

# Ethnic diversity and federalism. Constitution making in South Africa and Ethiopia

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Almost all countries in the world have ethnically diverse populations. However many of them have been – and are still – apprehensive about recognizing this societal feature in their constitutions and state institutions. This has been a *fortiori* the case for most African countries, whose leaders fear that the constitutional recognition and institutional accommodation of ethnic diversity will lead to societal disintegration and the ultimate collapse of the state. Yet, countless political conflicts have demonstrated that the denial and corresponding suppression of ethnic diversity does not at all constitute a successful nation-building strategy. Consequently, today in Africa and elsewhere an increasing number of countries are adopting a different approach towards the ethnic diversity of their population, an approach based on recognition and some form of institutional accommodation of ethnic pluralism. It is against this background that Yonatan Tesfaye Fessha compares the constitutional approaches towards ethnic diversity of two African countries: South Africa and Ethiopia.

The book starts with two theoretical chapters in which Yonatan convincingly argues that a successful nation building policy, a policy that will lead to harmonious societies and stable states, requires a positive approach towards ethnic diversity – an approach that recognizes diversity and attempts to design appropriate institutional mechanisms for its accommodation. Within this the author does formulate an important caveat: constitutional recognition and institutional accommodation of ethnic pluralism becomes mandatory only if this pluralism has generated certain ethnic claims and demands, or in the words of the author, “The politics of pluralism comes to the fore only when historical, economic and social circumstances deem cultural distinctiveness a politically relevant divide” (p. 21). However, Yonatan continues, in an ethnically plural country in which ethnic demands have been formulated, societal stability cannot be achieved by the protection of universal individual rights alone. Although the constitutional protection of universal individual rights is an important mechanism to protect persons belonging to minorities, it will not satisfy the demands of ethnic groups. This means that there is a need for the individual rights approach to be supplemented by specific constitutional provisions, mechanisms of recognition and institutional accommodation of ethnic diversity. At the same time, the author recognizes that the explicit incorporation of ethnicity in the constitution might lead to increased ethnic identifications and political disunity. This observation brings him to the discussion of federalism as an instrument to protect the interests and rights of ethnic groups as well as the unity of the state.

A state that recognizes the ethnic pluralism of its society might adopt federalism as a device to give practical effect to that recognition. Federalism is increasingly promoted as a mechanism to accommodate ethnic diversity since on the one hand it protects the interests of ethnic groups by providing them with self-rule while on the other it guarantees the unity of the state by offering a framework for shared rule. Hence, a successful nation-building policy in a country where ethnic pluralism has become politically relevant requires not only recognition of this diversity, but also the design of institutional mechanisms that enable the diverse ethnic groups to exercise self-rule as well as shared rule. Yonatan uses these three elements – recognition, self-rule and shared rule – as a frame to analyze and evaluate the constitutional approaches pursued by South Africa and Ethiopia, towards the ethnic diversity that characterizes both societies. The constitutional analysis is in both cases preceded by an overview of the historical and political background to the introduction of federalism. After a sound theoretical and conceptual framing of his case studies, the author provides an instructive selection of the relevant historical and political events, which helps the reader to understand the rationale for the introduction of federalism and the concrete form it took in both countries.

In Chapter 4 of the book, Yonatan discusses the background to the current constitutional accommodation of ethnic diversity in South Africa, which constitutes the subject of analysis in Chapter 5. He points out that South Africa is not only a racially divided country, where the black Africans constitute a numerically dominant segment of society; the country is simultaneously a country of ethnic minorities with the black community being composed of different language groups or ethnic groups. The existence of different ethnic groups among the black community was abused by the apartheid regime to divide the black Africans through the creation of ethnic homelands. Different ethnic groups had to be provided with self-rule in their homelands, which were intended to become independent states. At this point, the comparison with the Ethiopian model of ethnic federalism becomes particularly interesting. The core idea of Ethiopian federalism is that the interest and rights of ethnic groups can best be protected by providing the latter with territorial self-rule. The Ethiopian constitution grants an encompassing right to self-determination to all of Ethiopia's ethnic groups, which is realized through the establishment of ethnic-based territorial units. This has led critics to denounce Ethiopian federalism by pointing out the similarities with the South African homelands. Yet the criticism seems unfair because, as Yonatan points out, the creation of "Bantustans" was not the result of the free will of the black Africans, it was rather a unilateral imposition by the apartheid regime. The author observes that the Bantustan policy was generally unsuccessful in dividing the black African community, which brings him to the conclusion that "Ethnicity is still not the most politically relevant divide in present-day South Africa" (p. 62). Still, ethnic mobilization among the Zulu and Afrikaner communities did occur which had its impact upon the discussions about a new constitutional dispensation for post-apartheid South Africa. The political parties representing and defending the Afrikaner and Zulu interests argued in favour of ethnicity-sensitive constitutional devices such as ethnic power sharing, decentralization and federalism. The ANC, on the other hand, having the Bantustan policy fresh in mind, strongly objected to the

