

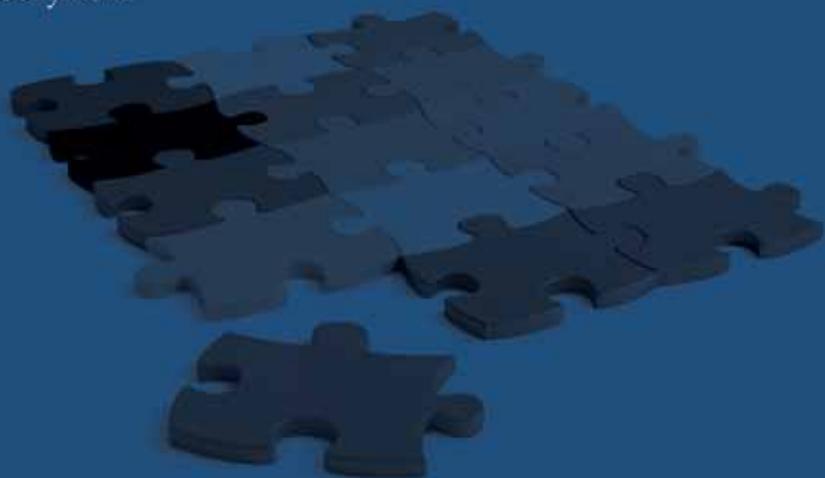
The Ethiopian Federal System

The Formative Stage

Muhammad Habib (Asst. Prof)

Edited by Abdulkader M. Yusuf (LL.M)

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ACRONYMS AND ABBREVIATIONS

ANC	African National Congress
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CUD	Coalition for Unity and Democracy
EPRDF	Ethiopian Peoples Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples' Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SNNPRS	Southern Nations, Nationalities and Peoples Regional State
TGE	Transitional Government of Ethiopia
UDHR	Universal Declaration of Human Rights
UN	United Nations
USA	United States of America

PREFACE

This monograph has been prepared to provide some broad outlines on the basic features of the emerging Ethiopian federal system. This is done in the light of the historical experiences of the country, prior to adoption of the federal system, and recent developments that seem to determine the existing structure of the system. Comparatively speaking, African experiences are taken into account due to its closer relevance to explain and understand the local developments in Ethiopia.

Moreover, as is the case in all federal systems, attempt is made to shade light on the structure of the two levels of government including its respective constitutional mandate. The laws of the country that provide the existing human rights regime are indicated in the light of the Constitution and the several international and regional human rights instruments ratified by Ethiopia. Given the federal structure of the country, the need for maintaining a uniform national human rights standards, that respect peculiarities of the different states, Killiloch, has been emphasized with a view to maximizing the benefits of the grass root population at the local level.

However, this monograph is of limited importance as it is intended to introduce the basic structures and recent developments of the emerging federal system in the context of Ethiopia. Therefore, the limitation in providing a more detailed analysis has to be acknowledged from the outset. Hopefully, it may still help to understand the basic foundations laid by the Constitution for building a federal system in Ethiopia. The section that relates to the pre-federal experience of the country may assist in comprehending the historical context in which the discourse on federalism has emerged in this country. Again, the part which relates to the regional context of Africa may help to conceive and understand both the strength and limitations of the Ethiopian federal system in the wider regional context. As such, despite its limited scope, this monograph may be found useful at least in understanding the different aspects of the discourse in its general sense.

The monograph has its own history. It began as an Amharic document few months ago. But the publication and distribution of the Amharic text, which is relatively bigger than the English version, has not taken place. But the English version is almost fully different as it covers recent developments and includes a

more focused analysis, despite its brevity, on certain aspects of the discussion. In preparing the Amharic monograph, I have been assisted by my former graduate students Syum Mesfin Syum, Tewedaj Melkamu and Abdulkader Mohammed. In their own right, these colleagues are knowledgeable scholars in their respective areas of specialization. The first two have graduated with MA degree in Federal Studies while the third obtained LL.M specializing in International Law, all of them from Addis Ababa University. All of them assisted in compiling the data for the text prepared in Amharic.

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This monograph is almost entirely different from the earlier Amharic text. The data utilized for this English text has been explored largely from new and more up to date sources. In particular, the section on the comparative aspects that relate to past and present other African federal experiences is fully a new addition. While maintaining the size as brief as it has come in the end, attempt is made to enrich the data and refine the arguments so that the text could be at least fairly informative to the English speaking audience. In the course of conducting the research and preparing this monograph, Abdulkader Mohammed worked with me assisting the research process and also editing the full text from the beginning up to the end. All these activities were accomplished within a very tight schedule that unfortunately did not allow to improve the text to a more desirable standard. Therefore, our apology is in order for any shortcoming or oversight. Meanwhile, I would like to express my gratitude to Abdulkader Mohammed, including my admiration for his meticulous editing and unreserved research assistance.

