

Inter-Regional State Boundary Friction Resolution Mechanism Under Federal Constitution of Ethiopia: Principles and Institutions

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Abstract: Federalism presupposes the existence a stable territorial boundary of units/ states that exercise their constitutional power and territorial autonomy. Inter-state boundary friction is a kind of contests over territory between two or more states assert sovereign power over one or the same territory; that is an apparent problem in Ethiopia. Boundary contest and misunderstanding is a serious political and human rights issue in federations where territory is potential identity-builders for ethnicities and is viewed as having high inherent values. Similarly, the boundary issue in Ethiopia is characterized by clashes between regional police and security forces and ethnically identified attack and violence between ethnic groups that has also resulted mass killings and person's displacement in contested boundary areas. Federal Constitution is an important legal framework to regulate the behaviors and actions of the disputed parties and determine the policies and procedures of inter-state border claim and friction resolution. In other words, federal constitution supplants international law and military power and serve as mechanism for interstate coordination and dispute settlement. The purpose of this study was to identify the effective inter-regional boundary friction resolution mechanisms under Federal Constitution of Ethiopia. The study has employed doctrinal legal research using secondary data and revealed the following. First, the study has found eight (8) constitutional principles support peaceful boundary friction resolution in Ethiopia Viz. primacy of federal union, cooperation and dispute settlement, codependence and disablement, federal oversight, sanctity of human rights, inclusive human rights invocation, peaceful coexistence, and rule of law. Ironically, in Ethiopia these constitutionally stipulated principles are not given due emphasis or are ignored and border conflicts are not adequately handled. Second, the study has revealed the need of a comprehensive legislation that proactively determine the nature inter-state border claim and friction resolution procedures and regulate the behaviors and actions of the parties that involve in the process. In this regard, the Federal Government has Legislative power under FDRE constitution. Third, the House of Federation and Administrative Boundaries and identity question Commission are the two inter-state boundary disputes resolution institutions in Ethiopia. However, both of these institutions have limitations in handling boundary disputes effectively- impartially. Finally, the study recommends that the Federal Government to enact comprehensive legislation based on the aforementioned eight principles. Besides, the federal legislator has to reconsider the composition, accountability, transparency of the Administrative Boundaries and Identity Question Commission.

Keywords: FDRE Constitution, Federal Government, Regional States, Inter-Regional Boundary Friction, House of Federation, and the Commission

1. Introduction

Federalism allows creation of distinct communities, which exercise autonomy over certain matters in a defined territorial boundary [1]. Inter-state boundary friction is a kind of contests over territory between two or more states assert

sovereign power over one or the same territory [2]. Territorial boundary conflict is a serious political and human rights issue in federations where territory is potential identity-builders for ethnicities and is viewed as having high inherent values [3]. Inter-regional state boundary friction is an apparent in Ethiopia [4]. Since 2018 boundary friction has

been characterized by violent conflicts involve active participation of ethnically defined (identified) group of people at controversial boundary areas [5].

There are a number of reports that confirm the presence of boundary friction and conflict in the Western Ethiopia (between Benishangul-Gumuz Regional State and Oromia National Regional State) with a widespread human rights abuse and violation [6-11]. In eastern Ethiopia, by mid-2018 the boundary areas between Somali Regional State and Oromia National Regional State were characterized by clashes that spiraled into mass killings and over one million person's displacements, involved the regional administrations and security forces, who were accused of killing over hundred Oromo in February and March 2017.

The inter-ethnic conflicts in western Ethiopia mostly result from boundary disputes and resource competition; and the conflict were characterized by violent and deadly confrontations with an ethnic dimension [8]. The cause of the violation is also related with the action of the people and police forces against other people who have different ethnic organ; and the major gaps were the involvement of officials and public figure in the conflict, fear and tension among the people, and Poor integration and coordination in security management [7]. In order to restore peaceful coexistence of the two communities, it requires commitment and ownership of higher officials; and measure like investments in peace building process [7]. It is also underlined that government should reactivate its power to impose peace and contain violence in the country [12].

In nutshell it is crystal clear that the inter-state boundary friction/conflict is characterized by a collapse of public law and order and there should be an effective mechanism force/bind the parties to the boundary case to prevent the occurrence of similar conflict [7]. Besides, it is found decisive to improve state capacity in preventing violence and conflict [12] and strengthening law and order that effectively eradicate or lower the conflicts [13].

On top of an endeavor to put in place an effective resolution mechanisms of inter-regional boundary friction a federal constitution plays an invaluable and incalculable role. In support of this, Allan Erbsen put the following:

...the theory of equal status and independence of states is illusory in practice. If the states were independent nations, they could rely on custom, treaty, or force to address interstate disputes or individual grievances arising from the extraterritorial effects of local regulation. But in the federal system, the Constitution supplants international law and military power as a mechanism for interstate coordination and dispute settlement, in particular to their boundary disagreements and conflicts [2].

The relevance of the Federal Democratic Republic Constitution of Ethiopia (hereinafter the FDRE Constitution) [14] on the process of boundary claim and dispute resolution is also recognized by Professor Assefa Fisha who states that in Ethiopia constitutionally stipulated principles are not given due emphasis or are ignored and border conflicts are not adequately handled [15]. Hence, unfolding and clarifying the

constitutional principles which are supportive to address boundary friction smoothly and at the same time enhance human rights protection in friction context is essential. Besides, it is necessary to identify the tire of government which is in charge to take legislative measures in order to change the constitutional principles regulating the process of boundary negotiation and dispute resolution in to practice.

The purpose of this study is to identify Inter-Regional Boundary Friction resolution mechanisms under Federal Constitution of Ethiopia. It is totally search the best mechanism from a constitutional law perspective; as the issue of inter-regional state border claim and friction resolution is the subject matters governed under FDRE Constitution. To that end, the study has employed a qualitative approach, which is mainly doctrinal legal research using secondary data. The data collected from the FDRE Constitution, regional constitutions, Legislations, policy documents, reports, and literature were analyzed by the author.

2. Fundamental Constitutional Principles

In Ethiopia constitutionally stipulated principles are not given due emphasis or are ignored and border conflicts are not adequately handled [15]. Under this section an attempt is made to unfold and clarify the principles of FDRE Constitution that lay down a legal norms and essential elements of a legal order [16] on boundary claims and friction resolution process. In that regard eight principles under FDRE constitution, which are individually discussed in the following sub-sections.

