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# Land Rights of Non-Indigenous Peasants in Benishangul-Gumuz: Legal Divergence and Policy Pitfalls under Ethiopian Federalism

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LAND RIGHTS OF NON-INDIGENOUS PEASANTS  
IN BENISHANGUL-GUMUZ: LEGAL DIVERGENCE  
AND POLICY PITFALLS UNDER ETHIOPIAN  
FEDERALISM

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School of Law;  
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July, 2019

## **Title Page**

# **LAND RIGHTS OF NON-INDIGENOUS PEASANTS IN BENISHANGUL-GUMUZ: LEGAL DIVERGENCE AND POLICY PITFALLS UNDER ETHIOPIAN FEDERALISM**

A Thesis Submitted in Partial Fulfillment of the Requirements for the  
Degree of Master of Laws (LLM) in Environment and Land Laws at the  
School of Law, Bahir Dar University

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July, 2019



### **Thesis Approval Page**

The thesis titled “*Land Rights of Non-indigenous Peasants in Benishangul-Gumuz: Legal Divergence and Policy Pitfalls under Ethiopian Federalism*” Mr. Bezabih Tibebe Checkol is approved for the degree of master of laws (LLM) in Environmental and Land Law Program at the School of Law, Bahir Dar University, Ethiopia.

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## **Declaration**

I, Bezabih Tibebu declare that this thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

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## **Dedication**

This work is dedicated to non-indigenous peasants who lives under Ethiopian ethnic federalism.

## **Acknowledgement**

First and for most I would like to thank the almighty God for all what happened to me.

I would like to give my cordial thanks to my advisor Brightman Gebremchael (LLD) for his continuous support in my study. This thesis has accomplished because of his dedicated support in each stage of my study. He was very committed to reply to my emails and phone calls whenever I need his support. Thank you!

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## **List of abbreviations and Acronyms**

ACHPR	African Commission on Human and People’s Right
Art.	Article
BGRS	Benishangul-Gumuz Regional State
CEDAW	Convention on Elimination of Discrimination Against Women
EU	European Union
FAO	Food and Agricultural Organization
FDRE	Federal Democratic Republic of Ethiopia
RLAUP	Rural Land Administration and Use Proclamation
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organization
NNPs	Nation, Nationalities and Peoples
ORS	Oromia Regional State
P.	Page
Para	Paragraph
Proc. No.	Proclamation Number
SNNPS	South Nation, Nationality and Peoples
UDHR	United Nation Declaration on Human Rights
UNs	United Nations
UNDRIP	United Nation Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
VGGT	Voluntary Guidelines on the Responsible Land Governance
Vol.	Volume

## Abstract

*In order to accommodate and protect various rights of NNPs of Ethiopia, the FDRE constitution established ethnic federalism since 1995. Among others, land resource become the common property of NNPs of Ethiopia and the state. Ethiopian rural peasants have constitutional rights to access arable land without fees and guaranteed from arbitrary eviction without indigenous and non-indigenous dichotomy. For the realization of this constitutional rights, the central government entrusted to enact land governing laws which serve as a guiding framework for the federation units when they administer their respective region's land resource. However, following ethnic based structure of federation units, regional states classify peoples as indigenous-non-indigenous/owner-non-owner to the region based membership to primordially identified NNPs of Ethiopian ethnic groups and limit constitutionally recognized land rights of non-indigenous peasants. Therefore, this study aims to investigate how access to land rights of non-indigenous peasants is defined and understood in BGRS and to explore the indigenous-non-indigenous peasant's dichotomy in relation to access to land and nature of land rights based on the existing land policy. Besides, the study investigates the impacts of the dichotomy on tenure security of non-indigenous peasants and the rationale behind for the creation of indigenous-non-indigenous dichotomy. Moreover, the study explore the legal and practical remedies available for arbitrarily evicted non-indigenous peasants from their land rights in both levels of government. In doing so, the study employed socio-legal research which is carried out through qualitative case study research approach by investigating land governing laws via the power of reasoning and its impact within the dichotomized indigenous-nonindigenous peoples. After exploration of the issues raised above, the writer has, eventually, reached to the following findings. Following the establishment of ethnic federal arrangement, BGRS revised constitution classifies ethnic groups as indigenous-non-indigenous to the region. Subsequently, the existing land resource of the region belonging to indigenous nationalities. Hence, the land rights of non-indigenous peasants are limited and face decentralized despotism that arise from ambiguous nature of land policy and pitfalls of ethnic federalism. Further, non-indigenous peasants are exposed for systematic marginalization and their land rights become unsecure due to unfavorable environmental conditions. There is also tenancy-landlordism relationship. When non-indigenous peasants arbitrarily excluded from their land rights in both levels of government, they have no legal mechanism to avert the problem. Therefore, the land rights of non-indigenous peasants are not protected and excluded from the ambits of common property of land resource in the region.*

**Key words:** Non-indigenous peasants, Land Right, Benishangul-Gumuz, Ethiopian Ethnic Federalism

# CHAPTER ONE: INTRODUCTION

## 1.1. Background of the Study

For rural residents of most developing countries including Ethiopia, land is the main source of economic, political, social and cultural assets.<sup>1</sup> It is a means of generating livelihood income for the rural communities.<sup>2</sup>Hence, defining access to land right plays a critical role within a given land tenure system. Access to land denotes a processes by which peoples, individually/collectively are able to use land whether on temporary/permanent basis via government allocation, donation, inheritance or by other modalities.<sup>3</sup> Whereas, property right in land can be understood as whether socially or legally recognized entitlements to access, use and control areas of land and related natural resources within a given land tenure system. <sup>4</sup> Hence, property rights in general and land rights in particular can be understood as an essential and have a real effect on the enjoyment of fundamental rights and freedoms of the rural community of the poor.<sup>5</sup> Lack of inclusive national land policies and ill-defined land rights results in violation of fundamental rights and freedoms of rural peasants, exclusion of different ethnic groups from the benefits of land ownership and patterns of land access that discriminate their economic opportunities based on their ethnicity. <sup>6</sup> Hence, discrimination related to ethnicity and natural resources can be manifested into three perspectives. From individual perspective discrimination refers to the behavior of individuals of one ethnic group that treats members of another ethnic group differently/harmfully that involves exclusion.<sup>7</sup> From institutional perspective discrimination describes the policies of institutions dominated by politically autonomous ethnic group and the behavior of individuals who implement

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<sup>1</sup>Belay Zerga, 'Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future', *International Journal of Scientific Research &Engineering Trends*, 2016, Vol. 2, Issue 1, pp, 17-24, P. 18 [hereinafter Belay Zerga, 'Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future']

<sup>2</sup>Julian Quan, 'Land access in the 21st century: Issues, trends, linkages and policy options Natural Resources', *LSP Working Paper* 24,2006,pp, 1-79, p.3

<sup>3</sup>Id., p.1

<sup>4</sup> United Nations Human Settlements Programme (UN-HABITAT), *Secure Land Rights for All*', Global Land Tool Network, 2008, p. 5

<sup>5</sup>Montgomery Wray Witten, 'the protection of land rights in Ethiopia', *Africa Focus*, 2007, Vol. 20, No. 1-2, pp. 153-184, p. 154-156

<sup>6</sup>Robin Palmer, 'Literature Review of Governance and Secure Access to Land', *governance and social development Centre*, 2007, pp, 1-35, p.5 [hereinafter Robin Palmer, Literature Review of Governance and Secure Access to Land]

<sup>7</sup>John Schelhas, 'Race, Ethnicity, and Natural Resources in the United States', *Natural Resources Journal*, 2002, Vol.42, pp, 724-763, p.726-728

these policies and control these institutions treat members of other ethnic groups differently.<sup>8</sup> From structural perspective discrimination signifies when the policies design are intended to a certain ethnic group oriented so that non-member ethnic groups become in a subordinate position and protected differently/harmfully.<sup>9</sup>

When we come to Ethiopia, it is endowed by different agro-ecology, ethnic and cultural diversity and characterized by the history of migration, nation and state building (pan-Ethiopianism) project which affects the current settlement pattern of rural population.<sup>10</sup> The traditional and agrarian livelihood of the rural people of Ethiopia is highly interwoven with the land since more than 80 % of the citizens are living in rural areas.<sup>11</sup> It also experienced different kinds of land tenure systems and property rights in land depending on the nature of the regimes.<sup>12</sup> Land resource become a major source of rural livelihood and development though it is subject to the political economy of now and then.<sup>13</sup>

After the demise of the Derg regime in 1991, the current government established ethnic federalism as the principal means for accommodating all ethnic groups in every horizon.<sup>14</sup> Hence, the federation units chiefly structured based on ethno-linguistic administration system.<sup>15</sup> To this end, the Federal Democratic Republic of Ethiopian (hereinafter FDRE) constitution aspires “to build one economic and political community based on the rule of law”.<sup>16</sup> The constitution also provides for a vast array of fundamental rights and freedoms.<sup>17</sup> Importantly, article 25 of the constitution

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<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Yigremew Adal, ‘Review of Landholding Systems and Policies in Ethiopia under the Different Regimes’, Working Paper No 5/2002,p,4 (hereinafter ‘Review of Landholding Systems and Policies in Ethiopia under the Different Regimes’)

<sup>11</sup>Zemen Haddis Gebeyehu , *Land policy implication in rural-urban migration :the dynamics and determinant factors of rural urban migration in Ethiopia*, PhD, dissertation, TEchnische University Munchen,2014), available at <https://mediatum.ub.tum.de/doc/1229128/1229128.pdf>, p 1-2 [hereinafter : Zemen Haddis Gebeyehu *Land policy implication in rural-urban migration :the dynamics and determinant factors of rural urban migration in Ethiopia*]

<sup>12</sup>Id. , p. 1-5

<sup>13</sup> Belay Zerga, ‘Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future’, p.17

<sup>14</sup>Alemante G. Selassie, Ethnic Federalism: ‘Its Promise and Pitfalls for Africa’, *Yale International Journal of Law*, 2003, Vol.28. No.51,pp,52-107 at p.54, [hereinafter Alemante G. Selassie, Ethnic Federalism: ‘Its Promise and Pitfalls for Africa’]

<sup>15</sup>Constitution of Federal Democratic Republic of Ethiopia proclamation, 1995, *Federal Negarit Gazeta*, proc. No. 1. 11th year No.1 art, 39/5 &47 [hereinafter proc. No. 1/1995]

<sup>16</sup> Id. preamble para.1

<sup>17</sup>Fessha et al,’ Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia, *African Journal of International and Comparative Law*,2013 Vol. 21 No.1, pp, 1-19,p.11, [hereinafter, Fessha et al, Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia, African Journal of International and Comparative Law]

declares the right to equality and prohibits any form of discrimination irrespective of any grounds<sup>18</sup> by policy, legislative and regulatory frameworks, development programmes and projects.<sup>19</sup>

To ensure the above common aspiration and fundamental rights, sovereign power resides on the hands of *Nations, Nationalities and Peoples* (hereinafter NNPs) of Ethiopian ethnic group.<sup>20</sup> That is why the FDRE constitution is generous for self-determination up to secession which has an important implication for land administration.<sup>21</sup> The FDRE constitution edicts *land as well as all natural resource is vested for the state and peoples of Ethiopia and land is common property of NNPs of Ethiopia.*<sup>22</sup> It also provides that the federal government have the power to enact laws for the utilization and conservation of land and other natural resources.<sup>23</sup> Based on this power, the federal government enacted framework legislation.<sup>24</sup> Within this general guidance, the federal government is responsible to determine issues on land tenure of landholders across the country to achieve different development objectives.<sup>25</sup> Hence, both the constitution and federal rural land legal framework promise access to rural land for peasants without making any distinction among different ethnic groups as far as preconditions of access to land are fulfilled and give *landholding* right for the rural peasants.<sup>26</sup> However, article 39 of FDRE constitution gives an obscure picture of NNPs of Ethiopia and the provision categorically talks about group rights of “*primordially*”<sup>27</sup> identified ethnic groups. Accordingly:

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<sup>18</sup>Fessha et al, ‘Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia’, p.11

<sup>19</sup> Lucy Claridge et al, Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights’ Treatment of Land Rights as Human Rights, *Minority Rights Group International*, 2015, pp 1-24, p-5

<sup>20</sup> Proc. No. 1/1995 , art,8

<sup>21</sup> Tom Lavers, ‘Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism’, *African affairs*, 2018, Vol.117. No. 468. pp. 462-484, p.468, [hereinafter, ‘Tom Lavers, Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism’]

<sup>22</sup>Proc. No. 1/1995, art 40/3

<sup>23</sup>Id., art,51

<sup>24</sup>Rural Land Administration and Land Use Proclamation, 2005, *Federal Negarit Gazeta*, proc. No. 456. 11<sup>th</sup> year, No. 44, [hereinafter Proc. No. 456/2005] &&Expropriation of Landholdings for public purposes and payment compensation proclamation, 2005, *Federal Negarit Gazeta*, proc.No.455,11<sup>th</sup> year, No. 43

<sup>25</sup>Habtamu, Sitotaw, ‘The Power to Administer Land in Ethiopia: Scrutinizing Federal Legislative Interventions’, *Bahir Dar University Journal of Law*, 2016,Vol.6, No.2, pp 196-224 at p. 207, [hereinafter, ‘Habtamu, Sitotaw The Power to Administer Land in Ethiopia: Scrutinizing Federal Legislative Interventions’]

<sup>26</sup>Proc. No. 456/2005, art, 2/5

<sup>27</sup>The term Primordialism based identification of ethnic group signifies that ethnic groups have an immediate contiguity, kindred spirits, kin connection of individuals, self-attribution of membership, common culture (language, religion, values, norms, common territory (country, region, nationality) and common assumed biological descent common ancestors, race or tribe. Membership for this primordially identified ethnic groups of communities play critical role in various rights.

*Nation, nationality and people for the purpose of this constitution, is a group of people who have or share large measures of common culture or similar customs, mutual intelligibility of language, belief in common or related identities, a common psychological makeup, and who inhabits an identifiable, predominately contiguous territory.*<sup>28</sup>

As we can understand from the cumulative reading of the preamble of the constitution article 39/5 and 40/3, NNPs of Ethiopia who own land are a group of people which is basically refers to categorically a group right.<sup>29</sup> Here, from the undivided common property of land resource landholding right is extended for rural peasants individually.<sup>30</sup> Consequently, an individual who is not a member of identified ethnic group is not obviously bestowed the undivided common land ownership right within *an ethnic federalism arrangement* <sup>31</sup>[*Emphasis added*].

The FDRE constitution also entrusted land administration power<sup>32</sup> to the regional states in order to implement the federal land law. Depending on the federal framework law, each federation units has their own rural land administration and use proclamation based on their regional context. The concept of land administration comprises an extensive range of systems and processes to administer land matters.<sup>33</sup> Accordingly, as FAO identifies, among others, it refers the way in which the rules of land tenure are applied and made operational in a given land tenure system basically which includes *land right, land use and regulation* and land valuation and taxation.<sup>34</sup> This is visible in the FDRE rural land administration and use proclamation.<sup>35</sup> Following the adoption of federal system in Ethiopia, Benishangul-Gumuz regional state (hereinafter BGRS) has its own regional constitution in which the regional administration system is structured, state behavior is regulated and basic rights and freedoms are recognized and protected.<sup>36</sup> But the region has some unique features by

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<sup>28</sup> Proc. No. 1/1995, art,39/5 and see the detail analyses under chapter three

<sup>29</sup>Daniel B. Gebreamanuel: *Transfer of land right in Ethiopia: Towards sustainable policy framework*, 1<sup>st</sup> ed. Eleven International Publishing, Hague, Netherland, 2015, pp, 1-295, p.30 [hereinafter Daniel B. Gebreamanuel: *Transfer of land right in Ethiopia: Towards sustainable policy framework*]

<sup>30</sup>Proc. No. 456/2005, art 2/4

<sup>31</sup>Ibid

<sup>32</sup> Proc. No. 1/1995art,52/2/d/

<sup>33</sup>Habtamu, Sitotaw, 'The Power to Administer Land in Ethiopia: Scrutinizing Federal Legislative Interventions', P.200

<sup>34</sup>FAO, 'Access to Rural Land and Administration after Violent Conflict', *Land Tenure Studies*, 2005, pp,1-73,p.23

<sup>35</sup>Proc. No. 456/2005, art,2/2

<sup>36</sup>Tsegaye Regassa, 'Sub-national Constitutions in Ethiopia: towards Entrenching Constitutionalism at State Level', *Mizan Law Review*, 2009, Vol. 3 No.1, pp, 34-69, p.34 [hereinafter Tsegaye Regassa, 'Sub-national Constitutions in Ethiopia: towards Entrenching Constitutionalism at State Level']



creating ‘indigenous non-indigenous’ ethnic groups dichotomy in their respective rights to the region <sup>37</sup>[*emphasis added*]. Besides, the region has its own rural land administration and use proclamation in order to implement the land right of rural peasants.<sup>38</sup> However, “non-indigenous peasants”<sup>39</sup>are forcefully evicted from their landholding right in the region.

In relation to non-indigenous people’s various studies have attempt to examine about its rights and status under the current Ethiopian ethnic federal system yet their focus has been mainly limited on socio-cultural and political rights under the existing federalism.<sup>40</sup> Therefore, this study aim to investigate the land rights of non-indigenous peasants in BGRS within the Ethiopian federal system.

## 1.2. Statement of the Problem

It is evident that access to land without payment and protection against eviction of peasants from their land right is a constitutional right which is reproduced in all federation units. However, realization of this right in Benishangul-Gumuz region is difficult. That is because Benishangul-Gumuz constitution clearly identifies five ethnic groups as indigenous and edict the region ownership belonging to indigenous nationalities to Berta, Gumuz, Shinasha, Mao and Como by excluding non-indigenous peoples.<sup>41</sup>Consequently, Benishangul-Gumuz regional land laws do not clear to protect the land right of non-indigenous peasants even if there is unoccupied arable land. There is an attempt for land resource regionalization.<sup>42</sup> Hence, non-indigenous peasants in

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<sup>37</sup>BGRS revised constitution Proclamation 2003, *Lisan Hig Gazeta*, proc. No. 31, 8th Year, No 4, art,2 [hereinafter BGRS revised constitution Proc. No. 31/2003]

<sup>38</sup>BGRS Rural Land Administration and Use Proclamation, 2010, *Lisan Hig Gazeta*, Proc. No.52, 17<sup>th</sup> year No. 10.[ hereinafter BGRS Rural Land Administration and Use Proclamation 85/2010]

<sup>39</sup>*Non-indigenous peasants, are therefore, peoples or community who moved into the territory of BGRS by different pulling and pushing factor, migration and government settlement program 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 at the times current federal arrangement and now those listed peasants reside in this region and sustain their livelihood based on agriculture.*

<sup>40</sup>For instance Assefa Fiseha, ‘Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia’, *Utrecht Law Review*, 2017, Vol. 13, Issue 1, pp, 170-189, p. 171 [hereinafter Assefa Fiseha, ‘Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia’]

<sup>41</sup>BGRS revised constitution proc. No. 31/2003 art,2

<sup>42</sup>Land Resource Regionalization refers to following ethnic federal system of arrangement ethnic groups they assume that the land resource found the assigned ethnic groups to that region consider as the land resource belonging to themselves and excluded the non-indigenous ethnic group from the benefits of the region land resource.

Benishangul-Gumuz region face systematic discrimination on accessing land right by giving priority to indigenous nationalities.<sup>43</sup>

The above problem also invites the regional representative government officials' abuse their authority to achieve their political goals along their ethnic lines. In this case, one can remember forceful eviction of non-indigenous peasant from their landholding and property right in Benishangul-Gumuz in 2013<sup>44</sup> and 2017 in Belo-Jeganfoy Woreda. Time to time forceful evictions of non-indigenous peasants in the region is highly increased though the region constitution edicts the right to free movement of peoples and freely engage in any economic activity.

Besides, the federal land governing laws are also vague concerning the land right of non-indigenous peasants and it is not clear how NNPs of Ethiopian ethnic group translate into regions to decide access and realize their land rights. The existing national land laws are lack of clarity on the relationship between land and ethnicity when ethnic federalism is established in 1995. In such circumstance, there is a contradiction between the universalistic principles of access to land right for all Ethiopian peasants and the territorial implications of ethnic federalism. Moreover, the legal frameworks are ambiguous whether the group right of common property of NNPs of Ethiopia over land includes non-indigenous peasants to exercise related land rights irrespective of the *nature and forms of land tenure*. Even it is not clear whether the existing land governing laws give a guarantee when the land rights of non-indigenous peasants are violated. This makes land rights of non-indigenous peasants at national and regional level become ambiguous.

Besides, due to lack of adequate research in this area, very little is known about the state of *land tenure security* of non-indigenous peasants. Therefore, it is imperative to critically explore the rural land policy and laws of the federal and Benishangul-Gumuz region in relation to access to land and land rights of non-indigenous peasants based on the current ethnic federal arrangement.

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

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<sup>43</sup>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, pp, 1-18,p.6-8

<sup>44</sup> Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p.76

### **1.3.1. General Objective**

The general objective of this study is to investigate the land right of non-indigenous peasants in Benishangul-Gumuz region in the one hand and the national land policy on the other hand under Ethiopian ethnic federalism.

### **1.3.2. Specific Objectives**

Having the above general objective, the study was intended to realize the following specific research objectives;

- To explore the how access to land and land rights of non-indigenous peasants is defined in Benishangul-Gumuz region in line with the federal land law;
- To synthesize the indigenous-non-indigenous peasants' dichotomy in relation to access to land and nature of land rights;
- To analyze the impact of the dichotomy on land tenure security of non-indigenous peasants;
- To explore the causes and legality of such dichotomy and
- To recommend the possible legal remedy to protect non-indigenous peasants land right at regional and national level.

## **1.4. Research Question**

### **1.4.1. General Research Question**

How does the current rural land laws of Ethiopia and Benishangul-Gumuz region promote access to land and protect the land right of non-indigenous peasants under the current ethnic federal arrangement?

### **1.4.2. Specific Research Questions**

- How access to land and land right of non-indigenous peasants defined in Benishangul-Gumuz region land governing laws in line with the federal land law?
- How do non-indigenous peasants understand the difference on access to land and nature of land right in relation to the dichotomy of indigenous and non-indigenous peasants in the region?
- What is the impact of classification of indigenous and non-indigenous/owner-non-owner to the region on the land rights of non-indigenous peasants?

- What are the causes and the legality of classification of indigenous and non-indigenous peasants in BGRS?
- How do the existing land laws address when there is violation on land rights of non-indigenous peasants in BGRS under the current ethnic federal arrangement?

## 1.5. Literature Review

There are many MA thesis and PhD dissertation that focused on the various socio-cultural and political rights of non-indigenous peoples. Nevertheless, the area of land right of non-indigenous peasants under the current federal arrangement does not yet get attention by the researchers. But there is a little attempt to address the land right of non-indigenous peasants.

Accordingly, the first article investigates the land right of non-indigenous minority in Oromia region.<sup>45</sup> Basically, this article focused on three interrelated issues. The first issue is that institutionalization of ethnic federalism has an implication of land administration that violate the land right of non-indigenous peasants by arguing that land administration power given to the regional state. Besides, Tom Laver argue that giving the right to self-determination up to secession of the region basically assume a certain territory belongs to a certain ethnic groups as indigenous which give priority over the land right of non-indigenous peasants. The second issue raised is that there is a contradiction between state/public ownership land right and customary land right under the current federal arrangement. As such principles of universal access to land for rural peasants are not realized since there is a conflict of interest between non-indigenous peasants and indigenous community which leads to ethnic conflict in the scarce land resource. The third issue addressed by this article is that ethno-nationality and citizenship or individual right of non-indigenous minority is not addressed in the existing land policy. After it analyze the above three issues, it come up with a conclusion that the land right of non-indigenous minority in the region is not respected and by strict interpretation of ethnic federalism by government officials and indigenous community lead to eviction of non-indigenous ethnic group.

However, the above study fails to address how those non-indigenous minority peasants can access land and security of their land rights ensured and it is not clear how ethnic minority is defined in Ethiopian context under ethnic federalism. Besides, the scope is limited on the constitutional right

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<sup>45</sup>Tom Lavers, 'Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism', p. 463

of land for peasants and the implication of the current federal structure of the country on land administration without addressing the detail enforcement mechanisms of this right. Third, it does not tell about the possible legal solution about the identified problems.

The second study is in relation to “*Land right and expropriation in Ethiopia*”.<sup>46</sup> Unlike the first study, this research addresses the content of the federal and regional rural land legislation in relation to access to land and land right of rural peasants. Especially, the study addresses the condition of residency and its associated limitation when regulatory organ of the region enforces the law. He argues that residency requirement for access to land results regions interpret as a nativity and exclude other ethnic group who comes from other regions ultimately that limit freedom of movement and creates tenure insecurity. Based on the above finding the researcher come up with unnecessariness of the condition of residency in order to avoid ethnicity on resource regionalism and to bring tenure security. However, the study does not tell about the concept of nativity, how nativity is expressed in Ethiopian land policy context under ethno-linguistic federal arrangement. Besides, the study is limited to define the nature of land ownership and land right in relation with non-indigenous peasants. Moreover, the study does not deeply address the compatibility of the regional land legislation with federal land frameworks.

The other research is basically focused “*Transfer of land right in Ethiopia towards sustainable policy framework*.”<sup>47</sup> This researcher arguing that having land transfer right increase economic productivity by giving incentive for the landholder. Besides, the research explores land governance system in line with international and regional soft law standards in general. Moreover, the study address human and environmental right aspects of the landholders. Consequently, the writer attempts to addresses the impacts of ambiguous definition of NNPs of Ethiopia in accessing land right under ethnic federalism. Further, he explains identification of NNPs as a group and giving ownership right and common property over land affects the individual land right who are not a member of the group by referring “*other ethnic groups*.” Moreover, due to ambiguous nature of land policy the practice shows that membership to a group is a precondition to enjoy land rights. Eventually, the study conclude that because of restriction of land transfer on the right holder results tenure insecurity which affects economic development, violate human right and degradation of the

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<sup>46</sup> Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p,1-317

<sup>47</sup> Daniel B. Gebreamanuel: *Transfer of land right in Ethiopia Towards sustainable policy framework*, pp, 1-327

environment. So that lifting of restrictions on transferability on land is advisable. However, the research has the following limitations. First, the research does not address the land right of non-indigenous peasants explicitly. Second, it does not tell about whether allowing land transferability secure the land right of non-indigenous peasants or not. Third, the study is general and does not address each federation units land legislation.

