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Right to Self Determination and Land Rights in Ethiopia: Analysis of  
the Adequacy of the Legal Framework to Address Dispossession

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## **Abstract**

The right to self determination of nations, nationalities and peoples has been the cornerstone of the Ethiopian federal state structure for the last two decades and is seen as an instrument for addressing the political, economic and social domination the majority of the people suffered for centuries. In turn, control over land and other natural resources is the core of this right. This research is an attempt to examine the content of the right to self determination under the Ethiopian constitution and test its adequacy to restore collective ownership and control of land and natural resources to the peoples who have been dispossessed of their land and resources by the wars of expansion of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. It argues that the constitution fails to incorporate clear and adequate guarantees on the ownership of and control of land by nations, nationalities and peoples and neglects the economic aspect of self determination. It further argues that the laws that are intended to implement land tenure are based on the assumption that the government is the sole owner of land. It concludes that the laws, including the constitution, are serving as instruments to perpetuate and legalise the dispossession rather than redress it.

## **Keywords**

Ethiopia, right to self determination, economic self determination, ownership of land and natural resources.

## **Introduction**

### **1.1 Background**

Ethiopia has been home to dozens of various peoples with different ethnic, religious and social identities. However, the great majority of these peoples have lived under internal ethnic, political, social and economic subjugation for centuries. Modern Ethiopia is seen by many as the product of the gradual expansion of the old Abyssinia- that consisted mainly of the high land regions of central and northern parts of the country, i.e., shewa, Gojam, Gonder and Tigray including parts present day Eretria- which had started in the 13<sup>th</sup> century and culminated with the annexation of the eastern, southern and south-western regions of the current Ethiopia (Donham D. 1986: p3, 251; Zewde B. 2007: p7).

Similar to other Africans who were colonized by European forces, the conquered peoples in these parts of the country lost, totally or partially, their local/ indigenous institutions and their land and other resources; were forced to adopt an external language and religion and were enslaved... the only difference was that they suffered these misfortunes at the hands of their fellow Africans. However, contrary to their African counterparts, the plight of these peoples did not receive the attention of the international and regional anti-colonial movements; and they did not get the moral and political support other colonised peoples received. The paradox of the late 19<sup>th</sup> century Ethiopia under Menelik II was that it was both the symbol of African resistance to European colonialism while at the same time it colonised and enslaved fellow Africans.

The expansion/colonization had significant economic and social consequences for peoples in these parts of the country; first and for most, the expansion led to abolition or the suppression of local land tenure systems (Jembere A. 2012: p128,129, 130) and the superimposition of an external, Abyssinian land tenure system that both led to the dispossession of local peoples of their land and other resources and the introduction of the exploitative political and administrative structures, i.e., the ‘gebbar-gult’ system.

In the settled and cultivated parts of the newly incorporated regions, a ‘gebbar’ system was introduced (Zewde B. 2007: p94, Donham D. 1986: p41). Upon completion of the conquest, the emperor granted his main war generals- the pioneers- and some of the local/indigenous leaders called the ‘balabats,’ who served as the intermediaries between the local people and the centre, a ‘gult’ right/land- a fief power to collect tributes from peasant farmers- ‘gebbars’- living in the region or district under his domain. Accordingly, Ras Woldegiorgis was given the Kafa region which he conquered and colonized; Dejach Tessema was given Ilubabor; Dejach Demisse was given Wollega Arjo and Horro, and Ras Mekonnen was given Hararghe (Zewde B. 2007: p96), to mention few examples.

The Amharic for the verb 'to colonise' is 'qiny madreg', 'maqnat' that means to discover, to control and make it better and usable ... Thus, the head of the army that led the conquest was normally given the 'gult' power over that region, while the lower ranking officers and the rank and file are given, according to their hierarchy, a power of tribute over a certain district, county or over a number of households (a foot soldier for example had a tribute collection power over five families (Zewde B. 2007: p96).

Though local people had the right to hold and use land, either collectively or individually, and the 'gult' holder's right was limited to the collection tributes and labour services, some 'gult' holders forced their 'gebbars' to buy their own lands. For instance, the governor of Arsi Ras Birru Woldegeorgis required that every 'gebbar' pay 30 Maria Teresa Dollars for an acre of land and those who did not afford were reduced to being tenants on their own land and could be removed any time (Zewde B. 2007: p98).

Furthermore, 'gult' holders gradually extended their powers beyond tribute collection and corvee labour to direct rights over land, i.e., 'rist', the fact that 'gult holders' /governors also had judicial power gave them the opportunity to amass land previously held by locals (Donham D. 1986: p9,11; Zewde B. 2008: p105).

However, it is true that the centre spared some of the regions from the 'gult-gebbar' system and the placement of their land under the lordship of northern war lord, for example regions in the west and the south west that have submitted peacefully such as Jimma, Leqa Neqamt, Leqa Qellam, Assosa, Benishangul, Afar (Awsa) and Gubba (Metekel), instead they were required to pay a fixed amount of tax annually to the emperor and were allowed to maintain their internal autonomy and institutions (Garretson 1986: p199). The Islamic kingdom of Jimma was further able to obtain a guarantee from the emperor that no church would be built in its territory and no Muslim would be forced to convert (Garretson 1986: p199).

Another consequence of the expansion/colonization was the introduction of a categorization of land known as 'unsettled' or 'uncultivated' or 'unused', that refers to all land 'not used' in the sense of a settled agriculture common in the northern part of the country and over which no particular person could show an individual or family right... such as communal land used for grazing cattle, forest areas used for hunting, collecting wild fruits, medicine and wood... and the whole land in the pastoral and semi pastoral lowland areas (Donham D. 1986: p41).

This classification is followed by a sweeping declaration that all 'unsettled' land falls within the domain of the king, which he could grant as 'gult' to his generals, who would then settle their soldiers and followers as payment for their military services; to the church, and people serving the state in other capacities such as judges and tax collectors in lieu of wages; or it was measured and sold to settlers from the north or used directly for the production of grains, keeping horses, mules and cattle for palace use (Zewde B. 2007: p198-99). Furthermore, local chiefs /leaders that served as instruments in the administration of the local people would also receive a share of land that has been declared the king's land.

