

Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia

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1. Background

'*Un museo di popoli*' – museum of peoples – was the concept that Conti Rossini¹ coined to express Ethiopia's enormous diversity, as it is home to no less than 76 'nations, nationalities and peoples' as defined by the constitution, none of them independently constituting a majority.² Yet this diversity suffered in the hands of a centralized and homogenizing nation-state for the whole of the twentieth century, giving rise to protracted civil war and the downfall of the centrist regime in 1991.

Reversing the age-old problem of extreme centralization of power and subsequent marginalization of a large section of society, the post-1991 federal dispensation in Ethiopia aims to empower politically mobilized ethno-national groups by granting territorial and political autonomy to some of the major groups at constituent unit and local level. The federal system established nine regional states and two autonomous cities. Despite differences in terms of degree, all regional states are internally diverse. There are 76 officially recognized ethno-national groups in the House of Federation (HoF),³ the second chamber, but the constitution established only 9 states. This fact in itself speaks volumes about constituent unit diversity. The heterogeneity is even more visible in the Southern Nations, Nationalities and Peoples Regional State (SNNPRS), which is home to 56 ethno-national groups.

However, territorial autonomy of ethno-national groups in a federal context in which the constituent units themselves are diverse, imposes a rigid conception of territory.⁴ The constituent unit or local government that empowers a specific ethno-national group is what Palermo called 'autonomy for a particular group'⁵ – the titular ethno-national group – that claims exclusive control over territory and dominance over public institutions within the constituent unit. The ethno-national group that enjoys autonomy in the form of self-rule strongly identifies itself with the territory over which it claims control. As such, the regional state is often perceived as an *ethno-national homeland*. In this regard territorial self-rule reinforces a sense of empowerment for the dominant ethno-national group but it will have an exclusive meaning for intra-unit minorities living in the regional state. This exclusivist conception of territory and the transformation of an ethno-national group into a political majority in the constituent unit or at the local level pose an existential threat to intra-unit minorities as the units are diverse in themselves. Indeed, over the past two decades tensions and conflicts have emerged in Ethiopia between the titular ethno-national groups and

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1 C. Conti Rossini, *Etiopia e Genti d'Etiopia*, (1937), p. 169.

2 See Art. 39(5) of the Ethiopian constitution.

3 The HoF is composed of 'nations, nationalities and peoples'. Each nation or nationality has one seat and one additional seat is granted for every additional million. The HoF does not have law-making power. It is mandated to resolve disputes among regional states, allocate subsidies to regional states and interpret the constitution. See Arts. 61 and 62 of the constitution.

4 This is particularly so in Ethiopia although other federal systems have mitigated this risk through safeguards in the federal constitution including strong enforcement of individual rights.

5 F. Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse', in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015), p. 19.

marginalized intra-state minorities. Through an analysis of the constitution, relevant laws, field work and relevant comparative literature, this article aims to shed light on the nature and source of such conflicts and offers institutional and policy options to address them.

Various studies have examined the rights and status of intra-unit minorities (minorities in the states) in Ethiopia⁶ yet their focus has been mainly on language and cultural rights as well as on the political opportunities that the ethno-national federation and ethnic local governments provide to the titular ethno-national groups. The studies offer little detail on the rights of dispersed intra-unit minorities, particularly power sharing which is a focus of this article. This article has four sections. The present Section 1 has provided some general background. The next section deals with the pillars of the federal system and also describes its impact on intra-unit minorities. Section 3 examines the status of these minorities and demonstrates the variations among the regional states in terms of responding to their demands. Section 4 outlines the institutional and policy options that are available to address the rights of intra-unit minorities. The last section provides the conclusion.

2. Key features of the federal system: Empowering titular ethno-national groups

As previously mentioned, marginalized ethno-national groups challenged the centrist state and brought an end to it in 1991 after years of civil war. The post-1991 federal arrangement was spearheaded by the Ethiopian People's Revolutionary Democratic Front (EPRDF),⁷ which overthrew the military junta in 1991. As the main architect of the transition (1991-1994) and of the 1995 constitution it long advocated 'nationalities' right to self-determination up to and including secession'. It claims that the key source of political crisis in Ethiopia is ethnic domination, with a ruling elite controlling power, resources and narrowly defining the values and institutions of the state (such as language – Amharic remained a national language until 1991 – and religion – the Orthodox Christian belief remained the state religion until 1974) as its main cause. As a result, the key features of the federal constitution are heavily influenced by the idea of the right of 'nations, nationalities and peoples' to self-determination and the right to self-rule as a solution to the 'question of nationalities'. Former Prime Minister Meles Zenawi, the chief architect, is quoted to have said: 'The Nile/Abay river has no life without its tributaries, Ethiopia also makes little sense without its diversity.'⁸

6 There are many MA and LL.M. case studies on minority rights in the states but published works are rare. Christophe Van der Beken is the only exception who has come close to the issue. See C. Van der Beken, 'Minority Protection in Ethiopia: Unraveling and Improving Ethnic Federalism', (2010) 13 *Recht in Africa*, no. 2, pp. 1-31. See also Y. Tesfaye, 'Federalism, the Sub-national Constitutional Framework and Local Government: Accommodating Minorities within Minorities', (2012) 4 *Perspectives on Federalism*, no. 2, pp. 78-97. Van der Beken's work covers details on language and cultural rights and rights of minorities under international law, which has very little to offer when it comes to group rights. As will be demonstrated later, intra-unit minorities demand much more than language and cultural rights. More importantly, critique regarding the hegemonic status of titular ethno-national groups and the shared conception of power and territory at constituent-unit level, which this paper attempts to address, is lacking in all these works. Tesfaye's work addresses some of the remedies available to intra-unit minorities, particularly a bill of rights and use of local government, yet the focus on the territorial solution, be it at constituent unit or at sub-unit level, entails the same challenges for such minorities as at local level.

7 The Ethiopian People's Revolutionary Democratic Front (EPRDF) that was established in 1989 is a coalition of four ethnic-based organizations: the core and founder, Tigray People's Liberation Front (TPLF), the Amhara National Democratic Movement (ANDM), the Oromo People's Democratic Organization (OPDO) and the Southern Ethiopian People's Democratic Movement (SEPDM). It came to power in 1991 and is still the ruling party today.

8 Interview with a senior party member of the TPLF 2010, Addis Ababa.

In a context where the ‘nation state’⁹ remained as the dominant political framework,¹⁰ a fundamental question of our time is the issue of how to design an inclusive, stable and cohesive political system amidst a society with more than one politically mobilized ethno-national group¹¹ in a state contesting the dominant perspective.¹²

Ethiopia’s post-1991 state restructuring aimed to ensure an inclusive political system through federalism while providing political space to ethno-national groups at regional state level. The division of powers between the federal government and the nine constituent units, a common feature of federal systems, might not explain the distinct features of the Ethiopian federal system. Beyond serving as another centre of power, the states have the additional and critical role of empowering ethno-national groups who are considered as founders of the new federal dispensation. What came out as the final constitution, at least at a formal level, is a partly fictitious ‘coming together’¹³ type of federation. The constitution is viewed as a political contract and the result of the ‘free will of nations, nationalities and peoples’ that are politically mobilized, territorially grouped and declared as sovereign (Article 8). The boundary of the sub-units have been redrawn in the post-1991 era in such a way as to ensure that the major ethno-national groups remain a majority in the respective state or local government and are able to exercise self-government and govern their own affairs. The constitutional design attempts to create some congruence between the ethno-national group and the territory of their regional states in order to ensure self-rule.

With a view to ensuring self-government to ethno-national groups, Article 39 of the constitution ensured three principal group rights. First: ‘every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession’. Second, it ensured the nationalities with ‘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’. In sharp contrast to the centrist regimes that aimed at assimilating diversity, after the adoption of the federation, Ethiopian nationalities publicly celebrate their diversity so much so that 8 December, the date on which the current constitution was adopted in 1994, has been designated by the government as ‘Nations’, Nationalities’ and Peoples’ Day’, although it is supposed to be Constitution Day. Thirdly, nationalities also have ‘the right to 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 the state and federal governments (...)’. Political practice shows that federal executive power, a key institution in

9 The ‘nation-state’ is widely associated with the rise of the European system of states, which began in Westphalia in 1648 and continued for the next 150 years, particularly so during the nineteenth century, when the emergence of popular sovereignty and self-determination led to the birth of nation-states. The nation-state replaced the different kinds of loose imperial and confederal political units that existed in Europe. In addition to insisting that there can only be one centre with undivided sovereignty and that it has to be homogeneous, this model prescribes that the nation and its political boundaries should match each other so that states can be nation-states. G. Nootens, ‘Can Non-Territorial Autonomy Bring an Added Value to Theoretic and Policy Oriented Analysis of Ethnic Politics?’, in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015), p. 38. It claims that ‘the territorial boundaries of the state must coincide with the perceived cultural boundaries of a nation’. It required that ‘every state must contain within itself one and not more than one culturally homogenous nation, that every state should be a nation and that every nation should be a state’. A. Stepan et al., *Crafting State Nations: India and Other Multinational Democracies* (2011), p. 1. This political framework (with a few exceptions such as Switzerland, Belgium and the United Kingdom) remained a hegemonic regime and framework that many developing countries had to replicate. Yet it was largely a coercive process and the dominant nation imposed its norms on ethno-national minorities, and those left out of the process challenged it. E. Nimni, ‘Minorities and the Limits of Liberal Democracy: Democracy and Non Territorial Autonomy’, in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015), pp. 57-58. As McGarry et al. argued, ‘The coercive policies to achieve linguistic and cultural homogeneity in France to create a single French nation attests to the fear and concern that cultural difference would translate into political difference and thus has to be eliminated.’ J. McGarry et al., ‘Introduction: European Integration and the nationalities question’, in J. McGarry & M. Keating (eds.), *European Integration and the Nationality Question* (2006), pp. 1-2. See also W. Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (2007), p. 42; Stepan et al., *ibid.*, p. 3. For a coherent critique of these thoughts see A. Smith, *Ethno Symbolism and Nationalism: A Cultural Approach* (2009), pp. 1-50; E. Nimni, ‘Introduction: The National Cultural Autonomy Model Revisited’, in E. Nimni (ed.), *National Cultural Autonomy and Its Contemporary Critics* (2005), p. 1.

