

Land Law Responses towards Arbitrary Eviction on “Non-Indigenous” Rural Peasants in Benishangul-Gumuz Region

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Abstract

The FDRE Constitution established ethnic federalism supposedly to accommodate and protect various rights of NNPs of Ethiopia. Among others, the land resource becomes the common property of NNPs of the Ethiopian ethnic groups. Following the adoption of ethnic based structure Benishangul-Gumuz Regional States (BGRS) revised Constitution has classified peoples, based on ethnicity, as "indigenous" Vs "non-indigenous" ("owner" Vs. "non-owner") to the region, and land resource found in region belongs to "indigenous nationalities." However, Ethiopian rural peasants have Constitutional rights to access arable land without fees and are guaranteed from arbitrary eviction without indigenous-non-indigenous dichotomy. So this study aims to investigate legal responses towards the protection against arbitrary eviction to non-indigenous peasants from their land rights. To achieve this objective, study employed qualitative research approach. The findings showed there is arbitrary eviction of "non-indigenous" peasants in the region. The land rights of non-indigenous peasants are restricted and face decentralized despotism. The root cause for arbitrary evictions of the non-indigenous rural peasants is the false indigenous/non-indigenous people dichotomization on the one hand, and ambiguous nature of land policy and pitfalls of ethnic federalism on the other hand. Neither FDRE Constitution

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Acronyms: FDRE-Federal Democratic Republic of Ethiopia; BGRS-Benishangul-Gumuz Regional States; NNPS-Nations, Nationalities, and Peoples.

nor BGRS Constitution provide for legal mechanism to avert arbitrary eviction of non-indigenous peasants from their land rights. Therefore, the FDRE Constitution and BGRS revised Constitution must be revisited in order to avoid indigenous/non-indigenous false dichotomy so that the land rights of non-indigenous peoples shall be protected.

Keywords: Eviction, Ethnicity, Non-indigenous, Land, Benishangul-Gumuz

Introduction

Ethiopia is a multicultural state whose people are so intertwined due to a long history of mobility, internal migration and voluntary or forced settlement by government policy. During the pre-1991 political arrangement, individuals and groups migrated and settled in different parts of the country for various reasons. They had established permanent, shared economic and political resources; participated in policy decision making regardless of their ethno linguistic and cultural background.¹ However, this situation could not persist after the introduction of ethnic-based federalism. With the advent of ethnic federalism via the 1995 FDRE Constitution, Nations, Nationalities and People (herein after NNPs) are guaranteed the right to self-administration up to secession.² The right of self-administration and sovereign power in the hands of NNPs of Ethiopian ethnic groups are the backbone of Ethiopian ethnic federalism.³ To realize these rights, the FDRE Constitution depicts Regional States delimited based on the settlement patterns, language, identity and consent of the people concerned. It structured Ethiopia's federalism mainly

¹ Takele Bekel, Ethnic conflict in Ethiopia: Federalism as a Cause AND Solution, South-South Section | *Peer Reviewed*, Vol. 6 No. 30, (2021), p. 3.

² The Constitution of Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazette*, (1995), Art. 39 [hereinafter FDRE Cons.].

³ *Id.*, Art. 46/2.

based on the criteria of ethnicity.⁴ For the practical implementation of the rights NNPs, the FDRE Constitution gives a political spirit-based definition for NNPs of Ethiopia. NNPs are defined as:

*A Nation, Nationality or People for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable predominantly contiguous territory.*⁵

Regional States have their own regional constitutions which are largely the replication of the federal Constitution. The state constitutions provided for the reconfiguration of the State into Zone and Woreda levels based on ethnicity, except the Amhara Regional State revised Constitution. One of the gears for the expression of self-administration for each Regional State is giving land resources to NNPs of the Ethiopian ethnic groups.⁶ Land is undivided common property of ethnic groups in the country.⁷ Thus, an individual can exercise his/her land rights within the undivided common property of ethnic groups via membership of identified ethnic groups. Despite the existence of a constitutionally recognized right on self-determination, there are two unsettled challenges under an ethnic based federal arrangement which are the causes for arbitrary eviction.

The first challenge is the question of the relationship between the Ethiopian State and NNPs. i.e; the problem of balancing and reconciling dual identity;

⁴ *Id.*, Art.46/2 & Art. 39/5.

⁵ *Id.*, art 39/5.

⁶ Minutes of Constitutional Assembly, Volume 5, Unpublished, HPR Library, Addis Ababa, Ethiopia, 1994, p. 75.

⁷ FDRE Cons., *supra* note 2, Art. 40/3.

belonging to a particular nationality, and belonging to the Ethiopian state. In contemporary Ethiopia, to participate in Ethiopian political life an individual citizen must first identify him/her self as being a member of a given ethnic group implying that individual citizens cannot simply be considered as Ethiopians rather they belong to the state because of their prior membership of a particular NNPs. But many Ethiopians have mixed identities, being descended from different ethnic groups. Under the new ethnic based federal structure they have to identify themselves as belonging to one group or another. Hence, the re-construction of ethnic identity in post-1991 Ethiopia have led to the emergence and re-emergence of a new locally based fragmented identity with no sign of ending. This not only impacts cultural coexistence and harmony between ethnic groups but also the integrity of the Ethiopian state.

The second challenge is the question of ethnic groups' relationships. For instance, when one looks at the ethnic boundary demarcation, territories historically shared between and commonly administered by the Somali and Oromo are now arranged under a fixed boundary to one group and exclude the other. With this framework, citizens' access to resources, political power, and local governance can easily create conflicts that did not exist before because ethnicity is made the basis for governance.

The BGRS Constitution recognizes different ethnic groups and unequivocally categorizes them into two groups: namely, ethnic groups as owners of the region-the so called indigenous nationalities of the region (Bertha, Gumuz, Shinasha, Mao, and Komo)⁸ on the one hand, and other peoples residing in the region labeled as non-indigenous ethnic groups that are not recognized as

⁸ The Benishangul Gumuz Regional State Revised Constitution Proclamation, No. 31/2003, *Lisan Hig Gazeta*, 2003, preamble para. 1-4, (hereinafter BGRS Revised Cons.).

owners of the region.⁹ The Constitution indisputably recognized self-determination for owner/indigenous ethnic groups to the region without any exclusion or restriction on non-indigenous ethnic groups’ socio-economic and political rights.

Since the advent of ethnic federalism, there is an attempt for land resource regionalization based on ethnicity. The central problem has been the competing interests between the indigenous nationalities and non-indigenous ethnic groups regarding the universally recognized constitutional principle of access to arable land and protection from arbitrary eviction. The problem emanates from indigenous/owner versus non-indigenous/non-owner dichotomy, resource rivalry, legal and policy paradox and so on. Specifically, the BGRS Constitution depicts nationalities that are considered to be the “owners” of the Regional State coupled with an exclusionary political economy practice. It relegated others to second class citizens which extremely undermines the notion of “unity in diversity”, and goes against the universal constitutional principle of access to agricultural land and protection from arbitrary eviction.¹⁰ This has created a room for the regional government officials to abuse their authority to achieve their political goals along ethnic lines.

The BGRS and FDRE Constitution edict the right to free movement of peoples and freely engage in any economic activity. But from time to time, forceful evictions of non-indigenous peasants in the BGRS has increased substantially which ultimately violates the economic rights of non-indigenous

⁹ Id, Art. 2&39.

¹⁰ FDRE Cons. *Supra* note 2, Art. 40/ 3&4 and Art. 4 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) clearly states that everyone has the right not to be forcibly evicted from his or her housing, land and property and shall be protected against arbitrary displacement.

rural peasants. In this case, one can remember the repeated forceful eviction of non-indigenous peasants from their landholding in Benishangul-Gumuz in 2013, 2017, 2019, 2020, and 2021 in Metekel and Kemashi Zonal Administration.¹¹

Following the problems mentioned above, the objectives of this article are to scrutinize land law and policy response towards the protection of arbitrary eviction of rural peasants from their land holding right under the ethnic federal system in general and in BGRS in particular. Based on this general objective, specifically, this article explores the impact of indigenous and non-indigenous dichotomy on land rights of rural peasants, and the rationale behind the dichotomy. To achieve these objectives, a qualitative research approach was used. Both primary and secondary data were collected. As a primary data source, key informant interviews with the non-indigenous rural peasants who are residents of BGRS, arbitrarily evicted persons, indigenous people to the region and government officials were interviewed. Respondents from indigenous/owner and non-indigenous/non-owner to the region were purposively selected who were old enough to have direct experience. In-depth and key informant interviews were also conducted with the leaders of the association formed to represent the arbitrarily evicted population and who were therefore in a position to provide insights into the subsequent attempts at dispute resolution. Representatives of the displaced non-indigenous ethnic group also provided extensive documentation relating to their appeals to government officials and the government's attempts to resolve the dispute. This written documentation constitutes a vital source of data enabling triangulation of interview testimony.

