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**ADDIS ABABA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**SCHOOL OF LAW**

*The Legal and Practical Challenges in the Creation of New Regional States in Ethiopia: The Case of Southern Nations, Nationalities and Peoples Regional States (SNNPRS)*

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**Addis Ababa**

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**Addis Ababa University Law and Governance Studies**

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“Legal and Practical Challenges of New Regional States Creation in Ethiopia: The Case of Southern Nations, Nationalities and Peoples Regional States (SNNPRS)”

A Thesis Submitted in the partial fulfilment for the awards of Master Degree of Law (LLM) in Constitutional and Public Law at the College of Law and Governance Studies, School of Law, Addis Ababa University

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**February, 2023**

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**Declaration**

I, Abrham Derebe, hereby declare that the thesis titled “The Legal and Practical Challenges in the Creation of New Regional States in Ethiopia: The Case of Southern Nations, Nationalities and Peoples Regional States (SNNPRS” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

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**Acronyms;**

**Art** Article

**CCI** Council of Constitutional Inquiry

**EPRDF** Ethiopian People’s Revolutionary Democratic Front

**FDRE** Federal Democratic Republic of Ethiopia

**HOF** House of Federation

**NEBE** National Electoral Board of Ethiopia

**NNP** Nations Nationalities and/or Peoples

**SNNPRS** Southern Nation, Nationalities and Peoples Regional State

**SRC** State Reorganization Commission

### **Abstract**

*This paper examines the legal and practical challenges of new regional state creation in Ethiopia, with a particular emphasis on the SNNPRS. The study thus tried to investigate some legal gaps relevant to new state creation and the practical challenges of new regional state creation, such as referendums, minorities inside new states, border demarcation, property distribution, and other concerns. By using qualitative methodology, this study analysed both primary and secondary data sources. Moreover, the study tried to draw a comparative analysis based on lessons learned from some countries regarding the challenges of new regional state creation and how to handle them. Accordingly, the overall findings of the study show that the FDRE Constitution, the revised SNNPRS Constitution, and other relevant subsidiary laws lack a clear legal framework for dealing with some challenges relating to new regional state creation, such as failure to consider the viability and minimum numerical population, sharing/distribution of common property, protection for minority rights within the newly created regional state, border demarcation and relating to the capital city the newly formed regions, the findings also show the legal and practical challenges. Based on these findings, the paper concluded that the Ethiopian approach to the new regional state creation in the SNNPR failed to address the above-mentioned legal and practical challenges. Therefore, this paper proposes serious reconsideration of the Ethiopian approach to a new regional state created in a way that averts the existing challenges on the matter.*

**Keywords:** *New regional state creation, Nation Nationality and People, SNNPRS.*

## Chapter One

### Introduction

#### 1.1. Background of the Study

Ethiopia is a country which is located in the Horn of Africa and it accommodates more than eighty indigenous ethno national groups each with its distinct history, culture, language, and traditions.<sup>1</sup> Not only in terms of its territorial size but also in terms of ethno-linguistic composition and religious diversity Ethiopia is diversified state. In other words, the Ethiopian State which was created by the centralizing forces has been qualitatively different from historic Ethiopia.<sup>2</sup>

In 1991 and after the fall of the Derg regime, when the existing government led by the Ethiopian Peoples' Revolutionary Democratic Front (hereinafter EPRDF) came to power, recognition of ethnic diversity became one of the core principles of the new regime's policy. This developed into an ethno-linguistic federal system consisting largely of ethno-national territorial units.<sup>3</sup> This ethno-national identity vision of state formation led to the formation of an ethnically-based regional member states such as Afar, Somalia, Oromia and the new regional state Sidama.<sup>4</sup> The preamble of the Constitution of the Federal Democratic Republic of Ethiopia (hereafter FDRE) reflects the constitution's implicit characterization of the Ethiopian federation, a union founded by the Ethiopian nations, nationalities, and people's consent (hereafter NNP).

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<sup>1</sup> Benedetta Boni, 'Ethiopian ethnic federalism: Sidama unsuccessful quest for self-determination', Dalarna University Centre for African Studies. (2020)1

[diva-portal.org/smash/get/diva2:1451836/FULLTEXT01.pdf](https://diva-portal.org/smash/get/diva2:1451836/FULLTEXT01.pdf) accessed on Jan 21, 2023

<sup>2</sup> Assefa Fisha, 'Federalism', teaching material justice and legal system research institution, (2009)210  
[lawethiopia.com/images/teaching\\_materials/federalism.pdf](https://lawethiopia.com/images/teaching_materials/federalism.pdf) accessed on Jan 08, 2023

<sup>3</sup> Yonas Girma, 'Implication of Ethiopian Federalism on the right to Freedom of Movement and Residence: critical Analysis of the Law and the practice'. (LLM thesis Addis Ababa University Scholl of Law (unpublished) (March,2013)31

[etd.aau.edu.et/bitstream/handle/123456789/17831/Yonas%20Girma.pdf?sequence=1&isAllowed=y](https://etd.aau.edu.et/bitstream/handle/123456789/17831/Yonas%20Girma.pdf?sequence=1&isAllowed=y)pdf accessed on Jan 04, 2023

<sup>4</sup> 'Constitution of the Federal Democratic Republic of Ethiopia Proclamation No 1/1995.' Federal Negarit Gazeta. 1<sup>st</sup>Year No1Addis Ababa 21<sup>st</sup> August 1995.

The sovereignty of Ethiopia's NNP of their right to self-determination, including secession, is also the central tenet of the 1995 FDRE constitution.<sup>5</sup> One of the specific features of the FDRE constitution is not only the recognition and institutionalization of the creation of new regional states but also the non-derogation of such rights even during a state of emergency.<sup>6</sup>

In this regard, the Sidama nation is the first Ethno national group to exercise a right to new regional state creation since the constitutional foundation of the Ethiopian federation in 1995. Even though the FDRE Constitution recognizes the creation of new regional states and provides some general principles on the creation of new regional states, the constitution and other subsidiary laws do not provide mechanisms to deal with and overcome some legal and practical challenges associated with the creation of new states.

In view of that, it is necessary to identify the legal and practical challenges that may arise during the creation of new regional states and provide a possible way of addressing/managing the challenges. This study particularly aims at identifying the major legal and practical challenges the creation of new regional states in the Southern Nation Nationality and Peoples Regional State (hereinafter SNNPRS).

## 1.2. Statement of the Problem

The FDRE Constitution, apart from recognizing the nine regional states and the newly created regional state of Sidama, also provides a legal assurance on the possibility of creating additional regional states. The right to create new regional states under Article (hereinafter Art.) 47 of the constitution can also be considered one aspect of the right to self-determination. Under the FDRE Constitution, a NNP have the right to establish a new regional state at any time. The constitution provides a procedural mechanism through which the right could be exercised unilaterally and unconditionally without the need to provide any

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<sup>5</sup> Abay Addis, 'the right to secession: the possibility of its application with regard to the current fiscal set up in Ethiopia', (2015)23 [etd.aau.edu.et/bitstream/handle/123456789/16980/Abay%20Addis.pdf?sequence=1&isAllowed=y](http://etd.aau.edu.et/bitstream/handle/123456789/16980/Abay%20Addis.pdf?sequence=1&isAllowed=y) accessed on Jan 02, 2023

<sup>6</sup> V.Vijay Lakshmi, Nigussie Afesha, Formation and Reorganization of states in India and Ethiopia federation.' IOSR Journal of Humanitarians and social science (IOSR-JHSS) Volume 25, issue 10, series 2, (2020)23 [iosrjournals.org/iosr-jhss/papers/Vol.25-Issue10/Series-2/E2510023141pdf](http://iosrjournals.org/iosr-jhss/papers/Vol.25-Issue10/Series-2/E2510023141pdf) accessed on Jan 09, 2023

justification.<sup>7</sup> The right reflects that the Ethiopian federation is implicitly characterized as a federation/union formed by the Ethiopian nations, nationalities, and peoples' agreement.

Art.47 (2) of the constitution identifies the beneficiaries and the procedure to be followed for those demanding a new regional state within the federation. Under the 2001 SNNPRS constitution, the right to create a new regional state is expressly recognized under Art. 39 (5) and (6).<sup>8</sup> The FDRE constitution allows each ethno-national group of the regional state to create their new regional states unilaterally and unconditionally without the need to provide any justification. The FDRE Constitution seeks to guide these issues in a non-threatening direction and envisages specific procedures on how the NNP exercises the right to self-determination.<sup>9</sup> The NNPs can form new regional states provided and follow the procedure listed under Art.47 (3) of the constitutions.<sup>10</sup> After the written submission of the proposal, the State Council is expected to organize “a referendum within one year to be held in the NNP that made the demand.”<sup>11</sup> If the question of new regional state creation has not been executed within one year period of limitation or if the NN or P is dissatisfied with the decision, the concerned NNP state council may appeal to the House of Federation (hereinafter HoF). The same procedures are stipulated under Art. 39 (6) of the 2001 revised constitution of SNNPRS.

However, the FDRE Constitution failed to stipulate the possible consequences of failure on the part of the state council to conduct the referendum within the specified one-year time limit. The state council may refer the matter to the national Electoral Board. Art.25 federal Proclamation No. 1261/2021 attempts to fill in the gap by ensuring that the right to appeal can be exercised by a party to the HoF which argued that its request for the creation of a new regional State has not been executed within the period stated or alleges that it is unhappy with the judgement. The NNP Council, which argued for the creation of the new regional State, must send such a complaint to the HoF in writing. The HoF is then required to provide the final judgment on the matter within two years after receipt of the complaint.<sup>12</sup>

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<sup>7</sup> FDRE Constitution, (n4)

<sup>8</sup> ‘Revised Constitution, 2001 of Southern Nation Nationality and Peoples Regional State Proclamation No. 35/2001’ Awassa 12<sup>th</sup> of November, 2001.

<sup>9</sup> FDRE Constitution, (n4)

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> ‘a proclamation defining the power and functions of the House of Federation of the FDRE Proclamation No. 1261/2021’, Federal Negarit Gazeta, 7<sup>th</sup> Year No. 41, Addis Ababa- 6<sup>th</sup> July, 2021.

Currently, in the SNNPRS, 13 Zones are demanding autonomous regional states for constitutional rights. In practice, the creation of a new regional state poses different challenges. Although the Constitution provides for creating new regional states, it does not provide for some very important questions that need clear regulation or guidance. For instance, as the constitution lacks clear criteria regulating a minimum size of population for regional statehood, it creates problems concerning the viability of the regional state that would be formed. In this respect, the constitution lacks clear criteria guiding the establishment of a new regional state. Besides, the constitution is silent about the rights of dispersed minority ethnic groups living in newly established regional states. Moreover, the constitution does not give us clear rules and guidance on the issue of territorial demarcation between the newly established regional states and the existing ones.

Another problem which is worth researching is the issue of asset distribution between the newly established regional state and the remaining members of the original regional state. How we distribute the assets common to all member groups of the original regional state and the newly created state is a question that deserves a clear answer and guidance from the constitution. However, this is not answered in our case. Nor do we find a scheme put in place to deal with the very taunting problems related to budgetary issues. This is also an area that needs clear provisions in the constitution. Therefore, the above problems necessitate a deep exploration and investigation of the new regional state creation in the country. This research is justified for the above reasons. Hence, this research aims to assess the legal and practical challenges encountered as a consequence of the creation of a new regional state, taking the SNNPRS as a case study.

### 1.3. Objective of the Study:

#### 1.3.1. General Objective

The general objective of the research is to identify the legal and practical challenges of new regional state creation in Ethiopia: - in the case of SNNPRS.

#### 1.3.2 Specific Objectives

- To examine the procedure for the creation of new regional states.

- To reveal the substantive and procedural inadequacies of the FDRE, the revised constitution of SNNPRS and pertinent proclamation provisions relevant to the creation of new regional states
- To show the legal and practical Challenges faced by the creation of new regional states.
- To examine the challenges formation of new regional states against the protection of minority rights

#### 1.4. Research Questions:

Based on the research objective the research will try to find the answer to the following questions:

1. What are the procedural requirements for creating new regional states under the FDRE constitution?
2. What are the main legal and practical challenges resulting from the creation of the new regional state in the SNNPRS?
3. Are the procedures and requirements for the creation of new regional states under the FDRE Constitution adequate in addressing the legal and practical challenges of the creation of new regional states in SNNPRS?
4. What effect does the creation of new regional states have on the rights of minorities within the new regional states of the SNNPRS?

#### 1.5. Scope and limitation of the Study

The study analyses the legal and practical challenges of new regional state creations in Ethiopia with particular focus on the right to self-determination in the SNNPRS. Therefore, it is delimited to analysing the legal and practical challenges during, and after new regional state creations in Ethiopia with a particular emphasis on the SNNPRS. Furthermore, the study also assessed the prospects and trends in other federations comparatively intending to learn from their pertinent experiences.

