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

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Abstract

After years of centralized rule emphasizing unity and territorial integrity, Ethiopia since 1991 has adopted a federal system aimed at accommodating its diversity. The system is designed to empower hitherto marginalized ethno-national groups by ensuring self-government in nine constituent units and redrawing boundaries to match them with ethno-national boundaries. By designing constituent units, and, in some cases, local governments, that ensure self-rule to major ethno-national groups, the constitution transforms these groups into majorities within the territories they control at constituent and local level. This article argues that while conferring territorial autonomy and self-rule to mobilized, territorially grouped ethno-national groups may be a step in the right direction in addressing the age-old "nationality question," the design establishes a titular ethno-national group that claims exclusive control over territory, dominates public institutions, perpetuates majority rule and replicates the problems of the "nation-state" at constituent-unit level. The combination of majority rule by titular ethno-national group and exclusive control over territory at constituent-unit level in a context of heterogeneous constituent units and increased inter-regional state mobility has thus brought grave consequences for intra-unit minorities. What the design provides is autonomy for a particular titular ethno-national group, not autonomy for all inhabitants in the constituent unit. Hence, the question arises: What institutional and policy options do we have to address the rights of intra-unit minorities in the states? It is argued that the process of empowering ethno-nationalist group at regional-state level was conducted without putting relevant institutional and policy mechanisms in place to minimize the marginalization of intra-unit minorities. The article thus examines the institutional, political, legal and policy safeguards that exist for intra-unit minorities. It proposes four mechanisms that aim to address the concerns of intra-unit minorities: power-sharing as well as non-territorial autonomy; external checks by the federal government to monitor constituent units' compliance with intra-unit mi-

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norities; and strict enforcement of human rights throughout the country. Enforcement of these packages of supplementary measures would mitigate the situation of intra-unit minorities and recast the conception of political power and territory in such a way that they are understood not as the exclusive property of particular ethno-national group but a shared common good for all the inhabitants of the constituent units.

Key words: *ethno-national federations; rights of minorities; territorial autonomy; non-territorial autonomy*

1. Background

Un museo di popoli – "museum of peoples" – was the term Conti Rossini (1937, p. 169) coined to express Ethiopia's enormous diversity, given that the country is home to no less than 76 "nations, nationalities and peoples" as defined by the Constitution, with none of these alone constituting a majority.[1] Yet this diversity suffered at the hands of a centralized and homogenizing nation-state for the entirety of the twentieth century, leading to protracted civil war and the downfall of the centrist regime in 1991.

Seeking to reverse the age-old problem of extreme centralization of power at the center and resultant marginalization of large sections 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. All of these states are internally diverse to varying degrees. For instance, whereas the Constitution established only nine states, 76 ethno-national groups are officially recognized in the House of Federation (HoF), the second chamber. This fact in itself speaks volumes about the diversity within the constituent units. 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, granting territorial autonomy to ethno-national groups

1 See Article 39(5) of the Ethiopian constitution.

in a federal context in which the constituent units themselves are diverse involves imposing a rigid conception of territory. The constituent unit or local government that empowers a specific ethno-national group provides what Palermo called "autonomy *for* a particular group" (2015, p. 19), namely, for the titular ethno-national group claiming 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 identifies itself strongly 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 exclusionary 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, poses an existential threat to intra-unit minorities, bearing in mind that 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 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 offer institutional and policy options to address them. Various studies have examined the rights and status of intra-unit minorities in Ethiopia,[2] yet their focus has been mainly on language and cultural rights as well as 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 or on power-sharing in particular, the latter of which is a focus of this study.

2 There are many MA and LLM case studies on minority rights in the states, but published works are rare. Christophe Van der Beken is the sole exception who has come close to the issue. See Van der Beken (2010) and also Tesfaye (2012). Van der Beken's work provides detail on the 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, what is missing in all of these works is critique of the hegemonic status of titular ethno-national groups and the shared conception of power and territory at constituent unit level – a gap which this article attempts to fill. Tesfaye's work addresses some of the remedies available to intra-unit minorities, particularly through the bill of rights and use of local government, yet the focus on the territorial solution, be it at the level of the constituent unit or sub-unit, raises the same challenges at local level that minorities face more widely.

Accordingly, the article has four sections. The first provides brief background, and the next deals with the pillars of the federal system, highlighting their impact on intra-unit minorities. Section three examines the status of these minorities and demonstrates the variation that exists in how regional states respond to their demands. Section four 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 military junta was overthrown by the Ethiopian People's Revolutionary Democratic Front (EPRDF), which then spearheaded the post-1991 federal arrangement. As a main architect of the transition (1991-1994) and the 1995 Constitution, the EPRDF had long advocated for nationalities' right to self-determination up to and including secession. Its central claim was that the key source of political crisis in Ethiopia was ethnic domination, that is, a situation in which a ruling elite controlled power and resources and narrowly defined the values and institutions of the state (among them language and religion – for instance, Amharic remained a national language until 1991, and Orthodox Christianity was the state religion until 1974). As a result, the main features of the federal constitution are heavily influenced by the idea that "nations, nationalities and peoples" have a right to self-determination and that the right to self-rule is a solution to the "question of nationalities." Former Prime Minister M Meles Zenawi, the chief architect, is said to have observed that "[as] the Nile/Abay river has no life without its tributaries, [so] Ethiopia … makes little sense without its diversity."[3]

In a context where the 'nation state'[4] remained as the dominant

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

4 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. Apart from insisting that there can only be one center with undivided sovereignty and that it has to be homogeneous, this model prescribes that the nation and its political boundaries should match each

political framework(Nimni, 2015, p. 61),how to politically integrate a diverse society, that is, a society where there exists more than one politically mobilized ethnonational groups[5]in a state contesting thedominant perspectiveand ensure political stability by designing an inclusive political system remains a fundamental question of our time(Stepan et al., 2011, p. 1).

Designing an inclusive political system that provides political space to ethno-national minorities while ensuring the cohesion, stability and territorial integrity of the overarching state remains a key challenge in diverse societies. Ethiopia's post-1991 state-restructuring aims to achieve that goal through federalism. The division of powers between the federal government and the nine constituent units is a common feature of federal systems, but this alone is not what gives the Ethiopian federal system its distinctive characteristics.

