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THE STATE OF VERTICAL DIVISION OF POLITICAL POWER IN THE ETHIOPIAN FEDERATION

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The State of Vertical Division of Political Power in the Ethiopian Federation

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Declaration

I declare that **'The State of Vertical Division of Political Power in the Ethiopian Federation'** is my original work and has never been submitted to any academic institution or university for any degree or certification. Only some parts of the work were used for scientific journal or online publications.

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.....

April 2017

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Abstract

Vertical division of power is the essence of federalism. In this qualitative dissertation, the author investigates the state of vertical division of political power in the Ethiopian Federation. This work was guided by the assumptions and principles of the Critical Paradigm. Sources of primary data were mainly interviews and documents. The main research question addressed by this work is "whether vertical division of political power in the Ethiopian Federation is suffering from constitutionally unwarranted centripetal and centrifugal tendencies and moves or not". To concretely investigate the state of vertical division of political power in the Ethiopian Federation, key areas of vertical division of power are selected and examined in both theory and practice. The specific themes examined include Self-determination, Federal Intervention, Police Power Division, Land Administration, Mobility and Related Rights, and Language Policy. Moreover, aspects of the Ethiopian federal arrangement that have an impact on the state of vertical division of political power including the prevailing nomenclature of the Federation and the electoral system are investigated. The laws governing almost all the themes of vertical division of political power discussed in this work have serious gaps. However, the practical challenges witnessed in the areas of language policy and land administration are caused only to a limited extent by an absence of clarity of division of mandates between the Federal Government and the state governments. On language policy issues, the constitutional stance itself is part of the problem. On land administration, the lack of adherence to the division of power, as provided in the Constitution, is an integral element of the challenges witnessed in the area. Overall, whereas constitutionally unwarranted centripetal tendencies prevail over Federal Intervention, Police Power Division, Land Administration, and Language Policy, centrifugal tendencies prevail in the areas of Self-determination and Mobility and Related Rights. In this work, it is shown that centripetal and centrifugal tendencies and moves result in violations of individual and group rights besides challenging the stability of the Federation.

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Acronyms and Abbreviations

ANC:	African National Congress
ANDM:	Amhara Nation's Democratic Movement
AV:	Alternative Vote
BPR:	Business Process Reengineering
BSC:	Balanced Score Card
CCI:	Council of Constitutional Inquiry
E.C.:	Ethiopian Calendar
EPLF:	Eritrean People's Liberation Front
EPRDF:	Ethiopian Peoples' Revolutionary Democratic Front
EPRP:	Ethiopian People's Revolutionary Party
FDRE:	Federal Democratic Republic of Ethiopia
FPTP:	First-Past-the-Post
GPS:	Global Positioning System
HoF:	House of Federation
HPR:	House of Peoples' Representatives
IGR:	Intergovernmental Relations
MEISON:	All-Ethiopia Socialist Movement (Amharic Acronym)
MMP:	Mixed Member Proportional
MoFA:	Ministry of Federal Affairs
MoU:	Memorandum of Understanding
NEBE:	National Electoral Board of Ethiopia
OLF:	Oromo Liberation Front
ONLF:	Ogaden National Liberation Front
OPDO:	Oromo People's Democratic Organization
PR:	Proportional Representation

SNNP:	Southern Nations, Nationalities, and Peoples
SPDUP:	The Silte People's Democratic Unity Party
STV:	Single Transferable Vote
TGE:	Transitional Government of Ethiopia
TNO:	Tigray National Organization
TPC:	Transitional Period Charter
TPLF:	Tigray People's Liberation Front
UK:	United Kingdom
UN:	United Nations
US:	United States
USA:	United States of America
USSR:	United Socialist Soviet Republics
WWI:	First World War
WWII:	Second World War

Notes:

Woreda: 'Woreda' in the Ethiopian context is equivalent to a district. Generally, in the states, following the state-level governments, woreda governments are the most powerful.

Kebele: 'Kebele' constitutes the lowest administrative unit in Ethiopia. It is equivalent to a sub-district.

Calendar: The Ethiopian calendar begins in September. It has 12 months of thirty days and a thirteenth month of 5 or 6 (once in four years) days. The Ethiopian calendar lags by seven or eight years behind the Gregorian calendar depending on whether it is before or after January. Before January, it lags by seven years and in January and following months of the Gregorian calendar, the Ethiopian calendar lags by eight years. In this work, both calendars are used for the sake of convenience although utmost effort is made to use the Gregorian calendar as far as possible. For example, if a certain incident happened in a

certain year of the Ethiopia calendar but the month is not certainly known, since it is difficult to provide the Gregorian equivalent, the Ethiopian calendar is used.

References in Ethiopian names: The Ethiopian naming tradition is different from the Western system of a first name followed by a middle name and finally a family name. In Ethiopia, the first name is the real name of the individual. The next two names are the first names of her/his father and grandfather that are used for the sake of identification. Following the common referencing method that brings the family names of authors first followed by the first and middle names does not make sense as far as Ethiopian authors are concerned. Therefore, in this work, Ethiopian authors' names are stated differently. In the in-text citations, the first name of the author followed by the date of publication (and the page number) is used and in the reference section the first name appears first followed by father's first name or fathers' and grand fathers' first names depending on what is stated in the source material.

Name of Agencies or Institutions: Some agencies or institutions of the government may change their names from time to time. If sticking to the name used during the data collection process or the occurrence of events discussed in this work is found to be more expressive and relevant, the earlier name is used.

Hierarchy, names, and authoritative versions of laws: In Ethiopia, the federal Constitution is the Supreme law of the land. A state constitution is a supreme law of the state concerned as far as it does not contradict the federal Constitution. Proclamations come next followed by regulations and directives. 'Proclamation' is the name used to refer to laws enacted by the HPR, the lower chamber of the FDRE, or the state councils. 'Regulation' is the name used to refer to laws enacted by the Council of Ministers of the Federal Government of Ethiopia or the executive councils of the member states of the Federation. The ministries of the Federal Government or the bureaus of the states issue directives. A directive may not contradict a regulation; a regulation may not contradict a proclamation; and a proclamation may not contradict a constitution. The authoritative versions of the laws cited in this work are the ones written in the working languages of the government that enacted the laws. For the sake of convenience, if available, the English versions are cited. When there is incompatibility between different versions of a law, it is indicated so.

Chapter One: Introduction

1.1 Background

The history of the 'modern' Ethiopian state is marred by conflicts of various forms. Most of these conflicts erupted from the centralized hierarchical nature of the state that failed to accommodate the interests of the diverse societies. 'The tensions that resulted from this incompatibility had to be managed by political dexterity i.e. by devising a formula through which the underlying divisions of an extremely varied society could be held in some kind of check' (Clapham 2009, 181). However, such a management only contributed to the proliferation of armed movements in all corners of the country, which culminated in the collapse of the authoritarian government in 1991, creating a space for change.

The empire building project was 'completed' by Emperor Menelik II at the end of the nineteenth century; a process accompanied by controversies. For some, the Ethiopian empire is a mere creation of Emperor Menelik and his predecessors in the second half of the nineteenth century (Merera 2006, 119). Others present Ethiopia as one of the most ancient and unified nations that survived for millennia (Levine 2011, 313; Bahru 1991).

After the death of Emperor Menelik in 1913, his grandson, *Lij*[1] Iyassu succeeded him for a brief period. After his removal from the throne due to allegedly profane acts he committed, Zeweditu, daughter of Emperor Menelik, ascended the throne with *Ras*[2] Teferi Mekonnen, later Emperor Haileselassie, as her regent. Following her dubious death, *Ras* Teferi took the throne to himself and became the longest serving Emperor of Ethiopia since 1930 until his controversial death in 1974. The imperial regimes of Menelik and Haileselassie pursued open policies of assimilation in their efforts to bring together a centralized Ethiopian state. Once the current Ethiopian territory was brought under the single imperial regime, Emperor Haileselassie, in the first half of the twentieth century, structured the country into fourteen provinces. He appointed governors from the center, in most instances undermining preexisting traditional structures (Young 1998, 192). Where found to be loyal to the Emperor, local chiefs were incorporated into the new centralized state structure as governors and district administrators. On the other hand,

[1] This is a title used before the first name of a son born to a royal blood. And it is used before the name of Iyassu because he was an heir to the throne but was never crowned.
[2] This was one of the highest titles in imperial Ethiopia.

extra tax burdens were levied and local chiefs marginalized in areas where loyalty to the center was doubted.

This project required the establishment of a state bureaucracy– a machinery that required a huge amount of resources to maintain it. As the demand for resources increased, so did taxation in its varieties and amount as the only way to meet the demand. This increasing burden on the peasants created dissatisfaction among the population. Moreover, the assimilationist policy of the centralized state failed to accommodate diversity in all its forms, be it national, religious, linguistic, or cultural. Local languages were undermined and Amharic became the working language of the government at all levels (see Alemseged 2004, 595). Christianity was the state religion and other religions and beliefs were challenged. These factors served as a driving force for opposing the regime throughout the empire. The Tigrayan farmers' uprising in 1943 and the Oromo uprising in Bale in 1963, both brutally suppressed, are two prominent examples.

As the popular resistance continued to press and the imperial regime weakened, the 1974 revolution erupted. The causes for the popular uprising were numerous: oppressed nations and nationalities rose against national oppression; Muslims demanded religious equality; soldiers and workers demanded a pay raise and improved working conditions, among others. As the pressure from the popular uprising increased, the suppressive capacity of the regime was weakened, and open political debates on the problems of the nation and the way forward came to the fore. Most current political differences and alliances were largely shaped during those times.

When the nature of the imperial oppression and the way forward was discussed by the political elite of the time, differing views emerged, shaped largely by ideological adherence and loyalty. Three dominant views emerged (see Merera 2006, 120) the first being the 'nation-building' thesis. According to the proponents of this thesis, there was no wrong in the Ethiopian nation-building process; any mishaps or oppression witnessed in the process were to be expected. They refer to foreign examples such as France where a cruel assimilation policy accompanied by brutal force was employed to create the French nation. The second group presented the situation as 'national-oppression'. Most opponents of the imperial regime, particularly those with Marxist backgrounds, belonged to this group. There was a consensus that the problem should be addressed through a radical change that involves restructuring the Ethiopian empire. Despite this consensus, members of this group differed on the way forward. While some believed that a nationalist struggle was the primary form of struggle, others considered this a narrow nationalist

approach that weakens class struggle. The former group later formed the Tigray People's Liberation Front (TPLF) and the latter became the Ethiopian People's Revolutionary Party (EPRP) and the All-Ethiopia Socialist Movement (MEISON). The third thesis is known as the 'colonial' thesis whose adherents sought separation as the only solution. Among them were the Eritrean People's Liberation Front (EPLF) and the Oromo Liberation Front (OLF).

The revolution that culminated in the downfall of the last Emperor in 1974 was, at the end, hijacked by the military. The military regime declared Marxism-Leninism as its guiding ideology. It demolished the feudal land holding system by introducing a radical land administration policy and the Ethiopian farmers ceased to be tenants of the feudal class. With the objective of creating a socialist mode of production, it nationalized all major private banks, industries, commercial farms, hotels and major service giving centers. It went to the extent of nationalizing rental houses. These measures enabled it to get initial support from the population in general and from the peasants in particular. However, the support did not last long as the new measures failed to provide the anticipated individual and national economic gains.

Most importantly, the regime failed to respect group and individual rights in any form. The repressive regime criminalized dissent and declared that any attempt to oppose (or to think of opposing) "Ethiopia Tikedem" (Ethiopia First), a name given to the policy guide of the government, as a crime for capital punishment. It failed to honor the right of nations and nationalities to self-determination and any attempt to raise the question was considered treason with the intent to dismantle the country. As a result, space for peaceful political struggle was eliminated and armed oppositions proliferated in all corners of the country.

The armed opposition movements varied in their approaches, resulting from their different perspectives on the required form of struggle to emancipate the country from dictatorship. Initially, the opposition movements were chaotic, fighting not only the military regime but each other as well, driven by opposing viewpoints and the desire to control the political space. The overall complexities of the struggle demanded 'survival of the fittest'; eliminating several organizations and creating new ones. Amidst this chaos, the TPLF, later joined by like-minded organizations to form the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), succeeded in controlling political power in Ethiopia. Thus, those who thought that 'national-oppression' is more helpful in understanding Ethiopia's problems won over those who claimed that 'class-oppression' was better (Teshale 1995, 170). Alongside the EPRDF, the

EPLF, an organization that was fighting for the secession of Eritrea marched into the capital of Eritrea and formed a provisional government.

Within a month of its victory, the EPRDF called all opposition parties 'committed' to peaceful political struggle to participate in a conference to design the Transitional Charter of Ethiopia. Most political organizations and civic associations in the country responded positively. Moreover, most of those who joined the conference were entities organized under national slogans including the Oromo, the Sidama, the Oromo Abo, the Ogaden, the Afar, and the Gambella liberation fronts, to mention a few. Given this historical antecedent and the prominent role played by nationalist parties during the transitional period (1991-5), it is not surprising that the 1995 Constitution adopts the issue of nationalism as a core-organizing factor in the fundamental restructuring of the Ethiopian state. The new Constitution was ratified in a constituent assembly held in 1994.

The Constitution retained the important elements of the Transitional Charter, such as the right to self-determination including and up to secession of nations, nationalities, and peoples. It established a federal state based on the "consent" of the 'nations, nationalities, and peoples'. Theoretically, this reflected a federation in which the nations had come together. Furthermore, sovereignty now lay with the 'nations, nationalities, and peoples' (see the preamble and Article 8 of the Constitution).

The foregoing paragraphs show that the Ethiopian federal system of governance is an offshoot of the armed struggle waged against the feudal and military regimes of Ethiopia. The core rallying causes of the armed struggle could have been met through a certain system of governance that accommodates diversity. Federalism was the best candidate to that end. Nevertheless, at the time of its inception, the federal system encountered internal and external challenges. First, political players had different positions and visions for the country. Their political goals ranged from those who missed the good old days of 'one country, one language, one religion, one flag...' to those who saw no hope in a united Ethiopia. Those who favored a unitary system saw a federal system that is designed to accommodate and promote the country's diversity as a stepping-stone for further fragmentation. Because of an alleged lack of suitable socio-cultural reality, this block argued, federalism had no future in Ethiopia. The other extreme side included many armed 'liberation' groups such as the EPLF, OLF, and the Ogaden National Liberation Front (ONLF). This side considered Ethiopia yet 'a prison house of nationalities' and

oppressive towards some religious groups. Thus, this block sought the solution in separating from the Ethiopian polity.

Another block spearheaded by the current ruling party, the EPRDF, claimed that Ethiopia was indeed a prison house of nationalities and oppressive towards some religious groups. However, this block argued, by negotiating new terms of relations, by rectifying earlier injustices, and given the many commonalities the Ethiopian nations shared, unity should be maintained and separation should be seen as a wrong solution although the nations, nationalities and peoples of the country should be absolutely free to determine their destiny. This side aimed to build a 'new' Ethiopia by correcting the earlier mishaps and by capitalizing on earlier positive crosscutting values such as resistance against alien subjugation and colonialism.

Global developments at the eve of the inception of the Ethiopian Federation did not favor adopting a federal system of governance either. Such federal-looking diverse countries as the USSR and Yugoslavia were breaking up. Thus, the argument goes, Ethiopia's fate could not be different if it dares to adopt a federal system of governance (based on the right to self-determination). Ethiopia's own experience in the case of the Ethiopia-Eritrea Federation, it was argued, confirmed so. Thus, both the internal and the external environments posed challenges, to say the least, against adopting a federal system of governance.

Nevertheless, the federalism project was pushed forward. The 1995 Constitution, not only established a federal system of governance but also it guaranteed the right of Ethiopian nations, nationalities, and peoples to self-determination including and up to secession. This right is a cause for heated political debates, to date. Some dubbed the federal arrangement as a pact among independent nationalities and hence 'ethnic' (*ye gossa* federalism, meaning federalism of tribes) (see Minase; Mesfin; Maimire in Assefa 2010, 186). For such people, the system looked like an international treaty entered into by identity groups (tribes according to them). Thus, the argument goes, nothing seemed to bind the different groups of the country to stay together leading to an eventual withering away of the federal system. It is amidst such views that the federal system of governance proved resilient and registered successes. Among the success stories are ensuring the equality of all national and religious identities, relative peace, fast economic growth, and fair distribution of resources and services. In fact, Ethiopia now has embarked on a new experiment of combining developmentalism and federalism.

Despite the successes, first, there still is no overwhelming political consensus on the relevance of 'the multinational federal system of governance' for Ethiopia. Second, there are areas where further engagements and clarifications are needed. Third, there are problems related to lack of compatibility between the law and the implementation of the federal system. The fact that federalism is a system that depends on tolerance, accommodation of diverse interests, bargaining and negotiation seems not to be well entrenched into the political practice. Some individuals, including those in power, use federalism as a 'license' to violate rights and others find or perceive the system as too limiting on individual freedoms.

With a lapse of time, the idea that some kind of a federal system of governance is necessary for Ethiopia seems to be prevailing. There are many scholarly works on the relevance of a multinational federal system for Ethiopia. The unorthodox assumptions taken by its designers, particularly in the African political context, and its unique features could have contributed to the attractiveness of the Ethiopian Federation for scholarly works. Scholars argue that the system still has areas that call for further negotiations. Many have also argued that the system is manifesting centripetal tendencies. The studies conducted so far deal with both normative and empirical issues and tend to be more generic focusing on the overall federal arrangement. A review of these works[3] inspired this writer to work on the topic at hand. First, it can be observed that the centripetal tendencies and the danger they pose to the federal arrangement and the cardinal principles of the latter were not investigated adequately and concretely. Second, experience so far reveals that the Ethiopian federal system of governance is challenged not only by centripetal tendencies but also by centrifugal tendencies. In other words, the Ethiopian Federation manifested specific aspects that merit further investigation. The state of vertical division of political power, which is mainly determined by the reality of centripetal and centrifugal tendencies and moves, is among the key areas that merits further scholarly engagement.

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[3]Among the works are: Assefa Fiseha (2005). Federalism and the Accommodation of Diversity in Ethiopia: a Comparative Study. PhD Dissertation, University of Utrecht.; Solomon Negussie (2008). *Fiscal Federalism in the Ethiopian Ethnic-based Federal System*. Utrecht: Wolf Legal Publishers.; Lovise Aalen (2011). *The Politics of Ethnicity in Ethiopia: Actors, Power and Mobilization under Ethnic Federalism*. Leiden: BRILL.; Sarah Vaughan (2003). Ethnicity and power in Ethiopia. PhD Dissertation, University of Edinburgh.; Yonatan Tesfaye Fessha (2008). Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia. PhD Dissertation, University of the Western Cape.; Christophe Van Der Beken (2012). *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*. Berlin: LIT Verlag Münster.

Furthermore, the Ethiopian federal arrangement is a unique experience in Africa. So far, no African country has dared to adopt its diversities, specifically multiple nationalisms, as a key organizing principle for its governance system (Andreas 2013, 57). In other words, African states have remained skeptical about multinational federalism although almost all African countries are diverse in multiple aspects including ethnicity and nationalism (Andreas 2013, 57). The Ethiopian federal arrangement has some other unique features even by global standards. 1) The 1995 Constitution allows for the right to self-determination of all the nations and nationalities including and up to secession. 2) Constitutional disputes are refereed by the second chamber. 3) The second chamber, the House of Federation, has little legislative power. 4) Amharic (a language spoken by the second largest national group at the level of a mother tongue) is adopted as the only working language of the federal government unlike the case in similar federations. The federal government in such culturally or linguistically diverse federations as India, Canada, or Switzerland adopt multiple official or working languages. These points will be discussed in this work along with the key theme i.e. vertical division of political power in the Ethiopian federation.

1.2 Statement of the problem

The Ethiopian federal arrangement has so far registered many successes. Particular examples, according to Alem (2003, 20), are: the introduction of the federal arrangement has ensured ethno-linguistic equality to a great extent; a great deal of administrative, fiscal, judicial, and security power decentralization is enjoyed by the member states; relative achievement in self-administration and participation in the affairs of the center. Moreover, the system has made it possible to achieve equity of distribution of resources and access to social services among its component parts. However, there are also indicators that the system has failed to address some of the problems that preceded its existence in addition to creating new ones (see Dereje 2006, 215).

A particular area where serious transgressions on the foundational principles of the federal arrangement were witnessed is the area of vertical division of political power. Previous studies indicate that there is a constitutionally unwarranted centralization tendency in the implementation of the Ethiopian federal system of governance (Assefa 2010, 255; Berhanu 2007, 116). According to these studies, owing to the overwhelming presence of the EPRDF, the ruling party, and its affiliates, there is no 'real' separation of power between the Federal Government

and the states. Additionally, poor implementation capacity of some of the states, the absence of independent or neutral inter-governmental body that facilitates the relations among the Federal Government and the states, and the absence of democratic political culture are making the country less-federal than it appears on paper.

The Ethiopian federal arrangement had some serious flaws from the very beginning i.e. in its very design. For example, the rights of those who live out of their so-called 'home states' were not adequately considered in the 1995 Constitution (Yonatan and Van Der Beken 2013, 43). Due to such factors, although the system has registered success in defusing conflicts from the center to the states, it has created new conflicts at the state level (see Dereje 2006, 216; Assefa 2012, 455). This calls for scrutinizing some aspects of the federal arrangement and particularly the way the states utilize their constitutional powers.

Although the previous studies rightly identify that there are constitutionally unwarranted centripetal tendencies, they are less concrete because they do not separately deal with the areas where the federal government encroaches into the competence of the states. Assefa's (2005) research explains how the party system works and how it resulted in a constitutionally unwarranted centralization tendency. Nevertheless, his findings can be concretized and elaborated more by further investigating some essential themes of vertical division of political power.

Among the most relevant provisions of the Constitution regarding vertical division of political power is Article 51. The latter provision entitles the Federal Government to design a countrywide policy on overall economic, social, and development matters. Obviously, a party that governs the center will have the power to implement its policies everywhere including in the states. This makes drawing a boundary between the powers of the Federal Government and the powers of the state governments arduous. Thus, it calls for further investigation on whether the Constitution or the overall legal regime itself is clear in this regard. In this work, this is done by investigating selected key areas of vertical division of political power including federal intervention, police power, land administration, and language policy.

Furthermore, previous studies fail to adequately show that there are also constitutionally unwarranted centrifugal tendencies in the implementation of the Ethiopian federal arrangement. There are indicators that absence of clarity and consensus prevail over the rights of the so-called non-indigenous groups. There are also indicators that the constitutionally guaranteed rights of

movement, employment, and ownership of property throughout the Ethiopian Federation are sometimes encroached. Cases in point are illegal settlements and the displacement of people in such states as Benishangul/Gumuz, SNNP, and Amhara. In many incidents, local or state officials were part of actions taken to implement illegal evictions and this can be considered as an indicator of the exercise of constitutionally unwarranted powers by the states.

Almost all the states of the Ethiopian federation are linguistically and culturally diverse. A comprehensive reading of the overall federal arrangement indicates that all the nations, nationalities, and peoples of the country are entitled to equal rights. Some tend to present the situations of such 'indigenous' groups as the Awi in Amhara or the Irob in Tigray as similar to 'non-indigenous' minorities (see Zemelak and Yonatan ND, 96-97). The converse is that the Amharas own the Amhara state and the Tigrayans own the Tigray state. However, there is no constitutional justification for such a treatment or understanding as the comprehensive reading of the Constitution implies that the indigenous groups should equally own the states they reside in. To further complicate the issue, the states do follow divergent paths in accommodating 'indigenous' minorities (see Assefa 2012, 455-456). In the Amhara State, they are provided with nationality councils. In Tigray, their presence is recognized but it is less supported by institutional arrangements to realize the right to equal participation in the affairs of the State. The Constitution of the State of Oromia recognizes only the Oromo nation despite the fact that there are others like the Zay around Lake Zeway, besides the so-called non-indigenous groups. The Afar state does not recognize the right of the indigenous Argoba to self-determination including and up to secession despite extending such a right to the Afars. It is imperative to note here that the federal Constitution extends such a right to all the nations, nationalities, and peoples of the country. More importantly, the roles of each level of government in handling cases of self-determination are unclear. The practice indicates that the states mishandle claims for recognition.

The foregoing paragraphs indicate the presence of political powers, exercised by the states, whose legality (in the eyes of the federal Constitution) call for further research. They are also indicators that the laws that regulate the regime of vertical division of political power in the Ethiopian Federation have gaps and that the practice is challenged by constitutionally unwarranted centripetal and centrifugal tendencies.

1.3 Research question

1.3.1 Main question

Is vertical division of political power in the Ethiopian Federation suffering from constitutionally unwarranted centripetal and centrifugal tendencies and moves?

1.3.2 Sub-questions

a. Is there clarity of vertical division of political power in the Constitution?

b. What factors extraneous to the issue of vertical division of political power affect the status of the latter? How?

c. What does the law on vertical division of political power in the themes investigated in this work look like?

d. What does the practice of vertical division of political power in the themes investigated in this dissertation look like?

e. What is the overall impact of the state of vertical division of political power in the themes investigated in this work?

1.4 Research objective

1.4.1 General objective

The general objective of this research is to examine vertical division of political power in the Ethiopian Federation as outlined in the Constitution and other laws and how it operates in practice.

1.4.2 Specific objectives

a. To investigate whether there is clarity of vertical division of political power in the Ethiopian Federation or not as per the Constitution;

b. To investigate aspects of the Ethiopian federal system that are not necessarily within the ambit of vertical division of political power but highly influence the status of the latter;

c. To investigate the law on vertical division of political power in selected areas of vertical division of political power in the Ethiopian Federation;

d. To investigate the practical vertical division of political power in selected areas of vertical

division of political power in the Ethiopian Federation; and

e. To investigate the overall impact of the status of vertical division of political power in the selected areas.

1.5 Paradigm and method of writing

Any research should have a guiding philosophy. Understanding the philosophy and the underlying assumptions is crucial for conducting research and evaluating research done by others (Grix 2004 in Mack 2010, 6). Nonetheless, there is no commonly agreed 'correct' way of doing research (Rubin and Rubin 2012, 14). The 'world view', 'system of ideas' or the overall approach followed by a researcher in conducting research is called a research paradigm (Fossey *et al.* 2002, 718). Any research paradigm has its own ontological, epistemological, methodological, and methodical positions. The forthcoming paragraphs discuss the ontological, epistemological, methodological, and methodical stands that will be taken in pursuing this research on top of identifying the overall research paradigm. A discussion on the method of writing the research will also be provided.

Ontology is the scientific study of existence or the meaning of being (Crotty in Scotland 2012, 9; Blaikie in Flowers 2009, 1). Epistemology deals with what constitutes knowledge; what can be known; the relationship between knowledge and the knower and related issues (Snape and Spencer 2003, 13; Guba and Lincon in Scotland 2012, 9). In short, it is the scientific study of knowledge. Methodology is about the assumptions, plans, and strategies a researcher employs in selecting methods of data collection and analysis (Guba and Lincon 1994 in Scotland 2012, 9). Method refers to specific tools or instruments of data collection as well as analysis (Crotty 1998 in Scotland 2012, 10).

Among the various research paradigms, the following three are the most common: the positivist (scientific) paradigm, the interpretivist-constructivist (naturalist) paradigm, and the critical paradigm. Although a comparative discussion of the different paradigms is provided in this section, for reasons to be provided in the forthcoming paragraphs, this research will be guided by the critical research paradigm. The positivist or the scientific paradigm is the oldest one and the others have developed in reaction to the limitations of the positivist paradigm. The ontological assumption of this paradigm is one of realism (Scotland 2012, 10). It assumes that there exists a reality independent of an individual's, including that of the scientist's, perception

or bias. This paradigm aims to establish a clear or objective relationship between variables. The positivist epistemology is a logical continuation of the positivist ontology. And it assumes that there is an objective reality 'out there' to be discovered by a neutral scientist following a clearly specified scientific method and 'unbiased standardized instruments' (Rubin and Rubin 2012, 15). The positivist methodology focuses on 'value-free' or quantitative scientific methods. Thus, the method is, usually, controlled scientific experimentation or laboratory studies. However, this research does not follow this paradigm because it is less helpful in understanding social phenomena, particularly the qualitative aspects of it (as this research is about vertical division of political power in the Ethiopian Federation; obviously a social science area that calls for a qualitative analysis).

The interpretivist paradigm was developed in reaction to the scientific paradigm (Mack 2007, 10). This paradigm has a contradictory ontological, epistemological, methodological, and methodical assumptions and stances compared to the positivist paradigm. According to the interpretivist paradigm, what is being or existent is dependent on each person's perceptions. Hence, there is no objective reality. Rather, each of us constructs our own realities (Scotland 2012, 11). What can be known or studied, according to the interpretivist paradigm, are individuals' perceptions about a certain thing (Rubin and Rubin 2012, 15). The epistemology of the interpretivist paradigm is, thus, geared towards revealing as many possible themes and perceptions as possible (Fossey *et al.* 2002, 726). Consequently, the naturalist methodology focuses on such methods as focus group discussions, interviews (both structured and semi-structured), and participant observation that help bring individual perceptions and understanding of a certain phenomenon. In this case, the main role of the researcher is to present different perspectives. Neither is she or he assumed to be objective or neutral. Unlike in the case of the scientific paradigm (whereby the researcher is highly empowered in relation to the research participants), the interpretivist paradigm empowers the research participants (see Fossey *et al.* 2002, 719).

The interpretivist approach can take us a long way in understanding social phenomena. However, this research does not follow this approach for limited but key reasons: the first one is related to its ontological assumptions and the second one is related to its goals. As will be clarified later, in this research it is assumed that, although it may be difficult to reach it through human effort, there exists some objective social reality. This writer has also a firm stand that

researchers should not be restricted to only explaining phenomena. Rather researches should, in addition to understanding situations and identifying problems, aim at finding solutions for problems they identified. This is, more or less, in line with the goals and assumptions of the critical research paradigm.

The critical research paradigm was developed in reaction to the limitations of the positivist and the interpretivist paradigms. Consequently, it combines some of the strengths of both paradigms (Flowers 2009, 3). The ontological position of the critical paradigm is that of historical realism (Scotland 2012, 13). Accordingly, the critical paradigm accepts that there is an objective reality but, unlike the scientific paradigm, it assumes that power relations play key role in constructing and shaping reality i.e. individuals' perceptions about reality are inseparable from prevailing power relations and social hierarchies (Cohen *et al.* in Scotland 2012, 13). The critical epistemology focuses on identifying social challenges particularly those that subdue people and changing them and emancipating those who are subdued (see Fossey *et al.* 2002, 720). The critical paradigm is criticized for lacking logical explanation for its stands; for openly agitating for change and emancipation than conducting a neutral research and for being ambitious in that it exaggerates the roles of researchers and fails to see that many decisions are done outside of the research environment (see Cohen *et al.* 2007, 30). Nevertheless, although critical research has uncompromising mission to change prevailing inequalities and social problems, it does not underestimate understanding and interpreting existing systems. The critical paradigm employs such common critical qualitative methodologies as neo-Marxism and feminism but it does not prohibit the use of such qualitative methods as interviewing and focus group discussions. Moreover, the critical paradigm tends to be accommodative compared to the others. Thus, it remains highly relevant philosophical guide for researches of this kind.

A note of caveat should be taken that this research may not necessarily adhere to all the prescriptions of the critical paradigm. The overall spirit is, however, guided by the critical paradigm because of its relative relevance to the overall objectives of this research. The critical paradigm compromises the extreme stances of the positivist and the interpretivist paradigms. The positivists argue that they can reach at an objective truth by employing the scientific method. However, scientists themselves have their own views, values, and biases. The positivist paradigm also provides very limited space for understanding meanings, value judgments, and behavioral issues that are difficult to quantify. The interpretivists argue that there is no independent or

objective reality at all. However, this is another extreme position because there are ample social phenomena where people can reach same or similar conclusions. In terms of resolving social problems, the interpretivist assumptions make conducting research almost meaningless. The critical approach and its adherents accept the existence of reality but they also recognize the role of individual biases, orientations, subjectivity and more importantly power relations in constructing and understanding reality. The critical paradigm further aims at changing unfair social relations through research findings. The stands of the critical paradigm, compared to the stands of the other approaches, are believed to be more realistic, convenient, and flexible in pursuing this research.

The following is a restatement of some of the key assumptions of this research. (1) It is not accepted that everyone constructs his or her own reality rather it is claimed that there exists a reality independent of individuals' perceptions; (2) It is necessary to investigate, understand, and interpret situations or social phenomena but it is not sufficient. Hence, researches should pursue an additional goal of correcting, or recommending mechanisms to resolve, problems. (3) It is recognized that researches may not be able to produce purely objective findings but they should continuously strive to do so. (4) Researchers alone may not be able to resolve all social problems but doing so should be among their top priorities although this mission should not affect the examination of different or contradictory views and perspectives on a single issue.

The foregoing paragraphs focus on the philosophical underpinnings of this research. The forthcoming paragraphs, on the other hand, focus on methods of data collection. This research employed the qualitative methods of interviewing, document (case) analysis, and personal observation. The research participants were selected based on their relevance (academic, policy-making, or deep involvement in one of the focal areas of this research). The purposive and snowball sampling methods were employed to select the research participants (interviewees). Thirty-three people of diverse backgrounds including appointees and experts in the HoF, appointees and experts in the Ministry of Federal Affairs, experts and appointees from the state councils, police officers, academics, former senior officials, politicians, serving senior officials of the Federal Government were interviewed for this research.

The documents analyzed include laws and decisions of different government organs including the HoF, state councils, and administrative authorities that deal with relevant issues of vertical division of political power in the Ethiopian Federation.

The writer has travelled to five states of the Ethiopian Federation to collect the primary data in addition to visiting the relevant offices of the Federal Government in Addis Ababa. From preliminary observations and the literature, at the time of designing the research, the writer deduced that there could be two distinct trends: constitutionally unwarranted centripetal and constitutionally unwarranted centrifugal tendencies. The five states were selected based on their 'educative' or peculiar experiences on the main indicators of the constitutionally unwarranted centripetal and/or centrifugal tendencies. The states selected as a group are expected to represent the situations of all the states on all the main themes that are discussed in this research.

One of the main themes of this research is accommodation of diversity in the Ethiopian Federation with a particular emphasis on the rights of the, so-called, indigenous minorities in the states. The states can be categorized into different groups based on their experiences in accommodating indigenous minorities. There are those who deny the existence of indigenous minorities despite their apparent existence (e.g. Oromia). There are those who recognize the existence of indigenous minorities in their territories but who do less than expected to accommodate their rights in line with the overall spirit of the 1995 Constitution (e.g. Tigray; Afar). There are those diverse states with no national/cultural group dominating the state and, hence, all the indigenous collectively own the states (e.g. SNNP; Benishangul/Gumuz; Gambella). The Amhara state recognizes the existence of minorities. The state Constitution provides for nationality councils at zonal/woreda levels to accommodate the minorities. However, the indigenous minorities are still treated as junior partners in the affairs of the state (when examined in light of the overall federal arrangement). The Harari state's experience is unique and, unlike the situation elsewhere, the 'indigenous' minority, the Hararis, command the veto power in the state and they are disproportionately empowered. The preliminary observation was that the states were taking some powers that are not given to them by the Constitution. In other words, the minorities (some indigenous and all the non-indigenous) were getting less protection at the state level than they would otherwise get from the federal Constitution. The sample states were selected by taking the above-mentioned diverse experiences and trends into consideration.

Within the theme of unwarranted centrifugal tendency lie the hurdles put by some states on the rights of freedom of movement (Art. 32 of the Constitution) and ownership of property within the Ethiopian territory (Art. 40 of the Constitution). In this regard, problems that include

evicting the so-called non-indigenous were witnessed in some states (e.g. SNNP; Benishangul/Gumuz). It can be observed that these two states adopted the working language of the Federal Government, i.e. Amharic, as their working language and in this situation the 'non-indigenous', who are mostly competent in the Amharic language, are expected to face minimal challenges on such rights as freedom of movement and employment. Nevertheless, this was not the case and the non-indigenous did face serious encroachment on these rights. Previous works indicate that similar problems were prevalent in such states as Oromia, too. On the other hand, states such as Tigray did not seem to have any serious problem in this regard. The selection represented both trends.

The second broad theme is unwarranted centripetal tendency in the Ethiopian Federation. Within this theme lies the regime of federal intervention. Theoretically, at the time the research was designed, the regime of federal intervention could have applied against all the states if the constitutional requirements were fulfilled. However, preliminary observations indicated that the regime of intervention was most likely to be used against the emerging states. The same preliminary observations indicated that police power division was more problematic in relation to the emerging states although it was, later, found out that it could be equally problematic in relation to the so-called relatively developed states. Another sector where the preliminary observations indicated that centripetal-tendency prevailed was land administration. Preliminary observations and previous works further indicated that the problem in relation to land administration, particularly large-scale agricultural investment, was observed in states, which are relatively less populous but with relative land abundance. The selection considers the latter fact as well.

Considering the foregoing preliminary observations based on review of the literature, the following states were selected for data collection purposes: Oromia, Amhara, SNNP, Benishangul/Gumuz, and Tigray. The writer travelled to these states, interviewed people, collected documents, and conducted observations between the months of July and October 2015.

The writing style combined both description and analysis. The descriptions aim at providing the reader with adequate information on the themes discussed (call it construction). The analyses aim at indicating loopholes, anomalies, problems, different experiences, and solutions (call it deconstruction or reconstruction, in the latter two cases). This style was employed to write all the substantive chapters of this work.

1.6 Significance of the research

As indicated in the preceding section, this research does not aim at merely pushing the frontiers of existing knowledge about vertical division of political power in the Ethiopian Federation. Rather, it also aims at contributing to the resolution of problems encountered in understanding and implementing the system. This makes it relevant both theoretically and practically. Generally, this research is significant because: (a) It explains the theoretical features of vertical division of political power in the Ethiopian Federation. (b) It explains key features of the practice of vertical division of political power in the Ethiopian Federation. (c) It investigates the theoretical and practical division of political power in key areas of vertical division of political power. (d) It proposes solutions to the problems identified in almost every chapter.

"Federalism is a very complicated form of government" (Burgess 2006, 8). Thus, let alone the emerging Ethiopian Federation, any federal form of government demands continuous studies and efforts to design mechanisms to cope up with new developments, issues, and themes. This work is, therefore, relevant in that it is a timely addition to the existing works, which tend to be generic.

This research is significant because, in addition to dealing with mainstream themes of vertical division of political power, it deals with some important but always overlooked issues of the Federation. Such aspects of the Federation include the nature of the architects of the system (a discussion on this topic adds to what is known about theorizing federalism so far) and the prevailing nomenclature of the system (whether the prefix 'ethnic' is proper from theoretical and practical angles). Another important issue is the electoral system. Although the focus is on the impact of these issues on the state of vertical division of political power in the Ethiopian Federation, the discussions provide additional insights on each issue.

Furthermore, this research has an international significance. It lets others, particularly those diverse countries contemplating introducing a system of governance that accommodates social cleavages, learn from the Ethiopian experience. Overall, this research is significant for it benefits policy makers, practitioners, politicians, academics, and even the ordinary people who are interested to learn about the Ethiopian system of governance and federalism in general.

1.7 Scope and limitations of the research

This research is about *vertical division of political power* in the Ethiopian Federation. Horizontal division of power or separation of powers in the Ethiopian Federation is excluded from this work for it is a broad area of research in itself. The same applies to fiscal powers and judicial powers. The 1995 Constitution explicitly recognizes vertical division of political power between the Federal Government and the state governments. Although local governments and the exercise of adequate power by them is recognized by the Constitution, their mandates are not listed in the Constitution (for more, see chapter 2, section 7). This research, therefore, focuses on vertical division of political power between the Federal Government and the states.

Time wise, this research covers the development of the themes (discussed in this work) since the inception of the Ethiopian Federation *de jure* in 1995 up to 2015. Nevertheless, as far as possible and when found important, updates of new developments are included in the relevant chapters.

The writer believes that the research has some limitations. The first important limitation emanates from its very nature. The study area is susceptible to subjectivity. Utmost effort was made to explain all the available perspectives and views on the issues discussed in this work but some perspectives or views may still be missing. It should also be clear that the analyses might not be absolutely free of value judgments on the part of the writer. On top of the subjective nature of the research area, the writer cannot see himself as an outsider or 'neutral' observer as far as the Ethiopian Federation is considered. As an Ethiopian citizen and owing to a living experience, the researcher may have formed opinions consciously or unconsciously on many of the themes raised in this research. Such lived and long formulated opinions may influence the researcher's value judgment.

1.8 Organization of the work (the chapters)

The forthcoming paragraphs provide a brief overview of each chapter of the dissertation. The first chapter, as it can be seen here and as its name indicates, provides introduction to the work. It particularly deals with the background to the topic, statement of the problem, objectives (general and specific), research questions (general and specific), research paradigm and method of writing, scope and limitations of the study, significance of the research, and organization of the work.

The second chapter provides a background and guiding explanations on the theories, principles, and concepts on which the issues discussed in this work are built. Thus, the prime utility of the chapter is to provide a frame to guide and locate this research in the bulk literature of federalism and, no less significantly, to equip the reader with a lens through which to analyze and categorize the contents of the other chapters of the work. Emphasis is given to conceptual clarifications, bringing instructive developments to attention, and highlighting the most common mechanism to divide political power and the complexities and diversities thereof. Moreover, in the second chapter, a new dimension to analyze federations is provided. However, vertical division of political power in the Ethiopian Federation and gaps and loopholes thereof are the focus points of the discussions. By reading between the lines of the relevant provisions of the Constitution and the literature, key gaps of vertical division of political power are identified so as to lay a foundation to the other chapters that focus on specific issues of vertical division of political power.

The third chapter deals with the prevailing nomenclature of the Ethiopian Federation and its impact on the state of vertical division of political power. Whether the system is 'ethnic' or 'multinational' in its essence is investigated. Moreover, the consequences of understanding or perceiving the system as 'ethnic' or 'multinational' on vertical division of political power is elaborated.

The fourth chapter deals with the existing electoral system of Ethiopia and its impact on the state of vertical division of political power. The simplest form of the majoritarian electoral system, i.e. the First-Past-The-Post (FPTP), is used to elect representatives at all levels in Ethiopia. Whether this system is the best in terms of realizing the political pluralism and equitable representation of diverse political interests of the country as envisioned by the 1995 Constitution is investigated. The linkage between the electoral system and the practice of vertical division of political power is discussed.

Lack of clarity on the vertical division of political power regarding issues of self-determination and related challenges are dealt in chapter five. This chapter focuses on self-determination in general, the federal and state constitutions and other relevant laws and their positions on self-determination from the angle of power division, and the practice of self-determination in Ethiopia and the most prevalent challenges thereof. Towards the end of this

chapter, the overall trend of the practice of self-determination in Ethiopia and its impact on the federal arrangement and the power division envisioned by the federal Constitution are discussed.

The sixth chapter deals with federal intervention. Federal intervention here is used in its broader sense to include emergency powers. The focus of the discussions in this chapter are the possible limitations on 'normal' implementation of vertical division of political power in federations with a particular emphasis on security and the legal regime and the practice of federal intervention in Ethiopia.

The seventh chapter is highly related to the sixth chapter. The two chapters deal with the same sub-theme i.e. power division in the area of security in the Ethiopian Federation. Thus, this chapter can be read as a continuation of the discussions in the sixth chapter. Specifically, this chapter provides an overview of police power division in federations, the Ethiopian Constitution's stance on police power division, the positions of the relevant federal proclamations and some state proclamations, and the practice of police power division in Ethiopia.

The eighth chapter deals with vertical division of power on land administration. Among the focal points of the discussion in this chapter is land ownership in Ethiopia. The Constitution, the other laws, and the practice are examined to deduce a conclusion on whether there is clarity on land ownership in the Ethiopian context or not and the impact of the latter on vertical division of power on land administration. The second focal point of the discussions, in this chapter, is vertical division of power on land administration. The Constitutional stance on power division in the area of land administration, the relevant federal laws, and the land laws of the states are discussed. Among the sources of controversies in the sector is a 'regulation'[4] 'enacted' by the Federal Government in 2010. The implication of the 2010 'regulation' on vertical division of political power is inquired.

Chapter nine deals with the positions of the Federal and the state constitutions on mobility-related rights from the angle of power division. The discussion focuses on the interests and fears of the indigenous and the non-indigenous groups in the Ethiopian states in relation to mobility rights, the practical challenges, and the most outstanding trends in the area.

The tenth chapter deals with language policy, with a particular emphasize on the working language policy of the Federal Government, as it appears in the law and, to a lesser extent, the practice. Whether the language policy of the Federal Government of Ethiopia is in harmony with

[4] Its legality is contested. See section 8.4 for details.

the *raison d'être* of the federal system is the main theme of this chapter. It is shown that the area of language policy inherently suffers from centripetal tendencies. The other main point of the discussion in the tenth chapter is the impact of this policy on the equality of the national groups of Ethiopia and future stability of the Ethiopian Federation and (indirectly) the vertical power division arrangement. Specifically, the dominant language policy approaches, the historical context of Ethiopia's language policy, the relevant foreign experience, and the Ethiopian language policy since the unfolding of the federal system and its impact are discussed.

Towards the end of almost every substantive chapter, way outs or recommended solutions to the challenges identified in the chapter are provided.

Finally, in the eleventh chapter, a conclusion that ties the threads of this work together and that deals with the most important findings of this work and a recommendation that indicates the main measures that should be taken to counter the challenges identified in this work are provided.

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Chapter Two: An Overview of Federalism and Power Division in the Ethiopian Federation

2.1 *Introduction*

This chapter aims to provide a background and guiding explanations on the theories, principles, and concepts on which the issues discussed in this dissertation are built. Thus, the prime utility of this chapter is to provide a frame to guide and locate this research in the bulk literature of federalism and, no less significantly, to equip the reader with a lens through which to analyze and categorize the contents of the forthcoming chapters of the work. The approach followed is that the literature that is found to be crucial in understanding issues of federalism and more specifically a pertinent issue of vertical division of political[5] power are critically analyzed and summarized. Emphasis is given to conceptual clarifications, bringing instructive developments to attention, and highlighting the most common mechanism to divide political power and the complexities and diversities involved thereof.

A federal system of governance presupposes the existence of some sort of inbuilt vertical power division arrangement. Hence, in political science, vertical division of power is used as a synonymous to federalism (see Lijphart 1999, 185). Of course, this assertion holds true if the division of power is constitutionally sanctioned and not a delegated one, as it is in the case of decentralized unitary states. As indicated in the above paragraph, the discussion in this chapter primarily aims at explaining issues of vertical division of political power in federations. However, given the inherent linkage between federalism and vertical division of power, the exercise will incidentally add points towards a learned understanding of federalism as a broader system of governance.

The second aim of this chapter is to add to what is so far known about the background of the Ethiopian federal system of governance. Many scholars have written on the historical background of the system (see Assefa 2010; Asnake 2013). Thus, since other writers wrote about the general historical background to the federal arrangement Ethiopia introduced *de jure* since 1995, less attention is devoted to it in this research. However, previous works did not focus on

[5] As it is elaborated in the first chapter, this dissertation is about vertical division of *political* power in the Ethiopian Federation and hence the discussion in this chapter, as elsewhere, excludes issues of fiscal federalism. The writer is aware that fiscal and political powers are highly interdependent. Thus, the focus on political power should not be understood as a compartmentalization of the two powers. It is simply a matter of concentrating the work on one of the two essential aspects power.

the nature and the choices of the architects of the system. Therefore, in this chapter, another dimension to analyze the background of the Ethiopian federal system is provided. This can be considered as a contribution of this research to 'theorizing federalism'.

Vertical division of political power in the Ethiopian Federation, as provided in the Constitution, and gaps and loopholes thereof are the focal points of the discussions in this chapter. An examination of the theoretical vertical division of political power in the Ethiopian Federation as it appears in the 1995 Constitution is provided. By reading between the lines of the relevant provisions of the Constitution and the literature, key gaps are identified. Most of the gaps identified are further elaborated in the forthcoming chapters that focus on specific issues of vertical division of political power. A summary is provided at the end of the chapter.

2.2 Federations, confederations, federal political systems, and federalism

A country that follows a federal system of governance is called a federation. A federation, therefore, is a descriptive term (Watts 2008, 8). No two federations are identical (Burgess in Kincaid 2011, xxi). However, we call a country a federation provided that it fulfills certain criteria. The most common features of a federation include: (1) the presence of at least two orders of government. A federal government, with its clearly stipulated constitutional powers, that directly acts on the citizens and the land they reside in and constituent unit governments that also have clearly stipulated constitutional powers and that act on the citizens and the land they reside in directly should exist. (2) Each order of government should exercises, in most cases, legislative, executive, judicial, and fiscal powers. In the exercise of such powers, each government has at least some areas where it exercises final authority and full autonomy. (3) Each government has constitutionally guaranteed powers i.e. they drive their powers from the constitution and not from another level of government. In the words of Watts (1998, 24), therefore, "[w]hat distinguishes federations from decentralized unitary systems is not just the scope of decentralized responsibilities but the constitutional guarantee of autonomy for the constituent governments in the responsibilities they perform." (4) The regional interests are represented in the center through a second chamber, which usually represents the constituent units interests in policy and law making at federal level. (5) Federations function under a written and usually detailed constitution with a rigid amendment procedure that involves the constituent units and the federal government. (6) There is a referee, either in the form of a supreme court,

separate constitutional court, or popular referendum, that arbitrates constitutional disputes. (7) Constitutions of federal countries are usually detailed and constitution makers attempt to enumerate all powers of each level of governments (recognized in the constitution). However, there are areas where different levels of government exercise concurrent or joint powers. New powers and unpredicted overlaps may also come to the scene in the course of exercising government powers. Thus, in federations, there usually is a body that facilitates inter-governmental relations (see Watts 2008, 9; Riker in Hale 2004, 167).

The descriptive terms 'federation' and 'confederation' were used interchangeably until the Americans 'invented' a new type of governance system in between 1787 and 1789 (Kincaid 2011, xxiii). However, as time passed, the two terms developed to explain very distinct governance systems. A confederation refers to a kind of supra-national government that is established by sovereign states to serve certain limited purposes; usually economic and defense purposes (Kincaid 2011, xxii). The powers of a confederation are given to it by sovereign member states and not by a constitution. Unlike federations, confederations do not have direct powers over citizens of member states (see Burgess 2006, 21-22). In other words, "One characteristic that appears to distinguish federations from confederations, noted by Leslie (1996), is the more restricted scope for redistribution that confederal institutions provide" (Watts 1998, 125). It is also relatively easy to leave a confederation, as it usually is a limited-purpose union created by sovereign countries.

There is no single commonly agreed definition for the term 'federalism'. Nor is there any comprehensive theory that explains federalism although we may have federal theories (Burgess 2006, 283). Fortunately, this lays on an inherent strength of federalism itself, i.e. flexibility. Federalism is flexible and context specific and it makes generalizations about it, and hence attempts to define it, almost impossible (Burgess 2006, 283). Nevertheless, there still are some key characters that distinguish federalism from other governance-related concepts, as indicated above. Federalism is a normative term (Watts 2008, 8) and its key feature is the declared goal of maintaining both shared-rule at the federal level and self-rule of the constituent units of a certain polity (Watts 2008, 8; Elazar 1994, 21). There is a central government called 'federal government', and regional governments named 'states', 'länder', 'cantons', or 'provinces' depending on the federal country one is referring to. Watts (2008, 8) summarizes that "[t]he essence of federalism as a normative principle is the value of perpetuating both union and non-

centralization at the same time." Similarly, Kincaid (2011, xxii) claims that "[federalism] can be minimally understood as a system that more or less maintains unity while more or less preserving diversity...".

Federalism is a system that is fundamentally rooted in power division and it allows for the existence of different centers of power in a single polity. In some instances, it may even allow for different conceptions of the state and its missions or goals. Thus, in federalism, there is no wonder if the English-speaking Canadians and the French-speaking Canadians have different understandings of Canada as a 'nation' (see Gagnon 1993, 17). The preceding sentences may imply that there should be a tight balance between forces of unity and diversity for federalism to exist. It may further imply that federations function under conditions of *modus vivendi*. However, according to Norman in de Schutter (2011, 176), the viability of federal systems demands commitments beyond *modus vivendi*. In other words, there must be a minimal shared vision among the actors to live together under a single political 'roof', although smaller 'roofs' exist under the bigger roof that enjoy certain levels of 'privacy' or the actors may perceive the 'roofs' differently.

The survival of federalism requires political actors to recognize and accept the legitimacy of the exercise of powers by the center and the constituent units although they may come across differences or disagreements on the nature or the extent of powers exercised by each. If political protagonists on both sides engage in zero-sum games and commitment to live under a unified polity is lacking, it will lead to instability (Norman in de Schutter 2011, 176). Some go to the extent of arguing that the overall federal setup should be slightly dominated by forces of unity (and the interest to live together) if federalism is to succeed. Otherwise, a perfect balance can result in a deadlock (Assefa 2010, 99).

Before proceeding to further conceptual clarifications, it is imperative to underline that, until recent times, there were differences among scholars on whether the terms 'federalism', and 'federation' were normative or descriptive (see Watts 1998, 119-120). King argued that 'federalism' is a normative term and it refers to the advocacy of principles of shared and self-rule whereas the term 'federation' is descriptive and it refers to a certain system of governance with a certain power division arrangement (Watts 1998, 119). However, authors such as Elazar did not agree with King and they claimed that 'federalism' "...refers to a genus of political organization encompassing a variety of species, including federations, confederacies, associated statehoods,

unions, leagues, condominiums, constitutional regionalization, and constitutional 'home rule'. In this schema, 'federation' refers to one species within the wider genus of federalism" (Watts 1998, 120). Hence, according to Elazar, both federalism and federation are descriptive terms. Watts, agreeing with King and, according to him, for the sake of simplicity, added another term to the debate, i.e. 'federal political systems'. And he argued that 'federalism' should be used as a normative term in that it refers to the advocacy of ideas that are meant to respond to citizens preferences in the areas that demand both collective actions and actions at the level of constituent units (Watts 1998, 120). On the other hand, he argued that 'federation' and 'federal political systems' should be understood as descriptive terms.

While 'federation', as discussed earlier, refers to a country that follows a federal system of governance, 'federal political systems' is a generic term that includes wide-ranging governance systems excluding the unitary ones. According to Watts (2008, 8), 'federal political systems' manifest some sort of vertical power division and the existence of different centers of power emanating from different arrangements. The continuum includes unions, federations, confederations, associated states, confederacies, leagues, condominiums, and so on. Watts' understanding of the terms 'federalism', 'federation', and 'federal political systems', is adopted in this work.

As hinted earlier, it is also possible that different groups can have different understandings or perceptions of their federation. For e.g., in Canada, there are two competing views of federalism. Some see the system from a liberal view and they assume that the main task of the state is to protect individual freedoms and liberties. On the other hand, some, mostly Quebecoise, view the federal arrangement as a means of guaranteeing communal equality (Gagnon 1993, 17).

There is no consensus on the exact number of countries that follow a federal system of governance. The figure lies somewhere between 25 and 29 (see Watts 2008; Kincaid 2011). This is because of the existence of some countries whose (un)federal nature is contested. All scholars would agree that the US follows a full-fledged federal system of governance but many will dispute whether South Africa and Spain are federal countries in the strict sense (see Watts 2008, 4). Moreover, while some may look into the nomenclature of a country in order to label it federal or otherwise, others may prefer to look into the reality of power division to do the same. Watts, one of the most quoted scholars of comparative federalism, claims that there are about 25

countries that are federal although the Constitutions of Spain and South Africa, which are included in his list, do not directly use the term federal (Watts 2008, 9). He further argues that he looks into the design and operation of the governments in classifying the countries (Watts 2008, 9). His list of federal countries includes: Argentina, Australia, Austria, Belau, Belgium, Bosnia and Herzegovina, Brazil, Canada, Comoros, Ethiopia, Germany, India, Malaysia, Mexico, Micronesia, Nigeria, Pakistan, Russia, St. Kitts and Nevis, South Africa, Spain, Switzerland, United Arab Emirates, United States of America, and Venezuela. Kincaid agrees with Watts that there are around twenty-five countries that can be termed as more or less federal. However, while Watts includes Belau and removes Iraq from the list, Kincaid does the opposite (Kincaid 2011, xxi). Others may like to include such post-conflict countries as Sudan and the Democratic Republic of Congo and even the European Union to the list (see Watts 2008, 14).

Despite the inconsistencies in identifying the exact number of federations or in understanding the nature of governance systems in some countries, the following federalism-related important generalizations can be forwarded: (1) The most geographically vast countries including Russia, Canada, the United States, Brazil, Australia, and India (excluding China) are federal. (2) Most of the most populous countries including India, the United States, Brazil, Indonesia (excluding Japan and again China) are federal. (3) Most of the biggest and most stable democracies are federal. Even in terms of economic performance, many in the list of federal countries including the US, Canada, Germany, Australia, Austria, Belgium, and Switzerland belong to the upper echelon of well-to-do countries. In conclusion, over 40 percent of the total population of the world lives under governance systems that exhibit serious characters of federalism (Watts 2008, xiii).

The reasons for the establishment of federal systems differ from time to time and from context to context. In the early federal experiments, the most prevalent reasons were security and economy (Kincaid 2011, xxiv). The most contemporary reason for the creation of federations is accommodation of diversity (Kincaid 2011, xxiv). Moreover, federations can be established as best institutional means to ensure liberty and rule of law by, among others, dividing powers to different levels of government, paving the way for self-rule and/or autonomy, and providing double protections to individual rights and freedoms (Kincaid 2011, xxiv). This leads us to a brief discussion on the history and type of federations.

2.3 A brief history and types of federations

Scholars trace the origin of federalism or, at least, federal ideas to antiquity (Karmis and Norman 2005, 25). Thus, people such as the ancient Israelites and the Americans, before the advent of modern federalism, established their federal-like governance systems based on the idea of Covenant, which indeed is the base for modern federalism (Ostrom 1991, 57). It is further asserted that federalism and federal ideas developed hand-in-glove with religious ideas and principles particularly the idea of covenant (Ostrom 1991, 57). Covenant, in its religious sense, refers to allying with one another under the rule of God. The idea of separation of powers in particular, it is argued, is rooted in the "Hebrew Bible called the Old Testament in the Christian world" (Barenboim 2005, 8). The very term 'federalism' itself is claimed to be derived from the Latin term '*foedus*' meaning alliance between individuals or groups (Karmis and Norman 2005, 5-6). However, there is a consensus that present-day United States of America (1789) is the birthplace of federalism in its modern sense (see Karmis and Norman 2005, 6, 103).

Starting from the early days of the 17th century, people moved from Europe, mainly from Britain, and settled in the 'new world'. The settlements constituted sixteen colonies, which were later consolidated into thirteen. The colonies resisted British colonialism and won independence in 1776. They further established a confederal government through the Articles of Confederation that was ratified in 1781. The Articles of Confederation brought together the separate colonies for some limited purposes including waging war and making peace although it deprived the confederal government the power to raise taxes for these purposes (Frankman 2004, 44). The Articles of Confederation of 1781, political actors found, were insufficient to address the common concerns of the colonies following which they had delegates sent to Philadelphia to negotiate another arrangement, which further empowered the *common* government (see Frankman 2004, 44). It is often presented that federalism as we know it today and particularly the US federation is the result of the Philadelphia negotiation. However, Burgess (2006, 53) states that "[w]hat is abundantly clear…is that the origins of American constitutional history and the federal idea stretch back almost two centuries to the first settled colonies in the early seventeenth century." Burgess' argument implies that the delegates could not have been entirely novice to the federal idea.

After long and demanding isolated negotiations, the Philadelphia delegates created a new and, in the eyes of many observers, a different arrangement than the ones who sent the delegates

could have imagined. The outcome of the negotiation expanded the mandate of the *common* government. In the words of Burgess (2006, 55), "... the 55 delegates from 12 states who met in secret deliberation to revise the Articles exceeded their formal brief and constructed a new and very different constitution." In other words, the Philadelphia negotiation, by seriously altering the power division arrangement known to the colonies during the Articles of Confederation, added a new variety to the types of governance systems known by then.

Three prominent men namely James Madison, John Jay, and Alexander Hamilton who used to write in a pen name 'Publius' played crucial role in convincing the people particularly that of New York, whom the articles were addressing, to accept the new arrangement (see Karmis and Norman 2005, 103). They explained the benefits of such an arrangement by focusing on such issues as security, the economy, and liberties and freedoms of citizens (see Publius 1787, no. ix and x, for e.g.). The document that was the result of the Philadelphia convention was finally approved by the Continental Congress and became the Constitution of the United States of America since 1789 (see Burgess 2006, 64). The Constitution and the federal arrangement sanctioned by the Constitution were/are shaped and reshaped by series of amendments and decisions of the United States Supreme Court on which the power to interpret the Constitution resides. The Amendments such as the Bill of Rights (the first ten Amendments) expanded the content of the Constitution. The decisions of the Supreme Court on cases that merit constitutional interpretation, on the other hand, further strengthened the powers of the Federal Government and its institutions. In fact, the establishment of the American Supreme Court with the power to arbitrate constitutional disputes and interpret the Constitution is considered as one prime reason for the success of the US as a nation (see Burgess 2006, 17).

It is generally accepted that the US federal arrangement is the result of bargains and negotiations conducted by competent, rights-cautious, and sovereign[6] entities and it is further agreed that the system developed through internal dynamics and institutions. Nevertheless, Riker, a prominent scholar of federalism, who attempted to coin an all-explaining theory of federalism, argues that external military-diplomatic threats and the need to pull resources for defense purposes against foreign aggression played a decisive role in the creation of the US federation (see Riker 1964, 12, 20). Riker's theory is called the military-diplomatic threat theory. In his view, two conditions must always be satisfied for federalism to exist: the expansion

[6] Except for the powers exercised by the consent-based confederal government.

condition and the military condition (Riker 1964, 13, 48). The first condition concerns those who want to expand without resorting to overt aggression or invasion and the second condition concerns those who are willing to concede part of their independence in exchange for a better defense against foreign military or diplomatic threats (Riker 1964, 12). Thus, previously sovereign entities will be willing to concede some portion of the powers they previously exercised if and only if they face an external danger and they do not see a possibility of averting the threat individually on top of some economic considerations (see also Riker in Burgess 2006, 17, 38, 76). This opens the possibility for a constitutionally sanctioned vertical division of political power or sovereignty (and hence federalism).

Counter arguments against Riker's theory imply that federations have far more purposes to serve and the military or diplomatic threat and to a lesser extent economic explanations alone are rather simplistic (see Burgess 2006, 81). Of course, there are some truths in this theory as far as the mature 'coming-together' federations is concerned but it loses touch particularly when it comes to the 'holding-together' federations, either mature or emerging. As it will be discussed later, federations can be established, mainly, for accommodating diversity and addressing cultural grievances on top of, of course, economic or military considerations. A thorough reading of the explanations provided in *The Federalist* papers also indicate that federalism including in the American context had (and still have) far too many purposes to serve than simply addressing the defense needs of the states. It is provided that federalism benefits citizens, *inter alia*, by providing double protections i.e. protections by a state government and protections by the federal government, by allowing free and wider mobility, by allowing for resource pooling for certain purpose and through economies of scale (see Publius 1787 no., 1, 11, 85, for e.g.).

It can be inferred that the core issue at the Philadelphia convention was vertical division of power between the states and the then imminent national government. The convention was aimed at creating a national government with limited and enumerated powers and some powers to be concurrently exercised with the states that exercised autonomous powers in areas reserved to them (Ostrom 1991, 45). Accordingly, the federal government was given powers that deal with issues of common concern to all the states. They included defense, currency, foreign affairs, and foreign and inter-state commerce (see Art. I Sec. 8 of the US Constitution). This laid a foundation for dividing powers in all federations to come particularly in those that follow the dualist model of federalism. Of course, federations differ in many aspects including in the way

they distribute power among different tiers of government, nevertheless the general trend remains unaltered from the American precedent: powers of countrywide significance are allocated to the federal government and those with only local[7] significance are allocated to the states. However, it is not easy to draw a clear line of demarcation between powers exercised by different levels of governments as things in reality are highly interconnected and power division in federations is always a complex issue that depends on many factors including context and decisions of institutions such as courts on top of constitutional arrangements (Anderson 2008, 24).

The other country with a great historical significance in the 'organic' development and the study of federalism is Switzerland. The origin of the Swiss Confederation can be traced back to the oath of allegiance entered into by three central alpine valley communities namely Uri, Schwyz, and Unterwalden (Erk 2008, 73). According to the oath of allegiance, the three communities pledged to join in self-defense in case an 'aggressor' attacks one of them. The three communities were autonomous in the sense that they were in charge of their internal affairs and they were free to enter into this sort of contract. This oath, also called the Federal Charter, which is some five centuries older than the American Articles of Confederation, came into existence in 1291. Slowly and through time, other communities joined them and the confederal-type arrangement came to a political tension in the mid of the 19th century.

The tension was between rich liberal protestant forces who wanted the common government to have more powers and between conservative catholic forces who wanted to maintain the *status quo* (Erk 2008, 74). The tension developed into a short-lived violent skirmish in 1847 (Erk 2008, 74). The liberal protestant forces prevailed in the war and this opened a way for renegotiating the previous arrangement. The new Constitution that came in 1848 strengthened and converted the confederal government into a federation although it maintained the nomenclature 'confederation'.

The Canadian Federation also belongs to the group of the first generation and mature federations. Unlike the USA, however, it had (and still has) a different purpose to serve. The Canadian federation was mainly geared towards accommodating the two linguistically and culturally distinct English-speaking and French-speaking communities of Canada from the very

[7] These include such powers as state civil service, land, state police, state courts, and usually health and education.

beginning and more so since the 1970s and 1980s. Burgess (2001, 257) explains the situation as follows:

> The division of the Province of Canada into two quite distinct cultural communities one mainly English-speaking and the other predominantly French-speaking along territorial lines was made primarily to resolve the political deadlock that had arisen between them. But it was at the insistence of French- Canadian political elites that the new Canadian union adopted the peculiarly federal form.

Quite contrary to the federal experience of the US, which ignored cultural diversities, the Canadian federal arrangement attempted, with an increasing commitment from time to time, to accommodate cultural diversity that existed since the colonial times. This does not, however, mean that all Canadians had shown equal readiness in accepting multinational federal arrangement. It was rather at the insistence of the French-speaking minority that the system was designed to be multinational (Watts 2000, 34). The Canadian federation was established in 1867. The federal bargain and power division arrangement in the case of Canada had to always devote significant consideration to socio-cultural issues on top of deliberating on what powers to allocate to the federal government and to the provinces (see Watts 2000, 32).

All the above-mentioned mature first generation federations, except Canada, were the results of negotiations by sovereign or semi-sovereign entities. The Canadian experience is different in that it started as a highly centralized federation with the main goal of holding the two culturally dominant English-speaking and French-speaking provinces of Ottawa and Quebec respectively (Watts 2000, 29-30). In the others, the entities, for different reasons depending on the context, had to negotiate what powers to give to an 'umbrella government' and what powers to retain. Their development can, therefore, be labeled 'organic'.

A common denominator is the fact that they all have come through lots of changes with the passage of time. In the US, the federal government has become more powerful; in Canada, the provinces particularly Quebec has become very assertive and very powerful; In Switzerland, language developed to be the main factor in asserting identity. All the above-mentioned federations were engineered before the WWI and all of them have survived for more than a century and in the case of the US for more than two centuries.

The second significant wave of federalism came in the aftermath of the WWII (see Watts 2008). Many federations including Malaysia, Pakistan, Spain, and Brazil belong to this

generation. However, the two mature federations that belong to this 'wave of federalism' are Germany and India (see Watts 2008). These two federations have tremendous variations. Nevertheless, they constitute very significant additions to the species of federalism.

Recent literature focuses on German federalism that developed after WWII. However, the federal idea was there in Germany far before the war. It is even claimed that the German regional and social setup was/is very convenient for the implementation of the federal idea (Advisory Commission on Intergovernmental Relations 1981, 19; Umbach 2002). Germany experienced governance systems that seriously considered regional distinctiveness. The unification of Germany and the establishment of a national government under Bismarck in 1871 was very close to a federal system of governance as many regions maintained broad powers despite Prussian dominance (Umbach 2002, 4). This continued during the Weimar Republic utill the Nazis came to power and establish highly centralized totalitarian state by abolishing federalism and regional powers since 1933 (Confino 2002, 90).

Germany was divided after WWII. The western part remained under the control of the Americans, the British, and the French whereas the east remained under the control of the USSR. Post-Holocaust West Germany was again to adopt federalism but, this time, it was a deliberate design of the Allied Powers, winners of WWII, not only to demilitarize but also to democratize, if not to weaken, Germany (Advisory Commission on Intergovernmental Relations 1981, 19). In the German case, it can be observed that federalism, more precisely, vertical power division was meant to serve an ulterior motive of weakening the central government by empowering the constituent units called the *länder*. This assumption of the allied powers considers vertical power division as a zero-sum game, which was later proved to be untrue. The paradox is that, despite foreign intervention, the post-WWII federal design was effectively domesticated and exploited to help Germany recover from war ravaged economy and to become a 'European power house' once again within some decades. This was reassured by the unification of Germany in 1990.