10 Nimni (2015), *supra* note 9, p. 61.

11 This expression refers to cases in which identity-based politics represents a high degree of prevalence and ethno-national minorities are mobilized politically behind ethno-national party/leaders, the ethno-national mobilization exceeding that accorded to alternative forms of political mobilization such as ideology, class, civil society, gender and the relationship between groups is affected by deep levels of mistrust making it less cooperative. See D. Horowitz, ‘Constitutional Design: Proposals, Process’, in A. Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (2002), p. 18; Kymlicka (2007), *supra* note 9, p. 68.

12 Stepan et al., *supra* note 9, p. 1.

13 Alfred Stepan uses coming together to explain federal systems that emerged from previously semi-autonomous units. See A. Stepan, ‘Federalism and Democracy: Beyond the U.S. Model’, (1999) 10 *Journal of Democracy*, no. 4, pp. 20-33.

African political context, is fairly shared among the four coalitions of the ruling party¹⁴ and at times extends to affiliated parties that govern the four peripheral regional states.

Thus, the Ethiopian federal system accommodates and empowers 'the nations, nationalities and peoples' primarily through the provision of territorial and political autonomy to geographically concentrated ethno-national groups (Article 46(2)). The major ethno-national groups have established their own regional states with their own constitutions and mandates. Of the nine regional states, six of them (i.e. the Afar, Oromo, Amhara, Tigray, Somali and Harar) directly represent empowerment of specific ethno-national groups resulting in what is nick-named as 'ethnic federalism'. In the Southern Nations, Nationalities and Peoples Regional State (SNNPRS), a state with extraordinary heterogeneity and Gambella¹⁵ local governments, not the regional state as in other states, are designed to ensure self-rule to the various groups. Each of these six regional states and some twenty local governments in the SNNPRS as well as three local governments in Gambella are, in short, a motherland to a particular ethno-national group that accounts for the majority of their respective population, allowing the group to control the regional and local political institutions. In other words, the design establishes a titular ethno-national group by creating strong links between the specific titular ethno-national group and the territory over which political power is exercised. This dispensation gives concrete meaning to the right to self-rule and collective self-identity.

Empowerment of ethno-national minorities through political autonomy is not unique to Ethiopia. Sub-national minorities elsewhere are also provided with territorial autonomy in a federal or quasi-federal arrangement, along with the right to use their language and some element of representation in the national political process. Examples include the Scots and Welsh in the United Kingdom, the Catalans and Basques in Spain, the Flemish and French-speaking regions and communities in Belgium, the Quebecois in Canada, the German minority in South Tyrol in Italy, the Swedes in Finland, the many largely unilingual cantons that host the three main language groups in Switzerland and the various linguistic majorities in the different states of India following the reorganization of the states along linguistic lines in the 1950s.¹⁶ In each of these cases, the primary safeguard for groups which are a minority within the federation is through their control as a majority in a self-governing constituent unit having guaranteed constitutional powers within in a federation.¹⁷ The ultimate objective of granting territorial autonomy to an ethno-national group in a federal or quasi federal arrangement is to transform the ethno-national group that may be a minority at the national level to a majority at sub-state level so that it will exercise meaningful political autonomy and self-government while at the same time ensuring representation in the national political process.¹⁸

Although political and territorial autonomy for ethno-national groups constitutes the most advanced response to territorially grouped, historically marginalized and mobilized ethno-national groups,¹⁹ it is not without implications for intra-unit minorities that live within the constituent units. As already noted there are 76 ethno-national groups in 9 constituent units in Ethiopia, clearly indicating a significant mismatch. Constituent units are rarely homogenous. Territorial autonomy to ethno-national groups in a federal context imposes a rigid conception of territory. The constituent unit or local government that empowers a specific ethno-national group is what Palermo called 'autonomy for a particular group',²⁰ – the titular ethno-national group – which claims exclusive control over territory and dominance over public institutions within the constituent unit. The ethno-national group that enjoys autonomy in the form of self-rule strongly identifies itself with the territory over which it claims control. As such it is often perceived as ethno-national homeland. In this sense, territory and self-rule reinforce a sense of empowerment to the dominant ethno-national

14 The use of the term coalition needs serious qualification in the Ethiopian context. While there are four coalition members of the ruling party that control power in the four major regional states and five affiliate parties that exercise power in the remaining five regional states, ideologically speaking, it is different from the concept of coalition as used in Western European sense. The coalition member parties and the affiliates are ideologically the same, the coalition is merely in ethnic terms.

15 Amhara regional state also provides self-rule to ethno-national groups at local level to the Oromo, Agew Awi, Agew Himra, Argoba and recently to the Kimante. This means there are five 'ethnic' local governments.

16 Kymlicka (2007), supra note 9, p. 177; R. Watts, *Comparing Federal Systems* (2008), p. 165.

17 Watts, supra note 16, p. 165.

18 Palermo, supra note 5, p. 21.

19 See for details S. Choudhry (ed.), *Constitutional Design for Divided Societies: Integration or Accommodation* (2008).

20 Palermo, supra note 5, p. 19.

group but will have an exclusive meaning to intra-unit minorities living in the regional state. This exclusivist conception of territory and the transformation of ethno-national group as a majority in the constituent unit leaves intra-unit minorities in a precarious position.

As noted above, six of the ethno-regional states in Ethiopia and some 20 local governments in SNNPRS,²¹ three in Gambella and five in the Amhara regional state, are named after the major ethno-national groups that control the states and the local governments. This approach replicates the limitations of the nation-state, claiming that ‘territories be homogenous and dominated by one titular group, the nation’²² at the constituent unit level. This only deals with the claim of a titular ethno-national group that has grave consequences for intra-unit minorities. As Palermo argued ‘it is a simple solution to a much more complex problem’²³ because it empowers the titular ethno-national group only and offers little political space to intra-unit minorities.

The following sections examine the precarious situation of these minorities and the institutional and policy options that may be employed to address their concerns.

3. The position of intra-unit minorities in the states

Although what constitutes a minority has been contested, according to the widely recognized author Capotorti, it implies that they are fewer in number compared to the rest of the population of the country and as a result of the democratic game of numbers they are in a ‘non-dominant position’. The minority may be found occupying a historically defined territory (or could be found dispersed) and are nationals of the state of residence and possess ethnic, linguistic, cultural or religious characteristics that distinguish them from the rest of the population and are interested in preserving their identity, instead of integrating into the dominant national group.²⁴ The ethno-national minority may exist as a minority wholly contained within a state such as the Scots in the United Kingdom or a minority in one state but have a kin state that dominates another (kin) state, for example, the Oromos in Amhara regional state, or may be found as minorities in more than one state and majorities in none.²⁵ Yet the above conception of ethno-national minorities is largely reductionist as it limits the claims of ethno-national groups to preservation of merely culture, language and religion.²⁶ While some would like to limit the claims of ethno-national minorities to dress, cuisine and music, at the root of the problem is addressing the political, economic and social marginalization that such groups suffer at the hands of the nation-state controlled by the titular nation.²⁷ If the ethno national groups are mobilized and found geographically concentrated, their claims may, depending on the policy of the state, include the right to self-government in the form of federalism or devolution and representation in central institutions within a state or may even extend to secession.

If the ethno-national groups are found geographically dispersed and yet mobilized, their claims may relate to power-sharing and control over language and culture. Geographically grouped or dispersed, in both cases, however, there is widespread consensus that the claims of ethno-national groups go beyond the protection of the basic civil and political rights provided to all citizens to include recognition and accommodation either in the form of political autonomy that ensures self-government or power-sharing along with control over language and culture.²⁸ One should note that ethno-national minorities are often mobilized for a political project which may take many diverse forms. If the groups are not mobilized under a political project, they may remain as distinct ethnic group with an identifiable language, culture or any

21 These are the zones and special *weredas* that empower specific ethno-national groups at local government level below the constituent unit. The Guraghe, Hadiya, Sidama, Gedeo, Silte, Welayta, Kembata Tembaro, Keffa, Sheka, Bench Maji, Gamo Gofa and Dawro, Yem, Halaba, Konta, Basketo, Derashe, etc. are the examples. See Van der Beken, supra note 6.

22 Palermo, supra note 5, p. 29.

23 Ibid., p. 20.

24 F. Capotorti, ‘Study on the Rights of Persons Belonging to Ethnic, Racial and Linguistic Minorities’, UNO 1977, UN-Doc. E/CN.4/Sub.2/384, Rev. 1, para. 58.

25 Nootens, supra note 9, pp. 40-41; see also McGarry et al., supra note 9, pp. 1-2.

26 For other limitations of Capotorti’s definition see S. Mancini, ‘Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism and the Right of Minorities to Self Determination’, (2008) 6 *International Journal of Constitutional Law*, no.3 and 4, pp. 560-561.

