

Federalism in Ethiopia

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Introduction

Ethiopia is characterized by great linguistic, cultural and religious diversity. Ethiopia is home for more than 80 ethnic communities with different languages. Except in a few urban areas such as the capital city, most of Ethiopia's ethnic communities predominantly live in their respective distinct geographic areas of habitation. No one ethnic community in Ethiopia is a majority comprising a population of more than 50% of the total population of Ethiopia. But there are relatively significant majority ethnic communities such as the Oromo and Amhara ethnic communities. Most of Ethiopia's ethnic communities are divided along mainly two religious cleavage lines: Islam and Orthodox Christianity. By crosscutting Ethiopia's ethnic cleavage lines, religion plays a moderating role in limiting the intensity of the ethnic factor in politics, giving rise to overarching loyalty. (See tables 1-4 below).

The 1995 constitution of Ethiopia establishes a federal system that is organized on the basis of the right of Ethiopia's ethnic communities to self-determination.

The recognition of the right of self-determination has become imperative to establish peace and democracy in the country and has demanded the reconstitution of the Ethiopian state on the basis of a federal political system that guarantees the maintenance and promotion distinctive ethno-cultural identities while building a common polity that allows them to pursue their common interests. In as much as ethnic federalism institutionalizes the self-rule and shared-rule of Ethiopia's territorial ethnic communities by guaranteeing their representation and participation in the governance process, it is a viable constitutive means to democracy. The federative arrangement in Ethiopia is not only aimed at enabling ethnic communities to maintain and promote their distinctive collective identities and their particular forms of life. It is also directed at building one political and economic community for the promotion of their common interests collectively, in a mutually supportive manner.¹

In this paper, I attempt to present the factors that have necessitated the adoption of federal system in Ethiopia and to discuss the salient features the latter.

¹ See preamble paragraphs, the *Constitution of the Federal Democratic Republic of Ethiopia* Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1st year No.1, Addis Ababa, 21st August 1995.

1. Historical Background

Following the imperial intrusion in the horn of Africa in the closing years of the 19th century, Emperor Minilik of the Amhara, the second largest ethnic group, had expanded the kingdom of Shawa, which was one of the loosely associated kingdoms of the Abyssinian Empire, from the present day North Central Ethiopia to the South. As a result of the successful conquests and expansions, the modern Ethiopian state was created and emerged as a unitary and centralized state.² And its shape was delineated by the boundary agreements made after the battle of Adwa in 1896 with the adjoining colonial powers.³

One major effect of the process of the creation of the modern Ethiopian state process was the dispossession of the land of the peoples of the conquered regions and its subsequent allotment among the new settlers of administrators, judges, soldiers and priests from the centre. This led to conflicts and antagonism between the tenant and the soldier-settlers in most of the South of the Empire. The other serious consequences of the empire building process were the process of imposition of the culture, language and religion of the ruling elite and the subsequent suppression of all others. The process of national integration (nation-building process) meant forced assimilation to the culture of the ruling elite.⁴

During the reign of Emperor Haile Sellassie (1930-1974), the process of imposition of the language, culture and religion of the ruling Amhara ethnic group was accelerated through the monolingual bureaucratic structure of state, educational system and mass media.⁵ Emperor Haile Sellassie also followed the precedent set by Minilik with regard to the land

² See Richard Pankhurst, *The Ethiopians* (1998) 174-179; Berhanu Zewde, *A history of Modern Ethiopia: 1855-1974* (1991) 60-61; and Andargachew Tiruneh, *the Ethiopian Revolution 1974-1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (1993) 5.

³ Ibid. The Peace Treaty of Addis Ababa, signed between Ethiopia and Italy on 26 October 1896, the 1906 Tripartite Treaty concluded between Britain, France and Italy, and the fact of Ethiopia's admission into the League of Nations in 1923 testified its sovereignty and territorial integrity. See <<http://www.ethiopians.com/abay/engin.html#1902>>

⁴ The culture of the empire builders, wrote Markakis, had a religious foundation that blended together faith, state and nation, and it was no exaggeration to say that Christianity was "the most profound expression of the national existence of the Ethiopians". John Markakis, *Ethiopia: Anatomy of A Traditional Polity* (1974) 30.

⁵The promotion of Amharic as a national language of Ethiopia was accompanied by the proscription of all other indigenous languages as a medium of education and press.

tenure system and the mechanism of appointing regional and local rulers from the centre to the provinces had continued.

Emperor Haile Selassie was deposed in September 1974 by a military coup and the monarchy was formally abolished in 1975. A military regime referred to, in subsequent years, as the Dergue (1974-1991) was established and declared itself to be a socialist.

During the reign of the military dictatorship, Ethiopia experienced the worst period in its history. Its economy was shattered, and it was also hit by famine in 1984/85, worse than the one in 1973/74. The military regime had aggressively repressed political dissent and damaged the social cohesion of the country by its endless military campaigns against national liberation movements. According to Paul Henze, 'The legal unaccountability of officials that was pioneered by Haile Sellassie took even more authoritarian direction under Mengestu, this helped fuel regional rebellion and an increased ethnic consciousness.'⁶

Neither military might nor socialist ideology was able to sustain the military regime in power. Just like its predecessor, the military regime (1974-1991) had failed to address the questions of nationalities (ethnic groups) for self-determination. It was brought down in May 1991 as a result of the culmination of the struggles of national liberation movements, particularly, Ethiopian Peoples' Revolutionary Democratic Forces (EPRDF), a coalition comprising Tigray Peoples Liberation Front (TPLF), the Ethiopian Peoples' Democratic Movement (EPDM), Oromo People's Democratic Organization (OPDO), and Ethiopian Democratic Officers Revolutionary Movement (EDORM). With the demise of the dictatorship, Eritrea got its de facto independence while the whole institutional pillars of the Ethiopian State had collapsed incurring tremendous damage to human and economic resources.

⁶ Paul Henze Brietzke, 'Ethiopia's Leap in the Dark: Federalism and Self-determination in the New Constitution' (1995) 39 *Journal of African Law* 20.

