poverty may seem to concern mainly economic, social and cultural rights, the human rights framework highlights the fact that the enjoyment of these rights may be crucially dependent on the enjoyment of civil and political rights.

¹¹⁹ See McDougall, supra note 57, Para 67-9

*The human rights approach thus dispels the misconception that civil and political rights and freedoms are luxuries relevant only in relatively affluent societies, and that economic, social and cultural rights are merely aspirations and not binding obligations.*¹²⁰

In particular, where land reform measures are to be introduced for development-related purposes and there arises a need for the displacement of individuals and groups, the measures have to be considered from various angles, and not solely from economic benefits.¹²¹

2.3. Concluding remarks

Even if the problems relating to land rights are multidimensional and complicated, the debate so far, as stated in Part II above, has merely focussed on the structures of ownership while there is a dearth of literature and scientific research that properly addresses the real problems. The institutional infrastructure that the human rights approach requires for accountability and monitoring purposes is very minimal. As land is a unique commodity, most of the disputes cannot adequately be adjudicated before the formal court system. There is a need to establish grassroots level administrative and quasi-judicial institutions that strive to resolve land-related disputes and make those wrongdoers to account.

Moreover, the Constitution has explicitly recognised religious and cultural institutions to resolve family disputes with the consent of the two parties.¹²² This has been rightfully pointed out by McDougall having a negative impact on the rights of women:

Since over 40 per cent of the population is Muslim, sharia courts are used widely in the area of family disputes. In theory both parties should consent to adjudication by either the religious or local court system. In practice men often favour sharia courts because they are more likely to be successful in them, and

¹²⁰ See the Guidelines and Principles, supra note 80, Para 27

¹²¹ When one looks at the controversial dam construction project in India, the Supreme Court's analysis overlooked, among other things, the inter-dependence of rights in considering only the economic benefits of the dams. With little or no concern to minority's and indigenous people's rights, as well as the socio-cultural impacts of the project on the young, women and other marginalised members of the society, the court solely relied on the economic benefits that could be reaped in the form of the tract of land to be irrigated, the drinking water to be secured and the electric power to be generated. See Supreme Court of India, *Narmada Bachao Andolan v Union of India*, (18 Oct. 2000), Majority Opinion available at <http://www.narmada.org/sardar-sarovar/sc.ruling/majority.judgement.doc>, accessed on 20th August 2007

¹²² See Arts 34(5) cum 78(5), supra note 49

*women may feel pressured to accept this. Under the sharia court system, which has its own appellate level, there is no possibility of appealing a sharia court decision in a federal court.*¹²³

This has a particular significance in relation to women's access to land. Upon divorce or the death of their partner or in other circumstances that require the courts' intervention, there is a higher risk of being discriminated before such religious or cultural institutions, which goes against the basic tenets of the human rights approach. Thus, there is a need to ensure that women actually go to those institutions with their free and full consent and will not be discriminated against while their case is heard.

Since the country is following a federal state structure, there is a fundamental question of how far non-uniformity be tolerated. There are variations across the regional pieces of legislation that have implications on women's equal access to land, their right to get access to justice, and generally on the proper implementation of international and national human rights standards. Thus, a process of harmonisation is required. The independent expert has expressed her concern about this issue by saying that 'Federal authorities must ensure that regional state constitutions and laws conform fully with the federal constitution and with international human rights law. In particular, the activities of regional public bodies and traditional customary and religious courts must be regulated to ensure such compliance.'¹²⁴

These and other factors that have been considered so far need to be addressed for the proper functioning of the human rights approach to land rights in Ethiopia. Moreover, indicators and benchmarks have to be used for monitoring the progressive realisation of this right. The next part of the Article introduces and explains sample indicators.