27 See W. Kymlicka, *Multiculturalism: Success, Failure, and the Future* (2012).

28 Kymlicka (2007), supra note 9, p. 16; McGarry et al., supra note 9, pp. 1-2.

other identity marker but are not considered as ethno-national minorities and hence clauses on equality, non-discrimination and individual rights may suffice. Ethno-national minorities are mobilized particularly in divided societies based on a certain identity marker such as language, religion, culture etc in relation to the next other group where they compete for power and resources.²⁹ Elites mobilize rich cultural and historical resources socially and politically with a view to improving the group's political, economic and social status. It is therefore often largely constructed in reaction to repressive state policy. The idea that they are considered as a minority means that there is an attachment of a socially/politically less worthy group which they would like to reverse and thereby regain better collective self-esteem. The fact that ethno-national minority mobilization is 'socially and politically constructed does not mean, as some think, that they are superficial or unpopular, or that their aspirations do not need to be taken seriously if justice and stability are to prevail'.³⁰

3.1. 'Inter-ethnic' conflicts or rights of intra-unit minorities in the constituent states?

Territory and the need to exercise power over it gives rise to interstate and intrastate conflicts.³¹ As Ephraim Nimni argued,

'When two or more national communities reside in the same territorial space (...) popular national sovereignty and territorial national self determination become zero sum game. The gain of one is unavoidably the loss of the other. For this reason, ethno national conflicts in mixed areas are bloody, extremely violent and protracted, for full victory and nation state for one means the expulsion or destruction of the other.'³²

Tensions between the titular ethno-national groups that claim exclusive control over territory and political institutions at constituent unit and intra-unit minorities' call for accommodation has at times led to deadly conflicts. This has particularly been acute for intra-unit minorities where their ethnic kin may have a constituent unit of their own yet a fraction of the titular ethno-national group is found as an intra-unit minority in another regional state because it is on the 'wrong' side of the border.

Some of the conflicts over grazing land, water and resources between communities had a long history that predated the new federal system, but the post-1991 political development seems to have changed the dimension of the conflict. The fact that the disputed areas coincided with the boundaries between regional governments seems to have transformed the conflict between local communities to conflicts between regional states.³³ Yet in real terms, the conflicts emerged because intra-unit minorities that find themselves on the 'wrong' side of the border suffered marginalization in the hands of titular ethno-national groups that rarely showed an interest in addressing the sufferings of intra-unit minorities. Intra-unit minorities often preferred to redraw the constituent unit boundaries in order to join the other regional state where their ethnic kin constitute a majority. The dispute over boundaries becomes a zero-sum game where the winner (the titular ethno-national group) takes it all and the losers (intra-unit minorities) remain as perpetual minorities, leading to deadly conflicts. Similar regional states often intervene to mitigate the situation of intra-unit minorities, aggravating the problem. An example of such deadly conflicts is the claim of ownership over Babile and Moyale – towns between Oromia and Somali regional states –, the Borona and Gari conflict, again between the same regional states. Other examples include conflict between the Afar and Issa,³⁴ between

29 As is often argued, identity is both self-defined and defined by others. French speakers in Canada defined themselves in relation to the English speakers with whom they compete for power, resources and try to preserve the French identity. Language is therefore the fault line. In Northern Ireland by contrast, despite sharing the same language the Protestants aligned with the United Kingdom (often called unionists) dominate politics and the Catholics are considered as marginalized. Religion then becomes the fault line. Identity is thus defined in relation to the next other (such as Catholic vs Protestant), not in absolute terms see A. Smith, *Ethno Symbolism and Nationalism: A Cultural Approach* (2009), pp. 1-50.

30 McGarry et al., *supra* note 9, p. 2.

31 T. Malloy, 'Introduction', in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015), p. 1.

32 Nimni (2015), *supra* note 9, pp. 64-65.

33 A. Kefale, 'Federalism: Some Trends of Ethnic Conflicts and their Management in Ethiopia', in A.G. Nhema (ed.) *The Quest for Peace in Africa* (2004).

34 For more on this see J. Markakis, 'Anatomy of a Conflict: Afar and Ise Ethiopia', (2003) 70 *Review of African Political Economy*, no. 97, pp. 445-453. Of late the two regional states have reached a political arrangement where Issa minorities in the Afar regional state will exercise self-government at local level while the disputed territory will remain part of the Afar regional state.

the Afar regional state and Somali regional states; conflicts between the Gedeo in the SNNPRS and the Guji Oromo in Oromia, and the Guji Oromo in Oromia and the Sidama of SNNPRS around the Wondogenet area. Oromia with its geographically stretched territory and several adjoining regional states, features in many of the disputes. Making matters worse, these hot spots often are also subject to manipulation by domestic opposition forces as well as neighbouring countries, and thus have the potential to destabilize the whole region.³⁵

The greatest danger in this respect is that most of these conflicts have been described in the media and even in some studies as being ‘interethnic conflicts’ (the titles of many undergraduate and graduate level essays are telling in this respect).³⁶

A careful look at the conflicts, however, shows that although intergroup conflict cannot be ruled out, so-called border/interethnic conflicts prove to be key issues related to the status of intra-unit minorities suffering at the hands of titular ethno-national groups demanding accommodation either in the form of local government (when intra-unit minorities are found concentrated, as in the Kimante of the Amhara region and of the Konso in SNNPRS), fair representation, power and resource sharing at various levels, with local political elites manipulating identity-based differences. So border redrawing does not necessarily address them head-on. As border/boundary demarcation takes place in the context of polarized situations among uneven numbers of ethnically divided groups, every time we try to draw borders, new majorities and new minorities emerge and the problem replicates itself after the new redrawing. It is now overly clear that even after the referendum conducted in 2004 to resolve alleged border conflicts between the Oromia and Somali regions, there are still, for example, Gerri Somalis in the *kebeles* (the lowest level of local government) that were transferred to the Oromia regional state. There are also Jarso (Oromo) minorities in the *kebeles* assigned to the Somali region. The same holds true in the other contested borders: there are Sidama minorities in the *kebeles* assigned to the Oromia regional state and there are Guji Oromos in the *kebeles* assigned to the Sidama zone of SNNPRS around the Wondogenet area.³⁷ The same could be said in the conflict between Gedeo (of SNNPRS) and Guji (of Oromia). In the Gedeo zone of the SNNPRS, there are significant numbers of Guji Oromos and in the Borona Zone of Oromia, there is a sizeable number of Gedeos.³⁸

In other words, contrary to the government’s claim that a ‘referendum is the sole and best option of settlement’³⁹ the referendum ‘did not achieve the elusive task of matching ethnic and regional state boundaries’.⁴⁰ This means that border demarcations do not address the substantive claims of intra-unit minorities who are calling for accommodation.

3.2. Intra-unit minorities inside the states and variation across states

Another category are intra-unit minorities dominated by titular ethno-national groups which do not have an ethno-national home land elsewhere. They are marginalized in the same way as the intra-unit minorities with their own kin constituent unit elsewhere. Contentious identity-based mobilization and claims for local self-rule based on Article 39(5) as in Kinmante of the Amhara regional state, Konso and Wolene of the SNNPRS, the Majang – an intra-unit minority divided over three regional states (Oromia, SNNPRS, Gambella) – have been thus calling for greater Majang local government and have caused major political instability. Regional states and the HoF have often emphasized the requirement of a distinct language as a key factor⁴¹ and often hesitated to concede to such demands. Yet we should note that identity is both self-defined and defined by others based on the interaction with the other. Thus language could be one marker of identity but it is *not*

35 For instance, several separatist parties backed by neighbouring Somalia interfere in the Somali region.

36 See for example A. Tadesse, *Guji-Gedeo Inter-Ethnic Relations, Recent Conflict, ‘Referendum’ as a Remedy in the Ethiopian Federal System*, (Addis Ababa University, MA thesis (2011), unpublished).

37 This referendum was held in 2008.

38 See Tadesse, *supra* note 36.

39 See A. Habtu (ed.), *Ethiopian Federalism: Principles, Process and Practice* (2010), p. 213.

40 A. Kefale, ‘Federal Restructuring in Ethiopia: Renegotiating Identity and Borders Along the Oromo-Somali Ethnic Frontiers’, (2010) 41 *Development and Change*, no. 4, p. 629.

41 The HoF has rejected claims for recognition of the Wolene and Kontoma stating that these groups do not have a ‘distinct language’ of their own, although Art. 39 does not include such a requirement. What Art. 39(5) requires among other things is ‘mutual intelligibility of language’ and not a distinct language in the way interpreted by the HoF.

*the only one.*⁴² Catholics and Protestants in Northern Ireland share the same language but there is a major political rift between the two, as religion remains the fault line for inclusion or exclusion. So in this case each group defines itself in relation to the other based on *religion* and its links with the UK. Nor does sharing the same language guarantee the end of identity-based mobilization. Groups sharing the same language may be split up due to other mobilizing factors such as religion, geography, history and more importantly, political and economic marginalization as is the case of the Wolene and Kontoma of the Guraghe zone in SNNPRS. India's 29th new state Telangana established in 2014 shares the same language with the state of Andhra Pradesh but decided to secede from it and have its own state because its residents felt they had been exposed to political and economic marginalization by the state owing to their geographic location.⁴³

Issues related to intra-unit minorities remain significant because with increased foreign and domestic investment inter-regional migration is expected to boom, thus creating new regional state minorities. For instance, owing to very large projects such as the Renaissance Dam, regional states such as Benishangul Gumuz are expected to host no less than a million migrants from other regional states, a number higher than the current total population of the regional state. What the institutional and policy options are to balance the right to self-rule of the ethno-national groups in the regional state and rights of citizenship of the new migrants is far from clear. It appears that the federation has inherent tensions, as it has failed to strike a balance between the right to self-rule of the titular ethno-national group on the one hand, and the need to protect intra-unit minorities and promote free movement of labour and capital on the other.

