

Joint Ownership of Land and Right of Secession in the FDRE Constitution

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Introduction

Ethiopia is the home to more than 80 ethnic communities with different languages, cultural and religious diversity. Except in a few urban areas such as the capital city, most of Ethiopia's ethnic communities predominantly live in their respective distinct geographic areas of habitation. There is no ethnic community in Ethiopia a majority that comprises a population of more than 50% of the total population of Ethiopia. But there are relatively significant majority ethnic communities such as the Oromo and Amhara. Most of Ethiopia's ethnic communities are divided along mainly two religious cleavage lines: Islam and Orthodox Christianity. By crosscutting Ethiopia's ethnic cleavage lines, religion plays a moderating role in limiting the intensity of the ethnic factor in politics, giving rise to overarching loyalty.²

The 1995 constitution of Ethiopia established a federal system that is organized on the basis of the right of Ethiopia's ethnic communities to self-determination. The recognition of the right of self-determination has become imperative to establish peace and democracy in the country and has demanded the reconstitution of the Ethiopian state on the basis of a federal political system that guarantees the maintenance and promotion distinctive ethno-cultural identities while building a common polity that allows them to pursue their common interests. In as much as ethnic federalism institutionalizes the self-rule and shared-rule of Ethiopia's territorial ethnic communities by guaranteeing their representation and participation in the governance process, it is a viable constitutive means to democracy. The federal arrangement in Ethiopia is not only aimed at enabling ethnic communities to maintain and promote their distinctive collective identities and their particular forms of life it is also directed towards building one political and economic community for the promotion of their common interests collectively, in a mutually supportive manner.³

² Hashim Tewfik(PhD), Federalism in Ethiopia, January 15,2010 page 5

³ See preamble paragraphs, the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Federal Negarit Gazeta , 1st year No.1, Addis Ababa, 21st August 1995

Ramifications of Right to self-determination

The FDRE Constitution departed from its predecessors in many aspects; the right of self-determination of Nations, Nationalities and Peoples is the major one. The right of self-determination has internal and external aspects in which it is exercised in any of these four ways.

First of all, the rights of Nations, Nationalities and Peoples to speak, write and develop their own languages as well as to express, to develop, promote and preserve their culture and history are guaranteed on a constitutional level. In fact, these rights are considered to be the inherent rights of Nations, Nationalities and Peoples of Ethiopia. Regardless of the administrative hierarchy of the territories inhabited by them, Nations, Nationalities and Peoples have a fundamental right to develop their respective cultures and preserve their history. If a Nation or Nationality believes that its identity is denied or promotion of its culture, language and history is not respected, it may submit its petition formally to the House of Federation for consideration and decision.

The House of Federation has recognized this form of self-determination in many of its decisions. HoF through various referenda determined the rights such as to have a distinct identity recognized and protected accordingly. For instance, a referendum had been conducted in the case of Siltie people living in the SNNPRS so as to determine their distinct identity as opposed to the other adjacent nations and nationalities.

The Siltie can now develop their own culture, language and history distinct from other ethnic groups. The decision of the House took into account the wishes and aspirations of the people to be identified in the way they have desired. Actually, it was a prime experiment in the exercise of the right to self-determination by a group in terms of cultural and linguistic peculiarities.

Another manifestation of the exercise of the right to self-determination is the right to a full measure of self-government which includes the right to establish institutions of government in the territory which a given group inhabits. It has been proclaimed under the Constitution that the government shall promote and support the people's self-rule which is guided by democratic principles at all levels. Under this category, Nations, Nationalities and Peoples have the right to establish their own local governments such as the Zonal, *Woreda* and *Kebele* administrations.

Hence, all regional states and their administrative subdivisions currently have their own governmental structures allowing them to administer their day-to-day affairs by themselves. The scope of such a right to self-administration extends to the formation of a regional state that would become a member of the Federation. The question of any Nation, Nationality and People to form its own state is carried out through the approval of a two-thirds majority vote of the members of the council of the Nation, Nationality and People concerned and by a majority vote in case of a referendum. Any party aggrieved by the decision of the council has the right to appeal the decision to the House of Federation.

