

# The contestation over the indigenous in Africa

## The Ethiopian example

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DEREJE FEYISSA/MERON ZELEKE

### INTRODUCTION

The discourse and related practices regarding the rights of indigenous peoples is considered ‘the last frontier’ in the human rights revolution, as it relates to those particular groups who have been left on the margins of development, who are perceived negatively by dominant mainstream development paradigms, and whose cultures and lives are subject to discrimination and contempt (Jackson/Warren 2005). But the big elephant in the room is the issue of definition – who are the ‘indigenous people’ anyway, and how to find them, and where? The contention surrounding the definition of indigenous people and the criteria used for identification are hugely contested. The applicability in the African continent is even more acute, disputed not only between human rights advocates and African governments, but also among local communities and scholars.

In a highly debated article *The return of the natives*, Kuper deconstructs the concept of the indigenous as a mere rehash of the western quest for the ‘native’ and the ‘primitive’:

“The image of the primitive is often constructed today to suit the Greens and the anti-globalization movement. Authentic natives represent a world to which we should, apparently, wish to be returned, a world in which culture does not challenge nature.”(2003: 345)

Kuper is also concerned by the dangerous consequence of the indigeneous peoples' movement, so long as it is based on essentialised notions of social identity:

“They are unlikely to promote the common good, and they will certainly create new problems. Wherever special land and hunting rights have been extended to so-called indigenous peoples, local ethnic frictions have been exacerbated. These grants also foster appeals to uncomfortably racist criteria for favouring or excluding individuals or communities.” (Ibid.)

However, deconstructing and debunking the discourse does not make the issue go away. Notwithstanding the scholarly debate, a wide variety of actors are already using the discourse of the indigenous and other related, globally recognized legitimising discourses with various degrees of success. Besides, despite strong resistance from governments with regard to the applicability of the term ‘indigenous’ in the African continent, recently thirteen African countries have grudgingly allowed the World Bank to initiate its indigenous peoples policy, at least in the projects that it funds (World Bank 2010). As such, it is actually more interesting academically to ask why and how governments contest the applicability of the term ‘indigenous’ in Africa in general and in their respective countries in particular. Equally important is to look at how people embrace the label ‘indigenous’ than to reflect on its ‘real applicability’.

Broadly speaking, two comparative approaches suggest themselves for the study of the discourse and politics of indigeneity in Africa. One is to look into the reasons why nearly all of the African governments resist the discourse of the indigenous. The other is to investigate the appropriation of the ‘indigenous people’ label by local actors who might use it as a new globally recognized legitimizing discourse that helps reframe the already existing resource- or power claims at the national, regional or local levels. In this contribution we examine these two comparative approaches with reference to the contested nature of indigeneity as it plays out in the Ethiopian context, where currently there is a contention between the Ethiopian government and international development and human rights organizations over the applicability of the term ‘indigenous people’.

There are some comparable explanations for African governments' resistance to the discourse and politics of indigeneity. One is that of *African exceptionalism*; a settlement history which – in contrast to North America, where the markers signifying the ‘indigenous’ are not difficult to discern – is characterized by a dynamic population movement in all directions at various

times. As such, it is common to hear the statement, ‘we are all indigenous’ by African governments. Fear of institutionalising what appears to be a “hierarchy of citizenship” (Tucker-Mahl 2008: 23) by recognising the indigenous peoples as if they were “special rights-bearing subjects” (ibid.) is another concern. Most African governments also adopt a modernist perspective, labelling indigenous claims on behalf of some peoples in Africa, particularly by international human rights organisations, as driven by ‘primitive romanticism’ and exoticism, while as governments they are more interested in changing the lives of the same people towards higher living standards, such as livelihood shifts from mobile pastoralism to a more sedentarized agro-pastoral lifestyle. Many African governments are also concerned about the conflict-generating potential of the term ‘indigenous’ when it is used in the historical and exclusive sense. The recent politicization of the notion of autochthony (equivalent to indigeneity) and the attendant exclusionary political practices in French-speaking West Africa – notably in Côte d’Ivoire – and its link with the escalation of conflict is a case in point.