As illustrated below, intra-unit minorities in Ethiopia face legal discrimination (e.g. in jobs, investment opportunities and bid competition, limited access to land – for example in Benishangul Gumuz regional state – the state law restricts economic migrants from having access to land stating that land belongs to the indigenous communities), political discrimination (they are not necessarily represented in the executive and legislative bodies of the regional state or local government and are often prohibited from running to public office as such institutions including the civil service is perceived as belonging to the titular groups alone) and administrative discrimination. Yet there are variations across regional states. The Oromia and Harari regional states remain the extreme, and many of the other states are less extreme.

The constitution of the Oromia regional state is exceptional in this respect.⁴⁴ Both its preamble and the provision on sovereignty declares that 'the Oromo nation' is the owner of the constitution and the region Oromia, *expressly* excluding non-Oromos residing in the regional state. Yet there are close to two million Amharas, 250,000 Gedeo and Guraghe each, 53,000 Hadiya, 45,000 Dawuro, and 42,000 Kambatea living in Oromia state. There are no express clauses for representation in regional state institutions such as the legislature, judiciary and the executive nor does the constitution provide for territorial or non-territorial autonomy to non-Oromos.⁴⁵ Following the wide spread protests in 2015 and 2016, the regional state declared 'economic revolution' designed to address the growing Oromo ethno nationalism, perception of marginalization and increasing youth unemployment. The regional state required international and national investors to outsource⁴⁶ some of their activities to organized youth from the regional state or face revocation of their license. They were required to give preferential treatment to the Oromo youth in terms of employment and business opportunities. The situation in urban local governments where non-Oromos are believed to be relatively higher in number than the rural areas is particularly worrisome. The regional state executive can reserve up to 70 percent of the city council for the Oromos (50 percent for the Oromo residents of the city and 20 percent for Oromos coming from adjacent rural *kebeles*) to make sure that the

42 See Smith, supra note 29, pp. 1-50.

43 'Telangana – India's 29th state is born', at <<http://www.dw.com/en/telangana-indias-29th-state-is-born/a-17449648>> (last visited 1 September 2017).

44 Lately the regional state has allowed the use of the Amharic language at schools in some major cities.

45 Non-Oromo here implies either smaller ethnic groups that exist within the Oromia regional state or individuals from ethnic groups other than Oromos. The regional state has lately opened schools that teach in Amharic in some bigger cities to allow Amharic speakers to use their language at schools. See for details Z. Yimer, *The Status, Powers and Functions of Local Government in the National Regional State of Oromia* (MA thesis Ethiopian Civil Service College (2009), unpublished).

46 For example Dangote's cement factory operating in Oromia regional state was required to outsource the supply of materials such as quarry and other raw materials to youth from Oromia regional state. See F. Tadesse, 'Authorities in the Dark Over Dangote's Threat to Cease Ethiopian Operation', *Fortune* (English weekly newspaper), vol. 18, no. 896, 26 June 2017; see also K. Bekele, 'Dangote partly suspends its operations in Oromia,' *The Reporter* (Amharic), vol. 2, no. 1802, 30 Hamle, 2009 E.C.

institutions of urban local government are dominated by the Oromos. This makes elections for urban local governments nearly meaningless. The mayor is also appointed directly by the regional state president.⁴⁷ Not surprisingly, frequent conflicts between the Oromos and minority Amharas (according to the 2007 census more than 3.2 million non-Oromos are believed to reside in the Oromia region) living in Oromia led to loss of life and destruction of property in 2000. Bedeno, Arba Gugu, and Gara Muletta are clear examples. In 2002, as a result of mobilization orchestrated by local political elites, a large number of Amharas were evicted from the southwest Oromia to the Amhara region, and their quest for return remains as yet unsettled.⁴⁸

The Amhara regional state recognizes only four non-Amhara ethnic groups residing in the regional state and has provided local self-government at zone level for four ethno-national groups (the Agaw-Awi, Agaw-Hemra, Argoba and the Oromos). Yet there are significant numbers of Tigrayan, Gumuz and Anuak intra-unit minorities. Lately the state has faced challenges from the Kimante's claim for local self-government and representation in public institutions.⁴⁹ Although in practice such ethno-nationality-based local governments have not exercised many of their powers, in theory they are entitled to enact laws and design policies on matters of their own including the use of language in public institutions.⁵⁰ Yet even this arrangement, although a step forward compared to the situation in Oromia, fails to ensure such groups the constitutional right to be represented in the regional state institutions such as the legislature, the executive, the civil service and the judiciary. The groups are only represented in the regional-state constitutional interpretation commission which is currently under establishment. The Amhara regional-state constitution, like the Oromia regional state, closes its eyes to minorities other than the Agaw, Argoba and the Oromos. Amidst the protests in 2016, the regional state evicted an estimated 8,000 Tigrigna speakers from Gondar demonstrating the repressive tendencies of the regional state towards intra-state minorities.

In regional states such as Afar (with significant Amhara, Oromo and Tigrayan intra-unit minorities) and Tigray⁵¹ (with significant Amhara and Agaw Hamyra intra-unit minorities), although they recognize the existence of intra-unit minorities within their boundaries, such minorities are not given local self-government in specific terms (the exception being the Irob of Tigray). Nor is there an express right to representation in key regional state and local government institutions.

Harar city state⁵² represents an exceptional arrangement given the distinct history of the Harari ethnic group as centre of Islamic civilization, where only nine percent of the regional state population (15,863 ethnic Hararies in a total population of 183,414) commands the regional state institutions.⁵³ Some wrongly believe that Harar forms a case of Lijphartian type of consociation⁵⁴ but despite the multicultural character of the Harari regional state and the evident numerical majority of the non-Harari, no satisfactory measures have so far been taken to secure the political participation of the non-Harari and non-Oromo residents of the city. The Oromos that constitute nearly two-thirds of the total population (103,468) participate in the political process to some extent, but other sizeable groups of minorities are excluded from the political process. It is hardly possible to imagine long-term political stability in the Harari region given the large part of the population marginalized from the political process. Harar does not seem to have taken into account the city's multi-ethnic character.

47 See proclamation number 65/2003: proclamation of urban local government of the Oromia regional state *Megeleta Oromia* 9th year No. 2 Adama 2003 and 116/2006 proclamation to amend the former *Megeleta Oromia* 14th year No. 12 *Finfine* 2006.

48 See T. Tafese, *The Predicament of Amhara Migrant-settlers in East Wollega Zone*, Ethiopia, unpublished paper presented at the Ethiopian Studies conference held in Norway (2006).

49 The Kimante's claim for recognition and accommodation is now close to ten years old. In June 2015, the regional state decided to provide local government with 42 *kebeles* but the Kimante community refused to concede, stating that they will not accept unless the local self-rule contains the claimed 126 *kebeles*.

50 See for details S. Mengiste, *Response to the rights of ethno-national minorities in the Amhara National Regional state: An Inter-state comparison*, Ethiopian Civil Service College (2009), unpublished.

51 For example members of the Kunama minority in Tigray are found in two districts of two different *weredas* dominated by the Tigrayans. The Irob have their own *wereda* but have not yet started using their Saho Language.

52 According to the 2007 census, the population of the Harari regional state is 183,344 of whom 103,421 are Oromos and 41,755 are Amhara.

53 See Harari State constitution Arts. 26 and 29. Only the Hararies and Oromos can participate in the region's politics.

54 See Habtu (ed.), *supra* note 39, pp. 202-203. At the core of the Lijphartian type of consociational democracy is that every relevant group *shares power and resources in proportion to the size of the vote* and hence does not believe in exclusion of any group whatever its type.

In the regional states such as Gambella⁵⁵ and Benishangul-Gumuz⁵⁶ there are two sets of unresolved issues. These regional states were more strongly marginalized than the other parts of Ethiopia in the twentieth century.⁵⁷ To address this historical injustice, regional states that favoured dominant ethnic groups living in the regional states were established. What is distinct about these regional states, however, is that not only are the 'indigenous ethnic groups'⁵⁸ diverse but there are also sizeable 'non-indigenous' groups that were forced to settle in these two regional states as a result of policies of villagization and resettlement of the *Derg* in the 1980s.⁵⁹ As a result, two types of frequently recurring issues have emerged in these two regional states. One relates to the challenge of establishing institutions of self-rule in the form of local government for the 'indigenous ethnic groups' that were marginalized for a long time. There is a justified fear of extinction among the indigenous ethnic groups resulting from domination of the political process from the central government (as has been the case until 1991) and economically powerful new migrants. The second problem is related to the fate of the sizeable non-indigenous groups settled in these two regional states. These groups also have a justified security concern as well as a strong interest in participating in the political process of the regional states. There is a tendency by the indigenous ethnic groups to limit the role of the non-indigenous groups that at least so far have been economically more powerful and politically active, from the political process. Further confusing this delicate position of non-indigenous minorities are provisions of the constitutions of some of the regional states issued even after the decision of the HoF⁶⁰ in the *Benishangul Gumuz* case decided in March 2003. For example, the revised Benishangul-Gumuz constitution and that of Gambella, Article 34, different from what is provided in other state constitutions, only ensure the right of non-indigenous minorities to work and live, and do not ensure the right to be elected to public offices.

Experience from other federations with diverse societies like ours illustrate that ethno-nationalist groups should not be allowed to govern their own regional states unless a clear guarantee for intra-unit minority and individual rights is stipulated and enforced. There is the fear that once ethno-national minorities acquire self-governing power at sub-state level, they might use it to prosecute, dispossess, expel or kill anyone who does not belong with them.⁶¹ In other words, the wave of post-Cold War minority rights in the west was conditional on the point that national minorities in the new arrangement are not going to be new autocrats at sub-state level. The main goal of the constitutional reforms in the west recognizing mobilized ethno-national minority rights to self-rule is to address demands of such minorities that have suffered at the hands of the titular nation within the nation-state. In addition to respecting individual civil and political rights, the provision of self-governing sub-unit addresses the concern of mobilized ethno-national minorities. Self-rule is thus provided in addition to the respect for individual rights at national and sub-unit level. It does not aim to compromise the gains already realised within the nation-state with respect to individual rights. The

55 For details see D. Feyissa, 'The Experience of Gambella Regional State', in D. Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (2006), pp. 208-230.

