

## AFRICA RISK CONSULTING

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#### Ethiopia Summary 1 June 2017

**United Nations High Commissioner for Human Rights (UNHCR) Zeid Ra'ad Al Hussein criticises the human rights record of the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF). Opposition politicians claim the human rights situation has worsened under the ongoing state of emergency. The Ethiopian government acquires from Dubai-based terminal operator DP World 19% access and usage rights for the Port of Berbera in autonomous Somaliland (Somalia). Israel-based Israel Chemicals Ltd (ICL) begins arbitration against the Ethiopian government over alleged failure to deliver on infrastructure pledges.**

#### UN criticises government's human rights record

International diplomats have increased their criticism of the human rights record of the ruling **Ethiopian People's Revolutionary Democratic Front (EPRDF)**. Criticism without sanction is unlikely to result in the government revising its stance towards opposition parties and movements. Following a visit to **Ethiopia, Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights (UNHCR)**, said on 5 May that he is "concerned... about crucial issues".<sup>1</sup> Specifically, Hussein raised concerns about the **2009 Charities and Societies Proclamation** which restricts foreign financing to non-governmental organisations (NGO), and which critics claim increases their administrative burden to a prohibitive degree.<sup>2</sup> Hussein also criticised the **2009 Anti-Terrorism Law**, which provides a vague definition of terrorism and which the government has used to crack down on all forms of opposition activity.<sup>3</sup> Hussein condemned the **2008 Freedom of the Mass Media and Access to Information Proclamation**, which the government has used to threaten and intimidate independent media.<sup>4</sup> Hussein said the three pieces of legislation "do not appear aligned with relevant international legal norms, and should be reformed."<sup>5</sup>

Hussein cited the anti-government protests between November 2015 and August 2016 as a consequence of the government's authoritarian stance towards the opposition.<sup>6</sup> Hussein said the government had refused to allow him to visit the **Oromia** and **Amhara** regional states so he was unable to verify government accounts that security force responses to the protests were "proportionate".<sup>7</sup> Hussein plans to return to Ethiopia in January 2018 and hopes to secure permission to visit the affected regions before then. Hussein called on the government to release individuals detained during the protests without evidence of involvement in violent activities.<sup>8</sup>

*"I am requesting the government to consider, where possible, the release of a number of individuals whose arrest or conviction appears to have been motivated by fear of criticism rather than evidence of intent to spark violent overthrow."<sup>9</sup>*

<sup>1</sup> UN press release, 5 May 2017

<sup>2</sup> www.amnesty.org.uk

<sup>3</sup> www.oaklandinstitute.org

<sup>4</sup> www.cpj.org

<sup>5</sup> UN press release, 5 May 2017

<sup>6</sup> UN press release, 5 May 2017

<sup>7</sup> UN press release, 5 May 2017

<sup>8</sup> UN press release, 5 May 2017

<sup>9</sup> UN press release, 5 May 2017

Hussein welcomed the government's publication of the second **National Human Rights Action Plan (NHRAP)** on 26 April.<sup>10</sup> The house of the peoples' representatives approved the second NHRAP in December 2016.<sup>11</sup> It includes additional training in human rights and due process guarantees to security forces and judiciary officers.<sup>12</sup> Hailemariam demonstrated his government's wariness of human rights:

*"The human rights action plan will strengthen our capacity of ensuring the exercise of human rights while enforcing and enriching the development of democratic institutions... Though it is not to what some of those who are not in favor of our democracy and development says, our democracy has its own constraints since its young and it is on a transition."*<sup>13</sup>

In addition to Hussein's criticisms, the **European Parliament** passed a resolution calling for a **United Nations**-led investigation into actions of security forces during the anti-government protests on 18 May.<sup>14</sup>

Domestic critics of the government have warned that the state of emergency, first imposed in October 2016, has further harmed Ethiopia's democratic institutions and human rights record.<sup>15</sup> The government lifted some of its provisions in March (see *ARC Briefing Ethiopia April 2017*) but restrictions on opposition activity remain in place. This includes a prohibition on the use of social media to contact what the government refers to as "*outside forces*"<sup>16</sup> which are in effect opposition groups based in the diaspora.<sup>17</sup> Also prohibited are the organisation of demonstrations in academic institutions, political campaigns "*likely to cause disturbances, violence, hatred and distrust among the people*"<sup>18</sup> and the use of political symbols or messages "*without permission*".<sup>19</sup> According to a journalist detained under the state of emergency for reporting on the protests,

*"In the past, the government has used its media laws to stifle the dissemination of dissenting opinions and the flourishing of free media in the country. That is why people expressed their grievances towards the government using protests. They were left with no options."*<sup>20</sup>

Notable Ethiopian journalists detained under the state of emergency include **Seyoum Teshome, Befekadu Hailu** and **Anania Sorri**.<sup>21</sup> Opposition leaders have also warned about the impact of the state of emergency.

