

Research Paper

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The use of ethnicity as a factor for demarcating municipalities: the case of Malamulele and Vuwani communities.



Key words: Demarcation, Amalgamation, Ethnicity, Ethiopia, Local Government, Service Delivery, Protests, Municipality, Malamulele, Vuwani, Conflict, Apartheid.

Declaration by Student

I, Tshehledi Isaac Mokgopo hereby declare that **'The use of ethnicity as a factor for demarcating municipalities: The case of Malamulele and Vuwani communities'** at the University of the Western Cape, hereby submitted, has not been previously submitted by me for any other degree at this or any other university. I further declare that this is my own original work; and that all the sources which were used or quoted in this study have been duly indicated and acknowledged as complete references

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Tshehledi Isaac Mokgopo

August 2017



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Declaration by Supervisor

I, **Professor Nico Steytler**, hereby declare that this research paper by **Tshehledi Isaac Mokgopo** for the degree of Law, State and Multilevel Government (LLM Programme) be accepted for examination.

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Prof N Steytler

August 2017



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Dedication

This study is dedicated to the following people: my lovely parents, Phineas Tshigivha Libago and Raesetja Rosina Mokgopo; my uncle's family, Phushudi Rufus Mokgopo and his wife Sebolelo Salphina Mokgopo; to my blessed siblings, Samuel, Maebe, Martin, Themby, Rendy Mokgopo; to Pleasure Thobakgale and my precious stone, Moemeloa Godsend.

It is also dedicated to the following people who have departed to be with the Lord: my late aunt Masilo Jeridah Mokgopo whom I lost mysteriously, also my late uncle Nyonkoloza Phillip Mokgopo who loved me dearly like his own son and my late beloved grandmother Keribe Ramatsobane (Ngwana Mogale) Sarah Mokgopo who raised my elder brother and I to be the responsible men that we are today.



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My gratitude further goes to Ms Nicky Van Driel for her excellent work in editing and proofreading this research. Thank you very much. I pray that the good Lord richly bless you and your family.

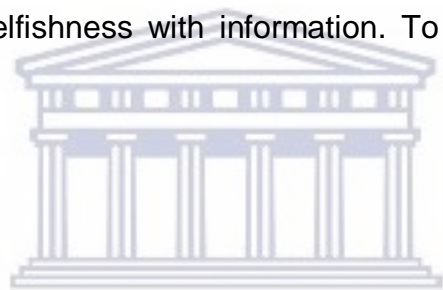
I would also like to thank my beloved parents, my father Mr. Phineas Libago and my mother Ms. Rosina Mokgopo for the pillars they are continuing to be in my life. There was a time when life became so difficult that I decided to quit my academic journey to look for employment due to financial constraints but you never allowed me to do that. You made sure that you played your role as parents to ensure that I complete all my undergraduate and postgraduates degrees. For that reason, I could not have chosen any better parents except you. I will always be indebted to you.

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Abbreviations

| | |
|--------|---|
| CDDR: | Commission on the Demarcation/Delimitation of States, Provinces and Regions |
| EPRDF: | Ethiopian People's Revolutionary Democratic Front |
| LP: | Limpopo Province |
| LG: | Local Government |
| MDB: | Municipal Demarcation Board |
| MDTT: | Malamulele Demarcation Task Team |
| MEC: | Member of Executive Council |
| NCOP: | National Council of Provinces |
| RSA: | Republic of South Africa |
| SALGA: | South African Local Government Association |
| TBVC: | Transkei, Bophuthatswana, Venda and Ciskei |
| TGE: | Transitional Government of Ethiopia |
| TPLF: | Tigray People's Liberation Front |



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CHAPTER ONE

INTRODUCTION

1.1. Problem statement

In 1994, South Africa became a democratic country after many decades of resistance against apartheid. In 1996, the Constitution which is the supreme law of the country was adopted and provides for three spheres of government namely national, provincial and local. The Constitution emphasise that South Africa is one, sovereign, democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, and non-racialism and non-sexism.¹

With regard to the establishment of municipalities the Constitution requires an independent body to demarcate municipal boundaries.² As a result the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) was adopted to give effect to section 155 of the Constitution which established the Municipal Demarcation Board (MDB).³ Section 3 of the Act provides that the MDB is a juristic person, independent, impartial and must perform its function without prejudice, fear or favour.⁴

The most important function of the MDB is to determine municipal boundaries in accordance with the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) and other appropriate legislation enacted in terms of Chapter 7 of the Constitution.

In 2000, the MDB demarcated 284 municipalities and the first full democratic local government elections took place on 5 December 2000 establishing the constitutionally designed system of local government. Not all citizens were happy with boundary

¹ Constitution of the Republic of South Africa, 1996.

² Chapter 9 "State Institutions Supporting Constitutional Democracy".

³ Local Government: Municipal Demarcation Act 27 of 1998.

⁴ Section 3 Municipal Demarcation Act.

determinations by the MDB.⁵ In 2009, the MDB minimized the number of municipalities to 278.⁶

The South African government has been at the receiving end of a wave of protests associated with lack of or poor service delivery around the country. On 21 September 2013, residents of the small town of Malamulele which falls under the Thulamela Local Municipality went on the rampage after a MDB meeting and torched municipal property. This was because the residents of Malamulele were demanding a separate municipality and their request was refused by the MDB.⁷ Thulamela and Makhado Local Municipalities which falls under the Vhembe District Municipality have two different ethnic groups in their areas namely, Venda- and Tsonga-speakers. Currently, the Thulamela Local Municipality head office is situated in Thohoyandou which has mainly Venda-speaking people. The sitting arrangements of these two communities emanates from the spatial impact of land reform and the redrawing of internal boundaries on South Africa's former Bantustans.⁸

In 2014, the MDB was taken to task as it experienced a serious challenge to its work as service delivery protests changed to protests about municipal boundary demarcation. This took place when the community of Malamulele in Limpopo went on the rampage and destroyed government buildings and barricaded the roads. The residents of Malamulele wanted their own separate municipality away from the Thulamela Local Municipality, which is located in a Venda-speaking community. The MDB took the resolution not to give the community its own municipality because it did not want to establish municipalities with ethnic boundaries.⁹

⁵ Cogta '15 Year Review of Democratic and Developmental local Government in Gauteng: Reflecting on Local Government Performance in Gauteng for the period of 2000-2016' Available at <http://www.cogta.gpg.gov.za> (accessed 27 July 2016).

⁶ Mashamaite K 'Public Service Protests in a Democratic South Africa: A Dilemma for Local Municipalities' (2004) 5 *Mediterranean Journal of Social Sciences* 233.

⁷ Baloi J 'Malamulele calm after rampage' SABC News 31 January 2015 Available at <http://www.sabc.co.za/news> (accessed 19 July 2016).

⁸ Ramutsindela M 'Resilient geographies: land, boundaries and the consolidation of the former bantustans in post-1994 South Africa' (2007) 173 *The Geographical Journal* 43-44.

⁹ Makamu N 'Malamulele Municipality: Tribalism or Administrative Justice?' City Press 14 January 2015 available at <http://www.news24.com/mynews24/malamulele-municipality-tribalism-or-administrative-justice> (accessed 13 August 2016).

However, a new municipality was created which included parts of Makhado. In 2015, the MDB took the decision to move some of the communities from Vuwani who were Venda-speaking, so as to incorporate them into the new Malamulele Municipality. This decision led to serious protests which saw the community of Vuwani burning 29 schools in the community and nearby communities. As a result of an on-going protest in Vuwani many people's lives were affected, mainly the school learners as the schools in the area were burned down.

The main reason for the burning of schools in Vuwani was because most of the community members alleged that they were not consulted when the decision to incorporate them within the new Malamulele municipality was taken.¹⁰

Ethnicity proved to be a serious issue for the MDB in determining and re-determining municipal boundaries in South Africa. The recent Malamulele and Vuwani saga in Limpopo saw the MDB faced with a serious problem as to whether to consider ethnicity as a deciding factor in establishing municipalities in the country. The community of Malamulele wanted its own municipality away from the Thulamela District Municipality whereas the Vuwani community on the other hand refused to be incorporated into the new Malamulele Municipality due to consultation issues, ethnic reasons and the fear of not receiving proper municipal services.¹¹ Ethnic diversity is of more concern as the community of Vuwani refused to be part of the new Malamulele Municipality by stating that they are comfortable with where they are currently situated which is in Vhembe District under the Makhado Municipality and that they did not want to be mixed with the Xitsonga-speaking people.¹²

¹⁰ Tau P 'More schools on fire in Vuwani as police try to control growing crowds' City Press 05 May 2016 Available at <http://city-press.news24.com/News/more-schools-on-fire-in-vuwani-as-police-try-to-control-growing-crowds-20160505> (accessed 23 August 2016).

¹¹ Tshikudo E 'We are not part of Malamulele!' Limpopo Mirror 27 July 2015 Available at <https://limpopomirror.co.za/articles/news/32225/2015-07-27/awe-are-not-part-of-malamulelea> (accessed 27 August 2016).

¹² Magubane K 'We don't want tribalism in Vuwani, says minister' Sowetan 11 May 2017 Available at <http://www.sowetanlive.co.za/news/2017/05/11/we-don-t-want-tribalism-in-vuwani-says-minister> (accessed 15 May 2017).

1.2. Research Questions

The questions to be addressed in this study are as follows: Should ethnicity be used as a factor in demarcating municipalities in South Africa? If, so does the present Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) allow for such accommodation? If ethnicity is used as a deciding factor will it not divide the country bearing in mind the past apartheid experiences? Thus, what are the pros and cons of using ethnicity as a factor in determining municipal boundaries? In answering the latter question, reference will be made to Ethiopia where local government demarcation is explicitly done on the basis of ethnicity.

1.3. Argument

Though the South African Constitution does not recognise the use of ethnicity as a factor for determining municipal boundaries, the recent protests by members of the community shows that ethnicity is starting to play a role in determining boundaries in South Africa. This means that the use of ethnicity in determining and re-determining municipalities must be treated equally to other factors that must be observed in the demarcation process.

There is a fear that if ethnicity is recognised in determining municipal boundaries that that recognition will result in ethnic conflicts by the members of the community because no boundary is totally inclusive of one ethnic group. The question of what will happen to internal minorities is also running through the minds of many people. But by looking at how the communities in Limpopo Province are situated, language speaks volumes in differentiating between the three ethnic groups which are situated in the province.¹³ There is always a particular ethnic group which is dominating in a particular place, such as in Venda where Venda-speaking people are the majority, in Giyani, Tsonga-speaking

¹³ Masondo D 'But by looking at how the communities in Limpopo Province are situated, language speaks volume in differentiating between the three ethnic groups which are situated in the province.' Politics web 25 March 2015 Available at <http://www.politicsweb.co.za/news-and-analysis/tribalism-language-and-the-national-question-in-po> (accessed 17 July 2016)

people are in the majority and in Polokwane with Sepedi-speaking people being in the majority.¹⁴

Therefore, the recognition of ethnicity in the demarcation process will not prejudice minorities as they will be incorporated within the boundaries of that particular ethnic group that they find themselves in. For example, if a certain minority group happens to find itself within the territory of another dominating ethnic group then such minority will be served by the same municipality which is serving the dominant ethnic group. This is to say, for example, due to work opportunities in Polokwane, there is always a large number of Venda- and Tsonga-speaking people leaving their communities to come to Polokwane. Some end up building or buying houses there and as a result they end up forming part of the Polokwane Local Municipality and even today, as observed, there is no ethnic conflict, which means that people might be satisfied with the boundaries in which they find themselves in.

It should be noted that the only disadvantage of using ethnicity in determining municipal boundaries, which could result in ethnic conflict will be where communities are not provided with proper municipal services by the dominating ethnic group as it was alleged by Malamulele community. However, on the other hand, the use of ethnicity in determining municipal boundaries will provide many communities with their own municipalities and ensures that municipal services are provided equally to all communities including rural communities in South Africa. Pursuant to that the use of ethnicity in demarcating municipal boundaries will result in different ethnic communities having direct access to municipal services in their areas and this will limit service delivery protests as observed in the Malamulele community. Ethnicity will then be used as a yardstick for assessing the ability of the municipality in taking care of the communities and it will reduce the pointing of fingers by other ethnic groups as they will have their own municipal offices within their boundaries.

¹⁴ Masondo D 'Tribalism, language and the national question in post-apartheid SA' Politicsweb 25 March 2015 Available <http://www.politicsweb.co.za/news-and-analysis/tribalism-language-and-the-national-question-in-po> at (accessed 17 July 2017).

The recognition of ethnicity should not be viewed as a step closer to dividing the country but it should be seen as a response to the problems and tensions faced by the MDB when carrying out its demarcation functions due to the fact that some provinces in South Africa have different ethnic groups that are situated according to their cultures and language in one province, e.g. Limpopo and Mpumalanga. By recognising and using ethnicity as a factor in demarcating municipalities this should assist the MDB as communities shall be satisfied and people would reside according to their ethnic groups. This is because people of the same language and cultural background tend to understand each other more and live in peace than in a mixed ethnic diversity which eventually results in ethnic conflict.¹⁵

1.4. Literature review

1.4.1. Municipal demarcation

In 1994 when the new democratic government of the Republic of South Africa (RSA) came into power it was faced with a major restructuring of government and the adoption of the new Constitution. This required total transformation of the three spheres of government because apartheid had left its mark on South African human settlements and municipal institutions. De Visser states that local government in South African has emerged or came up from being an institution that was racist, illegitimate and subservient to an institution with a leadership that is democratically elected which has a developmental agenda as well as a constitutional status.¹⁶ This means that transformation requires deep understanding of the historical role of local government in creating and perpetuating local separation and inequity as well as the impact of apartheid on municipal institutions.¹⁷

Tsatsire, Raga, Taylor and Nealer highlight that the influx control of Blacks in urban areas as well as racial segregation and disenfranchisement of certain racial groups characterised the history of local government during the apartheid era (1948-1993). They

¹⁵ Eller JD 'Ethnicity, Culture, and "The Past"' (1997) 37 available at <http://hdl.handle.net/2027/spo.act2080.0036.411> (accessed 23 July 2016).

¹⁶ De Visser J 'Developmental Local Government in South Africa: Institutional fault Lines' 2009 *Commonwealth Journal of Local Governance*, Issue 2 pp.8.

¹⁷ *The White Paper on Local Government* 9 March 1998.

highlight further that the South African local government became the mechanism and instrument through which racial and cultural groups were divided and kept apart. This is the main reason why racial transformation in local government structures was required in South Africa on the demise of apartheid.¹⁸

Ramutsindela and Simon highlight that “after the re-integration of the Bantustans into South Africa, the restoration of South African citizenship to residents of the so-called TBVC states (Transkei, Bophuthatswana, Venda and Ciskei) in 1992-1993, and the adoption of an interim constitution in 1993, a political environment was created in which the internal map of South Africa could be redrawn afresh in accordance with the envisaged principles of a non-racial democracy”.¹⁹ As a result the process of demarcating regions and renaming them into provinces followed in 1994.

According to Ramutsindela,

this process of demarcating and renaming of regions meant that the areas of the former Bantustans were kept intact within the provinces into which they were incorporated.²⁰ This is so because the intention to keep a particular language group together meant that ethnic language groups should continue to occupy the very same space within which they were confined under the apartheid government. In practice, the new provinces have accommodated and maintained the same linguistic and ethnic maps which existed during the apartheid era as the fundamental bases for spatial organization in a democratic South Africa. The demarcation of provinces/regions did not divide any of the former Bantustans into more than one province. Instead, it has strengthened the concentration of language groups into particular provinces, thereby keeping and maintaining the apartheid status quo of the distribution of those groups.²¹

¹⁸ Tsatsire I, Raga K, Taylor J D, & Nealer E ‘Historical overview of specific local government transformatory developments in South Africa’ 2009 *New Contree* 133.

¹⁹ Ramutsindela M R & Simon D ‘The Politics of Territory and Place in Post-apartheid South Africa: the Disputed Area of Bushbuckridge’ (1999) 25 *Journal of Southern African Studies* 479.

²⁰ Ramutsindela M (2007) 49-50.

²¹ Ramutsindela M (2007) 49.

It is worth noting that the demarcation process which redrew municipal boundaries across South Africa during that time/period was aimed at achieve uniformity in the local government structures on the basis of building functional boundaries and ensuring a sustainable service delivery as well as cohesive physical and environmental areas with financial viability within functional boundaries and administrations, this also includes the potential for the redistribution of functions and resources within the communities in South Africa.

Even though this process was presented as a technical exercise, in practice, it was also an intensely political one because it was concerned first and foremost with overcoming the legacies of apartheid government planning systems and racially-skewed resource distribution amongst the communities.²²

Thornhill writes that the newly elected democratic government of South Africa had to transform the local government system to meet the demands of a non-racial society which was totally fragmented due to the former government's apartheid policy. This saw a new system being established to comply with constitutional guidelines. As a result, the whole system was redetermined and restructured and replaced with a new system which is continuously being reviewed and amended: today municipalities in South Africa have been established and demarcated in such a way that it covers not only the urban areas but the total geographical area of the Republic of South Africa.²³

According to Mahlangu, municipal boundaries could include amalgamating some municipalities and demarcating new areas depending on the inputs from municipalities, provinces and other stakeholders.²⁴

Pycroft writes that "the point of departure in overcoming the structural limitations of the transitional form of local government in South Africa is to re-conceptualize and where necessary, redraw municipal boundaries. He further highlights that the MDB has to

²² Beall J 'Decentralisation and Engendering Democracy: Lessons from Local Government Reform in South Africa' (2004) 54 *Development Destin Studies Institute* 7.