¹¹ FDRE Cons., *Supra* note 2 Art. 40/3& 39 & Assefa Fiseha, 'Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia ', *Utrecht Law Review*, Vol. 13, Issue 1, (2017), pp, 170-189, p. 171 [hereinafter Fiseha, 'Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia ']

This article contains three sections. The first section began by scrutinizing the Ethiopian Ethnic Federal System, the essence of indigenesness in international and regional contexts, and the genesis of indigenes and non-indigenes dichotomy under the Ethiopian ethnic federal system. The second section depicts protections of non-indigenes rural peasants under the Ethiopian Constitution, constitutional design and recognition of non-indigenes peasants in BGRS and the nature of land ownership and its implication on recognition of land rights. The third section explores the constitutional right of freedom from arbitrary eviction of non-indigenes peasants, and then follows the conclusion.

1. The Ethiopian Ethnic Federal System: An Overview

Since 1995 Ethiopia established an ethnic federal system that gave full recognition to ethnic autonomy and at the same time aiming to maintain the unity of the state.¹² Regional states are structured based on ethno linguistic criteria in order to accommodate and empower various NNPs primarily through the provision of territorial and political autonomy to geographically concentrated ethnic groups.¹³ The major ethno-national groups have established their regional states and the Constitution mandates them to design ways to realize their own socio-cultural, economic and political rights including the right to both internal and external self-determination.¹⁴ As provided under the Establishment of National/Regional Self-Government Proclamation during the transitional period and the FDRE Constitution the internal aspect of self-determination within the federation signifies the right to use and develop one's language, promote one's culture, and history (socio-

¹² FDRE Cons., *supra* note 2, Art. 39&47.

¹³ *Id.*

¹⁴ *Id.*, art 39.

cultural self-determination).¹⁵ Besides, NNPs of Ethiopia have the full measure of self-government that allows each people the right to establish organs of the state to run their affairs in the territory they inhabited and to be represented fairly in the organs of the federal government (political self-determination).¹⁶ However, the issue of land resources is not explicitly dealt with under article 39 of the FDRE constitution (economic self-determination). However, when one read the provisions of article 40 of the same Constitution and the Preamble of proc. No. 7/1992 which provided for the Establishment of National/Regional Self-Government, economic self-determination is recognized for NNPs-Ethiopian ethnic groups, giving a clear understanding of the economic self-determination of ethnic groups. First, land resource is recognized as a group right by proclaiming land as a common property of NNPs of Ethiopia, and autonomous ethnically structured states administer this common property of land resource. Second, ultimate sovereign power is given to those primordially identified ethnic groups in their region by allowing self-rule to exercise their affairs. Third, when one ethnically arranged state wants to secede from the federation, it can exercise without any limitation which refers to the external aspect of self-determination. When we come to each polity state all socioeconomic and political self-determination is given for the indigenous ethnic group to the concerned ethno-linguistically arranged region. For instance, in the Afar and Harari revised Constitutions, the internal and external aspect of self-determination is given for Afar and Harari ethnic group respectively.¹⁷ Oromia and Somali revised Constitutions

¹⁵ Id; The Transitional Government of Ethiopia a proclamation to provide for the establishment of National/Regional Self-Governments Proc. No 7/1992, *Federal Negarit Gazeta* (1992), preamble, para 3.

¹⁶ FDRE Const., *supra* note 2, Art. 39.

¹⁷ Afar Regional State Revised Constitution, preamble para, 1-5 &Art. 8,39, Hareri Revised Regional Constitution, Art. 8&39.

followed the same approach.¹⁸ However, non-indigenous ethnic groups are excluded from both aspects of the rights to self-determination. Even they fail to be given recognition of their existence.

Even the naming of regional states, eight of them out of the eleven Regional States (Afar, Oromo, Amhara, Tigray, Somali, Benishangul-Gumuz, Sidama and Harar), directly represent specific ethnic groups which manifestly shows the arrangement is ethnic federalism.¹⁹ Hence, NNPs of Ethiopia are a group of people who share a common culture or similar customs, mutual intelligibility of language, belief in common or related identities, a common psychological makeup, and inhabit an identifiable contiguous territory which are essential components of the formation of ethnicity.²⁰ Article 46/2 of the FDRE Constitution provides that the federation units are delimited on the basis of the settlement patterns, language, identity and consent of the peoples concerned. That is why ethnicity is at the center of restructuring federal, regional and local governments under the Ethiopia federal system.

So, the ethno-national group that enjoys autonomy in the form of self-rule identifies itself in exclusion to non-indigenous ethnic group within territory they control.²¹ The key mechanism for the realization of the right of self-administration of an ethnic group is giving land as a common property for the identified ethnic group which has collective identities. Regional states are usually perceived as an exclusively identified ethnic group's homeland. In this

¹⁸ The Oromia Regional State Revised Constitution, Proclamation No.46/2001, [(hereinafter ORS Revised Cons.], preamble para 1 and Art. 2; The Somali Regional State Revised Constitution, [hereinafter SRS Revised Cons.], preamble, Para 1 and art. 2.

¹⁹ Jon Abbink, 'Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism', *Journal of Contemporary African Studies*, Vol.24, No. 3,(2006), p. 398.

²⁰ *Id.*

²¹ FDRE Const., *supra* note 2, Arts. 46&39.

regard territorial self-rule reinforces a sense of empowerment for the dominant ethnonational group. However, it will have an exclusive meaning for non-indigenous peoples who are not members of an identified ethnic group in the region when they exercise their socioeconomic and political rights. This exclusivist conception of territory and transforming ethnonational group into a political majority in the constituent unit or at the local level pose a structural and systematically designed law and policy threat to non-indigenous ethnic groups leading to arbitrary eviction from their home and land. Undeniably, over the past three decades internal displacement and arbitrary evictions of non-indigenous ethnic groups in Ethiopia are the outcomes of such systemic dichotomy²² between the titular ethnonational groups and non-indigenous ethnic groups.

Under BGRS's revised Constitution, economic self-determination including the utilization and administration of the land resource is one aspect of the rights exclusively attached to indigenous nationalities.²³ This right is not extended to non-indigenous peoples which directly affect the nature of the ownership and related land right of non-indigenous peasants. Therefore, a land resource found in Benishangul-Gumuz Region is given to the identified indigenous nationalities. In such circumstances, all land-related rights were delineated and implemented based on the interest of indigenous nationalities.

1.1. The Essence of Indigeneity under International Law

Under international law, one of the intricate and problematic concepts is who indigenous peoples are? And who are not non-indigenous? And what are the

²² Assefa, *supra* note 11, p. 178.

²³ BGRS Revised Cons., *supra* note 8, Arts. 2 and 39.

parameters to determine those peoples?²⁴ Though various legal experts have proposed several definitions, universally accepted and obligatory legal definitions do not yet exist.²⁵ In such circumstances, it is much more appropriate and helpful to attempt and outline the major features which help us identify who indigenous peoples are at the international and regional level and equally to understand the non-indigenous peoples. The notion of 'indigenship' in international law has been largely associated with the rest of colonialism.²⁶ Jose Martínez-Cobo, who was the UN special rapporteur, offered a description of indigenous peoples which is usually accepted and frequently cited by many legal experts, scholars and activists. He provides that:

²⁴ Ojulu, Ojot, *Large-scale Land Acquisitions And Minorities/Indigenous Peoples' Rights under Ethnic Federalism in Ethiopia: A Case Study of Gambella Regional State*, (PhD Thesis, University of Bradford, Unpublished 2013, p.42).

²⁵ *Id.*, p. 42.

²⁶ See also Art. 1(b) of the Indigenous Tribal Peoples Convention, 1989 (No.169) Adopted on June 27, 1989 by the General Conference of the International Labour Organization at its seventy-sixth session, entry into force: September 5, 1991(hereinafter Indigenous Tribal Peoples Convention, 1989). As defined in the 2003 report of the African Commission which the AU endorsed in 2005, the term 'Indigenous' does not mean first habitants in a country or on the continent 'as natives understood in the Americas or Australia but those people who are dominated and exploited due to colonization. Art. 1 (b) of the 1957 and 1989 Indigenous and Tribal populations Convention reads as "members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status , live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.". See also the UN Declaration on the Rights of indigenous Peoples[UNDRIP] preamble para.6 where the concept of Indigenous peoples is understood concerning dispossession of their land by colonization which is not existent in Ethiopia as indicated in this article.

