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**The Empowerment of Local Governments as a prerequisite for Self-Determination: the assessment of legal and institutional framework of Sidama zone, in SNNPR**

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**A Thesis Submitted To the School of Law of Addis Ababa University  
In Partial Fulfillment of the Requirement of Master Degree in Constitutional and Public Law**

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**March 2015**

## Declaration

I, **Merko Melese Nigatu**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation.

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## **Acronyms**

FDRE	The federal democratic republic of Ethiopia
FM	Frequency Modulation
GEN.Ass	General Assembly
HPR	House of Peoples Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SNNPR	Southern Nations Nationalities and Peoples Region
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization

## Abstract

*Self-determination as a sensitive content of world's legal and political issue passed through many ups and down to get the current international customary law status. It was contextualized as per the dynamic nature of world political and legal realities. Accordingly in the time of colonialism, it was considered as an apparatus of restoring independence whereas after the end of colonialism the notion of self-determination become the issue of all ethnic groups all over the world, which are snatched their political, economic and cultural rights by the clear tyrant nature of governments or swallowed by the majority rule of democracy. Ethiopia is a good example of trying to rule different ethnic groups in a single ruling system and by a single cultural oriented ideology. Like other countries experiences such efforts of Ethiopia did not compromise the diversity nature of the country and it becomes that self-determination is the way out of such crisis. But due to the deeply divided nature of the peoples there is still a problem of mainstreaming of the elements of self-determination. Beyond being part of the mere administrative structure of government, local governments should be the apparatus of mainstreaming self-determination since a single ethnic group occupy a local government. This paper attempts to examine whether the current federal structure of Ethiopia does enable to access the elements of self-determination by all nations, nationalities and peoples or not. It is also tried to show the importance of local governments in the equally and justly accessing and truly exercising the right of self-determination. To show such facts the Sidama zone legal and institutional framework is examined.*

**Key words:** *Self-determination, Self-government, disposal of natural resources, preserving of culture, history and language, empowerment of local governments, Sidama zone*

# CHAPTER ONE

## 1.INTRODUCTION AND ORGANIZATION OF THE PAPER

### 1.1. Background of the study

The modern concept of self-determination can be traced to the peace accord of Westphalia in 1648. Scholars almost invariably commence their analyses of self-determination with the peace of Westphalia, or the Jefferson or Wilsonian assertions that found normative expression in the United States constitutions and the peace of Versailles respectively.<sup>1</sup>

Like other legal and political philosophies, the birthplace of self-determination is not gone far from the Greek-Roman civilization. It has been drawn through the labyrinth of western history and development from Greece city states to Westphalia to the French and American revolutions to the Wilsonian claim<sup>2</sup> that “every territorial settlement involved in the WWI must be made in the interest and for the population concerned, and not as a part of any mere adjustment or compromise claims amongst rival states.”<sup>3</sup>

During WWII Self-determination emerged in two ideological forms that reflecting the differing worldviews of the east and the west. In Western Europe the concept of self-determination derived from the enlightenment ideas of popular sovereignty and representative government and Woodrow Wilson was considered as the figure of the western thought of self-determination. He was criticised as he was intended to apply the principle of self-determination unconditionally to the European peoples but not necessarily to peoples under colonial rule.<sup>4</sup>

In the central and eastern Europe the concept of self-determination was primarily based on the phenomenon of nationalism. Unlike the western European concept, the eastern and central

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<sup>1</sup> Oloka-Onayango, Joe. "Heretical Reflections on the Right to Self-Determination: Prospects and Problems for a Democratic Global Future in the New Millennium." *Am. U. Int'l L. Rev.* 15 (1999): 177

<sup>2</sup> Ibid

<sup>3</sup> Thomas A Barieley, *Woodrow Wilson the lost peace* 335(1944), quoted in Oloka-Onayango, Joe. "Heretical Reflections on the Right to Self-Determination: Prospects and Problems for a Democratic Global Future in the New Millennium." *Am. U. Int'l L. Rev.* 15 (1999), note 121

<sup>4</sup> Roepstorf, Kristina. "lawand development. org., 8

Europe concept of self-determination was highly linked with the ethnic and cultural factors, which was thought by Lenin as a pre-condition for peace in the world by applying to all non-European peoples under a colonial rule.<sup>5</sup>

The increasing of the sense of independence of many colonized countries in Africa and other countries, the view of Lenin started to replace the Wilsonian view. In the cold war the split between the two ideological approaches to self-determination was represented by the Soviet Union on the side and the European powers on other side.<sup>6</sup> The Soviet Union approach was concerned with challenging colonialism and advocated the independence of the colonized nations whereas the European countries want to maintain their colonies.

Due to the quest of international communities before and during the WWII, self-determination included in the UN Charter, which constitutes a compromise between the two ideological conceptions.<sup>7</sup> Self-determination in the charter is included as a principle in the development of friendly relations among nations.<sup>8</sup>

Even if the inclusion of the concept in the charter by itself was taken as a big step in the development of self-determination, its shallowness and the blurred nature of the concept, especially its silence about colonialism make it a mere political principle than being claimed as legal right.<sup>9</sup>

In the 1960, the united nation brings a remarkable achievement in the development of the legal framework of self-determination, with the declaration on the granting of independence to colonial countries and peoples.<sup>10</sup>

The subsequent resolution of UN, which is one of the vital steps in the development of self-determination, was the coming in to effect of resolution 2625. It was somehow different from the above resolution by its effort to introduce the internal self-determination and playing an

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Falk (2000) quoted in Roepstorf, Kristina. "lawanddevelopment. Org, note 5

<sup>8</sup> Charter, U. N. "signed 26 June 1945, 59 Stat. 1031." art. 1(2)

<sup>9</sup> Cited in note 4, 10

<sup>10</sup> Resolution, UN General Assembly. "1514 (XV)." *14 th December 1960* 958 (1960),.

important role by developing the role of self-determination beyond the classical understanding of “statehood self-determination”. The resolution gives due emphasis for the territorial integrity of the nation and it also limits the scope of self-determination by making secession conditional i.e. secession is possible if the states are acting against the principles of equal rights and self-determination of peoples without distinction as to race, creed or colour.<sup>11</sup>

As it is clearly provided in the common article one of the two covenants, self-determination includes all political, cultural and economic rights of peoples. In the context of self-determination giving a political right like political participation is not enough unless the minorities, the indigenous peoples or the ethnic groups are entitled to develop their culture and use their natural resources.<sup>12</sup> The UN in its general recommendation also reminds state parties to arrange their constitutional and political process to make self-determination practical.<sup>13</sup>

Federalism is taken as a fertile condition for the current content of self-determination. It is because federalism applies a decentralized administration system through granting a degree of autonomy for the political units.

In the contemporary world political order, local governments are taken as vital instruments of democracy. The more empowering local governments, the more a genuine democracy is built. Empowering local governments is empowering the citizens. Effective public participation involves the true devolution of power to the grass roots of citizens and this brings accountability for both municipalities and political representatives.<sup>14</sup> In short, local governments are an instrument and institution of deepening democracy in the public so that empowering local

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<sup>11</sup> Assembly, UN General. "Resolution 2625: "The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations." " *Resolutions Adopted by the General Assembly during Its Twenty—fifth Session* (1970):

<sup>12</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, art.1 (1); UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art.1 (1)

<sup>13</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 12: Article 1 (Right to Self-determination)*, *The Right to Self-determination of Peoples*, 13 March 1984,

<sup>14</sup> De Villiers, Bertus, ed. *Review of provinces and local governments in South Africa: Constitutional foundations and practice*. Johannesburg: Konrad-Adenauer-Stiftung, 2008., 8

governments become the consensus of all international democratic societies by considering empowering local governments as a sincere basis of “globalization of democracy.”<sup>15</sup>

Different discussions were held at international level about the value of local governments and the measures that should be taken to empower them. The world congress of cities and municipalities, which was held in 1976, was taken as a remind signal of the place of local governments in the international law. After twenty years, 1966 UN led the Habitat II submit for different international meetings about the issue and it was centred Istanbul and in this submit local governments were not only recognized as the stronger partner close to citizens, but they were treated as the level of government.<sup>16</sup>

The role empowering of local governments is not limited simply in the ensuring of democracy. One of the main rational for decentralization is empowering ethnic groups and thereby preventing the ethnic clash.<sup>17</sup> So the role of local governments in the multi ethnic society is also vital in ensuring self-determination.

Like other African nations, Ethiopia is also ethnically and religiously diversified.<sup>18</sup> Irrespective of this fact the nation did not have a good history in the compromising of this diversity based on mutual interest. The Ethiopian leaders intended the building of a strong state and its institutions as an instrument of nation building. It was designed to magnify the centralizing and unitary role of Ethiopian monarchs and concentrated on their innovative and modernizing role within the Ethiopian society, the church and state tradition in so far as it focused on the development and growth of an independent and literate Christian nation.<sup>19</sup> This movement seriously challenged the

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<sup>15</sup> Id, p. 109

<sup>16</sup> Id, p.110

<sup>17</sup> Siege & O Mahony (2008),quoted in Zemelak, A. "Local government in Ethiopia: Adequately Empowered." *A research paper submitted in partial fulfillment of the requirements for the LL. M Degree in the Faculty of Law, University of the Western Cape* (2008) , note 50

<sup>18</sup> Van der Beken, Christophe. "Ethiopia: Constitutional protection of ethnic minorities at the regional level." *Federalism and the protection of human rights in Ethiopia* (2008): 126-160.

<sup>19</sup> Alessandro Triulzi, ‘Battling with the Past: New Frameworks for Ethiopian Historiography,’ in Wendy James, Donald Donham, Eisei Kurimoto, Alessandro Triulzi eds *Remapping Ethiopia: Socialism and After*, (Oxford: James Currey, 2002): 276-289. It was not a priority to work on the role of regional forces. For an interesting piece on how the assimilation paradigm affects the politics of language and history see Alemseged Abay, ‘Diversity and State Building in Ethiopia,’ *African Affairs* 103/413: 593-614 (2004) in Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, 2006,note 6

concept of diversity and tried to build the 80 ethnic groups' culture and religion by a single ethnic group's culture and religion so that it becomes a time bomb for the past and present effort of an honest nation building.

The growth of the notion of self-determination and the growth of democracy in the international arena also inspired the Ethiopian students to advocate the equality of peoples in Ethiopia and enable to fight the narrow understanding of "peoples." Making and remaking of modern Ethiopia, the second half of the 19<sup>th</sup> century was shaped by the wars of incorporation and state formation on unequal terms. In many major ways, class and nation struggles, intended to end the asymmetric relations, have shaped the second half of the 20<sup>th</sup> century. In other words, while the wars of the 19<sup>th</sup> century were for the making of modern Ethiopia, the struggles of the 20<sup>th</sup> century were for the reversal of the same history process that created the multi ethnic polity of Ethiopia. The class of national struggles of the 1960s and 1970s that precipitated the revolution of 1974, the struggles that led to the change of regime in 1991, and the on-going struggles for-self-rule and democracy were and are all part of the "remaking" of Ethiopia<sup>20</sup> so that the two kinds of oppression i.e. national oppression and class oppression were the two fundamental factors for the current form of decentralization of Ethiopia.

Presently Ethiopia is undergoing process of decentralization, which began in 1991 with the coming to power of the EPRDF. The decentralization process is premised on, amongst others, instilling grassroots democracy, enhancing development and accommodating ethnic diversity.<sup>21</sup>

The current Ethiopia as a federal nation, it is divided in to nine regions, which are mainly organized in terms of ethnic criterion so that the ethnic groups of Ethiopia are constitutionally coupled to specific regional states and it is within and through these states that may exercise their right to self-determination.<sup>22</sup> Such constitutional effort faces some challenges since history makes the people intermixed.

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<sup>20</sup> Gudina, Merera. "Ethnicity, Democratisation and Decentralization in Ethiopia: the Case of Oromia." *Eastern Africa Social Science Research Review* 23, no. 1 (2007), 81

<sup>21</sup> Sustainable development and poverty reduction program (SDPRP quoted in Ayele, Zemelak. "Local government in Ethiopia: still an apparatus of control?." *Law, Democracy & Development* 15, no. 1 (2011), note 1

<sup>22</sup> FDRE Constitution, art 46

Christophe Van der Beken, based on the nature of the settlement of the people, categorized the current Ethiopian regions into four groups. These are those regions, which are named after by the dominant ethnic group like Amhara, Oromia, Tigray, Afar and Somali, and the second kind of formation of the region is the regions without any dominant groups. The third category of formation is southern region, which is marked by the extreme diversity, and the last kind of category is the small ethnic group i.e. the Harare dominates the region.<sup>23</sup>

As the practical scenario indicates there are ethnic groups, which are organized in terms of special woredas and zones as well as there are also ethnic groups, which are not enjoying any of these statuses.