²³ Thornhill C 'The transformed Local Government System: some lessons' (2008) 43 *Journal of Public Administration* 492.

²⁴ Mahlangu L 'Municipal Demarcation Board Reviews: Municipal boundaries for the 2016 local elections' (2011) 13(4) *Local Government Bulletin* 15.

determine the optimum boundary of all municipalities in South Africa, guided by the criteria provided for in the White Paper on Local Government, 1998 and Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)".²⁵

Whittal and Nxumalo highlight that the Municipal Demarcation Board is authorised to demarcate municipal boundaries and dissolve the spatial layout of apartheid government and it is also mandated to create new municipal areas of jurisdiction which are not racially-based. The aim of municipal restructuring is to assist in redressing the imbalances of the past and the inequalities in public service. They write further that the new municipal areas should be structured to help in addressing the urban/rural divide and integrate economic and social development.²⁶

1.4.2. Accommodation of ethnicity

According to Chandra, ethnic identity refers to nominal membership in an ascriptive category that is inclusive of language, caste, race or religion. This is consistent with the broad definition now taken as standard in the field of ethnic mobilization: in that "ethnicity easily embraces groups that are differentiated by color, language, and religion; it covers nationalities, races, tribes, and castes".²⁷ Gilley highlights that ethnicity is usually defined as that part of a person's identity which is drawn from one or more markers such as religion, race, social symbols, region, shared history or language. It is distinct from that part of a person's identity that comes from, say, economic status, personal moral doctrine, civic affiliations or personal history.²⁸

Horowitz highlights that ethnicity

is a powerful affiliation, both because similarity is valued and because genetic (or putatively genetic) origins and early socialization are potent sources of similarity

²⁵ Pycroft, C 'Democracy and delivery: the rationalization of local government in South Africa' (2000) 66 *International Review of Administrative Sciences* 151.

²⁶ Whittal J & Nxumalo C 'Municipal Boundary Demarcation in South Africa: Processes and Effects on Governance in Traditional Rural Areas' (2013) 2 *South African Journal of Geomatics* 325.

²⁷ Chandra K 'Ethnic Parties and Democratic Stability' (2005) 3 *perspectives of politics* 236.

²⁸ Gilley B 'Against the concept of ethnic conflict' (2004) 25 *Third World Quarterly* 1158.

or, in any case, of cues that signal similarity: customs, language, appearance, gestures, tastes, clothing, and habits. The assumption of similarity follows quickly once groups are formed, even in laboratories, and reinforces group identity. Even more powerful is the assumption of resemblance that evolve from birth or common experiences of childhood.²⁹

Horowitz writes that “in societies severely divided by ethnicity, religion, language, race or any other form of ascriptive affiliation, ethnic differences or divisions make democracy difficult, because they tend to produce ethnic parties and ethnic voting. An ethnic party with a majority of votes and seats can dominate minority groups, seemingly in perpetuity. Some vision of this problem informs the politics of a great many severely divided societies. In severely divided societies with ethnically-based parties, ordinary majority rule in most cases results in ethnic domination”.³⁰ He writes further:

Ethnic identities are dynamic both in their character and in their salience, even when an armed conflict has deepened divisions between groups and seen ethnicity rise to become an all-dominant social marker. Important opportunities for peace building may be lost if intervening actors fail to acknowledge the complexity nature of ethnicity and opt for policies that institutionalise ethnic differences.³¹

Ethnic diversity has clear political, economic and social consequences.³² Easterly writes that

ethnic differences and diversity has a more adverse effect on economic growth and the adoption of economic policy when institutions are poor. To put it another way, poor institutions have an even more adverse impact on growth and policy when ethnic diversity is high. Conversely, in countries with sufficiently good institutions, ethnic diversity does not lower growth or worsen economic policies. In other words, good institutions can also lower the risk of genocides and wars that

²⁹ Horowitz D L ‘Structure and Strategy in Ethnic Conflict’ (1998)

<http://siteresources.worldbank.org/DEC/Resources/84797-1251813753820/6415739-1251813951236/horowitz>.

³⁰ Horowitz D L ‘Ethnic Power Sharing: Three Big Problems’ Vol. 25 (2014) *Journal of Democracy* No.2 pp. 5.

³¹ Simonsen S G ‘Addressing Ethnic Divisions in Post-CONFLICT institution-BUILDING: Lessons from Recent Cases’ (2005) 36 *SAGE Journals* 297.

³² Gilley (2004) 1155.

might otherwise result from ethnic fractionalisation. Therefore, ethnically diverse nations that wish to endure in prosperity and peace must build good institutions.³³

South Africa is a home to different ethnic groups. According to Portes, ethnic awareness can be defined or interpreted to be the perception by members of a certain minority group of the social distance separating them from the dominant group and the existence of discrimination based on racial or cultural differences. Awareness of social distance and of negative stereotypes has been said to be a decisive factor affecting the behaviour of minority-group members. The opposite of ethnic awareness is then the belief and a sense of equality that one can freely mingle and associated with anyone else in the society; such perceptions are said to characterise fully "assimilated" minorities.³⁴

The accommodation of ethnic differences at the local government level is often viewed as a catalyst of ethnic tensions among communities and also contributing to national disintegration.³⁵ However, Singiza and De Visser argue that neglecting the wishes of other ethnic or other cultural groups may lead to alienation and demoralization. This is because when a group has been politically alienated at the central government (national level), pursuing political claims at the local level then becomes a logical option.³⁶

Fessha points out that the South African Constitution depicts a state (country) that strive to build a common national identity and a state that emphasise national unity. However, even though it seeks to build national unity it does so at the expense of ethnic diversity because it rather acknowledge that subnational identities are an important part of the South African make-up.³⁷

Fessha writes further that

³³ Easterly W 'Can Institutions Resolve Ethnic Conflict' (2001) 49 *Economic Development and Cultural Change* 703.

³⁴ Portes A 'the Rise of Ethnicity: Determinants of Ethnic Perceptions among Cuban Exiles in Miami' (1984) 49 *American Sociological Review Journal* 383.

³⁵ A Conference Report 'The accommodation of ethnic differences at the local government level is often viewed as a catalyst of ethnic tensions among communities and also contributing to national disintegration.' Available at <https://www.cia.gov/library/readingroom/docs/1995-10-01A.pdf> (accessed 17 August 2017).

³⁶ Singiza D K & De Visser J 'Chewing more than one can swallow: the creation of new districts in Uganda' (2011) 15 *Law, Democracy & Development* 5.

³⁷ Fessha Y 'The politics of ethnicity and the post-apartheid constitutional dispensation' (2014). <http://www.nyslawreview.com/wp-content/uploads/sites/16/2014/11/Fessha1>

a multi-ethnic state that strive to suppress diversity and attempts to build a common national identity based on the core culture of a particular ethnic group is bound to provoke violent ethnic nationalist movements. Similarly, a state that ostensibly follows a policy of neutrality when it comes to ethnic relationships often end up identifying itself with a particular group, therefore a multi-ethnic state should seek to avoid an attempt to homogenize its ethnically diverse population and transform it into a nation-state or remain 'culturally neutral'.³⁸

De Visser, Steytler and Fessha highlight that the use of ethnicity to organise internal boundaries is also evident to a certain extent, in the internal territorial organisation of the subnational units in Ethiopia. The territorial organisation of local government which is determined by the regional legislatures, has taken ethnic lines in some of the states, particularly in states that are home to more than one ethnic group.³⁹

Ethnicity is a fact to be taken into consideration, while on the other hand, ethnic identity is simply a fact into which everyone especially those born in Africa have the privilege to obtain membership without any recourse to application, papers and bureaucratic red-tape.⁴⁰ Furthermore, ethnicity may hold a strong key to democratizing the state and development in Africa if recognised rather than denying its existence. Pursuant to that unless ethnicity is taken seriously Africa's struggle to democratize the state and development will suffer no better a fate than that of an imagined nation state. This position of condoning ethnicity as a crucial factor in state building in Africa is quite relevant to the case of Ethiopia, where ethnicity has already become an 'official' state practice and ideology.⁴¹

³⁸ Fessha Y T 'Ethnic Diversity and Federalism: Constitution Making in South Africa and Ethiopia' (2010) 241.

³⁹ De Visser J, Steytler N & Fessha Y 'The role of ethnicity in the demarcation of internal boundaries in South Africa and Ethiopia' (2012).

⁴⁰ Seyoum H *Ethnicity in Africa towards a Positive Approach* (1997) 11-17.

⁴¹ Alemayehu A N *Ethnic Federalism in Ethiopia: Challenges and Opportunities* (unpublished LLM thesis, University of Lund, 2004) 16-17

1.4.3. Violent protests as a form of political participation

Due to the sensitivities around ethnic concerns, great care must be taken to consult communities that are affected by the municipal demarcation process. There should be a mechanism to ensure that consultation is enforced at a local government level so that members of the public can participate fully. This is because two decades into democracy, South Africa observed a serious wave of protests associated with poor or lack of service delivery around the country. It is further highlighted that poor service delivery elicited protests across the country which brought local government or municipalities under the spotlight. Since then local municipalities has been a subject of criticism for failing to implement their development mandate.⁴²

In 2013, the MDB was under serious criticism after riots erupted in Zamdela. According to Mathekga, it may seem that this protests originated from service delivery issues, however, these protests can be understood separately from issues of service delivery as alleged.⁴³ This means that issues like ethnic tensions and mobilisation as well as lack of consultation might also contribute to dissatisfaction by community members expressed as rioting and looting of properties.

Mathoho attests that there are different kinds of protests that occur in the country time and again. However, those who are careless end up categorising these protests as service delivery protests while in reality they vary from one protest to another. They include service delivery, tribalism or ethnic, political and demarcation protests.⁴⁴ That is why in most cases the majority of people always display their frustrations and impatience over poor, slow or lack of service delivery in the form of demonstrations, protests, boycotts, petitions and strikes which are characterized by looting, violence, bloodshed, vandalism and casualties.⁴⁵

⁴² Mashamaite K (2014) 234.

⁴³ Matehka R 'The challenge of local government structures in South Africa: securing community participation' (2006) Available at http://www.clearcontent.co.za/storage/files/prev_Challenge_of_local_govt_structures_in_SA. (Accessed 22 December 2016).

⁴⁴ Mathoho M (2016) 1.

⁴⁵ Mashamaite K (2014) 231.

There is a clear indication that community members in the Limpopo Province and South Africa in general, do not agree with the system used by the government in providing them with municipal services and the municipal demarcation process followed. In the past years most communities engaged in serious protests and burned government buildings. Rasils points out that the protesters did not see anything wrong in damaging government properties meant for their use and for the creation of a better life. Community members also do not mind disrupting the education of their own children.⁴⁶ Managa states that lack of public participation and accountability by the officials are the main factors aggravating service delivery protest in South Africa.⁴⁷

1.4.4. The use of ethnicity as a factor in determining municipal boundaries

Though many scholars have written on the determination and realignment of boundaries in South Africa focusing more on the provinces and on the demarcation of municipalities, there is no written work on the use of ethnicity as a factor in the demarcation process. This study adds to the current issues that the MDB is faced with in establishing and merging the municipalities in South Africa. This study therefore contributes to understanding a new development in using ethnicity in determining municipal boundaries in South Africa. Ethnicity is a response to the problems and tensions that the Municipal Demarcation Board is faced with. The significant contribution of this study in the field of local government is to provide an insight on the use of ethnicity as a factor in the demarcation process.

The study contends that in as much as the Constitution recognises that South Africa is a unitary and non-racial country, ethnic diversity cannot be ignored in determining municipal boundaries as it is currently the burning issue in Limpopo. This study will also contribute

⁴⁶ Rasila B N 'South African Government and its communities at war: The legacy of the struggle for democracy' (2015) 3 *Journal of Education, Psychology and Social Sciences* 67.

⁴⁷ Managa A 'Unfulfilled promises and their consequences: A Reflection on Local Government Performance and the Critical issue of Poor Service Delivery in South Africa' Africa Institute of South Africa: Policy Brief No.76. Pretoria: AISA (2012).

to a new literature and help new researchers who want to continue their research in this field.

5. Chapter outline

This research paper consists of five chapters. Chapter One deal introduction which lays down the main foundation of the study. Chapter Two discusses the historical background to the case of Malamulele and Vuwani. Chapter Three focuses on the municipal demarcation process in South Africa. Chapter Four discusses the use of ethnicity in demarcating internal boundaries in Ethiopia. Finally, Chapter Five deals with the conclusion and recommendations of the whole study.

6. Methodology

The research methodology used in this research paper is library based and relies on newspapers, popular media reports, text books, reports, legislations, regulations and articles. Information was also obtained from internet sources, government manuals and policy documents. This study will focus on municipal demarcation tensions and protests observed in Malamulele and Vuwani communities which are situated in Limpopo province. Furthermore, this study will also make a comparative study to Ethiopia. Ethiopia is a diversified nation with more than 80 ethnic groups and this makes it a good example and reference of this study. The main reason for choosing Ethiopia in this study is because it is the only African country that uses ethnicity explicitly for demarcation both in the regional level as well as at the local government level.

CHAPTER TWO

MUNICIPAL DEMARCATION TENSIONS: THE CASE OF VUWANI AND MALAMULELE

2.1. Introduction

The main purpose of this chapter is to provide the historical background to the case of the Malamulele and Vuwani communities. Both these communities are situated in the Limpopo province in South Africa. The Malamulele community uses the Xitsonga-language as their medium of communication while on the other hand Vuwani uses Tshivenda as their language. The community of Malamulele formed part of the Thulamela Local Municipality in the Vhembe District and was part of ward 13 with a population of 17 666.⁴⁸

However, the Malamulele community alleged that they did not receive municipal services from the Thulamela Local Municipality. As a result the community demanded its own municipality separate from Thulamela Local Municipality; their demand resulted in protests and looting of shops.⁴⁹

Initially the community's request for its own municipality was rejected by the MDB. Later the decision was taken by the Municipal Demarcation Board at the request of the Minister of Cooperative Governance and Traditional Affairs to provide the community with its own municipality. The provision of a new municipality to the community of Malamulele meant that some parts of the Makhado Local Municipality will form part of the new Malamulele Municipality. As a result, the community of Vuwani was incorporated in the new

⁴⁸ Malamulele Demographics available at <http://www.sabc.co.za/news/a/ee65040048fb4c658f9a8fcd12612d62/Malamuleleundefinedtoundefinedbeundefinedaundefinedmunicipality-20150407> (accessed 04 December 2016).

⁴⁹ Mokgopo T I 'The burning South Africa in the 20 years of democracy: Service delivery protests and demarcation protests with specific reference to the case of Malamulele and Vuwani' 2016 SAAPAM 65.

municipality. The community of Vuwani was not happy with the decision to include them in the new Malamulele municipality.⁵⁰

2.2. Malamulele and Vuwani municipal demarcation

2.2.1. Malamulele

Malamulele residents wanted to be separated from the Thulamela Local Municipality. The latter is based on the edge of the Kruger National Park, which is about 50 km from Mamulelele community. Community members were eager to obtain their own municipality because they claimed that the municipality prioritises municipal services to Tshivenda-speaking sections only, a claim which the municipality denied.⁵¹

On 21 December 2009, the Municipal Demarcation Board received a request from Malamulele Community Development forum for re-determination of the boundary of the Thulamela Local Municipality. The request was that the MDB should exclude the Malamulele area and determine the Malamulele area as a separate category B Municipality in the Vhembe District municipality. As a result the request by the Malamulele community was listed as one of the cases that were before the Municipal Demarcation Board and due for consideration as part of the then concluded municipal boundary redetermination process.⁵² However, the MDB resolved on 16 August 2012 to reject the proposal and close the matter due to a lack of support from the MEC responsible for local government in Limpopo Province and the Vhembe District Municipality.

A meeting was held on 26 October 2012 and all key stakeholders in this matter were notified accordingly on the decision of the Municipal Demarcation Board. On 21

⁵⁰ Maringa M & Tiva W 'Limpopo Vhembe District Municipality inaugurated' SABC News 17 August 2016 Available at <http://www.sabc.co.za/news/a/6fe76b804de64f91a956edebaa746de2/Limpopo-Vhembe-District-Municipality-inaugurated-20161708> (accessed 20 November 2016).

⁵¹ Tiva W 'Limpopo MEC pleads for an end to Malamulele violence' SABC News 2 February 2015 Available at <http://www.sabc.co.za/news/a/dcdf13804728bc548f9aaf686e648436/Limpopo-MEC-pleads-for-an-end-to-Malamulele-violence-20150202> (accessed on 17 September 2016).

⁵² Municipal Demarcation Board 'Feasibility Study: Re-determination of the boundary of the Thulamela Local municipality by excluding Malamulele area and determining this area as a separate Category B municipality within the Vhembe District municipality' (2015) 9.