*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions and legal systems.*²⁷

Based on the above parameters, to be considered as indigenous peoples, there must be a historical continuity between peoples under consideration and societies that existed before the invasion of external forces. Further, in order to understand the historical continuity of indigenous peoples, the group needs to show one or more of the following factors: a) full or partial occupation of ancestral lands; b) common ancestry among the original occupants of these lands; c) having distinct culture or way of life and language, e) residence in certain parts of the country, or in certain regions of the world; f) other relevant factors.²⁸

The International Labour Organization (hereinafter ILO) Convention No.169 of June 27, 1989 tries to pinpoint the major feature of indigenous peoples. This Convention emphasizes that indigenous peoples have their descent from the populations which inhabited the country, or a geographical region to which the country belongs at the time of conquest or colonization or the establishments of present state boundaries and who, irrespective of their legal

²⁷ Martinez Cobo's definition first appeared in 1986 in his study of the problem of discrimination against indigenous populations (UN Doc E/CN.4/Sub.2/1986/7).

²⁸ *Id.*

status, retain some or all of their own social, economic, cultural and political institutions.²⁹

According to the UN Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP), there are two key components in the description of indigenous peoples: those are the original residence of the land and their means of livelihood highly tied with the land resource such as using a land resource for herding, agriculture, hunting and fishing.³⁰ UNDRIP recognized that indigenous peoples have suffered from historic injustices due to colonization and dispossession of their lands, territories and resources, thus preventing them from exercising in particular their right to development by their own needs and interests.³¹ From this instrument one can appreciate that indigenous peoples' rights to lands, territories and natural resources carry far-reaching implications in every aspect of human development. To effectively realize their rights, UNDRIP acknowledges that indigenous peoples have the right to self-determination in all affairs and it is considered a corner-stone of their right to exercise their affairs.³² The other essential point of this instrument is that indigenous peoples have equal rights to non-indigenous peoples.³³ United Nations General Assembly (UNGA) has a fundamental declaration that acknowledges indigenous peoples have the right to self-determination in all affairs and they are considered as decisive of their right at international level. This implies that giving special treatment and legal protection for indigenous communities aims to enhance their rights rather than create new rights. Hence, by taking into account the historical experience of

²⁹ Indigenous Tribal Peoples Convention, 1989, *supra* note 26.

³⁰ United Nations Declaration on the Rights "Indigenous peoples", Res.61/295 General Assembly on 13 September 2007, Art. 26 (hereinafter United Nations Declaration on the Rights of Indigenous Peoples), preamble para, 2-6

³¹ *Id.*, preamble para, 2-6

³² *Id.* Arts.3&ff.

³³ *Id.*, preamble para. 2.

discrimination, recognition of their rights overall is fully justified from the ambits of equality and non-discrimination perspective that is enshrined under international human rights instruments. However, it does not clearly explain who indigenous peoples are within a given nation; rather, it outlines the major parameters to identify indigenous peoples from the rest of the existing community in the world. Besides, it does not show up to what extent the utilization of natural resources by indigenous people exercised or does the recognition of the right over natural resources implies the exclusion of the rest of communities. Lastly, the declaration has no legally binding force on the state parties which highly resembles the imposition of political commitments. Therefore, pertaining to the above assumption all Indian and White peoples residing in South Africa during the colonial operation have been considered non-indigenous people. In contrast, only Black South African peoples are indigenous in light of international laws.

Based on the above understanding in international law, one can claim that all Ethiopian NNPs are considered indigenous people.³⁴ Hence, Ethiopia is the only African country that was not colonized by any external body. Indeed, in Africa, there is no one ethnic group that can claim 'indigenesness' to be the African continent, and impossible to find a single group that could claim the status of 'indigenesness' people' to one African country due to colonization.³⁵ African peoples' history is characterized by massive

³⁴ Since the first 1957 Indigenous and Tribal Populations Convention which is revised in 1989, opted to define 'indigenous peoples concerning 'colonization' which is actually absent in Ethiopia, the Indigenous and Non-indigenous false dichotomy does not have a practical and historical justification existing in Ethiopia and therefore all Ethiopians are indigenous. The enclosure of the preceding false dichotomy under the BGRS constitution seems intentional with no reason just to emasculate the socioeconomic rights of the so called labeled non-indigenous Peoples.

³⁵ One can clearly understand that No African Country has ratified the UN Declaration on the Rights of Indigenous Peoples nor the African Charter on Human and Peoples

migrations and inter-ethnic marriage relation that making it difficult to determine which group might be descendants of the first inhabitants.³⁶

1.2 Regional and National Legal Instruments on the Essence of Indigeneity

The European Union (hereinafter EU) is committed to promoting human rights, and democratization and the development fight against racism and discrimination lie at the heart of that commitment.³⁷ The union recognizes that many indigenous peoples live in developing countries where they often experience economic, social and political marginalization and are exposed to more recurrent human rights violations than non-indigenous people.³⁸ To realize the commitment to promote human right, the EU Main Guidelines for Support to Indigenous Peoples recognize the importance of "self-development" provided that indigenous peoples have the right to be able to develop their own socioeconomic and political affairs unlike that of the UNDIPR which focus on the right to self-determination.³⁹

On the other hand, the formal legal recognition and status granted by Asian states to indigenous peoples vary from country to country.⁴⁰ Though almost

Rights does expressly include indigenous peoples within its ambit except a working group on Indigenous peoples/communities in the continent.

³⁶ Muluneh Kassa, 'The Paradox of Administration of Nationalities in Post-1991 Ethiopia: The Case of Benishangul Gumuz Regional State', *International Journal of Advancements in Research & Technology*, Vol. 6, Issue 2, (2017), p.39.

³⁷ The European Union: Human Rights and the Fight Against Discrimination, Pamphlet No. 14, at <https://www.ohchr.org/Documents/Publications/GuideMinorities14en.pdf>, (last accessed on May 14/2022).

³⁸ European Commission,, *Implementing EU External Policy on Indigenous Peoples*, joint staff working document, Brussels, 2016, p.7-8.

³⁹ The European Commission Working Document "On Support for Indigenous Peoples in the Development Cooperation of the Community and Member States, 1998.

⁴⁰ *Id.*

all states in Asia voted for the adoption of the UNDRIP many of them refuse to respect and implement the indigenous peoples' collective rights, especially to their lands, territories and resources and to self-determination because several Asian states are underpinned by legal systems inherited from colonial history that does not recognize the historical customary land tenure system and use of land resources that they have nurtured and managed for centuries based upon their inherent rights and tradition.⁴¹ Due to this challenge different Asian governments refer to the peoples concerned like 'aboriginal tribes' (Taiwan), 'aborigines' (peninsular Malaysia), 'cultural minorities' (Philippines), 'hill tribes' (Thailand), 'minority nationalities' (China), 'natives' (Malaysian Borneo) and 'scheduled tribes' (India) rather than using the term indigenous in their domestic laws.⁴²

Like that of the Asian continent, identifying indigenous peoples in Africa based on an international perspective remains a contested notion and inappropriate due to the history of colonization.⁴³ Traditionally, people of Africa remain tied to their land resources, with distinct ethnic groups demanding certain terrain.⁴⁴ Migration of Peoples from one region to another in reaction to climatic change and conflict has been the other salient feature of the African community for centuries. Colonization imposed by European-dominated political and economic systems on populations indigenous to the territory of Africa subsequently results in marginalization via colonization.⁴⁵

⁴¹ European Commission, Implementing EU External Policy on Indigenous Peoples, Joint staff working document, Brussels, 2016, p.7-8.

⁴² Asia Indigenous Peoples Pact, Overview of the State of Indigenous Peoples in Asia, (2014), p. 2.

⁴³ Laura A. Young and Korir Sing'Oei, Access to Justice for Indigenous Peoples in Africa, p.90.