constitutional incorporation of ethnicity and argued in favour of a centralized state. The result of the discussions between these two opposing groups was the adoption of an interim constitution, which possessed a number of federal features and included both individual and group rights. As such it struck a balance between the two divergent views on the future state structure of South Africa. Chapter 4 concludes with an assessment of the present-day importance of ethnicity in South African society. Here, the author repeats his observation that ethnicity, especially among the black African community, is not an important political divide. He explains this by pointing out that a shared history of oppression has generated feelings of inter-ethnic solidarity, which has reduced the potential for political mobilization along ethnic lines.

In the fifth chapter, the South African constitutional mechanisms for the accommodation of ethnic diversity are investigated within the frame drawn up in the theory section of the book – analyzing and evaluating the elements of recognition, self-rule and shared rule. When it comes to the first element, recognition, the book argues that the South African constitution includes both elements of unity and diversity. The constitution aims to guarantee national unity, but not to the detriment of diversity. This means that although the constitution recognizes that South African society is characterized by ethnic pluralism, it does not encourage the latter to the extent that it might undermine unity. In this regard, the constitution of South Africa does not portray the South African state as the result of a process of the coming together of different ethnic groups – a notable difference with the Ethiopian constitution, as demonstrated below. Another element supporting the balance between unity and diversity is the language policy, which prevents an overlap between ethnic/linguistic groups and provincial boundaries. The use of at least two official languages at provincial level recognizes on the one hand the internal diversity of the provinces and on the other, helps to minimize a sense of ethnic exclusion and as a result the policy contributes to national unity. As to the self-rule component, the book observes that although there has been no explicit attempt to achieve correspondence between provincial boundaries and ethnic groups – which might disqualify the portrayal of South Africa as an example of ethnic federalism – most provinces are numerically dominated by a specific ethnic group. Therefore, the provinces do constitute a potential forum for ethnic self-rule. Obviously, this potential will only be realised if the constitution accords sufficient powers to the provinces. Although the book provides an overview and assessment of provincial powers in South Africa, it does not discuss the issue of financial autonomy at sub-national level, which is unfortunate. Indeed, as the author himself acknowledges, “diversity-specific institutional arrangements will be meaningless if they are not accompanied with the necessary financial resources” (p. 32). After assessing the self-rule component, the book continues with a discussion of the mechanism of shared rule whereby the author deals consecutively with the first and second chamber of the national parliament and the national executive. As to the first chamber of the national parliament, its members are elected pursuant to the proportional electoral system, which guarantees the (ethnic) inclusiveness of this institution. One of the defining institutional features of a federation is the existence of a second chamber of parliament, a position assumed by the National Council of Provinces in South Africa. The

idea behind a second chamber is twofold: it creates an institutional forum where the diverse constituent elements of the federation are represented, which allows the latter to protect their interests. Apart from this diversity-protecting role, the second chamber, by bringing together the diverse constituent entities, also stimulates an inter-diversity dialogue and as such contributes to the unity of the state. As indicated in the author's assessment, the composition and powers of the National Council of Provinces give it a strong tendency towards these traditional objectives of a federal second chamber. In the national executive, the representation of different ethnic groups is assured because of the political commitment of the dominant party, the ANC, rather than through constitutional requirements demanding an ethnically inclusive executive. Chapter 5 concludes with a discussion of the minority issues at provincial level. Although the South African provinces are numerically dominated by certain ethnic groups, they are certainly not ethnically homogeneous and hence the concern for minority rights. Considering all the above elements, Yonatan rates South Africa as having managed to find the right balance between centripetal and centrifugal forces, between unity and diversity.

In Chapter 6, the book offers an overview of the historical and political elements that constitute the background to, and the rationale for, the introduction and the specific form of federalism in Ethiopia. This historical chapter covers a very long period starting with the ancient empire of Axum in the first centuries AD. It rightfully pays considerable attention to the process of conquest and expansion resulting in the formation of present-day Ethiopia at the end of the nineteenth century. This process of state formation gave Ethiopia its multi-ethnic character and it is here that the germ was laid for the ethnic tensions that would come to the fore at the end of the imperial period. Subsequently, the author discusses the era of Emperor Haile Selassie (1930-1974), which was characterized by a nation and state building policy of ethnic homogenization and centralization. However, in contrast to its aim of establishing a stable Ethiopian nation-state, this policy resulted in the Haile Selassie regime being confronted with several regional and ethnic-based revolts and demands. The military regime (known as the *Derg*) which deposed the emperor in 1974 largely continued with centralized rule although it made some nominal concessions to ethnic demands. However, these concessions were not able to extinguish the flame of politicized ethnicity and after a long civil war a coalition of regional and ethnic-based liberation fronts finally defeated the *Derg* in 1991. The political dominance of ethnic-based liberation movements in post-*Derg* Ethiopia was reflected in an interim constitution that laid the foundations of an ethnic-based decentralization. This interim constitution would pave the way for, and ultimately lead to the establishment of, an ethnic-based federation which came into effect with the 1995 constitution. Although this historical chapter offers nothing new to readers who are familiar with Ethiopian history, it does offer a useful summary of historical and political facets, the awareness of which is necessary to understand and evaluate the specific Ethiopian approach towards ethnic diversity.