September 2013, the residents of Malamulele went on a rampage after the demarcation meeting and torched municipal property.⁵³

Currently, the Thulamela Local Municipality head office is situated in Thohoyandou which has predominantly to Venda-speaking people. While on the other hand the Malamulele community is a Xitsonga-speaking community and it formed part of Thulamela Local Municipality. The Malamulele community alleged that they were not provided with municipal services and that members of their community were not employed by the municipality because the municipality hires Venda-speaking people only. As a result, the community members demonstrated against the municipality to force the municipality to provide them with the services they deserved. Even during this protest their demands were not met by the municipality.

In 2014, residents lost faith in the Thulamela Local Municipality and service delivery protests changed to demarcation protests. The Municipal Demarcation Board was taken to task as the community demanded its own municipality away from Thulamela which is a Venda dominated municipality. Residents accused the municipality of only delivering services to the Thohoyandou area. They pointed out that they felt sidelined by the municipality. This is because the municipality has its offices in Thohoyandou, nearly an hour's drive away from the Malamulele community.

After years of waiting, talking and hoping for things to change, the people of Malamulele burnt buildings. The schools in the area were also forced to shut down due to violence.⁵⁴ At least 100 schools were reportedly affected by the protest when protesters barred and prohibited pupils from attending school. The Malamulele area came to a standstill when protesters forced shops in the local mall to close two days before inland schools were due to open for the new academic year. Schools and businesses in the area remained closed.⁵⁵

⁵³ Mokgopo T I (2016) 66.

⁵⁴ eNCA 'Malamulele protests cause concern' eNCA 18 October 2013 available at <https://www.enca.com/south-africa/malamulele-protests-cause-concern> (accessed 06 December 2016).

⁵⁵ 'Malamulele protesters 'trading education for short-term demands' available at <http://mg.co.za/article/2015-01-22-police-monitoring-malamulele-ahead-of-friday-deadline-for-government-to-respond> (accessed 06 December 2016).

The Malamulele community's violent protest involved about 15 000 community members. They damaged and looted shops. Four of their shopping complexes were looted and damaged completely; they also damaged 37 houses, a truck, burnt a grader and lit six cars. The police had to use force and managed to stop community members from burning the local hospital.⁵⁶ These saw close to 60 people being arrested and charged with public violence.

Due to the community's demand for its own municipality, the arrests did not stop them from protesting. Community members again went on a rampage and destroyed government buildings and barricaded the roads.

The premier of Limpopo, Stan Mathabatha, blamed the violent protests that erupted in the Thulamela Local Municipality on tribalism. The main reason for this is because Thulamela Local Municipality is currently divided into two predominant groups, mainly Venda- and Tsonga-speaking and the differences in language were also known to arise within the municipal council.⁵⁷ This therefore raised ethnic tensions between the two communities, as members from each ethnic group prefers to use their own language even in the municipal council meeting without considering other community members from different ethnic group, either being Venda- or Tsonga-speakers. However, Shivambu highlights that:

“The violent protests that have defined Malamulele to demand a Municipality independent of the Thulamela Local Municipality have largely been defined and characterised in media circles as tribal cries for a tribal authority. While the consciousness of ordinary people in Malamulele might have tribal undertones, it is entirely incorrect that a demand for a municipality is solely on the basis of tribal dynamics, wherein Xitsonga speaking citizens do not want to be under a Municipality that is predominated by Tshivenda speaking citizens. It is only lazy

⁵⁶ News 24 'South African Protest News' News 24 21 August - 9 September 2013' available at <http://ccs.ukzn.ac.za> (accessed 16 December 2016).

⁵⁷ Sapa 'Tribalism behind Malamulele protest-Premier' IOL News 18 September 2013 Available at <http://www.iol.co.za/news/crime-courts/tribalism-behind-malamulele-protest-premier> (accessed 06 December 2016).

minds that reduce the genuine demands into a tribal issue because there are real socio economic aspects and features that need attention in Malamulele”.⁵⁸

The above statement by Shivambu is too political and therefore not true when compared to the real issues raised by the Malamulele community. The community alleged that they were not provided with municipal services and that the Thulamela Local Municipality has been channelling services to Tshivenda-speaking areas, rather than their Xitsonga-speaking area.⁵⁹ This is therefore an ethnic issue between the Tshivenda-speaking people and the Xitsonga-speaking community. These ethnic tensions led to the Malamulele community demanding their own separate municipality away from the Tshivenda-speaking community.

These demands have fueled tensions between Tshivenda- and Xitsonga-speakers and triggered division among local traditional leaders as some regard it as a tribal issue as stated by the premier of Limpopo. However, the protesters placed the blame on the Municipal Demarcation Board for not considering their call.

After the decision was taken not to give the community its own municipality all the stakeholders including the Malamulele Demarcation Task Team (MDTT) provided the Municipal Demarcation Board with additional information regarding their proposal. The new information was sent to the Municipal Demarcation Board and it included inputs from the Vhembe District and the MEC for local government. Additional information that was sent to the Board by the MDTT and different community representatives with regard to the proposed boundary re-determination raised a number of issues as motivation for this proposal. Some of the issues raised by the community of Malamulele include:

- a) Lack of consultation by the MDB during the demarcation process in 1999/2000;
- b) Poor or lack of service delivery by the Thulamela Local Municipality;
- c) Discrimination against the Greater Malamulele area;

⁵⁸ Shivambu F 'The case for Malamulele Municipality: A cogent case for Malamulele Municipality, it is not tribalism, it is service delivery' available at <http://floyd.n.blogspot.co.za/2015/01/the-case-for-malamulele-municipality> (accessed 06 December 2016).

⁵⁹ Online Library 'Malamulele School in Limpopo set alight, despite lockdown' SAPA 3 Feb 2015 Available at <http://ccs.ukzn.ac.za/default.asp?> (Accessed on 3 October 2016).

- d) The population size of the Greater Malamulele area as compared to some municipalities in the Limpopo Province e.g. Mutale Municipality, Bela-Bela Municipality, etc.; and
- e) Various government departments have satellite offices in Malamulele whereas this is not the case in many of the existing smaller municipalities.

The Municipal Demarcation Board discussed the new information at a meeting that was held on 17 May 2014.⁶⁰ The Board resolved to conduct a feasibility study to investigate the proposed boundary re-determination. The meeting further resolved that if the result of the investigation is in favour of the re-determination of the municipal boundary as requested, it should be considered *after* the 2016 local government elections. The MDB highlighted that if it is not feasible, it (the MDB) shall close the case and not proceed with the process as outlined in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).⁶¹

However, in 2015 the then Minister of Cooperative Governance and Traditional Affairs, Pravin Gordhan, requested the MDB in early 2015 to consider Malamulele community's demand for its own municipality separate from Thulamela Local Municipality. The MDB considered the request and created a new municipality in Malamulele. Community members were very happy with the decision to provide them with their own municipality. Community members then proposed that the new Malamulele municipality be named after the then Minister of Public Service and Administration, Collins Chabane. As a result, a new municipality was demarcated by the Municipal Demarcation Board which included some parts of Makhado. Among the communities that benefited from this action or decision was the community of Malamulele that had previously placed pressure on government with their protests action demanding an independent municipality away from

⁶⁰ Municipal Demarcation Board (2015) 9.

⁶¹ Municipal Demarcation Board 'The Proposed Redetermination of Thulamela Local Municipality to Create a Separate Municipality for the Area of Malamulele' (2014) 21.

Thulamela Local Municipality. A new municipality was formed on the eastern side of Vhembe District, giving residents the independence for which they had fought for.⁶²

2.2.2. Vuwani

The Municipal Demarcation Board made a redetermination and as a result, a new municipality which included Malamulele and a part of Makhado known as Vuwani was formed. This decision led to a serious protest which saw the community of Vuwani burning 29 schools in the community and nearby community. The community of Vuwani alleged that they were not consulted by the MDB about the decision to incorporate the area into the new Malamulele Municipality. The community also highlighted that they were not comfortable about being placed under the Makhado Municipality and that they will not be provided with municipal services in the new Malamulele municipality as it is a Xitsonga-dominating municipality while Vuwani is a Venda-speaking community.

Almost 52 000 pupils had been without schooling for a period of three months during the anti-demarcation protest action and as a result of the burning down of schools. The protests began in April 2016. As a result of an on-going protest in Vuwani many people's lives were affected, mostly the learners as the schools in the area were burnt down. All children and teachers were also prohibited from going to school even after mobile classes were provided by the Department of Education.⁶³

Members of the community vowed to shut down the voting stations in the area as municipal elections were scheduled to take place on 3 August 2016. However, before that time there was a meeting held between the traditional leaders and the inter-ministerial task team led by Cooperative Governance Minister, Des van Rooyen. Both parties signed a "peace agreement" on the 28 July 2016; they also agreed that services would be restored to the community. The agreement was that voting would be allowed to proceed in the affected areas that were hindered by intimidation and violence.

⁶² 'New structural divisions grant Malamulele its own municipality' available at <http://www.702.co.za/articles/3625/new-structural-divisions-enable-malamulele-with-its-own-municipality> (accessed 06 December 2016).

⁶³ Mokgopo T I (2016) 68.

Community members in Vuwani responded to the said “peace agreement” and held that they would not hold back their boycotting of local government elections in the area despite an agreement that was signed between eight traditional leaders and the inter-ministerial task team. In terms of the agreement, the traditional leaders were given responsibilities to reassure communities in the Vuwani area that engagement with the government would resolve their grievances, but within hours of the signing ceremony in the Limpopo province at the Premier Stan Mathabatha’s office in Polokwane, community leaders vowed to continue their boycott of the polls on 3 August 2016. They claimed they were not consulted by the Venda King, Toni Mphephu Ramabulana or any of their chiefs who signed the peace agreement. The anti-demarcation Pro-Makhado Task Team said the community believed their traditional leaders had betrayed them by signing a deal the community had not endorsed.”⁶⁴

The peace agreement was signed on 28 July 2016 and after the signing of the agreement, a meeting was held on 29 July 2016 between the Minister of Cooperative Governance and Traditional Affairs, the inter-ministerial task team and the traditional leaders.⁶⁵ However, members of the Pro-Makhado Task Team walked out of the meeting stating that the protest would continue until the government agreed to reverse the decision to amalgamate the community of Vuwani and Malamulele and other surrounding village’s to form a new Malamulele municipality.

Irrespective of that a new municipality was established and has 27 wards, of which 14 of these wards fall into the conflict-ridden Vuwani area.⁶⁶ Community members threatened the total shutdown of services in Vuwani; which included that the boycotting of schools would not come to an end unless the decision of the Municipal Demarcation Board was reversed. Despite the community members protesting, a technical team continued to work

⁶⁴ SA Local Government Information Centre ‘Vuwani residents vow to block elections despite traditional leaders signing agreements to allow voting’ (2016) No.11 *The SA Local Government Briefing* 27.

⁶⁵ eNCA ‘Vuwani shutdown set to continue despite peace ‘agreement’ eNCA 20 February 2017 Available at <https://www.enca.com/south-africa/vuwani-shutdown-set-to-continue-despite-peace-%E2%80%98agreement%E2%80%99> (accessed 10 December 2016).

⁶⁶ The SA local government briefing no.11 (2016) 28.

with the provincial government department and the Vhembe District Municipality to ensure that a new municipality was established untroubled.

This meant victory for the community of Malamulele, because on 4 July 2015 hundreds of residents of Malamulele attended a public meeting that was called to discuss the name of the new municipality.⁶⁷ On 21 April 2016, Vuwani residents with the members of Pro-Makhado Task Team as well as traditional leaders approached the court to set aside the decision of the Municipal Demarcation Board. The applicants submitted that the Municipal Demarcation Board's decisions were invalid because the MDB:

- a) Followed an unfair procedure in that the map for the Makhado Local Municipality, attached to the Board's decision dated 2 July 2015, demonstrates that the Mashau and the Masakona traditional areas would remain within the municipal area of Makhado.
- b) The Municipal Demarcation Board separated traditional villages and traditional communities.
- c) The Municipal Demarcation Board ignored relevant considerations in coming to its decision, and
- d) The Municipal Demarcation made a decision that was not rationally connected to the factors that it had to consider in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

On 29 April 2016 the Court dismissed the application by the applicant. The court held that:

“There was an initial notification in terms of Section 26 of the Demarcation Act, and a public meeting in terms of Section 28. The Board met each of these requirements. Therefore, the complaint by the applicants that there was non-

⁶⁷ SABC 'Malamulele to become a municipality' SABC 4July 2016 available at <http://www.sabc.co.za/news/a/ee65040048fb4c658f9a8fcd12612d62/Malamuleleundefinedtoundefinedbeundefinedaundefinedmunicipality-20150407> (accessed 10 December 2016)

compliance with Section 26(2) and (3) and Section 28 has no basis and is thus rejected”.⁶⁸

Traditional leaders appealed against the decision of the High Court. However, the Constitutional Court announced on 7 July 2016 that it had dismissed the application by a group of traditional leaders for leave to appeal against the judgement of the Limpopo High Court.

3. Conclusion

Ethnic concern proved to be vocal in the Vuwani and Malamulele saga, as both communities raised their concern on their amalgamation by the Municipal Demarcation Board i.e. Malamulele community formed part of the Thulamela Local Municipality, whereas the community wanted its own municipality away from Venda-speakers and Vuwani community has been incorporated in the new Malamulele municipality while the community wanted to remain being part of Makhado Local Municipality. The refusal by both communities to form part of a municipality that is dominated by a different ethnic group clearly proves that ethnic differences are rising in an alarming rate at the local government level in South Africa. However, the factors provided for in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) does not consider the use of ethnicity in demarcating municipalities in South Africa. Pursuant to that the decision was taken to provide the community of Malamulele with its own municipality and the two communities were incorporated to form part of a new Malamulele municipality.

Though the Local Government: Municipal Demarcation, 1998 (Act No. 27 of 1998) does not provide for the use of ethnicity in determining municipal services, the decision that was taken to amalgamate these two communities proved to be a time-ticking ethnic bomb because this decision led to riots and protests that saw schools being burned. It will be proper to conclude that ethnic differences between these two communities led to

⁶⁸ *Masia Traditional Council and Others v Municipal Demarcation Board and Others* (1256/2016) [2016] ZALMPPHC 1.

municipal demarcation tensions and what is known in this study as the Malamulele and Vuwani saga.

From the above, it is therefore important to examine the steps and process that the MDB considers when demarcating municipalities in South Africa. This is because the Local Government: Municipal Demarcation, 1998 (Act No. 27 of 1998) provides for the processes that must be followed. If the Municipal Demarcation Board decides to determine municipal boundaries in South Africa, the Board must consider the factors that are contained in the Act. The following chapter highlights the process of demarcating municipal boundaries in South Africa.



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CHAPTER THREE

THE MUNICIPAL DEMARCATION PROCESS IN SOUTH AFRICA

3.1. Introduction

The purpose of this chapter is to analyse the process of demarcation in South Africa, the criteria used by the Municipal Demarcation Board and the process followed by the MDB when there are objections as well as to what happens when the MDB rejects objections and the remedies that are available.

3.2. Demarcating provincial boundaries

For one to be able to understand the process of municipal demarcation in South Africa it will be best to first look at the demarcation process that was carried out when demarcating provincial boundaries in South Africa as it had to deal with the issue of ethnicity as a factor. This process was carried out by the Commission on the Demarcation/Delimitation of States, Provinces and Regions (CDDR).

The CDDR had to determine boundaries in lieu of the elections which were expected to take place on 27 April 1994.⁶⁹ However, the main question then was about the criteria to be used during this demarcation process. This was because the new and democratic South Africa was not expected to reflect the apartheid use of ethnic-based homelands. As a result, ethnicity was not listed as a criterion for demarcating boundaries. The criteria used by the CDDR in demarcating provincial boundaries includes amongst others: taking into account the availability of infrastructure and historical boundaries as well as existing government structures; demographics; service delivery; economic viability; potential for development; “cultural and language realities”; inconvenience to citizens and dislocations of service.⁷⁰ Consideration was given to economic and development potential, socio-

⁶⁹ Ramutsindela M R & Simon D 'The Politics of Territory and Place in Post-apartheid South Africa: the Disputed Area of Bushbuckridge' (1999) 25 No. 3 *Journal of Southern African Studies* 484.

⁷⁰ Jackson R & Makgetla T 'Redrawing the Map for Democracy: How South Africa's post-apartheid government tried to do away with the territorial legacy of racial segregation' Available at <http://foreignpolicy.com/2013/10/11/redrawing-the-map-for-democracy/> (accessed 13 February 2017).

cultural issues, and administrative and institutional capacity as well as erasing the boundaries of apartheid political entities to establish a unified territorial space for all South Africans. Other factors includes de-racialising the country so that people may start to think of themselves as South Africans holding diverse views and not as members of any racial, ethnic or linguistic group.⁷¹ The interpretation of the above criteria remained in the hands of the commissioners and they organised the criteria into four categories: economic aspects; institutional and administrative capacity; geographic coherence; socio-cultural issues and an agreement to evaluate each proposed boundary on its merits within each of the above four categories.⁷² The boundaries of the nine provinces so drawn did not create exclusive ethnic enclaves but in seven of the provinces there were linguistic majorities.