In nutshell, even if the above three literature try to deal the issue of the land right and tenure security of rural peasants as a whole, they fail to investigate the land rights of non-indigenous peasants under Ethiopian ethnic federalism specifically and directly. The issue raised and the titles itself are so general that limit in-depth exploration of land rights of non-indigenous peasants. Besides, the specific scenario of the land rights of non-indigenous peasants in BGRS is not addressed. In such circumstance, the land rights of non-indigenous peasants under Ethiopian ethnic federalism does not investigated well. So this research covered all the above mentioned study finding gaps by focusing on the land right of non-indigenous peasants in BGRS and investigate the legal divergence of the land rights of non-indigenous peasants with federal land legislation under the current ethnic federal arrangement.

## **1.6. Significance of the Study**

This research is useful for any stakeholders who are interested to know the land right of non-indigenous peasants in the region in line with ethnic federalism. Especially, for researchers the study helps to instigate and conduct further research and interrogate the existing land right of those peasants. For policy and law makers it may help to call the attention of the government and understand the existing divergence of the laws and policies on the land right of non-indigenous peasants so that the government will come up with a solution to the problem. Moreover, it is helpful for students, teachers and any interested person who wants to know about the subject matter the land right of non-indigenous peasants from law and policy perspective in the current situation.

## **1.7. Scope and Limitation of the Study**

To be precise, due to time, resource limitation and security issue the scope of the study limited on:

Chronologically, primarily the study focused on the current land right of the non-indigenous peasants and associated legal divergence and policy pitfalls since post -1991 Ethiopian federalism.

However, the past laws and policies helps to understand the existing laws and objectives. Hence, relevant pre-1991 land right issues were discussed as much as they are useful to provide a historical reference on the dichotomy of indigenous-non-indigenous to the main themes of this study. Demographically, the land right of indigenous peasants and urban residents of the region are out of the ambient of this study.

*Geographically*, currently due to different pulling and pushing factors almost half of the region total population is composed of non-indigenous peasants. Hence, exploring the land right of non-indigenous peasants in BGRS gives sufficient understanding on the nature and content of the land rights of non-indigenous peasants under the current federalism. So that the scope of the study had been limited to BGRS.

*Thematically*, it focused on access and land right of non- indigenous peasants so that the existing land laws of the region was investigated concomitant with the federal land laws.

Regarding to the limitation while conducting the study, the researcher has faced inaccessibility of various peace conferences agenda and documents particularly on arbitrarily evicted non-indigenous peasants. Besides, when the researcher used interview with some officials and expertise on the issues at hand, absence and fear of interviewees to provide genuine information for the question posed. However, with great endeavor, the researcher avoided the impact of such limitations for the quality of the study.

## **1.8. Research Methodology**

### **1.8.1. Research Approach**

As stated before, the aim of this research is to explore the legal protection and practical implementation of land rights of non-indigenous peasants in Benishangul-Gumuz region based on the existing laws. So, to address the research questions and to achieve the intended objectives, a qualitative case study research approach was employed. In this research approach, the researcher can be able to acquire in-depth understanding and extensive information about the study issue at hand.<sup>48</sup> It helped a detail exploration, description and diagnosis of the existing national land policy

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<sup>48</sup> John W. Creswell, *Research design: qualitative, quantitative, and mixed methods approaches*, University of Nebraska, Lincoln, 4th ed. 2014, pp, 1-324,p.235 [hereinafter, John W. Creswell, Research design: qualitative, quantitative, and mixed methods approaches]

and subsequent land governing laws on the land rights of non-indigenous peasants under ethnic federalism in the one hand and BGRS on the other hand. Hence, the research questions and objectives are explanatory in nature. So that the study was objectively intended to explore and analyze the existing legal divergence and policy pitfalls on addressing and protecting the land rights of non-indigenous peasants under ethnic federalism. Since under qualitative case study research approach, the researcher can be able to be flexible depending on the circumstances in the research process rather than tight what in the initial research plan prescribed.<sup>49</sup> The main idea behind qualitative case study research approach is to learn about the problem or issue from participants and to address the research problems based on the acquired information concomitant with the existing land governing laws in contexts of a variety of data sources.<sup>50</sup> It consists of a set of interpretive material practices that makes the world visible.<sup>51</sup> Furthermore, it involves key aspects that compel the researcher to pay attention to divulge matters that are difficult to explore in other methods of research.<sup>52</sup>

Under the ambits of qualitative case study research approach the study employed a blend of doctrinal legal research and socio-legal research type. The doctrinal research aspect involves analyze of statutory provisions and doctrines via the power of reasoning concerning the legal aspects of land rights of non-indigenous peasants which is employed under chapter two and three. Whereas, the socio-legal research aspect gives due focus to the facts on the ground that how the law operated within the society (non-indigenous peasants land right) that needs conducting empirical research which is chiefly employed under chapter three, four and five.<sup>53</sup>

## **1.8.2. Description of the Study Area**

The study was conducted in BGRS one of the federation units of Ethiopia. The reason that Benishangul-Gumuz region was selected as a case study area because relatively the region has fertile and unoccupied arable land which is suitable for agriculture. Due to these pulling and other pushing factors peasants in different corners of the country migrate to the region and live in order

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<sup>49</sup>Id., P.234

<sup>50</sup>Adrijana B. Starman, 'The case study as a type of qualitative research', *Journal of Contemporary Educational Studies*, 2013, Vol.1 pp 28-43 p. 28-30 [here in after Adrijana B. Starman, 'The case study as a type of qualitative research']

<sup>51</sup>Ibid

<sup>52</sup> Ibid

<sup>53</sup>Salim Ibrahim Ali, et al: 'Legal Research of Doctrinal and Non-Doctrinal', *International Journal of Trend in Research and Development*, 2017, Vol. 4, pp, 493-495, p. 494



to maintain their livelihood. However, the regional rural land governing laws create a dichotomy of indigenous-non-indigenous to the region in relation to the various rights.

Specifically, among the three administrative Zones of BGRS data was collected in Kemashi and Metekel Zones. In Kemashi Zone among five Woreda, namely, (Sirba-Abbay, Meti, Kamashi, Belo-Jeganfoy and Yaso) Belo-Jeganfoy was selected. Since it has a large number of non-indigenous peasants that engage in agriculture. Further, currently wide number of non-indigenous peasants forcefully evict from their landholding rights in Kemashi Zone specifically the selected Woreda. In Metekel Zone among six woreda namely, (Guba, Dangur, Mandura, Wenbera, Bulen and Pawe Special Woreda), Dangur woreda was selected due to the availability of unoccupied land. In both case the selection criteria was based on purposive sampling.

### **1.8.3. Data Sources and Data Gathering Tools**

Basically, both primary and secondary sources were used. As a primary source, after identifying the appropriate data source the researcher was conducted in-depth interview with the key informants. Since due to their special work experience and responsibility interviewing those peoples helped the researcher to gather sufficient information and know about the experience and awareness towards the land right of non-indigenous peasants. So that conducting with semi-structured interview were important. Especially, this interview helps the researcher to answer research question how non-indigenous peasants access and defined their land rights. Accordingly, non-indigenous rural peasants and local elders of BGRS particularly that reside in Belo-Jeganfoy and Dangur Woreda, land regulatory organ of the selected Zone and respective Woreda, BGRS Environmental Protection Land Administration and use Bureau was interviewed.

Besides, focus group discussion (hereinafter FGD) was employed in order to cover a few crucial issues which are not addressed by key informant's interview. Hence, this types of interview helped to elicit and know detail information about the respondent's awareness, beliefs and ideas who have similar background on the subject matter under inquiry.<sup>54</sup> Especially, this data collection tool helps to answer the research question such as the impacts of the dichotomy on the land rights non-indigenous peasants, the cause of classification and the available remedies for non-indigenous peasants when their land rights are violated. The group was formed six to eight peoples that can

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<sup>54</sup>Lokanath Mishra, 'Focus Group Discussion in Qualitative Research', *Techno LEARN*, 2016, Vol. 6, No. 1, pp, 1-5, p. 1-5[hereinafter Lokanath Mishra, 'Focus Group Discussion in Qualitative Research']

be both manageable and control of the member of the group. Accordingly, FGD was conducted with non-indigenous peasants especially who are the victim of forceful eviction in Belo-Jeganfoy Woreda.

In relation to documents, different land law minutes and relevant land laws and policies in relation to access and land rights of non-indigenous peasants were analyzed. As a secondary source, the researcher was undertake published and unpublished materials. Besides, other available and relevant literatures regarding to the issue at hand was also made part of data collection techniques.

#### **1.8.4. Sampling Technique and Sampling Size**

In order to acquire sufficient data participants were selected based on purposive and snowball sampling. Because the participant's experience, position, expertise and other attributes to acquire general information which is vital to address the research questions of the study.<sup>55</sup> Though, snowballing is considered as a type of purposive sampling, in this technique, participants with whom contact has already been made use their social networks to refer the researcher to other people who could potentially participate in or contribute to the study.

Determining sample size is an important issue in research since samples that are too large may waste resource and create inability to manage the data, conversely, many small samples may lead under estimation or inaccurate result. There are no fixed rules for sample size determination in qualitative research rather the sample size depends on what you try to find out and from what different informants or perspectives you try to find out.<sup>56</sup> Hence, the size was determine based on the criterion of redundancy or data saturation is met. So the researcher was undertake the interviewee as far as the data saturates.

#### **1.8.5. Data Analysis Method**

Data was gathered through both primary and secondary sources were analyzed by employing qualitative data analysis method. First, in-depth interview data was prepared through recording interviews and translated from Amharic to English language. Then the data was logically organized by using coding and making tabulation with similar responses and items together. Then the data was clean and identify the gaps based on the research objectives and questions. Finally,

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<sup>55</sup> John W. Creswell, *Research design: qualitative, quantitative, and mixed methods approach*, p.236

<sup>56</sup> Abiy Zegeye, et al, *Introduction to Research Methods*, Addis Ababa University, Unpublished, 2009, p,61

the existing primary and secondary source of data was analyzed via thematic and content based analysis by making triangulation in order to investigate the land right of non-indigenous peasants in the region.

## **1.9. Organization of Chapters**

This study has five chapters. The first chapter addresses the introductory part of the study. Specifically, it includes the background of the study, the statement of the problem, literature review and the objectives of the study, research questions, the scope and limitation of the study, organization of the study and methodology of the research. The second chapter, gives brief elaboration on the conceptual and legal framework of indigenous peoples at international, regional and Ethiopian context. Then the historical overview of Ethiopian land tenure system is analyzed. The third chapter is analyzed the nature of land ownership and its implication on delineating related land rights of non-indigenous peasants in BGRS so that the region land legislation were investigated. Then, federal-state paradox on addressing the land rights of non-indigenous peasants explored. The fourth chapter addresses the practical implementation of legal protection of land rights of ‘non-indigenous’ peasants in BGRS. Hence, the right to access and transferability of land, protection and remedies for violation of their land rights in Dangur and Belo-Jeganfoy Woreda were explored. Finally, it is followed by recommendation and conclusion.

# CHAPTER TWO: THE CONCEPT OF ‘INDIGENEITY’ IN THE ETHIOPIAN FEDERALISM AND HISTORICAL OVERVIEW OF LAND TENURE

## 2.1. Introduction

The way to define and set the minimum criteria to identify who is indigenous people from non-indigenous people is the most troublesome and contested issue under international, regional and national instruments.<sup>57</sup> The international community has not adopted a definition for indigenous peoples. Rather almost all international legal instruments and different organization try to attempt to characterize indigenous peoples than defining the actual term itself.<sup>58</sup>

However, identifying indigenous peoples from non-indigenous one is not to invent a new right or made exclusions of non-indigenous peoples from their rights. So, in order to understand the land rights of non-indigenous peoples under Ethiopian federalism, this chapter aims to address two interrelated issues. In doing so, first, it attempts to make clear about the concept of indigenous peoples from the various parameters used by international, regional legal instruments, scholars and the rationale behind to identify indigenous peoples from the non-indigenous peoples. Second, the concept of indigenous-non-indigenous dichotomy under Ethiopian ethnic federalism could be investigated. For the purpose of understanding the current dichotomy, the historical land tenure system under different Ethiopian regimes are assessed.

## 2.2. The General Essence of Indigeneity

The recognition and identification of indigenous peoples play a crucial role for the survival of indigenous groups and for their ability to meaningfully exercise their socio-economic, cultural and political rights.<sup>59</sup> But who defines ‘indigenous’ peoples, the parameter for identifying ‘indigenous’ peoples, and the scope of rights they enjoy makes the attempt of defining ‘indigenous’ peoples more complicated and debatable. The effort for defining and identifying ‘indigenous’ peoples in

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<sup>57</sup>Ken S. Coates, *a Global History of Indigenous Peoples Struggle and Survival*, 1<sup>st</sup> ed. , PALGRAVE MACMILLAN, New York, 2004, pp, 1-291, p.1

<sup>58</sup>Ibid

<sup>59</sup>Imai Shin and Buttery Kate, ‘Indigenous Belonging: A Commentary on Membership and Identity in the United Nations Declaration on the Rights of Indigenous People’, *working papers* 49, 2013, pp, 1-26, p.4[hereinafter Imai Shin and Buttery Kate, ‘Indigenous Belonging: A Commentary on Membership and Identity in the United Nations Declaration on the Rights of Indigenous People]

different regional and international instruments helps to understand the rest group of people who *literally* referred to ‘non-indigenous’ peoples.<sup>60</sup>

From the etymological definition, the word ‘indigenous’ originated from Latin term ‘indigena’ which mostly used to differentiate between persons born a particular place and those who come from elsewhere.<sup>61</sup> In addition, the term ‘indigenous’ was used to separate the colonized from the colonizer and the original settlers from newcomers and so on.<sup>62</sup> Hence, when the colonized and original settlers are considered as ‘indigenous’ people, the colonizer, conqueror, and newcomers are considered as ‘non-indigenous’ people. However, scholars and international instruments to address the socio-cultural, economic and political rights of indigenous peoples define in various way.

Among many scholars, Wilmer, defines indigenous people in the broader sense that with traditional based culture, who were politically autonomous, before colonization; who, in aftermath of colonization and their cultural integrity, economic self-reliance, and political independence by resisting the assimilationist policies of a nation-state.<sup>63</sup>

However, the above definition is challenged by Jeff Corntassel, provided that the definition was too general which did not unequivocally address whether indigenous people are distinct in terms of their culture and goals from other groups like non-indigenous people.<sup>64</sup> Besides, the definition does not clearly address who would have an assimilationist policy and from who does the indigenous people would resist an assimilation policy. Despite such limitation on Wilmer definition, Jeff J. Corntassel understands and defines indigenous people are the ancestral roots of the society which existed before the emerging of colonialism.<sup>65</sup> Further, he explains that indigenous peoples have their own historical continuity and its own distinct socio-economic

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<sup>60</sup>Gizachew Wondie, *Indigenous and Non-indigenous People's Rights in Benishangul-Gumuz Regional State*, MA thesis, Addis Ababa University, 2015, [Unpublished, available at Addis Ababa University Institutional Repository], pp, 1-123, p.28[herein after Gizachew Wondie, *Indigenous and Non-indigenous People's Rights in Benishangul-Gumuz Regional State*]

<sup>61</sup>Timo, M. *Identity, Difference and Otherness, The concepts of 'people', 'Indigenous People' and 'Minority' in International Law*. 1st ed. Helsinki: University of Helsinki, 2000, p. 110

<sup>62</sup>Ibid

<sup>63</sup>Gizachew Wondie, *Indigenous and Non-indigenous People's Rights in Benishangul-Gumuz Regional State*, p. 26

<sup>64</sup>Jeff J. Corntassel, ‘Who is Indigenous? ‘Peoplehood’ and Ethno nationalist Approaches to Rearticulating Indigenous Identity? People hood and Ethno nationalist Approaches to Rearticulating Indigenous Identity, Nationalism and Ethnic politics’. 79

<sup>65</sup>Ibid

practice before and after colonialism that makes them differ from the non-indigenous community.<sup>66</sup> On another hand, Benedict Kingsbury understand, indigenous peoples as those who have its own historical flow before and after the colonial invasion that exist on a given territory and they consider themselves different from others community, but now exist on their territories.<sup>67</sup> Based on the above definition in mind, Benedict forwards the following parameters to identify indigenous peoples. These are: “(a) attachment to ancestral territories and to natural resources in this area;(b) self- a close and identification by others as a members of distinct cultural group;(c) an indigenous language, often differ from the national language and presence of customary social and political institutions.”<sup>68</sup> According to Benenict’s definition, the requirement of being distinctiveness in terms of socio-cultural relation to the rest, strong attachment to land resource and non-dominance position clearly indicate that there would be group of people who had a dominance position over the ‘indigenous’ people and had also distinct ethic value.

Kymlicka describes indigenous peoples as “peoples whose traditional lands have been overrun by settlers, and who have then been forcibly, or through treaties, incorporated into states run by people they regard as foreigners.”<sup>69</sup> Here, unlike Benedict, Kymlicka’s characterization of indigenous peoples is only limited to arbitrarily evictions of indigenous peoples from land resource by settlers/foreigners. But Kymlicka, is silent to show who settlers are and how arbitrarily land eviction occur. On the other hand, Mary define Indigenous peoples are who suffered and face discrimination and displacement from their territory during the colonial era and currently they try to reestablish their identities.<sup>70</sup> Unlike Kymlick, their main focus of identifying indigenous peoples is colonialism. According to Mary due to the act of colonialism indigenous communities were arbitrarily evicted from their ancestral land and face marginalization but know they attempt to reinstate in their earlier position.

In short, though different scholars understand the concept of indigenous peoples from different perspective and outline their own parameters, one can capture the common understanding among

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<sup>66</sup>Ibid

<sup>67</sup>Kingsbury Benedict, ‘Indigenous peoples In International Law; A Constructivist Approach to the Asian Controversy’, *the American Journal of International Laws*, 1998, Vol.92, No. 3-. pp. 414-457, p. 420

<sup>68</sup>Kingsbury Benedict as cited by Eshetu Alebachew, *The Rights for Political Participation of Non-indigenous peoples in Gambella Region particularly in Gambella city, Abobo, Godere,Lare and Itang special Woredas*, (MA, thesis, Addis Ababa university, 2017, [Unpublished available at Addis Ababa University Institutional Repository] p.1-104, p.16

<sup>69</sup>Will Kymlicka as cited by Beza Desalegn, ‘Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia’, p.35

<sup>70</sup>Mary N. MacDonald, The primitive, the primal, and the Indigenous in the study of Religion, *Journal of the American Academy of Religion*, 2011, Vol.79,No.4, pp, 815-826, p.819

scholars. Hence, indigenous peoples are strongly tied with the land resource but due to the act of colonization, their land resource was arbitrarily taken so that different socio-economic and political rights face marginalization.

### **2.2.1. International Understanding in International Instruments**

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 parameters to determine those peoples?<sup>71</sup> Though several proposals for defining indigenous have been put forward by various legal experts, there is not yet a universally accepted and obligatory legal definition.<sup>72</sup> In such a circumstance, it is much more appropriate and helpful to attempt to outline the major features which may help us to identify who indigenous peoples are at the international and regional level and equally to understand the non-indigenous peoples.

In relation to this, the criteria proposed by Jose Martínez-Cobo –the UN special rapporteur– explain in his study ‘discrimination against indigenous peoples is usually accepted and frequently cited by many legal experts, scholars and activists.’<sup>73</sup> Accordingly, the parameters he labeled as indigenous peoples, were:

*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.*<sup>74</sup>

Based on the above parameters, being considered as indigenous peoples, there must be a historical continuity between peoples under consideration and societies that existed before invasion by external forces. Further, in order to understand the historical continuity of indigenous peoples he considers 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) have distinct culture or way of

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<sup>71</sup>Ojulu, Ojot Miru, *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, 2013, pp. 1-411, p.42, Unpublished, available on University of Bradford eThesis, [hereinafter, Ojulu, Ojot Miru, *Large-scale land acquisitions and minorities/indigenous peoples' rights under ethnic federalism in Ethiopia. A Case Study of Gambella Regional State*]

<sup>72</sup> Id. p. 42&ff.

<sup>73</sup> Id., p. 42

<sup>74</sup>Jose Martinez Cobo as cited by Bahar Abdi, *The Emerging International Law on Indigenous Peoples' Rights: A Look at the Ethiopian Perspective*, LLM thesis, Addis Ababa university 2010, pp.1-71,p.9 [Unpublished, available at Addis Ababa University Institutional Repository]

life and language, e) residence in certain parts of the country, or in certain regions of the world; f) other relevant factors.<sup>75</sup>

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 land resource for herding, agriculture, hunting and fishing.<sup>76</sup> UNDRIP recognized that that indigenous peoples have suffered from historic injustices as a result of colonization and dispossession of their lands, territories and resources, thus preventing them from exercising in particular their right to development in accordance with their own needs and interests.<sup>77</sup> From this instrument one can appreciate indigenous peoples' rights to lands, territories and natural resources carry far-reaching implications in every aspect of human development. To be effectively realize their rights, UNDRIP acknowledge that indigenous peoples have the right to self-determination in all affairs and it considered as a core-stone of their right to exercise their own affairs.<sup>78</sup> The other impressing point in this instrument is that indigenous peoples are equal right to non-indigenous peoples.<sup>79</sup> This implies that giving indigenous peoples special treatment and legal protection for indigenous communities aims to *enhance their rights rather than creating a new rights*. Hence, by taking into account historical experience of discrimination, recognition of their rights overall is fully justified from the ambits of equality and non-discrimination perspective that enshrined under international human right instruments. However, it does not clearly explain who indigenous peoples are itself 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 resource by indigenous people exercised or does recognition of the right over land natural resource implies the exclusion of the rest communities, the instrument doesn't well address. Lastly, the declaration has no legal binding force to the state parties which highly resembles the imposition of political commitments.

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<sup>75</sup>Ibid

<sup>76</sup>United Nations Declaration on the Rights of Indigenous Peoples, Res.61/295 General Assembly on 13 September 2007, art, 26 (hereinafter United Nations Declaration on the Rights of Indigenous Peoples)

<sup>77</sup> Id., preamble para, 2-6

<sup>78</sup>Id. art,3&ff

<sup>79</sup> Id., preamble para, 2



United Nations General Assembly (UNGA) has a fundamental declaration that acknowledges “Indigenous peoples have the right to self-determination in all affairs and they considered as central decisive of their right at international level.”<sup>80</sup>

Moreover, among the prominent international organization the International Labour Organization (hereinafter ILO) Convention No.169 of 27 June 1989 try to pinpoint the major feature of indigenous peoples. This convention emphasis on: indigenous peoples have their own 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 establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.<sup>81</sup> Additionally, the convention states that “Self-identification as indigenous or tribal shall be regarded as a fundamental criterion”<sup>82</sup>

Generally, there is no universally agreed definition on the concept of indigenous peoples among different academicians and international legal frameworks. Rather more or less their understanding is focused on colonization and land resource attachment which makes the concept of indigenous peoples problematic in the context of present-day Africa. Since peoples of Africa characterized by the history of massive migration and colonization.<sup>83</sup>

### **2.2.2. Regional and National Legal Instruments Understanding**

The European Union (hereinafter EU) is committed to promoting human rights, democratization and development fight against racism and discrimination lies at the heart of that commitment.<sup>84</sup> Besides, the union recognizes that many indigenous peoples live in developing countries where they often experience economic, social and political marginalization and are exposed to recurrent

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<sup>80</sup> United Nations Human Rights Office of the High Commission, ‘Indigenous peoples’ and the United Nations Human Right Systems’, United Nation, New York and Geneva fact sheet, 2013, No.9/rev.2.( available on: <<https://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>,> last accessed on June/6/2019)

<sup>81</sup> Daniel B. Gebreamanuel: *Transfer of land right in Ethiopia: Towards sustainable policy framework*, p. 204

<sup>82</sup> Gizachew Wondie, *Indigenous’ and ‘Non-indigenous’ People’s Rights in Benishangul-Gumuz Regional State: The Right to Political Participation of ‘Non-Indigenous’ People in Bambasi Woreda*, p.28

<sup>83</sup>Beza Desalegn, ‘Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia’, *Acta Humana*, 2015, pp 31-57 at p.34, [hereinafter Beza Desalegn, ‘Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus Adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia]

<sup>84</sup>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 14/2019)

violations of human rights than non-indigenous people.<sup>85</sup> Hence, taking into consideration the absence of an agreed definition, the EU documents for the identification of indigenous peoples use the *Cobo-working definition as discussed under section 2.1.1.*<sup>86</sup> Further, to realize commitment of promoting human right, the EU *Main Guidelines for Support to Indigenous Peoples* recognize the importance for “*self-development*” provided that indigenous peoples have the right to able to develop their own socio-economic and political affairs unlike that of the UNDRIP which focus on the right to self-determination.<sup>87</sup> To do this, the EU’s external action on supporting indigenous peoples is guided by a number of principles mainly set out by European Commission Working Document on support for indigenous peoples in various development cooperation.<sup>88</sup> Such principles are including the right to object development projects when their rights were affected, and the right to obtain compensation where the projects negatively affect their livelihoods, the right to participate and decision making power in government policies and development objectives.

Unlike the definition given by various scholars and international instruments that focus on colonization, the EU emphasis the various socio-cultural, economic and political rights. That is why the union use and recognize the rights to self-development rather than the right to self-determination. So that special assistance is needed in various government policies and programs in order to ensure equality and non-discrimination among peoples. However, even if the parameter to identify indigenous people is differ one another, the ultimate objective is to realize equality and the prohibition of discrimination and the enjoyment of full range of human rights is enshrined both in the EU policies and in UNDRIP.

