

## Development of, by and for the People: The Missing Link in the Development Trajectory of Ethiopia

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### Abstract

*The paper explores the place of the ‘people’ in the development trajectory of Ethiopia and if and how a human development could be realised. By inquiring into the place of the ‘people’, the paper attempts to show whether the people are at the centre or at the periphery, beneficiary or victims of the ongoing development. By asking if and how a human development approach to development could bridge the gap, the paper shows how this approach could translate ‘people’s’ need into right, and recognise them as active subjects and stakeholders of the process of development. To substantiate the doctrinal analysis, the paper uses empirical evidence and the Lower Omo Valley (LOV) sugar plantation project as a case in point. Through analysis, the paper demonstrates that the development trajectory being followed by Ethiopia falls short of satisfying the human development discourse of UN Declaration on the Right to Development (DRD), the African Charter on Human and People Rights (the African Charter) and the Ethiopian constitution. The paper argues that Ethiopia’s development efforts must take account of both the constitutive and prescriptive nature of the RTD if social equity is to be met.*

**Keywords:** Development process; Ethiopia; Human development; Lower Omo valley; People.

### Introduction

The world nations on the 2015 UN Sustainable Development Summit signify the era we are in as a period of immense challenges and opportunities (UNGA Res A/RES/70/1, paras. 14-17). It is an age of immense opportunity as the world chained with global interconnectedness through information and technology that in turn facilitate scientific innovations, trade and investment. It is also a time of continued multidimensional poverty where billions have deprived a life of dignity and where global and domestic inequalities are mounting. At the face of these challenges and opportunities, nations, particularly developing countries, often tend to set economic development as their ultimate goal with minimal consideration to the peoples’ welfare within their territories. In line with the dominant economic and development policies to achieve rapid economic growth, they focus on attracting investments. In fact, experience has shown that investments have become one of the key factors in the development process. However, the challenge occurs when investment projects are implemented with little or no consideration for the local communities’ welfare that are at the receiving end of the negative outcomes like forced relocation and social and community fragmentation.

This often happens when States despite advocating for human development disregard the prescriptive and constitutive aspects of development and pursue economic growth at the coast of other rights. With this backdrop, the discussion on development inevitably brings to picture the legal protection given to the RTD. Despite a long-standing debate, the RTD is recognised as a human right by the 1986 DRD. Even though it is not yet incorporated in a binding treaty at the global level, regionally, the African Charter is the first and only binding document that recognises the RTD as a right. Ethiopia is a party to basic human rights treaties and has ratified the African Charter in 1998. Further, the 1995 Ethiopian constitution guarantees the right to development under Article 43.

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Despite having these legal guarantees for the RTD, many are deprived better living standard and are living in multidimensional poverty (UNDP, 2015: 6). Notwithstanding the rapid economic growth the country is experiencing the growth is not inclusive enough (UNDP, 2014: 2). This reality trigger questions: why Ethiopia while having favourable legislation on the RTD and scoring rapid economic growth, more than half of its population live in multidimensional poverty? For whom, by whom and at whose cost is this growth happening? The paper is presented in five sections. Following this introduction and a section that presents a mundane view of the RTD, section two examines the concept of development as a process and the RTD as the right to the process of development. Section three explores the right and duty bearers of the RTD and their respective rights and obligations. After laying the theoretical foundation of the RTD, section four examines the overview of the Ethiopian constitutional framework on the RTD. These juridical and doctrinal analyses are then followed by section five that investigates the development path of Ethiopia and its impact on the realisation of human development based on empirical evidence. At last, it ends with a concluding remark.

### ***1. The Right to Development: A Mundane View***

The RTD has been advocated by the newly independent and developing nations since the 1970s (Uvin, 2007: 598). Even though the claim for the assertion of development as a right was advocated since then, the move towards its recognition as a part of the mainstream came only since the end of the cold war (Pahuja, 2007: 171). Since then, the concept and context of the RTD have gone through different phases of metamorphoses, particularly, from the right to economic growth to full human development. The RTD mean many things to many parties and people. In the 1970s, for the newly independent and developing countries, it was a means of securing economic development and sovereignty over their natural resource (Vandenbogaerde, 2013: 187). The claim for sovereignty over natural resource was an attempt to push forward the New International Economic Order (NIEO) movement (Anghie, 2004: 207-215). On the contrary, the developed countries, particularly the US, were the antagonist of the RTD.

In 1972 judge Keba M'Baye, a Senegalese jurist initiated the discourse on the concept of development as a human right by asserting that every person has a right to live and a right to live better (Bunn, 2000: 1433; Donnelly, 1985: 473). On the other hand, development – economic growth in particular – for scholars like De Soto, is influenced by and based on a secure property right and the ability for land titling to secure property right (De Soto, 2000: 156-214). The economic growth discourse of development, however, was taken further with expanded scope beyond economic growth or income per capita by Amartya Sen. For Sen (1999: 35-53), freedom is a *primary end* and *principal means* of development. In a sense, development is about expanding human freedom so that a person lives the life s/he values or has reason to value. Recently, the former Independent Expert on the RTD, Arjun Sengupta, whose approach seem to be influenced by Sen, described the RTD as a right to a process of development that has a person at the centre (2013: 68-69).

