

# Contemporary Governance Challenges in the Horn of Africa

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## Chapter 4

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### **Federalism, devolution, and territorially-based cleavages in Africa**

Does institutional design matter?

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# 4 Federalism, devolution, and territorially-based cleavages in Africa

Does institutional design matter?

*Assefa Fiseha*

## 4.1 Introduction: the nature of cleavages and institutional design

Whether it is possible to ensure democracy, stability, peace, and social cohesion in countries with deep societal divisions and the appropriate institutional arrangements is one of the central political issues of our time.<sup>1</sup> This is particularly so in many diverse countries in Africa where nation-building is linked with coercive and arbitrary processes by which the same communities are subdivided into different countries by artificial colonial borders.<sup>2</sup> In African countries with deep divisions, the state continues to suffer from structural problems in which the central government is accused of centralisation of power, corruption, abuse of rights, and the marginalisation of the bulk of society.

Thus, ethnic conflicts, violence, civil war, claims for accommodation, and threats of secession and state fragmentation remain major challenges. Some post-colonial African countries attempted to address them by resorting to a form of federation and autonomy, but with the exception of Nigeria, all such efforts failed within a decade of their establishment.<sup>3</sup> The failure of the federal experiment resulted in centralised unitary governments, imperial presidents, and one-party rule.<sup>4</sup> The federations failed because they were confronted by strong, big-man leaders who thought federalism would lead to state fragmentation and saw it as opposed to their own vision of centralised nation-building.<sup>5</sup> The political leaders of such a diverse continent thought federalism in the context of artificially drawn borders would lead to polarisation and ultimately put territorial integrity at stake.<sup>6</sup>

After the end of the Cold War, however, there was a resurgence in federalism and devolution in Africa. For some, it became a means to ‘domesticate the Leviathan’<sup>7</sup> by transferring power from the all-powerful centre to sub-units diffusing power into many centres; for others, federalism and devolution go beyond diffusing power and aim to manage territorially-based and politically mobilised divisions. Three key African countries (Nigeria, Ethiopia, and South Africa) have used federalism and devolution to achieve either or both of these objectives.

This chapter discusses the different institutional approaches adopted in the three federations and examines whether institutional design matters when addressing demands from politically mobilised groups. Should such divisions be considered building blocks for political engagement, or should they be diffused and divided into sub-units? What factors determine the choice of institutional design? Any discussion on institutional choices for dealing with diversity should begin with a clear understanding of the nature of the social divide in a given country. States have responded differently to demands by mobilised ethno-national groups.<sup>8</sup> This chapter presents three of the well-known approaches: integration, power-sharing, and federal accommodation. Behind the three options, however, is the nature of the cleavage and how to manage it.

The chapter has four parts. The first part provides the introduction and a brief account of the nature of the cleavage and how it affects institutional design. Part 2 briefly discusses the three federations. Part 3 examines whether and to what the constitutions of the three countries under consideration incorporate institutional features of accommodation and integration. Part 4 provides some comparative conclusions.

Politically mobilised cleavages continue to threaten the nation-state. After the Cold War, they caused what Arend Lijphart dubs a 'wave of ethnic conflicts'<sup>9</sup> as opposed to the promised 'third wave of democracy'.<sup>10</sup> Mobilised ethno-national minorities are 'regionally concentrated ethnic groups who once enjoyed or aim to enjoy political autonomy and have become part of states in which they constitute an ethnic minority through conquest, annexation, colonisation or incorporation during the coercive process of nation building'.<sup>11</sup> They mobilise politically around assertions of national identity and self-determination, the goal being to recover the extensive self-government they claim to have enjoyed historically or to which they aspire to. Their claims range from autonomy and national self-government to independent statehood, which may include secession. Countries that have politically mobilised ethno-national groups cannot assume to have stable territory. As discussed below, the demands of such groups focus on a particular territory and put the very unity and territorial integrity of the state to the test.<sup>12</sup>

Ethno-national-based minority mobilisation is a potent force that, if not managed carefully, could result in fragmentation. It has resulted in the formation of some 27 states that joined the United Nations after the Cold War ended.<sup>13</sup> In the 1960s and 1970s, nearly all major schools of thought (liberalism, socialism, globalisation, modernisation), regardless of their differing viewpoints, predicted that ethno-national minorities would wither away through liberalism, socialism, and melting-pot assimilation. Some called it a 'post-national illusion'<sup>14</sup> and counselled actors to understand this force properly and design institutions and policies to manage it. Territorially-based and politically mobilised divisions continue to challenge nation-building both in the developed (Canada, Spain, Belgium, and United Kingdom) and the developing world. The countries in this study (Nigeria, Ethiopia, and South Africa),

despite differences in the degree of mobilisation, all continue to face challenges related to group divisions. In other words, they are all deeply divided societies.

According to Horowitz, 'deeply divided society' refers to cases where identity-based politics have a higher degree of salience than other bases of political mobilisation such as ideology, class, and gender, and where the relationship between groups is characterised by mistrust and antagonism.<sup>15</sup> As Choudhry notes, 'a divided society is not merely a society which is ethnically, linguistically, religiously or culturally diverse ... [I]t is hard to imagine a state today that is not diverse.'<sup>16</sup> What makes a society divided is when the differences are politically salient and an identity-based distinct group uses them as a basis for political mobilisation. Identity becomes the primary source of mobilisation around which claims for recognition, resource control, accommodation, and self-government are framed, political parties formed, elections contested, and governments composed.<sup>17</sup> These forces affect the process of constitution-making and constitutional design in that a distinct identity-based mobilisation demands more autonomous self-government while less-mobilised groups settle for integration and other softer options.<sup>18</sup> This is to mean that some communities demand for political empowerment and would not settle for anything less than some form of territorial autonomy. Those that are not mobilised around identity would accept being integrated into the majority so long as there is a space for them to express their culture distinctiveness and individual members of those communities are not discriminated against because of their identity

As a result of cleavage, the three countries under study continue to face a threat of fragmentation, albeit to varying degrees. Ethiopia lost Eritrea, and the threat of secession is still a problem as it harbours many national liberation movements, such as the Oromo, the Ogaden/Somali, and the Tigray. Some ten ethno-national groups that used to administer themselves at local government level in the South have, following the winds of change in 2018, demanded constituent-unit status; two of them – the Sidama and the South West – have formally become Ethiopia's tenth and eleventh states. The war between the federal government and Tigray, while having multiple causes, is closely related to Tigray's age-old demand for self-government and fair representation in federal institutions.<sup>19</sup> Ethno-national groups are thus demanding more, not less, even after two-and-a-half decades of federal practice.

Nigeria's split between north-south and Muslim-Christian remains visible, in particular during presidential elections. The split is kept at a delicate balance based on an unwritten convention that guides presidential elections to rotate the office of the president between the north and south.<sup>20</sup> Nigeria faced the threat of secession from Biafra in the 1960s, and Igbo nationalism has not withered away. There is also an insurgent group in the Niger Delta (Ijaw) with the potential to cause trouble. In reaction to a highly centralised federation and marginalisation during the military era, a demand for 'true federalism' that grants genuine political autonomy and resource control is now fully expressed by ethno-regional groups (Yoruba, Igbo, Niger Delta region) in Nigeria.<sup>21</sup> As for South Africa, it has divisions based on race, language, and class. Over the

years, Zulu nationalism seems to have been diluted both due to the lack of internal cohesion and as a result of the African National Congress's (ANC's) penetration of its social base through a democratic process.

A precaution is in order here. First, cleavages do not automatically translate into a political project. Political and economic injustice that is reinforced by deep divisions, elites that frame the issues, and state response or the lack thereof play an impact on whether social cleavage would turn into a political cleavage. As Anderson and Choudhry point out, cleavage or diversity is not a destiny. It needs agency – political entrepreneurs that read the political dynamics of the country and frame the issues in a way that appeals to their audience. These political entrepreneurs are key to the ‘framing of narratives’<sup>22</sup> that articulate real or perceived exclusion and subjugation: they ‘are critical to the success of political mobilisation by framing the case (of ethno-nationalism), developing strategies, and marshalling resources’.<sup>23</sup> These entrepreneurs articulate alternative narratives that seek to deconstruct any centrist narrative about the past, present, and future (fears and possible hopes) and thereby express the grievances and advocate for the entitlements of the population they claim to represent, including the latter's territorial entitlements. In that fashion, an ideology is framed and a plan drawn up for concrete action.

Secondly, Gurr argues that conflict between competing nationalisms typically escalates in stages, and it is here that one finds the link with state policy. Eritrea's secessionist demand by elites in the mid-1980s was limited to the restoration of the federation (1952–1962) unilaterally abolished by Emperor Haile Selassie in 1962. With the military regime's failure to respond, radical issues such as secession emerged. Thus, divisions often start with modest, non-violent demands and, when regimes fail to address them, degenerate into violent protest and finally rebellion. This escalation occurs through a pattern of demands and responses: non-violent protest is met with a lack of political responsiveness, which in turn leads to violent protest, which is met with a violent reaction, and which then leads to rebellion and an armed conflict and civil war. State policy and action or inaction is thus a major factor that can escalate or moderate ethno-nationalism.

Thirdly, the process of transformation of a diversity that is mobilised into a political project is heavily associated with whether there was a nation-building project previously pursued by the central government. As mentioned, such a project often involves the forceful annexation of what were previously autonomous or semi-autonomous territories and the imposition of a common national identity in the form of a single national language and centralisation of power and resources. The left-outs from the process design a defensive response to the central state-led project of nation-building.<sup>24</sup> In other words, ethno-national-based cleavage and political mobilisation are often a reaction to the centrist elite's project searching for a political and identity space.<sup>25</sup> It is a sub-state nationalism framed in reaction to the central government's nationalism. There are thus competing nationalisms within the nation-state that, if not addressed, could lead to violence, civil war, and state fragmentation. Both are pursued

in the name of nationalism and have the potential to fuel emotions on both sides of the political divide and lead to political instability and state collapse. This may be called a clash of nationalisms: one form of nationalism is pursued by the central government in the name of nation-building, patriotism, civic nationalism, unity, and territorial integrity, while the other form is pursued by the ethno-nationalist elite.

The civil war in Ethiopia (1974–1991) fits well into this framework. The centrist military regime fought ethno-national-based liberation fronts in the name of *Ethiopia Tikdem* ('Ethiopia First') and the territorial integrity of the country, while branding them as secessionists. The ethno-nationalist elite in turn frames the centralised nation-state as a ruse for enabling the centrist elite's culture, language, or religion to become the national culture, language, or religion.<sup>26</sup> In other words, the group, however narrow its base, that controls the state does it not only to marginalise others from power and resources but to 'promote, consolidate and create a privileged position with respect to its identity and its manifestations. The state is defined as the expression of the group's nationhood'.<sup>27</sup> Political and resource conflict is fuelled by non-material issues such as the search for dignity and collective self-esteem,<sup>28</sup> a rich history ('we were great and want to be great again'), and claims by ethno-nationalist groups to regain lost social status (dignity) in response to historical traumas inflicted on their identity.<sup>29</sup> As Connor notes, 'Men do not allow themselves to be killed for their interests; they allow themselves to be killed for their passions.'<sup>30</sup> It is not surprising then that the legitimacy of the government, its institutions, and the values upon which it is established are sources of tension and, at times, terminal crisis.

Fourth, majoritarian democracy in deeply divided societies can generate problems necessitating other forms of inclusivity. This is an area where institutional design is crucial, particularly if the drivers of the central government version of nationalism are not a majority. In many cases, as in the case studies, there is no dominant ethno-national group that enjoys a demographic majority and which could claim to have a democratic majority to pursue its goals. The situation is a clash in which a minority with state resources at its disposal tries to impose its will on other minorities.

