

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

State Formation and Criteria for Statehood in the Ethiopian Federation

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**A Thesis Submitted To Post Graduate Studies of Addis Ababa University in Partial Fulfillment of
the Requirements for the Masters of Laws (LL.M) Degree in Constitutional and Public Law**

March, 2016

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Declaration

I, Worku Megersa, hereby declare that this thesis is my original work and has never been presented in any other institution. To the best of my knowledge, I also declare that any information used has been duly acknowledged and submitted for the partial fulfillment of the requirements for LL.M degree in Constitutional and Public law studies, Addis Ababa University.

Worku Megersa

March, 2016

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Errors, points of view, Omissions of the findings and analysis rest solely on me.

Acronyms

ANC African National Congress

EPRDF Ethiopian People's Revolutionary Front

FDRE Federal Democratic Republic of Ethiopia

HOF House of Federation

IFP Inkhata Freedom Party

LDP Liberal Democratic Party

NP National Party

OLF Oromo Liberation Front

SNNPRS South Nation Nationalities Peoples Regional States

TPLF Tigrrian People's Liberation front

Abstract

The idea of Federalism is understood as organizing states into at least two layers of government in order to realize self-rule and shared-rule among national and sub-national governments. With regard to forming sub-national states that constitutes the federation; geographic location, historical root, cultural association, ethno-linguistic or national identity might be the organizing element for the federation. When the formerly unitary multi-national state is to be devolved to form federal system of government, like in the case of Ethiopia, the very difficult question immediately comes in to picture is on what bases the sub-unit state that forms the federation is organized. This is a tricky challenge which faces every multi-national state that tries to establish the federation. Once the organizing element is selected the next challenge is to determine the criteria for those who able to form the sub-unit state since it is almost impossible or very difficult to grant a sub-unit state for each and every nationality in the federation. The purpose of this thesis is to explore this issue in the context of Ethiopian federalism.

Key words: federalism, multi-national federation, sub-national state formation, criteria for statehood

Chapter One

Introduction

1. Background of the study

For the most part of its history of nation building process, Ethiopia has been characterized by centralized state power. The Ethiopian state that emerged as a result of the centralizing trend in the 19th and 20th century was different from historic Ethiopia in terms of its territorial size, ethno-linguistic composition and religious diversity.¹ Despite its own contribution to creating the present day Ethiopian nationhood, this centralized nation building process was an attempt to assimilate the different groups into the ruling class's identity.² The majority of the ethno-linguistic groups incorporated through centralizing ambition were forced to assimilate into one language, one culture and one religion of the state under the notion of pan Ethiopianism.³ Hence, rather than attempting to create a multi-national state from the newly incorporated nationalities with diverse language, culture and religion, the regime imposed a narrowly defined imperial-state, whose cultural, social, political and religious foundation and its institutions failed to reflect the existing diversity on the ground. This paradox-ridden nation building strategy in Ethiopia led the country in to prolonged instability and war that brought about the current political system with the aim of accommodating the diversity of the country by organizing the country through ethno-linguistic federalism.⁴

The federalization of Ethiopia was introduced after a long period of attempted centralization in the country. Informally a political model similar to federalism was introduced in Ethiopia in 1991 when the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power and launched the idea of "self-determination for the nationalities", up to and including secession, devolving political, administrative and economic power to ethnically defined regional states during transitional period.⁵

¹AssefaFisha, Federalism, Teaching material Justice and Legal System Research Institute,(2009), p. 210.

²Ibid.

³Ibid, at 211.

⁴Ibid, at 212.

⁵ Aalen Lovise, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000, Chr. Michelsen Institute of Development Studies and Human Rights Max-Planck Institute,(2002), p. 1.

The new trend of reconstructing the Ethiopian state along decentralized ethnic line was justified by the then transitional period president, MelesZenawi;

“The key cause of the war all over the country was the issue of nationalities. Any solution that did not address them did not address the issue of peace and war. People were fighting for the right to use their language, to use their culture, to administer themselves. So without guaranteeing these rights it was not possible to stop the war, or prevent another one coming up.”⁶

Thus, Ethiopia accommodated ethnicity as a formal political element in the new state order. Identities of previously non-dominant groups were constitutionally recognized and the idea of pan Ethiopian identity de-emphasized with more rights to be accorded to neglected minorities and language groups, and aiming for a decentralized, ethno-linguistically-based federation instead of an enforced unitary state.⁷ This was held in due course to solve the “national question”, that is, the inequalities in power, cultural prestige and resources between the various ethno-linguistic groups.⁸

The federal system in Ethiopia was formally established when the new constitution came into force in August 1995. It is the constitution of Federal Democratic Republic of Ethiopia (FDRE) that formally entrenches the federal system in Ethiopia.⁹ The Constitution clearly states that Ethiopia is intended to be a federal state. Article 1 which defines the nomenclature of the state says: “This constitution establishes a federal and democratic state structure”. The preamble of the constitution emphasizes that it is the nations, nationalities and peoples that have adopted the constitution.¹⁰ The ethnic groups in the country are referred to collectively in the Constitution as “nations, nationalities and peoples”.¹¹

Ethiopian population is ethnically very diverse with more than 80 ethnic groups. The FDRE Constitution grants all of these groups a right to territorial autonomy, implying that all ethnic groups can be linked to a particular territory. Territorial autonomy for geographically

⁶Ibid, at 40.

⁷ John Young, ‘Ethnicity and Power in Ethiopia’, Review of African Political Economy, (1996) N. 70, p. 537.

⁸ Ibid.

⁹ Aalen Lovise, *supra* note 5, at 52.

¹⁰ Preamble of Constitution of the Federal Democratic Republic of Ethiopia, *NegaritGazeta Proclamation* No. 1/1995.

¹¹ Ibid.

concentrated ethnic groups is an important component of the Ethiopian federalism.¹² Thus, ethnic-based territorial autonomy constitutes one of the major features of the 1995 Constitution and the basis for the internal organization of the federal state. This explains why the Ethiopian federalism is often referred to as ethnic federalism.¹³

Article 47 of the FDRE constitution lists the names of the states of the Federal Democratic Republic of Ethiopia. Since the sovereignty rests with the nations, nationalities and peoples and not with the member states of the country, article 47 sub-article two of the FDRE constitution points out that;

“Nations, Nationalities and Peoples within the state have the right to establish, at any time, their own states”.

Therefore, according to the FDRE Constitution, each of the Ethiopian ethnic groups is entitled to their own self-government and this may extend to secession of the territory they inhabit. In addition to the rights of the existing states to self-determination and secession, any ethnic group within an existing state is entitled to establish its own state as recognition of its right to self-determination.¹⁴ It is interesting that the Constitution recognizes the right to self-determination and secession of the “nations, nationalities and peoples” without specifically mentioning the states in which the respective groups reside. Hence, to obtain self-determination by ethnic group the first step would be to establish some territorial basis where it forms the majority, and then to use that as a platform for self-determination and even secession.¹⁵

Thus, the notion of granting to the “nations, nationalities and peoples” their own “*mother*” states as enshrined in the Constitution entitles every “nation, nationality and peoples” (to those who have not yet been granted a state) the right to establish their own state at any time.¹⁶ The impression behind this idea is that the right to self-determination and the right to self-rule can best be realized through the creation of states whose borders coincide with the nations,

¹²Jaap de Visser, Nico Steytler and Yonatan Fessha, the role of ethnicity in the demarcation of internal boundaries in South Africa and Ethiopia, paper presented at the Annual Conference of the International Association of Centers for Federal Studies, (2012), Rome, p. 4.

¹³Ibid, at 5.

¹⁴ Ibid, article 39(1) and 47(2).

¹⁵Bertus de Villiers, Creating Federal Regions – Minority Protection versus Sustainability, Max-Planck Institute, (2012), p. 341.

¹⁶Constitution of the Federal Democratic Republic of Ethiopia, supra at note 15, article 47.

nationalities and peoples.¹⁷Therefore, every nation, nationality and peoples can have its own state and hence we can imagine no less than eighty states in the Ethiopian federation as there are more than eighty such ethnic groups in the country.

Nonetheless, at least theoretically, the Ethiopian federalism is meant for the empowerment of territorial ethno-linguistic groups or, in the wording of the constitution; “nation, nationalities and the peoples” of the country. It is said the core objective of the constitution is, therefore, self-determination of the ethnic groups of the country as forming their own government by ethno-linguistic groups through regional state or sub-national state is the ultimate exercise of the right to self-determination next to secession.¹⁸However, this idea is very nominal as we will see in the last two chapters of this paper.

A number of scholarly works have been conducted by well-known academician and researchers on Ethiopian ethno-linguistic based federalism.¹⁹ Most of the research conducted on Ethiopian federalism focused on the political reasons that brought the federation, its human right aspect, the merits and demerits of such federalism, and the structure and prospects of Ethiopian federation. Yet, no or at list very insignificant, research is conducted with the issue of sub-state formation and the criteria for statehood in the Ethiopian federation. This study intends to fill the gap that exists with regard to the issues of sub-national state organization of the Ethiopian Federation, the bases upon which sub-national states of the Ethiopian federation are formed and the criteria for being statehood.

2. Statement of the problem

As it is said earlier the FDRE Constitution unequivocally grants the right to form their own sub-national state to each and every nation, nationalities and peoples of the country. Taking this constitutional right to form their own sub-national state by nation, nationalities and peoples, one can expect more than 80 sub-national states in Ethiopia since there are more than 80 such entities in the country. However, despite such generous constitutional promise of sub-national states for each and every nation, nationalities and peoples living in the country, the federation of Ethiopia

¹⁷Bertus de Villiers, *supra* note 17, at 342.

¹⁸ See preamble, article 8, 39, 46 and 47 of FDRE Constitution.

¹⁹AssefaFisha, Aalen Lovise, Christophe Van der Beken, David Turton, John Young, Jon Abbink are some of the researchers who conducted major research and academic works on Ethiopian federalism.

is organized only by nine sub-national states in which only a few nationalities get their own sub-states. In this regard the core objective of the constitution is not realized. Of course, practically it is impossible for a country with such diversity of groups to secure to each of the minorities an own state and it can be source of dispute with a threat of destabilization of the country itself. This is the very dilemma of the Ethiopian federalism which this research paper intends to analyze. Thus, this research examines the founding elements of the Ethiopian federation and the criteria for the establishment of sub-national states in the Constitution of the Federal Democratic Republic of Ethiopia together with some foreign experiences with regard to these issues.

3. Objectives of the study

The main objective of this study is to examine how sub-national states of Ethiopian federation are organized with the aim to show that the sub-national state formation of the Ethiopian federation is very problematic and fragile. In doing so, the research critically analyzes the very foundation of the Ethiopian federation, the objectives of the federation, and the Constitutional criteria for sub-national statehood and its implication on the country.

4. Research question

In view of the objectives of the study answers will be sought to the following research questions:

- What is the basis upon which sub-national states of the Ethiopian federation was organized?
- Why the constitution granted every nation nationalities and peoples in Ethiopia the right to form their own states? What is its implication?
- Are there viable constitutional criteria for the formation of sub-states in the Ethiopian federation?
- Whether there is a need to renegotiate and restructure sub-states of the Ethiopian federation

The key themes to be explored under this research question are;

- The organizing principles of the sub-national states of the Ethiopian federation
- The units that have the right to form their own states under Ethiopian federation
- The apparent inconsistencies of the constitutional provision on the formation of sub-states in the Ethiopian federation and its implication
- If new states have to be formed what standards or criteria have to be developed

5. Significance of the study

The finding of this research will make significant contribution to the theoretical understanding of the basis for state formation and criteria for statehood in the Ethiopian federation. It might also initiate further study on the issues with the foundation of the Ethiopian federation. Practically as well, it can provide the needed information both in political and policy decision making processes for concerned body in the area. Even the recommendation that would be proposed by this research can also be helpful to initiate the need to renegotiate the formation of the Ethiopian federation and the revision of the FDRE Constitution. It is the hope of the writer that this research would contribute new perspectives in to Ethiopian federalism.

6. Research methodology

The main methodology of this research paper is doctrinal analysis. Literature concerning the topic of the research paper found in the library or on the internet, the main documentation in the process of formation of the Ethiopian federation such as the minutes of the transitional period conferences, the transitional charter, the first draft of the constitution, the minutes of the constitution assembly deliberation with regard to the issues of this research, the constitution and other laws in the area was investigated. In addition empirical study through interviews with key informants such as concerned officials at the House of Federation was conducted and included.