This appropriation of large areas of 'unused' 'uncultivated' and 'vacant' land also led to the introduction of land measurement called 'qalad' and sale of land that laid the foundation for

individual ownership of land and the suppression of local communal land rights (Zewde B. 2007: p97). In some places, such as Wollega and Arsi, land measurement affected even land already 'settled' and 'cultivated', and local people were required to buy their own land or face tenancy (Zewde B. 2007: p97).

The other effect of the expansion/colonization was that it led to the settlement of large number of people from the north or Abyssinia in the areas newly incorporated, thereby giving the dispossession of the local people a permanent effect, while on the other hand, it relieved the overcrowding and land scarcity in the north (Zewde B. 2007: p94). It also led to the imposition of the Amharic language as the official working language of the newly constituted administrative organs and the promotion of Orthodox Christianity as the official religion of the empire, though not as vigorously promoted as the former (Donham D. 1986: p11).

## **1.2 Land Tenure Reforms**

The gebbar system and the unlimited tribute collection powers of the gult holder had been gradually eroded by successive laws issued by the government in the 1930's and 1940's. For instance, the 1928 law gave gebbars the option of paying land tax either in kind or a three days labour on government land, while the 1935 and 1942 laws introduced a fixed annual land tax paid in cash that depended on the size of the land and whether the land is cultivated, semi-cultivated or uncultivated- and abolished all other forms of tribute to the gult holder including honey tribute (Jembere A. 2012: p130) and the corvee labour (Zewde B. 2008: p107, 176-77). These measures in principle had the effect of abolishing the gult and gebbar system of land tenure, though little had actually changed for the gebbar as the gult holders and landlords firmly resisted the changes and the central government did not have the capacity to enforce these laws.

The major change in land tenure came in 1975 with the enactment of the law on public ownership of rural land. The law nationalised all rural land and made it the common property of the peoples of Ethiopia (Art 3/1/); it outlawed private ownership of land and all forms of transfer including lease (Art 3/2/ and Art 5) and prohibited the use of hired labour, except where the land holder is unable to cultivate it himself due to illness, old age or where the holder is a woman (Art 4/5/). Most importantly, the law guaranteed the right of every one who wish to engage in agriculture to acquire land; and until land redistribution is undertaken, every tenant was allowed to remain in the possession of the land he had been cultivating (Art 6).

This law was significant because; firstly, it enabled a large number of gebbars/tenants whose lands have been appropriated to become the rightful holders of land; second, it brought the exploitative and inhumane 'gebbar' and 'gult' systems to an end; third, it helped create a system of local administrative and judicial organs with regard to land (Nahum F. 1980: p85), creating first cases of self government. Fourthly; it recognised the possessory and use right of pastoral and semi-pastoral peoples over the lands they customarily used for grazing and other agriculture related purposes (Art 24).

However, this law failed to address broader issues of dispossession of land and other resources the local/native peoples suffered autonomy and self administration. As a result, it only reaffirmed the imperial/colonial declaration that all land belonged to the crown, and perpetuated the dispossession of local/native peoples.

### **1.3 Objectives of the Study**

The general objective of the study is to examine whether the Ethiopian constitution and other relevant laws put in place adequate legal framework for redressing the historic dispossession of peoples of their land and natural resources.

In assessing this issue, it tries to answer the following questions. Firstly, what is the nature and content of the right to self determination in the Ethiopian context? Second, what is the place of right over land and natural resources in the realization economic self determination?

The adequacy of the legal framework to guarantee the peoples' right over land and natural resources will be assessed against the standards set by the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights (here after the Covenants) and other relevant international law instruments. This is because the provisions of the Ethiopian Constitution on fundamental rights and freedoms, including the right to self determination, have to be interpreted in accordance with these covenants and other international human rights instruments the country has ratified and which have been declared to be part of the laws of the country (Art 13(2)) and Art 9(4) of the Constitution.

## **Right to Self Determination: A General Overview**

### **2.1. Introduction**

The right to self determination served as the justification for all the democratic revolutions of the 18<sup>th</sup> and 19<sup>th</sup> century, the struggle for the independence and decolonization of Latin American and African states and now the struggle of national or religious minorities and other oppressed people for political, economic and social justice (Santos B. 2002: p297).

However, it was ironic that the ideals of dignity, equality, liberty and fraternity did not apply to all human beings, as the American revolutionaries and the fathers of the first democratic

state treated the black man as a mere chattel and perpetrated the extermination and dispossession of the native Americans; and denied the 'inherent' right to revolt against a colonial state and slave masters and to form their own state to peoples in Haiti (Alan Karras).

The modern concept of self determination, seen as the foundation of the international human rights system and the driver of the anti-colonial movement, is found in the Charter of the United Nations and other UN conventions, resolutions and declarations.

## **2.2. Definition and Contents**

According to the Charter of the United Nations one of the main purposes of the organization is to develop friendly relations among nations /states based on respect to the principle of equal rights and self-determination of peoples with a view to ensure international peace (Art 1(2) and Art 55). However, the charter fails to provide what constitutes self-determination and what is meant by 'nation' or 'people'.

The content of the right to self-determination is provided by the International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights. According to Arts 1 of these instruments, the right to self determination includes the following components. First, it means the right to freely determine ones political status and pursue economic, social and cultural development. This aspect of self determination entitles 'peoples' to secede and found a separate and sovereign state of their own, constitute the organs necessary to run the state, enact and implement policies and laws and exercise all the powers and authorities emanating from sovereignty; the authority to adopt and implement social, economic cultural development policies and implement the same.

One may argue that this right also implies the right of people to remain part of an existing state, but with an internal autonomy in which it institutes organs for self government and exercise self government and control over its resources; for a people that may secede should be able to attain autonomy and control its resources.

Second, the right to self determination involves the collective ownership of the people over the land and natural resources within the territory they inhabit, that includes the right to have access to such resources and use by members; the right, through a representative body, over the management, exploitation, conservation and free disposal of the same for the benefit of the people (Art 1(2)).