*"They are claiming that it has led to an even worse situation thereby leading to an almost total collapse of their activities."*<sup>22</sup>

Authorities in March charged opposition **Oromo Federalist Congress (OFC)** leader **Merara Gudina**, arrested in November 2016 after meeting members of the European Parliament to discuss the human rights situation, for inciting violence. Senior OFC member **Mulatu Gemechu** told an ARC researcher,

*"We have totally collapsed. We can't make any movement across our region, Oromia. Even hotels are not willing to give us permits to hold meetings for fear of reprisals. All meetings need the approval of the Command Post that is set up to oversee the state of emergency. We do not know*

<sup>10</sup> UN press release, 5 May 2017

<sup>11</sup> [www.ena.gov.et](http://www.ena.gov.et)

<sup>12</sup> [www.ena.gov.et](http://www.ena.gov.et)

<sup>13</sup> [www.ena.gov.et](http://www.ena.gov.et)

<sup>14</sup> [www.europarl.europa.eu](http://www.europarl.europa.eu)

<sup>15</sup> Source, journalist, Addis Ababa

<sup>16</sup> Source, journalist, Addis Ababa

<sup>17</sup> Source, journalist, Addis Ababa

<sup>18</sup> Source, journalist, Addis Ababa

<sup>19</sup> Source, journalist, Addis Ababa

<sup>20</sup> Source, academic, Addis Ababa

<sup>21</sup> Source, journalist, Addis Ababa

<sup>22</sup> Source, journalist, Addis Ababa

*how to meet or communicate with the [state of emergency command post]... we don't know what to do."<sup>23</sup>*

The EPRDF is unlikely to let international criticism influence its authoritarian stance towards opposition activities and critical media. The regional security role that Ethiopia plays, and the EPRDF's capacity to ensure domestic stability, means that donors and international governments are likely to continue to back it. Nevertheless, ethnic protests are likely to increase in frequency and scale as long as the EPRDF does not open up formal political space for the opposition.

### Ethiopia secures access to Port of Berbera

The Ethiopian government has acquired 19% of access and usage rights at the **Port of Berbera** in autonomous **Somaliland** in **Somalia**.<sup>24</sup> The agreement will reduce Ethiopia's dependence on the congested **Port of Djibouti (Djibouti)** for the movement of imports and exports. Currently 70% of cargo at Port of Djibouti is shipped to or from Ethiopia, accounting for over 95% of Ethiopia's foreign trade.<sup>25</sup> **Hussein Ige Dayr**, spokesman for Somaliland president **Ahmed Mohamed Mahamud 'Silanyo'**, announced the access and usage agreement, which will allocate close to a fifth of the port's capacity to Ethiopian shipments, on 13 May.<sup>26</sup> At the time of the announcement, Silanyo was officially inaugurating **Dubai**-based terminal operator **DP World's** 30-year concession to manage the development and operation of the Port of Berbera on the **Red Sea**. The concession began in March.<sup>27</sup> Dayr confirmed that the Somaliland government is not party to the agreement, which is between Ethiopia and DP World.<sup>28</sup> This means the Ethiopian allocation came from DP World's original 65% share of access and usage rather than the Somaliland's government's 35%.<sup>29</sup> The Somaliland government has responsibility for overseeing the concession and could have vetoed the Ethiopian agreement.<sup>30</sup> As part of DP World's concession, originally agreed in March 2016, the Somaliland government revised port tariffs and established a committee to manage joint operations.<sup>31</sup>