The FDRE constitution does not expressly describe the nature of local governments. Their establishment as a government seems open to interpretation since the question put two different concepts. In the first place, their establishment seems optional since it gives the power to the states to establish their administrative levels they find necessary. On the other hand the constitution put a mandate of adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of states.<sup>24</sup> Some scholars take this provision as source of empowering local governments. The provision institutes the principle of subsidiarity by allocating service delivery responsibilities to the lowest possible level of government.<sup>25</sup> Yet the right of regional states to decide on their local government structure is limited by concomitant obligation to create an autonomous local government as opposed to their own administrative arms.<sup>26</sup> Providing local governments with a constitutional status is a reflection of the recognition of its importance. More importantly, it represents a formal guarantee against any arbitrary elimination of local government by the national or sub national governments.<sup>27</sup>

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<sup>23</sup> Cited in note 18

<sup>24</sup> FDRE Constitution, art. 50(4)

<sup>25</sup> Yilmaz, Serdar, and Varsha Venugopal. "Local government discretion and accountability in Ethiopia." *International Studies Program Working Paper* 8 (2008), 2

<sup>26</sup> Ayele, Zemelak. "Local government in Ethiopia: still an apparatus of control?." *Law, Democracy & Development* 15, no. 1 (2011)

<sup>27</sup> Ayele, Zemelak Ayitenew, and Yonatan Tesfaye Fessha. "The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia." *Africa Today* 58, no. 4 (2012): 91

The other source of the empowerment of local government under the Ethiopian constitution is Art.39, which provides that every nation, nationalities and people have the right to self-determination and more importantly it provides every ethnic group a full measure of self-government, which includes the right to establish institutions of government in the territory they inhabit.<sup>28</sup> It seems that the constitution intends to give effect to the right of ethnic groups to a full measure of self-government by allowing establishment of an ethnically defined territorial unit in which members of ethnic group can govern their own affairs.<sup>29</sup>

The settlement pattern under Art.46 is designed by considering this scenario. Even if there are more than 80 nations and nationalities in Ethiopia, there are only five nations and nationalities that establish their own region. Even if the constitution says that every ethnic group has the right to establish their own region at any time, it will be absurd thinking that all ethnic groups will form their own region. So another mechanism must be designed to avoid such paradox.

The southern region is one of the 9 regions, which is manifested by its extreme diversity. It consists of about 56 ethnic groups. Sidama nation is among the 56 ethnic groups, which is organized in terms of zone level. So the purpose of this paper is to assess the exercise of the right of self-determination of Sidama nation.

## **1.2. Statement of the Problem**

The full and free exercise of self-determination is a precondition to build political community with a lasting peace, a guarantee of democratic order as well as advancing economic and social development.<sup>30</sup> Full exercise of self-determination implies that determining of political status, freely pursue of economic, social and cultural development.<sup>31</sup> However the right to ownership of rural and urban land as well as all natural resources is exclusively vested in the state and in the peoples of Ethiopia. The federal government shall enact laws for the utilization and conservation of land and other natural resources, historical sites and objects. Administering land is given to the states.

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<sup>28</sup> FRDE Constitution, art.39

<sup>29</sup> Cited in note 27, p.92

<sup>30</sup> FDRE Constitution, preamble, para.2

<sup>31</sup> Cited in note 12

Free exercise of self-determination implies that nations, nationalities and peoples in Ethiopia have the right to a full measure of self-government, which includes the right to establish institutions of government in the territory that they inhabit. But powers and functions are given in terms of states not in terms of nations and nationalities. The constitution also does not expressly empower the ethnically established local governments rather it empowers states to empower local governments. On the other hand, the FDRE Constitution enunciates that Nations, Nationalities and People have the right to establish their own states. But since the establishment of the constitution no nationality is experienced of establishing a state other than those expressed in the constitution.

Considering the weight of the value of self-determination for the growing of just democracy, and our historical failure of ethnic accommodation in our country, how much the FDRE constitution addresses the right of self-determination in a manner guaranteeing ethnic equality seems questionable.

The main theme of this thesis is to assess such legal and practical problems in Ethiopia. To be specific the thesis deals with the bipolar issue of self-determination. One side of Self-determination in the constitution is, it is a cardinal feature of the very constitution it self, ethnicity is the main basis of self-determination, active community participation is the sincere base of making a democratic system, which is answerable for both individual and group claims, on the other hand, there is lack of specified powers of local government in the constitution, especially for those ethnically established one, and they are financially dependent on regional government. As the states are empowered to confer sufficient powers to local governments under their umbrella, the ethnically diverse region of SNNPRS will be evaluated as to how it addresses the right of self-determination for the ethnic groups in the region by taking the Sidama zone as the area of practical study.

### **1.3 Research Questions**

The major research a question that this paper seeks to address is “what is the role of local governments to exercise a free, full and equal rights of self determination by each ethnic group or nationalities.”

In order to address the central question of the paper effectively, the following questions will be addressed, too.

1. What are the elements (contents) of self-determination in the international law?
2. How does the FDRE Constitution incorporate such elements (contents) of self-determination?
3. How does the FDRE Constitution make accessible the free, full and equal rights of self-determination to all ethnic groups or nationalities?
4. Are local governments adequately empowered under FDRE Constitution?
5. What is the role of local governments in the ensuring free, full and equal exercise of the right of self-determination?
6. How does the SNNPRS Constitution confer the contents of self determination for the ethnic groups located in the region?
7. What are the concerned institutions, which are designed to function the right of self-determination according to the SNNPRS Constitution?
8. How do such concerned institutions actually function the rights of self-determination in Sidama zone?

#### **1.4 Scope of the Study**

The thesis shouldn't be expected to deal the whole problems related to self-determination and local government due to the nature of self-determination is broad and could be claimed by any nature of government. But in this thesis the role of empowerment of local governments in the accessing of the elements of self-determination in the structure of Ethiopian ethnic based federalism is examined. So the elements of self-determination in terms of the divided society are the big part of the discussion of self-determination in the thesis. Local governments are also discussed in the context of its instrumentality in the mainstreaming of the standards of self-determination in each nationality group.

## **1.5 Objective of the study**

### **1.5.1 General objective**

The main objective of this study is to show the gaps in the full and free exercise of self-determination in Ethiopia and the vital instrumentality of empowering local governments to fill such gaps.

### **1.5.2 Specific objectives**

The study has also the following specific goals

- To assess the legal framework of FDRE constitution in regulating the scope of self-determination.
- To show the status of local governments under the Ethiopian constitution.
- To assess the legal framework of the SNNPRS Constitution in the conferring of powers to the nations and nationalities in the region.
- To examine the institutional framework and function of Sidama nationality zone based on the commonly accepted standards of self-determination and the regional constitution.
- To investigate the autonomy of the Sidama nationality in the exercising of its self-determination rights.
- To formulate concluding remarks based on the investigation about the full and free exercise of self-determination of Sidama nationality.
- To forward recommendations to fill the legal and practical lacuna based on the concluding remarks.

## **1.6 Methodology and sources of data**

As inferred from the research questions, I implement a qualitative research methodology. In conducting this research I used both primary and secondary sources. I did use the international laws like the UN charter, ICCPR, ICESCR and other resolutions in order to understand the common expression of free and full exercise of self-determination in contemporary international

law. I did also analyze the domestic laws, which includes the transitional period charter and the FDRE Constitution etc. to see how the current federal constitution incorporates the commonly accepted elements of self-determination in the international law. I mainly accessed the SNNPRS Constitution to understand the constitutional framework to mainstream the right of self-determination to all ethnic groups in the region. The other primary source I did also use was the interview conducted with the Sidama nationality administrative officials to know the function of the institutions in line with the right of self-determination.

The secondary sources include different books, articles and journals as well as Internet sources. The data collected from these sources are analyzed. Finally, I forward some conclusions and recommendation.

## CHAPTER TWO

### SELF-DETERMINATION AND LOCAL GOVERNMENTS IN INTERNATIONAL LAW

#### 2.1. The Notion of self-determination

##### 2.1.1. Self-determination before WWII

The exact when and where concept of self-determination originated cannot be easily investigated. In the broader examination of the term it is as old as the very human being himself. In its philosophical view, self-determination is taken as the affirmative instrument of human equality that can be expressed in reality.<sup>32</sup>

Claiming self-determination, as a group right is not the recent moral attitude that the contemporary political and legal phenomenon has built. One can relate the notion of group rights of self-determination with the operation of the Mosses in the freedom movement of Hebrews to escape from the slavery of Egyptians.

In the interpretation of the evolution of self-determination different images are reflected. Just as colonization and colonialism have been practiced throughout recorded history, political self-determination has been documented similarly and prized highly by peoples in ancient Mesopotamia and the latter Greek city-states are examples of its practice, and during and after the industrial revolution many groups of people started recognizing their shared history, geography language and customs.<sup>33</sup>

The modern political origin of self-determination can be traced back to the declaration of independence of the United States of America of July 1776, which proclaimed that governments derived their just powers from the consent of the governed and that whatever form of governments becomes destructive of these ends, it is the right of the people to alter or abolish it so that it finally yields the concept of popular sovereignty, which is the backbone of

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<sup>32</sup> Restatement of Law (Third): The Foreign relations Law of the United States, sec 702 (1987){“: Richard Lillich: ”Civil Rights” in Human rights international law 115, 113,151 (Theodor Moron Ed 1984). See also Barcelona Traction (Belg. V. Spain), 1970 I.C.J. 3. 32. (S. James Anaya, *Indigenous people in international law*), note 7

<sup>33</sup> <http://pesd.princeton.edu/?q=node/266.visited> November 28, 2014

democracy.<sup>34</sup> This is called self-determination of citizens that the citizenry of each state has a right to establish, maintain and alter the political institutions under which it lives and to be governed. On the other hand it is a founding basis of states' sovereign right by stopping the outsider from violating the right of citizenry-a people-to constitute and maintain itself as self-governing political entity.<sup>35</sup>

During the 19<sup>th</sup> century the nature of self-determination started holding a new shape, which was interpreted by nationalist movements as a meaning that each nation had the right to constitute an independent state and that only nationally homogeneous state were legitimate.<sup>36</sup> Historically, this notion of self-determination served the assertion of statehood and national identity at the expense of large multinational empires like Austro Hungarian, Ottoman, and Czarist Russian, contributed to the dissolution of colonial empires and it was also a cause for the unification of Germany, the disintegration of Yugoslavia, the collapse of soviet union and its empire, etc and the struggles for autonomy and secession have been and continue to be a source of conflict in Africa, Asia and Europe.<sup>37</sup>

During WWII self-determination emerged in two ideological forms, which was part of the east and west ideological struggles so that the western concept self-determination derived from the enlightenment ideas of popular sovereignty and representative government.<sup>38</sup> Woodrow Wilson was considered as the figure of this thought of self-determination, and claimed that every territorial settlement involved in the first world war must be in the interest and for the population concerned, and not as a part of any mere adjustment or compromise claims amongst rival states and he was criticized by scholars that he intended to apply the principle of self-determination unconditionally to the European people but not necessary to people under colonial rule.<sup>39</sup>

In central and eastern Europe the concept of self-determination was primarily based on the issue of nationalism and it was highly related with ethnic and cultural factors and Lenin was the

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<sup>34</sup> <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>, visited November 28, 2014

<sup>35</sup> Kapitan, Tomis. "Self-determination and international order." *The Monist* (2006): 356-370.

<sup>36</sup> Cited in note 34

<sup>37</sup> <http://pesd.princeton.edu/?q=node/266.visited> November 28,2014

<sup>38</sup> Cited in note 4

<sup>39</sup> Cited in note 3

proponent of this understanding of self-determination, and he understood self-determination as a precondition for in the world and his intention was to apply it to all non-European peoples under colonial rule.<sup>40</sup> Lenin and Stalin embraced the rhetoric of self-determination in the early part of the previous century, while viewing self-determination in association with Marxist precepts of class liberation.<sup>41</sup> Self-determination was mentioned as a right in the soviet doctrine, whereas it existed only for cases where it served the cause of class conflict and so called socialist justice; it was only a tactical means to serve the aims of world communism and not an end itself.<sup>42</sup>

### **2.1.1.1. Self-determination and the League of Nations**

In the establishment of the League of Nations the role of Woodrow Wilson was very pivotal. His contribution to self-determination consists not merely in his recognition of the importance of the doctrine but also in his movement to institutionalize it.<sup>43</sup> Among the instruments that were designed to institutionalize it was the League of Nations. He once stated, "*if the desire for self-determination of any people in the world is likely to affect the peace of the world or the good understanding between nations, it become the business of the league...*"<sup>44</sup> Wilson believed an international organization was needed to transform the doctrine of self-determination in to reality.<sup>45</sup> Even he attempted to incorporate the notion of self-determination in the international law, or at least in to international practice most theorists assert that self-determination was not considered as a legal right. In order to protect minorities, a lot of treaties were conducted under the auspices the League of Nations to achieve such purpose. Finally, in article 22 of the covenants on the League of Nations, the mandates system was devised as a compromise solution between the ideal of self-determination and the interests of administrative powers but self-

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<sup>40</sup><http://en.wikipedia.org/wiki/Self-determination>, visited November 11,2014

<sup>41</sup>Anaya, S. James. *Indigenous peoples in international law*. Oxford University Press, 2004,78

<sup>42</sup> Cited in note 34

<sup>43</sup> Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, 85

<sup>44</sup> The public papers of Woodrow Wilson, War and Peace 244 (Baker & Doddeds, 1927), quoted in Cobban, op. cit. in note 3,at 27 quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101,note 14, at 85

<sup>45</sup> Jessup, Philip C. "Self-Determination Today in Principle and in Practice." In Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 15

determination as a general principle did not form part of the covenant of league of nations, and therefore, was not a part of the positive of rule of law of nations.<sup>46</sup>

## **2.1.2. Self-determination after WWII**

### **2.1.2.1. Self-determination and the United Nations**

#### **A. Self-determination in the United Nations Charter**

What makes the United Nations different from its predecessor League of Nations regarding self-determination is that the United Nations expressly stipulated the concept in its charter. The expression of self-determination is explicitly mentioned in two articles of the charter. First self-determination is mentioned in the charter as one of the purposes of the United Nations. It states that the friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.<sup>47</sup> Second self-determination is mentioned under chapter six, which deals about the international economic and social cooperation. In this part self-determination is mentioned as a principle of peaceful and friendly relations.<sup>48</sup> Even if the United Nations declared the above provisions in its charter it still did not clearly define the meaning of self-determination.