⁴⁴ *Id.*

⁴⁵ Imai Shin and Buttery Kate, 'Indigenous Belonging: A Commentary on Membership and Identity in the United Nations Declaration on the Rights of Indigenous People', p.4

Further, except Ethiopia and Liberia, all African countries were colonized.⁴⁶ The facts mentioned above made it difficult to apply the concept of indigenous people's rights under international frameworks of indigenous people's rights in African context.⁴⁷

Applying the international and regional definition of indigenes under the Ethiopian ethnic federal arrangement is not much complicated.⁴⁸ Hence, Ethiopia was never colonized and did not share the history of colonialism like many African countries making the direct applicability of indigenous peoples' rights as framed in the international arena.⁴⁹ Muluneh Kassa explains that every Ethiopian is an indigenous person.⁵⁰ Wubshet also argues that though some regions try to understand some ethnic nationalities as being indigenous based on ethnolinguistic federal arrangement, the concept of indigenes is irrelevant in Ethiopia.⁵¹ Hence, currently, all Ethiopian NNPs have the right to self-determination and have their region.⁵² There are no legally recognized indigenous nationalities for a certain region in Ethiopia based on the international understanding of indigenous peoples governing legal frameworks.⁵³ Instead, when ethnic federalism was established since 1995, legally the FDRE constitution generously recognized the right to self-

⁴⁶ *Id.*

⁴⁷ Ojulu, *supra* note 2, p.43.

⁴⁸ See the meaning given to ‘indigenous people under the first 1957 and 1989 revised convention, Indigenous and Tribal Populations Convention, *supra* note, 26.

⁴⁹ *Id.*

⁵⁰ Muluneh, *supra* note, 36, p.40

⁵¹ ዉብሽት ሙላት, አንቅጽ ሰላሳ ዘጠኝ፣የራስን እድል በራስ መወሰንጥባቸው ለሌሎች አዲስ አበባ፣ ኢትዮጵያ፣ 2007 ዓ.ም ከገጽ 1-341፣ ገጽ 47 [ከዚህ በኋላ ዉብሽት ሙላት, አንቅጽ ሰላሳ ዘጠኝ፣የራስን እድል በራስ መወሰን].

⁵² *Id.*

⁵³ See the meaning given to ‘indigenous people under the first 1957 and 1989 revised Convention, Indigenous and Tribal Populations Convention, 1989, *supra* note 26.

determination for all ethnonational groups without any distinction.⁵⁴ Hence, there are three types of ethnic groups created within the country. The first category of ethnic groups refers to those who are politically cohesive in a nation but culturally separate even in language.⁵⁵ That is why except Gambella and South NNPs, Oromia, Amhara, Somali, Tigray, Afar and BGRS are predominantly composed of the dominant and large number of ethnic groups that gave rise to using their name to name the regional state.⁵⁶

The second category of ethnic group refers to recognized ethnic minorities with guaranteed cultural independence and other related rights within the dominant ethnic group.⁵⁷ That is why different regional constitutions allow establishment of special Woreda or Zonal administrations within their respective region.⁵⁸

The third category of the ethnic group is composed people that moved, over the last 150 years, from one ethnically autonomous region to the other region by resettlement program, economic, social or other pulling and pushing factors and their descendants.⁵⁹ In our case, they reside under one of the ethnically structured and territorial autonomous region/*kilil*. Regarding to this category of people many regional constitutions make a dichotomy by using

⁵⁴ FDRE Const. *Supra* note 2, Art. 39.

⁵⁵ Jürgen H.P. et al, 'The Concept of Ethnicity and its Operationalization in Cross-National Social Surveys', *Metodološki zvezki*, Vol. 7, No. 2, (2010), p. 111.

⁵⁶ Christophe Van Der, 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges ', *Journal of African Law*, Vol.59:No. 1, (2014), p. 153.

⁵⁷ *Id.*

⁵⁸ For instance the Kemisie Special Zone, Argoba Special Woreda within the Amhara region, The special woreda for Mao and Komo in BGRS and the Opo and Como special Woreda in Gambella Regional State.

⁵⁹ Jürgen et al, *supra* note 55, p.111.

the terms "we" and "others".⁶⁰ BGRS revised Constitution uses the terminology of indigenous and non-indigenous people dichotomy to the region. Based on this dichotomy, different scholars have put their conceptual definitions for these two groups of people. For instance, Van der Beken explains non-indigenous people as groups of people or individuals who moved to the region in more recent or past and to be seen as internal migrants to the ethnically arranged and autonomous region.⁶¹ Hence, the spirit of the FDRE Constitution assumes that all Ethiopian ethnic groups have their place of origin in a certain area of the country, which is located in one of the eleven regions.⁶²

The rational usage of the above terminology by scholars is not to show the international and regional understanding or identification of indigenous peoples from non-indigenous ones. Instead, when the federation units are structured ethno-linguistically, there are certain ethnic groups to which priority right is given to the assigned region. Some peoples have inferior rights and are not a member of ethnically arranged region in all socioeconomic, political and cultural rights.⁶³ Hence, the false dichotomy between indigenous/non indigenous peoples in BGRS which emanated from the FDRE constitution clearly contradicted the international legal framework and understanding of the concept of indigenous people.

Therefore, for this article, non-indigenous peasants are peoples or communities who moved into the territory of BGRS and other regions by

⁶⁰ See *supra* note 18.

⁶¹ Christophe Van Der, 'Ethiopian Constitutional protection of Ethnic minorities at regional level', *African Focus*, Vol.2. No. 1(2007), p.16.

⁶² *Id.*

⁶³ Beza Desalegn, 'Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus Adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia ', (2015), p. 38.

different pulling and pushing factors, and government settlement programs to sustain their livelihood or groups which have moved into this territory in exercising their freedom of movement or forced to move and become a part of this territory, and sustain their livelihood based on agriculture.

Taking the above working definition, article 2 of BGRS's revised Constitution conferred the term *indigenous nationalities*' to Berta, Gumuz, Shinasha, Mao and Como ethnic groups without giving any reasons for the usage of the terminology. Such categorization makes it difficult to assert whether such terminology covers the protection accorded to indigenous peoples within the international and regional frameworks. However, principally, the application of the terminology of indigenous peoples in the BGRS is far more extensive than the simple usage of the language. This is true as article 39 of the revised Constitution of BGRS gives the right to self-determination for five indigenous nationalities.⁶⁴ Besides, ownership right over the region is reserved for the above five identified ethnic groups-nationalities only.⁶⁵ Hence, such systemic and deliberately designed exclusion affects non-indigenous peasants' land right and freedom from arbitrary eviction, and impairs enjoyment of equal rights at the national and regional level.

1.3 Rasion D'etre of Defining 'Indigeneity'

As discussed above, despite the problem of adopting a uniform definition of "indigenous peoples", the attempts of defining and identifying by different scholars, and regional and international instruments have almost the same objective. They assumed that several of indigenous peoples are economically poor and live in inaccessible, marginal and risk-prone rural surroundings

⁶⁴ BGRS Revised Cons., *supra* note 8, Art. 39.

⁶⁵ *Id.*, Art. 2.

because of historical facts and colonization.⁶⁶ supposedly, many of them lack fundamental rights and freedoms, access to basic facilities as well as opportunities to participate in policy-making; their indigenous economies often depend on subsistence and characterized by limited access to land and other natural resources.⁶⁷ So they face discrimination, cannot participate fully in public life, and do not maintain their distinctive identities, cultures, languages and ways of life like the rest of world's community.⁶⁸ Hence, the aim is to push states to support and protect the different aspects of indigenous people's rights to overcome the historical injustices and current patterns of discrimination so that they can equally exercise their rights like that of non-indigenous peoples.⁶⁹

2. Protection of Non-indigenous Peasants under the Ethiopian Constitution

Since the adoption of ethnic federal system in post-1991, Ethiopia was structured into nine regions/*Kilil*; now, they are increased to eleven regions, eight of which had specific tribal designations to the specific region. By using the idea of ethnic homelands with political and property rights covenants, the government exceeded the threshold for a redemptive use of ethnicity to build unity in diversity in the Ethiopian state. Hence, the *Kilil* concept incubated three serious dangers that would present challenges for the realization of the rights of non-indigenous peoples rather than accommodating and protecting it. First, it creates dual citizenship problems and "decentralized despotism" in the Kilils, with a serious implication on people who are unable or unwilling to

⁶⁶ FAO Policy on Indigenous and Tribal Peoples, (2010), p. 7.

⁶⁷ *Id.*

⁶⁸ The United Nations Development Group's Guidelines on Indigenous Peoples' Issues, Inter-Agency Support Group (IASG), (2009), p. 12.