Currently, the widely advocated context of development and the RTD follows the later approach to development that embraces broader dimension of human 'well-being' contrary to economic growth *per se*. This is reflected in the UN documents related to the RTD. For instance, Article 1(1) of the DRD defines it as an inalienable human right by virtue of which everyone is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development. From this definition it is possible to see that the RTD embrace bundle of rights that have already been recognised by Basic Human Rights Documents, mainly, the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR). In line with this, Margot Salomon (2008: 17) noted that the RTD get its intellectual origin and legal claim from the UN Charter Articles 55 and 56 that demand the UN to promote better standard of living, employment and conditions of economic and social development and also member state to take steps jointly and separately towards the realisation of this purpose. Based on this, one could possibly argue that the RTD is as old as all other aspects of human rights. However, what distinguishes the RTD from other human rights is the fact that there is no provision in any of international human rights treaties that assert it as a right. Hence, despite its broad acceptance as a moral standard, the RTD is not yet incorporated into international human rights treaties. A region-specific treaty – the African Charter – is the first and only document that recognises the RTD as a right so far. According to Article 22 of the same charter, the RTD is a right to socio-cultural and economic development. While both the DRD and the African Charter impose the duty to protect, respect and fulfil on States, individually and collectively, the later confers the right on 'peoples' and the prior does so on both 'peoples' and 'persons' (African Charter, Art. 22 (2); DRD, Art.3).

These differences have cultural and historical explanations. It is basically the translation of Africa's concept of an individual in a society (Kiwanuka, 1988: 80-101). Put differently, within the context of African culture, individuals are embraced as integral members of the society animated by a spirit of solidarity. Nevertheless, both documents are congruent on the underlying concept of development. That it is a human right with an ultimate goal of improving human well-being.

## **2. Development as a Process and Right**

As the foregoing discussion shows, the concept and context of development have evolved from economic growth *per se* to a broader context that encompasses socio-economic, cultural, civil and political freedom that puts human beings at the centre. Having this broader notion of development, it will be logical, then, to set a guiding definition of the term development and the RTD. For the purpose of this paper, based on its broad application, the discussion follows the definition set by the United Nations Development Program (UNDP) – development as a 'human development'. The notion of 'human development' is eloquently described as "development of the people, for the people and by the people" by the Director of UNDP's Human Development Report Office (HDRO), Selim Jahan. In his explanation, Jahan, reasoned that it is development 'of' the people because it is concerned with the improvement of human capital and resource; it is 'for' the people by virtue of its design to ensure that benefits of development are translated into the life of the people; and it is 'by' the people since people are not a mere recipient of the end result but also active participants in the development process and issues that affect their interest. In a nutshell, he put human development as a process of enhancing human choice in every aspect of human life through enhancement of human capability and improvement of opportunities to use these capabilities.

This command of 'human development' as a development of, for and by the people goes in line with the above mentioned Sen's definition of 'development as a freedom' and Sengupta's articulation of 'development as a right to a process of development'. In a sense, this context of the RTD subscribes to people and persons' right to the means, benefits, and the process of development (Sengupta, 2004: 183-192). After setting this abstract notion of development as a central organizing definition, it is then important to unpack the elements of this definition through a closer look at the major prongs of development: as a process and as a right.

### **2.1. Development as a Process**

Contextualising development as a *process* is a deviation from the traditional definition of development in terms of Growth National Product (GNP) *prese* (Fukuda-Parr, 2012: 842). Development in this context takes an expansive form that encompasses all dimensions of human rights-economic, social, cultural, civil and political developments. It is a phased process that aspires at the progressive and steady improvement of the peoples' and persons' well-being through the fulfilment of their economic, socio-cultural, civil and political rights (Sengupta, 2004: 180). Nevertheless, it is worth noting what the former Independent Expert, Arjun Sengupta, in his fifth report reminded us: that the integration of these rights into a composite right should not be considered as an umbrella right and that it is qualitatively different from individual constituent rights (UNCHR E/CN.4/2002/WG.18/6, para. 15). The integration is, rather, an implication of the indivisibility and interdependence of these rights (DRD, Art.6 (2) & 9 (1); Maastricht Principles on Extraterritorial Obligations of States 1998, General Principles I (5); the African Charter, preamble para. 7).

