



Conference on Constitutionalism and Human Security in the Horn of Africa

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Foreword

This publication is the outcome of the first of the series of conferences planned under Inter Africa Group (IAG) program on Constitutionalism and Human Security in the Horn of Africa. The program aims at perusing the recent rich constitutional experience throughout the countries of the Horn, and identifying the key issues for future constitutional development in light of promoting peace and human security in the region. The program is based on research supplemented by series of regional consultations and publications.

On the 1st of October 2007 the first regional conference on “Constitutionalism and Human Security in the Horn of Africa” was organized by IAG. The conference took place at the Sheraton Addis where renowned scholars presented their research papers, and the participants which included policy makers, academicians and representatives of regional organizations, deliberated on various issues that were vital to the entrenchment of constitutionalism in the Horn.

The publication entails the papers presented as well as the issues raised and discussed during the conference.

During the discussion a number of constitutional development issues have emerged that constitute potential areas for further research and study. IAG is committed to pursue the program on constitutionalism and take up these and other emerging issues for future study and regional dialogue.

Acknowledgements

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Conference on Constitutionalism and Human Security

Sheraton Addis-1st October, 2007

IAG's Executive Director, Mr. Tamerat Kebede opened the conference welcoming the participants. In his opening remarks, he touched upon the broad objectives of the Inter Africa Group (IAG) and outlined the focus and intended outcomes of the conference. He underlined the importance of venues like this and their usefulness in terms of identifying issues and lacunae in the field therefore pointing the way ahead for future research.

Professor Asmelash Beyene, the designated Chairperson of the conference was the next speaker. In his speech he again reiterated to the participants that the primary objective of the conference as being the unveiling of varying experiences of constitutionalism and good governance in the Horn of Africa. He also pointed out that the nexus between constitutionalism, good governance and human security was another key aspect that the papers presented by participants and hopefully the discussions to follow will touch upon. He then briefly introduced the author of the first paper to the participants.

Dr. Kassahun Berhanu was the first presenter with a paper entitled, "*Constitutionalism and Human Security in the Horn of Africa: Examination of the State of Affairs in Ethiopia, Kenya, Sudan*". As the title suggests, Dr. Kassahun's paper was a general review of the issues raised in the title. The first part of the paper was conceptual in its concerns. It discussed concepts of constitutionalism and human security. He coined working definitions of the two terms and discussed the implications of these definitions. He also discussed the supposed contradictions and the complementary nature of human and state security. Towards, the end of the 1st part of his presentation, he touched upon the nexus between human Security and constitutionalism.

The second part of Dr. Kassahun's presentation provided a brief overview of experiences in the three countries (Ethiopia, Kenya and Sudan) regarding constitutional developments and the entrenchment of constitutionalism. In conclusion, he argued that in the Horn of Africa and also the rest of the continent the forces and pressures on authoritarian governance were on the rise. Conversely, this also meant that favorable conditions were emerging for the consolidation of constitutionalism in the African context. Dr. Kassahun ended his presentation, with three questions to the audience. These were:-

1. Do the processes associated with the consolidation of constitutionalism assure human security?
2. What have been the experiences and challenges facing constitutional arrangements in Africa? What has been the record so far?

3. How are democratic constitutions and constitutionalism to be guaranteed or protected in the African context?

During the several rounds of the discussion, participants raised a wide range of questions and forwarded many suggestions and comments regarding the paper presented. A number of participants further elaborated and some queried the experience of constitutionalism in the countries under question. Participants also brought up the issue of the discrepancy between principles and rules spelled out in constitutions and the implementation or adherence to these principles and rules. They enquired as to how this was to be explained.

Likewise participants emphasized the usual bias when it came to conceptualizing constitutions and constitutionalism whereby it is traditionally assumed that the central goal of constitutions and constitutionalism has as its central goal the limitation of the powers of the state. It was pointed out that this was the usual liberal position or conceptualization of constitutions and constitutionalism. Participants explained that this conceptualization is ill suited to the African context, where the state has to play a major role in the developmental process. Therefore, they argued that constitutions and constitutionalism in Africa have to lay particular stress on the empowerment and enabling role for the state so that it fulfills its role in development. One participant also raised the issue of the connections between ruling party programs and constitutions and the implications that follow from this.

In his response, to the queries and comments raised in the 1st round, Dr. Kassahun elaborated on the issues raised with reference to his presentation. He agreed with many of the points and concerns raised by the participants.

In the 2nd round of the discussion, participants again raised a wide range of issues and many questions relating to the presentation. A participant brought up the legal dimensions associated with constitutionalism such as a strong and independent judiciary, the rule of law etc. He argued that their importance should not be underestimated in terms of the entrenchment of constitutions and constitutionalism. Participants also brought up the relationship between the concepts of human and state security and their prioritization vis-à-vis each other. A participant also argued for the necessity of taking into account democratic political culture as a determinant in the consolidation of constitutionalism. He also pointed out that the values and beliefs of African cultures, and their probable impact on constitutionalism also needs to be studied and evaluated. The final comment was theoretical in nature and underlined the importance of taking into consideration the biases of liberal thinking when conceptualizing constitutionalism. The point being that the liberal conceptualization primarily focused on civil and political rights (CPRs) to the exclusion of other category of rights.

Responding to the points raised by discussants in the 2nd round, Dr. Kassahun agreed to the emphasis assigned to the legal dimension. He agreed that the behavior of many regimes and leaders in Africa was “opportunistic” when it came to the adherence to constitutional norms, but reiterated the point made in his presentation that it was ultimately the forces struggling for democracy that were the ultimate guarantor of constitutionalism. He also pointed out that when it came to the relationship between human security and state security that neither of the two can or should be elevated at the expense of the other. They were complementary concepts. Lastly, he agreed that political culture was central when it came to the consolidation of constitutionalism. At the same time, he pointed out to participants that the 1st generation of authoritarian leaders in Africa rationalized the turn towards authoritarianism in terms of African values and culture. In response to the last point raised by a participant, Dr. Kassahun pointed out that while the concern about the bias regarding CPRs was correct, at the same time, CPRs are also foundational to representative democracy and constitutionalism.

The next paper authored by, Mr. Leenco Lata, was presented by Professor Andreas Eshete. The paper, entitled “*Constitutionalism, Self Determination and the African Union*”, focused on a host of abstract and complex issues. The paper looked forward to the future, ideal path of political evolution in the Horn of Africa.

The 1st part of the paper focused on the challenges to good governance and political stability in the Horn of Africa. According to Leenco, these challenges have their origin both in the nature of state-society relations and mode of emergence of modern statehood in Africa. He goes on to argue that due to the cumulative nature of these problems and other processes such as the divergent drives towards particularism and globalism, statehood in the Horn of Africa was coming under greater pressure.

Leenco in the 2nd part of the paper, advances certain policy proposals as a response to the above mentioned existential challenges. In particular, he lays emphasis on changes in 4 areas. These being, neutrality or autonomy of the state, enjoying freedom or autonomy from ethnic, class and gender elites, greater accountability and accessibility of state officials and the state apparatus, robust representation of citizens and groups in the state and finally the necessity to enhance the capacities of the state.

According to professor Andreas, the paper and its recommendation involved a rethinking of the traditional liberal notion of the state. The nature of the nation state itself would have to be revised including the nation building projects of the past. Multiculturalism is a reality that would have to be accepted. Therefore in this

regard, Leenco argues for the institutionalization of federalism and pluralism and the disentangling of citizenship and cultural identity. He laid particular stress on the issue of self determination.

Leenco goes on to discuss the issue of security and constitutionalism in the Horn of Africa. He believes that the Horn is a single security complex, where external and internal security concerns overlap. Therefore, cooperation between states in the Horn is of paramount importance.

As a summary of what was a very complex paper, Professor Andreas pointed out to the audience, that an understanding of what Leenco argues for can also be garnered from an awareness of what he is rejecting. Accordingly, Leenco implicitly or explicitly rejects the liberal notion of the state and its emphasis on individual rights. He also seems to be rejecting the notion of granting elites or cultural groups the power to veto decisions advocated by those postulating the notion of consociational or associative democracy. In Professor Andreas's opinion, Leenco in this paper was gravitating to the "Rousseau" conception of democracy.

At the end of the presentation, the Chairperson commended Professor Andreas for his succinct presentation, simplifying what was a very complex and hard to digest paper. He then opened the discussion soliciting comments and questions from the audience.

Participants raised a wide range of questions and made many comments on the paper. Professor Andreas was asked regarding his reactions to the paper. Participants also questioned the issue of self determination as raised in the paper and the level of its application. In the opinion of one participant, it seemed that the paper defended an ethnic based federal system. The applicability/practicality of the proposals forwarded in the paper was another point mentioned by participants. Participants also questioned Ato Leenco's faith in inter-governmental cooperation and the related ideas of overlapping citizenship and sovereignty. One participant from Uganda, mentioned the historical experiences of the East African Community (EAC) and expressed doubts about the commitments of African governments to regional integration. The issue of cultural diversity and constitutionalism was also brought up. Participants also queried the linkage between consensus, prior consultation and the legitimacy of constitutions and the stability of constitutions. While some participants were not too clear about the linkage to the African Union (AU) mentioned in the paper, another participant pointed out that the constitutive act of the AU included provisions addressing respect for human rights, political participation, constitutionalism and sovereignty.

Professor Andreas in response to the comments and questions underscored several points. He pointed to the weaknesses in the paper such as the fact that Leenco had not indicated how all this was to be achieved. Another conceivable weakness could be its tendency to depoliticize important aspects and features of the state. Regarding self-determination, Professor Andreas explained that self-determination could be realized at different levels and in different forms. He pointed out that the paper was not explicitly advocating ethnic based federalism.

The next presentation was by Dr. Markakis and it was entitled, “*Federalism and Constitutionalism in the Horn of Africa*”. In his opening remarks, Dr. Markakis explained to the audience that he wanted to introduce a historical dimension, which so far has been missing in the discussions and presentations. His presentation was thematic in nature.

The 1st part of the presentation saw Dr. Markakis delving into the history of constitutions and constitutionalism. He pointed out that constitutionalism is rooted in the Western tradition and the developments of Western European history. Accordingly, constitutionalism and constitutions emerged in the aftermath of intensive social conflict and reflected the balance of forces in society. According to Dr. John Markakis, this series of conflicts led to the evolution of distinct constitutional principles such as the limitation of powers of the absolutist state, representative government etc. This experience however was limited to Western Europe and other parts of Europe lagged much farther behind in this regard.

The next part of the presentation focused on the African experience with modern constitutions and constitutionalism. Dr. Markakis pointed out that the African experience with constitutionalism was substantially different in that the first constitutions in Africa were not indigenous in nature but impositions from the departing colonial powers. This was a major weakness. Over time, arguments such as the need to facilitate economic development and national integration were deployed to weaken constitutionalism. This led to the emergence of different forms of authoritarianism and decline.

He went on to explain to participants that the 2nd wave of democratization in the 1990s led to a new wave of constitutionalism. In this wave of democratization, the social forces and pressures were African but the “ideas” were foreign. This in turn has led to the present weaknesses of the current wave of democratization and attempts to entrench constitutionalism, which reflect the tendency to blindly imitate concerns and provisions characteristic of Western constitutionalism. Dr. Markakis elaborated extensively on this point and added that this has not only led to exaggerated expectations but the almost inevitable failure of this current phase of changes in the African political arena.

The last part of the presentation focused on the historical experiences with federalism in the Horn of Africa. According to Dr. Markakis, federalism is a pressing issue in light of the social and historical realities of the countries in the Horn. However, the failures so far have only contributed to the escalation of conflicts and chronic political instability in the Horn. Finally, Dr. Markakis proceeded to read out the last portion of his paper to the participants. It addressed the current experiment in federalism in Ethiopia and the need for dialogue and consensus regarding the extent of decentralization and fiscal issues amongst the main political actors in Ethiopia.

The next presenter was Professor Alem Seged Habtu with a paper entitled, “Citizenship, ethnicity and group rights in the Greater Horn of Africa with a case study of Ethiopia”. As its title suggests, the paper discusses the context, influences, institutional form, successes and challenges of the federal system in Ethiopia. According to Professor Alem, some tentative successes can already be identified as a result of the introduction of the federal system of government such as the relative stability, greater appreciation/awareness of cultural differences, devolution of powers to the regions and finally the increasing tendency towards multilingualism in the public and educational spheres. He also pointed to the problems and challenges that have become apparent such as the excessive focus on ethnicity and corollary marginalization of other forms of identity, the hierarchy of ethnic status implied in the rhetoric of the ruling party and the constitution, the “Leninist” organizational practices of the ruling practices and also the overemphasis on ethnic nationalism and downplaying of civic nationalism.

In conclusion, Professor Alem argued that federalism in Ethiopia was here to stay and that the terms of the debate should focus on the improvements that can be suggested. He pointed out that there is an absence of consensus and that this should be rectified. He suggested that issues such as the clause of the Ethiopian constitution regarding secession, the conceptualization of ethnicity, the creation of a constitutional court and the decoupling of ethnicity and party identification should be debated and discussed.

The participants in line with the suggestion of the Chairperson made comments and raised many questions to both presenters. The comments and questions were both broad in nature focusing on wider theoretical issues and also specific in terms of focusing on the Ethiopian experience of federalism.

Some participants brought up the issue of consensus and agreement as the basis of constitutionalism and queried whether this was always necessary. If constitutions and constitutionalism are the outcome of protracted conflict, then it follows they argued that consensus might not be necessary at all. A participant also raised the issue of constitutional development and constitutionalism in Ethiopia and pointed

out that the Ethiopian experience is different and needs to be viewed distinctly from the experiences of the rest of Africa. Another participant raised a query regarding Dr. Markakis' presentation, where the participant pointed out that the provisions regarding the environment, child rights etc should not be viewed as blind imitation of constitutions in the West but necessary inclusions which have brought some degree of appreciable change.

Both presenters responded to the comments made and questions asked in the 1st round of the discussions. Dr. Markakis pointed out that consensus is necessary if constitutions and in the long run constitutionalism are to survive. It was also pointed out that "Ethiopian exceptionalism" applies but that features which are true of many other African constitutions also apply to the Ethiopian experience of constitutional development such as the tendency to borrow or imitate provisions of western constitutions.

Many questions and comments were again raised in the 2nd round of discussions. Participants queried the importance assigned to the African state in the presentations and the implicit view that it was the state in Africa which posed the biggest obstacle to constitutionalism and democracy in Africa. Another participant also inquired of the presenters their views on how consensus could be achieved in terms of constitutional development. A participant also asked for emphasis on the colonial experience and pointed out that later authoritarianism could be explained by the colonial heritage which was anything but "liberal".

In response to the comments and questions, Dr. Markakis pointed out that the state deserves attention because the African state is the primary actor in the African context in terms of impact and potential to bring about transformation. He further pointed out that ideal constitutionalism is a mirage, a few approach it but many are far from it, which participants should bear in mind. In response to the query about consensus he also noted that it is necessary but difficult to realize in practice. And lastly, in response to the point about colonialism he argued that while the colonial experience bears examination, that Africans at some point will have to stop blaming colonialism for all their problems and begin shouldering the responsibility for the failures. After all, Dr. Markakis pointed out colonialism is already old history.

The 3rd round of the discussions involved some general and specific queries to the presenters. Participants raised specific questions regarding the federal experience in Ethiopia. What have been the successes in actually devolving powers and responsibilities to regional states in Ethiopia? Does the Ethiopian federal experiment herald something new in the experiences of African statehood? Should or can the boundaries between postcolonial African states be redrawn to take into account ethnic settlement patterns? Another participant asked in what sense

conflicts and instability can be said to have declined in terms of intensity and frequency since the initiation of federalism in Ethiopia?

Participants also brought up more general questions and comments. One participant queried about the possibility and utility of “Africanising” constitutions in Africa and the possibility of contradicting international standards and norms. Another participant explained to the audience the activities carried out by the African Union in support of constitutionalism. A participant also raised the question of alternatives to ethnic based federalism.

Professor Alem answering the query about conflict pointed out that the comment about the incidence and frequency of conflict was stated in relative terms. He pointed out that comparing the past 15 years with the 15 prior to the onset of federalism shows that there has been an appreciable change in the level of conflicts. He also explained that the current conflicts are in many ways continuation of past conflicts. He argued that ethnic federalism has proved very useful in venting resentments and reducing the scale and intensity of conflict. In response, to the query about alternative models of federalism, Professor Alem agreed that alternative models exist but that in the context of the Horn of Africa and Ethiopia, the ethnic based federal system was inescapable.

Dr. Markakis explained that important lacunae existed in the study and evaluation of the Ethiopian experience in federalism. A very important gap, he pointed out was in terms of studies carried out the finances and fiscal aspect of federalism in Ethiopia. The issue of redrawing borders between and within states was an interesting issue but also problematic. As for constitutions and constitutionalism reflecting African values and traditions, Dr. Markakis argued for the need to look into the future and not into the past.

Ato Tamrat in response to the comments made by Dr. Markakis about the state of research on federalism mentioned several studies and conferences carried out by the Inter Africa Group on the issue of federalism in Ethiopia.

The final round of the discussion involved a few questions on the nomenclature used with reference to ethnicity in the Ethiopian context. Participants also raised questions regarding the relationship between ethnic nationalism and civic nationalism and whether they contradicted with each other. Professor Alem responded to these questions in the time remaining. He explained that ethnic and civic nationalism are not necessarily mutually exclusive or contradictory. But that in the Ethiopian context due to history and the present context, one form of identity has been elevated at the expense of the other.

The conference ended at 5:00 pm.

Constitutional Development Issues for further Research

The following issues have emerged in the discussions as areas which tended to generate a lot of debate and could constitute potential areas for future research and study.

1. Discrepancy between principles and actual implementation of constitutions and constitutionalism in Africa
2. Human Security and State Security: Linkages, Contradictions and Complementarities
3. Nexus between Human Security and Constitutionalism
4. Challenges and Obstacles to Constitutions and Constitutionalism
5. Political Culture and Constitutionalism
6. Constitutionalism and the role of the Developmental State
7. Constitutionalism and Federalism: Nexus, Problems and Successes
8. Problems, Achievements in terms of competing drives between international conventions and principles and constitutions and constitutionalism in Africa
9. Consensus as basis for constitutionalism: Experiences and Modalities
10. African Union and Constitutionalism: Practices, Experiences, Instruments
11. The Modalities and Possibilities of Africanizing Constitutions: How and Why
12. Identification of traditional African values and traditions and their relevance to contemporary constitutions and constitutionalism
13. Relevance of Western constitutions and constitutionalism to Africa
14. Balance between Civic and Ethnic Nationalism
15. Issue of a Security Complex in the Horn of Africa
16. Alternatives to Ethnic Based Federalism
17. Attitudes towards Ethnicity/Ethnic Federalism and its effects on Ethnic Identity
18. Civil Society and its role in Constitutional Development

Constitutionalism and Human Security in the Horn of Africa: Examination of State of Affairs in Ethiopia, Kenya and Sudan

by
Dr. Kassahun Berhanu

Introduction

Constitutionalism as a guiding principle and a basis for legitimizing power and incumbency of political regimes has become the order of the day at present. One of the concrete expressions of constitutionalism relates to enacting constitutions as basic legal documents in which guiding principles and structures of political systems are enshrined by depicting modes of governance, structural set ups of governments, and means and ways of regulating intra-state and state-society relations. The fashionable trend in this regard has thus become framing constitutions underpinned by neo-liberal overtones and aimed at regulating powers and responsibilities of state institutions, articulating relations between state institutions and their roles, and determining the rights and duties of citizens. Whether the various principles enshrined in constitutional provisions are translated into practice thereby positively impacting on real life of citizens, however, could be subjected to scrutiny. This is owing to a host of discrepancies and mismatches between solemn declarations, official rhetoric and formal pledges on the one hand and actual practice and the reality on the ground on the other.

