



Land Administration and Human Rights

DR. MELKAMU BELACHEW, AUGUST 2024

KEY MESSAGES

Full respect for human rights, as inherent to human dignity and fundamental to individual and collective well-being, is also recognized as central to achieving the Ethiopian national objective of building a political community founded on the rule of law and democratic order.

Cognizant of this, the FDRE Constitution guarantees a broad range of human rights in its Bill of Rights chapter. The Constitution recognizes and guarantees socio-economic rights and political such as the right to improved living standards and the right to sustainable development (Art. 43).

Self-administration, a constitutionally recognized fundamental right of individuals and groups, establishes the participation of right-holders in local governance in the process of policy formulation and implementation along with the transparency and accountability of duty-bearers in land administration systems. Land information, namely, cadastral and land registration can fall under the issue of “access to information” which is a fundamental human right recognized by domestic and international instruments. The right of access to information is also a prerequisite to many other rights such as public participation in decision-making, and, as such, it is a vital component of democracy. Mass Media and Access to Information Proclamation No. 590/2008 as amended by the Media Proclamation No. 1238/2021 further regulate the right to access to information.

This Law defines “information” as any material recorded in any form by public bodies while it acknowledges “the fundamental importance, in a democracy, of the transparent conduct of government affairs and, in particular, the right of individuals to access information held by public bodies”.



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The duty to enforce human rights including the right of access to environmental information goes to the government. In general, all federal and state legislative, executive, and judicial organs at all levels are obligated to respect and enforce the rights and freedoms, including the right to development and other generations of rights. The Constitution provides that all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it. The cumulative reading of the above paragraphs indicates that the state and its organs at all levels, individuals, and other non-state actors can be viewed as duty bearers of the right to development and other human rights in Ethiopia including land rights.

However, enforcement of the human rights to land is not realized in Ethiopia. Lack of adequate resources and the establishment of appropriate mechanisms may limit the realization of the human right to land. The reality of conflict and socio-political unrest, the legacy of a state monopoly and the slow pace of private sector empowerment in the economy, and limited space for independent institutions (such as media, CSO, courts and oversight institutions) underpin the challenges in the practice of developing and enforcing land rights. Land rights apply in the case of individual relationships with government entities during participation in local governance, and consultation, unlawful expropriation, and during business or investment operations.

The existence of weak institutions in charge of the implementation of laws such as courts, the Ethiopian Human Rights Commission, Ombudsmen and administrative agencies led to failure in exercising the required control and ensure accountability. Limited capacity and awareness are also contributing factors. There are attempts by

governmental and non-governmental institutions to create human rights awareness. However, these efforts are limited in terms of coverage. There are a sizable number of people, sections of communities and geographical locations in Ethiopia who need both rights holders' and duty bearers' awareness creation and capacity-building support.

Legal aid services which could have lessened problems created by lack of money to pay for lawyers, lack of awareness of one's rights and litigation procedure are not widely available in Ethiopia.

The stringent standing requirements to file proceedings for human rights violations before courts and other quasi-judicial organs also contribute to weak enforcement of corporate human rights liability regime and other mass displacements. In general, public interest litigation is not comprehensively recognized in the Ethiopian legal system nor are the existing laws recognizing it enforced.

Lack of political commitment on the part of the Ethiopian Government for the enforcement of corporate liability regime for human rights violations and addressing other land human right violations can also be taken as a barrier.

When the land laws are clear, their implementation is extremely lenient. Gaps must be treated so that victims of massive land rights violations in the form of evictions and the like get remedies and perpetrators will be held accountable. Addressing the existing deficiencies and ensuring remedy and accountability mainly depends on various concerted practical steps. These include enhancing state capacity, resource supply, national unity and sustainability, awareness creation, participation of the private sector, and addressing regulatory gaps.



BACKGROUND AND CONTEXT

Ethiopia's Homegrown Economic Reform aspires to macroeconomic stability, industrialization, private-sector growth, and the contributions of key sectors, including agricultural productivity and export diversification, to bring socio-economic transformations. The FDRE Constitution imposes an obligation on the federal and state governments to formulate and implement development policies and strategies of the country and the states, respectively. Subject to the availability of resources, "policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security".