Beyond serving as another center 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"[6] sort 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 (Arti-

other so that states can be nation-states. See Nootens (2015), p. 38. The model holds that "the territorial boundaries of the state must coincide with the perceived cultural boundaries of a nation"; it requires 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"(Stepan, A., Linz, J., & Yadiv, Y., 2011, p. 1). Taking root across Europe (albeit with a few exceptions such as Switzerland, Belgium and the United Kingdom), the nation-state model became a hegemonic framework many developing countries had to replicate. The process was largely coercive, with the dominant nation imposing its norms on ethno-national minorities, and with those left out of the process challenging it (Nimni, 2015, pp. 57-58). McGarry, Keating and Moore argue, "The coercive policies to achieve linguistic and cultural homogeneity in France to create a single French nation attest to the fear and concern that cultural difference would translate into political difference and thus has to be eliminated" (McGarry, J., Keating, M., & Moore, M., 2006, pp. 1-2). See also Kymlicka (2007), p. 42, and Stepan et al. (2011), p. 3. For a coherent critique of these notions, see Smith (2009), pp. 1-50), and Nimni (2005), p. 1.

5 This expression refers to cases in which identity-based politics have a high degree of prevalence and ethno-national minorities are mobilized politically behind an ethno-national party or leadership, with ethno-national mobilization exceeding that accorded to alternative forms of political mobilization – such as ideology, class, civil society, and gender – and the relationship between groups being affected by deep levels of mistrust, making it less cooperative. See Horowitz (2002), p. 18, and Kymlicka (2007), p. 68.

6 Alfred Stepan uses the term "coming together" to account for the federal systems that emerged from previously semi-autonomous units (1999, pp. 20-33).

cle 8). The boundaries of the sub-units were 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 governments and are able to exercise self-government and thus 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 for ethno-national groups, Article 39 of the Constitution entrenches three principal group rights. First, "every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession." Secondly, each nationality has "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 life under the centrist regimes that aimed at assimilating diversity, Ethiopian nationalities, following the adoption of the federation, have publicly celebrated their diversity to such an extent that the government has designated December 8, the date on which the current constitution was adopted in 1994, as "Nations, Nationalities and Peoples' Day" even though it was meant to have been Constitution Day. Thirdly, nationalities 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 government …" Political practice shows that federal executive power, a key institution in the African political context, is fairly shared among the four coalitions of the ruling party,[7] 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, each with their own constitutions and mandates. Of the nine regional states, six of them (i.e. the Afar, Oromo, Amhara, Tigray,

7 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, this is, ideologically speaking, far from a coalition as understood in the Western European sense. The coalition member parties and the affiliates are ideologically the same; the coalition exists merely in ethnic terms.

Somali and Harar) directly represent empowerment of specific ethno-national groups, resulting in what has been nicknamed "ethnic federalism." In the SNNPRS, a state with extraordinary heterogeneity, *local* governments – rather than the regional state, as in other states – are designed for ensuring self-rule to the various groups. Each of these six regional states, along with some 20 local governments in the SNNPRS, is, in short, a motherland to a particular ethno-national group that accounts for the majority of its respective population, a motherland 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. The 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. Subnational 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 national political process (Kymlicka, 2007, p. 177; Watts, 2008, p. 165). 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 Indian states following the reorganization of the states along linguistic lines in the 1950s.

In each of these cases, the primary safeguard for groups that are a minority in the federation is their majoritarian control of a self-governing constituent unit with guaranteed constitutional powers within a federation (Watts, 2008, p. 165). The ultimate objective of granting territorial autonomy to an ethno-national group in a federal or quasi federal arrangement is to transform an ethno-national group that may be a minority at national level into a majority at sub-state level so that it can exercise meaningful political autonomy and self-government, while at the same time enjoying representation in the national political process (Palermo, 2015, p. 21).

Although political and territorial autonomy for ethno-national groups constitutes the most advanced response to territorially grouped, historically marginalized and mobilized ethno-national groups,[8] 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 nine constituent units in Ethiopia, which clearly indicates a significant mismatch. Constituent units are rarely homogeneous. Territorial autonomy for ethno-national groups in a federal context entails a rigid conception of territory. The constituent unit or local government that empowers a specific ethno-national group represent what Palermo called "autonomy *for* a particular group" (2015, p. 19) – the titular ethno-national group claiming 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 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 the SNNPRS,[9] 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, which requires that "territories [should] be homogenous and dominated by one titular group, the nation" (Palermo, 2015, p. 29) at the constituent-unit level. This is a response to the claim of a titular ethno-national group, but has grave consequences for intra-unit minorities. As Palermo has argued, "[I]t is a simple solution to a much more complex problem" (2015, p. 20), in that it empowers only the titular ethno-national group 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 ad-

8 See for details Choudhry (2008).

9 These are the zones and special *woredas* that empower specific ethno-national groups at local-government level below the constituent unit. Examples of such groups include the Guraghe, Hadiya, Sidama, Gedeo, Silte, Welayta, Kembata Tembaro, Keffa, Sheka, Bench Maji, Gamo Gofa and Dawro, Yem, Halaba, Konta, Basketo, and Derashe. See Van der Beken (2010).

dress their concerns.

3. The Position of Intra-Unit Minorities in the States

Although what constitutes a "minority" has been contested, the widely recognized author Capotorti maintains that the term implies that such persons are fewer in number compared to the rest of a country's population and, as a result of democracy's game of numbers, are in a "non-dominant position." A minority may be found occupying a historically defined territory (or instead could be territorially dispersed); they are nationals of the state of residence; they possess ethnic, linguistic, cultural or religious characteristics distinguishing them from the rest of the population; and they are interested in preserving their identity rather being integrated into the dominant national group (Capotorti, 1977). The ethno-national minority may exist as a minority contained wholly within a state, as with the Scots in the United Kingdom; they may be a minority in one state but have a kin state that dominates another (kin) state, as in the case of the Oromos in Amhara regional state; or they may be found as minorities in more than one state and as majorities in none (Nootens, 2015, pp. 40-41; McGarry et al., 2006, pp. 1-2).

Nevertheless, for all its merits, this conception of ethno-national minorities is largely reductionist, as it limits the claims of ethno-national groups to the preservation simply of culture, language and religion.[10] If the ethno-national groups are geographically dispersed and yet politically mobilized, their claims may relate to power-sharing and control over language and culture. However, whether they be geographically concentrated or dispersed, there is widespread consensus that in both cases the claims of ethno-national groups go beyond the protection of the basic civil and political rights provided to all citizens and extend to recognition and accommodation in the form either of political autonomy ensuring self-government, or of power-sharing combined with control over language and culture (Kymlicka, 2007, p. 16; McGarry et al., 2006, pp. 1-2).

10 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. For other limitations of Capotorti's definition, see Mancini (2008), pp. 560-561.