PART 1

NATURE OF FEDERAL SYSTEMS AND THE REGIONAL CONTEXT OF AFRICA

1.1 Nature of Federal Systems

Most scholars seem to agree that federalism is a device for organizing two or more levels of government that assume different sets of responsibilities and manage the affairs of a country. For instance, Watts has argued that federalism, far from being a creed or ideology, may have to be understood as a 'normative term' that refers to a political system designed to attain 'both union and non-centralization at the same time.'¹ In the process, the federal union and its component units are supposed to enjoy considerable degree of shared rule and self rule within its constitutionally defined powers and responsibilities. In our African setting, characterized by considerable internal diversity and need for integrated national efforts towards social and economic advancement, it may rightly be asserted that federalism relates to the idea of having a workable political arrangement that necessarily requires the perpetual existence of different levels of authority sanctioned by a supreme constitution which has to serve as a broader national framework for building consensus accepting the principle of unity-in-diversity as a basis for nation building.

It is common for federal governments to have exclusive authority on some important national affairs such as defence, foreign relations, and management of major resources. Likewise, practices of several federal countries show that the units manage some of the local matters as their exclusive constitutional mandate. But modern life of nations does not allow so strictly compartmentalized division of functions in real practice. Contemporary theories and practices, therefore, almost invariably require cooperative working relationship between the national and the local authorities.²

Federal states share some important essential qualities, despite variations that may arise due to the different realities of the countries concerned. These include rule of law and constitutionalism, local autonomy and representative federal government institutions that bring benefits enjoys the loyalty of all the component units of the federation on a sustainable basis. Currently,

there are about twenty six federal countries which have, in spite of the basic similarities, variations in the way they organize its respective government structures. As a result, different federal systems came to reflect diverse political and constitutional traditions, practices and historical experiences. Such peculiarities reflect not only differences in terms of history and societal structures, but in addition to these, they indicate the levels of socio-economic development and degree of political maturity of the different actors in the countries concerned.

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One of the areas where federal systems exhibit considerable variations is the way they organize the second level of authorities. For instance, in the case of the older federations, USA and Switzerland seem to portray the major distinctions in this respect. The States in the US stand on fairly different grounds as compared to the Swiss Cantons which are positioned in a way that permits the different racial, linguistic and cultural groups maintain their diversities within the federal union. The newer federal systems seem to be influenced largely by diversity based considerations. For example, the recent constitutional reforms in Belgium have created room for the ethno-linguistic communities to enjoy certain constitutionally entrenched collective rights and freedoms while maintaining the regions to play its more familiar role within the federal structure.

1.2 The African Regional Context

The African region seemed to reflect considerable divergence in the approaches followed determining the structure of the local authorities. By and large, African federal experimentations may be classified into two major categories - including those which were initiated as part of the decolonization process and others that have emerged during the last two decades mainly as a response to internal conflicts.

Under the first category, for example, the Central African Federation, the East African Federation and Mali Federation were organized with the support and blessings of the colonial administrations largely as a means for creating economically viable states. But there were also individual countries that were initiated as federal entities. Nigeria and Cameroon may provide very interesting examples. Nigeria was organized with three large regional units that portrayed the long standing internal differences in terms history, culture and political traditions. The major ground of diversity in Cameroon was not internal as it had to do with the effects of colonial rule on the attitude and desire of the peoples

of the country. In other words, the Independence Nigerian Constitution gave prior considerations to accommodation of the regions whereas Cameroon's Constitution of 1960-61, which was somehow federal, had two units including East Cameroon and West Cameroon representing the Francophone and Anglophone sections of the country. With the exception of the Nigerian Federation and the autonomous status of Zanzibar within the United Republic of Tanzania, there is no doubt that most of the earlier African federal and federal-like initiatives did not prove long lasting in particular during the earlier decades after independence. But the reasons for the failure seemed be more related to the way the federal systems were managed than the grounds on which the units were organized.³

Since recently, there seems to be a new 'wave' of agitations for federalism and devolution of power in a number of African countries. But, still, federalism has not been desirable response to all cases of conflict. Indeed, the bloody conflicts in countries such as Liberia and Rwanda were treated using different approaches that did not require a federal substitute. But it is also true that some formerly unitary states have opted for a federal alternative mainly as a more practical and realistic response to the existing conflicts in such countries. The basis of diversity which these newly emerged African federal systems seek to address may not be explained with reference solely to ethnicity.