56 For the historic-political background of both regions see W. James, 'No Place to Hide: Flag-Waving on the Western Frontier', in W. James et al. (eds.), *Remapping Ethiopia: Socialism and After* (2002).

57 J. Young, 'Along Ethiopia's Western Frontier: Gambella and Benishangul in Transition', (1999) 37 *The Journal of Modern African Studies*, no. 2, pp. 321-46.

58 According to the CSA census of 2007 Gambella is home to five ethnic groups namely Anuak 21.2 percent, Nuer 46.6 percent, Majengir 4 percent, Opo and Komo 0.4 percent; Benishangul Gumuz is home to Berta 26 percent, Gumuz 21 percent, Shinasha 7.6 percent, Komo 0.96 percent and Mao 1.9 percent. The respective regional-state constitutions accord indigenous status to these groups and consider others as 'non-indigenous' subjecting them to a different treatment. Yet it should be noted that the federal constitution does not make such distinction although those identified as indigenous have the right to self-rule. The right to self-rule however should not be a pretext to discriminate or terrorize intra-state minorities.

59 In Gambella the highlanders constitute about 27 percent while in Benishangul Gumuz the same category of people constitute nearly half of the population of the region.

60 The decision ensured the right of non-indigenous minorities to be elected in public offices as they were excluded by local parties from the process. See the decision of the HoF in *Megabit 5*, 1995 E.C (March 2003) that in a nutshell upheld the then existing law (proclamation 111/1995) as constitutional but declared the decision of the Electoral Board that excluded the non-indigenous groups from running for office as unconstitutional and hence of no effect with prospective effect. It articulated that Art. 38 of the proclamation is not in violation of Art. 38 of the constitution. It also underscored that whoever wants to run as candidate is required to know the working language of the *regional state, and not one of the local vernaculars* (unpublished).

61 Kymlicka (2007), *supra* note 9, pp. 93-94.

Ethiopian constitution and actual practice have yet to settle this vital gap. There is a clear tendency to favour self-rule of ethno-national groups at the expense of individual rights.⁶²

4. The way out

4.1. Power sharing and non-territorial autonomy (NTA)

The Ethiopian constitution has certainly provided for some rights related to minorities. Each ethno-national group *recognized* at the federal or state level has at least one representative in the second chamber (the House of Federation). Smaller ethnic groups that have less than 100,000 people (the minimum electoral district to have one representative in the House of Representatives) have 20 seats reserved in the House. All languages are declared equal and those that have their own states or local governments have decided to use their language in schools, courts and other public institutions.⁶³ Local governments are also often used as a means to ensure self-rule as in the case of the Silte in SNNPRS and of late the Kimante of the Amhara regional state. The constitution also ensures the right to equality and non-discrimination.

Nevertheless, the concerns of intra-unit minorities do not seem to have been addressed adequately by these options alone.

In recognition of the limitations of granting political autonomy in the form of self-rule to geographically concentrated and mobilized ethno-national groups to intra-unit minorities and of the associated limitation of the exclusive conception of territory, a growing body of literature aims to mitigate the impact of titular-based political autonomy on intra-unit minorities.

The most common two institutional arrangements for addressing concerns of intra-unit minorities are power sharing and non-territorial autonomy (NTA).⁶⁴ In some federations, the federal government is also provided with constitutional powers to monitor the constituent unit's compliance with the rights of intra-unit minorities. Constitutionally entrenched rights and strong enforcement mechanisms can also mitigate the risks of majority tyranny and address intra-unit minority rights. The following sub-sections illustrate these complementary measures. They are complementary in the sense that they do not oppose the right of ethno-national groups to self-rule but rather aim to mitigate its adverse effects on intra-unit minorities.

In response to mobilized, territorially grouped ethno-national groups that suffered at the hands of centrist and homogenizing regimes, political autonomy in the form of self-rule within a federation has been a common and advanced political solution.⁶⁵ Yet among the severe criticisms presented against territorial autonomy granted to ethno-national groups is that it replicates the problems of 'the nation state' at constituent unit or local government level and creates a titular and dominant ethno-national group which itself may turn into an autocrat at constituent or local government level. The combination of the titular ethno-national group, exclusive conception of territory at constituent unit level and majoritarian democracy reinforces the titular nation's dominance⁶⁶ leading to what Karl Renner argued as 'If you live in my territory you are subjected to my domination, my law and my language.'⁶⁷ This perpetuates domination and subordination. It does not ensure self-government for all inhabitants in the constituent unit but ensures self-government to the titular ethno-national group alone. It becomes an instrument of domination – sub-unit minorities simply change masters: the old master against which the new titular nation fought and secured political autonomy is now gone

62 The preamble stating 'we the nations, nationalities and peoples of Ethiopia (...)', Art. 8 that places sovereignty on such groups and Art. 39 on the right to self-determination imply that group rights override individual rights.

63 See Arts. 5, 61 and 54.

64 Some link the origins of NTA to the last days of the Habsburg (Austro-Hungarian) Empire. For the full version of Renner's NTA model see K. Renner, 'State and Nation' [1899], in E. Nimni (ed.), *National Cultural Autonomy and Its Contemporary Critics* (2005), pp. 13-40. Since then NTA has been in use in several diverse countries including the Brussels-Capital Region of Belgium, see Nimni (2015), *supra* note 9, pp. 70-72.

65 K. Kossler, 'Conclusions: Beyond the Illusion of Ethno Culturally Homogenous Territory', in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015), p. 265; Kymlicka (2007), *supra* note 9, p. 177; Watts, *supra* note 16.

66 Kossler, *supra* note 65, p. 251.

67 Quoted in Nimni (2005), *supra* note 9, p. 9.

and replaced by the new master – the titular ethno-national group that enjoys political autonomy alone – resulting in what Mahmood Mamdani called ‘decentralized despotism’⁶⁸ or more appropriately local tyranny.

However, it is possible to construe a different conception of territory and notion of autonomy where the titular ethno-national group may continue to enjoy self-rule and yet the territory is not considered as exclusive but as a *shared common good* in which intra-unit minorities that live within the constituent units or local government can also have political and cultural space. Intra-unit minorities in the constituent units will also be part of the political decision-making.⁶⁹ The above conception of territory takes into account the heterogeneity of the population inhabiting the territory.⁷⁰ It is what Palermo calls ‘autonomy *of*’ all inhabitants in the constituent unit, not autonomy *for* a particular ethno-national group⁷¹ because in the real world sub-units in a federation are never homogenous (no necessary overlap between the ethno-national group and the territory). The issue of designing an inclusive governance system and accommodation of diversity remains crucial within the regional-state institutions going beyond the federal/national agenda. These normative issues demand addressing the agenda of intra-unit minorities within regional states and an understanding of the complex nexus between territory and ethno-national groups.

Power sharing and non-territorial autonomy (NTA) are often presented as important political solutions to mitigate the risks associated with the tyranny of the titular ethno-national majority at constituent unit level. The first key feature of the power-sharing arrangement is the inclusion of the main political actors that represent the main segments of society (including intra-unit minorities) into the political process and decision-making bodies at federal, constituent-unit or local-government level depending on where the locus of the demand is.⁷² The power-sharing arrangement could be a paritarian one in which the major political actors representing the different groups are represented in public institutions on an equal basis, regardless of their size or proportional to the share of the votes that the groups secure in elections.⁷³

The question of who is entitled to power sharing and NTA remains contested, yet there is an emerging consensus that suggests that the right belongs to geographically dispersed ethno-national groups who nevertheless are politically mobilized and hence have shown an express interest in self-government.⁷⁴ The goal is to empower dispersed ethno-national groups by creating institutional mechanisms for their participation. It is about designing an inclusive democratic polity that goes beyond titular ethno-national groups and majority rule through the inclusion of hitherto excluded dispersed ethno-national groups.⁷⁵ It combines political representation of the geographically dispersed diversity in public institutions with autonomy and control over culture and language. While it is often stated that NTA views diversity largely as a cultural and linguistic group⁷⁶ than as a politically mobilized ethno-national group, the emerging literature, however, indicates that though dispersed, the diversity that calls for power sharing and NTA, is a political project that calls for political accommodation in the form of power sharing in addition to autonomy and control over language and culture. Power sharing allows dispersed minorities to have a say in decision making at federal, regional-state or local level while linguistic and cultural autonomy ‘in the form of legally guaranteed autonomous corporation’⁷⁷ to ethno-national communities allows such dispersed minorities to have an exclusive say on issues related to their language and culture.

68 M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996), pp. 23-24.

69 For the different conceptions of territory and the nexus with national minorities see Malloy, supra note 31.

70 A practical example would be if the ethno-national group were to vote in a referendum: all the inhabitants in the territory, not merely the dominant ethno-national group, would be allowed to participate.

71 Palermo, supra note 5, p. 21.

72 The origin of power sharing in its rigid form (consociationalism) is the renowned Dutch political scientist Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (1977). The ideological roots, however, go to Karl Renner, supra note 64. See also Palermo, supra note 5, pp. 22-23. The concept was further developed by J. McGarry & B. O’Leary, *The Northern Ireland Conflict: Consociational Elements* (2004), pp. 1-51.

73 The major obstacle to this proposal is the First Past the Post electoral system with its impact of winner takes all and the loser gets none. Thus the first step towards realizing power sharing in its true sense is to reform the electoral system in a manner that promotes representation of diverse political and intra-unit minority groups.