7. Structure of the Research

Chapter one, this chapter, introduces the research paper which includes background, objectives and research questions of this paper. Chapter two explores the experiences of some foreign multi-national federations in formation of their sub-national states. In this regard the experiences of Nigeria, India and South Africa the will be discussed. In discussing the practice of these

federations, we will see, for example, why and how Nigerian federalism started with three states and became thirty-six and above at the moment, what is the standard to form these states among others, how Nigeria managed to form her states among 200 and above ethnicity. With regard to India, the issues are how India managed to handle stable and democratic federalism in organizing about 30 sub-unit states on ethno-linguistic bases while there are about 1600 ethno-linguistic groups in India. In the case of the two countries the makings of states are on-going processes as crises and conflict management with the objective to form stable and democratic federation as a means to realize self-rule in the federation for those who deserve to form the states. Valuable lesson can also be drawn from South African regional formation in which South Africa managed and abled to organize stable multi-ethnic federation through multi-party negotiation and conciseness to organize her regions. From discussion of the experiences of these countries, it is hoped that valuable information and lesson about state formation and criteria for statehood in multi-ethnic federation would be drawn.

Chapter three is concerned with the formation of Ethiopian federation. It deals with the issues such as background, factors and the core principles of the Ethiopian federation. Under this chapter the formation of sub-national states in the Ethiopian federation will be analyzed together with the objectives and the legitimacy issues of Ethiopian federation with the aim of pointing out the basis of sub-national states in the Ethiopian federation.

Chapter four of this research paper is devoted to the core issues of the study; the Constitutional criteria for the formation sub-national states and its implication for the Ethiopian federation. The apparent inconsistency of sub-national state formation and the constitutional criteria for statehood under Ethiopian federation would be discussed and analyzed under this chapter. And lastly this chapter is followed by conclusion and recommendations of the research paper.

Chapter Two

State Formation in some Multi-national Federations

2.1 Introduction

This chapter is devoted to the discussion of sub-national state formation in other multi-national federation that emphasized on linguistic and nationalities as pillars in the formation of their sub-national states. The formation of the three multi-national federations; the Indian, the Nigerian, and the South African federation will be discussed in detail. The main issues that would be raised in this part are the bases upon which sub-national states of these multi-national federations are formed and the organizing principles of their constituent states. This chapter is aimed at discovering the organizing principles sub-states of these multi-national federation and the criteria they have used in arranging their constituent states. In doing so the difficulties these multi-national federations had faced in forming their sub-national states and the temptation in setting objective criteria upon which sub-national states are created would be analyzed. Valuable lesson would be drawn from this discussion in this chapter which is very helpful to analyze the case of Ethiopian federation in forming sub-national states in subsequent chapters. To this effect section 2.2 and its sub section discusses sub-national state formation of Nigerian federation, section 2.3 and its sub section explores formation of provinces and criteria in forming the provinces of South Africa and section 2.4 and its sub section analyzes formation of the sub-national states of the Indian federation.

2.2. Origins and Formation of Nigerian Federation

Before colonialism, the area that is now known as Nigeria comprised of different kingdoms, empires, caliphates and chiefdoms.²⁰ Most of these kingdoms were heterogeneous in culture, traditions, norms and religions. British colonial conquest began with the re-organization and fusion of these territories, known as amalgamation, between 1861 and 1914.²¹ There were no concrete objective criteria for the amalgamation except for the administrative and exploitative tendency of the colonial powers. There was no consideration for cultural affinity, none for

²⁰ M. Crowther, *The Birth of Nigeria*, (1976) Lagos: Mimeo. P. 11.

²¹ Ibid.

geographical contiguity, despite the natural and geographical separation by two of Africa's giant rivers, River Niger and River Benue.²² The conquest altered the pattern of socio-economic and political system that existed in each of the empires, kingdoms and caliphates.²³ The British divide and rule colonial policy also encouraged regionalism.²⁴

Therefore, the inter-group relation was replaced by enmity, divisions and hatred with a sense of sectionalism, ethno-tribal chauvinism and geographical polarizations which became definitive features of Nigerian federation.²⁵ The historical circumstances make emergence of Nigeria an amalgam of divergent people with divergent language, culture, values and beliefs.²⁶ It is an irony of history that from the moment of amalgamation in January 1914 to date, attempts are still being continuously made to merge together the divergences so as to have a united, unified and cohesive state.²⁷

After the amalgamation the country was more or less run as unitary colony with twenty four provinces (12 in the North and 12 in the South) until the establishment of the federal order in 1946.²⁸ The 1946 constitution divided Nigeria into three regions along communal line dominated by the three major ethnic groups; Igbo in the Eastern, Hausa-Fulani in the Northern, and Yoruba in the western region.²⁹ Hence the Nigerian major ethnic groups; Igbo, Hausa-Fulani, and Yoruba controlled its geographical area as a basis for political support and nationalistic activism throughout the Nigerian federation though Nigeria comprises over 250 ethnic groups speaking more than 200 languages.³⁰

²² Auwalu Musa, Ndaliman Alhaji Hassan, "An Evaluation of the Origins, Structure and Features of Nigerian Federalism", The International Journal of Social Sciences and Humanities Invention Volume 1, (2014), P. 208.

²³ J. Ayoade, The Changing Structure of Nigerian Federalism, (1996), In Elaigwu, J.I. and Akindele, R.A. (eds) Foundations of Nigerian Federalism: 1960-1995. Vol.3: National Council on Intergovernmental Relations, Abuja. P. 103.

²⁴ Ibid.

²⁵ C. Okadigbo, Power and Leadership in Nigeria. Enugu: Fourth Dimension Publishing Company Limited, (1987), p.14.

²⁶ Ibid.

²⁷ Adeyemi, Oluwatobi, "The Politics of States and Local Governments Creation in Nigeria: An Appraisal", European Journal of Sustainable Development, 2, 3, (2013), p. 317.

²⁸ Ibid.

²⁹ Ibid p. 319.

³⁰ Ibid.

According to Oyediran and Oneyeye, the following factors necessitated the adoption of federalism in Nigeria:-³¹

1. *Heterogeneity/cultural differences:* Nigeria is made up of diverse ethnic groups, religions, customs, traditions and languages. These diversities are a problem to the operation of a unitary system.
2. *Size and Population:* The country is too large both territorially and in population for a unitary system of government, and federalism became inevitable for administrative convenience.
3. *Historical /Colonial factor:*The different ethnic groups in Nigeria had developed different administrative structures. The colonial principle of indirect rule allowed each region to preserve its cultural and traditional practices different from those of other regions.
4. *Economic factor:* In Nigeria, natural resources are scattered, therefore component units must unite as a federation to harness the resources for their overall benefit in addition to even and rapid economic development.
5. *Fear of Domination:* There has been fear of dominance of one another among the various ethnic groups, particularly among the major ones like the Yoruba, the Igbo, and Hausa-Fulani. There was also fear by the minority groups that they would be dominated by the majority.

2.2.1 State Creation in the Nigerian Federation: from three to thirty-six states

The Nigerian state creations experiences have been quite dramatic, state re-organization in the country have tended to be cyclical or self-perpetuating with each restructuring merely provoking agitation for further reorganization.³²At the time of independence in 1960 the Nigerian Federation comprised of three regions. The three initial regions were the Northern Region (Hausa-Fulani dominated); the Western Region (Yoruba dominated) and the Eastern Region (Ibo dominated). In all these regions, there were unrelenting clamor for creation of more states, particularly by minority ethnic groups.³³ The Northern Region which was dominated by the

³¹Oyediran and Oyeneye *New Approach to Government*, Lagos Longman Publishers, (2008), p. 14.

³²K. Omotoso, "The Nigerian State and The Problem of State Creation" in Agagu, A.A and Ola, R.O.F (eds) *Development Agenda of the Nigerian State*, Ibadan: Fiag Nigeria Publisher, (2004), P. 102.

³³ Ibid.

Hausa-Fulani contained 55 % of the nation's total population and more than half of the land mass of the country.³⁴

The first major state-creation took place in 1967 under General Yakubu Gowon's military rule in which the number of states increased to twelve.³⁵ In essence, the 1967 state reorganization was aimed at ending the structural imbalance engendered by the disproportionate size of the Northern region.³⁶ At the time, five main principles were used to justify the creation of the additional states. Namely:-

1. Removal of dominance of one state over the central government
2. Each state should form a compact and integrated area
3. Administrative convenience so as to improve the management of states
4. Effectiveness of each state to discharge its allocated functions and
5. States should be created simultaneously to provide certainty and stability.³⁷

The primary motivation for the creation of additional regions was given by Yakubu Gowon, the military head at the time:

“The main obstacle to future stability in this country is the present structural imbalance while the present circumstances regrettably do not allow for consultation through plebiscites, I am satisfied that the creation of new states as the only basis for stability and equality is the overwhelming desire of the majority of Nigerians. To ensure justice, these states are being created simultaneously.”³⁸

The second round of state-creation took place in 1976 when the number of states increased to 19.³⁹ In the 1976 review of states further objectives were announced to justify the creation of more states, namely the demand for even development among the states; the need to preserve the federal structure of government; the need to bring harmony; the need to minimize minority

³⁴Bertus de Villiers, *supra* note 17, at 324.

³⁵Adeyemi, Oluwatobi, *supra* note 29, at 318.

³⁶Ibid.

³⁷Bertus de Villiers, *supra* note 17, at 325.

³⁸Eliagwu, Gowon: The Biography of a Soldier State Man Ibadan: West Books Publishers, (1986), P. 102.

³⁹Bertus de Villiers, *supra* note 17, at 326.

conflicts and the need to bring government closer to the people.⁴⁰In this process the main linguistic groups were subdivided to accommodate smaller sub-groups.⁴¹The state re-organizing Panel made the following concluding remarks in its report, justifying the creation of more states:⁴²

1. The political stability of Nigeria cannot be guaranteed unless more states are created.
2. More states would strengthen the principles of federalism and produce a balanced and stable federation.
3. The economic and political result to be gained from the exercise of creating more states will, in fact, encourage unity.
4. The creation of more states will go a long way in assuaging the fears of minorities.

The main argument advanced in support of partitioning Nigeria centered on the issue of equity with regard to access to social and economic infrastructure.⁴³One of the driving forces behind the demand for more states was equitable distribution of resources. The other is rectifying social inequalities through the activities of local states.⁴⁴In the same vein, the agitation for states and local governments are seen as a sort of ethnic political economic strategy which considers the number of states from each ethnic group as added leverage for a more equitable share of national resources.⁴⁵Therefore, the motivation to create additional states was influenced by various considerations, such as a more equal balance of population; break-up of the large ethnic blocks into smaller sub-units; and more equitable distribution of revenues on a regional basis.⁴⁶ In addition, these proliferations of states were also pursued by the military in an effort to more effectively consolidate its control at the center over the regions, and to diffuse the centrifugal forces that had threatened the Federation. With more states the ability of the military to consolidate central control was therefore enhanced.⁴⁷

⁴⁰ Ibid.

⁴¹ Ibid, at 327.

⁴² U. Okpu, "Ethnic Minorities and Federal Character", in: P. P. Ekeh/E. E. Osaghae (eds.), *Federal Character and Federalism in Nigeria*, (1989), p. 357.

⁴³ K. Omotoso, *supra* note 34, at 102.

⁴⁴ Ibid.

⁴⁵ Ibid, p. 103.

⁴⁶ Ibid.

⁴⁷ R. Suberu, *The Struggle for New States in Nigeria, 1976-1996 African Affairs*, Vol. 1., (1991) P. 281.

Further creation of new states took place under a military rule from 1984 to 1999 when the number of states was increased to 36.⁴⁸ Although the creation of the additional states was said to be quite effective, it inevitably created new minorities within those new states. The new majorities who now had control over their own state were seen as domineering in their relations with others, while in other cases complaints of neglect, discrimination, intolerance and arrogance are leveled against some minority groups in power, usually seen as dominant minorities.⁴⁹ The fact that minorities without a state had little protection within states and had to suffer discrimination and neglect often further stimulated their desire for statehood.⁵⁰

Sooner the states created were caught up in overwhelming administrative challenges and problems such as poor infrastructural facilities, excessively high wage bills, low level of internally generated revenue, dwindling budgets, allocation of scarce resources to unproductive capital projects, massive corruption and wastage through inflated contracts, outright theft of public money and acrimonious battle over assets sharing, to mention just a few.⁵¹ Yet no hope of a stop to the desire for “*own state*” by the ethnic rivals. Hence, demands for the creation of additional regions continued and it has been reported that up to ten additional states may soon be created.⁵² However, the current constitutional requirements for additional regions to be created are very complex and cumbersome and it is unlikely that many more states will be created unless there is wide consensus for the increase of states.⁵³ The Constitution seeks to provide more legal security and certainty to the existence of the states in order to prevent a repeat of state creation through non-democratic means under previous military rule. The states are constitutionally protected and an amendment to the Constitution to create more states can only be made if the following very stringent requirements are met:-⁵⁴

1. Request for the creation of a new state must be approved by at least a two-thirds majority of the members of the Senate and House of Representatives, the house of assembly and the local governments from the area seeking to become a new state;

⁴⁸Bertus de Villiers, *supra* note 17, at 327.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, at 328.

⁵² K. Omotoso, *supra* note 34, at 102.

⁵³ Bertus de Villiers, *supra* note 17, at 328.

