

Stability and Trust in Federations with Ethnic Territories and a Secession Clause – Challenges and Opportunities for Ethiopia¹

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Abstract

How might Ethiopia maintain its federal structure and its territory? ‘Constitutional contestation’ in Ethiopia is fueled by two factors: regions and political parties follow ethnic line; and the Ethiopian Constitution has a secession clause.

A central challenge is to secure sufficient political trust. The public must be assured that authorities and individuals across regional borders generally comply with the law. This requires authoritative, independent ways to settle disagreements and monitor compliance, including carefully designed multi-level checks and balances, representatives of regions in central decision making bodies, and a ‘competence police’. So we should welcome the prohibition of the 2019 Election Law against ethnically based political parties. Strong and credible human rights constraints together with free media and functioning opposition parties may also foster trust. This is one further reason why Ethiopia should grant the African Court on Human and Peoples' Rights (ACtHPR) jurisdiction to hear cases from NGOs and individuals.

1. Introduction

-Will this new federal system work?

"I don't know; but we have tried everything else, and that didn't work". Prime Minister Meles Zenawi.²

“Either we live together in respect or dismantle Ethiopia”
Debrestion Gebremichael, vice president of Tigray regional state and chairman of Tigray People’s Liberation Front (TPLF), at rally in support of peace effort between Ethiopia and Eritrea, 28 July 2018³

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² C. Clapham, 'Nationalism, Nationality and Regionalism in Ethiopia' *Occasional Papers of The Anglo-Ethiopian Society* (1995),

³ Reported in <www.borkena.com/2018/07/28/we-live-together-with-respect-or-disintegrate-debrestion-at-mekelle-rally/>.

Ethiopia, arguably one of the world's oldest states, is a federation that experiences intense and sometimes violent tensions between those who support demands for national unity and those who favour further decentralization organized along ethnic lines – possibly even secession. Recent changes in the political situation render some of the issues concerning secession, and importantly the threat of it, more politically salient – and may hence fuel such calls. These reflections address firstly some of the challenges if Ethiopia is to maintain stability in the limited sense of retaining its federal structure within present territorial borders, and secondly some strategies to alleviate such sources of instability. Two particular concerns are how to protect and further the interests of oppressed minorities, and reduce incentives for regional leaders to credibly threaten with secession – and thereby reduce the risks of destabilization.

Section 2 provides some of the relevant background concerning Ethiopia. Section 3 identifies some of the sources of instability, drawn both from international comparisons among ethnic-based federal states and from the incentives fostered by the secession clause of the Ethiopian Constitution. Section 4 suggests some possible prescriptive responses, contingent on the historic and present tensions, actors and opportunity spaces. One central theme is the contributions of an independent domestic judiciary and international human rights bodies. Section 5 concludes.

Some cautionary notes are in order. Firstly, the value of maintaining the present borders is here simply taken as given. How to assess the justice of a federal order and assess the Ethiopian state accordingly falls beyond the scope of these reflections. Secondly, the suggestions offered are preliminary and general, drawn from attempts to generalize about stability within federal states. Such comparisons are of some – limited – use. Federal states are in general less stable than unitary states, since political authorities often introduce federal solutions precisely to quell conflicts or secessionist tendencies. Moreover, the number of stable federations are few, and they vary drastically in their constitutional forms. Indeed, every federation differs in important details, making it difficult to draw many lessons or predictions.

2. Ethiopian Federalism

Ethiopia is one of the oldest states in the world. Never colonized by Europeans, some hold that Ethiopia was a colonial empire over neighbouring peoples.⁴ Ethiopia has more than 80 ethnic groups. The two major ethnic groups alone, the Oromo and the Amhara,⁵ constitute more than 62 per cent of the population. The Somali and Tigrayans are each approximately 6 per cent of the population. There are several resource rich regions, including Oromia and Tigray. The Tigrayans have been the politically dominant group since 1995, when Ethiopia became a federation with 11 regions or territories. Ethiopia introduced an ethnic based decentralized structure with 14 regions in 1992. In addition there are two federal cities.

The Ethiopian Constitution is highly unusual in several respects. The regions are formed largely on an ethno-linguistic basis, such as the Oromo, the Somali and the Afar, who each have their own region, their own government and their own parliament. This ethno-nationalist bases may be contrasted e.g. to Nigeria, which by design avoids overlap between regional borders and ethnic lines.⁶ It recognizes the 'unrestricted' right of 'Nations,

⁴ A. Habtu, 'Multiethnic federalism in Ethiopia: A study of the secession clause in the Constitution' 35 *Publius: The Journal of Federalism* (2005), 313-335.