In a sense, the violation of any of these composite rights entails the violation of the totality of the RTD; or no individual right should be violated or at least diminish in the course of the development process which makes them indivisible. They are interdependent in a way that the realisation of the RTD depends on the fulfilment of all of the composite rights. Further, this process of development is meant to be realised through free, active and meaningful participation and equitable benefit sharing (DRD, Art. 2(1) & Art.8). Put another way, the people and every person are active subjects of development in which they take part, contribute to and benefit from rightfully. This is an affirmation of 'human development' as the development *of, for and by* the people. In addition, the development process is characterised as a progressive improvement of human well-being (DRD, Art.10). Owing to the very nature of development, it is not a one-time event; it is rather a phased realisation of all the composite rights. This is because, the formulation, adoption, and implementation of policy, legislative and other measures towards the realisation of development requires the deployment of significant resources (Okafor, 2008: 61). As such, the degree of its realisation is resource dependent. Nonetheless, it is noteworthy that this realisation need not always necessitate the deployment of resource or should not always be understood as a positive obligation (Odinkalu, 2001: 350).

As much as it is resource dependent, it also imposes negative obligations that limit the interference with the exercise and enjoyment of the process of development in its totality and its composite rights. Put concisely, defining development as a process means contextualisation of development as a phase based realisation of all dimensions of human rights and fundamental freedoms through free, active and meaningful participation and equitable benefit sharing. The realisation of the process of development imposes both positive and negative obligations on the government.

## 2.2. Development as a Right

If development is a 'process of development', the next task is to inquire whether this process can be an object of a claim as a matter of right. The analysis of development as a right applies the binary test that is referred as 'legitimacy critique' and 'coherence critique' by Sen. These critiques are founded on the very nature of rights. In principle, rights are "grounds of duties of others which benefit the right holders" (Sengupta, 2004: 187). In another term, rights furnish a ground for a justifiable claim that can be a basis of duties of others. While the objects of the claim by the right holder could vary from interest, liberty, and power to access to the necessary means of realising those objects, the claim itself could be of moral or legal or of both natures. Based on this nature of rights, the legitimacy critique questions the authority of the claim, while coherence critique interrogates the feasibility of the claim.

With regard to the legitimacy test, the recognition of a claim in question as a binding norm of the society by the broader section of the community is important. Even though, certainly, it is the political process that determines if a particular claim can become a right. In a sense, the claim in question becomes a right when states agree to treat the claim as a right by subjecting themselves to treaty obligations and incorporate it as part of their domestic legal system. Such recognition by states gives a legal justification for the claim in question by creating a legal right. In the absence of states' recognition and treaty obligation, the ground for justification could be a moral Standard. Moral justification follows Sen's argument that pre-legal moral claims, particularly human rights, can be justified by virtue of ethical importance of recognising such claims as appropriate entitlements of all human beings (Sen, 1999: 229). In consonance with the above analysis, the claim to a process of development can be justified based on the moral ground at the global level and on the legal ground at the regional, African, level. Internationally, the best available authority is a moral ground; mainly because, the RTD despite its broad acceptance as a human right by the global community,<sup>2</sup> it is not yet supported by treaty obligations and incorporated into domestic laws by many states. Therefore, it cannot be invoked as a legal right; rather it is a moral standard to which the international community by and large agrees.

As opposed to the RTD's *status quo* under international law, regionally, the African Charter under Article 22 spells out that "All peoples shall have the right to their economic, social and cultural development...". Further, the African Commission gave an authoritative decision on the *Endorois* case in which the Kenyan government was found in violation of the RTD of the indigenous community of Endorois. In this decision, the commission held that "The Respondent State [Kenya] ... is obligated to ensure that the Endoro is are not left out of the *development process or benefits*... It finds against the Respondent State that the Endoro is community has suffered a violation of Article 22 of the Charter." (2009: 298)

As the foregoing discussion shows, the RTD can pass the 'legitimacy' test by deriving its authority from legal, regionally, and moral standards. From a global perspective, it is justifiable based on its broad acceptance by the international community as a moral standard. Coming to the 'coherence' test, according to this critique the feasibility or justiciability of a given claim depends on the identifiability of the duty bearers and their corresponding duties. This conventional view of matching right with particular duty of a given agent in the society, or what is referred as 'perfect obligation' by Immanuel Kant, is sceptical to accommodate the RTD as a right (Sen 1999: 230; Pluhar (tr), 2002: 88-89). This is with the rational that right cannot be fulfilled unless it is coupled with a specific duty of particular agent for its realisation. As a response to this view, Sen explained that Kant's account of 'imperfect obligation' has a bearing with this regard. According to Sen's description, even though it is not a particular duty of any given agent or individual to ensure the fulfilment of a particular right, the claim can generally be made to those who are able to help fulfilling it.

<sup>2</sup> Some of the documents that recognize the RTD as a human rights includes: Vienna Declaration and Programme of Action (Vienna June 25, 1993) Art. 10; UN Declaration on the Rights of Indigenous Peoples (October 2, 2007), the preamble and Art.23; The Rio Declaration on Environment and Development (1992) Principle 3.