Outside of the Western world, India is a prominent example of multinational federation (since 1950). Unlike Germany, India is a country of enormous geographic and population size as well as a country of astonishing linguistic and religious diversity. It is believed that more than 1600 languages are spoken at the level of a mother tongue in India (Basu in Bhattacharyya 2005, 5). Owing to its diversity, Mahajan (2007, 85) claims, "[w]hen India gained independence in 1947 it was a foregone conclusion that it would be a parliamentary and federal democracy."

India's federal arrangement was created with the help[8] of its colonizer, Britain, following the former's independence in 1947 (see Bhattacharyya 2005, 14; Mahajan 2007, 86). The system employs ethno-linguistic, and in one case (Punjab) religio-linguistic, factors in organizing the constituent units (Watts 2008, 36-37). Similar to that of Canada, responsiveness to socio-cultural diversity is a trademark of the Indian federal arrangement. Nevertheless, the Indian federal arrangement is different from the first generation mature federations in that it was not a result of bargains by sovereign entities. The then Indian elites, highly influenced by the ideas of the anti-colonial struggle, had to design the power division arrangement from the perspectives of the goals they envisioned for India and, of course, there were debates in the process (see Mahajan 2007, 85).

Comparably, the outcome of the vertical power division arrangement in the case of India was tilted in favor of the center. This is evident in many ways including but not limited to the reservation of residual powers to the center. Even the very existence of the constituent units of the federation was (is) at the mercy of the federal government as the latter can create, divide, or merge the former (see Mahajan 2007, 82-87). Despite ups and downs, the Indian federal arrangement survived and flourished to date. The credit goes to the power division arrangement and particularly the openness of the system towards accommodating cultural demands (Mahajan 2007). Generally, the Indian federation is often considered as an example of a successful multinational federation (see Singh 2008; Burgess 2006).

Often than not, federalism or federal-like systems are (re)considered as governance instruments of last resort in response to 'seasonal' governance quagmires and as a best tool to distribute power among fierce contenders. This was very evident in the 1990s. Belgium introduced federalism fully in 1993 in response to its dyadic socio-political cleavages. South Africa introduced a federal-like (others would say federal without using the term 'federal') system as a best compromise to transform South Africa to democracy following the abolition of Apartheid. Ethiopia introduced a federal system of governance *de jure* in 1995 in reaction to the then prevailing demands for self-determination, fair representation, equitable distribution of resources, and cultural equality, generically referred to as the 'national question' in the Ethiopian political history, that nearly balkanized the country. The core of the bargain in all these emerging federations was power division. The agreement of the political contenders on this core issue

[8] Not in the sense of aiding democracy but indirectly through acts passed to facilitate colonialism.

enabled each country transcend imminent dangers of breakup or the continuation of violent conflicts. The early 1990s also witnessed the disintegration of countries that pretended to be federal but that lacked real power division in their governance systems (see Burgess 2006, 223). The Soviet Union and Yugoslavia are but two prominent examples.

The trend seems that federalism is to be continuously resorted to in diverse and/or conflict-ridden countries in a different way than its original creators, the Americans, would have imagined. The only contemporary exception from this general trend would be the European Union if it can be considered as a proper federal experiment at all. Federalism is recommended as a solution and it is being experimented in such countries as Iraq, Sudan, Yemen, Somalia, and the Democratic Republic of Congo in the 21st century. This shows the resurgence of the federal idea. The contemporary federal experiment focuses on maintaining the unity of existing countries while addressing conflicts that are caused by cultural injustices and/or unfairness in the distribution of resources and power across groups. This is different from the experience of the first generation federations whereby, in most cases, sovereign or semi-sovereign entities entered into a bargain to create umbrella governments for different historic reasons. This brings us to a discussion of a concept developed by Alfred Stepan, which played a significant role in understanding the nature of federal systems of governance.

Based on the histories of their development, Stepan (2005, 257-8) identifies three types of federations. The first group consists of 'bottom-up' federations whereby previously sovereign entities come together to form a bigger entity while retaining some powers to themselves. These federations are referred to as 'coming-together' federations. The second category is composed of previously unitary states that emerged into federal states for different reasons; mainly to accommodate diversity. In this case, the federal system is often introduced as a matter of necessity i.e. when the very survival of the unitary state is at stake unless a mechanism to empower cultural groups and address their grievances is introduced. These types of federations are referred to as 'holding-together' federations. The final group, as per Stepan, is denoted as a case of 'putting-together' federations. In this case, the constituent units do not choose to be part of the federation. Instead, force or the 'international community' plays crucial role in establishing the system.

Federations can also be categorized into two groups depending on the level of diversity they face: mono-national federations and multinational federations. Mono-national federations

are established mainly for economic and security reasons (e.g. Germany, USA). Multinational federations are established, mainly, to accommodate diversity on top of economic and security considerations (Kymlicka 2007, 35). Examples of multinational federations include Canada, India, Belgium, and Ethiopia. This categorization is, of course, more related to political assumptions behind establishing institutions of government. It has less to do with the demographic realities of federations. Demographically speaking, countries including the US are hardly mono-national. The United States is a diverse country composed of the dominant whites, the Afro-Americans, and such native groups as the "American Indian tribes, the native Hawaiians, Puerto Ricans, Chicanos, Alaskan Eskimos, and Chamoros of Guam" (Kymlicka 2001, 97). These groups could have formed majorities in some of the states if there was a genuine effort to accommodate them (Kymlicka 2001, 97). However, the US federation assumes that the country is mono-national and it exerts little effort to accommodate identity-based diversities. Those that explicitly aim at accommodating their territorially based and politically mobilized diversities are called 'multinational'.

Based on the nature of distribution of powers, federations can be roughly categorized into two groups: dualist and integrated (Anderson 2008, 21). In the dualist model, predominantly, each level of government has separate powers and it provides services through its own civil servants and government structures independent of the other level of government. Examples are the US, Canadian, and Brazilian federations. In the integrated model, each level has exclusive powers in some limited areas but most of the powers are exercised concurrently or jointly. In this case, usually, the federal government enacts a framework legislation. The framework legislation incorporates the guiding principles. The constituent units work on such details as contextualizing the legislation (without contravening the center's legislation) on top of doing the implementation (Anderson 2008, 22). Germany is a classic example of the integrated model.

Federations manifest serious variations in terms of the number of constituent units they have. They can range from two to dozens. Thus, it is also possible to categorize federations based on this factor: those with two units also called dyadic and those with more than two units. There are also serious variations on the types and extent of powers federal constitutions guarantee to constituent units. This leads us to a discussion on the constituent units of federations.

2.4 Constituent units of federations

The most important power contenders in federations are the constituent units and the federal government. The nature of the constituent units is an imperative factor in this game. The experience of federations, similar to other issues, is diverse in this regard, too. Considering such factors as population and geographic size, economic capacity, and the like, constituent units of any federation exhibit many variations (see Watts 1998, 123). For e.g., the US federation has the gigantic California and the tiny Wyoming as its constituent units. In the same fashion, the Ethiopian Federation has the relatively big Oromia and the tiny city-state of Harari as its constituent units.

The determinant factor whether the constituent units of a federation are symmetrical or not is, nevertheless, the constitutional powers they exercise (see Watts 1998, 123). Thus, despite the apparent variation in population and/or geographic size, some federations have units that exercise the same constitutional powers. Such powers are manifested in such areas as self-rule and representation particularly in upper chambers. In this sense, the US federation is a typical example of a symmetrical federation. California and Wyoming have equal constitutional powers including equal representation in the Senate, as they are each represented by two senators.

As it can be observed from the experience of different federations, the ones who are the outcomes of negotiations and bargains by sovereign or previously independent entities tend to allocate symmetrical powers to their constituent units. In addition to the US, Switzerland is a good example in this regard. Of course, Switzerland has units called half-cantons and this may imply that there is asymmetry within the Swiss federation. However, this arrangement in itself was a result of the firm stand that the originally negotiating units should be equally represented in the Swiss Second Chamber. The so-called half-cantons are the results of splits of previously single cantons and the logic employed was that the splitting units should divide the representation if they have to split. Otherwise, the so-called half cantons are as competent as the full cantons in all areas(see Swiss Constitution 1999, arts. 3, 47, for e.g.). It is for this reason that the recent Swiss Constitution avoids using the term 'half' (see Swiss Constitution 1999, arts. 1 cum. 150, for e.g.).

However, there can be entities that are somehow associated with a federal country without being a full-fledged member of the federation. Examples are the relationships between Puerto Rico and the US; Jammu and Kashmir or Bhutan and India; and Liechtenstein and

Switzerland. In this case, although the US and Switzerland can be generally considered as symmetric federations, the other entities associated with them can be considered as a secondary example of asymmetry as they have different relations with the federal governments compared to the other units (Watts 1998, 123).

The typical examples of asymmetry are, however, the ones experienced among full members of a certain federal or quasi-federal countries. For different historical and socio-cultural reasons, such countries as Canada, Russia, and Spain have constituent units with different competencies. For e.g., Quebec has competencies over cultural and immigration issues that the other provinces of Canada do not have (Norman 2006, 13); Russia has units that are referred by different names including republics and oblasts and that enjoy different levels of autonomy. Asymmetry in the exercise of power by different constituent units of a certain federation is but another name to the existence of variations in vertically dividing power in that federation.

Federations can be categorized into two groups regarding the issue of guaranteeing the survival of their constituent units. Some federations empower the federal government to unilaterally create, divide, or merge units while others guarantee the perpetual existence of the constituent units (Kincaid 2011, xxviii). India and the US respectively are typical examples. Governments with democracy deficit may also use force or abuse some of their powers to create, merge, or divide constituent units (Kincaid 2011, xxviii). The Ethiopian federal arrangement has a unique stand (that is worth discussing here) in this regard. The 1995 FDRE Constitution states that the nations, nationalities, and peoples of the country are sovereign and it further guarantees them the right to establish governments at different levels (1995 Constitution Art. 39(3)). Hence, indirectly, it does not guarantee the unity or perpetual survival of the states as listed under Article 47 since almost all of them are home to different nations and nationalities. In this case, the general trend seems that those federations that are the outcomes of bargains and negotiations by sovereign or semi-independent entities like the US and Switzerland guarantee the permanency of their constituent units (except for changes due to an internal breakup like the case of the Jura in Switzerland) whereas those so called 'holding-together' federations like India and Ethiopia do not guarantee the survival of their constituent units.

The nature, number, and composition of constituent units play crucial role in determining the stability and effectiveness of federations (see Hale 2011). Federations that are dominated by a single disproportionately big constituent unit tend to develop secessionist movements.

Federations that have two dominant constituent units also called dyadic federations often result in deadlocks. Belgium is a classic example in this regard. On the other hand, federations with very small and many constituent units tend to be dominated by the center and hence develop tendencies not to respond to local demands (see Hale 2011). Therefore, it is often argued that constituent units of a federation should not be big enough to 'think' that they can do it all themselves (Mill 2005, 165) or small enough that they cannot do anything substantial. It is further recommended that there should not be two disproportionately big constituent units and other small ones in a federation. Otherwise, the two will change the federation into a fighting ground to acquire supremacy or, if they come to terms, they will ignore the interests of the other constituent units (Mill 2005, 166). Thus, constitution makers should carefully think about not only how to vertically divide power but also about what types of constituent units to create, if they have the opportunity to shape them.

2.5 *Power division in federations*

Power division is an important aspect of all 'federal political systems'. But since this research is about division of political power in the Ethiopian Federation, the discussions in the forthcoming paragraphs focus on power division in federations, its types, and attributes. Political powers to be divided between the center and the constituent units in a federation usually fall into three broad categories: legislative, executive, and judicial powers. Owing to the interest to maintain unity and diversity, in federations, both the federal government and the constituent units have powers on which they exercise autonomy.

The distribution of powers between the federal government and the constituent units is called vertical division of power. The substance of vertical power division differs from one federation to another depending on such factors as history, culture, legal traditions, population and geographic size, and level of political mobilization. Hence, it is incorrect to generalize about the types of powers exercised by federal governments and their constituent units. The general trend is, however, to assign political powers that have countrywide significance to the center. For e.g., such powers as running foreign affairs, overseeing national defense, and setting monetary policies are reserved to the center (see Anderson 2008, 24-25). On the other hand, those powers that have local significance only are often assigned to the constituent units (see Anderson 2008,

24-25). Thus, such powers as land administration and providing such social services as health and education are often assigned to the constituent units.

In almost all federations, three types of powers exist: (1) those that are clearly allocated to either the federal government or the constituent units also called enumerated powers. (2) Those that are not listed in the constitution but often assigned to the constituent units, also called residual powers. (3) Those powers that the federal government and the constituent units jointly exercise also called concurrent[9] or joint powers. Federations differ on the types of powers they assign to either of the categories. They also differ on who exercises the residual powers. If one examines the US Federation's experience, only the federal government's powers are enumerated and the residual powers are assigned to the states (Anderson 2008, 23). The Indian constitution, on the other hand, enumerates the powers of the states and lists some of the powers of the federal government as it also allocates residual powers to the federal government (Anderson 2008, 23). The Ethiopian experience differs from both: the Constitution allocates enumerated powers to the federal government and it lists some of the powers of the states but it also allocates residual powers to the states.

2.6 The driving factors and the main actors in building the Ethiopian Federation

2.6.1 Introduction

We saw in section 2.3 that different federations have different histories. Their foundations are equally divergent. The three prominent examples identified are 'coming-together', 'holding-together', and 'putting-together' federations (Stepan 2005, 257-8). A typical example of the first category is the US federation whereas the Ethiopian Federation falls under the second category. In the literature, additional attempts are made to theorize why federations come into existence but with little success of convincing the students of federalism. The reason why it is very difficult to theorize federalism and to generalize about federations was provided in earlier sections of this chapter. In this section, by briefly revisiting the historical background of the Ethiopian Federation and through a comparison, another possibility of developing a theory of federalism is indicated. The key argument forwarded is that elites play the most crucial roles in creating federations. The elites are the ones that negotiate the power division arrangements. And,

[9] Details about the nature of concurrent powers in Ethiopia are provided in the later chapters that deal with the specific aspects of vertical division of political power (see chapters seven and eight).

hence, understanding the nature of the elite in a given federation is the most important means to understand that federation. To be more specific, power division arrangements in federations are basically the results of negotiations by elites. This, it is argued, is applicable to all federal states.

As provided in the third chapter, Ethiopia was predominantly a unitary state throughout its history. There were times, in history, where power was shared among different regional authorities but, arguably, that was not in federalism's sense of division of power. The three consecutive regimes before the introduction of the federal system *de facto* since 1991 and *de jure* since 1995 that ruled Ethiopia for about a century were devoted adherents of centralization and a unitary system of governance. The regimes ignored the diverse nature of the country. They openly pursued assimilationist policies in many aspects including religion and language. This resulted in different grievances and it was necessary to introduce a different system that accommodates such grievances if the country had to survive the civil war that culminated in removing the military dictatorship in 1991. We understand from section 2.3 that the US federation, on the other hand, is an outcome of negotiations of the representatives of previously separate colonies. A key similarity between the US and the Ethiopian Federation is, however, the decisive role played by the elites in building the federal systems. This section aims at highlighting the roles elites play in building federal states regardless of the different history or reason for the latter's existence. This is done by comparing the roles of the US and the Ethiopian elites in building the federal system in their respective countries. It is, thus, imperative to define who the elites are before embarking on a substantive comparison of the two systems.

2.6.2 Defining the elite

Elites are, generally speaking, the most powerful members of the society in a given political entity (Orrnert and Hewitt 2006, 6). In limited occasions, elite interest can go along with the general public's interest. Most often, however, elites are believed to have their own separate interests (see Domhoff 1998). Whether the interest of the elites are compatible with the interest of the general public or not, it is almost impossible for the latter to move out of the options set to it by the earlier (see Domhoff 1998). In other words, elites may be a threat to the true spirit of majoritarian democracy. The elites are in charge of power be it force, finance, or popular support.

Assuming that a given system is democratic, the public has to choose from among the options provided to it by the elites. The group whose agenda have the upper hand in popular votes becomes the ruling elite while the others will form the counter-elite (see Wilson 1993, 426). Obviously, the power to shape the existing system falls in the hands of the elites.

In the absence of democracy, the group that commands the most coercive instrument rules. This is usually military force. Those who belong to such a group and participate in important decisions form the elites. The system and the power to shape it fall in their hands. Those who have comparable economic, social, academic, and political backgrounds, but who are alienated from the 'present' system, form the counter-elite. They will 'wait' till 'their time' comes so that they shape the system in a way they think is proper or beneficial to them.

It can be observed that the elites and the counter-elites belong to the same class. The difference between the two is more of an internal division of a certain social group than of a substantive difference (Mills 1956; Orrnert and Hewitt 2006, 7). They are both composed of politicians in the three main branches of the government, corporate executives and business people, influential professionals such as lawyers and doctors, top military officials and civil servants, and known academics (see Hossain and Moore 2002). Apart from describing the characters and values of elites, it is very difficult and a highly subjective task to draw a boundary between elites and non-elites. It is also possible for individuals to switch sides. In this research, those individuals with the necessary academic, financial, social, political, or/and coercive resources to bring about changes on governance systems and to institutionalize such changes as circumstances require are considered to be elites. They have to be capable of doing this regardless of the presence and the opposition of the counter-elites.

In the Ethiopian case, the leadership of the TPLF/EPRDF played a pioneering role in designing the Ethiopian federal system of governance. The TPLF was a mass-based, peasant-dominated, and pro-poor organization (see Young 1997). Nevertheless, if one examines how it all started, the armed struggle was conceived in the minds of influential people who belonged to relatively wealthy families, people who had access to the then rare education, and people who were mainly urban dwellers. The TPLF was conceived by the Tigray National Organization (TNO), which was secretly established in Addis Ababa in 1974 by seven university students and a parliamentarian, who did not attend the founding meeting for security reasons (Aregawi 2004, 578-579). In their context, these people belonged to the elite class. Some of the founding

members of the TNO led the armed struggle to the end and they and people with similar backgrounds were the ones who designed the Ethiopian federal system of governance. Their preferences and decisions were, however, in line with the wishes of the masses. It is boldly recorded that the leadership of the armed struggle that preceded the unfolding of the federal system *de jure* in 1995 was known for its commitment to and defending popular causes (Young 1997, 34). Nevertheless, it is a matter of fact that the top leadership articulated and designed the system.

Taking note of such a contextual understanding of who the elites are, let us now deal with the role the Ethiopian elites played in bringing and shaping the Ethiopian federal arrangement. For the sake of clarity, we will include a randomly selected comparison with that of the US Federation and the roles played by elites in bringing and shaping the system.

2.6.3 A comparative role of the Ethiopian elites in bringing and shaping the Ethiopian Federation

In the United States of America, the watershed between those who favored federalism and those who opposed it was related to their political conviction. Some thought the bigger the country, the better the opportunities for the American people. Others thought the smaller entities were in a better position to ensure the prevalence of liberty. Otherwise, the elites and the counter-elites were composed of people of similar backgrounds: business people, lawyers, and other professionals. In the Ethiopian case, the divide between the elites and the counter-elites was sharper. The elites that brought the federal system were people who waged war against the military dictatorship. They were ex-guerillas. The counter-elite (the people that resisted the introduction of the federal system) were mainly composed of those who served in the military regime and those who were sympathizers of the unitary regimes of Ethiopia. This does not mean, however, that within the old system and within the urban dwellers, there was none in favor of a federal system of governance. Indeed, there were many. Similarly, it does not mean that everyone who participated in the fight against the military government had a clear idea of the governance system to be adopted next. It can be observed that the backgrounds of the American and the Ethiopian elites who architected the federal systems in their respective countries had notable differences. However, the elites in the two countries were also similar because they were both able to design a new system and they were influential members of their society. Thus, the

comparison is relevant as far as one takes the dominant character of the elites and the counter-elites.

While dealing with the roles the Ethiopian elites played in bringing and shaping the Ethiopian federal system from a comparative perspective, we will inevitably see the preferences they made and the options they had. The comparison will eventually help us appreciate the roles elites play in bringing federal systems of governance and determining power division arrangements.

The roots of the US Federation can be traced to the American war of independence against the British colonial rule although the federal idea had been there even far before the war. 'No taxation without representation' was the famous motto of the Boston Tea Party, where colonists rejected the tax on tea in 1773. The patriots who resisted British colonialism declared America independent in 1776. This led to war and the colonies won the war but they had to devise a system that preserves the achievements of the war. Consequently, they enacted a pact called the Articles of Confederation. This agreement gave some meager powers as maintaining peace and security and regulating inter-state trade to the Confederation (Sutton 2002, 3). After experiencing the confederation for about a decade including the drafting and ratification period (1776-1787), the states discovered that the Articles of Confederation had serious defects and they were insufficient to satisfy the interests of America and its people. They, therefore, decided to renegotiate and revise the Articles of Confederation. Fifty-five influential people, obviously members of the elite group, met at Philadelphia for this purpose. The delegates, instead of adhering to their original mission of revising the Articles of Confederation, produced a new Constitution that transformed the Confederation into a full-fledged Federation. The US embarked on an unprecedented federal experience in 1789, hence the oldest federation in the world. This move was not only novel but it also challenged the long-sustained assumption, particularly in the British system, that sovereignty is indivisible. A move that started as a resistance against colonialism, thus, culminated in establishing a system of governance that would influence future world affairs for centuries to come.

The discussion in section one of the first chapter tells us that the roots of the Ethiopian federal system of governance are traceable to the armed reaction against oppression. In this sense, the federal system of governance in Ethiopia is similar to that of the US. Moreover, since the 1995 Ethiopian Constitution gives sovereignty to the 'nations, nationalities, and peoples' of

the country, similar to the US system, the Ethiopian federal arrangement considers sovereignty divisible and sharable. We can also see that, elites who had fought oppressive systems designed both systems. However, there are many differences. In Ethiopia, the struggle was not against a colonizer but against an oppressive own state though some may claim there was an internal colonization (see, for e.g., Assefa Jaleta 2001). No independent constituent units or states existed that could fight the center because Ethiopia was a unitary state. However, there were different organizations particularly nationalist movements fighting the center.

A key point of departure in comparing the roles of the two elites starts from the very basic assumptions they took in creating the systems. The US elites assumed that they were the same people speaking the same language, practicing the same culture, and professing the same religion (Publius 1787, Federalist no. 2). Such emphasis was important given the fact that the states were sovereign entities and the intention was to bring them together. For that to happen there should have been something that ties them together. Nevertheless, the allegation that the states in the US were composed of the same people was an exaggeration to say the least. There was, and still is, racial, cultural, and religious diversity in the US. There were such diverse groups as the white Anglo-Saxons, Blacks, Hispanics, and Native Americans. A curious reading of the Publius reveals that such divisions were blatantly denied. The proponents of the American federation were right about one crucial aspect though. In terms of decision-making, only the almost-homogenous white Anglo-Saxons mattered. They were the dominant and decision-making group in all the states. Thus, although the allegation that they were of the same people was very exclusionary, it was true if one considers only the people who had the power to make decisions.

As a unitary state, Ethiopia used to emphasize the 'oneness' of the people. There was little attempt to recognize and accommodate the diverse nature of the people in the country. This combined with social, economic, and political problems gave birth to resentments and finally to the defeat of the central government by a coalition of armed groups. As a matter of belief and necessity, the new forces had to engage in recognizing the diverse linguistic, cultural, and religious nature of the country. Thus, the emphasis, unlike in the case of the US, was on recognizing the diverse nature of the country. On the other hand, the Ethiopian people had developed many commonalities owing to the common history they shared, the centuries-old interaction, intermarriages, wars, and unitary governance systems. It was also apparent that a

bigger country had a comparative advantage over smaller ones regarding security and economic matters. Hence, a federal system of governance particularly a multinational federation was found to be appropriate for accommodating such demands as recognition, self-rule, and equitable participation on one hand and a demand for bigger, more secure, and more powerful polity on the other. A cursory reading of the Preamble of the 1995 Ethiopian Constitution confirms this idea.

A series of deliberations were conducted on the advantages and disadvantages of introducing a federal system of governance in the case of the US. Emphasis was given particularly to issues related to the liberty, property, and security of citizens, and the insufficiency of the Confederation to preserve the union and attainment of government with true republican principles (Publius 1787, Federalist no. 15). In the Ethiopian case, the level of deliberation was not on a par with that of the US. In fact, many people blame the party that championed the commencement of the federal arrangement- the incumbent EPRDF for imposing its party programs. Nonetheless, others argue that the EPRDF had no option but to design the new system almost solely because other parties such as the EPRP refused to renounce armed struggle and boycotted the conference for the Transitional Period (For details, see Assefa 2010, 40-41 including the footnotes).

Furthermore, the elites of the two federations had different goals in mind for the federal arrangements they sought. In the American Federation, since issues of diversity were of little significance, the focus was on maximizing economic and security benefits from a larger polity. The elites sought the federal arrangement as a key instrument in safeguarding the liberty and security of the American people (see Publius 1787, Federalist no. 8 and no. 24). They saw the confederation as an insufficient institution to protect such key attributes of governance (Publius 1787, Federalist no. 8). In the eyes of the elites, it was impossible to attain a true republican government with true republican principles via the confederation (Publius 1787, Federalist no. 43).

Unlike that of the US, the main goals of the Ethiopian Federation are accommodating the varied diversities of the country by ending the long-sustained identity-fueled conflicts and any form of discrimination, respecting individual and group rights, and maximizing economic benefits by maintaining the unity of the country (Preamble of the 1995 Constitution). The focus of the deliberations preceding the introduction of the federal system was, therefore, on the advantages of introducing a multinational federal system in ensuring the rights of the different

nations, nationalities, and peoples, and accommodating cultural, linguistic, and religious diversities. A federal system of governance was considered as the only feasible option to respond to such pertinent demands. The different points of departure did not stop both the American and the Ethiopian elites from reaching a similar destination i.e. bringing a federal system of governance for their respective countries.

Among the other key differences between the Ethiopian and the American federal arrangements are the nature and the stand of the counter-elites. The two counter-elites are similar in that they both opposed their respective federal arrangements. The American counter-elites wanted more state sovereignty and the dominant Ethiopian counter-elites sought unitary state system with no division of sovereignty or autonomy for the constituent units (see Messay 1999). In the Ethiopian case, we have to talk only in relative terms because there are some counter-elites who consider the current division of power as insufficient and who claim further autonomy or even secession of some of the constituent units (see Merera 2006).

Additionally, in the American Federation, the counter-elites saw states as the only true guardians of liberty. On the other hand, the Federal Government was seen as a despot (see Antifederalist no. 4). In the Ethiopian case, the dominant counter-elites perceive the states as an obstacle to free movement of people and businesses (see Messay 1999). The American counter-elites saw increased centralization as a threat to liberty, democracy, and local governance. In the Ethiopian case, the dominant counter-elites perceive division of power between the center and the states and the exercise of self-rule by the latter as a springboard for further division and eventually fragmentation.

Both the Ethiopian and the American elites favored a republican type of government with popular sovereignty. They both had important reasons to seek a republican type of government. The American elites had a traumatic experience in dealing with the British monarchy. In the British system, sovereignty resides in the Parliament and the American elites considered this as inherently undemocratic. They also considered America as a land of freedom and democracy. Thus, it was natural for them to look for a different system. Consequently, they opted for a republican democratic system of governance whereby ultimate power resides in the people (Sutton 2002, 2).

Many of the problems witnessed in the second half of the twentieth century in Ethiopia were blamed on the inefficient and unresponsive monarchy. The emperor claimed to be an

appointee of God. He was the only one to be credited for whatever good the government does and to be blamed for none of the wrong things. A famous proverb described the situation: 'the king cannot be accused, as the sky cannot be ploughed!' The military regime that came to power by removing the last emperor from power in 1974 claimed to have taken power on behalf of the poor masses. Nonetheless, it failed to fulfill almost all of its promises. It was in particular impatient with any form of political dissent (see Assefa 2010, 33-34). Thus, in reality, the country was under tyranny and the people had no power. Moreover, the state was associated with one religion during the imperial times. The Ethiopian Orthodox Tewahedo Church was the official religion of the state. The military regime repressed all religions as it embraced Marxism-Leninism. This was despite the fact that the state belonged to people that are overwhelmingly religious but with diverse denominations and religions. Therefore, introducing a secular republican government was indispensable to respond to such problems.

When we come to some specific constitutional arrangements, in the US Federal Arrangement the power to interpret the Constitution is given to the courts with final power residing in the US Supreme Court. The Court, in the US system, is considered a professional and neutral arbiter (see Yonatan 2006). In the Ethiopian case, the power to interpret the constitution is given to the Second Chamber of Parliament namely the HoF. The proponents of the system argue that since the Ethiopian nations, nationalities, and peoples are the owners of the Constitution, they should also retain the power to interpret the content and the spirits of the same. In other words, a few judges should not tamper with the Constitution in the name of interpretation (see Yonatan 2006). Others question the neutrality of the Second Chamber, as neutral organs should arbitrate constitutional disputes. They further question the institutional competence of the HoF (see Yonatan 2006). A professional institution called the Council of Constitutional Inquiry (CCI), of course, assists the HoF. Nevertheless, the CCI has no power to take a binding decision. In the case of the US, the Supreme Court has played a great role in shaping the US federal arrangement. It is yet to be seen if the HoF is going to play the same role in Ethiopia. So far, the discussions in the later chapters indicate that the HoF is not yet institutionally competent enough to shape and reshape the Ethiopian federal system of governance.

It can be inferred that the US elite preferred a Supreme Court as a constitutional arbiter while the Ethiopian elite preferred a political organ to interpret the Constitution. The counter-

elites in Ethiopia preferred either a Supreme Court or a Separate Constitutional Court to do the job of constitutional interpretation (see Yonatan 2006).

Another important point of comparison between the Ethiopian and the American federations is the nature of the second chambers. In the American case, each state sends two representatives to the Senate. The states are equally represented in the senate regardless of such differences as population number and areal size. In the Ethiopian case, to begin with, it is not the states that are represented in the Second Chamber. Rather it is the 'nations, nationalities, and peoples' of the country. Secondly, the representation is not equal. According to Article 61 (2) of the Constitution, one representative and an additional representative for each one million people represent each nation, nationality, and people. This makes the Ethiopian Second Chamber *majoritarian* in its nature.

The American federal arrangement is demos-constraining because population number and majority voice are sidelined in the Second Chamber due to equal representation of the states. In the Ethiopian case, in principle, the Second Chamber is demos-enabling because representation in the Second Chamber is proportional to population number. Stepan (2005) argues that demos-constraining federations are more inclusive but less efficient because the smallest units in the federation can block decisions otherwise supported by the majority. The opposite holds true for demos-enabling federations.

Another constitutional point of divergence between the American and the Ethiopian elites lies on the possibility of a constituent unit exiting the federation. So far, in practice, no constituent unit managed to exit either federation. There is, however, theoretical divergence between the constitutional positions of the two federations regarding secession. In the American case, unlike during the confederation, exiting the federation or an attempt to do so is considered treason. The American civil war (1860-65) during the reign of Abraham Lincoln was caused by the attempt of seven and later eleven southern 'slave states' to exit the US Federation (see Sutton 2002). These states established a confederation and an alliance to fight against the northern more industrialized states and secede from the Federation due to the dominance of the latter. The northern states were opposed to the 'institution' of slavery on which the southern states' agriculture depended. The increased favor of the north towards centralization combined with the difference on the issue of slavery moved the southerners to attempt to exit the Federation. The

Federation under the leadership of Abraham Lincoln responded with force. The key motive was to preserve the Union, as it was indestructible.

In the Ethiopian case, the Constitution under Article 39 explicitly recognizes the right to self-determination of the 'nations, nationalities, and peoples' of Ethiopia including and up to secession. Thus, at least in theory, a certain national group has the right to exit the Federation. The right to secede is considered as the logical extension of the right to self-determination and the principle of popular sovereignty (compare Minase 1994). Another striking point is the fact that such right is given not to the constituent units of the federation but to the 'nations, nationalities, and peoples' of the country. There is no congruence between the territory occupied by such groups and the constituent units of the federation. However, it is difficult to imagine the survival of many of the constituent units in case the major national groups of such constituent units exit the Federation. It is, however, arguable whether the right to unilateral secession is recognized or not. Elsewhere, this writer has argued that the right to unilateral secession is not recognized in the 1995 Constitution (see Fiseha 2013). One thing is clear though: the 1995 Ethiopian Constitution recognizes the right to secession, at least, in theory.

Generally, in both cases the trend is in favor of centralization. This has to do with the preference of the elites. In the case of the US, its Supreme Court has been playing crucial roles in shaping the federal system. The US Federation has passed through different stages of history. At some point, the dualist understanding of federalism prevailed. At other times, cooperative federalism had the upper hand. There still are scholars who call for another complicated system called polyphony federalism (see Schapiro 2009). In the latter system, the states and the federal government are not necessarily forced to compete or cooperate but engage in many activities including overlapping ones at a time.

There were historic landmark events that shaped the US federal system for good. *Brown v. Board of Education* is one among such cases. In this case, the US Supreme Court decided that 'separate but equal' education was unconstitutional. This gave the Federal Government the power to regulate education in the name of ensuring equality among the races regardless of the fact that education was within the jurisdiction of the states. In shaping the US Federation, the 'necessary and proper' clause of the Constitution had a significant role. Since the Federal Government was entitled to regulate commerce and at the same time to take all necessary and proper actions to execute its powers, it gave it the upper hand in shaping the federal arrangement.

This power was of course one of the dividing lines between the American elites and counter-elites. Overall, so far, the choice of the elites for increased centralization takes the upper hand in the US federal arrangement.

In the Ethiopian case, the discussions in the later chapters prove that centripetal tendencies are prevalent. Even the Constitution gives the upper hand to shape the overall scientific, social, economic, political, and cultural life of the people to the Federal Government. Article 51(2) Of the Constitution states that the Federal Government has the power to design nationwide policies. This, undeniably, is an important power that favors the Federal Government over the state governments in many aspects. It can be compared to the 'necessary and proper' clause of the US Constitution.

The Ethiopian states are practically even weaker than they appear on paper (see Assefa 2010; the discussions in the later chapters). This is because the states tend to receive instructions from Addis Ababa on many issues including powers they are bestowed with by the Constitution. They have important powers in relation to such issues as civil service, education, administration, policing, and taxation (Article 52 of the Constitution). However, no state so far deviates from the policy proposals prepared at the center. This is, as stated above, due to a very strong party controlling the center and the bigger states of the Federation. The EPRDF controls four out of the nine states plus the chartered cities of Addis Ababa and Dire Dawa. In numerical terms, it is true that the majority of the states are not under the direct control of the EPRDF. However, the four states constitute 86.2 % of the total population of the country (Ethiopia Population Census 2007). This implies a single party is so far the one that decides both at the center and at the dominant states.

Moreover, the states that are not controlled by the EPRDF are ruled by its affiliates. The latter follow the policy proposals of the EPRDF due to either lack of capacity or initiative. Generally, the dominant elite seem to favor centralization over decentralization when it comes to power sharing such as taxation apart from the constantly maintained trend of accommodating cultural and linguistic diversities.

The discussions in this section highlight a phenomenon that is often overlooked in the study of federations. The role elites play in creating and shaping federal systems of governance is ignored. The US and the Ethiopian Federations are relatively divergent. Nonetheless, the comparison in this section affirms that the elites in both Federations had essential roles in

bringing and shaping the federal systems of their respective countries. This phenomenon, it can be generalized, is common to all federations. This leads us to the understanding that federations and power division arrangements thereof are the outcomes of the interest of the elites in each federation. However, the interest of the elite can either be in line with the interest of the masses or not. Certainly, the interest of the Ethiopian elite that designed the federal system was in line with the interest of the masses behind the liberation fronts (see Young 1997, 34). It can be inferred that studying the nature of elites in a given federation can result in a very revealing findings about the nature of the federation in place.

2.7 *An overview of vertical division of political power in the Ethiopian Constitution*

2.7.1 Introduction

Many critics consider the 1995 Constitution as an endorsement of the political programs of the EPRDF (see Abbink 2000, 153; Keller 2010). Indeed, one can see the core pillars of the EPRDF program incorporated into the Constitution, although the Constitution covers a much broader area than simply the EPRDF's programs. The Ethiopian state is changed for good in many aspects including in its political setup. However, opinions of scholars on the appropriateness of the, according to them, 'ethnic-based' federal arrangement for Ethiopia are highly divergent.

Some argue that ethnic federalism is conceptually flawed for diverse countries such as Ethiopia (Berhanu 2007, 267). They add that the practice in Ethiopia does not reflect a genuine commitment towards the implementation of an ethnic-based federal arrangement (Berhanu 2007, 263; Merera 2003). Others argue that the current federal arrangement is not only relevant for the country but also it answered the long-persisted ethno-national questions (see Andreas 2013; Fasil 1997). They further argue that questions for ethno-linguistic equality and the suppressive responses of the past regimes led the country to turmoil and wars that resulted in heinous impoverishment. Still, some others think that extending recognition to 'ethnicity' and considering it as a key factor in redesigning the state is a matter of necessity while recognizing the existence of some flaws in the current design and the implementation of the same (Alemseged 2004, 593; Assefa 2010, 374).

Coming to the Constitution, in the very first Article, it is stated that Ethiopia is a democratic federation. The Ethiopian Federation is composed of nine autonomous states[10] and two chartered[11] cities under the direct control of the Federal Government. One of the chartered cities, Addis Ababa, is the largest city in Ethiopia and it is constitutionally recognized as the seat of the Federal Government (see Article 49). The second city, Dire Dawa, was never mentioned in the Constitution but it was declared to be a federal city by a proclamation owing to the deadlock created by contentions regarding 'ownership' and disputes over power-sharing among different groups particularly the Oromos and the Somalis (see the Preamble of the Dire Dawa Administration Charter Proclamation No.416/2004). Whether the Federal Government may curve a federal territory via a proclamation is open for debate.

A country to be identified as a federation should fulfill certain common criteria (see section two of this chapter). Examining the governance system in Ethiopia against these criteria reveals the federal nature of Ethiopia. The 1995 Constitution establishes governments that have legislative, executive, and judicial powers at the federal and the state levels (Article 50 (1) and (2)). The Constitution even recognizes local governments and it further compels the states to provide local governments with adequate powers to enable the people make a meaningful participation in local administration. A further reading of the Constitution reveals that both the Federal and the state-level governments have the direct power to deal with the affairs of citizens and to control the land of the country and the state concerned respectively. This fulfills one key criterion of federations i.e. the presence of at least two spheres of government with a power to directly act on the citizens and the land they reside in. According to Articles 51 and 52 of the 1995 Constitution, besides exercising legislative, executive, and judicial powers, both the Federal and the state-level governments of Ethiopia enjoy certain powers where they exercise full autonomy[12]. This fulfills the second criteria of a federation that claims that each order of government should exercise, in most cases, legislative, executive, judicial, and fiscal powers and in the exercise of such powers, each government should have at least some areas where it exercises final authority and full autonomy. The powers exercised by the Federal Government and the state governments in Ethiopia are constitutionally guaranteed. Thus, it is illegal, for e.g.,

[10] According to Article 47 (1), the states are: 1) Tigray; 2) Afar; 3) Amhara; 4) Oromia; 5) Somalia; 6) Benishangul/ Gumuz; 7) the Southern Nations, Nationalities and Peoples; 8) the Gambella Peoples; and 9) the Harari People.

[11] A chartered city is a city in which the governance system is defined by the city's own charter document rather than by provincial, regional or national laws.

[12] Incidentally, it can be observed that Ethiopia's federal arrangement is dualist.

for the Federal Government to take the powers assigned to the states unilaterally. The only possible way out for relocating powers is via constitutional amendment whereby not only the Federal Government but also the state governments play decisive roles (see Article 105 of the Constitution). This is another crucial character of a federal system of governance. The legislative wing of the government of the FDRE is composed of the HPR and the HoF. The HPR represents the interest of the Ethiopian people in general and its main function is producing federal legislation in the name of proclamations (see Article 55 of the Constitution). On the other hand, the HoF or the Second Chamber's main function is safeguarding the interests of the 'nations, nationalities, and peoples' of the country (see Article 62 of the Constitution).

Nationalism is taken as the most important element in constituting the member states of the federation. It is the 'nations, nationalities, and peoples' of the country that are sovereign. Though, unlike most second chambers elsewhere[13], the HoF is deprived of law-making powers, it is there to safeguard the interests of the constituent units. It also exercises such important powers as arbitrating constitutional disputes and designing formulas for budget allocation (see Article 62 of the Constitution). This, more or less, fulfills an important character of federations that the state interests should be represented in the center through a second chamber. The 1995 Constitution also certainly fulfill this important character of federations: a written and usually detailed constitution with rigid amendment procedures that involve the constituent units and the federal government. The HoF also serves, using Watts's term, as an umpire through its power to interpret the Constitution and to deal with any constitutional disputes. However, it is not a politically neutral organ like a supreme or constitutional court. This more or less portrays another important character of a federation; the presence of a referee, either in the form of a supreme court, a separate constitutional court, or a referendum that arbitrates constitutional disputes although its institutional set up is unique and unprecedented elsewhere. Finally, in the Ethiopian case, the Ministry of Federal Affairs, so subjected to many criticisms, is supposed to serve as an instrument of IGR in addition to other mandates. This does not mean the IGR system functions well. However, the Ethiopian Federation attempts to fulfill the final requirement that federations need a body that facilitates intergovernmental relations.

The forthcoming sub-section presents an overview of vertical division of political power in the Ethiopian Federation. The discussion focuses on gaps in the Constitution (law) and the

[13] Compare with the US Senate or with the South African National Council of Provinces.

practice that serve as a springboard for the more focused discussions provided in the forthcoming chapters.

2.7.2 Vertical division of political power

Similar to constitutions in other federations, the 1995 Ethiopian Constitution allocates powers of countrywide significance to the center and those that have relatively local significance to the states. On the specific powers assigned to them, both the Federal Government and the states exercise legislative, executive, and judicial powers (Article 50 (2) of the Constitution). According to Article 50(9), the Federal Government is entitled to delegate its powers to the states. It is imperative to note here that only the Federal Government's power to delegate is recognized in the Constitution. The Constitution nowhere mentions the possibility of state power delegation to the Federal Government although there is no express prohibition, of such acts, too[14]. As a result, the constitutionality of the 'regulation'[15] that gives power to the Federal

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[14] The minutes of the Constitutional Assembly indicate that only downward delegation of power is allowed. Here are some extracts from the minutes: "አቶ ሐሰን ዓሊ.... ዓንቀፅ 50 ንኡስ ዓንቀፅ 9 በተመለከተም በረቂቁ ላይ በተቀመጠው መልኩ ፌደራል መንግስቱ በዓንቀፁ ላይ ከተመለከቱት ስልጣን እና ተግባሮቹ በውክልና ለክልሎች ሊሰጥ እንደሚችል እና ክልሎችም ከተሰጣቸው ስልጣን እና ተግባራት በውክልና ለፌደራል መንግስቱ ሊሰጡ እንደሚችሉ የሚያመላክት እንደነበር ገልፀው በኮሚቴው አስተያየት ፌደራል ስርዓቱ ከሚኖርበት ስልጣን እና ተግባራት ለስራ በሚያመች መልኩ ለክልሎች ውክልና መስጠቱ አግባብ መሆኑ፣ በአንፃሩ ግን ክልሎች ስልጣን እና ተግባራቸውን ለፌደራል መንግስቱ በውክልና እንዲሰጡ ማድረግ የራሳቸው ዓቅም ፈጥረው እንዳይንቀሳቀሱ ጫና ከመፍጠሩም ሌላ ስነ ልቦናዊ ተፅእኖ እንደሚኖረው እንዲሁም ተግባራዊ የሚያደርጉት ህዝብ የሰጣቸውን ስልጣን በመሆኑ ይህንን ስልጣን በተወሰነ ደረጃም ቢሆን አሳልፈው መስጠታቸው አግባብ እንደማይሆን ገልፀው መንግስት ክልሎችን ለማጠናከር አስፈላጊውን እገዛ የማድረግ ሃላፊነት እንዳለበት አመልክተዋል። ከዚሁ መሰረታዊ ነጥብ በመነሳትም ከንኡስ ዓንቀፁ እንዲሁም ክልሎች በተሰጣቸው ስልጣንና ተግባር በውክልና ለፌደራል መንግስት ሊሰጡ ይችላሉ። የሚለው እንዲወጣ ኮሚቴው ሃሳብ ማቅረቡን ገልፀዋል" meaning, Ato Hassen Ali states... the earlier version of Article 50(9) indicated that both the states and the Federal Government may delegate their powers. But, in views of the committee, he continues, considering the functions of the federal system, it is proper to delegate powers to the states in a way that is suitable to get things done. On the other hand, creating a possibility for the states to delegate their powers and functions to the Federal Government will hinder them from building their capacity and it will have a psychological pressure on them. Moreover, the states execute mandates given to them by the people and if they delegate this power to the Federal Government even in a limited manner, it will not be proper. The government has the responsibility to help the states build their capacity. Based on this, the committee suggested, the part that allowed the states to delegate their power to the Federal Government should be removed from the sub-provision (Minutes of the Ethiopian Constitutional Assembly, Volume IV, 109-110) (translation by author). Mr. Abay Tsehaye, who was also a member of the Constitutional Assembly, stated allowing only downward delegation is correct (Minutes of the Ethiopian Constitutional Assembly, Volume IV, 111). The Constitutional Assembly approved Article 50(9) of the Constitution accordingly.

[15] Ethiopia (2010). *Regulation by the Council of Ministers on the Administration of Agricultural Investment Land under the Appointment of Regions*. Unpublished. The legality of this document is contested. See chapter eight for details.

Government to administer investment land on behalf of the states through delegation is questioned (see Assefa 2012, 464). This is considered as one paradox that merits further investigation. Chapter eight is devoted for power division on land administration. The impact of this law on actual land use is also an issue for discussion.

Formulating and implementing overall policy on social, economic and development matters is the jurisdiction of the Federal Government (Article 51 (2)). However, the states are also entitled to similar powers at a state level (Article 52(2) (c)). Assefa (2010, 275) considers this as an instance of recognition of framework powers by the Ethiopian Constitution. However, he (2010, 331) criticizes that the Federal Government may exhaust all the possible powers by enacting detailed policies and leaving no room for the states. The Federal Government is further empowered to regulate 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 (Article 51(3)). This provision, when examined in light of the overall federal arrangement, looks limiting. Owing to its diversity, different groups in Ethiopia have different traditions of conserving cultures and historical legacies. There is also a possibility that different groups can select different technologies that fit their livelihood styles. Since the Ethiopian federal arrangement is designed, among others, to accommodate the country's cultural diversity, this provision gives a disproportionate power to the Federal Government.

Many key and relatively straight forward powers of the Federal Government are listed under Articles 51(4), 51(7), 51(8), 51(9), 51(10), 51(13), 51(14), 51(15), 51(16), 51(17), 51(18), 51(19), 51(20), and 51(21) of the 1995 Constitution. Enacting laws for the utilization and conservation of land and other natural resources, historical sites and objects (Article 51(5)) is another important power allocated to the Federal Government. The states are empowered to administer land and natural resources according to the laws enacted by the Federal Government (Article 52(2)(d) of the Constitution). The Constitution appears to be clear in this regard but the practice is full of controversies. Whether the states may enact laws or the Federal Government may engage in administrative activities regarding land in particular calls for further investigation. This issue is discussed in chapter eight.

Another crucial power of the Federal Government is administering national defense and public security forces as well as a federal police force (Article 51 (6) of the Constitution). The states are also empowered to establish state police force and to be in charge of their internal

security (Article 52(2)(g)). One can observe that security is a concurrent power but no further details as to the specific mandates of the Federal and the state governments are provided in the Constitution. Whether such security forces may intervene in the day-to-day security activities of a state remains unclear or at least worth investigating particularly in light of the proclamations that regulate federal intervention and the powers and functions of the federal police commission[16]. Chapters six and seven deal with these issues.

Furthermore, the Federal Government determines and administers the utilization of waters or rivers and lakes linking two or more states or crossing the boundaries of the national territorial jurisdiction (Article 51(11)). This may result in controversies in case a lake is linked to a river crossing two or more states or the reverse. A case in point is Lake Tana, which is connected to Abay (Blue Nile) but territorially confined to the Amhara State. Regulating inter-state and foreign commerce is within the jurisdiction of the Federal Government although this provision does not expressly prohibit states from entering into bilateral agreements (Article 51(12) of the Constitution).

On the other hand, the states are assigned relatively straightforward powers under Articles 52(1), 52(2) (a), 52(2) (b), 52(2) (e), and 52(2) (f) of the Constitution. The states are empowered to formulate their own social, economic, and development policies and strategies (Article 52(2) (c)). However, as discussed earlier, there is no clear demarcation between the Federal Government's and the states' power in this regard. Moreover, the states have the power to administer land and other natural resources according to federal laws (Article 52(2) (d)). The states are also empowered to legislate on criminal matters not covered by federal law (Article 55(5)). Nevertheless, this cannot be taken as a serious power since the HPR may exhaustively legislate on any criminal matter. The practice so far indicates so. Moreover, Article 55 (6) of the Constitution impliedly empowers the states to legislate on civil laws except those that are considered important for building one economic community on which the HPR has to legislate. In this regard, there is adequate room for the states to exercise some substantial powers. Based on this power, the states have legislated family codes that fit their socio-cultural contexts.

One of the key functions of the Ethiopian Federation is accommodating different 'nationalisms', cultures, languages, religions, and other diversities of the country. According to

[16]See System for the Intervention of the Federal Government in the Regions (sic) Proclamation No. 359/2003; Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011.

Article 39, the most controversial provision of the Constitution, there is lenient procedural requirement to exercise the right to self-determination including and up to secession. Many even think that this right may be exercised unilaterally[17]. Despite this, the majority of the states' constitutions have made the exercise of the right to self-determination conditional. The conditions include deprivation of the right to develop one's culture and to conserve one's history and denial of fair and meaningful participation at the center (see, for e.g., the Afar, Amhara, and Benishangul/Gumuz Constitutions).

To make things worse, some state constitutions do not recognize their internal diversity at all. For e.g., the Oromia State Constitution does not recognize such 'indigenous' groups as the Zay. Other state Constitutions have given the right to self-determination to numerically dominant groups of a state but deprived the same right to indigenous groups that make up the state. The Afar Constitution is a good example here. It recognizes the right to self-determination of the Afar only and it does not extend the same right to the indigenous Argoba although it recognizes their right to self-administration through a special *Woreda*. There is also a prevailing tendency to treat indigenous groups in states dominated by certain national groups as minorities for all purposes including the "ownership" of the states they reside in. This general reflection can follow a thorough reading of the Constitutions of Afar, Oromia, and Tigray. The Amhara state has taken some encouraging moves to accommodate its diversity by allowing for the so called 'nationality councils' to the 'minority' national groups. Nevertheless, even the move by the Amhara state is not free of flaws, if examined against the pillars of the overall federal arrangement as it can be argued that such groups should have been represented in second chambers with certain law making powers. Limiting the rights of the numerically inferior indigenous groups (by the states) is against the overall spirit of the federal Constitution and, hence, worth investigating. A detailed investigation of these issues is provided in chapter five.

When we come to the practice of vertical power division, many writers argue that there is a high centripetal tendency. The Federal Government manifests this in the exercise of many constitutionally unwarranted powers. Assefa (2010, 378) argues that the centralizing tendency, except for fiscal matters, should be seen from the angle of politics and not from the angle of the Constitution. The reasons for political centralization, according to him (2010, 378), are: "...firstly the process of policy-making, the party system in general and the existing system of

[17] For details, see chapter five.

ntergovernmental relations in particular, and secondly the 2001 party crisis, the Ethio-Eritrea War and the federal intervention law, which only seemingly are isolated incidents." Assefa's (2010, 383-384) research further reveals that the federal arrangement went a long way in accommodating historic grievances, diffusing conflicts from the center to the states but he, at the same time, argues that there still remains a lot to be done. Such issues as strengthening institutions, correcting regional imbalances, and accommodating the interests of internal 'migrants' are some examples. The discussions in the later chapters elaborate the foregoing issues further.

Other authors such as Dereje (2006) emphasize the impact of federalism on power division at the state level. He concludes that although the system has registered successes at the national level it nonetheless failed to adequately respond to the challenges of power division at sub-national (state) level taking the case of the Gambella State (Dereje 2006). Some like Yonatan (2008) focus on comparative studies. Others like Berhanu (2007, 267) claim that 'ethnic' federalism is a wrong arrangement for countries like Ethiopia. However, this conclusion does not seem tenable from both theoretical and empirical angles. Thus, this research will deal with these and related issues in the forthcoming chapters.

Finally, it is clear that the 1995 Constitution empowers the states to make policies in their area of competence. Nevertheless, so far, the state policies are mostly 'copy-paste' of the federal policies (I4). The states do not exploit their powers much. This is more common in the less developed states of Afar, Benishangul/Gumuz, Gambella, and Somali. However, some states have taken bold moves in certain areas. On rural land use, the Amhara State enacted the first law although regulating land use is the jurisdiction of the Federal Government. The Federal Government followed suit. Paradoxically, the law passed by the Federal Government affirmed the law enacted by the Amhara state retrospectively (I7). In a similar fashion, Oromia had a more elaborate law on driving including the use of modern traffic control instruments such as GPS and alcohol test. After sometime, the Federal Government followed (I4). Oromia and SNNP were ahead of the Federal Government in implementing BPR, a civil service reform package. Then the Federal Government employed people from the states and caught up. However, until the time of writing, no state has produced a policy that contradicts federal policies (I17).

There are different arguments as to why policymaking is dominated by the Federal Government. An interviewee argues that the party system has helped bring consensus and thus

lack of motive to take policy-making initiatives by the states (I4). Whenever there is something important, the Executive Committee of the ruling party meets and takes decisions. However, some at the HoF believe that things are changing these days, as there is an attempt to move from party channels, which can result in misunderstandings even within a single party, to legal channels (I4). Some argue that the states are weak in terms of policy-making because the policies designed by the Federal Government are detailed and comprehensive enough. The Federal Government makes policies on as detailed issues as kindergarten education. One of the interviewees argued that "...consider the Agriculture Policy as an example. It is very exhaustive and includes all sorts of agriculture. Therefore, a state may not need to enact a detailed document but to use the policy designed by the Federal Government by contextualizing it to its circumstances. For e.g., in the Amhara State priority may be given to cereals, in Afar to animals, in SNNP to cash crop etc." (I14). However, it can be argued that the states could still have engaged in policymaking in such areas as regulating social affairs including alcohol consumption, subsidizing (encouraging) certain sectors depending on state priorities, civil service benefits, state tax jurisdictions, etc.

Others attribute the weaknesses of the states to the disproportionate financial strength of the Federal Government (I16). According to the latter argument, situations in the states are different and there is a possibility for policy variation. Thus, there is enough room for the states to maneuver. However, they lack the capacity to do so owing to capacity limitations, which are highly intertwined with financial capacity (I16). There is some truth in all these arguments. However, the overwhelming policy-making power of the Federal Government as provided in Article 51 of the Constitution seems to be the most defining factor.

2.8 *Chapter summary*

Despite the inherent flexible nature of 'federalism' and despite previous scholarly differences, it is now a settled matter that federalism refers to the advocacy of a system of governance that calls for the compulsory existence of division of political power in a certain political entity whereas 'federation' refers to a certain entity that practices federalism. From its history of development, federalism reveals astonishing varieties as well as diverse motives on the side of its advocates. Federations differ on their nature and form as well as the powers they allocate to the federal and constituent unit governments. Nevertheless, a key feature of and the

single common denominator across all federations remains to be the existence of vertical division of political power. However, again, the foregoing discussions indicate that the experience of federations is very diverse including in the way power is divided vertically. The only important generalization to be drawn in this regard is the fact that, in most cases, federations allocate powers that tend to affect more than one constitute unit to the federal government whereas they tend to allocate powers with local significance only to the constituent units that are referred to by different names in different federal countries.

Not only do federations show variations when compared to each other but even to themselves across time. Some may start as a relatively centralized or decentralized but there is a possibility to reverse the original arrangements for various socio-political, cultural, judicial, or economic reasons. It is also not uncommon to witness in many federations that vertical division of political power as per constitutions and other relevant legislation (if they are lucky to be clear enough) may differ from what is actually practiced by various political actors. Such a fact calls for case-specific studies. The Ethiopian experience is one among them.

Many authors have provided us with the historical accounts, analyses of the nature of the popular movements and uprisings of the 1960s and 1970s, the impact of Marxism-Leninism on such movements and uprisings, and the nature of the armed struggle preceding the adoption of the federal system in Ethiopia. Nonetheless, it is obvious that the poor, illiterate masses that were the backbone of the armed struggle cannot articulate such issues as federalism and choice of governance systems. In fact, it is the leaders of the mass-based movements particularly those of the armed fronts that toppled the military regime that can and did articulate such programs. It can be observed that the choice made was in line with the mass-based demands. Thus, this can be considered as one of the rare incidents where the interests of the masses and the elites coincided. Nevertheless, it does not change the fact that an elite class that was devoted to remove the old order and redesign the governance system of the country afresh articulated the system. In this chapter, we saw that to understand federations and power division arrangements thereof, understanding the nature of the elite that articulated and designed them is crucial.

The discussion on vertical division of political power in the Ethiopian Federation indicates that there are areas where clarity is lacking. Moreover, previous researchers have indicated that there are constitutionally unwarranted centripetal tendencies. The centripetal tendencies that merit further research were elaborated. It is also indicated, in this chapter, that

there are constitutionally unwarranted centrifugal tendencies. The discussions in the forthcoming chapters will build on the latter two important features of the Ethiopian Federation.

The state of vertical division of political power in the Ethiopian Federation is, among others, determined by two vital factors. The first one is the essence of the system i.e. whether it is (perceived as) 'ethnic' or 'multinational' and the second one is the electoral system in place. Before proceeding to the more direct themes of vertical division of political power, these two issues are discussed in the two forthcoming chapters.

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Interviewees:

I4 (Anonymous, a senior expert who works in the area of federalism and IGR, Addis Ababa, 31/07/2015)

I7 (Arayaselassie Alemu, Chair of the Law and Justice Standing Committee in the Amhara State Council, Bahirdar, 10/08/2015)

I14 (Chanie Gebeyehu, IGR and Federalism Teaching Director, Ministry of Federal Affairs, Addis Ababa, 21/08/2015)

I16 (Sisay Melese, Conflict Resolution Director General, Ministry of Federal Affairs, Addis Ababa, 25/08/2015)

I17 (Tsegaberhan Tadesse, IGR Director, Ministry of Federal Affairs, Addis Ababa, 26/08/2015)

Chapter Three: Nomenclature of the Ethiopian Federation and Its Impact on Vertical Division of Political Power

3.1 Introduction

Despite the fact that the term ethnic, with far-reaching consequences on power division is used to define the Ethiopian Federation, naming the system has never been seriously dealt previously. Contrary to nationalism, ethnicity is less inclusive. Thus, the prefix 'ethnic' that is used to refer to the Ethiopian Federation has serious implications on vertical division of political power in all spheres of government. It is argued in this chapter that the label 'ethnic' is wrong and it has resulted in confusions. The lack of proper understanding of the system has a direct impact on the practical challenges of vertical division of political power in the Ethiopian Federation.

Naming political parties, public institutions, governments, and governance systems is a serious business because of the message the names portray. As will be shown in the forthcoming sections, almost all scholarly works refer to the Ethiopian federal arrangement as a case of 'ethnic federation'. However, the authors do not seem to have investigated the matter with the level of depth it deserves. Therefore, in this chapter, the appropriateness of the label 'ethnic' and its implications on the practice of vertical division of political power will be examined. This will be done in the following manner: (1) Highlighting the experience of other federations. (2) Summarizing and analyzing the literature. (3) By examining the evidence provided by the writers, if any, in labeling the Ethiopian federal arrangement 'ethnic'. (4) Examining the definitions and scholarly works around ethnicity and nationalism and (5) presenting evidence on the design and the implementation of the Ethiopian federal arrangement. Finally, the implication of such a label in the exercise of power by political actors, mainly, those in charge of the states will be examined.

3.2 Experiences of other federations

We saw, in chapter two, that there are two types of federations. The first group is composed of such mono-national federations, at least in theory, as the United States of America, Germany, and Australia. These types of federations are established, mainly, for economic and security purposes. The other group is composed of such multinational federations as Canada, India, Switzerland, and Belgium. In addition to economic and security purposes, the latter federations are established, mainly, to accommodate cultural and national diversities particularly

that of cultural minorities (see Kymlicka 2007, 35). This section briefly discusses some of the diverse federations and the common names they are referred to and the latter's relevance to the Ethiopian situation.

Again, in the second chapter, we saw that the Indian federal arrangement currently uses an ethno-linguistic and in one case a religious-linguistic basis to organize the constituent units of the federation (Watts 2008, 36-37). In other words, the Indian federal arrangement is very responsive to group/cultural identities. Considering its linguistic, cultural, and religious diversities, Ethiopia is similar to India. The federal arrangement in Ethiopia is also similar to the Indian federal arrangement because it is basically aimed at accommodating cultural and linguistic diversities. But the two big federations are referred to by different names in the literature. The Ethiopian federal arrangement is referred to as ethnic, while the Indian federal arrangement is often considered as an example of a successful multinational federation (see Singh 2008).

Similarly, again as discussed in the second chapter, one can see that the geneses of the Canadian and the Ethiopian federations are similar because accommodating diversity, particularly linguistic and cultural diversity, was of crucial importance. They are also similar because the form of the federal arrangements in both countries was the result of the insistence of the marginalized communities. However, the Canadian and the Ethiopian Federations are referred to by different names in the literature because the Canadian federation is referred as 'multinational federation' (see Keating 2001; Kymlicka 2007, for e.g.).

Another religiously and linguistically diverse and very old federation is Switzerland. The country is constituted of people who belong to one of four linguistic groupings: German (63.7 %), French (20.4%), Italian (6.5%), and Romansch (0.6%) (*Office fédéral de la statistique* (2002) in Grin (2005)). There are also considerable immigrant minorities who belong to foreign language groups. The development and history of federalism in Switzerland is highly connected to the country's ethnic diversity (Glass 1977, 31). Federalism was chosen as a means to accommodate the heterogeneous groups of Switzerland and the issue of accommodation of diversity remained relevant since the inception of the system (Glass 1977, 47).

The Swiss federal arrangement is different from that of Canada and India. The key difference is the Canton system whereby ethno-linguistically homogenous groups are divided into different constituent units (prior to and after the commencement of the Federation). Each

canton is sensitive to cultural and linguistic issues and it regulates language use in public spheres including education and commerce. In all the German cantons, the German language is the official language; in the French cantons, the French language is the official language; bilingual cantons use both languages as official etc. Thus, linguistically and culturally speaking, the Swiss system is even more sensitive than the other federations[18]. Similar to the above two federations, it is referred to as a 'multinational federation' (Kymlicka 2007, 36; see also Sweden 2006, 244).

Belgium is one of the emerging federations. Belgium started federalization since the 1960s and its Constitution adopted the federal label in 1993. Karmis and Gagnon (2001, 139) underline that "the history of Belgium is generally analyzed through the evolution of three cleavages: clerical/anti-clerical; capital/labour; French speakers/Dutch speakers." The recent dominant force is the competition between the French and the Dutch speakers. Hence, the federal arrangement is basically aimed at accommodating the two communities: the Dutch speaking (Flanders) and the French speaking (Walloons).

The Ethiopian federal arrangement was introduced at about the same time. The two are similar in that they were introduced to accommodate the tension between the different communities living in each country. Historically, the French speakers in Belgium were politically, economically, and culturally dominant. The French language was and still is the language of the capital Brussels despite the fact that it is located in the Flanders territory. The Dutch speakers are getting better economically and they are becoming more assertive regarding their claims. It is because of this tension that the federal arrangement was introduced. Similar to the others, the Belgian federation is referred to as 'multinational' (Keating 2001, 40; Kymlicka 2007, 36). In the Ethiopian case, the state pursued an assimilationist policy. The policy was resisted extensively. Nationalist armed groups toppled the military regime in 1991 and the federal arrangement was introduced as a sole alternative to maintain the unity of the country. Hence, there is similarity between the Ethiopian and the Belgian federations despite the difference in naming.

It should be noted that comparisons could not be perfectly analogous. It is only the most defining features of each system that should be taken into account. The Indian federal system apart from its multinational features has been run by coalition of parties ever since the end of the era of the Congress Party. However, this has nothing to do with the design of the Indian

[18] For additional details, see chapter ten.

Constitution but with the political practice and the preferences of the Indian electorate. The development of such a scenario is not closed in Ethiopia, too. In fact, during the 2005 election, the Coalition for Unity and Democracy, a coalition of parties with mono-national slogans had swept all the parliamentary seats in Addis Ababa both for the city administration and for the House of People's Representatives (HPR). It also won a significant number of parliamentary seats in the rest of the country. Moreover, it can be argued that not all groups in India constitute a separate state and some groups are found in many states. Neither do all groups in Ethiopia constitute separate states. It is also true that some national groups in Ethiopia like that of the Yem and the Argoba live in more than one state.

In Switzerland, the German-speaking group is found in 17 cantons[19] indicating that it is not 'one cultural group, one state' system. This may be considered as a deliberate design aimed at encouraging competition among same language groups and encouraging crosscutting values. However, the Swiss cantons existed as independent entities before the advent of the Swiss Confederation. Although the design does not aim at dividing national groups, it is not one cultural group (nation) for one state in the Ethiopian Federation, too. For that matter, the Ethiopian Federation hardly has a state composed of only one nation, nationality, or people. There is no reason for the different groups in the states not to compete if the 17 cantons that share Ethno-linguistic identities in Switzerland could compete among each other.

The Canadian Federal System has a robust system of protection of minorities in states apart from its democratic credentials[20]. It may be argued that the system for minority protection or the overall democratization process in Ethiopia lags behind that of Canada. However, this never changes the fact that both the Ethiopian and the Canadian systems aim at accommodating their national diversities. In terms of protecting minority rights and building competent institutions to that end, however, Ethiopia should learn from the experience of similar multinational federations. The explanations provided in this and the preceding two paragraphs show that the presence of differences among the federations mentioned here does not alter the essence of all of them i.e. accommodation of diversity and hence the comparison is relevant but the difference in naming is not justified.

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[19] In the Swiss Confederation, "17 Cantons are German speaking, four Cantons are French speaking, one Canton is Italian speaking, three Cantons are bilingual (German – French) and one Canton has three languages (German, Romansh and Italian)" (Fleiner 2002, 97).

[20] For additional details, see chapter nine.

3.3 *Naming the Ethiopian Federation: What does the literature say?*

The overwhelming literature portrays the Ethiopian federal arrangement as 'ethnic federation'. Such writers as Aalen (2011, 31-32) and Fasil (1997, 52) take the salient power of ethnicity in determining political developments in Ethiopia for granted and based on this premise they proceed to conclude that the EPRDF embraced ethnic federalism as a realistic solution to Ethiopia's state-building problems. Writers such as Aaron (2002, 8), Yonatan (2010, 2), and Van Der Beken (2012, 4) claim that the 1995 Ethiopian Constitution establishes states based on, mainly, ethnicity. It is claimed that "the new map of Ethiopia had done away with the 'provinces' and 'administrative regions' of past regimes. Instead, the country consisted of fourteen units, based on language and ethnicity, which include chartered cities" (Aaron 2002, 8). In the same fashion, Yonatan (2010, 2) claims, "in the case of Ethiopia, ethnicity constitutes one of the major features of the constitution. Nine regional self-governments delimited, by and large, on the basis of ethnic identity make up the Ethiopian Federation..." The latter ideas are strengthened by the claim that "the Ethiopian territory is divided into nine regional states (or regions) and two cities under direct federal control. As was the case with the regions from the transitional period, the nine federated entities are also ethnically based" (Van Der Beken 2012, 4).

Most writers do not seem to cast doubt as to the correctness of the label 'ethnic'. They instead focus on analyzing the merits or demerits of such a system for such diverse countries as Ethiopia. Such writers as Fasil (1997, 52) and Praeg (2006, 2) present the newly established 'ethnic federalism' as the only logical consequence of the power struggle preceding the unfolding of the new system and "...as [an] optimal political model in which the most progressive articulation of unity in diversity can be affected", respectively. Young (1998) portrays the current federal arrangement as a deliberate design of the TPLF to meet its political goals but, at the same time, he accepts that 'ethnic-based' local administrations are politically and historically sound in Ethiopia. On the other hand, some argue that ethnic federalism is conceptually flawed for diverse countries such as Ethiopia (Berhanu 2007, 267). Moreover, Paulos (2011, 403), in an attempt to summarize the arguments of those who oppose the federal arrangement states that "[once political and economic deprivations are removed], they suggest, ethnic conflict is bound to wither away from the Ethiopian scene. For them, ethnic federalism is a mechanism of destroying Ethiopia as a unitary nation-state" (Parenthesis added).

