

Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia

By

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Declaration

I declare that '**Institutional recognition and accommodation of ethnic diversity: Federalism in South Africa and Ethiopia**' is my work and has not been submitted for any degree or examination in any other university or academic institution. All sources and materials used are duly acknowledged and are properly referenced.

Yonatan Tesfaye Fessha

Date

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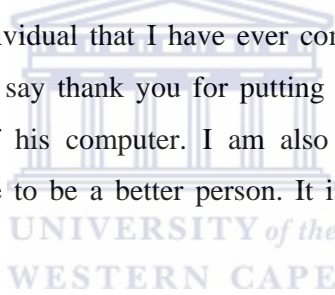
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Chapter One

Introduction

1. Background to the study

Ethnic heterogeneity rather than homogeneity characterise the populace of many countries around the world. More than 90% of the current 180 or so states in the world are ethnically plural in character; these states are home to almost 95% of the world's population.¹ The heterogeneity ranges from having just two different ethnic or linguistic groups to an accommodation of a sizable number of ethnic groups.

The multi-ethnic character of states is attributable to many different factors. In the majority of cases, it has been the result of conquest and annexation. Different ethnic groups are involuntarily incorporated into a larger state. The case of Ethiopia illustrates this fact. As the discussion in chapter six indicates, the present day Ethiopia is mainly the result of Emperor Menelik's expansion into the south and west and the forceful incorporation of these regions into the Ethiopian Empire. Colonialism has also brought the same effect. This is especially true in Africa where almost none of the existing states on the continent are the result of consensual state formation but a haphazard and arbitrary union of different cultural communities by the colonial masters. The colonial boundary that African states inherited and maintained (i.e. as the result of their compliance with the Organisation of African Unity's (OAU) principle of upholding colonial borders) has resulted in multi-ethnic states.²

¹ See Gurr 1993.

² OAU Document AHG/Res. 16 (I).

In few other instances, multi-ethnic states have been a result of agreements entered into freely in which case different cultural groups decide to live under the umbrella of a larger state. This could be attributed to reasons of economic and political expediency or to some other historical and political factors that contributed for the formation of a strong bond that was followed by a decision to live together. In the 19th century, for example, linguistic and religious groups joined voluntarily to form the Switzerland confederation.³

More often than not, the constitutional approach and the political practice followed by most of these multi-ethnic states do not accommodate their ethnic diversity. The institutional principles of these states have ignored or suppressed the cultural differences which are the major aspects of their social realities. Many states have turned their back on the vast cultural diversity which characterizes many of their societies. At the forefront of the constitutional and political agenda of most of these countries has been the pursuit of political unity and territorial integrity. The overriding aim of these countries has been to create and maintain national unity often at the expense of ethnic diversity. The reassertion of ethnic identity and political rights along those lines has been considered an enterprise that compromises political unity and territorial integration. Such hegemonic states have paid dearly in a bloody civil war that took thousands of lives.

The political conflicts that engulfed many countries around the world are often explained in terms of states' failure to manage the increasing assertiveness of ethnic politics. The genocide perpetrated in Rwanda that claimed the lives of one million people and the civil war in south Sudan, which had been on going for over thirty years, are two stark examples of

³ Fleiner 2000.

“identity-driven” conflicts in Africa.⁴ The ethnic conflicts in the Balkan⁵ and Sri Lanka,⁶ in which many lives have been lost, are but few of the costs that states sustained as they pursue their practice of political unity and fail to adopt a truly inclusive constitutional approach that recognises ethnic plurality.

There is, however, an emerging trend of accepting the principle that ethnic diversity of a society must be recognised and provided practical expression, typically through some form of institutional principles. In some cases, this shift towards the recognition of ethnic diversity and providing practical expression thereto has been achieved by adopting a federal system. In the African continent, Nigeria, a country of more than 250 ethnic groups, has, for example, adopted a federal form of government.⁷ In Asia, the relatively successful federal arrangement of the state of India is another notable response to the problem ethnic diversity poses in a country of “18 national languages and some 2, 000 dialects and a dozen ethnic communities and seven religious groups”.⁸ The Swiss federalism, which is referred by some as “a love of complexity”,⁹ also manifests that the country has opted to deal with its ethnic diversity through federal arrangements.

2. Statement of problem

The move towards the politics of accommodation begs the question of the relevance of institutional design in a multi-ethnic society where ethnic groups are geographically concentrated. This is the question that this study

⁴ Deng and Gifford 1995.

⁵ Gurr 1993.

⁶ Rajagopalan 2000: 205-208.

⁷ Dent 1995.

⁸ Majeed 2005: 181.

⁹ As quoted in Schmitt 2005: 348.

seeks to address. It examines how a state can use its institutional designs to accommodate ethnic diversity without posing a threat to the political and territorial integrity of the state. In particular, it examines the relevance of the federal design to the political crisis and continuous tension that dominate multi-ethnic states around the world. It investigates whether adopting institutional principles in a federal form helps us to adequately respond to ethnic claims and build a state that belongs to all who live in it.

With the view to achieve the above mentioned objective, the study seeks to answer the following questions:

- Should a multi-ethnic state recognise its multi-ethnic character?
- Is ethnic recognition categorical?
- Can federalism serve as an effective instrument to accommodate ethnic claims while at the same time building national unity and maintaining political integration in a multi-ethnic society?
- How should a multi-ethnic state design its institutions, within the context of federalism, to respond to the challenges of ethnic diversity?
- Does federalism provide multi-ethnic states with institutional principles that are a panacea to the challenges of ethnic diversity?

3. Scope of the study

This study uses the federal experiences of two countries as case studies: Ethiopia and South Africa. Both multi-ethnic states have recently emerged from a history of ethnic and racial conflicts that have divided their respective societies for decades. In an attempt to move away from the past and build a state that belongs to all who live in it, the constitution makers of both countries opted to use federalism as a vehicle. Although both countries have adopted federalism, the model of federalism each adopted in a

response to the ethnic heterogeneity that prevails in each country and the challenges it entails are poles apart. This is also where the interest to use the two countries as case studies stems from.

The major point of difference between the two systems lies in the significance they attach to ethnicity. In the case of Ethiopia, ethnicity constitutes one of the major features of the constitution. Nine regional self governments delimited, by and large, on the basis of ethnic identity make up the Ethiopian federation.¹⁰ All sovereignty, according to the Constitution, resides with these ethnic groups, which the Constitution refers to them as “Nations, Nationalities and Peoples of Ethiopia”.¹¹ That is why the Ethiopian federalism is often referred to as ethnic federalism. South Africa has, on the other hand, adopted, to say the least, an unassuming approach to the issue of ethnicity. The Constitution recognises, albeit implicitly, the political relevance of ethnic identities. Unlike the Ethiopian federal arrangement, however, the South African approach eschews the constitutional categorisation of ethnic identities. The two constitutions, thus, differ in the significance they attach to ethnicity as a basis for the organisation of their respective societies they seek to regulate.

In the case of Ethiopia, the fact that the point of departure of the self-government as expressed in the federal arrangement is not geography but ethnicity has given rise to controversies. The Ethiopian constitutional approach to claims of ethnic identity, it is argued, intensifies ethnic loyalty and hatred among ethnic groups rather than healing the wounds sustained as a result of historical injustices and fostering political unity. Some, as a

¹⁰ Article 47 the Constitution of the Federal Democratic Republic of Ethiopia (Ethiopian Constitution).

¹¹ Preamble Ethiopian Constitution. See also article 9 Ethiopian Constitution.

result, fear that the risk for political disintegration and violence is too great. The fear is intensified by the fact that the Constitution recognises the right to self-determination along with a clause of secession.¹² Others refer to the recent Ethiopian political history and argue that any constitution that aims to learn and at the same time move away from the wrongs of the past, should not fail to provide recognition to ethnicity.

The modest approach to ethnicity followed by South Africa has also similarly given rise to contrasting remarks. Critics have stated that the South African approach to ethnic heterogeneity represents the usual trend in Africa where there is no disposition to cultivate or even acknowledge diversity. Accordingly, it reinforces the common practice of African states where political unity is pursued at the expense of cultural plurality. For others, it represents “a modest but well considered approach to claims of ethnic identity”.¹³

It is the contrast between the institutional principles that underlie the responses of the two countries to the challenges of ethnic diversity which makes them the best candidates for case studies. Using the two case studies, the thesis seeks to respond to the research questions outlined above.

4. Significance of the study

This thesis focuses on federalism and ethnic diversity. Using two case studies, South Africa and Ethiopia, it sets to examine whether institutional designs in a form of federalism can serve as an effective instrument to respond to ethnic claims while at the same time maintaining national unity in the context of multi-ethnic societies. The issues this study investigates are

¹² Article 39 Ethiopian Constitution.

¹³ Alemante 2003: 54.

not only topical to multi-ethnic states around the world but constitute the core problems to which communities, ranging from the troubled Sudan to Nigeria and from the Western Sahara to the Democratic Republic of Congo (DRC), are struggling to find solutions. In this regard, the thesis may assist those multi-ethnic states that are struggling to find institutional solution to the ethnic conflicts that characterise their society.

5. Methodology

The research takes the form of a study of all relevant literature, including law journal articles, books, case law and other relevant materials. The Ethiopian system is examined by reviewing the Constitution, relevant legislation, literature, minutes of the Ethiopian Constitutional Assembly, government reports and other relevant documents. The South African experiment is examined by using similar sources of information as well as jurisprudence of the South African courts.

6. Limitations of the study

Few caveats are in order. First, as the title of this thesis suggests, the focus is on ethnic diversity. Other types of diversity are not discussed in this thesis. The methodological approach adopted by this thesis, which involves using two case studies to arrive at a certain conclusion, requires that we deal with the same subject matter. Thus, although race is an important part of identity politics in South Africa, this thesis has decided to focus on ethnicity making the selection of the two countries for case studies a plausible option. The thesis makes reference to other politically relevant cleavages, including race and regionalism, only when it is necessary to make a point to the main focus of this thesis.

Second, the track record of federalism suggests that federalism, if it is to work best, needs to be complemented by certain other processes and

structures: the rule of law, democracy and the culture of human rights in particular. Unpacking these processes and structures is not the objective of this thesis. The focus is on how the institutional design of states can be used to regulate the challenges of ethnic diversity. In particular, it zooms in the institutional principles that federalism specifically makes available for the purpose of accommodating ethnic diversity.

At this juncture, it is important to note that institution and institutional principles as understood in this thesis refers to established rules and practices that constitute a state's response to the challenges of ethnic diversity. Primarily this includes the constitution, legislation and other established practices that regulate the management of ethnic diversity.

Third, in so far as the processes and institutions that are discussed in this thesis are concerned, the aim is to examine how they can be used as a device to accommodate ethnic diversity. The point of reference to these institutions and arrangements is their role in the accommodation of ethnic diversity. Thus a discussion on educational curriculum, for example, would not delve into the details of education policy and examine the quality of the education policy. The concern is rather to examine how decisions on education curriculum can reflect on a state's policy of accommodation. One should thus not be wary of the 'isolated approach' that this thesis has adopted and the specific angle from which this thesis discusses matters like language policy, education and the like.

7. Structure

The argument and comparative review are presented as follows: Chapter Two discusses the challenges of multi-ethnic states. It commences the discussion by addressing terminological and conceptual problems around ethnic identity, ethnicity, nation and state. It then discusses the common

tendency to transform an ethnically diverse state into a nation-state. It shows that the legitimacy and political integrity of most of these multi-ethnic states has been challenged by the rise of ethnic nationalism and the formation of ethnic-based political movements. It attributes this endemic problem to the organisation of the state in these societies and especially to the illusion of nation-state building in multi-ethnic societies. It then explores the politics of recognition which stresses the need to move towards the recognition of ethnic diversity. It explores the argument that says the state needs to move away from the nation-state paradigm towards the recognition of ethnic diversity.

Chapter Three seeks to locate institutional principles that supplement the act of recognition. It does this within the context of a federal arrangement. In this regard, it first determines the meaning of federalism and federation. It then examines the capacity of federalism to provide practical expression to the act of recognition by accommodating ethnic diversity while at the same time maintaining national unity and political integrity. It examines whether the institutional principles that underlie federalism (i.e. self rule and shared rule) can go a long way towards accommodating the multi-ethnic character of a society. Furthermore, it seeks to identify the major issues that multi-ethnic states have to deal with in their effort to translate the institutional principles of recognition, self rule and shared rule into institutional reality. It identifies key institutional issues against which the institutional response of both Ethiopia and South Africa can be examined. In general terms, it sets the template for analysing the cases of both South Africa and Ethiopia.

Chapter Four and Five deal with the South African case study. Chapter Four discusses the political role of ethnicity in South Africa's constitutional and political development. With the view to setting the background for a discussion of the institutional arrangement in South Africa, it traces the role

and place of ethnicity in South Africa's constitutional and political discourse. This is followed by Chapter Five which focuses on the present institutional response of South Africa to the challenges of ethnic diversity. Using the template developed in Chapter Three, it evaluates the South African system with a view to determining whether it responds to the particular ethnic-diversity related exigencies of the society it seeks to regulate.

Chapter Six and Seven follows a similar pattern with a reference to Ethiopia. Chapter Six examines the role and place of ethnicity in Ethiopia. By discussing the political history of Ethiopia, it determines the political relevance of ethnic identity. Using the template developed in Chapter Three and against the background portrayed in Chapter Six, Chapter Seven proceeds to examine how the institutional principles of recognition and federalism, as adopted in the Ethiopian context, has been able to accommodate ethnic diversity while at the same time maintaining national unity.

Chapter Eight concludes the journey of this thesis by doing two major things. First, it summarises the major findings of this study. Second, it identifies key institutional lessons that may assist multi-ethnic states in recognising and providing practical expression to the ethnic plurality that characterises their society and build an all-inclusive state.

8. Argument

The argument that is put forward in this thesis is the following:

8.1 Recognition as institutional principle

The thesis contends that a multi-ethnic state must somehow recognise the ethnic plurality that characterises its society. It presents recognition of

ethnic diversity as an important institutional principle of a state that seeks to respond to the challenges of ethnic diversity. It advances this argument based on two points. First, an empirical examination of the experiences of multi-ethnic states suggest that states that are predicated on suppressing ethnic diversity has not succeeded in achieving their goal of creating a common national identity. In fact, the empirical evidence suggests that most of these countries are plagued by ethnic-based conflicts. Second, a state cannot remain neutral in so far as ethnic relationships are concerned, although this, admittedly, is the best strategy to build a state that does not create a hierarchical relationship among the different ethnic groups. The upshot of this argument is that the state has no choice but to recognise its multi-ethnic character.

Recognising ethnic diversity is not, however, categorical. The extent to which a state should recognise ethnic diversity is contingent on the political relevance of ethnicity in the state under consideration. At the centre of this argument is the position that views politicised ethnicity as a contingent process. The likelihood of ethnic differences to translate into political divide that warrant recognition in the public sphere is dependent on historical and political circumstances that attend the state formation process or the so-called “nation-state building” project.

Yet care must be made not to confuse the ‘non-categorical’ view of ethnicity with the ‘categorical-denial’ of ethnicity which suggests that a state should turn a blind eye to ethnic diversity or, in the extreme case, suppress ethnic diversity. The non-categorical view of ethnicity does not detract from the position that recognition of ethnic diversity is an imperative institutional principle of a multi-ethnic state that seeks to build a state that belongs to all who live in it. The implication is rather that the political

relevance of ethnic identity should come into the equation when the state determines the extent to which it should provide recognition to ethnicity.

The institutional principle of recognition can be given practical effect through the constitution, other important documents and state symbols.

8.2 The institutional principles of self rule and shared rule

The thesis further argues that recognising ethnic diversity does not suffice. The state's decision to recognise ethnic diversity must be supplemented by institutional principles that go beyond symbolic concessions, which the institutional principle of recognition seems to largely represent. Although the thesis does not reject the relevance of universal individual rights in a multi-ethnic society, it casts doubt on the capacity of the individualistic approach to effectively respond to the challenges of ethnic diversity. It contends that universal individual rights must be supplemented by institutional principles that give practical effect to the act of recognition.

The thesis locates these institutional principles within the federal design. In multi-ethnic states where the different ethnic groups are generally territorially concentrated, federalism, it is submitted, has the capacity to accommodate ethnic diversity while at the same time maintaining national unity. It argues that the institutional principles of federalism can be used as a device to supplement the act of recognising ethnic diversity with practical institutional arrangements. The institutional principles are embodied in the self rule and shared rule component of the federal arrangement.

8.2.1 Self rule

The institutional principle of self rule is derived from the basic feature of the federal idea that there is a constitutionally guaranteed division of political power between the federal and state governments. In a federal

arrangement, the federal units are autonomous in respect of powers vested in them. Federalism can be said to have truly recognised ethnic diversity only when it provides real and sufficient autonomy to the federated entities. The institutional principle of self rule can be provided practical effect through territorial autonomy, legislative autonomy and financial autonomy.

8.2.2 Shared rule

The institutional principle of shared rule is derived, on the other hand, from the fact that federalism promotes joint rule for some purposes. If the territorial force that pulls toward national unity and the other towards diversity are to be contained within their legitimate limits and thus ensure the maintenance of the federation, the system must be accompanied by the institutional encouragement of common institutions that provide the bond to hold the federation together. It is for this reason that growing attention is being paid to appendage the notion of federalism as “autonomy” with the notion of federalism as the co-management of society at large. This institutional principle practical expression through the legislative bodies of the federation, the executive and other important national decision-making bodies.

8.3. The federal response in a form of a ‘purpose continuum’

Even if one agrees that the federal design is quite relevant in building an all inclusive state in multi-ethnic societies, it is the particular nature of the federal design that ultimately determines the extent to which it can successfully build a multi-ethnic state that successfully embraces unity and diversity. Consistent with the view that denies a singularity position to ethnicity, the thesis argues that a federation that is designed to accommodate ethnic diversity must be underlined by a greater degree of plasticity in its recognition of ethnic diversity and must, to the extent possible, mirror the political saliency of ethnicity in the state under

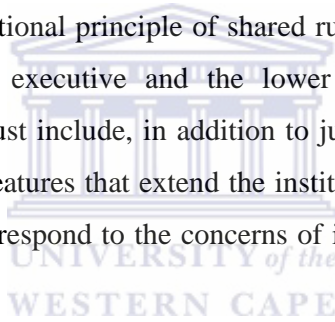
consideration. In other words, there is no singular model that can be prescribed to multi-ethnic states that are dealing with the challenges of ethnic diversity. The institutional design of a federal state must vary depending on the nature of ethnic relationships that is prevalent in the country.

With this view in mind, the thesis introduces what it calls the ‘purpose continuum’. On this purpose continuum are located institutional designs whose purpose ranges from prevention to remediation. At the prevention end of the continuum are institutional arrangements that are designed to prevent the elevation of ethnic identities to political identities. The quintessence of a preventive institutional design is that it responds to ethnic concerns without precipitating conditions in which ethnicity becomes a single rallying point of political mobilisation. This form of institutional response is appropriate in contexts where the political mobilisation of ethnicity is not significant and inter-ethnic solidarity is not at stake.

At the other end of the continuum are federal designs that are remedial in nature and whose purpose is to serve as a corrective measure to the already heavily deteriorating ethnic relationships. These federal designs are marked by their rigorous use of ethnicity as a basis to organise their state and society. This particular type of institutional response is sensible in a multi-ethnic society that is heavily characterised by inter-ethnic rivalry and a political space that is dominated by the political mobilisation of ethnicity. The precise position of a state’s institutional response on the purpose continuum should thus be based on a correct analysis of the political saliency of ethnicity in that country.

8.4. The limits of federalism

Federalism is not a panacea for all challenges of ethnic diversity. It is submitted that federalism, as institutional device, is not enough to respond to the challenges of ethnic diversity. A federal design that is constructed to accommodate ethnic diversity must go beyond the traditional institutional features of a federation. It must include non-traditional institutional features of a federation and other non-federal features in order to give full effect to the institutional principles that respond to the challenges of ethnic plurality. This includes, first, institutional features that reflect the multi-ethnic character of the state and thus give practical effect to the institutional principle of recognition. Second, it must incorporate institutional designs that promote the institutional principle of shared rule in the most contested political space of the executive and the lower house of the national parliament. Third, it must include, in addition to judicially enforceable bill of right, institutional features that extend the institutional principles of self rule and shared rule to respond to the concerns of intra-substate minorities.



Chapter Two

Towards the recognition of ethnic diversity

1. Introduction

As it is indicated in the introductory chapter of this thesis, ethnic plurality is the defining feature of almost all countries in the world. Ethnically plural states constitute the overwhelming majority of states recognised by the United Nations. The boundaries of most modern states do not coincide with ethnic divisions. What is also common is that most of these ethnically diverse states are seldom free of ethnic tensions. This chapter focuses on the challenges of multi-ethnic states and examines whether the design and orientation of the state towards ethnic diversity contributes to the ethnic turmoil that exists in many of these ethnically plural states.

Two main arguments are put forward in this chapter. First, it is argued that the rise of ethnic nationalism and the formation of ethno-nationalist movements in many parts of the globe are often attributed to the organisation of the state which often reflects the tendency to transform an ethnically plural state into a nation-state. This refers to a process in which states engage in the construction of a state that is characterised by cultural and social homogeneity. Some attempted to do this by fostering overarching identities in order to surpass internal differences over national identity. Others focused on creating national identity by diffusing the language and culture of the dominant group throughout the country. States generally focused exclusively on the maintenance of national unity and political integration. This provoked a forceful nationalist response from marginalised ethnic groups much less to blend different communities into a nation-state. Second, a multi-ethnic state that claims a policy of neutrality when it comes to ethnic relationships cannot avoid identifying itself with a particular ethnic group. State neutrality on ethnic relationship mostly turns out to be a myth.

Based on these and other considerations, including the limitations of universal individual right to respond to the demands that ethnic diversity poses to ethnically plural states, the chapter contends that institutional recognition of ethnic diversity is often the only way forward. As an alternative that provides a system through which a state can acknowledge its ethnic diversity and maintain national unity without the need to transform itself into a nation–state, institutional recognition of ethnic diversity is the healthier response to the exigencies of ethnic diversity.

Before we discuss the common tendency to transform an ethnically plural state into a nation–state and the ethnic strife that it caused, it is useful to address the terminological problems. The chapter, therefore, commences by exploring the terms ethnic group, ethnicity, nation, nation-state and the like. It then proceeds to discuss the so-called nation–state building process that preoccupied many ethnically diverse states and shows how it mostly gave rise to conflict-ridden societies. This is followed by sections that consecutively examine the relevance of universal individual rights and the option of political divorce to the multi-ethnic challenge. Finally, the chapter introduces the principle of recognition and examines how a state that organises its society based on the principle of recognition can accommodate ethnic diversity and ensure national unity.

2. Ethnic group and ethnicity

As indicated earlier, many multi-ethnic states are characterised by political disputes that are often ethnic in origin. Ethnic identity has become a common mobilising force so much so that “ethno-nationalism” has become a standard vocabulary in the discourse of nation and nationalism. It is this cultural marker that nationalists have often used to mobilise groups or more specifically subordinate minorities in order to become politically assertive. In fact, ethnic movements have often posed a serious threat to the territorial

integrity and legitimacy of the state. One cannot help but wonder what accounts for the intensity and scope of these ethnically motivated movements that pose an endemic challenge to many ethnically plural states. The reason might become clear as we proceed with our discussion but first comes the need to clear the confusion on what constitutes an ethnic group.

2.1 Ethnic group defined

The word 'ethnic' originated from the ancient Greek word *ethnos*, meaning a nation in the latter's immaculate sense of a group characterised by a common descent.¹ Academics, however, considerably vary in their opinion regarding the modern usage of the terms ethnic group and ethnicity. In fact, the term ethnicity made it into the social sciences only very recently. It appeared as a social scientific concept in the mid-twentieth century while it made it into the Oxford English Dictionary for the first time only in 1970s.²

The American literature on the subject of ethnic groups indicates that American sociologists used the term ethnic group to refer to "a group with a common cultural tradition and a sense of identity which exists as a subgroup of a larger society".³ The term has been applied to refer to any discernible minority, be it religious, linguistic, or otherwise.⁴ For American sociologists, the term ethnic group and minority group are thus synonymous. As observed by many, this American conception of ethnic group has a racist tone.⁵ It has its roots in the way the White Anglo-Saxon Protestants (WASPs) perceive themselves. WASPs do not perceive themselves as ethnic group. They consider themselves as those that set the

¹ Connor 1994: 43.

² McCrone 1998: 24.

³ Connor 1994:43.

⁴ Connor 1994: 43.

⁵ McCrone 1998: 24.

standard by which others are to be judged. It is the 'others' that are defined as ethnic. This includes Blacks, Hispanics, Jewish, Polish, Irish and so on.

The American understanding of ethnic group is problematic for at least two important reasons. First, there is nothing in the original understanding of the term which suggests that an ethnic group should be a minority. An ethnic group, in its original meaning, refers to a basic human category. The term applies both to the dominant group and to those that are usually referred as minority groups. Yoruba of Nigeria, Hutu of Rwanda, Baganda of Uganda, though numerically dominant, are still referred as an ethnic group as are the other numerically small cultural groups. An ethnic group need not be a subordinate part within a state. In fact, ethnic groups do not necessarily confine within a state. They may extend across several states, as do the Arabs. Secondly, the utilisation of the term ethnic group to any 'discernible minority' makes the distinction between various forms of identity at best ambiguous.⁶ This, however, does not mean that the term ethnic group has been given a precise definition.

A look at few definitions would reveal that the term ethnic group is definitionally chameleonic. In some cases, the term is used to refer to a small community with archaic characteristics. For others, myths of common ancestry are the defining feature of an ethnic group. Collectivities that share a myth of origin are also commonly referred as ethnic groups. The sharing of culture, and especially language, is also common to many definitions. Others emphasise the importance of historical memories.

Phandis and Ganquly, in their book, *Ethnicity and Nation building in South East Asia*, define an ethnic group as

⁶ Connor 1994: 43.

either a large or small group of people, in either backward or advanced societies, who are united by a common inherited culture (including language, music, food, dress, and customs and practices), racial similarity, common religion, and belief in common history and ancestry who exhibit a strong psychological sentiment of belonging to the group.⁷

By explicitly stating that the term ethnic group includes both small and large group of people, the authors are rejecting the American conception of ethnic group. They reject the view that the term ethnic group can be used to refer to minority groups only and not to the group that is dominant within the larger state. They have as well declined to accept the usual tendency of associating ethnic groups with backward societies. Ethnic group accordingly is not a phenomenon of backward societies but also industrialised societies. Difficult to accept is the fact that their definition suggests common religion as one of the defining features of an ethnic group. It is not clear if religion is essentially ethnic. It is submitted that with the advent of universalist world religions (i.e. Christianity and Islam) the latter has ceased to be ethnic specific. This has, for example, been the case in Africa. Once Africa has become home for diverse religions, many members of an ethnic group have abandoned their traditional beliefs and adopted either of these universalist world religions. There as a result developed in modern Africa a diversity of religion adherence with individuals, who otherwise belong to the same ethnic group, following different religions. This has taken away religion from the area of ethnic specificity. As Hasting notes, “Baganda Catholics might struggle bitterly with Baganda Protestants, but both were Baganda; even Baganda Muslims were Baganda”.⁸

⁷ Phandis and Ganquly 2001: 19.

⁸ Hasting 1997: 176.

Adrian Hasting provides a very detailed and descriptive definition of an ethnic group. For him, an ethnic group is defined by

...the common culture whereby a group of people share the basics of life – their cloth and clothes, the style of houses, the way they relate to domestic animals and to agricultural land, the essential work which shapes the functioning of a society and how roles are divided between men and women, the way hunting is organized, how murder and robbery are handled, the way defence is organised against threatening intruders, the way property and authority are handed on, the rituals of birth, marriage and death, the customs of courtship, the proverbs, songs, lullabies, shared history and myths, the belief in what follows death and in God, gods or other sprits. All of this as shared through a spoken language.⁹

For Hasting, it seems, common culture, shared history and myth and common language are the core features of an ethnic group. He later adds genetic unity as one of the essential elements of an ethnic group. The genetic unity, according to him, could be partly real, partly mythical. He attributes the survival of an ethnic group without territorial base, which is the case with the Jews and the Gypsies, to their “closest adherence to an original charter providing a distinct genetic unity”.¹⁰ This suggests that association with a specific territory is not, according to Hasting, one of ethnic attributes.

Smith, in his book, *National Identity*, defines an ethnic group as “named human populations with shared ancestry myths, histories and cultures,

⁹ Hasting 1997: 167.

¹⁰ Hasting 1997: 169.

having an association with a specific territory and a sense of solidarity”.¹¹ Smith, unlike Hasting, obviously makes reference to ‘an association with a specific territory’. As he makes it clear later when he discusses each attribute of an ethnic group, his reference to a specific homeland should not, however, be taken to mean that a community should actually reside in or be in possession of a certain territory to be regarded as an ethnic group. What matters for ethnic identification is not the actual possession but the attachment. Association to a certain land has thus a ‘mythical and subjective quality’. Smith makes mention of a collective proper name as one of ethnic attributes.

As the foregoing discussion on the definition of an ethnic group suggests, there is a wide divergence among academics regarding the precise definition of the term. Yet, one can also identify elements that are common to many definitions of an ethnic group. Among these are: culture shared by members of an ethnic group, common ancestry, common language, shared historical memories and association with a specific territory. Based on this, this thesis adopts a working definition which regards an ethnic group as a group of people who adhere to common origin, which may be real or myth, share one or more culture including language, belief in common history and consider a specific territory as their own homeland.

2.2 The nature of ethnicity

There is a general disagreement regarding the formation of ethnic identity and why it persists. Much ink is wasted by scholars trying to explain the phenomenon of ethnicity, the sense of belonging to an ethnic group. There are, generally speaking, two schools of thought on this subject: the primordialist school and the instrumentalist school.

¹¹ Smith 1991: 21.

2.2.1. The primordialist school

For a primordialist, ethnic identity is a biologically ‘given’ or ‘natural phenomenon’.¹² It is natural in a sense that it is “derived from a cultural interpretation of genealogical and non-genealogical descent among a certain group of people”.¹³ It is treated as given in human relations.¹⁴ It constitutes the relationship network which human individuals become a member by birth and thus through time acquire objective cultural attributes of the group, which often includes language, religion, customs and tradition, food, dress and music.¹⁵ Accordingly, the shared mutable and immutable qualities given at birth such as national origin, ancestry, mother language, shared history, traditions, values and symbols determine the sense of distinctiveness both for members of the group and for outsiders.¹⁶

According to the primordialist view of ethnicity, the emotive power of ethnic distinctions inevitably leads to political demand and conflicts.¹⁷ This view attributes conflicts to primordial ethnic passions. For a primordialist, “[p]eople are naturally emotionally attached to the ethnic group to which they belong and...this attachment necessarily implies feeling of antagonism towards other groups that sooner or later express themselves through violence and/or, in [multi-ethnic states], in movement towards

¹² Phandis and Garguly 2001: 23.

¹³ Cruz 1998: 168.

¹⁴ Esman 1994:10

¹⁵ Phandis and Garguly 2001: 23. The position that ethnicity is one of the ‘givens’ of human existence has received a new impetus from socio-biology which regards ethnicity as an extension of processes of genetic selection and inclusive fitness. See Smith 1991: 20.

¹⁶ Cruz 1998: 3.

¹⁷ Ghai 2001: 5.

independence”.¹⁸ Irrespective of state policy, this school argues, there is innate propensity among different ethnic groups to engage in conflicts. Human nature is thus behind the formation of ethnic identity. The inescapable conclusion is that conflicts are unavoidable in multi-ethnic states.

2.2.2. The instrumentalist school

The instrumentalist school of thought provides quite a different view of ethnicity. For this school of thought, ethnicity is far from being a natural phenomenon. It does not denote a fixed unchangeable characteristic. It is not a historical given at all. For proponents of this school, a human hand is behind the formation and maintenance of an ethnic identity. “[Ethnicity is] the product of processes which are embedded in human actions and choices...rather than biologically given ideas whose meaning is dictated by nature”.¹⁹ It especially emphasises the role of elites in the formation of ethnic identity. It, in fact, views ethnicity as the social and political creation of elites. With the primary objective of protecting and promoting political and economic advantage for their groups as well as themselves, elites, according to this view, select, distort, and sometimes fabricate materials from the cultures of the groups they wish to represent.²⁰

¹⁸ Diez-Medrando 2007: 22.

¹⁹ Phandis and Ganquly 201: 24. Some anthropologists go to the extent of suggesting that ethnicity can even be created and recreated at will. Some even attribute the creation of ethnicity to the work of anthropologists. “[E]thnicity is created by the analyst when he or she goes out into the world and poses questions about ethnicity” Eriksen 1993: 17. See also Banks 1997: 21.

²⁰ Phandis and Ganguly 2001: 26. History provides us with numerous cases where elites manipulate ethnicity to promote open and hidden political, economic and ideological interests. Fascinating accounts of manipulation by intellectuals and grammarians who invoke distorted versions of history or phonetics to advance

The malleability of ethnic identity constitutes the main argument of this position. It stresses that belonging to an ethnic group is not a natural phenomena but a matter of attitudes, perceptions and sentiments that are necessarily ephemeral and variable, changing with the particular situation of the subject.²¹ Ethnic boundaries shift over time. This is mainly attributed to the fact that ethnicity is considered as the function of actions and choices initiated or stimulated by external pressures.²² Roosens remarks that

[e]thnic self-affirmation or the ignoring or minimization of ethnic identity is always related in one way or another way to the defence of social or economic interests. Many people change their ethnic identity only if they can profit by doing so.²³

2.2.3. The synthesis

As it is clear from the foregoing discussion, the primordialist versus instrumentalist debate represents two extreme approaches to ethnicity. A primordialist considers ethnicity as an inborn feature of human identity. An instrumentalist, on the other hand, regards ethnicity as the work of individuals or groups who desire to achieve a certain goal and want to mobilise a group for that particular purpose. Both views of ethnicity are not without problems.

Let us start with the primordial concept of ethnicity. Being a view that considers ethnicity as combination of objective traits, a primordialist view of ethnicity would have to show that all members of a group share a

the political and economic interest of themselves or that of the group they claim to represent are plenteous.

²¹ Smith 1991: 20.

²² Roosens 1989: 13.

²³ Roosens 1989: 13.

distinctive trait. That is not, however, always possible. It is not uncommon to find out that there is no distinctive trait common to all the group members. Euskara is, for instance, considered as the language of the Basques. But not all Basques of Spain and France really speak Euskara; nor do all Catholics of Northern Ireland believe in Transubstantiation, the Assumption, and the infallibility of the Pope.²⁴ Of course, anthropologists would get around such difficulties by indicating that inter-ethnic marriages and other external influences result in individual members losing 'their genuine identity'. By doing so, they would, however, only be describing the "presumed characteristics of the unadulterated [ethnic] type"²⁵ rather than the actual characteristics of all group members.

There is, on the other hand, considerable truth to the view that ethnic identity is malleable. Ethnic identity is not a fixed unchangeable characteristic. This has mainly to do with the fact that those elements that define an ethnic group have strong subjective components thus making it possible to change the contents of one's ethnic identity. One such important attribute of an ethnic group, as indicated earlier, is common origin. This particular attribute renders an ethnic group more like one titanic family tied by a common ancestry. However, as it is always quickly pointed out, it is not always clear if there is really a common ancestor from which all members of the ethnic group descend to. More often than not this claim for a common ancestry turns out to be a myth rather than any fact of ancestry. Fictive descent and putative ancestry give most ethnic groups the impetus to continue living together as one huge family.²⁶ Identity is thus often

²⁴ Lagerspetz 2004: 1311.

²⁵ Lagerspetz 2004: 1311.

²⁶ This is not, however, a problem. It is myths of common ancestry, not any fact of ancestry (which is usually difficult to ascertain) that matters for the sense of ethnic identification. Fictive descent and putative ancestry have proven to be crucial.

presumed than objectively established. Hence, the strong subjective nature of this specific attribute of ethnicity. A subjective component is also very much alive in the ethnic attribute that associates members of an ethnic group with a specific stretches of territory. As it is the case with common ancestry, an attachment to a specific homeland could have a mythical and subjective component.²⁷ As indicated earlier, it is also agreed by many that it is this attachment and associations rather than residence in or possession of the land that matters for ethnic identification.²⁸ This, as indicated earlier, is especially true for ethnic diaspora communities²⁹ like the Jews and Armenians.

Subjective view or attitude, due to its very nature, is liable to change. The fact that subjectivity characterises most attributes of ethnicity suggests “the

²⁷ Smith 1991: 23.

²⁸ Smith 1991: 23.

²⁹ Ethnic groups can be of two distinct types: homelands societies and diaspora communities. Those ethnic groups that are the long-time occupants of a particular territory and thereby claim an exclusive as well as a moral right to rule it are considered as homeland societies. On the other hand, those ethnic communities, who as a result of population migration caused mainly by oppression in their home state and/or by the attraction of better economic prospects and opportunities, are found in foreign countries, are considered as ethnic diaspora communities. The political objective of these two groups is also very different. While ethnic homeland societies can claim territorial autonomy, ethnic diaspora communities cannot claim territorial control in foreign state. Rather they can only normally demand “non-discriminatory participation as individuals in public affairs, voting, office holding, access to justice –plus non-discriminatory access to education, employment, housing, business opportunities and public services; and official recognition of their right to maintain institutions that perpetuate elements of their inherited culture” (Phandis and Ganquly 2001: 5). In this study, unless otherwise explicitly stated, the usage of the term ethnic group is restricted to homeland societies.

shifting nature of ethnic boundaries and the malleability, within certain limits, of their members' cultural identity".³⁰ The holder of a subjective view may either change the hierarchy it gives to the different cultural markers or may choose to pick and assert as identity distinction a certain identity in a situation where multiple identities co-exist adjacently. Take, for example, the case of Bangladesh. The majority of the populations in the former East Pakistan were Muslims as well as Bengalis. When British India was partitioned in 1947, the people of the present day Bangladesh opted to join Pakistan thus asserting their Muslim identity over their Bengali identity. However, as their discontent within Pakistan grew and led to the formation of a liberation movement, they stressed their Bengali identity to justify their political secession from the rest of Pakistan.³¹ What this says is that the significance that members of an ethnic group attach to each attribute changes from time to time for various reasons. To the extent that this happens, one will also be able to witness a change in the cohesion and self awareness of the community as well as the content of an ethnic group. In exceptional cases this may even entail a shift in the boundary of an ethnic group. Smith has the following to say in this regard:

As the subjective significance of each of these attributes waxes and wanes for the members of a community, so does the cohesion and self-awareness of that community's membership. As these several attributes come together and become more intense and salient, so does the sense of ethnic identity and, with it, of ethnic community. Conversely each of these attributes is attenuated and declines, so does the overall sense of ethnicity, and hence the *ethnie* itself would dissolve or be absorbed.³²

³⁰ Smith 1991: 24.

³¹ Phandis and Ganquly 2001: 26.

³² Smith 1991: 23.

One should, however, be cautious of overstating the changeability of ethnic boundaries or the fluidity of their cultural contents. There are limits to the process of constructing ethnic identities. As Norval notes, identities are not fungible in the sense that they can be “picked and chosen as if from a supermarket shelf”.³³ It must also be noted that ethnicity does not come out of thin air just to assert or protect political or economic interest. More often than not there is some pre-existing form of cultural identity upon which ethnicity is built and, when the conditions are ripe, it is based on this pre-existing form of cultural identity that it establishes itself. It is only when we understand ethnicity as such that we can account for the continued existence of ethnic bonds in particular instances. Overstating the instrumentality of ethnicity also renders it difficult to account for the original crystallisation of ethnic identity.³⁴

The view that is adopted here thus lies somewhere between these two extreme theories of ethnicity. It is submitted that bonds derived from myths of descent provide the bedrock for the initial formation of ethnic identity. This, however, does not mean that the contents of ethnic identity cannot be changed or modified.³⁵ As anthropologist Hull observes:

Cultural identities come from somewhere, have stories. But like everything, which is historical, they undergo constant transformation. Far from being externally fixed in some essentialised past they are subject to continuous play of history, culture and power. Far from being grounded in a sense of ourselves into eternity, identities are the names we

³³ Norval 1999: 81–100.

³⁴ Banks 1997: 34. See also Smith 1991: 23 – 25.

³⁵ Cruz 1998: 169 – 170.

give to the different ways we are positioned by, and position ourselves within, the narratives of the past.³⁶

The view that is adopted here, therefore, rejects a simplistic instrumentalism. It refuses to accept that elites and political agents can simply manipulate identities in any way it pleases them. It, however, concedes that ethnic identities can be shaped by social, economic and political processes. That especially happens in the context of state policies and state action, inter-group rivalry and state resource competition. Studies in Africa and South East Asia have often demonstrated that ethnic consciousness is a frequent result of oppression by the state or the majority community. The contingencies of historical, social and political processes through which the images for identification are sustained, contested and negotiated need therefore be emphasised.

Ethnic identity is mobilised by political agents to demand greater concessions and share in power and authority. This is often manifested in the form of ethnic movements. The focus and aspiration of such movements may include a basic demand for the recognition of the identity of the group they claim to represent or autonomy within some form of a counter-

³⁶ This is also where Smith's understanding of ethnicity becomes relevant. Smith adopts the approach that stresses the historical and symbolic-cultural attributes of ethnic identity. Smith's (1991:20) conception of ethnicity considers such collectivities as "doubly 'historical' in the sense that not only are historical memories essential to their continuance but each such ethnic group is the product of specific historical forces and is therefore subject to historical change and dissolution". A similar explanation is suggested by Kellas (1991: 8) who regard the human nature as a necessary but not sufficient condition for the emergence of ethnicity. According to him, "sufficient conditions" relating to ethnicity go beyond "human nature". He locates the explanations for the development of ethnicity in any particular case in the contingencies of history.

majoritarian settlement including a demand for ethnic territorial autonomy within a federal frame. An ethnic movement, however, poses a serious challenge to the state when it demands the creation of a state of its own. This brings the question when and how an ethnic group turns into a nation and ethnicity gives rise to a nationalist movement. It is this issue that the next section addresses. This, however, requires a need to clarify the confusion surrounding the terms nation and state. We thus start the following section by defining the term nation.

3. Nation

The term nation, an anthropological concept, comes from the Latin word *nasci*, which can roughly be translated to mean to be born.³⁷ It generally connotes a community of people with “a consciousness of belonging together”.³⁸ The word has, however, come to mean different things through time. Back in the medieval times, a university student’s *nationem* refers to the specific part of the country from which the student came. Even in the early 17th century,³⁹ it was still being used to describe the inhabitants of a country notwithstanding the diversity of the population’s ethnic composition. That in a way made ‘nation’ synonymous with the people or the citizenry. This misuse of the term nation as referring to the people or citizenry still continues to the present day.⁴⁰

A number of scholars have attempted to define the term nation. There simply is no agreement on how we are to define a nation or even how one should go about identifying one. Ernest Renan, in his famous lecture,

³⁷ Jenkin 1997. See also Rudolph 1971: 2.

³⁸ Rudolph 1971: 2.

³⁹ Even in the early 17th century, no strong relation was made between a nation that one belongs to and one’s ethnic group. See Connor 1999: 38.

⁴⁰ Connor 1999: 38.

“Qu’est – ce qu’une nation?” provides us with a spiritual view of a nation. He states that a nation is in essence a ‘soul’, a spiritual principle, a kind of moral conscience. He considers a nation to be “a large scale solidarity, constituted by the feeling of sacrifices that one has made in the past and of those one is prepared to make in the future.”⁴¹ Written in the wake of the Franco–Prussian War of 1870–1871, his writing is often considered as a political statement. Being a French liberal nationalist, Renan was dismayed over the loss of Alsace-Lorraine to Germany on the ground that the territory was objectively part of the Reich. Renan argued that what is important is the people’s day to day commitment to the territory in which they were governed. This is what he referred as the “daily plebiscite” of the nation’s existence: “a great aggregation of man [sic] with a healthy spirit and warmth of heart creates a moral conscience which is called a nation”.⁴²

This conceptualisation of the nation as a ‘moral conscience’ has some semblance with Benedict Anderson’s famous definition of the nation as “an imagined political community”.⁴³ Anderson’s definition of the nation as “an imagined political community”, which has come to be the dominant definition by the 1990s, adopts, like Renan, a spiritual view of a nation. He considers a nation to be an imagined community because members of even the smallest nation do not and will never know their fellow members “yet in the minds of each member lives the image of their communion”.⁴⁴

Anderson’s criticism of Ernest Gellner’s claim that nationalism “invents nations where they do not exist” sheds more light on his definition of the

⁴¹ McCrone 1998: 5.

⁴² McCrone 1998: 5.

⁴³ Anderson 1991: 6.

⁴⁴ Anderson 1991: 6.

nation as an “imagined community”.⁴⁵ Gellner, argues Anderson, incorrectly equates ‘invention’ with ‘fabrication’ and ‘falsity’ rather than with ‘imagining’ and ‘creation’. This is a very important distinction. By clearly differentiating his position from that of Gellner, Anderson is making the point that the nation is ‘imagined’ and not ‘imaginary’. The latter implies a community that may not exist in fact, a community built on ‘falsity and fabrication’. It represents a community whose claims concerning its existence depend on a fallacious description of feeling and perceptions shared by members. The existence of imagined community is, on the other hand, a social fact.

Tamir criticises Anderson’s definition of the nation as “trivial” and “uninformative”.⁴⁶ Her main criticism centers on the fact that Anderson conditions the existence of an imagined community on the likelihood of face-to-face encounter among its members. If what makes a community an imagined community is the likelihood of face-to-face contact among its members, Tamir argues, all human associations could be considered as imagined communities. She attempts to illustrate this problem by making reference to a family. One obviously cannot meet all present members of his or her family. Even if that is possible, one cannot still be considered to have met the whole family as the image of one’s family is created not only through face-to-face contact with its present members but also through the awareness of the existence of former generations. Based on Anderson’s concept of an imagined community, she argues, there is no reason why we should not consider a family as an imagined community. We should thus note, following Anderson’s definition, that there is likelihood that even the smallest social groups can be considered as imagined communities. That

⁴⁵ Anderson 1991: 6.

⁴⁶ Tamir 2004: 345.

makes Anderson's definition, she concludes, unhelpful as it would not assist us in distinguishing a nation from other kinds of social groups.

It is not, however, clear when Anderson refers to the likelihood of face-to-face-contact as a condition to an imagined community that he was merely referring just to that physical impossibility or unfeasibility of face-to-face-encounters. A careful examination of Anderson's definition would reveal that this is nothing but a simplification of his definition of the nation. Of course, the size of a community shouldn't matter if a community is to be considered as an imagined community and thus a nation. By pointing out the absence of face-to-face encounter among members and yet indicating the presence of an image of the communion in each of its members, Anderson was only emphasising the psychological bond that sustains a nation. He was stressing the feeling of communion that exists among its members. The absence of face-to-face encounter is mentioned only to highlight how strong the feeling of belongingness is among the members of a nation. As Anderson himself points it out, a nation is imagined because it is conceived "as a deep, horizontal comradeship".⁴⁷

A look at other definitions of a nation would, in fact, show that a strong psychological bond that joins all members is the most defining feature of a nation. Tamir, for instance, talks about a "national consciousness fostering feelings of belongingness and national fraternity as the paramount common denominator of all nations".⁴⁸ Rudolph claims that nations are identifiable primarily by psychological or attitudinal criteria.⁴⁹ Hasting similarly puts

⁴⁷ Anderson 1991: 7.

⁴⁸ As quoted in Connor 1999: 37.

⁴⁹ Rudolph 1971:2.

horizontal comradeship at the center of what constitutes a nation.⁵⁰ For Connor, “the essence of a nation is a psychological bond that joins a people and differentiates it, in the subconscious conviction of its members, from all other people in a most vital way”.⁵¹

The emphasis on the presence of a psychological bond begs the question of the relevance of objective factors in sustaining a sense of national identity. It brings forth the question whether nations have objective bases at all. Some of the definitions provided by prominent scholars on the subject seem to suggest a positive response. In *National Identity*, Smith argues that a nation is a “named human population sharing an historic territory, common myths and historical memories, a mass public culture, a common economy and common legal rights and duties for all members”.⁵² From this definition, one can point out a number of objective factors that Smith considers necessary to sustain a sense of national identity. He, for example, deems it necessary for individuals to share historic territory, a common economy and common legal rights and duties. Adrian Hasting as well stresses a territorial and cultural element in his definition of a nation when he refers to “a historico–cultural community with a territory it regards as its own and over which it claims some sort of sovereignty”.⁵³ Others put emphasis on common language and territory as sufficient basis to maintain a sense of common national identity.

On the other hand, scholars like Renan and Anderson discounted the “objective” bases of a nation. For them, nations are not the determinate products of given sociological conditions such as language or race. Renan

⁵⁰ Hasting 1997.

⁵¹ Hasting 1997: 36.

⁵² Smith 1991: 14.

⁵³ Hasting 1997: 25.

had even ridiculed the blood definition: “One does not have the right to go through the world fingering people’s skulls and taking them by the throat saying: ‘you are of our blood; you belong to us!’”.⁵⁴ For Max Weber, neither can the fact that people speak the same language make them members of the same nation. Tamir, when criticising Smith’s definition of a nation, argues that conditions like the sharing of a common territory and even historical memories do not necessarily guarantee the development of a national identity.⁵⁵ For most of these scholars, there is more to nationalism than the mere presence of objective traits shared by all members of a community.

It is true that the mere presence of objective factors like language, religion, culture or historical experiences do not necessarily imply the existence of nationhood. Common language is often insufficient to sustain a sense of national identity.⁵⁶ Renan was also correct in suggesting that shared blood is not a sufficient factor for the establishment of a nation. There is enough evidence to suggest that most groups claiming nationhood do in fact incorporate several genetic strains.⁵⁷ Neither can religion supply a sufficient basis for nationalism despite its ideological power.⁵⁸ A good example in this regard is the case of Bangladesh and Pakistan. The fact that both share the same religion was not obviously good enough to establish a strong psychological bond and thus remain belonging to the same nation. A shared

⁵⁴ McCrone 1998: 4.

⁵⁵ Yael 2004.

⁵⁶ Weber 1978: 395.

⁵⁷ Of course, one may argue that the fact that the groups claiming nationhood have genetic strains doesn’t really matter as long as they believe they descend from a common ancestor. In analyzing socio-political situations, what ultimately matters is not what is but what people believe is (Connor 1999: 37).

⁵⁸ Rudolph 1971: 3.

territory under a common government sharing economic and legal systems does not also necessarily result in the development of a common national identity as attested by the political reality in Canada, Belgium, the former Yugoslavia, and Czechoslovakia.

We should not, however, be dismissive of the relevance of these objective factors to the development of a common national identity. Their contribution cannot be denied. What one rather needs to be cautioned against is from exaggerating the isolated effects of these objective factors. It is the combination of several kinds of objective relationships that contribute to “the development of the psychological phenomenon we speak of as unifying sense of nationhood among people”.⁵⁹ Rudolph has captured the contribution of objective factors scrupulously when he stated that the subjective facet (i.e. the psychological bond that glues individuals together in the spirit of belonging to one nation) is largely a function of objective factors.⁶⁰ After all, how can one distinguish a nation from other social groups like women, homosexuals and the like who as well share a strong psychological bond if it is not for the objective factors.

Objective factors that play an important role in making a nation in a particular case may not have that same effect in other scenarios, may not even exist at all or may play a divisive role. “Many of these [objective factors] could be mutually substitutable – some playing a particularly important role in one nation–building process, and no more than a subsidiary part in others”.⁶¹ Living together in the same territory, as

⁵⁹ Rudolph 1971: 3.

⁶⁰ The more of these attributes a given population possesses or shares, the more likely that the phenomenal psychological bond that we have been referring to shall emerge.

⁶¹ Hroch 1996: 61.

mentioned earlier, did not result in the development of common national identity in Canada and Belgium. On the contrary, the Scottish nationalism is based on living in a common territory despite “clear and abiding social, religious and geographical differences”.⁶²

What then is a nation? It is hardly possible to provide a hard and fast definition of a nation.⁶³ For the purpose of this thesis, however, a nation, broadly speaking, is primarily defined by the strong psychological bond that exists among members of a community. Members of a nation share a feeling of unity and substantial distinctiveness. Members are united in a sense that individuals see themselves affiliated with and committed to other members. Their sense of unity is also manifested in the fact that they see themselves as sharing a common destiny. Their sense of distinctiveness can be attributed to a combined effect of objective traits which may include a belief in separate origin/evolution, historical memories and/or linguistic and cultural ties. There also exists among members of a nation a shared feeling of exclusivity. National identity is therefore, a combination of both strong psychological bond that exists among members of a community and objective attributes.

3.1 Distinguishing a nation from an ethnic group

What then distinguishes a nation from an ethnic group? The basic, and for our purpose, the most important distinction between an ethnic group and a nation lies in the fact that the latter harbours ‘political and statist ideas’. The development of political and statist ideas within an ethnic group transforms

⁶² Smout 1994. See also Hroch 1996: 61.

⁶³ Tamir (1993:68) aptly states that “there is no satisfactory answer to this question, nor can we draw more rigorous boundaries. Greater precision, if at all possible, would force us to overlook the immense variety of social phenomena laying claim to the title “nation””.

the latter into a nation. Establishing an independent statehood is not, for example, the ambition of an ethnic group. The moment an ethnic group starts to project an ambition to establish an independent statehood, it ceases to be considered as an ethnic group.

The distinction mark of [a nation] by definition is its relationship to the state. A nationalist holds that political boundaries should be coterminous with cultural boundaries, whereas many ethnic groups do not demand command over the state. When the political leader of an ethnic movement makes demands to that effect, the ethnic movement therefore by definition becomes a nationalist movement.⁶⁴

The desire to establish an independent statehood is thus the most important distinguishing feature of a nation. It is, however, important to note that it is not necessary for an ethnic group to claim a state of its own in order to achieve the status of nationhood. If an ethnic group seeks some form of autonomy or self-government, then it has transformed into a nation.⁶⁵

As the title suggests, this thesis has opted to use the term ‘ethnic diversity’. This stems from the objective of this study, namely how ethnically diverse states like Ethiopia and South Africa deal with their ethnic diversity irrespective of the fact that the ethnic communities that inhabit the country have developed a political agenda or not. The focus of this study is not confined to a state’s reaction to an ethnic claim but also how a state can ensure or maintain that ethnic differences do not translate into political divide. Thus, ethnic diversity is used in this thesis broadly to refer to ethnic

⁶⁴ Eriksen 1993:30. See also Ghai 2001: 5.

⁶⁵ Brass 1991.

communities that have not developed political agenda as well as those that are politically mobilised and can thus be regarded as nations.

3.2 Nation and state distinguished

The term nation is also often confused with the term state. The two terms are used interchangeably. The one is considered as synonym for the other. It is not clear how this inter-utilisation of the terms nation and state has developed. Some scholars trace it back to the developments that unfolded in the late seventeenth century. They specifically relate it to the spread of the doctrine of popular sovereignty owing to the writings of John Locke. At the heart of this doctrine is the belief that all power emanates from the people. It identifies the people as the source of all political power. This revolutionary doctrine made the people and the state almost synonymous. “*L’etat c’est moi* become *l’etat c’est le peuple*”.⁶⁶ And owing to the misunderstanding of a nation as the people or the citizenry, the terms nation and state has consequently come to mean the same thing. Hence why the French Declaration of Rights of Man and Citizen proclaimed that “the source of all sovereignty resides essentially in the nation; no group, no individual may exercise authority not emanating expressly therefrom”.⁶⁷

There is, however, a difference between the two terms. The state represents the major political subdivision of the globe.⁶⁸ It is the territorial juridical unit, a legal concept “describing social group that occupies a defined territory and is organized under common political institutions and an effective government”.⁶⁹ It can thus be easily conceptualised in quantitative terms. Unlike the state, the intangible nature of a nation makes the latter

⁶⁶ Connor 2001: 38.

⁶⁷ Connor 2001: 39.

⁶⁸ Connor 1999: 36.

⁶⁹ Phandis and Ganquly 2001: 20.

difficult to define and conceptualise. A nation, as indicated earlier, is a self-conscious community characterised by a strong psychological bond that joins its members.

What is intriguing is that the habit of inter-utilising nation and state developed despite the fact that there is a frequent usage of the term nation-state. It is intriguing because the very fact of using the term nation-state illustrates an appreciation of the vital difference between the two terms. The term nation –state is designed to describe a territorial–political unit (a state) whose borders coincided or nearly coincided with the territorial distribution of a national group.⁷⁰ In a nation–state, the cultural (nation) and the political (state) are in alignment. The ‘people’ who are governed by the institutions of the state are by and large culturally homogeneous in having a strong and common linguistic, religious and symbolic identity.⁷¹ It is, in short, a term which is developed to express a state of affairs in which a nation has its own state.⁷²

⁷⁰ Phandis and Ganquly 2001: 39.

⁷¹ McCrone 1998: 7.

⁷² In a case where nation and state coincide, the state is perceived as the political extension of the nation. In such situation, appeal to one trigger the identical, positive psychological response as appeals to the other. “To ask a Japanese Kamikaze pilot or a banzai–charge participant whether he was about to die for Nippon or for the Nipponese people would be an incomprehensible query since the two blurred into an inseparable world. Hitler could variously make his appeals to the German people in the name of state (Deutsches Reich), nation (Volksdeutsch) or homeland (Deutschland), because all triggered the same emotional associations” (Connor 1999: 40). Similar responses can be elicited from members of a nation that is clearly predominant within a state. But the invoking of such symbols has quite a different impact upon other ethnic groups in the particular state. Thus, “‘mother Russia’ evokes one type of response from a Russian and something quite different from a Ukrainian” (Connor 1999: 40).

The nation–state that combines one state with one nation is often regarded as optimal and ideal.⁷³ A survey of all the countries around the world would, however, reveal that only very few of them qualify as nation–states. Connor points out that only less than 10 per cent of the states around the globe can be considered as nation–states.⁷⁴ Another scholar, Charles Tilly, states the same thing about countries in Europe. He claims that very few European states qualify as nation–states. Even in those states, which have a nation or potential nation accounting for more than 90% of the state’s total population, there is often an important minority. In many others, the largest ethnic element accounts for 50% to 74% of the population or for less than half of the population. This says the ‘state’ rarely coincides with the ‘nation’. That is why the existence of a nation–state is often considered a dream as much as a reality.⁷⁵

Had the world been composed of nation-states, there would have been no problem in the inter-utilisation of the term nation and state.⁷⁶ That unfortunately has not been the case though the world is often described as one of nation-states. As the section that follows shortly reveals, neither has the inherent tendency of most ethnically plural states to transform into a nation–state has become a reality. In fact, the root problem of conflict-riven multi-ethnic states often lies, as the following section argues, in this propensity to transform an ethnically diverse state into a homogenised entity, a nation-state.

⁷³ Neuberger 1994: 233- 234.

⁷⁴ Connor 1999.

⁷⁵ Hasting 1997: 3.

⁷⁶ Connor 1999: 40.

4. The illusion of nation-state building

If a state is ethnically plural, there are, broadly speaking, two options that it might wish to follow. One approach is to disregard the ethnic mosaic feature of the state and attempt to develop a single national identity along a single culture or ideology that transcends ethnic differences. This would be a decision to create a single national identity, a mono-cultural society. The other option is to embrace the ethnic diversity of the state. The state in this case can choose to promote a harmonious coexistence of separate ethnic groups. Until very recently, states, in all parts of the globe, have adhered to the first option and sought to establish nation-states.

The dominant streams of European thought considered the unitary, unfragmented nation as the ideal, the optimal state form. Diverse nationhood was considered as almost invariably negative due to its allegedly disruptive and centrifugal nature.⁷⁷ The states sought to promote cultural universalism within their boundaries as means of extending their legitimacy. The western European core regions attempted to impose a single language, religion, and - in the broadest possible sense - culture upon all of their subjects.⁷⁸ This is despite the fact that many of these European countries contain diverse ethnic groups like the Catalans and Basques in Spain, the Flemish and Walloons in Belgium, the Scots and Welsh in Britain, the Corsicans and Bretons in France,

The situation is more or less the same in Africa, if not worse. Confronted with the complex problems of maintaining the territorial integrity of the newly independent but deeply divided states they inherited from the departing colonial powers, African leaders sought to establish nation-

⁷⁷ Okafor 2000: 523.

