

**Implication of Ethiopian Federalism on the Right to Freedom of
Movement and Residence: Critical Analysis of the Law and the
Practice**

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DECLARATION

I, **Yonas Girma**, hereby declare that this dissertation is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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Acronym

ANRS	Amhara National Regional State
ART	Article
CCI	Council of Constitutional Inquiry
CERD	Convention on the Elimination of Racial Discrimination
CUD	Coalition for Unity and Democracy
ECOWAS	Economic Council of West Africa States
EHRCO	Ethiopian Human Right Commission
EIO	Ethiopian Institute of Ombudsman
EPRDF	Ethiopian People Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
HoF	House of the Federation
ICCPR	International Convention on Civil and Political Rights
MoFedAf	Ministry of Federal Affairs
OLF	Oromo Liberation Front
ONLF	Ogaden National Liberation Front
ONRS	Oromia National Regional State
OPDO	Oromo People Democratic Organization
SNNPRS	South Nation Nationalities and Peoples of Ethiopia
SNRS	Somali National Regional States
UDHR	Universal Declaration of Human Rights
UN	United Nation
ICERD	International Convention on the Elimination of Racial Discrimination

IDPs	International Disability Persons
NGO	None Governmental Organization
OAU	Organization of African Unity
AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
AEUP	All Ethiopians Unity Party

Abstract

The FDRE constitution has established ethnic federal arrangement in one hand and incorporates everyone's right to freedom of movement and residence everywhere within Ethiopian territory on the other. Besides this, ethnic self determination has established as a cornerstone of the federal system. But, there is no any single study has conducted to look at the practical serene coexistence of Ethiopian federal system and the right to freedom of movement and residence. Thus, the main issue addressed in this paper is whether the federal system has implemented properly in congruent with the right to freedom of movement and residence of individuals in Ethiopia. The thesis has also tried to explore whether the institutions put in place to safeguard the right to freedom of movement and residence has worked efficiently and effectively by way of giving the required remedy in case of violation. In doing so the writer has analyzed cases with integrating interview responses as well as explores other countries experiences. After conducting serious analysis, the writer has, eventually, reached to the following findings: ethnic federal setup of Ethiopia has practically negative implication on the right to freedom of movement and residence; ethnic based political parties are also responsible for the violation due to their contribution to the increasing ethnic consciousness of the society. Governmental safeguard institutions are not properly safeguarding this right from the pitfall of Ethiopian ethnic federal system; Misuse of ethnicity for political game by the ruling EPRDF party has aggravated the impact of ethnic federal system on the violation of such freedom.

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Chapter One: Back Ground of the Study

1.1. Introduction

Federalism is currently a common system of government, having been adopted by countries across the world, including Ethiopia. In 1991 after the fall of Derg regime when the present government, led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) thereafter came to power, the recognition of Ethiopian ethnic diversity became one of the core principles of the new regime's policy and established in Ethiopia an ethnic federal system largely consisting of ethnic based territorial units. This ethnicity-centered vision of State formation led to the establishment of a federation composed of nine regional, ethnically-based States, namely: Afar, Amhara, Benishangul Gumuz, Gambella, Harari, Oromia, Somali, Tigray and the Southern Nations, Nationalities and People Regional State (SNNPRS).¹

The FDRE Constitution of 1995(hereinafter referred to as the constitution) had explicitly declared Ethiopia to be a federal polity with nine states that constitute the federation. The constitution combines federalism, self determination and human rights as solutions to erstwhile unequal relationships among ethno-national groups in the country. However, the federal experiment has not assessed in light of the congruency with human rights in general and the right to freedom of movement and residence in particular.

The constitution has devised a mechanism to protect human rights from the potential pitfall from the new political experiment. Thus, it has put a corner stone for the establishment of safeguard institutions, such as Ombudsman and Human Right Commission so as to ensure protection of human rights in Ethiopia.² House of the federation is also empowered to adjudicate constitutional dispute including violation of constitutional human rights.

Although the states have an ethnic configuration, none of them are totally homogeneous and some are even extremely heterogeneous for example the SNNPRS, having around 56 different

¹ The nine Ethiopian States are enumerated in Article 47 (1) of the 1994 FDRE Constitution.

² The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 , *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, year 1 No.1, Addis Ababa 25th August, 1995, article 55(14) (15) has provides that the House of Peoples Representative shall establish a Human Rights Commission and institution of the Ombudsman, and select and appoint its members. It shall determine by law the powers and functions of the institution.

groups, is so diverse and so complex. Benishangul/Gumuz and Gambella have 4-5 ethnic groups within their territory. Afar, Somali, and Oromia regional states which too many observers seem to be homogeneous also have of non- Afar, non-Somali, and non-Oromo dwellers in their territory. Tigray, another state viewed as entirely homogeneous by many, is also a composite of the dominant Tigray, the Erob and the Kunama. The Amhara State has the Agaw, the Oromo and other minorities in addition to the dominant Amhara. The Harari State has a large number (conservatively estimated to be over 50% of the total) of Oromo inhabitants thereby necessitating the formation of a coalition (of consociational) government at the state level. In this way, Ethiopia's constitution makers have tried, or so they claimed, to forge a type of multi-ethnic federation.³ It is relevant to talk about the new minorities in Ethiopian federal structure so as to show how they can be vulnerable to violation of their right to freedom of movement and residence. Tsegaye Regassa has tried to roughly identify who such new minorities are.⁴ The first minorities are scattered groups who are children of our legacy.⁵ In this category, there are: a) children of empire builders; and b) children of villagization and (re)settlement programs. The second minorities are children of freedom of movement in the past regimes and new constitutional dispensation.⁶ These minorities have been created by the movement of persons from one region to the other since the current federal arrangement has been established. The third type of minorities are stranded groups, i.e., groups that are caught in between two or more regions when the new mapping of the constituent units of the federation was conducted (e.g. the Yem in SNNPRS and Oromia; the Mezenger in SNNPRS and Gambella; the Argoba in Afar and Amhara; the Guji in Sidama Zone of SNNPRS and Oromia; the Oromo in Gedio Zone of the SNNPRS; the Agaw in Benishangul Gumuz; the Oromos in Benishangul Gumuz; the Opo in Gambella and Benishangul Gumuz; the Oromos in Harari State; the Afar, the Amhara, and the Oromo in Tigray; etc.).⁷ Thus, this chapter has tried to point out that whether these new minorities have the right to reside in their previous homestead as it was.

According to Article 46(2) of the federal Constitution, "States shall be determined on the basis of the settlement patterns, language, identity and consent of the people concerned". The rationale

³ Tsegaye Regassa, *State Constitutions in Federal Ethiopia: a Preliminary Observation, a Summary for the Bellagio Conference*, Addis Ababa, 2004, pp.6.

⁴ Ibid.

⁵ Id. These persons represent the Amhara ethnic groups who have settled in different parts of Ethiopia due to vilagization, soldiers and resettlements conducted in the previous regimes.

⁶ Ibid.

⁷ Ibid.

for this type of “ethnic federalism” was to offer an opportunity to promote the rights and benefits of ethnic groups in Ethiopia by allowing the locals to determine their own destiny, to learn in their local language, and to homogeneously work for the interests of their group so as to preserve their own culture and history.

The constitution has given wide place to human rights and particularly Article 32 provides that any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. However, a Human Development Index shows Ethiopia scores 0.41 and twelfth lowest among 182 countries ranked in the UNDP Human Development Report of 2009.⁸ However, no any single study has conducted to explore the cause of such human right violation in connection with the federal system.

Thus, this study generally examines three key questions. First it seeks to deal with the concept of federalism and freedom of movement and residence at the theoretical level. Secondly, it has considered whether ethnic federal system of Ethiopia has negative impact on the right to freedom of movement and residence. Thirdly, whether the safeguard institutions effective and efficient to protect the right to freedom of movement and residence if any threat for violation has penetrated from the side of federal system. Fourthly, what are the triggering factors for the violation of the right to freedom of movement and residence?

1.11. Literature Review

In the international perspective, different authors have made certain reflections as to the inter-relation between federalism and human rights mainly focus on the situations in their country’s perspectives with a complete cultural, economical, attitudinal and legal system differences compared with Ethiopia. For instance, Mahindra P. Singh has written a reflection paper on federalism, human right and democracy with special reference to India. In fact, the paper focuses on actually federalism and human right but with Indian perspective. The paper also has not raised the issue of freedom of movement and residence in particular.

⁸ Guide to International Procedures Available in Cases of Human Rights Violations in Africa, Ethiopia’s profile, <http://www.claiminghumanrights.org/ethiopia>, accessed at 22/06/2012.

In the domestic sphere, many writers have made certain reflections on Ethiopian federalism, Ethiopian human right issues in different perspectives. But, the right to freedom of movement and residence has not been explored in as much as other human right aspects rose.

In relation to Ethiopian federalism and the right to freedom of movement and residence Mahari Tadelles has reflected in its an Abridgment of papers on Federalism, Diversity, Migration and Devolution of Power Submitted to the University of Oxford and Harvard University Presented to Public Discussion Forum for Political Parties Organized entitled “Devolution of power in Ethiopia: the legal and political aspects” that “*One of the negative consequences of holding-together (ethno-linguistic) federalism is its tendency to restrict freedom of movement and discrimination of non-native residents. The ethnic boundaries created by the federal constitution of Ethiopia have legitimized the resistance to spontaneous inter-ethnic migration. Such resistance (for example from Anywaas to the Nuers, and from Ari to the Mursi migration) sometimes has lead to confrontation and violent conflicts.*”⁹ This conclusion of Mehari has no any relevant premise. He did not even try to clarify the situation of Anywaas to Nuers and Ari to Mursi.

Foreign authors also reflect important issues relating to the implication of ethnicity for violation of human rights in federal Ethiopia. For instance, Kjetil Tronvoll, a Norwegian professor on his article titled “*Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma*”; tried to explore the critique against Ethiopia regarding human rights violations along ethnic and racial lines recently raised by the UN Committee on the Elimination of Racial Discrimination (CERD). The article compares the Ethiopian government’s stated policy on human and group rights with reported human rights violations in Ethiopia per ethnic regional state for the purpose of identifying possible “ethnic” patterns of violations. The final finding of the article is that ethnic federal system in Ethiopia apparently reinforces and distributes human rights violations in accordance with ethnicity.¹⁰ However, the author himself admits the partly problem of the finding of the article, from a methodological perspective, the categorical

⁹ Mehari Tadele, Devolution of power in Ethiopia, the legal and political aspect, *an abridgment of papers on Federalism, Diversity, Migration and Devolution of Power Submitted to the University of Oxford and Harvard University Presented to Public Discussion Forum for Political Parties Organized by African Initiatives for a Democratic World Order*, United Nations Conference Center, Addis Ababa, 2008, pp 11.

¹⁰ Tronvoll Kjetil, Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma *International Journal on Minority and Group Rights vol 15 , no 1,2008., pp 75.*

classification of “human rights violations along ethnic and racial lines” as expressed by Convention on Elimination of Racial Discrimination.

1.12. Statement of the Problem

Apparently, the vast majority of people moves and resides within their home states. People's ability to exercise civil and political rights as well as economic, social, and cultural rights within states generally depends in large measure on their ability to move about and to choose a place of residence within states.¹¹ Freedom of movement and residence is therefore crucial to the protection and enjoyment of other rights. As a consequence, the protection of freedom of movement cannot be left exclusively to recognition to domestic legal systems because many countries form legal, political and sociological basis for denying people the right of free movement and choice of residence. The extent to which free movement of citizens within the national territory is protected by domestic and international law has received the attention of this thesis at primarily level.

The constitution recognizes the right of nations, nationalities and peoples of Ethiopia to self determination up to session¹² in one hand and provides a right to every Ethiopian or any other person lawfully within Ethiopia to have the freedom to freely move and establish his residence within Ethiopia¹³ on the other. Thus, this thesis seeks to address the issues that: what is the scope of self determination in Ethiopia? Whether it only limited to administering the people of the same psychological makeup by their own selected leaders or it is excluding other ethnic groups from coming and residing in this self determined territories? That means whether a person or a group of persons from one region or from one distinct ethnic group can move and establish his/their abode in the territory of the other distinct ethnic group who exercise self determination? is crucial issue. This is because; the constitution establishes regional states along linguistic lines or ethnic identities and provides large scale human rights and such established regional states and the local governments have their own relative administrative and political autonomy. The above issues has raised to assess how such autonomy exercised in conformity

¹¹ Beyani Chaloka., Human Rights Standards and the movement of people with in the states, oxford university press, 2000.pp.3.

¹² Supra note 2, article 39(1).

¹³ Id, article 32.

with the right to freedom of movement and residence? Exploring the right to free movement of the people within the region (intra regional) and among the regions (inter-regional) in conjunction with the federal arrangement is the main task to do in this paper. Thus, does ethnic federalism by itself affect protection of the right to freedom of movement and residence in general? Are there any mechanisms devised by the constitution to protect the right to freedom of movement and residence from the possible threat from the political atmosphere? Does this mechanisms have performed their functions properly are the most important additional issues to be addressed in the thesis.

1.13. Objective of the Study

The main objective of the study is to assess the implication of Ethiopian federalism on the right to freedom of movement and residence.

To this end the study has forwarded the following points as specific objectives.

- To explore the legal and theoretical framework of the right to freedom of movement and residence.
- To explore the conceptual framework of Ethiopian federalism.
- To assess the implication of Ethiopian federal setup on the individual's right to freedom of movement and residence.
- To assess the extent and scope of the right to freedom of movement and residence in inter regional and intra regional aspect.
- To explore what factors are responsible for the violation of the right to freedom of movement and residence of individuals in Ethiopia.
- To scrutinize what self determination in Ethiopia denotes in light of the freedom of movement and residence.
- To analyze what available mechanisms are there to protect the freedom of movement and residence within the ethnic federal arrangement of Ethiopia.
- To observe whether the experience of other federal countries have anything to lend us on the apt of the freedom of movement and residence with federalism.

1.14. Research Questions

After examining the theoretical frameworks on the idea of federalism in general and Ethiopian federalism in particular, the subsequent research questions have been raised and addressed in brief throughout the study:

- At what extent the right to freedom of movement and residence could be exercised? What is the normative content and limit of the right to freedom of movement and residence in international laws in general and in Ethiopian legal framework in particular?
- What implication has reflected from Ethiopian federal system in protection of the right to freedom of movement and residence?
- At what extent self determination could be exercised in Ethiopia?
- What are the factors for violation of the right to freedom of movement and residence in Ethiopia? Are they linked to Ethiopian federal system directly or indirectly?
- What safeguard mechanisms are devised by the FDRE constitution so as to protect the right to freedom of movement and residence of individuals as members of minorities?
- Are safeguard institutions efficient and effective to protect the right to freedom of movement and residence?
- What good experiences Ethiopia learn from other federal countries relating to federalism and the right to freedom of movement and residence?

1.15. Significance of the Study

In its finding the study has tried to establish the extent of the right to freedom of movement and residence that can be exercised within federal countries in general and within Ethiopia in particular. The normative aspect of the right to freedom of movement and residence has been analyzed within the Ethiopian legal system and international legal framework. But, even though this right is not gratis from limitations and derogations, it has been restricted by dubious factors

in Ethiopia. So this study will provide much understanding about the scope and limits of the right to freedom of movement and residence.

The research has also gone through with the practical situation of the right to freedom of movement and residence and what factors responsible for violation of such right in Ethiopia. Thus, this finding will help primarily to alleviate the problems related to the causes of violation to the right to freedom of movement and residence. It also suggests a mechanism to the state machineries to devise a mechanism to protect this freedom of individuals from the pitfall of federal system of Ethiopia.

In addition, it will help to aware whether Ethiopian contemporary federal set up has positive or negative upshot on the exercise of the right to freedom of movement and residence. The practical analysis will tell us how the federal system should be implemented in congruent with the right to freedom of movement and residence.

1.16. Research Methodology

This research has explored the implication of Ethiopian federal set up on the right to freedom of movement and residence as well as explores the institutional protection of such right. Based on relevant domestic laws, the constitution and international instruments, it will try to critically analyze the practice in relation to exercise of freedom of movement and residence. For these purposes the study generally has made use of both primary and secondary source of data. Therefore, the research is qualitative in nature. In the main, the study has tried to make an appropriate review of relevant literature related to Ethiopian federalism and the concept, scope and limit of the right to movement and residence. In doing so, the study has employed structured and semi structured interviews to the concerned bodies, such as Human Right Defenders, House of the Federation, Council of Constitutional Inquiry Body and Political party leaders. Relevant cases have also been analyzed so as to show the practical aspect. Other countries experience related to the federal system and the right to freedom of movement and residence have been incorporated so as to consolidate the research finding and to suggest possible way outs for the problems and gaps.

1.17. Scope and Limitation of the Research

The study is about the implication of Ethiopian federal set up on the right to freedom of movement and residence. The connotation of Ethiopian ethnic based federal arrangement on the right to freedom of movement and residence has been assessed in terms of internal movement (inter regional and intra regional). One aspect of the right to freedom of movement and residence has been taken for this paper. That is the movement of Ethiopian citizens within the national territory of Ethiopia and the right not to be removed from homestead of such territory. Thus, the right to exit, the right to entry and the right to freedom of movement for foreigners are not included in the scope of the study.

Due to time and budget constraints the study is geographically limited to resources found in the capital city Addis Ababa. But, adequate information has obtained to conduct the research. It was difficult to get copy of case investigation documents from Ethiopian Human Right Commission and Ethiopian Institution of Ombudsman due to the reason that keeping confidential information of such institutions. However, adequate information regarding the investigation process and results of cases has been obtained from the investigators.

1.18. Ethical Considerations

The writer has taken an important ethical consideration in to account. Inter alia, interviewees have been informed of the purpose of the study without any form of deception before securing informed consent from them. The writer has also taken care of the interviewees' response from unnecessary disclosure in a way abusive to their relationship with their employer. The writer has also provided an accurate account of the information through examining the collected data to build a coherent justification for descriptions.

1.19. Structure of the Paper

This paper contains six parts. Chapter one provides an introduction and background of the study. Chapter two offers conceptual and theoretical overview of federalism. It outlines the

meaning and concept of federalism in general and ethnic federalism in particular. It also confers taxonomy of federalism. Chapter three discusses the theoretical and conceptual framework of the right to freedom of movement and residence in light of international standards. Chapter four highlights federalism and the right to freedom of movement and residence in Ethiopian context. Most importantly, it explores the theoretical foundation of Ethiopian federal system and the legal framework of the right to freedom of movement and residence in Ethiopian legal system. Chapter five devoted to deal with the practical analysis of Ethiopian federal set up implication on the right to freedom of movement and residence. Relevant cases have been analyzed; the responses from interviews have been integrated with the case study and other countries experience so as to identify and articulate the implications of Ethiopian federal setup on the right to freedom of movement and residence. The possible triggering factors that cause or contribute to violation of the right to freedom of movement and residence have been examined. Chapter six provides the concluding remarks along with major findings and proposed recommendations.

Chapter Two: Conceptual and Theoretical Framework of Federalism

2.1. Introduction

This chapter has tried to include the general theory of federalism, types of federalism and the concept of ethnicity and ethnic federalism. In the first section, the meaning of federalism has been pointed out from various scholars point of view. The distinction between federalism and federations has been tried to be explored. An attempt has also been made to explain the various types of federalism based on the origin of forming federation, operation of the organs and others.

The inclusion of these aspects is for the purpose of showing how the skeletal structure of a federal system can endow with possible frameworks within which diverse ethnic and linguistic communities occupy collective political space. Federal models can be very helpful to those seeking political solutions to group discord and tension. But federalism is not an unavoidable necessity; nor is it sufficient unto itself. In addition, to accomplish the goal of accommodating diverse groups, federalism must be accompanied by other strategies and measures.¹⁴

Generally, the purpose of this chapter is to provide a highlight on federalism, federation and ethnic federalism so as to understand the Ethiopian federal system and the model in which it affiliate.

2.2. What is Federalism?

Etymologically, the word ‘federalism’ comes from the Latin, *foedus*, meaning "covenant".¹⁵ Hence, federalism, being essentially a covenant or a treaty, is a solemn agreement among smaller polities to form a larger perpetual polity. John Kinacid suggests that a covenant signifies a binding partnership among co-equals in which the parties to the covenant retain their individual

¹⁴ Federal options and other means of accommodating diversity, introductory remark, Members of the staff of Forum of Federation Ottawa, Canada, <http://www.forumfed.org>, accessed at 31 October 2012.

¹⁵ Elazar Daniel and Kincaid John, the Covenant Connection: Federal Theology and the Origins of Modern Politics. (Lanham, MD: Center for the Study of Federalism and University Press of America) for a more comprehensive treatment of the federal idea as essentially covenantal, 1984.

identity and integrity while creating a new entity, such as a family or a body politic, that has its own identity and integrity as well.¹⁶ A covenant also signifies a morally binding commitment in which the partners behave toward each other in accord with the spirit of the law rather than merely the letter of the law.¹⁷

Stanford Encyclopedia of Philosophy defined Federalism as the theory or advocacy of federal principles for dividing powers between member units and common institutions.¹⁸ An American political scientist William Riker also defined federalism as a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.¹⁹ This definition indicates that in any federal government a federation should hold at least two levels of government. One is the government for the entire country that is usually responsible for a few subjects of common national interest. The others are governments at the level of provinces, regions or states that look after much of the day-to-day administering of their state. Both these levels of governments enjoy their power independent of the other.

Ronald Watts said that federalism provides a technique of constitutional organization that permits action by a shared government for certain common purposes, together with autonomous action by constituent units of government for purposes that relate to maintaining their distinctiveness, with each level directly responsible to its own electorate.²⁰

Federalism is essentially a system of voluntary self-rule and shared rule.²¹ The idea of shared rule and self rule in federalism is advantageous in many respects. Kincaid argues that federalism, as it is practiced in the United States, has "solved the fundamental problem of human governance and liberty."²² He goes on to state that federalism aspires to "maximize the democratic and economic advantages of both small and large republics by minimizing the

¹⁶ Kincaid John., Handbook of Federal Countries: Introduction, Montreal and Kingston: McGill, Queen's University Press, 2002.

¹⁷ Ibid.

¹⁸ Stanford encyclopedia of philosophy, first published Jan 5, 2003; substantive revision Mar 9, 2010, available at <https://www.leibniz.stanford.edu/friends/preview/federalism>, accessed at August 2, 2012.

¹⁹ Riker W., Federalism, Handbook of Political Science: Governmental Institutions and Processes, eds. Fred I. Greenstein and Nelson W. Polsby (Reading, MA: Addison-Wesley, 1975), pp. 93-172.

²⁰ Watts Ronald, Federalism Today, *the background paper written for the International Conference on Federalism* Saint Gallen, Switzerland, 2002, pp.7.

²¹ Supra note 15, pp.12.

²² Supra note 16.

anarchistic temptations of small republics to fight each other and the monopolistic temptations of large republics to become tyrannical.”²³

Whichever way scholars define federalism, any federal system should have the following common compositions. First, federalism contains two or more levels (or tiers) of government. Such different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, taxation and administration. The jurisdictions of the respective levels or tiers of government are specified in the constitution as well. So the existence and authority of each tier of government is constitutionally guaranteed. Second, in any federal government the fundamental provisions of the constitution cannot be unilaterally changed by one level of government.²⁴ Therefore, two aspects are crucial for the institutions and practice of federalism. Governments at different levels should agree to some rules of power sharing. They should also trust that each would abide by its part of the agreement. An ideal federal system has both aspects: mutual trust and agreement to live together.

2.3. Federalism and Federations

Plainly, federalism is the normative term whereas federation is the descriptive one.²⁵ As a normative term, federalism basically embodies the idea of self rule and shared rule between at least two tiers of government. “It accommodates preserves and promotes distinct identities within a larger political union.”²⁶ On the other hand, Federation as a descriptive term refers to the institutional make-up of the federal nation. It embodies such principles as the division of powers, a written constitution, regional representation at the center, equality of both central and regional governments, and regional autonomy. Federation therefore is the employment of the principles of federalism in order to achieve a balance between unity and diversity.²⁷

As Preston King argues, the ‘chief distinguishing feature of a federation is the territorial grouping of its citizens and the means by which these groups are represented.’²⁸ The federal principle, which in fact is the organizing principle and encompasses the principles of federalism,

²³ Ibid.

²⁴ Nature of federalism, http://www.excellup.com/Notes/10_SocSc_Federalism.pdf, accessed at August 3, 2012.

²⁵ Watts Ronald., *comparing federal systems in the 1990s*. Kingston, Ontario: Institute of Intergovernmental Relations, Queen’s University, 1996, pp. 6.

²⁶ Ibid.

²⁷ Ibid.

²⁸ King Preston., *Federation and Representation*, Toronto: (University of Toronto Press, 1993), pp. 94-101; 95.

underpins both federalism and federation. Embodying the idea of balancing and maintaining unity and diversity, the federal principle is realized through the federal institutions and Constitution established in the federation. The federal principle thus informs how a federal society is organized.²⁹ Hence, federalism embodies the standards of what a specific nation should follow to share the powers for the sub-national units where as federation sets the institutional framework which used for implementation of such shared rule and self rule.

2.4. Taxonomy of Federalism

Federalism can be categorized in various types, such as based on origin: coming together, holding together and putting together; based on operation: Dual or Cooperative, Executive or Legislative; based on mode of state formation: Symmetrical and Asymmetrical, Territorial and Ethno Linguistic. A brief explanation of such taxonomy of federalism is to be followed. But, it is also more important to notice that the preceding classification is not exhaustive, because some scholars classified federations in distinct ways.

2.4.1. Coming Together Vs Holding Together Vs Putting Together Federalism

Alfred Stefan proposed three types of federalism based on the paths through which federations have been formed.³⁰ These are: coming together, holding together and putting together.

The first category involves independent States coming together on their own to form a bigger unit, so that by pooling sovereignty and retaining identity they can increase their security. This type of federalism is known as ‘coming together’ federations. Coming together federations are an outcome of bargaining among independent states interested in creating a more stable and efficient union.³¹ In this category of federations, all the constituent States usually have equal power and are strong vis-à-vis the federal government. This has been the case of the United States when the thirteen colonies got together to achieve a more perfect union as an independent state. The history of Australia fits that same pattern, as does even multicultural Switzerland.³²

²⁹ Ibid.

³⁰ Stepan, Alfred, Federalism and Democracy: Beyond the U.S. Model, *Journal of Democracy*, vol 4, no 1, 1999, pp.10.

³¹ Ibid.

³² Juan J. Linz, Alfred Stepan and Yogendra Yadav ,“Nation State” or “State Nation”?: *Conceptual Reflections and Some Spanish, Belgian and Indian Data, background paper for HDR 2004*. Available at http://hdr.undp.org/en/reports/global/hdr2004/papers/HDR2004_Alfred_Stepan.pdf accessed at August 23, 2012, p.3

The second category is where a large country decides to divide its power between the constituent States and the national government. This kind of federalism is known as ‘holding together’ federations. In other words, the holding together federations are established from the attempts to keep together an already existing state through the democratic bargaining of the central government with individual regions for the degree of their autonomy.³³ In this second category, the central government tends to be more powerful vis-à-vis the States. Very often different constituent units of the federation have unequal powers. Some units are granted special powers.³⁴ This has been the origin of the long process of the transition in Belgium since independence in the 1830's from what was supposed to be a unitary nation-state to a new federal state. A similar process occurred in Spain in the 1970s. This might be the future of Sri Lanka.³⁵

The third category is established through a heavily coercive effort by a nondemocratic centralizing power to put together a multinational state, some of the components of which had previously been independent states.³⁶ This kind of federalism is a putting together federalism. The USSR was an example of this type of federalism. The basic difference between holding together and putting together federalism is the imposition of coercive force to seize together the states in case of putting together and freewill of the states is the prerequisite for holding together federalism.

Identifying Ethiopia's federalism into one of the above three Stepan's categories has been controversial. For scholars like Andreas Eshete, the ‘bargain’ that led to the formation of ethnic federalism in Ethiopia was offered by a ‘revolutionary overthrow of a unitary state.’ He, therefore, considered the Ethiopian federation as a result of the coming together of the country's ethnic groups who freely decided to reconstruct their shared political community on a new basis.³⁷ In contrast, Assefa Fisseha suggested that the formation of federalism in Ethiopia followed Stepan's model of holding together federation.³⁸ Edmond Keller, in his part noted that Ethiopia's ethnic federalism began in 1991 as ‘holding together’ but receded since 1992 into a

³³ Supra note 20, pp 4.

³⁴ Supra note 16, pp 9.

³⁵ Ibid.

³⁶ Supra note 20.

³⁷ Andreas Eshete, *Ethnic Federalism: New Frontiers in Ethiopian Politics*, in *First National Conference on Federalism, Conflict and Peace Building* (Addis Ababa, United Printers, Plc. 2003). pp 61.

³⁸ Assefa, Fiseha, Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism, in D. Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, London: James Currey, 2006, pp 132.

‘putting together’ type due to the monopolization of the political landscape by the EPRDF.³⁹ Both of the above views, failed to appreciate the fact that the post-1991 political order in Ethiopia was imposed by the EPRDF with little or no participation by other political forces. Another Ethiopian scholar on federalism, Asnake Kefale argues that, the creation and maintenance of Ethiopian federalism resembles more of putting together variant.⁴⁰ Efreem Madebo also said that instead of, putting together federation which is coercive, the formation of holding together federations which is in voluntary basis could have been the ideal choice for Ethiopia. This is an obvious certainty because the need to reduce group conflict, demonstrate respect for diversity, and the commitment to protect the integrity of the culture of different groups is one of the utmost justifications given for entering into a federal arrangement.⁴¹

2.4.2. Symmetrical Vs Asymmetrical Federalism

A federation could take the form of Asymmetric or Symmetric federalism in different countries for various reasons.⁴² Asymmetric federalism covers defacto and dejure asymmetry. On the one hand, Defacto asymmetry refers to the type of asymmetry that is a feature of all federations to some degree, namely differences between subunits in terms of size and wealth, culture or language, and those differences in autonomy, representation and influence in the wider federation that result from such attributes.⁴³ De jure asymmetry, on the other hand, is the product of conscious constitutional design. It refers to the allocation of different amounts or types of powers, or autonomy in certain policy areas, to some subunits of a federation but not others.⁴⁴

Symmetric federalism refers to a federal system of government in which the constituent states to the federation possess equal powers. In a symmetric federalism no distinction is made between constituent states.⁴⁵The “coming together” process of federation formation tend to create constitutionally symmetrical federations, whereas federations that are “holding- together” in their

³⁹ Keller Edmond, Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia, *African Journal of Political Science* (2002), pp. 7(1).

⁴⁰ Asnake Kefale, *Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions*, (PhD Dissertation, Lidein University, the Netherlands, 2009.), pp 43.

⁴¹ Efreem Madebo, ethnic federalism and one party rule in Ethiopia, 2009, pp 23.

⁴² Watts Ronald., *The theoretical and practical implications of asymmetrical federalism, In Accommodating diversity: Asymmetry in federal states*, (Montreal & Kingston: School of Policy Studies Queen’s University, 1999.), pp 23.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ <http://www.definitions.uslegal.com>, accessed at 27th September 2012.

origins and intentions tend to have important, constitutionally embedded, asymmetrical characteristics.⁴⁶ Charles Tarlton suggests that all federal systems, despite their constitutional symmetry, have an element of asymmetry in federal-regional relations.⁴⁷ Various social, economic and political conditions determine each regional state's relationship to the centre and its commitment to the federation. He also adds that the higher the degree of symmetry a federal system has, the more likely it is that the federation will be viable and suitable. The more a system is asymmetrical, the more unlikely it is that the federation will develop harmoniously.⁴⁸

Lovise Aalen suggests that the Ethiopian federal system is constitutionally symmetrical, that means all regular constituent units have the same formal and legal relationship to the federal government. However, when it comes to the social, economic and political conditions of each unit, the Ethiopian federal system is definitely asymmetrical. Due to the fact that "ethnic identity", or language in practice, has been the determinant factor in the delimitation of the constituent units, the various regions are very different from one another when it comes to ethnic composition, size of population and area, economic development and political landscape.⁴⁹ The constituent units have therefore very different capacities to implement the constitutional provisions and the central government's intervention in each region varies.

2.4.3. Dual Vs Cooperative Federalism

Ademola Ariyo categorizes federalism in to two based on the means through which it can evolve.⁵⁰ The first category is dual federalism in which the constitution allows for the creation of two separate and independent tiers of government with their own clearly defined areas of responsibility.⁵¹ The second is the cooperative federalism, on the other hand, simply refers to making federalism work through cooperation between various levels of government. It emphasizes the partnership between the different levels of government providing effective public service for the nation.⁵²

⁴⁶ Supra note 30, pp 9.

⁴⁷ Charles, T. Symmetry and asymmetry as elements of federalism: a theoretical speculation, *Journal of Politics*, Vol. 27, 1965, pp.875.

⁴⁸ Ibid.

⁴⁹ Aalen, Lovise, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000* (Bergen: Chr. Michelsen, Institut Development Studies and Human Rights, 2002), pp 25.

⁵⁰ Ariyo Ademola, Theories of federalism, *a paper presented in the Ad-Hoc Expert Group Meeting*, UNCC, Addis Ababa, 2003, pp 12.

