



Addis Ababa University
Center for Human Rights
Master of Human Rights

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Title;- **The Right to Self-determination and its Constitutional Adjudication: the quest of “Kontoma” People for recognition as Ethnic group**

By

Rahel Berhanu

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Submitted to Christophe Van der Beken (PhD)

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By:

Rahel Berhanu

Approved by Board of Examiners

Chairman, Department Graduate Committee

Signature

Advisor

Signature

Examiner

Signature

Declaration

I the undersigned, declared that this is my original work and that all sources of materials used for the thesis have properly been acknowledged.

Name: Rahel Berhanu

Signature: _____

Date: _____

This Thesis has been submitted for the examination with my approval as univeristy advisor.

Name: Christophe Van der Beken (PhD)

Signature: _____

Date: _____

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Acronyms

SNNP	South Nation, Nationality, Peoples
CCI	Council of Constitutional Inquiry
E.C	Ethiopian Calendar
FDRE	Federal democratic republic of Ethiopia
HoF	House of Federation

ABSTRACT

The purpose of this paper is assessing the Right to Self-determination and its Constitutional Adjudication: the quest of Kontoma community for recognition as Ethnic group. accordingly, qualitative research design was employed for this study; since it is a particular kind of qualitative research that seeks to describe ethnic identity of the community. Primary data, like key informant interview, minutes of decisions and appeals and proclamations are used for this study. On the other hand, FDRE and South Regional state constitutions are used as secondary data sources. Furthermore, the finding of the study from both data sources indicated that challenge of House of Federation are; lack of rules of procedure to settle constitutional cases, lacks commitment, prioritizing political issues, since most of them are political appointees, based on findings and conclusions, conclusions and recommendations were forwarded. Therefore, the House needs to clearly stipulate what standards of evidence ought to be used to make identity assessments according to the law.

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CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

The foundations of identity politics in multicultural community was understood or accepted gradually; especially after the second world war, the exception of scholars, who later came to be known as modernization theorists, was that an on-ward march of modernity would before long obliterate people's attachments to religious, ethnic or caste groups. "In contrast, the passage to modernity all over the world-more in some places, less in others-has been accompanied by very different developments Charles Taylor(1994).

Charles further famously argued, two such developments that demands for dignity and the urge to find one's authenticity are critical for understanding the identity politics of individuals and groups (Charles Taylor, 1994).

Federalism is currently a common system of government, having been adopted by countries across the world in order to recognize nations and nationalities as well as ethnic diversity .

In 1991 after the fall of the Derg regime when the present government, led by the Ethiopian Peoples Revolutionary Democratic Front(EPRDF) came to power, federalism was introduced and recognition of Ethiopian ethnic diversity became one of the core principles of the new regime's political policy as well as immediately established an ethnic based federal system.

Ethnic Federalism is defined as a political system consisting of ethnic based territorial units overlapping with political administrative units. Countries which are Nationally and ethnically heterogeneous and work in a federal structure at least partially based on national and ethnic heterogeneity (i.e at least some of their member states are ethno-regional units) are said to have adopted ethnic federalism.

Some scholars like Tsegaye Regassa(2009) suggests that Ethnic federalism has played a pivotal role in solving conflicts by allowing each ethnic/cultural-linguistic community to have control of those regions in the country where it is the majority, while respecting basic minority rights.

It prevents the kind of zero-sum power struggle between groups that likely to occur in an ethnically divided society where all the power is in the hands of the central government(Tsegaye Regassa, 2009)

Charles Taylor (1994), states that, the right to self determination is a fundamental and inalienable human rights. Individuals are entitled to participate in the political, economic and cultural systems of their state. In that sense the individual right to self determination might be regarded as coextensive with the right to some form of democratic governance. Self-determination is congruent with minority rights as it is a right pertaining to members of the groups, such as national religious ethnic or linguistic minorities (Charles Taylor,1994).

Self determination is included in Article1 of the two major international human rights instruments (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) because of its importance to the international order and the protection of individual rights.

The International Court of Justice has also recognized the right to self- determination as one of the most important human rights, and as the concern of all states” Self -determination is not only a right exercised by peoples or groups but it is also a human right of individuals.

The Constitution of the Federal Democratic Republic of Ethiopia vested the power to assess the claims

of cultural communities on the House of Federation. Accordingly, the HOF has been entertaining the issue of identity claims coming from different regional states of Ethiopia using its legitimate power of Article 62(3) of FDRE constitution.

For example the House of Federation has decided on the quest for independent recognition of Siltie nationality in Southethn Nations, Nationalities and Peoples region while in South region the Kontomas claims for different ethnic identity has been treated by the same institution differently. Therefore, this paper tries to assess the component of the right to self determination: the right to recognized as distinct/separate ethnic groups practice and challenges of House of Federation in addressing Identity claims: the case of Kontoma Community in South Region.

1.2. Statement of the Problem

Kontoma community is one of the communities living in southern nation nationality regional state in Gurage zone in Mareko and Meskan Woreda Administrations. The community has been claiming to be recognized as distinct community from the Mareko community since 1999 E.C. To this effect they have submitted claim for recognition of ethnic identity and self determination right to the Southern Nations, Nationality and Peoples regional Council of Nationalities.

The 2001 Revised Constitution of the SNNPRS has adopted a bicameral legislature analogous to the Federal Parliament (Art.48)).The lower chamber, which is the State Council, is the highest legislative authority of the State (Art.46 (1)).The State Council is vested with the highest regional political power(Art.51 (2)). The key powers and functions of the State Council, inter alia, includes issuing laws and approving social and economic programs; establishing additional administrative hierarchies that best advances self-government electing the regional president and approve the appointment of the members of the regional executive council(Art 51 (3)).The State council is composed of representatives elected by the plurality electoral system through direct election for a term of 5 years, and rhetorically represents the peoples of the State as a whole(Art.50 (3)).Besides, the State Council has special reserve seats arranged for minority groups analogous to the lower chamber of the federal Parliament (Art. 50 (2)).

The council after investigating the identity question of the community decided that the “Kontoma” community had no distinct community, no distinct language and hence no recognition of distinct ethnic identity was granted.¹

Following the decision of the Council, the Kontoma community brought their case to the House of Federation and the HoF after investigating their demand also rejected their question to be considered as distinct ethnic identity.

Finally the community brought their cases to Council of Constitutional inquiry asking constitutional interpretation of the decision of HoF considering the decision passed as a primary jurisdiction and it violates the constitutional rights of their community.

So first this thesis is going to assess what are the criteria considered by the Council of

¹ See የመዝገብ ቁጥር 1459/07 ሚያዝያ 17 ቀን 2012 ዓ.ም የሕገመንግስት አጣሪ ጉባኤ ውሳኔ ቃለ ጉባኤ documents on file.

Nationalities and HOF? Proclamation 251/2001, a proclamation to consolidate the house of the Federation and to define its powers and responsibility has contained provisions dealing with how to submit question of ethnic identity recognition and self-determination claims.².

The first criterion is whether article 39 (5) of the constitution is related with common culture and similar custom of the community. The second criterion is whether the culture or custom of the community is necessarily or needs to be distinct from other community? And To what extent it should be distinct? Why the Kontoma assimilated or integrated with the Mareko?

The investigation done by HoF tried to identify whether the “Kontoma” community is distinct from the “Mareko” community? Or whether the two are originally from the same kinship or ancestor? “ In this regard it is important to look at the reason that triggered the community to claim their ethnic identity? Are they primordially looking to establish their ethnic identity or some other instruments or factors are there? Second what are the position and the major criteria taken in to consideration by the decision making organs? On the one hand the claim of the community for ethnic identity recognition was not due to the need for establishing their ethnic origin. It was in looking for instrumental elements. So the claim of the community was based on instrumental element and not involved any primordial element. On the other hand the approach adopted by the House of Federation in determining the identity of the “Kontoma” community is based on primordial element of identifying ethnic identity. Should the HoF look at other criteria than the one included in Article 39 (5) of the Constitution.

According to Girma Zawudie(2011), Though the new government has taken bold measure in accommodating diversity, the response given to the claim of cultural communities is taking longer time than it is supposed to take.

The indecision of the house on the claims creates suspicion whether it is committed to accommodating diversity or as scholars argue use policies recognizing cultural pluralism in order to constrain and channel political activity in to patterns that are less challenging to the state. The house has clearly stated the time; it has failed to live up to its standards (Girma Zawudie, 2011).³

² Proclamation 251/2001, Federal Negarit Gazeta of FDRE 7 year number 41, 6 July 2001 article 19(1) and 20(1)

³ Girma Zewudie (2011) Identity Claim assessment practices of the House of

The core idea here can be raised as how the House of Federation could manage the identity claims of Kontoma community. How does the House of Federation decide on identity recognition. Therefore, in this thesis, the researcher will try to assess the practices of House of Federation in assessing identity claims of Kontoma Community.

1.3. Research Questions

This thesis generally tried to raise and answer questions like; what were the main challenges the House of Federation faced, how it could resolve those challenges and what practice has the House of Federation developed. Accordingly, this study attempts to answer the following research questions:

1. Who is the 'self' that claims for self-determination, accommodation and recognition?
2. Who decides on the issue and on what bases?
3. What are the institutional and policy mechanisms for dealing with such demands?
4. What is the role of House of Federation and regional states in addressing identity claims?

