

Multinational Federalism in Ethiopia: Issues, Challenges, and Prospects

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1. Introduction

Thank you, Bonnie, for organizing this webinar and for inviting me to take part in this conversation. Thanks, Zakia, for reaching out and bringing me on board. I am particularly grateful for your patient correspondence with me. To correspond with someone from whom you don't often get a prompt response easily, if at all, is quite a hard work in its own right. So, thank you for your efforts and for your patience in the process.

My name is Tsegaye R Ararssa. I am an Oromo from Ethiopia. For much of my professional-academic life, I have studied, researched, wrote about, and taught various courses on, federalism, minority rights, constitutional management of diversity, legal pluralism, etc. My own academic pursuit of the role of law in constituting the state and its others has led me to look closely at the figure of the Oromo in the constitutions of Ethiopia. In that pursuit, I examined how the state has constituted its others through an ensemble of laws, institutions, ideologies, and discourses which are deployed either to marginalize the bulk of the population (as it was the case in the pre-1991 Ethiopia), or to center the margin (as it is the case with the current federal experiment) in order to build a nation-state out of an empire. I consider, for instance, that if the centralizing constitutions of the imperial and military socialist regimes were about marginalizing the non-Abyssinian groups that critical scholars have called 'the other peoples' of Ethiopia¹, the multinational federalism of the post-1991 era was a way of centering the margin by enabling the latter to exercise collective agency (self-determination) and 'coming together' (federalism) to form a voluntary association. In spite of this latter apparently benign and inclusive move in Ethiopian constitutional law and its practices, all of the State's attempts so far have left the Oromo (and the numerous nations of the wider South) as the outliers. As such, the Oromo and all the 'other peoples' were rendered the constitutive outside of the Ethiopian imperial State. The Oromo was thus a nation in Ethiopia whose presence is rendered absent and whose absence is always present. Although in terms of the geographic space it inhabits and the numerical size of its population, the Oromo constitutes the core of Ethiopia, it

¹ See for example Donham and James (eds), *The Southern Marches of Imperial Ethiopia* (Ohio University Press, 1986 [2002]). The Ethiopian attempt to forge a nation-state out of a rag tag of empire can be seen as a typical example of the parallel practice in international law of exclusion by inclusion. The paradigmatic example of such an imperial practice is the international effort to bring the formerly colonized 'third world' into the fold of the post WWII international legal order. The decolonization and the subsequent (automatic) inclusion of the newly independent states in the UN's structure of 'unequal integration' is, in a way, exclusion by inclusion. For an erudite and incisive analysis of this practice in international relations, See Adom Getachew, *World-Making After Empire: The Rise and Fall of Self-determination* (Princeton University Press, 2019).

is systematically reduced to a group that is only present in the territory but absent from the polity.

In the last few years during which Ethiopia was engulfed by the #Oromoprotests movement, I have been an active participant in the public discussions on issues pertaining to federalism, constitutional law, self-determination, human rights, state constitutions, constitutional interpretation, and minority rights, particularly those pertaining to the rights of the marginalized groups of the wider Ethiopian South including the Oromo.² I have been right at the center of the debate on (for or against) multinational federalism in Ethiopia.³

In this talk, I reflect on the issues, challenges, and prospects of multinational federalism in contemporary Ethiopia. In so doing, in the following pages, I will address myself to the questions posed to us by the organizers of this webinar. Before I do that, however, I will make a few general remarks about the current state of the debate on MNF in Ethiopia. It is my hope that these remarks and my responses to the questions will provoke some thoughts and catalyze discussions in this (and, hopefully, in a subsequent) meeting.

2. General Remarks

The federal experiment has been the focus of intense political contestation starting from the time of its adoption in 1995. Although it was promoted as good politics by the framers because it decentralizes political power and reconfigures the empire as a multinational democracy, it has always had its detractors especially among the urban elite of the Ethiopian political class. This is perhaps the reason that led Medhane Tadesse to comment that the Ethiopian federal experiment is “an unfortunate means to a good end.”⁴

2.1. *Origins of MNF, Fractured Legitimacy, and Opposing Perspectives*

The fact that the federal arrangement was primarily the result of an inter-elite pact and the fact that it was underpinned by deficits of democratic election at the moment of its founding has contributed to the lack of legitimacy among the urban Ethio-elite on the one hand, and indifference, or general sense of disillusionment and deep disaffection, among the elite of the southern peoples (such as the Oromo) on the other. That left a crack, a fracture, at the foundational moment. The elite of the Ethiopian urban core felt excluded or unheard because there was no party that represented them as a distinct group (as they were not—they claim—a distinct ‘nation or nationality’). The elite of the southern half felt disillusioned and betrayed by an ostensibly progressive force that, in spite of its declared good intentions to be inclusive, only ended up re-enacting unequal integration into the empire. From that time on, the urban elite of the core launched their program of delegitimizing and vilifying the federal experiment as

² See Federalism, AS (2015), As2 (2016). For more of my thoughts on these subjects, see my edited book, *Issues of Federalism: Towards an Inventory* (Addis Ababa University, 2009), “Learning to Live with Conflicts 4(1) *Mizan L. Rev.*(2010), 51; “Comparative Relevance of the Ethiopian Federal System: Exporting Multiethnic Federalism,” 1(1) *Bahr Dar University Journal of Law* (2010), 5; “Subnational constitutions in Ethiopia,” 3(1) *Mizan L. Rev.* (2009) 33; “Making Legal Sense of Human Rights in Ethiopia,” 3(2) *Mizan L. Rev.* (2010), 288; “The Making and Legitimacy of the Ethiopian Constitution,” 23 (1) *Afrika Focus* (2009),85; etc.

³ See Tsegaye Ararssa, ‘Two Tales, or One? Federalism in Ethiopia,’ *Addis Standard*, 2015

⁴ Medhane Tadesse, FES, The Cairo Expert Group on the Security of the Greater Horn, 2009. See also his ‘The TPLF’ in Gerard Prunier and Eloi Ficquet (eds), *Understanding Contemporary Ethiopia: Monarchy, Revolution, and the Legacy of Meles Zenawi*, (Hurst & Company, 2015), p. 257.

‘tribal,’ ‘divisive,’ ‘balkanizing’, or even as institutionalized apartheid. They opposed the self-determination clause of the constitution (art 39) as anti-Ethiopian. They viewed the emphasis on linguistic justice, right to identity, culture, and history as divisive and anachronistically primitive (and thus anti-modern). The increasing visibility of the ‘other peoples’ or their cultural and political symbols, on the national scene was often viewed as ‘out of place’, more like a dirt that contaminated ‘the pure ‘Ethiopian mosaic.’⁵ The elite of the wider South, on their part, criticized the experiment as nothing but EPRDF’s strategy of ‘divide and rule.’⁶

This contestation over federalism found its way to electoral politics in 2005. The urban elite of the core largely campaigned on a platform of “saving Ethiopia from ethnic federalism.” They promised to rescind the self-determination clause (the in/famous art 39), to undo the federal arrangement, and to privatize land.⁷ Their campaign was obviously a negative one driven chiefly by a fierce resentment of the multinational federalism, which, in their eyes, was perceived to pose a threat to their long held cultural, economic, and political privilege. This messianic malaise of the modern Ethiopian elite, this fantasy of the self-proffered mandate to ‘save Ethiopia from its internal others’, has been reiterated over the years and has finally found expression in the anti-federalist campaign of today when, in the face of the mounting pressures of the #Oromoprotests movement for equality and justice (2014-2018), the urban Ethio-elite stormed the discursive terrain as if in a scramble “to save Ethiopia from Oromos.” For them now, contesting the federal arrangement is a push back against the Oromo demand for self-rule as much as it is also Abiy’s launching-pad for, at once, a) eviscerating the Oromo quest for self-determination; and b) undermining TPLF and the latter’s insistence on Tigray’s state autonomy.