To be sure, the political history of the modern Ethiopian state shows: 1) the unsuitability of a centralized unitary government for harmonizing the interests of heterogeneous ethnic communities; 2) the failure of a project of nation-building process that was based upon the imposition of state-nationalism and the concomitant suppression of the demands of ethnic communities for equality, power and power-sharing; 3) the contribution of authoritarian political rule in aggravating problems of ethnic diversity; 4) the imperativeness of the recognition and accommodation of ethnic diversity in the process of governance for the sake of ensuring peace, stability, and inter-ethnic harmony; and 5) the need for the democratic reconstitution of state and state power.

2. The Road to a New Constitution

The demise of the military dictatorship that had ruled the country for more than seventeen years in May 1991 broke new ground for reorganizing state power in Ethiopia. The Transitional Period Charter, which was drafted and adopted by a conference involving representatives of different liberation movements, ethnic groups and prominent individuals, expressly declared that "freedom, equal rights and self-determination of all peoples shall be the governing principle of political, economic and social life".⁷ Consequently, it established a transitional period government that was composed of a Council of Representatives and Council of Ministers.⁸ The Council of Representatives was made up of the representatives of national (ethnic) liberation movements, other political organization and prominent individuals.⁹ It exercised legislative and supervisory functions.¹⁰ The Council of Ministers, on the other hand, was constituted by a Prime Minister who was appointed by the President and approved by the Council of Representatives, and other Ministers, nominated by the Prime Minister and appointed by the Council of Representatives.¹¹ The requirements for selecting the members of the

⁷The Transitional Period Charter of Ethiopia, Charter No.1 of 1991, Negarit Gazette, 50th Year, Preamble, para.2.

⁸Ibid Article 6.

⁹Ibid Article 7. The members of the Council of Representatives were not elected; they were representatives of national liberation movements, ethnic groups and others.

¹⁰ Ibid Article 9.

¹¹ Ibid Article 9 (a).

Council of Ministers were not only based upon the criteria of technical competence and compliance to the Charter but also on broad national (ethnic) representation.¹²

In addition to reorganizing the central government, the Charter took two important measures. One, it provided for the promulgation of a law which would establish local and regional councils for local administrative purposes defined on the basis of nationality.¹³ Two, it laid down that the Council of Representatives would constitute the Constitutional Commission to draw up a draft constitution.¹⁴ Accordingly, the “National/ Regional Self-Governments Establishment Proclamation No.7/ 1992 was promulgated “with a view to giving effect to the right of nations, nationalities and peoples to self-determination.”¹⁵

This Proclamation, first, established two parallel systems of government; namely, the central transitional government and the national/regional self-governments.¹⁶ Secondly, it divided the legislative, executive and judicial powers between the two. While the central government was vested with powers in respect of “such matters as defense, foreign affairs, economic policy, conferring citizenship, declaration of state of emergency, deployment of army where situations going beyond the capacity of self-governments arise, printing currency, establishing and administering major development establishments, building and administering major communication networks and the like, which are specifically reserved to the central government because of their nature, the self-governments were given powers on all other matters within their respective geographic areas.¹⁷ Thirdly, the Proclamation empowered the self-governments to issue constitutions within the areas of their geographic jurisdiction and in compliance with the laws of the central government.¹⁸ Fourthly, the Proclamation made a link between the central government and the self-

¹² Ibid Article 9 (c).

¹³ Ibid Article 13.

¹⁴ Ibid Article 10.

¹⁵ A Proclamation to establish National/ Regional Self-governments, Proclamation No.7 of 1992, *Negarit Gazeta*, 51st Year, Preamble, para. 3.

¹⁶ Ibid Articles 2 and 9.

¹⁷ Ibid Article 9.

¹⁸ Ibid Article 15(1) a.

governments by providing for: a) the supremacy of the constitution,¹⁹ b) the accountability of the self-governments not only to the peoples that elected them but also to the central government,²⁰ c) the allocation of budget by the central government,²¹ and d) the subordination of the self-governments to the central government.²²

The effects of the Charter and Proclamation No.7/1992 were significant for the devolution of state power. Non-centralization, shared power and self-governance replaced the hitherto existing highly centralized unitary state power. The right of self-determination not only was recognized but also was put into operation in such a way that the people could constitute self-governments of their own within their respective geographic areas. The self-governments had legislative, executive and judicial powers in all matters other than those expressly given to the central government. In spite of the wide range of powers still enjoyed by the central government, the self-governments had supreme authority over those matters falling under their competence. Nevertheless, it could not be said that the law establishing the central and self-governments had set up a federal political system. Examined against the salient features of federalism, they did not only lack constitutional legitimacy but also the self-governments were made subordinate to the central government.²³

The Charter served as an interim constitutional framework that provided not only for basic governmental structures that opened adequate political space for Ethiopia's ethnic communities to share political power and to exercise self-rule but also for the protection of individual and group human rights as well as the rule of law. Hence, it helped to establish peace, political stability and a democratic context that would enable the full participation of the people in the process of constitution making.

¹⁹ Ibid.

²⁰ Ibid Article 14.

²¹ Ibid Article 53.

²² Ibid Article 3.

²³ Ibid.

The Transitional Government of Ethiopia created the Constitutional Commission in 18 August 1992. Pursuant to Article 7 of the Constitutional Commission Establishment Proclamation No. 24/1992, the Commission was organized. Accordingly, it was composed of seven members from the Council of representatives, seven members from various political organizations, 3 members from trade unions, 3 members from the Ethiopian Chamber of Commerce, 2 members from the Ethiopian Lawyers Association, 2 members from the Ethiopian Teachers Association, 2 members from the Ethiopian Health Professionals' Association, and 3 members Women's representatives. As is shown in the table below, the members of the Commission fairly represented contending political parties, civil society and different ethnic groups in Ethiopia. The Commission comprised both the supporters of the EPRDF and the opposition. (See table 2)

The Proclamation authorized the Commission:

- 1) to draft, in conformity with the spirit of the Charter, a constitution;
- 2) to prepare and conduct educational discussions, seminars and symposiums on constitutional principles;
- 3) to organize and hold public discussion on the draft constitution;
- 4) to submit the draft constitution to Council of Representative;
- 5) to publicize and distribute to the public the draft constitution after approval by the Council of Representatives;
- 6) to receive the comments of the National/Regional and Wereda Councils on the draft constitution;
- 7) to give explanations on the draft constitution and to respond to the inquires of the public;
- 8) to compile the comments of the National/Regional and Wereda Councils as well as the comments of other sectors of the public on the draft constitution;
- 9) to incorporate public comments in the final draft constitution and submit the same to the Council of Representatives;

- 10)to submit the final draft constitution for adoption to the Constituent Assembly to be elected pursuant to the final draft constitution;
- 11)to submit periodically to the Council of Representatives reports on its activities.