However, there are also country-specific objections, which undermine the comparative perspective. In the Ethiopian case that we examine here, for instance, the primary reason why the Ethiopian government is opposing the discourse and politics of the indigenous is in reference to the unique federal political order that it has established – a political order which has instituted cultural pluralism allowing ethnic groups the right to self-determination including and up to secession. This is unlike other African governments who primarily oppose the discourse of the indigenous from the perspective of the ‘divisive’ nature of institutionalizing cultural difference, though ethnicity is a crucial factor behind the scenes of national politics (Mamdani 1996; Deng 1997). Hence we outline only this case here to stress that the specificity of each case is vitally important and can only be taken into consideration when taking it *as* a particular case, though a reflection on the comparative dimensions mentioned earlier is also made where it is warranted. The Ethiopian government is resisting the discourse of the indigenous people by forwarding an alternative, and what it considers more inclusive terminology, that of ‘Nations, Nationalities and Peoples’. This renders the term ‘indigenous’ not only divisive but also irrelevant, as whatever cause might be served under the indigenous label could also be served through any of the three constitutionally recognized terms. For the second comparative angle – how local actors have appropriated the label ‘indigenous’ – we provide a case study of the Anuak of western Ethiopia, who have claimed the status of an indigenous people to reframe resource- and power claims in regional politics through a successful advocacy work of their diaspora in North America, and who seek dialogue with the global indigenous movement

by drawing on the repertoire of the works of international human rights organisations.

The discussion is divided into three sections. Section one provides background information on the origins of indigenous rights in North America, where the issue is least contested and is more comparable across countries, and on why and how it is contentious when it is introduced into other regions, particularly in Africa. Section two examines how various international organisations have sought to popularize and introduce the politics of indigeneity into Ethiopia, which the Anuak have tapped into in their struggle for identity maintenance and resource- and power claims in regional politics. Section three examines the response of the Ethiopian government and how its resistance is situated within an alternative institutional design – variously referred to as ethnic or multination federalism – to address the issue of social justice for the country’s minorities. Section four concludes by outlining the comparative dimensions and the country-specific issues involved in discussing the politics of indigeneity in Africa.

## **INDIGENEITY— A CONTESTED TERM**

The indigenous mass movements that started in the Americas during the 1960s and 1970s gave rise to the international indigenous movement. The claim to being an indigenous people is less contested in the Americas as compared with other regions, primarily because of a clear-cut settlement history between native populations (variously called ‘Red Indians’, ‘Native Americans’ or ‘First Nations’) and the European settlers and colonizers that followed the Colombian ‘discovery’ of the Americas in the 15th century. This social cleavage was marked by violent conquest with genocidal dimensions and large-scale land dispossession. The history of Latin America’s indigenous peoples, for instance, is that of a long struggle that started with the European invasion and conquest in the 15th and 16th centuries, when an estimated 90 to 95 percent of the native populations were wiped out (Van Cott 2007: 129)

Broad-based mass movements also mark the question of the indigenous peoples in the Americas. In North America, gaining indigenous autonomy from the colonial powers of the United States (US) and Canada has involved efforts at state-formation; that is, ‘tribal governance’. These nations seek to gain control over their social and political institutions without compromising what they consider to be unique and essential cultural markers. In Latin America, indigenous efforts to combat colonialism have taken a different strategy. These

peoples have organized into movements against racialized social hierarchies, and have agitated for increased rights. They have overtly challenged the state and contemporary capitalism, drawing upon an ethical reading of Marxism that calls for improved social rights and economic justice (Curley 2012).

The indigenous peoples' movements in the Americas, in turn, brought pressure to bear on the UN, which led to the Declaration on the Rights of Indigenous Peoples. Within international discourse, new indigenous alliances have found resonance in indigenous claims against the states that act as their colonizers. In response to indigenous movements around the world, even the United Nations (UN) has been compelled to formally recognize indigenous rights. The UN Declaration on the Rights of Indigenous Peoples (2007) has provided indigenous peoples with legal grounds from which to argue for increased autonomy and recognition of their social, cultural, and political practices in places where they have been historically exploited and marginalized. As Pelican has noted, "among its most significant assertions are indigenous peoples' right to self-determination; to lands, territories, and natural resources; and to free, prior, and informed consent" (2009: 52). This new global legal framework makes indigenous peoples special rights-bearing subjects in international law, beyond national laws and possibly even against governments who violate or do not comply with the indigenous peoples' rights.

