

**Addis Ababa University School of Graduate Studies
College Of Law and Governance Studies**

The Rights to Self-Rule and Rights of Citizenship in Ethiopia

By: Ziyad Redwan (LLB)

Advisor: Christophe Van der Beken(PHD)

ADDIS ABABA, ETHIOPIA

JUNE 2015

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A Thesis Submitted to the School of Graduate Studies of Addis Ababa University College of law and governance studies in Partial Fulfillment of the Requirements for the Degree of Master of constitutional and public law

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JUNE 2015

Declaration

I, the undersigned declare that this is my original work and has not been presented in any one university and all the sources of materials used in the thesis are duly acknowledged.

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Acronyms

ANRS	Amhara National Regional State
ANDM	Amhara National Democratic Movement (EPRDF)
BGNRS	BenishangulGumuz National Regional State
BGPDO	Benishangul-Gumuz People’s Democratic Organisation
EBDO	The Ethiopian Berta Democratic Organisation
NEBE	National Election Board Ethiopia
BPLM	Benishangul Peoples’ Liberation Movement (<i>BenishangulHezboch NetsanetNekenakie, Behenen</i>)
CCI	Council of Constitutional Inquiry
CSA	<i>Central Statics Agency</i>
EC/GC	Ethiopian Calendar / Gregorian Calendar
EPLF	Eritrean People’s Liberation Front (now PFDJ)
EPPF	Ethiopian People’s Patriotic Front or <i>arbegnochGenbar</i>
EPRP	Ethiopian People’s Revolutionary Party
EPRDF	Ethiopian People’s Revolutionary Front
ETB	Ethiopian Birr
GPRS	Gambela Peoples Regional State
HoF	House of the Federation
HPR	Federal House of Peoples’ Representatives
ICCPR	International Covenant on Civil and Political Rights
MAESON	the Amharic acronym of All Ethiopia Socialist Movement
NGO	Non-Governmental Organisation
NEBE	National Election Board of Ethiopia
NRDP	National Relief & Development Programme (of Dergue)
OLF	Oromo Liberation Front
ONC	The Oromo National Congress
OPDO	Oromo People’s Democratic Organisation (EPRDF)
SNNPR	Southern Nations, Nationalities and Peoples Regional State
TGE	Transitional Government of Ethiopia
TPLF	Tigray People’s Liberation Front

Maps



Abstract

The question of ethnic equality has been the apex of all questions for decades in Ethiopia. For this fact, the struggle to bring ethnic equality consumed the adorning and precious human life. This major and long lived historical issue seemed solved after the downfall of the Dergue through bitter military struggle of a number of national liberation movements. Following this, in 1991, in order to address along lived historical question of ethnic equality, through restructuring the country into different state an ethnic form of federal formula has been adopted in Ethiopia.

However a specific problem in the Ethiopian context is that every regional state now so designated under the federal arrangement is multi-ethnic, even Tigray (where Erob and Kunama as well as Amhara, Oromo and other minorities live with Tigray people), None of the nine regional states is mono-ethnic, so the protection of "minority and other individual citizen rights" under the power holding regional ethnic groups is at core of academic and political debate particularly on the scale of needed safeguards in the federal and regional constitutions and political practice of such states. Thus this showing the problem for a federation linking heterogeneous groups in a process of institutional dialogue is thereby just deflected towards another arena, a lower level, where the same problems of what the democratic exercise of rights means and how it can be guaranteed, come bouncing back.¹

Consequently, the neglect of these groups and individual citizens' rights by the new power holders has resulted in inter-ethnic conflict and tension between those owners regional state and others non titular citizens (also referred as non-indigenous, settler or immigrants). These have raised the question of citizenship and resulting rights and still the major point of discussion in the country among political parties. The post 1991 federal regime has been implementing various mechanisms to accommodate minority at regional level who share contingent territory. But concerning those dispersed citizens (can also be settlers, non-indigenous or immigrant) there is a lot issues regarding the right to political representation, right to equality, the right to freely move and work and other dozens of universal rights still unprotected, devalued and sometimes violated resulting in the feeling of second citizenship and high tension. Thus resulting in the change of political demand by ethnic groups from so called "national question" to what

¹ Jon Abbink, Ethnicity and Constitutionalism in Ethiopia, *Journal of African Law*, Vol.41: No. 2, p. 163

this paper calls it ‘citizenship question in the post 1991 reign of self-governance of nations, nationality and people.

In other words, citizenship question in Ethiopia can be explained as the plight of Ethnic minorities in any state that has most of the time been treated as aliens. This ill-treatment they receive is at the core of the constant manifestation of ethnic volatile engagements. In Ethiopia, this is fostered by the inability of the post-Derg elite to construct effectively, the philosophy of inclusive citizenship that will be capable of developing national identity with a cosmopolitan outlook. Other conflict generating factors can be located in the scarcity of cherished values and the differential opportunities that exist among competing groups intensified by ethnicity. Most reasons explicated for such upheaval are centred on the demand for recognition and inclusion in political bargain of states’ resources allocation. This scenario calls for the understanding of constitutional bases of citizenship in Ethiopia.

Thus the main objective of the study is investigating the relation between the rights to self-rule of ethnic groups(also referred as host, indigenous, titular ethnic groups endowed with a mother state/Wereda/zone of their own) and other individual (commonly referred as migrants, settlers or non-indigenes minority) rights of citizenship in the post Ethiopian ethnic federalism in light of experience in Asosa Wereda, Benishangul Gumuz Regional State (BGRS) vis-a vis to to eluciaadate the relevance of balancing the rights of individuals and groups within an umbrella of diversity – unity paradigm and the need for an overreaching concept of citizenship in Ethiopia.

The paper by considering this research gap, examines the overall nature and relationship between the rights of self-rule and rights of citizenship in the multi-ethnic Asossa woreda. This is crucial because the area hosts different ethnic groups though the dominant ones are Bertha from the host and other citizens who due to different reason have lived for decades, particularly there is a lot Amharas settler communities resettled in Dereg regime. This study then investigates experiences of the right to self-rule and rights of citizenship in Asossa Woreda, which has the largest number of “host” self-governing ethnic groups and ethnic migrant, non-indigenous or “settler citizens.

The study fully employed qualitative research approach. Relevant and reliable data were gathered through in depth informant interview, focus group discussion, non- participant

observation and documentary analysis. The finding revealed that there were many instances where the rights of citizenship were systematically violated by officials and nationalistic members of ethnic groups due to lack of understanding on the right balance between the right to self-rule and the rights of every citizens guaranteed in the FDRE constitution. The source of the problems seems of practical application of universal rights and upholding group tendency in the ideology of the ruling regime and officials. For instance the claim for balanced representation in political office of citizens in BGRS in general and Asosa Wereda in particular shows that the decision of the HOF and the The institutional set up of BGRS wereda and state council has greatest contribution for maintaining a sense of belonging and equality. Thus the primacy of individual right when there is a conflict with group rights particularly regarding universal right such as those discussed in this stud like, the right to movement, right to political participation, right to work and residence, freedom from discrimination and right to private property is essential for the stable and inclusive federal governance in Ethiopia. The paper recommended that better protection can be achieved if the participation of all citizens is guaranteed in the regional assembly, judiciary and executive posts without regard to indigeneity to the regional state. Further the establishments of federal institutions like that of the human rights commission, federal courts, federal police in the regions and enhancing the active role of FDRE Human Rights Commission and Ombudsman Institution can protect discriminatory practice and assure equality in the regional state.

Key words: - self-rule, rights of citizenship, political participation, equality, ethnic federalism, self-determination.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The main goal of the classical liberal state is liberty. The state has to provide security for the citizens in order to enable them to pursue their happiness in liberty. It is now a consensus among most scholars that a state with diversities needs not only to seek individual liberty for all its citizens, but also to look for peace among the different diversities. Besides individual freedom, peace among communities is one of the main goals to seek in multicultural states.² Similarly this holds true of Ethiopia because as it is a country “blessed” with the asset of diversity. It has been two decades since Ethiopia come to terms with the ethnic and fully accept diversities at the federal level. The state is organized in line with ethnic group’s right to self-rule.

The regime used language as the basis of ethnic affiliation and has re-drawn the boundaries of administrative regions along language lines. Despite the fact that there are some seventy two languages, it created nine ethnic-based states, with the promise that new ones may be created when necessary. In any event, the new constitution couched in the old Soviet terminology, established the so-called Federal Democratic Republic of Ethiopia, comprised of nine ethnically based regions or states, namely: Afar, Amhara, Ben-shangul-Gumuz, Gambella, Oromia, Somali, Southern Ethiopia Peoples and Tigray. Language was the major criteria utilized in drawing up the boundaries. Article 39 of the constitution states: Every nation, nationality or people in Ethiopia shall have the unrestricted right to self-determination up to secession; shall have the right to speak, write and develop its languages. Yet, with the exception of the Afar and Somali regions that are relatively homogeneous, all have significant minority ethnic groups. These include Amhara (Agew, Oromo, Tigrean); Oromia (Amhara, Gurage, Tigrean, Sidama etc.); Tigray (Amhara, Oromo, Kunarna, Erob). In the Southern Nations alone, there are over fifty ethnic groups. In drawing the boundaries little attention was given to such fundamental questions as history, geographic size, population density, economic and administrative viability, agriculture

² Akhtar Majeed, Jonah Isawa Elaigwu, Thomas Fleiner and Mahendra Prasad Singh, *Building on and Accommodating Diversities*, in Ronald L. Watts and Rupak Chattopadhyay (Ed.), *Unity In Diversity Learning From Each Other*, Volume 1, Forum Of Federations, 2008, p.17

and resource base, level of development of the infrastructure, ability to generate tax revenue, and administrative capacity.³

The redrawing in the post 1991 federal Ethiopia may make most groups a majority in their own houses thus allowing them to exercise their rights to self-government. It is, however, more likely that the redrawing may still leave a small pocket of ethnic groups within the newly established states as it does not necessarily give ethnic groups an ethnically homogeneous state unless followed by ethnic cleansing. The impossibility of having neatly divided ethnic groups even after a complete redrawing of the map of the country (unless through ethnic cleansing) therefore will raise the rights of minority and universal rights of individuals dwelling in the newly demarcated state (region). Thus there is still problem of accommodating ethnic diversities especially the plight of intra-sub state minorities at regional states level. Thus this has resulted in what we can call the question of citizenship in the post 1991 ethnic federal Ethiopia.

In other words, in Ethiopia two issues are the focus of political debate among the political parties and societies. The first is the issue of self-determination of nationalities, widely viewed as a perennial cause of conflict in Ethiopia. Since the downfall of the Dergue representation on the basis of nationality was a key dynamic since the convention of the Peace conference in 1991 and state and society relation afterwards. Its significance in 1991 is considered alongside the TPLF/EPRDF which had long (can be traced to the student movement) before pronounced it the primary contradiction facing the country. The second is the place of the rights of citizens as individuals to participate in political affairs, the right to movement and residence in the country without any discrimination as to ethnicity, language or other extraneous factors, right to property, right to work and other dozens of universal rights in the ethnically demarcated regional states. It's in sum a sort of contradiction between diversity and unity.⁴ In other words the status and meaning of Ethiopian citizenship in light of ethnic group's right to self-rule.

Furthermore the question of citizenship in Ethiopia can be stated as to the ethnically based interpretation of national identity that is still prevalent in the regional states, despite civic principles to be found in their constitutions, possess problems for how minorities citizens are

³ Daniel Kendie, The Causes of the Failure of the Present Regime in Ethiopia, *International Journal of Ethiopian Studies*, Vol. 1, No. 1 (Summer/Fall 2003), 191

⁴ Sarah Vaughan , The Addis Ababa Transitional Conference Of July 1991: It Origin, History And Significance, Edinburgh University, Center For African Studies, *Occasional Papers No.51*, 1994, P.2

treated within the nation-state and there are significant tension between the conception of nationhood and nation-building liberal democratic institutions. The predominantly ethnic understanding of nationhood is very hard to reconcile with liberal-democratic politics because it implicitly recognizes full citizenship rights only for the majority ethnic group with a mother state. Ethnic minorities tend to be treated as anomalous and problematic, even when they have inhabited the territory for centuries. This is the case even when minorities are formally guaranteed full citizenship rights under the supreme law of the land.⁵

Furthermore the opening paragraph to the preamble of the Ethiopian Constitution begins with “We nations, nationalities and peoples of Ethiopia”. Departing from the traditional framing of “we the people of the...” the Constitution presents the Ethiopian state as a compact entered into by the different ethnic groups that inhabit the country. As one author has remarked, “this is not a constitution of the Ethiopian citizens simply lumped together as a people”.⁶ Furthermore, the preamble clearly states that the ‘political community’ that these groups agreed to form is premised on the full recognition of their “full and free exercise of the right to self-determination”. Fasil states that “the Ethiopian citizens are first categorized in their different ethno-linguistic groupings and then these groupings come together as authors of and beneficiaries from the Constitution of 1994”.⁷ This will necessitate one to raise the place of individual citizens in the FDRE constitution in light of the overtone given to group rights manifested by making them sovereign power holders and other extensive self-determination rights under article 8 and 39 of FDRE constitution.

In fact the FDRE constitution included a lot of rights that are individualistic in their orientation with but with its pillar on the provision on the rights of self-determination to nation nationalities and people. The constitution has both an individualistic and group element. It is not only group rights that are regarded as the bottom line or threshold for the equal treatment of all Ethiopians, even though it can easily be marked the heavy emphasis which the Constitution has placed on group orientation of rights. The constitution has a list of universal rights to citizens which signals a firm belief in individual rights and equality. But, as mentioned above, the constitution has also at the same time granted extensive group rights to ethnic groups. The issue is whether the

⁵ Heather Rae, *State Identities and the Homogenization of Peoples*, Cambridge university press, 2002

⁶ Fasil Nahum, *Constitution For a nation of nations: - the Ethiopian prospect*, The Red Sea Press Inc: Asmara, 1997, p. 51.

⁷ Ibid

constitutional design and application of the constitutional principle of self-rule right to ethnic groups will and/or has created hurdle to individual rights or rights of citizenship guaranteed in the FDRE constitution. In other words which individual rights are given precedence over identity-related rights or has more cogency than diversity in FDRE Constitution if at all there is such preponderance.

Thus the paper will analyze the issues of the rights to self-rule and rights of citizenship in Ethiopia in the context of post 1991 ethnic federalism. In other words whether the post ethnic federalism structure has created barrier to the creation of an overarching concept like citizenship will be sorted out. The major issues being whether the post 1991 political landscape have or /and will enable for the emergence of inclusive political participation for groups and individual citizens in regional states, equally without unlawfully sacrificing the latter especially for those citizens who are differently labeled as non-indigenous/settler/ migrants or minority citizens in the ethnically self-governing regional states. Particularly taking the ethnic territoriality of regional state boundary the issues of the right to work and movement, in light of granting absolute sovereignty to regional ethnic power holders in the regional state the issues of nondiscrimination and equality, the right to political participation and property rights begs a big question in the constitutional documents and state practice. Especially in light of the long list of rights the Ethiopian constitution has guaranteed for every individual citizen without any sort of discrimination as to race, language, gender and religion, the interaction with group's right to self-rule needs some sort of answer for stable and secure federal arrangement. The issue of which one prevails in case of any contradictions is unanswered in the FDRE constitution and political practice in the regional state. Furthermore the meaning of citizenship is still controversial among political parties and society especially its entitlement seen from the rights of ethnic groups to self-determination and self-rule. The paper seek to address these issues taking a case from among the regional states where such case have been very controversial and tensions still lag for remedy. The paper takes the issues of Benishangul Gumuz regional state as a case in point for it rightly shows the issues surrounding the right to self-rule and rights of citizenship as outlined above.

1.2. Statement of the Problem

The 1995 Federal Constitution of Ethiopia under article 47 (1) declared rights for the establishment of self-determination up to secession for regional polities' in line with ethnic divisions. Following this, nine regional states and two city administrations have been established as the basic constituent units, which together makeup the Federal Democratic Republic of Ethiopia (FDRE). Particularly the Tigray, Afar, Amhara, Oromo, Harari and Somali have established a regional state based solely on ethnicity. This has resulted in what Osaghae defines 'statism' i.e.an entrenched system of discrimination which is also "a negation of the constitutional provisions on national citizenship in Nigeria, because membership in a state is exclusionary; one could only belong to a single state.⁸ Those excluded in each state are called non-indigenes and are discriminated against and could not make claims to the rights of individual citizenship from a state in which they are non-indigenous particularly the right to political participation and equality.

The contention of this paper is that the dividing line between indigenes rights to self-rule and other citizens like ethnic migrant or settlers citizenship rights is very thin and that in the context of modern Ethiopia, the issue of citizenship needs to be strengthened. This involves going beyond mere Constitutional provisions to enforcement as well as strengthening of statutory provisions. Thus, this paper argues that the resolution of the central issues involved in citizenship rights for all and self-rule rights to indigeneship conflicts will redefine the concept of federalism in Ethiopia.⁹ After the collapse of the imperial and Derg regime the policy of assimilation and nationhood was replaced in 1991 with EPRDF policy of ethnic federalism, consequently it would appear that the seemingly unnoticeable differences among groups brought about by their blending over a long period was resuscitated. Furthermore this is perhaps due to a number of factors, including the negative historical legacy of conquest, desire by the elite for power and position, extended ethnic self-right, the changing status of land and other natural resources as well as desire for separate identity among others. Beyond generating crises with the attendant loss of human and material resources, more of which have not been satisfactorily resolved till the

⁸Osaghae, Eghosa. The Problems of Citizenship in Nigeria *Africa: Rivista trimestrale di studi e documentazione dell'Istituto italiano per l'Africa e l'Oriente*, Volume 45, Number 4 (December 1990), pp. 593-611 (Accessed December 29, 2013 <http://www.jstor.org/discover/10.2307/40760561?uid=2&uid=4&sid=21102243050361>)

⁹Abimbola O Adesoji, Indigeneship and Citizenship in Nigeria: Myth and Reality,*The Journal of Pan African Studies*, vol.2, no.9, March 2009 p. 151

present time, the indigene right to self-rule Vis a Vis the rights of other citizens (in this paper interchangeable terms like ethnic migrants, non- indigenous or settler have been used) problem has called to question the basis of citizenship in Ethiopia.

The problem associated with this development is the result of post 1991 state restructuring and the nature of FDRE Constitutions which emphasize what constitute self determination to “nations, nationalities and peoples” thereby creating indigeneship in a nation, and more importantly who is a citizen. This has led to distinguishing between national and local citizens and more importantly, it has made it difficult to promote citizenship and constitutionally guaranteed citizen rights particularly in the absence of any enforcement strategy or procedure. The right to self-rule of indigenes Vis a Vis the citizenship rights of ethnic migrants or settler problems in Ethiopia had become protracted due to the narrow definition of citizenship in theory and in practice. The common discernible denominator in virtually all the different ethnic conflicts involving the owners of a regional state and other citizens has been an ethno-nationalistic feeling that forecloses inclusive and legal connotations of citizenship.

Consequently, some questions become pertinent. These include but are not limited to the following:

Who is an Ethiopian? What are the qualifications for Ethiopian citizenship? Does one qualify as a citizen in any part of Ethiopia irrespective of his location, ethnicity and religious affiliation? Should such factors such as ethnic self-rule right, indigeneity, migration or any other extraneous factor determine/deny/limit what a citizen can enjoy or the level he/she can aspire to. These questions and other related issues bothering on the problems of citizenship in Ethiopia would be discussed. This is with a view to seeking to break the myths, addressing the realities and attempting a re- definition of the principle of self-rule/federalism in the light of the problems associated with citizenship in modern Ethiopia. Thus here is the need for a re-thinking or a redefinition of citizenship vis-à-vis other limiting factors; apart from involving or introducing changes that are capable of challenging the status quo, a re-thinking or strengthening of citizenship that will address the problem of indigene right to self-rule versus other citizens like immigrant ,settler or non-indigene.

Thus the major contention is, while the FDRE constitution has provisions for full and inclusive citizenship, the practice bestows this right on some and denies this to others. I argue that the nature of citizenship must be factored in, especially aspects relating to how and under what circumstances it is inclusive, and true and inclusive citizenship holds out the prospects for ending the current ethnic contestations and attendant violence, and for an alternative nation making strategy in Ethiopia. Thus for the purpose of the thesis Citizenship is therefore, conceptually tied-up with equality, inclusion, representation and participation in democratic states. It is this notion of citizenship as a set of claims between the state and those who occupy the territory within the state that informs the following discussion of citizenship in Ethiopia.¹⁰ In other words it is contention between unity Vis-à-vis diversity, as Taylor distinguishes between a politics of universalism and a politics of difference. The first, politics of universalism, emphasizes “the equal dignity of all citizens and the content of this politics has been the equalization of rights and entitlements”.¹¹ This politics of universalism rejects the existence of first-class and second-class citizens. Briefly, “with the politics of universalism what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the unique identity of this individual or group, their distinctiveness from everyone else”.¹²

The paper examines a set of links among ethnic self-rule right, and the conflict of interpreting the nature and construction of citizenship rights in Ethiopia, highlighting the importance of these links for critical and further study. Using a qualitative and descriptive theoretical approach to analyzing the issues under examination, the paper investigates the root causes of the binary concepts within a historical and political evolution of the Ethiopian state. Drawing from sufficient literature and analysis of prevailing events and sourced data on the issues, the argument is posited in the paper that Ethiopian’s post-1991 periods are evidently marked with the challenges of ethnic self-rule rights and citizenship rights for other like settler, migrant, The former which generate the mobilization of citizens on primordial and normative basis in sharp contradiction with the legal and constitutional expectations of citizenship in the state. These

¹⁰Lahra Smith, Implications of the 2005 Elections for Ethiopian Citizenship and State Legitimacy, *International Journal of Ethiopian Studies*, Vol. 3, No. 1 (Winter / Spring 2007),p.55

¹¹ Taylor, C. (1992) ‘The Politics of recognition’, p. 37 in Gutmann, A. (ed.) *Multiculturalism and the politics of recognition* (Princeton: N.J. Princeton University Press) p. 25-74.

¹² Id., p.38

have raised social, legal, political and intellectual questions and issues that affect the functioning of the Ethiopian government and society in the nation building process.

The aim of my research is to investigate the dual levels of citizenship and how they are presented and negotiated in the process of state creation in Ethiopia. The concepts of subjects, identity, ethnicity and nationalism are used as coding themes in the investigation of the research materials. Findings from my analysis show that state creation solely on ethnicity strengthens the citizenship of the ethnic groups thereby weakening that of individuals.

Furthermore the major problem of the study can be presented as follows: it is stated that under the FDRE constitution there remains a problem regarding the relation between the first generation rights (civil and political human rights), the second generation rights (social and cultural rights) and the special third generation rights as vested in the nations, nationalities and peoples of Ethiopia. If the first two sets of rights are properly respected and maintained, the third set does seem a bit superfluous. During the discussion of the Constitution in the Constitutional Assembly on 8 December 1994 there seemed to be a tendency to equate "human and democratic rights" with the rights of "nations and nationalities and peoples to self-determination". But the resolution of conflicts between individual rights and ethnic pressures, including the protection of individuals *within* 'nations, nationalities and peoples' is not specifically considered. While a catalogue of first generation human rights is enumerated in Chapter 3 (Articles 13 to 27) of the FDRE Constitution, their relation to the nationality rights (Articles 39, 47) could have been clearer. In a political sense, the latter may tend to overshadow the former. This problem has been and will present itself in any of the nine member states in the federation, because they all have their own minorities.¹³

Similarly Yonathan asserts that, Although the emphasis on groups rights overshadows all other equally important provisions of the Constitution, respect for universal individual rights is given equal status, though not equal attention, as that of collective rights, or as the Constitution puts it, 'the rights of nations, nationalities and people'. This is clearly stated from the outset in the preamble to the Constitution which emphasizes the "full respect of individual and people's

¹³Jon Abbink, *supra* note 1 at 171

fundamental freedoms and rights”. It also declares the need to “live together on the basis of equality and without any sexual, religious or cultural discrimination”. The Constitution also provides for a vast array of universal individual rights. Importantly, article 25 of the Constitution declares the right to equality and prohibits discrimination on grounds of, among other things, race, nation, nationality, or other social origin, language, religion or other status. However the practice does not reflect the equal status that the Constitution bestows on individual and collective rights. In fact, the major challenge in terms of accommodating ethnic migrant citizens is attributable to a political practice that gives more weight to collective rights and frustrates claims based on individual rights. For example, the language issue has often been used to block ethnic migrants from exercising their individual rights to participate in the political institutions of the regional states. The language criterion is often used to deny Amharic-speaking individuals from being elected to public offices including state parliaments. In some regions, individuals that do not speak the working language of the region are barred from contesting elections. As a result, the political participation of ethnic migrant citizens in state administration has been largely curtailed. This contradicts article 38 of the Constitution which declares the right of every Ethiopian national to take part in the conduct of public affairs, including to vote and to be elected at periodic elections, without any discrimination based on nation, nationality, language, religion or other status. Notwithstanding this, the denial of political rights of ethnic migrant citizens in regional states that do not use Amharic as their working language seems to have received legal backing in a case that was decided by the HF.¹⁴ Thus this has raised the question of citizenship in the post 1991 ethnic federal structure.

The FDRE Constitution envisages equal respect for both group and individual rights. This stems directly from the preamble of the Constitution which recognizes the need for “full respect of individuals and people’s fundamental freedoms and rights”. Second, it reiterated that language should not be used as a ground to exclude others from political participation. In other words, language should not be used in order to advance a claim of ownership of the region, implying that those that do not speak the indigenous language of the region are outsiders. The regional state belongs to all who live in it. That means, among other things, that ethnic migrants’ right to

¹⁴Yonatan Tesfaye Fessha, *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*, University Of The Western Cape, Faculty Of Law, PHD Thesis ,2008 p.476

participate in the political process should not be compromised on the ground of language. Any contrary view, be it based on pragmatic or normative considerations, has the effect of disenfranchising a large number of the population in most urban areas of the different regional states. This undermines the constitutional commitment to equal respect for individual and group rights. It also creates a feeling of exclusion among ethnic migrants. The decision of the House to sacrifice these basic constitutional commitments on a few pragmatic and technical considerations are, to say the least, difficult to justify.¹⁵ Thus even though there is rhetoric to the respect of inclusive citizenship and equal protection of group and individual rights, the practice has relegated most to a “citizen- minus status” in their country of origin.

Furthermore it is stated that there is a constitutional obligation of equitable representation that reflects the constitutional commitment to accommodate intra-state diversity. By ensuring representation of the different ethnic groups who are concentrated in specified territory within the state, it signals the message that each state belongs to all who live in it. This has been done through granting the right to statehood and the creation of special *Weredas/zones* by the state constitutions. The Constitution through the division of constituent units in a possible solution to internal demands for self-government, contribute to the accommodation of intra-state minorities that are concentrated in defined contingent territory. *Further it is stated that this is not an option which is available for ethnic migrant citizens who are not geographically concentrated. Thus creating a lot of tension in the protection of individual rights guaranteed in the FDRE constitution, for instance it is yet not clear if ethnic migrant citizens must also be represented in the state structures. It is stated that some of the solution to intra-substate minorities and ethnic migrant citizens must be sought within the territorial administration that these minorities find themselves in. Judicially enforceable universal individual rights represent one such response. In this regard, although the constitutional commitment to the observance of full respect to individual and collective rights is an important mechanism that can be used to protect individual citizens belonging to these particular groups, the practice is not encouraging. The disenfranchisement of ethnic migrant citizens, which has relegated them to a ‘secondary citizen’*

¹⁵ Id, p.478

of regional states, is a testimony to the failure of the constitutional practice to give effect to this constitutional commitment.¹⁶

The uneasy relation between the right to self-rule and rights of citizenship has manifested itself through conflicts that had taken place in Ethiopia after the establishment of ethnic form of federalism in various regional states between the ethnic groups that have been recognized as “indigenous/native” peoples of the region and those labeled as “others” but who have constitutional right to live and work there. For instance, the 1991 Gambela conflict between natives and settlers and in Benishangul-Gumuz national regional state too, inter-ethnic conflicts between the host and settler communities.¹⁷ The study particularly focuses on Benishangul-Gumuz Regional State(BGRS) which is one among those constitutionally established regional governments in light of the above paradigm. The thesis will explore the relationship between the right to self-rule and rights of citizenship in BGRS. The region is multi-ethnic in which various ethnic groups live together in tolerance and integration. But this does not guarantee the absence of inter-ethnic conflicts in the region. According to Alemayehu and MoFA, since the establishment of ethnic federalism, there have been numerous inter-ethnic conflicts, particularly between those who have been identified as “host” with the right to self-rule and “settler” citizens.¹⁸ Among the major cause is the political representation of these citizens and other rights that ultimately require on issues of citizenship in Ethiopia. This study is, therefore, designed to investigate in light of the above assertion inter- relationship between the rights to self-rule and rights of citizenship in Benishangul-Gumuz Regional state(BGRS) with particular emphasis on Asossa *Woreda* which consist of the largest number of “host” ethnic group with the constitutional right to self-rule” and other immigrant citizens and settler.¹⁹

¹⁶ Yonatan Tesfaye, *Supra* note 14 at 481

¹⁷ Dereje Feyissa, ‘The Experience of Gambela Regional State’, in Turton, D. (ed.), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, (Athens: Ohio University Press), 2006, p.215

¹⁸ Alemayehu Fentaw, *Conflict Management in the Ethiopian Multi-national Federation*”, Unpublished MA thesis, European University Center for Peace Studies, Austria, 2009, P.58. See also Ministry of Federal Affairs (MoFA), *Institutional Support Project draft report on Conflict and Conflict mapping in and around Benishangul-Gumuz Regional state*, Addis Ababa, 2006, P.32

¹⁹ Central Statistical Authority (CSA), *Summary Statistical Report of the 2007 Population and Housing Census Results*. Addis Ababa: *Office of the Population and Housing Census Commission*, 2007, p.75

1.3. Objective of the study

1.3.1 General Objective

The overall objective of this study is to investigate the relationship between the rights to self-rule of ethnic groups and rights of citizenship of others that is guaranteed to all citizens in the post 1991 Ethiopian Ethnic Federalism with specific reference to the experiences in Asossa Woreda of Benishangul-Gumuz Regional State (BGRS).

1.3.2 Specific Objectives

In line with the major objective, the study aims to:

- Identify the limits and scope of the rights to self-rule of nationalities in Ethiopia in general and in the study area in particular.
- Investigate factors contributing to the deteriorating or better relation in regard to the rights to self-rule and rights of citizenship in the study area;
- Examine the meaning and sense of citizenship rights and Ethiopianess in the post 1991 Ethiopian Ethnic Federalism
- addresses the constitutional and federal set up in the post 1991 particularly the nature of the federal structure, the rights of ethnic groups to self-determination and self-rule, the different nation building effort in Ethiopia and the place of citizenship, the relation among citizenship and individual rights and group rights under the constitutional setup, the problem of citizenship in light of the minority – majority tensions in the federal Ethiopia, the major manifestations of the right to self-rule and rights of citizenship in Ethiopia will be identified particularly the right to self-rule and the rights of citizens to equality and non-discrimination, the right to self-rule and citizens right to work, movement property and right to political participation will be analyzed.
- Examine the right to self-rule and rights of citizenship taking particularly Asosa wereda in light of the above theoretical framework. It tries to explore the relation and the tensions between the two rights in light of the federal and regional constitution within the purview of international agreements Ethiopia has ratified.
- To suggest possible ways of balancing the rights of self-rule and rights of citizenship in a constructive manner

1.4. Research Questions

Based on specific objectives, this research study aims to answer the following questions:

- Whether Ethnic federalism prevents the development of a country-wide overarching citizenship.
- Whether, in deeply divided societies attempting to democratize, there is an inherent tension between the notions of civic republican citizenship and liberal citizenship?
- Critically assesses the complex interplay between Ethiopia's policy of federalism and the notions of citizenship rights and national identity.
- Whether the post 1991 federal arrangements results in the infringement or respect of the rights of equal and free citizenship at local and regional level?
- What are the most prevalent manifestation of the conflict between the rights to self-rule and rights of citizenship in the study area after the 1991 Ethiopian Ethnic Federalism?
- Whether the recurrence of ethnicity and citizenship question generate the inclusive nature of citizenship in Ethiopia?
- What are the factors escalating the contradiction between the rights to self-rule and the rights of citizenship in the study area?
- Whether the federal form in Ethiopia sustained in the domain of respecting *individual* human rights *within* the ethno-regions
- What are the mechanisms and institutional response used to solve the conflict between the rights to self-rule and rights of citizenship to reach a balance in a constructive manner?
- Why is the recognition of group and individual rights in Ethiopia?
- Why is the recognition of individual rights in Ethiopia insufficient to protect the rights of ethnic groups?
- What are the blurred lines between multicultural/recognition//diversity and citizenship?
- Is recognition inconsistent with the basic principles of liberal democracy? Or does the concession of a special status to certain ethnic groups, contradicts the principles of individual freedom and equality?

1.5. Significance of the Study

This thesis focuses on the right to self-rule of nation and nationalities Vis-a-Vis rights of citizenship. Using the BGRS Asosa Wereda as a case study, it sets to examine whether institutional designs in a form of ethnic federalism guaranteeing the right to self-rule to ethnic

groups is creating a hurdle to the protection of universal rights of citizens recognized in the FDRE constitution and international instruments. It further points out that federalism, if it is to work best, needs to be complemented by certain other processes and structures: the rule of law, democracy and the culture of human rights in particular. The thesis examines the relevance and place of universal individual rights in a multi-ethnic society. Furthermore it is inevitable to have widely competing interests in an area that have different ethnic and cultural backgrounds. Especially the senses of ownership of regional state by some ethnic groups and the feeling of aliens and sense of second citizenship by others will create conflicts. Thus investigating the dynamics of relation between the rights of self-rule and rights of citizenship as envisaged in FDRE constitution and practical situations will help to prevent further alienation and create better outcomes in accommodating all to the nation building process in Ethiopia. This research study then will have at least the following significances among others:

- Additional contribution to the works that have already been done on the rights of minority but with different perspective of belonging to the nation state as equal citizens and relate it with the notion of right to self-rule in post 1991 ethnic federalism.
- Assist and identify better ways to solve conflict between the rights to self-rule and citizenship in constructive outcomes in Ethiopia in general and the study area in particular and
- Finally can be a spot light for those scholars who want to do further research on the issue at hand in the study area and in Ethiopia.

1.6. Research Methodology

1.6.1 Study Area, Population and Sampling

The central focus of this research study is Asossa *woreda* in Asossa zonal administration, found in the western part of Ethiopia, nearly 700 kilometers North West of Addis Ababa City. There are seven *woredas* in Asossa zonal administration. Among those, only Asossa *woreda* is selected for the purpose of the study. Because of the difficulty to include all people in this study, the research included 85 participants through purposeful and snowball sampling among the study population. The selection criteria of *kebeles* are based on experiences and vulnerability to conflict regarding the right to self-rule and rights of citizenship.

1.6.2 Sources of Data

The study used both primary and secondary sources. The primary sources of data are people living in Asossa *woreda* who have different societal status (men, women and the youth) such as elders, *kebele*, *woreda* and zonal administrative personnel, judges, police and security officers, who have sufficient knowledge about issues related to rights to self-rule and rights of citizenship, whereas the secondary sources include official documents and related literature.

1.6.3 Methods of Data Collection

➤ **Key Informant Interview**

There were people selected in a purposeful sampling who have an ample knowledge and experiences regarding the rights of self-rule and rights of citizenship, possible sources of un/balance and mechanisms used and the challenges and prospects for sustainable peace. The researcher then developed semi structured questions in the form of oral interview with those who actively taken part in the process governance and private business in the study area (see Appendix I). The interviewees were selected based on purposive sampling techniques by considering their active involvement in the process of governance and social movement in the region. Accordingly the researcher interviewed 85 participants.

The site-specific exploratory interviews were conducted in villages purposively selected upon the criteria listed in the methodology part of this study. The main research site is the Assossa District with selected nine villages and Asosa city, khomosh, Sherkole, kumuruk, Gizen and Bambasi district was chosen as supplementary with concentrating on their capital town. The involvement of these District towns besides Asosa serve as favorable settings for investigating especially for informants coming from non-visited villages and in order to have whole picture of BGRS. As I already noted, the towns were the setting for systematic and purposeful observation and discussion about the socio-economic and political practices and interaction relevant to the study.

➤ **Focus Group Discussion**

On the other hand, the researcher conducted two equally sized focus groups discussions, each having twelve participants. This method is used to gather data on the practice of self-rule in the region, and the feelings and attitudes of the community on citizenship rights and relation with the application of the right to self-rule, the role of the community in governance, and potential

values or elements in the community particularly on creating favorable environment to all without discrimination and inclusiveness (see Appendix II). Participants for focus group discussion were selected in snowball sampling technique considering age, roles in the community, participation in the conflict and conflict transformation process. The researcher's role in this case is limited to facilitation and posing questions when necessary.

➤ **Document Analyses**

The researcher also conducted necessary and reliable information by reviewing the available documents and made a link/ connection between different variables contributing to the problem and to the possible solutions. The methods helped the researcher to cross-check and triangulate the data obtained through interview and focus group discussions. In this case, data available in the form of recordings at *woreda*, files, official reports, letters, and memo were used. Further the research takes the form of a study of all relevant literature, including law journal articles, books, case law and other relevant materials. The Ethiopian system is examined by reviewing the Constitution, relevant legislation, literature, minutes of the Ethiopian Constitutional Assembly, government reports and other relevant documents

➤ **Observation**

Beside the information obtained from the participants through the various mechanisms above, the researcher also made personal observation throughout the study and took field notes, whether the living situations there in the study area and the whole condition were or were not in line with the right balance between the right to self-rule and rights of citizenship, relation and feeling of peoples on the issues of the paper.

1.6.4 Method of Data Analysis and Interpretation

After selecting the sample population and collecting the necessary data the next step was analyzing and interpreting the data obtained. In analyzing and interpreting the data, the researcher sorted out the information or the raw data into the category they belong to and gave meaning to those data obtained from primary and secondary sources through thematic organization and triangulation.

1.7. Scope of the Research

This research study is limited to Asossa *woreda* in Benishangul-Gumuz Regional State of Ethiopia investigating the relationship between the right to self-rule and rights of citizenship from

theoretical and practical view point. The study further investigated the causes, sources and the possible solution to redress problems in achieving balance in the right to self-rule and rights of citizenship through constructive institutional and legal framework. Further the study is about those citizens in the different regional administration in Ethiopia who can be called “Those Who are Left Out” of self-government and the question of their citizenship entitlements: individual and collective rights.

1.8 Limitation of the Research

There were several limitations from the outset that made the road difficult to accomplish the task but the researcher tried his maximum effort to produce this Thesis. Among the most challenging limitations, unwillingness/fear of research participants to discuss the issues of the paper and to take tape recording and photographing were critical ones. The researcher then tried to jot down every point as much as possible. Others such as time and financial constraints were also obvious limitations as usual.

1.9. Ethical Considerations

All research participants who were involved in the study up on their willingness and consent. Research participants were told about the objectives of the research before the interview and FGD started. Regarding the right to privacy, the research withholds the identity of each participant. In all cases, names are kept confidential thus collective names like “informants” and “FGD participants” were used in the study.

1.10. Structure of the study

The thesis will be presented as follows: the First chapter presents the introductory issues like the major research questions, objective and background to the study and other points regarding research methodology. Chapter Two discusses the process of nation building and citizenship in Ethiopia. Further it addresses the issues of individual and group rights paradigm in the politics of Ethiopia and constitutional document. The third chapter examines the state re-structuring in the post 1991 era, concept and challenge of federalism, self-rule, self-determination in Ethiopia. It explores the constitutional process from the nation-state paradigm towards the recognition of ethnic diversity and its impact to citizenship practice and theory. It explores the shift in constitutional right and making based on individual rights to the notion of “nations, nationalities and peoples” as a mode state structure and right holders.

Chapter four lays the theoretical base for the right of citizenship and its relation with ethnicity and national identity. It seeks to locate the meaning and types of citizenship and the nature in the multi ethnic constitutional and political development.