2.1. Primacy of the Federal Union

Preamble is of a constitution is essential sources of principles; as there is no other place than the preamble is the constitutional understanding of the founding fathers and the national creed so clearly reflected [17]. Plato states that preambles are the soul of the laws, a device through which the legislator convinces the people to obey the law [18]. Schmitt has also confirmed that preambles express the society's fundamental political decisions [19]. Blackstone reinforced that preambles are the key to opening up to us the minds of the lawmakers [20]. Hence, preambles should not be visualized as symbolic statements; although the purpose of preamble is not only—perhaps not mainly—to guarantee rights or provide legal arguments but to set down the basic structure of the society and its constitutional faith [17].

The preamble of FDRE constitution is the most important and relevant statements, which can be considered as national consciousness principle. All of the statement, and direction and conditions provided under the preamble have strong relevance and nexus for the application and interpretation of the 106 provisions of the constitution, including Article 48. The preamble of FDRE constitution is the guiding principle on the mode of relationship between and among the federal and regional states of Ethiopia and how they will work together. As Article 52(2) (a) of the constitution imposed obligation on all Regional States and their officials to

preserve and maintain constitutional order [14]. Article 9 of the same also oblige all regional states to exercise their legislative, executive and judicial power based on the principle of constitutionalism and rule of law [14].

The behavior of parties to inter-state border fractions is expected to be in line with the political and economic integration policy of FDRE constitution, as underlined under its preamble- which is 'building a political community [14]. As under the last paragraph of the preamble, the makers of the constitution have considered FDRE constitution to be an instrument that binds both Federal and Regional Governments to fulfill the objectives and the principles set forth under the preamble. Article 88 of the constitution is also supportive principle that impose obligation on government (both Federal and Regional Governments) to give due recognition and commitment for the achievement of political and economic integration and union.

The constitution has conditioned the achievement of the federal aim on the presence of supportive political culture that is enabling; to rectify unjust historical relationships, further promote the shared interests, create sustainable and mutually supportive conditions, and continuous interaction on various levels and forms of life. The escalation of Inter-state border negotiation and disagreement into inter-state friction and conflict has high negative potential and implication on the achievement of the federal union aim. Hence, a first set of constitutional principle which likely prevents or mitigates interstate boundary friction spring from the aim of the federal union.

The primacy of federal union principle, as per FDRE constitution, requires the regional states not to amplify their respective boundary interest at the cost of the federal aim. Consequentially, the process of inter-state border negotiation and decision making process should reflect the primacy of the pillar policy of Ethiopian federalism aimed at building one common political and economic community. This in turn demands the presence of an utmost commitment from regional states to shape their action and behavior in line with the purpose of the federal union on the process and result of inter-state boundary claims and negotiations.

2.2. Cooperation and Dispute Resolution

The constitution has primarily mandated the concerned regional states to end their border disagreement effectively. The Constitution, primarily envisages the procedure of bi-lateral negotiation and cooperation among the regional states; which have co-equal power. By providing so, the constitution has preferred to address and regulate their border claim bi-laterally, and the constitution has banned unilateral action of one regional state.

Besides, by bearing in mind that the negotiation is possible to regulate the situation smoothly, the constitution has banned the intervention of the Federal Government. The power of the House of federation (the HoF hereinafter) under the constitution should be understood as a final resort for solving inter-state border conflict. The constitution has considered the role of HoF to solve the fraction on the basis of

referendum as an exceptional method. The need of resort to HoF and the procedure of referendum is required, where the concerned States fail to reach agreement.

The constitution has amplified the introduction a win-win and fair forum enabling them to address and regulate their border claim bi-laterally. Hence, the constitution has provided a wide room and latitude for the disputing/ negotiating states to make utmost attempt and commitment to resolve the border issue in question based on cooperation. This is concrete constitutional guidance support the need to setting cooperative framework between the regional states on issue of boundary dispute.

2.3. Codependence and Disablement

Article 50 (8) of the constitution has stated that Federal and State powers are defined by this Constitution and the States shall respect the powers of the Federal Government and vice versa. Article 51 of FDRE Constitution is very detailed in explaining the power of Federal Government. The constitution has provided reserve power and the lists under article 52 to regional states in aggregate and each of the regional states have the power to legislate, execute and adjudicate laws.

Article 52(2) (a) and (b) respectively vested power and function to each of the respective regional states to establish a State administration and to enact and execute the state constitution and other laws. However, the exercise of this aggregate power of the regions to establish their administration, including determination of their boundary is not unlimited. Article 52 of the constitution requires all regional States to exercise power in a manner that best advances self-government, a democratic order based on the rule of law. The same Article of constitution also expects them to protect and defend the Federal Constitution; when the regions exercise their respective power to enact and execute the state constitution and other laws.

Under the constitution, however all Regional States have full and equal power. According to article 47 (4) of FDRE constitution Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers. To this end, the constitution vested power to each of the regional states. Hence, all Regional States have full and equal power to legislate, execute and adjudicate their respective laws within their regional boundary. This provision of the constitution implicitly provides the principle of mutual respect among the regional states; which is explicit between federal and regional states under Article 50 (8) of the constitution.

Under FDRE constitution, there is no clear provision the power of governments on border issue. It is not a subject matter mentioned under regional states list of article 52 as well as under federal list of Article 51. This however does not mean that the border issue is reserve powers and it is not safe to state that the constitution has not incapacitated regional states to enact law on border issues. Although, the issue of border is unmentioned, under the federal list power; the constitution has kept legislative power concerning border

issue out reach of the Regional States under dispute unilaterally.

The constitution does not allow the regional states in conflict to unilaterally enact execute and adjudicate law concerning the subject matter under dispute. The ultimate decision making power of HoF on dispute settlement disables the role of the state to take unilateral action on the boundary under dispute. Thus, the jurisdiction of one regional states is limited regulate inter-regional state boundary claim and decisions, as the issue border also the concern of another regional states, and that is not settled. The constitution does not allow one of Regional State to exercise/ extend its legislative, executive and judicial authority in case where the issue of inter-state border at stack.

