

## 12. Rights and development: the costs of human rights in Ethiopia

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### 12.1 INTRODUCTION

#### 12.1.1 Rights, Money and Development<sup>1</sup>

International human rights texts have often framed human rights as inalienable, fundamental, and arising from the inherent dignity of human kind.<sup>2</sup> As a result, the realization and protection of human rights are frequently expressed in urgent terms, a demand that states prioritize human rights over almost anything else. While human rights might be inalienable, the realization of most rights comes at a significant economic cost. Few human rights require only that the state leaves its citizens alone to get on with their daily lives. Most rights, including the most basic civil and political rights, require some degree of state spending and many need considerable investment in infrastructure and personnel.

For developing countries, human rights may create an enormous financial burden on a state already under pressure. As a result, the realization and protection of human rights are sometimes used as a reason for states to pursue rapid,

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<sup>1</sup> This chapter has been written in the frame of the research project ‘Reopening political space for CSOs under pressure. The Case of Ethiopia’s sustainable development CSOs’. For more information on that project, see <https://includeplatform.net/new-roles-csos-inclusive-development/reopening-political-space-csos-ethiopia/>. The research is supported by the Netherlands Organization for Scientific Research under its NWO-WOTRO Science for Global Development Programme (grant number W.08.311.103).

<sup>2</sup> See, for example, the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) para Preamble, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3; Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

large-scale development that both generates wealth for states and improves the standard of living of citizens. The path to rights, on this approach, is through development.<sup>3</sup> A concern with the cost of rights might suggest that bringing together rights and development agendas is both necessary and beneficial. However, the relationship between human rights and development is far from simple, and development (even development aimed at securing human rights) may come at a high cost to human rights.

Ethiopia offers a recent and ongoing example of the complexity involved in pursuing a rights agenda through a development plan. In the past two decades, Ethiopia has pursued a programme of growth and development aimed at alleviating poverty and securing rights to health, food, water, work and education for the many millions of Ethiopians without access to basic rights and services. Thanks in large part to high levels of growth and international aid, Ethiopia has had significant successes in its pursuit of these goals. While Ethiopia has been successful in securing greater rights and well-being for its people, the pursuit of rapid growth has come at a considerable human rights cost. Ethiopia's long-term development agenda has been closely associated with the entrenchment of a largely authoritarian, one-party state. While reducing poverty and improving the lives of its citizens is the goal of Ethiopia's development programme, it is a programme that has been ruthlessly pursued both through the suppression of opposing and critical voices in politics, the media and civil society and through the displacement of people and denial of civil rights to free expression, protest and participation.

It is important to note that Ethiopia is currently in a state of political upheaval and change. Since the surprise resignation of the former Prime Minister, Hailemariam Desalegn, in 2018 and the appointment of the new Prime Minister, Abiy Ahmed, Ethiopia is at a social and political crossroads. Over the past few months, the Ethiopian Government has been working towards rapid reform in various areas, raising the hopes of many Ethiopians that the country is entering a new period of democratization and accountable governance. However, growing ethnic tensions and the lack of a clear political roadmap to ensure predictable change might hamper further reforms. At this stage, it is too early to know what the impact of these reforms will be on both the realization of human rights and the future development plans of the country. In our chapter, we focus primarily on Ethiopia's rights and development record over the past two decades, but we are mindful that much will change in the coming

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<sup>3</sup> Rapid development in South East and East Asian societies, including Japan and South Korea is sometimes described as an example of a third way of securing rights and development that is neither democracy nor communism. See, for example, Ian Neary, *Human Rights in Japan, South Korea and Taiwan* (Routledge 2003) 5.

months and we attempt to reflect these ongoing and rapid developments in our discussion of Ethiopian case studies in Section 12.4 of the chapter.

### **12.1.2 Overview of the Argument**

In this chapter, we examine the relationship between rights and development in the context of Ethiopia. We argue that the significant economic costs involved in securing rights suggest that development may be a crucial component or first step towards realizing rights in less and least developed countries. However, the pursuit of rights through a development agenda may distort rights outcomes and result in problematic trade-offs between civil and political rights, and socio-economic rights.

We make this argument over a number of steps. In Section 12.2, we look at literature on the costs of rights and on the ways in which economic concerns might change our understandings of human rights. We consider two arguments, both of which are complicated by the Ethiopian example. First, scholars have suggested that looking at human rights from a costs perspective reveals that the distinction between negative (or civil and political) and positive (or socio-economic) rights is far from obvious. A costs approach suggests that all rights require significant investment by states. In the Ethiopian context, however, we find that the distinction between these classes of rights is significant because civil and political rights are seen to stand in the way of realizing socio-economic rights. While all rights come at a cost to governments, the Ethiopian government views certain rights as a barrier to raising the funds needed to secure others.

The second cost-of-rights argument we consider is one that suggests that modernization ought to be prioritized before a state attends to securing rights, particularly civil rights to justice and due process. Scholars have suggested that the high cost of rights means that realizing these rights ought to be delayed in certain circumstances. Again, the Ethiopian context suggests that this argument does not show the full picture as the government does not simply and passively ‘delay’ rights but actively suppresses human rights when it faces opposition or demands for rights protections. In this context, rights delayed are rights violated.

In Section 12.3, we focus on Ethiopia’s current development. We begin with a brief historical introduction to Ethiopia’s development plan and progress. We look at the ways in which this development programme is connected to the realization of rights, and at what it has achieved in securing human rights.

In Section 12.4, we argue that, while development in Ethiopia has produced significant gains in the reduction of poverty and the realization of socio-economic rights, it has sometimes come at the cost of civil and political rights and environmental rights. We look at two examples of such rights lim-

itations – the forced removal of communities from agricultural land through ‘villagization’ and other development programmes and the exclusion of civil society organizations from human rights work.<sup>4</sup>

In Section 12.2.5, we bring together our discussions of the cost of rights and the Ethiopian example. By doing so, we suggest that there is no clear-cut, causal relationship between development and the realization of rights, but rather a complex and multifaceted interplay that complicates a straightforward costs analysis of human rights.

## 12.2 THE COST OF RIGHTS

### 12.2.1 The Nature of Rights

The two International Human Rights Covenants<sup>5</sup> express ideas about the nature and classification of human rights that have made their way into much of our common understanding of human rights. The International Covenant on Civil and Political Rights<sup>6</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>7</sup> state in their Preambles that human rights ‘derive from the inherent dignity of the human person’. Rights are inherent and inalienable and, as a result, hold a special status in international law.<sup>8</sup> The securing of human rights is recognized as urgent, a priority and duty of states owed in perpetuity. In addition, international human rights texts (and many domestic rights instruments) classify rights into groups or generations. A critical distinction in the negotiation of the Covenants was between civil and political rights and socio-economic rights. Considering rights from a costs perspective, however, creates some doubt both in regard to the usefulness of categorizing rights in the way we do and about the status of human rights as a priority.<sup>9</sup> We consider each of these in turn.

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<sup>4</sup> Our discussion of civil society in Ethiopia is principally based on interviews we conducted as part of an ongoing project that investigates the role of civil society organizations in sustainable development in the Ethiopian legal context. See n 1.

<sup>5</sup> ICCPR; ICESCR.

<sup>6</sup> ICCPR.

<sup>7</sup> ICESCR.

<sup>8</sup> See the discussion on dignity and the priority of rights in Jürgen Habermas, ‘The Concept of Human Dignity and the Realistic Utopia of Human Rights’ (2010) 41 *Metaphilosophy* 464, 469.

<sup>9</sup> Stephen Holmes and Cass R Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (WW Norton 2000) 125. Holmes and Sunstein primarily focus on legal rights within an American context. However, the principal argument that all enforceable rights come at a cost to the public purse is applicable in most contexts.

### 12.2.2 Negative and Positive Rights

One of the things that is thought to separate civil and political rights from socio-economic rights is the burden these rights place on the state and the relationship they suggest between the state and its citizens.<sup>10</sup> Many civil and political rights are often thought of as negative rights, rights that secure for individuals an area of non-interference by the state.<sup>11</sup> The state should not deprive individuals of their life, liberty or property, for example. Since these are rights aimed at protecting citizens from unjust state interference and securing the private and political lives of individuals, they are thought to generate limited costs for the state, creating an obligation of non-interference.

Socio-economic rights, on the other hand, are sometimes described as positive rights or rights that create an obligation on the state to take action to realize those rights.<sup>12</sup> These rights imply a different kind of relationship between citizens and the government – one in which the government provides services and goods to citizens beyond basic protections. These rights are thought to come at a high economic cost as they demand the state to take action, to provide services and infrastructure. Rights to health, housing or education, for example, create obligations on the state to provide houses, schools and hospitals to secure and realize those rights.

However, Stephen Holmes and Cass Sunstein have argued that, from a costs perspective, the distinction between ‘negative’ and ‘positive’ rights rests on an unrealistic and unhelpful dichotomy.<sup>13</sup> The realization and securing of rights<sup>14</sup> in both categories requires state action and incurs sometimes significant economic costs. Protecting rights to property, for example, requires the provision of police and fire services. Disputes about property or liberty also need a means of resolution, necessitating a full judicial system. These are significant costs for the state to bear.

