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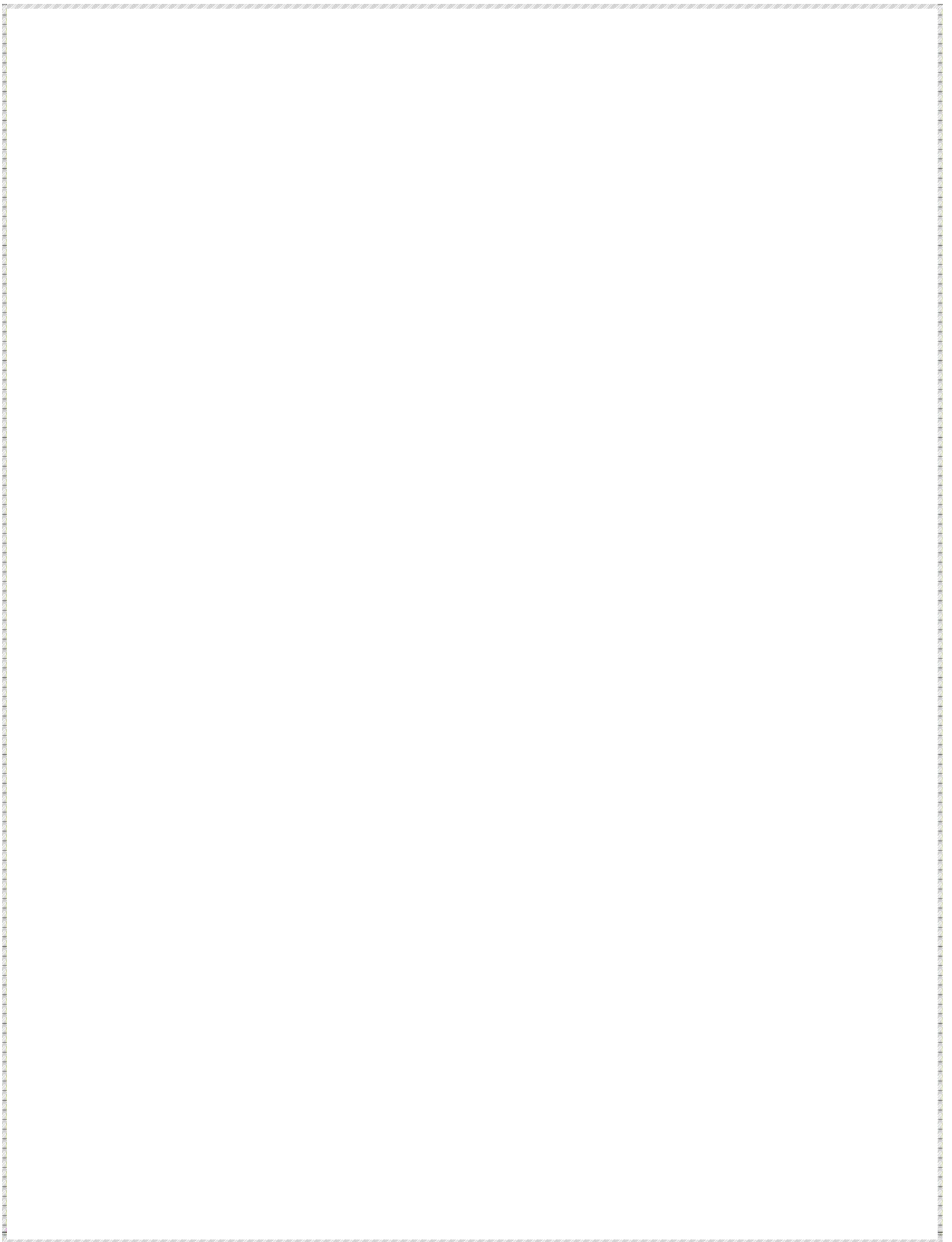
ADDIS ABABA UNIVERSITY
SCHOOL OF LAW
CONSTITUTIONAL AND PUBLIC LAW STREAM

**LARGE-SCALE AGRICULTURAL DEVELOPMENT AND LAND RIGHTS OF
PASTORALISTS IN ETHIOPIA: THE CASE OF BODI PEOPLE**

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**A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR MASTERS OF LAW IN
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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AISD	Agricultural Investment Support Directorate
CSR	Corporate Social Responsible
ESC	Ethiopia Sugar Corporate
EWCA	Ethiopian Wild Life Conservation Authority
EWDSE	Ethiopia Water Works Design and Supervision Enterprise
FAO	World Food and agricultural organization
FDRE	Federal Democratic Republic of Ethiopia
GRAIN	Genetic Resources Action International
GTP	Growth Transformation Plan
HH	House Hold
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Right
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic Social and Cultural Right
IFAD	International Fund for Agricultural Development
ILO	International Labor Organization
MDG	Millennium Developmental Goals
MEteC	Metal and Engineering crop
MOA	Ministry of Agriculture
MOFED	Ministry of Finance and Economic Development
NGO	Non-Governmental Organization
OI	Oakland Institute
OKSCDP	Omo Kuraz Sugar Cane Developmental Project
SI	Survival International
SNNPR	Southern Nations Nationality Peoples Region
UDIPR	United Nations Declaration on Indigenous Peoples Right
UNECA	United Nations Economic Commission for Africa
UNESCO	United Nations Educational, Scientific and Cultural Organization
WPAs	Wildlife Protected Areas
WDW	Water and Design Works

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Abstract

The Ethiopian State has been involved in large-scale agricultural development projects in the country's lowland peripheries since the imperial regime with the perception that the land in these areas are barren, unsettled, unused, and hence these backward communities should be improved. One of the development areas where the State involved in is sugar development projects, one of which is the OKSDP. One of the communities affected by the OKSDP is the Bodi people that have practiced pastoral mode of life for centuries.

There are two opposing narratives in relation to this massive project. The narrative of the state is that large-scale land acquisition for the OKSDP is an opportunity that injects huge capital and creates new jobs to the pastoralists, and the land alienated is barren and thus no one will be displaced. The State argues that villagization of the Bodi is being carried out with properly handled consultations and voluntarily. The Bodi are brought close to the OKSDP social, agricultural and infrastructural services, which they lacked for centuries.

Some others such as rights groups and scholars see the OKSDP as a threat to the pastoralists whose livelihood is heavily dependent upon land and the floods of the Omo River. Rights groups and academics further argue that there is no meaningful consultation with the Bodi; the villagization is carried out involuntarily because it was conducted after the Bodi's pasture land, water rights, and livelihoods have been taken over by the project; so the Bodi have no option but to comply with. The government has failed to pay monetary compensation as well as adequate social services.

However, no empirical studies have been undertaken so far that examine the implication of land alienation from pastoral communities in the Lower Omo Valley. This is particularly the case in relation to the Bodi Pastoral Community. This thesis thus aims to investigate the validity of the above two broad storylines over the OKSDP land alienation in light of theories, concepts, international and national legal instruments concerning indigenous peoples' rights to land. The investigation seeks to ascertain the point of view of the people affected. The study has employed qualitative research methods to collect data through semi-structured interviews with purposively selected informants and focus group participants. It has been augmented by quantitative data.

The key finding of this thesis is that the government has failed to comply with international and national legal instruments while undertaking the OKSDP. In my view, the process of land alienation is a 'land-grabbing' due to ill-convinced consultation and villagization processes, failure to pay monetary compensation and in-commensurate land allocation for Bodi's livestock grazing and crop cultivation.

The main recommendations are the State should give effect to pastorals 'communal landholding' system and comply with the existing legal instruments recognizing indigenous peoples' right to land; share benefits of the project in a way that the pastoralists can change their perception towards the project; and overcome reactions/resistance through a legitimate means.

Key Terms: Large-Scale State-Run Agricultural Development; Pastoralism; Communal Property

Declaration

I, the undersigned, declare that the thesis entitled “*Large-Scale Agricultural Development and Land Rights of Pastoralists in Ethiopia: The Case of Bodi People*” is my original work. The same thesis has not been submitted to any academic institution for degree award, and scholarly article. The secondary data sources included in this thesis are duly acknowledged.

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Advisor:MuraduAbdo

CHAPTER ONE

1 INTRODUCTION

1.1 Background of the Study

Ethiopia's pastoral communities represent 10% of the total population and approximately 40% of the land area of Ethiopia is considered to be under pastoral production (Helland, 2006). The pastoral communities in Ethiopia are composed of at least 29 different 'nations and nationalities', who live in seven national regional states. The whole of Somali National Regional State accounts for 57% of the pastoralists in Ethiopia and the Afar National Regional State accounts for 26% of Ethiopian pastoralists. The *Borena* and *Karrayu* pastoralists in Oromiya Regional State together account for about 10% of the total pastoral communities in Ethiopia. The remaining 7% of Ethiopian pastoralists inhabit in the lowlands of the SNNPR's South Omo and Bench-Maji Zones, Gambella and Beni-Shangul regions (Yacob, 2000; Sandford and Habtu, 2000).

The socio-economic and cultural systems of pastoralist communities in Ethiopia are based on communality. Land is held under the collective possession and ownership of pastoral community. Land tenure arrangements have traditional rules and regulations that aim at harmonizing ecological, economic and social benefits. In contrast to the communality of land holding, livestock ownership and management is for individual households (Markakis, 2004:4). Traditionally, pastoralists classify water resources into natural reservoirs free to all, traditional ponds with some excavation and '*birka*' (constructed water-harvesting ditches). Natural reservoirs such as rivers are traditionally considered as '*God-given*' water where every member of the community has free access. In contrast, ponds and ditches involve human labor; hence, only those who contribute their labor have free access (Mohammud, 2007).

Ethiopia's pastoral areas are being highly threatened with the rangelands becoming increasingly fragmented and barriers to mobility rising. The causes for this are complex and are related to historical, political, economic and environmental factors that have influenced how the pastoral areas are valued, managed and changed (Helland, 2006). Now a day, many pastoralists have chosen to while others have been forced to change their livelihood system away from livestock

production and towards more diverse systems. For some, a more sedentarized living is considered as advantageous in accessing to such services while for others it means increased poverty and food insecurity.

A key factor in these changes has been the lack of security that pastoralists and other rangeland users have over their land and resources. The general attitude of Ethiopian policymakers towards pastoralists has been ambivalent at best (Hogg, 1997). Government-pastoralist relations are marked by skepticism and distrust, expressed in a mutual and reciprocal manner. The Ethiopian governments have not recognized traditional systems of land tenure in the lowland peripheries, continuing to call the land 'unused' or 'underutilized' and the resources there of under the control of the government. Hagmann (2005) argued that Ethiopia has disregarded pastoralist land rights and the system of communal land use that underpin these pastoral traditions. All land belongs to the State, and though pastoral rights have received recognition at the highest level in the FDRE Constitution (Article 40(5)), pastoralists are not protected in practice nor has effective land tenure systems been developed for the pastoral areas. As a result, pastoral lands have been encroached upon, enclosed, lost, leased, or because pressure on remaining land and resources is so high, degraded.

The year 2000 data on land use coverage of the different pastoral regions has shown that there had been a dramatic increase in land use changes to crop agriculture with figures around 2 million hectares. These included 178,000 ha in the Afar Region, 390,000 hectares in the Somali Region, 1,332,900 ha in the Borena Zone of Oromia National Regional State, 58,503 ha in South Omo of SNNPR, 32,452 ha in Gambella National Regional State and 38,717 ha in Benshangul-Gumuz National Regional State (Beruk Yemane 2000). The objectives of such pastoral land losses and encroachment have been to irrigate sugar cane, to generate hydropower and facilitate socioeconomic development, as in the case of the Kesseme and Tendaho dams (Beyene 2006); for individual land use in Borana (GezuBekele 2008) and in Somali region (Sead Oumer 2007); the removal of land for government livestock ranches (Boku Tache 2000); the redrawing of administrative boundaries (Homann and Rischkowsky 2005); the establishment and enforcing of national park boundaries (Beruk Yemane 2000); the loss of land to invasive species such as *Prosopis juliflora*, which has taken over more than one million hectares of land and over 600,000

in Afar alone, important for grazing and access to water (Flintan 2009); and through the leasing of land to commercial investors.

Ethiopia is said to have ‘huge investment potentials for agricultural development’ (MOARD 2009). Irrigation potential of the country is estimated at around 4.3 million hectares (FDRE Embassy, Stockholm 2008). Of the total areas of the country approximately 45% is mid-highland and highland and the remaining is lowland despite their challenging climate. These lowlands are also where the majority of the country’s roughly 9.5 million pastoralists and agro-pastoralists live (in Kloos *et al* 2010). 3.7 million hectares has already been identified by the federal government and delineated as agricultural investment areas, with nearly 1.6 million hectares already deposited in the federal land bank. The land is found in four regional states of Ethiopian Federation—all areas with significant number of pastoralists and agro-pastoralists. Though it is said that land is most suitable for agricultural crops, the large areas of grasslands in these parts are also said to provide opportunities for livestock production (ibid). Further, pressures to loss of lands come from such as the Gibe III dam in South Omo (Kloos *et al* 2010), and the Omo Kuraz Sugar Development Project (OKSDP).

The ‘State-run’ Sugar Corporation¹ converts hundreds of thousands of hectares of ‘unused’ land in the lowlands into plantations and later produces sugar, ethanol, other by-products and electricity in the Lower Omo Valley. This will bring a huge change for the Lower Omo Valley which has long been among the least developed and marginalized parts of the country.

On the supposition that the impact of OKSDP will reach beyond significantly altering the economic structure of the South Omo Zone, this thesis investigates the implications of large-scale agricultural development and large-scale sugar processing industrialization on the land rights of pastoralists in the Bodi pastoral community. The lack of formal recognition of customary land tenure system under federal and regional states’ land laws has greatly diminishes security of tenure for South Omo pastoral population and provides a more limited legal recourse for displacements and expropriations. This thesis thus examines the status of pastoral commons

¹ The corporation is established by Council of Ministers Regulation No. 192/2010 as a public enterprise. For the purpose of the corporation, read Article 5.

under the Ethiopian constitution and land law regimes. It tests the manner of delineation of the Bodi land for the OKSDP; it investigates the process of consultation and obtaining consent of the Bodi; it observes the ways of villagization and payment of compensation; and it enunciates the reactions of the Bodi pastoralists towards OKSDP in light of the legal instruments that protect pastoral land rights.

1.2 Statement of the problems

Historically, South [Dehub] Omo Zone had been detached from the center for a longtime from its economic and development benefits. The pastoralist and agro-pastoralist do not have knowledge about large-scale commercial farm, except Dassanach and Bena-Tsemay woredas which have experienced large-scale agricultural development due to Ethio-[North]Korea Farm and Birale Farm, respectively. Some of pastoralists' livelihood depends upon the flood retreat agriculture on the banks along the Omo River and other lesser rivers. In those some agro-pastorals', the annual flooding on the Omo River dictates the rhythm of life and culture that permeate the area. But most pastoralists relied on livestock production, and some others lead their life by fishing.

A new chapter of 'development' and 'modernization' is opened in this locality in order to achieve the MDGs and the GTP of the country. In South Omo 180,625 ha has been delineated for investment in districts that are almost all dominated by pastoral livelihood systems. In addition, 175, 000 ha of land has been delineated for the Omo Kuraz Sugar Development.

On 25 January 2011, plans were announced by the Ethiopian late Prime Minister to convert 150, 000 ha (432,000 acres) of pastoral grazing land in the lower Omo to irrigate sugar cane production (Meles Zenawi 2011). Meles Zenawi pronounced that:

[...] in the coming five years there will be a very big irrigation project and related agricultural development in South Omo Zone [emphasis added]. I promise you that, even though this area is known as backward in terms of civilization, it will become an example of rapid development' (Ibid).²

²This speech was delivered during the 13th Annual Pastoralists' Day Celebrations² on 25th January 2011, Jinka while the late PM Meles Zenawi was describing the government's development plans for the South Omo region.

Then, South Omo is being associated with the massive OKSDP. The OKSDP is planned to develop sugar cane plantation on 175,000ha of land around the Omo River which is expected to be one of the largest sugar cane farms in the country.

This development project has provoked contending narratives. On the one hand, the government argues that the project will directly transform the local community. The land on which the project is planting is barren and unsettled land, so no one will be displaced. The Bodi have been consulted properly in order to obtain their consent to the OKSDP. The Bodi are brought close to the social and infrastructural services that the OKSDP provides for them. The Bodi are villagized with full consent, so the villagization program has been carried out voluntarily. The State further argues that the main compensation scheme is provision of social and infrastructural services that the Bodi have lacked for centuries than monetary compensation. Hence, the State argues that it did not violate rights of the Bodi. On the other hand, Human Right groups and scholars completely oppose the OKSDP seeing it as if it were against human rights, environment, and pastoral way of life and people's culture. This group narrates that the State has not conducted meaningful consultation and failed to obtain consent of the Bodi. The State has failed to provide pasture land, water ways and flood retreat cultivation sites to the Bodi and their livestock. They further argue that the State couldn't compensate the pastoralists for their assessable properties and relocate the in land proportional to their previous pasture landholding size. Hence, the State has failed to comply with Human Rights instruments protecting pastoral right to land. The Bodi community narrate that the OKSDP has adversely affect their traditional land tenure system and pastoral way of life via alienating land without consent; blocking pasture land; prohibiting water ways and flood retreat cultivation sites; allocating non-proportional pasture land, water/canals, and plot of land for cultivation . Thus, it is worthwhile investigating the narratives of actors on land alienation to the OKSDP in view of the international and national legal instruments. A study on the existing traditional land tenure system and the perceptions of the pastoral communities towards large-scale agricultural development are important, as this would provide the way for designing legally and institutionally appropriate interventions to be undertaken in the study area. This study is conducted mainly to investigate those contending views on land alienation process to the OKSDP according to legal parameters of consultation, free, prior informed consent; villagization; compensation; effects of the OKSDP on the Bodi pastoralists. The study has tried

to answer the following research questions through empirical data collected from the targeted population and actors.

1.3 Research Questions

1. What are the conceptual and theoretical foundations of land rights of pastoral communities?
2. How do international and regional, and national legal instruments protect land rights of pastoralists in Ethiopia?
3. What are the main lines of arguments of actors on the land alienation process to the OKSDP in Bodi Community in light of the Human Rights instruments protecting pastoral land rights in Ethiopia?
 - Consultation, Free, Prior informed Consent procedures
 - Villagization Process
 - Compensation Process
 - Effects of the Process
4. Are there planned measures in order to secure better protection of pastoral land rights while further expanding the OKSDP?

1.4 Objectives of the study

1.4.1 Main Objective

The main objective of this study is to investigate the validity of arguments of various actors over the OKSDP land alienation in the Bodi Pastoral Community in light of international and national legal instruments protecting indigenous peoples' rights to land.

1.4.2 Specifics Objectives

1. To discuss conceptual and theoretical foundations of pastoral 'common' in Ethiopia
2. To analyze international and national normative frameworks that protects communal land rights of pastoralists in Ethiopia;
3. To investigate the main lines of arguments of actors on the land alienation process to the OKSDP in the Bodi Community in light of Human Right instruments protecting pastoral land rights
 - Consultation, Free, Prior informed Consent;

- Villagization process;
 - Compensation mechanisms;
 - Effects of those processes on the Bodi pastoralists;
4. To find out ways forward in order to alleviate the adverse effects of OKSDP on land rights of pastoralists in the Bodi and the remaining pastoral areas in the three zones.

1.5 Methodology

1.5.1 Research Method

This study employed an exploratory research design. It used a case study on the Bodi, Salamago Woreda of South Omo Zone. The selection of Bodi pastoralists is due to the fact that the OKSDP began in Salamago Woreda, mainly in the Bodi Community. In Salamago *Woreda*, where the project started, the Bodi are the first to encounter the project and are the majority in the *Woreda* next to Mursi. The project is not yet underway in Mursi except conducting consultations. The case of Bodi is believed to represent other pastoral communities of the three zones in SNNPRS, which assumed to be benefited and/or affected by the Project. The OKSDP is also accompanied by villagization of the Bodi around it. The facts that the OKSDP has involved land alienation of large-scale, includes villagization as its components with the potential for expanding the project to adjacent pastoral communities led this author to select the Bodi experience as a focal point of the study.

1.5.2 The Study Population

About 53,596 people are estimated to live in the actual project ‘command areas’ (plantation area). A survey issued in July 2011 revealed that the total population of the districts which the project encircles is 279,026. These areas are sparsely populated and the average population density of the districts as a whole is 9.6 persons per square kilometres and when it comes to the much selected actual point of land of the command area, the population density will definitely get lower (Sugar Corporation Bulletin, August 2013).

Table1 Population of the ‘Command Area’ *Woredas*

No	Woreda	Population Size			Woreda Area	Population/km ²
		M	F	Total		
1	Salamago	15770	15422	31192	4450.07	7.0
2	Gyngatom	9891	9728	19619	2643.49	7.4

3	Meinitshasha	24391	24225	24,225	24,225	16.6
4	Maji	17154	18210	35364	4670.40	7.6
5	Decha	72100	72135	144235	2958.52	48.8
Total		139,306	139,720	279,026	17653.5	15.81

Source: Ethiopian Wildlife Conservation Authority, May 2013

1.5.3 Sample Size and Sampling Technique

The study population of Bodi pastoralists accounts for 6, 994 (CSA Report, 2007). The sample size of key informants was 60, which I selected through a non-probability purposive sampling technique, assuming that the selected people are supposed to have different opinions about knowledge of and interest in the issue discovered, and to cross-check the information gathered from different sources. The reason for choosing purposive sampling was because the key informants are believed to have a variety of views on the OKSDP and land rights of pastoralists in South Omo. Focus group participants were numbered 113, which were selected based on a probability-cluster sampling technique. The reason why I preferred cluster sampling and 113 sample size is that the Bodi live in a large area composed of five villages and they have large size in Salamago Woreda where the OKSDP is conceived. The sample size of participants is supposed to represent this population number as they were sampled from five villages. The villages were systematically selected to represent pastoral land right concerns and to capture the diversity and dynamics of the participants composed of age, sex, social status, wealth status variables.

Table 2: outlines sample size of key informants and their category

Category 1	No	Category 2	No	Category 3	No
Pastoral Elders	6	Sugar Corporation Authority	3	Religious leaders	1
Tribal Chiefs	2	Pastoralists' Department	1	Individuals Living around the Study Area	2
Pastoral Settlers	20	Zonal administration Officials	2	Government Employees	6
		Woreda Administration	2	Sugar Project Employees	7
Subtotal	28		16		16
Total	60				

Table 3 Sample Size of Focus Group Discussion Participants in Villages

Village	Participants	Sex composition		Percentage	
		M	F	M	F
Giyo	26	14	12	53.85	46.15
Omorombe	23	15	8	65.22	34.78
Chedemis	17	8	9	47.06	52.94
Gura	20	13	7	65	35
Omo-Hana	27	17	10	62.96	37.04
Sub-total	113	67	46	59.29	40.71
Total	113	113		100%	

1.5.4 Data Sources and Collection Instruments

1.5.4.1 Interview

This study used various data sources. Interview is one source. The key informants are categorized into three groups. The value of each interview varies greatly. While some of the informants provided substantial and essential information, others were either unwilling or unable to give useful information. However, informants may have an interest in manipulating the reality and present it as it best serves their interests. The interviews could be characterized as ‘open-ended’, where the informants were asked about both opinions and facts. Although no fixed sets of questions were presented, the interviews were ‘focused’ and semi-structured in a sense that they centered on ‘pre-determined’ issues defined in an interview guide. The semi-structured interview contained a number of questions that would be responded by the four groups of the key informants. The actual formulation of the questions was adopted to suit each particular interview.

I was more concerned with the first category of interviewees than the other groups. One of my assumptions was that pastoral communities would tell what exactly is going on in their localities in relation to land-alienation for the OKSDP on their own words, and hence they could provide crucial information about the functioning of the project and their land rights. These people are dealing with the daily operation and should be expected to know where the shoe pinches. The other groups’ views could be obtained from internet sources, literatures, government letters, and mass-medias.

Interviewees with second category were selected because they are well-acquainted with the process going on the benefits the project would give to the pastoral community and the

challenges that the project was facing. Their selection was made based on the assumption that they have participated in the ‘consultation’, ‘compensation’, ‘villagization’, and implementation stages of the project. Also, they were selected to get varied views within the government officials, the project officials and workers. Further, they were selected to validate or falsify the views found in different documents.

Interviewees in third category were selected because they might be expected to take a position between the government stance and the human right activists and environmentalists, and might therefore give new insights to the issues.

1.5.4.2 Focus Group Discussion

The participants of the group were made up of Bodi pastoralists who have particular experience or knowledge about the subject of the research, or those who have a particular interest in it. Five focus group discussions were conducted with Bodi pastoral community in five villages. Focus group discussions were conducted through semi-structured questions, with the help of an interpreter. I also visited the project area.

1.5.4.3 Documents

The documents include statistics, public reports and legal codes. Yin (1994:81) suggests that the most important use of documents in case studies is to corroborate and augment evidence from other sources. Legal documents such as national and international legal instruments, circular and letters to/from, legal cases, policy documents, draft laws and resolutions; academic writings such as books, journals, periodicals, senior essays, dissertations and theses were used mainly from AAU libraries.

1.5.4.4 Websites and Medias

Moreover, different websites primarily developed for land issues like Oakland Institute, Survival International, Human Rights Watch and Ethiopian Sugar Corporation were used. Further, other data sources like newsletters and broadcastings were used from national and foreign Medias.

1.5.4.5 Participant Observation

I did some degree of observation with little participation. I have experience in the pastoralist South Omo Zone. I made personal observation regarding the construction of the OKSDP and the livelihood of pastoralists. This would strengthen reliability of the data collected. As a researcher, I tried to make explicit the way how the data were presented and how they were collected and interpreted. This would enhance construct validity and avoid biased conclusion. I visited three of the villages established under the villagization scheme.

1.5.5 Data Analysis

The data collected through different instruments were presented and analyzed via qualitative method. The analysis was multifaceted, iterative, and simultaneous. The process of data analysis involved making sense out of data. It involved preparing the data for analysis, conducting analysis, moving deeper into understanding the data, representing the data, and making an interpretation of the larger meaning of the data. Interpretation of data made the basis of identification of prevailing practices and the governing particular practice with the view to come up with consistency between the law and practice in relation to land rights of pastoralists and large-scale agricultural development in the study area. Legal documents would tell whether the land rights of pastoralists are guaranteed in Ethiopia. The examination of the legal framework was the basis for revealing whether there is a discrepancy between normative frameworks of constitutional and international instruments regarding pastoral land rights and development, between the legal frameworks and the actual practices. The data collected were analyzed with inputs from available academic literatures in order to fill gaps that have not yet been addressed through empirical data.

1.6 Literature Review

The debate over the expansion of large-scale land acquisitions has been a burning issue in development. The bone of contention revolves around whether or not the investments realize a meaningful advantage to the local community.

Global land grab has emerged as a catch all phrase to refer to the explosion of (trans) national commercial land transactions and land speculation in recent

years, mainly but not solely, around the large-scale production and export of food and bio-fuels(FRANCO, J. C 2012:34)

The Ethiopian government argues that large-scale agricultural expansion is part of the country's strategy and policy to achieve national food security objective (MoA, 2011). The government intends to bring foreign investments and capital to the country and at the same time wants to create huge job opportunity.

The government strongly argues that massively transferred lands are 'unoccupied' or 'barren' or 'empty' or 'unpopulated' or 'underutilized', that the food and tenure security of the local populations is not affected, and that such lands leased out to agribusiness are part of the 75 million hectares of cultivable fertile land³ and that improvement of such underutilized lands transferred to investors would bring about immense benefits including technology transfer, employment and infrastructure development. The state's approach has been to totally reject customary rules pertaining to communal lands, which are considered contrary to modernization and impose on the people a particular notion of property in order to promote its own conception of modernization. The Ethiopian government claims to avail large hectares of unutilized or marginal lands, particularly in the lowlands, foreign investors for development. In so doing, the government hopes to supplement its efforts of transforming small holder agriculture from mere subsistence to commercial farmers (Muradu, 2013).

Ethiopia's Ambassador to UK⁴ notes that Ethiopia's prime concern is 'ensuring food self-sufficiency at both national and household levels. Food security at the national level has already been attained, but food security at the household level remains the current target. He notes that 'commercial farming is supplementary to farming by small-holders' and 'environmental impact studies are carried out by the Environmental Protection Authority'(The Guardian, 4 April, 2010, as cited in Elias, 2011).

³ Out of which only about 18 million hectares is being cultivated by peasants

⁴ A speech made by BrehanuKebede, Ethiopia's Ambassador to UK

The Ministry of Foreign Affairs considers the criticisms against the land transfers as politically motivated.⁵ The Ministry argues that this provides ‘new seeds and new techniques’ to developing countries and that the ‘deals also allow for major overall investment, including improved marketing as well as better jobs, and related infrastructural developments, including schools, clinics and roads.’ The statement underlines that ‘some of the deals will cover land that has not been used before’. The statement further makes a distinction between land ‘that is being given away’ and land ‘that is being leased because the investment will remain when the lease ends’ (Elias, 2011). Minister of MOARD⁶ pronounced that:

At the end of the day we are not really appreciating pastoralists remaining as they are. We have to improve their livelihood by creating job opportunities. Pastoralism, as it is, is not sustainable. We want to change the environment (in Butler 2010).

The government argues that ‘*not a single person was forcefully evicted.*’ In this context, South Omo Zone Chief administrator⁷ firmly refutes forceful eviction of indigenous people. He said that ‘the government’s principle is persuasion not forceful eviction. That is why two years were spent to persuade the community about the benefits of the villagization programme’. The population, comprising mostly pastoralists, were included in discussions on the project from the Zonal level to *Kebeles* and villages. The OKSDP is vital in transforming the living condition of the predominantly pastoralist community of the South Omo Zone (Walta Information Center, August 2, 2012).

On the contrary, Western Human Rights activists and environmentalists are repeatedly criticizing government in terms of human right violations, especially ‘forceful eviction’ of indigenous people and damage to biodiversity. The Oakland Institute (OI) states about the benefits of the large-scale farmland investments, their impact on food security, socioeconomic and cultural impacts, the impact of dispossession and displacement, environmental impacts and water use and water management. It also discusses the issue whether land certification makes any difference (in

⁵ FDRE Ministry of Foreign Affairs, ‘Politically motivated opposition to agricultural investment’ *A Week in the Horn*, http://www.mfa.gov.et/Press_Section/Week_Horn_Africa_January_22_2010.htm.

⁶ Dr. AberraDeresa, former Minister of Ministry of Agriculture and Rural Development

⁷MollokaWubneh

Horne, 2011). OI stresses that the current realities are not yet promising and “it is too early to tell if ‘transfer of technology’ will accrue to Ethiopia.” The report advises that effective strategies should be developed in order to enable technology transfer. The report appreciates the efforts of the Ethiopian government in ‘infrastructure development’ and that there is likelihood those investors can enhance infrastructure development ‘through various partnership schemes or as part of wider country-to-country development assistance efforts’ (in Horne, 2011:35). The report however forwards the caveat that it remains to be seen whether investors will contribute to infrastructure commensurate with their potential and promises. The report stated the positive contributions of investment along with the problem of low wages that is likely to arise particularly during the initial stages unless the Ethiopian government addresses its ‘failure to improve minimum labor and pay standards’. The report includes socio-economic and cultural impacts such as the risk of increased conflicts⁸, loss of cultural identity, the need to enforce mandatory standards in labor conditions, and loss of livelihoods upon displacement. The report further discusses the impact of dispossession and displacement and the adverse potential impact of the projects on the environment, and deals with the issues of water resource management and land registration (Ibid, 36-47).

The Human Rights Watch (HRW) criticizes that the land acquisition for the OKSDP has taken place without any meaningful consultations and compensation packages. The HRW reported that it did not find any ‘meaningful consultation’ that was undertaken with pastoral communities about the sugar plantation developments, nor about alternative livelihood strategies. HRW argues that pastoralists’ ‘ways to the banks of the Omo River are closed’ and they signed government forms with their thumb prints without knowing what the forms said or what they were ‘consenting’ to (HRW, June 2012). HRW reported that in June 2011 forced displacement of the Lower Omo indigenous population was just getting underway in the Mursi and Bodi communities. The report revealed that the resettlement process is ‘not voluntary’ (HRW, 2012). The livelihoods and food security of the pastoral communities depend on cattle rearing and agriculture on the banks of the Omo River and other fertile areas. The take-over of flood retreat and rain-fed cultivation sites along the Omo and its tributaries for commercial plantations and the

⁸This conflict may likely result from population growth accompanied by dwindling farmland for smallholder farmers and herders

forced reduction in cattle numbers will undermine local food security and decimate livelihoods (Ibid).

The narratives regarding this project radically contradict each other. The Ethiopian government favors the project in terms of socio-economic and other benefits; however, human right groups and scholars completely oppose this project seeing the developmental project as against the land rights of the pastoralists and their livelihood. They see the project from perspective of human right, land rights, culture, and political economy of indigenous peoples. The Bodi community argues the government didn't consult them before land alienation and villagization. Their access to pasture land and waterways are blocked by the Project. The government forcibly relocated them. The government did not pay compensation for their lost properties and provide inadequate pasture land and water ways/canals.

Many empirical studies have been conducted on the impact of large scale land acquisition (by state-owned, private or foreign investors) in many parts of the country. However, not a single study has been conducted in the study area regarding the subject matters I tried to address. None of the reports of (Oakland Institute, 2011; Human Rights Watch, 2012) and researches of (Lavers, 2012; Avery, 2012) have duly addressed the validity of arguments of various actors over large-scale agricultural development in light of human rights instruments protecting pastoral land rights. This study attempts to contribute to the land acquisition debate through field research conducted in Bodi Pastoral community of South Omo Zone, via employing empirically relevant data. The study looks at the effects of state's involvement in large-scale development projects, taking a case study of the Bodi Community located in Salamago *Woreda*, South Omo Zone, in relation to the OKSDP.

1.7 Limitation of the Study

Accessing land deal documents on the case organizations was formidable task in the data collection process. However, since most of the deals are similar by content, reference supplemented by fieldwork and literature was done. Fear of the government limited information supply by the communities and development officers working with the community. It was a challenge in the case where conflicts over land among settlers and the indigenous community,

and with the government exist. In this case, I stayed away until violence end by the intervention of regional Special Force. This has unduly delayed the research time schedule. Field observation of the corporations, however, highlighted the plight of the local population particularly loss of their communal lands. My experience however shows that higher officials were tougher to get hold of than those at lower levels; even some of them did not bother to reply to my requests, while others delegated the task to deputies or other lower officials. Second category of interviewees were generally not willing to expose conditions that they thought would harm the image of the project and the current government, and were less inclined to give information, although these people provided essential information. The zonal government didn't write this researcher a supporting letter to the OKSDP in time, even the letter was written by the Special Advisor of zonal administrator. In order to overcome this challenge, I approached them in a way that I would do this research keeping up a neutral position and finally handover it to the Zonal government. The majority of those whom I approached were willing to share their views.

1.8 Significance of the Study

The findings and recommendations of the study may serve as a reference to governments at any level, to private investors, and other stakeholders that would like to deploy interventions in these pastoral areas. The study could initiate other pastoralist areas and in the same area too and same subject matter, to carry out extensive studies on the relation between communal pool pastoral land resources and investment on land in the regional as well as national economic growth. It may also serve as stepping -stone for those who intend to do further studies on this particular topics. Finally, all these efforts may help to draw policy implications and conclusions that may be crucial to policymakers in their endeavor to bring rapid transformation and economic development in the pastoralist areas.

1.9 Structure of the Study

This thesis is structured into six chapters including this introduction. The second chapter talks about the concepts and theories regarding agricultural development; pastoralism; property right. Hardin's theory of the 'tragedy of the commons' has becoming a grand-norm from which states' derive the force of scientific validity for policy and legal intervention in dismantling pastoralists'

communal landholding rights. Hardin's proposed solution for the tragedy was either private or public property regime as alternative possible solution. However, in these days an alternative form of privatization is the 'selling-off' of vast tracts of agricultural land resources to powerful multinational state and private investors in developing countries. Hardin's perspective of commons that goes for privatization rather than governance of the commons are not dead in the Ethiopian context where 'land grabbing' is a severe problem in the name of development, considering that pastoral lands are 'vacant' or 'unused'. The third chapter talks about international and regional human right instruments protecting land right of indigenous peoples. These instruments give protection to indigenous people's right to ancestral land, state recognition to communally hold land and resources, demarcation of communally hold land, sought culturally appropriate free, prior consultations and consent, monetary and in kind compensation, and restitution. The fourth chapter deals with national legislation dealing protection with communal land tenure systems. The FDRE Constitution and subsidiary Federal and Regional States' land laws maintain state ownership of land; to do not recognize communal land tenure system; give primacy to sedentary way of life than pastoralism; adopt 'improvement' doctrine in order to pay compensations. The last chapter focused on debates of various actors on the OKSDP. This research found that the Bodi pastoral community have not been meaningfully consulted and consented to the handover their ancestral land, water ways and livelihoods; the villagization has been carried out forcibly as the Bodi did not have options to refuse, but rather to comply with; the Bodi were not compensated for their economically assessable properties and their pasture land and water ways are taken away for which the Bodi have not been proportionally compensated in kind. The Bodi began reacting/resisting the OKSDP in various ways. The reactions/resistance of the Bodi mainly associated with lack of culturally appropriate consultations and obtaining consent of the Bodi. The resistance is partly related to previous failed resettlement projects in their locality and land alienations for various purposes. Their land tenure system has been changed tremendously and their livelihoods are adversely affected. A very few Bodi villagers began to reaping fruits of the OKSDP. The sixth chapter concludes the thesis and provides recommendations.

CHAPTER TWO

2 THEORIES AND CONCEPTS OF AGRICULTURAL DEVELOPMENT PASTORALISM AND PROPERTY RIGHTS

2.1 Introduction

This chapter reviews theories and concepts regarding agricultural development, pastoralism and property rights before we move on to the legal status of ‘common property regime’ of pastoralists in the human rights instruments at international-regional-and-national levels. In my view, it is important to review the theories and approaches of communal property regime for the purpose of a thorough understanding of pastoral land tenure issues.

This chapter defines and theorizes different concepts in relation to this thesis. Accordingly, the term development is conceptualized in the context of agricultural development. It gives an overview of existing irrigation development in Ethiopia. It conceptualizes the term pastoralism; and pastoral livelihood patterns. As the main concern of this thesis is large-scale agricultural development and communal land regimes of pastoralists, this section focuses on the concept of ‘property rights’ and ‘common property’ regime in pastoral communities and the challenges thereon in Africa including Ethiopia.

2.2 Agricultural Development

The concept of agricultural development is within the context of several development paradigms⁹ postulated by eminent scholars in the field of agriculture, communication, sociology and economics (Yahaya, 2002). These postulations reveal that many countries in the developing world are undergoing changes in the agricultural sector both in policy and practice (Ibid). The development of the agricultural sector is commonly recognized as a particularly important in less industrialized countries to support the general economic growth for different reasons

⁹Free-market Trickle-down Growth-led development; Pro-poor (broad-based or balanced) growth-led development; Low-wage industry-led development; Low-wage labor-intensive export-led development; Agriculture-based development; Endogenous growth-based development; Rural development paradigm; Washington Consensus-based development; Strategic openness-based development; Exhaustible-resource export-led development; Agricultural commodity export-led development; Emigration-based development; Immigration-based development; FDI-based development; Foreign aid-based development.

(WorldBank, 2010).¹⁰ Agriculture-based development paradigm has to be further qualified if agricultural growth contributes directly to the various dimensions of socio-economic development. In particular, it has to take into account which type of agriculture, and in which context, directly contributes to poverty reduction and to other development dimensions, beyond its contributions to poverty reduction through impacts on economic growth (Ibid).

Irrigation development is vital to stimulate agriculture-led economic growth, notably in developing countries. To date, irrigated lands account for about 20 percent of the world's farmed area and 40 percent of global food production. Increases in irrigated area, cropping intensity, and crop yields have helped to stabilize food production *per capita*, even though population and *per capita* food intake have grown significantly in irrigation and drainage (Baba, 1993).

In Ethiopia, irrigation is one means by which agricultural production can be increased to meet the growing demands (Awulachew *et al.* 2005). A study indicated that one of the best alternatives to consider for reliable and sustainable food security development is expanding irrigation development on various scales, through river diversion, constructing micro dams, water harvesting structures, etc. (Robel 2005). A comprehensive National Irrigation Development Strategy (2005/2006-2009/2010) has been developed and is being implemented with the aim of establishing small, medium and large-scale irrigation schemes, either for use under smallholder-managed systems or as large-scale commercial plantations. The major expansion in the 'state-owned' commercial plantations predominantly involves the growing of sugarcane for sugar production (Awulachew *et al.*, 2009).

2.3 Typology of Irrigation Schemes

Irrigation schemes that have been used to define irrigation entities are numerous. The most common ones are size, nature of the water source, the governing body and levels of organization. For constructing irrigation systems, irrigation agencies have found it useful to classify systems in ways that facilitate technical and administrative input. Accordingly user managed irrigation, agency managed; private managed or local government (Hofwegen, 1998). Another classification

¹⁰For a comprehensive treatment of the theory of the growth of the agricultural sector within the context of a growing economy see e.g. Mundlak, Y. 2000, *Agriculture and Economic Growth* Theory and Measurement, Harvard University Press

is based on size, technology or method of water abstraction and application. On the basis of size thus ‘small-scale’, ‘medium-scale’ and ‘large scale’ are the detail classification method of irrigation. While pump or Gravity irrigation systems are the classification based on water abstracting system, furrow, basin, flooding, drip and sprinkler are the part of classification of irrigation based on method of irrigation application (Yohannes, 2011).