3.3. Demarcating local boundaries

3.3.1. Initial demarcation: pre-1995

It was during the negotiations stage that South Africa's constitutional makers decided in 1992/93 to divide the local government democratisation process into three phases.⁷³ The pre-interim phase: 1993-1995, the interim phase: 1995-1999 and the final phase after that known as the Democratic Local Government phase.⁷⁴ The Local Government Transition Act, 1993 (Act No. 209 of 1993) provided for the establishment of a Local Government Demarcation Board in each of the nine provinces in South Africa;⁷⁵ with a pre-interim local government stage to demarcate boundaries for the first local government elections in South Africa in 1995.⁷⁶ The major political objective of these Provincial Boards was to eliminate apartheid boundaries into unified municipalities. This is because during the

⁷¹ Ramutsindela M (2007) 49.

⁷² Dlamini K 'Drawing the line border disputes and electoral politics' (2012)15 No 3 *Indicators SA* 29.

⁷³ Cameron R 'Central-Local Financial Relations in South Africa' 2002, available at <https://open.uct.ac.za/handle/11427/22281> (accessed 28 November 2016) 119.

⁷⁴ Ovens W & Associates '15 of Developmental and Democratic Local Government: Celebrating achievements whilst acknowledging challenges' 2015 *SALGA* 12, available at www.SALGA.org.za (accessed 28 November 2016).

⁷⁵ S 11(1) Local Government Transition Act.

⁷⁶ Cameron R 'Local Government reorganisation' available www.hsrbpress.ac.za (accessed 05 November 2016).

apartheid era, the sphere of local government in South Africa became the mechanism through which racial and cultural groups were divided and kept separate.

In performing its duties, the Provincial Boards managed to break down apartheid boundaries.⁷⁷ This was however not always the case in smaller towns and rural areas.⁷⁸ The main aim was to deracialise local government which led to a reduction of municipalities,⁷⁹ reducing them from more than 1000 prior to 1994 to 843 municipalities.⁸⁰

According to Cameron, the problems of the demarcation in the 1995 elections was unevenness because communities remained fragmented i.e. some communities were split by provincial boundaries.⁸¹

3.3.2. Demarcation post-1995

Chapter 7 of the 1996 Constitution gives effect to the establishment of a local government sphere. Section 151 of the Constitution provides that the local sphere of government consists of municipalities which must be established for the whole territory of the Republic.⁸²

It is best to highlight that the major change brought by the Constitution of 1996 was that local government had to cover the whole of South Africa. The Constitution provides for the demarcation of municipalities in South Africa by an independent body known as the Municipal Demarcation Board.⁸³

In 1998, the Municipal Demarcation Act, 1998 (Act No. 27 of 1998) was adopted and the Municipal Demarcation Board was established and began to determine the locations of local government boundaries in 1999. During this demarcation process traditional rural areas and rural communities were severely affected by the process of demarcating

⁷⁷ Meligrana J *Redrawing Local Government Boundaries: An International Study of Politics, Procedures and Decisions* (2004) 221.

⁷⁸ Cameron R (2016) 76-106.

⁷⁹ Ndletyana M & Muzondidya J (2009) 24.

⁸⁰ Pillay U, Tomlinson R & Du Toit J *Democracy and Delivery: Urban Policy in South Africa* (2006) 79.

⁸¹ Cameron R 'Local Government reorganisation' available www.hsrcpress.ac.za (accessed 05 November 2016) 79.

⁸² S 151 Constitution.

⁸³ S 155 (2)(b) Constitution.

municipal boundaries.⁸⁴ This saw rural communities being integrated to form part of a single municipality or being split apart between two municipalities.

As a result, the first redrawn municipal boundaries resulted in numerous disputes by community members against both the processes followed and boundary outcomes. In many cases rural communities were split between two municipalities, while others were split over two district municipalities and even two provinces.⁸⁵

The Demarcation Board managed to reduce the number of municipalities from 843 to 284.⁸⁶ This saw communities that were poorly developed being combined with well-resourced communities under the same municipal boundaries.⁸⁷ The main aim of municipal demarcations and restructuring of municipalities is to assist in redressing the imbalances created by the past apartheid government and those that were created by the provincial boards.⁸⁸ As such, new municipal areas after demarcation are expected to help address the urban and rural division and integrate social and economic development. However, some of the redrawn municipal boundaries have resulted in numerous disputes ever since 2000.

After the demarcation process some traditional areas were split between two municipalities and in those cases traditional authorities who are recognised as the custodians of rural land have been greatly affected. Those who are mostly affected by the municipal demarcation process are those residing and heading small rural areas of two to three communities. However, traditional leaders who happen to be the leaders of these communities continue to have major control over most of the important rural survival

⁸⁴ Whittal & Nxumalo (2013) 325.

⁸⁵ Whittal & Nxumalo (2013) 326.

⁸⁶ Municipal Demarcation Board, available at <http://www.demarcation.org.za/index.php/municipal-boundaries> (accessed 28 November 2016).

⁸⁷ Ndletyana M & Muzondidya J 'Reviewing municipal capacity in the context of local government reform: 1994-2009' 2009 *HRSC* 24.

⁸⁸ Mathoho M 'Examining the Politics of Municipal Demarcation' 9 April, 2015, available at <http://www.ngopulse.org/article/2015/04/09/examining-politics-municipal-demarcation> (accessed on 28 September 2016).

strategies such as the allocation of land, natural resources, communal labour practices and in some instances law and order.⁸⁹

3.4. Role players in the Demarcation Process

The Municipal Demarcation Board is an independent body that is responsible for the demarcation of municipal boundaries in South Africa. The members of the MDB represent various professional fields of expertise that is appropriate to the field of local government.⁹⁰ Even though there are other actors in the demarcation process the main actor is the independent MDB whose members are appointed by the president of the Republic of South Africa after a stringent and rigorous selection process. In addition to the MDB there are also a number of role players involved in the demarcation process. These are members of communities, traditional leaders, municipalities, political parties, NGOs and civil society.

Municipalities in their own capacity play an important role in subsequent re-demarcations. Municipalities are mainly tasked to provide the MDB with the necessary administration and facilities to enable it to fulfil its constitutional obligations. Municipalities should also take part in the demarcation process since the demarcation process affects their functionality. Pursuant to that, most municipalities are also in the best position to provide required information and guidance from the local communities as to where best boundaries should be demarcated for effectiveness. Furthermore, submissions and extensive inputs should be made by all municipalities to ensure not only participation but also a proper consideration before boundaries are drawn.⁹¹

Last but not least are the communities and local residents. The main reason for their inclusion in the demarcation process is that they are the ones who are most likely to be

⁸⁹ Keulder C 'State, Society and Democracy: Traditional Leaders' available at http://www.kas.de/upload/auslandshomepages/namibia/State_Society_Democracy/chapter5 (accessed 07 November 2016).

⁹⁰ *Executive Council of the Province of the Western Cape v Minister for Provincial Affairs and Constitutional Development and Another, Executive Council of KwaZulu-Natal v President of the Republic of South Africa and Others* 1999 (12) BCLR 1360 (CC).

⁹¹ Bekink B (2000) 325.

affected on the ground. To ensure that their voices are heard specific provision is made in the demarcation process for individuals and groups to submit written representations on municipal boundaries to the Demarcation Board.⁹² They can also air their views at the public meetings and submit formal objections on the demarcation boundaries. The MDB in turn must consider and respond to all objections.⁹³

3.5. The objectives of the MDB and demarcation criteria

When the Board determines a municipal boundary its main objective must be to establish an area that would enable the municipality of that area to fulfil its constitutional obligations, which includes among others: the provision of democratic and accountable government for the local communities; the provision of services to the communities in an equitable and sustainable manner; the promotion of social and economic development and the promotion of a safe and healthy environment.⁹⁴ It must also enable effective local governance; integrated development and have a tax base as inclusive as possible of users of municipal services in the municipality.⁹⁵

3.6. Factors to be taken into consideration

Section 25 of the Municipal Demarcation Act provides the factors to be taken into consideration in meeting the objectives that are set out in the act. In terms of section 25, for the MB to attain these objectives, it must take into consideration:

amongst others, communities, the interdependence of people, and economies as indicated by existing and expected patterns of human settlement and migration; employment; commuting and dominant transport movements; spending; the use

⁹² S 27 Municipal Demarcation Act.

⁹³ S 27 Municipal Demarcation Act.

⁹⁴ S 24 Municipal Demarcation Act.

⁹⁵ S 24 Municipal Demarcation Act.

of amenities, recreational facilities and infrastructure; and commercial and industrial linkages.⁹⁶

These include also the need for cohesive, integrated and unfragmented areas, including metropolitan areas; the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively; the need to share and redistribute financial and administrative resources; provincial and municipal boundaries; areas of traditional rural communities; magisterial districts, voting districts, including existing and proposed functional boundaries, transport, health, police and census enumerator boundaries; social, economic and transport planning as well as existing and expected land use,⁹⁷

Furthermore there is a need for co-ordinated national, provincial and municipal programmes and services, including the needs of the administration of justice and health care; environmental and physical characteristics of the area; topographical, the administrative consequences of its boundary determination on municipal creditworthiness; existing municipalities, their council members and staff; and any other relevant matter; and the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, macro-economic stability and financial viability.⁹⁸

3.7. Municipal Demarcation process

3.7.1. Public notification of determination of municipal boundaries

Before the MB can consider any determination of a municipal boundary it must follow a public notice procedure provided for in in terms of section 26 of the Municipal Demarcation Act. The notice should state the MDB's intention to consider the determination of

⁹⁶ S 25(a)(i)-(vi) Municipal Demarcation Act.

⁹⁷ S 25 (b)-(h) Municipal Demarcation Act.

⁹⁸ S 25 (i)-(l) Municipal Demarcation Act.

municipal boundaries and invite written views and representations from the public. The time frame for such representation should not be shorter than 21 days.⁹⁹

Other methods of publication of such notice by the MDB may include communication or other appropriate means of communication within the area concerned.¹⁰⁰ This includes each municipality that will be affected by the Board's consideration of the matter as well as any magisterial district if affected and the Provincial House of Traditional Leaders concerned. The traditional leaders will be those established by provincial legislation in terms of section 212 (2) (a) of the Constitution only if the boundary of such a traditional authority is affected. If affected by such municipal boundary determination then the affected traditional leaders may also be invited to submit their views as well as their written representations on the matter to the Board within the period determined in terms of section 26 of the Act.¹⁰¹

3.7.2. Community/Public Participation and consideration by the MDB

The Municipal Demarcation Act provides that when the period for views and written representations has expired, the MDB must consider all views and written representations submitted to it and may take a decision on the determination or, before it takes such a decision hold a public meeting and conduct a formal investigation; or do both.¹⁰²

Thornhill highlights that community participation may take place through political structures, through other mechanisms such as an *imbizo* (informal gatherings where questions can be asked on any issues relating to the demarcation process), consultative sessions, public meetings and report back sessions with local communities.¹⁰³ If the MDB decides to hold a public meeting, it must publish a notice in the newspaper circulating in the area concerned stating the time, date and place of the meeting or of each meeting; and inviting the public to attend the meeting or meetings.¹⁰⁴ When the MDB publishes a

⁹⁹ S 26(1)(a)(b) Municipal Demarcation Act.

¹⁰⁰ S 26(2) Municipal Demarcation Act.

¹⁰¹ S 26(3)(a)(b)(c)(d) Municipal Demarcation Act.

¹⁰² S 27 Municipal Demarcation Act.

¹⁰³ Thornhill C (2008) 502.

¹⁰⁴ S 28(1)(a)(b) Municipal Demarcation Act.

notice, it must convey where appropriate, by radio or other appropriate means of communication the contents of the notice in the area concerned.¹⁰⁵ At a public meeting a representative of the MDB must explain the issues it has to consider including: any options open to it; allow members of the public attending the meeting to air their views on these issues and answer relevant questions.¹⁰⁶

3.7.3. Formal investigation and the power to investigate by the committee

After receiving comments, the MDB should decide whether to embark on a formal investigation or not. Should it decide to conduct an investigation, the MDB may conduct such investigation itself or designate any of its members. Such member/s or committee must report back and make recommendations to the MDB.¹⁰⁷ Pursuant to that for the purposes of its investigation the MDB or an investigating committee may by written notice summon a person who in its opinion has information which is material to the investigation to appear before the MB or the committee to give evidence. The expectation of the MDB in calling such person is for that person to produce a document available to that person as specified in the summons.¹⁰⁸ The MDB may also call a person to make presentation at its meeting or committee meeting, whether summoned or not to give evidence before the MDB or committee; or to produce a document in that person's custody.¹⁰⁹

3.7.4. Objections against the MDB's decision and consideration of the objections by the MDB

Section 21 imposes an obligation on the MDB to publish its intentions to determine and re-determine municipal boundaries in the Provincial Gazette.¹¹⁰ This is to allow for the parties aggrieved by the MDB's decision to submit written objections within 30 days of

¹⁰⁵ S 28(2) Municipal Demarcation Act.

¹⁰⁶ S 28(3)(a)(b)(c)(d) Municipal Demarcation Act.

¹⁰⁷ S 29(1)(2) Municipal Demarcation Act.

¹⁰⁸ S 30(a)(i)(ii) Municipal Demarcation Act.

¹⁰⁹ S 30(b) Municipal Demarcation Act.

¹¹⁰ S 21 (3) Municipal Demarcation Act.

that determination to the Board.¹¹¹ It happens sometimes that members of the public may be aggrieved by the decision of the MDB to determine and re-determine municipal boundaries within their areas and objects to such a decision of re-determining municipal boundaries. The MDB must then consider any objections made by the parties, by either withdrawing, varying or confirming its determination and again publish its decision in the relevant *Provincial Gazette*.¹¹² As already stated above, the MDB must consider such objections and after it has considered such objections, or has decided to re-determine a boundary under the circumstances provided for, and then the MDB must without any delay send such particulars of the determination of municipal boundaries to the Electoral Commission.¹¹³

3.8. Critical analysis of whether ethnicity could be considered as a factor in terms of section 25

One of the issues which contributed to the Malamulele and Vuwani protests is ethnic differences between the Venda- and Xitsonga-speakers.¹¹⁴ This therefore raised questions as to whether the use of ethnicity in demarcating municipal boundaries in South Africa could be considered as a factor? After considering the factors listed in terms of section 25 of the Municipal Demarcation Act, it will be best to analyse whether these factors include the consideration of ethnicity in determining municipal boundaries in South Africa either directly or indirectly. Only one factor provides for the use of ethnicity indirectly in demarcating municipal boundaries in South Africa. Section 25(f) provides explicitly that the Board must, when determining a municipal boundary, take into account areas of traditional rural communities and allow for public participation to ensure that traditional communities also participate in the municipal demarcation process.

¹¹¹ S 21 (4) Municipal Demarcation Act.

¹¹² S 21 (5) (a) (b) (c) Municipal Demarcation Act.

¹¹³ S 23 (1) Municipal Demarcation Act.

¹¹⁴ Mukwevho N 'Tribal tension between the Venda and Tsonga groups fuel conflict in Vuwani' Sowetan 9 May 2016, available at <http://www.sowetanlive.co.za/news/2016/05/09/tribal-tension-between-the-venda-and-tsonga-groups-fuel-conflict-in-vuwani> (Accessed 12 January 2017).

Most traditional communities are home to certain ethnic groups and are being led by different traditional leaders. This therefore open a room for the issue of language to be considered as another factor which differentiate the areas of traditional communities. Besides other factors such as culture and religion, language plays a major role in as far as ethnical differences is concerned. It is the language that is spoken by people in these traditional areas which makes them ethnically different from each other. Section 25(f) covered the use of ethnicity in demarcating boundaries and by considering traditional communities as a factor, linguistic differences will automatically become a factor in demarcating a municipality. This is because one cannot speak of traditional areas without including the language spoken in that area.¹¹⁵

Section 25(f) therefore provides for the indirect use of ethnicity as a factor in determining municipal boundaries in South Africa. One of the reasons why ethnicity was not provided for directly in this section was due to apartheid experiences. The explicit use of ethnicity in demarcating municipal boundaries was perceived as a return to the apartheid era. This therefore led to the silent use of ethnicity in demarcating municipal boundaries in South Africa.

Although it was not acknowledged in writing after the decision was taken to give the community of Malamulele its own municipality away from the Thulamela Local Municipality, one does not need a microscopic eye to see that ethnicity was used as a factor in giving the community of Malamulele its own municipality in as far as this study is concerned. This is because the Malamulele community raised ethnic issues against Thulamela Local Municipality, which is a Venda-speaking dominated municipality while the community of Malamulele is a Xitsonga-speaking community.¹¹⁶

The case of Malamulele and Vuwani explicitly shows that ethnicity is or was considered as a factor when providing the Malamulele community with a separate municipality away from the Thulamela Local Municipality. This is the decision that led to ethnic tensions and

¹¹⁵ Aligwekwe P E *The Continuity of Traditional Values in the African Society: The Igb of Nigeria* (2008) 94.

¹¹⁶ Mukwevho N 'Tribal tension between the Venda and Tsonga groups fuel conflict in Vuwani' Sowetan 9 May 2016, available <http://www.sowetanlive.co.za/news/2016/05/09/tribal-tension-between-the-venda-and-tsonga-groups-fuel-conflict-in-vuwani> at (accessed 12 January 2017).

riots between the two communities when the community members from Vuwani fought against their incorporation in the new Malamulele Municipality. It is therefore worth noting that the silence of the Constitution and the Local Government: Municipal Demarcation, 1998 (Act No. 27 of 1998) on the use of ethnicity in demarcating municipal boundaries in South Africa does not necessarily exclude ethnic tension between communities when municipal boundaries are being demarcated in South Africa.