Therefore, human rights as an entitlement of every humankind, claim based on human rights in general and the RTD in particular, can be addressed to anyone in a position to fulfil the claim in question. In line with this approach, the application of the coherence test to the RTD would require the identification of a set of right holders and duty bearers who are able to help in the realisation of this right. Such identification, then, requires further inquiry on the right and duty bearer and their respective rights and duties that make the discussion under the following section.

### **3. Right and Duty Bearers of the Right to Development**

The discussion on the right and duty bearers of the RTD is tied with the above-discussed coherency critique that is often raised as a critic against the RTD. This critic, in fact, emanates from obscurity on the exact content of rights and obligations under the RTD (Van der Have, 2014: 195). Even though the available empirical evidence in the area is scarce, a reference to the few existing regional – African – cases and different international instruments will be helpful in offering clarity with regard to the content, and right and duty bearers of the RTD.

#### **3.1. Right Holders of the Right to Development**

As it is with all other human rights, the RTD is every human beings' right. This broad reference to 'every human being' encompasses both persons and peoples (DRD, Art. 2 (1); Vienna Declaration, Art. 2, 10 & 20). Therefore, it is both peoples' and persons' right. As a persons' right, an individual person is a subject, active participant, and beneficiary of the RTD (DRD, Art. 2 (1 & 3)). In addition to the DRD, the notion of persons as legitimate right-holders by their individual capacity is also mentioned under the Convention on the Rights of the Child. This Convention asserts that parties to the treaty shall ensure the *development* of a child to the maximum extent possible (Art. 6 (2)). According to the Committee on the Rights of the Child, the concept of 'development' used by this convention has a holistic concept that encompasses the right to health, adequate living standard, education, and leisure and play (Hodgkin and Newell, 2007: 93). This holistic approach to the right to development of a child is in consonance with the 'human development' context discussed above.

Therefore, human persons in their individual capacity are legitimate holders of the RTD. The realisation of which requires development programs, nationally and internationally, to be considerate of individual persons as their central concern and aim at the steady improvement of their well-being. Collectively, the RTD belongs to 'all peoples' and the 'entire population' (DRD, Art. 1(1) & Art. 2 (3); the African Charter, Art. 22 (1) and Art. 24). The solidarity right aspect of the RTD as peoples' right is strongly linked to the international customary rule of peoples' right to self-determination, mainly, the right to sovereignty over their natural resource and wealth.<sup>3</sup> Yet, although the term 'people' is repeatedly mentioned as right holders, nowhere it is defined neither under the DRD nor the African Charter. Admittedly, a long-standing debate exists on the meaning of 'people' on the international plane. Among others, the important question for the discussion of peoples' RTD is whether sub-State groups like minorities, tribal or ethnic groups are considered as peoples. The African Commission decisions on some cases appear to rest the long-standing debate around this question. For instance, in the case known as *Ogoni* case, the Commission considered the ethnic minority group in Nigeria, the Ogoni, as 'people'.

In its decision within the meaning of Article 21, the Commission unequivocally referred to this ethnic minority as "people of Ogoniland" (*Ogoni*, 2001:paras. 55-58). In its holding, the Commission declared that "...the government of the Federal Republic of Nigeria to ensure the protection of the environment, health, and livelihood of the people of Ogoniland..." (ibid., paras. 55-59). Particularly, within the meaning of Article 22 of the African Charter, the Commission made a landmark decision on the *Edorois* case. Here, the Commission pointed to the unique character of the African Charter through its emphasis on 'people' and asserted that sub-State groups like indigenous communities are peoples (*Edorois*, 2009:paras. 149-150). In addition, the Indigenous and Tribal Peoples Convention No. 169 of the International Labour Organization (ILO) and the UN Declaration on the Rights of Indigenous Peoples have also affirmed that indigenous and tribal communities, as peoples, are the right holders of the RTD. Hence, from these international and regional documents and few empirical evidences, it can fairly be summed up that the people are the right holders of the RTD. Further, the context of people does also include sub-State groups as right holders.

<sup>3</sup>The African Charter, Art.20 (1) and Art. 21 jointly read with Art. 22 and Art.20 (1).

### 3.2. Duty Bearers of the Right to Development

The RTD impose duties on states, the international community and those whose action or/and omission affect the realisation of this right. States are the primary duty bearers in the realisation of the RTD. This duty of states is affirmed under Article 3 (1) of DRD, Vienna Declaration Part I, para. 10 and the African Charter Art. 22 (2). States are subject to obligation nationally and internationally to create a conducive environment for the realisation of the RTD. In line with the broadly accepted human rights obligations, states' duty under the RTD can generally be categorised as a duty to protect, respect and fulfil (*Ogoni*, 2001: para. 44). Each of these components of states' duty is included under the DRD and other relevant documents. Duty to protect imposes on states an obligation to protect against violation of and a hindrance to the realisation of the RTD individually and collectively (DRD Art. 3 (3)). Individually, states are obliged to protect peoples and persons within their territory against the violation of their RTD through legislations and effective remedies (Art. 3 (3), Art. 5 & Art. 6 (3)). The duty to protect also includes protection against violation by third parties – like private actors – operating within their territory (*Ogoni*, 2001: para. 46, 57-58). This duty is not limited to the national responsibility but also requires states to co-operate with each other as well as the international community to promote an effective elimination of obstacles to development based on the principle of sovereign equality, interdependence and mutual interest among all States (DRD, Art. 3 (2 & 3); Vienna Declaration Part I, para. 10). By doing so, states duty to protect impose on states and the international community a positive obligation.