⁵ The latter includes several ethnic groups, including Kemise-oromo, Qimmant, Agew, Argobba and Amhara.

⁶ Habtu, 2005, *supra* note 3, p. 316; R. Suberu, 'Federalism & the management of ethnic conflict: the Nigerian experience', in David Turton (ed.), *Ethnic federalism: The Ethiopian experience in comparative perspective* (Athens, Ohio, Ohio University Press, 2006) pp. 65-92.

Nationalities and Peoples' to 'self-determination up to secession'.⁷ A further factor in Ethiopia's multiethnic federalism is that many though not all political parties are organized along ethnic lines, which further strengthens ethno-nationalist cleavages.

The Constitution is also unusual in that it recognizes a right for ethnic groups to secede.⁸ It specifies the procedure to achieve independence: the seceding nation must make a formal request, a referendum in the region must then be held, and finally the transfer of powers to the council of the seceding nation and the partition of property must be organized. While few groups except in the Tigray region currently mention such secession, the possibility that conflicts may escalate to that point may foster more unrest and destabilization.

Why did the Constitution include these features, and what are their effects?

Some hold that an ethnic federation appeared as the only and inevitable solution to secure a unified Ethiopia faced with several tensions.⁹ Accusations of tyrannical ethnic based abuse by centralized authorities in the name of pan-nationalism appears to be one of several reasons for the focus on ethnic identities in the federal Constitution. Other potential factors include the ethno-nationalist nature of the Tigray People's Liberation Front (TPLF) and other insurgent movements.¹⁰

Why was a secession clause included? Some claim that it may have been necessary to secure agreement to a constitution in the first place. Past oppression appears to be why "[t]he TPLF and EPRDF [Ethiopian People's Revolutionary Democratic Front] insisted that the secession clause be included in the charter. Had it not been included, the OLF [Oromo Liberation Front] would not have joined the Transitional Government of Ethiopia and the country would probably have once more relapsed into civil war."¹¹ Other possible explanations may be that the TPLF all along intended for the "independent democratic republic of the (greater) Tigray" to secede, as stated in their 1976 manifesto.¹²

The effects of federation are mixed. Some deem it a success at securing peace and stability.¹³ Linguistic discrimination was reduced, and several collective ethnic and cultural rights were accorded to the regions.¹⁴ However, ethnic tensions did not so much disappear as transform within the federal structure.¹⁵ Federal features also appear to have contributed to some of the human rights challenges of Ethiopia.¹⁶ The central state has remained powerful, nominal decentralization notwithstanding.¹⁷ Indeed, observers note the lack of politically independent institutions to adjudicate the constitutional division of powers between the

⁷ Art. 39.1.

⁸ The Yugoslav 1946 Constitution and the USSR had a similar constitutional provision, discussed in Habtu, 2005, pp. 316-317. The European Union has a similar clause – Art. 50, which has been invoked by the United Kingdom.

⁹ D. Turton, 'Introduction', in David Turton (ed.), *Ethnic federalism: The Ethiopian experience in comparative perspective* (Athens, Ohio, Ohio University Press, 2006) pp. 1-31.

¹⁰ J. Abbink, 'Ethnic-based federalism and ethnicity in Ethiopia: Reassessing the experiment after 20 years' 5 *Journal of Eastern African Studies* (2011), 596-618, 597; K. Tronvoll, *War & the politics of identity in Ethiopia. The making of enemies & allies in the Horn of Africa* (London: James Currey, 2009).

¹¹ Habtu, 2005:324, cf. J.-N. Bach, 'EPRDF's Nation-Building: Tinkering with convictions and pragmatism' 27 *Cadernos de Estudos Africanos* (2014), 103-126, 111.

¹² 'Manifesto' (1976), e.g. M. J. McCracken, 'Abusing Self-Determination and Democracy: How the TPLF Is Looting Ethiopia,' 36 *Case Western Reserve Journal of International Law* (2004), 183-.

¹³ Turton, 2006 *supra* note 8.

¹⁴ Habtu, 2005 *supra* note 3, p. 335.

¹⁵ A. Kefale, *Federalism and ethnic conflict in Ethiopia : a comparative regional study* (Abingdon: Routledge, 2013).