Engaging with the global indigenous peoples' movement, various groups of people in Africa have already started to apply the term 'indigenous' in their efforts to address their particular human rights situations. The claimants are from various economic systems and include hunter-gatherers, pastoralists, and some small-scale farmers. They practice different cultures, have different social institutions and observe different religious systems (ACHPR 2006; Pelican 2009). According to the African Commission on Human and Peoples' Rights, the overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from those of the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination

and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life, and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development. Moreover, rather than aboriginality, the principle of self-identification is considered to be a key criterion for identifying indigenous peoples. This principle requires that peoples identify themselves as indigenous, and as distinctly different from other groups within the state (ACHPR 2006: 9–10).

If some anthropologists and scholars from neighbouring disciplines welcome the global recognition of the rights of indigenous peoples as yet another empowering discourse for marginal and vulnerable groups of people in the sense of strategic essentialism (Spivak 1998), others strongly criticize and even condemn the term in general and its application in Africa in particular (Hodgson 2002; Kuper 2003). One of the main objections is on the basis of settlement history. As Pelican has noted, “whereas in North, Central and South America indigenous activism has a long history and the status of first peoples is generally uncontested, the situation in Africa is different where defining which groups may count as indigenous is much more problematic and controversial, as there are long and on-going histories of migration, assimilation, and conquest” (2009: 53).

The discourse of indigeneity in Africa is also criticized, for it is, largely, externally driven. To start with, the insertion of the African “indigenous peoples’ movement into its global mother movement – by invoking experiences of indigenous peoples elsewhere is not a culmination of popular or mass and conscious self-identification by some ethnic groups” (Bojosi/Wachira 2006: 124). Rather it is a product of a long, enduring external mission, and is essentially driven by external funding and certain ideological assumptions (ibid.). These activist NGOs sought to ascribe special rights to a certain pre-determined discriminated cultural groups, those being hunter-gatherers and/or pastoralists. Determining which groups of people belong to the category of African indigenous peoples and claim special legal rights thereby is based on the conceptualization of indigenous peoples, the ideological positions these leading NGOs had/have, and the consequent assumptions and abstractions which follow from the appending of Africa’s “indigenous peoples’ movement to the global indigenous movement” (ibid.). Many African governments refer to this ‘externality’ of the discourse of indigeneity in Africa to justify their resistance. In 2010 for instance, the president of Botswana, Seretse Khama Ian Khama, accused Survival International, a powerful international human rights organisation actively engaged in promoting the indigenous peoples’ rights in Africa, of trying to keep the San “in a life of backwardness” that “appeals to the racist mentality of having people in Africa live in a primitive life of deprivation” (cited in Sylvain 2014: 257).

It is also our contention that, at least in the Ethiopian context, on which our contribution mainly focuses, the indigenous criterion is too broad to be useful. The criterion of “self-identification as members of a distinct cultural group and recognition of this identity by others” (UN 2004: 2) is non-exclusive in the context of Ethiopia, as is probably the case in most African countries, for nearly all ethnic groups have a distinct sense of self and other. Ethiopia is a very diverse country, with 75 officially recognized ethno-linguistic communities. Even closely related people such as the ethnic groups in South Omo, which have become the focus of indigenous activism by international human rights organisations, exhibit and maintain visible ethnic boundaries. Similarly, the criteria of collective attachments to geographically distinct habitats or ancestral land are non-exclusive in the context of Ethiopia. With the exception of those members of groups who now reside in urbanized areas, all groups have, albeit to different degrees, a strong sense of territoriality, and depend on one or more key natural resources (e.g. forest, river, farming land, etc.) for their livelihoods. The nature of these livelihoods – specifically their very low level of economic diversification – makes the direct applicability of this second criterion in the Ethiopian context very problematic.