The fact that all rights come at cost to the state has led some commentators and scholars to argue that ensuring rights (or at least, ensuring a large number

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<sup>10</sup> Johan D van der Vyver, ‘Morality, Human Rights, and Foundation of the Law The Foundations of Law: Morality, Human Rights, and Foundation of the Law’ (2005) 54 *Emory Law Journal* 187, 189–191.

<sup>11</sup> *Ibid.* 190.

<sup>12</sup> For a discussion on the justiciability of negative and positive rights in practice (and for an example of a Court highlighting the negative and positive aspects of the right to housing), see the case of *Government of the Republic of South Africa and Others v Grootboom and Others* [2000] (1) SA 46 (Constitutional Court of South Africa).

<sup>13</sup> Holmes and Sunstein (n 9).

<sup>14</sup> Holmes and Sunstein define rights as ‘important interests that can be reliably protected by individuals or groups using the instrumentalities of government’; *ibid.*, 16.

of rights) ought not to be the priority of less-developed countries.<sup>15</sup> It is to this argument that we now turn.

### 12.2.3 Meeting Basic Needs Prior to Securing Civil and Political Rights

Another way in which the cost of rights approach might impact understandings of what human rights demand is found in the argument that the realization and protection of human rights is something that can and perhaps ought to be delayed until a state reaches a certain level of wealth or development that makes rights ‘affordable’. ‘Legal rights’, Richard Posner argued in 1996, ‘are not free goods, unless society is willing to let them remain purely aspirational, paper rights’.<sup>16</sup> The (sometimes hidden) cost of rights, especially for less-developed states lacking already established infrastructure, led Posner to conclude that developing countries ought to be ‘concerned with an excess, as well as an insufficiency, of rights’.<sup>17</sup> Posner argued that less-developed states ought to make calculations about the cost-effectiveness of spending on certain rights, favouring broader social interests rather than individual rights protection.<sup>18</sup>

The argument that one ought to make cost-based decisions about whether or not to protect or advance certain human rights is sometimes taken even further. Some states have taken the position that pursuing development and modernization ought to be a priority over the realization of human rights.<sup>19</sup>

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<sup>15</sup> See, for example Richard A Posner, ‘The Cost of Rights: Implications for Central and Eastern Europe—And for the United States’ (1996) 32 *Tulsa LJ* 1. For a broader discussion on the usefulness (or uselessness rather) of rights in securing human welfare and well-being, see Eric A Posner, *The Twilight of Human Rights Law* (OUP, USA 2014). Eric Posner argues that ‘[it] might make more sense for Western donors to help a country build a reliable road system than to force it to abolish torture’ at 145. See also the discussion of some of the problems of a human rights approach in Robert Archer, ‘The Strengths of Different Traditions: What Can Be Gained and What Might Be Lost by Combining Rights and Development?’ (2006) 3 *Sur. Revista Internacional de Derechos Humanos* 80.

<sup>16</sup> Posner, ‘The Cost of Rights’ (n 15) 2.

<sup>17</sup> *Ibid.* 6.

<sup>18</sup> Posner focuses on certain negative liberties. He argues, for example, that the use of coercion to get an accused person to confess to a crime is a ‘cheap and effective method of criminal investigation’ and that the measures used to prevent such coercion are unaffordable to poor countries. *Ibid.*, 12.

<sup>19</sup> Stephen C. Angle and Marina Svensson (Eds), *The Chinese Human Rights Reader: Documents and Commentary, 1900–2000* (Routledge 2001) 390. This is discussed in greater detail in Section 12.5.

This development-first perspective rejects the idea that rights are ‘trumps’<sup>20</sup> or that rights can act as a limit to modernization programmes. It is an argument that often turns to the examples of South Korea and China to suggest that states have successfully pursued economic programmes that have secured better standards of living for their populations, while rejecting Western demands for transitions to a rights-based system.

#### 12.2.4 The Cost of Rights in the Ethiopian Context

The Ethiopian government’s approach to development and human rights suggests that adopting a costs-approach to decisions about the enforcement and protection of human rights is more complex and problematic than claimed by the scholars and commentators discussed above. Ethiopia has pursued an aggressive development programme aimed at achieving high levels of growth and at realizing the Millennium Development Goals (MDGs).<sup>21</sup> Its development programme has included policies designed to generate the necessary income for an ambitious infrastructure development programme, primarily through gathering ‘rents’ (and preventing what it calls rent-seeking by other parties) and attracting foreign aid and investment.<sup>22</sup> In the next section, we argue that in articulating its development programme, Ethiopia has explicitly looked at the example of states that have put rights and democracy aside on the basis that modernization and economy building should be the country’s first priority. At the same time, however, Ethiopia has sought to align its development policy with international standards on rights and sustainability in order to attract foreign investment and aid, essential to its development programme. Furthermore, Ethiopia has made huge strides in securing basic socio-economic rights for large parts of the population, while simultaneously, actively and aggressively violating the civil and political rights of many. This is because the ‘cost’ for the state of civil and political rights is not only financial, but also may affect its pursuit of its development agenda.<sup>23</sup>

All of this suggests that assessing the cost of rights is not only a matter of figuring out what rights cost the state in economic terms, but also requires the

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<sup>20</sup> As was famously argued by Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977).

<sup>21</sup> The goals are outlined in the UN General Assembly, *United Nations Millennium Declaration, Resolution Adopted by the General Assembly*, 18 September 2000, A/RES/55/2. We discuss the MDGs in Ethiopia, and the particular goals Ethiopia focused on meeting in the next section.

<sup>22</sup> Christopher Clapham, ‘The Ethiopian Developmental State’ (2018) 39 *Third World Quarterly* 1151, 1156.

<sup>23</sup> This argument is made in greater detail in Sections 12.3 and 12.4.

state to consider the role that those rights play in either helping or hindering development. In the next two sections, we examine Ethiopia's development plan and the successes and costs of its rapid growth, before returning to the question of what this reveals about the cost of rights in Section 12.5.

## 12.3 ETHIOPIA: CONTEXT AND BACKGROUND

### 12.3.1 A Brief History of the Federal Republic of Ethiopia

In 1989, the Ethiopian People's Revolutionary Democratic Front (EPRDF), a group of ethnically based opposition movements, came together to resist the Derg – the socialist, military government that had been in power since it ousted the last of Ethiopia's Emperors in 1974. Under a socialist programme, financed by the Soviet Union, the Derg had violently repressed opposition to its rule. Years of civil war and devastating famines undermined the strength of the military junta and in 1991 the EPRDF forces advanced on Addis Ababa and seized control of the state.<sup>24</sup>

The EPRDF's post-1991 agenda was one focused on democratization and recognition of the different ethno-linguistic groups,<sup>25</sup> in an ethnically based federal system.<sup>26</sup> From a fairly early stage, this project faced significant challenges and two elections (in 1992 and 1994) were largely seen to consolidate the EPRDF's one-party rule rather than to give Ethiopians a true electoral choice.<sup>27</sup> In 1994, opposition parties refused to participate, including the two major political parties representing the Amhara and Oromo, who withdrew from the electoral competition. Nevertheless, a Constituent Assembly was convened in late 1994 and a new Ethiopian constitution was drafted, establishing a federal republic made up of a number of ethnically defined regions.<sup>28</sup>

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<sup>24</sup> For a compelling overview of Ethiopia's history, from ancient to modern, see Richard Pankhurst, *The Ethiopians: A History* (Blackwell Oxford 2001).

<sup>25</sup> Terrence Lyons, 'Closing the Transition: The May 1995 Elections in Ethiopia' (1996) 34 *The Journal of Modern African Studies* 121, 80.

<sup>26</sup> See Abbink's discussion of ethnic federalism in Jon Abbink, 'Ethnic-based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years' (2011) 5 *Journal of Eastern African Studies* 596.

<sup>27</sup> Lyons (n 25) 128.

<sup>28</sup> Article 47, Constitution of the Federal Democratic Republic of Ethiopia 1995 (FDRE Constitution). For a critical analysis of the ethnic federal constitutions, see Minasse Haile, 'The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development Lead Article' (1996) 20 *Suffolk Transnational Law Review* 1.