One should note that ethno-national minorities often are mobilized for a political project that may take diverse forms; if these groups are not mobilized under a political project, they may remain a distinct ethnic group with an identifiable language, culture or other identity-marker but not be considered an ethno-national minority, with the result that clauses on equality, non-discrimination and individual rights could suffice as a safeguard for them. Ethno-national minorities are mobilized, particularly in divided societies, on the basis of certain identity-markers that contrast with those of next other groups.[11] Elites mobilize rich cultural and historical resources socially and politically with a view to improving the group's political, economic and social status. The mobilization is thus often constructed largely in reaction to state policy: the fact that the group is regarded as a minority frequently means that it is seen as less worthy than others and therefore feels impelled to reverse the situation and gain better collective self-esteem. That being said, the idea that ethno-national minority mobilization is "socially and politically constructed does not mean, as some think, that [the minorities] are superficial or unpopular, or that their aspirations do not need to be taken seriously if justice and stability are to prevail" (McGarry et al., 2006, p. 2).

3.1 "Inter-Ethnic" Conflicts or Rights of Intra-Unit Minorities in the States?

Territory, and the need to exercise power over it, give rise to interstate and intrastate conflicts (Malloy, 2015, p. 1). As Ephraim Nimni (2015) argues:

> [W]hen two or more national communities reside in the same territorial space ... popular national sovereignty and territorial national self-determination become zero-sum games. 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

11 As is often argued, identity is both self- and other-defined. French-speakers in Canada define themselves in relation to the English-speakers with whom they compete for power and resources and against whom they try to preserve their French identity. Language is thus the fault-line. In Northern Ireland, by contrast, despite that they share the same language, the Protestants aligned with the United Kingdom (often called unionists) dominate politics, while the Catholics are marginalized. Religion then becomes the fault-line. Identity is thus defined in relation to "the next other," not in absolute terms: see Smith (2009), pp. 1-50.

> state for one means the expulsion or destruction of the other (pp. 64-65).

Tensions between, on the one hand, the titular ethno-national groups that claim exclusive control over territory and political institutions at constituent unit and, on the other, calls by intra-unit minorities for accommodation have led at times to deadly conflict. This has been particularly acute in situations where intra-unit minorities have ethnic kin with a constituent unit of their own but a small number of this titular ethno-national group is found as an intra-unit minority in another regional state and thus on the "wrong" side of the border.

Although some of the conflicts between communities over grazing land, water and other resources have a long history predating the new federal system, the post-1991 political development seems to have changed their nature. The fact that disputed areas coincide with the boundaries between regional governments appears to have transformed conflicts between local communities into ones between regional states (Kefale, 2004). In real terms, though, the conflicts arose because intra-unit minorities falling on the "wrong" side of the border were marginalized by titular ethno-national groups that rarely showed an interest in addressing their sufferings. Intra-unit minorities often preferred to redraw constituent unit boundaries so as to join them with those of another regional state where their ethnic kin constitute a majority. The dispute over boundaries then becomes a zero-sum game in which the winner (the titular ethno-national group) takes it all and the losers (intra-unit minorities) remain as perpetual minorities, a situation that prepares the way for violent conflict. Kin regional states often intervene to mitigate the situation of intra-unit minorities, thus escalating the conflict.

Instances of such deadly conflict include the claim of ownership over Babile and Moyale, towns situated between the Oromia and Somali regional states; the Borona and Gari conflict, again between the same regional states; the Afar and Issa conflict[12] between the Afar and Somali regional states; the conflict between the Gedeo in the SNNPRS and the Guji Oromo in Oromia; and that between the Guji Oromo in Oromia and the Sidama of the SN-

12 For more detail, see Markakis (2003), pp. 445-453. Of late the two regional states have reached a political agreement in terms of which Issa minorities in Afar regional state will exercise self-government at local level while the disputed territory will remain part of the Afar regional state.

NPRS concerning the Wondo Genet area. Oromia, which adjoins several regional states and has a geographically stretched territory, is embroiled in many of the disputes. To make matters worse, these hot-spots are often also exploited by domestic opposition forces and neighboring countries, which creates the potential for the entire region to be destabilized.[13]

The greatest danger in this respect is that most of these conflicts have been portrayed in the media, and even some academic studies, as "inter-ethnic conflicts" (the titles of many undergraduate and graduate-level essays are telling in this regard).[14] A careful look at the conflicts does show, however, that although intergroup conflict cannot be ruled out, so-called border or inter-ethnic conflicts happen to be key issues related to the status of intra-unit minorities suffering at the hands of titular ethno-national groups and demanding accommodation either in the form of local government (as is the case when intra-unit minorities, such as the Kimante of the Amhara region of the Konso in the SNNPRS, are found to be concentrated), fair representation, or power- and resource-sharing at various levels where local political elites are otherwise manipulating identity-based differences.

So, redrawing borders does not necessarily address these conflicts head-on. Given that boundary demarcation takes places in the context of a polarized situation under uneven number of ethnically divided groups, every time borders are redrawn, new majorities and new minorities emerge, and the problem replicates itself after the new redrawing. It is now only too clear that even after the referendum conducted in 2004 to resolve alleged border conflict between the Oromia and Somali regions, there are, for example, Gerri Somalis left within the *Kebeles* (units at the lowest level of local government) that were transferred to Oromia regional state; similarly, there are Jarso (Oromo) minorities in the *Kebeles* assigned to the Somali region. This also holds true of the other contested borders: Sidama minorities are found in the *Kebeles* assigned to Oromia regional state, and Guji Oromos in those assigned to the Sidama zone of the SNNPRS around the Wondo Genet area.[15] The same could be said of the conflict between the Gedeo (of the SNNPRS) and Guji (of Oromia). The Gedeo zone of

13 For instance, several separatist parties backed by neighbouring Somalia have interfered in the Somali region.

14 See, for example, Taddesse (2011).

15 This referendum was conducted in 2008.

the SNNPRS has significant numbers of Guji Oromos, and in Borona Zone of Oromia there are a sizeable number of Gedeo's.[16]

In other words, contrary to the government's claim that "[a] referendum is the sole and best option of settlement" (Habtu, 2010, p. 213), the referendum "did not achieve the elusive task of matching ethnic and regional state boundaries" (Kefale, 2010, p. 629). Clearly, 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 of intra-unit minorities are those dominated by titular ethno-national groups but lacking a kin constituent unit elsewhere: they are as equally marginalized as intra-unit minorities with their own kin constituent unit. Contentious identity-based mobilization and claims for local self-rule based on Article 39(5) have been a major source of political instability, as in the case of the Kinmante of the Amhara regional state, the Konso and Welene of the SNNPRS, and that of the Majang, an intra-unit minority divided into three regional states (Oromia, SNNPRS, Gambela) and thus calling for greater Majang local government.

