

RHETORIC OR REALITY: SECESSION AS A HUMAN RIGHTS APPROACH TO ACCOMMODATION IN MULTIETHNIC ETHIOPIA

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I. ABSTRACT

A full measure of self-determination including and up to secession to ethnic groups in an ethnically diverse federalism, depending on the context under which federalism is the organizing system in a given country, serves as an antidote to historical ethnic dominations and ensures longevity. The Federal Democratic Republic of Ethiopia's Constitution is not only a legal document but also a 'Political Covenant' among the various ethnic groups the validity of which is dependent upon the ethnic-based federation. Rights based approach to ethnic conflict is an expression of the modern trend of dealing with or solving conflicts through ballots not bullets and secession upholds smooth-exit as determined by the ballots reducing further ethnic tensions and unbridled desire of controlling the fate of one ethnic group by another. But a critical and an in-depth analysis of the secession-clause provided in the Constitution yields a mere rhetoric than a realistically convertible right to solve "ethnic conflict" in Ethiopia. Normative limitations with-in the specific article and other provisions in the constitution, the context under which the Ethiopian politics operates, and Contextual limitations read from the regional and international trends toward secession reveals unduly limitations on the exercise of this right and may end up against the purpose to which it was designed to serve calling for an ex ante clarification of the contents of the right and its implementation.

II. STATEMENT OF TOPIC, CONTEXT & REVIEW OF LITRATURE

Secession¹ as a solution to ethnic conflict in Ethiopia has long been claimed by various ethnic groups² due to real and perceived domination by one ethnic group. The discourse on the right to self-determination including and up to Secession came in to being in the Ethiopian politico-legal culture in the 1970's³ with the student movement which culminated in to the overthrow of the monarchial government but unintended assent to power of a military dictatorship. The quest for determining one's political destiny seemed unimaginable given the long lived tradition of the imperial regime based on the concept of one and indivisible sovereign king . The university students' movement began with the growing dissatisfaction of the peasantry on tenancy and stand of homogeneity which created a discontent among the various ethnic groups deprived of their cultural identity and to use their own language.

The right to self-determination let alone secession was made a taboo with the coming in to power of the military government which led some to take arms to restore the quest for the right to self-determination including and up to secession. The military government after ruling the country without a constitution for 13 years⁴ came up in 1987⁵ with a constitution which contains the right to self-determination, thus reiterating the forum for debate at least for scholarly consumptions. The 1987 Constitution of the Peoples' Democratic Republic of Ethiopia did not contained detailed provisions on how the right is to be implemented and was a short lived constitution in most parts of Ethiopia (3 years) and never applied in some northern parts of Ethiopia which was by then already under the control of the Tigray Peoples' Liberation Front (a dissident group fighting for the right to self-determination of the Tigray people).

The total departure for the right to self-determination up to secession happened in 1991.⁶ The coalition forces of four major ethnic groups⁷ overthrown the military dictatorship regime and set up a transitional government under the Transitional Period Charter of Ethiopia. The Charter⁸, apart from defying unitary government and establishing a federal system based on ethnic lines, came up with the right to self-

¹ . The moral and legal validity of secession as is found in the Federal Democratic Republic of Ethiopia's Constitution will not be subjects of discussion in this paper unless incidental to the purpose at hand

² . The fact that Ethiopia is a multiethnic nation is not the subject of this paper. For a summary of the various ethnic groups and their place in history see section 2 of Yonatan Tesfaye Fisseha, Institutional recognition and accommodation of ethnic diversity: The case of Ethiopia, paper submitted for the 19th session of the summer university of the Institute of Federalism

³ . See Brietzke, PH. Ethiopia's 'leap in the dark': Federalism and self-determination in the new Constitution. 39 Journal of African Law (1995)

⁴ . The military government issued proclamation No. 1/1974 and was enforce until 1987

⁵ . Constitution of the Peoples Democratic Republic of Ethiopia of 1987

⁶ . After the overthrow of the military government a new transitional government was established comprising of the various ethnic groups under the Transitional Period Charter of Ethiopia of 1991 which introduced a federal form of government based on ethnic lines and the right to self-determination including and up to secession

⁷ . Tigray, Amhara, Oromo, and Southern Peoples and Nationalities which formed a coalition party called Ethiopian Peoples Revolutionary Democratic Front (EPRDF)

⁸ . Transitional Period Charter of Ethiopia, 1991

determination including and up to secession to ethnic groups. Based on this Charter a referendum under the auspices of the United Nations⁹ was held and Eritrea seceded or formally divorced from Ethiopia.