¹⁶ E. Brems & C. Van der Beken, *Federalism and the protection of human rights in Ethiopia* (ed. ^eds.), Lit (2008).

¹⁷ Abbink, 2011, p. 596.

regions and the central authorities.¹⁸ Regions have been dependent on the central authorities' revenue transfers.¹⁹ These factors may have contributed to stabilize the political order. Yet this stability is precarious, especially insofar as some regions may gain more economic independence or capture the central bodies of authority.

The effects in Ethiopia of the secession clause are mixed and contested. It appears to have encouraged some ethnic-based organizations to develop secessionist plans.²⁰ Indeed, even to talk about removing such a clause may spur secessionist movements to hurry up while secession is still legal. However, until recently it was difficult to think that any territory would be allowed to launch its own way towards independence. Any stirring in a region to secure more autonomy – or secession – was suppressed.²¹ Consider the Oromo in Oromia, the country's largest and most populous region. They have complained for decades about economic, cultural and political marginalization, but suffered a 2016 crackdown against protests. There seemed little chance that any territory would be allowed to secede according to the constitutionally defined process - until recently. Again, the real chances of secession need not be large: the mere possibility may serve to destabilize the political order.

Protests in Oromia, starting in November 2015, led to the resignation of Ethiopia's prime minister, Hailemariam Desalegn in 2018. He was replaced by Abiy Ahmed in April 2018. This change may render secession on the one hand more politically possible, since Ahmed is in many ways a progressive leader. On the other hand, secession of Oromia in particular may not be more likely, since Ahmed is an Oromo. He might neutralize or postpone the issues, but several forces with strong preferences remain, including the Oromo Liberation Front (OFL) and the Oromo Federalist Congress (OFC).

The changed political situation renders some of the issues concerning secession from federations more politically salient in Ethiopia. Several drivers may enhance temptation to call for secession in ethnic federations such as Ethiopia – and several factors may reduce such tendencies and promote stability.

3. On Sources of Instability: Ethnic Federalism

The ethnic bases of the federal structure, and the constitutional right to secede both increase the likelihood of secession in the Ethiopian case.

Due to their origins, federations already tend to face greater real risk of secession compared to unitary states. Ethiopia would appear to be a case of a 'holding together' federation,²² where constitutional decentralization of authority is a means to keep the state borders intact. In comparison, other federations or federal political orders are created by formerly independent sovereign units that join forces to address particular challenges – such as the US, or arguably the European Union. Both 'holding together' and 'coming together' federations seem to occur among states, in response to deep dissatisfaction with the unitary government(s). Holding together federations have 'devolved' certain authorities to reduce tension levels within some territorial areas. Coming together federations have decided to join forces to achieve certain objectives, but maintain a range of objectives that are not shared in ways that make a unitary state advisable.²³

If constitution writers seek to create a federal state with unstable territorial borders,

¹⁸ A. Fiseha, 'Theory versus practice in the implementation of Ethiopia's ethnic federalism', in David Turton (ed.), *Ethnic federalism: The Ethiopian experience in comparative perspective* (Athens, Ohio, Ohio University Press, 2006) pp. 131-164

¹⁹ Suberu, *supra* note 5.

²⁰ Abbink, 2011, pp. 604-605.

²¹ *Ibid.*, 604-5.

²² Bach, 2014.

²³ A. Stepan, *Arguing comparative politics* (Oxford: Oxford University Press, 2000).

they may be well advised to design an ethno-national based federation with a constitutional secession clause – as Ethiopia. These constitutional features make for a challenging political environment, leaving aside any further aspects unique to Ethiopia, such as its violent history and multiethnic population. Thus some note in the case of Ethiopia that "[s]ome ethnonationalist organizations seek secession, but they had sought secession even before the establishment of the federal system."²⁴ That these federal states face a perpetual risk of turning into unitary states or face secession should thus be no surprise.

3.1 If Ethnic-Based Federalism is the Solution, What is the Problem?

One way to accommodate tensions among ethnic or national groups is to reduce the topics that require negotiation and agreement – e.g. by decentralizing authority concerning official languages, cultural expressions, modes of economic development and the like. Each ethnic group or nationality is no longer a minority that the majority might discriminate against, but is rather empowered to decide these issues on its own. This may appear the only politically feasible response to acute crises.