The consequence is the increasing tendency to blame all the ills of the country on the federal arrangement. Above and beyond being reductionist, this attribution of blame on federalism is simply misdiagnosing the problem in order to impose the wrong “solution” on the majority of the Ethiopian population. As such, it only deepens the current crisis. While the Ethiopianist elite may want to utilize this blame strategy as a way of securing their privileges and of rehabilitating, recuperating, and repurposing the politics of empire (as their way ‘back to the glory of the olden days’), it won’t solve any problem. It only leaves us in the quagmire we find ourselves in, if not drive us even deeper into it.

The attempt to attribute the current (political, constitutional, and security) crises to MNF is to grossly misunderstand Ethiopia and its politics--past and present.⁸

⁵ This is seen in tons of cultural and artistic (comedic) products of the years. A classic moment was experienced by me when in 2006/7, on the day of the celebration of the ‘Nationalities’ Day’, the people doing a cultural show on the streets of Finfinnee were referred to as ‘Meles Zenawi’s cattle’ unleashed onto the city street for the celebration. For an anthropological view on the cultural meaning of contamination and the notion of dirt associated with it, dirt as a “thing out of its place,” see Mary Douglas, *Purity and Danger: An Analysis the concept of pollution and Taboo* (Routledge, 1966).

⁶ Merera Gudina and Beyene Petros are examples of this mode of critique, which, while conceding the importance of Federalism for Ethiopia, saw the actual practice merely EPRDF’s instrument of (re)centralization through ‘indirect rule’ by co-opted local cadres.

⁷ CUD’s election manifesto is only an example. The manifesto is available at: <https://zelalemkibret.files.wordpress.com/2011/11/kinijitmanifesto-english.pdf> (visited on 12 September 2020).

⁸ The key political questions in modern Ethiopia revolves around the contradictions around the right of access to land and the collective right of nations to self-determination. Two revolutions have been staged for the resolution of these contradictions (1974 and 1991) and haven’t yet been completed. The Oromo revolution (otherwise popularly known as #Oromoprotests movement) and the Southern peoples’ demands for statehood and/or local

It has to be said that the crises unfolding now is largely caused by the attempt by Abiy Ahmed and his ilk to undermine, rethink, and undo the MNF arrangement. Since the rise of Abiy, there is a palpable fear on both sides of the political divide regarding the federal experiment, a fear that informs and entrenches the positions in the debate around MNF. Seen from the South (and from the vantage point of the Oromo and the other others), the crisis is caused by the fear of loss of the promises of MNF, not by the excesses of it—as it is often maintained by the urban ethio-elite. Seen from the North (i.e. from the vantage point of the elite of the urban and the Amhara core), the current crisis is caused by the rise of particular nationalisms (especially among the Oromo youth) which threaten to recast Ethiopia as a multinational polity with a magnitude of autonomy left to each national group who also preserve their right to self-determination. This is seen, by the elite from urban-based, mainly Amhara, core as a prescription for destroying Ethiopia by encouraging acts of unilateral secession. In the final analysis, the fear of both camps is a fear of loss—the fear of loss of the constitutional promise of cultural recognition and self-rule on the one hand and the fear of loss of the glories of the past expressed through a highly centralized, monolingual, and monocultural Ethiopian state on the other.

2.2. Why Fear? Where is the risk coming from?

But whence come the fear of loss of the gains of federalism at this point in time? Why is MNF (perceived to be) at risk now? Here are the reasons: First, Abiy’s political posturing (reflected in his speeches and his program of *medemer*, his chosen code word for the more jaded notion of *unity*), is decidedly against the rights of nations to self-rule, linguistic justice, and the right to difference. His disavowal of the constitutional clauses of state autonomy and self-determination; his commitment to outlaw political parties organized around collective rights of national groups (which is also part of why he has to disband his own OPDO and the EPRDF coalition that made him a Prime Minister); his rush to set up, unconstitutionally, the so called “Identity and Boundary Commission” (intending to reshuffle the regional states and to dissolve the numerous demands for statehood in the SNNPRS); and his forming of a “Committee of Scientists” under the pretext of studying the issues of identity and rights of national groups; his obsessive adventures of rehabilitating and reinstalling the statues of past emperors such as Menelik II (and his empress, Tayitu) and Haileselassie as national icons; his frontal attack on Oromo nationalism as “parochial” and atavistic; his violent military offensive on the Sidama people to repress their demand for statehood;⁹ the similar assault he launched on the Wolaita people; his endless war on Oromia under the pretext that there is an armed insurgency; his propaganda war on Tigray because they are protective of their autonomy and constitutional

self-rule of recent years is the continuation of the second, still trying to ensure that the promises of the second are realized.

⁹ Over 167 persons were killed by the security forces in the Sidama region only in one day on July 22 2019. Thousands of the youth (the Ejjetto) were subjected mass arrest. The entire SNNPRS was brought under a military command post as a result. The Sidama conducted a referendum five months after this tragic massacre and they voted Yes to a separate statehood with an emphatic 98.5% in support. A similar attack was perpetrated against the Wolaita who had raised a similar demand for statehood. There too, at least 36 persons were killed by the government’s security forces, hundreds were wounded, thousands were arrested (including the Zone Administrators). Wolaita is still far from stable at the time of writing.

right to a democratic election; etc, are among the reasons why there emerged a palpable fear that the multinational federal experiment may be abolished.

Secondly, MNF seems to be at risk because of the coincidence of Abiy's imperial nostalgia and centralizing impulse with the vocal call from his partner political parties (such as Ethiopian Citizens for Social Justice, and several other Amhara Parties) to repeal or suspend the constitution; to abolish the multinational federal structure; to rescind the provisions on collective rights of national groups; and to reorganize the States—against their will--on the basis of factors other than the ones posited in the constitution (i.e., settlement pattern, language, identity, and consent of the people concerned—art 46(2)). Given the fact that currently Abiy's 'Prosperity Party' controls all the federal and state legislative houses (albeit illegally) except in Tigray, and considering the measures he has taken so far, the likelihood that he will make a move to implement these re-centralizing desires is high. Hence, the fear and agitation among the peoples of the southern half (and the Tigrayan, Qemant, Oromo, and Agaw parts of the northern half) of the country.