⁷⁸ Hechter and Levi 1993:186.

states.⁷⁹ They thought recognising and cultivating the ethnic diversity that defines the basic feature of their society would give rise to divisive politics, instability and disintegration. The homogenisation of intra-state ethnic differences was thus their main preoccupation. “Kill the tribe to build the nation”⁸⁰ was their motto. As Neuberger has put it, this was the major preoccupation of the leaders of post-colonial Africa:

Zambia’s President Kaunda said that ‘our aim has been to create genuine nations from the sprawling artifacts the colonialists carved out’. Cameroon’s president Ahidjo sees the institution of the state as a means to achieve nationhood. For him, ‘*L’integration nationale c’est l’adaptation des cityones aux differentes structures d’Etat*’. The same is true of Senghor who writes, ‘The state is ...primarily a means to achieve the nation’⁸¹

At the center of the nation-building process of many of these states, be it in Europe, Africa or Asia, has been a policy that promotes unity at the expense of ethnic diversity. This has taken many forms. In some cases, it has taken the form of what is often referred to as the ‘ostrich response’.⁸² Here the state attempts to eliminate differences by presenting itself as a mono-cultural state. This involves a denial on the part of the state that there are, for instance, linguistic minorities in its territory. That, in fact, is the policy France adopted in relation to its linguistic minorities. Despite the fact that there are a number of regional languages within its borders, France, when

⁷⁹ Okafor 2000: 512.

⁸⁰ This is the famous slogan of FRELIMO, a national liberation movement in Mozambique.

⁸¹ Neuberger 1994: 235.

⁸² Addis 2001: 736.

signing the *European Charter of Regional and Minority Languages*, declared that it has no linguistic minorities within its jurisdiction.⁸³

In other instances, repression has taken the form of building national identity based on a putative majority ethnic identity. Such practices include attempts to suppress the voices of a distinct ethnic group or to suppress ethnic groups economically, politically, culturally, and/or linguistically. The French state has historically erected numerous legal and administrative barriers to the maintenance of the Breton language and culture. French is the only official language for teaching and governmental business.⁸⁴ Numerous state institutions such as universal conscription were also designed to create a common French identity and to be robustly assimilative.⁸⁵ In many other western democracies, an attempt were also made to erode the sense of distinctiveness claimed by ethnic groups by “abolishing traditional forms of local or regional self-government, and encouraging members of the dominant group to settle in the minority group’s traditional territory so that the minority becomes outnumbered even in its traditional territory”.⁸⁶ The situation is the same in most multi-ethnic states both in Africa and Asia.

The coerced nation building project has seldom succeeded. The attempts to build a common national identity through large centralised states have not

⁸³ Addis 2001: 730.

⁸⁴ Hechter and Levi 1993: 189. In addition to facilitating communication across communities, a single national language is often regarded as an instrument to promote unity. Some, on the other hand, decline the demands of an ethnic group for an official recognition of minority languages on the ground that multilingual states should work towards monolingualism as it facilitates economic growth by ensuring efficiency (Lowrey 1992: 726).

⁸⁵ Linz, Stephan and Yadav 2004: 1.

⁸⁶ Kymlicka 2005: 2.

been able to produce the desired result. Neither has it brought political stability and economic development to most of these ethnically plural states. States that have attempted to impose the language and culture of the majority group have often engendered a violent reaction. Many have seen the proliferation of ethnic nationalist movements. In some cases, this has taken the form of armed uprisings. The political mobilisation of ethnic communities giving rise to conflicts organised and waged along ethnic lines have become a widespread phenomena. Countries, in which ethnic groups are waging collective action against the state seeking either 'equity' or a state of their own

are to be found in Africa (for example, Ethiopia) Asia (Sri Lanka), Eastern Europe (Romania), Western Europe (France), North America (Guatemala), South America (Guyana), and Oceania (New Zealand). The list include countries that are old (United Kingdom) as well as new (Bangladesh), large (Indonesia) as well as small (Fiji), rich (Canada) as well as poor (Pakistan), authoritarian (Sudan) as well as democratic (Belgium), Marxist-Leninist (China) as well as militantly anti-Marxist (Turkey). The list also includes countries which are Buddhist (Burma), Christian (Spain), Moslem (Iran), Hindu (India) and Judaic (Israel)⁸⁷

We have specially witnessed an increasing number of ethnic conflicts in the closing decades of the 20th century. By the 1990s 'ethnic' conflicts had broken out in many countries around the world. The collapse of communism in the former Soviet Union was followed by pockets of ethnic conflict in Eastern Europe. In some cases, the conflicts have resulted in the partition of larger states with new smaller states joining the United Nations. It was during this same period of time that humanity witnessed the

⁸⁷ Connor 1999: 163-164. See also Kymlicka 2004:1.

Rwandan genocide that took the lives of close to one million people in only one hundred days. It was also then that a new word, 'ethnic cleansing', made it into the English vocabulary.⁸⁸ "[Ethnic] nationalism", it is said, "had joined the ranks of the Undead."⁸⁹

To sum up, a policy that pursues national unity at the expense of ethnic diversity has seldom succeeded. Leaders of these states, under the guise of national unity and development, developed an ethnocratic state, a state which is controlled by one or some ethnic groups and predicated on the subjugation of others. Far from attaining its desired objective of creating an ethnically monochrome state, it has been the reason for the proliferation of ethnic-based movements. The experience of multi-ethnic states generally suggests that states should move away from this artificial nation-state building project. There is, however, little agreement on the path that these states must take in order to tackle the challenges of ethnic diversity. Some suggests political divorce or secession as the answer to the ethnic turmoil that characterises many of these states. Others advise these states to rely on universal individual rights. The succeeding sections examine the effectualness of these two alternatives.

5. Political divorce as a response to the challenges of ethnic diversity

Some point out to the ethnic tensions and conflicts that have permeated multi-ethnic states for decades and suggest political divorce as the ultimate solution. For these groups of scholars and politicians, the difference is unmanageable. They thus recommend separation. Despite the fact that this

⁸⁸ McCrone 1998: 2.

⁸⁹ McCrone 1998: 2.

option seems to represent ‘a simpler and tidier solution’, there is no guarantee that it addresses the problem of ethnic diversity effectively.

First, secession seems to be a presumptuous response as it assumes that all ethnic groups within a state want to go their own way. It presumes that establishing an independent statehood is the ambition of all ethnic movements that represent or claim to represent the interests of marginalised ethnic groups. Yet it is not at all clear if political divorce is the first priority of all communities as some might forgo secession in favor of securing a substantial measure of self government within a larger and stronger accommodative state or some form of recognition of their identity within a larger political partnership.⁹⁰ Moreover, separation may only be an appropriate response after examining other options and only if it appears that “there is no possibility of the various [ethnic] groups getting along and a group may have good reasons to believe that the statehood is its only security”.⁹¹ Otherwise, it would just simply be a knee-jerk response. This suggests that political divorce should be considered only as a last resort.

One should also note the border crisis that may ensue if one simply accepts political divorce as a solution to the challenges that ethnic diversity poses to ethnically plural states. This would, for example, be the case in Africa where countries are the result of a haphazard and arbitrary boundary making that was engineered by the colonisers. As a result, many of these countries

⁹⁰ The recent development in Sudan can be instructive in this regard. The Southern Peoples Liberation Movement (SPLM) has renewed its commitment to fight for ‘a united country on a new basis’ rather than independence for the south. The matter, however, is yet to be settled by a referendum. See a report by BBC ‘Kirr wants to keep Sudan united’ available at <http://news.bbc.co.uk/2/hi/africa/4144142.stm>, accessed on 12 December 2005.

⁹¹ Lowrey 1992: 733.

have incorporated a significant number of ethnic groups. Thus, if political divorce is the recommended prescription for ethnic diversity, the map of the continent would have to be significantly redrawn. It would not be difficult to imagine how this could easily give rise to protracted border crisis in countries like Nigeria that alone contains more than two hundred distinct ethnic groups. Added to this is also the non-viability of small ethnic states that may emerge as a result of the redrawing of the map of the continent.

There are, of course, scholars like Okechukwu Oko⁹² who strongly believe that this is the only way out if Africa is to experience peace and stability. The problem with this view is that there is even no guarantee that peace and stability will necessarily follow any ambitious project that attempts to redesign the map of the continent. The redrawing may make most groups a majority in their own houses thus allowing them to exercise their rights to self government. It is, however, more likely that the redrawing may still leave a small pocket of ethnic groups within the newly established states as it does not necessarily give ethnic groups an ethnically macrocosm state unless followed by ethnic cleansing. This means political divorce would only transfer the locus of ethnic conflicts. The impossibility of having neatly divided ethnic groups even after a complete redrawing of the map of the continent (unless through ethnic cleansing) therefore works against the viability of the secession option.

The international community is as well very reluctant to countenance secession as the solution for ethnically fractured states. Motivated by the need for maintaining the stability of world order, the international community clearly favours counter majoritarian political settlements over political divorces as a political prescription for ethnic conflicts as the latter

⁹² Oko 1998: 317.

results in shifts in international boundaries. The United Nations and The European Union, for example, insisted on the territorial integrity of Bosnia. One major product of the Dayton–Paris Accords was the establishment of a constitutional framework that offers substantial territorial and political autonomy to members of the three largest ethnic groups.⁹³ Similarly, in Georgia, U.N. mediators have proposed that the civil war launched by Abkhazian separatists be settled by drafting a new constitution that would offer the Abkhazians substantial local autonomy and a veto over central government actions that directly affect Abkhazian interests.⁹⁴

6. The individual rights approach

The problem with the secession option redirects one to look for responses to the challenges of ethnic diversity within the internal framework of the state. As indicated above, one such alternative that states have adopted to deal with the challenges of ethnic diversity is to constitutionally guarantee universal individual rights irrespective of ethnic, gender, race and other group memberships. This individualistic approach, some argue, goes a long way to in terms of responding to the challenges of ethnic diversity. This section turns on this particular approach and discusses the basic premises of the individualist liberal position with regard to the challenges of ethnic diversity.

6.1. The individual rights approach and the multi-ethnic challenge

A traditional liberal democracy treats citizens as individuals. It ascribes certain fundamental freedoms to each individual. The group to which the individual belongs to is irrelevant. Groups are merely a “collection of

⁹³ Kelly 2002: 252.

⁹⁴ See generally Chirikba 1998.

individual agents, an aggregation of the constituent parts”.⁹⁵ In fact, the classical liberalism considers the individual as the ultimate agent of action. It accordingly attaches a moral right only to that agent. According to this strand of liberalism, rights should only be seen in individual terms.⁹⁶ The individual, for example, has the right to use the language of his or her own choice. This he or she can do alone or in association with others.

Furthermore, a liberal democracy imposes on the state a negative duty. The government, according to this liberal position, has only the duty to respect and protect the rights of the individual. This means the state should only refrain from interfering directly or indirectly with the enjoyment of the right. With respect to rights related to ethnic relationships, this imposes on the state the duty to respect, among other things, the rights of the individual to use his language or exercise his culture alone or in any form of association with others. The state should not also discriminate against anyone based on language, religion or the way of life that one follows as a result of his or her association with a certain ethnic or national group.⁹⁷ No positive obligation is, however, imposed on the state. The state, for example, is not obliged to officially recognise, affirm or materially support any culture or language.⁹⁸ As aptly noted by Addis,

⁹⁵ Addis 2001: 736.

⁹⁶ Addis 2001: 736.

⁹⁷ This non – discrimination principle applies when the state distributes benefits and resources, or when it performs its traditional function of protecting citizens.

⁹⁸ There is an emerging trend in human rights, which tend to move away from the traditional conception of rights as ‘shields’ to one that conceptualizes rights as ‘swords’, too. The idea being that the state, rather than simply protecting members of society from the heavy hand of state power, must also be obliged to engage positively in matters related to the bill of rights. Hence, for example, the inclusion of socio economic rights as justiciable rights in the South African Constitution and

[t]he state's moral obligation is to respect these privately made choices in the same way that is required to honor other choices made by individuals as to who they will associate with, and on what terms and conditions that association will take place. The negative duty of the state to refrain from curtailing the right of individuals to speak (and cultivate) their language with other members of the linguistic group does not imply a positive duty on the state to officially affirm, recognise, or support, any of those minority languages.⁹⁹

It is this individualist liberal position that, in fact, provides the theoretical foundation for most international human rights instruments.¹⁰⁰ This has, for example, been the case with the first two international instruments that are adopted by the United Nations: The United Nations Charter and the Universal Declaration of Human Rights (UDHR). The Charter has nothing to say about group-specific rights. It simply recognises individual rights. This individualist outlook is, in fact, made clear in the opening article, Article 1(3), which outlines the purpose of the United Nations. According to this Article, the purpose of the United Nations is to encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. The reference to “fundamental freedoms for all” is interpreted as to mean fundamental freedom for all individuals and not groups.¹⁰¹ The same holds for the UDHR. The document declares that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex,

the obligation of the state to provide access to socio-economic resources and services. This argument is hardly extended to apply to the rights of ethnic groups.

⁹⁹ Addis 2001: 739.

¹⁰⁰ For more see Addis 2001: 739.

¹⁰¹ Addis 2001: 739.

language, religion, political or other opinion”. The documents, other than providing for a right against discrimination, do not mention group-specific rights.

It is important to note that even those instruments that attempt to address ethnic related claims are informed by this same individualist philosophy. These instruments do not promulgate the rights of ethnic groups but the rights of “persons belonging to a minority”.¹⁰² The first reference to group rights, and specifically minority rights, is made in the International Covenant on Civil and Political Rights (ICCPR), which, in article 27, states:

In those states in which ethnic or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

One should, however, note that the Article makes reference only to persons belonging to ‘such minorities’ and not to the groups themselves. That means the right is an individual right that can be exercised by persons belonging to such minorities and not to be invoked by a group as such.¹⁰³ As noted by Addis, persons belonging to such minorities enjoy an associational right, which is the right to choose with whom to associate and under what conditions to do so.¹⁰⁴

This preoccupation of international human rights instruments with individual rights is a post World War II development. Most of the bi-lateral

¹⁰² Bowring 1999: 6- 9.

¹⁰³ Bowring 1999: 4. See also Higgins 1994: 127.

¹⁰⁴ Addis 2001: 741.

and multi-lateral treaties as well as declarations established after the First World War were concerned with protecting individuals as members of particular ethnic group and especially minorities.¹⁰⁵ Such protection was, however, extended to a minority only in cases where there is a 'kin state' nearby which shows the desire to protect its ethnically affiliated group living just across the border. This often took a form of mutual undertakings. Germany, for example, agreed to provide certain rights and privileges to ethnic Poles residing within its borders on a condition that Poland treat ethnic Germans in Poland in the same manner. But these accords did not last long. Nazi Germany used these treaty provisions as a ground for invading Poland and Czechoslovakia. They justified their invasions on the ground that these countries "were violating the treaty rights of ethnic Germans on their soil".¹⁰⁶ The exploitation by the Nazis of these minority rights brought the whole system into disrepute.¹⁰⁷

It was the abuse by the Nazis of these minority rights and the Holocaust that followed which, according to many writers, explains the shift from group-specific rights to universal human rights and thus the adoption of international instruments with a strong individualist orientation. The Holocaust was seen partly as the consequence of group-thinking, which viewed people "as members of this or that group, rather than as individuals".¹⁰⁸ After World War II, the approach taken to protect ethnic groups has taken an indirect form of protection. It was no longer considered advisable to provide for special rights to members of a particular ethnic group. As Bowring puts it in the following quotation, the approach was

¹⁰⁵ Bowring 1999: 3.

¹⁰⁶ Kymlicka 2005: 2.

¹⁰⁷ Bowring 1999: 4.

¹⁰⁸ Addis 2001: 746.

rather to protect ethnic groups indirectly by providing basic human rights to all individuals:

The general tendency of post-war movements for the promotion of human rights has been to subsume the problem of national minorities under the broader problem of ensuring basic individual rights to all human beings, without reference to membership in ethnic groups. The leading assumption has been that members of national minorities do not need, are not entitled to, or cannot be granted rights of a special character. The doctrine of human rights has been put forward as a substitute for the concept of minority rights, with the strong implications that minorities whose members enjoy individual equality of treatment cannot legitimately demand facilities for the maintenance of their ethnic pluralism.¹⁰⁹

It is thus no wonder that the individualist liberal position is often defended on the ground that it is only when politics is conducted at the level of individuals that one can guarantee peace and stability in multi-ethnic societies. Politics, when conducted in terms of group rights, heightens the loyalty of group membership and thus “making politics a battle among permanently warring factions”.¹¹⁰ According to this position, prejudice, intolerance and stereotypes will reign when politics is conducted at the level of group rights. Proponents of this position thus recommend the individualist liberal position if politics is going to be conducted in a manner that ensures peace and stability. For them, group-specific rights are “anti – human”.¹¹¹

¹⁰⁹ Claude, 1955. See also Kymlicka, 2005: 3.

¹¹⁰ Bowring 1999: 2.

¹¹¹ Bowring 1999: 2.

The individualist liberal position believes that anxieties of persons belonging to ethnic groups can be effectively addressed by universal individual rights. According to this position, a system that recognises and provides for universal individual rights goes a long way to respond to the challenges of ethnic diversity. The expression of cultural identity should be left to the private sphere and the state should thus remain neutral on matters of ethno-cultural differences. Proponents of this position often mention freedom of association to show how recognition of universal individual rights can go a long way to accommodate ethnic differences. Kymlicka summarises this position as follows:

Freedom of association enables people from different backgrounds to pursue their distinctive ways of life without interference. Every individual is free to create or join various associations, and to seek new adherents for them, in the 'cultural market place'. Every way of life is free to attract adherents, and if some ways of life are unable to maintain or gain the voluntary adherence of people that may be unfortunate, but it is not unfair. On this view, giving political recognition or support to particular cultural practices or associations is unnecessary and unfair. It is unnecessary, because a valuable way of life will have no difficulty attracting adherents. And it is unfair, because it subsidizes some people's choice at the expense of others.¹¹²

6.2. The limits of the individual rights approach

The individual rights approach of liberal democracies to the challenges of ethnic diversity would not have been problematic in a nation-state where the cultural group coincides with the boundaries of the state. In such states, as

¹¹² Kymlicka 1995: 107.

noted by Basta, universal equal treatment suffices.¹¹³ The question is whether a liberal state, as it exists now, with its predominantly individualist orientation, will be able address the demands of ethnic groups in a multi-ethnic society or does it need to be supplemented by other institutional measures that respond to the needs and demands of multi-ethnic states.

To begin with, the individualist liberal position can be criticised for lack of consistency in its application of the individualist principle.¹¹⁴ As indicated earlier, the individualist liberal position relies on the principle that treats people as individuals. For this position, rights cannot be asserted or articulated in terms of groups. It does not see groups separately from the individuals who compose them. Proponents of this same position do not, however, hesitate to establish territorial borders and treat some individuals differently from others on the ground that the former do not belong to the state. The problem with this position, a position that allows one to exclude others based on the criterion of citizenship, is that it relies on the same classifications that it intends to avoid. It relies on the same vocabulary that proponent of group rights use to defend and promote the culture and language of ethnic groups: Group-specific rights.

Another problem and, for the purpose of this thesis, the major criticism is that in multi-ethnic states, the traditional civil and political rights that merely consider individuals as equal citizens, regardless of their particular identities, cannot adequately address questions that arise in relation to ethnic and national groups:

¹¹³ Basta 2000.

¹¹⁴ Addis 2001: 747.

Which language should be recognised in the parliament? Courts? Should each ethnic or national group have publicly funded education in its mother tongue? Should internal boundaries be drawn so that cultural minorities form a majority within a local region? Should political offices be distributed in accordance with a principle of national or ethnic proportionality?¹¹⁵

If the state is going to effectively address these questions and thus accommodate cultural diversity, it needs to supplement individual rights with institutional measures that represent an acknowledgment of its multi-ethnic reality.

Furthermore, the claim made by liberals that the state has to remain neutral in relation to ethnic relationships, that it has to leave the matter to the so called ‘cultural market place’, is in effect a call for the separation of state and ethnicity. According to the liberals, the ‘cultural market place’ should rather decide if a certain culture is going to survive or decay. The state should not interfere with the operation of this market place. The argument for separation of state and ethnicity is often reinforced by making reference to the principle of separation of church and state, which requires the state to remain neutral on religious matters. The separation of state and religion requires the state not to officially recognise or assist any particular religious group. By the same token, the state should not endorse or support the culture and language of any particular cultural group. In short, there should be a “benign neglect” of ethnic and national differences.

The difficulty with accepting the above stated position is that there is no way that the state can avoid recognising and promoting the identities of a

¹¹⁵ Kymlicka 2005: 4, 6.

particular ethnic group.¹¹⁶ Simply put, the state cannot remain neutral with respect to ethnic groups. This can be illustrated by making reference to the use of language. The use of a certain language by important public institutions like public schools, courts, parliament and other similar institutions provides a favourable environment for the development of the culture of the particular group whose language these institutions are using. The use of language as the language of government is, in fact, very important for the survival and development of culture. It is this potent force of language that may explain why it has been a fundamental cause of political conflict and violence throughout the world. Thus, when a government opts to use a certain language as official language, “it is providing what is probably the most important form of support needed by [a particular cultural group], since it guarantees the passing on of the language and its associated traditions and conventions to the next generation”.¹¹⁷ Of course, states may adopt a culturally neutral language as it the case with most decolonised states in Africa but this is not an option that is always available.

Decisions regarding boundaries in multi-ethnic states may also have the same effect of promoting a particular cultural group. A state may decide to draw boundaries in a manner that particular ethnic groups will never become a majority. It, in other words, may decide to draw boundaries in a manner that ensures that the dominant group always outnumbers other ethnic groups. For instance, the American government has historically made decisions about state borders with the aim of ensuring that there is a WASP majority in each state.¹¹⁸ On the other hand, the state can draw boundaries

¹¹⁶ Patten 2001.

¹¹⁷ Kymlicka 1995: 111.

¹¹⁸ Glazer 1983. See also O’Leary 2004.

to make ethnic groups majorities in their own house and thus enabling them to exercise control on decisions that affect the survival of their language and culture.¹¹⁹ Either way, the decision of the state has important effect in terms of recognising or suppressing, as the case may be, the language and culture of a particular ethnic group. The same can be said with regard to the distribution of functions and responsibilities.

What the above two examples suggest is that the analogy does not work.¹²⁰ It may be possible for the state not to have an established church. However, it is seldom possible for the state to remain neutral to cultural differences. When the state decides to adopt an official language, when it decides to draw the boundaries in a certain manner or when it officially considers certain days of a year as a public holiday, it tend to promote the culture of a particular ethnic group.

Despite what proponents of liberalism insist it is not also evidently clear that political peace and harmony will be guaranteed only if people are treated as individuals rather than as members of a group. In fact, there is overwhelming evidence that indicates the contrary. The failure to recognise an ethnic group or deny the rights of a group has often resulted in ethnic strife. This can best be exemplified by the civil strife that often follows when certain groups are denied the use of their language. This happened, for instance, in Sri Lanka.¹²¹ The civil war in Sri Lanka between the Tamil minority and the Sinhalese majority is attributed to the language policy of the government. In 1956 the Sinhalese majority government enacted the Official Language Act, according to which Sinhala become the official

¹¹⁹ Patten 2001. See also Kymlicka 1995: 112.

¹²⁰ Kymlicka 1995: 112.

¹²¹ Rajalopalan 2000.

language of Sri Lanka. This was seen by the Tamil minority as a threat against their distinctive identity. This has eventually led to the civil war that continues to plague the residents of the island. This suggests that citizens in a multi-ethnic state will keep their allegiance to the larger state when they see their identity being endorsed by the state.

6.3. Concluding remarks

As the foregoing discussions suggests, universal individual rights approach is an important part of the state's response to the multi-ethnic challenge. As the discussion in the following chapters shall show, it is especially important in terms of responding to the claims of ethnic groups that are not territorially dispersed. It is, however, submitted that individual rights approach is a necessary but not sufficient approach to deal with the challenges of ethnic diversity. A state's list of fundamental civil and political rights needs to be supplemented by other measures that reflect the recognition of ethnic diversity. It is here that what this study calls the principle of recognition becomes relevant. The discussion in the following section turns on what the principle of recognition is all about and its relevance to the multi-ethnic challenge.

7. The principle of recognition

The principle of recognition becomes pertinent in a situation where a state incorporates two or more than two territorially concentrated ethnic groups. Recognition, as adopted in this thesis, is an institutional principle that mandates the state to acknowledge the ethnic plurality that characterises the society it seeks to govern. It requires the state to recognise the right of ethnic groups to preserve their linguistic and cultural distinctions as well as manage their own affairs. This stands in sharp contrast with the policy of assimilation that many countries have adopted.

According to the policy of assimilation, ethnic groups are expected to abandon their distinctive culture and assimilate entirely to the dominant cultural norms. They are invited to adjust themselves through assimilation into the dominant culture. The analogy of the melting-pot is often used to explain the nature of this policy. Originally coined by Israel Zangwill, the Anglo-Jewish writer, the term was initially used to refer to the manner in which immigrants who came to the United States at the end of the nineteenth century were encouraged to think of themselves as Americans. The analogy was used to show how the immigrants gradually “abandon their cultures of origin until, as in the action of the melting-pot, they eventually became fully part of the bright new alloy”.¹²² A policy of assimilation does not thus recognise diversity. Rather it promotes the development of a common culture often by ‘eliminating’ the other.

What a state policy based on the principle of recognition aspires to achieve is quite the opposite. A principle of recognition doesn’t require ethnic groups to assimilate into the identity of the dominant group. It doesn’t expect them to abandon their original characteristics. On the contrary, it appreciates ethnic diversity. It aims to recognise rather than suppress diversity. Its basic claim is that more allowance should be made for diversity and difference. It, in fact, refers to diversity as a ‘demographic fact’ that needs to be acknowledged. That is why the analogy of the salad-bowl and not that of the melting-pot is often used to describe a state policy that is underpinned by the principle of recognition. As succinctly put by Watson, “[i]n the bowl different constituents retain their distinctive flavours

¹²² The term was originally coined by the Anglo Jewish writer Israel Zangwill in his play, *the melting – pot*, produced in New York in 1908. Watson 2000: 4.

and forms but the dish as a whole is recognizably *sui generis*, having its own distinctive character as a result of its unique blending.”¹²³

The principle of recognition is based on the assumption that the remedy to the exigencies of ethnic diversity that many states face lies in reversing this trend of suppressing and denying ethnic diversity and embracing institutions and policies that accommodate ethnic diversities while at the same time not losing sight of the need to maintain inter-ethnic solidarity. They have to devise appropriate institutional framework that guarantees equality and political space for ethnic communities while facilitating the achievement of cooperation and compromise among themselves. They should resort to government institutions that provide ethnic communities with the opportunity to participate and advance their interests in the political decision making process.

This, in fact, seems to be the emerging trend in the West. There has been a change in the manner most western countries deal with the multi-ethnic challenge. Today, a number of these states have come to realise that they cannot suppress or eliminate the socio-cultural differences that their countries exhibit as a result of ethnic diversity. That a nation building project that aims to suppress ethnic plurality cannot succeed. They have as a result abandoned the goal of eliminating ethnic diversities. They have come to accept that “their [ethnic] groups will endure into the indefinite future and that their sense of nationhood and nationalist aspiration must be accommodated in some way or other”.¹²⁴ As a result, most of western democracies no more consider themselves as nation-states. They rather

¹²³ Watson 2000:4.

¹²⁴ Kymlicka 2005: 2. They have as well come to accept that “these groups will continue to see themselves as separate and self-governing nations within the larger state into the indefinite future”. Kymlicka 2005: 3

have come to accept their multi-ethnic character. This includes an acknowledgment on the part of the state that ethnic groups have a valid claim to the language rights and self- government powers that are relevant to manage their own affairs.

The question, however, remains, whether this shift suggests that recognition is a fundamental human interest that has to be realised in every society. There have been, of course, serious attempts to posit recognition as a political ideology of universal reach. Many have tried to find a theoretical foundation for recognition in a freestanding value or ideal of constitutional democracy.¹²⁵ Taylor is one of the constitutional theorists who insist on providing a theoretical foundation to recognition. In his influential essay, *The politics of recognition*,¹²⁶ Taylor distinguishes between a politics of universalism and a politics of difference. These constitute the two forms of recognition which, according to Taylor, are important to contemporary politics. The first, politics of universalism, emphasises “the equal dignity of all citizens and the content of this politics has been the equalization of rights and entitlements”.¹²⁷ This politics of universalism rejects the existence of first-class and second-class citizens. The politics of difference, the second form of political recognition that arise as a result of the development of the modern notions of identity, emphasis, on the other hand, the recognition of “what is peculiar to each” individual or group. Briefly, “[with the politics of universalism], what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the

¹²⁵ Andreas 2003: 5.

¹²⁶ Taylor 1992: 37 – 38.

¹²⁷ Taylor 1992: 37.

unique identity of this individual or group, their distinctiveness from everyone else”.¹²⁸ Taylor’s chief concern is with the second form of recognition. He argues that recognition of distinctness is a vital human need. His thesis is then that to be recognised in one’s cultural distinctness is a universal human interest. What this thesis calls the principle of recognition thus becomes a reasonable realisation of a human interest for recognition of cultural distinctness. In this context, recognition is considered as an integral part of an ideal conception of constitutional democracy.

Unlike Taylor’s contention, it is not clear that the claim for the recognition of cultural distinctiveness is a ‘categorical demand’. As noted by Andreas, the claim to cultural distinctiveness does not stand as a matter of fundamental human interest.¹²⁹ It is not like the interest to be treated with equal concern and respect, which is a universal human interest. The importance of securing recognition for one’s cultural identity rather depends on historical circumstances. As Andreas notes,

[e]ven if cultural identity happens to be important to a person or a group and so anchors a claim to recognition of it by others, it is not obvious that recognition by any others is what is desired or desirable. Do French Quebeckers seek recognition of their distinct society by Zulus or Texans? Would Zulus or Texans have standing to extend or withdraw recognition from French Quebeckers? Indeed if we accept Taylor’s idea of the value of cultural difference and its recognition, it is puzzling why the demand for recognition is not put forward across as often as it is within societies. It is more plausible to think that recognition of distinctness or

¹²⁸ Taylor 1992: 38.

¹²⁹ Andreas 2003: 5.

difference by others matters only when the others are those with whom there are reasons to feel closely identified. Recognition becomes salient with differences among those who, for any number of reasons, otherwise feel a sense of mutual identification. Whether or not there are such reasons has less to do with fundamental human needs or interest than with *the contingencies of history*.¹³⁰

Cultural distinctiveness does not always suggest that a multi-ethnic state should organise itself along ethnic lines. The politics of pluralism comes to the fore only when historical, economic and social circumstances deem cultural distinctiveness a politically relevant divide. The service of the principle of recognition is necessitated not based on the acknowledgment that cultural distinctiveness is a universal human interest that needs recognition in the public sphere, but on historical and other contingencies that warrant the adoption of 'a politics of difference'. This says the principle of recognition is not a necessary part of an ideal conception or theory of democratic society; it need not be realised in every polity.¹³¹

This also means that there are societies in which the mere application of the ideal conceptions of constitutional democracy cannot help to achieve a well ordered regime due to historical, economic and social circumstances. Haysom was referring to these circumstances when he discussed the relevance of the classical liberal model to deal with ethnic plurality, and especially identity-based conflict in multi-ethnic societies. He identified four conditions in the absence of which a standard liberal democratic approach cannot do an effective job in managing ethnic

¹³⁰ Andreas 2003: 5-6. Emphasis added

¹³¹ Andreas 2003: 5-6.

diversity: “Conditions of economic opportunity that allow individual upward mobility regardless of group identity; absence of discrimination or at least a level of cultural and religious tolerance; a national identity that allows entry to members of culturally diverse groups; the practice of interest-based politics”.¹³² His thesis is then that a standard liberal democratic approach will fail to fulfill its promise of managing ethnic diversities within an accommodating state, not because of its intrinsic flaws, but because the conditions in many deeply divided societies prevent its actualisation, prevent the integration of diverse identities within a cohesive polity.¹³³ It is in such societies that state arrangement that is based on the principle of recognition becomes essential. Does this, however, mean multi-ethnic states, in which mobilisation around ethnic identity is in-existent, does not have to worry about recognising the ethnic diversity that characterises their society?

Relying on the arguments advanced above, some may contend that universal individual rights suffice in a multi-ethnic context where the state formation process has not produced hierarchy among the different ethnic groups and inter-ethnic relationship, as a result, is not at stake. The problem with this argument is that it overlooks the point that a multi-ethnic state in which inter-ethnic relationship is not at stake must have gone through a policy, albeit implicitly, that acknowledges its ethnic diversity. This assertion is intrinsically linked to the fact that there are always issues that a multi-ethnic state cannot resolve without considering its implication on ethnic relationship. As argued in the previous section, language policy is one such good example. Unless the state adopts a culturally neutral language, as it is the case with most

¹³² Haysom, 2003: 223.

¹³³ Haysom, 2003: 224.

decolonised states, or, an ‘equitable official language policy’, it cannot circumvent the politics of language and its ramifications on ethnic relationships. This says that ethnic identity will become a non-issue in the arena of political mobilisation only when the state formation process was driven by elements of recognition that facilitate the establishment of an all-inclusive state. In other words, ethnicity appears as an identity that is not politically relevant when the multi-ethnic society in question has not experienced ethnic stratification in the political, social or economic arena.

The ‘categorical view of recognition’ should not thus be stretched to imply that multi-ethnic states, whose political space has not yet been characterised by political mobilisation of ethnicity, should not worry about recognising ethnic diversity. The categorical view is rather to suggest that recognition is not a fundamental human interest that a society has to strictly organise itself along ethnic lines to the exclusion of all other identities and interests. In fact, the experience of multi-ethnic federations suggest that multi-ethnic states that have not yet experienced ethnic politics have to continuously guard themselves from the illusion that the management of ethnic diversity is not a relevant challenge.

Finally, the espousal of the principle of recognition and the emphasis on the recognition of the distinctive identity of ethnic groups should not imply that allegiance to the larger state does not exist or is not desirable. Persons belonging to different ethnic groups, despite their identification with politically mobilised ethnic group, can have allegiance to the larger political community and share the sense of what Linz *et al* refer to as the “we feeling”.¹³⁴ Some refer to this as ‘patriotism’¹³⁵ while others

¹³⁴ Linz, Stephan and Yadav 2004.

commonly call it ‘civic nationalism’ and the states where such feeling exist a ‘state-nation’¹³⁶ (as opposed to a nation-state) or a ‘nation of nations’.¹³⁷ The important point is that such sense of solidarity can exist in multi-ethnic state only when the definition of the state reflects an acknowledgment of the ethnic diversity that characterises the society it seeks to regulate.¹³⁸

8. Conclusion

A multi-ethnic state is confronted with the complex problem of managing ethnic diversity. As the foregoing discussion indicates, the state cannot overcome this challenge by suppressing ethnic groups. That can only lead to further ethnic strife. It can neither be done by attempting to establish an ethnically neutral state, or put differently, by separating state and ethnicity. A multi-ethnic state has to rather focus on other ways through which it can respond to the challenges of ethnic diversity without trying to transform itself into a nation–state.

The principle of recognition, as argued in this chapter, provides one such alternative. According to this principle, it is not enough to protect only universal individual rights. The common rights of citizenship are not adequate enough to provide protection to ethnic claims. If the needs and demands of ethnic groups are to be accommodated, the state needs to recognise its multi-ethnic character. It must supplement universal individual

¹³⁵ See Kymlicka 1995:13.

¹³⁶ Linz, Stephan and Yadav 2004.

¹³⁷ See Liobera 1997: 46-50.

¹³⁸ Kymlicka (1995: 13) illustrates this by making reference to Switzerland where the different linguistic communities “feel allegiance to the larger state only because the larger state recognises and respects their distinct national existence”.

rights with institutional measures that reflect the recognition of ethnic diversity.

Recognition is not, however, sufficient. Adopting the principle of recognition entails the need to adopt institutional designs that reflects its commitment to ethnic diversity. The state should design institutional structures that help it to translate its recognition of ethnic diversity into tangible institutional reality and establish an all-inclusive state. One form of institutional response that this study is going to focus on involves the adoption of some sort of federal arrangement as the basis for the organisation of multi-ethnic states. Broadly speaking, this includes the right to manage own affairs, according to which a group is allowed to exercise some form of political and/or territorial autonomy, and the co-management of the multi-ethnic society, which among other things, could require the representation of the different ethnic group in important national institutions.



In the following chapter, the discussion examines whether federalism, as an institutional design, has the capacity to accommodate ethnic diversity and thereby supplements the act of recognition. The discussion commences by introducing the meaning and nature of federalism.

Chapter Three

Federalism as institutional design to recognise and accommodate ethnic diversity

1. Introduction

As indicated in the previous chapter, the attempt to build a nation-state in the context of a multi-ethnic society has seldom succeeded. Violent reaction has been the common response to this form of nation-building. It has, in some cases, resulted in the proliferation of ethnic movements. In extreme cases, it has engendered separatist movements. As a result, the principle of recognition, an institutional response that suggests a state to move away from the nation-state paradigm towards a politics of recognition and accommodation, is presented as a promising alternative. A corollary of the decision to adopt the principle of recognition is the espousal of institutional measures that supplement the act of recognition and provide practical effect thereto. Policy makers and academics recommend various institutional measures that would allow multi-ethnic states to accommodate ethnic demands without endangering their political integrity. As it has become clear by now, one such institutional device that this thesis focuses on is federalism.

Federalism has not always been used as a device to manage ethnic diversity. Neither is its present use usually confined to serving as a response to problems engendered by ethnic diversity. There are other functions that federalism can serve. Notwithstanding that, the main argument in this chapter points out that federation, as institutional state design, has the capacity to accommodate ethnic diversity and maintain the political and territorial integrity of the state. The thrust of the argument lies in the projection of federalism, not as concept of rigid institutional principles

requiring uniform application, but as institutional principles that embodies core values, which can respond to the exigencies of an ethnically plural state through a carefully orchestrated pragmatic application.

We shall begin the discussion in this chapter first by exploring the meaning of federalism and federation. We then proceed to examine its similarities and differences from other forms of institutional organisation. This is followed by a section that discusses the relevance of the federal solution to the multi-ethnic challenge. Finally, the chapter concludes by identifying the institutional options and problems of managing ethnic diversity within the federal frame and, in the process, develops an analytical framework against which this thesis, in succeeding chapters, will examine the institutional framework of South Africa and Ethiopia.

2. Federalism and federation

The term federalism has usually been used interchangeably with the term federation. There is, however, an important distinction between the two terms. This distinction was explicitly stated first in King's seminal study, *Federalism and Federation*.¹ This was later taken up by Burgess in his edited book, *Federalism and Federation in Western Europe*, which appeared in 1986.² The distinction was further elaborated when Elazar discussed the variety of federal arrangements.³ Elazar considered federalism as a broad generic term encompassing a variety of forms of which federation was but one specific form. This distinction is widely accepted by other writers on federalism. However, the problem with Elazar's use of the two terms is that though he was well aware of the distinction between

¹ King 1982: 91.

² Burgess 1993, 4.

³ Elazar 1987: 12.

normative and descriptive discourse, he tended to use the term ‘federalism’ as both a normative and descriptive term.⁴ Watts, on the other hand, advises students of federalism to keep three terms distinct: federalism, federal political systems and federation.⁵ This thesis, following Watts, distinguishes between federalism, on the one hand, and federal political systems and federation, on the other, as normative and descriptive terms respectively.

Federalism,⁶ as a normative concept, has two essential aspects: autonomy and union.⁷ Simply put, the autonomy aspect is a reference to self-government and about making self-rule possible for the constituent units. The union aspect is, on the other hand, a reference to the co-management of the whole society and about the desire of people and polities to come or stay together⁸ for common purposes. With the notion

⁴ Watts 2000:162.

⁵ Watts 1994: 8.

⁶ Clear-cut definitions of federalism do not come by easily. Rufu Davis, in his book on the federal principle, endeavored to find a common definition of federalism but only to abandon his quest as “one that interferes with the pragmatic understanding of political systems organized on a federal principle” (as quoted in Elazar 1987: 28).

⁷ These two elements of federalism are evident in many definitions of federalism (See Wheare 1963: 10; Kriek 1992: 36; Livingstone 1968: 22; Friedrich 1964: 121; Duchacek 1970: 194).

⁸ Two processes of federalism may be identified. In its classic conventional fashion, federalism involves the coming together of separate communities to create a new entity, which is the case with the USA, Switzerland and Australia. On the other hand, what we have been witnessing in the twentieth century has been the federalization of what has been a unitary government. Examples of these so-called holding together federations include India, Belgium, Canada and Spain. Kincaid (2002: 10) maintains that, whichever pattern the federalization process takes, the end requirement is the same. For him, holding together federalism is “a process of

of multi-level government that it embodies, federalism therefore seeks to accommodate “the existence at one and the same time of powerful motives to be united for certain purposes and of deep-rooted motives for autonomous regional governments for other purpose”.⁹ As famously put by Elazar, federalism is “self rule plus shared rule”.¹⁰ For the purpose of this study, federalism refers to the combination of elements of ‘self rule’ for some purposes and ‘shared rule’ for others with the aim of accommodating and promoting distinct identities within a larger political union in some constitutionally entrenched basis.

As a normative concept, federalism represents an organising principle that prescribes the adoption of institutional arrangements that we generically refer to as federal political systems, a descriptive term that encompasses a range of possible political organisations that reflect the principles of federalism: federations, certain kinds of unions, federacies, associated

coming apart and then voluntarily coming back together again” (Kincaid 2002: 10).

⁹ Watts 1999: 31.

¹⁰ Elazar 1987: 4-5. The fact that the federal idea entails autonomy and partnership is also implied in the derivation of the word “federal” which has its origin in the Latin word *foedus* meaning covenant (Elazar and Kincaid 2000). A covenant represents a compact between equals to act jointly on specific issues of general policy while each keeping their autonomy to act independently in matters related to the expression of regional identity (Friedrich 1968; Kincaid 2002). Federalism therefore creates a general but limited government. It is general because it enjoys nation-wide responsibilities and authoritative capacity to carry out those responsibilities. It is limited because it allows the general government to exercise its powers only in constitutionally designated range of areas, leaving the constituent units to enjoy the power to exercise authority within their respective communities. In short, federalism creates a “limited but encompassing polity” (Elazar 1987:67; See also Kincaid’s (2002:7) reference to federalism as a “compound republic”).

states, leagues and cross-border functional authorities.¹¹ Federalism can manifest in different kinds of organisational forms in so far as the organisation in question reflects the combination of self rule and shared rule.¹² In fact, the term federal political systems may come to represent other types of political formations that we have not yet come across. This thesis focuses on federation.

The term federation refers to “a specific species within the genus of federal political systems”,¹³ which was first invented by the founding fathers of the United States of America at the city of Philadelphia in 1787. As a tangible institutional reality of the federal principle, federation includes structures, institutions and techniques, which serve to translate the federal idea into an institutional reality. The problem is, however, that federations themselves vary extensively.¹⁴ The fact that certain states consider themselves as federation does not help much in this regard. Closer scrutiny reveals that it is difficult to distinguish polities that claim to be federations from unitary state structures.¹⁵ Neither has the reluctance of states to consider themselves federal prohibited the literature from referring them as federations. A good example is India.

Federations vary enormously in three ways.¹⁶ They vary, first, in their federative institutions and the extent to which they are majoritarian in their

¹¹ Watts 1994: 8. See also O’ Leary 2003: 3.

¹² See also Watts 2000: 164

¹³ Watts 1998: 121.

¹⁴ The difficulty of distinguishing federation from other political formations has led one eminent federal theorist to go so far as to conclude that federation in political practice is a myth. See generally Riker 1975

¹⁵ Elazar 1987: 12.

¹⁶ O’Leary 2003: 3- 5. See also Kincaid 2005: 409 – 448.

character and processes. Some level of limitation, albeit in different degrees, is imposed on the powers of 'federation-wide majorities' in all federations.¹⁷ Secondly, they vary in the distribution of power within the federal governments. Some federations have very powerful second chambers while others create very weak second chambers. Some have separately elected executives; some have executives chosen by the federal first chamber. Thirdly, the manner competencies are distributed between federal and regional governments distinguishes one federation from another. In some case, the powers of the federal government are specifically enumerated by the constitution while in other federations it is the powers of the regional governments that are constitutionally circumscribed and limited. Some governments have adequate executive or administrative powers to give effect to their own legislative powers while others have entrenched a constitutional separation between the national government's legislative powers and the authority to implement national legislation.

The foregoing discussion confirms that the work of translating the federal idea into an 'institutional reality' can and has taken many forms. Federations thus vary in the extent to which component units are represented within the national institutions of the government institutions, in the powers they distribute to the different levels of government and in the

¹⁷ A federation is not majoritarian to the extent that it "has mechanisms, such as the separation of powers, bill of rights, monetary institutions and courts that are insulated from the immediate power of a federal governing majority" (O'Leary 2003: 3- 5. See also Kincaid 2005: 409 – 448). On the other hand, a majoritarian federation is characterised by a concentration of political power at the federal level; the system "facilitates executive and legislative dominance either by a popularly endorsed executive president or by a single party prime minister and cabinet" (O' Leary 2003: 4).

manner that these competencies are distributed.¹⁸ As aptly identified by Watts¹⁹ and O’Leary²⁰, however, there are a minimum set of elements that characterise any genuine federation. In a true federation, there are at least two governmental units (the federal and regional) each acting directly on their citizens, thus allowing self rule for the constituent units. Both the federal and regional governmental units enjoy separate powers or competencies allocated to each level via a written constitution – although they may have concurrent or shared powers. Furthermore, in true federations, the constitutional division of power between levels of government can not be amended unilaterally by either level of government. It requires the consent of all or a majority of the constituent units. Federations also provide for shared rule in the form of a provision for the representation of regional views within the federal policy-making institutions. This is usually addressed in the form of a bicameral legislature with the second chamber usually representing the constituent units. They also require an umpire (which usually are courts and referendum), entrusted with the duty of upholding the constitution and ruling on disputes between the governmental tiers

To sum up, the appropriate working definition for this thesis regards federation as an institutional arrangement that involves at least two orders of government with self rule and shared rule incorporated into the system on some constitutionally entrenched basis.

¹⁸ See also Chen 2002: 299.

¹⁹ See Watts 1994: 8-9.

²⁰ See O’Leary 2003: 3.

3. Federation as a territorial arrangement

Federal states can have territorial base or non-territorial base.²¹ In the former, it is territorial areas that serve as units of a federation. On the other hand, although academics like Livingston find it very difficult to consider a society without territoriality as federal,²² there are cases where the federal units are not territorially bound. Federalism, as a non-territorial project, is often associated with dispersed ethnic communities. In this type of federalism, various communities are locked in the same region and attend to their own local interests in accordance with the subsidiarity principle while at the same time cooperating with each other on matters of common concern.²³ The various communities, which are also sometimes referred to as corporate units,²⁴ represent the constituent parts or corporations of the central legislative body. This form of federation provide for non-territorial based institutional support in combination with a non-territorial form of political representation.²⁵ This form of federalism was first developed as a response to the challenges posed in democratising the multi-ethnic Austro-Hungarian Empire where a solution had to be found to secure the cultural rights of geographically scattered ethnic groups.²⁶ In countries like Belgium, however, both territorial and non-territorial conceptions of federalism are attained.²⁷

²¹ Kriek 1992: 19.

²² Livingstone 1956: 2

²³ Kriek 1992: 22.

²⁴ Kriek 1992: 22.

²⁵ Smith 1995: 6.

²⁶ Smith 1995: 6. See also Kriek 1992: 22.

²⁷ Federalism in Belgium is characterised by the existence of two different types of constituent units: Regions that are territorial units and Communities that are linked to individuals and languages and not territory. The three regions are Flemish, Walloon and Brussels while Flemish, French and German are the three communities. The regions have authority over socio-economic matters such as

This study focuses on multi-ethnic states where ethnic groups are geographically concentrated. Both in Ethiopia and South Africa, the two case studies, ethnic groups are more or less geographically concentrated. Seven of the nine provinces in South Africa are, for example, dominated by one language group. In Ethiopia, as well, each ethnic group is, by and large, concentrated in a specific part of the country. Hence, the option of the federal solution is examined as an option to address the challenges of ethnic diversity in the context of ethnic groups that are geographically concentrated. This does not mean, however, that the thesis does not at all discuss issues related to ethnic groups that are not geographically concentrated. The impracticality of creating neatly ethnically defined constituent units in any federation means that a federal arrangement, if it is to be successful in managing ethnic diversity, must address the concern of these ethnic groups as well. The point is rather that the major focus of this study is the management of ethnic diversity in countries where ethnic groups are, by and large, geographically concentrated.

The territorial focus of the study suggests the need to qualify the definition of federation that is already adopted by this thesis. For the purpose of this thesis, federations are taken to involve territorial division of authority. The adopted working definition of federation would thus read: Federation is an institutional arrangement that involves at least two *territorially based* orders of government with self rule and shared rule incorporated into the system on some constitutionally entrenched basis.

urban planning, housing, environment, economic development, employment and energy while the communities exercise power over cultural matters, education, use of languages and other matters that are of relevance to the communities. Lecours 2002: 58 – 73.

4. Federalism: An ideology or a pragmatic tool?

Some view federalism as a political ideology of universal reach.²⁸ Such view of federalism considers the latter as a necessary part of an ideal conception or theory of democratic society. It regards federalism as something that must be realised in every polity. These efforts to posit federalism as a freestanding ideology are, however, problematic.

Most constitutional theorists are usually hesitant to consider federalism as a free-standing ideology comparable to or separate from liberalism or socialism. They argue that a purely self-referential theory of federalism, unlike that of liberalism or socialism, cannot answer crucial questions about the human condition: about desire, happiness, justice, value, etc.²⁹ Even when some constitutional theorists reluctantly consider federalism as an ideology, they consider it as a 'weak ideology'. Burgess, for example, considers federalism as a "political ideology in the precise sense that it reflects values and beliefs which recommend specific forms of federation".³⁰ Similarly, Smith is very reluctant to consider federalism beyond a 'very general conception'; he, in fact, labels it as "programmatically orientations".³¹ Federalism is not thus defended as political ideology in the manner of a doctrine which trumpets universal, *a priori* truths. It rather represents a response to specific problems.³²

²⁸ Andreas 2003: 5.

²⁹ Smith 1995: 1-29. Commitment to federalism does not represent a general ideological desire to achieve some abstract notion of democracy or freedom. See Burgess 1993: 110.

³⁰ Burgess 1993: 112.

³¹ Smith 1995: 4.

³² A similar remark is also made by Riker when he stated that one should not decide

This 'particularistic approach' to the application of the federal principle accentuates the need to abandon the classical, essentially very static, conceptions of the application of the federal idea and move towards a more pragmatic approach. For long, both academics and politicians have been obsessed with a "geographical conceptions of federalism with its emphasis on a rigid, *a priori* division of governmental competences among a number of postulated equal political entities".³³ Students of federalism no longer apply such rigid conception of federalism when determining the organisation of a federal state. A pragmatic approach to the federal idea has become the common trend. The focus is now 'on functionalism'. The endeavor is to adopt this old idea of federalism to the challenges of the contemporary world. Carl Friedrich has adequately captured this fact when he presented "the notion of federalism as process – as a constantly evolving series of community decisions in concrete problem – situations, in sharp contrast to classical federalism's insistence that it was a fixed and static system of dividing and allocating law-making competences between equally fixed and static sets of geographically based communities".³⁴ Indeed, every application of the federal principle may well be federal in its very own way. This also implies that insofar as there is a functional need, "there is no shortage of alternative constitutional paradigms or models available to be shaped to contemporary problem-solving".³⁵

This pragmatic understanding of federalism implies a methodological perspective that a federal solution should adopt in a multi-ethnic state. It

"on the merits of federalism by an examination of federalism in the abstract, but rather on its actual meaning for particular societies". Quoted in Burgess 1993: 104.

³³ McWhinney 1992: 7

³⁴ Fredrick: 1986: 10.

³⁵ McWhinney 1962: 6.

emphasises the particularistic approach that a federal solution should take when dealing with the exigencies of an ethnically plural state. This approach first informs the identification/selection of conditions that call for the application of federal principles. Second, it requires us to apply the institutional principles that underlie the federal design in a manner that it can address the particular conditions of the society in question.³⁶

5. Accommodating ethnic diversity through federalism

States adopt federal arrangement for different reasons. For some, federalism is used as a basis for providing overarching regional security architecture based on mutual self-protection.³⁷ For others, federalism is regarded as safeguard from the tyranny of the majority that is induced by the concentration of power in a single governmental actor.³⁸ In some other

³⁶ Watts (10) similarly underlined the pragmatic nature of the federal solution when he remarked that the extent to which federalism can successfully responds to the particular exigencies of a society depends on “whether the particular form or variant of federal system that is adopted or evolved gives adequate expression to the demands and requirements of the particular society in question”. See also Andreas 2003: 8.

³⁷ Traditionally, federalism was considered, as in the case of U.S.A, as an instrument to prevent dangers from foreign forces and influence as well as from domestic faction and insurrection. In fact, the Confederate American states moved to a federation largely because of these reasons (See Hamilton et al 2005). In the early days, the European federalists’ advocacy for a federal Europe was similarly motivated by the desire to avoid aggressive and preemptive wars among states themselves (Smith 1995: 6).

³⁸ The concern about the concentration of power is regarded as an important reason for the adoption of a federal arrangement in the United States. In promoting a federal republic, Madison wanted to reduce the risk of majoritarian tyranny by dividing the majority “into so many parts, interests, and classes of citizens that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority” (Selassie 2003: 81); See also Smith 1993:6.

cases, economic motives are the driving forces behind the process of federalisation. Traditionally, this has to do with the desire to benefit from a large single market. This belief is reinforced today by many Europeans who champion the establishment of an enlarged regional trading bloc in order to secure a substantive control of shares in a competitive world economy.³⁹ More recently, federalism and especially the concomitant devolution of power to lower levels of government is regarded as a good strategy to deliver development.⁴⁰

This study recognises the instrumentality of federalism in achieving the above mentioned goals but the concern here is with the relevance of the federal idea to accommodate ethnic diversity. The objective is to look into how federalism and its institutional form, federation, can be used as a device to manage ethnic diversity without posing threat to political and territorial integrity. We are not thus to probe in detail and critically examine the economic and security related benefits of federalism. We may, however, discuss some of these political uses of federalism but only when it is relevant to make a point to the main thesis of this study.

Federalism is increasingly being presented as a countermajoritarian political settlement that can be used to manage ethnic diversity. Others, however, contend that federalism intensifies ethnic conflict that it is meant to prevent and thus advice against the adoption of federalism to the multi-ethnic

³⁹ Smith 1995: 6; see also generally Keohane, Robert and Joseph 2001.

⁴⁰ The assumption is that the central government can never possess enough information to tailor policies to specific circumstances. Being closer to the people, lower level of governments, it is assumed, have the advantage to achieve allocative efficiency and match local developments with local needs (See Elazar 1987:252; Parikh and Weingast 1997: 1593 – 1594; Yonatan and Kirkby 2008).

challenge. As the following discussion shows, there is little consensus on the utility of federalism in managing ethnic diversity.

5.1 Federalism as a promising alternative to manage ethnic diversity

For most ethnic groups and territorially structured communities, federalism offers the most realistic way to maintain state unity in the face of important centers of power and ethnic divides. In a study carried out for the Royal Commission on Bilingualism and Biculturalism, Watts argued:

As in Canada, so in India, Pakistan, Malaysia, Nigeria...and Switzerland, linguistic, racial and religious minorities that feared discrimination at the hands of numerical majorities but were unable alone to support effectively a genuine separate independence, have sought provincial autonomy within a federal political system as a way of preserving their own distinct identity and way of life. In each of these countries the multilingual and multicultural character of the society has frequently been cited by politicians as the crucial characteristic making a federal political system necessary.⁴¹

Being a compromise, the federal option lies mid-way between the options of a state that promotes complete assimilation or the submergence of differences and that of the dissolution of the state or the separation of some portion of that state.⁴²

It is generally argued that federalism serves as a device for accommodating the interests of two or more distinct ethnic communities locked within the boundaries of a single state thus providing a “sound strategy for promoting

⁴¹ As quoted in Gagnon 1993: 25.

⁴² Alemante 2003: 83.

national unity and political legitimacy”.⁴³ It has the advantage of being a provider of accommodation with the potential to respond adequately to problems occurring in multi-ethnic contexts.⁴⁴ Watts argued that “[i]n many societies where the political demands for integration and for separatism have been at odds with each other, the adoption of a federal system has seemed a solution to the problem of reconciling these conflicting pressures”.⁴⁵

Fleiner *et al* argue that the appeal of federalism in handling ethnic diversity lies in the fact that it offers a constitutional mechanism that not only tolerates but also promotes diversity.⁴⁶ Federalism does not see diversity as a problem that requires a careful diagnosis. It rather embraces diversity as a virtue and an advantage that deserves state protection and promotion. A state organised based on such principle, they argue, uses the “value of cultural diversity to enable the whole society to participate in the endeavour of the state to seek justice, promote peace and protect liberty”.⁴⁷

⁴³ Alemante 2003: 83. According to the view that adopts federalism as effective device for accommodating ethnic diversity, “harmony will be increased in a system in which territorially concentrated minorities are able to exercise autonomy or self-determination on matters crucial to their identity and continued existence, without the fear of being overridden or vetoed by the majority group” (Alemante 2003: 83).

⁴⁴ Gagnon 1993: 20. Diamond and Plattner (1994) argue that “ethnic conflicts – particularly ethno-political threats to the central state–can often be mediated through a judicious implementation of federalism and constitutional guarantees for the protection of individual collective (minority) rights”.

⁴⁵ As quoted in Gagnon 1993: 25.

⁴⁶ Fleiner, Klain, Linder and Saunders 2003: 206.

⁴⁷ Fleiner, Klain, Linder and Saunders 2003: 206.

Some, like the Tremblay Commission, established by the Quebec Legislative Assembly in 1953 to investigate constitutional problems in relation to Quebec, have even gone to the extreme and asserted that federalism is the only political system that allows “two cultures to live and develop side by side within a single state”.⁴⁸ For them, it is only under such arrangement that the different conflictual groups can buy into the system as a whole.

5.2 Federalism as a poor device to manage ethnic diversity

Many academics and politicians have reservations about the effectiveness of federalism in managing ethnic diversity and preventing conflict. Some even consider it as a poor constitutional approach to forge unity among the medley of ethnic communities that characterise the majority of states in the world. They consider this form of government inherently at odds with the purposes that it is meant to achieve. Smiley’s, for example, notes a paradox in the relation between federalism and nationalism:

[There is] a paradox here in the sense that the cohesion and desire for autonomy of particular groups in federal states which made federalism necessary at the outset makes such regimes somewhat unstable. Because of the continuing strength of such spatially demarcated diversities, there is an ever-present impulse for those who wish to preserve the

⁴⁸ Gagnon 1993: 27. Friedrich (1968: 32) writes: “Federalism provides the opportunity to give maximum scope to such linguistic self-expression. Bilingual (or even multilingual) communication may be a substantial burden in official and unofficial communication, but it is the necessary price which must be paid where otherwise only an imposed single language is likely to disrupt the community and tear apart those bonds which might otherwise suffice for effective political life. And federalism makes that possible”.

existing federation to counter such divisive forces by resorting to nationalistic appeals.⁴⁹

Federalism, according to this view, results in the erosion of national unity and the promotion of ethnic hostility or inter-group rivalry. Apart from escalating ethnic tensions, it erodes the limited national identity or sense of common political destiny.⁵⁰ Federalism, they argue, has the propensity to promote 'ethnic fundamentalism'. In a state that promotes politics of difference, "those who seek popular support must strive to be the most authentic and 'ethnic' of the candidates or parties, and the most resolute in asserting the ethnic interest as against the 'others' ".⁵¹

Proponents of this view refer to the historical records of federalism and argue that federalism does not have an encouraging record as a stable form of government. For Carven, this must be admitted as a simple matter of statistics.⁵² The picture for an ardent supporter of federalism is not an encouraging one. This is especially true in the twentieth century during which federations in multi-ethnic states have broken down. This is true both in the communist and post-communist world of Yugoslavia, Czechoslovakia, the USSR and in the post colonial world of sub-Saharan Africa, South Asia and the Caribbean. Based on this, many conclude that federal option is not a successful model to imitate especially in a multi-ethnic context. Elazar, a prominent scholar of federalism, was very reluctant to endorse the federal option in a multi-ethnic context. He argued that federations in a multi-ethnic context are difficult to sustain.⁵³ He, in fact,

⁴⁹ Smiley 1987: 14.

⁵⁰ Haysom 2003: 224.

⁵¹ Haysom 2003: 225.

⁵² Carven 1991: 243.

⁵³ Watts 2000: 165.

commented that confederations rather than federations of ethnic states would have a better chance of success. Every federal state is doomed to face a concerted bid for secession by one or more of its component regions.

5.3 Assessment

It must first be admitted that federalism does not prevent conflict. Neither does it eliminate political conflicts. Conflicts are an inherent component of all federal societies.⁵⁴ Conflict is considered as “an intrinsic and inevitable aspect of social change and an expression of the heterogeneity of interests, values and beliefs that arise as new formations generated by social change come up against inherited constraints”.⁵⁵ In fact, the literature on conflict and conflict resolution maintains that conflicts cannot be prevented but managed.⁵⁶ In this context, what federalism does is rather provide an institutional framework within which diversity can be fully managed and solutions acceptable to all can be found.⁵⁷ As Gagnon aptly reminds us, “the success of federal systems is not to be measured in terms of the elimination of social conflicts but instead in their capacity to regulate and manage such conflicts”.⁵⁸ What federalism does is thus manage conflicts by making ethno–regional coexistence a possible reality.