At present, adherence to constitutionalism as a guiding principle for regulating the mode and manner of assuming state power and determining state-society relations appears to be widely accepted and formally recognized. This phenomenon was propelled, among others, by a host of factors. These included new developments in the form of intensified popular struggles against authoritarian rule demanding the fulfilment of legitimate aspirations of society, subsiding of the Cold War, and ascendance of neo-liberalism as a sacrosanct principle to be complied with. The democratization wave unleashed between the mid-1980s and the early '90s was signified by the faltering of entrenched authoritarianism thereby leading to the opening up of spaces and forums on which collective actions and legitimate societal claims and demands were articulated. The new trend thus neutralised authoritarian dispositions of the African power elite and rendered absence of limits on unbridled prerogatives and discretionary powers obsolete. Consequently, the established African power elite, which reduced citizens to "extended households of incumbents", was forced to either exit the citadel of power altogether or concede to popular pressures by bowing to demands for reform and transformation.

One way of adjusting to new developments in the direction of restructuring the state and recasting state-society relations was anchored in formal adherence to constitutionalism and associated principles. This trend of resorting to the formal exercise of democracy for principled and opportunistic reasons was expressed in such things as framing liberal constitutions, conducting pluralistic periodic elections, providing legal frameworks for practicing formal liberties (of worship, association, expression, etc.), and allowing the creation of leeway and avenue for expressing dissent “within limits provided for by law”. Notwithstanding this, however, according primacy and importance to human security in both political discourse and practice continued to be relegated to the background. As to be briefly explained subsequently, issues surrounding human security attracted increased focus and attention only after the inauguration of the New Millennium.

This article aims at highlighting the essence of constitutionalism and human security and establishing a correlation between the two, which will be accompanied by a brief historical account of constitutional development in Ethiopia, Kenya and Sudan. Moreover, the implications of absence of constitutionalism for ensuring human security in the Horn of Africa will be discussed in view of recent developments. Besides, a discussion on opportunities and challenges relating to prospects for promoting a culture of constitutionalism in the three countries will be provided.

The Nexus between Constitutionalism and Human Security

Constitutionalism

In essence, constitutionalism is a principle that advocates the exercise of political power to be bound by rules, which determine the validity of legislative and executive action. This could be undertaken by specifying the procedures that must be followed in the course of undertaking public tasks. The existence of rules and procedures along with their strict observance lends both credibility and predictability of processes, decisions, and outcomes. It must be noted that constitutionalism can be effective and real to the extent that established rules have the propensity to curb arbitrary and discretionary behaviours and actions of power holders, and limit the lust of officialdom in its drive of trespassing the legal and legitimate bounds within which it is expected to function. In addition to the need for adherence to rules and procedures that guide the actions of the wielders of power and organs of the state, constitutionalism emphasizes the role of institutions that could restrict unlimited exercise of power. In the absence of viable institutions that regulate behaviors and actions of power holders to the extent that this does not inhibit smooth operation and acceptable degree of flexibility, it is highly likely that there would be room for abuse and neglect of responsibility.

According to some writers, constitutionalism is centred on two basic notions, namely, a) the limitation of the state versus society by way of respect for a set of human rights covering civic, political and economic liberties and b) implementation of separation of powers distributed between the organs of the state and the human actors in which authority is vested. As Montesquieu argued, separation of powers between the three branches of government is a safeguard against concentration of powers in the hands of the same organs and persons thereby curtailing possibilities for misuse of public office and power. Hence the need to enhance possibilities for the entrenchment of separation of powers as a culture and practice of political life is necessary. It is argued that constitutionalism is generally about the relationship between power and law, which promotes the viability and effectiveness of state institutions and entrenchment of smooth state-society relations.

Constitutionalism is, therefore, essentially about devotion and commitment to the principle that state power should originate from the consent of society and grounded on agreed upon rules and procedures. As regards its exercise, constitutionalism must be used to advance the wellbeing of society regardless of difficulties involved in attaining this goal. Among its various manifestations, enacting constitutions and adhering to principles and provisions enshrined thereof and their strict implementation stands at the forefront. It is often argued that enacting constitutions alone cannot be a sufficient condition for effecting transformation with positive bearings on the wellbeing of society. It is noted that transformation can take place under a situation where incumbent and emerging political leaders, including all pertinent actors, are sincere and committed to the realization of legitimate popular aspirations signified by the prevalence of a constitutional order.

In several instances, constitutional and other sets of reforms fail far short of bringing about desired changes that are underpinned by positive ramifications. This is mainly due to lack of commitment in favour of transformation projects on the part of the power elite. Hence undertakings are forced to be confined to stereotypes and formal rehearsals. It could thus be argued that limiting transformation drives anchored in the tenets of constitutionalism to formal facades is likely to end up in being ineffective in terms of bringing about meaningful changes. It is thus rightly stated that despite the crucial role of democracy for realizing development and social justice, its success depends on the vigour of practice. The same applies to the ramifications of constitutionalism as a political order. The crux of the matter, therefore, is not just formal adherence to constitutionalism as a guiding principle but also make new arrangements that could practically benefit society in socio-economic and political terms.

In discussing constitutionalism as a guiding principle of post-Cold War political systems, classic examples abound where citizens allegedly enjoy series of rights and liberties in the legal and formal sense. When probing into actual state of affairs in several cases, however, one is baffled by the fact that things are moving in a different direction. Such incompatibilities between principles and actual practice signified by misrepresentation of the basic tenets of constitutionalism are often reinforced by deliberately inserting ambiguities in legal provisions, which render actualization of constitutional principles difficult and cumbersome. Notwithstanding official pledges and solemn declarations in favour of entrenching constitutionalism for upholding the rule of law and protecting human rights, old ways of thinking and doing things in several countries remain fundamentally unaltered. Incumbents claiming to uphold democratic principles continue to hold power in a constitutional and pluralistic political setting while at the same time perpetuating old power relations and attendant practices in a subtle and disguised manner. This is expressed in the persistence and unabated perpetuation of old vices - cronyism, corruption, nepotism, arbitrariness, human right violations and unrestrained power of incumbents – in contravention of constitutional provisions.

Consequently, institutions that were created with the declared objective of upholding constitutionalism are reduced to the level of appendage of the state bureaucracy, which is more responsive to wishes and preferences of the wielders of power. Hence constitutional provisions that sanctioned the existence of such institutions could be rendered impotent and ineffective and serve purposes of elite pretension in the quest for obtaining internal and external legitimacy.

Human Security

Changes witnessed since the last two decades are signified by the subsiding of the Cold War and the retreat of authoritarianism in several countries of the world. The coming on the scene of waves of political and economic liberalization measures entailed varying consequences in the form of both opportunities and challenges with direct and indirect bearings on human security. These were marked by both positive and negative developments accruing from the weakening of authoritarian tendencies and dispensations and allowing for expanded spaces through which legitimate aspirations of society could be realized. On the other hand, political and economic instabilities accompanied by violent and tragic consequences were also experienced. In as much as new changes entailed opportunities, the challenges are also considerable that people "...throughout the world, in developing and developed countries alike, live under varied conditions of insecurity". As a result, paradigmatic shifts concerning security in general and human [in] security in particular came to the fore as issues of paramount importance that are worth considering.

Human security covers a wide range of issues associated with conflict, underdevelopment, financial/economic crisis, and absence of social protection. In his message to the participants of the International Workshop on Human Security in Ulaanbaatar, Mongolia, in 2000, UN Secretary General Kofi Annan made the following statement:

Human security in its broadest sense embraces far more than the absence of violent conflicts, encompassing human rights, good governance, access to education and health care, and ensuring that each individual has opportunities and choices to fulfil his or her potential her potential.

The above statement signifies changes in perception as regards the traditional notion of security that was centred exclusively on concerns associated with state survival. The new line of thinking thus emphasized the need to lend increased focus and attention to the security of people and uphold the interest of humanity as a collective. Human security as an issue of global concern began to gain currency and acceptance in regional and international forums particularly since the inauguration of the New Millennium. The Final Report of the Commission on Human Security submitted to the UN Secretary General on 1 May 2003 states that human security naturally connects a set of freedoms like freedom from want and fear, and freedom to take action on one's own behalf. It also emphasized that human security and human development are closely intertwined since both are concerned with lives and wellbeing of human beings. According to some writers, human security in essence means ensuring safety for people from both violent and non-violent threats by laying the ground for freedom from pervasive menace to people's rights, liberties and lives. Hence human security entails preventive measures by way of reducing vulnerabilities and minimizing risks thereby presupposing the need to take remedial measures in instances of failures of established preventive mechanisms. In the same vein, others claim that human security refers to the need for protecting the worth, dignity, and safety of the individual subsumed under the family, community and the state as an integral part of humanity.

The Link between Constitutionalism and Human Security

It is worthy to note that lending increased focus and attention to human security does not imply that state security, which was accorded primacy in the past, would be neglected altogether. This is because human security is not an antithesis of state security but rather something that complements it. Both can be mutually interdependent without one replacing or eliminating the other. As a matter of fact, upholding and preserving human security in a sustainable manner guarantees the security of the state against internal threats often caused by widespread disaffection. In the likelihood of external threats posed against the security of the state, entrenchment

of human security at the domestic level could be instrumental for forging cohesion and unity internally. Prior to the recognition and wider acceptance of human security as an important concern to be dealt with, state security posed as pivotal focusing on regime survival and conquest and perpetuation in power of ruling cliques and their cronies. This took place to the detriment of societal wellbeing and welfare. In this connection, it could be argued that many African leaders and political regimes have used state security and sovereignty as a tool for sustaining their privileges and oppressing their citizens with impunity.

It is widely argued that constitutionalism is a principle that upholds a system of governance based on the consent of the governed and anchored in agreed on rules and procedures. In the generic sense, it aims at bringing about an overall situation of societal wellbeing in an environment marked by harmony, credibility, and predictability of the socio-economic and political order grounded on the rule of law. Under a situation where constitutionalism is firmly entrenched, smooth interplay and realization of diverse legitimate interests would be regulated by established rules and regulations. Regulatory processes follow specific mechanisms and procedures, which are commonly known to all stakeholders. Hence the propensity of state of affairs leading to blatant violation of rights, denial of legitimate citizen access to amenities and entitlements, and misuse of public office in an unbridled manner and with impunity would be either minimal or totally absent. This implies that the power elite cannot threaten human security at will without facing the peril of accounting for misdeeds on the one hand, and citizens would not take recourse to change the status quo through extra-constitutional means on the other.

In both instances, therefore, forces and factors that potentially and in actual fact could unleash instances of insecurity could either be neutralized or controlled. One can thus conclude from the foregoing that a firmly established constitutional order, alias constitutionalism, is one of the crucial elements for ensuring freedom from physical and psychological insecurity and want. Conversely, a well established system characterized by prevalence of human security adds strength to the further consolidation of constitutionalism substantiated by positive attitudes and attendant practices signified by support and defence in its favour. In this connection, it is worthy to note that absence of constitutionalism and failure in strict application of its basic principles adversely affect upkeep of human security owing to several factors: undermining of the rule of law, absence of fair and equitable sharing of amenities and societal resources by way of administering distributive justice, lack of a system of accountability leading to violation of citizen rights and freedoms at will, and the gaining of ground on the part of factors that entail the taking shape of a broad constituency of discontent.

History of Constitutional Development in Ethiopia, Kenya and Sudan

In all the three countries in question, constitutional development is relatively a recent phenomenon that is closely associated with their “modern” and/or post-colonial political history. This commenced in Ethiopia a few decades prior to attainment of formal independence by Kenya and Sudan in the mid-1950s and early-1960s respectively. In the subsequent sections, attempt will be made to look into the history of the three countries on the subject in question, albeit briefly.

Ethiopia

Prior to the enactment of the first written Constitution of 1931 in Ethiopia, there were customary laws and conventions that embraced some legal principles on ecclesiastical and secular matters. These governed the actions and behaviors of and relationships between members of society.

Since the introduction of the 1931 Constitution, Ethiopia embarked on three constitution making exercises. The 1955 Revised Constitution was suspended and eventually repealed following the ousting of imperial rule in the mid-1970s, which was signified by a revolutionary upsurge. The 1987 Constitution of the Peoples Democratic Republic of Ethiopia (PDRE) promulgated under the military dictatorship was nullified when its architect was defeated by the incumbent ruling Front, EPRDF, in 1991. In July 1991 a Transitional Charter that served as an interim constitution for the transitional period (1991-1994) was promulgated. In 1994, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) was approved by a constituent assembly and came into effect in 1995. Constitution making and unmaking processes in Ethiopia are, thus, outcomes of frequent changes in the political landscape characterized by shifting of power between competing political forces.

It is widely claimed that the framing of the 1931 Constitution was mainly propelled by the urge for consolidating absolute power under the custody of Emperor Haileselassie, who used the Constitution to entrench his twin policies of centralization and modernization within a juridical framework of emergent absolutism. This was effected to the detriment of most of the established rights and privileges of the traditional nobility.

Several factors necessitated the revision of the 1931 Constitution in 1955: the changing political and socio-economic environment in Africa in general and Ethiopia in particular in the 1950s, Eritrea’s federation with Ethiopia under the UN-sponsored arrangement of internal self-rule, and the growing complexity in the mode of operation of the imperial government, among others. Significant changes

that were ushered in by the 1955 Constitution include introduction of universal adult suffrage, creation of a bicameral legislature, and formal recognition of rights and liberties allegedly to be enjoyed by citizens, and incorporation of some provisions of standard human right conventions.

The crisis of the Ethiopian state and the nature of opposition to imperial rule entailed profound changes in the political landscape as signified by events and occurrences associated with the revolutionary upheavals of the mid-'70s. In February 1974, the Emperor ordered for the formation of a constitutional conference, which was mandated to revise the Constitution with the view to making the Prime Minister directly responsible to parliament rather than the Emperor, and to further guarantee civil rights. The Constitutional Conference submitted a draft constitution in August 1974, which proposed constitutional monarchy as the form of government. The most important element of the draft constitution was its recognition that the Ethiopian people are the sources of state power and that the Ethiopian people as a whole are sovereign. Notwithstanding this, however, the attempt to introduce a relatively liberal constitution was stalled by the seizure of state power by the Provisional Military Administrative Council (PMAC) in September 1974. This took place in the absence of a well organized political force that could vie for power through mobilizing established constituencies of support on the basis of articulated programs and plans of action.

After repulsing external and internal threats posed against its survival and attaining relative strength and stability through ruthless show of force, the PMAC spearheaded by its strongman, Colonel Mengistu Hailemariam, embarked on a process of 'transforming' itself into a socialist style 'peoples democracy' by enacting the 1987 Constitution. This provided the legal basis for the coming on the scene of what came to be known as the People's Democratic Republic of Ethiopia (PDRE) spearheaded by a Marxist-Leninist vanguard party. In terms of constitutional development, some points are noteworthy regarding the 1987 Constitution. These include reaffirmation of the unitary state structure that provided for limited exercise of regional autonomy, equality of nationalities, combating of chauvinism and narrow nationalism to strengthen the unity of Ethiopians, equitable advancement of nationalities by progressively eliminating disparities in economic development, and respect for languages and cultures of nationalities (PMAC, 1987: 15-16). The Constitution also, for the first time in Ethiopia's constitutional history, declared the separation of religion from the state. The practical impact of the 1987 Constitution in Ethiopia's political history is not clearly known. When the forces of the EPRDF defeated the Mengistu regime in May 1991, the restructuring of the Ethiopian state on the basis of the 1987 Constitution was not even consummated. The PDRE Constitution, however, attempted to establish a Marxist-Leninist government in the style of the

East European nations. The process was tainted from the very beginning as the military dictatorship was simply interested in transforming itself to a civilian administration without fundamentally renovating the fabrics of the existing state-society nexus.

The PDRE Constitution of 1987 was effectively abrogated when military rule was ousted in 1991. The July 1991 Conference that was convened by EPRDF established a Transitional Government by adopting a Charter, which served as an interim constitution for the transitional period. The major underpinnings of the Charter included lending primacy to national self-determination including the right to secession, adopting the 1948 UN Declaration of Human Rights, effecting changes in the form of the Ethiopian state from unitary to federal, providing for the exercise of a set of freedoms and liberties, establishing a unicameral transitional legislature, and transforming economic policy from a centrally planned model to a market-oriented variant.

During the transition period, a Constitution Drafting Commission was appointed by the Council of Representatives of the Transitional Government. In the subsequent months following the commencement of preparing the draft, public discussions on constitutional issues and the various provisions of the draft were conducted throughout the country. The Constituent Assembly was thus elected and established without the opposition being represented in it. With some minor changes in the contents of the draft, the Constituent Assembly approved the new constitution in December 1994, which entered into force in 1995. Thus the incumbent Constitution became the basis for the establishment of the Federal Democratic Republic of Ethiopia (FDRE), which is the official designation of the Ethiopian state. With the exception of minor additions here and there, the FDRE Constitution reaffirmed almost all the provisions stipulated in the Transitional Charter.

Kenya

The First Lancaster House Conference convened in 1960 deliberated on the concepts and principles of constitution making that were to form the basis of the then anticipated Kenyan Self-Government. This was preceded by constitutional proposals made by African members of the colonial legislature in Kenya. Whereas the First Lancaster House Conference was marked for spelling out constitutional concepts and principles, the Second and Third Lancaster House Conferences held in 1962 and 1963 respectively articulated the actual form and structures of the envisaged constitution thereby posing as a turning point in the constitution making history of Kenya.

Following a series of negotiations and bargaining between different political groups and stakeholders, a self-government constitution was enacted in 1963. This was aimed at preparing the ground for self-rule pending agreement between the colonial administration and different groups claiming to represent the various nationalist movements. The Self-Government Constitution, which provided the basis of the Independence Constitution, was preceded by constitutional proposals submitted to the colonial government in June 1958 by the African members of the Kenya colonial legislature. Prior to the promulgation of the Self-Government Constitution, a general election to the two houses of the legislative body was conducted in which the Kenya African National Union (KANU) won the majority of votes thus qualifying to form the government.

On 12 December 1963, Kenya became formally independent under the sovereignty of the British crown. It is worthy to note that the legal basis for the existence and mode of operation of the new government was the Self-Government Constitution signified by several factors as its characteristics: a Westminster form of parliamentary government, a federal arrangement marked by extensive form of regional self-rule, a bicameral legislature, a dual executive in the form of a head of government (prime minister appointed by the governor general) and a head of state (the British Queen). Regional self-rule as sanctioned by the Self-Government Constitution led to dividing the country into seven regions each of which was allowed to have its own legislative and executive bodies with commensurate powers in respective areas of jurisdiction and competence. The 1963 Constitution was long, detailed and complex due to the fact that it was a compromise document that accommodated wish lists of several parties. It also institutionalized, entrenched and legitimized the colonial political and legal heritage.

On 4 August 1964 the then Prime Minister, Jomo Kenyatta, announced to the House of Representatives (the lower house of parliament) his government's proposal for constitutional amendment. In sum, the proposal was aimed at effecting changes in the underlying principles of the Self-Government Constitution with a political imperative calling for wide range of powers to be vested on the political leadership in the person of the chief executive. This was introduced as the first amendment bill in October 1964. On 12 December 1964, exactly a year after Kenya's formal independence under the British crown, Kenya was declared a sovereign republic thereby terminating the country's status as part of Her Majesty's Dominion.

The First Amendment Act formed the basis of what came to be known as "The Independence Constitution", whose salient features include, among others, abolition of a dual form of executive thereby making the President of the

Republic Head of State and Government and Commander in Chief of the Armed Forces. The Independence Constitution was based on two main principles, namely, parliamentary government and minority protection, and retained several of the provisions of the Self-Government Constitution of 1963. Besides, the Act gave wider powers to the President in relation to the civil service and created a post of vice president to be appointed by the President of the Republic from among members of Parliament. In theory, the Independence Constitution was supposed to mirror the liberal democratic tenets of the British Westminster model whereas it failed to pose as such in practice. Furthermore, it is alleged that the Constitution was essentially authoritarian in the sense that it guaranteed individual rights while at the same time negating it, which the numerous amendments made during subsequent years failed to remedy.