Similarly, the African Charter on Human and Peoples' Rights recognizes the equality of all peoples and prohibits the domination of a people by another (Art 19). It also provides for the unquestionable and inalienable right of all peoples to self-determination (Art 20(1)), whereby they shall freely determine their political status, purse the economic and social development according to the policies of their choice. Furthermore, the right to self determination includes the rights of all 'peoples' over their natural resources and wealth, the right to freely dispose of the same in the exclusive interest of the people and an obligation on all states parties to the charter to undertake measures to eliminate all forms of 'foreign' economic exploitation,

particularly by international transnational corporations (Art 21). The charter also recognizes the rights of all ‘colonized’ and ‘oppressed’ peoples to free themselves and obliges other member states to assist such peoples in their liberation struggle against ‘foreign domination’ (Art 20(1-2)).

As shall be shown below, the meaning of terms such as ‘peoples’, ‘foreign’, ‘domination’ ‘oppression’ have very limited meaning and scope for the purposes of the two charters.

According to Cassese, self determination may be either external, i.e., ‘the ability to choose freely independence/or union with other states’ or internal, i.e., which refers to the ability of a people to govern its own affairs through the representatives it freely chooses and holds accountable; or the right of an ‘ethnic, racial, religious minority in a sovereign state not to be oppressed by the central government’ (Cited in Santos B. 2002: p297-98).

However, one can argue that the right to self determination should not be limited to minorities, and should also apply to a majority in an authoritarian state that suffers under the domination of a politically and economically dominant minority group within a given sovereign state as is the case in Ethiopia and Bahrain to mention few.

### **2.3. Why self-determination?**

External self determination, in the context of the post world war II colonial era, has been an instrument of decolonization, a means of altering a world system based on the superiority of one nation over another, a coercive and exploitative relationship between states. It also has served as an instrument for restoring human dignity and equality of peoples in Africa and Asia that have suffered for centuries under European colonial subjugation.

On the other hand, internal self-determination is a means necessary to redress past injustices and domination within a state and creating conditions necessary for equality among all citizens (Kymlicka W. 1995: p370). According to Kymlicka, in countries where national, ethnic or religious discrimination and domination has existed the achievement of equality requires introduction of group differentiated rights such as self determination.

In general, the right to self-determination is a foundation for the realization of human rights and freedoms, self rule and democratic governance. According to the Human Rights Committee, ‘the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights’ (HRC General Comment No. 12 1984).

In the Ethiopian context, the right to self-determination is, for peoples that have been the victims of the wars of expansion and the political, economic and social domination, potentially a means for the restoration of their human dignity, equal citizenship, rights over their land and resources; a way for resolving decades’ long internal conflicts; and the basis for a system based on rule of law and democratic governance (Preamble to the FDRE Constitution; 1995).



However, the right to self-determination in general and the right to secede and form an independent state has provoked a strong opposition (ICG 2009: p8,9), because, it is perceived to be contrary to principles of the charters of the UN and the African union that guarantee territorial integrity of member states. The opposition to it is also driven by fear of disintegration of the country.

#### **2.4. Who Are the Subjects of the Right?**

The subjects of the right to self determination, i.e., 'peoples' or 'nations' under the UN charter and the covenants are understood to be 'non self governing territories and trust territories', i.e. colonies with peoples and geographical location distinct from the colonizing state (Roy J 1998: p13, 15). This approach, called the Blue Water Thesis, limited the right to self-determination only to overseas colonies belonging to European colonial powers and excluded peoples in sovereign states both in Europe and elsewhere that have been internally dominated, exploited... by governments that are usually under the firm control of one or the other ethnic, racial or religious group.

The attempt to extend the right to self-determination to internally colonized/oppressed peoples was promoted by Belgium (Roy J 1998: p14, 15). In a similar vein, the Declaration on the Collective Rights of Peoples of 1976, a non-binding instrument, provided for a broad definition of the term 'peoples' or 'nations' to include any group of persons, large or small, who have a common culture, historical tradition and occupying a determinate geographical territory (Sec 1, Art1).

However, the dominant powers at the UN including the US and later on many newly independent African and Asian states, which once they gained independence from European colonial subjugation and emerged as sovereign nations on the basis of colonial boundaries and identities, were reluctant to recognize the right in favour of the peoples that made up their respective states (Roy J 1998: p14, 15).

The main reason for the rejection of this approach (the Belgium Thesis) has been the claim that it would violate the territorial integrity of member states. Hence, according to Hannum 'territorial integrity and national unity took priority over the rights of national minorities and indigenous peoples' (Cited in Roy J 1998: p16-17). The newly independent African states and Ethiopia have also resisted the recognition of the nations and indigenous peoples in their as holders of the right to self determination on the ground that it would create ethnic tensions and conflicts and that all Africans are indigenous/pre-colonial (Clarke C. 2012: p30) suggesting that one African people/nation is allowed to colonize and oppress another African people/nation.

It is difficult to understand how and why preservation of territorial integrity should justify denial of internal self-determination to national /ethnic or religious minorities and indigenous peoples. The fact that internal or economic self-determination would be able to ensure the equality and social, economic and cultural development of national minorities or indigenous peoples without violating the territorial integrity of the state, shows that the real concern lies

somewhere else. Firstly, there is a reluctance to recognize such groups as the equals of the dominant group/s in the state and provide them with equal rights and protections. Second, there is the need to control the resources of these people and channel it to the exclusive benefits of the elites and the dominant ethnic/national religious... group/s in the state.

A recognition of this fact seems to be behind the conclusion of the Committee on Economic, Social and Cultural Rights that art 1 of the covenants is applicable to indigenous peoples, however, within the limits of internal self determination (IACHR 2009: p69).

## **2.5. The Right to Self Determination under the FDRE Constitution**

The Constitution of the Federal Democratic Republic of Ethiopia (here after the Constitution) recognizes the right to self-determination of nations, nationalities and peoples of Ethiopia including the rights to;

- ‘Unconditional right to self determination’ including the right to secede and form an independent state (Art 39(1)).
- Use and develop ones language; local languages have become the language of schooling (primary level), regional or local government and administration of justice. The peoples also have the right to express and promote their cultures and history (Art 39(2)).
- Full measure of self government that allows each people the right to establish organs of state to run their affairs in the territory it inhabits and to be represented fairly in the organs of the federal government (Art 39(3)).
- Though not under the provision that deals with group rights and in a very unclear and overlapping manner, as shall be discussed later, the Constitution also recognises the right of nations, nationalities and peoples over land and natural resources (Art 40(3)).