3.9. The demarcation process: traditional leaders' response

Traditional leaders are the custodians of many rural communities in South Africa where they are supposed to make sure that the rights of community members are protected. In the case of Malamulele and Vuwani, these two communities are under different traditional leaders, depending on their language, culture and tradition. This means that one cannot talk about ethnicity without mentioning traditional leaders. It is very clear that if the Municipal Demarcation Board must consider traditional areas, then it must also indirectly consider ethnic boundaries in certain cases. This is due to the fact that traditional leaders as well as traditional rural communities are not excluded from the demarcation process. Section 25 of the Municipal Demarcation provides that the MDB when determining a municipal boundary must take into account the areas of traditional rural communities.¹¹⁷

Since the demarcation of municipalities in South Africa includes the demarcation of rural areas it would be proper to include the response of traditional leaders to the demarcation process when demarcating rural communities. In Limpopo province traditional leaders lamented the process and the outcomes of the MDB.¹¹⁸ This is because after the demarcation process rural areas are split apart or integrated with other communities as observed in Malamulele and Vuwani. Traditional leaders are found to be vocal against

¹¹⁷ S 24 (f) Municipals Demarcation Act.

¹¹⁸ Holomisa B 'Who has the final say between the Demarcation Board and citizens in municipal borders?' available at <https://www.dailymaverick.co.za/opinionista/2016-05-06-who-has-the-final-say-between-the-demarcation-board-and-citizens-in-municipal-borders/#.WKwXIE27odU> (accessed 24 January 2017).

the demarcation process and members of the community listen to them more than any government officials or the government itself.¹¹⁹

In 1998, the Ndengeza community which is of Tsonga origin lodged a claim for a part of the Crystalfontein Farm 57 with the Restitution and Land Claims Commission and waited for the outcome of the restitution of land. However, after the completion of the municipal demarcation in the year 2000, the land under claim was split over two municipalities namely: the Great Giyani Municipality in the south and the Makhado Municipality in the north. The Ndengeza traditional leaders expressed their concern over the decision taken by the MDB and that they were not consulted during the demarcation process.¹²⁰ In 2008, the traditional authority lodged its grievance with the Municipal Demarcation Board over the boundary and requested that the area be re-demarcated. The re-demarcation process was refused and the Makhado Municipality stated that they would lose government grants if their area were to be decreased during the demarcation process.¹²¹

The traditional leaders in the area rejected both the demarcation process as well as the demarcation outcomes by the MDB. Such resistance led to serious tensions between the MDB, the municipality and the traditional leaders. This saw chiefs and political parties joining hands to try to bring closure on the splitting of traditional communities by the municipal demarcation process. The reason being that in many instances, new municipality boundaries cut across traditional tribal land and the introduction of local government on their lands would also diminish their own authority. Lehman highlights that prior to 1994 and the creation of local municipalities, traditional leaders exercised local government powers, yet the final constitution did not resolve the tension between recognition of the institution of traditional leadership and commitment to democracy in as far as demarcation is concerned.¹²² The only way to resolve this will be to demarcate municipalities using ethnicity in areas where traditional leaders and traditional communities speak different languages. This means that ethnicity should be considered

¹¹⁹ SA Local Government Information Centre 'Vuwani residents vow to block elections despite traditional leaders signing agreements to allow voting' (2016) No.11 *The SA Local Government Briefing* 27.

¹²⁰ Whittal & Nxumalo (2013) 327.

¹²¹ Whittal & Nxumalo (2013) 328.

¹²² Lehman H P (2007) 307.

in a few cases: only if there is an overlapping between traditional leaders and ethnicity. In a province such as KwaZulu-Natal, all traditional leaders are Zulu-Speakers. As a result traditional areas of a Zulu chief speaker should not be split between two municipalities as there are no ethnic differences. Only in Limpopo and Mpumalanga do traditional leaders belong to different ethnic groups. This means in such places ethnic differences (ethnicity) and the language spoken by traditional communities should be considered as a factor in demarcating municipal boundaries.

3.10. Conclusion

The legal framework set out the criteria to be used when demarcating municipal boundaries in South Africa. Through the MDB, the municipal demarcation process in South Africa transformed and shaped the system of local government. As a result, many communities including rural communities were demarcated to form part of municipal areas. This meant that rural communities would now be provided with municipal services within the municipality in which they fall. However, not all communities were happy with the demarcation process because they fought against their amalgamation with other communities; some communities alleged lack of consultation by the DMB while others raised ethnic issues. In the Limpopo province, the demarcation process raised ethnic tensions as seen in the Malamulele and Vuwani communities.¹²³

Section 25 of the Municipal Demarcation Act explicitly provides that the Board must, when determining a municipal boundary, take into account areas of traditional rural communities. This means indirectly giving consideration to ethnic differences because many rural communities are under the leadership of different traditional leaders who speak different languages. Ethnicity can be considered in determining municipal boundaries if what is provided for in terms of section 25, is adhered to. This is because one cannot speak of traditional areas and exclude the language spoken in that area. In

¹²³ Tiva W 'Limpopo govt condemns tribalism in Vuwani; SABC News 5 May 2016 Available at <http://www.sabc.co.za/news/a/c2f0fc004ca68007b8c0f9c8166c74bf/Limpopo-govt-condemns-tribalism-in-Vuwani-20160505> (accessed 15 December 2016).

other words, by considering traditional communities as a factor, then the issue of language must also be considered. In a province such as Limpopo, there are three different ethnic groups sharing the province. Those ethnic groups are led by different traditional leaders and the language spoken is different, i.e. Sepedi, Tshivenda and Xitsonga. This means that when the demarcation process is undertaken in a province such as Limpopo, the traditional communities must be considered as a factor as provided for in the Municipal Demarcation Act, as well as the language spoken by that particular area. By looking at the provisions provided for in section 25, ethnicity can be considered indirectly as a factor in certain areas such as Limpopo.

After analysing the municipal demarcation process in South Africa, the next chapter will focus on the system that was followed in Ethiopia, in determining both regional and local government boundaries. Ethiopia is a diversified nation with more than 80 ethnic groups and this makes it a good example and reference of this study. This is because Ethiopia has sought to accommodate its ethnic groups by demarcating internal boundaries using ethnicity at both the regional and local government level. The main focus will therefore be on both the system and structure followed in demarcating internal boundaries in Ethiopia. This study will also analyse the challenges faced when demarcating internal boundaries along ethnic lines at the regional and local government level.

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CHAPTER FOUR

THE USE OF ETHNICITY IN ETHIOPIA IN DETERMINING INTERNAL BOUNDARIES

4.1. Introduction

Ethiopia was never colonised by a European power but was occupied for a few years by Italy in 1936-41. It has been governed by several sovereign rulers (emperors) until the overthrow of Emperor Haile Selassie in 1974 which was followed by the dictatorship of Mengistu Hailemariam, the leader of the communist military junta, called the *Derg*.¹²⁴ The first efforts to unify the state were made in the middle of the 19th century when the authoritarian regimes applied politics of nation-building in Ethiopia.¹²⁵ It was after the defeat of the military regime that had ruled the country between 1947 and 1991, which saw Ethiopia experiencing a dramatic system change.

In 1991, an ethno-nationalist group, led by the (TPLF) Tigray People's Liberation Front and the (EPRDF)-Ethiopian People's Revolutionary Democratic Front with other ethnic-based movements, ousted the Derg regime and introduced a federal political system. The defeat of the Derg military-regime was thus achieved through a coalition of ethnic-based armed groups. This saw the principle of ethnic self-determination and a democratic order becoming a precondition for the maintenance of a polity within Ethiopia's boundaries, thus making space for diversity. After the military defeat of the Derg-regime, a complete shift in paradigm was undertaken. However, "instead of seeking unity through assimilation, unity was going to be achieved through the accommodation of diversities of all kinds as well as the granting of equal rights and status to all of the groups in the country (Ethiopia)".¹²⁶ Zimmermann-Steinhart and Bekele point out that between 1991 and 1995

¹²⁴ Frank M 'Effects of Ethnic Federalism in Ethiopia. Holding Together or Splitting Apart' 2009 *Ethnicity, Diversity and Democracy, EDG Project 2*.

¹²⁵ Lukáš I 'Language policy and process of nation-building in Ethiopia' Available at <http://alppi.vedeckecasopisy.cz/publicFiles/00109.pdf> (accessed 08 February 2017).

¹²⁶ Zimmermann-Steinhart P & Bekele Y 'The implications of federalism and decentralisation on socioeconomic conditions in Ethiopia' 2012(15) *2PER / PELJ* 91.

Ethiopia was ruled on the basis of the "Transitional Charter" which provided for decentralised government and upheld the self-determination principle.¹²⁷

The Ethiopian federal arrangement is perceived to be unique in Africa because it is explicitly built on ethnicity.¹²⁸ This is due to the fact that Ethiopia hosts more than 80 different ethnic groups, most of them with their own unique culture, custom, belief and peculiar ways of doing things.¹²⁹

This led to the adoption of the Federal Constitution of Ethiopia which established the nine regional states. None of the regional states in Ethiopia are ethnically pure, and only five regions are named after its numerically dominant ethnic group: Tigray, Afar, Amhara, Oromia and Somali. However, by using local government structures further ethnic groups have been accommodated. This strategy has its own challenges as different ethnic groups are fighting over limited resources - the exclusion of ethnic minorities in employment - as well as boundary tensions and constant conflicts amongst ethnic groups at regional and local government level.¹³⁰ This chapter will therefore discuss the historical transition and the creation of regions in Ethiopia. Pursuant to that it will also discuss the legal framework and establishment of local government in Ethiopia, as well as the challenges faced at both the regional and local government levels.

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4.2. Historical transition of Ethiopia

Tigray People's Liberation Front being the core rebel group in Ethiopia fought an ethno-regional liberation war from 1975-1991 and ended the long civil war in Ethiopia. The TPLF then promised a solution to the national question of inequalities in power, resources and cultural prestige between the various ethno-linguistic groups as well as the diffusion of regional and ethnic tensions. In 1990 the TPLF, broadened and grew into the Ethiopian

¹²⁷ Zimmermann-Steinhart P & Bekele Y (2012) 90.

¹²⁸ Baraki G 'The making of state and local government in the multi-ethnic federation in Ethiopia' (2016), available at [www.issirfa.cnr.it/download/08\)%20Ghebrehiwet%20Baraki%20\(paper](http://www.issirfa.cnr.it/download/08)%20Ghebrehiwet%20Baraki%20(paper) (accessed on 15 September 2016).

¹²⁹ Belay N 'The New Federal Experiment and Accommodation of Diversity in Ethiopia: Exploring a Novel Experience' available at http://paperroom.ipsa.org/papers/paper_10643 (accessed on 24 September 2016).

¹³⁰ Zemelak A 'Local government in Ethiopia: still an apparatus of control?' 2011 (15) *Law Democracy & Development* 21.

People's Revolutionary Democratic Front which was a coalition of parallel parties to represent other parts of Ethiopia. It later broadened its programme nationwide with the desire and eagerness of creating a renewed, 'revolutionary-democratic' state, with more rights to be accorded to neglected ethnic minorities and language groups. The main aim was to establish a decentralised system and ethno-linguistically based federation instead of an enforced unitary state in Ethiopia.¹³¹

In July 1991 a provisional Charter was adopted in Ethiopia and it gave a way for the birth or formation of what is known as the TGE (the Transitional Government of Ethiopia).¹³² The Charter then accorded numerous nationalities in Ethiopia the right to self-determination which also included the right to secession. The Charter was purposed to serve until a permanent constitution was drafted and popularly approved.¹³³

In 1995 the Ethiopian Federal Constitution was adopted and gave effect to the protection of all ethnic minority groups in Ethiopia. The constitution provided for the right to self-determination of all ethnic groups and the creation of ethnic regions in Ethiopia to accommodate the country's large ethnic groups. Ethnicity was thus central to the creation of ethnic-based subnational governments which could provide education, etc. This saw the minority groups using their languages for education purposes.¹³⁴

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4.3. The creation of regions in Ethiopia

One of the most consequential features of the Federal Constitution of Ethiopia in as far as the creation of regions is concerned, is that the Federal Constitution makes ethnicity the sole criteria for organising regional states in Ethiopia, while on the other side it makes dominant ethnic groups that are dominant the owners of sovereign powers in the areas which falls under their jurisdiction. According to the Ethiopian Human Rights Council, "this arrangement prevents non-native ethnic groups from any share in the political life of the regions and has *de facto* and *de jure* created native ethnic sovereigns in each region

¹³¹ Abbink J 'Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism' (2006) 24 *Journal of Contemporary African Studies* 389.

¹³² Engedayehu W 'Ethiopia: Democracy and the Politics of Ethnicity' (1993) 40 *JSTOR* 30.

¹³³ Engedayehu W (1993) 30-31.

¹³⁴ Abbink J (2006) 395.

without recognising the existence and right of ethnic minorities. In other words, the regional states have been instruments for the exercise of a sovereign right to self-government of native majority ethnic groups to the exclusion of other ethnic minorities living in those regions”.¹³⁵ The Constitution in doing so it has therefore created a new system of domination of ethnic minority groups by dominant and native ethnic communities in Ethiopia. In fact the Constitution has made minorities out of non- native or non-indigenous communities that have long inhabited the regions as their homeland.¹³⁶

The EPRDF government used the nationalities map of the Study of Ethiopian Nationalities of 1983 to delineate preliminary boundaries between the ethnolinguistic areas in Ethiopia.¹³⁷ In 1995, the constitution then provided for the establishment and creation of nine regions or regional states in Ethiopia, namely: Amhara, Afar, Oromia, Tigray, Somali, Harar, Benishangul-Gumuz, Gambella, and the State of the Southern Nations, Nationalities and Peoples (Southern Region of SNNPR).¹³⁸

The regions that were created in Ethiopia are ethnic-based regions, however, the only differences are that some have a dominant ethnic community whose name they bear while others are multi-ethnic with no numerically dominant ethnic community. It is worth noting that because Ethiopia is a home to 80 ethnic groups not every ethnic group can get a state. This resulted in regional states that are ethnically heterogeneous. For example, in regional states such as Gambela, South Regional and Benshagul-Gumz states, where multi-ethnic groups exist but no ethnic group is dominant, a mix of factors such as economic, political, settlement pattern, similarity of language and culture have been taken into consideration to an extent that ethnic minorities are also protected both at regional and local government level.¹³⁹

¹³⁵ Ethiopian Human Rights Council *Parallel Report Submitted to the Committee on Racial Discrimination* (2009) 9.

¹³⁶ Ethiopian Human Rights Council (2009) 10.

¹³⁷ Nationalities map of the Study of Ethiopian Nationalities of 1983 was a political research bureau which did the research work under the Derg regime (which was the first government to officially recognise the Ethiopian nationalities).

¹³⁸ Art 47 FDRE Constitution, 1995.

¹³⁹ Baraki G (2016) 5.

Ayele and Fessha write that with the constitution allowing for the establishment of an ethnically defined territorial unit “in which members of an ethnic group can govern their own affairs”, the intention is to give effect to the right of ethnic groups to a full measure of self-government.¹⁴⁰ It is therefore based on this principle that some of these regional states are designated as belonging to a particular ethnic group.

It is worth noting that none of the regions in Ethiopia are ethnically homogenous. This is because some have minorities in regions with a dominant ethnic community while on the other hand; others have even minorities within minorities. This therefore created ethnic tensions between ethnic minorities and other dominant ethnic groups at regional level. There are many challenges and constant fights between different groups over limited resources at regional level. Some of these challenges that are experienced at regional level are somehow similar to those experienced at local government level. Some of the challenges experienced at both the regional and local government level will be discussed in details below.

4.4. Ethnic conflicts in Ethiopia

Being a multi- ethnic state, Ethiopia observed numerous incidents of ethnic conflicts and tensions both at the local government and at the regional level. Because of the history of the country, the “current ethnic federal arrangement was in fact created to do away with suppression and the legacies of ethnic domination, while at the same time providing for a constitutional and legal framework for the resolution and mitigation of ethnic conflicts”.¹⁴¹

However, the creation of the ethnic federal system in Ethiopia had its own limitations.

“Ethnic federalism brought new dimensions that often aggravated and complicated ethnic conflicts in the country. By making ethnic groups the building blocks of the country’s federal system, the new arrangement elevated the importance of ethnic

¹⁴⁰ Ayele Z A & Fessha Y T ‘The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia’ (2012) 58(4) *Africa Today*, 88-106, 92.