Decentralization sufficient to secure some local autonomy need not require federalization: benefits such as linguistic and other autonomy could be secured by legislation. Still, a fear of centralization and abuse of power may require to constitutionalize such autonomy, e.g. in the form of federal arrangements. While ethnicity based federalism may appear tempting and even necessary in the short term, this may not be a sustainable solution, for several reasons. The cautions appear to apply also to the case of Ethiopia.²⁵

Firstly, the regional divisions may reinforce and entrench existing cleavages between populations in different regions, making longer term harmonization even less likely. Some go so far as to claim that ethnic federalism inevitably reinforces conflict between groups.²⁶ The focus on ethnicity and in particular local languages may even foster new social cleavages and conflicts.²⁷

Secondly, the regional borders very seldom succeed in delineating any ‘pure’ nation or ethnic group. Neither populations within geographical borders nor ethnic groups or nations share interests, preferences or loyalties in ways that remove or reduce conflicts - or aid in their resolution. There are often ‘internal minorities’ within regions who may suffer further discrimination by the regional majority – who can plausibly claim that the whole *raison d’être* for the region is to let them decide according to the majority’s shared identity. Thus in Ethiopia, enmity between various parts of allegedly the ‘same people’ has been regularly recorded on the basis of different beliefs, values and livelihoods - such as clashes between Guji vs. Boran, both Oromo-speaking.²⁸

Thirdly, the possibilities for regions to gain autonomy, and even for new ethnic groups to become a region with some self-governance,²⁹ may fuel ‘ethnic entrepreneurs’ who seek to create new shared identities with new claims. These political possibilities may thus create new conflicts, and more local intolerance of internal minorities. This appears to have happened also in Ethiopia.³⁰

²⁴ Habtu, 2005333.

²⁵ Kefale, 2013 ; C. Van der Beken, *Unity in Diversity: Federalism as a mechanism to accommodate ethnic diversity: The case of Ethiopia* (Munster: Lit, 2012).

²⁶ D. Feyissa, 'The experience of Gambella Regional State', in David Turton (ed.), *Ethnic federalism: The Ethiopian experience in comparative perspective* (Athens, Ohio, Ohio University Press, 2006) pp. 208-230.

²⁷ Ibid.

²⁸ Abbink, 2011 608.

²⁹ Sometimes without a constitutional amendment as in India where Parliament has this competence.

³⁰ Abbink, 2011, pp. 603-604.

A fourth challenge is that the different ethnic groups or nationalities are not mutually exclusive, possibly leading to further conflicts. Thus in Ethiopia, “Somali and Oromo identities are not unambiguous; some groups claim to be both Somali and Oromo.”³¹ When ethnic groups or nationalities have claims to territory, such overlapping identities pose particular difficulties. Indeed, in Ethiopia there are reports that “pastoralist groups have become more vulnerable as the state and the regional authorities want them to ‘settle’ and suspect them of fomenting instability and over-exploitation of the environment”.³²

Fifthly, some nationalities or ethnicities do not have a naturally salient territory. In many federations some groups are territorially dispersed – such as the Dalits in Nepal.³³ Territorial ethnic based federalism will create new risks for members of such groups of being subject to domination by their provincial authority, in addition to risking domination by central authorities.

A sixth concern with ethnic federalism is that economic sustainability may suffer if the sole criterion for territory is ethnicity or nationality. Thus in Ethiopia, some ethno-linguistic units are not viable economic or political units, and there may be extensive cross-regional economic ties.³⁴ Arguably, if the regions are economically interdependent this interdependence may stabilize the state.³⁵ However, if some entrepreneurs think that their future region might benefit from economic independence, this makes for less stability.

3.2 Risks of a Constitutional Right to Secede

The constitutional right to secede for a region may sometimes be to the advantage of individuals who might otherwise suffer prejudice and discrimination. When secession is known to be a viable option for them, this gives the central government an incentive to respect human rights and provide fair shares of benefits among the regions.

But such benefits are rare, and the risks are *legio*. Reduced risks of discrimination may only arise if threats of secession are credible – i.e. if the region can credibly survive outside the federation, e.g. by joining a neighbouring country. The mere right to secede may also fuel further instability, also by less oppressed regions whose leaders simply want more for their regions, or more power for themselves – and find it helpful to mention or threaten with secession. Many federations experience ‘constitutional contestation’ about where to allocate authority. A formally available right to secede may increase the level of contestation for several reasons.

