

FEDERALISM AND LEGAL PLURALISM IN ETHIOPIA: PRELIMINARY OBSERVATIONS ON THEIR IMPACTS ON THE PROTECTION OF HUMAN RIGHTS

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ABSTRACT

Through its 1995 Constitution, Ethiopia created a devolutionary federal state structure that is devised as a means of holding together the polity. The new political system combines federalism, self-determination (up to and including secession) and legal pluralism as solutions to the erstwhile unequal relationships among ethno-national groups in the country. While it has devised these solutions to tackle problems, the new political arrangement displays many loose ends as regards the protection of human rights, be that of individuals or minorities. This article is an attempt to highlight some of the outstanding human rights problems the new political arrangement fails to deal with.

I. INTRODUCTION

Both federalism and legal pluralism are mechanisms of promoting respect for self-rule of culturally distinct interests in multi-ethnic or multi-cultural societies. The old assumption of a 'nation state' and uniform laws for all members of a political community has proved to be defective and unsuitable particularly for societies with diversity. Conversely, federalism and legal pluralism provide for governance solutions for most of the political communities in the world today. But at the same time, one should be careful not to assume that everything in the package of federalism and legal pluralism would perfectly take care of everything in the polity to which they apply. There are byproducts of federalism and legal pluralism that adversely affect the rights of individuals and groups in a given polity unless a concerted and genuine legal and policy environment is created and such are even-handedly implemented. This article aims at explaining the problems and challenges of the application of federalism and legal pluralism in Ethiopia.

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II. FEDERALISM: GENERAL BACKGROUND

Federalism can be defined in various ways and therefore different identifying features can be listed. Graham Smith for example defines federalism as ‘an ideology which holds that the ideal organization of human affairs is best reflected in the celebration of diversity through unity.’¹ Federalism is also identified with the idea of distributing powers among different centers within a given polity on the basis of predetermined legal arrangements. Inherent in the idea of federalism is the desire to keep equilibrium between forces of centralization and decentralization, and as Smith succinctly puts it: “the federal idea, in short, is generally conceived as a compromise, conveyed by the image of checks and balances between unity and diversity, autonomy and sovereignty, the national and the regional.”² Constitutional distribution of powers between the center and the sub-national units is an important operational or practical feature of federations. Constitutional arrangements in federations enable the sub-national entities to take part in the making of decisions on important matters (and all matters that affect them) at the national level. The participation of the federal units in the national decision making process while self-ruling their distinct affairs is an essential mark of a federation.

In a federal arrangement, the center cannot unilaterally change, abolish or modify the covenant that creates the federal polity. In that sense, sub-national units derive their rights and existence not from the national government but from the constitution that creates them both. In a constitution of a federation, all important details of competencies of both levels of government should be provided to avoid conflict on jurisdiction. The extent and pattern of power sharing can again vary from one system to another, but generally matters of sub-national identity should be placed under the competence of federal units while matters amenable to shared-rule should be placed under the jurisdiction of the national government.

While remarking about the basic requirements of federalism and federations, one should not however lose sight of the important practical (and also legal) variations that render certain federations dysfunctional. Federal systems would be distinguished from one another on whether they demonstrate commitment to constitutionalism, respect for rights (individual as well as group) and democracy. True and functional federations are those that entrench the basic requirements of a federal arrangement along with democratic principles in their basic laws and at the same time practice those

1. FEDERALISM: THE MULTI-ETHNIC CHALLENGE 4 (Graham Smith ed., 1995).

2. *Id.*, at 5.

requirements and principles.³ Conversely, those that fail to entrench the above-stated requirements and principles or fail to implement them, cannot be considered as true federations.⁴ The main reason for the survival of such federations would be down-to-earth control exercised by the central government through various means of coercion.

The ways how federal polities arise, the justifications that propel federal forms of government and mechanisms of organizing the territorial federal units have been subjects of great theoretical and academic writings. Federalism in multi-ethnic societies has taken either a territorial orientation or a non-territorial one. Territorial orientation is embraced when the federal project aims at giving ethno-national groups territorial bases. Federations can be purely geographic and administrative such as in the USA. But at the same time, it is good to note that no two federations are alike on how they go about delineating the territorial contours for their sub-units. For our purpose, it suffices to say that the justifications, orientations, internal arrangements, etc, in federal systems are perhaps as many as the federal systems extant in the world today.

When ethnically based federations are rendered 'false federations,' the socio-political consequences to the polity would be doubtlessly fatal. Such a situation will breed all sorts of inter-ethnic disharmony and mistrust as there would not be fair resource and power sharing among the several ethno-national groups. This will also stir up nationalist sentiments among territorially concentrated ethno-national groups which their elites and nationalist leaders could use to stage secession claims. Several factors contribute to the inter-ethnic tensions in such federations. Though these factors definitely vary from one polity to another, common factors include for example the development of locally specific socio-political lifestyle such as self-identification with local language, creation of ethnic-based political parties and so on. These situations would lead to asymmetry between local and federal institutions, authorities and party elites.

One of the natural consequences of ethno-national federations is that all questions of power and resource sharing which are federal political matters automatically become ethnic questions because of the coincidence of the federal political question (which is power or resource sharing) with the ethnic question (which is the nationalist question of resource and power for a given group as compared to the other(s)). The latter facet of the question will have a far reaching consequence,

3. It has to be noted that most of the federations known to history including the socialist ones, have had nice principles and clauses in their constitutions about rights and democracy. The problem regarding the pseudo federations remained largely to be implementation of those rules and principles.

4. Some authors call the latter type of federations 'Pseudo-federations.' See e.g., I. DUCHACEK, *THE TERRITORIAL DIMENSION OF POLITICS: WITHIN, AMONG AND ACROSS NATIONS* (1986). Duchacek considered the now defunct Soviet Union, Yugoslav and Czechoslovakian federations as such.

depending on how it is attended to, of either resolving the inter-ethnic tension or inbreeding conflict with the ultimate effect of inter-ethnic hostility and fragmentation. But the general arguments about federalism as weakening social cohesion or citizenship solidarity of members of the political community have been pretty much challenged. Now both theory and practice show us that federalism, ethnically based federalism included, if properly implemented, can actually promote harmonious relationship among members of a political community. But, at the same time, federalism and particularly ethnic federalism can have a disastrous consequence if all its basic conditions are not implemented together as a package. This package can be contained in a basket consisting of both genuine self-rule and well crafted shared-rule.