The third manifestation of the exercise of self-determination is secession. This allows a Nation, Nationality or People to form its own sovereign state under international law. Given the unity in diversity and the brotherhood of the people and the protection of the fundamental individual group rights, the question of secession is not likely to arise. Yet, a Nation, Nationality and People may secede if the people opt for such an action. The Constitution and the House of Federation's Consolidation Proclamation have set out the procedure for secession to be carried out under the direction of the House of Federation. The principal requirements for a state to secede are two-thirds support by the legislative council of the Nation, Nationality and People concerned and a majority vote in a referendum.

The other aspect of the exercise of self-determination is the representation and participation of Nations, Nationalities and Peoples at all levels of government structure. By virtue of the Constitution, every Nation, Nationality or People has the right to be represented in both the state and federal governments. This representation embraces the right to participate in the legislative organs as well as executive and law enforcement bodies at federal and state levels. Hence, Nations, Nationalities and Peoples are represented in the two houses of the Federal Democratic Republic of Ethiopia. Members of the House of Peoples' Representatives, who shall not exceed 550, are directly and freely elected to represent the Ethiopian citizens as a whole, while the seats are allocated on the basis of the number of people belonging to Nations, Nationalities and Peoples.

Those minorities that do not meet the numerical requirement shall have special representation in the House. At least 20 seats are reserved for such Nationalities and Peoples. This is a special

representation established by the Constitution from the very outset. Details of the criteria as to who shall fall within this category are to be set out by the decision of the House of Federation. On the other hand the House of Federation is composed of the representatives of all Nations, Nationalities and Peoples in the country. Currently, it has 120 members drawn from 74 Nations, Nationalities and Peoples across the country.

From a practical standpoint, special measures are adopted in all government institutions to ensure the fair representation of all people of the country. The usual measure is to give priority at the time of recruitment or promotion to those candidates coming from a less-represented Nation or Nationality from among the candidates with equal results. The effort of the Federal Police Commission to accommodate the underrepresented Nations, Nationalities and Peoples is perhaps a good showcase in this regard.

Hence the right to express, to develop, promote and preserve their identity which includes one's language, culture and history, self-administration, and representation and participation of Nations, Nationalities and Peoples at all levels of government structure are part of the internal aspect of the right of self-determination whereas, the right to secession is the external aspect of the right to self-determination.

In this paper, I will assess whether the right of secession in the FDRE Constitution is unconditional and its relation with the principle of joint ownership of land.

Ownership of Land

Ethiopia experienced different land tenure systems. Without further going to old times and only looking at the past century, it is possible to classify the land tenure systems of the country into two using the year 1974 as a benchmark.

Pre-1974 period could be characterized as a feudal system where a mixture of private, government, church and communal land holdings coexisted. These land tenure systems had various kinds of landholding arrangements. The two prominent kings of the country in the contemporary era – Emperor Menelik and Emperor Hailesilassie introduced written land laws, which were believed to have benefited certain land lords and negatively affected

majority of the farming communities. However, the laws during the emperors' time allowed sale, exchange and mortgage of individual holdings.

The post-1974 period could be characterized by public ownership of all land. Following the coup that toppled Emperor Hailesilassie from power, all rural and urban lands were declared to be a state property abolishing all private and communal land ownership rights without compensations. Individuals and communities were given only "use rights" over the land. In 1991, the current Government took power defeating the socialist oriented Military Government. Despite the newly introduced political and economic changes, land remained public property. The Constitution of the Federal Democratic Republic of Ethiopia unequivocally states that land shall not be individual's property.

*"The right to ownership of rural land and urban land, as well as of all natural resources is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange."*⁴

*"Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development."*⁵

There have been critics against these constitutional provisions and the land administration Proclamations derived from it. Many believe that limiting land holders ownership to certain use rights not only infringe basic property rights, but also restrict users in many ways. Whereas, the Ethiopian Government firmly holds the position that free property rights including sale of land could lead to distress migration of the poor and accumulation of land in the hands of the few.

