

**THE APPLICATION OF THE LEGAL FRAMEWORKS GOVERNING
MICRO FINANCE: A CASE OF CITY ZONE
OF JIGJIGA OF SOMALI REGIONAL STATE AT ETHIOPIA**

Seid Demeke¹⁰ Nuru Addisu¹¹

ABSTRACT

There is a discontent on the substance of the legal framework governing micro-finance. The discontent is that the law is not designed taking in to consideration some unique contexts of the pastoral and agro-pastoral communities mainly in relation to the livelihood that sticks on livestock production. The gap created due to less participation of experts from pastoral areas in the course of policy and legal drafting. The point here is that if those experts participate in the drafting process, they able to get the opportunity to reflect the pastoral context and interests. Overall, in addition to the practical challenges related with lack of experts and legal awareness, the regional MFIs are having trouble while applying the laws, which are not pastoral friendly. Policies, legal and institutional frameworks should provide incentive for the micro finance clients like tax exemption and creating market channels. NBE should take into consideration the pastoral socio-economic realms while drafting directives and to this effect, the bank should include stakeholders and experts having experience and specialization on pastoral matters. Besides, it is also important to draw lesson from countries having best experiences on pastoral matters like Kenya and Bangladesh.

KEYWORDS

Micro Finance, Legal Frameworks, National Bank of Ethiopia (NBE) etc.

INTRODUCTION

The main objective of this paper is to analyze the practical operation of MFI in the region with a special reference on the enforcement challenges of the legal frameworks regulating MFI. Accordingly, the paper examines whether the legal regime and the practice takes the special needs of the pastoral community in general and mobility, social networking, cultures and tradition as well as the level of awareness of the pastoral community in particular. The methodology employed while conducting the research was qualitative approach-mainly document analysis, interview and focus group discussion are used as tools of data collection. The findings obtained from the qualitative data sources are integrated to reach at equivalent conclusion.

Background of Ethiopian Somali Regional State

Ethiopia Somali regional state is the second largest in the country after Oromia and covers a total area of 350,000 km. It is located in the east and south east of the country and lies between 4 and 11 degrees north latitude and 40 and 48 degrees east longitude. The region has 11 administrative zones consisting of 93 districts, and 6 city administrations, which are further divided into 1864 Kebeles. It shares borders with Somalia to the east and southeast, Kenya to the south and Djibouti to the north. To the northwest and west, it borders with Afar and Oromia regions respectively.

The Population of Region

The population of the region is estimated at 4.7 million out of which 44 percent are females and the remaining 56 percent are males. The average household size in the region is 6.6. The urban population is estimated to be 14 percent

¹⁰Lecturer, School of Law, Jigjiga University, Jigjiga, Ethiopia, seid1429@gmail.com

¹¹Lecturer, Department of Accounting and Finance, College of Business and Economics, Jigjiga University, Jigjiga, Ethiopia, nuraddis20@gmail.com



of the total population. Average population density is calculated to be 13 persons per square km, with major variations among the woredas of the region. Population density is highest in historically crop-growing areas like Jigjiga and the revering areas of Godey, Afder and Liban zones.

Livelihood of the Region

The vast majority of the population of the region is pastoralists and agro-pastoralists who are dependent on livestock and farming for their survival. The region has 17 rural livelihood zones, generically classified as pastoral, agro-pastoral, reverie and sedentary farming. The major sources of income include livestock and livestock product sales, crop sales, firewood and charcoal sales, petty trade and remittance from western living Diasporas of the region.

Jigjiga is a city in eastern Ethiopia and the capital of the Somali Regional State. The city is located on the main road between Harar and the Somali city of Hargeisa, and is known for incense production. It has all infrastructure including telephone service by 1956. An asphalt and concrete road and also Jigjiga is served by garaadwiil-waal international Airport (IATA: JIJ, ICAO: HAJJ).

THE APPLICATION OF THE LEGAL FRAMEWORKS GOVERNING MICRO FINANCE

The Regional Context

The Application of the Existing Federal Laws

The Ethiopian Somali's government sponsored MFI registered as per proclamation No. 626/2009 to provide microfinance services throughout the region. From its establishment, the MFI is providing loan, money transfer and saving services (interview with Ahmed, 2016). These services are among the several activities allowed to MFIs as provided under proclamation No. 626 /2009, art. 3.