Yet even if the central government's project of nationalism enjoys a majority, it pits a permanent majority against a permanent minority with no hope of becoming a majority. Arendt Lijphart brought this tension to the fore in post-Saddam Iraq. Majoritarian democracy applied to Iraq would mean 'a national government mainly or exclusively Shi'ite majority that excludes Sunnis and Kurds ... and it will be naïve to expect such minorities condemned to permanent minority to remain loyal or constructive'.<sup>31</sup> With it comes the issue of why ethno-national minorities under the perpetual rule of a majority could be expected to be loyal to such a regime and stay in the union. The general assumption of majoritarian democracy that the rulers alternate, such that today's political majority will become tomorrow's political minority, does not hold true in deeply divided societies.

In this context, majoritarian institutions may suffer from a legitimacy crisis. Here, the decisions of the majority are not accepted by the minority; the values of the centrist state, such as the flag, the national anthem, and policies advancing national unification, are resented and rejected by ethno-national minorities. Thus, alternative theories such as consociational democracy have been recommended in cases where the political system faces deep divisions. Instead of having winners and losers, consociational democracy brings major political actors together in terms of equality or proportionality and entails consensus-based decision-making on fundamental issues. Thus, left-outs in the majoritarian democracy become decision-makers through power-sharing, which reduces the potential for conflict. Institutional arrangements thus matter in managing divisions and reducing conflict.

Depending on the nature of the territorial cleavage, the level of political mobilisation, the nature of the elite that frames the issues, and the nature of the state response (accommodative, integrative or repressive), schools of thought vary as to whether the ‘cleavage and difference [should] be recognised, emphasised, institutionalised and empowered or should ... be diffused, blurred, transcended [and disempowered]’.<sup>32</sup> Although little explored in the comparative literature in Africa, at least from the institutional design perspective, there seem to be implicitly two options. The first, usually called the integrationist or centripetal system, is associated with Donald Horowitz, has its ideological roots in the United States, and is reflected in the constitutions of Nigeria and South Africa. The second is largely European, has partly leftist origins, is known variously as plurinational, multinational, or ethno-national-based federation, and has the core feature of accommodating territorially-based politically mobilised cleavages. Although the centralised nature of African federations means there is little practical difference between the two options, the differences in institutional design are however visible and manifest important contrasts that may be of interest to comparative federalism.

The next sections analyse the key features of the federal and devolved systems in the respective constitutions and explain the underlying differences. It is argued that the level of identity-based mobilisation, the nature of the cleavage that demands accommodation, and the vision and nature of the political elite during the constitutional moment are key factors that affect institutional design options. In terms of outcome, however, except in South Africa, all the federal and devolved systems, regardless of institutional design differences, have not contained strongly mobilised territorially-based cleavages.

## **4.2 Federal and devolved systems**

### ***4.2.1 Nigeria and its federation***

Nigeria, the most populous country in Africa, gained independence from British colonial rule in 1960<sup>33</sup> and soon became a federal parliamentary republic (1960–1966).<sup>34</sup> Since then it remains the only federal country in West Africa.

Nigerian diversity is reflected in a large number of ethno-linguistic groups and the north-south territorial divide. The country has two major religions, Islam and Christianity, with the former practised predominantly in the north, and the latter, in the south.<sup>35</sup> From independence to the first military coup of January 1966, the evolving political system was characterised by a weak federal centre and three strong regional governments.<sup>36</sup> The three regions were the northern (Hausa, Fulani), western (Yoruba), and eastern (Igbo), each with a dominant ethnic group in effect controlling political power as well as a number of minority ethnic groups.<sup>37</sup> Leaders of the regional parties chose to head their respective regional governments and send deputies to the federal government.<sup>38</sup>

A major feature of the federation inherited from the colonial administration was the structural imbalance between the north and the south.<sup>39</sup> The northern region was in a position to hold the whole country hostage, as it commanded 79 per cent of the country's total area and 53.5 per cent of the population, according to the 1963 census. It was not surprising, then, that in the southern part there was always the fear of northern domination (a tyranny of the majority). It was virtually impossible for the south to control political power at the centre.

It was in this context that the military coup of January 1966 sought to tilt the delicate balance between the regions, leading to the concentration of both political and economic power in the hands of the southern leaders.<sup>40</sup> The northern civil servants felt threatened as they lost political power to the south, who were relatively well trained and educated. To restore control, the north reacted violently, which led to the coup of July 1966. The July coup, led by junior northern military officers, brought Colonel Yakubu Gowon to power, thereby 'restoring' the balance of power. Gowon also restored the federal system abolished by Ironsi (one of the leaders of the January coup). The federation was put to the test after the July coup when the Igbos, who were harshly treated throughout the country, threatened to secede, creating their own state of Biafra and surrendering in 1970 only after two-and-a-half years of brutal civil war. Since then, all leaders have committed themselves to maintain Nigeria as a federation, although it had difficulties in practice owing to the dominant role of the military.<sup>41</sup> The failed Biafra secession had a lasting impact on Nigeria. The political elite at the centre has since then been trying to prevent a resurgence of constituent-unit-based nationalism by breaking down the major groups into many smaller states.

Except for the brief periods of 1960-1966 and 1979-1983, Nigeria remained under military rule until the restoration of civilian rule under an elected president in 1999. During this long period of military rule (28 years in total), the Constitution had been suspended, with constituent-unit power transferred to the national government, and redrafted several times by successive regimes. The military ruled by decree, eroding the independence of the judiciary and trampling on the rule of law in a profoundly authoritarian way.<sup>42</sup> The military head of state and commander-in-chief appointed and removed the military governors or administrators of the states. These appointees were answerable



to their military heads, not to the people.<sup>43</sup> The federal government repeatedly exercised emergency powers to legislate for any part of the federation on any subject it deemed necessary and took executive action in areas outside the exclusive and concurrent lists of national powers.<sup>44</sup> Thus, the extreme centralisation of national power has been a driver for the resurgence of ethno-nationalism and cleavages that have not withered away.

The Nigerian federation, typical of Donald Horowitz's centripetal federation, claims to have constituted itself on a territorial basis.<sup>45</sup> The system is in principle not designed to empower ethno-linguistic groups by granting their own states. The federation rather aims to create many small-sized states of comparable population and to guarantee fair shares for the states in the allocation of jobs and benefits through the principle of federal character.<sup>46</sup> 'Federal character' refers to the fair allocation of posts between ethnic and regional groups in public institutions at different levels. The principle was introduced in reaction to the fear that conflicts result because of fear of one ethnic group dominating the federal government and occupying an unfair share of government posts.

The 1999 Constitution, in article 2, declares Nigeria a federation consisting of 36 states. The Constitution, a comprehensive document containing provisions about not only the organs of the federal government but the states, divides power between the federal government and the states in article 3. Consistent with prior constitutions, it maintains the presidential system of government,<sup>47</sup> and the federal legislative function is vested in the National Assembly, which consists of the Senate (composed of three senators from each state and one from Abuja, the capital) and the House of Representatives.<sup>48</sup> Many contend that as a result of long military rule, the federal exclusive legislative list is extensive.<sup>49</sup> The Second Schedule to the Constitution in Part I enumerates 68 items as exclusive legislative powers of the federal government.<sup>50</sup> Part II of the same schedule consists of 30 items under the heading 'concurrent legislative list of both federal and state governments', with federal paramountcy ensuring prevailing national regulations in case of conflict between the two authorities.<sup>51</sup>

Some of the contemporary issues challenging the Nigerian federation include the distribution of power among the three tiers of government. Elaigwu argues that there is a need to revise the legislative list to transfer mandates in favour of sub-national units. The federal government has insisted on creating strong connections with local governments, which the states have resisted. Thus, restoring the autonomy of the states that had been eroded over the years due to military intervention remains a crucial issue.

Another challenge is the post-1999 emergence of threats related to Islamic fundamentalism in some of the northern states. Some northern states have insisted on extending Sharia law more broadly than was traditionally practised. Until 1999, Sharia applied only to civil proceedings such as succession and divorce. However, in 1999, the Supreme Sharia expanded Sharia law to apply to criminal law. This development was introduced in more than ten northern states.<sup>52</sup>

The need for revising the legislative list and resources in favour of the states, as well as the re-emergence of assertive sub-nationalism remain two of the main issues challenging the contemporary Nigerian federation. Overall, Nigeria has experienced some measure of stability since the return to civilian rule, but it continues to face resurgent nationalism in the east and the Niger Delta and sectarian violence in the north.

Whether the Nigerian federation has reduced ethnic tensions and divisions is an issue that remains contested. The tension among the bigger groups that brought the Nigerian federation to the brink of collapse in the 1960s has not withered away but has been partly localised by redrawing the groups into several small-size states. However, they have regrouped themselves into six (three in the north and three in the south). The north-south contestation has not disappeared and remains visible, particularly during presidential elections, but has not led to open violence.

#### 4.2.2 Ethiopia

Ethiopia's context differs from that of the other two cases, as it defeated Italian colonialism in 1896, and the process of nation-building was led by its own elite. The fact that it enjoyed centuries of civilisation meant the different ethno-national groups, despite long years of interaction, retained their own distinctive features, including their language and identity. Ancient experiences under quasi-autonomous kingdoms also serve as a framework on which to claim self-government. There is no English or other foreign-language legacy, unlike in the two other federations, where English is widely spoken and serves as a unifying element.

Nation-building in Ethiopia had similarities with nation-building in Europe. It was led by a centrist elite that borrowed the European nation-state as its model and, towards the end of the 19th century, brutally liquidated quasi-autonomous kingdoms that had existed for centuries. The left-outs (mainly ethno-national forces from Tigray, Oromia, and Somali) from the nation-building process resent this and have continued to challenge the centre. The debate between the centrist elite and the left-outs is Ethiopia's major political dilemma: although the post-1991 federal system sought to address it, it continues to challenge Ethiopia, making it very fragile. While divisions in the two federations aim for integration or accommodation, in Ethiopia they also aim at exit: there are many nations potentially in search of a state each of their own.

The concept of 'devolved autocracy' is often used in analysing relations between the centre and the provinces in historic Ethiopia, yet it fails to capture the essence of the relationship.<sup>53</sup> Ancient constitutional documents from the 13th century, such as the *Kibra Nagast* ('Glory of the Kings'), and constitutional practices rooted in the notion of *Niguse Negast* ('King of Kings'),<sup>54</sup> demonstrate the dual, if not multiple, centres of power in Ethiopia.<sup>55</sup> While the monarchy at the centre served as a pillar of unity, various kinds of regional forces<sup>56</sup> exercised important powers such as taxation, maintenance of local security, and

regulation of trade.<sup>57</sup> The seat of Ethiopia's political capital was often called 'wandering', as it shifted from one province to another with the change of emperors.

