

# External versus Internal Self-Determination: A Plea for the Full Implementation of the Ethiopian Federal Constitution<sup>i</sup>

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### **Abstract:**

This article contributes to the Ethiopian debate on self-determination, considering the current multinational federal constitution as well as international understandings of the concept. The article suggests that the Ethiopian Federal Constitution provides for internal self-determination and that shortcomings in terms of ethnic conflict should be attributed to failure to properly implement it. The author recommends full respect of human rights, both political rights and minority and indigenous rights, in line with the international best practices.

**Keywords:** Oromo; Ethiopia; FDRE Constitution; Self-determination

## **Self-determination as classic principle of international law**

The internal and the international debate related to the 1994 FDRE Constitution revolved around the principle of self-determination, strongly asserted within the Constitution itself. As known, in international law this principle was designed and defined to promote the process of de-colonisation. In its classic formulation the right of peoples to self-determination can be considered to consist in the possibility to free themselves from foreign, colonial or racist domination, by establishing an independent State. For most African countries this process took place in the early 1960s, with the effect of leading to the formation of new independent States along the borders designed during the colonial phase. The result was the formation of independent States composed by different linguistic groups, meaning that they incorporate different 'peoples' or 'nations', or, otherwise said, that they are multi-national or multi-cultural. Since the early independence phase, the internal relations across peoples incorporated or encapsulated within the same post-colonial State have been asymmetric, a condition that has soon fuelled many destructive conflicts across the continent. To avoid feeding this fire, the international community and the African Union have become very restrictive on the application of the right to self-determination. This right was meant to free Africa from European domination, not to liberate African people from other African peoples, a case that is better expressed in terms of 'right to secession'. Under international law, it is now universally accepted that the right to secession can only be accorded under two combined circumstances: a) the demand by the majority inhabiting the seceding territory and b) the full agreement of the country the people is seceding from, expressed through a resolution valid in terms of national law. The implication is that the State at large, through its legitimate representative organs, must recognise secession before this can be done by the international community and the United Nations.

## **The Ethiopian political history and the FDRE Constitution**

Being a country that was not colonised (except for the Italian period before the end of World War II), Ethiopia holds a peculiar position within African political history. After of the victory of Adwa (1896) the kingdom of Abyssinian was legitimated as an African empire. Exploiting the militarisation achieved in preparation of the war, it rapidly expanded in competition with the European colonial powers, turning itself into the political entity that is now referred as modern Ethiopia. The dominant ethnic and military elite built highly asymmetric relations with the peoples that were incorporated into the empire. Since the 1980s the concept of 'domestic', 'internal', 'indirect' or 'settler' colonialism' has been used to describe the analogies with other colonies<sup>ii</sup>. The decolonising process of the 1960s never took place in Ethiopia, because in terms of international law the country was not considered a colony. The intense and perduring conditions of internal domination and exploitation, and strong assimilation policy fuelled intensive ethnic-based insurgency, first in Eritrea, then in Ogaden (Somali region) and parts of Oromia. From the 1970s to 1991 most of the country was affected by large scale, militarily organised and persistent ethno-national and irredentist conflicts, including in Eritrea, Ogaden, Oromia and, at a later stage, Tigray.

The 1991 overthrow of the military junta by the ethnic-based armies marks a paradigmatic change in the country. The Transitional Charter of Ethiopia opened to the Universal Declaration of Human Rights, and it recognised the rights of the nations, nationalities and peoples of Ethiopia to self-determination, up to secession. These principles were further elaborated in the 1994 FDRE Constitution.

## **Emerging international understandings of self-determination**

The indigenous peoples' experience and civil struggle led to the emergence of new international understandings related to self-determination. In America independence was achieved since the 18<sup>th</sup>

century through wars mainly led by European descendants against the European States. The European descendants or creole elites took the control of the independent States, but, similarly to the conditions of many ethnic minorities in post-colonial Africa, the indigenous peoples have continued to face cultural diversity and political marginalisation.

The international community has been responsive to the indigenous peoples' demands by developing a special set of 'indigenous' rights within minority rights. In the context of the UN these were asserted for the first time with the 1989 *ILO Convention 196*. Two decades later they were further elaborated and universally recognised with the 2007 United Nations *Declaration on the Rights of Indigenous Peoples*. In the meanwhile, some regional organisations adopted binding instruments at continental scale, and many States have incorporated elements of indigenous rights within their own national legal system. All UN agencies dealing in areas where indigenous peoples live are bound to apply specific internal policies or guidelines, while international corporations are progressively complying to voluntary guidelines for responsible business.