Several issues can be noted from this provision. Firstly, the term ‘nation’, ‘nationality’ or ‘people’ means any group of persons who have or share common culture or custom or language; common or related identity, common psychological makeup, and inhabit identifiable predominately contiguous territory (Art 39(5)). Though some of these criteria may lack clarity, it is safe to argue that the right to self determination under the Ethiopian law is broader compared to those under the UN and African charters in its extension of the category of people who could invoke the right to basically all ethnic/racial groups and indigenous people who occupy a definite territory, speak the same language and share common or related culture.

Secondly, it is bold and progressive because its main aim is the redressing of past injustices even if that may mean secession and loss of territory. Because of this, it is superior, at least on paper to the one under the UN that prioritises territorial integrity over the rights of people. Thirdly, the fact that it fails to incorporate under the same provision the economic aspect of self determination makes it weaker regarding internal self determination and redressing the dispossession people suffered when they were forcefully incorporated into the country and lost collective rights to their land and resources.

## **Economic Self-Determination**

### **3.1 Definition and Contents**

From the common provision of the ICESCR and ICCPR, the following elements of Economic self determination may be identified.

- Though not clearly provided, it is evident that ownership or other similar right over land and natural resources underlies the right to freely dispose of one's natural wealth and resources.
- Peoples' right to pursue their economic social and cultural development,
- Peoples right to freely dispose of their natural resources and wealth and
- Peoples' right not to be deprived of their own means of subsistence (Art 1).

For this right to be realized it requires the existence of democratic self-government (Farmer A. 2006: p437) at local level and equitable representation in the central government. A democratic self government is essential to ensure that people who manage the resources promote the general wellbeing of the people and are accountable to the people and to allow the people to determine how to best use and exploit their resources.

Forming one important segment of the general right to self-determination, economic self-determination or permanent sovereignty over natural sources, refers to the collective ownership or other related rights over land and other national resources by peoples and their ability to decide on its use, access, exploitation, preservation and the right to freely dispose of it for the benefit of the people (Farmer A 2006: p418, Daes E.A 2004: p13). According to Daes, this right can also be understood as peoples' collective that imposes an obligation on the state to respect, protect and promote their property rights in the land they inhabit and natural resources (Daes E.A 2004: p13).

It originates in and acquires its legitimacy in the historical possession and use of land and natural resources by ancestors that gives rise to customary land tenure, not in the recognition by the state, though it could be recognized and protected by the latter (IACHR 2009: p27). This property right has two dimensions. It is an individual property right which is exercised within the limits of collective property system, hence, it is equivalent to the non-indigenous individual private property and is entitled to protection as such against discrimination, and

dispossession (IACHR 2009: p23). At the same time it is also a collective property right available only to members of that group (IACHR 2009: p24).

The right covers all lands and the resources on the surface and subsurface which the community occupied and used, and should be understood broadly to cover not only land physically occupied through settlements, villages... but also those used otherwise, i.e., for agriculture, hunting, fishing, gathering, passage, spiritual and cultural purposes or for shifting or sporadic cultivation, seasonal or nomadic gathering and which must be recognized and protected as such and should not be treated as abandoned, or vacant unused or underused and to be encroached upon (IACHR 2009: p13, 28-30).

However, there are laws that limit this right, particularly regarding indigenous people, to resources on the surface of land or exclude sub-surface resources unless such resources have been used by the people in their traditional ways of life or their traditional economies (IACHR 2009: p74). Such laws constitute unilateral and arbitrary transfer of property from its rightful holders to the state and a violation of the right to economic self-determination because this right is pre-state and such laws in most cases are the result of systems that exclude the marginalised national, racial... minorities and indigenous peoples who cannot be said to have consented to the transfer (Daes E.A 2004: p14).

The right also guarantees that people are not deprived of their land and natural resources through non-consensual, coercive and fraudulent schemes (leases and concessions) that unfairly and unreasonably favour the business, for example, unfairly low prices or royalties for such resources, no or little environmental safeguards... (Daes E.A 2004: p15).

Furthermore, with regard to expropriation on the ground of general public purpose, it is held that since land and other resources are the basis for other fundamental rights and the right to exist as a distinct people, particularly for indigenous peoples, expropriation should be limited to few cases (Daes E.A 2004: p15).

### **3.2 Why Economic Self-Determination?**

Collective control over land and other natural resources is an essential element of the right to self-determination in general and is the foundation for the enjoyment fundamental rights and freedoms in equal terms with others, for example, members of advantaged groups, and rectify past injustices and exploitation, and is key to the survival of such groups as distinct peoples and fair access to and enjoyment of economic and social services (Kymlicka W. 1995: p370,384). According to Kymlicka genuine equality requires recognition and protection of exclusive or priority rights for example to land resources to members of indigenous groups and other minorities that have been disadvantaged/marginalized by the state or by other groups (Kymlicka W. 1995: p370).

Secondly, control over natural resources is a very important means of economic decolonization (Farmer A. 2006: p438). It is an essential instrument by which the right to

land and other resources is wrested from the grip of colonial masters and other oppressors and restored to the people; and conditions for control and use of the resources by the people for the benefit of the people are created. Natural resources nowadays are the essential sources of revenue that can dramatically improve the lives of the people where they are properly managed by making it possible to provide basic infrastructure, social services such as health, water, education and through jobs creation... etc (Farmer A. 2006: p419).

In the context of the decolonization movement of the 2<sup>nd</sup> half of the 20<sup>th</sup> century, economic self determination aimed at enabling nations/ peoples under European colonization to take full control of their lands, minerals, forests, agricultural resources and employ the same in a manner that benefits their own nationals and not colonial powers and their businesses. In the context of internal domination/colonization, it aims to support the marginalized and the exploited peoples in asserting their rights to land and others resources in the areas they inhabit against the state or central government.

