

Book Review

Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study** (Revised Edition; 2007). Addis Ababa: Artistic Printing Enterprise. Pp. xv; 480. Price not indicated.

GETACHEW ASSEFA*

I am in no doubt that I will risk any exaggeration in saying that Assefa's book is the first comprehensive work which is devoted to the multifaceted issues arising in the context of the new Ethiopian federal system.¹ From the enormous amount of literature reviewed from wide backgrounds such as law, political science, social and political anthropology, and from the extensive review and analysis of facts on the ground, one can easily see that the book has gone far beyond the legal text analysis, which is customary in legal researches. It, in this regard alone, represents a commendable break from the usual legal researches we see. I hold a sincere belief that Assefa's book represents a dawn of a new era for legal research in Ethiopia.

The book was an attempt to explain the most vexing questions that face all federations in general and multiethnic ones in particular with a great focus on its main subject: Ethiopia. The leading research agenda the author has had while embarking on the work was to see whether the Ethiopian federal arrangement has put in place mechanisms that best accommodate 'the various ethno-linguistic groups in Ethiopia'(p.2.). The author has also other very pointed ancillary research questions that served as guidelines to decipher the large Ethiopian and foreign comparative materials that have gone into the book. Important such questions include questions on 'how best to restructure the constituent states' of Ethiopia in order to establish 'a more viable federal system'; the models of federal arrangements that are suitable to adapt to the Ethiopian reality; the

* The book is a revised and updated version of the PhD thesis the author defended on 9 November 2005 (University of Utrecht, the Netherlands, as indicated on p. ii of the book)

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¹ It is true that we have many academic research exercises on the Ethiopian federal arrangement as part of master's and doctoral researches by foreigners as well as by Ethiopians. As a comprehensive list of these works is not yet available, it is not possible for this writer to mention the works here. We also know that the Ethiopian federal system has been so far a subject of some conferences and discussion forums in Ethiopia and abroad. See For example, David Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspectives* (James Curry, Oxford, 2006); _____ ; *First National Conference on Federalism, Conflict and Peace Building* (Symposium Proceeding published by the Ministry of Federal Affairs, Addis Ababa, 2003)

optimal ways and extent of dividing powers that best serve the Ethiopian context; the mechanisms of ensuring the proper balance between the shared-rule and self-rule aspect of a federal arrangement that best suits the Ethiopian reality (p.3).

Organizationally, the book is divided up into 9 chapters including a chapter on conclusions and recommendations (and excluding the introductory part). In what follows, I will use the organization of the book and present my observations of the outstanding issues of the book and attempt comments which the author may want to take into account during future editions of this important book. I trust that the approach I adopted will suit the reader of the book and also my comments because as I have observed it each of the chapters of the book sort of stand capably on its own (though they are interdependent and interconnected).

The first chapter lays a foundation for the discussion in the book by looking at the past political and administrative history of Ethiopia. One of the most striking contentions the author makes in the first chapter of the book, aside from the many informative and interesting discussions on the Ethiopian historiography, as approached in quite different ways by Ethiopian historians, is about the historic Ethiopia's (before 1889, i.e., before Emperor Menelik II reign) being a '*de facto* federal state. The author argues that before the reign of Emperor Menelik II, Ethiopia's power relation between the centre and the peripheries was one of decentralization than centralization on the basis of what he calls 'provincialism'.² (pp. 16-21).

This is a very interesting reading of the administrative history of Ethiopia. But I think it is interesting to point out also that the autonomy in respect of the provinces existed in favour of those who were strong enough to exert it; many a people have been enslaved and subjugated by both the central and provincial authorities without any sign of self rule. So to that extent, one should forewarn a reader of Assefa's book the *de facto* federation in Ethiopia lacked almost absolutely a principle of equality of peoples.