The most critical gap in the literature is the fact that there is little attempt by the writers to provide evidence to substantiate the allegation that the Ethiopian federal arrangement is 'ethnic'. Even more concerning is equating ethnicity with the constitutional terms 'nation, nationality and people'. Yonatan (2010, 2) claims that "[a]ll sovereignty, according to the Constitution, resides with these ethnic groups, which the Constitution refers to as 'Nations, Nationalities and Peoples of Ethiopia' (Preamble Ethiopian Constitution; see also Article 9 Ethiopian Constitution). That is why the Ethiopian federalism is often referred to as ethnic federalism." He is different from the other writers in that he tries to provide an explanation as to why the Ethiopian federal arrangement is labeled 'ethnic'. However, the allegation that the Ethiopian Federation is ethnic because sovereignty resides in the 'nations, nationalities, and peoples' holds little water as ethnicity or ethnic groups are different from national groups as will be dealt in detail in the forthcoming section. Abbink (2011, 151) makes a similar assertion to that of Yonatan but there is no evidence or an attempt to provide evidence for his claim. This is what he says: "... ethnic identity has been declared the ideological basis of political organization and administration, and has also been enshrined in the federal Constitution of December 1994 defining the outlines of the new Ethiopia". Such claims are puzzling because the words 'ethnicity' or 'ethnic' are never mentioned in the Constitution. Additionally, as it is discussed in the forthcoming section, it is a well-established social science knowledge that the terms 'ethnicity' and 'nation' or 'nationality' have different meanings. There is no valid reason why the term 'ethnicity' should be equated with the terms 'nation', 'nationality', or 'people' only when it comes to Ethiopia.

3.4 *Ethnicity versus nationalism*

Scholarly debates on ethnicity and nationalism are long standing. Overtime, the ways the two terms are understood became more varied and complicated (see Breuily 1993). The key approaches in the debate are the primordialist, the modernist, and the constructivist approaches. The primordialist approach considers ethnicity and nationalism as given by nature while the modernists see the two as time bounded societal developments like industrialization and urbanization. The constructivists see ethnicity and nationalism as pure social constructs with some unifying factors such as culture (see Umut Özkırımlı 2010).

This section discusses the key features of ethnicity and nationalism and identifies the key dichotomies between the two. This helps us explain whether the Ethiopian federation is 'ethnic'

or 'multinational'. The intention is not to engage in detailed discussions of each approach but to identify the minimum agreements in each of the approaches so that basic differentiation could be established. A primordialist, a modernist, or a constructivist may perceive the distinguishing attributes differently but they still separate the two from each other.

To begin with, Narroll (1964, 10-11) states that "ethnicity" is employed to designate a population which: (1) is largely biologically self-perpetuating. (2) Shares fundamental cultural values, realized in overt unity in cultural forms. (3) Makes up a field of communication and interaction. (4) Has a membership, which identifies itself, and is identified by others, as constituting a category distinguishable from other categories of the same order. From this definition, one can see the importance given to biological perpetuity. In other words, one of the prime requirements for a group to constitute an ethnic group is blood ties among its members. Genealogy and common descent are essential requirements here.

On the other hand, "nation", according to the most elaborate definition of Stalin[21] ([1907-1913] 1953, 307) is defined as follows: "a nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture". According to Stalin, a community does not necessarily need a common descent or blood ties to qualify to be a nation. What is required is having a common historical heritage, stable community of people occupying a certain continuous territory and having a common economic life. It should as well have a common psychological makeup manifested through a common culture and language. According to Stalin, a community should have the above key commonalities to be called a nation, a definition with no requirement for genealogical or blood relations.

Kymlicka gives a similar definition to the term 'nation' with that of Stalin. For Kymlicka, "...nation means a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture" (Kymlicka 1995, 11). It is further argued that "...national membership should be open in principle to anyone, regardless of race or color, who is willing to learn the language and history of the society and participate in its social and political institutions" (Kymlicka 1995, 23). As per Kymlicka, common genealogy is not a requirement for joining a nation, neither is one required to embrace the authentic religion of

[21] The promoters of the 1995 Ethiopian Constitution came from the leftist movement of the 70s and their understanding of 'nationalism' was highly influenced by this background; thus, the emphasis on Stalin's definition.

the community. One does not even need to share the common political opinion, as willingness to participate in the society suffices.

The latter notion is more elaborated by Grosby (2005, 5). In his presentation of the matter, he says, "nationalism refers to a set of beliefs about the nation. Any particular nation will contain differing views about its character;... for any nation there will be different and competing beliefs about it that often manifest themselves as political differences". Inclusivity, therefore, is one of the defining features of a nation that makes it different from ethnicity. Ethnicity is exclusive as it requires common descent, and it may even extend to propagating the same politics and religion.

Contrary to the previous definitions, constructivists dilute the distinction between ethnicity and nationalism with a tendency to see the construct rather than the composition of cultural, socio-economic and political realities. For example, Ranger (1999) criticizes the tendency to portray Africa as a perfect destination for a scholar studying ethnicity. He further claims that ethnicity is a recent invention in Africa. According to him, his own and other scholars' extensive research in Africa indicate that Africans used to identify themselves in terms of "place, household, connection, occupation, polity, cult, and status – much like European identities in the medieval and early modern period" (Ranger 1999, 19). According to this claim, there is nothing specifically ethnic or nationalist about Africa as compared to other parts of the world.

By extension of this approach, one can say that there is an Oromo-Ethiopian identity as much as there is a Scottish-British identity. There is a Hutu exclusionist identity as much there was, and still exists, a Nazi idea of a "pure Aryan race" in parts of Europe. From Ranger's argument, there is no room to employ ethnicity as a base for a federal arrangement in Africa in general, and in Ethiopia in particular as there is nothing called "ethnicity" except an exclusionist and backward tribalism.

Another approach considers the politicization of identity as the watershed between ethnicity and nationalism. Yonatan (2010) states that once an ethnic group demands for autonomy or self-administration, they turn themselves into national groups. This in turn requires the presence of political parties representing the group claiming for political rights. In a similar fashion, "[c]ommunities qualify as nations when most of their members believe and feel them to be nations, i.e. when there is a critical mass within the community of individuals with a

particular national identity and a desire among their members to be self-governing" (Norman 2006, 4; see also Smith 1998). Whichever approach one adheres to, it is argued, the Ethiopian federal arrangement qualifies to be multinational.

In the discussion so far, it is established that ethnic identity is different from national identity as the former considers genealogical relations to be necessary, and that it is exclusionist in nature. National identity on the other hand is open, in principle, to anyone, regardless of race or color, who is willing to learn the language and history of the society and participate in its social and political institutions. This conceptual framework is an important element in evaluating the nature of the Ethiopian Federation.

Understanding the historical context within which the current arrangement came to be is also important to fully understand the nature of the Ethiopian Federation. The historical context shows us directions as to how to give meaning to the basic pillars of the system. It also shows us the intentions of the main architects of the federal arrangement. It is with this perspective that a discussion on the historical roots of the Ethiopian federal arrangement is provided in the next section.

3.5 Tracing the roots of the 1995 Constitution and nationalism in the Constitution

The birth of the new political dispensation in the form of a multinational federation appears to be a result of several factors related to the nature of the armed revolutionary war (for more on the background, see section one of the first chapter). Though every popular resistance had its peculiar characteristics, the armed groups that played the critical roles in restructuring the Ethiopian state, particularly those under the umbrella of the EPRDF, were far removed from ethnicity.

The TPLF (one of the members of the EPRDF coalition) was a national organization embracing Tigray nationalism and fighting for self-determination including and up to secession. The TPLF explicitly defined what a "Tigrayan" constitutes in its first 1976 manifesto. Accordingly, a "Tigrayan" includes all Tigrinya speakers in the territory of Tigray, the Agaw, the Kunama, the Saho (Irob), the Afar, and members of these groups who live outside of Tigray (TPLF's Manifesto 1976, v). It is also explicitly declared in the manifesto that the Tigray struggle is a national struggle (TPLF's Manifesto 1976, 18).

The presumption was that these people have developed a common nationalism owing to the long history they shared, the continuous territory they occupied, the common economic life they shared, and even a common psychological make-up they developed through centuries-old mutual coexistence and interaction. This understanding of Tigray nationalism in the early days of the TPLF is closer to the definition of a national group than ethnicity. There is nothing implying any such requirement as blood-ties, kinship, or genealogy to join the struggle, despite Markakis' (1996) unhesitating claim that the TPLF was an ethnic movement.

The practical engagement of the TPLF was even more inclusive than what is pronounced in the manifesto. One was free to join the movement as far as he or she accepted the cause of the struggle, which is why many individuals outside of the groups indigenous to Tigray joined the struggle. Some also rose to the ranks of the top leadership. Were it for genealogical and kinship ties, the TPLF of Tigray and the EPLF of Eritrea could have formed a political alliance, since they speak the common language of Tigrinya, and have a common descent, culture, and kinship ties. Yet no alliances were formed along these lines. The EPLF embraced Eritrean nationalism based on a common colonial legacy and history of the different groups in Eritrea. This proves that nationalism, while understood in different ways, was the dominant force in the armed struggle of both the TPLF and the EPLF.

The other coalition partner of the EPRDF was the ANDM. The ANDM was a very heterogeneous organization in terms of the genealogy, kinship, blood-ties, and native languages of its individual members. It was composed of Amharic, Tigrigna, Agaw, and Afan Oromo speakers among others. However, in the later days of the struggle, it clearly came out as the most avowed guardian of Amhara nationalism. "Amhara" is a socio-cultural category rather than an ethnically distinct category. Shack in Tronvoll (2009, 86) describes this reality as follows: "...on the ground, in social interaction, this means that any person, whatever his exact origin, who claims to be an 'Amhara' and to whom others react behaviorally as though he was an 'Amhara' is sociologically an 'Amhara'". That is why there are members, including in the top leadership of the ANDM, that do not have any direct kinship ties with any of the communities in the Amhara State. These members consider themselves Amharas and are accepted by others as Amharas. The same goes for the Oromo People's Democratic Movement (OPDO) and the other nationalist parties.

In summary, state structures and governance systems are very much driven by history, over and above dominant thinking and philosophy of the ruling elites and other related factors. In our discussion, so far, we have seen the role of national-oppression and national armed movements in the fight for democracy. We have also seen that nationalism served as the main organizational form of the coalition that spearheaded the transition to democracy in Ethiopia. We have also explained that the federal arrangement was the offspring of the dominant nationalist movements. It is from this historical perspective that the current Ethiopian federal arrangement should be analyzed.

3.6 *Group rights in practice: National or ethnic?*

Under this section, the two leading decisions of the HoF in relation to group rights in Ethiopia will be examined. In doing so, the aim is to examine whether the decisions of the relevant government organs consider ethnicity or nationalism as a determinant factor of the group rights examined.

The first case[22] brought to the FDRE HoF[23] was about the right to vote and to be elected for non-indigenous communities living in the Benishangul/Gumuz State. The State is home for many groups such as the Oromo, Amhara, Tigray, Kembata etc. in addition to five indigenous groups. The dispute arose when members of the former communities requested to exercise their constitutional right to vote and to be elected. The claim of the non-indigenous groups to participate as candidates for the electoral constituencies was supported by political parties representing the Gumuz, Shinasha, Komo, and Mao. However, the political party representing the Berta refused to accept the demand.

Following this, the Berta political party applied to the NEBE so that the latter would cancel the candidacy of the individuals representing the non-indigenous groups because the candidates were unable to speak the Berta language, which is one of the indigenous languages of the Benishangul/Gumuz state. The NEBE, accepting the complaint of the Berta Party, and invoking Article 38(1)(b) of Proclamation 111/95 ruled that the candidates cannot compete in the state because the latter provision requires competence in the regional state's national language.

[22] The source of information for this case is the report provided in the Journal of Constitutional Decisions of the House of Federation of the Federal Democratic Republic of Ethiopia Vol. 1, No. 1.
[23] Among its main functions is interpreting the Constitution.

The representatives of the non-indigenous nations, on the other hand, claimed that international law and Article 38 of the FDRE Constitution guarantees the right to vote and to be elected without discrimination based on any manifestations of identity such as language, race, religion, sex, nationality, etc. Then, they appealed to the HoF on 27/6/92 E.C. (March 2000) to reverse the decision of the NEBE by declaring Article 38(1)(b) of Proclamation 111/95 unconstitutional.

The HoF, accepting the complaint of the representatives of the non-indigenous groups, referred the case to the CCI[24] for a professional advice. The CCI, then framed an issue, and rendered its recommendation. The issue was whether Article 38 (1)(b) of Proclamation 111/95 contradicts Article 38 of the FDRE constitution. The CCI opinion was divided and it produced two recommendations. The majority's recommendation was brief in its content. But the minority's opinion was more elaborated and they argued that the dispute should be seen in the context of the overarching federal arrangement.

The majority recommendation stated that Article 38 of the constitution provides for free and fair election without discrimination based on color, race, national identity, language, religion, and political opinion, but Article 38(1)(b) of Proclamation 111/95 requires fluency in the language of the region the candidate is competing. Therefore, the latter contradicts the Constitution.

The minority's recommendation, on the other hand, read that Article 38(1)(b) of Proclamation 111/95 should be seen in light of the broader federal arrangement and the right of the nations, nationalities, and peoples. The minority further stated that the right to use one's language does not mean that learning others' language(s) is prohibited. And the requirement that a candidate must be able to speak the language of the council she or he is potentially joining does not amount to discrimination based on language. On the other hand, if the candidate is able to speak the language of a certain nation, there is no reason to prohibit the former from participating in any governance structure of the latter. This is because the participation of the candidate does not by any means affect the right of the concerned nation. Moreover, the minority's recommendation stated that Article 38 of the Constitution never prohibits putting language as a requirement for a candidacy in an election. What is prohibited, according to the

[24] This is an organ that serves as an advisor to the HoF in carrying out its duties in relation to constitutional interpretation (see Article 84 of the FDRE Constitution).

opinion of the minority, is discriminating individuals based on the language they speak. Hence, they concluded that Article 38(1)(b) of Proclamation 111/95 is constitutional.

The HoF, after a careful examination of the opinions of both sides, produced an analysis similar to that of the minority but arrived at a different conclusion. In brief, the HoF argued that nations, nationalities, and peoples have the right to develop their culture, language, and other manifestations of peculiar identity. However, it ruled that abusing such right for 'racist' purposes is prohibited. It further ruled that NEBE's interpretation of competence in the regional states' national language as provided under Article 38(1)(b) of Proclamation 111/95 is wrong. This is because the State Council of Benishangul/Gumuz uses Amharic in running its affairs and if a candidate is competent in the language of the council he or she is potentially joining, it is unconstitutional to cancel his candidacy. Competence in the language of the council one is running for was, therefore, the correct interpretation of Article 38(1)(b) of Proclamation 111/95.

From this decision, it can be inferred that one's descent has nothing to do with one's political career or the exercise of one's right in the Ethiopian federal arrangement. What is required is competence in the working language of the group one is attempting to represent. If the Ethiopian federal arrangement were ethnic, the descent of individuals would have played an important role and the HoF would have taken a different decision. It is true that the distinction between ethnicity and nationalism may not be easily visible all the time. Problems may also be witnessed here and there in the implementation of the Ethiopian federal arrangement that makes it appear as 'ethnic-based'. However, the above case demonstrates that the system is not designed to be ethnic.

The other case that demonstrates that blood-ties, genealogy, or descent, as it should be in ethnic arrangements, is not what matters in the Ethiopian federal arrangement is the Silte referendum[25]. According to Alem (2007, 70) and Nishi (2005, 158), the Silte were traditionally considered as part of the Gurage by outsiders. However, there are scholarly works that treat the Silte as a separate people that speak a distinct Siltigna language. Such works precede the claim for a separate Silte identity. The research conducted by Abraham Hussein and Habtamu Wondimu is a prime example. The two scholars identified people that lived in such areas as Azernet-Berbere, Silte-Zeway, Olicho-Wiriro, Kokir, Gedebano, Hulbareg, Wollene, Dallocha,

[25] The partial source of information for this case is the report provided in the Journal of Constitutional Decisions of the House of Federation of the Federal Democratic Republic of Ethiopia Vol. 1, No. 1. The remainder is obtained from the authors cited in the main text.

and Sankur Zeway as Silitigna speakers although they restricted the scope of their study to the Azernet-Berbere. The Silte language was also one of the languages that were used during the literacy campaign of the Derg (Abraham and Habtamu, ND).

With the introduction of the new federal arrangement, political parties representing the Silte group claimed a separate Silte nationality/identity. Initially, the demand did not succeed because there were doubts that the question was of benign public concern or not. A noticeable event was the conference organized by the SNNP State in 1997 in Butajira to discuss the agendum of Silte identity. 961 Siltigna speakers were selected, as representatives of the Silte group, for the conference. As reported by Nishi (2005, 165), "[a]fter three days of argument, they voted to determine, if the Silte is part of the Gurage or not. Of 927 votes, 781 were for the unity of [the] Gurage, and 146 abstained. None of the votes supported the Silte identity. The SPDUP announced that it would not accept the outcome of the conference."

Then the case ended up in the HoF. The HoF directed the case to the CCI for advice on two issues: who decides on identity questions of a community and what procedure should be followed in settling such questions. The CCI underlined that the FDRE Constitution does not provide clear answers to such questions but it argued that since identity questions arise within the states, they must entertain such questions. It further recommended, via majority, that the procedure to be followed should be referendum. The HoF, after lots of debates and deliberations, referred the case back to the SNNP State by putting certain directions to be followed in settling the issue.

The SNNP State organized a referendum as per the recommendations of the HoF. The referendum over Silte identity was conducted in March, 2001. The NEBE announced that out of 421, 188 voters 416, 481 voted for separate Silte identity (Nishi 2005, 165). Afterwards, the Silte are recognized as a distinct group.

It is sometimes argued that not all groups in Ethiopia have developed a sense of nationalism. Kymlicka (2006) argues that the Ethiopian federal arrangement, particularly the Constitution, imposes national identity on every group in the Country. However, a conclusion that the federal arrangement is 'ethnic' does not follow from such arguments even if it may be accepted as a valid criticism. Moreover, this case demonstrates that the Ethiopian federal arrangement is open to the development of new national identities since nationalism is not static.

A more important issue here is whether the Silte case demonstrates that the Ethiopian federal arrangement is ethnic or multinational. The Silte did not claim that they do not have any links or intermarriages with others including the Gurage. Neither did they claim that their religion is different from that of the other groups. They follow Islam and there are other groups, including within Gurage, who are Muslims. What they claimed was that their unique history has made them develop a distinct identity (Alem 2007). They added that their language is different from both the Sebatbet and the Soddo Gurage (Nishi 2005, 165). Moreover, the Silte referendum demonstrates that the people were very aware of their separate identity. This was demonstrated in their demand for autonomy and self-administration. This demand was made a political agenda through political parties representing the Silte. These facts indicate that the Silte case is among the examples that show that the Ethiopian federal arrangement is not 'ethnic-based'.

Nevertheless, there are indicators that the system is understood to be ethnic by some people. As discussed in chapter nine as well, it can happen that people are excluded from power because they are 'others' 'who do not belong' to the state concerned. Minorities who have kin on the other side of the state borders have suffered from these sorts of discriminations. This has been a cause of conflict in many areas. In cases where different nationalities live in a certain territory, which is common in bordering areas of the states, whenever identity-related conflicts occurred, the usual practice has been conducting referendum so that the people decide to which state they belonged. The concerned officials have been trying to create a mono-national territory as much as possible by restructuring the boundary of the states according to the preferences of the people. Nevertheless, in areas of mixed identity, it is almost impossible to curve a 'pure' territory, in terms of identity, even after a referendum. There will always be minority/majority groups in that particular territory.

Little attempt is made to accommodate different identity groups in a given territory by creating multilingual and multicultural local entities that accommodate all cultures and languages in a given area. In cases such as the Oromia-SNNP border conflict in the Wondogenet area, the Oromia-Somali conflict in the Moyale area, the Afar-Somali conflict around the Addis Ababa-Djibouti highway etc., the authorities focused on drawing the state boundaries in a way that, as much as possible, results in monolingual entities on both sides of the border. Such moves tend to strengthen identity-driven divisions. The solution to such conflicts should focus on, first, stopping all forms of discrimination against minorities. Minority rights should be protected and

promoted strictly. Allowing minorities to self-rule through local governments and introducing multilingual and multicultural local entities should be prioritized.

Evicting people from certain territories has occurred repeatedly (but not always or as a rule) on the allegation that they do not belong to a given place. This was the case in many states including Oromia, SNNP, and Benishangul/Gumuz. Very recently (around June 2016), thousands of people who are believed to have Tigrayan roots were evicted from the North Gondar Zone and to a certain extent from the West Gojjam and the Awi Zones of the Amhara State. Such incidents may occur regardless of the nature of the governance system in place. However, they boost identity-driven rifts. Overall, however, such misdeeds are clearly against the multinational design of the Constitution and not its outcomes or manifestations.

3.7 Perceptions on the nomenclature of the Ethiopian Federation and related issues

Parallel to interviewing the relevant officials and experts as per the initial interview questions provided in the second annex of this work, the writer was asking specific questions on the nomenclature of the Ethiopian Federation to experts, officials, and academics randomly. The responses were gathered in a written form because of the relatively larger number of respondents and because of the very specific nature of the questions asked[26]. The first question read: "is the Ethiopian Federation Ethnic or Multinational?" The second question read: "if, for example, an Ethiopian who was born in Gojjam and whose mother tongue is Amharic moves to Oromia State and he resides there for some years, becomes fluent in the Oromo language and culture, and he has political ambitions: (a) Do you think the 1995 Ethiopian Constitution allows him to compete for a political office including the highest executive positions of the state? (b) Do you think he is allowed to do so in practice? (c) Does your answer change if he were to move to the Benishangul/Gumuz or Harari or any other state? The responses indicate that the perceptions regarding the nomenclature of the federation vary tremendously.

An absolute majority of them said the system is multinational. Some of them said it is ethnic. An overwhelming majority said the Constitution allows one to compete for offices

[26] This should not be confused with a quantitative data. This is simply an extension of one of the main methods employed in carrying out this work i.e. interview. The only difference is the fact that the responses for the questions on the nomenclature were gathered in a written form but the responses to the other interview questions were gathered through a voice recorder and they took much longer to gather. For more on the methodology, see chapter one.

anywhere regardless of ethnic origins. For these respondents, what matters is language and cultural competence and political commitment to do so. Even some of those who labeled the system ethnic responded the Constitution does not put restrictions based on one's identity because only a small portion of them responded that the Constitution puts restriction based on identity.

However, a substantial portion responded that the practice does not allow people who are considered to belong to groups whose origin is out of the concerned state to hold political positions even if they are culturally competent. Nevertheless, considerable number of them responded that even the practice allows people who are considered to belong to groups whose origin is out of the concerned state to take political positions if they are competent in the working language of the state concerned. Another considerable portion of the respondents are not sure whether the practice allows so. The explanations provided by the respondents regarding the practice further indicate that the level of exclusion varies from one state to another. Harari and Oromia were mentioned as examples of relatively exclusive states and Amhara[27], SNNP, and Benishangul/Gumuz were cited as examples of relatively inclusive states. However, the generalizations are by and large applicable to all the states because majority of the respondents said that their responses would not differ if the hypothetical case was to apply to other states such as Harari and Benishangul/Gumuz than the one mentioned in the example.

The responses to the specific questions regarding the nomenclature of the system corroborate the findings discussed elsewhere in this chapter. To a greater extent, the responses imply that the system is designed as a multinational federation and it should be referred to as such. Even those who responded that the system is multinational admit that there are practical challenges. However, practical irregularities must not be confused with the design of the system. Of course, the practice indicates that there are challenges and majority of the respondents attribute the practical irregularities to institutional weaknesses or lack of awareness about the nature of the system on the part of decision makers. As much as there is narrow nationalism, there is chauvinism. As much as the indigenous elite are not ready to accommodate the non-indigenous, the non-indigenous elite are not ready to integrate and embrace the local language and culture. The design has little, if any, to do with such challenges.

[27] The responses were gathered before the occurrence of the crisis and the massive eviction of citizens from the Amhara State in 2016.

3.8 Chapter Summary

The basic question this chapter aims to answer is whether the prefix 'ethnic' truly explains the design-related nature and the practical realities of the Ethiopian federal arrangement and the impact of such a label on vertical division of political power. It is vital that the system is understood correctly by all stakeholders and more importantly by political actors. At least, there should be a consensus on key features of the system. The fact that the system, despite its multinational design, is labeled ethnic has significant negative consequences. It may signal a wrong message to politicians at different levels that the system is exclusionist. This may lead to tampering with some of the (human) rights of those who are believed not to belong (in terms of ethnic identity) to a given administrative area. On the other hand, authorities may tend to take powers that do not, constitutionally speaking, belong to them. It is crucial to stress here that naming the system and the way it is perceived has a direct bearing on the way power is practically divided. An in-depth account of the practical challenges is provided in the forthcoming chapters.

The discussion in this chapter shows that the Ethiopian Federation does not qualify to be 'ethnic' from different angles: theoretical, historical, or when seen in light of the experience of similar diverse countries. Theoretically, ethnicity is different from nationalism. And the Ethiopian federal arrangement gives recognition to the diverse nationalisms of the 'nations, nationalities, and peoples' of the country and, further, it is aimed at accommodating them. This is one indication that the Ethiopian federal arrangement is multinational. The practice reflected in the group-rights related decisions of the organs of government such as the HoF shows that decent, genealogy, and blood-ties are irrelevant in defining one's right. Rather language, culture, psychological makeup, and history are important. Such attributes are open for 'outsiders' to join. If such is the case, the system is understood to adopt nationalism as a key organizing factor, hence, multinational and not ethnic. However, there are also practical irregularities which tend to make the system appear 'ethnic' or exclusionist. Such irregularities should be seen as violations of the law and not as outcomes of the design.

The nomenclature is not the only decisive matter at the end of the day. This is because terms can be understood differently in different contexts. Ethnicity, for e.g., can be understood in its primordialist sense or in its constructivist sense. Thus, if the constructivist understanding of ethnicity was the one prevalent in the Ethiopian situation, the label 'ethnic' would have been less

damaging though still inappropriate and unjust. The fact that ethnicity is understood in its primordialist sense in the Ethiopian political context makes the label 'ethnic' in referring to the Ethiopian federal arrangement more damaging and misleading. The term is, more often than not, used to connote the importance of descent and blood-ties. Some scholars and politicians claim that the Ethiopian federal arrangement is *gosegna*, meaning tribal. This is far removed from the reality, as it can be understood from the theoretical understandings of the distinction between ethnicity and nationalism, the constitutional design, the foreign experience, and the real-life cases discussed in this chapter. It should be concluded that the proper name for the Ethiopian federal arrangement is 'multinational federation'.

This being said, we will see in the forthcoming chapters that, some political actors seem to understand the Ethiopian Federation as it is named in the literature i.e. in an ethnic sense. This is manifested in such exclusionist actions as denying some rights, including access to power and representation, to people who are said not to 'belong' to a given state. Expelling people from places they resided for years is among the prominent cases that will be investigated in this work. The latter, on the other hand, amounts to taking powers unwarranted by the federal Constitution and hence unwarranted centrifugal tendency.

A question may arise as to why many scholars call the Ethiopian Federation 'ethnic'. Two possible explanations can be provided for why writers label the Ethiopian Federation 'ethnic'. The first, and probably the minority, group consists of those who do not exert much effort in trying to digest the distinction between ethnicity and nationalism or those who see no substantial difference between the two. This may include both local and foreign authors. It can be argued that the people who had been seriously engaged in the drafting process and constitutional deliberations thereafter are never meant to portray the Ethiopian federal arrangement as '*gosegna*' when they use the term 'ethnic' in referring to the system. Such writers as Fasil (1997) and Andreas (2013) are good examples of this group.

It can also be observed from the literature that there are many writers who took the naming for granted. It seems that they have used the term 'ethnic' because somebody has already done so (see Harneit-Sievert *et al* 2010; Smidt and Kinfe 2007; Alem 2003; Van Der Beken 2012). The other group consists of those who are opposed to the new federal arrangement. Such writers, who are the majority, are deliberate detractors. They want to ridicule the system at any cost. They do not seem to care even if they would camouflage academics with their political

stand (see Berhanu 2007; Paulos 2011; Aalen 2011). Deliberate detractors are mostly local writers. Hence, deliberate detraction seems to be the second reason.

The same applies to foreign writers. Some of them may label the Ethiopian federal arrangement 'ethnic' because some other writer has done so. Others may use the term because of the inherent bias to see Africa as, yet, an ideal home for ethnicity and tribalism (see Rangers 1999) and, hence, they are uninterested in conducting some investigation about the reality of the system they are writing about although they may have a similar system at home with a different name (see Watts 2008).

It is important to reemphasize that debates on whether a multinational federal arrangement is preferable or proper for Ethiopia should be encouraged. However, it is also more crucial that the system is presented as it is with no exaggerations be it in the affirmative or the negative. The label 'ethnic' is one way of ridiculing the system. This, apart from being unjust and improper, distorts the true nature of the Ethiopian federal arrangement. Distortion impedes proper understanding of the system, proper implementation of vertical division of political power, and even future positive engagements. It is also important to underline that the design must not be confused with any practical irregularities that may be encountered in implementing this infant system. Indeed, we saw that there are many implementation-related irregularities. The implementation-related problems should be seriously dealt with and criticized. However, if the design is multinational and the implementation is of mixed character, logically, it should follow that the system is labeled multinational (with practical challenges, of course). Moreover, the question should be whether the system provides a venue for entertaining such challenges. The two cases discussed in this chapter show it does so. The next chapter is about the impact of the electoral system in place on vertical division of political power in the Ethiopian Federation.

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Chapter Four: The Impact of the Electoral System on Vertical Division of Political Power in the Ethiopian Federation

4.1 *Introduction*

The simplest form of the majoritarian electoral system, i.e. First-Past-the-Post (FPTP), is practiced at all levels in Ethiopia. The electoral system in place substantially influences the state of vertical division of political power in the Ethiopian Federation. The existing literature (see Yonatan 2009; Beza 2013) focuses on the election-related rights of people living out of their states of origin. Let alone its impact on power division, the electoral system is not investigated from the angle of realizing political pluralism and equitable representation of diverse political interests within a single identity group as envisioned by the 1995 Constitution. Ensuring political pluralism in the organs of the government and the state of vertical division of political power are highly connected. These two issues are the focal points of this chapter. The discussions are particularly aimed at showing the linkage between the electoral system and the practice of vertical division of political power in the Ethiopian context. Moreover, whether the existing electoral system is the best system in helping realize the political objectives of the Constitution, as indicated above, will be analyzed.

4.2 *A brief overview of electoral systems*

The type of electoral system a country adopts highly influences the development of its party system, the nature of its executive, and the nature of the relationship between its executive and legislative branches of government (Lijphart 2008, 161). There are various types of electoral systems. However, the two broad categories are the plurality or majoritarian (also called the FPTP or winner-take-all) electoral system and the Proportional Representation (PR) electoral system. There are many varieties of the two electoral systems. There are also countries that follow mixed systems by either creating a system that combines some features of the two main systems or implementing the two systems in parallel.

Within the majoritarian or plurality system, we have the FPTP, second ballot or majority run-off, and the Alternative Vote (AV). According to the FPTP, which is the simplest form of the majority system, the country is divided into single-member electoral districts and the candidate who wins the most votes in an electoral district is declared the winner (Reynolds *et al.* 2005, 35). In this case, the voters elect only a single candidate and the election is conducted only once.

Thus, theoretically speaking, a candidate who secures only a couple of votes can be declared a winner if none of the other candidates secures more votes (see Norris 1997, 301). The second ballot or the majority run-off refers to an electoral system whereby election is conducted for the second time if none of the candidates secures certain amount, usually an absolute majority or above fifty percent, of the votes cast in an election (see Norris 1997, 302). In this case, similar to the plurality system, only one candidate should be elected and the candidates who participate in the second round can be either the top two in the first round or more than two candidates who secured a certain percentage of the votes cast in the first round. On the other hand, the alternative vote refers to a system whereby, unlike the above two, the voters are allowed to indicate preferences in addition to indicating their most favored candidate in a single-member electoral district (Reynolds *et al.* 2005, 48). In this case, the candidate who secures an absolute majority of the first preferences is automatically declared a winner. However, if there is none who secures an absolute majority of the votes in the first round, the votes obtained by the candidate who secured the lowest first preferences are distributed to the others depending on the second preference. The process continues until a winner with an absolute majority of the votes is obtained.

The key idea in the PR system is that seats should be allocated in proportion to the votes secured by parties (Reynolds *et al.* 2005, 57). The two common PR systems are the List PR and the Single Transferable Vote (STV). Under the List PR, parties present the list of candidates and the voters vote for a party. The List can be either open or closed. If the List is open, voters are given the chance to influence the rankings; if the List is closed, the ranking of candidates is done by party officials and voters do not have the power to influence the rankings (Reynolds *et al.* 2005, 84). The parties are allocated with seats in proportion to the votes they won by allocating seats to candidates according to the ranking in the List. Under the STV system, voters elect and indicate order of preference in multi-member electoral districts (Reynolds *et al.* 2005, 76). Because voters can indicate order of preference, STV looks similar to AV. However, the two are different. AV is a majoritarian system in which the electoral districts are single member and the candidate who wins absolute votes is elected whereas STV is a PR system whereby the districts are multimember and a candidate needs to secure only a minimum percentage (threshold) of the votes cast in order to secure a seat. Votes extra to the required quota are also redistributed to other candidates based on order of preference until sufficient candidates are elected.

As discussed in the forthcoming paragraphs, the two systems have their own advantages and disadvantages. The Mixed Systems, therefore, are aimed at remedying the defects of one and at capturing the advantages of the other. For e.g., a mixed system may run both systems in parallel for electing members of a lower house. Or a mixed system may employ the PR system to remedy loses of seats because of the FPTP system used. However, it is argued that the advantages and disadvantages of each system are better evaluated not in the abstract but considering a given context (see Yonatan 2009, 334). Here under is a brief discussion on the comparative advantages and disadvantages of the majoritarian and the PR systems.

4.3 *The majoritarian versus the proportional system*

Although there are scholars who insist that one is always better than the other (see, for e.g., Lijphart 2008), it is obvious that context matters a lot in designing the most relevant electoral system for any country. To begin with one of the often-cited advantages of the majoritarian system, it tends to create few majority parties; one with rightist and another one with leftist tendencies (Lijphart 2008, 161). This has the advantage of removing small parties from the political scene. Even if small parties manage to secure seats in the legislature, they will be less likely to put serious impediments on governance efficiency. Moreover, the majoritarian system is believed to perform better than the PR system in terms of creating stable governance as it usually results in a single party forming a government without the need to resort to coalitions, which are often considered to be fragile (Norris 1997, 304). The majoritarian system allows voters to not only choose parties but also individual candidates. Thus, it is better in establishing direct association between candidates and voters. The majoritarian system is also the simplest electoral system for election authorities to administer it and for voters to understand it.

Despite the foregoing advantages, the majoritarian system has many disadvantages. Primarily, it tends to exclude and disenfranchise smaller parties (Norris 1997, 301). The latter in its turn heavily reduces minority representation in government. Moreover, since the majoritarian system does not guarantee that the seats in the legislature will be proportional to the votes cast, it results in votes' wastage (Reynolds *et al.* 2005, 43).

The proportional system, on the other hand, has the following advantages. It more or less translates the votes cast to seats in the legislature (see Norris 1997, 310). Thus, there is less votes' wastage. More importantly, the PR system is believed to perform better in ensuring

minority representation in government (see Moser 2008, 273). This means there is less minority exclusion and disenfranchisement in the PR system than in the plurality system. Since votes are usually pooled at the national or regional level, PR encourages soliciting votes from everywhere. This encourages parties to address wider areas. Since there is less possibility of switching from the right to the left or vice versa because of changes in party controlling government power, PR systems tend to ensure better stability and continuity in terms of policymaking and policy implementation (Reynolds *et al.* 2005, 58). PR further makes power sharing and coordination among parties and interest groups more feasible than in the case of the majoritarian system (see Reynolds *et al.* 2005, 58).

However, the PR system also has its own defects. This system often produces coalition governments with the accompanying risk of breakup at any time (see Reynolds *et al.* 2005, 58). Moreover, because of the high possibility of parties with ideological differences forming a government, it may be very difficult to implement a certain policy. At least theoretically, it can be argued that this reduces government efficiency. Although we saw earlier that because votes are pooled, parties are encouraged to appeal to a wider audience, there is a high possibility for the fragmentation of the party system. This is because any interest group regardless of the number of people sharing its goals is sure that it can manage to have a seat in the legislature for just winning, for example, only five percent of the vote. Thus, not only does this create fragmentation but also it rewards small or sometimes even extremist parties. It also tends to disproportionately empower smaller parties because of the high possibility that coalition governments will often have to include such parties. PR system's rules are more complex than those of the majoritarian ones are. This makes implementing the system relatively difficult (Reynolds *et al.* 2005, 59). Furthermore, PR system does not establish strong links between legislators and their constituencies as the voters are not empowered to elect individual candidates. Particularly in closed List PR, the party headquarters determines who may be elected and thus top party officials are very powerful in the case of PR systems.

As mentioned earlier, it is more concrete to assess the advantages and disadvantages of the different electoral systems on case-by-case basis . What is clear, however, is the fact that electoral systems determine the nature of politics in a given country. Thus, each country must carefully design an electoral system that helps it achieve its political goals better. Moreover, in the forthcoming paragraphs, by taking the Ethiopian experience as an example, it is argued that

the electoral system a country adopts has a bearing on division of political power. Let us analyze which system may better serve the political goals envisioned by the 1995 Ethiopian Constitution and more importantly the implications of the existing electoral system on the vertical division of political power in the Ethiopian context.

4.4 The implications of the majoritarian electoral system on Ethiopia's vertical division of political power

According to Article 9(3) of the 1995 Constitution, assuming government power in any manner other than what is provided in the Constitution is prohibited. It is stipulated that a political party or a coalition of political parties that has the greatest number of seats in the HPR should form the executive and lead it (Art. 56 of the Constitution). The Constitution further stipulates that there should be a neutral electoral board whose members are appointed by the HPR upon the recommendation of the Prime Minister (Art. 102). The Constitution and the amended electoral law, on the other hand, unequivocally confirm that the system at work is the simplest form of the majoritarian system i.e. the FPTP. Accordingly, a candidate who receives more votes than any other candidate is declared the winner and all constituencies are single member constituencies (Art. 25 cum. 28(3) of Procl. 532/2007). Furthermore, according to the law, it is not mandatory for an Ethiopian to participate in elections (Art. 76(3) of Procl. 532/2007).

It is indicated, in previous works, that the simple FPTP electoral system adopted by Ethiopia since the inauguration of the 1995 Constitution has fared unsatisfactorily in representing people who live out of their states of origin (see Yonatan 2009, 337-8; Beza 2013, 99). Hence, regardless of their national backgrounds and for election purposes, these people are considered a minority and the existing electoral system is criticized for not ensuring their representation. When seen against the preceding theoretical discussions and considering the Ethiopian situation it can be observed that the PR system could have given them more representation and hence more voice in both the national and state-level legislatures. Thus, the criticism is valid.

However, it is also critical to examine the relevance of the majoritarian system from a wider perspective and from the political objectives envisioned by the 1995 Constitution. It is apparent that in such diverse countries as Ethiopia there are diverse political interests. To ensure long-term stability, not only the governance system but also the mechanism to access

government power should be as inclusive as possible. The system should as far as possible avoid winner-take-all scenarios.

Nevertheless, it is wrong to understand the Ethiopian way of accessing power as a pure adversarial Westminster model. Indeed, it reflects some features of the consociational model. The key features of the consociational model are: "(1) grand coalition governments that include representatives of all major linguistic and religious groups, (2) cultural autonomy for these groups, (3) proportionality in political representation and civil service appointments, and (4) a minority veto with regard to vital minority rights and autonomy" (Lijphart 2008, 42).

The ruling party, the EPRDF, is a coalition of parties that represent four major states of the Federation: Oromia, Amhara, SNNP, and Tigray. Different parties that are affiliated to the EPRDF rule the remaining states. Moreover, *de facto*, different national and religious groups are represented in the cabinet *almost* in proportion to population number. Since the consociational model envisions grand coalition government encompassing different parties with different ideologies, the Ethiopian situation does not fulfill the first requirement. However, it should be noted that the party system attempts to represent all the national groups.

The Ethiopian national groups have cultural autonomy. In fact, according to the 1995 Constitution, they have the right to self-rule, which includes the right to establish institutions of government in the territory that they inhabit, and to equitable representation in the Federal and state governments (Art. 39(3)). Guaranteeing cultural autonomy is considered as one of the most visible successes of the federal system in place (see Alemseged 2004, 604). This fulfills the second requirement.

According to the consociational model, the electoral system should normally be the PR system (Lijphart 2008, 48). This is therefore the weakest link of the Ethiopian system in the eyes of the consociational model. Nevertheless, the Ethiopian national groups are in overwhelming majority of the cases territorially concentrated and it can be argued that the system does not exclude any national group from being represented in different tiers of government (see Yonatan 2009). Although not formally very well regulated, practice indicates that there are attempts to diversify the civil service and include the representatives of different national, religious, and gender groups. This partially fulfills the third requirement.

Finally, every nation, nationality, and people is entitled to self-administration including the right to secession and hence a national group can veto the federal arrangement. This fulfills

the fourth requirement. It can be seen that the governance system as a whole does not fit squarely into the Westminster (two party- majoritarian) model. Indeed, the Ethiopian Federation depicts some consociational features. The forthcoming discussion, therefore, aims at highlighting the problems associated with adopting the majoritarian electoral system.

Despite the fact that accommodation of diversity is the founding principle of the 1995 Constitution, one can observe that the electoral system in place is not the best in terms of fulfilling this objective. Theoretically speaking, according to the existing law, a candidate who obtains a single vote can be elected to the legislature if none of the other competitors manages to obtain one. This is not only very wasteful in terms of valuing votes but also has potential negative political consequences.

The experience of the Republic of South Africa with its first democratic election in 1994 is instructive here. Before 1994, in South Africa, the electoral system at work was the FPTP. The African National Congress (ANC) had a higher possibility of obtaining more seats under the majoritarian system (Reynolds 2005, 63). However, in the interest of long-term stability and inclusiveness, the ANC, in its first electoral participation, agreed to change the electoral system to PR thereby enabling other parties obtain more seats in the National Assembly than they could have under the majoritarian system (Reynolds 2005, 63). This helped build a more inclusive South Africa and hence it was a positive move.

Let us see the main issue at hand: analyzing the impact of the majoritarian system on vertical division of political power in the Ethiopian context. As mentioned earlier electoral systems should not be evaluated 'in abstract' (see Yonatan 2009, 334). In the Ethiopian case, therefore, it can be, so far, observed that the majoritarian system has strengthened the concentration of power in the hands of a dominant party. The more power is concentrated in a single or a coalition party, the greater the possibility that the party system bypasses the constitutional power demarcations. The findings in the forthcoming chapters confirm this.

Although the electoral system is not the sole factor, it is apparent that it has contributed to the disproportionate concentration of power in a single party. Cases in point are the 2010 and 2015 countrywide elections. In the 2010 election, the EPRDF and its affiliates secured all the seats in the HPR except for two seats that were won by an opposition member and an independent candidate. In the 2015 election, the EPRDF and its affiliates won all the seats in the HPR. Following this, in response to those who doubted the democratization process in Ethiopia

and those who challenged whether the election was up to the standards, it was officially stated that the votes cast were not as uniform as the legislature looked like. This implied that it was the electoral system in place that should be blamed. The most important point is that, in such cases, there is a high possibility that whatever proposed by the dominant party may easily become a law since there is very high uniformity of voices in the legislature (see also Assefa 2015, 258-259). The latter may have a serious impact on the autonomy of lower spheres of governments particularly the states.

The arguments of writers such as Yonatan (2009) and Beza (2013) that the existing electoral system is good enough to safeguard the representation of territorially concentrated national groups is at least contestable since it ignores the issue of internal diversity and political pluralism. It is normally expected that national groups have internal political diversity and different political parties who claim to represent such interests. The PR system is by far better in accommodating the representation of such internal diversities.

The better internal diversities are accommodated, the higher the possibility that state-level or local-level legislatures are more diverse. This results in relatively stronger legislatures that can debate laws better; with a consequent higher possibility of saying 'no' if it may affect their constitutional powers. In other words, diverse legislatures, which are highly likely in PR systems than in majoritarian systems, are in a better shape to check laws and policies that may contradict constitutional vertical division of power. The latter quality in its turn boosts the potential for institutional vibrancy; creates opportunities for balanced exercise of power by both the federal government and the constituent units. On the other hand, the majoritarian systems tend to create 'an elected dictatorship' (Norris 1997, 311). However, we saw that the PR system has weaknesses, too. Therefore, there is a need to look for a system that combines the strengths of both systems.

It is essential to reemphasize that the electoral system Ethiopia may adopt should be one that combines the strengths of the majoritarian and the proportional systems and, at the same time, that minimizes the weaknesses of the two. Moreover, given the literacy level of the society and the level of development of the country, the electoral system should be as simple as possible. A complicated voting system, however fair it is, may not be suitable or efficient.

This author is of the opinion that shifting to pure PR system is not the ideal option. This is because of the disadvantages of the PR system discussed earlier. The preferred option is the

Mixed System. Within the mixed system there are two options. One of them is called the Mixed Member Proportional (MMP) system and the second one is called the Parallel System. In the MMP system, the Majoritarian and the PR systems are employed at the same time in a manner that the PR system is used to compensate seats lost due to the majoritarian system (Reynolds *et al.* 2005, 91). The PR system employed here can be closed or open List PR. According to the Parallel System, the two are employed independently and simultaneously to elect representatives (Reynolds *et al.* 2005, 91). The first option tends to bring proportionality while also keeping some of the advantages of the majoritarian system such as establishing direct link between voters and candidates. The Parallel System tends to be disproportional, as the PR system is not used to compensate seats lost because of the majoritarian system.

The most feasible option for Ethiopia, this writer argues, is the MMP electoral system. The country now is divided into 547 electoral districts. The Constitution stipulates that the seats in the HPR should not exceed 550 and among them at least 20 seats should be reserved to minority nationalities and peoples (Art. 54(3) of the Constitution). If the electoral system is to be changed to the MMP, there is a need to restructure the number of the electoral districts because the Constitution has limited the number of the seats. The number of seats provided in the constitution should be divided into two categories: one category that is to be filled by the majoritarian system and another one that is going to be allocated proportionally. The amount of seats reserved to the two categories differs from a country to another. In Germany, the two categories are given equal weight (50% of the seats in the Bundestag are reserved for each category). In Italy 25% of the seats are reserved to the PR system and 75% to the majority system; in Bolivia it is 48% to 52%; in New Zealand 46% to 54% respectively (Reynolds *et al.* 2005, 91). Countries that allocate fewer seats via the proportional mechanism tend to lack seats that can compensate disproportionality that is created because of the majoritarian system (Reynolds *et al.* 2005, 91).

This author is of the opinion that both the majoritarian and the PR Systems should be given equal weight in the Ethiopian MMP system. This makes it necessary to restructure the electoral districts of the country. The districts can be restructured to around 275 while maintaining the Constitution's stipulation that the seats should not exceed 550. Accordingly, 275 of the seats can be filled according to the majoritarian system and the remaining seats can be allocated based on the PR system. Restructuring the districts to 275 will create a situation where

hundreds of thousands of people are represented in a single district (on average close to 400,000.00). However, some minorities may fail to fulfill this threshold and they may not be represented in the HPR. This defect can be remedied by expanding the seats reserved to minorities as the reality requires. According to this arrangement, a party that won 200 out of the 275 seats according to the plurality system but that have won only 60% of the total votes will get 330 seats in the 550 seat HPR.

This is how it works: if calculated proportionally, a party that won 60% of the votes obtains 330 seats. Since the party has already secured 200 seats through the majoritarian system, it will be awarded additional 130 seats. The same goes to all the parties that participated in the election. To discourage the development of fragmented party system, minimum threshold can be introduced i.e. only parties that won a certain amount of votes are entitled to compensatory seats. This writer is of the opinion that the parties that should benefit from the compensatory seats should be those parties that won, at least, 3% of the total votes or those parties that won at least three seats in a normal district. A normal district in this sense is a district that is not designed to ensure the participation of minorities. The common experience elsewhere suggests that the parties should win either 5% of the total votes or a seat through the majoritarian system to be eligible to compensatory seats via the PR system. In the Ethiopian case, given the higher population number, setting the minimum threshold at 5% may result in votes wastage, thus it is preferred to set it at around 3%. The other optional requirement is for a party to win in at least three electoral districts. This is introduced to protect the system from over representation of minority nationalities and peoples. If the requirement is reduced to winning a single district, for e.g., minority parties that won a seat in a district that was designed to ensure minority representation will get the chance to compensatory seats. This will inflate the overrepresentation of minorities further.

It was mentioned earlier that the electoral system should be as simple and clear as possible. One of the issues that determines this factor is the ballot system. In the case of MMP, the electorate can cast their vote either in one or two ballots. In a single ballot system, the vote cast is for both the preferred candidate and the party. In a two-ballot system, the voters indicate their district-level vote and party (countrywide) vote separately. The two have their own advantages and disadvantages. Separating the ballot for district level and party preferences gives the electorate the chance to split their preferences. However, in countries like Ethiopia where

literacy rate is yet low, it can be complicated for the voters. Adopting a single ballot system reduces the inconvenience. Therefore, this system looks more convenient for Ethiopia.

4.5 Chapter summary

The electoral system in place has a direct bearing on the vertical division of political power in the Ethiopian Federation. As per the discussions in this chapter, the majoritarian electoral system practiced at all levels throughout the country is not the best in terms of realizing the founding principles and the explicit objectives of the 1995 Constitution. A change in the current electoral system will therefore have a direct bearing on the nature of (practical) vertical division of political power. In order to have a balanced implementation of vertical division of political power in the Ethiopian Federation, the existing electoral system should be changed. On 10 October 2016, the President of the FDRE, in his annual opening speech at the joint meeting of the HPR and the HoF, confirmed that the government has noticed the loopholes in the existing electoral system. He further announced that, in the years ahead, the government will work to ensure that diverse political voices of the people of the country are represented. He promised changes will be introduced starting in the existing era of Parliament without waiting until the next countrywide election scheduled to take place in the year 2020. His speech indicated that the existing electoral law will be changed soon.

No one can be certain about the exact changes to be introduced by the government but the move is definitely towards adopting either a mixed or a proportional system. As the discussions in this chapter show, a change that introduces some elements of proportional representation to the existing electoral system will result in legislatures that are more diverse. The difference is almost automatic. Practice shows that the votes of the electorate are diverse. If the system is redesigned in a manner that accommodates such votes, it will result in at least diverse legislative bodies. Diverse legislatures will likely result in better checks and balances. Better checks and balances among branches or spheres of governments, on the other hand, result in a balanced state of vertical division of political power.

This author is of the opinion that a complete shift to the PR system is not the ideal option. This is because of the weaknesses of the system discussed in this chapter. A mixed system that combines the strengths of the PR and the majoritarian system is the better option. The mixed system should be the MMP system whereby the PR system is employed to compensate

disproportionality created by the majority system. This calls for redesigning the electoral districts of the country to 275 (from the current 547). This will result in increased number of people represented in a single district (up to 400,000.00). So as to ensure their representation, up to fifty seats of the HPR should be reserved for minorities. This calls for amending the Constitution and the existing proclamations. The constitutional amendment, in this writer's opinion, should focus on setting principles of election in Ethiopia. Details regarding technical issues should be provided in the Electoral Proclamation and other laws. Essential themes of vertical division of political power in the Ethiopian Federation are discussed in the forthcoming chapters. The state of vertical division of political power in the themes discussed in this work are highly influenced, as the discussions in this chapter indicate, by the electoral system in place.

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Chapter Five: Mandates of the Federal and the State Governments with Respect to the Right to Self-Determination

5.1 *Introduction*

In the preceding two chapters, we investigated two aspects that have a direct impact on the state of vertical division of political power in the Ethiopian Federation. In this chapter, we are going to discuss one of the key themes of this work: the mandates of the Federal and the state governments with respect to the right to self-determination. In the Ethiopian Federation, defining the roles of each level of government in handling cases of self-determination is essential. First, the procedure becomes transparent for potential claimants of the right. Second, it helps avoid unnecessary delays and bureaucratic hurdles. Third, the responsibilities of each levels of government will be clear and, hence, there will be less chance for blame-shifting and there will be higher possibility of establishing accountability for failures to respond to self-determination claims within a reasonable time. These all will finally help minimize the potential for violent encounters. As the discussion in this chapter indicates, lack of adequate definition of responsibilities and lack of political will has played a substantial role in mishandling cases of self-determination. This chapter, therefore, deals with the mandates of the Federal and the state governments with respect to the right to self-determination including secession, cases of self-determination and challenges thereof, and experiences of other federations in the area.

The self-determination right of the nations, nationalities, and peoples of Ethiopia includes, *inter alia*, secession, claiming to have an own state (constituent unit), or claiming for recognition as a distinct nation/nationality and self-administration. In the case of secession, decisions have to be taken by a two-third vote of the council of the concerned nation or nationality and by the concerned nation or nationality in a simple-majority referendum. The Federal Government receives the claim and prepares a referendum within three years from the date it received the claim (Art. 39(4)(b) of the Constitution). For claims to establish a constituent unit (internal secession), decisions have to be taken by a two-third vote of the council of the concerned nation or nationality and by a simple majority vote of the concerned nation or nationality in a referendum. The state council receives the claim and prepares a referendum within one year from the date it received the claim (Art. 47(3)(b) of the Constitution). On cases of recognition, the 1995 FDRE Constitution is silent. However, the Constitution generally

empowers the HoF to deal with all issues related to self-determination including and up to secession (Art. 62(3)).

The self-determination related demands presented so far were about recognition (and consequent claims for self-administration). Laws and processes introduced in due course give the primary power to deal with self-determination cases that fall in the latter category to the states (see Art. 20 of Procl. 251/2001). The HoF is given an appellate power. On claims for recognition, the claimant (potential nation or nationality) cannot have an own council because it was not recognized from the outset. Thus, it has to present its claim to the concerned state's council. The practice indicates that there are both legal and practical gaps in handling self-determination cases. Therefore, issues such as whether the states should have been given this power, whether the states (or even the HoF/the Federal Government) are entertaining the cases according to the laws, and the overall challenges in relation to exercising this power call for an investigation. Before delving into the local context, a discussion on self-determination in international law and a comparison with other countries' experiences is provided. This discussion is aimed at locating the Ethiopian experience in the international context and drawing lessons that may help deal with the self-determination-related challenges in Ethiopia.

The second section of this chapter deals with self-determination in international law and comparisons, the third section is about the federal and state constitutions of Ethiopia, other relevant laws, and their positions on self-determination from the angle of power division. The fourth section deals with the practice of self-determination in Ethiopia and the most prevalent challenges thereof. The fifth section deals with the overall trend of the practice of self-determination in Ethiopia and its impact on the federal arrangement and the power division envisioned by the federal Constitution.

5.2 *Self-determination in international law*

The right to self-determination has passed through different historical trajectories (see Horowitz 2003; Hannun 1998). The Enlightenment's ideas of the individual's right to dignity, equality, and autonomy are said to have enthused the idea of self-determination (Belser and Fang-Bär 2015, 49-50). The latter authors state that self-determination as a collective right can be attributed to as early political movements as the American Declaration of Independence (1776) and the French Revolution (1789) and this right was further augmented by the Russian

Revolution of the early twentieth century (Belser and Fang-Bär 2015, 50). However, the meaning and applicability of self-determination has remained ambiguous ever since its inception.

Self-determination, in the nineteenth century, was a political principle (and not a right) that was exploited to justify the unification claims of nations or identity groups such as the Italians and the Germans that were scattered in different entities (Hannun 1998, 774). Towards the end of the World War First, it was used to justify the disintegration of such defeated empires as Ottoman Turkey and Austria-Hungary by freeing different nationalities under their subjugation (Hannun 1998, 774). During the second half of the twentieth century, it was construed as the right of people under colonialism and alien subjugation to establish own states (Hannun 1998, 776). After the era of independence from colonialism in Africa mainly during the first decade of the second half of the twentieth century, however, the applicability of self-determination remains unclear (Mueller 2012, 311; Hannun 1998, 776).

Many international documents including the United Nations Charter (Arts. 1(2) and 55), the International Covenant on Civil and Political Rights (Art.1), the International Covenant on Economic, Social, and Cultural Rights (Art.1), and the Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (Art. 5(1)) expressly recognize the right to self-determination of peoples. However, the scope and the beneficiaries of the right to self-determination are disputed among scholars and state actors. Whether self-determination, as stipulated in international law, includes the right to secession has particularly been a cause of disagreement. The practice and scholarly works suggest that international law does not authorize groups in a sovereign state to secede and form an independent state (Cassese 1992, 339; Buchanan 1997, 33).

The only possible recognition of an external self-determination, it is argued, is stated in Article 5(7) of the Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. Accordingly, people that suffer from discrimination based on colour, race, and creed can legitimately claim for external self-determination (see Belser and Fang-Bär 2015, 64-65). The latter conclusion can be inferred from the contrary reading of Article 5(7). Otherwise, the same provision affirms the inviolable nature of the territorial integrity of states conducting themselves according to the UN Charter. According to Cassese, the possible beneficiaries of this right can

only be racial or religious groups (Cassese 1992, 118). He arrives at such a conclusion by arguing that race and color represent the same thing and creed, in the context of the Declaration, cannot be feasibly construed to represent anything else but religion. This line of interpretation of the Declaration excludes ethnic, linguistic, cultural, and other groups from invoking external self-determination. Ultimately, however, the possibility for racial or religious groups to win a case of external self-determination based on this line of interpretation is thin. This is because the document on which this line of interpretation is based is only a declaration. Since declarations are expressions of intents and obviously not binding international documents, no concrete international legal actions can be taken based on them.

Nevertheless, there is also an overwhelming scholarly consensus that international law does not prohibit secession or secessionism. Secession simply is an area not yet well regulated in international law (see Belser and Fang-Bär 2015, 75). In the words of Cassese, "the breaking away of a nation or ethnic group is neither authorized nor prohibited by legal rules; it is simply regarded as a fact of life, outside the realm of law..." (Cassese 1992, 340). The opinions of scholars on whether the right to secession should be recognized and regulated by international law are divergent. Some vehemently oppose it (see Horowitz 2003). Others strongly argue in favour of including and regulating secession right in international law as a remedial right (see Buchanan 1997; Belser and Fang-Bär 2015). Still others argue for the inclusion of the prime right to secession in international law (see Antić 2007; Weinstock 2001; Norman 2006)[28].

[28] Among the devoted opponents of the right to secession is Donald Horowitz. According to him, secession should not be recognized by international law under any circumstance (Horowitz 2003, 6). This is because, for him, the demerits of secession outweigh its possible merits. Moreover, he argues, those who favor secession have unfounded assumptions about its merits (Horowitz 2003, 5-6). The following are among the key 'unfounded assumptions' he identifies:

One of the often presented justifications for recognizing secession is the assumption that its exercise will result in homogenous units. Nonetheless, this does not happen in reality. The seceding units will usually have minorities within their territories (Horowitz 2003, 8). Thus, secession tends to perpetuate claims for secession because it is very likely that the new majority in the seceding territory will tend to oppress the minorities. Second, secessionist movements do not often have the capacity to achieve their goals without some external support (Horowitz 2003, 10). This in turn elongates the sufferings of the people in the territory that is attempting to secede due to harsh responses from the central government. Third, Horowitz admits that the state boundaries in today's world are overwhelmingly artificial and an argument can be forwarded that secession may help make boundaries congruent to group identities. Nonetheless, he insists that this is more of a projection than a reality because group identities tend to fluctuate continuously. Rather, allowing secession changes an already fragile internal boundary to a more conflict-prone international boundary (Horowitz 2003, 10). Fourth, allowing secession passes a wrong signal to others and encourages them to follow suit (Horowitz 2003, 11). This makes accommodation of diverse groups in a single state near to impossible besides posing a serious threat to territorial integrity of states (Horowitz 2003, 10).

However, many scholars challenge Horowitz's stand on secession. Among such scholars is Allen Buchanan. Buchanan (1997) identifies and analyses two distinct understandings of the right to secession. One is

what he calls the Primary Right Theory of secession and the other a Remedial Right Theory of secession. Primary Right Theory of secession is categorized further into two groups: Ascriptive Group Right to secession and Associative Group Right to secession (Buchanan 1997, 34). According to Ascriptive Group Right to secession, such identity based groups as nations should have the automatic right to exercise the right to secession if they unequivocally demand so. On the other hand, according to the Associative Group Right to secession, regardless of any manifestation of identity, people in a territory should be allowed to exercise the right to secession if they demand so in such an unequivocal manner as majority vote in a referendum. However, he prefers that secession should be allowed as a remedial right only i.e. as a solution for injustices suffered by a group of people provided that there is no other solution to such a problem short of secession (Buchanan 1997, 32).

It is emphasized that the territorial integrity of states, which is a cardinal principle of international law, should be honored (Buchanan 1997, 32). However, the territorial integrity of states should not justify obvious injustices directed against a certain group. In other words, "...national unity should not be pursued at any cost" (An-Na'im 1993, 106). As a compromise, therefore, Buchanan recommends for a remedial right to secession to be applied in such exceptional circumstances as discrimination against equitable participation in state affairs, serious human rights violations such as genocide, and related overt injustices. In such cases, if there is no other possible solution, such a group must be allowed to determine its destiny including exercising the right to secession. Buchanan sees his argument as not only supported by 'the declaration on principles of international law concerning friendly relations and cooperation among states' but also he sees some merits in such an understanding of the right to secession. He claims that if secession is recognized only as a remedial right, states will be encouraged to treat minorities or any other group, for that matter, fairly. Consequently, there will be less demand for secession. This, on the other hand, helps maintain the territorial integrity of states on which international law stands.

However, Buchanan's stand on secession is not free of criticisms either. Important questions that the Remedial Right Theory of secession does not answer are: who evaluates the existence or absence of injustices, violations, and discriminations? It is obvious that groups, particularly those involved in such sensitive issues as secession, will see a certain event from different angles and they may reach at a diametrically opposed views. A force-accompanied action of a central government, for e.g., can be seen as a law enforcement measure by a majority but a minority in the same country against whom the action was directed may see it as an act of suppression and hence a violation on their human rights. The other key challenge is related to the presence of secessionist movements in such democratic countries as Canada, Spain, and the United Kingdom despite Buchanan's assumption that remedial right to secession will make states more democratic and groups will find fewer reasons to claim for secession in democratic states. Let us examine the opinions of other scholars who push for an unqualified right to secession based on the claim that the merits of doing so outweigh its demerits.

Antić criticizes such writers as Horowitz and Buchanan both from normative and empirical angles. His key argument is that secession should be allowed for a nation that demands so via at least two-third majority vote in a referendum (Antić 2007, 147). He bases his justification in his firm believe that the consent of the governed nation should be given the ultimate priority more than anything else including the 'say' of international bureaucrats. Thus, for him, none of the arguments forwarded against the free exercise of the right to secession by national groups make sense. He criticizes Horowitz's understanding of the concept homogeneity. For Antić, if it is required, secession should be allowed because the concerned people have already expressed their interest through their votes. Therefore, there is no reason to prohibit the exercise of such right because it does not result in a homogenous unit. Moreover, according to Antić, Horowitz's claim that newly established states are more oppressive towards minorities is not supported by practical evidence. Instead, he argues, it is easier to put pressure on the newly established states so that they respect minority rights because they need lots of external support (Antić 2007, 148). However, the validity of the latter argument depends on the context as newly seceded states such as Eritrea and South Sudan turned oppressive.

It is not denied that secession may be accompanied by violence but it is argued that it is not the people who claimed for it to be blamed but the ones who try to stop it by killings and suppression as, practically, secession is usually a response to violence rather than a cause of violence (Antić 2007, 148). For Antić, the argument that central governments may kill people and there may not be external support is ridiculous if one analogizes it with preventing divorce as women may be beaten in the 'process' and no one may want to intervene. Furthermore, he continues, the right to secede fosters rather than dampens adoption of federalism and hence encourages accommodation of diversity based on the consent of the governed (Antić 2007, 149).

Extending his criticism towards Remedial Right Theories of secession, Antić argues that secession should not be limited to remedying situations of unjust conquest, exploitation, threat of extermination and threat of cultural extinction, as Buchanan proposes (Antić 2007, 151). Citing Norman (2006), he claims that secessionists and

International law is ambiguous on issues of internal self-determination as well. The beneficiaries and the rights available can only be discerned from the practice and scholarly works. According to Kymlicka, the definition should include all sorts of identifiable groups including 'immigrants', 'minorities', 'national' groups, and 'indigenous peoples' (Kymlicka 2007, 18). Cassese argues the claimants themselves can only determine the extent of the right to internal self-determination (Cassese 1992, 352). In other words, the concerned group should decide on its destiny and higher-level authorities should not impose solutions. However, solutions proposed by the concerned group should also be approved by higher-level (central) authorities and in the event of disagreement negotiated with them (Cassese 1992, 352). The list may include claims for 'autonomy', 'regional self-government', and 'participation in the national decision-making process' (Cassese 1992, 352). It can be observed here that the right is interpreted broadly, at least in theory, when it comes to internal self-determination.

Country-specific experiences on self-determination vary from one another tremendously (see Kreptual 2004). An overwhelming membership to the UN system and subscription to the international instruments that recognize 'self-determination of (all) peoples' does not seem to help bring uniformity either. We may take secession (one possible component of self-determination as per the earlier-discussed line of interpretation) as an example to see the

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unionists are likely to disagree about what kinds of incidents or events constitute just cause to secede; about whether a certain incident occurred or not; about whether they have been or could be rectified by measures short of secession; about whether any particular violation was significant enough, and so on.

He also criticizes other less popular arguments (Antić 2007, 151). Among them are the ones that allege that secession should be allowed in liberal democratic countries only (see Nilsen in Antic 2007, 151) and the ones that claim that secession defies majority rule which is one of the basic tenets of democracy (see Albot (1998) in Antić 2007, 152). He counters such arguments by stating that liberal democracies are themselves the result of secession and not a cause of it. He mentions such examples as the USA and India as evidence. Regarding the counter-majoritarian tendency of secession, he argues that secession demands are practically against the wills of dictators and oppressive regimes than they are against the wills of the majority. By citing the former Yugoslavia as an example, he asks what options the Albanians had apart from secession when the Serbs supported Milosevic, a war criminal. It is also obvious that majorities do not always rule according to democratic principles (Antić 2007, 152).

Passing to wider political theories, according to Kreptul (2004), liberal democrats are divided on whether the merits of allowing secession outweigh its demerits although they have a common point of departure i.e. maintaining the territorial integrity of modern states. Such writers as Norman (2006) and Weinstock (2001) argue that secession should be allowed for its merits in neutralizing challenges against the territorial integrity of states. Thus, they are not in favor of secession *per se* but the advantages it provides for containing secessionist movements. However, others from the same ideological backgrounds are against recognizing secession because they think that doing so amounts to paving the road for territorial disintegration of states (see Sunstein in Kreptul 2004, 149-151). The scholars in the Austrian libertarian school of economics, on the other hand, have a different reference point in arguing whether secession should be allowed or not. They see secession from the perspective of individual rights and freedoms (Kreptul 2004, 53). Thus, for them, secession should be allowed because of its merits in respecting the consents of individuals.

variation. According to Kreptul (2004), the majority of state constitutions do not regulate secession. Many state constitutions affirm the territorial integrity and indivisibility of the state. Some go to the extent of prohibiting any modifications to the existing boundaries. Only a few constitutions deal with secession and possibility of border modifications. Some countries have allowed the exercise of the right to secession without directly regulating it in their constitutions (see Kreptual 2004).

Historically, the USSR and Czechoslovakia had regulated secession in their respective constitutions. France had the same constitution but it allowed secession as far as it concerned overseas territories. The latter constitutions are, of course, of little relevance to the contemporary challenges, as the constitutions do not function anymore (see Kreptul 2004, 72). The constitutions of Austria and Singapore regulate the possibility of border modifications[29]. Canada and the UK have allowed Quebec and Scotland respectively to exercise the right without directly regulating it in their constitutions. Canada now has a statute on secession that emanated from the 'opinion' of its Supreme Court[30]. Countries such as India and Switzerland have allowed for internal boundary modifications including the creation of new states and a canton respectively. The original very diverse northeastern State of Assam, in India, is now reconstituted into five states: Assam, Nagaland, Mizoram, Meghalaya, and Arunachal Pradesh (Singh 2008, 1113). Self-determination movements in India were more often than not violent but, eventually, the Union has been responding in ways that accommodated the claims without compromising the territorial integrity of the Union. The Indian experience shows that the state and the claimants had been incurring unnecessary costs for demands that were mostly eventually met. In Switzerland, the Canton of Jura is an outcome of the exercise of self-determination in the Canton

[29] See Article 3 of the Austrian Constitution and Article 6 of the Constitution of the Republic of Singapore.