III. THE ETHIOPIAN FEDERAL SYSTEM: AN OVERVIEW

Since 1995, Ethiopia has been constitutionally a federal state.⁵ The 1995 Federal Constitution of Ethiopia (hereinafter the 1995 Constitution or the Constitution) proclaims in its very first Article that “the Constitution establishes a Federal and Democratic State structure....” When we look at the states of the Federation, it is tempting to say that the Ethiopian Federation is, to use the terms of Kartashkin and Abashidze, “ethnic-cum-geographical federation.”⁶ This is because the demarcation of the boundaries of the federating units did not strictly follow the ethno-linguistic lines particularly in the case of the SNNPS. However, in the opinion of these authors, the Ethiopian federation can and should be considered as ethnically-based most importantly because the ethno-national groups (officially known as “nations, nationalities and peoples”)⁷ are made to be the loci of sovereign powers.⁸ They are accorded the political center-stage to decide on their own future as well as on that of the Ethiopian state. Because of this sovereignty, they have the legal standing to exercise all the variants of self-determination entrenched in the Constitution such as the right to statehood within the Federation and even the right to secession.⁹

5. In fact the process of federalization started in 1991 with the forceful change of government and subsequent enactment of a Charter for the Transitional Period Government that recognized the rights of the ethno-linguistic groups to establish regional and local self-governments. The Charter also ushered in a new era in the Ethiopian political history by recognizing the right to independence to each and every ethno-linguistic group inhabiting the country. See, Articles 2 and 13 of the Charter, *Negarit Gazeta*, 50th Year No.1 (Addis Ababa, 1991).

6. V.A. Kartashkin & A.K.H. Abashidze, *Autonomy in the Russian Federation: Theory and Practice*, in 10 INT'L J. MINORITY & GROUP RTS 203 (2003).

7. See, e.g., arts 8, 39 and 47 of the Ethiopian Constitution (1995).

8. *Id.*, art. 8 & the Preamble.

9. *Id.*, arts 39(1) & (4) and 47(2).

The Constitution divides the territory of the country into nine federating states and one federal territory.¹⁰ The nine states are the State of Tigray, Afar, Amhara, Oromia, Somalia, Beneshangul/Gumuz, Southern Nations, Nationalities and Peoples, Gambella Peoples and the state of Harari People.¹¹ Of these states, Tigray, Afar, Amhara, Oromia and Somalia carry the names of the numerically majority and dominant autochthonous ethnic groups in the respective states. The state of Beneshangul/Gumuz carries the names of the two dominant (and competing) autochthonous ethnic groups, i.e., Benshangul (also known as Berta or Jebelawi) and Gumuz. The State of Gambella peoples is a kind of anomalous nomenclature. Gambella is the name of the Ethiopian territory bordering the Sudan. It is not therefore a name of a people. But the autochthonous ethno-linguistic groups are different by their ebony skin colour from most of the other peoples of the country.¹² And there are five local ethnic groups in the Gambella State and apparently those are the people called the Gambella Peoples.¹³

The State that adds a geographical aspect of federalization to the Ethiopian federalism is the Southern Nations, Nationalities and Peoples State. Several ethno-linguistic groups inhabiting the geographical southern and southwestern parts of the country are subsumed under this State. There are about 59 autochthonous ethno-linguistic groups that inhabit this State. It is interesting to note here that before the 1995 Constitution (and after 1991), the ethno-linguistic groups in this State were organized under 6 National/Regional self Governments, categorizing the more than 50 ethnic groups into 6 self-governments on the basis of their geographical proximity.¹⁴ Though, the reasons for this decision is not visible, the makers of the Constitution thought that the southern peoples can fit into one state.

The ninth member of the Ethiopian federation is the State of the Harari People. This is a city state named after the Harar city found in eastern part of Ethiopia. Harar

10. Another City, Dire Dawa became a federal territory later by federal law although it was not designated as such in the Constitution. The reason for making the latter city a federal territory was the fact that it has been claimed by both the Somali and Oromia Regional States.

11. Art. 47 of the 1995 Constitution.

12. See, Dereje Feyissa, *Ethnic Federalism in Ethiopia: The Experience of Gambella Regional State* (Paper presented at the Seminar on Ethnic Federalism: The Challenge for Ethiopia, Addis Ababa University, April 14–16, 2004).

13. These are Nuer, Anywaa, Mejengir, Opo and Komo.

14. Proclamation No. 7/1992, *A Proclamation to Provide for the Establishment of National/Regional Self-Governments*, *Negarit Gazeta*, 51 Year No. 2, Addis Ababa, 1992. Under this Law, Ethiopia was divided into 14 self-administering regions. Out of those, Tigray, Afar, Amhara, Oromia, Somalia, Beneshangul/Gumuz, Harari and Gambella maintained their statehood under the 1995 Constitution, while the 6 regions were lumped under the Southern State. The only remaining region, Addis Ababa, the capital city, is made a federal territory by the Constitution.

was historically a prominent Muslim emirate conquered and formally incorporated into the Ethiopian state by Emperor Menelik II in 1889. It is believed to have existed as a kingdom since the 9th century and its civilization reached its zenith during the 16th century under Amir Ahmed Ibn Al Ghazi who was able to conquer most of the Christian highland part of Ethiopia.¹⁵ Its glory started to decline with the latter's death in 1543 in the war he fought for more than a decade.¹⁶ Since then, Harar became just a historical city serving as a capital of a local administration until 1991. In 1991, with the change of government and the move towards federal system in the Ethiopian State, Harar's political importance started to significantly change.

According to the population census of 2007, the population of ethnic Hararis (the people after which the state is named) stands at 15,858. The Harari people constitute less than 9% of the population of the Harari People's Regional State. The Harari people have political dominance in that Regional State where over 91% of the population constitute mainly the Oromos (56.4%), the Amharas (22.77%) and people of other ethnic groups (about 12%). Therefore, the standard used for the formation of the State of the Harari People under the above prevailing facts is unclear. One might of course say, as briefly stated above that the arithmetic notwithstanding, historical, cultural and socio-political grounds might have been taken into account in the establishment of the Harari State as a standing memory of the past glory of the once powerful Islamic sultanate of Harar.