What lessons are learnt from precedents?

5. What was the main challenge that the House of Federation faced while assessing identity claims of Kontoma community?

1.4. Objective of the Study

The general objective of this study is identifying the main challenges and practices of the House of Federation in resolving the identity claims of peoples of Ethiopia in general and Kontoma community in particular.

The specific objectives are to:

- Explore or clarify the 'self' that claims for self-determination, accommodation and recognition.

- Identify the criteria of self-determination and the authority that can do this.
- Analyze the institutional and policy mechanisms for dealing with such demands.
- Explore the role of House of Federation and regional states in addressing claims of identity and explore the lessons learnt from pervious precedents.
- Assess the challenges that the House of Federation faced in entertaining Kontoma community's identity claim.
- And recommend relevant solutions for the identified legal and practical problems.

1.5 Significance of the Study

This study provides the opportunities for enhancement of good governance especially in addressing Identity claims. So that it might give clear insight on Proclamation no 251/2001 and its implementation mechanisms during the assessment of identity claims and other issues coming to the House of Federation. Moreover, it would also helo the House of Federation in order to properly handel difficult cases during assesemnt of identity claims. Finally, it could help reserachers pursuing the same problem in the area of identity claim studies.

1.6 Delimitation of the Study

Although so many problems might be observed in addressing identity claims in different areas, for this study it is better to limit the research to the practice and challege of the House of Federation based on Kontoma's resent identity claim in order to make it managable. Hence this study has focused on assessing the considerations of the House of Federation while entertaining the Kontoma community's identity claim.

1.7 Limitation of the Study

This study limitaion is overscheduled program of the interviewee respondents due to their political commitment and Covid 19 and unstability in the research area specially in Mareko, these were potential hinderance for the quality of the result of this study.

1.8 Research Methodology

The purpose of this research was to examine the challenges and practices of the House of Federation in addressing the identity claims in general and Kontoma community in particular. During its assessment of identity claims; the House of Federation consider, the language, territory and psychological make up of the claimant groups. Therefore, to achieve this purpose qualitative study design was used to properly address the above stated research questions.

Qualitative research design method was employed for this particular study, which is not because of arbitrary choice against quantitative method, but because of its inherent suitability. Since the study attempts to analyze and interpret than explain the perspectives of participants being as insider, it becomes hardly appropriate method to pursue quantitative design that quantifies and explain the data obtained based up on the data collected. Quantitative design is based on the positivist conception of reality as objective, direct, simple and fixed, which doesn't, however, help to interpret the informants' perspective in holistic manner. Social world can not be explained in the same light to the natural world because of marked variables gap in between. Qualitative design offers the researcher to differentiate appearance from reality employing common sense.⁴

1.8.1 Sources of Data and the Instrument

The source of data was both primary and secondary sources. Here various categories of documents were explored, which include: Federal and Regional State Constitutions, policy documents, legislations, and other various sources of governmental statistics, figures and map minutes of the House of Federation as well as government officials in the House of Federation, Representatives of Kontoma community identity claiming committee and councils of constitutional inquiry members have been consulted. As a secondary source of data books and journal articles are consulted.

Hence, the senior law experts in the house of federation and CCI, the secretariat of regional identity standing committee in the House of federation are key informants for this study.

⁴ Holliday, A. (2002:37) Doing and Writing Qualitative Research, London: SAGE Publisher Ltd

1.8.2 Methods of Data Analysis

The response of the interviewees was transcribed before analysis, then after the transcribed interview along with minutes and appeal were analyzed to see the coherence with proclamation 251/2001 as well as related constitutional legitimacy regarding to identity claiming and self administration ;inorder to answer the research objective.

1.9 Organization of the Study

This paper is divided in-to five chapters. Accordingly, the first chapter deals with introduction of the study. Mainly it tries to elaborate the back-ground, statement of the problem, research questions, objectives of the study, significance of the study, limitation and delimitation of the study and definition of operational terms. The second chapter forwards a conceptual framework for understanding the nature and type of ethnic and identity claims under ethnic federalism.

The third chapter deals with; background of the study population. This chapter tries to Elaborate the; background of the Kontoma community, by explaining religion, custom, language and the like concepts. The fourth chapter includes discussion and analysis of the main findings. This chapter tries to analyze the minutes and decisions concerning Kontoma community identity claims, according to FDRE constitution and proclamation number 251/2001. The research is going to focus on both the council of nationalities and the house of the Federation and their arguments in this regard. The last chapter focuses on summary, conclusions and relevant recommendations.

Chapter Two

Conceptualization of Self- Determination and Identity

2.1 Conceptualizing Self-Determination

Self-determination basically embodies a group right concept, and denotes that any group of people⁵ has natural right to freely determine their destiny. For the elucidation of the term more plainly, it refers to the group right to decide on their political, economic, and cultural destiny. Conception of self-determination as group right on international legal instruments went back to the works of Woodrow Wilson who made the following remark. “National aspiration must be respected; people must not be dominated by others, and be governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action” (11Feb. 1918).⁶ here The concept of self-determination in 1960-1980’s was a tool for anti-colonialism and again for independence. Of course, by then self- determination didn’t mean a group right in a free state. However, with a different context, in the post-colonial independence, as well, it has resumed serving as group right concept in a free state, and hence the right to self-determination is still at work in the international legal instruments excluding the right to secession. Secession nowadays is neither allowed nor banned in international legal instruments; rather it depends upon the geo-politics and the stance of the ‘mother’ state therein.⁷

Self-determination is still fundamental group right concept that virtually all international legal instruments incorporate. It takes central place in the charter of the United Nations (1945), in the Vienna Declaration and Program of Action (1993), in the twin International covenants namely: ICCPR and ICESCR, (1966), and in the African charter of human and people rights (1981). For instance, the Charter of the United Nations, in Article- 2 reads as “all people have the right to self-determination to freely determine their political status, (...), and cultural

⁵ For elucidation of the term ‘People’ given by Justice Kirby in the UNESCO international meeting of experts, reads as follows: “[a] group of individual human beings who enjoy some or all of the following common features. These features are: a. common historical tradition, b. racial or ethnic identity, c. cultural homogeneity, d. linguistic unity, e. religious or ideological attitude, f. territorial connection, g. common economic life.” The elements are markedly similar to the criteria stated for the NNPs in the FDRE Constitution of Art.39 (5).

⁶ “President Wilson’s Address to Congress, Analyzing German and Austeralia Peace Utterance(Delivered to Congress in Joint Session on February 11,1918”

⁷ Ibid

development.” The African charter of human and people rights, in article 19(2) states: “nothing shall justify the domination of a people by another.” And further goes to accentuate it in Article- 20 “[a]ll peoples shall have the right to existence: they shall have unquestionable and inalienable right to self-determination; [t]hey shall freely determine their political status and shall pursue their economic and social development according to the policies they have freely chosen.”

International covenant on civil and political right (ICCPR), and on economic, social and cultural right (ICESCR) as well, have incorporated self-determination right in their respective Article.1, which reads “[a]ll [groups] of people have the right to self-determination. By virtue of that right they can freely determine their political status, and pursue their own economic, social, political and cultural development.” The whole discussion about the concept of self-determination reveals that, it is internationally acknowledged group right. International legal instruments almost in every inter-state institutions have well acknowledged and incorporated in their governing legal entities. The signatory states are bound to respect and incorporate self-determination right into constitutions (Vilij, 2004).

Article 39 (1) of the FDRE Constitution states that “every Nation, Nationality and People has unconditional right to self-determination, including and up to the right to secession.” This article is manifestation for the entitlement of full self-determination right for groups of people in compliance to international legal requirements. Only nations not nationalities or peoples have the right to determine their destiny in the 1913 Stalinist description of *Nation, Nationality*.⁸

The Derg introduced its version of regional autonomy after the adoption of the constitution of the People’s Democratic Republic of Ethiopia (PDRE) in 1987. This constitution established an asymmetrical regime of regional autonomy in which some of the provinces affected by ethnic/regional insurgency were organised into five autonomous regions – Eritrea, Tigray, Dire Dawa, Ogaden and Assab. Eritrea was provided with more autonomy than the other autonomous regions. In contrast, the military government divided the rest of the country into 24 administrative regions. It is, however, important to note these measures were not intended to provide administrative and political autonomy as the military regime and its vanguard party,

⁸ McNeal, *Stalin's Works*, pg. 43.

the Workers Party of Ethiopia (WPE) continued to centralise power. Additionally, these reforms did not include linguistic autonomy. Amharic remained the working language of the government at all levels. This experiment ended in 1991 after the defeat of the Derg.⁹

The FDRE constitution has not made such differentiation in status, however. I.e. it is generic term in reference to the varied ethnic groups. Who is nation and who is not, or who is entitled to such right, and who is not as per the gist and explicit expression of the FDRE constitution is attuned for all. However, empirically tested, it varies. And distinction is made by variation in autonomy.