The 1995 Constitution adopts a primarily liberal and rights-centric approach to democracy.<sup>29</sup> The Constitution recognizes a number of fundamental human rights, including rights to freedom of association, assembly and expression.<sup>30</sup> In addition, the Constitution stipulates that all international agreements ratified by Ethiopia are an integral part of the law of the land,<sup>31</sup> and that ‘fundamental rights and freedoms’ are to be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.<sup>32</sup>

Ugo Mattei has argued that the Constitution’s appearance as a liberal, rights-based text belies the democratic deficiencies in the drafting process. As key opposition parties had withdrawn from the electoral process, Mattei concludes that the new constitutional text was supported by representatives of only a small portion of the population. He argues:

The following alternative was therefore open for the EPRDF leader and ... president Meles Zenawi: 1) a constitution supporting a strong leadership, imposed by political force, with some risks as far as the international support is concerned. Or 2) a constitution which shows the willingness to share power, in the hope of eventually obtaining larger internal consent and with the certainty of western sympathy. The second option was followed thanks to the remarkable enlightenment of the tygrine elite.<sup>33</sup>

However, Allo and Tesfaye have argued that, ‘despite ... constitutional promises for a break with the oppressive practices of the past, Ethiopia remained a fiercely repressive and authoritarian state. Instead of defending and protecting citizens, the Constitution became the primary discursive instrument mobilized by the regime to suppress and marginalize the very people it promised to liberate.’<sup>34</sup> This has manifested in two ways. First, the Constitution is merely a commitment to rights on paper, with limited political willingness to secure rights. Second, the state has used a rights discourse to justify and fund aggressive development projects, while simultaneously overriding the civil

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<sup>29</sup> Constitution of the Federal Democratic Republic of Ethiopia. The Constitution varies significantly from classic liberal constitutions in its establishment of an ethno-federal system. Abbink, ‘Ethnic-based Federalism and Ethnicity in Ethiopia’ (n 26) 597, 600.

<sup>30</sup> See FDRE Constitution, Articles 29–31.

<sup>31</sup> FDRE Constitution, s 9(4). Ethiopia is a party to many international human and environmental rights agreements.

<sup>32</sup> *Ibid.*, 13(2).

<sup>33</sup> Ugo Mattei, ‘The New Ethiopian Constitution: First Thoughts on Ethnical Federalism and the Reception of Western Institutions’ [1995] *Transplants, Innovation and Legal Tradition in the Horn of Africa*. Turin: L’Harmattan Italia.

<sup>34</sup> Awol Allo and Beza Tesfaye, ‘Spectacles of Illegality: Mapping Ethiopia’s Show Trials’ (2015) 13 *African Identities* 279, 280.

and political rights of those affected by such projects. We discuss this in more detail in Sections 12.4 and 12.5.

### 12.3.2 Revolutionary Democracy and the Developmental State

Ethiopia has a long history of development and modernization programmes. These include: the modernization programmes of Emperor Tewodros, who ruled from 1855 to 1868; the state-directed modernizations programmes of Emperor Haile-Selassie between 1941 and 1974; the Soviet-backed nationalization programmes of the Derg between 1974 and 1991; followed by the developmental state model adopted by the current government.<sup>35</sup> Christopher Clapham argues that while these programmes have been shaped by significant differences in priorities, approaches and ideologies, throughout this history, modernization has been state-driven, shaped by a hierarchical and authoritarian culture of governance.<sup>36</sup>

The EPRDF called its governance approach ‘Revolutionary Democracy’.<sup>37</sup> Abebe defines ‘Revolutionary Democracy’ as follows:

... revolutionary democracy propagates for a state apparatus that exercises effective control over the political, economic and social activities of society. Similarly, revolutionary democracy is founded on an ‘unshakable conviction carried over from a Marxist upbringing, that there is only one “correct line” and only one genuine revolutionary movement’.<sup>38</sup>

It was seen by the ruling party to combine Marxist–Leninist ideology, a selection of democratic principles and ethnic-based governance.<sup>39</sup> From an economic development point of view, however, Ethiopia is a self-declared developmental state,<sup>40</sup> modelled, in part, on East Asian economies, especially

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<sup>35</sup> Clapham (n 22) 1152.

<sup>36</sup> Ibid.

<sup>37</sup> Adem Abebe, ‘Rule by Law in Ethiopia: Rendering Constitutional Limits on Government Power Nonsensical’ [2012] CGHR Working Paper 1 13–14; Abbink, ‘Ethnic-based Federalism and Ethnicity in Ethiopia’ (n 26) 602.

<sup>38</sup> Abebe (n 37) 13. Here Abebe quotes John Markakis, *Ethiopia: The Last Two Frontiers* (James Currey 2011) 243.

<sup>39</sup> Abbink, ‘Ethnic-based Federalism and Ethnicity in Ethiopia’ (n 26) 602.

<sup>40</sup> Jon Abbink, ‘Stemming the Tide? The Promise of Environmental Rehabilitation Scenarios in Ethiopia’ in W van Beek, J Damen and D Foeken (eds), *The Face of Africa. Essays in Honour of Ton Dietz* (African Studies Centre, Leiden 2017) 187.

China,<sup>41</sup> but also South Korea, Taiwan and Japan.<sup>42</sup> A developmental state model sees economic growth and political stability as dependent on strict state continuity and guidance, and extensive state involvement in almost all aspects of the economy.<sup>43</sup> Assefa Fiseha Yeibyio argues that '[t]he state selects strategic sectors and gives priority ... to achieve its developmental objectives'.<sup>44</sup> What is significant about this approach is that it necessitates a strong, stable state<sup>45</sup> to pursue long-term economic goals. It creates little space for dissent, input or argument in regard to the nature of the development programme or what kind of development ought to be pursued in the country.<sup>46</sup> We return to this point below, in Sections 12.4 and 12.5.

The past decade has been marked by incredibly high levels of economic growth in Ethiopia. The World Bank reports that Ethiopia's economy grew by an average of 10.3 per cent a year between 2005/6 and 2015/16.<sup>47</sup> This growth largely occurred through the expansion of the agricultural, construction and services sector, as well as the manufacturing industry.<sup>48</sup> Importantly, for the purposes of this chapter, Ethiopia's development agenda centres on the reduction of poverty and securing essential services for a much greater percentage of the population. The goals of Ethiopia's Second Growth and Transformation plan include that:

rapid economic growth should sustain and broaden the availability and accessibility of quality economic and social infrastructures, be accompanied by poverty reduction and significant improvement of the living standard of the citizens through generating employment opportunity.<sup>49</sup>

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<sup>41</sup> China is not only a model for development but has been a key funder and trade partner to Ethiopia. Clapham (n 22) 1157.

<sup>42</sup> Emanuele Fantini, 'Development State, Economic Transformation and Social Diversification in Ethiopia', (2013) ISPI Analysis, [https://www.ispionline.it/sites/default/files/pubblicazioni/analysis\\_163\\_2013.pdf](https://www.ispionline.it/sites/default/files/pubblicazioni/analysis_163_2013.pdf) (accessed 28 November 2018); Clapham (n 22) 1155.

<sup>43</sup> Assefa Fiseha Yeibyio, 'Ethiopia: Development With or Without Freedom?' in Eva Brems, Christophe Van der Beken and Solomon Abay Yimer (eds), *Human Rights and Development: Legal Perspectives from and for Ethiopia* (Brill Nijhoff 2015).

<sup>44</sup> Ibid., 107.

<sup>45</sup> Ibid., 108.

<sup>46</sup> Jack Donnelly, 'Human Rights and Development: Complementary or Competing Concerns? Review Articles' (1983) 36 *World Politics* 255.

<sup>47</sup> The World Bank, 'World Bank Country Overview: Ethiopia', <https://www.worldbank.org/en/country/ethiopia/overview> (accessed 28 August 2018).

<sup>48</sup> Ibid.

<sup>49</sup> Federal Democratic Republic of Ethiopia, *Growth and Transformation Plan II, (2015/16-2019/20)*, Vol. I: 2016, 81–82.

Ethiopia has explicitly linked its development agenda to securing and protecting human rights. The first national Human Rights Action Plan states:

The Ethiopian Government is involved in major scale activities in all socio-economic sectors: to achieve the national vision of building, with people's participation ... a country founded on democracy and good governance, where social justice prevails and poverty is eradicated; to join the rank of middle income countries and, thereby, ensure and promote the enjoyment of benefits by the public at large. ... the country has currently traversed a remarkable and creditable distance in all the lines of respecting, protecting and enforcing respect of human rights.<sup>50</sup>

Articulating a development programme as a poverty reduction/human rights programme has been instrumental in Ethiopia's success in securing the support and aid of foreign states and organizations.<sup>51</sup> For its funding, Ethiopia largely depends on external aid, investment and borrowing.<sup>52</sup> Clapham notes that the Ethiopian government has been successful in attracting foreign aid despite its rejection of the economic and political policies favoured by many Western donors.<sup>53</sup> This is partly because Ethiopia has managed to align its development goals with those of international and rights-based organizations.<sup>54</sup> Clapham finds:

Ethiopia has been able to make common cause with Western donors over its poverty reduction programmes, and ability to achieve a high level of success in meeting the MDGs, which emphasize measures such as the eradication of extreme poverty, primary education, reduction in child mortality, and the promotion of gender equality.<sup>55</sup>

In a country with effective one-party rule, that has (until recently) aggressively suppressed resistance and has been repeatedly identified as violating funda-

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<sup>50</sup> National Human Rights Action Plan 2013–2015 – English translation 2013 ch 1.

<sup>51</sup> See, for example, the discussion of the EU's funding of Ethiopia in Karen Del Biondo and Jan Orbie, 'The European Commission's Implementation of Budget Support and the Governance Incentive Tranche in Ethiopia: Democracy Promoter or Developmental Donor?' (2014) 35 *Third World Quarterly* 411, 420–421. They find that the EU continued funding to Ethiopia, despite low scores on governance and democracy, because of high scores on social and poverty relief indicators.