Chapter five is about the rights to self-rule and rights of citizenship in Ethiopia and it theorizes its major manifestation in the post 1991 ethnic federalism, the meaning and extent of citizenship rights and seeks to locate the place of minority and “those who are left out” in the context of the federal arrangement and the mechanism adapted to problems associated with minority and majority in the post 1991 ethnic federalism. It tries to outline the relationship between the right to self-rule and rights of citizenship in the post 1991 ethnic federal Ethiopia

This is followed by Chapter six which focuses on the rights to self-rule and rights of citizenship taking the case of BGRS Asosa wereda as a case study. It examines the uneasy relation by taking fundamental universal right like the right to equality, right to political participation, the right to movement and residence, the right to property and the right to work Vis a Vis the right to self-determination of the titular groups in the regional state.

Chapter seven concludes the journey of this thesis by doing two major things. First, it summarizes the major findings of this study. Second, it proposes key recommendations that may assist multi-ethnic states in recognizing and providing practical expression to the ethnic plurality that characterizes their society and at the same time guarantee universal rights of other citizens thereby assure to build an all-inclusive state.

Chapter 2

STATE BUILDING AND CITIZENSHIP IN ETHIOPIA: - PARADIGM SHIFT

2.1 The Process of State Building: Theory and Practice

A common assumption of modernization theorists, as well as of third world political activists of that era (1960s), was that the process of modernization would lead inexorably to the breaking down of and the ultimate demise of traditional institutions based upon communalism, in their places would emerge modern liberal institutions characterized by individualism. Moreover it was assumed that as a result of conscious national government policies of integration, cultural diversity would give away to more homogeneous cultures. Yet, almost five decades later, in many parts of the developing world this has not completely happened.²⁰ Craig Calhoun notes that, “neither nationalism nor ethnicity is vanishing as part of an obsolete traditional order. Both are part of a modern set of categorical identities invoked by elites and other participants in political and social struggles”.²¹ In a similar vein Benjamin Barber contends “the planet is falling precipitously apart and coming reluctantly together at the very same moment.”²²

From the above we can take the challenge of nation building and the different model applied in history and present time. In many parts of the developing world, the challenge facing state and nation builders is to construct viable multi ethnic or multinational states. Nowhere is this truer than in Africa, where even though they have been eroded, traditional values, institutions and more continue to exert considerable influence over various segments of social life. For example, even though national governments routinely seek to instill in general population a sense of liberal citizenship and to organize political life accordingly, civic republican citizenship is often found to be at odds with such objectives.²³ This reality presents particular problems in deeply divided society, where national governments have attempted federal solution to reduce the perception among some religious, ethnic or nationality groups that have been and continue to be systematically discriminated against at the expense of other more favored groups.²⁴

²⁰ Edmond J.Keller and Edith M.Omwami, Federalism, Citizenship and National Identity in Ethiopia, *The International Journal Of African Studies*, Vo.6,No.1, 2007,p. 37

²¹ Calhoun Cairg, Nationalism and Ethnicity, *Annals Review Of Sociology*, V.19,1993,p.211

²² Barber Benjamin. *Jihadi Vs. Mac World*, New York:Times Books, 1995,p.4

²³Edmond J.Keller and Edith M.Omwami, supra note 20 at 38

²⁴ Id.,p.38

The term nation is also often confused with the term state. The two terms are used interchangeably. The one is considered as synonym for the other. It is not clear how this inter-utilization of the terms nation and state has developed. Thus owing to the misunderstanding of a nation as the people or the citizenry, the terms nation and state has consequently come to mean the same thing. Hence why the French Declaration of Rights of Man and Citizen proclaimed that “the source of all sovereignty resides essentially in the nation; no group, no individual may exercise authority not emanating expressly there from”.²⁵

What is intriguing is that the habit of inter-utilizing nation and state developed despite the fact that there is a frequent usage of the term nation state. It is intriguing because the very fact of using the term nation-state illustrates an appreciation of the vital difference between the two terms. The term nation–state is designed to describe a territorial–political unit (a state) whose borders coincided or nearly coincided with the territorial distribution of a national group. In a nation–state, the cultural (nation) and the political (state) are in alignment. The ‘people’ who are governed by the institutions of the state are by and large culturally homogeneous in having a strong and common linguistic, religious and symbolic identity. It is, in short, a term which is developed to express a state of affairs in which a nation has its own state.²⁶

The nation–state that combines one state with one nation is often regarded as optimal and ideal. A survey of all the countries around the world would, however, reveal that only very few of them qualify as nation–states. Connor points out that only less than 10 per cent of the states around the globe can be considered as nation–states.²⁷ Another scholar, Charles Tilly, states the same thing about countries in Europe. He claims that very few European states qualify as nation–states. Even in those states, which have a nation or potential nation accounting for more than 90% of the state’s total population, there is often an important minority. In many others, the largest ethnic element accounts for 50% to 74% of the population or for less than half of the population. This says the ‘state’ rarely coincides with the ‘nation’. That is why the existence of a nation–state is often considered a dream as much as a reality.²⁸ Had the world been composed of nation-states,

²⁵Connor, W. , ‘*National self-determination and tomorrow’s political map*’ in Cairns, A. (ed.) *Citizenship, diversity and pluralism* (Montreal: McGill–Queen’s University Press) (1999) P. 163-177

²⁶Yonatan Tesfaye, supra note 14 at 40-41

²⁷Connor, supra note 20 at 40

²⁸Hasting, A. *The construction of nationhood: Ethnicity, religion and nationalism* (Cambridge: Cambridge University Press), (1997), p.3

there would have been no problem in the inter-utilization of the term nation and state.²⁹ That unfortunately has not been the case though the world is often described as one of nation-states. As the section that follows shortly reveals, neither has the inherent tendency of most ethnically plural states to transform into a nation–state has become a reality. In fact, the root problem of conflict-driven multi-ethnic states often lies, as the following section argues, in this propensity to transform an ethnically diverse state into a homogenized entity, a nation-state.³⁰

Similarly Christophe Van der Beken states that “In Africa, nation and state building strategies aimed at weakening ethnic affinities in favor of a national identity prevail. They are based on the hope that, in this way, the attachment to the ethnic group will transform into an affinity for the state. However, many conflicts show that these strategies have not been successful in the slightest in erasing the ethnic identity of African citizens and guaranteeing the stability of the African state. Accordingly, as we will see in the next section, in Ethiopia where the government has, for over 15 years now, chosen to base the development of national identity explicitly on the recognition of the ethnic diversity of the population: hence unity in diversity.”³¹

Thus what is the ideal process in nation building process? Among scholars it is stated that a nation-building process needs to generate, for all members of a nation, the feeling of belongingness in the sense of the “we” in relation to the “others”. For composed nations such a nation-building process needs to unite diversities through common values shared by the respective ethnicities and distinct from values of the particular nations. Further it is stated that Universal values such as rule of law, democracy and human rights by themselves will not bring diversities together because they apply too broadly to mankind and not particular federal polities. Thus it is recommended that a more specific value could be federalism, direct democracy or the bottom up process of a consensus driven democracy with a concept of regional autonomy close to collective group rights. If values that hold and bring the concerned nations together are

²⁹ Connor, supra note 20 at 40

³⁰ Yonatan Tesfaye, supra note 14 at 42

³¹ Christophe Van der Beken, *Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia*, *Proceedings of the 3rd European Conference on African Studies (ECAS)*, 2009, p.1 (available at http://www.unileipzig.de/~ecas2009/index.php?option=com_docman&task=cat_view&gid=31&Itemid=24)

Accessed On July 2013

commonly accepted, the composed nation can build a new feeling of a broader “we” including all nations within the polity. Such a nation-building process, determined by democratic decision making processes that involve the entire society by elections or by votes on referenda can create the necessary feeling of togetherness and belongingness. However in this model it is asserted that a Processes with the aim of nation-building that discriminate within the procedure against one or several communities, will never achieve a common feeling of togetherness. Thus only, if an equal footing is respected, will the nation-building process have a chance to integrate the less numerous nations into an overall composed nation.³²

Thus contrary to the integrationist perspective based on individual right it is recommended In views of most of the academic literature that, multi-national or multi-ethnic federalists advocate federation to unite people who seek the advantages of membership of a common political unit, but differ markedly in descent, language and culture. They seek to express, institutionalize, and protect at least two national or ethnic cultures, on a durable and often on a permanent basis. Any greater union or homogenization, if envisaged at all, is postponed for the future. They explicitly reject the strongly integrationist and/or assimilations objectives of national and/or post-national federalists, and see these as nation destroying rather than nation-building.³³

In other words diversity in the past was usually not considered as a foundation for the building of a polity. Traditionally constitutions either denied diversity as a basic element for the nation-building, pretending rather that the nation is composed only of citizens, or they built on the majority culture of the nation (e.g. Germany). “Immigration countries” have often tried to integrate the diversities of the immigrants based on a “melting pot” concept.³⁴

The underlined rationale here is that “if the nation is an “imagined community” then the various diversities also have to be incorporated within the “composed nation”. Difficulty arises when there are attempts to “manage” identities and when an “official nationalism” emanates from the nation state, serving not the people but the state structure. This difficulty can be overcome if the concerns of diverse groups are accommodated within concerns for the proper and just functioning of the state. Once the state is just in its treatment of the constituents of society, the

³²Akhtar Majeed and et.al supra note 2, at 10

³³ McGarry, John, O. Leary Brendan, “Federation, as a Method of Ethnic Conflict Regulation”, Forum of Federations, 2010, p.10, Available @ www.forumfed.org accessed on 10th July 2013.

³⁴Akhtar Majeed and et.al supra note 2, at 11

latter are less likely to have difficulty in recognizing the legitimacy of the composed nation state. In a liberal federal democracy, respect for various differences and loyalties may be viewed as loyalties towards the inclusive nation.”³⁵

However contrary to the loyalties towards the inclusive nation, most federations composed of different diversities are confronted with the claims of multiple loyalties. In particular political leaders in the less numerous communities often foster the loyalty of their “nationals” against loyalty towards the majority nation. Such controversies turn often into violent ethnic conflicts. In order to solve this it is recommended that Federations composed of diversities need to accept and develop the multiple loyalties of their citizens. The Swiss federation for instance has a distinctive three folded citizenship concept. Each Swiss national needs to be a citizen of its municipality and its canton in order to become a Swiss citizen. This legal concept of citizenship reflects the acceptance of the principle of multiple loyalties as a foundation of the Swiss diversity.³⁶

Furthermore it is stated that “diversities should not be tolerated only as a special burden by the majority. Diversities in fact enrich the polity with additional values. Only by granting autonomy, which can foster the diversities and the different identities, are federations able to profit from this enrichment. By providing autonomy to different communities a federation both builds on and fosters the diversities. By enhancing diversities it enables all inhabitants of the country to feel at home within their motherland. A country challenged and enriched by its diversities has to build on these diversities. This again requires that the diversities are given the possibility to develop according to their own ideas, values and interests. Only when the diversities are able to define themselves and build on their own self-consciousness are they able to cooperate on a basis of partnership with other diversities and thus contribute to the added value of the common nation. Autonomy guarantees that communities develop from the bottom up in order to achieve finally the overall composite identity of the federation”.³⁷

Autonomy as a tool to accommodate diversities is often rejected with arguments that it prepares the way to secession, leads to disintegration, undermines solidarity within the state, and creates important inequalities. Consequently autonomy is often regarded as an impediment to integration

³⁵*Id.* p. 20

³⁶*Id.* p.11-12

³⁷*Id.* , p.15

and instead, as pointed out above, systems of multiethnicity based on individual human rights are advocated in the belief that minorities will be able to foster their special identities within the melting-pot or multi-ethnic system.³⁸

However it is asserted by federalism scholars that “federations with the guarantee of strong autonomy for their constituent units have in fact had the opposite experience. Indeed, strong autonomy has often fostered the real accommodation of diversities because unity can only be sustained on the basis of mutual respect and tolerance. If the citizens feel at home and secure within their regional and local community, they are more willing also to identify as citizens of the larger federation. They will be convinced of the win-win benefit from being part of a federal system. They can both foster their identity within the constituent unit and profit from the advantage of the bigger state through cooperating in the shared rule with other diversities at the central level of the federation.”³⁹

Furthermore as pointed out above Autonomy as a tool to accommodate diversities is often rejected with arguments that it prepares the way to secession, leads to disintegration, undermines solidarity within the state however it is asserted that the options of political divorce or secession as the answer to the ethnic turmoil that characterizes many of the African states is not a such practical in terms different perspectives. Akhtar Majeed and et al. states that “First of all it would not be difficult to imagine how this could easily give rise to protracted border crisis in countries like Nigeria that alone contains more than two hundred distinct ethnic groups. Added to this is also the non-viability of small ethnic states that may emerge as a result of the redrawing of the map of the continent. Further it is not at all clear if political divorce is the first priority of all communities as some might forgo secession in favor of securing a substantial measure of self-government within a larger and stronger accommodative state or some form of recognition of their identity within a larger political partnership. The impossibility of having neatly divided ethnic groups even after a complete redrawing of the map of the continent (unless through ethnic cleansing) therefore works against the viability of the secession option. The international community is as well very reluctant to countenance secession as the solution for ethnically

³⁸ Id.p.14

³⁹Ibid

fractured states. Motivated by the need for maintaining the stability of world order, this suggests that political divorce should be considered only as a last resort.”⁴⁰

Thus the diversity model of nation building asserted that “a policy that pursues national unity at the expense of ethnic diversity has seldom succeeded. Leaders of these states, under the guise of national unity and development, developed an ethnocratic state, a state which is controlled by one or some ethnic groups and predicated on the subjugation of others. Far from attaining its desired objective of creating an ethnically monochrome state, it has been the reason for the proliferation of ethnic-based movements. The experience of multi-ethnic states generally suggests that states should move away from this artificial nation-state building project.”⁴¹

What the paper presented above is the different model of nation state building model, however, there is little agreement on the path that states must take in order to tackle the challenges of ethnic diversity. Some suggests, as presented above, recognition through autonomy and political divorce or secession as the answer to the ethnic turmoil that characterizes many of these states. Others advise these states to rely on universal individual rights. In the next paragraph we will see the individual right based nation building model.

As stated above, the other alternative that states have adopted to deal with the challenges of ethnic diversity is to constitutionally guarantee universal individual rights irrespective of ethnic, gender, race and other group memberships. This individualistic approach, some argue, goes a long way to in terms of responding to the challenges of ethnic diversity. The individual rights approach of liberal democracies to the challenges of ethnic diversity would not have been problematic in a nation-state where the cultural group coincides with the boundaries of the state. In such states universal equal treatment suffices. The question is whether a liberal state, as it exists now, with its predominantly individualist orientation, will be able address the demands of ethnic groups in a multiethnic society or does it need to be supplemented by other institutional measures that respond to the needs and demands of multi-ethnic states.⁴²

Yonatan states that “the claim made by liberals that the state has to remain neutral in relation to ethnic relationships, that it has to leave the matter to these called ‘cultural market place’, is in

⁴⁰Yonatan Tesfaye ,supra note 14 at 48-49

⁴¹Id, p.47

⁴²Id. p. 57

effect a call for the separation of state and ethnicity. According to the liberals, the ‘cultural market place’ should rather decide if a certain culture is going to survive or decay. The state should not interfere with the operation of this market place. The argument for separation of state and ethnicity is often reinforced by making reference to the principle of separation of church and state, which requires the state to remain neutral on religious matters. The separation of state and religion requires the state not to officially recognize or assist any particular religious group. By the same token, the state should not endorse or support the culture and language of any particular cultural group. In short, there should be a “benign neglect” of ethnic and national differences”⁴³.

Yonatan refute on the capacity of the individualistic approach to effectively respond to the challenges of ethnic diversity. He contends that universal individual rights must be supplemented by institutional principles that give practical effect to the act of recognition in a federal setup. The individualist liberal position relies on the principle that treats people as individuals. For this position, rights cannot be asserted or articulated in terms of groups. It does not see groups separately from the individuals who compose them.⁴⁴ The individual Vis a Vis group dilemma will be discussed in more detail in section 2.3 but in this section the major position and suggested pitfall will be presented.

Opponents to the Individualist liberal position goes far to show the major pitfall. The first is they states that “Individualist liberal position lack of consistency in its application of the individualist principle.⁴⁵ Proponents of this same position do not, however, hesitate to establish territorial borders and treat some individuals differently from others on the ground that the former do not belong to the state. The problem with this position, a position that allows one to exclude others based on the criterion of citizenship, is that it relies on the same classifications that it intends to avoid. It relies on the same vocabulary that proponents of group rights use to defend and promote the culture and language of ethnic groups: Group-specific rights”.⁴⁶

Furthermore the major criticism on the individual rights model in multi-ethnic states is stated that“the traditional civil and political rights that merely consider individuals as equal citizens,

⁴³ Id. P. 58

⁴⁴ Id.p.12

⁴⁵ Addis, A., ‘Cultural integrity and political unity: The politics of language in multilingual states’ Vol.33, (2001) (fall) *Arizona State Law Journal* ,p. 747

⁴⁶Yonatan Tesfaye , supra note 14 at 57

regardless of their particular identities, cannot adequately address questions that arise in relation to ethnic and national groups: “Which language should be recognized in the parliament? Courts? Should each ethnic or national group have publicly funded education in its mother tongue? Should internal boundaries be drawn so that cultural minorities form a majority within a local region? Should political offices be distributed in accordance with a principle of national or ethnic proportionality?”⁴⁷ Of course, states may adopt a culturally neutral language as it the case with most decolonized states in Africa but this is not an option that is always available. If the state is going to effectively address these questions and thus accommodate cultural diversity, it needs to supplement individual rights with institutional measures that represent an acknowledgment of its multiethnic reality.⁴⁸

Similarly as stated by Kymlicka it is more here strengthen by Yonatan here as he refutes that the claim by the individualist for the separation of state and ethnicity as follows “It may be possible for the state not to have an established church. However, it is seldom possible for the state to remain neutral to cultural differences. When the state decides to adopt an official language, when it decides to draw the boundaries in a certain manner or when it officially considers certain days of a year as a public holiday, it tend to promote the culture of a particular ethnic group. Despite what proponents of liberalism insist it is not also evidently clear that political peace and harmony will be guaranteed only if people are treated as individuals rather than as members of a group. In fact, there is overwhelming evidence that indicates the contrary. The failure to recognize an ethnic group or deny the rights of a group has often resulted in ethnic strife. This suggests that citizens in a multi-ethnic state will keep their allegiance to the larger state when they see their identity being endorsed by the state. It is, thus, submitted that individual rights approach is a necessary but not sufficient approach to deal with the challenges of ethnic diversity. A state’s list of fundamental civil and political rights needs to be supplemented by other measures that reflect the recognition of ethnic diversity”.⁴⁹

Thus in order to fill the gaps in the individual approach it is recommend that “A multi-ethnic state has to rather focus on other ways through which it can respond to the challenges of ethnic

⁴⁷ Kymlicka, W. ‘Federalism, nationalism and multiculturalism’ in Karmis, D. and Norman, W. (eds.) Theories of federalism (New York: Plagrave Macmillan) (2005) p.4,6

⁴⁸ Yonatan Tesfaye , supra note 14 at 59

⁴⁹ Id. p.60-61

diversity without trying to transform itself into a nation–state. The principle of recognition provides one such alternative. According to this principle, it is not enough to protect only universal individual rights. The common rights of citizenship are not adequate enough to provide protection to ethnic claims. If the needs and demands of ethnic groups are to be accommodated, the state needs to recognize its multi-ethnic character. It must supplement universal individual rights with institutional measures that reflect the recognition of ethnic diversity. One form of institutional response is the adoption of some sort of federal arrangement as the basis for the organization of multi-ethnic states. Broadly speaking, this includes the right to manage own affairs, according to which a group is allowed to exercise some form of political and/or territorial autonomy, and the co-management of the multi-ethnic society, which among other things, could require the representation of the different ethnic group in important national institutions”.⁵⁰

In sum the most important challenges of in both the integrationist and diversity principle of nation building process is the principle of equality. What has to be considered as equal: each individual or each community notwithstanding the number of its citizens? For the French, with the concept of the unitary state based on the individual “citoyen” the answer is clear: only equality of the individual citizen counts. Based on this concept minorities, and in particular diversities and thus ethnic communities, will have to be ignored as political entities. The other extreme would be to consider only the equality of each community. This is in principle the concept of international law that considers all sovereign states as equal no matter what their size. Which should have priority: equal rights of citizens or the right to be equal as a member of a community?⁵¹

Thus in order to answer the dilemma on the principle of equality it is recommended for the formation of bicameral house particularly it is stated that “A bicameral federal system can provide a valid compromise for such a dilemma by providing a two-chamber legislative structure—one chamber composed according to the number of the citizens and one chamber composed according to the number of the federal units. The difficult issues with regard to

⁵⁰Id. p.69-70

⁵¹Akhtar Majeed and et.al supra note 2 at 12

different quotas in the second chamber and to the relationship between the chambers will then still have to be decided.⁵²

2.2 THE PROCESS OF STATE BUILDING IN ETHIOPIA: Forging a Multinational State

Ethiopia is the multi-ethnic, multi-linguistic and multi-faith Ethiopia. A little less than eighty ethnic groups, speaking twice as many dialects, inhabit the country. With no single ethnic group accounting for the majority of the population, however, Ethiopia, like most other African states, can be appropriately described as a country of minorities.⁵³ The era of Menelik, unlike that of his predecessors', not only saw the consolidation of the historical Abyssinian Kingdom under one rule but also its expansion beyond Shewa into the southern part of the present day Ethiopia. Motivated by the need to control the source of the lucrative long-distance trade, the expanding forces of the Menelik army brought under their control most of the people in the south and territories that were never brought under the effective control of Ethiopian rulers that came before Menelik. It was during this period that Ethiopia achieved its present shape as well as its diverse demographic and social character. The process of expansion took different forms. While some of the groups in the South submitted to the Menelik rule peacefully, others had to fight brutal wars before they were finally defeated and incorporated into the Empire.⁵⁴

There was a disjuncture between the southern population and the northern rulers in terms of language, religion and other aspects of culture. Amharic, the language of the Shewa Amhara and most of the northerners, was made the lingua franca of government's business in the South, which is home to more than seventy different languages.⁵⁵ Although the expansion of the Empire had brought under its rule a large number of Muslims, the monarch continued to present Ethiopia as a Christian state. Ascendance to a political office required assimilation to the culture of the northerners. In sum, economic marginalization as well as cultural and political alienation characterized the rule of the northerners over the newly conquered South.⁵⁶

What can we infer from the above nation building process in the imperial (1855-1974) regimes, is that ethnicity was extremely politicized and polarizing. The imperial regime simply repressed

⁵²*Id.* p, 12

⁵³ Yonatan Tesfaye, *supra* note 14 at 322

⁵⁴ Yonatan Tesfaye, *supra* note 14 at 335-336

⁵⁵ Markakis, J., 'Conflict in prefederal Ethiopia' in *First national conference on federalism, conflict and peace building* (Addis Ababa: United Printers) (2003), p.12.

⁵⁶ Yonatan Tesfaye, *Supra* note 14 at 340

the ethnic or nationalist sentiments, attempting to impose on the population at large a sense of belonging and allegiance to a multi-ethnic nation. However, in the end this strategy proved a failure, and the imperial system was deposed in 1974.⁵⁷

Furthermore in the process of nation building in Ethiopia the role of the student movement and peasant's rebellion had greater impact. "The rebel movements in Bale and Eritrea undoubtedly influenced the critical stance of the students, but the impact of Marxist-Leninist ideas was also responsible. Marxist-Leninist ideas about the 'nationalities issue' were applied to Ethiopian society. Taking into account the above-described nation and state building strategy of the imperial regime, it is obvious that Marxist-Leninist literature on the national question had a particular relevance for Ethiopia. Marxist-Leninist ideas clearly influenced Ethiopian students when they discussed the ethnic issue in Ethiopia. In 1969, the student magazine *Struggle* published a number of articles, which tackled Amhara dominance over the other ethnic groups."⁵⁸ Especially an article written by Walleign Mekonnen has gained notoriety. In his article, Walleign radically contested the official assimilation policy. He recognized the ethnic diversity of the Ethiopian population: "*Ethiopia is not really one nation. It is made up of a dozen nationalities, with their own languages, ways of dressing, history, social organization and territorial entity. And what else is a nation? Is it not made of a people with a particular tongue, particular ways of dressing, particular history, and particular social and economic organizations? Then may I conclude that in Ethiopia there is the Oromo Nation, the Tigray Nation, the Amhara Nation, the Gurage Nation, the Sidama Nation ...*"⁵⁹ Therefore, he continued, a new state has to be built, a state in which "*all nationalities participate equally in state affairs, where every nationality is given equal opportunity to preserve and develop its language, its music, its history, ...a state where no nation dominates another nation be it economically or culturally.*" He even accepted secession "*As long as secession is led by the peasants and workers and believes in its internationalist obligation...*" although the ultimate

⁵⁷ Edmond J.Keller, *Revolutionary Ethiopia: From Empire To People's Republic*, Bloomington, Indiana University Press, 1988

⁵⁸ Randi Ronning Balsvik, 'An Important Root of the Ethiopian Revolution: The Student Movement,' in Abebe Zegeye and Siegfried Pausewang (eds.), *Ethiopia in Change – Peasantry, Nationalism and Democracy* (London/New York: British Academic Press, 1994), p. 84.

⁵⁹ Walleign Mekonnen, cited in Sarah Vaughan, *Ethnicity and Power in Ethiopia* (Edinburgh: The University of Edinburgh PhD thesis, 2003), p. 136.

objective remained unity: *“In the long run, Socialism is internationalism and a socialist movement will never remain secessionist for good.”*⁶⁰

After the demise of the imperial regime through the different peasants uprisings and the student movement the Derg regime (the new Marxist- leninst regime (1974-1991), that assumed power however, in contrast to the policies of the imperial system, pursued what it claimed was a “scientific socialist” developing strategy attempted to make ethnic identity irrelevant, creating instead people’s organizations (e.g. revolutionary peasant’s, worker’s, women’s, youth organizations).The regime declared that these groups,along with the worker’s party of Ethiopia (WPE), were vanguards in a worldwide class struggle. However, this strategy also proved ineffective, and ethnic tensions and conflict eventually brought down the Marxist- Leninist regime in 1991.⁶¹

Due to pressure of EPRP (Ethiopian People’s Revolutionary Party) and MAESON (the Amharic acronym of All Ethiopia Socialist Movement) the *Derg* was obliged toadopt and refine a *Marxist-Leninist ideology* and take a stance on the ‘nationalities issue’ as well. This stance is clearly expressed in the ‘Programme of the National Democratic Revolution’ from 1976. It is interesting to cite the relevant provisions, for they again show clear resemblances with the current state:

“The right to self-determination of all nationalities will be recognized and fully respected. No nationality will dominate another one since the history, culture, language and religion of each nationality will have equal recognition in accordance with the spirit of socialism. The unity of Ethiopia’s nationalities will be based on their common struggle against feudalism, imperialism, bureaucratic capitalism and all reactionary force. Given Ethiopia’s existing situation, the problem of nationalities can be resolved if each nationality is accorded full right to self-government. This means that each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environs, it has the right to determine the contents of its

⁶⁰ Ibid

⁶¹ Edmond J.Keller and Edith M.Omwami, supra note 20 at 39-40

*political, economic, social life, use its own language and elect its own leaders and administrators to head its own organ.*⁶²

From the above it is stated that, “in order to achieve unity, diversity had to be recognized. All nationalities had a right to self-determination, which included language rights and the right to regional autonomy. As will become clear from the above, this right to self-determination resembles the right to self-determination granted in the current FDRE constitution. However, it is notable that in the *Derg* document no right to secession is granted - the conformity with the Leninist and Stalinist views on the right to self-determination nevertheless being guaranteed by using the term ‘nationalities’ instead of ‘nations’”.⁶³ This approach rested on a traditional differentiation between ‘nations’, which had a right to secession, and ‘nationalities’, which had not. ⁶⁴*In any case, for the Derg, as for the EPRP and MAESON, national/ethnic antagonisms were subordinate to class antagonisms. The Derg thus thought that getting rid of class antagonisms (which was an objective of government policy) would solve the ethnic problem.*⁶⁵

Similarly when analyzing the current Ethiopian regime nation building model Christophe Van Beken states that “ if one see the constitution in section 3, it will become clear that there are major similarities between the analyses of the Ethiopian students and the current state building strategy. In the constitution, ethnic diversity is also recognized and used as a founding element of state building. The constitution further confirms the approach of the students by granting a right to secession to Ethiopia’s ‘nations’. It is thus submitted that there is a direct link between the approach towards the ethnic issue adopted by the Ethiopian students at the end of the 1960s and the current state building strategy in Ethiopia, which is expressed in the constitution.”⁶⁶

In addition the legal groundwork for ethnic federalism in Ethiopia is laid by the federal constitution of which the preamble already indicates the new nation and state building strategy. This strategy focuses on two elements: protecting the rights of ethnic groups and ensuring the

⁶² Merera Gudina, *Ethiopia – Competing ethnic nationalisms and the quest for democracy, 1960-2000* (Maastricht: Shaker Publishing, 2002), pp. 82-83 in Christophe Van der Beken ,supra note 31 at 5-6

⁶³ Alem Habtu, ‘Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation,’ *Dialectical Anthropology*, Vol. 28 (2004), p. 101 in Christophe Van der Beken,supra note 31 at 6

⁶⁴Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984), p. 12 in Christophe Van der Beken ,supra note 31 at 6

⁶⁵Christophe Van der Beken ,supra note 31 at 6

⁶⁶Id.,p.3-4

unity of the Ethiopian state, hence: unity in diversity. These two elements are stressed throughout the preamble, but it suffices in this regard to cite the first and second paragraphs: “*We, the Nations, Nationalities and Peoples of Ethiopia (the constitution thus adopts Marxist-Leninist terminology to indicate the various ethnic groups) Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development*”⁶⁷

Furthermore the opening paragraph to the preamble of the Ethiopian Constitution as pointed out above begins with “We nations, nationalities and peoples of Ethiopia”. Departing from the homogenization solution of “we the people of the...” the Constitution presents the Ethiopian state as a compact entered into by the different ethnic groups that inhabit the country.⁶⁸ As one author has remarked, “this is not a constitution of the Ethiopian citizens simply lumped together as a people”.⁶⁹ Furthermore, the preamble clearly states that the ‘political community’ that these groups agreed to form is premised on the full recognition of their “full and free exercise of the right to self-determination”.⁷⁰

In sum in Ethiopia based on the history of the imperial expansion to south the issues and debates on nation building have continued among political actors and society. In other words these polarized debates are not of historical importance only but they constitute, as reflected in the 2005 election, a central place in the contemporary Ethiopian political and constitutional debate. Contradictory interpretations of the Ethiopian history underlie the country’s alignment of political forces. On the one hand are political forces that regard the Menelik expansion of the 19th century as the process of ‘nation-building’. For them, this is an unavoidable route that any great imperial power has to go through around the world. Based on their motto “unified One Ethiopia”, they see themselves as the authentic representatives of the indivisible Ethiopian ‘nation’ and consider it unpatriotic or even un-Ethiopian to argue for the recognition of the rights of hitherto marginalized ethnic groups”.⁷¹ Merara refers to these groups as “Menelikans of the

⁶⁷ Id., p.8-9 see also FDRE constitution, the preamble

⁶⁸ Yonatan Tesfaye, supra note 14 at 392

⁶⁹ Fasil Nahum, supra note 6 at 51.

⁷⁰ FDRE constitution, preamble

⁷¹ Merara Gudina, supra note 57 at 120

nineteenth century”.⁷²Some of the member parties of the Coalition for Unity and Democracy (CUD), the major contender of the 2005 election, subscribe to this ‘nation-building’ view. On the other side of the alignment are those that view the act of Menelik as an act of national oppression. They contend that the different nationalities were subjected to economic, cultural and political domination. Included in this category are the EPRDF, the Oromo National Congress (ONC) and a number of ethnicbased parties that contested the election in the different regional states.⁷³

2.3 The Individual Vis -A- Vis group Rights and Citizenship in Ethiopia

A traditional liberal democracy treats citizens as individuals. It ascribes certain fundamental freedoms to each individual. The group to which the individual belongs to is irrelevant. Groups are merely a “collection of individual agents, an aggregation of the constituent parts”.⁷⁴ In fact, the classical liberalism considers the individual as the ultimate agent of action. It accordingly attaches a moral right only to that agent. According to this strand of liberalism, rights should only be seen in individual terms.⁷⁵ The individual, for example, has the right to use the language of his or her own choice. This he or she can do alone or in association with others.⁷⁶

Furthermore, as Yonatan states “a liberal democracy imposes on the state a negative duty. The government, according to this liberal position, has only the duty to respect and protect the rights of the individual. This means the state should only refrain from interfering directly or indirectly with the enjoyment of the right. With respect to rights related to ethnic relationships, this imposes on the state the duty to respect, among other things, the rights of the individual to use his language or exercise his culture alone or in any form of association with others. The state should not also discriminate against anyone based on language, religion or the way of life that one follows as a result of his or her association with a certain ethnic or national group. This non – discrimination principle applies when the state distributes benefits and resources, or when it performs its traditional function of protecting citizens. No positive obligation is, however,

⁷² ibid

⁷³ Yonathan Tesfaye, supra note 14 at 375-6

⁷⁴ Addis, A., ‘Cultural integrity and political unity: The politics of language in multilingual states’ , *Arizona State Law Journal*,V. 33 ,fall, 2001,P. 736

⁷⁵ Ibid

⁷⁶Yonatan Tesfaye, supara note 14 at 51

imposed on the state. The state, for example, is not obliged to officially recognize, affirm or materially support any culture or language.”⁷⁷

Furthermore the individualist liberal position believes that anxieties of persons belonging to ethnic groups can be effectively addressed by universal individual rights. According to this position, a system that recognizes and provides for universal individual rights goes a long way to respond to the challenges of ethnic diversity. The expression of cultural identity should be left to the private sphere and the state should thus remain neutral on matters of ethno-cultural differences. Proponents of this position often mention freedom of association⁷⁸ to show how recognition of universal individual rights can go a long way to accommodate ethnic differences. According to the liberals, the ‘cultural market place’ should rather decide if a certain culture is going to survive or decay. The state should not interfere with the operation of this market place.⁷⁹

It is this individualist liberal position that, in fact, provides the theoretical foundation for most international human rights instruments. This has, for example, been the case with the first two international instruments that are adopted by the United Nations: The United Nations Charter and the Universal Declaration of Human Rights (UDHR). The Charter has nothing to say about group-specific rights. It simply recognizes individual rights. This individualist outlook is, in fact, made clear in the opening article, Article 1(3), which outlines the purpose of the United Nations. According to this Article, the purpose of the United Nations is to encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. The reference to “fundamental freedoms for all” is interpreted as to mean fundamental freedom for all individuals and not groups.⁸⁰ The same holds for the UDHR. The document declares that “*everyone* is entitled to all the rights and freedoms set forth in this Declaration,

⁷⁷ Yonatan Tesfaye, *supra* note 14 at 51

⁷⁸ Kymlicka, W. *Multicultural citizenship*, (Oxford: Clarendon Press), (1995), p.107. He states that “Freedom of association enables people from different backgrounds to pursue their distinctive ways of life without interference. Every individual is free to create or join various associations, and to seek new adherents for them, in the ‘cultural market place’. Every way of life is free to attract adherents, and if some ways of life are unable to maintain or gain the voluntary adherence of people that may be unfortunate, but it is not unfair. On this view, giving political recognition or support to particular cultural practices or associations is unnecessary and unfair. It is unnecessary, because a valuable way of life will have no difficulty attracting adherents. And it is unfair, because it subsidizes some people’s choice at the expense of others”.

⁷⁹ Yonatan Tesfaye, *supra* note 14 at 56

⁸⁰ Addis A. *supra* note 69 at 739

without distinction of any kind, such as race, color, sex, language, religion, political or other opinion”. The documents, other than providing for a right against discrimination, do not mention group-specific rights.⁸¹

It is important to note that even those instruments that attempt to address ethnic related claims are informed by this same individualist philosophy. These instruments do not promulgate the rights of ethnic groups but the rights of “persons belonging to a minority”. The first reference to group rights, and specifically minority rights, is made in the International Covenant on Civil and Political Rights (ICCPR), which, in article 27, states that “In those states in which ethnic or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁸²

One should, however, note that the Article makes reference only to persons belonging to ‘such minorities’ and not to the groups themselves. That means the right is an individual right that can be exercised by persons belonging to such minorities and not to be invoked by a group as such. Persons belonging to such minorities enjoy an associational right, which is the right to choose with whom to associate and under what conditions to do so.⁸³

It was the abuse by the Nazis of the bilateral reciprocal agreement to protect minority rights in Poland and Czechoslovakia and the Holocaust that followed which, according to many writers, explains the shift from group-specific rights to universal human rights and thus the adoption of international instruments with a strong individualist orientation. The Holocaust was seen partly as the consequence of group-thinking, which viewed people “as members of this or that group, rather than as individuals”.⁸⁴ After World War II, the approach taken to protect ethnic groups has taken an indirect form of protection. It was no longer considered advisable to provide for special rights to members of a particular ethnic group. The approach was rather to protect ethnic groups indirectly by providing basic human rights to all individuals.⁸⁵

⁸¹ Yonatan Tesfaye, *supra* note 14 at.52-53

⁸² *Id.* p.53

⁸³ *Id.* p.53

⁸⁴ Addis A. *supra* note 69 at 746

⁸⁵ Yonatan Tesfaye, *supra* note 14 at 54

Thus as can be inferred from it is stated that “the individualist liberal position is often defended on the ground that it is only when politics is conducted at the level of individuals that one can guarantee peace and stability in multi-ethnic societies. Politics, when conducted in terms of group rights, heightens the loyalty of group membership and thus “making politics a battle among permanently warring factions”.⁸⁶ According to this position, prejudice, intolerance and stereotypes will reign when politics is conducted at the level of group rights. Proponents of this position thus recommend the individualist liberal position if politics is going to be conducted in a manner that ensures peace and stability. For them, group-specific rights are “anti – human”.⁸⁷

As can be inferred from the above points it begs a question regarding the possibility of truth in Ethiopia particularly when one see it in light the last two decades politics which have been conducted at a level of groups identified as “nations, nationality and peoples”.