IV. FEDERALISM AND HUMAN RIGHTS

Generalizations are impossible about the structure of human rights in all federations and could be misleading if attempted. This is because there are a lot of variations in the human rights set up of federations. The grounds for variations among federal systems in the structure of human rights may include, as Yash Ghai notes, whether the federation is of a 'coming together' or 'a holding together' type.¹⁷

When we see the history of federations in terms of the competence for the enforcement of rights, the general tendency is that sub-national units are believed to have the primary legal competence in the enforcement of rights. This has been in principle the legal position taken by the American legal system (as clearly seen from

15. Richard Caulk, *Harar in the 19th Century and the Loss of its Independence*, 1968 (Seminar Paper available at the Archives, Institute of Ethiopia Studies, Addis Ababa University), at 3-4.

16. *Id.*

17. Yash P. Ghai, *The Structure of Human Rights in Federations*, in *HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES: NATIONAL EXPERIENCES THROUGHOUT THE WORLD* (Kemal Hussien et al eds, 2000), at 41.

the decisions of the American Supreme Court).¹⁸ In fact it is good to note that in the case of the United States, the Federal Constitution as enacted in 1787 did not have a bill of rights while most of the constitutions of the 13 ex-colonies that participated in the formation of the federation had bills of rights.

However, in a paradoxical way, the US states did not respect the equal citizenship rights of all members of their community and had to be instructed by the federal government on the basis of the post-civil war amendments to the Federal Constitution (notably 13th, 14th and 15th), which extended the jurisdiction of the federal government, in the areas of basic individual rights, to the states.¹⁹ The protection of rights in federations can be made difficult owing to several factors. In the United States of America, racial issue was the main factor that made state-level protection of rights worse than federal level protection.

In the Canadian federation, the protection of human rights began with a situation in which both the provinces and the federal government did not have bills of rights in their respective laws.²⁰ It was not clear for example whether the provinces or the federal government or both had the primary jurisdiction to enforce rights. The legal regime started to progressively improve with the enactment of the Canadian Bill of Rights.

In the case of Ethiopia which is the principal concern of this article, new issues and concerns directly related to the post 1995 federal system have arisen with respect to the protection and promotion of the rights and freedoms of individuals and minorities. Some of the most serious human rights concerns arose in relation to minorities and persons belonging to exogenous groups—groups that lived in states (theoretically in any of the nine states mentioned above) to which they are not indigenous but into which they moved over the last 150 or so years.²¹ It is not open to question that people of different backgrounds move, migrate and intermingle especially when they share common economic and political community.

In the case of Ethiopia as well, this demographic factor has happened. But more than this normal demographic factor, there was a major event that took place in Ethiopia during the turn of the 19th century, and that was the southward expansion of the Ethiopian state by incorporating most of today's eastern, southern and southwestern part of the country that were hitherto only loosely connected to it as for example

18. *FEDERALISM AND RIGHTS* (Ellis Katz & G. Alan Tarr eds, 1997), at xiv.

19. *Id.*

20. *Id.*, at 47-48.

21. I use the terms 'endogenous (indigenous)' and 'exogenous' very loosely here. For the purpose of this article, and in the Ethiopian context, indigenous groups are those groups that are currently believed both legally and politically to be the owners of the territories in which they are found.

vassals.²² A fundamental concomitant state of fact was that the people who served in expanding the state of Ethiopia (as soldiers and other servants) were predominantly the Amharas. The descendants of the Amhara settled in the newly incorporated areas and have since flocked in large numbers to these areas in search of better opportunities.²³ Primarily because of this historical fact, the Amhara are now the largest group that live in states other than the state of Amhara. The majority of the Amhara people live in the state of Oromia and according to the 2007 national Census, about 2 million (over 7 % of the total population of the Regional State) live in that state. A Large number of Amharas (over 22%) also live in the Harari Regional State. Similarly, 22% of the population of the Beneshangul-Gumuz Regional State are ethnic Amharas. Overall, about 10% of the total population of Ethiopians live in states other than where their kin live.²⁴

It is my contention that while the 1995 Constitution so generously recognizes the right to self-determination of ethno-national groups, it utterly fails to pay any attention to the non-indigenous (exogenous) groups who find themselves in the 'wrong' regional states. When the federal arrangement was negotiated in the early 1990s and the federal Constitution written, the issue of the large number of exogenous groups described above was never properly addressed. As a result, today there is no law at the federal level that addresses the rights of these exogenous groups. Nor are there laws at the regional states' level. For example, majority of the Amhara who inhabit the Oromia State or the Beneshangul-Gumuz State are not treated as a group of people with the right to exercise some cultural and linguistic rights. They cannot establish their political organization to participate in the conduct of regional or local governments.²⁵

Political legitimacy has been linked to the legitimacy of one's territorial existence. So other than in the Amhara Regional State, the Amharas cannot be recognized as a people with cultural and linguistic rights of their own—in other words, they have not been recognized as minorities under the Constitution. So they are left to the mercy of the ethno-national groups such as the Hararis and the Oromos who may (or may not) recognize some or any of their rights. There are clear legal and public

22. See generally, BAHIRU ZEWEDE, A HISTORY OF MODERN ETHIOPIA: 1855-1991 (2002).

23. The movement of people from the north to the south was not only associated with the history of modern state formation. Another major factor, as will be later mentioned, was the resettlement program of the 1980s undertaken by the military government of Mengistu Hailemariam (1974-1991). In the case of Beneshangul-Gumuz and Gambella regional states, most of the non-endogenous groups (primarily Amhara, Oromon, Tigray) have come to these states through the resettlement programs.

24. As per the 2007 Census, Ethiopia's population tops 74 million.

25. There are in fact some practical positive developments over the last 5 years or so such as schools that use the Amharic Language in urban areas of Oromia State. But these are not clearly put in laws or policy known to the public. These are political decisions that may be withdrawn any time.

policy gaps in this area that make the preservation and maintenance of self identity, and much less self administration of non-endogenous groups around the country all the more precarious. It might be useful to mention laws (and policies) in place in for example Oromia and Beneshangul-Gumuz regional states regarding self administration of residents of what are called '1st and 2nd grade cities' in order to show the extent at which lopsided laws and policies that discriminate against the exogenous groups are being implemented.

In the Oromia State, a law (Proclamation No.116/2006) provides that if the number of ethnic Oromos are less than the number of non-Oromos in 1st and 2nd grade cities of Oromia, 50% of the seats of city councils shall be reserved for the Oromos while an additional 20% seats would be reserved for Oromos living in the surrounding rural counties. This matrix effectively turns the urban non-Oromo majorities into minorities by design. Similarly, an Act of Beneshangul-Gumuz State (Proclamation No. 69/2007) stipulates that at least 55% of the seats of city councils must be reserved for indigenous ethno-national groups. Here also the intention is clear—to perpetually keep the non-endogenous groups in the region out of political power which they would have been entitled to according to one-person-one vote principle. These decisions of the states have to-date gone unchallenged. And it will be difficult to challenge them because the Federal Constitution does not address such problems. On top of that, looking at the seemingly unlimited right of self determination of ethno-national groups, any challenge of it on the basis of minority or individual rights may fly in the face of the self-determination rights of groups.