⁵¹ Ibid.

⁵² Ibid.

In dual federalism the competences between the local authorities and the federation are divided field by field, and each level of law is exclusively competent in its sphere. While, cooperative federalism is different there the legal regulation of different levels competes to regulate the same areas.⁵³ **Dual federalism** is a theory about the proper relationship between government and the states, portraying the states as powerful components of the federal government nearly equal to the national government. In dual federalism the federal government rules by enumerated powers only that means the federal government may rule only by using powers specifically listed in the Constitution; the federal government has a limited set of constitutional purposes; each government unit the federation and state is sovereign within its sphere; the relationship between the federation and states is best characterized by tension rather than cooperation and the relationships between the state and federal governments are marked by tension.⁵⁴

Cooperative federalism rejects that state and national government must exist in separate spheres. In this type of federalism the federal and state agencies typically undertake government functions jointly rather than exclusively; the federation and states routinely share power; power is not concentrated at any government level or in any agency; and the fragmentation of responsibilities gives people and groups access to many venues of influence.⁵⁵

Tsegaye Regassa has suggested that Ethiopian federalism seems to be a dual nature at least in theory.⁵⁶ He has asserted that while the constitution does not explicitly stipulate the existence of the principle of federal supremacy⁵⁷ in the Ethiopian federation, it holds, in consonance with the principle of federal comity, that “The states shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States.”⁵⁸ This provision is indicative, at least in theory, of the dual nature of the Ethiopian federation.

2.4.4. Territorial Federalism Vs Personal Federalism

⁵³ Schutze Robert., *From Dual to Cooperative Federalism: The Changing Structure of European Law*. Oxford: Oxford University Press, 2009, pp.5.

⁵⁴ *Id*, pp 7.

⁵⁵ *Ibid*.

⁵⁶ Tsegaye Regassa, Learning to Live with Conflicts: Federalism as a Tool of Conflict Management in Ethiopia , *an Overview, Mizan Law review, Vol 4, No 1,2007*, pp 93.

⁵⁷ *Id*, The principle of ‘federal supremacy’ or ‘federal paramountcy’ maintains that the federal government, its laws, and institutions are supreme, i.e., superior to, and override, the state laws and institutions.

⁵⁸ *Supra* note 2, Art 50 (8).

In federal countries, the federated entities can be established on territorial base or on personal base. The territorial federalism consists in splitting the national territory in geographical zones, regions, provinces, districts. In the limit of the competences of the federated entities, people and situations localized in these zones will be ruled, in virtue of the principle of homogeneity, by the federated entities. However such territorial governance structures can be controversial, due to the fact that the population demographics of such territories are rarely homogenous.⁵⁹

The non territorial or ethno linguistic autonomy can be particularly constructive in case of heterogeneous region. This federalism consists in giving to individuals a statute allowing them to depend on the rules edited by the federated entity anywhere the individuals are located on the national territory. This so-called 'personal' or 'cultural' federalism involves self-administration over the cultural, linguistic, ethnic, or religious matters of a determined group.⁶⁰

In 1991 Ethiopia established an ethnic federal system that gave full recognition to ethnic autonomy, while maintaining the unity of the state. Its new constitution created a federal system largely consisting of ethnic-based territorial units. The detail discussion has been made in chapter four of this thesis about Ethiopian federal set up.

2.5. Ethnicity and Ethnic Federalism

2.5.1. Ethnicity

There is no universally agreed definition for ethnicity. Scholars define ethnicity in different ways. Etymologically, ethnicity is derived from the Greek word 'ethnos' that means race, clan or tribe.⁶¹ But, the contemporary anthropologists view ethnicity in distinct way from race, clan or tribe. Ethnicity is often assumed to be the cultural identity of a group from a nation state, while race is assumed to be biological and/or cultural essentialization of a group hierarchy of superiority/inferiority related to their biological constitution.⁶² Ethnicity as defined by Max Weber's dictionary is a "subjective belief and a "common descent"...ethnicity embraces groups

⁵⁹ Id,pp 94.

⁶⁰ Eide R, *The Nation-State Fallacy* in Joseph Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies* (New York: Lexington Books/Macmillan, 1991), pp. 12-15.

⁶¹ Henry George, Robert Scott, a Greek-English Lexicon, on Perseu, <http://www.perseus.tufts.edu>, accessed at 31 October 2012.

⁶² Grosfoguel, Ramón (2004). Race and Ethnicity or Racialized Ethnicities? Identities within Global Colonialism. Pp 13.

differentiated by color, language, and religion; it covers" tribes," "races," nationalities," and casts.⁶³ On the one hand some scholars like Hutchinson and Smith define ethnicity based on genealogical and cultural criteria as ethnic group is a named human population with a myth of common ancestry, shared historical memories, one or more elements of common culture, a link with a homeland and a sense of solidarity among at least some of its members'.⁶⁴ On the other hand other scholars such as Fukui and Markakis claim the meaning of ethnicity based on the complex pattern of fusion and fission among groups. Thus, ethnic identities are to be understood as essentially political products of socially defined and historically determined specific situation.⁶⁵ Likewise, David Torton defined an ethnic group as 'not a group because of ethnicity but because its members engage in common action and share common interests'.⁶⁶ But it does not necessarily mean that the assumed genealogical or cultural traits are completely irrelevant.

Thomas Eriksen defined ethnicity in terms of 'the classification of people and group relationship' that has 'a political, organizational aspects as well as a symbolic one'. Hence, ethnicity for Thomas Ericson simply refers to the relationships between groups whose members consider themselves distinctive and, these groups may be ranked hierarchically within a society.⁶⁷

Beyond the definitions given by the aforementioned scholars and others, much of the literatures on theories of ethnicity are divided in to primordialist approaches and instrumentalist/Constructivist approaches.⁶⁸ Primordialists approach advocates that identities are fixed and that an individual has only one identity whereas Constructivists suggest that identities are fluid, or respectively, that individuals have several ethnic identities that can be 'activated' depending on social, economic and political processes.

⁶³ Max Weber's dictionary, key words and central concepts, books.google.com.et/books, 1968, accessed at 02 November 2012.

⁶⁴ Hutchinson John and Anthony Smith, *Ethnicity, Oxford and New York*: Oxford University Press, 1996, pp.7.

⁶⁵ Markakis John and Katsuyoshi Fuki, ed, *Ethnicity and Conflict in the Horn of Africa* (Athens: Ohio University Press, 1994), pp.6.

⁶⁶ David Turton., *a problem of domination at the periphery: the Kwegu and the Mursi*, in *D. Donham & James (eds) The Southern Marches of Imperial Ethiopia: Essays in History and Social Anthropology*, Cambridge: Cambridge University Press (1986), pp 17.

⁶⁷ Eriksen Thomas., *Ethnicity and Nationalism*, London: Pluto Press, 1993, pp 13.

⁶⁸ Clifford Geertz., *the interpretation of cultures*. New York: Basic Books, 1973, pp 23.

2.5.2. Ethnic Federalism

Ethnic Federalism is defined as a political system consisting of ethnic based territorial units overlapping with political administrative units.⁶⁹ Countries which are nationally and ethnically heterogeneous and work in a federal structure at least partially based on national and ethnic heterogeneity (i.e. at least some of their member states are ethno-regional units) are said to be adopted ethnic federalism.⁷⁰ Some scholars like Tesfaye Habiso suggests that Ethnic federalism has played a pivotal role in solving conflicts by allowing each ethnic/cultural-linguistic community to have control of those regions of the country where it is in the majority, while respecting basic minority rights, it prevents the kind of zero-sum power struggle between groups that is likely to occur in an ethnically divided society where all the power is in the hands of the central government.⁷¹

There are arguments in favor of and against ethnic federalism. The opponents of ethnic federalism argue that the federal structure has caused ethnic consciousness and contradiction. Christopher Van Der Beken in his book titled 'Unity in Diversity: federalism is a mechanism to accommodate ethnic diversity the case of Ethiopia', has raised two criticisms against ethnic federalism.

“There are two criticisms on ethnic federalism. The first criticism on ethnic federalism implies that the introduction of ethnic federal structure does not result in the creation of stability in the state but rather leads to growing tensions, instability and ultimately to the disintegration of the state. The second criticism departs from an a priori positive attitude towards federalism. Federalism can be a perfect mechanism in accommodation of ethnic diversity in the state if all ethnic regions are inhabited by one specific ethnic group: if in other words there is a perfect overlap between ethnic group and territory. However in practice it is impossible to achieve such an overlap. In each ethnic based region, there will be ethnic minorities, i.e. people who do not belong to the regional dominant group.

⁶⁹ Justin Bargin, Securing the Peace: The Battle over Ethnicity and Energy in Modern Iraq Dubai Initiative, Working Paper, Harvard Kennedy school press, 2009, pp 12.

⁷⁰ Ibid.

⁷¹ Tesfaye Habiso, *Multiethnic (Multinational) Federalism in Plural Societies: Does It Make a Difference?* 2010. Retrieved from http://aigaforum.com/articles/Multiethnic_federalism accessed at 6th November 2012, pp 12.

These can be minorities that have their own region, or minorities that constitute minority everywhere.”⁷²

The proponents on the other hand points out that,

It is exactly an ambition to find an answer for the growing ethnic contradictions that has stimulated the introduction of federal structures. However, the proponents of ethnic federalism do not deny that the creation of ethnic based federal structure can lead to an increased ethnic consciousness and to a deepening of the gap between the various ethnic communities.⁷³

They suggest three mechanisms to alleviate the problem of ethnic minorities in ethnic based regions. The first mechanism is a territorial approach which means that it strives to achieve a better overlap between ethnic group and territory. The borders of the existing regional states can be moved or new regional states can be created for ethnic groups that do not have their own region yet.⁷⁴

The second mechanism is based on a dissociation of autonomy and territory. It deviates from the idea that autonomy can only be granted to a territorial entity. If it is not possible or expedient to change existing borders or to create new territorial entities, ethnic minorities could be granted non territorial or cultural autonomy.⁷⁵

The third mechanism is that the federal constitution or as the case may be the regional constitutions grant a number of fundamental rights that can be invoked by the members of ethnic minority against the regional government. These rights include universal human rights as well as specific minority rights such as the right to participate in regional administration.⁷⁶

⁷² Christopher van Der Beken., Unity in Diversity: federalism is a mechanism to accommodate ethnic diversity the case of Ethiopia, global book marketing, London, 2012, pp 51.

⁷³ Poirer J., autonomy and diversity, subtheme paper: in R.L. Watts and R. Chatopadhyay.(eds), *unity in diversity learning from each other Vol I , building on or accommodating diversity, Forum of Federations Viva books*(2008), pp 38.

⁷⁴ Ibid.

⁷⁵ Ibid

⁷⁶ Ibid

The combined arguments of both the opponents and proponents of ethnic federalism produces specific conditions that should be fulfilled the success of ethnic federalism.⁷⁷ These are first the federated entities should have genuine autonomy.⁷⁸ Second the rights of ethnic groups in a federation will be optimally realized when there is a perfect overlap between the territories of the ethnic group and the borders of their respective territorial entities.⁷⁹ Third there should be a unity in the federation.⁸⁰ Fourth, an adequate mechanism has to be developed for the prevention and solution of interregional conflicts on the one hand and of conflicts between the federal government and the regions on the other hand.⁸¹ And the fifth and the final is the federal system should operate in a political culture that is positive towards federalism, which necessarily implies a democratic attitude.⁸²

2.6. The Concept of Self Determination

The right to self-determination is a fundamental and inalienable human right. It forms Article 1 of the two major human rights instruments (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) because of its importance to the international order and the protection of individual rights. The International Court of Justice has recognized the right to self-determination as one of the most important human rights, and as “the concern of all states”.

Self determination is not only a right exercised by peoples or groups but it is also a human right of individuals.⁸³ Individuals are entitled to participate in the political economic and cultural systems of their state. In that sense the individual right to self determination might be regarded as coextensive with the right with some form of democratic governance. Self determination is congruent with minority rights as it is a right with pertaining to members of the group, such as national religious ethnic or linguistic minorities.⁸⁴

⁷⁷ Supra note 72, pp 55.

⁷⁸ Ghai Y., *Ethnicity and autonomy: a framework for analysis*, Cambridge university press, 2000, pp 21.

⁷⁹ Supra note 72, pp 55.

⁸⁰ Ibid.

⁸¹ Supra note 78, pp 22.

⁸² Watts R., *Lessons from the pathology of multicultural federalism*, Freiburg university editions, 2003, pp 221.

⁸³ Marc Weller., *Escaping the self determination traps*, Martinus Nijhoff publishers, Cambridge university press, 2008, pp 16.

⁸⁴ Ibid.

Judge Dillard in his individual opinion in the 1975 Western Sahara case defines the right to self determination as “It is for the people to determine the destiny of the territory and not the territory determines the destiny of the people.”⁸⁵ According to Paul Brietzke, self determination, especially in Ethiopia, is all about answering the question “who should clear a path through the political thicket, and how, and who should then be able to walk this path?”⁸⁶

Scholars understand self determination to mean external as well as internal self determination. External self determination mostly involves an entity's move in the international arena thereby determining its international status.⁸⁷ In a way external self determination deals with the “status of a people vis- a –vis another people, state or empire.”⁸⁸ Moreover, external self determination embraces the right of a people to be free of external interference.⁸⁹ There is also a general understanding that external self determination includes secession. Internal self determination is associated with the democratic principle of the right of a people to choose its own government and participate in the chosen government.⁹⁰ Among other things, internal self determination includes promoting one's culture within a territory, establishing institutions of government and representation in the institutions of government at varying orders. Hence, internal self determination implies self government among other things.

2.7. Conclusion

Even though the definition of federalism has been provided by various scholars in various ways, there are common features that should be reflected from a good federal system. These are a federation should contain two or more levels (or tiers) of government. Such different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, taxation and administration. The jurisdictions of the respective levels or tiers of government are specified in the constitution as well. So the existence and authority of each tier of government is constitutionally guaranteed. In addition to that, in any federal government the

⁸⁵ Id, pp 17.

⁸⁶ Brietzke P.H. 'Ethiopia's "leap in the dark": federalism and self-determination in the new constitution'. *Journal of African Law*, vol.39, no. 1, 1995, pp 4.

⁸⁷ Ibid.

⁸⁸ Thornberry P. *the Democratic or Internal Aspect of Self Determination with Some Remarks on Federalism, in Modern Law of Self Determination* (C. Tomuschat ed. 1993), pp 5.

⁸⁹ Ibid.

⁹⁰ Id, pp.79.

fundamental provisions of the constitution cannot be unilaterally changed by one level of government.

There are various types of federalism, based on origin: coming together, holding together and putting together; based on operation: Dual or Cooperative; based on mode of state formation: symmetrical and Asymmetrical, territorial and ethno linguistic. Ethiopian federal system is likely to be grouped in the asymmetrical, ethno-linguistic, dual and putting together type.

Ethnic federalism has been adopted by different countries in the world. The opponents and proponents of ethnic federalism have provided their suggestions about their support and objections. The main critic of ethnic federalism is that the federal structure might cause ethnic consciousness and contradiction that may lead to disintegration of the national territory. The main supporting argument of ethnic federalism is that the ethnic groups' consciousness is derived from the ambition to find an answer for the growing ethnic contradictions that has stimulated the introduction of federal structures.

Chapter Three: The Right to Freedom of Movement and Residence

3.1. Introduction

In this chapter it has been tried to confer the general concept, content and limit of the right to freedom of movement and residence. Undeniably, the discussion in this chapter mainly focused on the right to freedom of movement and residence from the international perspective since most of the human right provisions in the domestic constitutions of many countries spring out from international human right instruments.

This chapter has also devoted to enlighten some theories related to the right to freedom of movement and residence. The theoretical foundation of such right assists any one to grasp how much the right is attached to human beings and how it develops. In addition, this chapter also includes some remarks about the government responsibility towards the enforcement of such freedom.

In the third section of this chapter, an attempt has been made to examine the international human rights instruments on the right to freedom of movement and residence. Since domestic law is inevitably the source of internal restrictions, the vital issue is to determine the scope of the right to freedom of movement and residence with in which internal restrictions are permissible by reference to international human rights standards set by international human rights instruments.

3.2. Conceptual and Theoretical Framework of the Right to Freedom Of Movement and Residence

3.2.1. What is Freedom of Movement and Residence?

“All people are entitled to the recognition of inherent dignity and certain inalienable rights, which are the ‘foundations of freedom and justice in the world’.”⁹¹

Freedom of movement is part of the "liberty of man"⁹² thus making it one of the most basic human rights.⁹³ Freedom of movement and residence is a human right concept which asserts that a citizen of a state in which that citizen is present has the liberty to travel, reside in, and/or work in any part of the state where one pleases within the limits of respect for the liberty and rights of others and to leave that state and return at any time.⁹⁴ According to Fitzpatrick the essence of freedom of movement and residence is the right to choose one’s own residence and to determine where and when one wishes to travel.⁹⁵ Hence, looking freedom of movement and residence as two separate freedoms is incorrect assumption. Freedom of movement and residence includes the right to free travel and at the same time the right to choose one’s own residence.

The right to freedom of movement and residence is not only about freedom to move and reside but it is also the freedom to remain in the place of one’s choice. It includes the freedom ‘not to move’. Freedom of movement and residence is also a protection against forced displacement and unlawful eviction.⁹⁶ According to the Report of the Representative of the UN Secretary-General on Internal Displacement, forced displacement: may be undertaken only in the specific circumstances provided for, with due regard for the principles of necessity and proportionality, and should last no longer than the exigencies of the situation. Furthermore, it

⁹¹ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, the preamble para 1.

⁹² Stig Jagerskiold, *The Freedom of Movement, in the International Bill of Rights: The Covenant on Civil and Political Rights*, (Louis Henkin Ed., 1981), pp 166, as cited by global commission on international migration, available online at <http://www.gcim.org>.

⁹³ Ibid.

⁹⁴ Postema Gerald., [Racism and the law: the legacy and lessons of Plessey](#), Oxford University Press 1997, pp 40.

⁹⁵ Fitzpatrick Joan., [Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures](#), New York, USA, Transnational Publishers Inc, 2002., p. 11.

⁹⁶ Supra note 11, pp 57.

must not occur on a discriminatory basis.⁹⁷ Mehari describes this right as the right to freedom of movement and residence is not only the right to move and select a place of residence, but it is also the right to be free from forced displacement and right to reside (remain).⁹⁸ Hence, some sides of such freedom which is relevant for this thesis are: free movement of persons; choice of residence and freedom from forced displacement or evictions.

3.2.2. The Scope of the Right to Freedom of Movement and Residence

The right to freedom of movement has three components.⁹⁹ The first one is the right to freedom of movement within a country, which includes the right to choose where to live within the country. People must be able to move freely and choose a place of residence within a country without restrictions, including establishing a purpose or reason for doing so. Governments have a duty to ensure that a person's freedom of movement is not unduly restricted by others, including private persons or companies. The right applies to all persons lawfully within state territory, not only to such state citizens. In the international context, the right to freedom of movement within countries is an important consideration as it relates to the special needs of internally displaced persons including with regard to return, reintegration and resettlement options. International law does allow a country to impose restrictions on who may enter it. A country may allow entry to a non-citizen on conditions that allow the person lesser rights of freedom of movement to those of citizens, provided those restrictions comply with the country's international obligations. For example, some work visas impose conditions on a visa holder to reside and work in a particular region. However, a non-citizen lawfully within Ethiopia whose entry into Ethiopia has not been subject to restrictions or conditions is entitled to the same right to freedom of movement as an Ethiopian citizen.

The second component is the right to leave any country, regardless of your citizenship. The freedom to leave a country pertains to short, long term and permanent departures.¹⁰⁰ It cannot be

⁹⁷ United Nations, Economic and Social Council, Commission on Human Rights, internally displaced persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, E/CN.4/1998/53, 11 February 1998, pp 7.

⁹⁸ Supra note 9, pp 11.

⁹⁹ The right to freedom of movement and residence in the Australian human rights framework, attorney generals department, prepared by the public sector education program(2008), retrieved from http://www.claiminghumanrights.org/freedom_movement, accessed on 26 August 2012.

¹⁰⁰ Ibid.

made dependent on establishing a purpose or reason for leaving. Citizens have a right to obtain passports or other travel documents from their country of citizenship. The right to leave, and to possess a passport, may be restricted, most notably if the person's presence is required due to their having been charged with a criminal offence.

The third one is the right to enter a country of which you are a citizen: The UN Human Rights Committee has stated that in no case may a person be arbitrarily deprived of the right to enter his or her own country, and that there are few, if any, circumstances in which deprivation of the right to enter a person's own country could be considered reasonable.¹⁰¹ Thus, the right to enter a country of which you are a citizen is the third most important concept of the right to freedom of movement and residence.

3.2.3. Limits of the Right to Freedom of Movement and Residence

In spite of the claim to universality and inalienability, human rights are not exercised in an absolute manner.¹⁰² There is a limitation imposed on the exercise of rights for the sake of making an optimal "utilization" or enjoyment of rights.¹⁰³ Limitations can take various forms such as restriction, suspension, or derogation from. Each of these forms affects the exercise of rights in different ways and to a varying degree. Thus restrictions circumscribe the manner, or place, and the extent to which rights can be enjoyed or exercised in a particular set of circumstances, often in normal times. Suspension leads to the temporary non-application of one or more rights because of an unusual difficulty in which a state finds itself. Derogation refers to the possibility of acting in a manner deviating from the accepted standards of behavior vis-a-vis rights. It entails acting like there are no human rights at all.¹⁰⁴ It is often underscored that limitations should meet the requirements of the principles of: legality; necessity; rationality; proportionality; and sanctity of life, dignity, and equality.¹⁰⁵

¹⁰¹ Ibid.

¹⁰² Hollamby Gordon., "The Limitation Clause" in Nel, F. and Bezuidenhout (eds), Policing and Human Rights (2nd ed). Lansdowne: Juta & Co. Ltd, 2002.

¹⁰³ Ibid.

¹⁰⁴ Tsegaye Regassa, Making Legal Sense of Human Rights: the Judicial Role in Protecting Human Rights in Ethiopia, *Mizan Law Review*, Vol. 3, No. 2, (2009), p. 288.

¹⁰⁵ Ibid.

Most human rights instruments permit States to place restrictions on freedom of residence and movement during situations of tension and disturbance in limited situations.¹⁰⁶ However, failure to act within these limits will make a decision to displace a population arbitrary in other words a decision that is not in accordance with the law and incompatible with standards protecting liberty and security of person will be in violation of the right to freedom of movement. Freedom of movement may only be limited where such restrictions are: Provided by law that is to say the power to move a population is written in national legislation, and are necessary to protect: national security which is only endangered in cases of grave political or military threat to the entire nation; public order, public health or morals which can only be justified if the health dangers are acute; the rights and freedom of others which may only be justified in cases of eviction to respect private property, in which case States must ensure that interference in favor of private owners is proportional, reasonable and applied in a non-discriminatory way; and must not be inconsistent with other State obligations under international law. Therefore any interference with the rights to freedom of movement and choice of residence must be balanced. It must pursue a legitimate aim and be proportional to that aim.¹⁰⁷

The International Covenant on Civil and Political Rights (ICCPR) requires that the right to freedom of movement and residence might be restricted, either by way of derogation under article 4 of the ICCPR, or to protect national security, public order, public health or morals or the rights and freedoms of others, as allowed by article 12(3). Any limitations to freedom of movement rights should be reasonable, proportionate and serve a legitimate State interest.¹⁰⁸

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to freedom of movement ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.’¹⁰⁹ Such measures may only be taken ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other

¹⁰⁶ Who are internally displaced persons, a module on the training of internally displaced persons, pp 3, available in <http://www.internaldisplacement.org> accessed at 3rd November 2012.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966., article 4.

obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

Further, the right can be restricted under domestic law on any of the grounds in article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others.¹¹⁰ The Human Rights Committee has stated that restrictions should not only serve the permissible purposes; they must also be necessary and proportionate to protect them and must be the least intrusive means of achieving the desired result. Examples of measures likely to constitute permissible restrictions are those on persons charged with or convicted of criminal offences, access to areas of environmental significance, access to areas such as earthquake zones and quarantine zones and prohibitions on unlicensed access to private premises, particularly where such access would interfere with the right to privacy of the owner or occupier of the premises.¹¹¹

Where the Defence force of one country operates overseas in time of armed conflict, international humanitarian law (IHL), as the body of law that applies specially to the circumstances of armed conflict, is the relevant standard under which compliance with the right to freedom of movement is assessed, rather than international human rights law.¹¹² International Humanitarian Law contains specific provisions that allow movement to be restricted in certain circumstances.¹¹³ The fourth Geneva Convention on the Protection of Civilian Persons in Time of War provides that the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war. This clearly shows that the right to freedom of movement and residence might be restricted for the purpose of protecting civilian persons in time of war.¹¹⁴ While freedom of movement does not figure among the “absolute” rights in article 27 of the Fourth Geneva Convention, it remains protected subject to the general limitations of article 27, which enables the Occupying Power to take such measures of control and security in regard to protected persons as may be necessary as a result of the

¹¹⁰ Id, article 12.

¹¹¹ Id, article 12(4).

¹¹² Klein Eckart., freedom of movement international protection, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2012., pp 3.

¹¹³ Ibid.

¹¹⁴ The fourth Geneva Convention on the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, article 27, para 4.

war.¹¹⁵ This clause and the concept of military necessity give considerable discretion to an Occupying Power to take measures of control and security. The discretion, however, is not unfettered. Limitations placed on freedom of movement must be shown to be necessary not in abstract, but in the particular factual circumstances.¹¹⁶ There is at least a presumption that the personal freedom of civilians will generally be unimpaired during occupation. The permissible rationale of movement restrictions derives from the object and purpose of the laws of occupation.

3.2.4. Theoretical Foundation of the Right to Freedom of Movement and Residence

Scholars have attempted to base freedom of movement and residence on several theoretical grounds, including the idea of a common ownership of the earth, a natural right of movement existing prior to the advent of nation states, and an ethics of cosmopolitanism.¹¹⁷

3.2.4.1. The Theory of Common Ownership of the Earth

This theory advocates that since the earth is simply there, with no-one deserving credit for it, a plausible view on original ownership is that all humans have some sort of symmetrical claim to it.¹¹⁸ This is not to say that the world's territory now ought to be redistributed. Instead, the collective ownership status of the earth may limit acceptable regimes of property, including regimes of immigration.¹¹⁹ "Original" ownership is not connoted with time. It is a moral status that the earth may have and one that would have conceptual and moral priority over individual appropriation.¹²⁰ The question of the original ownership of the earth greatly exercised political theorists in the 17th and 18th century. Among the urgent intellectual questions of that age were questions of the legitimacy of colonial acquisition and ownership of the seas, questions related to views about the original ownership status of the earth.¹²¹

¹¹⁵ J. Pictet (ed.), IV Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary, International Committee of the Red Cross, Geneva, 1958, pp. 199-207.

¹¹⁶ Ibid.

¹¹⁷ Farrer, James and Devin, T. *Defining a Right to Move: Reflections on 'Ethics of Migration'*, Conference paper, 2010, pp. 11.

¹¹⁸ Michael Blake, *Is There a Human Right to Free Movement? Immigration and Original Ownership of the Earth*, 2006, pp 2.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Tuck Richard. *The Rights of War and Peace*, (Oxford University Press, 1999), pp 23.

Kant, for one, thought the “communal possession of the earth’s surface” is one basis of the cosmopolitan right of resort.¹²² According to Kant, this right does not entitle to immigration, but grants mobility and safety in foreign lands. Yet no reason is given for the relatively restricted nature of this right. More robust rights to immigration emerge from a fuller accounting of such ownership.¹²³

3.2.4.2. The Theory of an Ethics of Cosmopolitanism:

Cosmopolitanism is the ideology that all human ethnic groups belong to a single community based on a shared morality. Cosmopolitanism may entail some sort of world government or it may simply refer to more inclusive moral, economic, and/or political relationships between nations or individuals of different nations. A person who adheres to the idea of cosmopolitanism in any of its forms is called a cosmopolitan or cosmopolite.¹²⁴

A cosmopolitan community might be based on an inclusive morality, a shared economic relationship, or a political structure that encompasses different nations. In its more positive versions, the cosmopolitan community is one in which individuals from different places (e.g. nation-states) form relationships of mutual respect. As an example, Kwame Anthony Appiah suggests the possibility of a cosmopolitan community in which individuals from varying locations (physical, economic, etc.) enter relationships of mutual respect despite their differing beliefs (religious, political, etc.).¹²⁵ Thus, according to this theory, everyone can go and live everywhere without any racial discrimination it is because human ethnic groups belong to a single community based on a shared morality.

3.2.4.3. Natural Right Theory

Natural Rights Theory is the set of philosophical claims that certain human and civil rights exist "naturally" and not merely as a product of a social contract devised by ordinary people. "Naturally" is usually code for "from God." Natural Law, associated with Natural Rights Theory, makes the same sort of claim. The problem with Natural Rights and Natural Law is that it is not

¹²² Kant Immanuel., *Metaphysics of Morals, Doctrine of Right*, sections 6, 1996, pp 13.

¹²³ Ibid.

¹²⁴ Id, pp. 9.

¹²⁵ Kwame Anthony Appiah, "Cosmopolitan Patriots," *Critical Inquiry* 23, no. 3, 1997, pp.617.

subject to empirical verification/falsification. As such it is ideological or theological in nature. People tend to adopt Natural Rights or Natural Law as ideas and rhetoric because they find the idea of attributing what they want to a deity much easier than thinking their way through challenging problems. In effect, it is the result of lazy mindedness.¹²⁶

Natural rights theory specifies rights that people have qua people, not qua citizens of this or that state. If, as seems plausible, people have rights to freedom of movement and freedom of association, then the case against immigration restriction is virtually airtight.¹²⁷ The Natural Rights Theory, human beings are granted upon creation certain rights that they are guaranteed regardless of what their government is, and they are (always) life and liberty and usually property as well. The Natural Rights Theory works with the Social Contract Theory, which states that men in their primal state are in a state of war where they act only in their self interest. Under a social contract, men can agree to live by a certain set of rules and agreements (that everyone agrees to), even if it involves giving authority to a higher power.

Different philosophers and statesmen have designed different lists of what they believe to be natural rights; almost all include the right to life and liberty as the two highest priorities. H. L. A. Hart argued that if there are any rights at all, there must be the right to liberty, for all the others would depend upon this.¹²⁸ T. H. Green argued that “if there are such things as rights at all, then, there must be a right to life and liberty, or, to put it more properly to free life.”¹²⁹ John Locke emphasized "life, liberty and property" as primary.¹³⁰ Thus, the right to freedom of movement and residence should be enforced properly so as to ensure the free life of the society.

¹²⁶ http://www.dkosopedia.com/wiki/Natural_Rights_Theory, accessed at 21 September 2012.

¹²⁷ Hudson James., the Philosophy of Immigration, Department of Philosophy, Northern Illinois University, *the Journal of liberation studies vol. III. No. 1*(1986), pp 6.

¹²⁸ Hart J, Rawls on Liberty and its Priority, *University of Chicago Law Review*, 1973, pp 554.

¹²⁹ Green T., *individual rights and common good*, oxford university press,2005., pp 58.

¹³⁰ Lock J, *Natural Rights to Life Liberty and Property*, Oxford University Press, 1996, pp 45.

3.2.5. Government Responsibility in Protection of Freedom of Movement and Residence

Governments have the obligation and responsibility to ensure the protection of all human rights for all individuals and to prosecute individuals and government officials who violate the rights of others.¹³¹ The concept of "due diligence" is sometimes mentioned as the standard by which government responsibility for violation of human rights by non-State actors is assessed. Governments that have signed human rights treaties are responsible to act with due diligence (or good faith) to prevent, investigate and punish any violation of rights recognized by those treaties. They are also required to provide a mechanism to restore the right violated and provide compensation as warranted by the damages resulting from the violation.¹³² Due diligence in the context of violation of freedom of movement and residence means governments have a duty to provide protection to all persons according to their obligations under international law. So governments must apply the due diligence principle in ensuring effective prevention of freedom of movement restriction, prompt and thorough investigation, and prosecution of violators and compensation for the person whose right to freedom of movement has been violated. Thus, Governments are bound to respect, ensure/ protect and promote the rights of all people.

3.2.5.1. Obligation to Respect

The governments duty to respect refers to governments must refrain from violating the human rights of individuals and take actions to uphold human rights principles. Governments shall not violate human rights of people in their territories in administering the nation's activities.¹³³ The obligation to respect is a negative obligation, and requires the State to refrain from any measure that prevents individuals from freedom of movement and residence. That means, government should refrain from restricting individuals from moving freely with in the country, and it should

¹³¹ Economic and Social Council, Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur on Violence Against Women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44, E/CN.4/2000/68, 29 February 2000 at para 50. See <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e29d45a105cd8143802568be0051fcfb>, accessed at 4th August 2012.

¹³² Id, para 51.

¹³³ Eide A, Economic, Social and Cultural Rights as Human Rights, in: A. Eide/ C. Krause (eds), 2nd edition, 2001, p.24.

also refrain from forced eviction.¹³⁴ Likewise, immigration officials, military and police must not violate the human rights of any person, including undocumented migrants and trafficked persons.