In other words the political empowerment of cultural communities can threaten significant groups other than cultural communities. It is undeniable that women and children receive unequal treatment in many ethnic and religious communities. Unless the FDRE constitution recognizes, and is perceived to recognize, that individual rights prevail over the collective rights of cultural communities, the fate of most citizens would be vulnerable to the prejudices and customs of local authorities. The importance of the priority of rights is not confined to under privileged groups. Freedoms of movement, occupation and association would not be meaningful unless they are guaranteed in self-governing communities; otherwise, they would be merely privileges of residents of federal cities and employees of central government. Citizenship cannot vary in accordance with ethnic identity. Individual rights define a guaranteed status of equal citizenship. They are an impartial yardstick for legitimate claims that each can make of every one across culturally diverse and politically autonomous communities.⁸⁸

As we have discussed in section 2.2 above Ethiopia has been experimenting the accommodation of diversity through an ethnic form federal system. Contrary to the individual liberal position the FDRE constitution has granted extensive group rights. As it can be seen from the different policy

⁸⁶ Bowring, B. ‘*Multicultural citizenship: A more viable framework for minority rights?*’, 1999,p.2 in Fottrell, D. and Bowring, B. (eds.) *Minority and group right in the new millennium* (Deventer: Kulwer)

⁸⁷ Ibid

⁸⁸ Andreas Eshete, Implementing Human Rights and a Democratic Constitution in Ethiopia, in Issue: *A Journal of Opinion: African Studies Association*, Vol. 21, No. 1/2 (1993),p.10

and documents of the EPRDF the regime alleges its commitment to equal protection both group and individual rights. It has been said that both rights are essential and one without the other will not stand alone. Particularly on the constitution has granted an extensive group rights and reserve sovereignty to ethnic group. The process of the shift from the integrationist model of the Derg to an ethnic form of self-rule, theorizing on the essentiality of group rights in Ethiopia, has been explained as follows:

The collective rights recognized in the FDRE constitution are rooted in the ideals of government that underlie individual rights. First, there is such a thing as a right to self-determination because there are fundamental interests of citizens that can be secured only by communities, not individuals. Cultural traditions such as forms of kinship, styles of art, shared beliefs and customs cannot be created, conserved or cultivated by individuals. Language and religion, understood in the broadest terms as a culture's perspective on the world and the meaning of life, belong to a community. Given the evident diversity of such forms of life in Ethiopian society, each community seeks a title to determine its own destiny in order to find full and distinctive expression. The collective right of cultural communities to self-determination therefore answers to the fact that individuals shape their lives in specific places through particular cultures with which they identify themselves. Second, many Ethiopian communities feel that they have suffered disparagement of their language, religion and other manifestations of their cultural life. Members of disparaged groups rightly claim that their dignity as individuals cannot be respected unless the worth of the cultural community to which they belong is affirmed. Moreover, owing to discriminatory practices, many believe that they have been harmed disproportionately by governmental negligence of the freedom and welfare of citizens. The claim to self-rule therefore arises from a desire for freedom and fair treatment by citizens who belong to historically disparaged and disadvantaged cultural communities.⁸⁹

However the major points is not recognition of groups right but what happened when there is a conflict especially in country where there has been mass movement of people and the meaning of inclusive citizenship in the ethnically self-administering ethnic groups. The process of federation its impact on individual rights and citizenship was forecasted by Endreas in 1993 before the ratification of the FDRE constitution. He specifically forecasted that:

“The answer to the question of whether Ethiopian citizens will effectively exercise their individual rights is complicated by another challenge that the country presently faces. The struggle against authoritarian power has prompted the rise of various nationalist movements. The

⁸⁹Andreas Eshete, supra note 88 at 9

most powerful political organizations are animated by ardent nationalist sentiments. All the groups who participated in the July 1991 conference endorsed the collective rights in the charter, which reserves large powers to cultural communities. Since then, the transitional government issued a proclamation on the establishment of regions and regional governments. A striking feature of the statute is that it defines regions almost exclusively by reference to ethnic identity. If the statute is upheld by the new constitution, Ethiopia will become a federation of self-governing ethnic communities. The strength of nationalist movements and their political entrenchment naturally arouses a fear that the citizenry and the political society will be fractured into separate ethnic communities. The cleavages and the fears they incite are susceptible to exploitation by elite intent on acquiring or preserving power and privilege. The danger, then, is that cultural divisions are liable to frustrate the realization of the rights of equal and free citizenship which a constitutional democracy promises. Still, efficiency may favor a loose confederation, where most political powers are invested in the constituent states. But under such arrangements the rights of equal and free citizenship would be largely at the mercy of local authorities.⁹⁰

Furthermore it is not only the rights and free inclusive citizenship that will be at mercy of local authorities- local tyranny but the impossibility due to lack of political commitment to adjudicate the cases of disputes involving ethnic group rights and individual citizens rights will ultimately result into questioning the place of liberal individual rights under FDRE constitution. Andreas in his article at the time of the constitution making process had pointed out the inevitability of these problems in the following ways:

*“Among the many problems concerning constitutional democracy in Ethiopia, two are raised by the joint affirmation of individual and collective rights. There is, first of all, the adjudication of the inevitable conflict between individual and collective rights. A constitutional democracy needs to give precedence to individual rights. Second, effective protection of the priority of individual rights requires construing of collective rights that enables solidarity among cultural communities.”*⁹¹

⁹⁰ Andreas Eshete, supra note 88 at 10-11

⁹¹Id. P. 8-9

In other words although the constitution honors high standards of individual and collective rights, it offers no guidance on what is to be done when they come into conflict. Conflict is inescapable, for a citizen's beliefs or actions can be at odds with the ascendant forms of self-expression in the community. The case for putting individual rights first in a democracy is compelling. The charter/constitution holds that citizens enjoy freedoms that cannot be overridden by the majority for the collective good. The fact that what is at stake is an ethnic majority or a collective cultural ideal is ethically irrelevant. Since individual rights provided in the charter/constitution specify constraints on any legitimate government, it is difficult to see how they can be justifiably denied by regional governments. If outsiders can insist on respect for individual rights without risk of cultural or ethnic imperialism, the demand can be reasonably made by those who are members of the same political community. All who accept the charter must agree that exercises of the right to self-determination that are incompatible with the equal protection of the fundamental rights of citizens are illicit.⁹²

The problem of the group *Vis a Vis* individual rights have been a bone of contention in the two decades federal experiment in the case that have been presented to the House of Federation, which will be discussed under chapter seven of this paper, holds contrary to the assertion of individual rights first when there is conflict as asserted above. Why is the precedence of individual rights compelling in Ethiopia? It is stated that:

*The claim that individual rights override collective rights is of great practical significance in Ethiopia. Few, if any, Ethiopian cultural communities are homogeneous; each inhabits a territory with ethnic and religious minorities. The traces of empire, forcible resettlement and internal migration to escape wars and famines are everywhere. Even if there is no tension between a cultural majority and minority, friction is likely once the majority wields political power in an ethnically defined regional government. Unless individual rights are given absolute weight against the collective rights of the cultural community, there can be no assurance against the sacrifice of the interests of citizens belonging to a minority group.*⁹³

The need and scope of/ for the recognition of ethnic group rights in Ethiopia have been a bone of contention since the student's movement and current political practice as the writer presets under

⁹² Id.p. 9-10

⁹³ Id. p.10

section 2.2. Furthermore the overtone in the current regime use of ethnic groups as legitimacy tools and the misunderstanding surrounding the extended self-rule right granted to nation, nationalities and peoples, elite manipulation of individual rights in the different administrative hierarchy of federal system has raised citizenship questions in Ethiopia. In other words it has forced to raise a question whether or not the political empowerment of cultural communities imperil either the state or the basic rights of equal citizenship? What possible linkage has the respect of group and individual rights in Ethiopia and the role of government? Whether they can be compromised? It is stated that:

“It might be argued that the political empowerment of cultural communities need not imperil either the state or the basic rights of equal citizenship. Citizens determined to assume responsibility for their lives and to make their own political choices as members of Ethiopia's cultural communities evidently have reason to lend support to the institution of self-government. Without a constitutional guarantee of the civil and political rights of citizens, cultural communities know that their collective rights are not safe. Unless there are institutional restraints on the powers of government as a whole, the state can trespass on the rights of cultural communities. A legitimate government can also check or prevent conflicts between cultural communities; like democratic states, can coexist peacefully. It seems, therefore, that Ethiopia's cultural communities can find sufficient common ground to support a free political association that protects the rights of citizenship. This argument indicates the possibility of a form of political association that is sometimes characterized as a minimal state: roughly, a state whose aims are limited to the protection of the liberties of individuals and groups against interference by other citizens, by government itself, and by other governments. It is easy to see that to secure these rights against interference is in the mutual interest of Ethiopia's cultural communities. The existence of disparate cultural communities may even prove to be an advantage to the feasibility and stability of the minimal state. It is often thought that diversity is a political virtue just because it inhibits the convergence of citizens in the pursuit of collective goals.”⁹⁴

The other issues related with the individual Vis a Vis group a right is the ideal institutional setup to respond the challenge in multi ethnic country. In other words when we see the institutional manifestation of citizenship and individual Vis a Vis group rights there are different views regarding the right institutional place of both rights to be represented. In other words there is the association of the lower house or parliament with individual rights and the second chamber with rights of ethnic groups. This is particularly related with the role of the HPR as a deliberative

⁹⁴ Id. p.11

body that represents the people as a whole and the contention regarding the place of ethnic-based parties representing group rights in the same house.

Bekele argues for the exclusion of ethnic-based parties from contesting seats in the HPR. He bases his argument on the nature and role of the HPR. First, he relies on the constitutional stipulation under article 54(4) which states that members of the HPR are representatives of the Ethiopian people *as a whole* (emphasis added) and members are mandated to be directed “by the will of their people” in their deliberation. For him, the HPR is an institution established by the Constitution to reflect the Ethiopian nationhood as an element of unity. Second, the apparent rationale for the creation of the two houses and their constitutional functions also supports this interpretation of the Constitution.⁹⁵

On the contrary Yonathan refuting the above argument stressed that the fact that the Constitution envisages the HPR as a body that represents the people of Ethiopia as a whole does not mean that its members do not have a constituency that may be based on ethnic affinities, regional solidarities or other relevant socio-political groupings. It only means that they are not supposed, at least, to formally organize their votes as a block. Members of the lower house are not supposed to receive instructions on how to vote on certain issues from the regional state where they come from. Members of the second house, on the other hand, are often supposed to act on behalf of the regional state from which they are elected or appointed. In fact, this underlies the major distinction between an upper house and lower house in most federations.⁹⁶ Furthermore Yonathan refuting Bekele’s understanding of the role and nature of the Ethiopian lower house asserts that it contradicts the current trend that underlines the need to enhance the representative character of national institutions, including lower houses, by ensuring representation. This is, in fact, what often drives the discussion about the appropriate electoral system in multi-ethnic federations⁹⁷. The view limiting ethnic parties in the lower house and the view about bi-cameral parliament and the respective role of each house are reminiscent of the traditional view that limits issues related to representation of diversity in the context of second chambers. Generally,

⁹⁵Bekele Haile-Selassie *Ethiopia: A precarious ethno-federal constitutional order* (University of Wisconsin Law School, unpublished doctoral dissertation), (2002).p.152

⁹⁶ Yonatan Tesfaye, *supra* note 14 at 446-447

⁹⁷ The plurality electoral system, when compared to the proportional system, scores low in enhancing the representativeness of a lower house. It gives little room for the representation of small parties in federal institutions.

there are no constitutional reasons that warrant the exclusion of ethnic-based parties representing group rights from contesting election to the HPR.⁹⁸

Chapter Three

STATE RE-STRUCTURING: SELF DETERMINATION AND THE ROAD TO FEDERALISM IN ETHIOPIA.

3.1 Federalism: concept and theory

Federal political systems are increasingly used by states with a multi-ethnic population as a mechanism to accommodate the demands of their ethnic groups as well as to protect their territorial integrity. Federal political systems are thus created to prevent, resolve or at least mitigate ethnically inspired or associated conflicts and in this way to ensure stability within the state.⁹⁹Theoretically federation is formed when two or more independent and neighboring states united for defined purpose- coming together. Alternatively federations is formed when sovereign authority creates autonomous states and combined in one and the same enactment determining their respective power, function and fiscal authority- holding together. For instance Ethiopian federation seems to fall in to the latter one of these two conventional categories. The constituent units of the federation in Ethiopia were not by any standard sovereign polities that negotiated a coming-together federalism. The positing of the Ethiopian federalism as a coming-together federalism is no more than a ‘constitutional fiction’.¹⁰⁰

The basic idea of federalism in any multi-ethnic setting is ideally to accommodate ethnic diversity while at the same time maintaining national unity. The idea is not to create ethnic enclaves. It is not to demarcate each ethnic group with a mother state of its own with the resultant consequence that territories are defined as belonging to the regionally empowered group with other groups treated as guests or outsiders. The grand aim of accommodating ethnic diversity requires that the state, to the extent possible, seeks to accommodate diversity at each point of relevance.¹⁰¹

⁹⁸ Yonatan Tesfaye, supra note 14 at 447

⁹⁹ Christophe Van der Beken, supra note 31 at 1

¹⁰⁰ Yonatan Tesfaye, supra note 14 at 394

¹⁰¹ Id. P.484

While territorial solutions offer an effective mechanism for accommodating diversity for geographically concentrated minorities and aboriginal populations, they also raise a number of concerns. First, in highly diverse societies, a significant degree of cultural homogeneity within constitutive units will rarely be attainable, short of an ever increasing number of very small units. In many cases, and notably in major cities, the intermingling of diverse groups is simply unavoidable. Nigeria has moved from 3 to 36 units, in an attempt to appease tensions between its 250 or so ethnic groups. This appeasement has only been partially successful. The Nigerian example invites us to reflect on the risk of extreme fragmentation that can come with constant restructuring.¹⁰²

This being said, there are advantages in federal arrangements, even for the majority. Territorial federalism may offer advantages that are similar to those found in classic non-multinational federations such as Germany, Australia or the United States. Federalism multiplies levels of entry for citizens as well as checks and balances between centers of power. It brings power closer to the people, while allowing joint action in some cases. It counterbalances management from afar in geographically vast countries. The fact that some units are composed of a minority—which is transformed into a majority within a constitutive unit—should not represent a hurdle in that context. More prosaically, the majority may simply not have a choice, if it wants to live in a peaceful, stable and democratic state. Oppression is neither legitimate nor effective. Attempts at minimizing differences by appealing to a single nation are likely to be counterproductive. In some cases, it is only by conceding “citizen plus” or “citizen plural” status to a segment of the population, that the risks of violence and instability will be reduced.¹⁰³

3.2 SELF-RULE AND SHARED RULE IN FEDERAL SYSTEM.

Federalism has become attractive to multiethnic countries as a way of maintaining balance between such lofty ideas as ‘self-rule’ and ‘shared-rule’.¹⁰⁴ Politics building on group identities

¹⁰²Johanne Poirier, *Autonomy and Diversity*, in Ronald L. Watts and Rupak Chattopadhyay (Ed.), *Unity In Diversity Learning From Each Other*, Volume 1, Building on and Accommodating Diversities, Forum Of Federations, 2008, p.44-45

¹⁰³Id, p.46

¹⁰⁴ Asnake Kefale, *Federalism and Ethnic Conflict In Ethiopia: A Comparative Study Of The Somali And Benishangul-Gumuz Regions*, Doctoral thesis, Department of Political Science, Faculty of Social and Behavioral Sciences, Leiden University, 2009, P.v

provide both some overarching shared-rule among different diversities and some regional self-rule by decentralization or federalization. Shared rule thus has the dual aspect of providing ethnic groups with the political means to ensure its autonomy while bringing it within the political processes of the state. The success of shared rule processes and institutions is thus determined not only by their effectiveness in guaranteeing the autonomy of constituent units but more importantly in the role they play in promoting national unity and providing joint spaces through which the various communities can communicate.¹⁰⁵

The rationale for giving the rights to self-rule is stated as enable “different communities need also to be able to foster their identities with regard to education, religion, communication, media, social networks, etc. However, they can only foster their identities through autonomy and self-rule. Multi-ethnic polities need to provide autonomy with regard to those vital issues that foster local identities and then to build on a common identity. If vital issues concerning the ethnic group or minorities are decided upon without the participation of the ethnic group or minorities in the decision-making process then the groups become losers likely to reject the legitimacy of the polity.”¹⁰⁶

Unitary states do not build on diversities although they can accommodate diversities partly by centrally determined decentralization. Federations, on the other hand, can provide at the same time not only constitutionally guaranteed regional self-rule for the federal units and but also shared-rule at the central level, such as by a two chamber system or even in the organization of the executive. Additionally, federal systems can install mechanisms for peaceful management of conflicts among different diversities or recognize diversities with the formation of new constituent units. Special procedures for the protection of vital interests of minorities, organization of the executive with several members representing diversities, and other special arrangements are also possible. Finally, one can imagine even a very loose federation, such as the Union between Serbia and Montenegro that was almost confederal and which provided even

¹⁰⁵ Akhtar Majeed and et.al supra note 2at 3

¹⁰⁶ Ibid

the possibility for a unilateral secession of the federal units. The latter provision has existed also in the constitution of Ethiopia.¹⁰⁷

3.3 ETHIOPIA: THE ROAD TO FEDERALISM

When Ethiopian people's revolutionary democratic front (EPRDF) entered Addis Ababa on 28 May 1991, it had pledged to convene within one month an inclusive conference of Ethiopian political groupings. The conference would agree the basis for, and establish a transitional government, which would rule until democratic elections could take place. This initiative was hailed as a fundamental break with an autocratic Ethiopian political tradition. In Ethiopia among the issues that are the focus of political debate among the political parties and societies is the issue of self-determination of nationalities (national question in Ethiopia), widely viewed as a perennial cause of conflict in Ethiopia. Since the downfall of the Dergue representation on the basis of nationality was a key dynamic of convention of the conference. Its significance in 1991 is considered alongside the TPLF/EPRDF which had long pronounced it the primary contradiction facing the country. Observed by representative from more than 15 countries, representatives of 27 Ethiopian political organizations and groupings participated in the conference which was convened at the African hall from the 1st to the 5th of July 1991. They adopted transitional period charter of Ethiopia (1991-1995).¹⁰⁸

Furthermore when we the process to federalism Christophe states that *“The national conference with a broad representation of predominantly ethnically based movements laid the foundations of the transitional period. The Charter, which was published on 22 July 1991 in the Negarit Gazeta (official journal of Ethiopia), granted, besides universal rights, far-reaching ethnic rights to all the ethnic groups of Ethiopia. The dominance of ethnic-based organizations in the transitional conference was such that the grant of extensive ethnic rights was a necessary condition for the success of the conference and thus for the continued existence of Ethiopia. The government was initially – just like the national conference – relatively politically inclusive with a representation of several political organizations. However, the transitional government was soon dominated by the EPRDF. The elections of June 1992 reinforced EPRDF dominance, in the*

¹⁰⁷ Id., p.5

¹⁰⁸ Sarah Vaghuan, supra note 4 at 2

central government as well as in the 14 regional governments that had been created by Proclamation No. 7/1992. This was the political context within which the constitutional process took place. The new constitution, which was approved by a constituent assembly on 8 December 1994, was therefore the result of an EPRDF-controlled process.”¹⁰⁹ It is a top down not democratically negotiated by all citizens in Ethiopia, as the transition have been boycotted prominent political parties, Thus creating a gap in the terms of association of or ownership of the new state in Ethiopia.

As cursor to the post 1995 state structure in Ethiopia, the Transitional Charter had indicated that an ethnically based decentralized state structure would be developed in Ethiopia. Article 2(b) of the Transitional Charter stated that each nation, nationality and people of Ethiopia was entitled to self-administration within its own territory. Furthermore article 13 stipulated that "local and regional councils ...defined on the basis of "nationality" were to be established. The implementation of these provisions from the Charter was effectuated by Proclamation No.7/1992 of 14 January 1992: the "National/Regional Self-Governments Establishment Proclamation No. 7/1992." This law identified 64 nations, nationalities and peoples or ethnic groups. These 64 groups were linked to 12 regions. Additionally, the cities of Addis Ababa and Harar were both made separate regions, bringing the total number of regions to 14. The determination of the regional boundaries was guided by the concern to create as many ethnically homogeneous regions as possible.¹¹⁰ The limited number of regions (14) on the one hand and the large number of identified ethnic groups (64) on the other obviously implied that most ethnic groups did not have their own region. To realize the right to self-determination of all ethnic groups, the Proclamation stipulated that 47 of the 64 ethnic groups listed by the Proclamation had the right to establish self-government at the district (*Wereda*) level or above. Those ethnic groups that were not included in this group of 47 were to be considered as "minority nationalities" and had the right to appropriate representation in the *Wereda* council.¹¹¹

¹⁰⁹ Christophe Van der Beken, supra note 31 at 8

¹¹⁰ Terence LYONS, Closing the Transition: the May 1995 Elections in Ethiopia, *The Journal of Modern African Studies*, V. 36, No.1 1996, p. (121) 124.

¹¹¹ Christophe Van der Beken, Ethiopia: From Centralized Monarchy To Federal Republic, *Afrika Focus*, Vol. 20, No. 1-2, 2007, pp. 13-48- p.38

Thus, after the end of the transitional government a new political road with a view “To address the long lived ethnic conflict and accommodate diversity, an ethnic form of federalism, and a new political paradigm introduced into the political scene of the country, specifically through the promulgation of the FDRE Constitution in August, 1995.”¹¹²It is proclaimed that by making this a historical land mark, Ethiopia witnessed the transition from ‘ethnic dominating’ to ‘ethnic egalitarian’ system and the emergence of new ethnically based partisan groups and the resultant substitution of authoritarianism by democracy.

There is a lot argument in favor and against ethnic federalism in Ethiopia among the politicians, academics and the society at large. According to David Turton the transformation that has taken place in the political structure of Ethiopia since 1991 has been both radical and pioneering. It has been radical because it has introduced the principle of self-determination for federated regional units in a formerly highly centralized and unitary state. It has been pioneering because it has gone further than almost any state worldwide in using ethnicity as an organizing principle.¹¹³

Further Turton argued that this should make Ethiopia’s experiment in ethnic federalism of great potential relevance to the growing debate about the accommodation of ethnic diversity in democratic states. Accordingly the adoption of ethnic federalism in Ethiopia after the downfall of the *Dergue* and highly centralized state is inevitable and serves as the major land mark to end ethnic problems in the state¹¹⁴. For Turton when one considers the level of internal conflict, military violence and repression by agencies of the state that characterized the period of the *Dergue*, the restructuring of Ethiopia as an ethnic-based federation has been an undeniable success. It has provided peace and security for the great majority of the population following a violent civil war and laid down, for the first time in the history of Ethiopia, ‘the legal foundation for a fully-fledged democracy.’ But if one considers the success of federalism in Ethiopia not against the record of the previous regime, but against the essential requirements of a genuinely federal division of powers, one cannot entertain fears for its long-term future.¹¹⁵

¹¹² Assefa Fiseha, Theory Versus Practice in the Implementation of Ethiopia’s Ethnic Federalism, in Turton (eds.), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, AAU Press, 2006, pp.131

¹¹³ David Turton (eds.), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, AAU Press, 2006, p.1

¹¹⁴ Ibid

¹¹⁵ Id. p.92

In sum, advocates hold that ethnic federalism could reduce group's disparity, promote ethnic accommodation and self-rule, encourage ethnic harmony through co-existence, and reduce secession and disintegration tendencies.¹¹⁶ It is the only solution which can solve the long lived historical question of various ethnic groups for equality and the right to exercise self-rule along with unity through diversity. Accordingly, an ethnic form of federalism has been adopted in Ethiopia in search of accommodating ethnic diversities and avoids the likelihood of the occurrence of conflicts along ethnic lines as well as eases the process of democratization after it has been haunted by ethnic grudges and repression.

In contrast, critiques argue that ethnic federalism could institutionalize ethnic discrimination, obstruct individual citizens' rights, strengthen centrifugal forces, introduce zero-sum ethnic competition and generate dangerous reactions like ethnic cleansing, expulsion and disintegration.¹¹⁷ Furthermore Dereje argued that more than a decade after the implementation of ethnic federalism, much remains to be understood about its impact on the everyday lives of people on whose behalf the policy either hailed or attacked where the new policy has mixed results, redressing old imbalances and creating new problems. The system introduced two new entitlement strategies in some regions as "natives" and "others"¹¹⁸. In the same vein Berhanu concluded that ethnic federalism escalates inter and intra-ethnic conflict within regional governments. For him, inter-ethnic conflicts in Benishangul-Gumuz Regional state (BGRS), Gambela Peoples Regional State (GPRS) and Southern Nations, Nationalities and Peoples Regional State (SNNPR) are bold manifestations in which inter and intra-ethnic conflicts are common practice at different times. He further explains that, inter-ethnic relations are full of

¹¹⁶ Id.p.1 see also Will Kymlicka,, *Emerging Western Models of Multinational Federalism: Are They Relevant for Africa?* in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, Addis Ababa University Press, (2006). Medhane Tadesse, *Turning conflicts to Cooperation: Towards energy led Integration in The horn of Africa*. Friedrich Ebert-Stiftung, Addis Ababa, 2004, p. 72. Tsegaye Regassa, *Learning to live with the Conflicts: Federalism as a tool of Conflict Management in Ethiopia*, St Mary's University Collage; *Mizan Law Review* Vol. 4 No. 1, 2010,p.55

¹¹⁷ Donald Horowitz, *Ethnic Groups in Conflict*, University of California Press, USA, 1985, p.603. See also Eric Nordlinger, *Conflict Regulation in Divided Societies*. Cambridge, Harvard University Center for International Affairs, 1972,p.216

¹¹⁸ Dereje Feyissa, *supra* note 17 at 208

unyielding competitions and destructive hostilities.¹¹⁹ Thus as explained in chapter one the contention of this paper is whether the self-right or ethnic federalism of ethnic group has created a hurdle for the exercise of rights of citizenship for all without any discrimination as stipulated in the international instruments which Ethiopia has ratified.

Furthermore Brietzke remarks: “The gist of these criticisms is that it is a dangerous experiment in autonomous ethnic development to separate people who begin to live within territorial units with mixed populations, in that it creates tensions that militate against the need for national unity.”¹²⁰ Some even go to the extent of branding the present dispensation as “bantustanisation”.¹²¹ The Bantustan policy was a unilateral policy of the apartheid government of South Africa that was simply imposed on black Africans to divide the black community along ethnic lines that each homeland, demarcated along ethnic lines, becomes an independent state and establishes itself as a nation state, with its inhabitants eventually losing their South African citizenship.¹²²

In sum the point of departure for self-government as expressed in the federal arrangement is geographical areas based on ethnic criteria. This explains why the Ethiopian federalism is often referred to as ethnic or, as it is sometimes referred as, tribal federalism. The fact that the point of departure of the self-government as expressed in the federal arrangement is not geography but ethnicity has given rise to controversies. The Ethiopian constitutional approach to claims of ethnic identity, it is argued, intensifies ethnic loyalty and hatred among ethnic groups rather than healing the wounds sustained as a result of historical injustices and fostering political unity. Some, as a result, fear that the risk for political disintegration and violence is too great. The fear is intensified by the fact that the FDRE Constitution under article 39 recognizes the right to self-determination along with a clause of secession. Others refer to the recent Ethiopian political

¹¹⁹ Berhanu Gutema, *Restructuring State and Society: Ethnic Federalism in Ethiopia*, Unpublished doctoral dissertation, Thesis No 8, Alboreg University, Denmark, 2007, p.269

¹²⁰ P.H Brietzke, ‘Ethiopia’s ‘leap in the dark’: Federalism and self-determination in the new Constitution, *Journal of African Law*, V. 39 NO. 1, 1995 P.27

¹²¹ Mesfin WoldeMariam, *The Horn of Africa: Conflict and poverty* (Addis Ababa: Commercial Printing Press) (1999) See also Assefa Endeshaw *Ethiopia: Perspective for change and renewal* (Singapore: Seng Lee Press), (2002)

¹²² Yonatan Tesfaye, *supra* note 14 at 420

history and argue that any constitution that aims to learn and at the same time move away from the wrongs of the past, should not fail to provide recognition to ethnicity.

3.4 The Right to Self-determination: - Concept and practice

Over recent decades, through a limited number of binding norms, and a greater range of soft law instruments, international law has gradually widened the classic concept of self-determination to incorporate that of internal self-determination. Self-determination was traditionally understood as the right of colonized or severely oppressed people to create an independent nation state. Internal self-determination includes measures of independent control over areas deemed to be crucial to the group's well-being within the existing state.¹²³ In other words because of its initial application in the context of decolonization, the right to self-determination was for a long time associated with the right to secession. However, today the dominant view in legal doctrine gives a wider meaning to self-determination. According to this vision, the right to self-determination has an internal as well as an external component and secession is part of the external component¹²⁴. The internal component is often associated with autonomy or self-government¹²⁵.

The proponents of the right to self-determination assert that *“The problems of self-government posed by ethnic cleavage would become less intractable if citizens were prepared to accept a rich conception of the right to self-determination. The right to self-determination is commonly understood to require affirmation of the cultures of others by, above all, non-interference with their freedom to keep their cultural practices. No culture is to be politically privileged. Citizens show their respect by refraining from actions that would prevent or stifle free expression of a culture. Self-determination would also permit communities a public space within which they can preserve and transmit their culture without fear of intervention. On this rendition of self-determination, cultural toleration is akin to religious toleration; neither requires citizens to prize the substantive beliefs or practices of others or to extend positive support to them”*.¹²⁶

Coming to the case of Ethiopia, the right to self-determination before it was enacted in the FDRE constitution its historical root can be traced back to the various rebellions emerging just before

¹²³ Johanne Poirier, supra note 102 at 38

¹²⁴ Christophe Van der Beken, supra note 31 at 10

¹²⁵ Ibid

¹²⁶ Andreas Eshete, supra note 88 at 12

and after the Ethiopian revolution of 1974, Marxism was the leading ideology. The formula of "national self-determination" of the various oppressed nationalities of Ethiopia was part of its discourse as expounded in a famous 1969 article by Walleigne Mekonnen in a student opposition paper(Challenge) in the Haile Selassie years.¹²⁷ The EPRDF came to power in 1991 using this ideological tenet, rooted in its struggle for Tigrayan autonomy. The idea of "national self-determination" can be seen as the second major ingredient of the revolutionary ideology of the Ethiopian revolutionary student opposition, and it became prominent *after* the demise of the socialist narrative which emphasized class analysis, as presented by the leftist Ethiopian movements MEISONNE and EPRP, movements which lost the struggle for power in the 1970s to the military Derg dictatorship. The Derg subsequently adopted a rigid and dogmatic version of this socialist ideology, relating all nationality questions to class questions and to a future socialist order in which such problems would dissolve. The EPRDF in fact is executing the second phase of the Ethiopian revolution with its emphasis on "national self-determination".¹²⁸

In the next paragraph the issues of the FDRE constitution article 39 on the right to self-determination which is controversial among politicians and society at large will be discussed. The constitution of FDRE in its preamble states that it is the nations, nationalities and peoples that have adopted the constitution. It is therefore no surprise that in its Article 8, the constitution grants all sovereign power to these nations, nationalities and peoples. From here it follows that *“Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.”*¹²⁹ The right to self-determination of nations, nationalities and peoples as conceived by Article 39 of the Ethiopian constitution, comprises four components: first it comprises the right to speak, to write and to develop its own language; to express, to develop and to promote its own culture; and to preserve its history, second it includes the right to a full measure of self-government, which is composed of two elements: the right to establish institutions of government in the territory that it inhabits and thirdly the right to equitable representation in state and federal governments. Finally the right to self-determination

¹²⁷ Kiflu Tadesse, *The Generation:- The History of the Ethiopian People’s Revolutionary Party*. Part I: From the Early Beginning to 1975, Silver Spring, 1993, p. 53-54

¹²⁸ Jon Abbink, *supra* note 1 at 165

¹²⁹ FDRE Constitution , Article 39(1)

includes the right to secession (4).¹³⁰ The Constitution has granted unconditional right to secession, in this regard it is stated that:

The right to secession as included in Article 39 goes even further than the progressive interpretation of international law. The prevailing view in legal doctrine is that the right to secede can only be applied in particular circumstances, as ultimum remedium¹³¹. However, as follows from the clear provisions of Article 39(1), the right to secession in Ethiopia is unconditional. In doing so, the constitution deviates from the Transitional Period Charter, the interim constitution adopted by the new power holders after assuming power in 1991. Article 2(c) of the Charter granted a conditional right to secession. This right could only be exercised when the nations, nationalities and peoples were prevented from exercising the other aspects of their right to self-determination. Furthermore, in the draft constitution, approved in May 1994, two alternatives were formulated with regard to the right to secession. The majority opinion supported an unconditional right to secession, whereas a minority opinion was in favor of a conditional right. Ultimately, the constituent assembly followed the opinion of the majority.

In sum the most striking element of the right to self-government, as recognized in the Ethiopian Constitution article 39, is that it includes the unconditional right of every ‘nation, nationality and people’ in Ethiopia to self -determination, including the right to secession. The importance attached to this specific right is evident from article 94(4)(c) of the FDRE constitution which state that the right cannot be suspended or limited even in the extreme case of external invasion, a break-down of law and order and other calamities that warrant a proclamation of a state of emergency.

3.5 The right to self-rule: concept and practice

As indicated earlier, it is asserted that “it is not sufficient that a state recognizes its ethnic diversity. The acknowledgment of ethnic diversity must be supplemented by institutional

¹³⁰ It is submitted here that these four components correspond with the most progressive views on minority protection in international law particularly Article 27 of the International Covenant on Civil and Political rights and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992 Articles 2.2 and 2.3 . See Christophe Van der Beken , supra note 31 at 9

¹³¹ Stefaan Smis, ‘Ethiopia and the Right to Secession in International and Comparative Law,’ in Eva Brems and Christophe Van der Beken (eds.), *Federalism and the Protection of Human Rights in Ethiopia* (Munster: Lit Verlag, 2008), p. 118.

principles that give practical effect to this act of recognition. One such institutional principle that federalism provides is the principle of self-rule, also known as ‘autonomy’ or ‘self-government’.” Although the synonymous nature of the terms self-rule, autonomy and self-government are contested by some authors¹³² this thesis uses the terms interchangeably. What is the concept of self-rule:-

There seems to be a general agreement with regard to the locus and meaning of the concept of autonomy. Sohn aptly indicates that the concept of autonomy lies in a continuum between the concept of non-self-governing territory and an independent state.¹³³ Harhoff also made a similar remark when he stated that autonomy lies “between full-fledged state like sovereignty and full subordination under national authority”¹³⁴. The concept of autonomy falls short of granting full-fledged independence but enables the inhabitants of a territory to control their economic, social and cultural affairs. In this study, self-rule therefore refers to the constitutionally entrenched powers of constituent governments to exercise control over some or all of their own economic, political, social and cultural affairs.

Self-rule in decentralized system of government and in federation are not identical. In many decentralized systems the powers of the self-government emanate not from the constitution but from the national legislature which means the central government that granted the selected powers retains, at least, legally speaking, the option to ‘recentralize’ powers and functions.¹³⁵

Different concepts of autonomy are possible. In most cases autonomy is granted on the basis of territory. Autonomous regions, constituent units or even municipalities controlling a specific territory are granted autonomy. In cases where diversities are dispersed throughout the entire territory of the federation and where they cannot therefore be accommodated on a territorial basis, the only alternative possible is so called “personal autonomy” which may be granted as a collective right to certain communities. Belgium and in particular Lebanon have partially

¹³² R.Lapidoth, *Autonomy: Flexible solutions to ethnic conflicts* (Washington DC: United States Institute of Press) (1997) and Welehengama G., *Minorities’ claims: International law and state practice* (Hampshire: Ashgate) (2000).

¹³³ Sohn, L.B ‘The concept of autonomy in international law and the practice of the United Nations’ V.15, No.2 *Israel Law Review*. (1980) p. 90

¹³⁴ Harhoff, F., ‘Institutions of autonomy’ *Nordic Journal of International Law* V.. 55 ,1986, p.30

¹³⁵ Yonatan Tesfaye, supra note at 372-373

provided in their constitutional systems for such a concept of personal autonomy.¹³⁶ In other words it can be said that:-

*Self-rule finds practical expression through the different territorial and institutional structures of a federation. It finds practical expression in the geographical configuration a federation. Self-rule can also receive institutional expression through the division of powers – which powers are allocated to which level of government. The institutional principle of self-rule is derived from the basic feature of the federal idea that there is a constitutionally guaranteed division of political power between the federal and state governments. In a federal arrangement, the federal units are autonomous in respect of powers vested in them. Federalism can be said to have truly recognized ethnic diversity only when it provides real and sufficient autonomy to the federated entities. The institutional principle of self-rule can be provided practical effect through territorial autonomy, legislative autonomy and financial autonomy.*¹³⁷

When we come to the case of Ethiopia, Article 46 of the FDRE Constitution states that the geographical configuration of the federal state shall be based on “the basis of settlement patterns, language, identity and consent of the people concerned”. Furthermore Article 39 of the Constitution states that every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits. The constitutional provision that declares the right of each ethnic community to administer its internal affairs within its own ‘defined territory’ represents an aspect of self-rule. It entrusted each ethnic community with the right to regulate its internal affairs thus providing for territorial autonomy. This was also facilitated further by the right of each sub national unit to determine its working language.¹³⁸

Based on the guiding principle established by article 46 of the Constitution, nine regional states that are largely delimited along linguistic lines and two administrative regions are established. More than two thirds of the people that live in five of the nine regional states, including Tigray, Amhara, Oromyia, Somalia and Afar, belong to a single ethnic group. Each of these states is also

¹³⁶ Johanne Poirier, supra note 102 at 38

¹³⁷ Yonatan Tesfaye, supra note 14 at 12-3

¹³⁸ Ibid

designated after the name of the dominant ethnic group in each state.¹³⁹ The state of Gambela and Benshangul/Gumuz, on the other hand, are largely bilingual regional states with other numerically small minorities in their midst. The SNNPR, on the other hand, depart from the rule that determines the organization of states along linguistic lines. This regional state is home to numerous small ethnic groups.¹⁴⁰ Yonatan states that *“the anomalous feature of the internal organization of the federal state relates to the Harari regional state. Despite the fact that the region is home to two other linguistic groups that are numerically superior to the Harari ethnic group, the region is named and considered mainly as belonging to the latter. This scenario is more likely to have historical explanation rather than one based on the demographic realities of the region. Addis Ababa, the capital city, and Dire Dawa, both of which are multi-ethnic cities, are recognized as two special autonomous city-states with their own self-government structures.”*¹⁴¹

However the Ethiopian federation is not only to remain with the above regional state because Article 39(3) of the Constitution reserves to ethnic groups within the ethnically plural regional states the right to establish at any time their own state. Ethnic groups that do not have a state of their own can secede from the regional state they are demarcated into. This is evident from article 47(2) (3) of the Constitution. A procedure for the establishment of such a state is also provided in the same article. According to the procedure outlined in article 47(3) of the Constitution, the demand for statehood must be approved by a two-thirds majority of the members of the Council of the ethnic group concerned. After receiving a written demand, the state council, from which both ethnic groups want to secede, organizes within a year a referendum for members of the relevant ethnic group. For an ethnic group to have a state of its own, only a majority of the voters' vote in favor of secession is sufficient. Once this is achieved, the state council will transfer its powers to the ethnic group that made the demand and the new state created by the referendum will automatically become a member of the federation.

¹³⁹See Yonatan Tesfaye, supra note 14 at 414. The Tigray region is named after the regionally dominant Tigre ethnic community. The same goes for the others. The Afar regional state- the Afar ethnic community, Amhara regional state- Amhara ethnic group, Oromyia regional state-Oromo ethnic community, Somali regional state-Somali ethnic community.

¹⁴⁰ Yonatan Tesfaye, supra note 14 at 414-415

¹⁴¹Id., p. 415

Furthermore in order to respond to the constitutional requirement of ensuring self-government and equitable representation of the different ethnic groups, the regional constitution has established ethnically defined zonal administrations and special Wereda. In contrast to their Counterparts in other regional states, zonal administrations in the SNNPR are recognized by the regional constitution as an autonomous tier of local government with constitutionally mandated elected councils and executive administrations. The Amhara state has also established three special zones for the Oromo, Awi and Wege-hemera nationalities administration.¹⁴²

In addition Most of the regional states are comprised of three-tier hierarchical administrative structures, namely Zone, Wereda and Kebele. in contrast to this, while the kebele is hierarchically responsible to Weredas and Wereda to a zone, With the view to accommodate minorities that due to their population size cannot establish their own zone within a regional state a number of regional states have amended their constitutions to provide for the establishment of ethnically defined special Wereda that do not form part of zones but hierarchically responsible to the region they belong. The Benishangul Gumuz state has, for example, established one special wereda¹⁴³ while the state with the most number of special *weredas* is the SNNPR with four special weredas. Functioning as autonomous entities, these ethnically defined zones and Weredas provide intra-state minorities with the territorial space that is necessary to manage their own affairs.¹⁴⁴

The other issues related self-rule is the case of citizens dispersed in the country, Owing to their settlement pattern; territorial self-rule is not feasible to ethnic migrants (also called non indigenous or settlers. These individuals are usually found in large number in major urban areas. It is asserted that Ethnic migrants must thus seek protection within a non-territorial framework.¹⁴⁵ This and related issues will be discussed in more detail in chapter five and six of the paper.

¹⁴² Yonatan Tesfaye, supra note 14 at 473

¹⁴³ Pawe special wereda has been reduced to Wereda status due to conflict of political loyalty to Amhara regional state than to their mother state -Benishangul Gumuz, interview notes, deputy regional president of the regional state, Asosa ,Febebruary,2014

¹⁴⁴ Yonatan Tesfaye, supra note 14 at 474-475

¹⁴⁵ Id.p.474

As illustrated above the ethnic element has significant place in the state organization in post 1991 Ethiopia. It is argued that the inclusion of the ethnic factor in designing the territorial structure of a state presents an ideal framework to provide extensive self-rule for an ethnic group, “guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society”.¹⁴⁶ Further Yonathan asserts that, *in a country like Ethiopia where particular ethnic groups have been dominated culturally, economically and politically by historically privileged members of a particular ethnic group, it is imperative that they, in order to avoid the continued dominance of the dominant group, are provided with territorial autonomy. An arrangement that makes an ethnic group a majority in its own house, it is argued, empowers geographically concentrated ethnic groups with the necessary space to protect and promote their distinctiveness, without fear of the dominant group imposing their values or vetoing their aspirations.*¹⁴⁷

However it is stated that the present internal organization of the state has the potential to freeze ethnicity and territorial boundaries. In such a system, every dispute turns into an ethnic dispute. Ethnicity becomes the sole lexicon of political discourse and, more dangerously for national unity, a readily accessible tool for ethnic entrepreneurs. As ethnicity has become a major source of power, the development of ethnic entrepreneurship across linguistic lines has become a common phenomenon. Nothing other than the political turmoil and violence that we witnessed in the different regional state can illustrate this more aptly. These criticisms, however, should not be interpreted as a rejection of the consideration of the ethnic factor in the designing of the state but rather to demonstrate that the Ethiopian Constitution has taken it too far.¹⁴⁸

In other words the problem with the Ethiopian system is that “*it over emphasizes ethnic diversity both in the symbolic realm and in the institutional expression of self-rule. A prime manifestation of this overemphasis on ethnicity is evident in the organization of the territorial structure of the state which seeks to provide a mother state to each large ethnic group. This construction of the*

¹⁴⁶ W. Kymlicka, supra note at 27-28.