It is worthy to note that a total of ten amendments mediated by Acts of Parliament were introduced between 1964 and 1968. The Second Amendment that took place in 1964 greatly reduced the powers, jurisdiction and competence of the regions and their leading organs in administrative and politico-economic terms. This rendered the regions increasingly dependent on the central government, which assumed a presidential form and derailed the foundations of the parliamentary system envisaged to effect arrangements with regard to distribution of powers originally. The trend of entrenching presidential power to the detriment of others persisted unabated in subsequent years. Hence the net effect of the first ten amendments to the Constitution was that government became so centralized that the public became virtually irrelevant in the management of public affairs. During the period between 1970 and 1973, the practice of introducing constitutional amendment was deferred due to absence of pressing needs to do so given that amassing of overwhelming powers on the part of the executive was duly accomplished to a major degree. Between 1974 and 1988, one amendment on the average was introduced every year serving more or less the same purpose of consolidating presidential power in one way or other.

In the light of this, it is argued that the several constitutional amendments successfully produced a repressive and autocratic system of government that was firmly backed by a rigid one party structure and spearheaded by a phenomenon of presidential absolutism. The process of entrenching a de facto one party state that commenced in the immediate aftermath of inaugurating the sovereign Republic culminated in making Kenya a de jure single party entity in 1982. The years between 1988 and 1991 were marked by violence-charged popular upheavals for multiparty politics and other more outspoken demands for expanded political space thereby posing considerable challenges against the status quo. New developments forced the government and the ruling KANU party to succumb to popular pressures, which culminated in introducing Constitutional Amendment Act No. 2 in 1991. This was

monumental in the sense that it reinstated de facto multiparty political structures and enabled each political party to nominate candidates for presidential and legislative elections. In 1992, it was agreed between KANU and the opposition to limit the tenure of the President to two terms. This was despite the fact that President Moi was in power for fourteen years at the time, which means that his two terms commence as of 1992 according to the new arrangement. On the basis of this, President Moi repeatedly declared that he was committed to the two term formula to which he adhered.

In the 1992 multiparty elections, KANU led by Moi won the day mainly owing to lack of strategic coordination and prevalence of rampant division in the ranks of the opposition, a phenomenon which repeated itself in the 1997 general elections. Constitutional Amendment Act No. 9/1997 was important for declaring that the “Republic of Kenya shall be a multiparty democratic state” thereby legally terminating the sanctity of one party rule. In 2000, Parliament passed a legislation entitled “The Constitution of Kenya Review Act- Chapter 3A” providing for the establishment of the Constitution of Kenya Review Commission (CKRC). The Commission was entrusted to undertake a wide variety of functions: conduct and facilitate civic education, collect and collate the views of the people on proposals to alter the constitution and draft a bill thereof, carry out or cause to be carried out studies and evaluations concerning the constitution, etc. President Moi left office following the December 2002 presidential elections in which the candidate of the National Alliance Rainbow Coalition (NARC), Mwai Kibaki, won. Following the ascendance of NARC in the 2002 presidential election, the Kibaki regime tried to grapple with entrenched problems associated with the past for quite a while. The submission of a revised constitution for approval by the people through a referendum in 2005 was defeated to the detriment of the NARC faction headed by Kibaki. This led to division between members of NARC thereby prompting the President of the Republic to dissolve the cabinet.

Sudan

Constitution making in the Sudan commenced prior to the country’s independence in 1956. Election to the first legislative body in the form of a constituent assembly was conducted to deliberate on the future constitutional form of government and the date of independence. The self-government statute of 1953 authored under the supervision of Britain’s colonial administration later served as a transitional constitution at the time of Sudan’s independence in 1956. This could be taken as the first supreme legal document in the constitution making history of Sudan. Between 1954 and 1958, Sudan’s political landscape was centred on inter-party struggles and intra-party factionalism that served as one of the justifications for the intervention of the military in politics.

Given the unfolding of cleavages and violent conflicts in Sudan prior to independence, it appears that Sudan achieved statehood under a condition characterized by lack of consensus expressed through constitutional means. Hence the country became independent with a temporary constitution whereby enacting a permanent one was inhibited by a couple of issues on which the forging of agreement became impossible. These were whether Sudan should be a federal or a unitary entity and whether the nature and contents of the constitution should be secular or Islamic. Wrangling and mutual and reciprocal antipathy between different political actors within government and outside led to visible signs of constitutional crisis thereby prompting the 1958 military coup spearheaded by General Ibrahim Aboud. Aboud banned all political parties, and suspended the constituent assembly and the interim constitution. Misrule by the military dictatorship and the adverse effects of its overall policies in general and the one pursued in the South led to mounting discontents entailing popular pressure and antagonism against the Aboud regime resulting in its overthrow and replacement by a civilian government in 1964.

The ousting of the first military regime created favourable conditions for reinstating some kind of constitutional order by way of restoring constitutional organs and structures of government. Parliamentary government between 1965 and 1969 was underpinned by the coming on the scene and dissolution of a series of coalition governments. On the other hand, the post-Aboud regime accorded priority to addressing the problem in the South and convened a Round Table Conference in 1965. The Conference did not materialize, among others, owing to the reluctance of the civilian government, which was dominated by elites from the North, in addressing the underlying factors presumed to be causes of the civil war. Hence the civil war between the central government led by Sadiq Al Mahdi and the Southern rebels intensified. The history of the second parliamentary government of post-colonial Sudan is replete with a host of crises characterized by defective and faulty modes of operation of the regime, which entailed a progressively widening popular disaffection that culminated in a broad constituency discontent. Overall state of affairs resulted in the coming on the scene of the second military regime through a bloodless coup led by Ghaffar El-Niamairy.

The leaders of the 1969 coup accused the overthrown civilian administration for several inadequacies in terms of boosting economic development, developing sound foreign policy, improving quality of life of the public, and solving the problem in the South. The Niamairy regime pledged to address all these concerns for which it gained the support of the Sudanese Communist Party, the Southern politicians, and other actors in the ranks of broad sections of society. The 1971 coup attempt precipitated the unfolding of crisis entailing state response by way of repression and related administrative and political measures targeting the Communists and Muslim Brothers in particular. In the face of more pressing challenges that surfaced

subsequently, the regime was forced to find accommodation with the Muslim Brothers at a later stage. The problem in the South remained unresolved until 1972, when the leaders of the protagonist parties agreed to Ethiopian mediation efforts eventually acceding to what came to be known as the Addis Ababa Accord of February 1972. The Addis Ababa Accord was a success in the sense that it effected cessation of hostilities and laid a legal foundation for autonomous status of Southern Sudan, which was on the top list of the demands of Southern politicians.

Following this, the regime promulgated the Southern Provinces Regional Self-Government Act as a statute providing for power sharing, special representation of the South in the cabinet, and extending the right to form a regional government in the South with executive and legislative powers. A new constitution was promulgated in 1973, which was designated as a permanent one. In this connection, it is stated “until 1973, the situation symbolized lack of a formal constitution”. The 1973 Constitution also provided for the establishment and popularization of the Sudan Socialist Union (SSU) as the only legally recognized party, progressive devolution of government functions and powers to regions and provinces, and rapprochement with the domestic opposition and neighbouring countries. The Niamairy regime was then able to consolidate power by gaining the support of the South, established a national assembly (parliament), and promulgated a permanent constitution.

Such an encouraging trend, however, began to be reversed in a gradual and piecemeal manner in subsequent years. In February 1980, Niamairy dissolved the Southern Regional Assembly, which was followed by the dissolution of the Southern Regional Self-Government and the creation of three regional governments in Bahr El-Ghazal, Upper Nile and Equatoria in June 1983. Concurrently, some clauses of the Regional Government Act of 1972 were repealed. The cumulative effects of such and similar measures culminated in the ushering in of the second round of civil war signified by the commencement of the armed struggle spearheaded by the SPLM/A, which was formed in the early 1980s. In July 1984, the regime introduced constitutional amendments to islamize the Constitution, which was opposed by 2/3 of the members of the National Assembly thereby forcing the government to withdraw them.

In the face of rising popular discontents, the Niamairy regime was overthrown in April 1985 in a bloodless coup led by General Sawar El-Dahab. The Transitional Government formed thereof arranged for the conducting of elections by reviving party politics and constitutionalism. In the April 1986 general elections, Sadiq El-Mahdi's Umma party won and formed the government. The war in the South continued unabated due to Sadiq's failure and reluctance in finding lasting

solutions. The new democratic dispensation was taken advantage of by Islamist forces, notably the National Islamic Front (NIF), which managed to mobilize its supporters in the ranks of the military and civilian groups. The brain behind the NIF move was Hassan El-Turabi. In June 1989, NIF took over the reins of power under Brigadier Omar Hassan El-Bashir and suspended the constitution, dissolved parliament, outlawed political parties, and banned media and trade union activities.

The efforts of the NIF regime to contain SPLM/A insurgent activities failed to materialize despite consistently administered military measures. This paved the way for the repeated mediation endeavours by various actors (UN, USA, AU, IGAD, and neighbouring countries, etc.), which first culminated in the peace agreement in Kenya signified by the Machakos Protocol of 2002. The Machakos Protocol laid the basis for enacting a national constitution that could guarantee freedom of worship and an inclusive constitutional review process during the interim period. The Protocol covered a wide range of issues pertaining to power and wealth sharing, security arrangements and resolution of various matters presumed to have fuelled the civil war. Implementation of the Machakos Protocol was stalled for a while without leading to disruption of negotiations between the government and SPLM/A. In January 2005, a landmark progress in the peace process took effect as signified by the signing of the Comprehensive Peace Agreement (CPA) in Naivasha, Kenya.

The Agreement provided for fair settlement of the conflict by addressing the legitimate claims and demands of the Southerners during the interim period, which was agreed to last for six years. At the end of the interim period, a referendum is to be held in the South in order to determine whether the South is to remain part of the larger entity or accedes to independent statehood through separation. For the period in question, a Government of National Unity (GoNU) was established at the apex of which is the Presidency comprising Omar Hassan Al Bahir as President of the Republic and Commander-in-Chief of the Armed Forces, the leader of the SPLM/A as the First Vice President, President of the Southern Sudan Regional Government and Commander-in Chief of the SPLA, and the ex-Vice President of the Republic as the Second Vice President.

On June 23, 2005 the National Constitution Commission was established comprising mainly representatives of the major parties to the CPA, notably the National Congress Party (NCP) and the SPLM/SPLA. The Commission, among other things, approved the adoption and incorporation of international conventions and accords pertaining to human rights and basic freedoms and liberties. In the new constitution several of the provisions based on Sharia law were amended thereby lending a feature of secularism to the current constitution particularly as regards Southerners in general.

Recent Trends towards Constitutionalism in the Horn

New phenomena mediated by the end of the Cold War and the ascendance of neo-liberalism were compounded by intensified popular struggles against entrenched authoritarian rule aimed at ensuring the creation of expanded political and socio-economic space. In the face of the irreversible stances that these assumed, the proponents of centralized one party rule were either forced to flee possible retributions resulting from popular upheavals (as was the case in Ethiopia and Somalia in 1991) or adjust to the imperatives of new developments and changed situations by bowing to mass pressures (as was the case in Kenya around the mid-1990s). Consequently, a series of measures ranging from administrative and procedural reforms entailing changes in the *modus operandi* of governments to restructuring and recasting overall intra-state and state-society relations were introduced.

One of the major underpinnings of the new dispensation was characterized by lending primacy to the need for initiating the process of constitutionalism, which was presumed to serve as a basis for forging a new political contract. Hence constitution making processes commenced in earnest in many of the countries of the Horn at varying times. Notwithstanding alleged flaws and controversies surrounding the exercise, Ethiopia and Kenya took the lead in the mid-1990s with regard to constitution making and ratification. This was expressed by consummating standard procedures and phases as hallmarks of standard engagement in the undertaking of constitutional reforms. In the case of Sudan and Somalia, engagement in the task was forced to delay until very recently owing to large-scale civil war and state collapse that persisted over a longer period in the two countries respectively. In all cases, a relatively expanded space and enabling environment appears to have prevailed as experienced in improvements regarding constitutionalism.

This is despite the fact that there is still a lot to be desired owing to discrepancies between formal pledges and rhetoric on the one hand and the reality on the ground on the other. Besides, whether constitutional rule is the order of the day is subjected to questioning as expressed in events and occurrences surrounding the post-May 2005 elections in Ethiopia, the fragmentation of the ruling NARC Coalition following the 2005 referendum on constitution revision in Kenya, and accusations and counter-accusations on the part of the major signatories to the Sudanese Comprehensive Peace Agreement hinting at unbecoming behaviors and actions of one another.

At this juncture, it is worthy to note that the principles enshrined in the Constitutive Act of the African Union and NEPAD underlined the need to ensure constitutionalism and human security to be concretely expressed in promoting

human rights and democracy, rule of law, and political, economic and corporate governance, all of which should rest on legitimacy and active participation of citizens. In July 2002, African Heads of State and Government agreed in Durban (Republic of South Africa) to enhance the governance realm anchored in peace and security. The NEPAD Document clearly acknowledges that it is impossible to foster development in the absence of true democracy, respect for human rights, and peace and good governance. As distinct from similar previous initiatives, NEPAD emphasized democracy and the rule of law as central for realizing the African Renaissance, which it hopes to effect. Assessing the degree and extent of compliance with principles enshrined in both the Constitutive Act and the NEPAD Document is not easy owing to different factors: variations in commitment of individual governments, the short time span since the commencement of these initiatives, and lending priority to other concerns that are alleged to be of pressing nature. Notwithstanding this, however, both improvement and deterioration of state of affairs associated with constitutional development and human security are experienced here and there depending on developments in individual countries.

Conclusions and Recommendations

The development of a culture of constitutionalism both in the Horn of Africa and the continent at large faces both opportunities and challenges. Opportunities in this regard abound: rising awareness as regards the positive ramifications of democracy, good governance and the rule of law, which reflect on the basic tenets of constitutionalism; determination of the popular masses and civil society activists to access relatively broader political and economic spaces through progressively increasing claims and demands and concerted actions; loss of ground and currency on the part of authoritarian dispositions that deny rights and freedoms; and increasing scrutiny on the part of regional and international organizations through monitoring and review mechanisms for ensuring compliance with widely accepted and standard norms of democracy and governance. Hence, violation of widely accepted principles with impunity, as was the case in the past, has its costs in terms of regime survival in the long run. With the exception of Eritrea, all countries of the Horn have embarked on the road to constitutionalism despite flaws and pretensions witnessed here and there.

Challenges militating against the development of a culture of constitutionalism are also not lacking either. The hangovers of past attitudes and behaviours persist on the part of the wielders of power who subtly use the existence of constitutional arrangements as smokescreen to cover up their misdeeds that run counter to the spirit and letter of constitutionalism. Paucity of genuine commitment to promote constitutionalism in spite of the existence of standard and well-framed constitutional documents poses a serious challenge to internalize constitutionalism as a culture.

Pretentious dispositions to circumvent scrutiny and gain recognition and attendant amenities on the part of “hidden autocrats” present a considerable danger to the development of constitutionalism. This is owing to the subtlety of deception, which cannot be identified easily. Moreover, a trend signifying the lust for self-perpetuation through persistent amendments of constitutional provisions on limited terms of office of incumbents is on the rise. This is done under various pretexts emphasizing primacy of the so-called “national interest”, which deflect focus and attention from issues related to the need for adherence to principles of constitutionalism. It is also worth noting that despite their daring emphasis on the centrality of constitutionalism (expressed in democracy and the rule of law), the Constitutive Act of the African Union and NEPAD are top-level initiatives in the making of which communities and citizens at large had no say and involvement. In the light of this, possibilities for cultivating legitimacy and building constituency for smooth implementation and wider acceptance of cardinal principles at lower levels could be minimal at best..

In view of the foregoing, one could suggest that existing trends driving at entrenching constitutionalism in the Horn should be persevered with. Another problem that underpins the erosion of constitutionalism in the Horn is associated with subjecting the judiciary to executive whims and wills. In several countries of the sub-region, the judiciary is subservient to the executive to the extent that the former is completely dependent on the latter for virtually everything. Hence the need for empowering the judiciary by way of making it legally and practically independent through various means: security of tenure of judges in a manner guaranteed by constitutional provisions, vesting the power of judicial review in supreme courts, enhancing vigil against violations on the part of regimes through awareness creation and intensive sensitization, and strengthening the oversight capacity of legislative bodies, among others.

Endnotes

¹ Gros, 1998, p. 3

² S. A. de Smith, 1992, p. 205.

³ *Ibid.*

⁴ Jan-Eric Lane, 1996, p. 25.

⁵ Lansine Kaba, 1991, p. 211

⁶ H.W.O. Okoth-Ogendo, 1991, p. 20.

⁷ M. Bratton and van de Walle, 1992, p. 29.

⁸ A. Sen, 1999, pp. 7-8.

⁹ S. Ogata and A. Sen, 2003, p. 2.

¹⁰ <http://www.humansecurity-chs.org>

¹¹ See UN Press Release SG/SM, 2000

¹² For example, the Commission on Human Security was created in January 2001 through the initiative of the Government of Japan as a response to the call of the UN Secretary General at the 2000 Millennium Summit for a world “free of want” and “free of fear”. Subsequently, the Human Security Unit was established in September 2004 in the Secretariat of the UN at the Office for the Coordination of Humanitarian Affairs (OCHA). The overall objective of this Office is to mainstream human security in all pertinent UN activities.

¹³ See S. Ogata. and A. Sen, May 2003.

¹⁴ See, among others, D. Hubert, 1999, p. 3.

¹⁵ W. Dorn, 2001, pp. 113-115.

¹⁶ S. Ndlovu-Gatsheni, 2004, p. 299.

¹⁷ S. Kondowe, 2000, p. 85.

¹⁸ M. Perham, 1969, pp. 138-139.

¹⁹ Bahru Zewde, 1991, p. 140; C. Clapham, 1969, p. 34.

²⁰ Tessema Ta'a and Zecharias Kenea, 1997; P. Henze 2000

²¹ Tessema and Zecharias, 1997, p. 19

²² P. L. Agweli Onalo, 2004.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ O. O. Ombaka, 2001.

²⁶ Government of Kenya, First Amendment Act of Parliament, No. 28/1964.

²⁷ This refers to maintaining property and other rights of European and Asian minority groups in Kenya.

²⁸ O. O. Ombaka, 2001.

²⁹ G. M. Munene, 2001

³⁰ See Constitutional Amendment No. 2, Act 38 of 1964.

³¹ O. O. Ombaka, 2001.

³² P. L. Agweli Onalo, 2004, p. 189.

³³ See Act No. 12 of 1991.

³⁴ Andrew Morton, 1998, p. 295.

³⁵ See Act No. 9 of 1997.

³⁶ For the details see, the Constitution of Kenya Review Act, Chapter 3A, Revised Edition, 2001.

³⁷ Atta El-Battahani, 2005, p. 10; see also Douglas, H. Johnson, 2003, p.26.

³⁸ Douglas H. Johnson, 2003, pp. 29-30.

³⁹ Atta El-Battahani, 2005, pp. 14-15.

⁴⁰ Encyclopedia Britannica, 1993, p. 251.

⁴¹ George E. Delury, 1983.

⁴² Francis M. Deng, 1991.

⁴³ Douglas H. Johnson, 2003, p. 198.

⁴⁴ Ibrahim Ghandour, 2004, p. 70.

⁴⁵ The National Congress Party replaced the National Islamic Front under a situation that the latter's leadership and political leadership remained intact in the main.