Direct central authority was hindered by the vastness of the state's territory, the absence of transportation and communications, the demands of local nobilities for some autonomy, fiscal, and manpower constraints, and ethnic, linguistic, and regional diversity and disparities. Regional forces enjoyed some autonomy as kingdoms that merely acknowledged the existence of a distant emperor. The more powerful provincial kings – alone or in coalition with others – were sometimes contenders for the throne itself.<sup>58</sup> The fact that the imperial power was open to potential contenders for power from the several provinces meant that state power was not highly ethnicised, at least before the emergence of the modern state under Menlik II (1889–1913). Greenfield wrote that 'struggles and rivalry lay between regions, later perhaps provinces, and not between tribal groups ... tribalism had no place in Ethiopian politics'.<sup>59</sup>

The decentralised feudal state structure changed radically with the emergence of a strongly centralised unitary state toward the last quarter of the 19th century, one spearheaded by Emperor Menlik II. This was consolidated under the absolute monarchy of Emperor Haile Selassie (1930–1974).<sup>60</sup> With the emergence of the centralised unitary state, Addis Ababa became not only the capital of Showa, Menlik's home province, but also of Ethiopia. The central government expanded its control to the south and southwest, along with the *gabar* system, which provided land – a critical resource – to the imperial army in the conquered territories and left the local people landless and servants of the new lords.<sup>61</sup> Showa then emerged as the epicentre of power and resources, homogenising centrist state using the Amharic language and Orthodox Christian religion to liquidate quasi-autonomous kingdoms. The new ruling elite, distinct both in terms of class and identity, was to become a source of resentment that ultimately led to the 1974 Revolution.<sup>62</sup>

The military junta (1974–1991) made gestures to address emerging demands from ethno-national groups when it came to power and toward the end of its era. It declared all nationalities equal but did not end their marginalisation from power and resources and failed to ensure the right to self-rule. More importantly, its rigid insistence on military solutions to political issues blocked all hopes for peace. A nominal form of regional self-rule was included in the 1987 Constitution, but by then it was too little, too late to attract already emboldened ethno-national groups.<sup>63</sup> Central power was no longer accessible to various contenders: identity began to matter for inclusion or exclusion from power and in the process began to be politicised. Thus, at the heart of the reason for the transformation of regional or provincial movements into ethno-nationalism is the exclusionist and centrist state: as will be illustrated later, ethno-nationalism is a reaction to centralised state policy.

The process of centralisation and homogenisation was far from smooth. It faced serious challenges initially in the form of provincial rebellions headed by nobilities, various peasant protests, and, later in a more radical form, university

students. As political parties were banned in the country, initial resistance to centralisation emerged in the form of peasant rebellions such as those in Tigray (1943), Gojjam (1968), Bale (1963/1970), Yeju (1948), and Gedeo (1960). Conflict in traditional Ethiopia manifested itself mainly in provincial rebellion against the centre and aimed at modest reforms without upsetting the whole system. Secession was also not on the agenda.<sup>64</sup> The opposition sought mainly the adjustment and restoration of violated rights through better administration, lower taxes, respect for local autonomy, and reduction of corruption.

Resistance against the centralised monarchy intensified in the early 1970s when discontent was articulated by young, radical, leftist university students. The Ethiopian Student Movement (ESM) emerged as an amorphous, ideologically and ethnically diverse university students' association. The ESM spawned many political parties that together challenged imperial rule. This resistance not only called for state reform but also at times challenged the state itself, which led to new forms of leadership, social composition, and ideological orientation.<sup>65</sup> The student movement's slogans – 'land to the tiller', 'end to national oppression', 'equality of religion', and 'social justice' – were popular in taking on the imperial regime.<sup>66</sup> The ESM argued that post-Menlik Ethiopia was a 'prison house of nationalities'<sup>67</sup> and the 'nation-building' project a failure; it called for an end to 'national oppression' through the grant of the right to self-determination to the nationalities.<sup>68</sup> Since the 1970s, the 'nationality question' – that is, addressing the claims by ethno-national groups to self-rule and political autonomy, fair representation in public institutions, and ensuring equality – has remained a crucial point in the agenda of Ethiopia's political struggles.

Nearly all of the political organisation that emerged from the ESM sympathised with the 'nationality question' since they ideologically leaned to the left. Yet apart from their sharing the view that the nationality question needed to be addressed, the exact meaning of this vague concept, and the strategy to address it, was far from clear. Many rival groups emerged with proposed solutions to the 'nationality question'. One was the Ethiopian People's Revolutionary Party (EPRP), formed in 1972, while another was the All-Ethiopian Socialist Movement (MEISON), formed in 1968. Both parties claimed they were multi-ethnic and approached the nationality question by subsuming it to class-based politics.<sup>69</sup>

The ESM became the gravedigger of the Emperor and a major driving force behind the 1974 Revolution. The wide support accorded to the students, and the aging Emperor's failure to introduce even modest reform, brought about this revolution. A popular revolution, it was hijacked by the military junta (1974–91) known as the Derg, a committee of 120 junior military officers, the only organised force at the time. The revolution dealt a mortal blow to the old monarchy, but save for it changing the source of political legitimacy from Solomonic genealogy<sup>70</sup> to socialism as a new tool for building the nation-state, the centralist character of the state and its policy stance to the emerging demand of ethno-nationalist groups remained intact – indeed, they took a form that far exceeded the imperial regime in its brutality.

MEISON initially sided with the military on the assumption that it would outsmart it and take control itself. The socialist regime (1974–1991) gave rise to protracted civil war and political instability that brought the country to the brink of collapse by 1991. Despite their sharing the same leftist ideology, the rivalry between the EPRP and MEISON and the conflicts with the junta brought on the ‘Red Terror’ and ‘White Terror’ in the early 1970s, which consumed the lives of thousands of young Ethiopians from all sides. The story of multi-ethnic, class-based parties thus came to a tragic end, leaving a legacy that still haunts Ethiopia, as was seen in the elections in 2005, 2015, and 2020.<sup>71</sup>

What transpired toward the end of the 1980s, when the state failed to address the demands of ethno-nationalist groups, was a failed ‘nation-building’ project<sup>72</sup> that politicised identity and created a privileged centrist political elite whose values and identity were equated with the state. As in many other failed ‘nation-building’ projects, a privileged ruling elite’s identity and language were used as a mask to impose the centrist ruling elite’s identity, language, and religion on others. Identity and language became a means for exclusion or inclusion, a source of pride, or a source of social and psychological trauma. The majority of people were marginalised by the state and considered second-class subjects, not citizens. Their identity was viewed as inferior and was thus stigmatised, which explains the passion and emotions associated with the protracted nature of intergroup conflicts. The conflict became nastier when ethno-nationalist groups sought not only to gain a share in power and resources but also to reverse their inferior status and claim back their ‘collective self-esteem’. While many actors and peace mediators focus on power and resource inequalities, the non-material causes of conflict are often the core element of mobilisation: the search for respected collective self-esteem.<sup>73</sup> The negative historical interaction among the political elite left deep-rooted mistrust, with selective history used as a tool in dealing with real or perceived threats. As is often said, ‘identity is the fruit of history’<sup>74</sup> claimed by those who seek to make sense of the present.

Thus, Ethiopia has seen strong ethno-national mobilisation against the centre for most of the 20th century. By 1991, it was a coalition of ethno-national liberation movements that dismantled the centrist military rule by force and formally introduced the federal system after a four-year transition period (1991–1994). The number of national liberation fronts is perhaps a record within the African continent. While class was presented as an alternative basis of mobilisation in the early 1970s (by EPRP and MEISON), leadership crises within the clandestine parties, brute force by the military, and the fact that Ethiopia was then largely a peasant-based rural country lacking a middle class meant there was a little appeal to class-based mobilisation. It was better for national liberation movements to explain the impact of the political and economic marginalisation of their constituencies in terms of ethno-nationalism.

In comparison with the other federations under discussion, in Ethiopia the extreme centralisation of power and use of brute force to deal with political issues incubated the ethno-national-based liberation fronts that emerged in the

early 1970s; a failure to engage in dialogue and compromise to resolve political issues also characterises modern Ethiopian politics. It is hard to find something comparable to the political settlement that led to post-apartheid South Africa or Kenya's political deal following the election crisis of 2007. Whoever holds power in Addis is often 'a suspect', and entrenched, territorially-based, and politically mobilised cleavage is the outcome.

Ethiopia's post-1991 federal system was meant to provide a solution to the age-old 'question of nationalities'. The main architect of the new Constitution, the ethno-nationalist coalition of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) under the leadership of the Tigray People's Liberation Front (TPLF), held that a new and democratic Ethiopia could only be constructed through the voluntary and consensual association of its parts, the 'nations, nationalities, and the people'.<sup>75</sup> As the EPRDF considered itself successor of the ESM of the 1970s, it committed itself to a political solution to the nationality question.<sup>76</sup> Political reality<sup>77</sup> dictated by ethno-nationalist mobilisation and its leftist ideological commitment seem to be the reason why it opted to reorganise the country along ethnic lines and recognised the right to the secession of ethno-national groups.

However, several studies point out the major paradoxes in that federal system. Strict adherence to the principle of democratic centralism in the EPRDF, a vanguard party, the ideology of the developmental state, and a focus on centrally designed state-led development combined to result in a centralised federal system that compromised the autonomy of the states in a context of growing ethno-nationalism unleashed by self-rule.<sup>78</sup> Despite a two-decade-and-a-half experiment with federalism, the quest for genuine self-rule, political inclusion, protection of citizenship rights, social cohesion, and transition to democracy remains far from realised. The federal system rested in practice on three pillars: (i) a 'big man' – Meles Zenawi (the powerful Prime Minister, whom Clapham dubbed 'the philosopher-king of the EPRDF',<sup>79</sup> (ii) democratic centralism (Meles's main tool); and (iii) the vanguard party.

The 'big man' has passed on, democratic centralism is gone, and with the withering away of ideology, power struggle continues along the fault lines. Federalism and devolution as a means to manage diversity and conflict assume effective institutions for the day-to-day operation of political business, inter-governmental platforms for bargain and negotiation, and impartial institutions such as the supreme or constitutional courts to mediate intergovernmental disputes. Disagreements are expected to be resolved through compromise and dialogue using existing political institutions – legislative bodies, intergovernmental relations, party-level negotiations – and, if that fails, using legal means: the supreme court that serves as the ultimate guardian of the Constitution.

Constitutionalism and the rule of law require that the political institutions ultimately submit to the guardian of the Constitution. Ethiopia failed to build these institutions, and the EPRDF, now rebranded as the Prosperity Party (PP) after the TPLF withdrew from it, relied on its own party machinery. This worked to some extent, at least partly because of democratic centralism

combined with elitist leaders such as Zenawi. The Meles-led EPRDF focused on the economy and creating a middle class; democracy and self-government were postponed. Guided by his leftist inclinations, ethno-nationalism was perceived as transient phenomenon that would wither away with the emergence of the middle class.

Since Meles's death in 2012, there has been ideological fragmentation within EPRDF. The movement was a coalition of four ethno-national parties and had strong ideological and class features in the form of revolutionary democracy, democratic centralism, and developmental state.<sup>80</sup> It was an ethnic coalition but had class-based content and ideology that held it together.<sup>81</sup> Gradually the class and ideological component withered away with the lack of competent leadership, and militant ethno-nationalism took centre-stage. As one political observer stated, '[T]he current ruling party (PP) is [a] politically and ideologically orphaned EPRDF minus the TPLF.'<sup>82</sup> In the absence of competent leadership and with the weakening or fragmentation of the party system, there is literally nothing that can serve as a platform for normal political business.

From 1995 to 2018, the federal government was perceived as dominated by the TPLF, which led to widespread protests in two of the bigger regional states – Oromia and Amhara. The Oromo Peoples' Democratic Organisation (OPDO) and Amhara National Democratic Movement (ANDM) were increasingly seen as puppet parties that did not genuinely represent Amhara and Oromo interests in the federal government. The extreme centralisation of power, a leadership crisis within the EPRDF, and the regime's failure to introduce reforms in response to demands stemming from a sense of marginalisation created the resentment that fuelled the 2015 protests in the Oromia and Amhara regions – protests that saw the EPRDF come under new leadership in 2018 in the form of Dr Abiy Ahmed.