As the drafting history (*travaux preparatoires*) of the charter regarding self-determination shows, the expression “based on respect for the principle of equal rights and self-determination of peoples” was added for the first time at the San Francisco Conference at the instance of the four sponsoring powers, China, the United Kingdom, the United States, and the Soviet Union by the initiative of Soviet Union in order to draw a particular attention for the population of colonies and mandated territories, which would to realize them sooner.<sup>49</sup> Even if the countries accepted the Soviet Union proposal, the sponsoring powers had left no definitive record as to what they

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<sup>46</sup> Ibid

<sup>47</sup> Cited in note 8, art 1(2)

<sup>48</sup> Id,art. 55

<sup>49</sup> Russel, Ruth B., and Jeanette E. Muther. "A history of the United Nations Charter." *Washington: The Brookings Institution* (1958): 96-97, quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101), note 28

meant by self-determination or what its meaning should be in the context of the mentioned article in the charter. The drafting committee of the UN charter understood that the principles of equal rights of people and self-determination are two complementary points of standards that the respect of the principle is a basis for the development of friendly relations and is one measure to strengthen universal peace, and that an essential element of the principle in question is a free and genuine expression of the will of the people...<sup>50</sup>

In the drafting history of art.1 (2) two points can be reflected. The first point is that the concept of self-determination embodied in the mentioned article is distinct from the concept of equality of states mentioned in art.2 (1), and second the charter concept of self-determination is closely the genuine will of the people in a given state. Beyond this, it is not clear, however, what the intentions of the founding members of the United Nations were with regard to self-determination in art.1 (2).<sup>51</sup>

The juristic opinion on the issue on the nature and definition of self-determination is different. Some writers understand that the recognition of self-determination is the result of the development of international law while others consider the inclusion of the concept in the charter as nothing beyond the recognition of the already existing rule of international law.<sup>52</sup>

On the determining of the meaning and range of the principle of self-determination, opinions among jurists also vary. According to Hans Kelsen, the whole picture of paragraph 2 of art.1 of the Charter is not different from the whole picture of paragraph 1 of art.2, in which the principles of sovereignty and equality are combined in a rather problematic way into one principle: that of 'sovereign equality' so that he concludes that interpreting the expression of self-determination of peoples under art.1 (2) have the same picture as a sovereignty of the states while such conclusion of Kelsen led to criticisms and doubt and it is also inconsistent with the *travaux preparatoires* and there is no any known canon of treaty of interpretation, which strengthens his conclusion

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<sup>50</sup> Doc. No. 944, I/ 1/34(1), 6 U.N. Conf. Int'l Org. Docs. 445 455 (1945) quoted in (Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101), note 33

<sup>51</sup> Cited in note 4, 9

<sup>52</sup> Lachs, Manfred. "The Law in and of the United Nations." *Indian J. Int'l. L.* 1 (1961): 429-439, quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 35

unless he took the UN charter itself as a form of treaty and taking as a reference the mentioning of one and the same concept in two articles.<sup>53</sup>

Ross however came very close to the contemporary interpretation when he wrote that self-determination means: A right for people or a group (in a sociologico-ethnographical sense) to determine the national dependency of the territory inhabited. On the positive side this would mean a right to claim territorial changes in accordance with the wishes of the population; on the negative side it would mean that no territory could be ceded unless confirmed by a plebiscite.<sup>54</sup>

However it is strongly urged that difficulties in the application of the principles of self-determination are by no means unique to that principle alone. What is required is the devising of useful criteria for determining the rationality of a demand for self-determination. Scholars like Eagleton have stated that it is a new field of international law that is being opened up and it deserves the most serious study.<sup>55</sup>

## **B. Self-determination in the two Covenants and other Resolutions of UN**

The silence of the UN charter on colonialism, which was one of the contentious issue of world politics at the time, made the concept simply in to a mere political principle rather than a legal right.<sup>56</sup>

In 1960, the United Nations brings a remarkable achievement in development of the legal framework of self-determination, with the declaration on the granting of independence to colonial countries and peoples.<sup>57</sup> The declaration was a milestone in the process of

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<sup>53</sup> Kelsen, Hans, George Williams Keeton, and Georg Schwarzenberger. *The law of the United Nations*. 1950 quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 36

<sup>54</sup> Ross, Alf. *Constitution of the United Nations: analysis of structure and function*. The Lawbook Exchange, Ltd., 2008 quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 38

<sup>55</sup> Eagleton, Clyde. "Self-determination in the United Nations." *American journal of international law* (1953): 88-93 quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 41

<sup>56</sup> Cited in note 4, 10

<sup>57</sup> *supra* note,

decolonization. In 2000, on the occasion of the 40<sup>th</sup> anniversary of resolution 1514, the UN General Assembly adopted resolution 55/46 that declared 2001-2010 the second international decade for the eradication of colonialism.<sup>58</sup> As it is indicated in the preamble of the declaration self-determination is taken as a background, and it also tried to put the scope of self-determination by stating that: All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>59</sup>

The resolution mainly proclaims the necessity of bringing to speedy and unconditional end colonialism in its all forms and manifestations. The questions that arises here is what forms of colonialism are envisioned by the resolution? Although it is difficult to answer this question decisively, it is submitted that the resolution condemns all forms of colonialism. Mr. Tsiang of China stated that:

*A colony is a colony, whether it is the product of overseas expansion or the product of overland expansion.*<sup>60</sup>

Another aspect of the resolution is that it does not restrict the peoples who can be beneficiary from the principle of self-determination. As scholars state that self-determination is not given only for peoples under colonies, it also extends to all peoples. The representative of Cyprus stated in the plenary meeting of the General Assembly that:

*Although the African-Asian draft resolution is mainly concerned with the granting of independence to colonial countries and peoples, yet it is in no way restricted. Its scope, in terms of freedom and self-determination, is all embracing. It includes all peoples, in*

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<sup>58</sup>[http://en.wikipedia.org/wiki/Declaration\\_on\\_the\\_Granting\\_of\\_Independence\\_to\\_Colonial\\_Countries\\_and\\_Peoples](http://en.wikipedia.org/wiki/Declaration_on_the_Granting_of_Independence_to_Colonial_Countries_and_Peoples), visited November 23,2014

<sup>59</sup> Cited in note 57, art.2

<sup>60</sup> U.N. GEN. Ass. OFF. REC.15<sup>TH</sup> Sess Plenary 1145 (A/PV.935) (1960) quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 48

*whatever land and in whatever circumstances they are dominated and by whatever means they are deprived of their inalienable right to self-determination and freedom.*<sup>61</sup>

Other member states also shared this idea and the representative of Ecuador said that:

*This principle must, however be exercised broadly without discrimination and without admitting exclusivist subtleties or fallacious exceptions, whether from the side of classic colonialism or neo-colonialism, and whether from the left or the right.*<sup>62</sup>

The resolution also bears upon the question of exercise of sovereignty in a colonial territory. It declares that all peoples have an unalienable right to complete freedom, the exercise of their sovereignty and integrity of their territory<sup>63</sup> whereas there are some words, which cannot be easily applicable in practice in the expression of this provision of the resolution like freedoms, integrity of their territory. But the grasping of the whole spirit of the provision implicates that there is a rising of another version of self-determination. The following statement of the Iranian representative in the plenary of the assembly, probably serves to enlighten the meaning of the provision. The representative states that:

*The colonial powers must recognize that one of the first and most important attributes of a people's independence is exercise of sovereignty, which are the sole countries of those living within the national territory. Sovereignty appertains to them both defacto and dejure and no one may exercise it on their behalf without freely given consent.*<sup>64</sup>

The other important achievement of the resolution is its effort to make self-determination in to a human right by declaring, as it is a virtue to freely determine their political status and freely pursue their economic, social and cultural development so that it had been starting goes beyond a

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<sup>61</sup> U.N. GEN. Ass. OFF. REC. 15<sup>th</sup> Sess Plenary 1256 (A/PV.945) (1960) quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 49

<sup>62</sup> U.N. GEN. Ass. OFF. REC. 15<sup>th</sup> Sess Plenary 1101 (A/PV.933) (1960) quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101note 50

<sup>63</sup> Supra note 57

<sup>64</sup> U.N. GEN. Ass. OFF. REC. 15<sup>th</sup> Sess Plenary 994 (A/PV.926) (1960) quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101), note 51

mere political concept. According to the Venezuelan representative, the principle of self-determination includes:

*The right of every people to choose its own government, to enjoy its spiritual and material patrimony without restriction, to live freely in accordance with its most enshrined traditions, and to be exempt any form of subjection to any other more powerful nation or people.*<sup>65</sup>

Next to the above resolution, the two 1966 covenants came in to effect. The common Art.1 of the two covenants i.e. the ICCPR and ICSCER states self-determination and its components in a better way than their predecessor. Both entered in to force in 1976 and now they are applied in more than 160 states parties. While most of the debates on the texts of the new covenants occurred in the UN commission on human rights, the general assembly itself directed that identical first article in each covenants and the concept in the first paragraph, in particular, is commonly cited as evidence of the universality of the right to self-determination, although its formation does little to make the scope of the right more precise.<sup>66</sup>

## **2.2. Internal Self determination**

The 1960 declaration on colonial peoples (GA Resolution 1514) ensured the external aspect of self-determination, which implies sovereignty, territorial integrity, freedom from outside interference or intervention etc. the expansion of the external aspect of self-determination can be regarded as a victory from the point of view of the third world.<sup>67</sup>

As the scenario demands, the scope of self-determination start getting another dimension beyond what was experienced. James Anaya has distinguished usefully between two models of self-determination i.e. *constitutive self-determination* and *on-going self-determination*. The former is

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<sup>65</sup> U.N. GEN. Ass. OFF. REC. 15<sup>th</sup> Sess Plenary 1200 (A/PV.939) (1960) quoted in Nawaz, M. K. "The meaning and range of the principle of self-determination." *Duke Law Journal* (1965): 82-101, note 52

<sup>66</sup> <http://pesd.princeton.edu/?q=node/254>, visited November 23, 2014

<sup>67</sup> Abdullah, Maya. "The right to self-determination in international law. Scrutinizing the colonial aspect of the right to self-determination." (2006). 26

about the choice of a group whether they prefer absolute independence or opt to remain part of a state other than the one they are currently a part of and the model is self-government without full independence so that to be self-governing a group must exercise some independent political control over some significant aspects of its common life.<sup>68</sup>

The 1970 friendly relations declarations is taken as the source of internal self-determination in addition to conforming the third world interpretation of self-determination, which is free from colonialism.<sup>69</sup> Especially, the section of the declaration under the heading of the principle of equal rights and self-determination of peoples provides a different question of interpretations. The provision reads as

*Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which dismember or impair, or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of government representing the whole people belonging to the territory without distinction to race, creed or colour.*<sup>70</sup>

Scholars interpreted the paragraph in two main categories. The first kind of interpretation is the ordinary kind of interpretation of self-determination, which is the ensuring of territorial integrity. On the other hand, the second part of paragraph starting with "...conducting themselves..." can be seen as a saving clause and the exception of territorial integrity so that by denying secession, it limits the scope of self-determination while such limitation will be applied if the states conduct themselves in compliance with the principle of equal rights and self-determination of peoples without distinction as to race, creed or colour.<sup>71</sup>

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<sup>68</sup> Cited in note 41, 81.

<sup>69</sup> Ibid

<sup>70</sup> Cited in note 11

<sup>71</sup> Ibid

The second perspective of self-determination is that the new conception of “peoples” is not only limited to the population of a fixed territorial entity but also encompasses indigenous groups and potentially some minorities.<sup>72</sup>

This perspective of self-determination emanates from the moral theory of right and wrong that the oppressed peoples deserve their freedom irrespective of the oppressor being domestic tyrants or colonizers.<sup>73</sup> The former understanding of self-determination as the right to be free from external occupation and colonization excludes the self-determination claims of many sub states national groups. The self-determination claims of national groups on the territory of the Russian federation, such as Dagestan, Mordova, or Tatarstan, for example are excluded, whereas the Baltic republics were considered to have this right due to their unjust occupation by the soviet regime.<sup>74</sup> But the point of contention for this view is that whether the international law supports this view.

The charter of the UN states that:

*Nothing contained in the present charter shall authorize the United Nations to intervene in matters, which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter.*<sup>75</sup> Even if the UN Charter says this, there is no law that specifies the duties of the states even to provide autonomy to minorities beyond the limited rights to practice their religions and cultures and to use their languages.<sup>76</sup> The concluding document of the Copenhagen meeting of the Helsinki commission’s conference on Human Dimension for example concerns the rights of persons belonging to minorities to establish and maintain their own educational, cultural, and religious institutions, organizations, or associations, whereas it does not deal

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<sup>72</sup><http://www.minorityrights.org/2813/themes/selfdetermination.html>, visited November 30,2014

<sup>73</sup> Moltchanova, Anna. *National self-determination and justice in multinational states*. Vol. 5. Springer Science & Business Media, 2009,1

<sup>74</sup> Id, p.2

<sup>75</sup> Cited in note 7, art. 2(7)

<sup>76</sup> Cited in note 73

with the political rights such as self-determination, which often constitute the chief concern of ethnic minorities.<sup>77</sup>

Most large scale violent conflicts now occur within states rather than between them, and in many cases of large scale intrastate conflict, self-determination is mostly an issue and decentralizing government functions can be more efficient, can make for more meaningful democratic participation, and better serve the interests of minorities that they believe they have insufficient influence in the broader, state wide political processes.<sup>78</sup>

There are different perspectives of justifications among scholars, who advocate that self-determination should be taken as a group right. One of the justifications is the right of self-determination can be produced to the individual person as a right by being the member of that ethnic group, while other justification considers that self-determination is as a group right.<sup>79</sup>

In the first i.e. the right of self-determination as individual right, the justification is members of national groups express preferences related to their identity in the processes of participating politically in their larger society, and these preferences are satisfied by states through their regular means of satisfying individual preferences so that it provides equal individual participation in politics.<sup>80</sup>

In the group based approaches of self-determination, cultural identity is taken as a necessary condition of autonomy. Will Kymlicka distinguishes three types of rights for minorities to account for moral, ethnic, and cultural (national) plurality: self-governments rights for national minorities, polytechnics rights for immigrant groups, and special representation rights for women, sexual and racial minorities, religious groups and the like.<sup>81</sup>

In explaining why national minorities, unlike other types of minorities, are entitled to self-government, Kymlicka considers not culture but the shared attitudes of individuals from minority

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<sup>77</sup> Id, 3

<sup>78</sup> Buchanan, Allen. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law: Moral Foundations for International Law*. Oxford University Press, 2003,403

<sup>79</sup> Cited in note 73, 5

<sup>80</sup> Id, 6

<sup>81</sup> Kymlicka, Will. *Multicultural citizenship: A liberal theory of minority rights*. Oxford: Clarendon Press, 1995,75

groups towards political authority, as represented by institutional structures of the host society and national minorities have institutions of self-government as well as territory, which is a collection of social cultures with a set of common economic, political and educational institutions.<sup>82</sup>

Jorge Valadez appreciates the cultural and political self-determination of Kymlicka even if he criticizes his failure of not considering the importance of economic self-empowerment, which plays an important role in the development of the political and cultural empowerment.<sup>83</sup>

The committee on the elimination of Racial Discrimination, in its recommendation on self-determination states about internal self-determination in its paragraph 4:

*In respect of self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect i.e. the rights of people to pursue freely their economic, social and cultural development without interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level as referred art.5 (c) of the international convention on the elimination of all forms of racial discrimination.*<sup>84</sup>

In general, internal self-determination is the right of peoples to assert its will against its own government. The content of internal self-determination can be divided as a group autonomy and democratic government. Group autonomy corresponds with the right of peoples to determine their constitution including autonomous status. As it is mentioned above it currently addresses the multicultural states.