⁴⁶ OSSREA, Rwanda Chapter, 2005, p. 159.

⁴⁷ See Article 79 of the NEPAD Document.

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Constitutionalism, Self-determination and the African Union

By
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Many of the predicaments facing the states and societies of the Horn of Africa stems from one unusual and surprising fact: the states of the region were stamped with tentativeness from their very inception. In another work (Lata 2004), I elaborate how the Sudan, Eritrea, Ethiopia, Djibouti, today's Somaliland and the remainder of Somalia emerged as tentative footholds for realizing region-wide empires, an aspiration entertained not only by external actors but also by a couple of local aspirants. Here it is possible only to summarize how this tentativeness endures even today. This can be explicated by looking at the current fates of the region's states. The Sudan presently faces the prospect of either remaining united or breaking up into at least two states. There are forces within Ethiopia that aspire to once again extend its borders to the Red Sea by regaining Eritrea preferably wholly or at least partially to afford Ethiopia access to the sea. Meanwhile, there are other forces within Ethiopia that are working to realize their independent national states by breaking away from the present state. Whether the former Somali Republic would be, or should be, reconstituted as a single country or not remains a contentious issue among Somali political elites. And whether a reconstituted Somalia would revive the previous aspiration of absorbing Djibouti, Eastern Ethiopia, and Northern Kenya also remains open to question. Consequently, nowhere else in the African Continent does the size and shape of states remain so explicitly tentative.

The prevalence of this tentative nature of the states of the Horn of Africa manifests itself ultimately in the invocation of self-determination. As a matter of fact self-determination has been invoked much more often in this region than anywhere else in the Continent, a reality which continues to this day (Young 1991: 44). The reasons for this peculiar experience of the states of the Horn of Africa are many but the most important one has to do with how the exercise of state power is perceived in the region. The exercise of state power is routinely perceived as privileging particular regional, religious, or ethnic elite in the experience of this region to date. This perception need not necessarily accord with reality for it to serve as a potent cause of popular mobilization for struggles that have manifested themselves in violence more often than not.

One surprising implication of this widespread invocation of self-determination in the Horn of Africa is the blurring of the distinction between cause and effect. The invocation of self-determination is understandably perceived as a potential cause for state contraction. And this perception has often driven the urge of expanding the

threatened state preferably by annexing adjacent entities or by at least projecting power and influence beyond its existing boundaries. In some cases, self-determination has been invoked to justify the aspiration to annex the adjacent territories of a neighbouring state. Both those aspiring to realize state contraction or expansion have thus invoked the same principle. Consequently, whether potential state contraction is the cause or effect of the invocation of self-determination is thus hard to determine with certainty.

What can be stated with a degree of certainty is the fact that both contractive and expansive tendencies simultaneously prevail in the states of the Horn of Africa. One possible underlying cause of this reality is the simultaneous prevalence of the processes of fusion and fission throughout the region. The existence of these simultaneous and apparently contradictory pressures often manifests itself in the ease with which groups demanding self-determination fragmented. The incumbents opposing self-determination have also often experienced a similar process of fragmentation. Under the circumstances, hence, uncovering and forging the appropriate political community may answer many of the demands for self-determination. And this search for the appropriate political community should perhaps be conducted within the search for effective political units based upon the tasks that supra-state, state, and sub-state entities are better placed to perform.

I propose that we harness constitutionalism and self-determination to serve the objective of realizing this layered form of pooling and sharing political power. Harnessing constitutionalism and self-determination for such a purpose appears promising because the two principles share a couple of missions in common. First, they are processes that bring into being and sustain a political community. Second, they also serve as the midwife of the status of citizenship and enforce and preserve the rights and duties according with this status. Citizenship and the nature and size of appropriate political community have been issues of contest in the Horn of Africa since the states of the region came into existence as manifested by the invocation of self-determination. Layered pooling and sharing of political power at the sub-state, state, and supra-state levels appears appropriate for the Horn of Africa because of another common experience of the region's states.

The states of the Horn of Africa display the potentials of qualifying as a cohesive region due to the prevalence of a "regional security complex" as the result of which the security concerns of the region's states cannot be addressed in isolation (Lyons 1996: 85). Thus far state the security strategies of the concerned states have routinely involved the practice of exacerbating the insecurity of neighbours. The fundamental challenge facing the states and societies of the region hence is inverting this relationship by creating region-wide structures of mutual security. Forging all the inhabitants of a particular state into empowered political communi-

ties by deliberately promoting the status of citizenship while taking into account the natural interdependence and interaction of the entire region's communities could possibly serve such a purpose. Consequently, the principles of self-determination and constitutionalism should be reconsidered as mechanisms for achieving this objective.

I propose that self-determination and constitutionalism could serve such a purpose if they are harnessed in order to deal with the following set of intimately interrelated imperatives.

- The first imperative that needs to be addressed is what I call the neutrality imperative. The perception that state power privileges a particular regional, religious, or ethnic elite has endured in the region thereby motivating the invocation of self-determination and generating the attendant insecurity and bloodshed. As I have already stated, this perception need not necessarily accord with the truth for it to serve as a potent cause for mobilization, its mere existence being sufficient for such purposes. The doctrine of state neutrality in all respects is perhaps not always desirable or achievable. But there are aspects in which promoting state neutrality becomes a necessary precondition for peace and stability.
- The second related imperative is the accessibility and accountability imperative. The accessibility imperative has an internal and external dimension. The internal dimension concerns making state institutions and functionaries easily accessible and openly accountable to grassroots communities. This mutual accessibility between grassroots communities and the functionaries in daily contact with them brings to the fore the issue of communication. Without effective, direct and unhampered communication between members of grassroots communities and the state institutions and functionaries in daily contact with them, promoting accountability and accessibility would appear unpromising. Fostering effective communication entails not only using the locality's vernacular but also eschewing the unnecessary mystification of concepts, principles and procedures to the extent possible.
- The external dimension of the accessibility imperative concerns enabling the state to legitimately and confidently access regional, continental, and global actors while remaining accessible to grassroots communities. The processes of accessing inter-state actors and remaining accessible to local communities reinforce each other in a reciprocal manner. Success in one of these areas contributes to the achievement of the other. Only the state that is firmly anchored in local communities by extending its capillaries to the remotest vil-

lages and pastoralist camps can interact with inter-state actors with confidence and legitimacy. And similarly only the state that can interact with inter-state actors with confidence and legitimacy can much more effectively serve grassroots societies in today's highly interdependent world.

- The third related imperative is the representation imperative. The representation imperative derives from the need by the state to recognize the identities of its citizens and to also render them recognizable in its imaging and projection. Only by succeeding in achieving this imperative would the legitimacy of the state and its related social, cultural, and political institutions be firmly established (O'Leary 1999:106).
- The fourth imperative is what I call the capacity imperative. The capacity imperative derives from the growing recognition that many of today's states are too small and too large at the same time. They are considered too large for full social identities and many real economic interests. They at the same time too small to effectively serve many economic purposes (Agnew 2000: 16).

Based on the identification of these imperatives, I propose a constitutional process that embeds the state through multidimensional self-determination for the Horn of Africa region. The concept of the embedded state is articulated to promote the capacity and neutrality of the state by rendering it autonomous of competing policy constituencies. The principle of the embedded state when combined with the exercise of multidimensional self-determination, I believe, could address also all the other imperatives I have enumerated.

Whether the state should in fact be neutral in all respects or not has been debated by political theorists throughout history. This ongoing debate notwithstanding, rendering the state and its institutions increasingly autonomous of particular regional, religious, ethnic, class, or gender-based elites is imperative for ending the strife that has bedevilled the societies of the Horn of Africa. The embedded autonomous state is theorized by Graeme Gill (2003) who recommends forging two forms of interdependence to achieve this purpose.

The first is *institutional interdependence* in which the state is penetrated by and also penetrates competing social forces. This mutual interpenetration of competing social interests and the state appears as a promising recipe for ending the ongoing perception of associating state power with particular regional, religious, or ethnic elite in the Horn of Africa. The more such a state is rooted in these competing social sectors, the more difficult it becomes for a particular social sector to

capture and turn it into an instrument for the promotion of its particular interests and visions. And it is the state's ability to balance off these competing social forces that enhances its autonomy and capacity.

The second type of interdependence between the state and competing social forces Gill designates *organic interdependence*. The process by which competing social forces are represented in state organs is what determines organic interdependence. Competing social forces gain equitable representation in state organs in two ways: by fairly sharing the staffing of state organs; and by having fair representation in legislative bodies. The state that has cultivated both institutional and organic interdependence becomes firmly embedded in society and thereby becomes autonomous of competing policy constituencies.

The process of embedding the state appears to call for the exercise of multidimensional self-determination. Hence, I propose embedding the state through the exercise of multidimensional self-determination to address the imperatives I enumerated earlier. This version of self-determination is designated multidimensional because it is composed of four dimensions: (1) internal, (2) bilateral, (3) horizontal, and (4) vertical (Danspeckgruber 1997: 222). Internal self-determination forges two communities sharing the same region within the state into a common political community when they jointly shape the political and security structures that fairly serve them. This ideally applies to minorities that live as enclaves within the homeland of a larger nationality. The exercise of bilateral self-determination is consummated when a couple of neighbouring nationalities arrive at a consensus on matters of particular interest to them. Horizontal self-determination is exercised when all the nationalities inhabiting the territory of a particular state jointly shape their common government which fairly serves all of them. Finally, vertical self-determination is exercised when states based on the exercise of the other dimensions of self-determination jointly forge common regional political and security structures.

Embedding the state through the exercise of multidimensional self-determination requires abandoning a number of aspirations pursued by many states throughout the world until recent decades. Perhaps the most fundamental of these is the aspiration of forging all the inhabitants of a particular state territory into a single nation identified by a common language and culture. The aspiration of rendering the political community coterminous with the cultural and linguistic community often through coercive assimilation translates into rendering the state and nation coterminous and synonymous, the presumption underpinning the nation-state model.

The nation-state model was pioneered primarily in Western Europe and was adopted as a normative principle throughout the world either through imposition or

emulation. However, scholars now cite compelling historical evidence to dismiss the realization of the culturally and linguistically homogeneous nation-state even in Western Europe (Oommen 1997 & van den Beghe 1992). There is also a broad range of theoretical reasons that indicates the futility of forging the homogeneous nation-state.

To begin with the so-called nation-states of Western Europe were created in the image of a specific ethnic group. As repeatedly argued by Anthony D. Smith (2004), a dominant *ethnie* led the process of realizing a centralized state in England, France, Spain, and Sweden in the course of which it stamped the emerging nation with its specific cultural features, historical memory and myth. However, starting in the 1960s, subordinate ethnic groups in these supposedly quintessential nation-states began asserting themselves in the process of which “the English, so long accustomed to think of the British nation and British identity as an historic extension of their own national identity found themselves swiftly disabused by Scots and Welsh of such proprietary notions; and much the same happened in France when Bretons and Alsatians, Provençals and Corsicans attacked the centralist Jacobin ideal of unitary France dominated by Paris and historic north-central French *ethnie* (Smith 2004: 23). The lesson that this association of the nation and national identity with a particular ethnic group almost automatically generated the reactive nationalisms of subordinate groups is pertinent to the Horn of Africa where also “the ‘national’ culture promoted by ruling groups was their own ethnic culture writ large” (Markakis 1999: 75).

The project of realizing the nation-state reigned supreme when modernization was expected to drive the replacement of ascribed identities with achieved ones and of particularistic values and group affiliation with universalistic ones (Kivisto 2002). However, as David Marybury-Lewis (2003: 96-101) argues, modernization has utterly failed in eradicating ethnic solidarity. Nevertheless, modernization continued to inspire cultural and linguistic assimilation, thereby generating “a disparagement of local and regional languages and cultures so that the ‘national’ culture monopolized the image of modernity and progress” (Keating 2001: 34). So long as this situation persisted, the state itself would be practicing a form of identity politics or to be implicitly defined in cultural terms. Under such circumstances, no amount of education or moral argument would succeed in reassuring those who feel excluded by the act of elevating a particular culture to the official ‘national’ status (Kane 2002: 110).

Western Europeans pioneered not only the nation-state but also its liberal democratic dispensation. One fundamental attribute of the liberal democratic state is its supposed ethnocultural neutrality because “a sharp divorce of state and ethnicity” has presumably been realized. However, it is becoming increasingly clear

that the assertion “that liberal-democratic states . . . are ethnoculturally neutral is manifestly wrong” (Kymlicka 2001: 23). Furthermore, the “traditional antidote to ethnic divisiveness - a liberal state that tries to make ethnic attachments irrelevant or an authoritarian state that tries to suppress them - have not worked well, and the need for greater attention to the theory and practice of the multiethnic state is glaringly apparent” (Marybury-Lewis 2003: 101).

Western European liberal democratic states are actually nation-building states that have been working to eradicate the identities of subordinate ethnic groups through assimilation. However, in today’s “culturally pluralist societies . . . states are perceived to no longer have the right or the ability to mandate a version of assimilation that amounts to the loss of one’s distinctive ethnic identity” (Kivisto 2002: 189). States are lacking such a right because a corpus of international human and peoples’ rights conventions constrain their previous ability to enforce assimilation through draconian coercive means. And state powers and competences to pursue such an objective are being eroded because they are “being threatened from three dimensions: from above, by global economic change and continental integration; from below, by a re-assertion of sub-state identities and the emergence of policy issues with which it is ill-equipped to deal; and laterally, by the rise of new forms of collective identity and the advance of the market and individualized social relations” (Keating 2001: 28). Dealing with these disabling pressures and the imperatives enumerated earlier constitute the fundamental challenge facing the states and societies of the Horn of Africa region and the Continent at large.

Another legacy bequeathed to the world by Western Europeans is the over-centralized state in which sovereignty is vested in a single person or institution. However, the experience of many of the same Western European states demonstrates that only those institutions that allow participation at the grassroots level conduce to the blossoming of democratic citizenship (Hadenius 2001). Hadenius argues that while the absence of such conducive condition in Latin America and Africa due to over-centralization stood in the way of effective democratization, its prevalence has made possible the emergence and flourishing of democracy in India. Derek Heater (2004: 120) also draws the similar conclusion that “participative citizenship is unlikely fully to develop at the state level without experience of similar activity at the more immediately relevant and intimate levels of the village, parish, ward, factory, or trade union.” He recommends federalism or some other form of decentralization that allows “layered” citizenship and which promotes “the status of citizenship on both state and provincial strata. . . [and] recognizes that the citizen will have a dual identity – both Virginian and American” (Heater 2004: 96). The practical harnessing of such layering of citizenship and self-identification is actually being recommended as part of resolving one of Europe’s oldest conflicts, that of Northern Ireland. Allowing “the citizens of Northern Ireland to owe differing

degrees of allegiance to an expanding range of identification: from regional townland, parish, or province to the national constitution (British or Irish or both) and, larger still, to the trans-national union of Europe” (Aughey 2005: 68) is being recommended for this purpose. The “layering” of citizenship through federalization or other policies of decentralization obviously calls for “layering” the exercise of sovereignty.

The nation-state, by conflating the nation and state, also implied that nationality and citizenship should be treated as being synonymous. Keith Faulks identifies the supposed fusion between nation and state, which culturalised the idea of citizenship, thereby confusing citizenship and nationality. Consequently, if the contradiction “between the universalism of citizenship and the exclusivity of the nation-state is to be overcome, citizenship must be uncoupled from both nation *and* state (Faulks 2000: 36). How this uncoupling of citizenship from both the nation and state could be made operational is however difficult to determine. The distinction that Derek Heater (2004: 94) draws between citizenship and ethnicity (nationality) in the following words may be helpful with this respect: “the priority of citizenship is the bonding of individuals to the state; [and] the priority of ethnicity is the bonding of individuals to their cultural group, often defined most intensely by language and/or religion.” And he arrives at the following important conclusion: “The nineteenth-century belief that [treated] citizens as nationals conflated the two identities has frequently been exposed as a figment.” Forging all the nationalities residing in the state territory into a common political community through the exercise of multidimensional self-determination may allow the continuance of both citizenship and nationality side by side.

The most difficult challenge in dealing with identity politics is striking a proper balance between respecting group and individual rights. John Kane (2002: 97-120) argues that group rights may be accommodated better within democratic theory than liberalism. The effectiveness of democratic theory for this purpose is due to its current “non-optional” status as the result of which “democracy, for all its faults and problems, has no serious competitor as a source of political legitimacy in the modern world.” This “non-optional” status of democracy imposes itself on both those advocating group rights and those denouncing them because both sides have to situate their argument within democratic theory. The competition to appropriate the status of “democrat” may actually “give incentives for leaders and parties to offer ideologies that appeal across culturally and ethnically divided groups rather than ones that mobilize specific identities, thereby de-emphasizing the political relevance of such identities” (Kane 2002: 109). Therefore, striking a balance between the respect of group and individual rights does not appear as futile as it does at first sight.

And this contest over according primacy to individual or group rights is taking place at a time when universalism is redefining particularism and vice versa. In many instances in today's world, "political contests center upon societies that are unwilling to surrender their land, control over their subsistence, their political self-determination, or their language and culture, to dominant societies or international ventures" (Niezen 2004: 174). But this worldwide struggle for asserting particularistic attributes has a universalizing tendency because: "Universal concepts from the Western tool kit of liberation have become a common heritage of humanity. To be resistant to assimilative forces all societies need philosophical, bureaucratic, and technological defenses. These defenses may answer the immediate call for legal and political empowerment, but over the long term they homogenize societies even further through globally similar struggles for recognition and self-determination" (Niezen 2004: 170).

While universalism and particularism continue to mutually redefine each other, we need to identify a mechanism that mutually reinforces citizenship and nationality (ethnicity). It has already been stated that "the priority of citizenship is the bonding of individuals to the state; [and] the priority of ethnicity is the bonding of individuals to their cultural group, often defined most intensely by language and/or religion." Keith Faulks proposes constitutional patriotism as a more acceptable alternative to basing solidarity on the sharing of a common culture. Constitutional patriotism, according to him, engenders "among citizens a commitment to their institutions of government, without having to rely on a spurious cultural unity" (Faulks 2000: 52). Democracy, in order to serve the purpose of promoting constitutional patriotism, must make room "for more experiments in new forms of participation which devolve power locally and which are more deliberative and intensive than merely voting" (Faulks 2000: 112).

James Tully (2000: 212- 34) proposes citizenization as a process that would enhance a sense of belonging to the political community among ongoing demands for recognition by diverse groups. He defines citizenization as a process in which citizens "disclose" the identity they wish to see recognized, and others "acknowledge" these and respond, either by agreeing, or by advancing demands for recognition of their own. Freely and fully participating in these give and take exercises is the essence of being a free citizen. However, if these opportunities are "unavailable or are arbitrarily restricted, the members of the political association remain 'subjects' rather than 'citizens' because the laws are imposed on them without their 'say'" (Tully 2000: 216). Intensive and protracted exercise of deliberative democracy is implied also by Tully's citizenization agenda. Only by engaging in these intensive deliberative democracy exercises can the entire citizens of the state internalize the values underpinning their common constitution thus making it the basis of their common constitutional patriotism.

Will Kymlicka and Wayne Norman arrive at a similar stand by advocating a shift from “vote-centric” to “talk-centric” exercise of democracy. They believe the process, in which “fixed, pre-existing preferences and interests compete through fair decision procedures or aggregation mechanisms (such as majority),” has the shortcoming of failing to uncover “a common will” (Kymlicka and Norman 2000: 9). The “talk-centric” exercise of democracy, which others call deliberative democracy, hence aspires to transform preferences through a process of sustained multi-logue involving diverse interested groups. John Dryzek is the foremost pioneer of deliberative democracy by recommending a shift from the quantitative act of merely counting votes to the qualitative endeavour of changing preferences through deliberating together about what is the right thing to do. Aughey (2005: 72) summarizes Dryzek’s recommendation as “an historical shift from quantitative democracy, appropriate to an industrialized and homogenized society to the qualitative democracy appropriate to a post-industrial, post-national and pluralist society.” The recommendation considered appropriate for post-industrial, post-national pluralist society may be even more so for the pre-industrial, pre-national pluralist societies of the Horn of Africa and the Continent at large with one caveat. Both forms of exercising democracy may be necessary depending on the context calling for them. I believe qualitative democracy may be more appropriate at the grassroots level where opportunities exist for traditional African face to face palavers and at the supra-state level involving appropriately delegated state representatives.