In his review and analysis of the 20th century crises of the Ethiopian State, Assefa presents an interesting summary of what unfolded in this period in the political as well as socio-economic landscape of the then Ethiopia. He tells us that most of the students of the political history of Ethiopia seek to explain the crisis in two major lines. The one line is an attempt to explain the crises as resulting from the monopolization of political power and thereby material and social resource by some in exclusion of the others, and that ethnicity at best was a factor or an element but not a sole cause of the 20th century crises in Ethiopia. (pp.55-57). This line of understanding contends that ethnicity was used as an instrument to further the agenda of power and resource access. The second major line of explanation of the state crises which was popularized by the Ethiopian Student Movement of the 1960s is along the existence of ethnic/national operation (pp.69-82). Assefa sees merit more in the combined contribution of both positions and

² See pp. 16-21. The author cites many scholars that have in different ways endorsed the idea that historic Ethiopia approximated a federal system.

concludes that the most important reason for the failure of the 20th century Ethiopian State was the latter's failure to accommodate ethno-cultural diversities of the inhabitants that were brought into the Ethiopian empire primarily as of Menelik II's era. This failure, according to him was manifested both in terms of dominance of the one ethnic group (the [Shewan] Amhara) in exclusion and marginalization of the others politically, socially, culturally as well as economically.

The second (pp.99-138), third (139-164) and fourth (pp.165-112) chapters of the book are devoted predominantly to the comparative aspect of the work. The author deliberately selected those federations that recognize multiculturalism as a political fact and which have fashioned in creatively different ways their public life by taking this fact into account (p.6). After making basic and helpful discussions about the concept of federalism (and federations); some important common denominators of federations; and institutional conditions of federations in the second chapter³, the author focused on one specific aspect of federal institutions in the third chapter, namely, the second/upper legislative house in federations.

The third chapter of the book has in a clear and interesting manner brought out the rationale for the existence of upper houses; the nature of their composition; and the functions they render. The author has shown us in this chapter that in all federal and federal-like systems, upper houses are not constituted on the basis of normal election principles of 'one man one vote' (as it is the case for lower houses) but rather through special system designed to ensure equal or at least equitable representation of the states forming the federation. Because of the nature of its composition, the author explains, these houses are meant to protect the interests of the states units at the federal level against the federal government's derogation from, or encroachment upon the states powers, and guarantee the participation of the states in federal decision-making as an aspect of the shared-rule. He also tells us that at least the federations considered in the study (except the Ethiopian one) have constitutionally empowered their upper houses with legislative competence..

The author in this chapter points out that as it does not empower the House of the Federation (the federal upper house) with legislative competence, 'the Ethiopian Constitution fails to entrench the states, or to use the terms of the Constitution, the nations, nationalities and peoples to be part of the federal law-making process' and that this exclusion of the states or the nationalities from the federal law making process may have negative consequences especially in situations where the central government

³ One of the important points he makes in the discussion in the second chapter for example is that there are theoretical, legal and practical consensus that in the division of powers between the center and the units, division is often made in such a way that the scale of power is tipped in favour of the center for the latter to prevail in the events of conflict. See for example, pp.108-114. The Author also succinctly discussed in the same chapter the fundamental legal and institutional requirements for a successful federation (pp. 120-127).

power is controlled by a group or a party different from those controlling the states' governments (pp.144-45).

The above is a very plausible position which I agree with. But I believe that one should look at this matter within the context of the whole Ethiopian constitutional dispensation including the powers given to the Ethiopian Upper House. My disagreement with the author's conclusion is that he did not look at the Ethiopian arrangement (for a non-legislative upper house) as an arrangement that tries to put in place a uniquely composed upper house (fundamentally different from all other federations known to us so far) with a different balance of power and institutional competence that gives enough leverage, for the entities it represents, against the federal government in its own ways.

Contrary to the author (and some others agreeing with him as explained in the book) who believes that the states are let-down by the Constitution in this regard, I argue that from the point of view of the states' (or the nationalities') interests at the federal level, the power of the House of the Federation (HoF) to interpret the Constitution offsets the most important shortcoming that may have resulted from its being a non-legislative house. This is in short because any overreaches or derogations by the federal government, through its laws or other decisions, on the powers and interests of the states (against the federal Constitution's division of powers) could be corrected by the House of the Federation through its constitutional interpretation power. So here in the Ethiopian case, what we have is not a situation where once laws are enacted they become out of the reach of the body that represents the states or the sub-national entities, as in other federations; rather precisely, what we have is a situation in which the end of the power of the federal legislative chamber, i.e., the House of Peoples' Representatives (HoPR), in respect of a given law, marks perpetually the beginning of the power of the House of the Federation to nullify that law in *toto*, or any part of it through its interpretation power thereby replacing the law or its part with its own decision. So, this way, the Ethiopian arrangement emasculates the danger that the federal government might bully the states unconstitutionally through the House of Peoples' Representatives or the federal executive. My point is that given the fact that the House of the Federation cannot be a legislative chamber and an interpreter of the Constitution at the same time⁴, the existing constitutional setup seems to me to have creatively designed an alternative system that uniquely protects the interests of the states and/or the nationalities at the federal level.