<sup>52</sup> This is evident from Ethiopia's Growth and Transformation plans, 2010/11 and 2014/15. See p. 15 of the GTP, [http://www.ethiopians.com/Ethiopia\\_GTP\\_2015.pdf](http://www.ethiopians.com/Ethiopia_GTP_2015.pdf) (accessed 4 September 2018).

<sup>53</sup> Clapham (n 22) 1156.

<sup>54</sup> National Planning Commission and UN in Ethiopia, 'Assessment of Ethiopia's Progress towards the MDGs' (2015), <http://www.et.undp.org/content/ethiopia/en/home/library/mdg/EthiopiaMDG2014.html> (accessed 2 September 2018).

<sup>55</sup> Clapham (n 22) 1157.

mental human rights,<sup>56</sup> donors favour funding the government's programmes precisely because of its successes in reducing poverty through development and securing some human rights.<sup>57</sup> The ongoing support of Western donors for Ethiopian development plans, despite the government's willingness to bulldoze human rights in pursuit of those plans (discussed in the next section), suggests that these donors' stated concern for rights and wellbeing is more rhetorical than real.<sup>58</sup>

Ethiopia is interesting, from a 'cost of rights' perspective, because the relationship between securing funds to pay for rights and the realization of rights is a complex one. In order to secure rights and pursue its development programme, Ethiopia has sought to attract foreign aid. It has secured this aid by investing heavily in a development programme that reduces poverty and improves living conditions and it has seen some significant rights successes in this regard. However, pursuing such a policy has been possible because resistance and opposition to the state and to the development programme have been suppressed by violating civil and political rights.<sup>59</sup>

In the next section, we look at Ethiopia's rights successes before turning to the troubling ways it has achieved some of these goals and the (sometimes) hidden costs of its development agenda.

### **12.3.3 Ethiopia's Rights and Development Successes**

Assefa Yeibyio points out that 'delivery in the socio economic sector does not necessarily automatically translate into a guarantee of socio-economic rights but it certainly is an important step towards realising them'.<sup>60</sup> Rapid growth and development have produced some significant successes in Ethiopia, most notably in the fields of education and health.

Ethiopia has measured many of its successes against the MDGs outlined in the 2000 Millennium Declaration.<sup>61</sup> Through its development programme,

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<sup>56</sup> See, for example, Human Rights Watch, 'Legal Analysis of Ethiopia's State of Emergency', [https://www.hrw.org/sites/default/files/supporting\\_resources/legal\\_analysis\\_of\\_state\\_of\\_emergency\\_declarative\\_0.pdf](https://www.hrw.org/sites/default/files/supporting_resources/legal_analysis_of_state_of_emergency_declarative_0.pdf) (accessed 20 March 2018). See also Amnesty International, 'Ethiopia 2017/2018', <https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia/> (accessed 28 November 2018).

<sup>57</sup> See Del Biondo and Orbie (n 49).

<sup>58</sup> Jon Abbink, "'Land to the Foreigners': Economic, Legal, and Socio-cultural Aspects of New Land Acquisition Schemes in Ethiopia' (2011) 29 *Journal of Contemporary African Studies* 513, 526.

<sup>59</sup> We return to this discussion in Section 12.4.

<sup>60</sup> Yeibyio (n 43) 119.

<sup>61</sup> The Declaration identifies eight development goals:  
1. to eradicate extreme poverty and hunger;

Ethiopia claims to have met a number of these goals.<sup>62</sup> First, it has reduced poverty levels by half. In 1996, 45.5 per cent of the population were living below the poverty line. This number was reported to have declined to 23.4 per cent in 2015. It has taken significant strides towards achieving universal primary school education. Ethiopia increased its net enrolment in primary school from 21 per cent in 1996 to 93 per cent in 2014. Ethiopia also succeeded in closing the gender gap in completion at the primary school level, a step towards promoting gender equality. Perhaps Ethiopia's most renowned success was reducing infant and child mortality rates by two-thirds two years earlier than anticipated, largely by increasing access to health services, immunization coverage and access to prenatal services from 29 to 98 per cent. In regard to the 7th Goal of ensuring environmental sustainability, Ethiopia reported in 2014 that it had increased forest cover, and would meet its goals in regard to access to safe drinking water and sanitation facilities.

Although Ethiopia remains one of the poorest countries in Africa and many Ethiopians continue to live in abject poverty,<sup>63</sup> over a decade of high levels of growth have produced measurable improvements in the quality of life, and the realization of rights, for many Ethiopians. Ethiopia's successes are significant from a cost-of-rights point of view for a number of reasons. First, they highlight the enormous cost of realizing human rights for millions of people – Ethiopia devotes more of its GDP to infrastructure and development than any other African state.<sup>64</sup> Second, Ethiopia's focus on the MDGs and on development more broadly suggests it is securing rights through a programme directed at improving the quality of life of individuals. Realizing rights and improving the condition of people's lives are treated as largely synonymous in this approach.

In reporting on its achievement, the government argued that there is a direct causal link between development and the improved quality of life of citizens.<sup>65</sup> While the successes of this programme are evident in the lives

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2. to achieve universal primary education;
  3. to promote gender equality and empower women;
  4. to reduce child mortality;
  5. to improve maternal health;
  6. to combat HIV/AIDS, malaria, and other diseases;
  7. to ensure environmental sustainability; and
  8. to develop a global partnership for development.

<sup>62</sup> National Planning Commission and UN in Ethiopia (n 54).

<sup>63</sup> The World Bank (n 31).

<sup>64</sup> Vivien Foster and Elvira Morella, 'Ethiopia's Infrastructure: A Continental Perspective' [2011] The International Bank for Reconstruction and Development/The World Bank Country Report.

<sup>65</sup> National Planning Commission and UN in Ethiopia (n 54).

of many Ethiopians, there is a missing step in the causal chain. This is a step that answers the question: what has been necessary for the achievement of Ethiopia's rapid development? It is to this question that we now turn.

## 12.4 THE COST OF DEVELOPMENT IN ETHIOPIA

While Ethiopia describes its development plan as one that seeks to secure greater rights and well-being for the future, the pursuit of rapid and high-level growth and economic prosperity has come at a considerable human rights cost. As discussed above, the Ethiopian Constitution adopts into Ethiopian law a set of fundamental rights and freedoms. In Ethiopia's 'developmental state' model, however, economic growth and political stability seem to be dependent on strict state guidance and extensive state surveillance and involvement. The state has been accused of aggressively suppressing opposing voices that seek to challenge it in both the political and civil society realms.<sup>66</sup> In this way, the government has resisted opposition parties and threats to its power, creating the stability in governance needed to realize its long-term economic goals.

### 12.4.1 Land-grabs and Villagization

A clear example of Ethiopia suppressing rights in pursuit of development can be found in its approach to agriculture and land management distribution.<sup>67</sup> Ethiopia not only depends on agriculture for much of its economic activity and trade, but many millions of Ethiopians also directly rely on agriculture for their sustenance and survival. In 2016, it was reported that 85 per cent of employment in Ethiopia is in agriculture and 95 per cent of all agricultural produce comes from small farms.<sup>68</sup> Only about 20 per cent of that produce is sold, with the other 80 per cent consumed by the households that produce it.<sup>69</sup>

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<sup>66</sup> Ethiopia Human Rights Project, '#OromoProtests: 100 Days of Public Protests' (2016); Human Rights Watch, 'US: Stand Up for Ethiopians as Government Stifles Protests, Jails Journalists' (Human Rights Watch, 9 March 2017), <https://www.hrw.org/news/2017/03/09/us-stand-ethiopians-government-stifles-protests-jails-journalists> (accessed 20 March 2018).

<sup>67</sup> See the discussion of Ethiopia's agrarian land policies in Husen Ahmed Tura, 'Land Rights and Land Grabbing in Oromia, Ethiopia' (2018) 70 *Land Use Policy* 247; Dessalegn Rahmato, 'The Perils of Development from above: Land Deals in Ethiopia' (2014) 12 *African Identities* 26; Abbink, 'Land to the Foreigners?' (n 58).

<sup>68</sup> Tom Burgis, 'The Great Land Rush: The Billionaire's Farm in Ethiopia' *Financial Times* (1 March 2016), <https://ig.ft.com/sites/land-rush-investment/ethiopia/> (accessed 14 March 2018).

<sup>69</sup> When looking at the agricultural sector, it is important to note that Ethiopia is highly food insecure, and is one of 10 countries considered to be at extreme risk. In

This is a population highly and directly dependent on their land, in a system in which ownership of the land vests in the state.<sup>70</sup>

The Ministry of Finance's Growth and Transformation Plan envisages a strategy of 'agricultural development-led industrialization', which remains labour intensive while integrating some new technologies including irrigation and more productive seed varieties.<sup>71</sup> 'It is intended that increased agricultural productivity, should lead to national food security, equitable growth, and smallholder security.'<sup>72</sup> Only 5 per cent of agricultural produce comes from large-scale, commercial farms, but the state's development agenda seeks to increase this significantly, and crop exports have nearly tripled between 2000 and 2011.<sup>73</sup> An important component of this has been large-scale land acquisitions by foreign parties.

