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The Paradox of Administration of Nationalities in Post-1991 Ethiopia: The Case of Benishangul- Gumuz Regional State

Abstract

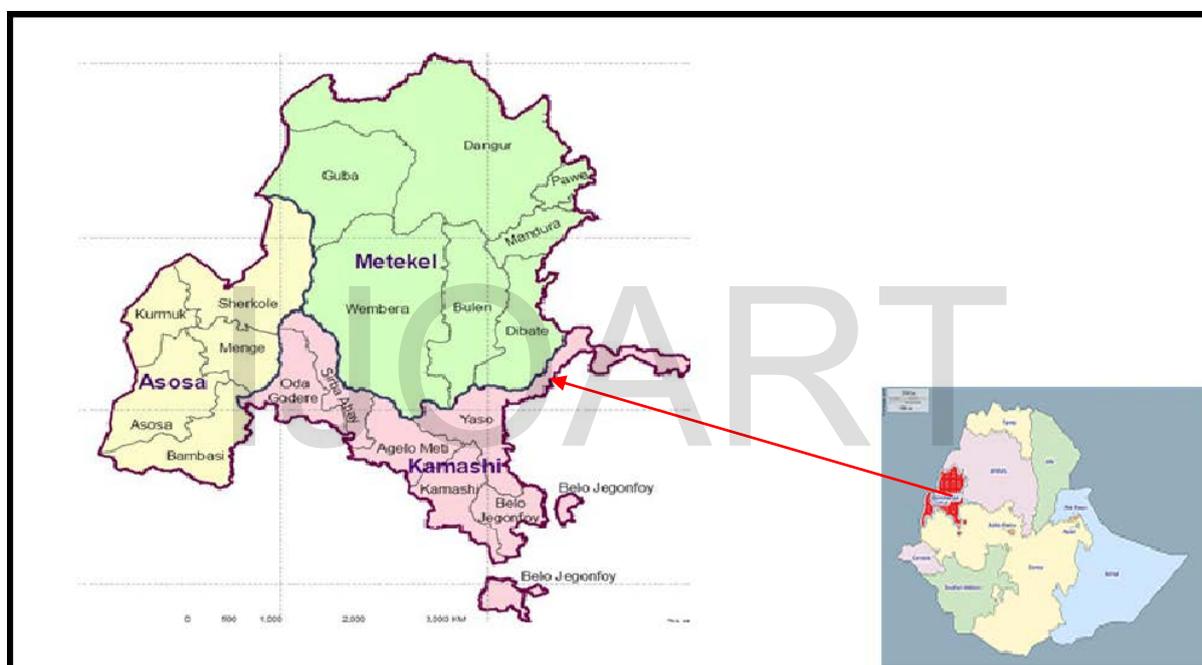
The Constitution of the Federal Democratic Republic of Ethiopia allows each of the regional states with the legislative power to draft, adopt and amend their own constitution fitting to its own local circumstances. Thus, Benishangul-Gumuz Regional State (hereafter used as BGRS) drafted and adopted its own constitution. The 2002-revised constitution of the region vividly recognized the establishment of administration of nationalities as administrative hierarchy by replacing the former Zonal Administration. Therefore, the writer of this paper collected various empirical evidences by using personal interview, researcher's field note, FGD in addition to appropriate legal document investigation to explain the paradox of incompatibility of legal principles and actual practices of nationality administration in BGRS. Hence, the writer claims that, BGRS does not follow its own constitutional provisions for administration of nationalities practically. Since constitutionally, nationality administrations in BGRS have important powers but practically these powers are symbolic/nominal.

Key Words: Nationality administration; BGRS; the regional constitution; Self-administration; Council of Nationality; Indigenous nationalities

1. Introduction

BGRS is one of the nine constituent units of the Federal Democratic Republic of Ethiopia (See Art 47(6) of the FDRE constitution). The region is located in the Northwestern part of the country at 9017'S to 1206'N latitude and 340101 to 37041 E longitude bordering with Sudan in the West, Oromya Regional State in the East, Amhara Regional State in the North and Gambella Regional State in the South. The regional state has a total land area of 50,381km² with a total population of about 670,847(Ethiopian Central Statical Authority,

2007 Ethiopian census). Under current structure the region was organized with three administrative *de facto* Zones. Such as Asossa Zone (which incorporates Bambasi, Assosa, Oda Godere, Menge, Komsha and Sherkole Woredas), Kamashi Zone (Sirba- Abbay now the named changed as Sedale woreda, Agalo Meti, Kamashi, Belo- Jeganfoy and Yaso Woredas), and Metekel Zone (which incorporates Dibate, Bullen, Mandura, Dangur, Guba, Wombera and Pawe Woreda). Apart from this, Mao Komo Woreda has been recognized as special Woreda under Assosa Zone (Source: from the researcher personal experience).



Map 1: Administrative Map of Current BGRS (the study area)

Source: From BGRS

BGRS is home of different ethnic, cultural, linguistic and religious groups. Hence, BGRS constitution recognizes the presence of different ethnic, cultural, linguistic and religious groups under the region (see the preamble of the revised regional constitution). Besides, the regional constitution explicitly categorized the peoples of the regional state in to two broad groups. Namely ethnic groups as owner and indigenous nationalities of the region such as the Bertha, Gumuz, Shinasha, Mao and Komo, whereas other peoples of the country

residing in the region as non- indigenous ethnic groups (see Art 2 of 2002 the revised BGRS constitution).