The citizenization deliberative process that underpins the emerging conceptualization of citizenship needs to be guided by strictly avoiding the practice of “performative contradiction;” i.e., denying others the very rights one is demanding. Eschewing performative contradiction leads to the conclusion that “unilateral defence of the status quo, unilateral constitutional change and unilateral secession are all unjust in the sense that they violate with respect to other members the very principle that is invoked to justify the act” (Tully 2001: 16).

Avoiding the commission of performative contradiction becomes necessary because most contemporary states are multinational and polyethnic at the same time. And the homelands of particular national groups within these multinational states may also be multinational and polyethnic. States and sub-state entities are considered multinational when the territory they claim encompasses the traditional homeland of other national groups. And states and sub-state entities become polyethnic as the result of immigration or in-migration of persons of other national backgrounds. Consequently, the assertion of one’s rights cannot be conducted at the expense of members of other national groups although satisfying the demands of multinationalism and polyethnicity may require different approaches. It is for this reason that the deliberation conducted for forging

constitutional patriotism should be conducted as a multilogue instead of as a dialogue. The latter often translates into looking for the winner while the former often conduces better for uncovering “a common will.”

Guaranteeing the security of individuals and their communities is the fundamental objective of harnessing constitutionalism in order to embed the state through the exercise of multidimensional self-determination. As Thomas Paine once said, “security being the true design and end of government, it unanswerably follows that whatever form thereof appears most likely to ensure it to us, *with the least expence and greatest benefit*, is preferable to all others.” Protecting individuals and communities “with the least expense and greatest benefit” implies that some system of trade-off will be required. This trade-off comes to light when we breakdown security policy into its three different components. The first aspect is military security policy which concerns anticipating and neutralizing efforts to weaken the nation [state] by armed forces operating from outside the state’s institutional and territorial space. The second is internal security policy which focuses on averting subversion, i.e. threats to the state from within its territorial and institutional confines. The third is situational security policy which deals with social, economic, demographic, and political developments within the state that could significantly erode its relative power (Huntington 1967: 1).

Another surprising peculiar experience of the states of the Horn of Africa - the overlap of military (external) and internal (domestic) security challenges - has to be taken into account when discussing how tradeoffs between investments in the various security policies have affected the societies of the region. The overlap of inter-state and domestic security challenges in the Horn of Africa stems from the realization that the distinctions “between internal rebellions and conflicts between states are often blurred” (Lyons 1990: 157) in the history of the region. Successive state leaders in the Horn of Africa have invested in containing the intertwined military (external) and domestic security concerns while totally neglecting situational security. Because situational security has been totally neglected, the deterioration of social, economic, and environmental conditions of the populace has been rising for several consecutive decades in some of the states of the region. The steady deterioration of situation security manifests itself more than anything else in the burgeoning gulf between population growth rate and the production of basic necessities. This ever-widening gulf accounts for the permanent condition of food insecurity, which is the fate of additional millions with each passing decade. Compounded by ever-rising ecological degradation and the ongoing ravages of the HIV-AIDS pandemic, escalating food insecurity currently constitutes the most important threat to the continued survival of the populaces of the Horn of Africa. There is therefore no other alternative to according situational security the highest priority by steadily removing those factors that have led to the prioritization of military and internal security to date.

The causes of intra-state tensions and conflicts in the Horn of Africa need to be identified and dealt with in order to achieve this shift in priority. The pervasive feeling of being excluded and disenfranchised accounts for most of the intra-state tensions and conflicts that have bedevilled the states and societies of the Horn of Africa. Addressing the imperatives mentioned earlier by embedding each state through the exercise of multidimensional self-determination would go a long way in stemming this feeling. And similarly embedding the Horn of Africa as a region composed of states configured along the same lines could alleviate the causes of inter-state tensions, conflicts and misunderstandings.

Embedded states would not only be autonomous of competing policy constituencies but would also be that much sounder, more confident, and stable. Realizing such a state would end the legacy of paranoiac regimes trying to hold together increasingly fragile states. Rule by paranoiac regimes over fragile states has routinely led to the phenomenon of the military or militarized parties taking over power in the Horn of Africa. Averting the recurrence of this experience can come about only by clearly defining the role of the military in the state and society. The liberal democratic doctrine of subordinating the officer corps to elected civilian officials may be desirable but difficult to immediately realize in the context of the Horn of Africa. I recommend instead the forging of concordance civil-military relations, which may but not necessarily calls for this separation of the civilian and military spheres and roles.

The “objective civilian control” of the military was theorized in the 1950s and 1960s when the theory of modernization ruled supreme and informed the states emerging from European colonial rule to emulate the practices prevailing in developed industrialized countries. A number of authorities are now criticizing the feasibility of wholesale importation of this doctrine by poorer and less stable states. Concordance civil-military relations contrasts with this straightforward copying of the doctrine of “objective civilian control” by highlighting “dialogue, accommodation, and shared values and goals among the military, the political elites, and society as means to prevent intervention of armed forces in domestic politics” (Schiff 1997: 22). This dialogue among the three actors – the military, the political elites and the citizenry at large – is intended to forge a consensus on four themes: the social composition of the officer corps; the political decision-making process; recruitment method; and military style. A transparent and inclusive decision-making process concerning particularly the budget, materials, size and structure of the armed forces would involve all concerned – the officer corps, the political elites, and citizenry – in the much needed act of striking tradeoffs between the three security concerns. Making the composition of the officer corps as inclusive as possible is similarly equally necessary in the experience of the states of the Horn of Africa because it could go a long way to dispel the current suspi-

cion that the military favours a particular ethnic, religious or regional group.

Making the recruitment process as transparent and representative as possible could also serve the same purpose. Negotiating concordance civil-military relations hence serves as an important element of embedding the state with the view to averting the association of the military with a particular sector of society, a suspicion that has dogged the states of the Horn since they came into existence.

Pooling political power at the sub-state, state and supra-state levels coupled with layering the exercise of citizenship rights has important implication for how we understand and handle the doctrine of state sovereignty. To start with the various components of the concept of sovereignty need to be grasped. Stephen Krasner (1999) identifies four ways by which sovereignty is supposedly exercised. First, domestic sovereignty concerns the degree to which state authority is internally recognized and respected. The ongoing contentions over the legitimacy of state power particularly in the Horn of Africa evidences the weakness of this version of sovereignty. Second, interdependence sovereignty concerns the ability of state authorities to control trans-border flows of people, goods, capital, and so forth. In reality few African states truly exercise this version of sovereignty. Third, international legal sovereignty refers to the recognition of states under international law and their treatment as subjects able to conclude inter-state agreements and contracts. Most African states enjoy this version of sovereignty more than the others. Finally, Westphalian sovereignty refers to the exclusion of external actors from the state's domestic activities and policy formulations. The endless imposition of external conditionalities evidences the diminished exercise of this version of sovereignty throughout the length and breadth of Africa. Furthermore, the repeated invitation by many African states for humanitarian intervention demonstrates that they are manifestly unable to exercise this version of sovereignty. Nevertheless, state leaders jealously resist sharing sovereignty with internal actors while making themselves so easily susceptible to external pressures and interventions.

It is perhaps precisely because the states they are ruling are besieged from below and above that state leaders so obstinately invoke sovereignty particularly in dealing with internal challenges. Anchoring the state in grassroots communities by addressing the imperatives discussed at the beginning could go a long way in making the outward exercise of sovereignty that much more meaningful and real.

Sovereignty, like so many other concepts and principles underpinning the state, is currently undergoing major rearticulation and redefinition. The work of the International Commission on Intervention and State Sovereignty (ICISS), which has rearticulated sovereignty as the responsibility to protect, is the latest and major initiative with this regard. The ICISS insists that the sovereignty of a state should

imply the responsibility to protect its inhabitants from avoidable catastrophe, mass murder, rape, and starvation. This responsibility to protect shifts the attention on “the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms” (ICISS Report 2001: 15). This rearticulation of sovereignty is truly commendable but it omits one very important fact that militates against African countries’ prospects of upholding it. Guaranteeing the “economic and social well-being” of citizens is near impossible for African countries while the present global economic arrangements remain in place. Unfair trade practices, unfair pricing of commodities and industrial outputs, and unfair outflow of raw materials all militate against African countries’ prospects of uplifting the economic conditions of their populaces. And so long as this condition prevails guaranteeing the economic and social well-being of their citizens does not look promising.

Immediately after many African countries emerged from European colonial rule, the habit of blaming Africa’s problems mostly on exogenous factors became the prevalent position. This has now been completely reversed by the growing tendency of blaming Africa’s miseries strictly on the Africans. In reality the truth falls somewhere between these two extreme positions. African states and their leaders can and must do a lot to put their houses in order. However, when it comes to the insertion of Africa in the current global economic order, African states are in no position to separately wield enough influence to make an impact. It is in this context that the emergence and steady crystallization of the African Union becomes quite promising if it takes on the task of renegotiating Africa’s position in the current global economic relations.

Pooling sovereignty at the Continental level by forming the African Union should serve this purpose more than anything else. However, the sovereignty of the African Union would be as robust and meaningful as the sovereignty of its building blocks, the member states. And the member states can act with confidence and legitimacy only if they are firmly anchored in the soil on which they stand. And firmly anchoring them on the territories on which they stand requires rooting them in the grassroots communities by addressing the imperatives enumerated earlier.

Finally the truly sovereign entity in today’s world must be clearly identified. In today’s world dominated by the neoliberal economic doctrine, the Market is the true global sovereign. The Market today is as sovereign as the Papacy used to be in the Middle Ages in Europe. The Pope then served as the earthly intermediary for the true Universal Sovereign, God Almighty. The various international financial institutions are today the intermediaries for the one global sovereign, the

Market. This deification of the Market is idolatrous and contrary to many of the religions that Africans confess. The African Union thus faces the challenge of entering the struggle to regain sovereignty back from the Market not only for Africans and their states but also for humanity. Unless this is accomplished no amount of soul searching by Africans can make a dent in the ever-escalating misery of our peoples.

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Federalism and Constitutionalism in the Horn of Africa

by
John Markakis

Constitutionalism

Constitutionalism was born in the struggle of the rising bourgeoisie to limit the power of the monarchy in the modern political history of Europe. This was a long and bloody affair; civil wars were fought and crowned heads rolled. When the bourgeoisie finally prevailed, the 'absolute monarchy' gave way to the 'constitutional monarchy;' something of a contradiction in terms, the latter still survives in that continent. The quintessence of constitutionalism in the Western tradition, therefore, is the prescribed limitation of state power. Like many political concepts – freedom, democracy, justice, equality – constitutionalism is an ideal much praised in theory yet seldom fully realised in practice.

In the Western tradition, conflict is the midwife of constitutionalism, and its genesis is a formal arrangement for power-sharing agreed by the conflict's winners. Nations that wrest their independence from alien rule need this arrangement, and a constitution is the indispensable accessory of a newly born state. Civil conflict within a state signals the breakdown of a prior arrangement and the need for its replacement when the conflict is settled. Hence, constitution-making follows the end of foreign and civil wars. France with its five republican constitutions is a good example.

A distinction must be made between constitutions and constitutionalism; between documents of transient and uncertain validity and a principle of universal value. Constitutions may or may not constraint the exercise of state power, and the presence of a constitution does not guarantee a constitutional form of state rule. Constitutionalism as the principle of constraining state power and regulating its exercise through law comes into its own when a balance of power between contending social forces is the result of social conflict. More often than not, the state is both the object of, and a party to, the conflict, and its power is used without restraint during its course. It is only when a balance of power results that a consensus is reached, and the power of the state is curtailed to avoid it becoming again the object of conflict. In Western Europe, constitutionalism is the final product of a series of historic struggles for state power; the nobility versus the monarchy, the aristocracy versus the bourgeoisie, the bourgeoisie versus the working class.

Because a potent source of conflict is the exclusion of sectors of society from access to state power, constitutionalism ordains representation in the political system and provides the institutional framework through which representation is achieved. Constitutionalism therefore is closely related to representative democracy, itself the product of a balance of power between social forces mentioned previously. Striking this balance is a rare achievement only a few countries in Europe were fortunate to realise until recently. The much vaunted democratisation of the rest of the continent – south, central, east - dates only since the end of the Second World War, and has yet to sink deep roots everywhere.

Because it is born of conflict, constitutionalism also entails a corps of procedures through which conflicting social interests can be negotiated, disputes resolved and conflict avoided. All the institutions of government are involved in this process, especially the judiciary whose independence is a hallowed constitutionalist principle. The procedures are based on laws that define the jurisdiction and determine the authority of all state institutions. Further limits on the power of the state are drawn by provisions that detail the rights of citizens upon which the state cannot trespass.

Because constitutional government is based on the rule of law, it requires a solid foundation of legitimacy in order to prove stable and sustainable. Max Weber defined three types of ruler legitimacy. The traditional type is the sort Ethiopian emperors, including the last one, enjoyed. The charismatic type is the sort the first African nationalist leaders like Kwame Nkrumah and Julius Nyerere acquired, and the legal-constitutional type is the subject here. It takes time, generations, and a lengthy period of successful governance to build this foundation, and for the main sectors of society to accept their interests are best served under this system than any attempt to change it.

Africa's experience with constitutionalism

Africa's experience with constitutionalism is quite different from Europe's. Most African states had constitutions before they had independence. These were ready-made colonial models in whose construction Africans themselves had no part. Most African colonies gained independence without war, and there was no social disruption involved in the transfer of power from the colonial power to the nationalist elite, a tiny minority of the population. The colonial constitutions were reproductions of metropolitan originals, absurdly inappropriate for Africa. Unmindful of their own history and the diversity of Africa, the colonialists presumed the one-size-fits-all model of liberal representative democracy was the only possible choice for Africa.

History proved otherwise. No sooner had African rulers grasped the reins of power than they began to discard the colonial constitutional legacy. The nationalist movement brought to power men who relied on charisma, not constitutionalism, for legitimacy. The twin goals of national integration and development that inspired them made them resent the constitutional limitations on state power, because they relied on the state to achieve these goals. The unravelling of the colonial constitutional design began almost immediately through the strengthening of the executive at the expense of the legislative, taming the judiciary, curtailing the jurisdiction of local government, etc. Furthermore, it was essential for the rulers to lay hold of their countries' economic assets in order to secure the resources their development plans needed, and to do so the state had to invade the private sector, trespassing constitutional boundaries intended to safeguard private property; another hallowed principle of modern constitutionalism.

As the drive for development slowed down and nationalist enthusiasm waned, Africa's rulers became increasingly preoccupied with their own political survival and subordinated other goals to this end. The downward spiral accelerated passing through the one-party system, African socialism, the lifetime president, ending nearly everywhere with military rule; the maximizing of state power. Even so, constitution-making accompanied each stage; even military dictatorships could not do without constitutions.

A new phase in Africa's experience with constitutionalism began in the 1990s with the so-called 'second wave' of democratization sweeping the continent, toppling military dictators, and raising great expectations of political and economic progress. By this time, hope for development had dimmed, nationalism had become a distant memory and national integration an abandoned goal. Constitutionalism, it was hoped, would provide legitimacy for Africa's new generation of rulers and good governance for their subjects.

The term 'governance' that came to supplant 'government' at this time is the code word for the new version of constitutionalism that now became the vogue internationally. The state in Africa was retreating under withering attack from abroad, charged with authoritarianism and gross violation of human rights, but even more significantly, with inefficient, wasteful and corrupt management of national resources and responsibility for the failure of development. The new constitutionalism reduced the state to a purely administrative role, entrusted the fate of the economy to the invisible hand of the 'free market,' and discovered a new agency, 'civil society,' to compete with the state in the conduct of social affairs, Constitutionalism had now acquired a partner in the 'free market,' and the state a competitor in 'civil society.' The new constitutionalism swept the continent in the last decade of the twentieth century. Privatization of the economy was at the

top of the agenda, structural adjustment pared down the size and budget of the state and eliminated the services and subsidies it provided for the mass of the people, the military and security apparatuses were downsized, and an anaemic civil society was force-fed with foreign funds to live up to expectations. Democratisation of the political system followed, albeit at a slower pace. Multi-partism and elections were expected to secure popular participation and fair representation, reinforced legislatures to keep the executive accountable, independent judiciaries to enforce the law impartially, and a plethora of other bodies – anti-corruption commissions, human rights commissions, ombudsmen – emerged to protect citizens from state abuse; it was widely acknowledged by now that the state is the biggest violator of citizens' rights. Transparency and accountability were other hallmarks of the new constitutionalism.

The constitutions adopted during this period were required to follow the rules of 'political correctness', another hallmark, no matter how absurd such rules might be in context. This produced extremely long and unwieldy documents which presumed to impose on the globe's poorest and weakest states obligations few if any of the advanced states are constitutionally burdened with (though they may have ordinary laws in that connection). In addition to special provisions for minorities, women, children, the aged, the sick, the incarcerated, the infirm and the disabled, the African state also undertakes to provide education, health care and employment for all, to protect the environment with its flora and fauna, and the like; most things the Africa state is manifestly unable to do.

The absurdity of political correctness is the most glaring flaw in the new constitutionalism, and detracts from the seriousness of the project. What is more serious, however, is the fact that Africa's current rulers have shown themselves no more willing to limit the power of the state than their predecessors were, and for good reason. Without the prospect of development and the vision of nationalism they are bereft of legitimacy and forced to rely on the power of the state to stay in office. Wholly dependent on foreign aid, they are compelled to go through the motions of democratisation demanded by the donors, as long as this does not threaten to dislodge them from power. Thus, the second wave of democratisation has turned into a theatrical performance few Africans take seriously, and one that cannot possibly provide legitimacy for genuine constitutionalism. 'Unfortunately, the effort to deepen and institutionalise democracy in the continent appears to have stalled as many regimes, including those that came into power in the late 1980s and early 1990s with a reformist agenda, have become authoritarian, exploitative, and as corrupt as their predecessors.' *

* Julius O. Ihonvbere & John M. Mbaku (2003) (eds) Political Liberalization and Democratization in Africa (Westport, Conn.; Praeger) p. 7-8.

There is a historical disjuncture between Africa's modern aspirations for constitutionalism and democracy, and the structure of its traditional agrarian societies and the under-developed political economy of its states. The structure of African societies comprises a vast rural base whose way of life and culture are still bound by tradition, and a small to miniscule urban sector caught in the throes of modernisation and import consumerism. The political economy of the African states relies on this agricultural base for food and exports, and the state relies heavily on peasant taxation and trade taxes for its revenue, a large part of which is spent on imports for the urban sector. The state cannot afford to relax its power to control and tax the peasantry, the peasants are unable to compel this, and the urban sector is unlikely to demand it. There is an obvious, huge imbalance of social forces here that encourages the expansion of state power rather than the opposite.

Constitutionalism/Federalism in the Horn of Africa

The states in the Horn of Africa are no exception to the pattern sketched above. If anything, they are distinguished for instability and violent conflict having set several continental records in that area. To talk of constitutionalism in this region may seem absurd, were it not for the light it can throw on an issue that has been persisted for half a century and is very much alive today. The issue is federalism, a core element of constitutionalism and a system of government adopted in many states worldwide.