⁶⁹ *Id.*

claim belongingness to any tribal grouping.⁷⁰ Second, it installs systemic marginalization of all Ethiopians who do not squarely fit into the characterization in country's laws and policies that one must belong to an identified ethnic group. Third, it brings spatial disintegration and developmental dysfunction of the country as a whole.⁷¹

First, the primordial identification of ethnic groups in Ethiopia predominantly depends on ethnolinguistic criteria to delineate regional boundaries designed to create a perfect fit between ethno-linguistic groups and territorial boundaries. Consequently, the FDRE constitution gives the identified and regionally structured ethnic group the right to administer its own affairs including natural resources and self-determination.⁷² That is why the sovereign power is given to ethno-linguistically arranged states rather than individual citizens.⁷³ Ethiopian federalism implies that individuals are first and foremost citizens of ethnolinguistic structured regions rather than that of Ethiopian which makes an individual to claim or benefit from group rights such as land resources when he/she becomes a member of one of the ethnically arranged *Kilil*.⁷⁴ Within ethnically arranged federation units, each ethnic group has its home region. Consequently, non-indigenous peasants have no or weaker claim of their land right than indigenous ethnic groups and nowhere were their issues addressed.⁷⁵ The spirit and operational reality of the

⁷⁰ Assefa Mehretu, Ethno symbolism and the Dismemberment of the State in the Horn of Africa: The Ethiopian Case of Ethnic Federalism , *International Conference on African Development Archives*, (2009), p.132.

⁷¹ *Id.*

⁷² FDRE Cons., *supra* note 2, Art.46.

⁷³ Alemante G. Selassie, ' Ethnic Federalism: Its Promise and Pitfalls for Africa', (2003), p. 55.

⁷⁴ Tom Lavers, 'Responding to Land Based Conflict in Ethiopia: The Land Right of Ethnic Minorities Under Federalism', (2018), p.477.

⁷⁵ Christophe Van der Beken, 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges',(2015), p.160.

FDRE constitution are designed for empowering territorially concentrated ethnonational groups without considering non-indigenous ethnic groups, which imposes a dogmatic conception of territorial autonomy.⁷⁶

The second paradox is that giving land as common property for NNPs and the right to self-determination excludes the non-indigenous ethnic group from the benefits of land rights arising from the nature of common property. The third paradox is that the power of land administration is given to territorially self-autonomous ethno-linguistically arranged *Kilil*. Therefore the land resource in the region is believed to be solely for indigenous peoples, which does not have to be shared with non-indigenous peoples. That is why the repeated eviction of non-indigenous peasants of Amhara ethnic groups from the Oromia region started in the post-1995, which reportedly happened with the participation of ethnically intoxicated local administrative organs.⁷⁷ Arbitrary eviction of non-indigenous rural peasants in BGRS has still continued.⁷⁸ Nevertheless, the federal government has no legal mechanism to see to it that all federal land policies and laws, and human and democratic rights of rural peasants are properly and uniformly applied throughout the country.

2.1. Constitutional Design and Recognition of Indigenous-Non-Indigenous Disparity in BGRS

⁷⁶ Melese Chekol, 'Inclusion or Exclusion of Exogenous Political Communities at Local Level in Ethiopia', *Research & Reviews: Journal of Social Sciences*, Vol. 3 | Issue 3 |, (2017), p.200.

⁷⁷ Jon Abbink, 'Ethnic-Based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years', *Journal of Eastern African Studies*, Vol. 5, No. 4, (2011), p.605.

⁷⁸ For instance, arbitrary eviction had happened in Benishangul-Gumuz Regional State during 2017- 2021.

The Ethiopian regional states have the competence to adopt their Constitutions to regulate the specific issues in context.⁷⁹ BGRS first adopted its Constitution in 1996 and then revised it in 2002. Gauging the BGRS constitution concerning the recognition of ethnic diversity, it is worth identifying the terms "peoples", "other peoples" and "indigenous nationalities" as used in the text of the Constitution. For instance, Article 9 of the Constitution uses the term peoples in ascribing sovereign power to the regional state by stating that "the peoples of the BGRS shall be the ultimate authority of the regional state." Again if one looks at the preamble of the Constitution it begins with the statement: "We, the nationalities and peoples of the region of Benishangul-Gumuz..." On the contrary, Article 2 sets a clear distinction between indigenous nationalities-the "owners" of the regional state, and other peoples, who are recognized as residents of the region, apparently considered guests hosted by the former. This is further corroborated by Article 39 of the Constitution which delineates the various aspects of the right to self-determination, extending it only to the indigenous nationalities.⁸⁰ The same is once again true if one goes to examine the organization of the region's Constitutional Interpretation Commission which is organized with a total seat of twenty members in which each indigenous nationality sends 4 representatives.⁸¹

From the above constitutional provisions it is plausible to argue that the Region's Constitution makes an intentional stratification between indigenous nationalities and non-indigenous communities of the region. The Constitution uses "indigenous nationalities" for the region's native identities and "other peoples" for the non-indigenous communities. In the same way, it is possible to argue that, when Article 9 of the Constitution uses the term "peoples" to

⁷⁹ FDRE Cons. *supra* note 2, Art. 50.

⁸⁰ BGRS Revised Cons., *supra* note 8, Art. 39.

⁸¹ *Id.*, Art.71.

confer sovereign power over the region, it includes the indigenous nationalities and non-indigenous communities. Affirming this stance, Article 45 (3) of the Constitution stipulates the promulgation of additional laws following the Constitution to protect the special need for representation of the non-indigenous communities in the region. The recognition given to the non-indigenous communities can also be firmly argued from the preamble of the Constitution which mentions the region's “nationalities and peoples.”

However, article 2 recognizes indigenous nationalities to own the regional state, and Article 39 only permits indigenous nationalities to benefit from the right to self-determination in the region. Therefore, ethnically based federations are rendered 'false federations', in which the socioeconomic and political consequences to the polity are calamitous. Such a situation will breed all sorts of inter-ethnic disharmony and mistrust as there would not be fair resource and power sharing between indigenous and non-indigenous ethnic groups within the region. This will also stir up nationalist sentiments among territorially concentrated ethno-national groups which their elites and nationalist leaders could use to stage secession claims by excluding non-indigenous ethnic group in the development of locally specific socio-political lifestyle such as self-identification with the local language, creation of ethnic-based political parties, resource utilization and so on. One of the natural consequences of ethnonational federations is that all questions of power and resource sharing which are federal political matters automatically become ethnic questions. That is why the non-indigenous ethnic groups repeatedly suffer from arbitrary eviction from their home and land in the region.⁸²

⁸² There had occurred massive arbitrary eviction and killing of the non-indigenous rural peasants of the Amhara and Agewu ethnic group in the Benishangul-Gumuz Region in 2013, 2017, 2018, 2019, and 2020.

2.2. Land Ownership and Its Implication on Recognition of Land Rights of the “Non-indigenous”

When the FDRE constitution was enacted in 1995 it declared that "... all rural and urban land, as well as all natural resources, is exclusively vested in the state and the people of Ethiopia. The land is a common property of the NNPs of Ethiopia and shall not be subject to sale or other means of transfer."⁸³ Depending on the above constitutional principle, the nature of the current land ownership and related land rights of non-indigenous peasants need to be clarified. Ownership right over land resources is given to the ethnically autonomous state and the peoples of Ethiopia. At the same time it declares that land is the *common property of NNPs of Ethiopian ethnic groups*.⁸⁴ Before addressing the land rights of non-indigenous peasants, it is critical to understand state and people's ownership. Here there are two possible arguments raised by different scholars. Many of them favor conceptualizing land ownership as being under State ownership because the state acts on behalf of the people.⁸⁵ Others treated land as being under joint ownership of the state and people.⁸⁶ As noted by Damite, two possible meanings can be given to the state and people ownership.⁸⁷ Initially, it may be argued that there is no distinction between state and people and the Constitution uses these

⁸³ FDRE Cons., *supra* note 2, Art. 40.

⁸⁴ *Id.*

⁸⁵ Achamyeleh Gashu, *Peri-Urban Land Tenure in Ethiopia*, Doctoral Thesis in Real Estate Planning and Land Law, Royal Institute of Technology, (2014), p.10.

⁸⁶ Daniel W. Ambaye: Land Right and Expropriation in Ethiopia, *Springer International Publishing*, (2015), p.4; Devereux Stephen et al, 'Too Much Inequality or Too Little? Inequality and Stagnation in Ethiopian', *Institute of Development Studies Bulletin*, Vol. 36 No. 2, (2005), p.121.

⁸⁷ Melesse Damite, as cited in Brightman G/Michael, *The Role of Ethiopian Rural Land policy and Laws in Promoting the Land Tenure Security of Peasants: A Holistic Comparative Legal Analysis* (LLM thesis, Bahir Dar University, School of Law, (2013).

terms to mean that land is a public property. The second thought is that the Constitution considers state and people separate entities so that land can be owned jointly. Here, the logical question raised is what is joint ownership which is owned by the above two legal entities? Joint ownership right denotes two or more persons persons jointly exercise, over the same object, all elements of ownership right.⁸⁸ Hence, if any benefit accrues from land resources, the concerned groups of NNPs of Ethiopia and the state must share the benefit. However, these scenarios in democratic government complicate the function and relationship of the state and people.