For the analysis of the Ethiopian constitutional mechanisms to accommodate ethnic diversity, carried out in Chapter 7, the author uses the same structure as in his case study of South Africa, consecutively dealing with the elements of recognition, self-rule and shared

rule. The preamble of the Ethiopian constitution begins with the phrase “We, the Nations, Nationalities and Peoples of Ethiopia” and Article 8 of the constitution stipulates: “All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.” The terms “Nations, Nationalities and Peoples” refer to the 80+ ethnic groups recognized in Ethiopia. Contrary to the South African constitution, the Ethiopian state/federation is constitutionally portrayed as the result of the coming together of different ethnic groups. From the outset, the Ethiopian constitution thus places a stronger emphasis on ethnic diversity. This is also clear when one looks at the basis for regional state delimitation. Although not all nine regions of the Ethiopian federation are numerically dominated by one group, five regions are. The explicit attempt to achieve an overlap between ethnic and territorial boundaries is furthermore reflected in several provisions of the federal constitution and of regional constitutions. From this it can be inferred that the establishment of ethnic-based territories is the favoured mechanism for accommodating ethnic diversity in Ethiopia. Within the regions, the diverse ethnic groups can exercise a significant degree of self-rule since, as the author rightly points out, the constitution has left the regions with considerable powers. Again, I believe it to be unfortunate that the author barely mentions the distribution of taxation powers between the federal government and the regions. The degree to which regions are able to generate revenue to pay for their expenses is an important determinant of regional autonomy. Furthermore, although the focus of this book is obviously on constitutional mechanisms, it would have been interesting to include in the analysis a number of extra-constitutional factors that affect regional autonomy in Ethiopia, such as the impact of the political party structure. As to the shared rule component, the book follows the same structure as in its study of the South African case, which means that it deals in turn with the materialization of shared rule in the first and second chambers of parliament and in the federal executive. Although the elections for the first chamber of parliament, the House of People’s Representatives, are based on the plurality electoral system – which is assumed less conducive for an inclusive representation – the author observes that this has not resulted in the marginalization of certain ethnic groups from the House. However in the case of the second chamber of parliament, the House of the Federation, its composition and (lack of) powers, is considered less conducive to achieving the unity in diversity objective. Since the representation of ethnic groups in the federal institutions is, unlike the case in South Africa, a constitutional requirement, the federal executive is ethnically inclusive. The last part of the chapter focuses on a problem which is common in all ethnic-based federations, namely the issue of intra-regional minorities. Although the Ethiopian constitutional framework offers a number of instruments to protect the rights of these minorities, a comprehensive system for minority protection has yet to be achieved. In his concluding observations on the Ethiopian constitutional approach towards ethnic diversity, the author appreciates the fact that the country no longer denies its multi-ethnic composition. At the same time he also points out that the Ethiopian constitutional system overemphasizes ethnicity. While this may be true, the author nonetheless seems to under-value his own contention – which runs throughout the book – that the institutional response of a country to the challenges of ethnic diversity depends on the

political saliency of ethnicity in the country in question (p. 239). Admittedly, ethnicity is not the primary marker of identity for all Ethiopian citizens. Nevertheless, it seems to me that the political constellation at the time of drafting the interim and final constitution was such that only the explicit recognition and institutionalization of ethnicity could have ended the civil war and prevented state disintegration.

The study concludes with an overview of the major research findings and some institutional lessons that can be drawn from the two case studies.

This book will be of great interest to scholars, students and policy makers interested in which constitutional and institutional devices states can adopt in order to respond successfully to the claims formulated by its diverse ethnic groups. A successful approach in this regard is one that protects diversity without undermining the unity, a balance which is necessary to hold the state together. The book is well structured, using a clear and relevant framework to perform the case studies of South Africa and Ethiopia. The author demonstrates considerable knowledge of the historical and constitutional features of both countries, but I missed some elaboration on the present-day political context of Ethiopia, given its significant impact on the operation of the federation. Another element that could have provided a more complete picture of regional autonomy in both cases is the degree of sub-national/regional financial autonomy.

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