#### 1.6. Significance of the Study

Among other things, the study will have the following significance: It shows the theoretical and ideological foundation of the right to new state creation or as embodied in the current constitution. It gives an in-depth analysis of the legal and practical challenges of new regional

state creation in the case of SNNPRS and provides a viable reform option for the concerned bodies. Moreover, by analyzing the better experiences of other jurisdictions on the subject, the study may provide insight on how to deal with the challenges. In general, the study would have its own significance for academics, policy makers, and interested persons.

## 1.7. Research Methodology

The study employed a doctrinal research methodology with a qualitative research approach. A doctrinal research methodology is used to assess the relevant legal instruments such as the FDRE Constitution, the revised SNNPRS Constitution, the Federal Proclamation defining the power and function of the House of Federation Proclamation No.1261/2021, and other pertinent legislations.

### 1.7.1. Research Approach and Design

The study used a qualitative research approach to look at the practical challenges of new regional state creation in Ethiopia, with a focus on the SNNPRS. A qualitative research approach was selected to analyse the perceptions, attitudes, and views of the concerned stakeholders on the practical challenges of new state creations in Ethiopia. Since the research is a qualitative one, the ideas of stakeholders from purposely selected key institutions like HoF, SNNPR State council, Council of Constitutional Inquiry, and Political Party institutions were integrated into the study. Moreover, the study also included the ideas of interested academicians. Regarding the type of research design employed, the researcher used descriptive and analytical research designs to describe the practical challenges of new regional state creations and make a critical analysis of different materials.

### 1.7.2. Sampling Techniques

In this study, the researcher used non-probability purposive sampling techniques. Non-probability purposive sampling is selected as the researcher aimed to access adequate data from the key informants and institutions. Therefore, the researcher employed purposive sampling techniques to collect data from key informants out of the purposefully selected four key institutions namely HoF, SNNPR State council, Council of Constitutional Inquiry, and Political Party institutions. The institutions were chosen for their relevance and importance in the topic area, as well as their ability to provide appropriate and reliable data for the study. In addition to these, an academician was also selected purposely for his knowledge having pertinence to the subject and the study area.

### 1.7.2.1. Data Sources and Methods of Data Collection

Both primary and secondary data sources to be collected in the following methods were used in this research.

#### 1.7.2.2. Primary Data

##### 1.7.2.2.1. Interviews

The researcher has employed both structured interviews with the four informants from the above-mentioned institutions (representatives) and one academician. Interviews were used to obtain broad information regarding the legal and practical challenges of new regional state creations in Ethiopia. Moreover, a structured interview was used since it allows the researcher to prepare and be competent during the interview process by allowing him to construct questions before the interview. Furthermore, an unstructured interview was employed since it allows the interviewer and the interviewees to communicate freely. It also allows for learning because the two exchange ideas by asking and answering questions, with the responses being supported by reasoning.

##### 1.7.2.2.2. Legal Documents

In addition to the above-mentioned primary sources of data (interview), the study employed primary documentary sources of data. Accordingly, legislation is the main primary source of this study. As a result, the key primary document sources for this study include the FDRE Constitutions; the SNNPRS revised Constitution, the Federal Proclamation defining the power and function of the House of Federation Proclamation No.1261/2021, and other statutes.

##### 1.7.2.3. Secondary Data Sources

In addition to primary data sources, the study has also employed journal Articles, books, websites, and relevant literature as secondary data sources to analyse and conceptualize the legal and practical challenges of new regional state creations in Ethiopia, in the case of SNNPRS.

### 1.7.3. Methods of Data Analysis

Based on the qualitative nature of the study, the research employed a thematic analysis method to analyse and interpret data based on their similarities to a certain issue. Accordingly, a qualitative analysis of relevant theoretical concepts, federal and regional laws, and other collected data is conducted.

### 1.8. Ethical Considerations

An important ethical consideration will be taken into account by the researcher. Among other items, before obtaining informed consent from them, the interviewees will be informed of the intent of the study without any sort of deception.

### 1.9. Structure of the Study

The research paper is organized into four chapters. The first chapter is the introductory chapter which includes the background of the study, Statement of the problem, the objective of the study, research question and scope of the study, significance of the study, limitations, methodology, ethical considerations, as well as structure of the research.

Chapter two of the research deals with the theoretical frameworks and experience of some multinational federations in the conceptual framework at the time of new regional state creation procedure, requirements or preconditions of new state creation, and challenges of state formation. In this regard, the experience of Nigeria, India, and South Africa will be discussed. Whether there are criteria for the creation of a new state and what the remedies are for the possible challenge in this chapter. Chapter three is concerned with the background, factors, and core principles of the Ethiopian federation. The Chapter also deals with the Legal and Practical Challenges of the Creation of New Regional States in the SNNPRS. In this chapter, the Legal and Practical challenges of the creation of a new regional state in Ethiopia the case of SNNPRS will be analysed jointly with the objective and the authenticity issues of the Ethiopian federation. Lastly, chapter four taps out the conclusion and recommendations that the researcher took note of while conducting the study.

## Chapter Two

### The State of New State Creation in Federation: An Overview of Theoretical Approaches and Practices of States

#### 2.1. Theoretical Approaches to New State Creation

The creation of new states in federations involves the secession of a part of a state or the adjoining parts of territories of several states to form a new state.<sup>13</sup> Sometimes it is referred to as “divorce without separation”.<sup>14</sup> This is because a process of new state creation takes place while the population of newly created constituent units remains within the territory of the same central administration.<sup>15</sup> Unlike the external aspect of self-determination where there exists a myriad of theoretical approaches, there are no well-developed theories concerning new state creation within a federation.<sup>16</sup> Contrarily, with regard to external secession, two prominent theoretical approaches are suggested though neither approach has adequate neither instructive nor doctrinaire power. These are primary right theory (permissive theory) and restrictive (remedial theory).<sup>17</sup>

##### 2.1.1. Primary Right Theory /Permissive Theory

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<sup>13</sup> Muluken Kssahun, “Formation of New States in Federal Ethiopia.” in the Adem Kassie Abebe and Amen Taye (eds.) REIMANGING ETHIOIPAN FEDERALISM, Ethiopia Constitutional and Public Law series, Vol.10, (2019)134

<sup>14</sup> Anthony C. Gilliland, Federalism and the Creation of New States: Justifying Internal Secession, (PhD Thesis, Universitat Pompeu Fabra (2013)165  
[tdx.cat/bitstream/handle/10803/145769/tacg.pdf;jsessionid=DECDEE2238FF2985FC0A81F5C924C76C?sequencepdf](https://tdx.cat/bitstream/handle/10803/145769/tacg.pdf;jsessionid=DECDEE2238FF2985FC0A81F5C924C76C?sequencepdf) accessed on Jan 08, 2023.

<sup>15</sup> Abdulmajeed Alkali, ‘Federalism and the Creation of Sub-national States in Nigeria: Appraising the State-Creation Exercise under *Babangida* Administration’, IOSR Journal of Humanities and Social Science (IOSR-JHSS), Volume 22, Issue 1,(2017)08  
[iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue1/Version-5/A2201050108pdf](https://iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue1/Version-5/A2201050108pdf) accessed on Jan 02, 2023

<sup>16</sup> Anthony C. Gilliland, (n14)

<sup>17</sup> Allen Buchanan, ‘Theories of Secession’, Philosophy and Public Affairs, Vol. 26, No. 1. (1997)31-61  
[jstor.org/stable/2961910](https://www.jstor.org/stable/2961910) accessed on Jan 03, 2023

Primary right theory (permissive theory) suggests that a distinct group (in either *ascriptive* or *associative* terms) has a general right to unilaterally secede, even where no injustice requires remedying through independent statehood.<sup>18</sup> The right is justified as an extension of the democratic principle, and of the right of a nation to choose its government, despite tension between such a right and the principle of territorial integrity.<sup>19</sup> This theory asserts that certain groups can have a (general) right to secede in the absence of any injustice.<sup>20</sup> In the expression of Allen, unlike remedial theory in which secession is available as a resort to serious injustice, secession is available as of right even in the absence of what Allen called injustice. Allen further classified the primary theory of secession into *inscriptive* and *associative*. According to ascriptive versions of primary right theories, these are groups whose membership is defined by what is sometimes called inscriptive characteristics to have the right to secede (even in the absence of injustices).<sup>21</sup> What an inscriptive characteristic view of Allen is the fact that a group that opts for secession claimed itself as a people or nation. Allen further claimed that what makes a group a nation or people is the fact that it has a common culture, history, language, a sense of its distinctiveness, and perhaps a shared aspiration for constituting its political unit.<sup>22</sup>

### 2.1.2. Restrictive /Remedial theory

On the one hand, restrictive (remedial theory) otherwise referred to as the just cause allows the right to secede if it is necessary to remedy an injustice such as the prior occupation of territory, the violation of people and human rights including genocide, and discriminatory injustice or ignoring people or groups based on their religion, language, ethnicity or culture.<sup>23</sup> Remedial right theories, perhaps the most prominent of which is outlined by Allen Buchanan in *Theories of Secession* (1997), view secession as a “remedy of last resort” or “last ditch

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<sup>18</sup> Ashleigh Bennett, ‘when is secession legitimate?’, Submitted for the LLB Degree Faculty of Law Victoria University of Wellington 2014 (Unpublished)13  
[paperzz.com/doc/8043084/when-is-secession-legitimate%3F--vuw-research-archivepdf](http://paperzz.com/doc/8043084/when-is-secession-legitimate%3F--vuw-research-archivepdf) accessed on Jan 03, 2023.

<sup>19</sup> Ibid

<sup>20</sup> Allen Buchanan, (n 17)36

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Aziz Sheikhan, Secession’s theory (Remedial Right Only Theories), Journal of Advances in Political Science Vol. 2. No.3. University of Tampere, Finland International Relations,2015 (unpublished)13  
[academia.edu/10341002/Secession\\_s\\_theory\\_Remedial\\_Right\\_Only\\_Theoriespdf](http://academia.edu/10341002/Secession_s_theory_Remedial_Right_Only_Theoriespdf) accessed on Jan 10, 2023

response” to injustices.<sup>24</sup> This may also be referred to as ‘negative’ or ‘reverse’ self-determination.<sup>25</sup> Such theories generally suggest that a territorially concentrated national group may have a general right to secede unilaterally “if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort”.<sup>26</sup> Proponents of the remedial theory suggest that a territorially concentrated national /minority group will have a right to secede unilaterally from an existing state if the group has suffered certain *serious injustices* at the hands of the state, for which there is no other appropriate remedy.<sup>27</sup> Remedial right theorists agree, then, that secession will be legitimate if, and only if, the territorially concentrated group that is seeking independence has suffered certain injustices.<sup>28</sup> The central notion of this theory requires the serious existence of injustice to exercise secession right. Allen developed three instances in which a right may be exercised as a possible measure to explain what constitutes serious injustice. These are (a) large-scale and persistent violations of basic human rights, (b) unjust taking of the territory of a legitimate state (where secession is simply the taking back of wrongly taken territory and (c) in certain cases, the state's persisting violation of agreements to accord minority group limited self-government within the state.<sup>29</sup>

## 2.2 . The Application of Theories of External Secession to New State Creation in Federations

As noted above, there is no well-developed theoretical approach with regard to internal secession otherwise known as a new state created in this context. Accordingly, one may ask whether theories of external secession apply in the case of internal secession. It is indicated that the theories on external secession can be contextually transplanted to justify the creation of member states within a federation since they share considerable common attributes.<sup>30</sup> This is because external secession and the formation of new states within federations emanate from the right to self-determination.<sup>31</sup> Though there is a great deal of variation about the

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<sup>24</sup> Allen Buchanan, (n 17)

<sup>25</sup> Ernest, 2009

<sup>26</sup> Allen Buchanan, (n17)35

<sup>27</sup> Ibid

<sup>28</sup> Ashleigh Bennett (n18)21

<sup>29</sup> Allen Buchanan, (n 17)36

<sup>30</sup> Muluken Kssahun, (n13)136

<sup>31</sup> Ibid

exact justification for external and internal secession, any theory that justifies external secession would also justify internal self-determination.<sup>32</sup>

### 2.3 . Internal Self-Determination

The right to self a determination has not been plainly elucidated not only the ICCPR but also ICESCR. However, this does not intend that it can't be implemented by someone. Accordingly, through a difference of constitutional principle, succeeding regimes have desired to overwhelmed insightful religious, linguistic and racial groups that perpetually jeopardize social harmony and strength.<sup>33</sup> Depending on the social context and severity of the issues each state was facing, different strategies were used.