The nature of land ownership resembles public ownership. First, article 89/5 FDRE Constitution provided that the "Government must hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development." Second, the constitutional prescription regarding acquisition of land by private investors based on payment arrangements and without affecting the common ownership rights of NNPs of Ethiopia signify that the nature of ownership of land is public ownership.⁸⁹

The next issue worth clarification is the message of common property and who are NNPs of Ethiopia who exercise common property rights over the land under the current Ethiopian federal arrangement. Exploration of the above two questions gives the response on the nature of ownership issue on the one hand and land rights of non-indigenous peasants on the other hand. As, discussed above, to understand the land right of non-indigenous peasants the prime task is who are NNPs of Ethiopia under the ethnic federal system? The cumulative reading of article 39/5 and the preamble of the FDRE Constitution, NNPs of Ethiopia are a group of people formed based on their

⁸⁸ Daniel Behailu, Transfer of Land Rights in Ethiopia towards sustainable development policy framework, *Eleven International Publishing*, (2015), p.185

⁸⁹ FDRE Cons., *supra* note 2, Art. 40/6.

common language, culture or similar or customs, having a belief in common or related identities, common psychological makeup, and who inhabits an identifiable and predominately live on contiguous territory. This group of people owned land resources and land is *undivided common property of groups of NNPs in Ethiopia*.⁹⁰ Here one can understand land ownership is a group right and impossible for NNPs of Ethiopia to directly control and administer the land resources individually rather than exercise via ethnic-based regional governments. This depicts that an individual who belongs to NNPs in a certain region will have ownership right on land and can exercise his/her land right.

Following the identification of the groups of people who owned land, the next logical question is can non-indigenous ethnic groups residing in the federation unit claim membership to a group and benefit from the common property of land resource of NNPs of Ethiopia. Hence, the concept of common property is tied to group membership, it is not *everybody's property*; rather, it implies that the potential resource users can exclude those who are not members of group owners.⁹¹ In other words, it refers to a resource owned collectively by all community members in which all members have equal rights to use the resource and the right to exclude non-members.

In general, the provision of the FDRE constitution regarding land rights lack clarity and have inherent structural problems to include and balance the land rights of a non-indigenous ethnic group with the group right of NNPs of Ethiopia over land resource, that has contributed for arbitrary eviction of non-indigenous peasants. First, the existing land resource is found in an ethno-linguistically arranged state on the one hand, and the common property of

⁹⁰ *Id.*

⁹¹ Richard C. Bishop & S. V. Ciriacy-Wantrup, 'Common Property as a Concept in Natural Resources Policy', *Natural Resources Journal*, (1975), Vol. 15, iss4/7, p.715.

those ethno-linguistically identified NNPs of Ethiopian ethnic group on the other hand. Second, the primordial identification of NNPs of Ethiopian ethnic groups creates an ethnic boundary that excludes the non-member of the identified ethnic groups.⁹² Third, ethno-linguistically identified NNPs of the Ethiopian ethnic group have ultimate sovereign power over their affairs, including land resources. Such intricacy emanates from the definition given for NNPs and the territorial implications of ethnic federalism introduced in the 1990s.⁹³

However, when one carefully scrutinizes the design of the Constitution of each regional state there is a direct distinction and definition given for the indigenous and non-indigenous ethnic groups regarding different socioeconomic and political rights. Hence, establishing an ethnic federal system was designed to decentralize power and resources and resolve the age-old questions for greater inclusion of different ethnic communities in the economic and political affairs of state institutions in Ethiopia.⁹⁴ This decentralization of power would empower ethnic groups to determine their destiny via the right to self-determination freely. Therefore, giving land as a common property of NNPs of Ethiopia and administration and utilization of land resources can find a concrete expression through an ethnically autonomous regional state.⁹⁵ For example, Article 8 of the revised Constitution of Oromia grants sovereign power exclusively to the "*people of the Oromo Nation*." Article 39 of this Constitution reserves the right to self-

⁹² Henry E. Hale, 'Explaining Ethnicity', *Comparative Political Studies*, Vol. 37 No. 4, (2004), p. 460.

⁹³ Lavers, *supra* note 74, p.463.

⁹⁴ Tilahun Weldie Hindeya, 'Large-scale agricultural land acquisitions and Ethiopia's ethnic minorities: A test for the rule of law' *African Human Rights Law Journal*, Vol. 18, (2018), p.349.

⁹⁵ *Id.*

determination to the “*people of the Oromo nation*”.⁹⁶ This shows that the right to exercise self-determination including the land resource as provided by the regional constitution is reserved for the “Oromo people”, excluding large numbers of non-indigenous ethnic groups from exercising the right to self-determination.⁹⁷ Similar provisions are also included in articles 9(1) and 39 of the Somali regional state Constitution.⁹⁸ Furthermore, article 46 of the Gambella Regional State Constitution identifies some ethnic groups as a “founder nation” of the region while the rest of the people are referred to as the “*non-founder nations*.”⁹⁹ As noted above, Article 2 of BGRS's revised Constitution has made a clear distinction between indigenous and non-indigenous ethnic groups in which ownership right for the region is given to the five indigenous nationalities by denying non-indigenous ethnic group. Here, the concept of ownership includes a bundle of rights. Ownership of the region is not only limited to giving a prerogative right on the indigenous nationalities' social and political rights based on the region's ethnolinguistic arrangement but also includes the prerogative rights of the indigenous nationalities on economic rights which basically assumes land resources. This right is further strengthened by Article 39 of the Constitution that unequivocally delimits the various aspects of the right to self-determination extending it only to the indigenous nationalities as it declares “ownership rights of land resource found in the region is given to indigenous nationalities to the region.”¹⁰⁰

⁹⁶ The ORS Revised Cons., *supra* note 18, preamble, para 1 and Art. 8.

⁹⁷ *Id.*, Art.39.

⁹⁸ The SRS Revised Cons., *supra* note 18, arta.9&39, preamble paras. 1-4

⁹⁹ The Gambella Peoples National Regional State Revised Constitution, Proc. No. 27/2002 [hereinafter GPNRS Revised Const.], Art. 46 (1).

¹⁰⁰ BGRS Revised Cons., *supra* note 8, Art. 39.

In the Ethiopian context, both internal and external aspects of self-determination are unconditionally included under article 39 of the FDRE Constitution. The former aspect of self-determination within the federation signifies the right to use and develop one's language, and promote one's culture and history (socio-cultural self-determination). Besides, NNPs of Ethiopia have the full measure of self-government that allows each the right to establish organs of the state to run their affairs in the territory they inhabited and to be represented fairly in the organs of the federal government (political self-determination).¹⁰¹ However, the issue of land resource is not explicitly dealt with in article 39 of the FDRE Constitution. However, when one reads the provisions of article 40 of the same Constitution economic self-determination is recognized for NNPs of Ethiopia. First, a land resource is recognized as a group right by proclaiming land as a common property of NNPs of Ethiopia and autonomous ethnically structured states administer this common property of land resource. Second, ultimate sovereign power is given for those primordially identified ethnic groups in their region by allowing self-rule to exercise their affairs. Third, when one of ethnically arranged state wants to secede from the federation, it can exercise without any limitation, which refers to the external aspect of self-determination.

In line with the constitutional principle that creates free access to rural land, the federal rural land administration and use proclamation declares that "peasant farmers and pastoralists engaged in agriculture for a living shall be given rural land free of charge" (Art. 5(1(a)). A person, above the age of 18 years may claim land for agricultural activities. This principle of free access to rural land has also been reproduced in the regional land laws.¹⁰² The

¹⁰¹ FDRE Cons., *supra* note 2, Art. 39.

¹⁰² See The Revised Tigray National Regional State Rural Land Administration and Use Proclamation, Proclamation No. 136/2007. Tigray Negarit Gazeta. Year 16 No.1.Art. 5(1); The Revised Amhara National Regional State Rural Land Administration and

conditions attached to this right are: first, the person must be willing to engage in agricultural activities. In other words, agriculture must be his/her main means of livelihood or profession. Secondly, s/he must reside where the agricultural land is located. Although this principle is not clearly seen in the FDRE Rural Land Administration and Use Proclamation (RLAUP), Regional RLAUPs have envisaged it.¹⁰³ Thus, age, residency and profession are the three important conditions to get rural land in Ethiopia. Since there is a shortage of agricultural land in rural areas, because of population pressure, giving land to those who live elsewhere (absentee owners) and those who earn income from other professions is not advisable. The criticisms raised against this rule are first, the principle of free access to rural land does not, in reality, work for the shortage of land in rural areas. Second, residency requirements in the law, land regulatory organs, government officials, and community use nativity as indigenes to the region based on the ethnic-based federal arrangement. Thirdly, the person requesting land must attain a majority, 18 years and above (Art.5) (1)(b).