According to Farmer economic self determination and internal self-determination are centred around the struggle between dominating central governments and peoples on the periphery (socially, economical and politically) and tries to tip the balance in favour of the underdog. Furthermore, the recognition and protection of the right of local peoples over their land resources, has the potential of preventing resentment and conflicts that arise out of alienation and the desire to secede (Farmer A. 2006: p442).

Finally, ownership and control of land and natural resources by people, (local, provincial bodies) improves the quality of resources administration, exploitation and disposal because such organs would be part of the local people and would understand their needs and concerns; and ensures accountability of officials to the people and sense of ownership and belongingness that enhance the use of the resources for the betterment of the region (Hayson N. and Keane S. 2009: p15).

### **3.3 Capacity, Equity and the Need to Prevent the Race to the Bottom**

The effective realization of economic self determination requires each people to have the capacity to properly manage their resources, i.e., the local/regional organ should have the necessary institutional, financial and skilled human resources. The question, however, is whether the lack of such capabilities should lead to denial of economic self-determination or whether the people's right of ownership over the land and resources be recognized, but the control and regulatory function be given to the central government? A very good example of the latter is the case in the US where the Indian tribes have the ownership of land reserved for them and all resources on/in such land, but the federal government is entrusted with the function of management of the resources. However, this solution has its own problems.

The US Federal Government is accused of mismanagement of the resources given to it in trust, for example, by devaluing the prices of Indian mineral resources; by failing to collect royalties and land lease fees, and by failing to ensure compliance with environmental standards through collusive arrangements with oil and mining companies or gross negligence

and which have given rise to demands for the restoration of full control to Indian tribes (Allen M. 1989: p872-3) & (Leeds L.S 2006: p441). The other problem that underlies this delegation or trust is the stereotype that presents Indians as irresponsible and the paternalism that prevents them from developing the skills necessary for self-government and administration of resources (Allen M. 1989: p869) and the discounting of Indian institutions and laws.

The other issue that is raised with regard to economic self determination is equity; particularly where certain regions or provinces are endowed with resources and while others are not. In such cases, should peoples' rights over natural resources be subject to restrictions, for example setting aside certain land and resources to the federal government; or impose an obligation to transfer some of the resource or revenue to central government for it to distribute nationwide. In multinational/ethnic/religious states, one of the main causes of conflict and social strife has been the struggle over land and natural resources. As a result, the recognition and protection of peoples' right over land and natural resources may have to be balanced against issues of justice and the practical needs to prevent potential conflict and migration and to promote solidarity between fellow countrymen and balanced national development.

Kymlicka suggests that the exclusive right of the particular people over its land and resources must be respected, but where such exclusive right puts such people in an advantageous position compared to other groups, justice requires that it be subject to taxes aimed at redistribution so that the state is able to provide services up to a required standard (Kymlicka W. 1995: p371). Accordingly, in the United Arab Emirates, each emirate shall have full powers (ownership, regulatory.....and revenue collection), however it shall contribute a negotiated amount towards the national budget (Hayson N. and Keane S. 2009: p11, 14 and 22). In Canada resources rich provinces transfer a portion of their revenue to resource-poor provinces through the federal government (Hayson N. and Keane S. 2009: p16).

Finally, economic self determination in multinational states must implemented in a way that prevents the race to the bottom, between competing regions or provinces in an attempt to attract investors by lowering environmental and labour standards or in fixing the terms of the deal such as price for resources, lease of land, amount of royalties, and incentives (such as exemptions from taxes) that reduce or nullify the benefit which the people is expected to derive from the use of its resources (Hayson N. and Keane S. 2009: p16). One way of addressing such problem is by giving the central government the authority to enact laws that provide for common standards applicable throughout the state and ensure their compliance.

## **The Limits of Ethiopian Laws to Guarantee Economic Self-Determination**

### **4.1. Ownership of Land and Natural Resources**

From the outset it has to be noted that the analysis under this chapter is based on the standards set by the covenants for economic self determination and control over land and natural resources, as already mentioned under Section 1.3 above.

The provision of the Ethiopian constitution that deals with the right to self-determination, though very revolutionary in many ways, does not provide for the right to economic self determination of nations, nationalities and peoples over land and natural resources in the territories they occupy (Art 39). This is a huge departure from the approach followed by the two UN covenants that present economic self determination as the core of self determination (Art 1 of ICESCR and ICCPR). Hence, one may argue that, economic self determination does not have the same emphasis and priority as secession or external self determination under the Ethiopian constitution.

One of the issues relevant to economic self determination, i.e., ownership of land and natural resources is excluded from the provision that deals with the right of self determination and is included under a provision on the right to property in general, Art 40 of the constitution.

According to this provision (Art 40(3)), the ownership of land and natural resources 'is exclusively vested in the state and peoples of Ethiopia'. This provision, however, has a number of shortcomings to address the issue of economic self determination.

First, the fact that the term 'state' here refers to the Federal Democratic Republic of Ethiopia, rather than regional states that were/are supposed to be established by and represent the nations, nationalities and peoples that are the holders of the right to self determination in the first place, makes the recognition of their economic self determination doubtful and precarious. In other words, the status of the regional states that the constitution recognizes as members of the federation and those that may be established by a nation, nationality or people in the future under Art (Art 47(1-2)) with regard to ownership of land and natural resources is left unanswered. In fact it should have been the regional states, if states have to be the owners at all, that are established and sustained by the nations, nationalities and peoples that should have been the owners of the land and natural resources and not the federal state; unless the states cede some of their land and resources to it.

Second, the fact that the Amharic version of this provision, which is the overriding version, uses the term 'people' and not 'peoples' suggest that it means all Ethiopians irrespective of their national or ethnic identities and geographical locations, echoing the 1975 law that nationalized all rural land, that stated 'all rural lands shall be the collective property of the Ethiopian people' (Art 3(1) Pro No 31/1975).