On the other hand, the formal legal recognition and status granted by Asian states to indigenous peoples varies from country to country.<sup>89</sup> Though almost all states in Asia voted for the adoption

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<sup>85</sup>European Commission,, Implementing EU External Policy on Indigenous Peoples, joint staff working document, Brussels, 2016, p.7-8 ( at:< [https://eeas.europa.eu/.../swd\\_2016340f1jointstaffworking\\_paper\\_en\\_v2\\_p1\\_8...](https://eeas.europa.eu/.../swd_2016340f1jointstaffworking_paper_en_v2_p1_8...)> Last accessed on May/14/2019)

<sup>86</sup>Ibid

<sup>87</sup>The European Commission Working Document "On support for indigenous peoples in the development cooperation of the Community and Member States, 1998, at: <<https://cendoc.docip.org/collect/...dir/Council%20Resolution%20Nov%201998.pdf>> last accessed on May 12/2019

<sup>88</sup> European Commission, Implementing EU External Policy on Indigenous Peoples, Joint staff working document, Brussels, 2016, p.7-8 ( at:< [https://eeas.europa.eu/.../swd\\_2016\\_340\\_f1\\_joint\\_staff\\_working\\_paper\\_en\\_v2\\_p1\\_8...](https://eeas.europa.eu/.../swd_2016_340_f1_joint_staff_working_paper_en_v2_p1_8...)> Last accessed on May 14/2019

<sup>89</sup>Asia Indigenous Peoples Pact, Overview of the State of Indigenous Peoples in Asia, available at: <[www.aippnet.org](http://www.aippnet.org)>

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 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.<sup>90</sup> Due to this challenge different Asian governments refer 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 use the term indigenous in their domestic laws.<sup>91</sup>

Like that of Asian continent, the identification indigenous of peoples in Africa based on international perspective remains a contested notion and inappropriate due to the history of colonization.<sup>92</sup> Since traditionally peoples of Africa now and then remain tied with their land resource, with distinct ethnic groups by demanding of a certain terrain.<sup>93</sup> Migration of Peoples from one region to the other region in order to react climatic change and conflict has been the other salient feature of African community for centuries. Further, except Ethiopia and Liberia all African countries were colonized. Colonization imposed by European-dominated political and economic system on populations that were indigenous to the territory of Africa which subsequently results marginalization via the process of colonization.<sup>94</sup> All the above factor made it difficult to apply the concept of indigenous people's right under international frameworks of indigenous people's right in African context.<sup>95</sup> Because there is a strong contention that 'all Africans are indigenous to the continent.'<sup>96</sup> Hence, in contradiction to international understanding, the African Commission on Human and Peoples Right (hereinafter ACHPR) denied the concept colonialism who came first

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, (Last accessed on May ,12/2019 )

<sup>90</sup>Ibid

<sup>91</sup>Ibid

<sup>92</sup>Laura A. Young and Korir Sing'Oei, Access to justice for indigenous peoples in Africa, p.90 ( available at <[https://academiccommons.columbia.edu/.../fedora.../Chapter\\_6\\_Young\\_Sing\\_Oei.pdf](https://academiccommons.columbia.edu/.../fedora.../Chapter_6_Young_Sing_Oei.pdf) > (last accessed at march /20/2019)

<sup>93</sup> Ibid

<sup>94</sup>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

<sup>95</sup>Ojulu, Ojot Miru, *Large-scale land acquisitions and minorities/indigenous peoples' rights under ethnic federalism in Ethiopia. A Case Study of Gambella Regional State*, p.43

<sup>96</sup> Id., p. 43

on a given territory.<sup>97</sup> Pursuant to the reasoning of the African Commission's Advisory Opinion, the principal criterion in determining indigenous peoples in Africa is that they themselves identifying as indigenous peoples in their socio-cultural life, historically marginalized and isolated from mainstream of politics and economic life, and spiritual or cultural attachment on natural resources rather than original or first occupation.<sup>98</sup>

Despite international and interregional communities made a positive effort for the protection of indigenous peoples, there is no internationally and regionally accepted standards that binds the member states to enforce the right of indigenous peoples except ILO.<sup>99</sup> And up what extent the right of both indigenous and no-indigenous community's right are enforced together whose livelihood is directly or indirectly depend on accessing land and natural resources.

Therefore, lack of unanimous definition for 'indigenous' peoples in the regional and international fora as well as the special rights attached to indigenusness makes the national states to issue their own domestic decision and definition of 'indigenous' peoples in their own territorial jurisdiction. Hence, different states have different conception and put subjective criteria for conceptualizing and defining 'indigenous' peoples.

### **2.2.3. Rasion D'etre of Defining 'Indigeneity'**

As discussed above, despite the problem of adopting a uniform definition of "indigenous peoples", defining and identifying by different scholars, regional and international instruments in different perspective their objective is almost the same. Consequently, they assumed that various of indigenous peoples are economically poor and live in inaccessible, marginal and risk-prone rural surroundings because of historical facts and colonization.<sup>100</sup> Hence, many of them are lack fundamental rights and freedoms, access to basic facilities as well as opportunities to participate in policy-making and their indigenous economies often depend on subsistence and characterized by limited access to land and other natural resources.<sup>101</sup> So that they face discrimination, not able

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<sup>97</sup> Id. , p. 44

<sup>98</sup> Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous peoples, 2007 ( available at: < [www.achpr.org/.../special.../indigenous-populations/un\\_advisory\\_opinion\\_idp\\_eng.p...](http://www.achpr.org/.../special.../indigenous-populations/un_advisory_opinion_idp_eng.p...) > Last accessed on May 12/ 2019).

<sup>99</sup> Beza Desalegn, 'Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia', p.34

<sup>100</sup> FAO Policy on Indigenous and Tribal Peoples, 2010, pp, 1-32, p. 7

<sup>101</sup> Ibid

to participate fully in public life, not maintain their distinctive identities, cultures, languages and ways of life like that the rest of world's community.<sup>102</sup> Hence, it pushes states to be bound to support and protect the different aspect of indigenous people's right in order to overcome the historical injustices and current patterns of discrimination so that they can equally exercise their right like that of non-indigenous peoples.<sup>103</sup>

### 2.3. The Concept of 'Indigeneity' in the Ethiopian Ethnic Federal System

As discussed above based on the current Ethiopian ethnic federal arrangement, sharing international and regional notion of indigenusness in both level, however, in Ethiopian context, applying its definition and concept is not much complicated.<sup>104</sup> First, in fact Ethiopia was never colonized and doesn't share the history of colonialism like many African countries makes the direct applicability of indigenous peoples rights as framed in the international arena.<sup>105</sup> Regarding to the idea Muluneh Kassa explain that every Ethiopian is indigenous people.<sup>106</sup> In support of this idea, Wubshet argue that though some regions try to understand some ethnic nationality considered as indigenous based on ethno-linguistic federal arrangement, the concept of indigenusness is not applicable in Ethiopia.<sup>107</sup> Hence, currently all Ethiopian NNPs have the right to self-determination and have its own region.<sup>108</sup> Second, giving recognition for indigenous peoples does not mean that limiting and excluding of non-indigenous peoples from their right.<sup>109</sup> However, Zewudie argue that the idea of expansion and internal subjugation as well as marginalization consider as a colonization and use the term in that context.<sup>110</sup> But in this article it is not explained about who are indigenous and non-indigenous, despite the fact that every NNPs of Ethiopian ethnic groups have

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<sup>102</sup> The United Nations Development Group's Guidelines on Indigenous Peoples' Issues, Inter-Agency Support Group (IASG), 2009, pp, 1-62, p. 12

<sup>103</sup> Ibid

<sup>104</sup> Beza Desalegn, 'Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia', p. 36

<sup>105</sup> Ibid

<sup>106</sup> 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*, 2017, Vol. 6, Issue 2, p 1-31 p.40 [hereinafter 'The Paradox of Administration of Nationalities in Post-1991 Ethiopia: The Case of Benishangul-Gumuz Regional State']

<sup>107</sup> ወ.ብሸት ሙላት, አንቅጽ ሰላሳ ዘጠኝ፣ የራስን እድል በራስ መወሰን ጽዕኖ መሪያ አትም፣ አዲስ አበባ፣ ኢትዮጵያ፣ 2007 ዓ.ም ከገጽ 1-341፣ ገጽ 47 [ከዚህ በኋላ ወ.ብሸት ሙላት, አንቅጽ ሰላሳ ዘጠኝ፣ የራስን እድል በራስ መወሰን]

<sup>108</sup> Ibid

<sup>109</sup> Ibid

<sup>110</sup> Fasil A. Zewdie, 'Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession', *Law, Social Justice & Global Development Journal (LGD)*, 2013, pp, 1-26, p.1 (hereinafter Fasil A. Zewdie, 'Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession')

the right self-determination. Second, the characterization of indigenous peoples followed by the African Commission by using historical marginalization and isolation is not without its own short coming. It is not clear how historical marginalization can be objectively interpreted. This is true when one counts the history of Ethiopian state and its peoples which have lack of consensus and results the cancellations of the current history teaching materials.<sup>111</sup>

Despite the above scholar's divergent views and arguments, there is no legally recognized indigenous nationalities for a certain region in Ethiopia based on the international understanding of indigenous peoples governing legal frameworks.<sup>112</sup> Rather when ethnic federalism established since 1995, legally the FDRE constitution generously recognizes the right to self-determination for all ethno-national groups without any distinction.<sup>113</sup> According to Seyoum Mesfin, the FDRE constitution give opportunity to identify indigenous and non-indigenous under the blanket terms NNPs.<sup>114</sup> Due to this, FDRE constitution does not adopt any legal framework in stating who indigenous and non-indigenous people is.

But one thing should be remember that article 54/3 of the FDRE constitution have a significant space about minority nationalities and peoples to have special representation in order to exercise the right to self-determination , socio-cultural and land resource rights within the dominant ethno-national group.<sup>115</sup> Following ethnic based federalism there are three types of ethnic group were created within the country. The first category of ethnic groups refers to who are politically cohesive in a nation but who are culturally separate even in terms of language.<sup>116</sup> That is why except Gambella and South NNPs, Oromia, Amhara, Somali, Tigray, Afar and Benishangul-Gumuz regions are predominantly composed of the dominant and large number of ethnic groups that give their name to the regional state.<sup>117</sup>For instance, the culture of Wollega Oromo, Borena or Shewa

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<sup>111</sup>Fana Broadcast Corporation News, May 15/2019

<sup>112</sup>Zerfu Hailu, Land Governance Assessment Framework Implementation in Ethiopia, Final Country Report, January, 2016, pp, 1-178, p. 56

<sup>113</sup> Proc. No. 1/1995, art, 39

<sup>114</sup>As cited by Eshetu Alebachew, 'The Rights for Political Participation of 'Non-indigenous' people's in Gambella Region particularly in Gambella city, Abobo, Godere,Lare and Itang special Woredas' , p. 24

<sup>115</sup>Proc. No. 1/1995, art, 54/3

<sup>116</sup>Jürgen H.P. et al, 'The Concept of Ethnicity and its Operationalization in Cross-National Social Surveys', *Metodološki zvezki*, 2010, Vol. 7, No. 2, pp, 107-132, p. 111 [hereinafter Jürgen H.P. et al, 'The Concept of Ethnicity and its Operationalization in Cross-National Social Surveys']

<sup>117</sup>Christophe Van der Beken: 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges', *Journal of African Law*, 2014, Vol.59, No. 1, pp. 150-177, p. 153 [hereinafter, Christophe Van der Beken: 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges']

Oromo is quite different in terms of culture even in terms of the dialect of their language. But they built the Oromo nation who is the dominant ethnic group in Oromia region. The same is true for Gojam, Shewa, Gonder or Wollo cultural practice but together they built the Amhara nation who is the dominant ethnic group in Amhara region. The second category of ethnic group refers to recognized ethnic minorities with guaranteed cultural independence and other related rights within the dominant ethnic group.<sup>118</sup> That is why in different regional constitutions allow to establish special Woreda or Zonal administration within their respective region.<sup>119</sup> The third category of ethnic group are: immigrants/settlers and their descendants who arrived over the last 150 years from all parts of the globe.<sup>120</sup> In our case, there are peoples who moved to one ethnically autonomous region to the other region by migration, resettlement program, economic, social or other pulling and pushing factor and currently they reside under one of ethnically structured and territorial autonomous Kilil. Regarding to this category of people except Amhara regional state revised constitution<sup>121</sup> many of the regional constitutions make a dichotomy by using the terminology “we” and “others”<sup>122</sup> [*Emphasis original*]. On the same approach, BGRS revised constitution use the terminology of indigenous and non-indigenous people dichotomy to the region. Standing from this dichotomy different scholars had put their own conceptual definition for these two groups of people. For instance, Van der Beken tries to explain non-indigenous people as groups of people or individuals who moved to the region in more recent or past and therefore to be seen as an internal migrants to ethnically arranged and autonomous region.<sup>123</sup> Besides, in another work, Van der Beken understand the ethnic territorial approach definition of NNPs under article 39(5) of the federal constitution, which identifies inhabiting an identifiable, predominantly contiguous territory as one of its constituent elements.<sup>124</sup> Hence, the FDRE Constitution assumes that all Ethiopian ethnic groups have their place of origin in a certain area of the country, which is

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<sup>118</sup>Ibid

<sup>119</sup> 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

<sup>120</sup>Jürgen H.P. et al, ‘The Concept of Ethnicity and its Operationalization in Cross-National Social Surveys’, p.111

<sup>121</sup>Amhara National Regional State the Revised constitution proclamation, 2001, *ZIKIRE-HIG*, Proc.No.59,7<sup>th</sup> Year,No.2, art, 8, 39 and preamble para 1-8

<sup>122</sup>ORS Revised Constitution Proclamation 46/2001, preamble para 1 and art, 2 &The Somali regional state revised constitution, proclamation, preamble, Para 1 and art, 2

<sup>123</sup>Christophe Van der Beken, ‘Ethiopian Constitutional protection of Ethnic minorities at regional level’, *African Focus*, 2007. Vol.2. No. 1 p.16(herein after Beken, V. ‘Ethiopian Constitutional protection of Ethnic minorities at regional level’)

<sup>124</sup>Christophe Van der Beken: ‘Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges’, p. 160

located in one of the nine regions.<sup>125</sup> Those ethnic groups explicitly mentioned and empowered by the regional constitutions are indigenous groups of the region and other people's come to the indigenous ethnic group regions by different pulling and pushing factor call non-indigenous peoples.<sup>126</sup> Further, Getachew Assefa understand indigenous people are those group of people that are currently believed both legally and politically to be the owner of the territories in which they are found whereas peoples moved over the last 150 or so years to one of ethnically arranged regions call *exogenous group*.<sup>127</sup> Other scholars also designated as *minority people*<sup>128</sup>, *non-indigenous people*<sup>129</sup>, sometimes they give a naked name like *migrants* (*መጡ*)<sup>130</sup>, *settlers* (*ሰፋሪ*).<sup>131</sup>

However, the rational usage of the above terminology and divergent understanding among scholars is not to show the international and regional understanding or identification of indigenous peoples from non-indigenous one. Rather to show when the federation units structured along ethno-linguistically there are a certain ethnic groups in which priority right is given to the assigned region and there are peoples who have inferior rights who are not a member of ethnically arranged Kilil. That is also the writer's contestation that there is no any legal ground in the current ethnic federal system of Ethiopia to use and apply the international and regional understanding of the concept of indigenous peoples right. Rather the primordial based identification of ethnic group and ethnic based structure of federation units itself creates the dichotomy of indigenous-non-indigenous people in the regions in terms of various right.

Therefore, the researcher uses the language only and develop its own working definition for the purpose of this thesis only as provide below.

*Non-indigenous peasants, are therefore, peoples or community who moved into the territories of BGRS by different pulling and pushing factor, migration and government*

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<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> Getachew Assefa, 'federalism and legal pluralism in Ethiopia: Preliminary observations on their impacts on the protection of human rights', p. 179

<sup>128</sup> Tom Lavers, 'responding to land-based conflict in Ethiopia: the land rights of ethnic minorities under federalism', p. 462

<sup>129</sup> Ojulu, Ojot Miru, *Large-scale land acquisitions and minorities/indigenous peoples rights under ethnic federalism in Ethiopia. A Case Study of Gambella Regional State*, p.259

<sup>130</sup> Ibid

<sup>131</sup> Jon Abbink, 'Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism', *Journal of Contemporary African Studies*, 2006, Vol.24, No. 3, pp, 390-415, p. 398 [hereinafter on Abbink, 'Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism']



*settlement program 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 at the times current federal arrangement and now those listed peasants reside in this region and sustain their livelihood based on agriculture.*

Taking the above designation and understanding in mind, based on article 2 of BGRS 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 is used to cover the protection accorded to indigenous peoples within the international and regional frameworks or not as discussed above. However, principally, the application of the terminology of indigenous peoples in Benishangul-Gumuz region is far extensive than simple usage of the language. This is true under article 39 of the revised constitution of BGRS give the right to self-determination for five indigenous nationalities.<sup>132</sup> Besides, ownership right over the region is reserved for the above five identified ethnic groups of nationalities only.<sup>133</sup> Hence, the question is how does non-indigenous peasants protect and enjoy equal right at national and regional level? And how the right of non-indigenous peasants’ address by the current land policy? These and related question will be discussed in chapter three.

#### **2.4. The Historical Context of Indigenous-Settler Dichotomy in Relation to Land Rights in Ethiopia**

In order to understand the indigenous-settler dichotomy and the vindication of different land right system within Ethiopia, one can appreciate the history of Ethiopian state in the one hand and introduction of ethnic federalism on the other hand. First, the introduction of state and nation building project in Ethiopian empire during the past era affects the settlement patterns and local land tenure system of different ethnic groups.<sup>134</sup> Since the current Ethiopian state is an outcome of centuries of expansion, inter-ethnic conflict and incorporations of different ethnic groups into the empire.<sup>135</sup> As a result, it created a significant economic and social consequences among different

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<sup>132</sup>Benishangul-Gumuz revised constitution, proc. No. 31/2003, art, 39

<sup>133</sup>Id. , art, 2

<sup>134</sup>Fasil A. Zewdie, ‘Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession’, p.3

<sup>135</sup>Ibid

ethnic groups. Among others, the first and for most effects of expansion and incorporation of different ethnic groups led to the suppression of local land tenure systems.<sup>136</sup> Instead, there is a circumstance that different politically imposed land tenure system in different part of Ethiopia.<sup>137</sup> On the other hand, granting land by the government organ and settlement of large number of peoples to the area which have relatively plenty of arable land, consequently, it creates grievance on local peoples against the government.<sup>138</sup> Second, as discussed under section 2.2 following the institutionalization of ethnic federalism the relationship between what traditionally call settlers and local peoples become changed in terms of enjoyment of different rights.

Accordingly, an exploration of the historical contours of rural land tenure system of Ethiopia is done within the three political regimes here below.

#### **2.4.1. In the Pre-1974 Political Regime**

The history of land tenure system in Ethiopia is closely interwoven with the foundation and formation of the nation itself.<sup>139</sup> Hence, the forms of land tenures are so variable throughout the country that it is almost impossible to impose any taxonomical order on them, unless it is understood that the description is operating at only the highest levels of generality.<sup>140</sup> Even if the land tenure system is very piecemeal and make difficult to understand comprehensively in the sense of current land tenure system, it is necessary to understand the historical antecedents and precedents of the land rights of rural peasants. Because the historical claim of rural land rights of peasants leading to the 1975 grand land reform consequently very relevant to understand the current public state/land ownership policy within ethnic federal arrangement. So the nature of the land tenure arrangement comprises communal (rist), private, state, church land, kinship and other forms.<sup>141</sup>

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<sup>136</sup>Id., p. 4

<sup>137</sup>Steven Davies, *the political economy of land tenure in Ethiopia*, PhD thesis School of International Relations University of St Andrews, 2008, pp, 1-288, p.42 [hereinafter Steven Davies, *the political economy of land tenure in Ethiopia*]

<sup>138</sup>Fasil A. Zewdie, 'Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession', p.5

<sup>139</sup>Daniel B/ Gebremanuel, 'Land Use Legislation in Ethiopia: A Human Rights and Environment Based Analysis', p.1

<sup>140</sup>Temesgen Gebeyehu, 'Peasants, land reform and property right in Ethiopia: The experience of Gojjam Province, 1974 to 1997' *Journal of African Studies and Development*, 2013, Vol. 5, No. 6, pp. 145-156, p.148 [hereinafter Temesgen Gebeyehu, 'Peasants, land reform and property right in Ethiopia: The experience of Gojjam Province, 1974 to 1997']

<sup>141</sup>Daniel W/gebriel Ambaye, *Land rights and expropriation in Ethiopia*, p. 41

Rist was a major type of communal ownership system over a land that emphasize on the lineage system which was commonly prevalent tenure arrangement in the northern part of Ethiopia.<sup>142</sup> With respect to access to land, under this tenure system all descendants of an individual founder of the land were entitled to their own share of land.<sup>143</sup> Hence, Rist tenure system was hereditary, inalienable and inviolable so that no users of any piece of land could sell, mortgage or bequeath his or her share outside his family member and only have usufractory right.<sup>144</sup> That is why rist land tenure system characterize as a communal nature land ownership that resided in the hands of extended family.<sup>145</sup>

The other form of land tenure system is the gult system. It is a system of administrative right over land or over a parish developed by the state.<sup>146</sup> Though most scholars consider gult to be a right to land, it had also been characterized as a right to control the labour power of the peasants living on their land.<sup>147</sup> Gult system was chiefly practiced in the southern part of Ethiopia following with the Ethiopian territorial expansion by Menilek II including Benishangul-Gumuz region. Gult land is granted by the emperor and provincial officials for the services provided of as a reward and salary on which the land-owners collect tribute and use labor as a kind payment from the peasantry.<sup>148</sup> The holders of gult right had a number of duties towards the state like administration, maintenance of law and order, military services, to levy and collect tributes over those who lived on the land.<sup>149</sup> Individuals with gult right grants also had the rights to impose labor and other personal services like building house, providing fire wood, looking after livestock that exploit the ordinary peasants which resides on the land.<sup>150</sup> *Gradually, this land tenure system creates “a sense of social subordination and inferiority of status between the tenants and the gult right holder”*<sup>151</sup>

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<sup>142</sup>Id., 44

<sup>143</sup>Ibid

<sup>144</sup> Daniel W/Ambaye, ‘Ethiopia Land Rights in Ethiopia: Ownership, equity, and liberty in land use rights’. p. 2

<sup>145</sup> Temesgen Gebeyehu Baye, ‘Peasants, land reform and property right in Ethiopia: The experience of Gojjam Province, 1974 to 1997’, p.148

<sup>146</sup> Temesgen Gebeyehu, ‘power, church and the gult system in gojjam, Ethiopia’, *Asian and African Studies*, 2016, Vol. 25, No. 1, pp, 51-71, p.55 [hereinafter Temesgen Gebeyehu, ‘power, church and the gult system in gojjam, ethiopia’]

<sup>147</sup>Ibid

<sup>148</sup> Daniel W/gebriel Ambaye, *Land rights and expropriation in Ethiopia*, p. 43

<sup>149</sup> Daniel B/ Gebreammanuel, ‘ Land Use Legislation in Ethiopia: A Human Rights and Environment Based Analysis’, p.7

<sup>150</sup> Belay Zerga, ‘Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future’, p.19

<sup>151</sup> Muradu Abdo Srur , ‘Policy and Law in Relation to Land Alienation in Ethiopia’, p. 60

Moreover, private land tenure system was created when the emperor expropriated and confiscated the land at the time of territorial expansion in order to achieve the objective of state and nation building. Further, all unsettled land, communal land of pastoralist and semi-pastoralists fall under the control of the emperor.<sup>152</sup> Those land was accessed for a wide range of people like soldiers, civil servants who came to administer the new areas and peasants moving to the south because of land pressure in the north.<sup>153</sup> This situation leads tenants started to manage their livelihood with sharecropping and fixed rents being the dominant forms of land contract ultimately which creates landlordism, no matter how, whether the landlord himself exist or not.<sup>154</sup> Even without supervision, landlords used threats of eviction and political power to enforce contracts and the determined sharecropping arrangement over tenants.<sup>155</sup>

Therefore, despite the complicated nature of land tenure system still there was no legally recognized dichotomy of indigenous-non-indigenous peoples in Ethiopian empire. However, there were different people who move from his/her locality to the other locality to discharge the government's task or due to other factors and live with another locality. In such circumstance, customarily the local people attached naked name as settlers or migrants.<sup>156</sup>

#### **2.4.2. During Derg (1975-1991) Regime**

The Derg was consisted of group of junior military officers (committee selected from army branches) in order to carried out a “creeping coup”.<sup>157</sup> Then in 1974 Revolution they overthrown on emperor Haile Sellassie I, and the Derg officially named themselves the Provisional Military Council (hereinafter PMAC).<sup>158</sup> Following its assumption of power, the Derg regime started to take radical socio-economic reforms by espoused socialist economic programmes and Marxist

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<sup>152</sup> Yigremew Adal, ‘Review of Landholding Systems and Policies in Ethiopia under the Different Regimes’, p.5

<sup>153</sup> Ibid

<sup>154</sup> Mohamed M. Ahmed et al, ‘Evolution and technical efficiency of land tenure systems in Ethiopia’, *Socio-economics and Policy, Research Working paper* 39, 2002, pp, 1-36, p.1 [hereinafter Mohamed M. Ahmed et al, ‘Evolution and technical efficiency of land tenure systems in Ethiopia’]

<sup>155</sup> Temesgen Gebeyehu ‘ power, church and the gult system in Gojjam, Ethiopia’, p, 51-73

<sup>156</sup> Sarah Vaughan , *Ethnicity and Power in Ethiopia*, PhD thesis, The University of Edinburgh, Social Science Faculty , 2013, p. 112, [ Unpublished available at < <https://www.era.lib.ed.ac.uk/bitstream/id/1299/vaughanphd.pdf> > : last accessed on May 13/2019]

<sup>157</sup> Daniel W/gebriel Ambaye, *land rights and expropriation in Ethiopia*, p. 60

<sup>158</sup> Solomon Fikre Lemma, *The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia*, PhD Thesis, School of Law, University of Warwick, 2015, pp. 1-373, p.111 [hereinafter *Solomon Fikre Lemma, The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia*]

political ethos.<sup>159</sup>The national development goals of the regime were: to bring social justice and equity by addressing the main historical criticism raised by several ethnic groups; to generate resources and speed up economic development for improving the living standards of the people by providing work for all rural people as well as to increase agricultural production; and accelerate the construction and management of the economy via planning and in a resource allocation system that would ensure a steady progress in economic and social development.<sup>160</sup> Among one of the reform agenda is the land issue. To do this, the government make all rural land become under state/public ownership for Ethiopian peoples as a whole land use right is extended to individual rural peasants without their ethnicity background.<sup>161</sup> As a result, the complex nature of all rural land tenure system during imperial regime formally changed including the duties and restrictions of land right holders and effectively avoid an exploitative type of relationship that existed between tenants and landlords.<sup>162</sup>

Proclamation 31/1975 also aim to give use right for peasants by making redistribution/distribution of land for the landless, create employment for the peoples by expanding large state farming activities for the realization of social and economic equality among peoples.<sup>163</sup> Under the same proclamation access to land via inheritance, membership in kinship and vicinage institutions, patronage, and sale were largely replaced by processes of redistribution and allocation by the authorities of the newly formed, territorial-based, peasant associations.<sup>164</sup> As such, nobody was allowed to sell, exchange, or give on succession, mortgage, antichrists, and lease or otherwise transfer his holdings to another<sup>165</sup> since from the inception making land under public ownership

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<sup>159</sup>Daniel W/gebriel Ambaye, *land rights and expropriation in Ethiopia*, p. 60, para, 2

<sup>160</sup>Solomon Fikre Lemma, *The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia*, p.112

<sup>161</sup>The constitutions of the Peoples of Democratic Republic of Ethiopia, Proclamation 1987, *Negarit Gazeta*, Proc. No. 1, 14<sup>th</sup> year, No. 1[here in after Proc. No. 1/1987], Public Ownership of Rural Lands, Proclamation No. 31/1975, *Negarit Gazeta*. Year 34, No. 26. [hereinafter Proc. No. 31/1975]

<sup>162</sup>Yigremew Adal, 'Review of Landholding Systems and Policies in Ethiopia under the Different Regimes', p.14

<sup>163</sup>Proc. No.31/1975, preamble para, 2-4

<sup>164</sup>John W. Bruce et al, after the Derg: an assessment of rural land tenure issues in Ethiopia', 1994, pp, 1-98, p.13 available at: < <https://minds.wisconsin.edu/bitstream/handle/1793/61013/rpderg.pdf?sequence=1>,> (Last accessed February 15/2019)

<sup>165</sup>Proc. No. 31/1975, art, 5

by the law was allowed tenants to stay on and cultivate the land they had been given by the landlords under tenancy contract.<sup>166</sup>

In addition, the proclamation created free access to land to many rural landless and tenants provided that *without discrimination of any kind, the law provided an opportunity and access to rural land for any person with no other adequate means of livelihood as well as who was willing to cultivate, which is sufficient for his maintenance which does not exceed ten hectares.*<sup>167</sup>(*Emphasis added*). Here, one can appreciate the law has no any place on the dichotomy of indigenous-settler rural peasants because of his/her ethnic membership of a certain ethnic group or other attachments. Because land is under the guise of public-ownership of all Ethiopian communities so that an individual who wants to engage in agriculture activities can easily access land. That is why extensive resettlement program is taken place in different parties of Ethiopia on unoccupied land including the current ethnically arranged BGRS. Therefore, enforcement of public ownership policy throughout the national territory, access to land for landless rural peasants without fees in order to address the ethnic grievance and social aspects of the land question implies there is no indigenous-non-indigenous rural peasant's in terms of land resource allocation based on his/her ethnic ground. However, the illness of the policy route followed by socialist regime were established via nationalization rural land and restriction on grain merchants, frequent land redistribution, involuntary resettlement program, price fixing, and quota assignments to peasants creates land tenure insecurity and environmental degradation.<sup>168</sup>

Besides, the land policy of Derg regime biased to large-scale state-owned and collective farms at the expense of the land of smallholders and their labour for the purpose of increase agricultural production.<sup>169</sup> Hence, the land rights of smallholders under the Derg's land policy were so attenuated and created unfavorable economic environment and implementation of the land right of peasants in order to improve their livelihood.<sup>170</sup>Moreover, the legal and the practical limitation of the reformed land policy restricts the peasant freedom in decision making and free choices about their lands use and

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<sup>166</sup>Daniel Behailu Gebereamanel, *Transfer of Land Rights in Ethiopia towards sustainable development policy framework*, p.17

<sup>167</sup>Proc. No. 31/1975, Preamble, Para, 2 & art, 4 (1, 3, 5) and 6 (2 and 4), 10 (1/c), 11 (2/c), 18 and 22 (1) and see also the Resettlement Proclamation No. 78/1976.