A Constitutional Assembly composed of various ethnic groups was set up in 1992 and entrusted with drafting a constitution which will endure ethnic tensions and ensure unity in diversity. Finally, Constitution of the Federal Democratic Republic of Ethiopia was adopted by the Constitutional Assembly 1994 which gave a constitutional sanction to the right to secession. The right to secession is included as Article 39 of the Constitution in the chapter which deals with human rights and fundamental freedoms. The right to secession, is thus, envisaged as a human rights approach to accommodate the needs of multiethnic society by establishing a consensual federation in breach of which is allowed a safe exit.

Much has been said and questioned about the prudence of including such right in a constitution¹⁰ without scrutinizing its efficacy thus calling an examination of what has been written by scholars to identify what has not been written to fill the gap. Analysis of the literature exclusively on Ethiopian cause would make the review incomplete for without knowing how such right is treated at international level would leave one in a floating stand given the politico-legal international dimension of the right.¹¹ It is hardly possible to claim novelty of an issue which floored a heated and renewed debate among scholars, but none addressed in the same way the issues treated in this work.¹²

There seems to be consensus by scholars at international level for granting the right to self determination in its internal aspect short of secession to¹³ “groups” than the context of “peoples”¹⁴ but split¹⁵ on whether these groups are entitled to the right to secession as a logical extension to the right to self-determination. Higgins,¹⁶ after analyzing the development of self-determination from principle to right and by reviewing the relevant legal instruments and state practice reached the conclusion that the right to secession applies only to all peoples of a given territory not to groups of people with in a territory. Her analysis does not draw a distinction between unilateral or consensual secession but a close reading reveals that she is addressing unilateral

⁹ . The United Nations Observer Mission to Verify the Referendum in Eritrea (UNOVER) was established pursuant to General Assembly resolution 47/114 of 16 December 1992.

¹⁰ . See Habtu, A. Ethnic Federalism in Ethiopia: Background, Present conditions and future prospects, paper submitted to the 2nd EAF International symposium on contemporary development issues in Ethiopia, 2003 for a summary of the main concerns on the inclusion of such right on both sides

¹¹ . Unlike other constitutional rights, this right involves separation of a group and making a new and independent state which involves joining the international community of states and knowing the newly formed state may be treated by other states is a matter of necessity not only nicety

¹² . At least as regards the constitutional right in Ethiopia, though a piece-meal literature may be found at international level

¹³ . All bibliographies and other materials included in this work support the claim and almost all scholars consider the internal aspect of self-determination as an aspect of liberal democracy such as Buchanan,

¹⁴ . The terms “groups” and “peoples” are used here as a conventional difference between a portion of the population and whole of the population, respectively in a given country

¹⁵ . It is this split which calls for review in this part to find whether some sort of secession right can be derived at least in as far as it shows what the fate of the constitutional right to secession in Ethiopia would be

¹⁶ . Higgins, R. Problems and Process: International law and how we use it. Oxford: Clarendon Press, 1994

secession as can be discerned from her description of the right as a claim by minorities. On the other hand, there are some scholars who claim that the rights to self-determination as provided in the international instruments apply to groups irrespective of whether unilateral or consensual.¹⁷ Buchanan¹⁸ appeared with clear distinction between consensual and unilateral secession and when such right may be exercised in which he foresaw nothing wrong in consensual secession. In his 'remedial-theory', Buchanan claimed that gross human rights violation may justify groups to unilaterally secede. From the above literatures one can draw two conclusions: consensual secession by groups in a given territory is in no contradiction with international law-to which I subscribe, and groups are entitled to the right to secession be it unilateral or consensual.

The inclusion of consensual secession in the constitution of the Federal Democratic republic of Ethiopia has been hailed by some as a 'stroke of genius' that would bring an end to century old ethnic domination in Ethiopia and ensure longevity;¹⁹ while others hold that the experiment signals a 'sign of first cracks' of disintegration of the historic and multiethnic state of Ethiopia which endured various challenges for three millennia.²⁰ From the incomprehensive literatures on both edges one consensus can be discerned: that Ethiopia is ethnically heterogeneous and a measure of self-determination is required but to what extent fires up the debate. Nahum,²¹ in his book on the constitution for a nation of nations, claims that the inclusion of this consensual secession right in the constitution serves as a uniting force in an ethnically diverse Ethiopia and is a litmus test for democracy. For him it is not the inclusion but the exclusion of this right which would lead to force of arms there by disintegration and justifies his claim by the oft mentioned case of Eritrea which the previous regimes have failed, under the force of arms, to keep it in with a result of 40 years bloody civil war.²² Derso,²³ on the other hand, on his Master's thesis on institutionalizing the right to self-determination claims that "where the right to self-determination is recognized...it is not advisable to provide secession in a constitution" for it would induce fragmentation with the presence of groups with the tendency of breaking away. Samuel,²⁴ further premises that the inclusion is meant as a forcible disintegration by stating that "a state which is not likely to be broken, may well be needlessly broken, by establishing a rule for how