[30] A country that is relatively well engaged in secession issues without directly regulating them in its Constitution is Canada. According to the decision of the Canadian Supreme Court (file number 25506, 1998), unilateral secession is impossible under the Canadian Constitution. The justifications provided in the decision of the Court were: (1) a decision to secede unilaterally involves a major change to the constitutional arrangement. This cannot be realized without amending the Constitution. Constitutional amendment in Canada, on the other hand, requires the participation of all the Canadian provinces and communities including Quebec. (2) Federalism in Canada was the result of negotiations and anything that affects the federal arrangement required negotiation by all the stakeholders. (3) Though the Canadian constitutional arrangement does not impose unity because the consent of the provinces matters, the provinces cannot secede unilaterally. This is because the fundamental organizing principles of the Canadian constitutional arrangement make negotiation mandatory. Hence, Canada must negotiate even if an overwhelming 'yes' vote was given in favor of secession. The court did not define what constitutes a clear demand, clear majority, or other similar terms. However, the Court at the same time affirmed that unilateral secession is possible under international law.

of Berne (see Maggetti-Waser and Fang-Bär 2015)[31]. Jura seceded from Berne in 1978 and exercised full rights as a canton since January 1, 1979 (Maggetti-Waser and Fang-Bär 2015, 354). The self-determination claims in the Jura region started almost two centuries ago and they are not yet fully settled. However, owing to the frequent utilization of direct democracy and proper conflict handling mechanisms, violence (compared to the case in India for example) was minimal.

The only countries with 'live' constitutional provisions that directly regulate external self-determination or secession are Ethiopia, St. Kitts and Nevis, and the European Union (if it can be considered as a country) (see Kreptul 2004). In the Ethiopian[32] and the European cases, secession must be accompanied by negotiation and, hence, it is not unilateral (see Art. 39 of the Ethiopian Constitution and Art. I-60 of the Treaty Establishing a Constitution for Europe respectively). In the case of St. Kitts and Nevis, secession is unilateral (Kreptul 2004, 80).

Returning to such basic questions as 'what is the extent of self-determination right?' 'Should it include secession?' 'Who is entitled to it?'[33] and 'What is the procedure to be

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[31] Discussions on the relevance of the procedures followed in the Jura case to Ethiopia are included in the later sections of this chapter.

[32] In the case of Ethiopia, Kreptul (2004, 80) argues that unilateral secession is not allowed. According to him (2004, 75), the only country that allows for a unilateral right to secession is St. Kitts and Nevis. Whether secession in the Ethiopian context is unilateral or not is, however, still one of the rarely discussed issues as many authors focus on either polemics or dealing with possible (de)merits of the Constitution's secession clause. There are also those who confuse the question whether unilateral secession is allowed with the question whether (unconditional) secession is allowed in the 1995 Constitution. This writer argues that secession as stipulated in the 1995 Constitution of Ethiopia is not unilateral.

The justifications for this line of argument are provided in the very article that guarantees the unconditional right to secession of the Ethiopian nations, nationalities, and peoples. According to Article 39(4)(b) of the Constitution, even after the council of the nation, nationality, or people claiming for secession has approved the claim, the Federal Government has to organize a referendum within three years. The Federal Government and stakeholders are not expected to remain neutral in the 'up to a-three-year time'. Indeed, in normal circumstances, they are expected to make political efforts to convince the claimants to renounce the secession claim (131). Even if the Federal Government or other stakeholders fail to convince the claims to renounce the claim and it is approved in a referendum, according to Article 39 (4) (e) division of assets should be effected. This, again, calls for a negotiation between the claimants and the Federal Government. These prove that secession in the Ethiopian context is not unilateral.

[33] Within those who reach a consensus that secession clause should be included in a constitution, the remaining task is to identify who is entitled to it and to regulate the conditions and the procedures for its implementation. There are various arguments in this regard, too. Buchanan (1997) argues that almost all groups including nations, ethnic groups, cultural groups, language groups, and a group of individuals who have made their intention through a plebiscite should be entitled to the right. For him, what matters is the presence of a clearly visible sense of oneness as a group and a problem that cannot be resolved short of allowing secession to such a group. However, for Antić (2007) not all identity groups should be entitled to such a right because its implementation and identifying the members of all sorts of identity groups is extremely problematic. Moreover, he along with An-Na'im (1993, 105) claims that nationalism has proved to be an overriding manifestation of identity in the history of modern world. Hence, only national groups should be the subjects of the right to secession. The Ethiopian Constitution follows,

followed?'[34], with the exception of the EU and St. Kitts and Nevis, the preceding discussions imply that no constitution or an international legal instrument provides a relatively clearer answer than the Ethiopian Constitution. Moreover, no international instrument provides a better leverage to the claimants of the right in Ethiopia than the Ethiopian Constitution. This point will be elaborated in the forthcoming section. Thus, for the purpose of analyzing issues of self-determination in Ethiopia, there is no clearer or even better, at least from the perspective of the claimants of the right, framework than the Ethiopian Constitution itself. It does not follow that the Ethiopian Constitution is straightforward on every aspect of self-determination but it is more direct (from a comparative perspective). However, given the practical challenges (as will be discussed in the forthcoming sections), comparison is still relevant. First, it lets one understand

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more or less, Antić's path because Article 39 of the Constitution entitles the right to self-determination including secession to only the nations, nationalities, and peoples of the country. It does not entitle such a right to religious groups for example.

[34] Even if the entity entitled to secession right is identified, settling the actual procedure of executing secession remains another challenge. One of the most effective, if not the only one, methods of ascertaining the wishes of a certain group claiming for secession is conducting a referendum. However, should such a group be entitled to secede because just fifty percent plus one of the electorate voiced 'yes' in favor of secession? Allowing so will be problematic because about half of the electorate is against secession and it poses a serious challenge to the future stability of the entity looking for secession. Particularly, if such a vote was given in a fluctuating political atmosphere, it will possibly compromise any of the goals the secessionists had in mind. On the other hand, requiring more than three-fourth 'yes' vote of all the eligible voters in favor of secession, for e.g., will be too rigid because denying a group whose seventy-four percent members favored secession from seceding will be problematic as the state cannot keep on governing such a group against its will without unpleasant consequences. Whether majorities should be calculated out of the registered voters or out of the total eligible voters of a group, claiming for secession, is another challenge.

After dwelling on such challenges, Antić (2007, 153) suggests "...demanding two-third majority of all the voters" as the best solution. He justifies his argument on the customary requirements of amending or changing constitutions. Amending or changing constitutions usually require super-majority votes in the legislature. Obviously, secession amends the concerned constitutional arrangement and hence it is fair to demand two-third majority vote. Nevertheless, although it is possible to amend constitutions without conducting a plebiscite, demands for secession should be confirmed in a referendum as it is must that the concerned people should be directly heard in such a crucial matter (Antić 2007, 153). Furthermore, for reasons of viability, it is suggested that a lower threshold of about 100,000 people should be required for a nation wishing to exercise the right to secession (Antić 2007, 155).

In the Ethiopian case, a simple majority 'yes' vote in a referendum suffices to ascertain that the concerned nation, nationality, or people has decided to secede (see Art. 39 of the Constitution). There is also no minimum population threshold requirement for exercising secession right. One of the imminent drawbacks of incorporating a liberal secession clause in constitutions is the fact that such a clause may enable some groups to sabotage democratic deliberations and decision-making processes (see Sunstein in Kreptul 2004, 50). There is a possibility that a political party representing a certain group may resort to secessionist rhetoric for as simple reasons as refusal of its program by the majority. On the other hand, governance should be based on the consent of the governed. Thus, it is must to find compromise points that guarantee consent-based governance but at the same time that effectively shield a secession clause from temporary heats of politics. Such authors as Weinstock and Norman recommend for mandatory waiting periods between the time the demand for secession was presented and the time for referendum (Kreptul 2004, 54). There is also a possibility that the concerned group can be consulted to give its vote in a referendum for more than once accompanied by some time gap between the referendums so as to prove that the demand is driven by fundamental reasons.

the challenges from a wider perspective and secondly it helps draw lessons as to how to manage the prevailing challenges.

5.3 *The federal and state laws on self-determination*

5.3.1 The federal laws

Article 39 (1) of the 1995 FDRE Constitution guarantees every nation, nationality, and people of the country the right to self-determination including secession[35]. In the second sub-

[35] In the Ethiopian context, discussions about secession are linked to a famous piece 'on the question of nationalities in Ethiopia' that was published in the *Struggle*, a journal of the then student movement, by Walleligne Mekonnen in 1969. Nevertheless, he had explicitly argued that he was not for secession per se. He supported secession as far as it helps the oppressed nations and nationalities become free. The socialist are internationalists in a condition of no oppression and, the argument goes, they would not support secession for the sake of it. In the words of Walleligne, "in the long run Socialism is internationalism and a Socialist movement will never remain secessionist for good" (Walleligne 1969, 5). Moreover, '...from their daily experience the masses know perfectly well the value of geographical and economic ties and the advantages of a big market and a big state' (Lenin in Walleligne 1969, 5).

However, the 1995 Ethiopian Constitution allows for the unconditional self-determination (including and up to secession) right of the Ethiopian nations, nationalities, and peoples. To recognize secession as a means to abolish oppression and to recognize secession as a pillar of a constitutional system are two different things. However, the young revolutionary is often quoted in relation to introducing secession to the Ethiopian political context, if not for being a reason for its incorporation in the 1995 Constitution. Thus, it seems that he is misquoted. He also seems to have foreseen that. In his own words, he expected "...readers to avoid the temptation of snatching phrases out of their context and capitalizing on them..." (Walleligne 1969, 1). The Marxists supported secession "as long as secession is led by the peasants and workers and believes in its internationalist obligation...." (Walleligne 1969, 5). For Walleligne, "[i]t is pure backwardness and selfishness to ask a people to be partners in being exploited till you can catch up" (Walleligne 1969, 5). In a similar fashion, Lenin argues, "to accuse those who support freedom of self-determination, i.e., freedom to secede, of encouraging separation, is foolish and hypocritical as accusing those who advocate freedom of divorce of encouraging the destruction of family ties" (Sewell 2004, 2). The socialist take on secession is clear: secession should not be seen as necessarily bad or even encouraged as far as it helps bring freedom to oppressed masses and so far as it is led by true socialists, who eventually are bound to work for the international proletariat cause.

One should refrain from reaching a hasty conclusion that the inclusion of the secession clause in the 1995 Constitution is unjustified. However, the context of the debates moves from the socialist context to liberal Western perspectives. Indeed, the incumbent EPRDF who is one of the most ardent defenders of the secession right does not defend this right in terms of fulfilling an 'international proletariat mission' but out of commitment to the sovereign right of the nations, nationalities, and peoples of the country and to encourage voluntary union (I32; I33). Given the facts that national oppression is abolished by the Constitution and the nations, nationalities, and peoples are equal and sovereign (see Art. 8 of the 1995 Constitution), one would clearly see that the Constitutional stand is not in line with the socialist stand. In the Western liberal context, secession is a subject for debates even in the absence of national oppression.

The 1991 TPC allowed for a conditional right to secession of the 'nations, nationalities, and peoples' of Ethiopia. They can exercise their right to secession provided that their rights to preserve and promote their identities, to administer themselves, and to equally participate in the affairs of the center were compromised. In a more liberal fashion, the 1995 Constitution allows for an unconditional right to self-determination including secession of the 'nations, nationalities, and peoples' of the country (Art. 39). Opinions on the recognition of the right to secession in the Ethiopian context are as divided as the opinions of writers elsewhere.

Among the writers that opposed recognizing the right to secession in the Ethiopian context with a particular reference to the Eritrean case was Minase Haile. According to him, international law does not recognize secession although it recognizes the right to self-determination (Minase 1994, 498). For him, self-determination is allowed for people suffering from colonial or alien occupation, massive discriminations, and serious violations of rights such as

provision of the same Article, it is stated, every nation, nationality, and people 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 state and federal governments. Moreover, Article 47(2) states that every nation, nationality, or people in any of the states of the Ethiopian Federation has the right to establish its own state. The Constitution incorporates procedures for exercising both the right to secession and the right to establish an own state in Articles 39(4) and 47(3) respectively.

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genocide. In such exceptional cases, he admits, secession may be recognized. He further argues that, in the Ethiopian case with a particular reference to the Eritrean situation, none of such conditions was satisfied. Ethiopia was not a colonizer as Eritrea was federated with Ethiopia via a UN supervised decision and Eritreans were not politically or economically discriminated compared to other Ethiopians. Nor did they suffer disproportionate human rights violations as the brutality of the then military dictatorship was directed against all Ethiopians. Thus, he sees allowing secession in the Ethiopian context as a springboard for further fragmentation and disintegration of one of the ancient states on earth let alone to have merits of any kind.

Tesfa (2015, 63) argues that the inclusion of the right to secession in the Constitution has become 'political dynamite in the country'. He articulates that such a move creates a 'federal nuisance'. In his words, "...accommodating distinct groups through federalism could hardly domesticate nationalist forces and envision common appeals for a federal society when the federal design makes states' territorial integrity, nationalists' article of faith, explicitly disintegrable at will by constituent units." Tesfa's argument implies that the inclusion or the exclusion of the right to secession in a constitution in itself makes an essential difference. However, experiences from such countries as the UK, Canada, or Spain indicate that the absence of the right to secession in a constitution does not stop secessionist movements. The real course of such movements is dependent on socio-economic and political developments. Furthermore, from Tesfa's arguments, it is unclear whether discarding the explicit right to secession from the Constitution includes denying the exercise of the right in the country. If discarding the right from the Constitution includes denying the exercise of the right, global development of human rights and experiences elsewhere do not seem to warrant such a move. If the problem is related only to the explicit recognition of the right, the question that follows is 'what difference does it make? The potential claimants may argue that it is their right, anyway.

Others see some merits in it. In 1991, the survival of the Ethiopian state was challenged by many armed liberation fronts fighting for the autonomy and in some cases like that of the OLF and Some Somali organizations for the secession of the national groups they claim to represent. Thus, some favor the secession clause for its merits in enabling the then Transitional Government of Ethiopia (TGE) bring the ethno-nationalist movements to the table (see Alem 2005, 324-325). Others seem to go beyond the pragmatic requirements of the early days of the transition from military dictatorship to federal system of governance. The most articulate view was presented by the then President of the TGE, Meles Zenawi. According to him, *inter alia*, the Ethiopian nations, nationalities, and peoples, if they wish so, should enjoy the right to secede so as to encourage a voluntary union (see Alem 2005, 326). Some tend to see the secession clause as having a mere symbolic value and they doubt that it would ever be implemented (Alem 2005, 313). There are also arguments that the procedural hurdles in the Constitution make the exercise of the right to secession almost insurmountable. However, Yonatan (2008, 430) disputes this assertion. For him, the procedural requirements for exercising the right to secession are not as burdensome as many portray them. They can be even labeled as very liberal or permissive even in light of the prescriptions of scholars who favor recognizing secession in multinational states. Weinstock (2001), for e.g., recommends for a-ten-year waiting period between the time the demand for secession was presented and the time for conducting the referendum. According to Article 39 of the Constitution, what the concerned nation, nationality, or people is required to do is to present its claim to its council. Then, if a-two-third majority of the members of the legislative council accepts the question, the Federal Government has to organize a referendum, which must take place within three years from the time the Federal Government received the concerned council's decision for secession. Afterwards, if the demand for secession is supported by majority vote in the referendum, if government power is transferred to the council of the nation that demanded secession, and if division of assets is effected according to the law, then secession may be put into effect. Thus, the claim that it has a mere symbolic value and procedural hurdles burden it is not entirely true.

The procedures in the Constitution imply that a group claiming for any of these rights should not only be an already recognized nation, nationality, or people but also one with its own council as the claims in relation to Articles 39 and 47 are assumed to be approved by the council of the concerned nation, nationality, or people. Nevertheless, most of the claims in relation to self-determination so far have been about recognition and a consequent demand for self-administration. To the dismay of the claimants, apart from empowering the HoF to deal with issues related to self-determination (Article 62(3)), the Constitution is silent on how a certain community can present a demand for recognition and who receives it. The CCI has deliberated on such a question when examining the demand of the Silte for self-determination[36]. The CCI argued that since demands for self-administration arise within the states, it should be first presented to and entertained by the states. Indeed, following such direction, it was later proclaimed that such demands should first be entertained at the state level (see Art. 20 of Procl. 251/2001).

The states are empowered to entertain questions on self-determination in the absence of a second chamber within the states that exercise similar powers with that of the HoF. The SNNP State is the only exception because it has the nationalities' council. Even in the case of the SNNP, the nationalities' council is not an exact state-level replica of the HoF, as the former does not decide on budget issues (see Arts. 51(3)(I) cum. 59 of the SNNP State Constitution). In the other states, the claimants are forced to seek recognition from a council dominated by another nation or nationality, which may be against the demand based on 'self' interest. It may be argued that the HoF will give directions to the concerned state council as it did in the Silte case but it is unclear why the HoF should not directly deal with such questions. It also raises the question of whether giving such powers to the states is constitutional. Of course, the HoF may revise state decisions on appeal and some may see this as a possible way out against oppressive state decisions. However, this will likely waste time and resources, if not open the possibility for the occurrence of conflicts, while the demands could have been entertained by the HoF, which is the representative of the nations, nationalities, and peoples, in the first place. The states are exercising a power that potentially contradicts Article 39 of the federal Constitution. Furthermore, this approach and its implementation tends to contradict the general interpretation

[36] See the Journal of Constitutional Decisions of the House of Federation of the Federal Democratic Republic of Ethiopia Vol. 1, No. 1. See also chapter three.

of international law in the cases of internal self-determination that the claimants should be the ones that decide on their affairs and claims although negotiations with higher-level authorities are also relevant in cases of dispute (see Cassese 1992, 352).

Proclamation 251/2001 fills one essential gap of the Constitution. It includes a provision on the procedure of presenting demands for self-determination. According to Article 21(1) of the Proclamation, a question of the right to self-determination must be presented in writing. The application must consist of the details of the question supported with names, addresses and signatures of at least five percent[37] of the inhabitants of the nation, nationality, or people and whenever necessary, the official seal and signature of the administration that presented the question for the right to self-determination. Sub-2 of the provision states the individual or individuals who are delegated to present a petition to the [HoF] pursuant to sub-article (1) of this Article shall produce a reliable evidence of their delegation from the nation, nationality, or people. Particulars on delegation, this law says, shall be determined by the *regulations* to be issued by the [HoF] (italics added).

If a certain community is claiming a (separate) recognition as a nation, nationality, or people, until it is recognized so the representatives can only represent a potential nation, nationality, or people or simply a community. Thus, the use of the phrase 'nation, nationality, or people' in the first sub-provision is confusing. However, the provision has provided objective requirements that are helpful to ascertain whether a certain self-determination related demand has a mass-based support or not. The second sub-provision makes it clear that the representatives that bring self-determination related claims should produce reliable evidence of their delegation from the concerned community. The proclamation leaves the mechanisms to ascertain so to be provided in regulations that are going to be issued by the HoF. At the time of writing this research, there was only a draft regulation. The draft regulation stated any individual or

[37] The exact population number of a group claiming for recognition cannot be known beforehand because the very distinct existence of such a group is yet to be decided. It can be argued that the requirement should have been a fixed number of signatures that is sufficient to prove that beyond few people are concerned in the issue. However, putting some random number such as 5000 signatures, as was done in the Jura referendum in 1974 (Switzerland) (Maggetti-Waser and Fang-Bär 2015, 350), is also problematic since some groups claiming for such right in Ethiopia can be far below that number. Putting lower number of signatures as a requirement, on the other hand, may not be representative enough for claimants with higher population number. Thus, retaining the percentage requirement is better with one qualification: the claimants should be allowed to produce a rough estimate of the number of the people they claim to represent and authorities should accept this and calculate the 5% signature requirement out of it.

organization could bring an application to the HoF. When there is more than one applicant, the agent or a team of agents needs to show that the others involved in the application have delegated him/her or them in written form provided that the HoF or the CCI agrees (Art. 11(3) of the Draft Regulation). The delay in producing a binding regulation on the part of the HoF was a cause for problems as some representatives of groups claiming for recognition were harassed and labeled to 'represent' personal interests alone. Details are provided in section 5.4.

5.3.2 The state laws

Self-determination in the context of the state constitutions has diverse faces. All the state constitutions provide that the right of nations, nationalities, and peoples provided under Article 39 of the FDRE Constitution is sacrosanct. However, at the same time, many of them have made the exercise of the right to self-determination conditional. They put such conditions as deprivations of the right to develop one's culture and to conserve one's history, fair and meaningful participation at the center, and self-administration for exercising the right to self-determination including and up to secession as provided in the Federal Constitution[38]. The same is stated in Proclamation 251/2001 (see Art. 19(1)). However, there are no such conditions for exercising the right to self-determination in the 1995 FDRE Constitution. The positions of the state constitutions and the Proclamation are thus not in line with the federal Constitution.

Some state constitutions do not recognize their internal diversity at all. For example, the Oromia State Constitution does not recognize such 'indigenous' groups as the Zay. Other state Constitutions have given the right to self-determination including secession to numerically dominant groups of a state but deprived the same right to indigenous groups that make up the state. The Afar Constitution is a good example here. It recognizes the right to self-determination including and up to secession for the Afars but it does not extend the same right to the indigenous Argobas although it recognizes their right to self-administration through a special *woreda* (see Articles 37 cum. 43(2) of the Afar Constitution).

The Amhara State Constitution has taken an encouraging move to accommodate the state's internal diversity by establishing the so called 'nationality councils' to the 'minority' national groups. However, even here, the Constitution is full of flaws when examined against the pillar of the overall federal arrangement i.e. sovereign equality of all the nations, nationalities,

[38] See, for e.g., Article 39 (4) of the Tigray, Amhara, and Benishangul/Gumuz Constitutions and Article 37(4) of the Afar Constitution.

and peoples (see Art. 8 of the FDRE Constitution). The nationality councils may take decisions on language and culture issues within their constituencies. However, when it comes to budget and law-making powers they do not exercise any meaningful power. In other words, on substantive issues, except for language and culture, the nationality councils do not exercise any autonomy, as they are accountable to the State Council (see Art. 74(3) of the Amhara Constitution). The state council determines the budget of the state including the budget of every *woreda* of the nationality councils (Art. 49(3.11) of the Amhara Constitution and 110). They do not even have the final power on the appointment of judges for their *zonal* or *woreda* administrations. They are limited to giving opinions only (see Art. 74(3)(g) of the Amhara Constitution). When it comes to exercising real powers, there seems to be little difference between a nationality and ordinary administration in the Amhara State. It can be argued that the nationalities should have been represented in a second chamber with certain law making powers.

The SNNP, which is the most diverse State of the Ethiopian Federation, is far ahead of the other states in institutionally accommodating its internal diversities. In addition to establishing nationality councils at zonal and *woreda* levels, the State Constitution establishes a statewide council of nationalities with substantial powers given to it. The council of nationalities exercises powers such as interpreting the State Constitution, deciding on claims for local administration, and handling state-level intergovernmental disputes (see Art. 59 of the SNNP State Constitution). Nonetheless, in the case of SNNP as well decisions in relation to budget are taken by the State Council (see Art. 51(3)(i) of the SNNP State Constitution). The foregoing discussions imply that the state constitutions have tremendous variations on the issue of self-determination at the state level. It is imperative to note here that the 1995 FDRE Constitution empowers only the HoF to handle issues of self-determination except for claims of separate statehood (see Arts. 62(3) and 47 of the Constitution). In the latter case, the claim is presented to the concerned state's council (See Art. 47(3)(b)). Exhausting 'local' remedies and thereby empowering the states to deal with issues of self-determination is introduced only in the Proclamation that defines the powers and functions of the HoF (Proclamation 251/2001). This is not in line with the Constitution.

5.4 *The practice of self-determination*

5.4.1 Cases of self-determination

At the time of data collection, there were many 'live' cases of self-determination. A majority of the claims arose in the SNNP State. The anthropological background of only a few examples are provided here. The purpose of this section is to give facts about some of the cases of self-determination in Ethiopia. This is expected to help the reader understand the nature of the cases on which the analysis on the implementation of the right to self-determination and the challenges caused by the lack of clear division of tasks between the Federal Government and the states in the area are based. The general trend and the challenges witnessed in handling cases of self-determination are discussed in the other sub-sections of this section.

a. The Qemant

The term 'Kemant' or 'Qemant'[39] hardly appears in the literature predating the 18th century. Thus, compared to the other groups of northwestern Ethiopia such as the Bete-Israelis, less is known about the Qemant's early history (Quirin 1998, 203). According to some myths, the Qemant's place of origin is ancient Israel (see Belay 2010, 11; see Yeshiwas 2013, 14). However, this is a simple myth, similar to many legends and myths that apply to other groups of Ethiopia, for which no tangible evidence is available. Thus, it is dismissed by writers and the traditional leaders of the Qemants as less relevant (see Belay 2010, 11; see Yeshiwas 2013, 14).

Anthropological studies indicate that the Qemant are among the original inhabitants of northwestern Ethiopia (Tourny 2009, 1225; Quirin 1998, 203). The Qemant are one branch of the Agaw group (Quirin 1998, 203). The Qemants lived mainly in the territories to the North of Lake Tana and to the South of River Tekezze (Quirin 1998, 203). The literature is not consistent on the exact districts the Qemants lived. While some argue that "*Chilga, Metema* and *Lay Armachiho* were ancient places where the Kemant people have lived" (Yeshiwas 2013, 15), others add the "town of Gondar, some kebeles of the Gondar zuria woreda, Dembia, Wogera, and Quara to the list" (Belay 2010, 9).

[39] Quirin states that 'the glottalized sound' does not exist in the Agaw language. Thus, the term 'Kemant' and not 'Qemant' is grammatically correct (Quirin 1998, 202). However, the use of the term 'Qemant' has become ubiquitous in academic works and official documents. Thus, the latter term is consistently used in this work.

The Qemant developed a separate identity that distinguishes them from the other Agaw family owing to their interaction with the expanding central Christian state of Ethiopia since the early 14th Century (Quirin 1998, 203). In other words, the ways they interacted with the state defined their feature identity. Although they showed commitment to preserve their separate identity, they were also engaged with the state in many ways (see Quirin 1998, 205-206). Compared to the Bete-Israelis, for example, the Qemants were more ready to accommodate the demands of the state. This gave them some advantages such as keeping their land and getting some positions in the state. This was not the case with the Bete-Israelis. They were dispossessed of their land and they were forced to take the then most despised jobs such as blacksmithing and pottery because they resisted the encroachments of the state strongly. The closer contact of the Qemants with the state, however, had negative consequences on their language, culture, and religion. The original religion of the Qemants is different from both Christianity and Judaism and it combines elements of Christianity and Judaism among others (Gamst in Belay 2010, 9). Their language is classified as Cushitic and a dialect of the Agaw language. These days, however, only a fraction of the people who were counted in the national censuses[40] as Qemants speaks the language and professes the original religion (Tourny 2009, 1225).

Currently, the Qemant are part of the North Gondar Administrative Zone of the Amhara State. The Qemant were not recognized as a separate nationality until recently. To make things worse, they were unrecognized in the most recent (2007) census despite the fact that they were included in the previous censuses. Then, the demand that was being pushed by a few individuals scaled up and the movement for recognition and self-administration intensified since 2007.

In 2007 E.C., the State Government allowed self-administration to the Qemant in 42 *kebeles* of the North Gondar Zone. The HoF has also registered the Qemant as the 76th nationality of Ethiopia (I6). The Qemant claim they are found in more places than those recognized by the government. Upon receiving an appeal from the Qemant, in June 2015 the HoF 'instructed' the Amhara State that it should address the remaining issues following the way it recognized the 42 *kebeles* (without giving any concrete direction). However, at the time of writing, there still was tension and the case was not yet settled (I6).

[40] In those that precede the census in 2007 (1984; 1994). In the 2007 census, the Qemant does not appear as a distinct group.

b. The Menja

The people referred as Menja in this section are given different names depending on the area they reside in: "the Manjo in the Kafa and Sheka zones, the Manja among the Amhara and the Dawro, the Bandu among the Bench, and the Manji among the [Majang]. Furthermore, the Manjo are considered Wayto around Lake Tana, Waata among the Oromo, Fuga among the Gurage, and Geemi among the Dizi, or are considered craft workers (e.g., blacksmiths, tanners, and potters)" (Yoshida 2013, 3). These groups, almost in all areas, speak the language of the dominant group of the area although there are differences of intonation (Yoshida 2013, 4). Thus, no language links all of them. What make all similar is the extreme forms of discriminations they suffer. The exact number of the Menja is not known as they are not included in censuses as a distinct group. Their number is estimated to be between ten to twelve thousand (Yoshida 2013, 3). It is argued that, physically, the Menja look different from the others (see Yoshida 2013, 4). However, since physical appearance has no relevance in defining group identity (see Art. 39(5) of the 1995 Constitution) it is not discussed here.

The fact that the Menja are identified as different by the others and by themselves has deep roots in the caste-like social hierarchy practiced in these areas to date (De Birhan 2012). If we take the case of the Keffa as an example, the society had been categorized into farmers, who are the upper or ruling class, black smiths and tanners, who belong to the lower class, and the hunters (the Menja), who occupy the lowest hierarchy in the society (De Birhan 2012). Eating habits, custom, and behavior were the excuses for perpetuating discrimination against the Menja in the earlier times. The discrimination was there since time immemorial. During the imperial times, the discrimination these groups suffered was overwhelming. In some cases, they were treated worse than animals. They were untouchables. They were not allowed to enter into others' houses or use the same equipments or tools. Inter-marriages were strictly forbidden. Any attempt to cross these lines were severely punished. They had no land. Anyone could occupy and change the forestland, the source of their livelihood or hunting, for any purpose including agriculture. Whenever they came across a passerby, they had to bow or kiss the earth shouting 'let me die for you!' (De Birhan 2012). The list can go on. However, they were also needed for the free labour they provided.

When the Derg came to power in 1974, some changes were introduced. They owned land for the first time. The other communities were ordered to stop discriminating them although to

no avail. The Menja were allowed to participate in different social, political, or institutional activities. However, the discrimination persisted. Since the downfall of the Derg regime in 1991, many changes were introduced to the Menja society. Their livelihood changed from hunting to subsistence farming and charcoal production, they embraced Christianity, and with the introduction of Christianity, the eating habit that included eating wild animals such as 'porcupines, wild boar, and colobus monkeys and dead animals', which served as an excuse to discriminate them, has also changed (Yoshida 2013, 8). However, even the downfall of the Derg and the advent of Federalism in Ethiopia did not stop the discrimination (De Birhan 2012). The continued discrimination was the cause for many violent confrontations between the Menja and the other groups mainly the Keffa (De Birhan 2012).

The Menja community mainly lives in the Keffa[41] and the Sheka[42] Zones of the SNNP State. They also live in the Dawro and the Benchmaji Zones and the Konta special *woreda* of the State (I21). They live more concentrated in the Keffa and the Sheka Zones but they live dispersedly in the others. Those from the Keffa and the Sheka Zones raised the claim for recognition and self-administration. The SNNP State declined their claim for recognition arguing that they are not different from the Keffa, the Sheka, or the others. Although the State declined to recognize them as a distinct nationality, it gave a direction that actions to fight the discrimination the Menja face should be taken. The Menja were dissatisfied by the decision (I21).

c. The Zay

Different etymologies exist regarding the term "Zay". Some narratives associate the term with the seventh letter of the Hebrew language. The seventh letter is called *Zayin* (ז), a word, meaning God. However, according to this narrative, no further details are available why this name was chosen (see Vinson ND, 28). The other narrative associates the term with the incidents encountered by the first arrivals to the Lake and islands of Zeway. When the first arrivals attempted to cross the Lake and move to one of the islands, they stepped in floating grasses but the grasses sunk and they shouted *'way', 'way'* (a crying shout) while those still on the shore where saying *'ze', 'ze'* (this, this). The combination became Zeway and somehow simplified to become 'Zay'. But the Lake is still called Zeway (see Vinson ND, 28-29).

[41] In all 10 *woredas* of the Zone.
[42] In all three *woredas* of the Zone.

The Zay inhabit the islands and the surrounding areas of Lake Zeway, 'located approximately 160 kilometers south of Addis Ababa' (Jordan *et al.* 2011, 3). According to Vinson, there were four major immigration waves to the area (Vinson ND, 32). The first arrivals are said to have come from Aksum, North Ethiopia, during the 9th century when Yodit Gudit, an Agew Queen, invaded and burnt down the first Orthodox Church in Ethiopia Aksum Tsion (Vinson ND, 8). The last wave of migration occurred as late as the 16th century, during the religion-inspired wars between Ahmed Gragn, the leader of the lowland Muslims, and the kings of the Christian Highland Kingdom (Vinson ND, 42).

The ascendants of the Zay belong to different groups including the first inhabitants of the area (such as the Watta and Areñ), Tigray, Silte, Gurage, and Oromo (Vinson ND, 31). There are clan and descent-based differences and identities. Those who arrived in the first three waves of migration belong to the *Ager* clan and those who arrived at the last major wave of migration belong to the *Wayzaro* clan, which was the ruling dynasty up to 1974 (Vinson ND, 31). Nonetheless, through centuries of interaction, the people were assimilated to create the Zay. They speak a distinct Zay language (*Zayigna*). Zayigna is linguistically classified as a Semitic language of the East-Gurage subfamily. It is said to be very close to the Silte and Harari languages (Jordan 2011, 3).

Currently, however, the Zay are not recognized as a distinct group by the institutions of government both at the state and at the federal level. Different woredas and zones administer them while they could have exercised self-rule in a unified entity. They are left to be minorities in East Shewa and Arsi zones of Oromia (Jordan 2011, 3). Education is offered only in Afan Oromo (Vinson ND, 101). They are generally subjected to massive 'oromoization' (see Vinson ND, 101-102). At the time of data collection, a formal claim for recognition was pending at the Oromia State. The State established a team composed of people with different backgrounds including a language expert and the case was directed to the Oromia Council for a decision (I20).

The above-mentioned cases are only a few examples. The experiences from the cases included here are believed to represent the dominant features of the practice of self-determination in Ethiopia. The next sub-section deals with the most prevalent challenges in entertaining demands for self-determination from the angle of power division.

5.4.2 Worrying issues in entertaining demands for self-determination

a. Delays and political manipulations

A typical example of the delays and manipulations in entertaining self-determination related claims is the Qemant case. The case is notorious for being mismanaged[43]. One of the interviewees claims that the people have been demanding for recognition and self-administration since the early days of the commencement of the Ethiopian Federation although the push was limited in intensity. However, he continues, the Amhara State did not take any concrete steps to address the demand. The fact that the Qemant is unrecognized in the most recent (2007) census despite the fact that it was recognized and had a distinct identification (code) in the previous censuses intensified the movement for recognition. Many of the interviewees agree that the demand that was being pushed by few individuals scaled up since 2007 (see I6, I7, I10).

The representatives of the Qemant have been presenting their claim to the Amhara State up to 2002 E.C. However, since the State did not entertain the claim, a petition was presented to the HoF. The HoF held a discussion on the issue in the presence of the representatives of the Amhara State in 2002 E.C. In this discussion, the State claimed that it should decide the case first (i.e. before it is appealed to the HoF) alleging that it did not have the chance to do so before. Then, the case was relegated to the State (I6).

After the case was relegated, the State established a study team. The team did not include representatives from the Qemant. According to the study conducted by the team, there was no Qemant language but it was found out that there is a community that lives in a contiguous territory that believes in a common Qemant identity. When the findings were presented in the presence of the representatives of the Qemant, it faced opposition based both on procedural issues and on its outcome (I6). Procedurally, the representatives claimed the study team should have included representatives of the community. Then, a second study team was constituted that included the representatives of the Qemant.

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[43] According to an investigative report of the FDRE Human Rights Commission presented to the HPR, 97 people were killed (2 policemen among the dead). 86 people were wounded. 235 shops were burned down. 412 houses were robbed. 74 houses were burned down. 255-quintal sesame seeds was burned down. 477 cattle were robbed (Available from: <http://www.ebc.et/web/news/-/--2433> [accessed on 11 June 2016]; <http://www.ethiopianreporter.com/content/%E1%8B%A8%E1%8A%A0%E1%88> [accessed on 12 June 2016]).

The second research team was constituted of five representatives of the State Government and four representatives of the Qemant. Since the previous study revealed that there is a community that believes in Qemant identity and this community lives in a contiguous territory the study was to focus on whether there is a Qemant language. An observation on whether there is a distinct culture was also to be made (I6). After commencing the task and going to the field, the study was terminated owing to disputes among the members of the study team on the objective of the study and procedural issues (I6).

Then, conducting a study for a third time was considered. The Qemant representatives suggested for a neutral research team to study the matter (e.g. a university from another state) (I6). The government officials suggested the representatives of the Qemant to do the study by themselves. They requested the representatives to produce a proposal and the State Government to cover the expenses. Then, the representatives presented a proposal but the officials said it was expensive and they asked the representatives to produce evidence at hand (I6). However, an agreement was not reached on the 'evidence' presented.

The State officials suggested the representatives of the Qemant and the North Gondar Administration study the issue for one more time. The representatives refused claiming that the Zonal Administration was the main obstacle to the 'Qemant question'. Thus, the representatives of the government alone conducted the study this time. In the mean time, tensions escalated and the Amhara State was taking measures including imprisoning people (I6).

The study was brought to the State Council for a decision in 2005 E.C. (I7). The Council concluded there is no language and contiguous territory. However, it also agreed that there is a community that believes in a common Qemant identity. Thus, owing to the language and territory 'factors', recognition was declined but a 'direction' was given to develop the language (I7). However, the representatives were not satisfied with the decision of the State and they appealed the decision to the HoF in 2006 E.C.

The representatives argued that the procedure followed by the State in conducting the study was incorrect and the study did not reflect the reality on the ground (I6). They further claimed that the Qemant fulfill the requirements of the Constitution for nationhood particularly those under Article 39(5) of the 1995 Ethiopian Constitution. Thus, they requested the HoF to study their case by a neutral body and to respond to their demands for recognition and self-administration. However, the HoF did not respond until February 2014. Claiming that the HoF

did not respond timely, thousands of members of the community went for demonstration in the city of Gondar on February 9, 2006 E.C. (February 2014) (I6).

Following the demonstration, within weeks, a team came from the Federal Government to conduct a study (I6). The team held discussions with the State Government, with the representatives of the Qemant, and the ordinary people. In the meantime, tensions were escalating and the Amhara Sate was imprisoning people (I6). The HoF gave a decision in June 2006 E.C. (2014) that the Qemant case needed further study (I6). Final decision was scheduled to be given in October 2007 E.C. (2014).

Disappointments and frustrations increased and members of the Qemant community started to close schools (I6). The State Government asked to intervene and solve the problem once again. The representatives agreed to the request of the State if the State addresses their demand by "learning from its previous mistakes!" (I6). In November 25, 2007 E.C., a conference was held in the University of Gondar, Science Amba Hall. The representatives of the Qemant and the Amhara were there. The representatives of the Qemant and the State Government agreed to resolve the issue by reaching a-five-point agreement. Accordingly:

1. The Qemant's demand for recognition was accepted and self-administration allowed.
2. Self-administration was first to be implemented in Chillega and Layarmacheho areas of North Gondar Zone. Claims in other areas were scheduled to be resolved through time in consultation with the people.
3. The final agreement (that is to be reached following a negotiation with the Qemant people) was to be brought to the State Council and proclaimed as a law.
4. It was agreed that it is illegal to 'cause problems' taking the Qemant question as an excuse (both by the Qemant and by the Amhara).
5. The government should work to strengthen the good relationship of the Qemant and the Amhara (I6).

Following the conference, the State Government recognized the Qemant as a distinct nationality and allowed self-administration in 42 *kebeles* of the North Gondar Zone. The representatives refused the decision of the State claiming that the decision contradicts democratic principles and the five-point agreement (I6). They argued that the claim of the Qemant concerns 8 *woredas* and 126 *kebeles* but the State has addressed only the claims in 2 *woredas* and 42 *kebeles* (I6). According to the representatives, settling the claims in the other disputed areas by

consulting the people, i.e. through referendum was ignored. Thus, the representatives of the Qemant called for further demonstrations in Chillega (on June 7, 2007 E.C.) and Gondar (on June 14, 2007 E.C.) towns (I6).

However, the North Gondar Zone Administration responded that the demonstrations were illegal and the Qemant Committee was an illegal gathering (letter written on June 4, 2007 E.C.). Some refused to stop demonstrating. Owing to violent confrontations with the State Police, lives were lost in Chillega (I6).

The representatives of the Qemant appealed the State's decision to the HoF once again. On June 17, 2007 E.C., the HoF affirmed the decision of the State Council. However, the HoF gave a direction that the State should resolve the dispute over the remaining *kebeles* (the main cause of the appeal) in the same manner it dealt with the other *kebeles* (see HoF Decision taken on June 17, 2007 E.C.). However, the State Council did not comply with the direction given by the HoF and it proceeded to implement its own decision. Tensions escalated to the worst. Even the decision regarding the 42 kebeles could not, up to the date this very page was written, be implemented. The treatment of members of the Qemant committee by the Amhara State, responsibility for the lives lost, head quarter of the new administration, and new development plans in the contested areas of the Zone were all causes of disagreement.

One can observe that from 1999 E.C. to 2002 E.C. the State did not respond to the claim of the Qemant. After the case was relegated to it by the decision of the HoF in 2002 E.C., the State did not give a final decision up to 2005 E.C. Even up to the time this very section was written (December 2008 E.C.) the case was yet a cause for serious confrontations and violence in the Amhara State. Briefly, for almost ten years since the representatives of the Qemant presented their case to the Amhara State, a final answer is yet to be found. This has resulted in mistrust between the claimants and the state.

Mistrust occurred in other cases, too. In the SNNP state, for e.g., the Wollenie refused to present their claim to the State Government on the allegation that they have no trust in the State Government (I12). Attempts were made to improve the situation as per the direction given by the HoF. At the time of writing, they had presented their claim to the State Council and the case was pending.

The most common problem in handling cases of recognition and self-administration by the states is failure to give definitive answers within the binding two-year timeframe (Art. 20(2)

of Procl. 251/2001). The very fact that the states are given the power to deal with such issues is questionable because the sovereign in Ethiopia are the nations, nationalities, and peoples (Art. 8(1) of the Constitution). They are represented in the HoF directly and it is either their own council (if they have one) or the HoF that should handle issues of rights that concerns them (Art. 62(3) of the Constitution). What is happening is in addition to exercising controversial rights given to them by Proclamation 251/2001, the states are not responding to the self-determination related demands presented to them within the timeframe provided in the Proclamation.

An interviewee with inside knowledge states that except for the ones that were accommodated from the outset, identity-related demands that came after the current constitutional system was put into practice were not addressed timely and positively (I12). This has led some to question whether the party in power (since the unfolding of the federal system) has changed its commitment to diversity accommodation (I12). They exclaim it seems that the EPRDF does not want such questions to arise anymore! Another interviewee claims, in the context of self-determination, it does not seem it is an era of federalism and constitutionalism because individual's interests are prevailing over the laws (I6). These opinions may be a bit exaggerated but they are not very detached from the reality as the delays and manipulations of self-determination related claims imply.

The data from the interviews indicate that a major cause of the delays and manipulations is the attitudes of the political leadership. For e.g., one of the higher state officials was of the opinion that criticisms against the federal system in general are either for merely academic consumption, for developing a CV, or for answering anticipatory questions. He adds, because the Constitution has answered key demands, the people are not in a position to raise 'minor' questions (I10). For him, minor questions include self-determination related demands like that of the Qemant. He does not seem to recognize that federalism is a system that demands continuous engagements and improvements. What is more worrying is that this official explicitly admits that discouraging such demands by putting pressures and even bureaucratic hurdles is a way out. Another interviewee with inside knowledge adds that there were officials in the Amhara State who thought that the Qemant's claim should not have been raised and entertained at all for an alleged lack of constitutionality (I7). This interviewee is of the opinion that such attitudes emanate from lack of proper understanding of the federal system. Nevertheless, oppressive and assimilationist tendencies cannot also be ruled out.

Provided that the political context is as indicated above, it is natural that entertaining self-determination related claims by the states would take longer and highly likely result in violence. Indeed, this is what the practice indicates. Furthermore, it is not clear what measures can be taken against the states if they fail to accept or entertain self-determination related demands within the given timeframes and according to the law.

b. Less use of legal and institutional mechanisms

Self-determination related claims, as per the primary data and the observation of this writer, are disproportionately politicized. This holds true for both the claimants and those who are expected to decide on the claims or even third parties. Times where such claims are seen as issues of rights, laws, and institutions seem rare. People are agitated to take sides based on emotions and not facts. A neutral scientific and legal outlook is lacking including at the level of institutions. Such demands always involve a majority that sees the claims as springboards for fragmentation and chaos and a minority that resents the insensitivity of the majority.

According to an interviewee in the SNNP, there were times where recognition-related decisions were easily taken (in meetings or conferences) without the need to involve the legal machinery or state institutions. However, later, as a result of the increase in claims, a decision was taken, again in a conference, not to entertain such demands anymore (I21). Nevertheless, both scenarios are wrong. The relevant institutions (according to the relevant laws and not through meetings and conferences) should have taken decisions on each claim of self-determination.

If we take the Qemant case as an example, again, the laws and institutions were not the main instruments employed in handling the claim. There was no referendum at all. At least, identifying the people that want to be called Qemant and to be included in the new administration calls for a referendum. However, it was the officials and the ruling party that decided everything. Following the decision that gave the Qemant self-administration right in the 42 *kebeles* of North Gondar, an attempt was made to directly consult the people. However, there was nothing close to a referendum. The *kebele* councils were deciding on behalf of the people. It is true that, in the Ethiopian context, the *kebele* is the closest administrative unit to the people but it still is part of the administrative structure. Almost all the Amhara State officials interviewed are of the opinion that recognition was given for pragmatic political reasons and not because the

'legal requirements' were fulfilled (I7, I10, I9). They say the State Council did not strictly adhere to the Constitution when it took the decision that recognized the Qemant and their right to self-administration. These indicate that the decisions were political.

A letter written by the North Gondar Zone Administration on June 4, 2007 E.C. to ban a demonstration called by the representatives (coordinating committee) of the Qemant is very informative about the way the claim was handled. The letter argues that it is the ruling party of the state that should address (and was addressing) the claim of the Qemant. It does not talk about government institutions and laws. Such arguments are fine for political campaigns but when one is addressing rights-related claims the appropriate instruments are obviously government institutions and laws. Thus, too much politicization is another challenge in handling self-determination cases.

c. 'If you do not speak a distinct language, you are not different!' argument

In the Ethiopian case, there are examples that you can be distinct nationalities while speaking very close (almost the same) languages and one nationality while speaking different languages (I21). The Wolayta, Gamo, Gofa, and Dawero are different nationalities in the SNNP State. However, their languages are almost the same. A senior official in the SNNP says they are 85% the same. On the other hand, the Gurage is one nationality in the State but within the Gurage there are different language groups. When self-determination related issues are raised the second trend is often forgotten. Self-determination is being considered synonymous to division. As a result, decision makers become more skeptical.

Among the criteria for nationhood (according to Article 39(5) of the 1995 Constitution) language is one of the most contested issues. It is one of the most controversial issues in all cases of self-determination. The claimants for recognition argue they have a common language, while those who are against recognition contend there is no such language.

In the case of the Qemant, the Amhara State continued to reject their claim for recognition and self-administration for some time on the basis that there is no common language. The Decisions of the HoF given on June 17, 2007 E.C. (June 2014) that denied the claim of the Kontoma for recognition as a separate nationality reads that the Kontoma do not have a separate language and hence they do not fulfill the requirement of the Constitution. Thus, no recognition

can be given. The SNNP State's decision on the Menja case follows the same line of argument. However, such arguments are not in line with what the Constitution says.

Article 39 (5) of the Constitution defines 'nations, nationalities, and peoples'. The provision reads:

> A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, *mutual intelligibility of language*, belief in a common or related identities, a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory (Italics added).

According to the Constitution a nation, nationality, or people should have a mutually intelligible language, among others. The Constitution does not say a distinct language. However, the decisions of the HoF and the state councils indicate that 'mutual intelligibility of language' is considered to mean a distinct language.

The roots of the Constitution's definition for nation, nationality, and people can be traced back to the writings of Stalin. Indeed, the definition provided in the Constitution and in the works of Stalin (from 1907-1913) are almost the same. According to Stalin (1953, 307), "a nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture."

Stalin elucidated what he meant by 'common language'. He says: "[t]his, of course, does not mean that different nations always and everywhere speak different languages, or that all who speak one language necessarily constitute one nation. A *common* language for every nation, but not necessarily different languages for different nations!" (Stalin 1953, 304) (Emphasis in the original). The English, the Americans, the Australians, a majority of the Canadians speak English but they are different nations. A majority of the Swiss, the Austrians, and the Germans Speak German but they are again different nations. We can list many similar examples. However, in the Ethiopian context, the decisions indicate that it is not understood so.

What is interesting in the Ethiopian situation is that the misunderstanding in relation to the language requirement is shared by all the parties involved in the cases of self-determination. The Qemant, for e.g., use Amharic as a common language. Only a limited number of people speak the Qemant language. However, they did not present Amharic as a common language and

claim recognition as far as the other requirements are fulfilled. The Kontoma argued their language is different (at least in accent) and they did not push for recognition even if their language may be same or similar with that of the Mareqo as far as the other requirements are fulfilled. The states claim such groups have no distinct languages. Misconceptions around the language issue complicate the cases i.e. it creates a scenario where there are people who feel they really are different and, at the same time, decision-makers who think the requirements of the Constitution are not fulfilled. This often has resulted in tensions and violence.

Another important issue that should have been considered in entertaining self-determination issues but which has been ignored so far is the driving factor of the Ethiopian Federal System. The system is aimed at correcting historical mistakes among which are national, cultural, and language oppression. If this is so, it is possible that, due to oppression, some have lost their distinct language. Depriving them recognition because their language is lost owing to oppression will be a double mistake. Thus, as far as they have a language that they use to communicate with each other (not necessarily a distinct one) and they fulfill the other requirements, groups demanding for recognition and self-administration should be accommodated. In practice, however, having a distinct language is being taken as a requirement (I5). The fact that officials and experts are assigned by the state governments to decide on whether a certain group has a distinct language is wrong from the outset. In conclusion, claiming that a community without a distinct language should not be recognized as a separate nation, nationality, or people even if it may have a common language is not tenable.

In some areas, there are people who are treated as an outcaste group. The reality does not allow such people to be active actors in development endeavors. As this is a serious challenge to the overall development activities of the country, some are of the opinion that identity and self-administration demands of such groups should be entertained even as exceptions without strictly adhering to what the laws including the Constitution say (I12). Nevertheless, this writer argues, the constitutional frame is capable of entertaining such demands without the need to resort to exceptional mechanisms.

Furthermore, the 1995 Ethiopian Constitution states that the rights and freedoms it provided, which includes Article 39, should be interpreted in line with international instruments Ethiopia signed (Art. 13(2) of the Constitution). According to international law, as discussed in the second section, all kinds of minorities deserve to be protected. It was further shown that,

subject to negotiations, the concerned groups should propose the solutions for their problems as higher level or central authorities cannot impose solutions. This shows that the steps followed by officials in handling the demands for internal self-determination were erroneous.

In this regard, the Indian experience is instructive. In the Indian Union, groups that have endured discrimination and oppression for centuries are not only recognized but also granted with special protections. The schedule system in India, which includes scheduled castes and tribes, guarantees such vulnerable groups with minimum quotas of representation, resources, and government positions (see Jadhav 2008, 1; see also Constitution of India Arts. 15 and 16). The occupationally and socially discriminated groups in Ethiopia deserve not only recognition but also similar protections to the ones offered in India for the underlying cause is similar.

d. The self is not the one that is deciding

The experience so far indicates that, in almost all cases of self-determination, the concerned community is not directly heard. However, the very phrase 'self-determination' implies the self is the one that should decide on its collective affairs. The Ethiopian Constitution assumes that all nations, nationalities, and peoples of the country are recognized. However, claims for recognition are yet coming. In fact, such nationalities as the Siltie and the Qemant were given recognition years after the unfolding of the Federal System. The Constitution is clear on possible claims that can be raised by those nations and nationalities that are already recognized. These are basically secession-related claims and demands for statehood. As discussed in the third section, those who are not recognized do not and cannot have own councils that are referred to in the Constitution in handling such cases. Regulating the way cases of self-determination, short of secession and demands for statehood, are entertained was a gap for the HoF to fill in.

According to an interviewee with inside knowledge, the HoF has set a procedure to ascertain whether the criteria under Article 39(5) are fulfilled (15). Accordingly, territory, language, and culture can be assessed objectively through a study whereas identity and psychological makeup are assessed subjectively i.e. through the voice of the people given in a secret ballot. Nevertheless, the interviewee argues, these procedures are not being adhered to in practice. In the case of the Menja, for e.g., researchers went to study if there is a distinct psychological makeup, *inter alia*, and they came to conclude that there is a distinct psychological

makeup but, they added, this was developed due to oppression. Then the SNNP State Council, accepting the 'findings' of the researchers, declined the demand of the Menja (I5). Two things can be observed here: it should have been the Menja themselves that decide on the issue of 'psychological makeup' according to the procedure lied down by the HoF, thus the Council should not have decided based on 'research'. Secondly, the 1995 Constitution does not put the reason behind having a different psychological makeup as a requirement. It simply includes common 'psychological makeup' as part of the definition. Thus, the 'finding' that the distinct 'psychological makeup' is a result of oppression and hence the Menja does not deserve recognition as a separate nationality is unconstitutional. As far as psychological makeup is concerned, the fact that they have a distinct psychological makeup should have sufficed. More importantly, the fact that the self is not deciding on its affairs is not in line with Article 39 of the Constitution. There is a need for detailed law, understanding or consensus creation, and implementation mechanisms in this regard (I7). This does not imply that the claimants alone decide on everything. Some issues that affect others' rights and some issues that are disputed can be negotiated with higher-level authorities (see Cassese 1992, 352). It is also imperative that the decisions taken by the claimants do not violate basic human rights and protections. Sidelining the concerned group from the decision making process is, however, unconstitutional.

e. Lack of clarity on culture and 'ownership' of states

None of the laws including the Constitution defines the term 'culture' and its manifestations. The Constitution may not be expected to do so but defining this term (which has a direct bearing on the rights of nations, nationalities, and peoples) is imperative. This should be done in other laws including regulations. Otherwise, it results in disputes and tensions.

Another area of confusion is the absence of consensus on whether the states belong to the nations that bear their names or whether all nations, nationalities, and peoples in a certain state are equals in shaping the destiny of the state they inhabit. A senior official in the Amhara State claims that the State is for the Amharas although the minorities have the right to administer themselves (I10). This writer argues this is wrong (see chapter three for details)[44]. Differences on

[44] "...የክልሎች ስያሜ የፌደራል መንግስቱ አባላት አካባቢዎች የትኞቹ ናቸው በሚል ቀደም ሲል ያለውን ተሞክሮ መሰረት በማድረግ የቀረበ እንጂ ያለቀለት ስም ነው ማለት እንዳልሆነ፣ ክልሎች ወደፊት የራሳቸው ህገ መንግስት ስለሚያወጡ በዚያው መሰረት ምክርቤታቸው ተነጋግሮ የክልሉን ስያሜ መለወጥ እንደሚችል፣ በህገ መንግስቱ የተቀመጠው እንደመነሻ እንጂ እንዳለቀለት ሆኖ መወሰድ እንደሌለበት በመሆኑም "የቤኒሻንጉል/ጉመዝ ክልል" ስያሜን በተመለከተ ከዚሁ አቅጣጫ መታየት

this issue have serious bearings on issues of self-determination and it needs further clarification and possibly laws.

5.5 *The overall trend and its implications*

To begin with, force has been an integral part of such demands more often than not. This holds true both to the claimants i.e. when they present their demands and to the states concerned i.e. when they respond to such demands (I12). Violence that resulted in damages to the extent of losing lives is witnessed in some of them. Seeing self-determination related claims as a zero-sum game, termination of government services, and mutual rejection were witnessed in many cases of recognition and self-administration before they were finally settled. It can also be observed that there was none to take responsibility for the loses and chaos (I12).

We saw earlier that the state constitutions vary from one another on the way they treat issues of self-determination. Some recognize internal diversity and establish institutions to handle their internal diversity. Others recognize their internal diversity but they lack details on institutions to accommodate internal diversity. Some recognize only a single nation. The Oromia Constitution falls in the latter category. Despite this, the right is exercised in Oromia widely (I19). Due to border disputes with such states as the SNNP, Benishangul/Gumuz, and Somali, people exercised the right to self-determination and decided to either remain where they were or join another state. This different positive trend not only helped the concerned communities exercise the right to self-determination but also to a certain extent bring peace to the states concerned.

እንዳለበት እቶ ታደሰ ካሳ አብራርተዋል", meaning "...The naming of the states is provided considering members of the federation and previous experiences but it is not final; states may change the name when, in the future, they enact their own constitutions; what is provided is a starting point and it should not be considered final. Thus, Mr. Taddesse Kassa explains, the naming of the 'Benishangul/Gumuz State' should be understood in this direction..." (Minutes of the Ethiopian Constitutional Assembly, Volume IV, 99) (translation by author). "...ለዘጠኙም ክልሎች የተቀመጠው ስም ከእሁን ቀደም በተለምዶ የታወቀ በመሆኑ እንጂ ሌላ ስያሜ ማውጣት እይቻልም ማለት እንዳልሆነ እቶ አባይ ፀሃዬ ጠቅሰው እያንዳንዱ ክልል የራሱን ህገ መንግስት ሲያረቅ ይህንኑን ስም ከፈለገ መቀየር እንደሚችል!...እመልክተዋል", meaning "...Mr. Abay Tsehaye explains that the names provided to the nine states is because it is known so previously and this does not mean that other names could not be given. Each state, when enacting its constitution, can change the name if it wishes so...." (Minutes of the Ethiopian Constitutional Assembly, Volume IV, 100) (translation by author). These extracts from the minutes prove the argument that a group after whom a state is named is titular or 'owns' the state solely is wrong. In other words, all the indigenous nations, nationalities, and peoples in a given state are equal owners of the state. The fact that the name Shinasha, Mao or Komo is absent from the name of the Benishangul/Gumuz State or the fact that the name Irob or Kunama is missing from the name of the Tigray State does not make the right of these groups inferior to the others whose names are reflected in the name of the states.

In some states, however, there are officials who argue that a community that raises a claim for self-determination can exercise the right but it cannot take the land it occupies. In other words, if a certain community decides they are different or they do not belong to a certain state, they can claim so but they cannot join another state with the land they occupy. This clearly contradicts the Constitution. A community cannot be evicted from their land for claiming to be different or for exercising the right to self-determination. This simply is an excuse for the officials not to genuinely entertain demands for self-determination as per the Constitution.

In the Ethiopian context, indicators are already appearing that issues of identity are fluid. For e.g., in the SNNP State, Kembata Tembaro Zone, Dombaya *Woreda*, a community in the Gindela *kebele* joined the Kembata through a referendum. However, they later requested to join the Alaba *Woreda*, a neighboring special *woreda* in the same State (I21). They are similar to the Alaba in terms of religion. However, there is no change regarding the facts that made the community claim to be Kemabata earlier. They claim to have changed their 'mind' later. This tells that identity claims are fluid and they will remain around. Thus, it is imperative to consider them as claims that could reoccur and it is better to refine the mechanisms to entertain them further.

Some officials may become defensive on self-determination claims because entertaining some demands will amount to opening Pandora's Box. We saw earlier that the SNNP State's experience gives room for having a separate identity while speaking very similar language (e.g. the WOGAGODA[45] group) and to have one identity while speaking different languages (e.g. the Gurage). In both instances, language does not take the central place in determining identity. In the likes of Sidama and Gedeo Zones of the same State, on the other hand, the language factor works (I21). Officials fear that attempts that alter the status quo may become destructive (I21). Giving recognition to a language group within the Gurage, for e.g., will have an impact on the second trend (I21).

In the majority of the cases, state officials tend to see self-determination related demands as parochial interests of the elite. It is, indeed, possible that such claims can be abused to serve narrow interests. However, seeing all such claims with this lens is not proper. It is also against

[45] WOGAGODA is an acronym for the Wolayita, Gamo, Gofa, and Dawero Languages. These languages belong to the Omotic family. Because the languages are very similar, the government attempted to forge a common WOGAGODA language and prepared textbooks in the language. However, owing to strong resistance the project failed.

the Constitution. What is proper and in line with the Constitution is to engage openly with such demands and, at the same time, to design mechanisms that ensure such demands are true reflections of the community concerned. Having clear objective criteria such as evidence of representation by the concerned community and a minimum number of signatures, as discussed in section three of this chapter, is helpful. Directly involving the group concerned is more so. Direct democracy can be accompanied by such measures as mandatory waiting periods and establishing open forums for discussions to all parties involved to protect self-determination rights from temporary heats of politics and manipulations for parochial interests.

Important lessons can be learned from the Swiss experience in this regard. In handling the demand for self-determination in the Jura region of Switzerland comparatively peacefully, a-three-step direct democracy played the most crucial step on top of other conflict handling mechanisms such as dialogues and establishing inter-communal assemblies (see Maggetti-Waser and Fang-Bär 2015, 350-366). The three steps were: (1) as a matter of principle, the residents of the Jura region with the right to vote were allowed to directly vote on whether Jura should be separated from the Canton of Berne and form a separate canton (Maggetti-Waser and Fang-Bär 2015, 350). It was agreed that the vote would decide the status of the region. However, since it was very possible that some districts' preferences may not be reflected in the general vote, a second district-level plebiscite was introduced, when demanded by the districts concerned (Maggetti-Waser and Fang-Bär 2015, 352). Thus, even if the total votes favored one option, the districts were at freedom to take the opposite option. This way the interest of the districts was identified and it became clear which districts wanted to be independent from Berne and which ones wanted to stay with it. However, since some of the districts were diverse and the potential border municipalities may have different preferences, and since their say matters in having a feature stable inter-cantonal border, too, the municipalities at the border were given the chance to vote on where they wanted to belong, on demand (Maggetti-Waser and Fang-Bär 2015, 352). However, other municipalities were not given the chance in order to prevent fragmented territories.

In the eyes of the Swiss experience and if there is a trust in democracy and the decisive power of the people, the issues that are perceived to be daunting in the Ethiopian cases are not much so. In the case of the Qemant for example, the primary data indicates that there are worries about how to exactly locate the boundary or what the fate of the diverse (inhabited by both the

Amhara and the Qemant) kebeles will be. It is possible to make the whole area, based on a proposal of the claimants and legal requirements such as eligibility to vote, have a referendum on the issue followed by giving every kebele the chance to decide on its status. This way the boundary of the new entity (if the votes result in one) can be determined. It is not difficult to foresee that there still will be diverse kebeles either that form the new entity or that remain in the earlier entity. Such minorities can be protected by accompanying the democratic process by iron cast minority protection that includes cultural and language rights, guaranteed minimum positions in the public sector, and guaranteed share of the resources from the public sector.

Moreover, the policy makers should make sure that getting a different administrative structure does not result in additional budget or benefits in services at the individual level. Otherwise, this leads to a competition that is ultimately bad for everyone (a 'race to the bottom' scenario). If there is no rent to be collected, the possibility that such demands will be abused for parochial interests will be less.

The interviewees who have observed the trend of self-determination at the state level conclude that the states have been very defensive on such demands (I12, I5, I7). What is more perplexing is state politicians that supported demands for recognition and self-administration when raised in other states turn to be very defensive when similar demands arise in their own state (I12). This indicates that such questions are not entertained objectively and rationally as it is envisioned by the 1995 Constitution. The discussions in this section imply, on self-determination issues, the states are exceeding the constitutional limits. Thus, centrifugal tendency prevails in the area[46].

5.6 *Chapter summary*

On external self-determination, compared to international law and practice, the 1995 Ethiopian Constitution provides clearer and extended rights to the nations, nationalities, and peoples of Ethiopia. It is particularly relatively clear on the issue of secession. On internal self-

[46] Furthermore, some of the states through their local officials take decisions that clearly violates the powers of the Federal Government and that ultimately affects issues of self-determination. In Ethiopia, the Emigration and Refugee Affairs Authority decides on citizenship issues (see Article 5 of Proclamation 6/1995). However, some local administrators issue identification cards (IDs) to foreigners because of clan or family ties or bribes. Then, those who get the IDs automatically become citizens without the need to go through the complicated process of acquiring citizenship. In other words, some local administrations are taking the power to decide on citizenship affairs. In such states as Ethio-Somali and Gambella, these practices are common (I3). This is another area with a centrifugal tendency.

determination, both international law and the Ethiopian Constitution provide a similar protection that includes recognition, autonomy, and guaranteed participation in national decision-making process for different groups.

So far, the claims in Ethiopia fall under internal self-determination for which the Ethiopian Constitution and international law provides flexible and extended protections. However, the practice indicates that such claims are opposed by officials. Part of the problem is defined by the constitutionally unwarranted power exercised by the states in the area of self-determination. The sovereign in the Ethiopian Federation are the nations, nationalities, and peoples. The institution that represents such groups and that is constitutionally mandated to look after their interests is the HoF.

Nonetheless, apart from empowering the HoF to deal with issues of self-determination in general (see Article 62(3)), the Constitution is silent on how a certain community can bring a demand for recognition and self-administration short of statehood and who receives it. Proclamation 251/2001 attempts to fill this gap. Accordingly, the states are empowered to entertain such claims. However, this power is given to the states in the absence of a second chamber within the states that exercise similar powers with that of the HoF. This means forcing the claimants to seek recognition from a council dominated by another nation or nationality, which may be against the demand based on 'self' interest. Giving such powers to the states is not in line with the constitutional stance that the Ethiopian nations, nationalities, and peoples are sovereign. Since the HoF has the power to see state decisions on appeal, some may consider this as a possible way out against oppressive state decisions but this will highly likely waste time and resources, if not open room for conflicts, while the demands could have been entertained by the HoF in the first place.

Some officials tend to see self-determination claims as elite-driven parochial demands. To address disputes on whether the claims are genuine or not, Proclamation 251/2001 states that claimants should produce signatures of at least five percent of members of the concerned community. As it is now, no one can certainly define the base to calculate the five percent requirement, as the claimants represent an entity that is not yet recognized. It is particularly problematic when the claims are highly disputed and politicized. The Proclamation further states that the HoF should enact a regulation on issues related to delegation. However, there is no such regulation to date and there are many practical difficulties in this regard. The Swiss experience in

the case of the Jura shows that no better means of assuring the genuineness of self-determination claims exists other than pursuing the democratic path and consulting the concerned people directly. In the interest of sustainable peace, dialogues, forums, inter-communal assemblies should accompany the democratic path.

Self-determination in the context of the state constitutions has diverse faces. Despite the absence of conditions in the 1995 FDRE Constitution, many of the state constitutions have made the exercise of the right to self-determination conditional. There is also a prevailing tendency to treat indigenous groups in states dominated by a certain national group as minorities for all purposes including the "ownership" of the states. Even the states that recognize their internal diversity, except the SNNP, do not empower all their nations and nationalities to be equal participants in shaping the destiny of their states.

Coming to the practice, delays and political manipulations, over politicization and less use of laws and institutions, misconceptions regarding the requirements of nationhood mainly manifested by requiring claimants to prove that they speak a distinct language, lack of clarity on some constitutional matters including culture and 'ownership' of states, and sidelining the claimants from determining their affairs are prevalent. Denying recognition to groups for whom it is obvious that they have different psychological makeup, history, and culture, and in most cases who suffered from relentless discriminations on the ground that they do not speak a distinct language is not in line with the 1995 Constitution. Quite to the contrary, such groups should not only be recognized but also specially protected because of their vulnerability. It was indicated in the discussion in this chapter that lessons could be learned from the schedule system of India that guarantees minimum protections to scheduled tribes and castes. Despite the fact that among the very raison d'être of the adoption of the federal system is protection of languages and cultures that endured oppressions, using the 'near-to-death' situation of a group's language as a reason to deny recognition is a double blunder. Generally, the foregoing discussions and the primary data reveal that the states have been very defensive in responding to such demands (I12; I5; I7). This centrifugal tendency contradicts the 1995 Constitution.

The discussion in this chapter indicated that the absence of clear division of mandates between the Federal and the state governments on issues of self-determination has resulted in conflicts and violence. Maintaining security in itself is an essential theme of vertical division of

political power in the Ethiopian Federation. The next two chapters deal with the regime of federal intervention and police power division respectively.