Federalism, by definition, imposes limits on state power by sharing it among its constituent units, and is considered optimum for states with a diverse population unwilling to accept centralised rule in a unitary state. There is a multitude of reasons worldwide for such unwillingness, but the common denominator is fear of domination by a hegemonic group.

The Horn of Africa is a region of great geographic and climatic diversity, where a multitude of communities have fashioned diverse ingenious modes of livelihood and a wealth of ethnic identities, cultures and forms of social organisation. The geopolitical pattern imposed on the region by the imperialist intrusion and the simultaneous Ethiopian expansion at the turn of the nineteenth century deprived most of them of autonomy, and apportioned them to the newly established European colonies and the self-proclaimed Ethiopian empire.

The colonial economic system followed a pattern of uneven development that favoured highland and riverain areas of sedentary cultivation that could be put to production of commercial crops for exports, and neglected other areas, particularly the vast lowland pastoralist region. Thus, a pattern of uneven socio-

economic development emerged within the colonial states early, and was copied in Ethiopia later, whose most conspicuous feature was the material disparity between regions within each state, especially high and low lands in Kenya, Eritrea and Ethiopia, and riverain and hinterland in Sudan and Somalia.

Independence did not alter this pattern, because the colonial blueprint for development was faithfully followed by all the states in the Horn. What did change was the centre of power that shifted from the colonial metropolis to the leadership of the nationalist movement. The vision of development through modernisation and national unity through integration that inspired the nationalists led them, on one hand, towards the centralisation of state power and authoritarianism and, on the other, against cultural pluralism. In Sudan and Ethiopia this verged on forced assimilation into the culture of the hegemonic ethnic group. Thus, political domination and cultural oppression were added to the material disparity that disadvantaged the dominated groups. This proved an explosive combination that soon engulfed the states of the Horn in civil conflicts which, it is worth noting, usually broke out and were fought mainly in the lowlands.

Sudan

Federalism emerged as a contentious issue in the political history of the Sudan ten years before that country's independence in 1956. It appeared shortly after the end of the Second World War, when Sudanese nationalism began to agitate for independence. Having been kept in isolation and pristine backwardness by British colonialism, Southern Sudanese correctly saw independence as tantamount to northern Arab domination, and asked for safeguards ensuring them a measure of self government. These were promised but repeatedly reneged upon. The first southern political organisation, the Liberal Party, resolved in 1954 that the South would remain in a united Sudan only under a federal constitution. The Southern army mutiny that heralded the longest civil war in Africa took place in 1955. In order to gain the consent of Southern members of the national assembly for the declaration of independence in 1956, the leaders of the northern led government promised that federalism would be given 'full consideration after independence.' It was considered and was flatly rejected by the commission that drafted Sudan's first constitution. That was hardly given time to go into effect, when the first military coup took place in 1958.

In the years that followed, the Anya-Nya rebellion in the South plunged Sudan into civil war, and incipient challenges to northern Arab domination emerged from marginalised regions; among the Beja in eastern Sudan, the Fur in the west, and the Nuba in the centre. These contributed to the collapse of the military regime in 1964. The civilian regime that lasted from 1964 to 1969 was unable to reach a consensus

on a new constitution, mainly because of disagreement on how to respond to the challenge of the marginalised regions. The second military regime (1969-1985) initially flirted with socialism and later turned to Islamic fundamentalism in a forlorn attempt to gain legitimacy. Its greatest success was to negotiate what turned out to be a temporary peace in the civil war through the Addis Ababa Agreement of 1972, which gave the South its own government and a significant degree of autonomy. A constitution adopted in 1973 sealed the agreement with the South, and in an attempt to pacify other regions that aspired to autonomy, the regime divided the country into several regions with a modicum of self rule. As is the rule with military regimes, this was a crude ploy that did not save the regime from collapse in 1985.

By that time, rebellion in the South was raging once more under the Sudan Peoples Liberation Movement led by John Garang. The interlude of civilian rule in Khartoum foundered unable to resolve any of the problems facing the country, and the military intervened again in 1989, once more adopting a radical Islamic posture to gain legitimacy. Long before 2003 when it reached an agreement with the South to stop the civil war, this regime was involved in armed conflicts in other regions – Nuba Mountains, Eastern Sudan and Darfur – and once again an embattled military regime was obliged to go through the motions of accepting a federal solution to the problems arising from the manifold disparity between the centre and the regions in Sudan. Again the manoeuvre failed, and conflict continues to rage in Darfur and Eastern Sudan.

Somalia

The Somali Republic became independent in 1960 when the former Italian colony in the south and the former British protectorate in the north merged. A constitution drafted soon afterwards imposed a unitary state with a highly centralised form of government, despite objections from the Ishaq clans in the north and the Sab clans in the southwest, both of who feared domination by the much larger Darod family of clans. Both preferred a federal system, and the north voted unanimously against the constitution in the referendum of 1961, but it was approved given the numerical majority of the Darod. Their fears proved justified, and both regions suffered neglect before and great violence after the advent of the military regime in 1969. The unravelling of the Somali Republic began with the secession of Somaliland in the north in 1992. At present it is hard to see a future Somali state in any other form but a loose federation of clans.

Eritrea

Eritrea's experience with constitutionalism is limited to the discussions that led to the preparation of a draft document in 1994. Orchestrated by a Constitutional Commission with great fanfare, this was the only occasion when political matters were publicly and widely discussed in that young country. Learned opinion was solicited from abroad, and in a grand gathering in Asmara, a group of Western constitutional lawyers and political scientists generously contributed suggestions to enrich a document that grew into a bloated testimonial to political correctness, and must have brought wry smiles to the faces of the nationalist leadership. The draft was then submitted to an appointed National Assembly which ratified it in 1997, and the government promptly shelved it. Which was just as well, since in 2001 the National Assembly concluded the majority of Eritreans did not see the need for political parties. The government followed with an announcement that it was not going to allow the formation of political parties. National elections scheduled to take place that year were cancelled.

Federalism was one topic that was ruled out of the discussion. The concept itself is taboo in Eritrean nationalist circles, whose attachment to an imagined Eritrean national identity is well known, as is their abhorrence of Ethiopia's ethnic federalism. Even so, the young state has not been spared the curse of conflict in the periphery that has been the fate of all states in the Horn. In fact, it was born with a ready-made insurgency in the western lowlands that continues to simmer.

Kenya

Kenya was launched into independence in 1963 as a federal state. This was at the insistence of small ethnic groups that feared the new state would be dominated by the Kikuyu and Luo. These fears were not unjustified. The Kenyatta regime based on these two groups wasted no time in dismantling the federal arrangement and imposed a highly centralised system of rule. Federalism (*majimbo*) emerged as an issue again in the first decade of this century, when Kenyans debated constitutional reform.

Uganda

Uganda is another state in East Africa that attained independence in a federal form. Here also the nationalist regime under Milton Obote forcibly destroyed the federation and brought all the country's diverse regions under a centralised and authoritarian rule, with tragic consequences. The regime that came to power in 1986 invented the 'non party democracy' and had little trouble holding on to power ever since. Uganda is still mired in violent conflict in the north and the adjacent

Karamoja region, where the incumbent regime is vainly struggling to impose the authority of the centre.

Certainly, federalism is a feature of constitutionalism that resonates in the modern political history of the Horn of Africa. Obviously also, the preference for such a system of government, persistently expressed by the politically excluded and socio-economically marginalised regions, goes against the interests of rulers and the politically dominant groups they represent. Unsurprisingly, any concessions the rulers have been forced to make at times were empty, ephemeral gestures that served only to fuel the violent centre-periphery conflicts which fill the pages of the Horn's post-colonial history. Rejection did not stifle the demand for self government, it only turned it violent, and Africa's longest civil wars were fought in this region over this issue. Even military regimes were compelled to erect federalism facades in the midst of war - twice in Sudan, once in Ethiopia - but it took five decades of war for Southern Sudan to gain genuine self government, and nearly as long for Ethiopia, having lost Eritrea, to adopt federalism. The issue of federalism is never off the political agenda in Kenya, and it is difficult to imagine an alternative for a renascent Somali state in the future.

Ethiopia: Constitutionalism/Ethnic Federalism

Ethiopia has a lead among states in the Horn of Africa in constitutionalist experimentation, having adopted its first constitution in 1931, less than a year after Haile Selassie's coronation as Emperor. This was a gesture from above, 'unasked and of Our own free will,' as the Emperor put it, intended to improve the country's international image, and also to provide the legal framework for the centralisation of the state and the taming of the nobility. More than half of the articles in the constitution were devoted to describing the powers of the Emperor. A brief mention was made of citizens' rights, and the chief drafter of the Constitution, Takla Hawariat, promised: 'henceforth, the Law will protect the weak and the poor against the powerful upstart.'

The 1931 constitution was revised in 1955, on the twenty fifth anniversary of Haile Selassie's coronation. Two basic motives for revision were the same ones that had inspired the constitutional experiment of 1931; namely concern for the country's image abroad and further centralisation of state power in the hands of the monarch. The sketchy provisions of the older document regarding the powers and prerogatives of the Emperor were greatly expanded and elaborated in the new document. An additional motive was to settle the status of Eritrea which had been linked in a federal union with Ethiopia since 1952. Remarkably, the 1995 Constitution made no mention at all of the union, but settled the issue in the very first article by proclaiming the 'sovereignty and territory (of Ethiopia) are indivisible.'

Political correctness is not missing. Twenty nine articles are devoted to the rights and duties of the people, including, the freedom of (a non-existent) press, and of association in a state where not a single civic association was tolerated.

The façade of electoralism was not missing either. The 1931 document established two appointed advisory bodies, a Senate and a Chamber of Deputies, of which little was heard afterwards. The 1955 document made the latter an elected chamber, and the first election in the history of the country took place in 1957, and every four years subsequently until 1969. Given the fact that no political parties did not exist, it is not surprising that people took no interest at all in the electoral process.

Ethiopia's third constitution was unveiled in 1985 by the military regime that had seized power in 1974. Its preparation was assigned to a team of academics and experienced civil servants working in the Institute for the Study of Nationalities, who were instructed to study relevant documents in the socialist bloc, especially the federal models of Yugoslavia and the Soviet Union. After a long period of study and deliberation the team drafted a number of alternative schemes that were submitted to the regime's leadership. As was the case with Haile Selassie, the military regime's strongman, Mengistu Haile Mariam, saw to it that nothing was included that could possibly threaten his supremacy and approved the final draft.

The introduction of the federal concept is the only interesting aspect of this constitution. Pressed by its Soviet advisers to deal with the problem of nationality conflict in Ethiopia, the embattled regime made a half-hearted and insincere attempt to meet some of the demands raised by nationalist insurgents in Eritrea, Tigray, Oromia, Ogaden, Afar and elsewhere. Accordingly the 1985 Constitution divided the country into autonomous and self-governing regions. This was an obvious ploy recognised by the insurgents whose forces toppled the regime a few short years later.

Ethiopia's current experiment with federalism is the third in a series. Unlike the timid and disingenuous gestures of the past, this was a radical reform intended to cut through the century-old tangled knot of iniquitous oppressive centre-periphery relations, and to restructure the state on a federal pattern based on equal, autonomous, ethnic constituent units. Largely unanticipated, this upending of the status quo was hurriedly implemented, following a brief but intensive period of publicity to mobilise support. No doubt, speed was of the essence given the unsettled political conditions of the time. Nevertheless, it is fair to say that not many Ethiopians who live in the countryside have a clear notion of what federalism means, or had the opportunity to express an opinion on its merits. There was simply no time to form a national consensus on the legitimacy of the new political system. Lacking this foundation, it is no surprise that federalism in this country is the subjects of intense political controversy that often threatens to turn violent.

It should be noted at the outset that the theoretical foundations of this experiment lay not in the philosophy of constitutionalism that is rooted in western liberalism, but in the ideology of national self-determination as construed by Marxism. From this difference spring divergent interpretations: of democracy (liberal versus popular); the state (unitary or plural); political rights (individual versus group); property rights (private versus collective); development theory (state-planned versus market-led); and a host of other thorny issues that divide the incumbent regime and its opponents and fuel an ongoing political debate.

Debate is essential for the evolution of this highly complex system of government planted in untried ground with little preparation. If it is to prove constructive, the terms of the debate must share a minimal consensus on its goal. However as it has unfolded to date, the debate has strayed away from federalism itself, to focus on the legitimacy of the regime which introduced it a dozen years ago and, by implication, the legitimacy of the federal system; proof that a consensus on the issue has yet to be reached in this country. This casts a shadow over the future of the federal scheme as it now stands, and raises the question whether it will prove more successful than its predecessors?

The answer to this question is of paramount importance. If the history of the region and of Ethiopia itself has anything to teach us, it is that the pressures to transform the iniquitous centre-periphery relationship cannot be defeated by force, nor deflected by political manipulation; methods that have been tried repeatedly in the past without effect. The cost to the countries involved has been disastrous in material and social terms; half a century has been wasted. Moreover, when the state has permanent resort to force to maintain its authority, all hope is lost for political stability and democratisation. Once force is adopted as the instrument of rule, it is applied indiscriminately in the centre as well as the periphery. The recurrence of military rule and of civilian regimes that depend on the military to keep them in power is a lesson proponents and opponents alike of federalism must take to heart. In debating the merits of this system as a constitutional solution to the civil conflicts that have plagued the region, they must be careful not to throw out the baby with the bathwater.

Citizenship, ethnicity and group rights in the Greater Horn of Africa with a case study of Ethiopia

by

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Citizenship: formal and substantive

The historical emergence of the concept of citizenship is derivative of and tied to the democratic revolutions of the late 18th century when imperial subjects transformed themselves into citizens. Thus, citizenship, in this revolutionary context, in fact, denotes membership in a democratic state. It is constructed on the basis of shared membership in the state. Through citizenship, the state strives to invest its members with a collectively shared (patriotic or state nationalist) sentiment. Whereas the state owns the citizens in authoritarian and totalitarian societies, the citizens own the state in democratic societies. In a modern democratic political community where the people are sovereign, the state (nation-state or multi-nation-state) can be referred to as a “citizen-state.”

We can think of citizenship in terms of formal and substantive citizenship. Formal citizenship refers to legal membership in an organized political community, a community of legally equal members, in a defined territory, i.e., the state. There are generally constitutionally mandated requirements for gaining formal citizenship. Nonetheless, for many disadvantaged classes of people, e.g., the non-propertied, women, dominated religious, racial or ethnic groups, the acquisition of formal citizenship entailed long and protracted political struggles. Thus, although all citizens are supposed to be equal in the eyes of the law, in reality, some are more equal than others on account of wealth, status, power, etc. Universal (and uniform) citizenship is the ideal of the democratic state. And as Ekeh puts it, “democracy is the political expression of a relationship between the individual, as a citizen, and the state.” There is no necessary connection between citizenship and ethnicity or nationality. Most often the state is not a nation-state. Citizens need not be members of a particular ethnicity or nationality.

In the pursuit of the expansion of individual citizenship rights, the challenge has been to move from formal citizenship to substantive citizenship, i.e., from formal membership to substantive rights, and to do so for all citizens. Although all citizens are formally equal, some have more substantive rights than others on account of history, ethnicity, religion, region, class, gender, etc. In other words, there is no equality of opportunity per se in formal citizenship. For that reason, the issues of substantive citizenship rights emerge as an agenda. Substantive citizenship guaran-

tees equality of opportunity regardless of class, gender, race, ethnicity, religion, national origin, etc. The struggle for substantive citizenship is incomplete everywhere, especially in the Greater Horn of Africa (GHOA) sub-region where there is insecurity of life and property, food and health care, shelter and clothing, education and social welfare, etc. In this sense, we can say that the peoples of our sub-region are far from achieving substantive citizenship.

Individual rights and Group rights

Despite formal and even substantive citizenship, the individual rights of citizens are often unrecognized or trampled upon on account of the individual's group membership, membership by race, ethnicity, religion, gender, region, etc. In order to overcome denial of rights due to group membership, the idea of group rights emerged. Group rights supplement individual rights. Thus, we can talk of women's rights, ethnic rights, children's rights, senior citizens' rights, etc. Of course, there is tension between individual rights and group rights; for example, which has primacy and under what circumstances? Group rights co-exist with individual rights in a tense way as one or the other is privileged by the state and other actors. Non-state institutions (civil society organizations, NGOs, communal organizations, ethnic, religious and cultural communities) play vital roles in mediating these tensions. Ethnic rights are one type of group rights. It is to this type of group rights that the Ethiopian federal state gives primacy.

Different conceptions of ethnicity

In the social sciences, there has been a debate on the primordiality or social construction of ethnicity. According to the "primordialist" approach, peoples' most powerful given or taken-for-granted attachments are deemed to be to their ethnic groups. The social constructionist approach underestimates the power of taken-for-granted attachments and identities, and argues that people's identities are socially constructed in the context of historical and sociological situations. The dominant view today is that ethnicity is socially constructed. But the either/or debate may be "an unnecessarily dichotomous choice." Beyond social science, "ethnic entrepreneurs," political leaders and elites manipulate ethnicity and ethnic allegiance to achieve political ends. For example, ethnic or nationalist ideologues may claim that ethnic groups or nations existed as "eternal beings present as such from the beginning of time" or that "nations have existed in anything close to their modern form since the beginnings of history."

Smith distinguishes among ethnic category, ethnic community, and ethnic nationalism. An ethnic category is seen as a distinct cultural group by outsiders

but has little or no sense of its common ethnicity. An ethnic community (*ethnie*) “is a named human population with a myth of common ancestry, shared memories, and cultural element; a link with a historic territory or homeland; and a measure of solidarity.” Ethnic nationalism is a consequence of the politicization of ethnic consciousness by an ethnic community. “One of the self-appointed tasks of nationalists is to turn ethnic categories into ethnic communities, and ethnic communities into ethnic nations.”

Ethnicity is an objective category and a subjective community. In the former sense, it is focused on ascribed status and is externally defined; in the latter sense, it is concerned with culture and self-definition and is internally defined. Ethiopia’s ethnic federalism is premised on the assumption of ethnicity as a fixed, ascribed status. This premise has led to resentment or opposition by individuals who see their ethnic identity as variable, composite or open-ended. It is important to recognize the plasticity, flexibility, variability of ethnic identity.

Ethnic groups are interested in economic resources as well as cultural resources (symbols). Adapting Marx’s conception of the development of class and class consciousness, we can say that there are two types or phases of ethnic formation: *ethnic-in-itself* (objective existence of an ethnic group) and *ethnic-for-itself* (subjective consciousness of an ethnic group as a community requiring self-determination). Ethnic mobilization contributes to the transition from ethnic-in-itself to ethnic-for-itself. Often, ethnic conflicts are at bottom conflicts over resources (material or symbolic) due to differential allocation or distribution of material resources (jobs, services, investments, etc.) or of symbolic resources (language, religion, culture, etc.). Ethnic mobilization is often led by the elite of the ethnic community, first and foremost for its own benefit. There are issues of internal differentiation (class, gender, locale, etc.) within ethnic groups. Thus, we should pay attention not only to inter-ethnic relations but also to intra-ethnic relations. In some cases, notably Somalia, clans are the functional equivalent of ethnic groups and must be analyzed as such.

Tension between citizenship and ethnicity

The struggle for ethnic and other group rights is an integral part of the struggle for active, substantive citizenship. Thus, citizenship, ethnicity and group rights are inextricably interconnected and interpenetrating. For example, the diminution of citizenship status or the alienation of individuals from the state induces people to appeal to their ethnic solidarity for recognition and/or protection; in short, the ethnic group competes with the state for people’s allegiance. Ekeh (2004) explains the relationship between the individual, ethnic group and the state as follows:

Ethnicity ... has assumed the role of the state ... because individuals do not trust the state. Indeed, historically ethnicity has protected the individual from acts of violence and persecution by agents of the state. The bonds of mistrust between states and individuals in Africa are replaced with bonds of moral sentiments binding individuals who share a common ethnicity...