When evaluated from its long history of establishment and the diversified demand of the rural and urban people, it can be said that the regional MFI is not that much active, especially to diversify the service provisions other than saving, loan and money transfer. Here, the suggestion is that the MFI should engage in additional activities like drawing and accepting drafts payable within Ethiopia; supporting income generating projects of urban and rural micro and small scale operators; rendering managerial, marketing, technical and administrative advice to customers and assisting them to obtain services in those fields; providing financial leasing services to peasant farmers, micro and small-scale urban and rural entrepreneurs (Proc. No. 626/2009, art. 3)

NBE supervises the operation of the regional MFI through on site (field supervision) and off site (reporting system). The power of the NBE regarding onsite supervision emanates from proclamation No. 626/2009 that provides: "The National Bank may, periodically or at any time, without prior notice, make, or cause to be made, an on-site inspection on any micro financing institution..." (Proc. No. 626/2009, art. 18(1)). In accordance with article 15 of pro. No. 626/2009 and directive No. MFI/18/06 the regional MFI submits periodical reports quarterly ((Proc. No. 626/2009, art. 15)

However, there are some problems in the cooperation between NBE and the regional MFI. The NBE does not invite the regional MFIs in the process of legal and policy drafting that concerns micro finance (interview with Ahmed, 2016). Had it been the regional MFI participated in the drafting phases, the interest and context of the pastoral areas could be addressed in best way than the current one. The other problem related with legal awareness creation. The NBE simply circulates the laws and directives without providing training regarding the practical application of those laws and directives. This problem is contributing to the improper application of the legal frameworks in the region.

Legal Awareness

The regional MFI provides training to its employee about the policy, laws and procedures of MFIs. But, legal awareness creation to the customers is very limited. The service recipients violate their duty and responsibilities in the course of returning the loan. They do not know the legal consequence of non-performance of the contract they



entered with the MFIs. As a result, most of the service recipients are unwilling to return the loan as per the agreed time (interview with Ahmed, 2016).

As far as possible, the MFIs do not take court action against the non-performing party. This is to maintain their social mission and to avoid fear in the society. That means, if the institutions challenge the non-performing party through court system, the later may incur additional costs and injection on the business activities, which ultimately affects the profitability of the overall business engagement. In other word, it is to build confidence and trust on the services of MFI. Thus, to claim the performance of the loan contract, the MFIs use negotiation method. So far, the regional MFI lodged one court action in Fiq zone. In addition, the court decided in favour of the MFI (interview with Ahmed, 2016).

Currently, more than 30 micro-finance institutions are operating in Ethiopia. However, very few of them are working in pastoral areas. Some NGOs and a government run microfinance institutions are trying to provide non-conventional financial services particularly 'interest free' credits in pastoral regions by a 'special permission' from the national bank (Pastoral Development in Ethiopia, 2004). This is good approach. However, when have a look the experience of Somali region as an example; the rural pastoral communities are not utilizing the interest free credits due to lack of awareness as to the introduction of this system. Hence, regional governments need to work for the accessibility of the micro-finance institutions and conduct advocacy, as the institutions are sharia friendly.

Overall, to let GTP II and pastoral oriented poverty reduction policies work in pastoral areas, it is decisive to consider micro-finance institutions as one major alternative income generation means to the pastoralists. Accordingly, priority should be given to rural microfinance for food security. It addresses credit and savings needed for agricultural production and off-farm enterprises, and it includes other demands for financial services, such as financing food consumption and health care as well as providing households' with more effective savings, credit and insurance services for smoothing consumption, holding precautionary savings and diversifying the asset portfolio (Zeller, M., et. al., 1997).

THE CASE OF CITY ZONE: IT INCLUDES TWO CITIES - JIGJIGA AND KEBRIBEYA WOREDA

The Operation of Interest Free Financial Services

City zone micro finance service provides non-conventional financial service based on sharia law. There is no interest claimed during the repayment. To meet with the sharia law, the experts of the institution examine whether or not the proposed business activities are *halale* (permissible under sharia law). During application, the service recipient should submit a business plan as provided under directive No. MFI/0/96, art. 3. Accordingly, in practice, the MFI do not accept a business proposal to engage in alcohol and chat business (FGD).

Performance of Repayment

The payment performance of the debtors in the zone can be leveled as poor. In-group borrowing, it is the responsibility of the group leader to return the money- mostly with in a year. By far, however, the institution rarely successful in receiving the money within the due date. The problem is that rather than investing the money to the intended purpose, the members simply share the money as soon as they received it for their own personal consumption. Two main reasons can be mentioned for this. The one is that people mostly borrow money not to engage in a business activity rather it is to cover emergency costs in time of difficulties and to discharge loan borrowed from individuals. The second reason is due to lack of effective and periodical supervision to ascertain whether the borrowers are investing the money as per the business plan, they submitted (FGD).