More than 3.6 million hectares of productive farmland have been leased out to primarily foreign private investors since 2007 both in pursuit of agricultural transformation and as part of the state's energy programme, through the development of biofuels.<sup>74</sup> In 2016, the *Financial Times* reported that only 35 per cent of the leased land had been developed despite the extremely low rentals Ethiopia charged investors and the tax holidays and guaranteed access to credit that they enjoy.<sup>75</sup> While this is partly related to the immense difficulty associated with accessing and developing the land in extremely remote parts of the country, it is also because some domestic investors have 'simply stripped their plots for charcoal and left them idle'.<sup>76</sup>

As Abbink points out, the Ethiopian state has been an active partner in what is sometimes referred to as 'land grabbing' by foreign actors, but local communities who have long occupied and worked on the land are rarely included in these deals.<sup>77</sup> While the hope was that these land leases would contribute to ensuring food security,<sup>78</sup> activists have alleged that people have been forcibly removed from the land in order to make way for private investors, although the

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past years, Ethiopia has relied heavily on food imports and international aid to avoid repeated famines. Andreas Mayer and others, 'Patterns of Global Biomass Trade' (Environmental Justice Organizations Liability and Trade 2015) 73, <http://www.envjustice.org/2015/03/patterns-global-biomass-trade/> (accessed 15 March 2018); Burgis (n 54).

<sup>70</sup> Abbink, 'Ethnic-based Federalism and Ethnicity in Ethiopia' (n 26) 610.

<sup>71</sup> Mayer and others (n 69) 77.

<sup>72</sup> Ibid., 78.

<sup>73</sup> Ibid., 73.

<sup>74</sup> Abbink, "'Land to the Foreigners'" (n 58) 516.

<sup>75</sup> Burgis (n 68).

<sup>76</sup> Ibid.

<sup>77</sup> Abbink, "'Land to the Foreigners'" (n 58) 514.

<sup>78</sup> Abbink, 'Ethnic-based Federalism and Ethnicity in Ethiopia' (n 26) 610.



state has denied this.<sup>79</sup> It does, however, acknowledge forcibly moving people under its villagization programme, which is designed to bring widely dispersed people into large settlements to facilitate the delivery of basic services.<sup>80</sup> It has been pointed out that many of these programmes have been implemented in exactly the areas in which the government has sought to lease land to foreign investors.<sup>81</sup>

Through the villagization programme, communities are frequently deprived of rights to land,<sup>82</sup> political participation, freedom of association and work, in exchange for the provision of services including access to water, health care, schools and so forth.<sup>83</sup> Those who have been forcibly moved allege that villagization has resulted in people who were previously self-sufficient being forced to become dependent on food aid.<sup>84</sup> Land redistribution to foreign investors has been done with little regard for customary use rights and customary law.<sup>85</sup> Abbink argues: 'The eagerness of Ethiopia's government to have foreigners take over land – which was for ages the core element of national or ethnic group identification and the source of people's livelihood, identity and pride – has created confusion over feelings of "sell-out".'<sup>86</sup> Abbink further mentions reports that have suggested that foreign leaseholders have bulldozed old gravesites and damaged areas and forests regarded by local people as sacred.<sup>87</sup> While the state argues that these programmes are designed to improve the quality of lives of the communities, the fact that villagization takes place

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<sup>79</sup> The Ethiopian government has sometimes asserted that there is no-one to consult because the land is empty, even where it is intensively used by communities with long-standing traditions of use, or where it is temporarily not being used owing to crop rotation practices or grazing practices. See the discussion in Tsegaye Moreda, 'Listening to Their Silence? The Political Reaction of Affected Communities to Large-scale Land Acquisitions: Insights from Ethiopia' (2015) 42 *The Journal of Peasant Studies* 517, 518; Abbink, "'Land to the Foreigners'" (n 58) 518–519.

<sup>80</sup> Moreda (n 79) 523.

<sup>81</sup> See the discussion in Tsegaye Moreda, 'Large-scale Land Acquisitions, State Authority and Indigenous Local Communities: Insights from Ethiopia' (2017) 38 *Third World Quarterly* 698.

<sup>82</sup> Under the Ethiopian Constitution, land is the common property 'of the Ethiopian Nations, Nationalities and Peoples'. The Constitution does protect any 'peasant, pastoralist or semi-pastoralist' who has the right to use the land for agricultural purposes, to lease out and bequeath the land and to acquire the property produced on the land (article 2(7)). The Federal Land Expropriation Proclamation 455/2005, however, allows for the expropriation of land for a public purpose. See Tura (n 67) 248–249.

<sup>83</sup> Moreda (n 79) 523.

<sup>84</sup> Burgis (n 68).

<sup>85</sup> Abbink, "'Land to the Foreigners'" (n 58) 523.

<sup>86</sup> *Ibid.*, 515.

<sup>87</sup> *Ibid.*, 520.

in areas targeted for land-leases and acquisitions casts doubt on the integrity of these claims.<sup>88</sup>

However, land grabbing and expropriations have not only taken place in rural areas, for the purpose of leasing agricultural land to private investors. They have also been attempted on the urban fringe. Recent plans to extend the boundaries of the city of Addis Ababa to neighbouring farming land resulted in protests, violence and mass-arrests.<sup>89</sup> In 2014, municipal authorities published the 'Addis Ababa Integrated Zone Master Plan'. The Plan envisioned expanding the city by approximately 1.1 million hectares into Oromia territories, to meet increased demand for residential and commercial property. The Plan was devised and published without any meaningful consultation with those who would be affected.<sup>90</sup>

The Plan led to protests in 2014 and again in 2015 when forests began to be cleared for the expansion.<sup>91</sup> The state's response to the protests was brutal, resulting in deaths, injuries and mass arrests under extended states of emergency.<sup>92</sup> The protests also resulted in the state ultimately abandoning the Master Plan.<sup>93</sup> While the state's violent repression of the protests was widely reported, the Master Plan and the events that unfolded in relation to it point to a range of ways in which the development goals of the government (in this case at the city level) are brought into conflict with civil and political rights secured in the Constitution. There was little consultation in regard to the Master Plan prior to its adoption. It has been reported that the public only came to know the details of the plan when a training programme for officials was televised and officials expressed concerns about its implementation.<sup>94</sup> Those who were to be directly affected by plans to extend city boundaries to neighbouring farm land had

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<sup>88</sup> Moreda (n 79) 523.

<sup>89</sup> OHCHR, 'UN experts urge Ethiopia to halt violent crackdown on Oromia protesters, ensure accountability for abuses', 21 January 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16977&> (accessed 29 November 2018).

<sup>90</sup> Margaux Pinaud and Clionadh Raleigh, 'Data Analysis: The Roots of Popular Mobilization in Ethiopia' (IPI Global Observatory), <https://theglobalobservatory.org/2017/06/ethiopia-protests-oromo-addis-ababa-master-plan/> (accessed 15 March 2018).

<sup>91</sup> These were not the first protests against land grabs. Protests by farmers and communities against the expropriation of their land have been met with mass arrests and military force. See Abbink, "Land to the Foreigners" (n 58) 523.

<sup>92</sup> Ethiopia Human Rights Project (n 66).

<sup>93</sup> Endalk Chala, 'Ethiopia Scraps Addis Ababa "master Plan" after Protests Kill 140' *The Guardian* (14 January 2016), <http://www.theguardian.com/world/2016/jan/14/ethiopia-addis-master-plan-abandoned> (accessed 15 March 2018).

<sup>94</sup> Merga Yonas, 'Interview with Tsegaye R. Ararssa (PhD): Legal Reflection on #OromoProtests' (*Advocacy4Oromia*), <https://advocacy4oromia.org/forum/interviewlegal-reflection-on-oromoprotests/> (accessed 10 July 2018).

little information or say in regard to decisions and developments that would radically impact their lives.

#### 12.4.2 Consultation and Civil Society<sup>95</sup>

The right to consultation is entrenched in Article 43(2) of the Constitution under the right to development. Article 43(2) provides: ‘Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community’. In practice, however, there is little public consultation on decisions and policies and few development decisions include meaningful participation by the public.<sup>96</sup> Critical discussion and engagement is discouraged and sometimes violently repressed.<sup>97</sup> The voices of those who are directly affected by development programmes either go unheard or are viewed as irrelevant.<sup>98</sup>

The state’s failure to inform those affected or to seek out public input into plans and policies is exacerbated by the almost crippling regulatory framework that governed the civil society sector between 2009 and 2019.<sup>99</sup> Civil society organizations (CSOs) often play a crucial role in ensuring that impacted com-

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<sup>95</sup> Our discussion of civil society in Ethiopia is principally based on interviews we conducted as part of an ongoing project that investigates the role of civil society organizations in sustainable development in the Ethiopian legal context. More information on the project can be found in n 1.