After the demise of the Derg regime, Ethiopiadecided and adopted ethno-linguistic federalism was primarily to address the 'national question' a popular name for the 1960s struggle for Ethno-linguistic domination (Markakis, 2003). Accordingly, the FDRE constitution explicitly recognized the rights of self-determination and administration including the rights to secession of the Nations, Nationalities and Peoples' of the country unconditionally. The right of peoples to self-administration is a pillar issue of Ethiopian federation. Hence, without doubt the constituent units of the federation in line with their own specific contexts are supposed to ensure the above-mentioned rights of Nations, Nationalities and Peoples in their own respective areas.

One major mechanism to ensure these rights is constitutional mechanism. Thus, like the FDRE constitution, BGRS constitution vividly recognized self-determination rights of Nations, Nationalities and Peoples of the region including secession right without any condition (see Art 39 of 2002 revised regional constitution), which means that all Nations, Nationalities and Peoples' of the region have full right to administer themselves. However, Art 39 of BGRS constitution restricted non- indigenous ethnic groups to the rights of internal self-administration within the region. Since, this right has explicitly offered to indigenous nationalities of the region namely the Bertha, Gumuz, Shinasha, Mao and Komo ethnic groups (ibid).

Accordingly, all indigenous nationalities of the region have full right to establish nationality administration in the regional state with the extent of territorial base (see Art 3 (2) of Proclamation no 73/2008 of the region). According to the said revised regional constitution, the structure of nationalities administration looks like ethnic self-administration with its own defined territory or boundary. Nevertheless, the practical spirit of the structure of

nationality administration in BGRS looks like non-territorialized, which is paradoxical for further information see Art 3 (4) of Proclamation no 73/2008 of the region.

The very objective of this paper is to explore the legal provisions and the practices concerning nationality administration in BGRS of Ethiopia. For this purpose, the paper began with a critical investigation into the concept of indigenesness, autonomy and self-administration by emphasizing BGRS. This will be followed by the discussion of the major discrepancies between constitutional principles and the practices undertaken within the region regarding administration of nationalities and identified the major reasons precluding regional government to realize constitutional provisions of administration of nationalities since, 2002. The paper then ends up with a conclusion.

2. Clarification of Fundamental Concepts: Critical Reflection in the Context of BGRS

The major emphasis of this section is critically to analysis fundamental concepts. Accordingly, an attempt has made to clarify the concepts such as autonomy, self-administration and indigenesness in the context of BGRS. In-depth exploration of concept has helped to generate a detailed understanding of the phenomenon under investigation. Therefore, analysis of each concept has followed by the effort to relate the concepts with the study area/BGRS. The main intention are to guide the conceptual discussion of the empirical analysis in the study area. Because the conceptual framework served as a set of 'lenses' that allowed the inquirer to 'see' and understand certain aspects of the phenomenon under investigation (Anfara & Mertz, 2006, p. xxviii).

2.1 Meaning of Indigenesness in BGRS

In fact, as many other terminologies there is no universally accepted identification criterion to determine certain peoples as indigenous and non-indigenous in every states. Nevertheless, different countries attach the concept in different ways by taking their own particular local context. For instance, in some western countries the dividing line between indigenous people

and others is not clear or precise. But one important distinguishing element to determine certain people either indigenous or non-indigenous under some western states is, the scope to which a group has played a role in the process of state formation (Will Kymlicka in Will Kymlicka and Baogang He (2005) (eds.): 48). However, this criterion is not diametrically applicable to all Western countries.

In the context of international law¹, the term indigenous is connected with colonialism particularly colonization undertaken by external states by excluding domestic aspects of state marginalization. Hence, Will Kymlicka connected this view with the '*saltwater thesis*' of European colonization of other states (ibid). Therefore, pertaining to the above assumption all Indian and White peoples residing in South Africa by colonial operation have considered as non-indigenous people while only the Black South African peoples are indigenous peoples in light of international law. Based on the international laws, one can clearly claim that all Ethiopian nations, nationalities and people' have considered as the indigenous people. Because Ethiopia is the only African country, which was not colonized by any external body.

Indeed, in Africa, there is no one ethnic group that can claim 'indigenouness' to be the African continent (Ojot Miru Ojulu, 2013). Leave alone the continental level, even at the regional or state level it is difficult if not impossible to find a single group that could claim the status of 'indigenous people' to one African country. After all, African peoples' history is characterized by massive migrations that make it difficult to determine which group might be

¹The international human rights regime has expanded its definition of rights to include not only individual rights to physical and political protection but also collective rights to cultural protection. For instance, cultural rights are now enshrined various international legal documents. Such as, in ILO Convention 169, UDHR, ICESCR, ICESCR, ICCPR, and Declaration on the Rights of Indigenous Peoples. Indigenous rights activists also exploit the existence of international rights that are not particular to cultural identity but nevertheless provide some moral leverage, such as the right to a family, environmental rights, human rights, and the right to shelter (Macklem, 2007). Many governments have responded to these changes at the international level by reconfiguring political organizations at the domestic level. As states withdraw their commitment to social and economic support, some have attempted to renegotiate the terms of citizenship by extending cultural rights to their marginalized populations.