74 See Nootens, supra note 9, pp. 35-37, 39, 41, 46; McGarry et al., supra note 9, p. 67.

75 Nootens, supra note 9, p. 47; Nimni (2015), supra note 9, p. 68.

76 See for example Renner, supra note 64 and Nootens, supra note 9, p. 39.

77 Nimni (2015), supra note 9, p. 71.

Unlike territorial autonomy and the right to self-rule granted to titular ethno-national groups, power sharing does not aim to transform a minority into a majority but instead designs inclusive political institutions where both the titular ethno-national group and the intra-unit minority cooperate in the process of decision making. The institutional design aims to overcome the majority-minority divide within the majoritarian democracy, which has the risk of creating permanent majority against permanent minority at constituent unit level. One of the widespread points of criticism against power sharing is that it is an elite-based accommodation which may not have widespread popular support. Yet this risk can be moderated as there is a need to establish a political elite representing widespread support of the masses through democratic and multiparty election with a proportional electoral system. Power-sharing arrangements help design an inclusive political system within the regional states in which no significant section of society feels excluded. The design of a bicameral legislative system with one chamber elected by state-wide vote and the second composed of representatives of the different ethno-national minorities as part of ensuring representation of dispersed minorities in central decision making is also an integral part of power sharing.⁷⁸ This arrangement is often more constitutionally formalised in federal systems than other forms of polities.

There are political, legal and moral reasons for the inclusion of intra-unit minorities in the states. There is a powerful argument that links self-rule at constituent unit level to democratic theory. During the American Civil War (1861-1865), secessionist southern states wanted to break the union in order to keep the institution of slavery. President Lincoln, however, argued that ‘people cannot declare self-determination or autonomy, if they intend to use their autonomy to oppress other people’.⁷⁹ Robert Dahl, another democratic theorist argued that ‘the right to self-government entails no right to form an oppressive government’.⁸⁰ In as much as one cannot use freedom of expression to insult or defame another, titular ethno-national groups cannot use self-rule to terrorize or subjugate intra-unit minorities.

In the Ethiopian case, regional-state institutions have frequently failed to mediate impartially in conflicts between the titular ethno-national group in the regional state and intra-unit minorities and federal institutions are often absent in those conflict-prone areas.⁸¹ The result of focus-group discussions held in the four major regional states⁸² in July 2015 has clearly indicated the importance of addressing this matter using a legal, institutional and policy framework for the protection of various kinds of intra-unit minorities in the regional states. As the discussions in this section indicate, Ethiopia’s case proves that the process of empowering ethno-nationalist group at regional-state level was conducted without putting sufficient institutional and policy mechanisms in place to minimize this major risk.

Let us also not forget that the different intra-unit minorities within the regional states in Ethiopia that face various kinds of administrative and political discrimination are *Ethiopians living in their own country* and not foreigners looking only for civil rights. As citizens and intra-unit minorities in their own country they have the right to engage in political and public affairs both at federal and regional-state level (Article 38). Let us also not forget that although titular ethno-national groups have a constitutionally protected mandate to self-rule, they cannot claim exclusive control over territory, only the Ethiopian state as a sovereign body can claim exclusive control over territory. Territorial autonomy and self-rule of ethno-national groups within a federation cannot be equated with the overarching sovereign Ethiopian state under which the sub-units exist. Power-sharing arrangements thus moderate the exclusive attachment of territory with the titular ethno-national groups and recast it differently developing sub-unit autonomy for all inhabitants of the constituent unit. It introduces intra-unit minorities *sharing a territorial space* with titular ethno-national groups, a conception of territory as an *inclusive and shared common good*.⁸³ The idea of diverse groups sharing power and territorial space ends ‘lethal competition for exclusive territorial control’⁸⁴ often

78 McGarry et al, *supra* note 9, p. 73.

79 Quoted in J. Kincaid, ‘Autonomy and Secession: Lessons Beyond’, in E.M. Belser et al., *States Falling Apart? Secessionist and Autonomy Movements in Europe* (2015) p. 389.

80 R. Dahl, *Democracy and its Critics* (1989), p. 208.

81 There are countless cases in Oromia, Gambella, Benishangul Gumuz, SNNPRS where a significant number of intra-unit minorities were marginalized, evicted and at times killed. Recently the Amhara region evicted some 8,000 Tigrigna speakers in the summer of 2016.

82 Oromia, Amhara, SNNPRS and Tigray regional states.

83 Nimni (2015), *supra* note 9, p. 68.

84 *Ibid.*

associated with titular ethno-national groups having territorial autonomy. This demands, as Palermo argued, a shift from an exclusive 'autonomy *for*' a particular ethno-national group to 'autonomy *of*' of all inhabitants in the constituent unit.⁸⁵

This firstly calls for legal and policy reforms at federal and constituent-unit or even local-government level that aim at redesigning the existing electoral laws based on the First Past the Post⁸⁶ to a proportional or mixed type to ensure the participation and inclusion of intra-unit minorities who may not be able to win a majority under the current electoral system. This is vital because in the context of a divided society and regional states under titular ethno-national groups, the First Past the Post electoral system at regional state perpetuates the dominance of the titular group. The election turns itself into 'ethnic census' and intra-unit minorities have little hope of securing majority given their number. Secondly, constitutional and legal reform at federal, regional state and local government level is required to ensure fair representation of intra-unit minorities in the executive, legislative, judicial and civil service and other public institutions of the relevant constituent unit and local governments. To ensure this, Article 39(3) of the federal constitution guarantees ethno-national groups' rights to equitable representation in federal and regional-state governments yet its application has remained limited to the federal executive level, the SNNPRS and to some extent the Benishangul Gumuz regional state and has no consociational elements in the sense of including ideologically different political parties based on a proportional electoral system.⁸⁷

A second important component of NTA is cultural and linguistic autonomy (also called functional autonomy, corporate autonomy, or corporate federalism)⁸⁸ conferred on dispersed ethno-national diversity. Competencies are transferred not in relation to a specific territory but in relation to a specific community regardless of place of residence.⁸⁹ Cultural and linguistic autonomy can be sought for these identities found territorially dispersed including those members of the homeland minority who have moved elsewhere in the country without necessarily taking a territorial autonomy in the form of zones and *weredas*.⁹⁰ The dispersed minorities will have legally established public bodies across territories and the minorities, although they may live within a territory where the majority belongs to a different national group, would not be subject to its laws but to those of their own public institution with respect to language, culture and education.⁹¹ In other words, the minorities will not be subjected to practising the language and culture of the titular nation in the constituent unit and indeed will be exempted from it by law. A council may be established if the community so wishes and legislate binding laws related to personal matters such as marriage and the family, customary law, religious rights, use of language in education and cultural affairs. It may also imply that public institutions also provide services to minorities in two different languages (that of the majority and that of the minority).⁹² Its aim is to strengthen the identity of intra-unit minority based on language and culture. The claim is that NTA supports political stability by providing non-dominant groups with a mechanism that enables them to minimize the effects of their inferior position in the larger society.

A typical NTA in the Ethiopian context would be the recognition of *Sharia* courts through law for Muslims throughout the country in relation to marriage, succession and personal affairs. NTA is envisaged in the Benishangul Gumuz regional state as some of the ethno-national groups are found dispersed although its enforcement has been delayed. NTA could also provide a political solution to Oromo claims for publicly funded schools in the federal capital Addis Ababa. Apart from ensuring fair representation in the city government institutions, Oromos could utilize NTA in Addis Ababa, if they so wish by opening schools for their children using the mother tongue. NTA could also be a key instrument for addressing the concerns

85 Palermo, *supra* note 5, p. 32.

86 Art. 54(2) of the Ethiopian constitution provides for First Past the Post electoral system.

87 Only members of the ruling party are entitled to representation. The FPTP electoral system excludes political opposition parties from sharing power.

88 McGarry et al., *supra* note 9, p. 68.

89 Nootens, *supra* note 9, p. 41.

90 Y. Ghai, 'Constitutional Asymmetries, Communal Representation, Federalism and Cultural Autonomy', in A. Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (2002), p. 163.

91 M. Suksi, 'Non-Territorial Autonomy: The Meaning of 'Non Territoriality'', in T. Malloy & F. Palermo (eds.), *Minority Accommodation through Territorial and Non Territorial Autonomy* (2015) p. 86.

92 *Ibid.*, p. 89.

of several intra-unit minorities in the states that do not have territorial autonomy to exercise the right to language and culture – an important component of the right to self-rule that is rarely employed.

4.2 Federal government political safeguards regarding intra-unit minority rights

Another, third measure often used in other federations to mitigate the marginalization of constituent-unit minorities is to empower the federal government to serve as guardian for intra-unit minorities against possible repression and discrimination by titular ethno-national majority.⁹³ While the federal and constituent-unit constitutions may ensure rights of intra-unit minorities, the titular ethno-national group that dominates the political institutions often lacks the *political will* and the *incentive* to enforce such rights. After all, the titular ethno-national group enjoys self-rule and controls the political institutions and so what incentive will it have to open up the political space? Regional-state institutions being in control by the titular ethno-national group often fail to mediate in conflicts that arise between the titular ethno-national group and the intra-unit minorities. For this reason, there is a need for an external check and balance mechanism.

Article 350A of India's constitution stipulates that every state and every local authority within a state shall provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. The provision goes beyond ensuring this right to minorities by empowering the President of the Republic to issue directives to any state to enforce this right. Article 350B establishes a Special Officer for Linguistic Minorities appointed by the President that investigates all matters relating to the safeguards provided for linguistic minorities under the constitution and that reports to him or her. The report may be tabled for discussion and further investigation in the federal parliament or is sent to the government of the state concerned. In India therefore the federal government has been given a more extensive power with respect to intra-unit minorities.⁹⁴ In 1992, the Union government also established a National Commission for Minorities by Parliamentary Act. The Commission evaluates the progress of minorities under the Union and in states. It also monitors the working of safeguards provided in the constitution and laws enacted by Parliament and state legislative bodies. It further investigates complaints, deprivations and discriminations suffered by minorities and suggests appropriate measures to be taken by the Union and state governments. These are important country-wide political institutions that monitor the enforcement of minority rights in the constituent units. Minority rights are not left to the discretion of constituent-unit governments and political institutions. The Indian constitution acknowledges that constituent-unit majorities may threaten intra-unit minorities and provides *country-wide political safeguards* that monitor state-level institutions' compliance with minority rights.