¹⁷ . See foot note 2 of Kreptul for a summary of scholars who advance this view in: Kreptul, A. The constitutional right of secession in political theory and history, *Journal of Libertarian Studies*, vol. 17 No. 4 2003

¹⁸ . Buchanan, A. Toward a theory of Secession. *Ethics*, Vol. 101, No. 2, January 1991

¹⁹ . Nahum, F. *Constitution for a Nation of Nations: The Ethiopian Perspective*. The Red Press Inc. 1997

²⁰ . Haile, M. *The new Ethiopian constitution: Its impacts on Unity, Human Rights and Development*. Suffolk Transnational Law review 1996

²¹ . See Note 17 above

²² . See also Ragassa for his analysis on how the inclusion of this right may reduce ethnic tensions in multiethnic Ethiopia in: Regassa, T. *Ethnic federalism and the right to self-determination as a constitutional legal solution to the problems of multi-ethnic societies: The case of Ethiopia*, (Unpublished, LL.M Thesis, Law Faculty University of Amsterdam). 2001

²³ . Derso, SA. *Institutionalizing the right to self-determination as a Human Right solution to problems of ethnic conflict in Africa: The case of Ethiopia and South Africa* (Unpublished, LL.M Thesis, Law Faculty, University of Pretoria Center for Human Rights) 2003

²⁴ . See Samuel Assefa as quoted by Derso above note 21

to break it up.” Despite the absence of comprehensive literature²⁵ on the Ethiopian context, two observations from the available literature can be made: inclusion of the right solves ethnic tensions there by creating a nation united with in diversity and inclusion of the right escalates ethnic conflict there by leading to the collapse of the Ethiopian nation.

None of the literatures whether praising or blaming the inclusion of the right to secession in the constitution assessed the right as a human rights approach, save to Derso²⁶ which attempted to provide a human rights solution to ethnic conflict but stopped short of secession-to which there must be an examination of its [self-determination] extreme logical conclusion. Moreover, none of the literatures critically examined the right to secession and come to conclusion that it provides effective right or not-to which gap I will try to address throughout this work. Even the literatures which up held the inclusion of this right as an antidote to ethnic conflict does not give a full account on how it makes such contribution. Moreover, they do not give a critical analysis on the short comings of the right as it is in the constitution and how it can be tailored to effective right which makes the intended contribution to remedy ethnic conflict, which of course is naïve to expect from such literatures. A task which tries to fill these gaps is bound to come up from this work. The contribution is twofold; first, providing an in-depth analysis of the right to secession and its ramifications to ethnic conflict in a multiethnic society like Ethiopia will nourish the starved literature to the Ethiopian and abroad academia. Second, sending the signal on the deficiencies of the right to all concerned will remedy, by providing ex ante clarifications, a worse situation to which the right was designed to serve for: solution to ethnic conflict.

The main purpose of this short paper is designed on a double-edged quest for secession, i.e., whether a human rights based approach to ethnic conflict is desirable and if so whether a genuine right to secession is provided under the constitution of Ethiopia to which a positive and negative answers, respectively is found throughout the whole paper. A passing remark is to be made on the first question and a more detailed explanation for the second one, not to repeat what has been said regarding the embracing of secession as a human rights solution to accommodating diverse interests in multiethnic nations. To best address the two main research questions, an attempt will be made to deal with the following sub-questions:

- Whether and to what extent right to secession solves ethnic conflict in a multiethnic society
- Whether the right to secession as provided in the constitution would reduce or aggravate ethnic tensions in Ethiopia
- Whether the content of the right to self-determination under contemporary international law recognizes the right to secession

²⁵ . The literature on this field in Ethiopia is in its infancy and is almost found in Master thesis’ of students. Most account on this debate is to be found in political parties debates and some web sites for which authorship is difficult to prove