descendants of the first inhabitants (Reid, 2009 cited in *ibid*). As clearly stated in Ojulu (2013), that is why the ‘African Commission’s Working Group on Indigenous Populations’ disregarded the question of aboriginality or ‘first comer’ as a criterion to identify indigenous peoples in Africa (African Commission on Human and Peoples Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), 2006). It is indisputable that different African ethnic groups have inhabited certain territories for centuries and now recognized by their state as the indigenous communities to those territories (Pyhälä, 2012). For instance, the Maasai and Turkana in Kenya, the Batwa in Burundi, the Fulani in Burkina Faso, the Baka in Cameroon, and many others could be mentioned who are recognized as indigenous peoples to certain territories of those states (ACHPR and IWGIA, 2006 cited in Ojot Miru Ojulu, 2013).

Most importantly, however, the question of the ‘first comer’ is not the only criterion by which to identify indigenous people, according to the ‘Working Group on Indigenous Peoples in Africa’ (ACHPR and IWGIA, 2006). This Working Group, rather than putting forward a one-size-fits-all style definition for indigenous peoples, outlined key characteristics that could help to identify indigenous people in Africa:

The overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they have regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They have subjected to domination and exploitation within national political and economic structures that have commonly designed to reflect the interests and activities of the national majority. This

discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development (ACHPR and IWGIA, 2006, p.10 cited in Ojulu, 2013).

Other scholars coincide the term indigenous and other peoples with the context of political exclusion, economic marginalization, cultural vulnerability, geographical isolation, and long-standing settlement (Kingsbury 1995, 1999). Generally, the basic criterion to determine certain groups as indigenous and non-indigenous is not uniform in all countries; the terminology has used in different countries and enshrined in international laws. Recognition of the rights of indigenous peoples in international law has often framed as a condition of deepening democratic citizenship. Hence, some countries in the world accept the usefulness and validity of the term as others continue to resist it. “But the term punctuates the political landscape in developed and developing countries, in the East and in the West. Its politics revolves around four different types of claims: participation and representation; access to resources; autonomy and self-government; and the protection for language and culture” (Courtney Jung, 2008: 184).

However, as interviews conducted with higher officials of BGRS reveal, the term indigenous in BGRS connotes original inhabitants. Moreover, to emphasize their status as a people living in the place prior to modern Ethiopia formation (last quarter of the 19th century) and who identified themselves, as part of politically, economically and socially marginalized groups during the former successive regimes. The interviewees also described that the main reason why the term indigenous has incorporated vividly into the regional constitution is likely to promote the rights to autonomy or self-government in the matter relating to their internal and local affairs and freely pursue their own traditional institutions, economic, political, social and cultural development in the region. The indigenous ethnic groups’

historic marginalization and isolation from the center may address by the regional action and hence explicit constitutional recognition of indigenous ethnic groups signifies the practical steps of the region to protect ethnic rights.

The minutes of the Constitutional Assembly held in Assosa 03/12/2002 also reveal a somewhat similar viewpoint as that of the interviewees. As per this minute, the term indigenous people in BGRS have described as:

People inhabiting the region in primacy have considered as indigenous to the region. But, one thing everyone should underscore here are other Ethiopian people's rather than indigenous ethnic groups was not considered as oddities and migrant they are Ethiopian (see Minutes of the Constitutional Assembly held in 03/12/2002, Assosa, Volume 1, the Amharic version was translated by the researcher).

As explained by Belay Kassa (2004) and Beza Dessalegn (2015), the intention of incorporation of the concept indigenous in BGRS constitution is controversial. However, the incorporation of the concept in the regional state constitution is not as such controversial. Since, the main assumption and description concerning the meaning of indigenous people by the minute of the conference is quite clear. As per the minute of the conference, the one major criterion to describe and determine people of the region as indigenous and other peoples are the duration of their settlement of the area (i.e. Benishangul-Gumuz Region). As per historical records, the earliest inhabitants of the region were those five indigenous peoples. For instance, as stated by early nineteenth century British explorer C.T. Beke, *shangella*² were the "previous occupiers" of Agawmeder, but had been "displaced" by the Agaw people to lowland area (the current BGR) (cited in Richard Pankhurst, 1977). Additionally, as stated by Manoel da Almeida the *Shinasha* people were also lived on both

² The term *Shangella* is derogatory term ascribed by the Ethiopian highlanders to designate the Gumuz community and other people, which has a black or Negroid pigmentation (Wolde-Selassie, 2002:225).

sides with the Nile and were among the “first inhabitants of the area” (ibid:9). Similarly, the issue is also true to the Bertha, Mao and Komo peoples of the region.

Even though, we are proud of being the only African country that has not been colonized, the contemporary Ethiopia was only born in the last quarter of the 19th century through brutal subjugation and colonization of the western, southern and eastern Ethiopian people by the northern Abyssinian kingdom (Merara, 2003). Hence, it is not controversial today that Ethiopia belongs to various indigenous communities that occupied their present territorial regions long before the Abyssinian conquest or the involuntary integration into the contemporary Ethiopia (Asafa, 1993). Therefore, their historic claim to a historic and strong bond with certain territories in which they have inhabited in earlier and seek to enhance the maintenance of their cultural identities including land rights and political/territorial autonomies is a major issue played a significant role to incorporate the concept indigenous in the BGRS constitution.