The Ethiopian federal and regional-state constitutions are silent on this matter. Intra-unit minorities continue to face various kinds of discrimination and marginalization and this has so far been left to the discretion of the states. It is time for constitutional amendments to be introduced with a view to empowering the federal government to monitor the states for their compliance with intra-unit minorities' rights. This is an important external political safeguard for intra-unit minorities. The constitution under Article 55(16) comes close when it mandates the House of Representatives to call a joint session with the HoF to take appropriate measures including giving directions to the concerned state when state authorities are *unable to arrest* violations of human rights within their jurisdiction. Yet this article is not close enough to the matter under discussion as it does not specifically deal with intra-unit minority rights. The expression 'state authorities unable to arrest' also implies that the responsibility falls initially within the states but as already mentioned states controlled by titular ethno-national groups have little incentive to enforce intra-unit minority rights. More importantly, the protection of intra-unit minorities is a question of designing inclusive regional-state institutions not necessarily linked to emergency situations, which the article seems to imply.

93 Kossler, *supra* note 65, p. 269.

94 Watts, *supra* note 16, p. 166.

4.3. Human rights

The last but not the least widely used measure to ensure intra-unit minorities' rights and rights of individual citizens is the inclusion of a comprehensive catalogue of fundamental rights in the federal constitution (also in state constitutions) and subsequent enforcement through institutional mechanisms including strong courts. This mandate remains principally that of the federal government but states can also enrich rights protection by providing better rights, not less than the standard, set by the federal constitution.⁹⁵ In the United States this was not the original intention of the Bill of Rights, added to the constitution in the form of the first Ten Amendments ratified in 1791. These were intended to limit federal government action and were not enforceable on the states. Human rights were to be aggressively enforced by the Supreme Court against the states after the Second World War along with the Civil Rights Movement. Although formulated as individual rights, the right to equality and non-discrimination played a key role for desegregation within states.⁹⁶

Chapter Two of the Ethiopian constitution (Articles 8-12) provides *fundamental principles* of the constitution. Article 10 in particular states that 'Human rights and freedoms, *emanating from the nature of mankind*, are inviolable and inalienable' implying that human rights are 'parents and not children of the law'.⁹⁷ Adopting the natural law conception, human rights derive from the inherent dignity of human beings and remain the foundations of the system. They remain critical standards to evaluate the validity of laws, institutions and state objectives (preamble second paragraph). Chapter Three of the constitution in particular provides for the guarantee of a host of individual and group rights and constitutes *one-third* of the constitution. Reinforcing the fundamental nature of human rights as one of the principles of the constitution, Article 104 stipulates a rigid procedure for constitutional amendment requiring the approval of the nine regional states and the two houses at federal level.

When fundamental rights and freedoms are given special position in the constitution through incorporation and by providing rigid amendment procedure, this means that the current majority in power at whatever level cannot overstep such constitutional guarantees. Such rights are then called constitutionally entrenched: a form of higher law that set limits on powers of political institutions. As such, acts of political institutions can only be legitimate so long as they comply with the human rights norms in the constitution. Constitutional interpretation and enforcement of human rights then is the application of these constitutional norms against the state and its agents such as the legislature and the executive both at federal and constituent-unit level.

Yet, the recognition of human rights in the constitution is an important step forward but is not enough. Strong institutional protection and enforcement is a crucial requirement in giving life to constitutionally entrenched human rights. In addition, such an institution needs to be impartial and independent if it is to set a limit on the power of the political institutions. As Barak argued, 'the protection of human rights – the rights of every individual (...) cannot be left only in the hands of political institutions which by their very nature reflect majority opinion'⁹⁸ and '(...) human rights (civil and political rights) must be insulated from the power of the majority'.⁹⁹ This is particularly crucial in the context under discussion where individuals and intra-unit minorities feel threatened and marginalized by titular ethno-national groups that dominate regional-state political institutions.

Political institutions such as Parliament and the executive are the articulators of the majority's wishes. Time and again history has shown that seeking refuge in the wishes of a democratic majority is no longer good enough. The majority, and more so when it is a titular ethno-national group that claims exclusive control over territory and political institutions, shows little interest in addressing the concerns of intra-unit minorities. This was clearly articulated in the United States in the famous *Carolene Products* case, further elaborated in Ely's *Democracy and Distrust* that draws from the second and third provisions of the

95 Stepan et al., *supra* note 9, p. 18.

96 Watts, *supra* note 16, p. 166.

97 See A. Sen, 'Human Rights and Development', in B. Andreassen & S. Marks (eds.), *Development as a Human Right: Legal, Political, and Economic Dimensions* (2006), p. 4; see also R. Dworkin, *Taking Rights Seriously* (1977) p. 3.

98 A. Barak, *The Judge in a Democracy* (2006), p. xi.

99 *Ibid.*, p. 33.

Carolene Products case.¹⁰⁰ Ely argued that the Supreme Court should interpret the ambiguous clauses of the constitution, particularly the equal protection clause, so as to ensure that the democratic process is kept open to all and that prejudice against particular minority groups does not contaminate the legislature.¹⁰¹ The Court also emphasized the prejudice on the side of majority against what it labelled as ‘discrete and insular minorities’ (not only political minorities but also minorities not represented in public institutions owing to their number/size or ethnic group). They are isolated from the rest of the community because they do not share many interests with the majority and have few avenues to protect their interest.¹⁰² Indeed, this is a critical problem in the Ethiopian federal system where intra-unit minorities continue to suffer because they are under the mercy of local majorities with little incentive to address their concerns related to political representation at sub-state level, claims for local government and use of distinct language. In the *Carolene Products* case, the Court stated that it should strictly enforce the constitution when the legislation in question clearly infringed a specific right identified in the text, had the effect of excluding citizens from the political process or was the result of prejudice against discrete and insular minorities. This suggests that there was a special need for the Court to intervene when the democratic process remains reluctant to address demands of such distinct groups.¹⁰³ Judicial review to protect individual rights including minorities is vital because it is least likely to be protected by the democratic process. Majorities have an incentive to deprive their opponents of their political rights because this helps the majority to retain power.¹⁰⁴

The corner-stone provision in this regard is Article 13 of the Ethiopian constitution, which has so far attracted little attention, neither from practitioners or from academia. Sub-article One stipulates ‘All Federal and State legislative, executive and judicial organs *at all levels* shall have the responsibility and duty to respect and *enforce* the provisions of this chapter’ (Chapter Three: the chapter on human rights). To ensure this, the provision imposes obligations on all public institutions but owing to the nature of the judicial function, the Article provides what one may call the *implicit* mandate of the courts at federal and state level to enforce and hence interpret Chapter Three of the constitution. The mandate of interpreting the constitution and resolve constitutional disputes belongs to the House of Federation (HoF), the second chamber, composed of different ethno-national groups as advised by the Council of Constitutional Inquiry (CCI). However, one may argue that Article 13 vests an implicit mandate in the courts with respect to the protection and enforcement of human rights. This does not rule out the possibility that whoever is not happy with the court’s ruling may refer the case to the HoF/CCI for final and authoritative resolution. A few authors have already made their position clear stating that enforcing the constitution (at least Chapter Three) does not include interpretation.¹⁰⁵ However, this is an understatement at best and a misunderstanding of Article 13 at worst with respect to the nature of the constitution and the nature of human rights.

The judiciary’s role/duty in ‘respecting and enforcing’ the rights and freedoms enshrined in the constitution cannot be meaningful unless it is involved in interpreting the scope and limitation of those rights.¹⁰⁶ It must be noted that this is not only a mandate of the courts but is also a *duty* imposed on them. Whether it concerns the violation of the right to equality or the scope and limits of the freedom of religion, the court cannot arrive at a conclusion without defining the scope of the right in a particular case. The court

100 *United States v. Carolene Products co.* 304 US 144 (1938). The argument in this section that builds on the role of the courts in the enforcement of constitutionally entrenched rights needs to be taken with a grain of salt. For ages the US Supreme Court, as in *Dred Scott v. Sanford* (1857) and *Plessey v. Ferguson* 163 US 537 (1896), failed to serve that very purpose. This was to be reversed in *Brown v. Board of Education* that ended the ‘separate but equal’ doctrine. Until then it was legal to segregate white and black students. Yet after the events that led to the two world wars and following the human rights revolution, the role of courts both at national or supranational level has increased significantly.

101 J.H. Ely, *Democracy and Distrust: A Theory of Judicial Review* (1980), pp. 12-13, 75-77.

102 J. Waldron, ‘The Core of the Case against Judicial Review’, (2006) 115 *The Yale Law Journal*, no. 6, p. 1405.

103 S. Griffin, *American Constitutionalism: from Theory to Politics* (1996), pp. 105, 159.

104 *Ibid.*, p. 105.

105 Y. Tesfaye, ‘Whose Power is it anyway: The Courts and Constitutional Interpretation in Ethiopia’, (2008) 22 *Journal of Ethiopian Law*, no. 1, pp. 128-144; see also C. Mgbako et al., ‘Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and Its Impact on Human Rights’, (2008) 32 *Fordham International Law Journal*, no. 1, p. 278.