3.2.5.2. Obligation to Ensure/Protect

The obligation to protect signifies that governments must ensure that their laws and policies do not permit any person to violate the human rights of any other person (including non-citizens). Governments have a duty to punish all perpetrators, including government officials, private actors, corporations, religious groups and other entities.¹³⁵ The full realization of the right to freedom of movement and residence obliges States parties to protect every human being against restrictions of such freedom from third parties. States have to guarantee with all appropriate means the protection of the affected population. The obligation to protect regarding freedom of movement and residence requires the State to ensure that the actions of third parties do not deprive individuals of their right to freedom of movement and residence.¹³⁶ It requires measures by the state to ensure that enterprises or individuals do not deprive the right to freedom of movement and residence. Human rights violations against undocumented migrants and trafficked persons are particularly difficult for civil society to monitor, because trafficked persons are not visible in the public sphere. Trafficked persons may not have legal working documents and thus work in underground sweatshops or factories. They may work in an occupation, such as the sex industry, that is illegal in many countries. They may be in sectors that are in the private sphere, such as domestic work or marriage. However, governments are responsible for ensuring protection of human rights in all these spheres.

It may be difficult to document and monitor the steps a government takes to ensure and protect human rights, especially if civil society is unaware of the existence of human rights principles and government obligations.

3.2.5.3. Obligation to Promote

Governments must ensure that people know their rights and how to exercise their rights. Governments must promote conditions on their territories that allow people to exercise their rights, such as providing education, upholding democracy, ensuring economic justice and

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Surabhi Chopra, *the Right to Food and Water: Dependencies and Dilemmas*, Institute for Human Rights and Business, faculty of law, at the Chinese University of Hong Kong (2010), pp 9.

allowing NGOs to criticize the government's human rights record.¹³⁷ A country's laws must not restrict the free promotion of human rights; for example, no law should restrict people's access to knowledge about their basic rights.

3.2.6. Significance of the Right to Freedom of Movement and Residence for other Human Rights protection

Freedom of movement, with in the state and among the states, is important for job and business opportunities for cultural, political and social activities, for all the commingling which a gregarious person enjoys.¹³⁸ The point which this statement underscores is that the ability to move between and within States is a prerequisite for the exercise of human rights generally.¹³⁹ In addition, freedom of movement within States is frequently a condition for entry into the territory of States and a precondition for departure from it. Arbitrary restrictions upon the right to freedom of movement and residence can very often lead to the denial of both economic, social and cultural rights including the right to employment, and civil and political rights, e.g., personal liberty, freedom of assembly and association, and ownership of property.¹⁴⁰

For instance, if a woman who is a private employee and a mother of kids is restricted from moving from her home for a definite or indefinite period of time, the woman might lose her job, her income might be reduced (lost), her kids might be starved and the problem might arrived up to the health disorder due to depression or up to death. All these problems are directly or indirectly related with human right violations, such as the right to food, the right to employment, the right to food, the right to health and even the right to life. The same is true if a person is forcibly displaced from his residence. That is the violation of freedom of residence and it is also indirect violation of the right to property, work, food, health and so on.

¹³⁷ Ibid.

¹³⁸ Supra note 51, pp.3.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

3.3. International Legal Sources of the Right to Freedom of Movement and Residence

3.4.1. Universal Declaration of Human Rights(UDHR)

Article 13 of the Universal Declaration of Human Rights (herein after UDHR) stipulates that: *“Everyone has the right to freedom of movement and residence within the borders of each State.”*¹⁴¹

This declaration, containing a provision that permits freedom of movement and residence as one of its essential elements, created a fully formed charter, setting out the complete range of rights applicable to all people in the world. Unlike the creation of a Bill of Rights on a national level, (as noticed under those English and American Bill of Rights), the declaration was the first time that rights had been articulated in a comprehensive manner on the international level. The declaration thereby puts the human being at the center of international law. The ultimate authority for the declaration is not states, but the qualities of humanity that all people of the world share. This is because, as the preamble states, “recognition of all the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The focus away from the state to individuals is why the declaration is “Universal” rather than “International.”¹⁴²

The existence of the right to freedom of movement and residence in the UDHR as an essential element is crucially important. Because, it is perfectly argued that the Universal Declaration of Human Rights has subsequently become binding either by way of custom or general principle of law, or by virtue of being an authoritative interpretation of the UN Charter itself by subsequent practice¹⁴³ despite the fact that a declaration [note that UDHR is a declaration] is not enforceable under international law.

¹⁴¹Supra note 91, article 13.

¹⁴² Devine C, Hansen Cr, & Wilde R, Human Rights: the Essential Reference, the Oryx Press, Arizona, 1999 , p. 10.

¹⁴³ Ibid.

3.4.2. International Covenant on civil and political rights

Article 12 of the international covenant on civil and political rights provides that:

“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”¹⁴⁴

International convention on civil and political rights includes protection against all forms of forced internal displacement, and: prohibits States from preventing individuals from entering or remaining in a defined part of the territory.¹⁴⁵ Furthermore: those lawfully within the State must be able to move around in the entire territory and establish themselves in a place of their choice.¹⁴⁶ The enjoyment of this right cannot depend on the purpose or reason for the person wanting to move or to stay in a place.

3.4.3. International Convention on the Elimination of all Forms of Racial Discrimination

This convention was established in order to eliminate all forms of racial discrimination. It aims to perform this task by setting down a list of guidelines as to how people should be treated, similarly to other human rights documents. Article 5 states that all people have the right to freedom of movement and residence within the border of the State, the right to leave any country, including one's own, and to return to one's country and the right to nationality.

3.4.4. Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Discrimination against women violates the basic rights of respect for human dignity as well as equality. Article 15(4) of the Convention on the Elimination of All Forms of Discrimination against Women, better known by its abbreviation CEDAW, states that women shall be afforded

¹⁴⁴ Supra note 109, Article 40.

¹⁴⁵ Johanna P, *Right to Freedom of Movement and Choice of Residence- also an IDP.s right? Case Study on IDP Returns in Bosnia and Herzegovina* European Masters Degree in Human Rights and Democratisation University of Padua, Italy (2003), pp. 15.

¹⁴⁶ Ibid.

the same right as men to choose their nation of residence as well as their place of residence within that nation.

3.4.5. ILO Regulation on Freedom of Movement for Workers within the Community

ILO Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers within the Community provides for the full protection of workers within their respective communities or across national borders as with the case of migrant workers. The International Labour Organization (ILO) considers freedom of movement is a fundamental right of workers and their families and the right of freedom of movement requires that equality of treatment shall be ensured by law and common belief in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country. This document goes on to list the rights of workers and their families establishing the basic guidelines by which governments and corporations must respect their workers and thus ensure them freedom of movement in order to pursue what is best for themselves and their families.

3.4.6. General Comments

General Comment 15, The position of aliens under the Covenant (twenty-seventh session, 1986)

which discusses the position of aliens under the International Covenant on Civil and Political Rights states that aliens have the right to liberty of movement and free choice of residence; they shall be free to leave the country.¹⁴⁷ While this document does recognize that states shall have the right to choose who enters their borders it calls on nations to allow in anyone whose fundamental human rights are at stake and anyone who may be facing persecution. It also

¹⁴⁷ Committee on Civil and Political Rights, General Comment No. 15: the Position of Aliens under the Covenant adopted at the twenty-seventh session of the Human Rights Committee, on 11 April 1986, para 5.

recognizes that aliens may be kept out of a country if they pose a threat to the well being of others.¹⁴⁸

General Comment 25 (1996) is in reference to article 40 of the International Covenant on Civil and Political Rights which deals with the right to participate in public affairs, voting rights and the right of equal access to public services states that all people should be given equal access to voting rights and there should be no impediments in their doing so.¹⁴⁹ Thus, freedom of movement, amongst other rights, should not be restricted because then the people's right to vote could be restricted and prevented by corrupts governments.

General Comment 27, Freedom of Movement (sixty-seventh session, 1999), provides an in depth look at the freedom of movement, its ramifications and even its restrictions. The Comment stated that freedom of movement is indispensable for the free development of a person and that this right interacts with several others in the International Covenant on Civil and Political Rights.¹⁵⁰ This document states that all people shall have the freedom to choose where they reside.¹⁵¹ They also have the right to leave any country they choose, including their own. It lists restrictions that under exceptional circumstances that can potentially be placed on freedom of movement, and lastly, stipulates the right to enter one's own country. This "general comment" picks apart every section of article 12 of the International Covenant on Civil and Political Rights, further examining it from a legal standpoint. This document is one of the main documents referred to when examining in depth the freedom of movement and its boundaries.

General Comment no 28, Equality of rights between men and women (2000) deals specifically with article 3 of the International Covenant on Civil and Political Rights, which states the equality of rights between men and women states in section 16 that states parties should provide any information on any legal practice or provision which restricts women's freedom of movement such as: the exercise of marital powers over ones wife and children or the issuance of

¹⁴⁸ Id, para 6.

¹⁴⁹ Committee on Civil and Political Rights, General Comment No. 25, the right to participate in public affairs, voting rights and the right of equal access to public service, Article 25.

¹⁵⁰ Committee on Civil and Political Rights, General Comment No. 27: (Freedom of Movement) Adopted at the Sixty-seventh session of the Human Rights Committee, on 2 November 1999, article 12.

¹⁵¹ Ibid.

travel documents to women.¹⁵² Subsequently, this comment calls for governments to repeal such laws giving women the same rights as men.

General Comment 29, States of Emergency (2001), discusses exceptions from provisions of the International Covenant on Civil and Political Rights.¹⁵³ This comment is extremely important due to the fact that it provides limits too the work set forth in the Covenant itself. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a state moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. However, the forcible removal of people from their places of residence is to be considered a crime against humanity (section 18d).

3.4.7. African Charter on Human and People's Rights¹⁵⁴

Article 12 of African charter on human and people's rights provides that

“Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.”

Article 12(5) of the same provision provides that

“The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.”

Unlike other international instruments ACHPR includes the clause that prohibits mass expulsion of non-nationals. The African Charter on Human and Peoples Rights established an African Commission on Human and Peoples Rights.¹⁵⁵ In its jurisprudence, the commission considered a number of communications in which states parties are alleged to have violated Article 12 of the charter in respect of the protection of freedom of movement and residence. Among other things, it is up on the efforts of the commission that the provisions mentioned under the charter got their well understandable form and attribute.¹⁵⁶

¹⁵² Committee on Civil and Political Rights General Comment No. 28: (The Equality of Rights Between Men and Women), Adopted at the Sixty-eighth session of the Human Rights Committee, on 29 March 2000, article 3.

¹⁵³ Committee on Civil and Political Rights, General Comment No. 29: on state of emergency, adopted at the 1950th meeting, on 24 July 2001, article 2.

¹⁵⁴ African (Banjul) Charter on Human & Peoples Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered in to force 21 October 1986, article 22.

¹⁵⁵ Ibid.

¹⁵⁶ Ralph Crawshaw & Leif Holmstrom, Essential Cases on Human Rights for the Police, Martinus Nijhoff Publishers, Leiden, 2006, p. 142.

3.4.8. American Convention on Human Rights

Article 22 of American convention on human rights provides that:

“Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”¹⁵⁷

This convention has provided the right to freedom of movement and residence in extra territorial manner since a citizen of one state party can freely move and reside within the territory of the other state party. Most of the international conventions except the American convention on human rights provided the limitation of the right to freedom of movement and residence in detailed way. It provides that the exercise of the right to freedom of movement and residence may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others. Or it may also be restricted by law in designated zones for reasons of public interest.”¹⁵⁸

3.4.9. ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment

The Protocol Relating to Free Movement of Persons, Residence and Establishment is signed in 1979 in Dakar among the members of Economic Community of West African States (ECOWAS). The protocol was signed based on Article 2(2) paragraph 2 of the Treaty of the Economic Community of West African States.

Article 2 of the protocol provides that:¹⁵⁹

- 1. The Community citizens have the right to enter, reside and establish in the territory of Member States.*
- 2. The right of entry, residence and establishment referred to in paragraph 1 above shall be progressively established in the course of a maximum transitional period of fifteen (15)*

¹⁵⁷ American Convention on Human Rights, adopted at the inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, article 22(1).

¹⁵⁸ Id, article 22(2 and 3).

¹⁵⁹ ECOWAS protocol , A/P.1/57/9/relating to free movement of persons residence and reestablishment, article 2.

years from the definitive entry into force of this Protocol by abolishing all other obstacles to free movement of persons and the right of residence and establishment.

This protocol assures the free movement of persons beyond their territorial limit of mother country. One person can move freely and reside in any place of the ECOWAS member country.¹⁶⁰ However this protocol lacks a formal legally integrated framework on the free movement of persons, a key component of regional integration.

3.5. International and Regional Supervisory Machinery and Compliant Procedures for the Instruments Dealing with the Right to Freedom of Movement and Residence

All the above binding international and regional human rights instruments dealing with the right to freedom of movement and residence have their own monitoring organs and compliant procedures for the proper implementation of the convention. It is based on these organs that all those binding instruments, discussed under the previous sections, have got their proper meaning after efforts taken by the organs in avoiding all ambiguities as much as possible. Thus, an attempt has been made to briefly introduce these monitoring organs and compliant procedures.

3.5.1. Human Rights Committee

The Human Rights Committee is established under article 28 of the international Covenant on civil and political rights. It has 18 members, who must be nationals of States parties to the Covenant.¹⁶¹ The Human Rights Committee has the power to supervise and monitor the implementation of Covenant obligations by States parties. It examines reports which states parties are obliged to submit periodically; issues concluding observations that draw attention to points of concern; make specific recommendations to the state; and consider communications from individuals who claim to have been the victims of violations of the covenant by a state party.¹⁶² The committee has also issued a series of General Comments, to elaborate on the meaning of various articles of the covenant and the requirements that these place on states parties.¹⁶³

¹⁶⁰ Ibid.

¹⁶¹ Supra Note 109, Article 28.

¹⁶² For this procedure to apply to individuals, the state must also have become a party to the first optional protocol to the covenant.

¹⁶³ Civil and political rights: human rights committee, fact sheet number 1, pp 12.

3.5.2. The African Commission On Human And Peoples' Rights

The African Commission on Human and People's rights has been established under article 30 of the African charter on human and people's rights.¹⁶⁴ The African Commission has the power to promote human and peoples' rights by collecting documents, undertaking studies and research on African problems in the field of human and peoples' rights, organizing seminars, symposia and conferences, disseminating information, encouraging national and local institutions concerned with human and peoples' rights, and, where necessary, giving its views or making recommendations to governments, to entertain both inter-state and individual communications.¹⁶⁵ Some individual communications have been filed, by both individuals and NGOs, to the African Commission alleging the violation of the right to freedom of movement and residence. These communications indicate the extent to which the right to freedom of movement and residence is violated in Africa. For instance, the recent individual communication has been filed by 'Enoughproject'¹⁶⁶, against the republic of Sudan for violation of the right to freedom of movement by blocking Sudanese civilians from moving anywhere and escaping attacks.¹⁶⁷

3.5.3. The African Court of Justice and Human Rights(ACJHR)

The African court of justice and human rights has been established by the African Union decision to merge the human rights court, that is, the African Court on human and people's rights¹⁶⁸, and the African Court of Justice¹⁶⁹ through the adoption of an instrument fusing both

¹⁶⁴ Supra note 154, article 30.

¹⁶⁵ Id, article 45.

¹⁶⁶ The Enough Project was co-founded by the Center for American Progress and the International Crisis Group in 2007. Based in Washington, D.C., its stated mission is to end genocide and crimes against humanity. The Enough Project conducts research in several conflict areas in Africa. The Enough Project facilitates several campaigns and initiatives which work to bring attention to these crises. Its co-founders are John Prendergast and Gayle Smith; its Executive Director is John C. Bradshaw, J.D., available in [Http:// www.enoughproject.org](http://www.enoughproject.org), accessed at 31 October 2012.

¹⁶⁷ Mary Maboreke (2010), the Secretary of African Commission on Human and Peoples' Rights, Communication Submitted to the African Commission on Human and Peoples' Rights by the Enough Project1 for Violations of the African Charter with Respect to Sudanese Civilians in South Kordofan and Blue Nile States, [Http://Www.Enoughproject.Org/Files/Communication](http://Www.Enoughproject.Org/Files/Communication), Accessed At 31 October, 2012.

¹⁶⁸ African Court of Human and People's Rights was established under the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and People's Rights.

¹⁶⁹ Protocol on the Court of Justice of the African Union, 2nd ordinary session of the African Union, Maputo, Mozambique, July 2003, article 4.

courts.¹⁷⁰ The African Court of Justice and Human Rights¹⁷¹, (ACJHR) will comprise of two sections, that is, a ‘General Section’ and a ‘Human Rights Section’.¹⁷²

ACJHR has the power to observe individual and NGO petitions, and the victim’s cases directly. Similar to the African Court, the proposed ACJHR will issue final and binding decisions.¹⁷³ The ACJHR has the power to refer cases of non-compliance with its judgments to the AU Assembly, which shall decide upon measures to be taken to give effect to that judgment, and which may thereby impose sanctions by virtue of paragraph 2 of article 23 of the Constitutive Act.¹⁷⁴

Thus everyone whose right to freedom of movement and residence has been violated can apply to the African court of Justice and Human rights by approaching directly.

3.6. Conclusion

The right to freedom of movement and residence is a fundamental human right recognized in international human rights instruments, such as UDHR, ICCPR, and other regional human right instruments. The right to freedom of movement and residence is not only to move within the country but also it is a protection from forced eviction or displacement. This freedom might be restricted, either by way of derogation under article 4 of the ICCPR, or to protect national security, public order, public health or morals or the rights and freedoms of others, as allowed by article 12(3). Any limitations to freedom of movement rights should be reasonable, proportionate and serve a legitimate State interest.

There are three theoretical foundations for the right to freedom of movement and residence. These are: the idea of a common ownership of the earth, a natural right of movement existing prior to the advent of nation states, and an ethics of cosmopolitanism.

¹⁷⁰ Draft Protocol on the Statute of the African Court of Justice and Human Rights, EX CL/253 (IX), Annex II Rev submitted to the 9th ordinary session Executive Council of the AU, 25-29 June 2006, Banjul, The Gambia (on file with authors). See art 1. The draft instrument would replace the initial Protocols establishing the two individual courts.

¹⁷¹ Consequently, the draft merger instrument stipulates a transitional period of one year from the its entry into force, for the African Court to take the necessary measures for the transfer of its prerogatives, assets, rights and obligations to the new ACJHR. After that, the former ceases to exist.

¹⁷² Supra note 169, article 5.

¹⁷³ Id, article 47(2).

¹⁷⁴ Id, article 48.

Government has a primary responsibility to respect, protect and promote the right to freedom of movement and residence. There are also international and regional human right enforcement bodies that have responsibility and power for the proper implementation of the right to freedom of movement and residence. These are: Human right committee, African commission on human and people's rights, African court of justice and human rights.

Chapter Four: Federalism and the Right to Freedom of Movement and Residence in Ethiopia

4.1. Introduction

The previous chapters presented the theoretical and conceptual frameworks of federalism, ethnic federalism and the right to freedom of movement and residence in general.

This chapter has tried to depict federalism and the right to freedom of movement and residence in to two distinct sections: the first section aims to provide the general overview on Ethnic federalism of Ethiopia. This section has tried to view Ethiopian federal system from the perspectives of historical background, basic features and ideological basis. An attempt has also been made to discuss the extent of self determination in Ethiopia. And, the second section confers the right to freedom of movement and residence in Ethiopian legal system. It has been devoted to deal with the right to freedom of movement and resident in Ethiopian legal system. It has been tried to review all domestic legal instruments so as to set out the status and recognition of the right to freedom of movement and residence in Ethiopia. The limitations of this freedom has also examined in light of international standards and domestic legislations.

4.2. Historical Background of Federalism in Ethiopia

In the following section the historical background of federalism in Ethiopia has been observed together with the modern political history of the country as the main objective of this section.

The modern Ethiopian state emerged at the second half of 19th century with the coming in to power of Tewodros II (1855- 1868) in 1855 to the throne.¹⁷⁵ Tewodros initiated his predecessors' mirror image imperial policies of modernization and centralization.¹⁷⁶ Almost all of his successors followed these policies, albeit with different levels of enthusiasm and vigor. After Tewodros's death in 1868, Kassa Mircha of Temben came to the throne following his coronation as Yohannes IV (1872-1889) in 1872 and he pursued his predecessor's policy of unification, although in a different fashion.¹⁷⁷ By referring to the Emperor's readiness to share power with his subordinates so long as his throne was not challenged and adoption of a more cautious policy of accommodation to regionalism¹⁷⁸, Assefa Fisseha remarked that de-facto federalism in Ethiopia has tried to be realized at the reign of Yohannes I.¹⁷⁹

After the death of Yohannes at the battle of Mettema in 1889, Menlik seized the Solomonic title and turned the course of the Empire to the South and followed the twin imperial policies of

¹⁷⁵ Bahru Zewde, *a History of Modern Ethiopia 1855-1974* (Athens, Ohio: Ohio University Press, 1991) at 11.

¹⁷⁶ Teshale Tibebu, *the Making of Modern Ethiopia 1896-1974* (Lawrenceville, NJ: The Red Sea Press Inc., 1995); Harold Marcus, *a History of Ethiopia* (Berkeley: University of California Press, 1994).

¹⁷⁷ Ibid.

¹⁷⁸ Supra note 175.

¹⁷⁹ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia, A comparative Study*, (Wolf Legal Publishers, the Netherlands 2007), pp. 11.

modernization and centralization.¹⁸⁰ Indeed, his lasting legacy has been the emergence of Ethiopia with its present geographic shape, capital and ethnic makeup. The battle of Adwa (1896) in which Ethiopian forces defeated the Italians led to international recognition of the boundaries of the country.¹⁸¹

Emperor Haile Selassie who took the throne after the brief reign of Lij Iyasu, the grandson of Menelik who ruled the country from 1911-1916 dominated much of the 20th century history of the country.¹⁸² He followed the policies of centralization and modernization of his predecessors with a renewed vigor and tenacity. In 1931, he introduced the first written constitution of the country with the purpose of consolidating his power.¹⁸³

After a brief interruption due to the Italian invasion, the Emperor introduced Decree Number 1 of 1942 that brought unprecedented levels of centralization in the history of the country.¹⁸⁴

In the midst of the strengthening of the Emperor's resolve for centralization of power, Eritrea joined with Ethiopia in 1952 under a United Nations (UN) sanctioned federal arrangement.¹⁸⁵ The Ethio-Eritrea federation (1952-1962) was more of an autonomous arrangement than a federation, as Eritrea that had a liberal constitution that recognized limited rights of freedom of association and speech became part of a highly centralized state under an absolutist monarch with guarantees of self-rule. In the end, the constitutional asymmetry between the two contributed to the demise of the federation in 1962.¹⁸⁶

In 1974 Emperor Haile Selassie was overthrown and Mengistu Haile-Mariam and the Derg (military ruling council) entered the stage. They gradually built an Ethiopian Marxist state. Mengistu's regime engaged in a cruel and bloody civil war on two fronts against opponents of the government against an ideological pan-Ethiopian movement on the one hand, and against ethnically-based resistance movements¹⁸⁷ on the other.¹⁸⁸

¹⁸⁰ Supra note 175, pp. 48.

¹⁸¹ Ibid.

¹⁸² Id. pp 13.

¹⁸³ Ibid.

¹⁸⁴ The Italians occupied the country from 1936-1941. In 1941, after the defeat of the Italians, the Emperor recovered his throne and rekindled his twin policies of centralisation and modernization, Clapham Clapham, C., 'Ethnicity and the National Question in Ethiopia' in Peter Woodward and Murray F. eds., Conflict and Peace in the Horn of Africa (Aldershot: Dartmouth, 1994), at 34.

¹⁸⁵ Supra note 176.

¹⁸⁶ Markakis John, National and class conflict in the Horn of Africa, Cambridge: Cambridge University Press 1987.

¹⁸⁷ Ethnically based resistance movements include the EPLF / Eritrean People's Liberation Front, the OLF, and the TPLF / Tigray People's Liberation Front).

The EPRDF that assumed power in May 1991 after its protracted 17 year armed insurgency undertaken the reconstruction of the Ethiopian state. It organized multiethnic coalition convened a national conference (commonly Known as Charter conference) in which twenty-seven political groups, trade unions, university representatives participated in July 1991, and quickly established the Transitional Government of Ethiopia (TGE) under a Transitional charter.¹⁸⁹The Transitional charter affirmed the right of ethnic groups to self determination, up to and including secession¹⁹⁰ and provided for the establishment of local and regional governments “on the basis of nationality.”¹⁹¹ It also stipulated that " Based on the Universal Declaration of Human Rights of the United Nations, adopted and proclaimed by the General Assembly by resolution 217 A (III) of 10 December 1948 individual human rights shall be respected fully, and without any limitation whatsoever.”¹⁹² Thus, all civil, political, social, economic and cultural rights which stated in UDHR are recognized and had protection by the 1991 Transitional charter of Ethiopia.

The Transitional Charter of the Transitional period (1991-1995) declared that each ‘nation, nationality, and peoples’ was provided with ‘the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation’.¹⁹³ As a result, the Transitional government enacted Proclamation of 7 of 1992 in January 1992 for the establishment of regional self-governments. Thus, the 1992 Proclamation (7 of 1992) enumerated about 60 ethnic groups, and provided for the 48 of the ethnic groups to establish their own ‘National/Regional Self –Governments’ at the wereda level or above. The remaining 17 small-sized ethnic groups were incorporated within some of the 48 self-governing ethnic enclaves as minorities.¹⁹⁴ The ‘nation, nationalities and peoples’ with small-size population and identified as ‘minority nationalities’ are provided with a right to have an appropriate representation in their respective woreda legislative body or council.¹⁹⁵ By going very far, the proclamation affirmed each ethnic group’s right to exercise its

¹⁸⁸ Supra note 176.

¹⁸⁹ Aaron Tesfaye, Political Power and Ethnic Federalism (Lanham, MD: University Press of America, 2002), 75.

¹⁹⁰ Transitional Charter of Ethiopia, July 22, 1991, Addis Ababa, Article 2.

¹⁹¹ Id, Article 13.

¹⁹² Id, Article 1.

¹⁹³ Id, article 2.

¹⁹⁴ Proclamation No. 7/1992, A Proclamation to provide for the establishment of National/Regional Self-Governments. Negarit Gazeta 51st Year No. 2, article 5.

¹⁹⁵ Id, article 6.

right to self determination if it is convinced that its rights for self administration and self-promotion are denied, abridged, or abrogated.¹⁹⁶

Initially, in 1992, fourteen regional states were established. Nevertheless, in 1993 the regional states were reduced to nine after merging the five regional states (Region 7, 8, 9, 10, and 11) in the South into one single regional state under the name of the Southern Nations, Nationalities, and Peoples (SNNP) regional state.¹⁹⁷ Even if the 7/92 proclamation allowed for merger, it had made a specific condition in a manner that the merging should not hinder each ethnic group's right to preserve its own local self-government capacity against its will.

The Transitional Council of Representative¹⁹⁸ established a Constitutional Commission to draft a constitution. It later adopted the draft and presented it for public discussion. Then, a Constituent Assembly ratified the federal constitution in December 1994, which came into force in August 1995. The constitution of the Federal Democratic Republic of Ethiopia starts with the words: "We the nations, nationalities, and peoples of Ethiopia." This phrase indicates that all the ethnic groups as collectivities, rather than individual citizens are, in principle, the authors of the constitution.¹⁹⁹ Thus, the regional states that were established during the Transitional period were officially endorsed by the 1994 constitution as constituent units of the Ethiopian federation. The constitution states that 'the federal democratic Republic of Ethiopia shall comprise of States, and the States shall be delimited on the basis of the settlement patterns, language, identity and the consent of the people concerned'²⁰⁰ Thus, Ethiopia's ethnic federalism is federalism based on ethnic communities as the constituent units and foundations of the federal state

¹⁹⁶ Id, article 7.

¹⁹⁷ There was no clear explanation how the merger was initiated, negotiated and agreed. The merger decision was made through closed door agreement among the self-appointed ethnic organizations in the name of the people. Whatever was the justification of the decision, such kind of decision, which has a tremendous political implication for the concerned people, should have been decided in open and transparent manner. Many prominent individuals in SNNP such as Beyene Petros, Tefera Meskelea and the SNNP Council speaker, have believed that the decision was imposed on them by EPRDF in inconsistency and contrary to the agreed covenant or the transitional charter). See Berhanu Gutema *Constitutionalism in the Horn of Africa: Lesson from the new constitution of Ethiopia*, DIIPER Research Series Working Paper Number 15, DIIPER & Department of History, International and Social Studies Aalborg University, 2009 at 13.

¹⁹⁸ Council of Representatives (COR) have 87 members which has been established by the charter conference comprising "representatives of national liberation movements, other political organizations and prominent individuals" and acted as the national parliament for the two and half years transitional period., transitional charter Article 7.

¹⁹⁹ Alem Habtu, *Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects*, (Queens College/CUNY, 2003), p.3.

²⁰⁰ Supra note 2, Article 46, The constitution also affirms the establishment of nine Regional State, which are: 1) the Region of Tigray, 2) the Region of Afar, 3) the Region of Amhara, 4) the Region of Oromia, 5) the Region of

4.3. Ideological Basis of Ethiopian Federalism

The main purpose of dealing with the ideological basis of Ethiopian federalism at this stage is aimed at assessing whether the ideological foundation have something to do with determining the implication of Ethiopian federal set up on the right to freedom of movement and residence in one or another way.

It is crucial to examine the criteria of arranging the current federal set up of Ethiopia and historical events that led to such criteria as a choice for federal arrangement so as to point out the ideological basis of Ethiopian federal system. Even though none of the nine regions is ethnically homogeneous and a perfect match between ethnic group and territory has thus not materialized, the ethnic criterion has played an important role in the creation of the regional states in Ethiopia, in the sense that the delimitation of the regional borders is based on ethnic ones. As a result, Ethiopian federalism has been called 'ethnic federalism', distinguishing it from federalism in a country such as the United States, where regional borders do not in any way correspond with ethnic ones.

The historical event that affects the federal setup of Ethiopia was the emergence of Marxism-Leninism as uncontested ideology of students and their challenge to Ethiopian unity and Amhara domination at the second half of 1960s and first half of 1970s.²⁰¹ The emergence of a radical Marxist Leninist opposition since the 1960s led to ethnic centered liberation front.²⁰² Thus, the radicalization of the students took a new turn towards the beginning of the 1970s when they began to tackle the problem of ethnic relations in the country.²⁰³

The FDRE Constitution also contains some provisions that Ethnic federalism provides for decentralization and self-government based on ethnicity and “an unconditional right to self-determination, including the right to secession.”²⁰⁴ The rationale behind this constitutional recognition, as highlighted in the preamble of the constitution is to show that “our destiny can be best served by rectifying historically unjust relationships”. The argument is that if the different

Somalia, 6) the Region of Benishangul/Gumuz, 7) the Region of the Southern Nations, Nationalities and Peoples, 8) the Region of Gambella Peoples, and 9) the Region of Harari People. The city of Addis Ababa was designated as a city administration, but directly responsible for the federal executive and the Addis Ababa people.

²⁰¹ Supra note 40, pp 63.

²⁰² Id, pp 64.

²⁰³ Ibid.

²⁰⁴ Supra note 2, article 39.

nationalities did not obtain any kind of autonomy, Ethiopia would soon erupt into war again.²⁰⁵ The late Prime minister (Meles Zenawi) in the Transitional Conference also tried to justify the adoption of the right to self determination by stating that:

*“The key cause of the war all over the country was the issue of nationalities. Any solution that did not address them did not address the issue of peace and war. [...] people were fighting for the right to use their language, to use their culture, the administer themselves. So, without guaranteeing these rights it was not possible to stop the war or prevent another one coming up”*²⁰⁶

The ruling Ethiopian People Revolutionary Democratic Front (EPRDF) who innovates ethnic self determination, the ideological foundation for Ethiopian federalism, asserts that it is intent forthrightly addressing the claims of ethnic groups in the country of historic discrimination and inequality, and to build a multi ethnic democracy.²⁰⁷ The integration of the internal aspects of self-determination in to the Ethiopian constitution and making it an ideological basis of the federal set up is a necessary approach to the political process in Ethiopia after EPRDF took power. Providing appropriate platform for the use of one’s language, promotion of culture, preservation of history, full measure of self governance and equitable representation at both regional and federal level is a matter-of-fact solution to the problems of ethnic identity that will possibly arise owing to uneven treatment or office sharing scenarios.

4.4. Salient Features of Ethiopian Federalism

Ethiopian federal system has its own salient features. The first and apparent feature of Ethiopian federalism is ethnicity as the first principle of organizing the State. Ethiopian citizens are categorized into their different ethno-linguistic groupings. Ethnicity or identity has been the driving force behind many of the demands for a measure of self-rule in a well-defined territorial level of local government either with the status of a zone or wereda (district) within the Regional

²⁰⁵ *Supra* note 49, pp. 40.

²⁰⁶ Sarah Vaughan *the Addis Ababa Transitional Conference of July 1991: It’s Origin, history and significance*. Edinburgh: Edinburgh University, Center for African Studies, 1994, pp 4.