Indigenous rights imply recognition and a degree of autonomy in the following main areas:

- Linguistic and educational rights
- Territorial rights
- Customary institutions
- Control over the development process, mainly through specific procedural rights

Since these rights were labelled under the heading of 'self-determination of the indigenous peoples', the distinction between 'external' and 'internal' and 'self-determination' was adopted by international law scholars<sup>iii</sup>. External self-determination refers to the classic understandings of it, as related to the process of de-colonisation and the possibility to achieve full self-government. In the current context it implies the right to secession. Internal self-determination instead refers to the rights of indigenous peoples, hence to the capacity by minorities and sub-national identity groups to autonomously take certain decisions within selected spaces of the existing States. It entails the relationship between a people and its own government, opening new ways to influence policy and to establish, in asymmetric power contexts, a just democracy by recognising group or collective rights. Internal self-determination does not imply secession, and this is in fact formally restated in all the international instruments of international law on indigenous rights.

Clearly, internal self-determination, if properly implemented, can provide the ideal answer for the multi-ethnic and multi-national composition of the African post-colonial states, thus avoiding the violent answers that have been enhanced by both marginalised ethnic peoples and by the States' repressive apparatus in the continent and, more specifically, in Ethiopia until 1991.

### **External versus internal self-determination in the FDRE Constitution**

The FDRE Constitution assures strong provisions both in terms of external and internal and self-determination. It allows for the possibility of secession by defining a legal procedure that, in line with international practises, require a two steps democratic processes, first within the geographical space aspiring to secession, then confirmation at Federal level.

The FDRE Constitution also provides for the adoption of multi-party liberal democracy, including the full corollary of the required political and human rights. Such rights are both directly recalled in the constitution and reinforced in terms of compliance to international law. In these regards, art. 13 in Chapter Three claims: "the fundamental rights and freedoms specified in this chapter shall be

interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.” Art. 9 (4) goes beyond most national legal systems by establishing that “all international agreements ratified by Ethiopia are an integral part of the law of the land”, without a need of specific legislation at federal level in addition to international ratification.

The FDRE constitution is also very elaborated in terms of minorities and cultural rights. Its provisions for the federal restructuring of the State go in the direction of assuring the exercise of cultural rights and internal self-determination. The ‘nations, nationalities and peoples’ of the country are defined by communality of culture, language and identity. Self-determination is ascribed to such groups, referring both the political sovereignty through the self-definition of the administrative spaces, and to development through administrative devolution of decisional capacity in planning and policy. In terms of minorities, it explicitly protects the land rights of farmers and pastoralists, and it considers customary law. In association with the devolution of powers, it potentially enables the different Regional States and administrative subdivisions to establish their own governance and consultative mechanisms, in line with the specific cultures, values and customary institutions.

Despite the notion of indigeneity is never mentioned<sup>iv</sup>, the FDRE Constitution seems to provide for the protections granted under international law to indigenous peoples in a diffused and embedded manner, to all the peoples of Ethiopia. The underlying assumption is that external self-determination is balanced by strong provisions for internal self-determination, favouring the decision by the peoples and nations of Ethiopia to stay in the federation by consensus.