In other words, the Commission was specifically called upon to conduct civic education and popular consultation in connection with the constitution-making process, to compile a draft of the constitution which would take into account the consultations and comments of National/Regional Councils, political parties, civic organizations, individuals and then to complete a draft constitution.

The work of the Commission involved mainly two interlinked phases: civic education phase and public consultation phase. These phases were regarded as important vehicles to ensure the participation of the public in the constitution-making process and to provide the public with a sense of ownership over the future constitution. During the civic education phase, the Commission disseminated information on the role of a constitution in building democratic system and the basic concepts of constitution and constitutional law, and the constitutional process. It used the state media to educate the public and stimulate discussions on these issues. It was during this phase that the Commission determined as to what questions were the most important for the public at large. During the consultation phase, the Commission published and presented to the public a series of key questions and issues regarding the constitution and the public was consulted for their response on these questions. The Commission organized public assemblies in various regions of the country to elicit the views of the public, and receive and compile their responses. After taking into account the consultations and comments, the Commission compiled and submitted a draft constitution for deliberation and adoption to the Council of Representatives on April 8, 1994.

In May 1994, the National Electoral Board conducted the election of the members of the Constituent Assembly and 543 delegates were elected on the basis of free, direct and equal universal adult suffrage.

Pursuant to article 11 of the Charter, upon adoption of the draft constitution by the Council of Representatives, the Commission presented the draft constitution to the people for discussion and consultation. It then submitted the final draft of the constitution, which took the discussions and consultations into account, to the Constituent Assembly for deliberation and ratification. The Assembly deliberated on the final draft constitution as of October 28, 1994 and ratified it on December 8, 1994.

Although some observers remarked that the opposition forces had little influence in the process of constitution making in Ethiopia, I strongly dissent from their point of views for the following reasons.

1. The Charter's guarantees of human rights that would govern the transitional period and the devolution of state power along ethno-territorial lines provided adequate political space for all parties to participate and debate constitutional issues.
2. Although the views and positions of the majority of the members of the Commission reflected the position of EPRDF, the views and positions of the minority on all controversial constitutional issues were presented to the public and the Regional/National Councils for debate and consultation.
3. The Commission had conducted a carefully planned civic education and popular consultation. The process of civic education and popular consultation took almost two years, which should be regarded as adequate for effective public education and consultation. Comparisons could be made with East Timor where the time allocated for such process was only one month.

4. The Constituent Assembly was organized not only elected on the basis of a free and fair electoral process but also reflected broad democratic representation of the various peoples of Ethiopia.
5. The debates in the Assembly dealt with the positions and views of both the majority and the minority positions and views on hotly contentious constitutional issues. The draft constitution was ratified by more than a two-third majority of the Assembly.

Therefore, it is my argument that the constitution-making process in Ethiopia reflected a robust process of public engagement and democratic representation.

After a four-year transitional period, Ethiopia adopted a federal constitution and organized state power accordingly.²⁴

²⁴The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1st year No.1, Addis Ababa, 21st August 1995.

3. The Right to self-determination: A Typical Feature of the Ethiopian Federal System

Ethiopia's federal political system is underlined by the right of Ethiopia's ethno-territorial communities (or nations, nationalities and peoples according to the Ethiopian constitution) to self-determination. According to Article 39(1) of the Ethiopian constitution, every ethno-territorial community has 'an unconditional right to self-determination, including the right to secession,' and this right cannot be suspended even during national emergencies.²⁵ Furthermore, as is expressly declared by paragraph 1 and 2 of the constitution, it is by exercising their respective right to self-determination that Ethiopia's ethno-territorial communities have entered into a federal compact with the objectives of ensuring ethno-territorial self-rule and inter-ethnic shared-rule of these communities.

The Constitution of Ethiopia singles out ethno-linguistic communities as its authors and beneficiaries. The Constitution opens up with the term "We, the Nations, Nationalities and Peoples of Ethiopia ... ratified the Constitution of the Federal Republic of Ethiopia." Accordingly, Ethiopian citizens are first categorized in their different ethno-linguistic groups, but not in their entirety as citizens. To be sure, in the words Professor Fasil Nahum, an Ethiopian constitutional law scholar, "it is not as simple as all ethnic groups simply coming together to form the federation. Some minority ethnic groups (i.e., those significantly with less population) have joined with much larger ethnic groups within a state, or have joined together to form a state. And these states formed on the basis of ethnicity have come together to form the federation. These states have retained the characteristics of their ethnic groups for governmental and other on-going constitutional

²⁵ Article 93(4) (c), the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1st year No.1, Addis Ababa, 21st August 1995.

purposes. The ethnicity of states is not just of historical importance, it is of actual significance in the everyday life of the people and of the federation as a whole."²⁶

Article 8 of the federal constitution of Ethiopia provides:

1. All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.
2. This Constitution is an expression of their sovereignty.
3. Their sovereignty shall be expressed through their representatives elected in accordance with this constitution and through their direct democratic participation.

The constitutional declaration of the sovereign character of Ethiopia's various ethno-territorial communities arises from the recognition of the right of each ethno-territorial community to self-determination, including the right to secession.

Article 39 of the constitution states:

1. Every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession.
2. Every nation, nationality and people in Ethiopia has the right to speak, to write and to develop its own language; to express and promote its culture; and preserve its history.
3. Every nation, nationality and people in Ethiopia has 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 regional and national governments.
4. The right of nation, nationality and people to secession shall come into effect:
 - a) When a demand for secession is approved by a two-thirds majority of its the legislative council;

²⁶ Nahum, Fasil, 1997. *Constitution for A Nation of Nations: the Ethiopian Prospect*. Asmara: the Red Sea Press, Inc., at 52.

- b) When the federal government organizes a referendum for the concerned people within three years from the time it has received the concerned council's decision for secession;
- c) When the demand for secession is supported by a majority vote in the referendum;
- d) When the federal government transfers its power to the council of the nation, nationality or people who has voted to secede; and,
- e) When the division of assets is made in a manner to be prescribed by law.