In Ethiopia, irrigation schemes are classified into three (a) size, (b) technology use, and (c) management. The first classification is by the size of the command area of the scheme. Schemes are classified as small (less than 200 ha), medium (200 to 3,000 ha) and large-scale (over 3,000 ha) schemes (MOWR 2002; Awulachew *et al.* 2005). The small-scale irrigation schemes are further classified in to modern schemes and traditional schemes. The former usually have fixed or improved water control/diversion structures. These schemes are generally constructed by the government or NGOs, which have mostly been constructed since the mid-eighties. The latter are different from the former because their diversion weirs are usually made from local materials, and are usually reconstructed every year.¹¹ The second classification is by the differences in the technology used to control and divert water, which have implications on water availability, water loss and establishment, and for operation and maintenance costs. The third classification is by management system, namely traditional, modern, public and private (Werfring 2004). The management systems of the two small-scale irrigation schemes are similar, usually involving local leadership and a water users’ association or irrigation cooperatives with the government providing extension support, while the medium- and large-scale schemes are usually managed by the government (Ibid).

In this paper, I would use a combination of the first three classification systems; thus, modern large-scale schemes which are usually managed by the state enterprises in which the size is over 3,000 ha, with fixed or improved water control and diversion structures. In this paper I would use words like ‘agricultural development’, and ‘irrigation schemes’ or ‘irrigation development’ interchangeably.

¹¹ Many are constructed by local communities and have been functional for relatively longer periods of time, some extending close to a century.

2.4 State-Run Large-Scale Sugar Development Projects in Ethiopia

Modern irrigation systems started in the 1960s with the objective of producing industrial crops in Awash Valley. The first formal irrigation schemes were started in the late 1950s in the upper and lower Awash Valley by private concessionaires who operated farms for growing commercial crops such as cotton, sugarcane and horticultural crops. In the 1960s irrigated agriculture was expanded in all parts of the Awash Valley and in the Lower Rift Valley (Awlachew *et al*, 2007).

Shoa and Metehara Sugar Factories were established in 1962 and 1969 respectively. In 1974 all sugar factories came into *Derg* government control and started operating under the then Ethiopian Sugar Corporation (ESC). ESC was being established to administer the Addis Ketema and Asmara Candy Factories together with the above three sugar factories. In 1992 the *Derg*'s ESC was dissolved by law and hence all the factories were re-organized as public enterprises. In 1998 the Ethiopian Sugar Industry funding Center came into existence—a Share Company of the Ethiopian Insurance company, Development Bank of Ethiopia, and the three sugar factories. The fourth sugar development project was launched in the country in 2006, which is the establishment of the Tendaho Sugar development project. Meanwhile the ESDA was established, and played a vital role in the activities of research, marketing and training. The current ESC with the dream of growing sugar development activities on a large-scale and organization came into being. On October 2010, by the Council of Ministers Regulation No.192/2010) substituting the earlier ESDA (Federal *Negarit Gazetta*, Regulation No. 2010)

Ethiopia has a significant irrigation potential identified from both available land and water resources. The country has developed irrigation schemes in many parts of the country at different scales—Large, Medium and Small-Scales. To date, data on 791 schemes has been collected from different regional states of Ethiopia. The total estimated area of irrigated agriculture in the country is 107,265.65 ha out of which 20,038.39 ha is from small-scale, 30,291.26 ha is from medium-scale and 56,936 hectares is from large-scale (Awlachew *et al*, 2007).

Medium and large-scale irrigation schemes grow mainly sugarcane, cotton, fruits and vegetables. The Wonji-Shoa, Metehara and Fincha schemes grow sugarcane while the Amibara and Upper Awash schemes grow cotton, and fruits and vegetables, respectively. As set out in the Accelerated and Sustained Development to End Poverty Plan (PASDEP) document (2005/2006-

2009/2010), the Irrigation Development Program (IDP) envisages the expansion of irrigation in the country by an additional 528,686 ha by the year 2010 (MOWR 2006; MOFED 2006). Of this 430,061 ha will consist mainly of medium and large-scale schemes while 98,625 ha will involve small-scale irrigation schemes to be developed by the regional governments in Ethiopia (Atnafu, 2007). To this end, 39 significant irrigation projects are planned to be implemented during the PASDEP period.¹² Most of these irrigation schemes will be large-scale community-managed schemes to be used by smallholder farmers. Exceptions to these are the schemes to be developed in the Awash and Abay basins, which will mainly involve the expansion of the already existing large-scale schemes or the development of new schemes. About 90,000 ha of irrigation land will be developed in Kesem and Tendaho to grow sugarcane, while there are planned expansions in the already existing sugar plantations. By the year 2010 there will be an additional 122,000 ha of irrigated land developed to grow sugarcane (ESDA, 2007). Overall, the total extension to irrigated area by the year 2009/2010 compared to 2005/2006 would be in the range of 528,686 ha. This implies that further development would extend the irrigated area to cover approximately 33% of the irrigated potential area and approximately 9% of the total cultivated land area. These plans are used as indicative targets for future irrigation development and for valuing the future contribution of irrigation to the national economy (Awulachew *et al*, 2009).

Table 5: Summary of the sugar development projects

No	Sugar Project	Plantation (ha)	Factory No	Region	Production Capacity	
					Sugar(ton/year)	Ethanol(m3/year)
1	Kessem	20,000	1	Afar	153,000	12,5000
2	Omo-Kuraz	175,0000	6	SNNPR	1,946,000	183,134
3	Tendaho	50,000	1	Afar	619,000	55,400
4	TanaBeles	75,000	3	Benishangul-Gumuz	852,000*	80,250*
5	Welkaiyt	45,000	1	Tigray	284,000	26,750
Total		365,000	11		3,854,00	358,034

Ethiopian Sugar Corporation, <http://www.etsugar.gov.et/index.php/en/>

*This figure is calculated from crushing capacity provided on the Sugar Corporation website www.etsugar.gov.et

¹² To just mention a few of the major projects, these include the World Bank projects around Tana (100,000 ha); Anger Negesso Project in Oromia (49,563 ha); Humera project in Tigray (42,965 ha); KessemTendaho in Afar (90,000 ha); Upper Beles in BenishangulGumuz (53,000 ha); and Ilo-UenBuldoho (32,000 ha) in Somali (MOFED 2006; MOWR 2006).

As indicated in above table, the sugar plantations and factories will be located in four regional states (Afar, Benishangul-Gumuz, Southern Nations Nationalities and Peoples (SNNP) and Tigray). Of the sugar development projects currently being implemented by the Sugar Corporation, about half of the acreage of sugarcane plantations and sugar and ethanol production will be from the Omo-Kuraz Sugar Development Project (OKSDP) as can be deduced from the above table.

2.5 Pastoralism

2.5.1 The Concept of Pastoralism

The designation ‘pastoralism’ can give rise to a range of often quite contradictory interpretations, depending on whether the focus is more on ecological, economic or social dimensions. In addition, pastoralism takes place in very different ecological contexts across the African continent, including dry land and wetland grazing, and a combination of intensive and extensive production strategies (Homewood, 2008). Blench (2001:6) defines pastoralism as ‘the use of extensive grazing in rangelands for livestock production’, while others see pastoralism not only as a mode of production, but also as a ‘mode of perception’ (Baxter, 1990, quoted in Markakis, 2004:14). There is a woeful lack of data about pastoralist communities, and figures for their number vary greatly. In strictest sense pastoralists are referred as people ‘depend on livestock, are mobile, use communal grazing areas and recognize customary rules as a source of authority’. Hence, there are at least 20 million pastoralists in Africa. A less rigorous definition however suggests that there may be some 200 million pastoralists’ in Africa (CTA, June 2012). Koocheki and Gliessman (2005) considered that pastoralism is both an economic and social system well adapted to dry land conditions and characterized by a complex set of practices and knowledge that has permitted the maintenance of a sustainable equilibrium among pastures, livestock and people.¹³ Most scholars, however, agree that pastoralism is a method of livestock production defies easy classification, as it occurs ‘under a variety of social and historical conditions’ (Samatar, 1992: 105). The most commonly recognized and most frequently used economic definition of pastoralism is of Jeremy Swift (1988). According to Swift, pastoral production systems are those that at least 50 percent of the gross incomes of households¹⁴ come from

¹³ This link between plants, animals and people was defined as the ‘Triangle of sustainability’.

¹⁴ The value of market production and the estimated value of subsistence production consumed by households

pastoralism or its related activities, or else, where more than 15 percent of households' food energy consumption involves the milk or dairy products they produce.

This study has adopted the broad definition given by Noriet *al* (2005:5) which reads 'pastoralism is the finely-honed ... relationship between local ecology, domesticated livestock and people in rangelands, particularly in resource-scarce and ecologically-variable regions, often at the threshold of human survival'. This characterization purposely includes a wide range of livestock species, ecosystems, varying degrees of mobility and very diverse livelihood strategies as pursued by nomadic, transhumant and agro-pastoralists. *Nomadism* refers to herders who depend entirely on the sale and exchange of their animals for their livelihood, pursuing opportunistic and irregular migration routes. *Transhumance* describes regular herd movements between fixed points in function of the seasonal availability of pastures. Transhumant pastoralists mostly have a permanent homestead and practice herd splitting. *Agro-pastoralists* are sedentarized groups who engage in a mix of crop production and usually smaller size livestock herds (Blench, 2001:11–13). It combines economic and cultural definition of pastoralism, which encompasses those people whose livelihood depend on livestock and livestock products, and those for whom livestock does not provide the main source of income, but who remain connected to a pastoralist lifestyle. This lifestyle combines a dependence on livestock with social structures and traditional practices, specific beliefs and institutions, sets of laws and customs. The definition involves a certain degree of fuzziness; in particular, it covers those who have dropped out of pastoralism through loss of livestock, but who have some desire to return to the lifestyle; agro-pastoralists who are involved in extensive livestock production, but for whom livestock is less important than cropping for household income and consumption; and those whose livelihoods and cultures are shaped by livestock dependency (Morris, 2008).

2.5.2 Livelihoods of Pastoral Communities

The areas where pastoralists inhabit are potentially limited for crop cultivation due to low and highly variable rainfall conditions, steep terrain or extreme temperatures. Within this unpredictable, vulnerable and dynamic environment, pastoralists have developed successful mechanisms of adaptation to maintain an ecological balance between themselves and the natural environment. The livelihoods of pastoralists depend on their intimate knowledge and skills of the

surrounding ecosystem and on the well-being of their livestock. Pastoral systems take many forms and are adapted to particular natural, political and economic environments. The types of livestock kept by pastoralists vary according to climate, environment, water and other natural resources, and geographical area.¹⁵ More often, pastoralism is viewed as an archaic practice without a future. This is not protecting and promoting pastoralism. For pastoralists, pastoralism is not just a production system, but rather a viable and important livelihood and existence. The pastoralist management system involves a complex set of elements that are linked together by a requirement for land and a responsibility to safeguard it. These include mobility, keeping or possessing large herds of livestock, herd diversification and splitting, etc. (PFE, IIRR and DF, 2010)

Mobility is a key feature qualifying pastoralism which enables livestock owners to find fresh pastures during dry seasons and times of drought. In arid and semi-arid regions as well as in mountainous regions, livestock mobility is the foundation of the pastoral system because it enables livestock to graze the diffuse and scattered vegetation of the regions' rangelands, or to take refuge to more favorable sites during droughts. In Ethiopia, pastoralists' prime reason for moving is to search for better grazing, water and saltlicks and to avoid disease. In Afar, Somali and South Omo areas movement is further dictated by the seasonal flooding of the Awash, Wabi-Shabelle, Ganalle and Omo Rivers respectively which threatens lives and livelihoods of the pastoral communities (PFE, IIRR and DF, 2010). It is a result of complex traditional rules and regulations that relate to when and where different ethnic groups or clans or even families may graze (McCabe, in Salihet *al*, 2001:69-76). In most cases, the concerned community normally sends a group of assessors to investigate the status of pasture and water at different places before moving.¹⁶

Livestock accumulation is another way to mitigate risk (Herren, 1991; McPeak and Barrett, 2001). A larger herd size pre crisis implies a larger herd post crisis (McPeak, 2005). Pastoralists do it with an objective of increasing milk yield, maintain an appropriate herd/flock structure for

¹⁵ These may include camels, goats, sheep, yaks, horses, llamas, alpacas, reindeer and vicunas

¹⁶ For example, the Borana pastoralists call the assessment as *abuuru* and Somali pastoralists call it *sahan*. Mostly, pastoral communities in Ethiopia tries to avoid staying in a certain area for a long period for various reasons, such as allowing for the ecological recovery of plants, avoiding the outbreak of disease and minimizing conflicts with other groups (Mohammud, 2007:13).

short and long-term reproductive success and ensure disease resistance by selective breeding. The reason for accumulating large herds is that it helps ensure the long-term survival of herds/flocks, despite losses incurred during periodic droughts and disease outbreaks (PFE, IIRR and DF, 2010:13).

Herd diversification is another *ex ante* risk management strategy in which pastoralists adjust the composition of their livestock in a direction that could minimize asset loss due to disaster. It is a mix of large and small ruminants, grazers and/or browsers, and it is important to minimize risk exposure while serving subsistence needs through optimal utilization of available resources. This has an objective of taking advantage of the heterogeneous nature of the environment and to use different resources (Hendrickson *et al.*, 1996; Orindi *et al.*, 2007). At present, pastoralists change their livestock species composition from Sheep and Cattle to Camels and Goats which easily adapt themselves to changes in pasture. Ethiopian pastoralists recently have started herd diversification (Yohannes and Mebratu, 2009; Asnake and Fana, 2012:137-138).¹⁷

Herd splitting is a means of mitigating the adverse impacts of climate change. It allows pastoralists to easily restock after extreme weather events (Orindi *et al.*, 2007; Orindi and Eriksen, 2005). In this case, pastoralists spread their livestock spatially throughout their personal networks to reduce risk. Herd splitting seems to be a rational way of mitigating risks, especially those arising from localized, not region-wide shocks.

2.6 Theory of Bundle of Rights

Theory of property rights does not emphasize who 'owns' land, but rather analyzes the formal and informal provisions that determine who has a right to enjoy *benefit streams* that emerge from the use of assets and who has no such rights (Bromley 1991, Eggertsson 1990, Libecap 1989). These rights need to be sanctioned by a collective in order to constitute effective claims. Thus,

¹⁷ Yohannes and Mebratu (2009) noted that the Ethiopian Somali Region herd composition is changing to shoats (sheep and goats) from camels and, among the Afar, from cattle to goats and camels. The Borana pastoralists, who are traditionally averse to camel husbandry, have also started keeping camels due to their resilience to drought and climatic stress. The Dassanech used to raid camels from the Turkana in the past, but the Hamar and Nyangatom got their first camels (originally bought from the Borana zone) with NGO support. In Nyangatom areas the adoption is so slow that most camels are still in government hands. Thus herd diversification in Dassanech and Nyangatom areas is only after encouragement from the government and NGOs that pastoralists started keeping camels (Asnake and Fana, 2012:137-138).

property rights involve a relationship between the right holder, others, and a governance structure to back up the claim. The two components of property rights are ‘the rule and its enforcement mechanism’. The rules may derive from state law, customary law, user group rules, and other frameworks, while enforcement of statutory law is usually the responsibility of the state, which means that the rights ground on formal laws. Property rights based on other types of rules may be enforced by customary authorities or by a user group, which manages the distribution of rights or members of that group ‘define or enforce rights among themselves’ (Schlager and Ostrom 1992, 254).

The term ‘property’ refers to rights and duties for both ‘participants and non-participants’ in resource extraction; the absence of rights and duties means that the institution of property does not exist (Stevenson, 1991:63). To put differently, ‘vesting property rights’ means defining who may participate in resource extraction and to what degree, and designating who makes the management decisions regarding the resource. Hallowell and Irving (1943:115) used the concept of property rights to further show how they exist in common property but not in an open access situation. That ‘rights and duties are relationships between persons and property rights are specifically relationships between persons regarding use of a thing’. Ostrom and Schlager (1996) point out that the rights are always the product of rules. For every right, rules exist that authorize particular actions in exercising that right. Formalizing these rules is not a necessity, as they may also be embedded in the society as customary norms. But, an important fact is that if an individual has a right, the other one has a commensurate duty to observe that right. This means that rights are only as secure as the duty of all others to respect them, and as this obligation is effectively implemented (Bromley & Cernea, 1989). Bruce (1998) notes that land tenure system can only be understood in relationship to the economic, political, and social systems which produce it and which it influences. In many contemporary states, a plurality of property ideologies, systems and legal institutions exist. As such, land tenure systems may be thought as sets of rules—at sometimes customs, at others laws—concerning people’s rights to land, together with the institutions that administer these rights and the resultant ways in which people hold the land (Downs and Reyna, 1988; Von Benda-Beckman *et al.*, 2006; FAO, 2011). The sets of rules define how access is granted to rights to use, control, and transfer land, as well as associated

responsibilities and restraints (FAO, 2002). Such plurality is a well-known phenomenon in pastoralist situations.

A property thus does not only refer to ownership of an object, but can include rights to various benefits flowing from that object. The existence and observance of these rights, duties, and other relationships distinguishes property from non-property, and one type of property from another as well. The ancient metaphor of ‘bundle of rights’ might help to illustrate this fact.

The concept of bundles of rights is developed by Schlager and Ostrom (1992) whose interest was primarily in analyzing common property regimes used by collectivities of resource users. Schlager and Ostrom distinguish between two major types of property rights, which they define as ‘authority to undertake particular actions related to a specific domain’ (Commons 1968 quoted in Schlager and Ostrom 1992, 250) and that are associated with increasing levels of command over benefit streams and resources bestowed upon the rights holders: *operational level* property rights and *collective choice* property rights (Schlager and Ostrom 1992, 250-251). Operational level property rights include the right to enter a defined physical property (access rights), and the right to obtain the ‘products’ of a resource (withdrawal rights), while collective choice property rights include (1) management rights (for example, to transform and use a resource); (2) exclusion rights (that is to determine who is entitled to access and withdrawal rights (Ostrom 2000) and who decides about the transfer of such entitlements); and (3) alienation rights (the right to sell or lease a resource (Ostrom 2000)).¹⁸The difference between operational level rights and collective choice rights is ‘exercising a right and participating in the definition of future rights to be exercised’ (Schlager and Ostrom, 1992, 251), which means that holders of *collective choice* rights determine operational rules (Schlager and Ostrom 1992, Ostrom 2000). However, it is assumed that their differentiation of bundles of rights is equally applicable for the analysis of other forms of land tenure regimes in particular on finding some hybrid types of regimes that are not completely state ownership, nor common property, nor private ownership.

¹⁸Ostrom recently (Ostrom 2000, 339) introduced some clarifications of the initial definition of types of rights in Schlager and Ostrom (1992) and Ostrom and Schlager (1996). This improved the applicability of the framework significantly.

Then, Schlager and Ostrom differentiate four types of users ('positions') with different bundles of rights. *Authorized users* hold access and withdrawal rights but 'lack the authority to devise their own harvesting rules' (Ostrom and Schlager, 1996:133). *Claimants* also have management rights, whereas *proprietors* also dispose of exclusion rights. Only *owners* hold all four types of rights (access, withdrawal, management, exclusion, and alienation) and can sell or lease but not bequeath their collective choice rights (Schlager and Ostrom, 1992:254; Ostrom and Schlager 1996, 149). A further clarification of the concept of 'bundles of rights associated with position' (Ostrom and Schlager 1996) led to the integration of a fifth user type—an *authorized entrant*. The authorized entrant holds solely access rights and replaced the *authorized user* as the position with the weakest bundle of rights.

Although Schlager and Ostrom's framework is useful to analyze types of users and bundles of rights, it cannot account for the 'politics' of land tenure relations. In other words, the bundles of rights approach could be misunderstood to depoliticize the political economy of land use. In principle, however, the bundles of rights approach allows a clarification of the tenure systems in use and the specific rights that a user holds and to what kind of benefit streams, or authority to particular actions these rights confer (Schlager and Ostrom 1992).

In this research, I would use the recent literature on property rights over land and other natural resources which commonly uses a broad classification along open access (no rights defined), public (held by the state), common (held by a community or group of users), and private (held by individuals or 'legal individuals') property regimes (Bromley, 1992). Yet, such classification can only be a rough guide to the effective entitlements that a right holder in one of the stylized property regimes holds in reality (*cf.* Benda- Beckmann and Benda-Beckmann 1999). This conceptualization of property rights also neglects the plethora of social relations that are defined through property, something that they call 'layers of social organization' (Benda-Beckmann and Benda-Beckmann, 1999:22) and that I need to analyze in order to understand what property means in different contexts. Although such distinction is related to statutory law, within customary law we can distinguish among individual- common- and- open access regimes.

2.7 Theoretical Underpinnings of Communal Property Regime

The use of land including its natural resources based on the institutions of ‘common property’ regime has been widely recognized by various fields of studies (Ciriacy-Wantrup and Bishop, 1975:713). However, many scholars and modern day economists have misunderstood the conception of common property (Ibid). Hence, it is important to review the theoretical considerations and central concepts regarding the tenure system and practices. Also, it is pertinent to brief on some semantic confusion and the theoretical assumptions that emanates from such understandings.

2.7.1 State-Public and Common Property Regimes

The notion of ‘common property’ is often confused with the concepts of ‘state or public property’ regime, as the latter often imply the collective nature of property rights. State or public property is often used to designate collective property whereby state is responsible for controlling the property (Barnes, 2009:154). Thus ownership rights of state or public vest in a public agency. This is to mean although the public may have the ‘rights to use’, the ‘title dead does not rest with the public’; it rather vests with the state. In such property system, the problem of allocation is solved by social, economic and political principles based on collective interest of the society (Enrico, 2004:54). In this regard, some argue that this situation makes public property a particularly good vehicle for protecting or serving public interests because ownership is detached from the usual self-serving interests associated with private property (Barnes, 2009:154). Barnes argues that such state or public property scheme appears to reduce collective property of the public to a special form of private property, with the State casting the role of an owner.

Scholars critical to state/public property argue that it does not generate a specific normative meaning if one takes the structure of ownership compared to private property. They argue that just like private property, a public authority typically may enjoy collective rights of possessions, management and use over a property with exclusion of the individuals groups or the public. This approach is also reflected in Demsetz’s definition of ‘state ownership of property’ which implies a situation in which ‘the state may exclude anyone from the use of a right as long as a state follows accepted political procedure for determining who may not use state-owned property’

(Demsetz, 1967:347). This definition raises the issue whether state property means public property in which state makes distinction between individuals who may or may not use such collective property. While public property is structured in the same way as private property ownership with rights such as excluding others, it is clear that the title is vested in a public agency that is responsible for controlling the property in the interest of the public (Barnes, 2009:155). However, the point at stake is whether public agency that holds the property clearly established right to use and access rules to ensure that such property is used to promote social, economic and cultural objectives of the public. The basic feature of public property thus lies in the way in which interest in the property is held rather than in the structure of ownership (Jetu, 2013).

The term 'communal ownership of property' is also used to describe 'common property regime'. Demsetz (1967:347) defines 'communal ownership of property' as 'the right which can be exercised by all members of the community in which the community denies to the state or to individual citizens the right to interfere with any person's right of community owned rights.' In this regard, the two classic examples of communally owned property are 'the right to till and hunt the land and the right to walk a city sidewalk' (Ibid). As Feeny *et al* (1990:4) and Charnley (1997:99) argue these classical examples clearly refer to both 'open access resource' and 'public property' regimes.¹⁹ It is 'open access' resources because the right of the community to till and to hunt the land is free of interference either from the state or individuals. And, it is 'public goods' in the sense that the right to walk a city sidewalk as a communally owned property right, where all members of the community enjoys the rights without any rivalry effect of such resource use without interference from the state or any individual. In this case, it could be said that Demsetz's communal property ownership is not clear as to whether it is construed to refer to common property regime or open access resources. The contemporary conception of common

¹⁹David Feeny *et al* (1990) defines communal property as the resource held by an identifiable community of interdependent users. These users exclude outsiders while regulating use by members of the local community. Within the community, rights to the resource are unlikely to be either exclusive or transferable; they are often rights of equal access and use. Others also use the phrase comprehensive communal property to refer a system in which no individual maintains an exclusive right to use pastoral resources; there are specific criteria that define who can and cannot become a member of the community of resource users; members of the group having usufructuary rights can expect to use the resources in the future, implying security of tenure; the community has developed a set of rules that guide how pastoral resources are to be used; and, there is a way of imposing sanctions on those who fail to adhere to these rules, which constitutes an enforcement mechanism (Charnley, 1997).

property regime as distinguished from open access resource implies a ‘group property’ where a well-defined set of users has access and control rights over the resource (Giordano, 2003:367).

2.7.2 Dichotomy of ‘Common Property’ Regime and ‘Open Access’ Resource

Literatures on common property regime won greater attention after Hardin’s influential piece entitled ‘The Tragedy of the Commons’ (Hardin, 1968). In his classic description of pasture commons, Hardin illustrates the word common property as a common property regime that has been applied to ‘any natural resource used in common which is susceptible to overexploitation. Hardin (1998:683) assumes that the commons are open for every Tom, Dick and Harry and that the commons without distinction are unmanaged.²⁰ As to Hardin, a better policy option to this recipe for disaster is private property, private enclosure of some, though not all, of the commons. Hardin’s thesis is straightforward:²¹

...the rationale herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another...and another...But this conclusion is reached by each and every rational herdsman sharing a commons. Therein is the tragedy...Freedom in the commons brings ruins to all...We might sell them off as private property. The tragedy of the commons is...averted by private property (Hardin, 1968:1244-1245).

Hardin’s piece was reinforced by Crowe(1969:1103), who cited England’s enclosure movement, intended to avert ‘a tragedy of overgrazing and lack of care and fertilization which resulted in erosion and underproduction...’As embodied in Hardin’s main work, the ‘old thinking’²²conceptualization about the commons is not nuanced. Under the old thinking communal lands are considered as conferring no individual access to and control over resources, necessarily requiring collective use, and the rules governing such resources were seen as

²⁰ Garrett Hardin has made this modification to his un-qualifying term “the commons” three decades after his seminal article: “To judge from the critical literature, the weightiest mistake in my synthesizing paper was the omission of the modifying adjective ‘unmanaged.’ In correcting this omission, one can generalize the practical conclusion in this way: “A managed commons’ describes either socialism or the privatism of free enterprise. Either one may work; either one may fail: ‘The devil is in the details.’ But with an unmanaged commons, you can forget about the devil: As overuse of resources reduces carrying capacity, ruin is inevitable.”

²¹ In relation to some resources having the nature of universal access such as the atmospheric air and the high seas, Hardin prescribes regulation based on ‘mutual coercion’. (1247) For the early critique of Hardin version of the tragedy of the commons, (see Beryl Crowe, 1969:1103-1107)

²²Muradu (2013) classify the perspectives on the commons broadly into the ‘old’ and ‘new’ thinking. The old thinking is articulated by Hardin and his followers by using the famous expression-“the tragedy of the commons”- whereas the new thinking is developed by Ostrom and her followers.

prohibiting land transfers to outsiders. The commons were likened to resources under the state of open access, no property case (Muradu, 2013:5-6).

Hardin's conception has been criticized for failure to distinguish between the concept of open access and that of common property (Ciriacy-Wantrup and Bishop, 1975:715) Ciriacy-Wantrup and Bishop argued that unlike open access resource, common property is not 'everybody's property'. This implies that potential resource users who are not members of a group of co-equal owners are excluded from common property (Ciriacy-Wantrup and Bishop, 1975:715; Burke, 2001:449-476). This insight has proven to be very useful in distinguishing common property from open access resources, and has played an important part in challenging the impacts of Hardin's influential article which is about the 'tragedy of open access commons' and not any 'tragedy of the commons' (Lynch, 1999:18). Here, a point at stake is the distinguishing salient features between the common property and open access resources.

In his synoptic definition, Stevenson (1991:46) states the term common property as a form of resource management in which a well-delineated group of competing users participate in extraction or use of a jointly held, fugitive resource according to explicitly or implicitly understood rules about who may take how much of the resource'. As to Stevenson, common property performs this task 'within the framework of group control, even as private property accomplishes them under individual control'. The number of users is limited, each user understands how much of the resource an individual may extract, and decisions about resource allocation are made by some group process. Ciriacy-Wantrup and Bishop added that the term common property refers to 'a distribution of property rights in resources in which a number of owners are co-equal in their rights to use the resource' (p.715).Such rights 'are not lost through non-use [...] but, it does not mean that the co-equal owners are necessarily equal with respect to the quantities or other specification of the resource each uses over a period of time. In such property regime, resources are subject to the rights of common use and not to a specific use right held by several owners. These writers argue that the concept of common property 'implies that potential resource users who are not members of a group of co-equal owners are excluded' (Ibid).

On the other hand, Stevenson defined open access resource as a 'deplete able, fugitive resource that are open to extraction by anyone, whose extraction is rivalry and whose exploitation leads to negative externalities for other users of the resource' (p.8). In other words, open access resources are susceptible to over-exploitation, because such resources are subject to use by any person who has the capability and desire to enter into extraction of it without any exclusion. Hence, open access resources could be tagged as 'everybody's property' as it represents 'nobody's property' (Ciriacy-Wantrup and Bishop, 1975:713). Now therefore the main difference between common property and open access resources depends on the concept of what implies property in the resource by certain users.

The right to 'possession' is presumed as a fundamental ownership rights that involves the right to exclusive physical control or the right to exclude others from the use or benefits of a thing (Becker, 1977:17). Above, it is signified that the main difference between common property and open access depends on the concept of what implies property in the resource by certain users. In common property regime at least possessory rights rests in the defined communal user of resources, while in open access resources there is no possession. Hence, possession right is an important element of comparison between open access resources and common property. This denotes possession right is positive right of holding the object and negative right of excluding others from its possession. This shows that in open access resources one does not have the right to exclude the other from extracting the resource nor does have the security of possessing a resource; in particular, physical units or a certain amount of the resource. As Ciriacy-Wantrup and Bishop, (1997:715) argued, thus describing open access resources- *res nullius*- as common property- *res communes*- is a self-defeating.

The old thinking attitude has now changed in literature in that it is a stereo-type to consider common property regimes as involving only collective production, as conferring the entire set of rights only to the group, as involving no tradability and being regulated by no norms and thus akin to open access resources (Brink *et al*, 5-7).

As Ostrom (1990) has popularized, the 'new thinking' involves in nuanced conceptualization of the commons and it no more views the commons as resources left in norm-less condition. The

concept of common property is often characterized by diversity of tenure regimes (Bruce, 2000/1). This means communal land tenure does not necessarily mean that members of the community would undertake production collectively. It is individual in some portion of the commons and it is collective in other portions. And common property does not mean that ‘the entire bundle of rights is given only to group as a whole...’ (Brink *et al*, 6). Bruce perceives that communal property is property right held by a group and the nature of the property the group may enjoy can be ownership or rights less than ownership such as usufruct or lease (p.12). Bromley (1992) as quoted in Bruce concisely sets common property as representing ‘...private property for the group’ (p.19). He maintains that common property is ‘property of a group held as a common pool resource that group members use simultaneously or sequentially’. Abebe(2009:3-4) says communal land and other associated natural resources are ultimately controlled by the concerned community or clan to the exclusion of non-members. This means that members of a certain community do have individual and/or common access to those resources, in exclusion of the outsiders. The members transfer these access rights to their descendants (Ibid). This does not necessarily mean that outsiders are totally excluded from using such properties. And, hence such communal resources are transferred to outsiders either in the form of sale or lease or outsiders are given access to communal resources in the form of sharecropping arrangements.

In view of Ostrom (1990), the world is supplied with non-tragic use of the commons. To this end, the issue is not whether the commons are feasible or how faster we shall privatize the commons, but rather under what conditions and at what scale the commons can be feasible. This follows that the direction towards finding an appropriate level or mix of governance of the commons to prevent spill over by outsiders and to prevent exploitation of some members from within has become the proper one than towards excluding outsiders (Fennels, 2011). Bruce opines that recent scholarship on common property as well as lessons learned from common resource management projects disprove the theory of the tragedy of the commons and confirm the prospect for prudent use of natural resources communally. He remarks that project experiences ‘almost always encourage greater control of resource use by local communities’ (p.20). In the views of development practitioners ‘local communities sometimes manage their resources effectively, even under substantial pressure’ (Ibid, p.19). The literature on the

commons has concluded that in common property, ‘a group with limited membership, the right to exclusive use of the resource, the opportunity to regulate resource use by group’s members has the incentive to manage its resources effectively, because the costs and benefits of disciplined, sustainable use are internalized by the group’ (Ostrom, 1986 as quoted in Bruce, 2000-1)

As Bruce articulates, there is not always ‘some necessary connection between common property as a legal regime and the nature of the resource, when in fact many resources can be managed as individual or as common property’. However, there are certain resources that by their very nature are less conveniently partitioned for management by households than by others. In respect of pastures and forests, ‘the costs of individualizing are high and it may be impractical...’ ‘Herders who can no longer move to accommodate highly variable rainfall patterns need to establish source of water for each discreet grazing unit...the costs of establishment are too high for small stockowners’ and enclosure of grazing land in such situation also results in denial of access to many small stockholders. In forests, ‘there are protection, management and opportunity costs associated with long term investment in trees, and these can more easily be borne by a community...’(p.19-20). In relation to forest resources, he writes that ‘common property is regarded as an efficient solution in forestry... [There] is the need to maintain access to critical resources for the many rather than for the few, and especially to preserve the access of the rural poor. In some cases, the survival of minority peoples depends on the safeguarding of those communities’ rights over their lands and forests’ (Ibid).

In relation to pastoral property right, Van den Brink *et al* advises retaining of some resources in common and the emergence of a new consensus about the manner in which the commons are expected to be treated.

[...] livestock production systems based on nomadism... is...rational response to economic conditions. In semi-arid and arid areas, rainfall variability, and hence the availability of water and fodder, may be so high, that livestock production will be based on a system which allows the herd to move over great distances. The spatial mobility of pastoral systems...exploits the economic benefits associated with flexibility—a benefit which can be shown to increase with increased rainfall variability. Pastoralists do not want fences because they know that their potential grazing area, given highly-variable rainfall, would be very large, and probably,

given the regularity of serious droughts, the fence could never be large enough...In order to prevent overgrazing and conflict, these pastoral access rights are not 'open access,' but specific rights restricted to a well-defined number of property right holders. The areas where such property rights apply are not 'unused' or 'vacant.' What pastoralists want are property rights that match their activities: access rights and rules to prevent over-use of the resource. Pastoralists would like their historic economic rights to be respected by the state and farming communities. The new consensus therefore recommends that governments create the possibility of resolving such potential conflicts and support dialogue so that communities can find ways of deciding together how the bundle of property rights should be allocated and enforced (Brink et al, 10-11; Tesfaye, 54).

Hardin's 'Tragedy of the Commons' is the story that has been much debated since its publication. Hardin's theory has had tremendous policy implications in analyzing and explaining over-exploitation in forests, overgrazing, and abuse of public lands, population problems, ground water depletion, and other problems of resource misallocation which becomes one of the most important mottos of privatization in the early stages of neo-liberalism (Stevenson, p.38). Hardin's thesis provided a relevant benchmark in the creation of a distorted vision about pastoralism, as customary institutions regulating communal access and utilization of natural resources were overlooked and pastoral resource tenure systems mislabeled as 'open access'. Hardin's thesis provided a rationalization for World Bank programs calling for sweeping privatization of land and commercialization of livestock production in Africa. Development planners and agronomists agreed that a major problem in Africa was one of increasing livestock productivity to feed Africa's growing population. The solution they saw was limiting the size of herds on rangeland, which could best be achieved by increased livestock marketing, using Western models of individual commercial ranches, rather than improving livestock productivity²³ (Simpson & Evangelou, 1984:64-65). Hence, development projects should focus on ending common property land tenure and increasing privatization because it promoted more rational land use for livestock production. In the absence of charges or regulations, such resources will come to be used excessively and result in deterioration and even destruction of the resource.

²³Through capital improvements in water facilities, disease control, or range improvement, which had been tried with varying success in the colonial and postcolonial period in Africa

Hardin's solution to alleviate the 'tragedy of the commons' was the privatization of community land. In recent times, however, an alternative form of privatization is the 'selling-off' of vast tracts of agricultural land resources to powerful multinational state and private investors. In Africa and Asia, the state's permission to act is accordingly stimulating 'land grabbing' and the expropriation of weak communities without any lobby. Land grabbing and expropriation of resources take place in an environment where customary rights can easily be breached and community practices do not count. This state of affairs could well be noted as a 'drama of the commons' (Ostrom *et al.* 2002)—a term that might more appropriately capture the situation. Muradu (2013) argues that Hardin's perspective of commons that goes for privatization rather than governance of the commons are not dead (at least) in the Ethiopian context where land grabbing is a severe problem in the name of development, considering that pastoral lands are 'vacant' or 'unused'.

2.8 Ethiopia's Development Narratives in the Lowland Peripheries

The history of pastoralists in Ethiopia reveals that they have been the most marginalized groups in the policy arena (Helland, 2002; Yemane, 2003). As such, during the Imperial regime (1930-1974), pastoralists were considered to be aimless 'nomads' who led a 'primitive' way of life (Abdulahi, 2004; Getachew, 2001). Besides, they were considered to have been using natural resources wastefully. Hence, the main ambit of the imperial government was to convert these 'primitive' societies into sedentary farmers who would utilize resources more efficiently. In other words, the government was intended to 'modernize' the pastoral communities. As a result, different government policies emphasized that efficient resource utilization was possible if the vast and 'inefficiently used' resources in pastoral areas came under the control of the state, legitimizing government intervention (Gebre, 2001). Modernist discourse views pastoralism as a stage for gradual development towards agro-pastoralism and finally sedentary agriculture.

The Amharic term '*tefmeret*' was used to suggest that the land being taken was either 'unutilized' or 'underutilized' while the notion of '*makenat*' was used to mean that the 'unutilized' land should be improved and the people therein be brought to the level of civilization under the guiding hands of the state. The fact that such terms were used to not merely to suggest that those areas are not populated, but that the areas are not populated with

civilized people in the sense they are unfamiliar to sedentary mode of cultivation, habit of building permanent dwelling houses and townships.

The imperial regime had advanced the argument to ‘modernize’ the lowland pastoral communities and promises made in 1960s and 1970s when the regime dispossessed land from Afar, Itu, Karrayu pastoralists who occupy the Awash Valley in eastern Ethiopia. With regard to adverse effects of commercial farming, Bondestam (1974:439) stated that ‘the introduction of cash crop agriculture was made possible by removing the indigenous people [Afar] from their land, thereby undermining their living conditions.’ Ayalew characterizes the consequences of state sponsored projects in the pastoral regions of Ethiopia as an attempt to convert the people into ‘wage laborer pastoralists.’ As a result, Bondestam advised the state ‘to stop the growth of commercial farming along the Awash Valley, and to concentrate on the continued survival of those Ethiopians who are still alive.’ Bekele and Padmanabhan (2008) recognized the fact that this imperial policy of land expropriation has continued to date persistent with its pronounced underdevelopment of the Afar and Karrayu who have been pushed to the drier fringes of these projects. The result has been pervasive land dispossession and tenure insecurity.

The *Derg* had pursued a combination of the Soviet and Chinese hybrid models of industrialization, state farms, collectivization of villages, cooperative farms, self-reliance and import substitution. The *Derg* had launched a forced campaign of villagization (Giorgis 1989)²⁴, where peasants were congregated into compact village settlements or resettled from the north to places in the south often through pure coercion. As a result, by the end of the 1980s, close to half a million peasants had been resettled and the state had overseen the construction of new villages where ‘nearly 40 percent of the country’s rural population, numbering about 14 million peasants, had forcibly been ‘villagized’ (Berisso, 2002:117). However, these policies did not lead to intensive investment and economic take-off that had transformed the Soviet economy in the 1930’s, nor could the *Derg* regime implement the Chinese path to development. The *Derg* regime collapsed with its unsuccessful state-farms and villagization projects in 1991.

²⁴ Villagization was following the Great Famine of 1984 which perished an estimated 250,000 to 500,000 peasants.

The FDRE state's basic market-oriented developmental strategy has been based on the commercialization of smallholder agriculture (MoARD 2006: 3). As a result, between 2003 and 2010 the government carried out an extensive certification and titling program that has been much praised by the World Bank for its low-cost approach. But these are not free hold titles that can be used as collateral. They merely certify the use-rights of the smallholders (Holden, Deininger, and Gebru: 2007).

The rationale for this strategy was based on the recognition of two key features of the country's socio-economic reality in addition to political reasons. First, given the prevalence of smallholder agriculture with low capital inputs, a strategy geared to increasing their productivity through inputs such as chemical and organic fertilizers and improved seeds could generate high returns without creating major social dislocations. The second reason for this emphasis on smallholder agriculture concerns food security. Here too the government strongly argues that the mere expansion in total food production is no guarantee that the poor would be in a position to access it in a market-mediated system of grain provisioning. A universe of smallholder agriculture would ensure that peasant households will continue to have direct access to basic food grains.

While this reaffirmation of support for smallholder agriculture would seem expedient for political and social reasons, state interest in foreign investment has stirred in the last few years. Two investment zones have recently been opened to foreign private investors. In small enclaves in the highlands themselves, investors interested in forms of horticulture cultivation that require heavy capital and labor inputs on limited amounts of land have been awarded concessions. Partly driven by Dutch investment companies, this is the case with the growing floriculture industry which has been expanding prodigiously over the past few years (Meles and Helmsing 2010). Given the perishable nature of these products, horticulture can only be undertaken in areas close to a developed transport infrastructure.