Regional states and the HoF have emphasized the requirement of distinct language as key factor for recognition and entitlement (to regional state or local government) andoften hesitated to concede to such demands. Yet we should note that identity is both self- and other-defined based on interaction with the next other. Thus, language could be one marker of identity, but it is *not the only one* (Smith, 2009, pp. 1-50). Catholics and Protestants in Northern Ireland share the same language, but there is a major political rift between them in that religion remains the fault-line for inclusion or exclusion; so, each group defines itself in relation to "the next other," in this case on the basis of religion and links with the United Kingdom. Nor does sharing the same language guarantee the end of identity-based mobilization. Groups sharing the same language could split due to other mobilizing factors, such as religion (as above), geography, history and, more importantly, political and economic marginalization. India's twenty-ninth new state, Telangana, established in 2014, shares

16 See Taddesse (2011).

the same language with the state of Andhra Pradesh but decided to secede from it and form a new state because its residents believed they had been marginalized by it owing to their geographic location (DW Akademie).

Issues related to intra-unit minorities in Ethiopia remain vital, because it is anticipated that increased foreign and domestic investment will accelerate inter-regional migration and thus increasing the new regional state minorities. For instance, owing to mega-projects like the Renaissance Dam, regional states such as Benishangul Gumuz are likely to host no less than a million migrants from other regional states, a number higher than that state's current total population. It is far from clear what the institutional and policy options are for balancing the right to self-rule of the ethno-national groups in the regional state with the new migrants' rights of citizenship. The federation appears to be caught in an inherent tension, since it fails to strike a balance between, on the one hand, the right to self-rule of the titular ethno-national group and, on the other, the need to protect intra-unit minorities and promote free movement of labour and capital.

Intra-unit minorities in Ethiopia face legal discrimination (for example, discrimination in jobs and bid competition), 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 for public office) and administrative discrimination. Nevertheless, there are variations across the regional states, with Oromia and Harari standing at one extreme, the Amhara region at the other, and many of the other states in between them.

The constitution of the Oromia regional state is peculiar in this respect.[17] Both its preamble and the provision on sovereignty declare that "the Oromo nation" is the owner of the constitution and the region Oromia, with such ownership *expressly* excluding non-Oromos residing in the regional state. Yet Oromia state has close to two million Amharas, 250,000 Gedeo and Guraghe each, 53,000 Hadiya, 45,000 Dawuro, and 42,000 Kambatea intra-unit minorities. There are no express clauses for minorities' representation in the regional state institutions such as the legislature, judiciary and the executive, nor does the constitution provide for

17 The regional state has recently permitted the use of Amharic language in schools in some major cities.

territorial or non-territorial autonomy for non-Oromos.[18] Given that non-Oromos are believed to be higher in number in urban than in rural areas, the situation in urban local governments 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*), thereby ensuring that the institutions of urban local government are dominated by the Oromos. This makes elections for these governments nearly meaningless. In addition, the mayor is appointed directly by the regional state president.[19]

Not surprisingly, there have been frequent conflicts between the Oromos and minority Amharas living in Oromia (according to the 2007 census, more than 3.2 million non-Oromos are believed to dwell in the Oromia region), conflicts that in 2000 led to loss of life and destruction of property. Bedeno, Arba Gugu, and Gara Muletta are clear instances. 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 to return remains an unsettled issue (Tafese, T. 2006).

In a similar vein, the Amhara regional state recognizes only four non-Amhara ethnic groups within its borders and provided with local self-government at the zone level (Agaw-Awi, Agaw-Hemra, Argoba and the Oromos), notwithstanding that there are significant numbers of Tigrayan, Gumuz and Anuak intra-unit minorities. Latterly the state has been challenged by the Kimante's claim for local self- government and representation in public institutions.[20] Though in practice these ethno-national-based local governments have not exercised very many of their powers, in theory they are entitled to enact laws and design policies on matters of their own, which include the use of language in public

18 "Non-Oromo" here implies either smaller ethnic groups that exist within the Oromia regional state, or individuals from ethnic groups other than Oromos. For details, see Geleta, Z.Y. (2009). *The status, powers and functions of local government in the national regional state of Oromia.* Ethiopian Civil Service College: unpublished MA thesis.

19 See proclamation numbers 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.

20 The Kimante's claim for recognition and accommodation is now close to a decade old. In June 2015, the regional state decided to provide local government with 42 *kebeles,* but the Kimante community refused to concede in alleging that they would not accept it unless the local self-rule contains the 126 *kebeles* they are claiming.

institutions.[21] Yet even this arrangement – though a step forward compared to the situation in Oromia – fails to ensure to 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 represented only in the regional state constitutional interpretation commission, which is just under establishment. The Amhara regional state constitution, like that of the Oromia regional state, turns a blind eye to minorities other than the Agaw, Argoba and Oromos.

Then, in the case of regional states such as Afar (which has significant Amhara, Oromo and Tigrayan intra-unit minorities) and Tigray[22] (which has significant Amhara and Agaw Hamyra intra-unit minorities), they recognize the existence of intra-unit minorities within their boundaries, but 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 state[23] represents a peculiar arrangement: given the distinctive history of the Harari ethnic group as the center of Islamic civilization, a mere nine percent of the regional state population (15,863 ethnic Hararis out of a total population of 183,414) has virtually full command of the regional state institutions.[24] Some wrongly think that Harar is a case of the Lijphartian type of consociation,[25] but despite the multicultural character of the Harari regional state and the evident numerical majority of the non-Harari, no satisfactory measures have been taken so far to secure the political participation of the city's non-Harari and non-Oromo residents. The Oromos, comprising nearly two-thirds of the total population (103,468), do participate to some extent in the political process, but other sizeable groups of minorities are excluded from it. It is hard to foresee long-term political stabili-

21 For details, see Addisu (2009).

22 For example, the Kunama minority in Tigray is found in two districts of two different *woredas* dominated by the Tigrayans. The Irob have their own *woreda* but have not yet started using their Saho language.

23 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.

24 See Harari State Constitution, Articles 26 and 29. Only the Hararies and Oromos can participate in the region's politics.

25 See Habtu (2010), pp. 202-203. At the core of the Lijphartian type of consociational democracy is the notion that every relevant group *shares power and resources in proportion to the size of the vote* and hence does not believe in the exclusion of any group of whatsoever type.

ty in the Harari region, given how large a part of the population is marginalized from the political process. Harar, then, does not seem to have taken into account the city's multi-ethnic character.