Who is the owner of land?

This might seem rhetorical question by the reason that everybody claims to know it though nobody is able to explain and justify to the extent that is plausible. The FDRE constitution stipulates that the ownership of rural and urban land, as well as of all natural resources, is

⁴ Supra note 3 article 40(3)

⁵ Id article 89(5) emphasis added

exclusively vested in the *state and in the peoples of Ethiopia*. Proceeding to narrate the fact, the constitution provides land as the common property of the Nations, Nationalities and peoples of Ethiopia and adds it shall not be subjected to sale or to other means of exchange.⁶

It is understood that, the word “state” is an abstract entity which incorporates four elements; population, government, territory, and sovereignty being the major ones though recognition have also its role.⁷ The question here is why did the constitution deliberately stated ownership of land exclusively vested in the state and peoples of Ethiopia knowing peoples of Ethiopia are subset of the state of Ethiopia? The common answer given is to give emphasis land is the common property of Ethiopians. Here, though theoretical it might seem, government being the subset of state and state being the joint owner of land, a question can be raised is, “does the government have land ownership claim?” To caption the obvious, the answer is “yes” or “no”. Considering the government the subset of the state, which the constitution exclusively vested ownership of land on the “state and peoples of Ethiopia”, we can say that the government have a say. On the contrary, the constitution clearly provides the role of government in relation to land and other natural resources that makes it custodian; the government has the *duty to hold land and other natural resources on the behalf of the people*.⁸ In relation to this, one point worth noting is, the constitution used the word “መንግሥት” for both “state” and “government” which is wrong. The word “state” is “መንግሥት” and another word should be used for government like “አስተዳደር” or “አስፈፃሚ” to avoid confusion. This requires series attention because, as human beings we communicate with the agency of language meaning words are the most useful tools at our disposal. If we do not use words correctly, meeting of minds will be difficult. Though the word “መንግሥት” mean “state”, but in our day-to-day activities (including the media and higher government officials) we hear it being erroneously used to mean both “state” and “government”.⁹ The problem becomes more severe when it is used in the constitution. For example, article 40(3) Amharic version of the constitution states that:

⁶ Article 40(3)

⁷ Article 1 of the 1951 Montevideo Convention

⁸ Supra note 3 article 89(5)

⁹ See articles 40(3), 40(6), 51, 56, and 89(5) of both the Amharic and English version

የገጠርም ሆነ የከተማ መሬትና የተፈጥሮ ሀብት ባለቤትነት መብት የመንግሥትና የህዝብ ብቻ ነው። መሬት የማይሸጥና የማይለወጥ የኢትዮጵያ ብሔሮች ብሔረሰቦችና ሕዝቦች የጋራብንብረት ነው።¹⁰

If things carry on this way the word “መንግሥት” will acquire secondary meaning¹¹ to mean “government” and will create great difficulty. Imagine for instance, when the above article is understood as if it meant “land is owned by the government and peoples of Ethiopia”; which is automatically out of the spirit of the constitution. Though the problem is only in the Amharic version it made it so difficult by the fact that the Amharic version is the final legal authority in time of contradiction.¹²

The concept of joint ownership

Joint ownership or Co-ownership is the right of ownership exercised by two or more persons in relation the same object. In other words, it refers to the right of use and enjoyment, right of possession and exclusion of others and the right to transfer a thing or to charge it with pledge or mortgage exercised jointly by several persons.¹³

If for example, four individuals A, B, C and D jointly own a building having four rooms and each joint owner occupies one room, the building shall remain undivided and each room belongs to all the joint owners and not to the particular person who occupies and uses it.

Note that the share joint owners have in the thing is determined by the agreement entered in between them. However, where there is no agreement as to the share of joint owners, the law presumes that they have equal share.¹⁴

¹⁰ Article 40(3) Amharic version emphasis added

¹¹ Secondary meaning is Intellectual Property (Trade Mark) concept which means by the act of usage when a word relinquishes its original meaning and acquires new meaning.