<sup>96</sup> Rahmato (n 67) 33; Terri Hathaway, ‘What Cost Ethiopia’s Dam Boom’ (International Rivers 2008) 14, 24, <https://www.internationalrivers.org/sites/default/files/attached-files/ethioreport06feb08.pdf>. See also Hathaway’s 2009 Report on the Gibe 3 Dam, which finds that ‘the Gibe 3 consultation process with project affected communities in the Lower Omo Valley was limited, selective, and violated their right to full consultation as protected under the national constitution of Ethiopia. While the Facing Gibe 3 Dam 6 International Rivers dam will affect flood-retreat cultivation that supports an estimated 100,000 people and indirectly benefits an additional 100,000 or more people engaged in the Lower Omo Valley economy, less than 300 individuals participated in official project consultations that took place in the area. In addition to involving small numbers of affected people, the meetings took place 10–17 months after the project contract was signed and construction began.’ Terri Hathaway, ‘Facing Gibe 3 Dam: Indigenous Communities of Ethiopia’s Lower Omo Valley’ (International Rivers 2009) 5–6, [http://archive.nowater-nolife.org/watersheds/omo/hydroReports/2009\\_IR\\_Gibe3\\_Communities.pdf](http://archive.nowater-nolife.org/watersheds/omo/hydroReports/2009_IR_Gibe3_Communities.pdf).

<sup>97</sup> Abbink, ‘Ethnic-based Federalism and Ethnicity in Ethiopia’ (n 26) 609.

<sup>98</sup> Desta Gidey and Kelemework Tafere, Interview with civil society employee (Ethiopia, 2018). See also Abbink, ‘“Land to the Foreigners”’ (n 58) 525; Abbink, ‘Ethnic-based Federalism and Ethnicity in Ethiopia’ (n 26) 609.

<sup>99</sup> In February 2019, the Ethiopian Parliament adopted a new law governing civil society. For a brief introduction to some of the key changes brought in by the new law, see Dina Townsend, ‘Ethiopia’s New Civil Society Law’ (*Tilburg Environmental Law*

munities have access to information about planned developments that might affect them, and they play a crucial role in bringing the interests and concerns of these communities to the attention of decision-makers.<sup>100</sup> However, Ethiopian regulation of CSOs has historically radically limited their ability to advocate for rights to participation or to represent communities affected by development programmes.<sup>101</sup> The Proclamation for the Registration and Regulation of Charities and Societies (the CSP), adopted in 2009,<sup>102</sup> categorizes CSOs as ‘Ethiopian’,<sup>103</sup> ‘Ethiopian Resident’<sup>104</sup> or ‘Foreign’.<sup>105</sup> Through its system of classification, the state controlled which organizations could work on rights-based activities and advocacy and which ones could not. This system was primarily based on the source of their funding.<sup>106</sup> CSOs who received more than 10 per cent of their funding from foreign sources,<sup>107</sup> for example, were excluded from working on a range of matters including human rights, conflict resolution, justice and law enforcement, elections and democracy in general.<sup>108</sup>

These restrictions were defended by the State as a necessary means to ensure that activities of a political nature are carried out ‘by the government in collaboration with its citizens’ and not foreign agents or entities.<sup>109</sup> However, CSOs

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*Blog*, 3 May 2019), <https://blog.uvt.nl/environmentallaw/?p=389> (accessed 3 May 2019).

<sup>100</sup> African Civil Society Circle, ‘The Role of Civil Society in Localising the Sustainable Development Goals’ (2016), <http://www.acordinternational.org/silo/files/the-roles-of-civil-society-in-localizing-the-sdgs.pdf> (accessed 23 March 2018).

<sup>101</sup> See note 17 in Moreda (n 79) 536.

<sup>102</sup> At the time of writing, this is still the law, although the new law is expected to come into force in the near future. See Charities and Societies Proclamation no. 621/2009.

<sup>103</sup> Charities and Societies Proclamation no 621/2009, Article 2(2).

<sup>104</sup> *Ibid.*, Article 2(3).

<sup>105</sup> *Ibid.*, Article 2(4).

<sup>106</sup> Taskforce on Enabling Environment for Civil Society in Ethiopia, ‘User Manual for the Charities and Societies Law’ (Consortium of Christian Relief and Development Association (CCRDA) 2011).

<sup>107</sup> Based on data from the Ethiopian Charities and Societies Agency that has been obtained during our research project (see n 1), 3281 civil society organizations are registered in Ethiopia. Some 503 of those CSOs are local, Ethiopian CSOs that receive less than 10 per cent of their funding from foreign sources. However, the large majority of the registered CSOs, a total of 2778, are either registered as Foreign Charities or as Ethiopian Resident Charities and Societies that receive more than 10 per cent of their funding from foreign sources and are thus excluded from working on a wide range of matters.

<sup>108</sup> Charities and Societies Proclamation no 621/2009, Article 14(5).

<sup>109</sup> In its explanatory note to the Charities and Societies draft Proclamation, the Ministry of Justice identified these as activities of a political nature that should be implemented by the government in collaboration with citizens: see Explanation of

that are locally funded and are wholly controlled and staffed by Ethiopians<sup>110</sup> have also been effectively barred from engaging in a wide range of activities owing to restrictions on how they can spend their funding, and high levels of interference by state officials in their work programmes.<sup>111</sup> In addition, these organizations have struggled to raise the necessary funds to carry out their work and many have been compelled to radically reduce their operations and to close down offices in remote areas, limiting their accessibility for those who need them the most.<sup>112</sup>

The CSP does not simply restrict civil and political space for CSOs. The CSP also sought to transform the civil society sector into a service-sector pursuing the particular development agenda prescribed by the government.<sup>113</sup> Foreign and foreign-funded organizations could do little other than service work under the CSP as they were excluded from advocacy and policy-oriented work.<sup>114</sup> These organizations were also obliged to seek project-by-project approval, enabling the state to only approve work that it views as necessary and welcome.<sup>115</sup>

The government's forced removal of communities, violent suppression of protests opposing the Master Plan and severe regulation of the civil society sector reveal its willingness to suppress rights to land, access to information, participation and freedom of expression and association, especially where these rights pose any threat or challenge to development plans.

### **12.4.3 Development at an Environmental Cost**

Ethiopia's ambitious development programme has not only come at a considerable cost for civil, political and even cultural rights, but also at a cost

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the FDRE Ministry of Justice on Charities and Societies Draft Legislation, September 2008, 16.

<sup>110</sup> See Charities and Societies Proclamation, Articles 2(2) and 14(5).

<sup>111</sup> Desta Gidey and Kelemework Tafere, Interviews with civil society employees (Ethiopia, 2018). See also Saskia Brechenmacher, 'Civil Society under Assault: Repression and Responses in Russia, Egypt, and Ethiopia' (Carnegie Endowment for International Peace 2017) 69.

<sup>112</sup> Nicky Broeckhoven and Dina Townsend, 'Supporting Local Civil Society Organisations in Ethiopia' (*Tilburg Environmental Law Blog*), <https://blog.uvt.nl/environmentallaw/?p=338> (accessed 7 October 2018).

<sup>113</sup> Brechenmacher (n 111) 66.

<sup>114</sup> See Charities and Societies Proclamation, Articles 2(3 and 4) and 14(5).

<sup>115</sup> Interview with civil society organizations employees (The Netherlands, 2018); Desta Gidey and Kelemework Tafere, Interviews with civil society employees (Ethiopia, 2018). These interviews were conducted in the frame of our research project, see n 1.

for the environment. In Ethiopia, sustainable development and environmental rights are entrenched in the Constitution.<sup>116</sup> Ethiopia has endorsed the 2030 Sustainable Development Agenda, which it sees as an integral part of its national development framework.<sup>117</sup> However, the Ethiopian government's focus in recent years has been on economic development and many of its development programmes, including the land-lease programme,<sup>118</sup> fail to take into account environmental concerns or impacts.<sup>119</sup>

The latest law on foreign investment, for example, has been criticized for prioritizing economic growth with little regard to social or environmental concerns. Birhanu argues: 'While economic and social sustainability has been taken as the ultimate goal of investment in Ethiopia, sustainability does not feature prominently .... Environmental impact assessment or compliance with environmental standards is required neither as a condition for issuance of permits [for investment] nor for renewal, suspension, or revocation of permits.'<sup>120</sup> While ostensibly committed to sustainable development, the Ethiopian government does not take environmental impacts into account in much of its development planning.

Ethiopia's environmental policies have to be understood in terms of the government's main development agenda.<sup>121</sup> The thrust of the EPRDF's sustainable development plan has been motivated by what has been described as Ethiopia's complex, deep and structural poverty. The Plan for Accelerated and Sustained Development to End Poverty of 2006 states that the 'main development goal' of the Ethiopian government is poverty eradication.<sup>122</sup> Thus, the government's failure to prioritize environmental concerns in its development programmes is unsurprising. Requirements like environmental

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<sup>116</sup> Articles 43 (Right to Development) and 44 (Environmental rights), Constitution of the Federal Democratic Republic of Ethiopia.