⁵⁴ *Ibid.*

2. Approval by way of a referendum of at least two-thirds of the population of the area that seeks to become a new state;
3. The request for the new state must be approved by a majority of all the existing States as well as a majority of the Houses of Assembly;
4. The proposal is approved by a two-thirds majority of each of the houses of the National Assembly.

2.2.2 Criteria used for creating states in Nigerian federation

The Nigerian process of state creation never had a visionary, normative policy or legal framework according to which the state reorganization occurred. State creation was principally done under military rule and as a form of crisis management and therefore took place in the absence of transparent public participation, democratic legitimation or a clear vision to guide the process.⁵⁵ State creation became in effect the main mechanism to accommodate demands by minority groups for protection. Practice has shown, however, that for each new state there were new minorities demanding more states.⁵⁶

As indicated earlier, originally state creation in Nigeria was derived from minority opposition to the three regions of federal structure, which secures autonomy and hegemony for the Hausa-Fulani, Yoruba and Igbo majority nationalities in the Northern, Western and Eastern Region respectively. Larry Diamond thus observes:

“Ethnic minority fears and grievances centered around obtaining a fair Share of rewards and resources of an expanding economy and states; contract, loan, scholarships, processing plant...minority demands for separate state were based on the belief actively promoted by their leaders that minorities were being cheated in the distribution of those resources by the majority dominated regional governments.”⁵⁷

The demands for the creation of state and local governments by various ethnic groups have become a recurring phenomenon in Nigerian polity till to date.⁵⁸ What has aggravated the demand for more states was lack of objective criteria for state creation. Agitation for new state

⁵⁵Ibid, at 329.

⁵⁶Ibid.

⁵⁷ Larry quoted in Adeyemi and Oluwatobi, supra note 29, at 160.

⁵⁸ Ibid.

became a political issue and the newly emergent politicians used the issue to campaign for votes and political support in the bid to gain political power.⁵⁹

However, the 1967 state re-structuring under the military regime of General Murtala Muhammed has some basic state creation elements. It was said that ethnic affinity, geographical contiguity, population size, land area, viability of new and old state, cultural incompatibility and self-determination were used as criteria for state creation.⁶⁰ Owing to the explicit association of state-creation with the devolution of central revenue, there was an official commitment in making the state as equal in population as possible. This was in order to ensure some per-capital equity in access of territorial communities to federal revenues.⁶¹ Consequently, many statehood requests were rejected on no other ground than their relatively limited population, which did not justify any reorganization.⁶²

While the creation of additional regions from the original three regions may have contributed to greater stability in Nigeria, such a break-down of larger ethnic groups into smaller entities is subject to limitations since it could encourage an ever-evolving process where smaller and smaller groups find a rationale to demand an own state.⁶³ In a country with so many ethnic identities as Nigeria, there will always be groups that find a rationale for defining themselves separate from other ethnic groups and demanding a state of their own.⁶⁴ Nonetheless, the creation of the additional states is seen as one of the key elements why Nigeria has been able to withstand the pressure of ethnic mobilization and why it has been able to accommodate the aspirations of minorities.⁶⁵ The state creation in Nigeria has therefore weakened the potential of violent ethnic separatism and replaced it with inter-state competition and mobilization which has not destabilized the Federation.⁶⁶ Horowitz concurs with the positive consequences of the state creation in Nigeria. He emphasizes that the dividing up of the original Hausa region diverted the

⁵⁹Ibid, at 161.

⁶⁰Ibid, at 165.

⁶¹ E. Ojo, and P. Adebayo, "The Politics of State and Local Governments' Creation and Nigeria's Search for Geo-Political Balancing" in *An International Multi-Disciplinary in African Journals*, (2008), online access at www.ajol.info.org, p. 25.

⁶² Ibid.

⁶³Bertus de Villiers, *supra* note 17, at 324.

⁶⁴ Ibid.

⁶⁵Ibid, at 325.

⁶⁶Ibid.

most active political entrepreneurship from identity-battles at the federal level to more local disputes based on accentuating more local identifications.⁶⁷

However, the creation of 36 states in Nigeria has not resolved all minority concerns and it has not addressed all aspirations for further state creation to take place. State creation is increasingly being demanded not only on ethnic considerations, but also in regard to demands for greater accessibility to government, more accountability of government and better access to and allocation of resources.⁶⁸ State-creation therefore remains to be serious agenda of Nigerian federation. The Nigerian state creation has in many instances been a way to riches for many groups and individuals within those groups and it is therefore not surprising that more groups and leaders are demanding for a state of their own.⁶⁹

2.3. Multi-party Negotiation and State Formation in the South African Federation

In its 1996 Constitution, South Africa adopted a system of multi-level governance divided into three spheres of government – national, provincial and local – that are to be distinctive, interdependent and interrelated. But the constitution does not refer such state structure as federation.⁷⁰ South Africa's transition from apartheid to a truly multi-racial democracy stands as one of the significant political events of the last century. The transition was peacefully negotiated among South African political parties through multi-party negotiation process. The democratic bargain is still holding South African federation.⁷¹ One of the most controversial issues in the debate was whether the South African State should be unitary or federal in nature.⁷² It was the out-going white-dominated Apartheid regime national party (NP) and the liberal Democratic Party (LDP) that insisted on federalism as a condition of a final constitutional settlement. They believed that federalism would contribute to limited government and restrain the majority that was about to take office. The NP representing the majority of whites, saw federalism, and with it

⁶⁷Ibid at 330.

⁶⁸ Ibid.

⁶⁹Ibid, at 331.

⁷⁰ See, for example, J. De Visser, ‘‘Republic of South Africa’’ in N. Steytler, (ed) *Local Government and Metropolitan Regions in Federal Systems*, Canada McGill-Queens University Press, (2008), p. 32.

⁷¹ A. Butler, *Contemporary South Africa*, Hampshire, Palgrave MacMillan press, (2004), p. 25.

⁷²Ibid.

a Bill of Rights, as providing an important check on the excesses of power by a new black majority government.⁷³

Besides NP and LDP, the Inkhata Freedom Party (IFP), which often projects itself as the sole custodian of Zulu political interests, also demanded a highly autonomous KwaZulu-Natal where Zulus remain the ethnic majority, and even claimed the right to self-determination and Zulu kingdom. Similarly, a small group of radical, ultra-right Afrikaners clamored for the creation of a *Volkstaat*, effectively a homeland exclusively for white Afrikaners.⁷⁴

The preferred position of the African National Congress (ANC) and the broader anti-apartheid movement entering the negotiation was overwhelmingly for a unitary South Africa. ANC argued the federal option proposed by the minority parties would reinforce the ethnic divisions of the past. For the ANC, federalism and decentralization were indelibly linked to the Apartheid model of *Bantustans* – quasi-autonomous puppet regimes that would deny Black South Africans full citizenship in South Africa itself.⁷⁵ ANC leaders were acutely aware of how the old regime had manipulated tribal and ethnic rivalries in a divide and rule strategy.⁷⁶ In addition the ANC and its allies feared that a federal order with delegation of powers to the provinces would weaken and disperse authority considerably thereby heavily restricting the central government's capacity to implement and consolidate mechanisms for reconstruction and development in the post-apartheid era.⁷⁷ Their goal was a united, non-racial, non-tribal South Africa, and they feared a regime that would legitimate and entrench such differences. Thus, accepting a federalist system was a difficult pill for the ANC to swallow. Their preference was overwhelmingly for a unitary state.⁷⁸

From the forgoing discussion one can see that the political difference between the negotiating political parties of South Africa was very enormous. However, despite these misgivings, the parties were able to concede their respective interest and put the multi-level system of government into place.⁷⁹ Maximal political inclusiveness was sought and achieved in the

⁷³Ibid, at 27.

⁷⁴ Y. Khosa, , "The Kingdom, the Volkstat and the New South Africa: Drawing South Africa's New Regional Boundaries", *Journal of Southern African Studies*21, (1995), p. 281.

⁷⁵ Ibid.

⁷⁶ Mac Maharaj, "The ANC and South Africa's Negotiated Transition to Democracy and Peace", *Berghof Transitions Series* No. 2, (2008), p. 96.

⁷⁷ Heinz Klug, *The Constitution of South Africa: A Contextual Analysis*, Hart Publishers,(2010), p. 13.

⁷⁸ Ibid.

⁷⁹Ibid, at 15.

negotiating Process. The ANC black majority managed to get in to power with strong central government and the NP secured both structural and constitutional bill of right and constitutional court limitations against the black majority government. The IFP is also succeeded in getting constitution status to their Zulu tradition leaders. Though not the wished for symmetrical *Volkstaat* of their own, the Afrikaners have also rewarded by the state of Western Cape. In addition the languages of every party were given official status. Finally, the interest of every party was reflected in the final negotiated constitution.⁸⁰

2.3.1 Creation of the Provinces

The Negotiating Forum, which represented all of the major political parties involved in the negotiation process, appointed a Commission for the Demarcation and Delimitation of Provinces.⁸¹ The Commission was also provided with a group of technical experts to assist with the public consultation, to undertake research, to give technical advice and to assess the public comments and proposals. The Commission's recommendations were accepted with minor adaptations by the main negotiating parties and those recommendations continue to form the basis of demarcation of the current provinces.⁸²

The Negotiating Forum provided the Commission with ten demarcation criteria according to which it had to assess the proposal submitted to it by the public and make recommendations about the future make-up of the provinces.⁸³ The public was invited to make inputs to the Commission and to motivate their submissions by using the criteria as points of departure. It is important to note that the Commission started its work with a clean slate, so to speak, with no draft demarcation outline or a minimum or maximum number of regions provided to it by the Negotiating Forum. Members of the public and political parties were therefore at liberty to propose any number of provinces provided they linked it in some way or another to the demarcation criteria.⁸⁴

⁸⁰Ibid, at 16.

⁸¹Bertus de Villiers, *supra* note 17, at 333.

⁸²Ibid, at 334.

⁸³ Ibid.

⁸⁴Ibid, at 335.

2.2.2. Criteria for Forming the Provinces

The South African Commission for the Demarcation and Delimitation of Provinces demarcated the provinces based on the following criteria:-⁸⁵

1. Historical boundary considerations, such as the then four provinces, the respective homelands, existing local governments, and the economic development regions,
2. Administrative considerations, including central points for the delivery of services to ensure that each province would be properly served,
3. Rationalization of existing structures and institutions such as homelands, provinces, local and regional governments
4. Limit financial costs as far as possible
5. Minimize inconvenience to people as much as possible
6. Minimize the dislocation of existing and future services
7. Demographic considerations and future movement patterns
8. Development potential, natural resources and possible economic growth points
9. Cultural and language realities

The Commission was required to take all these criteria into account and to assess the proposals submitted by the public on the basis of those criteria before making recommendations to the Negotiating Forum. The intention of laying down criteria for demarcation and to invite an expert Demarcation Commission to make recommendations was that the Negotiating Forum expected a well-balanced, considered and a politically unbiased report.⁸⁶ Based on the above criteria the Commission recommended the creation of nine provinces, and those recommendations ultimately formed the basis for the provinces of South African federation as they exist today.⁸⁷

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid, at 336.

The Commission conducted its affairs in public, its recommendations were open for public scrutiny and comment, and as mentioned above, it took a variety of criteria in to account of which “language and culture” were only one consideration.⁸⁸ Although “culture and language” were not dominant criteria when the South African provinces were created, the living patterns of South Africans played an important role when final provincial boundaries were settled.⁸⁹ Generally speaking the respective major South African ethnic groupings were indirectly accommodated within the respective provinces in the areas where they constitute a majority. For example the Zulus in Kwazulu; the Xhosas in Eastern Cape; the Sotho in the Free State and the Tswana in the North West; while Afrikaans is the majority language in the Northern Cape Province and Western Cape province.⁹⁰ It was also acknowledged by the Commission that further adjustments to the proposed provincial boundaries may be required in the future.⁹¹

There may be criticism in regard to the quality of governance in some provinces, but the actual provincial boundaries have, in general, not been subject to popular challenge. With the exception of a few local problem areas where some communities preferred being in one province to another, one could contend that the general demarcation outcome in 1993 has since been repeatedly legitimized through wide acceptance by the public.⁹² The general public acceptance of the provincial boundaries does not mean that alterations to boundaries, reduction of provinces or creating new provinces should never be considered. It is quite possible, as experienced in some other federal-type dispensations, that changes to boundaries may be required from time to time. This does not mean, however, that provincial boundaries should be altered at whim. If alterations to provincial boundaries are abused for political gain, the credibility of the system could suffer and demands for further changes to boundaries could grow.⁹³

In summary, the creation of the nine provinces of South Africa took place in the turmoil of political transformation and transition of the early 1990’s, but the provincial boundaries have since 1993 been legitimized through wide acceptance and the development of provincial

⁸⁸Y. G. Muthien and M. Khoza, “The Kingdom, the Volkstaat and the new South Africa: Drawing South Africa’s new regional boundaries”, *Journal of Southern African Studies* 21, (2005), p. 303.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹²Bertus de Villiers, *supra* note 17, at 338.