In addition to this common phenomenon, there could be other factors seeking appropriate responses. For instance, in South Africa, conflicting perceptions about the long term interests of the different racial groups seem to contribute in shaping the attitudes and preferences of ANC and other political parties on issues such as federalism and the like. In a different social setting, for example in the Sudan, religion appeared to have somehow a visible role besides ethnic and related differences. In other words, the specific nature and peculiarities of each federal system is influenced to a large extent by the historical experiences of the countries concerned prior to and at the time of the transition to some forms of federal dispensation.⁴

PART TWO

ETHIOPIA'S PRE-FEDERAL EXPERIENCES

8 Ethiopia's transition to the present federal dispensation appears to be more or less a result of similar experience. To begin with, it is widely known that this ancient African country did not fall under colonial rule, save a brief Italian occupation between 1936 and 1941. Some years before that, there were local initiatives towards modernizing the administration of the country. The first written constitution was drawn in 1931 following partly the older Japanese model which the imperial regime in Ethiopia seemed to perceive as a safer entry to start modernizing the country.⁵ At the same time, measures were taken to introduce modern education in which some significant progress was made before the occupation. Unfortunately, the Italian administration did not allow the Ethiopian initiatives towards progress to continue and mature to fruition. In fact on the contrary, for example, according to John Markakis "[A] particularly cruel blow was the loss of a portion of the miniscule group of educated Ethiopians" and that "[A]ll accounts agree that the Italian Fascists singled out this group for special savage treatment, as if to bolster their own claim of a civilizing mission by wiping out any proof to the contrary."⁶

The end of the occupation in 1941, therefore, signified the beginning of a new era ('addis zemen') in which foundations were laid for the considerable portion of the achievements that the country could depend virtually until very recently. These were evident, for example, in the spheres of education, urbanization and related social and economic sectors. In the political sphere, there were more or less similar developments that demanded a more speedy progress towards reform. Thus, the incorporation of Eritrea in a way that accommodated its distinct colonial experience and the introduction of the Revised Constitution of 1955 were expected to create a more conducive environment towards a greater degree of open-mindedness and at least some measure of gradual democratization. But as subsequent events, including the aborted coup of 1960, seemed to indicate the pace at which the government was moving towards the desired political reform was much slower than what the circumstances seemed to demand at that time. For instance, it was only about a month before its end that the imperial regime showed readiness to introduce a more significant measure of constitutional reform.⁷

By the time when the Military took over in September 1974, the situation had already deteriorated beyond what a gradualist reform process could do. Under such circumstances, the stage would usually be set for radicalism to flourish and take over the initiative. Thus, during the first two years after the end of imperial rule, the bulk of the political forces in the country were not ready to accept anything short of a full fledged commitment to scientific socialism. At the initial stage, the Military regime tried to find a middle way by declaring 'Ethiopian Socialism', as was the case in many other African countries which used to pretend pursuing its own local versions of socialisms. Later on, even the Derg had to join the rest as a new convert to Marxism-Leninism. Yet, that was not as far as sharing power with its political opponents who were largely left-oriented civilian political groups. In other words, the progress towards ideological 'solidarity' was not accompanied by political reconciliation.

Of all the contentious issues, the political difference on the national question posed probably the toughest challenge to the government. For the imperial regime, it was virtually unthinkable to recognize the ethno-lingual and any other form of internal diversity as a political issue. But for the Derg, it was already late not to give at least some measure of recognition to the issue. Therefore, the government had established the Institute of Nationalities with the mandate to study the situation of the nationality groups and recommend solutions. As a result, the Constitution which was introduced about four years before the end of the Derg regime had contained provisions that purport to address the national question. Once again, it appeared this too came very late. After all, the door was still closed against any move towards multiparty negotiation and the possibility of substituting the age old centralized rule by some sort of decentralization, if not a federal alternative. On the other hand, by the time when the Derg regime introduced the new Constitution, the different liberation fronts had already consolidated themselves into a significant political force. Consequently, the Derg regime came to an end when the liberation movements fighting for the rights of the different nationality groups took over in May 1991.⁸

Following the end of Derg rule, a Transitional Government of Ethiopia, TGE, was set up to manage the affairs of the country and prepare a new constitution. The Constituent Assembly debated on the draft Constitution which carried several new provisions, including the proposal to set up a federal form of government in a way that allows accommodation of the interests of the various nationality groups in the country. The Constitution came into force in 1995, inaugurating the existing federal arrangement.⁹

PART THREE

FEDERAL AND REGIONAL STATE GOVERNMENTS STRUCTURE

The FDRE Constitution provides for a federal government and nine regional states known as “Killil” (Plural “Killiloch”) conferred with different sets of responsibilities relating to important political, economic and social matters. Moreover, it would be interesting to see the approach followed in organizing the Federal and Killil Governments.

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3.1. The Federal Government

The Ethiopian Federal Government is parliamentary that allows the legislature to exercise oversight and control over the executive. The Constitution confers enumerated and limited powers and responsibilities upon the Federal Government. It has the power, for instance, to formulate and implement national policies, plans and strategies concerning the overall economic and social developments.¹⁰ Similarly, the Ethiopian Federal Government is empowered by the Constitution to formulate and execute national policies and strategies in the financial and monetary areas, as well as for the utilization and conservation of natural resources. Moreover, it is within the jurisdiction of the Federal Government to set country wide standards in concerning public health, education, science and technology, as well as for the preservation of cultural and historical sites.¹¹ These powers and responsibilities have somehow peculiar relevance in addition to the more customary functions of the Federal Government in the spheres of defence, foreign relations, inter-state and international trade and commerce. In the legislative sphere, the federal jurisdiction is again very wide. It includes, among others, power to enact laws concerning the utilization of land and other natural resources, enforcement of political rights enshrined by the Constitution, electoral laws and procedures, the penal, commercial and labour codes of the country.¹²

The Constitution requires that the House of People’ Representatives should be composed of members elected through a democratic process.¹³ The possibility that different political parties compete for seats in a democratic process has got important implications for the development of the federal system. Not only the institutional independence of the legislature in relation to the

executive but also the autonomy of the two levels of government, including the federal and Killil authorities, to a large extent depends on the growth of political pluralism.