¹⁴⁷ Yonatan Tesfaye, supra note 14 at 418-419

¹⁴⁸ Id. p. 424-425 see also Alemante G. Selassie, ‘Ethnic federalism: Its promise and pitfalls in Africa’, *Yale Journal of International Law*, V.28 No.1 (2003), p.107 and Assefa Fiseha, *Federalism and the accommodation of diversity in Ethiopia* (Wolf Legal Publishers) (2005)

*state has the effect of freezing ethnic identity as the prime marker of political allegiance, thus, limiting the development of either overarching or crosscutting cleavages. This is evident from the fact that identity fragmentation along ethno-linguistic lines has become a common phenomenon in Ethiopia. In some cases, it has even contributed to the weakening, if not disappearance, of age-old regional and national identities. More puzzling also is the prominence given to ethnic identity to the exclusion of all other identities like regional identities which are an important historical element of the Ethiopian makeup.”*¹⁴⁹

Furthermore it is stated that “The overemphasis on diversity, as is evident both at the symbolic and level and self-rule (and especially in the territorial structure of the federation) has, however, the danger of putting the federation under intense pressure. Since the excessive emphasis on regional autonomy is not countervailed by a set of institutions and processes that promote shared rule and thereby national unity, there is a tendency that interaction between ethnic groups will develop into a zero-sum game”.¹⁵⁰

In this regard, there is a lot recommendation from renowned academicians and experts among these Yonatan states that “*the Ethiopian system needs to move beyond its fixation with ownership based on historical and other considerations in the organization of the state and rather base its organization of the state on demographic realities. This does not mean that historical considerations are not necessary in the configuration of the state but they should be relevant only to the extent that they are necessary to determine the path that the society should take in unison. In the context of a state that attempts to come to terms with its history of conquest and subjugation, the federal arrangement should not be used to advance a policy of the restoration of a ‘distant past’. Not only is this impossible to achieve but it is highly disruptive and defeats the basic tenet of federalism as it results in the alienation of certain groups. This is illustrated very aptly by the condition and plight of ethnic migrant citizen for this can be attributed to the same system defines states as belonging to one ethnic group based on historical considerations and*

¹⁴⁹ Id.p.483

¹⁵⁰ id.p.485- 486

*not current demographic realities. This once again defeats the very purposes of the federal arrangement, namely to accommodate ethnic diversity”.*¹⁵¹

CHAPTER FOUR

THE RIGHTS of CITIZENSHIP: - Conceptual and Theoretical Framework

4.1. Citizenship: Definition and Concept

In a democracy, the source of all authority, the legitimate basis of all power, is the collective body of the people, the citizens of the polity. There is popular sovereignty of the citizens and thereby government by consent of the governed. A citizen is a full and equal member of a polity, such as a democratic nation-state.¹⁵²

The concept of citizenship is a key to comprehension of what democracy is and how it works. Thus, actors involved in the implementation of democracy need to know what citizenship is, how it is acquired or lost in various political systems, what rights, responsibilities, and duties are entailed by it, and how it is connected to the institutions of particular states. This is because of the function of a constitutional democracy where it first protect individual rights of citizens, and second to restrain or prevent certain (usually threatening) political changes which a majority or a self-declared sovereign power would simply impose on a minority, that is, it is to make authorities answerable to the law.¹⁵³ For instance the Derg regime in Ethiopia crumbled because of centrifugal regional tendencies, but perhaps more so because of violent, authoritarian rule stifling the exercise of democratic rights of citizens which ultimately undermined the whole social fabric.¹⁵⁴

When we come to the concept and definition of citizenship, it has been defined variedly among scholars. According to Nnoli, “*Citizenship is a phenomenon associated with the state... It*

¹⁵¹ Id. p.485

¹⁵² Mouffe Chantal., "Citizenship." In Seymour Martin Lipset, (Ed.), *Encyclopedia Of Democracy*, Volume 1 Washington, DC: Congressional Quarterly, Inc., 1995, p. 217

¹⁵³ Jon Abbink, *supra* note 1 at160

¹⁵⁴ Id.p.164

involves a strong identification."¹⁵⁵ It is conceived as "a status that is applied to a person endowed with full political and civil rights in the state."¹⁵⁶

In addition citizenship is a term commonly used in the social sciences to indicate different types of belonging to a political community and the rights that such belonging brings with it. Furthermore Citizenship in law is defined somewhat differently, where the legal bond between the state and the individual is at the core of its meaning. It is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.¹⁵⁷ This bond provides the basis for other rights. Precisely which rights the state guarantees to its citizens varies by state, but the most common rights of citizens are the right to permanent residence within the state, the right to freedom of movement within the state, the right to private property, the right to vote and to be elected or appointed to public office, the right of access to public services, the right to diplomatic protection when outside the country, and other rights that are guaranteed to noncitizens as well as citizens.¹⁵⁸

In other words what can be inferred from the above is that "*Citizenship is the fundamental institution that connects the individual bearer of rights to the protective agencies of the state. The civic realm of the state provides the main channels through which individuals can participate politically and share in governance.*"¹⁵⁹ Thus it can be said that "*The general formal conception of citizenship denotes judicial and political claims of membership to a State. Thus citizenship accounts of the state system globally reveal the highlighting of a sense of belonging and attachment to the state, where on the one hand, rights and other entitlements are assured to*

¹⁵⁵ Nnoli O., *Ethnic Politics in Nigeria*, Enugu: Fourth Dimension Publishers, 1978, pp. 2-10.

¹⁵⁶ Kazah-Toure T, A Discourse on Citizenship question in Nigeria, *Journal of West Africa Affairs*, V.4, No.1 2004, p.41-63.

¹⁵⁷ Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *International Journal of Refugee Law*, Vol. 10, No. 1/2, 1998, pp.159– 160

¹⁵⁸ Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, Open Society foundation, 2010 p. ix

¹⁵⁹ Douglas B. Klusmeyer, *Between Consent And Descent: Conceptions Of Democratic Citizenship*: Washington DC, Carnegie endowment for international peace, 1996p. 97

members and on the other hand, an expectant reciprocity in the exercise of members' duties and obligations."¹⁶⁰

Furthermore Citizenship is not of rights only but of duties, in this regard it is stated that "The responsibilities of citizenship involve action to narrow the gap between ideals and realities. For instance, the highest standards for good government in a constitutional democracy are (1) equal security for the rights of all persons in the polity, and (2) government by consent of the governed. Citizens have the responsibility to recognize and overcome contradictions of ideals concerning equality of rights for all citizens, such as unjust denial to certain persons or groups of their rights to participate in government or to fair treatment in the courts of law."¹⁶¹

Similarly Kymlicka and Norman's perspective propose citizenship as legal status defined mainly by panoply of civil, political and social rights with some responsibilities and duties like obedience of laws, payment of tax; as an identity of an individual belonging to one or more political community, an identity that is often contracted with other more particular identities like class, race, religion, gender profession and as an activity or civic virtue.¹⁶²

Furthermore Citizenship, as pointed out above by its fundamental definition, beyond implying the duties and rights that each member of a political society has towards the state of which s/he forms a part, "Citizen" is also an equalizing word. It carries with it the activism of Aristotle's definition-a citizen is one who rules and is ruled in turn. Even if the acquisition of citizenship is either through birth, lineage or naturalization, it requires a shared active participation of each member of the polity. Citizenship in blended and similar societies came to be defined not only in terms of obligations or responsibilities alone, but also in terms of rights and privileges. In other words, this is to say that there was no discrimination on the basis of descent, period of arrival or even extent of stay.¹⁶³

¹⁶⁰ Makmis Mark Dakyen & Edmond P. Zungdet, Ethnicity, Religious Conflicts, the Citizenship Question and Nigeria's National Transformation, *Global Journal Of Human-Social Science*, Volume 14, Issue 5, Version 1.0,2014

¹⁶¹ Galston, William A. "Liberal Virtues and the Formation of Civic Character." In Mary Ann Glendon and David Blankenhorn, Eds. *Seedbeds of Virtue: Sources of Competence, Character, and Citizenship in American Society*, Lanham, MD: Rowman & Littlefield, 1995, p.48

¹⁶²Will Kymlicka and Wayne Norman(eds), *Citizenship in Diverse Societies*, Oxford University Press, London, 2000

¹⁶³Abimbola O Adesoji, supra note 9 at 152

Thus from the aforementioned definition it can be pointed out categorically that “*the state as the only institution with the capacity to endow individuals with citizenship. Conferring citizenship status must meet certain criteria, which may include birth, registration or naturalization. This is defined in the constitution which locates their political rights, civil rights and civil liberties. Citizenship as individual constitutional right comes with duties and obligations. The constitutional obligations test individual loyalty and patriotism to the state. It also reinforces empathy, sustains solidarity and promotes ‘we-feeling’.*”¹⁶⁴ Thus it can be said that citizenship traditionally requires some qualification and can be discriminatory or denied others even though the dynamism and theoretical underpinnings of the idea reveals its multidimensional nature.¹⁶⁵

In sum for the purpose of this paper Citizenship is a force that makes citizens to participate in the democratic process of the state s/he belongs. The absence of it limits social cohesion and generates the condition for mobilizing group membership to perpetuate sense of vulnerability and to challenge the status of the state.¹⁶⁶ Klusmeyer argues in this context, when he conceived citizenship as rooted in: ...*The fundamental institution that connects the individual bearer of rights to the protective agencies of the state. The civic realm of the state provides the main channels through which individuals can participate politically and share in governance.*¹⁶⁷ Thus the discussion of citizenship above and my use of the term in this paper can be summarized as follows. At a minimum, citizenship is a legal and formal position based in law. It is the ultimate expression of a state's sovereignty in that it alone has the right to define who is and who is not a citizen.¹⁶⁸ Citizenship is also central to the democratic principle of self-rule, and the distinction between citizens and subjects. Subjects of a state have no "voice in the way in which political power is exercised," but citizens make laws and subject themselves to those laws through their own participation.¹⁶⁹

¹⁶⁴ Nnoli O, *Introduction to Politics*, Enugu: Pan-African Center for Research on Peace and Conflict Resolution (PACREP), Nigeria, (2003). pp. 130-135.

¹⁶⁵ Makmis Mark Dakyen & Edmond P. Zungdet supra note 160 at 13

¹⁶⁶ Ibid

¹⁶⁷ Douglas B. Klusmeyer, supra note 159 at 97

¹⁶⁸ Heater H.B, *What is citizenship?* Mal den: MA: Polity press, 1999, p.80

¹⁶⁹ Lahra Smith, supra note 10 at 54 (Tully 2000, 213)

4.2 Citizenship and nationality

I think it is worthwhile here to differentiate between citizenship and nationality. In some contexts an individual can have the nationality of a state—be recognized by the state as belonging and having some claim upon it—without the full citizenship rights that are granted to others. This situation was more widespread in the past than it is today. For example, in African countries under colonial rule or South Africa under apartheid, only those of European descent had both nationality and full citizenship rights. Similarly, it used to be common for women to have nationality of a state but not full citizenship, because they did not have the right to vote. Today, human rights law principles of nondiscrimination require that all those who are nationals of a state enjoy the same rights.¹⁷⁰

Furthermore the terms nationality and citizenship, while sometimes used as synonyms/interchangeably, have different meanings in different contexts. Citizenship has a precise legal definition, and provides access to specific rights. Nationality is often defined more broadly, with reference to origin and to membership in a culturally defined community. Furthermore while Citizenship is closely linked to the concept of rights defined by international and national law, On the contrary Nationality is a more ambiguous term than citizenship, and one closely associated with subjective understandings of community. It may refer to membership in an ethno-national group that need not be established as an independent state.¹⁷¹

Furthermore it is stated that “the nation state ineluctably links citizenship and nationality, citizenship is conferred on the basis of membership in the nation. This practice gravely endangers the possibility of nurturing cultural diversity within the nation state. Cultural diversity within the state territory requires decoupling of citizenship and nationality; in fact the acceptance of the idea of multicultural citizenship makes it imperative. The conceptual distinction between citizenship and nationality was endorsed in the erstwhile Soviet Union but the practice of Great Nation (Russian) Chauvinism endangered its diversity.”¹⁷²

¹⁷⁰ Bronwen Manby, *supra* note 158 at ix

¹⁷¹ Baubock Rainer, “Citizenship and Migration: Concepts and Controversies.” In *Migration and Citizenship: Legal Status, Rights and Political Participation*, edited by Rainer Baubock, Amsterdam: Amsterdam University Press, 2006, P.17

¹⁷² Akhtar Majeed and et.al *supra* note 2 at 24

Thus for the purpose of this paper One logical way to make the distinction would be simply to consider nationality as the country where an individual was born, while reserving citizenship for the legal status conferred by a state.¹⁷³ Thus an individual born in Ethiopia to Ethiopian parents and having Ethiopian citizenship at birth could become a Norwegian citizen, for example, while retaining Ethiopian nationality (understood as country of birth). In sum even though there is such difference, in this paper citizenship and nationality may be used interchangeably as in contemporary usage to refer to the legal relationship between an individual and a state, in which the state recognizes and guarantees the individual's rights. Neither "citizenship" nor "nationality" is used to indicate the ethnic origin of the individual concerned.

4.3 Types, nature and acquisition of citizenship

National laws generally distinguish types of citizenship, with different regulations for those acquiring citizenship at birth, origin, descent and those acquiring citizenship by a defined process of naturalization. In the following paragraph there will be a brief discussion on the different type, status, nature and acquisition of citizenship.

4.3.1 Citizenship at birth

Citizenship at birth may be defined as determined by place of birth (Jus Soli) (Latin for "right of soil") or by ancestry (Jus Sanguinis) (Latin for "right of blood"). Countries that follow a Jus Sanguinis policy grant citizenship based on ancestry or ethnicity; this is related to the concept of a nation-state common in Europe. Countries that use Jus Soli grant citizenship to anyone born in the territory of the state, a policy practiced by many countries, including the United States. Some European countries, despite the fact that they have big immigrant communities, retain Jus Sanguinis as the main principle governing the acquisition of citizenship by immigrants' children; this leaves naturalization as the main mode for acquiring citizenship by the population of immigrant descent. For example, after World War Two, "in countries such as Switzerland, Germany and Austria, second and third generation migrants were considered foreign nationals and had access to nationality on the same terms as first generation migrants".¹⁷⁴

¹⁷³ Gershon Shafir, "Introduction: The Evolving Tradition of Citizenship." In *The Citizenship Debates: A Reader*, edited by Gershon Shafir, Minneapolis: University of Minnesota Press, 1998. P.22

¹⁷⁴ Bronwen Manby, *supra* note 158 at x

In other words when an individual obtains citizenship on the basis of his or her father's and/or mother's citizenship (regardless of place of birth), this is termed herein "citizenship by descent." On the contrary citizenship from birth is to mean citizenship that an individual has by right from birth rather than acquired as an adult or following any administrative process. In some circumstances in some countries, the law provides that an individual can obtain retroactive recognition of citizenship from birth/of origin *after* birth.¹⁷⁵

4.3.2 Citizenship by acquisition

Citizenship by acquisition is that citizenship that has been acquired by an administrative process after birth such as by naturalization, registration, or marriage. For instance citizenship can commonly be obtained through marriage to a person holding the citizenship (*Jure Matrimonii*).¹⁷⁶

4.3.3 Types and Nature of citizenship

As pointed out above in the definition of citizenship there is an element of rights and duties that emanates from belonging to the state. Martiniello suggests that "*citizenship embodies three main features, including: 1) a juridical status granting civil, political and social rights and duties to members of a political collectivity, typically a state; 2) a set of social roles performed by citizens (for example voting) and 3) a set of moral qualities thought to be crucial for the existence of a good citizen.*"¹⁷⁷

The first of these features that divides citizenship into *civil, political and social rights* draws from the classic statement given by the British sociologist T.H. Marshall, who divided citizenship into three parts: civil, political and social¹⁷⁸ Marshall's central concern was how citizenship operates as a tool of social stratification, and how to reconcile the basic equality inherent in an idea of citizenship with the inequalities of social class endemic to the capitalist market system.¹⁷⁹ Furthermore H.T. Marshall's thesis has often been considered to provide the modern conception of the idea in which he classified citizenship as consisting of civil, political and social components. He analyzed the development of citizenship as a development of civil,

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Martiniello Marco, "citizenship", IN: David Theo Goldberg and Jhon Solomon, A companion to racial and ethnic studies, (Maldan, MA: Blackwell, 2002) p. 116

¹⁷⁸ Marshall T.H and T. Bottomore, Citizenship and Social Class, Concord, (MA: Pluto Press, 1991) p. 10

¹⁷⁹ Lahra Smith, *supra* note 10 at 55

then political, then social rights. These were broadly assigned to the eighteenth, nineteenth and twentieth century respectively. But such conception is said to treat all societies as homogenous which fails to explain the realities of ethnic, religious or racial divisions in relations to national citizenship as is evident in plural societies because he used an Anglo-Saxon interpretation of the evolution of rights in a "peaceful reform" mode.¹⁸⁰

However contrary to T.H Marshall's thesis theorist like James Tully has noted that the liberal view of citizenship as only a set of rights and duties is limiting, and that citizenship is better seen as "an identity that members acquire through exchanging reasons in public dialogues and negotiations over how and by whom political power is exercised"¹⁸¹ Tully's view of citizenship as the "intersubjective and dialogical" engagement in the "institutions of self-rule of a free people" points to the importance of recognition and participation of members of diverse citizenship.¹⁸² This view privileges the struggles over recognition rather than a particular end-goal of achieving a sense of belonging. Furthermore, social historian Charles Tilly points to the fact that "scholars have come to think of citizenship as a set of mutual, contested claims between agents of states and members of socially-constructed categories: genders, races, nationalities and others."¹⁸³ Citizenship is therefore, conceptually tied-up with equality, inclusion, representation and participation in democratic states. It is this notion of citizenship as a set of claims between the state and those who occupy the territory within the state that informs the discussion of citizenship in Ethiopia in this paper.¹⁸⁴

In the above paragraph we have seen citizenship as consisting of civil, political and social rights; in the next paragraph we will see the nature and the different possible status of citizenship in diverse society. It is suggested that in diverse states the status of citizenship can be divided into "*citizen minus*", "*citizen equal*", "*citizen plus*" and "*citizen plural*". According to Johanne Poirier it is stated that "*in a multiple pronged typology in a complex polity, it is posited at least four categories of citizenship status: "citizen minus", "citizen equal", "citizen plus" and*

¹⁸⁰ Makmis Mark Dakyen & Edmond P. Zungdet, *supra* note 160 at 13

¹⁸¹ Tully James, "The Challenge Of Reimagining Citizenship And Belonging In Multi-Cultural And Multinational Societies" IN: Catriona McKinnon and Iain Hampsher-Monk, *The Demands of Citizenship*, (New York, Continuum, 2000, p. 215).

¹⁸² *Id.*, p.214, See also Lahra Smith, *supra* note 10 at 55

¹⁸³ Tilly Charles, "Citizenship, Identity and Social History" *International Review Of Social History*, Vol.4, No.3, 1995, p. 6

¹⁸⁴ Lahra Smith, *supra* note 10 at 55

“citizen plural”. The first category, which is “citizen minus” is stated that as *“Every member of the state has right to equal citizenship and should never be treated as a citizen “minus.” A “Citizen minus” conveys repression and likely forced assimilation. Aboriginals who have been deprived of basic rights of citizenship—such as the right to vote—would fall in that category. This is surely easily discarded in a contemporary democratic context.”*¹⁸⁵ This is not only related with aboriginals but for instance ethnic migrants/intra minority in the different ethnically defined regional states in Ethiopia after the state structure in post 1991 federalism.

Next, the “citizen equal” model, here, the assumption is that all citizens are entitled to the same rights and services. Fundamental rights which should not be curbed, even on grounds of accommodating diversity, would provide the foundations of this category. In some cases, equality could entail temporary measures to redress systemic disadvantage, such as affirmative action. This is a basic citizenship regime for any member of a multicultural—and even multinational—society. These measures do not amount to institutional autonomy in the sense considered in this paper.¹⁸⁶

Thirdly we can have the “citizen plus” or the “citizen plural” categories. Here unlike the “citizen equal” it is stated that *“Institutional autonomy would be reserved to the “citizen plus” or the “citizen plural” categories, who in addition to their “citizen equal” status, can also claim measures of self-government. These two categories vary in terms of the degree of autonomy which each group can claim (both from a normative and a realpolitik perspective). It may be that the distinction between the “plus” and the “plural” revolves around the political power, degree of political mobilization and conception of self apart from the mainstream.”*¹⁸⁷

Furthermore the different models and their social realities are summarized as follows: for Chartrand, First Nations ought to be considered “citizen plural” because of their inherent entitlement to self-government. As stated above no groups should ever belong to the “citizen minus” model. Some groups in a complex society can legitimately claim accommodation according to the “citizen equal” model (including temporary quotas, etc.). Others, by virtue of

¹⁸⁵Johanne Poirier, supra note 102 at 44,45

¹⁸⁶Ibid

¹⁸⁷Ibid

their history, social cohesion, or political power within the overall state, may qualify as “citizen plus or plural”. The degree of institutional autonomy to which they can aspire would be reflected by this qualification. In that context, and to conclude with examples, Québec and aboriginal populations in Canada could claim “plural status”—and thus a very high degree of institutional autonomy. French Canadians outside Quebec could claim a “citizen plus” status, which would entitle them to certain attenuated forms of self-government. Other diversities can claim special accommodation measures— short of autonomy—to enable them to be “citizens equal”.¹⁸⁸

Finally the other division on citizenship can be termed as Liberal citizenship Vis-a-Vis republican citizenship. It is stated that *“The notion of civic republican citizenship considers rights not as inherent but as acquired through civic practice that upholds obligations to the community. By contrast, the idea of liberal citizenship assumes that rights inherent in individuals and exist prior to belonging to a community. Liberal citizenship is guaranteed with minimal obligation to the community. Within the post-colonial state, liberal qualifies a person to participate in the national community, while in ethnic community; civic republican citizenship requires members to participate in the group’s preservation. Particularly as this relates to competition or conflict with similar groups and even in some cases as this relates to national community.”*¹⁸⁹

4.4 The Citizenship Question

The wave of democratic transitions which spread across Africa in the early 1990s did not always result in the kind of meaningful democratic reform as was hoped. Nonetheless, many of these transitions led to some kind of institutional and constitutional reform. These electoral and constitutional changes also created the contexts within which African citizens and states began debating the contours of a new kind of nation-state citizenship. While much of the public discourse has been among elites, institutional changes are not only about voting, administration or political party dynamics. The institutional shifts also impact on the daily lives of citizens in

¹⁸⁸Ibid

¹⁸⁹ Stephen Ndegwa, “Citizenship and Ethnicity: An Examination of Two Transition Moment in Kenyan Politics”, *American political science review*, Vol.91, No.3, 1997, p 603-604.

ways that sometimes reflect dramatic transformations in social status and the relationships among actors, both citizens with the state, and amongst citizens themselves.¹⁹⁰

*An instructive example of the different nature of this process is South Africa, the constitution of 1994 signaled radical changes in electoral and political procedure with the end of apartheid. But it was equally a social transformation with the potential to initiate dramatic changes in how South Africans see themselves and their fellow citizens. Decades of state sponsored inequality and violence could not be undone overnight, however there appears to be a bifurcation in how the ruling party sees citizenship in the post-apartheid state and how average citizens envision the benefits of the democratic transition to impact their lives.*¹⁹¹ In her study of this, Enslin argues that the official, state vision of citizenship is “in serious tension” with the concerns of the poor, and average citizens.¹⁹² Enslin notes that during the anti-apartheid struggle a highly participatory notion of citizenship was forged. Now there is a tension between vision of active citizenship and conception of citizenship as access to opportunities and socioeconomic goods.¹⁹³ This shows conflicting visions of citizenship in the transition of state in post 1990s.

Furthermore in Ethiopia, as we will see, not only does the state and important constituencies of political elites have disparate visions of national citizenship, but local communities notions of power and extensive political reshuffling in post 1991 inform and shape the building of modern citizens.¹⁹⁴ This is also true of Nigeria where after experimenting with a federal structure based on ethnicity there is a tension sometimes leading to serious conflict based on questions related with citizenship as will be discussed in the next section of this paper.

4.4.1 The indigenous Vis- a-Vis settler/migrants conflict

Among the challenges in multi ethnic society particularly closely knit to the analyzed ethno-nationalities right to self-rule is the unresolved question of citizenship and rights which continuously generate ethnic suspicions, tensions and conflicts among groups classified as ‘sons of the soil’ or indigenes and migrants or settlers. For example in Nigeria it is stated that “Across

¹⁹⁰ Lahara Smith, *Citizen Education in Multiethnic Federal States: the experience of Ethiopia*, Immigration, Minorities and Multiculturalism In Democracies Conference, Edmund A. Walsh School of Foreign Service , Georgetown University, 2007, p.2

¹⁹¹ Ibid

¹⁹² Enslin Penny, “Citizenship Education in Post-Apartheid South Africa,” *Cambridge Journal of Education*, V.33, No.1, 2003.p. 79

¹⁹³ Id., p. 75

¹⁹⁴ Lahara Smith, *supra* note 190 at.8

*the land, a sense and indeed the practice, of belonging to one country is spurred for the more exclusive and exclusionary criteria such as indigene, native, autochthon, and son-of-the-soil. These criteria actually spell inclusion and exclusion with regards to citizenship rights and privileges both in general terms but especially in a given geo-political space.”*¹⁹⁵ This holds true not only of Nigeria but of Ethiopia where such problem are recurrent in Gambella, BGRS, South nation, nationalities and people state and Oromiya regional state as will be discussed in the next two chapters..

The tension between indigene Vis A- Vis settlers can be approximated as “the theory of settler phenomenon” that derives from migration of groups over time and space. The concept of indigeneship and settlersip is associated with primordial identity where “anyone born outside the native home of the ethnic group is regarded as a settler with no provision for converting to an indigene”, hence, inclusive citizenship is “discounted for narrower concept of indigeneity”. This process appropriates opportunities and privileges to indigenes while non-indigenes are denied such.¹⁹⁶

When we come to the definition of indigenous it is stated that “*who an indigene of a particular area could be a difficult task, particularly in the light of the mass movement of peoples over time and across cultures and space. Yet the relative association of peoples with different areas; a product of their settlement and the seeming dominance of their cultures or perhaps the outcome of their ability to conquer and occupy a relatively virgin area, has resulted in situations whereby some came to identify themselves as the indigenes of a particular place.*”¹⁹⁷ This holds true of Ethiopia where in BGRS and Gambella some have been successful in defining as indigene and others as settler/highlanders even though there is clear evidence that there is still continuous movement of population around the adjacent neighboring states which share common culture and history, thus raising difficulty in the appropriateness of the term in the political and constitutional practice of regional states in Ethiopia.

¹⁹⁵ Dakyen, M.M.and Zungdet, E.P., *Theory and Practice of Citizenship Education: The Nigerian Experience*, 2nd Edition. Jos: University Press Ltd, 2011, p. 190

¹⁹⁶ Alubo, O.,*Ethnic Conflicts and Citizenship Crisis in Central Nigeria*. Ibadan: *Programme on Ethnic and Federal Studies (PEFs)*,2011

¹⁹⁷Abimbola O Adesoji, supra note 9 at 152

Furthermore, it is stated that *“the dividing line between indigenes and settlers is very thin more so that an indigene somewhere could be a settler in another place in which case the rights enjoyed, as indigenes are limited or non-existent as settlers. The wider implication of this situation is that while one may enjoy some rights as indigenes, such rights could be limited by virtue of being a settler, a stranger or a migrant elsewhere whereas with a citizenship of state there is Constitutional guaranteed rights for every citizen to enjoy irrespective of his/her ethnicity, location or place of birth”*.¹⁹⁸ For instance an Amhara settler in Benishangul Gumuz has limited right to political participation even though s/he as an indigene to the Amhara regional state can exercise full rights citizenship, This is thus despite the FDRE constitutional guarantee to the right to equality under article 25 without any restriction on ethnicity, language, political opinion.....this will be discussed in detail in the final chapter of the paper.

Furthermore Mamdani in his examination of the indigene Vis a-Vis settler question in Nigeria enunciates a number of principles in understanding identity crisis. One of the principles is that the indigene/settler category is interconnected and interloping as one defines the other. According to him, *settlers exist because some people have succeeded in defining themselves as indigene in order to exclude others, whom they have defined as settlers. The indigene/settler relationship is based on the principle of exclusion. Settlers are not defined merely by immigration, more so that almost all African groups and peoples somehow, have migrated from one part of the continent to another over an enduring period of time. The concept of a settler is a political construction with roots in conquest, state power, coercion and law. The settler can never become an indigene or a native since the basis of differentiation is the denial of civic citizenship through a political imposition of a permanent and exclusionary ethnic or religious label*.¹⁹⁹

Basically in Nigeria the legal requirement creates a double-tiered system of citizenship whereby individuals belong first locally at their ‘state of origin’ and the secondly at the national level with the local membership being the precondition and determinant to opportunities at the national level. Belonging at the state level is maintained through an intricate system of mobilization and

¹⁹⁸Id.p.156

¹⁹⁹ Mahmood Mamdani. “Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism” *Comparative Studies in Society and History*, Vol. 43, No. 4. 2001, p. 651-664

patronage to the institutions of the ethnic group in which one is indigenous in return for endorsement and validation of national citizenship. Failure to make convincing claims of belonging in an ethnic group at the local level could exclude a person from most rights of citizenship at the national level leading to a condition of near-statelessness. Contesting local exclusion has therefore resulted in violent conflicts among ethnic groups.²⁰⁰

Furthermore here for the clarification and understanding the issues on indigene Vis –a- Vis settler and citizenship in this paper, it is important to clarify the difference between the individual and group citizenship levels. For instance in Nigeria it is stated that “*Whereas citizens enjoy liberal and civic rights such as franchise and fundamental human rights which are universal, individually accorded and guaranteed by the government of Nigeria, each potential citizen is required to first be an indigene; that is to say, one must make convincing claims of belonging in an indigenous group in one of the states before enjoying the individual rights. Consequently, access to the individual citizenship rights within the demos is based on the ability of the claimant to show sufficient proof of possessing citizenship in the ethnos (group) level. Although the ethnos citizenship is mutually exclusive; precluding non-indigenes of a state from citizenship, the other [individual/demos] is all-inclusive, and provides that all citizens are equal. This two-tiered citizenship model highlights a problematic relationship between individuals and the country which has been described as the “pathology” of citizenship in Nigeria. Of the two levels of citizenship, the group level predominates and the requirement of indigeneity at the local level as precondition for citizenship of the country implies that ‘citizenship is still largely a group phenomenon rather than an attribute of individual political actors’*”.²⁰¹

When we come to the impact of the conflict between settler Via-a-Vis indigenous, there are tensions that led into violent conflict and sense of belonging to the state. For instance in Nigeria the tension creates a challenge for national integration and transformation and the contestation over citizenship rights that Balkanizes ethnic groups as a source of conflicts as is evidenced by crisis and other conflicts in the different states. Alubo concludes the major issues in this regard; he states that “*Experiences with civil disturbances invariably relate to the question, who is a*

²⁰⁰ Nengak Daniel Gondyi, *Negotiating Individual and Group Citizenship through State Creation in Nigeria*, Master Thesis, Malmö Högskola p.2

²⁰¹ Id., p.7

citizen? What are his/her rights and entitlements? Do these vary from/to location in the country to the other? They also illustrate that citizenship in Nigeria is tenuous and varies with space and time. Thus, an ethnic and religious group may be persecuted from a particular region and told to “go home”, indicating that such groups do not belong in the particular space and time. This situation also affects the nature of participation and sense of belonging, and hence one requires some certification, of which the certificate of state indigene is illustrative, to participate or even benefit from available resources and opportunities.”²⁰²

Furthermore the issues regarding settler Vis –a-Vis indigene clearly indicates a contradiction and dilemma of citizenship that continuously occasions the spate of ethnic and religious conflicts and the attendant consequences of national transformation in Nigeria and Ethiopia too. Thus is asserted that *“despite these lofty ideals of the Constitution with regards to the idea of citizenship, aliens appear to be less discriminated than Nigerians who share different indigeneship in their places of residence. In reality, the realization of the ideals of the Constitution are far from the truth as while for example, citizens may own immovable property in any part of Nigeria, such are usually targets of attack for destruction in the volatile environment of civil disturbances in the country. In fact, ethno-religious conflicts such as the Boko Haram attacks being experienced in Nigeria result to wanton destruction of lives and property. These are clear cases of the violation of the rights of individuals and of citizenship rights as well.”²⁰³* This holds true of Ethiopian where citizens in the BGRS Yaso Wereda, Gambela and South nation nationalities and people in Guraferda rights of citizenship like to property, work and residence have been violated by those endowed with the ethnic self-right/indigenous.²⁰⁴ In other words this is to say that in Ethiopia after the introduction of ethnic federalism, in the different regional states the claim by settlers and indigenes tensions has given to many clashes thus creating citizenship question in Ethiopia as will be discussed in the final chapter of this paper.

²⁰² Alubo O., supra note 191

²⁰³ Makmis Mark Dakyen & Edmond P. Zungdet , supra note 160 at 16

²⁰⁴ Minister of foreign affair and Benishangul Gumuz region charged for case of 1,346 families who was displaced from their homes and properties in BGRS Kamaash zone, Yaso Wereda illegally. Prime Minister Hailemariam Desalgn has said in the parliament that the citizens are displaced due to mistake by rent seekers and offenders would be put to justice. (Available at <https://ethiopianimes.wordpress.com/tag/benishangul-gumuz/>) ,accessed on 20th January 2014.

In sum the recurrence of the conflicts in Nigeria and Ethiopia as pointed out above can largely be associated with the question of ethnicity and citizenship. The ventilation of such conflictual occurrences cannot be separated from the identity problem of groups having greater sense of attachment to their primordial affiliations that produce ethnic nationalism as against the inclusive conception of citizenship that is universal. Arguably, it is stated that the satisfactory resolution of issues of citizenship could have gone a long way to address and resolve in a more concrete manner the indigene Vis-a-Vis settler problem but this has not been the case.²⁰⁵

4.4.2 Ethnicity and citizenship

The people of a democratic country or nation-state or multi ethnic state may have various and overlapping identities based on such factors of society as religion, race, ethnicity, social class, and gender. However, the single identity possessed equally by all citizens of the polity, regardless of differences, is civic identity. Held in common by all citizens, civic identity is based on freely given commitment to certain civic principles and values of the democracy. In countries with widespread diversity in religious, racial, and ethnic identities (e.g., the USA, Canada, and Australia), a common and overarching civic identity is the tie that holds citizens together in a single democratic political order.²⁰⁶

However, as stated above among the different factors that is in contrast with citizenship is ethnicity, thus in the next paragraph we will have a discussion on what ethnicity is and how it relates to citizenship/citizenship question? Accordingly let us first define for our purpose ethnicity; it stated that “*it is a common form of social construction that distinguishes a group of people with one or more things in common such as race, religion, national origin, language and culture. Ethnicity can be said to be the consciousness of belonging to identifying with and being loyal to a social group distinguished by shared cultural traditions, a common language, in-group sentiment and self-identity*”.²⁰⁷ Clearly, ethnicity in this definition reveals a perception of group differences and so, the social boundaries between sections of a population. As to the nature of ethnicity, it is stated that “*it enforces internal mutual connection amongst people of the same*

²⁰⁵ Makmis Mark Dakyen & Edmond P. Zungdet , supra note 160 at 16

²⁰⁶ Patrick, John J., The Concept of Citizenship in Education for Democracy, *ERIC Digest*. Available at <http://www.ericdigests.org/2000-1/democracy.html> accessed on June 20 2014

²⁰⁷ Afolabi, M.A., *Intergroup Relations in the 20th Century Nigeria: A Historical Survey*. In: Akinwumi O, Okpoh O.O. Gwamna J.D, eds. *Inter Group Relations in Nigeria during the 19th and 20th Centuries*, Makurdi: Aboki Publishers, 2006.

ancestry, encouraging internal cohesion and solidarity and enforcing the need to provide natural security for each other and also promote a sense of identity.”²⁰⁸

Furthermore contextually, ethnicity in the sense of this paper is creating a sense of identity that can be a manipulative instrument in the hands of a class for an interest and its subjective dimension which breeds prejudices and stereotypes that are sometimes expressed in ethnocentrism. With this is the attendant inclination for exclusion of non-group members from certain rights, opportunities or privileges, resulting in ethnic discrimination common and a challenge to national unity, integration and transformation. It is stated that in multi ethnic federal countries like Nigeria and Ethiopia, “*ethnic majorities are often pitched against ethnic minorities exemplified in the dominance and hegemony of the owners of national regional state, and others as minorities on the other. This has provided a basis for conflict and a challenge to legal connotation and interpretation of citizenship under discourse (emphasis mine).*”²⁰⁹ Thus the connecting rod in the conceptualization of ethnicity and citizenship shows that they are social constructions, having the preponderance for exclusion and differential treatments. Particularly, ethnicity had impacted in the bifurcation of citizenship historically resulting in a confused sense of dual loyalty to the ethnic group as against the state.²¹⁰

Furthermore immense academic insight and energy have been dedicated to explaining and understanding the problems of ethnicity, religious conflict and crisis of citizenship in Nigeria. Key in the elements such scholarship have been the views that the dynamics of group relations in Nigeria relate to “*claims and contestations over identity as a basis of determining who is included or excluded from participation or benefiting from opportunities in particular situations*”.²¹¹ This has resulted in identity-related conflicts and contestations of citizenship. Similarly Dakyen and Zungdet contend that “*the scores of ethnic conflicts in Nigeria, including the civil war, were offshoots of the contestations of groups and what lies in the question of who*

²⁰⁸ N.E Lenshie and Abel, J., Ethnicity and Citizenship Crisis in Nigeria: Interrogating Inter Ethnic Relations in Sardauna Local Government Area, Taraba State, *African Journal of Political Science and International Relations* Vol. 6 No., 2012, p. 48-61

²⁰⁹ Makmis Mark Dakyen & Edmond P. Zungdet, supra note 161 at 12

²¹⁰ Id., p.13

²¹¹ Alubo, O. “Gaps and Potholes in Nigeria’s Political Practice: Issues of Citizenship, who is in and who is out? In: Abah S. (ed.), *Geographies of Citizenship in Nigeria*, Zaria: Tamaza, 2003

*constitutes a Nigerian citizen that also reflect a perennial citizenship crisis which divides the citizens from perceived strangers.”*²¹²

In this regard a very interesting reflection on the predicament and cause underlying most of conflicts in multi ethnic federal state for instance Nigeria and Ethiopia is the issue of citizenship rights. It is stated that in Nigeria the construction and nature of the state which is rooted in the colonial pedigree and in Ethiopia also the state structure after 1991 that establish ethnic federalism “*lend toward the institutionalization of ethnic entitlements, rights, and privileges which create differentiated and unequal status of citizenship. This tendency de-individualizes citizenship and makes more of a group phenomenon. Rather than the state providing a common bond for the people through the tie of citizenship, with equal rights, privileges and obligations, both in precepts and practice, people’s loyalties are bifurcated.*”²¹³ The result is usually tension and contradictions in the public sphere as claims of marginalization, exclusion, injustice and others. In other words the creation of states based exclusively on ethnic ground has resulted in Nigeria in what is called as “Statism”. ‘Statism’ is here to say “*an entrenched system of discrimination which is also a negation of the constitutional provisions on national citizenship because membership in a state is exclusionary; one could only belong to a single state. Those excluded in each state are called non-indigenes and are discriminated against and could not make claims to the rights of individual citizenship from a state in which they are non-indigenous.*”²¹⁴ The major contention of this paper is also whether there is a de facto “statism” in the regional states of Ethiopia after the post 1991 federal restructuring that guaranteed extensive self-rights to the owner ethnic groups through depriving the citizenship rights of other individual citizens.