The lopsided attention to the territorially based ethno-national groups at the expense of individual and minority rights was identified as a matter of concern in the Report on Ethiopia by the UN Independent Expert on Minority Issues.²⁶ The report indicated lack of comprehensive legal and policy provisions to secure minority rights in the face of the ethnically based federal system put in place following the 1995 Constitution of Ethiopia. It also pointed out the problems that have occurred in the process of implementation of the constitutional right to self rule by the majority ethnic groups in their respective territories whereby rights of minorities within the ethnic regional states and sub-state administrative units could be violated by those dominant ethnic groups wielding political, social and economic powers.²⁷

The Beneshangul-Gumuz Case—I have chosen to present one further case that has thus far shown the shortfalls of Ethiopia's laws and policies in relation to individual and minority rights more vividly, the Beneshangul/Gumuz case. The case arose in 2000

26. GAY MCDUGALL, REPORT OF THE INDEPENDENT EXPERT ON MINORITY ISSUES: ADDENDUM; MISSION TO ETHIOPIA (2006), A/HRC/4/9/Add.3.

27. *Id.*

in the Beneshangul/Gumuz Regional State and was brought to the Council of Constitutional Inquiry (CCI).²⁸ It was filed by the representatives of non-indigenous ethnic groups (such as Amhara, Oromo, Tigre and others) who live in the regional state.²⁹ The immediate reason for the case was a decision by the Regional State and the National Election Board³⁰ of Ethiopia which states that for a person to be a candidate for a national or regional election, he/she should be able to speak at least one of the languages of the autochthonous (endogenous) groups of a regional state of the intended candidature.³¹ This position of the Regional State government was given a legal basis by the Constitution of the Beneshangul/Gumuz Regional State which provides that the owners' of the Region are the five endogenous ethno-national groups.³² For the National Election Board, the decision was based on the Ethiopian Election Law³³ which under its Art. 38 states that a candidate for a national or regional election must be able to speak the vernacular of the regional state of his/her intended candidature.

Almost all members of the petitioning ethno-national groups came to the region through the earlier noted resettlement program of the previous government carried out in the 1980s. As stated above, these people are not generally considered as owners of the region. The case was particularly about a problem in the Bambassi Woreda (district) of the Assossa Zone (sub-regional administrative level) of the regional state. In this Woreda, the number of the Amharas is 14,467, the Oromos are 4,259 and the Tigrrians are 1981, while the total number of the endogenous (Berta, Mao and Komo) groups is 12,950, much less than the number of the exogenous groups.³⁴ The petitioners raised grievances and pleaded with the CCI (and the House of the Federation) for relief. The following were the relief sought:

- (a) The decision of the regional state administration and the National Election Board that required the knowledge of the vernacular of one of the five endogenous groups was preposterous and unconstitutional. Therefore, it

28. The Council of Constitutional Inquiry (CCI) is a constitutional body established as an advisory body to the House of the Federation (HoF) of Ethiopia—a federal house that has a constitutional competence to interpret the constitution. The CCI has the power of making recommendations to the HoF which may accept or reject the recommendations made by the CCI. *See*, Arts 62, 81-84 of the Federal Constitution and Proclamation No. 250/2001.

29. According to the 1994 Housing and Population Census, about 42% of the population of the Regional State consists of Amharas, Oromos and Tigres.

30. The National Election Board is a body in charge of all periodic elections in Ethiopia.

31. There are five endogenous groups in the Region: Berta/Beneshangul, Gumuz, Sinasha, Mao and Komo.

32. Art. 2 of the 2001 Constitution of the Beneshangul-Gumuz Regional State.

33. Proclamation No. 111/1995.

34. Data based on the 1994 Housing and Population Census of Ethiopia.

should be quashed or nullified. They argued that this decision tramples upon Art. 38 of the Federal Constitution which states among other things that every citizen has a right to be elected without discrimination on ethnic, national or language grounds;

- (b) The fair and equitable representation in the regional and national administrative organs and hierarchies. It is interesting also to note that the petitioners demanded to be recognized as distinct ethno-national groups in the regional state along with the five groups. Accordingly, they asserted that their right of self-determination under Article 39 of the Constitution should be respected;
- (c) That they be given a special administrative status in the region so that they will be able to exercise self-governance;
- (d) Alternatively, they be repatriated to the regions or places where they can have their rights respected and be able to preserve and develop their culture and language;
- (e) That those officials in the Regional State who have blackmailed them be brought to justice; and
- (f) That the economic discrimination going on against them, including confiscation of land and the denial of access to grazing land as well as to the use of acacia trees for house-building and other purposes be halted.³⁵

The above demands and claims raise important issues that may also be applicable to non-endogenous groups that are living in other regions such as Oromia and Gambella. The most interesting demand is the one that asserts they be considered as one of the 'nations, nationalities or peoples' of the region as per Article 39 of the Federal Constitution. As has been noted, neither the federal nor the regional constitutions give special status to such ethno-national groups living in different regional states, whose kin have their own separate regional state in the federation. It does not recognize them as minorities either.

The above case was entertained by the CCI. It is however very sad to see that only one of the relief sought, i.e., the right to be elected and the removal of the discriminatory language requirement put in place by the regional government and the

35. Translation from the original Amharic by the author.

National Election Board, was dealt with in the recommendation of the CCI. The HoF in fact attempted, in a broad-brush way, to address the other matters in addition to the claim for candidature but not squarely. In the opinion of this writer, the claims not squarely dealt with raise as important rights' issues as the one dealt with and as such should have been settled by the CCI and the House of the Federation. Several conclusions are possible from the behaviour of both the CCI and the House of the Federation in this case. One obvious conclusion is the apparent gap in the corps of laws (including the constitutions) of the country regarding the rights of exogenous groups and persons belonging to such groups in several of the regional states that left the CCI and the HoF without any clear legal basis for decision.