<sup>168</sup>Belay Zerga, 'Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future', p. 20

<sup>169</sup>Daniel Behailu Gebereamanel, *Transfer of Land Rights in Ethiopia towards sustainable development policy framework*, p.19

<sup>170</sup> Muradu Abdo Srur , 'Policy and Law in Relation to Land Alienation in Ethiopia', p.87-95

productions.<sup>171</sup> Despite the above land policy tragedy of the socialist regime, there is no implicit and explicit implications of classification of indigenous-non-indigenous rural peasants. Rather land resource become under the control of public ownership by extending land use right for peasants.<sup>172</sup>

### **2.4.3. In the Post-1991 Political Regime**

Following the demise of the Derg regime, the current government established an ethnic federalism, and the FDRE Constitution keep all urban and rural land under the ownership right to the state and Ethiopian people almost which is similar to public/state ownership land right under the Derg regime.<sup>173</sup> The current rural land policy has an implication on socio-economic and a political question in the present-day of Ethiopia. The insertion of land issues under democratic rights and give as group right for primordially identified NNPs Ethiopian ethnic group under in Ethiopian constitution, however, indicate that rural land has increasingly become a legal and political affair under the current ethnic federal structure.<sup>174</sup> By injecting the land policy in the constitution, the current government has successfully excluded the likelihood of flexible application of policy which is not able to accommodate the emerging land claimants. But in contradiction with its rigidity, the same document promises that all rural peasants of Ethiopia have the right to access agricultural land freely despite the fact that land is scarce resource.<sup>175</sup> In doing so, the FDRE constitution entrusted for the central government to enact details about rural land acquisition, transfer, redistribution and other aspects of rural holding rights which clarified by federal land administration and use proclamation.<sup>176</sup> Following the federal frameworks, each regions have their own land administration and use proclamation.

The present Ethiopia government have different socio-economic, political and cultural justification to advocate public land ownership rather than private ownership. First, the argument advocated

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<sup>171</sup>Teshome Chala, 'Analysis of politics in the land tenure system: Experience of successive Ethiopian regimes since 1930' *African Journal of Political Science and International Relation*, 2018, Vol. 10, No. 8, pp. 111-118, p. 115

<sup>172</sup>Proc. No. 1/1987, art,13

<sup>173</sup>Proc. No.1/1995, art, 40/3

<sup>174</sup>Samuel Gebreselassie, Land, Land Policy and Smallholder Agriculture in Ethiopia: *Options and Scenarios Paper prepared for the Future Agricultures Consortium meeting at the Institute of Development Studies* 20-22 March 2006, pp,1-20, p.4 (hereinafter Samuel Gebreselassie, Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios)

<sup>175</sup>Proc. No.1/1995, art, 40/4

<sup>176</sup> Proc. No. 456/2005, art, 5/b

by policy makers is the issue of social equity.<sup>177</sup> Since rural land play a critical role for Ethiopian peasants so that the government can able be to grants free access to land to every rural residents who wants to engage on farm activity and who earn income from farming by redistribution. Regarding to this policy argument Daniel tries to show the weakness of the argument proved that the social equality aspect of policy argument did not address the urban land issue.<sup>178</sup> However, he did not see the other weakness of the argument propounded by the government in relation to the fate of land right of non-indigenous peasants. Second, the issue of tenure security: the government argues that recognizing private ownership of rural land would lead to massive eviction or migration of rural population, as poor farmers would be forced to sell their plots to corrupt urban speculators, where in needy.<sup>179</sup> But the government did not address the other factor that land and ethnic attachment under ethno-linguistic regionalization of states become another tension on tenure security which leads to massive eviction of non-indigenous peasants. Third, argument of economic efficiency: the government argues that in low land area there are vast unutilized land so that the government can enable to expand large scale agricultural investment by accessing for developmental investors. Fourthly, as far as land resource is highly interwoven within politics allowing to sell and free transfer of land rights will have gradually the effect of destroying the identity of few minorities within the country. Since granting and protecting territorially based nationalities can help to exercise wide powers of self-government in political, economic, cultural and educational affairs.<sup>180</sup>

However, the government does not address the land right issue of non-indigenous peasants when land is under the common property of NNPs. Therefore, the subsequent chapters deeply address the relationship between the land rights of non-indigenous peasants and the existing land tenure system under the current Ethiopian federal arrangement.

## 2.5. Conclusion

There is no common agreed definition and understanding about indigenous peoples. However, most of the parameter of identification of indigenous peoples from the international point of view

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<sup>177</sup> Samuel Gebreselassie, *Land, Land Policy and Smallholder Agriculture in Ethiopia: Options and Scenarios*, p.4

<sup>178</sup> Daniel W/gebriel Ambaye, *Land Rights and Expropriation in Ethiopia*, p.71

<sup>179</sup>Ibid

<sup>180</sup>Mohammad Abdulahi , ‘The Legal Status of the Communal Land Holding System in Ethiopia: The Case of Pastoral Communities’, Hein Online -- *International Journal on Minority and Group Rights*,2007,pp, 85-125 p.107



links with a precolonial society, the traditional usage of natural resource and other related factors. Failure to establish an accepted definitions of indigenous peoples could lead other ethnic group to position themselves as indigenous to obtain international legal status and protection. Even the dilemma who indigenous-non-indigenous has become increasingly politicized that results political decision rather than focused on the legal and real matter of those peoples.

Nevertheless, when we apply the understanding and parameters that used by international instrument who indigenous peoples in Asian and African continent is highly contestable. Hence, almost all Asian and Africans states were under the European colonial dominances. Besides, beyond domination, most legal system of their respective state were inherited the colonizer's legal system after independency which does not give a space for the protections of the traditional land use of indigenous peoples that makes the current essence of indignity become challengeable. That is why those continents dislike the international understanding and parameters of identifications of indigenous peoples. Rather in order to protect their rights they try to establish their own parameters who indigenous people in their own continent.

So when one investigate the current Ethiopian federal arrangement there is no any legal rules that deals about the international and regional understanding of indigenous people. There is no any historical dichotomy about indigenous non-indigenous people. However, following the introduction of primordial identifications of ethnic groups and creating ethnically arranged autonomous states within the federation intentionally created the dichotomy of indigenous-non-indigenous peoples in order to exclude and discriminate the various rights of non-indigenous peoples. Hence, indigenous-non-indigenous dichotomy in BGRS used as a mask to excluded non-indigenous peasants from their land rights.

# CHAPTER THREE: THE LEGAL PROTECTION AFFORDED TO LAND RIGHTS OF ‘NON-INDIGENOUS’ PEASANTS IN BENISHANGUL-GUMUZ REGION

## 3.1. Introduction

Having well-defined and inclusive property rights over land resource plays a critical role for rural peasants to exercise their rights<sup>181</sup>. Hence, when the nature of property right specifically delineates (e.g., ownership and subsequent rights that arise from ownership) the means of access, transfer and restrictions thereof can be easily enjoyed by non-indigenous peasants in particular and peasants in general.<sup>182</sup> Besides, upon infringement of land rights, one can access a specific remedies according to what the law said. In such circumstance, the existing law play a critical role to bring equity, avoid discrimination and give legal protections of rural peasants.<sup>183</sup> Comprehensive legislative specification of property rights over land should avoid significant gaps, ambiguities, vagueness, and contradictions between the national land policies and subsequent land governing laws. Conversely, having precarious land laws and policies creates discrimination and inequality among different rural land users based on their ethnicity or any other ground in every level of government which ultimately results a violation of the land rights of peasants.<sup>184</sup>

Bearing the above facts in mind, this chapter has intended to scrutinize the existing national and regional land laws in relation to the protection and the nature of land right bestowed for non-indigenous peasants in BGRS in line with Ethiopian federal arrangement. To do this, the chapter begins by elucidating the general understanding of land tenure system. Then, followed by articulating nature of land ownership right and its inclusiveness towards the non-indigenous peasants in Ethiopia. Based on the nature of land ownership this chapter evaluating the land right of non-indigenous peasants in the region in line with the current Ethiopian federal system. Then, the subsequent sections try to examine the way to access to land and legal protection given for

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<sup>181</sup>Muradu Abdo, ‘Legislative Protection of Property Rights in Ethiopia: An Overview’, *MIZAN LAW REVIEW*, 2013, Vol. 7, No.2, pp, 165-206,p.165- 166, [hereinafter Muradu Abdo, ‘Legislative Protection of Property Rights in Ethiopia: An Overview’]

<sup>182</sup>Harold Demsetz , ‘Toward a Theory of Property Rights’ *The American Economic Review* , 1967, Vol. 57, No.2, pp. 347-359, p. 348

<sup>183</sup>Private Sector Development Hub, Ethiopian Chamber of Commerce and Sectoral Associations, ‘Property Rights Protection and Private Sector Development in Ethiopia’, 2013, pp, 1-141, p.5

<sup>184</sup>Muradu Abdo, ‘Legislative Protection of Property Rights in Ethiopia: An Overview, p.165

non-indigenous peasants in the region in line with the FDRE constitution and its limitation associated with the land rights of peasants. Finally, it's emphasize on the federal-state divergence and pitfalls of the land governing laws on addressing the land rights of non-indigenous peasants.

### **3.2. Land Tenure and Tenure Security**

When we talk about land tenure, we are concerned with the multifaceted relationships that exist between categories of individuals and groups in reference to land and other natural resources.<sup>185</sup> Land tenure, as an institution, not only govern access to and regulate over land and land-based resources and the benefits procured thereof but also a source of expectations for actors to simulate and predict each other's behavior in the sphere of activity to which the land tenure regime applies to the right holders.<sup>186</sup> It is usually defined in terms of bundles of right.<sup>187</sup> Therefore, land tenure system can be scrutinized in relations with a set of rights and obligations held by peoples with regard to the way of access via redistribution, inheritance, government allocation or any other modes, exploitation, preservation, and transfer of land and related resources.<sup>188</sup> In relation to this, United Nations Food and Agriculture Organization (hereinafter FAO) elucidate land tenure as a "relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land."<sup>189</sup> Besides, the document defines how access is granted, control, transferability, associated responsibilities and land who can use what resources for how long and under what conditions.<sup>190</sup> In short, land tenure is social pact that regulate the distribution of benefits that accrue from specific uses of a certain piece of land.<sup>191</sup>

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<sup>185</sup>Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p. 40,

<sup>186</sup>Girma Kassa Kumsa: *Issues of Expropriation: The Law and the Practice in Oromia*, LLM thesis, Addis Ababa University, School of Law, 2012, pp,1-126,p.11, [Unpublished available at Addis Ababa University Institutional Repository, [herein after Girma Kassa Kumsa: *Issues of Expropriation: The Law and the Practice in Oromia*,]

<sup>187</sup>Daniel Maxwell and Keith Wiebe, 'land tenure and food security a review of concepts, evidence, and methods', *research paper* No.129, 1998,pp,1-37,p.4 [hereinafter Daniel Maxwell and Keith Wiebe, 'land tenure and food security a review of concepts, evidence, and methods']

<sup>188</sup>Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p. 4

<sup>189</sup>United Nations Food and Agriculture Organization( FAO), *Land Tenure and Rural Development*, Rome, 2002, pp, 1-49, p.7, [hereinafter FAO, *Land Tenure and Rural Development*, Rome, United Nations Food and Agriculture Organization]

<sup>190</sup>Ibid

<sup>191</sup> Klaus Deininger, 'Land Policies for Growth and Poverty Reduction' *Arellano Law and Policy Review*, 2003, Vol. 5 No. 1, pp, 42-66, p. 42 [hereinafter Klaus Deininger, 'Land Policies for Growth and Poverty Reduction']

On the other hand, some peoples consider land tenure and land tenure security are the same.<sup>192</sup> However, tenure security is one aspect of land tenure system. So the way land rights are defined, individuals and entrepreneurs can obtain ownership or possession over it, and the availability of formal/informal mechanism for conflicts pertaining over the right will have far-reaching social and economic effects over the right holder especially in agrarian community.<sup>193</sup> The effects are not only limited the land right holders of an individual or household's social and economic status, but also affects the arrangement of the land governance system in every level of government structure.<sup>194</sup> Therefore, tenure security refers to the degree of assurance or protection that a person has over within a specific lands tenure system.<sup>195</sup> Hence, land tenure security can be explored into legal and institutional perspectives. From the legal perspective, the definition of property rights to land and the way in which people can acquire them must be clear and equitable in line with practical implementation; the use right must be longer, and source of risks like discretionary bureaucratic behavior must be eliminated.<sup>196</sup> On the institutional perspective, institutions must be accessible.<sup>197</sup> Besides, legal and practical tools for implementation of land legislation must give special attention to the specific land tenure security for exposed groups by supporting democratic land institutions and land administration systems that are decentralized and problem-centered; and improving access to effective systems of land dispute resolution.<sup>198</sup> That is the reason various researchers and development practitioners have long recognized that providing poor people with access to land and improving their ability to make effective use of their land right as well as creating favorable legal environment play a critical role to reduce poverty at household level and contribute for the national development in general.<sup>199</sup>

Generally, securing land rights within a given land tenure system is essential in order to combat ethnic based discrimination; social exclusion of exposed groups and broader socio-economic

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<sup>192</sup>Chris D. Arnot et al, 'What Is Tenure Security? Conceptual Implications for Empirical Analysis', *Land Economics*, 2011, Vol. 87, No. 2, pp. 297-311, p. 297

<sup>193</sup> Klaus Deininger, 'Land Policies for Growth and Poverty Reduction', p. xx

<sup>194</sup>Id. , p. x

<sup>195</sup>Elias N. Stebek, 'Challenges in Access to Urban Land for Business Activities under Ethiopian Law: Between Oligarchy and Broad-based Private Sector', *MIZAN LAW REVIEW*, 2015, Vol. 9, No.1, pp. 37-82, p.51

<sup>196</sup>Property Rights to Land, pp. 1-78, p.8, available at:

<[http://documents.worldbank.org/curated/en/485171468309336484/310436360\\_20050007003345/additional/multi0page.pdf](http://documents.worldbank.org/curated/en/485171468309336484/310436360_20050007003345/additional/multi0page.pdf)> (last accessed on, 4/12/2019)

<sup>197</sup>Ibid

<sup>198</sup>Lorenzo Cotula et al, 'Better land access for the rural poor Lessons from experience and challenges ahead', 2006, pp. 1-43,p.2

<sup>199</sup>Klaus Deininger, 'Land Policies for Growth and Poverty Reduction', p. xx

disparities related with discriminatory and insecure land rights. Hence, irrespective of any form of land tenure system (*state/public, private, communal or any other form*) securing land right in general shares a reasonable duration on the use of the land rights of land users, effective legal protection mechanisms against arbitrary eviction from land rights and the availabilities of enforceable remedies against the loss of these rights.<sup>200</sup>

Following the above conceptual understanding, the writer has made an exploration on the nature of land ownership within its implication on the land right bestowed by non-indigenous peasants under the rural land policy and laws in BGRS in line with the federal arrangement of the country.

### **3.3. The Nature of Land Ownership and Its Implication on Delineating Land Rights**

Despite on the major land policy argument on public versus private land ownership, as I try to discuss under section 2.4.3, when the FDRE constitution enacted since 1995 “... 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 to other means of transfer.”<sup>201</sup>

Depending on the above constitutional principle, some studies admit that the land policy of the 1995 constitution have a lot of similarities in terms of ownership and use rights.<sup>202</sup> Hence, the current state/public land ownership policy is the continuation of the Derg regime.<sup>203</sup> However, unlike the Derg public/state ownership land right, the nature of the current land ownership and related land rights of non-indigenous peasants become a little bit confused provided that ownership right over land resource is given for ethnically autonomous arranged state and the peoples of Ethiopia and at the same time it declare that land is the *common property of NNPs of Ethiopian ethnic group*.<sup>204</sup> Here, before addressing the land rights of non-indigenous peasants it is critical to know what is the message of state and peoples ownership? Based on this land ownership many of

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<sup>200</sup>United Nations Human Settlements Programme (UN-HABITAT), ‘Secure Land Rights for All’, p.5

<sup>201</sup>Proc. No. 1/1995, art, 40

<sup>202</sup>Zemen Haddis Gebeyehu, *land policy implications in rural-urban migration: the dynamics and determinant factors of rural-urban migration in Ethiopia*, p. 19

<sup>203</sup> Ibid

<sup>204</sup>Proc. No. 1/1995, art,40/3

scholars favor to write land as State ownership.<sup>205</sup> Others consider as a kind of joint ownership for the state and peoples.<sup>206</sup> As noted by Damite, two possible lines of meanings can be given to the state and people ownership.<sup>207</sup> Initially, it may be argued that there is no distinction between state and people and the constitution using these terms to mean that land is a public property. Second, the constitution has considered state and people as separate entities so that land can be owned jointly. Here, the logical question raise is what is joint ownership which owned by the above two legal entity? Joint ownership right denotes and exercised by two or more persons in relation to the same object so that all elements of ownership right exercised jointly by several persons.<sup>208</sup> Hence, if any benefit accrue from land resource, the concerned groups of NNPs of Ethiopia and the state must share the benefit equally. *But this types of scenario in democratic government complicated the function and relationship of the state and peoples.*

However, the nature of land ownership resembles to public ownership. First, article 89/5 FDRE constitution provided that “Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development.” Second, payment arrangements for private investors to use land without affecting the common ownership rights of NNPs of Ethiopia signifies public ownership.<sup>209</sup> Following this national land ownership any federal or regional laws must not contradict with the overriding principle.

The next worthy thing to be clarify 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 in the one hand and access to land and land right of non-indigenous peasants on the other hand. As, discussed above in order to understand the land right of non-indigenous peasants the prime task is who are NNPs of Ethiopian under the current federal system? Other

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<sup>205</sup>Achamyeleh Gashu Adam, *Peri-Urban Land Tenure in Ethiopia*, Doctoral Thesis in Real Estate Planning and Land Law, Royal Institute of Technology, 2014, pp, 1-66, p.10

<sup>206</sup>Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p. 4, and Devereux Stephen, et al, ‘Too Much Inequality or Too Little? Inequality and Stagnation in Ethiopian’, *Institute of Development Studies Bulletin*, 2005, Vol. 36 No. 2, pp, 121-126, p.121

<sup>207</sup>Damite, Melesse as cited by 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 [hereinafter, 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*].

<sup>208</sup>Daniel Behailu Gebereamanel, *Transfer of Land Rights in Ethiopia towards sustainable development policy framework*, p.185

<sup>209</sup>proc. No. 1/1995, art, 40/6

things remain constant, based on the cumulative reading of article 39/5 and the preamble of the constitution, NNPs of Ethiopia is a groups of people which is basically refers to group rights and this groups of people were formed based on their 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 exist on contiguous territory. Then, this groups of peoples owned land resource and land is *undivided common property of groups of NNPs of Ethiopia*.<sup>210</sup> Hence, land ownership is a group right and impossible for NNPs of Ethiopia directly control and administer the land resources individually rather exercised via ethnic based regional governments.

Following the identification of the groups of people who owned land, the next logical question is does non-indigenous ethnic groups reside one of the federation unit able to claim member of a group and at the same time benefit from the common property of land resource of NNPs of Ethiopia? Hence, the concept of common property ties to group membership, not *everybody's property*, rather it implies that the potential resource users can excluded who are not members of a group owners.<sup>211</sup>In other word, it refers to a resource owned collectively by all members of a community in which all members have equal rights to use the resource and have the rights to exclude non-members.<sup>212</sup> However, the land policy under FDRE constitution face lack of clarity and have inherent structural problems to include and balance the land rights of non-indigenous ethnic group with the group right of NNPs of Ethiopia over land resource. *First*, the existing land resource is found in ethno-linguistically arranged state in one hand and the common property of those ethno-linguistically identified NNPs of Ethiopian ethnic group on the other hand. *Second*, primordial<sup>213</sup>identification of NNPs of Ethiopia ethnic group creates ethnic boundary which excludes the non-member of the identified ethnic groups. This ethnic boundary further strength by creating ethnic based territorial boundary. *Third*, ethno-linguistically identified NNPs of Ethiopian ethnic group have ultimate sovereign power on their own affairs including land resource. Such

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<sup>210</sup>Ibid

<sup>211</sup>Richard C. Bishop& S. V. Ciriacy-Wantrup, 'Common Property as a Concept in Natural Resources Policy', *Natural Resources Journal*, 1975, Vol. 15, iss4/7, pp, 714-725, p.715[hereinafter Richard C. Bishop& S. V. Ciriacy-Wantrup, 'Common Property as a Concept in Natural Resources Policy']

<sup>212</sup>Hussein Jemma, *Politics and Property Rights Regimes in Land in Arsi Negele and Hetossa, South-Central Oromia, Ethiopia: Late 1880s-2006*, Doctoral thesis, Department of International Environment and Development Studies (Noragric), Norwegian University of Life Sciences, , 2010, pp, 1-78, p.8, [unpublished available at: [https://nmbu.brage.unit.no/.../2010-38\\_Hussein%20Jemma%20Sheymo\\_%28Nor%29...](https://nmbu.brage.unit.no/.../2010-38_Hussein%20Jemma%20Sheymo_%28Nor%29...) Last accessed on June 13/2019]

<sup>213</sup>Henry e. Hale, 'Explaining ethnicity', *Comparative Political Studies*, 2004, Vol. 37 No. 4, pp, 58-485, p. 460

intricacy emanates from the definition given for NNPs and the territorial implications of ethnic federalism introduced in the 1990s.<sup>214</sup>

However, when one carefully scrutinize the design of the constitution of each polity state there is a direct distinction and definition given for the indigenous and non-indigenous ethnic group in terms of different socio-economic and political rights. Hence, the establishment of a 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.<sup>215</sup> This decentralization of power would empower ethnic groups to freely determine their destiny via the right to self-determination. Therefore, giving land as a common property of NNPs of Ethiopia and administration and utilization of land resources can find a concrete expression through autonomous regional state.<sup>216</sup> For example, under Article 8 of revised Constitution of Oromia grants sovereign power exclusively to the “*people of the Oromo Nation*” and article 39 of this constitution reserves the right to self-determination to the “*people of the Oromo nation*”.<sup>217</sup> 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.<sup>218</sup> Similar provisions also included in articles 9(1) and 39 of the Somali regional state Constitution.<sup>219</sup> Furthermore, under article 46 of the Gambella Regional State constitution clearly identify ethnic groups as a “*founder nation*” of the region, while the rest of the people referred as “*non-founder nation*”.<sup>220</sup>

On the same approach, Article 2 of Benishangul-Gumuz region revised constitution, there is a clear distinction between indigenous and non-indigenous ethnic groups provided that ownership right for the region is given for the five indigenous nationalities by denying non-indigenous ethnic group. Here, the concept of ownership includes a bundle of right. Ownership to the region is not

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<sup>214</sup>Tom Lavers, ‘Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism’, p.463

<sup>215</sup>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*, 2018, vol. 18, pp, 346-364, p.349

<sup>216</sup>Ibid

<sup>217</sup>ORS revised constitution, Proc. No. 46/2001, preamble, para 1 and art, 8

<sup>218</sup>ORS revised constitution Proc. No. 46/2001, art,39

<sup>219</sup>The Somali regional state revised constitution, proclamation, art,9, 39 and preamble para, 1-4

<sup>220</sup>Gambella Peoples National Regional State Revised Constitution, Proc. No. 27/2002, art, 46 (1).



only limited giving a prerogative right on social and political rights of the indigenous nationalities based on ethno-linguistic arrangement of the region but also includes the prerogative rights of the indigenous nationalities on economic rights which is basically assume land resources. This right further strength by Article 39 of the Constitution unequivocally delimits the various aspects of the right to self-determination extending it only to the indigenous nationalities by declaring: “ownership rights of land resource found in the region is given to indigenous nationalities to the region.”<sup>221</sup>[*Emphasis in original*]. Among others, one of the basic element of self-determination includes economic self-determination rights.<sup>222</sup> Regarding to the concept of economic self-determination ICCPR and ICESCR identified as: “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 not to be deprived of their own means of subsistence.”<sup>223</sup>

When we see in Ethiopian context, both internal and external aspect of self-determination are included under article 39 of FDRE constitution unconditionally. The former aspect of self-determination within the federation signifies the right to use and develop ones language, promote ones culture and history (socio-cultural self-determination). Besides, NNPs of Ethiopia have full measure of self-government that allows each people the right to establish organs of the state to run their own affairs in their territory they inhabited and to be represented fairly in the organs of the federal government (political self-determination).<sup>224</sup> However, the issue of land resource is not explicitly dealt in article 39 of FDRE constitution. But when one read the provisions of article 40 of the same constitution economic self-determination is recognized for NNPs of Ethiopian. First, land resource is recognized as a group right by proclaiming land as a common property of NNPs of Ethiopian and this common property of land resource is administered by autonomous ethnically structured states. Second, ultimate sovereign power is given for those primordially identified ethnic group in their own region by allowing self-rule to exercise their own affairs. Third, when one of ethnically arranged state want to secede from the federation it can exercise without any limitation which refers to external aspect of self-determination.