But they have used different strategies to overcome those problems, however, nations which face highly divers' societal groups, territorial or non-territorial sovereignty, have been acknowledged as a resolution.<sup>34</sup> As a result, the tenet of self a determination in this framework, but in the non-colonial principle, associates to the internal territorial principle of a certain sovereign country.<sup>35</sup>

People have been given the autonomy to decide their own political, economic and social constitute inside their own country and under the general principle of reigning condition. Thus, domestic situation, which is in most cases may not necessarily display itself only in federal or semi –federal countries but also "arrangement like; regions, district, municipalities

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<sup>32</sup> Ibid

<sup>33</sup> S.J.R Noel, Canadian response to ethnic conflict: consociationalism, federalism and control, in Jhon McGarry and Brendan O'Leary (eds) *The politics of Ethnic conflict Regulation*, Routledge, London and New York (1993) [taylorfrancis.com/chapters/edit/10.4324/9781315003641-9/canadian-responses-ethnic-conflict-consociationalism-federalism-control-noel](https://www.taylorfrancis.com/chapters/edit/10.4324/9781315003641-9/canadian-responses-ethnic-conflict-consociationalism-federalism-control-noel) accessed on Jan 1, 2023

<sup>34</sup> Hurst Hannum: *Territorial Autonomy: permanent solution or step toward secession?* In Andrias et al (eds) *Facing Ethnic Conflicts: Toward A New Realism* ,Rowman and Littlefield publishers, Lanham, Boulder, new York and Toronto (2004)274 [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1940499](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1940499) accessed on Jan 08, 2023.

<sup>35</sup> Malcom N.Shaw, *International Law*, Sixth edition, Cambridge university press, New York (2008)291 [academia.edu/25762501/SHAW\\_MALCOM\\_International\\_Law\\_6th\\_Editionpdf](https://www.academia.edu/25762501/SHAW_MALCOM_International_Law_6th_Editionpdf) accessed on Jan 19, 2023

and communes" rather than international principles of the people may be what factor of may be what internal self-determination concerns.<sup>36</sup>

A democratic type of regime or political sovereign is what "self-determination" deals to the interested people as a whole or certain groups. As it was discussed, it increases their ability to jointly activity a great amount of impact over the progress of their political fate inside their respective circle.<sup>37</sup> Furthermore, self-determination allow them to protect the integrity of their cultural values which comprises of distinctive, entirely pervasive cultural values that may be encompassed of combined beliefs, languages, customs, traditions and scholarly history.<sup>38</sup>

#### 2.4 . State Practice; New State Creation in Nigeria, India, and South Africa

No matter the prevailing circumstance and process justifying the creations of new states vary from federation to federation, it is common to find that the constitutions of many federations anticipate the possibility of the formation of new states. The constitutions of Nigeria, India and South Africa are among the notable constitutions of that recognize the possibility of new state creation.

##### 2.4.1. Nigeria

Nigeria is a country of extraordinary diversity and as such, one of the extraordinary complexities.<sup>39</sup> These complexities are a consideration of the avalanche of religious and ethno-cultural groups co-habiting the territory and the intricacies of interaction among them.<sup>40</sup> Historically, the structure of its federalism can be traced far back to 1914 when the northern and southern protectorates were amalgamated with unitary administration.<sup>41</sup> Though, the officially operating federalism is currently recognized under the 1999 Nigerian

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<sup>36</sup> Walter Kalin: Decentralized Governance in fragmented Societies: Solution or Cause of New Evils? Andrias et al (eds) Facing Ethnic Conflicts: Toward A New Realism ,Rowman and Littlefield publishers, Lanham, Boulder, new York and Toronto (2004)301

<sup>37</sup> Michael Jewkes: Self-Determination Without Secession , Public Affairs Quarterly, Vol. 28, No. 2 , University of Illinois Press on behalf of North American Philosophical Publications (APRIL 2014).

<sup>38</sup> Ibid, at 154

<sup>39</sup> Akai, Kevin Polycarp. 'Re-visiting the structure foundation of Nigeria federalism', International journal of Advanced Research in Public policy, Social Development and Enterprises Studies, Vol.2 no.1 (2017).132  
[internationalpolicybrief.org/images/2017/ARPP/ARTICLE-12.pdf](http://internationalpolicybrief.org/images/2017/ARPP/ARTICLE-12.pdf) accessed on Jan 05, 2023

<sup>40</sup> Ibid

<sup>41</sup> Ibid

Constitution.<sup>42</sup> As per Art. 2(1), (3) of the 1999 Constitution of the Federal Republic of Nigeria, Nigeria is a federation consisting of 36 states and a Federal Capital territory. The federal arrangement in Nigeria under the constitution is premised on a distinctive division of powers of the federation between the federal and the States governments.<sup>43</sup> It appears that the basic goal of federalism in Nigeria is to promote the unity of the country while creating space for political autonomy in the different sections of Nigeria.<sup>44</sup>

#### 2.4.1.1 The Legal Framework for New State Creation

The process of new state creation in Nigeria is a means of achieving balanced and stable federalism, both federalism and new state creation are intended in the constitution and politics of Nigeria.<sup>45</sup> However, the present constitutional conditions for the creation of further new regions are difficult and time-consuming, and it is doubtful that many more states will be established.

States are constitutionally protected, and a constitutional amendment to create new states can be only accepted if the following procedural requirements are met in 1999 constitution of the Federal Republic of Nigeria<sup>46</sup> Under Art. 8 (1) an act of the National Assembly for the purpose of creating a new state shall only be passed if:- (a) a request, supported by the least two third majority of member ( representing the area demanding the creation of new state) in each of the following namely, (i) the senate and the house of representatives, (ii) the house of assembly in respect of the area, and (iii) the local government councils in respect of the area, is received by the national assembly; (b) a proposal for the creation of the state is thereafter approved in a referendum by at least two-third majority of the people of the area where the claim for creation of the state originated; (c) the result of the referendum is then approved by the simple majority of all the state of the federation supported by a simple majority of

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<sup>42</sup> Constitution of the Federal Republic of Nigeria 1999, Art. 2(1), (3)

<sup>43</sup> Emmanuel Ibiam Amah, 'Federalism, Nigerian Federal Constitution and the Practice of Federalism; An Appraisal', Beijing Law Review, 2017, 8, (287-310)293  
[file.scirp.org/pdf/BLR\\_2017082510370639.pdf](file.scirp.org/pdf/BLR_2017082510370639.pdf) accessed on Jan 12, 2023

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Constitution of Nigeria (n40) Art.8.

members of the houses of assembly; and (d) the proposal is approved by a resolution passed by two third majority of members of each house of the national assembly<sup>47</sup>.

The constitution sets extended procedures and prerequisites for the creation of new states. The request for new state creation must be supported by at least a two-third majority vote by the Senate and the House of Representatives, the house of assembly in respect of the area, and local government councils of the area. And the second, demand which is supported by at least a two-thirds majority vote required to be received by the national assembly. Here, if the national assembly does not receive the demand, the right to create a new state may stop at this stage. If it received, the referendum will be conducted by the people of the area that must be secure at least a two-thirds majority vote. For the next precondition and constitutional procedures, a proposal for the creation of a new state which has got two-thirds majority vote must be approved by a simple majority vote by all members of the federation. Lastly, the proposal must be approved by a two-thirds majority of members of each house of the national assembly.

#### 2.4.1.2. Challenges of New Regional State Creation

Though the constitution creates institutional space for the creation of a new state in Nigeria, it is not without challenges. The following difficulties are among the post-formation challenges of new state creation in Nigeria. Administrative challenges and problems such as poor infrastructural facilities, excessively high wage bills, low levels of internally produced revenue, diminishing budgets, diversion of limited resources to unproductive capital projects, massive corruption and wastage by inflated contracts, outright bribery of public funds, and acrimonious fight over assets sharing, to name a few. However, there is no hope of putting an end to ethnic rivals' demand for their "own state" by the ethnic rivals, and the fundamental problem that is confronting Nigeria state since her independence is continued agitation for the creation of more states.<sup>48</sup>

The solution to this problem "lay what calls the creation of institutional and fiscal resources and thus the expansion of the national cake". Indeed, the national cake is shaking without any

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<sup>47</sup> Ibid

<sup>48</sup> Adeyemi, o. Oluwatobi 'The Politics of States and Local Governments Creation in Nigeria: An Appraisal' European Journal of Sustainable Development (2013), 2, 3, 155-174 ISSN: 2239-5938 Doi: 10.14207/ejsd.2013.v2n3p155

[ecsdev.org/images/V2N3/adeyemi%20155-174](https://ecsdev.org/images/V2N3/adeyemi%20155-174) accessed on Jan 04, 2023

attempt to bake new ones making us a nation of consumers and not producers.<sup>49</sup> If governments at all levels (federal, state, and local) are responsive to the aspirations of the people and can ensure political stability and development agitation for state creation, the world will likely become considerably reduced and the national development agenda enhanced.<sup>50</sup> Government and the citizens must come together to establish a new common sense of civil identity which guarantees total loyalty to the state rather than an ethnic group or a geopolitical zone. When this is done, Nigerians will begin to see themselves as one nation.<sup>51</sup> The Federal Character Principle which guarantees equal representation of all states of the federation and geo-political zone in the sharing of political power, offices and the conduct of government business must be encouraged to prevent one tribal group from dominating other tribes in political appointments and government agencies.<sup>52</sup> There is a need for a policy framework or institutional mechanisms that will encourage inter groups, inter-tribes, and inter-religious relationships within the polity. The traditional rulers and religious leaders should not be left out in this crusade.<sup>53</sup> Finally, the major purpose of creating local government is to bring developments to the grassroots. In order to perform adequately, there is a need for local councils to have a strong economic base.<sup>54</sup> In this regard, it is proposed that statutory allocations to local governments be increased. Furthermore, the state government's part of the federation account should be delivered to councils quickly to avoid salary delays and unwarranted deductions.<sup>55</sup>

#### 2.4.2 India

The formation of regional states in India had come through different stages based on the non-ethnic (before Indian independence) and based on the ethnic line since the introduction of the 2020 constitution. By means of ethnicity as the primary norms many states had been recognized and formed constitutionally. Under the constitution of Indian Art.1, India has been characterized as a Union of States, Union territories, and any other territories that may be acquired by the government of India at any time. As the same Art. sub (3) parliament's

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<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

power to reorganize new states.<sup>56</sup> The legal frameworks that enable the creation of the new state are discussed.

#### 2.4.2.1. The legal framework of New State Creation

Concerning the formation of a new state and alteration of areas, boundaries, or names of existing states in the Indian federation, the constitution conferred the ultimate power on the parliament. The power to form new states provided that there must be a proposal to that effect, according to the constitution, it is the parliament “Lok Sabha’s” (House of the people) inherent rights, Art. 2 of the constitution provides that may by law admit into union or establish, new state on such terms and condition as thinks fit.<sup>57</sup> Under the above articles two most important elements can be raised. The first element is where the demand to form a new state arises either from the concerned people or group or the lawmaker themselves. The constitution mandated the parliament to make a law to make the demand effective. That is to say, the formation of new states under the federation of India cannot be effected by ordinary procedures and secondary laws but rather by laws enacted by the parliament that amounts to the amendment of the constitution under Art. 4(1). The additional element is that it is the parliament that provides conditions and terms on which the formation of new states can be realized. The constitution gives general supremacy to the Union parliament and executive in all matters. So that the mere fact the demand comes from the group or people does not suffice for a new state to be formed and become the new member of the federation.

The Indian constitution, on the President's advice, a bill to begin a new state formation request is submitted in the House of Parliament. It meant that the President's constitutional power to propose the formation of new states was enlarged, whether by withdrawing territory from existing states, merging two or more states or sections of states, or combining any area with a portion of a state.<sup>58</sup> The important consideration in the procedure for the creation of new states under the Indian federal system is the voting rule. Given the scope of the situation, one could anticipate a special voting rule to that effect.<sup>59</sup> Art.100 of the constitution,

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<sup>56</sup> India's Constitution of 1949 with Amendments through 2012

[https://www.constituteproject.org/constitution/India\\_2012pdf](https://www.constituteproject.org/constitution/India_2012pdf) accessed on Jan 09, 2023

<sup>57</sup> Ibid

<sup>58</sup> V.Vijay Lakshmi, Nigussie Afesha, (n6)33

<sup>59</sup> Tessema Simachew and Habtamu Simachew “The Procedure for the Creation of New Regional States under the FDRE Constitution: Some Overlook Issues”. Mizan Law Review, Vol.13 No.1. (2019) 116.

<ajol.info/index.php/mlr/article/view/192025> accessed on Jan 10, 2022.

however, provides no special voting. The formation of a new state in the Union can be decided by a simple majority of the members present and voting in parliament.<sup>60</sup> At the time of new state creation in India, the constitution does not give a referendum to be conducted concerning state reorganization or formation of the new state.

