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THE RIGHT TO SELF-DETERMINATION VIS-À-VIS IRREDENTISM: COMPREHENSIVENESS OF ARTICLE 39 OF THE FDRE CONSTITUTION IN ADDRESSING IRREDENTISM

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Abstract

Since Ethiopia got constitutionally structured as a federal state in 1991/94, the issue of self-determination has whelmed the socio-economic and political lives of the people. Consequently, different explicit and implicit quests of self-determination had been and are being made by nations, nationalities, and people of Ethiopia. The FDRE Constitution is a centrepiece both in activating and addressing these self-determination quests. Article 39 of the Constitution specifically provides the right to self-determination of nations, nationalities, and people of Ethiopia (hereinafter NNPs) shall be respected. However, it is not clear whether or not this provision addresses an ostensible self-determination case commonly known as irredentism. Irredentism is the simultaneous desire of the trans-border ethnic kin people and the adjacent parent state to their socio-political unification. Even if it is a real phenomenon, irredentist cases are rarely addressed both in national and international legal instruments. The right to self-determination, allegedly an unsettled right in terms of its normative contents, may or may not embrace irredentist cases. This study is doctrinal legal research, which, by analysing relevant national and international legal instruments and scholarly literature, appraises the comprehensiveness or otherwise of Article 39 of the FDRE Constitution in addressing irredentist cases. To substantiate the theoretical analysis, the Welkaite case, a prolonged and on-going quest of Welkaite people to secede from the regional state of Tigray so as to be incorporated within the regional state of Amhara has been highlighted. Doing so, the study has revealed that the self-determination clauses stipulated both under international and domestic legal instruments are incomprehensive to address irredentist cases.

Keywords: *Article 39, FDRE Constitution, House of the Federation, Irredentism, self-determination*

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I. INTRODUCTION

The right to self-determination, a fundamental right of people to freely decide their political status and to pursue their own choice of socio-economic and cultural developments is recognized and regulated in different international legal instruments.[1] However, this right is criticized for being contentious in terms of its normative contents and status.[2] The right to self-determination had officially been adopted in the signing of the United Nations Charter in 1945.[3] The Charter, as a pioneer in guaranteeing the right, has declared it under its Article 1(2). Eventually, the idea of self-determination has developed from a principle into an enforceable human right through subsequent UN human rights instruments and national legislations. The right is conceived and developed as the right of people. Nevertheless, not only its contents and normative status, but also, the subjects of the right or the question of what constitutes the term 'people' too lacks a consensus.[4]

In addition to that, there is an ostensible self-determination idea known as irredentism. Irredentism is a political and ideological movement aiming at unifying the nation (Nations) by reclaiming lost populations and territories which are believed to belong to the motherland because of ethnic (Ethnicity) or linguistic ties, geographical or historical reasons, or due to a previous possession.[5] The idea of irredentism represents the interest of both/all the unifying peoples or territories for their coming together. Accordingly, it can also be defined as "a bilateral and simultaneous pursuit by both the parent state and its ethnically kindred people living outside its territory for ethno-territorial retrieval.'' [6] Irredentism, as a political concept is not an uncommon phenomenon. Irredentist assertions were at the root of many territorial disputes during the twentieth century. Mainly after the Second World War, irredentist cases are being quested almost in every Continent.[7] For instance, the dispute between Russia and Ukraine over Crimea, Sudan and South Sudan over the Abyei area and between Ethiopia and Somalia over Ogaden were all irredentist cases. However, notwithstanding the factual phenomenon across the world, irredentist cases are rarely covered in contemporary national and international legal instruments.[8]

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[1] UN Doc. A/6316 (1966), International Covenant on Civil and Political Rights (ICCPR), UNGA Res.2200 A (XXI) 16 December 1966; and International Covenant on Economic, Social, and Cultural Rights (ICESCR), UNGA Res.2200 A (XXI), 16 December 1966, common Article 1.

[2] Matthew Saul, T*he Normative Status of Self-determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?* 11:4 HRLR, 609,643 (2011).

[3] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI (herein after UN Charter). available at: http://www.refworld.org/docid/3ae6b3930.html [accessed on 29 December 2021], Art. 1(2).

[4] *Supra* note 2, at 616.

[5] Max Planck Encyclopaedias of International Law [MPIL], last updated: October 2010, available at: https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e838.

[6] Julianna Christa Elisabeth Fuzesi, Explaining Irredentism: The Case of Hungary and its Trans-Border Minorities in Romania and Slovakia, A Thesis submitted in partial fulfilment of the requirements for the degree of PhD in Government, London School of Economics and Political Science, University of London (2006). Available at:https://www.semanticscholar.org/paper/Explaining-irredentism-%3A-the-case-of-Hungary-and-in-Fuzesi/fca3083b3b85944543f2f54138d54dbae300d5e2.

[7] Arnold N. Pronto, *Irredentist Secession in International Law*, 40: 2 FFWA, 103,106 (2016).

[8] *Id.*

Coming to Ethiopia, Article 39 of the Constitution has some relevance in this regard though it looks incomprehensive. Article 39(1) of the Constitution states that every nation, nationality, and people of Ethiopia has unconditional right to self-determination including the right to secede.[9] In illustrating the traits of the right to self-determination, the Constitution recognizes three sub-rights. The Constitution under sub-Article (2), (3), (4) of the same Article provides the right to; identity recognition, self-rule, and secession respectively. Here, one may wonder about the wording of the Constitution that says 'including the right to secession' as inclusive of other similar cases short of secession. Nevertheless, it is hardly possible to argue that irredentist cases can be embraced in this provision of the Constitution. This is because, while the Constitution further stipulates the rules and procedures to effectuate the right to secession (external self-determination)[10] and the right to self-rule (internal self-determination);[11] it has nothing to say about the rules and procedures to entertain irredentist cases.[12]

The right to self-determination is a general expression used as a folder to other specific rights. Self-determination *per se* cannot be demanded as a claim. It rather needs to be specified to the kind of self-determination; identity recognition, self-rule, or secession. The term self-determination may embrace any scenario of autonomy and administration that ranges from local governance to state sovereignty. In this sense, it may also include irredentism. Nevertheless, Article 39 of the Constitution, while stipulating elements of the right to self-determination, has for skipped irredentism for unknown reasons. However, this gap can neither be ignored nor filled by interpretation as irredentist cases are factual phenomena that are different from the other cases of identity claim such as self-rule and secession.

Here, one may challenge the existence of irredentist cases at the intra-country level as most of the prior cases and experiences are at the inter-country level. However, the constituting states

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[9] CONSTITUTION, Proclamation No. 1/1995, FED. NEGARIT GAZETA, 1st year No. 1, 1995 (hereafter, FDRE Constitution (hereafter FDRE Constitution), Art. 39 (1).

[10] External self-determination has three dimension which bases on; the principle of non-interference into the domestic affairs of states and thus is linked to the notion of state sovereignty, law and practice of decolonization, and the rights of indigenous peoples to secession. Here while the first two principles are stipulated under art 1(2), 55 and Chapters XI and XII of the UN Charter respectively, the third scenario (secession) is granted conditionally only when there is colonial annexation and violation of fundamental human rights. See also, Kristina Roepstorff, Self-Determination of Indigenous Peoples within the Human Rights Context: A Right to Autonomy. lawanddevelopment.org (unpublished manuscript), available on: http://www.lawanddevelopment.org/docs/selfdetermination.pdf, last accessed on: 25 May, 2019 pm. The FDRE Constitution provides unconditional right to secession of nation, nationalities and peoples as it is stipulated under Art 39/1 of the FDRE Constitution; and art 39(4) provides rules and procedures to be pursued to effectuate this right.