2.4. Federal Government Oversight

FDRE constitution has underlined the importance of solving border related problems among Regional States via inter-governmental cooperation and negotiation, which literally does not involve the use of force or the involvement of armed solutions. The use of force is also not compatible with the policy of under the preamble of the constitution which provides the need of building a common political and economic community [14]. However, to overcome such kind of situation, the constitution has provided safety valve in case the regional states attempt to settle their boundary claim via use of force. Accordingly, FDRE constitution has incorporated principle of federal oversight, which is authorization of federal regulation in circumstances where state action could lead to excessive friction.

The Constitution made the House of Federation responsible to find solutions to disputes or misunderstandings that may arise between regional states. This federal authorization under the constitution in effect limits regional states behavior and tendency to escalate their boundary claims in to border conflicts. The intervention of HOF on border issue is not only to facilitate the referendum. The constitution has mandated the HoF to ensure the presence of fair negotiation between the regional states. The constitution also demands and obliges the HoF to strive its best to end the border claims and negotiation peacefully.

In addition to that, under the constitution the HoF is mandated to recommend federal interventions if any State endangers the constitutional order or violate the constitution. Under Art 55 (16) also the House of People's Representatives (the HPR herein after) is vested power to take appropriate measures, either on its own initiative or a joint session with the HoF; when State authorities are unable to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned State authorities. The HPR also allowed to deploy Federal defense forces, under Art 51 (14), at the request of a state administration to arrest a deteriorating security situation within the requesting State when its authorities are unable to control it. Thus, all of the above approaches of FDRE authorize federal regulation in circumstances where state action could lead to excessive

friction; makes federal power both a vaccine and an antidote against interstate conflict.

2.5. Sanctity of Human Rights

In Ethiopian federation the tension between the poles unity and diversity (federalism) and its effect on the respect and enforcement of human rights is acute [21]. Ethiopia needs an effective boundary friction resolution mechanism; as human rights and peace are indivisible and interrelated, and each cannot be achieved without achieving the other [22]. There is no short cut to peace without human rights and "there cannot be a real peace in a society in which human rights and the fundamental freedoms are mass-violated [23]. Human rights also cement the bond between individuals and promote peaceful coexistence and make societies more resilient [24]. Besides, human rights violations are both causes and symptoms of violent conflict; as violent conflict impedes development and leads to serious human rights violations [25].

Widespread human rights abuses are an indicator of future instability or a harbinger of the imminent risk of violent conflict [26]. Human rights violation is an indicator for conflict intensification, and their institutionalization is a precondition to ensure peace in society [27]. Therefore, conflict resolution process must actively envision (visualize) the human rights, [27] and employ explicit, deliberate and holistic resolution mechanism which integrates human rights and sustainable peace policy objective and approach [26].

By the same token, to do away the human rights violations at controversial the regional boundary areas; it is essential to introduce friction resolution which takes in to account human right protection or eliminate factors that might lead to violence and human rights violations or prevent the occurrence direct physical violence itself.

Chapter four of FDRE constitution, specifically Article 48 has the relevant norm govern the issue of inter-regional boundary friction resolution. On the other hand the human rights norms are provided under chapter three of the Constitution. This structural distinction between the two norms does not mean that they are independent. Since the various elements of the constitution like state structure organization, human rights, and boundary changes are interrelated. Hence, it is not safe to conclude that human rights based peaceful dispute resolution is not contemplated under the constitution or that is extra-constitutional scenario.

Besides, the application of Article 48 of the constitution by isolating or disjointing it from the human rights norms provided under chapter three could limit the prevalence of constitutionalism and rule of law. Consequently, it is essential to pinpoint constitutional principles, which lay down a legal norms and essential elements of a legal order [16] and that put guidelines to all actors to adhere peaceful and human rights sensitive boundary claims and friction resolution process. In that regard the constitution has eight principles as individually discussed in the following sub-sections.

Article 10 of the FDRE Constitution enunciates the principle of sanctity of human rights in unequivocal terms;

and suggests that: a) human rights are inherent in the nature of human kind (although the word used to refer to human kind is the narrower “mankind”); b) they are universal (i.e. applicable to every human); c) they cannot be subject to any legitimate violation; and d) they are indivisible. Article 13 of the FDRE Constitution also impose human rights obligation on all institutions of government. The universal and unconditional applicability of human rights principles and the obligation of government make the superiority of human unquestionable in the process of inter-regional state boundary friction (conflict) resolution.

The principle of sanctity of human rights is a pillar principle to parties involve on the process of inter-regional state boundary changes and friction resolution. Although Article 48 of the constitution not given hint on human rights principle, it is important to admit that the various elements of FDRE constitution like state structure, human rights, and boundary changes are interrelated. In other words, the application of Article 48 of the constitution in isolation or disjointedly from the human rights norms could limit the prevalence of constitutionalism and rule of law and human rights.

Hence, human right in case of boundary friction is neither undesirable nor extra-constitutional issue. The issue of human rights on the process of inter-regional state boundary changes and friction resolution is desirable, as the constitution underlined put its aims to protect and respect human rights under the preamble and incorporate human rights to be the pillar principle under article 10. The presence of disagreement, misunderstanding or friction on certain boundaries cannot exempt the human rights obligation of the regional states party to the boundary case and that situation also cannot be taken as a defense. Hence, the principle of sanctity of human rights also a pillar principle to parties involve on the process of inter-regional state boundary changes and friction resolution.

2.6. Inclusive Human Rights Invocation

FDRE constitution has encompassed two types of rights, which can be invoked as group right and individual rights. Importantly, the constitution conferred group of people (defined as the NNP) the right to self-determination. This is a bundle of rights includes the right to homeland, resource, self-government, culture, and language and consist political, economic, social and cultural components [28]. The right encompasses three aspects Viz. preservation and promotion of linguistic and cultural diversity, the political autonomy and participation in the federal decision-making process, and the right to secession [29]. On the other hand, Art 15, 16, 40, 32 and 41 of FDRE Constitution; respectively stipulates non-group human rights can be invoked individually like the right to life, the right to security, the right to property, freedom of Movement, and the right to economy [14].