¹⁴¹ Ethiopian Human Rights Council (2009) 20.

identity as a key instrument to claim social, economic and political resources. Accordingly, ethnicity and ethnic identities have been used as flagships for mass mobilization in group conflicts. Some of these are often waged by the local elite to secure political power based on ethnic distinctiveness. As a result, those conflicts manifest themselves in the form of disputes over geo-political (regional, zonal or special woreda) boundaries”.¹⁴²

Although many Government reports indicate that incitement and ethnic violence are prohibited by law, in practice incidents of ethnic based violence have been on the increase in Ethiopia in the last two years. Therefore, by looking at the history of ethnic conflicts in Ethiopia, recent conflicts can be classified into four or more categories. However, in most cases, such categorization will depend largely on the identity of the parties involved in the conflicts and the cause of each conflicts between the parties. It is worth noting that some of these conflicts include settler versus native conflicts and clashes over power-sharing as well as resources-based conflicts. Since resource-based conflicts are customarily being presented as boundary disputes, they will however, not be discussed as a separate concept in this study.¹⁴³

4.4.1. Boundary-Related ethnic conflicts

According to the Ethiopian Human Rights Council:

“the establishment of other administrative units and regions in Ethiopia along ethnic lines required drawing boundaries between ethnic communities which in the past, had geographically been interspersed through diverse and long-standing patterns of settlement. As a result, the physical demarcation of geographical borders between the various ethnic groups in Ethiopia was difficult since there have been considerable population movements in many parts of the country. In redrawing the regional states, the concern of where the physical border between the national communities should be drawn has led to disputes and tensions in the

¹⁴² Ethiopian Human Rights Council (2009) 20.

¹⁴³ Ethiopian Human Rights Council (2009) 21.

country. Ethnic conflicts often resulted in civilians being attacked and robbed by virtue of their connection and membership to a certain ethnic group”.¹⁴⁴

It is true that many of these ethnic minorities or communities had experienced a small scale resource-based conflicts in the past. However, the introduction of the ethnic federal system in country (Ethiopia) changed the dynamics of these conflicts and tensions by reinforcing their ethnic dimension. Furthermore, “the fact that the disputed areas coincided with the boundaries of regional governments has transformed the conflict between local communities into conflicts between regional states”.¹⁴⁵ Some instances or illustrations that includes the claim of ownership over the Babile town (between the Oromiya and Somali regional states), the Borena and Gari conflict between the Somali and Oromia regional states, as well as the conflict between the Gedeo in the SNNPR state and the Gujji Oromo in Oromia regional states; these also includes the conflict between the Oromia and Benishangul Gumuz regional states, etc.¹⁴⁶

According to the Ethiopian Human Rights Council, “the major hindrance to a lasting resolution of such conflicts in Ethiopia is the fact that the boundaries between these regions or ethno-national communities are not clearly demarcated. There has been no systematic effort by the Government to delineate the boundaries in a clear manner, often because the tension is very high in the disputed territories”.¹⁴⁷

As a result, “the absence of a specialized government authority to assume the responsibility of attending to disputes between members of different ethnic groups living in adjacent regions has continued to give rise to frequent conflicts and tension in different parts of the country, often resulting in the death and displacement of many citizens and destruction of public and private property”.¹⁴⁸

Article 48(1) of the Constitution states that:

¹⁴⁴ Ethiopian Human Rights Council *Parallel Report Submitted to the Committee on Racial Discrimination* (2009) 21.

¹⁴⁵ Open document - ECOI.net Available at https://www.ecoi.net/file_upload/470_1263141582_ehrc-ethiopia-cerd75. (accessed 10 February 2017).

¹⁴⁶ Ethiopian Human Rights Council (2009) 21.

¹⁴⁷ Ethiopian Human Rights Council (2009) 22.

¹⁴⁸ Ethiopian Human Rights Council (2009) 23.

“all border disputes shall be settled by agreement of the concerned states. Where the states fail to reach agreement, the House of Federation shall decide such disputes on the basis of settlement patterns and the wishes of the people concerned”.¹⁴⁹

However, in many cases the principles that are stipulated in the Constitution are not implemented and some issues regarding border conflicts between ethnic communities are also not adequately addressed. In trying to find a suitable remedy in as far as border conflicts are concerned, it is worth noting that the ad-hoc inter-regional border committees which is coordinated by the Ministry of Federal Affairs usually attempts to resolve boundary related issues in Ethiopia.¹⁵⁰

Even though there is an attempt to settle boundary related issues in Ethiopia, the unfortunate part is that members of the ad-hoc inter-regional border committees are from the ruling elite of some of the regions which are also having claims over territories and these results in them being biased and lacking neutrality.

This has complicated the matter further and had resulted in the settlement of boundary disputes been a lengthy and inexpedient process due to failure of the committee members to reach an agreement. For example, attempts to resolve boundary disputes between the Oromia and Benishangul Gumuz, Afar and Somali, Oromia and Somali and regions are wearisome and have been dragging for years.¹⁵¹

Ethiopian Human Rights Council highlight that “despite its constitutional mandate to resolve these disputes, the House of Federation was not able to give a decision on these and similar cases due to serious human and technical capacity constraints. There is also a lack of clarity regarding the role of the House of Federation and the Ministry of Federal Affairs in this regard, leading to confusion as to which federal institution has the lead role in managing and resolving ethnic conflicts”.¹⁵²

¹⁴⁹ Art 48(1) FDRE Constitution, 1995.

¹⁵⁰ Ethiopian Human Rights Council (2009) 23.

¹⁵¹ Ethiopian Human Rights Council (2009) 23.

¹⁵² Ethiopian Human Rights Council (2009) 23.

4.4.2. Competition over limited resources

Boundary disputes are linked to competition over limited resources by different ethnic groups (both at the local government and regional level). The reason for limited resources is population pressures at regional level between different ethnic groups, environmental degradation as well as climate change.¹⁵³ Improper agricultural practices and soil erosion have greatly damaged the land's productivity. The rate of food production is also declining at an alarming rate as compared to an increasing population growth rate in the country.¹⁵⁴

The competition over limited or scarce natural resources is influenced by struggle for political power at regional level. This saw the agro-pastoral areas being in a state of instability due to competition over scarce resources.¹⁵⁵

The Somali and Oromo regions and the Ittu and Issa clans have become the areas that are hit by serious conflict over limited resources. The introduction as well as the implementation of ethnic-based boundaries in Ethiopia led to the issue of administrative boundaries between the Oromo and Somali regions, in general including the Ittu and Issa clans in particular became a source of conflict.¹⁵⁶ The major causes for conflict in these regions are cattle raiding, competition over declining resources and territorial expansionary moves.

Tenaw writes that stock of natural resources especially water points as well as grazing lands in pastoral and agro-pastoral areas are shrinking from time to time due to several factors, including expansion of agriculture, human and animal population growth, environmental degradation and the occurrence of prolonged drought.¹⁵⁷ Tenaw further highlights that there are no doubts that the above mentioned factors intensify resource

¹⁵³ Tenaw Z T 'Indigenous institutions as an alternative conflict resolution mechanism in eastern Ethiopia: The case of the Ittu Oromo and Issa Somali clans' available at <http://www.accord.org.za/ajcr-issues/indigenous-institutions-alternative-conflict-resolution-mechanism-eastern-ethiopia/> (accessed 14 February 2017).

¹⁵⁴ National Population Policy of Ethiopia available at <http://www.un.org/popin/regional/africa/ethiopia/policy/policy.htm> (accessed 23 February 2017).

¹⁵⁵ Kifle A A 'State-Building and non-state conflicts in Africa' (2015) 37 *Strategic Review for Southern Africa* 106.

¹⁵⁶ Tenaw Z T (2016) 7.

¹⁵⁷ Tenaw Z T (2016) 3.

scarcity in Ethiopia as well as competition for water sources and pastures in the regional level among the pastoralists.¹⁵⁸

It is worth noting that for pastoralism to survive there is a necessity for them to move within and across regional boundaries in search of drinking water and grazing-pastures for their livestock. However, currently the situation has not been conducive for them to move anywhere across the regional boundaries due to enmity among ethnic groups. Such enmity among ethnic groups resulted in three major conflicts which took place ever since the year 2000 between major rival pastoral groups, such as the Borena and Gari; the Merihan and Digidia, as well as between the Degidia and Borena in Oromia region. This saw hundreds of people losing their lives because of these conflicts.¹⁵⁹

In trying to resolve these resource competitions at regional level, territorial expansion became one of the main or major strategies of control over scarce resources. However, such boundary claims strategies resulted in various violent conflict between the two clans in the Omali/Oromia area. Taha writes that:

“In 2004, Somali Region claims that 21 *kebeles* which are the small units of administration in a district should fall within its regional administrations. These events led to a referendum in November 2004, which allocated only one of the contested *kebeles* to Somali regional state and the remaining twenty to Oromia regional state. As a result, the Issa and other Somali clans were not satisfied about the result and they made indiscriminate violent attacks on Ittu clans”.¹⁶⁰

Oba highlights that scarce resource competition and cattle raids between Ittu and Issa clan groups have resulted in conflicts ever since the 1960s. As a result the pastoralists are now facing more pressures and challenges than ever before because of:

“the loss of pasturelands to national parks, private farms, and ranches; increased commoditisation with concomitant inequality within the livestock economy;

¹⁵⁸ Tenaw Z T (2016) 3.

¹⁵⁹ Tenaw Z T (2016) 4.

¹⁶⁰ Taha MD *Land degradation and conflict in Sudan* (2007) 15.

changes to other types of land use; out-migration of poor pastoralists as well as periodic dislocations brought about by drought, famine, and civil war”.¹⁶¹

Basso points out that the recent inter-ethnic and clan conflicts in Ethiopia are related to national political processes. The main reason being the absence of clearly demarcated zonal, district, *kebele* and regional level boundaries in eastern Ethiopia. These therefore led to tense or solidified competition and territorial expansive moves by several ethnic groups. However, in trying to resolve these boundary disputes, in 2004 the two regional state government of Somali and Oromia tried to come up with a referendum, unfortunately all these efforts did not bring any long-lasting solution.¹⁶²

4.4.3. Power Sharing conflicts

The use of ethnicity as deciding factor for the distribution of political authority and power or as a major criterion for demarcating boundaries at the regional levels customarily led to or created serious competition over political power among and between different ethnic groups in Ethiopia.¹⁶³ Such arrangements became problematic at the regional level because ethnic group's access to power also guaranteed them better access to economic resources and superiority over other ethnic groups. Furthermore, ethnic arrangements led to the exclusion of non-native groups: the process which gave rise to rivalries and competition between native-ethnic groups for political power; which in turn led to violent conflicts (power sharing conflicts) especially in the Gambella and Benishangul Gumuz regions.¹⁶⁴

¹⁶¹ Oba G 'Ecological factors in land use conflicts, land administration and food insecurity in Turkana, Kenya' *Pastoral Development Network Paper No. 33a.* (1992) 15.

¹⁶² Bassi M 'Returnees in Moyale District, Southern Ethiopia: New means for an old inter-ethnic game' in Hogg R (ed.) *Pastoralists, ethnicity and the State in Ethiopia* (1997) 13.

¹⁶³ Van Veen E 'Perpetuating power Ethiopia's political settlement and the organization of security' Available at <https://www.clingendael.nl/publication/perpetuating-power-politics-and-security-ethiopia> (accessed 26 January 2017).

¹⁶⁴ Ethiopian Human Rights Council (2009) 8-10.

4.4.4. Conflicts between ‘native’ and ‘settler’ communities

As highlighted above, the relation between the settlers and native communities in the different regions in Ethiopia is fraught with serious tensions. Pursuant to that there are several factors that contributed to these tensions. Amongst others these factors include: discrimination; the disenfranchisement and lack of political representation of settler ‘minorities’ as well as native resentment towards settlers due to the past history of domination. They also include “economic insecurity due to increased migration and presence of settlers; fear of displacement and parochial sentiments of ownership and territoriality among native ethnic groups”.¹⁶⁵

As a result, serious conflicts ensued because of these tensions with many people losing their lives, and thousands of them being displaced because their properties were destroyed. Pursuant to that the omission of and failure to act on the part of the Federal and regional authorities somehow exacerbated these conflicts and contributed to the worsening of damages (destruction of properties). It is therefore worth noting that these tensions were mostly documented as discriminatory actions toward the ‘minority’ Amharic speakers. Furthermore, such conflicts are recorded as two conflicts which took place in Eastern Wollenga zone of the Oromia and Gambella region.¹⁶⁶

These saw local Oromo elites mobilising native community and solicited to xenophobic and territorial sentiments by reigniting historical memories of suppression and domination by the Amhara. Based on that the local administrators then influenced the Oromo community to evict the Amhara settlers and agitated that they be sent to their native region by claiming that like their ancestors “the Amhara’s were trying to rob Oromia by occupying the land and depriving their children of the future livelihood”.¹⁶⁷

¹⁶⁵ Ethiopian Human Rights Council (2009) 25.

¹⁶⁶ U.S Department of State ‘Bureau of Democracy, Human Rights, and Labor 2004’ available at <https://www.state.gov/j/drl/rls/hrrpt/2004/41603.htm> accessed on (27 February 2017).

¹⁶⁷ Ethiopian Human Rights Council (2009) 26.

4.4.5. Language and political tension

The Constitution of Ethiopia guarantees equality of languages and empowers regions to determine their own official working languages. As a result, some regions adopted languages of ethnic groups that are dominating in the regions as working languages. Such adoption meant that all aspects of judiciary, including the administrative and other affairs of the region are to be conducted in the language of a certain ethnic group.¹⁶⁸

Consequently, in as far as education is concerned this means that it must also be provided in the language of that particular region. This principle is also attached to the right to representation, access to employment including access to justice etc. The literacy in language of dominant ethnic group is therefore being used as a tool of accessibility at the regional level or some areas. Though these can be appreciated as a positive arrangements for the realization of ethno-linguistic groups which have sovereign powers at the regional state, the fate of those minority groups or communities who are unable to speak the language of the dominant ethnic groups as well as native groups requires serious attention and needs to be addressed urgently. Some of the communities which need to be accommodated included indigenous communities as well as settler communities whose language have been denied the status of being recognised as an official language. This is because members of the above mentioned communities will face serious difficulties in the exercise of their human rights because of their illiteracy in the regional working languages.¹⁶⁹

4.5. Ethnic local governments in Ethiopia

The Constitution of Ethiopia provides for constitutional autonomy for the regions which includes the “power to draft, adopt and amend the regional state constitution”.¹⁷⁰ This allows regions the opportunity to protect subnational ethnic minorities and accommodate regional ethnic pluralism. Tarr highlights that Ethiopia’s Federal Constitution (the Federal

¹⁶⁸ Midega M ‘The politics of language and representative bureaucracy in Ethiopia: The case of federal government’ (2015) 7 *Journal of Public Administration Policy Research* 15-16.

¹⁶⁹ Ethiopian Human Rights Council (2009) 14.

¹⁷⁰ Art 55(5) FDRE Constitution, 1995.

Constitution) leaves the “regions with considerable constitutional space to design their institutions and local governments”.¹⁷¹ This is due to the fact that local or (sub-regional) government is scarcely touched upon by the Federal Constitution. The regions are therefore autonomous in determining or establishing their institutional structure organisation and competencies of local government. Van der Beken highlights that each of the nine regions in Ethiopia has successfully managed to adopt an effective constitution that acknowledges the existence of different ethnic minorities at regional level. The majority of these regions have also designed the institutions of “local government as the primary mechanism of protecting sub-national ethnic minorities”.¹⁷²

Ayele and Fessha point out that “the right to self-government is not limited to the ethnic groups that have their own regional states: rather, it is a right that is constitutionally reserved to all or almost every ethnic groups in the country”.¹⁷³ Article 47(2) of the constitution states that ethnic communities within the states “have the right to establish, at any time, their own States”.¹⁷⁴ Therefore, the right to self-government or determination means that ethnic communities have the right to “exercise their right to self-determination, which includes the right to establish government institutions in the territory” in which they reside and also within the territorial boundaries of the regional state in which they are situated.¹⁷⁵

Ayele writes that the reason for decentralisation in Ethiopia was to empower ethnic minorities and thereby mitigate or prevent ethnic conflicts.¹⁷⁶ This meant that any ethnic related issues and questions which were not answered and cannot be dealt with through the medium of regional state formation will have to be addressed via the establishment of local government.¹⁷⁷

¹⁷¹ GA Tarr ‘Explaining sub-national constitutional space’ (2011) 115 *Penn State Law* 1134.

¹⁷² Van der Beken C ‘Federalism, Local Government and Minority Protection in Ethiopia: Opportunities and Challenges’ (2015) 15 *Journal of African Law* 150-177, 154.

¹⁷³ Ayele Z & Fessha Y ‘The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia’ (2017) available at <https://www.researchgate.net/profile> (accessed 15 February 2017).

¹⁷⁴ Art 47(2) FDRE Constitution, 1995.

¹⁷⁵ United Nations Declaration on the Rights of Indigenous Peoples available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed 17 July 2017)

¹⁷⁶ Ayele Z (2008) 12.

¹⁷⁷ Ayele Z (2008) 23.

The 1995 Constitution of Ethiopia thus provides explicitly for the establishment and determination of two types of sub-regional government in terms of articles 39(3) and 50(4) respectively.¹⁷⁸ Article 39 (3) implicitly provides for the establishment and implementation of autonomous sub-regional territorial units with the main aim of accommodating intra-regional ethnic minorities in the country. Pursuant to that this means that what is stipulated in article 39(3) is an autonomous local government that is empowered with powers that are relevant in protecting and promoting the interest of all ethnic communities on whose behalf it is established.¹⁷⁹

Local government in terms of article 39 as stated above is a local government whose territorial boundary is largely delimited along ethnic lines.¹⁸⁰ As stated by Ayele and Fessha:

The boundaries of article 39 local governments are to be demarcated based on the settlement pattern of an ethnic group whose aspiration for self-government could not be met through the establishment of a regional state. This means that article 39 local governments can only be established for an ethnic group that is geographically concentrated.¹⁸¹

Article 50(4) obliges the regional states to establish government units below state level. However, as stated above regional states have the power to enact their own constitution and to establish local government. The Amhara Constitution established an ethnic-based local government with one purpose of protecting sub-regional ethnic minorities. This approach has also been adopted and followed by the Benishangul-Gumuz, Gambella and Southern Region in their Constitutions.¹⁸²

Currently there are only five regions that have established ethnic local government in Ethiopia; there are still several state constitutions which do not recognise ethnic diversity including Somali and Oromia state constitutions. These ethnic-based local governments

¹⁷⁸ Nigatu M M 'The Empowerment of Local Governments as a prerequisite for Self-Determination: the assessment of legal and institutional framework of Sidama zone' *SNNPR* (2015) 42.