Regarding the autonomy of national groups in the multi-cultural societies, the common art.1 of the two covenants put the grounds of self-determination by stating that they have the right to freely determine their political status and freely pursue their economic, social and cultural development.

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<sup>82</sup> Id, p. 76

<sup>83</sup> Cited in note 73, 172

<sup>84</sup> U.N.Committee on the elimination of racial discrimination, G.Ass.Rec 21, the right self-determination 48<sup>th</sup> Sess. UN Doc. HRI/GEN/1/Rev.6 at 209(2003)

The UN reminds states to arrange their constitution and political process, which in practice allow the right of self-determination.<sup>85</sup>

## **2. Empowering local governments**

In the current world legal and political order, local governments are taken as a vital instrument of democracy and good governance. Effective public participation involves the true devolution of power to the grass roots of citizens and thus brings for both municipalities and political representatives.<sup>86</sup>

In the democratic view, the empowerment of local governments is highly related with the popular will and it is taken internationally as the instrument of “globalizing democracy”.<sup>87</sup>

Citizens use local governments as a checking point to be governed well and as a jurisdiction with adequate capacity to resolve the tough public problems.<sup>88</sup>

Different discussions were held in worldwide capacity about the value of local governments, the measures that should be taken to empower them. The world congress of cities and municipalities, which was held in 1976, was taken as the reminder signal of the place of local governments in the international law. After twenty years, in 1996 UN led the Habitat II summit for different international meetings about the issue and it was centred in Istanbul. In this summit local authorities were not only recognized as the stronger partner close to citizens but also they were treated as the level of government.<sup>89</sup>

### **2.1. Nexus between the empowerment of local governments and self-determination**

As it is mentioned above, empowerment of local governments is the fundamental instrument of ensuring democracy by improving active community participation in any nature of government

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<sup>85</sup> Cited in note 13

<sup>86</sup> Cited in note 14, 87

<sup>87</sup> Ibid, p.109

<sup>88</sup> Bowman, Ann O'M., and Richard C. Kearney. *State and local government*. Cengage Learning, 2012.269

<sup>89</sup> Id, p.110

whether it is federal or unitary since transferring the decision making power to the people is the common element of all democratic governments.

The other main rationale of decentralization is empowering ethnic groups and thereby preventing the ethnic clash.<sup>90</sup>

Scholars who have been saying a lot on federalism and ethnic diversity seem reluctant to give relevant value for the relevance of local governments in addressing the multi ethnic challenges.<sup>91</sup> The constitutions of many federations ignore granting autonomy for local governments.<sup>92</sup> Yonatan Tesfaye states that local governments were regarded as a stepchild of national and sub-national governments.<sup>93</sup>

Even if the international community starts accepting the value of local governments in the democratization process, only few countries show the real commitment by empowering local governments in their constitution.<sup>94</sup>

South Africa owns an exemplary constitution in the empowering of local governments. Since 1993 the local governments are an integral part of the South African constitution. Provinces and local governments are practical examples of how self-rule and shared rule are combined and harmonised in a single system of governments with common objectives.

When the multinational federations joining the bandwagon of federations gives a chance for the local governments to be a full member of the federal partnership like the national and sub-national groups.<sup>95</sup>

The role of empowerment of local governments is decisive in every nature of governments whether it is unitary, territorial federalism, or ethnic based federalism in the achievement of

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<sup>90</sup> Cited in note 17

<sup>91</sup> Yonatan Tesfaye Fessha, *Federalism, the sub national constitutional framework and local government: Accommodating minorities within minorities*, Perspectives on federalism, volume 4, 2012, 85

<sup>92</sup> Steytler 2005: 1 quoted in Yonatan Tesfaye Fessha, *Federalism, the sub national constitutional framework and local government: Accommodating minorities within minorities*, Perspectives on federalism, volume 4, 2012), note 17

<sup>93</sup> cited in note 91

<sup>94</sup> Id, p.86

<sup>95</sup> Cited in note 86, 86

democracy. The basic distinction between mono national and multinational federations lies in the extra efforts of multinational federations in addition to achieving federalism. In the mono national society ensuring democracy is enough due to the existence of one demos or nation within the state. But in the multinational federations due to the existence of more than one demos or nation within the state, the society seeks to regulate often finds expression in the institutional organization of the state and more specifically in the territorial structure of the federation.<sup>96</sup> In multinational federations, the demarcation of territorial boundaries takes communal identities in to account. In this form of territorial division, “ethno regional communities are considered as most appropriately represented through their spatial compartmentalization (states, cantons, communes), predicated on the beliefs that ethno regional or national communities should receive due territorial recognition” in other words the boundaries of the territorial units of a multinational federations coincide with cultural and ethnic boundaries.<sup>97</sup> So such realities make the sub national units more purposive than mere administrative divisions because of they do not only claim the respecting of their will, but also the survival of their communities as it is.

Regarding the distribution of minorities, in one multi-nations state, there are large numbers of ethnic groups that get the capacity of state. There are also other minorities, which are found under such major ethnic groups. If there is no constitutional mechanism to protect such minorities, their identity and culture will be swallowed and buried so that autonomy must be given, as they already existed without any structural adjustment. In such scenario autonomy implies that the national government should have little or no power to interfere in matters of local governments.

Local governments in multi-national federations must be the jurisdictions of sub national units.<sup>98</sup> Policies that allow the federal government to directly interfere like directly fund local governments going to open an opportunity to undermine the autonomy of sub national units.<sup>99</sup>

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<sup>96</sup> Ibid

<sup>97</sup> Smith 1995:6 quoted in Yonatan Tesfaye Fessha, *Federalism, the sub national constitutional framework and local government: Accommodating minorities within minorities*, Perspectives on federalism, volume 4, 2012, note 22

<sup>98</sup> Ibid

In the realm of local government, the contingent nature of political ethnicity would mean that the primary focus should be on creating an inclusive sub national system without elevating ethnicity in to primary means of political organization. In terms of configuration of local government, the system can provide territorial autonomy to ethnic groups without, however, explicitly defining it as an ethnic local government.<sup>100</sup>

In general, other than creating a lot of ethnic group by taking culture and language as a mere criteria, it will be sound to divide minorities into a number of viable homogenous local governments by giving constitutional autonomy.<sup>101</sup>

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<sup>99</sup> Steytler 2009: 433, quoted in Yonatan Tesfaye Fessha, *Federalism, the sub national constitutional framework and local government: Accommodating minorities within minorities*, Perspectives on federalism, volume 4, 2012), note 27

<sup>100</sup> Cited in note 91

<sup>101</sup> Id, p.96

## CHAPTER THREE

### SELF-DETERMINATION IN ETHIOPIA

#### 3.1. Historical background

##### 3.1.1. Notion of Self-determination in the Era of pre 1931

Ethiopia is among those countries, whose names are written in the first chapter of human history. It is a cradle of human being and it is also a place that mankind had started showing his wisdom and art by constructing monuments and rock hewn churches.

Regarding the societal nature of the country, Ethiopia is enriched ethnically and religiously like other African nations.<sup>102</sup> Irrespective of this diversity, the country did not have a good history in the appreciation of this diversity based on mutual interest. As it is frequently expressed, the entire history of modern Ethiopia until then had been characterized by ethnic chauvinism of the politically ascendant of Amhara ethnic group.<sup>103</sup> It has been stated that the range of other ethno linguistic groups in Ethiopia has been neglected and were considered as invisible and their culture and traditions used to be casted out.<sup>104</sup> The former well-known name of Ethiopia i.e. Abyssinia only represented the Tigrian and Amhara, which represented the northern part of Ethiopia that contains only two nations out of 84 nations and nationalities of the country.

Regarding the history of these nations and nationalities in terms of autonomy, different scholars draw different conclusions in which some say that there is no history of self-determination in Ethiopia based on exercising culture and tradition in a free span while others say there was a *defacto* federalism prior to the coming to power of Emperor Haile Selassie in to the throne by

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<sup>102</sup> Cited in note 18

<sup>103</sup> Keller, Edmond J. "Ethnic federalism, fiscal reform, development and democracy in Ethiopia." *African Journal of Political Science* 7, no. 1 (2002): 21-50.

<sup>104</sup> Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, 2006,17

interpreting the relationship between the central governments and the provincial nobilities as decentralization.<sup>105</sup>

The essential elements of diversity were reflected in the relationship between the central government and the provincial nobilities. Menelik's ministerial form of government, which was introduced in 1908, divided the country into thirty-four administrative regions based on ethnic distribution and geographic position.<sup>106</sup> The difference between provincialism and ethnicity is slight as provincialism of the time also refers to a special attachment or affection between a person and a group indicating one's origin and the provinces had distinct boundaries and historical traditions with autonomy of governing themselves and it also represented the economic and political interest.<sup>107</sup>

There is a categorization of scholars that still believe the expansion of Menelik as a national oppression by reasoning out that the nations and nationalities of the southern part of the country were incorporated by force and afterwards the governors came from the northern part of Ethiopia. Accordingly such expansion marginalized those nations and nationalities from exercising their cultural, political and economic rights.

As historians mention, prior to the nineteenth century, the autonomy of provinces was reflected, and they call it defacto federalism. This is because before the expansion of Menelik; the kingdom of Ethiopia was loosely associated with the Abyssinian empire.<sup>108</sup> In that time the provinces used to be autonomous and the imperial throne served as a symbol of unity and the political system

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<sup>105</sup> Id, 18

<sup>106</sup>, Andargachew, Tiruneh. *The Ethiopian revolution 1974-1987: A transformation from an aristocratic to a totalitarian autocracy*. Cambridge University Press, 1993 quoted in Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, (2006), note 14

<sup>107</sup> Markakis, John. *Ethiopia: anatomy of a traditional polity*. Oxford University Press, 1974, quoted in Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, (2006), note 15

<sup>108</sup> Tewfik, Hashim. "Transition to Federalism: The Ethiopian experience." In *Forum of Federations*. Ottawa, Canada. 2010, 4

combined a balance of forces between the monarchy and regional nobility, the former played a centripetal role and the latter moderating the power of the centre.<sup>109</sup>

As the above overview shows, the autonomy of provinces characterizes the history of Ethiopia in the pre 19<sup>th</sup> century, which is called defacto federalism by some scholars. Such act of administration of that time may slightly touch the modern concept of federalism. But at that time the prime interest of the central government was getting revenue through tributes so that as long as the provinces prove their commitment of paying such periodic fee, there was no other contention, which invites to conflict. Gradually when the time demands a firm unity and the interest of the central government goes beyond getting economic advantage over provinces, the relative autonomy of the provinces vanished.

### **3.1.2. Self-determination between 1931 and 1991**

The year 1931 is one of the historical years of Ethiopia because of it is the year in which the first written constitution came in to effect. Literally the purpose of the constitution was to modernize the work of the government and to make its activities formal like the western world. But technically the constitution was designed to be a weapon to reinforce the traditional position of the emperor as '*siyume Egziabher, Niguse Negest Za Ethiopia*', which is meant Elect of God King of Kings of Ethiopia who is the representative of God on earth to dispose God's will. On the other hand the role of the nobilities in the local leadership gradually diminished and the traditional checks against the power of the kings of kings became insignificant.<sup>110</sup>

The 1931 constitution granted unlimited powers to the emperor and ultimately it declared that no one is allowed to challenge and question the power of the king. The constitution also enunciated that the power is reserved for those descendants of king Solomon of Jerusalem and queen of Sheba which enabled that the domination of Amhara culture, religion and language to be at the center in the creation of modern Ethiopia.<sup>111</sup>

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<sup>109</sup> Cited in note 104, 23

<sup>110</sup> Id, p.32

<sup>111</sup> Cited in note 108

The 1931 constitution mainly tried to ensure the sovereignty of the king establishing the legal framework within the government by avoiding the personal, arbitrary and ill-defined powers traditionally held by the nobility. The nobilities and provincial governors were snatched their independent authority.<sup>112</sup>

So the 1931 constitution i.e. the first formal written constitution of the country did not show any spark in the appreciation of pluralism. It was designed to concentrate all powers at the center and to express the image of the nation by a single nationality's culture, language and social values i.e. dumping diversity.