The principle of human rights under Article 13 (1) of the constitution impose responsibility and duty on all Federal and State legislative, executive and judicial organs at all levels to respect and enforce self-determination rights of NNP as well

as individual rights of citizens. Art 93 of the constitution made NNP right to self-determination and right to equality of every Ethiopian non-derogable right during state of emergency. Hence, in general government is under obligation to respect and enforce the invocation of exercising both individual and group rights; in accordance with the constitutional and legal procedures.

The choice of individual and group rights invocation is important to optimize human rights protection in boundary areas; as there are different people composed of Oromos and Gumz, which have also conflicting interest associated with the boundary. The core issue is the limit of group human rights invocation by such people with different ethnic background (Oromos and Gumz) who pursue their life along the boundary areas, which is not settled. The question is the best human rights invocation that is inclusive of both groups. The notion of human rights also differs depending upon the object of the invoked right is individual or a collective [30].

The rational of choosing between group and individual human rights invocation for ensuring that human rights protection should inclusive to all people and that the human right invocation is not exclusive to some section of a group. To avoid the tension between group and individual human rights, and their application reducing collective rights into individual rights is a paramount option to the development and transformation of conflict [30]. Since individual rights apply to all citizens, while collective rights are often an essential part of the incompatibilities in conflict societies, in terms of conflict transformation it is preferable if human rights are invoked as individual and not collective rights.

Besides, in context of boundary conflict, there are constitutional and extra- constitutional factors support the individual human right protection. First, the collective right is already institutionalized by the respective regional state; as the Constitution envisages the procedure of bi-lateral negotiation and cooperation to avoid possibility of border conflicts between regional state governments, which are indirectly an institutional framework represent the group rights. The people as collectively have the right to participate on referendum. Second, individual rights apply to all Ethiopian citizens, which is inclusive all people (including those can be defined as NNP) in controversial inter-state boundary areas. The contested boundaries are the center of human rights abuse and in particular minorities feel insecure due to government failure to uniformly ensure citizenship rights. Hence, in context of boundary conflict, the principal invocation is individual human rights.

2.7. Peaceful Coexistence

From the preamble and Article 9 of FDRE Constitution it is clear that the constitution is a peace pact, among the Nations, Nationalities and Peoples of Ethiopia, and to this end they have promised and committed to abide by the basic constitutional principles embodied in the Federal Constitution [14]. The preamble of the constitution underline that the achievement of building a political community should ensure lasting peace among the NNP. The process of

inter-state friction should not be contradicted the federal aim NNP and the use of armed mechanisms or force by the people is neither contemplated nor permitted under the constitution.

The constitution does not need the distortion and destabilization of the people life at boundary contest areas. The process of the inter-regional state boundary friction resolution is not need the direct involvement of the people, except during referendum. The constitution not preferred entrenches and direct involvement of the people on boundary claim and negotiation. The constitution has institutionalized the people's interest via the regional states, which are vested power to initiate and follow the process of the inter-regional state boundary friction.

The principle of peaceful coexistence of people does not mean that the people in boundary contested areas have no say. The assumption is that the people right is already institutionalized by the respective regional state, and will be practicable on the procedure of bi-lateral negotiation and cooperation. The entrancement of state oriented inter-regional state boundary friction imitation and negotiation is to make the process manageable and peaceful. Since the entrancement of people on the process may make expose the process unmanageable and diffuse ideas and thereby become the source of people conflict.

The constitution is aim to avoid undesirable competition of people in controversial areas, via institutional framework and process which not destabilize the relationship of the people and backfire on the human rights. In other words, to avoid possibility of ethnic conflicts at local level or grass root level, and to protect destabilization of the local government units as well as the distortion of the local people ties border the constitution preferred centralization approach via the involvement of regional level and federal government procedure.

The role of NNP peace for the achievement of the aim is also reflected from the power of the HoF, which is mandated to work on the promotion of peaceful ties, unity and fraternity of the people; and to that end it is mandated to identify civil law under the constitution. This shows that the constitution demands peaceful regional boundary questions determination approach, which gives due attention to the peaceful coexistence of people.

The constitution also not allows regional states to resort wars for solving their inter-regional boundary misunderstanding. Article 52 of the constitution has only empowered Regional Stats to organize regional police force to maintain law and order; they are not allowed to wage war, instead to ensure peace and security, in line with the fundamental principle of the constitution Viz. human rights, popular sovereignty, and accountability and the federal aim.

Besides, the positive role of human rights up on determination of regional boundary friction resolution can be understood from the preamble of FDRE constitution, which makes the respect of human rights to be an important element for the achievement of the aim 'building a political community based on rule of law, peace, and democratic order. This also shows that resorting wars to solve inter-state friction

is not permissible under the constitution.

Therefore, generally speaking there is positive relationship between human rights and maintenance and sustainability of peace under the constitution. Exceptionally, public peace has got superior importance in the Constitution. This can be inferred from articles 26, 27, 30 and 93 of the Constitution where fundamental rights can be limited in the interest safeguarding public peace. Hence, the principle of peace is the guiding principle on process of boundary claims and, negotiation and dispute settlement.

2.8. Rule of Law

Human rights protection demand the presence of friction resolution process based on the principle of rule of law. The principle of rule of law primarily demand the existence of clear law, its publication and prospective application are considered as the basic and essential elements for a society aspiring to institute the Rule of law [31]. The preamble of FDRE constitution also underlines rule of law, human rights, and peace and democracy to be the essential values for the endeavor of building one political economy in Ethiopia. The practicality of these constitutional values requires government legislation action that regulates the social interactions between the societies and enforces those laws [32].

Article 12 (1) is the relevant constitutional provision which lay down the platform for the rule of law. This provision hints that unless there is transparent way of doing things which are meant in the public interest it is hardly possible to monitor the respect for the rule of law. This starts from the point of making the laws public, and once the rules are known there is a chance to question and take measures on persons conduct against the rule, in accordance with Article 12 (2). The practical application of rule of law principle stipulated under Article 12 needs the enactment of legislation that guide the action and behavior of all actors which involve on the process of boundary friction resolution.