Nor are the criteria “customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture” (ibid.) useful signifiers. Horizontally, a history of population movement has resulted in a dynamic process of cross-cultural fertilization among the four broad linguistic and cultural communities to which all of Ethiopia’s ethnic groups belong: The Cushitic, the Semitic, the Omotic and the Nilo-Saharan. In South Omo, for instance, in the encounter between Omotic, Cushitic and Nilo-Saharan cultural traditions, hybrid cultures are evident, though ethnic boundaries are sharply marked. Vertically, the issue of a ‘dominant society and culture’ was evident only until the 1974 revolution, before which the Amhara, and their kindred the Tigreans, were considered the dominant ethnic groups, and strongly identified with the Ethiopian state, which was principally defined in terms of the Amharic language and the institutions and cultural practices of the Orthodox Church. The revolution has made significant changes in the social make-up of the Ethiopian state, moving towards religious pluralism and redressing the economic grievances of ethnic minorities. The Ethiopian polity has been further restructured since the establishment of the federal political order in 1991, which instituted ethno-cultural justice (cp. the discussion in the sections below). Where a broad distinction can be made, it is between societies built along egalitarian principles on one hand and hierarchical societies on the other. Most of Ethiopia’s

egalitarian societies are found in the lowland, pastoralist areas, whereas many of the highland societies are built along hierarchical principles.

The criterion “an indigenous language, often different from the official language of the country or region” (ibid.) is also an insufficient marker of indigeneity, especially since 1991, when Amharic lost the status of being a ‘national’ language. Historically, Amharic has been the dominant language because of its identification with the Ethiopian state. All other languages had faced discrimination during and at the hands of the previous governments. The constitutional recognition of language rights since the establishment of the federal political order has rendered the issue no longer relevant in contemporary Ethiopia. For instance, currently the language of instruction for elementary education is based on the policy of mother tongue. At the federal level too, Amharic is adopted as the working language only for practical reasons.

## **THE DISCOURSE OF INDIGENEITY IN ETHIOPIA**

What makes the discourse of indigeneity in Ethiopia unique is that it was the NGOs who first picked up the discourse of defining some groups as indigenous. As the example from the Gambella region shows, it was only a decade after the NGOs had begun to use the discourse of indigeneity that groups such as the Anuak started using the label in regional politics. The first international human rights organisation to use the term indigenous in the Ethiopian context is Cultural Survival (hereafter CS), a powerful advocacy organisation for indigenous peoples.

CS first used the term ‘the indigenous people’ in Ethiopia to describe the cultural and political situation of the Anuak of the Gambella region of western Ethiopia, who also live across the border in South Sudan, comprising a total population of circa 100,000. The context within which the term ‘indigenous’ is applied to the Anuak is related to Ethiopia’s colour border and the modernist approach of the socialist government of the 1980s whose villagisation and resettlement program infringed upon local people’s land rights and radically changed the regional demographic structure. The Anuak are part of the wider Nilotic society, which occupies a peripheral position within the Ethiopian polity. They form Ethiopia’s borderland peoples, who differ from the mainstream Ethiopian population not only in terms of their marked economic marginality but also in their physical features. In the Ethiopian parlance the Nilotes are ‘black’, darker in their skin pigmentation, and contrasted with the ‘red’, lighter skin pigmentation of highland peoples. Generically called ‘Highlanders’, the latter are

identified with the Ethiopian state. As such, the Ethiopian state is also ‘red’. As the colour black is disdained and associated with an inferior position historically legitimated by the slave trade, which mainly victimized the ‘black’ Nilotes and other related peoples of the borderlands, the discourse on skin colour suggests the existence and relevance of the ‘race factor’ in Ethiopia.