¹⁷⁹ Ayele Z & Fessha J (2012) 93.

¹⁸⁰ Art 39 FDRE Constitution, 1995.

¹⁸¹ Ayele Z & Fessha J (2012) 93.

¹⁸² Van der Beken C (2015) 164.

are designed in such a way that they offer important protection to the cultural rights including language rights of the concerned ethnic minorities. The competence of the ethnic-based local governments in Benishangul-Gumuz, Gambella, Amhara and Southern Region allows local governments to determine their working language which is used mainly for official purposes in the local administration and judiciary.¹⁸³

For example, the SNNPR is home to dozens of ethnic groups and in order to respond to the constitutional requirement of ensuring self-government for the different ethnic groups, the regional constitution has established ethnically defined zonal administrations.¹⁸⁴ The Amhara state has also established three special zones (or Nationality Administrations) for the three indigenous minorities (i.e. the Agew Himra, Awi and Oromo). Similar administrative entities are provided for the five indigenous minorities in Benishangul-Gumuz. The Gambella constitution also provides for the establishment of a Nationality Zone for the three indigenous minorities of Anuak, Nuer and Mejenjer.¹⁸⁵

Fessha and Van der Beken argue that Ethiopian “ethnic-based local government administrations offer excellent” opportunities for participation and institutional representation for the empowerment of minority.¹⁸⁶ Ethnic local government is established at both the zonal and *woreda* level known as *liyu-woreda* (special districts).¹⁸⁷

Depending on the level of ethnic diversity, the regional states have established three Local Governments (LGs) tiers. According to Baraki, “two pragmatic approaches have been applied in the delimitation of local governments into the Zones, Special Zones, Special *Woredas*, and *Woreds*. Zonal governments and Special *Woreda* governments comprise several rural and urban *woreda* governments”.¹⁸⁸ As such, in the heterogeneous states of Southern Region (SNNP), Benshagul-Gumuz and Gambela, Zonal and Special *Wereda* Governments are mainly established along ethnic lines

¹⁸³ Van der Beken C (2015) 167.

¹⁸⁴ Zimmermann-Steinhart P & Bekele Y (2012) 94.

¹⁸⁵ Baraki G T *The practice of Fiscal Federalism in Ethiopia: A critical Assessment 1991-2012 An institutional Approach* (2014) 52-4.

¹⁸⁶ Fessha, Y T & Van der Beken C ‘Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia’ (2013)21(1) *African Journal of International and Comparative Law* 7.

¹⁸⁷ Art 50(4) FDRE Constitution, 1995.

¹⁸⁸ Baraki G (2016) 7.

regardless of their economic viability. In the SNNP, Zonal Governments (ZGs) and Special Woreda Governments (SWGs) are formed by breaking up heterogeneous Zone/Woreda Administrations. Baraki highlights further that “when a single ethnic group is found to be very tiny; two or more ethnic groups were brought together to form a SWG or ZG, often based on language and cultural similarities”.¹⁸⁹

According to Ayele and Fessha, zonal administrations are not even recognised in the regional constitutions, other than in the constitution of Oromia regional state, yet it is established in most regions. However, its main purpose is to serve as an intermediate point between a *woreda* and regional government.¹⁹⁰

The most powerful tier in terms of article 50(4) local government is the intermediate local government known as *woreda*. A *woreda* is created through the regional constitutions and it is established throughout the rural areas of the country. As a result, a *woreda* has a council: a legislative organ comprising of members that are directly elected by the people. Ayele and Fessha highlight that:

Equivalent of a *woreda* in urban areas is a city administration, which is an equally autonomous local government. The deliberative arm of the city administration is the city council, comprising of members that are directly elected by the residents of each city administration is the city council. A city administration has a mayor, a mayoral committee, a professional municipal manager, a municipal judicial organ and a municipal administrative court.¹⁹¹

It is worth noting that urban local government is created through regional statutes as opposed to a *woreda* which is created through regional constitutions.

The article 39 local governments are established to address ethnic claims or accommodate ethnic communities within some sort of territorial framework. Though these types of local governments have been established at the different levels in the hierarchy of local government these organisations are mostly established at the zonal and *woreda*

¹⁸⁹ Baraki G T (2014) 52

¹⁹⁰ Ayele Z & Fessha Y ‘The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia’ (2017) available at <https://www.researchgate.net/profile> (accessed 15 February 2017) 20.

¹⁹¹ Ayele Z & Fessha Y (2017) 9.

levels and are consequently known as the nationality zones and *liyu-woreda* (special districts).

It is worth highlighting that nationality zones are established as institutions of self-government for regional minority groups that occupies a territorial area covering a number of *woredas*. While on the other hand, a *liyu woreda* is a subdivision of a region which in terms of territorial and population size is comparable to a *woreda* administration and is established for a particular ethnic group that inhabits the area.¹⁹²

There is thus a clear difference between nationality zones and *liyu woredas* with the rest of local governments established in the country. Ayele and Fessha point out that:

In the Amhara regional state, the region is largely inhabited by individuals who belong to the Amhara ethnic group. However, within the regional boundaries of the Amhara regional states are pockets of territory that are dominated by the Himra, Awi (the two strand of the Agew ethnic group) and Oromo.¹⁹³

In order to accommodate all these three ethnic communities, the Amhara regional state has established three nationality zones. The same can be said about the Afar regional state.

Ayele and Fessha further write that

In contrast, the constitution has established regional states that are ethnically heterogeneous, with no single ethnic group accounting for the majority of the regional population. In these regional states, the claims for recognition and self-rule by ethnic communities have resulted in the regional governments establishing, depending on the size of the ethnic community, either being a nationality zone or a *liyu woredas*.¹⁹⁴

¹⁹² Ayele Z & Fessha Y (2017) 9.

¹⁹³ Ayele Z & Fessha J (2017) 10.

¹⁹⁴ Ayele Z & Fessha J (2017) 10-11.

Currently, the SNNPR has established fourteen nationality zones and eight *liyu woredas*. The same has been established in ethnically diverse Benshangul and Gambella regional state.

The Constitution of Afar region recognises the right of the minority of people who belong to Argoba to “have their own “special *woreda*” in the region”. In the Amhara region there are also special zones for a minority from the Oromo ethnic group. The Constitution of the Southern region is also designed in such a way that recognises the “special *woreda*” as an ethnic based sub-regional local government administration.¹⁹⁵

It is worth noting that the territorial demarcation of both the nationality zone and a *liyu woreda* follows the territorial settlement of the ethnic group on whose behalf they are established. As a result, these ethnic local government units are autonomous and should the ethnic group for which they are established choose to secede from the region and establish their own regional state they can do so.¹⁹⁶ Currently, nationality zones and *liyu woredas* are established only in five regions such as the Afar, SNNPR, Amhara, Benishangul-Gumuz and Gambella regions.

Liyu woreda is found only in four regions of Amhara, SNNPR, Gambella and Benishangul-Gumuz. In SNNPR there are nine *liyu woredas* that were established. Whereas, in Benishangul-Gumuz there are two *liyu woredas*, one in Gambella known as Godre *liyu woreda* and one in Afar known as Argoba *liyu woreda*.¹⁹⁷

It is therefore worth concluding by stating that nationality zones in Ethiopia are mainly established as institutions of self-government, for regional ethnic minority groups that occupy a territorial area covering a number of *woredas*.¹⁹⁸ Whereas a *liyu woreda* (special district), is a subdivision of regions which in terms of territorial and population size is comparable to a *Woreda* administration.¹⁹⁹ It is established for the particular ethnic groups

¹⁹⁵ Van der Beken C (2015) 162

¹⁹⁶ Art. 47(2) FDRE Constitution.

¹⁹⁷ Baraki G (2016) 7.

¹⁹⁸ Ayele Z and Fessha J (2012) 96.

¹⁹⁹ Fenta T M (2014) 74.

that inhabits the area. Nationality zones and *liyu woredas* are established only in five regions: Afar, Amhara, Benishangul-Gumuz, Gambella regions and SNNPR.²⁰⁰

4.6. Challenges, ethnic tensions and conflicts at local level in Ethiopia

According to Van der Beken, the main idea in the establishment of ethnic-based local government in Ethiopia is that “through these local governments system, the concerned ethnic minorities can exercise the self-rule component of the right to self-determination”.²⁰¹ Although the above facts managed to indicate the opportunities offered by the mechanism of establishing ethnic-based local governments in Ethiopia with the main purpose of fulfilling the rights of sub-national ethnic minorities, in practice this mechanism has substantial challenges, tensions, conflicts as well as limitations. Some of the limitation highlighted above relates to the degree of autonomy enjoyed by the ethnic-based local governments in the exercise of their powers. The challenges brought by ethnic-based local government in Ethiopia are:

- a) Land disputes between ethnic groups which includes contestation over district boundaries; and
- b) Ethnic mobilisation and competition over resources

4.6.1. Land disputes at the local government level

Some of the challenges that are faced at the regional level are somehow similar to those that are experienced at the local government level. The land issue in Ethiopia “constitutes one of the most contentious issues because it involves conflicting political, socio-cultural and economic interests”.²⁰² However, the point of contestation in Ethiopia’s ethnic-based local government level is as a result of who holds power or authority in the regional administration as well as who has the right over which land in the region. According to Abbink “the majority of tensions and challenges in rural Ethiopia emanated from disputes

²⁰⁰ Fenta T M (2014) 73.

²⁰¹ Van der Beken C (2015) 169.

²⁰² Hebo M ‘Disguised Land Sale Practices among the Arsii Oromo of Kokossa District, Southern Ethiopia’ (2007) 6(2) *Asian and African Area Studies* 352.

with regard to land and the boundaries of (woredas) districts and zones between the newly defined ethnic or linguistic groups”.²⁰³

This is because “after ethno-linguistic or ethnic identity was accorded an organising role in the determination of boundaries and adoption of policies, the new political dispensation was immediately used as a means to make claims to resources on both the national (state) level and local level (especially government funding and land)”.²⁰⁴ This started with sophisticated negotiations and ethnic positioning strategies of ethnic elites to enable them to get advantages at the expenses of other groups. Land and borders in Ethiopia became the prime cornerstone of contestation. Due to soil erosion and population growth in Ethiopia, land had become an increasingly scarce resource. This saw contestations over land and borders being backed up by an explicit reference to language and cultural differences.²⁰⁵ Other recurring factors with regard to land include:

“The disagreements about the possession of or use rights to water resources, prestige, land, and cultural policies (feelings of inter-group superiority and inferiority), settlement, licences for investment and language policy in education and administration”.²⁰⁶

Land issues lead to a high level of contestation over district boundaries in Ethiopia. This is the result of the competition over grazing space and water for livestock leading to sporadic cases of cattle rustling and revenge killings. These therefore led to other minority groups having limited access to services in areas that are dominated by rival ethnic groups. This resulted in ethnic mobilisation at the lower level. In many areas, minority groups re-negotiated local relationships and mobilised people to fight for recognition as 'nationality' or ethnic groups in order to take advantage of the new political order in Ethiopia. As a result, they used the constitutional status of the nationalities to pursue their goals.²⁰⁷

²⁰³ Abbink J (2006) 396.

²⁰⁴ Abbink J (2006) 395-396.

²⁰⁵ Abbink J (2006) 396.

²⁰⁶ Abbink J (2006) 391.

²⁰⁷ Aalen L 'Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: the Case of Ethiopia' (2006) 13 *International Journal on Minority and Group Right* 257.

Ethnic mobilisation usually results in different ethnic groups competing with each other over limited resources. Competition for resources in Ethiopia had shown itself primarily in the form of pastoralist conflicts and clashes over scarce resources of land. The reason being that pastoralist conflicts have a lengthy history and occurred in the lowland areas of the country mostly in the Afar, Oromia, and Somalia regions.²⁰⁸ Feyisaa highlights that:

There is a constant fight between the Nuer and Anywaa over privileges, over federal funds, over representation in the regional state government and land for pasture (Nuer) or agriculture (Anywaa). The two major groups dominate the local arena of politics and are locked in violent rivalry against each other. Furthermore, he highlight that “the basic claim of the Anywaa is that they are the original inhabitants of the area and that most of the Nuer are newcomers from the Sudan, who should not dominate and occupy Anywaa lands along the Baro River”.²⁰⁹

While different ethnic groups are in competition with each other over limited resources, the major challenge of local government in the regional level is the allocation of federal funds between different ethnic groups and representation at the regional level which resulted in political repression.²¹⁰

The majority of conflicts in Ethiopia now are mostly about boundaries between different territorialised ethnic groups. This is because fights are waged about identity in order to establish the borders of districts and zones. Unfortunately, the identity professed by ethnic communities (local people) is the deciding element. Because of ethnic difference between ethnic communities, different areas are given to each ethnic group but that does not stop the conflict. This led to unhappiness about how the boundaries have been drawn. Boundaries are tied up with ethnic identity as well as a conflict about resources in the disputed border areas. Abbink writes that “that is ‘secession’ in miniature form; however

²⁰⁸ Dibaba B ‘Diversity is not the root of Conflicts’ available at <http://aigaforum.com/article2016/Diversity-is-not-root-of-Conflicts.htm> (accessed 11 January 2017).

²⁰⁹ Feyissa D ‘A National Perspective on the Conflict in Gambella’ 2009 *Proceedings of the 16th International Conference of Ethiopian Studies* Trondheim 642.

²¹⁰ ‘Development Aid to Ethiopia: Overlooking violence, Marginalization and Political Repression’ available at <https://www.oaklandinstitute.org/development-aid-ethiopia> (accessed 14 February 2017) (accessed 14 February 2017).

some of the conflicts are about power or authority and access to scarce resources in a shared arena”.²¹¹

Despite its promise and claims to bring a long lasting solution, the post-1991 regime in Ethiopia did not succeed, in that it had failed tremendously to mitigate and to manage ethnic tensions in the country. In simple terms, it has decentralised most of the problems faced in Ethiopia by defining the root cause of conflicts to be at the local and not at the national level.²¹² This cannot be true because there are other serious problems that are affecting or are of great concern to the national government, such as minority exclusivity in employment and political privileges, etc.

4.6.2. Minority exclusion in employment.

One of the challenges faced by Ethiopia is the exclusion of ethnic minorities in as far as employment is concerned, resulting in a serious lack of employment for minority groups at the regional level.²¹³ This is because they are usually considered as not being part of the dominant ethnic group. This is irrespective of them knowing the local language or even having resided in the region for a long time. Because there is high unemployment, there is also high level of competition over resources in Ethiopia. This has led to the exclusion of ethnic minorities with regard to employment.²¹⁴

4.6.3. Political privileges

Political identity in Ethiopia fostered intra-ethnic solidarity as well as reinforcing inter-ethnic boundary in the country. However, “the same process has also raised serious problems of where to draw the line in the definition of the ‘self’ and engendered intra-ethnic competition for resources and political power”.²¹⁵ As a result, the repercussion of

²¹¹ Abbink J (2006) 397.

²¹² Abbink J (2006) 390.

²¹³ A study on minorities in Somalia, available at <http://reliefweb.int/report/somalia/study-minorities-somalia> (accessed 10 February 2017).

²¹⁴ Ethiopian Human Rights Council (2009) 10.

²¹⁵ Feyissa D (2009) 646.

institutionalised identity politics does not end at the migrants and inter-ethnic or indigenes level. It has also introduced social displacement within the ethnic groups magnifying and politicising sub-ethnic units.²¹⁶

“Political representation is a quarrelsome issue played out in power struggles between political elites at all levels of government in Ethiopia, affecting the stability of the regional states. Power struggles are expressed through inter-ethnic and clan-based conflicts and tensions”.²¹⁷

According to Feyissa, due to political privileges experienced by dominant ethnic groups, “multi-ethnic regional states are ‘up for grabs’ for the various groups who compete for resources and political power with various narratives of entitlement instead of building a viable regional political community”.²¹⁸

By so saying, the struggle for political power and competition over limited resources among the ethnic elites in Ethiopia is a reflection of the contentious issue of political ownership of the multi-ethnic regional states such as Gambella. Conflict situations in the Gambella region are “also related to the introduction of territorialized ethnicity and the politicisation of migration”.²¹⁹ Resources are allocated according to political affiliation and between ethnic lines.

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4.6.4. The challenges of establishing ethnic boundaries in Ethiopia

The organization of state power along territorially based ethnic communities has been reinforced and elevated to a constitutional level.²²⁰ The Ethiopian federation is unique in many aspects, insofar as it departs radically from the usual fear of African states to ‘play with fire’ i.e. ethnicity.²²¹ Despite some serious debates among different scholars, those

²¹⁶ Feyissa D (2009) 651.