2.2 Meaning of Autonomy and Self-Administration Rights: Reflection in the Context of BGRS

The terms autonomy and Self-administration is multi-dimensional concepts which have different meaning in different circumstances. The concept has internal and external aspects. However, this study addresses self-determination with respect to the right of BGRS nationalities and peoples’ freely to determine their political, economic and social status including the right of territorial autonomies within the region. Linguistically, the term autonomy was derived from the Greek ‘Auto’ – *self*, ‘Nomos’– *rule of law* (Natalia Loukacheva, 2005:2). Autonomy is therefore to rule over oneself according to one’s own laws or rules. Obviously, autonomy is a broad, vague and dynamic concept. Because it is used in a wide range of disciplines and can have different meanings depending on the context. For instance, in political science context it has often seen as “independence, self-

government, self- determination, self-direction, self-reliance and self-legislation” (Wiberg, 1998: 43). Similarly, in legal theory, it connotes self-government, self- rule, self-management, self- administration, home rule, and self-legislation. The classical definition of autonomy indicates the right of colonized or severely oppressed people to create an independent nation state, which means external self-determination. While, currently the definition comprises, measures of independent control over areas deemed to be crucial to the group’s well-being within the existing state, which has categorized as internal self-determination.

The major objective of autonomy is that it allows the group to administer itself within its jurisdiction and is better suited to the promotion and protection for its peculiar cultures, language, religion, and history in line with its aspirations and desires. However, the extent and scope of autonomy varies from situation to situation. There is no ready-made model or ‘one size fit all’ principle applicable with regard to extent and scope of autonomy. In this regard, Markku Suksi, asserted that ‘[there is] “no solid theory underpins autonomy, because autonomy arrangements are often very pragmatic ad hoc solutions that escape generalizations” (quoted in Yash Ghai, <http://dx.doi.org/10.1017/CBO9781139088206.001>). There are many purposes of autonomy and the arrangement for it varies a great deal, such as in terms of powers transferred or institutional relationships (ibid).

Accordingly, the only focus on this study is the internal aspects of self-determination within BGRS, which emphasizes the choice of a system of governance and the administration of the functions of governance according to the will of indigenous peoples under group *self-rule* matrix at BGRS. Johanne Poirier clearly asserted that the “concept of autonomy is closely connected to the notion of collective rights, although they are not coterminous” (Johanne Poirier, in Ronald L. Watts and Rupak Chattopadhyay, 2008, ed. Pp: 38). Autonomy is not merely having rights rather it is about having some space (both physical and

political) in which to exercise the right to decide in favor of one's rights (ibid: 39). Autonomy is about empowerment or the paradigm shifts from "rights" to "power" (ibid). Yash Ghai claimed that 'autonomy refers not only to specific constitutional arrangements, but also to practices and attitudes to politics, dialogue, openness and so on – a framework of mind and national orientation' (ibid).

Maria Ackrén (2009) indicated that, the concept of autonomy in a wider perspective is considered as the granting of internal self-government to a region or a group of people that is acknowledged as a partial sovereignty in relation to the national government. This autonomy could include, in such a case, both actual and formal sovereignty in the political decision making process (Svante E. Cornell, 2002: 247 quoted in Maria Ackrén, 2009: 12). This means that it is possible to exercise autonomy within a national boundary (such as at national, sub-national and local levels of government) without external influences. It has often described as self-rule or self-administration within the national boundary. Thus, some constitutions recognize, explicitly or through unwritten constitutional principles that the protection of minorities and aboriginal populations can entail a certain degree of organizational autonomy, which incorporates "self-management" or "self-government" in the national boundary. Accordingly, in Ethiopia the FDRE constitution and regional state constitutions guaranteed unconditional self-determination rights up to secession to all Nation, Nationalities and Peoples' of Ethiopia and 'owner nationalities' of the respective regions respectively.

While, in a narrower perspective Maria Ackrén (2009) explains autonomy as the protection for minorities and their self-determination rights. If we use this narrow definition, we enter a jungle of conventions, charters and other international agreements that deal with human rights issues, minority rights issues and indigenous people's rights and so forth. The common characteristic in all forms of autonomy is that they have granted to international

agreements or to interstate agreements or other public legislation within a state (ibid). Hence, in this study, internal aspects of self-determination has utilized with the particular situation of Benishangul-Gumuz Regional State. More specifically, territorial and non-territorial forms of autonomy have considered in investigating the practice of self- administration in BGRS.

Territorial forms of autonomy indicates an arrangement where population has granted special rights to run its own affairs in certain areas (Ruth Lapidoth, 2001 quoted in Maria Ackrén, 2009). Hurst Hannum and Richard B. Lillich (1980) as quoted in (Maria Ackrén, 2009) noted it as autonomous regions which possess some ethnic or cultural distinctiveness have been granted separate powers of internal administration without being detached from the state of which they are part. According to Johanne “one of the most advanced forms of territorial autonomy is a federal system which transforms a particular minority into a majority within one or several of the constitutive units” (Johanne Poirier, in Ronald L. Watts and Rupak Chattopadhyay, 2008, ed.). The territorial option will entail the redesigning of borders between units, or the creation of additional constitutive entities. Switzerland and India offer relatively recent examples of such restructuring. The objective is to seek a better fit between relatively homogeneous and geographically concentrated minorities and the political borders, which define the territorial competence of legislative and executive organs. Therefore, it is one means of accommodating diversity in federations.