At the due date of the repayment, some borrowers disappear from their domicile- even they travel to Djibouti. The office tries to find the debtor through the assistance of the police. If the borrower produces a good justification for the non-performance, the service provider gives two months extension. If the debtor failed to return the money by the two months deadline, the service provider lodges complain before court. However, court complaint is not well utilized. By far, the city zone micro finance bureau lodged only one case claiming payment performance. One of the main reasons is lack of legal expert in the bureau who can prepare court complain and represent before court. When a



person unable to return his debt, the clan that the borrower belongs to pay the debt (FGD). This is an impressive practice in Somali culture.

The Application of Micro Financial Laws

Regarding the application of the legal frameworks that govern MFIs, the researchers observed some problems. The bureau has no legal expert/advisor that may follow up the application of the existing laws (FGD). The existing employees in the bureau did not know the existence of laws that regulate the operation MFIs. Hence, legal expert is necessary in each zonal MFI; and for the rest of the employees, providing capacity building through training is necessary.

THE CASE OF KEBRIBEYA WOREDA

The Kebribeya MFI works in accordance with the rules and regulations of the NBE. The Devotion on the application of rules and regulations and their conformity with the pastoral community's situations were very well (interview with Mohammed Hassen).

To give loans to the pastoral and agro-pastoral community, the National Bank ordered micro-finance institutions to accept voluntary saving before six months of the first grant of loans but the Micro-finance institution, Kebribeya sub office, gives loan even at a time of first saving by the pastoral and agro-pastoral communities to relax them in getting finance for their productivity (interview with Mohammed Abdullah).

The Microfinance institution gives loans to the customers in four phases of release. By analyzing their productivity and profitability, the institution releases in the 1st phase Br. 4000, in the 2nd phase Br. 7,000, in the 3rd phase Br. 10,000 and in the 4th phase Br. 15,000.

The rules and regulations of the national bank provide that every debtor must pay back the loan taken in one lump sum. However, this was very challenging for pastoral communities with much probability of death of livestock and frequently occurred natural disasters. For instance, this year, wild fire in the town has damaged the property of agro-pastoral societies. To help the victims, the micro-finance office and Kebribeya town administration organized fund raising conference and collected much funds from the community, stakeholders and other partners (interview with Mohammed Abdullah).

A lot of rules and regulations have been addressed based on the operational manual given by NBE. However, the institution claims the introduction of especial treatment mechanisms in case when unexpected situations occurred among the pastoral communities (interview with Mohammed Hassen).

The proposal of the institution seems sound, especially to meet with the very mission of proclamation No 626/2009. As it is mentioned in the preamble of the proclamation, one of its mission is to have an appropriate legal framework that further enhances the development and soundness of the micro-financing business. The investigators are in the opinion that the soundness of the legal framework should be tested whether or not it meets with the interest of the pastoral and agro-pastoral communities, which accounts 15% of the total population of the country. Moreover, one of the objectives of directive No MFI/18/06 is to enable MFI to meet the credit demand of their client in a flexible manner. Flexibility should be interpreted to provide exceptional treatment mechanisms in case when unexpected loss occurred among the pastoral communities like death of livestock (directive No MFI/18/06, art.3 (a)).

CONCLUSION

There are some problems in connection with the application of micro financial laws- like lack of legal expert and legal awareness on the rule and regulation governing micro-finance. Moreover, there is a discontent on the substance of the legal framework governing micro-finance. The discontent is that the law is not designed taking in to consideration some unique contexts of the pastoral and agro-pastoral communities mainly in relation to the livelihood that sticks on livestock production. The gap created due to less participation of experts from pastoral areas in the course of policy and legal drafting. The point here is that if those experts participate in the drafting process, they able



to get the opportunity to reflect the pastoral context and interests. Overall, in addition to the practical challenges related with lack of experts and legal awareness, the regional MFIs are having trouble while applying the laws, which are not pastoral friendly.

RECOMMENDATIONS

The federal government especially NBE should provide intensive training and support for staff of the regional MFIs and for those who engage in alternative income generating activities through the support of MFIs. The pertinent bodies should promote entrepreneurship through establishing workable institutional frameworks.

- Policies, legal and institutional frameworks should provide incentive for the micro finance clients like tax exemption and creating market channels.
- NBE should take into consideration the pastoral socio-economic realms while drafting directives and to this effect, the bank should include stakeholders and experts having experience and specialization on pastoral matters. Besides, it is also important to draw lesson from countries having best experiences on pastoral matters like Kenya and Bangladesh.

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