In order to nurse democracy in Africa, the state must be trained to treat individuals as citizens who own the state. The individual will gradually be weaned from his bondage to ethnicity when he can rely on the state to supply him with basic security needs and when the state ceases to be the source of threats to his existence.

Should constitutional and institutional designs give primacy to universal (national) citizenship or particular (ethnic or cultural) citizenship? Do community members themselves give primacy to the former or the latter? This can also pose a problem at the level of ethnic/regional states, specifically, between and within ethnic/regional states. There is differentiation between large, medium and small ethnic groups, for example, in Ethiopia, between “nations, nationalities and peoples” and within each of these groups. Inadvertently or not, Ethiopia practices what Eyoh calls “differentiation and hierarchization of local/regional citizenship” or Hutchinson calls “ethnically based status hierarchies.” Ethnic hierarchies may also take the form of indigenes vs. settlers, as this the case in Gambela, Ethiopia, for example. Based on the experience of Cameroon, Eyoh concludes: “A key challenge to democratic nation-building in multi-ethnic societies is the design of institutions and policies which recognize and effectively mediate the competing claims of universal and ethno-cultural citizenship.”

Ethnicity and group rights

Ethnic and related identities are in the realm of shared sentiment based on affinity. Through taken-for-granted solidarity, ethnic and religious groups strive to acquire group rights, including rights to self-determination, in extreme cases, up to constructing their own sovereign state. The ultimate goal of a self-conscious ethnic community infused with a sense of nationhood may be to transform itself from the realm of shared sentiment to the realm of the sovereign state.

The idea of ethnic and group rights is fairly recent. Classical western thought focused on individual rights, which were considered not only necessary but sufficient. But the experience of discrimination against certain individuals on account of their group membership demonstrated that individual rights provide insufficient protection in the face of group discrimination; it underscored the

need for protection of groups *qua* groups. Thus, the idea of group rights emerged as a necessary complement to individual rights. The historic struggle of African Americans and women contributed to the development of group rights. In its social composition, the state can be seen as a state of individual citizens or as a state of corporate groups (religious, ethnic, cultural, social, economic, regional, professional, gender, clan, etc.) or as a combination of the two. The Ethiopian state is a state of corporate groups in which primacy appears to have been given to ethnicity even at the risk of undermining the concept of citizenship.

Group diversity based on ethnic, religious, cultural, clan, class or gender affiliation may or may not be given political expression by the state. State and public policies may attempt to depoliticize such diversity or give it expression. A state based only on individual rights will not give political recognition to groups, while a state based only on group rights will undermine individual rights. A state may be based on a combination of individual and group rights, a phenomenon on the upswing globally.

The recognition of ethnic and group rights could be manifested in the structures (formal, organizational, bureaucratic) of the state *and* in the processes (political, social, and cultural) or actions of the state and public authorities. *The actualization of ethnic and group rights requires mutual recognition, negotiation, accommodation and reciprocity. An open, flexible, accommodating, democratic political culture is necessary for the exercise of ethnic and group rights.*

The Greater Horn of Africa (GHoA)

Generally, citizenship is granted on the basis of being born in the country or on the basis of a naturalization procedure. Non-citizens can live in a country on the basis of resident alien status, refugee status, political asylum, etc. (The crisis-ridden sub-region produces one of the highest rates of refugees in the world.) At times, issues of ethnic origin may come up in determining citizenship status, e.g., Eritrean in Ethiopia or Ethiopian in Eritrea, Afar in Djibouti, Eritrea or Ethiopia, Somali in Ethiopia, Somalia, Kenya or Djibouti, Tutsi in Uganda, Dinka in Ethiopia or Sudan, Oromo in Kenya, etc. There were people deported from Ethiopia to Eritrea as Eritreans but who were not recognized by the Eritrean state as Eritreans, ending up without any citizenship. A second-generation immigrant may be deprived of citizenship on account of parental foreign origin. There is a need to explore dual and/or supra-state citizenship as possible ways of overcoming issues of foreign parentage, cross-border co-ethnicity, refugee status, etc. As the sub-regional organization, the Inter-Governmental Authority for Development (IGAD), acquires more coherence and substance as well as greater responsibilities and capacities, it could explore and recommend modalities for sub-regional or

supra-state citizenships.

All the states in the sub-region are, in varying degrees, weak, unstable or fragile states due to internal ethnic, religious or regional conflicts and inter-state tensions or wars. Sudan has been in a state of internal conflict for half a century. It suffers from a national identity crisis: Northern vs. Southern and conflicting identities within the North and the South. One scholar refers to the crisis as comprising “not one conflict, but a number of ‘stacked’ and overlapping conflicts.” Even the secession of the South from the North may result in the fragmentation and dissolution of both. Some form of confederation may be the only option left. Ethiopia experienced civil wars for three decades and suffers from internal ethnic conflicts and confrontation with Eritrea and Somalia. Eritrea has been in conflict with one or another of all its neighbors within the short span of its existence as an independent state on top of internal repression. Somalia has been a failed state since 1991. Djibouti is extremely dependent on external powers and there is simmering ethnic tension below the surface. Uganda has internal civil war and ethnic conflicts. Relatively more stable Kenya, nonetheless, has ethnic contentions and unresolved issues of federal vs. unitary form of state, etc.

The recent history of the Greater Horn of Africa has been a history of the struggle to overcome the status of colonial or local/imperial subject and to achieve the status of citizen in independent and democratic states. It is an unfinished struggle. In most of the sub-region, we can talk about the almost complete achievement of formal citizenship but the process of acquiring substantive citizenship is still very much incomplete. In all the states, except non-state Somalia, democratic constitutions recognizing citizenship rights are formally in place, although full implementation of the provisions leaves much to be desired in all of them.

Within the Greater Horn, Ethiopia has gone furthest in recognizing ethnic rights in particular and group rights in general. It provides the major example of a bold federal experiment in the sub-region. As such, it is important to pay attention to the Ethiopian experience in order to draw positive and negative lessons from its experiment.

Citizenship, ethnicity and group rights in Ethiopia: a case study

Since the 1990s, countries in the Greater Horn of Africa (GHOA) are using diametrically opposed ways of looking at ethnicity. In Uganda, for example, the central government discourages political parties along ethnic lines, does not allow ethnic parties, and champions a de-ethnicized unitary state. The same is essentially true of

Eritrea. In Ethiopia, on the other hand, the federal government encourages political parties to organize along ethnic lines. It champions an ethnic-based federation, even granting ethnic groups a “secession option.” The fact that ethnicity was the major vehicle for political mobilization in Ethiopia in the 1970s and 1980s primarily accounts for the Ethiopian experiment recognizing ethnicity as an organizing principle of the federation. The bold and controversial experiment with ethnicity as an organizing principle, clearly an exception to the general pattern in Africa, has positive and negative lessons for the other GHoA countries as they grapple with issues of ethnicity and group rights and with appropriate constitutional frameworks and institutional designs for addressing them.

In 1991, when the military junta collapsed, the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) leaders reorganized the Ethiopian state as a federation, using ethnicity as an organizing principle. The federal state was formalized in a new constitution that came into force in 1995. The constitution starts with the words: “We the nations, nationalities, and peoples of Ethiopia.” The framers of the constitution assumed all ethnic groups to be pre-existing and mandate-giving entities. Their status as free agents was not so much “achieved” as “thrust upon them.” In the constitution, it is not the people as a whole that are sovereign; it is the ethnic groups that are vested with sovereignty. Because ethnic groups are presumed to have entered the union voluntarily, they have the right to exit the union as well; hence, the inscription of the right to secession in the constitution. The country was divided into nine regions, using ethnicity as the primary criterion for creating “regional states.” The major ethnic groups (“nations”) formed their own “mother states,” namely, Tigray, Amhara, Oromo, Somali, Afar and Harari. Neighboring ethnic groups in the west and southwest formed Benishangul-Gumuz and Gambela, respectively. But the multi-language region in the South brought together some 46 ethnic groups.

Addis Ababa and Dire Dawa became federal territories. Each regional state has its own constitution as well as legislative, executive and judicial organs. But there are some problems with the conceptualization of ethnicity and with the structure and process of the regional states.

To identify all the ethnic groups in the country, the constitutional framers relied on a study carried out by the Institute for the Study of Nationalities set up by the military regime in the mid-80s. The Institute itself relied on a study of languages in Ethiopia conducted a decade earlier under the leadership of Lionel M. Bender. The Bender study identified some 80 language groups in Ethiopia. Conflating language with ethnicity, the Institute assumed these language groups to be ethnic groups as well; hence, some 80 ethnic groups in the country. Thus, ethnicity and language are made to correspond. But members of the same ethnic group could speak different

languages, e.g., the Gurage. Or members of various ethnic groups may have Amharic as their mother tongue or home language. Thus, ethnic classification has been made externally, not necessarily by the ethnic groups themselves. The Silte, for example, were classified as Gurage. As we shall see in the ethnicity section below, the controversy was settled by referendum with almost all voting for a Silte self-definition.

Borrowing from Soviet classification, the constitution also made a hierarchy of ethnic groups, namely, “nations, nationalities and peoples.” The big ones like the Amhara, Oromo and Tigray were dubbed “nations,” the small ones were mere “peoples,” while the in-betweens were dubbed “nationalities.” Again, this shows the classification was from outside and from above. The definition for “nations, nationalities and peoples” in the constitution also comes straight out of Soviet Marxism based, as it was, on objective, rationalist criteria. These criteria can be in conflict with an ethnic group’s self-definition. The right to secession is also directly from Soviet ideology. It is presumed that the right to secession is the ultimate solution to ethnic or regional conflict.

The ethnicity-based principle of political organization is probably the most controversial issue in Ethiopian public discourse. Supporters claim that it has maintained the unity and territorial integrity of the country and has introduced ethnic pluralism and equality. Non-partisan observers see ethnic-based federalism as ensuring political stability over all of Ethiopia and minimizing ethnic rebellions. Opponents worry that it invites ethnic conflict and risks state disintegration. Some see ethnic rights as incompatible with liberal democracy. Some others maintain that the new administrative divisions lack historical validity or economic rationale. Ethno-nationalists question the federal government’s commitment to self-determination or claim that it has not been implemented. To some critics, there is a *de facto* one-party state in which ethnic organizations are satellites of the ruling Tigray Peoples Liberation Front (TPLF). Finally, those who define Ethiopia as a colonial empire see ethnicization of the state as a trick and advocate “decolonization.”

Although Ethiopia is a multiethnic state, the preamble affirms that the Ethiopian peoples, “in full and free exercise of [their] right to self-determination” strongly commit themselves to build *one political community* and *one economic community* based on their *common interests, common outlook, and common destiny* (italics mine). These clauses were inserted in order to highlight the political and economic unity of the diverse ethnic groups. In the following section, we will look at the House of federation and the regional states that were created to accommodate perceived demands of the major ethnic groups.

The House of Federation

The House of Federation (upper house) is the guardian and interpreter of the constitution, the chamber in which “nations, nationalities, and peoples” are directly and proportionately represented. The House is composed of at least one representative from each of 67 ethnic groups in the country, and one additional representative for every one million population of each ethnic group. As a result, most ethnic groups are represented in the 112-member House of Federation. The Southern state (SNNP) with 46 ethnic groups has 54 representatives. The two largest ethnic groups, the Oromo and the Amhara have 19 and 17 representatives, respectively; the politically dominant ethnic group, the Tigray, has 3 representatives. The multiethnic federal territories of Addis Ababa and Dire Dawa have no representation in the House of Federation. Likewise, ethnic minorities in the “mother states” of Oromia and Harari are not represented in the House. Significantly, the House of Federation does not have legislative powers, making it a weak institution and undermining the rhetoric of ethnic sovereignty.

Regional states

The constitution established an ethnic-based federal republic comprising nine regional states created on the basis of predominant ethnic group, except the Southern regional state constituted by some 46 ethnic groups, and except two federal territories, Addis Ababa and Dire Dawa. It affirmed the unrestricted corporate right of all ethnic groups: “Every nation, nationality and people shall have the unrestricted right to self-determination up to secession” (Article 39). The act of secession requires a two-thirds vote in the legislature of the seceding ethnic group to be followed three years later by a referendum in the seceding region. It does not require the approval of the federal legislature.

The constitution provides considerable authority to regional states. “All powers not given expressly to the Federal Government alone, or concurrently to the Federal government and the States are reserved to the States” (Article 52). Each regional state has its own constitution, flag, executive government, legislature, judiciary, and police; it chooses its own working language; finally, it enjoys the right to secession. The constitution also allows further decentralization from regional state to zonal and *woreda* (district) levels. Some constituent parts (e.g. ethnic zones) want their statuses upgraded to that of regional state, primarily because that is where executive power lies. Since a few years ago, however, the trend is to devolve authority to the *woreda* level.

The constitution provides little guidance to management of federal-regional relations. Dealing with inter-state border disputes, Article 48 stipulates settlement by bilateral agreement among the disputant states. If the parties fail to reach an agreement, the House of Federation will decide on the basis of settlement patterns and the wishes of the people concerned. Article 50 only stipulates the general need for mutual, reciprocal respect between federal and regional governments.

There is immense economic interdependence, e.g. trading in food staples, grain, coffee, etc., among the regional states, and between regional states and the federal state. There are also the beginnings of exchange of experience, e.g. in education, health, housing, transportation, soil and water conservation, etc., among the regional states themselves. Generally, the federal government mediates relations among regional states. Relations between the federal government and regional governments and among regional governments have been relatively smooth so far primarily because a multiethnic ruling coalition and its allied ethnic parties have enjoyed a virtual monopoly of power at all levels of government, except in one zone (Hadiya). The ruling coalition, the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), consists of three ethnic and one multiethnic organization, namely the Tigray Peoples Liberation Front (TPLF), Amhara National Democratic Movement (ANDM), Oromo People's Democratic Organization (OPDO), and Southern Ethiopia Peoples Democratic Front (SEPDF), respectively. The structure within EPRDF provides equal votes for the four components in its central as well as executive committees. EPRDF is the *de jure* ruling party, with hegemonic control over EPRDF-allied ruling parties in the remaining five regions of the country, Afar, Benishangul-Gumuz, Gambela, Harari, and Somali.

Ethnicity as an organizing principle and problems of ethnic identity

Ethnicity is variable, fluid, complex and paradoxical. Ethnic communities rise and fall, form and dissolve, change and resurge. Ethnic identity is malleable and overlaps with other important social identities based on locale, region, religion, gender, class, citizenship, etc. As a consequence, individuals possess multiple identities, although they possess a composite identity at any given time. Yet the framers of the federal system in Ethiopia who used ethnicity as their organizing principle appear not to have been aware of the dimensions or complexities of ethnicity and ethnic identity.

The Ethiopian federal state defines ethnic identity, using mother tongue and descent. Language is the main reference regarding ethnic category. But in popular imagination and government practice, ethnic descent is also used.

However, millions of Ethiopians have multiple ethnic genealogies as they have inter-married and intermingled freely over centuries. Cohen says that in the Ethiopian case, there is “the convergence of two concepts: the concept of ethnicity itself and the assumption that ethnicity is represented by language.” But “language has gained greater significance as the marker of identity,” although it is “an unreliable marker of identity.” The speakers of different mother tongues could share a common ethnic identity, e.g., the Gurage, and one’s ethnic identity could be different from one’s mother tongue, e.g., non-Amhara ethnics in Addis whose mother tongue is Amharic. In short, many problems arise in making ethnic classification of individuals and of groups as well.

Let us look at the the Silte group, for example. Several years ago, the Southern regional parliament had classified the Silte as being of Gurage ethnic stock and had thus incorporated them in the Gurage (ethnic-based) zone of the Southern regional state. However, a debate raged subsequently about whether the Silte were in fact Gurage or not in ethnic category. The Silte contended that they are not Gurage but a distinct ethnic category. The Gurage insisted that they were in fact co-ethnic. According to a civil servant of Gurage (non-Silte) origin, the Gurage are an ethnic group comprising the *Sebat-bet* (seven-clan) Gurage, the Soddo, and the Silte. The *Sebat-bet* (literally, seven houses) consist of seven clans who speak seven mutually intelligible dialects. The Soddo are territorial-based and identify with *ager* (literally, country). They are divided into Soddo Kistani (Christian) and Soddo Jida, the former identifying itself as Gurage and the latter as Oromo. The Silte are Muslims and trace their ancestry to a non-Gurage ethnic group, the Hadiya and are called *Yeren* (Upper) Hadiya by the *Sebat-bet* Gurage. The issue of Silte identity was settled by referendum among the Silte in spring 2001. More than 99 percent reportedly voted to be identified as a distinct Silte ethnic group, not as Gurage. According to Markakis, the Gurage are a collection of seven clans and other territorial-based groups and, as they migrated to urban areas, they were categorized as an ethnic group by other Ethiopians and subsequently by the central government. The Silte issue could be the tip of the iceberg as any number of groups now classified as Gurage could choose to exercise their own self-determination, i.e., self-definition.

If we turn to the Amhara, whether they see themselves as an ethnic community, or whether they are even an ethnic category, has been contested. In a televised discussion in late 1991 with the then president, Meles Zenawi, Professor Mesfin Wolde Mariam had argued that the Amhara were not an ethnic group, by self-definition. Whether that is the case or not, it is nonetheless the case that multiple levels of identity do operate. There is a regional, even local, dimension of ethnicity. Regional and local origins are popularly perceived as important markers of identity. Native speakers of Amharic in Shoa province saw themselves not only as Amhara and/or Shewe, but also as Bulge, Menze, Merhabite, etc., identifying them-

selves by their locales. More broadly, they referred to themselves as Shewe, still identifying by region.

In Gondar province, they identified themselves as Gaynte, Gondere, Wolkaite, etc., or more broadly, as Gondere, again based on locale or region, respectively. In Wollo province, they identified themselves as Amara Saynt, Ambasel, Ancharo, Bati, Yeju, etc., or more broadly as Wolloye, again specifying locale or region, respectively. Under the ethnic federal scheme of things, all these Amharic native speakers were lumped together as an Amhara ethnic community. The Amhara are an (externally defined) ethnic category. But it is only since 1991 that Amhara ethnic nationalism began to emerge, as symbolized by the formation of the All-Amhara Peoples Organization (AAPO). In Tigray province, the Tigray identified themselves as Adwetay, Aksumay, Tembenay, Agame, Endertaway, Raya, and so on. The Tigray emerged as an ethnic community by the time TPLF was created in the mid-1970s. As stated earlier, at a larger geographical level, the Amhara identified themselves as Shewe, Gojjame, Gondare, Wolloye, etc., and the Tigray identified themselves as Tigray, or recently as Eritreans in the case of the new state of Eritrea.

The Oromo are the largest ethnic group in Ethiopia. They may be one ethnic category. But are they one homogeneous ethnic community or segmented (and interrelated) ethnic communities? Perhaps there are distinct ethnic (or sub-ethnic) communities among the Oromo, including: Bale Oromo, Arsi Oromo, Qotu or Harar Oromo, Shewa Oromo, Jimma Oromo, and Wollega Oromo. Furthermore, because of their large number and long geographic reach, historically the Oromo have been perhaps the most important source of interethnic mixing, intermixing with the Amhara, Tigray, Gurage, Hadiya, Kambata, Wolaita, Sidama, Somali, etc. The Oromo have an institution called *Mogessa* that transforms an ethnic group into being Oromo. The degrees of general pan-Oromo collective identity and specific area-based identities call for detailed investigation.