The wisdom in the field of human rights law and also the affirmation by the African Commission taught us that the duty to respect is a restraint on states from interfering in the enjoyment of fundamental rights (CESCR, General Comment No. 14 para. 50; General Comment No. 12 para. 19). As opposed to a duty to protect and fulfil, the duty to respect imposes a negative obligation on states. In the context of socio-economic rights, as it is explained by the African Commission on *Ogoni* case, the state has a duty to respect the free use of resources owned or at the disposal of an individual or collective group (*Ogoni*, 2001: para. 45). More importantly, on the *Edorois* case (2009, para. 279), the African Commission by recalling the report by the UN Working Group on the Indigenous Population, affirmed that indigenous peoples should not be coerced, pressured or intimidated in their choices of development. Which means the state has to abstain from interfering in the people's choices of development or at least should not interfere in a manner that violates other aspects of their rights?

Furthermore, the obligation to fulfil requires states, nationally and internationally, to realise the right to development of everyone by way of facilitation, provision and promotion (DRD Art. 3(1) & Art. 4 (1); *Ogoni*, 2001: para. 47). These duties to facilitate, promote and provide are in the vine of the RTD as it is highlighted under the DRD, the African Charter and by the African Commission. In the context of socio-economic rights, the African Commission on the *Ogoni* case explained that “It is more of a positive expectation on the part of the state to move its machinery towards the actual realisation of the rights”. Further on the *Edorois* case, highlighted that the recognition of the RTD requires fulfilment of five main criteria: “it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.” (*Edorois*, 2009: para. 277). As such, states duty to fulfil is about gearing up all State machineries towards the actual realisation of all these criteria.

### 4. Overview of the Constitutional Framework on the Right to Development in Ethiopia

Ethiopia, as a party to major international human rights instruments, among others, the ICCPR, ICESCR, and regionally, the African Charter has an obligation to recognise the rights and duties enshrined in these documents. And also, shall give effect to these rights and duties through legislative and other measures. On top of this, it is important to highlight that Article 13 (2) of the constitution allows the application of international human rights instruments in interpreting the meaning of human rights provisions included in the constitution. In light of this, the following section examines the constitutional framework on the RTD with particular emphasis on the duty of the state. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE), which has extensive coverage of human rights provisions, explicitly guarantees the RTD. Article 43 which provides for the RTD reads:

1. The Peoples of Ethiopia as a whole and each Nation, Nationality and People in Ethiopia, in particular, have the right to improved living standards and to sustainable development.
2. Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.

3. All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.
4. The basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs.

A rudimentary reading of this provision shows that the constitution has attempted to be in consonance with the DRD and Article 22 of the African Charter. Most importantly, the constitution recognises both constitutive and prescriptive prongs of the RTD. It does so by incorporating the right to improved living standards and sustainable development as constitutive components and the right to participation in the development projects and policies as prescriptive prongs of the RTD under Article 43 (2). This is also affirmed under chapter ten of the constitution, albeit, as national policy principles and objective to be achieved by the government rather than as people's right. Particularly, Article 89 (6) obliges the government, both regional and federal, to promote and support participation and initiatives of the people in the development process.

With regard to the right and duty bearers and their respective rights and duties, the constitution has stated that the "Peoples of Ethiopia as a whole, and each Nation, Nationality, and People in Ethiopia"<sup>4</sup> are right bearers (Nahom, 1997: 172) but it shows ambivalence on the duty of the government. With regard to the state's duty, the only obligation specified under Article 43 is that international agreements and relations concluded and conducted by the state shall protect Ethiopia's right to sustainable development. Which essentially is not a duty towards the people, rather it is to the state itself – 'Ethiopia's right to sustainable development'. According to the explanatory note of the constitution, the democratic right stated under Article 43 (the RTD) is given for the people. By the same note, it describes that the duty to fulfil this right is the governments' obligation as stipulated under Chapter ten of the constitution, particularly Article 89. Based on this textual reading it could be said that the constitution generally identifies the Nation, Nationality and People (NNP) as right holders and the government as duty bearer of the RTD. Nonetheless, the constitution shows ambivalence on the nature of the government's duty and judicial enforceability of the RTD. While the RTD comes as a democratic right of NNP in chapter three of the constitution, the duty of the government to fulfil this right is stipulated under Chapter ten as national policy principles and objectives that serve as a programmatic goal rather than enforceable duty in a strict sense. Here, the important question is whether the RTD under the Ethiopian constitution is recognised as a human right or programmatic goal and whether it is judicially enforceable. As it is discussed in the previous sections of this paper the doubt on the justifiability of socio-economic rights in general and more importantly the RTD is settled by precedents set by the African Commission (*Edorois*, 2009; *Democratic Republic of Congo v Burundi, Rwanda and Uganda* 2004, para. 95).