¹² Supra note 3 article 106

¹³ Article 1257 (1) of the Civil Code Proclamation No. 165/1960

¹⁴ Fassil Alemayehu, Law of Property, 2009

The following are the main characteristics or natures of joint ownership:

- The thing, which is jointly owned, is undivided and,
- Each joint owner is considered as owner of each and every part of the thing.

Though this may seem theoretical, when we see the constitution carefully, it states...*land is a common property of the Nations, Nationalities and peoples of Ethiopia...*¹⁵ Ethiopian land undivided is the property of nations, nationalities and peoples of Ethiopia. Every nation, nationality and people is joint owner and has ownership right on each and every part of land of Ethiopia. Hence, the land possessed by nation, nationality and people “X” is not his sole property; other nations, nationalities and peoples of Ethiopia have ownership claim on it. Every particle of Ethiopian land is jointly owned.

The question that can be raised is the sovereignty of regions of the federation. It is clear that sovereignty resides on nations, nationalities and peoples of Ethiopia¹⁶. That is why they are joint owners. Every nation, nationality and people *possesses the portion of land on its control*. This is why article 52(2) (d) of the constitution states that, states *have the power to administer land and other natural resources...* emphasis mine.

Right to secession

The FDRE constitution among other points has made a departure from the constitutions reigning before it that it established federal system of government, it vests sovereign power to the nations, nationalities and peoples of Ethiopia, and more over it incorporated the most controversial issue of right to secession which is provided to be exercised unconditionally. Although the secession right has been included in art. 39 of the constitution guarded with the supremacy clause in art. 9 there are unsettled arguments for and against such a bold right. Some argue that it should be avoided from the constitution; some others argue that it is a guarantee for the mutual respect, dignity and tolerant political togetherness, some others with moderate stand claim that stringent conditions should be attached to it.

¹⁵ Supra note 3 article 40(3) emphasis added

¹⁶ Id article 8(1)

As the purpose of this paper is to examine whether the right to secession is unconditional, I will carefully analyze the FDRE Constitution's stand; whether the right to secede is conditional or unconditional though it literally states every Nation, Nationality and People in Ethiopia has an *unconditional right to self-determination, including the right to secession*.¹⁷

1. Practicality

The FDRE Constitution has provided unconditional secession right. What is understood from this is that the constitution exaggerated the value of secession as if it is sacred and absolute movement and has made it unconditional variation from the remedial nature of secession. What makes the issue interesting more is that the constitution has focused on the external element of self determination - secession than for clear procedures for sufficient representation of the diverse groups in the government institutions. The constitution fails to provide for equitable representation of ethnic groups in the executive, judiciary and civil service. Although it provides for the nations, nationalities and peoples to establish institutions of government in their locality it gave the power to establish local governments to states without making the ethnic based local governments mandatory. The other point is the constitution has illogically made self-determination including secession right not subjected to derogation. The idea that secession is highly valued in the constitution is also reflected in the procedure that simple majority support in referendum is sufficient. However, since the secession claim is to be approved by the 2/3 majority of the legislative council of the nation, nationality and people concerned and that not all ethnic groups have this necessary legislative council it seems that the practicality of the unconditional secession right is limited, creating a paradox - granting unconditional secession right and at the same time limiting its application.

2. The power of House of Federation

The House of Federation is entrusted with powers to undertake its functions. Its power in relation to secession is to decide on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession in accordance with the Constitution.¹⁸ In

¹⁷ Id article 39(1)

¹⁸ Id article 62(3)

Ethiopia there are nations which established their own regional state; like Tigray, Amhara, Oromia, Afar and Somalia. If these nations opt to secede and if the HoF decides accordingly, the article of the constitution which enumerate members of the federation will be impliedly amended¹⁹. The question that can be raised is: does it have the power to amend the constitution apart from its interpreting power? The answer is No! If one of the nations which have established their regional state secedes, it shall pass through the amendment procedures²⁰ because it tacitly amends the constitution.