⁹³ Ibid.

identities.⁹⁴ Although there are a few local areas where communities continue to agitate for changes to provincial boundaries, there is no wide-spread dissatisfaction with or resistance to the exiting provincial boundaries. There are also no demands, except perhaps from the die-hard Right-wing who continues to agitate for a *Volkstaat*, for additional provinces to be created.⁹⁵

2.4. Formation of the Indian Federation

The Indian states as existing at independence were, according to Watts, the result of a “hasty integration” of the previously existing princely states for purposes of administrative convenience.⁹⁶ Although India had such pre-independence princely states and locally governed territories and regions, the federation was created by way of decentralization and newly created states.⁹⁷ Although linguistic considerations played a large role in the re-organization of the states shortly after independence, there remains in all of the state’s language, cultural and religious minorities.⁹⁸ The states are, in many regards, a microcosm of the Indian society. In several instances the states have greater diversity of minorities and population. This diversity is not only just in terms of size and composition of population, but also as far as the size of the territory, economic viability, resources and infrastructure are concerned, and many of the states are larger, with greater diversity of population than entire federations.⁹⁹

2.4.1. State creation in Indian Federation

The drafters of the Indian Constitution recognized that the creation of the states had to be flexible so as to allow for adjustments to the state boundaries to be made as time progressed. As a result, the Constitution provides for a mechanism for the reorganization of states. According to the Indian constitution the federal Parliament, House of the People (LokSabha), is clothed with the sole authority to create new states, to amend the boundaries of states and to do things in connection therewith. Following this power, the House of the People (LokSabha) may create new states, combine states and change the names of states without the approval of the second house of Parliament, the Council of States (RajyaSahba), or the governments or legislatures of

⁹⁴Y. G. Muthienand M. Khoza, *supra* note 90, at 306.

⁹⁵ *Ibid.*

⁹⁶ R. L. Watts, Multicultural Societies and Federalism, Studies of the Royal Commission on Bilingualism and Biculturalism, (1968), p. 110.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, at 111.

⁹⁹ Bertus de Villiers, *supra* note 17, at 315.

the states or the population affected by the alteration.¹⁰⁰ Although the federal Parliament has to adhere to all constitutional provisions when state boundaries are altered, it leaves parliament in a very powerful position where it can alter the structure of the federation at its own volition.¹⁰¹

According to Jain, the Indian federal Parliament has plenary and comprehensive powers to pass legislation to reorganize the States and Territories and to deal with all problems – constitutional, legal, administrative – arising as a result thereof.¹⁰² Therefore, the Indian federal Parliament can make the decision to create a new state, to alter a boundary or to combine states by an ordinary majority.¹⁰³

2.4.2. Criteria for creating states in Indian federation

At the time of the drafting of the Indian Constitution, there were competing arguments on the grounds on which the states should be created. The dominant Indian Congress Party was consistently supportive of territorial recognition of the vast collection of linguistic and cultural identities in India. The Indian Congress Party committed itself to the creation of linguistic states as a basis for the future stability of India.¹⁰⁴ As many as 1600 languages and dialects are spoken in India. The main languages can be grouped into about 12-15 regional languages. India is therefore often referred to as an example of “linguistic federalism” where the constituent units derive from language groupings.¹⁰⁵

The creation of states along predominantly linguistic lines was seen as a way to protect minorities, to build national unity within diversity, to make the government more-closer to the people and to improve efficiency in governance.¹⁰⁶ Pursuant to this understanding, the report of Language Commission India in 1956 underlined the importance of language in the formation of states as follows:

“Language is the main or almost the sole instrument for inter-communication in a civilized society; modern Governments concern themselves so intimately and so extensively with all

¹⁰⁰ Ibid.

¹⁰¹ Ibid, p. 316.

¹⁰² M. P. Jain, Indian Constitutional Law, 2011, p. 314.

¹⁰³ Ibid.

¹⁰⁴ Bertus de Villiers, *supra* note 17, at 316.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

aspects of social and even individual existence that inevitably in a modern community the question of linguistic medium becomes an important matter of concern to the country's governmental organization. In the conduct of legislative bodies, in the day-to-day dealings with citizens by administrative agencies, in the dispensation of justice, in the system of education, in industry, trade and commerce; practically in all fields in which it has to interest itself in modern times, the State encounters and has to tackle the problem of linguistic medium."¹⁰⁷

However, each main linguistic group in India does not necessarily have a state and within states there are often multiple smaller language groups. In addition to the language groups that do not have a home-state, there are also in all states minority language groupings. The creation of states on language lines was therefore only part of the solution to accommodate the diversity of India.¹⁰⁸

The Linguistic Provinces Commission (also known as the Dhar Commission), appointed in 1948 to make recommendations about the creation of states, was concerned that an over-emphasis of language would fuel sub-nationalism, encourage instability and prevent India from moving into modernity. The Commission described demands for linguistic states as an example of "parochial patriotism" and a recipe to undermine Indian nationalism.¹⁰⁹ It cautioned that once linguistic states were created, it would fuel the demands by those groups who were not given statehood, for their own states since it caused a "chain reaction of linguistic state movements". The Commission's main concern was that linguistic states would "set the ball rolling for the disintegration of the entire country".¹¹⁰

2.4.3. Ongoing Demands for More States

The state creation process in India is not yet complete. In fact, only four years after the 1956 state re-organization, new states were already created with Bombay being divided into Maharashtra and Gujarat in 1960. That was followed by the creation of Haryana and Punjab in 1966. Since then several more states have been created and demands are strong for additional states. Since the 1956 demarcation several new states have been created.¹¹¹ In 2000 a major state

¹⁰⁷ Report of the Official Language Commission of India, 1956, p. 11.

¹⁰⁸ Bertus de Villiers, *supra* note 17, at 318.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ J. Schwartzberg, "Factors in the Linguistic Reorganization of Indian States", in: P. Wallace

creation exercise took place with three new states being created. There are also ongoing demands and proposals for more states, for example for a state of the Greater Nagaland and for the creation of smaller states from the state of Assam, which contains 200 of India's 635 tribal categories.¹¹²

The most recent demand for statehood is that of Telangana in the northern part of the territory of Andhra Pradesh. The proposed new state has a population of 35 million. Reaction to the creation thereof, against the will of Andhra Pradesh, caused widespread public resistance but it also caused amongst those in favor of public action, such as resignations from the Parliament, to support the application.¹¹³ This followed more than a decade of demands by separate groups within the new state for a separate state due to what they perceived as neglect by Andhra Pradesh. Many demands for new states remain flourished with at least ten areas demanding for new states to be created.¹¹⁴

An interesting element of the current demands for new states is that in some instances the emphasis has shifted slightly from linguistic considerations as the basis of such new states, to political and economic justification for new states as well as arguments that the new areas would be administratively more efficient and better managed.¹¹⁵ The creation of states in India since 1956 has been predominantly *ad hoc* and as a result of irrepressible public demand, conflict and even violence rather than a visionary grand scheme or a structured process according to agreed criteria to guide the creation of states.¹¹⁶

In the absence of a constitutional or statutory framework to guide demands for state creation, the process remains mainly a political one. In essence the state creation process In India was a form of crisis management – if a minority could not be satisfied by any other constitutional or political means, they may as a final reward end up with a state of their own.¹¹⁷ There are signs that with demands for the creation of smaller states from the existing ones, issues of economic

(ed.), *Region and Nation in India*, (1985), p. 155.

¹¹²Ibid, at 156.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵V. S. Chand, "A Report on Demands for Creation of Small States in India", (2010), p. 24
available at www.scribd.com

¹¹⁶ Ibid

¹¹⁷P. Kumar, "Demand for a Hill State in UP: New Realities", in: V. Grover/R. Arora, *India Fifty Years of Independence*, (1999) p. 63

mismanagement and feelings of neglect in regional and rural areas are becoming the key motivations for a next round of major territorial reorganization. The question is whether state creation is the best way of addressing such concerns.¹¹⁸

2.4. Conclusion

In the first place state creation in Nigeria was derived from minority opposition to the three regions of federal structure, which secures autonomy and hegemony for the Hausa-Fulani, Yoruba and Igbo majority nationalities in the Northern, Western and Eastern Region respectively. Therefore, the first criterion for creation of states in the Nigerian federation was removal of dominance of the three ethnic groups over the other minority ethnic groups. Later on Nigeria developed other criteria for state formation such as ethnic affinity, geographical contiguity, population size, land area, viability of new and old state, cultural incompatibility and self-determination. The central government, the military rulers of Nigeria at different times, used state creation for political purposes and to handle ethnic crises. Hence state formation in the Nigerian federation was imposed and enforced by power and lacks legitimacy and stability.

The formation of South African provinces were well negotiated, studied and organized based on clearly defined pre-set multiple criteria such as historical boundary considerations, administrative considerations, demographic considerations and future movement patterns, development potential, natural resources and possible economic growth points, Cultural and language realities. For this matter since the formation of the federation, South Africa managed to organize relatively stable regions or provinces unlike the case of Nigeria. This shows that the vitality of all inclusive initial negotiation among various political groups of the country in the formation of sub-national states and stable federation. This is a lesson worthy to be adapted by every country that wishes to establish democratic and stable federation.

As seen in this chapter the Indian federation was formed on the bases of territorial-linguistic lines. Based on territorial-linguistic criteria the Indian federal parliament creates sub-states through state reorganization commission when there is a demand for statehood and that demand brings about conflict among ethnic groups of India. Sub-national state formation in the Indian federation is also relatively stable and democratic as it done by democratically elected

¹¹⁸ Ibid

parliament. However, Jain prescribes that the entire federation of India should be reviewed on the basis of criteria such as administrative convenience, geographic homogeneity, economic viability, and so forth so as to reduce the size of some of India's very large sub-states.¹¹⁹

¹¹⁹M. P. Jain, Indian Constitutional Law, (2011), p. 314.

Chapter Three

Sub-national State Formation in the Ethiopian Federation

3.1. Introduction

This chapter explores the historical, political and ideological background of the Ethiopian federation with the aim of identifying the constitutional principles upon which the sub-national states of the Ethiopian federation is formed. To this effect, Section 3.2 presents background to the Ethiopian federation in order to identify historical and political bases of the Ethiopian federation. Section 3.3 deals with Nationalities issue, which is the core problems the Ethiopian federation sought to solve. Section 3.4 and 3.5 are concerned with the actual establishment of the Ethiopian federation during Transitional Period and upon the coming to force of the Federal Constitution. The last two section of the chapter points out the effects of the current political system on the sub-national state formation.

3.2. Background to the Ethiopian Federation

Ethiopian society is today characterized by large diversity of languages, cultures, religions, socio-economic activities and governance traditions. Although the Ethiopian state has a particularly long history, this large societal diversity is of much more recent origin. It arose in the aftermath of a territorial expansion of the empire of Abyssinia at the end of the nineteenth century.¹²⁰ It was Emperor Menelik who in the last decades of the nineteenth century considerably expanded the Abyssinian/Ethiopian heartland – strongly dominated by Orthodox Christians who used Amharic and Tigrigna as the most important languages – with territories in the south, east and west through vast military conquest.¹²¹ This territorial expansion led to the traditionally dominant population groups no longer having a numerical dominance. The conquered peoples spoke dozens of languages, professed several religions and had different socio-economic activities and governance structures. However, this diversity was not at all reflected in government policy.¹²²

¹²⁰TeshaleTibebu, The making of modern Ethiopia 1896 – 1974, Red sea press (1995), p. 41.

¹²¹Ibid.

¹²² See, Edmond J. Keller, “Making and Remaking State and Nation in Ethiopia”, in Ricardo Rene Laremont, ed, Borders, Nationalism, and the African State, Boulder, Co: Lynne

On the contrary, government policy aimed to transform this heterogeneous group into a homogeneous Ethiopian nation. The strategy used for this purpose did not include the creation of a new identity, but the propagation of an existing identity – the identity of the conqueror – as the national identity.¹²³ Concretely, the regime strived to erase the ethnic identity of the non-Amhara peoples and to replace it with an Amhara identity.¹²⁴ It was the Amhara elite (and in particular the elite from the central region of Shoa) which had assumed power after the accession of Emperor Menelik in 1889.¹²⁵ The dominant position of the Tigrayans had ended with the death of the Tigrayan Emperor Yohannes, the predecessor of Menelik. The Amhara language (Amharic), culture and religion (Ethiopian Orthodox Christianity) were strongly propagated and idealized and all other languages, cultures and religions were denigrated.¹²⁶

As the state failed to accommodate the actual diversity of the country and became extremely centralized at the expense of regional rulers; the religious, lingual, cultural as well as political and economic dominance of the central Abyssinian rulers gave birth to the “question of nationalities.”¹²⁷ Therefore, with the emergence of centralized administration, Ethiopia faced serious state crisis. It is not surprising then that the legitimacy of the government, its institutions and the values upon which it is established remain one of the sources of tension and at times the cause of its terminal crisis and finally the political marginalization of the bulk of the community led to civil wars.¹²⁸ As discussed subsequently this crises finally caused the establishment of the Ethiopian Federation.