There was a much-hoped-for transition to democracy with the coming to power of the new leadership in 2018. A hidden coalition, known as *Oro-Mara* to imply OPDO-ANDM or narrowly 'Team Lemma', emerged within the broader EPRDF. This was known within the popular protests and the international community as 'the rise of some reformist elements from within the coalition who embraced the people's demand for change'<sup>83</sup> and identified as agents of change. The role and hope given to 'Team Lemma' in bringing reform and democratic transition in Ethiopia was very high.

Abiy Ahmed's ascendance saw a change in the power dynamics within the EPRDF – the coming to power of the OPDO, later renamed the Oromo Democratic Party (ODP), the party of the new Prime Minister. His election by the party was preceded by three years of protests that forced Hailemariam Desalegn to resign. The new Prime Minister moved rapidly to open up the political space, reshuffling the cabinet and bringing more women into it. He ended the state of emergency that was declared twice during the protests, while releasing thousands of prisoners, allowing banned and exiled political organisations and individuals to return home, and lifting restrictions on social media.



Importantly, he proclaimed multiparty democracy is the only route for the country's political future. Exiled opposition groups and armed movements that came from exile were allowed to engage in a political dialogue facilitated by the National Election Board of Ethiopia (NEBE). The NEBE itself went through some reforms. While the chairperson, a former opposition party leader who was in exile, was handpicked, the other four members of NEBE were appointed following consultations with key opposition political parties. The new government also reformed election and political party law. A draconian civil society law that limited the role of non-governmental actors since 2006 was reformed and opened space.

As a result, Abiy Ahmed was branded a 'reformer' who would end one-party rule and lead the transition to democracy.<sup>84</sup> His popularity in the first few months as a result of his reforms and effort to bring 'peace' between Ethiopia and Eritrea<sup>85</sup> was crowned when he was awarded the 2019 Nobel Peace Prize. Many hoped Ethiopia was finally on track to democratisation and had abandoned authoritarian rule.

However, the latest developments suggest that the country is sliding back into authoritarianism, with the new ruling elite engaged in the same old tactics as the previous one. Popular calls for democracy and genuine self-government are being hijacked by a centrist elite that is imposing its will by force – including waging civil war in regional states. This is happening despite popular support for democracy and federalism, as indicated by Afrobarometer.<sup>86</sup> Instead of providing political solutions to major issues (for example, a more inclusive political system and more working federal languages),<sup>87</sup> the new trend is to use force to terrorise people. From the Somali region<sup>88</sup> to Sidama,<sup>89</sup> Oromia,<sup>90</sup> Tigray,<sup>91</sup> and Wolayta,<sup>92</sup> the actions taken by the federal government speak for themselves: the use of emergency decrees to remove legitimate leaders and stop public demands; violence and the excessive use of force; massive abuse of human rights;<sup>93</sup> political killings and the imprisonment of key opposition political leaders (including Jawar Mohammed, Lidetu Ayalew, Bekele Gerba, Eskinder Nega – later released), several senior Oromo Liberation Front (OLF), and thousands of junior opposition party members; jailing civilians in different concentration camps, mass killings, and restricting media outlets and the internet. The federal government has issued several emergency rules imposing military rule (otherwise called 'command posts') in regional states such as Oromia, Tigray, Benishangul-Gumuz, parts of the Amhara, and the South but only a few of them have been submitted to parliament for approval. Command posts imply that civilian rule is being suspended and replaced by military rule and owing to its frequency and the wide geographic coverage; it has become the new normal. It is as if militarism has replaced federalism.

Political parties that pose significant electoral challenges to the ruling party, such as the Oromo Federalist Congress, faction of the Oromo Liberation Front, and Tigray Peoples Liberation Front (TPLF) are marginalised or branded as terrorists. These are parties calling for more inclusion at the centre and self-government, even confederation. The marginalisation has a peculiar dimension:



it excludes the parties organised along ethno-national lines and creates a favourable ground for parties that favour a more centralised form of government. What was supposed to be a transition to democracy is thus slowly evolving into a new centrist authoritarianism. Ethiopia's democratic transition, according to many observers, has shifted from elections without democracy into full-fledged centrist authoritarianism.<sup>94</sup> There are many signs that demonstrate this trend.

For a start, the ideological framework of the ruling party is slowly becoming clear. Abiy's close advisor, Daniel Kibret, said, 'We will continue to implement Menlik's nation-building project that was disrupted by EPRDF in 1991.'<sup>95</sup> This was the centralised Ethiopia that liquidated quasi-autonomous kingdoms that existed for long through a brutal and coercive process that became the source of Ethiopia's political agony in the last century. The paradoxes inherent in this process are well known: there are those who think it was a normal process of nation-building, and those who think it was empire-building and a form of colonialism. Between the two extremes are those who advocate for a new social contract that allows for a more inclusive centre and genuine self-rule, be it in the form of a federation or confederation. Reinforcing this development is the transformation of the EPRDF to PP under Abiy that turned former relatively autonomous coalition and affiliate members of the EPRDF to branches. The party's internal rule provides that members of PP in regional states are branches of the central leadership in Addis Ababa, not any more autonomous units as they were before. Applied in a federal context, that means regional states are *branches*, not any more autonomous bodies. Thus, since the establishment of PP, Ethiopia has been effectively a unitary decentralized state, not a federation anymore.

Abiy has rejected the concept of Ethiopia as a plurinational state as outlined in the preamble of the 1995 Constitution, declaring instead, 'We are one people.' Credible sources indicate that the PP has grand plans to introduce a more centralised political system that dismantles existing federalism, only tempered following intra party crisis in mid 2022 when the Amhara wing of the ruling party was blamed for hidden coup against Abiy, forcing Prime Minister Abiy to shift his power base to Oromia.<sup>96</sup> Until then, the 'imperial narrative was recycled'. This is not surprising: Abiy's victory speech in Parliament in April 2018 included the words, 'God rest the soul of my mother who told me as a young boy that I will be Ethiopia's seventh King.'<sup>97</sup> There is no federalism under authoritarian and centrist kings.

Since Abiy came to power, many of the leaders of the regional states have been removed by the PP, disregarding regional states' mandate to self-rule and the people's right to elect their own leaders. Indeed, the speed at which the Abiy government's centralising trend moves and its frequency of intervention in regional state affairs hints at his style of governance, notwithstanding his ODP background. The education road map issued by the federal government in May 2019 required the teaching of Amharic language in elementary schools, in contradiction to the Federal Constitution which empowers regional states to choose their working language including the language of

education. In addition, the party's internal rules provide that members of the PP in regional states are branches of the central leadership in Addis Ababa and no longer autonomous units as they were before.<sup>98</sup> Applied in a federal context that means regional states are now branches and no longer autonomous bodies.

Thus, since the establishment of the PP, Ethiopia is effectively a unitary decentralised state, not a federation. A centrist elite is in power. This is a puzzle because the Constitution has not been amended. One should look into the forces that brought Abiy to power to appreciate the riskiness of this development. He came in via the ODP, whereas it is well known that the core content of the protests in Oromia was 'we need a genuine federation, more self-rule, and a halt to federal government intervention in states'. In other words, it was a demand for more, not less, autonomy. It is ironic then that Abiy is keen to centralise power contrary to his own social base. This is a paradox but clearly reveals his plan.

There is more evidence yet of the centralisation trend. The Constitution, in article 52, empowers regional states to establish their own police to ensure peace in their territories, but a recent policy document of the federal government shows that it proposes to dissolve the regional state police, alleging that they are heavily militarised, contrary to their mission, and are posing a threat to peace and security.<sup>99</sup> The document states, furthermore, that the special police are becoming a tool for extremist ethnic and religious groups.<sup>100</sup> It centralises the recruitment of regional state police by subjecting it to federal control.<sup>101</sup> Regional state police, according to this document, are to be made accountable to the federal police while administrative accountability is reserved for the regional states.<sup>102</sup> Reversing previous trends and violating the regional state mandate, the document envisages that the promotion and appointment of the deputy commissioner and the commissioner of regional states will be made by the federal government (Ministry of Peace).<sup>103</sup>

One has to note as well that the centralisation drive is limited by deinstitutionalisation of the public and security sectors limiting the capacity of the state. Indeed, deinstitutionalisation characterises the new regime. The federal government has lost monopoly over the use of force and has not been able to ensure law and order throughout the country, the bare minimum role of any government. This development has affected public trust in authorities and public institutions. Ethiopia has more than four million internally displaced people as a result of horizontal and vertical conflicts that the government was not able to handle, one of the highest in the world. Following an interethnic conflict between Amhara and Benishangul Gumuz in 2020, deputy Prime Minister Demeke Mekonen said 'there is no other option for residents in Metekel zone other than organizing, arming and defending themselves.' The federal government has let the proliferation of informal forces such as *Fano*, *Qeerro*, and regional state special forces that continue to threaten it and as a result, federal government has lost physical control over parts of Oromia, Benishangul Gumuz, Amhara, and Tigray. The Ethiopian state is thus contracting and shrinking. This state of fact speaks volumes about the state of affairs

in Ethiopia. Ethiopia is a failed state. Thus alongside the drive for centralization, there is also fragmentation.

It should be mentioned that, in addition to the sham nature of the federations, it was the effort to centralise by the ruling elite that triggered the failure of the former USSR and Yugoslav federations.<sup>104</sup> There is thus a worrying parallel in Ethiopia at present: the more the PP tries to centralise and impose military rule, the more it inflames ethno-nationalism, and with that comes a greater threat of fragmentation. It is this worrying trend that we have labelled as the rise of a new centrist authoritarianism. The war that broke out between the federal government and Tigray in November 2020 is partly related to divergent perspectives about the federal system, with Abiy trying to restore a centralised Ethiopia and the TPLF pushing for a confederate type of arrangement that grants more autonomy than envisaged in the Constitution.<sup>105</sup> Tigray has been at the forefront of the struggle for self-government, while Abiy is running a federation without Tigray. The current federal institutions have little or no representatives from Tigray. The House of Peoples' Representatives and the House of Federation have no representative from Tigray. The federal army and federal police have officially expelled nearly all members from Tigray.<sup>106</sup>

Noting that many of the ethno-national forces share the agenda of genuine self-government and a more inclusive centre, the tension between the centrist elite and the ethno-national forces is not necessarily about mutually exclusive wishes. From the centrist elite's perspective, maintaining the unity of the country, social cohesion and countrywide protection of citizenship rights are priorities. This is understandable: the Amhara elite, accompanied by the Guraghe and a section of the Oromo, were key players in continuing Menlik's project of nation-building in the previous century. Liberal clauses of the Constitution and enforcement of such basic rights and freedoms using an independent judiciary, along with a constitutional court that serves as a guardian of the Constitution, can address such concerns. Conversely, ethno-national forces crave genuine self-government free of interference from the federal government and inclusion at the federal level. They suspect that whoever controls the centre often tends to centralise power and resources. Equal or proportional representation of regional states in federal institutions, consensus-based decision-making on key political and economic issues, and genuine autonomy for regional states will go a long way in addressing such concerns.

The interests of both camps are not necessarily incompatible and can be subject to negotiation. The revision of the Constitution could thus be made once a dialogue addresses the outstanding issues. Political agreements are formalised through a constitutional pact that all actors agree to abide by. Free and fair elections will then follow as a means to hand over power to an elected government.

