

Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia

Christophe Van der Beken*

1. Introduction

Today, federal political systems are increasingly used by states with a multi-ethnic population as a mechanism to accommodate the demands of their ethnic groups as well as to protect their territorial integrity. Federal political systems are thus created to prevent, resolve or at least mitigate ethnically inspired or associated conflicts and in this way to ensure stability within the state. The tendency to use federal structures as a mechanism for the accommodation of ethnic diversity is far less visible on the African continent and this is despite the large ethnic diversity that characterizes the population of most African states. In Africa, nation and state building strategies aimed at weakening ethnic affinities in favour of a national identity prevail. They are based on the hope that, in this way, the attachment to the ethnic group will transform into an affinity for the state. However, many conflicts show that these strategies have not been successful in the slightest in erasing the ethnic identity of African citizens and guaranteeing the stability of the African state. It is therefore interesting to look at Ethiopia where the government has, for over 15 years now, chosen to base the development of national identity explicitly on the recognition of the ethnic diversity of the population: hence unity in diversity. For this purpose, an ethnic federal state has been established.

Ethnic federalism – and Ethiopian federalism in particular – is hotly contested.² The major argument against it is that ethnic federalism will only lead to further ethnic fragmentation, tensions and conflicts and will thus ultimately result in the demise of the state.³ The study of the Ethiopian case will however demonstrate that the political context at the time of adoption of ethnic federalism was such that a state building strategy based on the recognition and administrative/institutional accommodation of ethnic diversity was the only mechanism that could guarantee societal stability and the continued existence of the Ethiopian state. Moreover, it is submitted in this paper that Ethiopian federalism does have the capacity to effectively balance unity and diversity tendencies, but only if a number of constitutional/legal and political conditions are fulfilled. To substantiate the argument that there was really no viable alternative for what could be called ‘the ethnic strategy’, it is necessary to provide an insight into the background to the introduction of ethnic federalism in Ethiopia. This background will also enable us to better understand the form and practice of the Ethiopian federal model and to suggest pertinent improvements. The second section will thus focus on the historico-political developments leading to the development of an ethnic federal state as

* Postdoctoral researcher at Ghent University Law Faculty. E-mail: Christophe.VanderBeken@UGent.be

² John Young, ‘Ethnicity and Power in Ethiopia,’ *Review of African Political Economy* nr. 70 (1996), p. 537; Terrence Lyons, ‘Closing the Transition: the May 1995 Elections in Ethiopia,’ *The Journal of Modern African Studies* Vol. 34, nr. 1 (1996), p. 125.

³ See, among many others, Minasse Haile, ‘The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development,’ *Suffolk Transnational Law Review* Vol. 20, nr. 1 (1996), pp. 1-84.

from 1991. The third section will investigate whether a number of basic constitutional conditions necessary for the accommodative effect of federalism to come into play are fulfilled. Besides the constitutional provisions, attention will also be paid to the political context, which obviously influences the meaning of the constitutional provisions. The paper will conclude that, in addition to a number of constitutional changes, it is the commitment of the current rulers to the implementation of Ethiopia's ethnic federalism that will be the main determinant of its success.

2. Background to Ethnic Federalism

2.1. The Origins of the 'Ethnic Problem'⁴

Ethiopian society is today characterized by a large diversity of languages, cultures, religions, socio-economic activities and governance traditions. Although the Ethiopian state has a particularly long history (there already existed an embryonic Ethiopian empire in the first century AD), this large societal diversity is of much more recent origin. It arose in the aftermath of a territorial expansion of the empire of Abyssinia at the end of the nineteenth century. It was Emperor Menelik who in the last decades of the nineteenth century considerably expanded the Abyssinian/Ethiopian heartland – strongly dominated by Orthodox Christians who used Amharic and Tigrigna as the most important languages – with territories in the south, east and west. This territorial expansion led to the traditionally dominant population groups no longer having a numerical dominance. The conquered peoples spoke dozens of languages, professed several religions (Islam and traditional religions) and had different socio-economic activities and governance structures. However, this diversity was not at all reflected in government policy. On the contrary, government policy aimed to transform this heterogeneous group into a homogeneous Ethiopian nation. The strategy used for this purpose did not include the creation of a new identity, but the propagation of an existing identity – the identity of the conqueror – as the national identity. Concretely, the regime strived to erase the ethnic identity of the non-Amhara peoples and to replace it with an Amhara identity. It was the Amhara elite (and in particular the elite from the central region of Shoa) which had assumed power after the accession of Emperor Menelik (in 1889). The dominant position of the Tigrayans had ended with the death of the Tigrayan Emperor Yohannes, the predecessor of Menelik. The Amhara language (Amharic), culture and religion (Ethiopian Orthodox Christianity) were strongly propagated and idealized and all other languages, cultures and religions were denigrated. Important instruments in this *Amharisation* policy were the imperial administration and education that exclusively used Amharic. Not only were the non-Amhara peoples the victims of an Amhara cultural and religious dominance, economically they were also in an inferior position. In many cases, the conquered peoples lost their traditional land rights for the benefit of the (Amhara) conqueror. Finally, the non-Amhara peoples were the victims of an Amhara political dominance. For non-Amhara the learning of Amharic and the adoption of Amhara culture, tradition and religion were

⁴ Christophe Van der Beken, 'Ethiopia: From a Centralised Monarchy to a Federal Republic,' *Afrika Focus* Vol. 20, nr. 1-2 (2007), pp. 13-48.

necessary steps to develop a career within the state. In the 1960s, a number of rebellions arose where the dissatisfaction with an Amhara dominated state was an important mobilizing factor. There was the independence struggle in Eritrea, which was more and more supported by the development of an Eritrean nationalism. Furthermore, there was the rebellion in the south-eastern province of Bale where a Somali and a nascent Oromo nationalism could be observed.

2.2. Marxism and the Discovery of the ‘Nationalities Issue’

2.2.1. The Ethiopian Student Movement

The revolts in Bale and Eritrea contributed to a larger attention to ethnicity in Ethiopia. This was especially visible within the Ethiopian student movement. Initially, the Ethiopian student movement was a corporatist movement that defended typical student interests in the field of food, housing and other similar matters. In the course of the 1960s the movement developed a much wider social objective and it became one of the most important actors in the opposition against the regime of Emperor Haile Selassie. In the beginning, the Ethiopian student movement had a pan-Ethiopian character, but at the end of the 1960s, the movement adopted a critical attitude towards the unity claimed by the government, a unity that was supported, as indicated *supra*, by the dominance of Amhara identity. The rebel movements in Bale and Eritrea undoubtedly influenced the critical stance of the students, but the impact of Marxist-Leninist ideas was also responsible. Marxist-Leninist ideas about the ‘nationalities issue’ were applied to Ethiopian society. Taking into account the above-described nation and state building strategy of the imperial regime, it is obvious that Marxist-Leninist literature on the national question had a particular relevance for Ethiopia. In his publication ‘Marxism and the National Question’ from 1913, Stalin recognized the right to self-determination of nations, which - according to him - implied: “*that only the nation itself has the right to determine its destiny, that no one has the right forcibly to interfere in the life of the nation, to destroy its schools and other institutions, to violate its habits and customs, to repress its language, or curtail its rights.*”⁵ Moreover, according to Stalin as well as Lenin, the right to self-determination even included the right to secession. However, in their minds, the right to secession was conceived of more as a tactic and thus not seen as a real possibility. Lenin judged that granting the right to self-determination, including secession, would not actually stimulate, but rather prevent nations from invoking this right.⁶ In a dialectic way, it was thus used as a strategy to promote state unity. In any case, the national question was subordinate to the class struggle, which was unequivocally stated by Stalin in the following words: “*Consequently, the fate of the Russian problem, and, accordingly, the "liberation" of the nations too, is bound up in Russia with the solution of the agrarian question, i.e., with the destruction of the relics of feudalism, i.e., with the democratization of the country. That explains why in Russia the national question is not an independent and decisive one, but a*

⁵ J.V. Stalin, *Marxism and the National Question* (1913), <http://www.marxists.org/reference/archive/stalin/works/1913/03.htm> (last visited 5 May 2009).