In the regional states of Gambela[26] and Benishangul-Gumuz[27] there are two sets of unresolved issues. These are states that had been more marginalized in the last century than the other parts of Ethiopia (Young, 1999). To address this historical injustice, regional states were established that favoured the dominant ethnic groups living within them. What is distinctive about these particular states, however, is not only that their "indigenous ethnic groups"[28] are diverse but that they also have sizeable "non-indigenous" groups which had been forced to settle in them as part of the *Derg*'s policies of villagization and resettlement in the 1980s.[29] As a result, two sets of frequently recurring issues have emerged in the Gambela and Benishangul-Gumuz regional states.

The first relates to the challenge of establishing institutions of self-rule in the form of local government for the "indigenous ethnic groups." Having been marginalized for long, these groups have a genuine fear of extinction from domination of the political process by the center and economically powerful new migrants. The second aspect of the problem is related to the fate of the sizeable non-indigenous groups settled in both regional states. These groups, too, have a genuine security concern, as well as a strong interest to participate in the political process of the regional states. There is a tendency by the indigenous ethnic groups to limit the role in the political process of non-indigenous groups that are currently more economically powerful and politically active than they are.

Further complicating the delicate position of non-indigenous minorities are provisions of the constitutions of some of the regional states, issued even after the HoF's decision[30] in the Benishan-

26 For details, see Feyissa (2006), pp. 208-230.

27 For the historico-political background of both regions, see James (2002).

28 According to the CSA census of 2007, Gambella is home to five ethnic groups, namely the Anuak (21.2 percent); Nuer (46.6 percent); Majengir (4 percent); Opo and Komo (0.4 percent). Benishangul-Gumuz is in turn home to the 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 different treatment.

29 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.

30 The decision ensured the right of non-indigenous minorities to be elected to public

gul-Gumuz case decided in March 2003. For example, the revised Benishangul-Gumuz Constitution and that of Gambella, Article 34, distinct from what is provided in other state constitutions, ensures only the right of non-indigenous minorities to work and live in these states, not the right to be elected to public offices.

Experience from other federations with diverse societies like Ethiopia's illustrates that ethno-nationalist groups should not be entitled to govern their own regional states unless a clear guarantee for intra-unit minority and individual rights is stipulated and enforced. The fear is that once ethno-national minorities acquire self-governing power at sub-state level, they could use it to prosecute, dispossess, expel or kill anyone who does not belong to them (Kymlicka, 2007, pp. 93-94). In other words, the wave of post-Cold War minority rights in the West was conditional on the point that national minorities in the changed dispensation were not to be new autocrats at sub-state level.

The main goal of constitutional reforms in the West recognizing mobilized ethno-national minority rights to self-rule is to address the demands of minorities that suffered at the hands of the titular nation within the nation-state. In addition to respect for individual civil and political rights, provision is made for self-governing sub-units in order to respond to the concerns of mobilized ethno-national minorities. Self-rule is thus provided in addition to therespect for individual rights at national and sub-unit level: the aim is not to compromise the gains already made within the nation-state with respect to individual rights. However, Ethiopia's constitution and practice have yet to bridge this crucial gap, in that there is a clear tendency to favour self-rule of ethno-national groups at the expense of individual rights.[31]

offices as they were excluded by local parties from the process. See the decision of the HoF of 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 Article 38 of the proclamation is not in violation of Article 38 of the Constitution. It also underscored that whoever wants to run as a candidate is required to know the working language of the regional state, and not one of the local vernaculars (unpublished).

31 The preamble refers to "we the nations, nationalities and peoples of Ethiopia …" Article 8, which places sovereignty on such groups, and Article 39, dealing with the right to self -determination, imply that group rights override over individual rights.

4. The Way Out

4.1 Power-Sharing and Non-Territorial Autonomy

Certainly, the Ethiopian constitution has 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 HoF). Smaller ethnic groups with a size of 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 groups which have their own states or local governments have indeed adopted their language in schools, courts and other public institutions.[32] Local governments are also often used as a means to ensure self-rule, as in the case of the Silte in the SNNPRS and, of late, the Kimante of the Amhara regional state. Nevertheless, the concerns of intra-unit minorities do not seem to have been addressed adequately through 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 limitations of an 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 twin institutional arrangements for addressing the concerns of intra-unit minorities are power-sharing and non-territorial autonomy (NTA).[33] In some federations, 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 majoritarian tyranny and support intra-unit minority rights. The following four sub-sections illustrate these complementary measures. The latter are complementary in the sense that they do not oppose the right of ethno-national groups to self-rule but aim rather to temper its adverse effects on intra-unit minorities.

32 See Articles 5, 61 and 54.

33 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 Renner (2005), pp. 13-40. Since then, NTA has been in use in a number of diverse countries, including the Brussels-Capital Region of Belgium. See Nimni (2015), pp. 70-72.

Political autonomy in the form of self-rule within a federation is a solution commonly advanced in response to the needs of mobilized, territorially grouped ethno-national groups that have been marginalized by centrist and homogenizing regimes (Kossler, 2007, p. 265; Kymlicka, 2007, p. 177; Watts, 2008). However, one of the major criticisms of granting territorial autonomy 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 that could turn into an autocrat at that level. Individuals who adhere to the values of the titular nation do well under these arrangements, but intra-unit minorities remain marginalized: the combination of the titular ethno-national group, the exclusive conception of territory at constituent-unit level, and majoritarian democracy, reinforces the titular nation's dominance, leading to extreme marginalization of the constituent-unit minority (Kossler, 2007, p. 251). As Karl Renner argues, political-autonomy regimes controlled by titular ethno-national groups preside over intra-unit minorities with the dictum, "If you live in my territory you are subjected to my domination, my law and my language" (cited in Nimni, 2015, p. 9).

The arrangement ensures not self-government for all inhabitants of the constituent unit, but self-government for the titular ethno-national group alone. It becomes an instrument of domination in which sub-unit minorities simply change masters: the old master against which the titular nation fought and secured political autonomy is now gone and replaced by a new master – the ethno-national group enjoying political autonomy alone – resulting in what Mahmood Mamdani called "decentralized despotism" (1996, pp. 23-4) or, more aptly, local tyranny.

On the other hand, it is possible to construe a different conception of territory and autonomy in which the titular ethno-national group may continue to enjoy self-rule, yet where the territory is considered not as exclusive but a *shared common good* in which intra-unit minorities that live within the constituent units or local government too could have a political and cultural space. Intra-unit minorities in the constituent units could also be part of political decision-making.[34] This alternative conception of territory takes into account the heterogeneity of the population

34 For an account of the different conceptions of territory and the nexus with national minorities, see Malloy (2015).

inhabiting the territory.[35] It is what Palermo calls "autonomy *of*" all inhabitants in the constituent unit, not autonomy *for* a particular ethno-national group (Palermo, 2015, p. 21), given that in the real world sub-units in a federation are never homogenous (that is, there is no necessary overlap between the ethno-national group and the territory).