[11] Internal self-determination has two aspects: the right of a people to determine their constitution including autonomous status and the right to have democratic governance. Leaving to the domestic affairs of the state as its sovereignty, the international system has a rarely regulation on internal self-determination. The FDRE constitution provides the right to internal self-determination (self-rule) of nation, nationalities, and people of Ethiopia as provided under Article 39(3) and 47(2) of the Constitution. Again, the procedures to be pursued are stipulated under art 47(3) of the Constitution.

[12] Due to its distinctiveness from secession and self-rule, it is inconvenient to apply the rules and procedures stipulated under Article 39(4) and 47(3) of the constitution to entertain irredentist cases.

of the federation in the federal system are considered as independent and act autonomously in their mutual relations for all legal purposes.[13]

Hence, as it is a *modus operandi* to analogize inter-country phenomenon to intra-country incidences, the term irredentism, which is asserted by different politico-legal scholars for inter-country cases can be used to a similar phenomenon of intra-country incidences between constituting states of the federation *mutatis mutandis*.[14] The fact of irredentist cases is practically evidenced to be common within the federating states of Ethiopia. The quest of Welkait people to secede from the regional state of Tigray in order to be encompassed within the regional state of Amhara is a good example. This case was first filed to the House of Federation in 2008 E.C. by the 'Committee of Welkait Peoples' Amharan nationhood identity claim.''[15] As evidenced from the note of the written petition made to the House of Federation by the committee and statements from the officials of the regional state of Amhara,[16] the Welkait case is not only the quest of the Welkait people to be incorporated within the regional state of Amhara but also, the claim of Amhara people to regain Welkait within its regional administration. Hence, this study is geared towards analysing the normative contents of the right to self-determination provided under different international legal instruments in general and Article 39 of the Constitution in particular by substantiating it with the nature and peculiarities of the Welkait case.

To this effect, this study is classified in to six sections, including the introductory part related to the concept of irredentism. The second section highlights about the right to self-determination, the normative contents under international legal instruments and the peculiarities of irredentism cases from related concepts. The third section is devoted to explore the contents of self-determination in Ethiopia and the comprehensiveness of the Constitution to deal with irredentism. Section four and five critically analyse the procedural and substantive limitations of Article 39 of the Constitution to irredentism case by substantiating the Welkait case respectively. Finally, section six will summarize the discussion by providing concluding remarks.

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[13] The existing legal framework is not enough to entertain irredentism issues among regions constituting Ethiopian federation. See Lea Brilmayer, inter-state federalism, Yale law school legal scholarship repository, faculty scholarship series, BYU L. Rev. 949, 949 (1987). See also Hannah L. Buxbaum, *Determining the Territorial Scope of State Law In Interstate and International Conflicts: Comments on the Draft Restatement (Third) And on the Role of Party Autonomy*, RESEARCH PAPER NUMBER 372, 27 DUKE J. COMP. & INT'L L. 381, 386 (2017).

[14] For this assertion, the intra-state application of the right to self-determination, as used in art 39 of the FDRE constitution, can be used as a good example because this right is primarily emerged and developed in the international law regime particularly to supplement decolonization movements and internal sovereignty of the people in a given country.

[15] A written petition submitted to House of federation by Committee of "*Wolkait* people *Amharan* nation-hood identity question titled as *'Welkait peoples' Amharan identity and border claim'* (unpublished subscript) (2008E.C.).

[16] Interview with Mr. Dessie Tilahun,, Director of the political affairs of the Amhara Democratic Party, interviewed on 30 April 2019. See also, a speech made by Mr. Gedu Andargachew, the then President of the regional state of Amhara, available at: www.hahudaily.com/top/watch.php?vid=37e7c21a9.

II. THE RIGHT TO SELF-DETERMINATION AND ITS NORMATIVE CONTENTS UNDER INTERNATIONAL LEGAL INSTRUMENTS

Tracing back the exact emerging time of the right to self-determination is a controversial issue. While some take its emergence back to the treaty of Westphalia,[17] others generally assert that the idea was emerged and recognized as a principle of international relations before WWI without specifying the exact time.[18] Despite the controversy on its conceptual emerging time, the idea of self-determination had officially been provided by the UN Charter. Hence, before the adoption of the UN Charter, the concept of self-determination was simply an extensional formulation of other concepts like sovereignty and territorial integrity of states or a mere factual struggle of people to their liberation.

Though it is alleged that Article 22 of the 1919 Covenant of the League of Nations implicitly embodied the idea of self-determination, it is the UN Charter (hereafter the Charter) that explicitly provided the right to self-determination of people. The Charter, under Articles 1 and 55, stipulates it as the 'principle of equal rights and self-determination of people.' Besides, the Charter also provides the right to self-determination of Non-Self-governing Territories (NSGT) as provided under its Chapters XI, XII, and XIII.[19] *Ipso facto*, the UN Charter is a pioneer in providing official recognition to the right to self-determination of people. Corollary to this, the idea of self-determination is quoted as a modern legal norm.[20] Eventually, the right to self-determination, as pursued by various groups today, is formally crystallized in the instruments of the United Nations.[21] Under the umbrella of the United Nations, subsequent human rights conventions have guaranteed and provided the right to self-determination as a (human?) right of the people.[22]

Different international and regional human rights instruments defined the right to self-determination as a 'right' "by virtue of which people freely determine their political status and freely pursue their economic, social and cultural development.''[23] Nonetheless, due to the ambiguity on the question 'who the people are,'[24] the right to self-determination is being

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[17] Jenny Nguyen, Whose Self-Determination?, *A Critical Examination on The Right to Self-Determination and its Role During the Process of Decolonization,* LAGF03 Essay in legal science Bachelor thesis, Master of laws Programme 15 higher education credits, Supervisor: CHRISTIAN HÄTHÉN, FACULTY OF LAW, Lund University (2016), at 8, (unpublished).

'Available at: https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8874246&fileOId=8882896.

[18] S. Kwaw Nyameke Blay, *Self-Determination: Its Evolution in International Law and Prescriptions for Its Application in the Post-Colonial Context,* a dissertation submitted to the FACULTY OF LAW, UNIVERSITY OF TASMANIA in fulfilment of the requirements for the Award of the degree of Doctor of Philosophy (Law): submitted to; Faculty of Law, University of Tasmania, Tasmania. Australia, (1984), at XIII (unpublished). Available at: https://eprints.utas.edu.au/11391/2/ch-1-5-Blay_1985.pdf.

[19] M. Ya'kub Aiyub Kadir, *Application of the Law of Self-Determination in a Postcolonial Context*: A Guideline, IX JEAIL 1, 7, 8 (2016).

[20] Blay Supra note 18.

[21] *Id*.

[22] ICCPR and ICESCR, Supra note 1.

[23] *Id*. See also the African (Banjul) Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU DOC. CAB/LEG/67/3 REV. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, Article 20(1).