⁴ The author's argument in this chapter that the HoF should be given a legislative competence cannot in my opinion be accepted unless its power to interpret the Constitution is withdrawn, for otherwise this will have a consequence of making the HoF a law-maker and a judge on the constitutionality of the law it makes at the same time.

Another finding of the author I would like to view critically is the one that relates to the system of representation of the nationalities in the HoF. Assefa states that the Constitution endorses almost the same principle of composition for the HoF as the one for the composition of the lower house (p.149). By citing Art.61 (2) of the Constitution, he states: 'the organizational principle of the HoF is the same with the HoPR except that there is a significant difference in the number of constituencies, 100,000⁵ for the former and one million for the latter', and concludes that 'this puts into question the rationale for setting up a second chamber in a federation' and that it is wrong to consider the House as a defender of the rights of nationalities (e.g., p.162, footnote 97; p.243). Again, to briefly state my perspective on this, I say that the fear of the author that the HoF would be composed in such a way that the more populous nationality would end up in having more representatives in it thereby turning the House into 'a nearly majoritarian House' is correct on the face of it. But I think at the same time that given the current nature of the states of the Ethiopian federation, there is very little chance, if at all, for the more populous groups to dominate the decision in the HoF. One should see from the author's figure (on p.149), the number of representatives for the most populous state, Oromia (for the 2001-2005 term of House) was 18, while it was 51 for SNNPS (Southern peoples State).⁶ Since individual nationalities are the ones to be represented in the HoF, the most diverse state (as opposed to the most populous state, hence group in some cases) ends up in having the greatest number of representatives in HoF. Because of this, I believe that the Upper House in Ethiopia also serves the interests of diversity in its own ways because of the careful design. In addition, just briefly, one should not also forget that in Ethiopia, the reason for the federal arrangement was not solely the need to accommodate interests of least populated (hence numerically minority) groups, but also, perhaps more so, in order to accommodate the interests of those numerically not terribly minorities (in some case numerically large or largest) but felt marginalized in the past.⁷ So the constitutional arrangement should address the interests of those populous groups who would feel swamped, if the Constitution were to opt for equal or so representation for all nationalities, by the numerous small groups in the country. By making the representation of the HoF less majoritarian (by requiring one million people for one additional representation) on the one hand and by granting at least one representative for every nationality in the country on the other, it seems to me that the Constitution has fairly addressed the needs of both the numerically small and the numerically large groups in the country.

⁵ According to Proclamation No. 532/2007, a size of a constituency shall be determined proportionately by taking into account the total population of the country (during every election) on the basis of the maximum number of seats of the HoPR, which is 550, including seats for special representation (not to be less than 20; Art. 54, FDRE Constitution).

⁶ The figure has slightly changed for the current (2005-2010) term.

⁷ The Oromo people are the case in point.

The fourth chapter is devoted to explaining in depth the approaches taken by some multiethnic states in designing a workable federal solution to accommodate their diverse societies. Accordingly, the author has thoroughly discussed the Nigerian, Swiss and Indian federations in the light of the above vantage point and brought out very interesting account of both the development and the current state of being of those federal systems. The information in this chapter offers very helpful insight for public policy in Ethiopia as well.