Consequently, the Constitution requires the need of taking legislative measures which put binding legal standards to all actors involve on the process of boundary friction resolution including higher officials, the police forces, local governments and the people. There should be also transparency and accountability mechanisms on the actions, behaviors and decisions of all actors involve on human rights protection and for the cause of conflict and violations.

3. Enactment of Friction Resolution Legislation

In Ethiopia there is no legislation that regulate inter-state border claim and friction resolution process. In the following sub-sections an attempt is made to look the relevancy the legislation and law making organ under the constitution.

3.1. Relevance

Article 48 of FDRE constitution has provided the basic

legal framework govern the process of inter-state boundary friction resolution. The fact that boundary dispute is one of basic problem of the Ethiopian federation demand enactment of further legislation that adequately regulates the issue of inter-regional boundary friction resolution. The general nature of FDRE Constitution, in particular Article 48, in comparative with other federal constitutions likes India and Germany also supports the need of further legislation on the issue.

The idea of regulating the issue of regional boundary friction under the norms stipulated under the two sub-articles of Article 48 is far from the Constitution. Some provisions of FDRE Constitution have amplified the need of further legislation by using the terms like *prescribed by law* (as provided under Article 19 (6), 27(5), 33(2), 39(4)(E), and 40(1)) and *particulars shall be determined by law* (as provided under article 6(3), 12 (3), 34 (5), 40 (6) and 40 (7), 49 (2) and 49 (5), 54 (3), 78 (3), 80 (3) (a) and (b), 93 (1) (b), and 102 (2) of the constitution).

The fact that Article 48 of Constitution is mute on the need of legislation does not mean that prescribing or determining issue of inter-regional boundary friction via legislation is undesirable under the constitution. The most important thing is the presences of practical grounds justify or warrant the enactment of legislation. The power of determining the need of legislation on a particular subject matter is left to the legislator, which is the extended and important part and percale of law making power of the federal and regional government under article 50 (2), which can be exercised by HPR and State Council in relation to federal and regional jurisdiction as per Article 55 (1) and Article 50 (5) of the constitution respectively in.

Besides, the need of legislation can be justified from rule of law perspective, which is one of the most comprehensive and vital doctrine, principle and/or concept of modern constitutions. The existence of clear law, its publication and prospective application are considered as the basic and essential elements for a society aspiring to institute the Rule of law [31]. The preamble of FDRE constitution also underlines rule of law, human rights, and peace and democracy to be the essential values for the endeavor of building one political economy in Ethiopia. The practicality of these constitutional values requires government legislation action that regulates the social interactions between the societies and enforces those laws [32].

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The next point is the nature of the legislation. This is whether the legislation is comprehensive applicable in all boundary cases or a legislation applicable on case by case bases for each boundary cases arise in different times. From the words of Article 48 it seems that the FDRE constitution allows case by case determination of policies, procedures, and institutions in case inter-state boundary claim and misunderstanding arises. However, the case by case approach and determination of policies, procedures, and institutions makes the nature of inter-state boundary claim of procedures, and institutions unpredictable. This can be also the source of conflict.

The constitution has not prohibited enactment of legislation that proactively determine the nature of inter-state boundary claim of procedures, and institutions, which is applicable in case of boundary misunderstanding arise between all regional states. Hence, it is necessary to have a comprehensive legislation that governs and regulates the process of inter-state boundary claim /friction resolution throughout the federation. The next issue is which tire of government –federal or regional states have the power to take legislative measure.

3.2. Legislative Power Under the Constitution

The power to legislate on border issue is unmentioned subject matter under the constitution; as the legislative power regulating inter-state boundary is not listed under regional states power of article 52 and under federal list of Article 51. However it is not safe to conclude that the border issue is reserve power; and the constitution has empowered each of regional states to enact law that regulate inter-state boundary dispute settlement process. In that connection Assfa has stated that it is not safe to conclude any power not mentioned under Article 51 belongs to the states by virtue of the reserve clause, as there are additional powers entrusted to the federal government under the other provisions of the Constitution.

Besides, there are principles under the constitution which supports the absence of legislative power by Regional States on inter-regional boundary dispute. The first principle is coequality, which is recognized explicitly under article 47 (4) of FDRE constitution. It holds that all states exist on an “equal footing” and are “equal in power, dignity, and authority. This principle is one limitation on the legislative jurisdiction of one regional state on another; in case the issue border between them is not settled. The principle of the constitution limits the exercise legislative power by multiple regional states possessing equivalent powers limits.

The second principle is an aggregate power allocation norm. The Constitution has aggregately provided the power of regional states under article 52, which confirms that the regional states in the aggregate possess a bundle of powers. The principle of aggregate power may be considered as an incentive allowing both from exercising legislative power. However, the aggregate allocation of power under, the constitution should not be considered as incentive for the exercise of legislative power as to the disputed subject matter, even if there is no provision under the constitution which put

power restraint on regional states. This principle should be understood as a constitutional mechanism not to further escalate the misunderstanding by coequal exercise of legislative power rather amplifies the role of federal legislative power as a solution.

Authorization of federal regulation is recognized as constitutional methods for managing horizontal federalism, in circumstances where state action could lead to excessive friction. The role of the congress, as a vaccine and an antidote against interstate conflict to avoid friction before it occurs and to contain it before it flares beyond control is recognized [2]. In elaborating the need of federal legislative regulation one has stated the following:

This allocation of power may or may not be sensible as a matter of purely vertical federalism—i.e., powers might not “belong” at the national rather than regional level at a particular time. However, there is a clear horizontal justification for excluding states from regulating in areas where conflicting state laws could lead to interstate friction [2].

Lastly, the FDRE Constitution incorporates principle of neutrality. This principle states that the last word in settling inter-regional dispute, including boundary disputes, must not rest either the disputing regional states. This is provided under Art 48 and Art 62 (5) of the constitution, which unequivocally hint that the power to regulate inter-state boundary disagreement is not regional matter. Had it not been federal matter the constitution would not have vested final decision making role for HoF, which is federal institution. This is constitutional limitation on regional state exercise of unilateral legislative action on the boundary issue under dispute. The regional states negotiation role to settle their border claims and interest by agreement should not be considered as legislative power.