Firstly, all regions may threaten to exit, to increase their bargaining position. Even without a secession clause, some regions may see reasons to secede – witness current conflicts regarding Catalonia. A secession clause may render threats of secession by more resource rich regions more credible, thus skewing the bargain among regions – even letting one hegemonic region receive the lion’s share of all resources and authority. Ethiopia has several large resource rich regions, thus diminishing the risk of one region dominating. But the poorer regions may still be left even worse off due to the exit options of other regions.

Secondly, negotiations about allocation of permanent resources may be even more conflictual when future exit remains an option. Some regional authorities may seek to host infrastructure, industry, etc., with the added objective of later seceding from the exploited

³¹ Ibid. , p. 607.

³² Ibid. , p. 604.

³³ Y. Ghai, 'Ethnic Identity, Participation and Social Justice: A Constitution for New Nepal?' *International Journal of Minority and Group Rights* (2011),

³⁴ Abbink, 2011, p. 608; Suberu, 2006; Feyissa, 2006.

³⁵ A. Follesdal, 'Modelling regional growth' *The Kathmandu Post - review of 'Unleashing Economic Growth: Region-based Urban Development Strategy for Nepal* (2010), .

rest of the country. And just the suspicions thereof may create highly damaging climate of mistrust rather than trust that all regions are committed to a shared future.

These risks wrought by a secession clause are neither decisive nor insurmountable. Indeed, there may be ways to regulate secession to reduce these problematic strategies – and suspicions thereof. Requirements might include some sort of consent by the remaining federation, and arrangements for reimbursement.

4. How Reduce Instability?

One of the central challenges for federations in general is how they can merit and facilitate trust and trustworthiness among citizens and regional leaders so they remain committed to uphold a shared political order.

Comparative studies of federalism warn of a higher level of ongoing constitutional contestation concerning the Constitution and its values and interpretation than in unitary political orders.³⁶ Ironically, the grounds of shared values and goals may be especially weak in federations, given that they were often created precisely in response to intractable problems and conflicts.

Such weak shared values notwithstanding, a self-sustaining federation requires several forms of political trust. Citizens and political leaders alike need ‘dual loyalties’, both to their region and to the country as a whole. Ethiopians in general must be prepared to restrain their self interest for the sake of other members of their nations/people within their region – as well as for the sake of other Ethiopians. Legislators and the executives at both central and regional levels must consider and care for the interests of other Ethiopians as well as their own people/nation within their region. In general, the losers in political decisions today must abide by the decisions they disagree with, and be able to trust that future losers will comply if and when tables are turned.

Such trust appears to require several shared commitments across any deep disagreements:

- That no regional politicians are planning to secede;
- An agreed division of legal competences among regions and central government authorities, on the basis of shared commitments about what the regions are for, and what Ethiopia is for;
- A belief that authorities will promote the interests of their nation/people, of the region and of Ethiopians as a whole.

If we turn to the ‘supply’ of trust, under conditions of little interpersonal trust, some institutions may be crucial. The public must be assured of general compliance with rules, by authorities and individuals, especially when unilateral compliance comes at great cost. So there needs to be authoritative, independent bodies to determine firstly whether various actors comply with their mandate when there is disagreement about this; and secondly that can be trusted to sanction violations. Such bodies must be sufficiently independent – yet be held accountable so that they do not abuse their mandates. Among the institutions that help create and maintain such trust are the following:

- Strong, competent and independent domestic and international courts that can monitor human rights violations perpetrated either by the central or by the sub-unit authorities;
- Carefully designed multi-level checks and balances, possibly including representatives of regions in central decision making bodies to enhance transparency and limit unfair

³⁶ M. Filippov, P. Ordeshook, and O Shvetsova. *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*. Cambridge University Press, Cambridge. 2004.; J. Lemco, *Political stability in federal governments* (New York: Praeger, 1991).

- distribution of resources;
- An impartial and independent judiciary that can adjudicate on conflicts concerning the proper ‘competences’ of the central and sub-unit authorities;
- Institutions that can protect freedom of expression and assembly, to allow independent and critical assessment of the performance of those in power.

In the case of Ethiopia, several of these institutional mechanisms might be strengthened.³⁷ The Constitution does ensure an independent judiciary,³⁸ but critics have lamented its de facto control by the political authorities.³⁹ The concerns may be alleviated by the reforms to enhance judicial independence and the rule of law promised by the Chief Justice of Federal Supreme Court of Ethiopia, Meaza Ashenafi.⁴⁰ A second way to enhance such trust-building by institutions is if Ethiopia granted the African Court on Human and Peoples’ Rights (ACtHPR) jurisdiction to hear cases from NGOs and individuals.