The core of Assefa's book, I believe, is Chapter 5. This can be observed from the title of the Chapter itself: Federalism and accommodation of diversity: The Ethiopian Experience. Here, the author has tried to address the research question of the entire book (see also top of p.213). He also looked at practical matters and concerns of implementation that have unfolded since the start of the Ethiopian federation. Assefa asserts in this part of the book that the Ethiopian Constitution which brings into being the federal system contains some contradictions in combining 'ethno-nationalism and self determination on the one hand and federalism on the other (p.219). He also points out here that (he did also point out this earlier in the third chapter of the book, reviewed above) the states of the Ethiopian federation are not guaranteed ways of participating in federal decision making and hence the shared-rule aspect of federalism has not been adequately addressed (p.228). He also points out importantly that there is no principle of federal supremacy in the Ethiopian constitutional federalism. He explains that as the case of overlap of powers remain inevitable in federations, it is important that federal constitutions enshrine a principle of supremacy of federal laws over state laws, which the Ethiopian Constitution fails to do (p.229). He further argues that unlike other federations where the elements or forces of unity slightly prevail over those of diversity, in the case of the Ethiopian federation, the reverse is the case (pp. 229-30). He convincingly argues in this connection that the study of federations and discourses on federalism show that a federal system aims at creating a stable and perpetual state either out of many units that come together or by preserving a state through 'a timely recognition of its inner diversity'. Hence, the argument is that federal supremacy is pivotal in creating a perpetual federal system.

Assefa also mentions in this part of his work about the issue of compatibility of secession as a constitutional right, and federalism (pp. 234-36). He has discussed the Ethiopian Constitution's provisions in this regard and the arguments and debates that were held during the making of the Ethiopian Constitution back in early 1990s. However, in view of the fact that secession is one of the thorniest issues at home and abroad, and in view also of the fact that amidst this controversy the Ethiopian Constitution has taken such a bold step of constitutionalizing secession unconditionally, a little more unpacking of the discourses surrounding the concept would only be more appropriate and expected in the book, which has not been done.

Assefa also suggests that in view of the many differences between the states of the Ethiopian federation, it may be wise to rethink the federal arrangement again and set up an asymmetric system. He indicates that although the Constitution aims at creating

symmetrical federalism, there is in practice a political asymmetry as regards some of the member states (pp.240-42). The consequence of this suggestion is for example that there will be differentiated levels of federal-state power and jurisdictional relations depending on the dictates of the facts on the ground in relation to the concerned states. The author has shown that the idea of asymmetry has been put to use by federations he has studied. I believe that this is an idea worthy of putting on the table for discussion in Ethiopia as well.

Assefa also discussed briefly but clearly the opinions of both the detractors and supporters of the Ethiopian ethnically based federalism (pp.47-53). He concludes in this regard that although the federal system has both foundational (owing to the problems in the Constitution itself) and practical limitations, it remains to be the only measure that could ensure the survival of the Ethiopian state. He points out in this same Chapter that the outstanding foundational limitations include the failure to take into account historic mobility of people and inter-group relations; failure to incorporate principles of asymmetry; its inability to put in place a system to guard against the danger of local tyranny; and absence of a compelling power-sharing schemes among the major contending groups (through for example PR election system). He has boldly and lucidly indicated the weak points in the foundational framework that needs to be reconsidered for the Ethiopian federal system to be able to forge a more perfect union while celebrating diversity. I believe that Assefa has initiated great thoughts which the political system may want to consider, further improve and put into action for a better Ethiopia.

Assefa also passes on a suggestion (which he says is made by others and he seems to concur with) in the same Chapter that may raise the eyebrows of many a people: a suggestion on restructuring of the Amhara and Oromia states (p.265) and also Somali state (p.266-7). He believes that restructuring these states 'addresses not only the asymmetric federal system but also brings administrative convenience. The author mentions the ideas and options propounded by those who favour the restructuring of the states (p.266). He makes it clear that the restructuring suggestion should not be confused with a call for adopting the American style geographical federalism for he says the latter is incompatible with the context of multi-cultural federal systems (p.267). Rather, the author makes a suggestion for restructuring the states somewhat along the line of Swiss cantonal structuring where the same language speakers live in many different cantons that are made to reflect and protect the essential attributes of diversity (see p.267).