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Interviewees:

I3 (Atkilt Daniel, UNDP conflict prevention advisor at the Ministry of Federal Affairs, Addis Ababa, 31/07/2015)

I5 (Anonymous, a middle-level official who works in the area of federalism and IGR, Addis Ababa, 31/07/2015).

I6 (Anonymous, former judge and currently an academic and a lawyer, Gonder, 07/08/2015)

I7 (Arayaselassie Alemu, chair of the law and justice standing committee in the Amhara State Council, Bahirdar, 10/08/2015)

I9 (Fekrie Mulugeta, process head of communications affairs of the Amhara State Council, Bahirdar, 11/08/2015)

I10 (Hon. Yalew Abate, speaker of the House of Federation and former speaker of the Amhara State Council, Bahirdar, 11/08/2015)

I12 (Anonymous, a middle-level official who works in the area of law-making, Addis Ababa, 31/07/2015)

I19 (Mesfin Assefa, Security and Administration Bureau Vice Head, Oromia State Government, Addis Ababa, 02/09/2015)

I20 (Lema Megersa, former speaker, Oromia State Council, Addis Ababa, 03/09/2015)

I21 (Yared Bantyedagne, Ensuring Nationalities' Rights and Creating Constitutional Awareness, Core Process Head, SNNP State Nationalities Council, Hawassa, 15/09/2015)

I32 (Anonymous, a senior official of the federal government, Addis Ababa, 25/10/2015)

I33 (Anonymous, a senior official of the federal government, Addis Ababa, 25/10/2015)

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Chapter Six: Federal Intervention and its Impact on Vertical Division of Political Power

6.1 *Introduction*

An encroachment on the autonomy of constituent units of federations presupposes the existence of certain extra-ordinary conditions. A careful balance should, however, be established that the same regime is not exploited to undermine the powers of the constituent units and the overall power division arrangement between the federal government and the constituent units. Hence, examining the way the legal regime on intervention is designed and practiced helps reveal the feature of vertical division of political power in a certain federation.

The regime of federal intervention in Ethiopia has tremendous impact on the state of vertical division of political power. The regime of intervention, the challenges thereof, and their impact on the state of vertical division of political power are discussed in this chapter. The second section deals with possible limitations on 'normal' implementation of vertical division of political power in federations. The third section is about the legal regime of intervention in Ethiopia. In the fourth section, the practice of federal intervention is discussed. A chapter summary is provided at the end.

6.2 *Limits on 'normal' implementation of division of power in federations*

In normal circumstances, different levels or spheres of governments in federations are expected to exercise the powers that are constitutionally assigned to them. However, extra-ordinary unforeseen things such as invasions, breakdown of law and order beyond the controlling capacity of a certain sphere of government, armed rebellion and the likes may occur. As far as it is essential to avert the danger that comes from such challenges, many federal constitutions include contingency systems that empower the federal government to encroach on constituent unit competences (see Watts 2008, 90)[47]. In India, for example, the emergency clause[48] was

[47] See also Germany (1949). *Basic Law (Grundgesetz)*. As last amended on 29 July 2009; India (1949). *The Constitution of India* (As modified up to the1st December 2007); Switzerland (1999). *Federal Constitution of the Swiss Confederation*. Adopted by the Popular Vote of 18 April 1999 (Status as of 14 June 2015); South Africa (1996). *Constitution of the Republic of South Africa*, 1996 (As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly);

[48] See Article 356 of the 1950 Indian Constitution.

included in the Constitution because the drafters envisioned an indestructible Union of the Indian states. The provision was therefore included as a contingency mechanism in case certain situations that challenge the constitutional order arise in the states. The expectation was that the provision would be used only rarely or even may be not at all (Reddy and Joseph 2004, 18)[49].

However, the experience of countries, as stated in their laws and as manifested in practice are diverse. To mention some examples, in most countries, such a system exists in the name of emergency. In others, it includes regimes for emergency as well as intervention[50]. In some countries the emergency declaration can apply to a certain territory where the reason for such a declaration exists, in others, once there is a declaration it may have a countrywide application. India and the USA respectively are good examples (see Reddy and Joseph 2004, 15). The measures taken following an emergency declaration also vary from one country to another. In such constitutions as that of India and Ethiopia[51], the measures taken may include suspension of a state government whereas in the Swiss or German constitutions a possibility for a complete takeover of a constituent unit government is not explicitly stated.

Emergency declarations call for stringent controlling mechanisms so that they are not abused by the federal government to weaken constituent unit governments or used for extraneous objectives. In the case of Switzerland, emergency acts are subject to citizen scrutiny as they are subject to citizen vote (see Arts. 140, 141, and 165 of the Swiss Constitution). In some federations such as Germany and Ethiopia, the legislative branches are expected to control and oversee emergency measures (see Arts. 91(2) and 93(5) of the German and the Ethiopian Constitutions respectively). In the case of South Africa, in addition to approval of parliament, emergency acts may be subjected to a decision of any competent court (see Art. 37(3) of the South African Constitution). In 1996, the Indian Supreme Court ruled that the emergency

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[49] One of the architects of the Constitution, Ambedkar, even forecasted that it would be a 'dead-letter' provision (see Reddy and Joseph 2004, 18). Nonetheless, subsequent Indian leaders used the emergency provision very frequently. The use of the emergency provision, in many occasions, was contrary to the intention of the drafters of the Constitution. It was used to remove governors who belong to parties different from the one ruling at the Union level (Tummala 1996, 377). With the lapse of time, however, the Indian Supreme Court ruled that the emergency provision could not be out of judicial scrutiny (Mahajan 2007, 83). Since recent times, with the overall increase in citizen awareness on political practice and owing to the increase in judicial scrutiny, the use of the emergency clause for extraneous causes has significantly declined (Reddy and Joseph 2004, 20).

[50] The Ethiopian (see Arts. 55 (16) and 62(9) and Art. 93) and the South African Constitutions include separate provisions for both emergency and intervention (See Arts. 37 and 100). The Indian (Art. 356), Swiss (Arts. 140, 141), and German (Art. 91) do not include such a distinction.

[51] See Article 93 of the Ethiopian Constitution and Article 356 of the Indian Constitution.

provision could not be 'immune from judicial scrutiny' (Mahajan 2007, 83). We can observe that the controlling mechanisms vary from one system to another.

While some federations have constitutions with much elaborated provisions on intervention or emergency, some have developed the system through practice. South Africa and the USA respectively are good examples[52]. South African's Constitution is probably the most elaborate in this regard (Anderson 2008, 57). The South African Constitution expressly distinguishes declaration of emergency from interventions of higher spheres of governments in the competence of lower spheres of governments (see Arts. 37, 100, and 139 of the South African Constitution). To avert a situation that threatens the life of the nation declaration of emergency by the South African Parliament is constitutionally warranted (Art. 37); if it is a failure of a provincial government to carry out its executive obligation, intervention but not declaration of emergency is warranted (Art. 100 of the South African Constitution). In the case of emergency, some basic rights may be derogated as far as it is essential to avert the danger (Art. 37(4) of the South African Constitution). The South African Government can take various measures including economic and security measures in the case of intervention in provincial competences (Art. 100(1) of the South African Constitution). Thus, the distinction between emergency and intervention is based on the level or intensity of the threat posed. The Swiss and the Indian constitutions empower the federal government to pass an act and to take a decision respectively that authorizes emergency measures. Thus, such constitutions do not list the types of threats, dangers, or extraordinary occurrences that warrant emergency declaration or act.

The above-mentioned comparative examples show that the international experience leaves us in disarray and with plenty of choices pursued by different federations but still some points that provide guidance in interpreting the Ethiopian system can be identified. According to the South African experience, for example, emergency is warranted provided that some important conditions are fulfilled: first, there must be such incidents as war, invasion, general insurrection, disorder, or natural disaster. Second, the 'life' of the nation must be endangered as a result. Third, the declaration must be necessary to restore peace and order (Art. 37 of the South African Constitution). Disorders or threats that do not endanger the life of the nation, it can be concluded, do not warrant the declaration of emergency. They can, however, warrant intervention.

[52] For additional details on the US experience, see Reddy and Joseph (2004), 14.

According to Corwin in Reddy and Joseph (2004), the following points are key characters of emergency: First, emergency should be *'sudden, unforeseen, and of unknown duration'* (Corwin in Reddy and Joseph 2004, 14). Second, the situation should be 'dangerous and life threatening' (Corwin in Reddy and Joseph 2004, 15). Third, who decides on the existence of such situation is an essential element for which there is no uniform practice (Corwin in Reddy and Joseph 2004, 15). "The fourth aspect of a national emergency... is the element of response to a sudden situation that cannot always be dealt with according to rule and that requires immediate action" (Corwin in Reddy and Joseph 2004, 15). These points may serve as a general guidance and they roughly apply to many emergency regimes. However, they have limitations. They do not, for example, apply to situations that endanger law and order but which may not be life threatening. Generally, as discussed in the next section, the South African experience seems to be a useful comparison and may assist in interpreting the Ethiopian systems of emergency and intervention.

6.3 The Ethiopian legal regime on federal intervention

6.3.1 Intervention as per the Constitution

In dealing with issues of intervention or emergency in the Ethiopian context, experiences elsewhere may provide us with some guidance of interpretation. However, it is also essential to see the context of power division in the area of security in Ethiopia. As it is also elaborated in chapter seven, the 1995 Constitution obliges both the Federal Government and the state governments to protect and defend the federal Constitution (see Arts. 51(1) and 52(2)(a) of the Constitution). This implies that both levels of governments have a role to play in maintaining peace and security which is an intrinsic element of 'protecting and defending' the Constitution. Moreover, according to Article 52(2) (g) of the Constitution, the states have the power to maintain public order and peace within themselves.

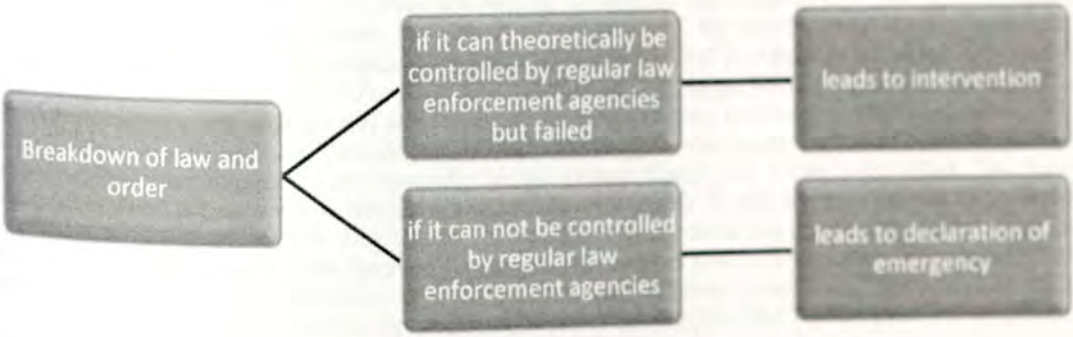
The Constitution does not define what 'maintaining public order and peace' entails. However, this is a broad and important power given to the states by the Constitution[53]. As the constitutional power of the states warrants and the laws discussed in the seventh chapter indicate the states are in charge of crime prevention and investigation (with few exceptions such as international terrorism), public order, fighting local insurgency or organized crime as they even

[53] For details, particularly on police power division, see chapter seven.

have special police units that are trained for that purpose. The Federal Government, on the other hand, is in charge of national defense, prevention and investigation of international crimes, prevention and investigation of ordinary crimes within federal jurisdiction, and the likes. An appraisal of interventions or emergency measures of the Ethiopian Federal Government should take this general power of the states into account.

It is imperative to note that the 1995 Ethiopian Constitution includes a system for both intervention and emergency declaration (see Arts. 62(9), 55(16), and 93 of the Constitution). Thus, intervention is not a novel matter that was introduced by Proclamation 359/2003. Article 93 of the Constitution provides a relatively detailed regulation of emergency. However, the Constitution is not as elaborate with respect to intervention as that of the South African Constitution, for example. The challenge is to distinguish situations that warrant emergency from situations that call for intervention. It is argued here that a breakdown of law and order that merits declaration of emergency in the Ethiopian case is a highly qualified one that can be compared to the South African case: The breakdown of law and order should endanger the constitutional order and it should be something that cannot be stopped by regular law enforcement agencies (see Art. 93 of the Ethiopian Constitution). These are cumulative requirements. If either condition is missing, then emergency declaration is not warranted.

However, a calamity or a breakdown of law and order that theoretically can be stopped by regular law enforcement agencies may go uncontrolled for either lack of capacity a state is expected to have or lack of willingness of a state. It can even occur with the consent or incitement of the state. In the latter cases, the Federal Government can resort to intervention. However, the Federal Government may not need to declare emergency for the act may not fulfill the threshold for doing so. The following diagram can summarize the distinction between emergency and intervention:



Another clue that helps us distinguish intervention from emergency is provided under Article 93(1)(b) of the Constitution. In this provision, it is stated, "state executives can decree a state-wide state of emergency should a natural disaster or an epidemic occur..." When one compares sub (a) and sub (b) of the same provision, it can be observed that the Federal Government may declare emergency by invoking external invasion, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, or the occurrence of a natural disaster, or an epidemic. On the other hand, the state governments may declare emergency only by invoking the occurrence of a natural disaster or an epidemic. It seems that the states do not need to declare emergency on the grounds of breakdown of law and order and external invasion as they can invite the Federal Government to intervene and it is not within their mandate, respectively. Following this line of argument, we can arrive at a conclusion that Article 93 is not an extension of the intervention regimes as provided under Articles 55(16) and 62(9) of the Constitution. Emergency and intervention are meant to regulate different things.

The commonality between intervention and emergency is that they both are measures taken in exceptional circumstances and if not properly carried out, they can threaten the power division arrangement between the Federal Government and the states. The discussions in the forthcoming sections are based on the above line of interpretation. However, it is still possible to argue that both emergency and intervention could have been merged, as it is the case with many federations. What is done here is to present the Ethiopian system as it is and to forward an idea on its plausible interpretation[54].

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[54] The Oromia and Amhara states experienced unprecedented levels of governance crisis and violence in the year 2008 E.C. (from late 2015 up to 2016). Through the invitation of the states, the Federal Government had been intervening in the two states to restore peace and security. Despite the interventions, crisis and violence persisted which eventually led to the declaration of the state of emergency in the whole country on 09 October 2016 (Available from: <https://www.ethiopianreporter.com/content/የሚኒስትሮች-ምክር-ቤት-የአስቸኳይ-ጊዜ-የአዋጅ> (Accessed on 04 November 2016)). The Government stated that the threats were not stoppable by regular law enforcement agencies. The violence was so widespread that, among others, thousands of Tigrigna-speaking people were displaced from the Amhara State, dozens of local and foreign owned investments were burnt down in both states (in larger quantities and more rampantly in the Oromia State), and people were killed. The Federal Government stated the regular law enforcement agencies were unable to stop the violence due to mainly the intervention of foreign actors. The then Minister of Communications stated that the violent elements have been receiving "all kinds of support" from Egyptian institutions. This includes finance, advice, trainings, equipments, and moral. The Federal Government stated that the nature of the conflicts (rampant and supported by foreign intervention and hence not stoppable by regular law enforcement agencies) justified the declaration of emergency.

Apart from resorting to declaration of emergency as per Article 93 of the Constitution, three key constitutional provisions authorize the Federal Government of Ethiopia to intervene in the internal affairs of the states. Article 51(14) of the Constitution states that "it [the Federal Government] shall deploy, at the request of a state administration, federal defense forces to arrest a deteriorating security situation within the requesting state when its authorities are unable to control it." According to this provision, the Federal Government intervenes in the internal affairs of a state if three conditions are fulfilled: deteriorating security situation, when the concerned state is unable to control it, and invitation by the concerned state.

However, the Constitution neither defines nor lists elements that constitute 'a deteriorating security situation'. In other words, the matter is vulnerable to subjective/political judgments of the concerned authorities. The second element, according to the wording of the Constitution, is a mandatory precondition that must be satisfied before the Federal Government steps in. Nevertheless, how the fact that the concerned state is unable to arrest the deteriorating security situation may be proved or its indicators are not mentioned in the Constitution. The invitation mechanism is not also specified in the Constitution. Which organ of a state decides on whether to invite the Federal Government and who receives and acts on the invitation to intervene is not regulated in the Constitution. The broad terms 'Federal Government' and 'state administration' are employed in drafting the Constitution. A possible example of inability to arrest a breakdown of law and order is a 'coup d'état' within a state. This does endanger the constitutional order but it may not necessarily threaten the 'life' of the country or it is not something that is expected to be beyond the capacity of the security agencies in a state. In this case, inviting the Federal Government to help arrest the situation may suffice. Thus, there is no need for the Federal Government to resort to emergency.

The other ground of intervention is stated under Article 55(16) of the Constitution. Accordingly, "It[the HPR] shall, on its own initiative, request a joint session of the House of the

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Following the Proclamation, power division in the area of security as provided in the Constitution has been suspended. All security forces including the military, the national intelligence and security, the federal police, the state police, the militia, and 'other security forces' are under the direct control of the temporary security committee of the Federal Government called 'the Command Post' chaired by the Prime Minister (Article 6 of the Proclamation (Available from: <https://www.ethiopianreporter.com/content/የሚኒስትሮች-ምክር-ቤት-የአስቸኳይ-ጊዜ-የአዋጅ> (Accessed on 04 November 2016)). The secretary of the Command Post is the Minister of Defense. Similar to what is argued in this chapter, the Federal Government stated that the emergency regime is applicable when there are, inter alia, security challenges that threaten the constitutional order and such threats are not stoppable by regular law enforcement agencies.

Federation and of the House of Peoples' Representatives to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned State authorities." The Constitution is not clear enough in this regard, too. Slapping certain individuals' faces amounts to violating human rights (Arts. 14 and 16 of the Constitution) but it would not be reasonable for the Federal Government to intervene in a certain state to correct the inability of the state to arrest such violations. Proportionality requires that the violation should be something serious, rampant and unaccounted for or systemic enough to call an intervention by the Federal Government. A typical example of this case could be if an armed group keeps on killing or kidnapping people in a certain state and the state authorities do not take proportional corrective measures.

Article 62(9) of the Constitution states "it [the HoF] shall order [f]ederal intervention if any [s]tate, in violation of this Constitution, endangers the constitutional order." This is the third ground of federal intervention. No more detail is provided in the Constitution as to the meaning of 'endangering the constitutional order'. Moreover, the phrase 'in violation of this Constitution' is redundant because it cannot be imagined that the constitutional order can be endangered without violating the Constitution. The phrase can add a meaning to the provision if and only if there is a possibility to endanger the constitutional order without violating the Constitution. Nevertheless, waging an armed attack against another state or supporting an armed rebellion may be good examples that warrant intervention in this case. It is necessary to have mechanisms that help arrest certain violations that are beyond the controlling capabilities of the states or that are deliberately created by them and that are dangerous to the constitutional order but the provisions that authorize the Federal Government to intervene in the internal affairs of the states lack details and clarity. Therefore, risks of subjective interpretation accompany all of them.

6.3.2 Intervention as per the federal intervention proclamation

Proclamation 359/2003 regulates the 'System for the Intervention of the Federal Government in the Regions (sic)' with the express aim of providing an implementation mechanism to the constitutional provisions that authorize federal intervention (see the preamble of the Proclamation). From the reading of the paragraph preceding the last paragraph of the preamble of the Intervention Proclamation, one would expect that the Intervention Proclamation adds details, definitions and qualifiers on the grounds of intervention as generally stipulated in

the Constitution but, similar to the Constitution, the Proclamation does not give meaning to 'intervention'. Instead of adding some details that would help understand the concept, it refers back to the Constitution (see Art. 2(1) of the Proclamation). The same holds true for many generic terms that are used in the Constitution but there are some sections where some details are added as well.

The grounds of federal intervention according to the Proclamation remain the same to those mentioned in the Constitution. Accordingly, the first ground of intervention is 'deteriorating security situation'. Unlike the Constitution, the Proclamation attempts to give meaning to 'deteriorating security situation' under Article 3 although the title of the provision reads 'principle'. Nevertheless, it uses terms that are vulnerable to subjectivity. It does not mention specific actions or activities that indicate the presence of a deteriorating security situation. However, it includes some details on the way the decision to invite intervention is passed and on the organ that receives the invitation representing the Federal Government. It is provided in the Proclamation that it is either the state council or the state's highest executive organ that does the invitation. The Prime Minister through the Ministry of Federal Affairs receives the invitation (see Art. 4 of Procl. 359/2003). According to the Constitution, the Prime Minister may deploy the Defense Forces to arrest the deteriorating security situation but according to the Proclamation she/he may deploy the Federal Police, the Defense Forces, or both to arrest the deteriorating security situation (Art. 51(14) of the Constitution and Art. 5 Procl. 359/2003 respectively). It is further stated in the Proclamation that the measures to be taken should be proportional, the mission should be stopped when the ground for intervention ceases to exist, and the Prime Minister is obliged to submit periodic reports to the HPR on the intervention (see Arts. 5 and 6). Regarding this ground of intervention, the Intervention Proclamation, as much as it adds some details, it also incorporates vague phrases such as 'disturbing peace and safety of the public', which can be exploited to undermine the powers of the states.

The second ground of intervention is violation of human rights provided that the state law enforcement and judicial machinery cannot stop such violations (Art. 7 of Procl. 359/2003). Some details including possibility of sending an investigation team by the HPR to any state where there is information that human rights violations are occurring and about reporting by the investigation team and the measures to be taken following such reports, which are unavailable in the Constitution, are provided (see Arts. 8-11 of Procl. 359/2003). Nevertheless, it fails to

address adequately the type and nature of violation that calls for the intervention of the Federal Government. The Proclamation does not really add much in terms of clarifying the substantive nature of this ground of intervention.

The second ground of intervention is different from the other grounds of intervention that there is no direct intervention by the Federal Government. Instead, the Federal Government (through the HPR) is required to issue a directive that instructs the state to arrest the violation and to hold those responsible accountable (Art. 11 of Procl. 359/2003). The fact that this ground of intervention does not authorize the Federal Government to intervene directly[55] in the state where violations of human rights are occurring has received criticisms (see Chimdesa 2012). The reason why it is not a direct intervention in this case can be because the Constitution and the Intervention Proclamation intends to respect state autonomy by giving the states a second chance, as they may not have any information that such violations are occurring (Chimdesa 2012,72).

On the other hand, Assefa (2010, 303) argues that this ground of intervention 'gives the impression' that the state itself can be a suspect. The question that comes next is that if the state itself is a suspect and if indeed the investigation reveals that the state is a perpetrator or an accomplice why should it deserve the second chance? (Chimdesa 2012, 73). This is similar to requesting a criminal to punish him/herself and do justice to the victim. Given the fact that the Proclamation refers to the consent or the knowledge of the state in the third aggravated ground of intervention (Art. 12), it is plausible to argue that the assumption behind the second ground of intervention is that the state is not a direct participant or does not have prior knowledge about the violation. Of course, following this line of argument will not give a clear answer as to what will happen if human rights violations occur with the knowledge or participation of the state. A possible way-out is to argue that this falls under the third ground of intervention as it endangers the peace and security of the Federation (see Art. 12(3) Procl. 359/2003).

Whatever the case, among the three grounds of intervention, the second one is the most favorable to the states in terms of respecting their autonomy and powers as it gives them a second chance. There is no criticism that can be forwarded on the modality of intervention in terms of division of political power except that the substance of the intervention is not adequately defined and, hence, this power is vulnerable to subjectivity and misuse. Nevertheless,

[55] The federal government can only issue a directive that instructs the sate to stop the violations through the HoF.

in terms of ensuring respect for human rights, which are the most important rights, it is not the best way to respond to when they are violated. One may wonder why disturbing the peace and security of the Federal Government calls for the unconditional direct intervention of the Federal Government (Art. 12(3)) and violating human rights not so (see also Chimdesa 2012, 73).

The third ground of intervention is endangering the constitutional order in contravention to the Constitution. In this case, the HoF has the power to authorize intervention. It is in this ground of intervention that the Intervention Proclamation provides relatively better details. Accordingly, an activity carried out with the participation or consent of a state government in violation of the Constitution or the constitutional order and in particular: (1) Armed uprising. (2) Resolving conflicts between another state or nation, nationality or people of another state by resorting to non-peaceful means. (3) Disturbance of peace and security of the Federal Government. And (4) violation of directives given pursuant to Article 11 of the Intervention Proclamation are deemed to be activities or acts that have endangered the constitutional order (Art. 12 of Procl. 359/2003). Nevertheless, there are many ambiguities in these grounds of intervention, too. What will happen if there is an armed uprising in a state but the state never consented to the armed uprising nor invited the Federal Government to intervene? The Proclamation does not provide a clear answer. One possible argument is to consider this as one among the grounds of intervention in the third case as the state is a negligent accomplice or an entity that is unwilling to arrest the situation. It is also unclear what constitutes an 'armed uprising' and 'disturbing peace and security'.

In the Constitution, there is no explicit authorization that the Federal Government may suspend a state government in any case of intervention whereas the Intervention Proclamation authorizes it to do so in the third case (Art. 14(2)(b) of Procl. 359/2003). This is reasonable given the gravity of the situation and the character of the state government. The effect is, the power division arrangement as stipulated in the Constitution will be null and void for the intervention period provided that a provisional state administration is established. If the system is used genuinely to arrest a real danger against the constitutional order, it is definitely a useful system. Nevertheless, given the fact that the conditions listed in the Intervention Proclamation that makes up the third case of intervention are subjective and not qualified enough, there is a possibility that this ground of intervention may be abused. If the latter happens, it will be devastating to the overall power division arrangement and the powers of the states in particular.

Issues with implications on the powers of the states regarding the Intervention Proclamation in general include the absence of regulation as to how long should the Federal Government wait before it determines that the directive given to the concerned state is not complied with, the absence of standards set for use as a reference point in determining proportionality and how it should be assessed, the absence of the requirement to establish an inquiry body that follows-up the measures of the Federal Government (see Chimdesa 2012,75-79). Having clear measures and standards on these issues is helpful to ensure that the Federal Government is not exceeding its powers and affecting the political power division arrangement in the Ethiopian Federation negatively and unconstitutionally.

6.4 *The practice of federal intervention*

6.4.1 Intervention without invoking the law

Up to the time the primary data for this research was collected (October 2015), the Intervention Proclamation was invoked only for two states: Gambella and Somali. According to one of the research participants, the intervention in the two states was done with their consent (I17). In the case of Gambella, there was a complete breakdown of law and order. The administration of the state was restructured from top to down. The security was under the control of the Federal Government (I13). In the case of the Somali State, the intervention was triggered by the invasion of Al-Itihad Al-Islamia (I17). However, around late 2015, early 2016, and mid 2016 the federal security forces intervened, through invitation, in the states of Gambella, Oromia and Amhara respectively. In the case of Gambella, the whole security apparatus of the sate was taken over by the Federal Government because the State security forces took sides in an inter-communal conflict in the state[56]. The recent interventions in the Oromia and Amhara states were driven by the violence, including killings and destruction of property and government structures, that occurred in the states.

Nevertheless, almost all the research participants who were consulted on the matter agree that intervention happens many times without directly invoking the Constitution or the Federal Intervention Proclamation (I4). Once, it happened in the Somali State that the State authorities refused to allocate budget to the *woreda* level administration following which the HoF, after

[56] See: <http://www.voanews.com/content/tracing-source-ethnic-clashes-ethiopia-gambella-region/3197700.html> [Accessed on 29 April 2016] and <http://www.voanews.com/content/several-killed-in-ethipia-oromia-protests/3097737.html> [Accessed on 30 April 2016].

deliberating on the matter, wrote a warning letter instructing the State Government to allocate the budget within a certain period (I4). A team of experts was deployed to observe whether the State Government complied with the instruction given by the HoF (I4). The matter was settled this way without the need for a formal declaration of federal intervention (I4).

A question may arise as to whether the act of refusing to allocate budget falls in any of the grounds for federal intervention. It may be argued that it falls in the third category of intervention as leaving the local governments with no budget to execute their mandates amounts to endangering the constitutional order. After all, local governments are recognized by the Constitution (see Arts. 39 and 50(4)). Nevertheless, pursuing this line of interpretation stretches the grounds of intervention further with a negative consequence on vertical power division. Instead, it could be better to leave these kinds of issues to internal checks and balances, public scrutiny, and political deliberations.

After the first two cases of formal intervention, the Federal Government and the states worked together in many areas including on those that apparently are issues of intervention but that are done through informal agreements of both sides (I17). On the other hand, it is a common practice that when an issue that may call for intervention is brought to the attention of the HoF, it is referred back to the concerned state to resolve it. Thus, the intervention system as provided in the Constitution or the Proclamation is not adhered to (I4). Practically, according to an informant, since the MoFA has a presence on the ground, because it is in charge of the Federal Police, and because it assumes it has the mandate to do so, it simply intervenes in conflicts without the knowledge of the HoF (I4). The law that defines the powers and functions of the executive organs of the Federal Government empowers the MoFA to coordinate the intervention activities of the Federal Government (Art. 14(1)(d)). Nevertheless, the MoFA is not mandated to decide on whether there should be intervention or not. Thus, at least for intervention activities based on the third ground i.e. endangering the constitutional order, not only should it be informed about the issue but also it is the HoF that must decide on it.

The engagement of the MoFA goes beyond coordinating federal interventions as it also engages in mediation and peace building activities. As a result, states complain that the mandate is that of the HoF and not that of the MoFA (I4). They also appeal actions taken by the MoFA to the HoF. For example, there was a long persisted conflict between the Afar and Isa communities of Eastern Ethiopia. The MoFA without the participation of the HoF handled the conflict and

worked out to resolve it sustainably. However, the parties complained to the HoF questioning the authority of the MoFA (I4). Any intervention by the MoFA in the internal affairs of the states in the absence of a request for help from the concerned state or a decision of the HoF that authorizes so is unconstitutional. Sometimes, the MoFA in cooperation with the concerned state handles issues that lawfully fall within the mandates of the HoF. By doing so, the MoFA take some of the powers of the HoF. Generally, there is a trend that the MoFA lets the HoF know about cases that it had dealt with through letters (I4).

Intervention can happen even without the knowledge of the MoFA let alone the HoF (I13). According to an informant, when there are conflicts and when it is beyond the control of the state concerned or when there are conflicts between two states, the Federal Police intervenes. In rare cases (in relation to cross-border issues and violent elements), the National Defense Forces are also involved. Thus, whenever there are violent conflicts the Federal Police involves with or without the order of the MoFA (I13). In the latter case, it seems that lower level officials take the decision to intervene.

The informal intervention is conducted mostly based on information obtained through a security and information exchange network. After a reform was introduced within the MoFA in November 2009, a security network for conflict information exchange from the very highest federal office to the lowest level of administration i.e. the *Kebelle* was established. When information is obtained that there is a conflict between two states, the MoFA coordinates the dispatching of Federal Police forces. The system was employed to deal with conflicts in such states as Somali and Gambella (I13).

Although the legal procedures are not given due attention and informality dominates the system, in the opinions of the research participants, the results are more often than not positive. Furthermore, state or local authorities are mostly receptive of intervention by the Federal Government. However, in terms of respecting the law and building institutional and system-based working capabilities, the prevailing experience is not constructive. There are complaints that, at individual level, some members of the security forces exceed their mandates and interfere in the day-to-day routine security affairs of the states (I11). There are individuals who were held accountable for this (I13). Moreover, within the agencies of the Federal Government that are involved in the informal cases of intervention, there are widespread complaints and coordination

problems. There is lack of clarity on who should do what. This is particularly true regarding the working relations of the HoF and the MoFA.

6.4.2 Intervention and party channel

Party channels are employed when interventions are conducted without directly invoking the intervention laws. According to an informant, because there is a one party system, problems that may call for intervention are being resolved through intra-party agreements (I5). Many isolated incidents that may call for formal interventions are carried out and settled through political means and often amicably (I4). According to one senior politician, party channels are also used to settle disputes over institutions and representation issues (I2). An attempt was made to settle a dispute over election and representation issues in the Benishangul/Gumuz State through party channels. What was proposed was to guarantee the election rights of the non-indigenous people but to give the locals the veto right. The proposed solution was a cause of difference even within the EPRDF (I2). The dispute was later taken to the HoF and the latter decided that anyone could participate in elections as a candidate provided that he/she can speak the working language of the state and he/she fulfills the other legal requirements[57]. However, the power sharing arrangement in the Benishangul/Gumuz State is still a result of party-level political negotiations[58].

Most of the research participants with inside knowledge agree that intervention issues are entertained through party channels. However, while some of them believe that there is even a need for more intervention (I11), others believe that this will have a negative consequence in the long run (I18). The former believe that there is too much security power decentralization and they consider this as a reason for the development of 'extremist' positions on issues of power division. According to a senior state official engaged in the area of security, some members of the leadership of states claim that they do not have the duty to report to the Federal Government on their internal security affairs (I11). This is illegal, in his view. He adds the focus should be on security works that strengthen the country as a whole (I11). On the other hand, the fact that there are interventions that are carried out through party channels is not seen positively by many of the research participants. Many of them argue that the demarcation between the powers of the Federal Government and the states as it is now is not as clear as it is expected to be. They call for

[57] Details are provided in the third chapter.
[58] For further details, see chapter nine.

strengthening institutions and carrying out interventions as per the laws and formal working mechanisms. They testify that the interventions as they are now are relatively effective and smooth as there is a political 'uniformity'. Nevertheless, in the long run and provided that there is a change in the political atmosphere, they believe, the current system will not work (118; 116; 114). It is, therefore, not constructive in terms of building institutions and systems that ensure a proper execution of the constitutional power division arrangement.

6.4.3 The procedural hurdles (non-responsive nature of the intervention law)

While the focus of the criticisms on federal intervention have been revolving around the fear that the system may unduly empower the Federal Government and diminish the powers of the states, some senior politicians who have been engaged in the area of security for so long argue that strictly adhering to the procedures laid down in the Intervention Proclamation is not feasible for carrying out security tasks. They say security necessitates prompt reaction (120; 118). In the opinion of these participants, the laws and procedures are often ignored because of this reason. Ignoring the laws and procedures, on the other hand, has made the intervention system to be dominated by informality and party channels.

Intervention is needed for extra-ordinary threats and it is obvious that such threats should be arrested as quickly as possible. However, when one examines the Intervention Proclamation, the way decisions are supposed to be taken, certainly, takes some time. Investigations should be conducted, reports of the investigations should be presented, and finally the concerned bodies must take decisions based on the reports except for intervention through the invitation of the state concerned. Furthermore, the Intervention Proclamation does not include contingency mechanisms. It does not, for e.g., empower the Federal Government to intervene as quickly as possible to arrest serious threats and account for any misdeeds, if any, later. The possible option in this case could be resorting to emergency declaration. Emergency declaration can be passed quickly by the Council of Ministers with a post-facto reporting duty to the HPR (see Art. 93(2) of the Constitution). However, as discussed in the third section of this chapter, not all threats that endanger the constitutional order may warrant an emergency declaration. Thus, it is better to amend the intervention system by incorporating some contingency mechanisms with post-facto reporting duties.

It is undisputed that the focus so far is not on building institutions and systems but on dealing with urgent and routine problems. There are times that the Federal Police participates in election-related security activities in the states; there are times that the state police maintain the security of federal institutions (dams, electric and telecom stations, academic institutions etc.) (I18). The latter does so because of convenience. The focus is, therefore, on the outcome i.e. maintaining peace and security regardless of division of mandate. According to one participant, there was a conflict in Ambo in 2006 E.C. Because urgent response was needed to save lives, the Federal Police intervened without the necessary procedures (I18). He continues to say "you do not even remember issues of procedure [as a state police official]; you just call the federal security agencies and ask them to help".

Even within its current scope of focusing on resolving problems and focusing less on the laws and procedures, the outcomes of the intervention system are not necessarily always satisfactory even in terms of addressing the threats. According to one informant, the MoFA usually takes too long to intervene. Furthermore, although the HoF and the MoFA are heavily engaged in matters of intervention, none of them has branch offices in the states. They depend on the institutions of the states to carry out their functions (I18). Such Federal Offices should have branch offices in the states (like the Customs and Revenue Authority of the Federal Government) to execute their functions better. A participant went further to add that solely depending on reports and the state institutions is causing problems. It is not enabling the institutions to solve problems timely based on first hand information (I18).

6.4.4 Intervention and the nature of a state

According to the key informants, the nature and frequency of interventions are different based on whether the state is a 'developed' or a 'developing' one. Interventions occur more frequently in the so-called developing states (see also Workneh 2016, 71). Another important factor in determining the frequency of interventions is the presence or absence of border conflicts between the states. In most cases, when there are inter-state border conflicts, federal security forces particularly the Federal Police are engaged (I13). Moreover, the geo-political neighborhood of the state determines the frequency of interventions. In such states as Somali and Gambella, the porous nature of the international borders, the presence of violent elements, and the weak nature of the state security institutions to deal with the security threats that arise in their

territories necessitates frequent intervention by the federal security forces. The implication is that the states that are more stable and that have built better security establishments such as Amhara, Tigray, and SNNP tend to be more powerful or autonomous than the states of Gambella, Somali, and Benishangul/Gumuz in their relations with the Federal Government. However, recent developments have necessitated intervention in the Amhara State, too.

6.4.5 Call for more intervention

Intervention is expected to be a point of debate, if not contention, between a state and the Federal Government's authorities. However, puzzlingly, the findings indicate that there is an increasing demand for intervention by some state authorities (I16). This leaves one to wonder on the nature of politics that is being built at the state level. It, at least, indicates that assertive political culture is yet to be built in many states of the federation.

According to a participant with inside knowledge, the lenient approach to intervention was built with the help of the civil service reform packages (I16). He argues that such reform packages as the Business Process Reengineering and Balanced Score Card were at the center of developing a sense of 'partnership' that is prevailing in the relations of the states and the Federal Government as all the reform and measurement tools were developed together. This, in the view of the informant, has created an opportunity to do things together notwithstanding the law. Therefore, the MoFA intervenes in the states without the need to invoke the Intervention Proclamation. He confirms that the resistance of the states to federal intervention has decreased since the reform works. It can be observed that the reform works had an undermining effect on the vertical power division arrangement.

According to this informant, some years back, there was a strong tendency by the states to oppose federal intervention even on issues that legitimately require so and this was problematic. This time the problem is that even if they can handle the problem on their own, the states are demanding too much intervention. Seeking extreme support is the prevalent tendency now (I16). This, sometimes, emanates from an ill intent to avoid responsibility; by staying away from conflicts and letting the federal authorities handle the 'dirty job' (I13). The Federal Police complains that some states, which are infested by rent-seeking low-level administrators who are the main sponsors of conflicts, are inviting it to intervene on issues that they can handle by themselves to escape responsibility and legal accountability.

The Federal Police or any other federal security organ is expected to intervene in the internal security affairs of the state if the state police or militia is unable to handle the problem (sometimes they fail to be neutral actors in internal conflicts of their state). However, the states are inviting the federal security forces to intervene including on minor routine security issues (I13). In other words, sometimes, the federal security agents including the Federal Police are getting engaged on matters that they would not chose to interfere for the sake of saving life and property (I13; I19). There are officers of the Federal Police who engage in as detailed activities as community-based peace building in the states (I13). Regardless of its source, the outcome of unduly conducted intervention is the same: undermining the vertical power division arrangement.

A recent development that stayed for a very brief time in the Amhara State is an exception to this general tendency. It was widely circulated that at the beginning of the crisis that hit the State hard (in the mid of 2016), the State authorities refused to invite the Federal Government to intervene and help them settle the crisis. It was when things went out of control that they agreed to and invited the Federal Government to intervene.

6.4.6 The general trend

Until the last months of 2015 during which the primary data for this research were collected, although official statistics is unavailable, the interviewees with inside knowledge confirmed that there was a general trend of a decline of conflicts in the country. The exception was the Amhara State in which the Qemant case had already turned violent[59]. By a sudden twist of events, in the late months of 2015 and early months of 2016, conflicts occurred in Oromia, Gambella, and along the Oromia-Somali border. Up to around October 2016, the Oromia and the Amhara states were in deep crisis. This certainly reversed the earlier trend of decline in conflicts. With a decrease in conflicts, interventions are expected to decrease but the lack of political willingness by some state authorities to handle internal conflicts by themselves tends to make intervention a common occurrence (I13).

6.5 *Chapter summary*

Many federal constitutions incorporate systems that authorize encroaching in the autonomy of constituent units in exceptional circumstances. Detailed comparative works on such systems are scanty. Experiences of countries are also very diverse. Thus, it is difficult to

[59] For details on the Qemant case, see chapter five.

generalize about the systems. What can be done is to draw some general lessons from the international experience and identify systems that can provide some guidance in interpreting the local system. This is what is done in the second and third sections of this chapter. The South African system in particular is heavily relied on in the endeavor to establish the distinction between intervention and emergency in the Ethiopian constitutional system.

It is concluded that intervention and emergency in Ethiopia are different regimes that apply to different situations. Emergency is a highly qualified system that applies to situations that are not only dangerous to the constitutional order but also that cannot be stopped by regular law enforcement agencies. It also applies to wider threats including natural disasters and pandemics. Interventions are also applied to arrest threats that endanger the constitutional order but the dangers are theoretically stoppable by regular law enforcement agencies. It is when, owing to such factors as incapacity or unwillingness, the regular forces fail to stop the threats that the Federal Government intervenes.

Nevertheless, it is imperative that the intervention system is designed in an effective, clear and accountable manner and in a way that does not undermine the autonomy of the states. In light of these criteria, the Ethiopian system of federal intervention has defects. To begin with, the provisions of the Federal Intervention Proclamation are crafted by employing terms that are vague and vulnerable to subjective judgments. Therefore, there is a possibility that such provisions may be employed to undermine the autonomy of the states.

Coming to the practice, intervention occurs in many ways without directly invoking the law. The party channel in particular is used to deal with threats that would otherwise call for formal intervention. It is found out that the outcomes are not necessarily bad. However, in terms of building institutions and respecting the law, the experience so far is not constructive.

Another finding is that there is a prevailing tendency by some states that the Federal Government should handle all the security threats. They tend to invite the Federation to intervene and deal with all sorts of threats for them. Nevertheless, the motive is not necessarily genuine. Some people in power are not ready to take responsibility and they do not seem to care about the autonomy of the states and the overall federal arrangement but their personal interests. They want the federal security authorities to do the daunting and demanding security-related jobs for them. One exception to this trend is a recent development in the Amhara State that stayed for a very brief time. At the beginning of the crisis that occurred in 2016, the State authorities refused

to invite the Federal Government. They did so only when things went completely out of their control.

The vague nature of the laws, the prevailing informal nature of the interventions, and the tendency to invite the Federation to handle all security threats by some state authorities combined give a serious blow to the vertical power division arrangement. It can be observed that federal intervention in the Ethiopian case is heavily dominated by centripetal tendencies. As a continuation of the discussion on vertical division of power in the area of security, the next chapter deals with police power division.

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Interviewees:

I2 (Dr. Gebreab Barnabas, former central committee member of the TPLF and State Minister at the Ministry of Federal Affairs, Addis Ababa, 29/07/2015)

I4 (Anonymous, a senior expert who works in the area of federalism and IGR, Addis Ababa, 31/07/2015)

I5 (Anonymous, a middle-level official who works in the area of federalism and IGR, Addis Ababa, 31/07/2015)

I11 (Anonymous, a senior official in the executive branch of the Amhara State Government, Bahirdar, 12/08/2015)

I13 (Tesfaselassie Mezegebe, Conflict Early Warning and Rapid Response Directorate Director, Ministry of Federal Affairs, Addis Ababa, 19/08/2015)

I14 (Chanie Gebeyehu, IGR and Federalism Teaching Director, Ministry of Federal Affairs, Addis Ababa, 21/08/2015)

I16 (Sisay Melese, Conflict Resolution Director General, Ministry of Federal Affairs, Addis Ababa, 25/08/2015)

117 (Tsegaberhan Tadesse, IGR Director, Ministry of Federal Affairs, Addis Ababa, 26/08/2015)

118 (Kenaa Yadeta, Vice Commissioner, Oromia State Police Commission, Addis Ababa, 01/09/2015)

120 (Lema Megersa, former Speaker, Oromia State Council, Addis Ababa, 03/09/2015)

Chapter Seven: Vertical Division of Police Power

7.1 Introduction

Security is a key government power. Police institutions are among the significant players in this regard. In many federal countries, police power is divided between the federal government and the constituent unit governments. When there is vertical division of police power, it is imperative that there is clarity between the policing powers of the federal government and the constituent units. It is also necessary that there are laws that regulate the coordination, cooperation, and support between the federal police and a constituent unit's police. Lack of clarity in this regard can result in constitutionally unwarranted centripetal or centrifugal tendencies and conflicts as it will not be easy to identify who does what. From this general point of departure, in the second section of this chapter a brief overview of police power division in federations is discussed. In the third section, the Ethiopian Constitution's position on police power division is appraised. In the fourth section, the positions of the relevant federal proclamations are investigated. In the fifth section, some state proclamations are examined. In the sixth section, the practice is analyzed. A chapter summary is provided at the end.

7.2 Vertical division of police power in federations

On vertical division of police power, laws and experiences of federal countries vary tremendously (Watts 2008, 91). The continuum includes those that have a single 'national' police institution and those that have different types of police institutions for different sectors and for different spheres of governments. To mention some examples, while Nigeria and South Africa have single[60] police institutions that serve the whole country (see Article 214(1) of the 1999 Nigerian Constitution and Article 199(1) of the 1996 South African Constitution), India and Germany have police institutions at different spheres of governments (see the Seventh Schedule of the 1950 Indian Constitution and Article 35(2) of the 1949 Basic Law of Germany). We have seen in the second chapter that federations tend to allocate powers of countrywide significance or issues that transcend constituent unit borders to the federal government and powers that have a local significance to the constituent units. In the area of security, however, such a generalization has a limited applicability. It only holds true for those federations that divide police power

[60] Except that South Africa has also separate metropolitan police forces for the big cities.

vertically. India, for example, allocates police powers both to the Union Government and the state governments. In doing so, it allocates powers that have international or national significance or that concerns more than one state to the Union Government (see Part I of the Seventh Schedule of the Indian constitution). On the other hand, prevention and investigation of crimes that are confined to a certain state are allocated to the government of that state (see Part II of the Seventh Schedule of the Indian constitution).

Still, even those federal countries that divide police power vertically manifest many variations on actual roles played by each level of government or on the material jurisdiction allocated to each level of police institution. Most federations like the US, Canada, India, Austria and Australia allocate certain listed roles to the federal government and the constituent unit governments (see Watts 2008, 198). Some federations like Germany and Switzerland designate police power as a concurrent power (see Watts 2008, 198). It can be concluded that, owing to the variations of the experiences of federations, no generalized theoretical framework that may help analyze the Ethiopian state of vertical division of police power can be drawn. For analyzing the state of vertical division of police power in Ethiopia, we have to stick to the relevant provisions of the Constitution. In interpreting the constitutional provisions, however, the experiences and laws of federations that are similar to Ethiopia offer some help.

7.3 *The Ethiopian Constitution on vertical division of police power*

As discussed in the second chapter, the 1995 Ethiopian Constitution lists the powers and functions of the Federal Government and the state governments under Articles 51 and 52 respectively. However, although the wordings of the titles imply that the lists are exhaustive, these provisions do not exhaustively list the powers of either levels of government. The federal government exercises additional powers that are listed under its branches including enacting labor, penal, and commercial codes and federal intervention (see Arts. 55(3)(4)(5) and 69(2) of the Constitution). The Constitution allocates residual powers to the states (see Art. 52(1) of the Constitution). Thus, also the states exercise wider powers than those listed under Article 52.

The Constitution incorporates concurrent powers as well. However, different from the German or the South African constitutions for example, it does not provide a list of concurrent powers[61]. The Constitution provides only two isolated powers with the express use of the term

[61] For further details on concurrent powers in Ethiopia, see Assefa Fiseha and Zemelak Ayele (2017). 'Concurrent

'concurrent'. The first one is about taxation in which case the Federal Government and the states are empowered to jointly levy and collect the taxes from enterprises they jointly own, from companies' profits and dividends, and from large-scale mining and petroleum and gas operations and royalties thereof (see Art. 98 of the Constitution)[62]. The second one is about delegation of the powers of federal courts to state courts (see Art. 80(2) and (4) of the Constitution). This is not really about the exercise of jurisdiction by both levels of governments on a certain matter. It simply is about delegation of authority. Thus, the use of the term 'concurrent' is inappropriate. We can see that the Constitution employs the term 'concurrent' in assigning powers only in limited occasions. Nevertheless, additional concurrent powers that are not expressly referred to as concurrent by the Constitution are available[63].

Among the concurrent powers that are not referred to as concurrent by the Constitution is security including police power (see Arts. 51(1) and (6) and 52(2)(g) of the Constitution). As discussed in the sixth chapter, both the Federal and the state governments in Ethiopia have roles to play in the area of security. Among others, both the Federal Government and the state governments are empowered to establish police institutions. However, in the Constitution the security-related powers are stated in generic terms. Moreover, the Constitution does not provide any further details on the powers of the police institutions at the federal and state levels. However, given the overall power division arrangement and the experiences of closely similar federations, the possible areas of competence for each police institution can be deduced. Such a deduction helps us have a general framework to analyze the lower legislation on police power division as well as the practice.

It is argued here that, according to the federal Constitution, it is proper for the Federal Government to exercise jurisdiction over[64]:

- *Crimes of international nature*. Issues that involve foreign relations have almost always been the competence of a federal government. The same is true in Ethiopia (see Art.

Powers in the Ethiopian Federal System' in Nico Steytler (ed.). *Concurrent Powers in Federal Systems: Meaning, Making, Managing*. Leiden: BRILL and NIJHOFF.

[62] Assefa and Zemelak (2017, 246) argue that this provision is tacitly amended as only the federal government does the collection task although the revenue is still shared.

[63] For additional details on concurrent powers, see Assefa Fiseha and Zemelak Ayele (2017). 'Concurrent Powers in the Ethiopian Federal System' in Nico Steytler (ed.). *Concurrent Powers in Federal Systems: Meaning, Making, Managing*. Leiden: BRILL and NIJHOFF.

[64] In areas where certain level of gravity threshold is required for the Federal Government to prosecute a certain criminal activity, the threshold level should be determined by a law. Such a law should be enacted in a process that involves the states. Further details are provided in the forthcoming sections.

51(8)(12) of the Constitution). The same logic may apply to crimes of international nature. In India, dealing with international crimes is the mandate of the Federal Government (see Part I of the Seventh Schedule of the 1950 Indian Constitution).

- *Crimes committed within Addis Ababa and Dire Dawa.* The chartered cities of Addis Ababa and Dire Dawa are directly accountable to the Federal Government. The Federal Government has the mandate to oversee their administration. It is logical that the same government prevents and investigates crimes in such territories.
- *Crimes that transcend state boundaries or affect two or more states.* The need for coordination puts the federal government in a better position as it is true with inter-state commerce for example (see Art. 51(8)). However, there is a need to set a certain threshold on the level of gravity of the crime. Some minor crimes such as ordinary theft can be handled through inter-state cooperation.
- *Crimes that target federal institutions.* The federal government is in charge of administering such institutions. It is logical that the same government prevents and investigates crimes against such institutions. However, there is a need to set a certain threshold on the gravity of the crime for the Federal Government to prosecute it. If the crime does not meet the required threshold, the state in which the federal institution is located may handle it.
- *Economic crimes.* They tend to affect the whole federation thus the federal government is in a better position. In this case, too, there is a need to set a minimum threshold on the level of gravity of the crime. If the economic crime committed is minor in its nature, it may be left to the concerned state to deal with it.
- *Crimes that target national sovereignty.* They affect the whole country hence the federal government is in a better position to prosecute them.
- *Maintaining peace and order over international boundaries and infrastructure.* Issues that link a country to another have always been the competence of a federal government. The same logic applies here.

On the other hand, it is argued, the following powers should be exercised by the states:

- *Ordinary crimes committed in the territory of a state.* The states are responsible for their internal peace and security and this makes it legitimate to exercise this right. Since the

states are in charge of routine administrative issues, they are closer to do ordinary crime prevention and investigation, too.

- *Organized crimes committed in the territory of a state*. The states are responsible for their internal peace and security and this makes it legitimate to exercise this right. See also the contrary reading of Article 73(9a) of the 1949 German Basic Law.
- *Local crimes that target state institutions*. The states are in charge of administering their institutions. This puts them in a better position to prevent and investigate crimes (that are not of international nature) against their institutions.

In the forthcoming sections, we will examine if the division of police power according to the federal and state legislation is in line with the overall spirit of the Constitution in addition to examining whether the practice is in line with the laws.

7.4 The federal proclamations

Besides and below the Constitution, laws that govern police power division are the law that determines the jurisdiction of the federal courts (Procl. No. 25/1996), the law that amends the federal courts proclamation (Procl. No. 321/2003), the law that establishes the Federal Police Commission (Procl. No. 720/2011), and the laws that establish the state police commissions. Proclamation No. 25/1996 is not, strictly speaking, meant to define the powers of the Federal Police but when read in combination with Art. 6(4) of Proclamation 720/2011, which is about the power of the Federal Police to execute orders and decisions of courts, it leads us to conclude that the criminal and security issues listed in it fall within the jurisdiction of the Federal Police. The Proclamation includes principles that are supposed to guide the federal courts in exercising their jurisdiction (see Art. 3). The first principle states that the federal courts exercise jurisdiction in cases that arise from the Constitution, federal laws, and international treaties. This principle, although it may be helpful to understand the source of federal jurisdiction, is vague. If a citizen files a case in a state court citing a provision of the federal Constitution or a federal law, it does not necessarily follow that the case should be 'seen' by a federal court. For instance, the power to enact a penal [criminal] code is given to the HPR and, by implication, the Ethiopian Criminal Code is a federal law. If one follows the principle that the federal courts exercise jurisdiction, *inter alia*, on cases that arise from federal laws, then all criminal adjudications will end up in the

federal courts. Nevertheless, this is not the case[65]. Neither does the Federal Police investigate all sorts of criminal acts throughout the country.

Article 4 of Proclamation 25/1996 lists twelve kinds of offenses on which the federal courts exercise jurisdiction and, by implication, the Federal Police has the power to investigate such crimes. This article is amended by Proclamation 321/2003. Among the amended parts of the Article is sub Article 1. The earlier version was about offenses against the constitutional order or internal security of the state. 'Constitutional order' and 'internal security of the state' are such generic terms that they need to be defined for identifying the exact powers exercised by the Federal Police in such areas. This sub-provision was so broad that it did not guarantee the powers of the states to maintain public order and peace within their territory as the Constitution does. Furthermore, it contradicted the Federal Intervention Law, as the latter law does not warrant an automatic power for the Federal Government to intervene in the states in cases of internal security problems[66]. In such instances, the Federal Government may intervene in the states only through an invitation of a state government or through the decision of the HoF that authorizes the Federal Government to intervene in a state (Art. 4, Procl. No. 359/2003). If that is the case, then it was not clear how the Federal Government could have exercised jurisdiction in cases of internal security unless the offense against the 'internal security of the state' occurred in the federal territories of Addis Ababa and Dire Dawa. This provision tended to expand federal powers unduly.

The amended version reads: "Offences against the national state" (Amharic: **በመንግስት ግዛት ሀገር ላይ በሚፈፀሙ ወንጀሎች**). The wording of the amended sub-provision is not clear. The phrase 'national state' is confusing. There is no 'national' or 'not national' state. Offences against the nation or the state could have sufficed although it would still be very generic as the earlier version was. The Amharic version is not that clear either. It may be loosely translated as 'crimes committed in the territory of the government of the country', which is again

[65] Jurisdiction is not determined only by who makes the laws (federal or state) but by such concepts as territoriality and personality, too. The Federal Government may enact civil laws that are essential for economic unity of the federation (see Art. 55(6) of the Constitution) but state courts can entertain cases based on such laws if the litigants happen to be residents or the source of the dispute is located in their jurisdictions (see chapter 3, Civil Procedure Code of Ethiopia). The same argument applies to the criminal code. The Federal Government should exercise powers on areas that are exclusively or concurrently given to it by the Constitution. Making a law does not automatically guarantee the Federal Government to exercise judicial jurisdiction. The contrary reading of Articles 4 and 5 of Proclamation 25/1996 itself implies that the Federal Government is not empowered to exercise jurisdiction over all disputes that arise from federal laws.

[66] For details on intervention, see chapter six.

very vague and generic. If the intention of the drafters is to refer to sovereignty, the wording looks wrong. As it is now, the sub-provision remains imprecise.

The other offences mentioned under Article 4 of Proclamation 25/1996 are:

- offences against foreign states;
- offences against the law of nations;
- offences against the fiscal and economic interests of the Federal Government;
- offences regarding counterfeit currency;
- offences regarding forgery of instruments of the Federal Government;
- offences regarding the security and freedom of communication services operating within more than one Region (sic) or at the international level;
- offences against the safety of aviation;
- offences regarding foreign nationals;
- offences regarding illicit trafficking of dangerous drugs;
- offences falling under the jurisdiction of courts of different Regions (sic) or under the jurisdiction of both the Federal and Regional (sic) Courts as well as concurrent offences; and
- offences committed by officials and employees of the Federal Government in connection with their official responsibilities or duties.

Proclamation 321/2003 (the Amendment Proclamation) amends Article 4(9) of Proclamation 25/1996. The earlier version gave the jurisdiction that involves foreigners to the Federal Government regardless of the gravity of the crime or the status of the foreigner involved. In Article 2(2) of the Amendment Proclamation, it is stated that "sub-Article (9) of Article 4 is deleted and replaced by the following new Sub-Article (9): '9. Without prejudice to international diplomatic law and custom as well other international agreement to which Ethiopia is a party, offences of which foreign nationals who enjoy privileges and immunities and who reside in Ethiopia are victims or defendants; without prejudice to Sub-Article (3) of Article 12 and Sub-Article (3) of Article 15 offences of which foreigners are victims or defendants and which entail more than 5 years rigorous imprisonment.'" Qualifying the provision this way is appropriate because it is not efficient for the Federal Government to prosecute all sorts of criminal cases that involve foreigners. But the gravity threshold should have been decided in a process that involves

the states as security is a concurrent power on which both levels of governments are empowered to make laws. As it is now, the gravity threshold is set by the Federal Government unilaterally.

The Amendment Proclamation reads that two new sub-Articles (sub-Articles 13 and 14) are added to Article 14 of Proclamation 25/1996. The intended amendment does not seem to apply for Article 14 of Proclamation 25/1996 because there are no 12 sub-Articles in the stated Article. Instead, it looks that the additions are intended for Article 4 which already has 12 sub-Articles and which lists the criminal jurisdiction of the Federal Courts. What we can conclude is that there is a typing error (Article 4; not Article 14). Article 2(3) of the Amendment Proclamation reads: The following new Sub-Article (13) and (14) are added to Article 14 (sic):

"13) Offences connected with conflicts between various nations; nationalities, ethnic, religious or political groups;

14) Without prejudice to Sub-Article (3) of Article 12 and Sub-Article (3) of Article 15 offences committed against the property of the Federal Government and which entail more than 5 years rigorous imprisonment."

Sub-Article 14 states that the Federal Government is not going to prosecute all sorts of crimes that are committed in the states that target its property. The crime committed against its property should be at least punishable by 5 years rigorous imprisonment. It is proper to set a minimum threshold for the Federal Government to involve. Crimes that do not fulfill the required threshold can be prosecuted by the states or local authorities. The Federal Government (through the HPR) set the threshold without involving the states in the process. When a law is enacted on concurrent areas that are stated in generic terms, the states should be involved in the law-making process otherwise only the Federal Government will dictate the terms, which may make the power less concurrent.

It is appropriate to give jurisdiction to the Federal Courts, and impliedly to empower the Federal Police to investigate such offences, in almost all of the preceding cases considering the overall power division arrangement as provided in the 1995 Constitution. However, the Amharic and the English versions of Article 4(3) are incompatible. While the English version talks about 'law of nations', which implies international law, the Amharic version talks about crimes against humanity (Amharic: በሰው ልጆች መብት ላይ የሚፈፀሙ ወንጀሎች). In the latter case, considering the general power given to the states to maintain public order and peace within their territories, there is nothing wrong if the power were to be left to the states. Moreover, Article

4(10) gives the power to adjudicate criminal acts related to illicit drug trafficking to the federal courts. Once again, considering the general power given to the states to maintain public order and peace within their territories, there is nothing wrong if this power were to be exercised by the states unless the crime transcends state or international boundaries.

The vertical division of police power becomes more problematic as we examine the other relevant laws. Let us begin with the Ethiopian Federal Police Commission Establishment Proclamation (Procl. No. 720/2011). The latter proclamation further expands the powers of the Federal Police by incorporating competences that are absent in Proclamation 25/1996 and by employing broad and generic terms in defining the powers of the Federal Police Commission (see Arts. 5, 6(1), 39 of Procl. 720/2011). This can seriously threaten the powers of the state police commissions. The main problem with the Proclamation is its failure to distinguish crimes on which the Federal Government exercises exclusive jurisdiction wherever they occur and those crimes in which the Federal Government exercises jurisdiction if they occur in the federal territories of Addis Ababa and Dire Dawa.

Article 6 of the Proclamation lists powers and duties of the Federal Police Commission. It lists forty 'powers and functions' and many of them duly fall within the competence of the Federal Police Commission considering the overall police power division arrangement as discussed in the above section. However, some of them call for attention as they unduly expand the powers of the Federal Police Commission and they may negatively affect the course of the Ethiopian Federation. To begin with, the first sub Article states that the Federal Police Commission has the power to "prevent and investigate any threat and acts of crime against the Constitution and the constitutional order, security of the government and the state and human rights". It is appropriate that the Federal Police Commission plays a prime role in maintaining the constitutional order, peace and security of the country and protection of human rights but the territorial and material jurisdiction should be qualified. These kinds of powers should be drafted by taking the powers and functions of the states into account. Where the Federal Police Commission's power to maintain the security of the government and the state and human rights begins and ends and where the role of the state police begins and ends should be clear.

It cannot be argued that the drafters of the Proclamation had the intention to give the Federal Police Commission the power to act whenever there are threats to the internal security of the state or human rights violations everywhere in the country. If such things happen in the

territory of the states, the states should act first as they are in charge of maintaining public order, peace, and security within their territories. For the Federal Police to step in, certain conditions such as the invitation of the state concerned or an outright threat to the constitutional order and a consequent decision of the HoF that authorizes intervention must be there, as discussed in the sixth chapter. This provision should, therefore, be defined and qualified further. If not, there is a chance that the powers of the Federal Police Commission and eventually the Federal Government are unduly expanded.

Some of the powers listed under Article 6 of the Proclamation, as mentioned earlier, are new; meaning they are not mentioned in the Proclamation that defines the competence of the Federal Courts. Of course, reading Articles 6(4) and 6(5) cumulatively reveals that the Federal Police Commission Establishment Proclamation intended to further expand the powers of the Federal Police Commission. In sub-Article 5, it is stated that without prejudice to sub-Article 4, the Federal Police Commission exercises the powers listed in sub-Article 5. Sub-Article 4, on the other hand, makes a direct reference to the Proclamation that determines the jurisdiction of the federal courts (Procl. 25/1996). Thus, it is clear that sub-5 is an addition to what is listed in the 'jurisdiction of the federal courts'. Indeed, some of the powers listed in Article 6(5) indicate this. The list includes: a) prevent and investigate crimes relating to counterfeiting currencies and *payment instruments*; b) investigate crimes relating to *information network and computer system*; c) prevent and investigate crimes relating to *human trafficking, abduction*, trafficking in narcotic and psychotropic substances, hijacking of aircraft *or ship, organized robbery, terrorism and violence* (italics added). Those in italics are the new additions. According to the discussion in the above section, such powers as dealing with hijacking of a ship or international human trafficking should normally be given to the Federal Police considering the overall power division arrangement and the nature of the crimes. However, the state police commissions can handle offences in relation to networking and computer systems, payment instruments, robbery, terrorism and violence unless the crimes extend beyond state boundaries. If it is beyond their capabilities, of course, they can ask for support from the Federal Police or even other federal security organs. Nevertheless, listing these types of offenses as an exclusive competence of the Federal Police does not respect the powers of the states to be in charge of their internal security and order.

Some of the powers listed in Article 6 totally ignore the federal arrangement. They just simply empower the Federal Police Commission to dictate its terms to the states or they oblige the states to act in a certain way. Article 6 sub-6 is about the power of the Federal Police Commission to delegate some of its powers to the state police and receive reports from them. It is not clear what will happen if they say 'no' to such a delegation or reporting. It seems it is their constitutional right not to be abided by a unilateral decision of the Federal Police Commission. Sub-7 talks about issuing national standards on police recruitment and employment, education and training, ranks, wearing of uniform, equipment and other related matters. The different contexts of the states are not considered in this provision. Furthermore, nothing is mentioned about the participation of the states in issuing these standards. The problem with many of the other provisions under Article 6 is the absence of clarity on whether the Federal Police has a sole competence on such powers or not. For example, sub-15 is about forensic investigation, sub-18 is about search and seizure, sub-28 is about issuing certificates of competence for those who want to engage in providing security service, and sub-29 is about issuing certificates to those who want to engage in forensic investigation service. There is no constitutional basis to give the Federal Police Commission a sole power in such areas. However, the proclamation fails to explain where the Federal Police exercises such powers. Neither does it seem that the Proclamation intends to prevent the states from doing so. The state police commissions can do so in their territories. Indeed, it is stated in the state police commission (re)establishment proclamations that the state police is empowered to conduct forensic examinations[67]. The Federal Police Establishment Proclamation should have been clearer on the exclusive and non-exclusive powers of the Federal Police Commission.

Sub-21 is about designing national policies, strategies and standards in cooperation with the state police commissions. In a similar fashion, Article 18(1) talks about a council to be established by the Federal and state police commissions. In the former case, the provision assumes that the state police commissions have the duty to cooperate when the Federal Police Commission requests them to do so. But it is obvious that the state police commissions are accountable to their respective states and not necessarily to the Federal Police Commission. In the latter case, it is helpful to establish a forum that allows the police commissions work together

[67] See, for e.g., Article 6(28) of the Benishangul/Gumuz Police Commission Re-establishment Proclamation (No. 125/2015); Article 10(11) of the SNNP Revised Police Commission Establishment Proclamation (No. 151/2014); Article 6(15) of the Amhara Police Commission Re-establishment Proclamation (No. 216/2014).

and maintain peace and safety but it is arguable whether the Federal Police Commission may unilaterally impose such an arrangement. It is also unclear what the consequences will be if a certain state police commission finds it not in its best interest to participate in such a council. Under sub-24, it is mentioned that the Federal Police Commission is empowered to provide educational, training, technical and advisory support to [the] regional (sic) police commissions with emphasis on regions (sic) that need affirmative support. Providing support does not affect the powers of the state police commissions but this is true as far as the support is a solicited one and not an imposed one. This provision does also tacitly assume that the Federal Police Commission will always have better capabilities than the state police commissions.

In conclusion, what the Constitution states is that both the Federal Government and the states have their own police power. The states are further empowered to maintain their internal security. Then, the question that follows is, should a proclamation that establishes the Federal Police Commission impose obligations on the states on such issues as how to organize their police force, what instruments to have and not to have, participating in forums, and accepting delegations? The answer is 'no'. At least, there should be a mechanism to ensure the participation of the states when such a law is enacted. It is going to challenge the constitutional division of power if the Federal Government enacts a law in an area that is not an exclusive federal power and still imposes duties on the states.

In other federations such as Germany, the federal government is highly unlikely to enact a law that affects the interest of the constituent unit governments on areas of concurrent jurisdiction. This is because the second chambers in such federations, which represent the interest of the constituent unit governments, will scrutinize the law before its final approval. In the Ethiopian case, the second chamber is not part of the law making process. Thus, the interests of the state governments are not directly reflected in the law making process. However, it is highly likely that when the federal government legislates on concurrent powers it affects the interests and powers of the states. This is what we can conclude by looking into the Federal Police Establishment Proclamation, for example. The only possibility for the states to invalidate laws passed by the Federal Government is by claiming that the law is unconstitutional and filing a law suit to the HoF (see Arts. 83 and 84 of the Constitution). However, this is not an ideal mechanism as the laws may already have created problems since they will be implemented once they are approved by the HPR and published in the *Negarit Gazeta*.

There is a need to introduce a mechanism that enables the state interests to be represented in federal legislation on areas that are concurrent and defined in generic terms in the Constitution. The first option could be to reform the HoF and give it a law-making power in concurrent areas that are of generic nature. The other option could be establishing a legislative IGR forum[68]. Strong legislative IGR forum can provide an opportunity for the states to negotiate with the Federal Government on a legislation that affects their interests. A forum that resembles an IGR forum exists. However, it has never been an effective forum for negotiation on legislation. The legislation on police commissions are tangible evidence in this regard.