The fact that no extensive expropriation of smallholders is envisioned in the highlands, the cultural core of the old empire, in the lowland peripheries state policy boldly echoes *terra nullius* narratives of unproductive and empty spaces that need to be made productive through

agribusiness investments. The 2005 Poverty Reduction Strategy Paper (PRSP) of FDRE Government embraced foreign and domestic investment in large-scale commercial agriculture on ‘unused’ lands (MOARD 2006). The kind of agriculture that is suitable cannot be labor intensive instead rely on mechanized farming requiring considerable outlays of capital for irrigation systems. These agricultural investments sites are located in the very regions that historically constituted the imperial periphery, and their conversion into mechanized agriculture entails enclosing the land and water resources used by pastoralists and historically marginalized communities.

The imperial regime’s ‘modernization’ narrative has been expressed recently by AbayTsehaye²⁵ in responding to critiques directed against a multi-billion dollars export oriented sugar plantation project. The Omo-Kuraz Project underway in the pastoral areas of South Omo on about 175,000 ha of land:

The farms are in barren areas... the plan is to transform South Omo residents socially, economically and culturally... Groups campaigning against the plans have selfish motives. They want these people to remain as primitive as they used to be, as poor as they used to be, as naked as they used to be, so that they will be specimens for research and an agenda for raising funds...Previously impoverished communities will be ‘far better off’ as they will benefit from irrigated land, improved social services, support from agricultural experts and job opportunities.

Abay Tsehaye echoed the thinking of the late Prime Minister Meles Zenawi who pronounced the development endeavors to be undertaken in South Omo pastoralist community in order to transform the ‘backward’ livelihoods and lifestyles of pastoralists (Meles Zenawi, 2011).

The available literature shows that the service of the state is increasingly made at the disposal of investors as if Ethiopia’s revolutionary slogan ‘land to tillers’ has now

²⁵ A senior minister in the current government

changed into ‘land to investors’.²⁶The past state projects appear to be still present with us today like ‘villagization’ program,²⁷ and large-scale agricultural development projects in pastoral and agro-pastoral communities, although the developments narratives have not worked to the advantage of concerned communities, as the state justifies projects carried out on the commons in terms of generation of more public benefits.

2.9 Conclusion

The perspectives on common property regime have been popularized after Hardin’s (1968) piece of work on the ‘Tragedy of the Commons’. Hardin’s conception of common property analyzed how the uses of pasture ‘commons’ end up in tragedy due to its susceptibility to over exploitation. Hardin’s theory has been extremely powerful in analyzing and explaining over-exploitation of ‘common’ land and its resources²⁸ in different parts of the world (Stevenson, 1991:8). However, subsequent writers criticized Hardin’s work for his failure to distinguish ‘open access’ resources from ‘common property’ regime. They argue that the supposed tragedy results really applies only to open access resources which of course Hardin himself has acknowledged that it should have been ‘Tragedy of the Open Access Commons.’(Kaplowitz, 2000:65) Schlager and Ostrom (1992:249) have also observed that whilst private and state property rights are clearly understood, many people even prominent scholars conceive open access resource and common property regime with confusion.²⁹

Hardin’s work has been challenged for failure to identify attributes that make difference between communal property and open access resources. The seminal work of Ostrom together with a growing literature on the commons has seriously interrogated Hardin’s conception of the tragedy

²⁶ For analysis of current trends in Ethiopia regarding transfer of rural land, including communal resources, to investors, see DessalegnRahmato, Land to Investors: Large Scale Land Transfers in Ethiopia (Addis Ababa: Forum for Social Studies, 2011).

²⁷ A complaint filed on behalf of people in Gambella, south western Ethiopia, (which is currently the site of a massive large scale commercial agriculture) alleging that the state is using funds dedicated to the Protection of Basic Services (PBS) by the World Bank and the UK Department for International Development to force them off their land under an ongoing villagization program and which the Bank Inspection Panel has called for an adequate investigation into the complaint.

²⁸ In forests, overgrazing, abuses of public lands, population problems, ground water depletion, and other problems of resource misallocation

²⁹ Even scholars, who are meticulous theorists and observers of behavior related to natural resource systems, use the terms ‘open access’ and ‘common property systems’ interchangeably.

of the commons. Although Hardin's theory has been criticized, governments still justify their intervention in communal property regime under the guise of such obsolete theory. In Africa and Asia, Hardin's theory is becoming a grand-norm from which they derive the force of scientific validity for policy and legal intervention in dismantling pastoralists' communal landholding rights. Hardin's proposed solution for the tragedy was either private or public property regime as alternative possible solution. However, these days an alternative form of privatization is the 'selling-off' of vast tracts of agricultural land resources to powerful multinational state and private investors in Africa and Asia. The state's permission to act is accordingly stimulating land grabbing and the expropriation of weak communities without any lobby. In this regard Muradu (2013) states that an entrenched thinking that echoes for the dismantling of the commons in favor of exclusive private property cannot be buried easily especially when it suits the interests of the elites. It is a convenient device to justify grabbing the commons. Ethiopian State development narratives considered the lowland peripheries as 'unused' and 'barren' land, and hence these lands should be held by the state and improved. The state conceives that private land enclosure of pastoral areas followed by some sorts of sedentary activities would add value to the land, which leads to giving property rights thereon to the improver (Muradu, 2013). The state argues that the commons in sparsely populated lowland parts of Ethiopia would be reserved for large plantations to generate employment for the people, and technology transfer and foreign currency. The state considers those benefits generating investment activities on 'empty land' would ultimately lead to civilization of the pre-modern pastoral people.

The controversial conceptual and theoretical underpinnings on the pastoral commons are addressed here. Theories need to be substantiated by legal instruments which bind States to comply with Human Rights instruments protecting pastoral land rights. The next chapter will be presenting the international and regional legal instruments that guarantee indigenous peoples right to land.

CHAPTER THREE

3 NORMATIVE FRAMEWORKS FOR PROTECTION OF PASTORAL LAND RIGHTS UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHT INSTRUMENTS

3.1 Introduction

In the previous chapter, we looked at the conceptual and theoretical frameworks proposed by scholars on the pastoral ‘communal landholding’ and the solutions to alleviate tragedy of the commons, and changing tendency of the tragedy of the commons to selling-off the commons in Africa and Asia. The focus of this chapter is on international human rights instruments related to the rights of indigenous or pastoral communities to their communal landholdings. I find that it is appropriate to first look into relevant international instruments before addressing the legal status of communal landholding in Ethiopia. Many international human rights instruments and environmental protection provide for collective or group rights of indigenous communities, including the right to their communally possessed lands, which they have special relations to. However, this chapter does not provide a full treatment of indigenous rights in international law as it is beyond the scope of this work, but it highlights a few points related to indigenous peoples’ right to land and territories and resources. The first provides an overview of indigenous peoples’ rights as defined by existing international human rights instruments. The next section briefly notes some of the main rights enshrined under the African Charter on Human and Peoples right in the context of standard setting exercises relating to indigenous peoples.

3.2 International Human Rights Instruments

The term ‘indigenous peoples’ is named in various international instruments differently such as ‘tribal peoples’, ‘local community’, ‘traditional community’, ‘minority group’. The ILO for example uses the names ‘indigenous’, ‘tribal’ and ‘semi-tribal’ peoples³⁰ while the African Commission on Human and Peoples’ Rights (ACHPR) uses the terms ‘indigenous

³⁰ Article 2(1) of the 1957 ILO Convention 107 on the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries

population/communities’.³¹ However, a detailed discussion of these concepts turn-by-turn, with no standard legal meanings, is beyond the scope and purpose of this thesis, as I have already defined what pastoralism is and how it differs from the other sections of country’s population. Thus, for the purpose of this thesis and with all due regard to the complexity of these notions, I have chosen to use the definition provided in ILO Convention 169. The ILO Convention 169 defined the term ‘people’ as ‘tribal peoples whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions’ (Art 1 (1) (a)). The Convention goes further and includes peoples ‘who are regarded as indigenous on account of their descent from the populations which inhabited the country ... and who, irrespective of their legal status, retain some or all of their own social, economic, and political institutions’ (Article 1(1)(b)). In Africa, the concept of ‘indigenous peoples’ is not understood in its ‘first peoples in a land’ sense, but rather it refers to those peoples whose ways of life, attachment to particular lands and social and political standing in relation to other more dominant groups have resulted in their substantial marginalization within modern African states.³² The African Commission’s Working Group on Indigenous Populations/ Communities identified the Somalis, Afars, Borena, Kereyu (Oromo) and Nuer as Indigenous peoples in Ethiopia. Yet, the authenticity of the process of identification has been challenged as ill-informed and unsystematic, and the list represents a blurred catalogue of indigenous peoples in Africa (Bojosi & Wachira, 2006:400).³³ The Ethiopian pastoral communities can be regarded as indigenous due to their descent from the rest of the Ethiopian population, and have retained (at least) some of their socio-economic, cultural and political

³¹ ACHPR resolution on the Rights of Indigenous Populations/Communities, OAU Rev. 1., 28th Ordinary Session, Cotonou, Benin, November 6, 2000.

³² ACHPR resolution on the adoption of the report of the African Commission's Working Group on Indigenous Population/Communities', Ref. ACHPR/Res.65(XXXIV)03. This resolution, which was adopted by the 53 signatory states of the ACHPR, provides that ‘certain marginalized groups are discriminated in particular ways because of their particular culture, mode of production and marginalized position within the state; a form of discrimination that other groups within the state do not suffer from. The call of these marginalized groups to protection of their rights is a legitimate call to alleviate this particular form of discrimination.’

³³ ACHPR/Res 65 (XXXIV) 03 Resolution on the Adoption of the Report of the African Commission’s Working Group on Indigenous Populations/ Communities (Resolution on the Adoption of the Report), p.16 The report is entitled ‘Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, Submitted in accordance with the Resolution on the Rights of Indigenous Populations/Communities in Africa adopted by the African Commission at its 28th ordinary session held in Cotonou, Benin in October 2000, IWGIA & ACHPR, 87 (2005), p.85, available at: <http://www.iwgia.org/sw163.asp>, accessed on 15 January 2014.

systems and institutions. In this context, I believe that this definition is applicable to pastoralist communities in Ethiopia, although the list is blurred.

Indigenous peoples' rights have assumed an important place in international human rights law and a discrete body of law confirming and protecting the individual and collective rights of indigenous peoples has emerged and concretized in the past 20 years. This body of law is still expanding and developing through the decisions of international human rights bodies; through recognition and codification of Indigenous rights in international instruments presently under consideration by the United Nations and regional instruments; through incorporation of indigenous rights in conservation, environmental and development-related instruments and policies; and through incorporation of these rights into domestic law and practice.

This evolution of juridical thought and practice has led many to conclude that some indigenous rights have attained the status of customary international law and are therefore generally binding on states (Anaya 1996, 49-58; Wiessner, 1999, 128; R. Torres 1991; IornsMagallanes, 1999, 238 & 242 and; Anaya & Williams 2001). Among others, Wiessner (1999) for example concluded that state practice permits the 'identification of specific rules of a customary international law of indigenous peoples.' These rules relate to the following areas:

First, indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life. Second, they hold the right to political, economic and social self-determination, including a wide range of autonomy and the maintenance and strengthening of their own systems of justice. Third, indigenous peoples have a right to demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used. Fourth, governments are to honor and faithfully observe their treaty commitments to indigenous nations (Ibid).

More often, it is stated that indigenous peoples' rights are addressed only under International Labor Organization Convention (hereafter ILO) No. 169. In fact, ILO No. 169, together with its predecessor ILO No. 107, is the only binding international treaty to exclusively deal with

Indigenous and Tribal peoples' rights.³⁴ ILO 169 is based largely upon the principle that Indigenous and Tribal peoples should 'enjoy as much control as possible over their own economic, social and cultural development.' However, indigenous peoples' rights are recognized and exist in well-established jurisprudence under international and regional human rights instruments and procedures.³⁵ The rights recognized in these international and regional instruments relate to, *inter alia*, ownership, possession and use of lands and resources of traditionally occupied and used cultural integrity, equal protection or nondiscrimination, self-development, self-determination, autonomy and self-government, participation in decision-making and the right to consent to activities, and to health and a healthy environment.

3.2.1 UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169

The United Nations Declaration on the Rights of Indigenous Peoples (hereafter UNDRIP)³⁶ sets forth an all-encompassing overview of indigenous peoples' rights and aspiration principles to be applied in state relations with indigenous peoples. The declaration provides for rights of indigenous peoples to their ancestral rights and to the natural resources located on or under those lands. ILO convention 169 contains more articles on Indigenous and Tribal land and resource

³⁴As of October 2001, the following 15 states have ratified ILO 169: Mexico, Norway, Costa Rica, Colombia, Denmark, Ecuador, Fiji, Guatemala, The Netherlands, Peru, Bolivia, Honduras, Venezuela, Argentina and Paraguay. Austria has ratified, but has yet to transmit its instrument of ratification to the ILO. The following states have submitted it to their national legislatures for ratification or are discussing ratification: Brazil, Chile, The Philippines, Finland, El Salvador, Russian Federation, Panama, and Sri Lanka.

³⁵ For example, both United Nations and Inter-American Human Rights Instruments have incorporated indigenous peoples' rights.

³⁶In 2007, 143 member countries adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in which the control and enjoyment of land are core principles. Thirteen African countries are members of the Human Rights Council, yet only four voted in favor of UN Declaration. African States expressed concern and contributed to the deferral of UN Declaration's adoption by the UN General Assembly. The AU adopted a unified position expressing concern regarding the UN Declaration, and welcomed the deferral of the UN Declaration's discussion by the UN. The AU mandated the African group at the UN to guard Africa's interests and concerns about the 'political, economic, social and constitutional implications' of UN Declaration. The African group released a memorandum setting out their concerns, and proposed some further amendments to UN Declaration. In March 2007, a group of African academics issued a reply countering the African group's Aide Memoire. At its 41st session, in May 2007, the ACHPR responded with the adoption of an Advisory Opinion on the UN Declaration, in which it tried to 'allay some of the concerns raised surrounding the human rights of indigenous populations' and reiterated 'its availability for any collaborative endeavor with African States in this regard with a view to the speedy adoption of the Declaration'. On September 7, 2007 the UN General Assembly adopted the Declaration after some amendments to the initial text. Ethiopia was one to have been registered an absent vote among the fifteen African states (Bojosi and Mukundi Wachira, 2006:400). This shows Ethiopia's neglect for the existence of indigenous peoples in its territories. The debate however should not be who is indigenous and who is not, but rather what is important is articulating 'the concrete human rights concerns of these peoples whose problems resemble those of indigenous people all over the world'.

rights, basing these rights on occupation and use of land and resources rather than on grants from the state, and a number of provisions relating to consultation with the objective of achieving consent and participation in decision-making. Let's briefly look at some of indigenous peoples' rights to land incorporated in these instruments.

3.2.1.1 Right to Maintain Spiritual Relationship with Ancestral Land

With regard to indigenous peoples right to maintain spiritual relationship with their ancestral lands, the declaration states that *'Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard'* (UNDIPR, art. 25).

The basis of indigenous land rights is the spiritual relationship that indigenous peoples have with their ancestral lands. Any discussion of these rights must begin with an understanding of that fundamental relationship. The UN Declaration and most other international sources recognize this spiritual and cultural relationship between indigenous people and their traditional lands. Anaya³⁷ (2004) pronounces that 'their ancestral roots are embedded in the lands in which they live or in which they have lived'. The cultural and spiritual identity of indigenous peoples is inseparably linked to their traditional territory. ILO mandates states to respect the special cultural importance and spiritual values embodied in indigenous peoples' relationship with their lands and territories (ILO, art. 13(1)). These ancestral lands, which contain the sacred sites where generations of ancestors have worshiped, are essential to the transmission of their culture and beliefs to future generations. In short, their traditional lands embody their legacy to the future.

3.2.1.2 Traditional Ownership of Land and Its Resources

The UNDIPR assumes that indigenous peoples own land and its resources traditionally. *'Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or*

³⁷James Anaya was the United Nations Rapporteur on the Rights of Indigenous Peoples. On March 26, 2008, the United Nations Human Rights Council appointed Prof. S. James Anaya to serve for an initial period of three years as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. A United Nations rapporteur reports to the Human Rights Council on a particular subject.

use, as well as those which they have otherwise acquired' (Article 26(1) and (2)). This implies that indigenous peoples possessed their lands before the colonial period. Indigenous peoples hold much of their land collectively with ownership centered on the group or community rather than privately. This communal land tenure system reflects their 'collective understanding of the concepts of property and possession.'

3.2.1.3 Titling and Demarcation of Ancestral Land

The UNDIPR directs states to officially title and demarcate indigenous ancestral land. '*States shall give legal recognition and protection to traditionally owned indigenous lands, territories and resources*' (Article 26(3)).³⁸ Traditional possession of indigenous peoples' ancestral lands entitles them to official state recognition of their ownership and to the registration of title to their land. The state must also establish the official boundaries to the land in consultation with the indigenous peoples to grant title to the land. ILO requires governments recognize and respect the special spiritual, cultural and economic relationship that indigenous peoples have with their lands and territories, especially 'the collective aspects of this relationship (13(1)). Article 14 of ILO requires that indigenous peoples collective 'rights of ownership and possession . . . over the lands which they traditionally occupy shall be recognized' and that states 'shall take steps as necessary to identify' these lands and to 'guarantee effective protection of indigenous peoples' rights of ownership and possession.' Article 13(2) of ILO defines the term 'lands' to include 'the concept of territories, which covers the total environment of the areas which the peoples concerned occupies or otherwise use. State recognition of indigenous ancestral land rights under constitution is not sufficient in itself. Indigenous rights must be protected through land titles (Inter-American Human Right Court, 2005).³⁹ In addition to international treaties, organizations, such as the World Bank, which have control of much needed funds, can use the power of the

³⁸Under article 27, the UN Declaration also mandates that 'states shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

³⁹YakyeAxa Indigenous Community vs. Paraguay, 2005 Inter-American Court of Human Rights (ser. C) No. 125, 143 (June 17, 2005); cf. Amnesty International, *Brazil: 'Foreigners in Our Own Country': Indigenous Peoples in Brazil*, available at <http://www.amnesty.org/en/library/info/AMR19/002/2005>, (discussing the implementation problems with Brazil's constitutional goal of demarcating all Indian land).

purse to encourage states to fulfill their international duty to demarcate and title indigenous and tribal lands(Pasqualucci, 2009).

3.2.1.4 State Recognition of Ancestral Land

The UNDIPR requires states to observe indigenous land tenure systems when recognizing indigenous ancestral lands. *'State recognition of traditionally-owned indigenous lands, territories and resources shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned'* (UNDIPR, Article 26(3)).When states recognize indigenous land rights; they must respect the customs, traditions, and land tenure systems of indigenous peoples. As stated in the preamble of the UNDIPR, indigenous peoples *'possess collective rights which are indispensable for their existence, well-being, and integral development as peoples.'* *'Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources ...'*(UNDIPR, preamble). Indigenous customary land tenure emphasizes collective land ownership and use by the community.

3.2.1.5 Right to Restitution of Ancestral Land

The UNDIPR asserts that indigenous peoples have rights to restitution of their ancestral lands. It states that *'Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent'* (UNDIPR, Art.28 (1)).

This implies that indigenous peoples who have involuntarily lost possession of their ancestral lands continue to have a right to their property, even though they lack title, unless the lands have been transferred legitimately and in good faith to other parties. Members of indigenous peoples who involuntarily lost possession of their lands, which have been legitimately transferred to innocent third parties, may have the right to recover them or alternately to obtain other lands of equal size and quality.

3.2.1.6 Right to Alternative Land and Compensation

The UNDIPR provides for indigenous peoples rights to alternative lands or compensation when the state cannot return ancestral communal land. Article 28(2) of UNDIPR reads that *‘Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress’*. In all instances however states might not return ancestral land to indigenous peoples. In such impossible instances, the state should, with the concurrence of the indigenous peoples involved, attempt to find them alternative lands. The alternative lands should be compatible with the customs and values of the people and their use of the land. ILO provides that in case where ancestral land cannot be returned to indigenous people, the people shall be given ‘lands of quality and legal status at least equal to that of the lands previously occupied by them’ (ILO, art. 16(4)). The substitute lands must be ‘suitable to provide for their present needs and future development’ (Ibid). These lands should be identified through the agreement of the people and the state, or, if agreement cannot be reached, through appropriate procedures. Alternately, with their agreement indigenous peoples should be given compensation for the land. That compensation should principally take into account ‘the meaning of the land for them’ (Ibid).

3.2.1.7 Consultation and Free, Informed and Prior Consent

Development projects are particularly acute threats to indigenous peoples’ rights and well-beings. These projects and operations have had and continue to have a devastating impact on indigenous peoples, undermining their ability to sustain themselves physically and culturally (Robert, 2004:1)). It is very important to secure the consent of, or at least to have consultation with indigenous local communities in decisions affecting them. It is necessary to appreciate the distinction between ‘consent’ and ‘consultation’. Their difference lies on being substantive and procedural. While consent is essentially a substantive right, consultation is predominantly procedural.⁴⁰ Consultation only requires States to avoid settled outcomes, and the willingness to negotiate geared towards obtaining consent, not just to explain and convince. It is weak as it only

⁴⁰ Consultation is principally included in ILO Convention No.169 (articles 6 &16), while consent is entrenched in the UN Declaration (UN Declaration, 10, 11, 19, 28, 30, and 32).

implies ‘an exchange of views devoid of any decision making role’.⁴¹ Even the agenda is set by the State; hence, only defective procedures undermine this guarantee (Bass *et al*, 2003). The right to prior informed consent, however, limits the State’s role to providing the necessary information for indigenous peoples to make appropriate decisions. The final say as well as the determination of the process lie in the discretion of indigenous peoples (Alex Page, 2004:19).

The UNDIPR requires consultation and free, informed and prior consent of indigenous peoples.

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources . . . States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources(Article 32 (1 and 2)).

ILO recognizes that Indigenous and Tribal peoples ‘have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development’ (Art. 7(1)).

The general consensus at the very least is that indigenous peoples must be consulted prior to the commencement of any projects on their land. As such, state and international decisions that affect indigenous peoples should only be made in conjunction with the active participation of the people in question. ILO states that ‘any action planned or taken by the state with respect to indigenous peoples should be undertaken ‘with the participation of the peoples concerned’ (ILO, Art.2). The consultations must be ‘culturally appropriate’ and ‘procedurally adequate’ in the sense that the indigenous peoples must have access to sufficient information to permit them to participate meaningfully in the decisions that would affect their communities (Anaya,

⁴¹ Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Population 23rd Session ‘Standard Setting Legal Commentary on the concept of FPIC’ Expanded working paper submitted by Mrs Antoanella-Iulia Motoc and the Tebtebba Foundation, E/CN.4/Sub.2/AC.4/2005/2 (21 June 2005), p.5

2005).⁴²Moreover, measures adopted by states to protect indigenous peoples ‘shall not be contrary to the freely-expressed wishes of the peoples concerned’ (ILO, Art. 4(2))⁴³

In this regard, World Bank policy specifies that the Bank will refuse to provide financing unless states engage in ‘free, prior, and informed consultation’ with the indigenous communities who would be affected by the project (World Bank, 2005).⁴⁴The required consultation must be ‘culturally appropriate’. This consultation results in broad community-based indigenous support for the project. The Bank, however, specifies that the requirement of free, prior, and informed consultation ‘does not constitute a veto right for individuals or groups.’ Veto power by groups is not as essential if the Bank refuses to fund any project that does not have the broad based support of the indigenous communities that will be affected by the project (Pasqualucci, 2009).

3.2.1.8 Benefit Sharing

Indigenous peoples have right to share benefit deriving from their resources. The UNDP pronounces that ‘*states shall provide effective mechanisms for just and fair redress for any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources*’ (Article 32(3)). The effects of such projects on indigenous peoples may include the loss of their ancestral lands, depletion of the resources necessary for their cultural or even physical survival, or the pollution and destruction of their environment (Stavenhagen, 2003). Article 15(2) of ILO convention provides that even when the state retains ownership of natural resources; it must share the benefits of any exploitation activities on ancestral lands with the indigenous peoples. ILO provides that ‘[t]he peoples concerned shall wherever possible participate in the benefits of

⁴² “The concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord.” Id. at 7 n.19 (quoting ILO, Report of the Committee Set up to Examine the Representation Alleging Non-Observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), Made Under Article 24 of the ILO Constitution by the *Confederación Ecuatoriana de Organizaciones Sindicales Libres* (CEOSL), ILO Doc. GB.282/14/2, 38 (Nov. 14, 2001)).

⁴³ See also U.N. Human Rights Comm., *General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights*, 7: U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994) (observing that ‘[t]he enjoyment of [indigenous] rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them’).

⁴⁴ The required consultation must include both men and women and be intergenerational in that it also addresses the concerns of youth and children.

natural resources exploration or exploitation activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities. 'Such benefits could entail compensatory damages or the receipt of services from projects. The indigenous peoples should be considered partners in these projects with their contribution being their natural resources, which would entitle them to share in the benefits.'⁴⁵The World Bank (2005:18-19)postulates that when the Bank funds projects for the commercial development of natural or cultural resources on traditionally indigenous lands, the indigenous peoples must 'share equitably in the benefits to be derived from such commercial development'; those benefits must be received in a 'culturally appropriate way'; and must be 'gender and intergenerationally inclusive.'⁴⁶The World Bank policies require that indigenous peoples must receive benefits and compensation that are 'at least equivalent to that to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land' (Ibid).

As regards to the implication of the UDIPR for Ethiopia, the fact that pastoral communities in Ethiopia have traits of indigenous peoples elsewhere, and authoritativeness of it in Human Rights matters would have a bearing effect on Ethiopia. Though UDIPR has no binding force like a treaty, it is not simply a statement either; but to the contrary, some of past General Assembly declarations have gained significant status in international law (Lassa Oppenhe, 1992:424). The name of a 'Declaration' simply gives the document a certain solemnity (Anaya and Wiessner, 2007). In spite of their non- binding status, other General Assembly Declarations in the field of Human Rights have risen to extraordinary significance. In respect to human right standards, the Universal Declaration on Human Rights is frequently cited as an authoritative document (Ibid). Such a declaration can furthermore be regarded as an element of state practice, and thus, among others, can lead to the development of new customary international law (Shaw, 2008:1212). Anaya⁴⁷ argues that the UN Declaration on the Rights of Indigenous Peoples constitutes 'an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law

⁴⁵Stavenhagen (2003), *Report of the Special Rapporteur on Human Rights and Fundamental Freedoms*, 144, 52 (referring specifically to a project in India) The concept of partnership could be for every such project, assuming, of course that the indigenous people were in agreement.

⁴⁶Natural resources that may be commercially developed may include hydrocarbon resources, minerals, water, forests, or hunting/fishing grounds.

⁴⁷ UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples

(...)⁴⁸. As Bartolomé Clavero did, various scholars have joined Anaya in this understanding stating that:

The Draft Declaration of Indigenous Rights is but a new step in the development of the international human rights regime that builds on the Universal Declaration on Human Rights. It is presented in declarative terms exactly because the instrument does not create these rights out of thin air, but instead confirms their prior existence and gives them practical meaning (Bartolomé Clavero, 2005:43).

3.2.2 ICCPR and ICESCR

Human rights principles articulated in the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), including principles of self-determination, participation, non-discrimination, cultural integrity, and social and economic welfare, are foundational to the specific rights of indigenous peoples.

Articles 1 and 27 of ICCPR are especially relevant to indigenous peoples' right to land and its resources protection. Article 27 is the basis for much of the Human Rights Committee's (HRC) jurisprudence.⁴⁹ Article 1 set out that the right to self-determination is defined as the right of all peoples to freely determine their political status to freely pursue their economic, social and cultural development and to be secure in their means of subsistence. This right has been applied to indigenous peoples by the Human Rights Committee (HRC) while examining state reports under the article 40 of the ICCPR. In its concluding observations on Canada's fourth periodic report, the HRC emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (article 1(2)). The HRC recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The HRC also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.⁵⁰

⁴⁸ UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, UN Doc. A/HRC/9/9 of 11 August 2008

⁴⁹ The ICCPR has been ratified by 145 States as of January 2000.

⁵⁰ *Concluding observations of the Human Rights Committee: Canada, 07/04/99*, at paragraph 8, UN Document CCPR/C/79/Add.105 (Concluding Observations/Comments) (1999), The HRC stated that with reference to the conclusion by the Royal Commission on Aboriginal Peoples (RCAP) that without a greater share of lands and resources institutions of aboriginal self-government will fail.

The HRC reached a similar conclusion in its concluding observations on the reports of Mexico and Norway issued in 1999 and Australia in 2000, that the states implement and respect the right of indigenous peoples to self-determination, particularly in connection with their traditional lands.⁵¹The HRC has also related the right to self-determination to the right of indigenous peoples to enjoy their culture under Article 27 of the ICCPR.⁵²

ICCPR protects linguistic, cultural and religious rights and, in the case of indigenous peoples, includes, among others, land and resource, subsistence and participation rights (Article 27).⁵³ The HRC published a General Comment in 1994 which elaborates on indigenous rights under article 27⁵⁴ and, in July 2000, stated that article 27 requires that ‘necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands ...’ and that ‘securing continuation and sustainability of traditional forms of economy of indigenous minorities, and protection of sites of religious or cultural significance for such minorities ... must be protected under article 27....’⁵⁵

The ICCPR and ICESCR, while reflecting on the anti-colonial context, shared a pivotal commitment, that ‘all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence’ (ICCPR, Art. 1.2, and ICESCR, Art. 1.2).

⁵¹*Concluding observations of the Human Rights Committee: Mexico*, UN Doc., CCPR/C/79/Add.109 (1999), paragraph 19*concluding observations of the Human Rights Committee: Norway*. UN Doc. CCPR/C/79/Add.112 (1999), paras. 10 and 17; and *Concluding observations of the Human Rights Committee: Australia. 28/07/2000. CCPR/CO/69/AUS (Concluding Observations/Comments)*, para 8

⁵²*Apirana Mahuika et al. vs. New Zealand* (Communication No. 547/1993, 15/11/2000)), UN Doc., CCPR/C/70/D/547/1993 (2000), at paragraph 9.2

⁵³ Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada, *Report of the Human Rights Committee*, 45 UN GAOR Supp. (No.43), UN Doc. A/45/40, vol. 2 (1990) See also, Kitok vs. Sweden, *Report of the Human Rights Committee*, 43 UN GAOR Supp. (No.40) UN Doc. A/43/40; and *I. Lansman et al. vs. Finland* (Communication No. 511/1992), CCPR/C/52/D/511/1992

⁵⁴*General Comment No. 23 (50) (art. 27), adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994*, UN Doc. CCPR/C/21/Rev.1/Add.5

⁵⁵*Concluding observations of the Human Rights Committee: Australia, 28/07/2000. CCPR/CO/69/AUS., (Concluding Observations/Comments)*, at paragraphs 10 and 11

The HRC on Economic, Social and Cultural Rights oversees the implementation of the ICESCR. In its General Comment 21, it notes that the ‘strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ (UN Doc E/C.12/GC/21).

Ethiopia became a party to the two human rights covenants without reservations in 1993. In recognizing the relationship between the place where the community lived and the right to enjoy culture, the Human Rights Committee’s finding strengthens indigenous peoples’ claims to maintain cultural activities on the land, even where full native title cannot be made out. This is particularly important for Ethiopia where the ownership of the land is ‘exclusively vested in the state and in the peoples of Ethiopia’ (FDRE Constitution, article 40(3)). The value of these findings by the Committee under the ICCPR for indigenous peoples lies in the recognition of the role that economic and resource activities play in the maintenance of the cultural rights protected by article 27 and in the possibility of protecting interests in indigenous land through rights such as privacy and family life. Thus, the ICCPR and the views of the Committee are relevant to the recognition of the rights and interests of indigenous peoples in Ethiopia.

3.3 The African Charter and African Commission on Human and Peoples Right

Human Rights Mechanisms in Latin America and Africa have been instrumental in addressing indigenous peoples’ rights particularly to lands and territories. In South East Asia, the recently adopted Human Rights Declaration of the Association of South-East Asian Nations (ASEAN) is noted to fall ‘below international standards on human rights particularly on the duties and responsibilities of states in upholding the universality, and non-derogability of and the enjoyment and exercise of human rights by citizens’ (AIPP, 2012). Further, it does not include recognition of indigenous peoples as ‘distinct from the majority and systematically discriminated and exploited through the non-recognition and violation of our collective rights’ (AIPP, 2012). This section however focuses on the African Human Rights Systems and it does not discuss all of the regional human rights instruments.

The African Charter is unique in its approach to collective rights known as peoples' rights. These include the right of all peoples to self-determination, the right of peoples to equality; the right to existence; the right to development; the right to national and international peace; and the right to environment (African Charter, Articles 19-24). Under the African Charter, in order for the groups that identify themselves as indigenous peoples to be entitled to them must qualify as 'people'. However, the problem arises as to who or what counts as 'peoples' as the African Charter does not define it. In spite of the conceptual ambiguity in the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has been developing jurisprudence on 'peoples' rights.

The ACHPR is the regional human rights monitoring and promotion body created by the African Charter. ACHPR has a complaint procedure and also receives periodic reports from African State parties. In 2000, the ACHPR created the Working Group of Experts on Indigenous Populations/Communities, which has been instrumental in contextualizing the concept of indigenous peoples to the continent and analyzing indigenous peoples' situations in numerous countries.⁵⁶

In a ground-breaking case between *Endorois vs. Kenya*, the ACHPR affirmed the rights of the *Endorois* over their traditional lands. The case involved Kenya's forced displacement of the *Endorois* people from their traditional lands on the banks of Lake *Bogoria*. The *Endorois* alleged that Kenya had violated their rights under the African Charter by granting a concession to mine on their land, failing to recognize their customary land tenure and forcibly relocating them for the purposes of developing a game reserve. The ACHPR found that Kenya's actions had violated the provisions of the African Charter relating to 'right to religion'; 'right to property'; 'right to culture'; 'right to freely dispose of wealth and natural resources'; and 'right to development' (ACHPR 2010).

The *Endorois* forced eviction from their ancestral lands [...] interfered with the *Endorois*' right to religious freedom and removed them from the sacred grounds essential to the practice of their religion and rendered it virtually impossible for the Community to maintain religious practices central to their culture and religion' (African Charter, Article 8; ACHPR 2010: 173). The

⁵⁶ See IWGIA (undated) for a comprehensive compilation of ACHPR-IWGIA publications

ACHPR concluding that the ‘property of the *Endorois* people has been severely encroached upon and continues to be so encroached upon. The encroachment is not proportionate to any public need and is not in accordance with national and international law (African Charter Art.10;ACHPR 2010: 238). The ACHPR concluding that *‘by forcing the community to live on semi-arid lands [...], the State has created a major threat to the Endorois pastoralist way of life [...] the very essence of the Endorois right to culture has been denied, rendering the right, to all intents and purposes, illusory’* (African Charter, Art. 17; Ibid: 251). *‘The Endorois have never received adequate compensation or restitution of their land. Accordingly, the [...]States is found to have violated Article 21’* (Ibid: 268). *‘[...] the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the ...State did not adequately provide for the Endorois in the development process’* (African Charter, Art.22; Ibid: 298).

The Kenya Land Alliance (KLA 2010) states that the ruling ‘will remain a landmark in the efforts to promote a community based approach, working in an incremental manner, and on an area by area basis, which will enhance the tackling of the rights and governance grievances which embrace much of the public land estate, including existing and future protected areas’.

Ethiopia ratified the Banjul Charter in 1998. These decisions are a major victory for indigenous peoples across the African countries, including Ethiopia. The African Charter encompasses essential provisions for the protection of indigenous peoples’ right, despite the fact that identifying such groups is case based. The ACHPR decisions on such complaints against states are land-marks to indigenous or pastoral communities so that states would recognize and implement accordingly indigenous peoples’ rights to land and its resources enshrined in the international and regional instruments.

3.4 Land Policy Guidelines

3.4.1 Principles For Responsible Agricultural Investment-RAI

The World Bank initiated a set of seven principles for responsible agricultural investments in 2011 due to the ‘Rising Global Interest in Farmland’. The seven core issues are developed in the hope that investors will adhere to a number of key principles. This should make sure that also the investing companies take their responsibility for a sustainable future. And it is also in their own

interest not to deplete resources and keep the local inhabitants pleased. It is particularly necessary that contractual arrangements become more transparent and that local populations have better opportunities to get involved in the negotiations (Zoomers, 2010; IFAD, 2010). The challenge is to ensure that investments made by foreign actors respect the rights of existing land users and increase productivity and welfare. The World Bank proposed the following principles (World Bank, 2011).1). (1) Respecting land and resource rights 2) Ensuring food security 3) Ensuring transparency, good governance, and a proper enabling environment 4) Consultation and participation 5) Responsible agro-investing 6) Social sustainability 7; and Environmental sustainability

The principles seem to be a good initiative and encourage potential investors to do Corporate Social Responsible (CSR) business. Though these principles have a different intention than the guidelines, they are relevant for potential investors and can contribute to CSR business. As with the voluntary guidelines, the principle aim is to give guidance and provide a framework for discussion. The principles are still under development, but the four institutions who launched them already agreed (EUWGL, 2011). Furthermore, it has become apparent that it is difficult to establish obligatory rules, due to numerous and various interests. It is supposed that voluntary guidelines or principles will be sufficient in order to mobilize support (IFAD, 2010), although the way they are perceived, and thus applied can differ largely.

Nonetheless, the principles have been strongly criticized, mainly by academics and NGOs (EUWGL, 2011). There are highly differentiated movements within civil society and farmer's movements as well (Borras *et al.*, 2010).The most opposing reactions come from La Via Campesina, FIAN and the Land Research Action Network GRAIN that are convinced that the RAI principles would in fact encourage land grabbing, because these principles would make it more legitimate. They believe that the food crisis will not be solved through industrial agriculture. Borras Saturnino and Franco (2010) conducted research on the consequences of a 'Code of Conduct', concluded that it would be better to stop these large-scale deals. The research concludes (Borras *et al.*, 2010:

The proposed CoC-framed response to the global land grab veers away from questioning the fundamental roots of land-grabbing, i.e., the existing industrial pattern of food and energy production and consumption controlled by TNCs, while engaging in the problematic notion of win-win scenarios.

The RAI principles have been further criticized by civil society representatives for their lack of reference to human rights (EUWGL, 2011). Moreover, the RAI do not include any reference to human rights law and rather build on corporate social responsibility frameworks (www.landaction.org). In spite of these critical remarks, there also appears to be broad support for the principles, although it seems quite difficult to find a way to implement them (Hallam, 2009). In my view, acknowledging the difficulty of defining standards, it would also be necessary to define some consequences if companies act a contrary to the standards.

3.4.2 The AU Land Policy Framework and Guidelines

The United Nations Economic Commission for Africa (UNECA) in collaboration with the African Union and the African Development Bank adopted the Framework and Guidelines on Land Policy In Africa in 2010 (AUC-ECA-AFDB Consortium, 2010). It is said to reflect ‘a consensus on land issues; and serves as a basis for commitment of African governments in land policy formulation and implementation and a foundation for popular participation in improved land governance’ (Ibid, xi).

The guidelines for Africa are based around three principles: strengthening land rights enhance productivity and secure livelihoods. In the framework, the involved organizations claim that the struggle for land and natural resources remains one of the key factors fuelling instability in Africa (Van Der Zwan, 2010).

The Land policy and guidelines acknowledge the particularly marginalized position of indigenous peoples that ‘beyond the frequently acknowledged inequalities due to race, class and gender, the marginalization of particular ethnic groups with respect to access to adequate land remains a perpetual source of conflict. The marginalization of certain categories of indigenous

people⁵⁷ has become contentious. Land policy reforms must also address these concerns' (Ibid: 9). The guidelines further state that 'land policies should seek to remove age-old rigidities in traditional structures and systems which tend to discriminate against women while at the same time building on and thereby improving indigenous tenure arrangements. Land policy processes must also recognize the role of local and community-based land administration institutions and structures, alongside those of the State [...] colonial legacies which tended to degrade indigenous land rights systems and suppress and sabotage their evolution and which ignored community land administration structures must now give way to new and innovative policies including the provision of statutory frameworks for the documentation and codification of informal land rights regimes' (Ibid: 14).

In its Declaration on Land Issues and Challenges in Africa, the AU (2009:2) has resolved to 'ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons.' The 'Framework and Guidelines on Land Policy in Africa' (AUC et al. 2010:2.7) argues that crises of energy, food supply and climate change are causing a 'new scramble for Africa's land resources', so that African states need to 'put in place adequate policies to ensure that the risks associated with these changes and, in particular the risk of uncompensated loss of land rights by the poor are avoided or effectively managed'. Notwithstanding capacity problems, De Schutter (2011:265) argues that the African Union Land Policy Initiative can help in coordinating and guiding African states in regulating land transaction to investors.