In addition, the dissolution of the Ministry of Federal Affairs (thus far the ministry for managing intergovernmental relations, now replaced by the Ministry of Peace); the undermining of the authority of the House of the Federation by sidelining the Speaker (and her replacement contrary to the constitutional rules of procedure) after her resignation over the constitutional crisis around the postponing of the May 2020 election; the relentless acts of vilification of the resolute insistence on the part of regions (such as Tigray and Oromia) on the centrality of MNF, the Constitution, Self-determination, and principle of democratic self-rule; and the bravado in all the urban-based Amhara media outlets that the federal system's days are numbered; etc, augur the possible undoing of the multinational federal structure that the nations have thus far anchored their hopes on.

2.3. Who are the opponents of MNF?

The direct and crude answer to the question as to who are the opponents of the MNF dispensation is as follows. The opponents of MNF are: a) the urban ethio-elite¹⁰ with vested cultural and economic interests in all the regions; b) elites from the ANRS who masquerade as "pure Ethiopians" (and as such see the 'other' peoples as "impure" contaminants); and c) a coalition of supremacist forces brought together by a shared sense of resentment to the MNF mostly owing to their background as bureaucrats of the era of Emperor Haileselassie and President Mengistu Hailemariam. Valorized by Abiy's self-image as a centralizing 'king,' and his messianic impulse ("to save Ethiopia from its other peoples"), this resentment has led to a protracted media campaign which gathered momentum partly because of the urban elite's (utterly baseless) anxiety about Ethiopia's dismemberment.

¹⁰ The people in this urban-based group see themselves as modern, or post-ethnic, cosmopolitans who have outgrown their ethno-national identity markers (which they assume are primordia and--by implication-- primitive. Some of the folks in this category also see themselves as 'non-ethnic' because they descend from 'mixed' families that "blended well" in the Amharic melting pot that they insist Ethiopia is. These persons believe that the multinational federal system, focused as it is on 'national' groups, neglects those who identify with many groups (or do not identify with any) although they, by default, privilege Amharic as their language of choice and the culture thereof as the "National Language and/or Culture".

3. MNF and the Oromo: The Oromo in MNF

In discussing the Ethiopian Multinational Federal experiment in the light of the Oromo lived experience and/or of the Oromo national aspirations, I will limit myself to directly addressing the organizers' questions. The first question to deal with is "what was the experience of the Oromo like with MNF?"

3.1. The Oromo attitude towards MNF: Ambivalent Acquiescence?

Immediately after the fall of the Derg, when a provisional government was established and a Transitional Charter was negotiated, the Oromo Liberation Front (OLF) had been part of the process. The leader of the OLF at the time, Leencoo Lataa, played a key role in preparing the draft of the Transitional Charter. The Transitional Charter, among other things, committed the regime to the respect of all human rights as codified in the Universal Declaration of Human Rights (UDHR) including the provisions of Common Article 1 of the two foundational international covenants (i.e., the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Socio-Economic and Cultural Rights [ICESCR] of the International Bill of Rights.¹¹ As we all recall, according to the common article 1 of the two covenants, the rights of "all peoples to self-determination" is recognized in the following terms:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Having lived through years of fighting a guerrilla war of resistance for liberation of their peoples, the liberation fronts that negotiated the Ethiopian Transitional Charter used the occasion to recognize the "right to self-determination up to and including secession" although they appended conditions to the actual exercise of the right.¹² Whether the negotiators took a cue from the international instruments, or they only gave expression to their ideological commitment to the principle they held dear from the outset, is not clear. However, what is evidently clear is that in including it in the Transitional Charter and in having it recognized legally, the Oromo leaders of the time have played a key role. As a result, the Oromo people

¹¹ The Transitional Period Charter of Ethiopia (1991), in its Art 1, makes a specific reference to the UDHR as it proclaims that all human rights and freedoms thereof shall be fully respected in Ethiopia, especially the ones pertaining to freedom of conscience, expression, assembly, and association. The Charter also readily recognizes the right to self-determination in its art 2.

¹² Accordingly, a "nation, nationality, or people" is entitled to exercise the right to independence if it is convinced that their rights (to culture, identity, history, language, self-governance, and effective representation in the country's government) are "denied, abridged, or abrogated." (Art2(3)). TGE, "Transitional Period Charter of Ethiopia" *Negarit Gazetta* (Proclamation No. 1/1991)

have generally felt that the fundamental political ethos of the Transitional Government is reflective of their aspirations. Because the FDRE Constitution continued in that vein in codifying self-determination and institutionalizing Multinational Federalism, the vast majority of the Oromo people held out hope that this could be an agreeable arrangement for them—in spite of the fact that, by the time the constitution was adopted in 1994, the OLF had left the Provisional Government and had returned to armed struggle.

Naturally, the Oromo acquiesced in the fact that the principle they subscribe to is constitutionally recognized. But at the same time, because they were brutally denied the opportunity to recover and exercise their collective agency and to enjoy democratic representation in the political process, they bitterly opposed the EPRDF regime of the time. The combined effect of this dynamics was the deep sense of ambivalence with which the Oromo views the MNF in Ethiopia to date. Consequently, Oromos, being the quintessential people of self-determination, self-rule, and republican democracy,¹³ they fully endorse the MNF arrangement in Ethiopia. However, almost paradoxically, because of the disaffection with the practice of the EPRDF in sidelining the Oromo (by excluding the OLF and co-opting other Oromos as OPDOs), for years, the Oromo averred a display of enthusiastic support for MNF. Although almost all Oromos viewed the MNF arrangement as the minimum threshold with which they can settle to live in, or with, the Ethiopian State, most contemplated separation from it before negotiating a union with Ethiopia on their own terms. Nevertheless, over time, as the issue of federalism took a central place in electoral politics,¹⁴ the Oromos started to rally behind the federalist ethos of the Constitution essentially because of the promise of equal citizenship and regional self-rule in a yet-to-be-democratized Ethiopia, or also because the hope of exercising self-determination (as enshrined in the Constitution) if only to steer away from an undemocratic, oppressive empire that sanctions ranked relationships among groups that had long been forced to adhere to an unequal integration.

As a people, the Oromo saw MNF as a site of loss and longing, as a place of despair and hope, as a political moment—so to speak--of experiencing pain (of disillusionment) and promise (of emancipation) at one and the same time. MNF always came to the Oromo as the great “could

¹³ As a people with a memory of brutal conquest and occupation by the expanding Abyssinian empire of the 19thc, the Oromo believe that they are entitled to the right to self-determination. This quest for self-determination has expressed itself in several forms over the last 100 years. The 1936 attempt to have the Western Oromo Confederation recognized in the League of Nations; the Bale armed resistance movements of the 1960s; the Matcha-Tulama self-help association and its increasing recognition of the empire's resistance to recognize equal citizenship in Ethiopia; the rise of Oromo nationalism among Oromo members of the Ethiopian Student Movement; the active participation of Oromo intellectuals in the radicalization of the Ethiopian Revolution of 1974 and the development of the Program of the National Democratic Revolution (PNDR) by Oromo leaders of the AESM, alias known in Amharic as ME'ISON; and the establishment of the Oromo Liberation Front (OLF) subsequent engagement in an armed struggle for liberation are often pieced together to present the Oromo nation as a nation in constant longing for self-determination. The fact that the Oromo have been engaged in a trenchant immanent critique of the EPRDF regime in Ethiopia and their persistent struggle—as a result-- for a more genuine federal system that allows for self-rule throughout the 27 years qualifies the Oromo as a people of/for self-rule. The fact that the Oromo nations has for centuries practised an egalitarian system of democracy (i.e., the Gadaa system) that also seeks to guarantee a republican form of governance across the five constituting units of the Oromo nation (i.e., Sabboo-Goonaa, Siikoo-Mandoo, Ittuu-Humbanna, Maccaa-Tuulama, and Raayyaa-Asaaboo) and their sub-units confirms the republican mode of their politics.