If the overarching concern is to maintain the federal state of Ethiopia with its current territory, several suggestions emerge – of varying political feasibility.

4.1 Restrict the Secession Clause

It would clearly be beneficial for stability – though politically unlikely - to remove or restrict the secession clause, or at the very least make it clearly unattractive as an option. On the other hand, the secession clause does acknowledge and recognize the existence of several ethnic groups, all of whom must be fairly treated and granted political voice. And the constitutional right to secede might prevent violent and illegal secessionist movements. These considerations indicate that if the secession clause is left in the Constitution, its role as a safety valve against oppression may be kept but it should be specified in various ways that limit risks of abuse. Secession might for instance only be permitted in cases of severe persistent human rights violations – perhaps as determined by international tribunals.⁴¹ Such a mechanism may prompt the state to provide better human rights protection of minorities, and freedom of expression and organization for all. Other requirements might include giving some voice to the remaining federation, and mechanisms to negotiate compensation to the remaining federation for any investments in the region. However, if some regional leaders plan to secede they might veto such constitutional changes.

4.2 Foster Dual Loyalty – by Non-ethnic Political Parties?

Secondly, ways to foster ‘dual loyalty’ should be explored, since stability requires that citizens and political elites have two levels of patriotism. Note that federations do not require ‘post-national’ citizens. The challenge of federations is instead to be ‘self-sustaining’ so as to create and maintain political loyalty among the citizenry *both* toward the own member unit and toward the federal level regime, officials and citizens. Many stress the need for citizens and elites to enjoy an ‘overarching loyalty’ to the federation as a whole if the political order is not to disintegrate.⁴² The challenge of building such an overarching loyalty is difficult in any political order, but especially demanding in federations with a history of well founded distrust

³⁷ C. Van der Beken, 'Improving the Constitutional Balance between Unity and Diversity for Societal Harmony and State Stability in Ethiopia', in Adem Kassie Abebe & Amen Taye (ed.), *Reimagining Ethiopian Federalism* (Addis Ababa, Addis Ababa University, 2019) pp. 45-84.

³⁸ Art. 78.

³⁹ Fischea, 2006.

⁴⁰ <www.herald.co.zw/judicial-independence-rule-of-law-ethiopias-female-cj-speaks/>.

⁴¹ A. Buchanan, *Secession: The morality of political divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview, 1991).

⁴² J. Linz, "Democracy, Multinationalism and Federalism." In *Demokratie in Ost Und West*, edited by W. Busch A. Merkel, 382-401. Suhrkamp, Frankfurt am Main, 1999., Filippov, Ordeshook, and Shvetsova, *supra* note 35.

among member units.⁴³ Thus, several authors note the need for a pan-Ethiopian identity and regional identity at the same time - with no clear general primacy of either. This would run counter to the claims made by some politicians in Ethiopia, who maintained that the national identity must be secondary to the regional:

in September 1992, Meles Zenawi, then President of the Transitional government (1991-1995) and leader of the TPLF/EPRDF ... stressed the fact that every Oromo, Tigrean or Kembata would consider himself first as an Oromo, a Tigrean or a Kembata and only then as an Ethiopian. An Oromo would prefer being an Oromo rather than lose his identity: "People should be proud of their identity and ethnic identity" ... "What incites disintegration is the view that we are all one."⁴⁴

The challenge is precisely that "while the domestic citizenship was defined in terms of Nations, Nationalities and Peoples, it had to coexist with a remaining international Ethiopian identity".⁴⁵ The requisite 'pan-Ethiopian identity' is not zero-sum vis-à-vis 'regional' identities. And we should not expect all conflicts between these to fade: some tensions may well remain between segments of the citizenry on various issues. We see similar tensions in several federal orders – such as in the European Union.

A similarity with the EU is relevant, namely the lack of an optimal party system to foster integration. A European party system which could foster such cross cutting loyalties is under-developed.⁴⁶ In the Ethiopian setting, parties have been allowed to be mono-ethnic. Several attempts at creating non-ethnic parties have been made, but with few exceptions, non-ethnic parties have failed to secure parliamentary seats.⁴⁷ Their prospects for influencing or neutralizing ethnic polarization are thus slim.