[24] Maria João Barata, *Self-determination, Identity and International Relations*, Paper prepared for the Isa annual convention 2011, Montreal, Quebec, Canada, 15-19 March, at 1 (unpublished). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2362024.

interpreted varyingly depending on the peculiar disposition of the right bearers.[25] Accordingly, for people under colonial rule (or any form of alien rule or occupation), the principle implies the right to freely create an independent state of their own or to merge or associate with an existing state.[26] In the case of an independent state, self-determination is used to acquire equal status with other similar entities in international relations and freedom from external interference in the administration of its internal affairs or to control over its natural resources as an aspect of its sovereignty.[27]

To give emphasis for the people of a sovereign state, self-determination implies the right of the majority to determine the type of government they desire through periodic elections or through revolution.[28] When the right is claimed against the state by minorities or ethnic groups, self-determination implies the right to identity recognition and/or the right to participate in the national socio-political and economic affairs or self-administration in their own province.[29] Moreover, a certain group of people may claim self-determination in order to secede from one state and associate or merge with another state.[30] Further, as a last resort and extreme form of self-determination, people may demand external self-determination (secession) to form their own independent and autonomous state. For such secessionist groups, self-determination implies to separating from the parent state in order to form their own sovereign state.[31]

Nevertheless, not all these spectrums of the right to self-determination are recognized in international legal instruments. This happened due to the very initiation of the right to self-determination as envisaged from Article 1(2) of the Charter aims to pursue the development of friendly relations among states.[32] It is in late 1960s that the right to self-determination was provided to grant people the freedom to be liberated from colonial dominance by the UN General Assembly Resolution 1514 (xv). This Resolution brought a UN Declaration on the Granting of Independence to Colonized Countries and Peoples.[33] Paragraph 1 of this Declaration states that the subjection of people to; alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, and is contrary to the Charter of the United Nations. More specifically, paragraph 2 of the Declaration is concerned with the right to self-determination of people by dictating that all people have the right to self-determination by virtue of which they can freely determine their political status and pursue their economic, social, and cultural developments.[34] The two human rights Covenants of 1976 (ICCPR and ICESCR) have also a similar notion regarding what constitutes the right to self-determination.[35]

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[25] Blay, *Supra* note 18, at xiv
[26] *Id.*
[27] *Id*, at xv.
[28] *Id*, at xvi.
[29] *Id.*
[30] *Id*, at xiv.
[31] *Id*, at xvi.
[32] U.N Charter, Article 1(2).
[33] Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (xv), UN Document. A/64 (14 December 1960).
[34] *Id*, at Para, 1 & 2.
[35] ICCPR *and ICSECR, Supra* note 22.

To reiterate it, the very essence of the right to self-determination, as stipulated in the relevant international laws signifies freedom from subjugation or colonial dominance[36] and sovereignty of the overall people of a given state to determine their political status and to pursue their economic, social, and cultural development.[37] This notion of understanding had been confirmed by the Committee of the International Convention on Elimination of all Forms of Racial Discrimination (ICERD). The general recommendation of the ICERD Committee provides that the right to self-determination has two phases; internal and external. Internal self-determination denotes the rights of people in a given state to pursue freely their economic, social, and cultural development without external interference. Moreover, external self-determination signifies that people of a given state have the right to determine freely their own political status and place in the international community based on the principle of equal rights and, is also exemplified by the liberation of people from colonial, alien subjugation, and domination.[38]

However, once the era of colonialism was over, the application of the right to self-determination, as provided in relevant international laws is, limited only to the principle of non-interference. Hence, in the post-colonial period, except in a manner provided under Article 1 of both ICCPR and ICESCR and the recommendation given by the Committee of ICERD, the international law neither says anything regarding the external self-determination of people[39] nor expected to be pro-secessionist claims as the states that make the law are not positive on the issue.[40] To say it in another way, secessionist claims by certain groups of people against a sovereign state are limited and, if not denied at all by international laws, the law-making states will be interested in the protection of the principle of territorial integrity and stability (internal and international) of the *status quo than allowing some group to secede*.[41]

Being so, international laws rather emphasize on the sovereignty and territorial integrity of the existing states.[42] This is because of the reason that the idea of external self-determination, in its very conception had been conceptualized in the sense of liberation from colonial domination. Hence, once the era of colonialism was over, it is improper to apply the right to self-determination in the sense of decolonization to secessionist claims as it would be an oversight to consider separatists as colonized people and separatism as an anti-colonial movement.[43] Consequently, the quest for secession not having been recognized and guaranteed under international laws yet, could not fulfil the principle of legality to be a legal claim.

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[36] G.A. Res. (xv), Para. 1 (14 December 1960). See also, Saul, *Supra* note 2, at 613.

[37] ጨብሸት ሙላት, አንቀጽ 39: የራስን ዕድል በራስ መወሰን, (2007), ገጽ. 80. See also, G.A. Res. (xv), Para. 2 (14 December 1960).

[38] Committee of the Convention on the Elimination of All Forms of Racial Discriminations, General Recommendation No. 21: Right to self-determination, (Forty-eighth session, 1996), Para 4.

[39] Blay, *supra* note 17, at iii

[40] 18 Pau Luque, Morality and Legality of Secession: a theory of national self-determination. (2020).

[41] *Id.*

[42] This standing of the international system is also envisaged from the UN General Assembly Resolution (1514); that, except for colonial domination, it gives more emphasis to the territorial integrity and political unity of sovereign states which represents the whole people belonging to the State without distinction as to race, creed or colour.

[43] See also ጨብሸት, supra note 37, at 251.

As envisaged under Article 27 of ICCPR, the rights of minorities and other ethnic groups within a given state are short of secession and are limited to the right to enjoy their own culture, to profess and practice their own religion, or to use their own language. While international laws are silent regarding the external self-determination of minority groups, many multinational states, including some with liberal and democratic constitutions, are inflexible about territorial integrity and do not tolerate external self-determination by minority groups located within their frontiers.[44]

However, there is no explicit provision of international law that inhibits the right to secede of groups of people in a given country. In fact, such right it is not denied at all either. As some scholars positively concede, the right secede shall be respected if some misfortune and abuses happen against particular group of people by the parent state's policy.[45]

International laws have left individual states to determine the external self-determination rights of ethnic and minority groups in their jurisdiction.[46] Nevertheless, once the state, on its own free will, guarantees the right to secession of ethnic groups in its territory, the international community may force such state to respect its law based on the principle of *pacta sunt servanda* applicable in treaties.[47]

A. Irredentism: A quest to Self-Determination?

The term "irredentism" is originated from the Italian nationalist movement of 1877 with the aim to bring the large Italian-speaking communities of Trentino, Istria, Trieste, and the Tyrol into the arms of a newly unified Italy.[48] During the then time, these regions which were neighbouring Italy but were subject to Swiss and Austrian rule, were referred to as '*terra irredenta'*, or "unredeemed land.'' [49] Since then, the word irredentism has been used to encompass "any political effort to unite ethnically, historically, or geographically related segments of a population in adjacent countries into a single political unit."[50]

This scenario of unifying ethnically kindred peoples within a single political unit could have a different meaning when seen from different points of view. To begin with, it may be understood as the realization of the right to self-determination of ethnic minorities living detached from their ethnically kindred people of the homeland. In contrary, to the retrieving state, it could be seen as the re-taking of its people and the land into its administration. Further, to the host state against which the claim is made, the scenario could be seen as territorial disintegration of the state which disgraces its territorial integrity.[51] By its nature, irredentism

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[44] Luque, supra note 40.

[45] Ahmednasir M. Abdullahi, *Article 39 of the Ethiopian Constitution on Secession and Self-determination: A Panacea to the Nationality Question in Africa?* 31:4 Verfassung und Recht in Ubersee / Law and Politics in Africa, Asia, and Latin, 440, 448 (1998).

[46] ቁብሸት, *supra* note 37, at 254.