¹⁴ The Federal arrangement started to be discussed publicly in the context of Election 2005, the time at which the detractors of MNF started to campaign against it promising its abrogation (through constitutional revision or amendment) if they are elected. From that time on, Oromos and all the other peoples of the wider South began to shed some of their disaffections vis-à-vis EPRDF and rally behind the promises of MNF.

have been.” In my years of teaching federalism in Ethiopia, I meet several Oromo law students year after year, and their view has invariably been marked by optimism (a modicum of hope that legal recognition signals and signifies to a lawyer) with the ever-present refrain of apathy and/or despair (at the practice of obstruction of MNF by the OPDO-EPRDF) in the background. In MNF, they see more of the undelivered promises than the concrete benefits it has brought to them. Bereft of democratic air, the MNF was experienced as an instrument of co-optation and increased regulation. The regime’s ostensible claim to creating an Ethiopia that is congenial to diversity, self-rule, and autonomy was only a façade masking the actual work of centralizing power and of securitizing independent expression of Oromo identity or the collective aspirations for self-determination thereof. Hope suspended and suffering unleashed (even in the midst of increased co-optation of a class of Oromo political elite, the OPDO, who were happy to live under patrons of various types from Addis Ababa), the Oromo public lived with the attendant irresolution about MNF. Hope, disenchantment, and irresolution—these three words summarize the Oromo experience with/in MNF.

3.2. Did MNF Address Grievances? Did it bring about any benefits?

There is no gainsaying that there are indeed some Oromo grievances that were addressed by the multinational federal experiment so far. These are mainly in the cultural domain. Apparently in line with what is provided for in art 39(2) of the Constitution, the Oromo are entitled, at least at the State level, to the use of their language, *Afaan Oromoo*, in the administration, the media, education, and adjudication. The right to the enjoyment and public manifestation of one’s culture is also recognized and practised—to a certain extent. The right to history (recording, writing, preserving, and memorializing of the Oromo story—the narratives of their lived experiences in Ethiopia) is also recognized although there has not yet been a significant amount of work done in this regard.¹⁵

Apart from the recognition of what can be called ‘cultural self-determination,’ one of the benefits that precipitated from the adoption of MNF in Ethiopia is the recognition of Oromia as a constituent member of the Federation. As such, Oromia now has a distinct legal personality with its own constitution, its own State Organs (i.e., the *Caffee*, the Executive, and the Judiciary), and its own State symbols (e.g. flag, anthem, and emblem). Oromos now have a state that they can proudly point to in the Ethiopian maps to show people where their homeland is. (Note that one of the reasons Oromos fiercely resist Abiy Ahmed nowadays is in part because of the (understandable) perception that Abiy, in his program of rethinking the federal arrangement, is bent on dismembering Oromia by dividing it into arbitrarily drawn smaller geographic entities that resemble the *kifle-hager* of the imperial and *Derg* era.)

In addition, in creating a whole new state apparatus at the state level, MNF has made it possible for Oromia to organize its own corps of civil servants both at the State, Zone, and District levels. This was unthinkable in yesteryears. Although it is riddled with all the ills of the

¹⁵ The discipline of oral history (writing) as such is yet to emerge in the professional historiography of Oromia and/or Ethiopia. In Bahru Zewde, *Documenting the Ethiopian Student Movement: An Exercise in Oral History* (Forum for Social Studies, 2010), claims that he has started dabbling in oral history, but the jury is still out on whether his was an oral history or not. Even that is limited to the study of the usual mainstream Ethiopianist fantasy. See also his *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974* (James Currey, 2014).

economics of rent-seeking and opportunistic dependence on the political party, some of the political and business elite have benefited from the general economic growth Ethiopia has witnessed during the Meles years. (This was however diminished in significance in the light of the massive youth unemployment and lack of equitable distribution of economic facilities and social opportunities that bedevilled the regime to date.)

On the whole, it is no exaggeration to say that to the vast majority of the Oromo people, MNF was beneficial more in its promise than in its practice. The practice, as we all know, had a democratic deficit. As such, it lacked consent of the people that could have made it possible for them to exercise their collective agency (as right-bearing constitutional subjects) as they seek to author their collective destiny. The fact that it was procured (so to speak) through EPRDF's top-down approach that imposed the MNF as "a grant from above" limited the people's self-directed capacity to own up the dispensation as their own. It is important to note that the EPRDF's attempt to "give" a federalist constitution to the nations in Ethiopia is in line with the Ethiopian tradition of offering constitutions, laws, and public institutions as a grant from self-proclaimed benevolent authorities of the imperial center. It is no accident that, for all its ideologically oriented commitment to self-determination, EPRDF shares the Ethiopianist anxiety that recognition of sub-national sovereignty and the right to self-determination poses a security threat to the state. Hence, the securitization of Oromo identity and the constant resort to violent tactics of repression (e.g., arbitrary killing, political assassinations, mass arrest and detention, torture, enforced disappearance, political rape, intimidation, etc) throughout its history.

3.3. What did the MNF get right?

Most of the things it got right are in the realm of promise, namely the promise, for example, of co-foundationalism, co-ownership of the state, co-eval presence in the polity, and co-equal sovereignty of all groups, large and small, as is adumbrated by the preamble of the constitution; the promise of self-determination and self-rule in the federation; the promise of shared power in the form of representation (for example in the House of Federation); the promise of equitable share in the economy and the growth dividends thereof (which, owing to the state capitalism that EPRDF's developmental state model espoused, ultimately disadvantaged subaltern groups such as the Oromo); the promise of restoring and/or preserving land rights to the nations—even when it has subjected it to state capitalist manoeuvres of 'selling' land to investors through investment or lease agreements that are binding for 99 years.

The constitutional promise of restoring land right to the nations, or preserving it for them, has been subverted by the fact that the State continued to be the principal 'owner' of land although there is a reference to the "nations, nationalities, and peoples" as co-owners (with the State). The fact that there is no explicit constitutional recognition, as yet, of the communal ownership of land and owing to the fact that the land proclamation of 1975 (as amended) is still the law governing the distribution, regulation, and administration of access to, and utilization of, land leaves the peoples vulnerable and deprives the nations of sovereignty over land.¹⁶ The

¹⁶ This makes the Ethiopian nations, including the Oromo, landless sovereigns—rather oxymoronicly.

consequence is that the indigenous farmers and pastoralists everywhere are subjected to a massive practice of evictions and dispossessions.¹⁷

4. Perfecting Multinational Federalism: Towards Transformative, or Redemptive, Constitutional Practices

In my discussion above, it has become clear (hopefully) that the Ethiopian experiment with MNF is far from perfect. The question now is how do we overcome its imperfections? What is it that we have to do in order to make it more perfect and more complete? How do we work towards making MNF a success story for every group in Ethiopia?