Furthermore, care must be made not to suggest that federalism necessarily ensures the harmonious co-existence of all ethnic groups.

⁵⁴ Gagnon 1993. See also Watts 1994: 15.

⁵⁵ See generally Oliver, Woodhouse and Miall 1999.

⁵⁶ Students of conflicts are advised to avoid using the term conflict prevention. Instead they are encouraged to employ terms like conflict settlement, conflict management and conflict resolution.

⁵⁷ Gagnon 1993: 24

⁵⁸ Gagnon 1993: 24.

Due to the dynamic forces that are competing for political resources, it is difficult to guarantee the success of federalism in managing ethnic diversity. What must be emphasised is the capacity of a system based on the principles of federalism to strike a deal that has the potential to satisfy ethnic communities sharing a common territory for the long haul.⁵⁹ After all, state building is a risky endeavour, especially in a multi-ethnic state where longstanding cleavages are often involved.

One cannot also simply rely on failed federations and argue that federalism is a poor device to manage ethnic diversity. As much as there have been examples of failed federations, one must also be careful not to overlook federations that have relatively been effective in managing ethnic diversity. The federations of Switzerland and Canada have survived and progressed for well over a century. India has survived for a half century. These federations, of course, are not without problems. Some level of strain characterises these and other federations in multi-ethnic states. In fact, certain federations are characterised by a perpetual state of crisis. Be that as it may, it is these federations that have managed the challenges of ethnic diversity better than other systems of government. It is these forms of governance that have provided an effective means of regulating deep divisions within society and preventing their spill over into inter-communal violence. One must not also lose sight of the reason for the establishment of some form of federal political systems in multi-ethnic polities is the very fact that the latter are “difficult to govern”.⁶⁰

Considered in such context of relativity, federalism emerges as a promising alternative. Rather than undermining a state’s stability, federalism can

⁵⁹ Burgess 1993: 24.

⁶⁰ Watts 2000: 166.

actually lead to a strengthening of the state as it allows it to avoid the threat of a devastating civil war provoked by decades of a policy of repression followed against ethnic groups or distinct territories. When issues like devolution of power, self-government, shared responsibility, internal self-determination are adequately addressed in a properly designed federal system, they present a promising perspective for many countries that have, for decades, been engaged in a massive civil war and/or characterised by long histories of inter-communal tensions. Such solutions can, arguably, serve not as a destabilizing, but, on the contrary, as a stabilizing factor for the state in question as they allow it to achieve a vitally important internal coherence between its ethnically heterogeneous components.

There are, of course, academics who maintain that all the objectives that federalism is alleged to satisfy in terms of managing ethnic diversity can as well be satisfied by adopting decentralisation.⁶¹ Andreas argues that

⁶¹ Like federalism, decentralisation involves devolution of power. The difference lies, however, in the status that the two systems attach to regional autonomy. In a decentralised system, the central government decides the functions and responsibilities that need to be devolved to the component units and those that it retains. The devolution of power to the component units thus depends on the wishes of the central government, which means that the central government wields the authority to 'recentralise' powers and functions that it has already 'decentralised'. In the case of federalism, however, powers are not only devolved to the sub national units but are constitutionally guaranteed, which means division of power cannot be altered by a unilateral act of any of the constituent units or the national government as it is the case with decentralised systems. Thus, the division of powers between the different levels of authority in a federation springs from a constitutional agreement to share power and not to centralise it; such a system is therefore a 'non-centralised' system and not decentralised (Elazar 1987: 166). In addition, effective separate representation of the sub units for the purpose of participating in policy formation and legislation, and, more especially, effective separate representation in the amending of the constitution itself provides a

decentralisation, like federalism, “serves experimentation, diversity and residential self–selection”.⁶² He thus argues that it is not at all clear that the aspirations that federalism is meant to fulfil could not as well be satisfied by adopting decentralisation.

It is true that decentralisation provides communities limited autonomy and thus self–government. But as pointed out earlier, decentralisation takes the centre as primary source of power. Whatever powers delegated to the regions are undertaken at the pleasure of the central government. The prominence of the centre means, among other things, that “central power continues to be exercised in accordance with the majority principle and the decisions as to what minority should have how much governmental power continues to depend on the majority”.⁶³ Furthermore, if ethnic groups are to fully exercise their autonomy, it is not enough that they are given autonomy and self–government. They must also be able to ensure that decisions taken at the central level do not affect their autonomy unduly. They can only do so when they are able to take part in the central legislative and policy formations. Decentralisation does not allow that. In the strictest sense of the terms, it is federalism that provides for effective separate representation of the component units in decision making at the national level of government.

5.4. Concluding remarks

In this thesis, federalism, underpinned by the institutional principles of self rule and shared rule, is presented as institutional design that

reasonably precise criterion for a federal as contrasted with a merely decentralised order of government (Kincaid 2002).The foregoing discussion should not, however, suggest the existence of a watertight division between a decentralised and a federal system. There are political systems that feature elements of both federalism and decentralisation.

⁶² Andreas 2003: 22.

⁶³ Fleiner, Klain, Linder and Saunders 2003: 206.

supplements the principle of recognition by providing practical effect to the act of recognition. It is argued that the capacity of federalism to respond to simultaneous pressures for the expression of distinctiveness and maintaining the territorial integrity of a state makes it a promising alternative for those that either wants to build or hold together an ethnically plural state. The institutional and territorial matrix of federalism, which is conducive to acknowledge and reflect diversity, makes it appealing to constitution makers in a multi-ethnic society. It is submitted that a properly designed federalism has the capacity to effectively accommodate ethnic diversity.

However, it is important to note that this thesis has not presented the mere adoption of federalism as a solution to deal with ethnic diversity. It has rather emphasised *the capacity* of federalism to respond to the challenges of ethnic diversity. That means even if one agrees that the federal design is relevant in building an all-inclusive state in multi-ethnic societies, it is the particular configuration of the federal design that determines the extent to which it can build a multi-ethnic state that successfully embraces unity and diversity. The realisation of the capacity inherent in federalism to respond to the multi-ethnic challenge thus depends on how the underlying institutional principles of self rule and shared rule are translated into institutional reality.

The following section, by focusing on how the principles of recognition, self rule and shared rule can be translated into institutional reality, looks into how a federation can strike a balance between unity and diversity in order to effectively respond to the challenges of ethnic diversity. By making references, whenever relevant, to the experiences of multi-ethnic states that have adopted federalism to deal with ethnic claims, it identifies key institutional issues that constitution makers have to consider in using federalism as institutional design to accommodate ethnic diversity. It

introduces the institutional options and problems of managing ethnic diversity within the federal frame. By doing so, it also sets the template for analysing the case studies that follow in succeeding chapters.

6. Institutional arrangements for recognising and accommodating ethnic diversity

The aim of the remaining parts of this chapter is to discuss, in a comparative manner, how the institutional principles of recognition, self rule and shared rule can and have been translated into practical and institutional arrangements that help to realise the capacity of federalism to respond to the challenges of ethnic diversity. The discussion commences by examining how a state's decision to recognise its multi-ethnic character can be translated into institutional reality. Drawing on the experience of multi-ethnic federations, it analyses the ways in which a state can go about recognising its multi-ethnic reality. The chapter proceeds to examine how states, once they recognise the multi-ethnic fact, can supplement this act of recognition using the institutional principles embodied in a federal frame. In this regard, the discussion first focuses on the institutional principle of self rule and sheds light on state practices and sub-national autonomy. The sections that follow discuss, in a similar fashion, the institutional principle of shared rule and how this principle can and has been given effect through practical and institutional expressions within the federal frame. The plight of intra-substate minorities in multi-ethnic federations is also discussed in this section.

As indicated in the introductory chapter, the focus of this thesis is primarily on institutional arrangements that impact on the accommodation of ethnic diversity. A complete institutional response to the challenges of ethnic diversity cannot, however, only focus on these diversity-specific

institutional arrangements but must also include other institutional arrangements that are common to all federations including federations that are constructed to accommodate ethnic diversity. A good example in this regard is a fiscal arrangement. Fiscal arrangements are not specific to federations that are designed to respond to the challenges of ethnic diversity. They, however, indirectly impact on diversity-specific institutional arrangements as the latter will be meaningless if they are not accompanied with the necessary financial resources. It is thus important to note that this thesis focuses on both diversity-specific arrangements and other supportive institutional arrangements that are common to all federations, yet have importance to multi-ethnic federations.

6.1. Recognition

The institutional principle of recognition basically relates to the state's self-definition - how the state views itself. It concerns itself with the type of nationalism that the state promotes; whether the state considers itself as a nation-state (or aspiring nation-state) or as a state with multi-ethnic character.

Many doubt the value of recognising the multi-ethnic character of a state. Pointing to the symbolic nature of the act of recognition, they prefer to concentrate on practical and tangible matters. There is, however, an emerging consensus that the symbolic concession that recognition represents is important in dealing with the multi-ethnic challenge.⁶⁴ The act of recognition, according to this view, at least suggests that the state is moving away from the nation-state paradigm towards a politics of accommodation. As Tierney notes, it indicates a preparedness to accommodate ethnic diversity:

⁶⁴ Keating 2001: 107.

...such preparedness to face the state's [multi-ethnic] reality is in fact a sign of the state's strength and an indication that it has the self – confidence to flourish through embracing positively the deep diversity upon which it was constituted.⁶⁵

The symbolic nature of the act of recognition should not blind one from recognising the important way that such recognition affects policy making and public discourse. The way that the state defines itself informs to a large extent the policy that it follows when dealing with ethnic claims. A state that strongly views itself as a nation-state is likely to deny or repress claims made by ethnic groups. On the other hand, a state that projects itself as a multi-ethnic state is less likely to ignore the demands of ethnic groups. A state's self definition thus sets "a normative framework for the constitution which can then inform constitutional process in a broader way".⁶⁶ This says that the identity of a state as defined by the state itself embodies not only symbolical value, which the act of recognition seems to largely represent, but also has practical significance as it informs the institutional choices a state has to make.⁶⁷

The most significant issue in Canada's constitutional debate has been over the visions of the nature of the Canadian state. There are two competing visions. The federal government, through legislation and policies, has been promoting pan-Canadianism, regarding Canada as one nation that happens

⁶⁵ Tierney 2004: 240.

⁶⁶ Tierney 2004: 235.

⁶⁷ It is also possible that this principle provides guidance to courts when adjudicating disputes that relate to the constitutional structure of the federation (Tierney 2004: 235).

to be composed of two linguistic groups.⁶⁸ This vision of the state, which is often identified with Pierre Trudeau, one of Canada's most influential Prime Ministers,⁶⁹ reflects the position that "any state recognition of cultural diversity must be granted on a uniform individual and pan-state basis; it must be personalised and deterritoralised".⁷⁰ It represents Canada as one multicultural state united through citizenship to a vision of a state which, but for its institutional design, is unitary in its political ethos.⁷¹ This monist vision of the state is rejected by Quebec nationalists who regard Canada as a multi-national society that contains two multicultural societies: Canada (The Rest of Canada-ROC) and Quebec.⁷²

⁶⁸ The British North America Act of 1867 officially recognised the bilingual character of Canada and thus guaranteed the use of French and English in the Quebec legislature, in the federal parliament and in Canadian courts (Balmer 1992: 445).

⁶⁹ Trudeau was the most prominent promoter of the 'image' of Canadian nationalism. He said: "One way of offsetting the appeal of separatism is by investing tremendous amounts of time, energy, and money in nationalism, at the federal level. A national image must be created that will have such an appeal as to make any image of a separatist group unattractive" (Trudeau 2005: 222). A plan was adopted by the federal Cabinet to promote the image of the federal government in Quebec in 1996. Although the program officially started only in 1997, it was later revealed that the program has, in fact, started a few years back through the Prime Minister's secret "Unity Fund". Through this secret fund, over 300 million dollars were spent between 1997 and 2002 through various Quebec ad agencies and federal crown corporation to promote the image of Canadian nationalism (see Gagnon and Herivault 2005: 10).

⁷⁰ Karmis and Gagnon 2001: 172.

⁷¹ Tierney 2004: 238.

⁷² Quebec has continuously been demanding to be recognised as a 'distinct society' in Canada. This was the main agenda in the two rounds of constitutional negotiations. In the 1987 Meech Lake Accord, Quebec demanded to be recognised as a 'distinct society'. Such recognition would have affirmed Quebec's dualist vision of the state, though set out only in the unenforceable paragraphs of a

Many analysts agree that this reluctance on the part of Canada to perform a symbolic act of recognition to Quebec's national character has contributed to identity fragmentation. Watts remarks that "[e]fforts to deny or suppress the multiple identities within its diverse society have, in Canadian experience, almost invariably led to contention, stress and strain".⁷³ Rocher *et al* similarly comment that the failure of Canadian political actors to respond to Quebec claim for recognition has kept the Canadian political system highly unstable.⁷⁴ The decision of Quebec nationalist to hold a referendum on Quebec's sovereignty in the aftermath of the collapse of the Charlottetown Accord, which is accompanied by the increase in political and social fragmentation, is also often attributed to the failure of the state to concede symbolic recognition to Quebec.⁷⁵

The reluctance to extend symbolic recognition often rests on the fear that it implies the right to establish a separate state. The mere fact of extending an act of recognition does not, however, necessarily imply the right to self

constitutional preamble. The Accord was initially approved. It failed to come into effect after two provinces refused to assent to the deal. The Charlottetown Accord, which began in 1990, dealt with the same issue but in a more comprehensive manner. The proposal of this Accord was defeated in referendum. 54% of the population voted against it and majorities in six out of ten provinces, including Quebec, voted against the deal. Tierney 2004: 238. See also Tully 1995: 175

⁷³ Watts 2000: 49.

⁷⁴ Rocher, Rouillard and Lecours 2001: 195.

⁷⁵ Gagnon and Herivault (2005: 1), commenting on what the "recognition of Quebec" would entail in a concrete manner for Canada's institutions, argue that the outcome of the Meech Lake debate has made the "distinct society" compromise obsolete and no longer good enough to a majority of Quebecois. For them, the only acceptable form of recognition today would be the inclusion of a clause recognising the "Quebec nation" in the preamble of the Canadian Constitution.

determination which can only be realised by establishing an independent statehood. As argued in the preceding chapter, many nationalist movements are often satisfied by a protected measure of autonomy. Extending such symbolic recognition, however, can go a long way in contributing to the stability and lasting union of the state. As the Canadian experience illustrates, the failure to concede a symbolic recognition to political communities increases discontent among the constituent units and facilitates identity fragmentation.

The act of recognition can find expression in different forms. In some cases, it can be explicitly articulated in the preamble to constitutions. In other cases, it can be embedded in the constitution's design, especially in language related section(s) of the constitution. It can also find expression in the various state symbols including the use of flags, anthems, public holidays and even the name of the state itself.⁷⁶

6.1.1 Preamble

The preamble to a constitution often reflects the orientation of a state. It gives an indication as to whether the state aims at a nation-state construction or readily recognises its multi-ethnic character. The preamble to the Swiss Constitution, for example, expresses the determinations of the cantons “to

⁷⁶ Rousseau (1972, 281), when discussing the formation of Polish ‘nationality’, advised the use of these and other similar symbolic codes. He stated that the state “should encourage the ‘creation of games, festivities and ceremonials of a Polish character... Public officials should wear distinctively Polish clothing and... an education system, staffed by Polish rather than foreign teachers should be used to ‘shape the souls of the citizen in a national pattern’...” Similarly, Trudeau (2005, 222), in a bid to promote the ‘image’ of Canadian nationalism, argued that “[r]esources must be diverted into such things as national flags, anthems, education, art councils, broadcasting corporations, film boards...”.

live together with our diversities, with respect for one another and in equity”.⁷⁷ As noted by Fleiner, this indicates that the cantons and the Swiss federation did not adopt the homogenisation solution of “We the people of the ...” (cf., the United States Constitution).⁷⁸ On the contrary, they decided to remain “the peoples of the cantons”.⁷⁹

A slightly different formulation is adopted in the Spanish Constitution. The preamble affirms the will of the “Spanish nation to protect all Spaniards and all the peoples of Spain in the exercise of human rights, their cultures and traditions, languages and institutions”. Article 2 further states that “[t]he Constitution is founded upon the indissoluble unity of the Spanish nation, the common and indivisible patria of all Spaniards, and recognises and guarantees the right to self government of the *nationalities* and regions of which it is composed and the solidarity among them all”. Tierney argues that the Constitution has fallen short of fully recognising the national diversity of the Spanish state.⁸⁰ He argues that different visions of the state are entrenched in the constitution which must qualify any claim that it (the Constitution) represents a complete acknowledgment of internal diversity. The recognition of ‘nationalities’ is qualified by the first phrase in Article 2 which emphasises “the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards”.

⁷⁷ Schmitt 2005:348.

⁷⁸ Fleiner 2002: 4.

⁷⁹ A recently amended version of the preamble to the Swiss Constitution reads: “we the Swiss people and cantons”. This suggests the emergence of ‘the Swiss people’ out of a process that recognised the diversity of “the people of the cantons”. This could be interpreted as an indication where the recognition of ethnic diversity can eventually give rise to ‘civic nationalism’ or what some authors refer as ‘patriotism’.

⁸⁰ Tierney 2004: 242.

A different interpretation of the constitution is provided by others who argue that the Spanish approach represents a balanced approach to the issue of ethnic diversity. The Constitution, by emphasising the indissoluble unity of Spain while at the same time recognising Spain as ‘an ensemble of diverse peoples, historic nationalities and regions’, is seeking to reconcile unity with diversity.⁸¹ It embodies a balance, albeit difficult, between two historical elements of Spanish history: the federalist and the centralist.⁸²

The foregoing discussion suggests that the formulation of the preamble to a constitution is an important element of recognition. It indicates whether a state recognises its ethnic diversity or presents itself as a homogenised state. Furthermore, although it represents the unenforceable part of constitutions, it guides public discourse and, more importantly, courts that adjudicate disputes between the different levels of government. It informs, to a great extent, the institutional choices that a state has to make in the body of the constitution.

6.1.2 Symbolic codes

The image of a state is reflected in the various types of symbolism that the state adopts. Symbolic codes of a state include the name of the state itself, the public holidays it celebrates, the flag(s) used in public buildings, official emblems and the like. The argument has been that symbolic codes of a multi-ethnic state should reflect the multi-ethnic character of the state.

⁸¹ Guibernau 2004.

⁸² Conversi 2001.

6.1.2.1 Names and terminologies

The use of terminologies and names has important symbolic values. One such important and often contested symbolic value relates to the name of the state. Some multi-ethnic states are reluctant to refer to themselves as federal despite the fact they reflect many of the characteristics of a federal state. Federalism is regarded as the 'F word'. They believe that describing the state as a federal encourages centrifugal tendencies. The Indian Constitution, for example, does not describe the state as federal despite the federal features that characterise the state. In fact, amendments to describe India as a federation were rejected in the Constituent Assembly and official documents rarely use the term 'federal'.⁸³

In other circumstances, the description of the state as federal is taken as an important measure that marks the move towards institutional recognition and accommodation of ethnic diversity. The 1994 Constitution of Belgium, which was based on the 1993 reform, describes Belgium, in the first article, as a "federal state, composed of communities and Regions" thus sanctioning its move toward a greater degree of accommodation with symbolic value.⁸⁴ Several institutions were renamed: central institutions would henceforth be called 'federal', while regional and community executive bodies would be referred to as 'governments'.

In short, the formal description of the state may reflect the level of the commitment of the state to the recognition of ethnic diversity.

⁸³ Majeed (2005: 183) relates the decision of the Assembly not to describe India as a federal to the fact that "they were not thinking of federalism in the usual sense at all."

⁸⁴ Karmis and Gagnon 2001: 164.

6.1.2.2 Flag

The use of flags also reflects on the image that a state aims to promote. Article 4 of the Spanish Constitution describes ‘the flag of Spain’. It, however, also recognises flags and ensigns of the subnational units or autonomous communities, as they are referred to in Spain. It stresses that these flags may be used together with the flag of Spain on public buildings and in the official ceremonies of autonomous communities.⁸⁵ This represents an acknowledgment of the diverse identity that characterises the Spanish society. In the United Kingdom, the Union flag is “no more than the superimposition of the flags of the component [units]” thus reflecting the diverse composition of the Kingdom.⁸⁶

6.1.2.3 The practicality of adopting an all-inclusive state symbols

Other symbolic codes that reflect on how the state defines itself include coat of arms, the designation by the state of certain dates as public holidays and even the naming of places and towns. Historically, in most countries the choices of these codes reflects the identity and practice of the historically dominant group.⁸⁷ It has often been argued that a state that promotes itself as an accommodating state has to take into account the practices and values of the different ethnic groups in the designation of these symbolic codes as well. Not all public holidays are, for example, equally important to all ethnic groups. Based on their culture and history, some ethnic groups might prefer other particular holidays. Multi-ethnic federations like Canada and Belgium have tried to be more accommodating by allowing the adoption of

⁸⁵ Tierney 2004: 243.

⁸⁶ Keating, 2001: 104.

⁸⁷ Patten 2001: 285

holidays at the level of the constituent units in addition to state-wide public holidays.⁸⁸

Yet some question the practicality of recognition through symbolical codes. They wonder how, as a practical matter, one can include the images, stories, languages and festivals of all or even most ethnic groups in the official document and codes of states. “How many images can reasonably appear on a flag? How many languages can be squeezed into a letterhead? How many cultural groups’ festivals can be recognised as public holidays?”⁸⁹ This, admittedly, is one of the challenges of building inclusive state symbols in a multi-ethnic state. Yet multi-level governance, in a federal or other form, surely can go a long way in responding to these challenges as its different levels of government and the corresponding territorial organisation can be used to cater for different identities. A good example in this regard is found in Scotland where there are even public holidays that are only celebrated at the municipal council level.⁹⁰

6.1.3 Language policy

As language is often one of the key expressions of ethnic identity, language rights in a federal state are “invested with a symbolism of its own”.⁹¹ It represents the recognition (or the lack thereof) of the linguistic identities of the state’s constituent units.⁹² As a result, language policy often correlates with visions of uniformity or visions of diversity.

⁸⁸ Keating 2001: 105.

⁸⁹ Levey 2001: 4.

⁹⁰ Keating 2001: 105.

⁹¹ Coulombe 2001: 242.

⁹² Language polices go beyond the symbolic realm of recognition. Language policies, for example, play an important role in securing access to power and influence. They affect access to public services or employment in public services.

Multi-ethnic states have adopted different language policies. Some adopted a policy modeled on the individualistic approach to the whole issue of language rights while others opted for the territorial model of language planning.

6.1.3.1 The individualistic model

Under the personality approach, individuals are entitled to use their mother tongue in every part of the country with few territorial restrictions. The language policy adopted by Canada during the government of Pierre Trudeau, which was later entrenched in the 1982 Constitution, represents this approach. Under the *Official Languages Act*, passed in 1969, both French and English were granted official status.⁹³ Canadian citizens were thus entitled to federal government services in either official language. Minorities, where their numbers justify, were allowed to have their children educated in their mother tongue. This policy entailed a symmetrical application from coast to coast, whereby French-speaking minorities outside Quebec and the English-speaking minority inside Quebec receive equal constitutional protection.⁹⁴

A language policy that restricts the use of languages other than the historically dominant language in public notices or in the extension of public services will impair access to these services by members of other language groups. It can also have the capacity to affect the enjoyment of other rights. A language policy that only promotes a single language group can have the effect of discrimination as it can create barriers to the exercise of voting, education and other rights. See generally Coulombe 2001.

⁹³ Balmer 1992:445.

⁹⁴ Coulombe 2001: 248-249.

The individualistic model adopted by Canada aimed to separate linguistic differences from the collectivities, territories and institutions which constitute them. It emphasises an individualistic orientation of the right. In such a vision, linguistic differences are individual attributes, protected from coast to coast by a central state. The major criticism leveled against this model of language policy is that it, with its integral coast-to-coast bilingualism, presents a monist vision of the state in the symbolic realm.⁹⁵ It regards the state as one bilingual nation. It refuses to recognise the Francophone community as a territorialised linguistic community.

Another criticism directed against this approach is that it has the tendency to perpetuate the dominant position that a historically privileged language group enjoys in the state; it is likely to have the effect of strengthening the pressures for assimilation to the dominant group.⁹⁶ This is illustrated by the situation in Quebec. In Quebec, before the passing of language laws, the cultural division was such that ‘capital spoke English and labor spoke French’ thus resulting in English occupying a disproportionate place in Quebec in relation to French; that in a way encouraged people from the other group to assimilate to that language group thus resulting in providing a disproportionate place to the historically dominant group.⁹⁷ That is why Quebec embarked upon what is called ‘the language normalisation

⁹⁵ Karmis and Gagnon 2001: 152.

⁹⁶ Karmis and Gagnon 2001: 155.

⁹⁷ The Commissioner of official languages, in his 1995 Report, noted this fact. The Report concluded that French still has a disproportionate place in relation to English even in the federal administration where the progress in the use and status of French is more visible. The Commissioner concluded that French did not achieve ‘a fair status as a language of services and work’. The 1996 Census also revealed that “the historical pattern of assimilation among francophone minorities has not yet been overcome” (Karmis and Gagnon 2001: 155).

process'.⁹⁸ This process, which came as a reaction to the disadvantaged position in which the linguistic minorities found themselves, aims at restoring the majority status that local languages should assume in their localities.

6.1.3.2 The territorial model

Other states have responded to the language problem by adopting the territorial model of language planning. Under such systems, the official language would be that of the majority of the locality. This model of language policy has the effect of promoting unilingualism. A good example in this regard is Belgium where both French-speaking Flanders and Dutch-speaking Walloon endorse unilingualism with Brussels being the only region that has adopted official bilingualism. Individuals moving into the either parts of Belgium must assimilate. French-speaking Belgians moving to a Flanders territory will have to send their children to Flanders schools and vice versa. There is thus a strict policy of both territorial and individual monolingualism implying that “[t]here are no all Belgian language rights”.⁹⁹ Similarly, in Switzerland, language guarantees are provided on the bases of the principle of territoriality. German-speaking Swiss moving to a French-speaking canton has to leave behind any prior claim to language protection.¹⁰⁰ In India, as well, the states are allowed to adopt their own regional languages. The Constitution specifically provides that the states are entitled to adopt one or more of the languages in use in the states including Hindi for official purposes of the state. Currently, 22 languages are recognised by the Constitution.¹⁰¹

⁹⁸ Tully 1995: 175.

⁹⁹ Keating 2001: 128

¹⁰⁰ Fleiner 2000.

¹⁰¹ Dhavan and Saxena 2006

This territorial model of language policy represents recognition of the linguistic identities of the constituent units. It also provides ample room for a community to develop its language and culture. The only concern might be that it risks developing isolated communities and scores low in the promotion of inter-group solidarity.

A variant of the territorial model of language policy is adopted in Spain. The Castilian language has been the dominant language in Spain for centuries while other national languages were suppressed.¹⁰² The 1978 Constitution made Castilian the official language of the central government, statewide, while making languages of the autonomous communities co-officials in their respective communities. It further imposes a duty on all citizens of Spain to learn Castilian and the right to use it. This limits the use of local languages to the activities of the autonomous communities thus, unlike the Canadian Constitution, denying any official status in relation to central institutions such as the Government, Congress, the administration and the Courts. Although the sanction of the Castilian language as co-officials of the autonomous communities have played an important role in promoting national unity, it has also the adverse effect of further entrenching the disproportionate status the local language holds in its own

¹⁰² Spain, after almost four decades of Franco's highly centralised and homogenising regime, adopted a new constitution in 1978. During the Second Spanish Republic (1931-1938), which was considered by many as a progressive government, Catalonia, the Basque country and Galicia were allowed to enjoy some level of autonomy. This was, however, short lived. The Franco regime, which came to power in 193, emphasised unity and condemned all forms of cultural diversity. The regime suppressed all regional political institutions and laws. It also prohibited the use of Catalans and Basques (Euskera) languages and all sorts of symbolic elements (flags, anthems) of the Catalan and Basque identities. See Guibernau 2003: 122.

localities. As noted by Agranoff, “the language issue has created the single most protracted policy conflict” in Spain.¹⁰³

6.1.3.3 Concluding remarks

As the Canadian experience shows, the individualistic approach to language planning follows a non-exclusive approach and allows individuals to use the language of their preference across the country. This may be feasible in a country like Canada where there are few linguistic communities. The capacity of this approach to give practical effect to the act of recognition in a multi-ethnic context is, however, questionable. The tendency of this particular language policy to perpetuate the dominant position of a historically dominant language is also something that must be looked into. Without a deliberate intervention from the state or the constituent government, it is likely that the historically dominant language group will continue to remain as the majority status language with the languages of other groups relegated to a secondary level.

Of course, the territorial model of language planning is not without problems either. As indicated above, this particular model scores low in terms of promoting inter-ethnic solidarity. It must, however, be noted that under certain circumstances such language policy might be the only way to hold the state together. In the case of Belgium, for example, it is argued that Belgium would not have existed as one state today had such an arrangement not been made.¹⁰⁴ In Switzerland, too, the territoriality principle to language is considered to be instrumental in guaranteeing peace among the different language groups.¹⁰⁵

¹⁰³ Agranoff 1994: 73.

¹⁰⁴ Balmer 1992: 443

¹⁰⁵ Fleiner 2000.

It is true that the success of a federal arrangement in accommodating ethnic diversity cannot be measured solely on the basis of its language rights regime. It is, however, generally agreed that a well designed language policy goes a long way in contributing either to the effective reconciliation of unity and diversity or to the eventual polarisation of the cultural communities and further disintegration of the state.¹⁰⁶

6.2. Self rule

As indicated earlier, it is not sufficient that a state recognises its ethnic diversity. The acknowledgment of ethnic diversity must be supplemented by institutional principles that give practical effect to this act of recognition. One such institutional principle that federalism provides is the principle of self rule, also known as ‘autonomy’ or ‘self government’.¹⁰⁷

There seems to be a general agreement with regard to the locus and meaning of the concept of autonomy. Sohn aptly indicates that the concept of autonomy lies in a continuum between the concept of non self governing territory and an independent state.¹⁰⁸ Harhoff also made a similar remark when he stated that autonomy lies “between full-fledged state like sovereignty and full subordination under national authority”.¹⁰⁹ The concept of autonomy falls short of granting full fledged independence but enables the inhabitants of a territory to control their economic, social and cultural

¹⁰⁶ Balmer 1992: 447 – 448.

¹⁰⁷ Although the synonymous nature of the terms self rule, autonomy and self government are contested by some authors (see, for example, Welehengama 2000 and Lapidoth 1997), this thesis uses the terms interchangeably.

¹⁰⁸ Sohn 1980: 90.

¹⁰⁹ Harhoff 1986: 30

affairs. In this study, autonomy therefore refers to the constitutionally entrenched powers of constituent governments to exercise control over some or all of their own economic, political, social and cultural affairs.

Self rule finds practical expression through the different territorial and institutional structures of a federation. It finds practical expression in the geographical configuration a federation. Self rule can also receive institutional expression through the division of powers – which powers are allocated to which level of government. The other important aspect of self rule is financial autonomy. We now turn our attention to these important aspects of self rule, starting with territorial autonomy.

6.2.1. Territorial autonomy

The level of autonomy that an ethnic group enjoys is largely affected by the territorial structure of the state. There are two basic approaches in so far as the geographical configuration of multi-ethnic federations is concerned.

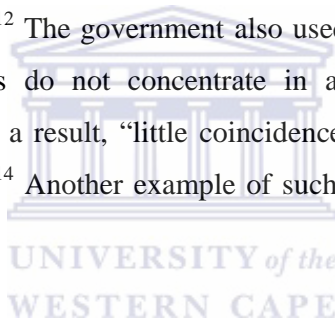
6.2.1.1 Territorial or administrative federalism

The first approach, which is often described as territorial or administrative federalism, advocates the drawing of boundary lines according to geographical or administrative convenience. The territorial units are fixed with ‘ruler and compass’. The state declines to reflect its ethnic diversity in the territorial division of the federation. The state functions on the premise that the various communities form a common society.¹¹⁰

In some cases, the state seeks to ensure that each constituent unit is composed of a fairly equal number of diverse ethnic groups in a manner that “each constituent unit becomes...a demographic microcosm of the state as a

¹¹⁰ Kriek 1992: 20.

whole”.¹¹¹ This, it is assumed, forces the different communities to cooperate with each other in the pursuance of power at the constituent unit level. In other cases, this approach may be underlined by the ‘divide and conquer policy’ that seeks to avoid territorially based ethnic claims. A classical example of this approach is the internal unit demarcation in the United States of America. As the USA expanded south westwards from its original largely homogenous citizenry of the 13 founding colonies, the territorial structuring was done in such a manner that the different ethnic groups will never become a majority. The government did this by drawing boundaries in manner that WASPs always outnumber the other ethnic groups. State boundaries were gerrymandered to ensure that there will be a WASP majority in each state.¹¹² The government also used different techniques to ensure that immigrants do not concentrate in a particular part of the country.¹¹³ There is, as a result, “little coincidence between ethnic groups and state boundaries”.¹¹⁴ Another example of such territorial structuring is Pakistan.¹¹⁵



The major criticism held against this type of internal unit demarcation is that it denies territorial autonomy to ethnic groups. By failing to provide geographically concentrated ethnic groups a homeland, it denies them territorial space which is essential to promote their identity. It also makes

¹¹¹ Anderson and Stansfield, 2005: 365.

¹¹² Kymlicka 2005: 112.

¹¹³ “Grants of public land were denied to ethnic groups per se to promote their dispersal: William Penn persuaded Welsh immigrants from setting up their own self-governing barony in Pennsylvania..” O’Leary 2004: 80.

¹¹⁴ Milton Gordon quoted in O’Leary 2004: 80. O’Leary (2004, 80) states that “the sole coincidence is between white majorities and state boundaries, and that is no coincidence”.

¹¹⁵ Rajalopalan 2000.

cultural groups continuously vulnerable to the dominant position of the majority group or, as the case may be, to the historically dominant group. More often than not such territorial structures of federations are underlined by strong integrationist and assimilationist dispositions of the state. Hence the reason why these federations are often referred to as mono-national federations.

6.2.1.2. Ethnic model of federalism

The other major approach takes ethnicity as the basis for the organisation of the state and draws the internal boundary of a state along ethnic lines. This approach is famously referred to as the “ethnic” model of federalism. In this form of territorial division, “ethno–regional communities are considered as most appropriately represented through their spatial compartmentalization (states, cantons, provinces, communes), predicated on the belief that ethno – regional or national communities should receive due territorial recognition”.¹¹⁶ Each territorial area accommodates a separate ethnic or linguistic group. Boundaries drawn to coincide with ethnic divisions are the basic feature of this approach. This is what commentators meant when they talk of a federal society, a situation where the boundaries of the territorial units of a federation are coterminous with the boundaries of its ethnic, religious or linguistic communities.¹¹⁷

This type of territorial structure, it is argued, provides extensive self rule for an ethnic group by allowing the latter to form a majority in one of the constituent units, thereby, “guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society”.¹¹⁸ A good

¹¹⁶ Smith 1995: 6.

¹¹⁷ Smith 1995: 6.

¹¹⁸ Kymlicka 1995: 27-28.

example of such geographical configuration is India, where the federal system has been designed in a manner that reflects the linguistic collectivities.¹¹⁹ A territorial structure based on linguistic provinces is, in fact, an important characteristic of the Indian federation. The process of provincial re-demarcation that took place in India has resulted in the reorganisation of all non-Hindi-speaking multi-lingual provinces of the country “into states in which a single regional language was dominant and was generally adopted also as the sole official language of each state”.¹²⁰ The process of state reorganisation along ethnic lines, which started in 1956 with 15 states, has resulted in a federation that currently has 28, by and large, linguistically defined states.¹²¹

Some suggest that this approach is appropriate “in contexts where the divisions among communities are especially deep and intractable, where secessionist sentiments is intense, or where divide and conquer approaches are either logistically unfeasible, or rejected by one or more communities”.¹²² In such a scenario, it is argued, drawing boundary lines to force communal co-existence may simply exacerbate tension, leading to further violence. According to this view, it is in situations where relation between the different groups has broken down irreparably and ‘ethnic clones’ are the only solution, that this model of federalism becomes relevant. Currently, this approach is being discussed in a number of divided societies including Cyprus, Afghanistan, and Somalia.

It must, however, be noted that ethnic federalism may also be adopted under less extreme circumstances. A particular ethnic group may have been

¹¹⁹ Friedrich 1975: 232. See also Rajagopalan 2000.

¹²⁰ Brass 1991: 315.

¹²¹ Dhavan and Saxena 2006.

¹²² Anderson and Stansfield 2005: 366.

dominated culturally, linguistically, economically and politically by a historically privileged ethnic group. Under such circumstances, the former, in order to avoid the continued dominance of the dominant group, may prefer a territorial structure that endows it with a ‘mother state’. It may opt for ethnic federalism that structures the geographical configuration of the federation along ethnic lines making each ethnic group a majority in its own house.¹²³ Such an arrangement, it is argued, empowers geographically concentrated ethnic groups with the tools to protect and promote their distinctiveness, without fear of the dominant group imposing their values or vetoing their aspirations.¹²⁴

6.2.1.3. The dangers of providing mother state to each large ethnic group

Many may agree with the decision to provide territorial autonomy to geographically–concentrated ethnic groups. They may not, however, be comfortable with large communities having their own constituent units. There is a fear that large ethnic groups carved under a single constituent unit pose a threat to the territorial integrity of the state.¹²⁵ “When the territories in question are spatial surrogates of large-scale, potentially self-conscious cultural communities, most territorial conflicts become community conflicts as well”.¹²⁶ This is often illustrated by the Belgian experience.

It is argued that the territorial structure of Belgium, which is mainly structured along three linguistic lines, has facilitated identity fragmentation along ethno-regional lines. As noted by Murphy, it has done so in at least

¹²³ This also helped to avoid inter-ethnic tension that exists as result of the actual or perceived domination of one ethnic group by the other.

¹²⁴ Simeon 1998: 47.

¹²⁵ Hale 2002: 4

¹²⁶ Murphy 1995: 93.

two ways.¹²⁷ First, it has led to a restructuring of key social and economic arrangements to reflect the underlying ethno-regional divisions. It entailed the division of a host of social and economic institutions along language lines. This has manifested, first, in the division of the Belgian broadcasting services into Flemish - and French-language wings, which eventually were completely separated. As a result, they are run by distinct entities that had “no explicit mandate...to promote integrative values, or even mutual understanding across linguistic lines”.¹²⁸ The other manifestation of institutional division and which is more significant is the division of major state-wide political parties along linguistic lines. This has, with the emergence of regionalist parties that, in the first place, induced the split of the traditional state-wide parties, reinforced regional structures and identities. It has done so by reducing opportunities for inter-community interaction and communication and by waning cross-cutting cleavages. Second, issues that are hardly related to language and culture have taken an ethnic dimension. This is evidently so in matters that have economic and financial implications. Murphy remarks:

[I]ssues that would not necessarily pit north against south were interpreted in that way because of the particular configuration of Belgian federalism. Under other circumstances one could imagine debates over fiscal policy focused on competition between the industrial heartland of central Belgium and the agricultural periphery of the northeast and the far south. One could imagine controversies over school funding between richer cities and poorer towns. One could imagine high-profile competitions between communes or districts within Flanders and Wallonia for telecommunication contracts. Or one could imagine disputes over arms sales between pacifist university communities and industrial

¹²⁷ Murphy 1995: 89.

¹²⁸ Murphy 1995: 89.

centers where jobs were dependent on continued arms production. But the structure of federalism imposed a different geographical logic on these matters – a logic in which linguistic identity, institutional politics, and social interest are largely spatially coincident and mutually reinforcing.¹²⁹

Nigeria, the oldest federation in Africa, faced with a similar situation, has continuously adjusted its internal boundaries. Initially, Nigeria was established as a three-unit federal structure that granted autonomy and hegemony to the country's three major ethnic groups, namely, the Muslim Hausa-Fulani of the Northern Region, the Christian Igbo in the South East (eastern Region) and the religiously bi-communal Yoruba in the southwest (Western Region). This was considered by many as one of the basic structural flaws of the Nigerian federation. It is argued that the erection of the federation's boundaries around the country's major tripartite ethnic fault-lines had led to hegemonic ethnocentrism and secessionism on the part of the "big three". As a result, the original geographical configuration of the federation was abandoned and replaced with twelve state structures in 1967. Since then the number of states has increased continuously. Currently, the number of states in Nigeria stands at 36.¹³⁰

In sum, the experience of multi-ethnic federations suggests that ethnic groups have territorial autonomy, implying a delineated part of a territory wherein an ethnic group will have the authority to manage its own affairs. As the foregoing discussion reveals, however, little consensus is available

¹²⁹ Murphy 1995: 93.

¹³⁰ Watts (1999:63) mentions other states where asymmetry in population, size and wealth of the constituent units has contributed to instability including East Pakistan prior to its secession, Russia prior to the break up of the USSR in 1991 and the Czech Republic within Czechoslovakia prior to its split in 1992

on the particular territorial structure that multi-ethnic federations should adopt in order to provide ethnic groups with territorial autonomy.

6.2.2. Division of powers and competencies

Division of powers between the federal government and the constituent units is one important area where the state can provide practical expressions to self rule. An important issue in relation to the distribution of powers and competencies in multi-ethnic federations relate to the area of competencies reserved to the constituent units. Which competencies are relevant to subnational units in a federation that is constructed to respond to the challenges of ethnic diversity? Often discussed in a multi-ethnic federation is also the issue of whether the system should provide equal powers to all subnational units or allow those with ethnic claims to enjoy more powers than others. Should the federalism be symmetrical or asymmetrical? These are some of the issues that this chapter addresses in the sections that follow.

6.2.2.1. Competencies allocated

As in many other types of federations, the debate about ‘who does what’ is pertinent in federations that are constructed to accommodate ethnic diversity. An important question is, however, whether the specific purpose of multi-ethnic federations informs the distribution of power and responsibilities between the federal state and the constituent units. The experience of a few multi-ethnic federations might shed light on the matter.

In Belgium’s ‘double federation’, the legislative body of each linguistically defined cultural community is empowered with competences over cultural and educational affairs. Thus, the Flemish community has competence over matters like education (including post-secondary education), culture (language, radio and television, public libraries, cultural agencies) and the so-called ‘personalised’ matters in which the use of language is important

(i.e. health care, family policy, social welfare, the integration of immigrants).¹³¹ Furthermore, the Belgian federation provides its constituent units the power to negotiate international treaties in areas of their own competence.

In Canada, the Constitution Act of 1982 allows provinces to guard their autonomy in areas that are of particular significance to them. This is in terms of the ‘opt out procedure’, according to which, provinces can avoid the effect of constitutional amendment proposed by the central government on matters relating to education or other cultural matters.¹³² This has allowed Quebec and other provinces to develop some measure of autonomy in cultural matters.¹³³

The effect of the particular purpose of multi-ethnic federation is clearly pronounced in the distribution of powers adopted by the Swiss Constitution. An important principle underlying the distribution of powers in Switzerland is that the cantons (i.e. the constituent units) must have the power to make and execute decisions “that are relevant to their cultural development based on their cultural heritage”.¹³⁴ Areas like language, culture and education fall under the jurisdictions of cantonal governments.

The foregoing discussion suggests that identity-related matters are often left to the jurisdiction of the constituent units, allowing the latter to exercise

¹³¹ Rocher et al 2001: 18. See also Karmis and Gagnon 2001: 163

¹³² Tierney 2004: 194.

¹³³ Recently, an agreement has been reached between the central government of Canada and Quebec to grant the latter a ‘semi- formal presence’ at the UNESCO, a UN agency that deals with matters of culture and education (*PM makes UNESCO deal with Quebec*’ May 04-2006).

¹³⁴ Fleiner 2006: 274

control over matters that are of relevance to them. This seems to be consistent with the purpose of multi-ethnic federations. However, the increasing interrelation of economic and cultural policy suggests that the demands of ethnic groups in a multi-ethnic federation cannot be met by simply providing them with the power to exercise control over culturally-related matters. As Watts notes,

[t]he original simple Canadian solution of 1867, which consisted of centralizing control of economic policy but assigning responsibility for cultural distinctiveness and related social programs to the provinces, has been complicated by two developments. One is the greatly increased cost of social policies requiring federal financial assistance and the other is the realization by regionally concentrated ethnic groups that their distinctiveness depends not just upon cultural policy but also upon being able to shape economic policies regarding their own welfare¹³⁵

This suggests that the distribution of power and responsibilities should not only focus on providing the constituent units control over identity-related matters. It suggests the extension of the jurisdiction of subnational units to other areas that affect their welfare.

Finally, it is also important to note that the legislative autonomy of subnational units is affected by the extent to which their legislative powers are full and exclusive. As the experience of multi-ethnic federations shows, interferences with the legislative powers of constituent units come in different forms.¹³⁶ In some cases, the federal government is empowered by the constitution with specific override or emergency powers to invade or

¹³⁵ Watts 2006: 331

¹³⁶ Examples of such quasi-unitary powers are found in the constitutions of India (see Majeed 2005) and Spain (see Conversi 2001).

curtail the otherwise jurisdiction of constituent units. In other cases, provision is made in some constitutions for the centre to issue directives to constituent governments in specified areas. This sometimes goes to the extent of allowing the central government to suspend constituent governments for prescribed reasons. Although providing the constituent governments final decision making powers over matters that are relevant to them reinforces their autonomy, few constitutions thus provide full and mutually exclusive power to each level of government. The concern in this case is the extent and the conditions under which central governments can circumscribe constituent units in areas that normally come under the jurisdiction of the latter.

6.2.2.2. Symmetry and asymmetry

In any multi-ethnic state, not all constituent units demand some level of self government. In most cases, a state would be composed of units that, due to historical reasons, demand a certain level of autonomy and others that merely represent regional divisions and do not have any aspiration for self government.¹³⁷ Countries like Canada and Spain illustrate this very well. In the case of Canada, Quebec represents the Francophone community, which considers itself as a national community entitled to a certain measure of self government while the other nine provinces do not harbour nationalist aspirations and are simply dubbed as the ‘Anglophone Canada’ or rather famously, the ‘Rest of Canada’, merely representing regional divisions. The same is true in Spain. In that country, Catalonia, the Basque country and Navarre are national communities while the other 14 provinces reflect regional divisions of a single nation, Spanish.

¹³⁷ Kymlicka 2005: 277.

As noted by Kymlicka, ethnic-based units usually demand more powers than regional-based units.¹³⁸ They aspire for more self government. The extent to which nationality-based units jealously guard their powers in the face of attempts of greater centralisation by federal governments is a major indication of this fact. Centralisation of powers by the Spanish national government would invoke little or no anger from the 14 autonomous communities as it would among the Catalonians, the Basque country or Galicia and, most importantly, not for the same reason. If any of the 14 Spanish communities object to the centralisation policy proposed by the central government, it would most probably be on the grounds of efficiency or democracy. Ethnic-based units would, however, resist such centralisation policy based on the ground that these policies pose a threat to the very survival of their respective communities. They might, of course, also disapprove of such policies based on the same reason that regional based units do. The converse, however, is not usually true.

One of the issues that is often raised within the context of such states is whether the state should adopt symmetrical or asymmetrical federalism. In asymmetrical federalism, all regions are treated equally. No special power, be it based on historical claim or the peculiar culture and needs of a particular community, is provided to a constituent unit within the federation. In asymmetrical federalism, by contrast, one or more of the constituent units are vested with special or greater self governing powers than others.¹³⁹ An

¹³⁸ Kymlicka 2005: 277.

¹³⁹ The notion of asymmetry in the federal context is regards to have been introduced by Charles Tarlton (Tierney 2004: 188). Two types of asymmetrical federalism are identified: “one dictated by the different size and demography of the units, the other determined by the different privileges and rights enjoyed by each unit – whether they are territorially or ethnically based” (Conversi 2001: 133). In this section, we are concerned with the latter type of asymmetrical federalism. It must,

example of asymmetrical federalism, albeit in a limited manner, is the Indian federalism, which provides special provision for Kashmir, Nagaland and Meghalaya.¹⁴⁰

Proponents of asymmetrical federalism argue that this model of federalism is important to “take account of the fact that within a state there are significant cultural or societal differences among the constituent units”.¹⁴¹ It enables the constitutional system to accommodate the distinctive political agenda which may well adhere within these constituent units. According to this view, providing equal autonomy to all constituent units would belie the political reality of the constitute units that compose the federation. Many thus advise the adoption of asymmetrical federalism to respond to the specific demands and particularities of the constituent units.

however, be noted that even this type of asymmetry arises in various ways. Asymmetrical mode of arrangement seems to be inherent in any system whose constitution provides for shared and concurrent powers. For example, in the case of Spain, the autonomy enjoyed by each autonomous community and the powers they exercise varies from autonomous community to autonomous community despite the fact that the devolution system moved from the asymmetrical mode of sub-state national societies to one of symmetry. This variation is mainly attributed to the complex matrix of ‘exclusive’, ‘shared’ and ‘concurrent’ powers outlined by the constitution that leaves “scope for considerable variation from one statute of autonomy to another in terms of the actual powers which are devolved” (Tierney 2004: 202). Regions may make use of different concurrent powers. National laws may apply differently for other reasons, the outstanding example being the ‘notwithstanding’ clause in Canada which enables a province to opt out of most provisions of the Charter under prescribed conditions (Ghai 2001:12). This shows that asymmetry does not necessarily develop as a result of a deliberate constitutional measure that aims to accommodate particular community groups but could as well be a necessary consequence of the system.

¹⁴⁰ Majeed 2005.

¹⁴¹ Tierney 2004: 188.

This asymmetrical system of federalism does not, however, lie easy with politicians, scholars and especially among members of other ethnic groups that do not demand or enjoy such differential treatment. The differential treatment offered to Kashmir is, for example, resented in India.¹⁴² The same is true about how the rest of Canada feels towards Quebec.¹⁴³ Generally, the idea of asymmetrical federalism is strongly resisted by most members of the dominant group.¹⁴⁴

Many states thus prefer to extend the same level of autonomy to all the constituent units without engaging in any kind of differential treatment. Rather than responding to a particular nationalist group and limiting the extension of a measure of autonomy to that same group, many states have, in 'a coffee to all' fashion, opted to extend the same treatment to all constituent units of the state. In Spain, for example, the system of autonomous communities was originally created in order to accommodate the nationalist demands of the historic territories, namely the Basque country, Catalans and the Galicia. Spain now has 17 autonomous communities and treats its constituent units more or less symmetrically. Similar developments took place in Sri Lanka which decided to give roughly the same option to all the other constituent units despite the fact that

¹⁴² See Kashyap 1990.

¹⁴³ See Kymlicka 1998.

¹⁴⁴ Kymlicka (2005: 279) founds the resistance to asymmetrical federalism in the context of Canada puzzling: "If English Canadians want a strong federal government, and the Quebecois want a strong provincial government, asymmetry would seem to give both groups what they want. It seems perverse to insist that all subunits have the same powers, if it means that English Canadians have to accept a more decentralised federation than they want, while French Canadians have to accept a more centralised federation than they want". For Taylor, this represents "confused moral thinking" (Kymlicka 2005: 279).

the reason for the adoption of the system was only to accommodate the Tamils.¹⁴⁵

6.2.2.3. Concluding remarks

The centrality of distribution of powers in managing ethnic diversity is patently unquestionable. As noted by Watts, however, “where particular distribution of powers has failed to reflect accurately the aspirations for unity and regional autonomy in a given society, there have been pressures for a shift in the balance of powers, or, in more extreme cases, even for abandoning the federal system”.¹⁴⁶ Notwithstanding this, there is no clear agreement on the type of matters as well as the scope of the powers and functions that must be entrusted to the federation and the constituent units.

The symmetrical vs. asymmetrical debate is also often central to multi-ethnic federations. Taking into account the ethnic discord that asymmetrical federalism often entails, some may argue that a state would generally be better off by extending the same treatment to all constituent units. This is especially the case in a situation where there are more than two ethnic groups within the state under consideration. In a bi-ethnic state, with the one representing the majority of the population, adopting an asymmetrical arrangement, whereby the numerically small group would be able to enjoy greater level of autonomy, might work fairly well. The political entanglement of adopting asymmetrical federalism in a multi-ethnic state, however, points towards the adoption of symmetrical federalism. Adopting such a system might reduce the tension and resentment that ensues as a result of the differential treatment that asymmetrical federalism entails.

¹⁴⁵ Tiruchelvam 2001: 197-218.

¹⁴⁶ Watts 1996: 103.

Furthermore, as noted by Ghai, the adoption of a symmetrical system of government or the “conversion of asymmetry into symmetry would not necessarily be against the interests of the original claimants of autonomy”.¹⁴⁷ The only objection of original claimants of autonomy to such true devolution of power to all the constituent units could only be based on the issue of status. For these groups of constituent units, extending special autonomy to them is a matter of acknowledging their distinctiveness. As the experience of multi-ethnic federations shows, they regard the decision of the national governments to extend the same treatment to all the other constituent units of the states as a deliberate attempt to dilute their nationalist agenda.¹⁴⁸ The issue is thus whether a state should adopt asymmetrical federalism with the view to assert the special status of a particular group or accord the same power to all constituent units and avoid intra-federal tensions. Whichever option a state follows, however, it is inevitable that it faces resistance from each community depending on the choice it chooses to make.



6.2.3. Fiscal autonomy

Fiscal autonomy refers to the financial capacity of the constituent units to discharge their expenditure responsibilities. A disparity between the responsibilities of constituent governments and their revenue-raising authority, it is argued, limits the powers of constituent governments. One such type of disparity that this section focuses on is vertical imbalance. Vertical imbalances occur when constitutionally assigned financial authority of the federal and the constituent governments do not correspond with their constitutionally assigned expenditure responsibilities.¹⁴⁹ These imbalances

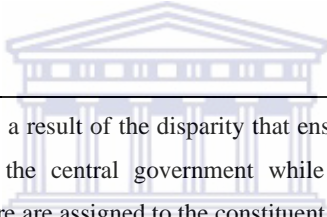
¹⁴⁷ Ghai 2001: 13.

¹⁴⁸ Agranoff 1994: 61-89.

¹⁴⁹ Watts 2002: 458. Vertical imbalance occurs for two reasons. First, these

closely relate to the power of the constituent governments' taxing powers and financial transfers from the central government to the constituent units.

The common feature of financial arrangements in many federations is the dominance of the central government.¹⁵⁰ The central government takes the lion share of revenue collected while most constituent governments have limited revenue generating responsibilities. Even when constituent governments are entrusted with taxing powers, they do not have powers over most of the taxes that generate high revenue. Those revenue sources are left to the central government. The constituent units, as a result, rely on intergovernmental transfers.



imbalances occur as a result of the disparity that ensues as a result of major taxes being allocated to the central government while responsibilities that require extensive expenditure are assigned to the constituent units on the ground that these responsibilities are best administered at that level. A second reason for the imbalance relates to the fact that the significance of different taxes as well as the cost of expenditures vary from time to time making any attempt to match revenue resources with expenditure responsibilities difficult, if not impossible.

¹⁵⁰ In Spain, for example, the primary power to raise taxes is vested exclusively in the central government. With the exception of the Basque and Navarre, “the autonomous revenue of communities still make up only a small percentage of their total revenues” (Rocher et al 2001: 89. See also Rocher, Rouillard and Lecours 2001:189). The financial dominance of the federal government is also visible in Canada where the financial capacity of provinces regularly fails to finance their constitutional responsibilities and the federal government takes in more tax revenues than it spends its own area of jurisdiction (Knopff and Sayers 2005). The same is true in Nigeria (See Dent 1995; Saberu 2004). In Switzerland, on the other hand, the financial autonomy of the constituent governments is far more consolidated where fiscal authority is divided between each order of government with each of them having direct access to several sources of revenue (Schmitt 2005).

The dominance of the central government in financial matters has a crippling effect on the autonomy of constituent governments. In Canada, the federal government, which, as indicated above, takes in more revenue than it spends in its own areas of jurisdiction, is criticised for using its financial muscle to interfere with areas of provincial jurisdiction. The federal spending power is regarded by government of Quebec as an “invasion of provincial autonomy and, as such, poses a threat to the cultural distinctiveness of the Quebec nation”.¹⁵¹ Finally, it is important to note that the degree of ‘constituent autonomy’ is affected not only by the extent to which the constituent units rely on transfers but also by the level of expenditure autonomy they enjoy which is determined by whether the transfers are conditional or unconditional in character.

6.3. Shared rule

Entrusting ethnic groups with self rule goes a long way in terms of responding to the challenges of ethnic diversity. That, however, addresses only part of the enigma. Representation of the constituent units in the institutions of national government is equally important. In the absence of such representation, “central power continues to be exercised in accordance with the majority principle, and the decisions as to what minority should have how much governmental power continues to depend on the majority”.¹⁵² If ethnic groups are to fully manage their own affairs and ensure that decisions taken at the central level do not unduly interfere with their autonomy, they must be able to participate in and influence central legislative and policy formations. In a nutshell, the constitution must

¹⁵¹ Telford 2003: 23. Gagnon and Herivault (2005: 15) similarly remark that “the federal spending power is used and abused by Ottawa to encroach upon all provincial jurisdictions”. Similar comments are made by Knopff and Sayers (2005: 125).

¹⁵² Fleiner, Klain, Linder and Saunders 2003: 206.

provide for institutional arrangements that translate the principle of shared rule into institutional reality. However, safeguarding the autonomy of the constituent units is not the only, and not even the main, reason why federal constitutions should provide for institutions of shared rule. In addition to serving as a vehicle for dealing with shared objectives and functions, such institutions provide the glue to hold the federation together. Power sharing arrangements at the central level generally has the effect of promoting the “we feeling”.¹⁵³

Shared rule thus has the dual aspect of providing ethnic groups with the political means to ensure its autonomy while bringing it within the political processes of the state. Experience has shown that excessive concentration on self rule and the absence of adequate representation and influence in the federal institutions for particular ethnic groups may lead to disintegration.¹⁵⁴ The success of shared rule processes and institutions is thus determined not only by their effectiveness in guaranteeing the autonomy of constituent units but more importantly in the role they play in promoting national unity and providing joint spaces through which the various communities can communicate.¹⁵⁵

Shared rule can be concretised in different institutions of federal government. This often includes the federal legislature, the executive as well as the judiciary. But shared rule as a device that promotes the co-management of society goes beyond these state institutions and includes intergovernmental relations and resource redistributive schemes. It also includes other role players like political parties. In the following pages, we

¹⁵³ Linz, Stephan and Yadav 2004: 9.

¹⁵⁴ Watts 1996: 103. See also Watts 2001b.

¹⁵⁵ Rocher *et al* 2001:196.

shall discuss, in a comparative context, how this principle of shared rule has been given institutional and practical expression in the institutions of national government. The next section focuses on lower house.

6.3.1. Lower house and the electoral system

Traditionally, representation of the constituent units in a federation is discussed in relation to second chambers. There is, however, an emerging consensus that the representative character of the central government can be enhanced by ensuring representation in the lower house, too. The argument has been that by establishing a lower house that is generally seen as representative of the entire population and not simply the majority, a state can do a better job of accommodating ethnic diversity. The representativeness of the lower house depends on the electoral system.

The main choice of electoral system is between plurality–majority systems and proportional representation systems. In the former, which is also usually referred to as the first-past-the-post system, the winner is the candidate with the most votes in a constituency. The proportional representation system, on the other hand, allocates seats to all candidates based on the votes they received. Accordingly, a party that wins 40 per cent of the votes gets approximately 40 per cent of the seats. A small party that fails to secure a significant vote would not go empty handed. Unlike the majority system that exaggerates the share of seats for the leading party, proportional representation equates a party’s share of the national votes with its share of the parliamentary seats.¹⁵⁶

A general point made by many is that proportional electoral systems are most likely to facilitate accommodation between diverse ethnic groups.

¹⁵⁶ Reynolds 1999: 90.

One, in fact, has gone so far as to suggest that “the surest way to kill the idea of democracy in a plural society is to adopt the Anglo-American system of first-past-the-post”.¹⁵⁷ Multi-ethnic societies which are often threatened by centrifugal politics need institutions like proportional representation electoral system that paves the way for moderation and compromise.¹⁵⁸ It can also serve as a confidence building mechanism as it enables numerically weak ethnic groups to gain parliamentary representation. The PR system, it is argued, facilitates a more representative legislature.