Coming to the recommendation of the CCI in the case under consideration, in an eight member deliberation, the CCI arrived at a decision by a majority of six members. The majority dealt with one major issue: whether Article 38 of Proclamation No. 111/95 (which requires the knowledge of the vernacular of the regional state for candidacy) violates Article 38 of the Federal Constitution that prohibits discrimination on the basis of national, ethnic or language grounds. It accordingly found that Art. 38 of the Proclamation imports a restriction not intended in the Federal Constitution and therefore was unconstitutional. It also further stated that the National Election Board's decision should also be set aside as it was based on an unconstitutional legislation.

In a relatively more elaborately reasoned opinion, the minority of 2 members concluded that there was no incongruity between the Federal Constitution and Proclamation 111/95. The crux of the opinion of the minority was that Article 38 of the Proclamation could have had a discriminatory disposition if it did merge language and ethnic origin to be the requirement for candidacy. The logic of their argument was that if a person who comes from one of the five endogenous groups of Beneshanbul/Gumuz regional state does not speak the vernacular of the regional state, she/he would be excluded from candidacy just like any member of the exogenous groups. And since exclusion on the basis of ethnic origin was not the intention of both the regional government and the National Election Board, a person is not discriminated against because of his/her ethnic identity and therefore neither the decisions of the National Election Board nor Article 38 of the Proclamation violate Article 38 of the Federal Constitution.

The House of the Federation with whom the ultimate power of constitutional interpretation lies, however, did not accept the opinion of both the majority and the minority of the CCI summarized above. It rather worked out a sort of compromise solution. It did not venture on deciding on the constitutionality or otherwise of Article 38 of Proclamation No. 111/95 in clear terms but said that if the vernacular of the regional state (i.e., the working language of the state) is spoken by the intending

candidate, s/he has the right to be a candidate. But if the candidate cannot speak the language of the regional state, he does not have the right for candidacy.³⁶ As indicated earlier, the petition put forward by the petitioners were not squarely addressed by the CCI as well as by the HoF. It seems to me that on a broader policy level the kinds of issues and claims raised by the petitioners need to be addressed.

Turning to other issues of human rights in federal Ethiopia, the author also contends that violations of rights have occurred in various parts of the country. We see that these serious violations of human rights have also occurred due to one or the other reasons. It is contended that timely actions by the regional governments and/or their local authorities could have made positive differences. Several examples of such violations can be cited as having occurred since the inception of the federal arrangement in 1991. The cases of Arba Gugu locality of the Oromia Region (occurred in 1991/2) where many civilians massacred each other in an ethnic-cum-religious tainted violence between the Amharas and the Oromos living in the same locality was one such case.³⁷ In these conflicts, several properties were lost and thousands were made homeless and internally displaced persons.

At about the same time as above, in what is today's Beneshangul/Gumuz Regional State, many members of the 'exogenous' groups such as the Amhara in the area of Metekel were massacred.³⁸ The case of violence among the ethno-national groups living in the Gambella Region that claimed the lives of several persons in 2003 and thereafter is also worth noting.³⁹ In all cases, the interventions from the regional governments were very slow and arrived only after several lives had been lost and properties destroyed. Problems in detecting early warning signs on the pending violence and resources might have stopped the regional governments from acting. But at the same time, the citizens affected needed better security from their regional governments.

Similarly, individual citizens' rights including the right to life were violated and constantly put under high risks as a result of the lack of preparedness and statesmanship by the regional states following the federalization of the state structure. An important case in point here is that of Somali and Oromo border claims and conflicts. The

36. In the Beneshangul/Gumuz regional state, the working language was (and still is) Amharic. The petitioners, as indicated above were required to know the language of one of the groups (owners of the region) for no purpose at all.

37. ETHIOPIAN HUMAN RIGHTS COUNCIL, *DEMOCRACY, RULE OF LAW AND HUMAN RIGHTS IN ETHIOPIA: RHETORIC AND PRACTICE* (1995), at 127–128.

38. *Id.*, at 128.

39. See, Getachew Assefa, *Protection of Fundamental Rights and Freedoms in the Ethiopian Federation*, in *PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON FEDERALISM, CONFLICT AND PEACE BUILDING* (2003).

overlapping claims for certain flashpoint places such as Miésso has engendered conflicts that claimed the lives of innocent persons and displaced thousands. The problem of wrangles over boundaries has in fact been dragging on since 1994/5 between the Somali and the Oromia regions. The problem however reached an acute stage after the referendum that took place in October 2005 in order to determine the administrative status of certain disputed localities between the Somali and Oromia regions.

Setting aside the dispute on the irregularities surrounding the conduct of the referendum, problems ensued even in areas where clear majority came out in favour of a given side, by the very side that became victorious. This was the case for example in the Bikkie, Afdem, Yerer and Mulu localities of the Miésso Woreda. The victims expressed their grievances that after the referendum, the localities fell under the Somali regional government's administration, but soon after its conclusion, with the Somali local administration's tacit consent, conflict arose and an act of ethnic cleansing against the Oromos was perpetrated resulting in the exodus of thousands and the murder of many.⁴⁰ Some angrily expressed their views saying that all the evils resulted from the referendum. One refugee in the Miésso town said, the government "saw its poison among us by its act of referendum".⁴¹

The elders of both the Somalis and the Oromos expressed their deep resentments that all of their misery happens because of lack of farsighted, genuine and neutral administration by the authorities. A statement of a Somali elder involved in resolving the conflict perhaps catches the feeling of the people:

There is a problem here. You know, children normally do what they see their father doing. The government administering us did not tell us—the Somalis, Oromos, Amharas and the Argobas—to live peacefully together as brothers and sisters. The Somali political leaders tell the Somalis that the Oromos are taking their land and that they should defend; the Oromo political leaders also tell the Oromos that the Somalis are overrunning them and they should stand against that. Even after the 2005 Elections, the Oromo party won an election here at Miésso area; we said we want to peacefully live under this administration; but our political leaders tell us not to seek administrative services from the Oromos. Both sides consider us (the people) as instruments for their political games. We do not know what

40. An interview with the Voice of America (*Amharic* Service) broadcast on 17 December 2005.

41. *Id.*

to do any more.⁴²

A very consistent claim of the affected people is that the two regional governments did not make adequate efforts to solve the problems. The problems are said to be predominantly permeated by the lack of good governance. Similar conflicts have besieged several areas in the SNNPS (e.g. conflict between Shecko and Mejangir)⁴³ and the Gambella regional State.⁴⁴

As the above brief account of the situation of rights in the Ethiopian states show, there are some matters of fact that Ethiopians, as citizens of a promising multi-nation state, should be concerned about. As the above examples and facts show, the problems are not unsolvable. They are capable of being solved with the right policy and legal framework that is targeted at building a multi-cultural state at all levels of administration and in all states of the federation. And as it has been argued above, more needs to be done by our states in this regard.