In the case of the new state creation according to the Indian constitution under Art.3 of the federal House of Parliament, is clothed with the only authority to create new states, to amend the boundaries of states, and to do things in relationship therewith.<sup>61</sup> Following this power, the House of the parliament may create new states, combine states and change the names of states without the approval of the second house of Parliament, the Council of States (Rajya Sabha's), or the governments or legislatures of the states or the population affected by the alteration.<sup>62</sup> Although the federal Parliament has to adhere to all constitutional provisions when state boundaries are altered, it leaves parliament in a very powerful position where it can alter the structure of the federation of its own volition.<sup>63</sup> The Indian federal Parliament has plenary and comprehensive powers to pass legislation to reorganize the states and territories and to deal with all problems constitutional, legal, and administrative arising as a result thereof. Therefore, the Indian federal Parliament can decide to create a new state, alter a boundary, or combine states by an ordinary majority.<sup>64</sup>

The president's enhanced authority and the state legislature's restricted involvement in the establishment of new states are justified by minorities' rights.<sup>65</sup> The topic of who should be able to start the process of creating a state was debated during the constitution-making process.<sup>66</sup> There was a proposal that the Bill for the creation of a new state should originate from the state legislature "whose boundaries are proposed to be altered, or whose areas are proposed to be diminished or increased".<sup>67</sup>

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<sup>60</sup> Ibid

<sup>61</sup> The constitution of India, (54)

<sup>62</sup> Berutise de Villiers, 'Creating Federal Regional-Minority Protection versus Sustainability', 315 [zaerv.de/72\\_2012/72\\_2012\\_2\\_a\\_309352.pdf](http://zaerv.de/72_2012/72_2012_2_a_309352.pdf) accessed on Jan 09, 2023

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Rotimi Suberu (n 39) 5.

<sup>66</sup> Ibid

<sup>67</sup> Ibid

In India, new states are formed based on the above criteria to enhance and maintain the states' distinct cultures and languages or scripts. This is one of the ways that not just India's distinctiveness, but also its cultures, customs, and languages, are preserved.<sup>68</sup> The State Reorganization Commission (SRC) suggested the formation of a state that would preserve the nation's unity and security, as well as the people's linguistic and cultural affinity, as well as the country's financial, economic, and administrative viability.<sup>69</sup>

As Art.3 of the Constitution permits the creation of new states from within the existing states, there are, however, no criteria laid down based on which a new state will be formed. Art.3 stipulates that any such bill may be introduced only on the recommendation of the president, which practically means the central council of ministers whose advice is binding on the president under Art.74(1) of the Constitution.<sup>70</sup>

The Indian Constitution, which was adopted in 1950, envisioned the Union as unbreakable. However, the constitution provides for the incorporation of new territories or the formation of new states into the Union, as well as the establishment of new states.<sup>71</sup> Art.3 of the constitution gives the parliament the power to "form a new State or parts of a State, or by uniting any territory to a part of any State."<sup>72</sup> The process of forming states in India is still ongoing.

The establishment of states based primarily on linguistic lines was seen as a way to protect minorities, foster national unity in the face of diversity, make government more understandable and accessible to the people, and improve governance performance.<sup>73</sup> Ever since the 1956 demarcation, several new states have been created. In the year 2000, India's internal map was rebuilt, resulting in the creation of three new states: namely, Jharkhand, Chhattisgarh, and Uttarakhand. In contrast to the previous state restructuring criterion, which took into consideration the country's linguistic variety, these states were formed based on

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<sup>68</sup> Rasleen Kour, 'Creation of New States in India.'(2010)

[docs.manupatra.in/newsline/articles/Upload/E6D33255-8F9C-4F9E-B3F9-7359D9D25FE9.pdf](https://docs.manupatra.in/newsline/articles/Upload/E6D33255-8F9C-4F9E-B3F9-7359D9D25FE9.pdf) accessed on Aug 16, 2021

<sup>69</sup> Ibid

<sup>70</sup> Sidharth Sharma 'Creation of New States: Need for Constitutional Parameters'

[researchgate.net/signup.SignUp.html?ev=su\\_requestFulltextpdf](https://researchgate.net/signup.SignUp.html?ev=su_requestFulltextpdf) accessed on Aug 16, 2021.

<sup>71</sup> Tessema Simachew and Habtamu Simachew, (n61)

<sup>72</sup> The Constitution of India, (56)

<sup>73</sup> Bertus De Villiers, (n62)319

effective governance and development (administrative efficiency) the new foundation for state formation.<sup>74</sup> Administrative efficiency was suggested and directed rather than the language concept in the most recent new state formations. The desire for additional states persisted, and in 2014, the state of Telangana was formed from the state of Andhra Pradesh.<sup>75</sup>

Though India has agreed to new state formation claims of this size and with these federation units, the number of states has already reached twenty-nine, even though there are many more obvious requests for state formation and many more in the coming years. This demonstrates that the development of new states is a process that cannot be finished within a specific time frame. There are still some requests for the creation of new states and the finalization of state borders.<sup>76</sup> In practice, federations have experienced challenges in the formation of new regional states creation.

#### 2.4.2.2. Challenges of New Regional State Creation

In practice, federations have experienced challenges and success in the creation of new states. Among the main challenges, the question of the division of property and debts is one of the critical concerns. In the case of India, Sharing of an asset between the new and existing states is one of the challenging issues. In terms of asset sharing, the Indian experience also shows that the legislature enacts legislation that governs asset sharing and prevents future conflict.<sup>77</sup> According to the state reorganization Act No 37 of 1956, apportionment of assets and liabilities are dealt with under part. VII from Art.75-93. The law covers significant topics such as land and products, treasury and bank balances, tax arrears, right to recover loans and advances, credits in specific funds, assets and liabilities of state operations, public debt, and repayments of taxes received in excess, deposits, and provident funds. In the case of Telangana and Andhra Pradesh, for example, the Indian government used the 2011 population census to divide both assets and debts among the two states.<sup>78</sup>

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<sup>74</sup> V.Vijay Lakshmi, Nigussie Afesha, (n 6)35.

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> See the States Reorganization act, 1956 ,the Madhya Pradesh Reorganization act, 2000, the Uttar Pradesh Reorganization act, 2000 ,the Andhra Pradesh Reorganization act, 2014 No. 6 of 2014 and the Jammu and Kashmir Reorganizations act, 2019. No 34 of 2019.

[legislative.gov.in/sites/default/files/A2000-28pdf](https://legislative.gov.in/sites/default/files/A2000-28pdf) accessed on December, 28/2022.

<sup>78</sup> ‘The Andhra Pradesh Reorganization Bill No. 8/2014’

In the second challenge, the debate over the capital city is likewise a contentious one, especially if the existing region's capital is located in a territory that claims to establish a new state. The self-determination of Telangana from the Indian state of Andhra Pradesh serves as an example in this respect.<sup>79</sup> Hyderabad is the capital of Telangana and was once the capital of Andhra Pradesh before Telangana separated to become its state. When the Indian parliament authorized Telangana's establishment, it resolved to make Hyderabad the joint capital of Telangana and Andhra Pradesh for a term of not more than ten years. After the said time expires, Hyderabad will be the sole capital of the State of Telangana, with new capital for the State of Andhra Pradesh.<sup>80</sup> In preparation for the eventual transition, Hyderabad is now the de jure capital of Andhra Pradesh, while Amavarati is the de facto capital. The city of Chandigarh became a Union territory of India and served as the shared capital of both states after the former Punjab state was reformed into Himachal Pradesh and Haryana in 1966.<sup>81</sup>

A fascinating aspect of the present desire for additional states is that the emphasis has switched significantly away from linguistic concerns to political and economic justifications for new states, as well as claims that the new territories would be more administratively efficient and better governed.<sup>82</sup> Since 1956, the creation of states in India has mostly been haphazard and a consequence of persistent popular demand, disagreement, and even bloodshed, rather than a visionary grand strategy or a systematic procedure based on agreed-upon criteria.<sup>83</sup>

The successful formation of one state often leads to continuous new state creation claims by other groups, generating additional burdens on the political process and the central government. The Indian federation preserved the right of minorities while creating new states is the last concern under Art.26, 30, And 350A of the constitution are of importance

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[reorganisation.ap.gov.in/downloads/APReorganisationBill2014.pdf](https://reorganisation.ap.gov.in/downloads/APReorganisationBill2014.pdf) accessed on December, 02/2022

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Ibid

<sup>82</sup> Worku Megersa, 'State Formation and Criteria for Statehood in the Ethiopian Federation', (LLM thesis, Addis Ababa University School of Law March 2016 unpublished) 10.

[etd.aau.edu.et/bitstream/handle/123456789/16747/Worku%20Megersa.pdf?isAllowed=y&sequence=1](https://etd.aau.edu.et/bitstream/handle/123456789/16747/Worku%20Megersa.pdf?isAllowed=y&sequence=1) accessed on December. 20/2022.

<sup>83</sup> Ibid

concerning the protection of minority rights. Art.26 is dedicated to the protection of religious minorities providing the right to establish and maintain institutions for religious and charitable purposes; manage its affairs in matters of religion. Accordingly, all minorities, whether based on language or religion, have the right to administer and establish educational institutions of their choice. Hence, Art. 350A says that “it shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the president may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities.”<sup>84</sup> Therefore, minorities no matter whether they belong to the new states to be formed or the existing state, the state authorities and the federal government are under the constitutional duty to make sure that the rights of the minority are respected and observed.

The process remains mostly political in the absence of a constitutional or legislative framework to direct demands for state formation. In India, the state-formation process was essentially a sort of crisis management: if a minority could not be satisfied by other constitutional or political methods, they may end up with their own state as a final prize.<sup>85</sup> There are signs that with demands for the creation of smaller states from the existing ones, issues of economic management and feelings of neglect in regional and rural areas are becoming the key motivations for the next round of major territorial reorganization.<sup>86</sup>

#### 2.4.3. South African

South Africa was divided into four major provinces before the 1994 general election: the Cape Province, Natal, Orange Free State, and Transvaal. The nation was divided into nine major provinces after the 1994 elections, which merged the previous "black homelands and self-governing entities" into a strong unitary and democratic system of government.<sup>87</sup> The

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<sup>84</sup> Haile Tarekegn, ‘State Formation under Constitution; a Comparative Study’ (LLM thesis Ethiopian Civil Service University School of Law and Federalism June 2020 unpublished) 29.

[academia.edu/48233416/STATE\\_FORMATION\\_UNDER\\_THE\\_FDRE\\_CONSTITUTION\\_ACOMPARATIVE\\_STUDYpdf](https://www.academia.edu/48233416/STATE_FORMATION_UNDER_THE_FDRE_CONSTITUTION_ACOMPARATIVE_STUDYpdf) accessed on December. 20/2022

<sup>85</sup> Worku Megersa (n 82) 10.

<sup>86</sup> Ibid

<sup>87</sup> Sitembe Msaseni, ‘The Impact of Constitutional Relationships between the three Spheres of Government: The South African Perspective.’ (2000)79

[researchgate.net/profile/GregoryHouston/publication/273455705\\_Public\\_participation\\_in\\_provincial\\_legislative](https://www.researchgate.net/profile/GregoryHouston/publication/273455705_Public_participation_in_provincial_legislative)

South African government system is fundamentally based on the principles of consensus and negotiated settlement, with the Mbeki administration still facing many topical or unresolved issues in the twenty-first century, including political participation, representation, integration, good governance, transformation, and democratization, as well as many other contested issues.<sup>88</sup>

#### 2.4.3.1. The Legal Framework for New Province Creation

The process of creating new provinces in South Africa was agreed upon in 1993 as part of the country's larger constitutional negotiations: a fifteen-member commission representing the country's various political forces was established with the task of recommending the number and boundaries of new provinces, subject to several criteria.<sup>89</sup> A Commission for the Demarcation and Delimitation of Provinces was appointed by the Negotiating Forum, which included all of the major political groups engaged in the talks.<sup>90</sup> The Commission was also provided with a group of technical experts to assist with public consultation, undertake research, give technical advice, and assess the public comments and proposals.<sup>91</sup> The main negotiation parties accepted the Commission's recommendations with minimal changes, and those suggestions are still used to demarcate the present provinces.<sup>92</sup>

The Commission was given 10 demarcation criteria by the Negotiating Forum, which it was to use to evaluate the public proposal and offer suggestions on the provinces' future make-up.<sup>93</sup> The public was encouraged to provide feedback to the Commission and to use the criteria as a starting point for their submissions.<sup>94</sup> It's worth noting that the Commission began its work with a blank slate, with no proposed demarcation plan or minimum or a maximum number of regions supplied by the Negotiating Forum. Members of the public and

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[processes/links/554f074c08ae956a5d230d81/Public-participation-in-provincial-legislative-processes.pdf#page=72](#) accessed on Aug 16, 2022

<sup>88</sup> Ibid

<sup>89</sup> George Anderson, 'Creation of Constitutional Units in Federal System' (2014)7 [constitutionaltransitions.org/wp-content/uploads/2017/05/Creation-of-New-Units-June-18pdf](#) accessed on Jan 11, 2023

<sup>90</sup> Bertus De Villiers, (n62)319

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid

political parties were thus free to suggest any number of provinces as long as they were tied to the delineation criteria in some way.<sup>95</sup>

The criteria of creation of the provinces were demarcated by the Commission for the following criteria's; Historical boundary, Administrative, Rationalisation of existing structures and institutions such as homelands, Limit financial costs as far as possible, Minimise inconvenience to people as much as possible, Minimise the dislocation of existing and future services, Demographic and future movement patterns, Development potential, Cultural and language realities.<sup>96</sup> The commission was obligated to consider all of these criteria and to evaluate the ideas submitted by the public using those criteria.<sup>97</sup> The Negotiating Forum expected a well-balanced, studied, and politically neutral report after establishing criteria for demarcation and inviting an experienced Demarcation Commission to make recommendations.<sup>98</sup> The Commission advocated the formation of nine provinces based on the aforementioned criteria, and these recommendations eventually became the foundation for the provinces of the South African federation as they exist today.<sup>99</sup>