2.2 Dimensions of Self-Determination

Self-determination, which is a group right concept, when put into practice has internal and external aspects. This classification is, however, made for maintenance of the concept in plain manner. Internal self-determination includes everything of self-determination right, but secession. Internal aspects of self-determination is not only about the peoples' right to administer own affairs within defined territorial limit but also extends to fair and proper representation for active involvement in the apparatus of the centre.¹⁰

The internal aspect of self-determination is particularly meant acquisition of a full measure of self-rule right within the larger polity. The internal aspect of self-determination can be expressed by the prevalence of adequate political, fiscal, and administrative autonomy for experimentation of territorial self-government. Acquisition of self-rule autonomy for any people within the bound of the larger polity offers dual benefits at a time which include defense, foreign relation, and economic prosperity on the one hand, and opportunity for the maintenance and promotion of own language, culture, and history on the other hand.¹¹Ibid.

External aspect of self-determination on the other hand, refers to the right of a particular group of people to go for secession, to become outside of the 'mother' state for establishment of a full-fledged sovereign polity. External aspect of self-determination emanates from the notion that all groups of people have the right to freely determine their own political status, and

⁹ Abate Nikodimos (2004),Ethnic Federalism in Ethiopia: challenge and opportunity,p 31

¹⁰ Daniel Mikre.(2013:19). 'Establishment of Local Government and Power Sharing Scheme in SNNPR State: the Case of Segen Area People's Zone', MA thesis, Ethiopian Civil Service University, Addis Ababa.

¹¹ Ibid

situate their place in the international scene based upon the principle of equal rights for all groups of peoples. The entire concept of self-determination however cannot be amounted to acquisition of total independence. It is erroneous to assume so. Secession is an extreme degree of self-determination assertion, and regarded as the external dimension of self-determination.¹² In summary, the concept of self-determination has got international legal foundation throughout. The FDRE constitution, which incorporates the right to self-determination, is basically in observance to international legal instruments.

The development and identification of the right to external self-determination has established its scope based on international instruments, soft law, cases and the remedial secession theory. The right to self-determination as a principle of international law, developed through UNGA instruments, and has under political imperatives of decolonization¹³ advanced into a right of self-determination,¹⁴ belonging to all people.¹⁵ Further emphasized to people under ‘alien subjugation, domination and exploitation’ who has been subjected to discrimination based on race and ethnicity, and denied access to democratic representation.¹⁶ The development supports the assumption that the UN Charter is intended to be universally applicable, and that it was never considered to be an exclusive right for colonial people only,¹⁷ but extends to all states ‘to promote the realization of the right self-determination’.¹⁸ The effective realization of the right proved vital in soft law instruments such as the VDPA, which reiterated the previous documents and affirmed peoples right to self-determination, and any denial of the right is a violation of human rights.¹⁹ The continuous effort of the development has predominantly been aimed to

¹² Ibid

¹³ Hurst Hannum, “Rethinking Self-Determination. Self-Determination”, Virginia Journal of International Law, vol, 43, no. 1, (1993), p. 12.

¹⁴ United Nations General Assembly resolution 1514(XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV) (14 December 1960), para. 2, principle 2.

¹⁵ United Nations General Assembly resolution 2200A(XXI), International Covenant on Civil and Political Rights, A/RES/2200A(XXI) (16 December 1966); United Nations General Assembly resolution 2200(XXI), International Covenant on Economic, Social and Cultural Rights, A/RES/2200(XXI) (16 December 1966), art. 1.

¹⁶ United Nations General Assembly resolution 2625(XXI), The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, A/RES/2625(XXV) (24 October 1970), preamble., principle (e).

¹⁷ Christian Tomuschat, Self-Determination in a Post-Colonial World, in: Christian Tomuschat (ed.), Modern Law of Self-Determination, 1993, p. 2.

¹⁸ United Nations General Assembly resolution 2200A(XXI), International Covenant on Civil and Political Rights, A/RES/2200A(XXI) (16 December 1966); United Nations General Assembly resolution 2200(XXI), International Covenant on Economic, Social and Cultural Rights, A/RES/2200(XXI) (16 December 1966), art. 3

¹⁹ United Nations General Assembly, Vienna Declaration and Programme of Action (VDPA), 12 July 1993, A/CONF.157/23, para. 2.3.

create internal arrangements within the framework of the state without jeopardizing the territorial integrity and political independence of the state.

The Final Act and the Copenhagen Document extended its availability while accounting for minority rights, however conditioned by state efforts and legislation. While the scope of external self-determination has been interpreted to be exercised in line with specific provisions, it is concluded that no international instruments, whether it be legally or politically binding, authorizes a right to external self-determination in the form of secession. Therefore International law does not grant an external right to self-determination to ethnic groups. No right to secession of ethnic groups/minorities is recognized under international law.

2.3 Concepts and Theories of Ethnicity

The term ‘ethnicity’ was developed from the Greek word ‘ethnos’ meaning a unit of human beings embedded with common socio-cultural expressions. Nonetheless, it is difficult like the word ‘federalism’ to provide a straightforward definition for what really ‘ethnicity’ signifies due to its objective and subjective elements. However, ethnic groups are defined by a common inheritance of culture, racial similarity, common religion, belief in common history and ancestry, and psychological feeling to belong to the group.²⁰

Smith defines an ethnic group as “a group of people who share ancestry myth, history, culture having an association with a specific territory and a sense of solidarity.”²¹ Unlike tribe and clan that may involve blood tie, ethnicity is based on common values such as language, culture, history, inhabiting common territory and belief in common descent. The notion of ethnicity as stated here has to do with the definition of the NNPs in article 39 (5) of the FDRE Constitution. Theoretically, there are three schools of thought dealing with the characteristics of ethnicity:

2.3.1. Primordialism

This school of thought argues that, ethnicity is something objectively given. It explains ethnicity based on the primordial elements such as kinship, sharing common psychological

²⁰ Ayele Sime. (2013:15). Party Structure and Ethnic Self-Determination Right in Ethiopia: A Study in Southern Regional State, lap Lambert Academic Publishing, Deutschland.

²¹ Alder Smith, (1991), National identity, New York: Penguin, p. 21

makeup, custom, language, culture, tradition, history, religion, and territoriality that keep members together as a separate entity and distinct group with unique characteristics. These primordial elements virtually are genetic traits, which are biologically determined. These elements are also used as an identity marker for understanding ethnic groups with ascription by others. The primordialist understanding of ethnicity is as coherent, easily identifiable, innate, and permanent over time.²²

Primordialism has been criticized for presenting a static and naturalistic view of ethnicity that mystifies emotion and reduces cultural and social behavior to biological drives. The primordial assumption ignores change and dissolution of ethnic groups and does not speak of the modern processes of fusion and fission of ethnic groups.²³

2.3.2. Instrumentalism

For this school of thought, ethnicity is perceived as something dynamic, flexible, negotiable, and that can be maneuvered by elites for political consumption.²⁴ Although ethnicity embodies common traits of culture, language, history, custom, nonetheless, as per this school, can be easily dissolved or again synthesized. Instrumentalists argue that ethnic entrepreneurs, with the objective of advancing their political and economic interest in particular, and for the group members in general, can select, distort, and even fabricate the necessary materials from the culture of the groups they wish to represent.²⁵ Instrumentalists underline that ethnicity is strategically used, and is open for manipulation for several ends.

2.3.3. Constructivism

For this school of thought ethnicity is a socially constructed phenomenon. Constructivists, in contrast to the instrumentalists' understanding of ethnic identity, incorporate analysis of how ethnic relations are maintained, defined, and perceived by the group itself. Constructivism focuses on cultural and historical ground for the development of ethnic consciousness instead of taking for granted that ethnic groups are created by elite maneuvering for strategic political

²² Phandis, U. & Ganquly, R. (2001), *Ethnicity and nation building in South East Asia*, New Delhi: Sage, p. 23

²³ Berhanu Gutema. (2007:36-39). 'Restructuring State and Society: Ethnic Federalism in Ethiopia.' Aalborg University, Uni Print: Aalborg, Denmark, PhD. Dissertation.

²⁴ Merara Gudina, (2003), *Competing Ethnic Nationalisms and the Quest for Democracy*, p. 83-86

²⁵ Phandis and Ganquly, *supra* note p. 24-26. See also Barth, F. (1969), *Groups and Boundaries: the social organization of culture difference*. USA: Universites forlaget

and economic consumption.²⁶ Unlike instrumentalists, constructivists denounce the assumption that ethnicity is strategic material based upon invention by elites, and it can easily dissolve. And they maintain that affection on the basis of selective interpretation of the real cultural experience of history and shared culture constructs ethnicity.²⁷

Constructivists blame instrumentalists as they have ignored the role of societal affection for ethnic mobilization through the vehicle of communal identities assuming ethnicity as only artificial synthesis by elites' maneuvering.²⁸ Constructivists also criticize primordialists for undue glorification of communal affection/sentiment. Constructivists maintain the two extreme thoughts in balance. Accordingly, ethnic groups' behavior can be influenced by the elites' level of maneuvering and the individuals' perception of identity.

The empirical and theoretical discussion on ethnicity so far reveals, ethnicity is quite vague and fluid phenomenon both at empirical and theoretical level. The primordialists' emphasis on innateness of ethnic identity as well as the instrumentalists' assumption of ethnic identity as fluid is overstated. Empirically, however, ethnic identity consciousness and ethnic solidarity depends on circumstances. Ethnic solidarity may diminish if that group members secure another solidarity alternatives such as professionalism, class relation, and political affiliation (Berhanu 2007).