7.5 *The mandates of state police commissions*

Coming to the state police commission establishment proclamations, some of them are drafted, more or less, in congruence with the Federal Police Commission Establishment Proclamation. However, there are also state police commissions with overlapping mandates with that of the Federal Police Commission according to their establishment proclamations. The Amhara and the SNNP States' Police Commission Establishment Proclamations respectively are good examples.

To examine some of them, let us begin with the Amhara State Police Commission. The powers and functions of the latter are limited to those that are not expressly given to the Federal Police Commission. Nevertheless, the Proclamation includes such generic terms as preventing and investigating crimes that endanger the institutions of the State and preventing crimes that endanger the constitutional order (see Art. 6 (1) and (3) Procl. No. 216/2014), which are too general and open for subjective interpretations. The State Police Commission may exercise such powers as far as the crimes are confined to the territory of the state according to our interpretation of the federal Constitution, as discussed in the third section of this chapter. Moreover, According to the Federal Police Establishment Proclamation, standardization is a mandate of the Federal Police whereas in the Amhara State Police Establishment Proclamation, it is stated that the State Police will decide on such issues in consultation with the Federal Police.

[68] On how a strong IGR helps consolidate proper governance in emerging multi-tiered systems based on the South African experience, see De Villiers, Bertus (2012). Codification of "Intergovernmental Relations" by Way of Legislation: The Experiences of South Africa and Potential Lessons for Young Multitiered Systems. *ZaöRV* 72: 671-694.

In the Case of Oromia, there is no separate police commission establishment proclamation. The powers of the Oromia Police Commission are defined in the Proclamation to Provide for the reorganization and redefinition of the powers and duties (sic) of the executive organs of the Oromia National Regional State (Procl. No. 163/2011). The powers of the State Police Commission are listed mainly in Article 34 and Article 23 of the Proclamation. Similar to the Amhara Police Commission Establishment Proclamation, the Oromia Police Establishment Proclamation incorporates some provisions that are open for subjective and literally broader interpretations. For example, in the Proclamation, it is stated that:

- The Security and Administration Bureau [Studies] the *causes of security problems* and design crime prevention (Art. 23(2)).
- The Police Commission prevents *any threat or crime against the Constitutional order* (Art. 34(1)).
- The Commission prevents occurrence of *criminal acts and traffic accidents* (Art. 34(2)).
- The Commission prevents *crimes* against the interest of the state government and its institutions (Art. 34(4)) (italics added).

These provisions are crafted in so broad ways that they imply the Oromia Police Commission is empowered to deal with all kinds of crimes. However, as discussed earlier, such crimes as terrorism and drug trafficking that extend beyond state boundaries and dealing with the threats against the institutions of the Federal Government fall within the jurisdiction of the Federal Police Commission.

Clear intrusion into the powers of the Federal Police Commission is stated under Article 34(8). According to this provision, the Oromia Police Commission is empowered to protect highways, bridges, big factories and officials. Highways are administered by the Federal Government and through interpretation it is within the jurisdiction of the Federal Police Commission (see Art. 51(9); 55(2)(c) of the Constitution). For bridges, it depends where the bridge is found. If it is on a highway then it is within the competence of the Federal Government. For big factories, the jurisdiction may depend on who the owner is. If the Federal Government owns the factory, it should exercise the jurisdiction. It is also unclear which officials (state or federal) the Proclamation is referring to.

Similar to the case of Oromia the re-establishment proclamation of the Benishangul/Gumuz State Police Commission (Procl. No. 125/2015) incorporates many

provisions that could be interpreted to give wider meanings. In the Proclamation, it is stated that the State Police is empowered to "prevent any treat (sic) and acts of crime against the constitution and the constitutional order, security of the government and the state and human rights" (Art. 6(1)). This is too general that the State Police seems to do all sorts of crime prevention everywhere in the country. In the same fashion, the State Police is mandated to "prevent and Investigate crime[s] against the interest and Institution of the Region (sic)" (Art. 6(4)). This is again too general as the State Police is, for example, not empowered to investigate an international criminal act against the state, according to the federal Constitution.

Compared to the above-mentioned state police commission establishment proclamations, the SNNP State's Police Commission Establishment Proclamation is the most confusing. Many provisions of the Proclamation employ generic terms and phrases. Some of the mandates are the exact replica of the powers of the Federal Police Commission as per its establishment proclamation. It is stated that the SNNP State Police Commission is mandated to "prevent and investigate acts of crime against the constitutional order, human right and security of the government and the region (sic)" (Art. 9(1)). This provision implies that it may investigate all sorts of crimes thus it is too general. Article 9(6) states "where there is sufficient and reasonable ground to suspect the likely (sic) of terrorist act and where it is believed that surprise search is necessary to prevent such acts, order to stop and search vehicles and pedestrians found in the suspected area; arrest suspects and seize materials related to the matter (sic)". The Federal Police Commission has exactly the same powers and it is unclear how both institutions will coordinate in this regard. Terrorism is, after all, the mandate of the Federal Police Commission according to the latter's establishment proclamation although we also saw in the third section that, constitutionally speaking, the states may exercise legitimate jurisdiction over terrorism as far as it is confined to their territory.

The SNNP's Proclamation further reads that the State Police is mandated to "prevent and investigate any threat and acts of crime against constitutional order, human rights, security of the government and state within the region (sic) (Art. 10(1)). This may imply that the State Police may investigate any crime against the constitutional order. Surprisingly enough it is stated that "without prejudice to the provisions of sub article (2) of this Article:- (a) Investigate crimes relating *to information network and computer system*; (b) Prevent and Investigate crimes relating to *human trafficking, trafficking in narcotic and psychotropic substances organized robbery,*

abduction and violence" (Art. 10(3)) (italics added). These powers are expressly given to the Federal Police Commission as per the latter's establishment proclamation although we saw in the third section of this chapter that the sates may exercise jurisdiction on these crimes as far as the crimes are limited to a state's territory. There is a need for constitutional interpretation as to whether the Federal Police Commission or the Police Commission of the SNNP State exercises jurisdiction on these crimes. Here it is argued that as far as the crime is confined to a state's territory, according to the Constitution, the states should exercise jurisdiction. Generally, we can see that there are variations among the states' police establishment proclamations. It can be further observed, according to the state proclamations as well, that the states have the responsibility to maintain peace and security within themselves. Let us see if the practice indicates so in the following section.

7.6 *The practice of vertical division of police power*

7.6.1 Tendency not to follow procedures and laws

> *"Whenever an issue of security is raised,....where are the Federal Police?, where are the Defense Forces?,....call them! Is the common trend. Whether all security issues that occur here and there concerns the Federal Government is really doubtful."*
>
> A senior government official in the Benishangul/Gumuz State (I23).

As the statement quoted above indicates when the police executes their mandates there is a tendency not to follow the procedures and laws on police power division strictly. This does not mean that policing activities are conducted arbitrarily. Indeed, the Federal and the state police work together through agreements, which, however, are political and not necessarily supported by the law (I25). It can simply be arranged that the Federal Police and the anti-insurgency members of the state police safeguard portions of the roads leading to the Ethiopian Great Renaissance Dam in the case of Benishangul/Gumuz State, for example. However, such an agreement does not depend on power division arrangement provided in the law. It is simply a work done jointly (I25). The same holds true in the case of Oromia. According to a senior official of the state, the ways security affairs are handled do not follow a 'rigid' procedure (which is to mean the procedures stated in the Federal Intervention Law). The job is done based on understandings, discussions, and calling each other at any time (I18).

In the Amhara state, a respondent stated that the Federal Police intervenes on day-to-day security activities of the state particularly when there are 'special' events (I18). Special events include election times, hosting conferences, celebrating important holidays etc. There are occasions where the State Security, the Federal Police, and the National Defense work in cooperation with each other. It is, of course, argued that the federal institutions work in the states with the consent of the states' authorities.

An interviewee with inside knowledge confirmed that because the MoFA is in charge of the Federal Police force and because it considers that it has the mandate to handle conflicts wherever they occur, it simply intervenes in the states without getting authorization even from the concerned Federal Houses (I2). As a result, some states complain about it questioning the authority of the Federal Police to intervene in their affairs (I2).

It can also happen that a state police nearby another state's territory can intervene in the latter state to control crisis based on an agreement. At some point, the Oromia State Police, for example, helped to handle security crisis in Hawassa and Wolkitie cities of the SNNP State (I20). The outcomes of such interventions are not necessarily negative (in fact they were positive and helpful in calming down the crisis) but the law does not regulate such interventions. Neither is mutual assistance based on cooperation problematic but it could be more constructive to govern them through a law. If cooperation continues to be carried out informally, it may be vulnerable to political controversies or manipulations.

Some, including members of the state police, argue that if the states are not capable of handling their internal peace and security affairs, the Federal Police should not remain neutral rather it has to intervene in the states. For example in the Benishangul/Gumuz State, there was a crisis in 2000 E.C. However, the state authorities neither managed nor invited the Federal Government to arrest the crisis. Then, the Federal Police had no option but to intervene (I24). Furthermore, it is argued that, not only should the Federal Police intervene in the states but also it is preferable to have a uniform police force across the country as this may make handling security problems easier. Those who forward such arguments claim that the political situation in the country is not yet 'mature' and it is being observed that the states are not capable of handling their own internal security affairs as they have not yet built the capacity to do so. For example the Benishangul/Gumuz State does not have enough police personnel[69] and it is always seeking

[69] The actual figure is not revealed here as it may have security implications.

the support of the Federal Police Commission (I24). Thus, the argument goes, having a uniform police force is better for the country (I24). Whether having a uniform or decentralized police force is better for the country is certainly a point for discussion but such a discussion is out of the context of the Constitution as the latter is clear that there must be police power division between the Federation and the states. However, it can be seen that officials with these kinds of opinions contribute to the prevalence of informality as a member of the leadership of a state police commission with such tendencies will not be expected to care much about police power division.

It is imperative that the Federal and the state police commissions coordinate well in carrying out their functions. After all, some security threats may not necessarily be confined to a certain territory or institution (I20). Therefore, a mechanism to exchange information and share experience must be there. It is also necessary to put in place a proper accountability mechanism. Working together on such issues as salary, rank, promotion and others that require standardization is also necessary (I22). Nonetheless, as it is now, because the laws and procedures are not strictly adhered to, the practice of vertical division of power in this area is challenged by constitutionally unwarranted centralization tendencies. Many of the participants agree that, in the short run, the outcome may not necessarily be a bad one. However, in the long run it can result in problems such as intergovernmental conflicts. Hence, to make sure that the involvement of the Federal Police Commission remains constructive and the overall federal arrangement remains intact, things have to be brought into formal legal mechanisms[70].

7.6.2 Tendency to take assignments without formal delegation

According to the Federal Police Establishment Proclamation, the Federal Police may delegate the power to prevent and investigate crimes that fall under its jurisdiction to a state police commission (Art. 6(6)). No further detail is provided about the formality and time limit of this kind of delegation in the Proclamation. If police power is delegated to civil servants and

[70] A recent statement from the head of the Amhara State, Gedu Andargachew, strengthens the finding that political decisions may override the law in the area of police power division. He showed up in the State's TV and stated that his State refuses to hand over a suspect who is alleged to have committed a crime that falls within the jurisdiction of the Federal Government. He claimed that since "there were many questions raised by the society in relation to the case and there is a need to listen to the feelings of the society and give respect to the questions raised by the society..." the suspect is not transferred to the [Federal] Government (Available from: <https://www.youtube.com/watch?v=8LCdlwlZ3e4> [Accessed on 17 November 2016]. It is unclear what the "feelings of the society" or the "questions raised by the society", if there were any, have to do with an issue of criminal investigation or prosecution that lawfully falls within the jurisdiction of the Federal Government (the latter issue was not contested). The argument of Mr. Gedu, in the eyes of the law, is irrelevant.

other government offices, however, it is provided in Article 23(2) of the Proclamation that the delegation should be given only to the extent necessary to handle a specific task. This gives a hint that when police power is delegated there is a need for some kind of regulation.

Coming to the practice, the state police commissions are engaged in many security areas, including safeguarding the institutions of the Federal Government, that fall within the jurisdiction of the Federal Police Commission without securing formal delegations from the latter. The states are, for example, engaged in customs issues such as controlling goods smuggling and preventing and investigating terrorism cases that transcend state boundaries (I8). A senior police official stated that his state's police commission is engaged in carrying out such functions through delegation it obtained from the Federal Police and because the latter does not have the necessary infrastructure to carry out such functions at the state level (I8).

The paradox is that the Federal Police does not have the necessary infrastructure to carry out its mandates but it is capable of 'helping' the states in carrying out their functions including dealing with routine security issues. Moreover, none of the participants from the police commissions produced evidence that proves that delegations are given according to the law. In the Amhara State, at the time the data for this section was collected, the writer was informed that the Federal Police Commission was organizing the necessary facilities to carry out its functions in the state on matters that fall under its jurisdiction. He was further informed that the State Police intends to withdraw from carrying out such activities once the Federal Police Commission starts to function in full capacity (I8).

A participant from Oromia State argued that the Federal Police is solely responsible for safeguarding federal institutions in the state including universities and power stations. He added that the state police might only give a support (I19). However, the status of such a 'support' is not clearly defined.

In the SNNP State, the state police engages in security issues that fall within the jurisdiction of the Federal Government including in safeguarding the country's international borders (with Kenya and South Sudan) (I22). The justification is that the borders cannot be left alone by claiming that safeguarding them is the jurisdiction of the Federal Government. In the eyes of a key informant, doing so will be irresponsible. After all, the Federal Police cannot reach all the borders of the country, he argues (I22). There is nothing wrong in doing so in terms of the final outcome i.e. making the country secure but in the eyes of the law the federal security organs

are expected to carry out these kinds of functions and the state security organs are expected to carry out security tasks within their states and not vice versa. If there is a need, however, the state police commissions can be engaged via delegation.

Furthermore, in the SNNP state, there is a command post (meaning a team coordinating a certain task) headed by the vice-head of the State and if this command post decides to establish a custom's station then it can be established although the team is aware that dealing with customs issues is the mandate of the Federal Government. Accordingly, at the time the data for this section was collected, six additional customs stations were established in the State in addition to the ones established by the Federal Government. A senior official argues that they established such stations to prevent crimes. He said the State was not engaged on customs issues for sometime because it is a federal power but that have caused great damage to the State. Indeed, crimes should be prevented but there is a possibility to respect the division of power (at least having a proper delegation from the Federal Police) and control the incidence of crimes at the same time.

The conclusion here is that the states are carrying out functions that fall within the jurisdiction of the Federal Government and the outcomes are mostly positive but they are doing so without formal delegations. However, sustainability requires that laws should be respected (I23).

7.6.3 Tendency to engage in crime prevention always and everywhere

Police officials who were interviewed for this research are of the opinion that crime prevention is the duty of every citizen and there is no problem whatsoever if members of the Federal Police Commission intervene in the states without any limit as far as prevention is concerned (I8, I20, I22). In their view, it is only when investigations are done that power division matters. There is some truth in this line of argument as far as prevention is done incidentally. It is obvious that not all citizens are expected to plan to engage in crime prevention. It is highly likely that they may never even remember the issue unless it is related to their job. Still the criminal law imposes an obligation on every citizen to report crimes (and therefore help crime prevention) if she or he happens to be at a crime scene or she or he happens to know about the possibility of commission of a crime (see Art. 443 of the Criminal Code). However, for example, if a teacher plans to spend the time he is expected to engage in teaching activities on crime reporting and he

does so, surely, he has failed in his duty to teach. Similarly, if members of the Federal Police Commission engage in crime prevention in an X *kebele* of Y state because they happen to be there (for example, safeguarding a federal institution), then that will be correct and failing to do so will be a crime. Nevertheless, if they are engaged in all sorts of crime prevention activities in the states because they plan to do so then that calls for a serious attention. The states are the ones that are responsible for their internal peace and security (Art. 52(2)(g) of the Constitution). The Federal Government may interfere in the internal affairs of the states including in the security affairs of the states based on the law, which requires either a Federal Intervention or Declaration of Emergency[71]. Then, based on what law can the Federal Police Commission plan to engage in crime prevention activities in the states unless, of course, the act of prevention is related to a specific federal institution or it is related to issues that fall within its jurisdiction? To be precise, it will be wrong if the Federal Police, for example, plans to prevent acts of brawling in the X *woreda* of Y state.

However, the practice indicates that the Federal Police participates in daily crime prevention activities particularly in 'tense' situations as election times and 'special' events (I8). In such situations, the Federal Police dispatches police force in selected areas and cities (I8). It is clear that such moves do not fall within the Federal Intervention Proclamation or the Constitution although the outcome, in terms of maintaining peace and security, may not necessarily be bad. However, it is also true that some states are not yet capable of handling crime prevention tasks on their own (I25). In terms of power division, it is a desperate situation although some state officials do not see such engagements of the Federal Police as interventions in the internal affairs of the states. The question that follows is that instead of always helping such states by doing the routine security activities why does not the Federal Police Commission legitimately help them build their capacity. Informality and political understandings are dominant trends but this may not be sustainable in the long run. Thus, it is preferable to implement the laws strictly (I8).

7.6.4 Forums and coordination

As threats may not necessarily be confined to certain territories and since the states and the Federal Government should cooperate with each other, there are countrywide security forums. One is the Police Commissioners' Forum. The Forum deliberates on such issues as

[71] For details, see chapter six.

ensuring standardizations, sharing experiences, and providing wider perspectives on security issues (I20). The other is the Security Organs' Forum. The composition of the Security Organs Forum includes: All state (including Addis Ababa and Dire Dawa) security and administration bureau heads, police commissioners, militia office heads, the Federal Police Commission, the MoFA, the security advisor Minster, and when necessary the Revenue and Customs Authority. In addition, since recently, those institutions that are accountable to the MoFA including the Civil Society and NGOs Agency are participating in this Forum (I13). In the meetings of the second Forum, all states report on their security. The work each has done is evaluated, gaps are identified, and future directions are set in the forum's meetings, which are conducted every three months. Most often the meetings are conducted in Addis Ababa. The forum also meets in the states.

Moreover, the Federal Police officers anywhere in the country, through the security information channel, report to the MoFA on security threats and new developments. The security channel (from the lowest to the highest level) is under the full control of the Federal Government and every effort is made to ensure people's participation in reporting threats. According to a key informant, there is no room for NGOs or other organizations to engage in this area (I13). He adds, before 2000 E.C., security work was more of crisis management but ever since the policy is geared towards conflict prevention. The channel and the forum have helped realize this mission. The system has helped prevent conflicts (I13).

Moreover, the state police commissions help each other horizontally. For example, the Amhara State Police Commission gives training support to members of the Afar State Police Commission (I8). Generally, in the eyes of the key informants, the achievements of the forums and coordinated works, in terms of ensuring peace and security in the country, are commendable. However, there still are some problems in relation to coordinating security tasks. The nature of the 'decisions' taken in the forums is not clear. It can also happen that a consensus may not be reached in the forums on some serious security issues. If such a situation occurs, it is not clear what can be done next (I18). It is not clear what will happen if a certain police commission fails to fulfill what it promised to do in the forums. Moreover, the reporting and support mechanism is not as strong as it should be (I11).This calls for strengthening and institutionalizing the forums further.

7.6.5 General challenges

There are general challenges that make conflict resolution a difficult task. According to an informant with inside knowledge, there are four main challenges (I13). First, the states are at different capacity levels. In the developing states, community policing is very weak and their overall conflict handling capacity is very limited. This calls for higher security support in such states. Second, there is a very high turnover of security personnel. Trainings on diverse topics are given to police officers and other professionals engaged in the area but many trained individuals leave the police institutions and this affects the continuous efforts to bring about sustainable peace in the conflict prone areas. Third, conflicts that are caused by manipulative engagements of lower level administrators are still prevalent. In the latter case, trigger factors include illegal arms trafficking and economic rent seeking. Fourth, there is lack of coordination between the security organs. Additional common problems are there in relation to lack of supplies and resources. Even for tasks that can be carried out within the given material and human resources, there are implementation problems. Moreover, there are lack of detailed procedures to implement general laws and policies (I13).

Differences in tendencies and perspectives is another challenge. It is observed that the opinions and perspectives of senior officials in the police commissions vary from those who want to see a minimal intervention in the territory of their states to those who want the country to have a single police institution (I18; I24).

Its Establishment Proclamation empowers the Federal Police Commission to technically support the state police commissions but, in the eyes of the research participants, the support given is not up to the expectations (I8; I22). Many of them believe that the Federal Police Commission has yet to build enough training facilities and capacity that enables it to execute its mandates to support the state police commissions (I8). Although all states complain that not enough support is coming from the Federal Police, complaints from the so-called emerging states are more frequent (I16).

Another challenge is the Federal Police Commission Establishment Proclamation's assumption that the Federal Police will always have better capabilities (see Art. 6(24)). The overall psychology seems that the Federal Police is superior (I18). This, in the view of one informant, is an inherited unitary tendency (I18). He argues that the assumption is not supported by the reality on the ground either. For example, on community policing Tigray State Police

Commission has better experiences and hence, he continues, Tigray can share this experience to other state police commissions including the Federal Police Commission (I18). The Federal Police Establishment Proclamation does not envision that best experiences, let alone technical supports, may also come from the state police commissions. This makes the support one sided and the relationship hierarchical. In the eyes of the overall federal set up and power division between the states and the Federal Government this is wrong. Thus, the hierarchical nature and spirit of the Federal Police Establishment Proclamation may continue to be a challenge. Furthermore, according to the research participants, the Federal Police Commission does not conduct the investigation of crimes that occur in the states but that fall within its jurisdiction as quickly as it is expected to be (I24).

According to a key informant in the Benishangul/Gumuz State, there is a Federal Police in all the *woredas* of the State and maintaining peace seems to be very dependent on the presence of the Federal Police (I25). People are also happy that the Federal Police is present (I25). However, this tendency to heavily depend on the Federal Police is not in line with the overall power division arrangement and hence it is a challenge that must be overcome.

7.7 *Chapter summary*

The Constitution states that the Federal Government is empowered to defend and protect the Constitution and to administer and organize National Defense, Public Security, and Federal Police forces and the states are empowered to establish and administer a state police force, and to maintain public order and peace within themselves (Arts. 51 and 52 of the Constitution). This obviously makes security and particularly police power a concurrent one. This concurrent power is stated in generic terms in the Constitution. In this chapter, the general areas of competence for both levels of police institutions were identified by considering the overall power division arrangement and the experience of federations with similar power division arrangements in the area.

It is concluded that it is proper for the Federal Police Commission to exercise jurisdiction over crimes of international nature, crimes committed within Addis Ababa and Dire Dawa, crimes that transcend state boundaries or affects two or more states[72], crimes that target federal

[72] provided that the crime meets the required threshold of gravity.

institutions[73], economic crimes[74], crimes that target national sovereignty, and crimes that target international infrastructure. On the other hand, it was argued that it is proper if the states exercise power over such issues as ordinary crimes committed in the territory of a state, organized crimes committed in the territory of a state, and local crimes that target state institutions.

Further details on police power division are available in other laws. The Federal Courts Proclamation, as amended, is one of them. The Proclamation lists crimes that fall within the jurisdiction of the Federal Courts (Art. 4 of Procl. 25/1996). By implication, the Federal Police is empowered to prevent and investigate such crimes. We saw that the proclamation implies that the Federal Government exercises jurisdiction over all disputes arising from federal laws (see Art. 3). However, we concluded that that is not the case. Nevertheless, many of the powers listed in this Proclamation as federal power are in line with the overall power division arrangement.

The second law is Federal Police Establishment Proclamation. This law recognizes the Federal Courts Proclamation and further expands the list of crimes that fall under the jurisdiction of the Federal Police. It can be observed that these laws are Federal Laws and the states did not and could not participate in the law making process. However, they determine the division of police power between the states and the Federal Government. The powers of the Federal Police Commission are, sometimes, drafted in broad terms and, sometimes, too detailed. These affect the state competence. Hence, a mechanism in the form of empowering the second chamber to oversee laws on concurrent powers or a strong IGR in the area is needed. As it is now, the overall spirit of the Proclamation is hierarchical.

The other laws are the state police establishment proclamations. These laws vary from one another while they are expected to be similar because the Ethiopian federalism is symmetric. Some of them, more or less, comply with the federal laws i.e. they respect the powers given to the Federal Police Commission by its establishment proclamation although it does not necessarily follow that doing so is right. The laws of Amhara and Oromia are good examples. On the other hand, some of them have general and overlapping mandates with that of the Federal Police Commission, which calls for constitutional interpretations. The SNNP State's law is a typical example.

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[73] provided that the crime meets the required threshold of gravity.

[74] provided that the crime meets the required threshold of gravity.

The practice indicates that laws and procedures are not strictly followed. Informal agreements dominate the area. It is not only that the Federal Police intervenes in the internal security affairs of the states but also the states take federal security assignments without securing proper delegation from the Federal Police Commission. There is a tendency by majority of the states' senior police officials that the Federal Police Commission can intervene in the security affairs of the states without any limit as far as prevention is concerned. This is not, however, compatible with the constitutional mandate that the states are responsible for their internal peace and security.

The Federal Police Commission and the state police commissions cooperate in many areas. However, the forums for coordination need further regulation as there are many un-clarities including about the status of the agreements reached, the way decisions are taken, and lack of proper reporting. The foregoing indicators make the area of police power division full of centripetal (and limited centrifugal) tendencies and practices.

The mandate of the Federal and the state governments in relation to resources is the other essential theme of vertical division of political power in the Ethiopian Federation. Land is among the most essential resource in Ethiopia. The next chapter deals with power division in area of land administration.

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Interviewees:

I2 (Dr. Gebreab Barnabas, former central committee member of the TPLF and State Minister at the Ministry of Federal Affairs, Addis Ababa, 29/07/2015)

I8 (Dejen Haileselassie, Assistant Commissioner at the Amhara Police Commission, Bahirdar, 11/08/2015)

I11 (Anonymous, a senior official in the executive branch of the Amhara State Government, Bahirdar, 12/08/2015)

I13 (Tesfaselassie Mezegebe, Conflict Early Warning and Rapid Response Directorate Director, Ministry of Federal Affairs, Addis Ababa, 19/08/2015)

I16 (Sisay Melese, Conflict Resolution Director General, Ministry of Federal Affairs, Addis Ababa, 25/08/2015)

I18 (Kenaa Yadeta, Vice Commissioner, Oromia State Police Commission, Addis Ababa, 01/09/2015)

I19 (Mesfin Assefa, Security and Administration Bureau Vice Head, Oromia State Government, Addis Ababa, 02/09/2015)

I20 (Lema Megersa, former Speaker, Oromia State Council, Addis Ababa, 03/09/2015)

I22 (Belayneh Bekele, Commander, Crime and Traffic Accident Prevention Core Process Head, SNNP State Police Commission, Hawassa, 14/09/2015)

I23 (Belay Wodisha, Commissioner, Ethics and Anti-Corruption Commission, Benishangul/Gumuz State, Assosa, 22/09/2015)

I24 (Anonymous, senior official in a state police commission, Assosa, 24/09/2015)

I25 (Tatek Alemayehu, process owner, Benishangul/Gumuz State Police Commission, Assosa 24/09/2015)

Web link:

<https://www.youtube.com/watch?v=8LCdlwlZ3e4> [Accessed on 17 November 2016].

Chapter Eight: Power Division in the Area of Land Administration

8.1 *Introduction*

According to the 1995 Ethiopian Constitution, on land administration, the Federal Government is empowered to make laws and the states are empowered to administer land according to such laws (see Arts. 51(5) cum. 52(2)(d) of the Constitution). The practice, as the discussions in this chapter will show, does not comply with the constitutional stipulations.

Going through the relevant land legislation reveals that compared to the rural land legislation the Federal Government has utilized its law-making powers more broadly in the case of urban land related legislation. The urban land related legislation tend to be broader and more detailed. This should not imply that the Federal Government has used its powers exhaustively in the case of urban land related legislation. The states and city administrations, for example, are empowered to issue regulations and directives that facilitate the implementation of the urban land lease holding proclamation (see Art. 33 of Procl. 721/2011).

In the case of rural lands, on one hand, the Federal Government did not use its law-making powers effectively. The states are, practically and not constitutionally, left with vast law-making powers. On the other hand, the Federal Government engages in administrative issues, which should be entirely left to the states. Therefore, it is argued that in terms of vertical division of political power rural land administration is more problematic than urban land administration. Therefore, the chapter will focus on challenges in relation to rural land administration.

Many scholarly works are available on land laws and land administration of Ethiopia. Muradu (2013), Muradu (2014), Daniel (2013), Daniel (2015), Elias (2011), and Dessalegn (2011) are notable examples. Muradu's works focus on communal ownership and land alienation. He goes to a great length to show that communal land ownership is not recognized by the Ethiopian State (Muradu 2013, 3). However, towards the end, he concludes with a note that he should not to be misread as 'romanticizing' communal ownership of land (Muradu 2013, 48). He further states that the country will definitely have an interest on land occupied by communes and such land may be used for investment purposes (Muradu 2013, 48). However, he does not discuss the latter issue further.

Muradu leaves us with many unanswered questions including but not limited to: whether all land under *de facto* communal occupation are used effectively to the betterment of the communes, how to establish a proper balance between levels of productivity at country level and local interests, the kinds of compensation the communes may be entitled to etc. These issues are indirectly related to vertical division of political power. Therefore, they will not be discussed directly and in details. Limited discussions on such issues, which are helpful to understand the main theme i.e. vertical division of power on land administration, are provided.

Daniel's (2013) work focuses on expropriation laws and the practice. He provides detailed accounts of the challenges thereof. Dessalegn (2011) and Elias (2011) focus on large-scale agricultural investments. These works will be referred to whenever they are relevant. However, none of the above-mentioned authors dealt with the challenges on land administration from the angle of vertical division of power. The only exception is Assefa's (2012, 446-447) work that deals with the issue briefly along with many issues that indicate the prevalence of centralization tendencies in the implementation of the Ethiopian federal arrangement. This chapter will take the discussions to a further step of details.

The second section of this chapter deals with the issue of land ownership in Ethiopia. The Constitution, the other laws, and the practice will be examined to see if there is clarity on land ownership in the Ethiopian context as this affects the state of power division in the area. The third section is about vertical division of power on land administration. The Constitution's approach to power division in the area of land administration, the relevant federal laws, and the land laws of the states will be discussed. Among the sources of controversies in the sector is a 'Regulation'[75] passed by the Federal Government in 2010. The 'Regulation' empowers the Federal Government to engage in administering large-scale agricultural investment lands. In the fourth section, therefore, the driving factors and the assumptions behind the 'Regulation' will be examined. In the fifth section, whether the introduction of the 'Regulation' has brought significant change to the status of large-scale agricultural investment will be inquired. In the sixth section, the implications of the 2010 'Regulation' on vertical division of power will be discussed. Finally, in the seventh section, the way forward to deal with the challenges of land administration in Ethiopia will be indicated. A chapter summary is provided at the end.

[75] Its legality is contested. See section 8.4 for details.

8.2 *Overview of land ownership and tenure right in Ethiopia*

Before delving into the issue of power division in the area of land administration, it is essential to deal with the issue of land ownership, as there is no agreement on who owns land in Ethiopia. Some argue it belongs to the people and the Ethiopian State jointly (see Daniel 2013, 288; Mellese in Muradu 2013, 14). Others argue that it belongs to the nations, nationalities, and peoples collectively (Muradu 2013, 16). The main sources of controversies are the following laws:

> "The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested *in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia* and shall not be subject to sale or to other means of exchange" (Italics added) (Article 40(3) of the 1995 Constitution).

> "*Government being the owner of rural land*, communal rural land holdings can be changed to private holdings as may be necessary" (Italics added) (Article 5(3) of Proclamation 456/2005).

Either because of the absence of clarity on ownership or because of the inconsistent practice of land administration, questions arise on the clarity of land tenure[76] in Ethiopia. According to an interviewee, during the imperial period there were different land-holding systems including: (1) governmental, (2) communal (predominant in the pastoral areas of the country), (3) Church, (4) *risit*[77], and (5) *gult*[78] (I3). The emperor was of course the sovereign

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[76] Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land... Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions. (See FAO (2002). *Land tenure and rural development*. PDF Document available from: <http://www.fao.org/docrep/005/y4307e/y4307e05.htm> [accessed on 26 November 2015]).

[77] *Rist* was a hereditary right in that one can claim a share of his parent's land based on descent. This was a system exercised in the northern parts of the country. For further explanations on earlier land-holding systems in Ethiopia, see Daniel Behailu (2011). Land use legislation in Ethiopia: A human rights and environment based analyses. *Jimma University Journal of Law* 3(2): 6-8.

[78] *Gult* was a non-hereditary right whereby land occupants pay a certain amount of their produce to the ruler assigned by the center to their area. This was predominantly exercised in the Southern and South Western parts of the country.

over all the land. Nonetheless, he did not use all the land himself and hence different land-holding mechanisms were recognized.

Following the downfall of the imperial regime, the military regime, the Derg, enacted a uniform land law and it proclaimed that land is the collective property of the Ethiopian people (Art. 3(1) of Procl. 31/1975). If an individual or an organization owned a piece of land privately and if there was a need, the state used to confiscate it without any compensation (Art. 3(3), Procl. 31/1975)). Communal land ownership was also abolished. Thus, pastoralist communities continued to posses land but ownership of the land they used for grazing was nationalized (Art. 24, Procl. 31/1975). According to an interviewee, the Derg's tenure system may not have been fair and just but it was at least clear. There was no confusion from the angle of the law (I3).

Currently, however, the above quoted provisions indicate that there is lack of clarity as to who owns land in Ethiopia. According to the first sentence of Article 40(3) of the Constitution, ownership of land is vested in the state and the peoples of Ethiopia. This provision portrays that the only entities to own land in Ethiopia are the state and the peoples. The two entities are linked by the conjunction 'and' hence it seems that they own the country's land jointly. However, the second sentence of the same provision shows that land is the common property of the nations, nationalities, and peoples of Ethiopia. The state does not appear in the second sentence. The term 'common' implies the nations, nationalities, and peoples of the country own the country's land collectively. This provision is problematic for it is unclear on whether the state and the nations, nationalities and peoples (or simply the peoples) of the country or the nations, nationalities, and peoples only are the owners of land.

Moreover, the constitutional provision is problematic because it does not clarify as to whether a certain nation, nationality, or people owns only a land it occupies or has a stake in all the lands of the country including in those occupied by fellow nations, nationalities, and peoples. On the other hand, Proclamation 456/2005, which was enacted to clarify the constitutional stance on land ownership and to serve as an overall guide on rural land administration in the country, gives land ownership to the government[79]. Neither the state nor the nations, nationalities, and peoples of the country are mentioned in Article 5(3) of the Proclamation, in which the government is indicated as an owner. The proclamation gives ownership to an entity

[79] In the first sentence of the preamble of the Proclamation (456/2005), it is mentioned that ownership of land is vested in the state and in the people of the country. Article 5(3) of the same Proclamation does not consider what is mentioned in the preamble and the Constitution.

unmentioned in the Constitution[80]. However, the government the Proclamation is referring to is not identifiable. Ethiopia, being a federal country, has governments at the Federal and the state levels. Some may even argue that the country has three levels of governments as local governments are also recognized by the Constitution (see Arts. 39 and 50(4) of the 1995 Constitution; see also chapter 2, section 7). This further complicates the absence of clarity regarding land ownership in Ethiopia. However, the Constitution is clear that private ownership and sale or exchange of land is prohibited.

One possible interpretation of the Constitution's position on land ownership is to argue that every nation, nationality, or people owns the land it occupies. Then the concerned government administers the land representing that nation, nationality, or people according to federal land legislation. There are practices and state laws that support this angle of interpretation. First, there are practical restrictions on free movement of farmers and subsistence farming seems to be restricted to one's place of origin apart from those who left their place of origin during the earlier regimes. Second, there is a tremendous variation among the state land laws. For example, the maximum land holding per household is five hectares in Tigray, seven or ten[81] hectares in Amhara, and ten hectares in Benishangul/Gumuz[82]. Similar variation is witnessed on the duration of subsistence or investment land rent from farmers. Generally, to be a farmer in different states means to have different rights and obligations as a citizen. The argument goes, had land been the common property of all the nations, nationalities, and peoples of the country, one who chooses to be a farmer would have had the chance to obtain rural land anywhere in the country and the state laws should not have been so diverse.

Nevertheless, this line of interpretation will be against many tenets of the Constitution. One of the grand goals of the Constitution is to build one political and economic community (see the Preamble of the 1995 Constitution). It will be impossible to build one economic and political

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[80] According to Article 89(5) of the Constitution, the government has the duty to hold land representing the people and deploy it for the common benefit and development of the latter.

[81] Seven hectares is given in highland or semi-highland areas and ten in lowland areas.

[82] See Art. 50(1) of the land administration and use revised regulation no. 85/2006 E.C. of the State of Tigray, Art. 5(3) of the land administration and use implementation regulation 51/2007 of the National State of Amhara, and Art. 4(10) of Benishangul/Gumuz State Rural Land Administration and Use Implementation Directive 018/2006. In Benishangul/Gumuz, exceptions are polygamous households. In that case, one gets additional half the size of the maximum holding for additional wife. It is imperative to note here that polygamy is a crime according to the Criminal Code unless committed in conformity with religious or traditional practices recognized by law (see Art. 650 cum. 651 of the Criminal Code).

community by limiting land ownership to the occupant nation, nationality, or people only. Instead, this line of interpretation may result in a scenario that some nationalities' survival is at stake due to shortage of productive arable land while there are productive but extra or unused lands in areas 'occupied' by other nations or nationalities.

The second possible interpretation and, this writer argues, the one that is according to the intention of the drafters of the Constitution is to argue that all the nations, nationalities, and peoples own all the landmass of the country collectively. The minutes of the debates of the Ethiopian Constitutional Assembly and the then agreed upon intended meaning regarding ownership of land prove this. Here below is an extract from the minutes:

> ....አቶ ገዙ አሸቴ... አያይዘውም ክልሎች የራሳቸውን የማስተዳደር መብት ቢኖራቸውም በአንድ ሀግ ጥላ ስር የሚተዳደሩ መሆናቸውን ጠቁመው ቀደም ሲል በየክልሉ የሚገኘው የተፈጥሮ ሃብት የክልሉ ብቻ ሳይሆን የአገሪቱ ህዝቦች በጋራ የሚጠቀሙበት እንደሆነ፤ የፌደራሉ መንግስት በመሬት ላይ ለምን ህግ ያወጣል የሚለው ተገቢ እንዳልሆነ አስረድተዋል።, meaning,
>
> ... reminding that although the states have the right to self-administration, since they are administered under a single law (sic), Mr. Gezu Eshetie continues, all natural resources that are found in all the states belong not only to the respective states but also to all the peoples of the country. Thus, it is wrong to argue that the Federal Government should not enact law on land...." (Minutes of the Ethiopian Constitutional Assembly, Volume IV, 116) (Translation by author).

The Assembly approved the land-related provisions based on this line of interpretation. Thus, a certain nation will have equal ownership right over a land occupied by all the other nations, nationalities, and peoples and vice-versa as far as that nation's individual members' potential to possess a piece of land is concerned. According to this angle of interpretation, it should be illegal to put restrictions on access to land based on such requirements as identity and place of origin for citizens.

There are challenges associated with this line of argument, too. First, there is a possibility of massive population movement from areas of land shortage to areas of relative land abundance. Thus, members of numerically superior nations that have land shortages may dominate nationalities occupying large land but who are numerically small. Second, because of change in

demographic configurations owing to population movement, there is a possibility that this scenario may compromise self-determination related rights of relative minorities.

However, such challenges call for putting mechanisms that balance interests in place and not limiting land ownership to a certain nation or local community. Nonetheless, it should be noted that some of the challenges are formidable. It can happen that a certain people moves to an uninhabited area in another state and, if after sometime, conflict occurs with the inhabitants of the host state, the former may demand to join their kinsmen in a neighboring state or even demand to secede with the land they occupied. In such scenarios, it is highly likely that the host state's people will resent such moves. The negative consequences of such challenges can be mitigated by anticipative legislation that encourage free movement but, at the same time, which clearly define rights and balance interests. A timely demarcation of internal boundaries is also helpful to reduce fears that may emanate from the possibility of 'land snatching' owing to massive population movements and consequent demands to join another administration or state.

As there are practical evidence that support the first line of interpretation, there are practices and evidence that support the second line of interpretation. First, although subsistence farming is largely restricted to one's place of origin, there still are people who are engaged in subsistence farming out of their states of origin. Second, although the state legislation vary from one another, they all affirm that all Ethiopian farmers and pastoralists have the right to possess land free of charge and many of them do not limit such right to the farmers or pastoralists in the state concerned alone. Third, notwithstanding the bureaucratic hurdles and some discriminatory state legislation, investors still possess land regardless of place of origin. Generally, the practice of land administration is of a mixed result i.e. it does not enable one reach a conclusion on whether land is commonly owned by all the nations, nationalities, and peoples of Ethiopia or not.

An interviewee (I3) with extensive experience in the area argues that because the law does not adequately deal with tenure right, the de facto ownership right exercised by pastoral communities is of no de jure recognition (see also Muradu 2013). Thus, when the government allocates land to investors in the traditional areas of the pastoral communities, a sense of alienation is created. To mitigate possible conflicts, the government negotiates with the clan leaders but the law does not give clear guidance. According to this interviewee, some government officials claim that they consult clan leaders of the pastoralists for the sake of peace, otherwise, the latter argue, land belongs to the government. On the other hand, the pastoralists

claim they own the land and it cannot be given away without considering their interests. If there were a clear law, it could have clarified such ambiguities.

Because the government represents broader interests of the people and because it has knowledge and research advantage, it can decide that a certain plot of land be used in a certain way. The government, for example, can decide that a certain pastoral land will be more useful and viable if it is reestablished as a national park. However, as it is now, it is not clear how this can be done. How is this negotiated? how is the possession system altered? is not answered by the law. The compensation system and its legal base should be clear.

Pastoralists may prefer to move freely as far as there is pasture. However, the law does neither prohibit nor allow this. A *woreda* leader may come across the way of a pastoralist community and claim this is 'our' land and hence you cannot proceed. It happens practically. However, again, the law does not give answers to this kind of challenges (I3).

Pastoralists and communities that depend on forest resources are particularly vulnerable. In such communities, because there is no sign or boundary that identifies the land, their area may be considered as an empty land. Others may come, settle, and claim the land. It happens that one who commands a better means of violence may come and occupy the land. It happened in the Oromia and Somali (Shekash people) border (I3). On the other hand, when some people live in an area with over utilized land trapped in poverty and there is rich and unutilized land elsewhere, there is no law that facilitates the orderly use of the latter land (I3). Those with less force and means are forced to remain where they are. Those with access to firearms are allowed to expand. In SNNP's Bench-Maji zone, the Surma encroached into the farmlands in the Dizi area owing to firearms superiority (I3). The Dizi are forced to concentrate in a highland with less means of livelihood. The same applies to utilizing natural resources. The absence of detailed regulation or law paves the way for the destruction of forest resources. This is what happened in the Majang area (I3). As the discussions in this chapter and chapter nine show absence of clarity or consensus regarding ownership of land has contributed to, *inter alia*, the prevalence of centrifugal tendencies manifested in such incidents as evicting citizens from certain states. Overall however this writer is of the opinion that the Ethiopian landmass is the common property of all the nations, nationalities, and peoples of the country.

8.3 *Federal and state laws on vertical division of power regarding land*

8.3.1 The concurrent nature of the powers in relation to land

According to the 1995 Constitution, it is the mandate of the Federal Government to legislate on the utilization of land (Art. 51(5) and 55(2)(a) of the Constitution). On the other hand, the states are empowered to administer land in accordance with the federal laws (Art. 52(2)(d) of the Constitution). The Constitution is very explicit in this regard: law making belongs to the Federal Government and administering land by employing federal laws belongs to the states. This also indicates that land, in the context of the Ethiopian Federation, is a subject of concurrent powers.

According to Assefa and Zemelak (2017), concurrency in general can take four different forms. The first one is list concurrency. In this case, the areas where the federal government and the states exercise concurrent powers are listed in the constitution. The second type of concurrency emanates from framework legislation. In this case, the federal government enacts framework legislation and the constituent units are empowered to enact detailed laws in the same area according to the framework or guiding federal legislation. The third type of concurrency is where law-making and execution powers are separated. In this case, one level of government makes the laws and the other level executes such laws. The final type of concurrency is, according to these authors, generic concurrency. In this case, the power is not listed as a concurrent power. It may not also include details as to the specific roles of each level of government. However, the content of the law tells that both levels of governments are empowered to act in that same area. Security, in the Ethiopian case, is a typical example of generic concurrency[83].

Assefa and Zemelak correctly mention land administration in the Ethiopian case as an example of concurrency that separates law making and execution. Nevertheless, they also notice that the states of the Ethiopian Federation are engaged in law making on land issues. According to the neat theoretical explanations they provided, this move of the states is unconstitutional. Despite this, they justified the engagement of the states in lawmaking by resorting to 'the general nature' of concurrency. According to them, in the area of concurrent powers, the federal government engages in lawmaking where the subject of concurrency becomes a matter of federal

[83] For further details on power division in the area of security, see chapters six and seven.

importance otherwise the states may continue legislate on it. However, this applies to situations where both the federal and the constituent unit governments have a concurrent legislative power in a certain area and not to the cases of concurrency that separate law making and execution from the outset. In Germany, for example, it is only when both have concurrent legislative powers and only to the extent and as far as the Federation does not use its power that the länder may continue to exercise a legislative power in a certain area (Art. 72 (1) of the German Basic Law). Otherwise, the länder may exercise legislative power in a certain area in so far as the Federation is not conferred with law making power in the same area (Art. 70 (1) of the German Basic Law). None of these, however, prohibits a federal government from delegating its legislative power to the states (see Art. 71 of the German Basic Law and Art. 50(9) of the Ethiopian Constitution)[84].

In addition to the explanations provided above, there are additional reasons why the states of the Ethiopian Federation should not engage in law making on land administration. First, the text of the Constitution on the issue of land is as clear as it could be. Law making belongs to the Federal Government and administering land according to such laws belongs to the states. There is no indication in the Constitution that the law making powers of the Federal Government on land were to be reduced to framework legislation only[85].

Another reason why land in Ethiopia cannot be a case of framework concurrency is the nature of ownership of land. According to the Constitution (see Art. 40(3) of the constitution) and the discussion in the second section of this chapter, although still debatable, land is a common property of the Ethiopian nations, nationalities, and peoples. If all nations, nationalities, and peoples of the country collectively own every piece of land regardless of its location, there is no justification to subject it to different laws by empowering the states to legislate on land. A possible justification for diverse laws on land can be forwarded based on the diverse nature of the agro-ecology of the states, livelihood variations, and differences on customs of land utilization (see Daniel 2013, 77). However, this in itself does not justify the existence of different land regimes. Such diversities can be accommodated in a single comprehensive legal regime of the Federal Government.

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[84] Whether delegation can justify the engagements of the Ethiopian states on land law making or not is addressed below (section 8.3.3.)

[85] The practice, however, indicates that the Federal Government has limited itself to enacting framework legislation in the case of laws that govern rural land. On the other hand, as the discussions in this chapter show, it engages in administrative issues. Both moves are not in line with the Constitution. Some authors take it for granted that the Federal Government is empowered to enact framework land legislation only (see Daniel 2015, 33). However, there is no such indication in the Constitution.

Some may still argue that the right to self-determination of the different nations, nationalities, and peoples of the country, which cannot be exercised in isolation from land, should justify the engagement of the states in law-making in the area. However, land administration in terms of individual land use and land claims as part of self-determination rights are different. The former regulates an individual's right in relation to land. The individual as a citizen should therefore be treated equally and subjected to the same land law. The latter is related to autonomy, cultural rights on a certain territory, and in the worst-case scenario secession. The states do not need to legislate on individuals' relation to the land to exercise these rights unless secession is materialized. As far as a certain state remains within the Federation, the land should be, as the Constitution states it clearly, administered according to a federal law[86]. These reasons make it appropriate to stick to the terms of the Constitution that give law-making power to the Federal Government and administering land according to the federal law to the states.

8.3.2 Challenges related to urban land legislation

As mentioned in the introduction, from the perspective of vertical division of political power, more challenges are witnessed in the case of rural land legislation than urban land legislation and the focus of this chapter is on the former. However, a challenge that affects the vertical division of political power between the Federal Government and the states negatively is witnessed in the urban land legislation, too. The key challenge in relation to the urban land legislation is that the different ministries of the Federal Government are empowered to engage in administrative activities, which is not in line with the Federal Constitution.

Proclamation 574/2008 regulates urban planning. This Proclamation empowers the Ministry of Urban Development and Housing to oversee and follow up whether state urban plans are in conformity with the federal legislation. Moreover, it is given the power to ensure balanced and integrated urban development in the country (see Art. 55(2) of Procl. 574/2008). Proclamation 818/2014, which is about urban landholding registration and Proclamation 721/2011, which is about urban lands lease holding, give similar controlling and overseeing powers to the Ministry of Urban Development and Housing (see Arts. 49 and 32 of Procls. 818/2014 and 721/2011 respectively). The Ministry of Federal Affairs is empowered to ensure

[86] Additional arguments are provided in chapter nine.

that the provisions of Proclamation 455/2005, which is about expropriation of landholdings for public purposes and payment of compensation, are implemented by the states.

All these proclamations invite an administrative involvement of the Federal Government on land issues in the states. However, the Constitution is clear that the states are the ones that are in charge of executing the land laws. It seems that the Federal Government is worried that the states may fail to implement the federal land legislation. Thus, it decided to empower its own agencies to do follow up and controlling functions. This affects the autonomy of the states.

8.3.3 Challenges related to rural land legislation

In an attempt to execute its law-making power, the Federal Government enacted a rural land proclamation in 1997 (Procl. 89/1997), which was later replaced by another proclamation in 2005 (Procl. 456/2005). Although Proclamation 456/2005 is broader in content compared to the earlier Proclamation, it does not deal with all relevant issues of land administration. To begin with, it is not clear on land ownership: while the preamble says ownership of land is vested in the state and the people, Article 5(3) of the same Proclamation gives land ownership to the government. Moreover, the Proclamation introduces a vital departure from the Constitution by obliging the state councils to enact detailed law on land administration (see Art. 17) and hence giving them the power to legislate on land administration. Such power is given to the states in the presence of many unregulated issues including maximum and minimum holdings and duration of lease agreements that require uniformity if the intents of the Constitution as discussed in section 8.3.1 of this chapter were to be adhered to.

It is possible that the Federal Government may delegate its powers to the states (Art. 50(9) of the Constitution). However, this very provision implies that the merit of such a delegation should be considered. It says 'when necessary'. It is clear from the phrase that delegation should not be exercised to the extent that it destroys the basic tenants of the Federation. The Federal Government, for example, may not delegate its powers to organize national defense or run foreign affairs to the states because it is highly unlikely that doing so will be necessary. Thus, delegation has its limits. It is argued here that legislating on land issues should be one of the areas with limited possibility of delegation for the reasons mentioned in section 8.3.1.

Following Proclamation 456/2005, the states passed rural land proclamations, regulations, and directives that show significant variations from one another. Thus, although the Constitution envisions a single[87] legal regime of land by giving the mandate to the Federal Government, the country now has different land laws. As it is now, a law that regulates subsistence farming in the highlands differs from a state to another and this does not go along with the constitutional provisions mentioned above. Thus, the states are unduly empowered to exercise law-making power on land administration.

On the contrary, in 2010 the Federal Government enacted a 'law' that gives it the power to administer agricultural investment land above 5000 hectares in size. The 'law' is titled 'council of ministers *directive* on agricultural investment land administration' in Amharic but 'council of ministers *regulation* on agricultural investment land administration' in English. Hence, the English and the Amharic versions are incompatible. Since the law was enacted by the Council of Ministers short of formal publication in the official Negarit Gazeta, it is difficult to tell what its status is. In any case, it has been operational since 2010 as if it were a law[88].

Land administration, as discussed earlier, is an exclusive mandate of the states. Then the question is can the Federal Executive enact such a 'law' even if it was published in the Negarit Gazeta? Neither can delegation be a basis because for delegation the initiative should come from the concerned state (the principal); the deal should be with each state; and it should be done through contracts or agreements between the Federal Government and the concerned state. To push the argument against this move further, it is worth mentioning that the Constitution does not mention the possibility of upward[89] delegation while it is explicit on the opposite (see Arts. 94(1), 50(9), and 78(2) of the Constitution).

It is difficult to conceive that delegation may be given through a 'law' that was passed by the Federal Executive alone. Moreover, the 'regulation' remains silent as to what will happen if a certain state refuses to delegate this power. The overall spirit of the 'regulation' sounds like a 'mandatory delegation', which is absurd as the two terms are not harmonious to each other. It can

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[87] See the discussion in section 8.2. particularly the extracts from the minutes of the Constitutional Assembly provided in a footnote and, of course, Articles 51 and 52 of the Constitution.

[88] Around early 2017, the Federal Government stated that it will withdrew itself from administering agricultural investment land (See: <https://www.ethiopianreporter.com/content/በደካማ-የሥራ-አፈጻጸም-የተገመገሙ-ሁለት-አጀንሲዎች-ተዋህደው-አዲስ-መሥሪያ-ቤት-ተቋቋሙ> [Accessed on 09 January 2017]).

[89] See section 2.7.2 of chapter two particularly the extracts from the minutes of the constitutional assembly provided in a footnote. The extracts indicate that the framers intended to allow only downward delegation of power.

be concluded that this is another move of the Federal Government that does not go along with the spirit and text of the Constitution. Nevertheless, many pragmatic factors and assumptions drove the Federal Government to pass this 'law'. Let us deal with such factors and assumptions in the next section and evaluate whether that was the best action that should have been taken by the Federal Government.

8.4 *Driving factors and assumptions behind the 2010 'regulation'*

The ruling party, the EPRDF, had evaluated the status of agricultural investment land before the 2010 'regulation' came into existence. In fact, the EPRDF executive committee approved a document that details the challenges of the sector and the proposed solutions[90]. Its content indicates that the document was the source of the 2010 'regulation' on agricultural investment land administration. A critical evaluation of the document approved by the EPRDF's executive, the 'regulation', and the 'memorandums of understanding for transferring lands that are suitable for large-scale agricultural investment through delegation'[91] indicates that there were many challenges around the administration of agricultural investment land that drove the Federal Government to do something about it[92]. Moreover, the Federal Government had many

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[90] Ministry of Agriculture and Rural Development (2009). የግብርና ኢንቨስትመንት መሬት አስተዳደር ስርዓት ዕቅድ (Plan for the Agricultural Investment Land Administration System): As approved by the EPRDF's Executive Body (Unpublished).

[91] According to an interviewee at the Federal Agency that administers large-scale agricultural investment lands that are transferred from the states to the Federal Government, the content of all the memorandums of understandings (MoU) signed by a state and the Federal Government is the same. The sample document consulted here is the MoU that was signed by the SNNP State and the Federal Government.

[92] According to the 'Plan for the Agricultural Investment Land Administration System: As approved by the EPRDF's Executive Body (2009) and the memorandum of understanding signed by the SNNP State and the Federal Government, the following were the prevalent challenges of the sector:

- Absence of accountability and transparency on investment land allocation;
- Absence of detailed and structured data on agricultural investment land;
- Lack of capacity and preparation and problems related to prioritization were witnessed in the states;
- Illegal settlements and land grabbing by pseudo investors;
- Lack of uniformity of the state land legislation and a total absence of any legislation in some of the states;
- Lack of precision in allocation and consequent land wastage;
- Owing to very low lease fees, investors were encouraged to engage in rent seeking activities instead of developing according to the commitments they entered into;
- Absence of clear investor recruitment strategy and allocating land to investors who happen to be 'there' although they are not necessarily the best ones to do the job;
- Lack of proper promotion work;
- Allocating uncertain land to investors or issuing overlapping maps and hence creating favorable grounds for conflicts;
- Absence of strong structure that can carry out the task of administering large scale agricultural investment land at the state level;

assumptions in introducing the system that gives it the power to administer agricultural investment lands exceeding 5000 hectares[93]. Some authors argue that the 'regulation' gave an

- Delays in delivery and payments by the side of the investors; and
- Generally, despite the presence of large unused land, water, labor and incentives, the sector was unable to meet the expected outcomes.

The data from the interviews strengthen the above points. In some of the states, large and productive land that could have changed the development status of the country, if it were properly utilized, has been burnt and wasted for years (I15). Such lands are available mostly in malaria-infested, remote areas, and deserts. These are lands with no signs of development while the bottom line is that when one thinks of development, the abundant land resource should be utilized effectively (I19). Even at the household level, because there is public interest and stake in it, everyone not utilizing this resource effectively should be held accountable (I20).

Besides the presence of large unallocated land, the amount of developed land was a little portion of the land allocated. Even among the developed lands, some of them are rented to others with a payment amounting to 4000.00 Birr per hectare (I15), which is very high compared to the official rent rate. Moreover, governance at the state level was highly discouraging to developers. The rent of land in the states was, and still is, very low. However, there were/are rumors that there is a very high 'informal' payment (I15).

Another challenge was the limited capacity of the states. They were not in a situation to issue a correct map (I15). The states with the most unutilized land were, and still are, incapable of attracting experienced professionals. They did not have a strategy to retain employees with better qualifications. Thus, their capacity to administer land was, and still is, limited (I15). According to I15, the controversial land allocations (these investments were launched in 2008 G.C. (I15)) to Karaturi Global and Saudi Star in the Gambella State were done by the state's local administration and the latter were the ones that committed the mistakes. The local authorities gave the riverside land to such companies without considering the interest of the local community. Saudi Star was given land in an area with a dam built by public money while there was not enough land that matches the amount allocated to Karaturi on the ground. To minimize the allocated land from 300, 000.00 hectares to 100,000.00 hectares, it took the Federal Government a year's negotiation time. According to the Agency, the company failed to develop the land even after the size was reduced. The Agency has now terminated the lease agreement and confiscated 98,800.00 hectares of the land allocated (For further details, see Fana Broadcasting Corporation's News of December 31, 2015. Available from: <http://www.fanabc.com/english/index.php/component/k2/item/4810> [Accessed on 7 November 2016]).

Furthermore, there is a question as to what to do with the livelihood of the pastoral areas. There are serious controversies in this regard. Some argue that the culture of the people and even the nature of lands, arid and semiarid with low rainfall, require keeping such lands as they used to be (I3). Others argue that there were works done to maintain pastoral life including by NGOs but that is found to be very expensive venture (I15). Accordingly, what is sustainable is to change the livelihood of pastoral people to less costly system (I15). Expanding large-scale farming is one of them (I15).

[93] According to the above-mentioned documents, changing the way large-scale agricultural investment land was administered i.e. giving the power to an Agency of the Federal Government under the Ministry of Agriculture and Rural Development was assumed to:

- Enable [the Federal Government] identify all suitable land for agriculture in all the states efficiently and make them available for investment;
- Enable the Federal Government distribute large scale agricultural land to investors uniformly across the states in a manner that can bring about significant change;
- Enable the Federal Government distribute land to investors without bureaucratic impediments (of the states);
- Enable the Federal Government ensure fee uniformity and fairness, control illegal activities in the sector, and finally to make sure that investments are beneficial to the mass;
- Enable the Federal Government ensure a balanced expansion of agricultural investment land in the country;
- Help the Federal Government determine the maximum size of land to be used for agricultural investment and ensure improvement on agricultural land use;
- Help investors produce internationally competent export-oriented products and enable the government meet its export goals;

exclusive power to administer lands exceeding 5000 hectares in size to the Federal Government (see Elias 2011, 177; Desalegn 2011, 10). However, neither the 'regulation' nor the primary data shows that it is an exclusive federal power i.e. the states can also administer or allocate lands to investors including and above this amount (I29; I15).

The Federal Government enacted the 2010 'regulation' for Agricultural Investment Land Administration and launched the Investment Land Agency within the then Ministry of Agriculture and Rural Development with the intention of meeting many commendable goals and assumptions (see Art. 5 of Regulation No. 283/2013). Nevertheless, the data from the interviews show that there is little success in improving the conditions that preceded the implementation of the 'regulation' for investment land administration and achieving the assumptions behind it[94].

- Enable strengthen the relationship between investors and out growers thereby facilitating technology transfer;
- Enable expand infrastructure to investment lands according to order of importance;
- Help the Federal Government attract foreign investors;
- Help the government stop land fragmentation and gear production towards hard currency earning products;
- Facilitate coordinated works between different levels of governments;
- Help the government build reliable land bank system; and
- Enable the government provide investors with comprehensive and continuous support.

[94] Not much change has been registered in the sector owing to the 'regulation'. There are many internal and external reasons for this. Lack of finance, technology, knowledge, and infrastructure persists. The companies that took land, particularly those from the East, lack the experience to administer large lands as they are used to administering small farmlands (I15). Some of them do not want to establish factories that process their agricultural outputs such as sugar factories. Instead, they look for 'easy money'. Thus, up to August 2015, out of the land allocated to investors by the Agency, only near to 30 percent is developed (I15).

Neither can the government take actions against some of the investors for failing to deliver, as the reason for their failure is due to delays in government infrastructure projects. For example, the delay in the Omo River bridge construction has prevented investors from developing the fertile land around the river despite the tones of cotton production expected from the land. Up to the date this data was collected, the investors were simply sitting and waiting for the completion of the bridge (I15).

Moreover, the monitoring and evaluation mechanism at the Investment Land Agency is weak. There is a support section and they have to do visits (tour) on the farms at least twice a year. However, they cannot do this due to lack of transport vehicles (I15). Surprisingly enough, most of the work of the Agency is being done by using investor's motor vehicles. This tells a lot about the limited nature of the capacity of the Agency. Without resorting to the help of the investors, the interviewee claims, not a single job can be done. To visit the lands, even with the support of the investors, the experts have to wait until the wet season is over and the grass is burned with fire, which is of grave consequence for sustaining life (I15). This situation is in clear contradiction to the assumptions mentioned in section 8.4.

Additionally, there are no farm management personnel in the Agricultural Investment Land Administration Agency. At the time of data collection, there was no one with cadastre or land administration specialty except one recent graduate in land administration and research in the Agency (I15). There was lack of finance for trainings. It is claimed that even donors were not interested in supporting agricultural investment related capacity-building works as they have reservations on the 'righteousness' of African agricultural investments (I15).

Furthermore, the states' point of view is that they should administer land (I15). As there were no open negotiations between the states and the Federal Government on the issue, consensus is yet to be reached (I15). Lack of open discussion and consensus has affected investors. Some of them face harassments (I23). A *kebele*-level official in Benishangul/Gumuz may restrict the mobility of investors and their machines. Some local officials, out of

'narrow nationalism', evict investors from their legal possessions (I23). In other words, the states are hesitant to honor the rights of investors, as they do not accept the power exercised by the Federal Agency. Hence, they do not push local officials to treat investors fairly and according to the contracts they entered into.

An interviewee at the Benishangul/Gumuz Environmental Protection, Land Administration and Use Bureau claims that the fact that administering some of the State's large-scale agricultural investment land is transferred to the Federal Government through 'delegation' is seen as a support. However, he adds, the state can do it all at this time (I29). Even higher officials, who argue that there is no problem if the states 'delegate' such power to the Federal Government, admit that there are complains and disputes about this 'delegated' power. Accordingly, the federal officials claim there is no interest on the part of the states from the very beginning when the former find people on the land that was supposed to be allocated for agricultural investment. The states reply it happened without their knowledge i.e. it is an illegal settlement (I23). Such disputes impede the success of the sector.

An interviewee at the Agency argues that the second Growth and Transformation Plan (GTP II, 2015-220) requires high performance from the agency as there must be high increase in agricultural production but, he adds, the states with the highest potential are not cooperating with the agency. According to an interviewee at the Investment Land Agency, not all states have given the Federal Government investment land to administer on their behalf. Those who gave large amounts of land are the SNNP, Gambella, Benishangul/Gumuz, and Oromia (in the eastern side). However, for a specific sugar project a 6000-hectare land was received from Amhara State and 2000 hectares and 4000 hectares from the Somali State's Shinillie and Godie Zones respectively. In the Shinillie's case, the investors themselves initiated the process because the investors had to take license from the Federal Government and the state was voluntary. In SNNP, the Agency did transfer only nearly to thirty percent of the land received. The rest was transferred to sugar farms owned by the Federal Government. In Gambella and Benishangul/Gumuz, there still are lands to be allocated. In Oromia, the land given is not that suitable because of the population dynamics, settlement patterns and changing situations. The local population has already started farming the land that was supposed to be remote and inconvenient for settlement.) (I15). According to Desalegn Rahmato (2011), the land transferred to the federal land bank in hectares was in Amhara 420,000 (not confirmed), Afar 409,678, Benishangul/Gumuz 691,984, Gambella 829,199, Oromia 1,057,866, SNNP 180,625. Total 3,589,678 hectares. The paradox is that at the surface it appears that such states as Gambella and Benishangul/Gumuz agreed to give away their administrative power on some of their investment land to the Federal Government but, practically, they fail to cooperate full heartily with the Federal Government. Their real interest seems, therefore, to administer all investment land (I15).

It is claimed that, at the federal level, no overlapping maps are issued. However, the states issue maps that overlap and banks are hesitant to accept the maps issued by the states. Thus, they find it difficult to extend loans. This, again, impedes speedy expansion of large-scale agricultural investment. However, data gathered at the state level shows that overlapping maps are issued not only by the states but also by the Investment Land Agency (I23; I29). Moreover, there is no mutual consultation in transferring lands and appraising the status of allocated lands (I29). The Federal Agency was allocating as small land as 500 hectares. This makes identifying the boundaries of each plot problematic. On the part of the states, the problem is that not all of them are capable of controlling the whole land due to lack of infrastructure and the nature of cultivation.

The other problem is someone in the Agency informs an investor that he/she can get a certain amount of land say in Benishangul/Gumuz but they give him or her very rough indicators (they do not even go to the extent of giving them coordinates!) (I28). Then the investor meets officials or experts in the state and proceeds to the relevant woreda. At some point, they go to the land and they need to define the boundaries. However, they have little to go on, as there is no map or anything. They set rivers, roads, or mountains as a boundary. This leads to overlaps (I28). Thus, the argument goes, most of the land transferred by the Federal Government are accompanied by disputes (I29). This proves that the states and the local governments are in better position to do the job.

Sometimes, it happens that the Agency allocates land to investors but on the ground there are people living in the area. It can be big land and it may be sparsely populated but it is not unpopulated. This is problematic, as the rights of the people may not be registered. It is not clear which areas are allocated to investors and which ones to the subsistence farmers (I28).

There are investors who divert loans and incentives given to them to engage in agricultural investment (I15). According to a senior official, in the Benishangul/Gumuz State, up to closely to the time the data was collected, 75% of the investors were engaged in renting out land to others and charcoal production (I23). The trend was the same whether the Investment Land Agency or the State allocated the land to the investor (I23). All the preceding factors affect the effectiveness of such investments. More importantly, they indicate that the good intentions of the Federal Government did not materialize. The key issue is how to sustainably solve the prevailing

Rather challenges, both old and emerging, are still there and it is imperative that the Federal Government approaches the problem regarding investment land administration from a different angle than involving itself in land administration.

8.5 *Implications of the 2010 'regulation'*

In the context of Ethiopia, land administration requires great care. Large-scale investments in the sector are important to create wealth, tighten inter-communal relationships, and build consensus (I6). However, fair distribution of wealth generated from such projects is vital. Moreover, such investments should not endanger the rights and livelihoods of people although they may improve or modify it (I6). More than eighty percent of the country's people depend on rural land. Land issues have been among the most influential mobilizing factors in Ethiopia's history. It seems that the Constitution gave the power to legislate on land issues to the Federal Government considering such factors.

Nevertheless, the Federal Government is not executing its responsibility well as it did not enact comprehensive laws and implementation mechanisms (I7). Instead, the Federal Government has simply allowed the states to produce diverse laws. One can observe that this is not in line with what the Constitution requires. On the other hand, the Federal Government faced challenges on expanding large-scale farms. Then, it decided to empower itself to engage in land administration. This is against the Constitution (see Art. 52(2)(d) and the third section of this chapter; see also Assefa 2012, 464). The 'regulation' implies that the Federal Government's move is unprincipled, institutions and the states are weak and the party channel is disproportionately strong. The laws in the sector in general imply that, both levels of governments are not doing what they are expected to do and doing what they are not expected to do according to the Constitution. Such scenarios occur owing to the decisions and directions of the Federal Government. Thus, land is another area that suffers from a centripetal tendency.

8.6 *Ways forward*

To address the challenges in the area of land administration, the starting point should be to make sure that the legal regime is comprehensive and clear enough (I28). Tenure right must be clearly regulated (I7). There must be clarity on inter-state movement of people. Some directives

problems of the sector. It is obvious that formal and continuous dialogues are important as enacting a law that takes away power from the states is, as the foregoing discussion proves, of not much help.

at the state level are inconsistent with the higher law at the state level. They allocate powers that have never been mentioned in the higher legislation (I23). And although the laws are defective they are not being amended quickly. Decision makers do not seem to see them as big problems.