²⁶ . See note 21 above

- Whether the Constitution is designed to really mean what it says or whether an exercisable right to secession is provided in the constitution
- Whether and to what extent an ex ante clarification is necessary to make the right to secede effective
- Whether and to what extent the normative limitations would make the right impracticable

This paper will be organized in manner to best answer the research questions posed above and provide a line which helps to develop the thesis statement in a well organized manner. To this effect, the paper will be organized in three parts, in addition to the introduction and conclusion & recommendation parts, containing:

Multiethnic nation and human rights accommodation: Background; this part of the paper contains sub-titles which are designed to address primary issues like *(a) the nature and process of ethnic conflict, (b) possible abortive solutions designed and tried, (c) the road taken to human rights approach to ethnic conflict, (d) context under which the right to self-determination up to secession was included in Ethiopia, (e) the social context why Ethiopia is on this road compared to other countries which have similar problems.* By doing so, the first chapter answers the quest for the situation of ethnic conflict by outline *the existing conflicts and that a human rights approach best suited to heal the wounds or further prevent ethnic conflict.*

The Right to Secession: Content and specific mode of implementation; this part of the paper contains sub-titles which are designed to address issues like *(a) the place of right to secession in the general right to self-determination, (b) contemporary and historical debates about its contents, (c) its place in international human rights law, (d) self-determination and beyond in Ethiopia.* By addressing the specific sub-titles, this chapter will attempt to answer that secession, *at least consensual secession like the one found under the Ethiopian constitution, has an acceptable place in international human rights norms.*

Rhetoric or Reality: Limitations to the exercise of the right from within and outside; this part of the paper is designed to address specific issues to the constitutional right to secession in Ethiopia there by examining the *(a) specific limitation within the right itself, (b) limitations contained in other provisions of the constitution, (c) problems associated with an attempt to exercise the right as it exists by now.* The proper address to the specific sub-titles in this chapter reveals that *the right as found in the constitution is a mere rhetoric which doesn't give any meaningful right to be exercised to serve the purpose for which it was designed for.* This part of the paper also poses a number of questions to which the answers are to be found in the *recommendation part to trigger a rethinking of the right to secession by those who are concerned, mainly academia and policy makers.*

As this paper will be limited by space, a trade-off is likely after posing such a number of important issues in the structure of this paper above. Hence, this paper will mainly focus on the rhetoric aspect of secession as is found in the 1995 Constitution of the Federal Democratic Republic of Ethiopia, saving details of the other issues for another

space. A presentation comments will be employed to enrich this paper further and make contribution to the scanty literature and discussion on the efficacy of secession clauses in multiethnic federations.

III. UNPACKING THE NATION OF NATIONS: ETHNO-CENTRIC CONSTITUTION

“We, the Nation, Nationalities, and Peoples of Ethiopia...”

These are the opening, but overarching phrases, of the constitution. A shift from ‘We the People...’ found in the previous three-constitutions.²⁷ The concept of a multination state was considered for long as a source of division that will weaken the strong empire of Ethiopia which survived three millennia’s of pressure from within and outside. But this hegemony of a nation-state was subjected to challenges throughout the history of Ethiopia from different angles. It was the ascent to power of the military-Marxist regime in 1974, hijacking the student movement and popular revolt, which floored the renewed quest for a home for each nation and the right of these nations to self-determination. The absence of tolerance for dissent and negotiation led some groups to take arms in their quest for the right to self-determination of their ethnic groups, notably the Tigray Peoples Liberation Front (TPLF). After 17 years of bloody civil war, the military regime could not withstand the military defeats and pressures and was ousted by a coalition of rebel forces in 1991.

The 4 coalition parties which overthrew the military junta were organized along their ethnic lines for the liberation of their respective ethnic groups. But the formation of the coalition, which at first was sought to defeat a common enemy-the military regime-was transformed in to a coalition for a common destiny which was sealed in 1992 by the adoption of the Transitional Period Charter of Ethiopia and forming a government based on national and provincial elections. The 4 coalition parties’ fall-short of representing all the ethnic groups in Ethiopia and further arrangements were inevitable. Based on the power-sharing arrangements and state organization, the first multiethnic Ethiopia was created in 1995 after the adoption of the Constitution of the Federal Democratic Republic of Ethiopia by the Constitutional Assembly.