The CS first encountered the Anuak as refugees in the Sudan in the 1980s; those who fled the revolutionary violence of the military-socialist Derg regime, violence which included not only the uprooting of local cultural practices in the name of progress and modernity, but also dispossessed the local people of their land in the controversial resettlement and villagisation programs. The ‘biblical famine’ that plagued Ethiopia in the mid-1980s and which was depicted and popularized by the Live Aid global concert prompted the government to embark on one of its most ambitious humanitarian projects, transferring hundreds of thousands of famine-affected farmers from the northern highlands to the relatively fertile western lowland areas such as Gambella. This transfer of population was not consented to by the resettlers, nor were local communities consulted about hosting this massive influx. Drawing on the narratives of the Anuak refugees who rejected the resettlement program and fled to South Sudan, in 1981 CS published an article calling them “indigenous people” (CS 1981: 3):

“The Anuak cannot survive without their ancestral lands [...] Today the total population is half of what it was a generation ago, but for the Amhara [Highlanders] whose traditional contempt for the Anuak as slaves and property continues, the Anuak are expendable.” (CS 1981: 3)

CS published a second article on the Anuak in 1984 entitled *The Anuak – A Threatened Culture*, in which the discourse of ethnic extinction was further spelled out

“The future of the Anuak is in serious doubt. The Anuak are however a tenacious people who have, over the years, been able to keep their language and customs alive in the face of extreme hardship and pressure [They] however must be regarded as an endangered people.” (CS 1984: 2)

In its 1986 issue CS published an article entitled *Ethiopia’s policy of Genocide against the Anuak of Gambella*, in which the resettlement program was defined as part of a systematic measure taken by the Ethiopian government to exterminate the Anuak:

“The Anuak believe that one of the reasons for the resettlement program is to intermarry the Nilotic Anuak people with the light skinned highlanders and thus breed the Anuak out of existence. They rightly consider this is a form of genocide [...] earlier reports from Cultural Survival indicate that the Derg has attempted to squelch Anuak procreation by confiscating the sacred marriage beads which are used as dowries.” (CS, 1986: 3)

Building on the extensive work of CS, many other international human rights organisations, such as Human Rights Watch, have produced volumes of work on the plight of the Anuak as indigenous peoples of Ethiopia. CS has renewed its advocacy practices in the new context of land grabbing. Ethiopia is at the forefront of the land-grabbing phenomenon in Africa, already leasing over three million hectares of land to foreign investors to develop large-scale commercial agriculture to boost export. Within Ethiopia, Gambella is at the centre of the land grabbing debate, where over 300,000 hectares of land have already been leased. Associated with land grabbing is the controversial villagisation program, which the government is justifying as the most effective strategy for delivering social services in lowland areas with dispersed settlement patterns. Critics however point out that the villagisation program is meant as a ‘cost-effective’ strategy to clear the land of the indigenous peoples, so that investors do not have to worry about consultation or compensation. In 2010 CS wrote about the issue of land grabbing and the related villagisation program in Ethiopia with a special focus on the Gambella region and how this has adversely affected the indigenous Anuak people in the following way:

For over 400 years, indigenous Anuak families have lived along the wide rivers of Ethiopia’s Gambella region, cultivating maize and sorghum in the rich alluvial soil. On higher ground, they practice shifting cultivation, and in the forests they gather fruits, nuts, roots, and medicines. These diverse resources have spared them from hunger even in times of drought. But now Ethiopian soldiers are moving nearly all of Gambella’s indigenous people –off their lands and farms and into state-created villages where the people fear starvation. Nearly half of Gambella’s land is leased or available for lease to investors who are creating vast plantations of agrofuel and food crops, mostly for export. (CS 2010: 4)

Some other international human right organisations have taken the discourse of indigeneity in Ethiopia one step further, translating the discursive struggle into practical action aimed at influencing the actions and decisions of the Ethiopian government, with the understanding that the government is significantly dependent on foreign assistance. As such, some of the organisations, such as Inclusive Development Investment (IDI) have targeted the flow of money to the Ethiopian government from such interventions as the

Protection of Basic Services project, a multi-billion-development assistance package by a coalition of donors such as the World Bank and DFID.