3.5 Conclusion

The Human Rights Instruments and land policy guidelines lead to a conclusion that states and indigenous peoples appreciate the existence of indigenous peoples and the fact that they have ancestral land tenure system, which they manage according to their customs. States and indigenous people agree on the need to recognize the special relationship that indigenous peoples have with their ancestral land. They agree on the need to recognize the rights of indigenous peoples over their land and resources. Not only recognition, but the States should demarcate and

⁵⁷ Such people are the San of Botswana; the Herero of Namibia; the Bakola, Bagyeli and Batwa of the countries of Central Africa; and the Ogiek of Kenya

title the communal landownership of indigenous peoples. Indigenous peoples have an inherent right on the ownership over ancestral land and other resources. In conjunction with indigenous peoples concerned, states shall establish and implement a fair, independent, impartial, open and transparent process to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. Such a process is not only for state recognition of ancestral land, but also for adjudication of cases arising on the ancestral land. When states' recognize ancestral land ownership, they shall give due respect to tradition, customs and land tenure systems, and require participation of indigenous people. Land ownership entrenched to indigenous peoples should be 'collective' to their community. Indigenous people should be consulted and consented freely and prior to implementation of development projects. Indigenous peoples should be compensated in case where development projects underway in their localities. They should not be evicted from their ancestral land.

Indigenous peoples want fairly unqualified international recognition for their rights to their land and resources. States are reluctant to grant this recognition as they want to retain some flexibility in the implementation of these provisions (Quane, 2005:27). To whatever extent the ownership rights over land and resources is recognized, indigenous peoples will have to be involved in any development projects affecting their lands and resources. This should ensure that indigenous peoples are not marginalized from these projects to the same extent as they have been in the past. There also seems to be a growing consensus where development projects affect indigenous peoples, they should be able to participate in the formulation of these projects. In ILO Convention 169, this is recognized as a legal right and can be used to challenge development projects that fail to respect this right. This can be contrasted with the UN Declaration, which recognizes that indigenous peoples have a right not only to be consulted about development projects that may affect them but also to 'veto' these projects when they affect their land and resources. The UN Declaration is still significant in highlighting the growing international consensus that indigenous peoples should be consulted and consented to development projects that may affect them and should no longer be marginalized from the development process. Although the Declaration does not impose any legal obligations on decision-makers in this area, it can be used to render them politically accountable for any failure to ensure the participation of indigenous peoples in relevant development projects.

The *Endorois* case helped define who is considered to be indigenous in Africa, recognized the need for consultation with communities, recognized customary forms of land tenure, and asserted that the needs of development, and specifically the creation of national parks, are not sufficient reasons for mass eviction.⁵⁸ The commission found that the eviction of an indigenous pastoralist people from their ancestral homeland (due to National Parks), including their ancestral graves, and the impact on their pastoralist way of life, was a violation of the right to culture and religion. It was also a violation of the right to health given the impact on their access to plants they used for medicine, on their cattle, and also on the *Endorois*' right to natural resources under the African Charter.

The judgment is also the first international legal ruling on the right to development. Finding Kenya to have violated it, the ACHPR said the right had two components—to development and to the improvement of standards of living. These were violated given the eviction's negative impact on the *Endorois*, the failure to give them any benefit from the economic development on their land, and the failure to adequately consult regarding decisions made concerning their land and their eviction. This case is an alarm bell to African countries so that they would be cognizant of indigenous people's right to land while undertaking development projects. The Ethiopian State should comply with international standards and principles that it has ratified that give protection to customary land right.

Many customary communities have adequate traditional common property arrangements, but many countries still lack legal frameworks to recognize common property regimes, and consequently make customary systems vulnerable (ILC 2008; Wily, 2006; Bruce, 2009). Most of the times customary land has been rendered government or public land, where the government allocates use rights among its inhabitants (Wily, 2006; Bromley and Feeny, 1992). A denial of all customary land interests as having the attributes of private property ownership (Wily, 2006). The major problems facing the communal landholding system of pastoralists are primarily rooted in the status given to such a system in the legal framework of the country. The FDRE Constitution

⁵⁸Lucy Claridge, 'Landmark ruling provide major victory to Kenya's indigenous *Endorois*,' Minority Rights International, August 26, 2010, <http://www.minorityrights.org/download.php?id=1009> (accessed December 10, 2014).

has made international human rights instruments part of the country's laws of the land. Ethiopia has a solid land law regime both at Federal and Regional States, including constitutions. The following chapter will have a more say on whether the Ethiopia's land law regimes guarantee communal landholding system or not.

CHAPTER FOUR

4 NORMATIVE FRAMEWORKS FOR PROTECTION OF PATORAL COMMMONS UNDER THE ETHIOPIAN LAND LAW REGIMES

4.1 Introduction

In the previous chapter we looked at international and regional Human Rights instruments protection indigenous peoples right to ancestral land resource. The international community has recognized that special attention should be paid to the individual and collective rights of indigenous peoples. Towards this, a number of international instruments address indigenous peoples' rights or include provisions relevant to them. The main legally binding document entirely focused on the rights of indigenous peoples is ILO Convention No. 169 on Indigenous and Tribal Peoples. And, the UN Declaration, *albeit not binding*, recognizes the rights of indigenous peoples on a wide range of issues and provides a universal framework for the international community and States. Yet, the implication of the UN Declaration in Ethiopia is also substantial. The focus on these instruments will not be meaningful unless they are actually guaranteed in the domestic legal framework. This is because the domestic legal framework is the one with which indigenous peoples having close contact and can easily access in the event that their rights are violated.

This chapter assesses constitutional, subsidiary laws and policies that have implications for indigenous peoples' rights in Ethiopia. The chapter examines the extent to which provisions of the FDRE Constitution and other subsidiary laws of Ethiopia have been made for the rights of indigenous peoples. It questions whether the Ethiopian laws, particularly provisions related to indigenous people's land rights have adequately addressed indigenous people's right to land. It questions how far does Ethiopian land laws coincide with international agreements that Ethiopia has ratified and customary international laws. In the event provision is not made for the rights of indigenous peoples, then it will explore ways in which the legal framework can be

brought in line with international standards. The legal framework includes instruments that may not be directly geared towards indigenous peoples but nevertheless impacts on the rights of indigenous peoples. In this respect, one way of limiting the scope of the legal framework to be examined is by focusing on the core claims of indigenous peoples in relation to land rights. In this regard, the chapter limits itself to examine the extent to which the domestic legislation makes provision for such rights or claims of indigenous communities.

4.2 Applicability of International Human Rights Law in Ethiopia

Ethiopia is a party to several international and regional human rights documents. The FDRE Constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land (Article 9(4)). Hence international human rights treaties ratified by the Parliament form the law of the country. No additional measure to be taken by the legislature is provided for in the Constitution. However, article 2(2) of the Federal *Negarit Gazette* Establishment Proclamation No 3/1995 provides that all Laws of the Federal Government shall be published in the Federal *Negarit Gazette*, and laws published in the Federal *Negarit Gazette* shall be taken judicial notice (Article, 2 (3)). However, under normal circumstances, international instruments ratified by the State are simply referred to and are not published in the *Negarit Gazette*.⁵⁹ Thus publication of all international agreements ratified by Ethiopia in the *Negarit Gazette* is recommended.

The House of Peoples' Representatives is constitutionally empowered to ratify these instruments (Article 55(12)); and thus the status of international agreements ranks at least equal to proclamations enacted by the same. However, the Constitution requires the interpretation of Chapter Three (Human and Democratic Rights) of it to be in conformity with international human rights instruments that Ethiopia has adopted (Article 13(2)). Thus, international human rights instruments (Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments) provide a standard for the interpretation of Chapter Three of the Constitution. Thus, Indigenous peoples' right (including right to land) enshrined in these

⁵⁹ Federal Democratic Republic of Ethiopia Combined report (initial and four periodic reports) to the African Commission on Human And Peoples' rights: Implementation of the African charter On human and peoples' rights, 2008, para.60

instruments should be the basis for interpreting Chapter Three of the Constitution. In relation to human rights, the constitution affords those instruments a higher status than an ordinary legislation. This means that as far as human rights and fundamental freedoms are concerned, international instruments rank higher than ordinary legislation and are instruments of interpretation for the human rights provisions of the Constitution. In practice, irrespective of their consensual or customary base and irrespective of their subject matter, international instruments are applied beyond and above ordinary legislation.⁶⁰In case of inconsistency between the Constitution and international human rights instruments, so long as the latter form part of the law of the land (FDRE Constitution, Article 9 (4)),it could be argued that the Constitution prevails over international human rights instruments that Ethiopia has ratified (FDRE Constitution, Article 9 (1)). Of course, there are two lines of argument where some argue that in case of inconformity between the Constitution and international human rights instruments, the latter prevails over the former based on Article 9 (1) of the Constitution, and others argue *vice versa* by referring to Article 13 (2) of the Constitution. Indeed, discussing these arguments is out of the scope of this thesis. In my view, article 13 (2) is intended to serve as a guide for the interpretation of Chapter Three of the Constitution, rather than invalidating the constitutional provisions in case of inconsistency, despite Ethiopia's international obligations. Article 9 (1) clearly provides for voiding 'any laws' and other practices. One of these laws is international human rights instruments ratified by Ethiopia, which are part of the law of the land (Article 9(4)).

4.3 Legal Status of Communal Landholding under Ethiopian Laws

4.3.1 The FDRE Constitution

The right to ownership of land and natural resources therein are exclusively vested in the State and the peoples of Ethiopia (FDRE Constitution, article 40(3)). However, pastoral rights to free grazing and cultivation of land and their right not to be displaced from their own lands have been guaranteed under article 40(5) of the Constitution. This is an important pledge for indigenous peoples of Ethiopia. The Constitution defines private property as:

⁶⁰ Federal Democratic Republic of Ethiopia Combined report (initial and four periodic reports) to the African Commission on Human And Peoples' rights: Implementation of the African charter On human and peoples' rights, 2008, para.60

...any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen... Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvement he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. (FDRE Constitution, Article 40 (2 and 7))

The right to ownership of land and other natural resources is exclusively vested in the State and the peoples of Ethiopia (Article 40 (3)). Moreover, the Constitution provides that land is not subject to ‘sale or other means of exchange’, which clearly indicates that land cannot in any way be alienated and therefore precludes any form of private or communal ‘ownership’ of land in the absolute sense of the term.

This implies that the Constitution has adopted the concept of ‘improvement’. Thus, for any person to have a claim over land in the sense of usufruct, he/she must show that he/she has made an improvement traceable to his/her labor or capital. One cannot lay claim to land without establishing improvements thereon. In this sense, unimproved land belongs to the state. This signifies that those who merely extract the bare natural fruits of communal land and landed resources cannot claim to have usufruct right over those resources for they have not met the requisite condition for claiming such right (Muradu, 2013).

As noted above, the ownership of public property is held by the state which tries to allocate such resources based on the collective interest of the society. In Ethiopia, unlike this conception, the term common property is used to refer to a property regime in which ownership rights of land and its natural resources are held by both the state and the peoples of Ethiopia. This is because terms like state or public property could not be inferred from the FDRE Constitution. In view of that, land including its natural resources as a common property of nation, nationalities and peoples of Ethiopia is used to describe state or public property in which state holds it in order to allocate this resource based on the interest and the common benefit of Ethiopian people.⁶¹

The convergence of public and common property conception could also be understood from the reading of both FDRE Constitution and land administration and use proclamation provisions.

⁶¹ However, despite such ownership structure, the term state or public property, rather than common property, is widely used in both academic and public discourse.

First, article 40 (3) explicitly uses the phrase ‘common property’. Second, article 51(5) and 52(2) of the Constitution empowers both the Federal and regional states to ‘enact laws for the utilization and conservation of land and other natural resources’. Third, Article 89(6) provides the duty of the government to hold land and other natural resources on behalf of the People and to deploy them for their common benefit. Fourth, article 5(3) of Proclamation No. 456/2005 provides for government ownership. This provision considers government as being the owner of rural land and empowers it to change communal rural land holdings to private holdings where the government finds it necessary to do so.

On the other hand, reading of the constitution poses ambiguity as to whether ‘common property’ is really mean ‘public property’. First, while defining ‘private property’ article 40 (2) reads [...] communities in appropriate circumstances may be specifically empowered by the law to own property in common. Next, article 40 (5) enunciates that Ethiopian pastoralists have the right to free land for grazing and cultivation [...]. This shows that the FDRE constitution also provides other possibilities in which common property regimes could be recognized. The reading of the latter article clearly shows that the Constitution recognizes not only the private landholding of cultivators but also the communal landholding systems of the pastoralists. Thus, these provisions may imply common property regime to imply pastoralists communal property regime but does not necessarily imply public/state property regime.

The understanding that has dominated the current debate in favor of public or state land ownership and the doctrinal interpretation of what signifies the terms ‘state and people’ used in Article 40(3) of the FDRE Constitution are the same because people are normally represented by their state. However, Mohammud (2007) contends that this argument is ‘very dangerous’ and not in the spirit of the constitutional framework because it implies that all ‘peoples’ rights’ under the Constitution are the rights of the state. He noted that on the basis of the above argument, the state has already made clear, on many occasions, that land is public property and can only be owned by the state. The recently enacted FDRE Rural Land Administration and Land Use Proclamation No. 456/2005⁶² clearly illustrate this position taken by the Ethiopian government. He argues that

⁶² Article 5(3) of the FDRE Rural Land Administration and Land Use Proclamation No. 456/2005 This Article provides that "government being the owner of rural land, communal rural landholding can be changed to private

people's rights and states' rights are apart under article 39 of the FDRE Constitution. He in particular noted that 'unlike state practice under international law in respect to the right to self-determination, which restrictively equates peoples with state and vests peoples' rights in the state, the FDRE Constitution recognizes this right of the people including secession (p.121).Article 39 of the constitution does not vest the rights of the Ethiopian people in the state and thus cannot lead to an equation of 'peoples' with 'state'. In this understanding, the right to self-determination is nothing but the right of the 'nation, nationality and people' to exploit land and its natural resources within the territory of a certain Regional State. In this regard, article 39 of the FDRE Constitution guarantees the right to self-determination of the 'nation, nationalities and peoples to use and administer land including its natural resources as an expression of regional autonomy through enacting land administration and use laws. However, such law making power is vested in the federal government by the FDRE Constitution, and regional states are only mandated to administer land and other natural resources in accordance with federal laws (FDRE Constitution, Art. 52 (2, d).

The 2005Federal Rural Land Administration and Land Use Proclamation No. 456/2005 states that if land use law is to be enacted by the Regional States, it shall only consist of detailed provisions necessary to implement Federal Land Law (Art. 17).Yet, this raises the issue whether states are empowered to enact land administration and land use law that recognizes the particulars of its pastoral communities thereby encourages communal landholding systems currently in practice. This very fact clearly demonstrates that the right of Ethiopian pastoralists to free grazing land under the FDRE Constitution is nothing but the right to their communal landholding system. Therefore, taking the justifications for the adoption of Article 39 and 40(3) together with Article 40(5), one can conclude that the FDRE Constitution has recognized the common property rights of Ethiopian pastoralists over their customary landholding system. In reference to Oromo pastoralists, Jetu (2013) argues that state council of Oromia has the constitutional power to enact land administration and land use law that clearly addresses the particulars of its pastoralists' communities in its regional territory. This writer believes that such power first and for most emanates from the right to self-determination over the exploitation of its

holdings as may be necessary." One can imagine the implication of Article on the customary communal landholding system of pastoral communities of Ethiopia that occupy about 61 per cent of the country's total landmass

resources within its constitutional territory, and from the rights of Ethiopian pastoralists' in general and Oromo pastoralists in particular to free grazing land and the right not to be displaced from their own lands as enshrined under both FDRE and Oromia constitutions (Revised Oromia Regional State Constitution, Art. 40(5)).

The other worth mentioning issue is efficient and adequate management of land including its resources held by the state through public property regime. In this regard, Elias (2011:67) notes that the current public property regime in Ethiopia is vague and ineffectively implemented as 'it is usually impossible to effectively exclude persons from the use and overconsumption of common pool resources in Ethiopia'. In such state of affairs '*de jure* public property becomes *de facto* open access in which certain common-pool resources (forests and pastures) in the rural areas of Ethiopia are exposed to encroachment, unlawful logging and overgrazing' (Ibid).'Elias proposes that the cure for such kind of ills is 'to dully recognize and clearly define the property rights of indigenous communities and collectives so that the right holders can have vested interest in the preservation, protection and development of these resources.'

In the context of the current Ethiopian communal property regime, *de jure* public property also becomes *de jure* open access. The reason behind such assertion is that there exist legal rights designed for rural communities for the purpose of free grazing land without specifically identifying well-defined user groups of the *de jure* public property regime. This situation in turn creates a condition of open access this time with a legal backup of free grazing land with the right to graze without interference from elders (as previously done) through local customary institutions. This situation turns *de facto* managed communal property regime in to *de jure* open access resources since such legal scheme undermines previously managed common property regime by weakening the existing customary institutions of resource management. This occurs as a matter of fact that the legal scheme gives rights to unmanageable members of the community to defy customary law and customary institutions over resource use and management. In a nutshell, in the absence of decentralized and adequately defined community property regime, it would be practically difficult for the state and the peoples of Ethiopia to effectively and adequately control such vast area of communal land in pastoralist area. The above discussion points to critically evaluate whether both federal and Regional land administration and land use laws enacted so far

conform to the above constitutional mandate and whether such laws takes the particulars and needs of pastoralists communal land holding purposes.

4.3.2 Subsidiary Land Laws of Ethiopia

As the supreme law of the land, the Constitution provides not only the fundamental rights and freedoms but also the distribution of governmental power—legislative, executive and judicial to the Federal and State levels. Article 51 of the FDRE Constitution provides that the federal government ‘shall enact laws for the utilization and conservation of land and other natural resources’, while the government of every constituent state has the duty ‘*[t]o administer land and other natural resources in accordance with the Federal laws*’ (Article 52). On the basis of this constitutional provision, the Federal government and some regional states have issued rural land administration and use laws.

However, the tone of successive rural land laws is not in favor of a full recognition of the rural commons (Muradu, 2013:10). To begin with, the 1997 Rural Land Law provided that regional land laws should provide for demarcation of communal land for grazing, forests, social services and other uses with the participation of the community (Proclamation No. 89/1997, Article 6(6)). This law however did not provide for payment of compensation for ‘improvements’ on communal landed resources in cases where peasants and ‘nomads’ lose their land rights due to government initiated land distribution. The reason is that the commons were to be taken without compensation where the state needed them. This 1997 Rural Land Law defines land rights of peasants and ‘nomads’ to suggest that their land use rights is conditioned upon land ‘demarcation’ in the sense of individual farm plots destined for sedentary agriculture and that it is only in that context that one’s land possession gets the blessing of the government with its implication for payment of compensation for labor related improvements thereon upon expropriation and government initiated-distribution (Articles 2/4, 6/6 and 6 (7-9)). This shows that the legislation apparently taken a step forward in recognizing the commons as belonging to the relevant community (Muradu, 2013:10). Yet, this apparent positive step forward was nevertheless undermined in this very legislation when it fused a community with a *kebele*⁶³. The same applies in the 2005 rural land administration proclamation (Ibid). The 1997 land law

⁶³*Kebele* is the lowest government administrative unit in the Ethiopian Federal setting

emphasized on the security of private landholders, while it said almost nothing about the security of communal landholding systems. With this proclamation, the positive aspect was that it provided a general framework and left the details of the law to state governments (Article 5(1) and (2)). It required State governments to ensure that their rural land laws conformed to environmental laws and federal land utilization policies as well as providing for gender equality in land use rights(Article 5(1) and (2)).

In regard to communal land, the government has made the country's historical heritage quite 'patent' under the 2005 Rural Land Law (Muradu, 2013:11). Under the preamble of the 2005 proclamation, the policy statement states that the law is designed to 'establish a conducive system of rural land administration that encourages private investors in pastoralists' areas where there is tribe-based communal landholding system' has made very clear its position on communal land holding. In practice, this legal provision means primarily giving communal land holdings to private investors. *Holding right* is defined as '*the right any peasant farmer or pastoralist shall have to use rural land for the purpose of agriculture and natural resources development, lease and bequeath to members of his family or other lawful heirs under*'(Article 2(4). The proclamation defines 'communal holding' as '*rural land which is given by the government to local residents for common grazing, forestry and other social services* (Article 2(12)),⁶⁴and 'state holding' as expansively as 'rural land demarcated and those lands to be demarcated...and includes forest lands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands' (Article 2(13)). The phrase *given by the government* under article 2(12) is in the sense of not recognition but creation of the commons (Muradu, 2013:11). Thus, the classic sense of 'communal land' has been statutorily abolished (Ibid).Article 5(3) of this law says 'government being the owner of rural land, communal holdings can be changed to private holdings as may be necessary.' The fact that this law introduces the concept of minimum private holdings which is described as 'rural land privately held by peasants and semi-pastoralist and pastoralists denotes that what is given recognition is private landholdings not communal ones (Article 2/11).⁶⁵The laws rather than recognizing the concept of communal land as a separate

⁶⁴ The approach to the definition under this Article is similar with the *diessa* (village) system of pre-1974 Ethiopia in the areas of highland farmers where the villagers used such land communally for their domestic animals and other purposes (Mohammud, 2007:36).

⁶⁵See the Amharic version of Article 2/11 of the 2005 Rural Land

form of land holding, it ‘jumbles’ it with the notion of private holding prevalent in the sedentary mode of cultivation (Muradu, 2013). A close look at some of the definitions provided in various provisions of this proclamation, it is evident that it is designed to ensure the security of private landholders, rather than communal holdings.

The introduction of *landholding certificate* and its application in pastoral areas raises the issue as to whether an individual pastoralist, who is a member of a community with communal rangeland holding, can possibly privately hold a rangeland and at the same time move from place to place. As discussed above, in the Ethiopian pastoral communities individual pastoralist does not hold rangelands privately. As such, how can an individual pastoralist entitled to possess rangeland and a holding certificate? This is a clear reflection of the ignorance or total disregard of the rights of pastoralists and their way of life.

The ILO Convention 169 articulates that State recognition of indigenous ancestral land rights under constitution is not sufficient in itself; indigenous rights must be protected through ‘land titles’ (Article of 13(2) of ILO Convention). Traditional possession of indigenous peoples’ ancestral lands entitles them to official state recognition of their ownership and to the registration of title to their land. The state must also establish the official boundaries to the land in consultation with the indigenous peoples to grant title to the land (Article 26(3)). One could argue that although it is difficult to demarcate indigenous peoples’ communal landholding privately, the State should define and demarcate communal landholdings and title them accordingly.

Apparently, the 2005 Rural Land Law recognizes ‘private holding’, ‘state holding’ and ‘communal holding’. Nevertheless, it strikes at the heart of the ‘communal holding’ when it sees the government as an owner of land and vests the power to privatize communal land as it pleases. This in turn means this land law has recognized only the private holding and the state holding. This is consistent with the individualistic tradition embodied in the Civil Code of Ethiopia,

which recognizes essentially⁶⁶ two domains: as land in the private domain and land in the state domain (Articles 1498, 1499 and 1500 of the 1960 Civil of Ethiopia).

The 2005 land law has in many perspectives failed to consider ‘communal landholding’ pastoralists. The 2005 proclamation treats communal lands essentially from the perspective of the interests and rights of settled cultivators. A close look at the provisions of the 2005 Proclamation clearly reflects that the land given by the government to local communities for grazing, forestry and other social services is fragmented rather than continuous.⁶⁷ A communally held fragmented land system would not be sustainable in the dry-harsh environment of lowland Ethiopia. Instead, continuous territorial land is an integral part of the communal landholding system of pastoralists, as reflected in most international instruments and the FDRE Constitution. The Amharic version of Article 5(3) permits the government, is if it deems necessary, to change communally owned or possessed lands in to privately held lands since the government is the sole owner of rural lands. The implication of this is that the law totally denies the constitutionally guaranteed communal land holdings. The rationale behind the 2005 Proclamation is that the communal landholding system of pastoralists hinders private investment and thus, in order to encourage investment, such a tribe-based traditional system of landholding should at least be eliminated, or at least be denied legal recognition. This in effect betrays the Constitution drafters’ vision to empower people and allow communities to decide over their own affairs (Mohammud, 2007:38).

He argues that the Constitution recognizes communal landholding systems. The Constitution provides that the state and the nations, nationalities and peoples of Ethiopia own land. The Constitution does not give more rights to the state than the nations, nationalities and peoples, that

⁶⁶In the Code, the term ‘essentially’ is used because the communal tenure has received a treatment, but it is a temporary treatment conditioned considerably by an expansive form of the repugnancy clause; the Code recognized the commons provided customary rules pertaining to them would not retard the economic progress of the concerned community, offend the principles of natural justice and morality and that the exercise of land right by an individual member of the community would not be subject to unreasonable conditions. Even this attenuated form of the commons cannot stand now because subsequent land laws have superseded those provisions of the Code regarding the rural commons. One of such subsequent superseding legislation is the land law under scrutiny in the present article.

⁶⁷ Fragmented communal land can really work in the case of the Ethiopian highland cultivators they permanently settle in a place. Also, as most Ethiopian highland cultivators rely on a mixed agricultural system, they need some open uncultivated land to be used as grazing land for their cattle together with privately held land for cultivation.

is, equal or 'balanced' rights of land ownership. Thus, Muhammad considers the state and nation, nationalities and peoples of Ethiopia are co-owners' of land and its natural resources. Abebehas also observed that the provision in the 2005 Rural Land Law which provides for government ownership over communal lands is '...diametrically opposite to the right of pastoralists guaranteed by the constitution.' As such, Abebe and Muhammad have argued that the 2005 proclamation should be held unconstitutional and thus null and void),as this law sees the government as 'sole owner' of the commons.

Mellese reads the Constitutional phrase—'land is the property of the people and the state'—to convey two messages (Mellese, 2009:32). First it assumes that the terms 'state' and 'people' are synonyms and thus he reads the statement in question as 'land is public property... which means private ownership of land is prohibited.' He says this reading of the constitutional phrase does not make sense because it deviates from the straightforward wording of the Constitution, which clearly states that 'the ownership of land is vested in the people and the state' (Ibid).The second way of understanding the words 'people' and 'state' should rest on the assumption that the two words imply distinct entities and that the wording of the Constitution in this regard is clear. Thus when the law is clear, according to the 'golden rule' of interpretation, it should not be subject to interpretation. Accordingly, the phrase at question should be read to mean 'state and people as two distinct entities' and to make 'land the joint property of these two entities' (Ibid). In other words, land in the country is 'co-owned' by the people and the state.

Mellese further claims that the Constitutional Assembly debated on the question of 'joint ownership' of land by the state and the people and took a position in favor of 'co-ownership' of land by the state and the people of Ethiopia. Muradu, however, disagree with the Mellese's assertion that the Constitutional Assembly debated on the question of 'joint ownership'. He contends that the minutes of the Constitutional Assembly on the property clause⁶⁸ do not dwell on the question of co-ownership of land by the people and the state nor does it consider the connotations of the words 'people' and 'state', but rather the minutes of the Constitutional Assembly confined to the debate about 'private' versus 'public' ownership of land in Ethiopia,

⁶⁸Article 40 of the FDRE Constitution

almost to the complete disregard of discussions on other dimensions of property (Muradu, 2013:15).

Mellese concludes that subsidiary land laws and government projects fail to acknowledge the people as co-owners of land even if such ownership right is recognized by the highest law of the land and the people's time immemorial tradition.⁶⁹The implication is since Mellese finds these government laws and projects contrary to the principle of people's ownership of land as enshrined in the Constitution, and hence he would go for annulling them.

The state claims that 'vast areas of unutilized land' are not included in the people's constitutional right to land and their immunity from eviction. In the face of that, for the above writers, it might be understandable to invoke the argument that the state's claim is a misreading of the constitutional provision mainly in view of the people's reliance on the commons for their livelihood. Muradu, however, claims that the assertion that the Constitution states that land is co-owned by the people and the state is inconsistent with a careful reading of the full text of the appropriate clause. Here it is necessary to reproduce once again article 40 (3), which reads *[t]he right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.*

A close look at this Constitutional provision shows that the words 'Peoples of Ethiopia' in the first sentence is amplified in the second sentence to mean 'the Nations, Nationalities and Peoples of Ethiopia',⁷⁰ and the concept of ownership used in the first sentence is expounded in the second sentence to mean 'common property,' to mean 'collective ownership'. In particular, when one relies on the corresponding Amharic version, it uses the word 'yegara', which connotes collective ownership as opposed to joint ownership—a type of private ownership. The phrase 'collective ownership' implies the ownership of each and every nation, nationality and people

⁶⁹ The Minutes of the Constitutional Assembly

⁷⁰ Article 39 (5) of the Constitution defines Nations, Nationalities and as, a 'Nation, Nationality or People' for the purpose of this Constitution, is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

touches upon land and natural resources found in Ethiopian territory irrespective of the specific location of such resources. In such a case, none of nations, nationalities and peoples—considered as part of this collective scheme—can localize their ownership interest and assert that they are owners, either in sole or joint, of a specific resource. On the other hand, where such communities are ‘owners’ of the specific resources they customarily utilize, they can localize their ownership interest and assert that they are owners (either in sole or joint) of a specific resource. In sum, there is nothing in this text that makes ethnic groups including pastoralists in Ethiopia owners of land and natural resources. The Constitution stands for the ‘collective ownership’ rather than the ‘ownership’ (Muradu, 2013:16).

The Constitution gives priority to peasants than pastoralists when it comes to access to land for ‘settled’ agriculture and pasturing indeed (Article 40(4-6)). To these categories of people, the Constitution gives ‘usufruct’ right over land and entitled them not to be evicted from the same. However, the usufruct right over their land is a general one, and it is not related to any specific plot of land. This is reinforced by a land tenure reform project document submitted to the USAID, which correctly states that ‘...*although the Ethiopian constitution grants households usufruct rights to land, it does not grant a specific plot of land...*’ And even in case where the right to usufruct of peasants and pastoralists gets concrete expression in an allocation of specific resource to them, their continued use of such assigned resource is contingent upon investing labor or capital on it that leads to permanent improvement (Article 40(7) of the FDRE Constitution).

4.3.3 The Regional States’ Land Laws

The FDRE Constitution and 1997 Federal land proclamation have allowed regional states to issue land tenure laws. Accordingly, four regional states⁷¹ have issued their own rural land tenure laws that take into consideration the peculiar circumstances of their own localities, while the

⁷¹Tigray Region (1997, amended 2002), Amhara Region (2000), Oromia Region (2002, amended 2007), and Southern Regional State (2003, amended in 2007). It is worth mentioning that most pastoral peripheral regions (for example, Afar, Somali) have not yet produced a regional land tenure policy (Helland 2006, Mohammed Abdulahi 2007). Mohammed Abdulahi outlines that the 2005 Proclamation makes it easier for federal and regional states to appropriate communal land of pastoralists in order to encourage private investment and facilitate state-driven development projects (Mohammed Abdulahi 2007, 122). We cannot go into depth on this here, but note that this is likely to increase the peripheral status of pastoralist land tenure systems and practices.

other regional states have not yet issued their own rural land legislation.⁷² All these states have enacted laws based on the general framework provided by the 1997 Proclamation—a law that was repealed and replaced by the 2005 Federal Rural Land Administration and Use Proclamation No. 456/2005.

First of these regional states were the states of Amhara and Tigray. In these two regional land proclamations, communal landholding system has no place as such. With repeal of the 1997 proclamation, state governments are expected to re-adjust their land tenure laws in conformity with the 2005 Proclamation. The provisions of the 2005 proclamation appear to have substantial similarities with the provisions of the Amhara and Tigray rural land laws—proclamations issued prior to the 2005 Federal land law. Thus, one can safely conclude that the land tenure laws of these two regions are the foundations for the 2005 rural land law proclamation.

Mohammad (2007) argues that the land law of the state of Oromia and the state of Southern Nations, Nationalities and Peoples are at the forefront of trying to address issues of communal land. The customary right of access to land for communal use (such as grazing, ritual ceremonies, etc.) shall be maintained for both peasants and pastoralists. Although it is currently difficult to calculate how strongly this provision will be enforced, including such a provision is a step in the right direction. On the contrary, the paradox in this regard is that the regional states with the highest percentage of mobile pastoralists⁷³ have failed to adopt specific land laws suitable to preserve the way of life of these communities (Mohammad, 2007:40). Hence, despite the existence of such a temporary problem, Mohammad says the proclamation is positive in regards to addressing pastoral communal landholding system (Ibid).

On the contrary, Jetu (2013) argues the Oromia State's Rural Land Law strengthens the federal rural land administration and land use that discourages communal land holding regime in pastoralist area. One of the issues to be addressed in the state governments' land law is that *'Ethiopian pastoralists right to free land for grazing and cultivation as well as the right not to be displaced from their own lands shall be specified bylaw'*. Although the constitution

⁷²The other five regional states (Afar, Somali, Benishangul-Gumuz, Gambella and Harari regional states) however have not yet issued their own implementation legislation.

⁷³ The states of Afar, Somali, Gambella and Benishangul-Gumuz

provides for the mandatory enactment of ‘specific law’ to implement this provision, a specific law that devotes to address the needs of Ethiopian pastoralists is not yet enacted. Instead, the concern of Ethiopian pastoralists are treated with the concern of Ethiopian peasants who lead sedentary life and depend on land cultivation under the generic rural land administration and land use legislation as a ‘*one size fits all approach*’. He reasons that despite the interweaving of pastoralists and peasants under regional land law, the intention of the legislature noticeably indicates that both the peasants and pastoralists be treated separately (Art 40(4) and 40(5)).

The main reason that necessitated the enactment of Proclamation No. 456/2005 is ‘*to establish a conducive system of rural land administration that promotes the conservation and management of natural resources, and encourages private investors in pastoralist areas where there is tribe based communal landholding system*’[emphasis added] (Proclamation No 456/2005, Preamble). This reading implies that communal landholding system is going to be discouraged in order to encourage private landholding. The term *pastoralist* under the Oromia land law is defined to signify an individual who pursues the raising and producing of cattle by holding rangeland from one place to the other in order to support himself and his family (Art. 2(14) of 2007 Oromia Land Proclamation). This definition clearly individualized the term pastoralists’ irrespective of the communal nature of pastoral way of life and communal land use for grazing purpose. The term ‘communal holding’ is defined as ‘rural land which is given by the government to local residents for common grazing, forestry and other social services’ (Federal Land Proclamation No.456/2005 art. 2(12); Oromia Land Proclamation No. 130/ 2007 Art. 2(5)).⁷⁴ Thus, pastoralists as ‘local residents’ may use land for common grazing as communal holding only upon the authorization of the government, disregarding the ‘historic’ and customary rights of pastoralists to grazing land.

The right of rural community to have access to rural land for grazing; religious or ritual places, water points and other social services (Article 5(4) of 2007 Oromia Land Proclamation). At first glance, it seems that this provision ultimately addresses the needs and specificities of pastoralists’ communal landholding for grazing, religious and ritual activities. Nonetheless, such

⁷⁴According to this proclamation, the term ‘Communal Holding is used to refer rural land which the local community commonly uses for grazing, woodlots and other social purposes’ irrespective of government authorization

free grazing land to rural communities does not clearly show whether it refers to rural areas of land cultivators, agro-pastoralists' or pastoralists separately as defined user groups. 'Minimum size holding' and 'minimum private land holding' are defined in the Oromia Land Proclamation. The former refers to size of pastoralists' rural land holding the productivity of which can ensure the food security of pastoralist family or which suffices for grazing (Art 2(10) of Proclamation No. 456/2005). The later refers to rural land in the holding of pastoralist who is entitled by law to use rural land (Ibid, Art. 2(11); Art. 2(6) of 2007 Oromia Land Proclamation). Under article 2(6), Oromia Land Proclamation defines the term 'private land holding' in pastoralists' context as rural land in the holding of pastoralists who are entitled by law to use the land. Therefore, these legal provisions clearly recognize private grazing land holding system which as noted before weakens communal pasture land holding and customary institutions designed to sustainably utilize such resources. Yet, the trend as provided under Article 13 of this proclamation shows that in the future 'a system of free grazing' is prohibited and a system of 'cut and carry' feeding is going to be introduced step by step (Proclamation No. 456/2005, Art. 13(3); USAID and MoARD, 2006: 71). This very fact clearly contradicts the constitutional rights of pastoralists to 'free grazing land'.

In regard to the land law of SNNPR, some argue that regional land laws have taken a positive step to recognize communal holdings citing as an example the 2003(Elias, 2011:36-7), which is repealed and replaced by the 2007 land law of the region. Muradu argues that a careful reading of the 2003 Rural Land Law of the Southern State did show an acknowledgement of the rights of communities over their lands, but the 2007 Rural Land Law of the Southern State has not taken a positive step in accepting communal land possessions. On the one hand, it appears to acknowledge land rights of the community and on the other hand it bestows ownership rights of the commons upon the state in a rather self-contradictory manner. The self-contradiction in the land law begins when it provides that 'Government, being the owner of rural land, can change communal rural land holdings to private holdings as may be necessary' (Article 5(14) of SNNPR Land Law; Article 5 (16) of Afar Land Law, 2001 E.C), which is a replica of Article 5 (3) of the 2005 Rural Land Law of the Federal Government of Ethiopia. To the extent that the 2007 Rural Land Law of the Southern State does recognize communal lands, it contradicts with the Federal 2005 Rural Land Law. Thus it may be argued that the latter overrides the former when conflict

arises between such two land laws.⁷⁵ And this relationship between federal and regional land laws should be seen in light of the Constitution which empowers the Federal Government to enact land utilization laws while empowering regional states to administer land on the basis of such federal laws; (Articles 51(5), 52 (2, a) and 55 (2, a) of the Constitution) the legislative practice of the Federal Government is based on a broad interpretation of the term ‘land utilization laws’ to include both land use and land tenure rules. Moreover, one should note that the ‘repeal’ clause of the 2007 Rural Land Law of Southern State nullifies any customary land tenure practices in respect of matters it addresses (Article 17(2)).

The above opposing views count on their construction of article 40 of the FDRE Constitution. The first view argues that the State misinterprets article 40 of the Constitution, and the second contends that the State does not misinterpret the article 40, but rather maintains the ‘age-old thinking’ of the state that the commons belong to it. The proponents of the first view argue that the Constitution recognizes pastoral communal landholding system as ‘joint-ownership’; it is the subsidiary land laws that violates Constitutionally recognized ‘joint-ownership’ rights of land, thus they should be annulled. The second view argues that the constitution does recognize ‘joint-ownership’ but rather it recognizes ‘collective ownership’. As a result, pastoralists in their localities do not have right over the land they customarily hold. Their land rather belongs to all nations, nationalities and peoples of Ethiopia. The Constitution maintains ‘state ownership’ conception of land. In my view, apparently article 40 of the Constitution seems to articulate ‘joint ownership’ of land and natural resources. However, a close examination of article 40 of the Constitution avail to the ‘old-thinking’ of the state that the rural communal land belongs to it. The state’s conception that land in Ethiopia lowland peripheries are ‘vacant’, ‘un-owned’ and ‘barred’ is entrenched in the FDRE Constitution.

The predecessors of the FDRE Constitution—imperial Regime Constitution and Derg Constitution—had vested ownership of land and natural resources in the State. During imperial regime, all unsettled or permanently uncultivated land in Ethiopia was conceived by the authorities as no man’s land, and claimed as state property. This was enacted in a 1954

⁷⁵ This is so if we construe the power of the Federal Government on land matters couched in the Constitution as enacting land utilization laws broadly to include land tenure matters

proclamation, the 1955 revised constitution and the Ethiopian Civil code of 1960. The imperial regime alienated the land under the pastoral production system to individuals, large state farms and national parks at the expense of and against the plight of the Kereyu, Jille and Afar pastoralists. In the 1975 land reforms proclamation, the state monopoly of ownership of land was reaffirmed and the rights of pastoralists were limited by law, only to usufructuary rights. Pastoralists have possessory rights over the lands customarily used for grazing or other purposes related to agriculture. During the *Derg* regime, large state farms emerged and or expanded at the expense of pastoralist herders in the rift valley regions. The best rangelands were demarked and enclosed for national parks and protected forests, outlawing pastoralists from using them for grazing. Large resettlement schemes were carried out at the expense of pastoralists, hunters and cultivators in the Gambella, Benishangul- Gumuz and the Wabishebele Valley.

The same goes onto the FDRE Constitution that land and natural resources ownership in the state. The supremacy clause of the Constitution reads that [...] *customary practice* [...] contravenes this Constitution shall be of no effect (Article 9 (1)). The communal landholding in the pastoral communities of Ethiopia is governed by customary laws or practices. Thus, the customary communal land tenure system in Ethiopia is null and void.

On the contrary, one may argue that the self-determination clause of the Constitution guarantees *[e]very Nation, Nationality and People in Ethiopia has the right...to 'develop and to promote its culture'*. In addition, in reference to the same provision and article 52 (2, d) it might be argued that nations, nationalities and peoples have the right to establish their own self-government and administer land and natural resources. The right to develop and promote its culture may include customary landholding system, and thus the Constitution duly recognizes pastoral communities' communal landholding system. And yet, article 52 (2, d) articulates that States shall have the power to *administer land and other natural resources in accordance with Federal laws*. Hence, states' land laws should be consistent with the Federal Land Law and with the Constitution. In fact, the Constitution gives States' the land administration power according to the Federal land Law. The state believes one of the general communities' interests is 'common ownership' of land and natural resources. The state's conception that the so-called unsettled land was known as *Zalan* (wanderer) land was to be reassigned to individuals, large state farms and national parks,

without obtaining the pastoralists' consent, and conducted 'villagization'. This trend has continued with the incumbent regime. The continuation is due to vesting of ownership in the state just like the imperial and *Derg* regimes, rather than 'misinterpreting' article 40 of the Constitution. The continuing calling of peripheral land as 'unused' or 'underutilized' by the Ethiopian government is associated to this point. Hence, in my view the FDRE Constitution does not recognize customary communal landholding system.