The practice in multi-ethnic federations seems to endorse the views of the proponents of the proportional representation system. In Canada, which has adopted the majority electoral system, there is an inherent overrepresentation of pluralities with minority parties tending to be underrepresented. Switzerland, on the other hand, employs a proportional representation system, which has accurately reflected the distribution of votes and hence the views of the constituent units. Belgium has also complemented federalism with a proportional representation voting system. Proportional representation in both federations “has tended to encourage multi-party systems, making party coalitions more common in their federal government”.¹⁵⁹

It is further argued that in proportional electoral system both large and small parties, with the view to maximise their overall national votes, create regionally and ethnically diverse lists.¹⁶⁰ The presence of political parties with state-wide objectives in a multi-ethnic state is important as it creates

¹⁵⁷ Lewis 1965: 71

¹⁵⁸ Reynolds 1999: 93

¹⁵⁹ Watts 2005: 18. See also Hale 2005: 5

¹⁶⁰ Reynolds 1999: 97

the opportunities for a dialogue between communities and increases the level of mutual understanding.¹⁶¹ It assists in the promotion of one of the main objectives of shared rule, namely inter-ethnic solidarity.

A corollary effect of adopting the proportional representation system is that the focus on enhancing the representative character of the lower house through this particular electoral system enables political actors to develop a ‘federation-wide consensus.’ By providing parties the opportunity to communicate and cooperate with each other, it promotes mutual understanding and the co-management of society. It also encourages the settlement of autonomy related questions through negotiation and compromise which are the hallmarks of federalism. This is very important in the context of multi-ethnic states. As noted by Watts, “in the process of shared rule, it is not just the institutional structures but the ways in which political parties operate and the interrelationships between federal and state (or provincial) branches of political parties that affect the extent to which a federation-wide consensus may be developed”.¹⁶²

Another associated consequence of the proportional electoral system is that it allows smaller nationalist parties the opportunity to hold the balance of power.¹⁶³ This is in a situation where a state-wide party falls short of an overall majority seats. In such scenarios, regional parties can enter into a bargain with the state-wide party whereby they can lend their support and in return gain increased autonomy and more concessions from the state. This is illustrated by the Spanish experience where regionally-based nationalist parties advance their claim for enhanced autonomy and recognition using

¹⁶¹ Rocher *et al* 2001: 180. See also Covell 1987: 57-82.

¹⁶² Watts 2001b: 45.

¹⁶³ Rocher *et al* 2001: 187.

the national political process.¹⁶⁴ This is important for multi-ethnic federations for the same reasons mentioned above. The involvement of nationalist parties in the national political terrain, though likely to create pressure on the system, could also be a blessing in disguise as it allows the nationalist parties to communicate and cooperate with the state-wide parties and with nationalist parties of other regions. This interaction between the party systems contributes a lot to effectively manage the tensions between the recognition and autonomy of communities, on the one hand, and the integrity of the state, on the other.

However, the above stated benefits of the proportional electoral system should be seen against the criticism that it exacerbates the ethnic tension that characterises many of these multi-ethnic states. For Lardeyert, this system is the least suitable electoral system for ethnically divided societies as it “tends to reproduce ethnic cleavages in the legislature”.¹⁶⁵ This is illustrated by the Bosnian experience. In Bosnia, where the PR electoral system is adopted, ethnic groups are represented in parliament in proportion to their numbers. Parties, established along ethnic lines, rely exclusively on the support of the community they seek to represent in order to secure seats in parliament. This has reinforced the ethnic divide that characterise the country. Reilly and Reynolds thus argue that “Bosnia’s 1996 elections were effectively an ethnic census, with electors voting along ethnic lines and each of the major nationalist parties gaining support almost exclusively from their own ethnic groups”.¹⁶⁶ Based on this fear, some advise the adoption of a system that avoids division along ethnic lines and recommends to “oblige

¹⁶⁴ Rocher *et al* 2001: 187.

¹⁶⁵ Lardeyert 1991: 35.

¹⁶⁶ Reilly and Reynolds 1999: 30.

members of each group to run against one another on (transethnic) political and ideological grounds in a single member district”.¹⁶⁷

To sum up, in considering an electoral system for multi-ethnic societies, emphasis is often given to inclusivity and electoral system that facilitates representative legislature. Notwithstanding the centrality of the design of the electoral system, it is important to note that there are a variety of factors that affect the impact of an electoral system on the accommodation of ethnic diversity.¹⁶⁸ The nature of the conflict and the society in question, especially the settlement pattern of ethnic groups, are important variables that determine the impact of an electoral system as an institution that responds to the challenges of ethnic diversity. Multi-ethnic states should thus take all these factors into account when determining their choice of an electoral system

6.3.2. Second chamber

The principle of shared rule gets institutional expression through second chambers,¹⁶⁹ usually associated with regional representations.¹⁷⁰ In multi-ethnic federations, the primary role of second chambers is representing

¹⁶⁷ Lardeyert 1991: 35. The argument forwarded by Lardeyert is criticised on the ground that it represents the usual tendency of concealing ethnic diversity; the usual inclination to ignore ethnic identity and promote overarching identity. This, as indicated throughout this thesis, engenders tension and violent response.

¹⁶⁸ Reilly and Reynolds 1999.

¹⁶⁹ An association has often been noted between federalism and bicameralism. For Duchacek, bicameralism is one of the ten yardsticks of federalism. Wheare did not see logical requirement for the national government of a federation to contain an upper house based on equal regional representation. He, however, considers it essential if federal government is to work well (Sharman 1987: 82 – 99).

¹⁷⁰ As a matter of convenience, this section and the section hereafter use the phrase ‘regional representation’ to refer to the representation of constituent units.

regional interests.¹⁷¹ They are regarded as a forum for introducing the interests of the constituent units into the national political process.

6.3.2.1. Composition of second chamber

The capacity of second chambers to effectively represent regional interests is closely related to the appointment system and particularly to the manner in which members are appointed or elected to the senate. In some cases, second chambers are composed of the delegates of the executives of the state government who vote as a bloc on the instruction of each state cabinet. A good example in this regard is the Bundesrat of Germany whose members are delegates of the Land governments that are instructed by the latter. In other cases, India being a good example, they are composed of representatives chosen by state legislatures or by special procedures established by them. There are also systems where members of second chambers or at least half of them are directly elected.¹⁷² In Switzerland, members of the second chamber are directly elected. Such representation systems generally provide an opportunity for voicing regional preferences and protecting regional interests. There is, of course, no guarantee that members of such senates will usually vote along constituent government lines.¹⁷³ The fact that the power to appoint representatives to second

¹⁷¹ Regional representation is not the only purpose of second chambers. In some jurisdictions, the constitutional role of second chambers is to check the power of other elements in the governmental process to achieve a system of limited government. This mainly has been the argument advanced in the *Federalist Papers*. See Sharman 1987: 85.

¹⁷² Sharman 1987: 84

¹⁷³ The appointment process by itself, of course, does not guarantee effective representation of regional interests in the second chambers. It is a common practice in some federations that members of the senate more often vote along political-party and interest-group lines than along constituent government lines. See Kincaid and Tarr 2005: 430.

chambers resides with the constituent units themselves does, nevertheless, put members in a better position to defend and advance regional interests.

The effect of the appointment system to second chambers becomes more apparent when one looks at federations that do not provide for any of the representation systems mentioned above. Canada is a good example. In Canada, the Senate was originally intended to represent the interests of the provinces. As a result of the process by which members are appointed, however, the senate has conspicuously failed to achieve this role.¹⁷⁴ Members of the Senate are nominated by the federal Prime Minister, providing the federal government exclusive power over the appointment of senators. The regional composition of the senate is thus nominal. With senators that, once appointed, are entitled to hold offices until the age of 75, the federal government is in a position to pack the chamber with its sympathisers. The process of nomination by the federal government precludes the Senate from being an “effective voice of regional or provincial interests”.¹⁷⁵

The appointment system is slightly different in Spain but with the same effect. The majority of senators are elected from the provinces.¹⁷⁶ Each province appoints four senators while each autonomous community appoints only one senator, with an additional one senator for every one million inhabitants in the territory. The problem with this particular system is that representation is largely based on provinces and not autonomous communities, which are ‘the true representatives’ of ethnic groups in Spain. As Tierney notes, “this heavy bias in favour of the provinces belies political

¹⁷⁴ Simeon 1998: 54.

¹⁷⁵ Hogg 1997: 251. See also Keating 2001; Tierney 2004.

¹⁷⁶ Guibernau 1995: 248.

reality given that the autonomous communities are the far more important tier of government”.¹⁷⁷ With only a few of the senators being elected from the autonomous communities, it is difficult to consider the Senate as an organ that represents regional interests.¹⁷⁸

Belgium, unlike Canada and Spain, has a senate that represents the language communities. Forty senators are elected directly with provision for linguistic balance between Flemish and French speakers.¹⁷⁹ The other twenty one members come from the three linguistic community councils while ten are co-opted by the other senators. Similarly in Nigeria, each State is divided into three senatorial districts, with each electing senator.¹⁸⁰ Abuja, the federal capital territory, has one senator. Each state is thus equally represented in Nigeria’s Senate.

¹⁷⁷ The absence of formal representation of the autonomous communities in the Senate can be partly explained by the fact that the whole state–autonomous communities’ relation was the result of bilateral agreements that merely focused on the autonomy of the latter. As Heywood aptly puts it, the autonomous communities enjoy self rule in a number of areas while “there exists few institutional mechanisms to allow shared rule with central government, which severely limit regional involvement in national legislative and executive decisions” (As quoted in Tierney 2004: 221).

¹⁷⁸ Efforts have been underway to reform the senate but in vain. In 1994, the General Commission for the Autonomous Communities was established in the senate. The main function of this Commission was to facilitate the transformation of the senate into a Chamber of Autonomous Communities. Although there is an emerging consensus that the senate should be a reflection of the autonomous communities, there is disagreement on whether senators should be directly elected by citizens of the autonomous communities or appointed to the senate by the legislature among their members (Conversi 2001: 126).

¹⁷⁹ Keating 2001: 120

¹⁸⁰ Ayua and Dakas 2005: 258.

An important issue related to the composition of second chambers is whether the constituent units should be represented equally. In the United States and Australia, the constituent units are represented equally. Other federations, unlike the USA and Australia, have rejected the equality principle and adopted a weighted representation that nevertheless favours smaller subnational units. The degree of weighting varies from one federation to another.¹⁸¹ At one end is Switzerland where the second chamber or the Council of the States, as it is known in Switzerland, is composed of two members from each full canton and one member each from the so-called half-cantons. At the other end of the extreme is India where the weighting is determined by a formula that is largely based on the respective populations of states. The largest state has 31 members while the smallest states have one member each. Belgium and Canada similarly follow a weighted representation that fall between these two extremes.

6.3.2.2. Powers of second chamber

In addition to the appointment system, the effectiveness of second chambers in representing regional interests depends on the specific powers allocated to these institutions by the constitution. This especially relates to their effectiveness in protecting the jurisdictions of the constituent units. The Belgian second chamber seems to be in a better position to protect regional interests. A special majority provision regarding laws pertaining to cultural and regional matters is specified in the Constitution requiring that such laws get a two thirds overall majority of the Senate before they become a law.¹⁸² Moreover, if three-quarters of the members of the Senate's linguistic group¹⁸³ consider that a decision in a legislative matter, not covered by the

¹⁸¹ Watts 2005: 12.

¹⁸² Peeters 1994: 204-205

¹⁸³ The Constitution provides for the creation of linguistic groups in both houses of

special majority provision, can be harmful to their community, an additional mechanism-the so-called 'Alarm Bell Procedure'- providing parliamentary exceptional procedure comes into effect. In addition, the Senate in Belgium enjoy powers over constitutional matters, international relations, the organisation of the courts and relations among the federal government and the regions and communities. This shows that the Senate in Belgium, by and large, is in a position to effectively represent the interests of the federated units. Similarly, the Senate in Canada has almost co-equal powers with the lower house.¹⁸⁴ The lower house may not override the Senate's vote except in the case of constitutional amendment, where it exercises only suspensive veto. The capacity of the Senate to vigorously protect regional interests is, however, greatly constrained by the fact that the regional composition of the Senate is nominal.

6.3.2.3. Concluding remarks

Second chambers form a critical component of an institutional response to the challenges of ethnic diversity as they represent the major institutional translation of the principle of shared rule. A major point that emerges from the foregoing is that the effectiveness of the second chamber in protecting the interests of the constituent units is the function of its composition and the power entrusted to it by the constitution.

6.3.3. Representation in the national executive

Shared rule can also get practical expression through the representation of the constituent units in the central executive, what political scientists call consociational or power sharing practices in the executive.¹⁸⁵ Most multi-

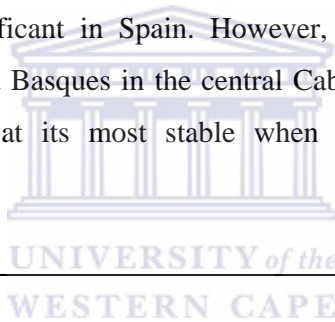
parliament.

¹⁸⁴ Knopff and Sayers 2005: 121

¹⁸⁵ Executive power sharing practice constitutes the core of consociationalism.

ethnic federations including the oldest federations have incorporated consociational tradition in their constitutional or political practices.

In Canada, conventionally, it has always been considered important that the Cabinet reflect some degree of balance with ‘credible team of ministers’ coming from Quebec.¹⁸⁶ Switzerland’s executive is, on the other hand, constitutionally structured as a seven-member Federal Council. The Constitution mandates the Federal Council to represent the country’s geographic and linguistic diversity.¹⁸⁷ In Belgium, the Cabinet is constitutionally mandated to be composed of equal numbers of Flemish and Francophone ministers.¹⁸⁸ Representation of regional interests in the central executive is less significant in Spain. However, there has usually been prominent Catalans and Basques in the central Cabinet.¹⁸⁹ It is also argued that “India has been at its most stable when its executive has been



According to Lijphart, the leading theorist of consociation, consociationalism has four features: a power sharing coalition which enjoys more than a simple majority of voters; the different communities must have some degree of autonomy; there must be proportionality in the public sector in government institutions, public employment, public expenditure and finally, there is required to be a system of protection for minorities by mutual vetoes or concurring majorities (Thompson 2000: 236 – 237). Consociational decision-making bodies is understood in this thesis in the narrow sense of ensuring representation of the different ethnic groups in the institutions of the national government as opposed to the wider notions of consociationalism and a strict quota system.

¹⁸⁶ Peeters 1994: 204.

¹⁸⁷ Schmitt 2005: 360-361.

¹⁸⁸ Keating 2001:121.

¹⁸⁹ Keating 2001: 121.

descriptively inclusive of the state's diverse religions and linguistic communities".¹⁹⁰

A more extensive and constitutionally mandated regional representation in the central executive comes from Nigeria, which has adopted what it calls 'the federal character'.¹⁹¹ This constitutional principle requires the composition and conduct of public institutions to reflect the country's ethnic, religious, regional and related diversities. The president must win regionally dispersed support, not just a simple national majority. This means the president can be elected only on obtaining a plurality of voters plus at least a quarter of the votes in two thirds of the states. The principle also requires the appointment of at least one minister from each state and stresses that the minister should be an 'indigene' of such state.¹⁹² The federal character must also be reflected in the other federal executive bodies. Thus, an 'indigene' of each state of the federation must also be represented in several other important federal bodies, including the National Economic Council, the Revenue Allocation Commission and the Federal Character Commission.

One of the major criticisms levelled against power sharing practice is that it mainly aims at accommodating elites. It assumes that ethnic depoliticisation can be achieved through the actions of their incorporated elites. There is some truth in the argument that consociational practice mainly benefits elites who do not necessarily stand for the interests of their constituent units. However, consociational practice within a federal arrangement is one among many of the ethnic managing devices that are adopted to accommodate

¹⁹⁰ Adeney 2002:8-33

¹⁹¹ Suberu 2004: 11.

¹⁹² Suberu 2004: 11.

ethnic diversity. That limits some of the pitfalls of consociational practice. Moreover, the political practice in most federations has become much more open to public scrutiny that elites can no longer afford to ignore the interest of their regional constituency.¹⁹³ As noted by Bakvis, “political elites are finding it difficult to move away from publicly stated positions or to bridge differences in public opinion”.¹⁹⁴ A remaining question is whether the representation of different ethnic groups in the national executive should be a constitutional mandate or a political practice. This is something that can be determined on case by case basis taking into account the saliency of ethnicity in the state under consideration.

6.3.4. Fiscal equalisation as fiscal glue of national unity

Disparities in income and wealth among constituent units exist in most federations. These differences may be traceable to “historical, stochastic or geographic sources”.¹⁹⁵ The uneven territorial distribution of capital and natural resources as well as the differences in the cost of providing public services greatly contribute to this fact.¹⁹⁶ This causes specific types of fiscal disparities which are usually referred to as horizontal imbalances. These are variations occurring across constituent units in their ability to raise revenue to meet the public expenditure needs of their residents.

¹⁹³ Smith 1995: 15.

¹⁹⁴ Bakvis 1987: 279 -305.

¹⁹⁵ Buchanan 2002: 9

¹⁹⁶ Dafflon and Vaillancourt (2003: 396-397) distinguish the reason for fiscal disparities as reasons on the expenditure side and those on the revenue side. Included on the expenditure side are demography, high population and/or scattering, topography etc. On the revenue side are listed differences in economic development, industrial specialisation, central versus peripheral positions, availability of natural resources etc.

Disparities in wealth among the constituent units are one of the most common causes of grievance in multi-ethnic federations. They often have a “corrosive effect on internal cohesion”.¹⁹⁷ They can undermine political stability and pose a threat to the continued existence of the federation. The problem is acute in countries where fiscal disparities are the result of geographically concentrated high-revenue resources such as oil.¹⁹⁸ A state that seeks to promote state wide solidarity has to address disparities in wealth. It has to use fiscal equalisation policies, which seek to reduce fiscal disparities among constituent units by using transfers of monetary resources,¹⁹⁹ as the ‘fiscal glue of national unity’.²⁰⁰ Hence the reason why such policies are sometimes referred to as “solidarity” or “cohesion” policies.²⁰¹

¹⁹⁷ Watts 2001b: 44. See also Knopff and Sayers 2005: 125.

¹⁹⁸ Knopff and Sayers 2005: 125

¹⁹⁹ Dafflon and Vaillancourt 2003: 397. Equalization schemes in most federations are effected by federal transfers to the poorer units of government. The only exception is Germany which constitutionally provides for inter-state transfers. The source of the revenue that is to be shared and redistributed for the purpose of an equalisation scheme may also come from different sources following different procedures. In some cases, the revenue to be used for an equalisation scheme comes out of the general resources of the paying unit(s) and established in their annual budget. In some other cases, the exact calculation of the amount is explicitly stated in the constitution or in a law, in the form of revenue sharing from at least one but preferably several or all tax sources used at the central level. Still, in some other cases, the constitution establishes an equalisation fund fuelled with several tax-sharing sources written in the law. See Dafflon and Vaillancourt 2003.

²⁰⁰ Kincaid 2005: 426.

²⁰¹ Kincaid (2005: 426 – 427) remarks that such fiscal equalisation policies can be viewed as “covert bribery whereby wealthy constituent units entice poorer units to remain in the federation or, alternatively, as covert extortion whereby independence-minded constituent political communities extract redistributive payments as a price for peace or union”.

Most multi-ethnic federations have some formal equalisation scheme. In Canada, for example, the central government makes unconditional transfers to address the horizontal imbalance between rich and poorer province; the Constitution Act of 1982 has further entrenched this commitment to the principle of equalisation payments and to promoting equal opportunities.²⁰² The federal government in Switzerland engages in financial equalisation by redistributing revenues from most taxes based on the financial strength of the cantons.²⁰³ In countries like Belgium, Canada, Spain and Switzerland, equalisation schemes are based on agreed formula while in India and Nigeria they are based on periodic recommendations of permanent or temporary, and usually independent, commissions.²⁰⁴

Equalisation schemes may not, however, be seen favourably by all communities. Catalonia, which is one of the richest regions in Spain, has continuously complained on revenue matters. It claims that it contributes “far more to the central Spanish purse”²⁰⁵ than it receives. A major cause of disgruntlement among the Flanders community in Belgium is also a similar claim that “national fiscal policies effectively put inhabitants of Flanders in the position of subsidising Wallonia”.²⁰⁶

²⁰² Section 36 of the Constitution Act 1982 states that the federal government is committed to the principle of making equalisation payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

²⁰³ Schmitt 2005: 372.

²⁰⁴ Kincaid 2005: 426

²⁰⁵ McRoberts 2001: 69

²⁰⁶ A member of the Flemish nationalist Student Union, in 1992, was widely quoted for claiming that every Flemish family could buy a new automobile every four year if it were not for annual revenue transfers from Flanders to Wallonia (Murphy 1995: 92).

Even when there is consensus on the need for an equalisation scheme, disagreements ensue with regard to the process and especially the representation of constituent units in the process of allocation. For example, in some cases, where an equalisation scheme is based on agreed formula, the federal government dominates the process of arriving at an agreement.²⁰⁷ Some of the processes do not involve representatives of constituent units. In federations where independent commissions, which are usually expert commissions, are established to provide recommendations on allocations after hearing representations from the constituent governments, there is no guarantee that the central executive implements the recommendations of these commissions. The need to involve constituent units in the processes of allocations is, however, being increasingly recognised in most federations. This is reflected in the plethora of intergovernmental councils, commissions and committees established to deal with such financial arrangements.

6.4. Federalism and the challenges of dispersed ethnic groups and intra-substate minorities

The translation of the principles of self rule and shared rule into tangible institutional arrangements goes a long way in terms of accommodating ethnic diversity within the context of geographically concentrated ethnic groups. It is, however, now accepted that it is impossible to create an ethnically homogenous subnational unit. Both assimilation and the extreme measure of ethnic cleansing have not been able to leave us with ethnic groups that neatly and precisely fall into separate geographical units. Neither has any territorial federal arrangement been successful in demarcating the territorial matrix of the federation into separate ethnically

²⁰⁷ Watts 2001: 34-35.

defined territorial units. In cases where territorial autonomy within federalism is possible for concentrated ethnic groups, there has usually been ethnic minorities scattered in the midst of regional majorities. In the case of India, for example, the federation “has done a lot in containing ethno-linguistic diversity tension by reorganizing the states to reflect language diversity, yet such reorganization has still left minorities within the state boundaries at the mercy of the states”.²⁰⁸ The extensive movement of citizens across internal borders also contributes to the rarity of an ethnically pure political unit. Intra-substate minorities are therefore present in most, if not all, federated units. As Cairns remarks, the vision of a federal system with coinciding ethnic and ‘provincial’ boundaries is “chimerical”.²⁰⁹ This brings to the fore issues about the majority-minority tension²¹⁰ at the level of the constituent units. It invokes the problem of the status and treatment of those who do not belong to the empowered regional majority.

6.4.1 The plight of intra-substate minorities

There is often a fear that minorities face stronger discrimination from regional authorities than they usually encounter from central government. As Preston King points out

We cannot be sure that federalism will do more than protect the interests of that sub-state section of the overall community which controls or dominates the locality...the power accorded to local oligarchy to rule, whatever its description, will always in some

²⁰⁸ Brass 1991: 117.

²⁰⁹ Cairns 1995: 26.

²¹⁰ As Cairns (1995: 33) puts it, regionally empowered majorities are prone to see regional minorities in their midst as practical challenge to their cultural integrity – as the enemy within - while regional minorities may see “power wielding regional ethnic majorities as potentially hostile to whatever cultural or other difference the minority individual possesses” Cairns 1995: 33.

degree permit it to deal unfairly, sometimes grossly so, with those subjects to it and most especially where the latter take no part in, or are automatically denied any significant impact upon, local deliberations.²¹¹

This especially becomes visible in the areas of language policy and education. In states whereby each constituent unit is allowed to promote its own language, the vexing question has been whether intra-substate minorities have to assimilate to the language of the regionally dominant group or would they still be allowed to use their language. Should members of the intra-substate minority send their children to a school where the medium of instruction is the language of their community or are they simply forced to take them to the school that uses the regional majority language as a medium of instruction?

The issue becomes more problematic in situations where a regional government adopts a policy or linguistic normalisation laws that attempt at elevating the regional language to a majority status or seeks to promote the regional language by reversing the disproportionate place it occupies in its own region. The Charter of the French Language in Quebec, which is famously known as Bill 101, is a good example that illustrates this situation. Adopted by the *Parti Québécois* government in 1977, Bill 101, following the territorial model of language planning, sought to promote the use of French and at the same time restrict the use of English. It obliges both immigrants and Canadians moving to Quebec to send their children to a French school and mandated the display of commercial signs in French only.²¹²

²¹¹ King 1982: 54-55.

²¹² Court decision has abrogated part of this legislation. The Supreme Court, in 1979,

The treatment of intra-substate minorities has also been the cause for some of the most violent conflict the world has witnessed in modern times. In the former Yugoslavia, the territorial structure was arranged along ethnic lines but failed to completely coincide territorial boundaries with patterns of ethnic settlement resulting in disgruntled minorities. As a result, “the breakup of Yugoslavia has produced unstable successor states with internal minorities, and has led to savage warfare and genocide in the service of ethnic cleansing”.²¹³

Of particular importance in any multi-ethnic federation is thus the need to take into account the interest and rights of intra-substate minorities. As Preston King noted, account must be taken of whether the adopted federal arrangement prejudices the rights and interests of the non-dominant communities within the constituent units. Securing the rights of minorities which are created by autonomy arrangements is very crucial for the long term success of any federal arrangement.²¹⁴

6.4.2 Bill of Rights as a device to protect minorities

Judicially enforceable bill of right are often regarded instrumental in protecting intra-substate minorities. Canada, for example, relies on the

decided that provisions making French the only official language of legislation and justice violate section 133 of the British North America Act, 1867, which guarantees legislative and judicial bilingualism in Quebec. Part of the law that restricted the rights to education in English was struck down entitling not only people who had been educated or whose parents had been educated in English in Quebec but also those who had been educated English elsewhere in Canada to have their children receive education in that language. The Court in 1988 also struck down the rule that imposes French as the only language to be used on commercial signs (see generally Swinton 1995).

²¹³ Carins 1995: 27.

²¹⁴ Ghai 2001: 22.

constitutionally entrenched bill of rights in order to protect regional minorities. An array of both individual and groups rights are included in the 1982 Charter of Rights and Freedoms. Among the included groups rights are rights of minority language and educational rights, which are judicially enforceable.

The issue of intra-substate minorities is also a problem in the linguistically divided Belgium. When the linguistic border was fixed in 1963 in Belgium, members of the Francophone community found themselves demarcated into the Flemish speaking part of the country. In order to accommodate these minorities, “language facilities” were introduced in the Flanders along the language border.²¹⁵ In a clear exception to the rule of territoriality and with a view to protect linguistic minorities, these facilities allow individual inhabitants the right to communicate in their own language with a public authority, even if the authority is not from the same linguistic group. And the local municipality, upon a request from a minimum number of parents, has to offer primary education in the language of the minority group.

Many agree that a bill of rights, enforced with a strong and independent judiciary, can provide some level of protection to regional minorities. The major criticism leveled against this approach is that it only provides for

²¹⁵ There is a controversy with regard to the status of these facilities and rights. For the Flemish region, these facilities are seen as temporary exception to the principle of territoriality, something that have to be abandoned after the linguistic minorities learn the language of the region sufficiently to be able to communicate with the public authorities. For the Walloons, on the other hand, the French speakers in Flanders are minorities that need to be provided with formal protection. The facilities are not a transitional measure. Disagreement continues between the Walloons and the Flemish over the interpretation of the language facilities (Deschouwer 2005).

negative rights, which protect individuals against discrimination and majoritarian abuse. The only positive right that such a bill of rights can provide is a constitutionally guaranteed minority language education right. This becomes especially insufficient when there is an important minority that may not be satisfied with negative rights. They may demand power that allows them to participate in the management of the constituent unit. They don't want to be treated as guests whose rights must be respected. They, as a result, often emphasise the deficiency of the bill of rights in protecting regional minorities and call for other complementary protective mechanisms.

6.4.3 Non-territorial autonomy

Another mechanism that focuses on guaranteeing self rule to regional minorities is what is generally referred to as non-territorial autonomy. This form of autonomy offers regional minorities autonomy over certain functions of relevance to them, which recognises their different culture and identity.²¹⁶ Russia is known for its application of this form of autonomy. Non-territorial autonomy arrangement has been adopted in Russia in 1996 with the passing of the National Cultural Autonomy Act.²¹⁷ The Act allows individuals to form National Cultural Associations which exercise jurisdiction over culture, language, education and the media. It is argued that such an arrangement of self rule responds to the concerns of minorities that are 'too dispersed or few in numbers' to exercise territorial autonomy.²¹⁸

²¹⁶ Moore 2004: 1330. This form of autonomy comes in different names: "cultural autonomy", "corporate autonomy", "corporate federalism" and "functional autonomy". This form of autonomy was used by the Ottomans originally to manage religious diversity.

²¹⁷ Moore 2004: 1330.

²¹⁸ Estonia is also known for its application of non-territorial autonomy. It first

6.4.4. Representation of minorities

Some multi-ethnic federations go beyond self-rule to protect intra-substate minorities. In these federations, the position of intra-substate minorities is enhanced by a system that allows them to be represented in the subnational decision-making bodies. In Switzerland, for example, all cantons have a high degree of proportional representation.²¹⁹ No political party enjoys absolute power in any canton. The collegial cantonal governments provide adequate representation for minorities. In Valais, one of the Cantons, for instance, the cantonal constitution provides that members of the cantonal government be elected in a manner ensuring that the three regions of the canton are taken into account. This suggests that the electoral system as well as other institutions and processes can be used to ensure the representation

applied this form of autonomy in 1925 with its Cultural Autonomy Law. Ethnic groups that number at least 3,000 were, according to this law, allowed to establish a cultural council capable of taxing the groups' members and exercising jurisdiction over a wide range of cultural activities, including education, culture, libraries, theatres, museums and sports. This was again reintroduced in Estonia in 1993 (Coakley 1994: 297- 307). The 1960 Constitution for Cyprus also provided for non-territorial autonomy for the geographically scattered Greek and Turkish Cypriot communities. The communities were given separately elected communal chambers with exclusive legislative powers over the religious, educational and cultural matters (Moore 2004 1330).

²¹⁹ Schmitt 2005: 363. In Sri Lanka, the protection of provincial minorities is ensured through a system of power sharing that is extended to the political executives of the region based on the system of proportional representation. According to this system, "the governor would call upon the leaders of the political party in the council who commands the confidence of the council to become the chief minister, the other position in the board of ministers would be shared on the basis of proportionality". Political parties represented in the council would be entitled to a number of positions in the board of ministers, proportionate to the votes that they had received (Tiruchelvam 2001: 213 – 214).

of intra-substate minorities in the decision making bodies of the subnational units.

6.4.5 Concluding remarks

A multi-ethnic state, if it is to effectively accommodate ethnic diversity, can address the concerns of intra-substate minorities using judicially enforceable bill of right, non-territorial autonomy and/or representation rights. As the experience of these same federations also reveals, these institutional measures are not mutually exclusive.

7. Conclusion

The aim of this chapter was not to come up with a model of federalism that responds to the challenges of ethnic diversity. The aim was rather to introduce the various options and discuss the implications of those options on the institutional recognition and accommodation of ethnic diversity and, in the process, develop an analytical framework. As a result, it has refrained from prescribing or endorsing a particular territorial and institutional arrangement that must be adopted in order to meet the challenges of ethnic diversity. It has limited the discussion to producing a template of institutional arrangement that are usually used in multi-ethnic states and demonstrate how the principles of recognition and accommodation can be translated into institutional reality within the context of a federal arrangement.

Using the template produced in this chapter, the thesis now proceeds to examine the two case studies. Based on the institutions and processes discussed in this chapter, the study proceeds to evaluate the constitutional framework of South Africa and Ethiopia in managing ethnic diversity. The evaluation of the institutional framework of each federation is preceded by a chapter that outlines the historical and political development of the country.

This is very important as it gives insight into the different historical and political forces that has informed the establishment, structure and function of each federation.



Chapter Four

Ethnicity in South Africa's political and constitutional development

1. Introduction

Many depict South Africa as a country of minorities. This may not always be easily subscribed to as there is little agreement about the cleavages of South African society. As Maphai commented, “there are as many groups as there are group ideologues in South Africa”.¹ Some may base their analysis on the race divide and reject the conclusion that South Africa is a country of minorities. This frame of analysis considers black Africans as an undifferentiated homogenous group, making them a numerically dominant segment of the society.² Those that regard South Africa as a country of minorities adopt, by contrast, ethnicity as the relevant fault line, which, in the South African context, is, more or less, identified with language groups. Analysis of South African society based on this fault line would indicate that no single ethnic or language group commands a numerical majority.³

¹ Maphai 1995: 78.

² Racially speaking, the country has been divided into four racial groups: Blacks, Coloureds, Indians and Whites. Black, which is interchangeably used with Africans, refers to people of solely African ancestry. Coloureds are usually people of mixed race though it includes people of Khoi origin who are not of mixed race. Whites refer to people of European origin, who are mainly of Afrikaner or English origin, but also including Germans, Portuguese and other people of European origin. Indians are largely of South Asian descent, largely descended from ‘indentured servants’ brought from the Indian subcontinent by the British to work in the sugar plantation of Natal. According to a recent census, 79.3% are regarded as African, 9.3% White, 8.8% and 2.5% Indian (Stats in Brief 2006).

³ Justice Sachs, based on the same frame of analysis, depicted South Africa as a country of minorities. “[T]here is no clear majority population in South Africa...Linguistically and culturally speaking, there are only minorities” (In *re: the School Education Bill of 1995 (Gauteng)*, 1996 (4) BCLR 537 (CC)). In terms

Eleven major languages are spoken in South Africa. This includes isiZulu, isiXhosa, Setswana, siSwati, Pedi, Sesotho, Xitsonga, Afrikaans, English, Tshivenda, isiNdebele. The African languages are broadly divided into Nguni and Sotho languages. IsiXhosa, isiZulu, siSwati and isiNdebele belong to the Nguni languages while Setswana, Sesotho and Pedi are Sotho languages. The other two, Xistonga and Tshivenda, do not belong to any of the two language groups. According to the 2001 census, Zulu speakers, the largest linguistic group in the country, account for 22.87% of the population followed by isiXhosa (17.89%), Afrikaans (14.45%), Sepedi (9.19%) English (8.59%), Setswana (8.21%), Sesotho (7.72%), Xitsonga (4.37%), siSwati (2.52%), Tshivenda (2.18%) and isiNdebele (1.46%).⁴ Others account for 0.57 of the population.⁵

This study, as indicated in the introductory chapter, focuses on ethnicity. In South Africa, the African language groups at the same time refer to ethnic groups. This is not, however, the case with Afrikaans and English speakers. Afrikaans speakers, for example, includes both white Afrikaners, who can be defined as ethnic Afrikaners, and members of the Coloured community,

of religion, the Christian community, which is composed of Protestant, Roman Catholic and African Independent Churches, is numerically dominant. It accounts for 84% of the population with the African Independent Churches being the largest group of Christian churches. Muslims and Hindus each account for 1.5 and 1.2% of the population respectively. 0.3% of the population ascribe to traditional African beliefs (Statistics South Africa: Census 2001).

⁴ Statistics South Africa: Census 2001.

⁵ This includes the Indian community. The conglomeration of these groups makes South Africa a country of huge diversity. It is a racially, ethnically and religiously diverse country. Sachs (1991: 23) thus describes South Africa as a “multi-lingual, multi-faith, multi-cultural, and multi-political” country.

who do not necessarily share an ethnic attachment with white Afrikaners. The English category similarly includes people other than English-origin.

This chapter traces the role and place of ethnicity in South Africa's constitutional and political development. Being cognisant of the fact that constitutions are informed and shaped by political and social forces that play out on the political terrain of a state, this chapter seeks to explore the political role of ethnicity in South Africa's constitutional development. This is especially important in South Africa as the major decisions on and perceptions of ethnicity are deeply affected by the political and social tensions that in the past, have, and continue to characterise South African constitutional dialogue. Past policies and actions of the State, as we shall see, have left their mark on the concepts of ethnicity and the political role it has in present-day South Africa.

Despite the widely held predictions that ethnicity will become primary political cleavage in post-apartheid South Africa, especially among the black community, ethnicity, this thesis maintains, is still not the most politically relevant divide in present-day South Africa. It must, nevertheless, be acknowledged that there are ethnic groups that demand the recognition of their distinctive identities. The thesis further argues that the explanation for the insignificant nature of the political relevance of ethnicity in post-apartheid South Africa lies in the particular historical and political context of the South African state and society.

The chapter has seven related parts. Part two discusses the ascendancy of Afrikaner ethnic nationalism. The third part looks at how the apartheid government attempted to entrench ethnicity by coupling the latter with territory. The fourth part concentrates on the constitutional options presented for post-apartheid South Africa and specifically examines how

ethnicity featured in the negotiations for a new South Africa. The fifth part focuses on the Interim Constitution and examines its response to the demands for the accommodation of ethnic diversity. The final part brings together the discussions on the general implications of these actions and policies of the apartheid government by focusing on the debate on ethnicity and its relevance in modern day South Africa before it concludes with a few general remarks.

One important caveat is in order. The objective of this chapter is to lay the foundation for a discussion of the present South African constitutional order. By discussing the role and place of ethnicity in South Africa's constitutional development, it serves to bring the present political and constitutional development in South Africa into perspective. As the aim of this chapter is to provide the basis for a discussion in the next chapter, the depth of the discussion is limited accordingly.

2. The ascendancy of Afrikaner ethnic nationalism

The birth of the Union of South Africa was realised when the four British colonies (Cape, Transvaal, Orange Free State and Natal) were merged in 1910. With the view to establishing a strong union between the four colonies, especially between the British colonies (Cape and Natal) and the two recent additions (Transvaal and Orange River Colony), the white elites established a strong unitary state as opposed to a federal state.⁶ This was

⁶ Steytler 2005: 313. The only remnant of federalism in the 1910 Constitution was the establishment of an upper house in which each province had equal representation. The upper house, which is called the Senate, was established to protect provincial interests. The Province's executive was, nevertheless, appointed and responsible to the central government. Although each province had elected councils, the power of these councils was also very restricted. Legislative acts had to be approved by the governor general and they were also subject to the

despite the fact that the Natal delegation, in the 1909 Convention that led to the formation of the Union, demanded a federal structure. The demand for a federal state was a manifestation of the anxieties of English speakers in Natal that they would be dominated by the numerically dominant Afrikaners.⁷

The dominance of Afrikaners came to fruition only in 1948 when the National Party ascended to power. The Afrikaners gained political control by the ethnic mobilisation of their community. Many authors trace the origin of Afrikaner ethnic consciousness to the second half of the nineteenth century and relate its hasty development to the British rule and the impact it had on the Dutch speaking colonists who later became known as Afrikaners.⁸ The Great Trek and the Anglo-Boer war are especially regarded by many as the defining milestones in the history of Afrikaner ethnic nationalism. The large sections of the Afrikaners in the Cape, with the prime objective of escaping the British cultural hegemony, ventured on what has famously come to be known as the Great Trek in the 1830s.⁹ The

overriding powers of the central government. The state generally established “an all-powerful government consisting only of white men” (Ebrahim 1998: 10) and eventually withdrew voting rights from blacks in 1936 and from Coloureds in 1956.

⁷ Klug 2000: 100. See also Welsh 1989: 250 – 279. As noted by Lemon (1996: 108), “there were sporadic revivals of federal proposals and even a threat to ‘go it alone’ at the time of the Republican referendum in 1960, when Natal was the only province to vote against the Republic”.

⁸ Others explain Afrikaner ethnic nationalism in economic terms. For more, see Leatt *et al* 1986: 67-88. See also Giliomee (1989:116-121) especially on the critique of the economic explanation of the Afrikaner ethnic nationalism.

⁹ Other writers indicate that the Great Trek of the 1830s was precipitated by the

long and difficult journey was undertaken by a group of about 15,000 Afrikaners. It resulted in the creation of two so-called Boer republics, namely the Zuid Afrkaansche Republiek (Transvaal) and Orange Free State. The establishment of the two Boer republics did not, however, bring to an end the contact with the 'British imperialists'. The ongoing tensions and attempts at expansion eventually led to the Anglo-Boer war of 1899-1902, which lasted for three years. The war experience heightened bitterness among the two communities. The concentration camps organised by the British for the Afrikaner women and children added to the bitterness of Afrikaners.

The National Party, which projected itself as the representative of Afrikaner national interests since its founding in 1914, immediately began a process of Afrikaner upliftment by reinforcing Afrikaner ethnic identity and promoting Afrikaner interests. Afrikaans replaced Dutch as an official language alongside English in 1926. After 1948, it became the openly favored language.¹⁰ The Afrikaner community also benefited from a striking improvement in economic status:

The capital accumulated in farming flowed into financial institutions which helped greatly to diversify the range of Afrikaner commerce. New investment in education, especially at university level, expanded Afrikaner involvement in the whole range of professions. Those in agricultural occupations dropped from about 30 percent in 1946 to 8

issues of *gelykstelling* (i.e. equalisation of Khoikhoi before the law in terms of Ordinance 50 of 1828) and the emancipation of slaves. For more, see Leatt *et al* 1986: 70.

¹⁰ From the time the National Party came to power, government business was mainly conducted in Afrikaans despite the fact that English was equally regarded as an official language. Afrikaans benefited from the allocation of state resources (see generally Silva 2006).

per cent in 1977 on the eve of the reform area. Afrikaners in blue-collar and unskilled work dropped from 40 to 27, while those in white-collar employment increased from 29 to 65 percent...Of the half a million whites in public sector employment, the great majority were Afrikaners.¹¹

With the help of state powers, Afrikaners, within a few decades, were brought to almost equal socio-economic status with their English-speaking compatriots.¹² The dominance of Afrikaners in the political arena was firmly established.

¹¹ Beinart 1994: 172. See also Adam and Giliomee 1979: 169.

¹² “Per capita income amongst Afrikaans-speakers, less than half that of English-speakers in 1946, had risen to 80 per cent in the late 1970s and was heading towards parity” by 1994 (Beinart 1994:173). Along with ethnic nationalism advanced by the National Party came racial ideology, which, in the form of apartheid, introduced race-based group classification as an official policy of the state. The National Party, with its series of complex statutes, institutionalised the practice of apartheid. These included legislation such as the Mixed Marriages Act (1949), the Group Areas Act (1950), the Reservation of Separate Amenities Act (1953), the Separate Representation of Voters Act (1951), the Population Registration Act (1950) and the Bantu Education Act (1953). The apartheid government divided the population into four major racial groups: White, Coloured, Indian and African. Every South African was compulsorily categorised as belonging to one or the other race, which determined all future rights and entitlements. The state spending process on services differentiated according to racial lines. The white community benefited the most while black Africans received the least. The Coloured and Indian community were granted an intermediate level, which was a deliberate act of the apartheid government aimed at avoiding the emergence of a unified resistance movement. Although the two population categories have suffered under the apartheid regime, they were not affected at the same level as the African population as they benefited from preferential treatment. This created divisions among the non-white population. The racial categorisation was also given strict spatial dimension by the enactment of the 1951 Group Areas Act, which institutionalized the residential segregation of

3. The Black homelands: ‘coupling ethnic differences and territory’

Race was not the only fault line the apartheid government used to divide South African society. It further divided the black African community along ethnic lines. This was realised through the introduction of the homelands which came into effect with the enactment of the Promotion of Bantu Self-Government Act (Act 42 of 1959).¹³ The Preamble to the Act read: “The Bantu people of the Union of South Africa do not constitute a homogenous people but form separate national units on the basis of language and culture”. The idea was that each homeland,¹⁴ demarcated along ethnic lines, becomes an independent state and establishes itself as a nation-state, with its inhabitants eventually losing their South African citizenship.¹⁵ This policy

racism. In 1983, the National Party government introduced a new constitution. One of the major changes introduced by that Constitution was the introduction of a tri-cameral parliament: the House of Representatives (for Coloureds), the House of Assembly (for Whites) and the House of Delegates (for Indians). The scheme excluded black Africans, claiming that they are accommodated through the homelands. Each parliament had jurisdictions over “own affairs” of the community it ostensibly represents while a joint house of the three parliaments had to deliberate over “general affairs”.

¹³ Some, however, trace the establishment of separate homelands for black Africans to periods long before the advent of the 20th century. In the Eastern Cape, Natal (including Zulu-land), the Free State, and the Northern and western Transvaal, a series of reserves or locations had been demarcated for exclusive African occupation. Over these areas tribal authority was exercised (see Leatt *et al* 1986: 121).

¹⁴ These areas were interchangeably referred to as Bantustans, homelands and self governing states.

¹⁵ Much of the policy reason and the idea behind the establishment of the homelands was laid out in the 3,755 page Tomlinson Commission Report of 1955. The report emphasised the existence of ethnic divisions among the black African community. It argued that “there were a number of ‘Bantu’ national organisms falling into

of ‘separate development’, according to the Afrikaner leaders, was the sole means of eschewing inter-ethnic conflict which characterised plural societies throughout the world.¹⁶ This justification, taken at a face value, appears to rely on ethnic enclaves as a means to avoid ethnic conflicts.

Ten homelands, based on ethnic lines, were established. Only four of them – Transkei (26 October 1976), Bophuthatswana (6 December 1977), Venda (13 September 1979) and Ciskei (4 December 1981) – infamously known as the “TBVC” states – became nominally independent. These four homelands had, as any other sovereign state, their own state apparatus including armies, passports and border posts. The relation between the homeland governments and the South African government was also conducted through embassies both in Pretoria and the homelands. The remaining six were considered as self governing homelands: Gazankulu, KaNgwane, KwaNdebele, Kwazulu, Lebowa and Qwaqwa.¹⁷ Each of the homelands was given its own national symbols, flag and emblem.¹⁸

various main ethnic groups, each of which should be able to run its own affairs” (Egan and Taylor 2003: 101). It was based on the aspects of this report that Prime Minister Hendrik Verwoerd formulated the 1959 Act (see Lijphart 1985: 38-39).

¹⁶ Egan and Taylor 2003.

¹⁷ The homeland solution was not sought for black Africans only. There were also attempts to establish a cape homeland to the Coloured community, which was considered by the apartheid government as ‘a nation in the making’. Although, a Coloured Representative Council, with limited legislative powers, was set up to advance this objective, it failed. With regard to the Indian community, the government first attempted to repatriate them to India. When that failed, the government established the South African Indian Council as a forum that represents the Indian community. The forum was given no effective or legislative power (Steytler 2005: 314).

¹⁸ The Minister of Bantu Administration and Development, in a speech he made to

The Bantustan policy had, more or less, created ethnically homogenous homelands.¹⁹ In Kwazulu, for example, 98% of the people are Zulus. The same is true in Transkei and Venda where the majority of the residents are Xhosas and Vendas respectively. Lebowa has two ethnic groups (i.e. the Pedis, the North Ndebeles) while Bophuthatswana has a population that is about one third non-Tswana. The black Africans that lived in homelands other than their own accounted for only 10 % of the black African population.²⁰

the House of Assembly in May 1963, stated that “[i]t is one of the basic desires of the Bantu to have his own flag” (Mr M.C. de Wet Nel, Minister of Bantu Administration and Development; House of Assembly, 3 May 1963 quoted in *1948 -1994 The apartheid years* available at <http://www.sedibafountain.org.za/pebble.asp?reid=4098&t=168&translated=false&Culture=English>, accessed on 4 September 2006).

¹⁹ Lijphart 1985: 37.

²⁰ According to the national policy, all black African people must be allocated to their ‘own’ ethnic Bantustan, irrespective of the fact that they never lived there. Egan and Taylor (2003: 102-103) refer to ‘the disjuncture between the de facto and de jure population of the Bantustans’. In Transkei, for instance, only 39% of the people allocated to it were actually living in that specific Bantustan. This was, however, to be changed by 1980s as large scale population removals and resettlements forced Africans into the Bantustans, with the latter eventually housing over half of the country’s population. Egan and Taylor (2003: 102-103) provide a vivid account of the situation: “Fundamental human rights were violated through the policy of forced removals. Regulated by the ‘scientific’ classifications of government ethnologists, millions of African people were uprooted to Bantustan locations. Over a period of 25 years nearly four million people were forced to move, many of them several times over. Forced removals aimed to ensure that certain categories of African people were permanently placed in the Bantustans: women and children, the old and sick, and the unemployed. In reality, Bantustans were a dumping ground for white South Africa...this was a form of ‘ethnic cleansing’ by another name.”

The ethnic basis of the homelands was further strengthened by the juxtaposition of their creation with the empowerment of traditional authorities. Traditional authority was preferred to formal parties in all the homelands; chiefs played an important role as unicameral legislatures that were mainly composed of chiefs or their representatives were established in all the homelands.²¹ A brief glimpse at the political manifestos of the political parties in the homelands also confirms the strong value attached to this tradition of chieftainship and tribal identity as an important source of legitimacy. The Transkei National Independence Party, in its manifesto, guaranteed “just and equal treatment to the various tribes living in the Transkei, and promises to foster a spirit of true Transkeian loyalty...bearing in mind the sanctity of its special customs and traditions for each tribe.”²² Similarly, the Ciskei National Independence Party’s principle was “the preservation of the institution of enlightened chieftainship, which serves as a symbol of traditional leadership and a rallying point for tribal unity; and the operation of such chieftainship along modern democratic lines”.²³ The close association of the homelands with traditional authorities had the effect of strengthening the entrenchment of ethnicity in each homeland.

3.1 The homeland policy: An exercise of self-determination?

The apartheid government justified this grand apartheid in terms of the right to self-determination. It regarded the homelands policy as an exercise of the right to self-determination. In a letter submitted to the United Nations’ Security Council, it argued that the aim of the homeland policy is “to make it possible for each of the various nations, black and white, to achieve its fullest potential, including sovereign independence, so that each can enjoy

²¹ Leatt *et al* 1986: 127.

²² Leatt *et al* 1986:127.

²³ Leatt *et al* 1986: 128.

all the rights and privileges which his or her community is capable of securing”.²⁴ In 1976, the South African Ministry of Foreign Affairs lamented:

[S]urely we are also striving for the peaceful realization of self-determination and majority rule. But we are going further and we are acting in the spirit of the UN Charter which refers so pointedly to “self-determination of peoples”. Our objective is self-determination of all the peoples in Southern Africa.²⁵

In an ostensibly considerate approach to members of other communities, Verwoerd said that it would be wrong to “retain control over what belongs to other people”,²⁶ suggesting that the homeland policy was designed to give the different black African communities the right to manage their ‘own affairs’. The homeland policy was generally presented by the South African government as a measure that fulfills the desire among black Africans for self government.

3.2 Assessment

A serious evaluation of the homeland policy would show that the policy did not muster the self-determination test. First, the homeland policy, as pointed out by many, did not entail an equitable division of resources.²⁷ The homelands were established in a significantly smaller geographical space compared to the area left for ‘white South Africa’. Only 13% of the total land area of South Africa was allocated for the homelands despite the fact that black Africans constituted over 70% of the total population. The land reserved for the homelands was still way below the optimum even if it is

²⁴ As quoted in McCorquodale 1994: 13.

²⁵ As quoted in McCorquodale 1994: 13.

²⁶ Leatt *et al* 1986: 123.

²⁷ Biko 2002.

assumed that only half of the African population (i.e. 37%) actually resided in the homelands.²⁸ Added to this was the fact that less industrially developed parts of the country were left to the homelands.²⁹

The other problem was lack of territorial contiguity or fragmentation of most homelands. KwaZulu, with its 48 separate territorial components, was the most fragmented homeland. Some analysts like Munger referred to countries like Indonesia, West Berlin (during the Cold War era) and USA (considering Alaska, Puerto Rico, Hawaii, and the Virgin Islands) and argued that 'noncontiguity' is not necessarily bad.³⁰ While one may, with great degree of reluctance, accept the argument that the lack of territorial contiguity was not necessarily unique to South Africa, this may, however, belie the reality that the fragmentation had deeply afflicted the homelands. What is rather problematic is that this line of argument simply misses the point. It confuses the accidental and historical products of territorial noncontiguity with the deliberate and manipulative construction of non-contiguous homelands.³¹

The major shortcoming of the policy lies, however, in the fact that it was not a project based on free choice. It was a unilateral policy of the apartheid

²⁸ Lijphart 1985: 40.

²⁹ "The Bantustan policy was never economically viable....only 5% of gross domestic product was produced by the Bantustans....Mainly owing to such appalling agricultural and industrial conditions. Bantustans were financially dependent on the South African parliament for over 70% of their budgets.. In return, the Bantustans provided South Africa with a huge army of cheap migrant laborers" (Egan and Taylor 2003: 105).

³⁰ Munger 1978: 260.

³¹ White farmers benefited from the fragmentation of the bantustans as it made it possible for them to keep their profitable lands (see Biko 2002: 86). See also Egan and Taylor 2003: 114.

government that was simply imposed on black Africans. Without engaging those affected, the government simply ascribed identity and accordingly divided the inhabitants of South Africa into various groups and decided for those groups where they should have their own territory. The inescapable conclusion is that homeland policy was not an exercise in self-determination.

The fact that homeland policy was not really an exercise in self-determination becomes clearer when one considers the fact that the self-determination principle was not even applied consistently. As indicated earlier, dividing the South African society along ethnic lines and creating nation-states was the formula adopted by the government to implement its so-called 'self-determination exercise'. One would thus expect the creation of ethnically homogenous states throughout the territory of South Africa including in the white community which is ethnically segmented.³² Despite this fact, the white community was not subjected to ethnic divisions. The homeland policy was rather confined largely to black Africans. This grotesque distortion of the policy of self-determination and its contradictions is laid bare by Archbishop Tutu when he said:

Blacks find it hard to understand why the whites are said to form one nation when they are made up of Greeks, Italians, Portuguese, Afrikaners, French, Germans, English, etc.; and then by some *tour de force* Blacks are said to form several nations – Xhosas, Zulus, Tswanas, etc. The Xhosas and Zulus, for example, are much closer to one another than, say, the Italians and the Germans in the white community.³³

³² Lijphart noted a higher level of ethnic voting among white voters in South Africa than ethnic voting in plural societies like Belgium, Canada Switzerland and Cyprus (Lijphart 1985).

³³ Tutu 1994: 8.

Some may argue that most of the ethnic groups within the white community could not be regarded as a nation. This may be true except for the Afrikaners. But the same can be said of the ethnic groups in the black African community. The contradictory nature of the policy is also evident in the fact that the system created two homelands for Xhosas: Transkei and Ciskei. This flies in the face of the claim advanced by the government that the objective of the policy is to create one homeland for each ethnic group. What, then, was the objective of the homeland policy?

The prime objective of the homeland policy was to ensure 'white rule over white South Africa'. Safeguarding white rule by driving out black Africans from the geographical and eventually political terrain of South Africa was the main objective of the policy. Black Africans who were deemed to belong to one of the homelands would, according to this policy, eventually lose their South African citizenship and accept citizenship of the homelands. They had to exercise their political rights in the homelands.³⁴ What occurred in South Africa, as aptly pointed out by Beran, was thus a case of 'expulsion' rather than an exercise of the right to self-determination: "If the parts of the state which challenge its unity include the central government and lays claim to the legal identity of the existing state, we have a case of expulsion rather than [self-determination]".³⁵ A concrete manifestation of the 'expulsionist' nature of the homeland policy was that black Africans,

³⁴ Speaking in the House of Assembly in 1978, Dr. Connie Mulder, then Minister of Information, said that "[i]f our policy is taken to its logical conclusion as far as black people are concerned, there will be not one black man with South African citizenship...Every black man in South Africa will eventually be accommodated in some independent new state in this honorable way and there will no longer be a moral obligation in this parliament to accommodate these peoples politically" (as quoted in Leatt *et al* 1986: 124).

³⁵ Beran 1984: 21.

who were living in the urban areas, were denied political rights. A policy of expelling black Africans from South Africa under the guise of self-determination was implemented on a wide scale. Black South Africans became foreigners regardless of their place of birth or preference. As Dugard has succinctly put it, this was a resort to “international-law fictions as a substitute for constitutional-law solutions”.³⁶

Only the failure to fully appreciate the true nature and motive of the homeland policy can explain the conclusion reached by some authors that the rejection of the so-called self-determination by black Africans was ‘unusual’. Adam, for example, considered the rejection of the homeland policy a paradox in Africa where communities in the peripheries of African states wage an ethnic conflict to secede from the larger states: “It is probably safe to say that the majority of people in independent Africa would welcome greater self-determination at the periphery, including secession from existing states, while the black majority of South Africans clearly favors preserving the unitary [i.e. unified] state”.³⁷ Adam seemed to be comparing the incomparable. His argument was dangerously close to suggesting that black Africans were presented with a choice of autonomous self government or staying together under one larger state. The bottom line is that there were little or no options presented to black Africans as the policy was imposed unilaterally and forcefully by the apartheid government.

³⁶ Dugard 1980: 26. The presentation of the homeland policy as an exercise of self-determination was not accepted by the United Nations. The Security Council of the UN issued an extraordinary statement calling all governments “to deny any form of recognition to the so-called “independent Bantustans” (McCorquodale 1994: 13). According such recognition was considered a breach of international law for violating a binding decision of the Security Council. Only South Africa recognised these homelands as independent states.

³⁷ Adam 1983: 132.

This makes it clear that the situation in South Africa at that time was not comparable to the situation in the peripheries of other African states. Hence, it is not a paradox that the majority of black Africans rejected the homeland policy.

3.3 The homeland policy and ethnicity

In view of the foregoing discussion about the homeland policy, the question arises as to whether the government succeeded in creating a strong ethnic identity among black African communities. Some authors tried to gauge the effect of the homeland policy by examining the responses of political actors and especially homeland leaders to the policy. Based on their response to the government's policy of homelands, Leatt *et al* identified two types of homeland leaders.³⁸ These were leaders that accepted the homelands as the practical tool to fight apartheid, on the one hand, and those that used the homeland to forge ethnic unity, on the other, with the latter, knowingly or unknowingly, contributing to the realisation of the objectives of the homeland policy.

For some in the Transkei, the independence of the Transkei state was a reaffirmation of their existence as a nation, which, they claimed, existed long before the formation of the Union of South Africa.³⁹ The dominant party in Transkei viewed Transkei's independence as "nothing more than regaining sovereignty over its traditional authority".⁴⁰ A similar sentiment

³⁸ Leatt *et al* 1986: 27.

³⁹ Kaiser Matanzima, leader of Transkei, alluded that Transkei received its name in the 1880s suggesting that it is older than the Union of South Africa which was formed only in 1910 (Leatt *et al* 1986:127).

⁴⁰ There was even a reference to Transkeians as is evident from the following extract from a speech made by Matanzima: "Just as Jews everywhere gained a new stature with the coming into being of the Promised Land, Israel, so too we

resonated among the leaders in the Ciskei homeland. Multiple identities seem to be identified by some of the leaders of that homeland. Sebe said:

We Ciskeians are not prepared to lose that which identifies us not only as Ciskeians, but in the broader context as South Africans. Indeed, I know positively that the aspirations of my people are to achieve nationhood for themselves as Ciskeians and citizenship for themselves as South Africans.⁴¹

Leaders of other homelands regarded the homeland as a power base from which they can wage their political struggle against apartheid. Chief Mangope of Bophuthatswana declared that “the main reason for choosing independence is that we utterly abhor racial discrimination..... [choosing independence makes us] a catalyst for accelerated change, so as to overcome...racialism on the sub-continent”.⁴² He wanted ‘to use apartheid to abolish apartheid’. Chief Mangostu Buthelezi was also especially known for using the homeland system as a political platform to promote the interest of black Africans in general. He refused to accept independence for KwaZulu and spoke against the homeland partition.

The other major manifestation often mentioned to indicate the success of the Bantustan policy in fostering ethnic identity relates to the ethnic discrimination that was reportedly prevalent within the Bantustans. Members of an ethnic group that do not belong to the major ethnic group for which the Bantustan was established were often subjected to discrimination in terms of access to jobs and social services. This was, for example, the

Transkeians have given all blacks in South Africa a new dignity by blazing the trail and founding a black Transkei” (Leatt *et al* 1986:127).

⁴¹ Leatt *et al* 1986: 127.

⁴² Lijphart 1986: 41.

case in the Winterveld area of Bophuthatswana where the non-Tswana population was constantly subjected to harassment by Bophuthatswana police on the grounds of being “illegal squatters”.⁴³

3.4 Assessment

Measuring the success of the homeland policy in entrenching ethnic identity by looking at the positions of the leaders of homelands could be tricky. For most of these leaders, the homelands policy gave them a material basis to advance ethnic claims. They developed benefits and stakes in the promotion of ethnic-based national identity.⁴⁴ This was evident from the ‘patronage, nepotism and bribery’ that characterised most Bantustans.⁴⁵ The workings of patronage, welfare provision and resource distribution played an important role in fostering class stratification and gave certain groups a reason to promote the Bantustan system. The major beneficiaries were the chiefs, Bantustan political and business elites. The desires of these leaders could, for obvious reasons, be at odds with the wishes of the majority of the population. The same is true even in the case of those that rejected the homeland policy or claimed to have adopted it for strategic reasons. These leaders quickly rallied around ethnic identity when they perceived a threat against their political power. It was, for example, the same leader of Bophuthatswana, who allegedly accepted independence for strategic reasons that presented strong resistance to the re-incorporation of the homelands into the new South Africa. This shows the difficulty of relying on the statements of the leaders of the homeland to determine the effect of the Bantustan policy on the formation of ethnic identity.