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<sup>221</sup>Benishangul-Gumuz region revised constitution, Proc. No. 31/2003, art, 39

<sup>222</sup>International Convention Civil and Political Rights, 1966, part I, art, 1

<sup>223</sup>Fasil A. Zewdie, ‘Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession’. P.11

<sup>224</sup> Proc. No. 1/1995, art, 39

When we come to each polity state all socio-economic and political self-determination is given for the indigenous ethnic group to the concerned ethno-linguistically arranged region. For instance, the Afar and Hareri revised constitution the internal and external aspect of self-determination is given for Afar and Harer ethnic group respectively.<sup>225</sup> The same approach followed by Oromia and Somali revised constitution as discussed above. However, non-indigenous ethnic group exclude from both aspect of the rights to self-determination. Even they fail to be given a recognition on their existence.

Therefore, when return to 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 infer from article 2&39 of the regional revised constitution.<sup>226</sup> However, this right is not extended to non-indigenous peoples which directly affect the nature of ownership and related land right of non-indigenous peasants. Therefore, land resource found in Benishangul-Gumuz region is given for the identified indigenous nationalities. In such circumstance, all land-related rights were delineated and implemented based on the interest of indigenous nationalities.

### **3.4. Property Rights in Land Bestowed for Peasants**

Under article 40 /1/ of FDRE constitution, it deals about private ownership right over a thing and lists its constituent elements. Besides, sub article 2 of 40 has delimit the scope of private property as “any tangible or intangible product which has value and *produced by the labour, creativity, enterprise or capital* of an individual citizen or juridical person.”<sup>227</sup> Hence, from this two provision one can understand the definition given for private property confirms full ownership right for it itself and add nothing for the nature and extent of property right over land resource given for peasants. Indeed, there is no explicit provision in the constitution that talks about the nature and extent of property rights in land bestowed for peasants. Because under sub article 4 of 40 of the FDRE constitution simply stated that “*Ethiopian peasants have right to obtain land without payment.*”<sup>228</sup> This provision is not clear whether the elements of private ownership right included on the land right of peasants which is provided under article 40(1, 2, and 7) of FDRE constitution.

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<sup>225</sup>Afar regional state revised constitution, preamble para, 1-5 &art, 8,39, Hareri revised regional constitution art, 8&39

<sup>226</sup>Benishangul-Gumuz revised constitution Proc .No. 31/2003, art, 2 and 39

<sup>227</sup> Proc. No. 1/1995, art, 40/1

<sup>228</sup>Id., art,40 /4

On the other hand, the constitutional exclusionary clause of “*prohibition of sale or to other means of exchange*”<sup>229</sup> has lack of clarity and subject to academic interpretation. Such ambiguity and lack of clarity of the laws may be abused in every level of government organ while enacting the detailed laws concerning the land rights of rural peasants. Because the exclusionary clause is not clear whether *other means of exchange* includes: transfer land right through rent, donation, and inheritance, exchange of land by other commodity and mortgage. In relation to this exclusionary clause some scholars understand other means of exchange equated as mortgage so that all Ethiopian peasants have all property right over land except sale and mortgage.<sup>230</sup> On the other hand, prohibition of other *means of exchange* includes all means of transfer of land so that Ethiopian peasants have use right to land only.<sup>231</sup>

Despite such divergence idea among scholars, it arguably that the intention of the legislature of the constitution use such ambiguous terminology is for the purpose of excluding land right from the ambit of private ownership right land policy. Because land policy statements are so general that provide only broader guidance for law reform, consequently, the law answer the question and realize the goal of land policies.<sup>232</sup> Hence, based on the adopted land policy the concerned level of government promulgate laws by using its legislative organ in order to specify the possible elements of property rights in land as per the essential national interest of the state- which broadly reflects the purpose, composition, and operation of the overall land tenure system, which includes the administration of land, guidance of the management of land related issues, directs the manner of provision and implementation of land rights.<sup>233</sup> So in order to implement the constitutional land rights of Ethiopian peasants, the same document commands the federal government should determine and enact detail legal framework about the conditions, the way to access, the extent to exercise and the way to administer and regulate thereof which serve as a guideline for states when they enact and administer land in their own region context.<sup>234</sup> When we see the rural land governing framework of Ethiopia, it upheld the constitutional principle that denies private

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<sup>229</sup>Id., art, 40/3

<sup>230</sup> Girma Kassa Kumsa: *Issues of Expropriation: The Law and the Practice in Oromia*, p.37

<sup>231</sup>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*, P. 87

<sup>232</sup>Solomon. Fikre Lemma: *The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia*, p.132

<sup>233</sup>Ibid

<sup>234</sup>Proc. No. 1/1995 , art, 55

ownership right over land and giving “landholding right” for peasants.<sup>235</sup> Under the Federal RLAUP holding right of peasants defined as:

*... [T]he right of any peasant... to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.*<sup>236</sup>

On the other hand, the Benishangul-Gumuz regional state the newly revised RLAUP states that landholding right refers to:

*...[Any] holder of rural land provided with holding certificate on the basis of this proclamation with utilization rights or any farmer with utilization rights provided with land holding certificate with right for producing properties related with agriculture and right to transfer such properties, not uprooted from his/her land, utilize land for agriculture and natural resources development or related activities or other agricultural activities with right to utilize, lease/rent, inherit, transfer through donation and etc....*<sup>237</sup>

On the same van, except the newly revised Amhara RLAUP, almost all the rural land laws of each polity state followed similar approach regarding to the extent and nature of property rights in land thereto.<sup>238</sup> Exceptionally, the newly enacted Amhara RLAUP clearly allows a certain peasant’s can able to mortgage any recognized financial institutions in which the elements and scope of landholding right is relatively broader than other federation units and the federal RLAUPs.<sup>239</sup> However, landholding rights for peasants in both level of government indicates that except sale and mortgage and restrictions imposed by the regional states, peasants have all property right over land. Therefore, the elements of property right in land (landholding right) for peasants in Ethiopia constitute the right to access and use land, transfer of landholding rights via rent, donation or lease or other modes to third parties.

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<sup>235</sup>Proc. No. ,456/2005, preamble, 3

<sup>236</sup>Proc. No. 456.2005, art, 2/4

<sup>237</sup>The Benishangul-Gumuz Regional State Amended Rural Land Administration and Use Proclamation, 2018, *Lisan Hig Gazeta*, proc. No.152 , 24<sup>th</sup> year .No. 152, art, 2/4[hereinafter BGRS Amended Rural Land Administration and Use Proclamation 152/2018]

<sup>238</sup>For instance The Oromia Rural Land Use and Administration, Proclamation 2007, *Megelata Oromia*, Proc. No. 130, 15<sup>th</sup> Year, No.12, art,6/1&2/7, pp, 1-11, p. 1&3[hereinafter Oromia Rural Land Use and Administration, Proc. No.130/2007], The Southern Nations, Nationalities and Peoples Regional state Rural Land Administration and Utilization Proclamation, 2007, *DEBUB NEGARIT GAZETA*, proc. No. 13<sup>th</sup> Year No. 10, art, 2/6

<sup>239</sup> The Amhara National Regional State The Revised Rural Land Administration and Use Determination Proclamation, 2017, *ZIKIRE-HIG*, Proc. No.252, 22<sup>th</sup> Year No. 14, art, 2/25& 19 [hereinafter Amhara Revised Rural Land Administration and Use Determination Proclamation 252/2017]

### 3.4.1. Access to the Land Right

Before dealing about access to land specifically it is vital to deal what land administration power do mean. Land administration refers to the process of determining, recording, and disseminating information about ownership, value, and use of land when implementing land management policies and laws. Land administration system may include the processes to manage state land, record and register private interests in land, assess land values, determine taxes, define land use, and support the development, application, and approval process. On the other hand, FAO elucidate the basic components of land administration while defining the term as the way in which the rules of land tenure are applied and made operational; and it includes an element of enforcement to ensure that people comply with the rules of land tenure.<sup>240</sup>Hence, land tenure in turn defines the relationship between people and their land. So for the purpose of this paper the definition given for land administration by FAO would be employed.

Accordingly, since Ethiopian land resource is owned by NNPs of Ethiopia, recording and disseminating information on private interests in land ought to be the prime task in land administration system. Hence, the matter of rural land administration is defined under the FDRE rural land proclamation and followed by each polity states which are almost similar to the definition given by FAO. So when see the power of land administration following the nature of state/public ownership of land resource, the FDRE constitution entrusted to the federal government to enact rural land law and related natural resources for the purpose of utilization and conservation.<sup>241</sup> To do this, the federal government enacted RLAUP and define land administration as “...means a process whereby rural landholding security is provide, land use planning is implemented, disputes between rural landholders are resolved and the rights and obligations of any rural landholder are enforced, and information on farm plots and grazing Landholders are gathered analyzed and supplied to users.”<sup>242</sup>

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<sup>240</sup>FAO, Access to Rural Land and Land Administration after Violent Conflicts, Land Tenure Studies 8, Rome, (2005), p. 23. The elements and activities in land administration include: Land rights ( activities like the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries); Land use regulations (including land use planning and enforcement, and the adjudication of land use conflicts); Land valuation and taxation, (the determination of values of land and buildings; the gathering of tax revenues on land and buildings, and the adjudication of disputes over land valuation and taxation).

<sup>241</sup>Proc. No. 1/1995, art, 51&55

<sup>242</sup> Proc. No. 456/2005, art,2/2

Besides, based on the guiding principles of the constitution, the federal RLAUP clarified the detail specification about the rural of land acquisition, transfer, redistribution, determining the condition on which he/she can be enjoyed and other aspects of rural *holding rights*.<sup>243</sup> This proclamation follows the constitutional principle provided that “...peasant/farmers/semi-pastoralist and pastoralists engaged in agriculture for a living shall be given rural land free of charge”<sup>244</sup> and the law give priority for those lists of peoples rather than peoples use land for business activity like investors.<sup>245</sup> Regarding to this, there are many peasants who have no their own landholding rights but whose livelihood is depend on agriculture by accessing land through rent, sharecropping, or any other means. Hence, the law seems to give absolute priority to them accordingly<sup>246</sup> by making land redistribution/distribution or changing communal land to private holding, the respective regional government can allocate arable land to such peasants.<sup>247</sup> However, this means of access to land is left up to the discretionary power of respective regional government.

The law also attached two condition on which a certain peasants can access to land provided that when a person whose age above 18 years and when he/she must willing to engage in agricultural activities as well as whose means of livelihood is agriculture) shall also have the right to get and use land.

The other point mentioned in the federal RLAUP is that without any distinction of indigenous and non-indigenous dichotomy edicts that all rural peasants have the right to access agricultural land through government allocation by redistribution/distribution in accordance with the law of the regions land administration concerned. In addition, peasants can access land through the strategy of rent, inheritance, lease or sharecropping. Except government allocation of land, peasants cannot claim as a right to access land via other modes of access to land.<sup>248</sup> Therefore, realization of free access to land for peasants would be somehow rhetorical in which land resource is scarce when the population increased. On the other hand, access to land is one elements of the undivided common property of NNPs of primordially identified and ethnically structured ethnic groups that

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<sup>243</sup>Id., art, 5/1( a, b)

<sup>244</sup> Ibid

<sup>245</sup>Proc. No. 456/2005, art, 5/4

<sup>246</sup>Daniel B. Gebreamanuel: *Transfer of land right in Ethiopia: Towards sustainable policy framework*, p. 39

<sup>247</sup>Proc. No. 456/2005, art, 5/2 and BGRS proc. No. 152/2018, art,6/3

<sup>248</sup>Tesfaye Teklu, ‘Rural Land Rights and Security in Cultivated Highland Ethiopia: Incremental Reform but Persistent Uncertainty’, *International Journal of African Development*, 2014, Vol.2. No.1, pp, 101-113, p.102

excludes non-indigenous peoples as discussed under section 3.3. In such circumstance, without having ownership right over land claiming access to land is not given for non-indigenous peasants and consider as walking in one leg and even it contradict with the principles of the undivided common property of NNPs of Ethiopian ethnic groups. Besides, the law is not clear about redistribution of land in order to realize free access to land for rural peasants rather it left for the discretionary power of each regional state which is almost all regional RLAUP ban no more redistribution of rural land except irrigational agricultural land.<sup>249</sup> The questions here is where did the government get extra plot of land to realize free access to land for peasants and bring social justice?

The other worthy thing is that the law elucidates rural peasants have the right to transfer their landholding rights either permanently or temporarily through rent, inheritance or donation.<sup>250</sup> The only limitation in case of land transfer is the constitutional exclusion clause, consent, registration and no eviction of family member in case of transfer.<sup>251</sup>

Moreover, the Federal RLAUP emphasize on which the way land and other natural resource can be sustainably utilize and conserve as well as it prescribes laws by which the administrative duty can be discharged with the obligation to enact laws by each regional state to effectively administer land and natural resources in their own region context. Hence, based on article 52 of the FDRE constitution and the federal guiding framework, regional governments have the duty to administer land and related natural resources.

Following the federal land governing framework, all regional states reproduced principles of free access to rural land for peasants in their own revised constitution and subsequent legislation. Hence, BGRS has its own rural land administration and use proclamation in order to enforce the constitutional rights of peasants and to achieve different government objectives. Accordingly:

*...[T]he land ownership rights given to the people and the government on the basis of the constitution of the regional state every land beneficiary specially determine farmers landholding or ownership utilization rights and obligations with due care for land has been necessary through creation of conducive situations for utilization.*<sup>252</sup>

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<sup>249</sup>Amhara National Regional State The Revised Rural Land Administration and Use Determination Proc. No. 252/2017

<sup>250</sup> Proc. No. 456/2005, art, 9/2

<sup>251</sup> Proc. No. 456/2005, art,8

<sup>252</sup>Benishangul-Gumuz Amended Rural Land Administration and Utilization proclamation, 152/2018, preamble para, 5

Further, the proclamation aims to create conducive environment in order to bring transparency regarding to the manner of utilization and protection of natural resources by ensuring landholding security and rights via land registration and certification.<sup>253</sup> Besides, to realize various government development objectives of the region and increase the participation different land users, properly addressing the land right of different landholders taken as a prime objective of the proclamation.<sup>254</sup> Besides, the proclamation aims to protect communal land grazing and to ban and controlling illegal settlements on private or joint/common landholdings rights.<sup>255</sup>

Under the BGRS rural land proclamation a certain peasant irrespective of whether (indigenous or non-indigenous) can be able to access agricultural land through government allocation when they fulfil the requirement of *age, interested to engage in agriculture and his/her means of livelihood is depend on agriculture and residency* through government grant.<sup>256</sup> Here, beyond the two condition attached under the FDRE RLAUP, in various regional state rural land administration and use proclamations (hereafter Regional state RLAUP) added *residence* as a prerequisite to access arable land.<sup>257</sup> The reason that different regional state in general and Benishangul-Gumuz region RLAUP in particular attached the condition may emanate from scarcity of agricultural land in rural area, so that it may not be advisable to give land to those who living somewhere else while other peasants live in hunger of agricultural land. Second, there may be a circumstance that peoples who have land in his homeland region and migrated to the other region in order to claim additional plot of arable land. Despite the above two justifications the attached conditions have its own inherent problems under ethnic federal arrangement. Because when regulatory organ of the regional state enact and enforce regional laws they use “residency requirement by interpreting it as *“indignity of a certain region”* and deny land rights of peasants who are not indigenous to the region. Such types of problem was happened in BGRS in 2005<sup>258</sup> and repeated in 2017.<sup>259</sup> The same problem was happened in South Nation, Nationality and Peoples (hereinafter SNNPS) regional state at Gura Farda Woreda in 2012 which results thousands of non-indigenous peasants of Amhara ethnic group in the region officially evicted from their landholding right by the pretext of illegal

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<sup>253</sup>Ibid

<sup>254</sup>Ibid

<sup>255</sup>Ibid

<sup>256</sup>Id., art,7

<sup>257</sup>For instance Amhara Revised Rural Land Administration and Use Determination Proc. No. 252/2017, art, 11

<sup>258</sup>Daniel W. Ambaye: *Land right and expropriation in Ethiopia*, p. 76

<sup>259</sup>For instance forceful eviction of non-indigenous peasants in Kamashi zone, in Belo Jeganfoy Woreda



settlers.<sup>260</sup> However, it is always a puzzle why the regulatory organ they evict those non-indigenous peasants in their own home and residence even in their own country after they live more than a decade and invest many things instead of searching other possible alternatives like regularization even if we assumed they settled illegally. But this puzzle shows that non-indigenous peoples treated as a secondary citizen when compare to the indigenous one. This miserable problem emanates from the egocentric and inherent problem of ethnic federalism.

The other important feature of the amended RLAUP of BGRS is that unless 80% of the land right holders agree, land redistribution is strictly prohibited.<sup>261</sup> However, such types of strict condition attached may seem that the region has a vast unoccupied arable land in the region before allotting the unutilized land for landless making redistribution of private holding is not logical. Contrariwise one can interpret since majority of landless peoples are non-indigenous peasants so that based on the provisions of the law the regulatory organ can easily limit the demand of non-indigenous peasants.

Further, beyond government allocation, peasants can access agricultural land through inheritance, donation or rent. When a person access land via inheritance and donation he/she must be a family member which counted upwards and down words with blood relation up to the second degree.<sup>262</sup> However, under Federal RLAUP blood relationship is not a requirement rather any person who permanently lives with the holder of landholding right and sharing the livelihood of the later can access land.<sup>263</sup>

### **3.4.2. Land Transfer**

Further, like that of the federal RLAUP, the proclamation provides that any peasants of the region have the rights to transfer their landholding right through donation, inheritance and rent provided that the following conditions are fulfilled.

**Holding certificate:** where a certain peasant wants to rent /lease out the land holding right he/she must able to show he/she has a landholding certificate issued from the competent authority and the

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<sup>260</sup>Yonas Girma Adimassu, *Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Critical Analysis of the Law and the Practice*, p. 93-97

<sup>261</sup>Benishangul-Gumuz Amended Rural Land Administration and Utilization proclamation, 152/2018, art, 9

<sup>262</sup>BGRS Amended Rural Land Administration and Utilization proclamation 152/2018, art,2/5

<sup>263</sup>Proc. No. 456/2005, art, 2/5

agreement should be in written form.<sup>264</sup> Otherwise the land holder has no the rights to transfer to other third parties.<sup>265</sup> The problem here is that land holding certificates in the region is not given for all rural peasants. Regarding to this, one of senior expert on land administration and utilization team leader in Metekel Zone elucidates:

*Due to financial and human resource constraint issuance of land holding certificate is not given for all rural peasants in the region. He also added that due to lack of cadastral system the region has no compressive information about how many hectares of the region's land resource hold by peasants. Due to this illegal land grabbing on unoccupied land, deforestation and illegal resettlement is the major bottleneck of the region rural land administration implementation. As such, peasant do not bother whether they hold land certificate or not rather they simply involve in informal land rent. This is the reason that informal land rental market is active in the region.*<sup>266</sup>

**No- eviction requirement:** when the landholder rent his/her land right to third parties the act of land transfer(rent) should not affect his/her livelihood and result eviction of his/her family. However, even if the proclamation delimits the average holding size of peasants in Dega and Kola provided that 5 and 10 hectare respectively, there is no minimum size limitation of plot of land to be rent by the landholder.

**Term of rent:** The term of contract of rent is not left for contracting parties only but there is a circumstance that the maximum term is fixed by the law provided that how long a farmer should rent his land to other farmers or investors based on the nature of the arable land of the region. Accordingly, two and ten years is given for traditional and modern farming respectively.<sup>267</sup>

**Consent:** In addition to the validity requirement of consent provided under the general contract law of Ethiopia, the Regional RLAUP added that the landholder must protect the consent of all the family members who have the right to use the land.<sup>268</sup> In case of donation or inheritance the landholder limits only he/she can transfer for family member who have a blood relationship.<sup>269</sup>

**Registration:** the competent authorities must register the contract, consequently, any customary practice of rent which is quite prevalent in the region is amounts illegal and results nullification of the contract.<sup>270</sup>

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<sup>264</sup> Benishangul-Gumuz Amended Rural Land Administration and Utilization proclamation, 152/2018, art,16,19&20

<sup>265</sup> Ibid

<sup>266</sup> Interview with Mister Yeshambel Tilahun senior expert and team leader in Metekel Zone, *on rural land administration and utilization*, March, /9/2019 [herein after Interview with Mister Yeshambel Tilahun]

<sup>267</sup> BGRS Amended Rural Land Administration and Utilization proclamation 152/2018, art,20/1(f)

<sup>268</sup> Ibid

<sup>269</sup> Id., art,16-19

<sup>270</sup> Id., art, 16/3

### 3.4.3. Obligation

Any rural land right holder and users have an obligation to protect the environmental resources in general and utilize land for the planned objectives. Further, without prejudices to the federal forest resources development, conservation, protection and utilization proclamation, if there is no indigenous forests in the land holding, the land holder has the duty to plant trees, take care for and proper utilization for growing trees. When the land holder exercise his/her land right the utilization must in a manner to protect the natural environment. Failure to protect land from flood erosion, forfeiting land right upon written notification, and voluntary transfer of land through gift results termination of land rights.<sup>271</sup>In nutshell, failure to observe the obligation which is impose by the law results in termination of the land holding rights.

The other important point incorporated in the newly amended RLAUP is that, when a person illegally grab on the unoccupied land or communally owned land resources beyond administrative measures he/she is subject to criminal liability. Besides, when an individual establish illegal settlement or engage any activity without legal authorization on jointly held land resource by both the public and the State results criminal liability.<sup>272</sup>

### 3.5. Immunity against Arbitrary Eviction

Before going to explore the legal protection of unlawful eviction of non-indigenous peasants in our context, it is important to see what forceful eviction implies. Forced eviction can be understood as whether a permanent or temporary removal against the will of an individuals, families or communities from their homes or land which they occupy without the provision access to appropriate forms of legal or other protection.<sup>273</sup>The practice of forced eviction denotes the involuntary removal of persons, families and groups from their property and land rights which brings a global, regional and national crises on economic, social and fundamental human rights and freedoms.<sup>274</sup> Freedom from forced eviction and reinforcing this substantive right are one of the basic rights under different international instruments such as UDHR, ICCPR, CEDAW, and

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<sup>271</sup>Id. , art,22

<sup>272</sup> Id., art,39&40

<sup>273</sup>Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997), Forced Evictions Fact Sheet No. 25, Rev. 1 (Geneva 2014); a( at: < [www.nyulawglobal.org/globalex/Forced\\_Evictions\\_Disability\\_Rights\\_Africa1.html](http://www.nyulawglobal.org/globalex/Forced_Evictions_Disability_Rights_Africa1.html) > (last accessed on 25 April 2018).