Before discussing what the concept of self-determination entails, it is necessary to make a couple of points about the bearers of the right to self-determination in the context of Ethiopian constitution. The first point relates to the definition of the term 'nation, nationality and people'. It is defined as 'a community that has a large measure of common culture or analogous customs, a mutually understandable language, a sense of collective or related identity, a common psychological make-up and a generally contiguous territory.'²⁷ This definition is an aggregation of objective and subjective components. The objective components are common culture or related customs, common language, and a contiguous territory and the subjective components are a sense of collective identity and common psychological make-up. Accordingly, a community that fulfils both components is a 'nation, nationality and people' that is the bearer of the right of self-determination. Since it represents a sense of collective identity that emanates from and based upon shared objective attributes such as language, culture, customs, common habitat, such a community could also be regarded as an ethnic community. The second point is that although the constitution elsewhere²⁸ uses the concept of minority nationalities or peoples (minority ethnic communities) for the purpose of special representation in the federal legislature, the right to self-determination is vested in every ethnic community,

²⁷ This is my translation of the Amharic version of Article 39(5) because I have found that the English version of this provision does not reflect the Amharic version, which has the final legal authority, as it is. For reference the English version reads as follows: "Nation, nationality and people for the purpose of this constitution, is a group of people who have or share a large measure common culture, or similar customs, mutual intelligibility of language, belief in a common or related identities, and who predominantly inhabit an identifiable contiguous territory."

²⁸ Article 54(2) & (3) of the *Federal Constitution of Ethiopia*.

regardless of whether one is a minority or a majority community. After all, Article 39 does not make any distinction between ethnic communities on the basis of their respective numerical size or positions.

The concept of the right of self-determination under Ethiopian constitution has three important and interrelated aspects. These are 1) the aspect of the preservation and promotion of linguistic and cultural diversity, 2) the aspect of the right of every ethnic community to political autonomy and participation in the federal decision making process, and 3) the aspect of the right to secession.

The linguistic and cultural diversity aspect of the right of self-determination comprises the right of every ethnic community to use and develop its language, to express and promote its culture, and to preserve its history. In Ethiopia, as in most other African countries, cultural and linguistic groups that have been suppressed by the homogenizing impulses of state-nationalism have deployed ethnic self-definition, which is an ordinary aspect of selfhood and a basic social relation, in the struggle for survival. As has been pointed out in the preceding sections, some of the major causes for ethnic conflicts in Ethiopia were the linguistic and cultural repression that several ethnic communities had suffered under the hitherto existing ethno-centrist governments. The policies of the latter to homogenize and assimilate politically subordinated communities into the milieu of the dominant ethno-cultural community had obviously failed to obliterate ethno-cultural differences, rather generated internal conflicts. These experiences have made the recognition and promotion of ethnic diversity imperative for establishing sustainable peace and social harmony, and for building a political, social and economic community constituted by the free will of the ethno-cultural communities of the country.

The autonomy and participation aspect of the right of self-determination establishes the entitlement of every ethnic community to self-government and to proportional

representation in regional and federal states. This aspect of self-determination ensures the devolution of state power to ethno-territorial communities and thereby makes it difficult for all power to be concentrated and centralized in one centre. In Ethiopia, as in several other African countries such as Nigeria, Cameroon, Sudan and Kenya, whose populations are divided ethnically into geographic territories, the devolution of power along ethnic lines becomes imperative not only to reduce ethnic competitions and conflicts for state power but also to provide the concerned communities with the opportunity to participate and advance their interests in the governance process. The participation aspect of self-determination is also aimed at developing common identity and unity among ethnic communities. As evidenced in history, the strategy of attempting to develop common identity premised on the denial and suppression of ethnic diversity among the heterogeneous populations of Ethiopia, as in much of other African countries, has failed, spawning centrifugal ethnic-based political forces. Unless giving autonomy and sufficient cultural space to the politicized ethnicity reverses the policy of suppression of ethnic diversity, it is impossible to bring about sustainable peace, democracy and development, nor is possible to create unity among the various ethnic communities. The entrenchment of autonomy and participation aspect of the right of self-determination is, therefore, a requirement of peace, democracy and development in accordance with which the participation of territorially based ethnic communities in the political process from the level of their respective habitats to the level of regional and federal state is ensured.

The implementation of the right of self-determination is manifested, at the grass root level, by the establishment of self-governments of ethnic communities in their respective habitats, and, at higher level, by their proportional representation in the State and Federal governments.²⁹ Accordingly, the Federal Democratic Republic of Ethiopia comprises nine States, which are organized on the basis of the geographic habitation, language, identity and consent of ethno-territorial communities.³⁰ These States are: the Tigray State, the Afar

²⁹ The English version of Article 39 (3) speaks of 'equitable representation' whereas the Amharic version reads as 'proportional representation'. I have used the Amharic version in my citation of Article 39 above.

³⁰ Article 46(1) & (2) of the Federal Constitution of Ethiopia.

State, the Amhara State, the Oromo State, the Somali State, the Benshangul / Gumuz State, the State of the Southern Nations, Nationalities and Peoples, the Gambela Peoples State, and the Harari people State. Simultaneously, the Constitution recognises the right of each ethnic community within the above-mentioned States to establish, at any time, its own States.³¹ Thus, while at the grass-root level every ethnic community is entitled to establish its own self-government, each has to be proportionally represented in all organs of the State and Federal governments. For instance, the constitution realises the right of each ethnic community to proportional representation in the Federal State by providing that each ethnic community is represented in the House of the Federation by at least one member for each one million population; and by providing that there should be at least 20 seats reserved for minority ethnic communities in the House of Peoples' Representatives, which consists of a maximum of 550 seats for representatives elected on basis of the system of plurality of votes.³² The proportional representation of the ethnic communities of Ethiopia in the federal state is not only to be limited to the two houses of the federal parliament, but it should also be reflected in the other branches of the government. The same holds true in the case of the constituent States.³³

The aspect of secession is the most complex and highly controversial part of the right of self-determination under the Ethiopian constitution. Some argue vigorously against it on the ground that such a right is the exclusive right of nations under colonial domination and that its recognition leads the country to fragmentation.³⁴ It has also been objected to on the ground that "the right of secession will stimulate a surge of nationalism, and it is inconsistent with competitive politics under federal arrangements: rather than practice the political art of compromise, some or most opposition parties will simply threaten to

³¹ Ibid Article 46(2).