From the above cases, it appears that the ruling party and government have imposed an “objective” scheme of ethnic categorization on the basis of mother tongue. Certain individuals and groups object to such ethnic categorization. Vaughan refers to this as an “identikit” conception of ethnic identity, citing the Wegagoda scandal in the Southern regional state, a scandal caused by the regional government’s attempt to fuse three interrelated languages into one new language. Finally, some see ethnicity as an altogether inappropriate form of identity because of the historical evolution of inter-ethnic and inter-regional communities into a nationally integrated Ethiopian polity. Maimire Mennasemay makes such an argument:

“... we have to consider the Ethiopian polity as the outcome of a ‘longue duree’ historical trajectory whose internal dynamics of national integration was articulated in terms of ‘Hager Bet’ or ‘terroirs,’ such as Gojam, Wollo, Shoa, Wellega, Sidamo, Tigre, Harar, etc. The ‘terroirs’ were interethnic, historically formed political domains; every ‘terroir’ was seen by its inhabitants, and the inhabitants of other ‘terroirs,’ as part of a larger historical entity – Ethiopia.”

Conclusion

The ethnic-based federal state system in Ethiopia is a triumph of ethnic nationalists and politicized ethnic communities. There seemed little alternative at the time to some sort of ethnic federalism, if the EPRDF were to establish its rule and retain the country as one. Thus, for EPRDF, ethnic-based federalism provided an expedient framework for resolving issues of ethnic nationalism and the right to self-determination. Leaders of ethnic parties that ordinarily would not support the government, e.g. in the Somali region, stated publicly that they were hinging their support, alliance, and membership in the state structure on the basis of the secession provision. Potentially, problems of secession would arise in border areas, notably the Somali region. Other border regional states such as Gambela and Benishangul-Gumuz are too dependent on the federal government to seriously entertain secession. Oromia is the most challenging regional state in the current federal arrangement regarding secession.

The framers of the ethnic federal state contend that their aim was to make Ethiopia a society of ethnic pluralism so that no ethnic group will find it necessary to secede from the state. On the positive side, it has given full recognition to ethnic rights. It may even have gone overboard in providing for the constitutional right to secession, creating an in-built, permanent insecurity about the territorial definition of the state. In this connection, Danspeckgruber gives the following warning:

“To grant the right of self-determination exclusively to those people who have a distinct ethnic, religious, or cultural background not only creates the danger of ethnic or religious cleansing, but also increases the danger that existing states will be destroyed rather than decentralized.”

On the negative side, by not giving sufficient play to federation-wide civic nationalism, it has contributed to ethnic hostilities and conflict. It is imperative to underscore (inclusive) civic nationalism in order to moderate and counterbalance (exclusive) ethnic nationalism. There is tension, if not conflict between ethnic nationalism (“cultural, linguistic, or primary”) and civic nationalism (“instrumental,

legal-rational, institutional, political, civic, territorial, or secondary.” In the latter, “the cultural is dissociated from the political.” There are lessons to be drawn for other Greater Horn countries. *Federal forms of state are appropriate for all countries in the sub-region. They are appropriate because all of them have experienced historical and contemporary cleavages and conflicts, including ethnic, regional, religious, and clan.* “Both federalism and consociationalism can help to provide a sense of security to groups, but a long-term solution requires not only security within groups, but also the development of trust and solidarity across groups.” To that end, ethnic nationalism must be counterbalanced by civic nationalism.

Within the Greater Horn sub-region, a state based on ethnicity is unique. Despite appearing to have undercut the drive for secession by largely removing manifest ethnic oppression, the Ethiopian federation is still contending with ethno-nationalist movements fighting for secession, most notably the Oromo Liberation Front and the Ogaden National Liberation Front. Moreover, the fact that the ruling group comes predominantly from a small ethnic group has raised serious protest from other ethnic groups. Its de facto use of democratic centralism, at least until recently, has also undermined effective decentralization and democratization. Ethnicity as an organizing principle underpinning the federal government in Ethiopia is a fragile and perilous experiment. The need to counterbalance ethnic nationalism with civic nationalism is glaring in today’s Ethiopia and is an object lesson for other states in the sub-region.

The assumption that the right to secession is the ultimate solution to ethnic or regional conflict is not necessarily valid. The secession of Eritrea (call it “decolonization,” if you wish) did not, in the final analysis, resolve the conflict between Eritrea and Ethiopia. If Oromia were to secede (or “decolonize”), the ensuing multi-pronged conflict would make the Ethiopia-Eritrea war (1998-2000) look like child’s play. If Southern Sudan were to secede from the North in 2011, it would not resolve the North-South conflict. Therefore, the notion that secession is the ultimate solution to ethnic conflict is probably mistaken. Secession or not, neighbors will remain neighbors. Therefore, we have to think of other ways of resolving conflicts, ethnic or otherwise.

One way is to think in terms of levels or tiers of citizenship: local, national and sub-regional or sub-state, state and supra-state citizenships (see the excellent paper presented by Leenco Lata at this conference). The process of creating such a structure of citizenship requires federalization at the state level and confederalization at the sub-regional level. For example, almost all the borders of the Greater Horn of Africa countries dissect pastoralist communities whose key strategy of survival is moving from place to place in search of pasture and water. How is the citizenship rights of these communities determined? What

measures should be introduced to mediate the principle of state borders as dividing lines for countries and pastoral areas as shared resources for pastoralists of neighboring countries? A process of confederalization could start with small steps, e.g., creating a joint administration of pastoral communities that cut across state boundaries, enabling them to move and live freely across state boundaries.

Imagine a joint administration of the disputed town of Badme or the port of Assab by Eritrea and Ethiopia. Swords into plowshares would have immense dividends for both countries. Clinging to state sovereignty and territorial integrity in the face of pressures of livelihood (e.g., pastoralism) or border conflicts (e.g., Badme) or zero-sum games (e.g., Assab) or presumed terrorism (Ethiopia/Somalia) will only mean continued warfare, military buildup and impoverishment. No state in the sub-region will have national security unless the various states acknowledge porous borders, trans-border co-ethnicity, in short inter-dependence. In practical terms, it means, among other things, strengthening IGAD and similar sub-regional institutions. It also means empowering citizens, cultural communities, NGOs, civil society organizations to engage in fostering cross-border interaction of communities.

Ten lessons to be drawn from Ethiopia's multiethnic federalism:

1. Federalism is appropriate for multiethnic societies such as Ethiopia, although the form of federalism could vary from country to country. It could be based on ethnicity, language, geography, history, economy or some combination.
2. Whether or not there is a need for the "right to secession" should be subjected to unrestricted national debate in each country.
3. Ethnicity and ethnic identity should be conceptualized not as ascribed but as constructed and instrumental. The criteria for ethnic classification should be rethought and should take into account the self-definitions that individuals and groups make.
4. The criteria for creating regional states or sub-units of the federal state should be rethought. For example, in the Ethiopian case, the Amhara, Oromia and Southern regional states could be broken up into four or five each. (The Southern region had started out as five states.)
5. It is important to get rid of any hierarchy of ethnic status ("nations, nationalities and peoples"). It presumes inequality based on numbers and / or "levels of development." In any event, it is contrary to any notion of equality.
6. Protection of minority rights within regional or "mother" states is vital but easily overlooked.

7. In any multiethnic society, it is important to highlight civic nationalism as a counterweight to ethnic or other particularistic nationalism. Encouraging formation of multiethnic parties (perhaps even decoupling ethnicity and party at the federal level) would contribute to this effort.
8. It is important to pay due respect to individual rights with regard to self-definition, self-determination. “Identity isn’t given once and for all: it is built up and changes throughout a person’s lifetime.”
9. In all multiethnic societies, it is doubly important to create an environment conducive to the growth of a democratic and pluralist culture.
10. In federal systems, it is important to have two legislative chambers, one representing one-person, one-vote, the other representing constituent states or corporate groups. In the Ethiopian case, the House of Federation should have legislative authority. It should also be representative of cities under federal jurisdiction, namely, Addis Ababa and Dire Dawa.

Ten lessons for the Greater Horn of Africa sub-region:

1. There is a need for exhaustive, unrestricted national debate before making a national constitution in order to ensure consensus, legitimacy and durability (e. g., that the constitution will outlive the regime that authored it).
2. Ethnicity is not primordial and fixed but constructed and flexible as well as instrumental.
3. Ethnic pluralism does not necessarily require ethnic-based administrative divisions. It is not necessarily a good idea to attempt a correspondence of ethnicity and territory or administrative borders.
4. Identities other than ethnic (e.g., class, region, religion, gender, etc.) should also be given political space.
5. Individual identity should not be perceived as subordinate to group identity. Individual rights should not be seen as secondary to group rights. Individual identity “makes each human being unique and irreplaceable.”
6. Protection of minority rights within sub-state units is vital.
7. Grassroots democracy at the local level and democratization at the national level are necessary for the efficacy of federalism. Federalism equals self-rule plus shared rule.

8. In the Greater Horn of Africa, there can be no peace in one country and therefore, no development in one country. Therefore, the absolute necessity for a confederation of the sub-region.
9. Factors that provide rationale for a Confederation of the Greater Horn of Africa include: a) artificial borders; b) cross-border ethnic groups/co-ethnics; c) region-wide ecological and health challenges; d) the capacity of each state to be a spoiler to neighboring states, e.g., proxy wars; e) globalization requires regional integration.
10. The development of multi-lateral institutions (regarding, for example, trade and commerce, industry, tourism, economy, education, health, ecology, environment, energy, immigration, human security) could serve as steps toward a sub-regional confederation.

Notes

- ¹ D.J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: The University of Alabama Press, 1987), p. 39.
- ² Peter Ekeh, "Basic Security Needs and the Limits of Democratization," *Ethnicity and Democracy in Africa*, eds. Bruce Berman, Dickson Eyoh & Will Kymlicka (Athens, OH: Ohio University Press, 2004), p. 36.
- ³ The genesis of states may have been nations and vice versa. "In Europe, states established nations and nations established states." Benjamin Neuberger, "State and Nation in African Thought," *Nationalism*, eds. John Hutchinson and Anthony D. Smith (Oxford: Oxford University Press, 1994), p. 231.
- ⁴ See Jacqueline S. Solway, "Reaching the Limits of Universal Citizenship: 'Minority' Struggles in Botswana," *Ethnicity and Democracy in Africa*, eds. Bruce Berman, Dickson Eyoh & Will Kymlicka (Athens, OH: Ohio University Press, 2004), p. 134.
- ⁵ Clifford Geertz, "The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States," *Old Societies and New States: Modernity in Africa and Asia*, ed. Clifford Geertz (New York: Free Press, 1963), pp. 110-11.
- ⁶ Paul R. Brass, *Ethnicity and Nationalism: Theory and Comparison* (Newbury Park, CA: Sage, 1991).
- ⁷ Stephen Cornell and Douglass Hartmann. *Ethnicity and Race: Making Identities in a Changing World* (Thousand Oaks, CA: Pine Forge Press, 1998).
- ⁸ Craig Calhoun, *Nationalism*. (Minneapolis: University of Minnesota Press, 1997), p. 8.
- ⁹ Nelson Kasfir, "Explaining ethnic political participation," *World Politics*, 31 (1979), p. 376.
- ¹⁰ Calhoun, pp. 30-31.
- ¹¹ Anthony D. Smith, "The Ethnic Sources of Nationalism," *Ethnic Conflict and International Security*, ed. Brown, Michael (Princeton: Princeton University Press, 1993), pp. 27-41.
- ¹² *Ibid.*, pp. 28-29.
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*, p. 31.
- ¹⁵ Peter Ekeh, "Basic Security Needs and the Limits of Democratization," *Ethnicity and Democracy in Africa*, eds. Bruce Berman, Dickson Eyoh & Will Kymlicka (Athens, OH: Ohio University Press, 2004), p. 36.
- ¹⁶ Dickson Eyoh, "Contesting Local Citizenship: Liberalization & the Politics of Difference in Cameroon," *Ethnicity & Democracy in Africa*, eds. Bruce Berman, Dickson Eyoh & Will Kymlicka (Athens, OH: Ohio University Press, 2004), p. 104.
- ¹⁷ John Hutchinson, "Ethnicity and Multiculturalism in Immigrant Societies," *Ethnicity*, eds. John Hutchinson & Anthony Smith (Oxford: Oxford University Press, 1996), p. 374.
- ¹⁸ Dickson Eyoh, "Contesting Local Citizenship: Liberalization & the Politics of Difference in Cameroon," *Ethnicity & Democracy in Africa*, eds. Bruce Berman, Dickson Eyoh & Will Kymlicka (Athens, OH: Ohio University Press, 2004), p. 97.
- ¹⁹ Abdelwahab El-Affendi, *For a state of peace: conflict and the future of democracy in Sudan* (London: Center for the Study of Democracy, 2002), p. 29.

²⁰ See Francis M. Deng, "Self-Determination and National Identity Crisis: The Case of Sudan," pp. 253-286, *The Self-Determination of Peoples*, ed. Wolfgang Danspeckgruber (Boulder, CO: Lynne Rienner Publishers, 2002).

²¹ See E.F. Byarugaba, "Ethnopolitics and the State – Lessons from Uganda," pp. 180-189, and F.E. Muhereza and P. O. Otim, "Neutralizing Ethnicity in Uganda," pp. 190-201, *Ethnicity and the State in Eastern Africa* M.A. Mohammed Salih and John Markakis eds. (Uppsala: Nordiska Afrikainstitutet, 1998).

²² In the last three decades of the 20th century, Ethiopia underwent two (elite driven) revolutions: class-based in 1974; and ethnic-based in 1991.

²³ David Turton, ed., *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (Addis Ababa: Addis Ababa University Press, 2006), p. 5.

²⁴ The regional states that formed the federation were: 1. Tigray, 2. Afar, 3. Amhara, 4. Oromia, 5. Somali, 6. Beni Shangul-Gumuz, 7-11 Southern Nations, Nationalities, and Peoples (a "voluntary" merger of 5 regions), 12. Gambela, 13. Harari, and 14. Addis Ababa. Later, Dire Dawa was made a federal city-state.

²⁵ Lionel M. Bender, J. Donald Bowen, Robert Cooper, and Charles Ferguson, eds., *Language in Ethiopia* (London: Oxford University Press).

²⁶ Interview with Kifle Wodajo, Chairman of the Constitutional Commission; he had himself fought for inclusion of this clause (August 2001).

²⁷ The smallest ethnic group represented is the 1,526-strong Koma (FDRE Central Statistical Authority 1999), p. 42.

²⁸ The two are federal territories directly answerable to the federal government. Since specific ethnic communities do not inhabit them, they are deemed to have no right of ethnic representation. However, their inhabitants are represented in the House of Representatives. The federal House of Representatives (lower house) is elected on the basis of population size; the total number of representatives is 547.

²⁹ There are probably a few million non-Oromo Ethiopians in Oromia, but they have no representation in the House of Federation. The Oromo are the numerical majority in Harar, closely followed by the Amhara. Yet, neither group has representation in the House of Federation. The ruling Harari ethnic group constitutes less than 10 percent of the population in the regional state. See also Asmelash Beyene 1997, p. 14 cited in Aklilu Abraham and Asnake Kefale, "Federalism and Decentralization in Ethiopia: Emerging Patterns and Problems," a paper prepared for a Workshop on "The View from Below: Democratization and Governance in Ethiopia," (Addis Ababa: Forum for Social Studies, 2000).

³⁰ See Asefa Fiseha, "Theory versus Practice in the Implementation of Ethiopia's Ethnic Federalism," *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* David Thurton, ed. (Addis Ababa: Addis Ababa University Press, 2006), pp. 131- 164.

³¹ A bill passed in 2003 gives discretionary authority to the federal government to intervene in regional states if it deems it necessary to do so for political, humanitarian and human rights reasons. Such a robust intervention authority would erode state rights.

³² Gideon Cohen, "The Development of Regional & Local Languages," *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* David Thurton, ed. (Addis Ababa: Addis Ababa University Press, 2006), pp. 170 - 171.

³³ Interview in Addis Ababa in August 2001; John Markakis, "The Politics of Identity – The case of the

Gurage in Ethiopia,” *Ethnicity and the State in Eastern Africa* M.A. Mohammed Salih and John Markakis eds. (Uppsala: Nordiska Afrikainstitutet, 1998), pp. 127-46.

³⁴The seven clans of Sebat-Bet Gurage include Ezha, Geta, Meq’werqwer, Muhre and Aklil, Endegane, Yegre-Anghet Cheha, and Yinor and Anner. See Gabreyesus Hailemariam, *The Guragne and Their Culture* (New York: Vintage Press, 1991), p. 1. Then there are Soddo (Kistani), Silte, Welene, Soddo Jedha, and Kebena. See also Markakis, p. 131.

³⁵Markakis, 1998, pp. 131-36. A linguist of Gurage origin, Hailu Fulass, had claimed that there were 13 languages among the Gurage, some mutually intelligible, some not. The languages include "Sebat-Bet," Welene (a combination of Sebat-Bet and Silte), Silte, and Soddo (language closest to Amharic, Tigrinya, and Geez), according to a Gurage informant in Addis Ababa in January 2002.

³⁶Gashaw argues that the Amhara "does not necessarily imply a distinct ethnic category. ... Those who speak Amharic today do not have any ethnic affiliation to each other. ... There is no intra-Amhara ethnic consciousness... There is no distinct sociological profile of an Amhara because there is no such thing as an Amhara with distinct ethnic attributes." Further, the Amhara is "a multi-ethnic group who speak Amharic."

Solomon Gashaw, "Nationalism and Ethnic Conflict in Ethiopia," *The Rising Tide of Cultural Pluralism*, Crawford Young, ed. (Madison: University of Wisconsin Press, 1993), pp. 143-44.

³⁷Markakis referred to Shoa as "the most heterogeneous of the ancient Ethiopian provinces with several ethnic and religious groups." John Markakis, *Ethiopia: Anatomy of a Traditional Polity* (Addis Ababa: Oxford University Press, 1974), p. 19.

³⁸The Yeju are said to be originally of Oromo stock but have been Amharized for some generations.

³⁹Traditionally, the Tigray people themselves used the word Tigray to designate only the *anrajas* of Adwa, Aksum and Shire. The rest were referred to simply as Temben, Agame, Enderta, Raya Azebo, etc.

⁴⁰Like the Yeju, the Raya and Azebo in Tigray region are of Oromo ancestry but now speak Tigrinya and Amharic, not Oromiffa. The Raya and Qobo in Wollo zone are also of Oromo origin but are Amharic speakers. But Oromo ethnonationalists claim them all as Oromo.

⁴¹The House of Federation recognizes the Tigray, Kunama, and Irob (Saho) ethnic groups in Tigray regional state.

⁴²Sarah Vaughan, "Responses to Ethnic Federalism in Ethiopia's Southern Region," *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* David Thurton, ed. (Addis Ababa: Addis Ababa University Press, 2006), pp. 181-207.

⁴³Maimire Mennasemay, "Adwa: A Dialogue between the Past and the Present," *Northeast African Studies*, 4, 2 (1997), p. 58.

⁴⁴Wolfgang Danspeckgruber, ed., *The Self-Determination of Peoples* (Boulder, CO: Lynne Rienner Publishers, 2002), p. xii.

⁴⁵Raymond Breton, "English Canada and Quebec," *Ethnicity*, eds. John Hutchinson & Anthony Smith (Oxford: Oxford University Press, 1996), p. 348.

⁴⁶Bruce Berman, Dickson Eyoh & Will Kymlicka, eds., *Ethnicity and Democracy in Africa* (Athens, OH: Ohio University Press, 2004), p. 20.

⁴⁷"The west Africans are developing a concept they call 'border land', taking communities of similar ethnic

origin and highly interdependent for survival as one community under the border land concept and forcing the regimes on all sides of the border land to come together with joint development projects of every aspect, including the opening of joint community radios, joint administration, joint local administration, etc.” Personal communication (July 2007).

⁴⁸ Amin Maalouf, *In the Name of Identity: Violence and the Need to Belong* (New York: Arcade Publishing, 2001), p. 23.

⁴⁹ *Ibid.*, p. 11.

⁵⁰ D.J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: The University of Alabama Press, 1987).