⁶ Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984), p. 34.

part of the general and more important question of the emancipation of the country.”⁷ These ideas clearly influenced Ethiopian students when they discussed the ethnic issue in Ethiopia. In 1969, the student magazine *Struggle* published a number of articles, which tackled Amhara dominance over the other ethnic groups.⁸ Especially an article written by Walleign Mekonnen has gained notoriety. In his article, Walleign radically contested the official assimilation policy. He recognized the ethnic diversity of the Ethiopian population: “*Ethiopia is not really one nation. It is made up of a dozen nationalities, with their own languages, ways of dressing, history, social organisation and territorial entity. And what else is a nation? Is it not made of a people with a particular tongue, particular ways of dressing, particular history, particular social and economic organisations? Then may I conclude that in Ethiopia there is the Oromo Nation, the Tigrai Nation, the Amhara Nation, the Gurage Nation, the Sidama Nation ...*”⁹ Therefore, he continued, a new state has to be built, a state in which “*all nationalities participate equally in state affairs, where every nationality is given equal opportunity to preserve and develop its language, its music, its history, ...a state where no nation dominates another nation be it economically or culturally.*” He even accepted secession “*As long as secession is led by the peasants and workers and believes in its internationalist obligation...*” although the ultimate objective remained unity: “*In the long run, Socialism is internationalism and a socialist movement will never remain secessionist for good.*” When analyzing the current Ethiopian constitution in section 3, it will become clear that there are major similarities between these analyses of the Ethiopian students and the current state building strategy. In the constitution, ethnic diversity is also recognized and used as a founding element of state building. The constitution further confirms the approach of the students by granting a right to secession to Ethiopia’s ‘nations’. It is thus submitted that there is a direct link between the approach towards the ethnic issue adopted by the Ethiopian students at the end of the 1960s and the current state building strategy in Ethiopia, which is expressed in the constitution. How this link came into being will be discussed *infra*.

2.2.2. Multi-Ethnic Marxist Parties

The ideas of the students played an important role in undermining the legitimacy of the imperial regime. The imperial regime fell in the course of 1974 and a military committee (known as the *Derg*) filled the resulting power vacuum. Initially, the *Derg* did not have a clear ideology, but it faced strong pressure from various Marxist movements. These movements, which found their intellectual and ideological ammunition in radical student circles, demanded the resignation of the military and the formation of a civilian government.¹⁰ To weaken these critical voices and to acquire greater support from the people, the *Derg* became

⁷ Stalin.

⁸ Randi Ronning Balsvik, ‘An Important Root of the Ethiopian Revolution: The Student Movement,’ in Abebe Zegeye and Siegfried Pausewang (eds.), *Ethiopia in Change – Peasantry, Nationalism and Democracy* (London/New York: British Academic Press, 1994), p. 84.

⁹ Walleign Mekonnen, cited in Sarah Vaughan, *Ethnicity and Power in Ethiopia* (Edinburgh: The University of Edinburgh PhD thesis, 2003), p. 136.

¹⁰ Christopher Clapham, *Transformation and Continuity in Revolutionary Ethiopia* (Cambridge: Cambridge University Press, 1988), p. 45.

increasingly radical.¹¹ This radicalization resulted in the adoption of ‘Ethiopian socialism’ at the end of 1974 and by 1976, the *Derg* had adopted a clear Marxist-Leninist outlook. This was going to influence the approach of the *Derg* towards the ethnic issue, but before going into that, it is important to mention two movements that played a major role in the first years of the military regime: the EPRP (Ethiopian Peoples Revolutionary Party) and MAESON (the Amharic acronym of All Ethiopia Socialist Movement). Both parties had their roots in the Ethiopian student movement. Consequently, they both adopted the dominant ideology of the student movement, Marxism-Leninism, and they both defended the right to self-determination of the diverse Ethiopian peoples. However, they followed Lenin and Stalin as they argued that the struggle for self-determination was subordinate to the class struggle.¹² Hence, according to them, a successful class struggle, and the socialist revolution that would follow from it, would also solve the ethnic problem. EPRP and MAESON opined that a successful class struggle would depend on the ‘broad masses’ being guided in their revolutionary struggle against the ‘exploiting classes’ by a ‘working-class vanguard party’. EPRP and MAESON both claimed to be that party, but in reality power was exercised by the military and the two multi-national Marxist-Leninist parties had to decide which attitude they would take towards it. The EPRP considered the military government unacceptable and the party demanded the immediate formation of a ‘Provisional People’s Government’.¹³ MAESON, on the other hand, choose to cooperate with the *Derg*, judging that the military government was a necessary phase on the road to a ‘people’s government’. The choice of the EPRP ushered in a violent conflict with the MAESON/*Derg* alliance (the so-called red terror), which led to nearly the total destruction of the EPRP by 1978. But the *Derg*, by then under the absolute control of Mengistu Haile Mariam, was not interested in power-sharing and decided to destroy its ally MAESON as well. Nonetheless, the initial cooperation with MAESON enabled the *Derg* to adopt and refine a Marxist-Leninist ideology.¹⁴ This obliged the *Derg* to take a stance on the ‘nationalities issue’ as well. This stance is clearly expressed in the ‘Programme of the National Democratic Revolution’ from 1976. It is interesting to cite the relevant provisions, for they again show clear resemblances with the current state building strategy:

“The right to self-determination of all nationalities will be recognized and fully respected. No nationality will dominate another one since the history, culture, language and religion of each nationality will have equal recognition in accordance with the spirit of socialism. The unity of Ethiopia’s nationalities will be based on their common struggle against feudalism, imperialism, bureaucratic capitalism and all reactionary forces...”

¹¹ Edmond J. Keller, *Revolutionary Ethiopia – From Empire to People’s Republic* (Bloomington/Indianapolis: Indiana University Press, 1988), p. 192.

¹² J. Young, *Peasant Revolution in Ethiopia – The Tigray People’s Liberation Front, 1975 – 1991* (Cambridge: Cambridge University Press, 1997), pp. 59-60; Leenco Lata, *The Ethiopian State at the Crossroads – Decolonization and Democratization or Disintegration?* (Lawrenceville/Asmara, The Red Sea Press, 1999), p. 199.

¹³ Young, p. 59.

¹⁴ Ghelawdewos Araia, *Ethiopia – The Political Economy of Transition* (Lanham: University Press of America, 1995), p. 134.