V. LEGAL PLURALISM AND HUMAN RIGHTS

Another aspect of the Ethiopian ethnically based federal system that needs to be looked into (from the viewpoint of human rights) is its official recognition of religious and customary laws and courts in family and personal matters. According to Vanderlinden, Ethiopia is an aspect of official legal pluralism or pluralism within the state law.⁴⁵ The Federal Constitution gives formal recognition to religious and customary laws and courts to operate side by side with the state legal system in the areas of family and personal matters.

This of course is an official recognition of the social pluralism of the Ethiopian society in those limited areas. The traditional norms and ways of life of the various Ethiopian peoples have survived the modern state and its legal and administrative institutions, since the latter was superimposed on it beginning from the turn of the 19th Century, and continued to exist side by side with it. The penetration of the modern state

42. *Id.*, (translation by the author).

43. See generally, Sara Vaughan, *Responses to Ethnic Federalism in Ethiopia's Southern Region*, in *ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVES* (David Turton ed., 2006).

44. See generally, Dereje Feyissa, *The Experience of Gambella Regional State*, in *PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON FEDERALISM, CONFLICT AND PEACE BUILDING* (2003).

45. J. Vanderlinden, cited in G.R. Woodman, *Ideological Combat and social Observation: Recent Debate about Legal Pluralism*, 42 J. LEG. PLURALISM & UNOFFICIAL L. (1998), at 24. For a clear and succinct discussion of legal pluralism, see J. Griffiths, *What is Legal Pluralism?* in 24 J. LEG. PLURALISM & UNOFFICIAL L. (1986).

apparatus and its laws into the traditional societies of the country has been indeed a very slow process and it has not been achieved. This has been the case even in the face of official policies of most of the 20th Century Ethiopia (during the regimes of Haile-Selassie I and a Military-socialist Government: 1930-1991) that were targeted at uprooting the traditional social relations and replacing them with modern state system and laws.

It suffices to cite a legal provision in the 1960 Ethiopian Civil Code regarding the position of the government policy: "Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed."⁴⁶ There was an attempt at total replacement of the traditional with the 'modern' in all of the areas of the civil law.⁴⁷ This was the case also in criminal matters as evidenced by the enactment of the 1957 Penal Code which did not leave any room for customary criminal justice administration.

In spite of the attempts made by the state to centralize the law and legal institutions, the reality in Ethiopia today is that customary systems and institutions remain very active in most of the various Ethiopian societies.⁴⁸ The current federal legal order of Ethiopia makes some changes in this regard. The Federal Constitution of Ethiopia has created a limited space for non-state law. The following are the relevant provisions of the Constitution:

- (i) This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.⁴⁹
- (ii) Pursuant to Sub-Article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary laws that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.⁵⁰

46. Art. 3347.

47. See also, G. Krzeczunowicz, *A New Legislative Approach to Customary Law: The "Repeals" Provision of the Ethiopian Civil Code of 1960*, 1 J. ETHIOPIAN STUD. (1963).

48. See generally, GRASS-ROOTS JUSTICE IN ETHIOPIA: THE CONTRIBUTION OF CUSTOMARY DISPUTE RESOLUTION (Alula Pankhurst & Getachew Assefa eds, 2008).

49. Art. 34(5).

50. Art. 78(5). State Councils are legislative assemblies of regional states.

Article 34(5) of the Federal Constitution quoted above takes a permissive stance in relation to both religious and customary laws and courts in the areas of family and personal disputes as regards consenting disputants. A close reading of Article 34(5) shows first that only a few of the areas of adjudication are carved out and given to the customary and religious laws and courts. In other words, in what are normally known as civil and commercial matters, the non-state laws and courts have jurisdiction only with respect to family and personal matters. Importantly, criminal jurisdictions are unequivocally denied to customary and religious laws and courts. Secondly, the jurisdictions of the non-state laws and courts are contingent on the consent of the disputing parties and cannot take place without the latter. Conversely, we could note that if the disputants agree to the jurisdictions of religious or customary courts and laws, the rules in the laws of custom or religion would apply to the consenting disputants regardless of the nature and contents of those laws.

In principle, by giving their consent, the disputants would be willing to absorb any kind of decisions whether they are repugnant to constitutional rights or ordinary sense of justice or not. Of course, one may argue that by virtue of Article 9(1) of the Constitution, decisions or religious and customary laws will have to yield to the Constitution in the event of their contradiction with the latter. But since the recognition accorded to customary courts and laws is given by the Constitution itself, again a possible counter-argument, to the effect that the very act of consent would ‘purify’ the ‘defective’ rules in custom and religion, is also plausible enough.

In spite of the imitative stance taken by the state, the empirical reality regarding the traditional or customary laws (including those with some ritual practices) in the country provides for a completely different picture. Although the state tries to gloss over the traditional laws in the country as non-existent in most of the rural areas (especially those farther away from the urban centres), the traditional laws and institutions still display a complete vitality. Many past and recent studies have confirmed that they exist in full force and the society uses them to settle disputes in their day-to-day lives.⁵¹ Importantly also today, as it was before, the jurisdictions of the

51. The following are just a few examples of such studies: Ayehu Legesse Teferra, Customary Contention: The Power and Authority of Partially Despised Waata Oromo in Dispute Settlement (M.A. Thesis, Addis Ababa University, 2005) (discussing how the traditional institutions of the Waata (Arsi) sub-group of Oromo settle disputes involving murder and other serious bodily injury to a person raping an unmarried girl, amputating one’s legs or hands, tooth breaking, arson, etc, through the traditional institution that consists of one man conciliator (the Waata) at first instance to a body of two to three elders —*jaarsa qe’ee warraa* (household or village elders) at the wider level and the *jaarsa gosaa* (elders of the sub-lineage) with conciliators numbering 3 to 5. At the community level, the *jaarsa biyyaa* (community elders), elders numbering up to 10 would be members of the ‘court.’ In serious cases such as murder, a ritual known as *fixa gumaa* (culmination of the process) would take place; Paulos Alemayehu, Potentials

traditional laws and courts are not restricted to just family and personal matters, but rather encompass all kinds of civil and criminal matters.⁵²