4.1. How to Improve the MNF

Overcoming the imperfections of MNF can be seen as part of overcoming the imperfections of the constitutional system in general. This act of overcoming imperfections, this work of improvement towards completeness, is viewed, in some scholarly circles, as a ‘redemptive constitutional practice.’¹⁸ As such, it can be likened to the transformative constitutional practices of post-apartheid South Africa.¹⁹ The question for us now is: what can be learnt from these practices as we try to make the MNF a success?²⁰

Overcoming imperfections can be done through a variety of redemptive practices such as:

- a) an incremental amendment (i.e., amendment to expand rights not to abrogate them);
- b) an aggressive implementation in a generally democratic political climate;²¹
- c) interpretative fidelity to the ideals of the MNF;
- d) positive legislation that bolsters the achievement of the ideals through the work of legislative gap filling; and
- e) a constitutionally responsible politics during electoral campaigns and a generative cultural and scholarly production of knowledge on MNF.²²

¹⁷ The UNDP-funded project of Developing Regional States (DRS) of 2010-2015, with its scheme of ‘commune building’ in the sparsely populated Gambella and Benishangul-Gumuz Regional States and of ‘sedentarization’ in the largely pastoralist Afar and Somali Regional States, is an example of the tragic experience of impoverishing indigenous populations through the development projects of the Ethiopian state.

¹⁸ Jack Balkin, *Constitutional Redemption* (Harvard University Press, 2011).

¹⁹ On Constitutional transformation in South Africa, see Karin Van Marle, “Transformative Constitutionalism as/and Critique,” 20 (2) *Stellenbosch L. Rev.* (2009), 286-301; see also Stu Woolman (eds), *Constitutional Conversations* (PULP, 2008): On ethical anti-constitutionalism as a critique of the limits of transformative constitutionalism, see T Delport, “An ethical (anti-) Constitutionalism? Transformation for a Transfigured Public,” 46(3) *Acta Academica* (2014), 104-121; and Joel Modiri, “Conquest and Constitutionalism: First Thoughts on an alternative Jurisprudence,” 34 (3) *South African Journal of Human Rights* (2018), 300-325.

²⁰ On the five redemptive practices vis-à-vis the Ethiopian constitution, see Tsegaye Regassa, “The Making and Legitimacy of the Ethiopian Constitution,” 23 (1) *Afrika Focus* (2009); or Tsegaye Regassa, “Between Constitutional Design and Constitutional Practice: Towards Bridging the Gap,” 1(1), *Mekelle University Law Journal* (2010), pp. 1-44.

²¹ Raising constitutional consciousness and legal empowerment (and mobilization) is of great help in putting pressure on the government to implement constitutional promises.

²² There was hope at some point that knowledge production could be done through institutions such as the Institute of Federal Studies (IFS) of AAU and Departments of Public and Constitutional Laws, Colleges and Schools of Governance, etc, across the higher education institutions in the country. But the current intellectual milieu is, on the whole, rigged against MNF.

4. 2. *What needs Tweaking? What shall we change through Amendment?*

In Ethiopia today, there are many who seek to ‘inject reform’ into the constitutional order in general and the federal system in particular through amending the constitution. For those of us who, following tack of the literal meaning of amendment (whose Latin cum French root *emendre* also means correcting), are still interested in using amendment as a way of correcting ‘errors’ or rectifying inadequacies, or redeeming the imperfections, the following is a tentative list to consider:

Art 5: In the light of the outstanding demand by the #Oromoprotests movement to make *Afaan Oromoo* one of the working languages—and considering the call among several groups such as the Somali to make their languages a federal working language--*diversifying the working languages of the Federal Government* becomes imperative. This makes us better fulfil linguistic justice. There are many options for this. We can make all the Ethiopian languages the working languages of the Federal Government and have a subsequent conversation about the practicalities and ways of circumventing the challenges thereof. Or we can make a select few languages Federal working languages (Oromo, Somali, Tigrigna, Sidama, Wolaita, Afar, etc) and keep the possibility of taking up the others in the times to come.

Arts. 13: The Constitution devotes one-third of its provisions (arts 13-44) to human rights. But in order to properly render the human rights chapter justiciable—i.e., to make the rights achievable through judicial processes in the legal system--some interpretive guides towards justiciability may be needed. Separate provisions dedicated to application, interpretation, and limitation would go a long way to enhance better implementation of human rights in the courts. The existing interpretation clause in art 13, while it is suggestive of the reference to international covenants as a guide, is far from serving as an adequate interpretive guide.

Art-62 et seq: Institutional innovation, in the form of *setting up a constitutional court* that fosters more justiciability of rights, leaving political matters to the HoF, is long overdue. In this regard, we can think of converting what is now the Council of Constitutional Inquiry (arts 81 et seq) into a constitutional court that produces meaning on matters purely legal (or matters that are not overtly political).

Speaking of *institutional innovation*, it is probably best to set up an Intergovernmental Relations Commission; an Expert Commission for Boundaries and Local Governments; an Equal Opportunities Commission (also to help us realize the preambular aspiration to rectify unjust historical relations); a Commission for organizing Referenda on Self-determination Claims (alias Referendum Commission); a Committee of Experts for Fiscal Relations (and Revenue Division), etc.

At the State level, it is probably worth considering to create more constitutional space for the States to integrate traditional political (e.g. *Abbaa Gadaa* Council) and legal institutions (*Seera Aadaa Oromoo*) in the codified constitutional arrangement. The Somaliland practice of instituting the *Gurti* as the upper house of the legislative chamber is instructive in this regard.²³

²³ See, for example, Markus Virgil Hoehne, “Limits of Hybrid Political Orders: The Case of Somaliland,” 7(2) *Journal of East African Studies* (2013), pp.199-217; M. J. Fox, *The Roots of Somali Political Culture* (Lynn Rienner, 2015); J. P. Azam, The Birth of a Democracy: Homegrown Bicameralism in Somaliland,” 20 (2) *Peace Economics, Peace Science, and Public Policy* (April 2014), pp.245-266; Natasha Leite, “Reinvigoration of Somali Traditional Justice through Inclusive Conflict Resolution Approaches,” 3 *Conflict Trends* (2017), available at: <https://www.accord.org.za/conflict-trends/reinvigoration-somali-traditional-justice-inclusive-conflict-resolution->

This serves the purpose of inclusion and representation (of all regional, clan, or dialect differences as the case maybe), broader cultural legitimacy (also paying tribute to the urge towards indigenization of politics), and for tapping into the dispute settlement resources in these traditional institutions.

Art 40: Land is now owned by the state. This is the case in spite of the perfunctory allusion to the “nations” as co-owners of the land. Strengthening nations’ sovereignty over land and natural resources (especially minerals, rivers, forests, etc) is thus necessary.²⁴ Sovereignty over land can be restored in part through recognizing communal ownership wherever it is appropriate.