This idea of restructuring proposed by Assefa certainly is a proposal to consider. However, as we can see from the book, the proposal has been only concisely discussed. But one would want to see more data and information on the Ethiopian reality that may convince the reader, including the one opposed to the idea, to see merit in the proposal. We would have liked to see more on how the new proposal if implemented would turn the existing problems around in terms of promoting the interests of those citizens of the states to be subjected to restructuring; in terms of promoting positive inter-ethnic

relations across the several states in Ethiopia; in terms of promoting the self-rule of the various nationalities and the overall national unity of the country, and so on. Most importantly, I believe that those nationalities in the states to be restructured need to be assured that they will have nothing to lose, but to gain, by the act of restructuring, and that their identity as a people in each case would remain intact across the sub-divisions to be created. More needed to be discussed in the book in this regard as well.

In addition to the above, the author's suggestion for restructuring seems to have in mind primarily the size of the three states selected. But, one may ask a worthy question as why the restructuring be limited only to consideration of size, and to only the three states. For example, should not we think the restructuring of the Amhara State along with restructuring of the Beneshangul/Gumuz State in which parts of the two states may be merged on the basis of practical considerations to be carefully designed? So I think that Assefa's suggestion is thought-provoking and interesting as it is, but at the same time more issues that are provoked by the suggestion itself needed to be addressed.

The book in chapters 6 and 7 deals with division of legislative powers, and division of executive powers and intergovernmental relations, respectively. In the sixth Chapter, Assefa essentially grapples with the two contending views regarding the constitutional viability or autonomy (in respect of law making powers) of the states of the Ethiopian federation. Many observers believe that the division of powers made by the Ethiopian Constitution devolved very insignificant powers to the states by concentrating more powers at the center. Assefa wants to show the reader that 'if the provisions of the Constitution are taken seriously, at least as far as the self-rule is concerned, the powers of the states are more comparable to a confederation than a federation' (p.293).

Considering the pattern of power division in some federations (USA; Germany, Switzerland and India) and comparing those with each other and the Ethiopian arrangement, Assefa draws out a conclusion that each of these federations has followed quite different approaches in the matter (294-342). As regards the main contention he makes, i.e., that the states of the Ethiopian Federation wield considerable power, Assefa strongly argues that 'the comparative study seems to suggest that the constituent [Ethiopian] states rather have an overwhelming amount of power at least so far as self-rule is concerned' (p.342-43). He states that the states make their own procedural and civil laws; their own constitutions; they are constituted of nationalities that are sovereign and have the right to self-determination up to and including secession. Furthermore, the states have the power to make and execute social and development policies, strategies and plans. He likewise contends that though the constitutional powers of the states are generous, there is a tendency of centralization of powers as a matter of the political practice in the Ethiopian federation owing to the factors he explains in the book (343-51).

In the seventh chapter, Assefa points out very interesting issues regarding federal executive powers and intergovernmental relations in the Ethiopian federation. He states

that though the Ethiopian Constitution envisages a situation of dual powers and institutions (Art.50 (2)), most of the federal executive institutions are not established in the states (nor are there clear delegations of powers) and hence there is a gap in enforcing federal laws in the states (p.355-57). Assefa notes that in a system with division of powers between the two orders of government such as Ethiopian (where exclusive powers are given to one or the other), a clear division of executive power is crucial. He also argues here that there are no comprehensive formal, constitutional or otherwise, system of intergovernmental relations between the Federal Government and the constituent states in Ethiopia. He discusses a sort of extra-constitutional mechanisms by which the federal government 'cooperates with' or influences the governments of the four peripheral states of Ethiopia (Afar, Beneshangul/Gumuz, Gambella, and Somali). These mechanisms currently are the advisorship of the Ministry of Federal Affairs (one of the executive organs of the Federal Government), the party structures, and the process of policy making (pp. 387-95).

In this respect, Assefa cites works of foreign researchers such as Lovise Aalan (2002) who for example asserted that 'the advisors from the Ministry of Federal Affairs virtually run the regional government and hindered self-administration'.⁸ He also discusses the overbroad powers practiced by the party officials of the EPRDF that were involved in many of the regions, including Oromia, and took important decisions derogating from the self-rule powers of the states (pp.387-88). He tells us that this situation has changed for the better since 2001 most importantly because of the reform of the EPRDF (following the split of the TPLF) and its realizations of the negative effects of such an approach to some of the states (p.388). More so, with the establishment of the Ministry of Federal Affairs, the relationships between the Federal Government and the four states have become more formally intergovernmental than anything else. Assefa, however, tells us that the Ministry though a good attempt at formalizing the Federal-state relations in respect of the four states, still cannot be taken to be an able substitute for inter-governmental institutions that exist in the federations he has thoroughly discussed in chapter seven of his book. He also indicated a possibility for overlap of powers between this Ministry and the HoF (p.390). Assefa also commented in a concise but pointed way the impact of the centralized party workings on the state autonomy and the constitutional division of powers (p.391-94). He tells us that the centralism of the party system has effects in all of the states either through the EPRDF or the affiliated ruling parties in the non-EPRDF controlled states.