[47] *Id.*

[48] Laura Murray, *ExaminingIirredentism*, 45: 2 JOURNAL OF INTERNATIONAL AFFAIRS, 648, 648 (1992

[49] *Id.*

[50] *Id.*

[51] Natalia Horlo, R*eason for emergence and ideological explanation of the irredentist policy*, 8: 3 JOURNAL OF GEOGRAPHY, POLITICS AND SOCIETY, 45, 51 (2018).

simultaneously manifests both centrifugal and centripetal tendencies.[52] That mean, while centric tendencies entail that irredentism contributes to the unification of the separated people within the boundary of one state, centrifugal tendencies show the desire of the national minorities to withdraw from the host State in the form of separatism.[53]

There are two types of irredentisms; Conventional and Unificationist (Pan-movement).[54] In conventional irredentism, there are three actors; the host state, parent state, and ethnic groups in the host state kindred with the people of the parent state. To explain it by example, let us take three scenarios; A, B and C. Accordingly, let us say A is host state; B, the parent state and C, the irredentist group of people living in state A, but kindred with people living in state B. in this case, the conventional type of irredentism is characterized by involvement of three parties. Thus, the host state A fiercely insists on the legitimacy of the *status quo*,[55] and the parent state B, on the other hand, tries to retrieve the ethnically kindred peoples living in the adjacent state A.[56] similarly, the irredentist group C, living in the authority of the host state A, claims to secede from the host state to join and merge with its ethnically kindred people of the parent state B.[57]

This scenario of territorial adjustment is called conventional irredentism and it is the most common form of irredentism that peculiarly needs a relatively equal and active reaction of the parent state and its ethnically kindred people living in the host state to achieve the required result.[58] It is the tri-parties reaction and most importantly, the involvement of the parent state, which makes irredentism something different from and beyond the idea of self-determination.[59] Therefore, as explained in above example, self-determination signifies the determination of one's own affair using one's own free will.

Irredentism, on the other hand, necessarily needs the direct or indirect involvement of the parent state to achieve the required outcome.[60] Without active and equal involvement of the parent state and the detached ethnic kin people, the situation would give rise to another scenario, i.e. if it is only the interest of the parent state; the situation becomes simply an annexation. And if it is only the interest of the detached ethnic kin people, it becomes implausible irredentism or simply a self-determination claim.[61]

In nutshell, genuine irredentism is inconceivable without active and relatively equal involvement of the parent state and its ethnic kin people living under the authority of the adjacent host state. Hence, as the determination of the course and outcome of irredentism needs the

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[52] *Id,* at 50.

[53] *Id.*

[54] Julianna , S*upra* note 6, at 36

[55] For its assertion, the host state raises its own national laws or international laws of sovereignty and territorial integrity of states.

[56] For its assertion, the parent state alleges the historical attributions and the fact of homogeneity of the people which it tries to incorporate with its own people.

[57] For its assertion, such ethnic group may raise the right to self-determination.

[58] Julianna , S*upra* note 6, at 22.

[59] *Id,* at 34.

[60] Stephen M. Saideman and R. William Ayres, *Determining the causes of irredentism: Logit analysis of minorities at risk data from the 1980s and 1990s*, 62: 4 JP, 1126, 1140, (2000).

[61] It is a self-determination case because it is the unilateral determination of the group on their status but the contemporary self-determination clause does not embrace such kind of claims.

interest and involvement of both parties, it is improper to conceive irredentism as a mere quest for self-determination of any nature.[62] Then, it would rather be preferable to term such a scenario conventional irredentism or bilateral-determination than self-determination.

The second type of irredentism is known as an unificationist or pan-movement, and it lack of the requirement of the interest of parent state.[63] This type of irredentism consists of the movements of different ethnic groups dispersed across several host states to create their own new state by taking and unifying lands together with their kindred people living in adjacent states.[64] Unlike the conventional type of irredentism which aims to join or to be incorporated within the political unit of the pre-existing parent state, the unificationist irredentism aims to create an imagined state which does not exist yet.[65] It is also known as the Kurdish style irredentism.[66] Though there are several on-going unificationist irredentism movements across the world, such type of irredentism is mostly evidenced to be unlikely to achieve the required result.[67]

Like conventional irredentism, unificationist irredentism is different from and broader than a self-determination claim. Because, unificationis irredentism is not an affair of a single group and no unilateral will would determines the imagined outcome. Rather, it is a multilateral affair and a common struggle which helps achieve the required result. Hence, the unificationist irredentism cases are better to be termed as a multilateral-determination than self-determination.

B. Irredentism vis-à-vis other likely cases

Different cases resemble irredentism. Revanchism is among such resembling cases. It is not unusual to see when the case of Revanchism is juxtaposed with irredentism. However, these two concepts are quite different. Revanchism is "a policy of seeking to retaliate, especially to recover the lost territory.[68]" The term revanchism originated from the French word 'revanche' which implies 'revenge.'[69] Revanchism is *"an attempt or a desire to regain territory that has lost to a neighbour or that has gained independence regardless of ethnic or cultural considerations."*[70] Irredentism, *on the other hand is, "an act of uniting territories that are inhibited by culturally or ethnically related people with "mother" cultural or ethnic nations."* [71] Therefore, while revanchism is about reclaiming the lost territory irrespective of the people therein, irredentism is about unifying the territory and the people therein with ethnically or culturally kindred people of the motherland.

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[62] Self-determination, as discoursed contemporarily, constitutes claims like; identity recognition, self-administration, and secession; each of these aspects of self-determination needs the vested interest and wills of only the concerned groups to guarantee the rights claimed.

[63] Julianna, S*upra* note 6, at 37.

[64] *Id.*

[65] *Id.*

[66] The Kurdish movement is the claim of Kurdish people living in Iraq, Iran, turkey and Syria to establish the Kurdish state by taking the land together with the people from such host states.

[67] Julianna , Supra note 6, at 38.

[68] Oxford English and Spanish Dictionary, available at: https://www.lexico.com/definition/revanchism.

[69] *Id.*

[70] Revanchism or Irredentism? Alpha Dictionary, available at: https://www.alphadictionary.com/blog/?p=1831, last accessed on 03 November 2021.

71 *Id*.

Furthermore, it is also usual to see when irredentism is blended with secession. Nevertheless, irredentism has its own distinct features different from secession in many aspects.[72] Even if both irredentism and secession are the two main forms of ethnically induced territorial adjustment incidences,[73] secession involves the withdrawal of people with its occupying territory from the authority of a given state to form its own independent state; whereas, irredentism is the case of seceding from one state in order to join another state of an ethnically kindred people.[74] Unlike secession which is the unilateral claim of the secessionist group, irredentism needs a bilateral and simultaneous pursuit both by the parent state and the trans-border ethnically kindred people to come together.

It is also evidenced when irredentism is juxtaposed with nationalism. Nevertheless, these two concepts are also quite different. Nationalism is an ideology or social and political movement that holds a consciousness of belonging to the nation together with sentiments and aspirations for its security and prosperity as its national will.[75] Hence, the melody of nationalism embraces a broader spectrum of the socio-economic and political life of the people belonging to a certain nation irrespective of their whereabouts. In another word, nationalism is not limited to the territorial retrieval of trans-border ethnic kin people; it rather further aspires to mobilize the people belonging to a certain nation for socio-economic prosperity and aims to create a sense of nationhood sentiment upon the members.[76] Therefore, nationalism is a broader concept that could embrace irredentism. In the contrary, irredentism, which is sub-set of nationalism, is a political movement of an aspiration to retrieve the trans-border ethnic kin people together with the land they inhabited into a unified territory. In this aspect, irredentism is expressed in a language of nationalism by which it seeks to form a nation-state.[77]

Similarly, irredentism is different from a territorial dispute. Irredentism has the effect of changing the territorial status demarcated between the parent and the host states which may look like a mere border dispute between states. However, a territorial dispute, which is a disagreement over the possession/control over a plot of land between two or more territorial entities, is caused by vague border treaty or a mere *de-facto* demarcation. This means, while a territorial dispute is a claim over a contesting plot of land; irredentism is a movement to retrieve an area of land from the rightful holder despite the manner through which it holds that area of land. Additionally, while the territorial dispute is a claim over a plot of land in disregard of the people who live in it,

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72 Arnold N. Pronto, Irredentist secession in international law, 40: 2 Ffwa, 103,103 (2016).