III Sample Indicators for Measuring the Realisation of Land Rights

3.1. Introduction

It is said that the most appropriate mechanism for measuring progress with regard to rights that are subject to progressive realisation is the use of indicators.¹²⁵ However, their appropriateness notwithstanding, it is not to claim that they provide everything in measuring the realisation of a particular human right. While writing about undue expectations from indicators in relation to the right to health, the Special Rapporteur on the subject stated that 'just as it is misguided to deny that indicators have an important role to play in

¹²³ See supra note 57, Para 70

¹²⁴ Id, Para 99

¹²⁵ See supra note 84, Para 34

relation to the right to health, it is also misplaced to expect too much from them.¹²⁶

It is worth noting that there exists a difference between human rights indicators and development indicators. This has been pointed out in the report of World Human Rights Conference of 1993¹²⁷ which provided that 'Statistical indicators currently utilized by specialised agencies to measure economic and social development may not be appropriate for monitoring State's compliance with their obligations under the covenant, particularly with regard to the vulnerable and most disadvantaged sectors of society. The use of statistical indicators in evaluating human rights compliance will require a reanalysis from a human rights perspective.'¹²⁸ Todd and Julia also describe this distinction with examples as follows:

*'[H]uman development indicators are sometimes used as proxy outcome indicators of the general trend in the enjoyment of human rights. For instance, improvements in national literacy rates may be cited as evidence of progress in the realisation of the right to education. However, national literacy rates may not reveal denial of enjoyment of the right to education by members of a minority group or others suffering discrimination. Equally, it is possible to provide indicators such as hospital beds per 100,000 people, percentage of governmental expenditure on the national healthcare system, and number of doctors per hospital as measures of provision of healthcare resources, but none of these indicators actually measures the denial of access to healthcare services.'*¹²⁹

In other words, unless the data are disaggregated in a manner that they are reflective of the human rights situations of those disadvantaged groups of the society, the conclusions would be very misleading. Again reiterating this point in relation to the right to health, the Special Rapporteur, in his 2006 report, stated that 'Disaggregated indicators can reveal whether or not some disadvantaged individuals and communities are suffering from *de facto* discrimination. For the most part, existing health indicators are rarely designed

¹²⁶ Id, Para 31

¹²⁷ See World Conference on Human Rights, 'Report of the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realisation of Economic, Social and Cultural Rights', (Geneva 25-29 January), A/CONF.157/PC/73, 20 April 1993, Para 10

¹²⁸ Ibid, Para 171

¹²⁹ See L., Todd & Mrs H., Julia, 'Map-Making and Analysis of the main international initiatives on developing indicators on democracy and good governance', final report for Eurostat project, University of Essex Human Rights Centre, June 2003, Para 24; see also UNDP, 'Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide', March 2006, where Todd makes almost similar remarks about the distinction of the development programming indicators and human rights indicators at page 12

to monitor issues like *participation and accountability*, although these are essential features of a human rights approach.¹³⁰

The Integrated Guidelines on Common Country Assessment and United Nations Development Assistance Framework¹³⁰ provide the basic principles with regard to human rights approach indicators which are 'not satisfied by traditional socio-economic indicators.' These are:

*'a) internationally agreed human rights norms and standards that determine what needs to be measured; b) a comprehensive human rights framework with sectors mirroring civil, cultural, economic, political and social rights; c) integration of the 'rights element' into existing indicators by identifying (i) explicit standards and benchmarks against which to measure performance, (ii) specific actors or institutions responsible for performance, (iii) rights-holders to whom responsibility is owed, and (iv) mechanisms for delivery, accountability, and redress; (d) measuring subjective elements, such as levels of public confidence in institutions of governance, including among vulnerable or marginalized groups. [And finally] all relevant indicators should be disaggregated, to the extent possible and where appropriate, by race, colour, sex, language, religion, nation, ethnic, or social origin, property and disability and other status such as woman or child head of household etc.'*¹³¹

Finally, it is also important to distinguish between indicators and benchmarks. Maria Green puts the distinction between the two by stating that 'benchmarks can be defined as goals or targets that are specific to the individual circumstances of each country. As opposed to human rights indicators, which measure human rights observation or enjoyment in absolute terms, human rights benchmarks measure performance relative to individually defined standards.'¹³² When one looks at benchmarks in this sense and in the context of

¹³⁰See UN Integrated Guidelines, 22 May 2002 available at http://www.unido.org/userfiles/timminsk/CCA-UNDAF_guidelinesMay2002.pdf , accessed on 15 Sept. 2007

¹³¹ Ibid, p.30

¹³² See M., Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23(4) *Human Rights Quarterly* 1062-1097, 2001, p.1079

socio-economic rights, they are sometimes referred to as 'minimum thresholds.'¹³³ Anna Würth goes further and distinguishes between qualitative and quantitative/performance benchmarks as well as qualitative, quantitative and participatory indicators.¹³⁴