Numerous scholars argued that, a territorial solution has been effective mechanism for geographically concentrated diversity. Nevertheless, it has its own risks sometimes. For instance, intermingling nature of diverse groups is simply unavoidable, sometimes it may foster secessionist tendencies, and ethnic cleansing or major involuntary displacement is a particularly perverse way of generating conditions for a diverse group to be geographically concentrated in a particular territory (ibid). Bertus de Villiers described non-territorial autonomy as “A non-territorial jurisdiction exists when independent public authority is

exercised in respect of certain individuals throughout the state irrespective of the fact that those individuals are residing in territorial jurisdictions in which other individuals are subject to similar public authority from territorially delineated jurisdictions” (2012:172). He also asserted that, non-territorial autonomy rests on two principles, firstly the decentralization of decision-making to a group rather than to a geographical territory, and secondly the clothing of such a group with public powers as a form of government in contrast to a private club or an association. Hofman asserted that non-territorial autonomy may usefully apply in situations where a minority does not constitute the majority or a sizable minority of the population in a given region of a state but finds itself dispersed throughout the whole of a state (Hofman, 2006/7: 11 quoted in Bertus de Villiers, 2012:172-173).

According to Maria Ackrén (2009: 16), non-territorial autonomy has referred to as personal, cultural, administrative and functional autonomy. She explains that personal and cultural autonomy have closely linked to each other, which refer to minority rights or indigenous people rights. Administrative and functional autonomy are more associated with various institutions and their functions and powers, but can also base on territorial grounds (ibid). These forms of autonomy have closely related to the discussion concerning multi-level governance. Numerous authors claimed that non-territorial autonomy is preferable for minorities who live dispersed in the country but have a strong political will for self-government and articulate their claims as such (Bertus de Villiers, 2012:172, Arend Lijphart, (2008), Assefa Fiseha,(2012) and others). It can therefore grant to a linguistic, cultural or religious minority group as a *legal entity* “cultural council” with public law legislative and executive status and functions to operate as an organ of government.

Power sharing or consociational democracy is also another aspect in non-territorial autonomy of different cleavages within certain state. According to Arend Lijphart consociational democracy means government by elite cartel designed to turn a democracy

with a fragmented political culture into a stable democracy (2008:31). His argument is that consociational democracy is one strategy for managing conflict in severely divided societies in cases where claimant groups is territorially not sufficiently concentrated. He also claims that successful consociational democracy requires a grand coalition government, segmental autonomy, proportionality in the voting system and in public sector employment, and minority *veto* (ibid: 32). Obviously, grand coalitions involves power sharing of all significant groups in political power, particularly in executive power. Segmented autonomy entails a delegation of decision-making power to every significant group. Proportionality entails that political representation, civil service appointments and allocation of public funds, etc. should consider proportion of each significant group. Lastly, minority veto entails the power given for minority groups to veto any decision that can put their vital interest at stake due to majorities out votes. Consociational democracy presupposes not only a willingness on the part of elites to cooperate but also a capability to solve the political problems of their countries (ibid: 34).

3. Administration of Nationalities in BGRS: Explaining the Paradox

In BGRS, administration of nationalities has apparently recognized by the 2002- revised regional constitution. However, the 1996 first written regional state constitution has no any clear provision, which stipulate about the existence of nationality administration in the structure of regional state. The 1996 regional constitution explicitly recognized the establishment of Zonal administration as an over sighting body of respective, Woredas of the Zone (see Art 69 of 1996 regional constitution). Nevertheless, the Zonal administration has no councils like that of the regional, Woreda and Kebel levels of government (ibid (2)). The Zonal administration was also responsible to the executive committee of the regional state (ibid (3)). Which means there is no directly elected political body in zonal administration; rather it is established by the regional government for administrative convenience to serve as

a branch office or intermediary for the regional bureaus to coordinate and follow-up services and tasks in the Woredas under its jurisdiction. Accordingly, the major powers and duties guaranteed to the Zonal executive committee were:

- 1) To direct, coordinate and supervise the activities of the respective Woredas of the Zone,
- 2) To undertake the social services and economic development studies of the zone and submit it to the executive committee of the regional state, upon approval, implement same,
- 3) To ensure the proper protection and prescription of the historical and cultural heritages as well as the natural resource of the zone and
- 4) To ensure the proper implementation of the laws, policies regulations, directives and decisions made by the regional state council and the executive committee of the regional state (see Art 70(1-9) of 1996 BGRS constitution).

As further explained by former higher official of the regional state:

In BGRS, the major assumption why Zone recognized and established as administrative unit in the 1996 regional constitution was to implement all-embracing political, socio-economic and administrative activities carried out within the respective Zone (Interview, former higher official of BGRS, Assosa, 18, June 2016).