²⁰⁷ Keller Edmond ‘Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia’, *African Journal of Political Science*, volume V. number XX(2002), pp. 21; Paulos Chanie, Clientelism and Ethiopia’s post-1991 decentralization, *Journal of Modern African Studies*, vol. 45, no. 3 (2007), pp 357.

State or demands for incorporation into the adjoining State to which their ethnic group allegedly belongs.

Making self determination as an ideological underpinning for the federation is the second salient feature of Ethiopian federal system. The proponents of the right to self-determination in Ethiopia argue that it is a guarantee for lasting peace and Promotes democracy. On the other hand, its opponents argue that the right to self-determination would lead to the disintegration of the Ethiopian state as witnessed by the separation of Eritrea from Ethiopia.²⁰⁸

The other most important feature of Ethiopian federalism is Constitutionalizing of the right to secede. Article 39 of the constitution provides that all nation nationalities and peoples of Ethiopia have unconditional right to self determination up to secession. In terms of political theory, secession and federalism are considered to be antagonists rather than friends.²⁰⁹ While the former is an exclusive guiding principle of self rule and persistence on a complete independence the latter is a combination of unity and diversity or self rule and shared rule according to its founding fathers. But, the FDRE constitution which is totally influenced by the political and philosophical outlook of the EPRDF cadres, tries to build a positive linkage between federalism and secession.²¹⁰

Instituting unicameral legislature in actual operation but bicameral in form at the federal level is the other salient feature of Ethiopian Federalism. Bicameralism is an essential feature of federalism for the rational of preserving the federation.²¹¹ The United States, Germany, and other federal systems use a bicameral system in order to ensure the representation of the interests of individual states and provinces, as well as the population of the country. Under “federal bicameralism”, the lower house is typically apportioned on the basis of population, while the upper house is divided amongst the regional units.²¹² Both houses have the legislative power in these federal countries. However, the House of the Federation, the upper house of the Ethiopian parliament, is “composed of representatives of Nations, Nationalities, and Peoples”²¹³ is a representative of the ethno-cultural groups rather than the states. But the states may have their

²⁰⁸ Yishak Kassa, *Federalism and Self determination in a Multicultural Context: the Challenges of the Ethiopian Experiment*, IFF Summer University 2008 working paper, pp 4.

²⁰⁹ Ibid.

²¹⁰ Kalkidan Kassaye, center state relation in Ethiopian Federal set up: towards coercive federalism, LLM thesis Addis Ababa University, 2010, pp 62.

²¹¹ Michael Cutrone, *Does Bicameralism Matter?* Princeton University press, 2005, pp 8.

²¹² Ibid.

²¹³ Supra note 2, Article 61(1).

interests aired through the ethnic groups that come out of them. Besides, the fact that the representatives are in practice so far selected by the state legislatures (often from within the state legislatures), rather than by direct popular vote, has created the impression that they represent the states. The state legislatures are of course allowed to elect the representatives themselves or to “hold elections to have the representatives elected by the people directly”.²¹⁴

When a federal government with parliamentary system has been put in place, formal bicameralism was envisaged. Even if the constitution tries to create an impression that the country has a bicameral legislature, a more serious scrutiny will suggest otherwise that the constitution take up bicameralism in form not in its strict sense. The Participation of the HoF in actual legislative tasks with the lower house is extremely limited; this is evidenced by the fact the list of powers and mandates under Article 62 refers only to two matters, among a total of 11, as the ones relating to legislation. These matters are: determination of “the division of revenues derived from joint Federal and State tax sources and the *subsidies* that the Federal Government may provide to the States”²¹⁵ and determination of “civil matters which require the enactment of laws by the House of Peoples’ Representatives.”²¹⁶ One can quickly note that even these are not legislative matters strict sense; they are rather directions on what to legislate upon, sort of a license for the HPR to legislate on the matters indicated.²¹⁷

Thus, all the above features are peculiar only to Ethiopian federal system. The next section has dealt with the scope of self determination in Ethiopian federal set up. It has tried to explore the issue that does self determination signify exclusion of other

4.5. The Extent of the Right to Self Determination in Ethiopian Federal Setup

The FDRE constitution has recognized both internal and external self determination. However, the constitution does not provide any thing about the meaning and extent of self determination. Self determination is a group right and vested only to the Nation, Nationality and Peoples of Ethiopia. “Nation, Nationality, or People”, which defined as “a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language,

²¹⁴ Tsegaye Regassa, Learning to Live with Conflicts: Federalism as a Tool of Conflict Management in Ethiopia, an Overview, *Mizan Law review*, Vol. 4, No 1, 2007, pp 43.

²¹⁵ Supra note 2, Article 62(7).

²¹⁶ Id, Article 62(8).

²¹⁷ Supra note 214, pp 43.

belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.”²¹⁸ The constitution clearly specifies the scope of the right to self determination. Internal self determination revealed from the right of “nations, nationalities and peoples” to speak, write, develop their language; to express, promote and develop their culture; preserve their history; and to self government and equitable representation in the regional state and federal governments. External right of self determination expressed in terms of secession.

In fact, these rights are considered to be the inherent rights of Nations, Nationalities and Peoples of Ethiopia regardless of the administrative hierarchy of the territories inhabited by them. If a Nation or Nationality believes that its identity is denied or promotion of its culture, language and history is not respected, it may submit its petition of self determination formally to the House of Federation for consideration and decision.²¹⁹ For instance, a referendum had been conducted in the case of Siltie people living in the SNNPRS so as to determine their distinct identity as opposed to the other adjacent nations and nationalities (Gurage). The Siltie can now develop their own culture, language and history distinct from other ethnic groups.²²⁰ The decision of the House took into account the wishes and aspirations of the people to be identified in the way they have desired. Actually, it was a prime experiment in the exercise of the right to self-determination by a group in terms of cultural and linguistic peculiarities.

The scope of the right to self-determination also embraces the right to a full measure of self-government which includes the right to establish institutions of government in the territory which a given group inhabits. It has been proclaimed under the Constitution that the government shall promote and support the people’s self-rule which is guided by democratic principles at all levels.²²¹ Under this category, Nations, Nationalities and Peoples have the right to establish their own local governments such as the *Zonal*, *Woreda* and *Kebele* administrations.

The extent of the exercise of self-determination also includes the representation and participation of nations, nationalities and peoples at all levels of government structure. By virtue

²¹⁸ Ibid.

²¹⁹ Proclamation Number 251/2001, proclamation for Consolidation of the House of Federation and the Definition of its Powers and Responsibilities, Federal Negarit Gazzeta, 7th year no. 51, Addis Ababa 6th July 2001, article 19(1).

²²⁰ Core Document Forming Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, [28 July 2009], United Nations HRI, International Human Rights Instruments Distr. GENERAL HRI/CORE/ETH/2012, Original: ENGLISH, 6 November 2012, p.134.

²²¹ Supra note 208, pp 6.

of the Constitution, every nation, nationality or people have the right to be represented in both the state and federal governments. This representation embraces the right to participate in the legislative organs as well as executive and law enforcement bodies at federal and state levels.

The scope of such a right to self-administration extends to the formation of a regional state that would become a member of the Federation. The question of any Nation, Nationality and People to form its own state is carried out through the approval of a two-thirds majority vote of the members of the council of the Nation, Nationality and People concerned and by a majority vote in case of a referendum.²²² Any party aggrieved by the decision of the council has the right to appeal the decision to the House of Federation.²²³

In ethnic federal system there are always minorities within the regional states or districts. The nation, nationalities and peoples of Ethiopia who has a right to exercise the right to self determination should not violate the rights of others. The right to promote of its own culture, language and history does not mean restricting others from promoting their own culture, language and history by legal means.

Self determination is all about as described above rather it does not mean that discriminating other ethnic groups or individuals or does not mean expelling other individuals who do not belong to that specific ethnic group. Every right should be exercised without affecting the rights of others. The 1995 Constitution so generously recognizes the right to self-determination of ethno-national groups; it utterly fails to pay any attention to the non-indigenous (exogenous)²²⁴ groups who find themselves in the ‘wrong’ regional states.²²⁵ What is the fate of such exogenous groups? This is not open for question because the constitution ensures the right to freedom of movement and choice of one’s own residence as well as its preamble embeds common economic and political community in the country without impinge on ethno cultural diversity. Equal opportunities have to be given to those exogenous groups of serving the regional state or zone or woreda (that has been established by way of right of self determination) public offices equally to those affiliated to the inhabitant ethno-linguistic group by blood. If a specific nation nationality

²²² Supra note 2, article 47.

²²³ Ibid.

²²⁴ ‘Exogenous’ is the opposite of ‘endogenous (indigenous)’, indigenous groups are those groups that are currently believed both legally and politically to be the owners of the territories in which they are found and exogenous groups are those groups that are found in other regions.

²²⁵ Getachew Assefa, Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on their Impacts on the Protection of Human Rights, *East African Journal of Peace & Human Rights*, Vol 17, No 1, 2011, pp 68.

and people exercise the right of self determination, it has a duty to equally treat exogenous groups with indigenous one at least in terms of residing permanently within the self determined territory. Otherwise it will amount to discrimination and violation of Article 25 of the FDRE Constitution.

4.6. The Right to Freedom of Movement under the Ethiopian Legal System

Even before the introduction of Fetha Negest²²⁶, there were many unassembled documents in Ethiopia designed to serve as a legal instrument in protecting the peace and security of the society. However, neither of these previous instruments nor Fetha Negest itself provided a protection of freedom of movement and residence of individuals. Section 31 of Fetha Negest dealing with slavery and manumission²²⁷ of slave provides that slaves shall be freed by will of their master. This is the only provision dealing with freedom of movement of slaves with conditions that if the master permits to freed them.²²⁸ This actually does not mean the right to freedom of movement.

4.6.1. Pre 1995 period

4.6.1.1. The 1931 constitution

The 1931 constitution was the first written constitution in the Ethiopia history and it incorporate some human right provisions under Chapter three titled “the rights accorded to the people by the Emperor, and duties which it is incumbent up on the people to fulfill” provides a guarantee of protection for a lot of human rights²²⁹ Save for the inadequacy and limited scope of the provision, it was the first instrument that permits the protection of freedom of movement in the Ethiopia history. It provides that within the limits laid down by the law, Ethiopian subjects have the right to pass

²²⁶ the law introduced in Ethiopia during the regime of Zarayaqob (1434-1468)

²²⁷ Manumission of slave means is the act by which a slave receives freedom, usually by the will of his or her master.

²²⁸ Fetha Negest, section 31, as cited by Fetha Negast, the Law of the Kings, translated from the Ge’ez by, Abba Paulos Tzadua, Carolina Academic Press, Durham, North Carolina, 2009, pp 5.

²²⁹ The constitution of the empire of Ethiopia 1931, established in the reign of His Majesty Haile Sellassie I, 16th July 1931, chapter three.

freely from one place to the other.²³⁰ Thus, the 1931 constitution recognizes freedom of movement in limited scope. It did not incorporate freedom to choose one's own residence.

4.6.1.2. The Revised Constitution of 1955

The 1955 revised constitution of Ethiopia was highly influenced by two factors; the adoption of Universal Declaration of Human Rights and the Establishment of federation between Eritrea and Ethiopia. The 1955 constitution has made a departure from the 1931 constitution by including freedom of residence. It says everyone has Freedom of travel within the Empire and to change domicile therein is assured to all subjects of the Empire, in accordance with the law.²³¹

4.6.1.3. The Civil Code of 1960

The 1960 Civil Code of Ethiopia is the basic legal instrument that enables to entitle civil remedies for persons whose rights has been violated. It also provides a guarantee to some rights under the first book and section two titled rights of personality. The Civil Code has provided a guarantee to the freedom to choose one's own residence. It provides that every person is free to establish his residence wherever it is suitable for him and to change the place of such residence.²³² The undertaking of a person to reside in a particular place shall be of no effect under civil law.²³³ The Civil Code is also the first Ethiopian legal instrument that enables individuals to claim compensation when their rights have been violated pursuant to the extra contractual liability provisions.²³⁴ Hence, the Civil Code of Ethiopia is an assurance to claim reparation if a person has suffered damage due to the infringement of his right to freedom of movement and residence.

4.6.1.4. The Penal Code of the Empire of Ethiopia

²³⁰ Id, article 22.

²³¹ The Revised Constitution of the Empire of Ethiopia 1955 established in the reign of His Majesty Haile Sellassie I, 4th November 1955, article 46.

²³² The Civil Code of the Empire of Ethiopia, 1960, article 12(1).

²³³ Id, article 12(2).

²³⁴ Id, Article 2027 and 20 35. Irrespective of any undertaking on his part, a person shall be liable for the damage he causes to another by an offence. A person commits an offence where he infringes any specific and explicit provision of a law, decree or administrative regulation.

Even though the Penal Code has no any express provision that entitle individuals rights and freedoms, it provides the criminal remedies for the violation of such rights and freedoms. It provides for instance, whosoever, not being authorized by law so to do prevents from moving freely within the Empire, is punishable with simple imprisonment or fine.²³⁵

4.6.1.5. The Criminal Procedure Code of the Empire of Ethiopia

The Criminal Procedure Code of the Empire of Ethiopia provides in the first schedule that the offence committed in violation of the right to freedom of movement and residence shall be brought to Woreda Court. There is no any other law that changes such jurisdiction of Woreda court for trying the violation of the right to freedom of movement and residence.

4.6.1.6. The Constitution of the People’s Democratic Republic of Ethiopia 1987

The 1987 PDRE constitution provides a guarantee for a number of human rights and fundamental freedoms. It prohibits any kind of discrimination on the basis of sex, religion, occupation, social status etc.²³⁶ it also guaranteed the inviolability of human person and the prohibition of unlawful arrest.²³⁷ Even though the constitution recognize such and other rights and criminalize or illegalize violence or pressure against individuals in general, it did not have a clear provision to the effect that freedom of movement and residence has been allowed.

4.6.2. Post 1995 Legal Regime

4.6.2.1. The 1995 FDRE Constitution

Article 32 of the FDRE Constitution explicitly says that any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. Comparatively, the FDRE constitution has failed to specify clearly and in detail the scope, limit and content of the right to freedom of movement and residence. For example, Article 19 of the Spanish constitution clearly provides that all Spaniards can freely decide where they want to live and travel in the national territory, enter and leave the country and that this right

²³⁵ Penal code of the empire of Ethiopia, 1957, article 569.

²³⁶ Supra note 2, Art 25.

²³⁷ Id, Art 43-44.

can't be restricted because of political or ideological reason.²³⁸ Article 139(1) of the Spanish constitution also states that all Spaniards have the same rights and obligations in any part of the territory of the State²³⁹ and (2) no authority may directly or indirectly hinder the freedom of movement and establishment of persons and the free movement of goods throughout Spanish territory.²⁴⁰

The 1995 FDRE constitution give wide recognition to human rights than its predecessors. The whole content of chapter three, i.e. 1/3rd of the constitution, titled fundamental rights and freedoms has been devoted to human rights. The constitution also explicitly provides that international instruments ratified²⁴¹ by Ethiopia are an integral part of the law of the land.²⁴²

Here, it is important to recall that Ethiopia ratified the following human rights and humanitarian instruments: International Covenant on Civil and Political Rights on 11 June 1993 [but no ratification for its optional protocols];²⁴³ UN Children Rights Convention on May 1991;²⁴⁴ UN Convention on the Elimination of All Forms of Racial Discrimination on 23 June 1976;²⁴⁵ UN Convention on the Elimination of All Forms of Discrimination against Women on 10 September 1981;²⁴⁶ African Charter on Human and People's Rights on 15 June 1998.²⁴⁷

Comparatively, The Constitution of the United States guarantees a right to travel, which entitles citizens "to enter any State of the Union either for temporary sojourn or for the establishment of

²³⁸ The Spanish constitution Article 19(1).

²³⁹ Id, Article 139(1).

²⁴⁰ Id, Article 139(2).

²⁴¹ Here, it is important to recall that Ethiopia ratified the following human rights and humanitarian instruments: UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 much 1994 [with no declaration for Art 21 (inter-state complain) and Art 22 (individual compliant), and no ratification to its optional protocol]; International Covenant on Civil and Political Rights on 11 June 1993 [but no ratification for its optional protocols]; UN Children Rights Convention on May 1991; UN Convention on the Elimination of All Forms of Racial Discrimination on 23 June 1976; UN Convention on the Elimination of All Forms of Discrimination against Women on 10 September 1981; African Charter on Human and Peoples Rights on 15 June 1998; the four Geneva Conventions on 02 October 1969; and Additional protocol I and II for the Geneva Conventions on 08 April 1994. One can find this information from United Nations, Treaty Series, and Vol. 2375, 999, 1577,660, and 1249.

²⁴² Supra note 2, Art 9(4).

²⁴³ United Nations, Treaty Series, Vol. 999, p.171 and Vol. 1057, p.407.

²⁴⁴ United Nations, Treaty Series, Vol. 1577, p.3.

²⁴⁵ United Nations, Treaty Series, Vol. 660, p. 195.

²⁴⁶ United Nations, Treaty Series, Vol. 1249, p. 13.

²⁴⁷ Available at www.au.org, [Documents], Treaties, Conventions & Protocols; accessed on November 3, 2012.

permanent residence therein.”²⁴⁸ Comparably, the Treaty establishing the European Community (EC) provides that citizens of the European Union “shall have the right to move and reside freely within the territory of the Member States.”²⁴⁹ Both in the United States and the EC, these internal free movement rights are recognized as incidents of union citizenship.²⁵⁰ Because citizenship is awarded irrespective of economic status, one might expect that both the rich and poor can enjoy the rights to freedom of movement. However, historically, many of the American states and the EC Member States have objected to a right to freedom of movement, which would enable indigents to move to and establish residence in other states.²⁵¹

4.6.2.2. The 2005 FDRE Criminal Code

The FDRE Criminal Code of 2005 just like the former Penal Code provides that whoever, not being authorized by law so to do, prevents another from moving freely within the territory of Ethiopia shall be punished with simple imprisonment or a fine.²⁵² A person commits an offence where, without due legal authority, he interferes with the liberty of another person, even for a short time, and prevents him from moving about as he is entitled to.²⁵³ In such a case, an offence shall be deemed to have been committed notwithstanding that no injury is done to the plaintiff. It shall be sufficient for the plaintiff to have been compelled to behave in a certain manner by the threat of a danger of which he could not be aware.

4.6.2.3. Revised Family Code

²⁴⁸ Freedom of movement under United States law is governed primarily by the Privileges and Immunities Clause of the United States Constitution which states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." As far back as the circuit court ruling in *Corfield v. Coryell*, 6 Fed. Cas. 546 (1823), the Supreme Court recognized freedom of movement as a fundamental Constitutional right. In *Paul v. Virginia*, 75 U.S. 168 (1869), the Court defined freedom of movement as "right of free ingress into other States, and egress from them.

²⁴⁹ Consolidated Version of the Treaty Establishing the European Community(2007), article 17-22.

²⁵⁰ This right is subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

²⁵¹ A.P. van der Mei, Freedom Of Movement For Indigents: A Comparative Analysis of American Constitutional Law and European Community Law, *Arizona Journal of International and Comparative Law* ,2002, Vol 19, No. 3, pp 4. Available at <http://www.ajicl.org/AJICL2002/vol193/VanderMei.pdf>, accessed on 20th September 2012.

²⁵² The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004, Article 602.

²⁵³ Id, article 585

The Revised Family Law stipulates that spouses should jointly decide their common residence.²⁵⁴ The law empowers women to decide on the common residence with their spouse. The spouses may agree to live separately for a definite or indefinite period of time. With regard to minors, the law states that the guardian shall fix the place where the minor is to reside. The minor may not abandon such place without the authorization of the guardian, but if he does so, the guardian may compel him to return.²⁵⁵

4.6.2.4. Immigration Law

Under immigration law, foreign nationals are required to possess a valid travel document, properly issued visa or permanent resident permit, internationally valid health certificate as may be necessary (depending on the country of origin) and other documents specified by the Ministry of Foreign Affairs to enter the country.²⁵⁶ Foreign nationals of Ethiopian origin who have secured the Ethiopian Origin Identity Card do not need an entry visa or/and residence permit to enter into or/and live in Ethiopia.²⁵⁷

Foreigners residing in Ethiopia shall be registered by the National Intelligence and Security Service with the exception of diplomats and international civil servants and members of their families residing in Ethiopia and foreigners who are recognized as refugees by the Government of Ethiopia and the UNHCR.²⁵⁸ A foreigner who is registered with the Immigration and Nationality Main Department will be issued with a temporary or permanent residence permit.

A permanent residence permit is issued for a foreigner who enters into the country with an immigrant visa, has a domicile in Ethiopia and lived in Ethiopia for at least three years preceding the submission of his application, is married to an Ethiopian national, is engaged in investment or humanitarian activities in Ethiopia or has made or is expected to make outstanding contributions in the interest of Ethiopia.²⁵⁹ A temporary residence permit is valid for one year and is issued for a person registered with the Immigration and Nationality Main Department and who is not entitled to a permanent resident permit.

²⁵⁴ The Federal Revised Family code, federal Negarit Gazeta of the federal democratic republic of Ethiopia, Addis Ababa, 3rd July, 2003, Article 54.

²⁵⁵ Id, Article 256.

²⁵⁶ Immigration proclamation number 354/2003, Federal Negarit Gazeta of the federal democratic republic of Ethiopia, year 9, No. 75, Addis Ababa, 3rd July, 2003, Article 3.

²⁵⁷ Id, Article 4.

²⁵⁸ Id, Article 13.

²⁵⁹ Id, article 21.

4.7. Who are the Beneficiaries of the Right to Freedom of Movement and Residence?

Most of the rights in the FDRE constitution are for the benefit of ‘everyone’, ‘every person’ or phrased in the negative tense, may be denied to ‘no one’. For instance, article 15 of the Constitution provides that every person has the right to life, and article 17 states that no one shall be deprived of his or her liberty. These rights are accorded universally; i.e., to all human beings.²⁶⁰ On the other hand, other rights are accorded to specific group of beneficiaries. For instance, article 20 (1) restricts the right to a public trial by an ordinary court of law within a reasonable time to accused persons; article 35 is restricted to women, while article 36 to children, the right to vote (article 38) is restricted to every adult Ethiopian.

Likewise, Article 32 of the constitution only recognizes the right to freedom of movement and choice of residence within the national territory to every Ethiopian or foreign national lawfully in Ethiopia.²⁶¹ Thus, every Ethiopian and foreign nationals who has a valid entry or resident visa can move or reside everywhere in Ethiopia.

The next question is whether the right to freedom of movement can be exercised by individuals or groups. Does a right designated as individual right might not have been exercised by a group of persons. The real distinction between individually anchored civil and political rights on the one hand and collectivity oriented social, cultural and economic rights on the other is non-intervention in the first set and intervention in the second set by the state.²⁶² Group rights are rights held by a group rather than by its members severally; in contrast, individual rights are rights held by individual people; even if they are group-differentiated, what most rights are, they remain individual rights if the right-holders are the individuals themselves.²⁶³ Group rights are said to be group rights because of the nature of rights which could be enjoyed by the same class of persons or government intervention is necessary so as to enforce such rights. For instance, rights entitled to women, children, or disabled persons can be group rights. Government has also expected to intervene for the realization of such rights, by putting into practice affirmative action

²⁶⁰ Rakeb Messele, enforcement of human rights in Ethiopia, research subcontracted by Action Professional’s association for the people (2002), pp. 32.

²⁶¹ Ibid.

²⁶² Willcocks Andrew., *Group Rights versus Individual Rights in the Australian Legal Context*, 2006, pp 4, retrieved from <http://www.eview.anu.edu.au/cross-sections/vol4/pdf/ch12.pdf>, accessed at 3rd December 2012.

²⁶³ Jones Peter, Cultures, Group Rights, and Group-Differentiated Rights, (*Routledge Innovations in Political Theory*, vol. 35, No. 2, Routledge, New York), pp 38.

other measures. When an individual right is exercised by many individuals and if they are members of a specific ethnic group, does not mean that right is a group right. Thus, the entitlement of the right to freedom of movement and residence to individuals does not mean that such right might not be exercised by a collection of individuals.

4.8. Who is Responsible for the Right to Freedom of Movement and Residence in Ethiopia?

Regarding the question of application relates to who is bound to compliance that right creates, the constitution has recognized both vertical and horizontal application of human rights.²⁶⁴ Vertical application refers to the relationship between the state organs and its subjects and amongst state organs themselves. Horizontal application refers to the relationship between and among the subjects themselves. The vertical application of human rights is envisaged under article 13(1) of FDRE constitution which provides that the legislature, executive and judiciary are all bound to respect and enforce the human right provisions. That means the state at all levels is the duty bearer of obligation emanating from chapter three of the constitution. A person may therefore challenge the actions of any of these state organs for violating his or her human rights and for not abiding by its duties under the human rights provisions stated under the constitution. the horizontal application of human rights also articulated under article 9 (2) which provides that all citizens, organs of state, political organizations, other associations as well as their officials to ensure observance of the Constitution and to obey it. A holistic and purposive view at the Constitution, apparently, exposed that state organs, non state organs, individuals and juristic persons are bound by the human rights provisions.²⁶⁵ This clearly exacts compliance and imposes a duty on the listed persons and entities to obey and observe the right to freedom of movement and residence that stipulated under article 32(2) of the constitution.

4.9. Limitation on the Right to Freedom of Movement and Residence in Ethiopian Legal System

²⁶⁴ Adem Kassie, Human Rights under the Ethiopian Constitution: a Descriptive Overview, *African Journal of Human Rights*, Vol 17, No 2 , pp 12.

²⁶⁵ Ibid.

In Ethiopia, there is no separate provision in the Constitution dealing with limitations that can be imposed on the exercise of human rights and the manner in which these limits can be imposed.²⁶⁶ Even though, the ICCPR under article 12(3) authorizes domestic laws to restrict this right on any of the grounds, such as national security, public order, public health or morals or the rights and freedoms of others,²⁶⁷ FDRE constitution and other domestic laws have not provide any of such limitations. The absence of such a general ‘limitation’ clause might, at first blush, give the impression that human rights are not subject to limitation in Ethiopia. But it is important to note that the absence might also lead to the arbitrary imposition of limitations giving the right holder no recourse to ensure that the limitation is a justified and reasonable one.²⁶⁸

Comparatively the Nigerian constitution is better than FDRE constitution in setting clear and general limitations on the right to freedom of movement and residence. In addition to the right to freedom of movement and residence’s guarantee only to Nigerians, the Nigerian constitution has put general restriction and derogation clauses on section 45 of the constitution. Accordingly, the right to freedom of movement and residence in Nigeria might be restricted to protect the interest of defense, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom or other persons.²⁶⁹

However, there are specific limitations built into the provisions of the constitution recognizing the rights. These limitation clauses are often known as claw-back clauses. And so, some rights such as the right to freedom of religion (art 27), expression (art.29), or assembly (art 30) are subject to a specific variety of limitations. However, constitution has not set any claw back clause on the right to freedom of movement and residence. The absence of claw back clause on the right to freedom of movement and residence confuse matters as to how, what kind of limitations can be imposed upon the exercise of such freedom and there is no way of weighing the legitimacy (or not) of any limitative law, measure, decision, or actions.

Article 32 of the constitution with the same meaning of Article 12 of the ICCPR provides that:

²⁶⁶ Supra note 104, pp 290.

²⁶⁷ Limitations on human rights in case of national security, public order, public health or morals or the rights and freedoms of others have been set forth by the constitution in case of state of emergency. But, state of emergency has some sort of procedures as indicated by article 93 of the constitution.

²⁶⁸ Supra note 104.

²⁶⁹ The Federal Republic of Nigeria Constitution, 1999, Article 45.

“Any Ethiopian or foreign National lawfully in Ethiopia within the national territory has the right to liberty of movement and freedom to choose his residence.”

The word “lawfully” might be considered as a restraint on the right to freedom of movement and residence regarding foreigners. The word lawfully is inserted to signify the requirement of resident visa for foreigners. Thus, the provision lacks detail explanation on the limitation of this freedom.

4.9.1. State of Emergency

A state of emergency can be declared in Ethiopia when external invasions, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.²⁷⁰ In this situation government might take any action which probably suspend or limit some human rights except the right against inhuman or degrading treatment, the right to equality and the right to self determination up to secession.²⁷¹ The right to freedom of movement and residence might be suspended or limited during the state of emergency. Because, Article 93 (4(c)) of the constitution does not place Article 32 in a non- derogable rights list. Thus, according to this provision article 32 can be suspended at the time of the declaration of state of emergency.

4.9.2. Expropriation of land for public Purpose

The individual’s right to freedom of residence might be restricted when he/she is compelled to leave his/her home or land for the purpose of public use. The expropriation of landholding for public use proclamation provides that a woreda or an urban administration can, upon payment in advance of compensation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.²⁷² Despite the payment of compensation for the resident, his eviction or

²⁷⁰ Supra note 2, Article 93(1)(A).

²⁷¹ Id, Article 93(4)(c) cum Article 18, 25 and 39.

²⁷² Expropriation of land holdings for public purpose and payment of compensation proclamation 455/2005, *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, year 11 No.43, Addis Ababa 15th July, 2005, Article 4(1).

displacement from his home is involuntary. That means his/her right to freedom to choose his residence is limited.

4.9.3. The Urban Land Lease Holding Proclamation 721/2011

The Urban land lease holding proclamation 721/2011 has come up with the holding of urban land only with lease. The proclamation provides that no person may acquire urban land other than the lease holding system.²⁷³ It obviously hinders in some instances the individual's right to choose the place of residence in Urban because of the lease requirement obliges a person to pay money for a plot of land. The other implication of this proclamation is that a person might be obliged to sell his house and leave if he is unable to pay the lease payment for the land.

4.9.4. Criminal Punishment

One of the basic criminal punishments in the Ethiopian legal system is imprisonment.²⁷⁴ Imprisonment is a person's restraint of liberty. Once a person's liberty has been restrained, his right to freedom of movement and choice of residence is restricted.

Compulsory labor with restriction of personal liberty is another means of criminal punishment which requires the criminal to discharge the compulsory labor by remaining in a particular place of work, or with a particular employer, or in a particular establishment, or without leaving his residential area or a restricted area under the supervision of government officials.²⁷⁵

Prohibition from Resorting to Certain Places is also another court measure as criminal punishment that restrains the convicted person from having access to or remaining in certain places to which contributed to the commission of the crime or may expose the criminal to committing fresh crimes, in particular public-houses, inns, entertainment halls, markets and other public places or the court may order restriction of settlement or residence in a town, village or a specified area.²⁷⁶ The court may also order the criminal to reside in a specified

²⁷³ Urban land lease holding proclamation no 721/2011, *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, year 18 No.4, Addis Ababa 28th November, 2011, Article 5(1).

²⁷⁴ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/ 2004 , *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, Addis Ababa 9th May, 2005, Article 93(1)(A).

²⁷⁵ Id, Article 104.

²⁷⁶ Id, Article 146(1)(2).

place or area for not less than one year and not more than 5 years where the criminal is likely to cause further disturbance or pursue a life of crime and the likelihood of his committing further crimes is lessened.²⁷⁷

3.7. Conclusion

Ethiopia has adopted ethnic based federal system in 1995 with the ideological foundation of self determination for each ethnic group. Ethnic self determination has deemed to be a guarantee for the protection of language, culture and religion of the nation nationalities and peoples of Ethiopia and a means for rectifying historical unjust in the country.

FDRE constitution has recognized both internal and external self determination. Internal self determination embraces the right of “nations, nationalities and peoples” to speak, write, develop their language; to express, promote and develop their culture; preserve their history; and to self government and equitable representation in the regional-state and federal governments. External right of self determination expressed in terms of secession.

Ethiopian federal system has also expressed in terms of some salient features. These are the arrangement of federal structure based on ethnicity; taming ethnic self determination as an ideological basis for the federation; inclusion of the right to secession in the federal constitution; legislative uni-cameralism in function and bi-cameralism in prescription.

The 1931 constitution was the first legal document that recognizes the right to freedom of movement in Ethiopian legal system. The Civil Code, Penal Code, and Criminal Procedure Code are the main domestic laws which provide protection for the right to freedom of movement and residence in Ethiopia before the adoption of 1995 constitution.

The 1995 FDRE constitution has recognized the right to freedom of movement and residence. However, the constitution does not contain any general or specific limitation clause on such right. The absence of limitation on this right in one way shows non-restriction of the right in Ethiopian and on the other hand arbitrary restriction on the right might be happened. State of emergency, criminal punishments, expropriation of land for public use and the holding of urban

²⁷⁷ Id Article 147(1)(2).

land only by lease are the limitations for the right to freedom of movement in Ethiopian legal framework.