A decade after CS began its advocacy work we now find Anuak political actors embracing the label ‘indigenous’ while legitimating power- and resource claims in the Gambella region. The term ‘indigenous’ is strategically deployed in inter-ethnic relations, as well as vertically in their relationship with the Ethiopian state. The Anuak have trouble with their main neighbours – the Nuer in the west and the Highlanders in the east. They have experienced demographic pressure from both sides. The ethnographically celebrated 19th-century Nuer expansion into the east was accomplished at the expense of Anuak territories. This expansion, which still continues, is not only territorial but also demographic. In fact, Nuer territorial expansion has been accompanied by a robust assimilation of their neighbours, including the Anuak; a demographic trend that has accelerated since the outbreak of the South Sudanese liberation movements in the 1960s, which resulted in a massive refugee influx into the Gambella region. Many of the South Sudanese refugees have always been Nuer, who constitute the second largest ethnic group in South Sudan. Equally threatening for the Anuak is the demographic growth of the Highlanders who have come to the Gambella region recently, mainly due to the activities of the Ethiopian state, such as the resettlement of the famine-affected people from northern Highlands that Cultural Survival has referred to in its genocidal account.

The establishment of the Gambella regional state as a constitutive member of the Federal Democratic Republic of Ethiopia since 1991 has put a new premium on the regional politics of number. Cognizant of the rapidly changing regional demographic structure, which has placed the Anuak in a minority position, they have picked up a historical argument for political entitlement to the Gambella region. In doing so they not only refer to settlement history, which accrues them ‘first-comer’ status but also they now also have begun extensively referring to the writings of Cultural Survival to legitimate their claim as an indigenous people of Gambella/Ethiopia. As Cultural Survival has continued to write about the plight of the indigenous Anuak people with reference to current issues such as land grabbing, the Anuak political actors, especially in the diaspora, have linked indigenesness with land grabbing to successfully insert Anuak politics into global civil society as prominent human rights issue. Armed with a globally legitimated empowering discourse they have recently engaged the Ethiopian state, which has an ambitious modernisation and industrialisation plan that among other things includes large-scale commercial agriculture in the country’s lowland regions, where there is “abundant empty land”. (Makki/Geisler 2011: 6–7).

Presenting themselves in terms of the discourse of the indigenous people enabled the Anuak political actors to legitimate a dominant political status in the Gambella region, at least throughout the 1990s and up until 2005, when a new power-sharing arrangement was introduced that balances the Anuaks' historical and the Nuers' demographic arguments for political entitlement. In their politics of inclusion the Nuer have sought to deconstruct the Anuaks' claim of indigeneity by referring to a longer historical frame of reference in which the Anuak, too, emerge, as migrants – a reference to the historical migrations of the various Nilotic groups of people back in the first millennium AD (Collins 1971). Moreover, unlike the CS, which recognizes the Anuak as indigenous people of Gambella, the AU/ACHPR, in its list of indigenous peoples of Africa, has identified the Nuer pastoralists as the indigenous people. These divergent schemes of representation by the international human rights organizations have sent conflicting signals about who the indigenous people in the Gambella region 'really' are.

## **THE RESPONSE OF THE ETHIOPIAN GOVERNMENT TO THE INDIGENOUS CLAIMS**

Ethiopia has been most vocal in its criticisms against the African Commission's Working Group of Experts on Indigenous Populations/Communities, to the extent of questioning the very relevance of the Working Group and the validity of its reports (Bojosi 2010: 295). Like his Botswanan counterpart, who we referred to earlier, Ethiopia's late Prime Minister Meles Zenawi denounced international human rights organisations championing indigenous peoples' rights in Africa for being driven by a desire to create "a human zoo" (2011) to provide photo-opportunities for western tourists. Anthropologists were not spared in his condemnations either; he considered them "friends of poverty" (ibid.). The Ethiopian government has shown a strong resistance to the application of the term 'indigenous' in the Ethiopian context, for at least four major reasons:

### **The term 'indigenous' is primarily understood in its historical sense**

The Amharic equivalent of the term 'indigenous' is *nebar hizb*, which means 'firstcomers' and is contrasted with *mete*, which means 'latecomers'. Given the country's history of dynamic population movements in all directions the government rejects the relevance of the term 'indigenous' in the Ethiopian

context. As the discussion in the previous section showed, the Ethiopian government is not alone in its perception of the term ‘indigenous’ in this way. Many African governments vehemently argue that all Africans are ‘indigenous’.