Conversely, ethnic identity heightens when ethnicity is politicized and identity politics is glorified, and when such an arrangement offers special benefit to a particular group, or otherwise, when such groups are marginalized, subjugated in one way or another. These factors will become basis for ethnic consciousness by keenly instituting the 'us-them' divide. In such circumstances, as it requires the group to assert its perpetual survival, maintaining cohesion and solidarity of the ethnic members will become the only way out.

Basically, ethnic identity consciousness and solidarity elevates if either of the earlier discussed factors surface out. It is, however, erroneous to assume that ethnic solidarity *per se* is destructive and obsolete as such it has obvious benevolence that can be attained though the

²⁶ Horowitz, Donald L. (1985), *Ethnic Groups in Conflict*, Berkeley, Los Angeles, and London: University of California Press. P. 55

²⁷ *Ibid.* p. 56-58

²⁸ Yeros, P.(1999).*Ethnicity and Nationalism in Africa: Constructivist reflections and contemporary Politics*, Basingstocke, Macmillan: Palgrave p.12

development of ethnic solidarity, and again it would be to evade the nature that ethnic affection is inconsistent to the modern society. After all, ethnic affection is universal. There is a saying, which supports the fact- 'birds of the same feather flock together'.

2.4. Conceptualizing Identity

When we see the concept of 'identity' from diverse community perspective the term refers to the attachments that people have to particular communities, ways of life, sets of beliefs, or practices that plays a central role in their self- conception or self –understanding.²⁹

When people claims that a practice, a place, or an activity is important to their identity, they usually means that it reflects something important about their sense of who they are or that they cannot realize something important about themselves without access to it.

Thus, identity claims are claims that entitlements, resources or opportunities ought to distributes based on this because of something distinctive and important about the identity of a group advancing the claim. When they claim that an descriptive characteristic like ethnicity is central to their identity, they mean that they understand themselves partly in terms of this characteristic (Eisenberg 2009). Based on the definition given above, diverse communities; claim public recognition of their distinctiveness in order to get resources and power needed to protect their authentic way of life.

However, many scholars argue that because the substantive content and value of cultural identity vary from one individual to the next in a diverse community; identity is an unreliable basis for legal and political entitlements. This, according to (Eisenberg, 2009) is one of the key concerns in contemporary debate across several scholarly disciplines, to confirm its political elusiveness. Eisenberg(2009) further pointed out that sociologists and anthropologists have argued that identity should be treated as a useful fiction, a sort of virtual center to which we must refer to explain certain things, but without it ever having a real existence or an idea without which certain key questions cannot be thought at all.

Nevertheless, Moodod; argues that the suggestion that groups are so internally complex that they have become 'necessary fictions' and that

²⁹ Eisenberg, A. (2009). Reasons of Identity: A normative Guide to the political and Legal Assessment of Identity Claims. New York: Oxford University Press Inc, P 18.

states with diverse population need to reach out for diverse society that is sensitive to ethnic difference and incorporate a respect for persons as individuals and for the collectivities that people have a sense of belonging to (Moodod, 2000).

Regardless of the debates over identity in diverse society use it to refer to the cultural attachments and activities that are important to the self-conception or self-understanding of an individual or groups; and defend identity by focusing on the relation between identity and recognition.

Hence, culturally diverse countries like Ethiopia have distinctive ways in which individuals or groups come to understand themselves in a social context are greatly influenced by recognition. Absence of recognition of the distinctiveness of a group is also adversely related to self-esteem and respect.

Consequently, scholars like Parekh, 2000 and Eisenberg, 2009, advocate multicultural societies to have political or legal means available to respond to the identity claims of groups. Furthermore, arguing that people face disadvantages which are institutional and relational, and many of these disadvantages target group-based characteristics, these scholars recommend legal and normative tools, such as rights, by which groups can advance claims.

2.5. Reasons of Identity Claim

Many scholars agree that identity claims in politics are often times related with the issue of culture, language and territory. Claimants justify their case basing on the importance of protecting their culture and language, which many agree play a central role in one's group identity. Claimants also associate their identity with the territory they reside and make it central to their identity claims (Girma Zawdu, 2011).

The case for territory is associated with self-administration as well as emotional ties claimants have with specific territory. In this section the relation of identity with culture, language and territory will be assessed. In addition the debate over allocating resources, entitlements, power and opportunities based on identity are presented (Girma Zawude, 2011).

2.5.1. Culture and Language

Culture is defined by many scholars differently and for that matter there is no precise, inclusive and exclusive definition of it. Many scholars from different disciplines define culture differently

and value it accordingly. However, most of the scholars agree that culture links individuals to one another, provides the basis for a common identity and creates a context for viewing and understanding the world. In this respect, they place high value on language and made culture inseparable with language.

For instance scholars like Reaume 2000³⁰ argue that language is a repository of the traditions and cultural accomplishments of a community as well as being a kind of cultural accomplishment itself. She further argues that it is the vehicle through which a community creates a way of life (culture) for itself and is intrinsically bound up with that way of life. The argument for culture and its place in multiculturalism ranges from its intrinsic value to the bearers as well as its extrinsic or instrumental value.

Hence, Steven Rockefeller (1994)³¹ argues that cultures are like life forms which are ends by themselves that give a context for human identity.

As summarized by Parekh, Kymlika like Rockefeller acknowledged that human beings are cultural creatures and that cultures are essential to their development as human beings in that culture gives them a sense of identity, provides an unconditional and non-achievement-oriented source of identification and belonging, facilitates mutual intelligibility, promotes social solidarity and trust, reinforces intergenerational bonds, and conduces to human well-being (Parekh, 2000).

2.5.2 Territory

Scholars like White (2001)³² and Smith (2009) agree that ethnic groups' claim for territory have both strategic and psychological importance in a sense that in the previous case control over territory can mean control over resources while in the second sense an attachment to a

³⁰ Reaume, D. G. (2000). „Official-Language Rights: Intrinsic value and the protection of Difference.“ In *Citizenship in Diverse Societies* (Kymilia.W. and Normal, W, ed). New York: Oxford University Press Inc. Pp. 243-251.

³¹ Rockefeller. (1994). „Comment.“ In *Multiculturalism: Examining the Politics of recognition.* (Gutmann, A. ed). New Jersey: Princeton University Press. Pp 87-98

³² White, J. S.(2001). *The Psychology of Nationalism.* London: Palgrave McMillan Publisher p.51

particular territory is central aspect of one's identity. According to White (2001) territory is a prime issue in many nationalist conflicts, particularly in secessionist conflicts in which an ethnic group claims a particular territory as its own.

Thus, White argues that it has more than strategic importance due to the reason that territories have strong emotional attachments for the people involved and those human beings tend to be sensitive to potential threats to identity. He argues that territory and identity are too closely intertwined that a threat to territory is considered as a threat to the integrity of the identity of a people (White, 2001). Smith (2009) on his part argues that territory and identity are knotted in that nations are territorialized communities, the majority of whose members have come to reside in a historic territory or homeland and who feel a strong attachment to it.

2.6. Responses to identity claims

As Eisenberg 2009 pointed out the response to identity claiming can broadly be categorized in to three. The first response to identity claiming is Quietism. This response to identity claim embraces that the need of ethnic groups can be addressed without recourse to identity. The second response to the claims made by ethnic groups is Skepticism.

Skeptics argue that because identities are socially constructed, too ambiguous and easily manipulated, it cannot serve as a basis for minority entitlements or legitimate grounds for distributing resources.

The third response is a multicultural perspective (identity approach) to identity claiming. Unlike the above state two responses, this perspective asserts that identity claims needs to be addressed for three reasons. These are its pervasive nature, the vitality of social recognition to the group's identity and self-worth, and respect for claimants' distinct way of life.

Identity quietists, Eisenberg (2009) argues, are generally sympathetic to the project of assessing the claims of cultural and religious minorities to protection and accommodation, but they believe that multicultural principles can be applied without recourse to identity assessments.

According to the Eisenberg (2009), often avoiding identity claims magnifies the problems minorities face or forces them to engage in higher stakes political activity and higher risk decision making which identity skeptics argue the other way round. The aforementioned authors further argue that even though identities are socially constructed, ethnic groups can sustain in to the indeterminate future and recognition of the distinct way of life through which individuals and groups actualize their potential is a vital human need that requires accommodation.

Furthermore, they pointed out that enabling groups to get access to their cultural resources that form the basis of their identity also needs institutions to respect the distinct way of life of groups who espouse different and even divergent vision of the good life.

Chapter Three

3.1 Historical and Political Context *vis-à-vis* Identity and Self- Determination

Claims

During the transition period(1991-1994), the region that is currently designed as SNNP existed as five separate regions- named as Regions Seven, Eight, Nine, Ten and Eleven.³³ at the time , Proclamation No 7/1992 recognized 45 ethnic groups as the native identities of these regions.

However, since then, and after the merger of the five regions into one, the number of the officially recognized native identities has increased to 56.

Ethnically defined groups within the new dispensation had therefore to be accommodated through sub-regional administrations known as zones and liyu weredas. Of course, the regional constitution

,in an effort to institutionalize an integrationist approach, obliged the Council of Nationalities (CoN) to promote and consolidate the unity of the region.³⁴

Because the region is further divided into ethnic based zones and liyu weredas, the subregional structures exhibit a number of variations when it comes to identity and self determination claims.

Some zones are institutionally setup as multiethnic, and hence they are entangled with competitive demands of both identity and self determination between and among the several indigenous groups.