4.4 Conclusion

The FDRE Constitution apparently provides bases for the recognition of pastoral land rights. Article 40(5) states, 'Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.' However, a close look at article 40 of the Constitution tells us that the Constitution does not recognize customary landholding system. This is the legacy of the Ethiopian states since Imperial Regime. The constitutional framework is codified in federal legislations—Federal land laws and a proclamation to provide for the expropriation of landholdings for public purposes and payment of compensation. The latter outlines expropriation and compensation procedures, which is only applicable to land where the individuals have legal title. As land tenure issues for pastoralist areas and communal areas are challenging and inherently complex, recognition of land rights are critical to ensuring some form of land tenure security and for implementing other constitutional clauses involving expropriation and compensation issues. Faced with criticisms about groups and individuals being expropriated or displaced, Ethiopia's government continues to assert that if they have title, they are compensated, while conveniently omitting the critical point that no pastoralists have title to their lands under Ethiopian law.

On the contrary, the UNIPR and ILO Convention together consider that traditional possession of indigenous peoples' ancestral lands entitles them to official state recognition of their ownership. The Declaration pronounces indigenous peoples' have inherent collective property rights which are indispensable for their existence, well-being, and integral development as peoples. The inherent rights of indigenous peoples derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to

their lands, territories and resources. The Declaration under article 26(3) imposes a positive obligation to legally recognize and protect traditionally owned indigenous lands, territories and resources. The Declaration requires that when States' recognize traditionally-owned indigenous lands, territories and resources, it shall do it in due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. (UNDIPR, Article 26(3)).

The ILO convention 169 provides that the rights of ownership and possession of the peoples concerned over the lands they traditionally occupy shall be recognized. Moreover, ILO Convention 169 provides that the rights of traditional communities to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities must be respected. The ILO Convention 169 requires governments recognize and respect the special spiritual, cultural and economic relationship that indigenous peoples have with their lands and territories, especially 'the collective aspects of this relationship (13(1)). Article 14 of ILO requires that indigenous peoples collective 'rights of ownership and possession over the lands'⁷⁶ which they traditionally occupy shall be recognized' and that states 'shall take steps as necessary to identify' these lands and to 'guarantee effective protection of indigenous peoples' rights of ownership and possession.'

The ICCPR states that 'in no case may a people be deprived of its own means of subsistence.'⁷⁷ In addition, the UN committee that monitors compliance with the ICERD, which Ethiopia ratified June 23, 1976⁷⁸ confirmed that 'governments which fail to recognize and respect indigenous customary land tenure are guilty of racial discrimination.' It has thus called on all states 'to recognize and protect the rights of indigenous peoples to own, develop, control and use communal lands, territories and resources and where they have been deprived of their lands and

⁷⁶ Article 13(2) of ILO defines the term 'lands' to include 'the concept of territories, which covers the total environment of the areas which the peoples concerned occupies or otherwise use.

⁷⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Ethiopia on June 11, 1993, art. 1(2)

⁷⁸ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106, annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969.

territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.⁷⁹

The focus of Ethiopian land tenure legislations are on sedentary way of life, rather than communal landholdings. The Ethiopian government has not recognized traditional systems of land tenure, as continuing to call the land ‘unused’ or ‘underutilized.’ In other words, the government has had an ‘improvement’ narrative. It could be argued that neither the federal government nor most of the state and regional governments have laws specifically protecting the land and water rights of pastoralists. Such rights, including customary rights to land and water, are usually ignored. Rules applied to pastoral areas are usually laws designed to govern arable land (Adams & Palmer 2007). Thus in the absence of a stronger legal regime of secure land use rights for the pastoralist, it is hard to assure the effective implementation of ‘*recognition and respect for existing land and resource rights; and compensating for ancestral land*’. Equally important are the institutional framework which can provide effective judicial protection and a normative setting that ensures the registration of (individual and community) landholdings and the demarcation of protected forests and wildlife.

Thus, the FDRE Constitution and the subsidiary land laws do not recognize and protect pastoral communal landholding system. These laws will practically be examined in the case of the Bodi pastoral community within the OKSDP in the South Omo Zone in the next chapter.

⁷⁹ UN Office of the High Commissioner for Human Rights, General Recommendation No. 23: Indigenous Peoples (Fifty-first session, 1997).

CHAPTER FIVE

5 THE OMO-KURAZ SUGAR DEVELOPMENT PROJECT IN SNNPR OF ETHIOPIA: THE CASE OF BODI PEOPLE IN SOUTH OMO ZONE

5.1 Introduction

The previous chapter investigated the constitutional and subsidiary land laws protecting pastoral people's right to land in Ethiopia. This chapter is intended to analyze the findings of this research. This chapter has attempted to incorporate the attitudes of all actors to the development of the State-owned Omo Kuraz Sugar Development Project. Here, primary and secondary data were collected from the actors themselves and discussions were held with the relevant government officials. This chapter portrays about pastoralism in South Omo Zone using land development projects underway in the Lower Omo Valley. It closely looks at the land philosophy of pastoralists. It triangulates views of different actors regarding the OKSDP. Finally, it analyzes those views in light of data gathered from local community/affected community and international and national laws relating to indigenous peoples land rights. In such a process, the key themes of reference relate to consultation and consent; villagization; compensation; effects (positive as well as negative) of the OKSDP; reactions/resistance of the Bodi pastoral communities.

5.2 The Study Area in Context

5.2.1 Background of South Omo Zone

South (Debut) Omo zone is one of the 14 zonal administrations⁸⁰ of the region which covers an area of 23535 km². The zone lies between 40⁰43'-6⁰46' latitude and 35⁰76'-36⁰06' longitude with an elevation ranging 360-3500 meters above sea level. The zone has large size of land resource exploitable for the development of commercial irrigable farm suitable for the

⁸⁰Sidama, Wolaita, Gamo-Gofa, Siltie, Guraghe, Hadiya, Kambata-Tambaro, Debut Omo, Kaffa, Shaka, Benchi, Maji, Gedeo, Sagan Area Peoples

development of low land crops.⁸¹The zone has a large number of livestock resources.⁸² Cultivated land of the zone covers 2.78%, grazing land covers 33.5%, and forest, bushes and shrub and others cover 63.72% ha. As regards agro-ecology of the zone, out of the total land size 60% is covered with arid, 5.1%-semi-wet, 0.5%-wet and semi-arid-34.4%. The mean annual temperature of the zone ranges between 26-35 °c and the mean annual rain fall ranges 350-1600 mm.

The zone is regarded as a typical marginalized area where infrastructure and social services are very poor or non-existent in most areas. However, since recently the government has been taking encouraging steps in the area of office organization, health provision, school enrolment, agricultural extension, gender participation, transportation and communication, and investment attraction. The pastoral part of the zone is one of the most remote and sparsely populated areas in Ethiopia. The Omo River forms the eastern boundary of the large grass plains of the Omo National Park and then meanders through the arid scrub plains of Dassanech *Weredas* to form the eastern boundary of the territory of the Nyagatom people.

5.2.2 Demography of the Zone

This Zone has a total population of 573,435, of whom 286,607 are men and 286,828 women; with an area of 21,055.92 square kilometers, Debub Omo has a population density of 27.23. While 43,203 or 7.53% are urban inhabitants, a further 25,518 or 4.45% are pastoralists (CSA, 2007). A total of 125,388 households were counted in this Zone, which results in an average of 4.57 persons to a household, and 121,309 housing units. The different indigenous ethnic groups in the zone have small populations.

Table 6: Demography and livelihood of Ethnic Groups of South Omo Zone

Ethnic Group	Livelihood	Total
Ari	Farmers	290,453
Maale	Agro-pastoralist	98,114
Dassanech	Pastoralist	48,067
Hamar	Pastoralist	46,532
Bena	Pastoralist	27,022

⁸¹ Such crops include oil crops, textiles crops, spices, fruit and vegetables and food crops.

⁸² According to 2011 data, the livestock resource of the zone was 1,777,000 cattle, 546,620 sheep, 968,531 goats, 92,343 equines and 611,606 poultry.

Nyangatom	Pastoralist	25,252
Tsemay	Pastoralist	20,046
Mursi	Pastoralist	7,500
Bodi	Pastoralist	6,994
Arborie	Pastoralist	6,840
Brayle	Pastoralist	5,002
Bacha	Pastoralist	2,632
Koyego	Pastoralist	1,974
Karo	Pastoralist	1,464
Murle	Pastoralist	1,469
Dime	Pastoralist	891

Zone Total	590, 252
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5.2.3 South Omo Pastoral Livelihood Zone

South Omo Zone has eight *Weredas*(districts):Debub Ari, Semen Ari, Maale, Hamar, Bena-Tsemay, Dassanech, Nynangatom, Salamago, and Jinka Town Administration. Except Debub Ari and Semen Ari, the remaining *Weredas* are comprised of pastoralists and Agro-pastoralists.

The South Omo Pastoral Livelihood Zone is a remote, livestock-dependent area, inhabited by theHamer, Maale, Benna, Tsamay, Dassanech, Nyngatom, Mursi, Bodi and Erboere. The zone is found in the basin of the Rift Valley, bordered to the east and west by the Kuttume Mountains. It stretches through parts of four neighboring *woredas* of South Omo Administrative Zone such as Debub Ari, Banna-tsamay, Hamerand Dassanach and Nyangatom. The zone is crossed by the Waito River and numerous dry seasonal rivers that originate in the Kuttume Mountains and drain down to the valley basin in the wet season.

This South Omo Pastoral livelihood zone is distinguished by its *bereha* (semi-arid rangeland) climate, with low and erratic annual rainfall, low altitudes and warm temperatures. Temperatures range from 16 C⁰ in the coolest months of the year (April – early June) to 30 C⁰ in the hottest months (January – late March). The main rainfall and production season stretches from March to June. Although the rains are normally characterized by poor intensity and erratic distribution, they enable pastoral households to grow small quantities of sorghum and maize. The showers that occur in September – November are important only for the regeneration of browse for goats.

A traditional and extensive livestock rearing system is practiced in the livelihood zone. Wealth is determined by livestock holdings. Other factors, such as the area of land that a household owns and cultivates, are secondary to this. Poor households are caught in a cycle that leaves them with small herds that provide little protection from food insecurity when hazards strike. If a few satisfactory years occur in succession, herd growth occurs. However, increased livestock mortality during drought, combined with increased livestock sales to finance essential food and nonfood items, depletes the herd again and offsets the small gains made during good years.

Table7: Wealth Distribution in South Omo Pastoral Livelihood Zone

		Wealth distribution	
Status	HH Size	Land Cultivated	Livestock
Poor	4-6	0.25 - 0.75 ha	1-5 cattle (including 0-2 plow oxen), 4-20 goats, 0-6 sheep
Middle	6-8	0.5 - 1 ha	6-20 cattle (including 2-4 plow oxen), 30-50 goats, 5-30 sheep, 0-1 donkey
Better-off	8-10	0.75 - 1.25 ha	30-70 cattle, 50-150 goats, 15-45 sheep, ~5 donkeys

Source: South Omo Pastorals Department, 2010

This figure represents Bena-Tsemay, Maale, Hamar, Dassanach and Nyngatom pastoral woredas of the Zone. The better-off households have up to 70 cattle and up to about 200 small stocks, while the poor have not more than 5 cattle and 25 small stocks. In Salamago Woreda, however, the poor have 4-6 cattle, 3-5 goats and cultivated land area of 0.25 - 0.75 ha, while the middle class have 20-50 cattle, 10-35 goats and 0.5 - 1 ha cultivated land, and the better-off have 60-110 plus cattle, 20-50 goats, 0-10 sheep and 0.75 - 1.25 ha of cultivated land.

Mobility is one of the key features of pastoralism anywhere. As informants and focus group discussants told this researcher, pastoralists in South Omo move from one place to the other mainly in search for pasture and water for their livestock. Mobility is one of the major coping strategies for drought and in case of water and feed shortage. It is practiced by all pastoral groups in South Omo and is carried out during the dry and drought seasons mostly for four months (December to March) to get water and pasture land for their livestock and for themselves. This is a determinant factor for pastoral mobility. The sources of water for animals in the study areas

during the dry season are permanent rivers, boreholes, hand pumps, ponds, lake, and water extracted from temporary rivers beds. One of the permanent rivers is the Omo River.

Table 8: pastoral mobility patterns in the Lower Omo Valley

Ethnic group	Wet season	Dry season	Drought period
Hamer	Hamer range, MenoGelti, Kizo, Surge, Zersia	Kizo, Dunka, Mino Gelti, Demeka, Kara, Surge, Zersia and Chelbi	Chelbi swamp
Kara	Kizo	KaroDus and KaroLebuk	
Dassanech	Berar, Illemi triangle, Kalam to Koras mountain, Kibish, Fejej, Bubua	Lorinatom range, grazing areas in the Omo delta include Nairobi Eorar, Nemerren, Nekebela, kezkez, Diba, ElfelYebul, Kayele, and Derich	Same areas as in the dry period
Nyangatom	Kibish	Along the Omo River from Ikangaton to Shenkora	
Mursi	Foothills of Bongoso, Dara, Kurum Mara and Elma wooded	Mara, Elma, Bongo, Dara, Moizo and wooded grass land lying between wooded thicket which comes close to Omo and the foothills east of the Omo–Mago watershed	Along the Omo River
Bodi	Foothills and Shune	Wooded grass land lying between the wooded thicket which comes close to Omo and the foothills east of the Omo – Mago watershed	Along the Omo River

Source: South Omo Agriculture and Pastoral Development Department, 2009

The table shows in the Hamar, Dassanach, Nyngatom, Kara, Erboore pastoral communities. Mobility patterns are different in normal years and bad years. In normal years, livestock movements start in early July and livestock generally stay near their areas of origin. In bad years, however, they migrate to different grazing areas both inside and outside the zone livelihood zone, including towards the Waito River, Mago National Park and areas near Borana of Oromia Regional State. During such years, mobility often starts before the end of the usual rainy season months. In Mursi and Bodi communities; mobility takes place only in bad years following the drying of local rivers. The migration is in search of water sources and usually in the direction of the Omo River, which is relatively nearby. In normal years, seasonal population and livestock movements occur due to the practice of flood retreat cultivation along the Omo River, not

because water or pasture is unavailable. Thus, the Omo River is a river on which the livelihoods of pastoral communities depend, mainly during dry season.

The Mago and Omo National Parks are major areas where they move to in search for pasturing land—these parks established in 1970 (See sub-section 5.2.6.1 below). Before their establishment these are as used to serve as pasture land, hunting Elephants which resists tsetse fly, collect honey from indigenous trees (Interview with Bodi elders, March 16, 2014).

5.2.4 Land Tenure Conception of South Omo Pastoralists

South Omo pastoral communities have their own traditional institutional mechanism through which they manage land and other natural resources for long time. Traditional institutions are run almost exclusively by older men who make decisions that affect everyone in the society. They set rules and regulations that forbid inappropriate practices; they ensure that rangeland resources are used and maintained properly. The leadership negotiates with neighboring groups on the use of water and pasture and allocates range and water resources. Traditional management of pastoralist rangelands depends on careful and wise use of community knowledge. Traditional knowledge can be understood as ‘a collection of knowledge that is passed down and is developed through generations within these communities’ (Mihlar, 2008). Traditional knowledge includes a variety of information; from being able to predict weather patterns and identify medicinal plants, to adapting new plant and animal conservation techniques (Ibid). The main consideration is availability of pasture and water. Their key strategy is managing mobility; they decide if, when and where the community should move. Traditional institutions are based on social structures, or territory—where the person comes from. Everyone is a member of a lineage group or clan.

Each ethnic group has its own territory, meaning every member of an ethnic group can tell the boundary limit of his/her group’s land. The boundaries are usually marked by some physical objects such as mountains, rivers and bare-land. The areas may be the home base of the group in question or both the home base and subsidiary area used for herds keeping during a part of the year. In fact, the boundaries tell only control rights such as exclusion, alienation and management rights of an ethnic group, while mobility transcends their territories. Tribal leaders control the overall management and utilization of the ‘communally’ owned range land. In

Nyngatom⁸³, the *Ngikumama* is the spiritual leader who decides over land and other issues. The *Nnimor* (stones or mountains) only live in the *Ngingaric* territorial section of the Nyngatom has the power to decide on land of the territory. (Interview with Admasu Localey, February 2014). In Mursi, resolutions concerning natural resources and others are considered in a general assembly of elders, the *Mezey*. However, in some cases the control over rangeland usage is for pastoralists coming from other ethnic group and very loose for their members or it can be said that there is no control. In case where another group pastoralist wants to use the rangeland for their animals, they have to get permission from the council or the tribal leaders; but getting permission is not as such difficult. This is because pastoralists in the study area have the culture of sharing resources at any circumstances. Land in the study areas often comprises strategic resources such as grazing areas including dry season retreats, through using the Omo River basin, grazing resources, and water points. The Kara area, for example, provides grazing and water for the Hamer and Kara communities during the wet season. In most dry seasons, however, Hamer and Kara livestock have traditionally moved to the area that is now the Mago National Park (Interview with Dunga Nakuwa, March 13, 2014). In addition, each clan has also communal graveyards, settlement areas and ritual sites. Each clan has a well-established system of governance where the decision power regarding land and other natural resources rests on the village council consisting the clan leader, elders, and local wise-men. Decisions given by village council include exclusion of non-members, allocation of sites to nonmembers and determining resource use patterns. And, every member of the clan has the right to use the fruits of his clan's land once he has the livestock to utilize the resources. Now days, however, South Omo pastoralists owned small plots of cropland and rangeland enclosure nearby their cropland and around their homestead. The rest of the vast rangeland is still owned communally and this communal ownership of the rangeland is similar to the type of land ownership in many pastoral areas of Ethiopia and East African countries (Abule *et al*, 2005).The pastoralists in South Omo areas have the practice of allocating grazing lands according to seasons and they have little practice of conserving rangeland land plants through the establishment of enclosures.

⁸³Nyangatom have two sets social organizations: territorial sections (*ngiteala*, sing. *ekitala*), generation-sets (*ngikasa*, sing. *ekas*), age-sets (*ngigerea*, sing *ajere*), and clans (*ngitekerea*, sing. *ateker*). These institutions play different roles in the secular and sacred lives of the people. The territorial section comprises of *Ngisakol*, *Ngikapung*, *Nnilingakol*, *Ngibuney*, *Ngitokovaman* or *Ngikor*, *Ngikumama*, and the recently added *Murule* or *Ngingaric*.

5.2.4.1 The Bodi of Salamago Woreda

The Bodi pastoralists are among the indigenous peoples of Salamago *Woreda*, South Omo Zone. As Bodi elders' narrates long ago, the Bodi came from Bench Maji Zone Maji woreda, under Alku Mountain, a special place called *Bertosay*. The reason of their migration was searching of water and grass for their cattle. The ethnic group has its own traditional and spiritual leaders such as *Kumurut*, *Kemsit*, *Galach*, *Mirikegna* and *Mora*. *Kumurut* is the highest spiritual leader and well known by his wearing style. He usually wears beads and bracelets '*lolongo*' on his neck and hand respectively. There are seven *Kumuruts* in Bodi people. *Kumuruts* bless their land to be reproductive and curse human and animal diseases. A Bodi clan chief said the Bodi pray to their lord for rain during sunny season and their god to wipe out hunger (Interview with Abebe [a Bodi clan leader], April 5, 2014)

Traditional administration system of the Bodi implies that the territorial⁸⁴ leaders have their own affairs, but they also have commonly shared affairs. They require a '*unanimous vote*' on the common matters; if one of them refuses, there will be no more decision. They practice a kind of '*con-federal*' administration, where the chief of the Bodi (by now he is Girpalawho represented the Bodi in the Ethiopian Transitional Period, 1991-1993) together with territorial leaders. The Bodi consider themselves as superior to others. In terms of hierarchy, they place themselves at the top and other like Bach and Dimme on the ground (Interview with Bodi elders in Salamago, February 2014).

Land tenure system in the Bodi is considered as '*autonomous*'. The Bodi have a belief that outsiders could not intrude their land. They believe that the land they dwell is a land from which they implanted. They consider themselves forming an '*intrinsic*' element of the land they dwell. In other words, they cannot be dissociated from their land. Some even say that they '*descend from heaven*' to this land. Land which is not given to anybody believed to be their land (Interview with elders of Bodi and focus group participants, February 2014). In a focus group discussion an elder participant described:

Our fore fathers and mothers had lived in this land. Our fathers lived here and I live here. This land is the land in which traditional hunting grounds, the land we use for grazing our cattle, our homes; get honey from forests, get water for

⁸⁴Gura, Omo-Hana, Omorombe, Chedmis, Giyo

ourselves and cattle...etc. The men take a fish hook and go to the river and catch a fish and bring it to me to eat. They also go and hunt to bring food for the children. The land belongs to me...to our generations...to my equals...to my children...it goes on...

The term communal ownership or common property regime in Ethiopia is often used to describe pastoral tenure. Here, the rights we are talking about are essentially group rights, rather than private. Helland (2006) argues that tenure regimes in pastoral areas have been assumed to be *res nullius* - or 'no-man's land', but the evidence available shows that they "should be regarded as *res communes*-or 'communal lands' in the proper sense, with various ownership rights vested in specific collectives of people". As Brink (2003:4) precisely noted, common property including land, is simply the property of a group. Though the concept of common property is sometimes logically extended to public property or state property (Bromely (1992, 1-17), it does not mean that common property is always state property. Thus, data gathered from informants and focus group discussants show that property rights are based on the existing pastoral conception that land and other natural resources are communally owned, which they have inherited from their forefathers, and is not a property to be allocated individually. Land conception of the Bodi tells us that the Bodi people exclude outsiders, and hence exercise 'exclusionary' principle on land right regime. In other words, it means the land they dwell on is 'communal' to their group, and not an 'open access resource'. Hence, it requires their consent or permission through consultation. Neither is it a state property.

5.2.5 The Lower Omo Valley

5.2.5.1 A Complex Set of Human and Wildlife Reserve

The valley borders Kenya and South Sudan, the Lower Omo and the National Parks of neighboring Lake Turkana, into which the Omo flows. The Valley is internationally renowned for its unique cultural and ecological landscape and one of the country's most remote and undeveloped areas. A UNESCO World Heritage Site (Archeological and Paleontological sites) comprises four main geological formations, namely the Mursi, Shungura, Usno; and the much younger Kibish Formation. The Lower Valley of the Omo River is a prehistoric site where many hominid fossils have been found. They are of fundamental importance in the study of human evolution. Several hominid fossils and archaeological localities, dating to the Pliocene and

Pleistocene, have been excavated by French and American teams. Fossils belonging to the ‘genera Australopithecine’ and ‘Homo’ have been found at several archaeological sites, as well as tools made from quartzite, the oldest of which date back to about 2.4 million years ago.⁸⁵ The lower Omo Valley is one of the last unspoiled wilderness biodiversity hotspot areas. Wildlife Protected Areas (WPAs) in the area include: Omo, Mago National Parks, Tama and Chelbi Wildlife Reserves, Murule and WelishetSala Controlled Hunting Areas. These WPAs are mutually dependent mega-biodiversity complex in the area and home for diverse conservational important species of mammals, avian, reptiles and insects.

The valley is a home for approximately 200,000 (various sources) agro-pastoralists made up of some of Africa’s most unique and traditional ethnic groups, including the Kwegu, Bodi, Suri (Surma), Mursi, Nyangatom, Hamar, Karo, and Dassenach among others.⁸⁶ Few non-indigenous people live in the Lower Omo Valley outside the main towns, and the indigenous communities have little experience of industrial-scale development. Each group is small in number, and many do not have regular contact with neighboring groups or government officials. Yet, low-intensity conflicts regularly occur between different ethnic groups over scarce grazing lands and water (Farm Africa, 2012).⁸⁷ The focus of government effort to develop the area has been on national park development and tourism (Terri Hathaway, 2009).⁸⁸

Livelihoods of the Lower Omo Valley pastoralists depend on a diverse combination of subsistence. Ethnic groups practice flood retreat agriculture on the river banks of the Omo and the surrounding flats. The settlement pattern of the some of the ethnic groups favors this type of agriculture, as the river divides their land into two, making more land available for flood-retreat agriculture. The Omo Delta provides livelihoods to at least 30,000 Dasanach, practicing a combination of cultivation and a particular type of delta based cattle pastoralism in the vast flats

⁸⁵<http://www.worldheritagesite.org/profiles/provile.php?user=7>

⁸⁶ Many more ethnic groups are in the surrounding areas but these are the key ethnic groups that are likely to be impacted by the irrigation developments. See also International Rivers, ‘Facing Gibe 3: Indigenous Communities of Ethiopia’s Lower Omo Valley’, January 26, 2009, <http://www.internationalrivers.org/files/attached-files/loweromovalleyfinal.pdf>, accessed on August 23, 2013

⁸⁷ Farm Africa, ‘Integrated Pastoralist Project, South Omo,’ 2012, <http://www.farmafrica.org.uk/ethiopia/integratedpastoralist> project, (August 23, 2013)

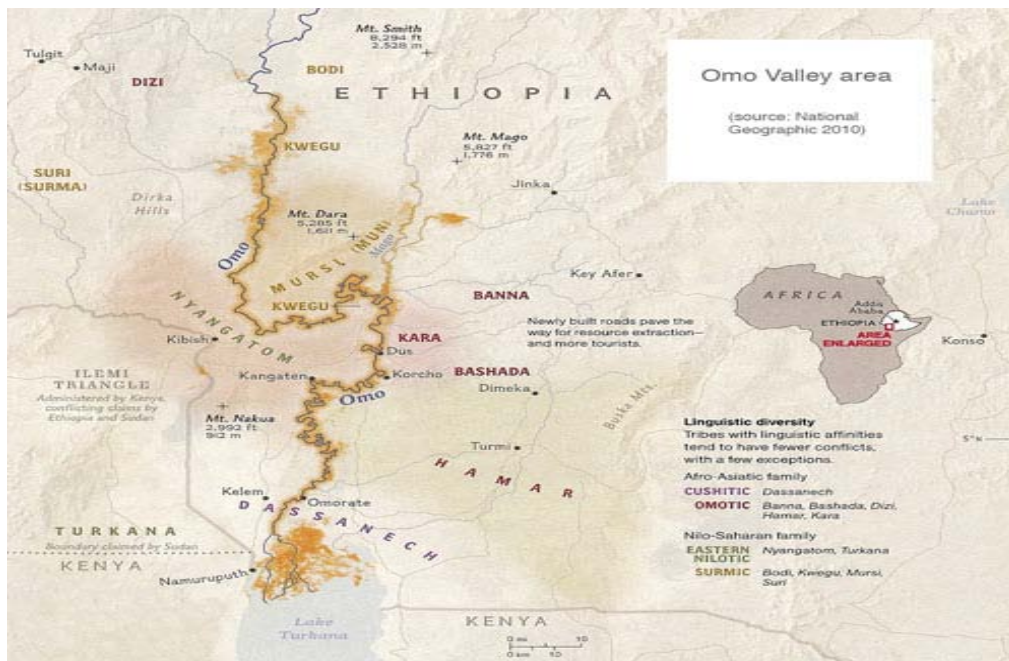
⁸⁸ Terri Hathaway, ‘Ethiopia’s Endangered Lower Omo Valley,’ January 26, 2009, <http://www.internationalrivers.org/en/node/2794>

regularly inundated by the flood of the Omo River. Upstream Omo River, Kara and the Muguji are two very small ethnic groups entirely dependent upon the flood of the Omo River for their cultivation in the flooded flats, along the banks of the Omo River and in the shores of the oxbow lakes. They integrate cultivation with complementary activities such as small stock husbandry, fishing, hunting, and honey cultivation, all dependent upon the ecology of the Omo River. The Nyangatom, the Mursi and the Bodi integrate flood retreat cultivation with a degree of a quite unreliable rain fed and shifting cultivation, and with a relevant component of savannah-based cattle pastoralism. David Turton outlined that ‘none of these is sufficient in itself, nor even in combination with one of the other two, to provide a regular, reliable subsistence, but each makes a vital contribution to the overall viability of the economy’ (Turton, 1985:332). Fully dependent upon the river ecology are the Ngarich (Murle), living among the Nyangatom, and the Kwegu, living among the Mursi and the Bodi. It is estimated that some 20,000 families are engaged in flood recession and cropping in the delta, on 12,000ha or so, meaning that 100,000 people rely on flood recession (Ethiopian Electric Power Corporation, 2009). Thus the livelihood of the Lower Omo Valley population is directly dependent on the Omo River⁸⁹ for their livelihoods, including those practicing a degree of rain-fed cultivation, not only because the flood assures a reliable crop at family level, but also because it produces the biomass that allows the survival of the herds in the driest season. The green belt and the forage produced by the flood and the fluctuation of the Omo River and of Lake Turkana are a key seasonal pastoral resource also for the pastoral groups normally living further away from the river and from lake (Hamar in Ethiopia, and the Gabra, the Dasanech Inkoria and the Turkana in Kenya)⁹⁰ (Kloos *et al.* 2010, 269-271).

⁸⁹An independent study conducted in May 2010 by SOGREAH Consultants Inc. for the European Investment Bank stated that forty-eight percent of the population are dependent up-on Omo river

⁹⁰The El Molo, the Dasanach Dies and the DasanachRielle, whose livelihoods are based on fishing on the shores of Lake Turkana, may also potentially be affected

Map 2: Lower Omo Valley



Source: National Geographic, 2010

5.2.5.2 Land Developments in the Lower Omo Valley

5.2.5.2.1 The Omo-Tama-Mago Mega Biodiversity Complex

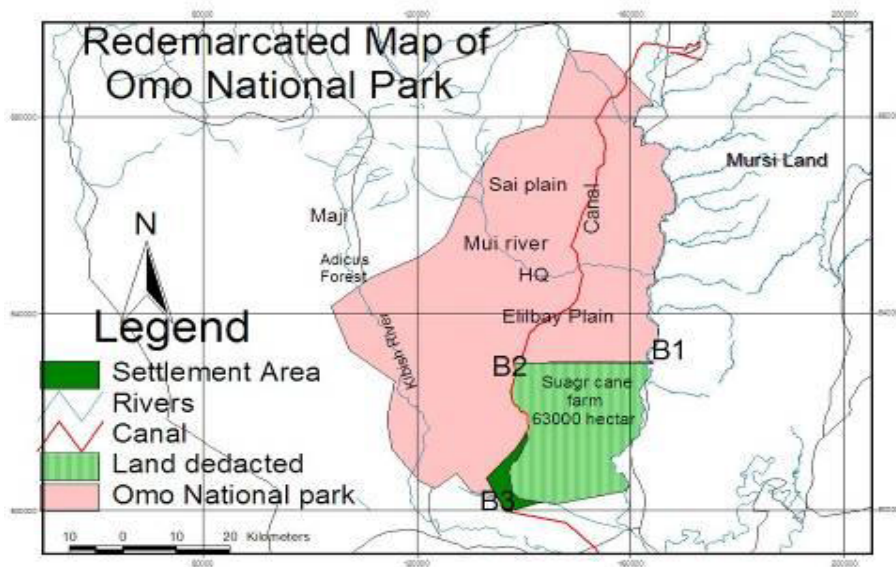
These three inter-linked wilderness areas are mutually dependent WPAs in the lower Omo valley of the SNNPRS of the country, where a number of wild species dwell. The Omo National and Mago National Parks and the Tama Wildlife Reserve are the three wildlife conservation sites.

5.2.5.2.1.1 The Omo National Park

The Omo National Park is one of the largest and biologically rich National Parks in Ethiopia. The park was established in 1968 as a proposed National Park covering a total of 4068km sq. The park was re-demarcated by the regional government, and secured legal demarcated boundary

in 2003 by the SNNPRS. The re-demarcation is aimed at minimizing the impacts of the project on the wildlife resources of the park during the selection of suitable cultivation land for the sugar plantation in the area. The Vegetation composition includes savannah, riparian formation and deciduous woodland. (Ethiopian Wildlife Conservation Authority[EWCA], September 2011).The south east part of the park land which covers 63000ht excluded and the total area of Omo National Park become 3438 km sq. The local communities' living in the Omo Valley around Omo National Park is the pastoralist Nyangatom, Musri, Surma Bodi; agro-pastoralistDizi and Me'enit, and Mugji and Kwegu, who depend on flood retreat agriculture and fishing and also have few cattle as well. The Northern, Southwestern part of the park, Dirga escarpment, *Illibai* plain and hot spring are inhabited by surrounding communities (EWCA, May 2013). All communities surrounding the park hunt wildlife for food and cloth. The south east part of the park below *Illiby* plain excluded from the park for the sugar cane development project (Ibid).

Map 3: Omo NP



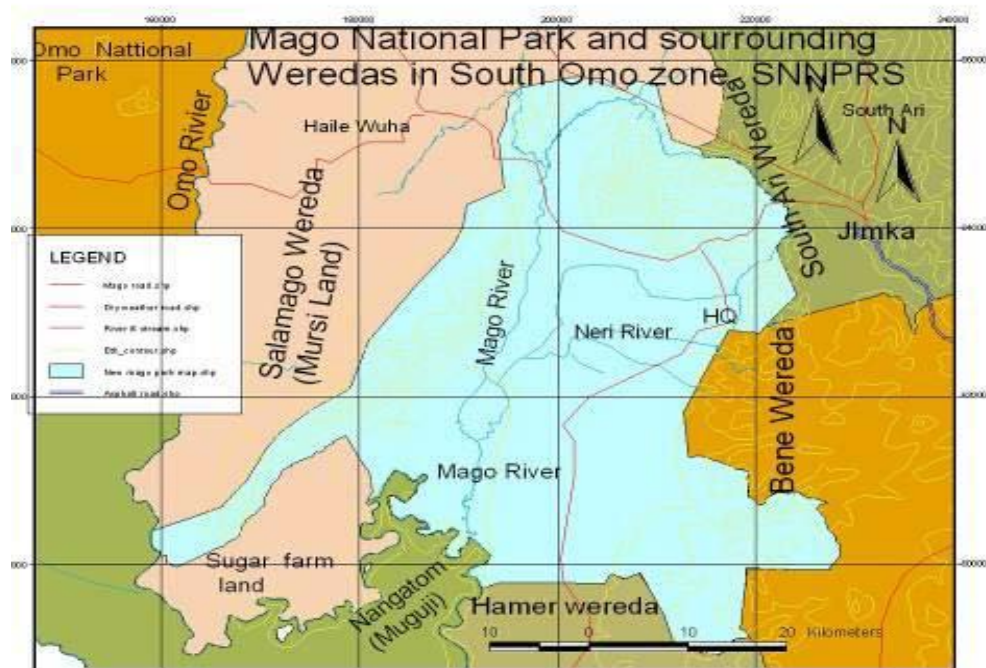
Source: EWCA, 2011

5.2.5.2.1.2 The Mago National Park

Mago National Park lies on the eastern sides of a small branch of the eastern Rift Valley, in the Debub Omo Zone. The Park was established in 1970 as a proposed National Park. Similar to the Omo the Park was also re-demarcated considering the recent local communities' settlement and

resources uses, wild animals' distribution, movement and habitat as well as the intended Omo-Kuraz Sugar Development Project in the area. The re-demarcated park boundary secured legal status in 2003 by the SNNPRS. The total area of Park becomes 3438 km sq. About 30000ht of the South West part of the park land excluded from the Park and included to the sugar cane development project. The Park supports a typical bush savanna fauna with 81 larger mammals and 237 species of bird.

Map 4: Mago NP



Source: EWCA, September 2011

This map shows that the Park shares borders with six ethnic groups, the Bena on the East, Ari [South Ari] on the North East, Mursi on the East, Hamer, Kara and Kwegu on the South (See the map below). As noted in the introduction, the Hamer, Kewgu, Kara, Mursi are pastorals. As a result, it could intrude pastoral land of these pastoral communities.

5.2.5.2.1.3 Tama Wildlife Reserve

Tama wildlife reserve was established together with Mago National Park in 1970; it is one of the WPAs in Debub Omo Zone located in between or adjacent to Omo and Mago NP. The reserve is very rich in wildlife resources besides large number of wild animals migrate into this area from

the neighboring WPAs based on seasons. It is one of the dry season’s refugees for the wildlife of the nearby WPAs.⁹¹ Almost all mammals and birds species recorded from both Omo and Mago NP known to exist in the reserve.⁹² In 2008, the reserve was re-demarcated. The total area of the reserve was about 1472km sq. About 42285ha of the left bank Omo River excluded from the Tama reserve for the intended sugarcane plantation. The Tama wildlife reserve has would totally lose its natural connection with the Omo River and Omo NP and all area to the left bank of Omo River is proposed as the ‘command plantation and sugar factory zones’ by the OKSDP. About 42285ht of land were selected and considered as one of the ‘command area’ (EWCA, September 2011).

5.2.5.2.2 Road and Petroleum Developments

The other development plans include major road infrastructure with a proposed North-South road to act as a critical part of the Addis-Nairobi-Mombasa corridor while proposed East-West roads will strategically connect Ethiopia with emerging markets in South Sudan. Moreover, petroleum exploration of a 29,465 km² concession block currently focused in the Dassenach and Nyangatom areas.⁹³

5.2.5.3 Land Available for Investment in the Lower Omo Valley

A survey conducted by the SNNPR Investment Bureau has identified 305,511ha of land available for investment in South Omo’s pastoral areas, for different investment activities in South Omo Zone. Of this ha of land, 180, 604 ha of land is proposed and transferred to the Ministry of Agriculture and Rural Development.

Table 9: Land available for investment in Lower Omo Valley

No	Woreda	Area Transferred to Federal Land Bank (ha)	Area verified (ha)	Location
1	Dassanech	89, 000	76, 409	West of Omo River

⁹¹ It is suitable home for the remnant giraffe population. Savannah, riparian formation and deciduous woodland constitute the major vegetation types of the reserve.

⁹² Common mammals species of the reserve includes: cheetah, elephant, giraffe, buffalo, lion, leopard, lelwel hartebeest, tiang, oryx, Burchell’s zebra, Lesser kudu, de Brazza monkey, common baboon and gureza, ostrich on the plains and the endemic black-winged love bird are among others typical features of the reserve.

⁹³ The block’s former 100% owner White Oil Ltd sold many of its East African oil holdings in order to focus on commercial agricultural. White Oil Ltd has however retained a 20% stake. The concession is owned by a consortium made up of Africa Oil Corporation (30%), Tullow Oil (50%) and White Nile (20%). The same geological basin is also being explored on the Kenyan side of the border by the same company. Concession information can be found at <http://www.africaoilcorp.com/s/Ethiopia.asp?ReportID=352253>. This company also has 4 concession blocks in the Ogaden, where various human rights atrocities have taken place under the guise of counter-insurgency against the ONLF. See <http://www.hrw.org/en/features/ogaden-war-crimes-ethiopia-0> for more information. Concession info at <http://www.africaoilcorp.com/i/pdf/PPT-April2011.pdf>

2	Nyangatom	63, 000	71, 473	South of Omo NP
3	Hamer	15, 000	16, 292	South of Mago NP
4	South Ari ⁹⁴	14, 017	16, 451	North of Jinka Town
5	Total	180, 604	180, 625	

Source: Flintan (2011); Embassy of Ethiopia, Stockholm (2011)

As shown in the above figure, the total Investment Land under Federal Land Bank at Federal level is 3,589,678MoARD, 2009; MoARD, 2010 in Dessalegn Rahmato,2011). Of which 180, 625 ha of land are transferred from SNNPRS (Ibid). Again, of this 180 625 verified lands for investment, 164 174 ha of land is verified in the Lower Omo-Valley (Dassanech, Nyangatom and Hamer). Only 16, 451 ha of land are verified in the agricultural *woreda* [South Ari] of the Zone. Hence, one can soundly argue that SNNPR verified land is totally from South Omo Zone.

5.2.5.4 The Investors in the Lower Omo Valley

The investors involved in large scale-agricultural investment in the Lower Omo Valley can be classified into private and government owned. Private investors are either foreign company, Ethiopian or Diaspora companies. While one of the agricultural investments signed with the federal Agricultural Investment Support Directorate (AISD) is an India company, the rest are either Ethiopian or Diaspora companies—the vast majority of which are for cotton production. The state-owned one is for sugar development. The 245,000 ha of sugar plantations are state-owned, in which India is playing a significant role in financing Ethiopia’s growing sugar industry.⁹⁵Hence the government is the major investor in the Lower Omo Valley via acquiring large-scale water and land for the development project, and implementing sugar cane plantation project. This idea has been highly gone with ‘marginal land’ narratives as a central apparatus used to enclose space for more economically productive means (Borras and Franco 2010). Over 350,000 hectares of land have been kept for commercial agricultural production in the Lower Omo Valley. This includes the currently publicized development of a huge 245,000 hectare state-run sugar plantation (www.oaklandinstitute.org, Sept, 2011). However, the OI figure is far higher

⁹⁴ An agriculturalist woreda in South Omo Zone

⁹⁵The Indian Export-Import Bank has pledged USD 640 million of credit over five years for Ethiopia’s sugar industry (at a low rate of 1.75% with five interest free years to be paid back in 20 years). However, one of the conditions of this credit is that at least 75% of the contract value of goods and services must be imported from India.Ethiopian Investor, ‘Ethiopia to release 91 million Credit LineUSD’ http://www.ethiopiainvestor.com/index.php?view=article&catid=69%3Aarchives&id=2119%3Aindia-to-release-usd-91-million-credit-line&tmpl=component&print=1&page=&option=com_content&Itemid=88

than the potential suitable area established by the Master Plan and the recent SORGEAH Study (2010). And yet the OKSDP officials note that the land allocated for the project is 250, 000 ha (Interview with KassaTesfaye, OKSDP Contract Administration vice Manager, March 2014).