The different political parties had secured varying number of seats during the first three electoral processes. But significant difference has appeared between the third and the fourth national election results. In such a circumstance, in particular the government may make significant contributions by creating favourable conditions for an accelerated development of multi-party democratic culture in the coming years. The following table shows the third and fourth national election results at the federal level.

No.	Winner Party	Results Obtained	
		2005 General Elections	2010 General Elections
1	The Ethiopian Peoples' Revolutionary Democratic Front (EPRDF)	327	499
2	Coalition for Unity and Democracy	109	---
3	Ethiopian Democratic Forces Union	52	---
4	The Somali People's Democratic Party (SPDP)	24	24
5	Oromo Federalist Democratic Movement	11	---
6	The Benishangul Gumuz Peoples Democratic Party (BGPDP)	8	9
7	The Afar National Democratic Party (ANDP)	8	8
8	The Gambela People's Unity Democratic Movement (GPUDM)	3	3
9	The Harari National League (HNL)	1	1
10	The Argoba People Democratic Organization (APDO)	1	1
11	The Ethiopian Federal Democratic Unity Forum (Medrek)	---	1
12	Shekko Mezhenger Peoples Democratic Unity Organization	1	---
13	Independent	1	1
Total number of seats in the House of Peoples' Representatives		546	547

The second federal house, i.e. the House of the Federation, is exceptionally interesting in the way its composition, powers and responsibilities are determined. Probably, this is one of the distinct features of the Ethiopian federal system.¹⁴ During the earlier years, the scope of functions which the House could legitimately perform based on the list of powers enumerated under Article 62 of the Constitution seemed a little unclear. Later on, a federal legislation was introduced that further defined the powers and responsibilities of the House with greater detail. It appears that the House has found the legislative act somehow helpful in pursuing the rights and interests of the different nationality groups in different sectors and to engage in activities presumably intended to strengthen the unity of the peoples of the country.

But, the constitutional responsibilities of the Ethiopian House of the Federation are still diverse and extra-ordinary as compared to the functions of similar institutions in other federal states. The list includes, among others, power to decide on issues relating to the rights and interests of the different nationality groups, interpretation of the Constitution in addition to the power to 'determine the division of revenues from joint Federal and State tax sources and the subsidies that the Federal Government may provide to the states.'

As compared to its equivalents in other federal systems such as India and Nigeria, the basis of representation to the House is also different. Here, membership of the House is based on representation of the nationality groups living in different parts of the country. Yet, the selection of the representatives of the nationality groups is done either by the Killil councils or through an electoral process directly by the people. As is indicated in Table 2 below, the number of representatives that a particular Killil is entitled to send to the House is significantly determined by the number of the nationality groups residing in the Killil, and not necessarily by the demographic size of the people of the Killil as a whole. The following table shows the number of representatives that each Killil sends to the House of the Federation.

No.	Regional States	Number of Representatives
1	Tigray	6
2	Afar	2
3	Amhara	17

4	Oromia	19
5	Somali	4
6	Benshangul/Gumuz	6
7	Southern Nations, Nationalities and Peoples	61
8	Gambela	4
9	Harari	1
	Total	120

3.2 Killil Governments

Practices of different federal countries show that the component units and its governments carry different designations depending on the political tradition of each state. For instance, Canada, India and South Africa refer to the units as 'provinces' while USA, Australia and Nigeria use the term 'states'. In Germany, the component units are called 'Landers' while in Switzerland, they are designated as 'Cantons'. In the case of Ethiopia, the units are called 'Killil' (plural 'Killiloch'). With the passage of time, such terms assume continuity and wider usage.

The component units that constitute the Ethiopian Federation are nine and it is possible for this number to increase as the Constitution allows the different nationality groups within the existing regional states to establish its own state provided that the procedure provided for this purpose is respected in the process.¹⁵ The other interesting point about the Ethiopian regional states, Killiloch, is the difference in size, as is the case in most federal countries. But the Constitution still maintains that "Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers".¹⁷ The following table shows the population and geographical size of the regional states in more concrete terms.