The Commission's work was done in public, and its recommendations were subject to public scrutiny and criticism. A variety of variables were examined by the Commission, including "language and culture."<sup>100</sup> Although "culture and language" were not major criteria when the South African provinces were founded, South Africans' living patterns had a significant effect in determining final provincial boundaries.<sup>101</sup> In general, the major South African ethnic groups were indirectly accommodated inside their respective provinces in regions where they were the majority.<sup>102</sup>

The criterion of "cultural and linguistic reality" presented the committee with a unique problem. For instance, Mokate argued the need for the structuring of constituent unites of South Africa in a manner that avoids legacies of apartheid, in the following:

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<sup>95</sup> Ibid

<sup>96</sup> Ibid, at, 334

<sup>97</sup> Ibid, at, 35

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Ibid

*“We had to take in mind that when we demarcate the provinces, we couldn't perpetuate apartheid's legacy either ethnic divides from the Bantustan era or through provinces that would maintain apartheid's spatial economy.”*<sup>103</sup>

The commission was not only ill-equipped technically to carry out its task, but it was also navigating a minefield of political difficulties. The South African government had never conducted a population census, and other official numbers did not include the homelands, implying that apartheid's goal was to keep the homelands out of the country. To keep its promise to utilize objective criteria to define the country's new province borders, the committee had to rely on data from other sources.<sup>104</sup>

Although there has been some criticism of the quality of government in some provinces, the actual provincial borders have not been challenged by the public.<sup>105</sup> Except for a few local difficult areas where certain populations chose to be in one province over another, one might argue that the 1993 delineation conclusion has been consistently legitimized by widespread public acceptance.<sup>106</sup> South Africa faced a variety of administrative and financial problems as a result of the formation of provincial administration.<sup>107</sup> To begin with, nine new provinces needed to be established for electoral and administrative purposes. Former homeland administrations had to be merged with apartheid-era regional structures in some circumstances, while new provincial legislatures had to be created from the ground up in others.<sup>108</sup>

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<sup>103</sup> Tumi Makgetla and Rachel Jackson, 'Negotiating Divisions in a Divided Land; Creating Provinces for a New South Africa.'(1993)7

[successfulties.princeton.edu/publications/negotiating-divisions-divided-land-creating-provinces-new-south-africa-1993-0](https://successfulties.princeton.edu/publications/negotiating-divisions-divided-land-creating-provinces-new-south-africa-1993-0) accessed on Jan 16 , 2023

<sup>104</sup> Ibid

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> David Pottie, 'Provincial Government in South Africa since 1994' (2000)38

[kas.de/documents/252038/253252/7\\_dokument\\_dok\\_pdf\\_4883\\_2.pdf/fdc82838-ab00-4bae-7e15-ff1d88726720?version=1.0&t=1539666709260](https://kas.de/documents/252038/253252/7_dokument_dok_pdf_4883_2.pdf/fdc82838-ab00-4bae-7e15-ff1d88726720?version=1.0&t=1539666709260) accessed on Jan 13, 2023

<sup>108</sup> Ibid

#### 2.4.3.2. Challenges of New Province Creation

The final Constitution of 1996 reaffirmed the number of provinces along with their borders even the choice of province capitals presented a difficulty to the new administration. Five cities claimed capital status in the new Eastern Cape Province, for example, with the case finally being decided in favour of Bisho, the former city of Ciskei.<sup>109</sup> The fact that so many cities claimed the title indicates that the Eastern Cape government was formed from a variety of rival territorial administrations.<sup>110</sup> Similarly, a provincial boundary issue involving the Bushbuckridge region of the Northern Province was influenced by the choice of the provincial capital.<sup>111</sup> Residents chose to be served in Nelspruit, the Mpumalanga city, which is only two hours distant by vehicle, rather than Pietersburg, the Northern Province capital, which is an overnight journey.<sup>112</sup>

In the province of KwaZulu-Natal, however, a new solution was found in addressing capital city-related problems. Two cities, namely Ulundi and Pietermaritzburg are accepted as twin capitals of the province, and the provincial legislature rotates between them.<sup>113</sup> According to Lodge, this political allegiance is an indication that, despite the absence of official boundaries, popular political loyalties are being recreated around regionalism.<sup>114</sup>

The fact that the public accepts the provincial boundaries does not rule out the possibility of changing them, reducing the number of provinces, or adding new ones.<sup>115</sup> It's probable that, as in some other federal-style arrangements, boundary adjustments will be necessary from time to time.<sup>116</sup> However, this does not imply that province boundaries should be changed at will. If changes to provincial borders are utilized for political benefit, the system's legitimacy may decline, and calls for more boundary changes may develop.<sup>117</sup>

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<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Ibid

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Bertus De Villiers, (n62)319

<sup>116</sup> Ibid, 319

<sup>117</sup> Ibid

## **Chapter Three**

### **Legal and Practical Challenges of New Regional State Creation in Ethiopia: The Case of SNNPR**

#### 3.1. Introduction

Ethiopia adopted ethno-linguistic federalism in 1991 under the Transitional Charter.<sup>118</sup> The country was reformed into 14 autonomous states under a provisional federal administrative setup under the transitional charter. As a result, the transitional Charter Proclamation No. 7/1992 stated expressly that territorial area should be set based on ethno-linguistic to provide nationalities the right to self-determination. Under the proclamation, among the 64 identified ethnic groups, 48 were allowed to exercise self-government at the woreda level or above.<sup>119</sup> The other “nationalities or peoples which could not establish their woreda self-government because of the small number of their population” were defined as “minority nationalities”.<sup>120</sup> However, in the later periods the government amalgamated five South Regional State including self-governments into one regional state in this regional state the SNNPRS Gurage, Sidama, Wolaita, Basketo, and Kefficho.<sup>121</sup> The ruling party EPRDF prepared this kind of structure. The process of amalgamating various ethnic group happen by a top-down imposition and without consulting the affected ethno-linguistic communities. Through coordination, amalgamation, and unification of smaller ethno-linguistic entities in one region, the merger was meant to ensure efficient use of scarce resources and government budgets.<sup>122</sup> The promulgation of the FDRE constitution in 1995 formalized the unification of those southern regions. As a result, the SNNPRS is known for its great ethno-linguistic diversity. When the FRDE constitution was adopted, the territory consisted of 56 ethno-linguistic groups.<sup>123</sup> Currently, the regional state is in alarming requests of different NNPs for establishing their own regional state. The Federal government is trying to respond to such kind of requests using political instrument of cluster based statehood. The HoF in its extraordinary meeting on August 18, 2022 accepts the claim of Zones of Wolayta, Gamo,

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<sup>118</sup> A Proclamation Providing for the Establishment of National /Regional Self Government, 1992, Proclamation No. 07/1992, Neg. Gaz.

<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> FDRE constitution (n 4)

<sup>122</sup> Muluken Kssahun, (n13)148

<sup>123</sup> Ibid

Gofa, South Omo, Gedio, Conso Zones as well as Derashe, Amaro, Burji, Alie, Baskieto, Special Woredas to establish a new regional state, “South Ethiopia Regional State” and recommends for the NEBE to facilitate the referendum to that effect, within three months, and report the result of the referendum to the House.

Concerning the other region established in the FDRE constitution, the ethno-linguistic element played a paramount role. Under Art. 46 (2) of the constitution, states are to be “delimited based on the settlement patterns, language, identity, and consent of the people concerned”<sup>124</sup> As a result, a single or multiple indigenous ethno-linguistic groups dominate various regional states numerically and/or politically status.

The FDRE constitution as stated under Art.39 (2) recognizes the cultural rights of all ethno linguistic groups “...the right to speak, to write, and to develop its own language; to express, to develop and to promote its culture; and to preserve its history”.<sup>125</sup> In the same vein regional entities have been given exclusive power to determine their working language based on the linguistic structure of the group. Many ethno-linguistic groups become eager and visible to endorse their own inimitable identity either for recovering their values or for economic and political advantage. In principle, the FDRE constitution also allows the right to self-administration and equitable representation at both the regional and federal levels of government.<sup>126</sup>

At this moment, several ethno linguistic groups are pushing for the recognition of their distinct identity in addition to the already existing 49 native identities, while the already recognized ethno linguistic groups dissatisfied with their status-quo are laying various claims of self-government in the form of new Zones and Liyu Woredas, territorial re-demarcations to be united with their ethnic kin across (political and territorial) borders, and equitable participation in the territories they already reside.<sup>127</sup>

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<sup>124</sup> FDRE Constitution, (4)

<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> Beza Dessaleg and Niguse Afesha, ‘The Quest for Identity and Self-Determination in the SNNP Region of Ethiopia’ Mizan Law Review, Vol. 13, No.1 (2019)

### 3.2. Advantages of forming One's Own New Regional State

The most important achievement of the 1995 FDRE Constitution lies in its unequivocal recognition of the multicultural nature of the state. The constitution begins in its preamble with the recognition of the Ethiopian polity as a composition of NNP. It is discernable in its wording “we, the Nation, Nationality, and Peoples of Ethiopia.” This expression hints at the recognition of Ethiopia as the land of NNP. Furthermore, the constitution has established an ethno linguistic federal system that gave full recognition to ethnic autonomy, while maintaining the unity of the state.

Unlike the earlier constitutions of Ethiopia which do not strongly address the right of self-determination of NNP in full sense, the FDRE Constitutions not only unequivocally recognize the multicultural nature of the state but also acknowledge the right to self-determination of the NNP of Ethiopia. The preamble of the FDRE Constitution affirms that the Ethiopian NNP, on the one hand, have the right to exercise in full and free. Their right to self-determination, and on the other hand, are also strongly committed themselves to build, one political and economic community based on their common interests, common outlook and common destiny.<sup>128</sup> Thus, the right to self-determination of NNP is stipulated under the FDRE Constitution as the fundamental principle that guides Ethiopian society. This fact is further strengthened under Art.8 of the same constitution by stipulating that the NNP are the holder of the sovereign power and the constitution is the manifestation of their sovereignty. Moreover, Art.39 (1) of the constitution specifies that every NNP of Ethiopian has an unconditional right to self-determination including the right to secession. This provision has given recognition to both external as well as internal aspects of self-determination. The internal aspect of self-determination becomes the main concern of this paper which indicates the rights of NNP to speak, write and develop their languages as well as express, develop and preserve their culture; and preserve their history; to exercise self-rule and create a new state within the federation; to establish local government and have equitable representation in the state and federal institutions. In addition, the right to a full measure of self-government which includes the right to establish institutions of government in the territory that the NNP inhabits is also guaranteed by the both constitutions. These rights are considered the inherent rights of every NNP. Therefore, the issue of new regional state creation is one aspect of this right to

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<sup>128</sup> FDRE constitution, (n4)

self-determination of NNP under the FDRE Constitution. The constitution provides further stipulations mainly to lay the procedures for creating a new regional state(s) under Art.46-48.

Based on the above information, we can see 89the possible advantages of the right to self-determination in general and new regional state creation in particular. When a certain NNP creates its own regional state, it is clear that it is endowed with the authority to administer itself according to the constitution and its constitution. In addition to this, it further promotes its language and culture. Furthermore, after achieving the status of state hood the newly emerged or create states could be able to a direct link of the other regional states and federal government without additional bureaucratic procedures. This in turn results in the better representation of the NNP in the federal institutions, than in the case of Zonal and Special Woreda level structure. The other point is related with good administration. It was problematic, for some NNPs which are remote from the center, in the previous SNNPRS, which may be or not be vast territory and with different linguistic and cultural varieties. To better deliver of social, economic services for those societies in the remote areas of the regional state a new created regional state may justify how to address to its society easily.

Despite these possible advantages of allowing a new regional state creation, there are also plenty of draw backs in the constitutional provisions (both the federal and the SNNPRS constitutions) during administrates new regional state after accumulation of creation as well as the laws enacted for the sake of implementing the constitutional provisions. There are also practical challenges in the process of creating new regional states in SNNPRS in the ground that emanate from non-observance of the existing laws and from gaps in the laws.

### 3.3. Procedural Requirements for New Regional State Creation

Regarding the formation of new regional state creation the FDRE constitution under Art. 47 and the revised constitution of SNNPRS under Art.39 sub 5 and 6 provide the procedures to be followed by NNP to form their state, the SNNPRS constitutional provisions are verbatim cope of the FDRE constitution Art.47 subs 2 and 3. Enumerated the member states of the federation, under the FDRE constitution under Art.47 sub 2 and 3 state that “Nations, Nationalities, and Peoples within the state enumerated in sub-Art. 1 of this article have the right to establish at any time, their states.”<sup>129</sup> Furthermore, Art. 46 (2) of the FDRE constitution lists preconditions on how states are to be delimited. It is possible It read that

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<sup>129</sup> FDRE constitution, (n4)

states shall be delimited based on the settlement patterns, language, identity, and consent of the people concerned.<sup>130</sup> Thus, NNP who fulfilled the definition of Art. 39 (5) and preconditions laid in Art. 46 (2) can establish their state. Like the elements provided for the definition of NNP under Art. 39 (5), settlement patterns, language, identity, and consent of the people must be cumulatively present.