Given Ethiopia's existing situation, the problem of nationalities can be resolved if each nationality is accorded full right to self-government. This means that each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environs, it has the right to determine the contents of its political, economic and social life, use its own language and elect its own leaders and administrators to head its own organ.”¹⁵

Hence, in order to achieve unity, diversity had to be recognized. All nationalities had a right to self-determination, which included language rights and the right to regional autonomy. As will become clear *infra*, this right to self-determination resembles the right to self-determination granted in the current constitution. However, it is notable that in the *Derg* document no right to secession is granted - the conformity with the Leninist and Stalinist views on the right to self-determination nevertheless being guaranteed by using the term 'nationalities' instead of 'nations'.¹⁶ This approach rested on a traditional differentiation between 'nations', which had a right to secession, and 'nationalities', which had not.¹⁷ In any case, for the *Derg*, as for the EPRP and MAESON, national/ethnic antagonisms were subordinate to class antagonisms. The *Derg* thus thought that getting rid of class antagonisms (which was an objective of government policy) would solve the ethnic problem. In practice, this led to a continuation of Amhara dominance. As a result, the *Derg* came under increasing pressure from regional and ethnic rebellion movements, which will be discussed next.

2.2.3. Ethnic Fronts

After the elimination of the EPRP as power factor, the most important resistance against the *Derg* (important as to the degree of danger they posed for the *Derg*'s rule) came from movements that were focused on a certain region or ethnic group. The reference to regional liberation movements is related to the leading resistance movement in Eritrea, the EPLF (the Eritrean People's Liberation Front). The EPLF fought for the right to self-determination (more specifically independence) of the Eritreans, as such taking a special position among the Ethiopian resistance movements. Eritrean identity was not an ethnic identity, but a regional identity, an identity shared by the different endogenous peoples of Eritrea. The other resistance movements were ethnic movements, movements that struggled for the interests of a particular ethnic group, such as the Oromo and Somali. The Ethiopian resistance movement that played the decisive role in the ultimate fall of the *Derg* was the TPLF (Tigray People's Liberation Front). The TPLF was established in 1975 by students who were strongly influenced by the Ethiopian student movement and thus by Marxist-Leninist ideas, including these about the 'nationalities issue'. The TPLF however differed from the other Marxist-Leninist movements such as the *Derg*, MAESON and EPRP, by the emphasis it placed on the ethnic element. For the TPLF, national/ethnic antagonisms were a primordial concern and it

¹⁵ Merera Gudina, *Ethiopia – Competing ethnic nationalisms and the quest for democracy, 1960-2000* (Maastricht: Shaker Publishing, 2002), pp. 82-83.

¹⁶ Alem Habtu, 'Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation,' *Dialectical Anthropology*, Vol. 28 (2004), p. 101; Young, p. 61.

¹⁷ Connor, p. 12.

presented itself as a movement fighting for the right to self-determination of the Tigrayans.¹⁸ This seems to indicate that the TPLF deviated from the ideas held by Lenin and Stalin that the grant of a right to self-determination was merely a tactic, a formal proviso in order to achieve state unity or, in other words, that the national struggle was subordinate to the class struggle. Note that the latter vision was also held by the movements discussed in section 2.2.2 *supra*. By placing such an emphasis on ethnic rights, it can be argued that the TPLF's approach rather corresponded with the ideas of the so-called Austro-Marxists, Karl Renner and Otto Bauer. According to Renner and Bauer, nationalism was not a transitory phenomenon that would disappear after a successful class struggle and the establishment of a socialist state.¹⁹ On the contrary, they opined that the latter processes would only strengthen national identities.²⁰ Of course, it cannot be stated with certainty whether the TPLF considered the right to self-determination as a genuine principle or rather as a tactic on the road to greater cohesion in the Ethiopian state.²¹ However, the primary focus on the right to self-determination, including the right to secession, of the Tigrayans, seems to point to the former interpretation. That Tigrayan nationalism was an important inspirational factor behind the TPLF's struggle is reflected in the TPLF manifesto from 1976 which stated: "*The first task of this national struggle will be the establishment of an independent republic of Tigray.*" Soon, this manifesto was repudiated by the TPLF, although the front has never completely rejected the possibility of secession. This was motivated as follows: "*If there is a democratic atmosphere than self-determination means the creation of voluntary integrated nations and nationalities whose relations are based on equality and mutual advantages. However, if the present oppression and exploitation continues or intensifies it means the creation of an independent and People's democratic republic of Tigray.*"²² In the course of the liberation struggle, the TPLF decided to widen its objectives and to extend its actions to areas outside Tigray, in order to bring about the complete downfall of the *Derg*. The TPLF, however, only represented a small part of the Ethiopian population (the Tigrayans) and, to rally other peoples behind its struggle, the TPLF in 1989 created the EPRDF. With the creation of the EPRDF, the TPLF's aim was the formation of a broad coalition of ethnically based parties. This political strategy was entirely consistent with the emphasis that was placed by the TPLF on the ethnic element. After the fall of the *Derg* in 1991, a transitional regime in which the EPRDF and other movements organized on an ethnic basis played a central role was installed. It was the beginning of a totally new attitude of the Ethiopian state towards the ethnic problem.

¹⁸ Young, p. 154; Leenco Lata, p. 210; Sarah Vaughan, *The Addis Ababa Transitional Conference of July 1991: its origins, history and significance* (Edinburgh: Centre of African Studies Edinburgh University, 1994), p. 11.

¹⁹ Connor, p. 28.

²⁰ Otto Bauer, 'The Nation,' in Gopal Balakrishnan (ed.), *Mapping the Nation* (London/New York: Verso, 1996), p. 49.

²¹ Young, p. 100.

²² Young, p. 100.

3. Ethnic Federalism in Ethiopia

3.1. The Road to Federalism²³

A national conference with a broad representation of predominantly ethnically based movements laid the foundations of the transitional period. The transitional period would be concluded with the coming into force of a new constitution. The foundations of the transitional period (e.g. the governance and policy guidelines, the structure and composition of the transitional institutions) were laid in the Transitional Period Charter, in fact a constitution for the transitional period. Several provisions of the Charter reflected a special attention to the ethnic problem. The Charter, which was published on 22 July 1991 in the *Negarit Gazeta* (official journal of Ethiopia), granted, besides universal rights, far-reaching ethnic rights to all the ethnic groups of Ethiopia. The dominance of ethnic-based organizations in the transitional conference was such that the grant of extensive ethnic rights was a necessary condition for the success of the conference and thus for the continued existence of Ethiopia. The Charter aimed to realize a beginning of implementation of these ethnic rights by providing for a guaranteed ethnic representation in legislative and executive institutions of government and by announcing the establishment of regional and local administrations on an ethnic basis. The government was initially – just like the national conference – relatively politically inclusive with a representation of several political organizations. However, the transitional government was soon dominated by the EPRDF. The elections of June 1992 reinforced EPRDF dominance, in the central government as well as in the regional governments that had been created by Proclamation No. 7/1992. This was the political context within which the constitutional process took place. The new constitution, which was approved by a constituent assembly on 8 December 1994, was therefore the result of an EPRDF-controlled process. However, it would be an exaggeration to infer that the constitution is merely a reflection of the EPRDF programme. In particular, the foundations of the ethnic federation were already included in the Transitional Charter that enjoyed a broad societal support in July 1991.