Under the current ethnic federalism, each regional state is structured based on the criteria of ethnicity (language, identity and the like). The primary goals of regional state constitution including BGRS Constitution is designed to fulfil the interest of specific ethnic group- the so called indigenous ethnic group. Then, all regional laws, policies and institutional arrangements are designed in

Use Proclamation, Proclamation No. 133/2006. *Zikre Hig. Year 11, No.18*. Art. 5(2); Oromia Rural Land Use and Administration, Proclamation 130/2007. Art. 5(1); The Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation, Proclamation 110/2007, Debu Negarit Gazeta, Art. 5(1).

¹⁰³ See for example the Amhara National Regional State Rural Land Administration and Use Proclamation (hereinafter ANRS RLAUP) that uses the phrase “any person residing in the region...” as a condition to get agricultural land (Art.5(2), 6(1), 7(1); The Tigray National Regional State (hereinafter called Tigray RLAUP) uses similarly words like “any resident of the region” (Art. 5(1)

the interest of that specific ethnic group in the region. This arrangement in regional states would bring discrimination based on identity, i.e. discrimination against “non-indigenouness”.¹⁰⁴ The discrimination is manifested in various forms including denial of access to arable land the region, and exclusion with respect to various socio-economic and political rights.¹⁰⁵

The land right of NNPs of the region is one of the democratic right of ethnic groups.¹⁰⁶ Land resources are exclusively given to the region's regional state and indigenous nationalities.¹⁰⁷ BGRS rural land proclamation assures peasants, irrespective of whether (indigenous or non-indigenous), that they are able to access agricultural land through government allocation when they fulfill the requirement of age, interest to engage in agriculture and his/her means of livelihood depends on agriculture, and residency.¹⁰⁸ Here, beyond the two conditions attached under the FDRE RLAUP, various regional state rural land administration and use proclamations (hereafter Regional state RLAUP) added residence as a prerequisite to access arable land.¹⁰⁹ The reason that different regional states in general and BGRS RLAUP in particular attached the condition may emanate from scarcity of agricultural land in a rural area, so it may not be feasible to give land to those who are living somewhere else. Second, there may be a circumstance that people who have land in one region may move to the other region to claim an additional

¹⁰⁴ Tsegaye Regassa, 'Sub-national Constitutions in Ethiopia: towards Entrenching Constitutionalism at State Level, *Mizan Law Review*, Vol. 3 No.1, (2009), p.34.

¹⁰⁵ BGRS revised Cons., *supra* note 8, Art.11-44.

¹⁰⁶ *Id.*, Art. 40.

¹⁰⁷ BGRS revised Cons., *supra* note 8, art 40/3.

¹⁰⁸ Benishangul-Gumuz Amended Rural Land Administration and Utilization Proclamation No.152/2018, preamble para.5.

¹⁰⁹ See for instance Amhara Revised Rural Land Administration and Use Determination Proc. No. 252/2017, Art. 11.

plot of arable land. Despite the above two justifications the attached conditions have their inherent problems under an ethnic federal arrangement. Because when the regulatory organ of the regional state enacts and enforces regional laws they use "residency requirement by interpreting it as "indignity of a certain region" and deny land rights to peasants who are not indigenous to the region. Such types of the problem happened in BGRS in 2005,¹¹⁰ and also repeated in 2017.¹¹¹ The same problem happened in the former South Nation, Nationality and Peoples Regional State at Gura Farda Woreda in 2012 which resulted in thousands of non-indigenous peasants of the Amhara ethnic group in the region being officially evicted from their landholding right under the pretext of illegal occupation. So the implication of ownership to the region for the identified indigenous nationalities resulted in conceptualization of the existing land and related resources becoming the undivided common property of the five indigenous nationalities. The pretext of indigenous vs.non-indigenous ethnic group classification is used to exclude and undermine the right claimed by non-indigenous peasants and landholding right is given for indigenous peasants.¹¹²

The question here is whether it is possible to claim and enjoy land right without having ownership right over the land resource which identified ethnic groups in the region own. Here, land rights of non-indigenous peasants remain up to the mercy of the regional state and indigenous ethnic groups. The utilization and administration of land resource benefits are given to the concerned indigenous nationalities using the legal, political and regulatory institutions for their advantage. That is why Endrias Eshete noted that to

¹¹⁰ Daniel, *supra* note 86, p. 76.

¹¹¹ There were forceful eviction of non-indigenous peasants in Kamashi Zone, in Belo Jeganfoy Woreda.

¹¹² Interviewed Mr. Sintayehu Tadesse, Director of Benishangul-Gumuz Regional State Rural Land Administration and Use Directorate, March11, 2022.

confer the right to give sovereign power and self-determination up to secession for ethnonational group is to grant that a regional state's common property rights take priority over the property rights of non-indigenous peoples over land resources.¹¹³ On the same vein, under BGRS revised constitution, economic self-determination including the utilization and administration of the land resource is one aspect of the rights identified to indigenous nationalities as inferred from articles 2&39 of the regional revised Constitution.

However, this right is not extended to non-indigenous peoples which directly affect the nature of the ownership and related land right of non-indigenous peasants. In such circumstances, all land-related rights were delineated and implemented based on the interest of indigenous nationalities. Land resource found in BGRS is given to the identified indigenous nationalities. Therefore, the dilemma of land policy and land rights of non-indigenous peasants continued and the region has no mechanism to balance the land right claimed by non-indigenous peasants on the one hand and the group rights of indigenous nationalities over land on the other hand, which ultimately bring land tenure insecurity and ethnic conflict in the region.¹¹⁴ On the one hand, there is a direct contradiction between the universal principles of access to land and land rights of all Ethiopian peasants and the territorial implications of ethnic federalism on the other hand.¹¹⁵ Hence, when the group land rights of indigenous people contradict with the non-indigenous ethnic group rights, the constitution gave priority for the group rights of indigenous peoples since the

¹¹³ Endrias Eshete as cited in Lavers, *supra* note 74, p. 469.

¹¹⁴ Mesfin Gebremichael, *Federalism and Conflict Management in Ethiopia: Case Study of Benishangul-Gumuz Regional State*, (Submitted for the Degree of Doctor of Philosophy, University of Bradford, 2011), p.223.

¹¹⁵ Lavers, *supra* note 74, p. 469.

FDRE Constitution gives priority to group rights.¹¹⁶ The contradictions exposed non-indigenous peasants to insecurity, and are marginalized when the law operates on the ground via the functionary of ethnically arranged *kilili*.¹¹⁷ Non-indigenous Ethiopian peasants are floated with no homelands for exercising their land rights, unlike indigenous peasants, who exercise the full measure of their land right via the functionary of membership to a certain ethnic group.¹¹⁸ This is incompatible with the constitutionally recognized right in which every citizen has "...the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory and freedom of arbitrary eviction from their land holding."¹¹⁹ Even it discards the general notion of citizenship rights of an individual within the country.

3. Protection against Arbitrary Eviction

Before exploring the legal protection of unlawful eviction of non-indigenous peasants in our context, it is important to see what forceful eviction implies. The UN Committee on Economic, Social and Cultural Rights (CESCR) defines forced eviction as the: "*permanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*"¹²⁰ People are often left homeless and destitute, without means of earning a livelihood, or effective access to legal or other

¹¹⁶ FDRE Cons., *supra* note 2, preamble para. 1.

¹¹⁷ Beza, *supra* note 63, p. 39.

¹¹⁸ Assefa, *supra* note 70, p.7.

¹¹⁹ FDRE Cons., *supra* note 2, Art.41.

¹²⁰ General Comment 7, 'The Right to Adequate Housing (Art. 11.1 of the Covenant): Forced Evictions', United Nations Committee on Economic, Social and Cultural Rights, (1997), at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument).

remedies. Forced evictions are often associated with physical and psychological injuries with specific impacts on targeted ethnic groups, women, children, persons already living in extreme poverty and other marginalized groups.¹²¹ The practice of forced eviction denotes the involuntary removal of persons, families and groups from their property and land rights which brings global, regional and national crises on economic, social and fundamental human rights and freedoms.¹²² Freedom from forced eviction and reinforcing this substantive right are basic rights under different international instruments such as UDHR, ICCPR, CEDAW, and ICESCR.¹²³ Those different international instruments impose negative and positive obligations on the state parties including Ethiopia to protect individuals or groups of people from forceful eviction.¹²⁴ Ethiopia as a part of the international community ratified different international instruments which become part and parcel of the law of the land that deals with the prohibition of forceful eviction.¹²⁵

Hence, states are always legally responsible for forced evictions in their jurisdiction. Forced evictions can always be ascribed to states' specific decisions, legislation, or policies or the failure of states to intervene to halt forced evictions by third parties.¹²⁶ So when we come to our context as

¹²¹ Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997), Forced Evictions Fact Sheet No. 25, Rev. 1 (Geneva 2014).