73 Donald L. Horowitz, Self-determination: Politics, Philosophy, and Law, 39 Nomos, 421, 423 (1997).

74 *Id*.

75Wayne Norman, Negotiating Nationalism: Nation-Building, Federalism, And Secession In The Multinational State, Oxford University Press Inc., United States; New York (2006), p. 5.

76 Julianna, Supra note 6, at 67

77 That nationalism is used as an instrument to effectuate irredentist claims. But, nationalism is a broader concept which is not limited on territorial unification of ethnically kindred peoples in a single authority; rather it also seeks non-territorial consolidation of nationals living across different states. Of course, there can be civic or ethnic nationalism; that while civic nationalism ascribes to belongingness to a state and loyalty to it, ethno-nationalism on the other hand presupposes belongingness to a certain ethnic groups and asserting a claim as (historic) right to self-determination for local autonomy or independence. See also; Nityananda Kalita, Resolving Ethnic Conflict In Northeast India, 72, II Proceedings of the Indian History Congress, 1354, 1364 (2011).

irredentism is a movement to unify the same ethnic group of peoples living across adjacent states.

Most importantly, irredentist cases are not only a quest for identity recognition or self-rule. Though the claim to identity recognition is the first step to allege an irredentist quest, the case would not be closed by answering the quest of the people to their identity recognition. The recognition of their identity will result in another quest; a quest to secede from the *status quo* in order to be unified with its ethnic kin people. So, this quest is neither a claim for self-rule nor identity recognition; it is rather irredentism.

III. THE FDRE CONSTITUTION AND NORMATIVE CONTENTS OF ARTICLE 39 OF THE CONSTITUTION

Though it is said that Ethiopia has adopted federalism as early as the Conference for Democracy was held in July 1991,[78] it is the 1995 FDRE Constitution that officially made Ethiopia a federal state.[79] The Constitution is best known for its complete departure from the past age-old monarchical system and its immediate preceding Military Regime. The ideological setting of the Constitution model largely is the Stalinist notion of 'self-determination of nationalities' that was part of the leftist political movement leading up to the late 1980s.[80] This is envisaged from the spirit of the Constitution which is mainly concerned with the rights of nations, nationalities, and people. The Constitution, *inter alia*, provides an unconditional right to self-determination including secession of nations, nationalities, and people.[81] Besides, such nations, nationalities, and people have owned sovereignty.[82] Let alone other concurrent and intervening factors in the then time, it is asserted that the prolonged national question is one of the fundamental driving forces of the emphasis given to nations, nationalities, and people in the Constitution.[83]

The adoption of the federal system in Ethiopia is alleged to be a post-conflict constitutional reform devised as a solution to manage ethnic conflicts in the country.[84] The federal structure is organized along ethno-linguistic lines which are known as ethnic federalism.[85] The idea of ethnic federalism is argued to be having connection to TPLF's initial conviction as TPLF is the offspring of the 1960s students' movements which upheld the right to self-determination as the

78 Didier Morin, the Federal Experiment in Ethiopia: A Socio-Political Experiment, Arnault Serra-Horguelin (1999), at 1. See also, *Transitional Period Charter of Ethiopia*, Proclamation no.1/1990 FED. NEGARIT GAZETA, (1990) available at: https://chilot.files.wordpress.com ›2011/11›the-transitional-period-charter.

79 FDRE Constitution), 1995, Article 1.

80 Semahagn Gashu Abebe, *The Dilemma of Adopting Ethnic Federal System in Africa in Light of the Perspectives from Ethiopian Experience 4:7* JOURNAL OF AFRICAN STUDIES AND DEVELOPMENT, 168, 170 (2012).

81 FDRE Constitution, Art. 39(1).

82 *Id* at, Art. 8.

83 Nahusenay Belay, The New Federal Experiment and Accommodation of Diversity in Ethiopia: Exploring a Novel Experience, p.1 (unpublished manuscript). Available at: https://lawethiopia.com/images/ethnic%20politics%20in%20ethiopia/The%20New%20Federal%20Experiment%20and%20Accommodation%20of%20Diversity%20in%20Ethiopia%20Exploring%20a%20Novel%20Experience.pdf.

84 Sujit Choudhry and Nathan Hume, *Federalism, Devolution and Secession: from Classical to Post-conflict Federalism*, COMPARATIVE CONSTITUTIONAL LAW, 356, 356 (2017).

85 FDRE Constitution, Article 46.

question of nations, nationalities and people in Ethiopia.[86] The federal system adopts a dual form government and power division between the federal and the regional governments though it lacks an express textual recognition of federal supremacy.[87] On the other hand, all regional governments own constitutionally symmetrical powers and relationships among themselves and to their relationship with the federal government.[88]

While the Constitution has established nine regional states and one city administration,[89] new city administration[90] and regional states[91] had been established later and have become the constituent units of the federation. Though this incidence of establishing new city administration and regional states needs constitutional amendment, it is done without making an amendment. Regarding the establishment of constituent units of the federation, the Constitution claims that regional states are delimited on the basis of settlement pattern, language, identity, and consent of the people.[92] Nevertheless, they are largely structured following language and ethnic lines.[93] Hence, despite their evident differences in terms of population size, all the regions are heterogeneous consisting of two or more ethnic groups.[94]

The Constitution has granted the unconditional right to self-determination for each nation, nationality, and people by which each nation, nationality, and people could have its own administration. Currently, about 86 ethnic groups are counted and recognized in Ethiopia,[95] but only a few of them have full territorial self-rule.

Though the Constitution is peculiar for its sympathy on the recognition and protection of nations, nationalities, and people,[96] it is alleged that the right to self-determination provided under Article 39 of the Constitution is for rhetorical and ideological purposes that there seems no intention of relinquishing the power of the federal government.[97] Particularly, the secession clause provided under Article 39(4) of the Constitution is provided as a symbolic value that there

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[86] Temesgen Thomas Halabo, *Ethnic Federal System in Ethiopia: Origin, Ideology, and Paradoxes*, 4 INT. J. POLIT. SCI. DEV. 9(2016). Available at: http://www.academicresearchjournals.org/IJPSD/Index.html.

[87] Tsegaye Regassa, *Comparative Relevance of the Ethiopian Federal System to other African Polities of the Horn: First Thoughts on the Possibility of "Exporting" Multi-ethnic Federalism*, 1:1 BAHIR DAR UNIVERSITY JOURNAL OF LAW, 5, 5 (2010).

[88] Semahagn, *supra* note 80, at 171.

[89] FDRE Constitution, Arts. 47(1) and 49(1).

[90] See Dire Dawa city administration establishment charter. Available at: https://chilot.me/wp-content/uploads/2012/10/proc-no-416-2004-the-diredawa-administration-charter.pdf

[91] See the Sidama regional State establishment, (available at: https://www.aa.com.tr/en/africa/ethiopia-10th-regional-govt-goes-official/1882023). And the South Western regional State (available at: https://ethiopianmonitor.com/2021/10/31/house-of-fed-approves-formation-of-ethiopias-11th-regional-state/).

[92] FDRE Constitution, Art. 46.

[93] Semahagn, *supra* note 80, at 171.

[94] *Id*.

[95] Federal Democratic Republic of Ethiopia Population Census Commission, summary and statistical report of the 2007 population and housing census, December 2008 (Addis Ababa).

[96] This is manifested from article 8 of the constitution which gives sovereignty to the nation, nationalities and people of Ethiopia; and from its stipulation to unconditional self-determination up to secession clause as dictated under art 39 of the same constitution. See also; Jon Abbink, *Ethnicity and constitutionalism in contemporary Ethiopia*, 41: 2 JOURNAL OF AFRICAN LAW, 159, 166 (1997).