### **What went wrong?**

The FDRE Constitution met strong criticism both within the country and by some international scholars, on the ground of its divisive potential. The fact that under the previous regimes the peoples of the country could not deploy their cultural and economic potentials and that this situation led to at least 20 years of pervasive military conflict was completely overlooked by those observers. Much of the criticism was indeed ideologically grounded in classic nationalism, since the new constitution was breaking the strong centralism that had marked modern Ethiopia, both during the imperial and socialist historical phases. However, the early implementation of multi-national federalism has actually produced some adverse effects that immediately went under scholarly scrutiny. These include the 1993 Eritrean secession — and, with it, the lost access to the sea — and persistent inter-ethnic conflict and ethnic cleansing along the borders of federal states and at the lower administrative level, especially in the process of demarcating them. These elements were taken by opponents of federalism as evidence of the intrinsic divisive risks of the FDRE Constitution, a view contested by Bassi who instead argued that the manifestation of violent ethnic conflict at the internal borders was not produced by the intrinsic characteristics of the FDRE Constitution, but by failure to properly implement it.<sup>v</sup> Several scholars have identified ‘revolutionary democracy’ as the working ideology of the Ethiopian People’s Revolutionary Democratic Front (EPRDF), the governing party until 2019. Revolutionary democracy is based on the notion of a ‘vanguard’ party leading the development process of the country with a centralistic approach and State-controlled economic planning. Centralistic power and planning were achieved by the party’s control over the federal governmental institutions through elections. However, the emergence of competitive political parties and of ideological alternatives was prevented by the systematic suppression of political rights, including the freedom of the press, by inhibiting civil society’ action and by forcing challenging political parties into underground activity<sup>vi</sup>. Most international studies have confirmed that after the adoption of the FDRE Constitution the country has been in a *de facto* one-party system, a condition described by Asafa Jalata in terms of ‘State terrorism’<sup>vii</sup>.

**Box 1. Official United Nations reports on serious minority rights violations in Ethiopia, delivered between 2006 and 2010**

CRC. "Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding Observations: Ethiopia", United Nations Committee on the Rights of the Child. Forty-third session, CRC/C/ETH/CO/3, 1 November 2006.

McDougall, G. "Implementation of the General Assembly Resolution 60/251 of March 2006 entitled 'Human Rights Council'. Report of the independent expert on minority issues. Addendum. Mission to Ethiopia (28 November-12 December 2006)", United Nations Human Rights Council, Fourth Session, A/HRC/4/9/Add.3, 28 February 2007.

CERD. "Consideration of the Reports Submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Ethiopia", United Nations Committee on the Elimination of Racial Discrimination, Seventieth Session, 19 February to 9 March 2007, CERD/C/ETH/CO/15, 20 June 2007.

CERD. "Consideration of the Reports Submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Ethiopia", United Nations Committee on the Elimination of Racial Discrimination, Seventy-fifth session, 3-28 August 2009, CERD/C/ETH/CO/7-16, 7 September 2009.

CaT. "Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Concluding Observations of the Committee against Torture. Advanced Unedited Version. Ethiopia", United Nations Committee against Torture, Forty-fifth session, CAT/C/ETH/CO/1, 1-19 November 2010.

The official UN reports listed in Box 1 confirm the systematic abuses of political rights, but also the disregards for minority rights. The adoption of the *Charities and Societies Proclamation No. 621/2009* curtailed civil society's independent action both in human rights monitoring and in the standard

**Box 2. Legislation paving the way to land grabbing**

From the FDRE Rural Land Administration and Use Proclamation NO. 456/2005:

Preamble: "Whereas, it has become necessary to establish a conducive system of rural administration that promotes the conservation and management of natural resources, and encourage private investors in pastoral areas where there is tribe based communal land holding system"

Art 5 (3): Government being the owner of rural land, communal rural land holding can be changed to private holdings as may be necessary

practice of engagement in local procedures for the protection of community's rights. Box 2 and box 3 illustrate cases of legislation and policy adopted in clear contradiction to the constitutional protections related to the land rights of both farmers and pastoralists.

In relation to borders' ethnic conflict, it should first be acknowledged that the Ethiopian peoples are clearly intermixed, especially along the area of linguistic contact. In the process of building

### **Box 3. Pastoral policy**

In contrast to a growing body of international soft law stressing the relevance of mobility and collective resources rights for pastoral groups the *Statement on Pastoral Development Policy* and the *Pastoral Development in Ethiopia* delivered in 2002 by the Ministry of Federal Affairs speak about the need to 'transforming the pastoral society to agro-pastoral life complemented by urbanisation', 'along the banks of the main rivers', and to promote the shift 'from mobility to sedentary life', with the purpose to exploit the 'immense natural resources potential' of the rivers in the pastoral area for irrigation and energy developments.