The issue is further complicated by the subsequent sentence in the same provision that states 'land is a common property of the nations, nationalities and peoples of Ethiopia...'. The problem here is that it does not provide clear guarantee for each nation's, nationality's or people's right to the land and natural resources in their respective territory, in the spirit of the right to economic self determination (Art 40(3)).

The other provision that touches upon the issue of ownership of land and natural resources is Art 5(3) of the Rural Land Administration and Use Proclamation No 456/2005. This provision states bluntly that land belongs to the government, not even the ‘state’ contrary to Art 40(3) of the constitution. It does not mention the people/s of Ethiopia or nations, nationalities or peoples at all.

Hence, it is possible to conclude that the laws on ownership of land and natural resources fail to properly address the historic dispossession that peoples of the country, particularly those who have been conquered and included under the Ethiopian Empire at the end of the 19<sup>th</sup> century, suffered and to ensure a meaningful right to self-determination that the constitution promises. In fact the idea that land belongs to the Ethiopian state does not have much difference from the imperial decree that declared all unsettled land to be crown or the king’s land, in its effect for the people who is disposed, because both dispossess the rightful holder.

#### **4.2. Control and Regulatory Authority over Land and Natural Resources**

This aspect of economic self-determination entitles the self determining people the legislative and regulatory authority over land and natural resources. In other words, the people shall have the authority to enact and enforce laws on the administration, allocation, conservation and alienation (for instance thorough leases, concessions etc) of their land natural resources. It includes, among others, the power to determine whether the land or other resource is to be used, alienated or conserved for future use; if it has to be used, the power of selecting the best way of using it and the manner of allocation to members; the power to collect revenues generated from the resources and to determine for what purposes such revenue has to be used.

Similar to the case of ownership discussed above, the provision of the constitution dealing with the right to self-determination (Art 39), does not include a rule on the issue of control and regulatory power over land and natural resources. One has to look elsewhere to find out whether this aspect of economic self determination is recognized.

According to Art 51(5) and Art 55(2-a) of the constitution, it is the federal government that is given the primary legislative power on issues of utilization and conservation of land and other natural resources. In accordance with these provisions, the federal government has enacted the rural land administration and use proclamation no 456/2005. Regional States’ power over administration of land and natural resources is subject to the federal government and federal laws (Art 52(2-d)). Hence, states cannot enact laws that are not in accordance with the federal law on administration and use of land. For example, states cannot enact a land administration and use law that tries to accommodate the specific circumstances of their region and the ways of life of their people.

This rigidity entails numerous consequences for economic self determination of people that is supposed to accommodate the diversity of people and ways of life. It is obvious that the manner in which land is held and used by communities practicing sedentary agriculture is different from the manner in which pastoral, semi-pastoral communities and communities practicing shifting cultivation hold and use land. In the former, a person’s private landholding



is usually based on definite boundaries and location while this may not be the case in latter where land holding is communal.

Whether the formal land tenure system in Ethiopia appreciates this difference and provides legal recognition to customary/traditional land holding and use is very doubtful. If it does, it means that pastoralist communities would have landholding and use rights in relation to the lands that they and their ancestors occupied and used and would be protected against eviction and the land would not be seen as a 'vacant' or 'unused'. Similarly, communities that practiced shifting agriculture would be considered to hold all the land that their members cultivated from time to time.

However, the following facts show that this is not the case. First, the constitution does not provide legal recognition to customary tenure; it rather abolishes all customary practices that are inconsistent with it (Art 9/1/). Hence, customary land tenures and rights under them are abolished for they are seen as contrary to the constitution and the formal tenure. Second, the rural land administration law deny recognition and protection to customary tenure; it rather aims to establish a system which 'encourages the private sector to invest in pastoralist areas', presumably by limiting or extinguishing their customary claims to land (Preamble to Proclamation No 456/2005). Third, the idea of a communal land the formal tenure introduces is very different from the one under customary tenure. Under the law, a communal holding is land granted by the government, the owner of all land, and that could be taken away and transferred, for example to an individual or a business on lease or freely, where the government finds it necessary (Arts 2/12/ & 5/3/). This conception of communal land is very different from communal land under the customary tenures, which arise from historical occupation and use by the people and their ancestors rather than grant of the government and its continued existence does not depend on the whim of the government.

Finally, this failure to recognise the customary tenures and rights arising there under and the diversity of the ways of life of various peoples gave rise to the fiction that land that has been occupied and used, but in a manner that is different from the manner in which land is occupied and used by the conquering/dominant group is 'vacant', 'unused'. This was what the conquerors said during the conquest and this is what the current government's policy documents, press releases...and actions are saying.

It follows that, the concept of 'land holding' the formal tenure introduces seems to be one based on sedentary agriculture whose size, location and boundaries are usually known and primarily based on individual or family ownership or holding, as opposed to the tenure system that allows open access to members of the community, which is not based on such measurements. As such the formal tenure represents an imposition of an alien socio-economic institution that has the effect of dispossessing people whose holding does not conform to its criteria.

It is also evident that it is such law that is serving as the instrument of dispossession by denying recognition to customary laws and rights and by turning peoples' lands into no man's lands. As such, the large scale agricultural land leases in the lowland areas of the country and the consequent dispossessions are only the final acts in a series of measures that have started

more than a century ago, i.e., the dispossession arising from the decrees and proclamations past and the actual dispossession. In the past these areas, though appropriated by the state, were seen as dangerous and no one had been willing to venture out in to them and hence the legal dispossession was not followed by actual or physical dispossession until recently pushed by various factors.

The above cases are evidences of the reality that, the nations, nationalities and peoples of the country and the regional states that are supposed to represent them do not have the level of control and regulatory authority their economic self determination requires.

Furthermore, economic self-determination, particularly control and regulatory authority over land and natural resources, is being further eroded following a recent directive that transferred the handling of land lease deals involving 5000 hectares or more from the states and giving it to the federal government, particularly Agricultural Investment Support Directorate (AISD) in the Ministry of Agricultural and Rural Devotement (MORAD) (Rahamto D. 2011: p10). Furthermore, regions (except Somali and Tigray) were required and made to transfer a total of 3,589,678 hectares of land to the Federal Land Bank to be administered and transferred to large scale agricultural investors (Rahmato D. 2011: p11).