However, Gurage Zone embraces other indigenous minorities although the name indicates a particular ethnic group, and this has brought the desire to further establish distinct ethnically defined zones and liyu weredas by these indigenous minorities. The zone also distressed with claims of new identity questions as groups continue to lay claims in order to breakaway from Gurage– their supposed parent ethnic group.³⁵

On top of this, in the context of internal border disputes, as is the case between Wolayita and

³³ See, Proc. 7/1992, Art. 3(1).

³⁴ See, the SNNP Constitution, Art. 59(4).

³⁵ Lara Smith (2007). "Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia", *Journal of Modern African Studies*, Vol.45 No. 4, pp. 565-594.

Sidama, the region harbors one of the most critical territorial disputes in the country.

Geographically, Sidama and Wolayta share a common boundary around Bilate River which is very far from Hawassa. They have amicable trade relationships and mostly exchange in a market called Dimtu. Whenever minor skirmishes pop up in this area, it would not escalate to other areas, certainly not at all to Hawassa. Rather local elders using traditional institutions resolve their conflict and resume normal life. Hawassa has never been a fault-line of boundary conflict with the Wolayta as it is placed at the heart of a Sidama land. The neighboring ethnic group is the Arsi Oromo. There is no recorded history of conflict between the Sidama and the Wolayta in Hawassa. Hawassa and the Sidama have been accommodating the Wolayta and other ethnic groups peacefully.³⁶

To be more judicious in our analysis, one has to factor in economic reasons for the conflict in Hawassa between the Sidama and the Wolayta. Although economic reasons by themselves are not a reason for conflict, as some argue, even such reasons and such lines of arguments could not hold water. Most Wolayta people who live in Hawassa like any other groups are ordinary Wolayta who try to earn their life by their own hard labor. A casual observer could not see the Wolayta as an economic threat of the Sidama in Hawassa. The relationship between the two has been nothing but symbiotic in many regards and psychology is also important in conflict situations.³⁷

Politically speaking, during the early days of federalism, EPRDF has focused on administrative integration, especially in the SNNP region, despite its commitment and permission to ethnic groups to organize and mobilize independently.³⁸

However, the region that is currently organized under 20 ethnically defined local governments is clearly struggling with accommodating 56 ethnic groups. It was due to this struggle that the number and identity of the local government structures have been a subject of various reformulations.

Like other ethnic groups in SNNP, Kontoma community demands and have submitted their

³⁶Dr. Ambaye Ogato is a Postdoctoral Research Fellow at the Max Planck Institute for Demographic Research (MAXNetAging), Max Planck Institute for Social Anthropology department of Integration and Conflict. He can be reached at: Ambaye@eth.mpg.de/ambaog@yahoo.com

³⁷ Ibid

³⁸ Aalen, *supra* note 11, pp. 98-99.

desire to form sub regional administration separated from Mareko. Mareko also need and have submitted request to form its own sub regional administration, to establish a zone of its own.

As the recent decision of Sidama of the regional council indicates, the measures taken as a region were supposedly undertaken to respond to the growing ethnic based demands within the region.³⁹

At the moment, the region is exhibiting a strong tendency to disintegrate. A handful of ethnic groups have already submitted their desire to form independent regions⁴⁰, while others are pushing for sub-regionalizations of their own.⁴¹ Many were carefully watching the claim by the Sidama for a regional status and its outcome, as it is decided as the tenth region in late 2012 E.C after long time struggle.

3.2 Identity and Self-determination Claims in SNNP

Ethnic identity and, importantly, the ensuring self determination right, which follow from recognizing one as distinct ethnic group, arguably, are two pillars of Ethiopia's experiment with ethnic federalism.

In particular, these two elements have far reaching implication in the SNNP region where many groups feel that their identity and self determination rights have been tampered with.⁴²

Legally speaking, the federal constitution, SNNP region's revised constitution and subordinate federal as well as SNNP region's legislation (proclamations) provides for the constitutional and legal frameworks on how issues of separate identity and self determination are managed.

A closer look at these laws reveals that they stipulate for procedural as well as substantive requirements claimants (claiming either for distinct identity recognition, self determination, or both) are supposed to comply with. The following two sub-sections discuss these matters in some detail.

3.2.1 Distinct identity recognition claims

³⁹ See, የደቡብ ብ/ብ/ሕ/ክልል ምክር ቤት 5ኛ ዙር 4ኛ ዓመት የሥራ ዘመን 8ኛ መደበኛ ጉባዔ ቃለ ጉባዔ document on file.

⁴⁰ Sidama, Kefa, Wolayita, Hadiaya and Gurage are among the NNPs who have pressed their demand openly for independent regional states, although the Sidama has gone additional steps, ahead of the others. The Sidama nation referred their claim to the SNNP regional state council, and the state council accepting their plea has referred the matter to the National Electoral Board for the later to organize a referendum on the new region formation request and in November 20th 2019 the referendum has been organized and based on its outcome a Sidama region has been established.

⁴¹ Developments in Gurage and Bench-Maji zones attest to this fact.

⁴² See the discussions below

Unlike issues relating to self determination⁴³ where extensive provisions appear both in the federal as well as regional constitutions and subordinate legislations, the major challenges in resolving identity question was the absence of clear-cut-law, which explicitly addressed a group's claim to be recognized as a distinct NNP.⁴⁴

In view of such facts, one has to trace the framework for analysis primarily from the House of Federation (HOF)⁴⁵ decision on Silte case.

In responding to the Silte identity question- the first of its kind in distinct identity recognition claims. The HOF together with the advisory opinion from the Council of Constitutional Inquiry (CCI)⁴⁶ substantively relied on Article 39(5) of the federal constitution.

It argued that communities who claim distinct identity recognition are required to show that they have their own language, culture, belief in a common or related identity (self-identification), psychological makeup and territorial contiguity.

Concerning these requirements, the Council of Nationalities (CoN)-mandated with the power of settling identity determination issues at the regional level- in one of its decisions regarding identity determination underscored that a claimant community does not need to fulfill all the five criteria cumulatively.⁴⁷

However, the CoN has since changed this position and the current understanding is that these are cumulative standards necessary for analyzing and deciding on identity determination claims.⁴⁸

Yet, the major point for them in seeking identity determination seems to relate to ensuring their survival and the creation of a conducive environment to develop their language, culture and preserve their history, which are all on the verge of extinction. But all claims have not been given formal

response by the regional apparatus.

With regard to the question as to who has the authority to decide on identity questions, the opinion by

⁴³See the discussion below under section 3.2.

⁴⁴ "Advisory opinion of the CCI on the Silte case" (2008). Journal of Constitutional Decisions, Vol. 1, pp. 42-43.

⁴⁵ See the FDRE Constitution, Art. 62(1)

⁴⁶ See, the FDRE Constitution, Art. 84

⁴⁷ Christophe Van der Beken (2012). Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia, Lit Verlag, p. 274.

⁴⁸ Interview with Speaker of the House of the Council of Nationalities, SNNP Regional State (Hawassa, 12 July 2017).

the majority members of the council of constitutional inquiry(CCI)- which was later on fully endorsed by the HoF –stated that Articles 52(2)(a) and 62(3) of the FDRE constitution do not clearly mention the entity that has the power to answer identity questions.

Based on this premise, the CCI stated that such matters shall be interpreted as falling under the residual powers of the regions⁴⁹.

In justifying the argument, the CCI stated that regions have to first answer the question of identity in order to establish the necessary institutions for self-rule –impliedly making identity questions within their jurisdiction. Secondly, as questions of identity are initially raised in the regions, responding to identity claims is the power of the regional councils because the regions have exclusive jurisdiction on regional matters in accordance with the FDRE Constitution.⁵⁰

Yet, a party aggrieved by the decisions of regional councils has the right to appeal to the HoF.⁵¹ The CCI cautiously elaborated on the power of the regional councils by stating that despite the role played by the councils, the ultimate decision maker in identity questions is the concerned community itself.⁵²

The primary role of the regional councils is to check whether the requirements set under Article 39(5) have been procedurally complied with. If the claimant community or group proves that there is a sufficient case, the regional council causes a referendum to be organized and the concerned community decides on the final fate of the identity question via direct participation.⁵³

⁴⁹ CCI advisory opinion, supra note 26, p. 44

⁵⁰ It seems, the reference to the regional councils was because, at the time, the power to interpret regional constitutions was vested with the respective regional councils. It was only after the regions revised their constitutions in and after 2001 that they conferred the power to interpret the regional constitutions on a separate regional organ – the Constitutional Interpretation Commission (CIC)). The SNNP region, however, entrusted the same task to the CoN – an institution similar to that of the HoF.

⁵¹ The power of the HoF to decide on such matters emanates from art 62(3) of the FDRE Constitution. See also CCI advisory opinion, supra note 26, p. 44; As the HoF decision stated: a claim raised by a community regarding its identity shall be first presented to and treated by the council of the regional state in which the community is found. It should only be referred to the HoF if the claimant community complains that its question has not been treated by the regional council properly or in accordance with the constitution and there arises, as a result, a misunderstanding between the regional council and the community. In this case, the decision by the House of the Federation shall be final. HoF decision on the Silte case, supra note 44, p. 4.

⁵² HoF decision on the Silte case, supra note 44, p. 4.

⁵³ CCI advisory opinion, supra note 44, pp. 47-48.