3.3. The Nationalities Issue

In the 1960s, a number of rebellions arose where the dissatisfaction with an Amhara dominated state was an important mobilizing factor. There was the independence struggle in Eritrea, which was more and more supported by the development of an Eritrean nationalism. Furthermore, there

Reinner, (2005), p. 89.

¹²³ Ibid, at 92.

¹²⁴ Ibid, at 95.

¹²⁵ See, Christophe Van der Beken, “Ethiopia: From a Centralized Monarchy to a Federal Republic”, *Africa Focus Journal* Vol. 20, N. 1-2 (2007), pp. 13-48.

¹²⁶ Ibid.

¹²⁷ Christopher Clapham, “Constitutions and Governance in Ethiopian Political History”, in *Constitutionalism: Reflections and Recommendations, Symposium on the Making of the New Ethiopian Constitution*, (Addis Ababa: Inter Africa Group, 1993), pp. 30-31.

¹²⁸ GebruTareke, *Ethiopia: Power and Protest*, Lawrenceville N.J. & Asmara: Red Sea Press, (1996), p. 203.

was the rebellion in the southeastern province of Bale where a Somali and a nascent Oromo nationalism could be observed.¹²⁹

The revolts in Bale and Eritrea contributed to a larger attention to ethnicity in Ethiopia. This was especially visible within the Ethiopian student movement. In the course of the 1960s the student movement became one of the most important actors in the opposition against the regime of Emperor Haile Selassie.¹³⁰ In the beginning, the Ethiopian student movement had a pan-Ethiopian character, but at the end of the 1960s, the movement adopted a critical attitude towards the unity claimed by the government, a unity that was supported, by the dominance of Amhara identity.¹³¹ The rebel movements in Bale and Eritrea undoubtedly influenced the critical stance of the students. In addition Marxist-Leninist ideas were also influenced student movements. Marxist-Leninist ideas about the “nationalities issue” were applied to Ethiopian society.¹³² Taking into account the above-described nation and state building strategy of the imperial regime, it is obvious that Marxist-Leninist literature on the national question had a particular relevance for Ethiopia. In his publication “Marxism and the National Question” Stalin recognized the right to self-determination of nations, which according to him, implied:

“that only the nation itself has the right to determine its destiny, that no one has the right forcibly to interfere in the life of the nation, to destroy its schools and other institutions, to violate its habits and customs, to repress its language, or curtail its rights.”¹³³

Moreover, according to Stalin as well as Lenin, the right to self-determination even included the right to secession.¹³⁴ However, in their minds, the right to secession was conceived of more as a tactic and thus not seen as a real possibility. Lenin judged that granting the right to self-determination, including secession, would not actually stimulate, but rather prevent nations from invoking this right. In a dialectic way, it was thus used as a strategy to promote state unity.¹³⁵ In

¹²⁹ Ibid.

¹³⁰ Randi RonningBalsvik, “An Important Root of the Ethiopian Revolution: The Student Movement”, in AbebeZegeye and Siegfried Pausewang (eds.), *Ethiopia in Change – Peasantry, Nationalism and Democracy* (London/New York: British Academic Press, 1994), p. 84.

¹³¹ Ibid.

¹³² Ibid.

¹³³ J.V. Stalin, *Marxism and the National Question* (1913), p. 85 available at <http://www.marxists.org/reference/archive/stalin/works/1913/03.htm>.

¹³⁴ Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy*, (Princeton: Princeton University Press, 1984), p. 34.

¹³⁵ Ibid.

any case, the national question was subordinate to the class struggle, which was unequivocally stated by Stalin in the following words:

“Consequently, the fate of the Russian problem, and, accordingly, the "liberation" of the nations too, is bound up in Russia with the solution of the agrarian question, i.e., with the destruction of the relics of feudalism, i.e., with the democratization of the country. That explains why in Russia the national question is not an independent and decisive one, but a part of the general and more important question of the emancipation of the country.”¹³⁶

These ideas clearly influenced Ethiopian students when they discussed the ethnic issue in Ethiopia.¹³⁷ In 1969, the student magazine *Struggle* published a number of articles, which tackled Amhara dominance over the other ethnic groups.¹³⁸ Especially an article written by Walleign Mekonnen has gained notoriety. In his article, Walleign radically contested the official assimilation policy. He recognized the ethnic diversity of the Ethiopian population:

“Ethiopia is not really one nation. It is made up of a dozen nationalities, with their own languages, ways of dressing, history, social organization and territorial entity. And what else is a nation? Is it not made of a people with a particular tongue, particular ways of dressing, particular history, particular social and economic organizations? Then may I conclude that in Ethiopia there is the Oromo Nation, the Tigray Nation, the Amhara Nation, the Gurage Nation, the Sidama Nation ...” Therefore, he continued, a new state has to be built, a state in which “all nationalities participate equally in state affairs, where every nationality is given equal opportunity to preserve and develop its language, its music, its history, ... a state where no nation dominates another nation be it economically or culturally.”¹³⁹

The strategy of “*ethnic liberation*” and the motivation for the search for a new identity for the Ethiopian state came chiefly from two ethno-regional movements: the Tigray People's Liberation Front (TPLF) and the Oromo Liberation Front (OLF).¹⁴⁰ Both of these movements claimed to speak on behalf of their respective ethnic communities, and in each case their resentment came

¹³⁶Stalin quoted in Connor, *Ibid*, at 35.

¹³⁷ Randi Ronning Balsvik, *supra* note 134, at 84.

¹³⁸*Ibid*.

¹³⁹Walleign Mekonnen, quoted in Sarah Vaughan, *Ethnicity and Power in Ethiopia* (Edinburgh: The University of Edinburgh PhD thesis, 2003), p. 136.

¹⁴⁰Alemante G. Selassie, “Ethnic Federalism: Its Promise and Pitfalls for Africa”, *William & Mary Law School Scholarship Repository publications*, (2003), p. 62.

from their perception that the Ethiopian state had historically been dominated by the Amhara, the country's other major ethnic group.¹⁴¹

The state structure represented by the central government was forcefully dismantled in 1991 in the hands of these national liberation fronts that fought against the system representing the ethno-linguistic groups in different parts of the country and the decision to create the federation came from the victorious national liberation movements under a circumstance where the military and security apparatus of the unitary state was practically abolished. There was straightforward grant of self-determination and self-rule to all nations and nationalities.¹⁴²

The then transitional president Meles Zenawi, justified the adoption of the government on the bases of nationalities in this way:

“From a purely legal point of view, what we were trying to do was to stop the war, and start the process of peaceful competition, peaceful expression of political opinion, and so forth. The key cause of the war all over the country was the issue of nationalities. Any solution that did not address them did not address the issue of peace and war. [...] People were fighting for the right to use their language, to use their culture, to administer themselves. So without guaranteeing these rights it was not possible to stop the war, or prevent another one coming up. The other dimension is that of democratization of society. When you open up, how are people going to express themselves? People were already expressing themselves even at the early stage before the conference in terms of nationalities. There were so many nationality-based organizations. That is representation of a certain sentiment.”¹⁴³

According to this statement the introduction of a federal system was seen as a way of maintaining unity and averting the disintegration of the country. The argument is that if the different nationalities did not obtain any kind of autonomy, Ethiopia would soon erupt into war again.¹⁴⁴ This is a kind of decentralization which is based on the assumptions that people express

¹⁴¹Ibid.

¹⁴²Ibid.

¹⁴³Meles Zenawi, quoted in Vaughan Sarah, The Addis Ababa Transitional Conference of July 1991: its origin, history and significance. Edinburgh: Edinburgh University/ Centre for African Studies, (1994), P. 56.

¹⁴⁴ Lovise Aalen, Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000. Chr. Michelsen Institute of Development Studies and Human Rights Max-Planck Institute, (2002), p.14.

their political aspirations along ethnic lines, and that the abolition of a strong central government and the empowerment of lower ethnically defined units will ensure stability.¹⁴⁵

3.4. The Transitional Period

The Transitional Charter, which worked as an interim constitution, adopted EPRDF/TPLF's ideas largely unmodified, although the OLF played an important part in the shaping of the document. Nevertheless, the political implications that followed the introduction of the Charter and the proclamation issued to establish national/regional self-governments, Proclamation No. 7/1992, certainly represent departure from the past.¹⁴⁶ Following this proclamation, two political developments were clearly observable;¹⁴⁷

1. The choice of ethnicity as a basic principle of political organization of the state, and society
2. The reconstruction of the Ethiopian centrist and unitary state by introducing a federal system of government

These two interlinked processes were again anchored on the basic formula of the right to self-determination for ethno-national groups.¹⁴⁸ It was certainly an official acknowledgment of Ethiopia as a multi-ethnic and multi-religious state.¹⁴⁹ The political rationale for such a radical change in the fundamental thinking of state organization among other things has been the view that this formula was a decisive remedy for the resolution of Ethiopia's long-standing problem of the nationality question.¹⁵⁰

The Charter assured the right to self-determination for "nations, nationalities and peoples", the independence of Eritrea and the aim of establishing elected regional and local administrations based on ethnic lines.¹⁵¹ The right to self-determination for the nationalities was the cornerstone of the Transitional Charter. Every "nation, nationality and peoples" obtained the right to promote its own culture, history and language and administer its own affairs in addition to participating in the central government. The right to independence was also affirmed, if nations, nationalities and

¹⁴⁵ Ibid.

¹⁴⁶ Leencho Lata, *The Ethiopian state at the crossroads*, Lawrenceville: The Red Sea Press, (1999), p, 51

¹⁴⁷ Assefa Fisha, *supra* note 1, at 223.

¹⁴⁸ Ibid.

¹⁴⁹ See Leencho Lata, *supra* note 145.

¹⁵⁰ Ibid.

¹⁵¹ See Lovise Aalen, *supra* note 5.

peoples were convinced that the above rights were denied they had the chance to seek secession.¹⁵²

The first elections in the Transitional Period were conducted in 1992, to fulfill the aims of empowering ethnic and national groups by decentralizing authority, federalizing governmental structures and providing local government with a popular mandate.¹⁵³ The new constitution, the main document for legalizing and formalizing the federal system, was ratified by a Constitutional Assembly in December 1994, and came into effect in August 1995.¹⁵⁴

The structures of each regional unit were formally established by proclamation 7 of 1992. Thirteen regional units plus Addis Ababa city, here called national/regional self-governments, were listed and defined on the basis of ethnic identities. Addis Ababa City was directly administered by the central government.¹⁵⁵ Only five of the ethnically defined states are relatively homogenous and have an ethnic majority (Tigray, Amhara, Afar, Somali, and Oromiya). The four regions in the south are very heterogeneous with more than 45 ethnic groups altogether, while Gambella and Benishangul-Gumuz have no clear majority group. The population in Harari is ethnically mixed, and the Amhara and the Oromo ethnic group constitute the majority.¹⁵⁶

The Charter and the proclamation explicitly provided that the boundaries of the territorial regions are defined on the basis of nationality in order to guarantee the nationalities the right to self-administration.¹⁵⁷ The proclamation distinguished between regional self-governments based on an agreement of two or more adjacent nationalities, and national self-governments, established by any nation, nationality or people.¹⁵⁸ Accordingly, the proclamation enumerated sixty-four identified nations, nationalities and peoples and set up thirteen regions plus Addis Ababa city.¹⁵⁹ Moreover, it was provided that self-government of adjacent nations, nationalities and peoples may by agreement establish a larger regional self-government within any of the 13 regions

¹⁵²Transitional Period Charter of Ethiopia, 1991.

¹⁵³Tronvoll Kjetil, *Ethiopia: a new start?* London: Minority Rights Group International, (2000) p. 22.

¹⁵⁴See Lovise Aalen, supra note 5.

¹⁵⁵ Transitional Period Charter of Ethiopia, 1991, supra at note, 155.

¹⁵⁶ See Lovise Aalen, supra note, 5, at 53

¹⁵⁷ James C.N. Paul, "Ethnicity and the New Constitutional Order of Ethiopia and Eritrea", in Yash Ghai ed., *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge University Press, 2000), p. 183.

¹⁵⁸ See, Proclamation No. 7/1992, a proclamation to provide for the establishment of National/Regional Self Governments *NegaritGazeta* 51st year No. 2 Addis Ababa, 14th January 1992.