DP World plans to invest up to \$442m in the Port of Berbera over the period of its concession.<sup>32</sup> The first phase of development will involve the construction of a 400-metre quay and 250,000 square metre container yard, and free trade zone.<sup>33</sup> Though **Denmark**-based **A.P. Moller-Maersk Group** and **Singapore**-based **Pacific International Lines (Private) Ltd** have agreements with the Somaliland government to operate a regular service to the Port of Berbera, trade remains limited due to infrastructure challenges.<sup>34</sup> The Port of Berbera currently only accommodates 350,000 tonnes.<sup>35</sup> The **Berbera Port Authority** in 2014 started an investment plan to expand the dry port and establish an additional container terminal by July 2016.<sup>36</sup> However, cargo handling equipment and storage warehouses remain limited. The construction of bulk grain silos was never completed, and so bagging takes place on the quayside.<sup>37</sup> While entry into the Port of Berbera is relatively straightforward, strong windy conditions during both the north-easterly (October to December) and south-westerly (July to September) monsoons can negatively impact vessels in both the approach channel and at the commercial quays.<sup>38</sup> A lack of tug vessels to assist in manoeuvring reduces ship safety.<sup>39</sup> The **Mayara**

<sup>23</sup> Mulatu Gemechu, Ethiopia

<sup>24</sup> Journal of Commerce, 15 May 2017

<sup>25</sup> Journal of Commerce, 15 May 2017

<sup>26</sup> Journal of Commerce, 15 May 2017

<sup>27</sup> www.hellenicshippingnews.com

<sup>28</sup> Journal of Commerce, 15 May 2017

<sup>29</sup> Journal of Commerce, 15 May 2017

<sup>30</sup> www.hellenicshippingnews.com

<sup>31</sup> www.hellenicshippingnews.com

<sup>32</sup> Journal of Commerce, 15 May 2017

<sup>33</sup> Journal of Commerce, 15 May 2017

<sup>34</sup> www.dlca.logcluster.org

<sup>35</sup> www.dlca.logcluster.org

<sup>36</sup> www.dlca.logcluster.org

<sup>37</sup> Source, East Africa analyst, UK

<sup>38</sup> Source, East Africa analyst, UK

and **Tamara** lighthouses at the entry of the port are ineffective navigation aids, and limit vessel entry and departure operations to daylight hours.<sup>40</sup> Frequent dust storms can further impair visibility.<sup>41</sup> The Berbera Corridor is underdeveloped, with the road on the Somaliland side of the border unpaved for long stretches.<sup>42</sup> Ethiopia is working with the Somaliland government to secure financing for road improvement projects.<sup>43</sup>

The DP World concession is politically sensitive in Somaliland. Somaliland members of parliament (MPs) originally questioned the commercial motivations of DP World, which has managed the Port of Djibouti's **Doraleh Container Terminal** since 2006.<sup>44</sup> The MPs questioned whether it was in the interests of DP World to develop the Port of Berbera as a competitive alternative to the Port of Djibouti.<sup>45</sup> There was additional consternation in early 2017 when the Somaliland government agreed with the **United Arab Emirates (UAE)** to establish a military base near **Berbera**.<sup>46</sup> Berbera is strategically located to protect shipping interests in the Red Sea and **Gulf of Aden**, as well as the ongoing military operations in **Yemen**. There is a widely held perception in Somaliland that the military base agreement is linked to the DP World concession.<sup>47</sup> Silanyo's son-in law, **Bashe Awil Omar**, was central to facilitating both the DP World agreement and then the military base agreement as Somaliland's representative in Dubai. Under the original deal, DP World reportedly pledged 15% of its annual local revenue to Omar.<sup>48</sup> DP World is reportedly looking to renegotiate the agreement to instead pay a commission to Omar and to Djibouti-based businessman **Abdourahman Mahamoud Boreh**.<sup>49</sup> DP World in February won an arbitration case against the government of Djibouti, which had claimed it made illegal payments to Boreh, former chairman of the **Djibouti Ports and Free Zones Authority**.<sup>50</sup>

The DP World Port of Berbera concession faces an uncertain political future. In February, Somaliland foreign minister **Saad Ali Shire** threatened to resign over the military base.<sup>51</sup> During the parliamentary vote on the issue, Saad went on a two-day long holiday to avoid voting against the base.<sup>52</sup> Saad is especially significant, not just because of his political office, but because he is a prominent member of the **Issaq/Haber Awal/Issa Moussa** clan which is dominant in Berbera and which opposes both the base and DP World's concession.<sup>53</sup> The main opposition **Wadani** party is especially opposed to the military deal.<sup>54</sup> There is reportedly concern within DP World that Silanyo's **Kulmiye** party will lose Somaliland's presidential election in November, with any successor potentially looking to cancel either or both of the Port of Berbera concession and the military base.<sup>55</sup>