Looking beyond the federal/national agenda, the issue of designing an inclusive governance system and accommodating diversity within the regional state institutions remains crucial. These normative questions demand engagement with the agenda of intra-unit minorities within regional states and an understanding of the complex nexus between territory and ethno-national groups.

As mentioned, power-sharing and 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 political actors representing the main segments of society (among them, intra-unit minorities) in the political process and decision-making bodies at federal, constituent-unit or local-government level, depending on where the locus of the demand is.[36] 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 votes the groups secure in elections.[37]

The question of whom is entitled to power-sharing and NTA is contested, yet an emerging consensus suggests that the right belongs to geographically dispersed ethno-national groups who are nevertheless politically mobilized and hence have shown an express interest in self-government (Nootens, 2015, pp. 35-37, 39, 41, 46; McGarry et al., 2006, p. 67). The goal is to empower

35 A practical example would be a situation where the ethno-national group were to vote in a referendum, and all the inhabitants in the territory, not merely the dominant ethno-national group, were then allowed to participate.

36 Power-sharing in its rigid form (consociationalism) was originated by the renowned Dutch political scientist Arend Lijphart. See Lijphart (1977); see also Palermo (2015), pp. 22-23. The concept was further developed in McGarry & O' Leary (2004).

37 The major obstacle to this proposal is the first-past-the-post electoral system, with its implication that the 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 the representation of diverse political and intra-unit minority groups.

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 and seeks the inclusion of hitherto-excluded dispersed ethno-national groups (Nootens, 2015, p. 47; Nimni, 2015, p. 68).

Such a polity combines representation in public institutions for the geographically dispersed diversity with autonomy and control over culture and language. While it is often stated that NTA views diversity largely in terms of cultural and linguistic groups[38] rather than politically mobilized ethno-national ones, the emerging literature indicates that, though dispersed, the diversity that calls for power- sharing and NTA is engaged in 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" (Nimni, 2015, p. 71) for ethno-national communities allows such dispersed minorities to have an exclusive say on issues related to their language and culture.

Unlike granting territorial autonomy and the right to self-rule 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 intra-unit minority cooperate in the process of decision-making. The institutional design aims to overcome the majority-minority divide within the majoritarian democracy, a divide which has the risk of creating a permanent majority set against a permanent minority at constituent-unit level. Among the criticisms of power-sharing is that it is an elite-based accommodation that can lack widespread popular support. Yet this risk can be mitigated, as there is a need to establish a political elite backed by support of the masses through democratic, multiparty elections under a proportional electoral system. Power-sharing arrangements can be designed as an inclusive political system within the regional states in which no significant section of society feels excluded. Another key element of power-sharing is designing a bicameral legislative system in which one chamber is elected by a state-wide vote and the second is composed of rep-

38 See, for example, Renner (2005) and Nootens (2015), p. 39.

resentatives of the different ethno-national minorities as part of an effort to ensure representation of dispersed minorities in central decision-making (McGarry et al., 2006, p. 67). This arrangement is often more constitutionally formalised in federal systems than in other kinds of polities.

There are political, legal and moral reasons for the inclusion of intra-unit minorities in the states. One powerful argument links self-rule at constituent-unit level to democratic theory. During the American Civil War (1861-65), secessionist southern states wanted to break the Union in order to retain slavery. President Lincoln, however, argued that "people cannot declare self-determination or autonomy, if they intend to use their autonomy to oppress other people" (cited in Kincaid, 2015, p. 389). Robert Dahl, another theorist of democracy, maintained that "the right to self-government entails no right to form an oppressive government" (1989, p. 208). Inasmuch 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.[39] The result of focus-group discussions in the four major regional states[40] in July 2015 has underlined the importance of addressing this matter by using legal, institutional and policy frameworks for the protection of various kinds of intra-unit minorities in the regional states. As the discussion in this section indicates, in Ethiopia 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 intra-unit minorities within the regional states in Ethiopia, minorities that face various kinds of administrative and political discrimination, are *Ethiopians living in their country* and not foreigners looking only for civil rights. As

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

40 Oromia, Amhara, SNNPRS and Tigray regional states.

citizens and intra-unit minorities in their country, they have the right to engage in political and public affairs both at federal and regional state level (Article 38). Although titular ethno-national groups have a constitutionally protected mandate to self-rule, they themselves cannot claim exclusive control over territory – only the Ethiopian state as a sovereign body can claim such exclusive control. 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 by the titular ethno-national groups and recast it differently by developing sub-unit autonomy for all inhabitants of the constituent unit. This introduces the notion of intra-unit minorities *sharing a territorial space* with titular ethno-national groups and a conception of territory as an *inclusive and shared common good* (Nimni, 2015, p. 68). The idea of diverse groups sharing power and territorial space ends the "lethal competition for exclusive territorial control" (Nimni, 2015, p. 68) often associated with titular ethno-national groups having territorial autonomy. As previously mentioned, it 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 (2015, p. 32).

This calls firstly 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-the-past-the-post principle[41] to ones based on a proportional or mixed type of system for ensuring the participation and inclusion of intra-unit minorities who may not be able to win a majority under the current electoral system. 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, civil service and other public institutions of the relevant constituent-unit and local governments. To be sure, Article 39(3) of the federal constitution guarantees ethno-national groups equitable representation in federal and regional state governments, yet its application has been limited to the federal executive level and to the SNNPRS; moreover, it has no consociational elements, in the sense of including ideologi-

41 Article 54(2) of the Ethiopian constitution provides for a first-past-the-post electoral system.

cally different political parties based on a proportional electoral system.[42]

A second important component of NTA is cultural and linguistic autonomy – also called functional autonomy, corporate autonomy and corporate federalism (McGarry et al., 2006, p. 68) – conferred to dispersed ethno-national diversity. Competencies are transferred not in relation to specific territory but in relation to specific communities irrespective of their place of residence (Nootens, 2015, p. 41). 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 up territorial autonomy in the form of zones and *woredas* (Ghai, 2002, p. 163). The dispersed minorities would have legally established public bodies across territories, and although they may live within a territory where the majority belongs to a different national group, they would not be subject to its laws but to those of their own public institutions with respect to language, culture and education (Suksi, 2015, p. 86).

In other words, the minorities would not be subjected to practising the language and culture of the titular nation in the constituent unit and, indeed, would be exempted from it by law. If the community so wishes, a council may be established to 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. Cultural and linguistic autonomy may also imply that public institutions provide services to minorities in two different languages, that of the majority and the minority (Suksi, 2015, p. 89). Its aim is to strengthen the identity of intra-unit minority based on language and culture. The case being made 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 within the larger society.