### **The term ‘indigenous’ is considered to be irrelevant in the context of the new federal political order**

The high modernism and political repressiveness of the military-socialist government of Ethiopia (1974–1991) had its malcontents. By the end of the 1980s there were dozens of ethno-national liberation movements, of which the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), a coalition of the country’s major ethnic groups, was the strongest militarily. The EPRDF succeeded in defeating the Derg’s army, and following its seizure of state power it has radically restructured the historically entrenched unmilitary state into a federation based on the principle of ethnicity. The preferred terminology used in the ethnic discourse in Ethiopia is ‘Nations, Nationalities and Peoples’ (NNP), a clear indicator of the Marxist legacy of the Tigrean Liberation Front, the dominant political force within the EPRDF.

Ethno-cultural justice is thoroughly recognized in the Ethiopian federation, and the right to self-determination is broadly understood to include: the right of a people to speak and develop its own language; the right to preserve, express and promote its own culture and history; the right to self-determination within a particular territory; and the right to political representation at the regional and federal levels of government. As a result of the new language policy, there are twenty-one languages, excluding Amharic, which are currently used as media of instruction at primary school level. According to Article 39 (1), the right to self-determination even includes the right to secede from the federation, when ethnic groups feel the federal government violates their rights. As such, Ethiopia’s new federal political order is unique in generously recognizing group rights. By recognising the rights of all ethnic groups for self-determination up to and including secession, the Ethiopian government even seems to have gone beyond simply meeting the main demand of the global indigenous movement: the self-determination of vulnerable and marginalized communities. The problem in Ethiopia is not the lack of a legal framework to protect the self-determination rights of these communities, but rather the translation of this constitutionally-backed right into a lived reality. Federal encroachment into regional and local autonomy abounds, rendering the exercising of the right of self-determination, particularly, among those with weaker political voice, impossible (Feyissa 2013).

## Government categories of marginalized groups

What is progressive about Ethiopia's new federal political order is not only the constitutionally sanctioned ethno-cultural justice and self-determination but also its recognition of the need to redress historically conditioned imbalances that have created inequality among the 'Nations, Nationalities and Peoples' of Ethiopia. Inequality among ethnic groups is recognized as a legacy of historical discrimination by the previous governments. This is reflected, above all, in the livelihood vulnerability of some groups of people, who are constitutionally recognized as "least advantaged" (Demisse 2013) and/or as national minorities. In identifying the 'least advantaged people' the government takes a regional approach, rather than only recognizing named peoples *per se*. Accordingly, the government identifies three categories of marginalised groups, which it calls the "historically least-advantaged" (ibid.) people. These are: the four "developing" (ibid.) regional states of Gambella, Benishangul-Gumuz, Afar and Somali; pastoralists, and national minorities.

The constitutional framework by which the 'Developing Regional States' (hereafter the DRS) are recognized is laid out in Article 89(4): "the Government shall provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development." (FDRE Constitution 1995: 214) As per this article, peoples of the DRS are historically marginalized, with reduced life opportunities than peoples who live in the other regions. The federal government not only identifies peoples of these regions as among the least advantaged but also makes it a constitutional obligation to provide them with special assistance. The requirements set out here form the basis of affirmative action leading to the goal of guaranteeing equal chances throughout the country.

Pastoralists also fall under the category of least advantaged people. The Ethiopian government, for the first time in the history of the country, rightly recognizes pastoralists as one of the most marginalized communities, in need of special support. The marginalisation of pastoralists is an issue, despite their larger demographic size and crucial contribution to the national economy. Pastoralists in Ethiopia occupy 60 percent of the national territory, constitute about 12 percent of the total population, and are responsible for about 42 percent of the total livestock population of the country (Solomon 2002). The government's identification of the pastoralists as vulnerable and in need of a special support clashes with local representations and status claims. In Gambella, for instance, the Anuak, whom CS recognizes as the indigenous people, deeply resent the Nuers' representation by the government, by virtue of being pastoralists, as 'vulnerable' and 'marginalized'. The Anuak political leadership

has sought to deny the Nuer recognition as pastoralists, which they managed to do until recently, when the government has officially recognized the latter.