3.2. Ethnic Federalism: Constitutional and Political Assessment

3.2.1. Nations, Nationalities and Peoples as Bearers of Sovereign Power

The legal groundwork for ethnic federalism in Ethiopia is laid by the federal constitution of which the preamble already indicates the new nation and state building strategy. This strategy focuses on two elements: protecting the rights of ethnic groups and ensuring the unity of the Ethiopian state, hence: unity in diversity. These two elements are stressed throughout the preamble, but it suffices in this regard to cite the first and second paragraphs: “*We, the Nations, Nationalities and Peoples of Ethiopia* (the constitution thus adopts Marxist-Leninist terminology to indicate the various ethnic groups) *Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the*

²³ Van der Beken, pp. 35-42.

rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development” (my emphasis). The preamble ends by stating that it is the nations, nationalities and peoples that have adopted the constitution. It is therefore no surprise that in its Article 8, the constitution grants all sovereign power to these nations, nationalities and peoples. From here it follows that “*Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.*”²⁴ The grant of sovereign power, which includes the right to self-determination up to secession, is clearly inspired by the views of Lenin and Stalin as expressed in the latter’s ‘Marxism and the National Question’ from 1913.²⁵ In that publication Stalin calls nations sovereign and grants them the right to self-determination, including secession.²⁶ Obviously, the right to self-determination is not only a Marxist-Leninist concept, it is also a right included in international treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The right to self-determination of nations, nationalities and peoples as conceived by Article 39 of the Ethiopian constitution, comprises four components: it comprises the right to speak, to write and to develop its own language; to express, to develop and to promote its own culture; and to preserve its history (1); it includes the right to a full measure of self-government, which is composed of two elements: the right to establish institutions of government in the territory that it inhabits (2) and the right to equitable representation in state and federal governments (3). Finally, as said, the right to self-determination includes the right to secession (4). It is submitted here that these four components correspond with the most progressive views on minority protection in international law. It is striking that provisions inspired by Marxism-Leninism fit in perfectly with recent tendencies in international law. After the Second World War - with its nationalist excesses - there was a general reluctance to grant specific rights to ethnic minorities. International law focused on universal (individual) rights and judged that the protection of these rights guaranteed the protection of ethnic minorities as well. Many African countries used this opinion to legitimize their nation building strategies. It became however clear that the effective protection of ethnic minorities required more than a mere protection of universal rights; it moreover required states to adopt specific minority rights as well. Consequently, despite its focus on universal rights, international law relatively early paid attention to the rights of ethnic minorities. In that context, Article 27 of the International Covenant on Civil and Political rights states: “*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*” International law thus grants ethnic minorities language rights and cultural rights; the same rights are incorporated in the first component of the Ethiopian right to self-determination. The third component, the right of ethnic groups to be represented in state and federal governments, corresponds with the participation rights included in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992. Articles 2.2 and 2.3 of this

²⁴ Article 39(1) of the Ethiopian Federal Constitution.

²⁵ Connor, p. 33.

²⁶ Stalin.

Declaration stipulate: “Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.” The second component of the Ethiopian right to self-determination, i.e. the right to territorial autonomy, is not granted in international law, except in the specific case of indigenous peoples. However, it is argued that the right to autonomy of ethnic minorities can be based on the right to self-determination, which is - as already stated - included in several international covenants. Because of its initial application in the context of decolonization, the right to self-determination was for a long time associated with the right to secession. However, today the dominant view in legal doctrine gives a wider meaning to self-determination. According to this vision, the right to self-determination has an internal as well as an external component and secession is part of the external component.²⁷ The internal component is often associated with autonomy or self-government.²⁸ The right to secession as included in Article 39 goes even further than the progressive interpretation of international law. The prevailing view in legal doctrine is that the right to secede can only be applied in particular circumstances, as *ultimum remedium*.²⁹ However, as follows from the clear provisions of Article 39(1), the right to secession in Ethiopia is unconditional. In doing so, the constitution deviates from the Transitional Period Charter, the interim constitution adopted by the new power holders after assuming power in 1991. Article 2(c) of the Charter granted a conditional right to secession. This right could only be exercised when the nations, nationalities and peoples were prevented from exercising the other aspects of their right to self-determination. Furthermore, in the draft constitution, approved in May 1994, two alternatives were formulated with regard to the right to secession. The majority opinion supported an unconditional right to secession, whereas a minority opinion was in favour of a conditional right. Ultimately, the constituent assembly followed the opinion of the majority. This seems to indicate that the Ethiopian constitutional drafter was serious about the right to secession, an impression that is further confirmed by Article 39(4). Yes, it is true that the Soviet constitution of 1977 also granted a right to secession,³⁰ but this was just form: there was no intention to actually uphold the right.³¹ Article 39(4) however provides for a procedure to exercise the right to secession and such a procedure was not included in the USSR constitution. Hence, the protection of ethnic rights takes such a central position in the Ethiopian constitution that it is difficult to consider the corresponding constitutional provisions as mere ritualistic Marxist formulae. Since a fundamental place is given to nations, nationalities and peoples, it is of course important to

²⁷ Kristin Henrard and Stefaan Smis, ‘Recent experiences in South Africa and Ethiopia to accommodate cultural diversity: a regained interest in the right of self-determination,’ *Journal of African law*, Vol. 44 (2000), 22.

²⁸ Hans-Joachim Heintze, ‘On the Legal Understanding of Autonomy,’ in Markku Suksi (ed.), *Autonomy: Applications and Implications* (The Hague/ London/ Boston: Kluwer Law International, 1998), p. 9.

²⁹ Stefaan Smis, ‘Ethiopia and the Right to Secession in International and Comparative Law,’ in Eva Brems and Christophe Van der Beken (eds.), *Federalism and the Protection of Human Rights in Ethiopia* (Münster: Lit Verlag, 2008), p. 118.

³⁰ Article 72 of the Soviet Constitution stipulated that each of the 15 union republics had a right to secede from the USSR.

³¹ Connor, pp. 51-52.

know who these are. Who are the bearers of the right to self-determination? The answer is given in Article 39(5) that, remarkably, does not differentiate between ‘nations, nationalities and peoples’ and defines these three terms as “*a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up and who inhabit an identifiable, predominantly contiguous territory.*” For this definition, the drafters of the constitution have again benefited from the work of Stalin. In his publication ‘nationalism and the Marxist question’ Stalin gives the following definition of ‘nations’: *A nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture.* The dominance of ethnic-based parties in the constitutional drafting process has led to a constitutional focus on the rights of the Ethiopian ethnic groups. Because of their Marxist backgrounds, the constitutional drafters have couched these rights in Marxist-Leninist terms. Nonetheless, irrespective of its Marxist inspiration, Article 39 grants extensive rights to Ethiopia’s ethnic groups and, by doing so, it fits in with an international trend towards increasing protection of ethnic minorities. Moreover, the rights are so extensive that, despite the Marxist phraseology, the constitutional drafter seems genuinely committed to their implementation. This impression corresponds with what has been argued in section 2.2.3., namely that from its establishment the TPLF gave a primordial importance to ethnicity, rather than subordinating it to class. A similar picture arises from the constitutional provisions that construct the Ethiopian federal state structure, which will be discussed in the next section.

3.2.2. Ethnic Federalism: Unity in Diversity

Since the confines of this paper do not allow a complete overview of the constitutional provisions framing Ethiopian federalism, the paper rather focuses on a number of constitutional aspects that – according to this author - are determinants for the achievement of unity in diversity in the federation, and thus for the effectiveness of Ethiopian federalism as a state building strategy. However, as already indicated in the introduction, the impact of constitutional provisions is not only determined by their intrinsic features, but also by the political context in which they operate. The analysis of the political context will not be treated separately, but will be interwoven with the assessment of the constitutional provisions, so as to provide a pertinent insight into their meaning.