### **4.2.3 South Africa**

Shifting global power politics, internal civil insurrection, international isolation, and the end of the Cold War put the apartheid regime of South Africa in

a shaky position, creating favourable conditions for a political settlement with the African National Congress (ANC). The presence of a charismatic leader, Nelson Mandela, who was willing to move beyond the past and contain potentially violent black nationalism in return for black political empowerment, was also a factor in South Africa's political transformation. The emergence of ethno-nationalist liberation forces was curtailed since ANC articulated the need for the black majority to work in unity against white minority rule. The presence of trade unions and the black middle class serves as the glue overriding ethno-nationalism and language-based mobilisation.<sup>107</sup>

To be sure, the Inkatha Freedom Party (IFP), the Zulu nationalist movement that struggled for the autonomy of KwaZulu-Natal, and the Afrikaner white minority, which sought to establish an Afrikaner *Volkstaat* (people's state in an own territory), tried to mobilise along identity lines. The white minority represented by the National Party that long-dominated power (1948–1990) ensured that whites controlled 87 per cent of the country's land, while putting South African blacks in controlled areas and denying them access to power and the economy – Bantustans. The whites were territorially dispersed<sup>108</sup> and not concentrated in one province. The National Party insisted on a federal option as a safeguard against emerging black majority rule. As for the IFP, its province is predominantly Zulu-inhabited. However, over the years, the ANC has become more popular, securing 64.5 per cent of the votes in the 2014 elections, while the IFP received only 10.9%.<sup>109</sup>

In this respect, identity-based political mobilisation is more diffuse in South Africa than in the other African federations. As Steytler has argued, '[A]fter twenty five years the unmaking of the salience of territorial divisions has largely been successful: territorial politics based on race and ethnicity have largely withered away ... the demand for ethnic homeland has evaporated.'<sup>110</sup> Likewise, Murray and Simeon argue that the constitutional design in South Africa aimed at blurring and diffusing diversity.<sup>111</sup> The institutional design process was inspired by Horowitz's integration model.<sup>112</sup> A key feature of the design, as argued by Murray and Simeon, is 'recognition of diversity without empowering it',<sup>113</sup> an apprehension that assumes the fluid nature of identity politics in the country. As a result, '[i]dentity politics has not disappeared in South Africa but does not dominate the political landscape'.<sup>114</sup>

A major factor here is, of course, how the ANC,<sup>115</sup> as champions of the black majority, articulated a vision of a united and inclusive South Africa that cuts across the main cleavages.<sup>116</sup> With its leftist leanings, the ANC's mobilisation of the black majority as its social base was based not on ethno-nationalism but on class and on race as a notion historically constructed and materially effected under colonialism.<sup>117</sup> To this, one should add the ANC's determination to end the bantustans – the apartheid-era ethnic enclaves (deprived of political power, economic base, and land) that served to divide and rule and thereby perpetuate white minority rule. Indeed, it is this history that made the ANC formally reject and discredit federalism in South Africa.

South Africa's nine new provinces established in the Constitution are largely new and officially aimed at ending the ethnic enclaves.<sup>118</sup> To this end, 'race could no longer be an organising principle',<sup>119</sup> and provinces should not reflect ethnic-based bantustans.<sup>120</sup> Instead, the ANC's preoccupation was economic development. Consequently, the provinces do not aim to empower ethno-national groups. Indeed, the idea of federalism for the ANC was disfavoured as it preferred an undivided unitary state<sup>121</sup> but only conceded indirectly to address the concerns of the white minority and IFP.<sup>122</sup> The ANC aimed to uproot the old regime and 'viewed federalism as a device to perpetuate grand apartheid and weaken transformative central government'.<sup>123</sup> The constitutional multi-level government with national, provincial, and local spheres is inspired by the German homogeneous federation focusing on cooperative government.<sup>124</sup> The institutional option for dealing with diversity thus reflects this reality.

Consistent with the idea of integration schemes, policies for diffusing identity-based politics are chosen within the framework of a liberal Constitution<sup>125</sup> that politically emancipates the black majority but with important constitutional restraints to ensure the protection of individual rights, namely the bill of rights, the constitutional court, and property rights. Black empowerment had to concede to the white's retaining their economic privileges,<sup>126</sup> an issue that continues to challenge South Africa.

Thus, despite the Constitution's declaring South Africa as diverse – the 'Rainbow Nation' – it has no formal place for group-based rights. 'The constitution does not envisage bi-nation or multinational-state',<sup>127</sup> as some whites and minorities had wished for. The Constitution subscribes to the classical liberal answer as diversity is not to be entrenched or institutionalised but should be left to the private sphere, following the logic: Let us separate state and ethnicity. Under chapter 1, section 6, there are clauses on right to language and culture, but these are subject to bill-of-rights limitation, in section 30. Both language and culture will be addressed on an individual basis through a bill of rights with an equality and non-discrimination clause at its centre.<sup>128</sup> That English remains as *lingua franca* also serves as a moderating factor.

Distinct from the integrationist approach, South Africa has opted for a parliamentary system of government with two chambers, the National Assembly, which is directly elected, and the National Council of Provinces, composed of provincial delegates. The chief executive and head of state is the President of the Republic: elected in the National Assembly, he or she ceases to be its member and is thus not directly elected, as is a Prime Minister in parliamentary systems. The President and the cabinet can also be impeached in Parliament through the motion of no confidence in terms of sections 87 and 92 of the Constitution.

South Africa also adopted a proportional electoral system for the National Assembly, reflecting an accommodationist approach. Parties that would not be elected under the first-past-the-post system are able to secure seats in the National Assembly, which gives life to the multiparty system in Parliament. In recent elections, small parties have been able to win elections in urban local

governments, eroding the ANC's stronghold in bigger cities. The electoral system thus promotes inclusivity and is a factor in moderating cleavages.

Overall, in line with the goal of integrationist or centripetal federations, the South African system aims to divide power both horizontally and vertically to minimise majority tyranny and not empower ethno-national groups. By design, the Constitution establishes a strong national government with a dominant role and weaker nine provinces. The national government can intervene in provincial affairs. Murray and Simeon conclude that the 'primary virtue' of South Africa's multilevel government 'may lie less in its capacity to empower than in its delegation of much responsibility for service delivery to the provincial and local governments'.<sup>129</sup>

It is important to note that unlike Ethiopia, South Africa does not have well-organised ethno-national-based liberation fronts and thus there can be no question of their territorial integrity and unity being put to the test. The Zulus of South Africa are an exception, though not comparable to the TPLF, OLF, and ONLF of Ethiopia, let alone to the case of Eritrea. The nature of the ethno-national cleavage in Ethiopia is highly mobilised, and indeed by 1991, this force had liquidated the centrist elite, after which it brought about major state restructuring. In the eyes of the ethno-national-based liberation front, Ethiopia is the product of a coercive nation-building process, one which, if it does not allow major political space at the regional state level and a fair share at the federal level, could result in many new nation-states. The nature of the cleavage and its level of political mobilisation are crucial factors that affect the institutional design and the dynamics of the federation or devolution.

While South Africa is not comfortable even with calling itself federal, in Ethiopia, some ethno-national liberation fronts think a federal system is not enough. There should be more transfer of political and fiscal power to the regional states, along the lines of a confederation. National liberation fronts also take pride in naming their regional states after the major ethno-national groups – Tigray, Oromia, Somali, Afar, and the like – as an indication of entitlement to constitutionally protected self-rule. One cannot say the same in Nigeria and South Africa, where the major focus has been on 'recognition of diversity without empowerment'. The Nigerian and South African constitutions focus on national integration and unity, and there is an underlying concern that differences should not be institutionalised or entrenched through federalism or devolution – federalism or devolution should aim rather to diffuse it so that there is less politically mobilised diversity.

In other words, the federal or devolved systems in these countries are not primarily about accommodation and empowerment of diversity; the focus is instead on federalism and devolution for development, service delivery, and the ending of the 'imperial presidency' by dispersing political power to many centres. Thus, diffusing power, and not accommodation and empowerment of ethno-national minorities, is the primary objective of the system. Ethiopia's federalism is preoccupied mainly with ethno-national accommodation and political empowerment, with the aims of enhancing service delivery

and ending extreme centralisation arising as consequences thereof rather than being primary goals.

### 4.3 Institutional design

As mentioned, due to different factors, schools of thought differ on whether the ‘cleavage and difference [should] be recognised, emphasised, institutionalised and empowered or ... be diffused, blurred, [and] transcended’.<sup>130</sup> What matters most is the nature of the cleavage and its level of mobilisation. Ultimately, political reality may require constitutional designers to be flexible and combine accommodation and integration. Integration policy is directed towards ensuring social cohesion, unity, and common citizenship while accommodation policy seeks to provide a political space for sub-state nationalism and minimise violence and state breakup.

At its root, ethno-national-based mobilisation concerns the social, political, and economic injustices, real or perceived, that ethno-national minorities experience at the hands of the centralised state.<sup>131</sup> Thus, whether one chooses integration or accommodation, the end goal is ensuring a just political and economic order in the polity both for those who want to pursue integration and the ethno-national minority that pushes for accommodation. Thus, a mixture of accommodation and integration should be possible; for the sake of clarity, each is discussed separately.

#### 4.3.1 Integration

One soft option advanced by many experts and international organisations such as the European Union, World Bank, and IMF is the integrationist federal system advocated by Donald Horowitz<sup>132</sup> and practised in Nigeria<sup>133</sup> and South Africa. Ethiopia’s centrist elite has for long either resisted federalism or, when the unitary system it promotes becomes unpopular in the context of highly mobilised ethno-national groups, proposed ‘a geographic federalism’<sup>134</sup> – the Ethiopian version of integration.<sup>135</sup> Ethiopia’s new leader, Prime Minister Abiy Ahmed, has indicated that this model is his preferred system and has hinted at amending the Constitution accordingly.<sup>136</sup> Lately, Ethiopian Citizens for Social Justice (*Ezema* in Amharic), an opposition party alleged to be close to the new government that came to power in 2018,<sup>137</sup> has issued a policy that espouses a presidential system, strong federal government, and Nigerian-type arrangement of weaker regional states in which the major ethno-national groups broken down into smaller states.

The intellectual roots of integration lie in American federalism. American experts in federalism, unlike their counterparts in Europe, prefer integrationist federation, the aim of which is to diffuse power to many centres. During the adoption of the United States federation, ‘it was decided that no territory would receive statehood unless minorities were outnumbered by white Anglo Saxon Protestants’,<sup>138</sup> and hence there is little overlap between ethnic groups



and territory. Indeed, Horowitz,<sup>139</sup> the main architect of centripetal/integrationist federation and a thinker who influenced the design of most African federations, argued that federations should prevent ethnic minorities from becoming majorities at the constituent-unit level and thereby forming coherent units that threaten to become nation-states unto themselves. One needs to note that in the United States, the same majority at the federal level also enjoys a majority at the sub-state level and hence that the United States is largely a nation-state federation with little to offer to strongly mobilised ethno-national groups.<sup>140</sup> As will be illustrated later, in South Africa and Nigeria, the sub-unit boundaries do not generally match the territorial distribution of major divisions or are deliberately drawn so as to cut across the main cleavages.

The Nigerian presidential federal system has 36 constituent units largely created by the military through a top-down process. The major ethno-national groups are by design subdivided into several states: the Hausa–Fulani in the north into ten; the Yoruba in the west into seven; and the Igbo in the east into five. Based on lessons from Biafra's failed secession, it aims to ensure national unity by creating many smaller sub-units. The 1996 South African Constitution established nine provinces, most of them new ones. Unlike Ethiopia, the provinces are not designed to coincide with linguistic boundaries, and the model rejects empowering distinct ethno-national groups. In some provinces (KwaZulu-Natal, the Eastern Cape, Western Cape, and the North West), there is a dominant linguistic group, but that was more of a coincidence than the result of a deliberate institutional design. The aim is to blur, diffuse, transcend, and cut across differences,<sup>141</sup> and the redrawing of constituent-unit territory seeks to achieve this goal. The system does recognise the right to culture and language, as is the case in South Africa, but one can exercise these rights only as an individual.