Regarding procedural matters like who shall be a claimant in identity recognition claims, the HoF stated that there is no restriction by the Constitution as to who has standing.

Yet, claimants are still required to submit their questions in writing by showing that the requirements specified under Article 39(5) of the constitution are satisfied.

The concerned regional council can afterwards make further inquiries on whether the elements Article 35(5) have been fulfilled or not. The HoF decision highlighted that the question of identity shall be ripe for a referendum within a maximum period of one year from the date of submission of the claims to the concerned regional council.⁵⁴

The HoF decision also indicated that a detailed law on these procedural matters, whenever necessary, might be promulgated at the federal and regional levels.⁵⁵

It seems that Proclamation No. 251/2001(Consolidation of the House of Federation and the definition of its power and responsibilities proclamation), and Proclamation No.60/2003(a regional proclamation of the SNNP region, i.e –the Consolidation of House of Council of Nationalities and Definition of its powers and responsibilities) were promulgated to address issues of procedure.

In particular, Proclamation No. 251/2001, concerning identity questions states: after exhaustion of all state level remedies⁵⁶, “any Nation Nationality, or People who believes that its self-identites are denied, its right of self- administration is infringed, promotion of its culture, language and history are not respected, in general its rights enshrined in the constitution are not respected or violated for any reason, may present its application to the HoF.⁵⁷

⁵⁴ “Advisory opinion of the constitutional and regional affairs standing committee”, Journal of Constitutional Decisions, Vol. 1, pp. 50-52. But see the discussion below in which Proc. 251/2001 extended this period to two years.

⁵⁵ HoF decision on the Silte case, supra note 44, p. 5.

⁵⁶ Proc. 251/2001, Art. 20(1).

⁵⁷ Id., Art. 19(1); See also, Proc. 60/2003, art 21(3), which provides for an identical statement. In here, one notices the confusion that arises as a result of the use by the particular provisions of the term NNPs for those groups still seeking to be recognized as an NNP. The same issue was a subject of heated debate in the HoF before the House reached a decision in the Silte case. See, The House of the Federation of the Federal Democratic Republic of Ethiopia “Decision of the HoF in the Silte case” (2008) Journal of Constitutional Decisions, pp. 57-60. One can speculate in here: since it is the particular claimant/s, which ultimately decides on whether it is an NNP or not, the drafters of the law chose to use the wording NNP rather than community or group.

The same proclamation changed the one year period that was stated by the HoF in the Silte decision, stipulating that the region concerned shall reach a decision within two years from the time it received an application for identity determination .⁵⁸

The concerned party can then, depending upon the circumstances, directly appeal to the HoF, if the application has not been decided within two years or if not satisfied with the decision.⁵⁹ The HoF, upon receiving the appeal, shall reach a decision over the case in not more than two years.⁶⁰

Accordingly, an identity question, which starts at the regional level and goes all the way to the HoF, is expected to be settled within a maximum of four years.

In reality, however, the Welene application , for example, has been pending before the CoN and HoF (on appeal)⁶¹ for decades. The time limit does not thus seem to create any accountability on the institutions reviewing identity determination cases.

Regarding the form of the application, first, it has to be presented in writing. Second, the application must include the details of the question supported with names, addresses and signatures of at least five per cent of the inhabitants of the claimant group and whenever necessary, it should bear the official seal and signature of the administration that presented the question.⁶²

⁵⁸ Proc. 251/2001, Art 20(2).

⁵⁹ Id., Art. 20(3).

⁶⁰ Id., Art. 22.

⁶¹ Application of the Welene community to the HoF, (10/07/99), document on file with the registrar of the CoN, Hawassa.

⁶² Proc. 251/2001, Art. 21(1); Proc. 60/2003 under Art. 22(1) provides for a similar undertaking.

Chapter Four

Finding and Discussion

4.1 “Kontoma”Community Ethnic Identity Recognition decision

Southern Nation Nationality and Peoples regional state is the third largest constituency in terms of demographic share, which represents about 20% of the country's population. Diversity is extraordinary in terms of ethnic background, language, religion, etc. As per the 2007 Census, Ethnic groups like Sidama (19.4 %), Wolayta (10.6%), Gurage (8%), Hadiya (7.6%), Gamo (7%), Kafficho (5.5%) and Silte (5.4%) together constitute more than 50% of the total population of the regional state.⁶³

Kontoma community is one of the communities living in southern nation nationality regional state in Gurage zone in Mareko and Meskan woreda Administrations. The community has been claiming their identity to be recognized as distinct community from Mareko community since 1999 E.C. To this effect they have submitted claim for recognition of ethnic identity and self determination right to the Southern Nations, Nationality and Peoples regional state council. When we see the content of their application to the Council of Nationality the following are main reasons that triggered the community to claim their ethnic identity:

- Violation of right to life is the main reason for the Kontoma community reasoning Kontoma community is killed because of their identity.
- The right to Honor and Reputation is violation is the second reason. According to the committee the Kontoma community has their own work habit which is handcraft and because of our work habit Mareco and other community members named Kontoma community as “Qoda faqi “and “Ketekach” and we are isolated and not respected. So the right to be respecting our dignity as human being, reputation and honor and to be recognized everywhere as a person has been violated by Mareco community due to our community unique identity.
- The rights to equality before the law and entitlement without any discrimination to the equal protection of the law is violated because their members of the community are not

⁶³ 2007 National census

recognized as a person by the Mareco and other community living around their village so their property burned by fire every time when conflict arise, they are killed, put in prison. Public officials of Mareco are not protecting their property and their damage claim are not heard by the police, Judges and other officials rather they are sent them to prison, and not treated them equally.

- Personal, Marital and Family rights of the community are violated. The FDRE and SNNP Regional constitution protects these rights. Men and women, without any distinction as to race, nation, nationality, religion who have attained marriageable age as defined by law have the right to marry and found a family. But Kontoma community not recognized as a person and not allowed to marry from other community members because of their work habit and identity they are discriminated to form marriage and family.
- Nations, Nationalities and Peoples rights of the community recognition as different ethnic identity. According to Article 39 of FDRE constitutions and South regional constitution a “Nation Nationality or People” is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities , a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory. Therefore Kontoma community requested as nationality for the following reasons; their language is different from Mareco and other community or clans have their own similar culture including wedding, work, living, morn and beliefs, and their historical origin are not the same with other community or clans.

Therefore based on the above reasons and human and democratic constitutional rights violation the Kontoma Community formed a committee members composed of seven representatives and sent their request to the council of nationalities to give decision for their identity question.

The regional Council of Nationalities accepts the application of the Kontoma community. The council of nationalities forms a research committee or team and the team is composed from members from the standing council, regional and Woredas level officials, representatives from Kontoma and other communities and other invited language experts.

The main points identified for the research team or committee to investigate whether the Kontoma Community have or share a large measure of common culture or similar customs, have mutual intelligibility of language , believed in a common or related identities and have a

common psychological make-up. In order to accomplish its assignment the team used field observation, focused group discussion and meeting among different stakeholders. Then the team came back with its findings on June 21, 2004.

The team research findings are presented as follows; first regarding the language criteria the study found that the language is different from the language of the “Mareko” by 14%. But they conclude that the Kontoma community does not have a different language which is distinct from Marekigna and also it is not registered as a language of Kontoma. Second point regarding culture and custom, the Kontoma community does have their own cultural judgment and court, they have their own cultural dressing, feeding, dancing which is slightly different from the Mareko community. Third point regarding psychological make-up, the Kontoma community believes that they have their own psychological make-up and evidence shows this fact. The fourth point regarding territory or landscape, the Kontoma community are living mainly in four kebeles of Mareko and Meskan woreda and especially in one Kebele more than 90 percent of the community are Kontoma community. So generally the research concludes its findings that the Kontoma community are not different from the Mareko community and do not have a different identity. But the findings indicate that the main problem that triggers the Kontoma community is human and democratic rights violations by members of Mareko and other communities found in Gurage due to wrong perceptions of the Kontoma community work habit and poor management of government officials, a good governance problem. The regional Council of nationalities, after investigating the identity question of the community for 5 years on 26/10/2004, decided that the “Kontoma” community has no distinct community, having no distinct language and hence no recognition of distinct ethnic identity is granted.

4.2 What are the criteria considered by the regional state council and HoF

Proclamation 251/2001, proclamation to consolidate the house of the Federation and to define its power and responsibility, has contained provisions dealing with how to submit questions of ethnic identity recognition and self-determination claims.⁶⁴

The question relating to the rights of nations, nationalities, and peoples to self-determination shall be submitted to the House of Federation only under conditions that the question has not

⁶⁴ Proclamation 251/2001, Federal Negarit Gazeta of FDRE 7 year number 41, 6 July 2001 article 19(1) and 20(1)

been given due solution by the various organs in the administrative hierarchy of the state concerned. Any Nation, Nationality, or People who believes that its self identities are denied, its right of self-Administration is infringed, promotion of its culture, language and history are not respected, in general its rights enshrined in the constitution are not respected or, violated for any reason, may present its application to the House of Federation through the proper channel.⁶⁵

Unlike the constitution the proclamation is clear that any nation nationality and people could bring two independent questions, the first is claim relating to recognition of ethnic identity. Any Nation, Nationality, or People who believes that its self identities are denied can bring the claim to the house after properly exhausting regional council remedy. Second any nation, nationality or people who believes that it's right of self-Administration is infringed, promotion of its culture, language and history are not respected can bring claim for right of self determination respected.

