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TITLE OF PRESENTATION: **Constitutional
Recognition and Protection of Land Rights
in Ethiopia**

AUTHORS: **Taye Minale and Habtamu Sitotaw**

ORGANISATION/UNIVERSITY: **Bahir Dar University,
Institute of Land Administration**

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• Introduction

- Ethiopia is a Federation of States, since 1994.
- It has 9 Regional States and 2 City Administration namely:-
 - Regional State: Tigray, Afar, Amhara, Oromia, Southern People Nations and Nationalities, Somalia, Harari, Gambella, Benshangul
 - City Administrations: Addis Ababa (Capital) and Dire-Dawa City.
- The country total area is around 1.1 Million Km², with a population of more than 100 million.



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Constitutional Development and issues of Land in Ethiopia

- Ethiopia enacted its first ever written constitution in 1931 during the era of Emperor Haile Sellassie I.
- This constitution was later repealed and replaced by the 1955 revised constitution.
- Both constitutions:
 - had given recognition for individuals to claim **ownership rights** over their holding.
 - Arbitrary eviction was prohibited
 - The right to transfer one's holding was recognized



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- After the overthrow of the imperial regime during the 1970s by the instrumentality of the students' revolt in the country with the slogan **“land to the tiller”**.
- As a socialist in its ideology, **the regime totally abolished private ownership** of both rural and urban lands(Proc.No.31/1975, and Proc. No.47/1975).
- The ownership right of land was vested to the state and public



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- The new constitution enacted in **1995, has introduced, a federal form of government** and ultimate power rests to the Nations, Nationalities and Peoples of Ethiopia that constitute the federation.

The Constitution has introduced separation of power between the federal and regional government, accordingly;

- The constitution has endowed **the power to enact laws concerning Utilization and conservation of land** and other natural resources, etc **for the Federal Government.**(Art. 51(5))
- As per the constitution the **regional States have the power to administer land** and other natural resources in accordance with Federal laws;



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- **Recognition and Protection of Land Rights under the FDRE Constitution**
 - Foundation of Land Rights in Ethiopia
- The Ethiopian Civil Code, which was enacted during the era of Emperor Haile Sellassie I in 1960, is the fundamental legislation governing property and land rights in the country specially concerning issues of **rent(contract), succession, donation etc.**
- The Criminal Code, the Civil Procedure Code



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- Rights to land get coverage under the FDRE constitution(particularly rural land).
- **The Ethiopia Land Policy is clearly enshrined under - Article 40**
 - (3) The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and **shall not be subject to sale or to other means of exchange****
 - (4) Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. **The implementation of this provision shall be specified by law.****



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- As per the constitution both the federal and regional governments are duty bound to protect and enforce such land right.
 - As it is also prescribed under the constitution, any law, customary practice, decisions of a public official or state organs relating to land rights will be void so long as it contradicts with the terms/intents of the constitution.(Art.9(1) FDRE Constitution)
- Subsidiary legislations for detail stipulation and protections of land rights shall be enacted in line with the constitution.



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Two Lines of Argument on the approach of the Constitution

- The argument forwarded by the government for the continuation of land as Public and State property rests mainly on the **issue of security**.
- In particular, it has been said that **private ownership of rural land would lead to massive eviction** or migration of the farming population, as poor farmers are forced to sell their plots to urban speculators, particularly during periods of hardship.
- Some studies conducted by the Ethiopian Economic Association (EEA) and by the World Bank contradict this hypothesis
- During hardship peasants prefer to rent instead of selling it.



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- **Critics on the approach of the Constitution :**

- ✓ It is inefficient because it constrains land transactions and has inhibited the emergence of a dynamic land market,
- ✓ It promotes fragmentation of land and growing pressure on land resources because it discourages rural people from leaving their farms for other employment opportunities;
- ✓ Gives the state immense power over the farming population because land is state property.



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Access to Land in the FDRE Constitution

- Access to land is a critical issue for millions of farm households in Ethiopia. This is particularly the case for rural land, as Ethiopia has a very large rural population, which constitute at approximately 83-85% of the total population.
- The constitution only stipulated that peasants, pastoralists and semi pastoralists can **acquire land for free** and it has left the details to be determined under subsidiary laws.
- Accordingly as per the federal rural land proc. No.456/2005;
“**any citizen** of the country **who wants to engage in agriculture** for a living shall have **the right to access rural land for free**”.