It was already mentioned that the Ethiopian population is ethnically very diverse with - according to official figures - more than 80 ethnic groups. As indicated in section 3.2.1, the Ethiopian constitution grants all of these groups a right to territorial autonomy, implying that all ethnic groups can be linked to a particular territory. Because it is this mindset that has determined the constitutional construction of Ethiopian federalism, the latter is commonly designated as ethnic federalism. The ambition to realize an overlap between ethnic and territorial borders has clearly played a role when determining the regional states of the federation; Article 46 of the constitution makes this explicit by stating “*States shall be delimited on the basis of the settlement patterns, language, identity and consent of the peoples*

concerned.” Article 47(1) provides for nine regional states or regions. These are the state of Tigray, the state of Afar, the state of Amhara, the state of Oromia, the state of Somalia, the state of Benishangul/Gumuz, the state of the Southern Nations, Nationalities and Peoples (hereafter the Southern state), the state of the Gambela peoples and the state of the Harari people. The names of the regions already reveal some information on their ethnic composition. In the first instance, six of the nine regional states carry names that refer to the ethnic groups that have a dominant position in the respective states. This means that the Tigray ethnic group is dominant in the Tigray state, the Afar in Afar, the Amhara in Amhara, the Oromo in Oromia, the Somali in Somalia and the Harari in Harar. In the first five of these regions, the dominant position of the ‘nominal’ ethnic group implies a political as well as a numerical dominance. The five ethnic groups control the political institutions of ‘their’ regions in which they also constitute a large numerical majority. The Harar state is a special case, since, although the Harari ethnic group controls the regional political institutions, the Harari are a small numerical minority in the region (they constitute a mere 8.65% of the regional population).³² The name Benishangul/Gumuz refers to the two major endogenous (I will come back to this term *infra*) ethnic groups of this region: the Berta (or Benishangul) and the Gumuz. The names of the remaining two regions indicate that various ethnic groups are living there. Taking into account the presence of more than 80 ethnic groups in Ethiopia, the above obviously demonstrates that most ethnic groups do not have their own regional state, but are a minority in one of the regional states. Hence, unity in diversity must not only be realized at the federal level (i.e. in the relationship between the federal state and the regions), but also at the regional level (i.e. the relationship between the regional state and the diverse intra-regional ethnic groups). Whether the Ethiopian model of federalism is suited to achieve this constitutional objective will be evaluated in the next paragraphs, which will also include implicit or explicit suggestions for improvement.

1. Unity in Diversity at the Federal Level

In order to assess the capacity of the Ethiopian federal model to achieve unity in diversity at the federal level, this section will focus on the autonomy of the regions as well as on their political participation at the federal level. It is submitted that genuine regional autonomy and an effective political participation of the regions at the federal level are necessary conditions for the accommodative effects of ethnic federalism to come into play.

The study of the constitutional allocation of competences over the federal and regional governments does not provide an unequivocal answer to the question whether the Ethiopian regional states have sufficient competences. A rather mixed impression arises. On the one hand, the power of the regional states to take policy decisions in a number of fields such as education, health care and social and economic development seems limited by the power of the federal government to draw federal policy lines.³³ On the other hand, the regional states

³² Federal Democratic Republic of Ethiopia, Population Census Commission, *The 2007 Population and Housing Census*, December 2008, Addis Ababa.

³³ Article 51(2) + (3) federal constitution.

have wide competences to form their own territorial, administrative and institutional organizations. The regions have the power to enact their own constitution, to set up a police force and they themselves determine the organization of the local administration.³⁴ The regional states also have important, especially in the light of the specific politico-historical context, powers in the field of language. Article 5(3) of the federal constitution grants the regional states the power to choose their own working language. Nevertheless Article 5(2) provides that Amharic will continue to be the working language of the federal government. This constitutional provision has not remained theoretical. Today, the six regions, which are dominated by one particular ethnic group (see *supra*), have adopted the language of the concerned group as the regional working language.³⁵ The three other multi-ethnic regions (Gambella, Benishangul/Gumuz and the Southern region) – and of course the Amhara region – have opted for a continued use of Amharic. An important protection of regional autonomy is that the federal government cannot unilaterally withdraw the powers of the regional states. A distinctive characteristic of federations is that the powers of the federated entities are included in the constitution and that the constitution cannot be modified without the participation of the regional states. Ethiopia is no exception to this. However, the Ethiopian federal government does have the power to intervene in regional affairs. Since the federal intervention is dependent on strict conditions, this should not be seen as an unacceptable limitation of regional autonomy. The Ethiopian legislator seems to have found an acceptable balance between protecting the autonomy of the regional states and the duty of the federal government to guarantee internal peace and security and the protection of the constitutional order. Finally, the autonomy of the regional states is determined by the degree of financial autonomy. Complete financial autonomy comes about only when the regional states can generate enough revenue to pay for their expenditure. The study of fiscal federalism in Ethiopia shows that the fiscal powers which have been assigned to the regions, do not generate sufficient income. The result is that the own revenue of the regions does not at all suffice to cover regional expenditure. The discrepancy between regional revenue and expenditure is primarily removed with subsidies from the federal government.³⁶ For their expenditure, all regional states are therefore strongly dependent on the federal government. This provides the federal government with an important mechanism to control the regions and is thus not favourable for an autonomous exercise of the regional powers.

Whereas the constitution offers a rather mixed picture as far as regional autonomy is concerned, the prevalent political situation is clearly not in the interest of regional autonomy. This is due to the position and internal operation of the EPRDF, which has been the leading political organization in Ethiopia since 1991. The EPRDF is a coalition of four ethnic-based parties: the TPLF, the ANDM (Amhara National Democratic Movement), the OPDO (Oromo People's Democratic Organization) and the SEPDM (South Ethiopian Peoples Democratic

³⁴ Article 52(b) + (g) federal constitution.

³⁵ These languages are Tigrigna in Tigray, Oromiffa in Oromia, Somaligna in Somali and Afarigna in Afar. In Harar besides the language of the politically dominant group, the Harari, the language of the numerically dominant group, Oromiffa, has also been adopted as the regional working language.

³⁶ Solomon Negussie Abesha, *Fiscal Federalism in the Ethiopian Ethnic-based Federal System* (Utrecht: Universiteit Utrecht, PhD Thesis, 2006).