The balanced approach to handle the challenges that emanate from the absence of clarity of ownership is to consider the nations, nationalities, and peoples as common owners of the landmass of the country. The government administers land on behalf of them. This gives the government the right to decide on the best use of the land on behalf of the owners. Nevertheless, the government should also consult the people particularly the ones that are directly affected by the alteration of the previous possession system. Not taking the living standard of the community directly affected below it previously was could be set as a minimum requirement for allowing the alteration. The aim should of course be to improve the livelihood of such a community. This may not involve giving compensation to individual members of the concerned community. That would be an administrative nightmare. However, the community should be provided with a collective opportunity (as the land was) that leads to the betterment of their livelihood.

A question may arise on what the possible way out could be in case a state fails to implement a federal law, which the state is constitutionally obliged to implement. The main solution should lie on checks and balances within the states similar to what happens when a state fails to implement its own laws. Political deliberations, electoral campaigns, the media, party politics, and the judiciary should serve as means of scrutiny that the laws are implemented. IGR could also be a supplementary tool. In the latter case, the states and the Federal Government may set joint goals based on the federal legislation and strive to implement them. Publicity of failure or success at IGR forums could serve as important controlling mechanisms. They may also enter into a binding IGR agreement in which case failure to live up to the expectations is punished and performance is rewarded. A unilateral empowerment of an agency of the Federal Government to carry out an administrative power of a state, on the other hand, is against the text and intents of the Constitution.

If one is going to deal with the practicalities of implementing large-scale investment in the country, she or he needs to have people on the ground in those states. Of course, there is a need to have a federal body to coordinate and set policy and laws but the Federal Investment Land Agency's mission is to administer and do the actual implementation. However, the Agency is not dealing with the actual implementation of the investment activities as expected (I28). Thus,

even practically, there is no need to have such an agency with its current mission at the federal level. It can be there to introduce policy, recruit investors, and do promotion works however (128).

Therefore, considering the power division in the Constitution and the practical challenges, land administration including investment land should be done entirely by the states[95]. However, in terms of obtaining what is expected from the agricultural sector, it is necessary to make sure that the states have the necessary resources and capacity (128). Such prevalent challenges at the state level as lack of capacity, rent-seeking oriented political economy, and lack of adherence to laws and principles should be addressed. In the fourth section, we saw that such problems were among the driving factors for the 2010 'regulation'. It can be understood that the Federal Government felt desperate about the situation. However, the correct approach should have been for the Federal Government to help the states address the problems without taking the power from them.

In addition to legislating clear, detailed, and comprehensive land administration law, the Federal Government should strengthen its institutions. There should be federal courts at the state level to deal with disputes that arise from federal laws whenever needed. This is crucial to safeguard the interests of all citizens. Such organs as the HoF, the Human Rights Commission, and the Ombudsman should have branches in all the states and they should exercise real powers. There must be clear laws and procedures to hold a government at any level accountable for any wrong committed. In this manner, discriminations and bureaucratic hurdles, which impede the speedy development of the sector, at the state level, can be mitigated. Moreover, awareness creation and consensus building is vital. The other important area of intervention for the Federal Government is to help build the capacity of the states. It can help them by providing trainings,

[95] According to Fana Broadcasting Corporation's news broadcasted on March 12, 2008 E.C. (March 21, 2016), the Agricultural Investment Land Administration Agency itself has confirmed the challenges of the sector. Among the challenges identified are overlapping land allocations. Forty-three lands of different sizes were allocated to more than one investor at a time. The same investors have used the same lands to get loans from the same bank. Some investors have disappeared with the loans they owed to the Development Bank of Ethiopia. Technology transfer, increase in productivity, which were highly expected from the sector, did not materialize. As a result, the Agency has announced that it has stopped land allocations tentatively until the challenges of the sector are fully investigated. The Development Bank of Ethiopia has also announced that it will not grant loans to those who are engaged in the sector. (Available from: <http://www.fanabc.com/index.php/component/k2/item/14676.html?Itemid=674> [accessed on 21May 2016]).

technological facilities, and finance. Accordingly, the sector can be developed while respecting the constitutional power division arrangements.

8.7 Chapter summary

The discussions in this chapter show that land administration in Ethiopia suffers from centripetal tendencies. The Federal Government has exploited its law-making powers in relation to urban lands to a broader extent compared to rural lands. On the negative side, the urban land related legislation empower different agencies[96] of the Federal Government to intervene directly in the administrative affairs of the states. In the case of rural lands, on one hand, the Federal Government did not utilize its law-making powers and, on the other hand, it has authorized itself to intervene in the administrative affairs of the states. Such moves are not in line with the Constitution. The Constitution gives law-making powers, as far as land is concerned, to the Federal Government and the power to execute such laws to the states (see Arts. 51(5) cum. 52(2)(d) of the Constitution).

However, the states also exercise law-making power in the area, which is unconstitutional. The states enacted very diverse land laws. Therefore, despite the constitutional stipulation that the country should have a single legal regime on land that is designed by the Federal Government, it now has diverse land laws. This has significant impact on the equality of citizens as their rights differ from one another in relation to land (depending on the state they belong to or place of origin).

To resolve the challenges and to boost production of large-scale agricultural investment, the Federal Government has empowered itself to engage in land administration through 'delegation' in 2010. Nevertheless, the discussion in this chapter indicates that the introduction of the 'regulation' did not resolve the challenges of the sector. To the contrary, the 'regulation' implied an unprincipled move on the side of the Federal Government, weaknesses of institutions and the states, and the disproportionate power of party channels.

The sector faces challenges that are not necessarily related to power division. Absence of clarity on land ownership further complicates the challenges in the sector. The Constitution, Proclamation 456/2005, the state land laws, and even the practice do not provide one with a clear guidance on who owns land. The same holds true on tenure right. This writer's opinion is all the

[96] The Ministry of Urban Development and Housing and the Ministry of Federal Affairs are notable examples.

nations, nationalities, and peoples of the country own land collectively. Of course, the minutes of the Constitutional Assembly also indicate so (see the second section of this chapter). In the latter sense, every citizen's right to potentially posses a piece of land anywhere in the Federation should be equal regardless of place of origin. Group rights in a certain territory should, however, be treated differently.

The findings imply that land administration will be better off if both levels of governments were to execute what is constitutionally assigned to them. The Federal Government should focus on law making. Ownership and tenure rights should be adequately defined in the federal legislation. The states, on the other hand, should do the administration without the intervention of the Federal Government. The Federal Government can support the states by building their capacity, providing facilities and connections, and finance. In other words, to handle implementation-related problems internal checks and balances and IGR mechanisms, and not snatching the powers of the states, should be employed.

To ensure that both levels of government execute their functions as per the laws, federal courts should be established in the states to interpret federal laws. Moreover, such institutions of the Federal Government as the HoF, the Human Rights Commission, and the Ombudsman should have presence in the states and they should exercise real powers. This way, the state governments can be empowered and also held accountable if they fail to comply with the laws. This will be, at the end, not only in line with the power division arrangement as provided in the Constitution but also better for the sustainable development of the sector. In the next chapter, we will deal with the mandates of the Federal and the state governments with respect to the right to movement and ownership of property in the Ethiopian Federation and challenges thereof.

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I3 (Atkilt Daniel, UNDP conflict prevention advisor at the Ministry of Federal Affairs, Addis Ababa, 31/07/2015)

I6 (Anonymous, former judge and currently an academic and a lawyer, Gonder, 07/08/2015)

I7 (Arayaselassie Alemu, chair of the law and justice standing committee in the Amhara State Council, Bahirdar, 10/08/2015)

I15 (Bezualem Bekele, Investment Land Administration Director, Ministry of Agriculture and Rural Development, Addis Ababa, 24/08/2015)

I19 (Mesfin Assefa, Security and Administration Bureau Vice Head, Oromia State Government, Addis Ababa, 02/09/2015)

I20 (Lema Megersa, former Speaker, Oromia State Council, Addis Ababa, 03/09/2015)

[23] (Belay Wodisha, Commissioner, Ethics and Anti-Corruption Commission, Benishangul/Gumuz State, Assosa, 22/09/2015)

[28] (David W. Harris, REILA (Responsible and Innovative Land Administration) Project Team Leader, Benishangul/Gumuz State, Assosa, 28/09/2015)

[29] (Habtamu Alene, Case Team Coordinator, Investment Land, Agriculture and Natural Resources Bureau, Benishangul/Gumuz State, Assosa, 29/09/2015)

Web links:

<http://www.fanabc.com/index.php/component/k2/item/14676.html?Itemid=674> [Accessed on 21 May 2016].

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Chapter Nine: Power Division and the Right to Movement and Ownership of Property in the Ethiopian Federation

9.1 *Introduction*

The 1995 FDRE Constitution guarantees free movement of citizens within the country's territory. This right includes the right to choose residence and ownership of property. The Constitution guarantees the right to self-determination of the nations, nationalities, and peoples of the country, too. However, there is no legislation that balances the two fundamental rights. Whose responsibility was it to enact such a legislation is a point for discussion (in this chapter). Besides, the respective powers of the Federal and the state governments in the area of mobility are not adequately defined.

Moreover, the practice indicates that there are tremendous challenges in the area. *Inter alia*, evictions of legal residents and lootings of properties of members of non-indigenous residents by some state officials were witnessed. As the discussions in this chapter will show, some officials were held accountable as a result. Such acts were committed despite the first-mentioned guarantee of the federal Constitution. It will be shown that the absence of detailed laws, the absence of clear demarcation of responsibilities between the Federal Government and the states have resulted in violations of individual rights and threats to the stability of the Federation.

This chapter, therefore, deals with the positions of the Federal and state constitutions on mobility-related rights from the angle of power division, the interests and fears of the indigenous and non-indigenous groups in the states in relation to mobility rights, the practical challenges, the most ubiquitous trends in the area, and possible solutions to the challenges identified. A summary is provided at the end of the chapter.

9.2 *Interests and fears (the problem)*

In many states of the Ethiopian Federation, the indigenous and the non-indigenous[97] have interests that are not necessarily compatible. They also have group-specific fears. The data from

[97] Some people may not be comfortable with the terms 'indigenous' and 'non-indigenous'. Nonetheless, such terms are the ones that are used to identify those who are native to a certain state and those that travelled from their native state and resided in another state. The use is confirmed by the state constitutions, too. Except for what is explicitly provided in the text, the use of the terms in this chapter does not imply any difference of right between the two groups.

the interviews indicate that the indigenous want to dominate their 'home' states in all aspects regardless of demography and other factors. On the other hand, the non-indigenous do not want to see any restriction on their political rights and the right to move and own property anywhere in the country. Besides, they want to have political representation commensurate to their number. Unfortunately, besides guaranteeing mobility and self-determination rights neither the Federal nor the state constitutions provide adequate details as to how to balance these rights.

As a result, the indigenous fear that if there is unregulated movement of people, if political power is distributed in proportion to the numerical size of the different nations or nationalities in a state, then they will be dominated, if not oppressed. On the other hand, the non-indigenous do not see any rational to regulate mobility-related right of people in their own country. Both present evidence that their threats are real. For example, if a certain area has fifty thousand inhabitants and due to discovery of natural resources, a hundred thousand people moves to that area, the locals will automatically become a minority in their home land (I3). This calls for some measures to be taken to protect the locals.

The non-indigenous argue that land is the common property of all Ethiopians and if some people are left to remain in destitution while there is abundant unused land in other states that will be unfair, if not illegal. The argument goes, everyone should be allowed to live and work anywhere as far as it does not affect the individual livelihood of the locals (I6). Other factors complicate the problem in relation to mobility rights. The non-indigenous and the indigenous tend to have different farming and business experiences and the productivity level differs. This increases the fear of the indigenous that they will be dominated. On the other hand, the indigenous participate in some illegal activities such as 'selling' land, which increases the unregulated movement of people. The fear is then the locals will be effectively removed from their land, if such practice continues (I23). But again if any measure to correct illegal selling of land (which was put into effect through the participation of the locals) is taken later, the non-indigenous resent it. They see the measure as elite-driven rent-seeking activity aimed at taking developed lands and not an issue of law enforcement at all (I23).

In the case of the Benishangul/Gumuz State, the State Constitution recognizes the right to self-administration of the five indigenous groups only. The fear of the locals was that the others might dominate them because their state was relatively under developed. The demography shows that around 43% of the total population are non-indigenous and around 57% are indigenous (I23;

see also Ethiopia's Population Census Report 2008, 96). When the population number grows, the locals fear, the non-indigenous may even go to the extent of claiming self-determination rights (123). This is presented as a reason to limit the self-determination right to the indigenous only (123). Nevertheless, the non-indigenous who are also the legal residents of the State have an interest not to be relegated to a secondary-status indefinitely. The lack of proper understanding of the nature of the federal system and pertinent principles thereof and problems in the area of governance and democratization further complicate the fears and interests (113; 16). The fears and interests call for a detailed legal regime that balances mobility and self-determination rights. The Federal Government particularly the HoF should play the leading role in this regard. The fifth section of this chapter elaborates the latter issue further but, here below, let us see the constitutional context of division of responsibility in the area.

9.3 *The federal and state constitutions on the right to movement and ownership of property*

The 1995 FDRE Constitution guarantees any Ethiopian or foreign national lawfully in Ethiopia, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to (see Art. 32(1) of the Constitution). Moreover, every Ethiopian's right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory is guaranteed (see Art. 41(1) of the Constitution). In a similar fashion, the Constitution guarantees every Ethiopian the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right includes the right to alienate, to bequeath, and, where the right of use expires, to remove the property, transfer his title, or claim compensation for it (see Art. 40(7) of the Constitution).

The state constitutions simply replicate the Federal Constitution's provisions on the right to movement, the right to engage in economic activities and pursue livelihood, and the right to ownership of property. Except for contextual expressions, there is no substantive difference between the Federal and the state constitutions on these issues. There is only one noticeable difference. The state constitutions incorporate explicit provisions that guarantee any Ethiopian, who 'understands' the working language of the state concerned, the right to work in any of the state's public or governmental employment positions either as a civil servant or as a political appointee (see, for e.g., Art. 34 of the Benishangul/Gumuz Constitution, and Art. 33 of the

Tigray, Amhara, Oromia, and SNNP Constitutions). This provision makes it clear that one's genealogy has nothing to do with fully enjoying mobility-related rights anywhere in the Country. The only limitation, if applicable, is the requirement of language competence. For positions in the public sector, one is expected to be able to 'understand' the working language of the state concerned. This limitation is not explicitly stated in the federal Constitution but it is reasonable given the overall nature of the multinational federal arrangement and the public interest at the state level.

Enumerated and well-accounted limitations on these rights exist in other multinational federations, too. For e.g., according to section 6 of the Canadian Constitutional Act 1982, every citizen of Canada has the right to enter, remain in and leave Canada and the right to move to and take up residence in any province of Canada. Moreover, every Canadian is guaranteed the right to pursue the gaining of a livelihood in any province of Canada. Nevertheless, according to the same Section, the right to pursue the gaining of a livelihood has limitations. Among such limitations are laws, programs or activities that have as their objective the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada (section 6 of the 1982 Canadian Constitutional Act).

According to the Canadian experience, there can be limitations on some components of mobility right if certain conditions are fulfilled. In the Ethiopian case, however, both the federal and the state constitutions lack details on the possible limitations. The practice, as will be discussed in the next sections, indicates that there are severe limitations and disputes over mobility-related rights. Moreover, in the Ethiopian case, the practice does not give one a clear map on which level of government is empowered to deal with contentions over mobility rights. So far, the disputes assume political forms. The solutions tried tend to be political, too.

As indicated earlier, the relevant provisions of the federal and the state constitutions are similar. Both the federal and the state constitutions affirm the right of citizens to move, own property, and reside anywhere in the Federation and in the concerned state respectively. Such similarity extends to other provisions that may give a clue as to who is responsible to deal with disputes over mobility-related rights. The federal Constitution states that the Federal Government shall protect and defend the Constitution (see Art. 51(1)). Thus, it can be argued that any dispute over mobility-related rights, which are constitutional rights, can be brought to the Federal

government for a decision. The problem is the state constitutions say the same thing. Hence, the same argument can be forwarded in favor of empowering the states to deal with such disputes. However, the practice indicates, state institutions may not serve as neutral arbitrators over mobility-related disputes. Actually, as the discussions in the forthcoming sections imply, the state institutions can be the sources of the problems than part of the solution.

As a matter of justice, however, the Federal and the state constitutions guarantee everyone's right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power (see Art. 37 of the FDRE, Oromia, and Amhara Constitutions, for e.g.). Certainly, disputes over mobility rights are justiciable. Despite the skepticism on whether the state institutions can serve as a neutral arbitrator on disputes over mobility issues, considering such procedural factors as personality and territoriality, it is argued that disputes over mobility rights should be first entertained by the courts of the state where the disputes arise (see Besselink 2000, 1378). Since these rights are explicitly stated in the Constitution and since the courts should apply 'obvious or previously interpreted' provisions of the Constitution (Besselink 2000, 1375), there is nothing that prohibits the state courts from exercising jurisdiction. If there is anything that calls for interpreting the federal Constitution like a legislation whose constitutionality is challenged, as it is stipulated in the Constitution, it should be decided by the HoF (see Art. 83(1)). From the angle of power division, therefore, both levels of governments may have a role to play in handling disputes over mobility rights. However, the law-making power in the area looks to be essentially the responsibility of the Federal Government.

Balancing self-rule and mobility rights in the Ethiopian Federation is a fundamental constitutional matter. Both rights fall in the third chapter of the federal Constitution, which lists fundamental rights. The general trend in federations is that fundamental rights take primacy over all other laws and decisions and the institutions of the federal government should act if there is a need for interpreting fundamental rights (see Besselink 2000, 1372). The specific institutions differ from country to country. In some federations such as the USA and Nigeria it is the Supreme Court that takes this role and in others such as Germany and South Africa it is the Constitutional Court that takes this role. In the Ethiopian case, the Constitution empowers the HoF to interpret the Constitution. In this chapter, however, we can see that the challenges discussed require anticipative legislation that balance self-determination and mobility-related

rights. In other words, as it can also be seen from the discussions in the eighth chapter, the post-facto interpretation function of the HoF on the constitutionality of decisions or laws may not be sufficient means to handle the challenges.

According to Article 61(8) of the Constitution, the HoF is mandated to identify civil matters, which require the enactment of laws, by the HPR. Similarly, Article 55(6) of the Constitution mandates the HPR to enact laws on civil matters that are deemed necessary to build and sustain one economic community by the HoF. According to the wording of the Constitution, once the HoF identifies the civil matters that it deems are necessary to build and sustain one economic community, the HPR has to enact laws that regulate them. Neither the civil nature nor the importance of balancing mobility-related rights and self-determination rights to build and sustain one economic community can be subjected to doubt. Moreover, balancing the two rights affects not only the interests of individual citizens but also the interests of the nations, nationalities, and peoples of the country. The HoF is mandated to ensure the mutual coexistence and equality of the nations, nationalities, and peoples of the country (Art. 62(4) of the Constitution). From the angle of division of power, therefore, the mandates of the two federal Houses indicate that the latter should be the ones that should legislatively act to balance the two rights (The HoF should identify the issue and the HPR should enact a law on it).

9.4 *Illegal settlements and evictions*

Practical challenges in relation to mobility rights are common in the southwestern and southern states such as the Benishangul/Gumuz, Gambella, and SNNP states. They have occurred, recently, in the Amhara State, too. However, mobility is also more common towards the south than the north. Challenges in relation to mobility occur even within a single state. The practical challenges fall into two main categories. The first one has to do with 'illegal settlements' and the other one with 'illegal evictions and restrictions on the right to pursue livelihood'.

9.4.1 Illegal settlements

In this regard, there are instances when the non-indigenous (by coordinating with local authorities) abuse land in violation of the law of the states. Some resort to illegal sale of land that they themselves illegally purchased from farmers (I13). This leads to the expansion of settlements on illegally transferred lands. Moreover, people move from one area to another by themselves and settle arbitrarily (I16). The locals resent that others are coming and occupying

their lands illegally. This, as indicated earlier, is also an intra-state phenomenon. At some point, within the Oromia State, some people moved from East Harerge to Guji areas *en masse* while the state authorities were not informed about it and this created a great administrative challenge to the State (I20).

Furthermore, some move to forest areas, clear the forests and engage in farming without the consent of local officials (I22). Thus, one may find an isolated village in the jungle (I23). Some of the settlers may even happen to be criminals who have to serve prison sentences elsewhere but who escaped justice (I26).

Such settlements, the indigenous argue, result in extractive, shortsighted, and destructive utilization of resources (I3). They add that the right to movement does not include moving *en masse* and settling in other places (I20). They further claim that the problems are caused by new arrivals and not by those who arrived early through the villagization programs of the military government (I20). The key problem here is the absence of a clear legal regime that regulates mobility and related issues. An equally important factor is the weak controlling and administrative capacity of the states. People may have settled in a certain area without the knowledge of authorities and once they have started producing, if they are told to leave the area, conflicts will highly likely arise. Some individuals complain that there are corrupt *kebele* administrators who simply 'sell' identification cards and allocate land for petty cash. These all lead to illegal settlements, consequent disputes, and often violence (I25).

9.4.2 Illegal evictions and restrictions on the right to livelihood

Illegal evictions of people, illegal confiscation of properties, and restrictions on movement of people who were supposed not to 'belong' to a certain area had been witnessed in some states of the Ethiopian Federation. Conspicuous examples were witnessed in the SNNP State's Benchmaji Zone (I3), in the Benishangul/Gumuz State's Kamash Zone in the 2000s E.C. (I26), and recently in the North Gondar Zone of the Amhara State. The evictions in the Guraferda *Woreda* of the Benchmaji Zone were among the most controversial incidents in relation to mobility rights. The reason given was that the settlers were more experienced in production, they are better at saving money, and buy lands from the local farmers at a cheap price. Thus, it was the worry of the State that the indigenous farmers will be landless (I21). Of course, some measures including punishment according to the criminal law were taken later

against those who evicted 'legal' settlers (I21). Legal settlers in this context are those who arrived during the military regime i.e. 1980s. If legality is understood this way, one should wonder whether there is a possibility to be a permanent legal resident as a farmer out of one's state of origin. The incident in the Kamash Zone of the Benishangul/Gumuz State and the measures taken were similar to that of the SNNP State (I26). In the Benishangul/Gumuz case, assaults and lootings that target the non-indigenous population were witnessed as recent as in 2007 E.C. (in relation to the 2007 E.C. (2015) elections) (I25).

In both incidents, many interviewees argued that local authorities conspired to take developed lands. However, there is also a narrative that confiscated lands go to the government land banks and hence there is no direct transfer of such lands from an individual to another (I22). Nevertheless, the latter does not necessarily stop abuses. The fact that measures were taken against allegedly corrupt leaders who evicted farmers to allocate land to investors strengthens the latter argument (I22).

Eviction incidents have forced some to claim that the right to move and work anywhere in the country as guaranteed by the 1995 FDRE Constitution is violated. It is further claimed that movement right seems to be restricted to trade and limited civil service positions only (I3). Others say the problems particularly those related to the right to work anywhere within the country's territory have to do with perceptions as well. Some perceive that they cannot work in a certain state even if they know the working language unless they are indigenous to that state (I3). Indeed, there are indicators that individuals that belong to non-indigenous groups, even if they speak the language of the state concerned, are considered as 'secondary' citizens and translators (I3).

That does not mean there are no individuals working out of their state of origin either as a civil servant or as a political appointee. The problem is: (1) many of them are denied equal opportunity, they take positions lower than their qualifications would have allowed them, and there is also a tendency to replace them by the indigenous when new graduates arrive, (2) the political appointees compared to the number of people they represent are negligible. If one takes the example of Benishangul/Gumuz State, out of the ninety-nine seats of the Council the Berta are represented by forty, the Gumuz by thirty-five, the Shinasha by eleven, the Mao by two, and the Komo by two members. In total, ninety members represent the indigenous. Only nine

members (Amhara 6, Oromo 2, and Kembata 1) represent the non-indigenous who are near half of the State's population (I26).

What is worrisome is the attitude of some MPs towards such a negligible representation. Some believe that even such a negligible representation is given to the non-indigenous people owing to the willingness of the indigenous groups otherwise the State, according to them, belongs to the indigenous nationalities only (I26; I27). They do not consider that the non-indigenous have a democratic or self-administration right in the Sate. However, there are also some MPs who are of the opinion that this can be negotiated further if the representation of the non-indigenous is found to be too little (I23). Nevertheless, the law, including state constitutions, clearly stipulates that any citizen has the right to engage in public jobs as far as she/he speaks the working language of the state concerned[98]. Despite this, given Ethiopia's past of national oppression and domination, the protections extended to the non-indigenous should not compromise the self-determination right of the indigenous. Thus, this calls for detailed laws and further negotiations that balance interests and rights (in which, again, the HoF should play a leading role).

9.5 Trends and ways forward

9.5.1 Trends

There are outstanding trends regarding mobility and related rights that call for further refinement and negotiation of the Ethiopian federal arrangement. The respective powers of the Federal and the state governments on such rights demand similar actions. To begin with, the status of non-indigenous minorities (whether they live concentrated or dispersed) is not well defined (I16). Their treatment, as it stands now, depends on the level of awareness and discretion of state authorities or informal negotiations within or among political parties.

As indicated in the preceding chapter, as it stands now, state-sponsored resettlement is confined to one's locality or state. Generally, the practice of interstate resettlement with its huge impact on mobility right is in bad shape. Because there is no comprehensive law that regulates

[98] While many of the state constitutions, as discussed earlier, are very explicit in this regard, few like the Afar Constitution are not so. The Afar Constitution (Art. 32) employs the phrase "ስርቶ ቀመኛር", meaning 'to engage in a means of livelihood', which of course can include holding public offices. Even if the latter interpretation is disputed, the same provision recognizes the primacy of Art. 32 of the Federal Constitution through a 'notwithstanding' clause.

resettlement, in some instances, the locals are alienated; in others, the settlers are abused. These all pose a threat to the federal system (I14).

Another worrying development is the discriminatory treatment of alleged illegal farming activities and settlements. The common trend is that if people engage in the same alleged illegal activity, while the indigenous are tolerated (or even encouraged to do so in some instances (I24)), the non-indigenous are evicted. These indicate the inadequacy of the laws and institutional protections in place (I20).

Discrimination is not limited to the way alleged illegal activities are treated but also in the way new demands are accommodated. If we take the example of the Benishangul/Gumuz State once again, there are residents who arrived in the State during the villagization programs of the military regime in the 1980s. Because of population increase, they have land shortages. However, there is reluctance to meet their demands for additional farming land in a State of relative land abundance (I23). The State authorities would happily accommodate such demands if they were to come from members of the indigenous nationalities. Thus, discrimination prevails even against those who spent their entire life in the State.

Furthermore, there are complaints that the main culprits of illegal evictions are not held accountable when attempts were made to establish legal accountability. For e.g., there was a zone administrator in the Benishangul/Gumuz State who was found to be guilty of evicting citizens illegally but he said he received orders from above which he believed were proper and he executed them (I26; I24). Nevertheless, none of the leaders at the State level was held accountable (I24).

It is obvious that some of the states have large unused arable lands. There is a need to reach a consensus as to how to use such lands. Are the states the sole decision makers on these lands[99]? Are they the only ones who should decide as to who can move into and use such lands? The content of the legal regime that governs such issues should be clearly defined and negotiated.

On the other hand, owing to deficiencies of controlling and regulating capacity, the population movements so far tend to be destructive to the environment. This threatens everyone but more so the indigenous communities who are more dependent on the environment. Some

[99] According to the 1995 FDRE Constitution, only the Federal Government should enact land laws. The states are expected to administer land according to the Federal land legislation. For details, see the eighth chapter.

indigenous nationalities meet their food, medicine, and even spiritual demands from the forest (I3; I6). The federal system should address the worry of such communities (I21). It is also imperative to note that some (though not majority) restrictions on mobility rights are driven by competition over dwindling resources. However, the restrictions on their turn discourage individuals that belong to the non-indigenous groups not to invest in the areas they work. The latter in its turn harms overall development in the states (I13).

Some of the interviewees blame the land policy for the problem in relation to mobility. They argue, had there been private ownership of land, the states could not have contemplated expelling settlers as it will be an outright illegal activity devoid of the mask of public interest (I6). However, whether the land policy defines the entire problem and changing that can solve all the problems in relation to mobility rights is doubtful. What is more important is the way forward.

9.5.2 Ways forward

Some scholars have already forwarded ideas that can definitely ease mobility-related challenges. According to Assefa (2012, 457):

> Primarily, the federal as well as the respective regional states should establish local government for self-rule where the indigenous groups are territorially grouped... Secondly, the regional state institutions at all levels should also reflect the diversity on the ground, albeit tilted in favor of the indigenous ethnic groups... Thirdly, in areas where indigenous ethnic groups are found to be territorially dispersed (which is the case in most parts of Benishangul Gumuz regional state), the federal and regional state governments should employ the notion of person-based federalism or a non-territorial form of cultural autonomy... Fourthly, these measures should also be complemented by 'cast iron' laws and institutions that ensure the rights of individuals to participate in the political process.

He adds that, citing Kymlicka, "[e]xperience from other federations with diverse societies like [that of Ethiopia] illustrates that ethno-nationalist groups should not be allowed to govern their own regional states unless a clear guarantee for minority rights is stipulated and enforced..." (Assefa 2012, 454).

Yonatan and Van Der Beken (2013, 41-46) forward related ideas. Accordingly, first there must be non-territorial protection which can take the form of 'bill of rights'. Second, territorial

state-level institutions should be complemented with non-territorial institutions. "This guaranteed representation can be further complemented with the right of non-indigenous internal minorities to veto decisions that impact upon their fundamental interests." (Yonatan and Van Der Beken 2013, 46). Third, the state governments should establish a multi-ethnic, and impliedly not a mono-ethnic, city administrations (Yonatan and Van Der Beken 2013, 47).

Assefa argues that 'the state-level institutions should reflect the diversity on the ground' although the overall balance should favor the indigenous groups. This is in line with the overall federal arrangement as it also considers the self-determination right of the indigenous groups. Yonatan and Van Der Beken's ideas are ideal to the non-indigenous groups but they are not so in addressing the concerns of the indigenous. Overall, the challenges identified in this chapter call for further investigation of the matter including looking into the relevant foreign experience.

Multinational federations cannot manage to curve out ethnically or culturally 'pure' constituent units (see Yonatan 2012, 79) although they are established with an apparent aim of accommodating territorially concentrated cultural diversities. Constituent-unit level diversity more often than not results in conflict of interests among cultural, ethnic, or national groups. Different mechanisms or a combination of mechanisms can be implemented to handle such conflicts. One is the Bill of Rights approach. According to this approach everyone, regardless of (identity-related) differences, is guaranteed the right to use his/her language and to practice his/her culture individually or in group (Yonatan 2012, 81). National majorities favor this approach (see Kymlicka 1998, 220). However, this approach has registered a minimal success in mediating conflicts of interests between minorities and majorities. First, it is a negative right that can be executed following the filing of individual complaints only (Pildes in Yonatan 2012, 82). It does not entrench the interests of cultural groups particularly the minority into the day-to-day administrative or political system. Resorting to adjudicative means to have one's right respected could obviously not be the preferred option. Members of a minority would find it far more convenient if their rights and interests were entrenched into the system, under which they function, from the outset. The Ethiopian situation, as discussed in this chapter, is a typical indicator that general bills of rights can help little in accommodating the interests of minority cultural groups. Had the rights been strictly implemented, some of the challenges could have been eased, of course. The absence of legal and institutional details accompanied by implementation-related problems worsens the situation of minorities.

The other common approach pursued to accommodate the interests of minorities is Territoriality. The multicultural or multinational federal idea generally depends on territorial accommodation of diverse groups, as discussed in the second chapter (see also Kymlicka 2007, 35). Indeed, territoriality can be a useful instrument to accommodate the interests of minorities that are territorially concentrated as it may enable them exercise self-rule in their territory and representation in higher levels. Self-rule may include, *inter alia*, deciding on local official language, local administration, education, and the local judiciary. For territorially dispersed groups, Non-Territorial Approach, a converse of the Territorial Approach, is suggested as a means to accommodate their interests (see Malloy *et al.* 2015, 7). This approach can allow territorially dispersed cultural groups exercise power on such issues as culture, language, and education (Malloy *et al.* 2015, 7).

Although they are helpful to address some of the concerns of minorities, both the Territorial and Non-Territorial Approaches have limitations. Territoriality assumes that there must be a right to internal secession. However, internal secession, even if constitutionally allowed as in the case of Ethiopia or Switzerland, could be time-consuming, unrealistic, or even undesirable solution to resort to whenever the rights of a minority are violated (see Yonatan 2012, 84). For some groups even if they are geographically concentrated, the Territorial Approach may still be of little help as they may be too small to have a viable territorial entity to exercise meaningful powers. The Non-Territorial Approach, on the other hand, may not enable minorities to have power over such important functions as administration, security, agriculture, and infrastructure. Powers in such areas cannot be exercised in isolation to a certain territory (Van Der Beken 2012, 304). Minorities, like the majority, would be interested to have a say if not control over all issues that affects them. This makes the Non-Territorial approach a not-so-strong option. A recent work by Malloy *et al.* (2015) shows that the Non-Territorial Approach, in its strongest version, can include self-governing. The presence of consultative bodies, political representation, and service institutions by and for the minority manifest this (Malloy *et al.* 2015). But this may not be always achievable. In the Ethiopian context, as the discussions in the forthcoming paragraphs indicate, implementing these kinds of arrangements requires consensus on some fundamental aspects of the Ethiopian Federation.

The third approach to minority interest accommodation could be to empower local governments to the extent that they enable minorities control all matters that concerns them

substantially. For example, local governments could be empowered to control such issues as culture and language, finance, security, and infrastructure. This approach is applicable to minorities that are geographically concentrated. Empowering local governments to the extent that they enable minorities control all important matters may not, however, be practically possible. This is because in most federations powers are essentially divided between the federal government and the constituent unit governments. Constituent unit governments may not be, therefore, willing to allow local governments to be in charge of 'important' powers such as security and finance. The constituent unit governments may consider empowering local governments as a zero-sum game that takes constituent unit governments' powers (Steytler in Yonatan 2012, 89). If a federal government intervenes in its constituent unit governments' affairs to empower local governments in order to accommodate minorities, such moves of the federal government may end up being or perceived unconstitutional. Thus, although local governments may be geared towards accommodating the interest of minorities, they may fail to be viable options for lack of enough competences or owing to the resistance of the constituent unit governments.

Yonatan (2012, 90) suggests the adoption of "...a constitutional framework that guarantees some measure of accommodation to internal minorities..." as the most feasible option. This writer concurs with Yonatan's suggestion. According to this approach, every cultural group is granted a share of powers including representation in the collective decision-making process at the constituent unit level. However, although dispersed minorities may be happy with this approach, geographically concentrated indigenous minorities may see it as a threat to their powers and the survival of their language(s) and culture(s) owing to domination by non-indigenous groups who are sharing power with the indigenous at the constituent unit level. This is particularly a highly likely scenario when the non-indigenous minority belongs to a culturally/linguistically dominant group at the country level.

In the Ethiopian context, all the approaches have relevance to accommodate certain interests of minorities. However, none of them is sufficient to address the fears and interests discussed in this chapter unless accompanied by a fundamental consensus about the nature of the Ethiopian state that is sought to be (re)built by the federal system of governance. The preamble and other relevant provisions of the Ethiopian Constitution including Articles 8 and 39 indicate that Ethiopia will not only tolerate but also promote its diversity. This makes Ethiopia a political

nation and not a cultural (mono-national) state[100]. It is suggested that any measure that aims at balancing mobility and self-determination right in Ethiopia should have the constitutionally sanctioned multicultural nature of the country as its point of departure.

As discussed in the next chapter, no language group in Ethiopia makes an absolute majority. Compared to the total population of the country every group is a minority. Thus, when one talks about majority/minority dichotomy in the Ethiopian context, it is only in relative terms. Location and context makes a group a minority or a majority. Nevertheless, the Amharic language is elevated to a majority status since it is recognized as the only working language of the Federal Government. The status enjoyed by Amharic in Ethiopia is more privileged than the other local languages or the official languages in other multinational federations. For example, in India, Hindi shares the official status at the federal level with English and English in Canada shares the official status at the federal level with French. On issues of culture and language, the approach followed by the Federal Government in Ethiopia highly affects the approach followed at the state level.

If the federation recognizes only one language as its working language, fearing that the one recognized at the federal level may dominate their language, the states may be forced to jealously guard the uncontested sole official status of the dominant language at the state level. This may include forcing speakers of the working language at the federal level to assimilate to a state's working language if they choose to reside in the state. The trend in such states as Oromia, Somali, and Harari indicates so. The discussions in chapter ten further indicate that the SNNP, Benishangul/Gumuz, and Gambella states adopted Amharic as their working language for arguably pragmatic reasons. Nevertheless, in terms of accommodating the non-indigenous groups, these states are not different. In fact, many of the mobility-rights-related controversies arose in these states. Because of the fear of domination by the non-indigenous, the latter states have limited the political participation of the non-indigenous groups to a negligible level despite the fact that the non-indigenous may be competent in the state working language. This indicates

[100] A political state is a state that guarantees equal protection to all citizens regardless of differences in language, ethnicity, or religion (Linder and Steffen 2006, 7). A cultural state, on the other hand, is based on the idea of mono-culturality (Linder and Steffen 2006, 8). A mono-cultural state promotes only a certain language and culture and it discriminates those who do not share the officially sanctioned ('authentic') language and culture (Linder and Steffen, 8). Cultural nation may work when there is language and cultural homogeneity. It is unsuitable for diverse countries like Ethiopia.

that addressing the language policy problem, as discussed in the next chapter, should be an integral part of addressing the challenges surrounding mobility and self-determination rights.

Experiences on accommodating minorities differ from a country to another. Of course, the challenges also vary from a country to another. In the Canadian experience, the Quebecoise fear domination by the English-speaking majority. In 1977, the Parti Québécois government of Quebec enacted the famous Bill 101. The Bill included provisions that promoted the use of the French language and that limited the use of the English language simultaneously (see Yonatan 2012, 81). Section 58 of this Bill restricted the public use of commercial signs that are not written in French in Quebec. Section 69 obliged firms functioning in Quebec to use their French names only. Section 73 limited English language instruction to the children of English-speaking parents in Quebec only. This provision obliged English speaking parents that are not from Quebec or parents of other language groups to send their children to schools that instruct in French.

The Constitutionality of Bill 101 was challenged by many decisions of the Canadian Supreme court (for details on cases, see Kelly 2012). For example, in *Ford v. Quebec* (1988), Section 58 of the Bill was found to be unconstitutional. The Court ruled that as far as the French text is 'dominant' public commercial signs could be written in French and other languages (Kelly 2012, 2). In *Quebec v. Protestant School Boards* (1984), the Supreme Court found that restricting school instruction in the English language to the children of Anglophones in Quebec only was against minority rights and hence unconstitutional (Kelly 2012, 13). Although Quebec did not comply with many of the decisions of the Supreme Court and Quebec used to enact new language bills that countered the decisions of the Supreme Court, it can be observed that language laws of Quebec were subjected to the scrutiny of the Canadian Supreme Court. The French language, along with English, is recognized as an official language of the institutions of the Federal Government of Canada (Ricento 2013, 4). Despite this, bills that limited the use of English and other languages in Quebec has been enacted by Quebec. One can imagine how more restrictive Quebec would have been had the French language not been recognized as official language of the Federal Government.

In Switzerland, the Federal Government recognizes all the indigenous languages of the country as national and official. Romansh, which is spoken by less than 1% of the total population, is recognized as official as far as the communication is between the Swiss Federal

Government and a Romansh speaker. However, language related issues and decisions at the constituent unit (cantonal) level is left to the cantons (Linder and Steffen 2006, 16). Majority of the cantons are monolingual and they are at liberty to impose their language on any one who decides to reside in them (Linder and Steffen 2006, 16).

Considering the Swiss experience, it may be argued that the Ethiopian states can impose their working languages on anyone who moves to their territory even if the state language(s) is (are) recognized as official language(s) of the Federal Government. Considering the Canadian case, they may not be allowed to completely restrict the use of 'others" languages for public purposes in their territory but they can legitimately claim for the recognition of the state language as the working language of the Federal Government.

The distinct features of the Ethiopian federation make it harder to follow fully either the Canadian or the Swiss example in addressing the concerns of minorities. Unlike both countries, Ethiopia has no absolute majority cultural group. Secondly, different from Switzerland, Ethiopia, although it facially looks like a coming together federation, in real sense it is more of a holding-together federation. There are people who moved *en masse* to different territories of the country before the advent of the federal system. To destine such people to either a complete assimilation with the indigenous groups or eternal marginalization from political power in their areas of residence cannot certainly result in a stable federal system. On the other hand, failing to appreciate the fears and interests of the indigenous is equally dangerous.

Kymlicka (1998) articulates the plights of indigenous minorities and the insensitivity of the majority almost everywhere. He argues that the majority follows double standards when the concerns of the minority are at stake (see Kymlicka 1998, 220). Kymlicka questions why the majority sensitively defends their language and culture from outside domination by taking measures that limit incidents that can negatively influence the dominance of their language and culture such as immigration and they consider it against human rights when a minority tries to defend its language and culture in the same manner. "The majority... has no desire to be overrun and outnumbered by settlers from another culture" (Kymlicka 1998, 220). The minority has exactly the same fears and interests as the majority; he concludes (Kymlicka 1998, 220). As the majority defends its language and culture by limiting immigration or settlements, Kymlicka argues, the minorities can defend their language and culture by taking different measures that may include designing stringent residency requirements, reserving certain lands to an exclusive

use of the indigenous minority, forcing newcomers to assimilate to the local language etc. (Kymlicka 1998, 219-220). Kymlicka's arguments remind us that the interests of minorities should be taken seriously. However, this writer argues, in the Ethiopian case Kymlicka's suggestions are not necessarily the ones that should be pursued. In other words, instead of resorting to restrictive approaches, it is more sustainable and less tense to pursue accommodative approaches both at the local and higher levels of governments.

The starting point could probably be for the Federal Government to work to create a consensus that the state boundaries are administrative boundaries and not a fence to prohibit others from accessing land and other natural resources (I6). This, of course, calls for an open engagement by both levels of governments. The other possible instrument is strengthening IGR in general and particularly horizontal IGR (I16).

Ethiopia is a country where some parts of it are overgrazed, over-farmed, and depleted and some parts of it are untapped and underutilized. To bring about sustainable and balanced development, an orderly mechanism to rehabilitate the depleted environment and to utilize the untapped resources should be introduced. Achieving this will obviously call for increased movement of people. Thus, the Federal Government should develop a legal regime that regulates interstate resettlement. Moreover, until development comes about and economic transformation is achieved, a law that protects those whose livelihood entirely depends on natural resources should also be developed by the Federal Government (I3).

Another important area of engagement is defining affirmative action adequately. For e.g., in the Canadian case affirmative action (discriminatory privileges) can be given to people in a certain province provided that they are economically and socially less advantaged and provided that the rate of employment in that province is less than the average employment rate in Canada. However, affirmative action should not be left undefined as they may be abused for unproductive and parochial purposes. In the Ethiopian case, detailed regulation of affirmative action is lacking. When and under what conditions should an affirmative action be given should be adequately defined. For e.g., in the case of Benishangul/Gumuz State, those who belong to the indigenous group get priority over investment land allocations[101]. However, there is no detail when and under what condition will they get this right. It is like a blank check for the State authorities. Thus, the Federal Government should regulate this area, as well.

[101] For further details on this issue, see chapter eight.

It cannot be emphasized enough that balancing the interests of the relative minorities and majorities in the Ethiopian context requires the enactment of a law by the HPR. Alternatively, the Constitution may be amended so as to include detailed provisions on the issues. Such legislation or amendment should consider the following points:

- The extent of the powers of the states to exclude citizens that are competent in the working language of the concerned state should be legally addressed. Languages and cultures or the general manifestations of identity (that qualify a group as a nation, nationality, or people) are the focus of group right protection. In that case, there is no theoretical reason to exclude a citizen based on other identity issues such as ethnic origin as far as he/she is culturally/linguistically competent, as also discussed in the third chapter. In situations where there is no threat to the local culture, local language, and political participation of the indigenous, in principle, all citizens should have equal right including equal (democratic) chance to hold public offices. The consociational model can be used to share powers.
- The discussions in the third chapter indicate that the non-indigenous groups are not completely excluded from political power. However, as it is now, the power-sharing deals are concluded through party channels out of the reach of law or democratic deliberations. They are not consociational arrangements either because the representation does not reflect the demographic reality on the ground. The current party-level arrangements should not be considered as precedents having a binding effect. The party-level arrangements should be, instead, replaced by legal arrangements.
- Notwithstanding the foregoing paragraphs, we saw that the interests and fears of the indigenous makes democracy (majority rule) alone not a feasible way out. When, for example, certain conditions such as lower employment rate or higher poverty level (compared to the country average or the average among the non-indigenous groups) is observed among the indigenous groups, the legislation should leave a regulated room for the sates to reserve resources and opportunities that compensate the unfavorable conditions of the indigenous. Such compensatory measures should remain effective only until the reasons for the unfavorable condition cease to exist.

- On certain group rights, such as the right to secession, only the indigenous groups may have the right to vote. However, the legislation should also address who is indigenous and who is not.
- Even if the states may have to adopt multilingualism (which is highly likely if the Federal Government does so first), in some places, they may maintain official status to indigenous groups' languages only, at the local levels. This coupled with an accommodative language policy at the state and federal levels guarantees equality of cultural groups. For those languages that can still be vulnerable to domination owing to less number of speakers, the states may allocate certain resources to encourage the use and development of such languages.
- The law should define interstate settlement of people considering the foregoing points. If the foregoing safeguards are properly included, the legislation should ensure that the democratic path albeit in its consociational form should be pursued. After all, multicultural governance systems are designed to ensure equality both at individual and at group levels and not to shield individuals or groups from fair competition by fellow citizens.

9.6 *Chapter summary*

In Ethiopia, both the federal Constitution and the state constitutions recognize mobility rights. They also recognize self-determination rights. However, they fail to define what mobility right entails and the possible limits thereof. Moreover, there are no details in either the constitutions or the other laws as to how to balance mobility-related and self-determination-related rights. Some state constitutions like that of Gambella and Benishangul/Gumuz give 'ownership' of the state to some nationalities only or in the case of Oromia only to the Oromo nation. However, even in these Constitutions, the right of every citizen to travel, choose a livelihood, and own property within these states is explicitly recognized. The state constitutions further recognize that any Ethiopian can take a civil service or a political position in the state concerned as far as he/she speaks the working language of that state. Moreover, the different treatment the nation/nationality named in the Constitution receives is not defined in any of these Constitutions.

Considering the constitutions and procedural issues, both the Federal and the state governments have a role to play in handling disputes over mobility rights. However, the discussions in this chapter indicate that the Federal Government should have the prime law-making responsibility in the areas of mobility and self-determination as the latter are basic rights as per the Constitution.

The practice indicates that many challenges have been witnessed regarding mobility right. The data from the interviews indicate that the indigenous aspire to dominate their 'home' states in all aspects regardless of demography and other factors. On the other hand, the settlers tend to not accept restrictions on their political rights or the right to move and own property anywhere in the country. More importantly, there are practical challenges that revolve around illegal settlements and illegal eviction of people. In relation to illegal settlements, illegal land sales and purchases, deforestation, and unregulated mass movements have been witnessed. Such settlements, the indigenous argue, result in extractive, shortsighted, and destructive utilization of resources. On the other hand, illegal evictions of people from areas they settled for years, illegal confiscation of properties, and restrictions on movement of people who were supposed not to 'belong' to a certain area had been witnessed in some states of the Ethiopian Federation. Weak controlling and administrative capacity of the states and corruption further complicate the challenges. The presence of illegal evictions and limits on mobility related rights suggest that centrifugal tendencies are prevalent.

Scholars have suggested some mechanisms that help reduce mobility related challenges. Accordingly, the Federal Government should devise a means that ensures the representation of the non-indigenous groups in local governments (when they are concentrated), in all state institutions and administrative levels (although the overall balance should favor the locals), and through non-territorial institutions. In this chapter, it is argued, balancing mobility and self-determination rights calls for more robust measures (than the ones suggested by the authors mentioned in this work) to be taken. Among such actions, the Federal Government should enact a law or work for a constitutional amendment. The law or the amendment should address, among others:

- The extent of the powers of the states to limit mobility and representation rights of the non-indigenous;

- Power-sharing arrangement at the state level; it should particularly focus on bringing the current party-level (political) arrangements to legal channels;
- Comprehensively define affirmative action and the condition that warrant its implementation;
- Language policy challenges both at the state and federal levels (comprehensively approach the matter); and
- Interstate resettlement of people.

The next chapter deals with language policy and the mandate of the Federal Government in this regard. A policy option that helps mitigate the challenges on the existing language policy, identified in the chapter, is suggested. The suggested policy option is believed to create a favorable ground for the development of openness to 'others" languages and cultures at the state level. The latter situation, in its turn, creates a favorable ground to address the challenges related to mobility rights.

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I3 (Atkilt Daniel, UNDP conflict prevention advisor at the Ministry of Federal Affairs, Addis Ababa, 31/07/2015)

I6 (Anonymous, former judge and currently an academic and a lawyer, Gondar, 07/08/2015)

I13 (Tesfaselassie Mezegebe, Conflict Early Warning and Rapid Response Directorate Director, Ministry of Federal Affairs, Addis Ababa, 19/08/2015)

I14 (Chanie Gebeyehu, IGR and Federalism Teaching Director, Ministry of Federal Affairs, Addis Ababa, 21/08/2015)

I16 (Sisay Melese, Conflict Resolution Director General, Ministry of Federal Affairs, Addis Ababa, 25/08/2015)

I20 (Lema Megersa, former Speaker, Oromia State Council, Addis Ababa, 03/09/2015)

I21 (Yared Bantyedagne, Ensuring Nationalities' Rights and Creating Constitutional Awareness, Core Process Head, SNNP State Nationalities Council, Hawassa, 15/09/2015)

I22 (Belayneh Bekele, Commander, Crime and Traffic Accident Prevention Core Process Head, SNNP State Police Commission, Hawassa, 14/09/2015)

I23 (Belay Wodisha, Commissioner, Ethics and Anti-Corruption Commission, Benishangul/Gumuz State, Assosa, 22/09/2015)

I24 (Anonymous, senior official in a state police commission, Assosa, 24/09/2015)

I25 (Tatek Alemayehu, process owner, Benishangul/Gumuz State Police Commission, Assosa 24/09/2015)

I26 (Ashu Dugaz Agie, chair, Budget and Finance Standing Committee, Benishangul/Gumuz State Council, Assosa, 24/09/2015)

I27 (Abdela Shehedin, member, Benishangul/Gumuz State Council, Assosa, 28/09/2015)

Chapter Ten: The Federal Deficit (Centripetal Tendency) of the 1995 Ethiopian Constitution on Language Policy

10.1 Introduction

In the preceding chapters, the discussions focus on comparing the law and the practice of vertical division of political power in the Ethiopian Federation. Thus, the analyses revolve around the relevant constitutional provisions and other laws on one hand and the practice on the other hand. Unlike these chapters, the focus here is the nature of the current language policy as it appears in the law because, it is argued, the problem around language policy is more related to the constitutional position rather than to the practice. We saw, in the preceding chapter, that establishing a state of balanced and accommodative division of political power at all levels, particularly in the states, is highly linked to the nature of the language policy pursued by the Federal Government. Thus, the link between the prevalence of centripetal tendencies in the area of culture and the presence of a sense of (cultural) marginalization, at least in some parts of the country, and the language policy of the Federal Government will be the focal points of the discussions in this chapter. The findings heavily depend on comparison with foreign jurisdictions. Nonetheless, even here some practical issues will be raised. The latter is done because there still is a gap between the law and the practice. There is, of course, room for discussing the language policy choices at the state level, too. However, the focus will be on the policy at the federal level as most of the policies pursued at the state level are a replica of the policy followed by the Federal Government. With the exception of the Harari State, the states have opted for the adoption of a single working[102] language regardless of internal diversity

[102] Anyone who writes about an issue of language policy will almost certainly come across three phrases: national language, official language, and working language. The meaning given to these phrases differs from one author to another, from one constitution to another, and from one context to another. The Swiss Constitution distinguishes national languages from official languages (see Arts. 4 and 70 of the 1999 Constitution). Accordingly, all the Swiss languages are national and the three major languages are official. The fourth language spoken by the numerical minority, Romansh, is official as far as the communication is between the Swiss Federal Government and a person that speaks Romansh. National language in the Swiss context implies the recognition and respect extended to all the indigenous Swiss languages. Official language is about practicability of use and hence it is about the working language. In the Indian Constitution, only the term official language is used (see Art. 343 of the 1950 Constitution). Since the Indian Constitution recognizes only English and Hindi as official languages, it can be seen that official language in the Indian context is about practicability of use and hence it is about working language. Otherwise, other languages of the country are recognized and respected, too. The list in the Eighth Schedule, which has been expanding from time to time, is evidence to that effect. The Ethiopian Constitution uses the term 'working language' only (see Art. 5 of the 1995 Constitution). However, the Constitution also recognizes the equality of all Ethiopian languages. In the latter sense, all Ethiopian languages are national as they all are given equal state respect and

similar to the Federal Government. Therefore, dealing with the defects at the federal level is, in a way, dealing with the defects at the state level.

The key argument of this chapter is that the language policy of the Federal Government of Ethiopia is not in line with the raison d'être of the federal system. We saw in the preliminary chapters that accommodation of national diversity and extending equal treatment to all previously denigrated languages and cultures was at the heart of the armed struggle that preceded the unfolding of the Federal System. Nonetheless, Ethiopian languages do not yet enjoy equal treatment in the law and the practice. One of the reasons is the centripetal approach followed by the Constitution. Regardless of the recognition of the equal right of different groups and languages by the 1995 Constitution and despite the fact that the country has dozens of languages that are spoken by millions of people, Amharic remains the sole working language of the Federal Government.

This is unprecedented in other multinational federations. In multinational federations, the Federal Government speaks diverse languages to reflect the reality on the ground. However, this is not the case in Ethiopia. This calls for an appraisal of the matter in the context of division of power. Should the Federal Government have been so much empowered that it may use a single language as its working language and force the constituent units to use only that language to communicate with it? What is the impact of this policy on the equality of the national groups of Ethiopia and future stability of the Ethiopian Federation and indirectly the power division arrangement?

To answer the preceding questions, the second section of this chapter deals with language policy[103] approaches. The third section deals with the historical context of Ethiopia's language policy. The fourth section deals with the relevant foreign experience. The fifth section deals with the Ethiopian language policy since the commencement of the federal system. The sixth section

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recognition. Working language in the Ethiopian Constitution is, therefore, an equivalent of official language in the Swiss or Indian constitutions. For multinational organizations, such as the African Union or the United Nations, the term national language may not apply. These are not national organizations. They are multinational or international. Such organizations may have a list of official languages. However, they may not use all the official languages for daily purposes. They may use some of the official languages only as working languages. Thus, in the context of international organizations, official language and working language may have different meanings. Generally, the crux of the matter is not whether a constitution uses one or the other phrase or not. It is whether a certain language is recognized, represented, protected, and respected. In the context of this work, all indigenous languages of a country that are listed or generically recognized by a constitution are assumed to be national. Official language and working language are assumed to represent the same thing and, hence, synonymous as far as a single country is concerned.

[103] For this chapter, a language policy is the official stance of a government at different levels on the recognition, use, protection, and development of a language spoken within its jurisdiction.

deals with the possible ways to correct the 'federal deficit' on the working language policy. A chapter summary is provided at the end.

10.2 An overview of language policy approaches

Patten (2001) identifies four possible language policy approaches. The first approach to the language-recognition problem could be 'disestablishment/public disengagement'. This approach is also called 'hands-off' or 'benign neglect' approach (Kymlicka and Patten 2003, 10). According to this approach, a state should have no language policy and should remain neutral concerning language issues as it does in regard to people's right to practice the religion of their choosing (Patten 2001, 693). However, this approach is impractical, as decisions regarding communications in the public arena over such issues as education, health, media, and business have to be made. In other words, a state must use a language to communicate its decisions or reach the public and, hence, it cannot remain neutral on language policy issues. The decision to use one or another language makes neutrality impossible. Hence, in the words of Patten, this approach should be set aside as it does not offer any solution to the language-recognition problem.

The other approach is 'official multilingualism'. According to this approach, the state extends equal recognition to all languages spoken in its territory. Equal recognition is provided regardless of the variations in the number of speakers and their socio-economic status. In this case, the state is obliged to provide all services in all the languages spoken in its jurisdiction. This implies that a speech group has the right to claim all services (be it education, judiciary, administration, business or media) in the country to be provided in its language.

According to Patten (2001, 696-697), adopting 'official multilingualism' can have two benefits. First, the linguistic group whose language is recognized as official can satisfy their communication needs, enjoy respect and consideration by using their language (symbolic affiliation), and promote themselves as a certain speech group. Second, it serves as a wider tool to ensure equality by providing equal opportunities and recognition to the different languages.

The challenges associated with this approach are: (1) it is costly to implement. In countries where there are dozens of linguistic groups, implementation will be prohibitive; (2) it may have a negative impact on social cohesion and integration. The existence of diverse working languages reduces the motivation to learn others' languages. This results in less inter-group

communication thereby delaying integration or, in extreme cases, leading to separation where there are other accompanying social or economic injustices. Overall, this approach of language policy is not always practicable when it comes to its implementation. Given the vast number of languages spoken in the country and its economic status, this challenge is certainly applicable to Ethiopia. It is easier to implement it in countries with less linguistic diversity and better resources.

The third approach is 'language rationalization'. According to this approach, the state deliberately supports the use of a certain dominant language and it prohibits the use of all other languages in certain areas of language use. Here, the state seeks to create social convergence around a specified language. The emphasis in this approach is to create linguistic homogeneity in running the key areas of private and public affairs. This, however, does not mean that the state limits itself to the use of a single language. Patten (2001, 701) identifies the advantages and disadvantages of 'language rationalization'. The advantages are social mobility, democratic deliberation, developing a common identity and efficiency. The main disadvantage of this approach is its inherently suppressive nature. It is against the equal treatment of speech groups. It does not also necessarily follow that rationalization is the only way or is always helpful to achieve social mobility, democratic deliberation, or develop common identity (Patten 2001, 702).

Historically, different empires had imposed their languages on other peoples. Such impositions resulted in, on the one hand, the development of a common dominant language, helpful in running international affairs and, on the other hand, much trauma by denying peoples the right to use and develop their languages. The latter in its turn affects peoples capacity to exploit (fully) their potentials. This is because language use has a direct relationship with one's sense of self and respect (Ghelawdewos 2012, 2). With no sense of self and respect, it is near to impossible to exploit one's potential.

One may conclude, therefore, that since 'language rationalization' denies equal rights to different languages, it is not a viable option in modern times. However, in situations where there are large numbers of speech groups in a country and all universally reject the languages, the state may have no option but to introduce some alien language and officially encourage its use, even though it may not necessarily ban the use of local languages in all language spheres. This can be done directly through laws or indirectly by attaching certain benefits to the speakers of the dominant language. At this moment, Amharic, a mother tongue of one of the national groups, is

the only working language of the Federal Government of Ethiopia despite the claim that the country follows 'official multilingualism'[104]. Thus, this approach is relevant to the current language policy.

The final approach is 'language maintenance'. This approach was originally concerned about the behavior of a certain language group towards their language when they come into a contact with other language group(s) i.e. to inquire why others converge towards their language while others diverge from it (see Fishman 1964) and the study was traditionally approached from a psychological perspective (see Giles and Johnson 1987). Despite this background, when the concept is applied to the context of state policy towards a language, 'language maintenance' becomes the primary instrument to sustain a vulnerable language. According to Patten (2001, 16), "[u]nder such a policy, the more vulnerable language is given fuller public recognition than the more secure one, as a way of signaling to people that the vulnerable language is worth learning and using on a regular basis."

A language policy based on the 'language maintenance' approach encourages the use of minority languages. This in its turn helps, though not guarantees, the survival of such languages because the survival of a language is dependent on many other factors including the economic importance of the language, the fertility rate in the community that speaks the language, and the choice of language for education by the concerned community, among others. Currently, the Ethiopian language policy encourages the use of mother tongue; at least, for primary education and local administration, hence, this approach is relevant to the Ethiopian situation, too. One can observe an intricate interplay of aspects of all the above-mentioned language policy approaches in today's Ethiopia.

10.3 The historical context of Ethiopia's language policy

10.3.1 The imperial era

The foundations of the modern Ethiopian state are attributed to the early Aksumite Civilization that flourished from about 100 B.C. to 1000 A.D. in the present highlands of Tigray State. The Aksumite Civilization began to gradually decline in the seventh century A.D. culminating in its downfall around 1000 A.D. The emergence and expansion of Islam, the invasion of the port of Adulis and trade routes in the red sea area by the Arabian people from the

[104] For details, see the later discussion on 'current Ethiopian language policy'.

north, and the loss of its vast territories in the Arabian Peninsula are believed to be the reasons for its downfall (Aregawi 2004, 243). The Aksumite Civilization, however, left many legacies. Among such legacies was a language with its unique scripts called the "Fidel" and numerals called the "Kutir". The language of the Aksumites called the Ge'ez belongs to the Semitic language group. Ge'ez is no longer used in the public domain in present-day Ethiopia, even though it survives as the main language of the Ethiopian Orthodox Church. Such Semitic languages of Ethiopia as Amharic, Tigrinya, Guragigna, Harari, and Argoba are the descendants of the Ge'ez language. They all use the Ge'ez script.

Following the decline of the Aksumite civilization, many other civilizations prospered. Lalibella and Gondar are the ones that had direct linguistic, religious, and cultural connections with the Aksumite Empire. The Ge'ez language was used as a written language in both civilizations. From 1760 to1855, the state experienced a time of complete anarchy called the "Zemene-Mesafint" or 'era of the lords' where central power was completely replaced by warring regional lords. However, no change was witnessed to the primary status of the Ge'ez language. In 1855, a man from Gondar by the name Kassa Hailu (later emperor Tewodros II) created something akin to a unified state by defeating the then regional lords. Among the changes introduced by Tewodros was the beginning of the use of the Amharic language in the recording of official documents (see Záhořík and Wondwosen 2009, 84). This gave Amharic the *de facto* status of an official language.

Following the death of Tewodros in 1868, Kassa Mircha, a Tigrayan, became emperor Yohannes IV of Ethiopia. Yohannes did not introduce any change to the status of Amharic perhaps for the sake of preventing language-inspired conflicts. After the death of Yohannes in 1889 while fighting the Mahdists (Dirbush) in Metema (North West Ethiopia), power shifted further south where Menelik II of Shoa became the Emperor of Ethiopia. Menelik expanded the empire by conquering neighboring peoples to the south of the traditional Abyssinian polity. The people of the conquered areas were forced to adopt the language and religion of the conquerors (see Alemseged 2004, 595). To make things worse, Amharic was imposed as the *de facto* sole official language of the empire even in Tigray- the historic core component of the Abyssinian Empire- forcing the people to not use their language for official purposes.

Without any legal justification, Amharic continued to be imposed on the people of the Empire during the times of Lij (Prince) Iyassu and Empress Zewditu who ruled after emperor

Menelik's death in 1913. Emperor Haileselassie took control of government power following the death of empress Zewditu in 1930. Haileselassie imposed the first modern Constitution on Ethiopia in 1931. The Constitution legitimized the absolute power of the emperor (see Art. 5) but it did not say anything regarding language. In practice, the use of the Amharic language in all the public sectors was comparable to the absolute powers given to the Emperor by the Constitution. The medium of educational instruction all over Ethiopia under Haileselassie was only Amharic and English. Amharic was the only Ethiopian language that was offered as a subject in schools. The judiciary used only Amharic at all levels and it was the sole language of Administration at all national, provincial, and sub-provincial levels (Getachew and Derib 2006, 44).

Emperor Haileselassie introduced a second Constitution in 1955. The reasons for so doing were to: (1) introduce some reforms, (2) facilitate a federation with Eritrea that had a more liberal Constitution at the time, and (3) give off a modern image to the country (Kassahun 2007, 16-17). The Constitution affirmed the absolute power of the emperor (Article 4) and the absolute privilege given to the Amharic language. Article 125 declares, "The official language of the empire is Amharic". Amharic language was also imposed in the partially autonomous region of Eritrea, which joined Ethiopia through the decision of the United Nations in a federal arrangement whereby Eritrea was allowed to use Tigrigna and Arabic for running its affairs (see Africa Watch 1993). It was the only language of the institutions of administration, education, judiciary, and media (Záhořík and Wondwosen 2009, 87). Thus, 'language rationalization' guided the language policy of Ethiopia during the imperial era.

Owing to the then prevailing socio-economic injustices (discriminatory language policy being one of the main ones), different national groups began to fight the central government for equality, justice, and self-determination. The uprisings and armed resistance in Tigray (in 1943 and from 1974-1991 respectively), the uprisings in Bale (1963-68), and the civil war in Eritrea (1961-1991) were inspired, *inter alia*, by the then prevailing language inequality, which is a manifestation of cultural oppression. In 1974, the resistance against the imperial rule from all corners of the society reached its peak. In addition to the different uprisings in different regions of the country, urban dwellers, taxi drivers, and university students contributed to the downfall of the emperor and the imperial regime once and for good. Despite the fact that the resistance against the imperial regime came from all sections of the society, the only organized force in the

country was the military. Hence, part of the military hijacked the revolution and seized monopoly control of the post-imperial state (Young 1998, 192).

10.3.2 The era of the military regime or the Derg

The military regime, commonly called the Derg, promised changes in many aspects when it seized power. Among those were issues related to land reforms, self-determination, and the equality of ethnic groups, cultures, and languages. Apart from reforming land ownership from which the Derg managed to gain some popular support, the regime evolved into a brutal dictatorship and it can be said that few or none of the promised rights and freedoms did come true (Assefa 2010, 33-34). Despite this, towards its end (in the 1987 Constitution), the Derg introduced a liberal stance on language policy when compared to that of the 1955 Imperial Constitution. Accordingly, apart from recognizing the equality of languages in the Constitution (Art. 2(5)), the Derg took some actions that positively influenced the use of other languages in the country. The most significant was the national literacy campaign where other Ethiopian languages were used for educational purposes for the first time (Getachew and Derib 2006, 47). According to McNabb in Getachew and Derib (2006, 47), fifteen languages were used for conducting the campaign: They were Amharic, Afan Oromo, Wolayta, Somali, Hadiya, Kembata, Tigrinya, Tigre, Sidama, Gedeo, Afar, Kafa-Mochinga, Saho, Kunama, and Silti.

This move was not only new but extraordinary in that it embraced almost all the major languages of Ethiopia. Moreover, under the Derg, the state-owned Radio Ethiopia began broadcasting in the Tigrinya, Tigre, Somali, and Afar languages (Smith 2008, 219). On the other hand, all the texts for the literacy campaign were prepared only in the Ge'ez script. Moreover, the broadcast time remained ever dominated by Amharic. Overall, the Derg pursued the same Language Rationalization approach as pursued by the earlier imperial regime. Amharic remained the sole language of formal education. Amharic was the only language used in all administrative levels including in the lowest level i.e. the *Kebele*. Amharic remained the sole language of the judiciary. The incorporation of other languages in broadcast media or the literacy campaign was not, therefore, a genuine attempt to redefine the nature of the sate and to embrace diversity (see Smith 2008, 219).

The civil wars that ravaged the country in the era of the Derg further intensified the resentments around the use of language. This is because the Derg became identified with the

Amhara (hence with the Amharic language) and the insurgents were identified with a certain national group that speaks a distinct language. The TPLF and the EPLF in Tigray and Eritrea respectively, for example, were predominantly Tigrinya speakers, and they effectively used the language issue to mobilize the people to intensify the fight against the Derg (see Aregawi 2004, 583-584).

10.4 The experience of other federations

Under this section, the language policy experiences of Nigeria, India, and Switzerland are examined. These countries are selected based on their similarities to Ethiopia in terms of diversity and their experiences on the subject matter. Nigeria and India are linguistically diverse and developing countries like Ethiopia but they have different language policies and, arguably, longer engagements with the issue. Switzerland is one of the developed countries and it is considered as one of the models of accommodating diversity particularly language diversity. Hence, their experiences are relevant to Ethiopia.

10.4.1 Nigeria

Nigeria is one of the ethno-linguistically diverse African countries, a factor largely attributable to its colonial legacy. The country was formed in 1914 by merging the then three West African British protectorates (Akinnaso 1991, 30). Each protectorate comprised many ethnic groups speaking diverse languages. It is believed that about 500 indigenous languages are spoken in Nigeria (Owolabi and Dada 2012, 1676). Until independence in 1960, English was the major language used for official purposes. After independence, the newly created country had to develop a language policy that would ensure the running of its affairs smoothly within a vast diversity. The move was towards recognizing multilingualism.