106 There is emerging literature that develops this argument. See D. Donovan, ‘Levelling the Playing Field: The Judicial Duty to Protect and Enforce the Constitutional Rights of Accused Persons Unrepresented by Counsel’, (2002) 1 *Ethiopian Law Review*, no. 1, p. 31; see also T. Bulto, ‘Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory’, (2011) 19 *African Journal of International and Comparative Law*, no. 1, pp. 99, 101.

to which the case is brought is going to engage in determining the scope of that particular right and whether that particular right is violated or not, before it concludes whether the public institution or the executive's action has violated a specific right and if so whether the government's act falls within the limits or not. It will be naïve to think that one can simply apply the provisions on human rights¹⁰⁷ without interpreting them as the reference is to constitutional provisions that are often brief, ambiguous, or silent on a number of occasions, or have to be adapted to changing realities.¹⁰⁸ As such, the words do not speak for themselves but require contextual injection of meaning if they are to be intelligible.¹⁰⁹ The constitution is often phrased generally as it is the fundamental document that only states the principles to be applied for generations. As such, interpretation precedes implementation/application which puts primary responsibility on the courts.

It is vital to understand the background and implications of Article 13. As already suggested, the US constitution initially contained no provision declaring the national application of the Bill of Rights. The issue of whether or not the Bill of Rights in the constitution is binding on state institutions was not settled until the second half of the 20th century. The strength of the federal government was tested on several occasions including during the Civil War. Until the second half of the 20th century the Bill of Rights was held only to apply to the federal government.¹¹⁰ Its applicability to state institutions was far from clear. The Warren Court grappled with the difficult task of extending all the Bill of Rights procedural guarantees to the states. The court's reforming vision aimed at federalizing defendant's rights, thereby making them applicable to each state's criminal justice process. The three most important rights instrumental to this shift in paradigm were the rule of search and seizure, the right to counsel and rules prohibiting confessions.¹¹¹ Seen in a federal context, Article 13(1) grants the judiciary an authority the US Supreme Court never had until the 1960s. In a federal system it is possible to argue that human rights included in the federal constitution may have a limited scope only at the federal level. States may provide a better or a lesser protection of rights, and that may lead to a controversy as to the territorial application of fundamental rights and freedoms. Article 13 seen in this context resolves such a dilemma by stating that fundamental rights and freedoms stipulated in Chapter Three extend to all persons within the territorial jurisdiction of the country implying that states cannot provide any less protection than what is provided at federal level. The uniform application of fundamental rights and freedoms is expressly declared and the same provision has imposed on the judiciary the duty of ensuring that fundamental rights and freedoms are 'respected and enforced' throughout the country. Although Article 13 equally imposes obligations on all branches of governments at federal and regional-state levels, the interpretation and protection of these rights cannot be effective by majoritarian bodies on which the limits are imposed.

As outlined above, the constitution provides a generous list of civil and political freedoms. More importantly, most of the rights provided in Chapter Three have been replicated in the state constitutions with slight adjustments. This would mean that the protection and enforcement of human rights is a concurrent (joint) mandate of the federal and state governments. Yet they are least enforced and not surprisingly this has become the ground for human right activists' to remind the government of its obligation to respect rights. There is little political will to enforce civil and political freedoms. Jurisdictional confusion between

107 Tesfaye, *supra* note 105, pp. 128-144; see also Mgbako et al., *supra* note 105, p. 278; Some have argued that courts are prohibited from interpreting the constitution by the framers. See G. Assefa, 'All about Words: Discovering the Intention of the Makers of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation', (2010) 24 *Journal of Ethiopian Law*, no. 1, p. 139.

108 Chief Justice John Marshall stated 'Let's not forget that it is the constitution that we are expounding (...)', in *McCulloch vs. Maryland* 17 US (4 Wheat.) 316, 407 (1819).

109 Griffin, *supra* note 103, p. 13.

110 For example in *Barron v. Baltimore* the Supreme Court decided that the bill of rights applied only to the federal government and hence was not binding on state-level institutions. Later the Supreme Court discovered the 'incorporation doctrine': the process by which US courts applied the bill of rights to the states and local governments. As early as 1925 in *Gitlow v. New York* the court declared that states are bound to protect the freedom of speech. But it was during the 1960s that the Supreme Court imposed standards on lower courts when it comes to rights of accused persons in line with federal requirements. I. Dimitrakopoulos, *Individual Rights and Liberties Under the US Constitution: The Case Law of the Supreme Court* (2007), p. 55.

111 See *Mapp v. Ohio* 367 US 643 1961; *Miranda v. Arizona* 384 US 436 (1966); for details see C. Wolf, *The Rise of Modern Judicial Review* (1986).

the regular courts and the House of Federation has also limited the enforceability of Chapter Three of the constitution.¹¹² One could state civil and political freedoms in Ethiopia remain *without a guardian*.¹¹³

5. Conclusion

Ethiopia's post-1991 state restructuring along federal lines responds to politically mobilized ethno-national groups. It provides territorial and political autonomy to the major ethno-national groups, redrawing the boundaries of the constituent units and local governments in such a way as to ensure self-government and constitutionally protected autonomy. By so doing, the constitution transforms ethno-national groups that may be a minority at the national level into a majority at constituent-unit level so that ethno-national groups can exercise meaningful political autonomy and self-government while at the same time enjoying some level of representation in federal political institutions such as the HoF and the executive.

It has been demonstrated, however, that while territorial autonomy and self-rule may be a step in the right direction in order to address the age-old 'nationality question', the design establishes a titular ethno-national group that claims exclusive control over territory, dominates public institutions, perpetuates the majority rule, and replicates the problems of the 'nation-state' at constituent-unit level. The combination of the majority rule by titular ethno-national group and exclusive control over territory at constituent-unit level in a context of heterogeneous constituent units has had grave consequences for intra-unit minorities.

What the design provides is autonomy for the titular ethno-national group, not autonomy for *all inhabitants* in the constituent unit. Ethiopia's case proves that the process of empowering ethno-nationalist group at regional-state level was conducted without putting in place relevant institutional and policy mechanisms to minimize this major risk. As a result of the failure to provide institutional mechanisms that address the concerns of intra-unit minorities, several deadly conflicts have emerged in the last 25 years. The recognition of 76 ethno-national groups, but only 9 constituent units, is a good indication of the level of regional-state diversity and the vulnerable situation of intra-unit minorities.

The conflicts arose because intra-unit minorities that find themselves on the 'wrong' side of the border were marginalized by titular ethno-national groups that rarely showed interest in addressing their plight. Intra-unit minorities in turn have often preferred to redraw constituent-unit boundaries so as to join another regional state where their ethnic kin constitute a majority. The dispute over boundaries becomes a zero-sum game where the winner (the titular ethno-national group) takes it all and the loser (intra-unit minorities) remains a perpetual minority, a situation resulting in violent conflict.

This article has highlighted gaps in the constitutional design with respect to institutional mechanisms for protecting intra-unit minorities and the need to recast the concept of political autonomy and territory for a particular ethno-national group into a constituent-unit structure for all inhabitants in the states. The key political measures presented as instruments to mitigate the risks associated with the tyranny of the titular ethno-national majority at constituent-unit level are power sharing and NTA.

The central feature of the power-sharing arrangement is the inclusion of political actors that represent the main segments of society (including intra-unit minorities) in the political process at federal, constituent-unit or local-government level. The power-sharing arrangement could be a paritarian one, where the major political actors representing the different groups are represented in public institutions on an equal basis regardless of their size or proportional to the share of the votes that the groups secure in elections. This combines political representation of the geographically dispersed diversity in public institutions, on the one hand, with autonomy and control over culture and language, on the other.

With such dispensation, the dispersed minorities would have legally established public bodies across the various territories, and although minorities may live within a territory where a different national group is the majority, they would not be subject to its laws but to those of their own public institution with respect

112 Several studies have indicated the confusion in terms of jurisdiction between the regular courts and the House of Federation. See Tesfaye, *supra* note 105; A. Fiseha, 'Separation of powers and its Implications for the Judiciary in Ethiopia', (2011) 5 *Journal of Eastern African Studies*, no. 4, pp. 702-715.

113 See A.K. Abebe, 'A constitution without a guardian: Is the Ethiopian Constitution really Supreme?', (2013) 5 *Ethiopian Human Rights Law Series*, no. 1, p. 9.

to language, culture and education. Linguistic and cultural autonomy, in the form of legally guaranteed autonomous public bodies for ethno-national communities, allows such dispersed minorities to have an exclusive say on issues related to their language and culture that concern only themselves. Power-sharing arrangements thus moderate the exclusive attachment of territory by the titular ethno-national groups and recast it differently, developing sub-unit autonomy for all inhabitants of the constituent unit. This introduces the notion of intra-unit minorities *sharing power and territorial space* with titular ethno-national groups, a conception of territory and power in which these are seen as a shared, common good.

Thus, it is possible to construe a different conception of power and territory in which the titular ethno-national group continues to enjoy self-rule while intra-unit minorities also have political and cultural space. This conception of territory takes into account the heterogeneity of the population inhabiting the territory: it is autonomy *of* all inhabitants in the constituent unit, not autonomy *for* a particular ethno-national group.

This first calls for legal and policy reforms at federal and constituent-unit or even local-government level that aim at redesigning the existing electoral laws based on the FPTP to change into a proportional or mixed type to ensure the participation and inclusion of intra-unit minorities who may not be able to win a majority under the current electoral system. Second, it requires constitutional and legal reform at federal, regional-state and local-government level that ensures fair representation of intra-unit minorities in the executive, legislative, judicial, and civil service, and other public institutions of the relevant constituent-unit and local governments. Two other mechanisms include the empowerment of the federal government to safeguard and monitor constituent units' compliance with rights of intra-unit minorities, a matter now largely left to the discretion of regional states, and the strong protection and enforcement of human rights. ■