³² Ibid Article (1) & (3).

³³ However, to what extent that the constitutional provision guarantees the proportional representation of ethnic communities in all branches of the constituent States and the Federal State realized depends upon whether it is adequately ensured in the concerned electoral laws as well as the specific practices regarding the representation of ethnic communities in governmental branches other than their parliaments.

³⁴ Abera Jembere, 'The Making of Constitution in Ethiopia' in (1994) 2 *New Trends in Ethiopian Studies* 66 1994, 74.

leave the state”.³⁵ Others hold that the constitutional inscription and recognition of the right to secession is not only a guarantee for respecting the right of nations, nationalities and peoples to self-determination but it is also an affirmation of the consensual basis of the federal union. Furthermore, the latter argue that the acknowledgment of the right to self-determination, including secession, might help in diffusing ethnic discontents, that its ready availability of will so color Ethiopian politics as to make its exercise less likely and less violent.”³⁶

Ethiopia’s political history has proved that the unity of the peoples of Ethiopia could be achieved only through their mutual consent to live together in order to pursue their common interests. A unity that is based on the denial of the right of self-determination could not be maintained for long by coercion, and instead of bringing about real and viable unity, it would become a breeding ground for ethnic discontent and secession, resulting in civil wars. Hence, Ethiopia’s exclusion of any resort to violence in order to secure the unity of its peoples and its attempts to bring about consensual unity by devolving political power to its constituent people are not just bold but courageous attempts to tame the centrifugal forces engulfing the country. However, if and when a people might demand secession, the Ethiopian constitution attempts to avoid its potential for violence by providing a peaceful and democratic path for its realization.

The significance of the right to secede should be examined and weighed up in relation to the purpose and object of Ethiopia’s federal dispensation. First of all, Ethiopia’s nations, nationalities and peoples have entered into a federal compact by the “free and full exercise of their respective right of self-determination” in order to build “one political community

³⁵ Paul H. Brietzke, "Ethiopia's Leap in the Dark: Federalism and Self-determination in the New Constitution", (1995) 39 *Journal of African Law* 32.

³⁶ Paul H. Brietzke, "Self-determination or Jurisprudential Confusion exacerbating political conflicts", *Wis. International Law Journal*, 1995.

based on their respective free will and consent, and the rule of law.”³⁷ Such a federal political community is set up with the objectives of establishing a lasting peace and democracy in the country and enhancing economic and social development for its peoples.³⁸ In their federal compact, they have made it clear that the fulfillment of the objectives requires guaranteeing respect not only for individual and group fundamental rights but also for the promotion of cultures and religions without any discrimination.³⁹ Thus, since the principal goal of federalism is achieving and promoting unity in diversity, the more the objectives of the federal compact are fulfilled, the lesser will be the likelihood for resorting to secession. Secondly, the Ethiopian constitution endeavors to unite distinct ethno-territorial communities within an overarching political system by distributing power among their common and respective governments in a manner designed to protect and promote the existence and authority of both. Hence, it in no way encourages any secession. Thirdly, it recognizes not only the fact that every ethnic community in Ethiopia has its own distinct culture and territory, but also that Ethiopia is a country wherein its ethnic communities have long lived together building relationships among one another through various levels and walks of life and thereby creating collective interest and outlook.⁴⁰ Besides, it declares the conviction of the various ethnic communities to build one economic community in order to maintain and promote their rights, freedoms and interests in a mutually supportive manner.⁴¹ Therefore, it gives more leverage to unity in diversity than secession.

³⁷ Paragraphs 1&2 of the Preamble of the Federal Constitution of Ethiopia. (This is my translation of the Amharic version). The English version, as it is, reads: “We, Nations, Nationalities and Peoples of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development:”

³⁸ Ibid.

³⁹ Ibid paragraph 3.

⁴⁰ Ibid paragraph 4.

⁴¹ Ibid paragraph 6.

4. Pros and Cons of Ethnic Federalism

In Ethiopia's political discourse, there are two opposite lines of arguments on the necessity of ethnic federalism. One line of argument opposes ethnic federalism on the ground that it may give rise to inter-ethnic conflict and dismemberment of the country. For instance, Walle Engedayehu holds the view that ethnic based politics in Ethiopia fosters conflicts and rivalry among many cultural communities and therefore thwarts any prospect for the establishment of lasting peace and political stability.⁴² His argument is based on the assumption that Ethiopia has been homogenized and has to a large extent become a unified entity, and hence ethnic federalism not only stands in the way of the advancement of common interests of the populace but would also be a threat to the unity of its people and to the maintenance of its territorial integrity.⁴³ He also argues that the adoption of ethnic federalism in Ethiopia might disrupt 'the natural course of peaceful integration among members of different population groups, which could come over time with improved education and communication systems. Dividing them on linguistic, religious, or regional differences will not only lead to social disharmony but will also arouse the desire by groups to press for secession in the future.'⁴⁴ Similarly, Daniel Kendie contends that ethnic federalism would inhibit the possibility of establishing a flourishing national economy by curtailing the mobility of labor and capital.⁴⁵

In contrast, Endreas Eshete argues that ethnic federalism is the optimal institutional means, i.e., effective, possible and ethnically permissible means of transition to democratic rule in Ethiopia since it allows not only free expression by ethno-linguistic communities of their collective identities and their peculiar forms of living but also ensures their

⁴² Walle Engedayehu, 'Ethiopia: Democracy and the Politics of Ethnicity' (1993) *2 Africa Today* 30.

⁴³ In his article, although Engedayehu seems to have acknowledged the existence of cultural, ethnic, linguistic and religious diversity in Ethiopia, he emphasizes that Ethiopia's diverse ethnic communities 'have lived over the centuries migrating from one area to another, intermarrying, intermingling in all levels of activities and sharing a sense of cultural and political unity.' Accordingly, he argues 'while cultural differences had always existed among them, the sense of unity and nationhood still remained strong.' Thus, the establishment of governmental units along ethnic lines is 'an unnecessary intrusion into their personal lives.' Ibid 34-37.