This is neither to say the decision by the commission has a binding effect on member states nor that it has settled every ambivalences. It is rather a deduction that as a primary interpretive organ, its decisions could serve as a guiding tool in the domestic implementation of those rights. As such, contrary to the DRD, the African Charter and the jurisprudence built by the African commission, the explanatory note of the constitution explains that the RTD is a programmatic goal which the government needs to attain and not justifiable. In a sense, the protection given to the RTD under the constitution is a programmatic goal to be achieved progressively by the state rather than an enforceable right at the court of law against the government. In addition, as opposed to the assertion by the explanatory note, according to Article 13 (1) of the constitution all the three organs – the legislative, executive and judiciary – of the state have the duty to respect and enforce the provisions of chapter three of the constitution. This, apparently, imposes the duty to respect and enforce the RTD on the government by the very fact it is one of the democratic rights recognised under chapter three. Moreover, the passing remark made by the explanatory note that the RTD is not justifiable and that it serves as a programmatic goal to be aspired for contradicts with the international commitment Ethiopia has under the African Charter and ICESCR.

Further, one could rightly question: what good does it serve, if a right is a programmatic goal under the exclusive reach of the government with no possibility of judicial enforceability? The explanatory note on Chapter ten attempted to answer this question by pointing to other means through which the people can hold the government accountable.

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<sup>4</sup> Article 39 (5) of the FDRE Constitution defines Nation, Nationality and Peoples as "... a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."

It described that when the government fails to fulfil policy objectives and principles, the people can show their grievance through peaceful demonstration, compliant and especially by interrogating the fulfilment of those goals on the election. Even though these are conventional means of giving voice to the grievance of the constituency under democratic political setup, the practicability of it under infant democracy like that of Ethiopia is highly questionable. Further, the empirical evidence to be discussed in a while proves the trajectory followed by Ethiopia, particularly in the development process proves to the contrary.

## ***5. Empirical Overview of Ethiopia's Development Trajectory and the Right to Development***

### **5.1. Overview of Ethiopia's Development Path**

In line with its duty to formulate, adopt and implement national development plans and policies, Ethiopia has been adopting several long, medium and annual term plans (UNDP, 2014: 2). Among these plans, the medium-term five years plan that Ethiopia has been adopting is an example. The latest of such plans is the Growth and Transformation Plan II (GTP II) (National Planning Commission, 2015: 16). With its objective to achieve the annual average GDP growth rate of eleven per cent while at the same time pursuing industrialization and structural transformation, the GTP II, addresses broad issues of economic growth, education, health and technological developments.

As the 2014 UNDP National Human Development Report of Ethiopia indicates, the government's effort in the adoption of policies and other measures towards the realisation of the RTD is commendable. However, the report cautioned that, despite this effort, the country still faces serious challenges with the highest percentage of its population living in multidimensional poverty. The same report highlighted that the increase in productivity and output level in some part of the country is accompanied by increasing the severity of poverty. By the same token, the 2015 Human Development Report (2015: 6), particularly, the Multidimensional Poverty Index (MPI) of Ethiopia shows 88.2 per cent of the population are multidimensionality poor while an additional 6.7 per cent lives near multidimensional poverty.

Further, the 2014 National Human Development Report revealed that Ethiopia's rapid growth and development were not evenly distributed and inclusive, nor were they fast enough, with a certain group of the constituencies remaining disadvantaged. Parallel to these reports, the news and report on the rapidly rising number of the country's millionaires are the other phenomena worth noting, particularly as a reflection of inequitable wealth distribution. As a report by the Guardian on December 4, 2013, shows, the number of dollar millionaires in the East African nations rose from 1,300 in 2007 to 2,700 by 2013, Ethiopia taking the lead with 108 per cent growth rate.

The same report affirmed that this rapid growth is not necessarily shared and the millionaires are growing at a faster rate than the middle class. Briefly, as these reports show the rapid economic growth recorded and different plans and strategies adopted towards realising development are commendable. However, the inequality in resource sharing that fails the majority in multidimensional poverty while raising the number of millionaires at a faster rate; the lack of opportunity for the majority to benefit from this development process makes the progress the country is making towards human development questionable. The following section brings further factual elaboration based on data collected from the LOV by different Civil Society Organizations and the author.