The pillars of the new constitution can be identified as multination-state, federalism, and self-determination. As a prelude to the inclusion of the right to self-determination up to secession in the new constitution, a warm-up exercise was undertaken by granting the independence of Eritrea based on the Transitional Period Charter of Ethiopia and under the auspices of the United Nations.

The constitution, in addition to creating a multiethnic federal state, was carefully and even sometimes overstating, designed to reflect the multiethnic nature of Ethiopia and a close look at some basic provisions of the constitution reveals why someone may be tempted to rightly call it an ethno-centric constitution which provides the bolts and nuts to keep the harmony intact: unity within diversity.

²⁷ . The 1931 and 1995 Constitutions of the Imperial Ethiopia; and the 1987 Constitution of the Peoples’ Democratic Republic of Ethiopia, which all constitutions uphold the indivisible unity of Ethiopia as one-nation state

The preamble, as opening part of the political covenant-as some would like to call it-reaffirms by objectively leaving and instead replacing the 'We, the People, ...' by 'We, the Nations, Nationalities, and Peoples, ...' the inauguration of a multiethnic Ethiopia. But, who are the Nations, Nationalities, and Peoples' of Ethiopia? Article 39 of the constitution has an answer. Article 39 last paragraph defines a Nations, nationalities, or Peoples' as "... is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory." Culture, Language, Identity, and Territory (homeland) are the 4 major characteristics identifiable from the definition given to Nations, Nationalities, and People' can safely be said an all inclusive definition which reflects the major characteristics of a particular group who call themselves as nations, save for one missing attribute which is religion. Does this make a constitution an ethno-centric constitution?

Not so fast. It is the elevated place of these Nations, Nationalities, and Peoples' in the constitutional system and what they can do within the constitutional system which makes the constitution an ethno-centric. The merits and demerits of an ethno-centric constitution are left to the judgement of the readers.

*"All sovereign power resides in the Nations, Nationalities, and Peoples' of Ethiopia."*²⁸

Though the Nations, Nationalities, and Peoples' decided to form a federation which will unite them for their common destiny, as outlined in the preamble²⁹, they did not dare to transfer their sovereignty to the Federal Government for this article affirms that sovereignty remains with the Nations, Nationalities, and peoples' themselves. What does this mean in practical terms may be difficult to ascertain for there are some states which conglomerates to diverse ethnic groups.³⁰

Dissecting the 'expression of sovereignty' as provided in the same article may help in understanding how sovereignty is kept by those Nations, Nationalities, and Peoples' merged in to one administrative region. Sovereignty, according to Article 8 paragraphs 2 and 3, is expressed by the constitution itself, representation, and direct democracy. Thus, the sovereignty may be recapped, for example, first, by the right to self-determination to each Nation, Nationality, and People without necessarily being one of the 9 regions and 2 administrative cities recognized by the constitution.³¹ Apart from this, Nations, Nationalities, and Peoples' within the enumerated 9 regions/states have the right to form their own state pursuant to paragraph 2 of Article 47 subject to procedural conditions laid down in the same article. Second, the rules of representation in the House of Peoples' Representatives-the lower house-and, third, the golden rule of

²⁸ . Art 8 (1) Of the Constitution of the Federal Democratic Republic of Ethiopia

²⁹ . First paragraph of the preamble explains well what the common destiny of the federation is going to be and reads as, '... to building a political community founded on the rule of law and capable of ensuring lasting peace, guaranteeing a democratic order, and advancing our economic and social development.'

³⁰ . More than 80 Nations, Nationalities, and Peoples' according to the definition in Article 39 are packed in a tight jacket of 9 regions and 2 administrative cities.

³¹ . Pursuant to Article 47 member states of the Federal Democratic republic of Ethiopia are: Tigray, Afar, Amhara, Oromia, Somali, Benishangul/Gumuz, Southern Nations, Nationalities, and Peoples', Gambela, and Harari

representation in the House of federation-the upper house-: 'at least one from each Nation, Nationality, and people.' Apart from this, sovereignty as expressed by direct democracy may exemplified by the power distribution which reaches the lowest units in the administrative arrangements pursuant to the constitution.

Thus, the affirmation that the Nations, Nationalities, and Peoples' are the holders of sovereign power as expressed by the constitution, representation, and direct democracy shows the importance they assumed in the constitutional system. Nations, Nationalities, and peoples' are the cornerstones in the constitutional engineering.

Normative provisions, apart from the sovereignty clause, in the constitution which show its ethno-centric nature are in order. Symbolic attachments and values come first.