Nigeria and South Africa recognise that they are diverse but do not seek to politically empower diversity. Neither federation ensures the right of ethno-national groups to self-rule. Rather, the main objective of the federal system is to diffuse power into many centres to reduce the risks of abuse of power at the centre. Besides, the model does not allow political organisation based on ethnicity.<sup>142</sup> This contrasts with the accommodation system, discussed below, where recognition of multiple identities to politically mobilised groups is the core feature.

The underlying assumption of the presidential federal system is that a charismatic and selfless president who wins a popular majority and with wide support from a significant number of constituent units will unify divisions.<sup>143</sup> A strong federal government run by such a president and weaker states where the major ethno-national groups are broken down into many smaller units will be less of a threat to the unity and integrity of the country. As already indicated, the model supports the partitioning of constituent units belonging to ethno-national groups, even against their will, as was the case in Nigeria<sup>144</sup> under military rule, to prevent the emergence of sub-state nationalism.<sup>145</sup> Integration aims more at building in (enhancing representation at the national level) than



building out (ethno-national-based sub-units with political autonomy).<sup>146</sup> Nigeria has constitutional rules that encourage political candidates to seek votes beyond their ethnic and social base. For example, in Nigeria, through the principle of the federal character, a principle that aims to ensure fair representation in national institutions, the federal executive must include a member from each state. Parties that compete in national politics must have a national character, with a certain level of membership and number of candidates across the country. The President is also required to win a majority of votes as well as secure at least one-fourth of the vote in two-thirds of the states.

Nevertheless, in societies with deep divisions, where there is no clear demographic majority (a common concern of all three federations), getting such a selfless, unifying president is a rare possibility. The presidency – as a one-person institution associated with the winner-takes-all outcome along with the mandate to make and break the executive and the resources that it commands both formally and informally – is rather a divisive institution.<sup>147</sup> The Nigerian presidential elections demonstrate this point. Instead of unifying different communities, the presidential institution is a bone of contention and cause of electoral violence: the record is simply dismal. Thus, some have indicated the parliamentary system as the preferred option.<sup>148</sup>

Secondly, where societies are deeply divided, as in Ethiopia today, there is no guarantee that the presidential candidate will win across ethno-national divides. On the contrary, communities seem to be keen to choose their own candidates. Thus, a presidential system may perpetuate a permanent majority against a permanent minority, resulting in political frustration and electoral violence, as it did in Kenya in 2007. Where there is no clear dominant group, it may even result in a permanent minority against a permanent minority:

Politicians from minority groups that occupy a few states/single state or share one with other groups have their guaranteed support confined to that state or a fraction thereof ... In a divided society where ethnic categories are the primary lens for viewing conflicts, ethnic minority politicians are hardly accepted outside their home base.<sup>149</sup>

Thus, the presidential system has little to offer to the left-outs but rather leaves them under the perpetual rule of others. It is this sense of isolation that fuels ethno-nationalism: Why stay in a system that is not theirs?

Thirdly, in the case of Nigeria, integration and territorial manipulation worked because the military imposed it by force; but the issue is why a strongly mobilised, territorially concentrated group that feels the central government is repressive and exclusive, as it was the case for the most part of 20th Ethiopia, would consent to such a tool of divide and rule. The effort by the central government to impose centrist policies in Ethiopia resulted in its liquidation and in 1991 the current government's effort to do the same has provoked widespread discontent in Oromia, the South, and Tigray.

Fourth, the presidential federal model works where there are softer, not deeper, divisions in which voters are open to supporting a candidate outside of their ethnic group and thus cutting across cleavages. As argued by Richard Simeon, federations that adopt integration work better in societies with a single dominant culture, softer divisions, and a broad variety of minorities dispersed throughout the country rather than territorially concentrated.<sup>150</sup> Integration has little to offer to politically mobilised, territorially concentrated ethno-national groups.<sup>151</sup> The current Nigerian federation is in many ways the making of military rulers who envisioned a centralised federal system and many small-size constituent units that frustrate the demands of bigger ethno-national groups for self-government.<sup>152</sup> Demands for a genuine federal system by the Yoruba, for a confederal arrangement by the Igbos and for resource control from the oil-producing Niger Delta (home of the Ijaw), which feels a high sense of marginalisation, frequently appear in constitutional reform debates.<sup>153</sup>

Thus, cries for reform of the Nigerian federation involving a presidency rotating among the six bigger geo-ethnic regions and demands for 'true federalism' with more power and resource devolution to states have been on the agenda since the return to civilian rule in 1999, albeit that little progress has been made.<sup>154</sup> These are some of the major forces in Nigeria pushing towards federal accommodation, and it is thus obvious that integration resulting in weak states and a strong federal government has not done well in containing divisions. Thus, Suberu concludes, Nigeria is in an unending search for true democratic federalism.<sup>155</sup>

Integration in Nigeria needs to be flexible to have some accommodative features. Integration assumes a single people (*demo*),<sup>156</sup> as it is a federation of citizens, not a federation among many mobilised ethno-national groups (*demos*). Democratic legitimacy rests on the 'people', but defining the people is central to the debate in divided societies. Integration assumes democratic legitimacy comes from a 'single common people'. According to Erk, 'The centre and the constituent units are orders of governments of the same nation.'<sup>157</sup> Integration is against the public institutional recognition of 'group identities',<sup>158</sup> though it may accept diversity in the private sphere (often called soft multiculturalism) and in this respect is not assimilation.

In other words, it aims at public homogenisation through common citizenship.<sup>159</sup> Public education, language policy, media, culture, national symbols, and the legal system are used as tools to promote a single public identity. Public policy also plays a key role in making sub-state identities publicly invisible.<sup>160</sup> As it is a product of the nation-state, it promotes one (national) identity and discourages sub-state identities. It pretends to turn a blind eye to differences, but implicitly and at times explicitly the culture and identity of the dominant elite become the 'national' identity. It promotes and nurtures the chosen identity of the political elite that controls power and is thus not inclusive. Identity then becomes a means for inclusion (source of pride) or exclusion (source of subordination and stigma) and a tool for mobilisation by

the left-outs to end their subordinate position. It is 'rooted in the old liberal principle that the individual is the only atom from which to construct and analyse society'.<sup>161</sup>

The limitations of integration in dealing with groups that are mobilised against the centre became clear towards the mid-20th century, and thus the nation-state was forced to reconfigure itself to provide space for sub-state entities. Thus, the UK, Spain, Canada, and Belgium had to open up through a renegotiated social contract for the Scottish, Catalan, Quebec, and Flemish autonomous sub-units.<sup>162</sup> One could argue in this sense that it was integration applied in the context of deep divisions that produced political mobilisation. Failed integration thus led to accommodation systems where mobilised ethno-national groups in the above countries are by design made majorities at the sub-unit level to ensure the right to self-government to groups as entities. The old liberal model based on the individual had to give in and be reformed to create space for left-outs. Deeply divided societies are pluri-nations and so demand the political recognition and empowerment of many nations, not one nation in the country. According to Erk:

Democratic legitimacy is based on the union between multiple *demoi*. And not every constituent nation sees the union in identical terms. For English speakers, Canada is a federation of ten provinces; for French speakers, it is a union of two nations.<sup>163</sup>

The centre and the constituent units are orders of governments of different nations. There are thus competing views on the nature of the union and the source of democratic legitimacy owing to multiple *demoi*. Thus, unlike integration, accommodation promotes dual or multiple identities and public policy, as well aims to achieve the same goal. In the presidential federal model, the goal is to construct one people out of many; by design, this prevents ethno-national groups from becoming constituent-unit majorities and thus denies the group self-government rights.<sup>164</sup> In other words, it does not ensure group self-government at sub-state levels.

In Ethiopia, owing to the coerced state formation process in the 19th and early 20th centuries and the subsequent failure by the centrist elite to address ethnic-based marginalisation, the larger ethno-national groups established national liberation fronts and brought the central government to its knees in 1991. Since 1991, they have exercised limited political autonomy and continue to demand more, not less, autonomy. One could say that the level of ethno-national-based mobilisation in Ethiopia is a record in the African context. The centre has had difficulty comprehending this fact and invariably fails to design appropriate institutions and policies to address it. A return to centralisation, or a shift to a strong presidential system with weaker states, could risk speeding up the country's collapse. It was the effort to centralise on the part of the central government in the context of mobilised ethno-national-based states that triggered the collapse of communist federations,<sup>165</sup>

the determination of Abiy and the *Ezema* leaders to shift towards a presidential and centralised federation is thus a risky choice and is aggravating tension in many parts of the country.

South Africa shares some features of integration. It is characterised by ‘politically salient cleavages that are both territorial and non-territorial and the issue of territorial accommodation is part of a larger constitutional agenda that may be offset by other claims’.<sup>166</sup> The white minority is territorially dispersed, while the different linguistic groups of the black population, although to some extent found geographically concentrated, have rather been mobilised as united entities by the ANC against colonisers and the apartheid regime. Despite linguistic differences, the idea of the black majority as a single and cohesive political community is still alive. The groups are also internally less-than cohesive. Zulu nationalism has over the years lost ground to the ANC, even in its home province.

#### **4.3.2 Accommodation and power-sharing**

For countries with deep divisions where ethno-national groups are politically mobilised and identity is politically salient, the two well-recognised alternatives, depending on whether the cleavage is territorially grouped or dispersed, are power-sharing or accommodation within a federation.<sup>167</sup> Thus, institutional design is not done in the abstract but is a reflection of the social and political forces that shape institutions.

First, a few remarks on power-sharing. The works of Arend Lijphart<sup>168</sup> and of late O’Leary and McGarry<sup>169</sup> have articulated the various elements of consociational – as opposed to majoritarian – democracy. According to Lijphart, ‘power sharing denotes the participation of all significant communal groups in political decision making especially at the (federal) executive level’.<sup>170</sup> Unlike integration that prefers a presidential system, power-sharing is associated with a parliamentary system that is suitable for a power-sharing arrangement in the executive, often in combination with a proportional electoral (PR) system. A parliamentary coalition is certainly more inclusive than the one-person office of the presidency.

As argued by Lijphart, it is a flexible arrangement that aims to ensure broad-based representation and the inclusion of all major actors in decision-making and could be on an equal or proportional basis. In Belgium, there is equal representation of the Dutch- and French-speaking communities in the executive. In South Africa (1994–1999), all parties that won a five per cent threshold to the legislature had the right to be represented in the cabinet. The executive power may be divided and shared, as was the case in Kenya between Kibaki and Odinga following the 2007 election crisis, and the rest of the cabinet was shared between rival parties. It could also take the Swiss form, where all communal groups are conventionally represented in the collegial executive, and the presidency is rotated among the seven members annually.<sup>171</sup> The inclusion of the major political actors in the political institutions, either through a

proportional electoral system or on an equal basis along with the representation of the different groups in public institutions, is thus the core feature of power-sharing.

Power-sharing, unlike federalism, often takes a non-territorial form.<sup>172</sup> In other words, it is recommended for societies that are deeply divided by identity differences but where the groups are geographically intermixed. Through a combination of power-sharing that enables them to influence policy-making at the centre and autonomy that entitles them to decide issues related to language, education, and culture, the groups are believed to contribute to political stability. Power-sharing could thus remain short of federalism so long as there is no territorially-based cleavage demanding political autonomy and self-government.