Movement). As their names indicate, the first three parties were established to represent one specific ethnic group each, namely the Tigrayans, Amhara and Oromo respectively. The SEPDM is a party established for the diverse ethnic groups of the multi-ethnic Southern region. Since, as indicated *supra*, regional borders are conceived to correspond with ethnic borders, the EPRDF in practice disposes of a specific party for four of the regional states: Tigray, Amhara, Oromia and the Southern regional state. In the regional and federal parliamentary elections of 1995 and 2000 the four EPRDF parties gained more than 90 per cent of the seats in the regional parliaments of these four regions. In the (first chamber of the) federal parliament, the four parties combined also held a large majority of seats. Moreover, EPRDF dominance over the federal and regional levels of the federation is even larger due to the front's control of the ruling parties in the remaining five regional states. In the remaining five regions, the regional political institutions are dominated by parties that are not formal EPRDF members, but have been established and are supervised by the EPRDF.³⁷ The most recent regional and federal elections of May 2005 have confirmed EPRDF dominance, albeit that the federal parliament and most regional parliaments are now characterized by a certain level of political pluralism.³⁸ Since both the federal and the regional levels have parliamentary systems, with executive institutions dependent on a federal or regional parliamentary majority, all executive institutions are also dominated by EPRDF constituent or affiliated parties. For example, 19 of the 21 federal ministers (without the prime minister) are EPRDF members.³⁹ The remaining two ministers are members of EPRDF affiliated parties. The control of the same party over the federal and regional political institutions does not automatically imply a limitation of regional autonomy. On the contrary, the fact that the EPRDF is organized on an ethnic basis seems *prima facie* favourable for an autonomous exercise of regional powers. However, the restrictions to regional autonomy are a result of the centralized decision-making process of the EPRDF. The different ethnically based parties – and thus the regional governments that are controlled by them – have to follow the central EPRDF programme when exercising their powers.⁴⁰ In the statute of the EPRDF this is stated as follows: “*EPRDF actions will be implemented in all the regions by the national member organizations: A. National EPRDF programmes, decisions, as well as tasks will be made effective by member national organizations in their respective region. B. National member organizations should implement national decisions and basic implementation directives in their regions. However, they are free to modify the national decisions and implementation directives according to conditions in their respective regions.*” The regional states can thus administer themselves, but they have to do this within the framework established by the EPRDF. The ruling parties of the five non-EPRDF regional states also follow the EPRDF programme, as they have once again explicitly stated after the latest EPRDF congress in September 2008. The following declaration of the ANDP (Afar National Democratic Party),

³⁷ Van der Beken, pp. 42-44.

³⁸ The election results can be found on the website of the National Electoral Board of Ethiopia: <http://www.electionsethiopia.org/Index.html> (last visited 5 May 2009).

³⁹ This observation is deduced from information provided by: Walta Information Center, 31 October 2008; the EPRDF website <http://www.eprdf.org.et/> and <http://www.infoplease.com/world/leaders/ethiopia.html> (last visited 5 May 2009).

⁴⁰ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia* (Nijmegen: Wolf legal Publishers, 2005/2006), pp. 379-380.

the ruling party in the Afar regional state, is illustrative in this regard: “*The Afar National Democratic Party representative indicated the commitment of the Afar people to implement the strategies and policies of EPRDF and its allies to eradicate poverty and thereby improve the living standards of the public.*”⁴¹ The implementation of the EPRDF programme at federal and regional levels is furthermore facilitated by the strong links between party and government institutions. The chairman and vice-chairman of the EPRDF are respectively prime minister and deputy prime minister in the federal government. More than half of the other federal ministers are members of the EPRDF executive committee. The presidents of the four EPRDF regional states are also members of the executive committee.

At this point, it is important to recapitulate the Marxist-Leninist roots of the EPRDF. The ideas of the EPRDF about the ethnic issue were inspired by Marxism-Leninism and it is thus no surprise that the mechanism included in the Ethiopian constitution to tackle this issue is ethnic federalism - the mechanism that was also used in Soviet constitutions. The Soviet constitution of 1977, for instance, created a federal structure of which the 15 union republics were ethnic-based.⁴² It has to be remembered that these union republics were sovereign and were granted the right to secede.⁴³ However, in practice the autonomy of the union republics was severely hampered by the operation of the centralized communist party that controlled all union republics.⁴⁴ The practical operation of federalism in the Soviet Union thus strongly resembles federalism as currently practised in Ethiopia. The ultimate disintegration of the Soviet Union has demonstrated that a nation building strategy based on the formal grant, but practical limitation of self-government, is not suited to achieve unity in diversity. The constitutional focus on ethnic rights does not lead to a reduction of ethnic identification (which is the traditional Marxist-Leninist view), but rather reinforces it. Restricting ethnic rights in practice will thus only lead to an increased conflict potential. Consequently, the dominance of the EPRDF appears to be an important impediment to the success of ethnic federalism as a state building strategy in Ethiopia. This argument is further strengthened by the observation that the provisions of the Ethiopian constitution place more emphasis on the protection of ethnic rights than the Soviet constitution of 1977. Hence, in Ethiopia there is an even stronger contradiction between form and reality. Contrary to the Soviet constitution, the Ethiopian constitution does not grant sovereign power to the regions, but to the ethnic groups themselves. Consequently, it is not the regions, but the nations, nationalities and peoples that have a right to secede. In the Soviet constitution, on the other hand, the right to secession was granted to the 15 union republics, not to the various ethnic groups inside these republics. Furthermore, as mentioned *supra*, the Ethiopian constitution even provides for a procedure to exercise the right to secession. Consequently, the Ethiopian ethnic groups, which are sovereign and possess extensive rights, have to accept strong limits to their autonomy in

⁴¹ Walta Information Center, 16 September 2008.

⁴² Connor, p. 51; Christopher Clapham, ‘Afterword,’ in David Turton (ed.), *Ethnic Federalism – The Ethiopian Experience in Comparative Perspective* (Oxford: James Currey, 2006), p. 237; Bill Bowring, ‘Burial and resurrection – Karl Renner’s controversial influence on the ‘national question’ in Russia,’ in Ephraim Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics* (London/New York: Routledge, 2005), p. 198.

⁴³ Respectively Articles 76 and 72 of the 1977 USSR constitution.

⁴⁴ Gary N. Wilson, ‘Russia,’ in Ann L. Griffiths and Karl Nerenberg (eds.), *Handbook of Federal Countries*, 2002 (Montreal & Kingston/London/Ithaca: McGill-Queen’s University Press, 2002), p. 254.

practice. This means, for instance, that today it is politically impossible for an ethnic group to exercise the right to secession. The constitution requires that the demand for secession is approved by the members of the legislative council of the concerned nation, nationality or people. Today, all legislative councils, at the regional and sub-regional level (see *infra*), are controlled by the EPRDF, which is certainly not in favour of secession, notwithstanding its constitutional incorporation. The latter point can for instance be illustrated by the strong resistance of the EPRDF against armed opposition movements that express secessionist ideas, such as the OLF (Oromo Liberation Front) or ONLF (Ogaden National Liberation Front).

The achievement of unity requires not only genuine regional autonomy; it also requires that the regional states be prepared to cooperate in order to develop a stable Ethiopian state. An important instrument in this regard is the political participation of the diverse regional states/ethnic groups (or federated entities) at the federal level.⁴⁵ The theory is that federated entities are only interested in the unity of the federation when they can exert sufficient influence in the federal institutions.⁴⁶ The Ethiopian constitution contains only limited provisions in this regard. For instance, the constitution says nothing about the ethnic identity of members of the executive. In practice, as has already been indicated *supra*, the executive is dominated by the four EPRDF regional states. Not less than 19 of the 21 ministers (excluding the Prime Minister, who is from Tigray) are from these regional states.⁴⁷ The remaining two ministers are from Afar and Somali; Benishangul-Gumuz and Gambella have no federal ministers. The guaranteed representation of all regional states is limited to the parliament. As is customary in federations, the federal parliament of Ethiopia consists of two chambers: the House of People's Representatives (HoPR) and the House of the Federation (HoF). The members of the first chamber, the HoPR, are elected by universal and direct elections by means of the plurality system.⁴⁸ This electoral system results in the larger (more densely populated) states having much more representatives in the HoPR than the smaller ones. Together, the Amhara and Oromia regions have more than half of the seats. Because of its specific composition the HoF offers no counterweight for the preponderance of the large regional states in the first chamber. Article 61(2) of the federal constitution stipulates that all nations, nationalities and peoples have a right to at least one representative in the HoF. Article 61(2) adds that the nations, nationalities and peoples have a right to one additional representative for each one million of their population. These representatives are elected from the states – in practice by the regional parliaments.⁴⁹ In concrete terms, this means that regional states that have an ethnically very diverse population (such as the Southern state) or

⁴⁵ Ronald L. Watts, 'Lessons from the pathology of multicultural federations,' in Peter Hänni (ed.), *L'homme et l'état – Mélanges offerts par la Faculté de droit de l'Université de Fribourg pour Thomas Fleiner* (Fribourg: Editions Universitaires Fribourg Suisse, 2003), p. 234.