²¹⁷ UNICEF ‘Context analysis of Ethiopia: April 2015’ Available at <http://doc.iiep.unesco.org/wwwisis/repdoc/peic/peic16.pdf> (accessed 15 February 2017).

²¹⁸ Feyisaa D (2009) 651.

²¹⁹ Feyisaa D (2009) 651.

²²⁰ Belay N ‘The New Federal Experiment and Accommodation of Diversity in Ethiopia: Exploring a Novel Experience’, available at http://paperroom.ipsa.org/papers/paper_10643 (accessed on 24 September 2016).

²²¹ Watts R L *Comparing Federal Systems* (2008).

who are in favour pointed out: that federalism was the best (in other words, the only) solution to Ethiopia's ethnic diversity problem.²²² Customary law has always been instrumental in handling disputes and regulating the livelihood of the Ethiopians and it is continual being used in the same manner even today in the country.²²³

However, according to the rejectionist of ethnic federalism, ethnic based federalism has the propensity to divide the people ethnically and elevate normal competition for resources to the level of ethnic strife and inter- and intra-ethnic mistrust.²²⁴ Ethiopian ethnic federalism gives support to (or encourages) political parties to organise along ethnic lines and to maintain or enforce an ethnicised federal state in Ethiopia.²²⁵

4.7. Conclusion

The Constitution of Ethiopia says almost nothing regarding the place and status of local government. This is because the local government structure is to be regulated in the regional states' constitutions. However, in terms of Article 50(4) the Federal Constitution requires states to transfer adequate power to lower levels of government. Furthermore, in terms of Article 39(3) it also "grants each ethno-national group the right to a full measure of self-government, which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in State and Federal governments".

Regions in Ethiopia were established based on ethnic differences and diversity of the country. This provided regions also with the power to determine or establish their local government based on their ethnic identity. It should be noted that "although the regions enjoy considerable constitutional space to design specific devices, the major

²²² Barata D D (2012) 67.

²²³ Abbink J 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (1997) 41 *Journal of African Law*, 170.

²²⁴ Belay N 'The New Federal Experiment and Accommodation of Diversity in Ethiopia: Exploring a Novel Experience', available at http://paperroom.ipsa.org/papers/paper_10643. Accessed on 16 October 2016.

²²⁵ Habtu A 'Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects' 2003 *EAJ International Symposium* 5.

constitutional tool for minority protection at regional level is invariably the establishment of ethnic-based local governments”.²²⁶

This enabled Ethiopia to establish at local government system that is ethnic-based, to accommodate all ethnic minorities. However, Ethiopia is now experiencing ethnic tensions between members of different ethnic groups that are fighting over limited resources. Such ethnic tensions are due to the greediness of the dominant ethnic groups either at the regional or local government level that refuses to or are not willing to share resources with other ethnic groups. Ethnic tensions are also due to limited resources in the country which led to ethnic mobilisation.

After the establishments of the *woredas*, “they became responsible for preparing and implementing developmental plans and the distribution of resources without seeking authorisation from higher levels, through the *woreda* block grant transfers”.²²⁷ However, the grants which are given to the *woredas* are also limited and this makes it difficult for the *woredas* to provide communities with proper services. This gave rise to ethnic challenges and tensions amongst ethnic minorities.

Though there are challenges at the local government level in Ethiopia, South Africa can learn one or two things from Ethiopia as the establishment of regions and local government has some advantages:

- a) Ethiopia has managed to accommodate ethnic minorities by demarcating regional boundaries along ethnic lines and ethnic communities, and
- b) It has also managed to accommodate ethnic minorities by establishing ethnic local government.

Some of the disadvantages of the system that is followed by Ethiopia are that there is a constant conflict between ethnic communities over regional boundaries. The determination of boundaries within ethnic lines resulted in conflicts which gave rise to ethnic mobilisation, land dispute and contestation over limited resources. There is also

²²⁶ Van der Beken C (2015) 177.

²²⁷ Zimmermann-Steinhart P & Bekele Y (2012) 96.

livestock and property looting between ethnic communities as well as minority exclusion in employment, etc.

Cohen is of the view that in recognising ethnicity for what it is, Ethiopia is sitting on an ethnic time bomb and it must come up with a possible solution.²²⁸ However, according to Abbink, pessimists argue that it may already be too late for the re-drafting of the constitution in Ethiopia because “among the generation coming to maturity since 1991, new identities have already been formed and are being internalised” by local people.²²⁹

Ethiopia has now declared a state of emergency due to violent protests which led to the killing of hundreds of people. This is because ethnicity has been mobilized in the contest for resource, and ethnicity has been built into the system. Ethnic minority groups alleged repression and exclusivity from resources by the dominating ethnic groups.

This shows that the main problem in Ethiopia is power sharing and equitable distribution of resources between or among ethnic lines or groups. Some of the problems faced by Ethiopia includes political mobilisation by ethnic minorities and the exclusion of minorities in as far as employment is concerned.

To eradicate demarcation tensions and protests South Africa should follow Ethiopia's example by demarcating municipalities using ethnicity. The South African Constitution provides for the establishment of municipalities in the territory of the republic and also provides for the equitable distribution of the revenues raised nationally. This means that should South Africa follow the Ethiopian example, it will still be financially viable and still manage to provide municipal services between ethnic communities. Demarcating municipalities along ethnic lines will be the best system to eradicate demarcation tensions and protest in South Africa.

By using ethnicity as a factor to demarcate municipal boundaries in South Africa: the starting point will be by looking first at the advantages and disadvantages, as well as the challenges faced in Ethiopia by using ethnicity as a factor in demarcating internal boundaries. What follows this chapter is the conclusion and recommendation of the whole

²²⁸ Cohen J M (1995) 177.

²²⁹ Abbink J (2006) 392.

study. The conclusion will be based on the entire study and shall be followed by the recommendation of the study.



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CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The question raised in this study is: should ethnicity be used as a factor in demarcating municipalities in South Africa?

This question came pertinently to the fore in the cases of Malamulele and Vuwani in the Limpopo province. In this case ethnicity proved to be the main issue or factor in the Malamulele community when its community members raised ethnic concerns against the Thulamela Local Municipality.

Community members protested and demanded their own separate municipality away from the Venda-speaking communities in the Thulamela Local Municipality. Once there was a concession to the Malamulele community and they achieved a separate municipality, the Vuwani community members also fought against their incorporation in the new Malamulele municipality by raising ethnic concerns against the Municipal Demarcation Board stating that they will not receive municipal services in the new Malamulele municipality because they are Venda-speakers while the community of Malamulele in general is a Xitsonga-speaking community.

Even though these two communities raised ethnic concerns against each other, the Municipal Demarcation Board incorporated the community of Vuwani in the new Malamulele municipality while the community wanted to remain being part of the Makhado Local Municipality. This saw ethnicity becoming an issue which challenged the MB in the demarcation of Malamulele and Vuwani.

However, the Municipal Demarcation Board continued with the demarcation process by amalgamating these two communities into one municipality. As a result, the decision by the Municipal Demarcation Board to provide the Malamulele community with a new municipality and the refusal by both communities to form part of a municipality that is dominated by a different ethnic group clearly proved that ethnic differences is emerging at the local government level in South Africa.

Pursuant to that this decision proved to be a time-ticking ethnic bomb because it led to riots and protests that saw schools being burned. As such, it will be proper to conclude that ethnic differences between these two communities led to tensions around municipal demarcation.

However, the Municipal Demarcation Board denied that it provided the Malamulele community with its own municipality away from the Thulamela Local Municipality, although the MDB implicitly used the ethnicity of the two communities as a factor in demarcating municipal boundaries.

The use of ethnicity in demarcating municipal boundaries in South Africa is a process which is formally denied by the Municipal Demarcation Board. However, by looking at the case of Malamulele, initially the decision was taken not to give the community of Malamulele its own municipality because the MDB did not want to establish ethnic municipalities. Later the decision was reversed and the community was given its own municipality away from the Venda-speaking community. The new municipality included some parts of Makhado which is a Venda dominated area. This led to ethnic tensions by the community of Vuwani, fighting against its incorporation into the new Malamulele municipality.

As a result, the Municipal Demarcation Board's decision to amalgamate these two communities of Malamulele and Vuwani proved that ethnicity was considered and used as a factor. Though it was not acknowledged in writing that ethnicity was used as a factor, the decision itself proves that ethnicity was considered as a factor in providing the community of Malamulele with its own municipality.

It is best to acknowledge that the MDB has so far managed to carry out its constitutional mandate of demarcating municipalities in South Africa with considerable success. However, there has been a lot of contestation by community members against the Municipal Demarcation Board's demarcation process as well as the demarcation outcomes.

Due to apartheid experiences, there is fear that if ethnicity is considered as a factor it will divide the country and be a return to the old apartheid system of ethnic-based Bantustans.

However, by acknowledging it in the case of Vuwani and Malamulele proves that using ethnicity as a factor in determining municipal boundaries will limit service delivery protest by members of different ethnic groups against each other.

The question posed initially: should ethnicity be used as a factor in demarcating municipalities in South Africa? This was answered in the affirmative. The next question that one can ask is whether the Municipal Demarcation Act provides for the use of ethnicity in determining municipal boundaries or not. And if it does not, should it be included?

The Act is silent in section 25 on the use of ethnicity as a factor in demarcating municipal boundaries. However, it indirectly allows for it by making reference to traditional authorities.

The answer to the above question is yes: it does allow for the use of ethnicity indirectly. This is because section 25(f) indirectly allows for the use of ethnicity in determining municipal boundaries by taking into account traditional communities. This section provides explicitly that the MDB must, when determining a municipal boundary, take into account areas of traditional rural communities. As a result, by mentioning traditional communities as one of the factors of demarcation, language and culture automatically become relevant factors.

Language also becomes a factor because most traditional communities in multi-ethnic provinces are home to a certain ethnic group and are being led by different traditional leaders as observed in Malamulele and Vuwani. By considering the different traditional communities, this allows the MDB to use of language as a factor. This means that other factors which distinguish the areas of traditional community are language and culture.

Section 25(f) covers the use of ethnicity in demarcating boundaries and by considering traditional communities as a factor, linguistic differences will automatically become a factor in demarcating municipality. This is because one cannot speak of traditional areas without including the language spoken in that area. In as much as traditional communities or areas became a factor to be considered by the MDB, language should also be a factor.

Section 25(f) therefore provides for the indirect use of ethnicity as a factor in determining municipal boundaries in South Africa.

This study then finds that one of the main reasons why ethnicity was not considered directly in the municipal demarcation process was due to South African apartheid experiences. As a result, the explicit use of ethnicity in demarcating municipal boundaries was perceived as a return to the apartheid era. This therefore led to the silent using of ethnicity in demarcating municipal boundaries in South Africa.

The use of ethnicity as a factor in demarcating municipal boundaries in South Africa should be acknowledged for what it is – identifying communities. However, caution should be exercised that ethnicity does not become a criterion, as is the case in Ethiopia but merely a factor, among others to be considered. This is evident from the lesson and experiences learnt from Ethiopia.

Ethiopia has based its demarcation explicitly on ethnicity as the main criterion and this allowed for protection and visibility of ethnic minorities. This saw the recognition of ethnicity in determining regional boundaries in Ethiopia resulting in the accommodation of minorities. This is because regions as well as the local government boundaries were drawn mainly along ethnic lines from the pre-existing administrative divisions.

Since 1991, after the overthrow of the Derg dictatorship, the core measure of the new government's state reform in Ethiopia was the remapping of the country explicitly along ethno-regional lines. In Ethiopia, ethnicity goes further than regional boundaries depending on the level of ethnic diversity. And in most cases when a single ethnic group is found to be very tiny, two or more ethnic groups were brought together in one region.

Pursuant to that there are some definite advantages to the ethno-political dispensation in Ethiopia which has existed since 1991: minority groups have acquired visibility and can exercise a measure of self-government. They can now use their languages for educational purposes and educate members about their community function in the administrations and political institutions. All nations, nationalities and peoples are represented in the 2nd house of Parliament known as the House of Federations.

However, the use of ethnicity in Ethiopia has come at a cost. After ethnic or ethno-linguistic identity was accorded an organising role in the determination of boundaries and policies and new ethnic based local authorities were established, the new political dispensation was quickly used as a means to make claims to resources against other ethnic groups (especially land and government funding).²³⁰ This saw disputes over resources in Ethiopia becoming ethnicized.

As compared to South Africa, Ethiopia has nine regions, six with dominant languages; while, South Africa has nine provinces and out of them seven have a dominant language. However, the South African Constitution does not recognise the use of ethnicity in determining boundaries due to past apartheid experiences and the colonisation period when Africans were separated on the basis of ethnicity for the purpose of divide and rule.

Some of the lessons that Ethiopia teaches South Africa are that using ethnicity alone as a factor in determining internal boundaries will result in ethnic tensions between ethnic groups and fighting for municipal resources or services. This means that should South Africa opt to use ethnicity alone as a factor, municipalities together with the Municipal Demarcation Board are likely going to be confronted by violent strikes. It will also result in a situation whereby members of the community use ethnicity to demand their own municipality away from other ethnic groups as observed in Malamulele. The use of ethnicity alone as a factor will lead to repression and ethnic mobilisation among communities.

In comparing the system that is being used by Ethiopia and South Africa when determining boundaries, it would be best to look first at the historical background of each country. The apartheid experiences in South Africa led to the determination of boundaries based on the factors and provisions contained in the Constitution and the Municipal Demarcation Act which lead only to the indirect use of ethnicity in demarcating municipal boundaries. This means that ethnicity is being indirectly allowed and practiced.

There are also advantages of using ethnicity as a factor in determining municipal boundaries. The recognition of ethnicity must not be viewed as a step closer to dividing

²³⁰ Abbink J (2006) 395-396.

the country but it should be seen as a response to the problems and tensions faced by the Municipal Demarcation Board when carrying out its demarcation functions due to the fact that South Africa has different ethnic groups that are situated according to their cultures and languages in two provinces, i.e. Limpopo and Mpumalanga. By recognising and using ethnicity in the form of cultural communities as a factor in demarcating municipalities, these will assist the MDB as communities will be satisfied and people will reside according to their ethnic groups. This is because people of the same language and cultural background tend to understand each other more and live in peace than in a mixed ethnic diversity which eventually results in ethnic conflict.

It should be noted further that the only disadvantage that was observed in this study is, that by using ethnicity in determining municipal boundaries this could result in ethnic conflict only if other communities are not provided with proper municipal services by the dominating ethnic group as it was alleged by Malamulele community members.

Therefore, the fact that people identify themselves differently in cultural-historical terms does not logically imply that they act or prefer to act on the basis of ethnicity in all contexts and political conditions. However, demarcating local government boundaries using ethnicity as a factor will sometimes depend of the historical background of the country. This study finds that ethnicity is knocking on South Africa's door and it is bringing ethnic tensions especially at the local government level. If we are not careful it will become a permanent resident which will trouble both the government and the Municipal Demarcation Board.

The positive side of using ethnicity as a factor is that municipalities will be put in the spotlight in determining whether these municipalities are capable of providing service delivery or not to all communities within their areas. This study finds that ethnicity will be used as a yardstick for assessing the ability of the municipality in taking care of the communities and it will reduce the pointing of fingers by other ethnic groups as they will have their own municipal offices within their boundaries as seen in Malamulele.

However, there is a fear that if ethnicity is recognised in determining municipal boundaries in South Africa such recognition will result in ethnic conflicts by members of the community because no boundary is totally inclusive of one ethnic group. The question of

what will happen to internal minorities is pre-occupying the minds of many people. But by looking at how the communities in Limpopo Province are situated, language speaks volume in differentiating between the three ethnic groups which are situated in that province. There is always a particular ethnic group which is dominating in a particular place, such as in Venda only Venda-speaking people are the majority, in Giyani, Tsonga-speaking people and Polokwane with Sepedi-speaking people.

Therefore the recognition of ethnicity will not prejudice the minorities as they will be incorporated with the boundaries of that particular ethnic group that they find themselves in, for example, if a certain minority group happen to find itself within the territory of another dominating ethnic group then such minority will form part of the majority and be served by the same municipality which is serving the majority. This is to say for example, due to work opportunities in Polokwane, there is always a large number of Venda- and Tsonga- speaking people leaving their communities to come to Polokwane. Some end up building or buying houses there and as a result they end up forming part of the Polokwane Local Municipality and even today there is no ethnic conflict which means that people are satisfied with the boundaries in which they find themselves in.

This means that in using ethnicity, there should not be pure ethnic municipalities in South Africa. In some instances it could be a factor, in others not. Importantly, it should not be an organizing principle such as in Ethiopia, but merely a consideration in the name of language and culture

Based on the above experiences, South Africa should not follow the system followed in Ethiopia by making ethnicity the only criterion in determining municipal boundaries because that would introduce apartheid planning and will cause ethnic conflicts. However, the use of ethnicity in the form of language and culture has a rightful place as a factor, among other factors in the demarcation of boundaries.

This study also recommends that the Municipal Demarcation Act should be amended to give effect to the use of ethnicity in demarcating municipal boundaries in South Africa. As such, the factors to be taken into account are communities organised around language and culture. This means that section 25(f) of the Act should be amended to include factors such as culture, tradition and language in areas of traditional communities.

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