The Ethiopian Flag with its three colours-Green top, Yellow middle, and Red bottom-have been long attached with the ruling elite ethnic groups throughout the history of Ethiopia and a new symbol of attachment was inevitable to keep the federation together. Article 3 of the constitution introduced the new symbolic change as addition to the three colours which reads, "... and shall have a national emblem at the centre." The constitution goes on, in Article 3, to provide on the criteria for the national emblem and "The national emblem on the flag shall reflect the hope of the Nations, Nationalities, and Peoples' as well as religious communities of Ethiopia to live together in equality and unity."

Language is one component in the definition we saw for the Nation, Nationalities, and Peoples' and assumes an important place in the life of each ethnic group, which long has been a bone of contention especially in the field of education. The constitution extends state recognition to all languages spoken by each of the Nation, Nationalities, and Peoples', but reserves the Amharic language as a working language of the federal government. Members of the federation, the 9 states, have the right to determine their respective working languages, but may not extend or withdraw official recognition for languages spoken by each of the Nations, Nationalities, and people with in the 9 member states of the federation.³² This arrangement is designed as an antidote to the long history of language and culture domination by one ethnic language-Amharic-in Ethiopia.

Despite a liberal approach followed in the provision of human rights in the third chapter of the constitution, Nations, Nationalities, and Peoples' appear as holders of a right to self-determination including and up to secession which signifies a remarkable seal that the federation is based on the consent of these Nations, Nationalities, and Peoples' the consent of which may be withdrawn at any time. The ramifications this right will be discussed in the next part.

Before winding up our unpacking effort of the Ethiopian Constitution as Ethno-centric Constitution, few provisions merit full citation as a conclusion to the argument:

Article 54 (2):

³² . Article 5 of the Constitution of the Federal Democratic Republic of Ethiopia

Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation of minority Nations and Peoples

NB; at least 20 seats pursuant to the third paragraph of same article is reserved for minority nationalities

Article 61

The House of the Federation is composed of representatives of the Nations, Nationalities, and Peoples.

NB: at least one representative for each Nation, Nationality, and People

Article 87

The composition of the national armed forces shall reflect the equitable representation of the Nations, Nationalities, and Peoples of Ethiopia

Article 93 (4) (c)

In the exercise of its emergency powers the Council of Ministers can not, however, suspend or limit the rights provided for...sub-articles 1 and 2 of Article 39

NB: Article 39 is the right to self-determination up to secession of the Nations, Nationalities, and Peoples

Article 105: Amendment of the Constitution

All rights and freedoms specified in Chapter Three of this constitution, this very article, and article 104 can be amended on the following manner: when all state councils by majority vote, when the House of Peoples Representatives by a 2/3 majority vote, and when the House of federation by 2/3 majority vote approves the proposed amendment

NB: Article 39 is in Chapter Three and can be considered as eternity clause based on the amendment procedure above

VI. THE RHETORICS OF SECESSION: 'THOUGH SHALL NOT FEAR'

Why on earth would a country institutionalize the right to secession in its constitution despite all the efforts listed above to accommodate the demands of ethnic groups in a multination federation? Is it to discourage secession, to avoid inevitable consequences of unilateral secession, i.e., violence, to show that the multination federation is united by consensus?³³

Article 39 of the Constitution of the Federal democratic Republic of Ethiopia provides for both internal and external aspects of self-determination. By its inclusion in Chapter Three of the Constitution, self-determination has attained the status of a human right in the constitution for the chapter is named as fundamental rights and freedoms. The inclusion of self-determination in this chapter has far reaching ramification for its

³³ . For a detailed discussion on the logic of institutionalizing the right to secession through constitutional means see: Weinstock, Daniel, On some advantages of constitutionalizing the right to secede & Kreptul, Andrei, The constitutional right of secession in political theory and history, Journal of Libertarian Studies, Vol. 17 No. 4, PP. 39-100

amendment procedure for it requires consensus by all members of the federation and 2/3 majority in both Houses. Given all this it can be said that the purpose of institutionalizing the right to secession is to employ a human rights approach in accommodating the diverse interests of the Nations, Nationalities, and Peoples by allowing a safe exit if any of these groups consider that the promise to keep them in the federation is no more respected either by the federal government or the state governments.

