



Land rights and land grabbing in Oromia, Ethiopia



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ABSTRACT

The land is not only a vital livelihood asset but also indispensable for the enjoyment of several human rights including the right to life, the right to food, the right to housing, the right to property, the right to development, and the right to self-determination. However, smallholder farmers and pastoralists do not have an adequate legislative protection as laws and practices facilitate arbitrary expropriations and land grabbing, which induce an economic marginalisation of most ethnic groups in Ethiopia. The Imperial regime (1930–1974) had imposed an oppressive land tenure system on the Oromo and other peoples of Ethiopia until the Derg regime (1974–1991) had introduced a public land tenure system. Land laws currently in force also do not sufficiently protect rights of rural land users. The Ethiopian Constitution of 1995 restricts the legislative power of the regional States on the utilisation of land and other natural resources and it excludes a right of economic self-determination of ethnic groups. Forced evictions occur based on flawed expropriation laws, which do not entitle farmers and pastoralists to a right to just compensation. In addition, the government of Ethiopia promotes urbanisation and private investments at the expense of the poor and vulnerable smallholders. This paper examines the Ethiopia's law and practice pertinent to land rights with a particular emphasis on the Oromia Regional State. It explores seven ways in which the law and the practice legalise and institutionalise dispossession and economic marginalisation of the poor without a sufficient due process of law.

1. Introduction

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

The need to control and utilise land and other natural resources has been the main cause for the Abyssinian's occupation of the Oromo and their homeland, Oromia (Gnamo, 2014; Hassen, 2002). The rulers of the Ethiopian Empire were also accused of using the land tenure as an instrument of oppression, dispossession and political and economic marginalisation of the Oromo people (Hassen, 2002). For instance, the Haile Selassie I regime (1930–1974) institutionalised an oppressive land tenure system in which the Oromo peasants were reduced to

gabbars (tenants) of the State and the handful privileged groups known as *balabats* (landlords) (Markakis, 1974). Although the military socialist Derg regime nationalised the rural land in 1975 and distributed it to the tillers (Ethiopia, 1975), it exploited the Oromo farmers and pastoralists by restricting their economic freedom under the guise of promoting the communism (Jemma, 2004; Hassen, 2002).

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

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

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Tigray People's Liberation Front (TPLF) (McCracken, 2004; Abbink, 2011), designs laws and policies in a manner serving to achieve the TPLF's political and economic interests (Gebresenbet, 2014). The making and the implementation of flawed expropriation laws in Oromia have been facilitated in large part because of the lack of political independence of the Oromo People's Democratic Organisation (OPDO), a party in the EPRDF coalition. Had the OPDO been independent, the Oromo's land and economic rights would have been protected under the existing legal and institutional frameworks. First, the OPDO members currently occupy 183 of 547 seats in the parliament (the House of Peoples' Representatives). However, they are criticised as nominal and agents of the Federal Government than genuinely representing the Oromo people (Abbink, 2011, Lavers, 2012a, McCracken, 2004). Second, the State of Oromia has the constitutional power to administer land and other natural resources within its administrative boundaries (FDRE, 1995 Art 52(2) (d)). Although the power of natural resources administration is crucial to empowering local peoples to own and utilise their land in an equitable manner, the Federal Government often usurps this power and leases a massive land to private investors (Zewdie, 2013). The Government also misuses the State ownership of the land to control the smallholders politically (Vadala, 2009) and implements expropriation laws that legalise the displacement of the smallholders from their lands without sufficient due process of law, just compensation, and robust rehabilitation (Abdo, 2015; Zewdie, 2013; Nadhaa, 2015).

This paper presents seven ways in which the existing laws and practices legalise arbitrary expropriations and the economic exclusion of historically marginalised ethnic groups in Ethiopia with a particular emphasis on the Regional State of Oromia. Although the laws apply to all Ethiopians, the land expropriation without sufficient compensation has much negative effects on the Oromo people for the following reasons. First, due to the location of the State of Oromia and its suitability for private and public investments, millions of hectares of lands have been taken from the farmers (Kumsa, 2012). Second, the expansion of Addis Ababa, the capital, which locates in the heart of Oromia and the increasing demand for the urban land in many other cities and towns have triggered huge rural land expropriations in Oromia (Kumsa, 2012; Tura, 2017; Nadhaa, 2015). Third, the Government of Ethiopia has leased out more than one million hectares of land in Oromia to foreign and domestic investors who are supposed to cultivate food and biofuels on a large-scale farming (Horne, 2011). Fourth, outrages over land grabbing in Oromia have given rise to the recent widespread Oromo protests (2014–2017) as a result of which more than 1000 people have been killed, and tens of thousands are exposed to gross violations of human rights (Human Rights Watch, 2016; Carboni, 2017).

2. Land rights and expropriation in Ethiopia

The right to land as a human right is recognised under several binding and nonbinding international human rights instruments as an implied right (Schutter, 2010). The land is crucial for the enjoyment of human rights including the right to food, the right to livelihood, the right to housing, the right to property, and the right to development, and it is indispensable for ethnic groups to exercise their right to self-determination. The FDRE Constitution recognises several ratified international human rights instruments, which protect land rights of smallholders and indigenous peoples, as part of the country's domestic laws (FDRE, 1995, Arts. 9(4), 13(2)). The legal recognition of land rights in turn imposes obligations on Ethiopia to protect land users from arbitrary evictions (Tura, 2017). The following paragraphs review normative contents of land rights under existing relevant laws of Ethiopia.

Ethiopia retains the state (public) ownership of land that was adopted in 1975. Accordingly, "the land is the common property of the Ethiopian Nations, Nationalities and Peoples" (FDRE, 1995, Art 40(3)). The FDRE Constitution prohibits private landholders from selling or

transferring their possessions (ibid). Nevertheless, this is not to say that smallholders (peasants and pastoralists) and private investors do not have any right to land. Pursuant to Article 40(6) of the FDRE Constitution, private investors have the right to use the land based on "payment arrangements". Moreover, peasants and pastoralists have the right to acquire land free of charge, the right to not be evicted from their possessions (FDRE, 1995 art. 40(4–5)), and a right to use the land for an indefinite period (FDRE, 2005). The right to use rural land includes:

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

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

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

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

However, expropriation laws adopted by the same government substantially contradict with the legislations above which list a bundle of rights of the smallholders. For instance, the FDRE Constitution does not expressly guarantee a right to just compensation during expropriation of rural land use rights. Pursuant to Article 40(8) of the Constitution, Articles 7 and 8 of the Federal Rural Land Proclamation No. 456/2005, Article 6(10, 11 and 12) of the Oromia Rural Land Proclamation No. 130/2007, the Federal Land Expropriation Proclamation No. 455/2005, and the Federal Land Expropriation Regulation No. 135/2007, a smallholder whose land is expropriated for public purposes is entitled to compensation for three things: property situating on the land, permanent improvement made to the land, and/or displacement compensation. The laws do not, however, specify whether taking of the land itself is a compensable interest.

A displacement compensation is calculated based on Article 8(1) of the Federal Expropriation Proclamation No. 455/2005 and Article 16(3) of the Federal Expropriation Regulation No. 135/2007, which must be "equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land". Scholars find that the displacement compensation does not represent a compensation for the loss of land use rights (Ambaye, 2013; Abdo, 2015). The calculation method is neither scientific nor justifiable. The amount of displacement compensation is inadequate compared to the right of smallholders (which is granted for an indefinite period) (Ambaye, 2013). It also disregards the constitutional right of smallholders to not be displaced from their possessions. Furthermore, the Ethiopian

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