Nigeria adopted English and the three languages spoken by the three most populous groups namely Yorba, Ibo, and Hausa as official languages (Adegbija 2004, 183). The reason for adopting English as an official language was, besides lack of agreement among the speakers of the three dominant Nigerian languages, the embedded nature of English into the Nigerian public life. English has been the dominant language of institutions of government, literature, and education (Ogunmodimu 2015, 157). If Nigeria continues to be united, the use of English as a language of countrywide communication continues to be inescapable as none of the other

indigenous languages can serve that purpose (Ogunmodimu 2015, 157). Thus, recognizing English as official language has helped maintain the unity of the country.

The three indigenous languages were introduced as official languages in an effort to create a sense of national cohesion by encouraging linguistic convergence along the dominant languages. This sentiment is reflected in the 2004 national education policy document (see Adebile 2011). For education purposes, mother tongue or immediate-community languages are expected to be used as instruction languages at the beginning of elementary school years. English is expected to take that role in later primary education years. Nevertheless, many parents prefer English as a medium of instruction for their children from the very first day of schooling and the policy of the government is not strictly adhered to (Owolabi and Dada 2012, 1678).

Some challenges are noticeable in the language policy of Nigeria. First, the recognition of the three indigenous languages as official did not result in any convergence around the three languages, as they remain regional languages (Adegbija 2004, 184). Second, the absence of strict implementation of mother tongue education in elementary schools is affecting the development of the local languages and the linguistic competence of students both in their mother tongues and in English as fluency in one language (the mother tongue) is considered to be an essential requirement for competence in additional languages (Owolabi and Dada 2012, 1684).

In conclusion, the privileges extended to the Nigerian languages are practically different; English- the inherited colonial language- is the most privileged followed by the three indigenous official languages and the regional languages respectively. The minority local languages are the least privileged. It is claimed that the indigenous languages of Nigeria are suppressed heavily due to the increasingly dominant role played by English and the preference of the privileged elites to use it (Bamgbose 2000, 2). Regardless of its defects, the language policy pursued by Nigeria is a helpful experience to look at when designing a language policy for such diverse countries as Ethiopia.

10.4.2 India

India is one of the most, if not the most, linguistically diverse countries with over 1600 languages spoken at the level of a mother tongue (Bhattacharyya 2007, 5). India experienced colonial rule under the British Empire for about three hundred years until its independence in 1947. Hence, the language policy discourse in India is highly connected with its colonial legacy

as in the case of Nigeria. During the colonial era, English was used as the principal language of administration both at the national level and in the regions.

In 1950, India adopted Hindi as the official language of the Union but as a result of resistance from the non-Hindi languages speakers, English was adopted as an additional official language, though with a subsidiary role in 1963 (Dua 1993, 304). Additionally, India extends a symbolic recognition to twenty-two of its languages by putting them under a schedule (see Schedule Eight of the Indian Constitution). The language use in the education policy of India affirms the privileged status given to English and Hindi. The policy is based on a three-language strategy. According to National Council of Educational Research and Training (2006, 13), the policy which was adopted in 1968 states:

- The First language to be studied must be the mother tongue or the regional language.
- The Second language:

- In Hindi speaking States, the second language will be some other modern Indian language or English, and

- In non-Hindi speaking States, the second language will be Hindi or English.

- The Third language:

- In Hindi speaking States, the third language will be English or a modern Indian language not studied as the second language, and

- In non-Hindi speaking States, the third language will be English or a modern Indian language not studied as the second language.

Implementing this policy was expected to expose people to multilingualism from an early age and to make them fluent in at least three languages as adults. However, in some states the result has been fluency in only two languages as people simply studied their mother tongue and English (see National Council of Educational Research and Training 2006, 13).

Parliamentary deliberations at the national level use Hindi though anyone who does not speak Hindi may use his or her own mother tongue. On the other hand, all authoritative legal texts are written in English and translated into Hindi. English is the most privileged language in the judiciary because the Indian Supreme Court and the high courts work in English (National Council of Educational Research and Training 2006, 13). Members of the Union decide which language to use in their respective regions.

Although, to a certain extent, other Indian languages can be used in running the affairs of the government including education, Hindi and English are the most favored languages in the Indian system. This indicates that the official language policy of India, at the national level, is mostly shaped by the Language Rationalization approach. However, the Union Government is not monolingual. It speaks English and Hindi. This can be taken as a lesson for Ethiopia.

10.4.3 Switzerland

Switzerland, though geographically small, is a country of linguistic diversity. It is constituted of people who belong to one of four linguistic groupings: German (63.7 %), French (20.4%), Italian (6.5%), and Romansh (0.6%) (*Office fédéral de la statistique* (2002) in Grin (2005, 4)). However, the country is also a home for other migrant residents who belong to either the Swiss or other linguistic groups. Some of them even outnumber the Romansh. Currently, the Swiss Federation is considered as one of the most progressive examples of 'official multilingualism'. The Constitution (implemented since 2000) recognizes German, French, Italian, and Romansh as the official and national languages of Switzerland. The latter is recognized as official language as far as the communication is between the Swiss Federal Government and a Romansh speaker (Fleiner 2002, 100).

The Swiss model is peculiar in many aspects. First, there is no language policy at the federal level as all decisions concerning the public use of language are made by the Cantons. Second, each canton adopts its own official language without interference of the federal government and a canton can bar the use of any other language apart from its official language for public purposes including in education and commerce though there is flexibility when it comes to private use. Third, it explicitly recognizes all the 'indigenous' languages of the country as national languages.

This, however, does not mean that the Swiss model is free of challenges. The strict territorial nature of the language policy implemented by the cantons pressurizes indigenous minority communities to assimilate to the majority language and culture instead of maintaining and protecting their own (Altermatt 2004, 23). The other problem in relation to the territorial nature of the language policy is the fact that it denies residents from other cantons and immigrants the chance to educate their children in their mother tongues unless they opt for 'private instruction' or schooling (Altermatt 2004, 17). The Swiss model does not also

accommodate the languages of migrants many of whom outnumber the Romansh. Nonetheless, the Swiss experience is fully accommodative as far as the use of indigenous languages at the federal level is concerned and it is helpful in identifying the pertinent issues that should be considered in adopting a working language in such diverse countries as Ethiopia.

10.5 The current Ethiopian language policy

Starting from the early days of the armed struggle that preceded the commencement of the Ethiopian Federal System, the TPLF and later the EPRDF adopted the stance that national oppression was the key problem in the 'nation-building' process of Ethiopia. Thus, it was concluded, in order to liberate the Ethiopian masses, national oppression should be defeated. Hence, national sentiments were effectively utilized to mobilize the people to join the struggle against the central governments (see Aregawi 2004, 583-584). Among the indicators of ethnic exploitation for the TPLF was the imposition of the Amharic language on the Tigray people that had its own distinct spoken and written Tigrinya language. This factor was used to mobilize people to fight against the center in other parts of the country, particularly in Oromia and Eritrea, as well. Therefore, the issue of language policy was at the center of politics since the times of the earlier regimes.

The 1991 TPC (Article 2) recognizes the right of each nation, nationality, and people to preserve its identity, promote its culture and history, *use and develop its language*, administer its own affairs, participate in the central government on the basis of freedom, and fair and proper representation and finally exercise its right to self-determination or independence, when the concerned nation, nationality, and people is convinced that the above rights are denied, abridged or abrogated. Apart from recognizing the right of each nation, nationality, or people to develop and use its language, the TPC does not include further details on language policy.

The 1995 FDRE Constitution affirms the equal status and protection extended to all languages of the country. However, it maintains the Amharic language as the only working language of the Federal Government. Article 5 reads:

Languages

1. All Ethiopian languages shall enjoy equal state recognition.
2. *Amharic shall be the working language of the Federal Government.*

3. Members of the Federation may by law determine their respective working languages (Italics added).

The Constitutional position that kept only Amharic as the working language of the Federal Government is different from any of the foreign experiences discussed earlier. Given Ethiopia's oppressive past and the presence of other languages spoken by millions of people, this constitutional stance is not in the right direction. More importantly, it denies level playing field and equal symbolic representation for the Ethiopian nations, nationalities, and peoples in the Federal Government. It is argued that let alone enabling non-Amharic speakers to compete with the Amharic speakers on equal basis, the policy may not enable people who belong to different language groups to compete on equal basis (I3). This is due to historical and language family (dis)similarity factors.

The following discussions on the current language policy of Ethiopia in the areas of administration, education, and judiciary indicate that despite the equal recognition extended to all languages or the pretention of 'official multilingualism', the Amharic language is dominant. Thus, an element of Language Rationalization persists. This dilutes the generous group rights particularly in the areas of language and culture as stipulated in the 1995 Constitution at the federal level. However, the current language policy is completely different from the earlier ones. Currently, each community has the right to use its language in all public arenas, at least, in its locality, which was impossible in the past regimes.

10.5.1 Language use in administration

In terms of national composition, the states of the Ethiopian Federation can be grouped into two categories. The first group composed of Tigray, Afar, Amhara, Oromia, and Somali have one numerically dominant national group and they have the language of the dominant national group as their working languages. In other words, the working language in Tigray is Tigrinya, in Afar Afar, in Amhara Amharic, in Oromia Afan Oromo, and in Ethio-Somali Somali. However, these states consist of minorities, too. The minorities may be indigenous people to the area who have a defined territory within the states or non-indigenous people who left their native place for different reasons. The indigenous are allowed to establish autonomous administrations either at a zonal or *woreda* level depending on additional factors such as the size of the population of the group. The latter use their languages for self-administration. Examples

are the Oromia, Awi, and Waghimira zones of the Amhara state. However, the non-indigenous groups are not yet enjoying self-administration right. Hence, they do not use their mother tongue for administration unless the working language of the state and the mother tongue of such a minority happen to be the same (incidentally). So far, there is no legal regime that governs the language of communication between an autonomous zone or *woreda* and the concerned state of the Federation. Nevertheless, from experience, the working language of the states is the *de facto* language of communication.

The other group of states includes SNNP, Benishangul-Gumuz, Gambella, and Harari. These states are home to different nations and nationalities. However, no national group has an absolute numerical majority in these states. Hence, they have followed a different path in selecting the working language at the state level; while the first three adopted Amharic, the working language of the Federal Government, as their working languages, the state of Harari uses the two languages spoken by the two major indigenous groups of the State i.e. Harari and Afan Oromo. Regarding the treatment of minorities in these regions, the same trend is followed as the first group. The underlining policy behind adopting Amharic as the working language of the multinational states seems to be to avoid conflicts that may arise from disputes over language use. It can also be justified by the associated costs of adopting all the languages spoken in the states as working languages. On the other hand, this denies the indigenous languages of the states the chance to develop to their fullest potential. The different trends indicate that the states freely decide on their working languages.

Amharic is the only working language of administration in the federally administered cities of Addis Ababa and Dire Dawa though they are home to linguistically diverse groups. The justification for this may be the practical impossibility of recognizing all the languages spoken by the resident people in these cities. However, in situations where all federal territories are run by one language, the claims for linguistic and cultural equality as provided in Article 5(1) of the Constitution remains unrealistic.

10.5.2 Education

The Federal Government issued a policy document with the title 'Federal Democratic Republic of Ethiopia Education and Training Policy' in 1994. The most relevant provision of this policy document is reproduced below:

3.5. Languages and Education

3.5.1 *Cognizant of the pedagogical advantage of the child in learning in mother tongue and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.*

3.5.2 Making the necessary preparation, nations and nationalities can either learn in their own language or can choose from among those selected on the basis of national and countrywide distribution.

3.5.3 The language of teacher training for kindergarten and primary education will be the nationality language used in the area.

3.5.4 *Amharic shall be taught as a language of countrywide communication.*

3.5.5 English will be the medium of instruction for secondary and higher education.

3.5.6 Students can choose and learn at least one nationality language and one foreign language for cultural and international relations.

3.5.7 English will be taught as a subject starting from grade one.

3.5.8 The necessary steps will be taken to strengthen language teaching at all levels. (Italics added).

The practice indicates that the basic guiding principles and rules provided above are adhered to (I23; I30). However, some languages are still not used for education although some years ago, twenty-five languages were already being used as media of instruction in primary education (Seidel and Moritz 2009, 1125). The interviewees attribute the problem to a lack of material and human resources (I23; I30).

Two points are worth noting. The first is the underlying philosophy behind adopting a mother tongue language for primary education i.e. the pedagogical advantages for the child and as a means of promoting nationality rights. There is, however, a disparity in implementing the policy of mother tongue primary education among the states; some states, zones, or districts restrict it to the first cycle (up to the fourth grade) while others extend it to the second cycle (up to the eighth grade) (see Getachew and Derib 2006, 55). The other defect lies with the practical implementation of this policy and in the fact that children in Addis Ababa are forced to learn their primary and kindergarten education in Amharic, regardless of their national backgrounds, which seriously affects the promotion of identity. In some states, particularly, in Oromia, due to the presence of 'non-indigenous' minorities mostly in the urban centers, the use of Amharic for

primary education is allowed (I19). This can be considered as a positive move in accommodating diversity at the state level.

The other point is the predominant position given to the Amharic language by explicitly recognizing its importance as a sole language of countrywide communication despite the presence of other languages spoken by millions of people that can contend for that position (not to mention the historic association of the language with oppression and discrimination). A clear contradiction is observed here. On the one hand, discrimination and national inequality is least tolerated by the current constitutional system as evidenced by such provisions as Article 39 of the 1995 Constitution. On the other, none of the languages in the country is on an equal footing with Amharic, which indicates the presence of some form of inequality.

10.5.3 Judiciary

According to the 1995 Constitution, both the Federal and the state level governments have supreme judicial powers within their jurisdictions. Hence, judicial powers regarding federal matters are exercised by the Federal Judiciary and judicial powers regarding state matters are exercised by the state judiciary (Arts. 78 and 79). The structure of the judiciary is in line with the administrative structures. Hence, the judiciary at the federal level uses Amharic as its working language while the state judiciaries use, most of the time, the working language of the state concerned.

The current federal court system has three levels: first instance, high, and supreme courts. Amharic is the working language at all levels. The state system has the same levels: *woreda*, zonal, and supreme courts. As mentioned above, the working language of the judiciary at the state level is, mostly, the working language of the state. The exceptions occur when a zonal or a *woreda* level court is found in a zone or *woreda* where the working language of the area is different from the working language of the state. For example, the working language of the Oromia Zone in the Amhara state is Afan Oromo and, hence, the working language of the Zonal Court in the Oromia Zone is Afan Oromo though the working language of the Supreme Court of the Amhara state is Amharic.

It can be concluded that people are free to use their languages in judicial proceedings at their localities but when decisions are appealed, there is a chance that they will have to abandon

their language and use the working language of the next-level court in their litigation[105]. For example, a litigant who used his mother-tongue language in the Oromia Zonal Court of the Amhara State should get all his documents translated into Amharic and he himself is forced to litigate in Amharic if he files an appeal in the Supreme Court of the Amhara State. The same thing happens when litigants appeal decisions of the state supreme courts (whose working language is not Amharic) to the cassation bench of the Federal Supreme Court.

These clearly indicate that the privileges enjoyed by the Ethiopian languages can be classified into three ranks. The Amharic language comes first. It enjoys predominance starting from the local levels to the highest federal institutions. The Tigrinya, Afan Oromo, Afar, Somali, and Harari languages come second. They enjoy predominance starting from the local level to the highest state institutions. Languages that are used at *woreda* and zonal levels come third. This means, despite the rhetoric of Official Multilingualism, which is pretended to be the case both at state and at the federal levels, in reality, there are pressures that encourage Language Rationalization around Amharic at the national level and the concerned state's language at the state level. However, in the third case, there is an effort to implement Language Maintenance by encouraging mother tongue use at local levels.

It may not be that easy to bring all the languages to perfect equality, as there are multiple factors that come into play. Recognizing all languages of the country as the working languages of the Federal Government, as is in the case of Switzerland, is unthinkable for obvious reasons; more than eighty languages spoken by more than eighty nations and nationalities cannot all be recognized as working languages. Nonetheless, it is not that difficult to ensure that the Federal Government represents the language diversity on the ground, as the forthcoming discussions indicate.

10.6 Possible ways to mitigate the 'federal deficit' on the working language policy

No country with a comparable national diversity has similar language policy with that of Ethiopia. Compare it with the experiences of India and Nigeria. In India, the attempt to adopt

[105] It is imperative to note that although a litigant in a nationality zone or a special *woreda* may use his/her language in court proceedings, he/she may still have to refer to laws written in 'others" languages. For example, the proclamations of the Amhara state are written in Amharic and English. Thus, a litigant in any of the nationality zones may use his/her language in a court in his/her locality but he/she may still have to refer to such laws. This can be very limiting.

Hindi as the sole official language by displacing English did not succeed. India, therefore, continues to recognize English and Hindi as official languages. Nigeria has recognized three of its major languages as official together with English but the latter, which is neutral, remains the dominant language. Switzerland recognizes all its indigenous languages as national and three out of the four languages as official for all purposes. Even the fourth and the smallest language, Romansh, which is spoken by less than one percent of the total population, is official as far as communication between the Swiss Federal Government and a Romansh speaker is concerned.

Many scholarly works indicate that the current Ethiopian language policy is not right[106]. First, it does not reflect the diverse or multinational nature of the country. Second, it is discriminatory. It tends to perpetuate the dominance of the Amharic language by sideling the other Ethiopian languages. As a result, it may challenge the federal arrangement by becoming a cause of conflict. Some went to the extent of arguing that despite the privileged status given to Amharic, there is no certainty of commensurate advantage associated with speaking the language for Ethiopians (Alemseged 2004, 613). Rather, it is argued, it symbolizes the dominance of its speakers at the mother tongue level and it negatively affects the promotion of other Ethiopian languages.

However, scholars differ on the solutions they suggest to correct the defect. Some argue for adopting Afan Oromo as an additional working language of the Federal Government (see Aberra 2009). Some argue in favor of adopting the four major languages of the country (in terms of the number of speakers) i.e. Amharic, Afan Oromo, Tigrinya, and Somali languages as working languages of the Federal Government (Mengistu 2014). Still others opt for a neutral language i.e. English to be adopted as a sole working language of the Federal Government (Alemseged 2013).

Some argue that lack of consensus as to how to correct the defect in itself warrants that Amharic should continue to be the sole working language of the Federal Government (I6). Others argue the privileges secured by Amharic owing to 'historical incidents' should be retained (I9). However, the challenges identified in this and the previous chapter make looking for an alternative language policy a matter of necessity. Moreover, two fundamental reasons justify this: (1) the multinational federal system that is based on the sovereign equality of the nations,

[106] See such authors as Aberra (2009); Alemseged (2013); Mengistu (2014); Yonatan (2009); Smith (2008) whose works are cited in different sections of this chapter.

nationalities, and peoples of the country and (2) avoiding present and potential contradictions and conflicts that may arise from disputes over language use, which in its turn, seriously threatens the stability of the Federation. The following can be policy alternatives:

10.6.1 Recognizing Afan Oromo as an additional working language of the Federal Government

At the mother tongue level, the Oromo language has the largest number of speakers (see Population Census Commission 2007, 91) although the language manifests slight variation of dialects from one place to another. Amharic is apparently better in terms of connecting the different nations and nationalities of the country as it has a higher number of speakers as a second language. In terms of demography, both the Afan Oromo and the Amharic languages have strong justifications in their favor in claiming recognition as working languages of the Federal Government. Hence, there is no reason to deny the Oromo language the status or the privilege given to the Amharic language (I15).

Nonetheless, recognizing only Afan Oromo as an additional working language of the Federal Government is challenging. Two reasons can be forwarded for this: (1) while the very wisdom of imposing Amharic, as the sole working language of the Federal Government is questioned, it does not make sense to give the same resented privilege to the Oromo language only and aggravate the situation of the other languages. (2) Other languages in the country have ample reasons to claim the same level of recognition.

One can mention such languages as Tigrinya, Somali, Sidamigna, Wolaytigna, and Afar. Tigrinya is a written and spoken language that has around five million speakers in Ethiopia and the current working language of Eritrea. The Somali Language is spoken by roughly the same number of speakers as Tigrinya in Ethiopia, the major indigenous language in the Republic of Djibouti, and a *lingua franca* of the Republic of Somalia. Over 1.2 million people in Ethiopia speak the Afar language (see Population Census Commission 2007, 91). It is the second dominant indigenous language of the Republic of Djibouti. It is also a language spoken by considerable number of population in Eritrea. Close to three million people speak Sidamigna and over 1.6 million people speak Wolaytigna (see Population Census Commission 2007, 92). Demography as well as the foreign experiences[107] discussed earlier justify that these languages

[107] For further details, see section 10.4.

should be recognized as working languages of the Federal Government. Thus, recognizing only Afan Oromo as an additional working language of the Federal Government is not going to resolve substantially the language policy defect.

10.6.2 Recognizing English as an additional working language of the Federal Government

This option gives an alternative to the non-Amharic speakers like in the above case. It may also facilitate technology transfer and help the country integrate into the global market in a better pace. However, it is less helpful to the nations and nationalities to develop their own languages. Moreover, this option fails to bring about language equality and to curtail contradictions over language use. The privileged position of Amharic (highly likely) will impede the attempt to introduce English as an effective language of communication.

10.6.3 Recognizing English as the sole working language of the Federal Government

Adopting English as the sole working language of the Federal Government of Ethiopia by displacing the position of Amharic would have two advantages: (1) it would contain potential violent conflicts over language use and (2) it maximizes economic benefits from global employment and business opportunities as well as technology transfer. Arguments against adopting English as a sole working language are: (1) it is a foreign language. People may ask 'how can a foreign language be adopted as a sole working language of the Federal Government in a country that has never been colonized?' (2) Practically, Amharic is currently more widely spoken than English is. As this writer has once read in a policy document of the ruling party (EPRDF), this was the reason behind maintaining Amharic as the working language of the Federal Government. The document further reads either willingly or by force, the Ethiopian people have learned Amharic (though on average very small portions of people from the other nations and nationalities are fluent in Amharic), hence, no other language can connect the Ethiopian people. (3) Amharic speakers may consider this as a threat to the use and development of the Amharic language.

Some of these arguments can be challenged though. First, one must remember that, in reality, Amharic could also be a new language to those who speak other languages; not to mention the traumas associated with the use of the Amharic language that were experienced

during the expansions of the imperial Ethiopia and during the military dictatorship. Second, whether one likes it or not, English is the predominant language of international communication. Mastering the language helps a country benefit from global opportunities. Thus, 'it is a foreign language, so we do not need it' may not be a valid argument.

It may be argued that lack of competence in English could be corrected by improving the teaching of English language in schools but the practice suggests otherwise. Had it been possible to improve English language skills by improving the way schools teach the language, progress should have materialized by now. Rather, the problem is related to lack of incentives from the external environment. The country teaches (attempts to teach is more appropriate because even most graduates do not have good command of English) in English at higher levels but business uses Amharic and other local languages. Thus, policy change will help improve fluency in the English language. The second argument against the adoption of English loses its relevance as the literacy rate of the country has shown significant change in recent times. Finally, the resistance that may come from some Amharic speakers wishing to maintain the *status quo* calls for a consensus creation and weighing all the options from a rational and inclusive perspective.

This policy alternative can negatively affect the development of local languages. Bisong (1995, 127) disputes this arguing that in the Nigerian case English has not succeeded in replacing, dominating, undervaluing, or marginalizing, or displacing other Nigerian languages. However, even if that is a real threat it can be mitigated. It can be supported by iron cast education policy that ensures local language use for at least primary education, which should be applicable all over the country including Addis Ababa and Dire Dawa. Nevertheless, this policy option does not help the Federal Government reflect the diversity on the ground. It only makes the Federal Government neutral.

10.6.4 Recognizing the four major languages of the country plus English as the working languages of the Federal Government

Recognizing some ten major languages of the country as working languages of the Federal Government is better to accommodate language diversity and to ensure substantial equality among the national groups. However, given the current economic capacity of the country, this may not be feasible. There will be huge costs associated with translations of official documents, preparation of textbooks, financing the training of teachers, etc. South Africa recognized eleven languages as official languages. Nevertheless, even in the case of South

Africa, not all of them are equally used. In fact, English has become the de facto dominant language (Mengistu 2014, 21).

The four major languages of Ethiopia represent more than seventy-five percent of the country's population[108]. Given the practical impossibility of accommodating all the major languages, adopting the four languages as the working languages of the Federal Government can be taken as the most feasible option. The experiences from Nigeria and Switzerland are relevant here and lessons can be taken from them. In the Swiss case, there is no foreign language recognized as a working language. In the Nigerian and Indian cases, English, a foreign language is recognized as a working language. In the Ethiopian case, it is better to recognize English as an additional working language besides the four major local languages. First, practically, English is the language of Education (high school and above) and major businesses such as banks and insurances, and the prestigious Ethiopian Airline. Second, those whose languages are not adopted as the working languages of the Federal Government should be given an additional option to communicate with the Federal Government.

An interviewee who works for the Federal Government states that it is easier to communicate in English with officials in some of the states including Gambella and Somali (I15). Third, we saw earlier that understanding the English language in itself has advantages. Thus, this writer recommends the four major languages (Amharic, Afan Oromo, Tigrinya, and Somali) plus English to be adopted as the working languages of the Federal Government. This policy, however, should be as open as possible to incorporate other languages to the list of federal working languages as far as development and resources permit.

Language serves to express one's identity and culture. It is also an essential tool of communication, participation, employment, and the survival of groups (Watts in Assefa 2005, 286). In the absence of language equality, all these essential matters will be affected. Thus, it is important to avoid English-language elitism and to promote local languages. As one means of promoting local languages, students and parents in Addis Ababa should be given the chance to choose their language of education. The current way of teaching all children in one language regardless of diversity is against the principle of promoting nationality identity. This practically means that as the residents of the Federal territories have diverse backgrounds, all state languages of primary education should be allowed to be used in Addis Ababa and Dire Dawa.

[108] This can be inferred from the 2007 Population Census Report pages 91 and 92.

Actual provision of such schools may depend on actual demands. This will not entail additional significant cost to the Government because the education bureaus of Addis Ababa and Dire Dawa can share texts prepared in local languages and other resources from the state education bureaus.

10.7 Chapter summary

This chapter dealt with the most common language policy approaches. It is argued that there is an intricate interplay of all the major language policy approaches in the Ethiopian case. Moreover, a few foreign experiences were presented. The discussion on the experiences of other federations indicated that none of these diverse federations have adopted a similar language policy (for the federal government) with that of Ethiopia.

The other issue discussed in this chapter is Ethiopia's past regarding language policy. The past was entirely dominated by the Language Rationalization approach. Assimilating all the diverse groups of the country by imposing the Amharic language and effectively removing the other languages from public use was the policy objective. This policy was among the causes of the heinous civil wars that ravaged the country. The change in language policy that came with the introduction of the federal system was a radical departure. Besides recognizing the equality of all languages of the country, the latter policy guaranteed, at least, using one's language for all purposes in one's locality.

Despite the fact that the new language policy is radical by comparison as it allows for the use of one's language of choice in all public arenas, Amharic is still dominant because it is recognized as the sole working language of the Federal Government in the 1995 Constitution. *De facto*, the constituent units of the Federation use only the Amharic language to communicate with the Federal Government. The Federal Government does not reflect any language diversity at all. This language policy is unique in that no other country with a comparable language diversity and system of governance has a similar language policy.

More importantly, the language policy of Ethiopia as stipulated in the 1995 Constitution is a potential source of conflict. The fact that the issue of changing the language policy of the country is on the agenda of many opposition parties indicates that there is discontent on the matter (see Yonatan 2009b, 517). The imposition of Amharic as the sole working language of the Federal Government threatens the equality of Ethiopian languages thereby representing the

continuation of the dominance of the Amharic language and its speakers at mother-tongue level (see Smith 2008, 229). Many scholars have written on the issue and they all agree that this language policy should be changed. Many of them have indicated that this policy is discriminatory, unfair, and a threat to the stability of the federal system. Nonetheless, there is variation on the alternative policy ideas forwarded.

The point that the existing language policy is not in line with the multinational nature of the Ethiopian Federation is stressed in this chapter, too. Alternative policy ideas that can correct the inherently centripetal tendency of the Constitution on language policy are presented and assessed. The preferred alternative policy for this writer is to adopt the four major languages of the country (Afan Oromo, Amharic, Tigrinya, and Somali) plus English as working languages of the Federal Government. Of course, other languages should be allowed to become working languages as far as the former's development and resources allow. This, it is argued, is believed to change the federal deficit on language policy and further consolidate the Ethiopian federal system. The aim can certainly not be to bring pride to every language group by recognizing all the languages of the country as working languages of the Federal Government. However, by diversifying the working languages of the Federal Government and by opening the possibility for every language to become a working language of the Federal Government (if certain practical requirements are satisfied), a strong signal can be sent that the Federal Government is culturally equidistant to all groups.

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Interviewees:

I3 (Atkilt Daniel, UNDP conflict prevention advisor at the Ministry of Federal Affairs, Addis Ababa, 31/07/2015)

I6 (Anonymous, former judge and currently an academic and a lawyer, Gondar, 07/08/2015)

I9 (Fekrie Mulugeta, process head of Communications Affairs of the Amhara State Council, Bahirdar, 11/08/2015)

I15 (Bezualem Bekele, Investment Land Administration Director, Ministry of Agriculture and Rural Development, Addis Ababa, 24/08/2015)

I19 (Mesfin Assefa, Security and Administration Bureau Vice Head, Oromia State Government, Addis Ababa, 02/09/2015)

123 (Belay Wodisha, Commissioner, Ethics and Anti-Corruption Commission, Benishangul/Gumuz State, Assosa, 22/09/2015)

130 (Iyasu Tesfay, Propaganda Head, TPLF Office, Tigray State, Mekelle, 10/10/2015)

Chapter Eleven: Conclusions and Recommendations

11.1 Conclusions

Let us start this chapter by reiterating the main research question: Is vertical division of political power in the Ethiopian Federation suffering from constitutionally unwarranted centripetal and centrifugal tendencies and moves? The discussions in the foregoing chapters indicate that the Ethiopian federal system of governance is indeed suffering from constitutionally unwarranted centripetal and centrifugal tendencies. The presence of such centripetal or centrifugal moves leaves the state of vertical division of political power in the Ethiopian federation wanting for corrective measures. As it is true with all qualitative researches (they are not meant to produce generalizations but specific attributes or qualities), the conclusion of this research should not be read as a generalization that the state of vertical division of political power in the Ethiopian Federation is in complete disarray. It is rather to conclude that the themes covered by this work show a serious character of either centripetalism or centrifugalism.

The centripetal or centrifugal tendencies and moves have two main sources. The first source is the presence of gaps in the law that regulates crucial areas of vertical division of political power. Of course, no federation may be able to have static or neatly divided powers between (among) its levels or spheres of governments. Nevertheless, all federations could always strive to achieve this. It is in the latter sense that the implementers of the Ethiopian federation have shown weaknesses. Otherwise, the line that divides government powers vertically will always contain some vague areas on which there will be continuous debates and engagements by, among others, institutions of government and scholars in the area. The second source of the challenges, identified in this research, is lack of adherence to the laws. Institutions and officials fail to act according to the law. The discussions in many of the chapters reveal that they tend to resort to so called 'political solutions', which can also be labeled as 'easy solutions', in order to resolve difficult problems. Difficult problems in this sense refer to problems that can be handled through systems and laws, if they are going to be handled properly. We will return to this issue soon.

The reader might already be wondering where the line that vertically divides powers in the Ethiopian Federation lies before we even talk about centripetal or centrifugal tendencies. Indeed, in the absence of such a line the discussions in this research will be of little relevance.

Nevertheless, it is not a line that can be established easily. A case-by-case analysis of themes of vertical division of political power and interpretations are needed. Even after that, there will be rooms for subjectivity and no definite line that divides power vertically, on which everybody agrees, may be 'drawn'. Tangibly indicating the ideal line of vertical division of political power, therefore, seems a remote reality. Nonetheless, discussions are still possible. This can be done by constructively drawing the line (at least an own line) followed by an analysis of the practice. This is what is done in this research. The ideal line of vertical division of political power in each area covered by this research was first drawn before delving into the discussions of the practical challenges and suggested solutions. When the Federal Government is found exercising powers that go below the line, they are indicated as centripetal tendencies and when the state governments are found exercising powers that are above the line or when they are found limiting basic rights or protections of the federal Constitution, such moves of the states are indicated as centrifugal tendencies. Concisely, talking about the ideal line that vertically divides power makes more sense when we talk about concrete issues.

It was mentioned above that the solutions tried to handle problems that concern the federal system tended to be political. Behind this are a strong party and its system. The party system in federations plays crucial roles (see Watts 2015, 24). In fact, centralization or decentralization trends depend on the party system (Turgeon and Simeon 2015, 128). Strong parties in emerging federations in particular could be double-edged swords (see Filippov, Ordeshook, and Shvetsova 2004, 214). Emerging federations are prone to instability. Federalism accompanied by a weak system of governance or absence of stability can only result in chaos. Therefore, a strong party that can implement effective governance is necessary. Nevertheless, in the long run, the outcome depends on how strong parties in emerging federations use their powers. Should the strong party use its position to build institutions, refine laws, build systems, and inculcate a democratic culture, it will strengthen the federal system (see Filippov, Ordeshook, and Shvetsova 2004, 221). If the party uses its strong position to decide on issues that concern laws and institutions at its convenience because it can do so, then its contribution to building a mature federal system will be severely limited. The Indian experience with the congress party proves this (see Filippov, Ordeshook, and Shvetsova 2004, 221). Even when it was very dominant, most of the times, the Congress Party respected the autonomy of states and state party organizations and it allowed for intra-party competition. Its impact on strengthening

the Indian federal system of governance, despite expectations to the contrary, was remarkably successful.

Since the inception of the federal system of governance in Ethiopia, the main party in power remained the same. The strength of the party has helped the country transcend eminent threats of break up in the early 1990s. The strength of the party is certainly among the key reasons for the relative peace and stability enjoyed by the country, despite its central geographic position in the turbulent Horn of Africa region. Besides, as indicated in the preliminary chapters of this research, the strength of the party and the introduction of a federal system of governance are behind the many socio-economic success stories of the country. Nonetheless, the discussions in such chapters as five, eight, and nine indicate that the party did not use its full potential to build institutions and systems. Quite to the opposite, there are indicators that issues (such as demands for recognition as a distinct nation or nationality) that should have been dealt with institutional and legal means only were channeled to party forums. The outcomes were also mostly negative as the extra-legal mechanisms opened rooms for delays, manipulations, and violence.

Among others, the manner the Qemant and other cases of recognition and self-administration were handled, the way the Federal Government attempted to resolve the challenges around agricultural investment land, and the way issues of security are handled indicate the weaknesses of institutions. In the case of the Qemant's claim for recognition and self-administration, the HoF simply empowered the Amhara state to handle the case with no specific directions given to the latter. The HoF did not say a thing on whether the State should involve the people directly (via referendum). On administering large-scale agricultural land, instead of doing the hard and correct job of building the capacity of institutions and helping the states do same, the Federal Government decided to empower itself to engage in land administration. This was possible because of the position and the will of the ruling party, the EPRDF. The decisions of the party had the effect of undermining the vertical power division arrangement as stipulated in the Constitution.

Because institutions are weak, after more than twenty years of experimentation with the federal system, there still is no established clarity on such basic issues as who owns land in Ethiopia. Whether all the nations, nationalities, and peoples collectively own land or each of them owns the land they reside in are particularly unsettled issues despite the presence of

practical challenges that call for doing so. Consensus is yet to be reached on the nature of the federal system of governance (whether it is 'ethnic' or 'multinational'). The procedures of handling demands for recognition, which is part of the right to self-determination, are not yet well established. Groups that are endowed with such extended rights as secession are finding it problematic to get their demands for recognition settled peacefully. These all affect the way power is practically divided.

The discussions in chapters five, six, seven, eight, and nine indicate that the very concurrent nature of some of the powers makes it essential that the two levels of governments have a venue to negotiate on the share of powers each level of government exercises. On areas of concurrency, if each level of government legislates separately (without consulting the other), the outcome will tend to negatively affect the state of vertical division of political power. The discussions in this work show this. Therefore, the states should be involved in the law-making process at the federal level. This can be done either through binding IGR forums (binding on the part of the Federal Government to ensure the voluntary participation of the states) or, as commonly done in federations, by empowering the second chamber in Ethiopia (the HoF) to have law-making powers on, at least, areas of concurrency.

Empowering the second chamber in Ethiopia to have law-making power, at least, in areas of concurrency may not automatically result in a better-balanced vertical division of political power. This has a lot to do with the way the dominant party uses its position than with empowering the second chamber to have law-making power. If the Federation continues to have legislators who see themselves as members of a party first and then as government officials or members of government institutions, empowering the second chamber may not bring much change (see Assefa 2015, 247-8). However, if accompanied by change in the way legislatures perceive their roles, engaging the HoF can give the states an opportunity to scrutinize federal laws on areas of vertical division of political power. Of course, technically speaking, the HoF is a chamber where the nations, nationalities, and peoples of the country and not the states are represented. The state councils may themselves elect representatives to the HoF, or they may hold elections to have the representatives elected by the people directly (Art. 61(3) of the Constitution). The practice so far shows that the state councils themselves elect the representatives. Given the fact that, in most cases, the representatives elected by the state councils to the HoF are higher state officials, empowering the HoF can be a real option. This

could, for example, help balance many of the legislation with centripetal tendencies in the areas of security and land administration.

The Ethiopian federal system as per the reading of Article 39 of the Constitution aspires for utopia of equality among nations, cultures, languages, and generally identity groups. This does not mean that the reality is very detached from the constitutional stipulations of equality. Indeed, the government has made commendable efforts to live up to the expectations of Article 39, as discussed in such chapters as five and ten of this work. However, the discussions in these chapters also indicate that state constitutions manifest weaknesses in ensuring the equality of all indigenous groups in the states. In terms of constitutional rights, the equal status of numerically smaller indigenous groups compared to numerically bigger indigenous groups in a given state should be obvious. The point of discussion, in this regard, should be on the type of institutional mechanisms to be introduced to ensure that the less populous groups are properly accommodated.

Despite Article 39, the federal system has so far lived with hierarchies of privileges extended to the Ethiopian languages. The existing policy, as discussed in chapter ten, is contested. Language policy matters, as can be observed from discussions in chapter nine, are highly entwined with issues of vertical division of political power. The practice shows that the challenges in the area of language policy tend to be embedded in broader issues of incompatibility of interests of the indigenous and the non-indigenous groups. Such manifestations tell that addressing the defects of the language policy is essential to harmonize the interests of the indigenous and the non-indigenous groups. Moreover, the Federal Government, which represents a country of overwhelming linguistic and cultural diversity, should reflect such diversity. As it is now, all groups could hardly see the Federal Government as culturally equidistant. This will have implications on the long-term stability of the federation.

The discussions in chapters nine and ten imply that issues of language and culture are complex. Minorities who themselves have suffered from cultural oppression tend to repeat the same mistakes once they achieve self-rule. Usually, majorities who want their language and culture to enjoy utmost protections and privileges do not show the same sympathy if minorities' claim for similar protections. Some may go to the extent of doing whatever possible to stop minorities from raising such claims. A policy driven intervention is, therefore, needed in this regard. Accommodative tendencies, consociational ways of power sharing, support for

disadvantaged languages and cultures (based on evidence), extending protections of bills of rights to everyone (regardless of group identity) should be the norm. Such a measure helps create a state of balanced division of political power particularly in the states by reducing fears of domination.

Proper execution and further refinement of the regime of vertical division of political power in the Ethiopian Federation, as the discussions in this work imply, requires robust institutions of research, knowledge dissemination, and media. For example, the cases of recognition discussed in chapter five and the challenges around mobility rights discussed in chapter nine, among others, indicate that there were issues that could have provoked serious media engagement. Nevertheless, the media particularly the electronic public media has never served as a source of deliberation or even discourse in this regard. This further indicates that institutions are weak. Therefore, governments at all levels should allow and encourage the media to play its role in enhancing the federal system and in airing mishaps thereof.

Overall, in this work, it is argued that Article 51 of the Constitution empowers the Federal Government to have an overriding policy-making power in almost all areas. A party that controls the Federal Government will therefore have an overwhelming policy making role. However, there still are areas where the states could have made a policy contribution. They are after all empowered to make policies on their socio-economic and development matters (Article 52 of the Constitution). The states could, for example, make statewide policies in such areas as culture, local transport, state tax jurisdictions, and alcohol consumption. They could also encourage certain sectors depending on state priorities through a policy. However, as indicated above, this cannot be seen in isolation to the political culture in place. The ruling party, it can be observed, should have done better in encouraging bottom-up policy contribution and innovation. Answers to the specific research questions are provided here below.

a. Is there clarity of vertical division of political power in the Constitution?

The Constitution lacks precision and clarity in many aspects of vertical division of political power including in majority of the themes investigated in this research. The respective policy-making powers of the Federal and the state governments on economic, social, and cultural issues are stipulated in generic and vague terms. The Federal Government is mandated to formulate and implement overall policy on social, economic, and development matters (Article 51 (2) of the Constitution). The states are entitled to similar powers at the state level (Article

52(2) (c) of the Constitution). Nevertheless, no further details that balance the powers of both levels of governments are available in the Constitution. This also holds true regarding the mandates of the Federal and the state governments in relation to self-determination, the right to movement and ownership of property, the regime of federal intervention, and police power division. On the other hand, the mandates of the Federal and the state governments are relatively clear in the areas of land administration and language policy.

In the case of self-determination, although the Constitution is relatively clear on issues of external and internal secession, it is silent on cases of recognition. List of the nations, nationalities, and peoples is not provided in the Constitution. It should have been foreseen that cases of recognition would occur. However, the Constitution generally empowers the HoF to deal with all issues related to self-determination including and up to secession (Art. 62(3)). This is not enough as the mandates of the Federal and the state governments on cases of recognition should have been indicated, as it is done in the cases of internal and external secession. The discussions in chapter five show that the challenges in the other laws and the practice are highly related to this gap in the Constitution.

The regime of federal intervention, as regulated in the Constitution is crafted by employing terms that are generic and vague. Moreover, the difference between the intervention and the emergency regimes are not clearly visible in the Constitution. To mention few examples, According to Article 51(14) of the Constitution, the Federal Government may intervene in the internal affairs of a state if three conditions are fulfilled: deteriorating security situation, when the concerned state is unable to control it, and invitation by the concerned state. However, the Constitution neither defines nor lists elements that constitute 'a deteriorating security situation'. According to Article 55(16) of the Constitution, "It[the HPR] shall, on its own initiative, request a joint session of the House of the Federation and of the House of Peoples' Representatives to take appropriate measures when State authorities are unable to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned State authorities." However, it would not be reasonable for the Federal Government to intervene in the states to correct the inability of a state to arrest minor human rights violations. It is reasonable to limit the intervention of the Federal Government to cases that are not only unaccounted but also serious and systemic enough. The third ground of intervention, according to the Constitution (Art. 62(9)), is when a state endangers the constitutional order. It is

unclear what the indicators are. The regime of intervention, according to the wordings of the Constitution is, therefore, vulnerable to subjective interpretations.

The Constitution empowers both the Federal and the state governments to engage in maintaining peace and security (Arts. 51 and 52). They are empowered to establish police institutions, among others. This makes security in the Ethiopian context a concurrent power. The powers of both levels of governments are stated in generic terms. The Federal Government has enacted laws in this area. Although the power is concurrent, only the Federal Government, without the participation of the states, enacted such laws. The laws as discussed in chapter eight manifest serious centripetal tendencies.

The Federal and the state constitutions recognize mobility and self-determination rights as fundamental rights. However, no further details are provided in the constitutions as to how to balance the two rights. Neither are the mandates of both levels of governments in this regard clear. The responsible sphere of government to handle disputes and to enact laws, for example, is not stipulated clearly in the Constitution.

In the area of land administration, it is plainly stated in the Constitution that the Federal Government should enact the laws and the states should administer the land according to such laws (Art. 51(5) and 55(2)(a) of the Constitution). Land in the Ethiopian context is a case of concurrent power in which different spheres of governments do the law making and the implementation. The Constitution is lucid in this regard.

The Constitution is clear that the Federal Government adopts only Amharic as its working language and the states can determine through a law their respective working languages (Art. 5). The language of communication between the states and the Federal Government is not indicated in the Constitution. However, the Constitution indicates that the Federal Government is entitled to work only in Amharic and the states can adopt any language they chose. The challenges in the areas of land administration and language policy are mostly not related to absence of clarity of mandates of both levels of governments in the Constitution. Summary of the findings on the themes mentioned here as an example are provided in sections 'c' and 'd' below.

b. What factors extraneous to the issue of vertical division of political power affect the status of the latter? How?

The electoral system in place and the way the essence of the system is understood or

perceived (whether it is 'ethnic' or 'multinational') highly affect the state of vertical division of political power. Of course, the electoral system in place is democratic and it is used in almost half of the countries of the world (see Reynolds *et al.* 2005, 30). Nevertheless, the discussions in the fourth chapter show that it favors a majority party; it is not comparatively suitable for diverse countries such as Ethiopia; it is practically seen to result in votes' wastage and homogenous legislatures. Homogenous legislatures are less likely to stand for the proper implementation of vertical division of powers between governments at different levels. Indeed, the findings in this work confirm this.

Consensus is yet to be reached on the nature of the federal system of governance. It can be observed from the discussions in the third chapter that the states are highly likely to be accommodative or limiting to the so-called non-indigenous groups depending on whether decision makers at the state level perceive the system as 'multinational' or 'ethnic' respectively. Limiting the non-indigenous from holding offices despite their competence in the working language of a state, for example, affects their constitutional rights to move and work anywhere in the country. States that engage in such actions contravene the Constitution.

c. What does the law on vertical division of political power in the themes investigated in this work look like?

Gaps prevail over the laws that govern such areas of vertical division of political power as federal intervention (also in relation to emergency), police power division, self-determination, and mobility rights. The discussions in the sixth chapter reveal that some sort of un-clarity or vagueness accompanies all grounds of intervention. This can make the powers of the states vulnerable to unduly interventions from the Federal Government. A point of ambiguity this work addressed is the nature of intervention and emergency in the Ethiopian Federation. It is concluded that intervention and emergency in Ethiopia are different regimes that apply to different situations. Emergency is a highly qualified system that applies to situations that are not only dangerous to the constitutional order but also that cannot be stopped by regular law enforcement agencies. It also applies to wider threats including natural disasters and pandemics. Interventions are also applied to arrest threats that endanger the constitutional order but the dangers are theoretically stoppable by regular law enforcement agencies. If, owing to such

factors as incapacity or unwillingness, the regular law enforcement agencies fail to stop the threats, the Federal Government intervenes.

It can be inferred from the Constitution that security is a concurrent power (see Arts. 51 and 52). Both levels of governments are, for example, constitutionally empowered to establish police institutions. However, on security powers, little details are available in the Constitution. The proclamations issued by the Federal Government and the states provide limited help to clearly demarcate the vertical division of power between the Federal Police Commission and the state police commissions. This research addressed this gap. Considering the overall power division arrangement and experiences elsewhere, it is argued that the Federal Police Commission should exercise jurisdiction over crimes of international nature, crimes committed within Addis Ababa and Dire Dawa, crimes that transcend state boundaries or affects two or more states[109], crimes that target federal institutions[110], economic crimes[111], crimes that target national sovereignty, and crimes that target international infrastructure. On the other hand, it is argued, the states should exercise powers over such issues as ordinary crimes committed in the territory of a state, organized crimes committed in the territory of a state, and local crimes that target state institutions.

The other area where essential gap of power division prevails is self-determination. On external self-determination, compared to international law and practice or even the constitutions of overwhelming majority of the countries of the world, the 1995 Ethiopian Constitution is explicit. It is particularly relatively straightforward on the issue of secession. However, the Constitution is vague on at least one aspect of internal self-determination. It does not deal with how claims for recognition can be presented and entertained. Nonetheless, the Constitution empowers the HoF to deal with issues of self-determination in general (see Article 62(3)). The Federal Government acted relatively quickly on this issue by enacting a proclamation. In Proclamation 251/2001, among others, an attempt is made to regulate the procedures for recognition. Accordingly, the states are empowered to entertain such claims. However, this power is given to the states in the absence of a second chamber within the states (except SNNP) that exercises similar powers with that of the HoF. This means forcing the claimants to seek recognition from a council dominated by another nation or nationality. Giving such powers to the

[109] provided that the crime meets the required threshold of gravity.
[110] provided that the crime meets the required threshold of gravity.
[111] provided that the crime meets the required threshold of gravity.

states is not in line with the grand constitutional stance that the Ethiopian nations, nationalities, and peoples are sovereign and equal. Since the HoF has the power to review state decisions on appeal, some may consider this as a possible checking mechanism against oppressive state decisions but this will highly likely waste time and resources, if not open the possibility for the occurrence of conflicts, while the demands could have been entertained by the HoF in the first place. The practice confirms that the states handle these claims badly. The HoF, in which all the nations, nationalities, and peoples are represented, should entertain issues of recognition. Not only will this move be in line with the Constitution and fair but also giving the HoF the power to handle cases of recognition and self-administration could help build a culture of political tolerance at the state level.

As much as state authorities fail to implement self-determination related rights properly, individuals may be tempted to claim such rights for extraneous reasons. Self-determination related rights should not be rights that can be invoked at the whim of individuals. There must be a genuine and mass-based cause for claiming them. The practice indicates that suspicions on whether self-determination claims are 'genuine' or not complicate the way the latter are handled, if not result in their outright rejection by officials through different mechanisms including force. Introducing mandatory waiting periods and asking the claimants to vote for more than once shields self-determination related claims from temporary 'heats of politics'.

Both the Federal and the state constitutions recognize mobility rights. They also recognize self-determination rights. However, none of the constitutions and other laws provides details as to how to balance mobility-related rights and self-determination-related rights. In this work, it is argued that both the Federal and the state governments have a role to play in handling disputes over mobility rights. For example, the state courts can entertain individual cases and complaints and the HoF may interpret the Constitution, if there is a need to do so. However, the Federal Government should have the prime law-making responsibility in the area.

On land administration, on which many challenges of power division are identified and discussed in this research, the problems have little to do with lack of clarity of vertical division of political power. The most important gap in the law in relation to land administration is the presence of ambiguity on land ownership and tenure rights. The latter is a complicating factor but the moves that are related to centripetal and centrifugal tendencies are largely defined by the failure to implement the clear division of tasks between the Federal Government and the states.

The Constitution states that, on land administration, the Federal Government should make the laws and the states should administer land according to such laws (see Arts. 51(5) and 52(2)(d)). Similar to land administration, the challenges around language policy are not mostly related to lack of clarity of the law. On language policy, the design in itself is the problem on top of limited implementation-related challenges.

Addressing the challenges in the area of land administration, among others, requires the Federal Government to utilize its law-making power effectively and efficiently. Land ownership and tenure right should be elaborated. This writer argues that considering land as a collective property of all the nations, nationalities, and peoples of Ethiopia should be the starting point. Moreover, whenever tenure rights are altered, not bringing the livelihood standard of the community directly affected by such an alteration below it previously was could be set as a minimum requirement for allowing the alteration. The objective should certainly be to improve the livelihood of those directly affected although giving individual compensation may not be feasible. On language policy, the constitutional stipulations (Article 5) should be renegotiated.

d. What does the practice on vertical division of political power in the themes investigated in this dissertation look like?

Challenges that emanate from failures to implement laws that are relatively clear as well prevail over vertical division of political power in the themes covered by this research. Constitutionally unwarranted centripetal or centrifugal tendencies are observed including on issues that are, according to the law, straightforward. To begin with, federal intervention in the Ethiopian Federation occurs in many ways without directly invoking the law. The party channel in particular is employed heavily to deal with threats that would otherwise call for formal intervention. It is found out that the outcomes are not necessarily always bad. However, in terms of building institutions and respecting the law, the experience so far is not constructive. Moreover, it is found out that, there is a prevailing tendency in some states that the Federal Government should handle all the security threats. Such states tend to invite the Federation to intervene and deal with all sorts of security threats for them. Nevertheless, the motive is not necessarily genuine. Local officials could resort to inviting the Federal Government to carry out local security tasks to evade responsibility or accountability. Overall, federal intervention in the Ethiopian case is heavily dominated by centripetal tendencies.

The practice on police power division indicates that laws and procedures are not strictly adhered to even to the extent that they are clear. Informal agreements dominate the area. It is not only that the Federal Police intervenes in the internal security affairs of the states but also the states take federal security assignments without securing proper delegation from the Federal Police Commission. There is a tendency by majority of the states' senior police officials that the Federal Police Commission can intervene in the security affairs of the states without any limit as far as crime prevention is concerned. This contradicts the constitutional stipulation that the states are responsible for their internal peace and security. The foregoing indicators make the area of police power division full of centripetal (and limited centrifugal) tendencies and practices.

On land administration, both levels of governments do not limit themselves to executing their constitutional mandates. The Federal Government engages in administrative matters without a constitutional mandate to do so. The states engage in law making without a constitutional mandate to do so. Such moves are part of the land administration related challenges discussed in chapter eight. Concurrency, as discussed in chapter eight, could not justify the engagement of the states in law making in the area of land administration. Delegation of power could be presented as another justification. Nevertheless, in this work, it is argued that even delegation could not serve as a reason because, according to Article 50(9) of the Constitution, delegation should be exercised when it is necessary. The practice shows that such a delegation was unnecessary.

The practical challenges on issues of self-determination are caused by delays in entertaining cases, political manipulations, and failure to utilize the existing laws and institutions. Moreover, knowledge deficit including on the requirements of nationhood are prevalent. More importantly, the cases of self-determination entertained so far reveal that there is a tendency to sideline the people concerned from the decision-making process. Even in the relatively successful case of the Silte, the discussions in the third chapter indicate that the people were allowed to engage directly after enduring many obstacles. In the case of the Qemant, the Menja, and others the state officials are deciding on everything including on issues that require the direct say of the people concerned. Such moves of the states contravene the bills of rights as stipulated in the federal Constitution, which is an indication that centrifugal tendencies prevail in the area.

Practice-driven challenges of vertical division of power prevail over mobility rights, too. It was shown that the indigenous groups aspire to dominate their 'home' states in all aspects regardless of demography and other factors. On the other hand, the non-indigenous tend to not accept restrictions on their political rights or the right to move and own property anywhere in the country. Moreover, illegal settlements and illegal evictions of people have become not uncommon occurrences. In relation to illegal settlements, illegal land sales and purchases, deforestation, and unregulated mass movements have been witnessed. On the other hand, illegal evictions of people from areas they settled for years, illegal confiscation of properties, and restrictions on movement of people who were supposed not to 'belong' to a certain area or even killings had been witnessed in some states of the Ethiopian Federation. Weak controlling and administrative capacity of the states and corruption further worsen the challenges. The presence of illegal evictions and limits on mobility related rights suggest that centrifugal tendencies are prevalent. In addition to enacting a law that balances mobility and self-determination rights, the Federal Government should ensure that its institutions are addressing these challenges. Resolving the mobility-rights-related challenges, *inter alia*, require communications or negotiations among governments. However, IGR is a serious gap of the Ethiopian Federation. Even the PM and state presidents have no common legal or institutional forum to discuss issues of common concern apart from the party channels. Strengthening IGR forums in varied forms is essential.

Uncertain internal administrative boundaries can be reasons for conflict particularly in relation to mobility rights. Internal administrative boundary demarcation should be done as quickly as possible but there also is a need to reach consensus on why internal boundaries are needed. They should not be, for example, employed to limit access to grazing land or water. However, timely demarcation of internal boundaries mitigates worries of some groups that they may lose a territory owing to movement of people and potential exercise of the right to self-determination.

e. What is the overall impact of the status of vertical division of political power in the themes investigated in this work?

Generally, federalism in the Ethiopian context is a typical example of what this writer prefers to call a knotty federalism. The introduction of the federal system itself is yet a cause of disagreement although a blind opposition to the system does not look realistic (anymore). Within the pro-federalism forces, the temptation to employ party channels to resolve federalism-related

problems on one hand and the need to follow laws and institutions on the other compete to shape the federal system. Lack of detailed laws, lack of robust systems and institutions, and lack of awareness, among others, pose controversies and challenges to the system from time to time. This makes the Ethiopian federal system more complicated compared to established federations that have to deal with fewer essential challenges. The overall lesson that can be learned from the discussions in this work is that actions or moves of governments both at the federal and state levels that do not respect the constitutional division of powers can have devastating consequences on individual and group rights.

11.2 Recommendations

The author is of the opinion that a host of political, legal, and institutional measures, most of them urgent, should be taken to correct the defects on vertical division of political power in the Ethiopian Federation.

- To begin with, the ruling party should re-channel its focus to refining laws and building institutions and systems.
- The ruling party has already promised to introduce some changes into the electoral system. If the electoral system is to be changed, the system to be adopted should be the MMP system.
- Bringing issues (of intervention, recognition, power sharing etc.) that concern institutions and laws to the legal channels, and not to the party channels, is essential to mitigate the challenges in the area.
- The states should have a say on laws that regulate concurrent powers that are enacted by the Federal Government. This can be done either through binding IGR forums (binding on the part of the Federal Government to ensure the voluntary participation of the states) or, as commonly done in federations, by empowering the second chamber in Ethiopia (the HoF) to have law-making powers.
- To ensure that the interest of minorities are respected, consociational power sharing arrangements and veto rights on such issues as determining a working language, budget distribution formula, local judiciary and the likes should be introduced.
- Minorities that suffer from caste-like discriminations deserve not only recognition but also affirmative measures that help them become full agents of development in the

country.

- The Federal Government should adopt the four major, in terms of the number speakers, languages of the country plus English as its working languages. This way it can show the different groups in the country that it is culturally equidistant and the federal system is, indeed, meant to accommodate diversity.
- The federal intervention-related laws should be amended and redrafted in terms that are less vulnerable to abuse and subjectivity. As the intervention regime regulates a concurrent area of power, i.e. security, the states should participate in the process.
- Entrenching clarity on police power division requires amending the proclamations that deal with police power and engaging the states in the process through a binding IGR forum or by empowering the HoF to exercise law-making power in the area.
- Besides revising the proclamations on police powers, the IGR forums in the area should be reestablished in ways that ensure the participation of all police institutions as equal partners and in ways that guarantee that agreements reached are adhered to.
- The HoF, in which all the nations, nationalities, and peoples are represented, should entertain issues of recognition in full consultation with the concerned community.
- To balance mobility-related and self-rule related rights, either the HPR (up on the recommendation of the HoF) should enact a law or a constitutional amendment should be introduced. The law should address the extent of the powers of the states, if any, to limit mobility and representation rights of the non-indigenous, general directions to be followed regarding power-sharing arrangements at the state level, the validity of the current party-level power-sharing arrangements in relation to the non-indigenous, affirmative measures and the conditions that warrant their implementation, and interstate resettlement of people.
- Addressing the challenges in the area of land administration, among others, requires the Federal Government to utilize its law-making power effectively and efficiently. Land ownership and tenure right should be elaborated. This author argues that considering land as a collective property of all the nations, nationalities, and peoples of Ethiopia, as it is also indicated in the minutes of the Constitutional Assembly, should be the point of departure.
- Addressing the practical challenges of land administration requires, *inter alia*, restraining

both levels of governments to their constitutional mandates. Only the Federal Government should enact the laws and only the states should administer the land in their respective jurisdictions according to the federal laws.

- To handle cases of self-determination peacefully, the Federal Government should ensure that referendum right is respected and regulates the same in detail through a proclamation. However, so as to shield self-determination related rights from abuse, mandatory waiting periods and voting on the claims for more than once may be introduced through a law or constitutional amendment.
- The institutions of the federation particularly the HoF, the HPR, and the CCI should work to adequately define and build consensus on such crucial matters as land ownership and nature (including nomenclature) of the federal system.
- Such institutions as the federal courts, the Human Rights Commission, and the Ombudsperson should have branches in all the sates and direct engagements with the citizens throughout the country.
- Internal administrative boundary demarcation should be done as quickly as possible but there also is a need to reach a consensus on why internal boundaries are needed.

Topics for further research

One can observe that this research does not cover all themes of vertical division of political power in the Ethiopian Federation. This is because of time, space, and resource limitations. Therefore, others can do similar researches that focus on different themes. A research that deals with vertical division of power in such areas as the judiciary, agriculture, health, education, civil service, and finance can be done. Another area for research is horizontal division of power (power sharing) in the Ethiopian Federation. Although this author had intended to cover this area, too, as he progressed a bit he excluded it because of time limitations for power sharing in the Ethiopian Federation can be a topic for a dissertation on its own. This author is aware of some, although short and limited in scope, works in the area. He believes a further comprehensive research can be done on it.

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Annex I: List of interviewees

List of interviewees			
Code (as cited in the text)	**Name**	**Profile (in some cases, facts that identify the person are still missing so as to maintain anonymity)**	**Place and date of interview**
I1	Anonymous	Former senior official in the justice sector and currently an academic in the area of human rights and governance	Addis Ababa, 27/07/2015
I2	Dr. Gebreab Barnabas	Former central committee member of the TPLF and State Minister at the Ministry of Federal Affairs	Addis Ababa, 29/07/2015
I3	Atkilt Daniel	UNDP conflict prevention advisor at the Ministry of Federal Affairs	Addis Ababa, 31/07/2015
I4	Anonymous	A senior expert who works in the area of federalism and IGR	Addis Ababa, 31/07/2015
I5	Anonymous	A middle-level official who works in the area of federalism and IGR	Addis Ababa, 31/07/2015
I6	Anonymous	Former judge and currently an academic and a lawyer	Gonder, 07/08/2015
I7	Arayaselassie Alemu	Chair of the law and justice standing committee in the Amhara State Council	Bahirdar, 10/08/2015
I8	Dejen Haileselassie	Assistant Commissioner at the Amhara State Police Commission	Bahirdar, 11/08/2015
I9	Fekrie Mulugeta	Process Head of Communications Affairs of the Amhara State Council	Bahirdar, 11/08/2015
I10	Hon. Yalew Abate	Speaker of the House of Federation and former speaker of the Amhara State Council	Bahirdar, 11/08/2015
I11	Anonymous	A senior official in the executive branch of the Amhara	Bahirdar,

		State Government	12/08/2015
I12	Anonymous	A middle-level official who works in the area of law-making	Addis Ababa, 31/07/2015
I13	Tesfaselassie Mezegebe	Conflict Early Warning and Rapid Response Directorate Director, Ministry of Federal Affairs	Addis Ababa, 19/08/2015
I14	Chanie Gebeyehu	IGR and Federalism Teaching Director, Ministry of Federal Affairs	Addis Ababa, 21/08/2015
I15	Bezualem Bekele	Investment Land Administration Director, Ministry of Agriculture and Rural Development	Addis Ababa, 24/08/ 2015
I16	Sisay Melese	Conflict Resolution Director General, Ministry of Federal Affairs	Addis Ababa, 25/08/2015
I17	Tsegaberhan Tadesse	IGR Director, Ministry of Federal Affairs	Addis Ababa, 26/08/2015
I18	Kenaa Yadeta	Vice Commissioner, Oromia State Police Commission	Addis Ababa, 01/09/2015
I19	Mesfin Assefa	Security and Administration Bureau Vice Head, Oromia State Government	Addis Ababa, 02/09/2015
I20	Lema Megersa	Former Speaker, Oromia State Council	Addis Ababa, 03/09/2015
I21	Yared Bantyedagne	Ensuring Nationalities' Rights and Creating Constitutional Awareness, Core Process Head, SNNP State Nationalities Council	Hawassa, 15/09/2015
I22	Belayneh Bekele	Commander, Crime and Traffic Accident Prevention Core Process Head, SNNP State Police Commission	Hawassa, 14/09/2015
I23	Belay Wodisha	Commissioner, Ethics and Anti-Corruption Commission, Benishangul/Gumuz State	Assosa, 22/09/2015
I24	Anonymous	A senior official in a state police commission	Assosa, 24/09/2015
I25	Tatek Alemayehu	Process owner, Benishangul/Gumuz State Police Commission	Assosa, 24/09/2015

I26	Ashu Dugaz Agie	Chair, Budget and Finance Standing Committee, Benishangul/Gumuz State Council	Assosa, 24/09/2015
I27	Abdela Shehedin	Member, Benishangul/Gumuz State Council	Assosa, 28/09/2015
I28	David W. Harris	REILA (Responsible and Innovative Land Administration) Project Team Leader, Benishangul/Gumuz State	Assosa, 28/09/2015
I29	Habtamu Alene	Case Team Coordinator, Investment Land, Agriculture and Natural Resource Bureau, Benishangul/Gumuz State	Assosa, 29/09/2015
I30	Iyasu Tesfay	Propaganda Head, TPLF Office, Tigray State	Mekelle, 10/10/2015
I31	Anonymous	A senior official of a state council	Mekelle, 15/10/2015
I32	Anonymous	A senior official of the federal government	Addis Ababa, 25/10/2015
I33	Anonymous	A senior official of the federal government	Addis Ababa, 27/10/2015

Annex II: Initial interview questions

I. On Federal Intervention

1. How many times has the law (proclamation 359/2003) been put into practice so far?
2. Where and when has the law been used to solve problems?
3. What positive experiences have been gained in implementing the law?
4. What changes have been manifested in implementing the law?
5. How do you compare the Constitution and the Intervention Proclamation?
6. What things regarding Federal Intervention requires attention in your view?

II. On Division of Police Power

1. How does the coordination between the federal and regular state police look like?
2. How does the coordination between the federal and the state's special police look like?
3. What are the positive experiences gained by working together?
4. What are the challenges faced by working together?
5. Does the special police have a separate establishment law? If not, what distinguishes them from the regular police?
6. Is the demarcation between the powers of the state police and the federal police clear?
7. Article 6(24) of the Federal Police Establishment Proclamation (No. 720/2011) states that the Federal Police will assist state police by providing trainings and technical assistance by focusing on the developing states. How far is this practiced and what's its impact on state police power?

III. On Land and Natural Resource Administration and Exploitation

1. Do you think the legal regime on land and natural resource administration and exploitation is comprehensive and clear enough?
2. What are the practical challenges regarding land ownership and utilization particularly in the so called developing states?
3. What are the practical challenges faced in the exploitation of natural resources including minerals in terms of group rights and benefit distribution?
4. Some states have delegated their power to administer above certain amount (>5000ha) of land to the Federal Government. Is this Constitutional?
5. In relation to question number 4, what practical challenges have occurred so far?

6. After the land is given to investors, forests cleared, it is alleged that some investors don't develop the land. If true, what are the causes? And what measures are being taken to decrease land wastage and to hold those responsible accountable?

IV. On Language and Cultural Issues

1. What challenges have the Ethiopian Federal System of governance faced in terms of using and developing one's language and culture for all purposes?
2. Do you agree with the current language policy of the federal Government?
3. What sort of challenges are there or do you think will occur in the future in the states in this regard?

V. On Self-determination at State Level

1. What does the implementation of this right at state level look like? What are the positive experiences and challenges?
2. Some state Constitutions don't extend this right including and up to secession to all nationalities in the state (e.g. Afar) and the Oromia Constitution recognizes only the Oromo nation. Is this compatible with what is provided under Art. 39 of the FDRE Constitution?
3. Are all the indigenous nations and nationalities within a state equally recognized and play equivalent roles in influencing the politics at state level in such states as Tigray and Amhara? What Constitutional guarantees and institutional mechanisms do they have?
4. Does the practice confirm that the 'self' is the one that decides on 'self-determination'? Give recent examples.
5. It is claimed that some numerically weak nationality groups are not benefiting from the reserve seats at the House of Peoples Representatives. How far is this true?

VI. On the Right to Movement and Ownership of Property in the Whole Country

1. Are there any restraints on the rights of citizens to move, work, and own property anywhere in the country?
2. If the answer to question number 1 is in the affirmative, what are the key causes?
3. What cultural or group rights do citizens living out of their so called mother states have? Is there any clear law in this regard?

4. Is there a law that regulates an organized inter-state movement of citizens? what are the challenges in this regard?

5. When large-scale investments are established in areas with numerically inferior nationality groups, what institutional mechanisms are put in place to protect the culture and group rights of the latter?

6. If large cities are established following grand projects, what benefits and challenges do you think they will bring to the local people?

VII. On Intergovernmental Relations (IGR)

1. Is there an institutional and legal IGR mechanism in Ethiopia?

2. If any of the states or Addis Ababa were to fall under an opposition party, what IGR challenges do you think will occur?

3. How do you evaluate the role of the government institutions and party mechanisms in regulating IGR?

4. It is alleged that it is the EPRDF executive committee that is serving as an IGR mechanism. Do you agree? why?

5. According to the FDRE Constitution, both the states and the Federal Government have policy-making powers. In practice, what kind of policies have the states designed so far? Has there been any dispute in this area so far? Is the demarcation between the policy-making powers of the states and the Federal Government clear?