A typical instantiation of NTA in the Ethiopian context would entail the recognition of Sharia courts by means of laws for Muslims throughout the country in relation to marriage, succession and personal affairs. NTA could also provide a political solution

42 Only members of the ruling party are entitled to representation. The first-past-the-post electoral system excludes opposition political parties from sharing power.

to Oromo claims for publicly funded schools in the federal capital, Addis Ababa. Apart from ensuring fair representation in the city government institutions, NTA could enable Oromos to open schools in Addis Ababa in which their children could use their mother tongue. In addition, NTA could be a key instrument for addressing the concerns of several intra-unit minorities that do not have territorial autonomy and allowing them to exercise the right to language and culture – an important component of the right to self-rule but one rarely employed.

4.2 Federal Government Political Safeguards for Intra-Unit Minority Rights

Another, and third, measure used in other federations to mitigate the marginalization of constituent-unit minorities is to empower the federal government to serve as a guardian defending intra-unit minorities against possible repression and discrimination by titular ethno-national majorities (Kossler, 2007, p. 269). While the federal and constituent-unit constitutions may ensure the rights of intra-unit minorities, the titular ethno-national group that dominates the political institutions often lacks the *political will* and *incentive* to enforce such rights. After all, such a group enjoys self-rule and controls the political institutions, so what reason would it have to open up the political space? Regional state institutions thus commonly fail to mediate conflicts that arise between the titular ethno-national group and the intra-unit minorities, a situation that points to the need for an external check-and-balance mechanism.

In this regard, Article 350A of the Indian 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 the right. Article 350B establishes the Special Officer for Linguistic Minorities, appointed by, and reporting to, the President under a mandate to investigate all matters relating to the constitutional safeguards provided for linguistic minorities. The Special Officer's report may be tabled for discussion and further investigation in the federal parliament or be sent to the government of the State concerned. In India the federal government thus has been given more exten-

sive power than in Ethiopia with respect to intra-unit minorities (Watts, 2008, p. 166).

In addition, the Union Government established a National Commission for Minorities in 1992 by Parliamentary Act. The Commission evaluates the progress of minorities under the Union and States. It also monitors the working of safeguards provided in the constitution and laws enacted by parliament as well as state legislative bodies. Furthermore, it investigates complaints, deprivations and discrimination suffered by minorities, and suggests appropriate measures to be taken by the Union and State governments. These are important 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. Instead, the Indian constitution acknowledges that constituent-unit majorities may threaten intra-unit minorities, further to which it provides *countrywide 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, which have been left so far to the discretion of the states. It is time that constitutional amendments be introduced with a view to empowering the federal government to monitor the states for their compliance with the rights of intra-unit minorities. This would be an important external political safeguard for such minorities.

In Article 55(16) the constitution gets close to it when it mandates the House of Representatives to call joint sessions 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 [emphasis added]."Nevertheless, this article does not get close enough, in that it does not deal specifically with intra-unit minority rights. The expression "when State authorities are unable to arrest" also implies that the responsibility falls initially within the states, but, as mentioned already, states controlled by titular ethno-national groups have little incentive to enforce intra-unit minority rights. More importantly, protection of intra-unit minorities is a question of designing inclusive regional state institutions not necessarily linked to the emergency situations which the article seems

to envisage.

4.3 Human Rights

The last, but not the least widely used, measure to the ensure the rights of intra-unit minorities and individual citizens is the inclusion of a comprehensive catalogue of fundamental rights in the federal constitution (as well as in state constitutions) and its 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 than – not less than – the standard set by the federal constitution (Stepan et al., 2011, p. 18). In the United States this was not the original intention of the Bill of Rights, added as it was to the constitution in the form of 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, alongside with the Civil Rights Movement. Though formulated as individual rights, the right to equality and non-discrimination played a key role in desegregation within states (Watts, 2008, p. 166).

Chapter 2 (Articles 8-12) of the Ethiopian Constitution provides for *fundamental principles* of the constitution. Article 10 states that "[h]uman rights and freedoms, *emanating from the nature of mankind***,** are inviolable and inalienable [emphasis added]," implying that human rights are "parents and not children of the law" (Sen, 2006, p. 4; see also Dworkin, 1977, p. 3). 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 for evaluating the validity of laws, institutions and state objectives (Preamble, second paragraph). Chapter 3 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 a special position in the Constitution through incorporation and by providing

a rigid amendment procedure, it means that the current majority in power at whatever level cannot overstep these constitutional guarantees. Such rights are then called "constitutionally entrenched": they are a form of higher law that set limits on the powers of political institutions. As such, the acts of political institutions can be legitimate only so long as they comply with the human rights norms in the Constitution. Constitutional interpretation and enforcement of human rights then entails applying these constitutional norms against the state and its agents, such as the legislature and executive both at federal and constituent-unit level.

However, while recognition of human rights in the Constitution is an important step forward, it is not enough. Strong institutional protection and enforcement are crucialrequirements for giving life to constitutionally entrenched human rights. Furthermore, the relevant organs need to be impartial and independent if they are to set a limit on the power of political institutions. As Barak has argued, "[T]he 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" (2006, p. xi); he adds that "human rights (civil and political rights) must be insulated from the power of the majority" (p. 33). This is particularly crucial in the context under discussion, one 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 will of the majority. Time and again, history has proven that taking refuge in the will of a democratic majority is no longer good enough. The majority – all the more so when it is a titular ethno-national group claiming exclusive control over territory and political institutions – shows little interest in the concerns of minorities. This was clearly highlighted in the United States in the famous *Carolene* Products case footnote 4, which in turn was further elaborated in John Hart Ely's *Democracy and Distrust,* a study drawing on the second and third provisions of the *Carolene* Products footnote 4.[43]

43 *United States v Carolene* Products co. 304 US 144, (1938). The argument in this section, one that builds on the role of the courts in the enforcement of constitutionally entrenched rights, needs to be taken with a pinch of salt. For ages the US Supreme Court, as evidenced by *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,* which

Ely argued that the Supreme Court should interpret the ambiguous clauses of the constitution, particularly the equal-protection clause, to ensure that the democratic process is kept open to all and that prejudice against particular minority groups does not contaminate the legislature (Ely, 1980, pp. 12-13, 75-77). The Court also drew attention to the majority's prejudice against what it labelled as "discrete and insular minorities" (meaning not only political minorities but those who are not represented in public institutions due to their ethnicity or the small size of their group). Such minorities are isolated from the rest of the community because they have little in common with the majority and few avenues to protect their interests (Waldron, 2006, p. 1,405). Indeed, this is a critical problem in the Ethiopian federal system, where intra-unit minorities remain at the mercy of local majorities who have little incentive to engage with either their concerns about political representation at sub-state level or their claims for local government and use of their language.