⁴⁴ Ibid 38-39.

⁴⁵ Daniel Kendie, 'Which way the Horn of Africa: Disintegration or Confederation' (Paper presented at the 6th MSU Conference on North-East Africa, April 23-25, 1992) 165.

representation and participation of in the process of governance, hence, it is the best workable constitutive means to democracy in Ethiopia.⁴⁶ Mengestab also contends that since the military, like the Haile Selassie regime, had perpetuated Amhara dominance over Ethiopian state and its peoples, setting ethnic groups against one another, the policy of ethnic federalism is necessary to diffuse ethnic conflicts.⁴⁷ I also share similar viewpoints with Endreas and Mengestab simply because as the political history of modern Ethiopian state testifies the centralized, authoritarian and unitary approach to government in Ethiopia had generated centrifugal ethnic movements that have ultimately brought about the breakdown of the state, and failed to create and sustain the unity of the various ethnic communities of the country. Consequently, the key lesson that can be drawn from our history is that if unity among the diverse ethnic communities of Ethiopia is to be achieved, it has to be based upon their will and commitment to live together while maintaining and promoting their diversity. In other words, the attempts to reconstitute the Ethiopian polity must be predicated on the recognition of cultural diversity and the will of its various cultural communities to live in political unity.

5. Structural Aspects of Ethiopia's federal system

The Ethiopian constitution establishes a federal and democratic state structure comprising two distinct entities, the federal state and the regional (member) states.⁴⁸ It defines and distributes powers and functions of the two entities.⁴⁹ It requires both entities to respect the powers of one another.⁵⁰ Each entity exercises legislative, executive and

⁴⁶ Andreas Eshete, 'Making ethnic Federalism' (Paper presented at the Constitution-Making Conference, South Africa, May 1997) 17-19.

⁴⁷ Kidane Mengestab, 'Averting Ethiopia's Disintegration' (1992) *Trans Africa Forum* 12.

⁴⁸The Federal constitution of Ethiopia: Article 1 and Article 50(1).

⁴⁹ Ibid Article 50(8) cum Articles 51, 52, 55 & 98.

⁵⁰ Ibid Articles 50(8), The lists of matters under the federal jurisdiction are: defense, public security and order; international relations; citizenship and immigration; international and inter-state trade; fiscal and monetary policies, currency, banking and domestic borrowing by states; air, rail, waterways and sea transport and major roads linking two or more states, postal and telecommunication services; general

judicial powers within its allocated sphere and is autonomous from one another.⁵¹ The powers of the federal state are limited to matters expressly enumerated under Article 51 and Article 55 of the constitution while those of the regional states include all matters not given expressly or concurrently to the federal state.⁵²

According to the Ethiopian federal constitution, the following responsibilities are included under the residual powers of the component states:⁵³

- Establishing a state administration that best advances self-government and democratic order based on the rule of law.
- Enacting and implementing their own constitutions and laws.
- Preparing and implementing economic, social and development policies and plans of their respective states.
- Levying and collecting taxes and duties on state revenue source.
- Preparing and administering their own budgets.
- Administering land and other natural resources in accordance with federal laws.
- Enacting and implementing laws on the administration of state employees and conditions of their work.
- Establishing the police force and maintaining public order and peace within their respective territories.

economic, social and development plans and policies; national standards and policy measures for public health, education, science, technology, and for the protection of cultural and historical heritages; land and other natural resources; political parties and elections; patent and copy rights; possession and bearing of arms; and declaration of state of emergency. Ibid Article 51. "All powers not given expressly to the federal government alone, or concurrently to the Federal Government and the States are reserved to the States." Ibid Article 52(1).

⁵¹ Ibid Article 50(2).

⁵² Ibid Article 52.

⁵³ Ibid Article 52(2).

As self-determining ethno-territorial polities, the component states are immanently entitled to use and promote their respective languages, cultures and histories.⁵⁴ The role of the federal state in this regard is limited to the delineation and implementation of 'country-wide standards and basic policy criteria for public health, education ... for the protection and preservation of cultural and historical legacies.'⁵⁵ For instance, the federal states cannot transgress the exclusive power of the component states in determining their own working languages.⁵⁶

This pattern of allocating specified powers to the federal entity and unspecified powers to the component entities is the result of the process of reconstructing the Ethiopian state on the basis of the recognition of the right of ethno-territorial communities to self-determination and the need to create a federal union. As the bearers of the right to self-determination, up to, and including, secession, the ethnic communities are essentially the sovereigns. However, recognizing the need to live together for pursuing common social, economic and political interests, they have freely and expressly agreed to give up some parts of their sovereignty to the federal entity.

Although the jurisdictions of the federal state and the regional states are distinctly delineated, they are interdependent in a wide range of matters.⁵⁷ First, in economic, social and development matters, the federal state is authorized to formulate and implement the

⁵⁴ Ibid Articles 5(3), 39(2).

⁵⁵ The federal state "shall establish and implement national standards and basic policy criteria for public health, education, science and technology as well as for the protection and preservation of cultural and historical legacies." Ibid Article 51(3)

⁵⁶ Ibid Article 5(3).

⁵⁷ Ibid Articles 51(2), (3), & (5); and see, for instance, common Article 47 (2.1) & (2.3) of the Constitutions of Tigray, Amhara and Oromo States.

overall policies and strategies of the country while the jurisdiction of the regional states is limited to specific policies and strategies. Second, in matters of education, health, science, technology, protection of cultural and historical legacies, the federal state sets the national standards and basic policy criteria while the regional states are the conduits for the protection and promotion of the languages, cultures and histories of their respective constituent ethnic communities. Third, while the federal state is responsible to enact laws for the utilization and conservation of land and other natural resources, the administration of such resources within the bounds of the federal laws is left for the regional states. Fourth, the judicial authority of the federal High Court and First-Instance Courts is delegated to the state Supreme Courts and High Courts respectively. Fifth, although each orders of government is, in principle, assigned executive authority in the same matters for which it has legislative authority, federal laws are in practice largely executed through the regional states. Therefore, in all the foregoing matters, the interdependence of the federal state and the regional states necessitates their cooperation and makes it crucial for the smooth and efficient application of their responsibilities.