The first procedural requirements are that the demand for new regional state creation has to be approved by the Two-third majority vote of the members of the council of the NNPs concerned.<sup>131</sup> Although the two-thirds majority requirement is normally a high threshold, it is not difficult to achieve it in a campaign that is driven by nationalist sentiments. Then, if the demand is approved by a two-thirds majority vote by the member of the Council of the concerned NNPs, it should be presented in writing to the regional state council.<sup>132</sup>

Both federal and the revised constitution of SNNPRS stipulates that acceptance of the demand for the creation of a new regional state can be approved ‘by a two-third majority of the members of the council of the Nation, Nationality or People concerned’ is one of the procedural requirements for creating one’s own regional state.<sup>133</sup> This seems to suggest that the right is exclusively reserved for those ethno-linguistic groups having their council.<sup>134</sup> Even though the “Council” key role in the process of establishing a new regional state as the chief negotiator. However, one can safely consider such “Councils of Nations, Nationality or People Concerned” are the results of the right of every NNP to “a full measure of self-government which includes the right to establish institutions of government.”<sup>135</sup>

The second procedural requirement, after the presentation of the demand in written form, According to Art.47 (3) (b) of the FDRE Constitution, the Council that received the demand for the creation of a new regional state has the responsibility to organize a referendum within a year to be held in the NNP that made the demand.<sup>136</sup> As previously stated, if a two-thirds majority is achieved in the NNP Council demanding the formation of its own state, and if the demand is presented in writing by the concerned council members, the FDRE and the

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<sup>130</sup> Ibid

<sup>131</sup> Ibid

<sup>132</sup> Ibid

<sup>133</sup> Ibid

<sup>134</sup> Ibid

<sup>135</sup> Ibid

<sup>136</sup> Ibid

SNNPRS revised constitution do not reject the request for the formation of a new regional state, but rather allow organized the referendum to be held within a year.

Concerning the time to conduct the referendum, if the state council fails to organize a referendum within a year the right holder can do that by appealing to the HoF per Art. 25 of Proclamation No. 1261/2022 appeal to the HoF which can be exercised by the party which claims that its demand for regional State creation has not been executed within the time specified or alleges to have dissatisfaction with the decision.<sup>137</sup> As such complaint has to be presented to the House in writing by the Council of the NNP that claimed for the formation of a new regional State. The HoF is then expected to give a final decision on the issue within two years after receipt of the complaint.<sup>138</sup>

The FDRE constitution entrusts the power to an organized referendum to the relevant state council. In contrast, the Electoral proclamation charges the Electoral Board to organize all elections including referendums in order to create a new regional state. The FDRE constitution under Art.102 gives, clue which is mandated to organize and conduct the referendum, the constitution empowers the NEBE to conduct all elections activities in the country.<sup>139</sup> Accordingly, the amendment proclamation No 1133/2019 and 1162/2019 clearly articulated the power and function of the Board concerning holding a referendum. In National Electoral Board of Ethiopia Establishment Proclamation No 1133/2019 under Art. 7 (1), power and duties of the board “execute impartially any election and referendum conducted under accordance with the constitution and with election law”,<sup>140</sup> are given a given a mandate to register, administrative and announce the result after referendum to create a new state. To clarify, the cumulative reading of Art.3 (1) and Art. 6 (5) of proclamation No 1162/2019 shows that the Board was empowered to organize and hold a public referendum provided that there must be demand from other bodies of government most likely from the regional council as far as state formation is concerned.<sup>141</sup>

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<sup>137</sup> Proclamation No. 1261/2022’, (n12)

<sup>138</sup> Ibid

<sup>139</sup> FDRE Constitution, (4)

<sup>140</sup> “National Electoral Board of Ethiopia Established Proclamation No 1133/2019”, 25<sup>th</sup> year No 71 Addis Ababa 6<sup>th</sup> June, 2019.

<sup>141</sup> “The Ethiopian electoral, political parties’ registration and election’s code of conduct Pro. No 1162/2019” 25<sup>th</sup> year No 97 Addis Ababa 16<sup>th</sup> October, 2019.

Proclamation No.1261/2021, however, does not only envisage the possibility of the referendum not being conducted within one year, but it also gives the HoF two years to consider the appeal. The Proclamation gives more time for the HoF to consider the appeal than the timeframe to organize the referendum given to the State Council under the Constitution.<sup>142</sup>

Thirdly, the case of procedural of new regional state creations, after the NEBE collects and counts votes in the referendum especially the result is supported by the majority vote, the referendum results do not require an absolute majority mean that a simple majority is sufficient. The state council has to transfer its power to the NNP that has demanded sufficient majority vote during the new regional states creation become necessary.<sup>143</sup> The Ethiopian constitutional system states that when the state council transfers power to the concerned NNP, a new regional state is constituted. Both the FDRE constitution (Art.. 47 (3) (c) <sup>144</sup>and the SNNPRS revised constitution (Art.. 39 (6)) have this provision (d)<sup>145</sup>, and proclamation No 1261/2022 under Art. 25 (1) (d) declared that if the state is constituted, the state council will have transferred its power to the NNP that made the demand, among other procedures.<sup>146</sup> Nonetheless, neither the federal nor the SNNPRS constitutions and pertinent laws contain procedures or standards of legal issues lack for transferring such power to the new regional state.

The final point that the new regional state created by the referendum without any need for application becomes a member of the FDRE constitution, Some confusions still tend to emerged to the scene. As has been seen, at least constitutionally speaking, the federal government does not have any role to play in the process of creation of new regional state. If this argument is true, so how will is the federal government to have a notice of fact of the establishment of new regional state in the federation? The constitution must have provided at some length the mechanism of regulating the further relation of the emergent state and the central power. Moreover, it would be wise to provide the procedures of division of asset between the newly established state and former losing state. Failure of the constitution to regulate such controversial areas makes the process incomplete. Anyhow, whatever the

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<sup>142</sup> Tessema Simachew Belay and Habtamu Simachew Belay(59)

<sup>143</sup> FDRE Constitution, (n4)

<sup>144</sup> Ibid

<sup>145</sup> The revised Constitution of SNNPRS, (n8)

<sup>146</sup> Proclamation No 1261/2022, (n12)

irregularities of the procedure, the newly created state from now onwards becomes the equal member of the Ethiopian Federation, and enjoys the powers and responsibilities bestowed on the regional units by the constitution.

### 3.4. Legal and Practical Challenges of New Regional State Creation in the Case of SNNPRS

Unlike federations such as Nigeria, India and South Africa which have many experiences with new regional states creation, the Ethiopian federation was stable for about two decades.<sup>147</sup> This is even though the procedure for the creation of new regional states in the FDRE Constitution is highly ethno-linguistic centred. Currently, however, there are many demands for new regional state creation by different NNP of the SNNPRS.

There are apparent problems when we consider the way the claims of NNPs in the SNNPRS for the regional states, are being answered by the federal and regional governments and the constitutional requirements are consistent. Similarly, there are also clear challenges in the FDRE constitution to other federations, the revised constitution of SNNPRS, and other pertinent laws concerning regard to the creation of new regional states. This subsection, therefore, discusses the challenges that occur due to the legal and practical gaps or challenges.

#### 3.4.1 Legal Gaps of New Regional State Creation

Despite the presence of some provisions governing new regional state creation based on the FDRE and the revised constitution of SNNPRS and the constitutions of other federations, there are several issues during the implementation of creation a new regional state.

Every NNP has the right to establish its own regional state at any time under the FDRE and the revised constitution of SNNPRS ethnic-linguistic approach, regardless of the number of members. However, the Constitutions doesn't outline a clear process for the creation new regional state theoretical especially non-ethnic divisions for things like administrative effectiveness.

Besides, while exercising new regional states' creation, sharing of an asset between the new and existing states is one of the legal gaps. If the referendum outcome supports the formation

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<sup>147</sup> Tessema Simachew Belay and Habtamu Simachew Belay, (n59) 92-93

of a new regional state, the question of the division of property and debts is one of the critical concerns. It may create serious conflict after formation of new regional state.

The other legal gap is that, unlike some constitutions of federal states such as India and Nigeria, the FDRE Constitution has no provision governing creation of new regional states through merging of two regional states of NNPs.

The constitution doesn't prohibit the creation of multi-ethnic regions. However, with no clear procedures to be followed, it is not clear how this could be constitutionally materialized. For the issue of creating new regional states on non-ethnic lines does not seem to be supported by the spirit of the constitution. By making NNP the holder of the right, the constitution appears to have excluded the possibility of asking for separate regions on non-ethnic grounds.

### 3.4.2. Practical Challenges of New Regional State

#### 3.4.2.1. Failure to Consider Viability and Minimum Numerical Population Threshold;

The FDRE and revised Constitution of SNNPRS provisions empower every NNP in Ethiopia to have an unconditional right to self-determination. If claims that the concerns of creation of statehood are raised by different ethno-linguistic groups without considering their population size and their capacity to function as regional states there are may be same conflicts. It is this radical stance on self-determination that has shaped the content and procedure of the right to create new regional states in the constitution without any requirement to prove whether the NNP can function effectively as a regional state or not.

However, the Ethiopian new regional state creation approach does not consider the viability of the concerned NNP to form a new regional state from a political, social, and economic perspective.<sup>148</sup> Any ethno-linguistic group can claim the right to form its regional state at any time without concerning the capacity to exercise such right and bear consequential responsibilities. In reality, to claim creating one's own state, economic capacity, skilled manpower, and effective and operational institutional frameworks may be necessary for the exercise of the right. In our case, even if several ethno-linguistic groups may be said to have the capacity to exercise such rights and duties, many ethno-linguistic groups may lack the needed capacity, at least in their current state.

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<sup>148</sup> Muluken Kssahun, (n 13)167

With its sole focus on the rights and the interests of the NNP requesting new regional state creation, the procedure failed to consider several important concerns. As a result, the federal government has no role in considering the viability of the state. It has been indicated that in the newly created regional states, Sidama and South West Ethiopia, temporary economic problems were apparent in these regions at least at the beginning stage. Beyene Petros, who is Chair Person of the Ethiopian Social Democratic Party (ESDP) has the following to say regarding the possibility of economic challenges during the creation of new regional states in general and the actual economic challenges in the case of the new region, Sidama, which was liberated from the SNNP regional state last year in particular;

*'Higher budget deficiency may occur during new state creation. This has its own impact on the collection of income tax. The Sidama Regional State was in higher budget deficiency in which, though it was not clearly told, the regional state was preparing a telethon to collect funds'* <sup>149</sup>

He further clarifies that regional states have to cover their administrative costs' from their tax sources and they can do so if they the capacity to do. On the other hand, the budget to be allocated from the federal government to states is based on their population size.<sup>150</sup> Then it is difficult for small-sized states to cover their expenditure both from their own revenue sources (tax and non-tax sources) and from the budget to be allocated for regional states.<sup>151</sup> He also adds that although the regional state may have its own institution as a zone or special woreda, the structures and institutions needed to function as a regional state are more cumbersome as compared to the former and a substantial amount of budget is required to run these tasks.<sup>152</sup> Generally, to him, it is difficult for some of the other forthcoming prospective regional states to provide adequate social services such as schools, hospitals, and infrastructures like roads, etc. to the NNP.<sup>153</sup> Even in the case of the currently created regional states of Sidama and South West Ethiopia, regional states, there is no guarantee whether or not the existing economic challenges may be averted.

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<sup>149</sup> Interview with Prof. Beyene Petros, "Chair Person of Ethiopian Social Democratic Party," (ESDP), May, 25, 2022

<sup>150</sup> Ibid

<sup>151</sup> Ibid

<sup>152</sup> Ibid

<sup>153</sup> Interview with Muliye Welelaw, in HoF Identity Affair head, in Addis Ababa Ethiopia (June 14, 2021)

### 3.4.2.2. Sharing/Distribution of property immovable and special movable

The FDRE Constitution, the SNNPRS revised Constitution, and the pertinent subsidiary laws are silent as to the issue of distribution of movable and immovable common property after the approval of the referendum in support of new regional state creation. In this regard, Zeleke Belayineh has the following to say:

*“In addition to the absence of clear provision in the FDRE Constitution, the SNNPRS Constitution, and the subsidiary laws, in the case of Sidaama, the rules that would be applied in the case of secession and the Indian experience were applied. In accordance with that rule, the distribution of property was based on the population size. The problem is that since there was no recent population census, the population size can’t be accurate.”*<sup>154</sup>

Beza also agreed with the above connotation by comparing the Indian and the Ethiopian experience becoming the issue. By the time of the new regional state's creation, a population census was held in India and the distribution of property was made accordingly. However, in the case of Ethiopia, he said that even if we made the distribution of common property based on the current population size due to a lack of clarity on the issue in the FDRE Constitution. The SNNPRS Constitution, and the relevant subsidiary laws, since population census was not held at this time as it has its impact on the matter.<sup>155</sup>

As has been noted in the previous chapter, regarding asset sharing, the Indian experience shows that the legislature enacts a law that regulates sharing of assets and prevented further conflict. One of the most pressing challenges is the distribution of property and debts. Other federation countries distribute assets and debts based on the population ratios of the previous and new regional states. For example, the Indian government utilized the 2011 population census to distribute both assets and debts across Telangana and Andhara Pradesh.