⁴³ Lijphart 1986: 41.

⁴⁴ Butler 2007.

⁴⁵ Egan and Taylor 2003: 105.

Of course, individuals who were not ‘indigenous’ to the homeland they inhabited were, on occasion, subjected to discrimination in terms of access to jobs and social services. The problem with such indicators is that they do not tell us much about the political mobilisation of ethnicity. At best, they point to the prevalent ethnic stereotypes and prejudices which are rather common in many ethnically plural societies.

The weight of evidence on the impact of the homeland policy tends to suggest that most black Africans, the artificially designated ‘citizens’ of the bantustans, had rejected the homeland policy. Sociological research and public opinion surveys revealed a widespread opposition to the homelands and to its underlying principle on making ethnicity as a basis for political activity. The majority of black Africans did not consider themselves as ‘ethnic subjects’. Most opposed to the homelands were urban Africans.⁴⁶ The opposition was strongest amongst anti-apartheid activists. The leader of the Black Consciousness Movement, Steve Biko, wrote in the 1970s: “...At this stage of our history we cannot have our struggle being tribalised through the creation of Zulu, Xhosa and Tswana politicians by the system”.⁴⁷ The policy of the National government that attempted to entrench the saliency of ethnic differences amongst black Africans was rejected by all major African movements including the ANC, Pan-Africanist Congress and Black Consciousness Movement. For them, it was only a means to continue the policy of apartheid and suppress the emergence of a common resistance front.

It would, of course, be naive to categorically suggest that the homelands and their leaders did not make any contribution to the creation of ethnic politics.

⁴⁶ Leatt *et al* 1986: 134.

⁴⁷ Biko 2002: 86.

The apparent utilisation of the homelands for ethnic mobilisation was evident in KwaZulu where the leadership spoke against the homeland's 'independence'. The major work of ethnic mobilisation around the Zulu ethnic identity was done by the IFP under the leadership of Chief Mangosuthu Buthelezi since 1975. Buthelezi, despite his claim for non-racialism, mobilised around ethnicity and his party used the KwaZulu homeland for political gain. As Egan and Taylor note, "[i]n the final years of apartheid, KwaZulu was being subsidised by Pretoria to around 1, 8 [billion] rands per annum, and those millions of Zulu-speakers who wanted to qualify for KwaZulu welfare and employment schemes had little choice but to join Inkatha".⁴⁸ As the discussions that follow will reveal, the appeal to ethnic sentiment among the Zulus by the IFP forms a central part of the identity politics that emerged in the early transition process.

4. Towards the Interim Constitution: The emergence of politicised ethnicity?

Following the dramatic announcement of the release of Nelson Mandela and other prominent political prisoners from prison in February 1990 along with the unbanning of the ANC,⁴⁹ the stage was open for negotiating the future of South Africa. One of the major issues that many academics and politicians grappled with, and continue to grapple with, as South Africa moved away from the apartheid era, is the role and place of ethnicity in post-apartheid South Africa. The central issue at the time was whether the ethnic identity that the apartheid government attempted to promote would continue to be muted or would emerge with the end of the white domination.

⁴⁸ Egan and Taylor 2003: 105.

⁴⁹ The release of Mandela and the unbanning of the ANC was preceded by secret talks between unofficial representatives of the South African government and the banned ANC, which started in November 1985.

4.1 Ethnic conflicts?

For some, the conflicts that engulfed the country in the transition process suggested the resurgence of ethnic mobilisation. In the early 1990s transition process, the country was marred by conflicts which were cynically referred to as ‘black on black’ violence. It is estimated that more than 14,000 people were killed in political violence in the four year period spanning from the beginning of the negotiations until the elections were finally held in April 1994.⁵⁰ Guy provides a vivid picture of that period:

In recent years ...ethnic conflict has moved from remote rural areas, the alleyways in South African slums, and the inaccessible compounds, onto the streets and the homes of the world in newspaper photographs and on the television screen. These pictures of ethnically organised bands, their ‘cultural weapons’ in their hands, pursuing their enemies through the streets with horrifying results, is now a familiar image of South Africa in many parts of the world.⁵¹

These major conflicts in black communities were considered by some as ethnic conflicts between the Xhosas and the Zulus. Although originally confined within the regional boundaries of KwaZulu–Natal, the conflict later spread to the Pretoria-Witwatersrand-Vereeniging area. It was also then that the conflict started to take ‘ethnic overtones’. Communities that lived side by side for as long as they could remember started to split along ethnic lines. Xhosas had to leave the hostels and Zulus had to flee the townships and take sanctuary in IFP-controlled hostels. The conflicts were regarded by some as the early signs of the political mobilisation of ethnicity and ethnic conflicts.

⁵⁰ Shaw 1997.

⁵¹ Guy 1992: 2-3.

Ethnic mobilisation was especially evident among the Zulus. In making an appeal for ethnic sentiment among the Zulus, the IFP and particularly its leader, Chief Mangosuthu Buthelezi, heavily relied on the history of the Zulu Kingdom. Buthelezi claimed that the KwaZulu homeland was a legitimate successor to the Zulu Kingdom and presented the call for the abolition of the homeland system and their incorporation into South Africa as an assault on Zulu political and cultural survival.⁵² The IFP claimed, on many occasions, that the special history and culture of the Zulu people was at risk of obliteration.

What might have possibly fed into the argument that claimed the emergence of ethnic mobilisation was the claim that the ANC was a Xhosa organisation. Of course, this is not without merit. The most prominent ANC leaders predominantly have been Xhosa-speakers.⁵³ Despite the fact that Chief Albert Luthuli, President of the ANC from 1952 to 1967, was a Zulu, both Nelson Mandela and the incumbent president of the country, Thabo Mbeki, are Xhosas. The other prominent leaders of the ANC, including Oliver Tambo, Walter F. Sisulu and Chris Hani, were Xhosas. In the early 1990s, the composition of the ANC's national executive Committee displayed a disproportionate representation of the Xhosas. Of the twenty black members of the ANC's national executive committee, ten were Xhosa with the other ten divided between Tswana (5), Pedi (4) and Zulu (one).⁵⁴

⁵² In September 1992 the ANC proposed (but never in fact organised) a march protesting the continued existence of KwaZulu. Buthelezi responded by stating that "At no time since the conquest of Kwazulu....has there been a greater threat against us as Zulus" (Manby 1995: 41).

⁵³ Horowitz 1991: 48-49. See also Lemon 1996: 96.

⁵⁴ Horowitz 1991: 54. Horowitz, in presenting the composition of the ANC's

It was not only the 'Zulu question' that drove the muted ethnic question home. Like the IFP, Afrikaner related right-wing parties mobilised around ethnic identity. As negotiations began, right-wing parties⁵⁵ started to become more militant in rejecting the changes of the status quo. When it eventually became clear that apartheid was coming to an end, right-wing parties, which, in 1993, created the Afrikaner Volksfront alliance, started to demand an "Afrikaner" homeland. The Afrikaner Resistance Movement (Afrikaner Weerstandsbeweging - AWB), a paramilitary group, threatened 'the horror of civil war' to create a "Volkstaat".⁵⁶ The violence by the right-wings escalated as negotiation proceeded.⁵⁷ Right-wing leaders, in making

National Executive Committee concedes the potential for a margin of error. Due to the reluctance to discuss ethnicity, Horowitz indicated that the data on identity was largely collected through informants.

⁵⁵ A major right wing party, the Conservative Party (CP) was established immediately after the National Party made a proposal to grant limited rights to Indians and coloureds in 1982. A group of ministers left the National Party and established the C P.

⁵⁶ The ability of the right-wing parties to destabilise the country was not something on which there was a consensus. Zille, writing in 1988, argued that "the right wing is not a paper tiger". The Conservative Party's spokesperson similarly lamented that "it is possible to turn...South Africa...upside down with 500 strategically placed people....The price of ignoring the demands for a separate state could be so high that no majority government would be able to ignore them in the long term" (as quoted in Zille 1988: 91-92). On the contrary, some political analysts like Booysen considered whites, including Afrikaners, too bourgeois to take up rifles and engage in liberation war. The only possibility is when "the ownership of private property is not enshrined in a bill of rights and white owned land is redistributed on a massive scale" (as quoted in Garson 1993:13).

⁵⁷ On the date the elections were to be announced, close to 3,000 members of the AWB stormed the building where talks were being held. A series of bombings in the Northern and Northwestern Transvaal – 'one of the most conservative areas in the country' – targeted government institutions. Black individuals were also targeted, especially in rural areas. The most dramatic event was when members of

their demand for self-determination and an Afrikaner homeland, invoked “the need for sacrifice in the face of the new threat to the Volk”.⁵⁸

The ethnic mobilisation that was evident among members of the Zulus and Afrikaners was also reflected in the constitutional options proposed by those that claimed to represent the interests of these communities during the negotiations for a new South Africa. The challenge of accommodating diversity was one of the most crucial questions in this process.

4.2 Ethnicity in the constitutional options for a new South Africa

The negotiations for the future of South Africa in the form of the Convention for a Democratic South Africa (CODESA) started on 20 December 1991 but ended without agreement in May 1992. One year after the collapse of CODESA, negotiations were resumed at the Multi Party Negotiation Process (MPNP), which finalised a negotiated settlement on 18 November 1993.⁵⁹ As Currie noted, the problem of accommodating diversity “dominated the lengthy constitutional negotiations”.⁶⁰

the AWB invaded Bophuthatswana to defend the Mangope homeland government. Three were killed (two of them summarily executed) in their abortive attempt. A spate of bombs orchestrated by the same group also killed more than twenty-one people in and around Johannesburg just days before the election.

⁵⁸ The two major nationalist movements, the IFP and the Afrikaner related right-wing parties seemed to complement each other as well. Buthelezi, for example, drew parallels “between Zulu and Afrikaner history and the response of each ‘nation’ to oppression. It is also a fact that members of the right-wing paramilitary organizations openly took part in the paramilitary training of IFP ‘self-protection units’ in rural Natal, which were mostly composed of young men. This ‘sense of solidarity’ shared among the IFP and the right wing parties, as we shall see later, was elevated to a formal coalition through the establishment of the Freedom Alliance (Manby 1995: 37).

⁵⁹ It was agreed that the non-elected negotiating political parties would draft an

The National Party initially argued that the accommodation of the heterogeneous South African society in some form of countermajoritarian settlement was a constitutional imperative.⁶¹ It strongly rejected a pure majoritarian system. This emphasis on group identity reflected the fact that the National Party viewed the South African society as consisting of groups. Based on this view, the party proposed a number of countermajoritarian principles, which could generally be couched in terms of power-sharing and self-determination. It first called for the adoption of a consociational system of government in which all groups should be represented in legislative and executive state powers, participating in decisions that affect the whole society. The party, in addition to a power-sharing scheme, demanded a devolved system of government. Supported by similar demands of the leaders of the homelands, especially Ciskei and Bophuthatswana, the party called for strong regional units.⁶² Strong regional government, argued F.W. de Klerk, was “the only way in which we can successfully accommodate the

Interim Constitution which would govern the country during the transitional phase. Afterwards, a democratically elected Constitutional Assembly, composed of the upper and lower houses, would determine the ‘final Constitution’. The drafting of the ‘final Constitution’ would have to comply with 34 Constitutional Principles which were agreed upon by the negotiators. For the ‘final Constitution’ to come into effect, it was agreed that the Constitutional Court would have to certify that it was in conformity with all the Constitutional Principles. The Constitutional Principles were adopted as a guarantee for the negotiators that the ‘final Constitution’ would not affect the basic principles contained in Interim Constitution.

⁶⁰ Currie 1998: 35.2. Steytler (1999) claimed that federalism was an important, though not dominant, issue in the Constitutional negotiation between the two parties.

⁶¹ Klug 2000: 104. See also Currie 1998: 35.2

⁶² At the same time, the NP emphasised the need for the bill of rights as a bulwark against state interference into the private realm (Steytler 2005). See also Manby 1995: 35.

heterogeneous nature of our society in a meaningful manner”.⁶³ The idea was to build regional alliances with some of the Bantustan leaders and capture some of the regions.⁶⁴

The strongest demand for federalism as an instrument to protect territorially based ethnic interests came rather from the Zulu-based Inkatha Freedom Party (IFP). The IFP proposed an ‘extreme form of federalism’ which would involve the devolution of extensive powers to the provinces. The country, the Party argued, should be called the “Federal Republic of South Africa”. The Constitution of the State of KwaZulu-Natal, which was adopted by the KwaZulu Legislative Assembly, the homeland parliament, in December 1992, regarded KwaZulu a member state of a Federal Republic of South Africa, in which “no federal law would be able to override any

⁶³ Egan and Taylor 2003: 109.

⁶⁴ Some, however, emphasised that the National Party’s focus was primarily on shared rule rather than self rule (Steytler and Mettler 2001). See also Currie 1998: 35.4. The demand by the party for a devolved form of government was not necessarily motivated by the urge to protect territorially based ethnic interests as its supporters, except for the provinces of Western Cape and Northern Cape where Afrikaans speakers are in the majority, were dispersed across the country. Decentralisation “was seen as a brake on a strong central government” (Steytler and Mettler 2001: 94). The National Party, according to this view, focused on securing a power-sharing deal at the level of the central government: “At the first round of negotiations at the Convention for a Democratic South Africa (CODESA), and subsequently at the Multiparty Negotiating Forum, the key area of contention between these two parties was the control of the power to be wielded by the national executive. The breakthrough in negotiations was not the agreement on the creation of provinces and the limited devolution of power to these subnational units, but the creation of a government of national unity. The NP thus placed its faith primarily in shared rule (literally through the device of a government of national unity) rather than self rule” (Steytler and Mettler 2001: 94).

state law and no federal taxes levied without the permission of the state”.⁶⁵ Buthelezi, in agreement with F.W. de Klerk, argued that “...federalism is the only form of government which will bring peace and harmony to South Africa.”⁶⁶ The party also demanded a special recognition of the Zulu monarchy. The party threatened secession if its demands for the political recognition of the ‘Zulu Nation’ in a federal arrangement were not met.

The Afrikaner based right-wing parties sought for the establishment of a separate Afrikaner homeland, a *Volkstaat*. The parties pledged war if their demand for an Afrikaner Volkstaat was not met. These parties were later joined with leaders of some of the homelands and the IFP to establish a loose coalition known as the Freedom Alliance in 1993. In this ‘odd

⁶⁵ Manby 1995: 42. The hallmark of the model of federalism proposed by the IFP was that member units of the federation decide the nature and scope of the powers of the national government. “The national government would not only be a government of limited, enumerated powers but also that the national constitution would remain subject to the constitutions of the individual states of the federation”. The proposed draft constitution which declared the sovereignty of KwaZulu–Natal to be “indivisible, inalienable and untransferable (section 3) required South African armed forces to obtain permission before entering Kwazulu–Natal (section 67(b)), required South Africa to obtain consent before levying taxes (section 67(d)), created an autonomous central bank (section 81) and granted a KwaZulu– Natal Constitutional Court exclusive jurisdiction to decide whether South African laws were valid within the regions (section 67(c) and 77). This led authors like Klug and Ellmann to conclude that what the IFP was proposing was confederalism although it was presented as a form of federalism (Klug 2000: 104; Ellmann 1993:166). Ellmann (1993:166) remarked that the Constitution was “indeed reminiscent of the notion of inter-state relations that prevailed in the United States before [the present American constitution] was adopted in the years of 1780’s when the United States lived under the ‘Articles of Confederation’”.

⁶⁶ Manby 1995: 42.

assortment of parties' were included, from the right-wing side, the Conservative Party led by Ferdi Hartzenberg, the small but strongly vocal Afrikaner Weerstand Beweging (Afrikaner Resistance Movement) led by Eugene Terreblanche and the Afrikaner Volksfront (AVF) led by the former SADF General, Constand Viljoen, and the IFP.⁶⁷ The objective of this alliance was to reject the individual-rights based new democratic constitution and advocate for the inclusion of ethnic identities in the Constitution.⁶⁸

As a direct result of the experience of the Bantustans, the ANC, on the other hand, expressed a great deal of objection to the idea of adopting a federal constitution that institutionalises ethnic differences. Proposals for the devolution of power to strong regional governments in the form of federalism was seen as a neo-apartheid scheme that could be used to thwart majority rule by drawing boundaries along the lines of race and ethnicity to maintain “white minority privileges”.⁶⁹ The ANC rather reiterated its long-standing commitment to develop a state that is racially and ethnically neutral.⁷⁰ It emphasised a policy of nation-building based on common

⁶⁷ Maphai 1995: 113. This alliance, which at the beginning called itself the ‘Concerned South Africans Group’ (COSAG), initially included the Bophuthatswana leadership, represented by President Mangope who was determined to secure the survival of a Tswana-dominated region, and Brigadier Gqozo of Ciskei. The two, however, left the alliance, with Ciskei first withdrawing in January 1994 and Mangope after the overthrowing of his government in March 1994 (Ebrahim 1998). See also Lemon 2003.

⁶⁸ Ebrahim 1998: 163.

⁶⁹ Creating strong federal units, the party argued, “would legitimate the homelands and create a separate white Volkstaat” (Steytler 2005: 316). See also Simeon and Murray 2001: 316.

⁷⁰ The ANC’s ‘antipathy’ to “any recognition of ethnic claim was explicitly stated in

citizenship and national identity, protected by a system of individual rights that is enshrined in a constitutional bill of rights. South Africa, according to the position of the ANC, shall be a ‘unitary, democratic and non-racial state’. It considered the establishment of a unitary centralised state essential in order to transform South African society into a non-racial society and to address the legacies of the apartheid state.⁷¹

4.3 Concluding remarks

Ethnic claims have dominated the early transition process. Ethnic mobilisation was notable among members of the Zulu and Afrikaner ethnic community. It is also clear that the major forces that dominated the transition process had divergent conceptions of South African society. It was thus evident that a successful transition required the accommodation of these divergent views of South African society and an all-inclusive election that involved the major forces.

Reconciling these divergent views was not, however, easy. In fact, initially, the different views of the political parties and the policy options they entailed appeared difficult, if not impossible, to reconcile. Owing to the significant changes in the position of the parties that was the result of painstaking negotiation process, the first political deal was signed between the ANC and the National Party on 2 December 1993 at Kempton Park. This was then adopted as an Interim Constitution after securing “legal form” by the tri-cameral parliament. The deal was, nevertheless, rejected by the major proponents for the recognition of ethnicity, namely the IFP and the Afrikaner right-wing parties.

its 1988 constitutional guidelines which went so far as to suggest the future prohibition of political parties which advocate or incite ethnic or regional exclusiveness or hatred” (Klug 2000: 104).

⁷¹ Steytler 2005.

Opposed to the deal concluded at Kempton Park, both the IFP and the Afrikaner related right-wing parties walked out of the negotiation process. They refused to take part in the elections. In view of the political violence that these organisations were associated with, their decision to abandon the process was not to be taken lightly. As indicated earlier, most of the conflicts in KwaZulu-Natal had involved IFP supporters, which indicated the capacity of the party to destabilise the political process. The right-wing parties, with their retired but still powerful Generals from the armed forces, who commanded the loyalty of serving members of the armed forces, were also forces to reckon with. Eventually, with the view to accommodating the demands of the IFP and conservative Afrikaners, amendments were made to the Interim Constitution in March 1994, before it even came into force.⁷² The next section focuses on the contents of the Interim Constitution and looks at how the Constitution attempted to accommodate the demands of ethnic-based groups.

5. Accommodating ethnic diversity in the Interim Constitution

There is no clear agreement about the kind of state established by the Interim Constitution. Some regarded it as a federal structure while others referred to it as a unitary state. What is, however, clear is that the form of state introduced by the Interim Constitution, as amended in March 1994, had important federal features. More importantly, for our purpose, the Interim Constitution presents a difficult balance between the centralists who sought to establish a common national identity, on the one hand, and the federalists who insisted on the distinctiveness of their respective ethnic identity and the protection thereof, on the other. Aspects of self rule and shared rule that were incorporated in the Interim Constitution support this

⁷² Act 2 of 3 March 1994.

conclusion.⁷³ The discussion in this section commences by looking at the status and use of language in the Interim Constitution.

5.1 The status and use of language

The clauses of the Interim Constitution that regulated the use of language represent recognition of the diverse ethnic groups that inhabit the country. In this regard, the ‘Fundamental Rights’ chapter included a provision on the use of language in education. In order to provide a complete picture of the status and use of language in the Interim Constitution, the discussions in the following two sub-sections deal with the regulation of language both for the purpose of government and education.

5.1.1 Language for the purpose of government

Section 3 of the Interim Constitution listed eleven official languages of the Republic at the national level: isiZulu, isiXhosa, Setswana, siSwati, Pedi, Sesotho sa Leboa, Xitsonga, Afrikaans, English, Tshivenda, isiNdebele.⁷⁴ The recognition of these eleven languages, according to the same section, did not diminish the rights and status of languages, which existed at the commencement of the Interim Constitution, a provision meant to address the anxieties of Afrikaners who feared the marginalisation of their language in post-apartheid South Africa.

⁷³ It must be noted that this study does not intend to engage in a detailed discussion of these elements of the Interim Constitution. The discussion is limited by the objective of this specific chapter, which is laying the foundation for a discussion of the present South African constitutional order in the next chapter.

⁷⁴ Section 31 further emboldened the right by stating that “every person shall have the right to use the language and to participate in the cultural life of his or her choice.”

A person, when dealing with public administration at the national level, had the right to use and be addressed in an official language of his or her choice as long as it was practicable.⁷⁵ The use of official languages for the purpose of the functioning of government, stated the Interim Constitution, can be decided by parliamentary acts and provincial laws “taking into account questions of usage, practicality and expense”.⁷⁶ The Interim Constitution specifically stated that a member of parliament may address Parliament in an official South African language of his or her choice.⁷⁷ More importantly, this right of parliamentarians was not limited to what was ‘practicable’.⁷⁸

Language rights were also recognised at the provincial level. According to section 3 (4) and (5) of the Interim Constitution, a provincial legislature could adopt any of the official languages as the official languages of the province. This was considered by some as “an attempt to recognise and accommodate the regional concentration of various linguistic groups”.⁷⁹ There were, however, a few conditions that, according to section 3(5) of the Constitution, need to be fulfilled. First, the language policy proposed by the provincial legislature must be approved by two thirds of its members. Second, the proposed language policy must not negatively affect the status of an official language existing at the time of the commencement of the Interim Constitution. This provision was designed to protect the official

⁷⁵ Section 3(3) Interim Constitution.

⁷⁶ Section 3(8) Interim Constitution.

⁷⁷ Section 3(7) Interim Constitution.

⁷⁸ Section 25(3) of the Interim Constitution recognised the right to use an official language of one’s choice in criminal proceedings. The right to demand that proceedings are conducted in a language understood by them is accorded to litigants, an accused, or a witness. Failing this, they have the right to have the proceedings interpreted in a language they understand.

⁷⁹ Brand 1997: 692.

status of the languages of Afrikaans and English which enjoyed a privileged status during the apartheid era.

Section 3(9) lists a number of principles to which any legislation, official policy and practice in relation to the use of language at any level of government must comply:

- The creation of conditions for the development and for the promotion of the equal use and enjoyment of all official languages;
- the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;
- the prevention of the use of one language for the purpose of exploitation, domination or division;
- the promotion of multilingualism and the provision of translation facilities;
- the fostering of respect for languages spoken other than the official languages and the encouragement of their use in appropriate circumstances;
- the non-diminution of rights relating to language and the status of languages existing at the commencement of the Interim Constitution.

Contrary to the position it adopted in respect of education, the Interim Constitution envisaged positive action on the part of the state in matters of language. The government was obliged to create conducive conditions for the development and promotion of the equal use and enjoyment of the eleven official languages.⁸⁰ This obligation should not be interpreted as conferring the duty of enforcing the equal use of all eleven official

⁸⁰ Section 3(1) Interim Constitution.

languages but rather that efforts must be made to develop and promote their equal use.⁸¹

5.1.2 Language in education policy

Section 32(b) of the Interim Constitution guaranteed instruction in the language of one's choice as long as it remains reasonably practicable. The subsection that followed recognised the right "to establish, where practicable, educational institutions based on a common culture, language or religion provided that there shall be no discrimination on the ground of race".⁸² Three important consequences followed from this provision. First, the right to instruction in a mother tongue was not necessarily a given priority. The provision simply allowed people to choose their language of instruction. As noted by Kriel, the key element was the notion of choice: "It is not about the language of a person's birth or a person's mother tongue".⁸³ Second, education based on common culture, language or religion was relegated to private educational institutions. Third, both the right to instruction in the language of a person's choice and the right to establish educational institutions based on common language, culture or race were limited to "where this is reasonably practicable".

⁸¹ Currie 1998: 37.1. Related to this obligation of the State was section 3 (10) of the Interim Constitution, which provided for the establishment of an independent Pan South African Language Board. The Board, which was subsequently established by parliamentary legislation, was entrusted with the duty to promote respect for the principles set out in section 3 (9), to further the development of the official languages and to promote respect for and development of other languages used by communities in South Africa including languages used for religious purposes. An advisory role with regard to legislation on language issues was also entrusted to the Board as it must be consulted and provide recommendations in relation to language related legislation.

⁸² Section 32 (c) Interim Constitution.

⁸³ Kriel 1998: 38-1.

The establishment of such educational institutions was the main subject of contention in a case brought before the Constitutional Court. The case concerned a dispute in the Gauteng Provincial Legislature relating to the constitutionality of certain provisions of a bill dealing with language and religious issues in schools.⁸⁴ In that case, the petitioners, members of the Gauteng Provincial Legislature, argued that the Interim Constitution, under section 32 (c), imposed a positive obligation on the state to establish, where practicable, schools based on a common culture, language or religion. As found by the Court, and rightly so, this was an incorrect interpretation of the Interim Constitution. No such positive obligation was envisaged in the wording of section 32(c) of the Constitution. The provision did not confer an obligation on the state to establish such institutions. What the Interim Constitution made provision for was the right of every person to establish “such educational institution”. Section 32(c), argued Justice Sachs, created a “constitutionally guaranteed space for private individuals to set up and maintain their own schools if they feel that their special cultural, language or religious needs are not being sufficiently catered for in the state system”.⁸⁵ What was envisaged by the Interim Constitution was thus a ‘defensive right’. This was a right that could be used by a person who wants to establish such educational institution to resist any interference by the state.⁸⁶ This presented a liberal view of the state where it was only expected to refrain from interfering in matters of culture and not burdened with any positive obligation in that regard. The state, according to this view, had only negative obligations. Tolerating the collective goals and

⁸⁴ *Gauteng Provincial Legislature in Re: Dispute concerning the constitutionality of certain provisions of the School Education Bill of 1995*, 1996 (4) BCLR 537 (CC).

⁸⁵ *In re: The School Education Bill*, 1996 (4) BCLR 537 (CC).

⁸⁶ Strydom 1999: 890.

aspirations of cultural communities was where the state's obligation begun and ended.⁸⁷

5.2 Self rule

As indicated earlier, the ANC was strongly opposed to the idea of federalism. As a result of the negotiations, however, the ANC softened its position on federalism, which eventually made the introduction of federal elements into the system possible. The National Party joined the ANC in the election process while the right-wing Afrikaner parties and the IFP refused to join the process. In a bid to bring these two major forces on board, some important concessions were made,⁸⁸ which ultimately allowed the incorporation of certain important aspects of self rule into the Interim Constitution.

5.2.1 Powers and functions

The self rule elements of the Interim Constitution were evident in the constitution and law making powers that were entrusted to the provinces.

5.2.1.1 Provincial constitution-making

One of the fundamental elements of the Interim Constitution pertaining to provincial powers was contained in the provisions relating to provincial constitution-making power. The Interim Constitution, even in its original form in 1993, allowed the provinces to draft and adopt their own

⁸⁷ Strydom 1999: 890.

⁸⁸ Important concessions were made to the IFP and the right-wing Afrikaner Parties in the form of two constitutional amendments to the Interim Constitution that were introduced in March and April 1994. The amendments of March 1994 addressed the demands of both the IFP and the Afrikaner related parties while those of April responded to the demands of the IFP only. The details of the amendments are mentioned in the course of the discussion outlined in this section.

constitutions. The contents of provincial constitutions were, however, extensively regulated by the Constitution. The March 1994 amendment relaxed the regulation by providing provinces a measure of discretion in structuring their legislative and executive branches. Provinces were allowed to depart from the procedures which the national Constitution originally mandated for the province's governance.⁸⁹ This created room for asymmetrical constitutions.⁹⁰

One of the symbolic but very important accommodative features of the Interim Constitution was that it envisaged the possibility of a constitutional monarchy within a republic. The April 1994 amendment, driven by the demands of the IFP, explicitly permitted provincial constitutions to provide for the institution, authority and status of a traditional monarch in provinces anywhere in the country; it even made the establishment of such institutions for the Zulu King in the province of KwaZulu-Natal mandatory.⁹¹ This symbolic but very important addition to the Interim Constitution gave the province of Kwazulu Natal the right to adopt a constitutional monarchy within the Republic of South Africa. Although these concessions were considered by some as too minimal to have actually convinced Buthelezi to join the process,⁹² he finally decided to participate in the election following these amendments that were enacted only two days before the election.

⁸⁹ Section 8(a) of Act 2 of 1994. See also Ellmann 1994.

⁹⁰ Steytler and Mettler: 2003.

⁹¹ Section 1 of Act 3 of 1994.

⁹² Steytler and Mettler (2003:8) suggested that the Zulu monarch, King Zwelithini, may have played a decisive role in changing Buthelezi's mind: "There was little love lost between them, and the transfer of tribal land by the South African government to the King a day before the election, may have swayed Buthelezi. Without royal support and facing the prospect of an uncertain future outside government office, there may have been little option left for them".

The constitution-making power of the provinces was contested in a case that was brought before the Constitutional Court. The KwaZulu-Natal draft Constitution, which was adopted unanimously by the provincial legislature, was brought before the Constitutional Court for the purpose of certification.⁹³ The Court, citing many flaws, refused the certification of the Constitution on the ground that the KwaZulu-Natal legislature, in drafting the provincial Constitution, had usurped the powers and functions of Parliament and the national government. The Court stated that some of the provisions in the draft Constitution appeared to have “been passed by the KZN legislature under a misapprehension that it enjoyed a relationship of co-supremacy with the national Legislature and even the Constitutional Assembly”.⁹⁴ The Court rejected the extreme option of provincial sovereignty on the ground that the assertion of recognition was “inconsistent with the Interim Constitution because KZN is not a sovereign state and simply has no power or authority to grant constitutional “recognition” to what the national government may or may not do”.⁹⁵

5.2.1.2 Provincial legislative autonomy

A cursory glance at the contents of the Interim Constitution might give the impression that provinces were provided with extensive areas of competence on which they could legislate. A long list of functional areas on which provinces can pass legislation was included under Schedule 6 of the Interim Constitution. From the long list of functional areas, however, only the following were relevant for the protection of ethnic communities: cultural affairs, education at all levels (but excluding universities and technikons), language policy and the use of official languages within the

⁹³ *In re: Certification Interim Constitution of the Province of KwaZulu-Natal, 1996* 1996 (11) BCLR 1419 (CC).

⁹⁴ At para 15.

⁹⁵ At para 34. For more, see Williams 2002.

province (subject to the provision of section 3), provincial public media and traditional authorities. In contention was the scope of provincial legislative power over these and other functional areas.

Initially, section 126 provided expressly for the so-called concurrent legislative competence of parliament with regard to all the functional areas mentioned above and accorded explicit supremacy to parliamentary legislation over provincial laws. This specific section was revised when the Interim Constitution was subsequently amended in March 1994 in order to meet the demands of the IFP. The IFP argued that the powers provided to the provinces were only concurrent powers that can be overridden by national legislation.⁹⁶ The amendment removed the explicit statement that accords concurrency and legislative supremacy to national laws and granted provinces prevailing powers in a range of areas of legislative authority. A close scrutiny reveals, however, that the amended provisions of section 126 did not, in effect, change the power relation between the national and provincial government as it accorded supremacy to the former in a wide set of circumstances.⁹⁷ The wide circumstances under which national

⁹⁶ Klug 2000: 108.

⁹⁷ The legislative competences of the provinces was circumscribed by the fact that an Act of Parliament that falls within the designated legislative functional area of the provincial legislatures could still prevail over provincial legislation in so far as the Act of Parliament deals with matters that cannot be regulated by provincial legislation. Matters included in this category are those which, to be performed effectively, requires regulation or co-ordination through uniform norms or standards that apply generally throughout the Republic or through an Act of Parliament, which is necessary to set minimum standards across the nation for the rendering of public services. In addition, an Act of Parliament would prevail if the Act is necessary for the maintenance of economic unity, the protection of the environment, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labor, or

legislation could prevail over provincial legislation watered down the legislative authority of provincial legislatures to a great degree.⁹⁸

The scope of provincial powers was contested in a case brought before the Constitutional Court. The case related to a dispute over the National Education Policy Bill which was tabled for adoption before the National Assembly. It was alleged that the Bill imposed national education policy on the provinces, thereby impinging upon the autonomy of the provinces and their executive authority.⁹⁹ The IFP contended that KwaZulu-Natal is in a position to develop and regulate its own policies and, as a result, the Bill could have no application in the province. The fact that education, as a functional area, was assigned concurrently to the national and provincial governments was not disputed. The disagreement lay in the effects of concurrency - what should follow when a subject matter is concurrently assigned to both provincial and national government. The assumption on the part of KwaZulu-Natal and the IFP was that a form of pre-emption doctrine precludes the national government from enacting in an area of concurrent jurisdiction as long as the provinces have the capacity to design and regulate their own policies. The Court, however, rejected the notion of pre-emption. The Court stated that the legislative competences of the provinces and parliament to make laws in respect of Schedule 6 [concurrent] matters did

the maintenance of national security. A provincial law would not prevail over an Act of Parliament if “it materially prejudices the economic, health or security interests of another province or of the country as a whole or impedes the implementation of national economic policies” (section 126 Interim Constitution).

⁹⁸ Some authors like Basson (1999) and Ellmann (1995) went to the extent of concluding that the provinces lack autonomous powers with regard to their allocated areas of legislative competences. .

⁹⁹ *Ex parte Speaker of the National Assembly: In re: Dispute Concerning the Constitutionality of certain Provisions of the National Education Policy Bill 83 of 1995* 1996 (3) SA 289 (CC); 1996 (4) BCLR 518 (CC).

not hinge upon section 126 (3), which regulated the conditions under which a national or provincial law prevails. Section 126 (3) came into operation, according to the Court, only if it was necessary to resolve a conflict between inconsistent national and provincial laws. As Klug aptly remarked, the Court, by rejecting the notion of pre-emption, enabled “both national and provincial legislators to continue to promote and even legislate their own imagined solutions to issues within their concurrent jurisdictions without foreclosing on their particular options until there is an irreconcilable conflict”.¹⁰⁰

In delivering judgment, the Court made some important remarks regarding the nature of provincial autonomy under the Constitution. It outlined the outer limits of provincial autonomy by cautioning that the provinces in South Africa, “unlike their counterparts in the United States of America”, were not “sovereign states”.¹⁰¹ Nothing in the Interim Constitution allowed a province to regulate its own status.

5.2.2 Volkstaat

As indicated earlier, Afrikaner-based right-wing parties insisted on the establishment of an Afrikaner homeland where whites would be a majority.

¹⁰⁰ Klug 2000: 109.

¹⁰¹ *National Education Policy Bill 83 of 1995* at para 23. The Court also made remarks with regard to the conflict of provincial and national legislation. The Court stressed that even if a conflict was resolved in favor of either the provincial or national law the other was not invalidated, it was merely subordinated and to the extent of the conflict, rendered inoperative. The Court thus made a distinction between laws that were inconsistent with each other and laws that were inconsistent with the Constitution and thereby argued that, even if the National Education Policy Bill dealt with matters in respect of which provincial laws would have paramountcy, it could not for that reason alone be declared unconstitutional.

Although establishing such a province was considered not feasible by many, different ‘innovative’ suggestions were made to realise an Afrikaner homeland. These included providing ‘financial incentives’ to induce blacks to leave the Volkstaat once its borders were laid out, Volkstaat constitutional provisions entrenching an Afrikaner majority in the Volkstaat legislature, and inducing more whites to move to the new Volkstaat.¹⁰² Opposed to any dispensation that does not provide for the establishment of a Volkstaat, the right-wing parties walked out of the negotiation process and threatened to destabilise the country. When the Interim Constitution was amended in March 1994, provisions were made to accommodate the demands of the Afrikaner-based right wing parties.

Two provisions in the amended Interim Constitution provided for the establishment of a Volkstaat Council. Section 184A (1) authorised the establishment of a Volkstaat Council of 20 members who were “elected by members of parliament who support the Volkstaat idea”. As was stated under section 184B (1), the major objective of the Council was to serve as a constitutional mechanism to enable those who support the Volkstaat idea to ‘constitutionally pursue the establishment of such a Volkstaat’. Although these provisions were only permissive and did not constitutionally oblige the creation of such a Council, the Parliament adopted the Volkstaat Council Act 30 of 1994, which gave effect to the establishment of a Volkstaat Council in May 1994. This is regarded by many as a good demonstration of the good will of South Africa’s new leaders and their “desire for domestic peace and their willingness to fashion compromises to achieve that goal”.¹⁰³

¹⁰² See Ellmann 1995: 31.

¹⁰³ Ellmann 1995: 32. This was objected by the CP “as inadequate provision for the

As indicated in the establishing section, the Volkstaat Council was provided with limited powers. It was mandated only “to gather process and make available information with regard to possible boundaries, powers and functions and legislative, executive and other structures of “a Volkstaat.” Its responsibility was to undertake and submit to the Constitutional Assembly and the Commission on Provincial Government feasibility and other relevant studies on the establishment of a Volkstaat.¹⁰⁴ These responsibilities defined the nature of the work of the Council as that of a mere advisory body which had the mandate to ‘study, propose...advocate’ and eventually “sell its idea of a Volkstaat to the Constitutional Assembly”.¹⁰⁵ It had no real decision-making powers.

The incorporation of the Volkstaat clauses in the Interim Constitution would undoubtedly went a long way in terms of managing a potential ethnic conflict. The incorporation of the Volkstaat Council in the Interim Constitution also succeeded in bringing some elements of the white right-wing parties into the negotiation process. General Viljoen, after breaking ranks with the AVF, established his own party, the Freedom Front, which eventually participated in the election.

5.3 Shared rule

Important aspects of shared rule also found their way into the Interim Constitution both in the legislative and executive arena.

establishment of the Volkstaat. They were seeking their own territory, constitution and government. They wanted a guarantee prior to the election that they would receive their own state” (Steytler and Mettler 2003: 97).

¹⁰⁴ Strydom 1997. See also Van Wyk *et al*: 1994.

¹⁰⁵ Ellmann 1995: 32.

5.3.1 The National Assembly

The principle of shared rule found its way into the legislative arm of government as a result of the system of proportional representation that was adopted for the election of the National Assembly, the lower and most powerful house of Parliament. Section 40 of the Constitution stated that the National Assembly consisted of 400 members elected in accordance with the system of proportional representation of voters. The specific system of proportional representation adopted by the Constitution did not place a threshold that parties needed to achieve in order to obtain a representation in Parliament.¹⁰⁶ No group, however small, was excluded from obtaining a seat in the National Assembly. This had the obvious effect of strengthening the power-sharing scheme institutionalised in the executive arm of government¹⁰⁷

5.3.2 The Senate

A Senate representing nine provinces was established by section 48 of the Constitution. Irrespective of the size of the population in a province, each province was represented by ten senators. This resulted in the overrepresentation of smaller provinces. Unlike many other senates where

¹⁰⁶ The system introduced the list system of proportional representation which offers to the voters only one choice, to vote for the political party of his or her choice.

¹⁰⁷ The issue of enforcing the principle of proportional representation was also raised in relation to the functioning and organisation of the parliament itself. The debate was raised in relation to the committees of the parliament when the ANC legislators proposed the chairing of twenty-three of the twenty-seven parliamentary standing committees overseeing cabinet ministries, leaving only the chairs of four 'housekeeping' committees and one of the twenty-seven portfolio committees to the National Party. Johnny de Lange, back then a prominent ANC legislator, argued that "[t]here is no reference whatsoever in the constitution forcing the legislature to be part of the government of national unity" (Ellmann 1994: 18).

members are assigned by the provincial legislature, the senators, in this particular case, were nominated by political parties.¹⁰⁸ The political parties, in order to nominate senators, had to be represented in a provincial legislature. Each party was entitled to nominate a senator in accordance with the principle of proportional representation.

The Senate was given an important power in the passing of bills affecting provincial matters. According to section 61 of the Interim Constitution, the Senate was entitled to exercise a veto on Bills affecting the boundaries or the exercise or performance of the powers and functions of the provinces. Both the Senate and the National Assembly, sitting separately, had to pass such Bills. The veto power enjoyed by the Senate, however, did not include bills amending the Interim Constitution, which, according to s 62(1) of the Interim Constitution, needed to be approved at a joint sitting of both the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both houses. More importantly, any bill that affected the legislative competence of provinces as well as the executive authority of the same had to receive a separate blessing of the two houses.¹⁰⁹ As noted by Basson, this amounted to a clear veto power by the Senate in the legislative process.¹¹⁰

¹⁰⁸ Section 48(2) Interim Constitution.

¹⁰⁹ Section 62(2) of Interim Constitution.

¹¹⁰ Basson 1994. It was also provided that a bill that affects the boundaries or the exercise of the powers and functions of a particular province or provinces must be approved by a majority of senators of the province or provinces affected only. The Interim Constitution, under section 62(2), further stated that the boundaries and legislative competence of a province shall not be amended without the consent of a relevant provincial legislature. This, commented Basson (1994: 95), introduced “an extra-parliamentary procedure into the legislative process in Parliament by awarding such national legislative competence (amounting, in fact, to a legislative veto) to the relevant provincial legislature”.

5.3.3 Government of National Unity

An important feature of the Interim Constitution was the power sharing scheme introduced in the Government of National Unity. The scheme was focused on the executive arm of government. Two paths through which this scheme could be realised were provided in the Interim Constitution. First, any party winning at least one-fifth of the seats (i.e. 80 seats) in the National Assembly was guaranteed the position of an executive deputy president.¹¹¹ It was as a result of this rule that F.W.De Klerk, the last president of the apartheid government, became a second executive deputy president and joined President Mandela and his deputy, Thabo Mbeki, in government. Second, the proportional representation system was applied in the Cabinet where, according to the Interim Constitution, every party that won 20 seats in the National Assembly (that is, essentially, at least 5% of the vote) was entitled to representation in proportion to its seats in the Assembly.¹¹² The power sharing scheme was complemented by the constitutional rule which instructed the cabinet to seek consensus in making decisions. The Cabinet, according to section 89(2) of the Constitution, was obliged to function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

Although the phrase “government of provincial unity” was not explicitly stated in the Interim Constitution, the same principle of shared rule had found its way into provincial executive structures. The principle of proportional representation was, for example, applied in the election of members of the Executive Councils. According to section 149(2) of the Interim Constitution, any party with at least 10% of the seats in a provincial

¹¹¹ Section 84 Interim Constitution.

¹¹² Section 88(3) Interim Constitution.

legislature was entitled to such representation on the province's council. The provincial Executive Councils, the counterparts to the national cabinet, were similarly obliged by section 150(2) of the Interim Constitution to function in a manner which gives consideration to the consensus-seeking spirit underlying the concept of a government of national unity as well as the need for effective government.

5.4 'Fundamental Rights'

The Interim Constitution, in its chapter on 'Fundamental Rights', provides for a number of rights that are often regarded as instrumental in the accommodation of the needs of individuals that belong to different ethnic groups.¹¹³ It declared a right to equality and prohibited unfair discrimination based on grounds of language, race and ethnicity. Section 31 of the Interim Constitution prohibited the state from interfering with an individual's right to speak the language or practice the culture of his or her choice.

5.5 Constitutional Principles

An important extension of the accommodative feature of the Interim Constitution was the adoption of principles which guaranteed that the counter-majoritarian elements of the Interim Constitution would be maintained in the final constitution. In this regard, the Interim Constitution included, even as adopted originally in 1993, Constitutional Principles which guaranteed the provinces protection against the diminution of their powers.

For the purpose of this study, four Constitutional Principles need to be mentioned. Constitutional Principle XI stated that the diversity of languages and cultures would be acknowledged and protected, and conditions for the

¹¹³ Section 8 Interim Constitution.

promotion shall be encouraged. The final constitution, according to Constitutional Principle XII, would also “recognise and protect” provincial constitutional provisions that are adopted with respect to the status of traditional monarchs. Constitutional Principle XVIII ensured that in the final constitution the province’s powers, including their power to write their own constitutions, “shall not be substantially less than or substantially inferior to those provided for” in the Interim Constitution.

Constitutional Principle XXXIV provided for the right to self-determination. This Constitutional Principle outlined the right to self-determination that implied a measure of territorial autonomy. It stated that the Constitution recognises “...a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way”. It further stated that “the Constitution may give expression to any particular form of self-determination, provided there is proven support within the community concerned for such form of self-determination.” More importantly, it guaranteed the entrenchment of a territorial entity in the final constitution if it is established in terms of the Interim Constitution in order to give expression to the notion of the right to self-determination.

The final settlement represents a fine balance between the need to accommodate the demand of an ethnic group, on the one hand and the danger of opening a can of worms conducive for ethnic entrepreneurs, on the other. As noted by Hendricks, “[b]y not closing off the avenue to ethnic groups who seek self-determination, and instead, to assert that they need to show proven support, the state effectively accommodated ethnic demands without running the risk of every ethnic group seeking secession.”¹¹⁴

¹¹⁴ Hendricks 1997: 100.

The general aim of the Constitutional Principles was to ensure that the final Constitution would not be less accommodative than the Interim Constitution. As we shall see later, the Constitutional Court, which, according to these principles, was given the power to ensure that the final constitution complied with these Constitutional Principles, refused to certify the first draft presented for certification on the basis that it did not accord sufficient power to provinces.

5.6 Assessment

The Interim Constitution could, in many respects, be considered an important document that attempted to accommodate the demands of both centrifugal and centripetal forces through a balanced incorporation of both individual and group rights. The Interim Constitution had included rights that are individualistic in their orientation. As the provision on education illustrates, the Interim Constitution provided for a negative right even in matters that are relevant to ethnic groups. However, in as much as the document emphasised individual rights, it made important concessions with the view to addressing the anxieties of ethnic groups. The provision on language required positive action on the part of the state to promote the use and development of languages. The clauses relating to the Volkstaat and self-determination were also important safeguards that the Interim Constitution provided to those who perceived a threat to their ethnic identity. The constitutional provision for a monarchy within a republic, albeit symbolic, represented a brilliant inclusion of an element of self rule. The establishment of a government of national unity with executive power-sharing at its centre was also an important concession to those who relied on shared rule to promote the interests of the community they represent.

It is, however, important to note that the shared rule system enshrined in the Interim Constitution did not represent a full-blown consociationalism. This

is, first, because the Interim Constitution fostered a government of national unity but did not guarantee that the government would function as ‘a grand coalition’. The power of the executive deputy president was limited to consultation and did not include the power to veto. The clause that injected the spirit of consensus decision making was also soft as it only required members to give due consideration to the ‘consensus-seeking spirit’ without obliging them to actually make decisions by consensus.¹¹⁵

The general assessment is that the Interim Constitution had, more or less, fashioned a compromise that balanced the demands of those that perceived a threat to their identity, on the one hand, and those that sought the centralisation of power under a unitary state, on the other. There is no doubt these aspects of the Interim Constitution went a long way in quelling the anxieties of those who perceived a threat to their ethnic identity.

6. The political saliency of ethnicity in post-apartheid South Africa

Discussing the concept of ethnicity and posing claims based on the same is one of the most onerous jobs that any politician in South Africa can ask for. Anyone who wants to analyse ethnicity and champion ethnic identities can easily be mistaken for a neo-bantustan architect who attempts to reintroduce ‘the ugly past’ under the guise of accommodating diversity.¹¹⁶ Especially

¹¹⁵ Ellmann 1994.

¹¹⁶ The maligned nature of the concept of ethnicity has been apparent in the fact that many scholars have, for a long time, avoided the discussion of ethnicity. Bekker (1993, 63-95), in his book *Ethnicity in Focus*, analysed several relevant scholarly works with the view to examine scholarly interest in the area of ethnicity. In the areas of sociology, most scholarly works, he noted, rarely considered ethnicity as a basis for analysis. Even studies focusing on incidents that involved inter-ethnic conflict and pre-supposed the consideration of ethnicity as a relevant factor have eschewed the latter as a framework for analysis. During the apartheid era, any serious engagement of the concept of ethnicity in the South African context was

Afrikaners that posit ethnic questions are often accused of clinging to the apartheid era's privileges, however genuine their claims may be.¹¹⁷ The past, with its dire connotations of ethnicity, has caused ethnic entrepreneurs in South Africa to be looked upon with suspicion. As Maphai aptly points out, "ethnicity seems to have become a euphemism for racism".¹¹⁸ The question, however, remains whether ethnicity is a politically relevant divide in post-apartheid South Africa.

6.1 Contesting views about the political relevance of ethnicity

Many scholars and politicians, despite the great deal of reluctance to engage in any serious discussion of ethnicity, insisted on the relevance of ethnicity in South Africa. Horowitz was, for example, confident enough to prophesies that ethnicity will become the central question in post-apartheid

equated with doing intellectual work for the apartheid government. For Bekker, the avoidance of the discussion of ethnicity was also a matter of 'political correctness', as this particular evasion was common among those that were opposed to the apartheid regime, especially liberal and Marxists scholars. Lijphart (1989) adds similar political reasons to the 'list of factors' that lead to the evasion of addressing ethnicity. As much as the government can stand to benefit from stressing ethnicity, he argued, so does the opposition from de-emphasizing it. For the latter, the discourse on ethnicity is considered as 'a discourse of domination'. It is a discourse that serves the interests of those who sway power. For the apartheid government, on the other hand, it is an instrument to maintain minority rule. The net effect of all these has been, as Horowitz noted, "the studied neglect of ethnicity" (Horowitz 1991: 28).

¹¹⁷ In some cases, this can be explained by what is usually referred to as 'dogmatic non-racialism', which, to a large extent, seems to be prevalent in the present day South Africa. A typical characteristic of this dogmatism is that it has the strong tendency to deny or repress those who harbor strong feelings about their ethnic identity.

¹¹⁸ Maphai 1995: 73.

South African politics.¹¹⁹ Lijphart made similar predictions. For him, the most ‘accurate view of the South African plural society’ is one that views South Africa as a state that is characterised by a multiple division of ethnic groups. When the white domination comes to an end, he predicted, the black African society of South Africa can be divided into ten ethnic segments and the whites into Afrikaners and English-speakers.¹²⁰ This position is also shared by David Welsh who, writing back in 1980, predicted the weakening of black solidarity in the post-apartheid South Africa: “It may very well occur that ethno-linguistic differences among Africans will become politicised”.¹²¹

Others relied on the experience of heterogeneous countries and similarly argued that South Africa cannot be an exception to the saliency of ethnicity in ethnically plural societies. Giliomee, for instance, argued that “studies of other African societies show the persistence of ethnicity despite the absence of any policy resembling apartheid”.¹²² He, supporting his argument with data collected among black people in South Africa, expressed strong doubt about the assumption that the distinctive ethnic identities nurtured by the apartheid government and institutionalised by the homeland policy would ‘promptly fade away’.¹²³ Arguing against what he called the ‘end-of-ethnicity myth’, Lijphart also relied on comparative observations:

¹¹⁹ Horowitz 1991.

¹²⁰ Lijphart 1985.

¹²¹ Welsh 1980: 161.

¹²² Giliomee 1991: 66.

¹²³ Giliomee and Schlemmer accused the liberals, who emphasised inequality and disregarded ethnic heterogeneity as of prime importance in South Africa, of being “apologetic”. They argue that the de-emphasising of the importance of ethnicity in the liberal school goes down to the growing belief that “constitutional proposals

Ethnicity and ethnic divisions are facts of life in South Africa. It is tempting to play down the ethnic factor both because it superficially appears to have been declining in importance during the last decades and because it would be much easier to find a democratic solution for South Africa if the country were a basically homogenous or an only mildly divided society. Unfortunately... the latter image *does not stand up to sober comparative scrutiny*. South Africa's ethnic divisions cannot be wished away.¹²⁴ (Emphasis added).

Many thus predicted that with the dismantling of apartheid, the common oppression that muted intra-group rivalries among the different ethnic groups in the black community will fade away. The offshoot of this argument is that the architects of post-apartheid South Africa must guard themselves from the wrong assumption that the tensions that exist between black Africans are too insignificant to serve as raw material for ethnic mobilisation. More importantly, however, it suggests that the post apartheid government cannot avoid the entrenchment of ethnic identities in the Constitution.

Those who predicted ethnic-mobilisation in post-apartheid South Africa felt vindicated by the major events that unfolded in the early 1990s transition process discussed above. The conflicts confirmed, for them, the prediction that ethnic mobilisation and ethnic conflicts are an inevitable spin-off of the fall of the apartheid system. For some, “[n]ow that the possibility of the end of apartheid is a reality...the ethnic divisions in South Africa will emerge,

needed to be acceptable to the Black majority” (Giliomee and Schlemmer 1989: 160).

¹²⁴ Lijphart 1989: 22-23. See also Welsh 1980; Lemon 1996.

and we are now seeing the first signs of this fight between the Xhosa and Zulu on the reef".¹²⁵

Others simply rejected ethnicity as a relevant factor in South Africa. Sparks, writing in 1990, predicted that ideologically defined political bases rather than ethnic power bases will be the rallying point for any power struggle within the black community in the post-apartheid South Africa.¹²⁶ A good number of liberal scholars have also considered 'the structural inequality of wealth, status and power' and the statutory racial system as the most important divide and not the ethnic diversity that characterises South African society.¹²⁷

6.2 Assessment

The conflicts in the early transition, adduced above to support the emergence of ethnic mobilisation, do not necessarily substantiate the claim that ethnicity is a politically relevant factor in post apartheid South Africa. To begin with, a closer scrutiny would reveal that the categorisation of the conflicts in the early transition period as ethnic conflict between the Xhosas and the Zulus is a mere simplification. As Maphai aptly comments,

[o]riginally the violence was confined to the Kwazulu-Natal region, almost an exclusively Zulu speaking area. Most of the non-Zulus who settled there have virtually been assimilated.

¹²⁵ As quoted in Guy 1992: 84. Maphai objected to the categorisation of the conflict in the Witwatersrand area in the Transvaal as a Xhosa-Zulu conflict. He argued that this conclusion is based on the wrong assumption that the townships are exclusively or predominantly dominated by Xhosas while the townships which were close to the hostels where Zulus dwelled were ethnically heterogeneous (Maphai 1995: 91).

¹²⁶ Sparks 1990: 391.

¹²⁷ Slabbert and Welsh 1979: 153.

How anyone could objectively describe this as a Zulu–Xhosa conflict, defied imagination.¹²⁸

The conflict was largely between members of the same ethnic group: ‘Between rural, often, older, Zulus committed to their tribal identity and traditional systems of government, and those younger, township-based Zulus, less strongly tied to ethnic loyalties, who supported the ANC’s demands for modernisation and homogenisation of the South African people’. As some aptly commented, the conflicts were more of a ‘Zulu civil war’.

Related to this is also the revelation of the existence of a ‘third force’ behind the conflicts witnessed in the early transition phases. A judicial commission of inquiry, chaired by Judge Goldstone, revealed that members of security police were involved in engineering the conflicts.¹²⁹ Senior South African Police officials, according to the report, had been involved in supplying IFP with weapons and financial support.¹³⁰ This indicated that political violence will become less common “as those who engineered so much of it lose their access to the levers of power”.¹³¹ The revelation of the “Inkathagate”, as it came to be known, cast doubt on the position that claimed the potential resurgence of ethnic identity in the new South Africa. The revelation vindicated the view that the conflicts were not ethnic conflicts *per se*.

¹²⁸ Maphai 1995: 91.

¹²⁹ Ellmann 1994. This was denied by both IFP and General Bassie Smit, the second-highest ranking police officer in South Africa and one of those accused in the report.

¹³⁰ Manby 1995.

¹³¹ Ellmann 1994:10.

The ANC's overwhelming victory in the general election of 1994 also shows that ethnicity is not the most relevant political divide in South Africa. In as far as the black African communities were concerned, the election results tended to suggest less ethnic divisions.¹³² The ANC received its strongest support, 91.6%, from a region where there are hardly any Xhosa speakers: The Northern Transvaal Region which is composed of Pedi, Shangaans and Vendas. The party garnered 83.3% of the vote in the North Western Regions which is dominated by Tswana-speakers. Likewise, it polled 76.6 and 80.7% of the vote in the Sotho-speaking Orange Free State and the Eastern Transvaal respectively. The latter is home for the Ndebele and Swazi speakers. Despite the fact that the ANC's leadership, as noted above, is dominated by Xhosa speakers, the 1994 elections indicated that the party enjoys a great deal of support across ethnic groups. This left little substance in the claim that the ANC is a 'Xhosa organisation'.

Equally notable is the fact that parties which contested the election on an ethnic ticket performed poorly in the elections. The Luso (Portuguese)-South African Party, representing the approximately 500,000 South Africans of Portuguese ancestry, failed to gain a single seat in Parliament. Similarly, the following ethnic parties were not able to secure significant place in Parliament: the Minority Front Party (Indians in the Kwazulu-Natal region), Dikwankwelta Party of South Africa (Southern Sotho in the Orange Free State), African Democratic Movement (Xhosa in the Eastern Cape) and Ximoko Progressive Party (Shangaan in the Northern Transvaal).¹³³

The revelation of the "third forces", together with the winning of elections by the ANC across ethnic groups and the poor performance of ethnic parties

¹³² Maphai 1995: 95.

¹³³ Maphai 1995.

in the elections suggests the continuing solidarity among black African people. It confirmed the prediction that 'Blacks will not vote with their tribal feet'. To be precise, however, the voting trend was not entirely ethnically neutral. Voting patterns, to some extent, have also been partly ethnic. This is especially true in KwaZulu-Natal where the IFP received the majority of the votes (i.e. 50.8%), with 83% of the vote coming from the Zulus. Another ethnic-based party is the Freedom Front, Afrikaner-based party, which received 83% of its votes from Afrikaners although it only garnered only 2.7% of the national vote in a country where Afrikaners account for almost 5.5% of the population.¹³⁴ More Afrikaners voted for the National Party whose votes, however, came from other population groups as well. Of the 20.39 % of the national vote that the National Party secured, only 30% came from Afrikaners, another 30% from Coloured,¹³⁵ 20% English-speaking white and the rest from other groups.¹³⁶ These figures suggest that the exceptions to the 'ethnically neutral voting pattern' are limited.



7. Conclusion

The solidarity of the black communities that, to a large extent, has muted inter-ethnic rivalry seems to have persisted into post-apartheid South Africa. Mobilisation around ethnic identity is rare among the different

¹³⁴ Of the 9.3% white population in South Africa, approximately 550,000 are Portuguese speakers and people who speak other European languages. The rest includes Afrikaans and English speakers in the ratio of approximately 60:40 (see Lemon 1996).

¹³⁵ Almost two-thirds of the Coloured vote in the Western Cape voted for the National Party (see Giliomee 1995).

¹³⁶ Republic of South Africa 1994 General Election available at <http://www.electionresources.org/za/1994/>, accessed on 03 June 2008. See also Reynolds 1999.

ethnic groups within the black community. This, some may argue, does not necessarily rule out the argument that relied on comparative observations (i.e. experiences of other ethnically plural societies) and predicted the politicisation of ethnic differences among the black community. It might only mean that it is too early to expect the weakening of black solidarity and the revival of ethnic rivalry in the state of affairs where race and class divides reinforce each other, thus, making the statutorily determined and historically reinforced racial cleavage sharp and very strong.

A more plausible explanation for the gap between the widely held predictions and the actual societal reality lies, however, in the limitations of the arguments based on comparative observations. The argument seems to simply suggest that ethnic divisions will necessarily be reproduced in the political arena. It fails to consider the role of historical and political circumstances in bringing parallelism between social cleavages and political mobilisation. The political experience of the different ethnic groups in South Africa has created solidarity among the different ethnic groups within the black community. The absence of ethnic traits in the identity and organisation of the post apartheid state seems to have further contributed to the rarity of ethnic mobilisation. It may not thus be surprising that ethnic mobilisation is rare in a situation where political and historical experiences have resulted in the emergence of solidarity across the ethnic divide and where there is no particular pattern of state-driven ethnic stratification.