The approach adopted in this Article in developing few sample indicators for measuring the realisation of the human rights to land in Ethiopia is the structure-process-outcome approach. Todd and Julia again illustrate these layers of indicators through examples in the following fashion:

Input/structure indicators include the ratification of international human rights texts and the protection of human rights in national law (de jure protection of human rights) or the allocation of the necessary resources for the provision of public services; process indicators measure how the policy is implemented, for example the level of accountability and participation of different sectors of society; and outcome indicators include the level of enjoyment of human rights by individuals and groups (de facto enjoyment of human rights)¹³⁵

Moreover, the sample only concerns with indicators and not with benchmarks. And all the samples are meant to reflect the particular issues that recur in the country's land-related discussions. Moreover, one important aspect of human rights approach indicators is not covered within the sample, which is indicators that capture the role of international actors, such as transnational corporations and financial institutions. As far as the presentation of items in the table that follows is concerned, after putting within the table all the indicators at each level-structure, process, outcome, it will be followed by a brief description of the nature, method of measurement, etc of each of the indicators.

¹³³ See Paul Hunt, Right to Education Indicators/Benchmarks, informal paper for the World University Service Workshop, cited in Green, Ibid

¹³⁴ See W., Anna & S., Frauke Lisa, Indices, 'Benchmarks, and Indicators: Planning and Evaluating Human Rights Dialogues', (Translation from German: Peter Jaschner), German Institute of Human Rights, Nov. 2005, pp. 22-24

¹³⁵ See supra note 128, Para 23

Sample Indicators for measuring the realization of the human right to land in Ethiopia				
Type of Indicators	Secure Tenure	Land Access	Functioning Land Market	Functioning Land Information System
Structural Indicators	<ul style="list-style-type: none"> ➤ Number of international Human Rights Instruments ratified by Ethiopia that have a provision on property rights to land ➤ Constitutional recognition of the right of use and transfer of one's land ➤ Federal legislation on the use, administration and transfer of land ➤ Existence of a national land database that collects, stores, updates and makes accessible land related information for policy makers, credit institutions and the public at large ➤ The number of regional laws that have been issued in light of the international standards and federal laws 			
Process Indicators	<ul style="list-style-type: none"> ○ Number of possession certificates issued each year ○ The number of legislations that provide for indeterminate redistribution measures ○ The number of disputes that arise among land users because of ill/undefined boundaries 	<ul style="list-style-type: none"> ○ The length of time that it takes for a new claimant to get a land ○ The number of young individuals that get use right of land each year ○ The ratio of men/women having acquired land use right per year 	<ul style="list-style-type: none"> ○ The number of credit institutions that lend money by taking land as a collateral ○ Existence of laws that protect loan contracts, specifically that involve mortgage ○ The average length of time that a case would take before a land dispute resolution tribunal 	<ul style="list-style-type: none"> ○ The number of users of the land information database ○ Number of networks that connect to the national land information database each year ○ Is the national land information database updated frequently?
	<ul style="list-style-type: none"> ○ How frequently does the national government undertake participatory agrarian reform? 			
Outcome Indicators	<ul style="list-style-type: none"> ❖ Proportion of the population who has built on the land permanent infrastructure in the last 2 years ❖ The length of time within which s/he loses his/her use right of the land due to lack of continuous presence in the area ❖ Number of women who have been able to have their land dispute settled before the land tribunals 	<ul style="list-style-type: none"> ❖ Existence of protection of land use right transfer through inheritance, gift, or sell ❖ Proportion of slum dwellers over the last two years, both rural and urban Number of indigenous societies that have been granted a particular communal rights and 	<ul style="list-style-type: none"> ❖ How much has the land price increased over the last two years? ❖ Housing sell and rent price variations from one region to another ❖ The proportion of 	<ul style="list-style-type: none"> ❖ The number of incidents of complaints on the reliability of the land information system each year ❖ The proportion of a rural population able to access the land information

		protection on their traditional land	the government's annual GDP that is generated from land-related transactions	system ❖ How much of the running cost of the land information system is covered by the income from the service charges/sell of the information?
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3.2. Brief Description of the Indicators

The writer first has identified four basic qualities that a country must aim at in the process of the realisation of the human rights to land. These are secure tenure, improved land access, a well functioning land market as well as land information systems. Accordingly, each of the types of indicators, i.e., the structural, process and outcome, has to be measured in light of these basic aspects of the land rights.