<sup>117</sup> National Plan Commission, The 2017 Voluntary National Reviews on SDGs of Ethiopia, <https://sustainabledevelopment.un.org/content/documents/16437Ethiopia.pdf> (accessed 8 March 2018).

<sup>118</sup> Although required by law, Abbink notes that few of the land investment projects had been the subject of an environmental impact assessment and that studies done on flower farms in central Ethiopia had revealed significant impacts on water levels and contamination of the local environment. Abbink, "Land to the Foreigners" (n 58) 520.

<sup>119</sup> *Ibid.*, 516, 520–521.

<sup>120</sup> Fikremarkos Merso Birhanu, 'Country Report for Ethiopia: Green Growth, Environment and Sustainable Development in Ethiopia' [2014] IUCN Academy of Environmental Law E Journal 168–169.

<sup>121</sup> Colby Environmental Policy Group 2011, 'Environmental Policy Review: Key Issues in Ethiopia 2011' (Colby College Environmental Studies Program 2011) 14.

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

impact assessments create additional burdens on investors<sup>123</sup> and properly assessing and mitigating impacts may make particular plans or programmes unfeasible. Integrating environmental concerns into national development programmes may well slow down the rapid pace of that development, and this can easily be used as an excuse to not prioritize environmental assessments in development planning. In emphasizing poverty eradication as the primary goal of development, Ethiopia appears to adopt a hierarchical approach to sustainable development, a concept sometimes thought to be concerned with balancing economic, social and environmental interests.<sup>124</sup> In Ethiopia's approach to sustainable development, these are not equal concerns, as environment takes a back seat to economic and social interests.<sup>125</sup>

As a result, the costs of development, which here manifest themselves as environmental impacts, are delayed. While Ethiopia is pursuing rapid development to afford the costs associated with reducing poverty and realizing rights, it seemingly fails to take into account the ways in which environmental impacts might make the realization of rights more expensive, now or in the future. This can be shown by returning to the land-leases example; in some cases the transformation of land from small-holder agricultural or grazing land to large-scale industrial agricultural land<sup>126</sup> has had devastating consequences for water resources in the area.<sup>127</sup> This is likely to have numerous short and long-term consequences on farming communities and on the environment more broadly. It also may undermine the productivity of the leased land. The environmental impacts are, as a result, an important part of the economic equation when assessing the income land-leases generate, the costs they impose, and the ways in which they advance (or hinder) the realization of human rights.<sup>128</sup>

Environmental impacts and costs are exacerbated by the Ethiopian's government's unwillingness to consult with affected communities and involve CSOs in development planning. This is because planners and policy-makers may lack all of the relevant information needed to come up with an effective,

<sup>123</sup> Tesfaye Abate Abebe, 'Environmental Assessment and Monitoring under Ethiopian Law' (2012) 1 *Haramaya Law Review* 1, 122; Dejene Girma Janka, 'Environmental Impact Assessment in Ethiopia: Laws and Practices' (PhD, The University of Alabama, 2012).

<sup>124</sup> Gro Harlem Brundtland, 'World Commission on Environment and Development: Our Common Future' (OUP 1987).

<sup>125</sup> Abbink, "'Land to the Foreigners'" (n 58) 516.

<sup>126</sup> This is not a problem unique to Ethiopia. 'The evidence available from studies on massive mono-crop plantations (biofuels, cotton, maize, or sugar cane) shows that profitability is very disappointing, stakeholder involvement minimal, and long-term environmental damage significant'. Abbink, 'Stemming the Tide?' (n 40) 186.

<sup>127</sup> Abbink, "'Land to the Foreigners'" (n 58) 520–521.

<sup>128</sup> *Ibid.*, 520.



efficient and sustainable development agenda. Engaging with civil society and affected communities will provide the government with information about the local environment that may result in better planning. A lack of consultation results in a lack of proper planning, and consultation may result in better development policies.<sup>129</sup>

In this section, we have attempted to highlight some of the costs of Ethiopia's rapid development. We have argued that the Ethiopian government's pursuit of its development agenda has been accompanied by the violation of civil and political rights, and has come with little regard for environmental impacts. This is significant because it adds a new dimension to a cost of rights approach to human rights. We turn to this next, in Section 12.5.

## 12.5 ETHIOPIAN EXPERIENCES AND LESSONS IN REGARD TO THE COST OF RIGHTS

Ethiopia has focused on developing its economy and infrastructure to improve the quality of life of its citizens, and thus to realize their rights. Improving quality of life – through lifting people out of poverty, reducing their vulnerability to hunger and disease, ensuring access to education and to job opportunities – is both seen as the outcome of ensuring human rights, and as part of the process towards securing human rights. Creating job opportunities and developing the infrastructure necessary to lift people out of poverty and to provide them with access to health and educational services, housing, sanitation and so forth comes at a high cost, a cost that largely falls to the state in many countries. A development agenda that attracts investment and aid, and that generates income through trade, while establishing the infrastructure necessary to secure both human rights and continued economic growth, is the means by which states might ensure rights and wellbeing for their citizens.

The idea of realizing rights through development suggests a fairly simple relationship between development, quality of life and human rights. This is an approach that sees a clear and direct causal link between development and rights. Chinese Spokesman, Liu Huaqiu, for example, sees economic development as a pre-condition for human rights and argues that 'when poverty

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<sup>129</sup> See the discussion on the role of participation in environmental decision-making in Jonas Ebbesson, 'Public Participation' in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (OUP 2007) 681; Dinah Shelton, 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?' (2006) 35 *Denver Journal of International Law and Policy* 129, 139–140; Jonas Ebbesson, 'The Notion of Public Participation in International Environmental Law' (1998) 8 *Yearbook of International Environmental Law* 51, 63–69.



and lack of adequate food and clothing are commonplace and people's basic needs are not guaranteed, priority should be given to economic development. Otherwise, human rights are completely out of the question'.<sup>130</sup> In this approach, human rights might be delayed until a certain state of development is achieved or funds are secured, as development is seen as a necessary precondition to the realization of those rights.<sup>131</sup>

In our discussion of Ethiopia thus far, however, we have argued that the relationship between realizing rights and securing the development and funds necessary to realize those rights is far more complex. The State has not only delayed (certain) rights to reach its development goals. The violation of these rights by the Ethiopian government has also allowed it to reach its development goals. Suppressing dissent and opposition has arguably been a key component of the Ethiopian government's development plan. While Ethiopia has aggressively pursued a development plan aimed at improving the living conditions of Ethiopians, achieving development goals and securing socio-economic rights, the state has in fact been engaged in a rights trade-off, violating civil and political rights in pursuit of socio-economic ends.

What we see in Ethiopia is a trade-off not only between civil and political rights and socio-economic rights, but also between the rights of some segments of the population and the rights of others. Tsegaye Moreda has documented this rights trade-off in large-scale land acquisitions in the Benishangal–Gumuz region.<sup>132</sup> The original occupiers of the land – the Gumuz people – not only lost access to and use of land that had been theirs for generations, but many jobs created through the land acquisitions were given to migrant workers flowing in from other parts of Ethiopia.<sup>133</sup> While the land acquisitions generated (seasonal) work opportunities and an improved standard of living for some, this came at a devastating cost for others, particularly for the Gumuz communities who were left landless, without work and without legal recourse. These trade-offs suggest that there is no clear, causal path between greater levels of development and the realization of rights (between increased wealth

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<sup>130</sup> Eva Brems, *Universality and Diversity* (Martinus Nijhoff 2001) 62. For full statement see Angle and Svensson (n 10) 390. This is what Howard describes as the 'Full-belly thesis'. Rhoda Howard, 'The Full-belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Saharan Africa' (1983) 5 (4) *Human Rights Quarterly*.

<sup>131</sup> A strong defender of this approach was the late prime minister of Singapore, Lee Kuan Yew, who argued that democracy and political rights are un conducive to economic growth and development and should be sacrificed in the short and medium term. See Carl Henrik Knutsen, 'Investigating the Lee Thesis: How Bad is Democracy for Asian Economies?' (2010) 2 (3) *EPSR*, 451–473.

<sup>132</sup> See generally Moreda (n 79).

<sup>133</sup> *Ibid.*, 528–529.

and realizing rights) as development has been achieved at a significant cost to human rights.

At the heart of this discussion lie deeper questions about the relationship between human rights and development, and about justifications for rights trade-offs. Much has been written about possible trade-offs between rights and development. Jack Donnelly has outlined three<sup>134</sup> widely advocated trade-offs between human rights and development (as a necessary precursor to securing human rights). For our discussion, the third trade-off, the so-called ‘liberty trade-off’, is the most pertinent. Donnelly describes this as follows:

The exercise of civil and political rights may disrupt or threaten to destroy even the best-laid development plan, and must therefore be temporarily suspended. ... Freedoms of speech, press, and assembly may be exercised so as to create or inflame social division, which an already fragile polity may be unable to endure; free trade unions often merely seek additional special benefits for a labor aristocracy; elaborate and punctilious legal systems on the Western model may seem to be extravagant anachronisms.<sup>135</sup>

On this account, the state’s priority ought to be building schools and hospitals, and not investing in courts or encouraging free media when it faces a significant development deficit. An important question arises, however: if a state opts to focus on modernization and fails to secure rights, what happens when citizens are unwilling to wait for their rights or if they object to modernization plans? What should the state do when people protest their lack of rights? The Ethiopian example suggests that waiting on civil and political rights is not merely a matter of prioritizing hospitals over courts, but rather a matter of aggressively and violently putting down resistance.