Chapter Five: Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Practical Analysis

5.1. Introduction

In all federal countries of the world, which have heterogeneous society, the settlement of people does not always correspond to ethnic and administrative boundaries.²⁷⁸ It is impossible to maintain an ethnically homogenous sub-national unit because of migration. The same is true in Ethiopia where millions of Ethiopians live out of their presumed ethnic homelands because of years of forced and voluntary migrations. The makers of the federal constitution did not foresee how the institutionalization of ethnic federalism would affect relationships between exogenous (persons who live in other regions) and indigenous communities.²⁷⁹ Hence, after the institutionalization of federalism in several parts of the country patterns of relationships between the two groups have changed. The exogenous became new minorities with limited political rights. While the indigenous groups sought to use their new autonomy to assert their economic and political power, the exogenous groups felt insecure, discriminated and disenfranchised. As a result, there are tensions and forced displacement of exogenous groups in the relationships between the two groups in many parts of the country.²⁸⁰

In this chapter it has been tried to explore the practical situation of the right to freedom of movement and residence in Ethiopia in light of the ethnic federal set up stretched in the country. Apparently, the stretching of federal system by the constitution has provided plenty of benefits to the indigenous dwellers of each regional state. The question of freedom of movement and residence has been raised in relation with the new minorities and dispersed individuals who have been created due to the ethnic self determination within the country or within the region.

It has been also tried to explore the role of governmental and non-governmental safeguard institutions in protection of the right to freedom of movement and residence from the actual and potential challenges which derived from the ethnic federal set up and the political arena. Thus, not only the mere existence but also the legal responsibility and practical efficiency of these institutions have been discussed in this chapter. Practical cases have been analyzed, interview responses have also examined and integrated with secondary sources of information so as to conclude in accurate way and to consolidate the finding of a research.

5.2. Profile of Population Movement in Ethiopia

²⁷⁸ Getachew, Assefa. Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on their Impacts on the Protection of Human Rights, *East African Journal of Peace & Human Rights*, Vol 17, No 1,201, pp.5. .

²⁷⁹ Ibid.

²⁸⁰ Supra note 40, pp 159.

It is obvious that people of different backgrounds move, migrate and intermingle especially when they share common economic and political community²⁸¹. This demographic factor makes Ethiopia as one of the countries in Africa with a relatively high level of internal displacement and population redistribution.²⁸² But more than this normal demographic factor, there was a major event that took place in Ethiopia during the turn of the 19th century, and that was the southward expansion of the Ethiopian state by incorporating most of today's eastern, southern and southwestern part of the country that were hitherto only loosely connected to it as for example vassals.²⁸³ A fundamental concomitant state of fact was that the people who served in expanding the state of Ethiopia (as soldiers and other servants) were predominantly the Amharas. The descendants of the Amhara settled in the newly incorporated areas and have since flocked in large numbers to these areas in search of better opportunities. The movement of people from the north to the south was not only associated with the history of modern state formation. Primarily because of this historical fact, the Amhara are now the largest group that live in states other than the state of Amhara. The majority of the Amhara people live in the state of Oromia and according to the 2007 national Census; about 2 million (over 7 % of the total population of the Regional State) live in that state. A Large number of Amharas (over 22%) also live in the Harari Regional State. Similarly, 42% of the populations of the Beneshangul-Gumuz Regional State are ethnic Amharas, Oromos, Tigries, and others. Overall, about 10% of the total populations of Ethiopians live in states other than where their kin live.²⁸⁴

Another major factor was the resettlement program of the 1980s undertaken by the military government of Mengistu Hailemariam (1974-1991). In the case of Beneshangul-Gumuz and Gambella regional states, most of the non-endogenous groups (primarily Amhara, Oromo, Tigray) have come to these states through the resettlement programs. For example, in the Bambassi Woreda (district) of the Assossa Zone (sub-regional administrative level) of the regional state, the number of the Amharas is 14,467, the Oromos are 4,259 and the Tigrians are

²⁸¹ Building one political and economic on rule of law and self determination is the aspiration of FDRE constitution as inferred from the preamble.

²⁸² Kiros GebreEgziabhier and White M, *Migration, community context and child immunization in Ethiopia*, journal of Social Science and Medicine, vol 4, no 3, 2004, pp.59.

²⁸³ Supra note 175, pp.37.

²⁸⁴ Central Statistical Authority (CSA), Summary and statistical report of the 2007 population and housing census. Addis Ababa: Central Statistical Authority, (2008).

1981, while the total number of the endogenous (Berta, Mao and Komo) groups is 12,950, much less than the number of the exogenous groups.²⁸⁵

The rural-urban population movement trend in Ethiopia can be explained by a number of so-called push and pull factors.²⁸⁶ The main push factors in Ethiopia are overpopulation, famine, poverty, land scarcity, governmental agricultural policies, and a lack of agricultural resources.²⁸⁷ Many households, however, also participate in seasonal labor activities, leading to temporary rural-urban migration. The pull factors are many rural civilians were draged to Ethiopian urban areas in the post-revolution period in Ethiopia as a result of the development of these areas into more important business and political centers.²⁸⁸ The socioeconomic deterioration of the urban environment, particularly the shortage of housing and lack of jobs, are the main barriers for rural-urban and urban-urban movements.²⁸⁹ In addition, the post revolution land reforms and the new socioeconomic structures emerging from the societal reorganization appear to have inhibited rural-urban migration.²⁹⁰

The rural to rural population movement in Ethiopia continues to occur along traditional lines of marriage and is increasingly occurring as an adaptation strategy to poor agricultural and living conditions.²⁹¹ Significant long-distance rural-rural migration occurred during armed conflicts in the 1970's and as part of state-led resettlement schemes during the droughts of the 1980's. Rural to rural movement of population has fluctuated in different years, 57 % moved from rural to rural from the total internal movement in 1984²⁹², 49 % moved from rural to rural from the total internal movement in 1994²⁹³, 38 % moved from rural to rural from the total internal movement

²⁸⁵ Supra note 282, pp. 60.

²⁸⁶ Kunz E, the Refugee in Flight: Kinetic Models and Forms of Displacement. *International Migration Review*, Vol. 7, No 1, 1973, pp. 126.

²⁸⁷ Ezra, M. & Kiros, G. E. Rural Out-Migration in the Drought-Prone Areas of Ethiopia: A Multi-Level Analysis, *International Migration Research*, vol. 35, No. 3, 2001, pp 74.

²⁸⁸ Supra note 282, pp 62.

²⁸⁹ Mberu, Uchena. Internal migration and household living conditions in Ethiopia, *Demographic Research Online journal*, Volume 14, Article 21, Max Planck publishing, 2006, retrieved from <http://www.demographic-research.org/Volumes/Vol14/21/>, accessed at October 12, 2012.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Getnet Alemu and Mehrab Malek, Implications of Land Policies for Rural-urban Linkages and Rural Transformation in Ethiopia, *Ethiopia Strategy Support Program, working paper no 15*,2010, pp 25.

²⁹³ Central Statistical Authority (CSA), the 1994 population and housing census of Ethiopia: results at country level, volume II analytical report. Addis Ababa: FDRE, Office of Population and Housing Census Commission, (2000).

in 1999²⁹⁴, 40 % in moved from rural to rural from the total internal movement 2005²⁹⁵ and 47 % moved from rural to rural from the total internal movement in 2008.²⁹⁶

This profile of population movement in Ethiopia shows that Ethiopian people have been intermingled irrespective of language, culture and religious diversity. It might be difficult to find homogenous community within the regions, zones and even at local level because of the mixing of various ethnic groups through internal migration. Besides, the profile shows that temporary movement of persons from place to place has no problem practically in Ethiopia. However, some forced displacement instances have been occurred in Ethiopia after 1991. Such instances will be analyzed in detail in section 5.3.3 of this chapter.

5.3. Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence

Federalism has a dual purpose that it aims at achieving unity while preserving diversity. Any state that is federal in character must reconcile the preferences and wider demands. Federalism should also play a role in restraining of the concentration and abuse of power. Alan Fenna has declared two colliding realities. One is that developed conceptions of universal human rights leave much less scope for differing social and cultural practices than they did in the classic period of federal formation.²⁹⁷ That means, universal human rights including the right to freedom of movement and residence can-not be practiced properly in diverse social and cultural federal system. The other is that the kind of diversity that federalism accommodates is exclusively diversity spatially defined.²⁹⁸ Thus to allow different practices is to allow the triumph of local majorities over local minorities.²⁹⁹ Federalism allows the practice of diverse cultures and language whereas human right norms allow the protection of the rights and freedom of every member of the minority or majority diverse community. Hence, federalism protects the socio cultural rights of majority within diversity and human rights are safeguards for the rights of

²⁹⁴ Central Statistical Authority (CSA), analytical Report on the 1999 National Labor Force Survey. Addis Ababa: The FDRE Central Statistical Authority, (2000).

²⁹⁵ Supra note 284.

²⁹⁶ Ibid.

²⁹⁷ Alan Fenna, What Use is Federalism Anyway? *Refereed paper presented to the Australasian Political Studies Association conference*, University of Newcastle 25-27 September 2006, pp 2.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

every individual. For example in south Africa, federalism preserves self administration, language use and socio cultural aspect of black South Africans in one hand and constitutional human rights preserves the rights and freedom of all white, black or Indian South Africans.³⁰⁰ The other example Canada, the 1982 constitutional amendment that introduced the Charter of Rights and Freedoms was opposed by many in Québec because it threatened to trump provincial defense of collective language choices with universal rights to free expression and thereby negate the very type of pluralism that federalism apparently existed to protect.³⁰¹

Theoretically, Ethiopian legal framework has no problem with prescribing individual right to freedom of movement and residence. Both federal and state constitutions have recognized the right to freedom of movement and residence in the same manner. Both federal and state constitutions in Ethiopia have incorporated right to equality or prohibition of discrimination on the ground of race, nation, nationality and religion. However, as Ethiopian federalism is built based on ethnic identity, it might have adverse effect on the right to freedom of movement and residence of individuals from regions to regions or within the regions. Thus, the practical situation of Ethiopian federalism impact on the right to freedom of movement and residence has been explored from two points of views. The First one is from the general observation of international human right concerned bodies. Third, from the point of practical instances of ethnic displacements that shows violation of the right to freedom of movement and residence.

5.3.1. Concluding Observations of UN Treaty Bodies

The UN treaty body on Convention on the Elimination of Racial Discrimination (hereinafter referred to as CERD) recently issued its concluding observations on the protection of human rights in Ethiopia. The concluding observation said that the decentralized system of ‘ethnic federalism’ adopted by Ethiopia through its Constitution could lead to the forced displacement of persons as well as increase tensions between ethnic groups in regions where ethnic coexistence is a demographic feature.³⁰² More or less concurrently with the CERD report, a special advisory report on the situation of minorities in Ethiopia was submitted to the UN Human Rights Council

³⁰⁰ Id, pp 3.

³⁰¹ Ibid.

³⁰² Concluding Observations of the Committee on the Elimination of Racial Discrimination: *Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Ethiopia* , CERD/C/ETH/CO/15, Geneva, arch 2007,para 16, cited at Kjetil Tronvoll, Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma *International Journal on Minority and Group Rights vol 15 , no 1,2008, pp 75.*

from the Independent Expert on Minority Issues.³⁰³ This report raises concerns over political instability along ethnic lines in Ethiopia, and that minority groups are discriminated against, excluded and marginalized, and are in fact in danger of being forcibly displaced from their homesteads and disappearing as distinct groups in guise of self administration.³⁰⁴ These two reports indirectly reflect the right to freedom of movement and residence in Ethiopia has endangered by the ethnic federal system of Ethiopia.

Moreover, the Independent Expert advising the UN Human Rights Council was deeply concerned that Ethiopian non-governmental actors expressed such a lack of faith in political processes, domination by a political and ethnically-based elite, despair, hopelessness and fear.³⁰⁵ The report concludes on the following critical note:

“There is a widespread perception that ethnicity is being manipulated and used as a political tool [in Ethiopia]. While the Government is said to favor and encourage the establishment of ethnically-based political parties over multi-ethnic parties, some consider this is a means of entrenching ethnic divisions. In a nation that has faced long and bitter ethnically-based conflict, domination by particular ethnic groups, and decades of authoritarian rule, a process of national dialogue and reconciliation seems required – one that enables all groups to build confidence in democratic processes, to disassociate politics from ethnicity, and to break down the perception that independent political opposition equate armed resistance.”³⁰⁶

Ethiopia has not officially responded to the CERD critique, or the points of concern raised by the UN Independent Expert on Minorities. The late Ethiopian prime minister and government officials very seldom publicly acknowledge responsibility for human rights violations. Human rights accusations are usually either rejected as baseless and false or the responsibilities for human rights abuses are attributed to low level officials in the rural areas who act outside their governmental mandate, or did not understand their responsibilities.

³⁰³ The mandate of the Independent Expert was established in 2005 to promote implementation of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Ethiopia report was the first mission to Africa for the Independent Expert.

³⁰⁴ Gay McDougall, Report of the Independent Expert on Minority Issues. Addendum: Mission to Ethiopia (28 November–12 December 2006), A/HRC/4/9/Add.3. Implementation of General Assembly Resolution 60/251 of 15 March 2006.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

A strategy recently used by the federal government to distance themselves from human rights violations is to state that these violations are the responsibility of the regional states, and not the federal government.³⁰⁷ Such an excuse, however, cannot be anchored within the international human rights regime, which clearly states that it is the state party which is responsible for human rights protection (i.e. the federal democratic republic of Ethiopia, and not for instance the regional state of Oromia). Therefore, in the eyes of the government, there is apparently no human rights-based justification of a criticism of the ethnic federal system or the government's policies towards human rights in general and the right to freedom of movement and residence in particular. Such a view is also anchored in the Ethiopian Constitution (Article 13(1) and (2)) and the federal proclamation which prescribes the "system of intervention of the federal government in the regions" (No. 359/2003, Chapter 3), which clearly states that the federal government is responsible for human rights protection and implementation.

The CERD report and a special advisory report on the situation of minorities in Ethiopia have tried to show two interrelated causes for the violation of individual right to freedom of movement and residence. The first cause is ethnic federalism adopted by Ethiopia could lead to ethnic displacement. The second one is the establishment of ethnic based political parties and dominance of EPRDF on the political arena. The CERD critics basically pointed out that, both the ethnic federal arrangement and ethnic based political parties in Ethiopia could divert the attention of the people to be ethnic (race) centered that might lead to ethnic favoritism and ethnic displacement that apparently affects the right to freedom of movement and residence.

5.3.2. Practical Instances showing the Impact of Ethiopian Federal set up on the Right to Freedom of Movement and Residence

As noted in the second section of this thesis the right to freedom of movement and residence is not only about freedom to move and reside but it is also the freedom to remain in the place of one's choice. It includes the freedom 'not to move' and it is also a protection against forced displacement and unlawful eviction. Thus, it has been tried to expound the violation of the right to freedom of movement and residence which has been occurred in various parts of Ethiopia since the inception of the federal arrangement in 1991. Hence, seven ethnic displacement cases have been analyzed. Generally, all these cases at hand shows that the right to freedom of movement and residence of individuals from distinct ethnic groups has jeopardized by the ethnic

³⁰⁷ Ibid.

federal arrangement which has been introduced in Ethiopia since 1991. The reasons to blame ethnic federalism for such problem enmeshed in various aspects. The first reason is that event sequence by which the ethnic displacement instances have followed and occurred after the stretching of ethnic federalism in Ethiopia. Secondly, Ethiopian ethnic federalism that accompanied by ethnic self determination and self administration led to the dominance of specific ethnic groups over the other dispersed ethnic individuals and that has created new minorities. For instance, the Sidamas were dominant in the administration of Wondogenet woreda and consider themselves as legitimate children of the region in general and the woreda in particular has created the Guji Oromos as new minorities in that Woreda and they feel marginalized. This situation was the cause of violent ethnic conflict and massive ethnic displacement in Wondogenet. Thirdly, as many scholars agree that ethnic federalism creates ethnic consciousness in the mind individuals and particularly on ethnic elites. That is why the local political leaders in Gura farda area forced the Amhara ethnic peasants to leave that territory. Fourthly, the federal arrangement has divided the diverse society based on ethnicity which has created conflict for permanent possession of the resource. For instance, the conflict between Gedeo and Guji Oromos has triggered after the splitting of these two ethnic groups in to two regions, SNNPRS and ONRS.

5.3.2.1. Amhara and Oromo in Gida Kiremu and Arba Gugu Area

Numerically, Amhara and Oromo ethnic groups are the two most dominant ethnic groups in Ethiopia. The Amhara ethnic groups have dispersedly settled in different areas of Oromiya region due to various historical, economic and social factors. For the purpose of this paper, two displacement areas have been selected from Oromiya region to show how the right to freedom of movement and residence has been affected by the Ethiopian ethnic federal setup. These are the forced displacement of Amhara ethnic groups from Arba Gugu area and Gida Kiremu woreda of eastern Wolega of Oromiya Regional State (herein after referred to as ONRS).

Many people have settled in Gida Kiremu woreda of ONRS from the northern parts of Ethiopia particularly from the current Amhara National Regional State (hereinafter referred to as ANRS) starting from 1950s and 1960s due to resettlement programs, environmental degradation,

drought and famine.³⁰⁸ The settlers were two types: the first settlers had possessed the farming land which was vacant and forest area but changed in to farming land by them. The second settlers started to settle from 1984 up to 1994 and after their arrival in the Woreda, most of the them first served as share-croppers with the local population or early Amhara settlers for a couple of years or so before obtaining their own plots of land for farming. The plots in most cases were obtained either through contractual arrangements and/or purchase³⁰⁹ from the local population. After the settlers obtained land in one of the two ways, they cleared the forested areas and converted them into farm plots. Gradually, they settled in nine peasant administrative areas (PAs) of the Woreda, namely Aaroo Addisalem, Aaroo Bagin, Boka, Chelia, Kofkofe, Kusaye, Mirga Jiregna/Sire Doroo, Sombo, Wasti, as well as in Kiremu town.³¹⁰

Consequently, the Gida Kiremu woreda was inhabited by both Oromos who take the majority and Amharas the minority. Both the Oromos and Amharas were living together peacefully, they have created common descendents through marriage and some of them considered each other as kins and share their culture, religion and other social values. Nevertheless, after 1991 stretching of ethnic federal arrangement in Ethiopia and particularly after the promulgation of 1995 Constitution the Gida Kiremu area has provided a woreda status in Eastern Wolega zone of Oromiya region. The majority of Oromo inhabitants in that woreda have developed a sense of primary ownership over that woreda and started to look the Amharas as immigrants; the lands which possessed by the Amhara ethnic groups have started to be ejected and given to the Oromos and, some of the second type of settlers are requested to leave the woreda. Consequently, the ethnic conflict arose between the Amhara and Oromos in the Woreda. The Amhara ethnic groups were killed and forced to displace from that area. A military intervention that followed resulted in the displacement of more than 12,000 Amhara settlers from Gida Kiremu woreda.

Tesfaye Tafese who has conducted enormous research on this situation raised three political factors that have influenced or triggered the conflict between two ethnic groups and the forced

³⁰⁸ Tesfaye Tafesse ,The Predicaments of Amhara Migrant-settlers in East Wollega Zone, Ethiopia ,*Proceedings of the 16th International Conference of Ethiopian Studies*, ed. by Svein Ege, Harald Aspen, Birhanu Teferra and Shiferaw Bekele, Trondheim, 2009,pp 12, available online at [http://www. portal.svt.ntnu.no/tesfaye](http://www.portal.svt.ntnu.no/tesfaye), accessed at novemebr 23rd 2012.

³⁰⁹ The selling and buying of land in Ethiopia has been outlawed since the nationalization of rural lands by the military government, *the Derg*, in 1975. As a result, peasants in different parts of the country undertake land transactions in an 'illegal' way.

³¹⁰ Supra note 308.

displacement of Amhara settlers.³¹¹ The first one is agitation by the local elites against the presence of settlers in the Woreda. This has been one of the major factors that fuelled tension, triggered violent clashes, eventually leading to the displacement of some of the settlers. The settlers consider all the actions taken against them as ‘ethnic cleansing’.³¹² The second factor is the allegation about the migrants demand to be considered as a special Amhara Zone within ONRS in a similar fashion to the Oromia Special Zone centred around Kemissie in ANRS.³¹³ The third one is the Woreda administration’s decision to exclude all non-Oromos from Peasant Administration leadership after 1991 acted as a point of dissatisfaction among the settlers. The exclusion was justified on the bases of language and ethnicity. Officially, Afan Oromo became the lingua franca and kube the script of the Peasant Administrations in the Woreda.³¹⁴ All these factors show that the ethnic federal system primarily created a sense of ethnic division between the two ethnic groups, by empowering the indigenous ethnic groups in guise of self administration and marginalizing the settlers. Thus, the settlers feel as second class citizens and frustrated. Finally, ethnic conflict arose between the two ethnic groups that had displaced many Amharas. Then after, it is unthinkable to go and live in Gida Kiremu woreda because of such ethnic conflict and displacement. That means the right to freedom of movement and residence of displaced Amhara ethnic individuals has been violated and it also hinders other individuals to move and reside there in Gida Kiremu. The writer of this paper also agrees with Tesfaye Tafese for the factors contributing to the violation of the right to freedom of movement and residence of Amhara ethnic persons. The first one is absence of any mechanisms by which the government’s devolution of power to nine regional states based on ethnic lines (ethnic-based decentralization) should no longer be used to promote political agendas by politicizing ethnicity. The second factor is ethnic elites in different regional states have employed ethnic identities to mobilize support and to incite communal hatred for political ends by stereotyping and defaming other groups.³¹⁵

The cases of Arba Gugu locality of the Oromia Region occurred in 1991/2 where many civilians massacred each other in an ethnic-cum-religious tainted violence between the Amharas

³¹¹ Ibid.

³¹² Ibid.

³¹³ Id, pp. 15.

³¹⁴ Ibid.

³¹⁵ Ibid.

and the Oromos living in the same locality was one such case.³¹⁶ In these conflicts, 320,000 Amharas were displaced.³¹⁷ The pattern of displacement was triggered in the same manner with that of Gida Kiremu displacement.

This particular case clearly demonstrates how ethnicity has been politicized after the stretching of federal arrangement in Ethiopia in those particular areas. The right to freedom of movement and residence of individuals who supposed to be Amharas was violated.

5.3.2.2. Expulsion of Amhara Peasants from Gurafarda Woreda

The Amhara Ethnic groups have been settled in different parts of SNNPRS. A number of persons from Amhara region have moved to south western areas of Ethiopia, such as Keffa, Benchi Maji and Tepi areas since 1895 Menilik conquest. The resettlement in Gurafarda district is one of the biggest in Bench Maji zone of the SNNPR state. Planned resettlement in this district was started in 1980s by transferring drought affected households from northern Ethiopia.³¹⁸

Gurafarda is located in the southwest part of Bench-Maji Administrative Zone and the country as well. The woreda is located 602 Km southwest of Addis Ababa and 42 Km from Mizan-Teferi (the principal town of the zone) in South Nation Nationalities and Peoples Regional (SNNPR).³¹⁹ Gurafarda had been wavering from one administrative form to another corresponding to the interest of the governing bodies of the region and the country in general. The wereda was once answerable to Mettu where the throne of the Majesty Haileselassie was seated till the liberation of the entire country from the Italian invaders.³²⁰ During the Derg regime, it was a seat for Wereda administration in its own, at *Bibita*. In 1980s the Derge regime has resettled drought affected households from North Ethiopia (Amhara Ethnic groups) in the

³¹⁶ Ethiopian Human Rights Council, *Democracy, Rule of Law and Human Rights in Ethiopia: Rhetoric and Practice* (1995), pp.128.

³¹⁷ Daniel Kendie, *Ethiopia: an Alternative Approach to National Development, seminar paper, presented in Addis Abeba*, 2004. Retrieved from <http://www.homepages.wmich.edu>, accessed at 25th December 2012.

³¹⁸ Moti Jaleta, Mekonnen Yohannes, and others, *Impact of Resettlement on the Livelihood, Food Security and Natural Resource Utilization in Ethiopia, DCJ report No 65*, 2011, pp 8.

³¹⁹ Belay Haile, *Resettlement Induced Land Use Changes and their Impact on Non-Timber products production, Adiss Ababa University, unpublished MA Thesis in Geography and Environmental Studies, 2009, pp 22.*

³²⁰ Abeje Menberu, *Differential Livelihood and Adaptive Strategies of Spontaneous and Organized Resettlers in Guraferda Woreda of Southwestern Ethiopia (SNNPR), unpublished MA Thesis in social anthropology, 2011, pp56.*

area.³²¹ Though the site has fertile soil covered with savannah woodland, it was harsh to the re-settlers in terms of human and animal health.³²² Before the 1980s resettlement of the Derg, the Wereda comprises only three ethnic groups namely Majangir, Shako and Me’enit. Each ethnic group settled in the direction through which they could get connected into their people who live numerously in the neighboring Weredas.³²³ After the end of the Derge regime, Gurafarda district became answerable to Shako Weroda. This administrative structure continued till 2001 when people known as Me’enit (ሚኒት) from the local began to reclaim that the Wereda administration had to return to its former seat.³²⁴ However, the response of the regional government was not positive at first due to the number of Me’enit ethnic group and other former Amhara settlers were not sufficient so as to form woreda administration. Accordingly, the Regional government dismissed their question since their number is small.³²⁵ In order to realize their question and to satisfy the number requirement, the Me’enit ethnic groups search for any means. They came across in their mind with those people who are living around who came from the northern Ethiopia, particularly from Amhara Region, who are engaged in different jobs including labor works.³²⁶ Hence, these people invited anyone to come and thereby form a new and separate Woreda. Attracted by this invitation, the people who belong to the Amhara ethnic group came and joined the Me’enit. This helped the Me’enit to satisfy the number constraint in order to form their self-rule Woreda. Upon bringing the quest for formation of the Woreda to the State Council again after satisfying the required number, the Council allowed them to form the Woreda. After getting approval from the upper respective hierarchies, the woreda making “Biftu” the seat for the authority established it as a standalone wereda. After the Woreda status has given to Gurafarda, the Woreda administration allocate the Amhara new comers two hectares of land for farming and one thousand square meters land for building home.³²⁷ This enables the Amharas to lead a settled and good life. They developed and used the farm land thereby derive

³²¹ Ibid.

³²² Most of the re-settlers in this district were transferred to the neighboring highland districts because of malaria, trypanosomosis and attack on crops and livestock from wild animals. Supra not 318.

³²³ Ibid.

³²⁴ ፌዴራል ደረጃ (ጠቅላይ 14ኛ ቁጥር 5፤ ቁጥር 180ኛ 2004 ዓ.ም፤ ሩፕብሊክ ደረጃ 26ኛ 2004 ዓ.ም.

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Official interview with Ato Shiferaw shigutie, Available at <http://www.snnprs.gov.et/index.html>. Last visited on september 12, 2012. The document is posted in ‘pdf’ in the official website of the Regional government. However, the website does not show who interviewed the President. Of course, it is a sort of declaration of the position of the Regional government on the matter.

fruit out of it. They constructed home on the land they are allocated. In general, they lead in Gurafarda the life that everyone does have. The second way of settlement of Amhara ethnic groups in Gurafarda has been accomplished in the above way. The third way of settlement of Amhara ethnic group in Gurafarda was done based on the calling by the woreda authorities. That means, having got the political power, the then authorities announced invitation advertising that the Wereda had fertile land for investment and resettlement. Based on the advertisement a number of persons from Amhara ethnic group go and settled up to 2005.³²⁸

Thus, the amhara settlers in Gurafarda have been increased and almost as equal as those of Me'enits and given legal title deed for the land possession. The Amhara ethnic groups who are settled in Gurafarda have been intermingled with the indigenous Me'emit people through marriage, culture and religion. However, the highest public officials of the woreda and local chiefs as well as the regional officials were not comforted with such kind of social interaction in Gurafarda. The woreda officials have adapted a sense of ethnic segregation against Amhara ethnic dwellers of the woreda.

Consequently, in March 2012, the contentious happening has attracted seriously the governmental and private, domestic and foreign, printed and electronic media including opposition political parties. The happening was the displacement of Amhara peasants from Gurafarda Woreda of Benchi Maji zone. The forced displacement of such Amhara ethnic groups have evidenced by the letter (directive) written by the President of the SNNPRS and the conjoint action taken by the respective Woreda.³²⁹

Primarily, the president of SNNPRS has denied the expulsion of such Amhara ethnic peasants from Gurafarda.³³⁰ But, he has agreed with the eviction of such Amhara ethnic peasants and tried to justify the eviction by the illegality of their settlement and land possession. However, the evicted peasants have brought evidences showing their legality of land possession and their settlement has based on the calling of woreda authorities and resettlement program conducted by

³²⁸ Interview with Ato Degu Teshale, Ato Mebratu Banche and Ato Alemu Hailu, they are some of the displaced persons from Gurafarda Woreda and they were hosted in the compound of All Ethiopian Unity part, Addis Ababa Ethiopia. The interview has been taken from the AEU party audio documentation.

³²⁹ Circular written by Shiferaw Shigutie, President of SNNPR, A Circular written to Benchi Maji Zone, Sene 11, 2001 E.C

³³⁰ ሰጠን ዘመን ጋዜጣ፣ ሚያዝያ 2፣ 71ኛ ህመት ቁፍፍ 122፣ 2004፣ ገጽ 2፤ and Ethiopian Television NEWS, April 7 2012. These government media simply reported the response of the President of the Region.

the former regimes.³³¹ The late Prime Minister Ato Meles Zenawi has also consolidated the last utterance of the regional president by alleging that the east Gojam settlers have been displaced because they have committed deforestation in Gurafarda.³³²

Whether the arguments of government or other bodies accurate or inaccurate the right to freedom of movement and residence of such Amhara peasants was violated. The justification for the forced displacement of such people was their illegal deforestation.³³³ There is no any legal provision in Ethiopian legal framework that provides violating the right to freedom of movement and residence of individuals through forced displacement could be a penalty for deforestation. It was possible to punish the identified persons who have committed deforestation based on the relevant legal provision.

The case of Gurafarda also shows that the interest of SNNPRS government was to resettle only the regional ethnic groups. For instance, in the year 2003 and 2004 resettlers from Sidama, and Gedeo Zones were sent to Bench-Maji Zone, Gurafarda area.³³⁴ In addition to this, in 2005, 2006, and 2007; people from Hadiya, Guragie and Sidama were made to resettle in seven kebeles.³³⁵ The Amhara Ethnic settlers who have been forcefully displaced from Gurafarda Woreda are earlier to reside in the woreda than the Hadiya, Guragie, Sidama, and Gedeo resellers. For instance, Ato Anley Geremew, one of the evicted peasants settled in Gurafarda, Watwa kebele since 1999.³³⁶ But, he has been forcefully displaced from Gurafarda Woreda with his wife and two children (13 years old daughter and 9 years old boy) by the order of Woreda officials. His children do not know any place other than Gurafarda. This situation clearly demonstrates forced displacement in Gurafarda has done on ethnic discriminatory and the plan to settle only regional ethnic individuals in Gurafarda presumed to be the motive for violation of right to freedom of movement and residence.

Some of the evicted Amhara peasants from Gurafarda were temporarily sheltered in the office compound of Ethiopian Unity Party, Addis Ababa. One of the evicted peasants said that

We have no problem with the local people or Me'int. They accompanied us with tear. They supported us by carrying our commodities when we were forcefully displaced from

³³¹ Supra note 327, pp 4.

³³² Meles Zenawi, Prime Minister, FDRE, Speech to the House of Peoples' Representatives, Miazia 9, 2004 E.C.

³³³ Ibid.

³³⁴ Supra note 20, pp.56.

³³⁵ Ibid.

³³⁶ Interview with Anley Geremew, displaced person from Gurafarad woreda, conducted in July 2012.

*our homestead. But, the chair man of Lenta kebele told the accompanying me'int ethnic groups that 'they are going to their real home Amhara Region. They were your invaders. Don't be sad because of their journey.'*³³⁷

This clearly shows that the problem is there with the local political officials and the highest regional and political authorities.

The SNNPRS president Ato Shiferaw Shigutie has admitted the fact that 800 Amhara settlers with their families are returned to Amhara Region at the cost of the SNNPRS based on the agreement of two regions (SNNPRS and Amhara regional state).³³⁸ This is another significant indication for the violation of individual's right to freedom of movement and residence of such Amhara Ethnic groups caused by the ethnic federal set up. The Agreement between Amhara and SNNPRS region shows that the political leaders still have a thinking that the federal arrangement is not suitable for people to move and reside from one region to the other. Moreover, limiting the right to freedom of movement and residence through regional governments agreement is not a justification set by international human right instruments or the FDRE constitution. But, the writer of this thesis is not suggesting that the regional governments should not agree but the consent of individuals to choose their residence should be involved in the agreement. Let say for instance some individuals need to go and reside from Sidama zone of SNNPRS to East Gojam of ANRS, but the two regions by agreement return back such individuals to Sidama zone for any reason. That is a violation of the right to freedom of movement and residence of such individuals. Because limiting the right to freedom of movement and residence except in the state of emergency is violation of that right.

5.3.2.3. Exogenous Groups Displacement from Benishangul-Gumuz Regional State

Following the adoption of the 1995 Constitution, Benishangul Gumuz Region was created from the westernmost portion of the Gojam province (the part north of the Abay River), and the northwestern portion of the Welega Province (the part south of the Abay).The Benishangul Gumuz regional state constitution has indicated the ethnic communities inhabited in the region, such as Berta, Shinasha, Gumuz, and Mao Komo. Infact, the constitution has recognized the

³³⁷ Interview with Ato Bahru Erkihun, displaced person from Gurafarda, July 2012.