The 1931 constitution was revised by the 1955 constitution, which was proclaimed on November 4, 1955 on the occasion of the 25<sup>th</sup> anniversary of the coronation of emperor Haile Selassie. But still the revised constitution had nothing to do with accommodating diversity. The added provisions were designed to ensure the firm strength of the emperor. In the revised constitution the power of the emperor increased in terms of quality and quantity, detailed provisions about the military power of the emperor were included; the succession issue of the throne on the rule of male primogeniture was also the new event of the revised constitution, which strengthens the root of the empire. The only positive development of the constitution was the inclusion of more civil and political rights than its 1931 predecessor.<sup>113</sup>

In general the revised constitution of 1955 has nothing to do with self-determination. As scholars state it was a legal charter for the consolidation of absolutism. In the spelt out of the powers of the emperor they even did not create any chance by mistake, which makes the people beneficiary.

The concept of self-determination in the era of the emperor can be raised in relation with the history of Eritrea. After both the Ethiopian patriots and British soldiers expelled Italy from Ethiopia, the fate of Eritrea was one of the issues at the UN. After a lot of controversies, it was

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<sup>112</sup> Paul and Clapham, *supra* note 56: 340-341. It is stated that they fought to secure and share power from their traditional holdings and they forced the Emperor to draft a law that was to be part of the constitution but that was never realized. See Aberra Jembere, *An Introduction to the Legal History of Ethiopia: 1434-1974*, 2<sup>nd</sup> edn. (Munster: Lit Verlag, 2000): 168-171 quoted in (Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, 2006), note 60

<sup>113</sup> Revised Constitution of the Empire of Ethiopia, Chapter three

decided that Eritrea should be granted autonomy and to be federated with Ethiopia even if it was not stayed long due to the act of conspiracy of the emperor. Even if the federation did not get a chance to flourish, it enabled the people of Eritrea to exercise a relative autonomy and democracy.

The issue of the right of self-determination in Ethiopia was brought after the 1974 popular uprising removed the emperor and enabled the military to come to power.<sup>114</sup> Although self-determination was one of the demands of the people before and after the end of the monarchy, the reaction of the military junta was not promising and it started responding by the means of violence.<sup>115</sup>

Dergue, for many years did not own any organised written constitution. The government led the country with some fragile concept of socialism and by force. Accordingly it led the country in to armed conflicts, civil strife and economic deteriorations and the gross violation of individual and group rights.<sup>116</sup>

At the eve of its downfall, Dergue made a constitution in 1987, which declared the country as a unitary state other than a union of republics.<sup>117</sup> It was reported that the problem of nationalities was hotly debated in the constitutional commission, as well as in the working party of Ethiopia central committee, but the regime would not abandon its desire to create a single multiethnic state rather than a federation.<sup>118</sup> What makes it different from its predecessors regarding the right to self-determination was it expressly talked about the equality of nationalities. It was the first constitution, which tested differences in terms of nationalities, and ethnicities by stating that the people's democratic republic of Ethiopia is a unitary state where nationalities live in equality, where chauvinism and narrow nationalism will be combated, and the languages of nationalities

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<sup>114</sup> Cited in note 108, 5

<sup>115</sup> Ibid

<sup>116</sup> Ibid

<sup>117</sup> The Constitution of the people's democratic republic of Ethiopia, art. 59

<sup>118</sup> [http://en.wikipedia.org/wiki/1987\\_Constitution\\_of\\_Ethiopia](http://en.wikipedia.org/wiki/1987_Constitution_of_Ethiopia), visited December 27, 2014

should be respected.<sup>119</sup> The constitution also promised the equal participation in political, economic, social and cultural fields through the realization of regional autonomy.<sup>120</sup>

Scholars stated the issue of self-determination in Dergue regime was raised as soon as it took power. Paragraph 5 of the programme of the NDR of Ethiopia, which was the basic political document until the promulgation of the new constitution and the formation of WPE states as follow.

*The right of self-determination of all nationalities will be recognized and fully respected. No nationality will dominate another since the history, culture, language and religion of each nationality will have equal recognition in accordance with the spirit of socialism.*<sup>121</sup>

Scholars like Merara state that the above document was prepared by MEISON but due to the internal conflict between the two and when MEISON was annihilated, Dergue buried the concept until the civil war forced to do so.<sup>122</sup>

In general self-determination in the period of military junta had not been practiced other than simply adopting the terminology. A strong centralized decision-making was reflected. USSR supported Dergue and the constitution of the Dergue inherent the major concept from the USSR constitution and in the USSR nationalities would enjoy cultural rights and limited amount of administrative autonomy with their own home areas subject to the overarching control of the communist party whereas in Ethiopia the WPE played this role and in the end not even the minimal versions of self-autonomy were into practice.<sup>123</sup>

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<sup>119</sup> Cited in note 117, 2

<sup>120</sup> Ibid

<sup>121</sup> Basic document of the Ethiopian revolution published by the office for mass organization affairs: agitation propaganda and education committee, Addis Ababa, May 1977, quoted in Fiseha, Assefa. *Federalism and the accommodation of diversity in Ethiopia: A comparative study*. Wolf Legal, 2006note 143

<sup>122</sup>Merara, Gudina. *Ethiopia: Competing ethnic nationalisms and the quest for democracy, 1960-2000*. Shaker Pub.,(2003.), 82

<sup>123</sup> Cited in note 104, 61

### 3.1.3 Self-determination in the transitional period (1991-1994)

Four years after the coming in to force of the Dergue constitution, the system itself was destroyed. As the result of the culmination of national liberation movements, spearheaded by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), the military dictatorship was overthrown on May 28, 1991.<sup>124</sup>

Unlike the previous change of systems in Ethiopia the defeat of Dergue paved the way and created the opportunity to undertake political and constitutional transformation and to devolve state along ethno linguistic line.

The process of transition from a unitary to a federal system in Ethiopia has proceeded in two sequential and interrelated phases: the first phase of the devolution took place during the transitional period (1991-1994); and the second phase commenced after the enactment of the 1995 Federal constitution.<sup>125</sup>

In 1991, a coalition of ethnic based liberation movements toppled the military dictatorship and introduced a new radical strategy of nation building on the basis of the recognition of ethnic diversity.<sup>126</sup>

In the transition period there were crucial events, which included both legal and political events such as organizing national conference, the creation of a transitional government. The conference adopted a transitional period charter that laid down the legal framework for the re-establishment of the state and devolving state power along ethno regional lines.

The charter states that in addition to the end of an era of subjugation and oppression, it was the starting of a new chapter in Ethiopian history in which *equal rights and self-determination of all the peoples shall the governing principles of political, economic and social life.*<sup>127</sup>

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<sup>124</sup> Cited in note 108, 5

<sup>125</sup> Ibid

<sup>126</sup> Seyoum, Mesfin. "The Threat of Ethnic-Federalism under a Centralized Party Bureaucracy: Contemporary Ethiopia and the Defunct Yugoslavia Federation."

<sup>127</sup> *The transitional period charter of Ethiopia*, Charter No. 1 of 1991, Negarit Gazette, 50<sup>th</sup> year, preamble, Para. 2

Self-determination as a right was included in the charter and it states that each nation, nationalities and people is guaranteed the right to preserve their identity, administer its own affairs, and the charter also further enunciated the failure to comply this right by the government will grant self-determination of independence as leverage.<sup>128</sup>

Preserving the identity of nations and nationalities was also promised by the Dergue constitution. What made the charter special was the extent of the right of self-determination i.e. the right to independence (now called secession) and the degree of the commitment of the government to make the right real. In order to ensure the proper representation of nations and nationalities, the charter established two parallel systems of government, consisting of a central government and the regional/national self-government, for transitional period.<sup>129</sup>

The charter provided for the promulgation of law, which would establish local and regional councils for local administrative purpose defined on the basis of nationality.<sup>130</sup> Accordingly, proclamation No.7/1992 was promulgated “with a view to giving effect to the right of nations, nationalities and peoples to self-determination”.<sup>131</sup> The charter and the proclamation explicitly provided that the boundaries of the territorial regions are defined on the basis of nationality as a guarantee of the right of self-determination for nationalities.

The proclamation established fourteen-national/regional self-governments and identified the ethnic communities inhabiting each of the regions, except Addis Ababa.<sup>132</sup> Accordingly, five regions (region 7-11) merged to a single southern regional self-governing unit wherein each ethno linguistic community would retain its own local self-government and have representation at the regional level. The regions on the other hand enjoyed broad powers over the matters of language, culture, education, health, police and security, social and economic development activities.<sup>133</sup>

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<sup>128</sup> Id, Art.2

<sup>129</sup> Id, art.6

<sup>130</sup> Id, art.13

<sup>131</sup> A *Proclamation to provide for the establishment of national/regional self governments*, proclamation No. 7/1992, Negarit Gazette, 51<sup>st</sup> year, preamble, Para. 3

<sup>132</sup> Cited in note 108, 7

<sup>133</sup> Ibid

### **3.2. Self-determination in the present (1995 FDRE Constitution)**

As the 1995 constitution enunciates, self-determination is the pillar to build a political community founded on the rule of law and capable of ensuring a lasting peace guaranteeing a democratic order, and advancing economic and social development.<sup>134</sup> As it is clearly seen in the preamble, self-determination is not just simply a right rather it is a founding principle of the new Ethiopia to build democracy, to ensure peace and to be economically advanced.

The most significant and unique feature of the 1995 constitution is the recognition and institutionalization of the right of ethno linguistic communities of Ethiopia to self-determination and it is considered that the federal system is founded on the basis of the ethno linguistic arrangement.<sup>135</sup>

In the exercise of the right of self-determination nations, nationalities and peoples in Ethiopia have the right to speak, write and develop their language, to promote and develop their culture and to preserve their history.<sup>136</sup>

As full measure of self-government is one element of self-determination, the constitution states that the establishment of institutions of government in the territory that they inhabit and to the equitable representation in state and federal governments.<sup>137</sup>

The provision is clear about the fact that a nation or an ethnic group shall exercise self-determination in the territory it inhabits. It will happen through the establishment of institutions of government, which are accountable and transparent for the nation they are established by. Self-government also includes the participation of ethnic groups in both states and federal governments.

Freely pursuing economic development, or freely disposing of the natural wealth and resources is one of the main standard of self-determination in the international instruments and scholars also

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<sup>134</sup> FDRE Constitution, preamble, para.1

<sup>135</sup> Cited in note 104, p.15

<sup>136</sup> FDRE Constitution, art. 39(2)

<sup>137</sup> Id, art.39 (3)

agree that economic empowerment of nations is a pre-condition for the full exercise of self-determination.

Regarding economic empowerment, or the free disposal of natural resources, the Ethiopian constitution is silent. The grand provision of self-determination i.e. art.39 of the constitution, says nothing about the economic empowerment, or the free disposal of natural resources of nations, nationalities and peoples.

### **3.2.1 Distribution of powers between the federal and state governments: As FDRE Constitution stipulated**

It has been said that one of the core element of self-determination is self-rule or self-government and the Ethiopian constitution has already declared that nations and nationalities have the right to establish institutions in their own territory. But the establishment of the institutions does not ensure self or self-government unless the institutions are granted sufficient autonomous power and functions.

The FDRE constitution distributes the powers and functions of federal and state governments and the current Ethiopia as a federal nation, which is divided into nine regions.<sup>138</sup> The regions are mainly organized in terms of ethnic criterion so that the ethnic groups of Ethiopia are constitutionally coupled to specific regional states and it is within and through these states that they may exercise their right to self-determination. Even if the constitution tries to allocate the ethnic groups in one concentrated area, it is still impossible to achieve this purpose since history intermixed the people. Accordingly, Christophe Van der Beken divided the Ethiopian regions in to four based on their ethnic organization i.e. the regions named by the dominant ethnic group in the region like Amhara, Oromo, Afar, and Somalia. The second group of the regions are those without any dominant ethnic group, which are Gambela and Benshangul Gumuz regional state. The third formation of the region is expressed by the extreme diversity i.e. the South Nations, Nations and Peoples regional state. The final category of region is Harare, which is dominated by a small ethnic group.<sup>139</sup>

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<sup>138</sup> Id, art.47 (1)

<sup>139</sup> Cited in note 18,p.

Regarding the distribution of powers, the Ethiopian constitution demarcates the powers between the federal governments and the states.<sup>140</sup>

The process of power sharing in Ethiopia corresponds to most of the elements of consociational and incentivist models of power sharing. The adoption of the federal system of government was meant to provide a proper balance between at least major ethnic groups; there by holding a country united, which was threatened by disintegrative forces.<sup>141</sup> The basic structure of power sharing in Ethiopia covers the three major dimensions, which are the territorial, fiscal and political. The creation of states indicates the territorial dimension, while the revenue allocation system indicates the fiscal dimension; the method of distribution of powers indicates the political dimension.<sup>142</sup> It is clear that the 80 ethnic groups are organized under the 9 regions. As the practical scenario indicates there are ethnic groups, which are organized in terms of special woredas and zones as well as there are also ethnic groups, which are not entitled any of these structures.