A) The Federal Legislature

The federal government has two different assemblies, namely, **the House of Peoples' Representatives** and **the House of Federation**.⁵⁸ Each differs from one another in their respective powers and functions except in those constitutionally specified matters falling under their concurrent competence. For instance, both the Houses are required in a joint session to take "appropriate measures when state authorities are unable to arrest violations of human rights within their jurisdiction".⁵⁹

⁵⁸ Ibid Article 53. The word 'to arrest' is a wrong translation of the Amharic version; it has to be read as 'to stop'.

⁵⁹ Ibid Article 55(16) and Article 62(5).

The House of Peoples Representatives is the legislative organ of the federal state. It has powers to legislate in all matters assigned by the constitution to federal jurisdiction.⁶⁰ The role of **the House of the Federation** in the law making process are, however, limited to such specific matters as constitutional amendment,⁶¹ initiation of draft civil laws,⁶² approving draft procedural rules for the Constitutional Inquiry Council⁶³ and adoption of its own internal administration rules.⁶⁴

The competences of **the House of Federation** are interlinked with the need to maintain and promote the constitutional compact among the various ethnic groups of Ethiopia. The latter are not only the authors of the constitution but they are also its guardians who have bound themselves in mutual commitment to its fulfillment. The House of Federation, which is the House of the nations, nationalities and peoples, was created to maintain and develop their consensual relationships on the basis of equality and respect for their respective diversity while realizing their commitment to uphold the constitution.⁶⁵

The most important competence of the House of Federation is the power to interpret the constitution.⁶⁶ Unlike many other federal systems, the umpiring of constitutional issues in Ethiopia is not vested in either a Constitutional Court or a Federal Supreme Court. In

⁶⁰ Ibid Article 55(1) and (29).

⁶¹ Ibid Articles 104 and 105.

⁶² Ibid Article 62 (8).

⁶³ Ibid Article 84(4).

⁶⁴ Ibid Article 62(11).

⁶⁵ Minutes of the Constitutional Assembly, (Amharic Version), Hidar 21, 1987 E.C, Nos. 26-29.

⁶⁶Article 62(1), the *Constitution of the Federal Democratic Republic of Ethiopia*. For a detailed discussion of constitutional umpiring in Ethiopia, see section 6 of the next chapter.

Ethiopia, the umpiring of constitutional disputes is not a purely legal matter but it involves a political solution. Although it is the House of Federation that has the authority to decide on “all constitutional disputes,”⁶⁷ it is supported by a Council of Constitutional Inquiry,⁶⁸ which is established by the Constitution with the power to investigate constitutional disputes and to submit its recommendations to the House of Federation⁶⁹ if it finds it necessary to interpret the Constitution.

B. The Federal Executive

Pursuant to the Ethiopian Constitution, a political party or a coalition of political parties that has the greatest number of seats in the House of Peoples’ Representatives form(s) and lead(s) the Executive,⁷⁰ and assumes the power of the federal state.⁷¹ This direct linkage makes the executive not only subservient to the House of Peoples’ Representatives but also its conduit through which the political programs of the majority party or a coalition of parties are implemented. Therefore, one can see a Westminster style executive government in the Ethiopian case.

The executive is made up of the Prime Minister and the Council of Ministers. They exercise the highest executive powers of the Federal State.⁷² While the Prime Minister is elected from among members of the House of Peoples’ Representatives, the members of the Council of Ministers are selected by the Prime Minister and appointed by the House of

⁶⁷ Ibid Article 83(1).

⁶⁸ The has 11 members comprising the President, Vice President of the Federal Supreme Court, And 6 legal experts nominated by the House of Peoples Representatives and appointed by the President, and 3 persons appointed by the House of Federation from among its members.

⁶⁹Articles 82, and 84 (1), the *Constitution of the Federal Democratic Republic of Ethiopia*.

⁷⁰ Ibid Article 56.

⁷¹ Ibid Article 73(2).

⁷² Ibid Article 72(1).

Peoples' Representatives.⁷³ Both are responsible to the House of Peoples' Representatives.⁷⁴ The Council of Ministers is also responsible to the Prime Minister.⁷⁵

C) The Federal Judiciary

The Ethiopian judiciary is composed of two parallel systems of federal and state courts, among which judicial authority is distributed.⁷⁶ Federal judicial power lies in federal courts whereas state judicial power is given to state courts.⁷⁷ The organization of both court systems envisages three-layered hierarchical structures and corresponding divisions of jurisdictions. At the federal level, the Constitution establishes only the Federal Supreme Court, leaving the establishment of Federal High Courts and First Instance Courts to the House of Peoples Representatives, which may decide by a two-thirds majority vote to set up such courts nation wide or in some parts of the country when it deems it necessary.⁷⁸ In the absence of such decision, the jurisdictions of the Federal High Court

⁷³ The Prime Minister has a discretionary power in selecting the nominees for ministerial posts. He/she can select the nominees either among the members of the two Federal Houses or among other persons. Ibid Article 73(1) and Article 74(2).

⁷⁴ Ibid Article 72(29).

⁷⁵ Ibid Article 76(2).

⁷⁶ Ibid Article 78(2) and (3).

⁷⁷ Ibid.

⁷⁸ Ibid Article 78(3). In the federal capital, Addis Ababa, as well as in Dire Dawa, the House of Peoples' Representatives has established the Federal High Courts and the Federal First-Instance Courts. See the *Federal Courts Establishment Proclamation No. 13 Negarit Gazeta*, (Addis Ababa, 15th February 1996) Article 24(2) & (3).

and the First Instance Courts are allocated respectively to State Supreme Courts and State High Courts.⁷⁹

Conclusion

As the political history of modern Ethiopian state testifies, the political prevalence of ethnicity and conflict in Ethiopia is largely the consequence of the usurpation of institutions of self-governance and the consistent exclusion of ethnic minorities from the political process under the pretext of national integration. The suppression of group identities has become ideological and a mobilizing factor against state nationalism. The state has collapsed as a result of the struggles of national liberation movements.

The collapse of the authoritarian, centralized, and ethnocratic state by itself could not necessarily lead to a successful transition to democracy. The democratic reconstitution of the state in Ethiopia partly made it necessary to establish a federal institutional setting that entrenches political space for the participation of ethno-territorial communities in the governance process. This raised an immense challenge for reconstructing the state from the bottom-up based on the right of self-governance of identity groups and on their consent to live together for mutual economic, social and political benefits under one political order.