³³⁸ Supra note 327, pp 5.

presence of other ethnic groups.³³⁹ Based on the 2007 Census, the Benishangul-Gumuz Region has the ethnic groups that the Berta (25.41%), Amhara (21.69%), Gumuz (20.88%), Oromo (13.55%), Shinasha (7.73%) and Agaw-Awi (4.22%).³⁴⁰ Hence, all ethnic groups other than Gumuz, Shinasha, Berta, and Mao-Komo are considered as settlers (here in after referred to as exogenous groups).

The adoption of the federal system and the creation of Benishangul Gumuz region led to changes in inter ethnic relationships between the indigenous and exogenous groups in the region. The Benishangul Gumuz region is not only ethnically heterogeneous, but also a region of multiple minorities. In fact, none of the ethnic groups in the region constitutes more than 50 per cent of the total population.

The indigenous groups not only embraced the new system warmly but also seek to use its structures to advance their economic and political interests at times at the expense of exogenous communities.³⁴¹ The exogenous, in contrast, ‘felt that they were treated as second-class citizens with restricted rights to live and work’.³⁴² The creation of the region transformed the hitherto marginalized minority groups at the fringes of the Ethiopian periphery to the status of ‘owner nationalities’, while members of the exogenous ethnic groups became new minorities. For the EPRDF that undertaken the process of ethnic regionalization, the presence of relatively large numbers of exogenous people in the newly created ethnic regions seemed an anomaly.³⁴³ This likely explains the lack of a systematic mechanism in the federal constitution to protect the interests and citizenship rights of the exogenous groups. Thus, after the formation of the BGNRS, acrimonious relationships between the new regional authorities and the exogenous communities emerged on such issues as representation and resource sharing.

Since the 1991 regime change, they have particular grievances regarding access to land and land resources. When the Exogenous people brought to Assosa in 1980’s, they received 1000 square meters of land for their individual residential quarters and private vegetable gardens.

³³⁹ Constitution of Benishangul Gumuz Regional State, proclamation No 26/2003, the preamble.

³⁴⁰ Supra note 340.

³⁴¹ Gebre Yntiso., Resettlement Risks and Inter-Ethnic Conflict in Metekel, Ethiopia, *Ethiopian Journal of the Social Sciences and Humanities Vol 2 Number 1,2004*, pp 63.

³⁴² Ibid.

³⁴³ Supra note 40, pp 98.

However, each of the settlers' cooperatives collectively own the main farming land about 500 hectares.

After 1991, the EPRDF government distributed the communally held land among the settlers. In many of the villages, the average household landholding became small after redistribution.³⁴⁴

*For example, in one of the settler villages, close to Assosa town, the average household land holding of the settlers came to a mere 0.5 hectare. Additionally, after the establishment of the region, the settlers' prospects to have access to the region's virgin and fertile land became increasingly limited. In contrast, the Bertha emboldened by the changes has become more assertive about their ownership of the region's resources.*³⁴⁵

Moreover, most of the exogenous groups were forced to leave their farm land to the indigenous Berta communities. The changed atmosphere led to two options. First, the exogenous groups have been forced to be displaced from their settlement area to other places. Second, development of a new land tenure system in Assosa – the leasing of land by the Bertha to the settlers was another option. Accordingly, the latter provide up to a third of their produce to the former, i.e. two third of the product delivered to the exogenous land holders. However, the settlers consider this an exploitative relationship between a tenant (settler) and landlord (titular/Berta), and preferred to displace from Benishangul Gumuz regional state for search of better life and equality.³⁴⁶ In addition to that, the endogenous people who reside near to the rapidly growing Assosa town have confiscated of their farmland for urban development without compensation.³⁴⁷ They tried to bring their grievances to the concerned regional government office. But, the local officials always intimidate the complainants and informed the exogenous victims of expropriation that they are not entitled to possess that land, rather they should go to their own region.³⁴⁸ This case clearly demonstrates how the regional political leaders perceive ethnicity. They have only favored the regional indigenous peoples than the others. This situation has been created after the stretching of ethnic federal system in Ethiopia. The writer of this thesis has also a view that the right of indigenous people should be respected. However, the right of indigenous

³⁴⁴ Ibid.

³⁴⁵ Uthman Hassen , *a New Frontier in the Inter-Ethnic Relationship in Multi-Ethnic Ethiopia: a Study on the Role of Religion in Promoting Social Integration in Beni-Shangul*, *Department of Social Work,2006, Pp. 45.*

³⁴⁶ Ibid.

³⁴⁷ Amare Asef, Letter to the Benishangul Gumuz National Regional State Council, Assosa, 2001.

³⁴⁸ Ibid.

people should not affect the fundamental right to freedom of movement and residence of exogenous people.

5.3.2.4. Oromo vs Somali

Under the Derge and Imperial regimes Oromo and Somali ethnic groups were living together peacefully in the Province called Borena.³⁴⁹ Despite some temporary conflicts arose between such ethnic groups during the past regimes, they were inter connected via inter ethnic marriage, religion and other socio cultural aspects.³⁵⁰ The change of government in 1991 and the subsequent introduction of the “ethnic federalism” concept brought about the creation of regional states and governments. Based on ethnic federalism policy, former Borana province has divided into two distinct ethnically-based regional states. Boran, Guji, and other Oromo clans in the former Borana province are now under Borana and Arsi zone administrations of Oromia regional state, while Somali clans (Garre, Digodi, Marehan, and few others) are now under Liban zone of Somali regional state administration.³⁵¹ However, the exact definition of the boundary between the SNRS and Oromia, two entities that have evolved from the ethnic federalism process, remains disputed. At the same time, ethnic groups from both sides started to compete over the permanent ownership and access, particularly to rich grazing land and pasture as well as strategically and historically vital water points along the regional border.³⁵² For the purpose of alleviating the problem the referendum was held in October 2004 conducted in about 420 kebeles in 12 districts spilled across five zones of the zones of the Somali Region. According to the official results of the referendum, about 80% of the disputed areas have fallen under Oromia administration though irregularities in voting were heavily complained in many of them.

The post referendum situation subsequently triggered mass displacements of the Somali communities in the said areas, particularly in parts of Goro-baqaqsa and Gurodamole districts of Afder zone and in parts of Liban, Shinile and Fik zones.³⁵³ Some of the scholars who studied in the subject matter, like Muhyadin Odowa said that, these displacements of Somalis are the result

³⁴⁹ Internally displaced persons monitoring centre at <http://www.internal displacement.org/idmc/website/countries>, accessed at 24 December 2012, pp 4.

³⁵⁰ Ibid.

³⁵¹ Muhyadin Odowa, Local conflicts between Somali and Oromo people in the context of political decentralization in Ethiopia: Comparative case study on Ma'eso and Babile Districts, *Master's Thesis in Development Studies, institute of social studies, Hague Netherlands* 2006, pp 22.

³⁵² Ibid.

³⁵³ Supra note 349.

of increased harassment and subjugation from the Oromo side in the post- referendum period, because many of the displacements are in areas that either already transpired to the Oromos or pro-Oromo activities increased to scare out their competitors.³⁵⁴ A similar situation is potentially looming in areas that have not yet been transferred into the hands of the Oromos. The referendum strained relations and raised frictions and uneasiness in areas where no referendum was conducted. Notable example in this latter case could be the case of western Hudet of Liban where heightened uneasiness prevented pastoral mobility and inter-tribal sharing of resources in the western parts of the district.³⁵⁵ Immediately after the referendum in November 2004, forcefully displaced persons began arriving in Mieso town and there are now more than 2,100 people living in temporary shelter. The Doba woreda authorities have requested immediate relief support from NGOs for 12,000 newly displaced people.³⁵⁶ The internally displaced persons originally from Erer woreda have fled to Karamille town as result of the violence.

Moreover, setting aside the dispute on the irregularities surrounding the conduct of the referendum, problems ensued even in areas where clear majority came out in favour of a given side, by the very side that became victorious. This was the case for example in the Bikkie, Afdem, Yerer and Mulu localities of the Miesso Woreda. The victims expressed their grievances that after the referendum, the localities fell under the Somali regional government's administration, but soon after its conclusion, with the Somali local administration's tacit consent, conflict arose and an act of ethnic cleansing against the Oromos was perpetrated resulting in the exodus of thousands and the murder of many.³⁵⁷ Some angrily expressed their views saying that all the evils resulted from the referendum. One refugee in the Miesso town said, the government "saw its poison among us by its act of referendum".³⁵⁸ Hence, these situations shows clearly, the right to freedom of movement and residence of both Oromo and Somalis have been violated due

³⁵⁴ Supra note 351, pp 22.

³⁵⁵ Ibid.

³⁵⁶ UNDP Emergencies Unit for Ethiopia (UN EUE), 31 March 2002, Internal Discussion Paper: Humanitarian aspects of Liben and Afder zones in Somali Region at the end of Jilal, retrieved from <http://www.internal-displacement.org/idmc/website/countries.nsf>, accessed at 23 December 2012. Reports from the region indicate that five people were killed, 12 others wounded and 447 houses burnt during an outbreak of violence in the last fortnight. Another NGO, Catholic Relief Service has received an urgent request for assistance from the Goro Gutu woreda administration for immediate humanitarian needs such as food, shelter and clothing for 324 displaced persons.

³⁵⁷ Supra note 351.

³⁵⁸ Ibid.

to the ethnic conflict which arose from the ethnic federal set up that inspire both groups to permanently own the land and control the administration leadership.

5.3.2.5. Wondo-Genet Ethnic Displacement

Sidama and Oromo ethnic groups have lived together for long time in Wondogenet area in southern Ethiopia. After 1991 wondogenet has taken a status of woreda administration and incorporated in sidama zone of SNNPRS. The oromo ethnic groups feel insecurity and discomfort in the political arena because the Sidama ethnic groups have the power to administer the Woreda.³⁵⁹ The Sidama looks themselves as owners of the land and Oromos as settlers. The Oromos claimed that they are discriminated in every social and political aspect despite their long residence in Wondogenet.³⁶⁰ Because of such decents, violent conflicts have arisen in the woreda and many lives were lost and many people has involuntarily displaced from both ethnic groups. Finally, the Oromo ethnic groups took their question of self administration to the House of Federation. In 2008 the referendum has taken place so as to solve the problem. Based on the referendum only 2 kebeles out of 13 has opted to be in the Oromiya region and the remaining 11 were in Wondogenet woreda of Sidama zone in SNNPRS.³⁶¹

The House of Federation did not follow any win-win approach in order to solve the problem of Sidama and Oromo in Wondogenet. The referendum always makes only one party to be a winner and the other to be a loser. Still the Oromos living in the 12 kebeles of Wondogenet which choose to remain with Sidama zone have faced with the stated problems. They are forced to leave their primeval residence and fled to ONRS that think to be their original place. The same is true with respect to the Sidamas who live in the remaining 2 kebeles. They are faced with the problem of forced displacement from their prolonged residence. Hence the right to freedom of movement and residence of both Sidama and Oromo ethnic individuals has been violated through two ways. First, involuntary displacement of such individuals from both areas is one way of violation. Second, the ethnic conflict prohibits the free movement and residence of one ethnic group to the territory of the other ethnic group is unthinkable.

³⁵⁹ The report of Ethiopian national election board to the house of federation on the general process and result of the referendum held Wondogenet in November 2008, unpublished.

³⁶⁰ Ibid.

³⁶¹ Ibid.

5.3.2.6. Gedeo vs Guji

The Gedeo people are settled agriculturalist and live in the fertile, densely populated SNNPRS. The Guji an agro pastoralist people are their neighbours to the east in a lowland area which is not so densely populated.³⁶² Traditionally, Gedeo and Guji interact peacefully; they intermarry, exchange produce and cooperate in production efforts. In the border area the people are generally bilingual; and Gedeo live within Guji territory and vice versa. The Guji are part of the Oromo family but the Gedeo also have elements of Gada structure and the two groups have similar traditions and indigenous conflict resolution mechanisms.³⁶³ During the former regimes, both groups were within Sidamo district.

When the new federal arrangement has stretched in Ethiopia, the issue of where the physical borders between the two ethnic groups should be drawn has aroused immense concern. Since the border between Gedeo and Guji is the same as the border between Oromia and SNNP regional states, which infuses this borders with even greater importance. Many Gedeo live in Hagere Mariam (currently known as Bulie Hora) woreda and it has been reported that political leaders from both groups utilized this situation when the border demarcation process was discussed and fueled the ethnic tension between the two ethnic population. This ethnic tension gradually attains at the peak and generate violent dispute between two ethnic groups. As a result, moving and residing from one ethnic group to the other have been unthinkable.

The ethnic tension and popular discontent in both ethnic groups forced House of the Federation to carry out a referendum in 1994. At this point, it should be underlined that both Guji and Gedeo peoples were not geographically separated in the disputed vicinities. They rather lived together in different numerical proportions. However, even after the referendum many individuals' from each ethnic group forced to displace from the area which has been given to the other ethnic group.³⁶⁴ For instance, in the 1995 referendum four Peasant Associations Harooressa, *Ciccu*, *Oddo* and *Wonago* were incorporated to Gedeo zone while *Guangua* and *Oddo-Miqe* were

³⁶² Asebe Regassa Debelo ethnicity and inter ethnic relations: the Ethiopian experiment and the case of Guji and Gedeo, *thesis submitted to the degree of masters of philosophy in indigenous studies, university of Thromso, Norway* 2007, pp 65.

³⁶³ Ibid.

³⁶⁴ Ibid.

dissociated from the Gedeo zone and joined Borana zone.³⁶⁵ After the referendum both Guji and Gedeo were not satisfied rather they looked each other as cat and rat. Many Gujis forced to displace from the above four areas (*Harooressa, Ciccu, Oddo* and *Wonago*) and Gedeos forced to leave from the two areas (*Guangua* and *Oddo-miqe*).

Some flawed events of the referendum have aggravated the situation of displacement. For instance some spectators said that in *Ciccu area* Guji inhabitants were intimidated by the Gedeo forces not to identify themselves as Guji. Other ethnic groups were bribed to vote on the side of the Gedeo in areas like *Oddo*. Although the Guji demanded the principle that exempts a territory from 50% +1 if it is bordered by one of the regional states by $\frac{3}{4}$ of its directions, in the case of *Wonago* - where the *galma* Qallu [the sacred Qallu compound] is located - the Gedeo insisted on the majority vote and thus it went to Gedeo zone.³⁶⁶

Obviously, referendum makes the majority to be winners and minority to be losers. The minority has two evil options either leaving the area which decided to be given for the other adverse ethnic groups or staying with frustration and marginalization in that area. The referendum did not resolve the ethnic tension and the forceful displacement of both ethnic groups. For instance, during a few time of intense fighting in the summer of 1998 reportedly more than 260 Gedeos were killed and tens of thousands were forced to flee their homesteads, resulting in an ethnic cleansing of Gedeo from Guji traditional territory. At the same time 204 Gujis were killed and many others were forced to flee, resulting in an ethnic cleansing of Guji from Gedeo territory.³⁶⁷ Many individuals from Guji ethnic population who were beneficial from the trade unable to do so in the market places of Gedeb, Yirga Chefie and Wonago towns which are the main trade centers occupied by Gedeos. This clearly shows the violation of the right to freedom of movement and residence for both the Gedeos and Guji ethnic groups.

³⁶⁵ Id, pp 67.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

5.3.2.7. The Indigenous and Highlanders in Gambella

The Anywaa, the Nuer, the Majangir, the Opo and the Komo ethnic groups have granted recognition by the regional state constitution.³⁶⁸ Gambella is a lowland region that sharply contrasts the neighboring western highlands. This is the reason why the migrants are called Highlanders. According to the 1994 census, the Highlanders constitute 24% of the region's population and in some areas, particularly in the Majangir Zone and in the regional capital; they constitute more than 50% of the population. In terms of their ethnic identity, the majority of the resident Highlanders are ethnic Amhara, Oromo, Tigreans and Kembatta.

The first categories of Highlanders who settled in Gambella are former state officials and their families.³⁶⁹ The bulk majority of the Highlanders who currently live in the Gambella region, however, came in the 1980s as part of the resettlement program. The introduction of coffee farming and timber production in the Majangir area has also encouraged new wave of migrants to the area. The 1990s saw yet another round of skilled migrants to the region. Given the fewer number of educated indigenous people, the newly constituted Gambella regional state encouraged educated Highlanders to come to the region and work as civil servants in the regional government.³⁷⁰ Nevertheless, after 1991, the population movement from the high lands to the Gambella regional state has highly reduced and even the former settlers has displaced from there. There have been blurred attitude towards the 'the highlanders' since 1991. In 1992 more than 200 resettled Highlanders were killed in Ukuna village by armed Anywaa groups.³⁷¹ In the same year hundreds of Highlanders were massacred by armed groups led by the Nuer prophet Wutnyang. Many of the highlanders were fled to the neighboring regions.³⁷²

In post 1991 Ethiopia, the various groups of people who live in the Gambella region are accorded with different degrees of political entitlement. According to the regional constitution, sovereignty resides in the five 'indigenous' nationalities, also called by the federal government national minorities. The Highlanders do not fit into this classification scheme. They are of diverse ethnic origins. The category of Highlander is elastic to the extent that any non-Nilotic people with brown skin colour (red in local perception) wherever he/she is from considered as

³⁶⁸ Kurimoto, E. Politicisation of Ethnicity in Gambella. In: K.Fukui, E. Kurimoto and M. Shigeta (eds.) *Ethiopia in Broader Perspective: Papers of the 13th International Conference*, 1997, pp 17.

³⁶⁹ Ibid.

³⁷⁰ Id, pp 18.

³⁷¹ Ibid.

³⁷² Ibid.

Highlander. In post 1991 political dispensation, the Highlanders emerge as a residual category because, by definition, they 'belong' to ethno-regional states other than Gambella on the basis of their respective ethnic identity. As a result, they do not have a political representation in the regional parliament despite their demographic size. In addition, they have forcefully displaced from that region.

It is possible to understand from the implication of ethnic federalism on Gambella regional state that, first the Amhara, Oromo, Tigrie and other ethnic groups who lived in Gambella regional state are regarded as migrants and they are forced by the titular ethnic groups³⁷³ to displace from Gambella where they live beginning from 1980s. Secondly, the political situation in Gambella discouraged other ethnic groups to move and live in Gambella.

5.4. Patterns of Additional Triggering Factors for Violation of the Right to Freedom of Movement and Residence in Ethiopia

Violations of the right to freedom of movement and residence in Ethiopia under the EPRDF government are dispersed according to ethnicity in conjunction with various types of “triggering” factors. Violent ethnic conflict is one of the triggering factors for the violation of the right to freedom of movement and residence in Ethiopia. Violent ethnic conflicts among distinct ethnic groups competing for local resources or political power within the ethnic-administrative system (such as Gedeo-Guji, Borana-Garre, Afar-Somali, Oromo-Amhara, Anuak-highlander, etc.) have all produced violation of the right to freedom of movement and residence. This particular triggering factor has discussed in the preceding sections in detail.

There are some additional triggering factors for the violation of the right to freedom of movement and residence. These are: electoral process; armed rebel movements, politicization of ethnicity and ethnic consciousness. All these triggering factors relate to contexts where individuals or representatives from subjugated ethnic groups pursue their legitimate rights as Ethiopian citizens or members of an ethnic collective through ethno-political representative organizations (as responses to the new constitutional order which encourages ethno-political participation and advocacy throughout the country), or through extra-judicial means of organized

³⁷³ Titular Ethnic Groups denotes ethnic groups who has constitutional recognition in specific region and considered as indigenous people.

armed struggle. These additional triggering factors are related to the political motive performance of the ruling EPRDF party.

5.4.1. Post 2005 Electoral Process

The first pattern of violation is electoral process. Manipulating ethnic distinctiveness by EPRDF government was a usual conducts for the fear that ethnic unity as a threat to its election wining. Pre and post election conduct of EPRDF party was a comparable pattern of triggering factor for violation of the right to freedom of movement and residence of some members of ethnic groups. Such violations in relation to election was seen particularly after the 2005 elections when the Amhara and urban constituencies of the main opposition bloc, the Coalition for Unity and Democracy (CUD), were targeted for arrests and detention as the CUD coalition became the main electoral threat to an EPRDF victory in the disputed 2005 elections.

Furthermore, supporters and sympathizers of electoral participating Oromo parties (such as Oromo National Congress and Oromo Federal Democratic Movement) were also targeted during the 2005 elections as they won great electoral advances in Oromia.³⁷⁴ Thus, following the 2005 election EPRDF has campaigned to University students, local cadres and civil servants that the old dictatorial regimes has ended by EPRDF's bloody struggle and the Amhara ethnic groups were the suppressers of Ethiopian nation, nationalities and peoples and CUD has the aim to return back the old political system with Amhara dominancy.³⁷⁵ After that campaign ethnic consciousness has been thrived in most individuals' mind and ethnic hatred over Amhara ethnic people has boomed up on the one hand and the intermingled Amhara ethnic individuals in different regions were targeted by EPRDF cadres. Thus, most of the Amhara ethnic individuals living outside Amhara region were frustrated, discriminated, and displaced. For instance, in June 2005, some 2,000 people of Amhara descent were chased out from the Gida-Kiremu district in Eastern Wollega (Oromia region) by local people, in guise of being 'CUD opposition supporters'.³⁷⁶ Local ruling party members and cadres reportedly incited the people, and the

³⁷⁴ Abink J, Discomfiture of Democracy? the 2005 Election Crisis in Ethiopia and its Aftermath, *Oxford university press on behalf of Royal African Society, African Affairs* 105/419, 2006, pp 5.

³⁷⁵ Ibid.

³⁷⁶ ከቤሌት ከዚ በላይ የቀረጸው የግልጽ ተዘርፎ። ሞቅሞታ 11፣ 1997 e.c. "[Http://www.Mahder.Com/Index.Php?Name=Amharic](http://www.Mahder.Com/Index.Php?Name=Amharic)" as Cited By Abink J, Discomfiture of Democracy? the 2005 Election Crisis in Ethiopia and its Aftermath, *Oxford university press on behalf of Royal African Society, African Affairs* 105/419, 2006, pp 5.

police did not act to stop the expulsion. The victims had built up a life there since the 1960s and had intermarried in the community. But they had to leave under threat and abandon all their possessions.³⁷⁷ This event is an ominous sign that the postelection process in Ethiopia is being ethnicized. Thus, the right to freedom of movement and residence of the Amhara ethnic individuals has been violated on the above way.

5.4.2. Armed Rebel Movements

The third determining pattern for “the right to freedom of movement and residence violation producing” case is the armed ethno-national resistance struggles waged by ethnic representative movements, most notably the Oromo Liberation Front in Oromia regional state and Ogaden National Liberation Front in Somali regional state. These armed groups have caused to the displacement of many people in both Oromiya and Somali regions. Some individuals who have been suspected with direct or indirect link to these groups has displaced from their homestead and fled to foreign countries for fear of criminal punishment which prescribed by the new anti terrorism proclamation because these armed groups are considered as terrorist groups.³⁷⁸ Thus, on the one hand the government has failed to fully eliminate such armed struggle forces whether by diplomatic or military ways so as to secure the right to freedom of movement and residence of individuals. On the other hand, the right to freedom of movement and residence of innocent individuals has been violated by the government itself in guise of terrorism prevention.³⁷⁹

5.4.3. Politicization of Ethnicity and Ethnic Consciousness

Ethnicity is politicized when political coalitions are organized along ethnic lines, or when access to political or economic benefits depends on ethnicity. Ethnicity can be socially relevant in a country without it being much politicized, and the degree to which ethnicity is politicized can vary across countries and over time.³⁸⁰ Ethnic consciousness manifests itself in attempts to

³⁷⁷ Ibid.

³⁷⁸ Ibid.

³⁷⁹ Zahorik, Jan. “*Ethiopia between Constitutional Principles and Reality.*” Ostrava: University of Ostrava, 2011, pp 3. Retrieved from, http://conference.osu.eu/globalization/publ2011/374-378_Zahorik.pdf. accessed at December 12, 2012.

³⁸⁰ Fearon James., *Ethnic Mobilization and Ethnic Violence*, Oxford Handbook of Political Economy ,oxford university press, 2004, pp 4.

‘define’ the ethnic group, establishing what it means to be a member of the group; in this way, ideas like language, dress, religion, history are used to ‘define’ the group, and thus become both conscious and politicized subject to debate both within the community itself and in the larger political arena. Ethnic consciousness is beyond awareness of ethnic lines.³⁸¹ It includes politicization of ethnicity or connecting every social, economic political and cultural aspect with ethnicity. Let say for instance if someone is ethnically conscious, he/she would wish all rich men to be a member of his ethnic group. Thus, if he/she is a chairman of a specific government office, he might try to full fill his ethnic desire by employing only the member of his own ethnic group. That means he commits ethnic favoritism in employment. The same is true with respect to violation of the right to freedom of movement and residence. Ethnic conscious political leaders might discriminately displace or evict divergent ethnic groups so as to satisfy their mental desire which filled by ethnic consciousness. If ethnic groups become conscious of their group identity, it grows at the expense of common national identity and plays a divisive role in the ‘nation-building’ project.

Politicized ethnicity is a dangerous move against the ‘nation-building’ process.³⁸² Some scholars like Poluha maintain the view that politicizing ethnicity is becoming a challenge towards promoting democracy in Ethiopia. She argues that prioritizing ethnicity promotes group identity and focuses on group rights at the expense of individual right, which is the cornerstone of liberal democracy.³⁸³ Supporters of this view of “divisive aspect of ethnicity” also raise the issue that politicized ethnic identity creates hatred, violence and civil strikes between different ethnic groups. The experiences of ethnic conflicts in Rwanda, Burundi and Somalia seem to have convinced the scholars in the field even among western academics about the ‘divisive’ nature of ethnicity in African context.³⁸⁴

³⁸¹ Michael Noonan, *The Rise of Ethnic Consciousness and the Politicization of Language in West-Central Nepal*, University of Wisconsin-Milwaukee, 2005, pp 7.
http://www.archiv.ub.uniheidelberg.de/savifadok/volltexte/2008/203/pdf/Ethnic_Consciousness_and_Politicization.pdf accessed on 3rd February 2013.

³⁸² Teka Tegegne “Amhara Ethnicity in the Making” in Mohammed, Salih and Markakis, J (eds.) *Ethnicity and the State in Eastern Africa*. Uppsala: Nordic Africa Institute, 1998, pp 7.

³⁸³ Poluha, Eva, “Ethnicity and Democracy A Viable Alliance? In Mohammed Salih, and Markakis, J (eds.) *Ethnicity and the State in Eastern Africa*. Uppsala: Nordic Africa Institute, 1998, 9.

³⁸⁴ Wolde Sellassie, Zerhun “Minority identity and ethnic Politics in Ethiopia. The case of Weyto in Lake Tana. National Discourse and Local Reality. Mphil Thesis, Department of Social Anthropology, University of Tromsø, 2001, pp 5.

Ethnic consciousness has created in Ethiopia. Ato Siekotorie Getachew has also agreed with the existence of ethnic consciousness in Ethiopia but blames the former regimes for the ethnic consciousness. He said that the former regimes' ethnic oppression has created ethnic consciousness and ethnic hatred but such problems were hidden up to the time of self administration ensured by the EPRDF government to the Nation, Nationalities and Peoples of Ethiopia.³⁸⁵ However, one of the drawbacks of ethnic federalism is that creating ethnic consciousness³⁸⁶ and practically Ethiopian ethnic federal setup has obviously created ethnic consciousness within the society. The ethnic affiliated political parties³⁸⁷ have also aggravated the situation of ethnic consciousness and contradiction in the country. It is also evident that Nigerians were more ethnically conscious when they were under ethnic federal structure than the current geographic one.³⁸⁸ In fact, the hangover of their former ethnic drunkenness still creates a problem, but it is less knotty than religious extremism and terrorism in Nigeria.³⁸⁹ Actually the former regimes of Ethiopia might be blamed for not assuring ethno cultural inequality but they were sermonizing the society to develop strong sense of National feeling than ethnic feeling.³⁹⁰ Thus, it might not be proper argument blaming the former regimes for the flourishing ethnic consciousness which threatens the protection of the right to freedom of movement and residence in Ethiopia.

Ethnic consciousness is inherently tended to craft ethnic favoritism and discrimination. Jan Zahorik explains the situation that the ethnic and political exclusion and ethnic favoritism has become a 'trademark' of contemporary 'ethnic federalism in Ethiopia.³⁹¹ But, Ato Siekotorie Getachew has blamed Narrow nationalism and chauvinism for all of the ethnic displacement instances and violation of the right to freedom of movement and residence.

³⁸⁵ Interview with Ato Siekotorie Getachew, EPRDF Party Public Relation Director, conducted on February 2, 2013.

³⁸⁶ Supra note 72.

³⁸⁷ Most of the ruling and opposing political parties have organized based on ethnic lines, such as TPLF, OPDEO, SNLF, and others.

³⁸⁸ Hassan Doyin, Federalism and Ethnic Violence in Nigeria: Past and Present Issues, *Journal of Research in National Development*, vol. 9, No 1, 2011, pp 6.

³⁸⁹ Supra note 374.

³⁹⁰ For instance 'Ethiopia Tikdem' was a motto at the Derge regime. Actually these regimes are criticized for extreme centralization of the country, but they were committed to create high sense of national feeling.

³⁹¹ Supra note 379, pp 7.

5.5. Self Determination vis a vis the Right to Freedom of Movement and Residence: Ethiopian perspective

Even though the right to self-determination has only “vague and imprecise” meaning and content, it has been invoked by numerous groups as a vehicle to achieve various ends, the majority of which relate to freedom.³⁹² It is obvious that self determination whatever it is internal or external has numerous benefits for the groups who exercised it. However, the freedoms of other people who intermingle with the group who entitled self determination might be endangered. Self determination should strike the balance between two conflicting interests of the society. These two conflicting interests are the interest of specific society or group who seeks to exercise self determination and the interest of other dispersed individuals those who live in the territory of self determined territory to the protection of their fundamental human rights such as the right to freedom of movement and residence.

Article 39 of the Constitution stands to grant all peoples of Ethiopia both internal and external right to self determination without any condition. It has become one of the controversial provisions that pervade the body politics of Ethiopia more so than any other perceivable issue of interest and scholars are also continuously arguing in support or against this Article. Interestingly, the opponents and proponents of this provision have a common objective that to keep Ethiopia as it's now- one country under the horizontally striped green, yellow, and red flag.³⁹³ The focus of this section is limited on internal self determination particularly Ethiopian ethnic self determination and its impact on the right to freedom of movement and residence of persons. Thus, the main issue to be addressed is whether the right to freedom of movement and residence of diverse ethnic groups would have been protected practically in the situation of self determination in Ethiopia?

The exercise of internal ethnic self determination in light of protection of individual rights to freedom of movement and residence can be explored in to two ways.

First, are distinctive ethnic groups secured from eviction from their homestead which found in the territory of self determined ethnic group? The practical instances which has been analyzed

³⁹² Gerry Simpson, the Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age, *Stanford Journal of International Law*, vol. 5, no 4, 1996, pp 67.

³⁹³ Adal Isaw, Nationalism, Self-determination, Article 39, & the Eyes of International Law, 2009, retrieved from <http://www.ethioobserver.net/Nationalism>, accessed at 26th December 2012.

under section 5.3.3. Shows that any individual who is not the member of self determined ethnic community has a fate to be displaced from his/her prolonged homestead. This is evident from the cases such as the displacement of Amharas from Gida-Kiremu, Arba-Gugu, Benishangul-Gumuz, and Gumbela; the displacement of Oromos from Wondogenet and Somali; displacement of Gedeo from Borena Zone and others. The other additional practical instance that shows self determination in Ethiopia has adverse effect on the right to freedom of movement and residence of distinct ethnic groups in Ethiopia is the displacement of Amhara from Shinasha zone. When the Shinasha ethnic groups forms its own Zone called Metekel in Benishangul gumuz region, many of the early Amhara ethnic residents were obliged to leave the Metekel zone.³⁹⁴ The Shinashas considered themselves as real owner of Metekel zone and the Amharas as second citizens of the zone. It is obvious that ethnic marginalization, discrimination and ethnic eviction might take place when the administration power has given to a specific ethnic group with in multi ethnic society. This situation could also be aggravated by the little awareness regarding the concept of self-determination of majority of society in Ethiopia.

There is also apparent problem in Ethiopia that going and residing in self determined territory is challenged by the local rulers of self determined ethnic group. This fact is evident from the forced displacement of Amhara peasants from Gurafarda, displacement of Highlanders from BGNRS and similar instances. As long as the so called migrants do not violate the right of such titular ethnic groups, they have a constitutional right to reside everywhere with in Ethiopian territory. Even if they violate the rights of such titular groups, they should be punished by the relevant law of the state than expelling them from their homestead or prospective residence. The right to self determination should be exercised without affecting the right to freedom of movement and residence of individuals.

5.6. The Role of Institutional Safeguards for Protection of the Right to Freedom of Movement and Residence in Ethiopian Federal System

Government organs are the primary institutional safeguards for individual rights and freedoms. The Legislature can make protective laws. Through its budgetary and control powers, it can also press the Executive into deference for negative rights and facilitation of the enjoyment of positive rights. The Executive, on its part, has the role of respecting human rights and preventing

³⁹⁴ Official report of All Ethiopia Unity part, November 2012.

violations by others. The Judiciary enforces rights by determining entitlements, punishing violators, and by redressing the victims. Usually courts are viewed as the custodians of human rights. House of the Federation with the support of constitutional inquiry body is the titular institution for safeguarding constitutional rights since constitutional interpretation is bestowed to it. Ethiopian Institution of the ombudsman and Ethiopian human right commission are also equipped with the power of monitoring and investigating human right violations.