[97] Jon Abbink, *Ethnicity and constitutionalism in contemporary Ethiopia*, 41: 2 JOURNAL OF AFRICAN LAW, 159, 169 (1997).

is an unlikelihood of actually exercising this right by the nations, nationalities, and peoples as stipulated in the paper.[98]

Irrespective of any disparity between the wording and the practice, the normative contents of Article 39 of the Constitution are the concern of this paper so as to scrutinize the comprehensiveness or otherwise of the Constitution in addressing irredentist cases. The right to self-determination provided under Article 39 of the Constitution, which entitles nations, nationalities, and people as the holders of the right is different from the notion of the right to self-determination provided under the international laws. As stipulated under Article 1 of ICCPR and ICESCR, once the era of colonialism is over, the context of the right to self-determination provided under such international laws is for the whole people of a given State to determine their socio-economic and political affairs by themselves freely from any alien interference, but not for territorial or administrative autonomy of groups of people in a given country.

As described above, Article 39 the Constitution has recognized and guaranteed three elements of rights under the auspice of the right to self-determination. These are; the right to the recognition and enjoyment of own identity and values,[99] the right to self-rule and equitable representation in the regional and federal governments,[100] and the right to secession.[101] In order to exercise these rights, the Constitution has stipulated the rules and procedures to be pursued. Let us see the rules and procedures to be followed in exercising these three elements of rights within the right to self-determination.

Secession as the right to external self-determination: this is the right to secede from the federation so as to form an independent and sovereign new state. This is a discrete form of self-determination that disgraces the territorial integrity of the mother state by which Article 39 of the Constitution is unique in adopting a mechanism for the demise of the state constitutionally and peacefully.[102] To realize the constitutional right to secession, the constitution provides the rules and procedures to be pursued. In this regard, Article 39(4) of the Constitution is crucial. Article 39 (4) (a) of the Constitution stipulates that the first condition is the approval of the demand for secession by a two-thirds majority of the members of the Legislative Council of the concerned nation, nationality, or people acting through representative democracy. The right to secede can only be constitutionally triggered by the Legislative Assembly of the claimant nation, nationality, or people. This provision is an important check against any thoughtless or purely chauvinistic agitation for secession.[103]

Once the demand to secede has been approved by the required majority of the legislative assembly of the concerned nation, nationality, or people, the procedure provided under Article

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[98] Alem Habtu, *Multiethnic federalism in Ethiopia: A Study of Secession Clause in the Constitution*, 35: 2 PUBLIUS, 313, 329 (2005).

[99] FDRE Constitution, Art. 39(2)

[100] *Id*, at Art. 39(3)

[101] *Id*, at Art. 39(1).

[102] Ahmednasir M. Abdullahi, *Art 39 of the Ethiopian constitution on secession and self-determination: A panacea to the nationality question in Africa?*, 31:4 VERFASSUNG UND RECHT IN UBERSEE / law and politics in Africa, Asia and Latin America, 440, 445 (1998).

[103] *Id*.

39(4) (b) of the Constitution follows. Hence, the federal government has to organize a referendum for the claimant nation, nationality, or people. This is a double check to assure whether or not the demand made by the Legislative Assembly of the concerned nation, nationality, or people is a true reflection of the will of the majority of the concerned nation, nationality, or people.[104] Doing so, if the demand for secession is supported by a majority vote in the referendum, the federal government will transfer its power to the council of nation, nationality, or people who have voted to secede.[105]

Self-rule as the right to internal self-determination: this is the right given for nations, nationalities, and people that have no their own regional state to secede from a given regional state so as to establish their own regional state. The Constitution, under Article 47(2) has provided the right to self-rule stating that "*Nations, Nationalities, and Peoples within the states enumerated in sub-Article 1 of this article have the right to establish, at any time, their own states.*" This is because of the reason that while there are about 86 ethnic groups,[106] and each nation, nationality, and people has the right to self-determination; including self-rule, the Constitution had established only nine regional states.[107] The procedures to be pursued in exercising the right to self-rule of nations, nationalities, and peoples have provided under Article 47(3) of the Constitution. Therefore, the first condition is the approval of the demand for statehood by a two-thirds majority of the member of the council of the nation, nationality, or people concerned, and the demand is presented in writing to the State Council.[108]

Here, unlike what is provided under Article 39(4) (a),[109] the wording "…. *members of the council of the nation, nationality, or people concerned*…" is less ambiguous as it implies the legislative representatives of the concerned nation, nationality, or people within the council of the regional state in question, but not the council of the regional state as a whole. Therefore, the right to self-rule can be exercised by each nation, nationality, or people that have legislative representatives in the council of the host regional state.[110] Once the claim of statehood is approved by the legislative members of the claimant nation, nationality, or people, the next step is organizing a referendum by the council that has received the demand for statehood so as to assure whether or not the claim is the claim of the concerned nation, nationality, or people.[111] If the result of the referendum is in favor of the claim in its majority, the state council will transfer its power to the nation, nationality, or people that made the demand for statehood.[112]

The right to the recognition and enjoyment of own identity and values: this is the right of nations, nationalities, and peoples in Ethiopia to speak, to write, to develop their own language;

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[104] *Id.*

[105] FDRE Constitution, Art. 39(4) (C), (D).

[106] See *supra* note 95.

[107] Though the constitution had established nine regional states, now, as of November 2021, two new regional states have established, the Sidama regional state and the South West regional state, so that there are eleven regional states for now.

[108] FDRE Constitution, Art. 47(3) (a).

[109] *Infra* note 118.

[110] This still excludes nations, nationalities, or peoples that have not legislative representative in the Council of the regional State.

[111] FDRE Constitution, Art. 47(3) (b).

[112] *Id* at, Art. 47(3)(c and d).

to express, to develop, and to promote their culture; and to preserve their history.[113] In this regard, the Constitution does not stipulate the rules and procedures to be pursued in exercising the right to identity claims. In providing some details concerning the right to self-determination of nations, nationalities, and peoples in Ethiopia, the other relevant law next to the Constitution is Proclamation No. 251/2001.[114] The proclamation, though not as detailed as the procedures stipulated for secession and self-rule, under Articles 20 and 21, in providing some general procedures and steps to be pursued in all forms of self-determination quests, has provided the procedures and steps to be followed in the quest for identity claims too. These steps and procedures are the exhaustion of state-level remedies to make a petition before the House of Federation[115] and the need to make the petition in written form to provide the details of the quest, signature, and evidence for the delegation when the quest is made by representatives.[116]

Having scrutinized three elements of right within the right to self-determination provided under Article 39 of the Constitution, the author of this paper has noticed some gaps in the provision of the Constitution. This is, despite its uniqueness in providing the right to self-determination of nations, nationalities, and people to the utmost extent, Article 39 of the Constitution has its own limitations both procedurally and substantively.

IV. PROCEDURAL LIMITATIONS OF THE RIGHT TO SELF-DETERMINATION PROVIDED UNDER ARTICLE 39 OF THE FDRE CONSTITUTION

The right to self-determination of nations, nationalities, and peoples that has provided under Article 39 of the Constitution is not always exercisable as promised due to some procedural limitations. In this regard, the first limitation is concerned with the feasibility of exercising the right to secession. The right to secession seems hardly exercisable for each nation, nationality, or people. This is because, let alone the political will of the federal government and other intervening factors as per Article 39(4) (a) of the Constitution; nations, nationalities, and people to exercise their constitutional right to secession need to have a legislative council that could vote for the claim to secede. Moreover, it is not always true for each nation, nationality, and people to have representatives both in the legislative council, which is representative of people in one to hundred thousand ratios and, in the House of Federation which is representative of nations, nationalities, and people.[117] This conveys that only nations, nationalities, and people that have their own regional state and legislative council can exercise the right to secession.[118] Hence,

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[113] *Id* at, Art. 39(2).