Yet, as indicated earlier, important exceptions are notable. Ethnic demands were articulated and vociferously pursued by groups belonging to the Zulus¹³⁷ and Afrikaners. The Interim Constitution represents a negotiated

¹³⁷ It is, however, important to note there is not even clear support for the political

settlement that, to a large extent, responded to the claims of these two groups. The question is whether the final Constitution has equally accommodated the demands of the different ethnic groups. The next chapter focuses on the final Constitution of South Africa as well as the legislation and other practices that developed thereafter, with the view to examining their implications for the accommodation of its ethnically diverse population.



party that appeals to ethnic sentiment among the Zulus. This is evident in the not-so-strong support that the IFP secured during the first election and in the successful incursion of the ANC in the IFP's traditional power base, which eventually resulted in the dominance of the ANC in KwaZulu Natal in the elections that followed.

CHAPTER FIVE

Institutional Recognition and Accommodation of Ethnic Diversity in South Africa

1. Introduction

The politics of identity was at the centre of the governance policy of the apartheid regime. Through its homeland policy, the apartheid government introduced ethnicity as the organising principle of the black community. Its race based policy, on the other hand, entrenched the hegemony of the white race and sought to weaken the solidarity of the non-white communities. It is with this historical baggage that the architects of the new South Africa came together to draft a constitution. To the surprise of many, they agreed on an Interim Constitution, dubbed by many as the ‘negotiated revolution’. They agreed on a constitution that represented a balance between the ‘centralists’ who insisted on building a common national identity, on the one hand, and the ‘federalists’ that stressed the need to recognise and accommodate distinctive ethnic identities, on the other. By including a set of 34 Constitutional Principles¹ that the 1996 Constitution had to comply with, they further ensured that the inclusive elements of the Interim Constitution were not lost in the final compact. This chapter focuses on the 1996 Constitution and the legislative and other institutional developments that unfolded thereafter and examines how it seeks to manage the tension between national unity and ethnic diversity.

The chapter examines the 1996 Constitution along the lines of the three basic institutional principles developed in the previous chapters:

¹ Of the 34 Constitutional Principles, four are specifically relevant for this study, namely Constitutional Principles XI, XII, XVII and XXXIV. For a further discussion of these principles, see section 5.4 of Chapter Four.

recognition, self rule and shared rule. It first seeks to determine how the Republic of South Africa views itself, as manifested in the Constitution and other major legislation. Does it recognise its multi-ethnic character or present itself as homogenised society that seeks to transform itself into a nation-state? The chapter then proceeds to the second institutional principle, self rule, and examines the South African constitutional perspective on providing ethnic communities with autonomy to manage their own affairs. Finally, the focus shifts to the third institutional principle, shared rule, and discusses how this particular institutional principle, which conceptualises the co-management of the society, has received institutional expression in the South African Constitution.

The objective of this chapter is to determine and assess the position of South Africa in the continuum of states that are engaged in a nation-state building project, on the one hand, and those that readily recognise their ethnic diversity and organise their state accordingly, on the other. It is from this perspective that each theme is examined. While each of these themes are broad enough to be the subject of a full thesis, the discussion of each topic is limited to the above stated objective of this chapter.

Before proceeding into the main subjects of this chapter, however, a few words on the general features of the state structure are in order. The aim is to briefly introduce the constitutional context within which the state's response to ethnic diversity is situated.

1.1 Introducing the structure of government

The Constitution states that government is constituted of three 'distinctive, interdependent and interrelated' spheres of government.² This is a reference

Section 40(1) Constitution of the Republic of South Africa Act 200 of 1996. (Hereafter

to the constitutionally autonomous national, provincial and local governments. The use of the term ‘sphere’ as opposed to the more common ‘level’ is deliberate. It is meant to denote the non-hierarchical relationship between the three spheres of government.

1.1.1 National government

South Africa has adopted a parliamentary system of government with some elements of a presidential system. The Constitution vests the executive authority of the Republic in the President,³ who is both head of the state and of the national executive.⁴ The President, who, once elected, ceases to be a member of the National Assembly,⁵ exercises the executive authority together with the other members of the Cabinet.⁶ Members of the cabinet are accountable collectively and individually to Parliament,⁷ which has the power to pass a motion of no confidence in both the President and the Cabinet, immediately resulting in his or her resignation.⁸

The legislative authority of the national government is vested in the Parliament,⁹ which consists of the National Assembly and the National Council of Provinces.¹⁰ The National Assembly is a directly elected body. The National Council of Provinces, the second chamber, on the other hand, is not a popularly elected body but consists of provincial delegates.

Constitution).

³ Section 85 Constitution.

⁴ Section 83(a) Constitution.

⁵ Section 87 Constitution.

⁶ Section 85(2) Constitution.

⁷ Section 92(2) Constitution.

⁸ Section 102 Constitution.

⁹ Section 43 Constitution.

¹⁰ Section 42 Constitution.

1.2.2 Provincial government

South Africa is divided into nine provinces. The executive authority of a province is vested in the premier of that province, who is elected by the provincial legislature from among its members.¹¹ Like the national President, the premier exercises the executive authority together with other members of the Executive Council, an equivalent of the national Cabinet. Like members of the national Cabinet, members of the Executive Council are accountable, collectively and individually, to the provincial legislature for the exercise of their powers and the performance of their functions. A motion of no confidence by the provincial legislature on the Executive Council will result in the premier having to reconstitute the Council. If the motion of no confidence includes the premier, however, the premier and all the other members of the Executive Council must resign.

The legislative authority of a province resides in its provincial legislature, which may consist of between 30 and 80 members.¹² Members of the provincial legislature are fully elected by the residents of the province.

1.1.3 Local government

Local government in South Africa, unlike in many other federations, is not subordinate to the other spheres of government. It is recognised as a distinct level of government by the Constitution. As such, it is a government in its own right. It is directly elected and exercises constitutionally entrenched original legislative and executive authority in its areas of competence.

Both the executive and legislative authority of local government resides in the municipal council.¹³ A municipal council has ‘executive authority in

¹¹ Sections 125-141 Constitution.

¹² Sections 104-124 Constitution.

respect of and has the right to administer' local government functional areas as listed in Schedule 4B and 5B of the Constitution.¹⁴ It also enjoys legislative authority in respect of the same matters.¹⁵ The Constitution provides for a two-tiered local government outside metropolitan areas: district and local municipalities.

2. Recognition of ethnic diversity

This section examines how the state of South Africa views itself by focusing on the preamble to the Constitution, language related sections of the Constitution and the various state symbols like national anthem, flag and coat of arms.

2.1 Preamble to the Constitution

The opening paragraph to the preamble of the South African Constitution begins with the homogenisation solution of “We the people of South Africa”. It presents the Constitution as a social contract entered into by South Africans acting in their capacities as individuals, unconstrained by their ethnic or other group allegiances. Far from viewing South Africa as a state divided into different groups, section 1 of the Constitution describes South Africa as ‘*one*, sovereign, democratic state’ (emphasis added). A clear emphasis on the promotion and achievement of national unity is also visible both in the preamble and other parts of the Constitution. The preamble, seeking to achieve national solidarity, identifies “building a united...South Africa” as one of the principal objectives of the Constitution. Section 41 (1) (a) also enjoins all spheres of government and all organs of state to preserve “the national unity and the indivisibility of the Republic”.

¹³ Section 151(2) Constitution.

¹⁴ Section 156(1) Constitution.

¹⁵ Section 156(2) Constitution.

Given the political history of South Africa, the preamble's emphasis on national unity should not come as any surprise. The preamble and the various sections of the Constitution that emphasise national cohesion represent a clear break from the previous dispensation that segmented the population into different groups. This, for example, explains why the Constitution needed to explicitly describe South Africa as 'one state', a direct rejection of the bantustanisation of the South African state. That also explains why it eschews the apartheid style identity ascription and the expression of diversity in terms of explicitly identified groups and corresponding territories. The Swiss model, which, through the preamble to the Constitution (i.e. 'We the people of the cantons'), recognises the division of the Swiss population into different territorial groups, is rejected as it would echo the old apartheid dispensation. It is based on this perspective that some considered the emphasis on national unity as the only sensible option in the context of South Africa. Brown commented that "a simple retreat from nationalism into multiplicity, division and difference can be immensely disabling in contexts, such as [South Africa], in which the rebuilding of society requires a common commitment and a shared sense of responsibility".¹⁶

Many may readily interpret the emphasis on national unity as a reluctance to fully recognise the internal diversity that characterises the South African society. The preamble does not, however, go without acknowledging the multi-ethnic character of South African society, albeit with no reference to territoriality. It explicitly declares that "South Africa belongs to all who live in it, united in their diversity", the catchphrase being 'united in their diversity'. This recognises that South Africa is composed of diverse peoples. Out of this has also developed a commonly used phrase in South

¹⁶ Brown 2001: 757-758.

African constitutional discourse: 'Unity in diversity'. Archbishop Tutu's description of South Africa as the 'rainbow nation' is also often used to describe the diverse character of the South African society.¹⁷ Although the description of South Africa as the 'rainbow nation' embodies an element of togetherness, it does not envisage the realisation of national unity at the expense of diversity. In fact, it represents the possibility of building national unity without destroying cultural distinctiveness and diversity.¹⁸ This phrase is borrowed by many including Mandela who, in his inauguration speech, said that "we shall build...a rainbow nation at peace with itself and the world".¹⁹

The preamble to the Constitution emphasises national unity and the indissolubility of the state while at the same time recognising the diversity of its population. The Constitution therefore mirrors the Spanish constitution which attempts to maintain the difficult balance between unity and the need to recognise diversity. The South African Constitution, unlike the Spanish constitution, does not explicitly refer to the different groups that make up the South African society.²⁰ Its recognition of the diverse character of the society, however, represents an implicit acknowledgment of the fact that South African society is divided into different groups. The nation-building discourse one often encounters in South Africa also indicates a tacit recognition that South Africa is not a nation, although the emphasis on national unity and nation building might suggest an aspiring nation-state.

¹⁷ Tutu 1994.

¹⁸ Lenta 2004.

¹⁹ As quoted in Ramsamy 2002: 208

²⁰ The Spanish Constitution refers to nationalities and regions.

2.2 Symbolic codes

The symbolic codes of the South African state reflect an emphasis on national unity while at the same time acknowledging the diversity of the South African society.

2.2.1 Formal description of the state

The official name of South Africa is the “Republic of South Africa”.²¹ Despite the fact that the state reflects many of the characteristics of a federal state,²² the Constitution does not describe the country as a federal country. Nowhere in the text of the Constitution can one find the term ‘federalism’. In fact, this was the major bone of contention during the making of the Constitution. The use of the term federalism was seen as promoting a system that would frustrate the majoritarian democracy, introducing apartheid through the backdoor. It was associated with the ‘bantustanisation’ of South Africa and the retrenchment of ethnic divisions. Later, an agreement was reached to drop the ‘F’ word and focus on an appropriate system of a constitutional government that provides for “good and effective government”.²³ The name of the state does not, therefore, reflect the institutional realities of the state, which incorporates important federal features.

2.2.2 National anthem

The national anthem²⁴ is a combination of the African hymn *Nkosi sikelel' iAfrika* (God Bless Africa) and the old national anthem, *Die Stem van Suid-*

²¹ Section 1 Constitution

²² Haysom (2001: 43) remarks that “if the South African constitutional scheme were to be analyzed against a formal federal checklist, it could, with justification, be classified as federal”.

²³ Murray 2006: 263.

²⁴ Section 4 Constitution; see also Government Gazette 18341 of 10 October 1997.

Afrika (the Call of South Africa). The African song *Nkosi sikelel' iAfrika* was usually referred to as the unofficial anthem of South Africa during the apartheid era and it was sung at all anti-apartheid rallies and gatherings. It was regarded as a symbol of independence and resistance to apartheid. The first part is sung in isiXhosa or isiZulu and then in Sesotho. The old anthem is sung in Afrikaans and finally a verse in English. By merging the two old anthems and using four languages, the Constitution has recognised both sides of South African history as well as the different linguistic groups that inhabit the country.

2.2.3 Flag

The new South African flag, which is provided in Schedule 1 of the Constitution, is envisaged as an attempt to bring together the past and the present. It is indicated that the colours of the National Flag include the colours of the old South African flag with the superimposition of the colours of the ANC flag. For example, the chili red (red/orange), white and blue appeared in the Dutch and Zuid Afrikaansche Republiek flags while the green, black and gold appear in the ANC flag. This makes the current flag a national symbol that combines the past and the present.²⁵ An official government website that describes the symbolism of the flag states that the 'unity in diversity' theme is also reflected in the central design of the flag, which "begins as a 'V' at the flag post and joins together in the centre of the flag and extends further as a single horizontal band to the outer edge of the

²⁵ A government website states that "the design and colors of the National Flag are a synopsis of the principal elements of South Africa's flag history" and maintains that "individual colours or colour combinations represent different meaning for different people and therefore no universal symbolism should be attached to any of the colours" (see *National Flag* available at <http://www.info.gov.za/aboutgovt/symbols/flag.htm>, accessed on 15 May 2008).

flag”.²⁶ This is seen as representing the coming together of the diverse population groups in South African society, which then take the road ahead in unison.

2.2.4 Coat of arms

In line with the new constitutional dispensation, South Africa has replaced the coat of arms it has been using since 1910. The current Coat of Arms is a series of elements organised in two distinct circles placed on top of one another. Relevant to the purpose of this study is to note the theme it embodies. In the Coat of Arms are included two human figures from Khoisan rock art. The figures are depicted as facing one another in greeting and in unity. Below is the motto that is written in the Khosian language of the /Xam people: *!ke e: /xarra //ke*. Literally interpreted, it means diverse people unite. It is remarked that the coat of arms “calls for the nation to unite in a common sense of belonging and national pride - Unity in Diversity”.²⁷

It is also important to note the symbolism of choosing the Khosian language, spoken by a mere 12,000 people. This choice of language may reinforce, on the one hand, the constitutional ideal that everyone has a place in South Africa. On the other hand, it may represent a deliberate decision by the government to avoid the language problem it would have likely faced if it had used any of the eleven official languages. It is also important to note that unlike the national anthem and the flag, the Coat of Arms, which was only adopted in 2000, four years after the Constitution was enacted, does

²⁶ *National Flag* available at <http://www.info.gov.za/aboutgovt/symbols/flag.htm>, accessed on 16 May 2008.

²⁷ *National Coat of Arms* available at <http://www.info.gov.za/aboutgovt/symbols/coa/index.htm>, accessed on 15 May 2008.

not include symbols that signify the representation of Afrikaners and other members of the white community.

2.2.5 Assessment

Other symbolic codes that affect inter-ethnic relationships include public holidays which sometimes may represent the cultural, political and historical experiences of different ethnic communities. In this regard, it is important to note that South Africa provides a creative approach towards managing public holidays. For example, in the apartheid South Africa, December 16 represented a commemoration of the Voortrekkers victory over a Zulu army in 1838 in what is usually referred to as the Battle of Blood River.²⁸ December 16 is also the day on which the ANC began its armed struggle in 1961. In the post-apartheid South Africa, the government maintained December 16 as a public holiday. In view of the nation-building and reconciliation spirit it seeks to promote, however, the government declared December 16 as the Day of Reconciliation. This marks a departure from 'divisive symbolism'.²⁹ This unique adoption of a public holiday in a manner that is inclusive and reconciliatory of the warring factions of the past is often regarded as a very good example of 'accommodative symbolism'.³⁰

²⁸ The Battle of Blood River was fought near the Ncome river, which became red with blood. The river was thereafter named Blood River. For a detailed discussion, see Ehlers 2000.

²⁹ Ehlers 2000: 17-18.

³⁰ Another holiday that represents a creative attempt to reconcile the culture and history of the different ethnic groups is the Heritage Day, which is celebrated on September 24. In KwaZulu, 24 September was usually celebrated as a Shaka day, in memory of Shaka, a Zulu King that played an important role in brining together the different Zulu clans under 'a united nation'. In post-apartheid South Africa, it is declared as the Heritage day, a day on which South Africans are encouraged to

The symbolic codes adopted by South Africa reinforce the ‘unity in diversity’ theme adopted by the preamble of the Constitution. Both the recognition of the diversity of the society and the emphasis on national unity are apparent in the symbolic codes. The national anthem and the flag of South Africa represent the recognition of the diverse communities of the country. A common theme of these symbolic codes is also national unity. Each symbolic code that celebrates the diversity of the population equally presents a countervailing concern for national unity. The symbolic codes do not present South Africa as a mere collection of diverse groups (living in their enclaves) but as diverse groups that seek to live in unison. Its decision not to abolish a public holiday that was celebrated by a particular group of the society but to turn that holiday into a day where the different groups come together to reconcile their differences and thereby promote national unity is an illustration of the state’s choice for inclusive symbolism. The decision to recognise diversity while desisting from encouraging ethnic particularism is also reflected in the nomenclature of the state. The aversion to using the ‘F’ word (i.e. federalism) while incorporating important federal features indicates a decision to recognise ethnic diversity without encouraging centrifugal tendencies.

Some suggest that the symbolic codes do not adequately accommodate all communities. This point is, for example, raised in reference to the national anthem: “Now this might satisfy speakers of those four (or five) languages,

celebrate the cultural diversity that characterises their society. The idea behind the celebration of this particular holiday is to foster reconciliation and promote “the notion that variety is a national asset as opposed to igniting conflict” (*Public holidays* available at <http://www.info.gov.za/aboutsa/holidays.htm>, accessed on 02 May 2008).

but what about the other seven official languages not represented?”³¹ Obviously, it is not practicable to ensure the representation of each and every community in the symbolic codes of the state. What is important is that the state, to the extent possible, has strived to ensure that its symbolic codes, including the national anthem, reflect the cultures, histories and identities of a wide range of communities. No particular group should prevail at the symbolic level as doing so would alienate other ethnic groups from the state. Although the national anthem does not make use of all official languages, the use of four official languages by itself represents a creative approach towards ethnic accommodation. The point is that the symbolic code the state adopts signifies an attempt to represent a broader range of communities as opposed to a particular group of the society gaining prominence in the designing of national symbols.³²

2.3 Language

Section 6 of the Constitution regulates the use of language. It determines the official language of the Republic as well as the provinces and municipalities.

2.3.1 The language clause of the Constitution

Section 6 of the Constitution, like the Interim Constitution, recognises the eleven languages as the official languages of the Republic. The conferring of official status on all eleven languages sends the message that all linguistic groups are regarded equally by the South African Constitution.

³¹ Neethling 2001: 6.

³² Counter indications are moves afoot to remove the part reflecting the old anthem (i.e. the Afrikaans and English sections), which may prove to be divisive (Neethling 2001).

Symbolically, it reinforces the normative guide set by the preamble that ‘South Africa belongs to all who live in it’.³³

Section 6 of the Constitution departs from its counterpart in the Interim Constitution in important ways. First, the stipulation of the Interim Constitution which mandated the government to ‘create conditions for their equal use and enjoyment’ of all official languages is, to some extent, qualified in the 1996 Constitution by the introduction of a preferential treatment clause that applies in relation to some of the official languages. The Constitution, under section 6(2), emphasises “the historically diminished use and status of the indigenous languages” and mandates the government to “take practical and positive measures to elevate the status and advance the use of these languages”. The special treatment afforded to the previously marginalised indigenous languages is further entrenched in the Constitution as it, under section 6(4) (2), subjects the enjoyment of ‘parity of esteem and equitable treatment’ of all official languages to “the state’s obligation with regard to indigenous languages”. Obviously, ‘equitable treatment’ in this context does not mean equal treatment. As Currie aptly notes, it is “a treatment that is just and fair in the circumstances”.³⁴ This, at least, means that a language policy has to take into account the structural inequalities of the different languages spoken in the country, entailing a special treatment of some of the official languages.

³³ Another language related clauses of the Constitution, though individualistic in its orientation, is section 9(3) which states that “the State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including [...] language”. In addition, section 30 provides that “[e]veryone has the right to use the language and participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights”.

³⁴ Currie 2002: 65-6.

The special treatment of previously marginalised indigenous languages is even symbolically expressed in the manner in which the eleven official languages are listed in section 6(1). Unlike in the Interim Constitution in which the official languages are listed alphabetically, the 1996 Constitution, under section 6(1), lists the eleven official languages starting with the language that lacks widespread usage and ending with the one that enjoys extensive usage.³⁵ In other words, usage informs the listing order of the eleven official languages. This symbolic expression can, in fact, serve as a guide for interpretation. Strydom argued that “[t]he purpose of the structure is to change the order preference in a deliberate attempt to give textual prominence to languages lacking widespread usage”.³⁶

Second, the language clause of the 1996 Constitution introduces a plethora of considerations that were not included in the Interim Constitution and which must now be taken into account when the different spheres of government decide their official languages.³⁷ The newly added considerations are usage, practicality, expense, regional circumstances, and balancing the needs and preferences of the population. A third point of departure is that the Interim Constitution stipulation, which prohibited the downgrading of rights relating to languages and the status of languages existing at the commencement of the Interim Constitution, is omitted. That specific clause was of special concern to the Afrikaner community who feared the marginalisation of their language in post-apartheid South Africa.

³⁵ See also Strydom 1997.

³⁶ Strydom 1997: 898.

³⁷ Strydom 1997.

2.3.2 The use of language for the purposes of government

The use of language for the purposes of government is a major manifestation of the officialisation of a language.³⁸ According to section 6(3), which outlines the use of language for the purposes of government, the national and provincial governments can select any of the official languages for the purposes of their administration. Their decision to use any of the official languages must be based on “usage, practicality, expense, regional circumstances and the balances of the needs and preferences of the population as a whole or in the province concerned”.³⁹ In this regard, local governments are spared from the complexities of these considerations as they are only required to take into account language usage and the preferences of their residents. The subsection injects a minimum condition by enjoining the national government and each provincial government to use at least two official languages.⁴⁰ In South Africa, where the different ethnic groups are relatively geographically concentrated, the regional preference to language usage provides ample opportunity to promote regional languages and facilitate the promotion of self-management of ethnic communities.

³⁸ As aptly argued by Strydom (2002: 25), “officialising a language is meaningless unless that language is used in all or most of the primary tasks of government—legislative, executive and judicial”.

³⁹ Section 6(3) Constitution.

⁴⁰ According to one interpretation, the minimum number of languages to be used for purposes of government is three and not two: English and Afrikaans (as the spirit of the Constitution precludes that their status be diminished) plus at least one African language because the state must, in terms of Section 6(2), take practical positive measures to elevate the status and advance the use of these languages (Kriel 2002).

2.3.3 The Pan South African Language Board

The 1996 Constitution also maintained the Pan South African Language Board which was established by the Interim Constitution. As stated in the Interim Constitution, the Board is mandated to promote and create conditions for the development and use of all official languages.⁴¹ The list of languages which the Board is mandated to promote and develop is, however, amended to include the Khoi, Nama and San languages, as well as sign languages.⁴² In addition, the Board is entrusted with the additional task of promoting and ensuring respect for all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu.⁴³ This duty of the Board is also extended to languages used for religious purposes in South Africa including Arabic, Hebrew, Sanskrit and other languages.⁴⁴ The 1999 South African Language Board Amendments Act added the responsibility of preparing a dictionary for all eleven official languages.

2.3.4 “Impractical egalitarianism”?

The conferring of official status to all the eleven languages is criticised by some as counterproductive. They argue that this policy is not practically realisable and may eventually result in unilingualism; they consider the policy as an “impractical egalitarianism”.⁴⁵ This fear is compounded by the fact that the Constitution, as mentioned earlier, subjects the equal treatment and use of all eleven languages to a plethora of practical considerations. Although scholars like Alexander concede to the unavailability of the use of such ‘safety clauses’, he strongly warns that clauses, which are “allegedly

⁴¹ Section 6(5) Constitution.

⁴² Section 6(5) (a) Constitution.

⁴³ Section 6(5) (b) (i) Constitution.

⁴⁴ Section 6(5) (b) (ii) Constitution.

⁴⁵ Sacks 1997: 683.

based on technical and economic grounds, are more usually the perfect loopholes for reducing the principle of equal treatment to mere lip service”.⁴⁶

2.3.5 Assessment

Theoretically, the Constitution introduces a variant of the territorial model of language planning at a provincial level. Unlike the traditional territorial model, however, it does not simply grant an official status to the language of the majority of the locality and limit the use of other local languages. It rather allows provincial governments to consider the factors listed in section 6 (3) from a provincial context and adopt at least two official languages for the purposes of provincial government. The province of the Western Cape, which is predominantly inhabited by Afrikaans and Xhosa speakers, has, for example, adopted three official languages: Afrikaans, isiXhosa and English. It is not, however, clear if this variant of territorial model automatically applies to national departments operating in the provinces.

It is, however, important to note that a reading of section 6(3) does not reveal which of the considerations listed therein should be given paramount importance when determining an official language. In the absence of such clear guidance, it all depends on the level of importance that policy makers attach to these determining factors. For those that stress practical and economic considerations, the official multilingualism policy serves no purpose beyond ‘a symbolic gesture’. A recommendation by the Institute of Chartered Accountants in June 2000 suggested that Afrikaans be abolished and English becomes the sole medium of communication, training and examination. The institute’s annual expenditure of R600, 000 on translation, reproduction and printing is cited as the main reason behind the

⁴⁶ Alexander 1998: 16.

recommendation.⁴⁷ From the perspective of ethnic accommodation, on the other hand, practical considerations should not be used as an excuse to trample on the constitutionally sanctioned official multilingualism. This perspective underemphasises the considerations of ‘practicality [...and] expense’ in the use of official languages. It rather stresses the importance of the constitutionally declared official multilingualism and the normative guidelines that declare the enjoyment of “parity of esteem and equitable treatment of all official languages”.⁴⁸

In practice, government seems to have given considerable weight to practical considerations. English has become the *lingua franca* of government administration to the extent that the policy of multilingualism adopted by the Constitution has only come to represent a mere symbolic value. English has become the language for internal and external communication in government departments.⁴⁹ Even when members of the public communicate with government in a language other than English, government departments invariably respond in English.⁵⁰ Both in the

⁴⁷ Kriel 2002.

⁴⁸ Du Plessis and Pretorius 2000.

⁴⁹ Very recently, the decision of the Western Cape Provincial Police that only English be used for all internal, including radio, communication has faced protest from a group Afrikaans speaking police and also among the wider Afrikaans-speaking community. Some threatened legal action against the province’s police language policy. The authorities said that their aim was to improve communication between the province’s different language groups by encouraging the use of English. The new policy was later removed (FW: *Afrikaans is under threat* available at http://www.news24.com/News24/South_Africa/News/0,9294,2-7-1442_2060508,00.html, accessed on 20 March 2007).

⁵⁰ Strydom 2002.

National Assembly and the National Council of Provinces, the dominance of English is clear. Major policy documents are often produced only in English. The situation is no different in the courts. The constitutional promises relating to the parity of eleven languages are not given effect to.⁵¹

The establishment of the Pan South African Language Board has not, as yet, had any significant impact on ensuring the implementation of the official language clause. On many occasions, the Board, after investigating complaints with regard to the violation of language rights, has found that the language policies and practices of the government and state corporations violate the Constitution. The findings and recommendations of the Board, however, often fall on deaf ears. The government is broadly criticised for failing to give adequate attention to the Board. On one occasion the Board felt compelled to write an open letter to President Nelson Mandela criticising and expressing its concern about the tendency towards monolingualism at all levels of government.⁵²

Generally, the discussion on the use of language for the purposes of government reveals a trend that reinforces the suspicion of the critics of the officialisation of all eleven languages. The officialisation of the eleven languages might send the symbolic message that all groups are regarded equally in the public sphere. However, this symbolic message has not been

⁵¹ After examining the use of African languages in courts, Hlophe (2001:94) concluded that “[t]he courts continue to lay too much emphasis on practical considerations. Practical considerations in effect are convenience to the presiding judicial officer! The noble goal of language parity will remain elusive as long as the courts continue to adopt this approach, and the legacy of English and Afrikaans as the sole court language will continue...In the result, indigenous African languages are undermined”.

⁵² Giliomee 2003.

given practical effect. Despite the multilingual reality that characterises South African society and a Constitution that declares official multilingualism, monolingualism seems to be the emerging trend.⁵³

2.4 Recognition of traditional law and traditional leadership

Traditional communal way of life continues to define the lives of many South Africans, especially in rural areas. For many, it is linked to their culture and identity. This begs the question of accommodation of traditional leadership within the constitutional system of government. As the following brief discussion reveals, the constitutional position adopted by South Africa represents an attempt to recognise the cultural identity of traditional authorities without implying a role for traditional authorities in government.

2.4.1 Constitutional recognition of traditional leadership

The Constitution recognises the role of both traditional law and traditional authorities.⁵⁴ This is explicitly stated in section 211 which provides for the

⁵³ The practice of monolingualism with its promotion of English as the sole language of communication has caused an outcry from communities, especially the Afrikaner community. In an open letter addressed to President Thabo Mbeki, twenty-four prominent speakers of Afrikaans complained that “the South African government commitment to a philosophy of multilingualism and cultural pluralism was paying lip service only, as was the commitment to the promotion of the African languages including Afrikaans”(Insig 1999:24). English, they claimed, is what is actually being promoted. The dominance of English is, in fact, conceded by the government. The Minister of Arts, Culture, Science and Technology, when establishing a Language Plan Task Group (LANGTAG), noted the increasing tendency towards unilingualism despite the multilingual reality that characterises South African society and a Constitution that declares official multilingualism (Department of Arts, Culture, Science and Technology 1996).

⁵⁴ Under the Interim Constitution, the traditional rulers were allowed to retain the

recognition of the institution, status and role of traditional leadership as defined by customary law. Section 211(2) states that a traditional authority that observes the system of customary law may function subject to any applicable legislation and customs. The recognition of traditional law and traditional leadership is given further expression through the obligation imposed on the courts to apply customary law when it is applicable.⁵⁵ The Constitution also provides the possibility for the adoption of a traditional monarch. Section 143(2) of the Constitution provides that a provincial constitution may provide for “the institution, role, authority and status of a traditional monarch, where applicable”.

The recognition of traditional leadership is not, however, absolute. The recognition of traditional leadership is subject to the Constitution and legislation. This is also true with regard to the application of customary law. Although the courts are mandated to apply customary law when that law is applicable, the application is made subject to the Constitution and any legislation that specifically deals with customary law.⁵⁶

The Constitution appears to envisage a role for traditional authorities at a local level. This is indicated in section 212 of the Constitution which allows for the enactment of a national legislation that may provide “for a

powers and functions they held under customary law and ‘applicable laws’. At the municipal level, they were given an *ex officio* membership status to the municipal council. The provinces, where there are traditional authorities, were mandated to establish houses of traditional leaders. The national government was also obliged to establish a council of traditional leaders, which is now called the house of traditional leaders. (sections 181-184 Interim Constitution; for more discussion, see Bennett and Murray 2007).

⁵⁵ Section 211(3) Constitution.

⁵⁶ Section 211(3) Constitution.

role for traditional leadership as an institution at local level on matters affecting local communities”. Although not couched in a mandatory form, this represents recognition of the traditionally important role that traditional authorities play in local communities.

2.4.2 The Traditional Leadership and Governance Framework Act

The limited role of traditional authorities in local government was further defined with the enactment of the Traditional Leadership and Governance Framework Act in 2003.⁵⁷ The major objective of the Act is to regulate “the place and role of traditional leadership within the new system of democratic governance”.⁵⁸ A traditional community is defined by the Act as a community that is subject to a system of traditional leadership in terms of that community’s customs and observes a system of customary law.⁵⁹ The authority of identifying a community as such is vested in the premier of the province who has to carry out this power in accordance with provincial legislation and in consultation with the house of traditional leaders in the province, the community concerned and, if applicable, the king or queen under whose authority that community would fall.⁶⁰ A traditional community must establish a traditional council whose mandate is “to administer the affairs of the traditional community, assist the traditional leaders, support municipalities in the identification of the community needs, contribute to development and service delivery and promote indigenous knowledge systems for sustainable development”.⁶¹ Without denying some of the important roles that the traditional council is entrusted with, Murray aptly comments that “[t]he functions that the Act

⁵⁷ Act 41 of 2003.

⁵⁸ Preamble Traditional Leadership and Governance Framework Act 41 of 2003.

⁵⁹ Section 2(1).

⁶⁰ Section 2(2).

⁶¹ Section 4(1).

sets out are generally soft, including, for instance, activities like ‘facilitating’, ‘supporting’ and ‘promoting’ various things’.⁶²

The Act also seeks to bring the institution of traditional leadership in line with the imperatives of a state that is based on constitutional democracy. It requires a traditional community to transform and harmonise customary law and customs with the Constitution and the Bill of Rights. Departing from the traditional mode of organisation which limits membership to few selective members of the community, the Act requires the inclusion of elected members and women in the membership of the traditional councils. It mandates that a third of the members must be women and 40% of the members must be democratically elected.⁶³

2.4.3 Houses of traditional leaders

The provisions of the Constitution and the Act provide for the establishment of houses of traditional leaders that deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law.⁶⁴ Unlike the Interim Constitution, which mandates the establishment of such houses, the provisions of the Constitution has made the establishment of houses of traditional leaders optional. When the Constitution came into effect, however, all provinces, with the exception of the Western Cape, Gauteng and Northern Cape, had already established houses of traditional leaders as required by the Interim Constitution. Furthermore, the Council of Traditional Leaders, which is composed of

⁶² Murray 2004: 15.

⁶³ Section 3(2).

⁶⁴ Section 212 (2) Constitution.

three representatives from each provincial house, was established in 1997, later renamed as the National House of Traditional Leaders in 1998.

The power of the National House is generally limited to providing advice to the government or the President, and to make recommendations on questions of traditional leadership, customary law and the customs of communities observing systems of customary law. This does not impose a corresponding duty on the national government to seek the advice of the National House. Even in cases where advice has been sought and given, there is no obligation on those that sought the advice to take that into account. As noted by Bennett and Murray, the House “plays a strictly advisory role, even in matters concerning traditional leadership and customary law”.⁶⁵ The only exception is that a national bill that deals with customary law or customs of traditional communities must be referred to the National House, which is given 30 days to provide its comment, before it is passed by Parliament.⁶⁶

2.4.4 Assessment

The recognition of traditional leadership represents an important acknowledgement of the culture and tradition that underlie traditional forms of government. It symbolises the recognition of the culture and identity of those that adhere to the traditional communal African way of life. The place of traditional authorities, as the Constitutional Court noted, does not, however, extend beyond the cultural realm. In fact, the constitutional recognition is described by the Constitutional Court, as “recognising a degree of cultural pluralism with legal and cultural, but not

⁶⁵ Bennett and Murray 2007: 26-27.

⁶⁶ Section 18(1).

necessarily governmental consequences”.⁶⁷ The constitutional recognition does not thus extend beyond the acknowledgment of cultural pluralism to give traditional leaders a role in government.

A closer look at the developments that unfolded after the adoption of the Interim Constitution would show even the limited role that traditional authorities enjoyed in local government has also gradually declined. As indicated earlier, traditional leaders were provided municipal council membership *ex officio* by the Interim Constitution.⁶⁸ They lost this status with the adoption of the 1996 Constitution. Eventually, their role was reduced to an advisory (non-voting) role following the enactment of the Municipal Structures Act, which outlines the structure of local government.⁶⁹

The establishment of wall-to-wall municipalities, as pointed out by Murray, has also cast doubt on the exercise of local powers by traditional leaders. She mentions two circumstances that undermined the role of traditional authorities in local government. The first relates to the demarcation process that led to the establishment of wall-to-wall municipalities without regard to traditional bonds. In a demarcation process that she describes as “reminiscent of the way in which Africa was carved up in the 19th century”,⁷⁰ the boundaries of traditional communities were frequently disregarded in creating the new municipalities. The second, and most important reason for the decline of traditional leaders, relates to the “usurping of traditional chiefly powers by local

⁶⁷ *In Re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) para 195.

⁶⁸ Section 182 of the 1993 Constitution.

⁶⁹ Section 81 Local Government: Municipal Structures Act 117 of 1998.

⁷⁰ Murray 2004: 14.

government”.⁷¹ Many of the service delivery responsibilities that traditionally belonged to the local chiefs have become the constitutional responsibilities of local government. Yet functions like resolving disputes, allocating land, convening initiation schools and presiding over national festivals remain under the jurisdiction of traditional leaders.⁷²

In sum, the constitutional recognition of traditional leadership is limited to the cultural realm. With the establishment of democratic local government across the country, the traditional authorities have lost some of their governance responsibilities. This, however, should not dent the symbolic significance of the recognition of traditional leaders by the Constitution.

2.5 Concluding remarks on recognition

The South African Constitution portrays a state that seeks to build a common national identity; a state that emphasises national unity. It does not, however, portray a state that aims to promote national unity at the expense of ethnic diversity. With its central theme of unity in diversity, it assures those with ‘ethnic anxieties’ that it does not aim at conflating all identities into one whole and mould a new common national identity. It rather recognises that subnational identities are an important part of the South African make-up. In the arena of recognition, this is especially visible in the image of the state that the various state symbolic codes portray. They reflect an image of a state that strives to build national unity based on the premise that ‘South Africa belongs to all who live in it’. This balancing act is also visible in the language clause of the Constitution.

⁷¹ Murray 2004: 14.

⁷² Bennett and Murray 2007.

The official recognition of all the eleven languages as equal at the national level could be considered as a reflection of a state that emphasis national unity by assuring that all language groups have a place in South Africa while the regional preferences in language usage represent recognition of the need to provide for regional languages. Furthermore, the decision not to advance one particular language but to, at least, recognise two official languages at the provincial level is an important recognition of intra-provincial diversities. Yet this same aspect of the provincial language policy portrays a state that discourages the identification of a single language with a particular territory and promotes social cohesion and national unity through its language policy. The language clause of the Constitution has thus the dual role of promoting national unity and accommodating ethnic diversity.

In as much as the Constitution does not portray a state that seeks to suppress ethnic diversity, it does not, however, present a state that actively promotes ethnic diversity. South Africa is not presented as an amalgamation of politically relevant ethnic or national groups. The preamble does not portray a case of different territorial groups coming together to draft the South African Constitution. As is also evident from the language clause, the state attempts to eschew the territorialisation of linguistic diversities. In so far as ethnic relationships are concerned, South Africa is presented by the Constitution as one state that happens to be composed of eleven linguistic groups. This vision of the state does not officially recognise ethnicity as an organising principle of society.

There are, however, notable discrepancies between the constitutional narration of recognition and actual practice. This, as discussed earlier, is evident in the area of language where monolingualism is the emerging trend despite the constitutional declaration of official multilingualism. This is,

however, countervailed by the fact that the emerging dominant language, which is English, is a culturally neutral language except, of course, for the Afrikaners for whom the dominance of English is reminiscent of the 'British cultural hegemony'. A general evaluation of elements of the Constitution that impact on the vision of the state suggests that the different ethnic groups that inhabit the country have received affirmation in the public sphere.

3. Self rule

The focus of this section is to evaluate how the South African constitutional framework dealt with the issue of subnational autonomy. As indicated in Chapter Three, the institutional arrangements through which self rule finds practical expression include the territorial structure of the state, the division of powers and financial autonomy. It is against these same institutional arrangements that the South African approach is examined.

3.1 Geographical configuration of the state

This section examines whether the geographical organisation of the subnational units in South Africa accommodates ethnic diversity. It is submitted that the territorial structure of the state provides the various ethnic groups a territorial space that can potentially be used to promote the self-management of their own communities without posing a threat to the political and territorial integrity of the state.

3.1.1 The process of provincial demarcation

Once an agreement was reached among the negotiated parties to devolve powers to the subnational units, the process of provincial demarcation ensued immediately, with the criteria for demarcation emerging as a key issue. The fifteen-member Commission on the Demarcation/Delimitation of States, Provinces and Regions (hereafter the Commission) was established

on 28 May 1993. With time against it, the Commission carried out the demarcation process in an extremely short period of time between May and November 1993. As the 1996 Constitution simply confirmed the outcome of the 1993 provincial demarcation, it is necessary to examine the process that led to the adoption of the delimitation of nine provinces.

The mandate of the Commission was to make recommendations on the demarcation of provinces/states/ regions for the purpose of the electoral process, as well as the structures of the Constitution.⁷³ Only a period of six weeks was given to the Commission to come up with a report.⁷⁴ The Commission was also mandated to hold public hearings within the limited period of time.⁷⁵ The Commission regarded the aim of the provincial delimitation as “the reduction of territorial disparities in social and economic development”.⁷⁶ Expectedly, it also regarded “the prevention of negative forms of competition between regions, particularly with regard to ethnic and chauvinistic forces”⁷⁷ as the aim of the provincial delimitation.

The Commission’s brief, which was mandated by the Multi-Party Negotiating Council, included ten criteria that had to be used in the demarcation of the regions. The Commission categorised the ten criteria

⁷³ Khosa 1993.

⁷⁴ The Commission was mandated to complete and table the report from 8 June to 31 July 1993. This had a negative effect on the ability of the Commission to ensure the participation of local communities, adequately scrutinise the various submissions and investigate all local disputes regarding demarcation. See De Coning 1994.

⁷⁵ Welsh 1994.

⁷⁶ Egan and Taylor 2003: 110-111.

⁷⁷ Egan and Taylor 2003: 110-111.

into four broad groups.⁷⁸ Economic aspects (i.e. the necessity of limiting financial and other costs, the need to minimise inconvenience to the people, the need to minimise dislocation of services and development potential), geographic coherence (i.e. historical boundaries, including provincial, magisterial and district boundaries and infrastructures), institutional and administrative capacity (i.e. administrative considerations, including the availability and non-availability of infrastructures and nodal points for services, the question whether to rationalise existing structures, including the TBVC states, self-governing territories, and regional governments including the criteria mentioned in the economic aspect category) and socio-cultural issues (i.e. demographic considerations and cultural and language realities). It was agreed by the Commission that no criteria is more important than the others. The Commission regarded all criteria as ‘equally material’ and decided to adopt a “balanced view on criteria”.⁷⁹

In the negotiations, the parties agreed to take the nine ‘development regions’ that had been delimited by the Development Bank in the early 1980s as a point of departure. After a series of public hearings and the drafting of reports, the Commission presented its final report to the Multi-Party Negotiating Council on 18 October 1993 which then adopted it as a point of departure. The Commission’s proposed map was accepted, with few modifications, by the Coordinating Committee on the Demarcation/Delimitation of Regions (CCDR). This committee, composed of multi-party representatives, adopted, after a series of failures to reach a compromise, the delimitation of nine provinces with some changes to the Commission’s map.

⁷⁸ De Coning 1994.

⁷⁹ De Coning 1994.

The making of the final map of nine provinces involved the splitting of the provinces that constituted the original Union of South Africa (i.e. Cape, Transvaal, Natal and Orange Free State) and the incorporation of the homelands.⁸⁰ The Cape Province was partitioned into the Western Cape, Northern Cape, and Eastern Cape, with the latter incorporating the former homelands of the Transkei and Ciskei. The Transvaal was divided into the Northern Province (renamed Limpopo), Gauteng (the Johannesburg-Pretoria-vereniging area) and Eastern Transvaal (renamed Mpumalanga), and its western parts were merged with parts of the northern Cape and the former homeland of the Bophuthatswana to become the province of the North West. Natal became KwaZulu-Natal, and the Orange Free State was simply renamed the Free State.

3.1.2 The impact of provincial demarcation on ethnic diversity

Many scholars regard the present provincial delimitation as the rejection of ethno-national politics.⁸¹ They remark that ‘there is no ethnically contrived pattern’ in the delimitation of the provincial boundaries. This, they argue, is visible in the fact that most of the provinces are heterogeneous. The consideration of ethno-national politics in provincial boundary delimitation would have brought quite a different territorial configuration of the state. Egan and Taylor remark:

If [ethnonational politics was the primary motivation behind regional delimitation], demographic patterns suggest that the current Western and Northern Cape provinces would have been joined into a more predominantly Afrikaans-speaking region, with eastern parts of the Western Cape ceded to the mainly Xhosa-speaking Eastern Cape and northern parts of the Northern Cape

⁸⁰ Egan and Taylor 2003.

⁸¹ Egan and Taylor 2003.

ceded to North West, which might also have gained north-west Free State and far-western Gauteng. Gauteng would have been more ethnically homogenous if it had been merged with Mpumalanga and possibly even with KwaZulu-Natal.⁸²

At the time of writing, the South African government has embarked on a review process on provinces and local government where fundamental questions about the future of provinces are currently being asked. To date, there are no clear indications on how the government has decided to go about this.⁸³

3.1.3 Assessment

Although it is true that the provinces in South Africa are characterised by heterogeneous population, this should not be overstated. While overt ethnic consideration might not have been the primary motivation in the making of the provinces, most of them are nevertheless inhabited by an ethnic group that is numerically dominant. Although almost all ethnic groups are dispersed throughout the nine provinces (which is usually the case in many other multi-ethnic states) there is a clear concentration of each ethnic group in a particular province as shown in Table 5.1.

⁸² Egan and Taylor 2003: 110.

⁸³ A document prepared by the Department of Provincial and Local Government (DPLG), which sets out the policy process on the review of provincial and local government, states that the “government does not have a position or foregone conclusion on this matter. It has not taken a decision on reducing or rationalising the number of provinces” (DPLG (2007) *Policy process on the system of provincial and local government: Background: Policy questions, process and participation*, available at www.dplg.co.za, accessed on 19 May 2008).

While pockets of Xhosa speakers can be found in the Free State, Northern Cape and Western Cape, it is in the Eastern Cape that they have disproportionate concentration. The same applies to the Zulu-speakers who are numerically dominant in KwaZulu-Natal, although they are dispersed throughout the country. In fact, over two-thirds of the residents in the Eastern Cape, KwaZulu-Natal and the North West speak a single language.⁸⁴ The numerical dominance of the Sesotho speakers in Free State (64.4%) and Sepedi speakers in Limpopo (52.1%) cannot also be disputed.

As Table 5.1 shows, the majority of ethnic groups in South Africa thus have a 'mother province' with pockets of their 'cousins and nieces' scattered in other provinces. It is only Afrikaners and people of English-origin that are dispersed throughout the country without being numerically dominant in any of the nine provinces. Although Afrikaans speakers dominate the Northern Cape and Western Cape, it is the Afrikaans-speaking Coloured community that are numerically dominant in those two provinces. Provinces that lack a dominant ethnic group and which can accurately be characterised as truly heterogeneous are Gauteng and Mpumalanga.⁸⁵

The tendency on the part of many scholars to regard the South African provincial boundary demarcation as a rejection of ethno-national politics

⁸⁴ Simeon and Murray 2004.

⁸⁵ A constitutional amendment (i.e. the Constitution Twelfth Amendment Act of 2005 and the Cross Boundaries Municipalities Laws Repeal and Related Matters Act 24 of 2007), which aimed at eliminating cross-boundary municipalities, has brought some change in the demographics of some of the provinces. KwaZulu-Natal has, for example, incorporated a municipality that is largely inhabited by isiXhosa-speakers. Similarly, the Northern Cape has seen an increase in the number of its Setswana-speakers.

seems to be based on the assumption that ethno-national political considerations necessitate the absolute coincidence of ethnic groups and provincial boundaries. Although the consideration of ethno-national politics might entail a congruence of ethnic groups and territory, it should not necessarily be so in an absolute exclusivist term. The consideration of ethnonational politics does not necessarily result in or require the adoption of the principle of ethnic-exclusivism. It does not necessarily imply the segmentation of the territory by granting each ethnic group one exclusive territorial 'homeland'. What it may require is that ethnic groups, to the extent possible, have a province in which they are in a majority, that they are provided with a territorial space that is necessary to advance their interests in areas of language culture and education. The two major regions in Belgium are not ethnically microcosm regions. They have important minorities. The same is true of subnational states in Spain and Canada. After all, as it has been stressed several times in this thesis, it is not even practically possible to carve out a purely ethnic province.

Furthermore, some scholars indicate that technical considerations relating to natural and economic resources were not given any specific priority over other considerations in the South African provincial boundary demarcation.⁸⁶ The political gerrymandering, which was allowed as a result of the critical role played by the negotiation council in the demarcation process, has, in fact, allowed ethnic consideration into the making of provincial boundaries. As noted by Lemon,

[t]he process was far more complex, and strategic calculations of the potential for racial and ethnic regional bloc voting and electoral

⁸⁶ De Coning 1994.

alliances did play a part. In particular, there was little attempt to territorially divide the Bantustans.....⁸⁷

Be that as it may, the fact that most provinces are dominated by a single ethnic group has not yet given rise to strong exclusive provincial identity. This is demonstrated by the fact that the recent protests against the decisions of the government to transfer certain municipalities to other provinces were not motivated by a provincial identity but rather by concerns related to service delivery. Residents of the Matatiele community applied to the Constitutional Court protesting their incorporation into the Eastern Cape from KwaZulu-Natal. They wanted to be incorporated back into KwaZulu-Natal because of the perception that KwaZulu-Natal offers better services than the Eastern Cape.⁸⁸ The same is true about Kutsong municipality whose residents objected to their transfer from Gauteng, the wealthiest province, to the resource-poor North West.⁸⁹

Generally speaking, ethnic considerations might not have played a larger role in the geographical reconfiguration of South Africa. It must, however, be conceded that the present territorial configuration of the state can potentially be used to promote the self-management of most ethnic groups. This also means that the demographics of most of the provinces make them potentially amenable to the often emotionally charged and contrived appeals of 'ethnic brokers'. As the foregoing discussion indicates, however, the potential amenability of the territorial structure to the manipulation of ethnic brokers has not translated the provinces into

⁸⁷ Lemon 1996: 112.

⁸⁸ 'Mufamadi gave 'wrong' reasons for demarcation' *Mail and Guardian*, 31 March 2006.

⁸⁹ Atkinson 2007.

bedrocks for advancing demands that are centrifugal in nature.⁹⁰ By contrast, the current territorial matrix of the South African state have provided ‘regional elites’ with the means for political participation and representation in the leadership structure of their respective provinces, promoting the self-management of communities. This is further facilitated by the Constitution that allows regional preferences in language usage.

In conclusion, it can be argued that the current territorial structure of South Africa has given the various ethnic groups a territorial space to manage their own affairs without posing a threat to the territorial integrity of the state. The territorial configuration works to restrain centrifugal tendencies and encourage the presentation of territorially based ethnic/regional demands in a ‘centripetal spirit’. Given the current review of provincial boundaries, which, as indicated above, is currently underway, the fear is rather that should a decision be taken to abolish provinces, regional elites and others with vested provincial interests will pull out the ethnic card, introducing explicit ethnic mobilisation in the political arena. Take provinces away, and there is a likelihood that ethnic concerns will rise to the surface.

3.1.4 Self-determination

Constitutional Principle XXXIV of the Interim Constitution provided for self-determination of a community sharing a common cultural or language heritage. It further bound the 1996 Constitution to “give expression to any particular form of self-determination”. The Volkstaat Council, which was established to explore the idea of a Volkstaat and provide alternatives for

⁹⁰ The absence of strong provincial ethnic identity is also clear from the fact that ethnic ascriptions are rarely attached to the provinces. The public discourse does not usually associate ethnic identity with particular territory/provinces, with the exception of KwaZulu-Natal

its implementation, failed to come up with “a viable blueprint for an independent Volkstaat”.⁹¹ The Constitution simply implemented the promise of the Interim Constitution by reproducing the same Constitutional Principle in section 235:

The right of South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.

Many regard this specific constitutional stipulation as ineffectual. First, the section does not recognise the right to self-determination but the *notion* of the right to self-determination. The implication is that self-determination is not recognised as a constitutional right. Second, national legislation has to be enacted to give effect to the notion of the right to self-determination.

Strydom argues that this section imposes on the government the duty to enact legislation to give effect to the right to self-determination.⁹² It is not clear, however, if the wording of the section does indeed suggest so. The Constitution merely emphasises the non-preclusion of the recognition of the right to self-determination. This is not the same as obliging the national government to give effect to the right to self-determination. The Constitution simply keeps the door open for the national government to recognise, in its own terms, the right to self-determination through national legislation, putting ‘the ball of the right to self-determination’ in the

⁹¹ Currie 2002: 35-34.

⁹² Strydom 2002.

national legislature's court. The implication is that the Parliament, if it so wishes, cannot only overburden the conditions under which the right to self-determination can be exercised but it can also refuse to give effect to this right. The permissive nature of section 235 must thus be noted. Although the government may not necessarily take the 'outright rejectionist route', that remains a constitutional option. In this regard, Steytler and Mettler commented aptly when they wrote:

The right to self-determination, in the legal sense, was reduced to, at most, a political claim. Any federating process along the route of self-determination would not be in the hands of any self-selected community, but will be governed by the Parliament itself.⁹³

The Constitutional Court, when it responded to a submission made by the Volkstaat Council and the Conservative Party in the certification process of the 1996 Constitution, also confirmed the permissive nature of section 235. The Volkstaat Council and the Conservative Party argued that the 1996 Constitution failed to fulfil the expectation established by Constitutional Principle XXXIV "about the creation of a Volkstaat among a significant number of Afrikaners; it has subjected the internationally recognised right to self-determination to the discretion of Parliament".⁹⁴ The Constitutional Court, however, regarded Constitutional Principle XXXIV as a permissive rather than an obligatory provision.⁹⁵

⁹³ Steytler and Mettler 2001: 102. Strydom (2002:27) suggests that the Constitution does not attach importance to the right to self-determination by indicating that section 235 "falls under the sub-heading 'other matters' in a chapter entitled 'general provisions'...During the negotiations all attempts to have self-determination included in the Bill of Rights, as a third generation right in accordance with international law, were unsuccessful".

⁹⁴ Steytler and Mettler 2001: 101.

⁹⁵ *Ex Parte Chairperson of the Constitutional Assembly: in re Certification of the*

Furthermore, had a territory that gives effect to the right to self-determination been established in terms of the Constitution, the Court stated, the situation might have been different as the Constitutional Principle XXXIV required the entrenchment of such territory in the 1996 Constitution. In the absence of such territory, the Constitution, the Court concluded, had fulfilled the promises of Constitutional Principle XXXIV by keeping the door on the right to self-determination open through section 235.

The Constitution does not as such provide for the right to self-determination. Neither does it shut the door for self-determination completely. It rather leaves it open for the exploration of the possible realisation of the right to self-determination for those that insist on going that route. It is important to note that the Constitution recognises the possibility of expressing the right to self-determination both in a territorial form 'within the Republic' and in 'any other way', thus, suggesting that self-determination can be exercised in a non-territorial form, which may include what is usually referred to as cultural-based non-territorial self-determination.⁹⁶ In fact, the potential implementation of the right to self-determination within such a non-territorial framework, as we shall see later, is already envisaged in section 185 of the 1996 Constitution, which provides for the possible establishment of cultural councils. What section 235 brings to the table is an element of territorial self-determination. The enforcement of this constitutional stipulation depends on the interplay between the level of support for a claim of self-determination in any of

Constitution of the Republic of South Africa 1996 (4) SA 744 (CC), 1996 BCLR 1253 (CC).

⁹⁶ Woolman (2007), on the other hand, suggests that the 'other way' of realising the right to self-determination does not exclude secession.

South Africa's ethnic groups and the government's disposition towards the politics of accommodation. For now, the doors for a politics of self-determination and autonomy designed in either territorial or non-territorial framework are left open by section 235 of the Constitution.⁹⁷

3.2 Powers and competences of provincial governments

The potential relevance of the provinces in responding to particular ethnic claims and, hence, accommodating ethnic diversity, cannot be solely based on the nature of the territorial configuration of the state but also on the powers and competences that the Constitution accords to provincial governments. The provinces in South Africa have both a constitution making and law making power. It is submitted that the provinces enjoy a very limited legislative autonomy. It must nevertheless be admitted that the South African system of provinces does offer a framework that can absorb greater ethnic demands for autonomy, if necessary.

3.2.1 Provincial Constitution

A provincial government, according to section 142 of the Constitution, has the power to adopt a constitution for its province. Although provincial constitutions must be consistent with the national constitution, the discretion of adopting provincial legislative or executive structures and procedures that differ from those provided in the national constitution is guaranteed.⁹⁸ Where applicable, a provincial constitution can also provide

⁹⁷ As noted by Alexander (1996: 15), "[t]he amphibolous language of section 235 of the new Constitution leaves the door ajar for a politics of cultural-national autonomy, and conceivably even for a politics of territorial self-determination".

⁹⁸ Section 142 Constitution. The Constitutional Court, when examining the draft constitution of the Western Cape that proposed the introduction of an alternative electoral system for the province, adopted a restrictive interpretation of provincial constitution making by holding that designing an electoral system does not fall

for the institution of a traditional monarch including the role, authority and status of the traditional monarch.⁹⁹ The recognition of traditional monarch represents an important recognition of self-government of cultural communities, albeit symbolic. As indicated earlier, the recognition does not necessarily have “governmental consequence”.¹⁰⁰

A provincial constitution cannot, however, simply confer powers and competences on provincial government. Section 143(2) of the Constitution limits the powers and functions of provincial governments to what is already provided in the Constitution. Thus, first, a provincial constitution cannot confer on the province any power or function that falls outside the area of provincial competence listed in Schedule 4 and Schedule 5 of the Constitution.¹⁰¹ Second, it cannot confer on the provincial government any power or function that falls outside the powers and functions conferred on the provinces by other sections of the Constitution.¹⁰²

3.2.2 Provincial law making power

In terms of legislative authority, the national government enjoys extensive authority as all law-making powers, unless expressly granted to provincial or local government, are vested in its legislative arm. Provincial competence, as mentioned above, is listed under Schedule 4 and 5 of the Constitution. Schedule 4 provides a long list of functional areas of concurrent national and provincial legislative competences. Only some are

under the jurisdiction of the provinces (*In re: Certification of the Constitution of the Western Cape, 1997*, 1997 BCLR 1167 (CC)).

⁹⁹ Section 143(1)(b) Constitution.

¹⁰⁰ *In Re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) para 195.

¹⁰¹ Section 143(2) (b) (i) Constitution.

¹⁰² Section 143(2) (b) (ii) Constitution.

relevant to the protection of the identity of an ethnic group. This includes education at all levels (excluding tertiary education), indigenous law and traditional leadership (subject to chapter 12 of the Constitution). In addition, language policy, the regulation of official languages at the provincial level and all media service controlled or provided by the provincial government are also provincial competences.

Schedule 5 of the Constitution, on the other hand, provides, albeit limited, functional areas of exclusive legislative competence. Almost more than half of the functional areas listed under this Schedule are identity-related matters. This includes libraries (i.e. other than national libraries), provincial cultural matters, archives (i.e. other than national archives), provincial sport, museums and provincial recreation.

As indicated by the Constitutional Court, both the provincial and national spheres of government can legislate in a matter that falls within the final area of concurrent national and provincial legislative competences.¹⁰³ The doctrine of preemption does not apply as legislation enacted by both spheres of government can bear on the same matter in so long as they are not inconsistent. The predominance of national legislation becomes clear, however, as soon as a conflict ensues between national and provincial legislation.

Section 146 of the Constitution regulates circumstances in which there is a conflict between national and provincial legislation. Since the section begins with outlining the conditions which national legislation must meet

¹⁰³ *Ex Parte Speaker of the National Assembly: In re: dispute concerning the constitutionality of certain provisions of the National Education Policy Bill 83 of 1995* 1996 (4) BCLR 518 (CC).

in order to prevail over provincial legislation, it creates the impression that provinces are granted more autonomy. The seemingly predominant position of provincial legislation is also stated in section 146(5) which clearly states that provincial legislation prevails over national legislation if the conditions listed under the same section are not met. The diluted nature of this provincial autonomy becomes apparent, however, when one looks at the broad circumstances under which national legislation can prevail over provincial legislation in areas of concurrent competencies. National legislation, according to section 146(2) of the Constitution, can prevail over provincial legislation if, for example, the national legislation is necessary to maintain uniform standards, national security, economic security or to protect the common market, to promote economic activities across provincial boundaries or to protect the environment, among others. Moreover, the same section states that national legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that is “prejudicial to the economic, health or security interest of another province or the country as a whole or impedes the implementation of national economic policy”.¹⁰⁴

The predominance of national legislation is not only limited to areas where the two levels of government enjoy concurrent authority. The national government can also enact laws in the case of Schedule 5 matters over which exclusive jurisdiction has been vested in provincial government. Section 44(2) of the Constitution lists almost the same broad criteria of national economic unity, national security, national uniform and standards as well as other circumstances that allow the national legislature to pass legislation with regard to matters falling within a functional area of exclusive provincial competence.

¹⁰⁴ Section 146(3) Constitution.

In extreme circumstances, the national government can exercise powers of intervention as permitted by section 100 of the Constitution. If a province fails to fulfil an executive obligation under the Constitution or other legislation, the national executive can take ‘any appropriate steps to ensure the fulfilment of that obligation’. This ranges from the rather soft measure of writing a directive to the provincial executive, ‘describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations’, to the more extreme measure of taking over the responsibilities of the provincial executive with regard to the relevant obligation.¹⁰⁵

3.2.3 Assessment

The general assessment is that the provinces enjoy limited legislative autonomy. First, they are provided with a limited area of exclusive legislative competence. Most areas of competences are included in the category of concurrent competences including matters like education, media service, indigenous law and language policy, which are all relevant for promoting ethnic identity. The long list of concurrent competences and the limited exclusive provincial powers attest to the integrated system of government adopted by the Constitution which “places less emphasis on geographical autonomy and more on the integration of geographic jurisdictions into separate functionally determined roles in the continuum of governance over specifically defined issues”.¹⁰⁶ The minimal emphasis on provincial autonomy is also apparent from the fact that the national government enjoys overriding power over almost all legislative areas of provincial government. This position of provinces is a reflection of the ANC’s political aversion against the notion of provinces, which, it feared,

¹⁰⁵ Section 100 Constitution.