The "Kontoma" community after their case was rejected by the regional state council representative committee of the Kontoma community composed of seven members who are elected by members of the community have submitted their claim by way of appeal Hamel 2005 to the HoF claiming their ethnic identity to be recognized . The content of the appeal is based on the decision of the regional council of nationalities basically the language element not to be seen as distinct on ground of not registered as a different language in Ethiopia. Because the Kontoma community committee appeal by referring cases of "Kenbata and Donga", "Silte and Welene", "Alaba and Kebena", "Welayeta and Gamo" and "Gofa and Dawero" community are using similar language but they are different nationalities. So to be considered as different ethnic identity no need of different language and no need of registration and also regarding our community settlement Kontoma community are living in 17 kebele of Mareko and Meskan woreda but the regional council of nationality decision limited Kontoma community only in one woreda. Finally the decisions ignored our different culture and custom even if evidence shows them that we do. So generally it is constitutional rights violation by the decision of the council of nationalities should be corrected.

The House of Federation after receiving the claim had established a committee to further investigate and study about the community's distinct identity. The committee held critical investigation considering only some of the criteria under article 39(5) of the constitution. The

⁶⁵ Ibid

criteria taken in to consideration in the study were Language, culture, settlement pattern and history of the community. There are two other subjective criteria provided under article 39(5) of the constitution. These are whether the community belief in common or related identities, and have a common psychological makeup. However these criteria's were not considered and the study did not include these two vital criteria to determine the ethnic identity of the "Kontoma" community.

The first criterion provided under article 39 (5) of the constitution is related with common culture and similar custom of the community. A group of people must have or share large measure of common culture or similar customs. It is certain that ethnic communities have many things in common. However culture or custom is among that ethnic communities keep in common. Common culture is of identification in which community that do not have common culture are not in fact a community that belong to common origin, it does not matter whether that communality constructed the culture or similar custom or primordially belief that they are from common origin. Communality of culture may be constructed through time or primordially from common origin.

The second criterion is whether the culture or custom of the community is necessarily or needs to be distinct from other community? And To what extent it should be distinct?

The committee in its investigation tried to identify whether the "Kontoma" community is distinct from the "Mareko" community? Or whether the two are originally from the same kinship or ancestor?. the House of Federation conclude that according to the study both the Mareko and the Kontoma community are from the same ancestor. The Kontoma community is originally from the Mareko community, the Mareko community has about 32 tribes and the Kontoma community is one of these tribes.⁶⁶

On the other hand the study also finds out that the "Kontoma" Community has no distinct identity. The study tried to find out the common origin of the community and found that the "Kontoma" communities are not distinct; they are one and a major tribe of the Mareko

⁶⁶HoF file number 1451, june 2007 page 10-11, the claimant further brought the case to the CCI seeking constitutional interpretation on the decision of the House and the CCI rejected justifying that the CCI have no mandate to review the decision of the House of federation, because the decision of the house of final according to proclamation 251/2001

community. Are they primordially looking to establish their ethnic identity or some other instruments or factors are there? Second what are the position and the major criteria taken in to consideration by the decision making organs? On the one hand the claim of the community for ethnic identity recognition was not due to the need for establishing their ethnic origin. It was in looking for other instrumental elements. So according to the research respondent from council of constitutional inquiry claim of the community was based on instrumental element and not involved any primordial element. On the other hand the approach adopted by the House of Federation in determining the identity of the “Kontoma” community is based on primordial element of identifying ethnic identity. The committee had looked in to the Primordial element, whether the “Kontoma” community are originally, even before crossing the border of Ethiopia were one tribe with the Mareko community or have distinct origin of their own identity.

Again it is very important to raise according to the constitution the criteria under article 39(5) talking about common culture is not about considering the culture of one community with other community but only studying among and between the claimants. However in the study the culture and custom studies was not the culture of the community claiming the identity recognition. Why the culture and custom of the claimant only or the Kontomas alone were not studied remains a question. The idea in the constitution is to mean identifying whether the claimant has common culture or not among themselves and not in comparison with other community. There is no any indication in the constitution that whether the community claiming identity recognition has similar culture and custom with other different ethnic community has to be considered or studied.

The HoF rather considered whether the culture and custom of the Kontoma community is different from Mareko community culture and custom. The HoF sticks to that position in looking to establish the common ethnic origin of the two communities. The approach adopted by the HoF is clearly primordial. The study had identified all the ethnic and tribal division of the community, and considered whether the community is originally, even before coming to Ethiopia were/have common origin or not.⁶⁷The community originally comes from east Africa with other ethnic communities like Hadiya, Xanbaro, halaba, kebena, Mareko. Mareko community has more than 32 tribes and the claimant the Kontoma community is one tribe of the Mareko community and

⁶⁷HoF file number 1451, june 2007 page 9-10

they do share similar custom and culture but still different on some of its perspectives.

The investigation and the study clearly showed that the council has based its decision totally after testing the common origin of the two communities. The study did not take in to consider the current feeling and psychological makeup of the community. The community claimed they are distinct and are Kontoma and not Mareko, however the government is saying you are not Kontoma, or although you are named Kontoma you are the same with Mareko and denied them their very existence as distinct.

4.3 Why the Kontoma assimilated or integrated with the Mareko

The study further identified that the Kontoma community integrated with Mareko in 1991 during the transitional period. The reasons identified by the study are during the transitional period for political and economic factors the community willingly integrated with the Mareko, specifically to assume self determination right at local level. It is arguable whether the act was integration, assimilation or even constructed. The study already established that either by assimilation or integration this community has merged with the Mareko community for some other instrumental factors.

One can still argue at this stage the community is again claiming to be deconstructed from the Mareko community to establish their identity as distinct from the Mareko community, identity is fluid it can be constructed or even deconstructed at a time due to instrumental factors. These communities were merged with the Mareko community at one point to preserve their economic and political advantage. Now again in looking for better economic and political advantage they are claiming recognition of their own distinct identity. Now the reason for the claim is they believe they are discriminated based on political, economic and social factors. Their claim is not based on looking for their common ancestral relationship, but wants for political and economic empowerment to prevent the discrimination.

Closely observing or analyzing article 39 of the FDRE constitution, primordial's school of thought, ethnicity is the requirement to determine and exercise the right to self determination. The subjective criteria provided under the provision "Believe in common or related identity" refers to the psychological factor of the relationship between the groups. Common psychological makeup can be developed by group of people who have no common ancestor or common origin

or among different ethnic groups but believe or constructed among them through time. Otherwise sticking in to origin has its own problem and very difficult for one to find its own common origin by itself.

Trying to define this psychological status of group is also another problem. So it is a mistake to begin from the position of an outside observer trying to identify nations by looking to see which people have common attributes such as race or language. Because we may find people who share one or more such attributes and yet do not constitute a nation because they do not think of themselves as forming one and vice versa. (David p;22)

The decision did not consider (the two factors or criterion) unclear which is very important to establish constructive and instrumental element which shows the current belief of the community whether they believe to have common element and to be distinct from other communities.

Primordial elements that they are distinct considering their original kinship is primordial attachments have decisively become instrumental to claim social, political, and economic advantages. The community is sticking to the primordial element to advance the instrumental factors. According to research respondent the community has no any desire to really claim their common origin but to prevent political and economic discrimination they are facing. However the HoF did take or considered the primordial factor, based on the history, language and culture and settlement pattern of the community and it decided that the community has no distinct origin which is different from other community, they belong to the Mareko community identity or one tribe of the other community.

The other criteria considered by both the regional state nationalities council and seen by appeal by the House of federation is the language requirement. Article 39(5) of the constitution provides a group of people must have or share mutual intelligibility of language. Accordingly it seems different nationalities must have or use language of their nationalities to communicate among themselves. However it is not clear whether the language should be totally distinct which is not spoken by other community in the country or even elsewhere outside the country. The requirement under the provision which is provided as, “mutual intelligibility” has been misunderstood to mean distinct language which is not spoken by other community. The literary definition of mutual intelligibility is to mean capable of being understood each other. Does this mean the language should be distinct?, it should be understood to mean although the language is

spoken by other community, so far the community claiming recognition of distinct identity uses the language to understand each other they are at liberty to be recognized as distinct ethnic identity. So if the community fulfills other requirements under the provision it can be recognized as distinct identity. However the practice has totally diverted from the normative perspective. In the case under discussion the regional council and the house of federation have rejected the case for the mere fact that the language the “Kontoma” community use are similar with the language of the “Mareko” and hence are not distinct⁶⁸.

Finally after the Hof decision representatives of the community took the decision of House of Federation for Council of constitutional inquiry for constitutional interpretation reasoning that the house decision is as a primary jurisdiction is like any government decision so should be subjected to constitutional review. And the CCI investigated their constitutional compliant and rejected their questions because of jurisdiction.⁶⁹

The study and investigation was conducted to identify whether the language of the “Kontoma” community is distinct from the language of the “Mareko” community. The study or investigation found that the community has no distinct language; the language they are using is much similar with the language of the Mareko’s. As I said earlier according to article 39(5) of the constitution it is important to evaluate whether the language requirement under the provision needs to be distinct or not, if the language the community uses is capable of creating mutual understanding among the community and other criteria are fulfilled the community could be recognized as a Nation, Nationality or people. The study found that the language is different from the language of the “Mareko” by 42.63%. Even if the language criteria under the constitution are required to be distinct the other question that comes to mind is by what percentage the language should be distinct. However the provision is clear that the community claiming ethnic identity recognition do not need to have distinct language which is not totally spoken by other community.