The Ethiopian Constitution holds considerable relevance in considering land rights as human rights. The first aspect is in its overall emphasis and substantive content on human rights. Beginning from the preamble, Paragraph 2 provides that "full respect of individual and people's fundamental freedoms and rights" is required to achieve the objective of advancing "economic and social development" under Paragraph 1. In Chapter 2, "human and democratic rights" form one of the five fundamental pillars of the Constitution. Under Article 55(14), the Constitution mandates the House of Peoples' Representatives to establish a Human Rights Commission and determine by law the Commission's powers and functions. Further into the substantive provisions, the whole chapter three is an extensive catalog of individual and collective human rights and freedoms. The Chapter is also considered as the Constitution's Bill of rights section. The second aspect in the FDRE Constitution's promise to human rights lies in its incorporation of treaties ratified by Ethiopia into domestic law. Ethiopia already subscribes to the minimum set of human rights: the international bill of human rights (consisting of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), and

the International Covenant on Economic Social and Cultural Rights (ICESCR)) and ILO's Declaration on Fundamental Principles and Rights at Work. Moreover, Ethiopia has ratified other conventions, including the African Charter on Human and Peoples' Rights. According to Article 9(4), international agreements ratified by Ethiopia are "part and parcel of the law of the land." Moreover, human rights provisions of the Constitution are to be interpreted "in a manner conforming to" treaties adopted by Ethiopia. The cumulative reading of these two provisions (Articles 9(4) and 13(2)) means that all treaties ratified by Ethiopia (under the UN, African Union, or other frameworks) are considered part of domestic law. This includes not only human rights instruments but also treaties related to business and the economy such as bilateral investment treaties. It also means that human rights principles enshrined in instruments adopted by Ethiopia hold higher interpretive authority.

Despite domestic and international legal frameworks, inadequate protection of human rights in general and land rights in particular is a recurring problem in Ethiopia. The FDRE Constitution has failed to bring about fundamental transformation in the protection of human rights in the country and human rights litigation is too low. Several factors could be mentioned for this. One problem is the Constitution's bias towards group rights at the expense of individual rights, partly attributable to the founding grand narrative of the Constitution that resulted in a lack of sufficient attention to the importance and protection of individual rights enshrined under the Constitution. The extended right to self-determination given to ethnic-based states has also created problems in the exercise of certain rights such as the right to freedom of movement, the right to life, the right to property, and the right to security.

In different regional states of the Ethiopian federation, individual citizens are being forcefully



evicted from the land they possess merely because of their ethnic identity. The situation is further reflected in the state constitutions. Even though all regions have ethnically diverse populations, most regional constitutions do not grant protection to ethnic groups other than the “indigenous” groups of the region, i.e. the groups that have their place of origin in that region. The implicit or explicit differentiation between indigenous and non-indigenous groups has implications for the rights of the two categories of groups.

Methodology

Literature review was the main method of this study. The review was made systematically. The key words that can represent the study subject were identified. The databases that are globally recognized were searched. All studies made on Ethiopian land administration were downloaded and summary tables for all relevant study reports were organized. Assessment report was prepared and was used as the base for developing draft policy briefs. The draft policy briefs were further refined and finalized considering feedback and comments gathered from stakeholders and the client.

Findings

Protecting Land Right as a Human Right

Although international human rights law does not include a right to land directly, it may be seen as protecting access to land in two ways. First, land users’ rights are protected, the right to land may be seen as a self-standing right, whether it is protected as an element of the right to property, whether it is grounded on the special relationship of various communities to their lands, territories, and resources, or whether it is a component of the right to food. In other cases, the right to land may be said to be instrumental to other human rights such as the right to food. Land rights are also related to

the right-to-life clause of the Constitution, which is seen as “emanating from the nature of mankind” and “inviolable”. Land rights in Ethiopia are often the sole source of livelihood for smallholder farmers. They constitute an indispensable factor for the rural population and are thus part and parcel of their constitutional right to life; this would accord such rights sanctity by removing them away from easy reach of state authorities. When land is taken from small landholders, the government is depriving them of a livelihood asset.

Only by recognizing the complex relationship of land to livelihoods and to a decent standard of living, as well as the various ways in which rights may impose obligations on States, can we make progress towards the human right to land. The other argument is that human rights are universal, inalienable, and inviolable rights naturally gifted to all human beings, thus imposing on the state a duty to promote, protect, and respect these rights. As a principle, human rights are indivisible and interdependent, meaning that the protection of one right contributes to the respect of the other human rights (1993 Vienna Declaration). In this sense, respect for the human right to land fosters respect for other rights. For example, the right to development depends a great deal on how land is secured, used, and managed, requiring appropriate land laws and policies that bring tangible benefits to the people.

Problems of Implementation of Human Rights to Land

Within the scheme of the Constitution, land rights and more generally the right to property are labeled as democratic rights as opposed to a human right. The categorization of land rights as democratic rights formally means, in essence, that the state can more easily restrict or trump the land rights of citizens. If the democratic rights path is followed, the state can, for example, issue lax expropriation laws. In fact, the expropriation law of Ethiopia makes



it legally easier for the state to deprive a livelihood asset than is the case with a mere economic asset, enabling violations of the Constitution and human rights. It gives extensive power to the government, and which affords farmers and pastoralists little or no practical protection against land dispossession. The broader interpretation of public purpose and the inadequacy of compensation coupled with the inadequacy of existing remedies are eroding and destroying human/land rights and the very existence of many farmers and pastoralists. The idea of vacant or unused land is being used to dis-empower and dispossess people of their communal land-use right.