### **5.2. The Lower Omo Valley Case and the Right to Development**

Even though it is difficult to capture all the alleged violations of the RTD in this limited study, as a showpiece, the State-run Sugar plantation project in the LOV Case and related human rights abuses is discussed below. The LOV is located in the Southern part Ethiopia. It is renowned for its peculiar cultural and agro-ecological landscape. The site is one of a registered UNESCO's World Heritage site in Ethiopia. The LOV is a home to approximately 200,000 inhabitants made up of around 300,000 indigenous Africa's most unique and peculiar ethnic groups; among others, the most known ones are namely Bodi, Mursi, Gyangatom, Hamar, Bacha, Maale, Demme, Konso and Dassenach (Oakland Institute, 2011: 1). The region was earmarked as a site for "rapid development" through commercial agricultural production back in 2008 (Zenawi, 2011).

Among the planned large-scale development projects, the State-run sugar plantations made up of three separate blocks that cover nearly 80,000 ha each was one. The first of these three blocks known as the “Omo Kuraz Sugar Factory Project”<sup>5</sup> started in 2011 with reported cost of 225 million USD each (Oakland Institute, 2011: 1). This large scale plantation project was part of the 2010 Growth and Transformation Plan (GTP) of Ethiopia (National Planning Commission, 2010:17). While the above report gives brief background information about the development project, the relevant question for the purpose of this paper is on its process and impact on the local tribal community.

This project affected around 170,000 tribal communities who live along the Omo River as a result of related resettlements (Oakland Institute, 2013: 4). According to a report by a state-run media, Walta Information Center, on February 27, 2012, in the year 2012 as part of the government’s resettlement plan, the Southern Nation Nationality and Peoples (SNNP) Regional State was to resettle 103,000 members of the pastoral community in the LOV.<sup>6</sup> The report further stated that the registration for the resettlement was based on the full consent of the community involved and the program was carefully drawn up to ensure pastoralist areas benefit from development. The report particularly mentioned that the beneficiaries were being provided with the necessary socio-economic infrastructure. Additional government source asserted that the project creates large employment opportunities with over 150,000 full-time and part-time jobs (Cherie Enawgaw et al., 2011: 8).

As opposed to what is reported by the government sources above, reports by the Oakland Institute, Human Rights Watch (HRW) and Survival International show, the development project was accompanied by forced evictions, denial of access to subsistence land, beatings, killings, rapes, imprisonment, intimidation, political coercion, and the denial of government assistance are all being used as tools of forced resettlement. With regard to consultation with the community, even though there were few attempted meetings by the government with the community, these meetings were accompanied by the threat of force and arbitrary arrest to intimidate and coerce indigenous community when enthusiasm for the project has not been forthcoming (HRW, 2012: 37). For further inquiry, in the month of August 2015, the author travelled to the site, particularly to Selamago Woreda where the Bodi tribe were settled. The data collected through site observation and interview with twenty Bodi tribe members (names withheld, August 15-20, 2015), one social worker (names withheld, August 26, 2015) and two government officials at the Zonal and Woreda level (names withheld, August 14, 2015) are discussed below. Questions forwarded for an interview were mainly the followings:

1. Was there relocation of the tribal communities? If so, was it for the purpose of the sugar plantations?
2. Were the tribal communities compensated upon relocation? If not, why not?
3. Was there consultation with the tribal community? Was the establishment of the project and relocation based on their informed consent?
4. How are they benefiting from the ongoing sugar plantation project?

The response to these questions by the three categories of respondents can generally be put into two categories, except on the first and second questions. To start with their point of agreement, all respondents including the Bodi tribe members, government officials, and a social worker responded affirmatively to the first question, that there was resettlement of the tribal communities. The purpose of this relocation was to make a way for the Kuraz Sugar Plantation. With regard to the second question on the payment of compensation as well, all respondents responded that there was no compensation paid to the tribal community. The reason given by the South Omo Zone Culture Tourism and Government Communication Affairs expert and another official from Selamago Woreda was that the tribal communities are benefiting from the project through employment opportunity, infrastructure, health and education services being given. Therefore, the officials said, there is no need for the government to pay additional compensation as they are already benefiting. The response of all interviewee from Bodi tribe members to this question was that they were not aware of such possibility. The social worker who left the area few months before this interview as well responded that there was no compensation paid to the tribal community upon relocation. The response to the third and fourth questions by the respondents was significantly different.

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<sup>5</sup> The Ethiopian Sugar Corporation, See <http://www.etsugar.gov.et/index.php/en/projects/kuraz-sugar-development-project> (accessed 15 May 2016).

<sup>6</sup> For detail information see [http://www.waltainfo.com/index.php?option=com\\_content&view=article&id=2076:snnpr-plans-to-benefit-a-hundredthousand-pastoralists&catid=52:national-news&Itemid=291](http://www.waltainfo.com/index.php?option=com_content&view=article&id=2076:snnpr-plans-to-benefit-a-hundredthousand-pastoralists&catid=52:national-news&Itemid=291) (accessed 15 May 2016).