5.6.1. Government Organs as Safeguards for Protection of the Right to Freedom of Movement and Residence in relation to Ethiopian Federalism

The three government organs are the primary institutions responsible for the protection, promotion, and enforcement of human rights in Ethiopia. The legislature (both the House of Peoples' Representatives), the executive (especially those institutions such as the police, prosecution, prisons who administer civil and political rights and those who are in charge of providing public goods and services such as education, health, social welfare, clean environment, clean water, etc), and the judiciary (which includes the institutions with the responsibility to adjudicate cases over constitutional disputes such as the Council of Constitutional Inquiry and House of the Federation). Thus, a process of concretization of the principle of sanctity of human rights in general and the right to freedom of movement and residence in particular can be achieved through constitutional guarantee; legislative protection; judicial application; and executive implementation.³⁹⁵

Once constitutional guarantee is secured, it is important that for the protection of the right to freedom of movement and residence, legislative framework is designed. Legislative protection ensures that no violation can occur with impunity. Thus, this task of state usually incurs the duty to forbid any act or omission those pretenses a threat to rights.³⁹⁶ Judicial application and interpretation of the right to freedom of movement and residence gives an assurance that in cases of violations, there is a possible remedy (or redress) by taking one's cases to courts. However, do courts exercise their power to adjudicate cases relating to the violation of a constitutional right to freedom of movement and residence particularly related to ethnic federalism? is an issue. If the

³⁹⁵ Supra note 104, pp 292.

³⁹⁶ Ibid.

answer is in the affirmative, executive implementation relates to the certainty that all judicial injunctions and orders that vindicate one's rights are to be heeded to thereby leading to an actual redress for the victim and a real sanction on the perpetrator of the violation or abuse. All these tasks are inter-related and interdependent one on the other.³⁹⁷ This section has tried to explore the governmental safeguard institutions for the right to freedom of movement and residence such as Courts, Ministry of Federal Affairs, Ethiopian Human Right Commission, Ethiopian Institute of Ombudsman, House of the Federation and Council of Constitutional Inquiry Body. It has been tried to depict the role of these governmental institutions in protecting the right to freedom of movement and residence. An attempt has been also made to explore the challenges and efficiency of such institutions from the practical point of view as follows.

5.6.1.2. Courts

The courts are required to submit cases to the CCI and HOF if they believe that there is a need for constitutional interpretation.³⁹⁸ If a constitutional dispute exists, the court adjudicating the case does not have the jurisdiction to further investigate or render a ruling on the issue of constitutionality.³⁹⁹ While the courts are loathe to do anything which might indicate that they are engaged in constitutional interpretation, they do have a duty to enforce the Constitution's fundamental rights and freedoms, and the principle of precedent, recently established within the Ethiopian judiciary, may assist them in doing so.⁴⁰⁰ In the case of *Biyadiglign Meles et al v. Amhara National Regional State*⁴⁰¹, the CCI ruled that remedies concerning violations of rights by the executive do not amount to reviewing constitutionality of laws and thus parties have to seek remedy from the courts.⁴⁰² While there is some debate as to the extent of its application, the Court of Cassation has invoked the Child Rights Convention in a precedent-setting decision.⁴⁰³ The decision clearly indicated that courts have both the right and the duty to invoke international

³⁹⁷ Ibid.

³⁹⁸ Proclamation no. 250/2001, Council of Constitutional Inquiry Proclamation, *Fdereal Negarit Gazeta*, 7th year No. 40, Addis Ababa, 6th July 2001, Article 21.

³⁹⁹ Id, art 21

⁴⁰⁰ Chi Mgbako, Sarah Braasch, Aron Degol and others, silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, *Fordham International Law Journal Volume 32, Issue 1* 2008, pp.275.

⁴⁰¹ Decision of the CCI on an application made on *Miazia* 30 1989 E.C. (8 May 1997, unpublished). As Cited By Assefa Fisseha, *Constitutional Adjudication In Ethiopia: Exploring The Experience Of The House Of Federation (Hof)*, *Mizan Law Review*, Vol 1, No 1, 2007, Pp 8.

⁴⁰² *Supra* note 400, pp 276.

⁴⁰³ Ibid.

human rights instruments in their decisions.⁴⁰⁴ Thus, legally Ethiopian courts have the right to adjudicate any case that relates to violation of the right to freedom of movement and residence by the executive bodies.

In addition to the power to apply constitutional human rights and international instruments, courts have an inherent power to adjudicate civil and criminal matters related to violation of the right to freedom of movement and residence. They have a power to apply and interpret the FDRE Criminal Code of 2005 that provides regarding freedom of movement as ‘whoever, not being authorized by law so to do, prevents another from moving freely within the territory of Ethiopia, is punishable with simple imprisonment or fine.’⁴⁰⁵ Even the civil aspect related to freedom of movement and resident can be governed by Article 2035 of the Civil Code which enables to claim compensation because one aid to have committed a fault when he/she violates any provision of law.

However, this right of courts to adjudicate the violation of individuals’ right to freedom of movement and residence could be shared by other political institution, such as House of the Federation when the violation related to ethnicity, inter regional issue and the right to self determination. Some individuals have also lodged their grievance related to violation of the right to freedom of movement and residence to Ethiopian Human Right Commission, Ombudsman and Ministry of Federal Affairs. Such institutional diffusion which aims to enforce the right to freedom of movement and residence has advantages and disadvantages. Even though, institutional dispersion is advantageous in equipping individuals to have multiple options in order to preserve their right to freedom of movement and residence, it might confuse them to identify which institution has proper jurisdiction to implement such right. Eroding inherent adjudicatory power of courts is also the other disadvantage of institutional dispersion for protection of the right to freedom of movement and residence.

Practically, in the archives of federal high court registrar, there are no any forced displacement cases or any violation of the right to freedom of movement and residence which have been directly or indirectly caused by ethnic self determination, ethnicity or any attribute of the federal system have brought to courts for adjudication. Most of such cases have been brought to HoF,

⁴⁰⁴ Ibid.

⁴⁰⁵ Actually, state courts have no constitutional right to adjudicate criminal matter in Ethiopia because criminal matter has under the jurisdiction of federal courts.

CCI, EHRCO and EIO. Representatives of displaced Amhara peasants from Gurafarda woreda have tried to brought their case to the court through ministry of justice and federal police but failed to arrived at their for the unknown reasons.⁴⁰⁶ One of the federal high courts Judge Tium Gebru said that no any crime related to forced ethnic displacement has brought to adjudication because it requires political decision than legal interpretation.⁴⁰⁷ Thus, such kinds of cases are most probably sent to CCI and HoF. There is a trend also in federal courts to refer cases which entail constitutional right issue particularly violation of group rights or contradiction of group and private rights to the CCI and HoF.⁴⁰⁸ Hence, practically Ethiopian courts have played less power to safeguard the right to freedom of movement and residence when the violation related to ethnic forced displacement.

5.6.1.2 Ministry of Federal Affairs

Ministry of federal affairs (hereinafter referred to as MoFedAf) is generally responsible for all of the regions regarding the operation of the federal police, setting of national standards for urban planning; finding solutions to inter-regional conflicts; coordinating federal intervention in the regions and others. Within the MoFedAf, there are four principal directorates which engaged to solve the problems that arise from Ethiopian federal system.⁴⁰⁹ These are: conflict prevention and resolution directorate, federalism awareness creation and national consensus consolidation directorate, intergovernmental relation directorate, and religious affairs directorate.

Ato Chanie Gebeyehu, federalism awareness creation and national consensus consolidation directorate director said that Ethiopian federal system is not free from some ethnic problems. The necessity of this directorate with in ministry of federal affairs is to create awareness about the merits of Ethiopian federal system, to curb negative attitudes of the society towards federalism and to consolidate the practice of unity within diversity.⁴¹⁰ Despite some ethnic conflicts have created displacement of many people in the country, the government has worked hard to rectify

⁴⁰⁶ Interview with Ato Anley Geremew, one of the displaced persons from Gurafarda Woreda, conducted on 12th July 2012.

⁴⁰⁷ Interview with Tium Gebru, Federal High Court judge, conducted on 13th January, 2013.

⁴⁰⁸ Ibid.

⁴⁰⁹ Interview with Ato Chanie Gebeyehu, federalism awareness creation and national consensus consolidation directorate director, conducted on January 18, 2013.

⁴¹⁰ Ibid.

the wrongs.⁴¹¹ MoFedAf has also a power to put into practice local solutions for local problems at grass root level beyond working to create smooth inter governmental relation.⁴¹²

Even though, MoFedAf is one of the safe guard institutions of individual rights and freedoms which might be threaten by the upshot of Ethiopian federalism, it did not consider any case related to the violation of the right to freedom of movement and residence of persons from region to region. However, it has tried to uphold peace and harmony between diverse ethnic groups which had been in conflict. For instance, MoFedAf has tried to maintain peace between the Agnuak and Nuer ethnic groups to live together peacefully by establishing mutually elected peace committee.

5.6.1.3. Ethiopian Human Right Commission

Ethiopian Human Rights Commission (EHRCO) is governmental special body that serves as ‘benefactor’ of the human right norms in Ethiopia. Ethiopian human rights commission is national human rights body established pursuant to Article 55(14) of the FDRE constitution through proclamation Number 210/2000.⁴¹³The Ethiopian Human Rights Commission has the mandates to promote, protect and work towards the realization of human rights in Ethiopia.⁴¹⁴ The commission has particularly the duties and responsibilities to educate the public to be aware of and claim its rights; observing that human rights are protected, respected and fully enforced; investigate complaints of human rights violations; and recommend remedial measures where they are found to have been violated.⁴¹⁵

Practically, EHRCO has conducted many investigations in relation to forced ethnic evictions which primarily affect the right to freedom of movement and residence. For instance, ethnic displacement of Konso ethnic groups from Teltele area by Borena Oromos, Gedeo ethnic group’s eviction from Anferera and Shakiso areas by the local administration, ethnic eviction of Sidama and Guji oromo each other in Wondogenet, Ethnic eviction of Oromos and other ethnic groups from Moyale area by Somalis and others are some of the cases investigated by Ethiopian Human

⁴¹¹ Ibid.

⁴¹² Interview with Ato TsegaBirhan, Inter Governmental Relation Directorate Director, conducted on December 10, 2012.

⁴¹³ The Ethiopian Human Rights Commission Establishing Proclamation, 2000, Proclamation No. 210, Negarit Gazeta, 6th Year, No. 40 article 6.

⁴¹⁴ Ibid, article 5.

⁴¹⁵ Ibid, article 6.

right commission.⁴¹⁶ The investigation has commenced based on written application of any individual victims or representatives of ethnic groups.

Wondogenet ethnic displacement from Eido Kebele after the referendum has been investigated by Human right commission in February 2011. According to Ato Yonas Zemene who is one of the investigators said that many Sidama ethnic groups have been forcefully displaced from Eido kebele in Wondogenet. Later on many Guji Oromos have displaced by revenge attack of Sidamas. Any people from each ethnic group in that kebele were restricted from moving and residing individually due to fear of the attack. The main cause of their conflict that leads to ethnic displacement was a descent of Oromos on the referendum which gave the Eido Kebele to Sidama Zone of SNNPRS and the dominancy of Sidmas in the administration.⁴¹⁷ The final measure taken by Ethiopian Human Right Commission in that particular case was mediating the two ethnic groups by their own indigenous conflict resolution mechanism. But, no remedy has been taken so as to reinstitute the displaced ethnic groups from Eido Kebelle. The final finding of three members' investigation committee of Ethiopian Human Right Commission shows that similar ethnic eviction has taken place from Teltelie area by the local administrators and from Shakiso and Anferera areas by ethnic tainted violence between Oromo and Gedeo. Many Konso and Gedeo ethnic groups have been evicted from these areas. Oromo ethnic groups have been also displaced from Somali occupied Moyale areas.⁴¹⁸ Thus, Ethiopian Human Right Commission has participated in the safeguarding of the right to freedom of movement and residence by participating in the investigation process of violation of such right.

Ethiopian Human Right Commission investigation process is mainly conducted by field observation. Thus, evidences have been collected through video pictures; interviews with selected members of parties, witnesses and other concerned individuals; documentary evidences and others. For instance, the case of unlawfully evicted Oromos from Moyale by the Somalis and local administrators was confirmed by the documentary evidence, such as land possession certificate and tax payment receipts.⁴¹⁹ Thus, the investigation process of EHRCO could be more or less accurate because of its dependent mainly on primary data.

⁴¹⁶ Interview with Yonas Zemene, investigator in Ethiopian Human right commission, Addis Ababa, January 27, 2012.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

EHRCO has some problems relating to safeguarding of the right to freedom of movement and residence. First for its promotional task appears larger than its protection and remedial tasks and its focuses on a general problem rather than specific cases which might be taken as aberrations.⁴²⁰ Second the sanction that the EHRCO has at its dumping is basically the mobilization of shame on institutions that perpetrate abuse or neglect of rights through publicizing a report while also doing the best it can to cooperate with institutions working towards securing relief to specific victims of abuse.⁴²¹ Thus, the final result of any investigation for human right violation by EHRCO is naming and shaming. But, no any report of the commission shows the violation of the right to freedom of movement and residence, in spite of the fact that it has played pivotal role in investigating violation of the right to freedom of movement and residence which caused by ethnic related factors. It has been also criticized for it serves as a conscience of the system or the regime since the regime persons in charge might discourage reporting human right violations so as to keep the name of the regime.⁴²²

5.6.1.4. Ethiopian Institution of the Ombudsman

Ethiopian Institution of the Ombudsman(herein after referred to as EIO) have the power to supervise that administrative directives issued, and decisions given, by executive organs and the practices thereof do not contravene the constitutional rights of citizens and the law as well; receive, and investigate, complaints in respect of maladministration; conduct supervision, with a view to ensuring that the executive carries out its functions in accordance with the law and to preventing maladministration; seek remedies in case where it believes maladministration has occurred; undertake studies and research on ways and means of curbing maladministration; make recommendations for the revision of existing laws, practices or directives and for the enactment of new laws and formulation of policies, with a view to bringing about better governance.⁴²³

Legally, the establishment proclamation vested sufficient powers to EIO which enables to control forced eviction of individuals wreaked by bad conduct of administrative bodies. The practical implementation regarding the issue at hand shows the inconsistency of the promise and

⁴²⁰ Supra note 104, pp 292.

⁴²¹ Id, pp. 293.

⁴²² Ibid.

⁴²³ Proclamation No. 211/2001, proclamation for the Institution of the Ombudsman, Fedral Negarit Gazeta, 6th Year, No. 41, article 6.

achievements of this institution. Only two cases that involve the issue of violation of the right to freedom of movement and residence have been brought to EIO.⁴²⁴ Ato Petros W/senbet, maladministration offences investigation and correction directorate director in EIO, said that very few cases relating to violation of the right to freedom of movement and residence came to EIO because of the absence of such kind of problem in Ethiopia. The first case handled by EIO was the Gurafarda Woreda ethnic eviction. The investigator of the case Ato Deneke Shanko said that the displaced persons from Gurafarda have dropped because the displaced persons were illegal settlers. The reason provided by Ato Deneke is deviated from the words of the late Prime Minister Meles Zenawi who said that the displacement of Amhara Peasants has justified because of their unlawful act of deforestation.

The displaced Amhara peasants through their representatives have brought their complaints to EIO to return back them in their homestead Gurafarda and to discourage the woreda administrators from their illegal act of forcing for displacement. But the EIO director rejects the case. According to Ato Petros W/senbet, no any field observation has conducted to investigate the Gurafarda case because it is well known that the displaced persons are illegal settlers and the regional government has responded this fact.⁴²⁵ The writer of this thesis suggests that rejecting the case without proper and adequate investigation is not expected from one constitutionally established human right institution. The response of SNNPRS government could not be conclusive evidence to say the displaced persons were illegal settlers.

5.6.1.5. House of the Federation and Council of Constitutional Inquiry

House of the Federation (here in after referred to as HoF) has the power to adjudicate any constitutional dispute. The HoF has the power to decide issue of border disputes based on the peoples' interest and settlement patterns and pass a decision, based on sufficient information it may have, on redefining disputable borders taking into consideration the peoples' settlement patterns.⁴²⁶ The HoF has also the power to seek for the peoples' interest and consent as to

⁴²⁴ Interview with Ato Petros W/senbet, maladministration offences investigation and correction directorate director in EIO, conducted on January 21st, 2013.

⁴²⁵ Ibid.

⁴²⁶ Supra note 219, Article 26 and 27.

redefining the disputable border, if it cannot decide to which side the disputable land belongs.⁴²⁷ The HoF should request the parties to resolve their misunderstandings by peaceful means and discussion where their misunderstanding is other than border disputes and it shall also attempt to abridge their difference.⁴²⁸ If the concerned parties could not resolve their misunderstandings through discussion, the HoF shall strive to find a solution in any mechanism possible.⁴²⁹

Ato Behailu Fisseha, conflict prevention, resolution and peace building case management director in the house of federation said that house of federation has a primary mandate to see cases related to violation of individuals right to freedom of movement and residence which are caused by ethnic conflicts and other related factors.⁴³⁰ Thus, HoF is the primary safeguard institution for the right to freedom of movement and residence in Ethiopia.

Practically, HoF has involved in the ethnic tension between Sidama and Guji that causes the displacement of Sidama and Guji in Wondogenet area. It has principally investigated the cause of conflict and the cause of displacement in Wondogenet. HoF has conducted referendum so as to solve the ethnic dispute and displacement. However, two main shortcomings can be identified from the institutional functions of HOF in relation to the safeguard of the right to freedom of movement and residence in Ethiopia.

The first shortcoming is the solution forwarded by HOF for any ethnic issues related to territory is referendum which is not a win-win approach. Referendum obviously can solve the dispute related to the territorial belongingness of a specific ethnic group but it always satisfy one group and distressed the other group. Referendum in deciding the belongingness of a particular territory to one or the other ethnic group has a grand hazard to the minorities whose vote has beaten by the majority. There is no any concrete safeguard way to protect rights of such ethnic minorities who lived in the territory which bestowed to the opponent ethnic majority. That is why ethnic tension, and forced displacement was also continued even after the referendum which held in most parts of the country.⁴³¹ Hence, HOF could not totally protect the constitutional right to freedom of movement and residence of individuals in most parts of the country in which

⁴²⁷ Ibid, article 28(2).

⁴²⁸ Ibid, article 32(1).

⁴²⁹ Ibid, article 32(2).

⁴³⁰ Interview with Behayilu Fisseha, conflict prevention, resolution and peace building case management director in the house of federation, conducted on December 20, 2012.

⁴³¹ Many Sidamas have displaced from the two kebeles which vested to Oromiya from Wondogenet by the referendum. Supra note 416.

ethnic tension has elevated. The second shortcoming is the constitutional rights protection technique which employed by HOF is not proactive. It has a trend to wait for infringement of constitutional rights until their incidence. There is no any devised mechanism to prevent ethnic conflict which might cause for the violation of the right to freedom of movement and residence. However, currently there is a progress to establish “peace committee” in each and every rural kebelles in which diverse ethnic groups reside. The main objective of establishing such peace committees is to prevent potential ethnic conflicts from their bud stage. The committee will try to figure out common social values within the community to create brotherhood among the ethnic groups and report to peace keeping forces if potential ethnic conflicts erupted with in the society. If the “peace committees” established by HOF in such areas in free, fair and equitable manner, the constitutional rights will have better protection and the proactive HOF intervention could be effective. The fourth shortcoming is that it has no any institutional foundation to confer redress for victims of constitutional rights violation.

The Council of Constitutional Inquiry (hereinafter referred to as CCI), has established by virtue of article 84 of the FDRE constitution and proclamation No 250(2001). The Council of Constitutional Inquiry has the power to investigate constitutional disputes and submit recommendations to the House of Federation. Apparently, the function of the CCI is to assist the HOF in deciding constitutional disputes and to discard cases in which no constitutional interpretation is required.⁴³² Because CCI is merely an advisory body its recommendations are non-binding.⁴³³ According to Article 84 of the Constitution, any federal or state court and any interested party, be it an individual, organization, nation, or state, may submit a constitutional challenge to either a state or federal law to the CCI.⁴³⁴ Essentially, all acts of the legislature and the executive are subject to constitutional interpretation by the CCI and HOF.

The Berta Election case is one of few cases which decided by the CCI and the HOF. The election right case of Benishangul-Gumuz region was initiated by a group of persons from the Bambasi and Assosa woreda of the Benishangul-Gumuz state who claimed to belong to and represent the Amhara, Oromo, Agew and Tigray nationalities, and residents of the area. They contested the constitutionality of a decision of the Election Board banning them from running for election on grounds of not knowing the language of the electoral district, and of article 38 of

⁴³² Supra note 2, Article 84

⁴³³ Id, Article 84(1)

⁴³⁴ Id, Article 84(2)

proclamation 111|95. They argued that the decision of the board and article 38 of the said proclamation contradicted article 38 of the constitution, a provision that guarantees the right to vote and to be elected. On reference by the House of Federation (citing articles 62 and 84 of the constitution) the Council of Constitutional Inquiry considered the case and submitted its recommendation stating the unconstitutionality of the decision of the board and of the contested provision of the proclamation.⁴³⁵ This decision clearly shows that how the CCI with HOF can safeguard the constitutional rights of exogenous groups living outside the region which claimed to be their home region. Likewise, any violation of the right to freedom of movement and residence of individuals which are belonging to distinct ethnic groups through direct or indirect impact of ethnic federal arrangement can be adjudicated and decided by such CCI and HOF.

Records of the registrar of the Council of Constitutional Inquiry and of the House of Federation reveal that, the Council has investigated plenty of issues alleged to involve constitutional adjudication.⁴³⁶ The majority of the cases that reached the Council of Constitutional Inquiry have been rejected on grounds of not meriting constitutional interpretation or for reasons of not exhausting the remedies offered by government institutions having the power to consider and decide on the matter or due to their linkage to a regional constitution and the Council thus decided that their determination was within the competence of the state Council of Constitutional Inquiry.⁴³⁷ As the right to freedom of movement and residence is recognized in FDRE constitution any person can initiate a case to the council of constitutional inquiry for searching of justice.⁴³⁸ For instance, representatives of peasants who have been displaced from Gurafarda Woreda had lodged their application to the CCI by stating that their right to freedom of movement and residence has violated. But, their application was rejected by CCI for the reason that not exhausting the remedies offered by the concerned regional government i.e. SNNPRS

⁴³⁵ Getahun Kassa, *Mechanisms of Constitutional Control: a Preliminary Observation of the Ethiopian System*, *Africa Focus*, Vol. 20, No 1-2, 2007, Pp. 86.

⁴³⁶ *Ibid.*

⁴³⁷ Cases seeking determination of constitutionality are rejected on grounds of non exhaustion of local remedies of which the state Council of Constitutional Inquiry is considered one mechanism. This is being done by the federal Council of Constitutional Inquiry as the Council of Constitutional Inquiry proclamation provides that a case may be submitted to the Council if it has exhausted the local remedies as stated under article 23 of this proclamation. *Supra* note 435, pp. 86.

⁴³⁸ *Supra* note 398, article 23, entitles any person any person who alleges that his fundamental rights and freedoms have been violated by the final decision of any government institution or official may present his case to the Council of Inquiry for constitutional interpretation.

which have the power to consider and decide on the matter.⁴³⁹ Nevertheless, the applicants i.e. the Gurafarda displaced peasants through their representatives said that the regional government could not provide any remedy because their right to freedom of movement and residence has been violated by the regional government itself. Thus, their argument has a point that the issue of exhaustiveness could not be raised for this particular case in which the regional administration itself is accused as their constitutional right violator.

5.6.2. Non Governmental Human Right Institutions

Non-governmental organizations (NGOs) have played pivotal role in contributing towards the betterment of human rights situations. These institutions help in fostering the human rights culture through training, education, and dissemination of information, though universities and higher educational institutions also share this responsibilities, in stimulating the State commitment to the human rights values through technical assistance and capacity building schemes, and in making interventions to facilitate the enjoyment of some rights by the public such as through counseling and legal aid services to victims, through conducting policy research and lobbying, etc. Human right council (the former Ethiopian Human Right Council) is one of nongovernmental human right institution that used as a safeguard for many of the right to freedom of movement and residence in the domestic sphere. International nongovernmental human right institutions, such as Amnesty International and Human Rights Watch have also tried to report human right violations in Ethiopia.

5.6.2.1. Human Right Council

Human Right Council (hereinafter referred to as HRCO) the former Ethiopian Human Right Council is one the few nongovernmental human right institutions in Ethiopia that established in 1992 for the purpose of disclosing and disseminating human right violations to the public. This human right institution has played pivotal role in disclosing human right violation to the public

⁴³⁹ Interview with Ato Dessalegn, the former chairman of CCI, conducted in January 21, 2013.

by publishing series books that contain information whose, by whom, how, where and when the human right violation has occurred.⁴⁴⁰

EHRC 18th regular human right violation report shows that, starting from 1991, after the ethnic federal arrangement introduced in Ethiopia, 17, 900 peasants of Amhara, Kembata, Hadiya, Wolayita, Sidama, Guraghie, Tembaro, Kulo, Dawuro and Tigrian ethnic groups have been forcefully displaced from Shashemenie Zuriya Woreda, Wondogenet, Wondoteki and Shemena Areas of Oromiya and SNNPRS region.⁴⁴¹ The reason of their forced displacement as given by local chiefs was they are not citizens of the region. Actually, the written order issued in April 2, 1995 from the Prime Minister Office order the local chiefs and the regional governments to resettle the displaced peasants in to their former place. But, the Oromiya regional state government has resettled 3,601 households in Lalima area of Siraro Woreda. But, the SNNPRS did not implement the order of resettling the displaced households in the area of Wondo, Tikana and Bilito, until 1995.⁴⁴² Hence, Human Right Council has played pivotal role in divulging and publishing the reports which show violation of the right to freedom of movement and residence. As a result, the reports have played a role in shaming the violator and the concerned body who has failed to protect such rights.

5.6.2.2. International Human Right Institutions

Amnesty International⁴⁴³ is one of a number of non-governmental international organizations focused on human rights with over 3 million members and supporters around the world. The objective of the organisation is "to conduct research and generate action to prevent and end grave abuses of human rights, and to demand justice for those whose rights have been

⁴⁴⁰ More than 6 book series which contain informations related to human right violations have been published by HRCO through the sponsorship of foreign countries Embassies and foreign NGOs. But currently, its foreign source has been limited by the new NGO law.

⁴⁴¹ የተጠቃሽዎች የአስፈጻሚ ስልጠናዎች ስር 3 ነጠብያ 1995-1999 ዓ.ም፣ አስፈጻሚ፣ ብሔራዊ ስልጠና ማተሚያ ቤት የተተካ፣ ታሰብሰብ 2000ዓ.ም. ገጽ 315.

⁴⁴² Id.

⁴⁴³ Amnesty International was founded in London in 1961, following the publication of the article "The Forgotten Prisoners" in The Observer 28 May 1961, by the lawyer Peter Benenson. Amnesty draws attention to human rights abuses and campaigns for compliance with international laws and standards. It works to mobilise public opinion to put pressure on governments that let abuse take place. The organisation was awarded the 1977 Nobel Peace Prize for its "campaign against torture," and the United Nations prize in the field of human rights in 1978. <http://www.amnesty.org/en/who-we-are>, accessed on January 24, 2013.

violated."⁴⁴⁴ Amnesty International has divulge a violation of the right to freedom of movement and residence in Ethiopia through its report by stating that forced evictions displaced tens of thousands of people in Southern Nations, Nationalities, and People's Region (SNNPR); Gambella; Oromia; Tigray; and Somali regions. Some people protesting against the forced evictions were arrested. The eviction was inflicted up on some ethnic groups whose home region supposed to be other regions.⁴⁴⁵

The other international organization on human rights is Human Rights Watch which conducts research and advocacy on human rights all over the world.⁴⁴⁶ Even though, it has been criticized by Ethiopian government for unfair and biased reporting of human rights issues in Ethiopia, the report of Human Rights Watch shows that Ethiopian government has violated the right to freedom of movement and residence of individuals by way of forced displacement and eviction.⁴⁴⁷

Despite the fact that Amnesty International and Human Rights Watch have nothing to do with respect to enforcement of the right to freedom of movement and residence for victims in the Ethiopia, Ethiopian government might be restrained from further violation of this right or committed to strengthen the protection of such right for fear of international community's disapproval based on the report. Thus, international organizations have played pivotal role by making themselves as a safeguard to the right to freedom of movement and residence of Ethiopian citizens who have been threatened to be forcefully displaced due to their distinction of ethnicity through the reports that evidently shows the violation of such right.

⁴⁴⁴ Who is Amnesty International retrieved from <http://www.amnesty.org/en/who-we-are>, accessed on January 24, 2013.

⁴⁴⁵ Human right violations in Ethiopia, retrieved from <https://www.amnesty.org/en/region/ethiopia/report-2012>, accessed on January 24, 2013.

⁴⁴⁶ Who is Human Rights Watch, <http://www.hrw.org/about>, accessed on 20th January 2013.

⁴⁴⁷ Human right reports, <http://www.bbc.co.uk/news/world-africa-16590416> accesses on 20th January 2013.

5.7. Other Countries Experience on Federalism and Freedom of Movement and Residence

Under this section, federalism and the right to freedom of movement and residence experience of Nigeria, Switzerland, and Belgium are examined. These countries are selected based on their similarity with Ethiopia in terms of diversity. Nigeria is a developing African country which has experienced two types of federalism (ethnic and geographic) within half a century and it might have something important to offer to Ethiopia. Switzerland has said to be experienced one of the world's successful federal systems in accommodating diversity. Belgium has a unique form of federal system that has two federal structures (geographic and ethnic) at the same time. Belgian and Ethiopian federal systems are similar with regard to their transformation from unitary to federal system. Hence their experiences are relevant to Ethiopia.

5.7.1. Nigerian Experience

Nigeria is one of the ethno-linguistically diverse African countries, a factor largely attributable to its colonial legacy. The nation was formed in 1914 by merging the then three West African British protectorates.⁴⁴⁸ Nigeria is made up of more than 250 ethnic groups, the three major ones being the Hausa/Fulani, the Igbo, and the Yoruba, which together account for more than half the population.⁴⁴⁹ Although most Nigerians speak at least one of the three major indigenous languages Hausa, Igbo, or Yoruba some 250 languages are estimated to be spoken, and the official language, a colonial inheritance, is English. After independence, Nigeria has adopted federalism based on ethno-linguistic distribution of the three main ethnic groups in the 1960 constitution. The north, dominated by the Hausa-Fulani, was larger and more populous than the other two regions. There is a very significant minority population in the north. The west was, and still is, dominated by the Yoruba, while the Ibos were the largest group in the east.⁴⁵⁰ The significance of ethnic based federalism is better appreciated against the background of the civil war, or Biafran War, fought to thwart the secession of the then Eastern Region. Following the

⁴⁴⁸ Akinnaso, F. towards the development of a multilingual language policy in Nigeria, *Journal of applied Linguistics*, Vol. 12, No.1, 2001, pp. 29-61.

⁴⁴⁹ Elagiewu J, Historical Foundation of Nigerian Federalism, *Institute of Governance and Social Research*, 2007, pp 110.

⁴⁵⁰ Fawole O and Bello M, the impact of ethno-religious conflict on Nigerian federalism, *International NGO Journal* Vol. 6, No.10, 2011, pp. 211 .Available online at [http:// www.academicjournals.org/INGOJ](http://www.academicjournals.org/INGOJ) accessed at 6 october 2012.

country's first military coup (15 January 1966) and countercoup (29 July 1966), a number of factors, including the killing of many Igbos in northern cities and the mass exodus of Igbos from the North to their homelands in the East, led to the proclamation on 30 May 1967 of a new, independent state territorially identical to the Eastern Region christened the "Republic of Biafra." The civil war, fought by the North and West against the East, finally ended on 12 January 1970 with the surrender of Biafra and its reintegration into the federation now subdivided, however, into the East-Central, South-Eastern, and Rivers states.⁴⁵¹ Thus, after 1976, the Nigeria states ceased to be subdivided based on ethnicity. All ethnic groups fragmented in to different states. Subsequently, from four regions in 1963, Nigeria grew to a twelve region federation in 1967, and in 1976, the number of States increased to 19. 1989 witnessed another increase in the number of States to 21, 30 States by 1991 and by 1996, it has become a 36 States structured federation.⁴⁵² Thus, the former three regions have now been balkanized into Nigeria's present thirty six-state federal structure. In spite of this departmentalization, north-south divisions have remained alive in Nigerian politics."⁴⁵³ Practically, in Nigeria the contemporary federal set up is based on geographical basis.

The 1999 Nigerian constitution has clearly provided the right to freedom of movement and residence only to Nigerians under section 41. It provides that:

"Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit there from."