One could not rule out the relevance of power-sharing in the federations under discussion, given the fact that none of the ethno-national groups taken alone constitute a '50 plus 1' majority. Indeed, all the African federations under study are countries of minorities. Even in Nigeria's estimated population of 200 million and no less than 400 ethno-linguistic groups, three of them (Hausa–Fulani, Yoruba, and Igbo) are estimated to account for 60 per cent of the total population, but none is large enough to claim a majority.<sup>173</sup> O'Leary has argued that in a context where there is no *staatsvolk* (a dominant group that enjoys an absolute majority and hence has the demographic advantage), political instability will prevail unless there is an inclusive political system that brings the major political actors to power.<sup>174</sup> The solution he proposes is executive power-sharing among the major political actors. While in all three federations there is an effort to have an inclusive federal government, in reality the federal government is perceived as belonging to one dominant group and thus continues to face a legitimacy crisis. Left-outs continue to threaten the central government. For instance, since the establishment of the Ethiopian federation, both as a result of constitutional principle (article 39(3)) and practice, there has been an attempt to reflect the country's diversity in the establishment of the executive.

The issue, however, is that representation is meant for some only in the nominal and not real sense. The two coalition members of the ruling party that led the Oromia and Amhara regional states, in particular, faced a serious legitimacy crisis until recently, and thus a section of the Oromo and Amhara used to think they were not genuinely represented in the federal institutions. Hence the narrative of marginalisation and the protests since 2015.

In nearly all African federations, including Ethiopia, the federal principle of representation has never been genuinely implemented. Representation of sub-units in federal institutions is mainly in the second chamber, the federal executive, the judiciary, the army, and security. Inclusive and broad-based federal government remains a scarce commodity, explaining what Steytler and de Visser call 'the fragile nature'<sup>175</sup> of the federations, given that they face threats of fragmentation and secession. Non-inclusive federal government in a divided society is perceived as belonging to some and not all, and with that comes the

legitimacy crisis explained earlier. To stay in power, the federal government resorts to brute force, while the left-outs do the same thing, making the system fragile. The constitutional clauses contain some elements of representation. Nigeria has the 'federal character', in article 4(4), and Ethiopia the right to equitable representation of nationalities, in article 39(3), in federal institutions. However, representation is symbolic rather than genuine. In many cases, it is the federal government that handpicks the 'representatives' instead of leaving the matter for the sub-units to designate their genuine delegates in the federal institutions. This has been a major paradox in Ethiopia, for example, as the 'representatives' do not have legitimacy in the eyes of the people of the states.

The second chambers play a special role in representing states in the law-making process at the federal level and in airing their voices. This is particularly critical when the federal government designs laws and policies that may affect the interest of the states. In addition to airing their concerns, constituent units can also block the other house when it exceeds its mandate and impacts their autonomy. The second chamber thus safeguards the interests of the states. The basic principle that guides federations is that, irrespective of their population size, the states are represented on an equal basis. Thus, in Nigeria there are two senators from each state, while in South Africa each province has ten representatives in the National Council of Provinces.

The Ethiopian House of Federation is distinct in two respects: it has no law-making function, but it has wide powers in resolving intergroup conflicts, although in reality it is least explored because its members are not full time. It also enjoys wide powers in the allocation of subsidies that the federal government allocates to the states – the main source of states' revenue. Secondly, the representation is not based on equality. It is a majoritarian house where each nationality has one seat, but for every additional one million, there is one more seat. The fact that states in Ethiopia have no law-making functions means that the federal government can easily enact laws that affect the autonomy of states; in the absence of a constitutional court that impartially umpires intergovernmental disputes, the system leaves states at the mercy of the federal government.

The experiences in Nigeria and South Africa are relevant in this regard. The states have a role in the law-making process at the federal level, and they all have either a constitutional court (South Africa) or supreme court (Nigeria) to address intergovernmental disputes in an impartial manner. Institutions that enforce the supremacy of the Constitution and the rule of law and that umpire intergovernmental disputes impartially are indeed vital preconditions for the operation and development of federations.<sup>176</sup> These institutions give life to the powers allocated to the two levels of governments and thereby allow the federation to evolve within bounds. Such institutions keep the federation balanced and give concrete expression to the division of powers. In Africa, political power is yet to be tamed and institutionalised. The 'big man' or the dominant party at the centre is a major obstacle to federalism, power-sharing, and separation of powers. Independent institutions such as supreme courts or constitutional courts play vital roles in limiting the power and in institutionalising it.

South Africa and Nigeria have taken some steps, but Ethiopia is far behind in this respect, and the federation has largely been open to political manipulations.

It is vital to mention that successful federations that have politically mobilised cleavages often combine federalism with power-sharing. Groups are found intermixed or geographically concentrated. Thus, combining the two offers the best solution. It is for this reason that Elazar argues that consociational federations are best suited to divided societies.<sup>177</sup> The Swiss and Belgian federations are in many ways consociational. Compared to presidential centripetal federations, consociational parliamentary federations bring the major political actors to the executive and Parliament and minimise the risks of the 'winner-takes-all' associated with presidential systems. Due to the fact that it often leads to a coalition government, the system needs a consensus-based process of decision-making to avoid government collapse and to provide an incentive for elite bargaining.<sup>178</sup>

The highest form of accommodating ethno-nationalist groups, particularly when they are found territorially concentrated and are politically mobilised, is through consociational federalism.<sup>179</sup> The accommodation approach takes 'divisions' seriously and does not aim to abolish or weaken them but recognise them and turn them into constitutive elements of democracy and empowerment. When combined with federalism, it treats 'the segmented elements' as building blocks of political engagement and aims to make the ethno-national group a majority at the constituent-unit level.<sup>180</sup> While Switzerland and Canada were pioneers in this respect, Kymlicka argues, the idea of ensuring self-government to territorially concentrated national minorities is now universal in the West.<sup>181</sup>

As Livingston observed, the essence of federalism is not in the Constitution or the institutions alone but in the social and political diversity that necessitates the adoption of federalism.<sup>182</sup> The geographical distribution of diversity and its political mobilisation remain vital factors. If mobilised and if ethno-national groups are found concentrated in a certain area, then ethno-national federalism remains the relevant alternative. Unlike the integrationist presidential federations whose goal is to disperse power in many centres, ethno-national parliamentary federations empower such groups by redrawing territories to ensure they become a majority at the sub-state level. Ethno-national minorities challenge the coercive process of state formation and the subordinate relationship they have with the centre. They assert a national identity whose goal is to ensure self-government within a defined territory, and thus the relationship between groups and territory becomes critical.<sup>183</sup> Self-government is intrinsically linked to territory. At the core of the mobilisation is the need to address political and economic deprivation and regain collective self-esteem by ending their subordinate relations with the elite that controls the centre.<sup>184</sup> Their claims may extend to including the right to exit, while the centre wants to ensure unity and territorial integrity of the state.

Political autonomy within a defined territory as part of the political system is thus a midway solution to the competing claims of the centre and the



sub-units. Unlike the presidential federal model, ethno-national-based federations do not aim to nurture only one identity but recognise more than one public identity. Public policy thus promotes multiple identities. Managing mobilised ethno-national diversity and ensuring the right to self-government remains the major task of the federal design. Through its combination of constitutionally entrenched division of power as well as the principles of shared rule and self-rule,<sup>185</sup> it allows mobilised groups to enjoy political autonomy at the sub-unit level while ensuring representation at the federal level. Through the institutions of shared rule and representation in federal institutions, ethno-nationalist groups are given the opportunity to influence decision-making at the centre.

The logic of this form of federalism is that ethno-nationalist groups can only respect the institutions of governance and thus contribute to a stable federation when they are granted a satisfactory combination of influence at the centre and meaningful autonomy at the sub-state level with regard to their own affairs.<sup>186</sup> As practised in the Swiss collective presidency, the different identities have guaranteed representation in key decision-making institutions at the federal level.<sup>187</sup> This determines whether ethno-nationalist groups remain loyal to the overarching federation or prefer to fight or walk away from it. As it recognises more than one public identity (at the federal and sub-state levels) and aims to secure coexistence among them, it remains a key instrument for polity-building and managing diversity.

The most common criticism of the accommodationist approach is that it institutionalises divisions, deepens the fault lines it is meant to address, and can aggravate the conflict.<sup>188</sup> Yet deeply divided societies are already divided and thus would need accommodation, not integration, to prevent the next step: secession and state fragmentation. Power-sharing and ethno-national federations are 'put in place where other institutional options have failed'<sup>189</sup> or do not fit; as Liam Anderson notes, the choice is between ethno-national federation and nothing. Moreover, it is rare that a sub-unit will become a homogeneous unit; mobilised ethno-national groups that constitute a majority at sub-unit level could tend to be local tyrants and abuse the rights of minorities, so there is a need for institutional guarantees ensuring citizenship and minority rights throughout the federation.<sup>190</sup>

Post-1991 Ethiopia's federal experience is not without limitations. Critics have raised concerns that by empowering ethno-national groups to self-rule and by providing resources, security forces, and the media at their disposal, the Ethiopian federal system may weaken common ties.<sup>191</sup> Emboldened ethno-national groups and their elites, by focusing on the politics of difference, may have independent nationhood as their ultimate objective. It is thus a high-risk strategy that can bring about the country's disintegration.<sup>192</sup> Some of the above symptoms were clearly manifested in the pre-election debates of the 2005 elections in which some leaders from the opposition fomented ethnic hatred.<sup>193</sup> The signs were also visible in the recent protests in which hard-line ethno-national elites considered carrying the federal flag a crime. Intra-unit



minorities in states have been discriminated against by dominant ethno-national groups who think they ‘own’ the territory. State institutions such as the police and the army, whose role is to ensure peace and order and prevent crimes, often take sides in intergroup conflicts and aggravate the problem.<sup>194</sup> While federal education policy requires states to promote the federal working language in schools, in some parts of the Oromia regional state, this was largely seen as a continuation of the old regime and resisted. Regional state figures have also been active in foreign affairs, an exclusive mandate of the federal government.

The federal system has also shaped intergroup relations and tensions over the years. The fact that disputed areas coincided with the administrative boundaries between regional governments seems to have transformed conflicts between local communities into conflicts between regional states.<sup>195</sup> The recent (2017) Oromia-(Ethio)-Somali conflict is perhaps the worst example in which local political elites, the media, and the police apparatus took sides in the conflict, causing the death and displacement of hundreds of thousands from both sides and threatening the peace and stability of the country.<sup>196</sup> Of late, federal institutions are also falling into that trap. Citizens in different parts of the country accuse federal institutions such as the police and army of failing to protect them in times of conflict.<sup>197</sup>

Societies with deep divisions require strong social capital that connects them across ethno-national and religious boundaries.<sup>198</sup> Thus, building institutions and systems that nurture shared values (such as strengthening common bonds that tie the people, a shared and inclusive history, inclusive symbols and monuments, the deliberate promotion of common citizenship that transcends ethnic and religious divides,<sup>199</sup> countrywide protection of citizenship rights through courts, as well as leaders that bridge ethno-national boundaries) is critical to counterbalancing rising ethno-nationalism, building a sense of shared belonging, and maintaining the interdependence between unity and diversity. As Steyler and Ghai argue, ‘The slogan “unity in diversity” means more than the recognition and accommodation of diversity; it also entails the nesting of such diversity’<sup>200</sup> through policies and processes that counter the centrifugal forces unleashed by self-rule. It is about, in the words of David Miller, ‘nesting identity’<sup>201</sup> through federalism – an identity that is aware of itself as well as the identity of others. It assumes intergroup interaction for building cohesion among groups,<sup>202</sup> rather than the non-interactive existence of parallel and segregated identities. It is also about the coexistence of multiple identities, where two or more identities feel a sense of belonging both to a smaller (sub-state) community as well as to a larger, overarching political community, and do not see these communities as mutually exclusive.