No.	Region	Population*	Area in Square KM**
1	Tigray	4,316,988	84,721.77
2	Afar	1,390,273	72,052.78
3	Amhara	17,221,976	154,708.96
4	Oromia	26,993,933	284,537.84
5	Somali	4,445,219	---
6	Benshangul/Gumuz	784,345	50,698.68
7	Southern Nations, Nationalities and Peoples	14,929,548	105,476.09
8	Gambela	307,096	29,782.82
9	Harari	183,415	333.94
10	Addis Ababa	2,739,551	526.99
11	Dire Dawa	341,834	1558.61
	Country Total	73,750,932	784,398.48

* Source: The 2007 Population and Housing Census of Ethiopia, National Statistical Summary Report, Federal Democratic Republic of Ethiopia, Office of Population Census Commission Central Statistical Agency, July 2010, page 1

** Source: Federal Democratic Republic of Ethiopia, Central Statistical Agency, Ethiopia, Statistical Abstract 2009, February 2010, pp. 21-49

The FDRE Constitution allocates significant powers and responsibilities to Killil Governments. In addition to the responsibilities provided in the Constitution as either exclusively state or concurrent functions, residuary matters are also assigned to the regional states. As a result, the sum total of powers and responsibilities of Killil governments is likely to expand by virtue of its mandate to deal with the residuary matters, not enumerated by the Constitution.

The way Killil governments are organized is another interesting feature of Ethiopian federalism. Contrary to the practice in other developing federal countries such as India and Nigeria, the Ethiopian federal system allows the component units to adopt their own Killil constitutions, albeit subject to the supremacy of the Federal Constitution. At the initial stage, the Killil Constitutions were very much similar to such an extent one could not see the rationale for pursuing this approach. However, some years later, they came to be revised in a way that reflects considerable variations.¹⁸

As an emerging federal system, Ethiopia has witnessed multi-party elections since recent years not only at national but also at Killil and Woreda levels. Different parties competed for seats in the State Councils, although there has not been an occasion so far in which an opposition party won in any of the states and city administrations, save the victory by CUD in Addis Ababa during the 2005 election. Despite the success of different opposition political parties to win considerable number of seats in some of the regional state councils in 2005, more or less similar to that of the federal legislature, the fourth electoral process has not shown the same pattern of political development.

3.3 The Mechanism for Disputes Settlement

The Ethiopian Federal Constitution does provide a mechanism for addressing domestic social conflicts, including constitutional disputes. The House of the Federation and the Council for Constitutional Inquiry are assigned with the responsibility to settle disputes and ensure peaceful resolution of conflicts in accordance with the Constitution. The Council for Constitutional Inquiry is largely composed of legal experts, but its mandate is limited to presenting recommendations to the House of the Federation. In other words, it appears that the mechanism is intended to enable the House settle such disputes with the necessary advice by the Council. In effect, therefore, it is considerably different from the systems that obtain in other jurisdictions that permit the supreme Courts or the constitutional courts to play the leading role in settling constitutional disputes.

Now, it may be appropriate to consider the hitherto existing experiences in Ethiopia. Available records show that both the Council and the House have so far dealt with some important cases relating largely to the rights and interests of the different nationality groups, concerning either competition over resource or administrative power. But in some instances there were cases touching upon the rights presumably associated with the more general right of self determination. For example, the claim by the Silte community to have its own distinct identity, similar to the other nations/nationalities in the country, has attracted a great deal of interest. Further, issues associated with the compatibility or otherwise of group or community rights with the more familiar individual rights of citizens were similarly dealt with. For example, the case that arose in Benshangul/Gumuz Killil in this respect has remained interesting to date.¹⁹

Meanwhile, it appears that there were no similar cases so far involving jurisdictional conflicts, say, between the Federal and any of the Killil Governments on a given matter of mutual interest. Comparatively speaking, the more notable cases in many federal countries are related with intergovernmental disputes. Yet, it is also true that intergovernmental disputes usually arise in a context characterized by political pluralism that reaches a point of power sharing at federal and/or unit levels.

PART FOUR

THE CONSTITUTIONAL BASIS FOR HUMAN RIGHTS PROTECTION

Ethiopia's record in the area of human rights protection was not commendable, for several decades, even by the average standard of the bulk of African states. The previous constitutions of the country, perhaps save the revised Constitution of 1955, did not even pretend to require human rights protection as an integral component of the national legal system. The current Ethiopian Constitution, including the several international and African regional human rights instruments ratified by Ethiopia since recent years, contains explicit commitment to ensure protection of human rights within the new federal political structure.

4.1 Fundamental Human Rights

Constitutions usually provide the basic laws that serve as a point of departure to evolve a workable human rights system in any jurisdiction. While this pattern applies to both the older and the emergent democracies, practices of the developing countries indicate that government actions that lead to assumption of international obligations in the areas of human rights and good governance also contribute towards constituting a national legal regime that could be favourable for the growth of a promising human rights regime in the society.

The question of human rights in Ethiopia may, therefore, be evaluated from two perspectives. On the one hand, it will be proper to begin by assessing the basic laws relating to human rights, as provided in the Federal Constitution and the several international and regional human rights instruments applicable in the country. Then, the institutions that function in the spheres of human rights need to be considered in the light of its existing records.