Furthermore it can be said that “Citizenship principles as it applies to most states in Nigeria, do not accord everybody equal rights in the state. This is because it also tends to exclude those who have not been endowed with full citizens’ rights. The people that come under this category are often referred to as ‘foreigners’; at another level, they are called ‘settlers’ or ‘non-indigenes’.

²¹² Dakyen, M.M. and E.P Zungdet, *Theory and Practice of Citizenship Education: The Nigerian Experience*, 2nd Ed., Jos: University Press Ltd, 2011

²¹³ S.Adejumobi, Citizenship, Rights and the Problem of Conflicts and Civil Wars in Africa, *Human Rights Quarterly*, Vol.23 No.1, USA: The John Hopkins University Press, 2001, p.148-170.

²¹⁴ Eghosa Osaghae, supra note 8 at 593-611

The categorization of citizenship on this paradigm is enhanced by status of birth (the law of blood), law of place, and naturalization. Such categorization makes it difficult for the conception of nationhood, when ethnic minorities are treated as anomalous and problematic, even when they have inhabited the territory for centuries, or even when they have been granted full citizenship rights.²¹⁵ The context in which this is demonstrated explains exclusive criteria used to determine the grounds of one's citizenship which further question, 'when does a settler become native?'²¹⁶

Thus for the purpose of this paper "citizenship question" can be explained as "The unequal treatment of ethnic groups on certain basis of identity is central to it. "Citizenship question" is central in countries with wide-spread diversities in terms of religion, race and ethnicity. Citizenship question is a contested outcome of individual struggles for rights to participation and socio-economic welfare in a multi ethnic state²¹⁷. Generally, citizenship question is invoked when there is an entrenchment of ethnicity and other primordial factors identified by Kazah-Toure thus: *"...the manipulation of ethnicity and religion by ruling elite and the monopoly of political power by dominant ruling elite from particular ethnic or religious group - while others are kept away from sharing power. The nature and character of the state responsiveness to the necessities of citizens generally prop up citizenship question directed at the state. This is as a result of the inability of the state to make adequate provision for 'social necessities of livelihood or "individuals' basic security need and universal rights."*²¹⁸

As pointed out above on the impact of citizenship question it is also stressed that *"This inability emboldens sentiments among ethnic groups directed against one another and the state, thereby depriving it of the needed loyalty."*²¹⁹ The political economy explanation for this is beacons on the closing of socio-economic garb and political opportunities among ethnic groups, particularly ethnic gladiators competing for state power, the use of state power and the consolidation of it.

²¹⁵ Kazah-Toure T, supra note 156 at 41-63

²¹⁶ Mamdani M, *When Does a Settler Become Native? Reflection on the Colonial Roots of Citizenship in Equatorial Africa and Southern Africa*, Inaugural Lecture at A.C. Jordan chair of African Studies, Cape Town: University of Cape Town, 1998

²¹⁷ Ibid

²¹⁸ Kazah-Toure T, Inclusive Citizenship and Democratic Governance in Nigeria, in: Abah OS Ed. *Geographies of Citizenship in Nigeria*. Zaria: Tamaza Publishing Company Ltd, 2003, pp. 20-41

²¹⁹ Jega A, General Introduction-Identity Transformation and Politics of Identity under Crisis and Adjustment, in: Jega A (Ed), *Identity Transformation and Identity Politics under Structural Adjustment in Africa*, Afrikaans institute, Uppsala, 2000, p.12.

The incompatibilities of interests generated by these circumstances are usually given ethnic coloration. The adverse effect is the destruction of internal cohesion and solidarity needed for consolidating democratic governance in multi ethnic setting. Ameliorating such adversity is to create more and more space for developing and accommodating 'inclusive citizenship' that will allow for citizens' participation in the democratic process.²²⁰ Thus it is suggested that *“The conception of the political architecture is constructed on the fact that it has the capacity for building bridges of unity, cohesion and loyalty among citizens. If The effort has been rendered precarious due to misinterpretation, distortion and political manipulation by dominant ethnic or sectional elite to serve their gregarious interests, it will be against developing a civic identity and better integration and cohesion among the residents of the a country.”*²²¹

²²⁰ Kazah-Toure T, supra note 156 at 21

²²¹ Ibid

Chapter Five

THE RIGHT TO SELF-RULE AND THE RIGHTS OF CITIZENSHIP IN ETHIOPIA: an overview of the citizenship question

5.1. Citizenship in Ethiopia: - Legal Framework

In this section we will have a discussion on the different laws on citizenship in Ethiopia. Accordingly the 1930 Ethiopian Nationality Law, which was repealed in 2003, stated that: “Any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject.” However, in the context of setting out the arrangements through which children born of mixed marriages could establish their Ethiopian nationality, the 1930 law also contained a provision that reads: “Every child born in a lawful mixed marriage follows the nationality of its father.”²²² Thus, children of Ethiopian women and foreign men were not regarded as Ethiopian—both in law and in popular understanding—even if they were born and had lived all their lives in Ethiopia, even though the law seemed gender neutral at first sight.²²³ Furthermore the 1930 law also reflects a double standard with regard to the effects of marriages of Ethiopian subjects to foreigners. Whereas “a lawful marriage in Ethiopia or abroad of an Ethiopian man with a foreign woman confers Ethiopian nationality upon her,” “a lawful marriage contracted abroad of an Ethiopian woman with a foreign man deprives her of Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband.”²²⁴

When we come to the FDRE constitution, it does not say anything about citizenship, what it means to be a citizen of Ethiopia. The Constitution just talks about the rights and responsibilities of the citizen, but does not define it. The FDRE constitution under the title rights of nationality

²²² Ethiopia Nationality Law, July 1930, article 1 and 6.

²²³ “A child born in a lawful marriage of an Ethiopian mother with a foreigner is always able to recover the benefit of Ethiopian nationality, provided he lives in Ethiopia and proves he is completely divested of the paternal nationality” (section 7); “If the lawful marriage according to the national law of the foreign father is posterior to the birth of the child issued from his relations with an Ethiopian woman, the child legitimated through this subsequent marriage follows the nationality of his foreign father only on condition that the national law of the latter confers upon him the foreign nationality with all inhering rights. Otherwise, the child preserves his Ethiopian nationality” (section 8). See *id.*, article 7 and 8.

²²⁴ Ethiopia Nationality Law, *supra* note 222 at article 2 and 4.

states that “No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will. Marriage of an Ethiopian national of either sex to a foreign national shall not annul his or her Ethiopian nationality. Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law. Any national has the right to change his Ethiopian nationality. Ethiopian nationality may be conferred upon foreigners in accordance with law enacted and procedures established consistent with international agreements ratified by Ethiopia”²²⁵.

Furthermore Article 33 of the 1995 Constitution did remedy the gender bias and inconsistency in the 1930 nationality law by providing that marriage of an Ethiopian, male or female, to a foreigner does not result in the loss of Ethiopian nationality unless he or she chooses to take the nationality of his or her spouse. In addition in 2003, a comprehensive reform to the nationality law significantly improved this situation. The 2003 Proclamation on Ethiopian Nationality removed this gender discrimination, providing that an Ethiopian national of either sex may pass nationality to his or her spouse, and also simply that “any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.”²²⁶

Interestingly, FDRE Constitution had emphasized the issues of citizenship and fundamental human rights. The nationality proclamation specially identifies who a citizen is and how one can become a citizen. Specifically the law identifies how citizenship can be attained in Ethiopia. These are by birth, registration, marriage and naturalization.²²⁷ The proclamation also eased restrictions on naturalization and provided that “all Ethiopian nationals shall have equal rights and obligations of citizenship regardless of the manner in which nationality is acquired.”²²⁸ The law is not stated to have retroactive effect, however, and in practice it seems that those with non-Ethiopian fathers find it difficult to obtain recognition of a right to nationality on equal terms.²²⁹ In addition regarding the rights of citizenship it states that “the state shall protect the rights and

²²⁵ FDRE constitution, article 33

²²⁶ Id., article 6

²²⁷ Federal Negarit Gazette, Proclamation No. 378/2003, on Ethiopian Nationality, article 3, 5, 6, and 18.

²²⁸ Id., article 3-6

²²⁹ Bronwen Manby, supra note 158 at 54

lawful interests of its citizens in the whole parts of the country and those residing abroad without any discrimination²³⁰.

Furthermore Ethiopia has never recognized dual nationality. The 1930 Nationality Law, the 1995 Constitution and the 2003 Proclamation on Ethiopian Nationality all provide that when an Ethiopian acquires another nationality, he or she automatically loses his or her Ethiopian nationality. However According to a proclamation issued in 2002, “foreign nationals of Ethiopian origin” are to be issued special identity cards that entitle the holder to various benefits. A foreign national of Ethiopian origin is defined as follows: *A foreign national, other than a person who forfeited Ethiopian nationality and acquired Eritrean nationality, who had been an Ethiopian national before acquiring a foreign nationality; or at least one of his parents, grandparents or great grandparents was an Ethiopian national.*²³¹ Holders of such cards enjoy rights and privileges that other foreigners do not, including visa-free entry, residence, and employment, the right to own immovable property in Ethiopia, and the right to access public services. The law expressly forbids Ethiopians who have taken other nationalities from exercising the right to vote, to be elected to any office at any level of government, or to be employed on a regular basis in the armed forces or diplomatic corps.²³²

5.2. The Right to Self-Rule and Rights of Citizenship in Ethiopia: Citizenship Question

As pointed out in the above chapters it is interesting to note here that the Ethiopian constitution, which established federalism and self-determination can said to have been impressed by two loyalties. The first loyalty is to FDRE constitution which provides for establishment of regional self-government of nations nationalities and peoples based on linguistic and territorial divisions of ethnic groups. The second loyalty is to international basic human right to individuals. Thus the constitutional documents can be said that it has equally recognized groups and individual rights. The constitution based the principle to erase past alienation of the different ethnic groups has enhanced communities with group rights. It is not however clear whether such group rights

²³⁰ Federal Negarit Gazzete, supra note 227 at 14, 18

²³¹ Federal Negarit Gazette, “Proclamation No. 270/2002: Providing Ethiopians resident abroad with certain rights to be exercised in their country of origin,” 5 February 2002

²³² Bronwen Manby, supra note 158 at 77

should or not enable the group to interfere with basic human rights of individuals whenever there is a contradiction. It is argued that for the sake of peace within the polity some human rights may be limited for the protection of the group rights, for instance where such a group may interfere in language rights to the extent of imposing within its territory their language in order to defend the threatened language.²³³ Thus this has resulted in a situation where those who do not speak the language of ethnic group concerned are prohibited from political participation impacting on the right to equality and other universal rights given to all citizens.

Furthermore now-a-day's inter-ethnic conflicts are common in Ethiopia. Pertinent to a case at hand the case of Berta and Settlers in Asossa *woreda BGRS*, in a survey made by Ministry of Federal Affairs (MoFA), revealed the prevalence of series of inter-ethnic conflicts. The assessment concluded that the stability of the area depends on the quality of governance and local administration because the conflicts are not yet resolved.²³⁴ Furthermore in the study conducted by Wondewosen affirms that autonomy conflict in Benishangul-Gumuz Regional State has been mainly in the change in the relationship between the host ethnic groups and the numerically strong settler communities and other citizens. In other words this to say that the formation of the new region not only transformed the settler communities and internally migrated citizens into new minorities but also impelled confrontation between them and the new political class of the host ethnic groups endowed.²³⁵ In other words, the FDRE constitution, established under ethnic federal formula came up with new minority-majority relations. Thus contrary to the "national question" rhetoric, there emerge what is called "citizenship question" i.e. The various inter-ethnic skirmishes and clashes, here and there between the formerly anguished ethnic minorities in different parts of the country that began to emerge into the country's politics after 1991 restructure of state and other internally migrated citizens trying to uphold and demand the universal rights given to all in the constitution. As the major cause is stated that the ill-conceived policy of ethnic federalism has generated internal violence because ethnic majorities in some regional states have become intolerant towards minority groups in their

²³³ Akhtar Majeed and et al, *supra* note 2 at 4

²³⁴ Ministry of Federal Affairs (MoFA), *Conflict and Conflict Mapping in and around Benishangul-Gumuz Regional State*, 2006, p. 34

²³⁵ Wondewossen Teshome, 'Federalism in Africa: The Case of Ethnic-based Federalism in Ethiopia', *International Journal of Human Sciences*, Volume: 5 Issue: 2, 2008 p. 22-24

jurisdictions, as has been pointed out the case of BGRS and in the Southern Peoples' Administrative Region.²³⁶

There is certainly no gainsaying that the FDRE constitution in principle provides for full inclusive citizenship rights as earlier conceptualized. Further in line with the Universal Declaration of Human Rights and International Covenants on Human Rights and International instruments adopted by Ethiopia the FDRE Constitution has appropriately included the fundamental human rights of citizens, under chapter three on fundamental rights and freedoms. Among which some of are the right to equality/ freedom from discrimination under article 25, the right of every Ethiopian citizen, without any discrimination based on color, race, nation, nationality, sex, language, religion, political or other opinion or other status to vote and to be elected at any level of government under article 38, the right to acquire and own immovable property anywhere in Ethiopia under article 40 and the right to liberty of movement and freedom to choose his residence under article 32.

Furthermore it can be stressed that chapter 3 of the Constitution dwells extensively on the Fundamental Rights of Ethiopians irrespective of their ethnicity, location or place of birth. Obviously these provisions were meant to act as safeguard against or to provide redress for violations of one's citizenship rights. It would seem however that these provisions did not envisage or perhaps display a total ignorance of situations whereby the enjoyment of citizenship rights will be handicapped or prevented by extraneous considerations such as indigeneity or ethnicity or extensive ethnic self-rule based on language criteria.

In addition even where there are clear provisions on the fundamental rights that Ethiopians can enjoy, the situation is not in any way different. The notion or the perception that the indigeneity of a particular ethnic group or region confers certain rights which others should not enjoy by virtue of being settlers, migrants or strangers is a base for citizenship question. Such rights included but not limited to unhindered access to education and employment opportunities, right to movement, right to property such as land and right to political participations. However as stated above article 25 of chapter 3 of the FDRE Constitution provides for the right to freedom

²³⁶ Daniel Kendie, supra note 3 at 191-2

from discriminations. Specifically it states that, “*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.*” Further under article 33(2) referring to the rights of nationality state that “*Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law.*”

Lofty as these provisions are, the reality is far from the ideal as manifested with the recurring conflicts in many of the regional states as mentioned above. Hence, the contention is that the Constitutional provisions are negated by political consideration in which case there is a focus on what can be referred as indigeneship rights which are ethnic groups’ rights to self-administration. Thus this, it is stated has exposed the federal system to a certain level of divided or dual citizenship between group rights and individual rights. Consequently, it places group rights over individual rights and hence the rights of ethnic groups particularly of indigenes over citizens.²³⁷ Thus this is what is referred as “citizenship question” in Ethiopia i.e. the problem of citizenship in Ethiopia that today largely stem from the discriminations and exclusion meted out to people on the basis of ethnic, regional, and religious identities. This is because those who see themselves are “natives” or “indigenes” exclude those considered as “strangers” from the enjoyment of certain rights and benefit that they ought to enjoy as Ethiopians upon the fulfillment of certain civic duties, such as the payment of tax, this holds not of Ethiopia but Nigeria.²³⁸

The 1994 FDRE Constitution has been seen as laying the basis or foundation for the indigeneship problems by giving extensive self-right to ethnic groups. The foundation to citizenship question can be stated in the words of Lahra Smith as follows:

²³⁷ Oyeweso Siyan, *The Undertakers, the Python’s Eye and Footsteps of the Ant: The Historian’s Burden* (22nd Inaugural Lecture, Lagos State University) Lagos: Faculty of Arts, Lagos State University, 2006.P. 36

²³⁸ Ololade Bamidele, and John Ikubaje, *Positions of Citizens’, Forum for Constitutional Reform on the 1999 Constitution*, Lagos: CFCR, 2004, p. 65

The preamble to the constitution vests power in ethnic groups, by opening with the words: ‘We, the Nations, Nationalities and Peoples of Ethiopia.’ Similarly, Article 8 states that sovereign power ‘resides in the Nations, Nationalities and Peoples of Ethiopia,’ through their elected representatives and ‘their direct democratic participation.’ While recognizing a variety of individual rights, the Ethiopian constitution takes the radical position that political power resides with ethnic and nationality groups. This unique formalization of communal identity as the basis for formal citizenship in Ethiopia has vast political implications and a great many detractors and supporters. Ethnic federalism is a radical departure from a western liberal model of citizenship, but also from previous political regimes in the country..²³⁹

In short there emerged conflicting visions of citizenship in the transition in the post 1990s.

In Ethiopia, as we have seen, not only does the state and important constituencies of political elites have disparate visions of national citizenship, but local communities notions of power inform and shape the building of modern citizens.²⁴⁰ It is stated that *“this is largely because Ethiopia’s “democratic transition” of the early 1990s was incomplete. Though the Peace and Democracy Conference in 1991, the Charter for the transitional government and the Constituent Assembly in 1994 were all nominally to draft a new political compact for governing a newly democratizing Ethiopia, much of the 1995 Constitution represents the EPRDF’s vision for Ethiopia. As key categories of resistance to these institutional and societal changes were sidelined, the opportunity for national dialogue on the structures of Ethiopian citizenship was essentially lost”²⁴¹.*

Accordingly the post 1990s federal structure expressly provides that in order to enjoy access to positions and opportunities on the basis of the right of self-rule one needs to be an “indigene” of the state or local government concerned²⁴². Being an indigene involves showing evidence of

²³⁹ Lahra smith, supra note 190 at 10-11 see also Teshale Tibebe, *The Making of Modern Ethiopia: 1896-1974*. NJ: Red Sea Press, 1995. Will Kymlicka, “Emerging Western Models of Multination Federalism: Are they relevant for Africa?” in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, edited by David Turton, Athens, OH: Ohio University Press, 2006. Donham, Donald L. and Wendy James, eds. *The Southern Marches of Imperial Ethiopia*, Athens, OH: Ohio University Press, 2002, Bahru Zewde, *A History of Modern Ethiopia, 1855-1974*. Athens, OH: Ohio University Press, 1991

²⁴⁰ Id., p.8

²⁴¹ Id., p.13-14

²⁴² The BGRS constitution article 2 give the sovereign power to the indigenous ethnic party even though it takes notice of other citizens are living in the regions for decades. The same holds true of the Gambela constitution.

belonging, through speaking the local language or through one's parents or grandparents to a community indigenous to a State or Local Government, which in effect suggests the membership of a local ethnic and linguistic community. Thus, the inability to prove such membership of a group of people will result in being defined as a "stranger" who cannot enjoy all the rights and privileges of indigenes and/or natives.²⁴³ However the Federal principle of self-rule under FDRE constitution was meant to promote unity in diversity while encouraging accommodation at the federal level particularly in term of appointments. Without holding brief for the framer of the Constitution therefore, it could be said that the principle was not meant to achieve anything sinister or divisive as can be inferred from the long list of universal human rights under chapter three.

More importantly, the exclusion of Ethiopians citizens on the basis of ethnicity/language and the consequent denial of access to land, education, employment and even political offices could not have been envisaged or perhaps deliberately ignored/glossed over by the framer of the Constitution. Remarkably, one major thesis running through the preceding discussion is that the Constitutional provisions on citizenship and fundamental human rights should have provided the needed antidote to the indigene-settler (individual and group rights too) dichotomy, but it did not; first because some of the constitutional provisions focused on the promotion of group rights over individual rights through political concept like indigeneity and territoriality of ethnicity. Second, because the provisions did not envisage or contemplate some problematic situations like for instance what prevails when there is a contradiction between rights of the groups and individual citizens.²⁴⁴ In sum Rae has to say the following on the dilemmas of those citizens who un/fortunately have found themselves in ethnically delimited regional states... *The ethnically based interpretation of national identity that is still prevalent in these states, despite civic principles to be found in their constitutions, possess problems for how minorities/internal migrants are treated within the nation-state and there are significant tension between the conception of nationhood and nation-building liberal democratic institutions. The predominantly ethnic understanding of nationhood is very hard to reconcile with liberal-democratic politics because it implicitly recognizes full citizenship rights only for the majority ethnic group. Ethnic*

²⁴³ Ololade Bamidele and JohnIkubaje, supra note 235 at 76.

²⁴⁴ Abimbola O Adesoji, supra note 9 at 158-159

minorities tend to be treated as anomalous and problematic, even when they have inhabited the territory for centuries. This is the case even when minorities are formally guaranteed full citizenship rights.²⁴⁵ In the following section we will see in detail the status and treatment of minorities in the different regional states in Ethiopia.

5.3 CITIZENSHIP and MINORITY –MAJORITY PROBLEMS at A REGIONAL LEVEL IN ETHIOPIA

5.3.1 Minority right: concept and definition

What is minority and who are qualified to be called and why we need a special treatment? In this regard it is stated that “*The treatment of minorities has been the cause for some of the most violent conflict the world has witnessed in modern times. For instance in the former Yugoslavia, the territorial structure was arranged along ethnic lines but failed to completely coincide territorial boundaries with patterns of ethnic settlement resulting in disgruntled intra-sub state minorities. As a result the breakup of Yugoslavia has produced unstable successor states with internal minorities, and has led to savage warfare and genocide in the service of ethnic cleansing.*”²⁴⁶ Who are minorities? What common characteristics do they share? What are the different types of it? What was the historical ground for it? In this next section before going to see in detail the issues of minority at regional level in Ethiopia a brief discussion on the Concept and definition of minority will be presented.

Minorities have been defined differently however for the purpose of this paper it can be defined using the most cited definition on the issue that was given by Jules Deschenes in 1985 who defined minority as: “*A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law*”²⁴⁷

²⁴⁵H. Rae, supra note 5 at 7

²⁴⁶Cairns, A.C. ‘Constitutional government and the two faces of ethnicity: Federalism is not enough’ in Knopf, K., Ostry, S., Simeon, R. and Swinton, K. (eds.) *Rethinking federalism: Citizens, markets and governments in a changing world* (Vancouver: University of British Columbia Press) (1995) .p.27

²⁴⁷ A minority rights group international, *Briefing*, M.R.G, 2003, p. 1-2

As pointed in the preceding different chapters of the paper after the Second World War - with its nationalist excesses - there was a general reluctance to grant specific rights to ethnic minorities. In other word International law focused on universal (individual) rights and judged that the protection of these rights guaranteed the protection of ethnic minorities as well. Many African countries used this opinion to legitimize their nation building strategies. It became however clear that the effective protection of ethnic minorities required more than a mere protection of universal rights; it moreover required states to adopt specific minority rights as well.²⁴⁸

Consequently, despite its focus on universal rights, international law relatively early paid attention to the rights of ethnic minorities. In that context, Article 27 of the International Covenant on Civil and Political rights states: *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*²⁴⁹

Furthermore International law grants ethnic minorities language rights and cultural rights and the participation rights included as in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992 which under Articles 2.2 and 2.3 of this Declaration stipulate that: *“Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.”* Further, it is argued that the right to autonomy or self-rule of ethnic minority’s particularly indigenous peoples can be granted on bases of the right to self-determination, which is included in several international covenants.²⁵⁰

²⁴⁸ Christophe Van der Beken ,supra note 31 at 9-10

²⁴⁹ ICCPR, article 27: in: Christophe Van der Beken, supra note 31 at 9-10

²⁵⁰Id,p.9-10

5.3.2 Minority at Federal Level in Ethiopia

In light of the above in this section of the paper we will see the scope and level of protection of minority at federal and state level in Ethiopia. Accordingly article 54 (2) (3) of the FDRE constitution states that the House of People Representative shall have about 550 members, among these 20 seats are allocated for special representation to minority groups. However, neither the constitution nor the electoral law²⁵¹ give any indication in this regard as to the definition but it simply leaves the task of preparing criteria for determining such minority ethnic groups to the House of Federation (HF). Thus how can we define minority particularly noting that a single seat in House of people Representatives represents an electoral constituency of roughly 100,000 populations. thus according to *the decision adopted by the transitional parliament*²⁵² and which is still being applied, it is plausibly suggested that the term minority should be determined to include ethnic groups that are numerically too weak to gain parliamentary representation. Thus Ethnic groups that are geographically concentrated but numerically too weak to win an electoral constituency and, thereby gain representation are covered by this scheme of representation. In other words it can be specifically stated that the notion of minority as those groups whose population ranges between 10,000 and 100,000 that are eligible for special representation in the parliament at federal level.”²⁵³ This definition is problematic however for its emphasis on one type of minority group (i.e. comparative smaller size of population) and seems to disregard other type of minorities such as religious, sub racial and social.¹⁵

When we see the scope of minority rights under FDRE constitution, it is suggested that it has more progressive entitlements not even recognized under international law. Christophe identified the major components of the rights that are guaranteed to all “nation, nationalities and people” including minority groups under article 39. He states that “the scope of the treatment of minority under the FDRE constitution is more progressive than that of international law. The constitution grants minorities the rights to language and culture which are incorporated in the first

²⁵¹ Proclamation No 532/2007 Electoral Law of Ethiopia amended Proclamation, *Federal Negarit Gazeta* 13th Year No.54, Addis Ababa, 2007. According to art 20(1) (c, d) of electoral law: “Minority nationality” means a community determined by house of federation based on clear criteria.

²⁵² The document from electrical board identified about 22 nationalities as minority nationalities for representation of House of People Representative, for Constitutional Assembly and Regional Councils. Among the 22 minority nationalities entitled to such representation 15 nationalities are from south regions, see Muktar Mohamed, *Ethiopia Federalism And Protection Of Minorities*, Senior Essay, Unpublished, ESCU, 2003, pp 35

²⁵³ Yonatan Tesfaye, supra note 14 at 445

*component of the Ethiopian right to self-determination. The second component of the Ethiopian right to self-determination, i.e. the right to territorial autonomy/self-rule, even though it is not granted in international law, except in the specific case of indigenous peoples it is granted for every nations nationality including minority ethnic groups. The third component, the right of ethnic groups to be represented in state and federal governments is also guaranteed in line with the international protection of minority as pointed out above.*²⁵⁴ In the next section of the paper the treatment and scope of minority at the different regional states in Ethiopia will be discussed in detail.

5.3.3 Minority at Regional level in Ethiopia: indigenous and non-indigenous

Multi-ethnic federations, including Ethiopia, revealed that in cases where territorial autonomy within federalism is possible for concentrated ethnic groups, there has usually been ethnic minorities scattered in the midst of regional majorities. Thus a geographical configuration of a federal state, including one that heavily relies on ethnicity in the making of subnational units seldom leave us with separate ethnically pure territorial units. Be it indigenous ethnic groups (i.e. indigenous to the area they inhabit) or ethnic migrants, there will always be ethnic minorities that are scattered in the midst of regional majorities. This brings to the fore issues related to the accommodation of ethnic diversities (the issues of majority-minority tension) at the subnational level. Thus such reorganization will leave minorities within the state boundaries at the mercy of the states. It invokes the problem of the status and treatment of those who do not belong to the empowered regional majority.²⁵⁵

Similarly it is stated that drawing borders means some people are in, some people are out. “Minorities within the minority” are incorporated sometimes against their will, or their interests. Thus, territorial solutions have the effect of leaving some people out. To illustrate the side effect of a territorial solution, for instance, the territorial solution in Canada has been beneficial for the French-speakers in Quebec. But it has further marginalized the French-speakers who live in the other provinces. Federal (central) institutions, function in a bilingual mode. However, apart from the right to manage their own educational institutions (and much more timidly, the right to have

²⁵⁴ Christophe Van der Beken, supra note 14 at 9-10

²⁵⁵ Yonathan Tesfaye, supra note 14 at 144-145

their interest considered with regards to health institutions), these various minorities do not enjoy any form institutional autonomy either in their province, or at the federal level.²⁵⁶

Consequently it is stated that “*Federalism may not adequately respond to the security and respect of intra sub state minorities. A federal arrangement that grants a mother state to a numerically dominant ethnic group within a territorial unit often exposes minority groups to discriminatory policies of the regionally dominant group. Such an arrangement would only move the locus of inter-ethnic conflict and tension from the central government to the level of the constituent units. Of particular importance in any multi-ethnic federation is thus the need to take into account the interest and rights of intra-sub state minorities. Securing the rights of minorities which are created by autonomy arrangements is crucial for the long term success of any federal arrangement.*”²⁵⁷

Similarly Cairns affirm the possibility of discriminatory policies and double standard regarding minority in ethnically delimited regional states. He states that “*regionally empowered majorities are prone to see regional minorities in their midst as practical challenge to their cultural integrity – as the enemy within - while regional minorities may see power wielding regional ethnic majorities as potentially hostile to whatever cultural or other difference the minority individual possesses.*”²⁵⁸

Furthermore there is often a fear that minorities face stronger discrimination from regional authorities than they usually encounter from central government. As Preston King points out “We cannot be sure that federalism will do more than protect the interests of that sub-state section of the overall community which controls or dominates the locality...the power accorded to local oligarchy to rule, whatever its description, will always in some degree permit it to deal unfairly, sometimes grossly so, with those subjects to it and most especially where the latter take no part in, or are automatically denied any significant impact upon, local deliberations. Thus as Preston King noted, account must be taken of whether the adopted federal arrangement

²⁵⁶Johanne Poirier, supra note 102 at 48

²⁵⁷Y.Ghai ‘Ethnicity and autonomy: A framework for analysis’ in Ghai, Y. (ed.) *Autonomy and ethnicity: Negotiating competing claims in multi-ethnic states* (Cambridge: Cambridge University Press) , 2001,p.22

²⁵⁸A.C Cairns, supra note 246 at 33

prejudices the rights and interests of the non-dominant communities within the constituent units.”²⁵⁹

However it is suggested that “*in prescribing a particular response to minority problem, however, a distinction has to be made between ethnic groups that are scattered throughout the country, on the one hand, and those that are territorially concentrated but do not have their own self-governing unit, on the other.*”²⁶⁰ In other words this is to mean on the one hand “indigenous minorities” - those ethnic groups that have traditionally lived in the territory of the region and On the other hand “Non-indigenous minorities” – those ethnic groups that have migrated to the region in the recent or distant past and are indigenous in another region. We could also call them internal migrants or settler. For instance in regional states like Oromia, Amhara, Tigray, Afar and Somali, five out of the nine federating states, each of them dominate the political process in their own mother state. In these states numerical majority coincides with political dominance at state level.²⁶¹ However the Amahara in Oromia or the Tigrayan in Amhara or Oromiya, the Amhara in BGRS or Oromiya, the Oromoin BGRS or vice versa are non-indigenous minority²⁶². Thus what can be inferred from this is that different majority-minority notions create problems on protection and institutional safeguards to majority- minority right tension in Ethiopian ethnic federalism.

Furthermore Christophe Van der Beken also affirms the above division on minority groups in regions of Ethiopia. He states that “*under regional laws and practice a differentiation is made between two categories of ethnic minority: i.e. indigenous and non-indigenous minorities, accordingly a different response to each type of minority is implemented. For instance the Oromia constitution only contains protective mechanisms for the Oromo, not for the other ethnic groups, since these are considered to be non-indigenous or exogenous. The Amhara constitution contains group-specific rights for the Himra, Awi and Oromo who are considered to be endogenous in the region. He concludes that the two regions have a similar approach to ethnic diversity. In both cases the constitutional accommodation of ethnic diversity is limited to*

²⁵⁹ P.King, *Federalism and federation*, (London: Croom Helm), (1982) p: 54-55

²⁶⁰ Yonatan Tesfaye, *supra* note 14 at 508

²⁶¹ However in some other regional states a numerical majority remains political minority, in terms of its influence on the political process at the state level. For instance in the state of Harari 7% of the total population in the region play key political position over the rest of other ethnic groups.

²⁶² Assefa Fiseha, *Federalism and the accommodation of diversity in Ethiopia* (Postbus: Wolf Legal Publishers, 2005

*indigenous groups.*²⁶³In the following paragraphs we will see what institutional mechanism best suit the treatment and protection of both types of regional minority in Ethiopia.

- **Institutional safeguard**

In order to remedy the problem of minority it is suggested that based on the situations on the ground the following options should be implemented, these are judicially enforceable bill of right, non-territorial autonomy, and self-rule and shared rule. However Yonatan in this regard states that *“It must be noted that the following mechanisms are not mutually exclusive. A state can complement a judicially enforceable bill of rights with institutions and processes of both self-rule and shared rule in order to guarantee a system that adequately responds to the demands of intra-sub state minorities. “A federal design that is constructed to accommodate ethnic diversity must go beyond the traditional institutional features of a federation. It must include non-traditional institutional features of a federation and other non-federal features in order to give full effect to the institutional principles that respond to the challenges of ethnic plurality. It must include, in addition to judicially enforceable bill of right, non-territorial autonomy, and institutional features that extend the institutional principles of self-rule and shared rule to respond to the concerns of intra-substate minorities.”*²⁶⁴In the next section we will see each of these institutional responses to the plight of the different types of minority at the regional level in Ethiopia and beyond.

- **SELF-RULE**

Indigenous minorities have a right to have a territory of their own inside the region and to representation in the regional institutions unlike non-indigenous minorities who do not have such specific protection and can only claim universal rights.²⁶⁵As the experience of the Ethiopian federalism shows, minorities that are geographically concentrated can be provided with a territorial space to manage their own affairs. This has taken two forms. First, the Constitution provides ethnic groups the right to secede from ethnically plural regional states and establish their own state.²⁶⁶The Second, the internal territorial division within the ethnically plural regional states in Ethiopia has been arranged in such a way that the different ethnic groups can

²⁶³Christophe Van der Beken, Ethiopia: The Protection Of Minorities At Regional Level, *African Focus*, Vol.20, Nr.1-2, p.125

²⁶⁴Yonatan Tesfaye, supra note 14 at 13

²⁶⁵Christophe Van der Beken, supra note 263 at 125

²⁶⁶FDRE Constitution, Article 47(2)

exercise authority on functions that are of relevance to them without necessarily providing them a regional state of their own. Thus for geographically concentrated ethnic groups the constituent units, recognizing their multi-ethnic character, can apply, to the extent possible, processes and institutions of both self-rule and shared-rule. In this regard as pointed above by Christophe and similarly by Yonatan the Ethiopian institutional response to the anxieties of indigenous minorities, which involves both territorial self-rule and representation at state structures, is in line with the normative position.²⁶⁷

However this particular solution might not always be available and not even advisable. Cairns states that the division of constituent units in response to internal demands for self-government is one possible option but it cannot be a “constitutional routine”, this is because it may promote fragmentation along ethnic lines.²⁶⁸ *Thus self-rule and shared rule can be incorporated in any proposal that deals with intra-subnational ethnic diversity, which goes a long way in terms of ensuring that the federal response adequately accommodates the demands of all ethnic groups that inhabit the subnational unit in question.*²⁶⁹

- **SHARED RULE**

The position of intra-substate minorities can be further enhanced by complementing self-rule with some aspects of shared rule. This is about the representation of intra-substate minorities in the regional legislative and policy decision making bodies, including the provincial legislature, executive, police and courts. In Ethiopia, the equitable representation of the different ethnic groups in the state governments is a constitutional mandate according to Article 39(3) Ethiopian Constitution.

Furthermore an issue that emerges from the Ethiopian experience in this regard is the relevance of the electoral system that is adopted at the subnational level. But it is stated in this regard that the electoral system adopted is on the dissatisfaction of many non-indigenous minorities. It is asserted that “*the application of a simple plurality system at the subnational level can result in disproportionate results along ethnic lines in a situation where there are large numbers of ethnic*

²⁶⁷ Yonatan Tesfaye, supra note 14 at 481

²⁶⁸ A.C Cairns, supra note 246 at 27

²⁶⁹ Yonatan Tesfaye, supra note 14 at 508

*migrants citizens. This suggests the inclusion of an election system that ensures the representation of the groups that inhabit the subnational state. This can take the form of a plurality electoral system that includes a quota system or the proportional representation system.*²⁷⁰ *The application of the majority system of election, as opposed to the proportional electoral system, at the state level also means that ethnic migrant citizens have potentially little or no representation in state parliaments. In so far as the accommodation ethnic migrants are concerned, one may reasonably conclude, the Ethiopian federal system leaves much to be desired.*²⁷¹

Incorporating intra-substate minorities and ethnic migrants into the regional system through the processes and institutions of shared rule that reflect consociational principles, complemented with an electoral system that facilitates representativeness, can go a long way in accommodating intra substate minorities in the subnational political process. This helps minorities to feel that they are not merely ‘others’ that are simply tolerated by the regional majority group but also equal members of the society that participate in the management of the constituent units. It also ensures that the system does not simply focus on the autonomy of the different ethnic groups but also ensure that the subnational state belongs to all who live in it. Thus a sense of full citizenship and national identity are created. Further this ensures that the guiding principle of the federation as which says that sufficient attention should be given both to ethnic diversity and the promotion of national unity, filters through the federal territorial matrix and shapes the governance structure of subnational units as well.²⁷²

- JUDICIALLY ENFORCEABLE BILL OF RIGHT

The other institutional mechanism to the problem of minority at regional level is judicially enforceable bill of rights. Contrary to indigenous minority right to self-rule and shared rule the federal solution, due to its territorial orientation, is less appealing to dispersed ethnic groups (non-indigenous). Since they are dispersed all over the country, it is inconceivable to provide them with a territorial space to manage their own affairs. It is suggested that “*The anxieties of such groupings cannot be addressed through territorial solution owing to the fact that they are*

²⁷⁰ Id.,p.536

²⁷¹ Id.,p.481-482

²⁷² Id., p.537

*dispersed throughout the country. An effective response to address the anxieties of such minorities requires primarily the adoption of judicially enforceable bill of rights that, among other things, entrench the right against discrimination based on language, race or ethnicity and ensure access to education in one's own language.”*²⁷³

In addition judicially enforceable bill of right are often regarded instrumental in protecting intra-substate minorities. Many agree that a bill of rights, enforced with a strong and independent judiciary, can provide some level of protection to regional minorities. The major criticism leveled against this approach is that it only provides for negative rights, which protect individuals against discrimination and majoritarian abuse. The only positive right that such a bill of rights can provide is a constitutionally guaranteed minority language education right. This becomes especially insufficient when there is an important minority that may not be satisfied with negative rights. They may demand power that allows them to participate in the management of the constituent unit. They don't want to be treated as guests whose rights must be respected. They, as a result, often emphasize the deficiency of the bill of rights in protecting regional minorities and call for other complementary protective mechanisms like shared rule and non-territorial autonomy.²⁷⁴

- **NON-TERRITORIAL AUTONOMY**

Another mechanism that focuses on guaranteeing self-rule to regional minorities is what is generally referred to as non-territorial autonomy. This form of autonomy offers regional minority's autonomy over certain functions of relevance to them, which recognizes their different culture and identity. This form of autonomy comes in different names: “cultural autonomy”, “corporate autonomy”, “corporate federalism” and “functional autonomy”. This form of autonomy was used by the Ottomans originally to manage religious diversity. It is argued that such an arrangement of self-rule responds to the concerns of minorities that are ‘too dispersed or few in numbers’ to exercise territorial autonomy.²⁷⁵

²⁷³ Id.,p.481

²⁷⁴ Id.,p.149

²⁷⁵ Moore, M., ‘Sub-state nationalism and international law’,*Michigan Journal of International Law*, V. 2,2004, p. 1330

Furthermore this option, which is envisaged in the South African Constitution, can take the form of cultural councils that can be established by ethnic groups to exercise jurisdiction over a wide range of identity-related matters, including culture, education, language, libraries, theatres, museums, sports and the media.²⁷⁶ It is stated that *the Ethiopian institutional response to the anxieties of non-indigenous minority does not; however, seem to be the case with ethnic migrants. With the exception of the concessions made to ethnic migrants in areas of education, no other mechanisms are provided by the Constitution through which ethnic migrants can exercise control over matters that are relevant to them, especially in identity related matters like language, culture and the media. The lack of protection in a form of non-territorial autonomy has denied ethnic migrants citizens, who are often 'too dispersed or few in numbers' to exercise territorial autonomy, a say over certain functions which are of relevance to them.*²⁷⁷

5.4 CITIZENSHIP, ETHNICITY, IDENTITY AND “THOSE WHO ARE LEFT OUT” OF ETHNIC FEDERALISM IN ETHIOPIA

Although other countries like South Africa and Rwanda up to 1994 gave ethnicity a measure of official recognition, Ethiopia is different in the sense that ethnic identity is the normative identity on the basis of which the new state prefers to deal with its citizens in many spheres of life, especially the political and economy.²⁷⁸ The Ethiopian constitution of 1994 takes the radical position that political power resides with ethnic and nationality groups. This unique formalization of communal identity as the basis for formal citizenship in Ethiopia has vast political implications.²⁷⁹

It is stated that *“While the Ethiopian Constitution has recognized "ethnic rights" in one form or another, it has not addressed the presence of the "non-ethnic" population in Ethiopia: not only do the large group of persons with "mixed origin" parents not have a structural place in the order of things, also the growing urban population is left out. What are the urbanites, what is their identity? The Constitution has under Article 49(1-5) tried to answer this by declaring Addis Ababa, the largest urban center with at least three million inhabitants, a special,*

²⁷⁶ Yonatan Tesfaye, supra note 14 at 535

²⁷⁷ Id., p.481

²⁷⁸ Jon Abbink, supra note 1 at 160

²⁷⁹ Lahra Smith, supra note 190 at 10-11

chartered territory, with "complete powers of self-administration", but detached from the ethno federal order²⁸⁰".