⁴⁶ John McGarry, 'Federal Political Systems and the Accommodation of National Minorities,' in Ann L. Griffiths and Karl Nerenberg (eds.), *Handbook of Federal Countries, 2002* (Montreal & Kingston/London/Ithaca: McGill-Queen's University Press, 2002), p. 437.

⁴⁷ OPDO and ANDM have six ministers each, SEPDM five and TPLF two. This observation is deduced from information provided on the EPRDF website: <http://www.eprdf.org.et/>

⁴⁸ Article 54(1) + (2) of the federal constitution.

⁴⁹ Article 61(3) of the federal constitution; interview conducted by the author with Samuel Alemayehu, former Secretary General of the House of the Federation, Addis Ababa, September 2003.

that are inhabited by large ethnic groups (such as the Amhara and Oromia regions) are more strongly represented in the HoF. Hence, three states (the Southern state, Amhara and Oromia) together have 90 of the 112 representatives in the House of the Federation. However, one should not conclude from the above that the federal level is dominated by these three regional states. The dominance of the EPRDF in the executive and in the first chamber - as mentioned *supra* – as well as in the second chamber (the members of the HoF are all elected by EPRDF dominated regional councils) would make it more correct to describe the situation as an EPRDF dominance (which also includes an important role for Tigray, through the TPLF). Hence, once again, the political context prevents a full operation of the constitutional provisions; content does not reflect form.⁵⁰ Content does reflect form, however, when it comes to the political participation of the non-EPRDF states. Together these five regional states account for 45 seats in the HoPR, 16 seats in the HoF and they only have two federal ministers. This weak position is not compensated for by the political context since, as discussed, the ruling parties in these regions are not members of the EPRDF.

2. *Unity in Diversity at the Regional Level*

Although an ethnic federation aims to achieve a correspondence between ethnic borders and regional borders, it is obvious that in practice a perfect overlap is never possible. This is particularly so in Ethiopia with its long tradition of internal migration and resettlement of ethnic groups. *Supra*, we have already mentioned that only six of Ethiopia's nine regional states are dominated by a particular group. Six states are thus ethnic states, which provide a forum for the nominal ethnic groups to exercise the different aspects of their right to self-determination, as included in Article 39. This means that the large majority of Ethiopia's 80+ ethnic groups does not dominate a particular state, but rather constitutes a minority in one of the six ethnic states or in the three remaining multi-ethnic states. In this paper, the term ethnic minority is thus used for ethnic groups that do not dominate the regional state where they live. Consequently, members of the six 'nominal' ethnic groups who live outside 'their' regional state (e.g. Amhara living in the Oromia region) are also considered ethnic minorities. This shows that all regional states, even the six so-called ethnic ones, have ethnic minorities. Hence, the success of Ethiopian federalism must also be measured by its achievement of unity in diversity at the regional level, which will depend on the ethnic minorities being able to protect their rights. The latter issue will be studied in this section.

For the ethnic groups that do not have their own region yet, the current nine regions of the federation form the framework through which they have to exercise their rights. However, this should not cause one to lose sight of the fact that the federal constitution offers these ethnic groups two possibilities of creating their own territorial entity, inside or outside the federation. It can be repeated that, according to Article 39 of the constitution, all nations, nationalities and peoples have a right to secede from the federation. Additionally, Article 47 states that all nations, nationalities and peoples, which do not have their own region yet, have the right to establish their own region. But, as pointed out *supra*, the political context is not exactly

⁵⁰ I owe this terminology to Walker Connor.

favourable to the exercise of the right to secession. Neither is it favourable to the creation of new regional states. For instance, when the Sidama (an ethnic group in the Southern region) requested the establishment of their own regional state, this was rejected by the EPRDF.⁵¹ The ruling party equally resisted a similar request from the Berta (one of the ethnic groups living in Benishangul-Gumuz), fearing that accepting this request would cause similar demands from other ethnic groups.⁵² Thus, again we see that the EPRDF is not willing to accept the full consequences of the constitution's emphasis on ethnic rights. It is argued that today the EPRDF shares the Leninist view that sees the grant of a right to self-determination as a strategy to achieve unity rather than as an end in itself.⁵³ The following statement by Meles Zenawi, prime minister and chairman of the EPRDF, seems to corroborate this: "*There is no way the secession could take place one fine morning simply because the right is embodied in the constitution. As a matter of fact, the secession clause was put into the constitution in order to avoid such an eventuality.*"⁵⁴ Moreover, a few years ago, there were strong indications that the EPRDF was in the process of being reformed from a coalition of four ethnic-based parties to a single political party with four regional branches.⁵⁵ As a matter of fact the SEPDM (the South Ethiopian Peoples Democratic Front), the ruling party of the Southern state, previously a coalition of 20 ethnic-based parties, merged into a single political party in September 2003: the SEPDM. This is not to say that constitutional provisions granting all ethnic groups a right to secede or a right to their own region are wise, but these are a consequence of the constitution not differentiating between the three categories of nations, nationalities and peoples. The argument would therefore be that the EPRDF should accept the implementation of the ethnic group rights included in the constitution, but the constitution should be revised in such a way that different rights are bestowed upon the three categories of nations, nationalities and peoples. In concrete terms, this could mean that the right to secede and the right to create a separate region are limited to particular ethnic groups.⁵⁶

To improve unity in diversity inside the regions, a number of constitutional revisions seem also to be necessary. To implement the right to self-determination of the regional ethnic minorities, the regional constitutions adopt an ethnic-territorial strategy. This means that they, following the example of the federal constitution, grant their ethnic minorities the right to their own sub-regional territorial entity. For, instance the Nuer, Anuak and Mejenjer have

⁵¹ Lovise Aalen, *Institutionalising the politics of ethnicity – Actors, powers and mobilisation in southern Ethiopia under ethnic federalism* (Oslo: University of Oslo PhD thesis, 2008), p. 164.

⁵² Asnake Kefale, 'Federalism and Autonomy Conflicts in the Benishangul-Gumuz Region, Ethiopia,' in Eva Brems and Christophe Van der Beken (eds.), *Federalism and the Protection of Human Rights in Ethiopia* (Münster: Lit Verlag, 2008), pp. 192-193.

⁵³ Sarah Vaughan, *Ethnicity and Power in Ethiopia* (Edinburgh: The University of Edinburgh PhD thesis, 2003), p. 171.

⁵⁴ Jon Abbink, 'Ethnicity and Conflict Generation in Ethiopia: Some Problems and Prospects of Ethno-Regional Federalism,' *Journal of Contemporary African Studies*, Vol. 24, Nr. 3 (2006), p. 394.

⁵⁵ Christophe Van der Beken, *The Ethiopian Federal State Structure and the Accommodation of Ethnic Diversity: A View from the Southern Nations, Nationalities and Peoples Region* (Ghent: Ghent University Non-Western Law Working Paper, 2003), p. 14; Sarah Vaughan and Kjetil Tronvoll, *The Culture of Power in Contemporary Ethiopian Political Life* (Sida studies n° 10, 2003), p.112.