Assefa's book contains very rich comparative information on the little known area of intergovernmental relations in federations. It also points out the legal lacunae as well as the practical problems in this regard in the career of the Ethiopian federation so far. These discussions I believe are very instructive and helpful for the policymakers of the country. I would have liked this part of Assefa's book to have gone a couple of steps further. The one is to compare the kind of informal relations between the federal and

⁸ P. 387. See also his reference to J. Young's work (pp. 386-87).

the states governments in Ethiopia with those systems of intergovernmental relations he extensively discussed (e.g. Germany's) and comment pointedly on the possible merits of the informal system at work in Ethiopia. Because it seems to me that formalization is not a goal in itself; the goal rather is the federal system's and the people's benefiting from the goings on in reality.⁹ Second is a discussion on the views from the states and the citizens (of the states) about what they thought of the informal inter-party or intergovernmental relations that have been going on since the inception of the federation. Knowing their reflection on this would have given the reader information to cross-check the veracity for example of the views of the scholars the author included in the book that all along paint a gloomy picture on the matter.

In the last substantive chapter of his work (Chapter 8), Assefa discussed adjudication of disputes in federations with a focus on the Ethiopian system. Assefa explains extensively the Ethiopian system of constitutional interpretation by the HoF, which departs from other systems in which courts interpret constitutions. He explains the reasons that led to the Ethiopian approach during the making of the Ethiopian constitution (402-06).

Besides, Assefa takes issue with the laws enacted by the HoPR (proclamations No. 250/2001 and 251/2001) on further defining the constitutional interpretation powers of the HoF and its aide, the Council of Constitutional Inquiry (CCI) on two grounds. The first is whether it is constitutional to have the powers of the HoF defined by the HoPR in the first place. Assefa believes that this should not have been the case. This is an interesting matter to argue over. But, I would also like to point out to the reader that on the contrary the fact that the HoPR is a law-maker on "all matters" assigned by the Constitution to the Federal jurisdiction would make it competent to pass such a law. Furthermore, I think that it is only appropriate from the point of view of checks and balances between the two federal houses since the HoF is an interpreter of the Constitution. If the powers defined for HoF by the laws have constitutionality problems, it can be brought to the HoF for review; this would have been problematic if HoF were to define its own powers.

The second ground of Assefa's disagreement with the laws is that the latter have unconstitutionally broadened the powers of the HoF to interpret the Constitution thereby taking away from the judiciary the powers the Constitution apparently gives to the courts. This is without any exaggeration a very intriguing and tantalizing issue. I cannot deal with the matter in such a limited space. But I would leave it my cautioning the reader to look further into the laws and the Constitution before agreeing or disagreeing with Assefa's views. One should for example ask whether the Constitution has unequivocally spoken about the limits or bounds of interpretable matters or not. One should also first understand what the framers intended to mean by "constitutional

⁹ This is not to say that there is merit in the system of advisorships where the advisors became so powerful and made the state rulers puppets. That was not acceptable. But other efforts of informal engagement of capacity building that helped the citizens of those states should be accommodated.

dispute” on the one hand and “constitutional interpretation” on the other. Lastly, how are these issues of interpretable matters handled in other jurisdictions? For example, isn't it the case that all matters for constitutional interpretation, whether legislative or executive acts, are dealt with by the constitution interpreter single handedly? I would leave this matter here as it will not be practicable to address each of these in this review.

In conclusion, I would like to state once again that Assefa's book is well done. It is very educative for students of Ethiopian constitutional law as well as for law and policy makers of Ethiopia. I hope they will make a good use of it. I also hope the author will take into account the points and issues I have indicated in this review in future edition of the book.