Table 10: Selected investments in the Lower Omo Valley

Name	Size (ha)	Purpose	Investor
Block 1	82,600	Sugar	State-owned
Block 2	81, 250	Sugar	State-owned
Block 3	81, 300	Sugar	State-owned
Daniel Fasil Bihon	5, 000	Cotton and grains	Diaspora
Lucci	4, 003	Cotton	Ethiopian
Mela	5, 000	Cotton	Ethiopian
Whitefeld Farm	10, 000	Cotton	India
Reta	2, 137	Cotton and grains	Diaspora
Rahwa	3, 000	Cotton and grains	Ethiopian
Tsegaye Agri'l Deve't	1, 000	Cotton, Sesame and Soybean	Diaspora
Tamil Hadigu	5, 000	Cotton, Seeds	Diaspora
Adama	18, 516	Cotton	Diaspora
Other Agi'l Invest't	57, 695	NA	NA
Land Available from Federal Land Bank	89, 000		
Total Agricultural Investment Land	445, 501		

Source: EWCA, September 2011; www.media.oaklandinstitute.org/land-deals-africa/ethiopia, 2011

5.3 The State-Run Omo-Kuraz Sugar Development Project

5.3.1 Irrigation Development Potential of the Omo-Gibe Basin

The Omo-Gibe River Basin Integrated Development Master Plan Study exhaustively presents the different natural resources found in the basin and outlines possible projects (Ibid). The Omo-Gibe Master Plan study's 'reconnaissance phase' investigated a potential of 265, 000 ha, distributed throughout the Basin. A potentially suitable for irrigation, with the potential area having been narrowed down from 265, 000 ha to 74, 300 ha, which following soil survey was then reduced further to 54, 670 ha. This did not include any potential within the 'protected area'— National Parks and Wildlife Reserves. The Master Plan determined that 94% of the basin water demand would be from irrigation, and that the bulk of this was foreseen in the Lower Omo. In 2011, 135,

285 ha were reported excised from the Omo National Park, Mago national park, and the Tama Wildlife Reserve, for sugar plantation (see the overlap between the National Parks and OKSDP, Figure----). It is assumed that this land has been established as 'suitable for irrigated agriculture'.

The Terms of Reference for the 1996 Omo-Gibe Basin Irrigated Development Master Plan study referred to 'estimated 250, 000 ha identified as having potential for irrigation development (MoWR 1992, Tor Item 3.3.3.). The Master Plan adopted the 'Ethiopian Criteria' to classify irrigation schemes according to areas.

Table 11: Irrigation Potential of the Omo-Gibe Basin

Catchment Area (Km ²)	Irrigation Potential in ha (Master Plan)				Irrigation Potential in ha(WAPCOS 1995)			
	Small-Scale	Medium-Scale	Large-Scale	Total	Total Drainage Area(Km ²)	Irrigable Area (ha)	Percent area of the Country	Irrigable of the
79,000	N/A	10,028	57,900	67,928	78,213	445,000	12%	

Source: The national water resources master plan, (WAPCOS 1990)

The Omo-Gibe basin is the third largest in Ethiopia, with an annual flow of 17.9 bcm. The first and second being Abbay with 52.62 bcm and Baro-Akobo with 23.24 bcm (Yacob, 2007) and the Omo River is the second largest river in Ethiopia (Richard Woodroffe and Associates & Mascott Ltd., 1996, vol. 5). In terms of percent in irrigable area of the country, the Omo-Gibe Basin (12%) stands third, with Abbay (27%) and Baro-Akobo (26.5%) ranks first and second respectively. Large-scale and medium-scale irrigation potential is identified in the basin. Omo-Gibe River basin is the second largest basin in terms of hydropower development potential, and it is a basin in which most of the current hydropower development is taking place. The basin is also endowed with a variety of wildlife; with Omo and Mago parks being located in the basin.

5.3.2 The Omo-Kuraz Sugar Development Project Command Area in SNNPR

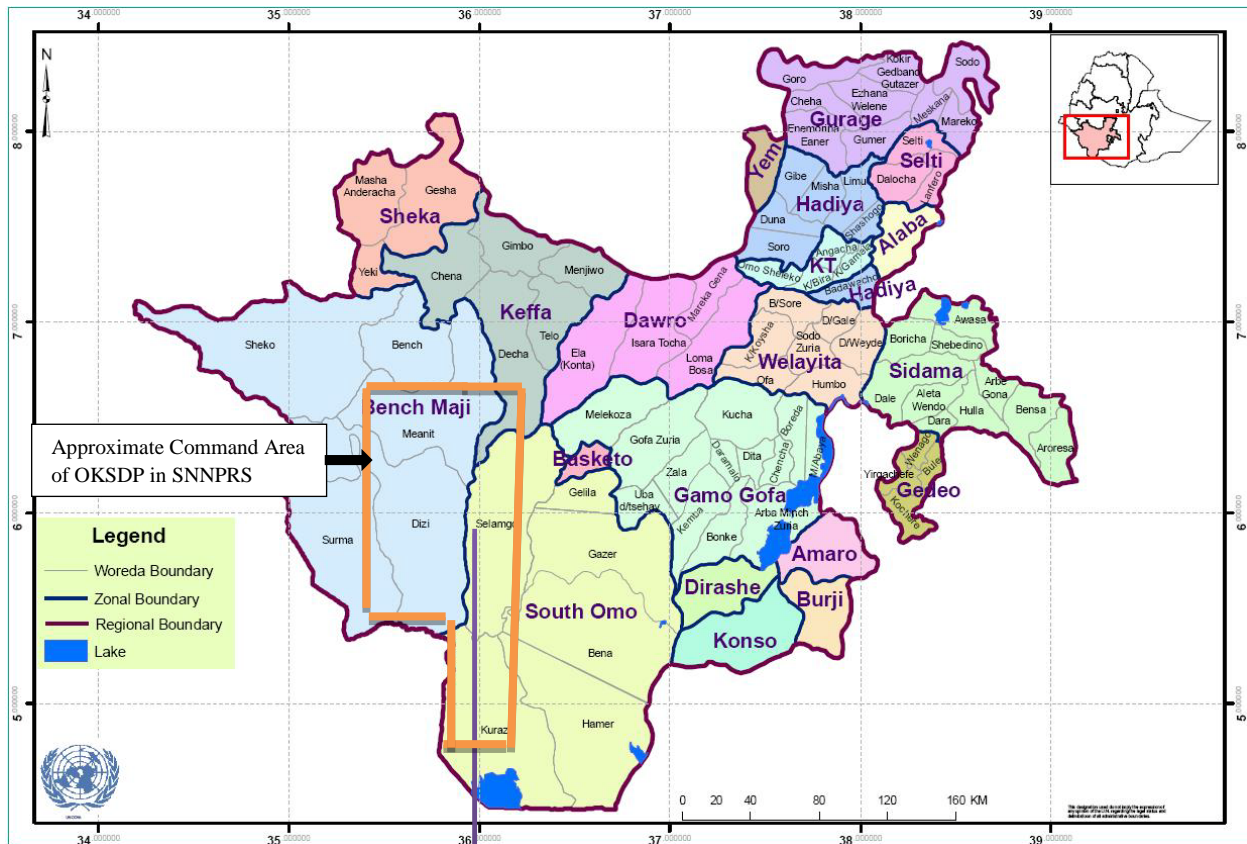
The Omo-Kuraz Sugar Development 'command area' (plantation area) comprises selected areas of Salamago and Nyangatom *Woredas* of South Omo Zone; Surma and Meinitshasha *Woredas* of Bench-Maji and Decha *Woreda* of Keffa zone in the SNNPR. The Project covers wide areas in these three zones of SNNPRS. Of the six sugar factories, three are to be constructed in South

Omo Zone's three *Woredas*, Salamago, Nyangatom and Dassanech. The remaining two are to be constructed in Bench-Maji Zones and one is to be built in Keffa Zone, Decha *Woreda* (see the Map below).

The plantations and factories of the Project will be located on both sides of the Omo River. On the Eastern side, 50,000 ha are allocated for sugarcane plantation in Salamago Wereda, while the Western side accommodates 125,000 ha of cultivation. On the Western side, the activities of the Project directly fall in Nyangatom Wereda of South Omo Zone, and other *Woredas* from Bench-Maji and Kaffa Zones (Interview with Project Management Office, February 22, 2014).

The total sugar plantation field of the OKSDP is 175,000 hectares (Ethiopian Sugar Corporation Bulletin, August 2013). However, initially the land to be alienated for sugar plantation was 150,000 ha of land. The OKSDP plans include more than 200 kilometers of irrigation canals running parallel to the Omo River, on the east and west banks, more than 750 kilometers of internal roads, one bridge over Omo River, construction of villages for employee, and the construction of six sugar processing factories. The six sugar factories that will be constructed by the Metal and Engineering Corporation (MetEC) in the area. These six factories will have a capacity of producing 1,946,000 tons of sugar per annum. The project would create huge employment opportunities for the local community. The six sugar factories and plantations in the zone are expected to create more than 150,000 fulltime and part-time jobs opportunities. It is also planned to consider community development components in which local people will be directly benefited by having separate irrigation land to enable them to earn a living from their own irrigation agriculture (Ibid).

Map 5: Approximate OKSDP Command Areas in SNNPRS



The study Area

5.3.3 The OKSDP in Salamago Woreda-South Omo Administrative Zone

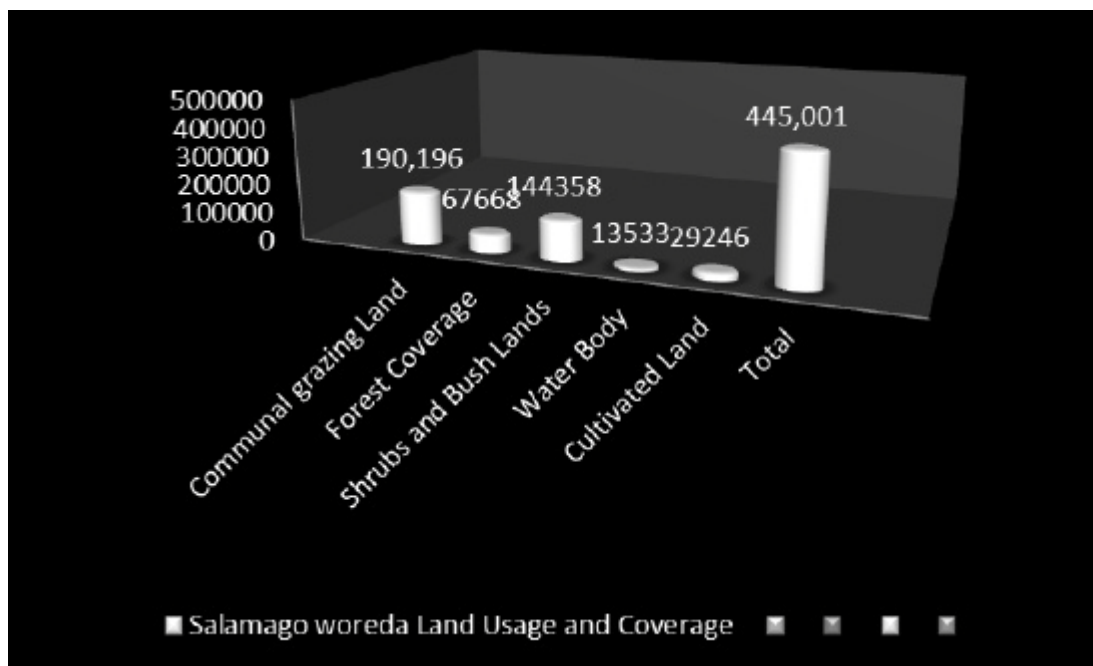
5.3.3.1 The Salamago Woreda

Salamago Woreda is located in the southern borderlands of Ethiopia, in the lower parts of the Omo-Gibe Basin and about 100 km north of Lake Turkana. The Woreda borders on the south by Nynangatom, on the west and north by the Omo River which separates it from the Bench Maji

and the Keficho-Shekicho Zones and the Konta special woreda, on the northeast by the GamoGofa Zone, on the east by the Basketo special woreda and Ari, and on the southeast by the Usno River, which separates it from Hamer and Bena. The *Woreda* has three *Kebeles*, and four indigenous peoples: Bodi, Mursi, Bacha and Dimme. All live within and around the ‘command area’. (Interview with Banana, Salamago *Woreda* Administrator, February 23, 2014). The administrative center of Salamago is Hana. The Salamago *Woreda* is the area where the Omo-Kuraz Sugar Project is started. In this *woreda* the Mursi nationality compose of the majority followed by the Bodi. This *woreda* has four indigenous ethnic groups (Bodi, Mursi, Bacha and Dimme) and Konso settlers since 2003. All of the indigenous ethnic groups of this *woreda* live within and around the ‘command area’ of the project (Interview with Banana, Salamago *Woreda* Administrator February 2014).

The *Woreda’s* livelihood depended on animal husbandry. Hence, the cattle population of the *Woreda* is 150,000, sheep 16,000 and goats 24,000. The total land area of Salamago *Woreda* is 445, 001 km². Communal grazing land of the *Woreda* ranks first, followed by woodland (Shrubs and Bush land) and forests. Cultivated land covers the least of all. Water body covers 13,533 ha of land. The *Woreda’s* agricultural land holding size per household is 0.75 hectares is the minimum and 9 hectares are the highest holding (Interview with Head of South Omo Zone, Salamago *Woreda* Agro-Pastoralists and Pastoral Affairs Office.)

Figure 1: Land use proportion in ha, Salamago *Woreda*



Salamago Woreda, Agro-Pastoralist and Pastoralist Affairs Office, Nixon Godanna, 2013

5.3.3.2 The OKSDP in Salamago Woreda

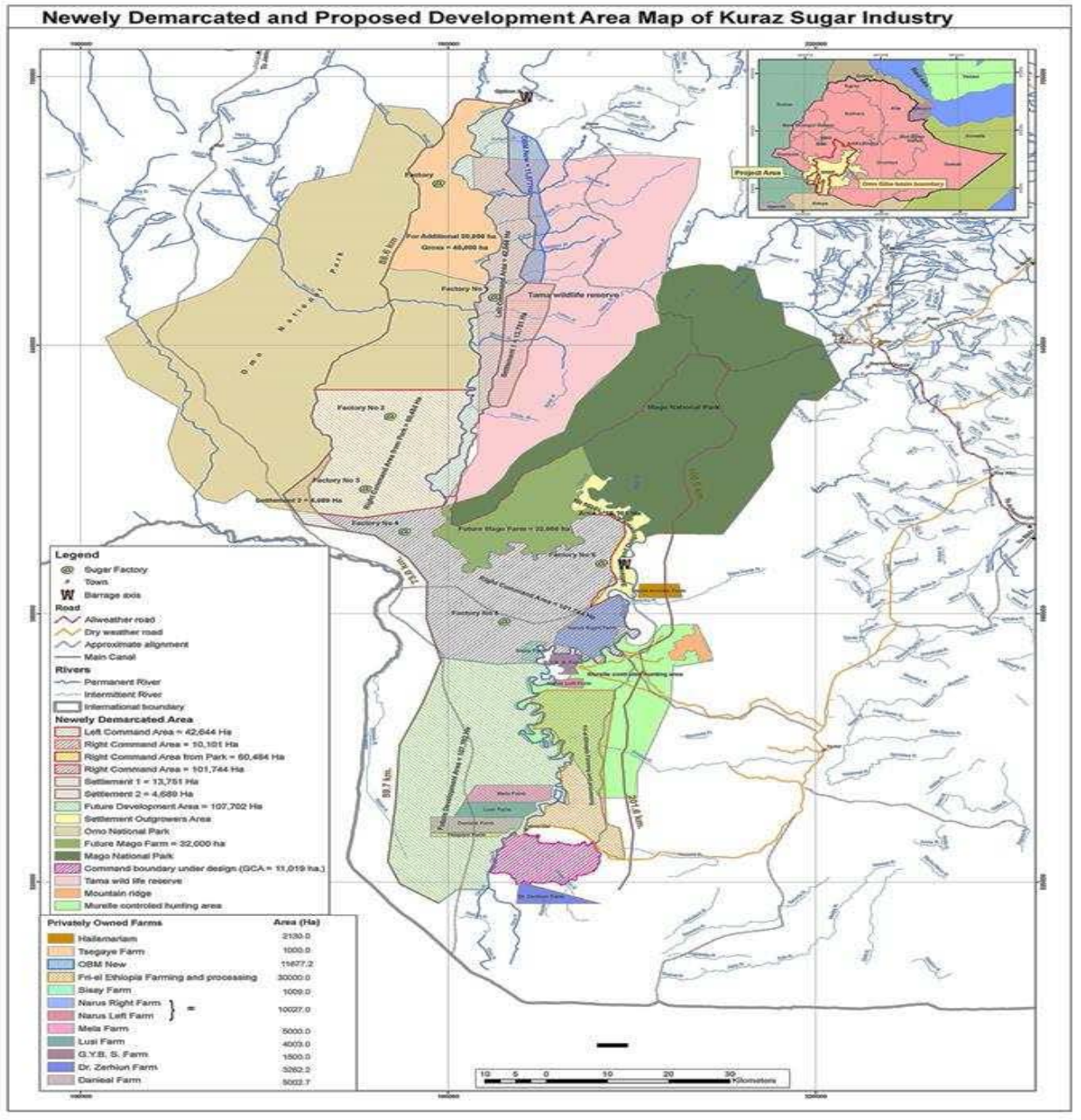
The OKSDP will have direct effect mainly on Salamago and Nyangatom Woreda of the nine *Wereda* in the South Omo Zone.

The development of the ‘first block’ of the Omo Kuraz Sugar Development Project started in May 2011 in Salamago Woreda of South Omo Zone with road construction, site preparation, and camp development with plans for the development of six factories. This development has begun in the Northern portion of the South Omo Valley. Tenders are already out for some of the required infrastructure.⁹⁶The first factories to crush sugar cane were expected to start by 2013/14, according to Dereje Gutema, deputy director general of factory projects and preparation at Sugar Corporation (Zewdie, 2011), and it has not started yet. First block of the OKSDP encompasses both sides of the Omo River. Over 80km of main irrigation canals and secondary drainage channels constructed between 2011 and May 2012 (HRW, 2012). Approximately 2,600ha of land east of the Omo is likely under cultivation. No indications of current or preliminary development on western bank of Omo River within Sugar Block one. Over 125km of new roads

⁹⁶FDRE Sugar Corporation, ‘Invitation for the Construction of Plant Tissue Culture and Micro-propagation Research and Development Centers at Kuraz (near Omo or Jinka) site; available at <http://www.2merkato.com/latest-ethiopian-tenders/2011/07/14/16883> (accessed January 2014)

constructed. Sugarcane processing mill constructed between September 2011 and early January 2012 (HRW, 2012).

Map 6: Map of the OKSDP and Associated Investments



Source: EWCA, 2011

The map was included in an internal report by the Ethiopian Wildlife Conservation Authority (EWCA) into the environmental impact of planned sugarcane plantations in the Omo. The maps also shows the location of three very large parcels of land earmarked for sugar plantations (Blocks 1, 2, and 3) that are situated on both sides of the Omo River—approximately 80,000 ha each. The map shows where Ethiopia intends to resettle tribes whose land and communities stand in the way of their ‘development’ plans. It reveals that the lands of tribes such as the Mursi, Bodi

and Kwegu are handed over. This map illustrates plans for more than 200 kilometers of irrigation canals running along the Lower Omo River cutting through the hearts of the Omo, Mago National Parks and Tama wildlife reserve, and running almost all the way to Lake Turkana.

5.3.3.3 The Bodi Pastoralists around the OKSDP in Salamago Woreda

5.3.3.3.1 The Process of Land Alienation in the Bodi Community

This section examines the views of four actors in the process of land alienation for the Project. The actors include Bodi pastoralists' elders and chiefs, government and sugar project officials/workers, NGO workers, and Human Right Activists. Their perception revolves around the manner of consultation to obtain consent of Bodi pastoralists. It examines the amount and method of compensating Bodi pastoralists for loss of their pasture land and livelihoods, if any. It examines the manner of Bodi villagization. It enunciates the implications for and benefits of OKSDP land alienation in relation to the Bodi Pastoralists.

5.3.3.3.1.1 Consultation, Free and Prior Consent of the Bodi

On the question whether community consultations have been made and consent obtained freely and prior to the implementation of the project, various actors have contradictory views. On the one hand, the Human Rights Watch, the Oakland Institute and some writers contend that no proper consultations have been conducted; government coerced, intimidated and arrested persons with dissenting opinions. On the other hand, Ethiopian government argues that consultations have been conducted and pastoral communities have fully agreed upon the undertaking and villagization. And yet some government officials and more importantly the pastoral community informants contend that the consultations were limited and focused, and there was no consultation prior to implementation of the project. Facts on the ground could have more likely genuine answers than on paper or media. Hence, the thesis argues that the views of first category informants and focus group participants could prove or disprove such contending views. Now first let's see their views and then validate them in light of the Bodi community's views.

Davidson (2011) argues that people have been put in jail because they had opposed the plan and others have been repressed. In a report entitled '*What will happen if hunger comes? Abuses against the Indigenous Peoples' of Ethiopia's Lower Omo Valley*' (HRW, 2012), HRW argues that there has been little meaningful consultation with communities who may be affected by the

irrigated sugar plantations. Instead the government has used fear and intimidation when enthusiasm for the sugar plantations has not been forthcoming from local communities. There were meetings held in the Bodi areas of Lower Omo in March 2011. Those in attendance were told of the government's sugar plans and there were attempts to gain some form of consent from affected communities. These meetings took place in the town of Hanna. Federal, regional, and *woreda* government officials took part, and the police and military presence was high. Initially these meetings were open to whomever wanted to attend, but more recent meetings have involved participants selected by the government, and honoraria were paid to them (HRW, 2012:37). The threat of force and arbitrary arrests to intimidate and coerce indigenous communities during consultation meetings has continued more recently. This was happened after two consecutive meetings held in October 2011 in which the Bodi had rejected the project and villagization, then the government became exhausted of trying to make the Bodi agree. The government called the security forces and the forces came and surrounded the Bodi at a meeting and caught four young men and put them in prison (Ibid).HRW argued, outside of urban areas, it did not find any evidence of meaningful consultation that was undertaken with communities about the sugar plantation developments, nor about alternative livelihood strategies (Ibid).

HRW reported that Federal military forces visiting villages have arbitrarily arrested and detained members' of the Bodi and Mursi communities. The interviewees said that the military personnel conducting the arrests gave different reasons for the arrests, but regularly mentioned opposition to the sugar plans as a contributory factor(HRW,2012:49).HRW argued that since its visit to the Lower Omo in 2011 there have been continuing credible eyewitness reports about the army beating and assaulting Bodi and Mursi. HRW found that Ethiopian 'state security forces were repeatedly threatening, assaulting, and arbitrarily arresting villagers who resist transfer'. The group claims to have found at least seven incidences when people died as a result of their beatings by government forces (Ibid).

Dissent about the government's Lower Omo development plans is not tolerated within government and the pastoral communities. A Bodi man said *people disagree with the government on the sugar, but are afraid of the possible use of force to resettle people and so do not say much. [We have a] big fear of government here. If you express concern, you [will] go to*

jail. The very limited consultation has resulted in a lot of miscommunication, with residents unaware of any forum in which they can seek clarification or express dissenting views (Ibid).

The OI reported documents how officials from the USAID and the DFID, who were investigating claims of abuse, heard first-hand accounts from villagers recounting brutal treatment by Ethiopian authorities under the villagization program. The OI reported that the development of sugar plantation infrastructure has been accompanied by abuse from the Ethiopian Defense Forces (EDF) against local populations, instilling a sense of fear regarding any opposition to sugar plantation plans. This pattern of government harassment and human rights abuses is consistent with recent discoveries by journalists from the BBC and the Bureau of Investigative Journalists who have uncovered oppressive behavior by the EDF in other parts of Ethiopia with villagers who do not show support for the government.⁹⁷ OI reported that the EDF, occasionally with government officials, arrive at Omo Valley villages in particular to Bodi, Mursi, and Suri villages and questioning them about their perspectives on the sugar plantations. Many arrests have been made in these villages with seemingly little cause, and sentences are swift and severe in this regard (OI, September 2011). OI accused the Ethiopian government that dozens of villagers remain in detention after voicing opposition to the development plans. Violent clashes between the Ethiopian army and tribes from the region are on the rise. Many fear of an escalation in the crisis to civil war. Many tribes are saying they will fight back rather than be moved off their traditional lands to make way for these plantations. They are living in fear but feel they have nothing to lose by fighting back. In order to limit accessibility and ensuring the relocations remain out of the spotlight, roadblocks are now in place in many parts of the Lower Omo Valley (Aljazeera News, Feb.13, 2012).

On the contrary, the Ethiopian government argues that it has consulted on the various fora the people living around the project area on the project and resettlement plan. This includes (a) a series of consultation made with the Bodi people living around the project area; (b) a regional conference, in which various stakeholders including representatives of the people living around the OKSDP area was held; and (c) an educational programs on the need for the project and its

⁹⁷See the BBC's article: 'Ethiopia 'using aid as weapon of oppression, news.bbc.co.uk/2/hi/programs/news_night/9556288.stm (As Oakland Institute accessed 1 September 2011.)

benefits for the peoples living around the project area were broadcasted through regional FM radio station using local languages (FDRE Permanent Mission to the UN, Geneva, August 20, 2013).⁹⁸The government highlighted that it is only being carried out in uncultivated land and that adequate environmental, cultural and socio-economic impact assessments have been carried out. These studies concluded that the project will have significant positive social and environmental impacts, and will not negatively affect pastoralists or fishers in the area. The response also provided information on the consultations carried out in relation to both development projects. The government stated that following these consultations, people living around the project area consented to voluntarily resettle. The government stated that plots of land similar to previous holdings and proportional compensation will be given to those villagizing. Molloka claimed that the pastoral population were included in discussions on the project from the zonal level to *Kebeles* and villages, and would benefit from the project (Addis Fortune, June 27, 2011). Sitotaw argued that consultations were conducted with local communities (in the presence of clan leaders and elders) several times in villages (Interview with Sitotaw, Vice Administrator of the Zone, April, 2014). Similarly, OKSDP officials argue that consultation is a continuous process that since the start of the project consultations have been conducted with pastoral communities, especially with the Bodi.

I got a public consultation minute of the OKSDP. The minute states 151 pastoralists (83 male, 68 female), local government officials and OKSDP representatives⁹⁹ participated in a meeting conducted on an agenda of '*Security situation related to the project and road utilization*'. The minutes states that the meeting was conducted on October 25-26, 2013 at Hailuha, Mursi where four Mursi *kebeles* and one Bodi Kebele participated. The meeting was chaired by Sitotaw Garsho, Vice Administrator of South Omo Zone. The minutes notes pastoralists aired their main concerns and fears that the government is going to settle them with unfamiliar people whom they do not know ever before, and consequently conflict will arise; that the government should assure them not to surrender their land to any one and to that effect conclude contract of agreement, one copy to be put with them and the other copy with the government; that the *Wolshet Salla* Hunting

⁹⁸ See response of FDRE Permanent Mission to the UN Office at Geneva and other International Organizations in Switzerland to The Office of the United Nations High Commissioner for Human Rights

⁹⁹ In addition to local community members, participants of the meeting include Woreda Chief Administrator, Woreda Security Office Head, Woreda Road Transport Office Head, OKSDP Manager, OKSDP Compensation Team Leader, OKSDP Public Relations Team Leader

Organization will take over their land if they settle in a village; the fact that the land that the government take over for farm and its workers is vast, there will be shortage in pasturing land; that the government will hand over their previous residence land to others when they settle; as government is allocating farm-land in measurement, there will be lack of farm-land for youth in the future; that there is lack in farm-land allotment and water in the villages. As the minute states, for these and other concerns, the responses of government were affirmative. Quoting a speech of Shiferaw Shigute¹⁰⁰, Chair person of the meeting noted that the government will not give their previous pasturing and settlement land to anyone. This could be assured from Bodi who started villagization as well. The government will not settle them with others, even it will settle them based on their clan and chiefs; this could be seen in newly Bodi villages. And such villagization would be done at Mursi and Gura of Bodi. The government would prepare sufficient pasture and farm land so there will not be scarcity of farm and pasturing land. The newly Bodi villagers do not face pasture and farm land shortage, even they couldn't plough the whole land they have given. The minute notes that the participants agreed on the following points. The already started villagization program should be accelerated and they shouldn't go against the project, and even if there are some who defy the project, they would struggle together. The pastoral representatives fully accept the next villagization program to be undertaken in Mursi. The pastoral participants confirmed that they would not be part of anti-development forces. The participants agreed that the youth would not forcibly block roads and stop cars; when cars knock down dogs, they would not block roads and ask compensation, rather teach others who commit such wrongs. It concludes that none of the issues raised by the pastoral participants agreed. In an interview conducted with OKSDP's public communication officer, there have been continuous public discussions and for the year 2014/2015, it is planned that about six consultation meetings would be conducted (Brehanu Arega, March 2014).

Nonetheless, some government officials and most informants from Bodi pastoral community (who have not joined villagization) and focus group members argue that consultation with the indigenous communities began after land was alienated for the project. These group contend that the consultation with the Bodi pastoralists was narrow, focused only on clarifying plans and explaining the potential benefits to the communities and done at implementation stage rather

¹⁰⁰ShiferawShigute was President of the SNNPRS-now Minister of Ministry of Education of Ethiopia

than putting the communities as decision makers who determine the fate of the projects. Above, we noted that government officials argue that consultations are comprehensive and time taken. However, Sitotaw argued that consultations were hastening and could not change pastoralists' perception over land. No consultation was conducted before the inception of the project (Sitotaw Garsho, April, 2014). He added that in the beginning the Bodi accepted the project, but latter begin challenging the project due to car accidents and immigration of many labor forces and others to the area. Another government official, who visited Birale Farm (now Omo Valley Agro-Industry), Dasanach and Nyngatom areas together with selected Bodi pastoralists, argued that when Bodi representative arrived at the Omo Valley Agro Industry and saw Tsemay farmers who work around the Farm, they said *'these are Konso farmers, but not Tsemay, because pastoralists do not plough and their teeth resembles that of Konso who live on our land and whose teeth are colorized'*. On their journey, representatives of Bodi moved to Dasanach and Nyngatom areas where they met these pastoral groups and conducted discussions about the benefit of the OKSDP, and some of participants from the receiving pastoral communities said this project would benefit them in terms of agriculture, schooling, security, medical centers, etc., but the Bodi representatives pointing at Girma Nyworria (Dasanach Woreda official) said: *'Girma! It is you who organized these people to talk about the positive aspect of the project only; just like us, the Dasanach and Nyngatom do not know what benefits it would have; you speak via their mouth'* (Interview with Local Government Official, name with held, April 2014). The official added that the experience sharing journey was made once and it was during the implementation of OKSDP. Members of Special Police Force noted that they sometimes use force and/or arrest dissents about the Project for awhile. They said their comrades usually present at consultation meetings to guard Officials and oversee consultation process and attitudes of participants (Interview with three members of Special Police Force, name withheld, April 2014). They said there are 60 Federal Police Force guarding the Project, excluding Regional Special Police Force and Ordinary Police in the area. Zonal Police Officers said that they sometimes arrest dissents about the Project for some time, but do not take them to prosecution (Interview with two members of Zonal Police, name withheld, April 2014). A school teacher who has lived for three years in Salamago Woreda said initially all of the decisions on the OKSDP and other developments are made by a small group of people, so nobody really knows what the plans are until it is time for implementation (Interview with a school teacher, name withheld, April 2014).

Most of focus group participants in the five villages noted that they refuse coming of the project in to their ancestral land. The tone of focus group participants reads: *‘We didn’t invite government to begin development projects in our land, nor did we go to the government land somewhere else’*. *‘What does sugar for us after all?’* However, government officials told them that this is government land, not their land, so they can’t prohibit the government from operating its activities. The participants emphasized that *‘we request government to leave our ancestral land, or let us leave it and move to other place to find out our livelihoods’*. In a focus group discussion held at Gura village, a Bodi elder said:

The government has been alienating our land here and there. First, it took a vast land for national parks which we had been using for pasturing and hunting. Then, it went on alienating our land to Konso settlers, who expand the given agricultural land day by day and hence minimizing our pasture land. Now, it has alienated our pasturing land, ways to the Omo River, where we move in time of drought, watering our cattle, and cultivate using flood retreats. When it alienated land for national parks, there was no consultation at all. When it alienated land for Konso, officials came to us and said the Konso would train us agriculture and leave your land within ‘three’ years after entry, but they [Konso] have stayed more than 10 years, we are exhausted... government officials deceived us...conflict aroused between us and Konso. When the government took over our land for OKSDP, it didn’t consult us initially; consultation started after delineating the land and clearing land for farm, then we refused, except some who joined the new villages latter. We went to plateaus near to South Ari Woreda in opposition to villagization.

In an axiomatic expression, a Bodi elder at Gura picked up a long stick¹⁰¹ and said that:

If you cut one inch from this stick today, its size will be reduced, and you will be attacked less in a fighting; if you go on cutting another one inch tomorrow, its size will be reduced more and you will be attacked more in fighting, again if you cut another one inch day after tomorrow, you should not enter in to fighting, because your stick completely lose its identity, nothing is at your hand. Likewise, the government has cut our land in to pieces—to national parks—to Konso—and to itself. Finally, we lost our ancestral land and livelihoods as well.

¹⁰¹ Bodi use thin and long stick for their ‘Donga’ play, where youth fight with their stick

The two accounts denote three facts. First, Bodi have a vast ancestral land which they have been used for pasturing and cultivation since time immemorial without restriction. Second, this vast-traditionally held land has been alienating for various purposes since 1970's, which in effect impeded their ancestral land livelihoods. More importantly, land alienations have been carried out without and/or with limited consultations with a specific group. In other words, consultations were inexistence in the first phase of alienating their lands, and in the recent case consultations were inexistent at the beginning, very minimal and not convincing.

I conducted interview with 20 new villagers and project workers who belong to Bodi pastoral community. Most of the villagers comprised of women and elderly people in the new villages. Of my 20 informants 8 are female 6 are elderly persons, 2 are students and 4 are project laborers (Dozer operators, cleaners, security guards). All replied that before alienation of the command area there were no consultations, but consultation was started with villagization. They noted that they came to village sites with their own will, while most of their family members refused to come to new villages and fled to plateau near Ari, and area called Gura. A Bodi male informant noted that he was the first to join the village from *Giyo Kebele*, while his village chief-Banja refused it. Yet, he said the chief joined after seeing the fruits of villagers (Olgedoni Chuno, April 2014). A Bodi female informant stated that she came to the village on her own will, but most her companions refused to join it considering that the government could take off their settlement site and pasture land. As a result, Bodi have sent women and elderly peoples to the new villages, she explained. The reason why most of the villagers are elderly people and women is associated with Bodi's suspicion that government would give their land to Konso or to other newcomer asit did before (Bulkakoro Shebunimogi, April 2014). Indeed, adjacent Bodi and others (mostly Dime) villagers begin joining the new villages.

Here above, we have seen contending views of actors over consultation processes of the OKSDP. At the outset, I mentioned that one of the research questions of this thesis to be addressed is whether consultation and consent were properly undergone or not in terms of human rights standards and the FDRE Constitution. Most of government officials and OKSDP management views the consultations processes were undergone properly. This group pointed out that

consultations have been taken place around the project's command area. They noted that government's policy is persuasion rather than coercion. Human Rights group argue that consultations have been carried out but with minimal participation and intimidations. The government, police, and military officials are using fear, threats, and arbitrary arrests and detentions to suppress dissent about the government's Lower Omo development plans. Thus, such consultations did not comply with international Human Rights instruments. The first and third category informants as well as focus group participants argued that consultations were inexistence at the beginning and the government alienated land without obtaining their consent. And consultations started with the view to settle the Bodi and when the Bodi began to resist the Project.

The views of pastoral community informants and focus group participants correspond to arguments advanced by the Human Rights groups in the sense that consultations did not exist in the beginning and the later consultations have been conducted with minimal participation. The Human Rights groups do not totally disagree that consultations were not carried out, but rather argue that consultations were minimal, selective, honoraria paid and instead of conducting peaceful consultation the government has used fear and intimidation when enthusiasm for the sugar plantations has not been forthcoming from the participants. However, the Bodi pastoral community did not respond any force and intimidations used by the government unlike reported by the Human Right groups. In my recent field visit and previous experience, there have been no data on arrest and convictions against pastorals in relation to dissent opinion about the OKSDP. Of course, in 2010 firearm registrations were carried out by the SNNPR Special Police Force, and some criminal suspects (not in opposition to the Project) were handed over to the government by local chiefs and elders. Yet, the procedures to convict or acquit them were swift in a way that they couldn't defend themselves, and none of the defendant was freed. The firearm registration has its rule and aims. Among the aims of firearms registrations are prohibition to carryon firearms along roads and public places, to know the number and holders of the firearms by the government, prohibit firing in any circumstances without prior permission from local government. Violations of such rules would result in surrendering of firearms to the government (Informal discussion, Commander Fisseha Garede, Special Police Force Vice-Chief, 2010). There was no such firearms registration and mass convictions before the conception of the

Project. Land alienation for the Project has already been done before such activities. Now let's see whose view is justified in light of international and national legal instruments that give protection to indigenous peoples' land rights.

We noted that the FDRE constitution, international agreements, and a growing body of case law all underscore the validity of customary indigenous rights and any attempt to develop traditionally owned lands requires free, prior, and informed consent of those currently occupying it and appropriate compensation. The FDRE Constitution prefers consultation to consent. The FDRE Constitution provides for indigenous peoples to have the right to full consultation and expression of their views in the planning and implementation of environmental policies and projects that affect them directly. In fact, the constitution does not amenably state '*culturally appropriate consultation*' unlike the ILO Convention 169 and UDIPR. Where citizens are displaced or their livelihood has been adversely affected by the development projects undertaken by the government, citizens have right to get commensurate monetary or alternative compensation, including relocation with adequate state assistance (FDRE Constitution, article 44(2)). This shows these provisions provide constitutional basis for indigenous peoples to have a say on development projects that could affect them and their livelihood, and also require the government to conduct environmental impact assessment before major development projects are implemented. Article 92(3) reads *people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.*¹⁰² This article requires consultation to be conducted in two phases. First is at planning stage. In case where a development project that could affect local communities is planned, local communities should involve and voice on the project, and welcome the project. But, they cannot annul the development project adopted by the planning body. The other is in the implementation stage. At this stage, consultation should be a continuous process. Hence, consultation is a continuous process rather than an overnight endeavor. The Bodi communities required to be consulted accordingly.

Empirical evidences reveal that none of these constitutional and international human rights provisions have been implemented in the study area presumably because the government does

¹⁰² See also Chapter 10 of the FDRE Constitution about consultation and participations

not recognize customary tenure system in the first place. This can clearly be referred from the views of first and third category informants, and focus group participants who replied that consultation processes appear to be virtually non-existent in the planning and preparation stage of the project. This was also reaffirmed by some government officials who particularly belong to the indigenous peoples. The responses of second category respondents show that although consultation started lately, it is continuing among pastoral communities with inclusion of different sections of pastoral community. This group of informants failed to clearly narrate how the processes of consultations were undergone in terms of composition of participants, time frameworks (before, during and after implementation of the project) and procedures. This shows that the government and OKSDP failed to conduct consultations in the planning stage of the project, although the lately began consultations are underway. The latter consultations have not brought about considerable positive results in terms of convincing the overall aims of the project in general and villagization in particular (see the discussion under villagization section below). These consultations are resulted with a little change of perception of the Bodi towards giving up their pastoral livelihood. This requires revisit of the problems of Bodi's tiny inclination towards the Project from historical as well as current incomppliance of the government with procedures of consultation. The sometimes arrest and use of force contravenes consultation procedures set under Constitutional and International Human Rights Instruments. As the USAID report on Gibe III states, this consultation too has been minimal in the study area and was not 'culturally appropriate project. Thus, although the government officials and Project management [but not all] argued that consultations have been carried out in appropriate manner and persuasively, the absence of consultations at the planning stage and the later consultations being accompanied by Police Force and temporary arrest resulted in Ethiopia's failure to comply with legal standards. Thus the views of local community's and Human Rights Groups validated in this case. This is a failure of the Ethiopian government to comply with the required consultation procedures under the constitution, international and ACHPR instruments. Ethiopia is a state party to ACHPR. The ACHPR requires Ethiopia to respect and protect everyone's right to property. As stated above, the ACHPR has made clear applies to land communally occupied by indigenous communities, and also the rights of peoples to natural resources and to development. Failure to comply with international and regional human rights instruments, the ACHPR should uphold the standards it has already set out in Kenya's *Endorois* case. Given the principles set out by the African Human

and People's Right Commission in the *Endorois* case, all these rights are likely to be violated if the peoples of Lower Omo are evicted from their homeland without adequate consultation and consent.

5.3.3.3.1.2 Villagization of the Bodi

The FDRE Government reportedly favors a policy to settle pastoralists. In 2002 the Federal Government delivered *Statement on Pastoral Development Policy* with the main objective of 'transforming the pastoral societies to agro-pastoral life complemented by urbanization'. The priority is on 'voluntary sedentarization along the banks of the major rivers' to promote the shift 'from mobility to sedentary life, from rural to small pastoral towns and urbanization' (FDRE, 2002:5-6.). In a complementary document, mention is made to the 'immense natural resources potential' of the rivers in the pastoral area for irrigation and energy developments (Ibid, 2-3). The FDRE pastoral policy suggests that sedentarization 'should be implemented step by step on a voluntary bases' and building on 'pilot studies' (Ibid, 6).