<sup>274</sup> Ibid

ICESCR.<sup>275</sup> Those different international instruments impose a negative and positive obligation on the state parties to protect an individual or groups of peoples from forceful eviction.<sup>276</sup> In such circumstance, the government should refrain from taking any type of legislative and administrative measures that result in eviction of the peasants on the one hand, and impose a positive obligation to espouse all possible programs that protect peasants from eviction by the government itself on the other hand.<sup>277</sup> Hence, states are always legally responsible for forced evictions that take place on their own jurisdiction.<sup>278</sup> Since forced evictions can always be ascribed either to the specific decisions, legislation, or policies of states, or the failure of states to intervene to halt forced evictions by third parties.<sup>279</sup>

So when we come to in our context as provided under article 9/4 of FDRE constitution, it ratified different international instruments which become part and parcel of the law of the land that deals about the prohibition of forceful eviction.<sup>280</sup> Beyond the international instruments, article 40/4 of the FDRE constitution, unequivocally prohibits forceful eviction provided that: “Ethiopian peasants have the right to...protection against eviction from their possession. *The implementation of this provision shall be specified by law.*”<sup>281</sup> Following this constitutional prohibition, forceful eviction of peasants from their landholding right are incorporated in all regional state revised constitutions.<sup>282</sup>

Here, the above constitutional immunity given for the rural peasants signifies that every level of the government has the duty to protect and prohibit peasants from the risk of losing their landholding right including the government himself. This entails the existing land laws and policy must clearly address and give legal guarantee for the land right of all peasants that helps to halt

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<sup>275</sup> United Nation 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,(at < [www.ohchr.org/documents/issues/housing/guidelines\\_en.pdf](http://www.ohchr.org/documents/issues/housing/guidelines_en.pdf),> (last accessed on, 10, April, 2019

<sup>276</sup>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, pp, 102-106, p.104

<sup>277</sup>United Nations, Forced Evictions , Fact Sheet No. 25/Rev.1, New York and Geneva, 2014, p 4-10

<sup>278</sup>The Centre on Housing Rights and Evictions (COHRE), ‘*Successes and Strategies: responses to forced evictions*’ Geneva, Switzerland, 2008, pp,1- 117, p.7

<sup>279</sup>Ibid

<sup>280</sup>Proc. No. 1/1995, art 9& art, 13

<sup>281</sup> Id., art,40/4

<sup>282</sup>Amhara National Regional State The Revised Rural Land Administration and Use Determination Proclamation 252/2017 art, 2/24

arbitrary eviction. The existing law must avoid the actual and potential threats which amounts discriminatory in nature and harassment that leads to eviction of rural peasants. On the other hand, when this right violated the state has the duty to 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 protections of land rights of non-indigenous peasants can be achieved through constitutional guarantee, legislative protection, judicial application, and executive implementation.<sup>283</sup> Legislative protection ensures that no violation can occur when non-indigenous peasants exercise his/her land right. Hence, if there is a violation of rights, the application and interpretation of the land right of non-indigenous peasants according to the law gives an assurance and there is a possible legal remedy by taking one's case in front of court of law. However, do 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 is an issue? If the answer is in the affirmative way, executive implementation relates to the certainty that all judicial injunctions and orders that vindicate one's rights are to be heeded to thereby leading to an actual redress for the victim and a real sanction on the perpetrator of the violation or abuse.<sup>284</sup>

However, immunity against arbitrary eviction of peasants, needs detail rules and regulations that answer specific issues which emanates from eviction. Yet, there is no such kinds of detailed laws that address when there is an eviction or there is no legal mechanism were devised to implement in both levels of government.<sup>285</sup> While the implementation of some obligations could require financial resources and time, others have immediate effect and do not require resources. This includes refraining from forceful eviction of people. However, even the act of eviction itself is not acknowledge as a criminal act in the FDRE revised criminal code. As a case, when peasants threatened with or subject to forced eviction there is no any procedural grantees for prohibiting, preventing and accessing legal remedy in our jurisdiction.<sup>286</sup> However, when there is an expropriation for public purpose the affected person have both constitutional substantive right and procedural mechanism were design to acquire "compensation commensurate to the value of the

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<sup>283</sup>Tsegaye Regassa. 'Making legal sense of human rights: 'The Judicial Role in Protecting Human Rights in Ethiopia', *MIZAN LAW REVIEW*, 209, Vol. 3 No. 2, pp, 289-330, p. 292

<sup>284</sup>Yonas Girma Adimassu, *Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Critical Analysis of the Law and the Practice*, p.48

<sup>285</sup>*Id.*, p.111

<sup>286</sup>Christophe Van der Beken: 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges', p. 161

property.”<sup>287</sup>In addition, complaint or conciliation procedures led by an independent body may be put in place. Based on the legal remedies of expropriation some writers try to show the existence of compensation in the case expropriation considered as a constitutional grantee for the landholders whose interests are affected.<sup>288</sup> However, eviction in case of expropriation and forceful eviction without any legal ground is quite different.

### **3.6. The Federal-State Paradox in Relation to Land Rights of ‘Non-Indigenous’ Peasants**

The underlying dilemma of land rights of non-indigenous peasants emanates from the official elusive nature of state/public ownership land policy discourse and ethnically arranged federalism which does not take in to account the land rights of non-indigenous peasants and the demographic dynamics of the country.<sup>289</sup> There are three responsible interrelated causes of contradiction from federal up to state level that they fail to address the land rights of non-indigenous peasants.

*First*, primordial identification of ethnic groups of Ethiopia predominantly depend on an ethno-linguistic criteria to delineate regional boundaries in order to make a perfect fit between ethno-linguistic groups and territorial boundaries. Consequently, the FDRE constitution give the identified and regionally structured ethnic group have the right to administer their own affairs including natural resource up to the right to self-determination.<sup>290</sup> That is the reason the sovereign power is given for ethno-linguistically arranged states<sup>291</sup>rather than individual citizens.<sup>292</sup> Hence, Ethiopian federalism implies that individuals are first and foremost citizens of ethno-linguistic structured regions rather than of Ethiopian which makes an individual should claim or benefited from group rights such as land resource when he/she become a member of one of ethnically arranged Kilil. <sup>293</sup> Within an ethnically arranged federation units, each ethnic group has its own home region and, consequently, that non-indigenous ethnic groups of non-indigenous peasants

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<sup>287</sup>Proc. No., 1/1995, art, 40/8

<sup>288</sup>Girma Kassa Kumsa: *Issues of Expropriation: The Law and the Practice in Oromia*, p.37

<sup>289</sup>Ethiopian land administration assessment report ,2004, pp,1-50, p. 3-6 ( available at : < [www.globalprotectioncluster.org/.../Ethiopia\\_Land\\_Policy\\_Administration\\_Assessm...](http://www.globalprotectioncluster.org/.../Ethiopia_Land_Policy_Administration_Assessm...)> Last accessed on: 4/10/2019)

<sup>290</sup> Proc. No. 1/1995 , art, 46

<sup>291</sup> Id., art, 8

<sup>292</sup>Alemante G. Selassie, ‘Ethnic Federalism: ‘Its Promise and Pitfalls for Africa’, p. 55

<sup>293</sup> Tom Lavers, ‘Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism’, p.477

have a weaker claim of their land right than indigenous ethnic groups and nowhere their issues were addressed.<sup>294</sup> Because from the spirit and operational reality of the FDRE constitution, the Ethiopian ethnic federal system was designed for empowering territorially concentrated ethno-national group without considering non-indigenous ethnic group which imposes a dogmatic conception of territorial autonomy.<sup>295</sup> That is why Haileyesus argue that non-indigenous ethnic groups do not have a constitutional recognition under the constitutions of different regional states.<sup>296</sup> There is no any territorial management for non-indigenous peasants which live in different regional states that occur due to demographic factor and major event that took place in Ethiopia during the past 19th century in the case of state and nation-building project.<sup>297</sup> Gebremichael also noted that, taken ethno-linguistic as a marker to identify ethnic groups in the federal arrangement were taken place without consideration of economic migrants, people who resettle in different regime and historical events of the country's population.<sup>298</sup> The *second*, paradox is that giving land for the common property NNPs of Ethiopian and the right to self-determination excludes the non-indigenous ethnic group from the benefits all land rights arise from the nature of common property. The *third paradox* is that the power of land administration is given for territorially self-autonomous ethno-linguistically arranged Kilil. As discussed in so far, land administration basically contain *land allocation, land right, land use and regulation and land valuation and taxation which is exercised by the regional state*. Hence, the land resource in their region is believed to be solely designated for them which do not have to be transferred by any means to non-indigenous peoples. That is why repeated expulsion of non-indigenous peasants of Amhara ethnic groups from Wollega in 2000 (and later in 2005), which reportedly happened with the involvement of ethnically intoxicated local administrative organs.<sup>299</sup> Nevertheless, the federal government have no legal mechanism to see all federal land policies and laws concerning the land rights of peasants are properly and uniformly applied throughout the country.

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<sup>294</sup>Christophe Van der Beken: 'Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges', p.160

<sup>295</sup>Melese Chekol, 'Inclusion or Exclusion of Exogenous Political Communities at Local Level in Ethiopia', *Research & Reviews: Journal of Social Sciences*, 2017, Vol. 3 | Issue 3 |, pp,196-201, p.200

<sup>296</sup>Haileyesus Taye Chekole, 'Issues of Minority Rights in the Ethiopian Federation', p.1

<sup>297</sup>Getachew Assefa, 'federalism and legal pluralism in Ethiopia: Preliminary observations on their impacts on the protection of human rights' p.179

<sup>298</sup>Gebremichael, Mesfin, *Federalism and Conflict Management in Ethiopia. Case Study of Benishangul-Gumuz Regional State*, p.122

<sup>299</sup>Jon Abbink, 'Ethnic-based federalism and ethnicity in Ethiopia: Reassessing the experiment after 20 years', *Journal of Eastern African Studies*, 2011, Vol. 5, No. 4, pp, 596-618, p.605

In the above circumstance, there is a direct contradiction between the universal principles of access to land and land rights of all Ethiopian peasants in the one hand and the territorial implications of ethnic federalism on the other hand which suggest lesser rights for non-indigenous peasants and live as a secondary citizen.<sup>300</sup> Hence, when the group land rights of indigenous people contradict with the non-indigenous ethnic group the constitution give priority for the group rights of indigenous peoples since the FDRE constitution give priority for group rights.<sup>301</sup> Besides, there is no legal mechanism to strike-balance between the two ethnic group interests. Those contradictions exposed non-indigenous peasants to become insecure and marginalized when the law operated into the ground via the functionary of ethnically arranged Kilili.<sup>302</sup> In such circumstance, Ethiopian rural land policy face lack of clarity to define and ascertain the land rights of non-indigenous peasants who are unable or unwilling to claim belongingness to any of identified ethnic groups.<sup>303</sup> Those non-indigenous Ethiopian peasants become floated with no homelands from exercising their land rights, unlike that of indigenous peasants in which they exercise full measure of their land right via the functionary of membership of a certain ethnic group.<sup>304</sup> This is incompatible with the constitutionally recognized right in which every citizen has a right without any prejudice to reside anywhere in the territory of the country as well as "...the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory."<sup>305</sup> Even it discard the general notion of citizenship right of an individual within the country.

Besides, article 43/1 of the FDRE constitution elucidates that the *peoples of Ethiopia as a whole, and each NNPs of Ethiopia as a group have the right to improved living standards and to sustainable development.*<sup>306</sup> To realize this right the FDRE Constitution has its national policy and objectives which impose an obligation on the government to enact different policies including land resource. Accordingly, under article 89 the government has the duty to:

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<sup>300</sup>Tom Lavers, 'Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism', p. 469

<sup>301</sup>Proc. No. 1/1995 ,preamble para,1

<sup>302</sup>Beza desalegn, 'Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy versus Adequate Political Representation in the Benishangul-Gumuz Region of Ethiopia', p. 39

<sup>303</sup>Assefa Mehretu, 'Ethno symbolism and the Dismemberment of the State in the Horn of Africa: The Ethiopian Case of Ethnic Federalism', p.5

<sup>304</sup>Assefa Mehretu, 'Ethno symbolism and the Dismemberment of the State in the Horn of Africa: The Ethiopian Case of Ethnic Federalism', p.7

<sup>305</sup>Proc. No.1/1995 art,41

<sup>306</sup>Id. , art,43/1



*(1) formulate policies that ensure 'all Ethiopians to benefit from the country's legacy of intellectual and material resources; (2) ensure that all Ethiopians get equal opportunity to improve their economic condition and to promote equitable distribution of wealth among them'; (3) take measures to avert any natural and man-made disasters, and, in the event of disasters, to provide timely assistance to the victims ; (5) Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development (6) promote the participation of the People in the formulation of national development policies and programmes' and also 'support the initiatives of the People in their development endeavors.'*<sup>307</sup>

From the above national objectives one can appreciate that the government have both positive and negative obligation to protect different economic rights of Ethiopian nationals by enacting inclusive policies and creating a positive working environment conditions for the nationals as a whole without any distinction. Further, the government has the duty to refrain from unlawful acts that hinder the enjoyment of the rights of an individuals or groups. *Paradoxically*, lack of addressing the land rights of non-indigenous peasants under FDRE constitution creates incompatibility of various individual rights of non-indigenous peasants and economic objectives of the government as explained above. Due to this constitutional incompatibility, the subsequent federal and regional land laws and policy troubled with legal and practical implementation to address the land rights of non-indigenous peasants.<sup>308</sup>

Like the federal and other regional state constitutions, the BGRS revised constitution elucidated on the regional organizational structure and institutional foundation of the regional state in each administrative units, power division and limitation of the administrative units and their respective institutional setups which ultimately serve as a tool to guide and regulate state behavior in each level of government structure in the region when they administer their own affairs such as land resource.<sup>309</sup> Moreover, the revised regional constitution deals about fundamental rights and freedoms with respective duties of an individual and groups of peoples.<sup>310</sup> Among others, land right of NNPs of the region is one of the democratic right of an ethnic groups.<sup>311</sup> Within BGRS revised constitution deals about different economic objectives of the region that help to realize fundamental human and democratic rights of an individual or groups.<sup>312</sup> However, following the

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<sup>307</sup>Id. , art,89(1,2,3,4,6)

<sup>308</sup>Adisu Kasa and Daniel Behailu, ' Land Governance in Ethiopia: Towards Evaluating Global Trends', p.40

<sup>309</sup>Tsegaye Regassa, 'Sub-national Constitutions in Ethiopia: towards Entrenching Constitutionalism at State Level' *Mizan Law Review*, 2009, Vol. 3 No.1. pp,34-69, p.34

<sup>310</sup>Benishangul-Gumuz revised constitution proc. No. 31/2003 art, 11-44

<sup>311</sup>Id. art,40

<sup>312</sup> Id., art, 111

elusive nature of national land policy, the right to ownership and property right over all land resources is exclusively given for the regional state and indigenous nationalities of the region.<sup>313</sup> The implication of ownership to the region for the identified indigenous nationalities refers to the existing land and related resource become undivided common property of the five indigenous nationalities. Regarding to this, one of the key informant noted that: “The pretext of the classification of indigenous-non-indigenous ethnic group to the region is used to exclude and undermine the right claimed by non-indigenous peasants and based on the dichotomy *landholding right* is given for indigenous peasants.”<sup>314</sup> So the question here is that it is possible to enjoy and claim land right without having ownership right over the land resource which is owned by identified ethnic group in the region? It arguable that, the land rights of non-indigenous peasants exist up to the mercy of the regional state and the interests of the non-indigenous peasants does not affect the group land rights of indigenous ethnic groups in the region. The ambiguous and incomplete laws and policies are the best fertilizers for creating inequality and discrimination among different ethnic groups. Hence, the utilization and administration of land resource benefit is given to the concerned indigenous nationalities by using the legal, political and regulatory institutions for their advantage or violence.<sup>315</sup> Endrias Eshete noted that to confer the right to give sovereign power and self-determination up to secession for ethno-national group is to grant that a regional state’s common property rights take priority over the property rights of non-indigenous peoples over land resource.<sup>316</sup> Therefore, like the FDRE constitution, the dilemma of land policy and related land right of non-indigenous peasants continued and the region has no any mechanism to balance the land right claimed by non-indigenous peasants in the one hand and group rights of indigenous nationalities over land on the other hand which ultimately bring land tenure insecurity and ethnic conflict in the region.<sup>317</sup>

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<sup>313</sup> Benishangul-Gumuz region revised constitution proc. No. 31/2003, art 40/3

<sup>314</sup> Interviewed with Mister Sintayehu Tadesse, Directorate of BGRS , on rural land administration and use, *impact of the dichotomy on the land rights of non-indigenous peasants*, March,11, 2019

<sup>315</sup> Abigeya Getachew Wolde, *constitutionalism in multi-ethnic countries: land and natural resource as the cynosure of conflict and harmony(Nigeria, Kenya and Ethiopia)*, LLM thesis, central Europe University,2018 [Unpublished available at: <[www.etd.ceu.hu/2017/wolde\\_abigeya.pdf](http://www.etd.ceu.hu/2017/wolde_abigeya.pdf)> pp,1-52, p.18

<sup>316</sup> Endrias Eshete as cited Tom Lavers, ‘Responding to land based conflict in Ethiopia: the land right of ethnic minorities under federalism’, p. 469

<sup>317</sup> Gebremichael Mesfin, *Federalism and Conflict Management in Ethiopia. Case Study of Benishangul-Gumuz Regional State* , p.223

So the above structural exclusion of non-indigenous peasants in both level of government have its own legal and practical implication on subordinate laws which demonstrates itself in lower attention on the protection of rights of non-indigenous peoples by the regional state. Further, the regional constitution emphasis on encouragement of ethnic-based claimed at controlling land resources and identity-based demands targeted at establishing ethnic-based local administration that emanates from the rights of self-determination.<sup>318</sup>

In nutshell, the dichotomy of indigenous–non-indigenous to the region signifies ethnic based land resource control prohibit the land rights of non-indigenous peasants. When the FDRE constitution entrusted land administration power to the regions as discussed under section 3.4 land rights of non-indigenous peasants is not addressed. One of the key informants understand that “even if the rural land law allows access to land for all peasants without any dichotomy, however, following the right self-determination under ethnic federal arrangement there is an understanding that the region land resource is belonging to indigenous nationality and affects the enforcements of the rights of all peasants equally in every level of government.”<sup>319</sup> Hence, the revised constitution is the supreme law of the region provided that any subordinate laws including the RLAUP of the region should be applicable in line of the spirit of the constitution.<sup>320</sup> Consequently, allowing free access to land rights for all non-indigenous peasants under the subsequent land governing laws face problem of practical implementation or it seems nominal since contradiction of the overriding constitutional principles results nullification of the law. So that the existing land governing laws of BGRS does not been able to articulate the interest of non-indigenous peasants found in the region.

Moreover, for realization of the right to access to land and land rights of non-peasants in particular and administration and utilization of the land resource in general, non-indigenous ethnic group needs democratic self-government and equitable representation in each level of government like that of indigenous ethnic group.<sup>321</sup> Since inclusive and democratic self-government is crucial to guarantee that peoples who uses the land resources, promote the general wellbeing of the people, creating accountability to the people and to allow the people to determine how to best use and

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<sup>318</sup>Jon Abbute, ‘Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism’, p. 389

<sup>319</sup>Interviewed with Mister Sintayehu Tadesse, *on the land rights of non-indigenous peasants in relation to the current federal arrangement*, March,11, 2019

<sup>320</sup>Benishangul-Gumuz region revised constitution proc. No. 31/2003, art, 10/1

<sup>321</sup>Fasil A. Zewdie, ‘Right to Self Determination and Land Rights in Ethiopia: Analysis of the Adequacy of the Legal Framework to Address Dispossession’, p.11

exploit their resources via their representatives.<sup>322</sup> In a sense, the protection of property rights in land involves complementarities among the legislature, the judiciary, executive organs and administrative tribunals.<sup>323</sup> However, each administration of nationalities of the region has organized with law enforcement organ without considering the right of non-indigenous peoples. This is visible when one critically evaluate the organization of the region's Constitutional Interpretation Commission. The commission is organized with a total seat of twenty members from indigenous nationalities.<sup>324</sup> In such circumstance, each law enforcement organ which represented on a certain ethnic groups and community inevitably seek to define and understand along their own ethnic lines for the distribution and control of land resource as well as related economic benefits so as to benefit their own ethnic groups.

### **3.7. Conclusion**

Ethiopia's federal structure is rightfully referred as a multinational or ethnic federation so that ethnically arranged regional states utilize as a best instrument where ethnic groups can exercise their land right and protect their interests. Hence, the 1995 FDRE professed land resource become under the common property of the NNPs of Ethiopian ethnic groups and adopt a public ownership land policy. The constitution allow free access to land for rural peasants without the dichotomy of indigenous and non-indigenous peasants. To implement the overriding constitutional rights of peasants, the same document entrusted the federal government with a task of enacting framework legislation, and the regional states legislation must ensure its implementations thereto through the power of land administration. The subsequent land legislation adopt free access to land for peasants by giving landholding rights to peasants. However, there are byproducts of ethno-linguistic federal arrangement of federation units and common property of NNPs of Ethiopia that adversely affect the land rights of individuals and groups in a given state which is not able to claim membership to a group. This, in turn, raises a question regarding to citizenship and belongingness (whether individuals are first and foremost national citizens or members of ethnic groups to exercise their land rights). Hence, the land rights of non-indigenous peasants were not addressed within the national land policy or there is no protection mechanism when their land rights are violate which

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<sup>322</sup> Ibid

<sup>323</sup>Hailu Burayu et al, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes', *Mizan Law Review*, 2013, Vol.7 No.2, pp, 351-365, p. 351

<sup>324</sup>BGRS revised constitution, proc. No. 31/2003, art, 71/1

ultimately creates decentralized despotism in every level of government. The implications of ethnic federalism and ambiguous nature of the national land policy, BGRS constitution clearly make a distinction by giving ownership right of land resource and administration of the region affairs to the indigenous ethnic groups. Such types of legal arrangement has a direct implications for land administration which makes the land rights of non-indigenous peasants considerably uncertain and creates paradox to constitutionally recognized rights and government policies.

# CHAPTER FOUR: PRACTICAL IMPLEMENTATION OF LAND RIGHTS OF ‘NON-INDIGENOUS’ PEASANTS IN BELO-JEGANFOY AND DANGUR WOREDA

## 4.1. Introduction

In the third chapter, the researcher tries to explore the legal aspects of land rights of non-indigenous peasants in the ambits of federal and BGRS land governing laws. On the other hand, this chapter explores the practical implementation of access to land and protection of the land rights of non-indigenous peasants in line with the existing land tenure system. Besides, it focuses on the practical protection of arbitrary eviction of non-indigenous peasants and the legal remedies given for those peasants whose land rights were violated. Thus, in tandem with what was pledged to be followed as a methodology in the introductory part, the writer has made a fieldwork visit to the study areas and collected qualitative data in order to understand the practical aspects of the access to land and related land rights of non-indigenous peasants. Hence, insights of non-indigenous peasants on the practical implementation of the law based on the dichotomy of indigenous-non-indigenesness in the selected study area were taken by interviewing key informants and focused group discussion.

## 4.2. The Exercise of Right to Access Land

Due to lack of arable land, environmental problems, high population pressure and other pulling and pushing factor non-indigenous peasants migrated from different direction and resides in Belo-Jeganfoy and Dangur Woreda which is known by the availability of unoccupied and relatively fertile land.<sup>325</sup> Though the federal and the regional RLAUP allow governmental allocation of land to peasants whenever there is unoccupied land, majority of non-indigenous peasants have no their own landholding right.<sup>326</sup> From focus group discussion and interviews noted that:

*Almost all the residents in both Woreda are non-indigenous peasants that sustain their livelihood in agriculture. The woredas' have plenty of unoccupied land. However, the regulatory organ is not always voluntary to distribute the land for non-indigenous peasants. Instead, they suppress the claim of non-indigenous peasants and made harassment by claiming that you are illegal migrant. But when indigenous*

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<sup>325</sup>Interview with Yasabu Dessie, non-indigenous peasants in Belo-Jeganfoy woreda Dediessa Kebele, *why you come in this area*, March, 8/2019, interview with Gemechis Wokejira, non-indigenous peasants in Dangur Woreda in Gurji kebele, *why you come in this area*, March, 10/2019

<sup>326</sup>Focused group discussion on arbitrarily evicted non-indigenous peasants in Belo-Jeganfoy Woreda in Dediessa Kebele, *on access to land*, March,9/2019, Interview with Mister Simeneh Solomen, non-indigenous peasants in Gureje Kebele, *how non-indigenous peasants access to land in Dangur Woreda in Bureje Kebele*, March, 10/2019

*peasants claim to land or where a person pays some amounts of money through the chain of corruption the land regulatory organ simplify distribute the land for those persons.* <sup>327</sup>

The other informants disclose the fact that access to agricultural land is depends on the availability of contract of rent in cash or rent in kind (Quota) or in Amharic Kuricha and sharecropping rather than accessing land through government allocation.<sup>328</sup> Irrespective of the permanent residence or temporal immigrants in both Belo-Jeganfoy and Dangur Woreda, access to agricultural land through rent in cash is a dominant strategy for non-indigenous peasants.<sup>329</sup> Further, one of the informants in Gublak Kebele noted that “I live for the last 13 years and I don’t have my own landholding right rather I access agricultural land through rent.”<sup>330</sup> One of the senior land administration and utilization expert also share the above idea of non-indigenous peasants provided that:

*Starting from the introduction of the current land policy of Ethiopian and enactment of the BGRS RLAU, there is no clear, formal and transparent land distribution taken place in the region. For this matter, he justified two reasons: first, due to agricultural land constraint in the highland part of Ethiopian in different direction non-indigenous peasants migrated into the region in order to search arable land and they start to live in the region. In such circumstance, if unoccupied land is distributed for non-indigenous peasants, other non-indigenous peasants found in high pollution pressure regions highly migrated into the region in order to benefit from land distribution. However, such a situation is not pleased with the region’s government organ. Hence, the region’s government organs were arranged based on their ethnic lines of each indigenous ethnic group. As a case, the government organs always fear that when the number of non-indigenous peoples increased, gradually, they claim the right to self-rule. Second, when the land distribution is taken place in the region the indigenous ethnic groups are not voluntary. Since they consider that land resource has been inherited from their ancestors and land is belongs to the common property of indigenous nationalities. So that when the land becomes distribute to the non-indigenous peasants the land resource conflict may change to ethnic conflict. Due to such complicated factor, the implementation of free access to land becomes difficult rather the usual practice of access to land for non-indigenous peasants are through rent and other modes.*<sup>331</sup>

On the other hand, the other informants noted that even if the contract of rent is the usual modes of accessing arable land, there are a number of non-indigenous peasants who have no money to pay the value of the contract of rent to the landholder. Such types of non-indigenous peasants can

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<sup>327</sup>Focused group discussion on arbitrarily evicted non-indigenous peasant in Dediessa Kebele, *on access to land*, March, 9/2019, Interview with Mister Simeneh Solomen, non-indigenous peasants in Gureje Kebele, how non-indigenous peasants access to land, March, 10/2019

<sup>328</sup>Interview with Mengistu Zegeye, non-indigenous peasants in Borenji Kebele, *how access to land*, March 10/2019, Interview with Mister Miseganaw Esubalewu, non-indigenous peasants in Belo-Jeganfoy Woreda in Seni Kebele, *how access to land*, March, 8,2019

<sup>329</sup>Interview with Mengistu Zegeye non-indigenous peasants in Dangur Woreda Azareti Kebele, *on access to land*, March 10/2019

<sup>330</sup>Interview with Ayesheshem Alemu, Non-indigenous peasants in Dangur Woreda Gublak Kebele, *on access to land*, March 11,2019

<sup>331</sup>Interview with Mister Eshetu Mosisa, senior expert land administration and utilization in Dangur woreda, *on access to land*, March, 12/2019

access arable land via sharecropping arrangement by contributing his/her labour.<sup>332</sup> Under this contractual arrangement where the landholder and sharecropper share the product of the land according to the formula they agreed in kind. It is common among farmers who live in the same locality and whose knowledge of farming experience and trustworthiness of fellow farmers is strong. In case of a contract of sharecropping arrangement, the landholder provides arable land only and then non-indigenous peasants who have no land contributes his/her labour and other variables, such as supervision, management of the agricultural activity, Ox, and cover other related expenses. Then, at the end of the day the output of the agricultural activity should be divided according to the mutually agreed formula. One of the informants who resides in Borenja Kebele noted that when non-indigenous peasants enter into a contract of sharecropping arrangement, based on the fertility of the soil, scarcity of land, the contracting parties negotiated that the land provider takes 1/3<sup>rd</sup> or 1/4<sup>th</sup> from the total product of the given land.<sup>333</sup> However, such methods of accessing land has strong tradition within the rural peasants in Ethiopia but the formal law neither allows it nor prohibits it.<sup>334</sup>