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- **Mechanisms to Enforce Land Rights**

- i. **Access to Justice**

Protecting and enforcing land rights will not be feasible in the absence of proper mechanisms to enforce them.

As the practice shows, in various incidents, the government, private companies, ordinary individuals and others appear to violate constitutionally recognized land rights of individuals.



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Thus if violation of individuals land rights exist then, **there shall be mechanisms to resolve land related disputes and providing appropriate appeal procedures**

The issue here is whether there are mechanisms that the constitution has provided in advance to enforce land rights specifically in the event of violation of any of the rights thereof.



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- The constitution has **relevant provisions that govern both the right to bring justiciable matters to a court and other organs** empowered with judicial power.(Art.37)
- The constitution has **recognized the establishment of customary institutions and religious courts** that will support the regular courts thereby can entertain various cases that are under their jurisdiction.
- Thus the aggrieved person may chose either to take his/her case **to the regular court or to alternative dispute resolution mechanisms.**



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- **Appeal is one of the procedural rights under the constitution** where parties are at liberty to take their grievances to a court of law.
- **The constitution has established a two-tier court arrangements** in the federal and regional governments.
 - The federal level constitutes the federal first instance courts, the federal high courts and the federal Supreme Court.
 - Similarly, in the regional level, there are regional first instance courts, the regional high courts and the regional supreme courts.
- In case of error of laws(not fact) the case can be appealed to the Federal Cassation Court.



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ii. The Supremacy Nature of the FDRE Constitution as a Protection to Land Rights

The Constitution is the supreme law of the land.

- ✓ Any law, customary practice or a decision of an organ of state or a public official which contravenes the Constitution shall be of no effect.(Art.9(1))

Even if land rights in the constitution are not liberated enough, **its supremacy nature will help, at least, to protect the land rights** under it against decisions of any kind, legislative acts, customary practices etc. so long as they contradict the constitution.



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iii. Constitutional Amendment Procedures as a Protection to Land Rights(?)

Constitutional amendment procedures as prescribed in the constitution may be seen from two perspectives concerning its implication on land rights.

- ✓ One perspective could be the provided amendment procedures as a guarantee for land rights and;
- ✓ On the other side, it highly prohibits the flexible application of the land policy of the country;



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- According to the constitution, its provisions under chapter three can not be amended easily and it is expected to pass through a number of procedures before amending them.
- A look at Articles 104 and 105 of the constitution reveals this fact.



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- As per Art.105, chapter three of the FDRE Constitution can only be amended,
 - (a) When all State Councils, by a majority vote, approve the proposed amendment;
 - (b) When the House of Peoples' Representatives, by a two-thirds majority vote, approves the proposed amendment; and
 - (c) When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.



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- Considering these provisions, a certain legislator or any organ of government will not easily amend the constitution.
- Hence, land rights that got constitutional recognition and protection will not be easily affected unless the procedures to amend them are complied with.



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- **Restrictions to Land Rights under the Constitution**

- i. **Expropriation as a Restriction**

The constitution allows the possibility to take away private property by virtue of expropriation.

As the current Ethiopia is experiencing rapid economic development where enormous building of hydropower and irrigation dams, construction of roads, renewal and redevelopment of urban centers, expansion of cities, transfer of large-scale rural agricultural land to investors, zoning of industrial lands etc. are being carried out, the government is in in-need of lands.



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- Two interests, public interest represented by the government on one hand and private landholders' interests to secure their property on the other hand, appear competitive interests during the government expropriates private landholdings.
- For this, a workable legal framework requires a balance between these opposing interests.
- **In order to balance these conflicting interests the constitution has enshrined**
 - The requirement of public interest
 - The requirement of due process of law
 - Payment of commensurate compensation



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Concluding Remarks

- The constitution should have included some relevant provisions concerning urban land
- The approach of the constitution in providing the possibility to acquire rural land free of charge, protection from arbitrary eviction and the requirement attached with expropriation is commendable.
- The inclusion of a provision under the constitution which makes any legislation or decision of any organ null and void in case of contradiction with the constitution is also commendable.
- The amendment procedures concerning the right to land should have been some how relaxed.



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Thank You For Your Attention!!!