¹⁰⁶ Klug 2000: 114.

could be used to promote ethnicity or ‘tribalism’ as it often referred to by ANC officials. It is also a manifestation of the constitutional emphasis on national unity.

The predominant position of the national legislature in the law-making arena is further strengthened by the fact that the provinces have not exploited their competences. Except for the early years of the transition (and even then limited to the provinces of Western Cape and KwaZulu-Natal) provincial law making is almost non-existent. Western Cape and KwaZulu-Natal¹⁰⁷ were the only two provinces that were engaged in drafting provincial constitutions and using their provincial legislative competence.¹⁰⁸

¹⁰⁷ Prior to the 2004 elections, the only two provinces that were not controlled by the ANC were Western Cape and KwaZulu-Natal. It is these two provinces that challenged the national government on matters of legislative competence, with some of the legal disputes ending up in the Constitutional Court. (See *Constitutionality of the Liquor Bill* 2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC); *Premier of the Province of the Western Cape v President of the RSA* 1999 (4) BCLR 382; 1999 (4) SA 657(CC); *Premier of the Province of the Western Cape v the Electoral Commission* 1999 (11) BCLR 1209 (CC); *Executive Council of the Western Cape v Minister for Provincial Affairs and Constitutional Development of the Republic of South Africa*; *Ex Parte Speaker of the National Assembly: In re: dispute concerning the constitutionality of certain provisions of the National Education Policy Bill 83 of 1995* 1996 (4) BCLR 518 (CC); *Executive Council of KwaZulu-Natal v President of the Republic of South Africa* 1999 (12) BCLR 1360 (CC). It was also these provinces that drafted provincial constitutions. While the Western Cape constitution has been certified by the Constitutional Court with some amendments, the draft constitution by KwaZulu-Natal, as mentioned in the previous chapter, was rejected by the Court on the ground that it usurped national powers.

¹⁰⁸ With the ANC consolidating its hegemony in all provinces, the provinces have

Notwithstanding the failure of the provinces to make use of their legislative powers, the identity-related and other relevant competences entrusted to the provinces, albeit limited, coupled with the relative concentration of ethnic groups in the provinces put the latter in a position to absorb ethnic claims as they arise. More importantly, the constitutional and territorial framework within which the distribution of powers and functions is outlined serve as a safety valve for accommodating emerging ethnic interests and responding to ethnic-based claims that have territorial dimension.

Considering the scheme of distribution of power as it is currently adopted, however, it would only be fair to conclude that provinces enjoy a circumscribed legislative autonomy, which is further weakened by the passive role the provinces have assumed in the arena of law-making. As we shall see shortly, the limited legislative autonomy of the provinces is watered down by a lack of financial autonomy.

3.3 Financial autonomy

The revenue-raising capacity of the national government in the form of taxation is not explicitly provided for in the Constitution. On the other hand, the provinces, although explicitly mentioned in the Constitution, enjoy a very limited taxation power. According to section 228(2) of the

limited themselves to implementing legislation passed by the national legislature rather than engaging in law making in their areas of legislative competence (Simeon and Murray 2004). Surprisingly, the discontent with the limited autonomy of the provinces did not only come from the opposition but also from within the ranks of the ANC. The Premier of the Western Cape province, Ebrahim Rasool (2004) complained about the diminishing role of provinces: “[F]rankly Mr. President, we might have to talk about provincial Administrations or Agencies as opposed to provincial *Government*.”

Constitution, a provincial legislature may impose taxes, levies, duties other than income tax, a value added tax, a general sales tax, rates on property and custom duties. This provision denies provinces access to broad-based taxes like income tax and sales taxes that are strong sources of revenue. Main sources of own provincial revenue are limited to road traffic fees, hospital fees, horse racing and gambling fees, which collectively account for less than 4% of total provincial revenue.¹⁰⁹ While provinces, according to the same section, can expand their revenue sources by enacting a flat-rate surcharge on any nationally imposed tax, levy, or duty other than a corporate income tax, value-added tax, rate on property, or customs duty, subject to national legislation,¹¹⁰ no province has done so.¹¹¹ This leaves the national government with extensive powers of taxation, making it the fiscally dominant sphere of government. The inadequate own-source revenue has compelled provincial governments to rely heavily on transfers from the national government, which account for 96% of provincial government revenue.¹¹²



In terms of transfers, the Constitution, under section 214(1), envisages an ‘equitable division of revenue raised nationally’ among the three spheres of government through an Act of Parliament. The division of revenue, according to the same section, must take into account the “need to ensure that the provinces and municipalities are able to provide the basic services and perform the functions allocated to them”.¹¹³ The fiscal capacity and the ‘developmental needs’ of the provinces must also be taken into

¹⁰⁹ Khumalo *et al* 2006.

¹¹⁰ The Provincial Tax Regulation Process Act 53 of 2001 regulates the introduction of such taxation powers.

¹¹¹ See Rao 2003.

¹¹² Khumalo *et al* 2006.

¹¹³ Section 214(2) Constitution.

account.¹¹⁴ Furthermore, the Constitution injects an element of equalisation into the allocation process by demanding that the division of revenue takes into account “the economic disparities within and among the provinces”.¹¹⁵

The understanding that one would have from reading section 214 of the Constitution is that a provincial share from the ‘equitable division of revenue’ comes with no strings attached; that it represents an unconditional allocation to provinces. Murray and Simeon, however, list a few reasons why the claim that the equitable share is an unconditional allocation should be qualified.¹¹⁶ By stating the objectives of the equitable share for provinces (i.e. enabling provinces ‘to provide basic services and perform the functions allocated to it’), they argue that section 227 spells out the purpose of the equitable share, implicitly limiting its use. It is, however, not clear if this can actually be considered as a condition imposed on the use of the equitable share as the latter are usually specific.

¹¹⁴ Section 214 (2) Constitution.

¹¹⁵ Section 214(2) (g) Constitution. With regard to revenue allocation process, the Constitution has established the Finance and Fiscal Commission (FFC), an independent body that is composed of members appointed in consultation with the premiers of provinces and organised local government. The FFC plays an advisory role with regard to the allocation of revenue by submitting recommendations to the Houses of Parliament and the provincial legislatures as well as to the national minister of finance. The other mechanisms through which provinces can ensure the accommodation of their concerns involve executive forums for intergovernmental fiscal relations. One such forum is the Budget Council, which is institutionalised by the Intergovernmental Fiscal Relations Act 97 of 1997. This forum, which must meet at least twice in each financial year, is composed of the National Minister of Finance and the MECs for finance of each province. The institution enables the national government to discharge its constitutional responsibility of consulting provinces on the division of revenue.

¹¹⁶ Murray and Simeon 2000.

What the Constitution simply reiterates is a basic principle of revenue allocation that is common in multilevel governments, namely that intergovernmental fiscal transfers are designed to enable subnational governments to discharge their expenditure responsibilities.¹¹⁷ The more specific conditionality, however, comes, as Murray and Simeon aptly indicate, from the practice of the Department of Finance, which requires the allocation of a bulk of the provincial share to health, education and welfare. Generally, the ‘informal conditions’ that are imposed on the provincial share leave the provinces with very few discretionary funds, reinforcing the lack of financial autonomy that characterises South African provinces.¹¹⁸

In sum, the national government have extensive taxation powers. The provinces, on the other hand, have little own source of revenue. The total dependence of the provinces on intergovernmental transfers is further reinforced by the fact that the provinces have little control over the use of the transfers. The provinces have thus little or no financial autonomy. Notwithstanding that, the absence of strong exclusive provincial identity has made financial autonomy a non-issue in so far as inter-ethnic relationships are concerned. Of course, the likelihood of financial issues emerging as a heavily contested area in the event that provinces become custodians of ethnic interests cannot be ignored. For now, however, the impact of financial autonomy or the lack thereof on the accommodation of ethnic diversity is not significant.

¹¹⁷ Steytler (2005: 336) similarly argues that “there are no constitutional restrictions on how provinces use their equitable share”.

¹¹⁸ “The end result”, according to Steytler (2005: 336), “is that 85 percent of all the funds a province receives have already been preallocated by the national government”.

3.4 Concluding remarks on self rule

Although the territorial configuration of provinces in South Africa does not purely coincide with the ethnic division of the country, it can still be used to accommodate the demands of particular ethnic groups for self-management. It is, for example, conducive to promote the languages of the respective ethnic groups. It also creates, as it does now, the opportunity for ethnic groups to be represented in provincial legislatures and executives.

Of course, the adopted system of distribution of powers might suggest a constitutional system that is less bent on subnational autonomy. Yet the exclusive provincial competences and the long list of concurrent powers, considered with the Constitutional Court's analysis of concurrent powers, indicate room for provinces to assert their power and entrench their autonomy.¹¹⁹ Although the powers and functions entrusted to the provinces do not make the latter engines of ethnic expression, they provide them with a scope, albeit limited, to enact on identity-related matters.

The self rule elements of the Constitution do not encourage the expression of ethnic sentiment or reward the political mobilisation of ethnicity. However, neither do they preclude the accommodation of ethnic diversity. They rather provide an institutional framework that can be used and, when necessary, readjusted, as in the case of the self-determination clause, to give ethnic sentiments a sense of accommodation. In the context of South Africa where the significance of the political role of ethnicity is not widespread, the fact that there are provinces with a relative concentration of ethnic groups and a system that prefers regional use of language goes a

¹¹⁹ The Court is, of course, criticised for its narrow interpretation of provincial powers. For more on this, see Malherbe 2002. Yet its rejection of preemption has left enough space for active law making for both spheres of government.

long way in managing ethnic anxieties. That is also why any decision to trample the provinces can be dangerous as it might take away an important institutional bulwark against the emergence of politicised ethnicity.

4. Shared rule

This section, using the same institutional arrangements discussed in Chapter Three, examines whether the South African constitutional framework has given expression to the institutions and processes of shared rule.

4.1 The National Assembly and the electoral system

The National Assembly, the lower house of the South African Parliament, consists of 400 members that are elected from a closed party list.¹²⁰ Each party has both a national and provincial list. Half of the members of the National Assembly come from provincial lists provided by the parties, with population size used as a basis to determine the number of seats that are allocated to each province. The provincial list is designed to ensure “some links between parties and their provincial votes”.¹²¹

The Constitution explicitly instructs that the electoral system must result, in general, in proportional representation.¹²² Members are, therefore, elected based on a proportional-representation system, which is designed to enhance representation in the National Assembly. In practice, the electoral system has enabled even parties that attracted an insignificant percentage of the national vote to secure seats in the Assembly as it does not specify a threshold in order to secure seats. A party that receives 0.25% of the

¹²⁰ Voters cast their vote not for individual party candidates but for the party of their choice.

¹²¹ Murray 2006: 265

¹²² Section 46 (1) (d) Constitution.

national votes is entitled to one seat. As commented by Reynolds in relation to the 1994 election,

[i]t is probable that even with their geographic pockets of electoral support the Freedom Front (nine seats in the National Assembly), Democratic Party (seven seats), Pan Africanist Congress (five seats), and African Christian Democratic Party (two seats) would have failed to win a single parliamentary seat if the elections had been held under a single-member district 'first past the post' electoral system. While these parties together only represent six percent of the new Assembly, their importance inside the structures of government far outweighs their numerical strength.¹²³

In addition to the Freedom Front, other small ethnic-based parties like the Minority Front (MF), which seeks to represent the Indian community, the United Christian Democratic Party (UCDP), which claim to represent the Tswana ethnic interests, and the Afrikaner Eenhidsbeweging (AEB), an Afrikaner-based party that separated from the Freedom Front, were able to secure seats in the national parliament after the 1999 election. The 2004 election saw, in addition to the three large parties (the ANC, Democratic Alliance and the IFP), the representation of eight other small parties including ethnic-based parties like the Freedom Front, the UCDP and the MF that continued to secure seats in the National Assembly.¹²⁴ The inclusion of these parties in the National Assembly reaffirmed an important contribution of the system towards the accommodation of diverse interests including ethnic diversity. The adoption of proportional representation in South Africa after 1994 is especially important given the dispersal of ethnic

¹²³ Reynolds 1997: 12.

¹²⁴ Republic of South Africa General election results available at <http://electionresources.org.za/provinces.php?election=2004>, accessed on 20 July 2006.

communities like the Afrikaners. If the single-member district ‘first past the post system’, which puts geographic concentration of support as a precondition for electoral victory, had been adopted, the likelihood of parties that represent the wide array of Afrikaner interests securing a seat in the Assembly would have been minimal. The same applies to the representation of other ethnic groups that are either geographically dispersed or small in size.

4.1.2 Assessment

Some analysts hold a different view with regard to the effect of the proportional electoral system on racial/ethnic relations. They suggest that the proportional electoral system, even if it is not the major cause, has contributed to the re-entrenchment of racial cleavages in the new South Africa. It has encouraged parties to mobilise the electorate along racial lines and target pockets of members of a racial community that are scattered all over the country. Piombo, for example, argues that

[a] different electoral system, perhaps combining elements of constituency and proportionality principles, could have forced political parties to seek support from among the country’s black voters. This not only would have avoided ethnic mobilisation, but would also have discouraged the racial mobilisation that has become the signature of opposition politics in South Africa.¹²⁵

Murray, on the other hand, is critical of the role of the National Assembly in promoting shared rule. She commented that “the National Assembly plays little role in reflecting federalism and regionalism”.¹²⁶ She supports

¹²⁵ Piombo 2005: 466.

¹²⁶ Murray 2006: 266:

her point by indicating that “even those members selected from provincial lists do not see themselves as provincial representatives”.¹²⁷

The proportional electoral system has clearly enhanced the representative character of the National Assembly. Parties that would not have secured a seat in the Assembly under a different electoral system are now represented. The fact that the Assembly, to the extent possible, has included parties that represent different communities goes a long way in accommodating diversity. In addition, the argument that the proportional electoral system facilitates inclusivity by not only allowing the representation of different parties but also by encouraging intra-party diversity holds true for South Africa. The ANC national list is, for example, “usually reviewed by party leaders and adjusted to ensure that seats are secured, [among other things], for representatives of diverse groups”.¹²⁸

As can be seen from above, there are diverse views on the shared rule role of the National Assembly and the impact of the electoral system on political mobilisation. As indicated above, Murray claims that the National Assembly has thus far played little role in reflecting ‘federalism and regionalism’. Given that there is little provincial interest articulation in the National Assembly, her comment represents an accurate observation of the

¹²⁷ Murray 2006: 266.

¹²⁸ Murray 2006: 266. This practice, however, should not be overemphasised. Although it might promote inter-community solidarity, it all depends on the credibility of the person alleged to represent the diverse groups in his or her respective community. Some of these alleged representatives might not have support in their respective communities. As we shall discuss shortly in relation to the representation of the national executive, meaningful representation must be distinguished from what is often referred to as the ‘illusion of representation’.

practice. Yet the propriety of designing the National Assembly as a house where provincial interests can be articulated is questionable. Lower houses, like the National Assembly, do not traditionally represent diversity in its territorial form. That is usually the work of second chambers. The design of the National Assembly, which allows for the introduction of territorial views in an open PR system, removes the latter from the ranks of lower houses that usually serve as a body that represent 'the people as a whole' in which issues are articulated on non-territorial basis and citizens are represented as individuals. This particular aspect of the design of the National Assembly tends to blur the distinction between the lower and the upper house and overlooks the reason behind the creation of two houses. This will especially become evident with the advent of political pluralism and the emergence of strong provincial parties.

Of course, it is important that constitution makers are increasingly seeking for inclusivity in the lower houses and ensure that the faces of this most important institution of national government reflect the diverse characters of the state. This does not, however, mean that members of the lower house have to articulate their positions in territorial terms except with the long held tradition that they speak on behalf of their respective small and localised constituencies. Constitution makers are rather seeking inclusivity in the lower house to ensure that political parties that represent a segment of the society, who, has it not been for the electoral system would not have taken a seat in the Assembly, voice the concerns of the community they represent. It is in this regard that the lower house plays a role in accommodating diversity. This has clearly been the case in the South African National Assembly, where ethnic-based opposition parties like the Freedom Front, often make submissions and present complaints in matters that affect their constituency.

Piombo's argument pertaining to the impact of the electoral system on political mobilisation is also problematic in some respects. First, it is not clear if political factors other than the sheer adoption of the proportional electoral system have not informed the decision of the parties to pursue race-based political mobilisation. As indicated in the previous chapter, despite predictions to the contrary, black solidarity has continued in post-apartheid South Africa in the form of support for the ANC. Opposition political parties, either because of the perceived difficulty of making inroads into the ANC traditional power base¹²⁹ or owing to the relatively easy mobilisation of the non-black community on the grounds of real or perceived threat of racial/African nationalism, opted to target the racial minority communities. The political campaign of the opposition targeted the white, Coloured and Indian communities. The party politics of the ANC, with its rhetoric of black-white, advantaged-disadvantaged, has also contributed to the continuing of political discourse along racial dichotomy. These and other political factors may largely account for continuing race-based political mobilisation. There is no doubt, however, that the electoral system may play into the hands of political parties that decide to pursue identity-based political mobilisation. Nevertheless, this is not the same as considering the electoral system as an incentive for the adoption of race-based political mobilisation by political parties.

Second, Piombo's comment focuses on how the adopted electoral system affects political mobilisation and neglects the very reason why the system

¹²⁹ Opposition parties in South Africa seem to be confronted with a catch 22 situation. In the context of South Africa where the history of institutionalised racism is like 'the gift of the Nile to the ANC', attempting to attract black voters might not be that rewarding in the short term. It is also clear that the opposition parties like the DA, for example, will not be able to "consolidate support among conservative whites and win the black vote at the same time" (Matshiqi 2007).

was adopted in the first place. The choice for a PR electoral system is usually motivated by the need to establish an inclusive lower house. Inclusivity, in turn, is sought because of the existence of fundamental differences that need to be accommodated. This relies on the argument that the best way of promoting national unity in a deeply divided society is not to use political institutions to suppress those divisions and attempt to create an overarching identity but to accommodate them. In the South African context, the fundamental differences run along the lines of racial cleavage, mainly caused by the socio-political factors that have dominated the country for decades. It is in order to accommodate these differences that the constitution-makers chose the proportional representation electoral system as the appropriate system of election. In the South African context, a different electoral system, at least in the near future, in which racial politics will endure, would have resulted in the permanent marginalisation of groups that claim to represent Afrikaners and other racial minorities from the political process. The Constitutional Court pointed out this pitfall in the case of *United Democratic Movement v President of the RSA* when it commented on the electoral system:

It is acknowledged that a constituency-based electoral system would operate to the detriment of smaller parties...This would be the result of precisely the socio-political factor, namely that smaller parties probably command majority support in very few areas and would for that reason win less seats in a territorially- based system than in a proportional system.¹³⁰

It must also be not feared that the electoral system promotes racial cleavages in situations where those cleavages do not represent the realities

¹³⁰ 2002 11 BCLR 1179 (CC) para 47. See also Malan 2005: 399

of the society concerned. The decline of ethnic parties in the early transition period of South Africa illustrates this very well. Ethnic entrepreneurs who sought to use the system to secure a place in national politics were not able to secure a significant place in Parliament as they were attempting to mobilise communities around an identity that is not politically relevant for most sections of the society. Racial cleavages, thus, will continue to characterise election campaigns and normal politics only because they represent a politically and socially relevant divide. Allegiance to a racial group and political mobilisation based on that line of allegiance was a reality before the introduction of the PR system and a change in an electoral system will not necessarily guarantee a change in that regard.

Third, it is not clear if the party's mobilisation would have taken a different line had the Constitution adopted the suggested combination PR and constituency principles. In fact, local government elections in South Africa combine elements of both the proportional and constituency electoral systems. The political mobilisation adhered by the parties is, however, no different from the strategy they adopt at a national and provincial level. For that matter, the voting trend is also similar.

Generally, the proportional electoral system has made the representation of different communities a possible reality. Of course, the relative strength and influence of the parties is limited owing to the dominance of the ANC. Yet, as Reynolds commented, their presence in this nationally important institution "far outweighs their numerical strength".¹³¹ More importantly, it provides for a structure which can be put to a better use of accommodating ethnic diversity when political pluralism becomes the order of the day.

¹³¹ Reynolds 1997.

4.2 The National Council of Provinces

The National Council of Provinces (NCOP) is the second chamber of the South African Parliament. As the name of the institution itself suggests, this is the house of provinces. The Constitution, in section 42(3), explicitly states that the NCOP “represents the provinces”. As its primary function is to ensure that provincial interests are taken into account in the national sphere of government, the NCOP’s role is to “represent provinces as political entities, not to represent citizens as such”.¹³² The NCOP accomplishes this task first by “participating in the national legislative process” and, second, by “providing a national forum for public consideration of issues affecting the provinces”.¹³³

As indicated in Chapter Three, the capacity of second chambers to represent the interests of the constituent units depends, first, on the composition and the manner in which members are appointed or elected to the chamber and, second, on the powers allocated to the chamber.

4.2.1 Composition of the NCOP

In the NCOP, each province is represented by a single delegation that is composed of ten delegates, headed by the premier of the province or a person nominated by the premier and drawn from members of the provincial legislature and the executive.¹³⁴ Of the ten delegates, six are permanent delegates while the other four are special delegates.¹³⁵ The provincial legislature appoints the permanent delegates based on the nominations it receives from parties represented in the legislature. The special delegates, who are members of the provincial legislature, are

¹³² Murray and Nijzink 2002: 8.

¹³³ Section 42(3) Constitution.

¹³⁴ Section 60(2) (a) Constitution.

¹³⁵ Section 60(1) Constitution.

appointed from time to time by the provincial legislature in consultation with the concurrence of the premier and the leader of the parties entitled to special delegates in the province's delegation.¹³⁶ Members of the provincial delegation have to reflect the representation of parties in the provincial legislature; the Constitution specifically enjoins the need to ensure the participation of minority parties both in the permanent and special delegates' components of the delegation.¹³⁷

4.2.2 Functions and powers of the NCOP

In addition to the appointment system, the effectiveness of the NCOP in representing the provinces depends on the relevance of its constitutional powers in protecting provincial interests. In this regard, the NCOP, first, participates in the passing of bills that amend the Constitution. In amending certain sections of the Constitution, the NCOP must accept the bill with a supporting vote of at least six provinces. This includes the amendment of section 1, the entire chapter 2 containing the Bill of Rights and the amendment of section 74(1) of the Constitution.¹³⁸ Any other amendment of the Constitution that relates to a matter that affects the NCOP, alters provincial boundaries, powers, functions or institutions and amend provisions that deal specifically with a provincial matter must also be passed by the NCOP with the supporting vote of at least six provinces.¹³⁹

With regard to ordinary legislation, the role of the NCOP is stronger in respect of bills that affect provinces, the so-called section 76 legislation. Any bill that deals with subject matter that falls within a functional area

¹³⁶ Section 61(4) Constitution.

¹³⁷ Section 61(2) (a) (1), 61(3) Constitution.

¹³⁸ Section 74(1 and 2) Constitution.

¹³⁹ Section 74 (3) Constitution.

listed in Schedule 4 of the Constitution (i.e. the concurrent legislative competency of the national and the provincial spheres) is automatically considered as a bill that affects provinces. The NCOP, with each provincial delegation having one vote, can either reject or pass with amendment bills that affect provinces. If the NCOP rejects the bill or if the Assembly refuses to pass the bill as amended by the NCOP, the bill or the amended bill, as the case may be, must be referred to the Mediation Committee,¹⁴⁰ which consists of nine members each from the National Assembly and the NCOP.¹⁴¹ In the event that the Mediation Committee fails to come up with a bill acceptable by both houses, the National Assembly can pass the bill, either as originally passed by it or as amended by the Mediation Committee, but only if it can secure the vote of at least two thirds of its members.¹⁴²

The NCOP also plays a limited role in the passing of national legislation that falls outside the explicitly provided spheres of provincial competence, the so-called section 75 bills. A rejection of a section 75 bill by the NCOP only results in the reconsideration of the bill by the National Assembly.¹⁴³

¹⁴⁰ Section 76 (1) Constitution.

¹⁴¹ Section 78 Constitution.

¹⁴² Section 76(2) Constitution. According to section 146(4) of the Constitution, the decision of the NCOP to accept or reject a section 76 bill must be taken into account by a court that has to decide whether the national legislation overrides the provincial legislation in the event of a conflict between national and provincial legislation. Accordingly, “[i]f the bill was passed by the NCOP, a court is likely to accept that the national legislation is necessary for any of the purposes stated in section 146 (economic unity, etc). Where the NCOP voted against the bill but a two-thirds majority was obtained in the National Assembly, the court may take that as an indication that the necessity test has not been met” (Levy, Tapscott and Steytler *et al* 1999: 91).

¹⁴³ Section 75 Constitution.

When reconsidering the bill, the National Assembly must take into account any amendment proposed by the NCOP. The final decision, however, rests with the Assembly. As Murray put it, this limits the role of the council to “an arena of second sober thought”.¹⁴⁴ It is also important to note that the delegates of each province vote as individual members when the NCOP considers bills that do not affect provinces.¹⁴⁵

The NCOP can also exercise “veto powers over national executive action”.¹⁴⁶ First, an intervention by the national government in a province ends if the NCOP disapproves.¹⁴⁷ Second, all international treaties entered into by the national executive must be ratified both by the National Assembly and the NCOP. Third, a declaration of a ‘state of defence’ must also be approved by the NCOP.¹⁴⁸ Finally, the NCOP can overrule the decision of the National Treasury to cease the transfer of funds to a province for want of compliance with sound financial management.¹⁴⁹

4.2.3 Assessment

The representation system in the NCOP generally provides an opportunity for voicing provincial preferences and protecting provincial interests. There is, of course, no guarantee that members of the NCOP will vote along the interests of their provinces as voting along political-party lines is usually common. Nevertheless, the fact that the power to appoint representatives to the NCOP resides with the provincial legislatures themselves does put members in a better position to defend and advance

¹⁴⁴ Murray 2006: 266.

¹⁴⁵ Section 75(2) (a) Constitution.

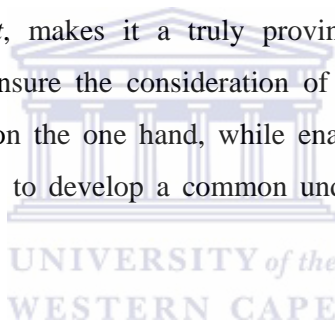
¹⁴⁶ Steytler 2005: 330.

¹⁴⁷ Section 100(2) (b) Constitution.

¹⁴⁸ Section 203(3) Constitution.

¹⁴⁹ Section 216 Constitution.

provincial interests. More important in this regard is also the fact that the Constitution enjoins the provincial legislature to ensure that the delegation of the provinces to the NCOP is as representative as possible. This facilitates inclusiveness and the projection of the province in the national forum as a single entity. This is further reinforced by the fact that each provincial delegation, when dealing with bills that affect provinces, has just one vote that must be casted based on the instructions of the provincial legislature. The NCOP's role as a protector of provincial interests is further facilitated by the fact that it is entrusted with important powers that ensure the effective participation of provinces in national decision-making. Generally, the institutional design of the NCOP, which is modelled after the German *Bundesrat*, makes it a truly provincial body. It has the potential capacity to ensure the consideration of provincial interests in provincial legislation, on the one hand, while enabling the national and provincial governments to develop a common understanding of national interests, on the other.



In practice, the NCOP has not been that successful in relation to its ability to influence the passing of national bills, which is one of its primary functions. Since the establishment of the NCOP, only a handful of amendments have been proposed by provincial legislatures to cater for provincial interests.¹⁵⁰ The legislative contributions of the NCOP have been “limited to the corrections of textual errors and some fine-tuning”.¹⁵¹ This is partly attributed to the dominance of the ANC in both houses of the Parliament and in almost all provinces. The fact that the two houses do not differ from each other in partisan composition has limited the capacity of the NCOP to influence national bills. The dominance of the ANC also

¹⁵⁰ Murray 2006.

¹⁵¹ Levy, Tapscott and Steytler *et al* 1999: 91.

means that most important decisions are decided through party structures and executive intergovernmental structures. Long before bills are tabled for consideration before the NCOP, provincial concerns have already been communicated by the relevant provincial officials in the different intergovernmental structures.¹⁵² Given this political context, it is difficult, if not impossible, for the NCOP to fulfil the potential its institutional design promises. However, given that “party dominance is not a permanent state”,¹⁵³ the effectiveness of the design of the NCOP will likely come into its own right when competitive politics replaces the political space that is currently characterised by ‘one-party dominance’.

4.3 Co-operative government and intergovernmental relations

As much as a federation must be arranged to accommodate ethnic diversity, it must also promote state-wide solidarity. Constitution makers must be careful not to be swept away by the sheer desire of responding to the demands of ethnic groups and end up creating a system whereby each community operates in isolation from others; a system where there are little or no “institutional links between levels of government – each is its own self-contained system”.¹⁵⁴ This is about multi-ethnic federations providing a common space whereby the different levels of government work towards shared purposes and common objectives. It is about maintaining a joint space through which the different communities can communicate and foster mutual understanding. This can only be done when the national government, together with the constituent governments, engages in the co-management of the federation. This is where intergovernmental relation, as

¹⁵² See Murray and Nijzink 2000: 44-45. See also Levy, Tapscott and Steytler *et al* 1999.

¹⁵³ Steytler 2005: 343. See also Friedman 1999.

¹⁵⁴ Simeon and Conway 2001: 345.

a process and structure that provides the context to engage in the co-management of federation, becomes relevant.¹⁵⁵

Intergovernmental relation within the normative framework of cooperative government is one of the most important and unique features of the shared rule elements in the South African Constitution. The Constitution explicitly requires all spheres of government to act in the spirit of cooperative government as opposed to in competition with each other. As stated by the Constitutional Court in its *First Certification* judgment, the Constitution has rejected competitive federalism and instead chose to adopt ‘cooperative government’.¹⁵⁶ Chapter three of the Constitution is dedicated to outlining the normative principles of cooperative government.

¹⁵⁵ The nature of intergovernmental relations in a federation depends on the particular normative framework within which this relation operates. It depends on whether the core of the normative work is based on competitive federalism or cooperative federalism. Competitive federalism assumes “the inherent competition for power between the federal and state governments and one can gain power only at the expense of the other” (Nice 1995: 5-6). According to this view, federalism is essentially a zero-sum game. Cooperative federalism, on the other hand, emphasises cooperation and coordination in contrast to inter-jurisdictional competition. This model is based on a sharing of power and responsibility, with the various participants working towards shared goals. In many multi-ethnic federations, intergovernmental relations are, by and large, operating within the normative framework of cooperative federalism. In fact, as noted by Kincaid (2005:433), no federal constitution endorses intergovernmental competition; “instead to the extent that intergovernmental relations are mentioned, the emphasis is on cooperation and coordination”. It is within this same normative framework that this study discusses intergovernmental relations.

¹⁵⁶ In *Re: certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) at para 290.

4.3.1 The principles of cooperative government

Section 41(1) of the Constitution lists the principles of cooperative government and intergovernmental relations that all spheres of government and organs of state must adhere to. The principles can be broadly categorised as principles that promote and emphasis national unity, respect for autonomy and a duty to cooperate.

The first half of the principles of cooperative government stress the need to promote national unity: the three spheres of government must “preserve the peace, national unity and indivisibility of the Republic”;¹⁵⁷ they must collectively work to “secure the wellbeing of the people of the Republic”;¹⁵⁸ they must also maintain their loyalty “to the Constitution, the Republic and its people”.¹⁵⁹

The second part of the principles reaffirms the distinctiveness of each sphere and promotes respect for autonomy: The three spheres of government must “respect the constitutional status, institutions, powers and functions of government in the other spheres”;¹⁶⁰ they must “not assume any power or functions except those conferred on them in terms of the constitution”;¹⁶¹ furthermore, they must “exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere”.¹⁶²

¹⁵⁷ Section 41 (1) (a).

¹⁵⁸ Section 41 (1) (b).

¹⁵⁹ Section 41 (1) (d).

¹⁶⁰ Section 41 (1) (e).

¹⁶¹ Section 41 (1) (f).

¹⁶² Section 41 (1) (g).

The bridge between the two elements of cooperative government is the principle that underpins the duty to cooperate. According to this principle, the three spheres of government must “co-operate with one another in mutual trust and good faith by (i) fostering friendly relations; (ii) assisting and supporting one another; (iii) informing one another of, and consulting one another on, matters of common interest; (iv) co-ordinating their actions and legislation with one another; (v) adhering to agreed procedures; and (vi) avoiding legal proceedings against one another”.¹⁶³

Equal respect for national integrity and autonomy are therefore the essence of these principles. Relations between the different spheres of government must be underpinned by these two basic elements of cooperative government. On the one hand, the exercise of autonomy should not jeopardise or undermine the national unity of the Republic. At the same time, the need to promote national unity should not compromise subnational autonomy. The territorial, functional and institutional autonomy of subnational units must be respected. All spheres of government are obliged to observe and adhere to these principles of cooperative government and conduct their activities within the parameters of these same principles.¹⁶⁴

The Constitution envisions the establishment of forums and structures that facilitate cooperative government. It mandates, under section 41(2), the enactment of an Act of Parliament that must “establish or provide for structures and institutions to promote and facilitate intergovernmental

¹⁶³ Section 41 (1) (h).

¹⁶⁴ Section 40(2) Constitution. A fourth principle of cooperative government emphasises the need for effective government. The three spheres of government are mandated to provide ‘effective, transparent, accountable and coherent government for the Republic as a whole’.

relations”. The envisaged Act of Parliament must also “provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes”.¹⁶⁵

This constitutional mandate was not immediately responded to. Instead, informal communications and *ad hoc* forums were used to facilitate intergovernmental relations.¹⁶⁶ A plethora of intergovernmental structures were established in all spheres of government. The constitutional mandate was eventually responded to when Parliament, after a decade, enacted the Intergovernmental Relations Framework Act (hereafter the ‘Act’ or the ‘IRFA’). This Act, which came into effect on 15 August 2005, provides for the institutional structures of intergovernmental relation in each of the three spheres of government.¹⁶⁷ The Act provides for the establishment of four types of executive intergovernmental structures. By establishing these structures, the Act has moved intergovernmental relations from the informal domain of interaction through telephones, letters and informal meetings into a more formal arena of communication and interaction.

4.3.2 Assessment

The promotion of co-operative government as opposed to intergovernmental competition is a reflection of the constitutional emphasis on national unity.

¹⁶⁵ Section 41(2) (b).

¹⁶⁶ See Steytler, Yonatan and Kirkby 2006.

¹⁶⁷ The Act recognises the fact that other Acts of Parliament have created specific forums contemplated in section 41(2), and limit its role to establishing a general legislative framework. The Act, with the ultimate aim of enhancing intergovernmental cooperation, formalises the relations between the three spheres of government. Thus the IRFA gives concrete form to the principles of co-operative government by establishing the structures of intergovernmental relations and providing mechanisms for settling disputes between the three spheres.

The emphasis on cooperative government “is consistent with the requirement [...] that national unity be recognised and promoted”.¹⁶⁸ As can be gathered from the principles of cooperative government outlined by the Constitution, the obligation to promote national unity is equally underlined by an obligation to respect the autonomy of each sphere of government. That means the duty of cooperative government cannot be used to circumscribe provincial autonomy; cooperative government should not be used as a ‘centralising device’.

South Africa, by adopting the IRFA, has taken further the institutionalisation of cooperative government and intergovernmental relations that it had already embarked upon, albeit to a limited extent. It is not, however, clear if the design and practice of these intergovernmental structures have fully given effect to the two pillars of cooperative government, namely national unity and respect for autonomy. Giving practical effect to these two pillars of cooperative government would require the establishment of intergovernmental relations that are based on a ‘negotiated, non-hierarchic exchange’ between the different spheres of government. It would require the realisation of a forum where equal partners of government come together to consult on matters of common interest in mutual respect. The system of intergovernmental relations envisaged by the IRFA presents, by contrast, “hierarchical and rule-bound structures and procedures”.¹⁶⁹ This, as aptly argued by Steytler,¹⁷⁰ clearly manifests in the fact that the national IGR forums are designed not as forums of both national politicians and their provincial counterparts but rather as a ‘consultative forum for national politicians’. The President’s

¹⁶⁸ *In Re: certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) at para 290

¹⁶⁹ Steytler 2007: 9.

¹⁷⁰ Steytler 2007: 9-10.

Coordinating Council, which brings together the President with the Premiers of the provinces, is considered as a consultative forum “for the President”.¹⁷¹ The same is true for the MinMECs, sectoral intergovernmental forums that brings together the relevant national minister with their provincial counterparts. These forums are regarded as “consultative forums for the Cabinet member responsible for the functional area”.¹⁷² This hierarchical relation seems to be further strengthened by practice. Admittedly, there is not enough evidence to assess the practice of structures established after the adoption of the Act from this perspective. However, if the practices of the pre-IRFA intergovernmental structures and preliminary researches on structures established based on the IRFA are anything to go by,¹⁷³ the structures are far from representing this principle of ‘negotiated, non-hierarchic’ interaction. The forums are used as a platform for the national government and its officials to present their policies, without an equal level of involvement from the provinces. The functioning of the structures does not give an impression of the central government and the provinces engaging in equal terms in the co-management of the federation. The domination of the forums by the national government and the lack of active engagement from the provinces pose a real danger of turning intergovernmental relations into ‘centralising devices’.

¹⁷¹ Section 6 IRFA.

¹⁷² Section 11 IRFA. As noted by Steytler (2007), the objectives of the IGR, which re “hierarchically slanted”, also indicate that the IRFA does not envisage the intergovernmental relations between the national government and the provinces as an interaction among equals. See also sections 4, 7, 8(1) (a) and 8(2) of the IRFA, which signal the hierarchical nature of the intergovernmental relations that the IRFA espouses between the national government and the provinces.

¹⁷³ See Fessha and Steytler 2006.

4.4 Representation in the national executive

The Interim Constitution provided for a government of national unity.¹⁷⁴ The 1996 Constitution, on the other hand, does not make power sharing a requirement in organising the national executive. The cabinet is not constitutionally required to be composed of different groups or reflect multi-party representation. In the absence of a constitutional mandate, the remaining question is whether the representation of the different groups in the national executive is ensured through political practice.

4.4.1 Representation through political practice

The composition of the ANC, some argue, caters for the broader representation of the different ethnic and racial groups, making the ANC a ‘consociational party’. Lijphart argues that “the ANC is a strongly multi-racial and multi-ethnic party; in particular, its members of parliament and its cabinet ministers have been broadly representative of the major racial and ethnic groups in South Africa”.¹⁷⁵ He equates the ANC with that of the Indian National Congress, “which has been so inclusive of all religious, linguistic and regional groups in India that it has embodied the essence of a grand coalition within the party and within the long succession of Congress cabinets”.¹⁷⁶ He, though not in many words, advises us not to be wary of the ANC governing alone in such a deeply divided society.

¹⁷⁴ As a result, the National Party and the IFP joined the ANC in government. Two years later, the National Party withdrew from the arrangement on the ground that “its close identification with the majority ANC restricted its ability to build its own constituency, and that it would be more effective in opposition” (Murray 2006: 271). Murray indicated that “this assessment proved wrong. In the 2004 national elections, the National Party received just 1.7 percent of the vote. In 1994 it had commanded 20.4 percent” (Murray 2006: 286).

¹⁷⁵ Lijphart 1998: 148.

¹⁷⁶ Lijphart 1998: 148.

A simple look at the racial composition of the ANC may tend to confirm the view that the ANC is a 'consociational party'. Unlike the other predominantly black parties, like the Pan African Congress, the ANC, based on its commitment to non-racialism, opened its door for people of all racial groups. The leaders of the ANC are also mindful of the need for political accommodation of different racial groups within the ANC leadership structure. Nelson Mandela, in his speech at the 1991 National Convention of the ANC, said that

... [t]he ordinary man, no matter to what population group he belongs, must look at our [ANC] structures and say that 'I, as a Coloured man, am represented. I have got Allan Boesak there whom I can trust. And an Indian must also be able to say: There is Kathrada – I am represented.'¹⁷⁷

This is also reflected in the different institutions that the ANC controls. The provincial ANC in the Western Cape, according to the tradition of the party, is largely representative of the different groups that inhabit the province.¹⁷⁸ Boggards, writing in 2002, noted the overrepresentation of non-blacks in the ANC caucus as well as the fact that "[t]hirty percent of its deputies come from the Coloured, Indian and white communities despite the fact that these communities contributed only six percent of the overall ANC vote".¹⁷⁹

¹⁷⁷ Ramsamy 2002: 208.

¹⁷⁸ Hendricks 2005: 117.

¹⁷⁹ Boggards 2002: 13. This, in fact, has caused an outcry among some members of the ANC. Peter Mokaba, then deputy minister of Environmental Affairs, said: '[T]he need to consolidate power in our country must first and foremost entail the imperative of consolidating power base. On the basis of that strength we must move to consolidate the Black power base...If 60% of the 62% that voted the

Unlike the case of racial representation, the relevance of the representation of different ethnic groups in the ANC does not receive official recognition. The official position of the ANC with regard to its ethnic composition does, in fact, signal a hostile attitude towards ethnicity. The ANC has considered ethnic divisions as artificial and, as indicated earlier, the manipulation of ethnicity by the apartheid government has further discredited the concept of ethnicity. In so far as public pronouncements are concerned, the ANC has continued to present the black African community as an undifferentiated homogenous segment of the South African society. That is not, however, totally true. Ethnic considerations, it seems, have played a role in organising the leadership structure of the party and the government. Butler, writing shortly before the ANC's 52nd Conference in Polokwane,¹⁸⁰ indicated that “[e]thnic balance is a cornerstone of ANC party lists and National Executive Committee (NEC) elections”.¹⁸¹ He also points out that ethnic representation is clear in the core leaders of the ANC (i.e. the ANC president, the deputy president, chairperson and secretary-general) which come from different ethnic groups.¹⁸²

ANC into power is African, why is it that the percentages of other national groups in the leadership structures is more than their contribution to the democratic vote?’ (as quoted in Ramsamy 2002: 208). A similar claim is recently made by members of the provincial ANC in the Western Cape who, in similar fashion, argued that “representivity should be reflective of the majority of people who voted the ANC into power in the province” (Hendricks 2005: 117).

¹⁸⁰ The 52nd ANC Conference has brought a dramatic change in the leadership structure of the ANC including the election of Jacob Zuma as a president of the party. How this new turn of events will affect the demographics of the leadership structures of the party and the government is yet to be seen. The discussion here does not include post-Polokwane developments.

¹⁸¹ Butler 2007: 38.

¹⁸² Butler 2007. Despite the absence of constitutional requirement for ensuring

According to Butler, representation of ethnic groups is also taken into account in organising the state presidency where the minister, policy coordination director and director-general belong to the numerically smaller ethnic communities.¹⁸³ Despite the absence of constitutional requirement for ensuring multiparty representation in the cabinet, the ANC government, under the leadership of Thabo Mbeki, has also included members of minority parties including the IFP and AZAPO in cabinet.¹⁸⁴

The difference between the role of ethnicity and race in the organisation of the leadership structure of the ANC and the government, it seems, is that the former does not often receive public recognition as opposed to the latter about which leaders of the party are not shy to express their sensitivity. Ethnicity, it seems, is an implicit element of both party and government structures organisation. Of course, one may reasonably argue that there is no evidence to regard the representation of the different ethnic groups in the government and the party as an outcome of a deliberate policy. Be that as it may, it cannot be denied that the diversified face of the party and the government takes ethnic traits away from the most important and often contested political space in a multi-ethnic context.

4.4.2 Assessment

Despite the absence of the constitutional requirement for the representation of the different ethnic groups in the national executive, the ANC's sensitivities to ethnic and racial balance in its leadership structure and the

multiparty representation in the cabinet, the ANC government, under the leadership of Thabo Mbeki, has also included members of minority parties including the IFP in cabinet (Steytler 2001; Murray 2006).

¹⁸³ Butler 2007.

¹⁸⁴ Steytler 2001. See also Murray 2006.

national executive has, to some extent, ensured the representation of different ethnic groups. It is also important to note the approach it adopted with regard to ethnic representation as opposed to racial representation. Its decision to explicitly recognise the need to ensure the representation of the different racial communities is consistent with the fact that race is the primary cleavage for political mobilisation in South Africa. On the other hand, its refusal to recognise ethnic representation as an explicit principle of political organisation goes in tandem with the fact that ethnicity is not the relevant divide that warrants public recognition; yet the representation of different ethnic groups in the leadership structure of the party indicates an acceptance of the important principle that an ethnically diverse state must be sensitive about ethnic balance by, among other things, providing a sense of representation in important leadership structures.¹⁸⁵ This also suggests that accommodating ethnic diversity does not necessarily or usually require a constitutional or formal obligation of providing representation to the different ethnic groups.

It must, however, be important to note developments that have cast doubt on the claim that the ANC have successfully maintained ethnic balance both within the party and the government. Some have alluded to the growing concern about the overrepresentation of particular ethnic groups within the leadership structures of the ANC and the government. Archbishop Tutu, in one of the public speeches he made in 2006, warned against the rise of ethnic divisions because of the perceived dominance of the ANC and the government by particular ethnic groups. He specifically stressed the need to “hear the cry of those who complain about a Nguni-

¹⁸⁵ Butler (2007: 38) discusses how the ANC “has made ethnicity almost invisible” by providing, among other things, due consideration to ethnic balance.

ocracy¹⁸⁶ and even of a Xhosa-ocracy”.¹⁸⁷ Some suggest that this claim is not without merit. Writing in 2007, Calland points out that twelve of the fifteen member National Working Committee of the ANC come from Nguni group, with “three from minority groups”.¹⁸⁸ The domination of the same groups in other key government positions and especially the cabinet is also noted by other authors. Murray, in a typical South African academic style that eschews direct reference to ethnicity, indicates the growing concern “about what is perceived as the overrepresentation of two provinces in cabinet”.¹⁸⁹ The references are to the Zulu and Xhosa-speaking provinces of KwaZulu-Natal and Eastern Cape respectively. Similarly, Butler refers to Thabo Mbeki’s second-term reshuffle in which he appointed 13 Xhosa-speaking cabinet ministers and 6 deputy ministers as “an insensitive tilt away from ethnic balance”.¹⁹⁰

The succession debate within the ANC, which preceded the 52nd ANC policy Conference in Polokwane, has also brought the issue of ethnicity to the fore. After the axing of Jacob Zuma from the position of Deputy President of the country, following allegations of corruption, there was no clear favorable candidate that emerged to lead both the ANC and the government after 2007 and 2009 respectively.¹⁹¹ It was reported that

¹⁸⁶ The Nguni group, as mentioned in the preceding chapter, includes the Zulu, Xhosa and Swati speakers.

¹⁸⁷ Tutu 2006.

¹⁸⁸ Calland 2006: 123. Mosiuoa Lekota, the national chairperson of the ANC before 2008, “after winning the ANC national chairmanship in the 1997 Mafikeng conference, pronounced his election a victory for the Sotho-speaking people” (Calland 2006: 124).

¹⁸⁹ Murray 2006: 272.

¹⁹⁰ Butler 2007: 42.

¹⁹¹ As indicated earlier, the ANC held its national conference in December 2007 in

supporters of Jacob Zuma advanced a conspiracy theory that that there is a plot by a group of Xhosa-speaking leaders of the ANC to prevent a Zulu-speaker from becoming the next president of the party and the government.¹⁹² Central to this is also that the top job of both the ANC and the government has for a long time been in the hands of Xhosa-speakers. An ANC national executive committee member, reacting to the possible nomination of Thabo Mbeki for the leadership position of the party for a third time, expressed the possible revival of ethnic concerns because of the continued dominance of the ANC and government leadership structure by particular group/s: “We need to accept the reality that, if we want to build a united nation, we need to allow other people from other provinces to lead the ANC and government”.¹⁹³ This is obviously a reference to the dominance of the leadership of the ANC and the government by Xhosa-speakers.

Although these claims cast doubt on the success of the ANC and the government in achieving ethnic balance in the national executive, they do not necessary lead to the conclusion that there is a deliberate tendency to establish the hegemony of a particular ethnic group/s. This, however, should not detract the government and the party from giving the issue the serious consideration that it deserves. After all, these claims at least “signal the beginning of increased public demands for diversity in the executive”.¹⁹⁴ They signal the need to be sensitive about ethnic balance lest that it creates the impression, perceived or real, that a particular ethnic group is rushing to entrench its hegemony.

which it elected Jacob Zuma as a President of the party. The next national election is scheduled for early 2009.

¹⁹² Butler 2007.

¹⁹³ ‘Zuma on the back foot’ *Mail & the Guardian* (8 December 2006).

¹⁹⁴ Murray 2006: 272.

Finally, it must be noted that the mere existence of members of different groups in the leadership structure of the party and the government does not necessarily amount to representation of the different groups. This is especially true of the representation of the different racial communities. Although members of the racial minority communities appear disproportionately in the leadership structure of the ANC, it is difficult to readily consider them as representatives of those communities. It is often argued that most White, Coloured and Indian candidates of the ANC “would have great trouble winning a seat in their respective ethnic communities under the first-past-the-post plurality system”.¹⁹⁵ With regard to the Indian members of the ANC and the Indian community, Ramsamy specifically indicated that “although there are a number of Indians in the hierarchy of the ANC, the frequent rejection of Indian identity by Indian ANC activists has...contributed to the community’s misgiving about the ANC”.¹⁹⁶ This further illustrates the gap between the ostensible representatives and the represented. It is contended that this picture of composition of the ANC creates ‘a dangerous illusion of representation’ more than it reflects an actual representation of the different South African communities.

4.5 General remark on shared rule

The institutional design for shared rule facilitates inclusiveness. The electoral system has ensured the representation of different groups in the National Assembly while the institutional design of the NCOP provides meaningful space for national-provincial dialogue as well as for the injection and protection of provincial interests in national decision-making. Quite unique to South Africa is also the detailed constitutional

¹⁹⁵ Herman and Simkins 1999a: 31.

¹⁹⁶ Ramsamy 2002: 206.

framework that outlines the process of shared rule in the form of cooperative government. This is also supported by the institutional framework for intergovernmental relations, which is designed to help all spheres of government comply with their constitutional obligation of working in cooperation as opposed to in competition with each other. The institutional designs as well as the constitutional framework for processes of shared rule are consistent with the constitutional emphasis on national unity.

In practice, the effects of the processes and institutions of shared rule have been very limited. The reason for this is attributable not so much to institutional design as it is to the political context. At the centre of this is the unassailable position that the ANC holds in the body politic. The ANC dominance in the lower house has limited the relative strength and influence of other parties in the National Assembly. Its control of all the provincial governments and thus the seats of the NCOP have turned the latter into an ineffective institution. The domination of intergovernmental structures by the national government has limited the contribution of the latter for the co-management of the society. A point should nevertheless be made that the Constitution, notwithstanding the current political context, does provide an adequate system of shared rule. The political dynamics are likely to change from time to time although that does not seem to be likely in the near future in the case of South Africa.

5. The challenges of accommodating dispersed ethnic groups

As argued in Chapter Three, the territorial solution that federalism provides for has limitations as it cannot, for example, respond to questions that arise in relation to the anxieties of ethnic groups that are not territorially concentrated. This section examines two important elements of the South African Constitution that are often deemed relevant to accommodate the

concerns of dispersed ethnic groups and individuals that belong to such ethnic groups: the Bill of Rights and non-territorial autonomy.

5.1 The Bill of Rights and the multi-ethnic challenge

The 'Bill of Rights' contains an exhaustive list of rights, including the traditional civil and political rights as well as the often controversial socio-economic rights.¹⁹⁷ A number of rights are relevant, directly or indirectly, to accommodate the needs of persons that belong to the different ethnic communities. The following sections discuss some of these rights very briefly.

5.1.1 The right to equality and non-discrimination

By way of emphasising the departure from the injustices of the apartheid era, the Bill of Rights section commences by outlining the right to equality. Section 9 states that “everyone is equal before the law and has the right to equal protection and benefit of the law”. As opposed to formal equality, it emphasises substantive equality by envisaging the adoption of legislative and other measures that help to “advance persons disadvantaged by unfair discrimination”.¹⁹⁸ This provides room for the adoption of affirmative action measures. It also gives effect to the constitutional view of substantive equality as including “the full and equal enjoyment of all rights and freedoms”.¹⁹⁹

¹⁹⁷ With regard to the application of Bill of Rights, section 8 provides that it binds all organs of state, be it at the national, provincial or local level. The Bill of Rights also protects against private infringements of rights; rights are applicable horizontally to natural and juristic persons, “taking into account the nature of the right and the nature of any duty imposed by the right” (section 8(2) Constitution).

¹⁹⁸ Section 9(2) Constitution

¹⁹⁹ Section 9(2) Constitution.

As a corollary of the equality right, the state is enjoined not to “unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, *ethnic* or social origin, colour, sexual orientation, age disability, religion, conscience, belief, culture, *language* and birth” (emphasis added).²⁰⁰ The prohibition of such unfair discrimination is also extended to private persons. The Constitution also mandates the adoption of national legislation to prohibit unfair discrimination which was eventually realised through the enactment of the Promotion of Equality and Prevention of Discrimination Act 4 of 2000.

It is important to note that the Constitution does not prohibit discrimination *per se* but only unfair discrimination. As stated in section 9(4), discrimination on one of the grounds listed in subsection 3 automatically becomes unfair discrimination unless it is established that the discrimination is fair. This means discrimination based on language and culture is automatically regarded as unfair discrimination. This also implies that the Constitution’s adherence to substantive equality may entail differential treatment. Special measures might be necessary in order to ensure that those that were disadvantaged by unfair practices in the past also benefit from “the full and equal enjoyment of all rights and freedoms” that the Constitution promises.

5.1.2 Associational rights

Of particular importance to the protection of the identity of members of ethnic groups are the so-called associational individual rights. These are rights “which cannot be fully or properly exercised by individuals other than in association with others of like disposition”.²⁰¹ Section 18 of the

²⁰⁰ Section 9(3) Constitution

²⁰¹ *In re: certification of the Amended Text of the Constitution of the Republic of*

Constitution guarantees the right of everyone to freedom of association while section 17 stipulates the right to assemble.

Freedom of association can be used to advance the identity of a particular group. In the context of South Africa, however, the extent to which this right can be used to advance identity-claims seemingly faces a challenge from the equality principle which prohibits discrimination on the basis of race, ethnicity, culture, language, or religion. It is argued by some that “[a]ssociations that would promote and embody discriminatory practices on the grounds of race, ethnicity, culture, language, or religion will probably be precluded...”.²⁰² This challenge is explicitly pronounced in relation to two other sections of the Bill of Rights, which are also associational rights that directly deal with identity-related matters: sections 30 and 31.

Section 30 deals with rights to language and culture and provides that each individual “has the right to use the language and to participate in the cultural life of their choice”. A more extensive protection of similar nature is stipulated under section 31, which states that “[p]ersons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community... to enjoy their culture, practice their religion and use their language”. The section also recognises the right of such persons “to form, join and maintain cultural, religious and linguistic associations and other organs of civil society”.²⁰³

South Africa 1996, 1997 (1) BCLR 1 (CC) at para 23.

²⁰² Henrad 2002: 153.

²⁰³ Section 31 (19) (b) Constitution.

Brinkel regards the rights stipulated in section 31 as group rights.²⁰⁴ He bases his argument on the stipulation of the provision which indicates that the rights in question are enjoyed by the persons belonging to a community “with other members of that community”. He therefore concludes that groups are granted rights. Currie makes similar remarks:

The section 31 right requires for its exercise the existence of an identifiable community practicing a particular culture or religion or speaking a particular language. Therefore, if as a result of state action or inaction that community loses its identity, if it’s absorbed without trace into the majority population, the individual right of participation in a cultural or linguistic community will be harmed. Section 31 therefore certainly requires non-interference with a community’s initiative to develop and preserve its culture. In addition, it is likely that it requires positive measure by the state in support of vulnerable or disadvantaged cultural, religious and linguistic communities that do not have the resources for such initiatives.²⁰⁵

When considered in light of the international instruments which provide for the same right, in almost the same exact words, the argument that section 31 represents group rights is hardly convincing. The section, like article 27 of the ICPR, makes reference primarily to persons belonging to a cultural, religious and linguistic community and not to the groups themselves. This puts the right in the realm of individual rights that can be exercised by persons belonging to such minorities and not rights that can be invoked by groups as such. The reference to the fact that the right can be enjoyed with other members of the community makes the right an associational but individual right only.

²⁰⁴ Brinkel 2006: 207.

²⁰⁵ Currie 2002: 35-18.

It is also important to note that section 31 formulates the right in a negative manner. This means the duty that section 31 imposes on the state is negative. The government has only the duty to respect and protect these rights, which means it has to merely refrain from interfering with the enjoyments of these rights. The section does not impose a positive obligation on the state. This further affirms the individualistic nature of the rights provided by section 31.

Finally, it is important to note that the rights provided both in section 30 and 31 cannot be exercised in a manner inconsistent with any provisions of the Bill of Rights.²⁰⁶

5.1.3 Language in education

Another identity-related right contained in the Bill of Rights is section 29(2), which deals with the issue of medium of instruction or often referred to as language in education policy. Language in education was one of the most controversial clauses during the making of the 1996 Constitution. It almost disrupted the talks as the political parties representing the interests of Afrikaners insisted on the recognition of the right to education in minority language. Section 29(2) represents a compromise that was finally agreed upon by the political parties after long painstaking negotiations.

After reiterating the right to receive education in the official language(s) of one's choice, section 29(2) enjoins the state to consider "all reasonable educational alternatives *including single medium institutions*, subject to considerations of equity, practicability and the need to redress the results of past racially discriminatory laws and practices" (emphasis added). From the

²⁰⁶ Sections 30 and 31(2) Constitution.

wording of this section, it is clear that the 1996 Constitution imposes a positive obligation on the state to implement linguistic rights with regard to the medium of instruction in schools and other educational institutions. This is in contrast to the Interim Constitution, which only provided permissive rights to private individuals to establish single medium institutions that cater for the cultural and linguistic needs of their particular community. This departure from the Interim Constitution is confirmed by the Constitutional Court which stated that section 29 imposes on the state a positive obligation which did not exist under the Interim Constitution.²⁰⁷ The SCA has further confirmed this right in *Western Cape Minister of Education and others v Governing Body of Mikro Primary School and another*.²⁰⁸

The right of everyone to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable is a right against the state. The Constitution recognises that there may be various reasonable educational alternatives available to the state to give effect to this right and has left it to the state to decide how best to do so. In order to ensure the effective access to, and implementation of, this right, the state must, in terms of the provision, consider all reasonable educational alternatives, including single medium institutions. Section 29(2) therefore empowers the state to ensure the effective implementation of the right by providing single medium educational institutions. This is a clear indication that in terms of section 29(2) everyone has the right to be educated in an official language of his or her choice at a public educational institution to be provided by the state if reasonably practical, but not the right to be so instructed at each and every public educational institution subject only to it being reasonably practicable to do so.

²⁰⁷ *In Re: certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) para 12- 13.

²⁰⁸ [2005] 3 All SA 436 (SCA) para 31.

The imposition of a positive obligation on the state to implement linguistic rights with regard to medium of instruction in schools and other educational institutions is, in fact, a major departure from the Interim Constitution. It should not, however, be overstated as single medium schools are but one option that must be weighed against a plethora of other considerations. Importantly, educational alternatives, according to section 29, should be evaluated by taking into consideration factors like ‘equity, practicality and the need to redress past injustices’, which, in the South African context, are often given considerable weight.²⁰⁹ This, in fact, has been clearly indicated both by the government and the Constitutional Court. Kader Asmal, the former education minister, argued that “our Constitution [in section 29(2)] speaks directly to the need to receive education in the official language of choice and yet links this to other basic rights such as equity and the need to redress the inequalities of the apartheid legacy”.²¹⁰ Similarly, Sachs, in one of the language in education related cases brought before the Constitutional Court, held that access to education has more cogency than diversity in South African Constitution.²¹¹ The prominence given to access to education

²⁰⁹ Woolman (2007: 57-60), with the view to point out the weakness of the concession made to single medium schools in section 29(2), goes to the extent of arguing that what we have in section 29(2) is “not really a right at all. It is, perhaps, best described as a right to have reasons or an entitlement to justification for the state’s refusal to sanction a single medium public school”.

²¹⁰ Asmal 2002.