However, the Ethiopian federal system lacks a comprehensive policy for nesting diversity and for creating cohesion as it emphasises nationalities’ right to self-rule. Strong institutional protection of individual rights and ensuring fair and genuine representation of minorities at different levels of government mitigates the weaknesses of accommodation and enhances social

cohesion by encouraging the free movement of people across the federation. Accommodation thus needs to manifest some element of integration.

#### **4.4 Conclusion**

This chapter has examined whether the nature of the cleavage matters and has an impact on institutional design. In comparing three federal and devolved systems, it was argued that the nature of the cleavage and its level of mobilisation matter have an effect on institutional design. Depending on the nature of the cleavage and level of mobilisation, distinct institutional arrangements are needed to manage the cleavage and reduce conflict. Less-mobilised cleavages – as in South Africa – can be managed through integration, while more mobilised and territorially-based ones can be managed through accommodation.

At the end of the day, though, political reality dictates that constitutional designers should be flexible and combine accommodation and integration. As in Ethiopia, nesting identity remains vital to ensuring social cohesion, unity, and common citizenship. In Nigeria, there is growing concern that divisions may deepen unless an accommodation policy is employed to provide political and identity space for sub-state nationalism and to minimise mobilisation based on identity. Integration has not been able to respond to strongly mobilised groups in Nigeria, and failed integration policy can fuel ethno-nationalism, resulting in more radical demands. In South Africa, despite an integrationist design, the proportional electoral and parliamentary systems have promoted political inclusion that (besides other factors such as the presence of a black middle class) have moderated divisions.

As a result of the coercive nation-building process that liquidated quasi-autonomous kingdoms and the failure of successive regimes to respond to demand accommodation, the number of national liberation fronts in Ethiopia is a record within the African continent. The left-outs from the nation-building process have continued to challenge the centre. The debate between the centrist elite and the left-outs is Ethiopia's major political dilemma and the cause of its fragility. There was much hope that when the new leadership came to power in 2018, the demands for genuine federalism in which regional states would exercise political autonomy free from central interference would realise. As shown in this article, what transpired was, however a new form of centralisation that has changed the narrative to centralised nation building, issued policies that promote unitarism, removed regional state heads by force, and continued to impose 'command posts' in the states. Given its geographic coverage literally affecting most regional states and the frequency of use, it has become the new normal. The current state of affairs shows militarism has replaced federalism in Ethiopia. The reaction is vivid: an all-out war against the centre, particularly in Tigray and Oromia; two of the states that harbour age-old demand for self-government and now pushing for a loose confederation. Centralisation and marginalisation are currently two major challenges and both are inimical to deeply divided Ethiopia.

In comparison with the other federations under discussion, two points complicate Ethiopia's political context. Extreme centralisation of power and the use of brute force to deal with political issues served to incubate the ethno-national liberation fronts that emerged in the early 1970s. In addition, modern Ethiopian politics are characterised by a failure to engage in dialogue and reach compromises. It is hard to find something comparable to the political settlement in post-apartheid South Africa or Kenya's post-2007 political deal following the election crisis. Entrenched, territorially-based, and politically mobilised cleavage is the outcome. The Ethiopian federal system's distinctive response to the nationality question was an effort to address this issue.

The chapter has concluded that the nature of the cleavage and its level of mobilisation has an impact on institutional design. Depending on the nature of the cleavage and its level of mobilisation, some of the federations have chosen accommodation and others integration. Two accommodationist arrangements are power-sharing and consociational federation, which ensure self-government and fair representation. The central government in each of the countries under discussion continues to be perceived to have weak legitimacy and to lack of inclusivity. At its core is the fact that each country is composed of a collection of ethno-national minorities, none of them alone commanding a majority. Majoritarian-based democracy in deeply divided societies becomes a problem rather than a solution – hence the need for other inclusive options. It becomes a clash in which a minority that has state resources at its disposal tries to impose its will on another minority. Yet even if the central government's project of nationalism enjoys a majority, it pits a permanent majority against a permanent minority, and the latter has no hope of becoming a majority.

With it comes the issue of why an ethno-national minority under the perpetual rule of injustice would be expected to be loyal to such a regime and stay in the union. The general assumption of majoritarian democracy – that rulers alternate between elections, in that today's majority will become tomorrow's minority – does not hold true in deeply divided societies. In this context, the institutions also suffer from a legitimacy crisis. The decisions of the majority are not accepted by the minority. The values of the centrist state such as the flag, the national anthem, and public policy are deeply resented and rejected by the ethno-national minority. Thus, alternative theories such as consociational democracy are recommended when the political system faces deeply divided cleavages. Instead of having winners and losers, consociational democracy brings together political actors – either in equal or proportional arrangements – and insists on consensus decision-making on fundamental issues. Thus, left-outs in the majoritarian democracy become decision-makers through power-sharing, reducing the potential for conflict. Distinct institutional arrangements thus matter in managing divisions and reducing conflict.

The second distinct institutional feature that deeply divided societies with territorial divisions need is political autonomy and representation. Unlike the integrationist presidential federations that disperse power into many centres, ethno-national parliamentary federations aim to empower such groups

by redrawing territories to ensure that they become a majority at the sub-state level and exercise meaningful political autonomy and self-government, while at the same time enjoying representation in the national political process. Ethno-national minorities challenge the coercive process of state formation and the subordinate relationship they have with the centre. They assert a national identity whose goal is to ensure self-government within a defined territory and, thus, the relationship between groups and territory becomes critical.

While in integration, cleavages are deliberately subdivided into several sub-units, in accommodation the cleavages think such an approach is a ploy to divide and rule and insist on having a constituent unit that ensures they have a majority and territorial control where they exercise territorial and political autonomy and decide their own affairs. Compared to presidential centripetal federations, consociational parliamentary federations bring the major political actors to the executive and Parliament and minimise the 'winner-takes-all' risks associated with presidential systems. As it often leads to a coalition government, the system needs a consensus-based process of decision-making to avoid government collapse and serve as an incentive for an elite bargain. Mobilised ethno-national groups that feel less represented in federal institutions have little incentive to stay in the union unless they are assured of some level of influence or even veto at the centre. To minimise the growing mistrust between the federal government and regional states, key decisions that affect the country and the regional states need to be decided by a consensus between the federal government and regional state leaders.

In South Africa and Nigeria, the choice was to make cleavages diffuse. Consistent with the logic of integration federation, larger ethnic groups do not have ethnic homelands at the provincial level. The federations divide the larger ethnic groups into several states. They do not take the ethnic/religious-based provinces as building blocks during the political engagement but rather break them into smaller units. Furthermore, while the Constitution outlines the broader objectives of devolution, the overall design of the federal system shows a major focus on development and service delivery rather than ethnic accommodation. In both federations, the overall logic is that it is easier for the national government that controls power to manage many smaller-size provinces or states than a small number of larger provincial-based ethnic groups.

Another observation is that, unlike Ethiopia, South Africa does not have well-organised ethno-national liberation fronts and thus the territorial integrity and unity of the state have never been put to test. The Zulus of South Africa or Maasai, coastal people, and the northeast of Kenya are exceptions and not comparable to the TPLF, OLF, and ONLF of Ethiopia, not to mention Eritrea. Ethno-national cleavages in Ethiopia are highly mobilised and, indeed, since 1991 have brought about major state restructuring. Ethiopia, in the eyes of the ethno-national-based liberation front, is the result of a coercive nation-building process which, if it does not allow major political space at the regional state level and a fair share at the federal level, could result in many new nation-states.

The nature of the cleavage and its level of mobilisation is thus one major factor that affects the institutional design and dynamics of the federation or devolution. Even at a formal level, while South Africa is not comfortable calling itself federal and hence employs a more neutral name, 'devolution', in Ethiopia, ethno-national liberation fronts think federation is not enough. They seek a greater transfer of political and fiscal power to the regional states along the lines of confederation. Furthermore, National liberation fronts take pride in naming their regional states after the major ethno-national groups as an indication of entitlement to constitutionally protected self-rule. One cannot say the same in Nigeria and South Africa, where the focus has been on 'recognition of diversity without empowerment'. The Nigerian and South African constitutions focus on national integration and unity, and there is an underlying fear that differences should not be institutionalised or entrenched through federalism or devolution. Federalism or devolution should rather aim to diffuse it. In other words, it is federalism and devolution for development, service delivery, and ending tyranny at the centre. Thus, accommodation and empowerment of ethno-national minorities are not the primary objectives of the system: diffusing power is.

South Africa shares some features of integration. It is characterised by 'politically salient cleavages that are both territorial and non-territorial, and the issue of territorial accommodation is part of a larger constitutional agenda that may be offset by other claims'.<sup>203</sup> The white minority is territorially dispersed. The different black communities, although to some extent found geographically concentrated, ANC mobilised as a single political community (black community) against the apartheid regime. The idea of black majority as a single political is thus still alive despite the linguistic diversity within the black community. The groups are also internally less-than cohesive. Zulu nationalism has over the years lost ground to the ANC, even in its home province.

In Nigeria, integration has increasingly been questioned and softer forms of mobilisation have frequently called for accommodation and more transfer of power to sub-units. The current Nigerian federation is in many ways making military rulers who envisioned a centralised federal system and many small-size constituent units that frustrate the demands of bigger ethno-national groups for self-government. Failed integration can deepen cleavages and shift the focus towards accommodation. True federalism by the Yoruba, confederation by the Igbos, and a high sense of marginalisation and demand for resource control from the oil-producing Niger Delta (home of the Ijaw) appear frequently in constitutional reform debates.

Thus, cries for reform of the Nigerian federation involving a presidency rotating among the six bigger geo-ethnic regions and demands for 'true federalism' with more power and resource devolution to states have been on the agenda since the return to civilian rule in 1999, albeit that little progress has been made. These are some of the major forces in Nigeria pushing towards federal accommodation, and it is thus obvious that integration resulting in weak states and a strong federal government has not done well in containing

divisions. Thus, Nigeria is in an unending search for genuine federalism, with some powers transferred to states.

## Notes

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- 19 The claim by the federal government is that on 4 November 2020 the TPLF 'attacked the Ethiopian army base (the Northern Command) that was based in Tigray', in response to which it (the federal government) undertook a 'law enforcement operation' to bring the

culprits to justice. However, the African Union (AU) and other sources challenge the government's narrative. According to an AU press release, 'On 4 November 2020 the Government of the Federal Democratic Republic of Ethiopia launched a military offensive against the TPLF, this was followed by attacks on the Northern Command of the Ethiopian National Defence Forces by the TPLF on the same day.' See ACHPR 'Background' (n.d.) <https://inquiry.achpr.org/elementor-536/> (last accessed 23 June 2021). It is now clear that the TPLF and federal government have been at war since Abiy Ahmed assumed power and that what happened on 4 November was the culmination of tensions since 2018. The federal government's claim that it is conducting a 'law enforcement operation' conceals a much more devastating humanitarian and civilian disaster in the region. An estimated two million people have been internally displaced from their homes; some 65,000 have become refugees in the Sudan; civilian institutions such as schools, hospitals, factories, and crops that were ready for harvest have been looted and dismantled; sexual violence and rape have been committed on women; and starvation is being used as a weapon of war. Pekka Haavisto, a European Union envoy who visited Ethiopia in February 2021, informed the European Parliament that Ethiopian leaders had told him that 'they are going to destroy the Tigrayans, that they are going to wipe out the Tigrayans for 100 years'. See D Walsh, 'From Nobel Hero to Driver of War, Ethiopia's Leader Faces Voters', *New York Times* (21 June 2021) [www.nytimes.com/2021/06/21/world/africa/Ethiopia-election-Abiy-Ahmed.html](http://www.nytimes.com/2021/06/21/world/africa/Ethiopia-election-Abiy-Ahmed.html) (last accessed 1 July 2021).

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