¹⁵⁹ See Ibid article 3.

specified.¹⁶⁰ The remaining other nationalities and peoples with small populations were defined as minorities.¹⁶¹

3.5. The Formal Constitutional Establishment of the Federal System in Ethiopia

The federal system in Ethiopia was formally established when the new constitution came into force in August 1995. Ethiopia officially adopted a federal form of government as of this date.¹⁶² The constitution clearly states that Ethiopia is intended to be a federal state.¹⁶³ Article 1 defines the nomenclature of the state: “This constitution establishes a federal and democratic state structure”.¹⁶⁴ The sovereign power is not given to the Ethiopian people at large or to the federal member states, but “resides with the nations, nationalities and peoples of Ethiopia”¹⁶⁵ Article 39 of the FDRE constitution gives a further elaboration on what this sovereignty is about. It largely repeats from the Transitional Charter’s article two, and asserts that “... every nation, nationality and people have an unconditional right to self-determination, up to and including the right to secession.”¹⁶⁶

Article 47 lists the names of the states of the Federal Democratic Republic of Ethiopia. The thirteen regions defined in proclamation 7/92 are reduced to nine, following the merger of the southern regions into one in 1994.¹⁶⁷ These are the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia, the State of Somali, the State of Benishangul/Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of the Gambela peoples and the State of the Harari people.¹⁶⁸

The names of the regions already reveal some information on their ethnic composition. In the first instance, six of the nine regional states carry names that refer to the ethnic groups that have political as well as a numerical dominance in the respective states. This means that the Tigray ethnic group is dominant in the Tigray state, the Afar in Afar, the Amhara in Amhara, the Oromo

¹⁶⁰ See Ibid article 3(2) (Article 3(2)).

¹⁶¹ See Ibid Article 2(6).

¹⁶² See Lovise Aalen, *supra* note, 5, at 59.

¹⁶³ Ibid.

¹⁶⁴ The constitution of Federal Democratic Republic of Ethiopia (FDRE), Article 1, *Negarit Gazeta Proclamation No. 1/1995*.

¹⁶⁵ Ibid, article, 8(1).

¹⁶⁶ See Lovise Aalen, *supra* note, 5, at 60

¹⁶⁷ Ibid.

¹⁶⁸ See Article 47(1) of FDRE Constitution.

in Oromia, the Somali in Somali state.¹⁶⁹The five ethnic groups control the political institutions of their regions in which they also constitute a large numerical majority.¹⁷⁰

The Harari state is a unique case. Although the Harari ethnic group controls the regional political institutions, they are a small numerical minority in the region. What is inexplicable in the Ethiopian federation is that the Harar city surrounding Hundane Woreda of Oromia state is carved in to and included in Harari state.¹⁷¹ The name Benishangul/Gumuz refers to the two major endogenous ethnic groups of this region: the Berta or Benishangul and the Gumuz. The names of the remaining two regions indicate that various ethnic groups are living there.¹⁷²Thus from among the estimated 80⁺ ethnic groups only five ethnic groups (Tigray, Afar, Amhara, Oromo and Somali) were allowed to have their own ethnic regions where they constitute the majority. In contrast, several dozen smaller ethnic groups were either put together in multi-ethnic regions (SNNPRS, Gambella and Benishangul Gumuz) or attached as minority ethnic groups to the bigger ethnic regions.¹⁷³Taking into account the presence of more than 80 ethnic groups in Ethiopia, the above obviously demonstrates that most ethnic groups do not have their own regional state, but are a minority in one of the regional states.¹⁷⁴

3.6. The Demand to Establish Own States and the Political System

An understanding of the operation of federal systems requires an analysis of more than formal governmental structures. It requires an analysis of the actual interaction of societies, structures and processes.¹⁷⁵ The functioning of the formal and institutional framework and the character of intergovernmental relations is dependent on the underlying political, social and economic structures and the roles played by *inter alia* interest groups, individual leaders, informal elites and political parties.¹⁷⁶ Livingston claims that federalism is a function not of constitutions but of societies. He judges a state as federal not by its federal government and its legal structures, but by the way social, political and economic interests were organized. His socio-cultural theory of federalism implies that a society is federal in the sense that its major linguistic, cultural, ethnic,

¹⁶⁹Lovise Aalen, *supra* note 147, at 61.

¹⁷⁰ Christophe Van der Beken, *supra* note 129.

¹⁷¹ All the populations living in this Woreda are Oromo nationals.

¹⁷²*Ibid.*

¹⁷³*Ibid.*

¹⁷⁴*Ibid.*

¹⁷⁵ R. L. Watts, *supra* note 98.

¹⁷⁶*Ibid.*

economic or other interests are territorially grouped, but the diversities are not so great that there is no room for political integration.¹⁷⁷ A federal government is then the device by which federal qualities of a society are articulated and protected.¹⁷⁸

Political wise, a single party system, where the dominant party is monolithic, totalitarian or authoritarian and internally not federated, cannot permit decentralization of power or the genuine operation of a federation. In other words, where there is no political pluralism and open democratic contestation for power, it is difficult to talk about federalism and its values.¹⁷⁹

Constitutionally there is no doubt that Ethiopia is a federal polity. But its federal entities are controlled by the strongly centralized EPRDF that predetermines decisions from the prime minister's office in the capital to remote rural kebelles.¹⁸⁰ A dual dynamic is at work: a more visible, formally decentralized state structure and a more subtle and effective capture of the state by the EPRDF and its affiliated regional parties. A well-organized one party network extends from the center to the region which actually undermines the realization constitutional federalism in Ethiopia.¹⁸¹

Politico-ideological approaches help to explain some of the key problems of Ethiopian federalism. As we have seen earlier, federalism in Ethiopia like other federations has an ideological inspiration. Like Soviet federalism, Ethiopia promised self-determination of nation and nationalities up to secession but in practice nation and nationalities would not entertain autonomy beyond language and culture which makes it quite similar to Soviet political makeup.¹⁸² The right of self-determination up to and including secession was incorporated in the Soviet constitution. This was, however, a mere lip service as the Soviets never allowed administrative autonomy let alone secession. Second, in spite of the formal commitment for a multiparty democracy by the 1994 Ethiopian constitution, a monolithic power structure emerged under the EPRDF.¹⁸³ The EPRDF like the communist parties of the former Soviet Union claims

¹⁷⁷ W.S. Livingston, Federalism and constitutional change, (Oxford: Oxford University Press, 1956), p. 15

¹⁷⁸ Ibid.

¹⁷⁹ Lovise Aalen, *supra* note, 5, at 12.

¹⁸⁰ Ibid, p. 16.

¹⁸¹ Berhanu Gutema, Restructuring State and Society: Ethnic Federalism in Ethiopia (Aalborg University Denmark, 2007), p. 60.

¹⁸² Alemante G. Selassie, *supra* note 144, at 58.

¹⁸³ Ibid.

to play the role of the ‘‘*vanguard*’’ political party.¹⁸⁴ Like the practice of the Soviet Union, the decision to give a certain level of administrative status to ethnic groups solely rests upon the ‘‘*vanguard*’’ party, the EPRDF.¹⁸⁵ As a result, there are some paradoxes, which are still difficult to explain. For instance, the Harari whose overall population does not extend beyond ten thousand and constitute about 7 per cent of the total population of the Harar city were allowed their own sub-state, while the Sidama whose population is more than two and half million were given a zonal status within the Southern region.¹⁸⁶

As stated above, ethnicity has the central organizing device of Ethiopian federalism; any group that the constitution recognized as a ‘‘nation, nationality or peoples’’ have full right to form its own state. In Ethiopia demands for the creation of more states persists especially in light of the expectation created by the constitutional recognition of right of nation and nationalities as cornerstones of the Federation.¹⁸⁷ Consequently, there are numerous petitioners to House of Federation seeking recognition of their separate ethnicity.¹⁸⁸ However, the political context is not favorable to the creation of new regional states. For instance, when the Sidama (an ethnic group in the Southern region) requested the establishment of their own regional state, this was rejected by the EPRDF.¹⁸⁹ The ruling party equally resisted a similar request from the Berta (one of the ethnic groups living in Benishangul-Gumuz), fearing that accepting this request would cause similar demands from other ethnic groups.¹⁹⁰ This instance shows that the EPRDF is not willing to accept the full consequences of the constitutional rights of nation and nationalities.

Much of the claims that come to the state council and House of the federations are concerned with recognition of ‘‘Nations, Nationalities and Peoples’’ and for the purpose of some kind of *self-rule*. The nationality claims of Kontoma, Manja, Danta, Welene, and Gofa in SNNPRS, Kimant in the Amahra regional state, Zey in Oromia regional state are good examples in this

¹⁸⁴Merera Gudina, Ethnicity, ‘‘Democratization and Decentralization in Ethiopia: The Case of Oromia’’ Eastern Africa Social Science Research Review, Volume 23, Number1, Published by Organization for Social Science Research in Eastern and Southern Africa, (2007), p. 20.

¹⁸⁵Ibid.

¹⁸⁶ Christophe Van der Beken, *supra* note 129, at 40.

¹⁸⁷ See Lovise Aalen, *supra* note, 5, at 42.

¹⁸⁸ Ibid.

¹⁸⁹ Lovise Aalen, Institutionalizing the politics of ethnicity – Actors, powers and mobilisation in Southern Ethiopia under ethnic federalism, (Oslo: University of Oslo PhD thesis, 2008), p. 164.

¹⁹⁰ Asnake Kefale, ‘‘Federalism and Autonomy Conflicts in the Benishangul-Gumuz Region, Ethiopia’’, in Eva Brems and Christophe Van der Beken (eds.), *Federalism and the Protection of Human Rights in Ethiopia* (Münster: Lit Verlag, 2008), pp. 192-193.

regard.¹⁹¹ Among these the claims; the claims of Kontoma, Manja, Danta and Gofa are rejected by giving the reason they cannot meet the constitutional definition for “Nations, Nationalities and peoples”.¹⁹² It is said that these peoples are considered as *Societies* not as “Nations, Nationalities and peoples”. Kimant in the Amahra regional state is recognized as nationalities while the claim of Zey in the Oromia regional state is still under consideration.¹⁹³

Most of the claims are handled through party politics and by stringent procedural requirement of the constitution and proclamation No. 251/2001.¹⁹⁴ The constitutional procedure prescribes that:-

“The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

- a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned,
- b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession,
- c) When the demand for secession is supported by a majority vote in the referendum,
- d) When the Federal Government will have transferred its powers to the Council of the Nation, Nationality or People who has voted to secede and,
- e) When the division of assets is effected in a manner prescribed by law.”¹⁹⁵

Whereas the procedure according to article 19 and 20 of proclamation No. 251/2001 is that:-¹⁹⁶

Article 19(1):

¹⁹¹ An interview with Ato Woldu Mernen, Constitutional Rights Interpretations Directorate Director at House of Federation .

¹⁹² Ibid

¹⁹³ An Interview with Ato Aschalewu Tekle, Democratic Unity and Governmental Relations Directorate Director at House of Federation.

¹⁹⁴ An interview with Ato Woldu Mernen, supra note 192, See also article 39(4) , 47(3) of FDRE Constitution and article 19 and 20 of the proclamation to consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to define its power and responsibilities No.251/2001 Federal Negarit Gazeta 7th year No. 41.

¹⁹⁵ Article 39(4) of FDRE Constitution.

¹⁹⁶ See article 19 and 20 of the proclamation No.251/2001, supra note 195.

- The House shall have the power to decide on issues relating to the rights of nations, nationalities, and peoples to self-determination. Any Nations, 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 through the proper channel.

The question of any Nation, Nationality, or people to form its own State is carried out:

- a) When the question for statehood has been approved by a two-thirds majority vote of the members of the Council of the Nation, Nationality, or People in question, and the request thereof is presented in writing to the State Council;
 - b) When the Council that received the claim has organized, a referendum to the Nation, Nationality, or People that presented the request, within one year;
 - c) When it is supported by majority vote in referendum of Nation, Nationalities or people on the question of state formation;
 - d) When the State council has transferred its powers to the Nation, Nationality or People that claimed the statehood;
 - e) A new State which is formed by the referendum shall directly be a member of the Federal Democratic Republic of Ethiopia without any need for application.
- Article 20 Essentiality of Exhaustion of State-level procedures
 - 1) The question specified in sub-article 1 of Article 19 shall be submitted to the House only under conditions that the question has not been given due solution by the various organs in the administrative hierarchy of the state concerned.
 - 2) The States shall make decisions within two years up on question specified in sub-article 1 of Article 19 Particulars shall be determined by the law issued by the states.
 - 3) The question may be referred directly to the House if it has not been decided within two years, or if the decision made dissatisfied the concerned party.”