Whether the decision taken by the Constitution in relation to customary and religious laws of the country is well advised or not; whether it is comprehensive or not; and importantly, whether it is fully cognizant of the societal reality and is capable of addressing basic concerns of those interested or not, etc, are issues worth separate consideration. These however are not the areas of interest of this article. This article rather attempts to focus on the gaps in the law (including in the federal Constitution) in regulating the relationship between the formal courts and laws and traditional or religious courts and their impact on the enjoyment of constitutional rights by citizens.⁵³

One of the main challenges of legal pluralism in Ethiopia today is the determination of which body should be the highest judicial body that could give a conclusive end to claims that have been submitted to the customary and religious courts. For example, should the final decision of the highest religious or customary court be subject to review by the ordinary courts, or for that matter by the highest ordinary court? This issue has been a battle ground between the liberal outlook and that of the supporters of more autonomy for cultural or self determination rights of ethno-

and Challenges of Indigenous Institutions for Good Governance: The Case of Gada among the Gedeo (M.A. Thesis, Addis Ababa University, 2005) (discussing the customary judicial institution of the Gedoe people of the SNNP State. The author describes how the traditional chiefs—the *Hayitticha* at its lower tier and the *Abba Gada* at the apex—dispense justice on all kinds of cases in the civil and criminal areas); Shack William, *On Gurage Judicial Structure and African Political Theory*, in 5 JOU (1963) (describing the judicial system of the Gurage of Ethiopia (SNNP State) as consisting of two tiers: the first instance with competence at the village (clan) level and the *Yajoka* as a court of appeals. The jurisdiction of the *Yajoka* also leaves out no case but principally deals with disputes which arise out of the network of kinship, economic and social rights, duties, and obligations existing among Gurage, and which are incumbent upon all Gurage who claim citizenship. William discusses an interesting situation in which the Gurage judicial system and the government courts existed side by side and the disputants chose where to take their cases). *See also*, Walegn Tadesse Robele, *Continuity and Change in Ye-Gordena Sera System of Kistane-Gurage Traditional Governance* (M.A. Thesis, Addis Ababa University, 2005). On the institution of the *Gada* of the Oromo, see Dinsa Lepisa Aba Jobir, *The Gada System of Government and Sera Caffé Oromo* (LL.B Thesis, Addis Ababa University, 1975); Seid Jundi, *The Traditional Law Making and Enforcement Process in the Gadaa System of the Oromo: A Comparative Approach* (LL.B Thesis, Addis Ababa University, 1994); Daniel Abebe Haile, *Kinship, Marriage, and Alternative Dispute Resolution among the Sab of the Somali* (M.A. Thesis, Addis Ababa University, 2005) (discussing the Somali customary law (*Xeer*) and its rules (*Xeer Dulnimo* and *Xeer Do'nimo*) and courts (*Guddi*) as passing up on all kinds of cases including a small misunderstanding among individuals to homicide cases). *See also*, Jemal Derie Kalif, *The Customary Resolution of Homicide Cases in Ethiopian Somalis and its Impact on the Regional Justice Administration* (LL.B Thesis, Addis Ababa University, 1999).

52. *See*, Pankhurst & Assefa, *supra* note 48.

53. *See*, the *Kedija Beshir* case, file No. 394/92 (of the 3rd *Naieba* [First Instance *Sharia*] Court of the City Administration of Addis Ababa).

national or religious groups. For example, in general the latter group opposes that the ordinary court of any level be allowed to review the judicial determination made by customary or religious courts.

In a related issue, Kymlicka notes that many American Indians oppose the idea that the US Supreme Court reviews their internal decisions as per the Bill of Rights. He observes that both the American Indians and Canadian Bands in relation to the Canadian Charter of Rights and Freedoms opposed to the Supreme Courts' ability to review the decision of their local councils, and that they do not want members of their respective communities to challenge their decisions in the ordinary courts.⁵⁴ The demand for exemption of decisions of the tribal bodies, Kymlicka notes, is opposed by liberal thoughts obviously because in the name and under the guise of group interest and 'cultural purity,' individuals or subgroups, such as women, may be subjugated, and therefore that tribal judicial or executive or legislative decisions must be subject to review by the nation's highest court in the event of report of grievance and after the exhaustion of remedies available at the level of tribal institutions.

The reasons for the traditional institutions' resistance of the review from the state institutions are many.⁵⁵ But, the most overriding consideration can be said to be the concern that the modern institutions such as supreme courts may not be impartial in cases involving tribal cultural matters due to the ethnocentric bias the former would have against traditional institutions. When it comes to the review of religious institutions' decisions by the modern state institutions, the suspicion of bias would be all the more pronounced. The *Kediya Beshir* case is illustrative of this situation.

This case involved a dispute on inheritance of a house among grand children of a Muslim family. In 1999, the plaintiffs (four persons) opened a case before the first instance *Sharia* Court⁵⁶ claiming that they should be given their share which was under possession of the defendants (four persons). The *Sharia* Court received a response from the defendants who asserted basically that they did not consent to be adjudicated before

54. See generally, Will Kymlicka, *Liberal Culturalism: An Emerging Consensus*, in 1 *ETHICAL THEORY AND MORAL PRACTICE* (1988).

55. *Id.*, at 85. Kymlicka for example explains that in the case of the Indian tribes, they are opposed to the US Supreme Court's power to review their institutions' decisions because, among other things, the Supreme Court historically legalized the acts of colonization and conquest that dispossessed the Indians of their property and political power.

56. Based on the Constitutional recognition of religious laws and courts discussed earlier in the article, the Federal Parliament enacted a law, entitled "Federal Courts of *Sharia* Consolidation," Proclamation No. 188/1999, which established a three-tier court of *Sharia* to have jurisdiction on parties and matters amendable to federal jurisdiction. The states can enact their own laws on the same matter. According to the law just mentioned, the courts of *Sharia* have jurisdiction on such matters as marriage, divorce, maintenance, guardianship of children and family relationships as well as *wakf*, gifts and inheritance. See, Art. 4 of Proclamation No. 188/1999.

a religious/*Sharia* court, and secondly that the case was pending before the regular court with jurisdiction. They made it clear in their reply to the Court that as per Article 34(5) of the Federal Constitution, the religious/*Sharia* court will have jurisdiction on this case only if they consent to be bound and since they made it unequivocally clear that they do not consent to have their case adjudicated here, the case should be closed for want of jurisdiction.