The so-called ‘national minorities’ also belong to the category of the least advantaged. The legal basis for this is Article 54 (3) of the Constitution: “out of the maximum number of 550 seats in the House of People’s Representatives (HoPR), a minimum of 20 seats is reserved for minority nationalities and peoples.” (FDRE Constitution 1995: 179) The federal parliament is composed of two chambers: the House of People’s Representatives, and the House of the Federation. The representatives of the former are representatives of the Ethiopian people as a whole. They are elected by means of general and direct elections under a first-past-the-post electoral system. In practice, this means that the candidate who gets the most votes in the district wins the single seat in each electoral district. In a state organized on an ethnic basis, the use of such an electoral system runs the risk that the only seat in each electoral district will be won by the candidate who represents the interests of the largest ethnic group in that district. This is particularly problematic for those ethnic groups that are a minority in every electoral district: there is a real risk that those ethnic groups will not have a single representative in the HoPR. To reduce this risk and to guarantee the representation of all ethnic groups in the first chamber of parliament, the federal constitution provides for a guaranteed representation of “minority nationalities and peoples” (ibid: 185). The constitutive units of the Ethiopian federation – Nations, Nationalities and Peoples – are asymmetrical, ranging from ethnic groups with a demographic size of over twenty million (e.g. Oromo and Amhara), to groups with as few as one thousand members (e.g. Brayle and Kwegu).

There is a close fit between regions and peoples recognized by the Ethiopian government as marginalized and in need of special support, and the academic literature on marginalized communities in Ethiopia, as well as the groups that international human rights organisations or development institutions would have readily defined as ‘indigenous’. However, the direct application of the term ‘indigenous’ and the conventional criteria used to identify the indigenous is more problematic, and may even be too broad to be useful.

## CONCLUSION

As the discussion in the previous sections indicates, the Ethiopian example shows the limits of the notion of the indigenous as a useful and convenient label to further the social justice agenda for marginalised groups in Africa. When used

in the sense of strategic essentialism (Spivack 1998) the term ‘indigenous’ could be empowering for vulnerable groups of people. But As Kuper (2003; 2005) emphatically and convincingly noted, the term ‘indigenous people’, used both as an anthropological concept and a political tool for activists, might also do more damage, rather than furthering the social justice agenda. Not least, its application might create new divisions and fuel existing inter-group tensions, as shown in the example from Gambella, where the Anuak claim to the title of ‘indigenous people’ is contested by the Nuer; claims which are variously validated by international human rights organisations depending on which definitional criteria they emphasize. Alternatively, Kuper argues for individual rights of citizens within liberal-democratic states as a better way of promoting the common good, including redressing the grievances of members of minority communities.

As the comparison between the Ethiopian case study and the origins of the concept of indigeneity in the Americas showed, alternative institutional designs that support a robust minority rights regime, such as the multi-nation federation, might better address the issue of the special recognition of certain cultural communities than the more contested term ‘indigenous’. The challenge is how to make the Ethiopian federal political order more federal and help it to deliver on its promises. What Ethiopia needs is not a fourth category of people – the indigenous – in addition to the already bulky appellation ‘Nations, Nationalities and Peoples’ but rather a robust federal system in which the rights of individuals and collectivities are lived realities, rather than merely ideas inserted into a constitution. Mukundi Wachira argued along the same lines, while reflecting on the issues of indigenous peoples’ rights in Kenya:

“It is possible to meet indigenous peoples’ claims by adopting general legal measures aimed at redressing past injustices and continuing socio-economic deprivation and inequality [...]. Indigenous peoples’ core claim to land rights in Kenya can be accommodated within the mainstream legal framework, including the Constitution, legislation, and judicial decisions.” (2008: X)

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