Art 49: Negotiate a new capital city. Options are many: carving out a federal capital territory; creating a self-governing city with an overall accountability to the state it belongs to; having a roving capital; dispersing the seats of the legislative, judicial, and executive branches of the Government; or subordinating the capital to the state in which the capital is located.²⁵ One thing is for sure: as recent developments proved, Ethiopia cannot be at peace with Finfinnee as its capital without respecting Oromia’s claim to the city (at least without implementing the constitutional ‘special interest’ thereof).

Arts 51-52: the rallying cry during the past several years of protests was for more self-rule, more autonomy, and for more control of one’s government. However, the demand for decentralization can be achieved by reworking the provisions on division of powers between the federal government and the states. Owing to the fact that Ethiopia had been a highly centralized empire prior to the adoption of the federal system, the vast majority of power is listed down as federal powers leaving the rest, the un-named remnants, to the states.²⁶ If we are to use amendment as a redemptive practice to overcome over-centralization of power, then a rethinking of the provisions of arts 51-52 becomes a must. Rethinking arts 51-52—especially in the area of planning, regulating, and governing cities; deciding on tax bases and rates on specific goods and services emanating from particular states; land administration; negotiating international trade agreements (or having a say in the negotiations)--etc is needed in the light of the increasing link of the local economy to global economic actors.

[approaches/](#) (visited on 12 September 2020) on how the *Gurtii* (the House of Elders) and the *Xeer* (indigenous Somali law) were made to work in concert in state- and peace-building while also enhancing the legitimacy and efficiency of the state.

²⁴ Art 40 (3) reads as follows: “The right of ownership of rural and urban land, as well as natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities, and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.”

²⁵ See Enid Slack and Rupak Chattopadhyay (eds), *Finance and Governance of Capital Cities in Federal Systems* (McGill-Queen’s University Press, 2009); Roger Wettenhall, “On the Study of Federal Capital Cities: A Review Article,” 6 *Commonwealth Journal of Local Government* (July 2010), 158-165; Klaus-Jurgen Nagel (ed), *The Problem of the Capital City: New Research on Federal Capitals and their Territory* (Institut d’Estudis Autonomics, 2013); Caroline van Wynsberghe, “Federal Capitals: A Comparison,” 10 (1) *Revue Internationale de Politique Comparee* (2003), pp. 63-77.

²⁶ When we see the long list (21 sub-articles in Art 51, enumerating the Federal Powers, and 2 sub-articles in art 52, stipulating the State powers), it seems that only powers that could not be specifically named seem are left to the states as “residual powers.” What is residual about the powers that one could not imagine and could not name as a result?

Arts 53 et seq: Rethink the electoral system by injecting some form of proportional representation (PR) system.²⁷ The recent adoption of the Mixed Member Parliament [MMP] in Tigray National Regional State [TNRS] is an instructive example in this regard).

Arts 71 et seq: In addition, in the light of Ethiopia's diversity (which Arndt Lijphart considers a typical trait of a segmented societies),²⁸ and considering the explosive nature of competing nationalisms in contemporary Ethiopia, a formal mechanism of ensuring executive power-sharing needs to be constitutionalized.

Art 62 et seq: The House of Federation ought to be (re)conceived as a house of recognition, representation, and (economic) redistribution. Rethinking the membership of the House of Federation is imperative.

In order to enhance the *representative capacity* of the HoF, *equal representation of all nations*—large and small alike—is better. Also, it is probably necessary to *rethink its voting system* (with a *veto* power—negative voting scheme—over issues that are specifically related to, or of concern to, particular groups). Moreover, it is high time for members of the House of Federation to be picked through *direct popular election*. Variation of *its term of office* from that of the Parliament also helps to ensure a variegated parliamentary life that will not leave avoid in times of election-related constitutional crisis. In its work of *building bridges* among states and nations and nationalities—and in its broader work of *peace-making*—the House of Federation needs to be encumbered with the duty to liaise with traditional (adjudicatory and administrative) authorities. The House of Federation serves the Federation best if it is reconceived as *a counter-majoritarian house* that insists on constitutionality, constitutional integrity, and the full protection of minorities in the country. If possible, the House of Federation needs to be a counter-imperial institution that can secure non-domination for the hitherto oppressed nations of Ethiopia. It should be a forum for the nations to politically resist imperial urges, or imperial nostalgia, of many a centrist politician in Addis Ababa.

Also, it is probably important to expand, in the long term, the peace-building responsibility of the HOF thereby making it attend to the fraternity component of the 1960s student revolution that also groped towards the federalist dispensation. This peace-building responsibility will in turn cater to the solidarity needed to build “one economic and political community” (as per the preambular aspiration).

In its adjudicatory role, the HoF ought to focus on the strictly non-justiciable matters that are traditionally known as ‘political’. Making peace among states, the nations, and communities, or mediating and/or adjudicating disputes between the central organs of the Federal Government should be the preserve of the HoF.

In its redistributive work, it needs to go beyond deciding on the formula of allocating revenue (in terms of grants and subsidies). It needs to collaborate with the proposed Intergovernmental Fiscal Commission (or an independent Commission of Experts on Division and Sharing of the

²⁷ According to art 54 (2), representatives are elected based on the “plurality of votes cast,” i.e., through the first-past-the-post system. This system is not congenial to the needs of inclusion and representation, especially in ‘segmented societies’ such as Ethiopia’s.

²⁸ See Arendt Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (10th Print ed), (Yale University Press, 1977).

Revenue) in order to ensure an equitable and fair distribution of resources, economic infrastructures, and growth dividends.

Art 70: Rethink the mode of nomination and appointment of the President. Make it more democratic. Can we think of direct popular vote, or the participation of all the major organs of Federal and State authorities, especially the latter, in the nomination, recruitment, selection, and appointment of the President of the Republic?²⁹

Arts 72 et seq: Review and limit the Executive Power over foreign relations—treaty powers, war powers, etc. As it stands now, per article 74 (6), the Prime Minister has only overall supervisory power over the implementation of foreign policy. The limits on treaty and war powers will ensure that this supervisory power is not abused. The treaty obligations that flow to the constituent units of a multinational federation ought not to be left only to the whims of a federal Prime Minister.³⁰

Arts 79-80: In the division of judicial powers, it is high time to devolve more substantive powers, especially in criminal law areas, to the State courts.

Art 81-82: In the nomination and appointment of judges (of Federal Courts, including the proposed Constitutional Court), there should be a confirmation process in which the public is allowed to present questions, through their representatives or directly, to the candidates.

Art 93(4)(c): Emergency clauses should have the right to life included in the list of non-derogable rights. Accordingly, Arts 14-15, which acknowledge the principle of sanctity of life, ought to be included in art 93 (4)c so that the Executive will not restrict, suspend, or derogate from them even in times of emergency. That it was omitted in the first place must be a mistake.

4.3. Any successful models to emulate? Any Alternative Roadmap for MNF?

Each federal system is unique. There are as many types of federations as there are federal countries. But there are systems we can learn from. For example, we can look to the Swiss Federal system to draw lessons on consociational democracy and executive power-sharing through the instrumentality of the Grand Coalition Council.