Essentially, *security of tenure* is by far a significant problem whenever the land issue is put on agenda for discussion. The realisation of many human rights will be in question where security of tenure is lacking. Mr. Danilo Türk, in his progress report, describes the severity of the problem of tenure insecurity in the following words:

Millions of people in the cities of the world and the countryside have insufficient or no legal tenure over the land they occupy or farm. Adequate tenure within both urban and rural settings has been clearly recognized as a prerequisite for the full realization of a variety of human rights. Insecure tenure often forces peasants into exploitive relationships with land owners and at another level discourages the urban poor to improve or maintain their dwellings. Without adequate legal tenure the threat of eviction or displacement never ceases

*and possibilities for all sectors to exercise individual self-determination and plan for the future are severely curtailed.*¹

Tenure insecurity, having such wide-ranging effect in the realisation of fundamental rights, can be caused by various factors and the sample indicators that are pointed out at the structural, process and outcome level are meant to capture these factors. At the level of structure, the legal and institutional issues are to be addressed. At the level of process, the certifications of possession rights, issues of redistribution, both actual and anticipated, as well as definition of boundaries are considered. At the outcome level, one of the important consequences of secured tenure, the willingness to put permanent structures on the land such as non-seasonal plantations and buildings, is expected to be measured. Moreover, one of the causes for tenure insecurity within the Ethiopian context is the legal stipulation that one will lose his/her use right to the land if s/he fails to continuously reside in the area for some period. Since many of the regional laws have this kind of stipulation, as one outcome of the realisation of the human rights to land, those laws are expected to be repealed gradually and thus the indicator is expected to measure such progress. In addition to these, since women are among the vulnerable groups of the society that insecurity of tenure affects severely, the ease or difficulty of getting their disputes settled before the land tribunals is singled out as one sample indicator.

The second cross-cutting aspect of the human right to land that the writer identified is *land access*. By access to land, here, it means the ease or difficulty in getting use-right to land for both agricultural and housing purposes with due respect to the right to equality. Access to land at present is a problem for all sectors of the society, though such disadvantaged groups such as the young, women and minority groups are the ones that are most affected. Thus, apart from the legal recognition of the right for access, at the process level, the length of time that one has to wait to get a use right to land, the men/women ratio of an annual grant of

¹See Progress Report of the UN Special Rapporteur to the UN Sub-Commission on Prevention Discrimination and Protection of Minorities, Mr. Danilo Turk, E/CN.4/sub.2/1990/19, 6 July 1990, Para 137

access to land and the number of young persons² who get land access each year. Few outcome indicators are also provided with this regard (see the table).

Land market and land information system are highly complementary aspects in the sense that where there is a well functioning land information system, there is a higher tendency that the land market will develop.¹³⁸³ Land information system has been defined as 'the systematic collection, updating, processing and distribution of spatially referenced land related data to support legal, administrative and economic decision-making, for development planning and evaluating the consequences of different action alternatives.'¹³⁹⁴ It is also said that apart from its complementary purpose for the land market, land information system also makes the authorities accountable by 'shifting the legitimacy of the rights owners from the politicized context of local [authorities] to the impersonal context of the law.'⁵

Thus, few sample indicators are also developed to capture the development of the land market and a functioning land information system in the country at the structural, process and outcome level. At present the mortgage market is not functioning at all in the rural areas most importantly because of lack of security as well as the vaguely defined right of the users to borrow money by surrendering their possession right as a collateral. Accordingly, various process and outcome indicators in relation to the land market and credit institutions have been put as samples. While at the structure level an indicator is formulated to measure the existence of a land database that fulfils the qualities of a working land information system, at process and outcome levels sample indicators are provided that measure the quality, frequency of use and reliability of the information provided by the system.

² The threshold age will be 18-21 years of age. While 18 is the beginning of majority age under the country's law in some state legislation marriageable age has been extended up to 21. So these two age limits shall be taken for the purpose of this indicator.