However, the 2002-revised constitution of the regional state has not a single provision depicting about Zonal administration. It is depicting about nationality administration by replacing Zonal administration in article 74 of the 2002 revised regional constitution. The revised regional constitution explicitly outlawed the Zonal administration and replaced with administration of nationalities as administrative hierarchy coming after the regional state

council under the regional state (see Article 74 of 2002 of BGRS constitution). Constitutionally, administration of nationalities has linked with territory granted to each indigenous ethnic group. It was intentionally that Zonal administration has replaced by nationality administration in BGRS. For instance, the minute of the first formal conference of BGRS held in 03/12/2002 clearly elucidated the importance of the replacement of Zonal administration with nationality administration to promote territorial self-administration of indigenous nationalities of the region.

Accordingly, the interview conducted with the respondents reveals that, the major goal of replacing Zonal administration by nationality administration are to promote indigenous ethnic groups self-determination in the regional state (Interview conducted with Belay Wodisha, Commissionaire of ethics and anti-corruption of Benishangul-Gumuz region, Feb 3/2016). Similarly, the Amhara regional state constitution clearly stipulates that, administration of nationalities have been designed to preserve and protect the rights of non-Amhara ethnic groups living within the regional state borders namely Himra, Awi and Oromo peoples (Sarah Vaughan, 2003:240). The nationality administration in the Amehara region serves the same purpose of enabling the indigenous minorities of the state the exercise of their right to self-determination (see Art 73 of the revised Amhara National Regional State Constitution). Like Amhara regional state, in SNNPRS administrations of nationalities have organized for promoting ethnic self-determination in the respective border of the region (see Sarah Vaughan, 2003:240 and SNNPRS constitution). The right to establish nationality administration in Benishangul-Gumuz regional has explicitly rendered for indigenous nationalities of the region such as Berta, Gumuz, Shinasha, Mao and Komo nationalities (see Art 3 (2) of Proclamation no 73/2008 of the region).

As interview conducted with higher officials of the region stated that, the genesis of the recognition of administration of nationalities in BGRS political history unequivocally

began since 1995; following BPLM withdrew from the regional government and attempted to re-launch guerilla insurgency in the region (Interview, 18/2 2016, Assosa and informal interview with former higher officials of the region). Subsequently, the regional political elites with the help of EPDRF have marked special recognition of administration of nationalities to indigenous communities in the regional constitution as a palliative to deflect the demand of secession inspired by BPLM (ibid). Accordingly, the respondents underscored that hence after a long period of political debate, it has incorporated within the revised regional constitution, primarily to promote indigenous ethnic groups self-determination right up to the extent of possessing territorial area in region. They also stated that, during the political debate, almost all political elites of non-indigenous ethnic groups were aware that practically it is impossible to establish administration of nationalities under the region because of the intermixed nature of people throughout the region. Thus, most of the participants failed under the political dilemma regarding constitutional recognition of the establishment of administration of nationalities within the region by indigenous communities only (ibid).

Hence, the writer claims that the game played by both political elites of indigenous and non-indigenous ethnic groups to recognize constitutionally the establishment of administration of nationalities in the region seems like '*non-zero-sum game*' approach. Because the current practices, concerning the establishment of administration of nationalities in BGRS clearly indicate us non-territorial one. However, the intention of the revised regional constitution is explicitly to structured administration of nationalities in the region with territorially based ethnic self-administration like the case of Southern Nations Nationalities and Peoples Region (SNNP), Amhara National regional state and Gambella region of Ethiopia. The essence of nationality administration in accordance with the regional

constitution designates that self-administration in its own affairs within its own defined territory.

In support of the above argument, the Minutes of the Constitutional Assembly held in Assosa town at 03/12/2002 clearly elucidate, the replacement of Zonal administration with nationality administration to promote territorial self-administration of indigenous nationalities of the region. However, the current practical essence of the structure of nationality administration in BGRS showing us, non-territorialized or border-less, which is paradoxical (see Art 3 (4) of Proclamation no 73/2008 of the region). Notably, the paradox is that, the proclamation no 73/2000 nullified the intention of the minute of the revised regional constitutional decree regarding nationality administration in BGRS, which is outlandish in democratic federations. Since, the regional state constitution is the supreme law of the region, any laws contradicting the regional constitution has no effect within the region. As per the proclamation, no 73/2000 of the region and the current practice show us, each council of nationalities within the region has established with non-territorial modes. Here it looks like to achieve a mutual beneficial outcome between indigenous and non-indigenous ethnic groups in theory and practice by employing a '*tit-for-tat*' mode of strategy respectively.

At a normative level, administration of nationalities in BGRS has established with territorial base. Nevertheless, practically administration of nationalities in the region has established with de-territorialized or non-territorialized base. In fact, this happened because that, most of the indigenous ethnic groups' settlement pattern within the region has highly dispersed and intermingled throughout the regional territory. Therefore, it is practically impossible to establish ethnic-based territorial administrative entities like administration of nationalities in BGRS. Establishment of ethnic based territorial administrative entities lacks appropriateness for Benishangul-Gumuz Region as the constitutional decree, because the patterns of settlement of indigenous ethnic groups have dispersed throughout the regional

state. So, for the mentioned and other related reasons, employing similar measure like what has been taken in Amhara or SNNPRs may not fit with the context of BGRS, because there is no 'one size fit all' government structure. Many scholars of federalism argued that, territorial autonomy offer an effective mechanism for accommodating diversity for those geographically concentrated ethnic groups.