As it is enshrined in the FDRE Constitution all sovereign power resides in the nations, nationalities and peoples of Ethiopia.<sup>143</sup> States as members of the federation are, therefore, primarily delimited on an ethnic basis, but as it is mentioned above some of them are home states for specific groups while others are homes for several ethnic groups bundled together. The FDRE Constitution gives the powers and function in terms of states by stating that all powers not expressly given to the federal government alone, or concurrently to the federal government and the states are reserved to the states. In addition to this states shall have the power to establish a state administration, to enact and execute the state constitution and other laws, to formulate and execute economic, social and development policies, strategies, and plans of the state, to levy and collect taxes and duties on revenue sources reserved to the states and draw up and administer the state budget etc.<sup>144</sup> In the exercising of these powers and functions a single ethnic group that get the status of region in the structural adjustment get a better autonomy other than those ethnic

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<sup>140</sup> Supra note 22, art.51&52

<sup>141</sup> Belay, Alefe Abeje. "EVALUATING THE SYTEM OF POWER SHARING ETHIOPIA IN LIGHT OF AREND LIJPHART'S MODEL OF POWER SHARING." *European Scientific Journal* 9, no. 31 (2013), 263

<sup>142</sup> Ibid

<sup>143</sup> FDRE Constitution, art.8(1)

<sup>144</sup> Id, art. 52

groups that collectively exercise the right of self-determination in a single region organized in the form of zones and special woredas. The major inconsistency of this territorial organization exhibited is the huge asymmetry in population size, geography and economy between the states and its failure to uniformly follow the constitutional principles.<sup>145</sup> This inconsistency is practically visible as it questioned the ethnic equality of the nations and nationalities in the country. For example the Harare city states has only 0.1% of the total population and occupies 0.01% of the national territory is a state, while Sidama with 5.5% of the total population is at the sub state level.<sup>146</sup>

The above scenario makes legitimate the claim of nations and nationalities to be a state. Pursuant Art.47 (2) of the constitution every nations and nationalities or people, which exist within the states has the right to establish, at any time its own state. Thus every nations and nationalities organized at the zone, woreda, or Kebele level could form a new state pursuant to the procedures under art.47 (3). But in a country of 80 ethnic groups it seems impractical or absurd. That is why some scholars described it as depicting a ‘confederal character.’<sup>147</sup>

Such constitutional principle i.e. granting power and function in terms of state has a lot of impacts on the full exercise of the right of self-determination among nations and nationalities.

Nations, nationalities and peoples, which are organized in terms of kebele, woreda, and zone, couldn’t directly exercise the power and functions under art.52 of the constitution. They are waiting the blessing of the ethnic group that granted status of statehood to be beneficiary and it is natural that the ethnic group that directly exercises the power and functions makes itself the first beneficiary.

The impression of statehood granting of powers and functions of the FDRE constitution is also visible in the fiscal aspect. Intergovernmental fiscal relations inherently related to the policy making at the federal level where states are parties to the process of intergovernmental relations so that the fiscal system is primarily maintaining relations between the states and not between

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<sup>145</sup> Solomon, Nigussie., *Fiscal federalism in the Ethiopian ethnic-based federal system*. Wolf Legal Publishers, 2006., 261

<sup>146</sup> Ibid

<sup>147</sup> Id, p.262

ethnic groups.<sup>148</sup> It is visible that those ethnic groups can and will claim their right of forming a separate state to be part of the panel unless art.52 is designed inline with art.8 (1) of the constitution.

It has also an impact on the process of revenue transfers. When we compare the per capita revenue, which is the relative revenue share of ethnic groups represented at the sub regional level in the SNNPR and Amhara regions is very lower than those regional ethnic groups like Gambela, Benshangul Gumuz and Afar. So such groups, which are levelled under a sub region status, have a sound reason to claim statehood to get the direct bargaining process at the federal.

### **3.3. Empowerment of local governments: as the apparatus of mainstreaming of self-determination**

#### **3.3.1 The Status of Local Governments under FDRE Constitution**

In describing the overall concept of local governments, the FDRE Constitution is full of blurred issues. In the first place the constitution does not incorporate the issue with a clear wording. From the reading of the constitution there are two bipolar views regarding local governments: in the first view it delivers the choice of establishments of local governments to the states by stating that state Governments shall be established at state and other administrative levels that they find necessary, and in the second views, the constitution enunciate the obligation of states granting adequate power to the lowest units of government.<sup>149</sup>

Scholars take the second view as a source of empowering local governments in Ethiopia. The provision institutes the principle of subsidiary by allocating service of delivery responsibilities to the lowest possible level of government.<sup>150</sup> Yet the right of regional states to decide on their local government structure is limited by concomitant obligation to create autonomous local government as opposed to their own administrative arms.<sup>151</sup> Providing local government with a constitutional status is a reflection of the recognition of its importance. More importantly, it

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<sup>148</sup> Id, p.264

<sup>149</sup> FDRE Constitution, art. 50(4)

<sup>150</sup> Cited in note 25, p.2

<sup>151</sup> Cited in note 26

represents a formal guarantee against any arbitrary elimination of local governments by the national or sub national government.<sup>152</sup>

The other indication that the Ethiopian constitution has envisaged the establishment of autonomous local government comes from art.39, which provides that every nation, nationality and peoples have the right to self-determination, more importantly it provides every ethnic group a full measure of self-government, which includes the right to establish institutions of government in the territory that inhabits. It seems that the constitution intends to give effect to the right of ethnic groups to a full measure of self-government by allowing establishment of an ethnically defined territorial unit in which members of ethnic group can govern their own affairs.<sup>153</sup>

As it is mentioned above, there are hints that the constitution seems concerned about the issue of local governments, but it is not in the level of empowering.

There are ethnic groups, which are organized in terms of kebele, woreda, and zone, especially in Amhara, SNNPR, Tigray, and Benshangul Gumuz. The constitution gives the power and function to the states, the states are also empowered to empower the ethnic groups under the woreda, and zone level.

The power of taxation including land are given to the states so that ethnically established local governments are not economically and politically empowered. Due to this bold reality, soon or later the ethnic groups never stop claiming statehood.

### **3.3.2 Empowerment of local governments as a saving clause from internal fragmentation**

As we mentioned above, nations and nationalities under the sub national units are not equally exercising their self-determination right with those nations and nationalities, which are found in the sub national status due to the constitutional empowerment states.

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<sup>152</sup> Cited in note 27, 91

<sup>153</sup> Id, p.92

In order to ensure their equality and interest, the current constitutional solution is granting their constitutional claim of statehood. This by itself is destructive since making the whole 80 ethnic groups as states leads to the internal fragmentation. On the other hand, denying their right of being statehood is the violation of their self-determination right.

To avoid the above two problems i.e. the internal fragmentation, and the violation of the right of self-determination, there must be another alternative way of accommodation. This solution is the empowerment of the ethnically established local governments. As it is mentioned above the rationale behind the claiming of statehood is the legitimate intent of exercising full rights of self-determination or the quest of power to be equally beneficiary with those nations and nationalities that got the statehood status.

If the nations, nationalities and peoples under the sub national units or in their local status can exercise their political, financial and the elements of self-determination fully, they will never claim statehood without serious ground.

## CHAPTER FOUR

### RIGHT OF SELF DETERMINATION OF SIDAMA NATION IN SOUTHERN NATIONS, NATIONALITIES AND PEOPLES REGIONAL STATE: THE ASSESSMENT OF LEGAL AND INSTITUTIONAL FRAMEWORKS

#### 4.1 The Right of Self-determination under the SNNPRS Constitution-Legal Framework

Southern Nations, Nationalities and Peoples regional state is among the 9 regional states of Ethiopia, which is characterised by extreme diversity. Fifty-six Nations, Nationality and Peoples out of 80 are found in this region.

In the very preamble of the revised 2001 SNNPR Constitution, Self-determination is mentioned as the instrument of protecting the language and culture of the nationalities of the state, and it serves to ensure the supremacy of the law and equality.<sup>154</sup>

Like the federal constitution, the right of self-determination is stipulated under art.39 of the SNNPRS constitution. With due respect of the federal constitution the regional constitution granted the following rights under the scope of self- determination.

The first right, under the scope of self-determination, is the cultural and language preservation. It ranges from preserving their identity by promoting and preserving its heritage and history to use and develop its own language and culture.<sup>155</sup> Efforts expected to be done to develop, preserve and promote their language, culture and history.

The second right that nations, nationalities and peoples are supposed to be benefited from self-determination is exercising a political autonomy, or political self-determination. It also ranges from administering their own affairs within their own defined territory to effectively, impartially and justly participates in the activities of the federal government.<sup>156</sup> It is administrating their powers and functions, which are granted by the constitution. The powers and functions of the

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<sup>154</sup> Southern Constitution, preamble 1

<sup>155</sup> Id, art.39 (1)

<sup>156</sup> Id, art .39 (2)

state council are stipulated under art.47 of the SNNPRS Constitution, which are implemented by the state government all over the region.

The powers and functions of states directly related with the right of self-determination of nations and nationalities. As it is already mentioned, the federal government directly empowered states and it is up to states to confer the powers and functions they have to the lower units inside them so that the wider exercise of the right of self-determination by nations, nationalities and peoples depends on the autonomy that given by the regional constitution.

Among the powers and functions of the state, it shall formulate and exercise the regional policy, strategy and plan related to economic and social development, administer land, levy taxes and collect duties on revenue sources granted to the regional state, levy and collect income taxes on civil servants, income of houses and other properties owned by private, agricultural income tax, fix and collect rents on the income houses and properties owned by the regional states, levy and collect income profit, sales and exercises on enterprises owned by the state, levy and collect taxes from transport services rendered on water within the state, and it also has jointly shared tax incomes with the federal government like large mining and all petroleum and gas operations, and royalties on such operations.<sup>157</sup>

Then the point of discussion here is what are the powers and functions that the regional state left to the local governments in terms of political and fiscal power?

Political self-determination of the nations, nationalities and people is stipulated in both the federal and state constitution. On the other hand both constitutions do not enunciate about the fiscal self-determination of nations and nationalities.

The SNNPRS Constitution acknowledged the establishment of Zones and Special woredas. It also says that the zone or special woreda is an administrative hierarchy next to region.<sup>158</sup> The zones and special woredas of the southern region are established based on ethnic criterion so that the constitution enunciates the same powers and functions for both zones and special woredas.<sup>159</sup>

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<sup>157</sup> Id, art.47

<sup>158</sup> Id, art.80

<sup>159</sup> Ibid

It seems the constitution intended to show the equality between the nations, nationalities and peoples. If that is the case what is the difference between zones and special woredas? Constitutionally there is no difference other than being administrative structure.

## **4.2 The zones' or special woredas' structure and powers under the SNNPRS Constitution**

### **4.2.1 Structure**

Three organs organize the zones or special woredas. These are the Zonal or special woreda council, the Zonal or Special woreda Administrative council, and the judiciary.<sup>160</sup> The representatives elected for the Zonal or special woreda council, including those elected for the state council, shall organize the members of the Zonal or special woreda council.<sup>161</sup>

The Zonal or special woreda council holds those representatives elected for the state council as a member. The point here is that why the constitution put the member of the state council as a member of the Zonal or special woreda council members. It is thought that such composition offers an institutionalized device for vertical intergovernmental relation (regional-Zonal) and is conducive to the achievement of unity in diversity in the region.<sup>162</sup>

The Zonal or special woreda administrative council is an executive organ of the zone or special woreda and it is accountable to the chief administrator, the Zonal or woreda council and the state council.<sup>163</sup> As it is inferred from the provision, the administrative council has a double accountability to the Zonal or woreda council and the state council so that if there is a contradictory issue between the state council and the Zonal or woreda council, which one prevails, is not clear yet.

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<sup>160</sup> Ibid, art.80 (1)

<sup>161</sup> Ibid, art.81 (1)

<sup>162</sup> Cited in note 18, p.9

<sup>163</sup> Cited in note 154, art.84 (1)

## 4.2.2. Powers and Functions

### I. Powers and Functions of the Zonal or Special woreda council

As it is provided in the SNNPRS Constitution the Zonal or Special woreda council shall exercise the highest political powers, and regarding their powers and functions, they are duty bound to respect the powers and functions of the HPR as it is provided in the federal constitution and the state council, which are provided under art.51 of the SNNPRS Constitution.<sup>164</sup> Here the federal constitution doesn't put any power and function for the Zonal or woreda council so that their destiny is dependent on the good will of the state council. Accordingly the state Constitution i.e. SNNPRS Constitution confers the following powers and functions to the Zonal and special woreda council.

The Zonal or woreda council shall determine the working language; protect the right of the nationalities to speak, write and develop their language as well as to preserve their history.<sup>165</sup> Developing their language and preserving their history related with the institutions that they have been establishing. In order to establish such institutions, financial empowerment plays a significant role. As it has been mentioned above all taxation powers are vested on the state government and budget for the zone and special woreda is generated from the state so that in the allocation of such budget whether the state government gives a due consideration for this obligation or not will be assessed.

The other power and function of the Zonal or special woreda council is that they shall make laws on matters uncovered and are consistent with state and federal laws.<sup>166</sup> In this case it is questionable that there is any uncovered matter on both state and federal laws so that it seems difficult to operate in practice.

The Zonal or special council also shall approve its own budget upon budget allocated to it by the state council.<sup>167</sup> Here in the first place the budget is coming from the state and the constitution

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<sup>164</sup> Id, art.84 (2)

<sup>165</sup> Id art.81 (3(a & b))

<sup>166</sup> Id art.81 (3(c))

<sup>167</sup> Id art.81 (3(d))

does not put any provision whether they have a say upon the allocation of budget so that the amount may not be in line with their programme. Second they are obliged to follow the state plan to approve the zone or special woreda budget so that it seems they are restricted to make their own plan.

The other power and function of the Zonal or special woreda council is to call and investigate the chief administrator and other Zonal or special woreda officials whether they have discharged their responsibilities or not.<sup>168</sup> In this scenario, the constitution does not put any effect of such call and investigation. This means what if the council get the officials fail to conduct the responsibilities in accordance with the interest of the concerned nationalities. The problem is also tough since the Zonal or woreda administrative is accountable to the state executive so that their hand is tied to take any measures.

## **II. Powers and Functions of the Zonal or Woreda Administrative Council**

As the highest administrative organ of the zone or special woreda, the administrative council has the following power and functions.

As the executive organ, it enforces the laws and other decisions of federal and state laws while the regional constitution does not order the administrative council to enforce the special woreda or Zonal laws, and it also formulate economic and social development policies and strategies that are consistent with the state policies and strategies.<sup>169</sup> Here the administrative council is guarded by the standards of state government to formulate the zone or special woreda socio economic policies and strategies. Upon approval of such policies and strategies, if the Zonal council disprove it, the administrative council may defend itself by reasoning out the state policy issues, no matter how the state policies endanger the interest of the concerned nationalities. The constitution also does not show any way that the Zonal or special woreda administrative council participate in the policy formation of the state.