By contrast, the FDRE constitution in dealing with the right to new regional state creation provides both substantive and procedural provisions to be followed in the exercise of new regional state creation. One of the gaps it left was provisions that provide guidelines for property apportionment. It does not provide procedures and guidelines on how and by which

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<sup>154</sup> Interview with Zeleke Belayineh, “the Southern Nation, Nationalities and People Regional State Federation Conflict Resolution peace building and Constitutional Values Study Directorate Director,” March,3,2021

<sup>155</sup> Interview with Beza Dessalegn (PhD), Assistant Professor, College of Law and Governance, School of Law, Hawassa University. March 2, 2021

law the division of assets is to be made. By the same token, the SNNPRS constitution provides nothing about the apportionment of sharing property. But by the time the new regional state Sidama, secedes from the SNNPRS, it regulates the process of asset and liability sharing with a motion in detail, from the experience of India. Not only in the case of Sidama but the same was also applied in the case of another new regional state the South West Ethiopia Regional State. Thus, unless and otherwise asset sharing is regulated by further laws, it will be a potential cause for further disputes and could cause instability between NNP and between the emerging state and the existing state.

#### 3.4.2.3. Protection of Minorities within Minorities

Protection of minority rights is one of the main problems during new regional state is created. In this regard, Jon Abbink puts it, the federalization and boundary creation along ethnic lines especially in the multifaceted SNNPRS, can lead to a kind of multiplication of levels of oppression and feeling that the small ethnic groups are excluded from power.<sup>156</sup> The point here is that though the constitution provides the right to internal self-determination, there are no laws that safeguard the rights of minorities, procedures, and guidelines/ opportunities for minorities/ whether they want or do not want to join the newly formed states or remain with the former state. Hence, the right of minorities within such a diverse society remains a practical challenge. On the one hand, it solves the quest for self-determination and at the same time up with other problems.

The Ethiopian approach only considers the formation of a new regional state from the perspective of the right of claimant ethno-linguistic groups and is silent on the fate or the right of new minorities during and after the formation of the new regional state creation. Demanding the formation of a new regional state without clear legal provisions that regulate the legal and institutional framework to guarantee the individual and group right of minorities may jeopardize the rights and interests of non-indigenous ethno-linguistic groups of the new regional state.

In this regard, in the case of Nigeria's new state creation Okoh, who argued that minorities who do not have their own state got worse protection within the states they inhabit if

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<sup>156</sup> Jon G. Abbink, 'New Configurations of Ethiopian Ethnicity: The Challenge of the South, Northeast African Studies', New Series, Vol. 5, No. 1 (Michigan State University Press ((1998)59-81).70  
[jhu.edu/pub/26/article/399110/pdf](http://jhu.edu/pub/26/article/399110/pdf) accessed on Jan 07, 2023

discriminated and neglected happen in a new created states, another case may initiate to create a new regional state creation because it usually results in stimulating them to have their own state.<sup>157</sup> He further asserts that because Nigeria can never accommodate all its minority groups through different forms of territorial autonomy and other approaches may be necessary to protect these minority groups, particularly those minority groups which are found in the territory of a state controlled by another titular ethno-linguistic group.<sup>158</sup>

However the Ethiopian federal system empowers and accommodates ‘the Nations, Nationalities and Peoples’, primarily through the provision of political and territorial autonomy especially geographical concentrated ethno-national groups manifest clearly.<sup>159</sup> The major ethno-national groups have established their own regional states with their own constitutions and mandates. Of the eleven regional states, seven of them (i.e. the Afar, Oromo, Amhara, Tigray, Somali, Sidama, and Harari) directly represent the empowerment of specific ethno-national groups resulting in what is nick-named as ‘ethno-linguistic group federalism.’ No ethnic group, such as the Oromo in Oromia, the Somali in Somalia, and the Sidama in Sidama the owner of the regional state, is eligible for statehood because the owners have already founded their own states.

The FDRE constitution begins in its preamble with the recognition of the Ethiopian state as a composition of NNP of Ethiopia. It is discernable in its wording “We, the Nations, Nationalities and Peoples of Ethiopia.” This expression hints at the recognition of Ethiopia as the land of NNP and with that tacitly as the land of minorities, in whatsoever criteria minority may be defined in the Ethiopian context.

The most important article about minority rights may be described as follows: Under the FDRE constitution Art.5 (1) states that “all Ethiopian languages shall enjoy equal state recognition.”<sup>160</sup> The revised constitution of the SNNPRS provisions is a copy of the federal constitution. The recognition of all Ethiopian languages, the independence of several speakers, and whether they are regional or minority languages is an important step toward the implementation of minority rights in Ethiopia. Since language is the main cultural marker that differentiates minorities from the majority and enables the existence of a minority as an identified group.

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<sup>157</sup> Bertus de Villiers, (n 62)327

<sup>158</sup> Ibid

<sup>159</sup> FDRE Constitution, (n 4) Art. 46 (2).

<sup>160</sup> Ibid

Art. 8 (1) of the FDRE constitution states that “all the sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.” Since Ethiopia is recognized here as a composition of NNP and hence all NNP, whether large or small number are the sovereign power holder. So, implicitly minorities in Ethiopia are recognized as the founders of the Ethiopian polity. This is a wider recognition of minority rights albeit implicitly. The federal constitution guarantees all ethnic groups equitable representation in state and federal government 39 (3) of the FDRE. Concerning minority rights, though not clearly defined who the minorities are, shoes representing the constitution which reserves 20 seats in the lower house<sup>161</sup> and at least one and one additional for each one million population in the upper house.<sup>162</sup>

The SNNPRS government has a bicameral parliament similar to the federal government structure, replicating the structure of the federal parliament.<sup>163</sup> One of these houses the Council of Nationalities is composed of representatives of NNP present in the state. Each group is entitled to at least one member. With additional members allocated depending on population as per Art.58 (1) and (2) of the SNNPRS revised constitution<sup>164</sup> and the consolidations of the house of the council of Nationalities and definition of its powers and responsibilities with proclamation No. 60/2003 under Art.47 (1).<sup>165</sup> Here, each NNP shall have one additional representative for one million of its population.<sup>166</sup>

However, in practice, this representation is limited to the endogenous groups of the Southern region. It also provides for a different mechanism of guaranteed representation at the regional level. Through the guarantee of reserved seats for minority groups, all endogenous groups are assured of representation in the first chamber of the regional parliament. But, the Council of Nationalities, the second chamber, is largely responsible for ensuring ethnic representation in the regional parliament. In this organ, all endogenous ethnic groups have at least one representative. Such guaranteed representation is not assured in the executive council, but there is as yet no indication to doubt the ethnic representativeness of the executive. Finally,

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<sup>161</sup> Ibid, Art. 54(3)

<sup>162</sup> Ibid, Art. 61(2)

<sup>163</sup> The Revised Constitution of SNNPRS, (n8)Art. 48

<sup>164</sup> Ibid

<sup>165</sup> DEBUB NEGARIT GAZETA OF THE SOUTHERN NATIONS, NATIONALITIES AND PEOPLES REGIONAL STATE, “The consolidations of house of council of Nationalities and definition of its powers and responsibilities proclamation No 60/2003, 8<sup>th</sup> year No.9 Awassa 29<sup>th</sup> June2003”.

<sup>166</sup> Ibid

the organ that is competent for constitutional interpretation has to be as inclusive as to accommodate these scattered ethnic minorities.

Not only that, the zones found in the SNNPRS; are also claiming to have their own regional state. In addition to this, more than 28 minority groups, in the same regional state, are also claiming the recognition of their identity. These minority groups, in addition to the fact that they were not represented in the council of nationalities, one of the main questions raise is that the previous suppression by the dominant group may go to its apex when the quest for statehood is accepted.<sup>167</sup> They have the fear of assimilation and violation of their rights by the newly created regional state. And in fact, it is. For instance, if we look at the constitution of the regional state of Sidama, despite the presence of minority groups in the regional state, it says that the constitution belongs to the people of Sidama. Thus, in addition to prohibiting from sharing the supreme power by the minority groups, its contradiction with the federal constitution is practically apparent. This is because the right to self-determination of the minorities in this regional state as envisaged in the federal constitution can't be fully implemented.

One of the zones which claimed to have its own regional state is the Gurage zone. There are unrecognized communities in that zone. These communities fear assimilation and violation of their rights by the dominant group claiming to have its own regional state. In addition to this other woreda councils in Gurage zone, were repeatedly, remarking against the claim of statehood by the zone. A prominent example is the Wellenie Community. Although the Wellenie Community has been claiming the recognition of its identity, it does not get any response yet to its claim. As a result, the right of minority groups is not being protected as provided in the law.<sup>168</sup>

The other practical challenge for internal self-determination within a diverse society is that territory which could contain valuable assets, infrastructure natural resources and the territory which is involved may contain historical or religious of particular cultural importance to members of one community or another.

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<sup>167</sup> Petros W/Senibet, 'the members of HoF, Identity and Administrative boarder directorate', and before the members of HoF, he was the SNNPRS Nation Nationality Council member, Mar 1/2022

<sup>168</sup> Ibid

#### 3.4.2.4. Relating to Border Demarcation

One of the challenges of new regional state creation in the SNNPRS is the border demarcation, Territorialisation in a federal setup will always bring some conflict some ethno-linguistic groups "on the wrong side" regardless of how boundaries are drawn.<sup>169</sup> Although the goal of creating ethno-linguistic group is to create a political community within a specific territory that can express its wishes only creation group's homeland through self-rule while also participating in the larger context through shared rule, no territorial unit can be completely homogeneous.<sup>170</sup> The worry is that, under such circumstances, minorities who would become majorities may abuse their new found authority to oppress and discriminate against their own minorities.<sup>171</sup>

The SNNPRS region is not an exception to the border demarcation practical challenge. Various ethno linguistic group disputes have erupted revolving around border areas with others ethno-linguistic groups. The border conflict for delimitation can be identified as internal or external. The main reason to raise issues of border delimitation among other regional states, Zones, Woredas, and Special Woredas in the region which is the interest to live with neighboring people that have similar psychological makeup, language, culture, and history.

The risk of boundary-related conflict should be seen in the light of the already existing growing incidents of ethno-linguistic group conflict over identity and territorial issues. A proliferation of new regional states following the ethno-linguistic group approach enshrined in the constitution might exacerbate this problem. Since the approach denies other concerned groups to have a say in the process of new regional state creation, the disagreements on the need of creating a new regional state might be manifested in the form of territorial disputes. In the SNNPRS, a region with numerous new regional state creation questions being raised at a time, the capacity of a potentially disintegration regional administration to solve interethnic disagreements over territory is likely to be limited.<sup>172</sup>

The drawing of boundaries led to the generation of violent conflicts among various ethno-linguistic groups and almost in all border areas of regional states. The Ethiopian federalism

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<sup>169</sup> Beza Dessalegn and Niguse Afesha (n 127)82

<sup>170</sup> Ibid

<sup>171</sup> Ibid

<sup>172</sup> Tessema Simachew Belay and Habtamu Simachew Belay, (n 59)120

system as based on ethno-linguistic federalism, and administrative boundary delimitation is being applied in a manner that generate conflicts between the ethnic groups. The constitutional ethno-linguistic federal arrangement has been managed by those in charge implanting it in a way that provokes ethnic boundary conflict.

The FDRE constitution under Art.48 provisions concerning “state border change” which is expressed as all state border disputes to be settled by an agreement of the concerned States in dispute and when they fail to reach an agreement, the HoF has the power to decide such disputes based on settlement patterns and the wishes of the peoples concerned within two years, render a final decision on a barney submitted to it.<sup>173</sup>

Various ethnic linguistic group disputes have erupted revolving around border areas between ethno-linguistic groups. As a solution to the problem, boundary demarcations and re-demarcations have occurred. In the context of the SNNP region, redrawing of boundaries mainly refers to: (i) redrawing the Zonal or woreda/special woreda boundary with other neighbouring, and (ii) redrawing (or requesting to re-draw) internal boundaries to resolve a dispute between ethno-linguistic groups in two sub-regional administrations (Zones or Woredas/special woreda).<sup>174</sup>

In the Ethiopian border demarcation, there is no officially recognized and accurate boundary delimitation of regional states. From the outset, there is no clearly developed mechanism of drawing boundary not only in this particular area, but also at the national level. And the boundaries delimited by whatever mechanism are not flawless. All boundaries are approximate and unofficial. Even the boundaries of the zonal administration are inaccurate and traditional. Consequently, many conflicts have erupted between some zones and still it is an unresolved issue. For instance, the conflict between the Wollayta zone and Sidama regional states, Sidama and Oromia, Gurage Zone, and Silite Zone conflicts, are caused due to practical challenges associated with lack of clearly demarcated administrative boundaries and struggle for use of natural resources.