However it is not only Addis Ababa that has a large, mixed population, including people who will never return to their "ethnic areas of origin", but also other towns like Shashemene, Awasa, Nazareth-Adama, Debrezeit (Bishofetu), Ziway, Asosa, Jimma or Asella. These people (numbering millions) have by implication been declared "non-existent", non-ethnic. Consequently it is asserted that *"in actual practice the local ethnic groups to whom the region nominally belongs or those who are a majority group in the region where these cities are located, asserted their dominance on local affairs. For instance, in Awasa, a large town in the Southern Region, the Sidama (who are over-represented in the zonal administration) claim the town as part of their territory, although it was not traditionally theirs, and try with all means (often surreptitiously) to expand their numbers in the town judiciary, executive and legislative bodies. This local dominance would also mean that the Sidama language would have to be taught in the schools, pushing out Amharic, the working language used until now in the mixed urban areas. For all such problems there are no obvious solutions.*²⁸¹

Furthermore in addition to "those citizens who are left out of ethnic federalism in Ethiopia" there are sections of the population that does not identify with any particular ethnic group but with the larger state. This section of the population is present mostly in the capital but also some other major towns²⁸². Admittedly, it is not easy to discern this group. It is asserted that *"Like the Walloons of Belgium that identify themselves with the state, some of them claim the Ethiopian identity and strongly reject identification with any particular ethnic group, as we will in this section, only to express their opposition against the present dispensation, a politically motivated*

²⁸⁰Jon Abbink, supra note 1 at 172

²⁸¹Id. p.172. in order to accommodate diversity at city council level there a proclamation for the distribution of city council where the 30 % is for the Sidama while the rest is reserved to the other citizens in the council, it is not known how far is these true in the executive and judiciary of the city administration.

²⁸² For others, including those that could primordially speaking belong to the Amhara or those that have successfully assimilated to the Amhara culture, it is difficult, if not impossible, to define their identity in separation of the state-wide identity. This is understandable given that the state, as alluded to above, is constructed based on the language, culture and history of the Amhara. Furthermore it may be related with the weak ethnic identification of citizens in Amhara regional states due to their unwillingness to accept the "putting together" in one state despite regional different which more express themselves like Shoa, Gondere, Gojjam..... see Yonatan Tesfaye, supra note 14 at 388-389

response rather than a true expression of one's identity. The point is that such kind of identity formation and its development should also be given a space in the public sphere. As it happened with the case of Brussels in Belgium, residents of the capital must be free to develop their own identity, which in most likely case would either relate to the state-wide identity or an identity that is peculiar to the city. They should not be forced to be classified as belonging to a particular ethnic group which currently manifests in the requirement that imposes a duty on the residents of the city to identify themselves with a particular ethnic group when applying for an identity card and mobilize based on ethnicity.”²⁸³

For instance the problem to accept these identification has backlash to the ruling regime EPRDF in 2005. It is stated that the existence of these different layers of identity is more reflected in the 2005 election. It is clear that one of the reasons why the ruling party lost the election in Addis Ababa and other cities had to do with the fact that its policy of nationalities does not sit well with the residents of the melting pot Addis Ababa. It is difficult to conceive a party that champions the cause of the ethnic groups winning an election against a party that rejects the consideration of the ethnic factor in the Ethiopian politics in a city where the majority of them do not consider their ethnic identity as a defining element of who they are.²⁸⁴

The foregoing discussion clearly indicates the need to arrive at a synthesis of the two views on citizenship that have dominated the Ethiopian politics for decades²⁸⁵. The reordering of state-society relations and the empowering of cultural groups naturally generated public discussion and heated debate about the meaning of democracy and citizenship in Ethiopia. The contending views that emerged boiled down to two conflicting understandings of the essence of "Ethiopian-ness": ethnic or civic. In other words Ethiopia's struggle today is between those who hold to a pan-Ethiopian conception of the state and those who espouse ethnic federalism. The core issue is the definition of "Ethiopian-ness," or the civic view of citizenship as opposed to that of ethnic

²⁸³ Id. p.378-9

²⁸⁴ Yet to present the successful mobilization of the residents of the capital and other major urban areas against ethnicity as a state-wide protest to the inclusion of the ethnic factor in the body politic is either being naïve or engaging in a deliberate distortion of the sociopolitical realities prevalent in the country. The relative gain of ethnic-based opposition parties in the Oromo-speaking parts of the country suffices to indicate that the denial of votes to the ruling party cannot be simply interpreted as a rejection of the ethnic factor. See Id.p. 380

²⁸⁵ Id.,p.379-380

identity, the primordial self, and hence regional allegiance.²⁸⁶ In the words of Lahra Smith “*It is clear that for the first time in the post-Derg period a certain category of Ethiopian citizens and voters had their set of political concerns publicly addressed, most notably: the contentious question of what constitutes the authentic and esteemed Ethiopian identity, Whether it is fundamentally rooted in a particular ethno linguistic identity, as the Constitution currently reflects, or if it is universally "Ethiopian?"*”²⁸⁷ These are two competing visions of citizenship in Ethiopia, broadly categorized as those seeking to articulate a "universal Ethiopian" identity (by focusing on individual rights) and those seeking recognition and incorporation of their ethno linguistic identities (the group-rights approach). Each reflects a distinct historical understanding of the nature of the Ethiopian state and the pattern of incorporation of new citizens in the expanding Ethiopian state. The political battle today is not one between Amharas and Tigrayans, or Amharas and Oromos, for instance, but over the resolution of the historical legacy and future of unequal citizenship.²⁸⁸

The practical manifestation of the deep division on the unequal and future citizenship in Ethiopia is vividly reflected in the program of political parties competing for power. It is stated that the election platforms, broad voting patterns and the behavior of the ruling party and the opposition parties in past election, what emerges is a picture of the Ethiopian election as a pivotal moment for citizenship. Presented with distinct formulations of Ethiopian citizenship, one unitary and individually-based and the other ethnic and group-based, Ethiopian voters expressed their disparate support for these citizenship models. Yet the violence and acrimony that has surrounded the election demonstrates that the last two decades has brought the country no closer to resolving the contentious issue of historical injustice and contemporary inequality. Dialogue and negotiation on these topics is still so impossible as to provoke the kind of violence we have seen in this election cycle.²⁸⁹ What is the content of these different views and what commonality and middle way do we have? Can we have a compromised stance that takes the two views and what does it takes? We will discuss these questions in the following paragraph.

²⁸⁶ Tesfaye Aron , Identity Politics, Citizenship, and Democratization in Ethiopia , *International Journal of Ethiopian Studies*, Vol. 2, No. 1/2 (Summer/Fall 2005-2006),pp. 55

²⁸⁷ Ibid,p.60

²⁸⁸ Lahra Smith, supra note 10 at 60

²⁸⁹ Id., p.61

The first view of citizenship in Ethiopia as ethnicbased on the primordial self is characterized in theideologues within the EPRDF, particularly those in the TPLF and Oromo nationalists who saw the nation as an entity composed of separate oppressed cultural groups.²⁹⁰ These groups, they asserted, were dominated by the Amharas in the past. The Amharas had trampled on their rights and imposed Amhara culture and language on them through centralization of state power. The ethnic view holds that the normative concept of democracy involving individual rights precludes self-determination or nationalism for all. It gives primacy to the ethnic self and justifies and supports self-determination through decentralization of state power, or ethnic federalism.²⁹¹ This view asserts that the opposition and the ruling party represent similar configurations of power. Neither fundamentally challenges Ethiopian exclusion of the Oromo in particular, and other groups of Ethiopian citizens. Particularly they emphasis the dominance of the EPRDF and the state in controlling the expression of ethno linguistic identities and the way it exercises power has undermined the potential of the provisions of ethnic federalism to lead to genuine social equality and political participation by members of many ethno linguistic groups, most notably the Oromo, and other smaller or historically marginalized groups such as the Somalis, Anuaks and Nuer in Gambella, Berta, Mao, Komo and others in Benishangul-Gumuz, the Afar and various smaller ethnic groups in the South.²⁹²

The second view of Ethiopian citizenship which can we refer as civic or pan-Ethiopianor *universal Ethiopian" identity*or conception, asserts that the civic self and Ethiopian citizenship over ethnic, cultural, or any other primordial sentiments. These pan-Ethiopianists admitted that the country was unified around an Amhara cultural base, but they asserted that neither the ancient class system nor the superstructure of the modern Ethiopian state were exclusively the domain of the Amharas. They posited that rather than a monopoly of one group, the system was based on elite integration and was open to all with proven military, political, or administrative

²⁹⁰ See Assafa Jalata, *Oromia and Ethiopia: State Formation and Ethno National Conflict: 1868-1992*. Boulder, CO: Lynne Rienner, 1993

²⁹¹ Tesaye Aron, *supra* note 286 at 58-9

²⁹² Lahra Smith, *supra* note 10 at 61. She states that the 2003-2004 violence in Gambella, the tremendous poverty and insecurity in Afar and Somali regions, the ongoing suppression of Oromo communities are all prominent examples of how similar the EPRDF's rule is to that of previous regimes. See also Barnes Cedric, "Ethiopia: A Sociopolitical Assessment," Writenet report prepared for UNHCR, May 2006. See also Amnesty International and Human Rights Watch report on Ethiopia: Prisoners of Conscience on Trial for Treason and terrorism including Opposition Party Leaders, Human Rights Defenders and Journalists (2015)

skills.²⁹³ This view was also supported by scholars of Ethiopian politics that claimed that integrated Oromo elites were also oppressors of their own ethnic groups. Political parties which are claimed to be proponents of the civic view include the CUD and some within the UEDF.²⁹⁴

These two contending ideologies inform current politics and trends in state-society relations in Ethiopia. The primary issues are the definition of "Ethiopian-ness" and whether the re-ordering of state-society relations on the basis of ethnic federalism is good for Ethiopia.²⁹⁵ Thus it is stated that *"the political agenda of the major opposition parties is intertwined with ethnic politics and an 'ethnic program' as that of the EPRDF. It reflects a view of Ethiopian citizenship grounded in historical discourses of unity and assimilation in a country long ravaged by the residual impacts of unequal incorporation and state penetration. In point of fact, it is nearly impossible to envision a political party in Ethiopia without an ethnic program of some kind. The absence of an explicit plan reflects a particular historical understanding of the nature of Ethiopian citizenship."*²⁹⁶

Thus the most striking feature of the Ethiopian social and political landscape today is that, even after successive regimes of widely varying ideological and political orientations, certain communities and individual citizens in the country continue to have their most basic citizenship rights like the right to development, equality, political participation and other basic freedom denied, not only by the Ethiopian state, but by fellow citizens. This fact of unequal citizenship has been at the core of the political discourse in Ethiopia.²⁹⁷

The foregoing discussion clearly indicates the need to arrive at a synthesis of the two views that have dominated Ethiopian politics for decades. It is stated that *"The basic thrust of this position is the need to accept the existence of different types and levels of identity, which may or may not overlap among members of the Ethiopian society. We need to come to grips with the fact that some keep their allegiance exclusively with their particular ethnic group while others share an*

²⁹³ Getachew Haile.. "The Unity and Territorial Integrity of Ethiopia," *Journal of Modern African Studies*, V. 24, No. 3: 1986

²⁹⁴ Tesaye Aron, *supra* note 286 at 58-9

²⁹⁵ *Id.* pp. 55

²⁹⁶ Lahra Smith, *supra* note 10 at 61-62

²⁹⁷ *Id.* P.61

*overarching state-wide identity. Some identify themselves with their regional rather than ethnic identity. And yet, we must also note that a multi-layered identity, whereby the embracing of an ethnic identity does not exclude similar allegiance to an overarching state-wide identity, is a common reality as is the case with persons belonging to most ethnic groups in the southern Ethiopia”.*²⁹⁸

Thus the key element for the mutual coexistence of the different groups in the Ethiopian society lies in the capacity and willingness of the protagonists of the Ethiopian politics to recognize the multi-layered identities that exist in the country. Consequently it is suggested that *“It is only when a consensus is achieved to build the Ethiopian state based on such recognition that a peacefully co-existing democratized Ethiopia becomes a possible reality. The absence of such recognition compromises the capacity to achieve arrangements that can be acceptable by all groups. Once this crucial element of recognition is realized, however, agreeing on institutional expressions that give practical effect to these different types and layers of identities should not be a problem.”*²⁹⁹

Furthermore the acts and policy of the states which goes against mutual peaceful coexistence citizens should be avoided. This is because in societies that are deeply divided along ethnic lines, the commitment of regimes to establish, perpetuate and even deepen the specific ethnic character of the polity could prove problematical in terms of both the long-term stability of the polity and the genuinely democratic nature of its institutions.³⁰⁰ Further the politicization of ethnicity or territorial ethnic self-government has drawbacks notably in terms of social cohesion and distrust. This is because as a result of over differentiations , while no one is forced to choose a single identity, the Communities largely function in isolation, creating ever increasing schism between citizens, rather than creating bridges between them. Further the accentuation of ethnicity makes the effort of stabilizing the political process and the construction of inclusive citizenship futile adventure.³⁰¹

²⁹⁸Yonatan Tesfaye, supra note 14 at 379-380

²⁹⁹ Id., p.380-381

³⁰⁰Thompson, Alex,*An introduction to African Politics*: Second Edition, Rutledge printing press,New York,2004,P. 8

³⁰¹ ibid

CHAPTER SIX

THE RIGHT TO SELF-RULE AND RIGHTS OF CITIZENSHIP IN ETHIOPIA: THE CASE OF BENISHANGUL GUMUZ REGIONAL STATE - ASOSA WEREDA

6.1. Background to the study area

6.1.1 Benishangul-Gumuz regional State

The Benishangul Gumuz Regional State is one of the federating states of Ethiopia, which is found in North West of the country. It borders with Amhara Regional State in the north and Northeast, Sudan in west, Oromia in east and Southeast, and Gambella in southern parts. As history shows the area of Benishangul was incorporated into Ethiopian Empire during the time of Menilik by his general Ras Gobena Dache through peaceful negotiation made between Ras Gobena and Shek Al-khojale Al-Hasen. The Gumuz people were for long time before the establishment of modern Ethiopian Empire was paying tribute for Abyssinian king.³⁰²

Benishangul Gumuz Regional State (BGRS) was established in 1993, with the establishment of 14 regional administrations by proclamation No. 7/1992 by merging parts of the former Asossa and Metekel Administrative regions.³⁰³ As will be briefly discussed in the next section the conflict that emerged in the western Ethiopia between the EPRDF and OLF delayed the inauguration of the BGRS for about a year. Later, the new Constitution of Ethiopia, which created a federal system of governance in 1995 declared it as one of the founding members of

³⁰² Belay Wedisha, *Ethiopia's Ethnic Federalism: The Tension Between "Indigenous" And "Settlers" In the Benishangul Gumuz Regional State*, Senior Thesis ,Unpublished ,ESCU,P.74

³⁰³ Asnake Kefele, supra note 104 at 160

FDRE.³⁰⁴ In the next sub sections we will see the major background to the region and Asosa Wereda that is particularly relevant to the paper

6.1.1.1 Profile of Population

BGRS occupies an area of 50,380km², on the western border of Ethiopia, stretching from 09.17° to 12.06°N (see map 6.1). The area is divided by the Blue Nile, with Metekel zone and Pawe Wereda to the north spread over 26,560km², and Assosa and Kamashi zones, and Mao-Komo Special wereda to the south, occupying 23,820km². The total population of the region, according to the 2007 census result, is estimated 784,345 of which 86.5% is living in rural areas and the rest 13.5% is living in urban areas with projection values of for 2017 is estimated to be 1,066,001.³⁰⁵

The majority population other than the so called “indigenous” ethnic groups were made to reside in the region by resettlement programs made during the Derg time from drought affected part of the country which includes Amhara, Agaw, Kambata, Hadiya and others.⁵ These “indigenous” ethnic groups are Berta, Gumuz, Shinash, Mao and Komo. Amharic is the regional working language and is a mother tongue for 21.6% of the population of the region.³⁰⁶

The population of the region is unevenly spread over three zones, and one special wereda, with greatest overall density in Assosa zone (average of 17.7 persons per square km)³⁰⁷. Of the region’s ethnic groups, Gumuz are concentrated in Metekel (where they interact and mix primarily with Amhara and Agaw populations, alongside the indigenous Shinasha) and Kamashi (where they mix primarily with Oromos), whilst Berta are concentrated in Assosa zone alongside the majority of the region’s Amhara population.³⁰⁸ Similarly, 80% of the Amhara population of the region is concentrated in three weredas where there are extensive resettlement sites (Assosa,

³⁰⁴ ibid

³⁰⁵ FDRE Central Statistical Agency, *Population Projection of Ethiopia for All Regions at Wereda Level From 2014-2017*, August 2013, Addis Ababa, Ethiopia

³⁰⁶ The Revised Constitution of BGRS, Proclamation No.31/2002, Article 6

³⁰⁷ Sarah Vaughun, *Conflict & Conflict Management in & around Benishangul-Gumuz National Regional State*, Fourth Draft Report, FDRE Ministry of Federal Affairs, Addis Ababa, 2007, p.6 This compares with figures of 9.6 on average for Metekel including Pawe and 7.0 for Kamashi. These figures in turn mask significant variations: Pawe wereda is overwhelmingly the most densely populated part of the region, with a population of 45,552 in 569 km² or 80.6 persons per square km; Assosa wereda has 41 persons per square km; Guba and Yaso weredas, meanwhile, have 2.6 and 3.4 persons per square km respectively, with the population density of the other Weredas ranging from 4.5 to 9.2.

³⁰⁸ ibid

Bambasi, and Pawe) with most of the rest in Dangur and Dibate, and other Metekel weredas which border ANRS. As commonly elsewhere in Ethiopia, urban and rural ethnic distributions are non-symmetrical, with Amhara, Oromo, Shinasha, and Agew dominating (in that order) an urban population which constitutes 13.5% of the regional total.³⁰⁹The 2007 census reported the ethnic composition of the BGRS population as follows:

Ethnic groups** in Benishangul-Gumuz (CSA 2007:39)

Ethnic Group	Number	Percentage	Comment
Agaw Awingi	33,061	4.2%	
Amhara	170,132	21.6%	
Berta (Jebelawi)*	199,303	25.4%	Indigenous
Gumuz	163,781	20.8%	Indigenous
Hadiya	2,154	0.27%	
Kambatta	2,161	0.27%	
Komo	7,773	0.99%	Indigenous
Mao	15,384	1.96%	Indigenous
Oromo	106,275	13.5%	
Shinasha	60,587	7.7%	Indigenous
Tigray	5,562	0.7%	
Total incl. others	784,345	100.0%	

*a further 2656 (0.3%) related population is described as ‘Fadashi’

³⁰⁹ Id. p.9

**only those groups with a regional population over 1,000 are listed here

Furthermore as is the case with the ethnic balance, religious affiliation is not distributed evenly across the region, with Islam predominating in Assosa zone, and Orthodox Christianity amongst urban and settler communities and highland migrants. Protestant Christianity is particularly associated with areas of imperial-era mission activity amongst Kamashi Gumuz and Oromo in what used to be a part of Wellega.³¹⁰ The 2007 census reported the religious affiliation of the BGRS population as follows:

Religion	Percentage
Muslim	44.9%
Orthodox Christian	33.3%
Traditional religions	7%
Protestant Christian	13.5%
Catholic Christian	0.6%
Other	0.5%

6.1.1.2 Political history of the region

As pointed out above Benishangul Gumuz National Regional State was carved from areas which had formed parts of Gojjam and Wellega Provinces, to the north and south of the Blue Nile, respectively. As Sarah states *“Its borders were (and continue to be) matters of contention: much of what is now Assosa zone and Mao Komo Special Wereda was originally claimed by Oromia; meanwhile Gumuz claims on borderlands as far north as Tigray (and even the Eritrea border) were eventually settled in favour of Amhara National Regional State. BGRS was administered, for much of the TGE period by the Benishangul People’s Liberation Movement (BPLM, or behenen in its Amharic acronym). The BPLM originated amongst Berta dissidents in Khartoum in the late 1970s. The Dergue government of the time had quickly defeated Berta attempts at opposition activity in the towns, and the survivors sought support and alliances in the Sudan”*.³¹¹

³¹⁰Id., p.6

³¹¹Id., p.2

The region has been affected by civil war that has carried in the western part of the country particularly in 1989 the EPLF captured Benishangul and then turned over the territory to the OLF which was assumed to have popular support and an ethnic affinity with the local people. That proved not to be the case, and in the event the OLF was only able to hold the territory for two months before the Derg re-took it. However, before the OLF retreated it terrorised many of the non-Oromo population of the territory, and took any valuable items it could carry.³¹²*In spite of this legacy the EPRDF allowed the OLF to assume control of the territory in 1991 when Derg forces fled south. The stage was then set for the territory's second war as the OLF defeated the much smaller forces of the BPLM who were not prepared to accept Oromo hegemony in a region in which Oromos only constituted 13.5% of the population (2007 census). With the BPLM defeated and the EPRDF otherwise preoccupied with establishing a transitional government, the OLF began pursuing its own program in Benishangul. This involved replacing Amharigna with Oromiffa in the schools and punishing those who spoke the language [Amharigna] in the streets, terrorizing Amhara and any who opposed them, and propagating the view that the inhabitants of Benishangul were 'black Oromos' and the ground was being prepared for an independent Oromia which would include Benishangul. In response the indigenous population petitioned the EPRDF to intervene which led to the region's third war in January 1992. The subsequent defeat of the OLF left the BPLM in a commanding position. These struggles centered mainly on Assosa zone, but Metekel, north of the Nile, was not much quieter.*³¹³

On the contrary Gumuz involvement with the BPLM, meanwhile, expanded after its alliance with the TPLF from 1988, and by the later part of the TGE period Gumuz nationalist elements of the BPLM were poised for conflict with Amhara and other settlers and immigrants around Pawe. Tensions were raised by the fact that most settlers supported the Amhara National Regional State's (ANRS) claim on Pawe, Mandura and Dibate weredas. Bloodshed, which flared in 1986 EC (1993-4) was brutal and widespread, and only cooled down after federal military intervention³¹⁴.

³¹² Id.,p.3

³¹³ J. Young, *Peasant Revolution in Ethiopia – The Tigray People's Liberation Front, 1975 – 1991* (Cambridge: Cambridge University Press, 1997 p.2), IN: Sarah Vaughun, supra note 307 at 3

³¹⁴ *ibid*

A range of formulae to balance different ethnic political interests in the region has been attempted since 1991. Continuing Berta domination of the BPLM undermined the success of attempts to turn it into a BGRS-wide political party, incorporating the representatives and interests of other groups. In 1996, with new leadership and under heavy pressure to clean up its act following a June conference chaired by the then-Federal Prime Minister, the BPLM changed its name to the Ethiopian Berta Democratic Organisation (EBDO), and become one of a spectrum of separate ethnic PDOs within the region. This was also the moment, at which a Gumuz President was nominated for the first time, succeeding 3 Berta incumbents. In 1998, the various ethnic based political organisations (EBDO, as well as Boro Shinasha PDO, Gumuz PDO, Mao and Komo PDO) merged to form the Benishangul-Gumuz People's Democratic Organisation, a regional State umbrella party affiliated to, but not a member of, EPRDF. The amalgamation mirrored similar moves in other parts of the country.³¹⁵ As will be discussed in this chapter the region has been in successive ethnic conflict among indigenous and settler groups preceding the 1992 EC election due to the demand for inclusive citizenship and representation in the regional administration and the insurgency of BPLM until it finally reach an agreement through an amnesty to its armed members. The region provides a good case of citizenship question in Ethiopia for it had well established citizens who differ from the empowered ethnic groups under the state constitution.

6.1.1.3 Constitutional and Administrative organisation

Interestingly, the constitution of Benishangul-Gumuz explicitly differentiates between endogenous and other peoples. As pointed out above article 2 of the regional constitution classifies the following five ethnic groups as endogenous: the Berta, Gumuz, Shinasha, Mao and Komo. As indicated in table in the previous section, none of those five ethnic groups has a numerical majority. The 2 December 2002 constitution provides for a four-tier administrative structure: the region, the Administration of Nationalities, the Wereda and the Kebele. However the administration of nationalities provided by the constitution has not been established, but Zones which are not ethnic based but administrative zones. Thus Benishangul Gumuz Region consists of three administrative zones (Metekel, Assosa and Kamashi), and has twenty Woredas,

³¹⁵ Sarah Vaughun, *supra* note 307 at 10

one special Woredas, 474 kebeles and thirteen towns. The three zones of the region encompass 20 weredas, in addition to the one special weredas:

<i>Zone</i>	<i>Weredas</i>
<i>Assosa</i> (6 weredas) <i>Capital</i> <i>Assosa</i>	<i>Bambasi, capital Bambasi</i> <i>Assosa, capital Assosa</i> <i>Oda Godere, capital Oda Bildigilu</i> <i>Menge, capital Menge</i> <i>Komosha, capital Komosha</i> <i>Kurmuk, capital Kurmuk</i> <i>Sherkole, capital Halmo</i>
	<i>Mao Komo Special Wereda, capital Tonga</i>
<i>Kamashi</i> (5 weredas) <i>Capital</i> <i>Kamashi</i>	<i>Sirba Abbay, capital Koncho</i> <i>Agalo Meti, capital Agalo Meti</i> <i>Kamashi, capital Kamashi</i> <i>Belo Jeganfoy, capital Soge</i> <i>Yaso, capital Yaso</i>
<i>Metekel</i> (7 weredas) <i>Capital</i> <i>Gilgel Beles</i>	<i>Dibate, capital Dibate</i> <i>Bullen, capital Bullen</i> <i>Mandura, capital Mandura</i> <i>Dangur, capital Mambuk</i> <i>Guba, capital Mankush</i> <i>Wonbera, capital Debre Zeit</i> <i>Pawe Wereda, capital Almu</i>

Furthermore at the regional level, the Benishangul-Gumuz region has legislative, executive and judicial institutions. Legislative powers are vested in the state council, executive powers in the

executive council and judicial powers in the regional courts.³¹⁶ Legislative power is exercised by the state council, which is the highest authority in the region. State council members are representatives "*of the People of the Regional State as a whole*"³¹⁷ and are elected for a term of five years through direct elections.³¹⁸ The constitution provides for guaranteed representation of the Mao and Komo peoples in the state council. Article 48 (2) stipulates: "*Therepresentation of Mao and Komo nationalities shall be given specialconsideration.*"

According to Christophe Van der Beken "the 2002 constitution pays more attention to the ethnic diversity of the regional population than the constitution of 1996. It introduced fundamental changes to the regional administrative and institutional structure. Particularly significant for our purposes is the disappearance of the administrative level of the Zone (the administrative level hierarchically placed between the region and the district) and the introduction of the Administration of Nationalities as a new territorial administrative entity. The nations, nationalities and peoples of Benishangul-Gumuz have the right to their own Administration of Nationalities. Within the Administration of Nationalities, the nations, nationalities and peoples or ethnic groups have self-administration and the possibility of protecting and developing their own cultures and languages."³¹⁹

However it is stated that "*The Administration of Nationalities is a new administrative level that has replaced the Zone. It is an application of the territorial strategy based on the belief that the nations, nationalities and peoples can best realize their right to self-determination within their own territories. Therefore, the nations, nationalities and peoples in Benishangul- Gumuz have a right to establish their own territorial entity. The question now is whether this right pertains to all ethnic groups or whether it is limited to those endogenous to the region. The answer to this question can only be speculative since, so far, no Administration of Nationalities has been established.*"³²⁰

³¹⁶BGRS revised constitution, supra note 306 Art. 46

³¹⁷ Id., Article 48(3)

³¹⁸ Id., Article 48(1)

³¹⁹ Christophe Van der Beken, supra note 263 at 130. See BGRS revised constitution, supra note 306

³²⁰ Interview notes, Legal Advisor To President of BGRS, Asosa,2014

According to Christophe Van der Beken it is stated that “taking into account the philosophy of the constitution and political practice in Benishangul-Gumuz, it is only the endogenous groups that have a right to their own Administration of Nationalities. This position is supported by the composition of the Constitutional Interpretation Commission and the way it is elected, under article 71(1) of the constitution, which states that the legislative council of the Administration of Nationalities only elects members of endogenous groups as representatives in the commission.”³²¹ As the case of Gambela, Amhara and SNNPRS shows, we may argue that in Benishangul-Gumuz only the endogenous groups have a right to create their own Administration of Nationalities. This position is further supported by article 39 of the Benishangul-Gumuz constitution which, similar to the Amhara constitution, limits the exercise of the various aspects of the right to self-determination to endogenous groups.³²²

However, it is asserted that “*this situation does not imply that the exogenous groups have no right to be represented in the Administration of Nationalities. The Benishangul-Gumuz constitution does not guarantee such representation, but the example of the Southern region illustrates that the exogenous groups can be represented in the ethnically organized sub-regional territorial entities.*”³²³

In addition it is stated that “two considerations must be made when one see the Administration of Nationalities in BGRS. Firstly, some ethnic groups in Benishangul-Gumuz (such as the Gumuz) are dispersed over the regional territory. For them, it seems impossible to establish their own territorial entity in the region. Secondly, and this partially results from the first remark, the new ethnic-based administrations will inevitably have their own minorities. The example of the Mao Komo Special *Wereda* can illustrate this. Though this *Wereda* has been established for the Mao and Komo ethnic groups, a large number of different ethnic groups are living in the area. For these reasons, the territorial strategy for the accommodation of ethnic diversity (the creation of ethnic based territorial administrative entities) is not appropriate for the Benishangul-Gumuz region.”³²⁴

³²¹ Christophe Van der Beken, supra note 263 at 129

³²² Ibid

³²³ Ibid

³²⁴ Id ., P130

We may conclude that the 2002 constitution has strengthened the position of the endogenous ethnic groups of the region by providing for their guaranteed representation in the regional parliament and in the regional Commission for Constitutional Interpretation. The right of the ethnic groups to their own territorial entities (the Administration of Nationalities), however, is not appropriate for the situation in Benishangul-Gumuz. Because they lack territorial concentration, the ethnic groups of Benishangul-Gumuz cannot exercise their right to self-rule through the creation of ethnic-based territorial administrative entities (the Administration of Nationalities). Furthermore, although the exogenous groups can claim universal human rights in the region, no regional administrative or institutional mechanisms are in place to allow for the exercise of their group-specific rights.³²⁵ This and related issues will be discussed in detail in the next parts of the paper.

6.1. 2 Asosa Wereda: - Administrative and constitutional arrangements

Under previous governments, Assosa zone formed an Awraja under Wellega *Teklai Gezat* or *Kifle Hhager*. Asossa *woreda*, which is the largest of all *woredas* in terms of population extent, is the central focus of this study. Asossa *woreda* is one of the seven *woreda* Administrative units in Asossa zone. Assosa zone is divided into 7 weredas, namely: Assosa, Bambasi, Oda Godere, Komosha (often Homesha), Kurmuk, Menge and Sherkole. Assosa town which is 665 km far from the federal capital (Addis Ababa) is the capital of the zone.³²⁶ The population is diverse with the majority being Berta with a population of 186,325, Amhara 74,171, Oromo 32,050, Tigrie 3865, Guragie 1294, Mao 1921 and other ethnic living in the zone.³²⁷

As mentioned above Assosa Woreda is one of the nineteen Woredas in Benishangul-Gumuz Regional State. It is located in the South-west part of the region. It shares common borders with the Sudan in the west, with the Kurmuk & Homosha Woredas in the north, with the Menge, Oda Bilidigilu & Bambasi Woredas in the northeast, with the Bambasi *woreda* and south with the Mao Komo Special Woreda in the east (see figure 1).³²⁸

³²⁵ Id ., P131

³²⁶ BGRS Bureau of Finance & Economic Development, *Physical & Socio-Economic Profile of Asosa Woreda*, p.1

³²⁷ FDRE Central Statistical Agency, *supra* note 305 at 42

³²⁸ BGRS Bureau of Finance & Economic Development, *supra* note 326 at 1

Astronomically, Assosa woreda extends from 09.654988 North to 10.335187 North latitudes (extending about 0.680199 north to south), and 34.137426 East to 34.911339 East longitudes (extending about 0.773913 west to east). It has a total border length of about 340.5km (about 75.5km international borderlines with Sudan, about 229.3km with Woredas (12.0km with Kurmuk, 64.9km with Homosha, 32.4km with Menge, 10.0km with Oda Bilidigilu and 110.0km with Bambasi), and 35.7km with Mao Komo special woreda. Assosa woreda has an estimated land area of 2,917.64sq.km, it accounts for about 5.75 percent of the total land area of the Regional State of Benishangul-Gumuz.³²⁹

According to the projection made from the 2007 Population and Housing census, the total population of Assosa Woreda was 104,147 and 133,757 in May and November 2007 and July 2012 respectively. The urban population of the Woreda was accounted 27.93 percent of the total population during the mentioned years.³³⁰

Assosa town houses three levels of government bureaucracy: BGRS regional bureaux, Assosa zone offices, and the departments which serve Assosa wereda. Until January 2010, Asossa *woreda* consists of 78 *kebele* administrations in which 4 of them are urban *kebeles* and the rest 74 *kebeles* are rural *kebeles*. Later in January 2010, new *woreda* administrative set ups has been running and because of this Asossa *woreda* is supposed to extend its administrative responsibilities only on those rural *kebeles* which consist a total of 74 *kebeles* found surrounding Asossa town. Among this 36 of them are inhabited by the Bertha, while 38 of them are inhabited by settlers whereas the rest 4 urban *kebeles* are under the administrative authority of Asossa city municipality.³³¹

In 1974, when the Provisional Military Administration (*Dergue*) seized power, the first swift measure it decreed with regard to react the drought affected areas was the introduction of “resettlement” into the areas rich in natural resources and have less population extent. One of the areas selected for resettlement and villegization was the present Benishangul-Gumuz Regional

³²⁹ Ibid

³³⁰ FDRE Central Statistical Agency, *supra* note 305 at 42

³³¹ Interview notes ,Asosa wereda president, Asosa, 2014

State, the then Wollega sub-province, Asossa *Awraja*.³³² Thus following the 1984/5 famine, people from different areas of the country were deported to settle in to the Asosa zone in general and Asossa *woreda* in particular and the major changes in resettlement patterns took place during the first post-revolutionary period, and famine victims become the dominant components.³³³

The advent of Settlers into this area is therefore related to this historical process or trend. Dergue-era settlers are found in Assosa and Bambasi weredas, with a total of 55 settlements in the two weredas. Four settlements, formerly close to the town in Assosa wereda, have recently been relocated into Bambasi wereda, in order to make way for urban expansion onto land they occupied.³³⁴

There have been different conflicts and significant tension which have been experienced in Assosa and Bambasi wereda between the settlers and Berta. The major cause being, the fact that settler community close to the regional capital are more able to express their anxieties about representation directly to those officials in Assosa. Assosa wereda is currently administered by a Berta chairperson with his deputy drawn from the settler communities. Primary problems in Assosa wereda are related to competition for resources, including land, bamboo, and forest resources. Deforestation is a significant problem in the area, widely blamed on the settlers. Furthermore, four settler kebeles or *menderoch* have been relocated from close to Assosa town, into Bambasi wereda, in order to make room for projects of urban expansion. In addition tensions are due to immigration, local authorities and communities seem to distinguish between groups legally relocated by the government, and those coming in ‘illegally’.³³⁵

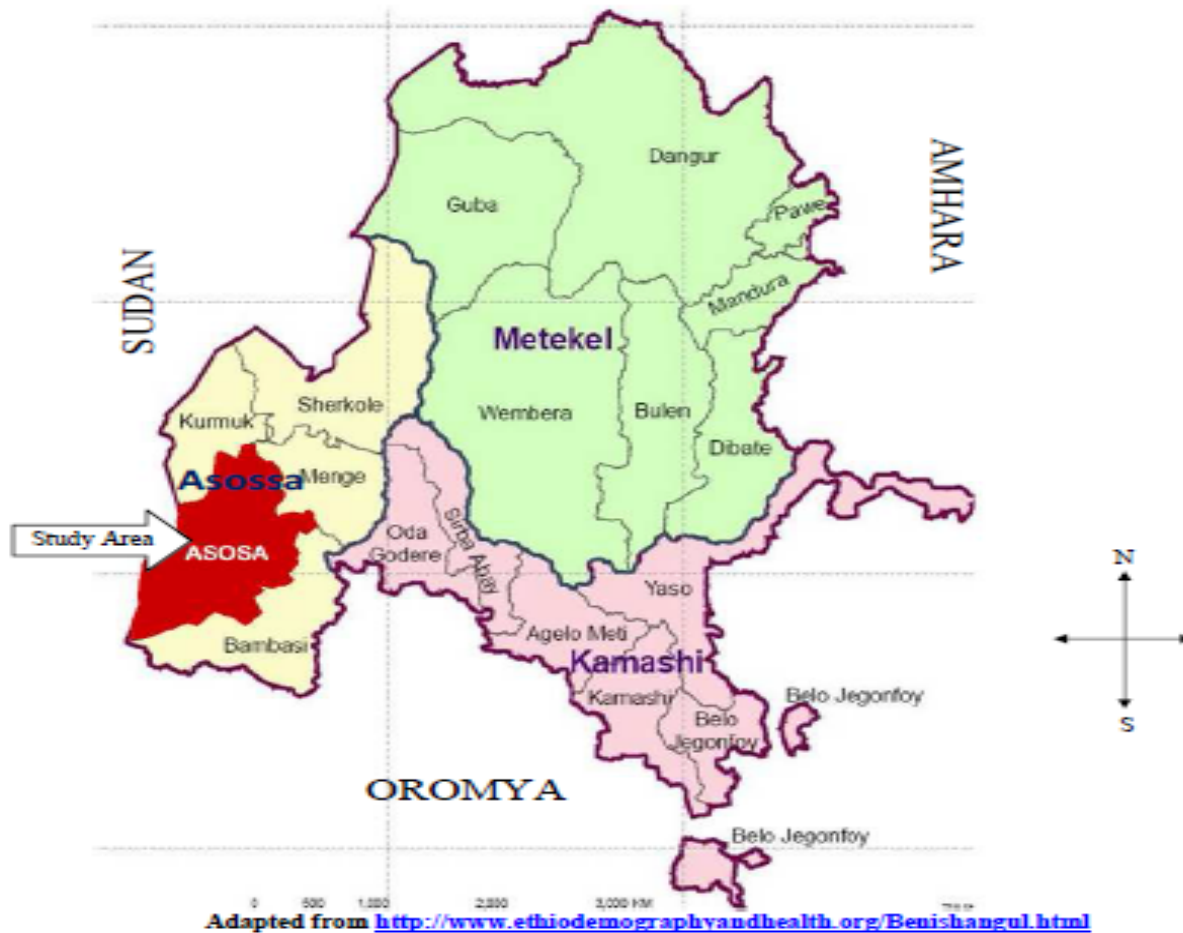
³³² Alula Pankhurst, *Resettlement and Famine in Ethiopia: the villages Experience*, Manchester University press. London, 1992.p.14

³³³ Ibid

³³⁴ Sarah Vaughn, *supra* note 307 at33

³³⁵ Id. p.34

Figure Map of Benishangul-Gumuz Regional State Showing the study area



6.2. The Right to Self-Rule and Rights of Citizenship in Ethiopia: the case of Benishangul Gumuz Asosa Wereda

As we have demonstrated in the preceding chapters of this thesis, many of the regional states in federal Ethiopia including Gambella, SNNPR, Somali and the Benishangul-Gumuz regions were affected by conflicts that have been in one way or another intertwined with the federal restructuring of the country. For instance, in the multiethnic Benishangul-Gumuz region, intra-regional conflicts emerged at two levels – between the newly empowered ‘titular’ ethnic groups and the titular and the ‘non-titular’ groups.³³⁶ The boundary thinking that federalism engenders at local and regional levels, on the other hand, induces conflicts between groups who in the past had peaceful relationships.³³⁷

³³⁶ Asnake K.,supra note 104 at VI

³³⁷ Ibid

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 non-indigenous communities.³³⁸ The non-indigenous, in contrast, ‘felt that they were treated as second-class citizens with restricted rights to live and work’.³³⁹ 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 non-indigenous ethnic groups became new minorities. For the EPRDF that undertook the process of ethnic regionalization, the presence of relatively large numbers of non-indigenous people in the newly created ethnic regions seemed an anomaly.³⁴⁰ This likely explains the lack of a systematic mechanism in the federal constitution to protect the interests and citizenship rights of the non-indigenous citizens. Thus, after the formation of the BGRS, acrimonious relationships between the new regional authorities and the non-indigenous communities emerged on such issues as representation, right to movement, right to work, the right to equality and non-discrimination and resource sharing.