In general in this specific case the Southern Nations, Nationalities and peoples regional state council and the House of Federation decision in determining the identity question considered only three criteria under article 39(5) of the constitution. The subjective criteria provided under the provision were not well analyzed and considered. The psychological feeling of the

⁶⁸ Secretariat, Council of constitutional inquiry file Number 1452 p;16

⁶⁹ FDRE Council of constitutional inquiry decision on file number 1459 dated Miyaziya 17,2010E.C

community whether they consider themselves as distinct or not were not considered. The community was integrated with the Mareko community in 1991 by their own free will and now claiming to be recognized as distinct community. The claim of the community was triggered by some other political and economic factors and was not to establish their primordial ethnic identity. However both the regional state council and the House of Federation have considered the communities ethnic origin and concludes that originally the Kontoma community is one and major tribe of the Mareko community.

Therefore when we see the two decisions the points raised by the members of Kontoma community are constitutional requirements to be recognized as a distinct ethnic group. But as to the research findings of both decision makers revealed that most of the claims of the community are human and democratic constitutional rights violation by different clan groups by marginalizing them with wrong perceptions and good governance problem.

In short, it will be a violation of their constitutional right, taking into consideration the importance of official recognition.

Chapter Five

5. Summery Conclusion and Recommendation

5.1 Summery

There is confusion between nationality and ethnic and there is no clear cut and sharp dividing line between the two concepts. We cannot find a straightforward definition for ethnicity due to its objective and subjective elements.

Smith defines an ethnic group as “a group of people who share ancestry myth, history, culture having an association with a specific territory and a sense of solidarity.” Unlike tribe and clan that may involve blood tie, ethnicity is based on common values such as language, culture, history, inhabiting common territory and belief in common descent.⁷⁰ (Alder Smith, 1991: p. 21)

For David it is very important to examine the ethnic origins of people in order to understand the national identities of them. Typically, though not always, a nation emerges from an ethnic community that furnishes it with its distinct identity. (David p; 19) The other is that ethnicity continues to be a possible source of new national identities. An ethnic group may develop to a nation when it begins to think of itself as a nation and to express those aspirations in nationalist terms.⁷¹

As we have seen in chapter two theoretically, there are three schools of thought dealing with the characteristics of ethnicity: primordialism, constructivism and instrumentalism.

Primordial school of thought argues that, ethnicity is something objectively given. It explains ethnicity based on the primordial elements such as kinship, sharing common psychological makeup, custom, language, culture, tradition, history, religion, and territoriality that keep members together as a separate entity and distinct group with unique characteristics. These primordial elements virtually are genetic traits, which are biologically determined. These elements are also used as an identity marker for understanding ethnic groups with ascription by others. The primordial’s understanding of ethnicity is as coherent, easily identifiable, innate, and

⁷⁰ Alder Smith ,Alder Smith, (1991), *National identity*, New York: Penguin, p. 21

⁷¹ Ibid p;19

permanent over time.⁷²

For constructivist school of thought ethnicity is socially constructed phenomenon. Constructivists, in contrast to the instrumentalists' understanding of ethnic identity, incorporate analysis of how ethnic relations are maintained, defined, and perceived by the group itself. Constructivism focuses on cultural and historical ground for the development of ethnic consciousness instead of taking for granted that ethnic groups are created by elite maneuvering for strategic political and economic consumption.⁷³ Unlike instrumentalists, constructivists denounce the assumption that ethnicity is strategic material based invention by elites, and it can easily dissolve. And they maintain that affection on the basis of selective interpretation of the real cultural experience of history and shared culture constructs ethnicity.⁷⁴

5.2 Conclusion

Definition of an ethnic group (nation, nationalities or peoples) illustrates any group who can satisfy criteria listed under Article 39(5) of the constitution have the right to self determination including the right to secession. However it is not clear whether these criteria used to claim identity recognition or does these criteria available only for the already recognized and existing ethnic groups but only claiming the right to self determination is a question.

So one can say that group or community can claim two important rights, the first is to be recognized as a distinct ethnic identity fulfilling the criteria under article 39(5) and the second is claiming self determination and self governance right for already recognized distinct ethnic identity. In both cases the same criteria provided under article 39(5) of the constitution are considered.

This part of the paper has tried to conclude about the practice and challenges of House of Federation in resolving the Kontoma communities claim of identity based on the above analysis in chapter four, under which constitutions of both the FDRE and South nations, nationalities and people regional state which shades some light for the question of a certain community groups to be recognized as an independent identity group and to exercise the right to self-determination

⁷²Phandis, U. & Ganquly, R. (2001), *Ethnicity and nation building in South East Asia*, New Delhi: Sage, p. 23

⁷³Horowitz, Donald L. (1985), *Ethnic Groups in Conflict*, Berkeley, Los Angeles, and London: University of California Press. P. 55

⁷⁴ Ibid p; 56-58

based on the constitutional provisions of the aforementioned constitutions including the relevant provisions of proclamation No. 251/2001.

These legal provisions were also intensively analyzed against the claim of the Kontoma communities and the response of the regional councils of nationalities, the House of Federation together with minutes of the House, appeal of Kontoma community and interview of key informants.

However, unlike the fundamental constitutional provisions of the constitutions of both federal and regional state as well as political rhetoric of the governing party of federal and regional state governments. The House fails to attain fair decision against the claim of Kontoma community due to its low commitment to enforce the constitutional legitimacy. The House fail to respond the settle their response with in time limits and it tooks more three years. The main problem that we can see from the House is there is no clear rules and procedure to entertain constituional claims so because of this it follows different procedure and no uniform decision.

Besides, the region was not as such ready to entertain the Kontomat case; rather it was reluctant to see the petitions of Kontoma community timely and critically from the very beginning. That is why it passed different decision other than the finding of the research team. The research team findings are not analized well. And when we see the time of decision it took more than 5 years. Generally the council of nationalites decision lacks uniformity among other ethnic groups identity question. Therefore, the intensive analysis of the document and cases gives chance to the researcher to come up with the following concluding remarks

- ❖ The House of Federation was trying to make just friendly talk with the regional state regarding the Kontoma case, so that it fails to exercise its legal power properly to make correct decision on the case.
- ❖ The House in the Kontoma case did not take a real commitment to implement strictly the provisions of proclamation No. 251/2001.
- ❖ The House fears its interference in regional states decision while the applicant suffers from mistreatment of regional states and even some pay their golden life, since some of them

are died for it due to delay of their claim and discrimination.

- ❖ The House of Federation did not properly demonstrate its legal power making itself independent of regional state governments.
- ❖ The House treats the Kontoma case differently than earlier ones, as did in the “Silte” case. Because the “Silte” case was resolved through popular referendum but the Kontoma case is decided by regional state council without consulting the concerned population. The ethnic identity of other ethnic groups language are not registered and registration is not requirement and even if they share the same language they can be treated as a different ethnic.
- ❖ Regarding to the lesson learnt from previous ones like the “Silte” case, good legal provisions are drawn in proclamation No. 251/2001 and some procedures are developed to define the vested power of the House and give clear cut exercise to handle the cases although the House could not use such legal instrument to resolve the Kontoma case.

5.3 RECOMMENDATIONS

Based on the aforementioned findings and concluding remarks the following relevant recommendations are forwarded for the concerned governmental bodies.

1. The House of Federation has shown little commitment in addressing the identity claims raised from different nations and nationalities while the constitutional document vested the power to the House. Therefore, the House need to clearly stipulate what standards of evidence ought to be used to make identity assessments and should work on it tirelessly.
2. The House should develop certain criteria which shows the difference between nations, nationalities and communities and the criterion on how to designate a group as a „ nation or, nationality or, community“ and its consequences as well as to be unambiguously identified and stated well.
3. Since one of the challenges in the Kontoma case was the problem of identifying the group either belong to Mareko or not. Because of this, research were conducted and the

finding shows that only the language vary by 42.63 percent and not registered as a distinct language makes them as belongs to Mareko.

These and other problems emanate from low awareness of constitutional principles and the right of nationalities by the members of the House and from some of ambiguous provisions of proclamation No. 251/2001.

4. The intensive and timely training should be organized for the members of the House on the constitutional principles pertaining to identity issues and the procedural application of proclamation No. 251/2001.
5. The claims of identity recognition and the right to self-administration are of course beyond the political issue; rather they are the issue of legality. Therefore, the House should give priority for legal issues based on the present case than giving priority to political decisions.
6. Finally, the House of Federation as it is final decision maker on identity claims, it has to clearly articulate the way of executing its decision in situations where regional states in fringe its final decision. Therefore, the House needs to amend its proclamation and regulations so that to clarify the general and ambiguous terms.

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- Ambaye Ogato(Phd) is a Postdoctoral Research Fellow at the Max Planck Institute for Demographic Research(MxNetAging), Max Planck Institute for Social Anthropology department of Integration and Conflict. Ambaye@eth.mpg.de/ambaog@yahoo.com

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