As per the revised regional state constitution, each administration of nationalities has organized with different institutions such as, legislative, executive and judicial institutions. Similar to the regional levels of government, administration of nationalities in BGRS adopted a parliamentary system of government. Accordingly, the revised regional constitution guaranteed the legislative authority of the administration of nationalities to council of nationalities, while administrative power of administration of nationalities has provided to council of administration of nationalities. Whereas, the judicial power of the administration of nationalities has vested in the hands of nationalities administration judicial organs.

Currently all indigenous ethnic groups of the region have the office of council of nationalities established in 08/06/2014 with non-territorialized modes as expressed supra. Namely council of Berta nationality, council of Gumuz nationality, council of Shinasha nationality, council of Mao nationality and council of Komo nationality were established in the in different areas of the regional state. The Head Quarter of council of Berta, Gumuz, Shinasha, Mao and Komo nationalities found at Assosa, Gelgel Beles, Bulan, Mao and Komo towns respectively.

The members of nationality council comprise members selected from members of the Woreda Council under 'special condition' including members of the regional council. Nevertheless, the approach how the members of council of nationalities have elected is not clear as stated in the revised regional constitution and Proclamation no. 73/2008. The term 'special condition' mentioned in regional constitution and in Proclamation no. 73/2008 has

led to various interpretations. Therefore, they are not a directly elected body for the administration of nationalities because members of the council of nationalities are the collection of members of regional state and Woreda councils with the term office of five years. Hence, there is no-independent election to elect members of the council of nationalities in the region unlike state council.

The major powers and functions of the council of nationalities in BGRS as stated in Article 75 of BGRSconstitution and Art 7 of Proclamation no 73/2008 of the region) are:

- 1) To determine the working language of the respective administration of nationality;
- 2) To protect the rights of Nationality to speak and write, to develop, preserve, express, promote and expand its language as well as to preserve its historical heritage;
- 3) To issue and enforce, without prejudice to the legislative power given to the Regional Council under this constitution, implementation directives consistent with Regional laws, regulations and directives in its jurisdiction;
- 4) To evaluate and approve its plan and budget based on the regional plan and budget approved by the Regional Council;
- 5) To elect its speaker and deputy speaker and chief administrator of the respective administration of nationality;
- 6) To evaluate and approve the appointment of deputy chief administrator of the Administrator of Nationalities and other members of the Council of Nationalities upon the recommendation of the Chief Administrator;
- 7) To submit its recommendation to the Regional Council on the appointment of judges of the High Court and First Instance Court of the Administration of Nationalities;
- 8) To call for questioning the officials of the Nationality Administration including the Chief Administrator and evaluate their performance.

In order to shoulder thus above responsibilities council of nationalities is organized with different committees. The major committees under council of nationalities are standing committee, sub-committee and ad hoc committee (see Art 20 of proclamation no. 73/2008 BGRS). Each committee has its own functions and powers. For instance, the power and functions of the standing committee are:

- 1) Initiation of directives within authority lawfully entrusted;
- 2) Prepare and submit recommendations and suggestions to the council on the draft directives and decisions referred to them;
- 3) Oversight and control the activities of the government bodies appropriately assigned to them;
- 4) Receive and appropriately entertain complaints applied to them through various ways and the detail shall be decided by the directives;
- 5) Conduct, subject to the purpose of their establishment, studies and supervise the effective implementation of laws, policies, strategies and programs;
- 6) Organize various workshops and discussion forums as well as facilitate mechanisms for experience sharing;
- 7) May undertake their activities by braking up into sub-committees;
- 8) Make sure that their legislative and investigative activities are done on gender equality basis and gender sensitized

The standing committee has also structured with different four committees. Such as nationality affairs standing committees, the legal and administrative affairs standing committee, the economic, budget and finance affairs standing committee and capacity building, social and women's affairs standing committee. As stated in Art 23-26 in Proclamation No. 73/2008 of BGRS, each thus standing committee has their own specific

objectives performed by the respective committees. For instance, issues concerning social, legal, economic and capacity building within their respective administrations.

However, as interview conducted with experts of respective office of nationality council reveals, those mentioned standing committees of nationality councils have not practically established as per the proclamation of nationality council in all respective councils. The nationality council will expects to undertake supra mentioned activities like that of SNNPs and Amhara regional states nationalities council. For the time being establishment of those standing committees has suspended by the regional state council. As interview conducted with Abedulemuhab Mussa, the Process Owner of Research Concerning Language, Culture and History at the office of *Bertha* nationality council explained that, constitutionally provided power of nationality councils is strong but in practice the power and functions attached to nationality councils in BGRS seems like nominal or symbolic. The main reason is that *de facto* Zonal administration by replacing nationality administration has been executing almost all constitutionally provided powers and functions of nationality administrations in BGRS practically.