The other feature of conflict prevalent in the area emanates from border issues and natural resources arising as a result of the creation of a new regional state and mere claim of land and resources have to be distinguished between ethno-linguistic groups. To pick some examples,

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<sup>173</sup> The FDRE constitution, (4)

<sup>174</sup> Beza Dessaieg and Niguse Afesha (n 127)82

of the natural resources conflicts the Burji and the Kore groups were frequently attacked by the numerically dominant neighbour the Guji. Like Burji and Kore of the Konso were conflicted with the neighbouring Borena Oromo on a claim of the fertile Segen area coming from Borena Zone in a place called Teltele, and their claim has not yet ceased. The regional government as well as the Burji and Amaro local officials have been convinced that if they were organized with the other three Woredas, they would smoothly manage to resolve the border issue in cooperation.<sup>175</sup>

Ephrem Madebo (Politician and chairperson of the board of ESAT TV) has the following to say regarding to border demarcation conflict, When zones and Woreda/special Woreda's are demarcated, they empower a certain groups (societies) who live in that nation who consider they are the only owners of that zone or Woreda/special woreda. In such a case, since ownership is given to a certain groups in that nation (not to all residents who live in specific zone or special woreda), it is clear that the rest of the residents who are considered to be not indigenous to that area will be alienated from the right of ownership of that particular zone or special woreda.<sup>176</sup>

The border between Sidama regional state and Wolayta zone is marked by tracts of forest land, but today it is difficult to trace these boundaries because of deforestation. It is reported that stone walls were constructed between Sidama and Wolayta. But these were mainly defensive, and in general, there were no artificial boundary markers to separate one province from the other.<sup>177</sup>

Although the tendency is that the Zones and Woredas/special Woreda are becoming regional states in the status of the territory they have at the time and the territory they are levying taxes on, that does not mean, however, there will not be border disputes in the future after the formation of the new regional state. There may be some border disputes particularly due to the absence of clear border demarcation standards at the national level and the fact that the disputes at Zone or woreda or special woreda level border disputes are different. In the disputes at zones, Woredas, and special Woredas the disputes are mainly communal whereas,

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<sup>175</sup>Lovise Aalen, 'the politics of Ethno linguistic groupity in Ethiopia; Actors, Power and Mobilisation under Ethno linguistic group Federalism', (2011)164.

[cmi.no/publications/file/769-ethnic-federalism-in-a-dominant-party-state](http://cmi.no/publications/file/769-ethnic-federalism-in-a-dominant-party-state). Last visit: 8/16/22

<sup>176</sup> Ephrem Madebo, Politician and chairperson of the board of ESAT TV, Feb, 18/2022

<sup>177</sup> Lovise Aalen, (n175)165

when it comes to regional state disputes the intensity of the claims as well as the disputes will arise.<sup>178</sup>

Jhon Abbink summarized the problem of the administrative border as follow:

*“Borders between regions, zones and districts have been the recurring issue of dozens of conflicts, many of them violent and with numerous casualties.”*

Consequently, the establishment of an institution like the HoF, Administrative Boundary and Identity Issues commission at the federal level, and the SNNPRS level at the Council of Nationalities shows how particularly the boundary delimitation which is a challenge in the Ethiopian federation and the new regional state creation. The point which the main concern of this study know how the conflict becoming intensifying when the need of creation new region by including various regions, zones, Woredas/special and Woredas of the SNNPRS.

As federal level, lack of clear administrative boundaries has been a cause of practical problems and become challenging of new regional state, the creation of new regional states which are realized in the previous region and other region.

#### 3.4.2.5. Relating to the Capital City

One of the challenges after the new regional state creation in the capital city, the controversy related to the capital city is also another sensitive, particularly if the capital city of the existing region is located in the territory that claims to form a new regional state. The most debated and controversial issue of concern with the establishment of the new regional state in Sidama and the SNNPRS has been the status of the capital city. Concerning the challenges relating to determining the capital city, the trend during the creation of the Sidama regional state revealed that both the regional governments of SNNPRS and the regional state of Sidama agreed and signed their government’s sit to be at Hawassa for the next 10 years.<sup>179</sup> In addition to this, the constitution of the newly created regional state of Sidama under Art. 6 provided that Hawassa shall be the capital city of the Sidama regional state.<sup>180</sup> However, the

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<sup>178</sup> Prof. Beyene Petros (n 149).

<sup>179</sup> Kjetil Tronvoll, with Filata Boroje and Kairedin Tezera, ‘The Sidama’s quest for self-rule: A study of the referendum on regional statehood.’ (European Institute of Peace. (January 2020)31 [eip.org/wp-content/uploads/2020/06/Sidamas-quest-for-self-rule.pdf](http://eip.org/wp-content/uploads/2020/06/Sidamas-quest-for-self-rule.pdf) accessed on Jan 17, 2023

<sup>180</sup> A Proclamation to Pronounce the Coming In to Effect of the Constitution of the Sidama National Regional State No. 1/2020

constitution does not indicate where the capital city of the SNNPRS shall be after the lapse of the specified 10 years. This seems in line with the experience of the Indian federation in the determination of the capital cities of Telangana and Andhra Pradesh regional states by the time Telangana separated from the latter in 2014. Hyderabad is the capital city of Telangana and served as the capital of Andhra Pradesh before Telangana claimed to form its own state. When the Indian parliament authorized the formation of Telangana, it determined that Hyderabad would serve as the joint capital city of Telangana and Andhra Pradesh for a duration of ten years. After the specified term has expired, Hyderabad will be the sole capital of the state of Telangana.

On the other hand, during the creation of the South Western Ethiopia regional state, the Bench Sheko Zone claimed the interference of the HoF to help the determination of the region's capital city. However, under Art.6 of the constitution of the newly created South Western Ethiopia regional state, there is no indication about the capital city of that regional state. The constitution indicates that there has to be more than one capital city for the regional state in question.<sup>181</sup> But the committee established for the determination of the capital city recommended Bonga to be the capital city of the South Western Ethiopia Regional State. In this case, the Bench Sheko zonal council objected to the recommendation of the committee. Thus, as the above experiences show that the absence of specific laws and clear guidelines determining the capital cities during the creation of new regional states is one of the challenges as far as legal and practical challenges concerning the creation of new regional states are concerned. Similarly, in the case of SNNPRS too, determining where the capital city should be when the new regional state is created is one of the typical challenges. Particularly, considering the statehood claims of many zones, and Woreda's in the SNNPRS, the determination of capital cities has been a clear challenge after the creation of the new regional states. This is because, most of the time, the issue of center of the region is considered as an ancillary one and it is not to be considered at the first stage of the process of new regional state creation.

The fact that the previous capital city of the SNNPRS was Hawassa and now this capital city will be given to the newly created Sidama Regional State, after 10 years, creates some sort of

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<sup>181</sup> The draftee Constitution of the South West Ethiopia,( የደቡብ ምዕራብ ኢትዮጵያ ህዝቦች ክልል ረቂቅ ህገ መንግስት)

interests for preferring as much as possible to bring the center of the remaining part of the SNNPRS to their own territory. This is because these NNPs which were under the previous SNNPRS may have grievances when their previous capital city is taken by the NNP in which the capital city is situated by the time the latter (Sidama) becomes a self-governing regional state. This grievance may lead for each NNP to claim the center of the new regional state to be in its own territory. This is what clearly observed in the newly created South West Ethiopia Regional State which comes by the merger of different ethno-linguistic groups. Similarly, the HoF accepts the claim of Zones of Wolayta, Gamo, Gofa, South Omo, Gedio, Conso Zones. As well as Derashe, Amaro, Burji, Alie, Baskieto, Special Woredas to establish a new regional state, “South Ethiopia Regional State” and recommends for the NEBE to facilitate the referendum to that effect, within three months, and report the result of the referendum to the house. Due to the above stated grievance of NNP of the previous SNNPRS and from the lessons of the South Western Ethiopia Regional State, it is clear that the determination of the capital city of the forthcoming South Ethiopia Regional State will be too problematic. The absence of clear laws or guideline for selecting a capital city in Ethiopia in general and in SNNPRS in particular, aggravates this issue. Had it been for some laws and guidelines for the selection of capital city, this problem could have been reduced to some extent.

## **Chapter Four**

### **Conclusion and Recommendation**

#### **4.1. Conclusion**

The FDRE Constitution provides substantive and procedural requirements for the creation of new regional states. Three multi-ethnic federations have been discussed in this paper.

First one is that the formation and reorganization of the state, in Nigeria, India and South Africa, is determined or confirmed by a law (s) which enacted by the federal government. Thus, the issue of new regional state creation, in these three federations, is not left to the regional and local administrative unit only. Second, a legal structure for extinguishing and integrating an existing state, in these three federations, is also legally designed. For instance, Indian federation encompasses wider scope with respect to the readjustment of the boundaries and alteration of area, name and admission of new regional state in its laws. Third, class which concerns about the criteria, legal and practical challenges of new regional state creation shall be answered. In all the three countries looked at the federal government and the political party had great role to be played while forming new regional states.

The criteria of the FDRE and SNNPRS constitution adopted for the new regional state creation is the narrowest of others federations. That is to say it pays no attention to many criteria which is stipulated in the rest of the examined federations. For instance, failure to consider the viability and minimum numerical population; absence of clear guidelines in the constitutions (both the federal and the SNNPRS constitution) as well as in the subsidiary laws for the sharing of an asset between the new and existing states is one of the main legal gaps resulting in many practical challenges in the implementation of current claims of statehood in SNNPRS. The other gap of the FDRE Constitution, the SNNPRS Constitution and pertinent laws, resulting to practical problems in new regional state creation is that they failed to include guidelines and procedures on how asset sharing/distribution between the existing and new regional states can be created in the absence of agreement to that effect. They are silent on how and by which laws the apportionment of the assets can be done and who the participant can be. Unlike in the case of other federations, protection of minority rights with the new regional state creation, and political viability are not taken into consideration in this regard under the Ethiopian federation.

Border demarcation also is one of the main practical challenges of new regional state creation in the SNNPRS. Since the Ethiopian system of federalism is based on ethno-linguistic

federalism, administrative boundary delimitation is one of the major practical challenges and a source of conflicts between the ethno linguistic groups. New regional state creation inter alia involves territorial reorganization and other complicated administrative issues that cannot be left to regional states level only. In the case of India and Nigeria the power is given to the federal government, where as in South Africa it is given to the main political party. The FDRE constitution and the revised constitution of SNNPRS, to gives the power of the referendum is the concerned NNP only. The Ethiopian legal framework does not include the role of the federal government and SNNPRS government in the time of new regional state creation, but it permits them to facilitate the referendum.

The absence of laws and guidelines for the determination of capital city also is another challenge. After the creation of the new regional state, the controversy related to the capital city that emanate from the absence of clear laws in this regard, is found to be another sensitive problem in the case SNNPRS. This is particularly aggravated if the capital city of the existing region is located in the territory that claims to form a new regional state such as the case of Sidama. The different zones and Woredas, currently going to be merged to form a new regional state are facing this challenge from the outset.

#### 4.2. Recommendation

The researcher provides the following major recommendations in light of the challenges which are identified in this research;

- It is recommended that the federal and the SNNPRS governments must have legal process during forming a new regional state. That is to say that the political decisions in the process should always have a legal ground. Since the federal government and concerned state should establish better legal principle in the case of any formation of new regional state.
- Boundary demarcation issues between the new regional state and other regional states should be solved by securing the consent of any particular regional state having their boundaries changed. The HoF should come up with clear legal standards for such kind of boarder disputes.
- The Ethiopian federal framework should also be reviewed to enable state reorganization-like boundary and state merger readjustment will be reduced. Particularly, the constitution should include merge of different NNPs so that they may collectively established a regional state.

- Uniform law that provides procedures and guidelines for asset sharing between the new regional state and the existing state should also be enacted. For example, Asset sharing has a vast scope and complex concerns that cannot be resolved at the regional level alone. Therefore there must be a role of the Federal government.
- The FDRE and the SNNPRS constitution provide full protection to all citizens and political groups who are representing minorities.

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#### IV. Interviews

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Interview with **Beza Dessaegn**: LLB, LLM, PhD, Assistant Professor, College of Law and Governance School of Law, Hawassa University. March 2, 2021

Interview with **Ephem Madebo**, Politician and chairperson of the board of ESAT TV, February, 18/2022

Interview with **Muliye Welelaw**, in HoF Identity Affair head, in Addis Ababa Ethiopia, June 14, 2021

Interview with **Petros W/Senibete**, 'the members of HoF, Identity and Administrative boarder directorate, March 1/2022

Interview with **Zelege Belayineh**, the Southern Nation, Nationalities and People Regional State Federation 'Conflict Resolution peace building and Constitutional Values Study Directorate Director, March 3, 2021