With respect to land investments, the extent of granting land to foreign companies in Ethiopia is staggering leading to land rights violations. Business activities in land sectors include horticulture, commercial agribusiness, textile, and mining which have social, environmental, and human rights impacts. Following land grabs, forced evictions often occur without adequate legal protection, leading to significant human rights abuses, including loss of shelter, violation of the right to housing, and disruption of community ties. Business activities have economic ramifications such as decreased access to resources and opportunities for victims, as well as broader implications for national development and social stability. In Ethiopia, there is the absence of a clear and comprehensive Bill of Rights litigation procedure as well as redress for violation of constitutional human rights. The procedure for litigation of the Bill of Rights and remedies can be found scattered in the Constitution, the House of Federations Proclamation, the Court of Constitutional Inquiry Proclamation, the Civil Code, and the Civil Procedure Code. These laws, however, lack comprehensiveness and clarity as well as contain procedural standards that are not tailored to the specific nature of constitutional litigation.

There are two approaches of interpretation of the Ethiopian Constitution regarding responsibility to respect human rights including land rights implying that there is lack of clarity on the issue. The first approach starts with Article 9(2), which provides: "All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it." Based on this provision, one line of argument interprets the term "other associations" to include business organizations and corporations and thus holds that the Constitution requires companies to respect all relevant provisions related to human and land rights, environmental, and social issues. A second approach of reading the Constitution that defines the scope of obligations for human rights in the Constitution is that as far as human rights are concerned the Constitution enshrines the conventional approach of centering the State. That is the State, and its agencies have the duty to respect and ensure respect of the human rights enshrined in the Constitution (Article 13(2)).

With respect to the right of access to environmental and land information in Ethiopia, several reasons are identified for the poor enforcement of environmental rights in the country, namely, weak institutional capacity, inefficient remedial bodies, limited public awareness, political and economic pressures, corruption and lack of accountability, insufficient legal frameworks, social and cultural factors, and land use conflicts. The absence of a framework land law that combines land, the environment, water, land use, etc) in an integrated manner is one of the main barriers to access to environmental and land related information. While existing effort to cadastral and land registration information in Ethiopia is quite commendable, it is not integrated with water and environmental information. This has implication on the protection of land rights.



Recommendations

A human right approach to land rights protection may not be used as substitute for sound land governance as land is quite more than human right. However, the approach can be used as a complementary tool. There is the need to understand the strong nexus between land and other fundamental human rights such as the right to life and livelihood.

Protection of land human rights requires concrete expression in legal rules to restrict the state in the course of land expropriation, to tighten up the definition of public purpose, to put in place mandatory and effective public hearing and consultation mechanisms, to allow interested persons to object to land acquisition, thereby limiting the type and amount of agricultural land that can be expropriated at any given point in time, to make the amount of compensation adequate, and to make loss of land occurs only upon the fulfillment of stringent conditions, and to make payment of compensation also consider the value of the land. There is no formal recognition of the judicial enforcement of the human rights provisions of the Constitution. The Ethiopian Constitution has kept courts at arm's length from constitutional interpretation. This has diminished the role of Ethiopian courts as the ultimate custodians of human rights protected under the Constitution and other laws. Reform is

needed to rectify this gap along with judicial system improvement. Establish a framework land law that provides for certain fundamental principles, land and water rights, environmental rights, etc. in an integrated manner is crucial to improve the right to access to land and environmental information in Ethiopia and help to enhance land rights protection.

Weak land and natural resource administration and local governance that triggers inter-ethnic conflicts over land, natural resources and local boundaries with implications on human rights, such as self-administration rights of groups and individuals.

Accountability for human rights violations should be expressed in clear and objective terms including in the case of corporate human rights violations. In this regard, reference should be made to the UN Guiding Principles on Business and Human Rights (UNGPs), the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct (also known as OECD Guidelines), and the African Commission on Human and Peoples' Rights resolution on "Business and Human Rights in Africa (2023).

The African Union (AU) must accelerate its existing efforts at strengthening land governance in the African continent.

CONCLUSIONS AND WAY FORWARD

Land rights in Ethiopia should be protected as fundamental human rights to individual and collective well-being. In the land administration system of Ethiopia, the recognition, protection, fulfillment and enforcement of land as human rights is also central to achieving the Ethiopian national objective of building a political community founded on the rule of law and democratic order.

The state is has an obligation as a duty bearer for effective land governance and protection of human rights. Advancing the human rights approach to land governance requires actionable policy measures such as, fixing the land expropriation gaps, enhancing enforcement capacity of the state, improve judicial enforcement, public awareness on the human rights to land, and strengthening continental level efforts.