The office of nationality councils launched in June 8, 2014. As interview conducted with the experts of office of nationality council reveal, the major powers and functions of the office of nationality councils are to render secretarial service to the council, research and information service for the organ of council, prepare meeting halls for the council, record and keep minutes, decision and documents of the Council. The founding assembly of council of nationalities³ passed the decision that the only power and responsibilities implemented by each council were promoting culture, language and history of the respective nationality. The founding assembly ordered the council of nationalities to undertake its tasks only on the areas of culture, language and history of the respective nationality. As interviews conducted with

³The nature of founding assembly of nationality council comprises all members of nationality council.

members and experts of each council of nationalities reveal, currently the council is at the infant stage but after it has strengthened, the council can start to implement all powers and responsibilities. This hypothesis was present during the establishment of the office of council of nationalities. The decision of the assembly is that the council has established with non-territorial base. Nevertheless, one contradicting issue is that currently Zonal-administration is performing each activity on behalf of nationality administration.

However, under the regional constitution there is no any explicit provision depicting about the existence of Zonal administration as one level of government in the region. Conversely, there exist Zonal administration by replacing nationality administration in BGRS practically. The power and responsibilities of Zonal administration and nationality administration have been similar. In addition to this, the major power and responsibilities provided by the 'founding assembly' to the nationality council were almost similar with the regional, Zonal and Woreda level bureau of culture, tourism and information. For instance, one of the major powers and duties granted to the bureau of culture, tourism and information of the regional state is to cause the study and enhancement of the language of nations and nationalities of the region and its historical places (see Art 5(7) of proclamation no 23/2001 of the regional state). This is also another contradictory issue regarding the power and responsibilities of council of nationalities in BGRS.

Thus, overlap of power and responsibilities between the council of nationalities and bureau of culture, tourism and information has been creating the situation of conflict of interest between these two institutions (i.e. council of nationality and bureau of culture and tourism). There is no channel of cooperation between the offices to undertake their activities. The constitutional decree and the practice of council of nationalities in BGRS concerning the roles and functions are different. In practice, Zonal-administrations have considered as superior body than nationality administration in BGRS. Zonal administrators consider

themselves superior body than council of nationality. Here also there is contention between Zonal administration and nationality administration practically in BGRS because who is legitimate body? Zonal or nationality administration in BGRS in practice as interview conducted with the different respondents indicates that the Zonal administrations were superior body than nationality administrations. On this basis, some respondents explained that:

Now it is not shameful to say as we observed and perceived practically. At this time, it is quite clear that the office of council of nationality in BGRS seems like the institution exist in the certain island solely (FGD, with experts of the office of Berta nationality council in 6/21/2016 at Assosa Town).

From the above stated viewpoint, one can claim that, in practice emphasis has not provided by the regional government as administrative unit in the regional state rather the regional government considered the institution of council of nationality as merely symbolic or nominal unit. However, constitutionally council of nationalities has considered as supreme political institutions of the respective nationalities (see Art 75 (2) of the regional constitution) means that it is purely political institutions. However, the practice shows us council of nationalities were not political institutions in the respective nationality administrations. The major reason are that tasks practically performed by this council are restricted only to promote and strengthen cultural, linguistic and historical values of the respective ethnic groups of administration of nationalities. Only culture, language and history have given a wide expression practically by the council of nationalities in BGRS.

4. Conclusion

Administration of nationalities has apparently recognized by the revised constitution of Benishangul-Gumuz regional state. The constitution explicitly banned the older Zonal

administration and replaced with administration of nationalities as administrative hierarchy coming after the regional state council under the regional state. The very objective was to promote indigenous ethnic groups self-determination in the regional state. At a normative level, administration of nationalities in BGRS has established with territorial base. However, practically administration of nationalities in the region has established with de-territorialized or non-territorialized base. The situation is clearly paradoxical. Because the revised regional constitution explicitly structured administration of nationalities in the region as territorially based ethnic self-administration like the case of Southern Nations, Nationalities and Peoples Region (SNNP) and Amhara National regional state. As a matter of fact, the reason why in BGRS administration of nationalities was established with non-territorialized base is that most of the indigenous ethnic groups' settlement pattern within the region has been highly dispersed and intermingled in the regional territory.

Therefore, it is practically impossible to establish ethnic-based territorial administrative entities like administration of nationalities in BGRS. Establishment of ethnic based territorial administrative entities lacks appropriateness for Benishangul-Gumuz Region, because the settlement patterns of indigenous ethnic groups are not convenient. So, for the mentioned and other related reasons, employing similar measure like what has been taken in Amhara or SNNPRs may not fit with the context of BGRS, because there is no 'one size fit all' government structure. Now all indigenous ethnic groups of the region have the office of council of nationalities established in 08/06/2014 with non-territorialized modes. The constitutional decree and the practice of council of nationalities in BGRS concerning the roles and functions are different. A Zonal-administration has considered as superior body than nationality administration in BGRS practically. However, constitutionally council of nationalities has considered as the supreme political institution of the respective nationalities (see Art 75 (2) of the regional constitution) which means that it is a purely political

institution. The practice indicates that councils of nationalities are not political institutions in the respective nationality administrations rather cultural institution. Because the major tasks practically performed by this council are cultural issues. It seems like ‘a bird without wing or a dog without tooth’ since what the revised regional constitution and other pertinent legal documents demanded and the practices on ground under the regional state remain completely different with regard to nationality administration in BGRS.

Acknowledgments: This research has immensely benefited from comments made by my PhD thesis supervisor Dr. Christophe Van Der Beken, my friends in Assosa University of BGRS and my PhD classmates’.

Conflicts of Interest: The author declares no conflict of interest.

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