This is very difficult to justify on lack of capacity, at least with regard to relatively well established regional states of Amhara and Oromiya and is said to have raised complaints among the first two (Lavers 2010: 118).

### **4.3. Right to Freely Pursue Ones Economic and Social Development**

Another pillar of economic self determination is the peoples' right to freely choose the type of economic and social development they want to pursue and execute the same (Art 1(1) of the covenants).

As already mentioned above the provision of the constitution dealing with self determination does not clearly provide for economic self determination, including the right to freely choose and pursue economic, social and development policies that best serve the needs of the people. However, it is possible to find rules relevant to this element of economic self-determination under Arts 51, 52 and 55 of the constitution.

According to Art 52(2-c), regional sates are given the power to formulate and execute their own economic, social and development policies, strategies and plans. However, the same power is given to the federal government, i.e., the federal government shall formulate and implement the country's, not just for the cities under its jurisdiction, policies, strategies and plans on economic, social and development matters (Art 51(2) and Art 55(10)). This overlap of power raises various legal issues. One of them is which policy should prevail where the two are in conflict?

As the practice of the last two decades shows, however, economic, social and development policies, strategies and plans are formulated by the federal government and the states are only enforcers. The fact that top regional state officials, are also members of the party that is in control of the federal government and hence might have voted on such policies does not make them a region's policy. All the mid-term development plans, i.e., the Sustainable Development and Poverty Reduction Program /SDPRP/ 2002-2005; the Plan for Accelerated and Sustainable Development to End Poverty /PASDEP/ 2006-2010 and the Growth and Transformation Plan /GTP/ 2011-2015, the latter two being the continuation of the SDPRP, that the country have adopted and pursued are federal government policies.

Furthermore, the resettlement programs now being implemented in the lowland areas of the country, which are inhabited by communities engaged in pastoral, semi pastoral and shifting cultivation, have been part of the development plans of the federal government at least since 2002 (SDPRP 2002: p60, 69 and 81). Similarly, supporting and promoting large scale private sector agricultural investment in the lowland areas that are seen as 'uncultivated', 'vacant' is one of strategies of these midterm economic and social development plans (GTP 2010: p46, 54). As one agriculture ministry official is quoted as saying pastoral and shifting agriculture are unsustainable land uses therefore they must be transformed through settlement programs (Dr Aberra Deressa state minister for Agriculture and Rural Development (Cited in Lavers T. 2012: p119). Such programmes which have their origin among federal government officials and adopted and implemented without a meaningful consultation with the people affected by it, fly in the face of economic self-determination, and constitute the Ethiopian civilizing mission that discount people and their ways of life.

#### **4.3.1 What kind of development?**

The development strategy of the Ethiopian government that is based on the lease of large areas of land/ large scale agricultural investment has given rise to a number difficult questions that include, whether it is participatory, whether it benefits/empowers the local people or is dispossessory, whether it is based up on their needs and priorities etc.

The fact that the main economic and social development policies are adopted by the federal government, as we have seen above, raises questions about whether it really addresses peoples' needs and priorities and participation of the people. For example, the plan for large scale agricultural investment in the lowland areas and the resettlement programmes were implemented without participation/ consultation of the people affected by them (Rahmato D. 2010: p21). In the districts surveyed by the Forum for Social Studies in Gambella National Regional State, district officials were instructed to implement the resettlement programme, they were not consulted nor allowed to consult the residents of their respective districts (Rahmato D. 2011: p21).

The development strategy of the government tended to treat land only for its economic importance and its potential for investment and to neglect the social, cultural and spiritual values of the local communities. However, land is for many communities much more than

just an economic resource, as it plays a central role in the people's spiritual, cultural and social lives and is the basis of their identity, the space for their continued existence as a distinct people (Oakland Institute 2011: p39,42).

In addition, the development strategy has also been dispossessory; people are forced to relocate from villages they inhabited and lands they used or are being denied access to land and natural resources that they have used for centuries (Rahmato D. 2011: p21, HRW 2012: p9, 17). It is also a development plan that alienates local /native people, and transfers large areas of virgin land to outsiders (foreigners, Ethiopians living in Europe and North America and highlanders particularly supporters of the dominant political group) that may lead to resentment, tension and conflict (Oakland Institute 2011: p20). Rebel groups that have the agenda of secession, for example those in Oromiya, Ogaden and Gambella, among other grievances raise the alienation of their lands to or the exploitation of their resources by outsiders, and their marginalization.

The strategy, as the current five year plan shows, is export driven and tends to neglect local and national food security concerns. The main focus of the large scale agriculture investments is to produce 'primarily for export or raw material for domestic industries' (GTP 2010: 55). This is further evident from the fact that investors who took land for the purpose of producing cereals, wheat, rice and maize under took no obligation to supply the local market, (Saudi Star and Karaturi Lease Contracts).

Between two and three million people face food shortages even in the best of years and the country has to rely on food aid to feed them and where rains fall short, the number rises dramatically. In addition, the price of food crops has sky rocketed in the last six years and the state has to import millions of quintals of wheat and supply it at subsidized price for people in urban centres. Under these conditions, the export of food from this country and the priority of bio-fuels, for example, is not only unethical but also a disregard of the states' development promises and fundamental rights of the people to food.

The strategy also has significant environmental costs that have implications for the lives, health and livelihoods of the people. Furthermore, it negates the government's own claims that it pursues sustainable development and lately green economy strategy (CRGE 2011). These development strategies require using resources without causing environmental damages and protection of existing forests, reforestation and forestation to benefit from their economic and ecosystem services (CRGE 2011: p2). Contrary to this, however, lands within the boundary of the Gambella National Park, the Babile Elephants' Sanctuary and numerous other forests, wetlands and other protected areas are leased out, leading to the clearance of trees (Rahmato D. 2011: p17, See also Mwembaza et.al 2009: p17, 19, 23-4). Similarly, a natural forest area in Gambella, on which local people depended for their livelihood was leased to an Indian company for tea plantation, but the felling of trees was halted temporarily only after local people petitioned the president of the country and he wrote a letter to the Environment Protection Authority (EPA) and raised his concern; and in turn the authority wrote to the Ministry of Agriculture and Rural Development opposing the land deal and the project remained suspended (Rahamato D. 2011: p22, 23).