As far as the laws of the country are concerned, for example, about one-third of the Constitution covers matters relating to human rights.²⁰ The basic rights of citizens entrenched in the Constitution include, among others, rights to life, property and privacy as well as safeguards against inhuman treatment of persons held in custody, including security of those convicted to serve

certain prison terms. Other provisions require non-retroactivity of criminal law and prohibit double jeopardy. The Constitution also does stress citizens' right to honour and reputation, liberty and equality, movement and property, irrespective of any sort of local diversities, be it ethnic, religious or racial differences. These are very interesting safeguards in the context where the several nationality groups or communities are also entitled to certain collective cultural and social rights.

In the same way, there are explicit provisions recognizing the rights of people to enjoy political rights such as the right to vote and be elected, freedom of association and press subject to such limitations that may be provided by law. But the law making power of the Federal and Killil Governments is not unlimited. The Constitution itself imposes a duty upon both levels of authority not to pass the limits set by the basic law of the country. Thus, the appropriate clause of the Constitution declares that "any law...or a decision of an organ of a state...which contravenes the Constitution shall be of no effect".²¹ Moreover, both Federal and Killil Governments are required to take all necessary measures that can ensure adequate protection of human and democratic rights in the country. In the event where any organ of government fails to do that, it would amount to 'offence by omission'.

4.2 Rights of Nations and Nationalities

Apart from the fundamental rights and freedoms of the individual mentioned above, the Federal Constitution provides a number of rights, otherwise known as community rights, in favour of the different nationality groups in the country. First, such groups or communities have been identified as "... a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory".²² The famous Article 39 of the Constitution carries a number of fairly detailed rights, in addition to matters relating to 'self determination'. These include "... the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history".²³ Furthermore, the different nationality groups are entitled "... to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in State and Federal Governments".²⁴

But there are also other interesting rights that may gradually become more attractive as the country develops in the social and economic spheres. Thus, in

addition to the abovementioned and widely debated aspects, the Constitution carries certain protective provisions presumably intended to serve the long term interests of the different nationality groups. One of such rights is the right "...to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community."²⁵ Last, but not least, the human rights provisions of the Ethiopian Federal Constitution, presumably including those relating to self-determination, are required to be interpreted and enforced in conformity with "the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia."²⁶ The following table shows some of the international and regional instruments, including their dates of ratification which seem to be partly recent developments.

No	Instrument	Date of Adoption	Date of Entry into Force	Date of Ratification or Accession
1	ICCPR	16 December 1966	23 March 1976	11 September 1993
2	ICESCR	16 December 1966	3 January 1976	11 September 1993
3	CERD	21 December 1965	4 January 1969	23 July 1976
4	CEDAW	18 December 1979	3 September 1981	10 October 1981
5	Convention Against Torture	10 December 1984	26 June 1987	13 April 1994
6	Convention on the Rights of the Child	20 November 1989	2 September 1990	13 June 1991
7	African Charter on Human and Peoples' Rights	27 June 1981	21 October 1986	2 June 1998

At this juncture, it may still be interesting to look into the nature and significance of those international and regional human rights conventions that are applicable in Ethiopia. The African Charter on Human and Peoples' Rights, the Conventions against Torture and all forms of discrimination against women, the two UN Conventions including ICCPR and ICESCR and the like form an integral part of the laws of the country.²⁷ In other words, as far as the laws can go, there is a sufficient ground to believe that there is the opportunity for the growth of good human rights culture in Ethiopia. Then what remains to be done is promoting the growth of democratic institutions that can ensure

adequate implementation of such rights in the real life of the society. And it is almost always the case that an emergent federal system could encounter some extraordinary challenges in this respect.

4.3 Mechanism for Enforcing Human Rights

Again, to begin with, the Constitution does require that the appropriate institutional mechanisms should be in place as a means for implementing the human rights laws of the country. To mention specific requirements, for instance, the House of Peoples Representatives has constitutional obligation to establish national human rights commission and institution of Ombudsman.²⁸ Although with some delay, the House has already established both institutions conferring on them to take various measures necessary for human rights protection and good governance in the country. As we look into the actual activities of the institutions, it appears that both have been making efforts geared to create wider public awareness about the rights and freedoms which the Constitution has guaranteed. It is true that in a country like Ethiopia the public really needs support to build the very confidence that rights of the ordinary citizens can be protected and the power of governmental institutions can be limited to that extent. Both history and practices of previous regimes for several decades did not permit the growth of democratic culture in the society. However, in such a circumstance, the awareness alone may not help to cultivate the necessary state of mind that can encourage the public to utilize the laws and the institutions without any hesitation. Confidence building in this particular sense really demands that the institutions demonstrate that, indeed, the rights of citizens can take precedence over any other considerations and the power of public institutions can definitely be questioned where it runs contrary to the Constitution. It seems encouraging that some of the reports of the Ethiopian Human Rights Commission²⁹ and the Institution of the Ombudsman³⁰ do indicate that the need to play such a role is well recognized.³¹