While the response given by the tribe members and the social worker was in agreement, the response given by government officials was to the contrary. To start with the government officials' response to the question whether there was consultation with the tribal community with regard to the establishment of the project and relocation and if it was based on their informed consent, their response was to the affirmative. Both officials at the South Omo Zone and Selamago Woreda responded that there was consultation with the tribal communities both before the project started operation and upon relocation and it was fully based on their consent. "In fact, they [the tribal community] are told that the project is good and important for them" (Interview, August 14, 2015). The response given to the same question by eighteen of the sampled twenty Bodi tribe members was that the government officials were trying to gather the tribal community but the community felt uneasy to discuss the issue as the consultation was held under the heavy presence of military force. Even when few of them were willing to sit for consultation, a Bodi man said, all they were told was that it is good for them without further discussion or consultation. In addition, the tribe men mentioned that the relocation was against their will and it was done by force. The Social worker also affirmed that there was no enough consultation and awareness creation work done from the government side even though there was some effort (Interview, August 26, 2015).

The last question was on how the tribal communities are benefiting from the ongoing sugar plantation project. The response by the government officials both at the Zonal and Woreda level was again to the affirmative. They mentioned that the tribal communities are benefiting from the sugar plantation project in different ways. They mentioned that at the time of the interview around 562 Bodi tribe members were already employed in the sugar plantation and one Bodi man was trained as a bulldozer operator (Interview, August 14, 2015). In addition to the employment opportunity, the officials said, the community were provided with health care, schools, clean water and millstone grinder services close to their villages.

Nevertheless, this opinion was not shared by the members of the tribal community. They mentioned that previously they used to get water both for their cattle and themselves easily from Omo River but now they have to walk a far distance to fetch water. There is a school built by the government but they said they are not benefiting from having it as there are few teachers and the teaching language is in a language they do not understand (Interview, August 15-20, 2015). They also said they are not benefiting from the job opportunity provided by the government because all the jobs are taken by peoples from other areas and different cultures. In general, the tribal communities do not think they are benefiting from the project, they rather think they are losing their cultural identity due to the inflow of the highlanders to their area. According to the social worker, even though there are some services that are being provided by the government like school, healthcare centers and millstone grinder, these services are not well equipped both in terms of manpower and material.

The main challenge identified by the social worker is that since working as a labourer in a factory or all other services are not part of the tribal communities' culture, they do not care much about those services. They rather prefer going back to their semi-pastoralist life and as it stands now it is difficult to say they are beneficiaries of the plantation project. The author could not substantiate the claim made by government officials on the consultation and consent based relocation of the tribal community with sufficient evidence. During the site observation, the presence of military forces in the area, the unwillingness of members of the tribe to speak about their situation at the presence of government officials and poorly maintained education and health care centres are contrary indicators to the officials' response. Therefore, the author is of an opinion that the government did not fully engage the affected community in the means, process, and outcome of the development process in the south Omo.

### **5.3. Analysis**

The foregoing report by different Civil Society Organizations and data collected by the author show the existence of general information gap regarding the development plan taking place in the South Omo. The consultation effort that was made by the government was minimal to be considered as a meaningful and informative consultation. More importantly, the process by which the development plan has been implemented violates socio-economic and cultural rights and particularly, the RTD of the affected community of the LOV. Even though the development project of the sugar plantation contributes to the overall economic growth of the country, such growth is happening at the cost of the most vulnerable and disadvantaged section of the constituencies. Relocating indigenous community from their ancestral land against their consent with no compensation violates the constitutional right of pastoralist to free land for grazing and cultivation as well as protection against displacement (FDRE Constitution, Art. 40 (5)).

It further violates their constitutional right to participate in national development through consultation on policies and plans that affect their interest (ibid. Art. 43 (2)). More importantly, it is contrary to the international human rights obligation of Ethiopia under ICESCR and the African Charter. However, it is noteworthy that this should not lead to the conclusion that the sugar plantation project on the site violates the right of the tribal communities by the mere fact it is located in the area. Rather, as it is rightly noted by Okafor and also the decision by the African Commission on the *Ogoni* case highlights, the government has the right to plan and implement development projects; but the people must have a right to the means, process, and outcome of such development. Therefore, the Ethiopian government has violated the tribal community's RTD not because it planned and implemented the sugar plantation project, rather by failing to meaningfully involve them in the means, process and outcome of the development process and by not taking the care that should have been taken to protect the victims of different human rights abuses related to the project. Hence, Ethiopia has violated its international commitment, constitutional and human rights to development of the LOV tribal communities.

### Conclusion

The alarmingly rising income and wealth inequality and the less participatory development trajectory that takes the affected community as objects rather than subjects of development is neither constitutionally nor internationally justifiable. Hence, it is time for Ethiopia, as a duty bearer of the RTD towards its own people and the international community to act and see beyond the GDP growth. It must bring its development plans and legislative measures to the ground in line with its duty to respect, protect and fulfil under international human rights treaties, the African Charter, and the constitution. Ethiopia's development efforts must take account of both the constitutive and prescriptive nature of the RTD by encompassing socio-economic, cultural, civil and political rights if social equity is to be met.

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