It might be helpful in fostering pan-Ethiopian identity if political parties were required to include different ethnicities or nationalities in order to compete in national elections. That way the parties would engage in the distributive challenges and help foster the requisite dual identities and solidarities. From this point of view, we may welcome suggestions about how the EPRDF may foster federal double identities. It could foster multiethnic parties, to include Afar, Somali, Harari, and Benishangul, and allow non-Oromo in Oromia to join the party.⁴⁸ It may be important to point out that the newly established Prosperity Party – which has replaced the EPRDF - is explicitly multiethnic.⁴⁹ From this perspective we should welcome Article 69 c of the new Election Law of 2019. It stipulates that a new political party may not be registered if it excludes potential members on the basis of "ethnicity, religion or identity".⁵⁰

Other regulations regarding political parties may also be helpful to promote stability and dual loyalty – and to reduce the risks of domination. For instance there may be legal requirements to secure a sufficient number of specified groups within each party group in parliament, or to ensure that parties only can have seats in parliament if their candidates were successful in several regions. Less intrusive measures might include funding that nudges similar cross-ethnic parties.⁵¹

⁴³ Filippov, Ordeshook, and Shvetsova, *supra* note 35, p. 315.

⁴⁴ Bach, 2014.

⁴⁵ *Ibid.*, p. 111

⁴⁶ But cf. S. Hix, *What's Wrong with the EU and How to Fix It* (Oxford: Polity Press, 2008) and others.

⁴⁷ Including the 2005 Addis Ababa election where the Coalition for Unity and Democracy (CUD) party gained access, but the CUD fragmented immediately thereafter.

⁴⁸ Habtu, 2005 334.

⁴⁹ I am grateful to Christophe Van der Beken for this information.

⁵⁰ Ethiopian Parliament, Law on Ethiopian Election, Political Parties Registration and Election Ethics (ed. ^eds.), 2019). I am grateful to an anonymous reviewer for this reference.

⁵¹ I am grateful to Colin Rowe for nudging this expansion of possibilities.

4.3 Strengthen Incentives to Remain in the Federation

If the secession clause remains, there are several ways to make secession less attractive for regional political leaders so that they may not even threaten to use that option. In general, secession can be made less plausible if regional leaders have a stake in central government. They thus enjoy a share in decision making over the larger state, and this may make them less eager to secede. This may also be a way to ensure that those who have called for secession do not lose face when deciding to instead remain in the federation.

Such group representation in the regional or central bodies may also promote trust and dual loyalties. Arrangements may include quotas or designated seats in legislatures for specified minorities. Such arrangements not only give them a voice and political influence, but also provide on-going recognition and concern for their situation. Other measures include deliberate over-representation of certain minorities to ensure them not only a voice but also weight when decisions come to a vote.

Some disadvantages of such arrangements also merit mention. One concern is to determine which among many groups need such representation in common bodies. Another is to fine-tune the extent of over-representation, if any. Measures may also be required to not entrench such existing conflicts further, and to allow new solutions to future forms of injustices. The lists of ‘deserving’ groups must be open over time to revision, once past injustices are corrected, or new injustices arise or are discovered. Some criteria for ending over-representation may also be needed. Such dynamic lists also creates new risks of manipulation. Procedures for change must be set up in ways that prevent suspicion that powerful groups will tweak the system to their further advantage. Thus, in the Ethiopian context there are reports of increased tensions about declaring oneself a member of one or another group partly for such strategic reasons.⁵²

A further concern is that some of those elected as representatives of these groups may not act in the groups’ best interests, partly because they are likely to be among the more privileged segment of the minority.

There are several further important issues to consider when designing such non-territorial arrangements. When many groups have legitimate need for representation, it may make sense to not insist on specified quotas but rather require a minimum threshold of representatives. This may be particularly helpful when addressing ‘intersectionality’ - when the vulnerable segments of society overlap, such as women in certain castes or ethnic groups. Another fundamental question is where such quotas or thresholds should be applied - to the principal legislative chamber, or to a chamber of peoples with specified powers.

Note that such mechanisms will typically require that the judiciaries play important roles to maintain trust that the procedures are not abused. This increases the need for an independent and trustworthy domestic judiciary – and for international courts.

4.4 Reduce Incentives for Secession

A further path to promote stability is to reduce the attraction of full blown sovereignty in the eyes of regional elites. One strategy is to provide stronger protection of the human rights of their members.⁵² Collective rights and other human rights may protect groups who otherwise face risks of domination and who might therefore support calls for secession. Rights may include freedom from interference, or more substantive autonomy. We find expression of some such rights in ILO Convention 169 on Indigenous and Tribal Peoples.⁵³ Other rights may concern ‘reverse discrimination’, to alleviate the impact of past and present injustice and

⁵² Abbink, 2011, p. 606.