On the other hand, the legislative power of federal government is more solid under FDRE Constitution. First the HoF is a federal government organ, which is responsible to find solutions to inter-state boundary disputes or misunderstandings, under Art 62(6) and Art 48(1) of the constitution. As the final say on the subject matter is enshrined to the federal government organ, the regional states have no constitutional power. Instead federal government has constitutional power that is also under obligation to ensure the introduction of a win-win and fair forum between the concerned regional states. The first list of power, the power to defend the constitution under Article 51 also oblige the federal government to enact a law that underpin and assist the regional states to channel their boundary case smoothly and constitutionally.

In nutshell, the principle of co-equality and aggregate power enshrined under the constitution make the legislative involvement of federal government desirable and effective constitutional mechanism in order to stop unilateral behavior and actions of Regional States as well as to effectively regulate the actions and behaviors of different regional states interest as to their border claim in to inter-state fraction. Hence, Federal Government has constitutional power to enact

law that regulates the policies, principles of inter-state boundary resolution process as well as to determine the procedures, and institutions involve on inter-state boundary dispute settlement. The HPR is the relevant Federal Government organ, in that regard.

4. Boundary Friction Resolution Institutions

The inter-state boundary disputes resolution mechanism of Ethiopia is characterized by the presence of two parallel settlement pattern established via Federal constitution and Federal legislation, which respectively are House of Federation and Administrative Boundaries and identity question Commission.

4.1. House of Federation

Article 48 of the FDRE constitution primarily provides for an institution in which “all State border disputes to be settled by agreement of the concerned States; but where the concerned States fail to reach agreement, the house of the Federation has mandated to end the disagreement and the fraction. Additionally, under Article 62(6) of FDRE constitution HoF is responsible to find solutions to disputes or misunderstandings that may arise between regional states. From these provisions it is clear that the HoF has constitutional power on the issue of boundary misunderstanding and dispute between regional states.

However, there are four main constitutional factors limit HoF’s effectiveness its boundary dispute settlement function.

First, under Article 53 of FDRE constitution the HoF has no legislative power, hence there is no mechanism to proactively enact binding rules put fertile ground to umpire and decide inter-state border disagreements under article 48 of the constitution. Second, the composition of HoF is lacks expertise as the members are elected representatives of nation nationality or people. This composition formula affects the effectiveness of HoF’s institutional capacity to investigate and decide boundary issue.

Third, there is the possibility of risk due to the implications of HoF composition, which its impartiality in the form of the disputing regional state / political party interest. Besides, according to the constitution members of the HoF are at the same time active members within the regional government, having political accountability. Finally, the institutional competence of the HoF in terms of experts and regularity of work time is also questionable; as the HoF is a part time house, and unless extra-ordinary circumstances meets only twice a year.

4.2. The Administrative Boundaries and Identity Question Commission

As a response to the critics against the mandate of HoF to adjudicate intergovernmental conflicts in Ethiopian federation, in particular to tackle the risk of HoF impartiality in the form of party interest; and for maintaining federal

stability, it the importance of establishing Government institutions that is distinct from party channels allowed and permitted to evolve as autonomous government bodies so that they will survive regardless of party change or any party bickering is suggested [15].

In 2019, the Federal legislator (the HPR) has established Administrative Boundaries and identity question Commission [33]. This federal institution is mandated to decide on the issue of inter-regional boundary claims and dis agreements.

4.2.1. Constitutional Ground on the Establishment

Under FDRE constitution there is less explicit guidance for the need of establishing an organ that deals with the issue of boundary dispute other than the HoF. However, implicitly there is concrete guidance under the constitution that supports the need of other organ on issue of boundary dispute. In general, it is crystal clear that the FDRE constitution not put monopoly power to HoF even if it has inherent responsibility to find solutions to inter-state boundary disputes or misunderstandings, under Art 62(6) and Art 48(1) of the constitution.

First, the scope of HoF power on dispute settlement under the constitution should be seen in nexus with the aim to disable unilateral action of one of the Regional State. Article 48 of FDRE Constitution, primarily envisages the procedure of bi-lateral negotiation and cooperation among the regional states; which have co-equal power. By providing so, the constitution has amplified the introduction a win-win and fair forum enabling them to address and regulate their border claim bi-laterally. The constitution has primarily mandated the concerned regional states to end their border disagreement effectively. The constitution has banned unilateral action of regional states to regulate their border fraction, it has not bans regional states to use institutional framework for bi-lateral boundary resolution.

The HoF is an institutional mechanism under the constitution to limit the unilateral actions region in relation to boundary issue under dispute. Even though, HoF as the last resort mechanism to solve inter-state boundary disagreement under the constitution; its intention is only to disable the role of regional states to supervise the process of border conflicts negotiation and referendum. The sprite of the constitution, does not contemplate the HoF to be the only government organ, which deal the issue of inter-state border fractions.

Second, the constitution has not capacitated each/one of the regional states to enact law that regulate the policies, procedures, and institutions in case the parties to inter-state boundary claim are in disagreement position. There is no justifiable or constitutional ground, enabling one of Regional State to exercise/ extend its legislative and executive authority in case where the issue of inter-state border at stack. In such cases the constitution has kept this legislative power out reach of Regional States. This assertion is in line with the principle of coequality of regional states recognized explicitly under article 47 (4) of FDRE constitution. The principle of coequality of regional states is one limitation on the legislative jurisdiction of one regional state on another; in

case the issue border between them is not settled.

Third, the decision making power of the HoF on dispute settlement is constitutional limitation on the role of regional state on the boundary issue under dispute, including taking legislative action. Article 50 (8) of FDRE constitution has stated that Federal and State powers are defined by this Constitution and the States shall respect the powers of the Federal Government and vice versa. The power to legislate on border issue is unmentioned subject matter under FDRE constitution. The power to determine policies, procedures and institutional mechanisms concerning inter-state boundary is neither mentioned under regional states list of article 52, nor under federal list of Article 51. However, this does not mean that the border issue is reserve power and it is not safe to conclude that the constitution has empowered each of regional states to enact law that determine procedures, and institutions as to inter-state boundary delimitation.