The advocacy of reconstructing the Ethiopian state on the basis of a federal system of ethno-territorial communities is reinforced not merely to maintain the unity of Ethiopian peoples but to create sustainable peace that is immanently essential for the much needed social and economic development of the country. The entrenchment of institutions of self-government of ethno-territorial communities and their participation in the governance of the federal polity would help to manage disputes through negotiations and consensus rather than violence. In fact, the last ten years, since the devolution of state power along ethnic lines, have been marked with relative internal peace and stability. Moreover, instead of generating internecine ethnic conflicts, the empowerment of ethno-territorial communities in the governance process has become a solid ground for maintaining their unity and pursuing their common interests.

⁷⁹Article 78(3) and Article 80(2), the *Constitution of the Federal Democratic Republic of Ethiopia*.

Tables

Table One

Distribution of Ethnic Groups (100,000+) in Ethiopia, 1994

Ethnic Group	Population	% Of Total Population
Oromo	17,080,318	32.1
Amhara	16,007,933	30.1
Tigraway	3,284,568	6.2
Somali	3,160,540	5.9
Guragie	2,290,274	4.3
Sidama	1,842,314	3.5
Wilaita	1,269,216	2.4
Afar	979,367	1.8
Hadiya	927,933	1.7
Gamo	719,847	1.4
Gadeo	639,905	1.2
Keffa	599,188	1.1
Kembata	499,825	0.9
Agew/ Awingi	397,491	0.7
Kulo	331,483	0.6

Goffa	241,530	0.5
Bench	173,123	0.3
Kemant	172,327	0.3.
Yemsa	165,184	0.3
Agew/ Kamyir	158,231	0.3
Ari	155,002	0.3
Konso	153,419	0.3
Alaba	123,900	0.2
Gumuz	121,487	0.2
Jebelawa	118,530	0.2
Koyra	107,595	0.2
All Others (incl. 53 Ethnic Groups)	1,409,766	3.0
Total	53,132,296	100.0

Source: FDRE Central Statistical Authority, The 1994 Population and Housing Census of Ethiopia Results at Country Level Volume II Analytical Report. Addis Ababa: CSA, June 1999, pp 41-43.

Table Two

Distribution of Mother Tongues (100,00+) and Second Languages in Ethiopia, 1994

Mother Tongue	Population	% of Total Population	Second Language pop	%of total Population
Amharic	17,372,913	32.70	5,104,150	9.61
Oromiffa	16,777,976	31.58	1,535,434	2.89
Tigrinya	3,224,875	6.07	146,933	0.28
Somali	3,187,053	6.00	95,572	0.18
Guragigna	1,881,574	3.54	208,358	0.39
Sidamigna	1,876,329	3.53	101,340	0.19
Wilaitigna	965,462	2.32	89,801	0.17
Afarigna	923,958	1.82	22,848	0.04
Hadiyigna	923,958	1.74	150,889	0.28
Gamogna	690,069	1.30	24,438	0.05
Gamogna	637,082	1.20	47,950	0.09
Keffigna	569,626	1.07	46,720	0.09
Kembatigna	487,655	0.92	68,607	0.13
Agew/ Awingiga	356,980	0.67	64,425	0.12
Kulogna	313,228	0.59	19,996	0.04
Goffigna	233,340	0.44	33,449	0.06

Benchigna	173,586	0.33	22,640	0.04
Arigna	158,857	0.3.	13,319	0.03
Konsogna	149,508	0.28	5,658	0.01
Agew/ Kamyrgna	143,369	0.27	11,026	0.02
Alabigna	126,257	0.24	25,271	0.05
Gumuzigna	120,424	0.23	4,379	0.01
Jebelawigna	116,084	0.22	15,738	0.03
Koyrigna	103,879	0.20	2,371	0.00

Source: FDRE Central Statistical Authority, The 1994 Population and Housing Census of Ethiopia Results at Country Level Volume II Analytical Report. Addis Ababa: CSA, June 1999, pp.46-48.

Table Three

Distribution of Religions in Ethiopia, 1994

Religion	Population	%of Total Population
Orthodox	26,877,660	50.6
Protestant	5,405,107	10.2
Catholic	459,458	0.9
Muslim	17,412,431	32.8
Traditional	2,455,053	4.6
Others	478,226	0.9
No Stated	42,756	0.1
Total	53,132,296	100.0

Source: FDRE Central Statistical Authority, The 1994 Population and Housing Census of Ethiopia Results at Country Level Volume II Analytical Report. Addis Ababa: CSA, June 1999, pp 56.

Table Four

Population of Ethiopia by Regional State, and Number of Ethnic Groups in Each Regional state, 2001 (in Thousands)

Regional States	Population	Number of Ethnic Groups
Tigray	3,901	3
Afar	1,272	1
Amhara	17,205	5
Oromia	23,704	1*
Somalia	3,898	1
Benishangul- Gumuz	565	5
SNNP	13,293	46
Gambella	222	4
Harari	172	1**
Addis Ababa	2,646	Not Applicable
Dire Dawa	342	Not Applicable
Total	67,220	67

Source: FDRE Central Statistical Authority, Ethiopia Statistical Abstract 2001. Addis Ababa: CSA, March 2002, p. 24; FDRE House of Federation Secretariat Current list 2002. Addis Ababa: House of Federation Secretariat.

Table Five

The Members of the Constitutional Commission of Ethiopia

From the Council of Representatives	From Political Organizations not represented by the Council of Representatives	From Civic Organizations
Hareri National League	Southern Ethiopian Peoples Democratic Front	Ethiopian Chamber of Commerce
Ethiopian Democratic Union	Southern Ethiopian Peoples Union	Ethiopian Lawyers Association
Ethiopian National Democratic Organization	Moa-Anbesaa Organization	Ethiopian Teachers Association
Keffa Regional Administration Peoples Unity	Ethiopian National Unity party	Ethiopian Health Professional Association
Ethiopian Peoples Revolutionary Democratic Movement	Ethiopian Muslims Democratic Movement	Women's Representatives
Oromo People Democratic Organization	Democratic Movement league	Forum 84
Essa & Gurgura Liberation Organization		Ethiopian Labor Union