In principle environmental impact assessment is mandatory for mechanized and large scale agricultural investments, as a result no investment license is supposed to be given without it (Art 3(1) of EIA Law). The responsibility to ensure compliance with such law had been given to the Environmental Protection Agency (EPA) which evaluates the environmental impact assessment reports submitted by an applicant for an investment license (Art 14). However, this responsibility has been transferred since 2009 to the Ministry of Agriculture and Rural Development (MORAD) to facilitate investment by allowing the investor to obtain services related to the evaluation and approval of EIA report and the issuance of license at the same place/entity. However, the Ministry was not designed to carry out such responsibility and does not have the required human and technical capabilities to do so (Rahmato D. 2010: p11).

Furthermore, regional investment bureaus have also been instructed to issue licenses to agricultural investment applications without EIAs approved by the regional environmental organs (Mwembaza et.al 2009: p17,19,23,24).

As a result, one can see that the promotion of investment and economic development is given priority even at the cost of significant environmental damages, in violation of the constitutional and other legal protections for the environment.

#### **4.4 Ability to Freely Dispose of Ones Land and Resources**

The lack of clarity on the issue of ownership and the limits on the peoples' right to regulate and manage land and other resources, discussed above, have direct implications on this aspect of economic self determination, i.e., their ability to freely dispose of their resources and deploy the same for the benefit of the general people, not the just the elite.

Internal self determination in general and economic self determination in particular presuppose the existence of a democratic political arrangement that allows the people to choose freely the representatives they believe would promote their interests, address their pressing concerns and manage resources in the interest of the people, and where they fail to do so remove and hold them accountable.

However, this does not seem to be possible in the current political reality of the country. Political parties which have been governing regional states are either established or initiated by the party governing the federal government (which in turn is dominated by one party), or they came to power or maintained in office by the political, military and financial muscle of this party, in exchange for their political obedience (Tronvoll K: p7 & Hagmann T. 2011: p9-10). This power relation means that regional governments may be unresponsive to the voices and interests of the people of their regions, where such interests conflict with the policies and programs of the federal government. This dependency seems to have a huge effect in undermining the autonomy of the people and their rights to land and resources.

#### **4.5. The Right not to be Deprived of Means of Subsistence**

The right not to be deprived of one's means of subsistence include protection against dispossession, eviction. In this regard, the constitution provides protection against eviction to individual peasant farmers and pastoralists (Art 40(4-5)). However, this protection is not matched by concrete measures in subordinate laws, as shall be seen.

With regard to groups, the absence of recognition and protection for customary tenures has rendered land rights arising there under insecure and vulnerable. For example, Art 5(3) of the rural land administration and use proclamation no 456/2005, provides that the government, as the owner of land, can convert communal landholding, as defined earlier, into private holdings where necessary. This shows that land rights of a community and its members are at the mercy of the government, which can take them away without compensation where it deems it necessary.

In addition to this, the expropriation power of the state has casted a constant shadow of insecurity over land rights, both collective and individual. According to Arts 3(1) and 2(5) of the expropriation of land holdings proclamation no 455/2005, the state, federal or regional acting through a district administration, shall have the power to expropriate a landholding where it decides that such landholding is for a project serving a 'public purpose', which is defined so broadly to accommodate any investment/commercial project that is hoped to generate jobs, demand for raw materials, foreign exchange....

What makes this law even harsher and a source of great insecurity is that, the decision whether a certain project serves a public purpose or not is made by the district administration without any requirement of public hearing/inquiry or consultation of the people who are affected by the proposed project and is not subject to review by courts (Art 11). Furthermore, a person whose landholding is expropriated is not paid compensation for the land or his/her rights to land, but only for the permanent improvements, if any, made by such holder (Art 7) and displacement compensation equivalent to 10 times the average income he/she gained from the land over the previous 5 years (Art 8).

#### **Concluding Remarks**

The wars of expansion and the formation of modern Ethiopia around the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> centuries had serious consequences for the peoples inhabiting the southern, eastern, western parts of the country including loss of lives and human dignity; the loss of self rule and the right to use one's language for administration, schooling..., and the right to preserve and express one's culture; and loss of the right to one's land and natural resources (originally only land that was categorised as 'unused' or 'vacant' but gradually all land was declared to be the property of the crown or the state).

The right to self determination is seen as the instrument of decolonization through which 'peoples' that have suffered internal or external domination and exploitation could determine

their political status, i.e., independent statehood or internal autonomy and control over their land and natural resources and indispensable precondition for the realization of genuine equality and justice in multinational/ethnic states with a history of domination/exploitation such as Ethiopia.

Economic self determination-the collective ownership of land and natural resources and the ability to control, manage and dispose of the same for the benefit of the people, not just the elite and the privileged minority is the core of the right to self determination and essential to redress historic injustices and dispossession and achieve economic and social equality by giving members of the marginalised groups priority or exclusive rights to the lands they occupied for centuries.

The FDRE constitution, with the aim to redress the historic domination, dispossession and exploitation the majority of the peoples of the country suffered recognises their right to self determination including the right to secede and form an independent state. Though it is bold in its aim and coverage all peoples, it has serious limits when it comes to economic aspects of self determination.

The fact that the constitution's provision that provides for the right to self determination fails to incorporate the right of the nation, nationality or people over the land and natural resources gives the impression the constitution discounts the importance of this aspect of self determination and does little to redress the dispossession of the people of their land and natural resources.

Furthermore, the provisions of the constitution and other laws that deal with issues relevant to economic self determination and ownership of land and natural resources lack clarity and present a picture far away from the standards of the right set by the international covenants that the country ratified and the aim of redressing past injustices the constitution sets out its preamble.

Generally, the constitution and the other laws fail to provide adequate legal framework necessary for the effective realisation of the right to self determination in general and economic self determination in particular and to achieve the aims of redressing past injustices. Instead, these laws reinforce and legitimise the dispossessory measures of the imperial and military government.

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