3.7. Issues of Legitimacy with the Ethiopian Federation

Those political systems which are born in the context of an overwhelming consensus that engendered the participation of all sectors of the population, and have as a result developed a Constitution that is entirely compatible with the popular will, sociocultural and political context might have a strong original legitimacy.¹⁹⁷ A crucial aspect of decentralist and balanced federalist ideologies is that the federal bargain should be based on a covenant or a pact, where the various political forces in the country voluntarily agree to make arrangements for power sharing and devolution of power.¹⁹⁸

As indicated earlier in this chapter, Ethiopia is an old polity principally formed through military conquest and the incorporation of vast lands with diverse peoples with equally diverse linguistic and cultural identities into the Ethiopian empire. As such the source of legitimacy of state power in the country has never been popular consensus. The key sources of legitimacy in Ethiopia's past were force (conquest, military expansion), religion (i.e. Orthodox Christianity), and tradition (i.e. 'right' genealogy).¹⁹⁹ In the current political system of Ethiopia, the structure and implementation of ethnic federalism seem to reflect tension between two competing political urges – to prescribe from above, or to facilitate consensus with-in the groups in question.²⁰⁰

From the very outset, unlike the case of South Africa, the introduction of federalism in Ethiopia was not all inclusive and negotiated among various political parties of the country at the time.²⁰¹ The consequential Federal Constitution also was not a political compromise that reflects the interest of all. The real political party behind the introduction of federalism in Ethiopia was EPRDF.²⁰² The organizations that became members of the EPRDF were to a large extent created by the minority political elite, Tigrians Peoples Liberation Front (TPLF) and did not initially have any popular base. For instance, the Oromo People's Democratic Organization (OPDO)

¹⁹⁷Tsegaye Regassa, "The making and legitimacy of the Ethiopian constitution: towards bridging the gap between constitutional design and constitutional practice", *Africa Focus Journal*, Volume 23, N. 1, (2010), p. 98.

¹⁹⁸Elazar Daniel, *Exploring federalism*, Tuscalosa Alabama, University of Alabama Press. (1987), p. 10.

¹⁹⁹Mattei quoted in Tsegaye Regassa, *supra* note 196 at 98.

²⁰⁰ Vaughan Sarah, *supra* note 142 at 170.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

consisted of former Derg soldiers who were captured by the TPLF during the final days of the war.²⁰³

A consideration of the way in which the EPRDF was created, however, might question the TPLF's intentions behind the formation of a common front. The TPLF was politically weak when it came to power because it represented the minority ethnic group which is less than ten percent of the population of the country. A way of securing its position was to transform the country into ethnically defined regional states and create ethnically defined parties under its control.²⁰⁴ The formation of the EPRDF could thus be seen as an instrumental move to ensure the hegemony of TPLF.²⁰⁵

The EPRDF's initial justification for introducing a federal system was supposed as the commitment to the principle of national self-determination. However despite a clear ideological and normative connection to the idea of national self-determination, the process of institutionalizing the principle through the drafting of the federal constitution has severely lacked transparency.²⁰⁶ During the transitional conference in July 1991 the non-ethnic movements that had fought against the Derg were largely excluded from the conference and the organizations that actually participated were actively encouraged to organize on a nationality basis.²⁰⁷ Many of the nationality-based organizations did not have any popular base or prehistory before the conference was initiated. Other opposition parties withdrew from the process and the elections to the Constitutional Assembly. The EPRDF controlled the Constitutional Commission, the elections and the final ratification in the assembly.²⁰⁸ The outcome of the transitional political process; the transitional charter and the new constitution, is therefore more a result of an agenda predetermined by the EPRDF rather than a pact between all the organizations that participated in the process.²⁰⁹

Therefore, the process of introducing federalism in Ethiopia is more of a federal imposition than a federal bargain. The EPRDF never really asked the opposition whether they wanted federal

²⁰³Lovise Aalen, *supra* note 5 at 38.

²⁰⁴Ottaway Marina, "The Ethiopian transition: democratization or new authoritarianism", *Northeast African Studies* 2, 1995, p. 74.

²⁰⁵ *Ibid.*

²⁰⁶ Vaughan Sarah, *supra* note 142 at 171.

²⁰⁷Lovise Aalen, *supra* note 146 at 38.

²⁰⁸ *Ibid.*, at 41.

²⁰⁹ *Ibid.*

dispensation along ethnic line or not. The military superiority of the TPLF and the control that they imposed during the transitional period made the opposition unable, both physically and politically, to reject the federal proposal forwarded by TPLF.²¹⁰ Hence, the establishment of a federal system along ethnic lines can be seen as a part of EPRDF's strategy to consolidate its dominant party rule. A common interpretation of why the EPRDF introduced ethnic federalism is said that it was a way of institutionalizing the principle of "divide and rule" and ensuring the ruling party's position. Thus, federal system has become exclusively "the EPRDF's federal project" instead of inclusive "Ethiopia's federal project".²¹¹

The above analysis clearly demonstrate that unfortunately like the old days Ethiopian polity even the current federal system in Ethiopia is an imposed one rather than bargained political settlement like the case of South Africa we have seen in this paper. Hence, the federal arrangement in Ethiopia is not what Michel Burgess calls "genuine federation"²¹² as it lacks popular will and legitimacy. The lack of legitimacy implies that the current sub-national state arrangement in the Ethiopian federation cannot be attributed to the popular will rather it is a dictation of the party in power i.e. EPRDF.

3.8. Conclusion

As seen in this chapter apparently the right of nation and nationalities constituted the foundation for restructuring the Ethiopian state in the process of setting up the federal system. Formally, it is said ethnicity is the central organizing device of Ethiopian federalism and the main objective of the Ethiopian federation is the empowerment ethnic groups in the country. Consequently The Ethiopian Constitution provides for ethnic-based sub-state formation as the principal institutional means for accommodating ethnic groups' cultural, linguistic, and political claims. Constitutional sovereignty is also vested in "nation, nationality or peoples" and any ethnic groups that the constitution recognized as a "nation, nationality or peoples" have full right to form its own state. However, this is a mere paper provision since the introduction of federal system in Ethiopia lacks legitimacy and sub-national state formation and their autonomy is dependent on extremely centralized political party in power.

²¹⁰Ibid, at 46.

²¹¹ Ibid.

²¹²Burgess, Michael "Federalism and federation: a reappraisal" in Burgess, M. and Gagnon A. (ed.) Comparative federalism and federation New York: Harvester Wheat sheaf, (1993), p. 6.

Chapter Four

Criteria for Statehood in the Ethiopian Federation

4.1. Introduction

As discussed in the preceding chapter, the Ethiopian Constitution provides for ethnic-federal government as the principal institutional means for accommodating ethnic groups' cultural, linguistic, and political claims. To accomplish this purpose the Constitution has divided the country into nine ethnic-based federal states out of more than eighty ethnic groups of the country.²¹³ Each of these states, with one exception, is drawn with the aim of making it the principal vehicle for aggregating and expressing the political, cultural, and linguistic identity of the country's ethnic groups.²¹⁴ The animating idea behind Ethiopia's ethnic federalism seems to foster the emergence of ethnic-national groups as distinct political, geographical, cultural, and linguistic unit.²¹⁵ According to FDRE constitution it is the "Nations, Nationalities and the Peoples" of Ethiopia that can establish the constituent states of the Ethiopian federation.²¹⁶ However, the Constitution does not stipulate the difference between "Nations, Nationalities and Peoples" and also does not set out criteria according to which demands for recognition as a "nation, nationality, or people" can be determined. Nevertheless, "Nation, Nationality, or People" are the constitutional criteria for being sub-national statehood. This chapter is dedicated to discuss these issues and its implication under the Ethiopian federal arrangement. To this end section 4.2 discuss the constitutional right to form sub-national states and criteria for being statehood. Section 4.3 analyzes the problem of the constitutional criteria for being statehood. Section 4.4 points out the need to re-negotiate the Ethiopian federation and revise the constitutional criteria for being statehood. And the chapter ends with concluding remarks.

²¹³ See Article 47(1) of FDRE Constitution.

²¹⁴ See Alemante G. Selassie, *supra* note 144, at 61.

²¹⁵ *Ibid.*

²¹⁶ See Article 47(2) of FDRE constitution.

4.2. Nation, Nationalities and Peoples as Criteria for Claiming Statehood

And the Constitutional Right to form own States

The basic feature one notices throughout the FDRE's Constitution is the utmost importance given to the ethno-linguistic groups within the Ethiopian polity. Unlike many constitutions, the Preamble of the Ethiopian Constitution does not commence with the traditional constitutional formula of "we the people"²¹⁷ but with "We the Nations, Nationalities, and Peoples of Ethiopia."²¹⁸ By this language, one can understand that the Constitution is the product of a consensus among the constituent ethnic groups inhabiting the Ethiopian state. In theory, this means that the state is founded by and belongs to all ethnic groups, and consequently that no particular ethnic group would or should be entitled to perceive the state solely as its own.²¹⁹ Chapter two of the constitution which deals with the fundamental principles declares that "All sovereign power resides in the Nations, Nationalities, and Peoples of Ethiopia"²²⁰ In the same manner the Constitution grants the nations, nationalities and peoples the right to self-determination.²²¹ This method of locating sovereignty in ethnic communities implies that the new constitutional order visualizes a state in which each of these communities is privileged to decide its own form of governance, identity, future association with the state, and the rights of individuals subject to its jurisdiction.²²²

Some analysts consider that Stalinist theory of nationalities heavily influenced the political movements behind the Ethiopian ethnic federalism. It is said that many of the concepts used to discuss problems of ethnic relations in Ethiopia were copied from Russian revolutionaries.²²³ Stalinist principles of self-determination professes that the right of a "nation" to arrange its life in the way it wishes either on the basis of autonomy, federal relations with other nations or complete secession.²²⁴ The Soviets used to categorize the different ethnic groups within the ex-Soviet union as "nations, national groups and peoples". The nations were at the

²¹⁷ Alemante G. Selassie, *supra* note 144 at 55.

²¹⁸ See Preamble of FDRE Constitution.

²¹⁹ Alemante G. Selassie, *supra* note 144 at 55.

²²⁰ See Article 8 of FDRE Constitution.

²²¹ See Article 39 of FDRE Constitution.

²²² Alemante G. Selassie, *supra* note 144 at 55.

²²³ Lovise Aalen, *supra* note 5 at 14.

²²⁴ See Viktor Knapp, "Socialist Federation-A Legal Means to the Solution Of The Nationality Problem: A Comparative Study", *82 MICH. L. Rev.*, (1984), p. 62.

top of the hierarchy, had their own union republics and even the right of secession, while nationalities and peoples were in “autonomous republics” and “autonomous districts” without the theoretical rights enjoyed by the union republics.²²⁵ Joseph Stalin defined the nation as:

“...a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture”²²⁶

In similar manner Ethiopia also implicitly adopted the Soviet practice of hierarchically categorizing its ethnic groups into “nations, national groups and peoples.”²²⁷ More interestingly, the FDRE constitution adopted Joseph Stalin’s definition of the “nation” which defined “nations, nationalities and peoples” as:

“... a group of people who have or share a large measure of 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”²²⁸

Nevertheless, apart from giving one and the same definition to the three entities, “nations, nationalities and peoples”, the Constitution does not differentiate among a “nation”, a “nationality” and a “people”. The effect of such categorization is also not mentioned like in the case of ex-Soviet union. Of the elements mentioned, it is only language and territory which are relatively easy to determine and distinguish, and it is therefore reasonable to claim that the Ethiopian federal units first and foremost are defined on a “ethno-linguistic territorial basis”. The other traits, such as common psychological make-up and identities, are hard to agree on and would probably be more unstable and changeable than language and territory.²²⁹

As mentioned above the Ethiopian population is ethnically very diverse that there are more than 80 ethnic groups. The Ethiopian constitution grants all of these groups a right to territorial autonomy, implying that all ethnic groups can be linked to a particular territory. Article 47(2) of the FDRE constitution states that:

²²⁵ Ibid.

²²⁶ Stalin quoted in Walker Connor, *supra* note 138.

²²⁷ See Preamble, Article 8(1), and 39(5) of FDRE Constitution.

²²⁸ See Article 39(5) of FDRE Constitution.

²²⁹ See, Abbink Jon “Ethnicity and constitutionalism in contemporary Ethiopia”, *Journal of African Law* 41:159-174, (1997), p. 166.

“Nations, Nationalities, and peoples within the States enumerated in sub-article 1 of this article have the right to establish, at any time, their own states.”

Again there is constitutional ambition to realize an overlap between ethnic and territorial borders when determining the regional states of the federation. Article 46(2) of the constitution makes this explicit by stating:

“States shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned.”

According to these constitutional provisions all “nations, nationalities and peoples”, which do not have their own state yet, have the right to establish their own territorial states.²³⁰ This is an expression of the idea that the right to self-determination and the right to self-rule can best be realized through the creation of states whose borders coincide with the “nations, nationalities and peoples”.²³¹ Following these constitutional provision therefore, one can safely conclude that the basic criteria for statehood in the Ethiopian federation is “Territorial Nations, Nationalities and Peoples” which are best known as “Territorial ethno-linguistic criteria”.

4.3. Territorial Ethno-linguistic Criteria for Statehood and its Implication

Following the constitutional provision discussed above, the criteria for statehood in the Ethiopia federation is being recognized as “nations, nationalities and peoples” and every “nations, nationalities and peoples” can have its own state and therefore, we can imagine no less than eighty sub-states in Ethiopian federation. Nevertheless, as it was mentioned above from more than 80 ethnic groups of Ethiopia, according to the language of the constitution which can be categorized in to “Nations, Nationalities, and peoples”, it is only six ethnic groups that have already exercised the constitutional right to establish their own sub-states. The bulk of Ethiopia’s 80+ ethnic constitute a minority in one of the six ethnic states or in the three remaining multi-ethnic states.²³²

This is the core paradox of FDRE constitution which generously promises to every ethnic group in the country the right to form their own states but actually denies the majority of them by

²³⁰See, Article 47 of FDRE Constitution.