⁵⁶ The rather absurd consequence of the current provisions is that ethnic groups with only a few thousand members have the right to form their own regional or even independent state.

their own 'Administration of Nationalities' in Gambella; the Agew Himra, Agew Awi and Oromo have their own 'Nationality Administration' in Amhara and in the Southern region all nations, nationalities and peoples have a right to their own 'Zone' or 'Special *Woreda* (district)'. However, in the Southern region with its 50+ ethnic groups, only thirteen Zones and eight Special *Woreda* have been established so far.⁵⁷ This implies that some ethnic groups now have their own Zone/Special *Woreda*, that a number of ethnic groups are a minority in a Zone/Special *Woreda* dominated by a particular group and that the remaining ethnic groups are living together in multi-ethnic Zones. Taking into account the above-mentioned current attitude of the EPRDF towards ethnic rights and the reform of the Southern ruling party the SEPDF into the SEPDM, it should not be surprising that the government is not particularly enthusiastic about creating new Zones/Special *Woreda*. The reluctance of the EPRDF was, for instance, obvious in the process that ultimately led to the creation of a separate Silte Zone in 2001 and the 2000 split up of the Simien (north) Omo Zone into three Zones (Wolayita, Dawro, Gamogoffa) and two Special *Woreda* (Basketo and Konta).⁵⁸ In practice, the EPRDF today focuses on unity, based on the traditional Marxist-Leninist view that granting ethnic rights will lead to a neutralization of ethnicity.⁵⁹ However, as argued above, the contrary is true. This means that conflict can only be prevented - and unity can only be achieved - if the ethnic rights included in the constitution are effectively protected. This is not to say that the territorial approach is a perfect mechanism to do this. Yes, the territorial approach was necessary to accommodate certain ethnic demands and in the future it can still be used, but it also holds various disadvantages. Firstly, the regional constitutions grant the right to a sub-regional territorial entity exclusively to the endogenous nations, nationalities and peoples. Indeed, the regional constitutions differentiate between endogenous and non-endogenous groups. Endogenous groups are considered to be groups of the region, groups of the soil, so to speak. Non-endogenous groups have migrated to the region in the more recent past. For instance, the Amhara are endogenous in the Amhara region, but non-endogenous in the Southern region. The Oromo are endogenous in Oromia, but non-endogenous in Benishangul-Gumuz. The differentiation between endogenous and non-endogenous groups is a result of the ethnic-territorial premise of the constitutional drafter; all ethnic groups can be linked to particular territories/regions. Secondly, the endogenous ethnic groups are not always concentrated in a specific territory, so that many members of a group might live outside *their* sub-regional territorial entity. Finally, the establishment of new sub-regional territorial entities will lead to a dispersion of scarce resources, thus undermining government efficiency. It is therefore argued that constitutional revisions are in order, not to abolish the territorial strategy but to adapt and complement it with other mechanisms. Firstly, the Southern constitution should not grant each endogenous ethnic group the right to its own Zone/Special *Woreda*. As has been argued above, different rights should be given to different categories of ethnic

⁵⁷ Information provided to the author by the Ministry of Federal Affairs, Addis Ababa, August 2007.

⁵⁸ For further information on the Silte case, see: Lahra Smith, 'Voting for an ethnic identity: procedural and institutional responses to ethnic conflict in Ethiopia,' *Journal of Modern African Studies*, Vol. 45, 4 (2007), pp. 565-594. For further information on the North Omo case: Sarah Vaughan, 'Responses to Ethnic Federalism in Ethiopia's Southern Region,' in David Turton (ed.), *Ethnic Federalism – The Ethiopian Experience in Comparative Perspective* (Oxford: James Currey, 2006), pp. 189-194.

⁵⁹ Vaughan and Tronvoll, pp. 118-119.

groups. Furthermore, in addition to territorial autonomy, ethnic groups should also have the right to non-territorial autonomy. In the case of non-territorial autonomy, autonomy is not granted to a certain territorial entity, but to the ethnic group as such.⁶⁰ Autonomy rights are enjoyed by all members of the group regardless of where they live in the territory of the state.⁶¹ The powers that now belong to the territorial administrations in the areas related to ethnic identity protection (i.e. powers in the field of language, culture and education) would be transferred to the non-territorial administrations. This would solve both the problem of the endogenous minorities and the imperfect overlap between territorial and ethnic borders. For the Amhara, for instance, this would mean that in addition to their territorial administration - the Amhara region - they would also have a non-territorial administration. This administration would be responsible for areas related to identity protection for all Amhara, no matter where they live in Ethiopia. Although this approach goes radically against the territorial approach that is prevalent in Ethiopia, I argue that it does not go against the foundations of the constitution as expressed in the primordial position and the rights of nations, nationalities and peoples. As discussed in section 2.2.3, the initial approach of the TPLF towards the ethnic issue, with its emphasis on ethnic rights, corresponded more with the views of the Austro-Marxists Karl Renner and Otto Bauer than with the opinion of Lenin and Stalin who subjugated the national struggle to the class struggle. This initial approach is also reflected in the constitution, as argued in section 3.2.1. Due to their focus on ethnic identity rather than class identity, Renner and Bauer developed a model of non-territorial autonomy as a mechanism for the accommodation of the diverse ethnic groups in the Austrian-Hungarian Empire.⁶² The constitutional inclusion of non-territorial autonomy would therefore be in line with the foundations of the Ethiopian constitution. In order to guarantee unity as well as diversity, it would furthermore be advisable to link non-territorial autonomy with political participation (e.g. through guaranteed representation, minority vetoes) in the territorial administrations.

4. Conclusion

The way Ethiopia, through its constitution, approaches its population's ethnic diversity is quite special in the African context. Though this constitutional approach has its origin in Marxism-Leninism, the protection of ethnic rights it includes makes the Ethiopian state building strategy fit in with recent trends in international law. Consequently, Ethiopian federalism should not be *a priori* rejected and, in fact, it is my belief that it does have the potential to guarantee unity and stability, through the protection of diversity, in Ethiopia. However, this will require political as well as constitutional changes. Firstly, the contradiction between form and practice should disappear or, in other words, the ruling party should accept

⁶⁰ McGarry, p. 425.

⁶¹ Hans-Joachim Heintze, 'Autonomy and Protection of Minorities under International Law,' in Günther Bächler (ed.), *Federalism against Ethnicity? Institutional, Legal and Democratic Instruments to Prevent Violent Minority Conflicts* (Chur/Zürich: Verlag Rüegger, 1997), p. 89.

⁶² Ephraim Nimni, 'Introduction: the national cultural autonomy model revisited,' in Ephraim Nimni (ed.), *National Cultural Autonomy and its Contemporary Critics* (London/New York: Routledge, 2005), p. 2; Christoph Emminghaus, *Äthiopiens ethnoregionaler Föderalismus – Modell der Konfliktbewältigung für afrikanische Staaten?* (Hamburg: Lit Verlag, 1997), p. 47-48.

the consequences of the constitutional choices. The constitutional grant of extensive ethnic rights on the one hand and the political limits to their implementation on the other is an important conflict generating factor. However, in order for it to be able to achieve unity in diversity, the constitutional framework also needs some changes. Most notably, the strong emphasis on separateness (e.g. through the right to territorial autonomy at different levels) should be reduced and countered by the development of mechanisms that focus on integration (e.g. political participation, non-territorial autonomy).