[114] *Infra* note 123.

[115] *Id*, at Art. 20.

[116] *Id*, at Art. 21

[117] Beza Dessalegn, *Comment on Ethnic Minority Rights under the Ethiopian Federal Structure*, 6:2 MLR, 333, 340 (2012).

[118] Here, it is my doubt that whether the wording "…. members of the legislative council of nation, nationality, and people concerned …." under article 39(4) (a) implies the council of the regional state in a whole or it implies representatives of the concerned nation, nationality, or people in the regional Council. Hence, if it implies Council of the regional state in a whole, it is only nations, nationalities, and people that have legislative Council, regional state that can exercise the constitutional right to secession. On the other hand, if it implies representatives of the concerned nation, nationality, or people in the regional Council, the right to secession can be exercised not only by nation, nationality, and people that have their own regional Council but also by nation, nationality, and people that

while the right is given to nations, nationalities, and people, it is regional states that can exercise the right.

Secondly, the procedural rules stipulated under Article 39(4) and 47(3) of the Constitution are feasible only to the nations, nationalities, and people that settle in one of the established regional states. To say it in another way, if a certain ethnic group has a dispersed settlement across the different regional states; it is hardly possible to ensure their right to self-determination to self-rule and secession. Hence, the right to self-determination stipulated under the Constitution will only be the rights of nations, nationalities, and people that inhabit only in one of the established regional states in which it is either a majority or a dominant ethnic group.[119] This is one of the problems encountered by minorities living across different regional states in asserting the constitutionally guaranteed right to self-determination.[120] Hence, it is open to conclude that the quest of different ethnic groups residing in different regional states is supposed to be entertained only within the context of one of the established regional states.[121]

V. SUBSTANTIVE LIMITATIONS OF THE RIGHT TO SELF-DETERMINATION PROVIDED UNDER ARTICLE 39 OF THE FDRE CONSTITUTION

Despite its liberal and revolutionary approach in providing the right to self-determination of nations, nationalities, and peoples in Ethiopia, Article 39 of the Constitution is not still comprehensive enough to recognize and guarantee all the possible quests of nations, nationalities, and peoples that demand territorial adjustment. The possible quests of nations, nationalities, and peoples that demand territorial adjustment include, but are not limited to, the unification of two or more regional states, division/amalgamation of a regional state, and irredentism, in some cases.

In Ethiopia, irredentism, which is a quest to secede from one regional state so as to join another regional state of ethnically or culturally kindred people,[122] is not addressed under Article 39 of the Constitution. As discussed in section 3 above, Article 39 of the Constitution provides three elements of rights, the right to recognition and protection of identity, self-rule, and secession. Irredentism is a different case from these three elements of rights provided under Article 39 of the Constitution so that the Constitution has missed addressing irredentism; both the conventional and unificationist irredentism.

Irredentism is a different case that requires its own rules and procedures different from the rules and procedures provided for the elements of rights stipulated under Article 39 of the Constitution. However, neither the Constitution nor Proclamation No. 251/2001[123] have provided rules and procedures to be pursued in settling irredentist cases and any attempt to adjudicate irredentist cases in the context of Article 39 of the Constitution is futile.

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have representatives in the council of the regional state in exclusion of those that have not legislative representatives at all in the Council of the regional state

[119] Beza Desalegn, Supra note 117, at 341.

[120] *Id.*

[121] *Id*, at 342.

[122] Julianna, *supra* note 6.

[123] Proclamation No. 251/2001, Proclamation on the consolidation of the house of federation and definition of its powers and responsibilities, Federal Negarit Gazeta, Federal Democratic Republic of Ethiopia, Addis Ababa (2001).

Practically, it is evidenced when irredentist claims are being misapprehended and cited as a claim to mere identity recognition, self-rule, or secession. Moreover, as evidenced from the Welkaite case, it is becoming common to see attempts of trying to settle irredentist cases using the existing legal frameworks. However, the procedural rules to be followed in entertaining self-determination claims stipulated under Art 39(4) and 47(3) of the Constitution and as well in the Proclamation No. 251/2001 are not feasible to entertain irredentist cases.[124] This shows that irredentism needs its own legal and institutional frameworks. The following sections are intended to shed a light in this regard.

A. Irredentist Cases in Ethiopia and its Adjudication

In Ethiopia, there are different on-going irredentist cases; *inter alia,* the quest of the Welkaite and Raya people to secede from the regional state of Tigray and be incorporated within the regional state of Amhara are both irredentist cases.[125] The formal petition made on the Welkaite case, official statements, public demonstrations, and scholarly views concerning Welkaite[126] and Raya,[127] that reveals the quest of the people to be incorporated within the regional state of Amhara and the interest of the regional state of Amhara to retrieve such provinces shows the irredentist nature of the Welkait and Raya cases as well. Due to the problem in the establishment of the regional states of the federation from the very start, currently, numbers of irredentist cases are being increased among the regional states.[128] Denying such cases has significant socio-economic and political implications.[129] Hence, such cases need to be carefully handled and adjudicated. In so doing, understanding the very nature of the case is pivotal. Because, understanding the nature of the case and its peculiar feature would enable us to wonder about the feasible legal and institutional frameworks to settle such cases.

It would be an oversight to consider irredentism as the expansionist tendency of the retrieving state. This is because, the quest is mainly the quest of the ethnically kindred people who are detached from their ethnic kin people and encompassed within the regional state of another ethnic group. Such irredentist cases are the result and effect of the ill arrangement of regional states mainly through political will with less consideration of the historical and sociological backgrounds and consents of the people concerned during the formation of constituting states of the federation.[130] Despite the reality of such irredentist cases across

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[124] Though this proclamation is amended in 2021, as consulted the draft amendment proclamation, nothing new is adopted both substantially and procedurally to address irredentist cases.

[125] Here, while the *Welkaite* case is formally filed to the concerned offices, the cases of Raya is only allegations inferred from the statements of government officials, scholars, political parties leaders, and public demonstrations.

[126] Amhara Media Corporation, ወልቃይት ከነፃነት በኋላ – የምስጋና ፕሮግራም፣ available at: https://www.youtube.com/watch?v=2RAQ1AERhLc&t=736s.

[127] Amhara Media Corporation, የግፍ ጉጠት – ዘጋቢ ፕሮግራም፣available at https://www.youtube.com/watch?v=ESe8lwkwRmc

[128] Under Article 46 of the FDRE Constitution it is stipulated that States shall be delimited on the basis of the settlement patterns, language, identity and consent of the peoples concerned, these conditions were not strictly followed in the establishment of States. Rather, States had established mainly based on language and political will.

[129] The 2008 E.C popular revolt of Gondar people and the corollary political unrest which finally results to the demise of TPLF led EPDRF Government is a good example as the denial or absence of speedy response for the Welkaite case is the main reason of the revolt.

[130] Beza Dessalegn, *supra* note 117.

different regional states of the federation, it is not seen when such cases are settled like other self-determination cases due to the legal lacuna the Constitution left unaddressed had since it was adopted.