The Ethiopian Constitution is the only, except for St. Kitts and Nevis, constitution which provides for a constitutional right to secede.³⁴ Continuing the purpose and prudence of institutionalizing the right to secession in a constitution, lets draw our attention to whether the right to secede, as it exists under article 39 of the constitution, is really meant for the people to exercise it as a right or a vain rhetoric that would not really be exercised by the Nations, Nationalities, and Peoples thereby hinting on its possible purpose.

The inclusion of the right to secession in the constitution is a mere rhetoric but not convertible right as it exists now in the constitution. This is both from normative and institutional angles.

Article 39 provides:

Rights of Nations, Nationalities, and Peoples

Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.

Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect: (a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned; (b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession; (c) When the demand for secession is supported by majority vote in the referendum; (d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to

³⁴ . But there are other existing forms of recognized secession procedure in some countries. For example, Canada recognizes secession as an outcome of the Supreme Court decision in 1998; there are also no more good laws such as the Secession clause in the former Soviet Union

secede; and (e) When the division of assets is effected in a manner prescribed by law.

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

NORMATIVE LIMITATIONS

As one begins to unpack the unconditional right to secession as provided in the first paragraph, one would find that it is a conditional right by looking in to the procedures envisaged in the next paragraphs. One would conclude, after going through the procedures, that to exercise the right to secession is prohibitively difficult if not impossible. First, the procedures, i.e., 2/3 majority vote in the Regional Council, organization of referendum within three years, majority vote referendum, transfer of power from the federal government, division of assets are all condition to the full exercise of the right to secede. Hence, the right to secede is a conditional right for the procedural requirements are cumulative of which the absence of one may block the secession initiative.

The right to secede is vested on the Nations, Nationalities, and Peoples while the decision whether a particular Nation, Nationality, or People should secede is given to the Regional Council, the decision of which to be approved by a 2/3 majority. The constitution recognizes only two legislative councils: the Federal legislative Council and the Regional Legislative Council. The existing 9 Regions are themselves multinational Regions composed of different ethnic groups as a result the Regional Council is composed of these different ethnic groups according to the rules of representation. Thus, when a particular Nation, Nationality, or People wants to exercise its constitutional right it has to get the improbable blessing of other Nations, Nationalities, and Peoples represented within the Regional Council: one nation deciding over the fate of another nation on the exercise of "unconditional" right to secede. Hence, the right holder and the decision maker are two different entities, a comparable situation to when a right to secede of a sub-unit is subject to the approval of the other members of the federation. This situation is more worrying when one is reminded that the vote required by the Regional Council is super majority (2/3). Take for example the Southern Nations Nationalities and Peoples, one of the nine regions according to the constitution, which currently is composed with over 40 ethnic groups. It is not hard to imagine how difficult it would be to get 2/3 majority vote if one of the Nations, Nationalities, or Peoples decide to exercise their constitutional right. In such a scenario, the right most probably would be exercised by those regions which are composed of a single Nation, Nationality, or People, which currently is not the reality in Ethiopia and of course would not be in the future.

The problem continues. Even if a Nation or Nationality manages to get a 2/3 majority vote in the Regional Council, it should also get a majority vote in a referendum organized by the federal government after approval by the Regional Council. But who is

to participate in the referendum vote? A seemingly silly question but with far reaching consequences when one looks at the exact words of sub b of paragraph three which says when the demand for secession has been supported by a majority vote in the referendum but says nothing on who shall participate in the referendum. This would give rise to constitutional challenge before the House of Federation in case where there is a disagreement on the interpretation of the provision. Then ultimately the right to secede would fall in the hands of the House of Federation and thereby on the will of the other Nations and Nationalities.

The absence of ex ante clarification on the transfer of power and division of assets, assuming that all the hurdles has been passed and a nation secured all the votes required, would be a source of contention in the process of secession. It is worthwhile to remember all the conditions are commutative.

The transfer of power and change of territorial jurisdiction would require further procedures, and sometimes constitutional change, which will further complicate the situation in the process of situation and may result in intervening circumstances to halt the whole procedure. It is worthwhile to remember the stringent requirement to amend the constitution as laid down in articles 104-106.

The division of assets is to be effected in accordance with the law as laid down in sub d of paragraph three. But which law? Who is going to enact this law? An answer to none of which is found in the constitution thereby delegating the issue of constitutional right to undetermined legislative body.

It is these and other normative limitations found within the constitution which invite someone to partially conclude the inclusion of the right in the constitution is a mere rhetoric designed to achieve ulterior purpose than the exercise of the right itself. Then why is the right institutionalized in the constitution? More of a symbolic-unity in diversity by the consent of all the Nations, Nationalities, and peoples of Ethiopia-and a lien-if just in case the past injustices would make their way in the new Ethiopia.