As far as the federal system is concerned, the possibility that these institutions can function more actively in the regional states, Killiloch, is of paramount importance. As is known, most of the things that matter to the grass root population are within the jurisdiction of the states. Again, relatively speaking, as compared to the Federal Government, Killil governments need the experience and the right institutional set up to cope up with the standard anticipated by the Constitution and the several international human rights instruments. These qualities can be acquired only through practice and trial and error, and for this

condition to be sustainably available, the Human Rights Commission and the Institution of the Ombudsman should fully function in the regional states and enjoy unreserved cooperation by the local authorities under all circumstances, including where their intervention may cause displeasure in some instances. This would come naturally through collaborative engagement that can ensure both the constitutional autonomy of the states and the institutional independence of the institutions operating in the areas of human rights and good governance. It is high time that the mechanism for inter-governmental collaboration in these areas of public concern should be evolved in reality.

4.4 The Amendment Procedure Applying to Human Rights Provisions

Amendment of federal constitutions almost everywhere is not left to the unilateral decision of either the federal or unit governments. Moreover, it is common to find at least two types of amendment procedures relating to different portions of the constitutions. On the one hand, there may be an ordinary procedure for amending the bulk of the provisions of a constitution. On the other hand, there may be a special procedure relating to certain selected portions of the constitution which seem to be largely presumed a basis for the security, continuity and unity of the federation under future circumstances.

The FDRE Constitution seems to follow the same pattern in determining the procedures for its own amendment. As is known, the Constitution consists of eleven Chapters and one-hundred and six articles. The bulk of the provisions may be amended using the ordinary procedure which requires the agreement of only two-thirds of the regional states and both Houses of the Federal Government. But special procedure is provided for amending the third chapter and the two provisions containing the amendment procedures. Chapter Three of the Constitution is the one that contains the human rights provisions of the Constitution.³²

In the light of this, it may be proper to draw a conclusion that human rights protection should receive maximum attention by all levels of government as a matter of primary constitutional obligation. To this effect, the development of democratic institutions should be encouraged and facilitated so that the wider society would increasingly benefit as the federal system takes root within the constitutional framework.

PART FIVE

CONCLUSION: THE WAY FORWARD

From the forgoing discussion, it seems clear that the Ethiopian federal system is taking shape in the context of the political, economic and social development taking place since the coming into force of the Constitution in 1995. At this stage, there seems to be a need for a more constructive discourse that encourages all sectors of the society to take active interest in the democratization process. As is known, the future development of the federal system depends on an accelerated growth of a democratic culture in the society. This means that the determination of the right courses of action towards a better future necessarily requires participation and positive contribution of the society at large.

As a contribution towards that goal, this modest study seems to suggest that the growth of democratic institutions need to be recognized as one of the priorities for the progressive development of the emerging federal system. Development of such institutions requires a conducive environment that provides the opportunity for all sectors of the society to play active role in the process.

One of the possible measures towards strengthening democratic institutions may be creating a more conducive situation that enables the legislative organs of the government, both at federal and Killil levels, play a more independent role to the extent anticipated by the Constitution. Indeed, the Constitution indicates that the legislative organs have the responsibility not only to cultivate democratic practices within its own institutional mechanisms but also to safeguard and promote the development of all democratic institutions in the country.

During the past five years, 2005-2010, the legislative houses showed a greater degree of engagement in building institutional capacity that could enable them discharge their constitutional responsibilities. That relative success may partly be attributed to the wider participation of different political parties both at federal and Killil levels. However, the very nature of the constitutional responsibilities of the federal and Killil legislations suggest that more or less similar progress could be attained under the existing circumstance as well.

For instance, the House of Peoples' Representatives has constitutional obligation to ensure "[E]nforcement of the political rights established by the Constitution and electoral laws and procedures"³³ In the same way, the House has the power to safeguard the independence of the federal judiciary, the Human Rights Commission, the Institution of the Ombudsman, the National Election Board and the like.³⁴ To the same extent, Killil legislatures may play a similar role to facilitate the growth of democratic institutions within their jurisdictions.

Since these provisions of the Constitution impose a duty upon the legislatures to establish and safeguard the independence of such institutions, it goes without saying that failure to meet this standard will not be acceptable. Therefore, hopefully, the legislative organs of the federal and Killil governments may play an effective role that can ensure the sustainable development of democratic institutions in the country.

Meanwhile, as is the case in every federal system, it is high time that inter-governmental cooperation becomes institutionalized in particular in the areas of human rights and good governance. For this, it will be necessary for Killil authorities to actively cooperate with the institutions functioning so far at the federal level. Probably, existing cooperation has been maintained through day to day interaction of government functionaries. However, this will not be sufficient to evolve a sustainable working relation under all circumstances. In other words, the question of inter-governmental cooperation need to be a subject of constructive discourse at all levels of government and the society at large. Where all sectors of the society take active interest in an issue, such as this, there is a chance for consensus to be attained and sustainable result to be achieved.