The right to freedom of movement and residence in both Ethiopian and Nigerian constitution has similar recognition despite the fact that the Nigerian constitution provides its protection only to Nigerian citizens. No much emphasis has been given for why and how foreigners' right could be applied since the objective of this thesis actually focuses on the citizen's right to freedom of movement and residence within the federal set up. Besides this, section 42 of the Nigerian constitution provides that: *A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or*

⁴⁵¹ Ibid.

⁴⁵² Ebere Osieke, Federal Republic of Nigeria, *a paper submitted for forum of federation*, 2009, pp. 9.

⁴⁵³ Ibid.

*any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.*⁴⁵⁴ This provision has emphasized particularly on non discrimination of indigenous and exogenous groups or Muslim and Christians or the ruling party supporters or opponents. Hence, the legal framework of Nigerian constitution has no problem in relation to prescribing the right to freedom of movement and residence of individuals.

Nevertheless, Nigeria has changed from ethnic federalism to geographic federalism due to the negative consequences of the former one. The ethnic federal setup which was implemented in Nigeria in 1960's and 1970's had negative impact on the right to freedom of movement and residence of Nigerian citizens. For instance, the Igbo ethnic groups who live in the northern province of Nigeria which supposed to be the home region of Hausa ethnic groups were forced to leave the region in 1975. As revenge all ethnic groups other than Igbos were forced to leave the south eastern province by the order of lieutenant colonel Gowan.⁴⁵⁵ One ethnic group could not move and reside in the other parts of Nigeria which supposed to be the home region of other ethnic groups and that has created crisis of movement and residence of individuals in Nigeria. Consequently, the Nigerian federal setup has been changed in to geographic form.

The current federal system in Nigeria even cannot totally resolve the ethnic tensions and forced displacement of ethnic groups. There are many reasons which have been pointed out by different scholars for why the right to freedom of movement and residence in Nigeria has been still imperiled by the non ethnic federal system. First the former trend of ethnic classification which was putted into operation in the ethnic federal setup of Nigeria remained alive.⁴⁵⁶ Second, even though Nigeria adopts geographic form of federalism, it has not implementing true federalism. That means absence of adequate devolution of powers and retention of very high

⁴⁵⁴ Ibid.

⁴⁵⁵ Supra note 452, pp 26.

⁴⁵⁶ Hassan Doyin, Federalism and Ethnic Violence in Nigeria: Past and Present Issues, *Journal of Research in National Development*, vol. 9, No 1, 2011, pp 6.

percentages of revenue coming from the different states reflected in Nigeria. The government failed to give paramount consideration on national integration and nation-building.⁴⁵⁷ Third the expansion of Sahara desert forced the northerners to migrate southward for search of agricultural land and the southerners looks the situation ethnic expansion of Hausa-Fulani.⁴⁵⁸

Had the former ethnic federal system continued, no any country called Nigeria would have been existed in Africa. Despite the fact that the current geographical federal structure cannot totally eliminate violation of the right to freedom of movement and residence, it radically reduces the problem in Nigeria. Thus, Ethiopia should learn from Nigeria that the ethnic federal system might cause for the displacement and even to the death of many people if it does not properly implemented. Federalism without democracy is a threat to territorial existence as well as a cause to massive human right violation. The Nigerian experience shows that the geographical federal structure is better to preserve the right to freedom of movement and residence of individuals. But, the challenges faced to Nigerian geographic federal system could have similarly affect the Ethiopian federal system if Ethiopian 9 regional states fragmented in many states based on geographic setup.

5.7.2. Switzerland's Experience

Switzerland came into existence as a state entity in 1291 through the alliance of small communities in the Alpine valleys.⁴⁵⁹ Switzerland is a home of multi religious, multi cultural and multi lingual societies. Swiss federalism has developed out of several different, independent and very diverse communities, which have been structured as rural corporations, small democracies, aristocratic or economic oligarchies.⁴⁶⁰ There are four main languages in Switzerland, German (63.7%), Italian (7.6%), France (19.2%), and Romanic (0.6%).⁴⁶¹

The Swiss Constitution has tried to develop a special type of federal state one that is developed and determined by its multicultural environment. The Swiss federalism has been arranged with

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ Grin, F. Language policy in multilingual Switzerland: overview and recent developments. Paper presented at the *Cicle de conferencies sobre políticalingüística Direcció general de política lingüística*, December 4, 1998, in Barcelona, Spain.

⁴⁶⁰ Fleiner, T. Recent developments of Swiss federalism, *Publius, the Journal of Federalism*, Vol.32, No. 2, PP. 97-123.pp 22.

⁴⁶¹ Ibid.

taking in to consideration of the principles that have shaped the political culture of Switzerland, including the distribution of powers. Taking cultural diversity seriously, the Constitution provides the Confederation with the general responsibility to promote cultural diversity within its delegated competences and, with regard to languages, to provide measures for the better mutual understanding of different language communities.⁴⁶² Thus it has to be noted the differences between the Swiss and Ethiopian federal system so as to identify which feature of the Swiss federal system is significant. First, the Swiss federalism is a coming together type of federalism whereas Ethiopian federal system is coming together. Second, Swiss federalism is built in well-practiced direct democracy. Third, in Switzerland there is no language policy at the federal level as all decisions concerning the public use of language are made by the Cantons and recognizes all the ‘indigenous’ languages of the country as national⁴⁶³ whereas, under the FDRE Constitution the working language of the federal government is Amharic; all Ethiopian languages are to enjoy equal recognition, with each state having the right to determine its respective working language.⁴⁶⁴

Federal constitution of the Swiss confederation has given protection to the right to freedom of movement and choice of domicile. Article 10(2) provides that everyone has the right to personal liberty and in particular to physical and mental integrity and to freedom of movement.⁴⁶⁵ Article 24 provides that Swiss citizens have the right to establish their domicile anywhere in the country.⁴⁶⁶ Article 37 of Swiss constitution provides that anyone who is a citizen of a commune and of the Canton to which that commune belongs is a Swiss citizen.⁴⁶⁷ No one shall be given preferential treatment or suffer prejudice because of their citizenship.⁴⁶⁸ Thus, the legal framework of the right to freedom of movement and residence in Switzerland is almost similar with Ethiopian constitution.

⁴⁶² Federal Constitution of the Swiss Confederation adopted by the popular vote of 18 April 1999 (Federal Decree of 18 Dec. 1998, Federal Council Decree of 11 Aug. 1999 - AS 1999 2556; BBl 1997 I 1, 1999 162 5986), article 2 and 70.

⁴⁶³ Supra note 460, pp 32.

⁴⁶⁴ Supra note 2, article 5.

⁴⁶⁵ Federal Constitution of the Swiss Confederation Adopted by the popular vote of 18 April 1999 (Federal Decree of 18 Dec. 1998, Federal Council Decree of 11 Aug. 1999 - AS 1999 2556; BBl 1997 I 1, 1999 162 5986). Retrieved from the website <http://www.admin.ch/ch/e/rs/1/101.en.pdf> accessed on 10 September 2012, Article 10.

⁴⁶⁶ Id, article 24.

⁴⁶⁷ Id, article 37(1).

⁴⁶⁸ Id, article 37(2).

The practical situation shows that the Swiss federalism has no negative impact on the right to freedom of movement and residence. Not only Swiss citizens but also foreigners have the right to freely move and reside in Switzerland. It is evident that 20 % of people living in Switzerland are foreigners.⁴⁶⁹ In order to respond to the necessity of individual rights and freedoms the Swiss Constitution did establish political institutions and procedures, which enable a peaceful settlement or management of internal conflicts.⁴⁷⁰ In this sense, individual's right to freedom of movement and residence has given much emphasis. However, this does not mean that the Swiss federal model regarding language policy is free of challenges. The strict territorial nature of the language policy implemented by the Cantons makes communal interaction less easy which increasingly challenges unity at the national level.⁴⁷¹ From the experience of Switzerland it is evident that providing equal status for all languages of the country may solve the problem of equality of language but it can't solve the problem of restriction of freedom of movement and residence within the national territory. But the Ethiopian language policy is also criticized for the imposition of Amharic as the sole official working language of the Federal Government might threatens the equality of Ethiopian languages thereby representing the continuation of the dominance of the Amharic language and its speakers at mother-tongue level and it is a potential source of conflict.⁴⁷² But, it is obviously difficult to make all 80 languages of Ethiopia as national language.

Hence, Ethiopian federal system should be implemented based on democratic values just like that of Switzerland. Providing adequate autonomy to the regional states in terms of both political and economic aspects is more significant to make Ethiopian federal system successful as Swiss federalism.

⁴⁶⁹ Fleiner Thomas, *Federalism: Basic Structure and Value of Switzerland Recent Developments in Swiss Federalism*, University of Fribourg, Switzerland, 2000, pp 3.

⁴⁷⁰ Ibid.

⁴⁷¹ Fiseha Haftetsion, *Choosing a Working Language in Multiethnic Nations: Rethinking Ethiopia's Working Language Policy*, retrieved from [http://: www.aigaforum.com/articles/Paper-on-Ethiopia-Language-Policy](http://www.aigaforum.com/articles/Paper-on-Ethiopia-Language-Policy), accessed on 13th January 2013.

⁴⁷² Ibid.

5.7.3. Belgium Experience

After the 1993 State Reform and almost 30 years of political adjustments and institutional reforms, the unitary State of Belgium has been formally transformed into a federation made up of three Regions (Brussels, Flanders and Wallonia) and three Communities (Dutch-, French- and German-speaking Communities).⁴⁷³ The Belgian federation is unique in this respect, as no other federation is composed of two overlapping types of polities or geographical entities. In addition to the inherent complexity of the institutional system, which is politically expressed through this double federal structure and its asymmetry, the Belgian party system is totally split between the two main linguistic communities.⁴⁷⁴ In Belgium the territory of the Flemish Region is limited to the Flemish-speaking linguistic region, the Walloon Region to the French and German-speaking regions and the Brussels Region to the bilingual region of Brussels.⁴⁷⁵ The French speakers from Walloon and Brussels can be in one community. The Flemish speakers from Flemish and Brussels region form Flemish community. The German speakers from Walloon region form German community. Each community has its own autonomy and competence in specific areas. Thus whether the Belgian unique federal arrangement has solved the problems related to the right to freedom of movement and residence of individuals is the concern of this section.

Despite the fact that, article 12(a) of the Belgian constitution has stated in general that the freedom of individual is recognized, no any single provision of the constitution recognized the right to freedom of movement and residence specifically.⁴⁷⁶ However, article 11 of Belgian constitution provides that enjoyment of the rights and freedoms recognized for Belgians must be provided without discrimination. To this end, a legislative act adopted by the federal legislative assemblies (House of Representatives and Senate) and “federate law” refers to a legislative act adopted by the legislative assemblies of the Regions and Communities (Flemish Parliament, Parliament of the French Community, Parliament of the German-speaking Community and Parliament of the Walloon Region) guarantee among others the rights and freedoms of ideological and philosophical minorities.⁴⁷⁷ Thus, the non discrimination clause has played

⁴⁷³ Constitution of Belgium Article 1.

⁴⁷⁴ Id, article 4.

⁴⁷⁵ Id, article 5.

⁴⁷⁶ Id, article 12.

⁴⁷⁷ Id, article 11.

pivotal role in equalizing all linguistic communities to be beneficial from the right to freedom of movement and residence if it has been exercised by the adverse community members.

The right to freedom of movement and residence has been hindered by language consciousness since First World War. Before the war the language issue was not important but during the war Flemish soldiers had complained about the language situation, and they became conscious (and were mobilized to become conscious) of the fact that they were eventually expected to die for a country that did not even try to communicate with them in their own language.⁴⁷⁸ After the war, the language tension has flourished. But, to tighten the language tension most of speakers of minority languages other than the official one for the region, the inhabitants received so-called 'facilities', allowing them to use their language in their individual contacts with the public authorities in 1947.⁴⁷⁹ After 1968, the territories of language communities have been demarcated and 'Territorial principle' of language use has been adopted in Belgium. Despite language tensions Consociational democracy⁴⁸⁰ is a technique of conflict avoidance used by Belgium by granting a large degree of autonomy to the groups in conflict, and by obliging them to move together or not move at all for all matters that remain common.⁴⁸¹ This consociational democracy is the factor for the changing of Belgium from unitary to Federalism.⁴⁸² But, the language tensions in Belgium still hinder the exercise of the right to freedom of movement and residence of Belgian Citizens. Adaptation of the political parties to the linguistic-regional divide is a challenge for not only the protection of the right to freedom of movement and residence but also to the territorial existence of Belgium.⁴⁸³ The Flemish and Walloons are still considered each other as Israelis and Palestinians.⁴⁸⁴ Dutch speaker Flanders are claiming that their language, culture socio political role diminished by such French speaking Walloons. They have raised a

⁴⁷⁸ Deschouwer Kris, Ethnic Structure, Inequality and Governance of the Public Sector in Belgium, *Part of UNRISD Project on Ethnic Structure, Inequality and Governance of the Public Sector*, 2004, pp 12.

⁴⁷⁹ Ibid.

⁴⁸⁰ Consociational democracy is a type of democracy which emphasizes the importance of power-sharing among different segments in society. This democracy is characterized by four main political institutions: a grand coalition, a mutual veto, a proportional representation and segmental autonomy.

⁴⁸¹ Binningsbo M, Consociational Democracy and Post-conflict Peace. Will power sharing institutions increase the probability of lasting peace after civil war? *International Peace Research Institute, Paper prepared for presentation at the 13th Annual National Political Science Conference, Hurdalsjoen, Norway, 5-7 January, 2005*, pp. 9.

⁴⁸² Ibid.

⁴⁸³ Ibid.

⁴⁸⁴ Robert H, Ethnic conflicts: Flemings and Walloons, Israelis and Palestinians, Harvard university press, 2009, pp 23.

question of creating an independent Flanders within Europe by 252 page manifesto.⁴⁸⁵ Most scholars of federalism have refrained from blaming the Belgian federal system for the ethnic tensions rather than penetrating their finger towards the ethnic based party system of Belgium.⁴⁸⁶ Despite the existence of the above challenges consociational democracy has played a pivotal role to the territorial integrity and peaceful co-existence of Belgian citizens so far. Thus, Ethiopia should learn from Belgium that ethnic based political parties are the means to fuel the fire of ethnic tensions. Consociational democracy should also be adapted in Ethiopian politics.

⁴⁸⁵ Ibid.

⁴⁸⁶ Supra note 481, pp 11.

5.8. Conclusion

The first and second section of this chapter are designed to give highlight about the vulnerable groups for violation of the right to freedom of movement and residence as well as the profile of population movement in Ethiopia. These sections have emphasized that the movement of people from place to place with in Ethiopia was achieved involuntarily and voluntarily during the former regimes largely and a little bit in the current regime too. Such movement has created ethnically intermingled society.

The other sections of this chapter devoted to show the practical implication of Ethiopian federal system on the right to freedom of movement and residence by integrating case analysis with interview responses, UN treaty body observations and other countries experiences. Seven ethnic displacement instances have been selected for the purpose of showing violation of the right to freedom of movement and residence. Someone might simply ask how these ethnic displacement cases connected with the right to freedom of movement and residence violation. But, the answer has set forth in the third chapter of this thesis that show the right to freedom of movement and residence does not only means simply freedom to move and reside somewhere but it also includes the right to free from forced displacement and evictions.

All of the seven cases show that Amhara, Oromo, Tigrie, Sidama, Gedeo, Somali and other ethnic groups have displaced from the territory which supposed not to be their home region, zone or woreda. These cases show the flawed implication of Ethiopian federal system on the right to freedom of movement and residence of individuals for three reasons. The first reason is that event sequence by which the ethnic conflicts that led to displacement has followed and happened after the stretching of ethnic federalism in Ethiopia. There were no any dispute between Oromo and Sidama in wondogenet, Oromo and Somali in Borena, Amhara and Oromo in Arbagugu and Gida kiremu, and others for many years up to the introduction and implementation of ethnic federal set up in Ethiopia. Secondly, Ethiopian ethnic federalism that accompanied by ethnic self determination and self administration led to the dominance of specific ethnic groups and minority of the others regarding administration. Obviously, the Sidamas were dominant in the administration of Wondogenet woreda and consider themselves as legitimate children of the region in general and the woreda in particular. Thirdly, as many scholars agree that ethnic federalism creates ethnic consciousness in the mind of individuals and particularly on ethnic

elites. Fourthly, the federal arrangement has divided the diverse society based on ethnicity which has created conflict for permanent possession of the resource.

There are additional triggering factors for the violation of right to freedom of movement and residence of individuals. These are the election process, armed rebel movements and politicization of ethnicity and ethnic consciousness. All these factors are related to misuse of ethnicity for political profit by the ruling EPRDF party.

The role of governmental and non-governmental human right institutions have been explored in terms of their efficiency and effectiveness to protect the right to freedom of movement and residence of individuals from the pit fall of ethnic federal system. Courts' lack of adjudicatory power over the issue of violation of the right to freedom of movement and residence due to the ethnic self determination or other similar impact clearly affects the strong institutional safeguard of the right to freedom of movement and residence. Human right commission and Ombudsman are not also effective and efficient enough to preserve the right to freedom of movement and residence of individuals from violation. The final remedy which usually issued by House of the Federation only solves temporary ethnic disputes than the forced displacement of individuals even after the referendum. The only role of non-governmental human right institutions is naming and shaming and they are also blamed by the government for not reporting accurate information.

The experience of Nigeria shows that ethnic federal system is a grand hazard to the protection of the human right protection in general and the right to freedom of movement and residence in particular. That is why it changed from ethnic federal system to geographic federal system. However, the geographic federal system of Nigeria could not totally eliminate the problem. Thus the Nigeria experience noticed that federalism without democracy is a challenge to the protection of the right to freedom of movement and residence. Swiss and Belgian federal experiences show that the right to freedom of movement and residence might be protected even in the multi-national federal system when it is implemented with democratic ways.

Chapter Six: Conclusion and Recommendations

6.1. General Conclusions

The FDRE constitution has created ethnic form of federal system in Ethiopia in one hand and prescribes the right to freedom of movement and residence everywhere within Ethiopian territory on the other. These two notions have been explored in-terms of normative content and concept as well as their practical compatibility in the process of implementing federal system.

The right to freedom of movement and residence is not only the right to move and reside but it is also the right to free from forced displacement and evictions. The right to freedom of movement and residence is recognized not only in FDRE constitution but also in other legal documents of the country such as the Civil Code, Criminal Code, and immigration law of Ethiopia. The 1931 and 1955 Constitutions had also recognized such freedom with a little limitation. The FDRE Constitution has not set any claw back clause or general limitation except state of emergency on the right to freedom of movement and residence. The absence of such a general limitation clause might, at first blush, give the impression that some human rights in general, the right to freedom of movement and residences in particular are not subject to limitation in Ethiopia. But it is important to note that the absence might also lead to the arbitrary imposition of limitations giving the right holder no recourse to ensure that the limitation is a justified and reasonable one.

From various types of federalism, Ethiopian federal system is likely to be grouped in the asymmetrical, ethno-linguistic, dual and holding/putting together type of federalism. Ethnic self determination is the ideological foundation of Ethiopian federal system. In fact, opponents of ethnic federalism suggest that it might cause ethnic consciousness and contradiction which apparently entails ethnic discrimination on the enforcement of human rights at the whole. However, proponents on the other hand admit such drawbacks and have suggested possible solutions for the problem such as legal, procedural, institutional safeguard mechanisms which should be devised by the federal government with a view to protect the rights of individuals from the pitfall of ethnic federal arrangement. This study has tried to explore whether ethnic federal structure created ethnic consciousness and ethnic contradiction. Whether the right to freedom of movement and residence of individuals are affected by the ethnic consciousness which might

possibly created by the ethnic federal system. Not only the Ethiopian ethnic federal system, but the ruling EPRDF party's method of manipulating ethnicity to win the political game is also responsible for the flourishing ethnic consciousness in Ethiopia after 1991. Thus, violation of the right to freedom of movement and residence in Ethiopia is caused by the ethnic conflict, ethnic displacement and ethnic consciousness which are the result of ethnic federalism and EPRDFs vision to rule the country through eliminating the unity of people by manipulating ethnicity to divide its rivalries.

Concluding observation of UN treaty body on convention on the elimination of racial discrimination shows that ethnic federal system of Ethiopia has negative impact on the rights of individuals. Particularly, the concluding observation has given much emphasis on the issue that forced ethnic displacement has increased in Ethiopia after the adoption of ethnic federal system and that directly affects the right to freedom of movement and residence of persons in Ethiopia. Moreover, the independent expert advising the UN human right council has reported that, the dominance of ethnic political parties and the increment of ethnic based elites in the political atmosphere have created ethnic consciousness within the society. As a result, ethnic division that causes to ethnic discrimination on the protection of basic human rights including the right to freedom of movement and residence. Thus, these two reports cumulatively blame the ethnic based federal system and the ethnic manipulated political atmosphere for the violation of the right to freedom of movement and residence in Ethiopia.

As stated in the beginning, the right to freedom of movement and residence denotes not only the right to move but it also connotes the right not to be removed. That means forced displacement and evictions are violation of such right. For the purpose of showing violation of the right to freedom of movement and residence due to the pitfall of Ethiopian ethnic federal structure, seven forced ethnic displacement cases have been analyzed. These cases show not only the violation of the right to freedom of movement and residence of such displaced persons but also indicate the situation that other individuals could not exercise their right to freely move and establish their residence in such displacement areas. The first case is about the displacement of Amhara ethnic individuals from Kidakiremu and Arbagugu area of Oromiya Regional State. The cause of their displacement is ethnic manipulation of the local elites to create ethnic conflict between Amhara and Oromo ethnic groups. The second case is about the expulsion of Amhara

peasants from Gurafarda woreda of SNNPRS in 2004. This case clearly shows how self determination affects the right to freedom of movement and residence. The individuals from Amhara region are prohibited to go and reside in Gurafarda woreda after the Me'inet ethnic group form Gurafarda woreda through self determination. Longley resided Amhara ethnic individuals have been also compelled to displace from Gurafarda woreda by the local elites. The third and seventh cases deal about exogenous individual's displacement from Benishangul-Gumuz Regional State and Gmabella regional state. These case demonstrates that the Oromo, Amhara and Tigrai ethnic persons (called exogenous groups) or highlanders have been intimidated to leave the BGRS and GRS after 1991. Many of such exogenous people have been forcefully displaced after 1991 from such regions. The two regional state constitutions do not recognize such exogenous dwellers of both regions. There are two types of people in these two regions, the indigenous people as legitimate children of the regions and exogenous people as illegal settlers with no right to live there. Thus, some exogenous or indigenous individuals who are residence of BGNRS and GNRS were forced to leave the regions directly or indirectly by the state officials or by the indigenous people. However, it is to be noted that the right of indigenous persons, such as the right to language, culture, identity and other rights are not affected by the existence of such exogenous persons. The fourth, fifth and sixth cases are related to the violation of freedom of movement and residence of Somali, Gedeo, Sidama, Guji-Oromos from ONRS, SNNPRS and SNRS respectively. The cause of violation is ethnic conflict between such ethnic groups. Despite the fact that, House of the Federation has interfered to solve the border conflict through referendum, the displacement of Oromos from Wondogenet area and Gedeo zone; Gedeos from Borena zone and Sidamas from Guji zone and Somalis from Borena zone have been took place. From these cases it is possible to understand that referendum is not a win-win approach to satisfy the needs of both groups rather it aggravates the forced displacement of adverse groups from one another by using the title granted by the referendum.

There are additional triggering factors for violation of the right to freedom of movement and residence in Ethiopia. All of these additional triggering factors are directly or indirectly related to manipulation of ethnicity. The first triggering factor is electoral process by which EPRDF used ethnicity as a means of campaign to election. Such kind of conduct was the usual performance of EPRDF party in all elections till the recent one. Moreover, particularly the post 2005 election has created ethnic hatred against Amhara due to EPRDF's harangue about the historical

oppressiveness of Amhara ethnic political leaders during the former regimes. That creates ethnic consciousness and ethnic hatred within the society. Thus, displacement of Amhara ethnic groups from different parts of the country was triggered after 2005 election. The second triggering factor is armed rebel movements. Armed rebel movements such as OLF and ONLF demand the secession of Oromiya and Ogaden are the causes for the displacement of such armed rebels. On the one hand the government has failed to fully eliminate such armed rebel movements so as to secure the right to freedom of movement and residence of individuals on the other hand some individuals have been displaced from their homestead in fear of detain for their connection with such armed rebel movements because they are assigned as terrorist groups. The third one is politicization of ethnicity and ethnic consciousness. Politicization of ethnicity and ethnic consciousness has thrived in the country after 1991. The ethnic affiliated political parties have also aggravated the situation of ethnic consciousness and contradiction in the country. Ethnic consciousness is inherently tended to craft ethnic favoritism and discrimination. Thus, when ethnicity politicized and ethnic consciousness flourished, ethnic favoritism likely to be created and affect the right to freedom of movement and residence of individuals.

The other important issues of this thesis are: What safeguard mechanisms are devised to protect human rights in general and the right to freedom of movement and residence in particular? Are they efficient enough to protect the right to freedom of movement and residence from the impact of ethnic federalism? Thus, it has been tried to explore these issues from the institutional safeguard perspective and the practical point of view. Theoretically, there are institutional safeguards for the right to freedom of movement and residence in Ethiopia. These institutional safeguards are governmental and non-governmental institutional safeguards. Despite the claim that Ethiopian courts have the power to adjudicate cases related to constitutional right to freedom of movement and residence, they have not adjudicated any practical case related to violation of such right by the fallback of Ethiopian federal system and the political atmosphere. Rather HoF, CCI, EHRCO and EIO have tried to investigate and adjudicate such kind of cases. Thus, House of the Federation with the technical and legal support of Council of Constitutional Inquiry has been the primary institutional safeguard for the right to freedom of movement and residence. However, the practical situation shows that even HoF and CCI could not properly protect such freedom for three reasons. First, these institutions are politically affiliated institutions which could not render any decision with legal basis. Second, they have no

formalized procedure that enables to protect the right to freedom of movement and residence of individuals. Third, choosing referendum as a last solution to solve ethnic related issues is not a win-win approach. This is because, after the referendum the winners consider themselves as decree-holders and they tried to forcefully displace the losers of referendum. Thus, these institutions have no any mechanism to prevent post referendum violation of the right to freedom of movement and residence. The other shortcoming relating to the function of HoF is constitutional right protection method is not proactive.

Ethiopian human right commission and Ethiopian institution of ombudsman are the other institutional safeguards for the right to freedom of movement and residence. Both institutions have tried to investigate forced displacements in Ethiopia. Despite the fact that EHRCO has conducted investigation on the violation of the right to freedom of movement and residence and found specific results of violation, no any published report of the institution shows the violation of such right and no any redress has been issued. EIO has rejected one forced ethnic displacement case (the case of Amhara peasants' displacement from Gurafarda Woreda) without conducting proper investigation and based only on the reply of SNNPRS who is the defendant in such particular case.

Ministry of Federal Affairs is also one of the safeguard institutions for any trouble caused by Ethiopian federal system. Thus, if the federal arrangement has caused a violation of the right to freedom of movement and residence in Ethiopia, Ministry of Federal Affairs should intervene so as to solve the problem. However, the ministry has not responded to the displacement of persons who has said to belong to Amhara, Oromo, Sidama and other ethnic group from SNNPRS, ONRS, BGNRS and other regions.

Human Right Council, Amnesty International and Human Rights Watch have provided a safeguard to the right to freedom of movement and residence by publishing reports of violation in Ethiopia. In fact, the report only used for 'Naming and Shaming', i.e. the violator might refrain from further violation to preserve its good will.

Other countries experience shows that the right to freedom of movement and residence of individuals somehow affected by ethnic federal system when it has implemented in improper way. That means ethnic federal system without democratic government has negative impact on

the right to freedom of movement and residence. The former Nigerians ethnic federal system has failed because of its negative impact not only to the right to freedom of movement and residence but also to other fundamental human rights of Nigerian Citizens. Comparatively the current Nigerian geographical federal system is effective in curbing violation of the right to freedom of movement and residence. The Swiss federal system is a good example for sound coexistence of federalism and the right to freedom of movement and residence. The developed democratic culture and adequate decentralization have made the Swiss federal system to be successful in every aspect. The Belgium federal system, despite its uniqueness, it could not promote the right to freedom of movement and residence of diverse Belgian citizens from one region to the other. This is because language tensions have been flourished since First World War and the disintegration of national political parties in to ethnic (language) based political parties.

6.2. Recommendations

Based on the findings of this paper, the writer would like to recommend the following suggestions.

- Ethnic federal system together with ethnic based political parties has created ethnic consciousness. Thus, the researcher would like to suggest that ethnic federal system should be averted to the geographical federal system and political parties should be discouraged from organizing themselves based on ethnic lines. Besides this, the constitution should devise a mechanism, such as making ethnic manipulation for election as unconstitutional, to preserve the federal system from misuse of ethnicity which apparently directs the society to ethnic consciousness and ethnic division and that leads finally for violation of the right to freedom of movement and residence.
- The constitution need to adopt a general limitation clause that limits a limitative act to be enacted based on the specific limitation clause built in most of the human right provisions, and in order to control possible arbitrary limitations up on the right to freedom of movement and residence which do not have any claw back clause.
- The government should work towards preventing and eliminating ethnic consciousness from the society by promoting and advocating national unity

through Medias, schools and other ways. Ethnic consciousness is the cause for most of the forced ethnic displacements which have been occurred in Ethiopia. The ruling EPRDF party should abstain from manipulating ethnicity as a means of winning the political game.

- The government should take measure to return them back those who are displaced from their homestead due to their violation of the right to freedom of movement and residence by the force of local political leaders and ethnic conflict.
- Government should devise long lasting proactive conflict prevention mechanism in places where diverse ethnic groups reside. The HoF's attempt to establish peace committees which contain members from each ethnic group to prevent potential ethnic conflicts should be consolidated and put in to practice. Because these committees might apply indigenous ethnic prevention mechanisms with technical support and sponsorship of the government.
- Ethiopian Human Right Commission should publish a report of the investigation results which relates to violation of the right to freedom of movement and residence since publicizing a report is significant to mobilize the shame on the violators so as to prevent them and others from similar violation.
- Ethiopian Institution of Ombudsman should conduct proper and fair investigation on specific cases before deciding whether the applicants' rights have been violated or not.
- House of the Federation and Council of Constitutional Inquiry Body should formulate clear-cut procedure to safeguard the constitutional rights in general and the right to freedom of movement in particular. Potential forced displacement of ethnically dispersed individuals and numerical minorities should be taken in to consideration after the territories which defined through referendum.
- House of the Federation has to devise proactive to protection technique so as to safeguard the right to freedom of movement and residence from violation. It should not wait until the constitutional rights to be violated.
- Self determination has to be implemented in congruent with the right to freedom of movement and residence. The new minorities who might reside within the territory of self-determined ethnic group must not be forced to leave their

homestead in guise of the territory belongs only to such self determined ethnic groups. There should be a safeguard mechanism for the right not to be removed of such ethnic groups. The displaced persons should be returned to their homestead.

- The federal system must be implemented based on democratic values and adequate decentralization of power just like Switzerland for the purpose of achieving the success of accommodating diversity as well as protecting the right to freedom of movement and residence.

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Annex

Interview Guide Questions to Investigators in Safeguarding Institutions

I Yonas Girma, an LLM student in Addis Ababa University, kindly requests.....to prepare or inscribe your answer for the following interview questions.

This interview guide is prepared for the purpose of gathering information for my Master's thesis that I am pursuing in AAU Law School. I am grateful for your kind cooperation investing your precious time to respond for my interview. You can refrain from writing your name.

Interview questions

1. The right to freedom of movement and residence is guaranteed by FDRE constitution. What remedies done by the institution?
2. Do you think your institution is a safeguard to the right to freedom of movement and residence for individuals? How?
3. How many cases have been investigated by the Institutional investigation office regarding violation of the right to freedom of movement and residence in relation to ethnic displacement perpetrated by local chiefs or ethnic violence?
4. How do you investigate such cases?
5. What was the final finding of the investigation?
6. If the final finding was violation of the right to freedom of movement and residence, what is the cause for violation of the right to freedom of movement and residence?
7. If the final finding was violation of the right to freedom of movement and residence, what measures you had taken to alleviate the problems?

Interview Guide to Political Leaders and Scholars of Federalism

I Yonas Girma, an LLM student in Addis Ababa University, kindly requests.....to prepare or inscribe your answer for the following interview questions.

This interview guide is prepared for the purpose of gathering information for my Master's thesis that I am pursuing in AAU Law School. I am grateful for your kind cooperation investing your precious time to respond for my interview. You can refrain from writing your name.

Interview questions

1. Freedom of movement and residence is expressed in terms of freedom from forced displacement and eviction. What do you assess this right in light of ethnic federal system of Ethiopia?
2. Do you think the causes of ethnic displacement or displacements by ethnic violence are the negative results of ethnic federal system in Ethiopia?
3. Do you think Ethiopian Ethnic federal system and the right to freedom of movement and residence are compatible each other?
4. What do you think the factors for violation of the right to freedom of movement and residence?
5. Do you think the safeguarding institutions are efficient and effective to protect this right?
6. What are the challenges for protection of such right?
7. What do you suggest for the better protection of this right?