Aside from the question of whether such an approach can ever be justified, doubt has been cast over its effectiveness. Amartya Sen noted that ‘there is, in fact, little general evidence that ... the suppression of civil and political rights are really beneficial in encouraging economic development’.<sup>136</sup> This finding was confirmed by the Danish Institute for Human Rights, which released a research paper in 2017 looking at the relationship between human rights and

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<sup>134</sup> These are the needs tradeoff (‘Rather than devote scarce resources to social programs in order to satisfy basic human needs ..., it is necessary to tolerate relatively high levels of absolute poverty ... in order to maximize investment’), the equality tradeoff (‘during the transition to a modern economy, inequality in the size distribution of income will first increase, then be maintained at a high level, and finally recede at moderately high levels of national income’) and the liberty tradeoff (discussed above). Donnelly (n 40) 256–257.

<sup>135</sup> Ibid.

<sup>136</sup> Sen, Human Rights and Asian Values, Sixteenth Annual Morgenthau Memorial Lecture on Ethics and Foreign Policy, 25 May 1997.

economic growth.<sup>137</sup> The paper found that, while securing civil liberties may result in greater economic growth, there was no evidence of the opposite. In other words, there was no evidence that great economic growth led to higher respect for civil and political rights.<sup>138</sup> Moreover, scholars have found that when very poor countries grow their economies and increase citizen wealth, this often results in an increase in human rights violations rather than the opposite, as a previously impoverished population is increasingly able to engage in politics and make demands on the state.<sup>139</sup>

An earlier paper by the Danish Institute also found:

[There is] little support for the widely held assumption that there is a trade-off between human rights and economic development or that human rights is a cost that one must put off until sufficient wealth has been generated. Rather, the indications so far are that the sequence works the other way around. Human rights-related factors present themselves as assets that can in several respects precondition and enable economic development. In other words, it can be argued that human rights should be seen as an active part of the growth model, rather than merely a passive outcome of it.<sup>140</sup>

Based on evidence from Sub-Saharan Africa, Howard affirmed that civil and political rights need to be implemented simultaneously and in an interactive manner with economic, social and cultural rights in order to attain economic development.<sup>141</sup> According to her, a sequential implementation of civil and political rights – whereby these rights are sacrificed in the short term – would have perverse effects, not only from a human rights perspective but also from a perspective of efficiency and effectiveness.<sup>142</sup>

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<sup>137</sup> Sigrid Alexandra Koob, Stinne Skriver Jørgensen and Hans-Otto Sano, 'Human Rights and Economic Growth, an econometric analysis of freedom and participation rights' (The Danish Institute for Human Rights 2017).

<sup>138</sup> *Ibid.*, 48.

<sup>139</sup> Neil J Mitchell and James M McCormick, 'Economic and Political Explanations of Human Rights Violations' (1988) 40 *World Politics* 476, 479.

<sup>140</sup> Kristoffer Marslev and Hans-Otto Sano, 'The Economy of Human Rights: Exploring Potential Linkages between Human Rights and Economic Development' (The Danish Institute for Human Rights 2016) 5.

<sup>141</sup> Howard (n 108), 469.

<sup>142</sup> Howard argues that the effective implementation of economic policies, for example, is conditional on the 'continued input by those affected'. This 'input', in the form of public participation or criticism, can only be guaranteed if civil and political rights are protected. Howard (n 108), 473–474. A World Bank report on human rights and economic development has also argued: 'Human rights add value when it comes to the quality of economic growth, and specifically the distribution of growth within a society. As such, they should ... been seen ... as a framework for economic development, which can inform economic policy and guide social welfare on aspects related, in

Beyond the argument that rights might enhance economic prosperity, it is possible that rights limitations impose their own costs (economic and otherwise) on society. Donnelly highlights the difficulty of assessing the cost of rights violations and of comparing the costs of socio-economic rights with civil and political rights. Unlike needs satisfaction which can be measured in economic terms, 'it is extremely difficult, if not impossible, to state the costs of the liberty tradeoff in monetary terms. We thus seem to be required to make a "tradeoff" between incommensurable items.'<sup>143</sup> What is clear, however, is that civil and political rights violations impose considerable costs and burdens on individuals and on society as a whole. The Ethiopian government's failure to consult on the Master Plan, for example, not only resulted in mass incarcerations, severe injuries and damage to property, but also forced the government to abandon the plan. Solving the housing shortage in Addis Ababa is a priority for the city, but the approach to solving this problem that was adopted wasted time, investment and other resources, and traumatized and angered a large portion of the population.

Moreover, the costs imposed on a population may not only be social but may also be economic and environmental, as discussed in Section 12.4. As Donnelly argues: 'Imposed social discipline will usually engender inefficiency that at least partially cancels any gains derived from suspending civil and political rights.'<sup>144</sup> The example of the limitation of political space for CSOs in Ethiopia clearly shows that restrictions and violations of civil and political rights can have a devastating effect on the ability of groups of citizens, communities and their organizations to engage in advocacy and policy making and therefore design their own futures.<sup>145</sup>

Abbink argues that part of the problem is that states like Ethiopia view development exclusively or primarily as a 'quantitative material process'.<sup>146</sup> Countries overlook the cultural and social aspects of development, as well as the environmental aspects. This is development from above, a monolithic model of growth driven by the state, which prioritizes the end goal over the interests, needs and rights of Ethiopians today.<sup>147</sup> It is a model that places

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particular, to equity.' Here human rights are seen to be important to ensure a certain kind of growth, namely equitable and socially beneficial growth. See Nordic Trust Fund/World Bank, 'Human Rights and Economics: Tensions and Positive Relationships' (The World Bank 2012) x, [http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/Report\\_Development\\_Fragility\\_Human\\_Rights.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/Report_Development_Fragility_Human_Rights.pdf) (accessed 4 December 2018).

<sup>143</sup> Donnelly (n 46) 280.

<sup>144</sup> *Ibid.*, 282.

<sup>145</sup> African Civil Society Circle (n 100) 2.

<sup>146</sup> Abbink, "'Land to the Foreigners'" (n 58) 524.

<sup>147</sup> *Ibid.*, 526.

a significant burden on individuals and on society as a whole. Its short- and medium-term achievements, however, suggest that it is also a model that might be defended on a cost approach to human rights.

Economic costs cannot be assessed or understood in isolation of what is necessary to secure growth or generate the revenue that funds the realization of rights. In our conclusion, we turn to this inherent complexity of the cost of rights debate.

## 12.6 CONCLUSION

It has been argued that all too often we fail to give the economic cost of human rights sufficient attention, as we are concerned that in doing so we reduce something of inherent value to a crude monetary value.<sup>148</sup> Paying attention to what rights cost the government, however, may not only reveal that our assumptions about rights are incorrect (that we cannot easily describe rights as either negative or positive, for example) but may also better equip less- and least developed states to make decisions about how, when and whether to allocate significant funds to the realization of certain rights.

Arguably, a concern with the cost of rights is at the heart of the developmental state model. States like China, South Korea and Ethiopia have focused their efforts and energies on modernization and rapid development rather than human rights, believing this to be the best path to the state being able to provide a better quality of life for their citizens.<sup>149</sup>

In this chapter, we have examined Ethiopia's developmental achievements and we have argued that the relationship between realizing rights and paying for them is not straightforward. States clearly need revenue to fund the infrastructure and personnel that are often a precondition to realizing rights – houses, hospitals, courts and even polling stations must be built and staffed at sometimes considerable cost. Embarking on a rapid programme of development and modernization, however, is rarely a rights-neutral activity. In other words, the realization of rights is not something simply delayed until a country is in a position to pay for them, but in getting to that position, human rights are both advanced and violated.

Ethiopia has made significant strides in reducing poverty, rolling out accessible primary school education and reducing infant mortality. It has funded these programmes through ambitious development projects and foreign investment and aid. The Ethiopian government has not simply been working towards improving the quality of the lives of its citizens, however, but has been

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<sup>148</sup> Posner, 'The Cost of Rights' (n 15) 1.

<sup>149</sup> Marslev and Sano (n 117) 9.

engaged in a rights trade-off in terms of which civil, political and environmental rights are sidelined and sometimes aggressively violated. This is not simply a matter of prioritizing one class of rights over another. Rather, certain rights are seen to obstruct and get in the way of development and the realization of other rights. In other words, the government appears to adopt the view that one class of rights is legitimately violated in pursuit of achieving other rights. This is not unrelated to the achievement of its development goals, but precisely a key component of achieving those goals. A straightforward costs-approach to human rights, however, may not adequately take into account the cost of generating the means to pay for rights. Examining rights from a costs perspective in a case like Ethiopia requires investigations not only into what rights cost the government, but also into how that wealth is generated.