The third, mechanism of accessing land in both Belo-Jeganfof and Dangur Woreda is through the contractual agreement of Kuricha. Under this contractual agreement, the landholder gives his land use right for certain peasants for a specified amounts of crops in kind. The informants elucidate in these way:

*Since 'Kurecha' is kind of rent used by the landholder as tactic to avoid the risk occurred in the agricultural activity such as drought or other natural and manmade problems. Unlike sharecropping, in this case of Kurecha and rent whatever risk occurs, the landholder did not share the risk of the tenant rather the tenant has the duty to pay the amount of crop which specified in their contractual agreement. Accordingly, the amount of crop paid for the landholder may 5-10 Kuntal or 500- 1000 kg per hectare. Even if the land is not productive or the crop is affected by drought or any other related risk that does not cover the contractual agreement, the tenant has the duty cover the debt wherever he/she brings. The amount of quota paid for the landholder is determined in their contractual agreement is based on the fertility and productivity of the land.*<sup>335</sup>

The fourth mechanism of access to land for non-indigenous peasants in both Woreda is through informal land sell. Despite what the government legislation prohibition of the land sale, non-

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<sup>332</sup>Interview with Mister Simeneh Solomen, non-indigenous peasants in Dangur Woreda in Gureje Kebele, *on non-indigenous peasants access to land?*, March, 10/2019

<sup>333</sup>Interview with Abersem Mulu, non-indigenous peasants in Dangur Woreda in Borenja Kebele, *on land rights of non-indigenous peasants*, March 10/2019

<sup>334</sup>Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, 'The Enigma of Informal Rural Land Deals In Ethiopia: Evidence from Peri-urban Areas of Hawassa City', *HARAMAYA LAW REVIEW*, 2017, Vol. 6, pp, 43-66, p. 52 (hereinafter Daniel Behailu Geberamanuel and Gemmeda Amelo Gurero, 'The Enigma of Informal Rural Land Deals In Ethiopia: Evidence from Peri-urban Areas of Hawassa City')

<sup>335</sup>Interview with Abersem Mulu, *on access to land*, March 10/2019, Interviewed with Maregu Anemut, non-indigenous peasant in Belo-Jeganfof woreda in Dediessa Kebele, *on access to land*, March, 8/2019



indigenous peasants access arable land through sale from indigenous peasants. The informants noted that the contracting parties do not use the term sell in their contractual agreement explicitly rather they used different masks and in a variety of forms like donation, inheritance' contract of rent or land exchange.<sup>336</sup>

Despite the above fact the writer assured that there are some non-indigenous peasants who have their own landholding rights. The informants elucidate the way of access arable land in this manner: "I lived for the last 8 years in Gublak Kebele and I have ten hectare of arable land. The land administration committee has no problem to access land if your approach is tactful and able to pay some amount of corruption because in our Kebele in particular and Dangur Woreda, in general, there are a number of unutilized lands."<sup>337</sup>

The above different strategy of access to land shows that even if the region has plenty of arable land, the constitutional rights of free access to land is not appropriately enforced. Hence, first, non-indigenous peasants in the highland area have real arable land constraint. Therefore, they want to move and work in BGRS by exercising the constitutional right of free access to agricultural land. However, realization of free access to land rights for non-indigenous peasants is difficult. For this problem there are two responsible causes. First, the regional land regulatory organ is not voluntary to distribute the unutilized land for non-indigenous peasants due to the legal and structural problem of failing to address the land rights of non-indigenous peasants under the current federal arrangement. Hence, from the legal perspective giving ownership to the region of indigenous nationalities implies that exclusions of large numbers of non-indigenous ethnic group. From structural arrangement perspective, the primordial identifications of ethnic groups and establish the federation units results the issue of non-indigenous peoples become ignored. Second, following the legal dichotomy the indigenous-non-indigenous ethnic group in relation to the common property over of region's land resource affects the practical implementation of the rights of non-indigenous peasants. Due to this problem, non-indigenous peasants opt to engage in different informal land deals which affected and restrict the various land rights of non-indigenous peasants in the region. So directly or indirectly the practical problems of access to the land right for non-

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<sup>336</sup>Interview with Yasabu Dessie, non-indigenous peasants in Belo-Jeganfoy woreda Dediessa Kebele, *on access to land*, March, 8/2019, interview with Gemechis Wokejira, non-indigenous peasants in Dangur Woreda in Gurji kebele, *how access to land*, March, 10/2019

<sup>337</sup>Interview with Ayesheshem Alemu, non-indigenous peasants in Dangur woreda in Gublak Kebele, *on access to land*, March, 11/2019

indigenous peasants are the manifestation of the legal ambiguity, inconsistency and the precarious nature of the land right of non-indigenous peasants under the existing land policy in Ethiopia in the one hand and BGRS on the other hand.

### **4.3. The Practice of the Right to Use and Transfer Land Rights**

As has been discussed in so far, landholders of rural peasants have unlimited period over their land use right. However, when a person transfer his landholding right to third parties, the law put the maximum period of two years for their contract of rent.<sup>338</sup> Even if non-indigenous peasants access to land through the above-discussed modalities, land held under legally permitted short-term land rental contracts are rarely used to grow permanent crops which take beyond the terms of contract or the term fixed by the law. All informants explain that almost all contractual agreement is one year. This short term contractual agreement has restricted the preference of peasants on what types of crops to be harvest. Due to this problem, non-indigenous peasants use the land for seasonal crops which arrive in one year. So in every year starting from January up to April non-indigenous peasants are searching rental land.<sup>339</sup>

Abersum Mulu express the situation by comparing the land right holder who obtained land via government grant, rent/Kuricha or sharecropping arrangement is narrower and restricted in terms of duration of utilization of the land, production and input choices. Rental price arrangement and the contractual agreement is *leonine* provided that almost all terms and conditions of the contractual agreements are imposed by the landholder and non-indigenous peasants have little to negotiate due to the increment of the demand of non-indigenous peasants and lack other alternatives simply accept the contractual agreement.<sup>340</sup> The other informants also elucidate that especially in case of sharecropping arrangement unless the sharecropper takes the share of the landholder into his/her house the landholder deny the contract or by creating a number of conditions such as he/she asks extra amount of money. If the sharecropper refuses the landholder, the sharecropper of the non-indigenous peasant is exposed for different harassment by the land

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<sup>338</sup>Benishangul-Gumuz revised land administration and use proclamation 152/2018, art, 20/1, (f)

<sup>339</sup>Interview with Hussien Sofian, elder of non-indigenous peasants in Quota Kebele, *on limitation of land rights of non-indigenous peasants?* March 12/2019, interview with Ayalew Belay, non-indigenous peasants in Belo-Jeganfey Woreda in Didiga Kebele, *what is the limitation on the land rights of non-indigenous peasants when you exercise,* March 8/2019

<sup>340</sup>Interview with Abersem Mulu, *on the land right of non-indigenous peasants in line with indigenous peasants,* March 10/2019

right holder like the land resource is belongs to the indigenous nationalities, you are non-indigenous. As such, the sharecropper simply accepts what the landholder said.<sup>341</sup> The other informants also noted that there is a multiple contract of rent occur over a single plot of land and conflicts<sup>342</sup>

One of the senior experts on the land administration and utilization team leader in Metekel Zone explain the situation in this way:

*Though land transfer is allowed through rent, inheritance or other modes in both regional and federal rural land governing laws whenever the conditions fulfilled, the practice in Dangur Woreda in different Kebeles reveals that they are largely unregistered. Time to time the number of non-indigenous peasants is increasing. Due to this situation, the demand for arable land is highly increased by non-indigenous peasants. Early times indigenous peasants live in shifting cultivation and little benefit from the land rental or sharecropping arrangement. However, when the non-indigenous peoples increased in the Woreda, indigenous peoples start to provide land rent to the non-indigenous peasants. Hence, indigenous peoples assume land resource as belonging to themselves so that they simply divided the unutilized land and start to transfer third parties. That was the reason illegal encroachment, settlement on unutilized land and informal land rent become active. Due to this fact, some indigenous peasants hold arable land which amounts 20-250 hectare. As such when they conclude a contract of rent it simply done without the permission of the government and the landholder is not voluntary to register their contractual agreement. Because on the one hand, the landholding right is not certified. On the other hand, the way of getting the land is simply encroaching the unutilized land. In such circumstance, when non-indigenous peasants exercise their right based on the contractual agreement there are a number of complicated problem in Metekel Zone in general and Dangur Woreda in particular because of their contractual agreement is not done according to the what the law said .<sup>343</sup>*

From the above-discussed fact, it reveals that the land rights of non-indigenous peasants are extremely insecure. The non-registration of contractual agreement invites dispute between the contracting parties and their contention are entertained outside the formal judicial system.<sup>344</sup> Here, even if the informal judicial system have its own merits non-indigenous peasants have no option to take the case when they dissatisfied by decision of informal judicial system. One of the informants explains that if we take the case in court of law or other concerned government regulatory organ the usual

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<sup>341</sup>Interview with Hussien Sofian, elder of non-indigenous peasants in Quota Kebele, *on the limitation on the land rights of non-indigenous peasants when you exercise?* March 12/2019, interview with Yalew Belay , non-indigenous peasants in Belo-Jeganfey Woreda in Legaya Kebele, *on the limitation on the land rights of non-indigenous peasants when you exercise*, March, 8/2019

<sup>342</sup>Interview with Aragaw Mossissa non-indigenous peasants in Dangur Woreda in Alipopo kebele , *about the land rights of non-indigenous peasants the land use and transfer right of non-indigenous peasants*, March, 12/2019, Interview with Lemma Wakejera, non-indigenous peasants in Belo-Jeganfey woreda in Shenkora Kebele, *about the land rights of non-indigenous peasants the land use and transfer right of non-indigenous peasants*, March, 8/2019

<sup>343</sup>Interview with Yeshambil Tilahun, senior expert on land administration and utilization team leader in Metekel Zone, *about the land use and transfer rights of non-indigenous peasants in Dangur Woreda*, March 9/2019, Interview with Abdi Guteta, senior expert on land administration and utilization in Belo-Jeganfey woreda, *about the land use and transfer rights of non-indigenous peasants*, March, 7/2019

<sup>344</sup> Interview with Sheshigu Awoke, Dangur Woreda manager, note on *the impact of indigenous-non-indigenous dichotomy on the land rights of non-indigenous peasants*, March 11/2019

response is you are an illegal settler and made deforestation so that you must leave the land.<sup>345</sup> In such a case, all burden resides on the hands of non-indigenous peasants who sustain his/her livelihood through rent, sharecropping or Quota.<sup>346</sup> Due to this problem, whatever disagreement occurs between the contracting parties the non-indigenous peasants have no equal bargain power rather they simply accept the word of landholder. Therefore, there are three rationales for the land use right and contractual agreements of non-indigenous peasants become insecure. First, even if there are unoccupied land, a number of non-indigenous peasants resides in both Woreda have no arable land. Second, the land regulatory organ is not voluntary to distribute the unoccupied land for non-indigenous peasants since they assume land resource is belonging to the indigenous ethnic group and the regional state. Third, following the increment of non-indigenous peasants, indigenous peasants divided the unoccupied land and start to transfer the plot of arable land to non-indigenous peasants in a various informal contractual arrangement that invite land disputes. So this practical problem is the direct reflection of the dichotomy of indigenous non-indigenesness to the region and the loopholes of the land policy which results in the land rights of non-indigenous peasants exposed for marginalization.

#### **4.4. Impact of the Dichotomy of Indigenous/Non-indigenous Peasants on the Land Rights of Non-indigenous Peasants**

The case of arbitrary eviction of non-indigenous peasants of the Amhara and Oromo ethnic group in 2017 and 2018 respectively in Kamashi administrative Zone in Belo-Jeganfoy Woreda illustrates some of the impacts of the dichotomy and the legal paradox failing to address and protect the land rights of non-indigenous peasants from arbitrary eviction.<sup>347</sup> In this regard, key informants explain that when we start to cultivating the land plot for the last ten years which accessed via rent, sharecropping arrangement or any other mechanism there was no problem. However, gradually the land claim came when the regional government and the local administration said to be land is

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<sup>345</sup>Interviewed with Maregu Anemut, non-indigenous peasant in Belo-Jeganfoy woreda in dediessa, *how the regulatory organ treat when your land rights is violated*, March, 8/2019,

<sup>346</sup>Interview with Semianeh Solomon, non-indigenous peasants in Borenji Kebele, *how land regulatory organ protect the land rights of non-indigenous peasants*, March, 9/2019, interview with Anemut Atinafu, non-indigenous peasants in Belo-Jeganfoy Woreda, Dediassa Kebele, *how land regulatory organ protect the land rights of non-indigenous peasants*, March 6/2019

<sup>347</sup>FGD note, on arbitrarily evicted non-indigenous peasants in Belo-Jeganfoy Woreda in Dediassa Kebele, *root cause of arbitrarily evictions of non-indigenous peasants*, March 9/2019

belonging to the indigenous ethnic groups.<sup>348</sup> According to the informants view the classification of indigenous non-indigenous to the region is used as a fundamental strategy to enforce or protect different rights of rural peasants by the law enforcement organ.<sup>349</sup> The other informants also focused on the decentralized despotism that every non-indigenous peasants in the region are subordinate nationals in every horizon.<sup>350</sup> That is the reason from focus group discussion they said that the dichotomy of indigenous non-indigenous ethnic group to the region creates modern indigenous peasants landlordism and simply they rent, sell or transfer in any modes to non-indigenous peasants.<sup>351</sup> Hence, both piece of evidences shows that such type marginalization occurs due to the existence of legal discrimination which in turn the direct contradiction with the constitutional principles of the right to non-discrimination, free access to arable land for peasants and tenure security. The other informants also elucidate:

*The dichotomy of indigenous-non-indigenous to the region in every levels of government interpreted the law and equated to “ethnicity” requirement, and any legal rights and protection is always implemented in favor of the indigenous nationalities. That is the reason the practical aspect of exercising free access to land and protections of land rights of non-indigenous peasants is not protected even if there is unutilized land in both selected study area.*<sup>352</sup>

According to the above informant’s view the dichotomy allow non-indigenous peasants exposed for systemic marginalization that emanated from ethnic-based hegemonies to control socio-economic and political affairs. Therefore, membership indigenous nationalities is the artefact of the practical rule of accessing and protecting land rights of non-indigenous peasants. Moreover, it creates unconducive working environment for non-indigenous peasants which ultimately bring land tenure insecurity. The other informants also disclose that though when non-indigenous peoples inform the potential or actual problem of the violation of the land right for the enforcement

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<sup>348</sup>Interviewed with Anemut Atenafu, non-indigenous peasants in Belo-Jeganfoy Woreda in Dediessa Kebele, *impact of classification of indigenous-non-indigenous peasants on land rights*, March, 8/2019

<sup>349</sup>Confidential interview with, senior expert on land administration and utilization in Belo-Jeganfoy Woreda, *on classification of indigenous-non-indigenous/owner-non-owner to the region on the land rights of non-indigenous peasants*, March , 8/2019, focus group discussion Belo-Jeganfoy Woreda in Dediessa Kebele arbitrarily evicted non-indigenous peasants, *what do you think the classification of indigenous-non-indigenous /owner-non-owner to the region on the land rights of non-indigenous peasants*, March, 9/2019

<sup>350</sup>Interview with Sheshegu Awoke, Dangur Woreda manger, *impact of the dichotomy on the land rights of non-indigenous peasants*, March, 12/2019

<sup>351</sup>FGD note, on arbitrarily evicted non-indigenous peasants in Belo-Jeganfoy Woreda in Dediessa Kebele, *impact of the dichotomy on the land rights of non-indigenous peasant*, March, 9/2019

<sup>352</sup> Interview with Sheshegu Awoke, Dangur woreda manger, *impact of the dichotomy on the land rights of non-indigenous peasants*, March, 12/2019

organs, they are reluctant to give legal guarantee.<sup>353</sup> This shows there is an institutional discrimination in which state officials who works those ethnically autonomous institutions are member of indigenous nationalities and they run their own interests whom they are represented and they do not bother about whether the interest of non-indigenous peasants were affected or not. In such circumstance, the enforcement of formal land laws and policy is not simply the impartial application by bureaucrats rather it implemented in line with the interest of indigenous ethnic groups. That is the reason in the joint peace conference between Benishangul-Gumuz and Amhara regions one of the participants from Kamashi Zone raises the issue that: “in order to respect rule of law and protect the rights of NNPs, first there must not be a dichotomy of *red and black or indigenous or non-indigenous peoples in one region.*”<sup>354</sup> Because the dichotomy of indigenous-non-indigenous to the region used for two purposes for the regulatory organ.<sup>355</sup> Hence, according to Siraj Abdu, first land resource is belonging to indigenous nationalities so that prior legal protection of land rights is given for them consequently indigenous ethnic group in the region have more privilege than non-indigenous ethnic peasants. Second, when non-indigenous peasants claim their rights the regulatory organ attached different harassment so that they can simply suppress or even start to evict non-indigenous peasants. From focus group discussion also support the above fact by elucidating that:

*Especially in Kamashi Zone in Belo-Jeganfoy Woreda due to the existence of fertile and unoccupied land gradually the numbers of non-indigenous peasants increased. Due to this fact, in order to limit the demand of the land right of non-indigenous peasants, government organs via a secret communication with selected indigenous peoples like unemployed youths arrange different tactics in order to evict non-indigenous peasants in their residing area. Then those selected indigenous peoples start to make personal conflict with non-indigenous peasants or their children's or robbed their property. Within the conflict when an indigenous individual become victimized, intentionally the issue become changed into ethnic conflict. Then through this mechanism, non-indigenous peasants exposed for arbitrary eviction.*<sup>356</sup>

From the above discussion it is true that for example the arbitrarily eviction of non-indigenous peasants of Amhara ethnic group from their residence in Belo-Jganfoy Woreda in 2017 with the

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<sup>353</sup>Interviewed with Semianeh Solomon , non-indigenous peasants in Dangur Woreda Borenji Kebele *protection of the land rights of non-indigenous peasants by land regulatory organ*, March, 7/2019, Focus group discussion on arbitrarily evicted non-indigenous peasants in Belo-Jeganfoy Woreda in Dediessa Kebele, *protection of the land rights of non-indigenous peasants by land regulatory organ*, March, 9/2019

<sup>354</sup>Asemahegn Aseres, *Minutes on Peace conference between Amhara and Benishangul-Gumuz regional state councils*, held on Amhara region in Injebara town, January /27/2019

<sup>355</sup>Confidential interview, senior expert on land administration and utilization in Kamashi zone, *impact of the dichotomy on the land rights of non-indigenous peasants*, March, 14/2109

<sup>356</sup>FGD note, on *causes of arbitrary eviction of non-indigenous peasants in Belo-Jeganfoy Woreda in Dediessa Kebele*, March, 9/2019

mask of ethnic conflict. The same incident was occurred in Oromo ethnic group in 2018. From the above incident the discriminatory law is not only limited to affect the land and other property rights but also non-indigenous peasants develop a victim mentality that feel to think as subordinate citizen in the region which easily exposed for different social and psychological problems. That is the reason whenever there is an actual or potential threat occur in their resident they search their ethnic origin and return back their home region. Therefore, the cumulative effect of the above problem brings land tenure security of non-indigenous peasants in the region. Moreover, the dichotomy create a kinds of *tenancy-landlordism relationship between non-indigenous and indigenous peasants respectively*.

#### **4.5. Practical Observation of Protection and Remedies against Arbitrary Eviction of Non-indigenous Peasants in Belo-Jeganfoy Woreda**

As discussed in so far, immunity against arbitrary eviction is a constitutional right for peasants. Following this constitutional right, each level of government has the duty to protect, respect and fulfil the land rights of rural peasants which is promised by the law. Because one of the main objectives of the current rural land policy is to bring tenure security among rural peasants by giving legal guarantee whenever there is an actual or potential threat of violations of land rights such as arbitrary evictions of rural peasants. Hence, the state shall promptly take all legislative, administrative and other appropriate steps to realize their rights. However, arbitrarily eviction of non-indigenous peasants remain one of the most prevalent threats in BGRS in particular and in Ethiopia in general.<sup>357</sup>

In order to address the problems of evicted non-indigenous peasants, on November /9/2018 the two speakers of Benishangul-Gumuz and Amhara regional states council concluded a joint agreement in Assossa town.<sup>358</sup>The agreement focused on the way of enactment and mentoring of laws including the way of modification of different working directives, good governance, and conflict management starting from higher government level up to the lower. Further, its emphasis on the coordination of the two regions government organ, public relationship twice a year when it

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<sup>357</sup>The Federal ministry of peace, peace and unity delivery programs, *Addis Zemen Gazeta*, 78th year , No.225, April 23/2019, p.13 [herein after The Federal ministry of peace, peace and unity delivery programs]

<sup>358</sup>The binary agreement between Amhara and Benishangul-Gumuz regional state councils, Assossa town, November, 9/2019, p,1-2

necessary an expert who selected in both region conducted survey research and experience sharing are some of the major outcomes of the binary agreement.

On the other hand, after non-indigenous peasants evicted from their land rights and houses, different level of government try to attempt to protect the rights of non-indigenous peasants. To this end, both Benishangul-Gumuz and Amhara regions prepared peace conference on January /5/2019 at Injebara town in order to address the land rights of arbitrarily evicted persons in the one hand and to improve the relationship between the peoples of the two regions on the other hand. In this conference different elders, religious leaders, peasants and government officials made a dialogue on the issues of the protection of rule of law, the way to improve the relationships of the two peoples of the regions, and the way how evicted peasants should be returned back to their prior resident.<sup>359</sup> On the above raised issue, the president of Benishangul-Gumuz region said that in order to avert the problems of eviction everyone must struggle those peoples who intentionally creates ethnic conflict. On the other hand, the president of Amhara region also raised that the problem of evicted non-indigenous peasants is more complicated so that in order to reinstate it needs coordinated activity in every level of government organ with peoples and create a positive working environment for citizens. Like Amhara region, peace conference were held between Benishangul-Gumuz and Oromia regional states in March 29/2019 in Assossa town.<sup>360</sup> In this conference, the former president of Oromia regional state raise the issue that in order to protect and return forcefully evicted peasants beyond strength public relationship different developmental infrastructure must be done in order to integrate and facilitate the public relationships of the two regions.<sup>361</sup>

However, despite the above positive initiatives of peace conference and public relationship, they did not address the root cause of discriminatory laws and policies that makes non-indigenous peoples become arbitrarily evicted by indigenous peoples. That is why Assefa argue that here is no clear legislation about the land rights of non-indigenous ethnic groups in the one hand and clear constitutional guarantee for non-indigenous peasants land right on the other hand<sup>362</sup>

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<sup>359</sup>Asemahegn Aseres, *Minutes on Peace conference between Amhara and Benishangul-Gumuz regional states councils*, held on Amhara region in Injebara town, January /27/2019

<sup>360</sup>Fana Broadcast Corporation, Report of Working Group on arbitrarily evicted peoples, fifth, ordinary meeting of Ethiopian parliament, May ,4/2019

<sup>361</sup>The Federal ministry of peace, 'peace and unity delivery programs', p. 13

<sup>362</sup> Assefa Fiseha, 'Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia', p. 177



When we come to the legal remedies available for arbitrarily evicted non-indigenous peasants, as has been discussed under section 4.4, the usual response of the government organ wants to *return arbitrarily evicted peasants from their residence*. However, arbitrarily evicted peasants are not voluntary to return back to their home and start their normal life. Hence, from the focus group discussion they noted that some of the non-indigenous peasants in Belo-Jeganfoy Woreda were evicted twice on 2013 in Benishangul-Gumuz and some of them were evicted on 2008 in Oromia region in Gida Ayana Woreda.<sup>363</sup> During the first and the second arbitrary eviction, the government organ of Benishangul-Gumuz and other concerned stakeholder persuading and promise to give a legal guarantee when you return back their residents. Then, following their promises evicted non-indigenous peasants return back to their residence. However, those promised government organ does not investigate and bring the criminals in front of the court of law and the lost property were not replaced or when non-indigenous peasants who affected by arbitrarily eviction and whose property is robbed bring a case in front of court law it is very difficult and faces different harassments.<sup>364</sup> That is the reason within the report of working group (selected from the parliament) to conduct field visit on arbitrarily evicted peoples - both the deputy prime minister and ministry of peace reported to the parliament that to bring the suspected criminals to the court of law the major challenge is that every level of government is not voluntary and committed to bring the criminals in front of the court.<sup>365</sup> Rather they hidden the suspected criminals in his/her own ethnic group.<sup>366</sup> Hence, the remedies for non-indigenous peasants that faced forced eviction on their land right does not enjoy a fair hearing, access to legal counsel, legal aid, restitution, resettlement, rehabilitation and compensation except humanitarian aid <sup>367</sup> As such, the problem occur after few years things are *return* back and indigenous peoples start to evict non-indigenous peasants from their own residence by different reasons.<sup>368</sup> So if we accept the solution forwarded by the government and return back to our residence today, tomorrow the same problem will occur so that they claim why we return back to evict again?<sup>369</sup>

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<sup>363</sup>Focus group discussion, *on the legal remedy on the violation of land rights*, March, 9/2019

<sup>364</sup> Ibid

<sup>365</sup> Fana Broadcast Corporation, report of working group on arbitrarily evicted peoples, fifth, ordinary meeting of Ethiopian parliament, May ,4/2019

<sup>366</sup>Ibid

<sup>367</sup> FGD note, *on the legal remedy on the violation of land rights*, March, 9/2019

<sup>368</sup> Ibid

<sup>369</sup> Ibid

On the other hand, both Benishangul-Gumuz and Amhara regions were organized four expert Committee in which two of them selected in each region since almost all evicted peasants are the Amhara ethnic groups in Belo-Jeganfoy Woreda.<sup>370</sup> The prime task of those selected durable solution Working Group Committee is to identify and investigate the damaged, lost or robbed property of non-indigenous peasants for the purpose of reinstatement. The committee also investigate and inform to leave those indigenous peoples who enter into the house of evicted non-indigenous peasants. Besides, the committee has the duty to follow-up on the improvements of environmental conditions of Belo-Jengafoy Woreda in order to return back those evicted non-indigenous peasants in their prior residence. On the other hand, in order to return back non-indigenous peasants to Belo-Jeganfoy Woreda in coordination with the regional state they build around 60 huts in Dediessa Kebel.<sup>371</sup> However, the special economic and social council of the president of Amhara region noted that even if the activity is good still there is a problem on the side of Benishangul-Gumuz region to take the commitment and to enforce the constitutional rights of non-indigenous peasants whose land rights were violated.<sup>372</sup> This lack of commitment signifies both the federal and the regional government have no fast and hard adequate laws to give response for the existing problems. Such inadequacy of laws adversely affect the practical implementations of the rights of non-indigenous peasants. On the other hand, many of regional peace agreements remain words on paper, not actions in the field and they are elusive. Because from the very outset engaging in a peace process and signing a peace agreement have a political character which needs political commitment. Due to the above reason the responses of arbitrarily evicted non-indigenous peasants in their land rights and home in Ethiopia in general and BGRS in particular essentially focused on life-saving humanitarian action.