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<sup>168</sup> Id art.81 (3(h))

<sup>169</sup> Id art.85 (1 & 4)

### **4.3. The Exercising of the Right of Self-determination of Sidama Nationality: Practical Assessment of Institutions**

#### **4.3.2. Sidama Zone**

Sidama zone is located in the south east of Ethiopia, which is part of the Southern Nations, Nationalities and Peoples Regional State in the current administrative structure of the country. It is named after the Sidama people, whose homeland is in the zone. It is bordered in the south by the Oromia Region (except for a short stretch in the middle where it shares a border with Gedeo zone), on the west by the Bilate River, which separates it from Wolayita zone, and on the north and east, by the Oromia Region.<sup>170</sup>

The zone is the leading of coffee producing zone in Ethiopia, which contributes greatly to the foreign exchange of the federal government. The central statistical agency (CSA) reported that 63,652 tons of coffees were produced in Sidama and Gedeo combined in the year ending in 2005 E.C, based on inspection records from the Ethiopian coffee and tea authority. This represents 63% of the SNNPR's output and 28% of Ethiopia's total output.

Regarding demography of the zone, based on the 2007 census conducted by the CSA, the zone has a total population of 2,954,136, of whom 1,491,248 are men and 1,462,888 women, with an are of 6538.17 square Kilometres, Sidama zone has a population density of 451.83. While 162,632 or 5.51% are urban inhabitants, a further 5,438 or 1.18% are pastoralists.

The Sidama people preserved their cultural heritage, including their tradition and language until the conquest by emperor Menelik II in the late 1880s. They used to be administered by the indigenous moote political system. The family relative for the position nominated to the Mooticha, equivalent to a king who is the head of political and administrative structure.

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<sup>170</sup>[http://en.wikipedia.org/wiki/Sidama\\_Zone](http://en.wikipedia.org/wiki/Sidama_Zone) last visited on March 23, 2015

### 4.3.2. Preservation of History, Culture and Language of Sidama Nationality

Preserving history, culture and language is one of the underlying elements of self-determination, especially in the ethnically divided society.

The assessment started from the Sidama zone culture, tourism and communication department. In my interview, I present the first question for the head of the department as: do you think the Sidama nationality's history, culture and language respected in the present federal system? The head of the department responded to the question as follows:

*Definitely yes! It used to be said that don't wear Sidama nationality cultural cloth in the church, because it is the cloth of devil, don't put the Sidama language in the radio, because it going to break radio, don't eat Sidama food, because it is barbaric. But now, we teach our children by our own mother tongue language and we have radio programme by our own language, our traditional cloth getting the attention beyond the member of the nationality group, even it become source of income for who make and sell the cloth. Our traditional food is included in many grand hotels' menu and many peoples including the tourists love it.<sup>171</sup>*

Related to the preserving of history of the Sidama nationality, a research has been conducted about the history, culture and way of life of the Sidama nationality and then it is published in the form of book in Amharic, which deals about the identity, culture, and political struggles of the nationality to preserve its history & culture.<sup>172</sup> In addition to this, there is an effort to register the New Year celebration of the nationality, which is called *Chefie Chenbelala* in UNESCO.

In order to develop the nationality language, which is here after called Sidamigna, a relatively respectable numbers of works have been done. Among these, in the Hawasa teachers college,

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<sup>171</sup> Interview with Workineh Filate Dansamo, the head of Sidama zone culture, tourism and communication department, January 16, 2015

<sup>172</sup> Ibid

there is a department of *Sidamigna* and it is given as a degree programme in Hawasa University.<sup>173</sup>

The Sidamigna-Amharic dictionary has been published and it is the working language and academic language of the elementary schools of the zone and it is also given as one subject matter in the preparatory and secondary schools.<sup>174</sup>

The zone has built its own radio station and is regularly broadcasting in Sidamigna, and there is also a Sidamigna programme that broadcast in South and Fana Shashemene FM radio stations.

Regarding the cultural institutions (cultural centres), which continuously work to develop the culture of the nationality and conduct research to get more values of the society has not been built yet. The Sidama nationality has its own administrative and dispute resolution mechanisms, which guaranteed, the society's peace for centuries and there is no any institution established to preserve such values. The main reason for such failure is the financial constraints due to the fact that the zone administrative council allocates budget based on the priorities and directions of the state government so that more budget is allocated for health, education, and poverty reduction.<sup>175</sup>

In Sidama zone, in the preserving of the history, culture and language, two relatively noticeable works has been done. The first one is the prescription of the history and culture of the nationality in the book. The second is the activities of the zone in developing the nationality's language is remarkable as long as it is given in the college and university; a sustainable founding base is done.

But in the big picture, the non-existence of cultural institutions that study and preserve the nationality's culture is a big failure. The administrative and dispute resolution mechanism of the society must be part of constructing of the society rather than negligently rejected. Works are not done yet to develop the art and music of the nationality. In order to preserve and pass to the next generation the society as it is, such institutions are the vital instruments. Without so it is difficult to say the nationality is preserving its history and culture.

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<sup>173</sup> Ibid

<sup>174</sup> Ibid

<sup>175</sup> Ibid

### **4.3.3. Exercising of a full measure of self-government**

The exercising of a full measure of self-government is a means of political self-determination. In this regard the Sidama nationality zone has its own Zonal council and administrative council, which are the highest political powers holder and executive organ of the zone respectively.

#### **I. Sidama zone council: the highest political powers holder of the zone**

As it is mentioned in the previous discussions, the Sidama zone council is the highest political powers holder of the zone. As the highest political powers holder of the zone, it has powers and functions granted by the state constitution so that in this practical assessment the practical activities of the council will be evaluated in light of the constitutional allocations of powers and functions of the council.

##### **A. Making Laws**

The inherent function of the council is making laws, and as the regional constitution stipulated the council shall issue laws on the matters uncovered by the federal and state laws. Accordingly the Sidama zone state council could not make proclamation by the fact that making proclamation is the power of state and federal governments so that the law making power of the zone is limited in the status of directives.<sup>176</sup> As a matter of fact the federal and state laws cover most matters so that in the history of the council one directive was made only on one matter i.e. a directive which prohibits street selling of goods after 6 AM and the other is on the way, which is designed to administer the works and ethics of the members of the council.<sup>177</sup>

In this regard, in the first place, the south constitution does not say that the zone council can make only directives as the speaker said. The constitution simply stipulated that laws signed by the concerned speaker thereby published in Debub Negarit Gazette. Second as the practical assessment shows since the establishment of the current federal system of the country, the Sidama zone council has enacted one directive, and the nature of the directive can't be the

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<sup>176</sup> Interview with Ato Solomon Lallie, the Speaker of Sidama Zone Council, January 16, 2015

<sup>177</sup> Ibid

reflection of its political power so that the Sidama council could not exercise its inherent power of legislating laws and it is simply granted the law making power for formality purpose.

## **B. Approving its own plan and budget**

One of the constitutionally granted powers and functions of the Zonal council is the approval of its plan and budget based upon plan and budget allocated by the state government. In approving the zone plan, forcing to stick to the plan of the regional government seems against the autonomy of the zone council on the Zonal matters. The federal and state governments make the plan and budget based on those policies and strategies so that the council follow those directions to approve its own plan and budget.<sup>178</sup> Regarding the standards the council follow in the approving the Zonal plan and budget are the standards that appear in the state plan and budget and what is expected from the council is checking the budget that is allocated based on those standards and directions.<sup>179</sup>

In the preparation of the state plan, the Zonal council has not any say, and it is thought that the representatives of the Sidama nationality in state council will rescue the interest of the nationality.<sup>180</sup>

In the issue at hand the Zonal council is not independent to approve its own plan and budget. Let alone the amount of budget, in choosing the real priority of the nationality it is not possible by the solid standard of the constitution. As supreme political power holder of the zone, the Zonal council shall approve its plan based on the priorities of the nationalities not the state. The representative of the Sidama nationality in the state council are expected to act regionally as a member of the regional government so that it is being naïve expecting they are always argue to the very interest of Sidama nationality. To this effect the real guard of the Sidama nationality is the Zonal council whereas it has failed to serve its duty.

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<sup>178</sup> Ibid

<sup>179</sup> Ibid

<sup>180</sup> Ibid

### **C. Determining the working Language of the Zone**

Determining the working language of the zone is the power of Zonal council due to this Sidamigna was determined as the working and academic language of the zone since August 10, 1985 E.C.<sup>181</sup>

Since the Zonal council determined Sidamigna as the working language of the Zone the overall activities of the judiciary system is carried out in Sidamigna.<sup>182</sup> But the cotemporary working laws i.e. codes, proclamations, directives, and the cassation decisions are not translated in to Sidamigna so that there is no accessibility of laws to the society in their own language and the presiding judge in the writing of any decision and judgement, he/she inferring the Amharic provision and translated into Sidamigna by him/herself and there is no any standard of translation that all judges must follow.<sup>183</sup> Even if the Zonal council tried to translate the SNNPRS Constitution in to Sidamigna, it has not reached to the society yet.<sup>184</sup>

The Zonal justice department is the main concerned organ of the issue at hand. As soon as the council determined the working language of the zone in 1985 E.C the Zonal justice department immediately started translating the common legal terms in to Sidamigna by starting the name of the courts like the first instance court, high court in Sidama language and also other terms like defendant, plaintiff, charge and so on whereas the translation did not continue and the documentation process of the translated terms was not organised and it was simply prepared in brochures for the sake of structural adjustment.<sup>185</sup>

The public prosecutors frame charges in Sidamigna by translating the Amharic legal provision by themselves without any established standards.<sup>186</sup>

In the justice department, there is a legal study and an awareness creation, branch and its structure stretched to the woreda level and it currently works on the creation of awareness

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<sup>181</sup> Ibid

<sup>182</sup> Interview with Ato Dingama Dide, Vice President of Sidama zone high Court, January 22, 2015

<sup>183</sup> Ibid

<sup>184</sup> Ibid

<sup>185</sup> Interview with Ato Shumbulo Shumene Saru, the higher expert of Sidama zone justice department, January 22, 2015

<sup>186</sup> Ibid

through FM radios and by giving training for the societies while there is no any research that has been conducted on the consequences of the current legal operation in the zone.<sup>187</sup>

The Sidama nationality, like other Ethiopian society has their own dispute resolution mechanism that the society practiced for centuries and they have a great faith on such mechanism whereas it has not been granted any legal effect in the formal judicial system and there is no any effort or study that has been conducted to make it part of the judicial system.<sup>188</sup>

As it has been clearly seen in the above interviews, the working language of the courts is Sidamigna. On the other hand there is no law including codes, proclamations of both federal and state as well as the decision of the cassation translated in to Sidamigna. Especially the laws that are made by the state are directly affecting the social, economic, cultural and political life of the society. In relation to the socio economic development of our country lots of proclamations and directives are made every day on new and strange matters so that without the translation of these law into Sidamigna and without making accessible these laws to the society imposing a legal sanction is against the very notion of rule of law.

The state constitution, which is the source of both group and individual rights, is not properly translated in to Sidamigna and is not accessible to the society so that it is hard to say the Sidama people are aware of their fundamental rights and freedoms. Where the individual arrested it is hard to know their rights as arrested person. Where they presented in the court as accused person it is hard to them to know their preliminary objections.

Translating the Amharic provision in to Sidamigna is left to the individual judges and public prosecutors. As the very complex nature of the law giving such responsibilities for individuals does not enable to deliver the true intention of the legislature and the translation of the judges on the same provision will not be the same, due to this mere fact it is difficult to say justice is served.

One of the purposes of the law is creating a norm in the society so that without accessing the law to the society, translating the law randomly will not allow to achieve this very purpose.

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<sup>187</sup> Ibid

<sup>188</sup> Ibid

As it is mentioned above the academic language of elementary schools in the zone is Sidamigna. In the elementary school's curriculum there are four subject matters and it is prepared in accordance with the nationality history, curriculum and geography, especially the environmental science.<sup>189</sup>

Regarding the secondary school, the regional government designs the curriculum and it is decided that all academic matters are to be in English, except Sidamigna is given as one subject matter, and the educational department of the zone is not entitled to decide on the curriculum of secondary school.<sup>190</sup>

In the curriculum preparation of secondary schools the educational department of the zone does not participate except preparing the Sidamigna language book and in the book it is tried to include the Sidama nationality's culture and history whereas on the other social science subject matters the regional education bureau decides the contents so that it is difficult to say the Sidama nationality history, culture, traditional way of administrative and alternative dispute resolution mechanisms are included in the secondary school curriculum in the an organized manner.<sup>191</sup>

Regarding the reference books, the Sidamigna dictionary prepared both in Amharic and English languages while there is no any other reference book prepared in Sidamigna and there is no a book about Sidama nationality in Sidamigna. The only book that deals about the history and culture of the nationality has not been translated in to Sidamigna yet.<sup>192</sup>

One of the purposes of education is to let students grasp the background, identity, history and culture of the society that they come from and grow up in and also in the future it will be the source of their achievements as well as the society will get the true problem solver elites. As per the notion of self-determination the education curriculum plays an important role in the developing history, culture and other identities of the nationality as well as it also produce the

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<sup>189</sup> Interview with Ato Elias Barsamo Debiso, the head of curriculum in Sidama education department, January 26, 2015

<sup>190</sup> *ibid*

<sup>191</sup> *Ibid*

<sup>192</sup> *Ibid*

societal oriented generation, who can protect and grow the political, economic, culture and other rights of the nationality.