Endnotes

¹ Ronald Watts, *Comparing Federal Systems*, 3rd edn, McGill-Queen's University Press, 2008, pp. 8-9.

² Akhtar Majeed, Ronald Watts and Douglas Brown, eds. *Distribution of Powers and Responsibilities, A Global Dialogue on Federalism, Vol 2*, Mc Gill- Queen's University Press, 2006, pp. 341-3.

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³ David P. Currie, ed. *Federalism and the New Nations of Africa*, The University of Chicago Press, 1964, pp. 415-37.

⁴ Aaron T. Gana & Samuel G. Egwu, ed. *Federalism in Africa: Framing the National Question, Vol I*, Africa World Press, Inc. 2003, pp. 115-43.

⁵ Some of the provisions were adopted based on the Imperial Japanese Constitution of 1889, also known as the Meiji Constitution.

⁶ John Markakis, *Ethiopia - Anatomy of Traditional Polity*, Second Edition, Addis Ababa, Shama Books, 2006, p.181

⁷ Immediately after the historic popular revolution of February 1974, the Imperial regime had set up a new ministerial cabinet, still remembered as 'Addisu Cabine'. The new prime minister, Lij Endalkachew Mekonen assigned a high level constitutional commission to draft a new constitution for the country. The draft was submitted in Summer, and it did carry a lot of new provisions intended to limit the power of the monarch and introduce a parliamentary government under some form of constitutional monarchy. Among other things, the draft constitution had provisions recognizing the right of the people to develop their respective cultural values and languages. Unfortunately, just about a month after its submission for approval by the Emperor, the military took over. In other words, it came very late.

⁸ For the events that led to this era, see Paul Henze, *Ethiopia in Mengistu's Final Years*, Vol. 2, PP. 286- 96.

⁹ Inter Africa Group, *Genesis of the Ethiopian Constitution of 1994: Reflections and Recommendations of The Symposium on the Making of the 1994 Ethiopian Constitution*, 17-21 May, 1993, Addis Ababa Ethiopia, pp. 374.

¹⁰ FDRE Constitution, See Article 51 (2).

¹¹ As above, Article 51 (3) and (5).

¹² As above, Article 55 (2) – (5).

¹³ In Ethiopian constitutional history, probably save the draft constitution of summer 1974 that never did come into force, the FDRE Constitution is the first to expressly allow multi-party election and participation in the legislative process. See Article 73 (2).

¹⁴ FDRE Constitution, Article 62 (4) requires the House of the Federation to "...promote the equality of the peoples of Ethiopia... and consolidate their unity based on their mutual consent." See Consolidation of the House of the Federation and Definition of its Powers and Responsibilities Proclamation, Proclamation No. 251/2001.

¹⁵ The procedure set out to address demands of any nationality group to form its own state is provided under Article 47 of the Constitution. In other words, the list of the states incorporated in the Constitution is not exhaustive.

¹⁶ Watts listed several federal states where the units have considerable disparity in terms of size and alludes that such realities may be taken somehow as a normal feature. See Watts, note 1, p. 73. Memorably, the question of regional disparity was very controversial in Nigeria until the civil war, although the number of states has now reached 36. See Uma O. Eleazu, *Federalism and Nation-Building: The Nigerian Experience, 1954-1964*, Arthur H. Stockwell Publishing, pp. 72-107

¹⁷ FDRE Constitution, Article 47 (4).

¹⁸ For example, one may compare the Revised Constitutions of Amhara and Southern Nations, Nationalities and Peoples Regional states and see how different approaches are employed to address intra-Killil diversities.

¹⁹ Yehige Mengistawi Firdoch Matshet, (*Journal of Constitutional Decisions*) Volume 1, No.1, Hamle 2000 EC, PP. 24- 34.

²⁰ See FDRE Constitution, Chapter Three, Articles 13-44.

²¹ As above, Article 9 (1).

²² As above, Article 39 (5).

²³ As above, Article 39 (2).

²⁴ As above, Article 39 (3).

²⁵ As above, Article 43 (2).

²⁶ As above, Article 13 (2).

²⁷ As above, Article 9 (4).

²⁸ As above, Article 13 (1)

²⁹ The Ethiopian Human Rights Commission is established pursuant to Proclamation No. 210/2000.

³⁰ The Institution of Ombudsman is established pursuant to Proclamation No. 211/2000.

³¹ See The Ethiopian Human Rights Commission, Be 2002 Budget Amet Ye Eqd Affetsatsem Report. See also The Institution of Ombudsman, Be 2001 Ye Andegnaw Rub Amet Ye Eqd Affetsatsem Report.

³² FDRE Constitution, Articles 104-105.

³³ As above, Article 55 (2) (d).

³⁴ As above, Article 55 (13) – (15) and Article 102.

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