Further, from the principle of constitutionally guaranteed division of power and the supremacy of the constitution follows that the last word in settling the boundary disputes must not rest either the disputing regional states. This also supported and strengthened under Art 48 and Art 62 (5) of the constitution. These provisions have clearly hinted the power to regulate inter-state boundary disagreement is not regional mater. Had it not been federal matter the constitution would not have vested final decision making role for HoF, which is federal institution. From the above it can be concluded that Federal Government has the power to enact law that regulate the policies on inter-state boundary and to determine procedures, and establish institutions as to inter-state boundary delimitation.

There is no constitutional norm limit and exclude the legislative function of HPR to establish additional institution that regulates the process of inter-state boundary disputes or misunderstandings. Art. 45 of the constitution also support, as parliamentary systems the supremacy of HPR -subject of course to the supremacy of the Constitution- requires us to assume that the power of the HPR to establish additional organ as constitutional. In practice, HPR has established boundary commission by invoking article 55 (2) of the constitution.

4.2.2. Aim, Objectives and Powers of the Commission

The proclamation has warranted the establishment of the boundary commission based on Federal Government's constitutional responsibility to protect and defend the stability Ethiopian federation. The aim behind the establishment of the commission, as underlined under the preamble of the proclamation, is strengthening the federal system to reinforce the underway diversity of nations, nationalities and peoples. The preamble also underscored that controversy relating administrative boundaries is source of conflicts between various nations, nationalities and peoples; and that is also the major causes of federal instability in Ethiopia and, the need for a neutral, highly professional and peaceful solution for the problem.

The legislator has attempted to justify the establishment of

the commission, by bearing in mind the negative implication inter-state boundary disagreements on the stability Ethiopian federation, and the need of having a neutral, highly professional and peaceful solution for the problem. Thus, the rationale behind the enactment of proclamation which establishes the commission as an additional framework is to strengthen the stability of the federation that is by widening involvement of federal government institutions which deal on the issue of inter-state border fractions. Such rational and involvement is in line with the political and economic integration policy of FDRE constitution, as underlined under its preamble. That is also in line with Article 88 of the constitution, which put political and economic integration aim of Ethiopian federalism. This provision impose duty on federal government to take legislative measures achieve the political objective of the constitution, which is the promotion of self-rule and strengthen unity.

Under art 4, the objectives of the commission shall be to submit recommendation to the Public, the House of the federation, the House of People's Representatives and the Prime minister. Article 6 states that, any administrative boundaries decision and identity question shall be studied by the commission and resolved by House of the Federation in accordance with applicable laws.

Under art 4, the objectives of the commission shall be to submit recommendation to the Public, the House of the federation, the House of People's Representatives and the Prime minister. Under the umbrella of its power to provide alternative recommendations, the proclamation has different but interrelated roles to the commission. Article 5 of the proclamation has listed four powers and duties of the commission.

The first function of the commission is adjudication. Accordingly, under art 5(4), the commission is in charge to investigate administrative boundaries controversies which are directed to it from the House of the Federation, the House of Peoples' Representatives and the Prime minister. Additionally, as per art 5 (1), the commission is mandated to study any problems and conflict that are related to the administrative boundaries demarcation and issues of identity.

The second major function of the commission policy initiation, and under art 5 (3), the commission is in charge to develop federal policies, which serve as basis for the continued determination and alteration of administrative boundary decisions, that expand appropriate constitutional principles, transparency and efficient system or amendment of laws. Additionally, the commission is in charge, under art 5(7) to initiate the policy framework of administrative boundaries to make the administrative boundaries and their area of well-being for development and commerce.

The third major function of the commission is prevention. Accordingly, under art 5 (2), the commission is in charge to identify amendments actions that has to be taken to promote and consolidate unity of peoples based on equality and their mutual consent. Additionally, under art 5(5) the commission is mandated to supervise and facilitate ways in which Conflicts arise over administrative boundaries have been resolved, the

renewal and strengthen of good relations between neighboring regions. Further, under art 5(6) it has shouldered the responsibility of identifying the measures that has to be taken to make administrative boundaries is not further cause of conflicts.

Fourthly, the commission is in charge to conduct study on the issue of administrative boundaries. To this end, art 5(10), the commission imposed obligation on the commission to Prepare strategy and detailed plan that show the process of gathering public input and feedback, which ensures that the process includes all sections of the community. Under art 5 (8), it is in charge to collect public opinion on issues of administrative boundaries. Under art 5 (9), it is in charge to Collect opinion and inputs for the study from regional and federal officials, political parties, and other stakeholders.

Finally, the commission also has subsidiary law making power. In this regard as per article 20 (1), the Council of Ministers vested power to issue regulations necessary for the implementation of this Proclamation. Under art 20 (2), the Commission may also issue directives for the implementation of this proclamation and regulations issued pursuant to sub-article (1) of this Article.

4.2.3. Composition of the Commission

The establishment proclamation provides the commission has an office with necessary staff and accountable to the Prime Minister to serve for three years, unless extended its term by the decision of the HPR [33]. Article 14 and 7 of this proclamation has expected the members of Commission to undertake its functions independently and impartially.

Article 7 deals with the Appointment of the members of the commission. Accordingly, under art 7 (1), the number of members of the commission shall be determined by the government. Art 7 (2) provides that individuals designated as members of the Commission shall have community commendation and good reputation for their ethical conduct, educational preparation, and work experience. Art 7 (3) the Chairperson of the Commission and the Deputy Chairperson and other members of the Commission shall, up on recommendation by the Prime Minister and appointed by HPR.

The proclamation has expected the members of Commission to undertake its functions independently and impartially. This shows that the enabling legislation is based on an assumption that the commission should function independent from the regional states and give its decisions in spirit of impartiality. The composition principle of is professionalism, neutrality and independence.

4.2.4. Some Limitations

Although the establishment of the commission is constitutional response, there are some concerns which limit the effectiveness of the commission. First, by design the commission has no power to render binding decision on the parties to the boundary dispute, the regional states. As provided under art 4 of the proclamation the underlining objectives behind the establishment of the commission are to submit recommendation to the Public,

the House of the federation, the House of People's Representatives and the Prime minister. Hence, the list of four "powers and duties" vested to the commission under Article 5 of the proclamation cannot go beyond providing recommendation; and this makes the commission teeth less as it is up to the parties to accept or reject the recommendation of the commission. As a means of securing information to the commission Art 16 impose an obligation on "any person" to cooperate the Commission's request for legal question.