¹²² *Id.*

¹²³ United Nations basic principles and guidelines on development-based evictions and displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18, (1997).

¹²⁴ Transparency International, 'Forceful Evictions: an Intersection between Corruption, Land and Human Rights: Case Study of the Kenyan Perspective', *African Journal of Land Policy and Geospatial Sciences*, (2018), p.104.

¹²⁵ FDRE Cons., *supra* note 118, Art.9/4.

¹²⁶ The Centre on Housing Rights and Evictions (COHRE), 'Successes and Strategies: Responses to Forced Evictions', Geneva, Switzerland, (2008), p.7

provided under article 9/4 of the FDRE constitution, Ethiopia ratified different international instruments which become part and parcel of the law of the land that deals with the prohibition of forceful eviction.¹²⁷ Beyond the international instruments, article 40/4 of the FDRE Constitution unequivocally prohibits forceful eviction. It states that “Ethiopian peasants have the right to...protection against eviction from their possession. The implementation of this provision shall be specified by law.”¹²⁸ Following this constitutional prohibition, all regional state constitutions incorporated provisions against forceful eviction of peasants from their landholding rights.¹²⁹

Freedom from arbitrary eviction needs early or structural prevention which involves the creation of regimes or norms and standards of behavior to prevent resource and identity-based conflict, when certain socioeconomic and politically concerned land laws and policies are enacted. However, the lack of inclusive national land policies and ill-defined land rights results in the violation of rural peasants' fundamental rights and freedoms of rural peasants, excluding different ethnic groups from the benefits of land ownership.¹³⁰ Hence, discrimination related to ethnicity and natural resources can be manifested in three forms. At an individual level, it concerns the behavior of individuals of one ethnic group that treats members of another ethnic group differently/harmfully and involves exclusion.¹³¹ From institutional level perspective, the policies of institutions dominated by politically autonomous ethnic groups and the behavior of individuals who implement these policies

¹²⁷ FDRE Cons., *supra* note 2, Arts. 9&13.

¹²⁸ *Id.*, Art.40/4.

¹²⁹ Amhara National Regional State The Revised Rural Land Administration and Use Determination Proclamation No.252/2017, Art.2/24.

¹³⁰ Robin Palmer, Literature Review of Governance and Secure Access to Land, *Governance and Social Development Centre*, (2007), p.5.

¹³¹ John Schelhas, 'Race, Ethnicity, and Natural Resources in the United States ', *Natural Resources Journal*, Vol.42, (2002), pp.726-728.

and control institutions may treat members of other ethnic groups differently.¹³² From structural perspective, discrimination signifies the policies designed for a certain ethnic group so that non-member ethnic groups become subordinate and protected differently/harmfully including arbitrary eviction.¹³³

Freedom from arbitrary evictions of non-indigenous rural peasants under an ethnic federal structure requires managing ethnic relations, fostering democratization, political representation, responding to population displacement, protecting human rights, ensuring good governance, exercising the responsibility to protect, and proactively prevent arbitrary evictions of non-indigenous ethnic groups of rural peasants. Hence, the government should refrain from taking any draconian legislative and administrative measures which result in the arbitrary eviction of non-indigenous rural peasants in the one hand, and impose positive obligation to espouse all possible programs that protect rural peasants from eviction by the government itself on the other hand.¹³⁴ States are always legally responsible for arbitrary evictions on their jurisdiction because it always originates from the specific decisions, legislation, or policies of states, or the failure of states to intervene to halt forced evictions by third parties.¹³⁵

The constitutional immunity against eviction given to the rural peasants signifies that every level of the government must protect peasants from the risk of losing their landholding right. This entails that existing land laws and policy must address and give legal guarantee for the land right of all rural

¹³² *Id.*

¹³³ *Id.*

¹³⁴ United Nations, Forced Evictions , Fact Sheet No. 25/Rev.1, New York and Geneva, (2014), p 4-10.

¹³⁵ The Centre on Housing Rights and Evictions (COHRE), '*Successes and Strategies: Responses to Forced Evictions*', Geneva, Switzerland, (2008), p.7.

peasants. The law must be able to counter actual and potential threats which amount to discrimination and harassment that lead to the eviction of rural peasants. On the other hand, when this right is violated, the state must provide all remedial mechanisms, irrespective of the nature of the land tenure system. Hence, the realization of the principles of free access to land and the protection of land rights of non-indigenous peasants can be achieved through constitutional guarantee, legislative protection, judicial application, and executive implementation.¹³⁶

Legislative protection ensures that no violation can occur when non-indigenous peasants exercise his/her land right. If there is a violation of rights, the application and interpretation of the land right of non-indigenous peasants according to the law give assurance that there is a possible legal remedy by taking one's case in courts of law. However, the question is can courts exercise their power to adjudicate cases relating to the violation of a constitutional right against arbitrary eviction of non-indigenous peasants under the current ethnic federalism. Suppose the answer is in the affirmative in which case executive implementation relates to the certainty that all judicial injunctions and orders will be complied with, leading to an actual redress for the victim and a real sanction on the perpetrator of the violation or abuse.¹³⁷

Hence, protection against arbitrary eviction of peasants needs detailed rules and regulations that answer specific issues which emanate from eviction. However, there are no detailed laws that address eviction and there is no legal mechanism has been devised for that purpose at both levels of

¹³⁶ Tsegaye Regassa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia', *Mizan Law Review*, Vol. 3 No. 2, (2009), p. 292.

¹³⁷ Yonas Girma, Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Critical Analysis of the Law and the Practice, (LL.M thesis, AAU, 2013), p.48.

governments.¹³⁸ Even the act of eviction itself is not acknowledged as a criminal act in the FDRE revised criminal code. However, when there is an expropriation for public purpose the affected persons have both substantive constitutional right and procedural mechanism designed to acquire "compensation commensurate to the value of the property."¹³⁹

Conclusion

The article examines land law and policy responses towards better protection of property rights and immunity against arbitrary eviction of non-indigenous rural peasants in BGRS in the context of ethnic federalism. The article reveals that though protection from arbitrary eviction of rural peasants from their land right is recognized without any dichotomy, the current land law and policy cannot protect these rights due to the intermingling of ethnicity and land resource under the current ethnic federal arraignment. BGRS Constitution noticeably differentiates between indigenous nationalities and other peoples of the region in terms of "ownership" of the region. The dichotomy of indigenous-non-indigenous nationalities excluded non-indigenous communities in the economic, political and socio-cultural rights responsible for arbitrary eviction. Such problems has occurred in BGRS in 2005, 2017, 2018, 2019, and 2020. The same problem happened in the former South Nation, Nationality and Peoples Regional State at Gura Farda Woreda in 2012 which resulted in more than thousands of Amhara ethnic groups in the region being officially evicted from their landholding right under the pretext of illegal settlement. By vesting the ownership of the region for the identified indigenous nationalities, the existing land and related resource become the undivided common property of the five indigenous nationalities.

¹³⁸ *Id.*, p.111.

¹³⁹ FDRE Cons., *supra* note 2, Art. 40/8.

The classification of the indigenous-non-indigenous ethnic group to the region is used to exclude and undermine the right claimed by non-indigenous peasants. The protection of non-indigenous rural peasants from arbitrary eviction in Ethiopia in general and within BGRS in particular remain appalling. There is arbitrary eviction and systematic discrimination of non-indigenous peasants in the region. Such systemic discrimination related to ethnicity and land rights can be manifested in three perspectives. From an individual perspective, discrimination refers to the behavior of individuals of one ethnic group that treats members of another ethnic group differently/harmfully and involves exclusion. From institutional perspective, the policies of institutions dominated by politically autonomous ethnic groups discriminate other ethnic groups. The behavior of individuals who control an institution and implement these policies treats members of other ethnic groups differently. From a structural perspective, the policy may be designed for certain ethnic group and discriminates the non-indigenous ethnic groups that are treated as subordinate. Therefore, the federal and BGRS Constitutions need to be amended to accommodate the fundamental rights and freedoms of non-indigenous rural peasants.