²³¹Assefa Fisha, *supra* note 1 at 225.

²³² Christophe Van der Beken, *supra* note 129 at 32.

granting this right only to the selected few.²³³ This is not to say that constitutional provisions granting all ethnic groups a right to form their own states are wise, but these are a consequence of the constitution which allows every ethnic groups to have their own states without differentiating between the three categories of the federal entities, “nations, nationalities and peoples”. Similarly, the absurd consequence of the constitutional provision that grants all ethnic groups to form their own state is that ethnic groups with only a few thousand members that are not capable to form a viable political unit that can compete at the federal level have the right to form their own independent state. These are the outcome of the constitutional provision that generously grants every ethnic group without any other qualification or criteria.²³⁴

Therefore, apparent Constitutional inconsistency of sub-national state formation of in the Ethiopian federation lays here in that on the one hand the Constitution grants every territorial ethnic groups of the country the right to form their own sub-national states while on the other hand only nine sub-states (six national and three multi-national sub-states) were created from more than eighty ethnic groups of the country.²³⁵ No explanation was given for the reason why and how these nine states were created. It looks simply the discretion and dictation of the political party at the power.²³⁶ This is linked with the issue of the lack of legitimacy in the formation of Ethiopian federation. Granting each and every ethnic groups of the country the right to form their own sub-states is inexplicable, not viable and affordable. It may inflame ethnic passion and cause ethnic division and conflict which might in turn lead to disintegration of the country. Again, some analysts consider this as dangerous “divide and rule” agenda of the political party behind the federation rather than genuine standards of sub-national state formation of the federation.²³⁷

²³³ See, Article 47 of FDRE Constitution.

²³⁴ Christophe Van der Beken, *supra* note 129 at 33.

²³⁵ See, Article 46 and 47 of FDRE Constitution.

²³⁶ See, for example, Lovise Aalen, *supra* note 5 and Vaughan Sarah, *supra* note 142

²³⁷ *Ibid.*

4.4. The Need to Re-negotiate and Re-consider the Criteria for Statehood in the Ethiopian Federation

The very difficult issue in multi-ethnic federalism relates to how best to restructure the constituent states. The authors of the FDRE Constitution argue that one way to resolve ethnic tension is to redraw the states boundaries along language criteria and that territories should meet the interests of people.²³⁸ Following this thinking, the constitution generously grants every nation and nationalities of the country the right to form their own territorial mother states. As it is discussed above, practically speaking it is not feasible or at least viable to grant every ethnic group the right to form their own state given the presence of more than 80 ethnic groups in the country.²³⁹

Again in the desire to make ethnic and administrative boundaries congruent when Ethiopia was reconstructed into an ethnic federation led to huge asymmetry among the members of the federation.²⁴⁰ As a result, there are huge disparities among the regions in terms of population and territorial size. Some of the regions such as Oromia, Amhara and Somali are territorially too big with the resultant administrative and logistic difficulties, while such regions as Harari, Benishangul-Gumuz and Gambella are too small with the difficulty of ensuring their economic viability.²⁴¹

Looking at the issue from the aspect of conflict management, almost all of the multi-ethnic states in the Ethiopian federation faced inter-ethnic conflicts over a range of issues such as territory, representation and sharing of resources.²⁴² In some cases, some ethnic groups seek to separate from the existing multi-ethnic regions and form their own ethnic regions using the constitutional provision. This also engenders tensions and conflicts. The most frequent and deadly conflicts ever since the introduction of the federal system has been in the multi-ethnic states of SNNPRS, Gambela and Benishangul-Gumuz.²⁴³ It is true that there are many factors that brought about the conflicts but certainly one is the failure to design adequate mechanisms for dealing with the

²³⁸ Assefa Fisha, *supra* note 1, at 247.

²³⁹ Christophe Van der Beken, *supra* note 129, at 47.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² Christophe Van der Beken, *supra* note 129, at 48.

²⁴³ Assefa Fisha, *supra* note 1, at 234.

complex multi-ethnic groups living in each of the respective states. These are the states in which the grant of “mother states” has not fully been materialized because of an alleged lack of a dominant nationality or because of constituting too many small ethnic groups.²⁴⁴

Relative peace has been restored in some of the regions, for instance, in SNNPRS after the Wolayta, Silte and Kaffa-Sheka were granted local governments.²⁴⁵ If this case is convincing then it makes a strong argument for further restructuring of the regional governments, along with the general view that nationalities within multiethnic regional states should be granted their own states.²⁴⁶ The fact that there have been frequent conflicts in the SNNPRS, Gambela and Benishangul-Gumuz compared to other relatively homogenous states, seems to suggest that the multi-ethnic states should also be structured along similar lines. The SNNPRS is relatively more stable and peaceful after the series of regional state restructurings.²⁴⁷

Nevertheless, the above suggested restructuring of sub-states brings with it the issue of where to begin and end the reorganization of the sub-units of the federation. As we have seen above, the present constitutional stand may lead to the Nigerian style of industry of sub-states that the country cannot afford and it might pose the threat of ethnic division and conflict in the country. Resource wise the country cannot afford to grant own states for each and every ethnic group. And also every ethnic group in the country is not capable to form their own sub-states as some of them are numerically and economically very insignificant.²⁴⁸

The logical way out is therefore, it is wise to re-negotiate sub-national formation of the Ethiopian federation and revise the current Constitutional provision that generously grants every territorial ethnic group in the country the right to form their own state based on the sole criteria of ethnicity. The sole ethno-linguistic criterion of forming sub-state needs to be qualified and additional viable criteria must be designed. In this regard one may think of other additional criteria of forming sub-states like the criteria South Africa developed and used for creating its provinces such as; historical boundary considerations, administrative considerations, rationalization of existing structures and institutions, financial costs, minimizing inconvenience

²⁴⁴Ibid.

²⁴⁵ Christophe Van der Beken, *supra*, note 129, at 49.

²⁴⁶Ibid.

²⁴⁷Ibid.

²⁴⁸Ibid.

to people, demographic considerations, development potential, natural resources and possible economic growth points and cultural considerations. As we have seen in the chapter two of this paper Nigeria also in her later day of state reorganization, developed additional criteria for formation of sub-states such as ethnic affinity, geographical proximity, population size, land area, administrative convenience, viability of new and old state, cultural incompatibility and self-determination.

4.5. Conclusion

In conclusion therefore, the writer believes that first the FDRE constitution must clearly define the entities, “Nation, Nationality and Peoples”, upon which it bestowed sovereignty and self-determination since these are the bases or the sole criteria for sub-national state formation in the Ethiopian federation. The difference among these entities and the reason why such entities are categorized in this manner must be determined since which entities are/aren’t capable of forming its own state at a moment is unclear. Second the process of creation of sub-states of the federation must not be waited until some crisis comes for the purpose of crisis management like in the case of Indian and Nigerian practice we have seen in this paper. Third, for the purpose of stable federation, the process of forming sub-states of the federation must be re-negotiated, well studied and clear-cut criteria for sub-state formation must be constitutionally designed as the experience of South African federation, we have seen in this paper, demonstrates. In doing so the apparent inconsistency of FDRE constitution that is generously granting every ethnic group in the country the right to form their own state but actually giving this right only for a few ethnic groups may be solved. The argument would therefore be there is a need of re-negotiation and Constitutional revision concerning the formation of member states of the Ethiopian federation.

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

The principle of self-determination or self-rule in the federal form of government is best exercised through formation of sub-national states that constitute the federation. Thus, the core objective of federalism is realized through sub-national state formation. When the formerly unitary multi-national state is to be devolved to form federal system of government, the difficult issue immediately comes in to picture is on what criteria the sub-unit state that forms the federation should be organized.

The multi-national federations, we have seen in this paper, basically used territorial ethnic groups or territorial ethno-linguistic criteria for formation of their sub-national states. For instance, the Nigerian federation was primarily created by Hausa-Fulani, Yoruba and Igbo majority nationalities and later on sub-divided following ethnic line criteria to form the present day Nigerian federation. India also used ethno-linguistic criteria for reorganization of her sub-national states. Though South Africa used multiple criteria, ethnic group was basically used for demarcation and delimitation of Provinces.

Ethiopia clearly used and constitutionalized ethnic groups as criteria for formation of sub-national states as the Ethiopian Constitution entitles every nation, nationality and peoples the right to establish their own state at any time. As discussed broadly in this paper, in principle, organizing sub-national states on the criteria of ethnic groups has historical, ideological and political roots in Ethiopia. Ideally, Ethiopian federalism is meant for the empowerment of territorial ethno-linguistic groups or, in the wording of the Constitution; “nation, nationalities and the peoples” of the country. It is believed that the right to self-determination and the right to self-rule can best be realized through the creation of states whose borders coincide with the nations, nationalities and peoples. For this reason the Ethiopian Constitution provides for ethnic-federal government as the principal institutional means for accommodating ethnic groups’ cultural, linguistic, and political claims. Constitutional sovereignty is also vested in nation, nationality or peoples and any ethnic groups that the constitution recognized as a “nation,

nationality or peoples’’ have full right to form its own state. However, we have seen in this paper that the Ethiopian federation lacks legitimacy from the very outset and the said empowerment of the ethnic groups of the country is merely nominal and lip service as the dominant political party in power never allowed it.

Nonetheless, the FDRE constitution is unequivocally grants the right to form their own sub-national state to each and every nation, nationalities and peoples of the country. Taking this constitutional right of nation, nationalities and peoples to form their own sub-national state, one can expect more than 80 sub-national states in Ethiopia since there are more than 80 such units in the country. However, despite such liberal constitutional promise of sub-national states for each and every nation, nationalities and peoples living in the country, the federation of Ethiopia is organized only by nine sub-national states in which only a few nationalities get their own sub-states. In this regard, it can be said that the principal objective of the constitution is not realized. Of course, practically it is almost impossible to grant sub-state for each and every nation, nationalities and peoples living in the country as the constitution promises given the presence of more than 80 ethnic groups in the country. Every ethnic group in the country is not capable to form even Zonal or Woreda administrative units of their own let alone their own sub-states as some of them are numerically and economically very insignificant. However, this may cause ethnic division and conflict as it fosters ethnic passions in the country.

The logical conclusion is therefore, it is very judicious to re-negotiate the Ethiopian federation and revise the current constitutional provision that generously grants every territorial ethnic group in the country the right to form their own state based on the sole criteria of ethnicity. This sole territorial-ethnic criterion of forming sub-state must be qualified and additional viable criteria must be designed. In this regard one may think of other additional criteria of forming sub-states like the criteria South Africa developed and used for creating its provinces such as; historical boundary considerations, administrative considerations, rationalization of existing structures and institutions, financial costs, minimizing inconvenience to people, demographic considerations, development potential, natural resources and possible economic growth points and cultural considerations. Nigeria also in her later day of state reorganization followed similar fashion of using additional criteria for formation of sub-states such as ethnic affinity, geographical

proximity, population size, land area, administrative convenience, viability of new and old state, cultural incompatibility and self-determination.

5.2. Recommendations

For establishment of stable federation should be based on a covenant or a pact, where the various political forces in the country voluntarily agree to make arrangements in sub-national state formation and power sharing, the writer believes that the formation of the Ethiopian federation must be offered for all inclusive re-negotiation as it lacks the initial legitimacy since the current federal arrangement was offered single handed by the political party in power. Here, one might recall the subtlety of South African arrangement in this regard.

For the purpose of organizing stable federation, the process of forming sub-states of the federation must be well studied beforehand and clear-cut criteria of sub-state creation must be constitutionally designed as the experience of South African federation demonstrates. The process of creation of sub-states of the federation must not be waited until some emergency comes for the purpose of crisis management like in the case of Indian and Nigerian practice we have seen in this paper.

FDRE constitution must be reviewed to define clearly the entities it calls, “Nation, Nationality and Peoples”, upon which it bestowed sovereignty and self-determination. Since recognition as “Nation, Nationality and Peoples” is the bases or the sole criteria for sub-national state formation in the Ethiopian federation, the difference among these entities and the reason why such entities are categorized in this manner must be determined. Hence which entities are/aren’t capable of forming own state must be clearly stipulated.

In the review process of the Constitution, additional criteria of forming sub-states such as; historical boundary considerations, administrative convenience, financial costs, demographic considerations, development potential, natural resources, economic developments and cultural considerations may be developed and used for reorganizing the existing states and creating new states as well.

In doing so the apparent inconsistencies of FDRE constitution in formation of sub-national states, that is generously granting every ethnic group in the country the right to form their own state but actually giving this right only for a few ethnic groups, may be resolved.

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