⁵³ International Labor Organisation, *Convention 169 on Indigenous and Tribal Peoples*(1989) <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>>, visited on M. Thapa, *Forget Kathmandu: An Elegy for Democracy* (New Delhi: Penguin, 2005).

oppression.

Such arrangements can also benefit minorities who are geographically dispersed or who live intermingled with other groups. Note that these rights need not be tied to a particular territory: the rights may concern issues such as religious practices or language teaching in the schools. Territorial control need not be part of these clusters of rights, since the members of several such groups may live side by side. Yet such rights also have some drawbacks. In particular, the appropriate set of rights may have to be carefully tailored to the specific needs and histories of each group. An extensive system of special rights may also hinder a national sense of unity and solidarity. Some have also warned that some such rights may create new risks to vulnerable persons *within* this minority. For instance, women may need protection from harmful elements of some traditional cultures and practices that would otherwise merit protection against majority encroachment. Many human rights can provide some safeguard against these sources of domination.

There are also challenges with regard to the kinds of powers and immunities that such groups should enjoy while preserving sufficient opportunities for common responses to shared problems and opportunities, and to avoid unintended domination over those groups that do not enjoy such privileges.

A further challenge to attempts at implementing such solutions in Ethiopia is the sheer number of groups that may reasonably make claims to such autonomy and immunity rights.

Such group rights will require vigilant judicial review over legislation and administration at all levels, and may obligate the judiciary to make very hard and politically contested trade offs among the claims of different groups.

A second strategy to reduce the incentives to secede is to insist that the political elites who secede will be held responsible also after secession to the relevant international and regional human rights treaties and courts. Thus the regional majority group cannot escape requirements to treat their internal minorities decently. Both domestic and international authorities may insist on such requirements, possibly subject to international review. In the case of Ethiopia, it would thus be important to insist that any seceding region would be required to accept the jurisdiction of the African Court on Human and Peoples' Rights (ACtHPR).

Ethiopia has not itself accepted the jurisdiction of the ACtHPR. This would seem a wise step also as a measure to restrain secessionist movements.

4.5 Check Secession Entrepreneurs' Ability to Manufacture False Claims of Harassment from the Centre

A further feature that may help quell unjustified calls for secession would be independent private or public media. They may check the veracity of claims by central governments and regional elites alike about human rights abuses carried out by either. Such quality control of claims by secession entrepreneurs – and by the central government – may reduce the perceived grievances. A clear risk for both authorities is that there may be an increase in justified grievances - unless they comply with the various human rights standards and other requirements for minority protection.

5. Conclusion

The new political realities in Ethiopia hold promise of a more stable and just future for Ethiopians. Some of the opportunities may endanger the territorial integrity of the country, if some regions seek to secede. On the other hand, there may be ways to quell such secessionist tendencies – even in Ethiopia.

Most federations face profound challenges of stability to avoid both complete centralization and secession. Two aspects of the Ethiopian Constitution render the challenges especially difficult: the ethnic or nation based regions, and the constitutionally protected ability of regions to secede. Several strategies may reduce such risks, by increasing trust among the public at large and among the political elites that power will not be abused. Some such strategies are more politically realistic than others. One important contributing factor is international human rights courts and other international or regional courts with an obligation to uphold human rights standards.

Human rights embedded as superior legal norms throughout the territory may serve to *unify* a federation, and *reduce* fears of abuse of central authority – e.g. as part of ‘Constitutional Patriotism’.⁵⁴ International courts may both help in monitoring human rights compliance, and help bolster the independence of domestic judiciaries’ own human rights mandates and their ability to adjudicate competence conflicts between regions and the central authorities. Human rights norms such as freedom of speech and assembly, as well as political freedoms, upheld by independent domestic and international courts, may also reduce the risks of false claims by secession entrepreneurs and central authorities alike. Insofar as elites of a new state can be credibly compelled to ratify international human rights treaties, they might foresee that even secession will not allow them to promote their own ethnic group at the expense of the human rights of minorities. This may further reduce their incentives to secede.

⁵⁴ J. Habermas, 'Citizenship and national identity: some reflections on the future of Europe' 12 *Praxis International* (1992), 1-19.