The first instance *Sharia* Court (*Na'eba* court), set aside the preliminary objection of the defendants and went on to see the merits in which it found the applications of the plaintiffs founded and decided that the property be partitioned among the defendants and the plaintiffs. The court even imprisoned one of the defendants for 15 days (for court contempt) for having said during oral hearings that the court did not have jurisdiction. The defendants appealed to the High *Sharia* Court and the Cassation Division of the Supreme *Sharia* Court one after the other, both of which affirmed the first instance *Sharia* court's decision.⁵⁷

As per the procedural laws of the country, the defendants submitted an application for review to the cassation division of the Federal Supreme Court of Ethiopia, claiming that the decisions of the courts of *Sharia* committed a grave error of law. However, to the dismay of the petitioners, Federal Supreme Court's cassation division stated that there is no error of law committed by the courts of *Sharia* and rendered the case inadmissible.⁵⁸ The defendants, through the Ethiopian Women Lawyers' Association—a local women's rights advocacy group—petitioned the Council of Constitutional Inquiry (CCI) for review and quashing of the decision of the Courts of *Sharia*. The CCI admitted the case and decided in 2003 that the first instance *Sharia* Court could pass upon a given case only with a clear consent of the parties to the case, and its passing upon this case over clear rejection of its jurisdiction was unconstitutional. It made a recommendation to the HoF that the decision of the *Sharia* courts be overturned.

Several interesting points of analysis can emerge from this case. One is the possible ill-treatments that may result from the subjection of citizens to religious courts in light of the constitutional human rights principles and the broader international human rights regime to which Ethiopia is a party. Secondly, the judges who sit at the customary/religious courts do harbour a lot of sentiments to their own courts and laws. In this very case, they simply bypassed a very clear constitutional provision that states that the consent of a disputant is the only way from which a religious court gets its jurisdiction on a case. In defiance, the judge of the first instance *Sharia* court in *Kediya Beshir* went on to incarcerate an objecting party for court contempt.

57. File No. 7/95.

58. Cassation File No. 12400/1995.

In the case, Kedija Beshir and other defendants were made to undergo serious difficulty, financially and emotionally for more than three years in a matter that should have ended at the first or so hearing. It is interesting to note also that the cassation division of the federal supreme court of Ethiopia refused to admit the *Kedija Beshir* case stating that there was no error of law committed by the courts of *Sharia*. It said this while a clear constitutional provision was set aside by the decision of the latter. One therefore has to look beyond the black letter decision of the Federal Supreme Court. I believe that the Supreme Court's Cassation division could clearly see that a fundamental error of law took place in the case—a deliberate error by the *Sharia* Courts not to heed to the constitutional provisions. But it seems to me that the cassation division of the Supreme Court wanted just to avoid the problem by not admitting it, like the proverbial pigeon that buries its head in the sands. This shows us the indeterminacy of the judicial stands on cases involving prior religious court decisions.

This, no doubt will be the case in customary legal regimes of the multitudes of the cultural communities of Ethiopia. Their norms have discriminatory treatment regarding especially women.⁵⁹ Also, important is that the process for justice administration used by the customary institutions does not in most cases afford fair play for the parties, especially the defendants. The problem is exacerbated in the case particularly of customary courts and laws by the absence of clear legal regime guiding the citizens through the dispute settlement processes and the remedies available to them. To begin with, to date, there is no law both at federal and regional levels regulating the state of affairs of customary law and courts.⁶⁰ As a result a lot of very important matters remain unregulated. For example, it is not clear as to what kind of procedural requirements should be observed by the customary courts; who should be a judge in customary courts; whether they should observe any constitutional limitation about the body of rules they could use regarding rights of disputants, etc., are not at all known.

59. See e.g., Wolde-Selassie Abbute, Gumuz and Highland Settlers: Differing Strategies of Livelihood and Ethnic Relations in Metekel, North-Western Ethiopia (M.A. Thesis, Addis Ababa University, 2002). Wolde-Sillassie discusses the dispute settlement among the Gumuz of Ethiopia as involving the giving away of a girl during the reconciliation process between the feuding clans. The girl can in principle be used by the victim families in anyway they wish, but normally would be taken as a wife for one of the members of that family. See also, Dolores A. Donovan and Getachew Assefa, *Homicide in Ethiopia: Human Rights, Federalism and Legal Pluralism*, in 51 AM. J. COMP. L. 505 (2003).

60. Note that Art. 34(5) of the Constitution states that the details on customary courts and laws shall be enacted in statute. The constitutions of the Regional States also state the same thing.

VI. CONCLUDING REMARKS

Attempts have been made in this article to highlight some of the human rights concerns at the sub-national levels in Ethiopia. As this discussion begins to show, there are several reasons for the poor state of human rights in the states of Ethiopia. Some of these problems are created because of the absence of a neutral approach by the regional governments to recognize the equality of groups and individuals in their territories and under their administration. It however has also a lot to do with the problems in law and policy at the national level that fail to design mechanisms that serve all citizens in the country. In the absence of the policy and legal regimes, it would be impossible for the federal government to ensure the accountability of the regional authorities.

There are undoubtedly many positive things that have been brought with federalism in Ethiopia. I am inclined to believe that federalism is a better suited form of organizing state power in Ethiopia. I also equally believe that if federalism in Ethiopia is not well implemented—with genuine commitments to its principles and demands—a great danger looms on the future of the country as a polity.

While it is extremely important to ensure genuine self-rule rights to the various ethno-national groups in Ethiopia, it is equally important that the ethno-national groups with their own full measure of self-government are required to respect minority and individual rights of those who do not belong to their ethnic group. Such a matter should not be left to the mercy of the governments of the self-governing ethno-national groups; it rather has to be enacted into a federal law such as a constitution. The politico-legal system should also provide for mechanisms of sanctioning violations of such laws and at the same time provide for a remedy for those individuals and groups who happen to be mistreated.

As regards the recognition of customary and religious institutions for settlement of disputes in the country, there is no doubt about the fact that it is an excellent step forward and perhaps is simply a must given the nature of state structures established in response to the multi-ethnic nature of the country. But, as has been argued earlier in the article, the legal regime on the matter is not fully in place and this makes it very difficult to evaluate the state of affairs of customary justice system in the country. It should be emphasized that Ethiopia's commitment to official legal pluralism would take her to task, among other things, on creating a means to follow-up the performance of the customary and religious legal regimes to make sure that the latter comply with at least the minimum standards of human rights protection and on upgrading the performance of these institutions.⁶¹

61. See, Donovan & Assefa, *supra* note 59, at 507.