This policy has especially been applied in the lower Omo Valley, where the local peoples had lost the added environmental value brought by the regular flood of the Omo River, key to their livelihoods. Their lands have massively been transferred to corporations for large scale irrigated agricultural schemes.

administrative spaces identified with one or the other ethnicity, all parties should feel secured that their rights will be secured should they find themselves in condition of minority. Failure to guarantee minority rights has exacerbated the consequences of having specific geographical spaces attributed to one or the other administration, and fuelled ethnic conflict related to this process. The case of border demarcation between the Oromo-Borana and some Somali speaking groups is well documented through papers and thesis<sup>viii</sup>. It took place at a time of full suppression of democratic rights and military control of the area. The Tigray Peoples Liberation Front has centrally manipulated refugees policy and favoured forced movement of population before holding the referendum. This responded to strategic objectives to locally achieve political and military control, against political organisations that were challenging at the level of federal politics. After about 3 decades, recurrent outbreaks of ethnic conflict continue to affect all local groups.

### **Concluding remarks**

The FDRE Constitution had an impact in terms of the spatial restructuring of the country and recognition of linguistic and cultural rights. However, it was not implemented in the directions that are key to assuring internal self-determination. Specifically:

- Democracy has never been established
- No effective mechanism of enforcement of human and minority rights has been put into operation
- Persistence of a highly centralistic political practice

Today, we see armed struggle resuming in Tigray. This fact is rhetorically presented as a confirmation of the divisive potential of the FDRE Constitution, and instrumentally used as motivation for engaging in constitutional reform. We are at a time whereby nationalistic insurgency is reviving in the country. Re-opening the constitutional process now has a high potentiality to fuel it by escalating to several regional States, especially if the constitutional reform will be perceived as motivated by the old-style centralistic ideology and aimed at drawing back from the conquered cultural rights. I hope I have shown that for 3 decades the FDRE Constitution has been successful in preventing the large-scale ethnic-based insurgency that has marked the previous 2 decades, despite the identified problems in

political practice. International experience shows that internal self-determination can provide an adequate answer to the problem of cultural difference and political marginality, but it requires a corollary of respect of political and minority rights. Ethiopia is not an exception: the formal implementation of multinational-federalism, by itself, is not enough. All components of the FDRE Constitution need to be properly implemented before its basic mechanism of balancing external self-determination with internal self-determination can properly work.

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<sup>ii</sup> Megeressa, Gemetchu. 1985. "Knowledge, identity, and the colonizing structure. The Case of the Oromo of East and Northeast Africa", unbs. Ph.D thesis, School of Oriental and African Studies, university of London. Holcomb, Bonnie, Ibssa. 1990. *Invention of Ethiopia: The Making of Dependent Colonial State in Northeast Africa*. Red Sea Pr. Jalata, Asafa. 1995. "The Emergence of Oromo Nationalism and Ethiopian Reaction", *Social Justice*, 22, no. 3.

<sup>iii</sup> Anaya SJ, Lenoir J, Rogers JE. 2009. *International human rights and indigenous peoples*. Austin: Wolters Kluwer Law & Business.

Quane H. 2011. The UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights? In S. Allen, A. Xanthaki, (eds.) *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. Oxford Hart Pub, pp. 259-87.

<sup>iv</sup> Despite similarities in the dynamics of internal relations across the identity groups of the State, the category of indigenous rights is hardly applied in the context of Africa, due to the lack of a clear contraposition between 'indigenous' inhabitants and a governing elite associated to trans-continental migrants. However, in terms of international law it is perfectly possible to apply the concept in Africa as well, taking the construction of the modern State — as it emerged by the colonial and decolonizing processes — and linguistic and cultural internal differentiation as reference.

<sup>v</sup> Bassi M, 2014, "Federalism and Ethnic Minorities in Ethiopia: Ideology, Territoriality, Human Rights, Policy," *DADA*, no. 1 (2014) <http://www.dadarivista.com/Singoli-articoli/2014-Giugno/02.pdf>

Bassi M, 2019, "The relativistic attitude in development: reflections on the implementation of the Ethiopian multinational Constitution", *Archivio Antropologico Mediterraneo*, 22, no. 21.

<https://journals.openedition.org/aam/2319>

<sup>vi</sup> The OLF, one of the three main organisations that had formed the Transitional Government of Ethiopia, was the first important party to face this destiny after the 1992 'snap' elections.

<sup>vii</sup> Jalata, Asafa. 2017. "The Oromo Movement", *Social Justice*, 44, No. 4.

<sup>viii</sup> Bassi M., 1997, "Returnees in Mooyale District, Southern Ethiopia: New Means for an Old Inter-Ethnic Game", in R. Hogg (ed.), *Pastoralists, Ethnicity and the State in Ethiopia*, London, Haan, pp. 23-54.

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