The Federations of the USA, Australia, Canada, can be considered for decision on the choice of Capital cities. South Africa's division of the seats of the Legislative, Executive, and Judicial branches of the Federal Government can also be an alternative to look at. Similarly, on diversification of the working language of the Federal Government, South Africa may be a good example to look to. South Africa's transformative constitution may also be useful in the

²⁹ Currently, as per art 70 (1-2), the only bodies involved in the nomination and appointment of the President are the two houses of Parliament. Accordingly, the President is nominated by the Parliament (i.e. HPR) and appointed by a 2/3rd majority vote of the joint session of HPR and HoF. The States and the Nations/Nationalities have an indirect and remote, if any, participation in the process. The election of the President is thus predominantly the business of the Party, or coalition of parties, that dominate the houses. As an all-encompassing institution that should also operate beyond and above the heat of politics, the Presidency should be elected in a process that enjoys a broader popular legitimacy.

³⁰ The opacity of Abiy Ahmed's 'deals' (especially with Eritrea and the middle eastern states such as UAE, Saudi Arabia, and Egypt; and the agreements he had with the US regarding the GERD) and the unclarity of the obligations he has committed the country into in the process have made it all the more necessary to spell out, review, and limit the foreign relations power of the executive.

area of overcoming the divisions that have roots in the colonial past and the way it forged a way forward through the Truth and Reconciliation Commission (TRC).³¹

On the presidency, Germany's example may be instructive. On issues of electoral systems, especially if we have to go for a variant of the PR system, it may be important to refer to the constitutions of Switzerland, Germany, etc.

The second question addressed to us in this category relates to what an alternative model (i.e., alternative to the Ethiopian MNF as it stands now) would look like. The list of provisions that I suggested can be amended in order to perfect the federal system are already an indication of what an alternative model of MNF in Ethiopia would look like. Apart from the normative and institutional innovations we may want to bring to the MNF in the spirit of achieving its (democratic) transformation, there are alternative practices that we may pay a heed to in order to make the constitutional promises real. Some of these are already highlighted as redemptive practices. However, one also need to remember that in Ethiopia, if seen in the light of the historical context and the dominant political contradictions regnant in the empire, there is hardly any better arrangement than the current multinational federal structure, especially for managing diversity, securing ethno-cultural justice through mutual recognition, and establishing a lasting peace. If the saying that "whenever a nation chooses to be federal, it so chooses because it has no other choice" has any truth, then there is no better place than Ethiopia to vindicate it. And this is consequential. If in the light of its purposes, it is the choicest arrangement for Ethiopia, the quest for "an alternative roadmap" becomes both unnecessary and undesirable. Instead, what we should rather focus on is how to improve the current multinational federal structure through transformative or redemptive constitutional *practices*.

Through these redemptive (cum transformative) practices, we should overcome the sense of loss and fulfill the longing of the various ethno-national groups that have been trapped in the oppressive and ever more centralizing, if dysfunctional, empire. Through these practices, it is possible to help the promises of MNF are delivered. Through these practices and the concomitant injection of a robust electoral-democratic energy, MNF can be put to use to restore lost sovereignty and collective agency for the various groups via self-determination and self-rule at the State level and to secure non-dominance through the institutions of shared rule at the federal level. In other words, MNF can be employed to remake Ethiopia and to transform the ailing state-society relations for good.

5. Multinational Federalism, Youth Movements and the Prospect of Regional Stability

In recent years, the young people have brought energy into the political dynamism in Ethiopia. The problem of youth unemployment in a context that is already ethnically rigged political practice has driven the youth to engage critically with the regime through protest movements for social justice. The demand for voice and representation in government (at least for maintaining a political hope that can be afforded by a free and fair election), the demand for recognition of their cultural identity and the dignity thereof, and the demand for access to an

³¹ On the transformative constitutional practice in South Africa, see Stu Woolman, *Constitutional Conversations* (PULP, 2008); Karin Van Marle, "Transformative Constitutionalism as/and Critique," 20(2) *Stellenbosch Law Review* (2009), 286; See also Desmond Tutu, *The Rainbow People of God: South Africa's Victory over Apartheid* (Bantam Books, 1994) generally on the transition from apartheid to democracy in South Africa.

equitable share in the economic growth formed the three central demands that permeated and propelled the protest movement.

5.1. MNF and the Youth: The Qeerroo Quest for Social Justice in MNF Ethiopia

The #Oromoprotest movements of 2014-2018 were primarily triggered by the unfair development practices of the regime through incursion into Oromia jurisdiction through, among others, the Integrated Regional Development Plan (aka Addis Ababa Master Plan). The resistance to the Master Plan was couched in the language of fair (re)distribution of economic benefits for the Oromo youth whose parents' land was expropriated while they were languishing under a joblessness that was gnawing at them for over 5-6 years. It was a resistance against the economic despair unleashed upon them by the accelerated development practices of the self-proclaimed developmentalist state of the time.

The increasing loss of land (as the key economic facility, often the only means of livelihood) to investors exacerbated the problem of access to social opportunities such as education, communication, and health. Oromia—and by extension, Ethiopia--became a land of lack: a land of jobless graduates, landless farmer-parents, and of millions of young people constituting a 'placeless' (or lost) generation. Added to this was the increasing denial of political pluralism in the electoral practices (such as that which was typified by EPRDF's winning of 100% of the State and Federal parliamentary seats in the 2015 elections) which also sharpened the demand to be heard, to be effectively represented in the decision -making institutions of the country as well as in the Oromia region. The feeling of having no representative in Parliament has effectively pronounced the looming political despair at the time. It was no accident that the November 2015 protest in Giincii erupted only 4 months after the election and a month after a new Parliament of EPRDF (and of OPDO in Oromia) was inaugurated.

An important component of the #Oromoprotests movements of 2014-2018 was also the demand for a broader recognition of culture (the Oromo language, the Oromo identity, and the Oromo national heritage) in Ethiopia and its Federal Government institutions. The demand to make *Afaan Oromoo* one of the Working Languages of the Ethiopian Federal Government was clearly articulated, but beneath this demand was a whole set of questions that seek a rethinking of the language and cultural policies in the realm of education, media, and administration—all of which were seen as wanting in the eyes of the Oromo youth (*Qeerroo* and *Qarree Oromoo*). Beneath these demands for recognition, there was the more robust and the more perennial question of 'Nationalities' which, through the constitutional recognition of self-determination and the promise of MNF, was only tamed but not resolved. That was why, through the #Oromoprotests season, the slogan 'Implement Genuine Federalism!' was constantly heard as a faint refrain in the background.

The #Oromoprotests movement is only one example of youth movements for social justice (seeking political representation, cultural recognition, and economic redistribution). In almost all parts of Ethiopia, youth groupings (such as the *Faannoo* (of Amhara), *Ejjetto* (of the Sidama), *Zerma* (of the Gurage), *Barbartaa* (of the Somali), *Yalaaga* (of the Wolaita), etc) were echoing the same demands, thereby making the youth a veritable force to reckon with. It is obvious that these strong youth demands for recognition of identity and for a more accommodative, or at least tolerant, federal state puts a lot of pressure on the government,

especially when these demands, being rooted in contradictory claims of ‘competing nationalisms,’³² pull its limited political and economic capital in different directions.