Regarding the education curriculum of Sidama zone it does not enable to achieve the purposes. Teaching the elementary school in Sidamigna may be taken as a good beginning but in the elementary school students are not expected to know more than writing and reading. The interpretation and analyzing capacity of students starts in the secondary school but the role of the zone in preparation of the curriculum of secondary school is not visible so that the students of Sidama nationality are not sufficiently moulded in the context of their own nationality. Adding passages about the history and culture of nationality in the secondary and preparatory Sidamigna book may contribute a little bit in giving a clue of their society while the purpose of language book is to qualify students in the four language skills i.e. reading, writing, speaking and listening so that it is difficult to say the language class only can enable to create the locally enriched educated class.

So because of students in the elementary school learn in their mother tongue language it is difficult to conclude that they know their history and culture as long as it is not part of the secondary school curriculum. The reason for such failure is because of the educational department of the zone is empowered neither to prepare the curriculum of secondary school by itself nor to participate in the curriculum preparation of the regional education bureau.

## **II. The Zonal Administrative council-the executive of the zone**

As the executive organ of the zone, the problems that reflected in the other institutions like the failure of the establishment of cultural institutions, the unorganized nature of the judiciary system and the justice department, in the education curriculum etc... are directly related with it since it is empowered to allocate budget, formulate economic and social development policies and strategies.

### **A. The ambiguity of accountability of the Zonal executive**

As the state constitution enunciates the Zonal administrative council is accountable for both Zonal council and regional administrative council in addition to this the chief administrative

council personally accountable to the chief executive of the regional government and such dual responsibility may create ambiguity who will be the final decision maker in the matters of the zone?

The constitution may not be clear on the accountability issue but still there is no such conflict that has arisen between the regional administrative council and the Zonal council since the Zonal administrative council works through cooperation with the regional administrative council and in addition to this there is the supremacy of power that our decision couldn't expect to challenge the decision of the regional government as long as the region has a higher political status than the zone.<sup>193</sup>

Zonal council controls the working of administrative council through its standing committees for example the audit committee can call and question on the financial matters any head of department of the zone and can influence to dismiss from post based on the result of the audit.<sup>194</sup>

The issue of accountability is one of the expressions of self-determination by making the officials accountable to the people directly influenced by their act and decision so that the administrative council of the zone should be mainly accountable to the people of the zone. The supreme power holder of the zone is the people of the zone and the Zonal council represents the people so that on the specific matters of the zone, the decision of the Zonal council should prevail. It does not mean that the Zonal council should be sovereign on all matters of conflicts of the decision but the areas highly connected with the interest of the nationality must be decided by the Zonal council and these areas must be clearly determined.

The possible reason for the current harmony between the zone council and regional administrative council is because of the Zonal administrative council takes the order from the regional government by accepting that the regional government is the final decision maker on all matters.

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<sup>193</sup> Interview with Ato Bekele Teffo Gellagelo, the head of civil service department of Sidama zone, January 26, 2015, *In my staying at Hawasa I tried to get the chief administrator of the zone for two weeks even if I couldn't while he was in his office by reasoning out he is busy of meetings so that I interviewed the other members of the executive of the zone administration.*

<sup>194</sup> Ibid

## **B. Drawing up budget**

Drawing up budget is part of the political autonomy of the Zonal administrative council and in the drawing up of the budget, the administrative council follows the parameters of budget allocation of the state like the revenue generating capacity, expenditure need, developmental level, population size, the numbers of cattle in the concerned woreda, accessibility of health stations etc.<sup>195</sup>

In the content of the plan, the Zonal administrative council follows the policies and directions of the state government and those policies and strategies of the region are formulated after studying the region's problem so that the zone follow the plan of the regional government.<sup>196</sup>

Regarding the amount of budget, by its nature budget is not sufficient but relatively the administrative council believes the zone is getting what it deserves and if the zone fails to accomplish its plan due to the shortage of budget, the regional government fulfils some important works based on MDGs.<sup>197</sup>

## **C. Formulate Economic and Social development Policies and Strategies**

The zone administrative council adopted the state government policies and strategies in the context of the zone. The nations, nationalities and peoples of the region are facing in the same problems and have the same historical marginalization so that the uniform policies and strategies are needed.<sup>198</sup>

The zone administrative council has not made its own original policies and strategies yet. But it is not because of the regional government prohibit the administrative council from doing so rather the policies of the state and the federal government govern the problems of the zone.<sup>199</sup>

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<sup>195</sup> Ibid

<sup>196</sup> Ibid

<sup>197</sup> Ibid

<sup>198</sup> Ibid

<sup>199</sup> Ibid

In this regard policies and strategies, in most scenarios are drawn from the federal government. But states made their own policies and strategies based on the powers and functions granted by the federal constitution so that it may not be expected the zones and special woredas to be enriched by their own policies and strategies since the states by itself is not enriched. On the other hand it does not mean that all doors are closed to the zone to make its own policies and strategies. As we have seen in previous assessment there are problems on the development of cultures, education curriculum etc. As it is seen from the reading of the regional constitution, the zone can make its own policies and strategies on its own specific matters. As the interviewee said, the zone administrative council still does not try one because of the generalized acceptance of the regional government policies and strategies as a key for all matters of the zone and such belief makes it passive to see the problems deep down inside.

Nations, nationalities and peoples in the region may have the same historical experience and their desires may share some common characters like they all need to develop their culture, increasing their self-governing autonomy, ensuring the ability of choosing their priority etc. and these desires are not ensured by the unanimous plan, policies and strategies of the region.

#### **D. Good governance and other activities in the zone**

The Sidama nationality is one of historically marginalized nationalities in terms of its culture, language in particular and it is the victim of other social, economic and bad governance problems in general like other Ethiopian peoples. In this respect our country designs policies and strategies to ensure good governance and economic development. Because of this in Sidama zone roads are constructed, schools are built etc.

The administrative council tries to identify the problem of good governance in each sector i.e. in health, education, in the civil service sector and other related services. Accordingly the administrative council tries to put solutions, identify who should solve such problems and who should be accountable for such failures. The administrative council also categorizes problems, which can be solved shortly and takes a long time to be healed and the council enforce each department of the zone to deal with stake holders in what time the service should be rendered and the administrative council applies the citizen charter which provides in how much time the

person get the necessary service, and the administrative council evaluates its progress and failures in every three months.<sup>200</sup>

To understand whether the people and stakeholders are relatively satisfied or not by the service the zone government provides, it requires a deep research to be conducted. But the above efforts of the administrative council deserve some recognition.

The administrative council has not prepared its own policies and strategies to solve its own good governance problems. As it is mentioned above, there is a big problem in the judicial system and justice department, which needs the extensive effort of the administrative council. Such and other good governance problems of the zone are highly related with the culture, way of life and history of the society so that the solution for the problem of good governance must come from the nationality itself. The administrative council must use the traditional administrative mechanisms in the fighting against bad governance, corruption scheme etc.

#### **4.3.5. Free Disposal of Natural Resources and Wealth –Economic empowerment**

As it is mentioned in the previous discussion part, the free disposal of natural resources and wealth is one of the essential elements of self-determination. In this regard, the Ethiopian constitution, in the description of self-determination it does not express the free disposal of natural resources and wealth whereas it gives the powers of making law on land and other natural resources to the federal government.

In the practical assessment, Sidama zone revenue office was part of the exploration to get the general information about the revenue source of the zone. In the first place, the zone has no power to decide any tax base as long as it is the power of the federal government, the zone also has not any power of taxation, which is given by the regional constitution so that the zone revenue branch office collects taxes that are given by the federal constitution to the regional government and the zone revenue office is the branch of the regional revenue authority.<sup>201</sup> The

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<sup>200</sup> Ibid

<sup>201</sup> Interview with Lidia Tadesse, the developmental plan expert of the Sidama zone revenues office, January 20, 2015

source of taxes of the revenue office comes from three main areas i.e. direct tax, indirect tax and non-tax revenues and these sources are related to the state power of taxation, which is stipulated under art.97 of the FDRE constitution.<sup>202</sup>

On the share companies and private limited companies the power to collect tax belongs to the federal government. What the zone revenue office benefited is from the lease of the land and in the mining field by giving licences for individuals or groups of individuals below PLC level.<sup>203</sup>

Regarding the source of budget, it comes from two sources i.e. from the regional government and the internal revenue of the zone. The source of budget that the zone gets from the regional government depends on the internal revenue of the zone, which means if the zone collects more revenue the income it gets from the regional governments will decrease and if the zone collects the revenue that covers the annual amount of budget, which is decided by the regional government, the source of budget from the regional government will be suspended.<sup>204</sup> If the zone collects the amount of revenue more than the determined annual budget of the zone, it couldn't use the rest of the amount.<sup>205</sup>

In the economic empowerment, as the very constitution of the region shows, the zone or special woredas do not have any taxation power or any other source of income due to the fact that the federal constitution gives taxing power for the states. But still nothing prohibits the state constitution from giving some taxing power or other source of income to the zones or special woredas.

As it is understood from the interview, the zone revenue branch office collects taxes as a branch of the regional revenue authority and the zone uses the revenues that are collected by the revenue office. This is just a practice that the regional government follows to make its tax collection mechanism effective by creating belongingness, but there is no any guarantee that prohibits the regional government from eliminating the Zonal revenue branch office so that the source of

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<sup>202</sup> Ibid

<sup>203</sup> Ibid

<sup>204</sup> Interview with Ato Syum Wotamo, the marketing supervisor of Sidama zone economy and finance department, January 20, 2015

<sup>205</sup> Ibid

income will be only the budget that the zone gets from the regional government. In the absence of power of taxation of the nationality zone, it is difficult to say that the nationality freely disposes of their natural resources and wealth. And without the free disposal of natural resources and wealth there is no full exercise of the right of self-determination.

## CHAPTER FIVE

### 5. CONCLUSION AND RECOMMENDATIONS

#### 5.1. Conclusion

In the paper, the historical background of self-determination started with the Wilsonian popular sovereignty understanding of self-determination. Furthermore the Lenin perception of the concept as a colonial independence and the current understanding of internal self-determination in the multicultural society have been discussed. In the discussion it has been seen that self-determination is not anymore the idea of a few political thinkers and scholars rather it is the right of every nations and ethnic groups around the world, which grants them the autonomy to decide on their own cultural, economic and political issues. In the discussion, the role of local governments in the mainstreaming of self-determination has been also dealt with.

Self-determination in the Ethiopian context has also been assessed. The FDRE Constitution, put self-determination as a cardinal element of the federal system and it provides that nations, nationalities and peoples of Ethiopia have the right to develop their culture and to establish their own political institutions to administer themselves but it does not stipulate whether the nations, nationalities and peoples of Ethiopia have the right to dispose of their natural resources and wealth. The constitution stipulates that the federal government mainly controls land and other natural resources and it gives powers and function in terms of states doesn't give in terms of nations and nationalities and this leads to results inequality in the exercise of political powers among nations and nationalities. The constitution also grants the power of taxation in terms of states rather than in terms of nations and nationalities and it results in inequality in the disposing of wealth and natural resources among nations and nationalities. The FDRE Constitution has not seriously addressed the issue of local governments.

The SNNPRS constitution is structured in the form of the federal Constitution and it organizes ethnic groups in terms of language and ethnicity by creating special woredas and zones. As it is stipulated in the federal constitution, the SNNPRS Constitution gives powers and functions, and all power of taxation to the SNNPRS government. The constitution determines the structure of

the special woredas and nationality zones by putting their own council and administrative council as the highest political holders and executive organ of the nationality zone or special woreda respectively.

The Sidama nationality zone is among the zones of SNNPRS with the highest population. The zone has its own Zonal council and administrative council. The purposes of these organs are supposed to enable the Sidama nationality the exercise of political power in both legislative power and making the zone plan and budget, policies and strategies on the matters directly concerning the nationality. But in the practical assessment, it is not seen both of these organs exercise the necessary powers and functions. It is shown that they are simply structurally available and follow the lead of the regional government. The council has not made any law and the administrative council has not issued any policies and strategies yet. On the concerned matters like education, judiciary and other cultural issues of the zone, the organs do not put specific standards to say that the zone is politically empowered. The zone has not been entitled its own source of taxation or income in general.

In the development of the culture of the nationality, institutions are not established, the council follows the regional policies, plans and directions to approve budget, the administrative council does not make policies and strategies and its own original plans on the original problems of the zone so that it is hard to say the Sidama nationality exercises fully their self-determination right. They are rather dominated by the regional government.

## 5.2. Recommendations

Based on the above assessments, the following recommendations are put forward

- ❖ The issue of accountability of the Zonal administrative council should be clearly and systematically regulated between the Zonal council and the state administrative council. To that effect on the specific matters that are directly related with the concerned nationality, the administrative council should be unconditionally accountable to the council of the concerned nationality council and those matters should be clearly defined in the SNNPRS Constitution so that the SNNPRS Constitution should be amended.
- ❖ A clear procedure of supervision of special woredas and nationality zones by the state should be devised and the area of intervention by the state also should be identified.
- ❖ The special woredas and the nationality zones should be granted sources of taxations specially taxes that are related to their land and natural resources.
- ❖ The federal government must establish an organ that evaluates the assignments of regional governments in ensuring the right of self-determination for the ethnic groups or nationalities under their territories
- ❖ Finally based on art.50 (4) of the FDRE Constitution, special law should be made that determine the functional competencies of special woredas and nationality zones in the areas of economic and political empowerment.

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## **Persons Interviewed**

Interview with Workineh Filate Dansamo, the head of Sidama zone culture, tourism and communication department, January 16, 2015

Interview with Ato Solomon Sasie, the Speaker of Sidama Zone Council, January 16, 2015

Interview with Ato Shumbulo Shumene Saru, the higher expert of Sidama zone justice department, January 22, 2015

Interview with Ato Dingama Dide, Vice President of Sidama zone high Court, January 22, 2015

Interview with Ato Elias Barsamo Debiso, the head of curriculum in Sidama education department, January 26, 2015

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Interview with Lidia Tadesse, the developmental plan expert of the Sidama zone revenues office, January 20,2015

Interview with Ato Syum Wotamo, the marketing supervisor of Sidama zone economy and finance department, January 20, 2015