Thus the discussion in this section of the paper is informed by the existence of such tensions and conflict in the BGRS in general and Asosa Wereda in particular. It is the fact that there is tension and conflict between those ethnic group with constitutional right to self-rule and other people’s rights of citizenship that emanate through living for decades in the study area, fundamental human rights and the inclusive nature of citizenship. The section will interpret facts as gathered from different sources in the study area in light of the background discussion on the right to self-rule and rights of citizenship we have in the preceding chapters of the paper with particular emphasis to those rights of citizenship that are most fundamental and relevant to the comparison with the right to self-rule.

³³⁸ 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.

³³⁹ Ibid

³⁴⁰ Asnake K., supra note 104 at 98

6.2.1 The right to Self- rule Vis a Vis the Right to Freedom of Movement and Residence

Can you smell the soil? Doesn't it taste of Berta? (Comment attributed to then-Vice President Abdul Mohammed Mahmoud, arguing with a settler in Bambasi wereda in 1993EC). Further It is widely alleged that when then-Vice President Abdul Mohammed arrived at Bambasi in 2001 conflict between Berta and settlers he found a settler chasing away a colobus monkey, and complained 'the monkey was here before you: it is its land – you don't have the right to chase it away',³⁴¹

The UN treaty body on Convention on the Elimination of Racial Discrimination (CERD) issued its concluding observations 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.³⁴² Further a special advisory report on the situation of minorities in Ethiopia was submitted to the UN Human Rights Council by the Independent Expert on Minority Issues. The 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.³⁴³ These two reports indirectly reflect the right to freedom of movement and residence in Ethiopia has been endangered by the ethnic federal system.

The problem with the right to movement and residence in the BGRS is mainly the migration of different communities and citizens to fertile agricultural land. The BGRS has a large total surface area and is sparsely populated, this, together with its fertile soil, makes the region attractive to many Ethiopian farmers from other regions who wish to leave their own small and exhausted plots behind. This inter regional migration is clearly reflected in the ethnic composition of the region's population as shown in the above section. In other words this is to say that there is a

³⁴¹ Sarah Vaughun, supra note 307 at 33

³⁴² 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, March 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.

³⁴³ 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

relatively long tradition of unofficial or informal settlement from Amhara following initial arrival in 1977 and 1978EC in Kashmando kebele in Bambasi and adjacent wereda and settlement from Oromiya regional state to Mao-Komo, Yaso and Bulen wredas in Kamashi Zone.³⁴⁴

In light of the above scenario when we see the Preamble of BGRS constitution, it is drafted in the name of ‘*we the nationalities of Berta, Gumuz, Shinasha, Mao and Komo and other peoples residing in the region*’. This neat categorisation of five discrete indigenous groups, however, serves only as a loose approximation of a much more complex reality. The movement of populations into this area is an on-going process. The arrival of many groups and communities now considered to be both ‘coherent’ ethnicities, and ‘indigenous’ to the areas in which they now live, has in fact been fluid, fragmented and recent.³⁴⁵

There is widespread anxiety amongst indigenous political elites that, if their community numbers fall below a majority, this could have dramatic implications for their status within, and administration of the region.³⁴⁶ According to the FDRE Constitution anyone over 18 years old can vote. But if you interpret this crudely, it will cause problems because of highland immigration: it will create conflict between the indigenous and non-indigenous communities.³⁴⁷ In addition to the above justifications which are not based on the constitution, it is stated that “*We accept the principle of freedom of movement – but not illegally: immigrants are taking the land and destroying the natural resource base: this is clearly a cause of future conflict.*”³⁴⁸

Thus despite the FDRE constitution under Article 32(1) stipulation for “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,” A common response to continuing waves of new immigrants, however, has been to criminalise immigration, even to the point of regular expulsions of those said to be ‘illegal migrants’ from some weredas like Bulen, Belojeganfo and

³⁴⁴ Sarah Vaughun, supra note 307 at 34

³⁴⁵ Id., p.15

³⁴⁶ Id., p.17

³⁴⁷ Ibid

³⁴⁸ Ibid. according to the interview notes done by the writer this is similarly the same justifications that is invoked by officials and indigenous political elites, Interview note, BGRS vice president, 2014, Asosa.

*Yaso.*³⁴⁹ The issue of who is said to be ‘Illegal migrants and legal migrant’ by itself is very problematic and gives wide discretion to local officials resulting in local tyranny and intimidation of citizens. This policy is questionable in terms of the constitutional rights of citizens to move and live freely in any part of Ethiopia: it is clearly unsustainable in the longer term.³⁵⁰ *It is likely that regional concerns about immigration, which occasionally verge on paranoia, are exaggerated. However, the political sensitivity of this issue is very great, given a situation where indigenous groups constituted only 57% of the population according to the census conducted in 2007, while, all ethnic groups other than Gumuz, Shinasha, Berta, and Mao-Komo which make up of 43 % of the regional population are considered as “settlers or asNon-indigenous groups”.*

Thus in light the absence of an overarching federal policy framework which can support the regional states in general and BGRS government in particular in reconciling the constitutional principles according to which the rights of indigenous communities to self-rule are safeguarded, and yet all Ethiopian citizens have the right to movement and residence throughout the federation. Failure to address this policy problem results in unnecessary tension, and the frequent expulsion of migrants and settlers said to be ‘coming illegally’ into the region.³⁵¹

6.2.2 The right to Self-rule Vis a Vis the right to work

The FDRE constitution under article 41(1) states that Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory. Among the issues which are said to have impact on the rights of citizens in relation to ethnic groups to right to self-rule is the freedom to work in the country within the civil service and other business activities.

It is stated that Regional based ethnicity is a development risk because it limits the movement of capital and labour required to take advantage of economic opportunities, creates entitlement

³⁴⁹ When the Shinasha and Gumuz ethnic groups form its own Zone in the region many of the early Amhara ethnic residents were obliged to leave the Metekel zone. The Shinashas and Gumuz considered themselves as real owner of Metekel zone and the Amharas as second citizens of the zone. See Official report of All Ethiopia Unity part, November, 2012.

³⁵⁰ Id, p.18 The case of those officials(Weleteji and 26 others) in the Belojegenfo Wereda accused of expelling those citizens which are said to be non-indigenous to the area is a good start in enforcing the rights of citizens to move and live in the country and shows the willingness to fight such wrong doing by the federal government.

³⁵¹ Id. p.44

that does block development, and leads to irrational use of energy and other resources. The farms in Humera and the Awash Valley for instance used to provide employment opportunities for 100,000 and 150,000 workers respectively. The workers came from all over the country. The ethnic policy of the present regime discourages labour mobility. It has in fact perpetuated and even aggravated regional and ethnic inequality.³⁵²

*Furthermore the decision of the ethnically plural states, like SNNPRS, Gambela, and BNRS to adopt Amharic as their working language indirectly responds to the linguistic anxieties of ethnic migrants who are usually fluent speakers of Amharic. However, in as much as the decision to use Amharic in multi-ethnic regional states might ease the majority- minority tension at the state level. This, in some cases, has been to the detriment of the local population and its adverse effect on local empowerment is evident. In Gambela regional state, where Amharic is adopted as the working language, the dominance of ethnic migrants in the civil service sector cannot be ignored. The ethnic-migrants are still the largest contingent of employees in the civil sector. The language policy in this particular region, it is argued, “will ultimately disadvantage the local people, who are becoming steadily less competent in the language of the regional and the Federal Government”.*³⁵³ The reverse seems to be true in the ethnically defined regional state like Oromiya, Tigray, Somalia and Amhara. The unilingual policy adopted by these states has meant that the large number of ethnic migrants that live in the major towns of these states cannot communicate in their own language with the public authorities and government offices. For instance in Oromiya regional state Government many documents, including traffic fines, are not accessible for Amharic-speaking residents of these towns as state government offices solely use the regional language for government purpose. However in actual practice the policy is often not as strict and there is significant practical accommodation of language diversity. Thus these contrasting positions of ethnic migrants suggest the need to adopt a balanced approach that would accommodate the interest of ethnic migrants without adversely affecting the interest of persons belonging to the indigenous ethnic groups.³⁵⁴

³⁵² Daniel Kendie, supra note 3 at 192

³⁵³ Dereje Feyesa, supra note 17 at 216.

³⁵⁴ Yonatan Tesfaye, supra note 14 at 471-473

When we see the case of BGRS due to a shortage of qualified endogenous staff, more than half of regional public servants belong to non-endogenous groups. This large representation is facilitated by the continued use of Amharic as the regional working language³⁵⁵, the civil service is dominated by Amhara and Oromo and other nationalities.³⁵⁶ This has resulted by some indigenous to feel that they are not exercising their right to self-determination for immigrants get jobs here which they couldn't get in Oromia or Amhara – and they have an alternative to go there after they get experience here; whilst indigenous civil servants remain in support staff roles without a chance to work outside the region. The problem is how to compromise the rights of other citizens who for decades have been contributing to the development of the region and the right to self-rule ethnic groups in the region as opportunities are now getting narrow for appointments as experts to indigenous civil servants too. The more region is working to solve the civil service capacity constraints and to avoid the accommodation of large numbers of 'outsiders' in the short, medium, and reasonably long term, the highest be the level of discrimination and less opportunity to others citizens in the region.³⁵⁷

Thus there is no overarching federal policy framework which can support the BGRS government in reconciling the constitutional principles according to which the rights of indigenous communities are safeguarded, and yet all Ethiopian citizens have the right to live and work throughout the federation. Failure to address this policy problem results in unnecessary tension, and the frequent expulsion of migrants and settlers 'coming illegally' into the region.³⁵⁸ In other word this is expressed in the tensions within the civil service between indigenous and non-indigenous groups where the former are accused of spearheading an 'illegal' immigration of their families and friends to take land and dominate businesses in the Wereda. Civil servants, further, complained of discriminatory and poor treatment on the part of officials when there are appointments for training, education and other opportunities. Furthermore the writer has inquired whether there is restriction/denial of fully-fledged participation in the investment and business activities based on one's identity or status of being to settlers/immigrant. Most of the key informant asserted that, except for the provision of land for household and business, where there

³⁵⁵ Christophe Van der Beken ,supra note 263 at 127

³⁵⁶ Sarah Vaughun, supra note 307 at 16-17

³⁵⁷ Interview notes, Civil servants, Assosa, February 2014

³⁵⁸ Sarah Vaughun, supra note 307 at 44

discrimination, investment and business is free for all competitors business women/men and there is no discriminatory practices while having a business license and payment of taxes to the authority.³⁵⁹

Contrary to the relation between indigenous and non-indigenous, the other interesting development with regard to the right to self-rule among the five indigenous groups is the dominance of Shinasha in the civil service. *Shinasha are significantly better educated than their Gumuz and Berta counterparts, and tend to dominate professional positions within the civil service. A degree of resentment is expressed both by Shinasha and non-Shinasha regarding this situation: from the Shinasha side that they have never had the chance to lead the region: from the other nationalities that they are 'controlling everything', through their heavy representation in professional positions.*³⁶⁰ *However, if the disproportionate number of Shinasha in the professional civil service increases further, this could bring problems.*³⁶¹

6.2.3 The right to self-rule Vis a Vis the right to political participation

The Relations particularly between Berta and the predominantly Muslim Welleye were reported to have been reasonably good in both Assosa and Bambasi, with significant inter-marriage, until the disturbances that erupted in Miazia 1993EC (April-May 2001). The settlers' calls for their own representation had helped to trigger the BPLM demand for their rights under constitutional Article 47 to an independent Berta territory, where they would not have to deal with the settlers.³⁶² As one commentator has observed:

*There might have been other factors which fuelled conflict, but the main issue was and still is the political control of resources. Berta were already nervous about their numbers after the census [in 1994], since although they were more numerous than the Gumuz, their population increase was lower. They felt that their influence might shrink further if the settlers were to get separate representation.*³⁶³

³⁵⁹Information from interviews, Asosa, February 2014, Tensions within the civil service between indigenous and non-indigenous groups reached a head in Kamashi in the recent period, where Oromo civil servants at zone level were accused of spearheading an 'illegal' immigration of their families and friends to take land and businesses in the zone. See also Sarah Vaughun, supra note 307 at 44

³⁶⁰Sarah Vaughun, supra note 307 at 53-54

³⁶¹Id. p.10-11

³⁶²Id. p.33-34

³⁶³Ibid

Furthermore the regional government's position is premised on the idea that indigenous nationalities don't have the same kind of choices about where to live that are available to other outside groups: Oromos can choose Oromia, Amharas Amhara, Tigrayans have Tigray, and they must recognise that at some level this is *not* their land. Our indigenous communities, meanwhile, have only this 'homeland', so they should have special rights and protections in it.³⁶⁴

Thus as pointed out above this is to say that the most controversial balancing act is between the five officially recognised indigenous groups (reported to be 57% of the regional population in the 2007 census) and the various non-indigenous communities living in BGRS, whose numbers are increasing. These include: Dergue era settlers in Assosa, Bambasi, and Pawe, mainly from Wello, Hadiya, Kambatta, and Tigray; more recent rural migrants from Wello, Gojjam and Gondar, as well as neighbouring Oromo and Agew Awingi areas; and migrants to the towns, particularly Assosa. The electoral representation of these sections of populations has been the subject of constitutional deliberation at the Federal level.³⁶⁵ In the following paragraphs we will see the facts, issues, and the recommendation of the CCI, the final judgement of the HOF and the major pitfalls of the interpretation.

At a meeting on 17 February 2000, in the run up to the May 2000 federal and regional elections, the National Election Board Of Ethiopia (NEBE) upheld a petition disbaring candidates from non-indigenous nationalities in BGRS from running for election, on the basis that they were not able to speak any of the local languages of the region.³⁶⁶ In other words the case involved three Amharic-speaking individuals who wanted to stand for the 2000 state legislature election in the regional state. However based on a petition made by an ethnic-based party that operates within the regional state, the NEBE ruled that the individuals could not stand for election as they could not speak one of the four indigenous languages spoken in the regional state.³⁶⁷ They requested the House of Federation to nullify the decision of the Electoral Board as per Article 9 of FDRE

³⁶⁴ Id. P.11-15

³⁶⁵ Id. p.33-34 even though the BGRS only bestows the right to self-determination to the indigenous groups there was a demand to have a special *woreda*, like those of Pawe and Mao-Komo (Pawe *woreda* at the time were special *woreda* established by Settlers in Metekel Zone which can participate in regional matters bypassing the zonal administration).it was impossible not only due to constitutional protection but the geographical make up and population settlement of the Bertha and settlers villages in Asossa have no definite boundaries.

³⁶⁶ Id. p11-15

³⁶⁷ Yonatan Tesfaye, *supra* note 14 at 477-478

constitution. Then the case was transferred to the Council for Constitutional Inquiry in June 2000. The issue hinged on whether or not there is a contradiction between:-

- i) FDRE constitutional article 38 (safeguarding the right to elect and be elected)³⁶⁸ and
- ii) Electoral Law, Proclamation 111/87, article 38(1)(b) (stating that candidates for election should know a/the national language of the area they sought to represent).³⁶⁹

However, the CCI couldn't pass decision unanimously; hence, there were majority and minority opinion. The majority members of the council of constitution inquiry (CCI) found that by putting the pre-condition of language on electoral candidacy, Proclamation 111/87 was in contradiction with Constitutional Article 38. The candidates who had been disbarred in this instance were representatives of the non-indigenous citizens, 'who had lived in the region for a long time.'³⁷⁰ However a number of members of the CCI presented a more radical minority position, which rejected the central conclusion of a contradiction between the constitutional and electoral law articles. *The minority argues that constitutional interpretation must consider 'the general goals and objectives of the constitution, the purposes it wants to achieve and dangers it wants to avoid, rather than taking only one article separately' this view maintained that.*³⁷¹

- (i) *discrimination contravening constitutional article 38 would indeed occur if candidates were disbarred because they were speakers of one language; excluding them because they cannot speak a particular language, however, does not per se constitute unconstitutional discrimination;*
- (ii) *Self-determination of nations, nationalities and peoples, which is a constitutional goal, can't be achieved without making provision for the protection and use of nations', nationalities' and peoples' languages. 'On the one hand, states are delimited on the basis of the language, identity and consent of the people concerned; on the other hand there are the rights of individuals to be elected. These two rights*

³⁶⁸ Art 38 of FDRE constitution reads as follows: Every Ethiopian national, without any discrimination based on color , race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights A)To take part in the conduct of public affairs, directly and through freely chosen representatives. B) On the attainment of 18 years of age, to vote in accordance with law. C) To vote and be elected at periodic elections to any office at any level of government

³⁶⁹ Note that the more recent electoral proclamation, 532/99, makes no new provisions in relation to this issue.

³⁷⁰ The case of constitutional Interpretation on BGRS Right to election: - the Recommendation of CCI and decision of the House of Federation, 3 May 2000. See Sarah Vaughun, supra note 307

³⁷¹ Ibid. Minority opinion in the CCI by Menberetsehay Taddese & Hassan

should be executed in harmony. If an individual is not a member of the nation in question, and in case he wants to participate in the rights to self-determination, he is requested to know the language of the National Region. He will not be prohibited from participation in an election because he is a member of another nation. The electoral legislation both maintains the premises of the constitution, and respects the rights of the individual and is therefore fair and impartial. This is the only way to address properly the objective conditions that prevail in our country'

- (iii) *The rights to be elected are not without limit: every country puts different limitations on them. 'Given our country's federal structure, it is not surprising to put languages as one criterion for election'.*

Finally even though case was submitted to the House of Federation in September 2000 it was unsuccessful to render decision quickly as per the requirement of constitution. Finally, in March 2003 the House of Federation decides that:

" . . . Art 38(1) (b) of proc. 111/95 is not contradictory to the constitution. However decision of the NEBE is unconstitutional because, it excluded those individual who are versed in the working language (Amharic) of the regional State. Therefore, decision should be in effective for future elections" Surprisingly contrary to both the minority and majority recommendation of the CCI, the HOF took the view that Amharic (the language of government in BGRS³⁷²) was a working language of the region, thus overturning the NEBE decision and allowing the reinstatement of the candidates in question for they can speak the language. In the next paragraphs we will see what the major pitfall and challenges of the decision of the HOF.

According to Sarah *"this is a 'decision of convenience' that circumvented rather than resolving the constitutional issue. If there is indeed a contradiction between the two principles, what would be the position, for instance, of non-Oromiffa-speaking would-be electoral candidates in Oromia? Or of non-Tigrigna-speaking candidates in Tigray, where Amharic is also not a national language? or indeed of Agew-speaking candidates in BG.?"* Neither the minority nor the majority view explicitly addressed the specific situation of farming communities resettled during the Dergue period, or even earlier: *are they expected to learn the language of the host*

³⁷²According to Art 5(1) of the constitution of BGRS, "Amharic is the working language of the regional state.

*community, or can they be represented in principle by Amharic or other speakers from their own community? Is their status different from that of other non-indigenous communities, for instance those in urban centres, and if so how and why?*³⁷³

Even though the House reversed the decision of the NEBE and affirmed the right of the three individuals to stand for election the decision, it has fallen short of entrenching the right of ethnic migrants to stand for an election irrespective of their linguistic ability. The House rejected the decision of the NEBE on the basis that the individuals can speak the working language of the region, which is Amharic, and do not necessarily have to speak the languages of any of the indigenous groups. It, however, held that the electoral law that makes the right to stand for an election dependent on the working language of the region is constitutional. It justified its decision on pragmatic considerations as opposed to normative grounds. It argued that the ability to speak the regional working language is essential if a deputy is to engage fully and effectively in the debates and discussions of the regional parliament. Speaking the working language is essential, if not indispensable, for the effective representation of the electorate in parliament, it concluded.³⁷⁴

Furthermore as Yonatan argues *“the major limitation of the decision of the House lies in its focus on mechanical aspects of representation. It is true that effective representation can be enhanced by the ability to speak the working language of the parliament. But this does not mean that there are no other mechanisms through which language constraints can be addressed. The provision of translation facilities can, for example, easily alleviate language constraints. Even in the federal parliament, deputies that have difficulties with Amharic, the federal working language, often rely on translation facilities to convey their message. By following the logic inherent in the decision of the House, one cannot also escape arriving at the absurd conclusion that members of indigenous ethnic groups that do not speak the working languages of the ethnically diverse regional states of Gambela and Benishangul, which is Amharic, must be excluded from standing for election for regional parliaments. The House’s analysis of effective representation is also narrowly focused on the functioning of the parliament. This also explains why the House does not consider it necessary for an individual that wants to stand for election in a federal parliament to speak the regional language. The House fails to take into account the fact that effective representation also requires being able to effectively communicate with the electorate. In fact, the essential ingredient for effective representation is the capacity to communicate with*

³⁷³ Sarah Vaughun, *supra* note 307 at 11-15

³⁷⁴ Yonatan Tesfaye, *supra* note 14 at 477-478

*the electorate which, at the very least, involves speaking the languages of the electorate or the constituency they seek to represent.*³⁷⁵

In addition it is stated that the House has failed to drive home two essential points that it emphasized in the opening paragraphs of its decision. First, it stated that the Constitution envisages equal respect for both group and individual rights. This stems directly from the preamble of the Constitution which recognizes the need for **“full respect of individuals and people’s fundamental freedoms and rights”**. Second, it reiterated that language should not be used as a ground to exclude others from political participation. In other words, language should not be used in order to advance a claim of ownership of the region, implying that those that do not speak the indigenous language of the region are outsiders. The regional state belongs to all who live in it. That means, among other things, that ethnic migrants’ right to participate in the political process should not be compromised on the ground of language. Any contrary view, be it based on pragmatic or normative considerations, has the effect of disenfranchising a large number of the population in most urban areas of the different regional states. This undermines the constitutional commitment to equal respect for individual and group rights. It also creates a feeling of exclusion among ethnic migrant citizens. The decision of the House to sacrifice these basic constitutional commitments on a few pragmatic and technical considerations are, to say the least, difficult to justify.³⁷⁶

- Representation in practice

As discussed above, conflict between settlers and Berta in Asosa and Bambasi weredas has often been fuelled by demands for representation of non-indigenous groups in the state and wereda council. Due to these both wereda executive councils now incorporate settler representatives, but calls for greater equity continue. Whilst tensions relating to representation are at a lower level than in recent years, this issue has not yet been sustainably resolved, and is likely to recur as a source of conflict, locally and at zone level.³⁷⁷

³⁷⁵ Ibid

³⁷⁶ Id. p.478-479

³⁷⁷ Interview notes, Asosa, 2014, see also Sarah Vaughun, supra note 307 at 31.

The representations of other citizens in the regional and wereda council follow the amendment of the regional constitution in 1994EC (2001/2). The revised constitution sets out the rights of the indigenous nations and nationalities of BGRS under Article 39. The revised constitution of the region recognizes the “indigenous” five ethnic groups as the owner of the regional state with the right to self-determination.³⁷⁸ Other articles, however, set out scope for legislation to protect ‘other peoples’ living in the region: Article 48(2) of BGRS states that *Members of the Regional State Council shall be elected from among candidates in each electoral district by a plurality of the votes cast [...] on the basis of the size of the population. The representation of Mao and Komo nationalities shall be given special consideration. [...] People who are believed to be entitled to special representation shall be represented in the Council through election. Particulars shall be determined by law.* Furthermore Article 45(3) states that *Representation of other people of the region shall be given special consideration. Particulars shall be determined by law.* As it is clear from the provision while the small indigenous ethnic groups (the Mao and the Komo) have a guaranteed representation in the regional parliament, the non-indigenous groups have no such guarantee.

Even though the regional constitution does not provide for a guaranteed representation of non-natives ethnic groups in the regional parliament, as noted above, the regional government has taken a number of steps to try to institutionalise representation of non-indigenous groups, initially at local level, but now also at regional level, with seats given to Amhara (2), Oromo (2) and Agaw (1) representatives.³⁷⁹ It is stated that “*the move is the decision of our political organisation, BGPDO: even OPDO didn’t give this kind of representation for Amharas in Oromia. We are playing an exemplary role as to how to live together.*”³⁸⁰ This is essential effort for the legislative process in state council, consultative procedures and hearings that would provide for all communities to present their specific interests within the law-making procedure

³⁷⁸ Revised constitution of Beneshangul Gumuz regional state Article 3

³⁷⁹ Sarah Vaughun, supra note 307 at 18. In addition to the election of their own representatives at local levels, key developments was the establishment of Pawe Special wereda, reporting directly to the regional administration, however as the interview with the vice president shows due to the inclination of the Wereda to Amhara region than to BGRS it was decided to revoke the special wereda status and done to report to the Metkel Zone.

³⁸⁰ Id.p.31

are valuable tools. As a basic principle one should guarantee that the law-making processes are inclusive with regard to the diverse groups when they deal with law-making at the any level.³⁸¹

When we see the issues of representation of non-indigenous in the executive at the regional and wereda level, the Asosa and Bambasi wereda executive has been restructured to involve representatives of all communities living in the area. Whilst the chairman is Berta, his Deputy is Amhara, the vice Speaker of the wereda council is Tigrayan, in both wereda and in Babasi the head of the Agriculture Department is Oromo.³⁸²

Furthermore it is stated that “the positions of the regional executive are divided in an attempt to balance regional ethnic interests: Berta and Gumuz share between the Presidency and Vice-Presidency; other seats are allocated among: Berta, Gumuz, Shinasha, and Mao Komo. The representation of other citizens like Oromo, Amhara, and other settler/urban community is not given a place except the regional administration secretary which is an Oromo. Thus the regional cabinet has no representatives of non-indigenous groups. Thus indigenous groups are represented in the regional cabinet whereas none of the non-indigenous groups is represented at that level. Thus On the level of the executive, the various diversities have not been somehow taken into account. The same goes for the Constitutional Interpretation Commission where all indigenous groups are equally represented while the non-indigenous groups have no representatives.³⁸³

Furthermore the other major points that have close link to the issues of the right to self-rule and rights of citizenship is the composition of the judiciary and police. In order to enable the judiciary to respect the interests of different ethnicities it needs to be composed of judges representing the different communities to ensure confidence in the impartiality.³⁸⁴ When we see the composition in the Asosa wereda it does not reflect the communities in the wereda as it is only dominated by judges from the indigenous ethnic groups.³⁸⁵ Similarly the police forces have to guarantee security among different communities they need to be composed of officers and ranks that belong to those different diversities in order to achieve credibility and trust among all

³⁸¹ Akhtar Majeed & et.al ,supra note 2 at 16

³⁸² Interview notes, Asosa wereda president,Asosa,2014

³⁸³ Christophe Van der Beken ,supra note 263 at 127

³⁸⁴ Akhtar Majeed & et.al ,supra note 2 at 16

³⁸⁵ Interview notes, Asosa Wereda judge,Asosa,2014

the different communities.³⁸⁶ The case of Asosa wereda where the police office's is manager is Amhara shows that there is comparatively better accommodation of other citizens equally with indigenous one, even though there is tremendous pressure in the working environment for dominance of the police force only by the indigenous peoples.³⁸⁷

A further theme of on-going tension, relates to the political profile of representatives non indigenous citizens and/or settler. It is stated that *"If you consider the situation in Kemissie, the Oromo zone of ANRS, their OPDO representatives are under Amhara political authority. But when you come to BGRS, they have their own representatives, from ANDM, TPLF, and OPDO. When we have a problem with them [the cadres], they say they are under EPRDF, not the BGPDO. There is no close follow up from the EPRDF political organisations, so their cadres become kings here, with no evaluation from people who know the day to day problems they are causing. They don't take account of our comments and criticisms when evaluating their cadres; they think of themselves as watchdogs for the federal government, rather than collaborating with and being led by the BGRS government."*³⁸⁸

Finally what we will discuss is whether the above arrangement by the regional government real respond to the rights and freedoms of political participation including political speech, voting, election to political office which enable citizens to shape public policy and the capacity of citizens to influence or review public decisions in the region. Critics claim that these arrangements still don't address the real problems arising locally between groups.

Following the decision of the House of the Federation, non-indigenous citizens/Settlers asked for proportional representation in the regional assembly. Despite their population extent³⁸⁹, Settlers of Asossa *woreda* were given a single seat in the regional assembly. This representation was also

³⁸⁶Akhtar Majeed & et.al ,supra note 2 at 16

³⁸⁷Interview notes, Asosa wadera police office commander ,Asosa,2014

³⁸⁸Sarah Vaughan, Supra note307 at 31. According to interview and observation carried out by the writer, even though it is a decade since Sarah has interview the president there is similar current situation in this regard. In this regard the problem emanates from the fact that the regional party is an ally not member of the EPRDF, it is difficult to explain how after two decades in power the parties remain in such loose position creating conducive environment for the future in the relation to accountability.

³⁸⁹According to the 2007 CSA census result their population size accounted nearly 50% of the *woreda*, and 22% from the total population of the BGRS region whereas the Berthas accounted 50% of the *woreda*, and 28.7% of the total, have 40 representatives in the regional politics. See Asnake Kefele,supra note 104 at 164

again canceled in the 2005 national election .Beginning from the 2005-to-2010 national election the seat was taken by someone whom the Settlers did not elect to represent them in the regional assembly by dismissing the one who is nominated by the Settlers.³⁹⁰ When we see the ethnic composition or representation of other citizens and ethnic groups in 2010-2015 election period, according to the statics from the regional council there are six members of state council from Asosa wereda among which one is from the non-indigenous while the rest are from Berta ethnic group, as things stand now there is no any indication/political will to change for more accommodation of “other citizens” in the upcoming election 2015 in the council.

In addition in order to limit Settler’s political participation, the number of people who shall be participated as representatives of Settlers in the *woreda* council and *woreda* executive has been intentionally reduced. when both the Settlers and the Berthas in the earlier periods formed the *woreda* council in Asossa *woreda*, the number of people that could be elected from each *kebele* has been decided to be three which make up a total of 222 members (there are 74 *kebeles* in the *woreda*, from these 36 are Bertha *kebeles* and the rest 38 are Settler *kebeles*).³⁹¹ Therefore, in an intention to reduce Settlers political influence in the *woreda*, in contradict with the 2002 revised regional constitution article 86 (1), which states that “members of the *woreda* council should be directly elected by the people residing in the *kebeles* under it”, it was decided to reduce the number of representatives elected to the *woreda* council from Settler *kebeles* to two, while the Bertha *kebeles* remained to be three.³⁹² This helped them to decide in every affair through the majority vote regardless of the interest of Settlers citizens. The reduction of representatives from Settler *Kebeles* did not consider the population size as a parameter. If it does, Settlers get better than before over the Berthas. Reduction of the number of representatives is not only limited in the *woreda* council, but also taken place in *woreda* executive. Primarily, among fifteen members, Settlers were given seven seats in the *woreda* executive, whereas later it was reduced to be four, two and now it is one.³⁹³

³⁹⁰ Amare Kenaw, *Inter-Ethnic Conflict Transformation in the Post-1991 Ethnic Federalism: Experiences from Asossa Woreda in Benishangul-Gumuz Regional State of Ethiopia*, Addis Ababa University, unpublished MA thesis, February, 2012, p.41

³⁹¹ Ibid. This has been verified by the interview the researcher has carried out with the vice speaker of the Asosa wereda council, Asosa, 2014

³⁹² Ibid

³⁹³ Ibid

All these imbalances on the issue of equal or proportional political representation both in the *woreda* and regional assembly as well as executives between these ethnic groups in the *woreda* has caused series of conflict since the federal restructuring. When the House of the Federation decided for equal representation both in the regional and *woreda* affairs, for both Settlers and Berthas, in Asossa, the regional government maintained its position and gave a nominal representation to Settlers as well as in the *woreda* council too. Beyond the response of the participants, the researcher field observation had shown us that there is still an internal motion in the attitudes of the people with regard to equal political representation in various governmental institutions which need to be transformed before they cause further inter-ethnic conflict.³⁹⁴

In sum even it is stated that *“though the House of the Federation had decided to guarantee the equal representation of non-indigenous citizens there is still a rift in practical application in this respect. Now-a- days there is no violent conflict in the area and the conflict looks transformed into constructive outcomes, but there is still a scandal at the end of the tunnel showing the conflict will revive for the future unless and otherwise settlers right to elect and to be elected in their country of origin is respected and restored. For this fact, Settlers’ equal representation in the regional assembly and woreda council is the main issue still the region is supposed to consider to maintain sustainable peace and security in the area and vis-à-vis to create symmetrical relationship between the residents regardless of ethnic boundary. One might ask, for how long this people tolerate all issues without enjoying their constitutional right is a critical question to be seen in the future. Because settlers in their part still perceiving that the issue of unequal representation in the regional assembly and woreda council as the direct outcomes of the Ethiopian ethnic federal formula.”*³⁹⁵

6.2.4 The right to self-rule Vis a Vis right to equality and non-discrimination

In this section equality is expressed in the sense where, even if one is has citizenship of the country he lives one may encounter prejudices and discriminations from the host community in case he migrated due to many factor. The sources of prejudice and discrimination are both a matter of visibility (physical appearance, dress pattern, etc.) as well as a product of interaction, as religious faith, race, style of speaking the local language. In other words this is termed as

³⁹⁴ Ibid

³⁹⁵ Ibid

“ethnification” which is a process through which some collectivities are defined and perceived as outsiders/ aliens and driven out. This has nothing to do with facts of history, length of residence, or degree of assimilation.³⁹⁶ Thus when a collectivity develops the feeling that it does not belong or is treated as an outsider because of its specific identity, it becomes an ethnies which is an obstacle to nurturing diversity. It is stated that “*Citizenship in such cases can provide at least partial succor to ethnies, because it is essentially an instrument of equality.*”³⁹⁷ But these practices should not compromise citizenship values and human rights. Indeed, agreeing to institutional autonomy for the benefit of distinct groups is not necessarily without cost. The majority may fear the lack of consistency in a number of policy areas. It may also resist practices in some constitutive units which it deems to be contrary to fundamental rights (the controversy regarding a particularly harsh application of the sharia by certain Nigerian constitutive units is a good illustration). Some may reject asymmetrical arrangements as an assault on the principle of equality between constitutive units. There may be concerns that solidarity between citizens of the overall state will be threatened by such territorial restructuring. The majority may experience a sense of loss regarding a unified nation which it perceives—rightly to wrongly—to be inclusive of every citizen in the state, over and beyond the various types of socio demographic and cultural differences. These concerns ought to be taken seriously”.³⁹⁸

Thus as pointed out above the major issue is section is the sense of equality in self-governing ethnic administration or in other words whether the right to self-rule guaranteed to the ethnic groups has impacted on the right to equality of other citizens in the wereda? 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.

The FDRE constitution under Article 25 affirms the Right to Equality of citizens. It states that “*all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective*

³⁹⁶ Akhtar Majeed & et.al ,supra note 2 at 30

³⁹⁷ Sarah Vaughun supra note 307 at 33

³⁹⁸ Akhtar Majeed & et.al ,supra note 2 at 46

protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status. In the following paragraphs we will discuss the different manifestations of the relation between the right the self-rule and rights of citizenship in the study area.