3. The Joint ownership nature of land

The constitution stated that Ethiopian land undivided is the property of nations, nationalities and peoples of Ethiopia. Every nation, nationality and people is joint owner and has ownership right on each and every part of land of Ethiopia. Hence, the land possessed by nation, nationality and people “X” is not his sole property; other nations, nationalities and peoples of Ethiopia have ownership claim on it. Every particle of Ethiopian land is jointly owned. The question that can be raised is the sovereignty of regions of the federation. It is clear that sovereignty resides on nations, nationalities and peoples of Ethiopia²¹. That is why they are joint owners. Every nation, nationality and people possesses the portion of land on its control. Hence, though ideal it may seem, other nations, nationalities and peoples have a say on the secession of a given nations, nationalities and people and their voice should be heard.

In nutshell, the right of secession of nations, nationalities and peoples of Ethiopia is not unconditional as it appears to be. Instead it is conditional one. In spite of the debate on the conditional versus unconditional nature of right of secession, as we can learn from history and the current reality, no one can hold a given nations, nationalities and people against its will from seceding.

¹⁹ Id article 47(1)

²⁰ Id articles 104 and 105

²¹ Id article 8(1)

Conclusion

Ethiopia being the home of more than 80 ethnic communities with different languages, cultural and religious diversity which most of ethnic communities predominantly live in their respective distinct geographic areas of habitation except in a few urban areas such as the capital city.

The 1995 constitution of Ethiopia established a federal system that is organized on the basis of the right of Ethiopia's ethnic communities to self-determination. The recognition of the right of self-determination has become imperative to establish peace and democracy in the country and has demanded the reconstitution of the Ethiopian state on the basis of a federal political system that guarantees the maintenance and promotion distinctive ethno-cultural identities while building a common polity that allows them to pursue their common interests. In as much as ethnic federalism institutionalizes the self-rule and shared-rule of Ethiopia's territorial ethnic communities by guaranteeing their representation and participation in the governance process, it is a viable constitutive means to democracy.

The constitution also made land common property of the Nations, Nationalities and peoples of Ethiopia... Ethiopian land undivided is the property of nations, nationalities and peoples of Ethiopia. In other words, every nation, nationality and people became joint owner and entitled to ownership right on each and every part of land of Ethiopia.

Despite of the debate on the conditional Vs unconditional nature of right of secession, as we can learn from history and the current reality, no one can hold a given nations, nationalities and people from seceding against its will. In nutshell, the right of secession of nations, nationalities and peoples of Ethiopia is not unconditional as it appears to be; instead it is conditional one.

Recommendations

The FDRE Constitution came up with important concepts and recognized rights which its processor constitutions used to suppress like sovereignty of nations, nationalities, and peoples, their right of self-determination including the right to secession, has its own flaws that need adequate attention and I recommend:

The correct use of the Amharic word “መንግሥት” because, the constitution used the word “መንግሥት” for both “state” and “government” which is wrong. The word “state” is “መንግሥት” and another word should be used for government like “አስተዳደር” or “አስፈጻሚ” to avoid confusion. This is so serious because, as human beings we communicate with the agency of language meaning words are the most useful tools at our disposal. If we did not use words correctly, meeting of minds will be difficult. Though the word “መንግሥት” mean “state”, but in our day-to-day activities (including the media and higher government officials) we hear it being erroneously used to mean both “state” and “government. The problem becomes more severe when it is used in the constitution. For example, article 40(3) Amharic version of the constitution states that:

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If things carry on this way the word “መንግሥት” will acquire secondary meaning to mean “government” and will create great difficulty. Imagine for instance, when the above article is understood as if it meant “land is owned by the government and peoples of Ethiopia”; which is automatically out of the spirit of the constitution. Though the problem is only in the Amharic version it made it so difficult by the fact that the Amharic version is the final legal authority in time of contradiction.

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