5.2.MNF and Regional Stability in the Horn

How does MNF affect stability of Ethiopia and the Horn of Africa region?

Often, the detractors of MNF in Ethiopia assert that the multinational federal system, with its emphasis on self-determination of groups, threatens to increase state fragmentation and contribute to the volatile nature of the region. They point to the secession clause in art 39 (1) and conclude that it will not only dismember Ethiopia but will cause a spill over of conflicts to the neighbourhood. First of all, the secession clause is there precisely to avoid conflicts in the event that any group wants to form its own independent state. In Ethiopia, it was recognized not just as a recognition of the natural right of groups to sovereignty and collective agency but also, and primarily, as a guarantee of “lasting peace” in the region. What the secession clause is saying is that there will be no war conducted in the name of achieving self-determination any more. Secondly, one needs to realize that what is domestically accepted in constitutional law will facilitate the acceptance and recognition of the newly independent nation in international law. The result is that conflict will be prevented not just in Ethiopia but also in the neighbourhood that can readily accord recognition to the newly minted sovereign state. In this way, the secession clause of art 39 has a de-securitizing effect on the politics of self-determination. That is to say, the quest for self-determination is no more seen as security threat to the rump state nor is it going to be a cause for taking up arms to fulfill the quest. Moreover, if self-determination is also the right to be (re)united with other states (as Frederic Kirgis had once stated),³³ then the constitutional recognition of self-determination in Ethiopia can be seen as offering an opportunity for a voluntary association with other polities through forging a union of diverse types. The fact that the secession clause leaves the Ethiopian federal system virtually an open system—open in the sense that there is the right of exit from it as well as joining it—makes it flexible enough, at least in theory, not only to let go of an existing member but also to welcome another member from the neighbourhood.

Granted, the horn region is a region of fragile states. But it is also a region of high economic interdependence. It is a region of countries with nations that cross boundaries: Tigrigna, Afar, Kunama, and Saho/Erob speakers in Ethiopia and Eritrea; Somali in Somalia, Somaliland, and Djibouti; Afar in Ethiopia, Djibouti, and Eritrea; Oromo in Ethiopia and Kenya; Nuer and Anywa in Ethiopia and Southern Sudan; Berta and Gumuz in Ethiopia and the Sudan. It is also a region of transboundary allegiances, ways of life, and economic cultures. The countries of the horn also ‘export’ conflicts to one another. Owing to the fact that the region’s states are “states of violence,” i.e., states conceived in and maintained through violence,³⁴ mostly violence over self-determination (conquest and resistance), it may benefit from a properly implemented MNF as currently posited in Ethiopia.

³² See Merera Gudina, *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960-2000* (Shaker Publishing, 2003) for the use of the notion of ‘competing nationalisms’ and their manifestations in Ethiopian politics.

³³ See Frederic L Kirgis, “Degrees of Self-Determination in the United Nations Era,” 88 *Am J. Int’l L.* 304 (1994), p. 307.

³⁴ Richard J Reid, *Frontiers of Violence in North-East Africa: Genealogies of Conflict Since c. 2011*, (Oxford University Press, 2011).

So, what bearing does the MNF has on the geo-political stability of the horn of Africa? Certainly, owing to the fact that it remains to be practically unimplemented, the path of MNF is still “the road less travelled.” Consequently, it is too early to celebrate its practical success as such. One can not therefore give an assurance that MNF will prove to be a panacea for the peace and stability of the Horn region. However, it is important to note that, considering the historic fact that it was negotiated to bring about “a lasting peace” between (ethno-)national groups, there is at least that promise of peace (i.e. the potential to disarm liberation fronts and point them towards prioritizing the legal-political mode of pursuing self-determination). The fact that Ethiopia’s relocation of sovereignty primarily in sub-state entities is also indicative of Ethiopia’s commitment³⁵ to a post-Westphalian notion of sovereignty that focuses more on peoples (than on the state), a notion that prioritizes the rights of people as the primary public value to protect and/or defend. This has consequences for the horn region that, because it has long been bedevilled by the failed attempt to superimpose a western (Westphalian) model of state-and nation-building, is now amenable to a more open and a more flexible arrangement such as the one the Ethiopian MNF offers.

“Exporting” Ethiopia’s brand of federalism to the Horn region—or adopting it as a way of reconceiving the region—may probably be an overreach.³⁶ What cannot be gainsaid however is that abandoning MNF in Ethiopia now is going to wreak havoc in the entire region. This is because undoing MNF will amount to calling for a (re)militarization of politics and exacerbation of the fragility of states in this extremely interlocked and highly interdependent region. It may be that no one in the Horn may be charmed by the promises of MNF (especially because of the lack of implementation so far), but abandoning it (and throwing away the promise of self-rule it encapsulates) will surely ignite an instability of far-reaching consequences. Contrary to destabilizing the region (as its detractors often claim), MNF is one way of securing peace in Ethiopia and beyond. In fact, it is not unreasonable to argue that MNF—or a confederal variant of it—may be ‘the last best hope’ for stabilizing the Horn region.

6. Conclusion

The questions we have been addressing ourselves to revolved around what multinational federal experiment means to the peoples in the region; what it lacked; how we can perfect it; and its impact on regional peace and stability. To the marginal peoples of Ethiopia, MNF’s benefit is not in what they have so far experienced as their lived reality; it is more in the promise of securing self-rule and non-domination in an Ethiopian context riddled with the evils of ranked relationships in a violently repressive empire. The MNF experiment carried a promise, and signified the hope of the nations to regain their collective agency (via self-determination) and to preserve non-dominance (through self-rule).

The Ethiopian abandonment of the commitment to multinational federalism, if it happens, will lead to a political dead end. It may even result in a possible civil war and a consequent

³⁵ This commitment is reiterated in art 8 cum 87-88 of the FDRE Constitution where it prioritizes peoples as the locus of sovereignty and puts accent on the principle of peaceful settlement of disputes and a relationship of fraternity with African brothers.”

³⁶ On “Exporting” MNF, see Tsegaye Regassa, “Comparative Relevance of Ethiopia’s Federal System to other Polities of the Horn: First Thoughts on the Possibility of “Exporting” Multi-Ethnic Federalism,” 1(1) *Bahr Dar University Journal of Law* (2010) 5, pp. 5-48.

dismemberment of Ethiopia as a state. Just as the dissolution of the imperfect Ethio-Eritrean Federation led in the past to war and subsequent separation of Eritrea, the dissolution of this imperfect federal experiment now may usher in a protracted civil war that will dismantle the Ethiopian State for good. This in turn may deny the entire Horn of Africa region the chance of instituting “a lasting peace” (in the words of the Ethiopian Constitution), even the chance of transforming the region’s politics by demilitarizing it. This may in turn deprive these “states of violence” in the Horn Region of the opportunity to transform and replace the (constitutive) rule of violence by the rule of law (through which these states can now turn themselves into agents of enduring peace).