³ For a refined discussion on this link see generally H., De Soto's 'The Mystery of Capital' supra note 88

⁴See Gerhard Larsson, 'Land Registration and Cadastral Systems: Tools for Land Information and Management', KTH, Stockholm, 2000, P. 3-4

⁵ De Soto, supra note 88, p.53

Finally, agrarian reform is provided as one of the process indicators having an impact on secure tenure, land access, land market as well as land information system. While describing the notion of agrarian reform, Coomans wrote:

Agrarian reform in developing countries as a policy objective and governmental programme aims at promoting access to land for the rural poor and security of tenure for those agricultural workers who cultivate the land. It does not only deal with providing physical and economic access to land, but also with access to agricultural inputs, markets, credit, administrative services and other forms of assistance. This implies changing power structures and socio-economic relations in order to ensure a better living for peasants and a more fair and just society.⁶

Thus, agrarian reform⁷ is something that has such wide ranging impact as far as the land rights of the rural peoples is concerned. When it comes to Ethiopia, in particular, by rural one is speaking about the 85% of the total population of the country. Accordingly, the frequency of a participatory agrarian reform measures are to be captured by this indicator and it is implied that the more frequent agrarian reform is undertaken the better it will be in terms of transforming the living conditions of the agrarian poor even if further indicators have to be developed to measure the effectiveness of the reform apart from its frequency.

Conclusions and Recommendations

Addressing the land right issue from a human rights perspective has a wide ranging implication in the sense that it relates to a variety of civil, cultural, economic, political and social rights. Moreover, considering the significant role that a secured land right may play in the development processes of many developing countries makes the subject even more significant. Even if there are many reports written by the various UN human rights bodies as well as its specialised agencies, such as FAO and UN-HABITAT, a norm that specifically addresses this right is still lacking at the international level. However, the regional human rights standards are one step ahead in this regard. That notwithstanding, the human rights to land can be read into other international human.

⁶ Coomans, supra note 22, p.8

⁷ Agrarian reform as a human right in itself is a vast topic that goes beyond the scope of this essay.

Ethiopia's position with regard to the application of the international human rights standards within the domestic legal setting needs a radical rethinking. Absence of even a single official full text publication of the international human rights instruments the country has ratified makes it legally disputable to invoke any of those rights before the domestic courts. Since the country has not ratified any of the protocols that permit individual complaints before the UN human rights institutions, an Ethiopian, as an individual, cannot have international recourse whenever violations of the property rights to land occur.

In this research, an attempt has been made to introduce a new dimension to the possible solutions to the Ethiopian land rights problems. Specifically, the human rights approach has a great deal to offer in addressing the critical shortfalls in the government's land policies. By now, it is readily apparent that the land issue is an issue of socio-economic development in its literal sense and thus approaching the matter from the human rights perspective is a necessity. This is so because development is understood at present as 'a process in which all the human rights and fundamental freedoms can be realised.'

As most of the human rights that are one way or another related to the human right to land are socio-economic rights, there exists a question of progressive realisation as provided in the ICSECR. And the use of indicators is the best mechanism for monitoring such progressive realisation of the human rights to land. Accordingly, few sample indicators have been developed in this research. They need further refinement as well as inclusion of benchmarks and of more indicators that capture international actors such as transnational corporation, financial institutions, etc.

Even if there are commendable measures that are underway in the country, especially in relation to certification of possession rights, there are critical gaps within the measures in terms of addressing the principles of the human rights approach to land rights, among which the following can be considered very much imperative for the government to consider.

➤ Developing an enhanced political will to engage the public in active, informed and effective participation in land policy design and implementation, which requires an urgent measure to lay down the necessary infrastructures for the same purpose;

- Investing in the establishment of reliable land information system that ensures accountability and transparency of the actions of the authorities and that will serve as basic input for the development of the land market;
- Working towards uniformity across the regions wherever such uniformity is desirable. Especially when it comes to land-access and gender equality issues, there is no doubt for the need for uniformity based on the internationally recognized human rights principles;
- Rethinking the country's position in the implementation of international human rights standards within the domestic legal system which, among others, requires the publication of the full texts of the relevant treaties on the official legal gazette and translation of same into the local vernaculars so as to make them accessible for individuals as well as the courts;
- Undertake institutional reforms to ensure that those having grievances relating to their land-holdings will have swift and effective institutional remedies and thereby ensuring security of tenure.