The villagization program of the SNNPR is practiced in all five pastoral *Weredas* of the South Omo Zone (Dasanach, Hamar, Nyangatom, Salamago, Bena-Tsemay) and Bench-Maji and Kaffa zones of SNNPRS, with pastoral ethnic groups. In Salamago Woreda of South Omo, villagization is practiced in five of the nine *Kebeles*, of which three (Omo Hanna Villages 1, 2 and 3) have already been established for the Bodi, while villagization in the Mursi area is at the land preparation stage (Interview, Zone's Chief Administrator, January 2014). The villagization program seems to have been standardized (see the attachment, Model Village Layout Plan), ¹⁰³ zone officials contend that a mobility corridor remains, thus implying that pastoralism is still allowed to continue. Therefore, even if the household head decides to join the villages, his sons could continue herding cattle in the traditional grazing areas of the Bodi. Each household¹⁰⁴

¹⁰³ The preparatory study report shows (SNNPRS, 2012), including standard model maps for villages, and the type and number of social services to be provided in each village. Eleven infrastructure and social service providing centers will be built in each village: school (Grades 1-4, (5-8 being built in Village II (mid-way to Villages I and III)), health post, veterinary post, mill, drinking water station, police station, *Kebele* office, teachers' house, agricultural extension agents' house, health extension workers' house, and farmers' training station.

¹⁰⁴ It is common for a man to have numerous wives, depending on his herd size (wealth). Government officials accepted the demand from these individuals that an additional hectare of agricultural land be given to each of the second, third... wives.

will receive one ha of land with access to irrigation water¹⁰⁵ and one-half ha of land for building a house.¹⁰⁶ A store has also been built and a monthly food ration, in the form of food aid, is provided to all households which join the villages until they produce their harvest (Interview, Chief Administrator and Project Coordinator, January 2014).

Table 10: Villagization plan in Salamago *Wereda*

Scheme	Nationality	Village	HH per village	Population
Salamago Old	Bodi	Omo Hanna Village 1	500	2,500
		Omo Hanna Village 2	500	2,500
		Omo Hanna Village 3	430	2,150
Salamago New	Bodi & Bacha	Gura Village 1	320	1,600
		Gura Village 2	320	1,600
	Mursi	Hailuha village 1	413	2,065
		Hailuha village 2	413	2,065
		Hailuha village 3	414	2,070

Source: SNNPRS (2012) Government, Pastoral Affairs Bureau, South Omo Zone, Salamago *Wereda* and Kaffa Zone, Decha *Wereda*. Villagization Plan of 2005 (E.C), Submitted to Kuraz Sugar Development Project Nehassie 2004, Hawassa

This figure shows there are 1,430 planned households. Of these, only 717 households took the 0.5ha for building a house, and only 242 had started building a house and 171 had begun living in the village. Of the 2,000ha of land prepared for distribution to pastoralists, only 360ha has been received by the pastoralists, which is about half of the recorded receipt of land for the housing units. The low level of receipt of farming land is further highlighted if one considers the giving of a hectare of land to every additional wife.¹⁰⁷

¹⁰⁵ Two thousand hectares of land, with water from the primary canal coming from the Omo River, has been cleared and ploughed for the Bodi. In the future, the villagized pastoralists will be required to learn oxen-plough techniques

¹⁰⁶ The total cost of all social infrastructures is covered by the Sugar Corporation, but the pastoralists are expected to build their own houses

¹⁰⁷ It is highly likely that although these wives get a hectare of land under their names (considering them as household heads), they will live very close by, and thus, not necessarily get separate land for building houses. A husband can easily accommodate his wives on one-half hectare of land. Traditionally, all wives have cordial relationships, helping each other in the household chores and child-rearing. Thus, not all wives demand separate housing units.

The government planned to settle 1464 capable households from Mursi villages of Moyza, Bongozo, Maki and Hailuha, each accounts 506, 263, 257, 438 respectively, which means 18.5% of the total Mursi Population (7,491). Nevertheless, no one has come in the villagization package, and the government spent a lot of money to the proposed agro-pastorals. This may be needed further investigation, regarding the project's acceptance by the Mursi pastoral community and their attitude to give up their livelihoods. This seems contrasting with the intended government plan—to transform pastorals and agro-pastorals to the sedentary way of life (South Omo Pastoral Areas Bureau, 2004). The government designed to settle totally 7411 households from the Bodi and Mursi pastoralists in 2010, but it only managed to resettle around 300 agro-pastoral households which mean 20.49 %.

On the issue of villagization of the Bodi there has been a debate that the implementation of villagization of the Bodi pastoralists is not going in line with the principles of voluntarism and human rights instruments. Actors point out that there is mismatch between the principles of the voluntary villagization and ways of implementation at grassroots levels by the government on the one hand, and villagization has been taken place voluntarily on the other hand. Thus, the gap exists between the principles and the process of implementation. This will inevitably threaten the success of the scheme. Thus, all actors of the program at all levels and other development agents involved in rural development need to understand the challenges to its achievement in order to take a remedial action. The findings of this study are expected to provide empirical evidences on the problems that may cause the potential failure and overall achievement of the voluntary villagization to policy makers. Here below are the contending views of actors and the justified view among them.

HRW (2012) argues that the Ethiopian government is forcibly displacing agro-pastoralists of Lower Omo valley to make away for 245, 000 ha of state-run sugar plantations, linked to the development of the Gibe III dam, which will provide much needed hydropower to Ethiopia. The cost of this development to the indigenous peoples is massive. That their farms are being cleared; that prime grazing land is being lost; and livelihoods are being destroyed. Government security forces are forcing them to move through violence and intimidation. HRW argued that process of villagization is not voluntary. One Mursi man said, *'it is forced, nothing voluntary about it. We*

do not want this.' The Ethiopian government was also using the national parks as a reason for displacement. HRW visited abandoned Mursi villages in Mago National Park whose residents had relocated from the Mago Valley onto the dry and arid plateau above the valley.¹⁰⁸ Officials told villagers that the park is for animals or tourists and not for the indigenous people (HRW, 2012). Mursi villagers from two different villages (outside Mago National Park) told HRW that government officials had informed the villagers several months previously they would be moved, but they were not told the location or timing. Two other Mursi communities first heard about villagization when the military appeared in their villages and told them they were to be permanently settled in the Haileuha area, an area located in the Mursi land (HRW, 2012).

HRW argues that the government maps of the OKSDP show that the planned state-run plantations overlap with the traditional lands of the Suri, Bodi, Mursi, Kwegu, Nyangatom, and Karo, while irrigation canals will cut through virtually all of their territory. HRW argues that traditional land use sites of the Mursi and Kwegu are extremely reduced. HRW argue that 30 of the 52 (58%) Mursi and Kwegu villages are in the areas that are either delineated for sugar plantation development or are in the lands being actively marketed by the government of Ethiopia for agricultural development. 114 of the 157 (73%) of Mursi and Kwegu areas that are identified as cultivation sites are in the areas that are either delineated for sugar plantation development or are in the lands being actively marketed by the government of Ethiopia for agricultural development (HRW, 2012; see also www.mursi.org). The left command area of project which covers 42, 285 ha of land denied access to Omo River for indigenous community. A minimum of 130 distinct settlement sites were identified on lands immediately to the east of the constructed canals and designed sugar cultivation zone. It is likely that remaining inhabitants of these settlements will have increased difficulty of access to the Omo River and will have to travel significant distances either to the south or north, around 35 km long canal segment blocking access (HRW, 2012).

HRW calls on the Ethiopian government to suspend the construction of Gibe III and the associated sugar plantation until these projects can be carried out in a manner that is consistent

¹⁰⁸Mago National Park is predominantly in Mursi and Kwegu areas and is located on the east side of the Lower Omo Valley.

with national laws and international human rights standards. HRW also urges Ethiopia's donors to thoroughly investigate the forced displacements, press the government to abide by international human rights law, implement international best practices in undertaking any resettlements, and ensure that no support is given to any activities in the Lower Omo related to forced displacement. Before providing any support to any programs in the Lower Omo, donors should ensure there is meaningful consultation that appropriate environmental and social impact assessments have been carried out and made available for public discussion, and that a dialogue occurs with the Lower Omo's indigenous populations about alternate livelihood strategies. Donors should call on the Ethiopian government to halt all resettlement plans until they can be carried out in a fair and transparent manner and are consistent with Ethiopian national law and Ethiopia's international human rights obligations (HRW, 2012).

OI discovered that the long-rumored villagization of local pastoralists into more permanent villages is beginning. Those that are encountered outside of villages are told to relocate to the villages immediately. Villagers are being told to limit cattle numbers and the area their cattle graze in. There are also numerous reports of troops killing and confiscating cattle, among other forms of intimidation. OI states that without intervention the traditions of indigenous people will be gone and future livelihoods are threatened. At this moment, the indigenous population is threatened by villagization; national park management, the massive Gibe III hydroelectric facility, as well as now commercial agriculture are serious threats to the very existence of these groups. People are being forced by governments to retreat from their land and are being villagized (OI and SMNE, 2011).

The Omo-Gibe Master Plan assessed 'Environmental Impact' of the Project and concluded that it has had impact on grazing land; agricultural land; forestry and wildlife; water resources; aquatic resources; public health and increased use of agrochemicals (Woodroffe, 1996, Vol. V, section 3, p.45-56).¹⁰⁹ A major impact of the project will be the loss of traditional grazing lands to irrigate agriculture (Ibid, p.45 Annex A4.2). The Master Plan study also assessed its 'Social Impact'. One of these impacts is related to scarcity of pasture land and water bodies. As pastoral communities heavily depend on the natural environment of the area for their livelihood, the

¹⁰⁹ See the Omo-Basin Master Plan's 'Pre-feasibility study on Environmental Impact'

OKSDP could substantially alter and disrupt their traditional way of life and could seriously threaten their existence (Woodroffe, 1996, Vol. V, Section 3 Lower Omo Irrigation, Table 1.1.p.1). Expropriation of land would directly affect indigenous people through loss of grazing land (Ibid). The physical barrier of irrigated land to the river could also prevent them watering their cattle (Ibid). The overflow of water carries fertile silt and floods on the banks along the river, which creates opportunistic cultivation of sorghum and maize crops in the Omo River banks. On the contrary, the construction of the project will cause altered water flows, the most obvious of which will be sustained changes in low flow regime (Woodroffe, 1996, Vol. V, Annex 4). This could bring a corresponding loss for fish and other aquatic organisms (Ibid). It will have impact on aquatic resources (Annex A4.6).

In response to such accusations, the Ethiopian government stated that coercion to force people to move is denied, describing them as politically motivated; that HRW is reproducing data produced earlier by others, notably Survival International, International Rivers, Oakland Institute; that the potential sugar plantation area is 150, 000 ha of land, possibly extending to 175, 000 ha, not 245, 000 ha as stated by HRW. The government with a summary of the findings of this report in November 2011 responded by dismissing all findings, insisting that *'the project site and the selected locations in South Omo are not anywhere close [to] human dwelling.'* *The government continues to claim that 'this is completely uninhabited land. There is no evacuation or dislocation of people'*.¹¹⁰The government would provide 0.75 hectares of irrigated land for 2,050 households, training on *'improved agronomy practices, technology inputs, and livestock management (including range land)'*. It also noted the possibility of out grower options on the sugar plantations, along with the provision of *'social and economical facilities and infrastructures.'* Government argues that Sugar Corporation and other stakeholders have given due attention to the movement of pastoralists' cattle. Accordingly, cattle crossing structures are under construction over main and secondary canals and these structures are made at points of the land where the cattle of these pastoralists are earlier accustomed to use while they were moving around in search of water. At the same time, irrigable farm lands are ready to acquaint them with agriculture and help these inhabitants of the area become semi-pastoralist. Furthermore, as there is enough grazing land around, the corporation is making water ponds accessible to their cattle

¹¹⁰Letter from Minister of Federal Affairs ShiferawTeklemariam to Human Rights Watch, December 19, 2011.

(Sugar Corporation Bulletin, August 2013).The government stated that that these findings ‘emanate from the willful ignorance of the HRW Research group in Ethiopia about the discipline of Ethiopian security forces (Ibid).

The villagization project is officially called ‘voluntary villagization of pastoral households.’ However, it seems to be positioned to pave the way for sedentarization through the encouragement of reduction of herd size, use of improved breeds and the introduction of ranching over time. This view is expressed at the regional, zone levels, and in a document from the Southern Ethiopian People’s Democratic Movement (SEPDM, 2010).Government officials argue that villagization is particularly pursued to increase the benefits indigenous communities obtain from the Project in Salamago *Wereda*.¹¹¹It was after successive discussions of the leadership of both Sugar Corporation and authorities of the Federal and SNNPR Government with the natives, elders and scholars of all the command area of the project and then getting their full consent that Sugar Corporation kicks off the project. Hence no one is displaced, as there had never been any settlement around the project. Abay Tsehaye¹¹²argues that local communities support the scheme and the displaced population will be very minimal as the farms are in ‘barren areas’ (Davidson, 2011).Molloka fiercely rejects criticisms of forceful eviction of indigenous people for the sugar project. He maintained that *‘the government’s principle is persuasion not forceful eviction. Two years are spent to persuade the community about the villagization program’*. *‘This is a baseless allegation. Not a single family was forcefully resettled.’*

Molloka maintained that 1,430 households from Mursi, Bodi and Bacha ethnic groups were included in the villagization program. Out of this, 606 households have received their plot, around 300 are building their homes, and around 50 have already settled in the assigned villages (Walta Information Center interview with Molloka, August 2, 2012).¹¹³ The target set for the budget year was to villagize 1,742 households in Salamago *Wereda* and the administration plans to fully complete the villagization in the current budget year. For the first phase of the villagization program in connection with the Sugar development project, three villages are being

¹¹¹These benefits could be secured through assuring food security, getting access to employment and social services in villages (especially women), better market prices, and also opportunities to work as out-growers for the KSDP (SEPDM, 2010).

¹¹²Former Director General of Ethiopian Sugar Corporation

¹¹³http://www.waltainfo.com/index2.php?option=com_content&task=view&id=4536&pop=1&page=0&Itemid=137

prepared in the Salamago *Wereda* alone. No one here is going to be displaced due to the project through the villagization program, except being able to have access to various infrastructures and social services to which they had never been privileged for long. Sitotaw imputed allegations that pastoralists are forcibly evicted. He stated that pastoralists are sparsely populated. The government villagized them in recognition for their former villages ¹¹⁴(Interview with Sitotaw, April 2014) and hence, what is going on is in fact a ‘villagization’ program with a full consent of the natives. As the OKSDP site is adjacent to the Bodi pastoral communities the government had planned to resettle the Bodi tribes before any other tribal community in the newly developing villages (Village I, Village II, and Village III). The Bodi have been living in three main and two sub villages before government villagization has taken place. In 2010, the government made series of community discussions to create public awareness of the importance of the project and the necessity of the sedentary way of life in relation to their pastoral livelihood, either to give up or to continue their previous economic activity, and the discussion was conducted with the villagers of Omohanna, Narmashik, Omorumbie, Gura and Geo-Chedemis¹¹⁵.The first four villagers had agreed on the villagization program and showed their warm welcome to resettle in the newly developed villages, but the Geo villagers refused government’s proposed village. Besides, the Bodi addressed their plan for the concerned authorities about their own designed settlement, and wanted to settle in their nearby ‘vacant’ land, instead of the OKSCDP proposed and developed land. The government accepted their interest somehow, and this shows that the government do not want to relocate them forcefully, and giving due recognition to their interest. Hence, they have options of either to live in their former village or the place they have chosen or the OKSCP designed place. He said this is a good indicator of government’s voluntary villagization program at the OKSCDP site. The settlement pattern was based on tribal leaders, and they were villagized to the north direction, 5 kilometers away from the project’s irrigation dam, and to the South and the East of the Omo River, within 1.5 kilometers distance. Each village’s size is 296.9 ha and totally is 1,482.5 ha land. All villages are interconnected with roads (Interview with a member of South Omo Zone Council, name withheld, February 2014).

¹¹⁴Maki, Hailoha, Moyzo, Bongozo

¹¹⁵ Their population size is (2553, 1,500, 1070, 3004 and 1055 respectively

We noted above that receipt of villagization program is low in Bodi, and nothing is found on the ground in Mursi communities. The low level of receipt of villagization in Bodi could be attributed to the lack of awareness and pastorals livelihoods, according to local government officials. Molloka argued the pastoralists were included in discussions on the project, and would benefit from the project (Zewdie, 2011). He noted that the reason for low level of entrance to villages is that the pastoralists first wanted cultivated land than house. He noted that pastoralists say they already have houses, what they don't have is agricultural land (South FM Radio 87.9 interview with Molloka, audio record held with the Radio Station, Jinka). Head of the South Omo Zone Pastoral and Agricultural Department argued that Bodi's resistance is particularly associated with 'lack of awareness' and the difficulty of lifestyle transformation from 'a traditional pastoral society to a sedentary way of life'. This resistance has necessitated numerous discussions, where each *Kebele* was represented by 20 individuals (including traditional leaders, ritual leaders, and representatives of youth and women). These individuals were also involved in the selection of the sites for the villages, the arrangement of the housing units¹¹⁶ and the agricultural land. In an attempt to convince the Bodi about the genuine intentions and the good results of villagization and farming, these representatives were also involved in an experience-sharing visit to other pastoral areas in Birale area of Bena-Tsemay *Woreda*, Dassanech and Nyangatom. The discussions were made with the intention of convincing the pastoral communities. According to Zone officials, better success is recorded in the Dassanech *Wereda*, as the Dassanech had prior experience of small scale irrigated agriculture and have 'better awareness.' with representatives of each ethnic group to explain the benefits of living (Interview with Zone's Chief Administrator, February 2014).

In view of the local community, their pasture land and water ways become inaccessible. Majority of first and third category informants and focus group participants reported that their access to pasture land water ways have been limited. Access to these resources by the community is restricted as the 'command area' land is fenced and grazing lands and Omo River waters fall under control by the project. Majority of category 1 and 3 respondents replied that there has been an increase in the size of the agricultural land (both large-sale irrigation and private investment)

¹¹⁶ As noted earlier Bodi have social organization based on clan; hence, housing arrangement was based on clan relations and good relations between individual households.

with a subsequent decrease in the size of the grazing land. The main reason for the reduction in the average land holding as reported was the increase in the allocation of communal grazing lands to large-scale state-owned commercial farms, private investment, private agricultural land holding, wildlife reserves, and population in the area and the ensuing demand for land by newly formed households. Focus group discussion results can easily be inferred to estimate the size of the livestock population denied access to the former community grazing lands which has been occupied by the OKSDP. The pastoralists grieved that the small grazing land left was insufficient for their cattle. As a result, the pastoral community is now forced to travel long way in search of pasture for grazing and water as the shortcut road to the nearest river is blocked. In this regard, a Bodi elder at Omo-Hanna focus group discussion expressed his concern that:

Our cattle are at risk of shortage of water resource, because our cattle drink pond and small river water, which dries easily in dry season. As the ways to the Omo River are blocked, there will be a problem during the dry season. During rainy season we have water in small rivers like Gura, Hana, Giyo, etc., but when there isn't if we do not go back to Omo River we will need government to bring water. If they do not, we and our cattle will die. We will go to Omo anyway; if not, we will die; they can kill us there if they want.

First category informants and focus group participants noted that the former flood retreat cultivable land along the Omo River is blocked, with the right to cultivate such land obtained either by inheritance or by permission of the traditional owners of the land. In this regard, it is worth to mention a narration of a Bodi woman at Omorombe focus group discussion:

The government did not know where we lived; where we ploughed; where we pastured; where we hunted. It says there is no one here. We were here. We have been cultivating, pasturing and hunting on this land since time immemorial. My father cultivated and my grandmother had cultivated, pastured and hunted here. Now I am still using this land for same purposes. We grow here like the sorghum. My ancestors died here and I was replanted here like we replant. I am here and I am eating from this land. My descendants will use this land as we did and doing. The government is erroneously saying that no one is here and alienating our land by its own whim.

The Bodi elders and chiefs condemn the villagization as if calling ‘curse’ to the community. Villagizing Bodi chiefs ‘*Kumuruts*’ meant putting elephant tooth together. The effect of which is calling disease and curse to the Bodi community. As the result, they allow women, old-people and children to villagized. The rest should remain in their original settlement site and keep-on herds. In my field visit, I observed that most of new villagers are women and old people.

I observed that the government is building different social infrastructures with the conviction that the villages will be populated sooner or later, but natives are less persuaded to accept the villagization. Even the Omo Hanna Village 2, which is considered as the most successful one, has less than one-third of the planned household units living in it. In the Omo Hanna Village 3, most social infrastructures are in place, but no one joined the village. Moreover, even the villagized agro-pastorals were not fully settled there; their one leg is found in the newly developed village, and their another leg is found in their previous living village, because they left all their cattle and family there. Hence, we could not talk the villagization program is succeeded.

Here above, we looked at contending views on whether the villagization has been voluntarily carried out or not. Government officials and OKSDP management view that it has been carried out voluntarily; it is carried out with duly conducted consultations and experience sharing visits to agro-pastoral communities, and villagization site selection. First category informants and focus group participants contend that the handed over land has been their pasture land; their water way; their cultivation land; their bee heave land; their fishing land; their hunting and fruits and honey collection land. The Project blocked pasture land and water way have been handed over to the Project; their reaped sorghum, granaries, and bee heaves were bulldozed without their consent. Thus it is the land where their livelihoods rely on. The Human Right groups view that the indigenous peoples are forcibly evicted, because there were culturally appropriate consultations and the indigenous people were intimidated and detained. Their livelihoods in general have been threatened. This group argues that there were no adequate ‘environmental’, ‘social’, ‘cultural’ and ‘food security’ impact assessments conducted by the government; although many studies reveal that the OKSDP will have an adverse impact on these themes. Thus villagization has been carried out involuntarily. Now, let’s see whether the villagization has

undergone ‘voluntarily’ or ‘involuntarily’ in light of the Human Rights and Constitutional Provisions.

The UN Committee on ESCR defined ‘forced eviction’ as:

permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection(UN Committee on ESCR, General Comment 7,1997).

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)¹¹⁷ further expanded the definition of forced evictions to mean:

[A]cts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and / or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.

This definition implicitly provides that forced eviction could be carried out against the will of communities from the land they occupied. This land could communally occupied land. The act or omission should eliminate or limit the ability of a community to reside or work in a particular dwelling, residence or location. The act or omission of forced eviction could be permanently or temporarily incapacitate access of the community to their land, residence or work. Such act or omission could be done without the provision of appropriate forms of legal protection. The occupier takes possession of land or structures without the tacit consent of the owner or without any right in law to take possession of such land or structure. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants. Then, the question is how should eviction be carried out if it is inevitable? To this end, the UN Committee on the

¹¹⁷ Presented in the report of the UN Special Rapporteur on Adequate Housing, Miloon Kothari, A/HRC/4/18, February 2007, Available at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf Translations in other languages available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx> and www.hic-sarp.org.

ESCR sets forth points of reference while evicting communities from their land and livelihoods as follows.

The UN Committee on ESCR noted that prior to carrying out any evictions, States parties shall ensure particularly those involving large groups, that all feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimizing, the need to use force (ICESCR, General Comment 7, 1997). The UN Committee ESCR provides the prerequisites that should be met for any form of eviction to be legal. First of all, any form of eviction shall be made in accordance with the relevant provisions of international human rights instruments and taking into consideration the principles of reasonableness and proportionality.¹¹⁸ The villagization program that requires the villagization of people from one place to the other in the same manner requires the fulfillment of the following prerequisites. The eviction should be made in accordance with the relevant and appropriate procedures declared by laws; (b) persons to be affected by the eviction should fully and genuinely participate in the process; (c) prior notice shall be given to the persons that are to be evicted; (d) the purpose of the eviction or the reason why it is necessitated shall be clarified for them; (e) before the eviction is underway pre-implementation study shall be made and all the necessary preparation for the eviction, such as preparation of an alternative land and housing, shall be completed; and (f) adequate compensation shall be paid for the evicted persons (ICESCR, General Comment 7, 1997).

The UNDRIP suggests that states should prohibit *'any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources.'*¹¹⁹ The declaration directly condemns any forcible relocation of indigenous peoples from their lands or territories. Instead, it imposes the requirements of free, prior, and informed consent, agreement on just and fair compensation, and, where possible, the option of return. It also provides for indigenous peoples to participate in the decision-making processes and recognition of traditional forms of land tenure and the requirement for states to seek 'free and informed prior consent' prior to development activities (UNDIPR, arts. 19, 26, 30).

¹¹⁸ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced Eviction and the Right to Adequate Housing (1997) Para 15.

¹¹⁹ This article replicates article 18 of ILO Convention No. 169.

The ACHPR have pertinent provisions to consultation, free and prior informed consent of indigenous people in decisions affecting their lands, territories and resources or rights in general and their consent must be sought prior to any changes in use (articles 14, 20, 21, 22, and 24) ¹²⁰

The FDRE Constitution under its preamble laid down a ‘*cooperative development approach*’ among government, investors and local community. The Preamble of the 1995 FDRE Constitution states that “*the Constitution is based on the voluntary commitment of the Ethiopian ‘Nations, Nationalities and Peoples’ to build a political community which ensures lasting peace, economic and social development through mutual support and mutual respect*”. In development activity, efforts to establish good relations between investors, states, and local communities must become a routine part of the calculations for possible rewards in the decision-making process before investments are made via sound consultation procedures to establish genuine mutual communication between local populations, governments, and investors.

The FDRE Constitution under its preamble holds a comprehensive approach of development. The spirit of the FDRE Constitution which states that ‘*our common destiny can best be served by rectifying historically unjust relationships and by further promoting our shared interests*’, a new political order instilled with fraternity and supported by acts of solidarity (Constitution of the FDRE 1995: Preamble). This shows that any attempt at furthering equitable development must take historical factors into account in order to generate positive models for intervention and investment that take historical experience into proper consideration. In this regard, Ivo Strecker (2013) proposed that adherence of all parties concerned to an ‘International Investors Code of Conduct’ (IICC) and jointly working out what kind of large-scale and small-scale projects are most appropriate in a given situation is one concrete way that this can be done.

Things will go well when no one gets excluded from this process, neither those most directly involved like the investors, local populations, regional administrations and national governments, nor more remote parties like donor

¹²⁰ African Union, ‘List of countries which have signed, ratified/Accessed to the African Charter on Human and Peoples’ Rights,’ <http://www.africaunion.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf> (accessed January 15, 2014)

agencies, civil rights groups, the media and scholars [...] the International Investors Code of Conduct and the global attempts at more equitable development are intertwined. They are co-emerging and are two sides of a single process. (Ivo Strecker 2013)

The FDRE Constitution under article 40(5) guarantees pastoralists the rights to free grazing and cultivation of land and their right not to be displaced from their own lands. This is an important pledge for indigenous peoples of Ethiopia. Article 92(3) provides for full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly. A cumulative reading of the article 40 (5) and 92 (3) convey a meaning that pastoralists may be displaced from their land with their own will up on prior and upcoming consultations on development project to be undertaken on their land. In case where the displaced pastoralists or their livelihood has been adversely affected by the development projects undertaken by the government, citizens have right to get commensurate monetary or alternative compensation, including relocation with adequate state assistance (FDRE Constitution, article 40 (8);44(2)). But, such monetary compensation could only be paid for ‘improvements’ made on land (Article 40 (3) cum. (8)). In this context, monetary compensation could not be expected in pastoral communities, but rather relocation with state assistance is a way out.

The above mentioned legal standards provide that free and prior consultation and consent should be conducted before eviction and relocation. The affected communities should be provided an opportunity to be heard and to participate in the decision making process (on their own or through their representatives) on matters involving any proposed eviction so that they can protect their legitimate collective interests and includes appropriate documentation and feedback mechanisms. Needless to say, the affected communities in charge of the land to the occupation of the land in question should give consent either expressly or tacitly, whether in writing or otherwise. As we noted above, consultations with the Bodi were in existence at the planning stage of the project. The planning process has been entirely top-down and implementation has been surrounded by a wall of secrecy. The planners apparently believe that the affected communities will automatically benefit from generalized economic development and ‘modern’ forms of agriculture. It even seems to be assumed that the agro-pastoralists of the Lower Omo

Valley will be better off after villagization, however, they manage to survive and whether they realize this at the moment or not, because they will have been lifted out of the ‘backwardness’ of their former lives as mobile herders. In addition, the latter consultations resulted from resistance by the local community, and to implement villagization. Further, as the Bodi pastoralists argued, the project ‘command area’ lies on their pasture land and water ways. The project obstructed their mobility to pasture land and the Omo River, which they use for watering their cattle and flood retreat cultivation during dry season of the areas. The fact that the OKSDP initial landholding size increase from 150, 000 ha (See Meles Speech, 2011) to 175, 000 ha (Sugar Corporation Bulletin, 2013) could exacerbate the blockade. As we all understand, the pastoral livelihood and grazing activity needs vast land surface. On the other hand, the project currently is using 175,000 ha of land. So long as the OKSCDP is a mega project it would expand and needs another vast area for the newly sugar cane plantation. As mega projects requires vast ha of land by their nature, the indigenous communities’ future grazing land would be threatened in the command area. Of course this is the nature of mega projects, and a process of enclosure but this process has been working with limited participation of the natives. Actually, the Bodi villages are far from the project ‘command area’ near to hills. In that sense, the Project did not touch up their former villages. This argument is in fact advanced by the government that ‘no one could be displaced as there is no settlement in the project site, and the pastoralists are being hauled from their former villages to the new villages where social and infrastructural services are availed.’ This, however, does not mean that their livelihood is not affected by the project, as their pasture and water ways become inaccessible, which could result in reduction of their cattle.

This signifies that none of the criteria set forth by the UN Committee on ESCR Comment and UNDIPR on development-forced displacement and villagization have been learnt in the OKSDP. Henceforth, although the villagization program is described as ‘voluntary’, it is ‘involuntary’ in the sense that those affected have no reasonable option but to comply with, because consultations with the local community began after land alienation had taken place, which meant their pasture land and water ways to the Omo River had stopped. In other words, their livelihoods are jeopardized. According to field data, it is clear that no attempt has been made to give the affected population a genuine say in decision-making to say on the project prior to alienation of their land for the OKSDP. Naturally, the indigenous ethnic groups resisted the project. The direction taken

to lower the extent of resistance was an extensive and intensive campaign of discussions, with the objective of making them accept the decision that came up from way above.¹²¹ This concludes that the views of first and third category and focus group participants override views of government and OKSDP management, while corroborate with views of Human Right groups.

5.3.3.3.1.3 Compensating Bodi Pastoralists

Naturally, eviction could result in loosing of livelihoods, homes and land of the dwellers. The Bodi have lost their ancestral land, their pasture and water ways, and flood retreat agricultural land. On the question whether the pastoral communities were paid monetary compensation, and relocation with state assistance, actors have differing views. However, their views are not as equally contending as that of consultation and villagization processes in the Lower Omo Valley. In this case, the views are lenient towards compensation.

On the one hand, the compensation scheme has been deemed wholly inadequate by concerned HRW and community organizations that critique the scheme as underfunded and the relocation sites as being remote, lacking paved roads and essential services. Businesses and informal factories have not been offered any compensation. HRW reported that the preparation of 1,700 ha (land cleared for the 1,700 Bodi households) involved the complete clearing and removal of all vegetation and the demarcation of house sites and fields for each Bodi household. None of the promised infrastructure such as houses, clinics, and schools is yet in place. A number of villagers voiced concern about the impact of scarce water resources on their livestock and livelihoods, stating that the government says it will bring water for them and for their cattle. The government told them to stay there, not to go anywhere else. When there is no water and if they do not go back to Omo, they would need the government to bring water. If they do not, they and their cattle will die. HRW argued that drastic land clearance in the Mursi, Bodi, and Kwegu areas, and that areas used by local people for flood-retreat and rain-fed agriculture seems that land is being cleared regardless of how local people are presently using it. The ‘bush belt’ along the Omo River is reportedly being cleared, along with its cultivation areas, bee heaves, and traditional plant gathering sites (HRW, 2012).

¹²¹See also Tewelde and Fana, 2013: 8

The government told lower Omo residents that a key component of the villagization plans appears to be change of mode of life. This would dramatically undermine current livelihood practices and cultural values with potentially threatening consequences for food security and nutrition, particularly amongst children. These messages have been continuously delivered to Lower Omo residents over the past year by government and military personnel (HRW, 2012). HRW reported that according to numerous testimonies from local residents, government officials and members of the military have been telling Bodi and Mursi villagers to dramatically reduce their cattle numbers and to purchase two or three 'Borana cattle' per household, which is considered to be good for meat production.

The February 2012 construction of an earthen dike across the Omo River resulted in a reduction of the Omo River's flow to a trickle and there were reports from residents of an instant downstream reduction in Kwegu fish catches (HRW, 2012). This reduction in fish habitat and fishing success could have detrimental impacts to Kwegu livelihoods (Ibid). As one man warned, *'there will likely be a problem in the future with pastoralists if they try to reduce our cattle numbers'* (HRW, 2012). Community members concern that they will be reliant on government for their food needs in the relocation sites. Government food aid deliveries were being used as an incentive to stay settled in one area (HRW, 2012). A Mursi man summarized food security concerns for the future, *[...] now the dam has been built, there is no water in the river, the land has been taken away, and the cattle must be given to the government—what will happen to the poor people in times of famine? [...] What will happen to us if hunger comes?* (HRW, 2012)

On the one hand, government officials argue that the project is mainly designed to benefit local community. Local government officials argued that the most important compensation is their benefit that the pastoralists would share from the project in terms of social services. The main compensation could be social and infrastructural services that the government is constructing in their locality, rather than monetary compensation. The government has drawn them from areas where there are no social and other services to areas where these services made available. And

yet, monetary compensation for their bee heaves will be paid in Dicha *Woreda*, Kaffa Zone. Local government officials argued that land development in these localities would drive the pastoralists to reduce their huge number of cattle, but the government does not coerce them to sell their cattle (Interview with local government officials and OKSDP management, April 2014). Government officials argued that the government has enclosed pasture land across the way from Jinka to Salamago. It has established canals to watering Bodi cattle. It has constructed a cattle crossing bridge to pasture land along canals (Ibid).

Abay Tsehaye argued that those affected will be compensated for lost earnings and given land at least equal to previous holdings (in Davidson, 2011). The Omo-Gibe basin Master plan noted that acceptable compensation to individual and communities is provided for land used by proposed schemes. Local people are assisted in meeting their own development priorities in return for their land being used for national development (Woodroffe et al, 1996, section 3, Lower Omo Irrigation, p42).

Empirical data indicate that the take-over of flood retreat and rain-fed cultivation sites along the Omo and its tributaries for commercial plantations and the forced reduction in cattle numbers will undermine local food security and decimate livelihoods. In this connection, a Bodi man at Chedemis focus group discussion said:

The bulldozer even cleared the gardens where our crops were growing. They cleared a very straight road to a place called Shigitan, where they cleared out the cultivation sites we had already planted.

We described in the ‘context’ section that livestock plays vital role in the livelihood of HH in the Lower Omo Valley, and loss of pastureland means a significant loss of income for HH. The Bodi started selling off their cattle due to shortage of pasture, while others lost them due to death resulting from food shortage and inaccessibility [moving a long way] the Omo River. According to first category informants and focus group discussants, the propensity of selling off cattle at HH level in the affected community lost on average 3-4. A Bodi elder at Giyo focus group discussion stated that ‘*We don’t have a culture of selling out livestock; we sell to buy grain when hunger comes. We are not compensated either in cash or in kind. We left as we are.*’

Land clearance has already been carried out for the first block of the project. Irrigation developments have completed in 11 canals, while canal 12 and the following started. A total of 4978 ha of land has been covered by sugar cane plantation (Unpublished documents of the OKSDP, 2013). In connection to the clearance of land, a Bodi man at Omo-Hanna noted that:

They are cutting down our bush and forest, and bulldozing our gardens. Then they want us to sell off all our cattle. No one is going to sell their cattle. They should go away. They should leave our forest alone and leave it to us to cultivate with our hands.

Another Bodi woman at Gura focus group discussion condemned the clearance of their livelihoods by bulldozers.

The government cleared far and dug up Bodi sorghum along the Omo River Basin. The sorghum was near ripening; a truck plowed it and cast it away. The Bodi bee hives cast away together with honey; the Bodi granaries run off by bulldozers.

With regard to monetary compensation, all of the 20 respondents (100%) replied that they were not paid monetary compensation for their land and livelihoods; instead, the government assisted them with food ration, mills, housing [new], health centers (animal and human), roads, schools, agricultural land to plant sugar cane and crops as well, etc. They said they brought their animals with them to the new villages, where they watering and feeding them. The government has established canals to water their cattle and pasture enclosures. Yet, the new villagers worry about shortage of pasture land and insufficient watering along the canals, if their relatives come to the new villages with the whole livestock. All of the informants and focus group participants shared the views of the new villagers, by stating that none of them have been compensated for the grazing land they have lost. The pasture enclosure is far from the area where they dwell. The project does not allow them to feed former pasture land which has been delineated towards the OKSDP.

The above views mainly revolve around two points. One is that compensation should be paid in kind and cash to the Bodi pastorals that lost their pasture land and livelihoods. This view is profoundly propagated by human right activists and environmentalists such as the HRW, SI and OI, although their views are not mentioned fully. The other view is proposed by the government officials and project management, which viewed the project itself, is the answer for the question of compensation; although some could have been compensated for loss of their bee heaves. The interviewees and focus group participants are in view of compensation both in kind and in cash for their livelihoods and land commensurate to the pasture land they lost and waters (water ways). Now, let's see their views in light of human rights standards and national laws, regarding compensation entitlements in case of eviction.

Earlier we noted that the villagization process was involuntarily carried out. The UNDIPR states that indigenous peoples who have 'involuntarily' lost possession of their ancestral lands continue to have a right to their property, even though they lack title, unless the lands have been transferred legitimately and in good faith to other parties (UNDIPR, Article 28 (1)). The same provision under sub-two provides that '*unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress*'.

The CERD General Recommendation XXIII provides guidelines to a nondiscriminatory development, including the provision by State parties of conditions 'allowing for sustainable economic and social development compatible with their cultural characteristics' (CERD Recommendation XIII, Pra.4(c)), and requiring restitution for the deprivation of Indigenous land providing for '*the right to just, fair and prompt compensation [which] should as far as possible take the form of lands and territories*' (Ibid, para.5).

The UN Guidelines protect the right to remedy in case of forced eviction. In particular, they contain provisions for:

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law. Where land has been taken, all evicted persons should be compensated with land commensurate in

quality, size and value, or better. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process (Paragraphs 60 - 63).

The key parameters of this guideline are ‘compensation’, ‘economically accessible damage’, gross-human rights violation, ‘eviction’, ‘proportionality of loss and compensation’, ‘irrespective of title to property’. In this sense, indigenous communities [at least] are entitled to land commensurate in quality, value and size to the land they lost. In addition, economically assessable property entitles them to monetary compensation. Hence, the Bodi have lost both economically assessable property such as sorghum, and bee hives in bushes. Further, the Bodi have lost pasture land and water ways which need to be substituted with land and water proportional to that they lost.

The FDRE Constitution provides that the government has the power to expropriate private property on land for *public purposes* subject to the payment of *advance* compensation *commensurate* to the value of the property (Article 40(8)). The basics of this provision are ‘private property’, ‘public purposes’ and ‘compensation commensurate to the value of the property’. The provision allows the expropriation of ‘private property’ *a fortiori* applies for land holdings (by smallholders, pastoralists and communities) even if the literal reading refers to ‘private property’. However, the difference lies on whether there is the entitlement to compensation for expropriated landholdings. As we noted above, the FDRE Constitution adopts ‘improvement’ doctrine (Article 40(2)). Now, the question is whether communal land holdings are entitled to compensation payable in cash or in kind or in both to communal land holders? The phraseology of the Constitution does not entitle communal landholders to be compensated, while expropriating them from their land holdings possible. It appears that one who improves the land that he/she hold could be entitled to payments for his property situated in his expropriated landholding, while the others not. This, however, does not mean that pastoralists could be impoverished because of loss of their ancestral land; but they would rather be given land proportional to what they have lost because of ‘development plan’.

The 2005 Expropriation Proclamation seems that pastoralists' communal holdings are not given recognition in their existing forms but only when pastoralists transform their ways of life into 'sedentary' farming. Article 2(2) of the Proclamation defines compensation as payment to be made in cash, in kind or both to a person for his/her property situated on the expropriated holdings. The compensation thus only envisages the '*property situated in [the] expropriated landholding*' and not to the use right that is terminated as a result of the expropriation and that could have been transferred for consideration¹²² or inherited by generations of heirs.¹²³ Compensation is also payable for permanent displacement and, in case of temporary displacement it is only payable as long as the displacement continues. Article 8(2) of the proclamation provides for the possibility by which pastoralists grazing lands could temporarily be expropriated. This provision provides '*[a] rural landholder or holders of common land whose landholding has been provisionally expropriated shall... be paid until repossession of the land....*' (Ibid, article 8(1)). The phrase 'holders of common land' may be interpreted to include pastoralists as the latter most often use lands commonly in Ethiopia. The proclamation articulates state's entitlement to expropriate landholdings for public purposes subject only to advance compensation. The proclamation does not, however, define the process of and role of affected communities in determining public interest. The decision on what constitutes public interest is incontestably left to the discretion of implementation agencies. Such a decision is not even subject to appeal in courts or superior authorities. It is only dissatisfaction in relation to the amount of compensation that is subject to appeal to superior administrative bodies or courts of law (Ibid, Article 11). Thus, this law disregards the interest of the local community, or potential victims in favor of 'public purpose'.