In the short-term, there is political uncertainty about the future of the Port of Berbera concession and military base. This will persist until the November Somaliland election and potentially beyond depending on the winner. Even if the Port of Berbera agreement holds, expensive trade procedures and continued high risk of congestion and delays, due to Ethiopia's heavy reliance on a few

<sup>39</sup> Source, East Africa analyst, UK

<sup>40</sup> Source, East Africa analyst, UK

<sup>41</sup> Source, East Africa analyst, UK

<sup>42</sup> Source, East Africa analyst

<sup>43</sup> Source, East Africa analyst

<sup>44</sup> [www.hellenicshippingnews.com](http://www.hellenicshippingnews.com)

<sup>45</sup> [www.hellenicshippingnews.com](http://www.hellenicshippingnews.com)

<sup>46</sup> [www.hellenicshippingnews.com](http://www.hellenicshippingnews.com)

<sup>47</sup> Source, academic, Hargeisa

<sup>48</sup> Africa Intelligence, 24 Mar 2017.

<sup>49</sup> Africa Intelligence, 24 Mar 2017.

<sup>50</sup> Financial Times, 21 Feb 2017.

<sup>51</sup> Source, academic, Hargeisa

<sup>52</sup> Source, academic, Hargeisa

<sup>53</sup> Africa Intelligence, 10 Feb 2017.

<sup>54</sup> Africa Intelligence, 10 Feb 2017.

<sup>55</sup> Africa Intelligence, 10 Feb 2017.

motorways, will mean that logistical bottlenecks persist. Lead times and costs will remain high, increasing business costs.

### Israel Chemicals Ltd begins arbitration against government

**Tel Aviv (Israel)-based Israel Chemicals Ltd (ICL)** announced on 10 May that subsidiary **ICL Europe Coöperatief UA** had begun arbitration against the Ethiopian government.<sup>56</sup> A prominent arbitration case may jeopardise the perception of Ethiopia as a stable predictable investment environment. ICL filed the arbitration at the **Permanent Court of Arbitration at The Hague (The Netherlands)** under the **Arbitration Rules of the United Nations Commission on International Trade Law**.<sup>57</sup> ICL claims that the Ethiopian government violated an investment protection agreement with The Netherlands, where ICL Europe is incorporated.<sup>58</sup> ICL alleges that the government imposed an illegal tax assessment against ICL Europe and failed to deliver on infrastructure pledges to indirect subsidiary **Allana Potash Afar Plc**.<sup>59</sup> In October 2016, ICL terminated its investment in the **Danakhil** potash project in **Afar Regional State**.<sup>60</sup> ICL cited the government's failure to deliver on the infrastructure, notably a road and railway to link Danakhil to export facilities in **Tadjoura** (Djibouti), and regulatory framework required for the project.<sup>61</sup> The **Ethiopian Tax Authority** also rejected an Allana Potash Afar appeal over an *"unjustified and illegal"*<sup>62</sup> value added tax (VAT) assessment reportedly worth \$80m.<sup>63</sup> There is speculation that the mines ministry never supported ICL's acquisition of **Canada-based Allana Potash** for \$137m in June 2015, and that the government designed the infrastructure and tax disputes to force ICL to relinquish the project.<sup>64</sup> At the time it terminated the investment, ICL recorded a \$202m write-down related to the project.<sup>65</sup>

High profile arbitration will damage Ethiopia's investor profile. The failure to deliver infrastructure – central to the commercial viability of large-scale investor projects – in particular risks deterring future investment beyond the mines sector.

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<sup>56</sup> SNL Metals & Mining Daily, 12 May 2017

<sup>57</sup> SNL Metals & Mining Daily, 12 May 2017

<sup>58</sup> Dun and Bradstreet, 1 Mar 2017.

<sup>59</sup> SNL Metals & Mining Daily, 12 May 2017

<sup>60</sup> Dun and Bradstreet, 1 Mar 2017.

<sup>61</sup> Dun and Bradstreet, 1 Mar 2017.

<sup>62</sup> SNL Metals & Mining Daily, 10 Oct 2016.

<sup>63</sup> SNL Metals & Mining Daily, 12 May 2017

<sup>64</sup> Indian Ocean Newsletter, 27 Jan 2017.

<sup>65</sup> SNL Metals & Mining Daily, 12 May 2017

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