INSTITUTIONAL AND OTHER LIMITATIONS

Much can be said about the difficulties that a secession initiative may face by analyzing the current practice of federalism in Ethiopia. But, much to my regret, it falls short of a lengthy discussion for various reasons including space. It is an obvious fact that political parties influence the way a federation works and secession would not be an exception as a constitutional issue of major interest. The right to secession has been a rallying point for political parties, either in favour or against, in the last 17 years of the Transitional Charter and the Constitution. No provision of the constitution has attracted the attention of political parties than ownership of land and secession. Political parties as instruments of the expression of the will of the people will advance the interest of the portion of the society which represent. The organization of political parties in Ethiopia, though not a legal requirement, follows along ethnic lines. Out of the 76 registered political parties, for example, 72 of them are organized under the umbrella of one or more ethnic groups. This will definitely shape the fate of the right to secede in the constitution.

The current ruling party, which stayed in power for the last 17 years, is a coalition of the four major ethnic groups in Ethiopia and is the party which introduced the

constitution together with its right to secede. The right to secede will be there normatively till this party stays in power for the future holds a lot of uncertainties concerning the stand of opposition political parties-some of them are in favour and others against. But would it be possible to exercise the right even though the ruling party is still in power? Though difficult to claim conclusion, it is not. Some points are in order. There still are secessionist armed struggles³⁵ with in Ethiopia despite the existence of a constitutional right to secession which makes no difference since secessionist movements also happen in countries where there is no constitutional right to secession. A more centralized trend of the federal government, as evidence by various measures, would call one also to doubt the genuineness of the ruling party that it dares to grant the right to secession.

The ruling party and the people of Ethiopia also are at war with a legally seceded neighbour Eritrea for the last 10 or so years which may either to draw a parallel lesson on the consequences of secession even though the secession was consensual. The party may not be willing to sacrifice its popular legitimacy there by its political power by gambling in avoidable secession movements or initiatives. The public, both within the secessionist and non-secessionist, may be forced to a different calculation than to go ahead with the demand for secession.

The situation if the opposition comes to power is no less, if not more, hostile to the idea of secession itself. There a stark division within the opposition concerning the right to secession. With such uncertainty, it is possible to predict either the total abolition of the right in the constitution, which close to impossible, or collapse of the government over disagreement on this issue which further complicates the situation. The reluctance of the international community towards secession movements and insufficient resources within the seceding nation would also contribute in making sure right to secession is a just a constitutional rhetoric thereby its symbolic purpose.

IV. CONCLUSION

By detaching myself from the mainstream debate as to whether it is advisable to institutionalize the right to secession in the Ethiopian constitution, I have argued in this paper that it is not the inclusion but whether the right can be exercised should invite for a concrete argument. A critical and an in-depth analysis of the secession-clause provided in the Constitution yields a mere rhetoric than a realistically convertible right to solve "ethnic conflict" in Ethiopia. Normative limitations with-in the specific article and other provisions in the constitution, the context under which the Ethiopian politics operates, and Contextual limitations read from the regional and international trends toward secession reveals unduly limitations on the exercise of this right and may end up against the purpose to which it was designed to serve calling for an ex ante clarification of the contents of the right and its implementation.

Consensual secession unlike unilateral secession lacks no legal validity in both domestic and international plane as ascertained from the available literature. The Ethiopian constitution viewed from all angles can be considered as an ethno-centric constitution

³⁵ . The Oromo Liberation Front and the Ogaden Liberation Front are the two most active secessionist movements from within and outside Ethiopia

which took extra step to accommodate the interests of multination Ethiopia. Starting with the preamble, recognition of languages, right to self-determination up to secession, Representation in both Houses, principles of economic, social, and national defence, and the amendment procedure of the constitution one can see the Nation, Nationality, and People element as a pillar of the whole constitution.

Despite all the efforts of accommodation, the Ethiopian constitution has embarked on an improbable journey towards institutionalizing the right to secession in the constitution. The normative limitations with in article 39 and other institutional impediments will make the right to secession as a mere rhetoric designed to serve other purpose than providing a real right. The double vote requirement, the absence of ex ante clarification laws concerning the transfer of power and division of assets, the politics under which Ethiopia is and will operate, and internationally hostile environment towards secession would make a bitter reality to those who counted on the constitutional right to secession.

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