The definition given to 'landholder' in the Proclamation provides for 'eligibility' requirement to claim compensation. That is, the requirement of proof of 'lawful possession' over the land holding to be expropriated and ownership of the property thereon (Article 2(3) of Proclamation No.455/2005). The regulations passed to implement the 2005 Expropriation Law makes 'lawful

¹²² It is to be noted that peasants and pastoralists not only lose use rights due to expropriation but also lose the benefits that could have accrued from the transfer of their land use rights. Art. 8 of Proc. No. 456/2005 provides the following: '*Peasant farmers, semi-pastoralists and pastoralists who are given holding certificates can lease to other farmers or investors land from their holding of a size sufficient for, the intended development in a manner that shall not displace them, for a period of time to be determined by rural land administration laws of regions based on particular local conditions.*'

¹²³ Art. 8(5) of Proclamation No. 456/2005 provide that '*Any holder shall have the right to transfer his rural land use right through inheritance to members of his family.*'

possession of the expropriated land holding' a precondition for receiving compensation. Here the term 'lawfully' means adducing evidence of the acquisition of private landholding pursuant to state law (Muradu, 2013:12). In this respect, the SNNPRS land law seems to be silent on the issue as it defines private holding to be those farmers who are entitled by law to have legal rights to use the land (SNNPR Land Proclamation No.110/2007, 2(13)).

In view of legal instruments, the Bodi pastoralists are entitled to both monetary and kind compensations. Monetary compensations should be paid to them (those who lost their bee heaves and sorghum], and land equal in size quality or better to those who lost their flood retreat cultivation land and pasture land. As argued above, let alone the outsiders, even the 20 informants from the new villages contend that canal waters are not sufficient to feed their livestock and enclosed pasture is not as equal as their previous vast one. The view of the government in regards to compensation is little inclined to compensation in kind, but this one is also not commensurate to what the pastoralists lost. This requires re-visitation of compensation processes.

5.3.3.3.2 Effects of the Omo-Kuraz Sugar Development Project on Bodi

5.3.3.3.2.1 Benefit Sharing

The newly established villages are linked to the provision of agricultural land with access to irrigation water. An expert is assigned for every 50 ha of land, which shows an earnest intention to convert the pastoral into an agricultural community. Furthermore, through the building of water points, the government intends to reduce the need for seasonal migration, and eventually encourage destocking and the use of improved breeds (SEPDM, 2010).Elementary schools, health centers (human and animal), pastoral training centers, *Kebele* administration offices, community policing offices, residential houses of health extension and agricultural extension, roads, etc. are built and have started giving services to local communities. Many natives have started maize on their irrigable land. Around 22 social service providing institutions are built at Omo Hanna, Omorombie, and Chedmis *Kebeles* until the end of June 2013 (Sugar Corporation Bulletin, August 2013).Duge Tati from village one said the government is providing them with pastor and farming land. They are getting the necessary infrastructure. Health professionals come and vaccinate their animal. Mami Nganga from village one said we are getting road, potable

water, school, and health facilities with their reach, which were not present in the past. Mami concluded that they are learning; they are drinking clean water.

The local settled agro-Pastorals benefited a lot in many ways from the OKSCDP. The local people are also comfortable with the villagization program, which the government began to transform the livelihood of the pastoral community. As a result of the launch of the project, they are benefiting from the various facilities such as roads, potable water, schools, health stations and flour mills built at the villages, according to villagers. Among those who joined new villages is Zinku Basha from village II, said he is very happy to be here at the village. The government engaged him in development. He raises cattle. He grows crops. The government provides him select seed. He is improving his livelihoods. He added that they had long been marginalized and deprived of any development activity. But now they want to reach to the level where other pastoralists are placed. Zinku said *'We residents of the area want our children, like other Ethiopian children to learn and be pilot, doctor and driver'* (WIC, 2012). Molloka said prior to OKSDP it was problematic to get 20/30 students, but now we have 207 students in two villages, with proportional male and female students (Interview with Molloka, April 2014). A school vice principal noted that the OKSDP provides students' uniforms, follow up students' learning, prepared game play grounds, and etc. (AbebechTerefe, April 2014). She shares the views of chief administrator that the number of students increases to 100 and above from a number less than 40. Three students interviewed shared vice principal's opinion, stating the OKSDP freely provide them with student learning materials (Tadesse Shenda, Gnyluwa Buluga, Gete Namars, April 2014).

One of the important contributions of an expanding sugar industry to the national economy is the creation of employment opportunities. The GTP document provides an estimate that one person will be employed for every hectare covered by sugarcane. Including jobs outside the realm of the specific OKSDP¹²⁴, the Zone alone is expected to absorb as many as 600,000- 700,000 employees. Estimates vary, but the conservative number we found was 400,000. Assuming that these people will be equally distributed on a per hectare basis and taking the conservative estimate, about 114,000 job opportunities will be created on the eastern part of the OKSDP, in

¹²⁴ For example school teachers, health professionals, traders, etc.

Salamago *Wereda*. Among 101 staffs working at the sugarcane plantation, some of them are from Bodi. A Bodi employee named Gajjuwa Waranimeri said he earns 1,067 Birr per month as a regular staff, and there are other ten workers from his fellow natives too. In the short term, the corporation has made the necessary preparation to train as many natives as possible in various technical professions like painting, truck driving, etc. which relatively demand short term training, according to Nuredin Assaro. The Sugar Corporation has enrolled around 202 youth selected from different districts of South Omo, Bench Maji and Keffa zones to Jinka Construction and Industrial College and Chancho Tractor Operating Training Center in which trainees are equipped with necessary knowledge substantiated by practical work. These youth were trained in building, plastering, painting etc. And, almost all of these trainees are now found working at the project in various professions (Sugar Corporation Bulletin, August 2013). The project has created job opportunities to 6, 695 citizens and out of the total 2, 000 are natives till the end of June 2013(Ibid). Hence, by June 2013, 29.87% of OKSDP employees are natives. Asres Adaro, Vice Manager of Public Organization and Compensation-Resettlement at OKSDP, noted that *'in relation to creating job opportunity, the government is pursuing the principle of priority to the pastoral community'*. Accordingly, pastoralists are recruited as security guards, cleaners, messengers at the OKSDP. The OKSDP has trained thirty pastoral youths from Salamago, Nyangatom and Dassanach *Woredas* in dozer-operation carrier. This is done in order to create 'ownership' feeling with pastoralists over the project (Interview with Asres Adaro, February 2014).

Field visit result reveals that the government is continuing building the different social infrastructures with the conviction that the villages will be populated sooner or later. For example, although no one joined the Omo Hanna Village 3, most social infrastructures are in place. The most successful, Omo Hanna Village 2 has less than one-third of the planned household units living in it. The low success rate seems to indicate that the pastoral community is not deeply committed to joining the villages.

However, these potential positive impact of the project shows that the OKSDP implementers seem to have chosen a *pulling* strategy, rather than *coercing* Bodi to the villages. The various social infrastructures, the food rations and the provision of agricultural land and skills act as the

pulling strings. Employment opportunities also serve as a *pull* factor. In addition to OKSDP management and government officials, all of the 20 informants (100%) told this researcher that they all joined the new villages willingly; despite the fact that they initially were suspicious of the project. But they didn't hesitate to tell this researcher that their outside relatives still force them to quit the new villages. One instance of such pressure was that the outsiders killed a young new villager in group recently. One of the new villagers, Zinku Basha stated that

I am one of the beginners to join the new villages; I started farming and begin to see the fruits of it; government and project officials considered me as model farmer in the new villages; I started sending my children, but one of the five; nevertheless, I am in a serious pressure from my outside equals and the chief; they call me 'woman'; they detach me from social and cultural ties.

At the beginning, most of their relatives left their former villages and went to mountains. But when they joined the new villages they saw benefits of the project and get benefitted. And that is why some of their relatives who refused to join the new villages return to newly established villages. Of course, still many refuse to join the new villages, supposing that the government will surrender their former villages and pasture areas to others. Although not recorded formally, leaving villages after joining is also not uncommon.

The attitude of pastoralists towards accepting the sedentarization show positive impact. The response of most respondents in the new villages accepted the sugar cane developmental project. Of the 20 informants in the new villages, 14 have said we accepted the project, which meant 70%. The remaining 6 (30%) is placed between in options like 'not happy' and 'partially happy'. Those who were partly accepted ones were accepted the project due to various benefits drawn from the project and those who were partly opposed were concerned about various negative impacts related to the project. Of these, some of their worries were related to their future access to grazing lands and water, and environmental degradations, while others were concerned about their traditional culture. The project has been opened widely its door for emigrant workers who are coming from various parts of the country and welcomed with their varied way of life style and culture, although all these situations may alter their identical culture.

Nevertheless, most of new villagers were interested to give up their former pastoral way of life and showed their concessions towards sedentarization. This indicates the government worked a lot on the persuading activity to share benefits of the project the indigenous people. The cumulative response of my respondents is relatively better percentage in their willingness towards full transformation from pastoralism to sedentarization and agrarianism in the newly established villages.

These positive effects could be linked to the benefits drawn from the OKSDP. As we noted elsewhere, the UNDIPR pronounces that states shall provide effective mechanisms for just and fair redress for any project affecting their lands or territories and other resources. The ILO Convention provides that the peoples concerned shall wherever possible participate in the benefits of natural resources exploration or exploitation activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities. The benefits could entail compensatory damages or the receipt of services from projects. The World Bank postulates that when the Bank funds projects for the commercial development of natural or cultural resources on traditionally indigenous lands, the indigenous peoples must share equitably in the benefits to be derived from such commercial development.

5.3.3.3.2.2 State-Driven Change in the Land Tenure System

The implementation of the OKSDP resulted in a mixture of property rights in the area. The state became the *de facto* owner of part of the land over which the pastoralists had had inalienable rights for generations. Indeed, the state has been claiming its historical narrative of state ownership of rural commons by disregarding customary landholding systems of the pastoralists. Apart from the traditional communal ownership of the rangeland, the introduction of the villagization brought about a new variant of common property regime. Indeed, the non-command area parts of the area remained under the control of the pastoralists and are entirely allocated for livestock grazing, while traditional communal land rights are nullified by order from the state in the command areas of the OKSDP. This implies that the state intervention has created a dual legal system whereby claims over the command areas are governed and protected by *de-jure* laws, whereas the other areas remained outside of direct state protection and legitimacy and

governed by *de-facto* customary rules. Yet, the state has the power to takeover the non-command areas at anytime when it deems necessary, with or without compensation, according to land laws.

The OKSDP is changing the traditional property regime of the pastoralists and brought about new forms of land use arrangements that have direct implications for their livelihoods in the study area. Three distinct forms of land use arrangements have been created: the OKSDP farm [Sugar Plantation], settlement farms, and individual small farms. The existence of state farms implies *de facto* state ownership as well as the nullification of customary rights, which pastoralists had had over land for generations. Indeed, the contemporary rights that pastoralists have over this portion of the former commons have been limited to use rights over crop residues, and only with the consent of officials from the state farms. On the other hand, the expropriation of large tracts of dry season pasture land without compensation has resulted in the reduction of the capability of pastoralists to secure livelihoods through the traditional means of livestock production. The settlement farms reflect a kind of interaction between the state and the pastoralists. In this case, the new resources necessary to produce crops are entirely supplied by the state. The existing irrigation infrastructure and the road networks are built by the state through a large outlay. The technical personnel and the management staff are installed through the efforts of the state. These resources defined capabilities to exercise rights within the parameters of the new land use system. Individual small farms have not yet begin to exist, but the former flood retreat individual farms are quenched.

5.3.3.2.3 Bodi Reaction towards the Project

The Bodi pastoralists expressed their dissatisfaction with and opposition to the implementation of the commercial farm schemes in different ways. The Bodi usually stop bull-dozers from clearing land and claim birr in the form of compensation for their land and resources thereon in groups and individually (Interview with a bulldozer operator, name withheld, February 2014). Plantation workers contend that Bodi snatch their [workers] water and meals; beating them; sexually harass female workers; and cutting-off matured sugar cane. Bodi youths come at the end of month to office and claim salary, which actually they do not do. The Bodi employees in the project usually do not do their work the whole month; they become absent from work place without permission for consecutive days and claim the whole month's salary, and if the payer

refuse, they say *'on whose land do you refuse to pay us salary-pay all*, and coerce their supervisors and payers. This is common with Bodi. They work not more than 15 days in a month. The Bodi leave the new villages that the government constructed after staying couple of days. In 2012, even if the project had sowed seeds on the 1000 ha of land (which it cleared, cultivated, made irrigation water available) Bodi villagers refused to remove unwanted plants (Interview with sugar plantation workers, name withheld, February 2014). In the year 2012 the Bodi have reaped maize products, produced by the OKSDP. They even refused to collect maize from farms, and wait the project workers to collect and insert in the granaries. The project works did all these. In the next year, they [Bodi] claim the same process of maize production, but then the OKSDP refused to produce maize and took away the 1000 ha of land (which initially allocated to villagers for their production) from the Bodi and planted sugar cane and pay them 25, 000 birr per year. This was done against Bodi's opposition or reluctance to cultivate land (Ibid).

The Bodi invited more than 300 Me'enit¹²⁵ (the Bodi call themselves Me'enit, blaming that Amhara renamed them Bodi to mean 'Body' or big man) to settle around factory one of the OKSDP, which is the inception of the project located in Bodi land. In order to stop crossing Omo River and then the project's expansion to factory two establishments, the Bodi burnt wheels that temporarily serve as a bridge to cross the Omo River for cars and peoples. The Bodi leave the newly established village where they started living within few days and would not come again (Interview with name withheld OKSDP worker, March 2014). The project is kept by the native Bodi security guards and Federal Police. In areas where the Bodi security guards keep the project, they cooperate with their colleague pastoralists to enter their cattle into areas fenced for the project. In response to car accidents, Bodi frequently kill civilian and military personnel, considering that the government does this deliberately to reduce Bodi people and expand the project area. An anonymous respondent claimed that once he visited the project with his staff, when they were having meals, two Bodi men came to them and usurp their meal and ate, saying that *'Amhara (as they call all outsiders), who are you to come to our land and eat meal but we don't'*. Another informant noted that such a reaction is common to the Bodi. In focus group

¹²⁵ The Me'enit [also pastoralists] are part of Bodi who live in Bench-Maji Zone, SNNPRS. While the Bodi live on South Omo side of the Omo River, the Me'enit across Omo River, in Bench Maji.

discussions, it surfaced that the Bodi usually made use of the areas abundant water for grazing and the forest for wild animals, roots, leaves, and the bark of plants for different types of traditional medicines. The participants emphasized that the sporadic killings which have been intensified since the beginning of large-scale agricultural investment are related to the Bodi peoples' grievances about their ancestral lands being given to investors, their revered forests being cleared, and their being divested of their communal land rights.

On the other hand, government officials argue that the Bodi and Mursi have no political or social aims at all. Government Officials believe that the Bodi and Mursi are engaged in the killing of innocent people in order to express their grievances at having lost their lands owing to Konso settlers' expansion of land, and inappropriate use of their resources by outsiders, and even illegal supply of local liquors to market and thereby instigating conflict. Moreover, anti-development forces and the so-called human right activists are making use of propaganda. Hence, Government officials contend that recent killings are not related to land 'grabbing' or to large-scale agricultural development.

In my view the reaction/resistance of Bodi pastoral community seem to have been associated with lack of properly handled consultation and securing consent and absence of recognition of their ancestral land. I could link the reaction of Bodi with the various development resistance and reaction instances occurred in South Omo Zone's pastoral community: Ethio-Korea Farm, Birale Cotton Plantation, and Salamago Resettlement Project. The Ethio-[North] Korea Joint Agricultural Development Project (also named as Tringole State Farm) was planned to irrigate 10,000 ha of cotton when it reached its full capacity in the former Kuraz *Woreda* (now Dassanach and Nyangatom *Woredas*). In 1991, after the collapse of the military regime, the Korean staff based at Omorate—center of Dassanech *Woreda*—left and the North Omo Agricultural Development Enterprise took over (Richard Woodroffe and Associates, and Mascott Ltd., 1996).¹²⁶ The Omo-Basin Master Plan draws from Ethio-Korea Farm experience, stating that there were major disturbance during the initial establishment of this project. The Dassanach communities were not consulted about the project, nor were they compensated when

¹²⁶Yet, it was unsuccessful; as a result, the land remained as it was, and the electric generator which was used to power the water pumps now generates electricity for residents of Jinka.

they traditionally viewed as theirs was annexed (Woodrooffe *et al*, 1996, section 3, Lower Omo Irrigation, pp.44-45). For that reason, the Omo-Basin Master Plan (1996)¹²⁷ calls for consultation of the pastoral communities around the OKSDP. While the Lower Omo Valley irrigation can bring considerable benefits at the national and regional level (Woodrooffe *et al*, 1996, section 3, Lower Omo Irrigation, p42)¹²⁸, for the project to be implemented successfully there is need for discussions and negotiations with the various groups living in the area to ensure that the riverine land used for flood retreat cultivation is affected as little as possible. Dry season grazing rights and access to the river are protected.

The Biralle Cotton Plantation carries on a similar story. The Biralle commercial farm was established in Woito Valley, South Omo in 1991. The farm initially received 1400 hectares of land from the federal and regional government. Its size has more than doubled today. The Commercial Bank of Ethiopia has sold the farm to the privately owned Omo Valley Industry plc.

Local residents were evicted and had to migrate to the neighboring hills. The community lost its prime grazing land. Now livestock are not allowed into the farm and a fine of 3 Birr per goat and 4-6 Birr per head of cattle is charged for trespassing. The farm owners do not allow the community to graze their livestock even after the cottonseed and maize harvest so the residue is wasted. Incidents of harassment of locals are common with no organized conflict resolution mechanisms between the farm and community. The local community was not involved during the planning and implementation stages that led to the creation of the farm. Different sections of the Tsemay pastoral community could not agree about the land use consent that had been given by some elders without full approval of the whole community. As a result, the plantation had been stigmatized by a violent and unfortunate start when it was set up in the 1990s. Anger started as soon as the plantation was established. Animosity increased when local people were constantly moved from their lands while the plantation was extended and conflicts about land use were not resolved. When a plantation vehicle hit a calf enclosure and killed some calves, infuriated Tsemay youngsters attacked and killed several plantation employees. Eight suspects

¹²⁷ The Ministry of Water Resources of FDRE issued its XV-Volume Omo-Gibe Basin Irrigated Development Master Plan Study in December 1996 (the Master Plan) (Woodrooffe *et al*, 1996). The Master Plan was the first and only comprehensive study of its kind for this basin, and it encompassed the entire basin with Ethiopia.

¹²⁸ See the conclusion section of the Master Plan for details

from the Tsemay community were arrested to be brought to trial in Jinka. On the day after the arrest, a herder found the corpses of the eight suspects buried by the roadside. People said that only three of them were involved in the attack on the plantation workers. Even after reconciliation efforts, different versions about the conflict and loss of lives linger in the minds of people and although the plantation has changed management and ownership in the meantime, it still carries the history of its violent beginning (Gabbert in Mulugeta, 2014).

The Salamago Resettlement Scheme¹²⁹ carries on another similar story. This scheme is one of the several state-sponsored resettlement schemes undertaken by the Southern Nations, Nationalities and Peoples Regional State (AykeAsfaw, 2005).¹³⁰ The settlers in six villages at Salamago belong to Konso ethnic group—people known for a UNESCO registered terracing and hard-working. The Salamago resettlement is underway having some positive features but riddled with a series of setbacks and replete with a host of problems. The existence of a significant number of ‘self-motivated’ and determined resettlers is an important advantage. The hard working behaviour of the Konso settlers who are famous for their traditional soil conservation system is another advantage. Moreover, the sanction of the free movement of resettlers coupled with the proximity between the resettlement area and their area of origin enabled them to maintain their contact with their area of origin. The suitability of the area for human habitation is also another important advantage of the area (AykeAsfaw, 2005).

Ayke (2005) however contends that similar to past ‘villagization’ programs in the country, the scheme has suffered from a rushed feasibility study, poorly observed selection criteria, unsound planning and inadequate inputs. As a result, deadly conflicts between settlers and host communities have occurred. Moreover, large number of resettlers, 723 heads households out of a total of 2897 heads of households, which is about 24%, abandoned the resettlement area in the last 20 months following their arrival in January 2004.

The negative outcomes have been resulted in the clearing of ‘virgin’ territories for settlement, and already distress activity by settlers in the 2003 pilot has led to worrisome environmental

¹²⁹ The scheme is also called ‘Guyo-Dakuba Resettlement’— named after one of the six resettlement villages established by the program

¹³⁰ These six Konso resettled villages are Shumeto, Haruma, Giyo-Dakuba, Kenchewa, Tsitsima (with two villages).

damage. The likelihood of unofficial or 'self-motivated' through networking with friends and relatives increase from time to time, thus exacerbating conflict among the indigenous communities and the settlers. The Konso are settled on lands traditionally used for grazing by the Bodi pastoral community. The land was of great value to Bodi pastoralists since time immemorial, who received no compensation for the loss of this resource. This uncompensated displacement of resources has led to serious tensions between Bodi and Konso (Gunasina Bashamaji, Woreda Security Head March, 2014). In December 2007, violent conflict erupted between the two communities, resulting in the killing of 29 Konso and 28 Bodi peoples; burning of houses, granaries, and robbing of property including cattle. This conflict spreads to the areas where the unofficially settled Amhara reside. As a result, in 2010/11 a number of people were killed on both sides, granaries burnt. A four days conflict, (March 26 to April 1, 2014) between Konso settlers and Bodi pastoralists cost individuals' life and properties (Interview with Inspector Kassa Kawza, Zone Police Crime Prevention Section Head February 2014).

The result of which is deforestation of the long lived indigenous trees, displacement of indigenous pastoralist, conflict that resulted in killing of a number of people (particularly women and children of settlers), prohibiting settlers the right to movement which restrain the settlers to bring their products to local market. The Bodi focus group participants said that the government deliberately settled these people in order to devastate their environment, cause conflict and fear of losing their land. The Bodi say Konso '*Kessi*' (literarily means Konso bad [Satan]). Focus group participants said '*the government has settled people who are making insecurity to the government itself and thus they make insecurity to our land and deforested our environment*'. They call the settlers 'tree feeder'.

The zonal and *woreda* government institutions, NGOs, and local dispute resolution mechanisms have failed to solve the problem. Hence, the regional government has sent 'Special Police Force' and crime investigation officers to the area in order to solve the problem through bringing the criminal suspects to justice. Mass fire arms registration took place in 2010 by the Regional State Police Department. And yet, recurrent conflicts exist between the Bodi pastoralists and Konso settlers; the Konso continues expanding farm land, while Bodi claims that the land exclusively belongs to the Bodi. Focus group participants alleged that

We asked the Government Officials who came to consult us about ‘who are the settlers and for how long they would stay, and they confirmed that the settlers would stay only for five years; however, the Konso have stayed on our land for ten years, so they must leave our land.

The Deputy administrator of South Omo Zone said that both the Konso and Bodi accuse the then government officials who consulted them about the resettlement, saying that ‘*they didn’t convince us*’ (Interview with Sitotaw Garsh, April 12, 2014). The Bodi said government officials deceived us.

5.4 Conclusion

The OKSDP is one of the State-Run Large Scale Sugar Development Projects in the country, with six sugar factories. The OKSDP totally needs a vast area approximately 175,000 ha for its prioritized cultivation, and an overall of 245, 000 ha of land in the Lower Omo Valley. This enormous area will get water supply from the Omo River through a diversion weir. As part of the GTP, planting sugar industries is one of the major goals in the agro-processing sector. The Ethiopian government acted as a key investor in the Lower Omo Valley and looking not only for the available ‘unused lands’, but also looking for the lands that have a good source of water [Omo River] including labor force.

The OKSDP has been linked with frequent allegations especially by Human Rights groups and environmentalists, including that the government has failed to properly consult and obtain the consent of affected indigenous groups prior to land alienating to the OKSDP; forcibly evict indigenous peoples from their land and livelihoods; failure to pay compensation for indigenous people’s property; and provide inadequate pasture land and water ways to their multi-species livestock and themselves at villagization sites. The Ethiopian government and OKSDP management responded to allegations by dismissing all findings, insisting that all these allegations are politically motivated, and the project site and the selected locations are not anywhere close to human dwelling. The government continues to claim that this is completely uninhabited land. There is no displacement of pastoralists. Land alienation has been carried out with properly conducted consultation and consent of the locals obtained persuasively. The

villagization consists of the relocation of pastoralist into sedentary villages where they are provided with improved social services, housing and infrastructure. The government provided the Bodi with irrigated land and enclosed pasture land; built cattle-crossing bridge; create job opportunity to the natives; training on improved agronomy practices, technology inputs, and livestock management. I am perplexed about the radical differences between the views expressed by the government officials and the OKSDP management, on the one hand, and those expressed by Human Rights groups and locals, on the other hand, and I find it difficult to reconcile such opposing views. These contending views triggered conducting of this research, particularly from perspectives of the Bodi community.

Field data from first category interviewees and focus group participants proved that there are strong indications that the Bodi pastoralists are potentially affected by the OKSDP. The rights of the Bodi pastoralists to their traditional lands in the area have not been adequately recognized and respected by the Constitution and Subsidiary laws of Ethiopia, and are not being taken into account in the consultation, compensation and villagization processes. The Bodi pastoralists have been participating in the villagization involuntarily, and that the government is attempting to coerce specific groups to be relocated, mainly by preventing individuals from grazing their cattle in the areas from which they are to be moved and cultivating flood retreat areas. In this connection, removals of the Bodi from their traditional lands have serious implications for a wide range of human rights; these implications are greater for indigenous peoples, who generally hold bonds of deep historical and cultural significance to the lands in which they live.

Limitations on indigenous people's land rights and resources are considered a legitimate option when such limitations are only take place with adequate mitigation measures and, in the case of any displacement, with appropriate consultation and consent obtained free from any physical and/or mental coercion of the affected indigenous peoples within a participatory, consensus-building process, and the opportunity to return to their traditional lands. The data collected revealed that no monetary or in kind compensation has been paid for loss of their livelihoods, and that the living conditions in the new villages are inadequate, especially with respect to access to sufficient water ways to watering their multi-species livestock and pasture land.

The lack of consideration of the potential land rights of affected Bodi pastoralist runs counter to contemporary human rights standards regarding indigenous peoples and to relevant provisions of

the FDRE Constitution. The FDRE Constitution is novel in requiring consultation of communities over development activities affecting them, and monetary compensation for economically assessable property and relocation to proportional land with government assistance. However, none of the land law proclamations and the FDRE Constitution guarantees the right to institute court action to challenge potential violations of the right to consultation in development-induced displacement. Hence, it could be argued that there is no comprehensive legislation specifically addressing the rights and concerns of indigenous peoples. However, indigenous peoples can claim their rights under those Conventions that Ethiopia has ratified.

The government is urged to evaluate the OKSDP and its associated efforts in the lower Omo valley to ensure compliance with international Human Rights standards as well as with the FDRE Constitution. I emphasized that unless and until any villagization in particular and land alienation can take place in accordance with Human Rights standards and adequate safeguards are put in place to mitigate any unavoidable effect on human rights, the government should rework on its failure to comply with obtaining consent of the Bodi and unsuccessful villagization in the Lower Omo Valley. The benefits (access to social and infrastructural services, and leave ajar for their cattle to pasturing and watering) the government provides to a very few Bodi and other new villagers are a strong part of the project, which should be strengthened farther to draw the perception of the indigenous peoples towards sedentarization. In any case, I would reiterate the conclusions I made in regarding the processes of land alienation to the OKSDP in the Bodi community and their villagization which I considered are justified.

CHAPTER SIX

6 CONCLUSIONS AND RECOMMENDATIONS

The traditional pastoral livelihood system based on the keeping of multi-species livestock in a semi-arid environment has survived for centuries in lowland peripheries of Ethiopia. Their livelihoods like seasonal herd mobility, changing herd composition, and traditional institutions of mutual help used to maintain the sustainability of the system both ecologically and economically. However, many pastoralist communities are no longer able to apply most of their traditional rangeland management practices since the imperial regime. This is due to the increasing pressure on rangelands, loss of indigenous practices and weakening of customary rules. The existing traditional institutions are not always recognized by the formal land law regimes and weakened institutions are unable to enforce communal landholding systems. The formal institutions are no longer able to efficiently manage the vast natural rangelands and it is evident that mobility and the utilization and management of grazing land and natural resource have been vulnerable since the government began to transform the livelihoods of the pastoral community in to a ‘modern’ way of life through large-scale agricultural development endeavors and villagization.

The ill-conceived ‘modernization’ policy along with agricultural development persuaded by the Ethiopian Governments that aimed at the establishment of large-scale commercial farms and then sedentarization of pastoralists in the lowland peripheries and the failure to recognize the land rights of the pastoralists have had adverse effects on the pastoralists and agro-pastoralists and their livelihoods. The cultural core of the imperial regime in the lowland peripheries state policy boldly echoes *terra nullius* narratives of ‘unproductive’ and ‘unused’ spaces that need to be made productive. The imperial government’s thinking that the land in these territories was unutilized and that the people had to be made to see the light of civilization was passed onto *Derg* and the current government through agri-business investments. In 1975, the *Derg* had abolished existing customary land tenure systems and instituted State ownership of land. The *Derg* had largely practiced unsuccessful state-farms and villagization projects until 1991.

The FDRE Government has reaffirmed state ownership of land. Ethiopia's national poverty reduction program recognizes that there is a rising threat to pastoral livelihoods as a result of biased policies and environmental change. The change in government in 1991 has given development priority in large-scale agricultural developments in the pastoral and agro-pastoral lowland areas. The government has taken several steps toward a more private land tenure model including permitting land to be rented. More recently, the government's long-term leasing out of large 'unused' lands to foreign and domestic investors in large-scale commercial agriculture. The government involved in mega project developments like sugar cane developments. The kind of agriculture that is suitable cannot be labor intensive instead rely on mechanized farming requiring considerable outlays of capital for irrigation systems. Large-scale agricultural developments constitute a central place in the country's five year GTP, 2010/2011-2014/2015. The GTP document adopts a geographically differentiated strategy for agricultural development, mainly hinges upon scaling-up of proven technologies in the densely populated highlands and transferring land to investors¹³¹ in the sparsely populated lowlands. The Ethiopian state showed a shift of emphasis from smallholder focused agriculture which was dominant during the first and second Poverty Reduction Strategy Papers (MoFED, 2002; MoFED, 2005, Teshome, 2006) to large-scale commercial agriculture expected to play vital and complementary role in its third five years development plan (MoFED, 2010).

The Lower Omo Valley has been associated with several land development endeavors since the imperial period. The first of its kinds are National Parks and Wildlife Reserves. The Omo NP covered 4, 068 km² when it was established in 1968. This size is reduced 3, 438² in 2003, 63, 000 ha (630km²) in South-East corner excised for OKSDP. The Mago NP, which covers 200,000 hectares alone, shares borders with six ethnic groups, the Bena, Ari, Mursi, Hamar, Kara and Muguji (Kuwigu). The park was established in 1970. It was re-demarcated in 2003, reduced to 3,438 km², 30, 000 ha (399 km²), in West part of the park excised for the OKSDP. The Tama National Reserve was established in 1970 with 1, 472 km², located either side of the Omo NP, including the buffer zone between Omo NP and Mago NP. In 2008, it was re-demarcated 42,285 ha (423 km²) on left bank of Omo excised for the OKSDP. Then, the Beralle commercial farm

¹³¹ The government plans to transfer about 3.3 million ha of land to investors (foreign as well as domestic) in the five year period (MoFED, 2010, p. 49) in addition to plantations owned by state corporations (Eg. Sugar and Chemicals Corporation will establish sugarcane and rubber tree plantations, respectively).

was established in Woito Valley, South Omo in 1991. The farm initially received 1400 hectares of land from the federal and regional government, which later on doubled its size along the Woito River in the Lower Omo Valley. The Ethio-[North] Korea Farm was another encroachment in the former Kuraz *Woreda*, which covered 10,000 ha of land in the Lower Omo Valley in 1990's.

The most recent land developments are the OKSDP, which alienated an overall 245, 000 ha of land; of which 175,000 ha of land is alienated to sugarcane plantation. In addition to OKSDP, there are several private (both foreign and Ethiopian) owned investments carried out in this region, mainly cotton plantation. Further, 180,625 hectares of dry season grazing have been identified and handed over to the National Land Bank.

This thesis has paid attention to the controversial State-Run Omo Kuraz Sugar Development Project. The Project has raised controversy among different actors. On the one hand, the Human Rights groups and some scholars argue that the Ethiopian Government has used force and intimidation to convince the pastoralists about the project and villagization program and thus failed to properly consult and obtain consent of the indigenous peoples according to International Human Rights instruments; the government rather forcibly evict the indigenous peoples from their ancestral land and their livelihoods and didn't pay compensation in cash and in kind for their property and provide inadequate social and infrastructural services for the villagers. This group urges the government to cease the OKSDP, and international donors to terminate funding the Project. On the other hand, the Ethiopian government argued that the land on which the OKSDP is planting is 'barren', 'unused', 'unsettled', so no one would be displaced. The government argues that it has conducted an inclusive consultation with the pastoral community; conducted experience sharing visit to other agro-cultural areas in the Lower Omo Valley; villagization has been carried out only on voluntary basis; the main compensation scheme is benefits that the pastorals could get from the project, rather than monetary compensation, and the government planned to pay monetary compensation to Dicha Wereda pastorals who lost their properties; others have not lost any economically assessable property. Again, the pastoral communities argued that the government didn't consult them before alienating their pasture land and water ways to the Project. They argued that they didn't give their consent to handover their

ancestral land which they have been using for pasturing, watering themselves and their livestock, flood retreat cultivation. In relation to consultation, some anonymous interviews claimed that the government use force and arrest persons with dissent opinions. The pastoralists argued that their reaped sorghum, granaries and bee hives have been bulldozed for which they were not compensated. The government has blocked their water ways and made inaccessible their previous pasture land. The government is pushing them to reduce their huge livestock via selling. The canals constructed to watering their livestock and enclosed pasture land is inadequate to feed their livestock and themselves.

International and regional Human Rights Instruments all underscore the validity of customary indigenous rights and the need to protect indigenous people from involuntary displacement from their ancestral lands. Any attempt to develop these lands requires consultation, and free, prior and informed consent of those currently occupying it and appropriate compensation. These legal instruments prohibit forced displacement from land and livelihoods. They provide that benefit sharing mechanisms should be considered while undertaking development projects. Together with appropriate compensation, alienation is a last resort and should only occur as outlined in the appropriate legislations. The FDRE Constitution and subsequent Federal and Regional land law proclamations stipulated land as a 'state property', and do not guarantee communal landholding system. The state adheres to 'improvement' doctrine on land. The land laws authorize the State to change rural lands to private property at any time up on its whim. The Ethiopian pastoral communities however perceive that land and other natural resources are their common property. The Bodi pastorals in South Omo Zone strongly believe and express their attitude towards 'communal ownership' over the land they inherit from their ancestors.

The findings of this research validated the views of the local community in a sense that the processes of consultation and obtaining consent to delineate Bodi land and villagization processes were unduly rushed by the OKSDP's schedule; it didn't allow sufficient time for affected communities to understand, react and consult. According to data gathered from first and third category informants, and some government officials, the OKSDP consultation process with project affected communities in the Lower Omo Valley was limited, selective, and violated their right to full consultation at both the planning and implementation stages of the project. The

villagization is conducted forcibly because the indigenous people given up their pasture, water ways and their livelihoods without consent, as land alienation was done prior to consultation, villagization has been carried out with little participation and still at low acceptance level and thus unsuccessful. The little inclination of the Bodi towards villagization is partly related to the fact that hasty and skeptical consultations were carried out when the government planned to settle Konso on their land and establishing National Parks. The government failed to pay monetary compensation to economically assessable properties and gave them non-proportional cultivable and pasture lands. Thus, the government has ‘grabbed’ Bodi’s ancestral land. Land grabbing is characterized by the large size of the land investment, the lack of transparency of the negotiation and implementation of the investment, the incompleteness of contracts (Cuffaro and Hallam 2011), and missing involvement of the local communities who inhabited the land (Abbink 2011).

The positive effects of the OKSDP are creation of job opportunities to the locals, especially unskilled ones. The OKSDP has benefited the locals in terms of social and infrastructural services. The beneficiaries however are very few because the Bodi have refused joining the new villages. The adverse effects of these land alienations have been loss of large magnitude of critical grazing lands which could have numerous detrimental effects on the life South Omo pastoralists and their production system. Change in communal land tenure management of the Bodi restricts herd mobility and limits access to pasture and water ways in the study. The traditional system of mobility of grazing land in dry and wet season can often no longer be practiced owing to the expansion of cultivation into grazing lands and the breakdown of traditional practices. The reaction/ resistance of the Bodi against the Project could be linked to the historical and current failures of the government to duly respect their livelihoods and properly consult about the kind of project to be carried out in their localities before, during and after implementation.

Lessons drawn from fifty years of research on the consequences of development-forced displacement, as well as from the sorry history of so-called ‘pastoral development’ in Africa and elsewhere, tells us that this expectation, however sincerely held, is a delusion. The Awash Valley provides a historical example of the conversion of pastoralist land to large-scale irrigated crop

production (Behnke and Kerven 2013a, b). In the Awash Valley, large-scale irrigation schemes dedicated to commercial agriculture were initiated in imperial times and subsequently led to a number of problems, which have also later occurred in other cases and are likely to occur in future development projects in river basins unless planners learn from the past. The Awash Valley development pursued would neither benefit the local Afar nor large numbers of ordinary Ethiopians but only a coalition of foreign companies and local dignitaries. Turton (2012) argues that if irrigation development and villagization in the Lower Omo continues on its present course, it is virtually certain that it will become known as a text book example of how not to do river-basin development, and as a ‘disgracing stain on development itself’ (Cernea and Mathur 2008: 1). I am with the opinion that the views of these writers are by far right from historical as well as current large-scale agricultural perspectives. I believe that the historical and present mistakes that the Ethiopian state has made could be remedied provided that the following recommendations are properly considered in the study area and the rest of OKSDP command areas.

1. The Federal and regional government should reconcile the constitutional land ownership right with the traditional communal tenure system in order to bridge the policy vacuum between *de-jure* and *de-facto* tenure arrangements. Most importantly, however, there should be an effective land law that recognizes ‘communal landholding’ in the pastoral areas, which could protect the unprecedented degree of land misuse by state and private investors. A number of policy implications have been forwarded in this regard, but the state remains silent. I don’t think keeping silent is a solution, because the problem is persistent, and that Ethiopia is a state party to many binding international and regional human rights instruments and failure to comply with these instruments persistently might entail state liability.
2. The government should proceed with this developmental project, but with due respect to the agro-pastoral population interest according to the villagization process, and it must restrain itself from forceful villagization. The project must consider the downstream river retreat agro-pastoral livelihoods.
3. The government should enhance benefit-sharing mechanisms to the affected communities. The social services were not enough to motivate the agro-pastorals, so

additional efforts must be needed. The one ha of farm land given to a HH is not enough for fulfilling the villagized HH. The areas where pasture land was enclosed and water ways/canal opened are not enough for Bodi's multi-species livestock. This made unhappy for the rest unsettled pastoral communities, and may also be one form of problem for the non-success of intended villagization program. Thus, the government should enclose pasture land in places where pasture would be available during dry and rainy seasons, and avail water ways/canals for their multi-species livestock. The project must afford much trainings/education for the agro-pastoral community to get benefitted in having jobs.

4. The Federal and Regional governments should strengthen their legal system and also should work together with the traditional institutions in order to make, rapid and just decisions, when alienating land for large-scale agricultural investments, either by the state or privately so that possible resistance and conflict would be eased. Traditional leaders, above all, majority of the community, are not convinced about what the project mean. This requires reinvestigation of the problem of low acceptance from grass-root level and even at *Woreda* and *Kebele* level as to whether the local officials who make consultations believe in the project or no, and government institutions setting-up (strength) at the lowest level.
5. Land use patterns have been directly affecting pastoralists. So, the benefits of the new land use should be shared. Sharing the earnings from tourism and wildlife parks will improve the sustainability of the new system as communities assume responsibilities for protecting development areas themselves. The use of land will continue to change over time and it is clear that the recent changes in land tenure may not be easily reversed. These changes have had a negative effect on the lives and livelihoods of pastoralists. Future changes in patterns of land use will undoubtedly continue to affect pastoralists but the beneficial effects should be promoted and the negative consequences should be mitigated. To this end, an integrated land use plan should be devised. This should cover all and uses from villages and farmlands to communal rangelands and wildlife parks. It should include mechanisms to minimize expansion of area enclosures and depletion of communal rangelands. This requires the full participation of pastoralists who have expert knowledge about the environmental constraints of the land. It demands engagement with traditional institutions so as not to undermine effective communal resource practices and

increasing efforts to build trust between pastoralists and policymakers and properly valuing interdependencies between pastoralists and other stakeholders.

6. Traditional systems need to be strengthened and re-empowered to manage natural resources with understanding from the government and in harmony with formal knowledge; supporting the customary institutions would contribute to protection of land and related natural resource management and help reverse aspects of climate and environmental change.

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