Further, there is also a gap in institutional frameworks. Both the state and federal level institutional frameworks that are empowered to adjudicate self-determination cases; the House of Federation at the federal level[131] and the councils of respective regional states[132] at the state level, have no legal base to adjudicate irredentist cases.[133] This is because the elements of the right to self-determination provided under Art 39 of the Constitution, upon which the concerned state and federal level institutions are empowered to adjudicate are only limited to identity recognition, self-rule, and secession. Irredentist case, on the other hand, is a different kind of self-determination claim listed above and it is not addressed in the normative contents of the self-determination clause of the Constitution. Hence, neither the regional nor the federal level institutions are expressly empowered to umpire irredentist cases and, this institutional gap is the extensional effect of the legal gap in expressly addressing irredentist cases.

Therefore, for the House of Federation, it would be an ultra-virus power to assume umpiring power on irredentist cases as neither the Constitution nor Proclamation No. 251/2001 have recognized such kinds of claims. The same is true for the councils of regional states.

Additionally, giving an umpiring power to the council of the host regional state contravenes the natural law principle of '*nemo judex in causa sua*' as the host regional state would be a judge on the case instituted against it.[134] This will create a conflict of interest on the host state as the case requires the state to be impartial in umpiring the case which could have an effect of losing its people and land. Due to this, the host state, rather than answering the case amicably, might unreasonably delay and deny it in different ways. This is what happened to the Welkait case too. When the committee of the Welkaite case had lodged the claim to the regional state of Tigray, the responses from the concerned officers of the regional state of Tigray were intimidation, abuse, and detention of the committee members.[135]

The Welkait case has been quested since the time when Welkait had been incorporated within the regional state of Tigray.[136] Since then, the Welkait people have had a prolonged and on-going quest to secede from Tigray and join their ethnic kin people of the Amhara regional

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[131] See Article 62(3) and 39(4) of the FDRE Constitution.

[132] See Article 47(3) of the FDRE Constitution

[133] Even in adjudicating the three elements of the self-determination cases, the power of such Federal and State level institutional organs is limited to facilitating and following up the procedural regularity of the case. The substantive power to determine the self-determination claims of nation, nationalities and peoples in Ethiopia resides upon the hands of the concerned nation, nationality, or people through their representatives, indirect democracy, and by their referendum, direct democracies. See also; የኢ.ፌ.ድ.ሪ የፌደሬሽን ምክር ቤት፣ የኢ.ፌ.ድ.ሪ የፌደሬሽን ምክር ቤት ያሳለፋቸዉ ዋና ዋና የህገ-መንግስት ዉሳኔዎች፣ *የህገ-መንግስታዊ ፍርዶች መጽሄት*፣ ቅጽ 1፣ ቁ 1፣ (ሀምሌ 2000). ገፅ 50-60.

[134] This conflict of interest would also arise in case of a claim for self-rule made by nation, nationality, or people against the regional state. So that it is the view of the author of this paper that in such cases there need to have some intervention by the federal government. And, this is justifiable as the case is the matter of two regional states, if not established - potential regional state.

[135] Interview with *Atalay Zafea*, member of the Committee to the *Amharan* nationhood identity claim of *Welkait* people, interviewed on May 2018.

[136] *Id*.

state which is *ipso facto,* the case of irredentism.[137] After all, the claim was formally appealed to the House of Federation on 21 November 2008.[138] However, the House of Federation rejected the petition on the ground of non-exhaustion of remedies at the state level by asserting Article 20 (1) of Proclamation No. 251/2001.[139] However, when the committee filed the case to the regional state of Tigray, the concerned officials of the regional state of Tigray de-legitimized the case and used coercive measures to hold the case and started intimidating, jailing, and harassing the compliant committee members.[140] Even if it is a prolonged case, it is not settled yet and it is neither expected to be solved easily. This problem is attributable to the complexity of the case to be understood in the context of Article 39 of the Constitution and a misapprehension by the House of Federation about the nature of the case together with the unwillingness of the regional state of Tigray to consider the interest of the claimant people escalated the problem.

In nutshell, recognizing and providing constitutional protection for irredentist cases like the three elements of the right to self-determination provided under Article 39 of the Constitution is the first thing to be done. Then, as irredentist cases call for the involvement of two or more interested parties, the procedures to be followed in settling such cases need to be in consideration of this scenario. Accordingly, the first step needs to be ascertaining and settling the case of identity question of the trans-border ethnic group that claims to secede from the host state so as to join the other regional state with ethnic or cultural kin people. If this question of identity is answered affirmatively, the next step is to allow the claimant people secede from the host regional state and unifying with the regional state of its ethnic kin people as requested. Finally, adjustment of the border between the two regional states will take place. However, these steps and procedures shall not infringe the general procedures provided under Articles 20 and 21 of proclamation 251/2002.[141]

Differently from what has provided hereinabove, the government has made different attempts to settle irredentist and other self-determination cases in the country. Among other things, the federal government had established an Ad hoc Commission in 2018.[142] As envisaged from Article 5 of its establishment proclamation, the Commission has the mandate of inquiring and providing scientific opinions concerning cases of self-determination. In so doing, the role of the Commission is to assist the concerned government organs in settling different self-determination quests of NNPs. Though it may not be a panacea to the problems arising from the self-determination quests, it would have a vital role in assisting the House of Federation and other government organs in their effort to settle self-determination cases. Nevertheless, as it has only an advisory role, the Commission would address neither the legal nor institutional gaps in settling irredentist cases. It may rather recommend the gaps to the concerned organs through its researches.

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[137] *Id*.
[138] Supra note 15.
[139] Interview with Atalay Zafea, Supra note 136.
[140] *Ibid*.
[141] See *supra* note 115 and 116.
[142] *Administrative Boundaries and Identity Issues Commission Establishment Proclamation,* Proclamation No. 1001/2018, FED. NEGARIT GAZETA, (2018).

VI. CONCLUSION AND RECOMMENDATIONS

Irredentism, which is the simultaneous quest of the parent state and trans-border ethnic kin people to their political and territorial unification, is hardly addressed both under international and national legal frameworks. Irredentist cases are practical phenomena both at the inter-countries and intra-country levels with unique form of territorial re-adjustments. Though the Constitution allows secession, the international system insists on the principle of sovereignty and territorial integrity of states.

FDRE Constitution is known for its advocacy for the rights of nations, nationalities, and people; however, it has overlooked irredentist cases for reasons not clearly known. Noticing the peculiar features of irredentism, the normative contents of Article 39 of the Constitution is incomprehensive to address irredentist cases which could arise among the regional states of the federation. There are gaps both in the legal and institutional frameworks to deal with irredentist cases. As irredentist cases are different from the normative contents of Article 39 of the Constitution, both the federal and state level institutions have no express power to entertain irredentist cases.

Though there are no legal and institutional frameworks to adjudicate it, the irredentist movement in Welkait case fulfils all the features and peculiarities of conventional irredentism. Hence, such gaps shall be solved to prevent and mitigate the far-reaching effects of the problem. In addressing such gaps, the peculiar features of irredentist cases need to be strictly considered. Further, House of Federation needs to be expressly empowered to umpire irredentist cases. House of Federation is the representative of nations, nationalities, and people of Ethiopia due to which it will be feasible organ to umpire such cases. As irredentist cases concern the interest of two or more regional states, the House would be the proper organ to umpire such cases. Moreover, this is in line with the power of the House to adjudicate border disputes between the regional states provided under Article 48 of the Constitution.

Irredentist cases have multifold sub-claims including a claim to identity recognition, a claim to be unified with the regional state of ethnic kin people, and the corollary border adjustment between the host and retrieving regionals states. Once, the House of Federation gets expressly empowered to umpire irredentist cases, it shall entertain irredentist cases by; first, ascertaining and settling the case of identity recognition question. If the question of identity recognition passes its test, then, unifying the claimant people with its ethnic kin people as requested would take place. Finally, settling the consequent border adjustment between the host and the retrieval regional states would be effected to permanently solve disputes.

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