#### **4.6. Conclusion**

Free access for agricultural land for rural peasants is constitutionally guaranteed right. To implement this rights the same document entrusted for the central government to enact the detailed governing laws which serve as a guiding principle for the federation units. Accordingly, the federal guiding principles sets out a certain peasants can access arable land when the condition of age and

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<sup>370</sup> FGD note , on *protections arbitrarily eviction of non-indigenous peasants*, March, 9/2019

<sup>371</sup>Interview with Mister Ayenew Belay special economic and social advisor of the president of Amhara regional state, *legal remedies for the land rights of forcefully evicted non-indigenous peasants*, March, 13/2019

<sup>372</sup> Ibid

proficiency were fulfilled without the dichotomy of indigenous-non-indigenous peasants. However, federation units added the requirement of residence as a third requirement. Peasants can access arable land via government allocation by distribution when there is unutilized and unoccupied land in their locality. Beyond granting of arable land by the regulatory organ peasants can access land through the strategy of rent, donation or gift when the legally prescribed conditions were fulfilled. Nevertheless, in both Belo-Jeganfoy and Dangur Woreda, even if there is unoccupied land, the land regulatory organ is not voluntary to allocate the unoccupied arable land for non-indigenous peasants rather they allocate in favor of indigenous peasants and investors. Due to this problem almost all non-indigenous peasants in both Belo-Jeganfoy and Dangur Woreda have no arable land. Rather their means of accessing land is through informal contract of rent/Quota, sharecropping arrangement and land sell against the prescribed state laws. Hence, the practice reveals that access to land is based on indigenous-non-indigenous and owner-non owner dichotomy to the region in the both Woredas which is the direct consequence of the discriminatory nature of the regional laws. As a result, they do not know what the future will occur on their land rights and properties. However, there are few non-indigenous peasants who access arable land through administrative allocation by the tactic of corruption.

The land use and transferability right of non-indigenous peasants are also insecure. Since almost all land use rights acquired through contractual arrangement are informal and unregistered and affected by the dichotomy of indigenous-non-indigenousness. The contracting parties are not voluntary to register the contract because initially the landholder acquire the land via encroachment of the unutilized land without the permission of government organ and the amount of landholding is beyond the maximum limit prescribed in the Benishangul-Gumuz RLAUP. In such circumstance, there is multiple land rent over a single plot of arable land and denial of their contractual agreement, consequently, that invites conflict between contracting parties. The conflict ultimately changed into an ethnic conflict between non-indigenous peasants and indigenous ethnic groups which leads to the massive arbitrarily evictions of non-indigenous peasants in the region. Hence, the arbitrarily eviction non-indigenous peasants invites loss of land and property which in turn creates violations of fundamental rights and freedoms. Therefore, without access to land resource and protection of property rights over the land of non-indigenous peasants are often deprived of their main source of material and moral income in which their sustainable livelihood is depend on land.

Despite the existing problem, the state response to the conflict has been highly ambiguous, failing to defend the land rights of non-indigenous peasants in line with the common property of land for NNPs of Ethiopia, free access to land and immunity against arbitrarily eviction of non-indigenous peasants. Rather the regulatory organ prepare different peace conference, and public meeting in order to integrate the conflicting parties. The various sporadic ways of response towards the land rights of non-indigenous peasants does not give legal protection and secure their land rights. Rather, the problem relates to the inability of the regional and federal constitutions and subordinate land governing laws that protect and harmonize the land rights of non-indigenous peasant's within the indigenous land rights in the regional state. Hence, the existing discriminatory laws, rules and regulations that does not able to accommodate and give legal guarantee for non-indigenous peasants under the existing land tenure system as well as it restricts the ability to claim their landholding right.

## **CHAPTER FIVE: CONCLUSION AND RECOMMENDATION**

### **5.1. Conclusions**

The aim of this study is to answer how the current rural land laws of Ethiopia and BGRS promote access and protect the land rights of non-indigenous peasants within the current federal system. Based on this general research question the study also investigate the subsequent specific research questions such as: how access to land and land right of non-indigenous peasants is defined in BGRS, the impacts of the dichotomy on the land tenure security of non-indigenous peasants, the rationale behind the classification and the legal remedy available when there is a violation of land rights of non-indigenous peasants.

The FDRE constitution has established an ethnic federal system in order to accommodate the various interests of NNPs of Ethiopian ethnic groups. To do this, the constitution give ultimate sovereign power for primordially identified NNPs of Ethiopia ethnic groups rather than an individuals. For the realization of this right, the FDRE constitution organize autonomous states by giving both aspects of self-determination rights. For the realizations of this rights the constitution edicts that land as a common property of NNPs of Ethiopian ethnic group and the state which is administered by regional states. Besides, it allows free access to agricultural land for rural peasants and immunity against arbitrary eviction without the dichotomy of indigenous-non-indigenous to a certain region. Following the FDRE constitution the federal RLAUP give landholding rights for peasants. However, realizations of access to land and land right, underlined by the laws is idealistic due to shortage of arable land in their locality. Because BGRS revised constitution create indigenous-non-indigenous dichotomy to the region. Peoples migrated by different pulling and pushing factor and resides in the region called non-indigenous peoples. Based on this dichotomy by giving ownership right to the region for indigenous ethnic groups exclude non-indigenous peoples from exercising their land rights. Besides, the various aspects of the right to self-determination were exclusively given to indigenous nationalities which is directly affected the land rights of non-indigenous peasants and non-indigenous peoples put in a position and consider as a secondary citizen.

Even if both the federal and the regional RLAUP allows governmental allocation of land to peasants whenever there is unoccupied land, the practice of both Dangur and Belo-Jeganfoy Woredas reveals that it is not properly implemented for non-indigenous peasants. Instead, the usual

practice of accessing land is via the strategy of informal land rent/quota/sharecropping and sell contractual agreement from indigenous peoples. There are two reasons that non-indigenous peasants engaging informal means of access when there is unoccupied land in both Woredas. First, following the adoptions of self-determination and giving land as a common property for primordially identified ethnic group under ethnic federalism, federation unit defined land resource belonging to indigenous nationalities. Hence, they are not voluntary to distribute unoccupied land for non-indigenous peasants. Second, the elusive nature of NNPs of Ethiopian ethnic group and establishing ethnically autonomous Kilil results a direct contradiction with individual and group right over land resource ultimately the land right of non-indigenous peasants become vulnerable. Therefore, the dichotomy of indigenous-non-indigenousness to the region implies there is a structural problem on appropriate recognition of land rights of non-indigenous peasants. Due to this problem membership to indigenous nationalities is the artefact and the basic instrument for defining access to land and protection of land rights in the region which is clearly contradict with the principles of free access to land for rural peasants without dichotomy.

Land is an undivided common property NNPs of Ethiopian ethnic group and private landholding right is given for rural peasants. However, following the dichotomy of indigenous-non-indigenousness the undivided common property of land resource is given for indigenous nationalities and landholding rights extended to indigenous peoples in BGRS. Hence, due to lack of recognition by the regional laws and the blurred picture of NNPs, there is an exclusion of non-indigenous peoples from the common property of land resource, access to land and related land rights were given for indigenous peasants. Even their land rights acquired via rent/quota/sharecropping mechanism were exposed for different harassments such as non-indigenous peasants are illegal migrants, they made deforestation and other defamatory words by the regulatory indigenous government officials in both Woredas. As such non-indigenous peasants were exposed for an uncondusive working environment that affects their land right security. The regulatory organ does not make distribution unoccupied land for landless peasants in both Woredas because of land belonging to indigenous nationalities. However, indigenous peoples, following the customary practice and legal recognition of exclusive owner of the region land resource, they simply distribute the unoccupied land. This creates indigenous peasant's landlordism that engage an informal land transaction with non-indigenous peasants. Such kind of practical tenancy-

landlordism relationship between non-indigenous and indigenous peasants' respectively emanates from the discriminatory and ambiguous nature of land laws.

The findings of this research also indicated that the land rights of non-indigenous peasants shaken and challengeable which has resulted in instability and insecurity. First, giving ownership right to the regional indigenous nationalities implies to the non-indigenous ethnic group have no the right to benefit from the common property of the regional land resource which adversely exclude access to land and exercising related land rights of non-indigenous peasants who are not a member of an indigenous nationalities. This makes non-indigenous peasants become legally discriminated which is directly contradict with the constitutional principles of the right to non-discrimination, free access to arable land for peasants, the objectives of land tenure security for peasants and even the notion of citizenship right. Second, the dichotomy of indigenous non-indigenous requirement affected the region's policies and land governing laws that enacted and implemented in favor of the interest of indigenous nationalities which ultimately results lesser attention on the land rights of non-indigenous ethnic group. These problems further affected and put in paradox to the aspiration and objectives of creating on economic and political community at regional and national contexts. Third, as far as law enforcement organs structured along their ethnic lines, implementation of laws on access and protections of land rights for peasants are in favor of indigenous peoples for whom they are represented. This problem, consequently, created three interrelated problems: one, it created decentralized despotism which confounds every non-indigenous Ethiopian peasants in the region is subordinate nationals in every horizon by the logic of ethno-linguistically arranged federalism. Two, the existence of systemic marginality that emanated from ethnic-based hegemonies to control socio-economic and political rights by indigenous nationalities overrides non-indigenous peasants from accessing and protecting their land rights by making it a requirement of membership to indigenous nationalities. That is the reason the practical aspect of exercising free access to land and protections of land rights of non-indigenous peasants is not protected even if there is unoccupied land in both selected study area. Third, beyond denial of land rights of non-indigenous peasants, government organs manipulates the dichotomy and used as a base for ethnic conflict in order to evict non-indigenous peasants in the region as it reveal the case of arbitrary eviction of non-indigenous peasants in Belo-Jeganfoy Woreda. Therefore, the creation of ownership to the region for indigenous nationalities by law

signifies give priority right for them and used for the suppression of the claim of the rights of non-indigenous peasants in every horizon.

The findings of this research reveals that there is no legally recognized dichotomy of indigenous-non-indigenous peoples from the ambits of international and regional understandings of indigenous peoples under Ethiopian national laws. However, following the establishment of primordial identified ethnic based structure of federation units, regions classify as indigenous and non-indigenous to the ethnically arranged region in terms various socio-economic and political rights including land resource in their own regional governing laws. Therefore, even if the FDRE constitution had no indigenous-non-indigenous dichotomy, the concept arise itself from the anomalies of ethno-linguistic structure of federation units. Hence, the terminology under BGRS revised constitution is used to exclude the land rights of non-indigenous peasants from the ambits of common properties of NNPs of the region rather than the genuine application of the concept of indigenous people's rights under international or regional perspectives.

Protection and giving legal guarantee when peasants exercising their land rights is a constitutional right. However, the findings of this research showed that there are byproducts of ethno-linguistic and territorial-autonomy of the federation units and common property of NNPs of ethnic group of Ethiopia that adversely affect the land rights of individuals/groups in a given state which is not able to claim membership to a group. In such circumstance, both the regional and the federal government have no strike balance mechanism to protect the land rights of non-indigenous peasants whenever there is an arbitrary evictions. The protection mechanism of both level of government were very cosmetics in which non-indigenous peasants did not get the required protection and recognition by creating indigenous-non-indigenous dichotomy. Besides, the research proved that, due to lack of clear, proactive and inclusive land laws to prevent the actual or potential threat of the violation of the land rights of non-indigenous peasants the usual response of the governments were: first, except returning of arbitrarily evicted non-indigenous peasants there is no due process of law to enforce their rights. Second, after the violation of non-indigenous peasants land rights the government prepared different piece of conference and public meeting programs for the purpose of protections of the subsequent infringements. Third, the usual remedy of the government for arbitrarily evicted peasants is a humanitarian aid by establishing temporarily working committee. Therefore, it concluded that the national land policy and subsequent land



governing laws do not have strike-balance mechanism that comprehensively address the land rights of non-indigenous peasants and give the legal guarantee whenever there is an actual and potential threat of violation of their land rights.

In nutshell, Ethiopia lacks an inclusive and adaptable land policy which is detailed with proper legislation on addressing the land rights of non-indigenous peasants. Rather the institutionalization of ethnic based structure of federation units and having the right to self-determination helps those region to understand land resource as a common property of NNPs of Ethiopian ethnic groups now they are found in ethnically arranged federation units. This creates ethnic boundaries and territorial boundaries which excludes non-indigenous peoples who lives out of his/her homeland. Therefore, an individual who are not able to claim membership to an identified ethnic-group does not benefit from the common property of land resource for NNPs of Ethiopia. However, such exclusion is paradox to the principles of free access to arable land for Ethiopian rural peasants without any distinction and other democratic right provisions of the same constitution like the right to movement and engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory. Hence, realization of equitable access to land for peasants, underlined by the laws is idealistic due to lack of arable land in their locality. As a case, when an individual leave their own homeland regions and resides in other region, the BGRS excludes non-indigenous peasants by the logic of indigenous-non-indigenous dichotomy from accessing land and protection of land right from infringements. Besides, the federal government don't have strike balance mechanism when the region violates the land rights of non-indigenous peasants such as where there is arbitrarily eviction and discriminations. Due to this problem non-indigenous peasant's right exposed for decentralized despotism in every level of government and systematic marginality that emanates from unfavorable socio-economic and political environments.

## **5.2. Recommendation**

Hence, after summarizing the findings of this study, the possible recommendations that can be made from this study are as follows:

### **5.2.1. Recommendation for BGRS**

- The dichotomy of indigenous-non-indigenousness and owner-non-owner to the region must be avoided within the revised constitution and all peoples live in the region should be recognized equally. Because the existence of indigenous-non-indigenous to the region under ethnic based

administration system encourages and used ethnic brokers to manipulate and abused for their own ethnic group interest and discriminates non-indigenous peasants. It creates hierarchical ethnic group in the region in terms defining and protections of various land rights. Hence, in both Woreda there is highly prevalent tenancy-landlordism relationship between non-indigenous and indigenous peasants. Therefore, giving equal recognition and removal of the dichotomy helps to avoid systematic marginalization, ethnic based land resource competition conflict so that it can be easily to prevent the actual and potential threat that leads arbitrarily evictions of non-indigenous peasants.

- The regional land administration system must be strength and identification of the region's unoccupied land so that it can be easily distribute the idle land to the landless rural peasants including non-indigenous peasants. This helps to avoid the accumulations of idle land in the hands of indigenous peoples, illegal encroachments of unoccupied land, informal land sell and land related conflict.
- The regional government must have participatory decision making process on the land issues in order to carry out comprehensive public awareness campaigns, including systems to capture public feedback when regional laws and policies design up to the lower administrative Kebele level. Hence, it plays critical role for the design of inclusive and integrated land policy, legislation that ensure equity and non-discrimination within the existing policy frameworks of the region context.
- It also essential that the regional government should have an independent working group in order to investigate the non-indigenous people conditions not only for the purpose of land resource allocation but also for the enactments of region context socio-economic and political concerned policies. Because more than 42% of the region's population are non-indigenous and 86.5% engage in agriculture in which the lion share is hold by non-indigenous peasants. So failure to include and marginalization of those groups of peasant's amounts marginalization of the regions development as a whole.
- The regional government should take measures in coordination with the federal government to return them back those who are arbitrarily evicted non-indigenous peasants from their homestead (Belo-Jeganfoy and dangur Woreda). Beyond, the government should return back lost property and compensation should be paid for the damaged property.

### **5.2.2. Recommendation for the Federal Government**

- The federal government should amend the national land policy in particular and the FDRE constitution in general in order to accommodate the land rights of non-indigenous peasants in explicit manner. Because the ethnic based federal structure and giving the primordial identified ethnic group as a common property implies the exclusions of non-indigenous peasants from enjoying land rights when the law operated into the ground. As a result land regulatory organ access and denial of land right for rural peasants is based on memberships of the identified indigenous nationalities.
- The federal government should revised ethnic based administration federal system and opt other forms of federal system. Since by establishing autonomous state in the one hand and giving self-determination right directly contradict with the constitutional principles of free access to land for rural peasants that affect the land rights of all non-indigenous Ethiopian peasants who lives out of his/her homeland of ethnically arranged Kilil. Even it affect and contradict the notions of citizenship right and serve as a machine to produce and develop local ethno-national citizenship right in one country. Hence, there is a structural discrimination provided that when there is a policies design they are intended a certain ethnic group oriented so that non-member ethnic groups become in a subordinate position and protected harmfully. Besides, there is institutional discrimination due to policies of institutions are dominated by politically autonomous ethnic group and the behavior of individuals who implement these policies and control these institutions treat members of other ethnic groups differently. So revision of ethnic based federal structure of federation units avoids the above problems.
- The federal government must have a strong check and balance mechanism on the land rights of non-indigenous peasants with the concerned regional government so that the government can be able to easily take all appropriate proactive prevention measures and provided remedies whenever there is an actual or potential threat of infringements of the land rights of non-indigenous peasants according to the existing land governing laws.
- The federal government are expected to work on developing an intervention mechanism for defending and protecting the violation of the land rights of non-indigenous people in each and every level of administration by establishing independent organ. It also suggest that the federal government shall create awareness to the people about the constitutional values and principles.

- The constitution need to adopt a general limitation clause that limits the act of regional states when they enact discriminatory laws on the rights of non-indigenous peasants specifically. This helps to control arbitrary evictions of non-indigenous peasants from their land rights and limit ethnic based manipulation by ethnic entrepreneur and ethnic based harassment that invites ethnic conflict.

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## VIII. Interviews

### a. Interview with non-indigenous peasants

- Interview with Getaneh Mulu, non-indigenous peasants in Dangur woreda in Gublak Kebele , *on access to land*, March, 11/2019
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- Interview with Mengistu Zegeye non-indigenous peasants Dangur woreda in Azareti Kebele, *on access to land*, March 10/2019
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- Interview with Yismaw Sharew, non-indigenous peasants in Belo-Jeganfof Woreda in Legaya Kebele, *on limitation on the land rights of non-indigenous peasants*, March, 8/2019
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- Interviewed with Asmare Alemu, *protection of the land rights of non-indigenous peasants by land regulatory organ comparing indigenous peasants*, March, 7/2019
- Interviewed with Maregu Anemut, non-indigenous peasant in Belo-Jeganfof woreda in Dediessa Kebele, *how access to land*, March, 8/2019

#### **b. Interview with Government Officials**

- Confidential interview, senior expert on land administration and utilization in Belo-Jeganfof Woreda, *what do you think the classification of indigenous-non-indigenous*

*/owner-non-owner to the region on the land rights of non-indigenous peasants, March , 8/2019,*

- Interview with Abdi Guteta, senior expert on land administration and utilization in Belo-Jeganfof woreda, *on the land rights of non-indigenous peasants, March, 7/2019*
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### **c. FGD on Arbitrarily Evicted Non-indigenous Peasants**

- FGD note on the *legal remedy on the violation of land rights, March, 9/2019*
- FGD note *on root cause of arbitrary eviction of non-indigenous peasants in Belo-Jeganfof Woreda in Dediessa Kebele, March, 9/2019*
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## **Appendix One: - Interview Guiding Questions for Data Collection**

I am Bezabih Tibebu, Environmental and Land Law Student from Bahir Dar University School of Law. I am conducting graduating research on “*Land rights of non-indigenous peasants in BGRS: legal divergence and policy pitfalls under Ethiopian federalism.*” In doing so, I found it is very important to get your input for desirable analysis and conclusion on the issues. Therefore, I am going to appreciate for your consent and cooperation to take part in this interview to provide necessary information for this research paper. Lastly I can assure you that the information that you provide will be used only for academic purpose and any request concerning this issues is acceptable.

### **Type One: - Key Informant Interview Guiding Questions**

- How non-indigenous peasants access agricultural land? Explain?
- How do you see the land rights of non-indigenous peasants?
- How other indigenous community understand the land right of non-indigenous peasants?
- How land regulatory organ treat non-indigenous peasants in the region?
- What is the limitation of on the protection of land right of non-indigenous peasants?
- Compare non-indigenous and indigenous peasants land right in the region?
- What do you think about the impact of the classification of non-indigenous and indigenous on the land tenure security?
- How non-indigenous community understand the land resource found in the region?
- What measure do you suggest about the classification and its impact on your land rights?

### **Type Two: - Interview Guiding Questions for Government Officials**

- What do you think on the classification of indigenous-non-indigenous /owner-non-owner to the region in relation to the land rights of non-indigenous peasants?
- Justify the land rights of non-indigenous peasants?
- Explain legal remedies for the land rights of non-indigenous peasants who are forcefully evicted?
- Explain the land rights of non-indigenous peasants in relation to the current federal arrangement?

- What is the cause of arbitrarily evictions of non-indigenous peasants?

**Type Three: - Interview Guiding Questions for FGD**

- Explain legal mechanism taken by regulatory organ to protect land rights?
- Explain the impact of eviction non-indigenous peasants from their land right?
- How access to land?
- Justify the classification of indigenous-non-indigenous/owner-non-owner to the region on the land rights of non-indigenous peasants?
- Justify legal remedy on the violation of land rights?
- What is the root cause of arbitrarily evictions of non-indigenous peasants?

**ቃለ-መጠይቅ ለማድረግ የተዘጋጁ ጥያቄዎች**

**የግል ባህሪያት**

- ስም .....
- ሙያ / የሥራ አይነት-----
- በክልሉ ውስጥ ለምን ያህል ጊዜ ኖርህ/ሽ/-----

**ለቁልፍ መረጃ ሰጭ ሰዎች የተዘጋጁ ጥያቄዎች**

**ሀ. ለአርሶአደሮች የተዘጋጁ ቃለ-መጠይቆች**

- የክልሉ ተወላጅ ያልሆኑ አርሶ አደሮች የእርሻ መሬት እንዴት መሬት ታገኛለህ/ሽ/ (በመንግስት በምደባ, በወርስ, በልገሳ, ወይም በሌላ መንገድ) እባክዎ ያብራሩ
- በቤንሻንጉል ጉሙዝ ክልል ውስጥ ተወላጅ እና ተወላጅ ያልሆኑት ከመሬት የመጠቀም መብት ጋር ያላችሁን ልዩነት ያብራሩ?
- የክልል ተወላጅ የሆኑ ሰዎች የክልል ተወላጅ ባለልሆኑ አርሶ አደሮችን የመሬት ይዞታ በተመለከተ እንዴት ያዩታል?
- ህጉ የክልል ተወላጅ ያልሆኑ እና የሆኑ ብሎ መከፋፈሉ የመሬት አስተዳደር አካላት ከመብት ጋር በተያያዘ ምን ልዩነት ይፈጥራሉ?
- የክልል ተወላጅ ባለሆኑ አርሶ አደሮች የመሬትን መብት ጥበቃ በተመለከተ ምን ምን ተጽዕኖች አሉ ብለው ያስባሉ?
- የመሬት ይዞታ ባለቤትነትን በተመለከተ በአካባቢው ተወላጅ ያልሆኑ እና ተወላጅ የሆኑ ብሎ መከፋፈሉ የሚያመጣቸው ችግሮችን ያብራሩ ?
- በክልሉ ውስጥ የሚገኘውን የመሬት ሀብትነት እና ይዞታን በተመለከተ የክልሉ ተወላጅ ያልሆኑ አርሶ አደሮች እንዴት እንደሚረዱት አብራሩ?

- ከመሬት መብቶቻችሁ ጋር በተያያዘ ህጉ ምን ቢሆን ይሻላል ይላሉ?

**ለ. ለመንግስት ባለስልጣኖች የተዘጋጁ ቃለ-መጠይቆች**

- የክልሉ ተወላጅ እና ተወላጅ ያልሆኑ እንዲሁም የክልል ባለቤት የሆኑና ያልሆኑ ብሎ መመደቡ ስላለዉ ህጋዊነት እና ተወላጅ ባልሆኑ አርሶአደሮች ላይ ያለዉን ተጽኖ ያብራሩ?
- የክልሉ ተወላጅና ተወላጅነት የሌላቸው ብሎ መከፋፈሉ ከአርሶ አደሮች ነፃ የመሬት መብት ጋር እንዴት ይገነዘባሉ?
- እንደዚህ አይነት ክፍፍል ተወላጅ ባልሆኑ አርሶ አደሮች የመሬት ዋስትና ላይ ያስከተለው ተጽእኖ ምን ይሆን?
- የክልሉ ተወላጅ ያልሆኑ አርሶ አደሮች የመሬትን መብትን በተመለከተ ምን ያስባሉ?
- በኢትዮጵያ የፌዴራሊዝም የአስተዳደር ሥርዓት ዉስጥ የክልሉ መንግስት ተወላጅ ላለሆኑ አርሶ አደሮች የገጠር መሬት መብቶችን ለማስጠበቅ መንግስት ምን እርምጃዎችን ወስዷል?

**ሐ. የትኩረት ቡድን ውይይት ለማድረግ ለሚሳተፉ ሰዎች የተዘጋጁ ጥያቄዎች**

- የክልሉ ተወላጅ ባልሆኑ አርሶ አደሮች ውስጥ ያለውን የመሬት ይዘታ ምን ይመስልዎታል?
- የክልሉ ተወላጅ ያልሆኑ አርሶ አደሮች ከመሬታቸውና ከንብረታቸው እሚፈናቀሉት ለምንድን ነው?
- አርሶ አደሮቹ ከእርሻ መሬታቸው ላይ መፈናቀላቸው የሚያስከትለውን ውጤት ያስረዳሉ?
- ከመሬት ይዘታዎ ሲፈናቀም ሆነ እንዳይፈናቀሉ ለመጠበቅ በህግ ተቆጣጣሪ አካል የተወሰደውን ህጋዊ መፍትሄ ያስረዳሉ?
- የመሬት መብትን በተመለከተ ተወላጅ እና ተወላጅ ባልሆኑ አርሶ አደሮች ያለዉን ልዩነት እባክዎ ያብራሩ?