Second, the underlining principle on the selection of the members of the commission totally ignores the role of regional states participation on the process of dispute settlement. The commission has no mechanism that ensures the inclusion of the members from the parties to the dispute. The composition formula has also not ensured the exclusion of any member who has an interest on the case to be resolved by the commission. As the underlining principle on the selection of the members of the commission is professionalism and neutrality it does not take into account equality of regional states principle of the constitution. Hence, the commission is far from serving as a forum of bi-lateral negotiation forum between the regional states.

Third, the composition formula totally ignores the right of NNP representation in federal institutions, which is recognized under article 39 of the constitution. Because, as several sections of the Constitution indicate, it emphasizes the sovereignty of nationalities, it grants nationalities the right to self-determination, secession included; there is no federal supremacy clause unlike many other federal constitutions. It appears that the nationalities are considered as building bricks as if they preceded the federation. Hence, the establishment of the commission has no recognition that ensures formal reflection of NNP voice on the process of boundary friction resolution. In fact, Art 5 (2) has mandated the commission to identify amendments actions that has to be taken to promote and consolidate unity of peoples based on equality and their mutual consent.

Forth, the absence of mechanism that ensures equal involvement of people from the concerned regional states is another concern. In fact, Art 5(5) mandated the commission to supervise and facilitate the ways in which administrative boundaries Conflicts resolved, the renewal and strengthen of good relations between neighboring regions. However, this is impossible without meaningful and formal participation of people from local areas on the process of boundary friction resolution. Hence, the commission is established based on top down formula so that there is no way for enhancing local people representation in the commission.

Fifth, the commission also lacks procedural safeguards which ensure transparency, justice, accountability, due process and independence. The Preamble it is stated 'We, the nations, nationalities and peoples of Ethiopia: strongly committed, to *building a political community* founded on the rule of law.... As the members are not elected on case by case method for three years it seems difficult to ensure neutrality.

Six, the limited period given to the commission is another concern; as the proclamation provides that the commission has an office with necessary staff and accountable to the Prime Minister to serve for three years, unless extended its term by the decision of the HPR [33].

5. Conclusion and Recommendations

The purpose of this study is to identify mechanisms of inter-regional boundary friction resolution under Federal Constitution of Ethiopia. To that end, the study has employed a qualitative approach, which is mainly doctrinal legal research using secondary data and the study has revealed the following.

The FDRE Constitution has eight (8) important principles which put guidelines to all actors to adhere peaceful and human rights sensitive boundary claims and friction resolution process. The first is primacy of federal union, principle dictates that the manner regional states inter-state border claim and negotiation should not prejudice of the value federal union. The second is principle of cooperation and dispute resolution, which demand states to settle their border disagreement bilaterally to make utmost attempt and commitment to resolve the border issue in cooperation. The third is principle codependence and disablement, which recognizes the dependence of the Regional States on each other on the process of negotiation that creates incentives for conciliation and removes or disables instruments of potential conflict escalation.

The fourth principle is federal oversight which is authorizes of federal regulation (as a safety valve and to overcome violent situation,) in circumstances where state action could lead to excessive friction. The fifth principle is sanctity of human rights, which demands accepting human rights as moral force and shapes and influences laws, decisions, practices, and actions in relation to the process of inter-regional boundary friction. The sixth is inclusive human rights, based on invocation individual human rights. This is preferable, as group rights invocation is not inclusive due to the presence of population difference in terms of ethnic background and language in controversial boundary frictions areas.

The seventh principle is peaceful existence of the people, which prohibit the distortion and destabilization of the people life at boundary contest areas. The process of the inter-regional state boundary friction resolution is not need the direct involvement of the people, except during referendum. The constitution not preferred entrenches and direct involvement of the people on boundary claim and negotiation; as their voice is institutionalized via the regional states.

The last, but not the least principle is rule of law, which requires the need of taking legislative measures which put binding legal standards to all actors involve on the process of boundary friction resolution including higher officials, the police forces, local governments and the people. There should be also transparency and accountability mechanisms

on the actions, behaviors and decisions of all actors involve on human rights protection and for the cause of conflict and violations.

Finally, the inter-state boundary disputes resolution institutions of Ethiopia are the House of Federation and Administrative Boundaries and identity question Commission. There is permissible ground under the constitution for the establishment of parallel institution, other than HoF that umpires the issue of inter-state boundary. In other words, there is no clear aspiration under the constitution to make the HoF the only government organ which deals the issue of inter-state border fractions.

Thirdly, there are constitutional challenges that negatively affect the role of house of federation on dispute settlement. These include, the non-legislative role of the HoF, which in turn limits the role of the house to pass binding rules which guide boundary negotiations and dispute settlement; the composition of the HoF, which in turn pave the way for political impartiality of the house; and the level of experts and regularity of work time of the HoF, in turn affects the institutional competence of the HoF, to resolve boundary disputes effectively.

Besides, there is constitutional power and ground for the HPR to enact the law that establish the commission. Finally, the study recommends the enactment of comprehensive legislation that is applicable in case of boundary misunderstanding arises between all regional states and proactively determines the nature of inter-state boundary claim of procedures, and institutions. Since federal government has constitutional power the HPR should enact law that establishes institutions on inter-state boundary negotiation and procedures; and promote accountability and transparency on the on the process and procedure of boundary decision making.

Fourthly, the researcher concludes that Federal Government legislator (the HPR) has constitutional power to enact law that regulate the policies on inter-state boundary and to determine procedures, and establish institutions involve on inter-state boundary dispute settlement. For that matter, the consent of the HoF is not a precondition for the effectiveness of federal legislation to be passed by the HPR.

Consequently, the researcher recommends the following. The HPR should enact federal legislation that provides for the creation of bi-lateral boundary negotiation forum between the concerned regional states. The HPR should enact federal legislation that determine the obligation of regional states to respect and enforce human rights upon the procedure of boundary decision making. The HPR should enact federal legislation that promote accountability and transparency on the on the process and procedure of boundary decision making. The federal government should also reconsider the composition of the newly established Administrative Boundaries and identity question Commission, and among other things it is important to enhance the involvement of the Regional States in the commission.

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