Previous history of biases and unfair policy clearly fed resentment and resistance, such that when administrative structures were remodelled on the principle of ‘self-determination of nationalities’ the stage was set for a violent process of ‘redressing the balance’.³⁹⁹ One of the main conjunctures in Berthas-Settlers conflict was the legacy of the past, in which the military regime established basic social institutions such as education, health and agricultural, to be found only near to the Settlers’ village at the expense of the Berthas. By considering the historical injustices, imbalances, inequality and purposeful marginalization of specified group by the government in the past, the FDRE Constitution declared some special rights to four peripheral regional governments as an affirmative action. The action includes special developmental assistances to those marginalized groups in the past⁴⁰⁰. Among those four nationally and constitutionally identified regions, the BGRS is one of them. To effectively address and meet the national developmental assistance in those regions, the regional governments are supposed to design specific parameters. The BGRS is using those ethnic groups specified as “owner nationalities” or “host ethnic group” to be benefited from this policy. The owner nationality in Asossa *woreda*, therefore, is the Bertha ethnic group. For this fact, in order to boost peoples participation in the affairs of the area there is a priority given to the Bertha as a host ethnic group in various social affairs such as job opportunity, and lower entrance points to the higher institutions. By making this, the region is encouraging the active participation of the host ethnic group into different social service arena.⁴⁰¹

However this special privilege to the indigenous groups has created a loop hole/cover where it has become easy to violate the fundamental rights of others. It is stated that “*it was the intentional move of the regional government in a bid to limit the participation of Settlers into different social services, and this policy is served as one of the manifestation of Settlers’*

³⁹⁹ Sarah Vaughn supra note 307 at 58

⁴⁰⁰ FDRE constitution, Art. 89 (4)

⁴⁰¹ Amare Kenaw, supra note 390 at 47

*treatment as “second class citizenry”. Further it is more than a generation since arrival of settler citizens, their children were born, grew, and learned here, why is not they have the right to be treated as the Bertha offspring do. They went to the same school, played in the same ground, and grew together on the same field. There is nothing that separates them, since they share the same social condition and environment. But the ideological bar applied to them due to language and ethnic difference is one of those situations that cause conflict.*⁴⁰²”

Furthermore beyond the application of the affirmative action, there is an exaggerated move from the side of the Berthas to use this special right in the areas which did not require the application of it/illegal use of it. Settlers/non indigenous then feel segregated and intentionally reduced to be secondary to the Berthas. It is stated that *“the youth after they graduated from various colleges and universities came back to their home region, but they cannot compete as equal as the host. They are allowed to compete to various posts after the host ethnic groups get all the chances. If all the vacancies were taken by them, the only option left was either migration to the neighboring region or to neighborhood country crossing the international boundary through Sudan* ⁴⁰³

From this, we can understand that, there is an awareness problem on the concept of affirmative action and self-determination. When priorities were given to those constitutionally identified groups discriminately from other citizens or groups, the others feel as they are disadvantaged and perceive themselves as second class to the region. However some officials have used it inappropriately/illegally the opportunity given by “affirmative action” to their advantages. Indigenous groups as an owner nationality feels like proud of it and trying to use it in every means to disregard and disrespect the other citizens like Settlers’ who are discriminated for good. In contrast, the other non-indigenous or Settlers citizens conceive the idea and application of the affirmative action in an intention to reduce their participation in the affairs of the region and feel like they are disregarded and have no democratic rights to ask and get whatsoever they seek.⁴⁰⁴

The other issues, which will be discussed in detail in the next section 6.2.5, in relation to the right to self-rule and rights of citizenship is the *“Competitive dynamics between settler and Berta*

⁴⁰² Id. 47

⁴⁰³ Ibid

⁴⁰⁴ Ibid

communities which is clearly exacerbated by emerging shortages of land for agricultural activity – mostly shifting hoe cultivation by the Berta, and plough agriculture by the settlers. As settlers seek means of obtaining increasing areas of land for agriculture, Berta farmers and elites have entered into leasing arrangements, sometimes for large areas of land that they control. This has in turn fostered resentment on the part of settlers who see themselves effectively as ‘tenants’ subject to unregulated and exploitative terms.’⁴⁰⁵

In sum ethnic self-government has drawbacks notably in terms of social cohesion and distrust. Hence, while no one is forced to choose a single identity, the Communities largely function in isolation, creating ever increasing schism between citizens, rather than creating bridges between them. It is stated that *“the Settler communities/non indigenous specifically after the establishment of ethnic form of federalism have been secluded in enjoying rights as equal as the host communities/indigenous groups of the region. This, therefore, resulted in resentments among the settler communities and led to the outbreaks of inter-ethnic conflicts in matters of interests between the Berta and the Settler communities. Local and personal conflicts soon get wider attention and escalate into an all-out conflict in line with ethnic grouping.”*

6.2.5 The right to self-rule Vis a Vis The right to property

The FDRE constitution under article 40 (1) guaranteed the right to property of every Ethiopian citizen. *“The right to the ownership of private property unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise. Under sub article 3 the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia”.* Further under sub article 4 *Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Furthermore sub article 8 states that without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.*

⁴⁰⁵Sarah Vaughun, supra note 307 at 44

In the next paragraph we will see how the post 1991 federal structure that guaranteed rights to self-rule too ethnic groups have impacted to the rights of other citizens to private property in rural and urban Asosa wereda. Since the 1991 regime change, they have particular grievances regarding access to land and resources. When the settler people brought to Assosa in 1980s they received 1000 square meters of land for their individual residential quarters and private vegetable gardens. 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.⁴⁰⁶ *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.*⁴⁰⁷

Moreover, most of the non-indigenous 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. As pointed in the above section the Second is the development of a new land tenure system in Assosa in particular and the BGRS in general– the leasing of land by the Bertha to the settlers. Accordingly, the latter provide up to a third of their produce to the former, i.e. two third of the product delivered to the settler 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.⁴⁰⁸

⁴⁰⁶ Asnake kefele, supra note 104 at 98

⁴⁰⁷ 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 BeniShangul*, Addis Ababa university, unpublished MA thesis, 2006, P.45. According to my informant the situation of the settlers after decades of farming the same land over and over again resulted in unproductivity of the land and the increase in family members due to birth has created miserable situations where they are either faced with options to re-migrate to their original place or leave the country. Interview note, Asosa city Administration council speaker, Asosa, 2014

⁴⁰⁸ Ibid. In the focus discussion it was stated that due to the fact that the indigenous groups does not know farming and the non-indigenous has better experience in farming has resulted in situation where the former will do nothing but collect the labour of the latter resulting in the dependence of the latter, thus the regional government is prohibiting such dealings. Quotation from focus group discussion, Asosa, 2014

In addition to that, the Asosa city administration has incorporated four of the settler kebele who reside near to the rapidly growing Assosa and confiscated their farmland and property on it for urban development like the Asosa University, stadium and other military camp without compensation.⁴⁰⁹ They tried to bring their grievances to the concerned regional government office but the local officials always intimidate the complainants and informed the victims of expropriation that they are not entitled to possess that land; rather they should go to their own region.⁴¹⁰ Similarly even though there is fast development in hotel and other service by non-indigenous groups in Asosa town the provision of land for residential purpose to the resident and civil service have been faced with discriminatory practice where it is rare to be given to non-indigenous groups. This case clearly demonstrates how the regional ethnic politics has intertwined with control of resource like land. 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 people should not affect the fundamental right to property of other citizens who live in the wereda.⁴¹¹

In sum there is a perception where the so called indigenous groups claim all the properties non indigenous/Settlers had till now belong to them because everyone came into the area with bare foot and hands having nothing. Even though one has an urban and rural land possession certificate they perceive themselves as the new land owners/ aristocrats. As the different conflict in the area shows the settler had never a history of conflict either in grazing or irrigable land with another Settler *kebele*, it is only with the Berthas in all dimensions. There is wrong perception the indigenous ethnic group has an exclusive right over all matters and can decide whatsoever

⁴⁰⁹ Amare Asef, *Letter to the Benishangul Gumuz National Regional State Council*, Assosa, 2001. IN: Amare Kenaw, *supra* note 390 at 48

⁴¹⁰ Ibid however, the regional government has moved some settler to new settlement area. Priority was given to those Settlers whose land was taken by urbanization and those who have been identified as short of land and prone to serious conflict with the Berthas. The new area for re-settlement area is found in Bambasi *woreda*, commonly called as “Mutsa Mado” and “Keshimando” around 50 kilometers far from their former settlement. Social institutions were opened before the Settlers fully settled. On the other hand, the settler complains that the area is too far and has no developed infrastructure and it has disconnected them from their social life in the former settlement. On the contrary, other *woredas* who have sufficient land begun to curtail the settlement of people from Asossa *woreda* into their land fearing the same happening.

⁴¹¹ Ibid. This was verified by the researcher with interview of Amba 2 Kebele chairman, Asosa, 2014

they sought necessary to them regardless of the Settlers. This has resulted in a situation where Settlers/non indigenous to ask whether they are citizens in the same state or not⁴¹².

6.3. Balancing the Right to Self-Rule and Rights of Citizenship in Ethiopia

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 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.

Thus 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 and house of federation), 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 can be achieved through constitutional guarantee; legislative protection; judicial application; and executive implementation.⁴¹³

Furthermore it is stated that *Federalism cannot exist without democracy, while democracy can prevail without federalism.*⁴¹⁴ *The recognition of democratic rights imposes an obligation on government to respect the freedom and equality of citizens. Rights establish a minimum standard*

⁴¹² Ibid

⁴¹³ 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. 292

⁴¹⁴ Asnake Kefale, supra note 104 at 1

*for legitimate rule. The standard, however, is exacting. Citizens now have important liberties and privileges that cannot be infringed upon by government. Any act of government that invades the rights of citizens is void, even if it enjoys the support of the majority or is shown to be beneficial to all. By making certain freedoms immune to executive fiat, legislative decision or popular vote, rights ensure citizens a final say in the arrangements that they live under. The system of rights does not merely amount to laws which permit actions, or prohibit interference with them. A system of rights empowers individual citizens themselves to impose limits on government, and entitles them to seek redress in case of infringement.*⁴¹⁵

Additionally beyond the above institutional roles there are many federal principles, which need not be incarnated in actual federal institutions, but have pivotal role among such is keeping the delicate task of balancing ‘unity’ and ‘diversity for the successes and failures of federations, the reduction of overpowering ethnic nationalism and promote national unity, priority of individual rights and inclusive citizenship, Greater and mass enlightenment or the education of the citizenry, safeguarding accountability, transparency and good governance care among non-institutional safeguards which should be observed.

- THE HOUSE OF FEDERATION and REGIONAL CONSTITUTIONAL COMMISSION

According to the FDRE Constitution the House of the Federation is responsible to interpret the constitution, decide on nationalities issues, under article 62(4) it promote the equality of the Peoples of Ethiopia enshrined in the Constitution and promote and consolidate their unity based on their mutual consent, and under Article 62(9) it shall order Federal intervention if any State, in violation of this Constitution endangers the constitutional order. Accordingly the House⁴¹⁶ tried to resolve the issues of right to self-rule and citizenships in the BGRS regarding the political participation of Amharic speaking settlers and other citizens. Thus any of the concerned federal and regional actors are supposed to execute the decision of the House.⁴¹⁷ However the decision of the house has unfortunately made the right to political rights of citizens to depend on the knowledge of the working language of a region, even if it seems to solve the peculiar case of

⁴¹⁵ Andreas Eshete, supra note 88 at 9

⁴¹⁶ The house of federation is assisted by the CCI that was 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. According to article 23 of the proclamation 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 CCI for interpretation and the latter has power to discard cases in which no constitutional interpretation is required.

⁴¹⁷ HOF, March 15, 2003, on the 3rd official working year, 2nd regular meeting

BGRS, it is not known what will be the fate of the non-indigenous citizens if in case the regional government of BGRS change the working language of the region to other language as the case in Oromiya and Tigray illustrate. Thus the house should re-consider the right to political participation of every Ethiopian citizen without any discrimination based on language or of whatsoever. Likewise, any violation of the right to freedom of movement and residence, right to equality, right to private property of individuals which are belonging to distinct ethnic groups through direct or indirect impact of ethnic federal arrangement can be adjudicated and decided by CCI and HOF. However the constitutional rights protection technique should be proactive; it should not wait until infringement of fundamental rights of citizens. Furthermore the counterpart of HOF in the region like BGRS is the constitutional interpretation commission and CCI under article 71-73 play pivotal roles in the protection and enforcement of rights of citizenship in the region.

- HOUSE OF PEOPLE REPRESENTATIVE/REGIONAL COUNCIL

According to article 55 of the FDRE constitution the HPR is mandated among other things to the enforcement of the political rights established by the Constitution and electoral laws and procedures, enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community, carry out investigation and take necessary measures if the conduct of national defense, Police forces and public security infringes upon human rights and the nation's security, appoint Federal judges, establish a Human Rights Commission/ombudsman institution, on the basis of the joint decision of the House, give directives to the concerned State authorities to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction, call and to question the Prime Minister and other Federal officials and to investigate the Executive's conduct and discharge of its responsibilities. These powers of the HPR if applied in vibrant and effectively way will solve many of the problems in the regional states on the major issues of the paper discussed. This holds true of the BGRS council which is the counterpart institution on regional matters as article 49 of the constitution similarly empowers it.

- HUMAN RIGHT COMMISSION

In order to implement the rights of citizenship, such that it does not remain an order on paper, relevant here is the suggestion for an independent commission that would monitor the implementation of some of the very critical provisions of the constitutional document.

Accordingly the FDRE Human Rights Commission⁴¹⁸ would be relevant but how functional, effective or pro-active is the commission? Thus, what is required is a very vibrant, efficient and responsive Human Rights Commission, otherwise it is better that it be non-existent. The FDRE Human Rights Commission has been 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.⁴¹⁹

- INDEPENDENT JUDICIARY

Judicial application and interpretation of fundamental right of citizens gives an assurance that in cases of violations, there is a possible remedy (or redress) by taking one's cases to courts. The case of Belojegenfo and Yaso wereda official's prosecution case in BGRS shows that courts can exercise their power to adjudicate cases relating to the violation of fundamental constitutional right like the right to freedom of movement and residence, property and right to equality that particularly emanates from ethnic federalism. The 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.⁴²⁰ While Ethiopian courts are barred from constitutional interpretation, they do have a duty to enforce the Constitution fundamental rights and freedoms according to international human rights agreements which the country ratified. For instance in the case of Biyadigligh Meles et al v. Amhara National Regional State⁴²¹, 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. While there is some debate as to the extent of application international human rights agreement, the Court of Cassation has invoked the Child Rights Convention in a precedent-setting decision.⁴²² The decision clearly indicated

⁴¹⁸ Ethiopian human rights commission is established pursuant to Article 55(14) of the FDRE constitution and proclamation No. 210/2000. According to article 5 of the proclamation the Commission has the mandates to promote, protect and work towards the realization of human rights in Ethiopia. Further article 6 states that 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.

⁴¹⁹ Tsegaye Regassa, supra note 418 at 292

⁴²⁰ Ibid

⁴²¹ Decision of the CCI on an application made on *Miazia* 30 1989 E.C. (8 May 1997, unpublished). IN: Assefa Fisseha, Constitutional Adjudication In Ethiopia: Exploring The Experience Of The House Of Federation, *Mizan Law Review*, Vol 1, No 1, 2007, P. 8.

⁴²² 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.

that courts have both the right and the duty to invoke international human rights instruments in their decisions. Furthermore courts have an inherent power to adjudicate civil and criminal matters related to violation of fundamental rights of citizens like the right to freedom of movement and residence, right to property, the right to work and equality.

- **MINISTRY OF FEDERAL AFFAIRS**

Ministry of federal affairs 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 ministry there are four principal directorates which engaged to solve the problems that arise from Ethiopian federal system.⁴²³ These are: conflict prevention and resolution directorate, federalism awareness creation and national consensus consolidation directorate, intergovernmental relation directorate, and religious affairs directorate. The ministry has played in the BGRS tremendous role in resolving the conflict between Berta and settlers following the 2001 demand for equal political representation.⁴²⁴

- **INSTITUTION OF THE OMBUDSMAN**

Ethiopian Institution of the Ombudsman 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. Furthermore it 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 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.⁴²⁵ However the role of this institution depends on how independent it is and effective to the different complaint of citizens in distress in the ethno regional states.

⁴²³ See the website of the ministry www.mofa.gov.et (accessed on January 2014)

⁴²⁴ Sarah Vaughun, supra note 307

⁴²⁵ Proclamation No. 211/2001, proclamation for the Institution of the Ombudsman, Fedral Negarit Gazeta, 6th Year, No. 41, article 6.

- **FEDERAL POLICE and PROSECUTION**

As the Ethiopian federal structure follows the dual system among the executive, legislative and judiciary, the federal government can establish in all parts of the country these institutions to deal with only federal matters. Accordingly the federal police has been established in five of the regional state to investigate and prosecute issues pertaining to the federal matters under the constitution including the violations of fundamental rights of citizens. This is essential in the situation where there are local biases and tyranny that discriminates based on the criteria whether one belongs to the region/ethnic groups in question. In a situation where there is diversity at local level and officials from one ethnic group only holds power the possibility of equal respect of fundamental freedoms and rights is rare. The federal police and ministry of justice public prosecution have played a great role in controlling the different ethnic conflicts in the different parts of the country that has directly to do with the violations of fundamental citizenship rights in the regions.

Chapter Seven

Conclusion and Recommendation

7.1. Conclusion

The geographical configuration of the Ethiopian federal state has not created entirely ethnically homogenous states. In many of the states, there are indigenous and non-indigenous ethnic groups that live in the midst of the empowered regional majorities. Indigenous ethnic groups are like the Kunama in Tigray, the Agew and the Oromo, both of whom inhabit in the territory of the Amhara regional state. On the other hand non-indigenous ethnic groups includes migrants and settler who have historically moved south and west settled in for instance in BGRS, Oromiya and other regional states due to different historic or economic reasons. The latter are usually found in large numbers in major urban areas of the different states. This pattern of settlement brings to the fore issues about the majority-minority tension and citizenship question at the state level. It begs the question whether the Ethiopian Constitution provides for a mechanism by which indigenous and non-indigenous citizens can be accommodated. The Ethiopian institutional response provides for a number of mechanisms through which indigenous minorities can be accommodated in the federal system. For instance the right to statehood and the creation of special weredas/zones by the state constitutions and shared rule are such mechanism. A major limitation of the federal system is that it does not adequately address the plight of non-indigenous citizens. The FDRE constitution indicates that the division of constituent units is a possible solution to internal demands for self-government by nationalities; however, this is not an option which is available for non-indigenous groups who are not geographically concentrated. Thus some of the solutions that must be sought within the territorial administration that these citizens find themselves in include judicially enforceable universal individual rights, non-territorial autonomy and shared rule. However, In this regard even though there is flexibility in relation to the use of language in education in ethnically heterogeneous regional state, these measures have not lifted the status of equal citizenship and have practical limitations in addressing the plight of citizens in the different parts of constituent units.

In other words the makers of the Ethiopian federal constitution did not foresee how the institutionalization of ethnic federalism would affect the relationships between indigenous and

non-indigenous communities.⁴²⁶ Hence, after the institutionalization of federalism in several parts of the country patterns of relationships between the two groups have changed. The non-indigenous became new minorities with limited political rights. While the indigenous groups sought to use their new autonomy to assert their economic and political power, thus this has resulted in a situation where the non-indigenous groups/citizens felt insecure, discriminated and disenfranchised. As a result there are tensions, sense of vulnerability, hostility, unfair treatment, double standard, discriminatory practices and forced displacement of non-indigenous groups/citizens in their relationships with indigenous groups in many parts of the country. This then what this paper calls it as the “citizenship question” i.e. the dilemma of citizens in situation where there is violation of their fundamental rights by those who controls or dominates the locality to rule as granted by the constitution document or by those who fought for equal rights to nation, nationalities and people in their effort to solve the so called “national question” in Ethiopia. The dilemma is whether these people are citizens or subjects as they do not take part in local deliberations. In other words it is the situation where citizens feel as merely ‘others’ that are simply tolerated by the regional majority group who own the region, they are treated as guests whose rights are not respected and deemed as unequal members of the society that do not participate in the management of the constituent units. Thus there is no sense of full and equal citizenship that resulted in the crisis of national identity/unity. The “citizenship question” in Ethiopia is manifested in the different ethnic conflicts that underline what is to be a citizen and its entitlement? Whether respect for rights of citizenship varies depending on one’s place, language, religion, and ethnicity? In other words there is, what Eghosa Osaghae calls it, a ‘statism’ that is to say “*an entrenched system of discrimination which is also a negation of the constitutional provisions on national citizenship because membership in a state is exclusionary; one could only belong to a single state. Those excluded in each state are called non-indigenes and are discriminated against and could not make claims to the rights of individual citizenship from a state in which they are non-indigenous.*”⁴²⁷ The major justifications lie in the post 1991 state re-structuring and new model of nation building that while recognizing a variety of individual rights, grants sovereignty/political power to ethnic groups. There is unique formalization of communal identity as the basis for formal citizenship which has vast political

⁴²⁶ 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.

⁴²⁷ Osaghae Eghosa, supra note 8 at 593-613

and constitutional implications in the different parts constituent units. Simply put unlike, the approach to citizenship under the centralizing and modernizing regime of Emperor Haile Selassie and that of the socialist dictatorship of the Derg, the EPRDF has self-consciously, through the 1995 constitution structure citizenship around a different, more pluralist, multiethnic, and decentralized model/vision of citizenship departing from a centralized, assimilationist model of nation-building of the previous political regime and a western liberal model of citizenship. However this dramatic social, economic and political shift has resulted in the lack of consensus on the most fundamental elements of Ethiopian national identity, citizenship and institutional structure.

The preamble to the constitution vests power in ethnic groups, by opening with the words: ‘We, the Nations, Nationalities and Peoples of Ethiopia.’ Similarly, Article 8 states that sovereign power ‘resides in the Nations, Nationalities and Peoples of Ethiopia,’ through their elected representatives and ‘their direct democratic participation.’ This is expressed by the right to Self-determination/self’s rule; this right with its internal or external features has numerous benefits for the groups who exercised it. However, the freedoms of other people who intermingle within the group who are self-determining 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 citizens who live in the self-determined territory, such right includes the right to freedom of movement and residence, right to equality, right to political participation, right to work and right to private property. In other words this is to state that *“the exercises of the right to self-determination that are incompatible with the equal protection of the fundamental rights of citizens are illicit. Citizenship cannot vary in accordance with ethnic identity. Individual rights define a guaranteed status of equal citizenship. They are an impartial yardstick for legitimate claims that each can make of every one across culturally diverse and politically autonomous communities.”*⁴²⁸

Furthermore the political empowerment of ethnic groups can threaten significant groups and citizens other than its own cultural communities. Unless the constitution recognizes, and is

⁴²⁸ Andreas Eshete, supra note 88 at 9-10

perceived to recognize, that individual rights prevail over the collective rights of cultural communities, the fate of most citizens would be vulnerable to the prejudices and customs of local authorities. The importance of the priority of rights is not confined to under privileged groups like women and children. Freedoms of movement, property, occupation and association would not be meaningful unless they are guaranteed in self-governing communities; otherwise, they would be merely privileges of residents of federal cities and employees of federal government.⁴²⁹

Thus major contention of this thesis is thus stated by Andreas as follows: *“Ethiopia is a federation of self-governing ethnic groups and controlled by ethnic nationalist, their political entrenchment naturally arouses a fear that the citizenry and the political society will be fractured into separate ethnic communities. The cleavages and the fears they incite are susceptible to exploitation by elite intent on acquiring or preserving power and privilege. The danger, then, is that cultural divisions are liable to frustrate the realization of the rights of equal and free citizenship which a constitutional democracy promises.”*⁴³⁰ This was the major question of the paper that was examined by taking the BGRS, Asosa Wereda as case, particularly emphasizing on the rights of citizenship of non-indigenous Vis- a -Vis indigenous group’s right to self-rule in post 1991 federal Ethiopia. In short it is to explore on the whether the federation which invested most political powers in the constituent states endangers the rights of equal and free citizenship?

The case in BGRS, Asosa Wereda clearly shows that the non-indigenous /Settler citizens specifically after the establishment of ethnic form of federalism have been secluded in enjoying rights as equal as the indigenous groups of the region. In particular to their right to political participation, freedom of movement and residence, right to equality and non-discrimination and the right to property. It is stated that even though the House of the Federation had decided on the equal representation of settler citizens still there is a rift in practical application in this respect. The seemingly dormant situation at this time will revive for future conflict unless and otherwise non-indigenous/settlers’ equal representation in the regional and *woreda* council is respected. This is in order to maintain peace and security in the area and vis-à-vis to create symmetrical

⁴²⁹ Ibid

⁴³⁰ Id,p.10-11

relationship/inclusive citizenship among the residents regardless of ethnic boundary. Settlers still perceive that the issue of unequal representation in the regional assembly and *woreda* council as the direct outcomes of the Ethiopian ethnic federal formula. Furthermore the major problem in this regard is that there is a wrong perception among the power holding/regional state owner ethnic groups that the representation of “others” is a gift, political decision to be taken any time soon not recognizing as universal right of citizens. Thus, even though the constitution of BGRS guaranteed a special representation of other citizens and the HOF has decided for equal right to be elected in the region there is no particular law that regulates such issue in leaving the matter to political decisions of the party. Furthermore the issues of the right to property of non-indigenous citizens should be respected as situation following the incorporation of the 4 rural kebele to Asosa city administration equivalent compensation has not been given. In addition the provision of farming land to those settler citizens who for about half century farm a small plot of land without fertility should be given equal weight without any discrimination and any displacement without the consent of these people to another area should be avoided. Similarly in urban city like Asosa the provision of land for residential purpose should be based on equality and non – discrimination without due regard to ethnicity and language as far as the criteria for residency is qualified. Furthermore with regard to the right to work, even though the BGRS is majorly has a number of non-indigenous citizens in the public service, the issue of affirmative action is the major problem. Even though the empowerment of local ethnic groups is essential it however it promoted mediocrity at the expense of merit particularly with the abuse that characterized its application in civil service appointments, promotion, admission into schools (where even though the settler citizens who lived for decades in a situation of similar economic and political environment of peripherality only the indigenous are given affirmative action into admission to university and civil service) and so on, then it could be seen as a solution that has become problematic. In addition even though there is a sense of and complain on the dominance of “other citizens” in the city of Asosa on business and investment activity, there is no discrimination based on language or ethnicity as to the payment of tax and doing business. Furthermore the rights of citizens to movement and residence have faced immense challenges in BGRS particularly the justification mostly invoked by authorities, the taking of land and destroying the natural resource by “illegal immigrant” non-indigenous citizens, the treat of crime of from neighbouring regions and fear of political dominance by the large population of other

citizens are questionable in terms of the constitutional rights of citizens to move and live freely in any part of Ethiopia.

Thus such instance of violations of rights of citizenship of non-titular groups/citizens has resulted in resentments and led to the outbreaks of inter-ethnic conflicts. Local and personal conflicts soon get wider attention and escalate into an all-out conflict in line with ethnic grouping this is because territorialized ethnic self-government has drawbacks notably in terms of social cohesion and distrust. Hence, while no one is forced to choose a single identity, the Communities largely function in isolation, creating ever increasing schism between citizens, rather than creating bridges between them thus impacting overreaching citizenship rights for all. In addition there is several citizenship visions which resulted in the lack of consensus on the most fundamental elements of Ethiopian national identity, citizenship and institutional structure. Thus in the long term, this lack of consensus may undermine the local level commitment to basic principles like equality and rule of law, as they become associated with disciplinary and regulatory mechanisms that run counter to the stated principles. Further Citizenship even if it is a force that makes citizens to participate in the democratic process of the state s/he belongs the non-indigenous role in this regard in nominal. The difference between subjects and citizen is blurred as the latter have no "*voice in the way in which political power is exercised,*" contrary to the role of citizens in constitutional democracy in making laws and subject themselves to those laws through their own participation. Thus the institutional shifts in the post 1991 impact on the daily lives of citizens in ways that sometimes reflect dramatic transformations in social status and the relationships among actors, both citizens with the state, and amongst citizens themselves. In other words the formalization of communal identity as the basis for formal citizenship in Ethiopia has vast political implications implying the equal protection and enforcement of fundamental rights citizens in the different constituent units.

7.2. Recommendations

Based on the findings and conclusions, the study recommends the following:-

- so as to ensure the observance of the fundamental rights of citizenship or to see the safeguards given to the minorities are observed and did not remain just as paper safeguards, there is a need for the establishment of a vigilance or watch group in different constituent states so that defects or drawbacks in the protection of the minorities could be brought to the notice of the government and the legislature. For instance the terms of reference of the human right commission and institution of the ombudsman mandate them to promote the culture of human rights and democracy. The institution, however, must be functional, very vibrant, effective, efficient, responsive and pro-active, otherwise it is better that it be non-existent.
- The establishment of federal institution like the ministry of justice, federal courts and federal police will assure more safety and neutrality in the implementation of constitutional rights of citizens and laws.
- Courts play an important role in the enforcement of the Bill of Rights. Anyone who alleges that his or her right has been infringed or threatened can seek redress from a competent court who may grant appropriate relief. Courts can also enforce constitutional rights in any litigation. However there is an absence of judicial review of the courts over the state executive and legislative powers in order to check their actions and possible infringements on individual and group rights. Judicial review is of course essential ultimately to safeguard human rights. For instance, the council of constitutional inquiry which has two of its members appointed by the Prime Minister (president and vice president of the supreme court) and six legal experts (most likely selected through party channels) delegated by the president upon recommendation of the HPR and three delegate from the members of house of federation and is thus not fully independent. It would have been better to make the Constitutional Court which is less in the orbit of politics and to have this body invested with constitutional review powers. However the HOF and its counterpart in the BGRS i.e. the constitutional interpretation commission and CCI which are mandated under article 71-73 to interpret any laws, regulations and directive which contravene of the constitution have pivotal roles in the protection and

enforcement of rights of citizenship in the region if they are proactive and independent from political influence.

- Even though the HOF has decided for the right to elect and to be elected of non-indigenous/settlers citizens, they are not proportionally represented in the regional and woreda council based on their population size, this is due to the political decision and regional legislation that guarantee majority seat and reduce the numbers of candidates of settler for the regional and Wereda council⁴³¹. This is justified to assure the majority status of the indigenous communities and respond to the paranoia of indigenous ethnic groups on losing the regional political institution to the increasing number of immigrants coming to the region. This decision is in line with Ethiopian federalism aim of the empowerment of indigenous communities and sustainable solution to the conflictual relationship between indigenous and non-indigenous citizens particularly if seen in light of the demographic pressure in the region, however this practice is questionable in light of the decision of the HOF which recognize equal right to elect and be elected for all citizens. The issues of demographic pressure is to be solved with common policy and the collaboration of neighboring regional states and through the design of federal structure of constituent units based on balance in the resource base, population, territorial size and other historical and administrative criteria. The bottom line is that political participation of citizens should not be nominal and limited to the deliberation but extend to other branch of governments institution too.
- Federalism is not a panacea to the multi-ethnic challenge. Non-federal elements of institutional recognition and accommodation, including an appropriate electoral system, a representative executive and non-territorial protection of language and culture, should be incorporated into the institutional design and political culture of the state if the latter is to adequately respond to the challenges of ethnic diversity. In particular as the experience of Ethiopia shows, the application of a simple plurality system at the subnational level can result in disproportionate results along ethnic lines in a situation where there are large numbers of ethnic migrants. The application of the majority system

⁴³¹ Proclamation No.69/2007, A proclamation to provide for the establishment of urban centers of BGRS and definition of their powers and duties, article 55 states that 55% of the seats of a city administration and municipal towns or the size of constituent to be determined by the administration council of the region shall be reserved to the indigenous nationalities.

of election at the state level also means that ethnic migrant citizens have potentially little or no representation in state parliaments. This suggests the inclusion of an election system that ensures the representation of the groups that inhabit the subnational state. This can take the revising the plurality electoral system to include the Proportional Representation system.

- The house of federation should design different mechanism to effectively implement article 62(4) the Constitution. The house is mandated to functions as an institution that forges and maintains a harmonious relationship horizontally between the different ethnic groups and vertically between the ethnic groups and the federal and regional government. This role of the HF commences with its duty to “promote the equality of the peoples enshrined in the Constitution and enhance their unity based on their mutual consent”. The Constitution offers this framework for national co-operation and cohesion. Thus it is recommended to maintain an institutionalized structure of integration and compromise politics on the national/regional level. The HOF should exploit the already integral part of collective memories and histories of inter-group contacts, exchange and mutual influences of Ethiopian within state structures. These have to be institutionally and constitutionally acknowledged. Thus in this regard Integration and policies that promote national unity should be put in place by the government to enhance tolerance and peaceful co-existence. Thus the rights of residency that ensure full rights of citizens be upheld. This will not only confer political rights to citizens but ensure greater unity for national development. It is recommended that emphasis on the cohesion is the only way to manage conflict among distinct groups. Cohesion can be fostered by processes emphasizing inclusiveness of all the different diversities. This inclusiveness must be based on the values of justice, democracy, tolerance, respect of diversity and rule of law that are not only accepted by all different ethnic communities but that establish for all communities a new and stronger identity making possible a solidarity among the different communities.
- Inclusive citizenship rights should not only be clearly defined but enforced, with de-emphasizing of attachment to primordial and discriminatory legislations and practice. In this regard the constitution need to adopt 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 upon the rights of citizenship which do not have any claw back clause.

- Some balance between self-rule and joint rule must be found. The balance requires a certain degree of trust, or at least a leap of faith that the “Others” can be trusted. If the proper balance is reached, trust will be consolidated. Any decision making process has to find a good balance between the vital interests of the different diversities as groups and the interests of each citizen.
- It is also necessary that good governance especially accountability, transparency and equity be ensured to restore governmental legitimacy, inter-ethnic and religious harmony and promote democratic consolidation. This is essential as government’s failure to deliver resources equitably or the dividends of democracy have often aggravated conflict situations. The constitution and laws of the land should be proactive and respected by all shades of citizens across the social, economic and political divide. Functional laws that punish offenders irrespective of their status should be upheld by all. The security agencies, judiciary and those in authority can ensure that laws are very functional by setting clear examples of respect for the rule of law. This will engender respect for the rights of others, equity and justice. Accordingly the problem in the study woreda which includes the legacy of the past inappropriate development policies, economic factors which are related to control of land and resources, political factors which are related to equal representation in the regional assembly and woreda council and poor governance on the part of the local administration should be given due emphasis and solved accordingly. Thus as conflict transformation does not only aim to end violence and change negative relationships between the conflicting parties but also to change the political, social or economic structures that cause such negative relationships and aimed at empowering people to become involved in non-violent change processes themselves, to help build sustainable conditions for peace and justice.
- Greater and mass enlightenment or the education of the citizenry is also proposed. Citizenship education programmes need to be adopted at all levels of education with emphasis on socio-cultural understanding and exchanges in Ethiopia. In this regard it is suggested that enforcing individual or citizenship right in the context of the Ethiopian situation could sometimes lie with the people, and then there is the need to prepare

citizens to seek to enforce their rights. Enforcement in this sense will involve being ready to take up the gauntlet as the occasion demands for instance the case of citizens from Benishangul Gumuz on the right to political participation can be a good manifestation . This could involve seeking legal redress or seeking Constitutional interpretation/implementation on the right to self-rule cum citizenship rights issue and being willing to explore all legal avenues, and to any level. Therefore, empowerment is central to the ability of citizens to seek enforcement along with an awareness that would involve employing all known media to create awareness, using different languages to reach the mass of the population. Hence, the content of the awareness program should also include the scope of rights, what they are, the Constitutional provisions backing them up, and ways of enforcing the rights and seeking redress in the case of infringement or denial. And in addition, non-governmental organizations with a specific focus on individual rights could be involved to create and sustain awareness and facilitate enforcement.

- Beyond creating awareness to facilitate enforcement or even implementation of Constitutional provisions, awareness is also needed to guard the masses against political manipulation by the elite, a necessary element when it is considered that the elite have often played up or down the issue of self-right for indigenes and citizenship rights of settlers depending on which side would serve their interest better. This means the ruling regime should abstain from manipulating ethnicity as a means of winning the political game and playing down divisive tendencies and should promote uniting factors. For instance the issues of political representation in BGRS shown that demand by the settlers and other have led to violent conflict through the wrong manipulation of the masses by ethnic technocrat. Consequently, an elaborate program of awareness is needed to alert the masses at the often receiving end of indigenes right to self-rule cum citizenship rights of settler crises to the danger inherent in allowing themselves to become pawns on the chessboard of the political elite, whose major goal mostly is the realization of their selfish interests /desires of attaining and sustaining themselves in political offices. And furthermore, awareness is needed to educate the masses about making choices of leaders not on the basis of ethnic origin or indigene-settler basis, but rather on the quality of candidates, their antecedents as well as their ability to deliver. Thus ordinarily the

concept of citizenship should suggest that an individual has a right to contest an election wherever he resides; this will begin to happen when citizens begin to focus on the ability of politicians, rather than their ethnic origins. Furthermore at the institutional level limiting or prohibiting mono-ethnic political parties and to promoting cooperation between policy makers are tools for reducing the intensity of the regional nationalism.

- There is the need to strengthen individual rights and accord them more importance than group rights, the reason being that efforts at protecting and promoting group rights have been directly responsible for the escalation of indigene versus non-indigene problems, including the numerous crises witnessed in different parts of the country in the past and present. Towards this end, it has been suggested that citizenship rights of any Ethiopian who has lived in any part of the country for certain number of years can enjoy full residency rights, which must include all rights normally available to the traditional indigenes of the states. This protect an abbreviated citizenship within an undivided polity, it needs also to build on a national citizenship through the enforcement of rights in judiciary and other institutions. In this age of global citizenship, becoming a citizen in Ethiopia both in words and in fact should not be circumvented by Constitutional provisions or by political considerations. Rather citizenship should be strengthened, beginning with Constitutional provisions, which should not only be enforced by the government, but also by the people. Thus as a major factor in defining citizenship it should not be difficult for Ethiopians to enjoy citizenship right irrespective of where he or she lives; anything short of this represents a diminution of citizenship. More importantly the basic principle of modern citizenship seems to be, where you pay your taxes is where your home is, and there you demand services and enjoy benefits. In essence, residency defined by a determined number of years and qualified by the performance of such obligation as paying tax should make an Ethiopian eligible for full citizenship rights anywhere in the country, irrespective of his ethnicity, language or place of birth. Inclusive citizenship rights should not only be clearly defined but enforced, with de-emphasizing of attachment to primordial and discriminatory legislations and practice.

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- Transitional period charter of Ethiopia, Negarit Gazeta, 50th years, No 1,1991
- The constitution of federal democratic republic Ethiopia, Negarit Gazeta, 1st years pro No. 1/1995
- Proclamation to make the electrical law of Ethiopia conform with the constitution of FDRE, proclamation No. 111/ 1995, FederalNegarit Gazeta 52th year
- Establishment of regional self- governments, proclamation No. 7/92, Neg Gaz Year 52 No. 7.
- Revised constitution of 1955
- The constitution of PDRE 1987
- Revised constitution of BGRS, Dec, 2003, Assosa
- A proclamation to provide for the establishment of urban centers of BGRS and definition of their powers and duties, Proclamation No.69/2007,BGRS,Asosa
- Electoral Law of Ethiopia amended Proclamation, Proclamation No 532/2007, Federal Negarit Gazeta, 13th Year No.54, Addis Ababa, 2007
- The Ethiopian Human Rights Commission Establishing Proclamation, Proclamation No. 210, Negarit Gazeta, 6th Year, No. 40,2000
- proclamation for the Institution of the Ombudsman, Proclamation No. 211/2001, Fedral Negarit Gazeta, 6th Year, No. 41
- Ethiopia Nationality Law, July 1930,
- Ethiopian Nationalityproclamation, Federal Negarti Gazette, Proclamation No. 378/2003,
- Providing Ethiopians resident abroad with certain rights to be exercised in their country of origin, Federal Negarit Gazette, Proclamation No. 270/2002

Annex

Appendix I: Research Instruments

A) Interview Guide for Key Informants

General introduction:

The purpose of this interview is to gather information related to the rights to self-rule of the indigeneous communities and rights of other citizens in the post 1991 Ethnic Federalism with specific reference to the experiences Asossa *Woreda*, Benishangul-Gumuz Regional State of Ethiopia. The data to be collected will be solely used for academic purposes.

Dear participant, your response will be kept confidential and I kindly request you to participate voluntarily in this study. The quality of this study depends up on your genuine response. So, I would like to ask your consent. Thank you in advance for your kind cooperation!!!

1.1 Basic Information

Kebele _____ Date _____

Woreda _____ Place _____

Sex _____ Educational level _____

Age _____ Ethnic Group _____

Marital Status _____ Occupation _____

For how long you lived in the area? _____ Position _____

1.2 Questions on the rights to self-rule of the indigenous communities and rights of other citizens:-

- How do describe the relationship between the rights to self-rule of indigenous ethnic group and other individuals rights of citizenship guaranteed under FDRE constitution in this *Woreda*?
- How do you assess the right of citizenship of “others” in light of ethnic federal system of Ethiopia in this wereda? For instance do you think the causes of ethnic displacement or displacements by ethnic violence are the negative results of ethnic federal system in Ethiopia?
- Is there conflict or balance between the right to equality, the right to movement and residence, the right to political participation, right to property, work and other

fundamental human rights that are guaranteed to all citizens and right to self-rule of indigenous communities?

- Do all citizens have equal right to participate in the governance (executive), state council, appointed in the judiciary, police and civil service?
- What are the hurdles in this Wereda on the right to property particularly related with in provision of urban and rural land, doing business, investment and due compensation after expropriation of urban and rural property?
- Do “indigenous” citizens have better chance of employment in the civil service, privilege in the payment of tax, provision of urban and rural land and participate in the Wereda administration?
- Do you feel like as an equal member with inclusive and equal citizenship rights in the community in this Woreda? Why or why not?
- What are the potential challenges in the protection and enforcement of rights of citizenship in this Wereda?
- What benefits and problems do you identify in the exercise of ethnic self-rule right in this Wereda?
- What are the most prevalent types of inter-ethnic conflicts between the Bertha and other citizens in this *woreda*? What are the proximate causes or contributing factors to inter-ethnic conflict?
- How do you see the participation of non-indigenous citizens in the wereda and regional administration? Does it ease or complicate problems?
- How do you evaluate the role of institution like the regional council, police, courts and constitutional commission in safeguarding the right of citizenship of individuals in the wereda? What are the challenges?
- What remedies do most people resort to alleviate the problems that involve violation of the right of citizenship in the wereda?
- What are the challenges of sustainable peace in the area after the decision of HOF on the right to political participation and does it fully address the problems in BGRS?
- What do you suggest for the better protection of this right?
- Any additional opinion related to the issue at hand.

Thank you very much for your valuable information!!!!

B) Focus Group Discussion Guide

Focus Group Discussion Participants

General introduction:

The purpose of this interview is to gather information related to the rights to self-rule of the indigeneous communities and rights of other citizens in the post 1991 Ethnic Federalism with specific reference to the experiences Asossa *Woreda*, Benishangul-Gumuz Regional State of Ethiopia. The data to be collected will be solely used for academic purposes.

Dear participant, your response will be kept confidential and I kindly request you to participate voluntarily in this study. The quality of this study depends up on your genuine response. So, I would like to ask your consent.

Thank you in advance for your kind cooperation!!

2.1.1 Basic Personal Information

Kebele _____ Date _____

Woreda _____ Place _____

Sex _____ Educational level _____

Age _____ Ethnic Group _____

Marital Status _____ Occupation _____

For how long you lived in the area? _____ Role in the community _____

2.1.2 Issues to be raised in the Focus Group Discussion

- What do you think the factors for violation of the right to freedom of movement and residence, work, right to equality, right to property, political participation? What are the challenges for protection of such right?
- Do you think the right to self-rule of indigenous groups and the right of citizenship of other citizens compatible each other?
- How do you evaluate the establishment of federal police, human rights commission, institution of the ombudsman and courts to safeguard the rights of citizenship in this *woreda*?
- How do you express your Ethiopian identity and rights that emanates by virtues of your citizenship?
- Any additional points related to the issue under discussion.

Thank you very much for your valuable information!!!