In the *Carolene* Products case footnote 4, 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 the Court sees a special need for it to intervene when the democratic process is reluctant in addressing the demands of such groups (Griffin, 1996, pp. 105, 159). Judicial review to protect individual rights, including those of minorities, is vital because they (minority rights) are the least likely to be protected by the democratic process: majorities have an incentive to deprive opponents of their political rights, since this helps them to retain power (Griffin, 1996, pp. 105).

In this regard, the cornerstone provision of the Ethiopian Constitution is Article 13, which so far has attracted little attention either from practitioners or academics. Sub-article one (chapter 3, the chapter on human rights) stipulates that "[a]ll 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 [emphases added]." To be sure, the provi-

ended the "separate but equal" doctrine: until then it had been 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 the courts, both at national or supranational level, has increased significantly.

sion 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 3 of the Constitution. The mandate of interpreting the Constitution and resolving constitutional disputes belongs to the HoF, which is composed of different ethno-national groups and advised by the Council of Constitutional Inquiry (CCI).

However, one can argue that Article 13 vests an implicit mandate on 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 might 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 (or at least its chapter 3) does not include interpretation (Tesfaye, 2008; see also Chi et al., p 278). This position is, however, an understatement at best and a misunderstanding of Article 13 at worst with respect to the nature of the Constitution and on the nature of human rights.

The judiciary's role, and duty, in "respecting and enforcing" the rights and freedoms enshrined in the Constitution cannot be meaningful unless it involves interpreting the scope and limitation of those rights.[44] It must be noted that this is not only a mandate of the courts but a *duty* imposed on them. Whether we talk of the violation of the right to equality or the scope and limits of freedom of religion, the court cannot arrive at a conclusion without defining the scope of the right in a particular case. The court before whose bench the case is brought is necessarily going to engage in determining the scope of that particular right, and whether or not it has been violated, before it can conclude 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 would be naïve to think that one can simply apply the provisions on human rights (Tesfaye, 2008, pp. 128-144; Chi et al., 2008, p. 278)[45] without interpreting them, seeing as the reference is to constitutional provisions that often are brief, ambiguous, silent on a number of occasions, or in need of being adapted

44 There is an emerging literature that develops this argument. See Donovan (2002), p. 31, and Bulto (2011), pp. 99, 101.

45 Some have argued that courts are prohibited by the framers from interpreting the constitution. See Assefa (2010), p. 139.

to changing realities.[46] The words do not speak for themselves, but require contextual injection of meaning if they are to be intelligible (Griffin, 1996, p. 13). The Constitution is often phrased generally as it is a fundamental document stating only principles, ones which are to be applied for generations to come. As such, interpretation precedes implementation or application – which hence puts primary responsibility on the courts.

So, it is vital to understand the background and implications of Article 13. As already hinted, 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 binds 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. Prior to the second half of the 20th century, the Bill of Rights was held to apply only to the federal government.[47] Its applicability to state institutions was far from clear. The Warren Court had to grapple itself 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.[48] Seen in a federal context, Article 13(1) confers an authority on the judiciary which 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 within the federal level. States may provide a better or a lesser protection of rights, and that may lead to controversy as to the territorial application of fundamental rights and freedoms.

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

47 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, the court declared in *Gitlow v New York* that states are bound to protect freedom of speech. But it was during the 1960s that the Supreme Court imposed standards on lower courts in line with federal requirements regarding the rights of accused persons. See Dimitrakopoulos (2007), p. 55.

48 See *Mapp v Ohio* 367 US 643 1961; *Miranda v Arizona* 384 US 436 (1966); for details, see Wolf (1986).

Seen in this light, Article 13 of the Ethiopian Constitution resolves such a dilemma by stating that fundamental rights and freedoms stipulated in chapter 3 extend to all persons within the territorial jurisdiction of the country, implying that states cannot provide any lesser protection than what is provided at federal level. The uniform application of fundamental rights and freedoms is expressly declared, with the same provision imposing a duty on the judiciary to ensure 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 organs against 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 3 have, with slight adjustments, been replicated in the state constitutions. This would mean that the protection and enforcement of human rights is a concurrent (joint) mandate of the federal and state governments. Yet these rights are the least enforced in Ethiopia, and it is no surprise that this has become the ground for human right activists to accuse the government of failure to fulfill its obligation to respect rights. Indeed, there is little political will to enforce civil and political freedoms; moreover, jurisdictional confusion between the regular courts and the HoF has also limited the enforceability of chapter 3 of the Constitution.[49] One could say, then, that civil and political freedoms in Ethiopia remain *without a guardian* (Adebe, 2013, p. 9).

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

49 Several studies have indicated the confusion in terms of jurisdiction between the regular courts and the House of Federation. See Tesfaye (2008) and Fiseha (2011).

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 was demonstrated, however, that while territorial autonomy and self-rule may be a step in the right direction in addressing the age-old "nationality question," the design establishes a titular ethno-national group that claims exclusive control over territory, dominates public institutions, perpetuates majority rule and replicates the problems of the "nation-state" at constituent-unit level. The combination of majority rule by titular ethno-national group and exclusive control over territory at constituent-unit level in a context of heterogeneous constituent units has brought 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 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 two and a half decades. The recognition of 76 ethno-national groups, but only nine constituent units, indicates very well the level of regional state diversity and the vulnerable situation of intra-unit minorities.

The conflicts arose because intra-unit minorities that fall 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 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 constituent-unit 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 the groups secure in elections. This combines, on the one hand, political representation of the geographically dispersed diversity in public institutions with, on the other, autonomy and control over culture and language.

Under such a dispensation, the dispersed minorities would have legally established public bodies across the various territories, and though minorities may live within a territory where a different national group is in the majority, they would not be subject to its laws but to those of their own public institution with respect to language, culture and education. Linguistic and cultural autonomy, in the form of legally guaranteed autonomous bodies to 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 calls firstly for legal and policy reforms at federal, constituent-unit and even local-government level that redesign existing electoral laws based on the first-past-the-post principle as a proportional or mixed type of electoral system for ensuring the participation and inclusion of intra-unit minorities who would not otherwise be able to win a majority. Secondly, constitutional and legal reform at federal, regional state and local-government level should ensure fair representation of intra-unit minorities in the executive, legislative, judicial, civil service and other public institutions of the relevant constituent unit and local governments. Two other measures are, first, to empower the federal government to safeguard the rights of intra-unit minorities and monitor constituent units' compliance in this regard, a matter which is currently left largely to the discretion of regional states; and, secondly, to strengthen judicial protection and enforcement of human rights.

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