²¹¹ *Ex Parte Gauteng Provincial Legislature in Re: Dispute concerning the constitutionality of certain provisions of the School Education Bill of 1995*, 1996 (4) BCLR 537 (CC). For a similar comment see *Laerskool Middelburg & ‘n ander v Departementshoof, Mpumalanga Department van Onderwys, & andere* 2003 (4) SA 160 (T). Yet it is important to bear in mind that an argument merely based on equity does not automatically result in the rejection of single medium schools. Drawing on the *Mikro* case, Woolman (2007: 57-70) aptly notes that “a community’s interest in maintaining its linguistic and cultural integrity may –

over diversity is, in fact, the driving principle behind the decision of the government and courts²¹² to force single medium schools to change into parallel medium schools or dual medium schools,²¹³ including tertiary institutions.²¹⁴

under a very narrow set of conditions – legitimately trump purely ideological commitments to equity”.

²¹² See *Laerskool Middelburg & 'n ander v Departementshoof, Mpumalanga Departement van Onderwys, & andere* 2003 (4) SA 160 (T); *Seodin Primary Schools v MEC Education, Northern Cape* 2006 (4) BCLR 542 (NC); *High School Ermelo & Another v The Head of Department & Others* [2008] 1 All SA 139 (T). For a detailed discussion of these cases, see Woolman and Bishop 2007.

²¹³ The establishment of double-medium schools is advocated by prominent South African language activist Neville Alexander. He argued that all public, including private schools, with some unavoidable exceptions should use two languages as a medium of instruction. He regarded single-medium schools as prohibitively wasteful and expensive projects that would entrench existing racial and ethnic divisions. He is however mindful of the fact that the state has to heed, to a certain extent, to the demands of the more conservative elements in South Africa. (Alexander 1998). A report of a working group on values in education, established by the Department of Education, provided some recommendations on how the policy of the Department can be implemented. Their recommendation, which suggests that South Africans be at least bilingual if not trilingual, demands “that all learners acquire at least one African language as a subject throughout their school years”; the particular language should be determined at a provincial level (Working Group on Values in Education (2000) *Values, Education and Democracy, Report of the Working Group on Values in Education*, available at <http://www.info.gov.za/otherdocs/2000/education.htm>, accessed on 20 February 2007).

²¹⁴ The use of languages in tertiary education has been one of the most contentious issues. The debate has especially been played out in the formerly Afrikaans universities, and more specifically at the University of Stellenbosch. In June 2002, Kader Asmal, then Education Minister, announced that the five historically Afrikaans-medium universities in South Africa have to implement dual or parallel medium tuition in Afrikaans and English. He invoked the same argument of

5.1.4 Limitation of rights

The relevance of the Bill of the Rights to provide protection to the different groups, whether they are directly or indirectly related to identity-related concerns, depends on the extent to which the rights are protected from infringement or subjected to limitations. Of course, none of the rights contained in the Bill of Rights are absolute. The limitation clause under section 36 provides for circumstances under which these rights may be curtailed:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purposes; and
- (e) less restrictive means to achieve the purpose.”

As in many other constitutions, the Constitution also provides that the declaration of states of emergency can result in a temporary suspension of some rights. However, some rights including the rights to equality with respect to unfair discrimination “solely on the grounds of race, colour,

access and other basic rights such as equity and the need to redress the inequalities of the apartheid legacy. This was not received well among the Afrikaans community. An Afrikaans pressure group, *Groep van 63*, “has declared war on [the Minister’s...] decisions to force English on historically Afrikaans universities” (Kriel 2002: 13).

ethnic or social origin, sex, religion or language”,²¹⁵ the right to human dignity and the right to life are non-derogable.²¹⁶

Without delving in detail into the discussion of the limitation clause, for the purpose of this study it suffices to note that the nature of rights is one of the first factors that must be taken into account in determining whether the limitation imposed on a particular right is “reasonable and justifiable”. As noted by some authors, “[a] right that is of particular importance to the constitution’s ambitions to create an open and democratic society based on human dignity, freedom and equality will carry a great deal of weight in the exercise of balancing rights against justifications for their infringement”.²¹⁷ The place of identity-related rights in the constitutional scheme thus determines the extent of protection that these specific rights in the Bill of Rights provide to the protection of the identity of a particular group. As the discussion of language in education policy reveals, other rights are given precedence over identity-related rights. For example, the ‘hierarchy of norms’ applied when confronted with the problem of language in education tends to put access to education at the top and diversity at the bottom.²¹⁸

5.1.5 The enforcement of the Bill of Rights

The South African courts play an important role in the enforcement of the Bill of Rights. Anyone who alleges that his or her right has been infringed or threatened can seek redress from a competent court who may grant appropriate relief, including a declaration of rights.²¹⁹ The courts can also

²¹⁵ Section 37(5) (c), Table of non-derogable rights, Constitution.

²¹⁶ Section 37(5) (c), Table of non-derogable rights, Constitution

²¹⁷ De Waal, Currie and Erasmus 2001: 156.

²¹⁸ See also Strydom 2002: 27-28.

²¹⁹ Section 38 (1) Constitution.

declare invalid any law or conduct that is inconsistent with the Bill of Rights to the extent of the inconsistency.²²⁰

The protection of rights is not, however, limited to the courts only. There are also other independent institutions, commonly referred to as Chapter Nine institutions, which are established by the Constitution to play an important role in the promotion and protection of the Bill of Rights. These are the Human Rights Commission, the Public Protector, the Commission for Gender Equality and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (discussed below), the Auditor General and the Electoral Commission. The terms of reference of these institutions mandate them to promote the culture of human rights and democracy. The South African Human Rights Commission is, for example, tasked with promoting respect for human rights and, in particular, with monitoring the measures taken by government to the protection and promotion of rights entrenched in the Bill of Rights. It has the power to investigate and to report on the observance of human rights. It is also mandated to take steps when rights have been violated.

5.1.6 Assessment

Almost all the rights included in the Bill of Rights are individualistic in their orientation with the sole exception of the provision on the medium of instruction. They do not have a group element. Individual rights are regarded as the bottom line or threshold for the equal treatment of all South Africans.²²¹ This marks the heavy emphasis which the Constitution has placed on an individualistic orientation of rights. It signals a firm belief in individual rights and equality.

²²⁰ Section 172 (1) Constitution

²²¹ Meyer 2007.

The Bill of Rights does provide for all individual rights that are often deemed relevant to protect the identity of individuals that belong to different ethnic groups within liberal democracies. As the discussion on the limitation of rights reveals, however, these rights are subject to limitations. Other rights are also given precedence over identity-related rights as it is evident in the case of language in education in relation to which courts held that access to education has more cogency than diversity in South African Constitution.²²² This limits the effectiveness of the individual rights regime to protect identity-related concerns of persons belonging to an ethnic group.

As argued in Chapter Two, universal individual rights are not enough to protect identity-related concerns in a multi-ethnic society. The adoption of fundamental civil and political rights, it is argued, needs to be supplemented by institutional measures that reflect the state's commitment to respond to the anxieties of ethnic groups that are not territorially concentrated. The next question is thus whether the South African institutional response includes other non-territorial measures that can be used to respond to the claims of such groups.

5.2 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities: A commission for dispersed and intra-provincial minorities?

In addition to judicially enforceable Bill of Rights, the Constitution provides for non-territorial protection of language and culture by providing for the establishment of a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (hereafter the Commission).²²³ The clause that provides for the establishment of the

²²² See the discussion on language in education in section 3.3 of this chapter.

²²³ Section 185 Constitution.

Commission was included in the last hours of the adoption of the Constitution in order to accommodate the demands of sections of the Afrikaner community. The fact that some Afrikaner-based parties were the major reason behind the establishment of this Commission invokes the relevance of this specific Commission to the protection of the rights of dispersed ethnic groups and intra-provincial minorities. This issue becomes pertinent in light of the power of the Commission to recommend the establishment of cultural councils. In this section, we shall determine the relevance of this Commission, and especially the establishment of cultural councils, to advance the rights of ‘cultural and linguistic communities’. Before that, however, a brief description of the structure and functions of the Commission is in order.

The Constitution lays out, very briefly, the structure and function of the Commission and mandates Parliament to enact legislation that provides for the establishment of the Commission. This mandate was eventually responded to when Parliament, six years after the adoption of the Constitution, enacted the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002 (hereafter the ‘CRLC Act’).²²⁴ According to section 186 of the Constitution, the Commission must “be broadly representative of the main cultural, religious and linguistic communities in South Africa”. The Commission is also required by the same constitutional stipulation to “broadly reflect the gender composition of South Africa”.²²⁵ This is true of all the Chapter Nine institutions, which are required to reflect the race and gender composition of the population.

²²⁴ The Commission was established only in 2003.

²²⁵ Section 186(2) (a) Constitution.

Section 185 of the Constitution and provisions of the Act provide for both the normative framework, which guides the activities of the Commission, and the mechanisms by which these normative guidelines can be translated into institutional realities.

5.2.1 The normative framework

The normative framework for the activities of the Commission is stated in the form of the two constitutional objectives of the Commission. The first is to “promote respect for the rights of cultural, religious and linguistic communities”.²²⁶ This normative guideline has two implications. First, it recognises the existence of cultural, religious and linguistic communities. The objects of the Commission are not individuals who are members of ethnic and linguistic groups but the communities themselves. This represents an important recognition of the diverse communities of South African society. Second, it recognises that these communities have rights that have to be promoted by the state. This amounts to an equivalent of recognising group rights in contrast to individual rights that the Constitution highly emphasises. This has provoked many to express the concern that the Commission may have the effect of entrenching ethnic identity and ‘even strike tensions’ where it did not exist before.²²⁷

The mandate of the Commission to recognise and promote the rights of cultural, religious and linguistic communities is not, however, without qualification. The Commission, according to its other primary object, must also work towards ensuring the development of harmonious co-existence and shared identity. This normative guideline requires the Commission to “promote and develop peace, friendship, humanity, tolerance and national

²²⁶ Section 4 Act No 19 of 2002.

²²⁷ Carrim 1999.

unity among the different communities on the basis of equality, non-discrimination and free association”.²²⁸ This represents a countervailing concern for national unity. The inclusion of religious communities in the mandate of the Commission also indicates an effort to dilute the potential centrifugal effects of protecting cultural communities. As indicated by Steytler and Mettler, “[w]ith religion not being territorially, culturally or linguistically based, but cutting across such cleavages, the focus of the Commission is dispersed”.²²⁹

In sum, the Commission has to achieve the difficult balance between the recognition and promotion of the diverse South African communities and the need to promote and maintain national unity.

5.2.2 Functions of the Commission

Section 185(2) of the Constitution provides for functions through which the Commission can translate its objectives into realities. One of the primary functions is the establishment of cultural councils. The Commission is also empowered to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities. In more detail, the establishing Act of the Commission provides it with an advisory role. Accordingly, the Commission is empowered to “receive and deal with requests related to the rights of cultural, religious and linguistic communities”.²³⁰ The requests are mostly likely to come from the different spheres of government and organs of state that may call on the Commission to advise

²²⁸ Section 185(1) (b) Constitution.

²²⁹ Steytler and Mettler 2001: 100.

²³⁰ Section 5(1) (h) Act 19 of 2002.

them on legislation and policies related to cultural, religious and linguistic matters.

A more reactive role is also assigned to the Commission in that it can make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities. Furthermore, it is empowered to “bring any relevant matter to the attention of the appropriate authority or organ of state and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter”.²³¹ Although the Act does not shed much light as to what these ‘relevant matter[s]’ might be, it can only be assumed that the matter must relate to the protection of the rights of cultural, linguistic and religious communities. As Carrim²³² aptly indicated, this may include matters like “the development of art, music, literature, drama, sculpture, museums, monuments and other representations of culture”.²³³

Finally, the Commission is also entrusted with a dispute-settling function. It has to facilitate “the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of state where the cultural, religious or linguistic rights of a community are affected”.²³⁴ It may also report any matter which falls

²³¹ Section 5(k) Act 19 of 2002.

²³² It is important to note that Carrim was the chairperson of the relevant portfolio committee that steered the enabling legislation of the Commission through Parliament.

²³³ Carrim 1999: 264.

²³⁴ An issue that was debated in the Parliament was whether the Commission should have the power to protect the cultural, religious and linguistic rights of communities. The majority of parliamentarians deemed it sufficient to limit the

within its powers and functions to the South African Human Rights Commission for investigation.²³⁵

5.2.3 Cultural Councils

Section 185 (1(c)) of the Constitution states that the Commission can “recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa”. This means the power of the Commission in the establishment of cultural and other councils is limited to recommendation. The final decision to establish such council rests with the national Parliament that has the power to enact national legislation to that effect.

Paradoxically, neither the Constitution nor the Act provides for the nature and functions of cultural councils. A comparative observation would, however, reveal that cultural councils have traditionally been used to advance the interests of ethnic communities and exercise jurisdiction over matters that are relevant for the protection and promotion of ethnic

function of the Commission to the role of a mediator between communities. As Woolman (2007: 58-74) noted, “[t]his role as mediator, rather than litigator, meant that the [Commission] was only granted the power to bring matters of concern to the attention of ‘appropriate authorities’ and to request an appropriate response”.

²³⁵ It is more likely that the mandate of the Commission may clash with other institutions established by the Constitution. This is more likely to be the case with the Pan South African Language Board which deals with language matters. Coincidentally, it is important to note that the provision on the Commission is located in Chapter 9 which provides for the establishment of the six ‘State Institutions supporting constitutional democracy’. As a chapter 9 institution, the Commission, which is accountable to the National Assembly, is bound to be independent, subject only to the Constitution and the law, to act impartially and to perform its functions without fear, favor or prejudice.

communities. This includes exercising jurisdiction over a wide range of identity-related activities, such as education, culture, libraries, theatres, the media, museums and sports. Yet the fact that both the Constitution and the Act do not elaborate in sufficient detail on the nature of cultural councils (except for the general statements of purpose outlined under section 36-38 of the Act) has made many of these issues subject to speculation. Some of these issues are discussed below.

5.2.3.1 Subjects of cultural councils

Both the Constitution and the Act give little indication of the kind of communities that can legitimately ask for the establishment of or participation in cultural council/s. Two minimum conditions can be inferred both from the Constitution and the establishing Act. First, the community must fall in any of the three types of communities (i.e. religious, linguistic and cultural communities). Second, it should be established through voluntary association of individuals without any ascription of identity from the state or any other group.²³⁶ The establishing legislation, when defining a community/cultural council, stresses that the community must be “a voluntary association of persons or community organisations based on the principle of freedom of association”.²³⁷

Carrim argues that “ethnic, not racial, communities would qualify to participate in a cultural council”.²³⁸ He then illustrates this by stating that

²³⁶ The Commission may use different methods to ascertain that a claim for a cultural council is supported by the majority of people who identify themselves with the community for which protection in a form of cultural council is being sought. This, as Carrim (1999), suggested, may include referenda, petitions, elections or other mechanisms.

²³⁷ Section 1 Act 19 of 2002.

²³⁸ Carrim 1999: 263.

Afrikaners, if they “were to qualify for participation in a cultural council on linguistic grounds...Afrikaans-speakers, irrespective of race, would be represented”.²³⁹ Carrim is correct in pointing out that the Commission caters for ethnic as opposed to racial communities although the term ethnic has deliberately been avoided from the Constitution and replaced by the more vague ‘linguistic and cultural communities’. This should not, however, imply that Afrikaners cannot qualify to establish cultural council based on linguistic and cultural criteria as the latter could arguably differentiate between Afrikaners and Afrikaans-speaking Coloured community. Most members of the Coloured community, for example, do not share the same concern as Afrikaners about the status of Afrikaans. Carrim’s outright rejection of the eligibility of the Indian community for consideration of cultural councils unless based on their religion (i.e. a Muslim or Hindu community) is also problematic as it is reminiscent of ascribed identity where individual’s identity is determined solely based on some objective criteria. His view is dangerously close to the apartheid’s static view of identity and risks the problem of imposing identity. It is up to members of that community to select the identity that defines them best (be it cultural, linguistic or religious) with the clear exception of, of course, race.

5.2.3.2 Cultural council to all communities or to specific minorities

Related, but not limited, to cultural councils is the issue of whether the Commission will be available to all linguistic and cultural communities or only to minorities. The Constitution does not distinguish between communities when it makes the services of the Commission available for cultural, religious and linguistic communities. Carrim suggests that the Commission will be available for “cultural, linguistic and religious

²³⁹ Carrim 1999: 263.

communities generally – which means ‘majority’ communities as well’.²⁴⁰ This position, which stresses the availability of the services of the Commission including the potential establishment of cultural councils for all cultural, linguistic and religious communities, finds support in the wording of the Constitution which does not make such distinction.

Of course, the Commission, as indicated earlier, was originally designed to accommodate the demands of some Afrikaner-based parties. This, considered with comparative experiences, might suggest that cultural councils should be established for communities that require special protection because of their historical, demographic or settlement features. This especially includes communities that are either too dispersed or few in numbers to promote their rights as a group within some form of territorial framework. Although the Constitution does not make such distinction, the Commission, one may thus reasonably argue, has to take these considerations into account. It may have to focus, for example, on communities that, because of various reasons, are not adequately accommodated through the national and subnational state systems. This, however, does not necessarily exclude ‘majority communities’ from the mandates of the Commission as the latter could be minorities in some provinces. This means although Zulu speakers in KwaZulu-Natal may not qualify for a cultural council, the same cannot be said of Zulu speakers in other provinces where they are in minority. On the other hand, to simply require the Commission to extend its services to ‘majority communities’ might give rise to a situation where the Commission is faced with demands from a plethora of communities as a result of which it may not be able to achieve its constitutional mandate.

²⁴⁰ Carrim 1999: 265.

Considering the heavy emphasis on national unity, the proposal to focus on specific minorities might not be the route that the Commission chooses to follow. The extension of the services of the Commission to all cultural communities may also have the effect of diluting the special claims of particular cultural groups. Depending on the strength of the claims of particular ethnic groups and their response to the Commission's 'coffee to all approach', the Commission's decision to extend its service to all cultural communities may promote national cohesion or exacerbate ethnic tension.

5.2.3.3 One or many cultural councils

It is not clear whether the Constitution provides for the establishment of one cultural council that represents the diverse communities in South Africa or a cultural council for each distinct cultural community. Carrim, dealing with the same issue, argues for one national cultural council.

By interacting in the same forum the different communities will get to know each other better and will develop mutual respect. They will have the opportunity to mediate their differences. They will also gradually realize that whatever their cultural differences, they share a broad core of values – and in this way a sense of South Africanness will be fostered. On the other hand, separate councils will serve to isolate the communities from each other, fossilise their ethnic identities and create unnecessary suspicion and competition among them. A single council will also save considerably on costs.²⁴¹

At first glance, this argument finds support in the wording of the Constitution, which envisages the establishment of “a cultural or other

²⁴¹ Carrim 1999: 264.

council or councils for a community or communities in South Africa”.²⁴² The argument also finds support in the other object of the Commission, namely the promotion of national unity. The question is whether the establishment of one cultural council for all the different communities would provide for adequate protection and promotion of the rights of cultural communities. Although the alternative defended by Carrim cannot be easily dismissed as ineffective, a brief comparative observation would reveal that cultural councils are often established for a specific community to provide for some form of non-territorial autonomy over matters that are of particular relevance to the concerned community. It might be difficult, if not impossible, for a single cultural council to do what cultural councils are traditionally supposed to do for the communities they represent.

5.2.4 Assessment

The government’s lack of enthusiasm about the Commission was evident in the fact that the Commission, whose establishment is envisaged by the Constitution, had not been established until 2003. In fact, the enabling legislation was only enacted six years after the adoption of the Constitution, indicating the scant attention that the government had given to the Commission. The lack of political will to give effect to the constitutional promises of the Commission is evident.

In addition, the Act that finally established the Commission as well as the practice of the Commission suggests an emphasis that is skewed in favour of promoting national cohesion rather than protecting cultural diversity. The emphasis on national unity comes out clearly right from the beginning in the preamble to the Act. The preamble enjoins the Commission to play a key role in “assisting with the building of a truly united South African

²⁴² Section 185(1) (c) Constitution.

nation bound by a common loyalty to our country and all our people’.²⁴³ Another object of the Commission, which is added by the Act, instructs the Commission to “promote the right of communities to develop their historically diminished heritage”.²⁴⁴ This brings into the equation redress and equity thus watering down diversity-based claims of other groups. The effect of this is noted by Murray when she commented that:

[t]here is something of an irony in the fact that the ‘cultural rights commission’ established to convince right-wing Afrikaners that their language and culture would not be destroyed by ‘majority rule’ will, in fact, be an institution primarily representing the many black ethnic groups which were turned into political entities by apartheid and whose political identity the new order has sought to downplay in its nation-building project.²⁴⁵

The extension of the services of the Commission to groups that have not sought such particular protection is a reflection of the government’s ambivalence to use the Commission to fulfil the purpose it is established for.²⁴⁶ The constitutional possibility for establishing cultural councils seems to be also muted both by the Act and the practice of the Commission. This is clear from the fact that the Act or any other legislation has not clearly indicated the criteria for the establishment and

²⁴³ Act 19 of 2002.

²⁴⁴ Section 4(d) Act 19 of 2002.

²⁴⁵ Murray 1999: 273.

²⁴⁶ When Chris Nissen, the former ANC leader in the Western Cape, was appointed by the Minister of Constitutional Development to investigate the establishment of the Commission, his first visit was a meeting with a San community, a group that are often referred as ‘indigenous people’ of South Africa, as opposed to the Afrikaner community that demanded the establishment of such system in the first place (Steytler and Mettler 2001).

recognition of these councils.²⁴⁷ With the confusion that surrounds the nature and function of these councils and the patently clear lack of political will, the establishment of cultural councils is unlikely to be on the cards in the near future. In a nutshell, the general trend puts the Commission in the ranks of ‘transformative institution’ and not the ‘diversity commission’ that the Constitution, though in broad terms, envisaged it to be.

6. Conclusion

The post-apartheid South Africa, compared to other multi-ethnic societies, has a unique advantage in so far as ethnic relationships are concerned. The majority of the populations of South Africa, despite their ethnic diversities, seek to belong to one political unit. The majority of the black community that belong to ten different ethnic groups and whose ethnic identity the apartheid government promoted have refused to champion political parties that invoke ethnic identities. As the increasing incursions of the ANC into the traditionally power bases of the IFP reveals, even among members of the Zulu ethnic group, there is no clear support for those that use ethnicity for political mobilisation. The power base of Afrikaner parties that claimed to promote Afrikaner identity has also diminished over time as they failed to convince their constituency to rally behind a nationalist agenda. The incremental gain of white and especially Afrikaner voters by the Democratic Alliance (DA), a party with no nationalist agenda, implies the unpopularity of centrifugal demands among Afrikaners. It indicates the decline in support for a separate Afrikanerism. There is thus no single political organisation with a nationalist or separatist agenda that commands significant support from any particular section of the South African

²⁴⁷ See Henrad 2007; Murray 1999. Woolman (2007: 24F-19) states that the Commission “has not registered a single cultural council because it still lacks criteria and procedures for their establishment”.

society.²⁴⁸ This provides South Africa with an important ingredient of national cohesion. The issue is how the institutional model adopted by South Africa responds to this social reality. Does it still simply try to build a single national identity or provide adequate recognition and accommodation to the ethnic diversity that characterises the society?

Few general observations can be made with regard to the institutional model that South Africa has adopted in response to the multi-ethnic challenge. First, the Constitution gives recognition to the ethnic diversity that characterises South African society. It has provided for the introduction of projects that signify the recognition of the diverse ethnic groups that inhabit the country. The preamble, the national anthem, the flag and the official recognition of all the eleven languages is indicative of a state that wants to build national unity out of its ethnic diversity. Notwithstanding its emphasis on promoting national unity, the South African approach does not deny or suppress ethnic diversity. An important aspect of the Constitution is also that it refrains from actively promoting ethnic diversity. It does not use ethnicity as a constitutional organising principle of state institutions. It eschews the territorilisation of ethnic differences. In a nutshell, it does not reward political mobilisation along ethnic lines.

²⁴⁸ The Freedom Front Plus, despite its reconstitution as the Alliance of three Afrikaner parties, was only able to increase its support from a dismal 0.80% in 1999 to 0.89 in the 2004 election despite the fact that almost 60% of the 9.3% whites in South Africa are Afrikaans speaking. The same is true about the United Christian Democratic Party (UCDP), which claim to represent the Tswana ethnic interests. In the North West, where almost two-thirds of the population belongs to the Tswana ethnic community, the UCDP's support in the 2004 election stood at 8.49%. The Minority Front, which claim to represent the Indian community, secured only one seat in the National Assembly in 2004. For more, see Hoeane 2004.

Second, territorial autonomy does not figure prominently in the South African multi-sphere government. This is not so much because of the geographical configuration of the state which does not provide for territorial expression to ethnic diversity as it is because of the limited legislative role that provinces are made to assume in the political process. It is important to note that the system still provides room for ethnic accommodation. The provinces play an important role in providing the different ethnic groups representation in the leadership structure of the provinces. In most respects, the door for using the provinces to accommodate ethnic interests is also kept ajar. The open system of provinces allows the latter to serve as a safety net, which, with some adjustments, can respond to new ethnic challenges. It is also important to note that the seemingly limited role of provinces has not made the latter less significant for political parties that want to capture the provinces.

Third, the processes and institutions of shared rule that are used to advance common national harmony and national unity are adequately provided by the Constitution. These range from the proportional electoral system to the NCOP and the principles of cooperative government. The institutional design allows for both the representation of group and regional interests in the national decision making and the development of common interests. The fact that these institutions have thus far not been used effectively should not be considered as the weakness of the constitutional framework but more so as a result of the political context.

What becomes clear from this review of the South African constitutional approach is that South Africa has shied away from the policies of both suppressing ethnic identity and actively promoting ethnic diversity. The South African response goes in line with both the political relevance of ethnic identity among the South African society and the general principles

pertaining to the accommodation of ethnic diversity. The decision to avoid ethnicity as the explicit principle of political organisation is consistent with the fact that ethnicity in South Africa is still not the most relevant political divide, which warrants an explicit constitutional recognition. The emphasis on shared rule as opposed to self rule is also consistent with the prevailing desire of belonging to one state. On the other hand, the decision not to adopt a policy against ethnic diversity but rather to leave space for ethnic accommodation represents the recognition of the reality that there are groups, albeit numerical minorities, that demand the recognition of their ethnic identities. Moreover, it represents the basic principle that any multi-ethnic country, like South Africa, needs to recognise and be sensitive about ethnic diversity. Generally, the approach adopted in South Africa, which refrains from actively encouraging ethnicity while at the same time falling short of totally shutting down avenues for ethnic accommodation, resonates of a cautious pragmatic approach towards ethnic diversity; an approach that has set South Africa on a pedestal of prevention, the basic aim of which is to protect the mushrooming of conditions that precipitate the emergence and consolidation of strong centrifugal tendencies. In the context of South Africa, where centripetal forces are strong, the decision of the state to manage the emergence of centrifugal tendencies by using the constitutional and legislative framework as a 'preventive tool' seems appropriate.

In as much as the preventive approach has managed to remove ethnic traits from the constitutional and political system, it has not been totally successful. Although there are no strong evidences to suggest that the national executive is dominated by a particular ethnic group, some have alluded to the ethnic imbalance that is prevalent in the current cabinet. Unless addressed immediately, these claims are likely to feed into the contrived appeals of ethnic brokers eventually putting strain on inter-ethnic relationships. A preventive approach does not require making ethnicity a

prime principle of organising the cabinet but that enough attention should be paid to ethnic balance.

Furthermore, as the result of the failure to be consistently directed by the same spirit of accommodation that made the political transition possible, the constitutional representation and commitment is, on occasions, at odds with the political practice. There seems to be a widespread tendency to regard the ‘accommodationist elements’ of the Constitution as transitory measures. This sentiment seems to partly underlie the current debate about the future of provinces. Accommodationist elements of a constitution can be used to reach a peace compact and bring together the protagonists. That may make a constitutional arrangement more like what Steytler and Mettler referred to the Interim Constitution as a ‘peace treaty’.²⁴⁹ However, an ‘accommodative constitution’ goes beyond the settlement of conflicts and guides the continuing management and resolution of ethnic conflict in a multi-ethnic society like South Africa. Unlike a peace treaty, accommodationist elements of the constitution should not be transitory in nature. They are built based on the premise that a multi-ethnic society must always ensure that the different groups are provided with the means for autonomy, political participation and representation. Of course, the degrees of autonomy and representation may vary depending on the realities of the society at a particular point in time. With the dynamics of ethnic identity and ethnic relationships, the rules may have to be adjusted here and there. However, the basic principles of recognition and accommodation in a multi-ethnic society and the rules that translate these institutional principles into a reality must, by and large, remain in place. Regarding the provinces as a product of compromise that are no longer relevant reveals a failure to note the important role that provinces play in providing the different ethnic groups a

²⁴⁹ Steytler and Mettler 2001: 93-106.

means for political participation, representation and hence self-management.

The disposition to regard the accommodationist elements of the Constitution as temporary measures seems to also partly explain the failure to adequately act on or give effect to the promises of the Constitution. A case in point is the failure of the government to apply the language clause. The constitutionally declared official multilingualism has become a mere lip service to linguistic equality as English becomes the lingua franca of government business and education. The reluctance of the government first to establish and then support the activities of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities reveals the lack of political will to give effect to the constitutional promise of accommodating identity-related concerns. The failure to give practical effect to these and other inclusive elements of the Constitution represents a disquieting departure from the constitutional commitment to build a state that belongs to all who live in it. More importantly, it risks rendering the constitutional recognition of ethnic diversity a hollow gesture.

South Africa has to capitalise on the lack of strong centrifugal forces in its endeavor to build a state that 'belongs to all who live in it'. Yet, it must continue to guard itself from the tempting obsession of implementing a nation-building project that is insensitive towards ethnic accommodation. Increasing insensitivities towards issues of ethnicity and ethnic identity might create room for ethnic tension to replace racial division.

Chapter Six

Ethnicity in Ethiopia's political and constitutional development

1. Introduction

Un museo di popoli. 'Museum of peoples'. That was how Conti Rossini, the famous Italian scholar, described the Ethiopian Empire in his book *Historia di Ethiopia* in 1928. To date, that remains an accurate description of the multi-ethnic, multi-linguistic and multi-faith Ethiopia. A little less than eighty ethnic groups, speaking twice as many dialects, inhabit the country. Despite its numerous ethnic groups, however, two-thirds of the 70 million populations¹ belong to three major ethnic groups. The Oromo are the largest ethnic group accounting for 32.1% of the population, followed by the Amhara (30.1%) and the Tigre (6.2%); the next four numerically strong ethnic groups are the Somali (5.9%), Gurage (4.3%), Sidama (3.5%) and Welayta (2.4%).² With no single ethnic group accounting for the majority of the population, however, Ethiopia, like most other African states, can be appropriately described as a country of minorities.³ On the other hand, as a country that has accepted Christianity, in its orthodox form, in the third century AD and practiced it as a state religion until 1974, Ethiopian is often

¹ According to the last census, which was conducted in 1994, the population in Ethiopia was about 54 million. The current estimation, which is about 70 million, makes the country the second most populated country in Africa.

² Central Statistical Authority 1994.

³ The languages spoken in Ethiopia are categorised into four language groups: Semitic, Cushitic, Omotic and Nilo-Saharan. The first three belong to the broader parent language known as proto-Afro-Asiatic. Of the major linguistic groups, the Amhara, Tigre and Gurage belong to the Semitic language group while the Oromo, Somali, Welayta and Sidama are Cushitic in origin. Most of the languages in the South-western Ethiopia, especially those located on both sides of the Omo River, belong to the Omotic language group. The western fringes of the country are inhabited by Nilo-Saharans (see Levine 2000; Bender *et al* 1976).

portrayed as a Christian state. The description of Ethiopia as a Christian state could, however, be misleading as no less than half of the population are Muslims by faith.⁴

This chapter traces the role and place of ethnicity in Ethiopia's political and constitutional development. The focus is to explore the political role of ethnicity with the view to bringing the present political and constitutional development into perspective. Although a discussion of the political and social forces that played out on the political terrain of a state is usually important for an informed diagnosis of a country's political malaise, these discussions are of particular importance in Ethiopia as they are at the centre of the current political and constitutional discourse. Ethiopia's past is a very important part of the current debate on the organisation of the Ethiopian state. As one author has put it, "differences over the present dispensation are fought as battles over historical interpretation".⁵

The chapter has seven related parts. Part two discusses very briefly the period prior to the imperial expansion that brought about the modern day Ethiopia. It especially focuses on the historic Ethiopian state or Abyssinian Kingdom, as it is usually referred to, and examines the place of ethnicity during that period. Part three looks at how the forceful imperial expansion that took place in the last quarter of the nineteenth century culminated in transforming a largely homogenous Kingdom into a multi-ethnic empire, thereby injecting an ethnic dimension to the backward agrarian feudalism

⁴ According to the 1994 population census, Orthodox Christians account for 50.6% of the population, followed by Protestants (10%) and Roman Catholics (0.9%). The Muslims constitute 32.8% of the population (Central Statistics Authority 1994). It is estimated that the Muslim population has increased significantly and estimated to account for 40-45% of the population.

⁵ Andreas 2003: 144.

under which the Ethiopian peasantry laboured for centuries. Part four discusses the consolidation of the domination under the centralisation-driven HaileSelassie regime. It also notes the emergence of the ‘question of nationalities’ and ethno-nationalist movements. The half-hearted regional autonomy solution that was introduced by the 1987 Constitution is briefly touched upon in part five. Part six concentrates on the transitional charter and examines its response to the demands for the accommodation of ethnic diversity. The final section, part seven, brings together the discussions on the general implications of these actions and policies of the successive Ethiopian governments by focusing the debate on ethnicity and its saliency in Ethiopia before finally making some concluding remarks.

2. Ethnicity in historic Ethiopia

The conglomeration of the heterogeneous societies of what is today Ethiopia under one state was achieved in the last quarter of the nineteenth century through conquest and territorial expansion.

2.1 Historic Ethiopia

The empire builders came from the northern part of the present day Ethiopia, historically known as Abyssinia,⁶ which was largely inhabited by

⁶ This designation is derived from ‘Habashat’ ‘one of the tribes that inhabited the Ethiopian region in the pre-Christian era (see Bahru 2005). Informally, Ethiopians tend to refer to themselves as ‘Habasha’ (Abyssinians). Bahru (2005: 1) provides a succinct account of how the term Ethiopia came to be applied to the present day Ethiopia: “The term Ethiopia is of Greek origin and in classical times was used as a generic and rather diffuse designation for the African landmass to the South of Egypt. The first known specific application of the term to the Ethiopian region is found in the Greek version of the trilingual inscription of the time of Ezana, the Aksumite king who introduced Christianity into Ethiopia towards the middle of the fourth century AD. This adoption of the term continued with the subsequent translation of the Bible into Ge’ez, the old literary language. The Kebrā Nagast

the Amhara and the Tigre. The Amhara, who speak Amharic and largely orthodox Christian, were further divided into regional administrations that included Wello, Gonder, Gojjam and Shewa. The Tigre, situated in the northern region of Tigray, also including most part of what is today Eritrea, maintained their language (i.e. Tigrinya) but adhered to the same religion. The rulers of these two groups can trace their origin to the ancient Axumite Kingdom that ruled over most of the northern Ethiopia, including Eritrea, and the South Arabia coastal areas across the Red Sea. Following its collapse in the 8th century, which was precipitated by the growing pressure of Islam in the area and the Beja expansion, power shifted to the hinterlands. This was followed by the rise to power of the Agaw, a Cushitic-speaking people that inhabited pockets of northern Ethiopia. Their dynasty, known as the Zagwe dynasty, was rather short-lived (i.e. 1150-1270). It was overthrown by Yekuno-Amlak, an Amhara from what used to be the Wello region. With the aim of legitimising his reign and discrediting the Zagwe as usurpers, Yekuno-Amlak declared his dynasty as ‘Solomonic’, marking the beginning of the Solomonic dynasty that traced its origins to King Solomon of Israel and Queen Sheba of Ethiopia and through them to the House of David and ultimately to Jesus.⁷

(“Glory of Kings’), written in the early fourteenth century, which gave the ‘received’ account of the story of the Queen of Sheba and King Solomon, not only linked to the Ethiopian kings to the House of Israel, but also sealed the identification of the term Ethiopia with the country; since the thirteenth century, when a dynasty that claimed to represent the restoration of the Solomonic line came to rule the country, its rulers have styled themselves ‘King of Kings of Ethiopia’ ”.

⁷ The conventional history of Ethiopia is traced back to the alleged visit of Queen of Sheba from Ethiopia to King Solomon of Israel in the tenth century BC. Hence, as Bahru (2005:7) remarks, “the reference to Ethiopia’s three thousand years of history that we hear and read so often”. The mythology of King Solomon of Israel and Queen Sheba of Ethiopia, as indicated by many writers, was a powerful

Although the successive kings of the Solomonic dynasty were able to extend their military strength and territorial breadth, they did not establish effective rule over the whole of the present day Ethiopia.⁸ Save for the inter-trade interactions, the frequent raid and the intermittent tribute, the sphere of influence of the Christian Kingdom⁹ was largely confined to the northern and central highlands of the country. The lands of the present day Ethiopia were not brought under one central authority. In fact, the southern regions existed under different political systems. Some had hierarchical Kingdoms while others were more egalitarian in their societal organisation. As Bahru succinctly summarised, “their organisations ranged from communal societies to states with powerful kings and elaborate mechanisms for the exercise of authority”.¹⁰ The most prominent Kingdoms include Kingdoms of Kafa, Walayta and Janjaro. The Oromo, according to some authors, were not under the military control and political influence of the Christian Kingdom; before their forceful incorporation to the Ethiopian empire, writes Mohammed, “the Oromo led an independent existence as masters of their

source of legitimisation by the Ethiopian monarchs. This legend was instrumental in positing the authority of the kings of Ethiopia as a mandate from heaven. This continued until 1974 when the popular revolution brought to an end the era of emperors and kings (see Merara 2002: 7).

⁸ The two Solomonic kings notable for their expansion of military might and territorial control were Amda-Tseyon (1314-1344) and Za’ra-Yacob (1434-1468). Their sphere of control, according to some writers, extended from the coast of Indian Ocean to the Barka valley in western Eritrea and comprising 99 regional states and provinces. In addition to the northern and central Christian ones such as Hamasen, Nara, Tigray, Amhara, Shewa, and Damot, southern Moslem sultanates such as Yifat, Dawaro, Hadiya, Adal and Bali are included (see Fasil 1997: 7-8).

⁹ The terms Abyssinian Kingdom and Christian Kingdom are used here alternatively to refer to the historic Ethiopian state.

¹⁰ Bahru 2005: 16.

destiny and makers of their own history".¹¹ The originally egalitarian Oromo society replaced its age-based republican system of socio-political organisation, the famous Gada system, with hierarchical monarchical institutions. Five such Kingdoms were established among the Oromo.¹² These groups of people were not directly engaged in the Abyssinian Kingdom. They were rather peripheral to the politics of the Abyssinian Kingdom that was largely stationed in the northern part of Ethiopia.

The control of the imperial state over the historic Ethiopian state was weakened further as a result of a series of events that unfolded in the 16th century. First was the rise of Ahmad Ibn Ibrahim, usually known as Ahmed Gragn, a warrior that mobilised the Muslim population of Afar and Somali against the Christian Kingdom. The Kingdom suffered a series of defeats between the periods of 1529-1543, incurring untold destruction including the death of its Emperor, Lebna-Dengel, as fugitive. It was only the intervention of a 400 strong Portuguese expedition, which came upon the request of the late king that put a hold on the rapidly advancing Gragn's army. As the damage had already been done, the support from Portugal contributed little to restore the glory and might of the Christian Kingdom.

The end of the conflict with Ahmed Gragn was immediately followed by the extensive expansion of the Oromo towards central, northern and western Ethiopia. The Christian Kingdom, weakened by the Ahmed Gragn invasion, was in no position to check this significant population movement.¹³ Bahru

¹¹ Mohammed 1994: 1.

¹² Mohammed 1994.

¹³ Mohammed (1994) challenges the conventional view that the Oromo expansion was made possible by the civil war that ensued after 1559 in the Christian society. According to Mohammed (1994: xiii-xiv), "the success of the Oromo was

remarks that the fifty years expansion of the warlike Oromo people had dramatically changed the demographic shape and political geography of the state.¹⁴ Some moved to the heartland of the Christian society creating a buffer zone between the Christian highland and the Afar of the Red Sea plains. The expansion had created “differentiation amongst the Oromo themselves”.¹⁵

An important feature of the Oromo expansion was that the Oromos did not impose their language, culture or religion on the people they conquered. They rather assimilated to the community they conquered by adopting the religion of the people among whom they settled, which could have been either Christianity or Islam.¹⁶ They also spoke the language of the community they conquered. This capacity to assimilate might explain their rise to join the power circles of the ruling class in the Abyssinian Kingdom and influence royal politics. A good example is the rise of the Yejju dynasty, Oromo nobles¹⁷ who were the real rulers of the Abyssinian Kingdom beginning from the last quarter of the eighteenth century and reaching its peak between the periods of 1803-1825, although members of the dynasty did not personally assume the throne. Believing that the monarchy belongs to the House of Solomon, they ensured that a ‘Solomonic emperor’ was the actual crowned monarch. In most cases, however, the crowned emperor was a puppet in whose name the Yejju nobles ruled.

inevitable and the civil war itself was generated mainly by the inability of the Christian leadership to stop the Oromo advance”.

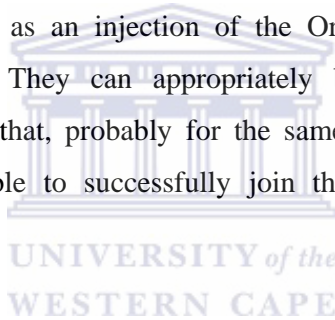
¹⁴ Bahru 2005.

¹⁵ Clapham 1994: 29.

¹⁶ Levine 2000.

¹⁷ Although Muslim Oromos in origin, members of the Yejju dynasty, like most of the other Oromos that migrated towards the north in the 16th century, “had become Christianised and followed other Amharic customs” (Bahru 2005: 12).

Another related effect of the Oromo expansion is what Teshale calls the ‘Oromisation’ of the traditionally Christian ruling houses.¹⁸ A case in point is the ‘Oromisation’ of the ruling house of Gojjam. Since the middle of the 17th century, rulers of the Gojjam dynasty were Oromos that were assimilated to the Amhara by converting to Christianity, speaking Amharic and practicing the Amhara culture. The list of such Oromo rulers in Gojjam extends from “Dajjach Yosedek-the eighteenth century Gurdu Oromo ruler of Gojjam–to Ras Hailu the Great, Negus Tekle Haimanot, and Ras Hailu Tekle Haimanot”.¹⁹ To be precise, however, this can hardly be regarded as the Oromisation of the Gojjam ruling house. The Oromo rulers, for all practical purposes, had shredded off their Oromo identity. Their action could not be regarded as an injection of the Oromo influence into the Abyssinian Kingdom. They can appropriately be described rather as ‘Amharcised’ Oromos that, probably for the same reason that they were ‘Amharcised’, were able to successfully join the power circles of the Christian Kingdom.



The cumulative effect of the Gagn invasion and the Oromo expansion was the steady retreat of the political centre to the north. The Christian Kingdom, weakened by the war against Ahmed Gagn and the Oromo expansion, established a fixed imperial capital in Gonder, departing from the tradition of roving camps and marking the beginning of the so-called Gondarine period (1640-1770). Those who reigned over the Kingdom during this relatively peaceful period are better known for building impressive castles and churches. The peaceful period was, however, abruptly interrupted by the regional warlords who started to engage in protracted and destructive warfare for the control of the throne. From 1769 to 1855, a

¹⁸ Teshale 1995: 38.

¹⁹ Teshale 1995: 38.

period that has come to be known in history as *Zemene Mesafint*, or the Era of Princes, the monarchy was rendered nominal. The king no longer enjoyed the supremacy power, a king in name only. Real power resided with the regional lords.²⁰

The first attempt at bringing all the regional warlords in the Abyssinian Kingdom under one central authority was made by Kassa Haylu who subdued the regional warlords and crowned himself as Emperor Tewedros II, King of Kings of Ethiopia in 1855. With his ambition to establish a modern monarchical empire, he worked towards the creation of a unified Abyssinia. In a bid to modernise the state, he introduced new measures including, among other things, creating a professional state army which is paid a salary, introducing tax and confiscating the amount of land the church owned.²¹ It is important to note that his ambition of unification did not include expanding his control beyond Shewa, the southern end of the Abyssinian Kingdom and the central region of the present day Ethiopia.²² The aggressive centralist reforms he sought to implement and his intolerance to regional autonomy, however, provoked rebellion from the regional nobilities.²³ This, coupled with his conflict with the church,

²⁰ As Fasil (1994: 9) comments, the ascendance of the regional lords and the weakening of the kings should not imply the existence of a highly centralised government prior to the *Era of Princes*: “Provincial chiefs had their independence, especially the further they were from the political center of gravity. Now, however, the previous ties had broken down. The central government made no effective demand for revenue and offered no real threat of monarchical sanctions. The possible conciliatory influence of a monarch on belligerent noblemen was also absent, and noblemen plotted against and fought each other continuously”.

²¹ Bahru 2005.

²² Bahru 2005.

²³ This was evident for example, in the fact that he, after subduing shewa, revoked

frustrated his personal ambitions to build a modernised and unified Abyssinia, thereby, contributing to his eventual downfall.²⁴

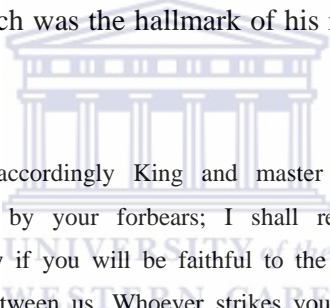
Tewedros's successor, Yohannes IV, who had his origin in the Tigray region, adopted a different approach in bringing the regions under one rule. Underlying his approach to unification was a considerable degree of tolerance to regional autonomy. Unlike Tewedros that sought to abolish regionalism, Yohannes was ready to recognise the regional hereditary rulers and share with them his control over the Kingdom as long as they recognise his suzerainty. In a manner that is indicative of an appreciation of the challenges inherent in building a unitary state out of the multitude of regions controlled by strong regional hereditary rulers, Yohannes pursued a policy of 'controlled regionalism' and provided a varying degree of autonomy. In contrast to Tewedros, he allowed the exercise of power by the regional hereditary rulers, confirming on them titles such as Ras and even Negus (i.e. King).²⁵ As Bahru commented, "he continued to regard himself as *primus inter pares* (first among equals), a *negusa Nagast* (King of Kings)

the title of *negus* (King) from the shewan ruler and replaced it with the old shewan title of *mar'ed azmach*. This was in defiance of the tradition according to which the shewan asserted their regional autonomy by assuming the title of king while at the same expressed the supremacy power of the emperors in Gonder by restraining from adopting the title of *Negusa Nagast* - King of kings (see Bahru 2005).

²⁴ See Gebru 1991: 39. The immediate cause for the downfall of Tewedros was his decision to detain European missionaries and consuls in a response to the failure of the British to respond to his call for a holy war against Islam. The British then sent a military expedition to Ethiopia to set the detainees free from Tewedros' control. The unpopularity of Tewedros at the time was evident in the fact that "the British army with cannons and Indian elephants crossed half of [Abyssinia] without firing a shot" (see Fasil 1997: 12). In the face of imminent defeat and capture in the hands of the British, Tewedros committed suicide.

²⁵ Gebru 1991: 39.

in the strict sense of the word, not an undisputed autocrat”.²⁶ His approach was also evident in the way he treated his strongest contender of power, Menelik of Shawa. Menelik’s attempt to expand his territorial control was disavowed by Yohannes who, after defeating the invading Egyptian forces in two successive battles (i.e. Gundat 1875 and Gura 1876), led his army against Menelik. A full scale war was, however, averted, when Menelik agreed for the peaceful resolution of the conflict. According to the Leche agreement, as it came to be known, Menelik renounced the title of *negusa nagasat* (i.e. King of Kings) while keeping the title of *negus* (i.e. king). He also recognised Yohannes’s suzerainty. Yohannes’s utterance immediately after the conclusion of the agreement reflects his readiness to tolerate regional autonomy, which was the hallmark of his rule over the Abyssinian Kingdom:



You are accordingly King and master of a land conquered by your forbears; I shall respect your sovereignty if you will be faithful to the agreements decided between us. Whoever strikes your Kingdom, strikes me, and whoever makes war on you, makes it on me. You are accordingly my eldest son.²⁷

2.2. Assessment

As the foregoing discussion suggests, regionalism had played an important role in the historic Ethiopian imperial politics. The major fault line in the Era of Princes as well as in the era of King Tewedros and that of King Yohannes was not ethnicity but regionalism. The Amhara did not mobilise themselves as one ethnic group. They were rather divided along their regional domains and fought against one another for the control of the

²⁶ Bahru 2005: 43.

²⁷ As quoted in Bahru 2005: 46.

throne. This is also evident in the fact that one cannot trace ethnic mobilisation of the Amharic speaking regions against the Tigray regional rulers. Emperor Yohannes created both alliance with and fought against the different Amharic speaking regional rulers. The linguistic division between the Amhara and the Tigre was irrelevant.²⁸ This says that regionalism rather than ethnicity was the most relevant divide in the historic Ethiopia.

There is, however, a slight exception to this. An important, but often underemphasised, element of Tewedros's reign over the Abyssinian Kingdom was his conviction to put to an end to the influence of the Oromo, whom he regarded as outsiders to the Ethiopian throne. In one of the letters he sent to Queen Victoria in 1862, Emperor Tewedros declared:

My fathers the Emperors having forgotten our Creator, he handed over their Kingdom to the Gallas and Turks. But God created me, lifted me out of the dust, and restored this Empire to my rule...By His power I drove away the Gallas. But for the Turks, I have told them to leave the land of my ancestors. They refused. I am going to wrestle with them.²⁹

He was obviously referring to the influence of the Yejju dynasty. Teshale argues that the struggle led by Tewedros was not just about creating a centralised power.³⁰ It was also a struggle against the Oromo dominance at

²⁸ See also Adhana 1998: 44.

²⁹ As quoted in Teshale 1995: 38. In the past, the term Galla was often used to refer to the Oromos. This is regarded by the Oromos as pejorative. Presently, using the term Gala might put one into a serious trouble, causing wide-spread conflict as it often happens in universities. Oromo nationalists claim that the name was applied by outsiders and the Oromo do not refer to themselves as Galla (see Mohammed 1994: xi).

³⁰ Teshale 1994

Dabra Tabor, the power capital of the Yejju dynasty at the time. This contrasts with Bahru's assertion that the struggle against the Yejju dynasty either by Tewedros or other regional warlords was "dictated less by ethnic and religious considerations than by self-interest and regional aggrandizement".³¹ Tewedros's direct reference to the Oromos rather than to the dynasty they control, in the letter he wrote to Queen Victoria, suggests that 'ethnic' rather than 'regional' considerations underlie his contempt for the supremacy of the Oromo nobles in the Abyssinian royal politics. As Merara argues, Tewedros "was the first modern Ethiopian ruler who explicitly recognised the ethnic factor in his project of empire-building and consciously challenged the supremacy of the Oromo princes over the Abyssinian Kingdom".³² This, one may reasonably argue, also shows that the Abyssinian Kingdom is regarded as belonging to the Amhara and Tigre and that the Oromo are regarded as outsiders to the Christian Kingdom. This is also supported by the fact that members of the Yejju dynasty never claimed the throne but played a role of king maker when they actually ran the monarchy.

Although regionalism was a dominant element of the period prior to the last quarter of the 19th century, the resultant mobilisation was not centrifugal in nature. The regional warlords were not satisfied with the control of their respective regions. They rather fought for the control of the central state. In fact, the making and 'unmaking' of kings was the major preoccupation of the regional warlords during the period of *Zemene Mesafint*. "The moves of the regional warlords were to dominate the centre, not to go away from it".³³

³¹ Bahru 2005: 12

³² Merara 2002: 59.

³³ Bahru 2005: 4.

The cumulative effect of the dominant features of the historic Ethiopian state makes the latter a de facto decentralised state. Regional rulers exercised autonomy in their respective regions with little influence from the monarch. The only requirement was that they recognise the suzerainty of the emperor and pay tribute to him. They had the power to collect taxes, maintain an army, administer justice and engage in other matters that relate to the administration of their respective regions. It is this feature of the Ethiopian polity that led Paul Henze to conclude that Ethiopia “has almost always been relatively decentralized at many stages in its long history”.³⁴ This was, however, to change dramatically with the coming to power of Menelik, King of Shewa.

3. Ethnicity in the making of the present day Ethiopia

The death of Yohannes in the war against a Sudanese army in 1889 opened an opportunity to the age-old rival of Yohannes, Menelik II King of Shewa, to claim the throne. The era of Menelik, unlike that of Tewedros, not only saw the consolidation of the historical Abyssinian Kingdom under one rule but also its expansion beyond Shewa into the southern part of the present day Ethiopia. Motivated by the need to control the source of the lucrative long-distance trade, the expanding forces of the Menelik army brought under their control most of the people in the south and territories that were never brought under the effective control of Ethiopian rulers that came before Menelik. “From 1875 to 1889 Menelik expanded his empire to four or five times its original size”.³⁵ It was during this period that Ethiopia

³⁴ Henze 1994: 124. Fasil (1997: 38) attributes the decentralised nature of the Ethiopian state to “the extent of the empire (even at its lowest ebb) and its largely mountainous and broken topography, its lack of effective communication, its numerous ethnicities, and above all its quarrelsome regional feudal lords”.

³⁵ Lewis 1993:160

achieved its present shape as well as its diverse demographic and social character.

The process of expansion took different forms. While some of the groups in the South submitted to the Menelik rule peacefully, others had to fight brutal wars before they were finally defeated and incorporated into the Empire. By way of providing an account of the south west regions that submitted to Menelik peacefully, Bahru writes:

With little or no resistance, the Oromo states submitted to Menelik one after another. In the years between 1882 and 1886, Menelik was able to obtain the submission of Kumsa Moroda (later Dajjazmach, and baptized Gabara-Egzabhir) of Leqa Naqamte, Jote Tullu (also made Dajjazmach) of Leqa Quellam, Aba Jiffar of Jimma II, and the rulers of other Gibe river states, as well as of Ilubabopur, further to the west.³⁶

On the other hand, the Arsi Oromo, located south east of Shewa, resisted incorporation and fought fiercely against the expanding Menelik army. A four-year long (1882-1886) war was fought before the Arsi Oromo were defeated and their rulers submitted to the authority of Menelik. The incorporation of western Gurage, Harar, the powerful southern Kingdom of Walayta and Kaffa into the Ethiopian empire similarly required the expanding Menelik army to fight fierce and sometimes protracted wars, which resulted in an untold destruction of human lives.³⁷ The Ogaden and some of the peripheral regions, which were brought under the Imperial state

³⁶ Bahru 2005: 62.

³⁷ “The conquest of these regions gave Menelik access to real wealth - coffee and gold among other things - which significantly enhanced his political position and military might” (Merara 2002: 61).

around the end of the 19th century, were incorporated “under conditions much worse than those exacted from the Oromo”.³⁸

The manner in which the conquered people reacted to the expanding Menelik army had its own impact in the post-conquest treatment of the former within the Ethiopian Empire. Those that peacefully submitted to Menelik were allowed to keep their own leaders and some amount of internal autonomy, thus introducing a semblance of the famous colonial *modus operandi* of indirect rule. Those that resisted the expansion were often dealt “with a massacre, expropriation and dislocation”.³⁹ The following account of a French national that joined Menelik during his conquest of the Welayta in December 1894 illustrates this very well:

As the object of the campaign was to reduce the country into submission, there was, from the very beginning, “looting of houses and crops, slaughtering of animals, sacking of the country [and] burning”. Every day, the conquerors came back to camp with slaves and booty. With their superior weapons the Shoans [representing the Abyssinian State] slaughtered large numbers of Wollamos [Welaitas]. “It was a terrible butchery, a debauchery of living or dead flesh ... by the soldiers drunk from blood”...By December 11, the resistance of the Wollamos had been broken, and on the march that day, “our mules turned aside continuously from recently killed corpses which encumbered the country. The wounded, horribly mutilated, were trampled by the cavalry men”. ... On December 18 and 19 Menelik divided up the rich booty, keeping eighteen thousand heads of cattle and eighteen hundred slaves for himself. He then returned triumphantly to Addis Ababa, taking along king Tona [the defeated Welayta king].⁴⁰

³⁸ Merara 2002: 61.

³⁹ Lewis 1993: 161.

⁴⁰ As quoted in Tronvoll 2000: 13.

The main drivers of the Menelik expansion into the south were predominantly the nobilities of the Shewa Amhara. They were, however, also joined by the northern regional elites. The elites of Tigray and the regional Amhara elites of Gondar, Gojjam and Wello had no choice but to either join the Menelik project of expansion and share the dividends or “face the much enhanced shewan military muscle”.⁴¹ Non-Amharas also joined the conquest. In fact the leading general of the Menelik army and architect of the expansion to the South, Ras Gobana, was an Oromo. As Teshale aptly points out, however, “the chief protagonists and beneficiaries of the drama *Pax Menelika* were predominantly Amhara”.⁴²

By the end of the nineteenth century, the Shewan-Amhara led conquest and expansion turned the religiously monolithic Amhara/Tigre Kingdom into a multi-ethnic and multi-faith country that we now call Ethiopia.⁴³

3.1 The imperial expansion and the two facets of domination

The introduction of the imperial rule in the South entailed two facets of domination over the conquered people. The first relates to land alienation. The northern rulers confiscated two-thirds of the southern lands, leaving the remaining one-third to the indigenous population. The confiscated land was divided by the state among the northerners, mainly among the Shewa Amhara, which included the warlords that led the victorious armies (i.e. who, in turn, subdivided it among their officers, soldiers and retainers),⁴⁴ the

⁴¹ Merara 2002: 61.

⁴² Teshale 1994: 41.

⁴³ Teshale 1994: 41

⁴⁴ Following the incorporation of the South, the northern rulers started to establish Ketemas (garrison towns). Inhabited by northerners who flocked to the areas as administrators, court officials, soldiers, interpreters and priests, the garrison towns became the centre from which the new rulers exercised control over the newly

church and all official and agents of the state who served in the south. The imperial palace and members of the royal family were granted vast estates.⁴⁵ The remaining one-third was partitioned between the conquered people and their traditional rulers, with the latter enjoying either a reduction in tax payment or a total exemption. The land that once belonged to the southern population was confiscated by the state and distributed to northerners. As a result, the majority of the southern populations were basically reduced to tenants of the new landlords with no rights to the land they once owned.⁴⁶

The second form of domination pertains to cultural and political domination. There was a disjuncture between the southern population and the northern rulers in terms of language, religion and other aspects of culture. Amharic, the language of the Shewa Amhara and most of the northerners, was made the lingua franca of government's business in the South, which is home to more than seventy different languages.⁴⁷ Although the expansion of the Empire had brought under its rule a large number of Muslims, the monarch continued to present Ethiopia as a Christian state. Ascendance to a political office required assimilation to the culture of the northerners. In what is usually referred to as *Amharicization*, members of the

subjugated land and the people. This gave rise to the so-called neftega system. As succinctly put by Teshale (1995: 44) "[t]he word neftega is derived from the word naft (Arabic for gun). Neftega means one with gun. The neftega system refers to the exercise of political and economic control by armed northerners over the people of the southern region. Neftega and gabar face each other without mediation, directly and fiercely. The language of the gun was the means of communication".

⁴⁵ Markakis 1978: 23.

⁴⁶ Markakis 1978: 24. "The impact of the land expropriation was mitigated by the fact that it did not result in mass displacement of population from the land, because the new landlords needed peasant Labour" (Markakis 1978: 11).

⁴⁷ Markakis 2003: 12.

Oromo nobility and other ethnic groups had to speak Amharic, convert to Christianity and even in some cases change their names to a Christian/Amhara name in order to be accepted among the ruling class of Ethiopia. “Subjected to the administrative fiat of the north”, as Bahru succinctly summarized, the languages and cultures of the southern population “were denigrated”.⁴⁸

Teshale’s comparison of Menelik’s conquest with that of Oromo expansion sums up the nature of the Menelik conquest:

The only analogy to the magnitude of the Menelik expansion was the Oromo expansion of the sixteenth and seventeenth centuries. But the Oromo had occupied land, for they were in search of grazing and settlement space; the Amhara occupied people, for their aim was tribute exaction, to enhance the life of the leisure class. While the Oromo genius for assimilation quickly claimed any non-Oromo defeated or otherwise, the Amhara conquerors imposed a rigid class system of ruler and ruled. The relative egalitarianism of the former and the hierarchical order of the latter led to the different results of their territorial conquests.⁴⁹

In sum, economic marginalisation as well as cultural and political alienation characterised the rule of the northerners over the newly conquered South.

⁴⁸ Bahru 2005: 5. Gebru (1990: 71) states that “[p]aternalistic and arrogant Abyssinians looked upon and treated the indigenous people as backward, heathen, filthy, deceitful, lazy and even stupid – stereotypes that European colonialists commonly ascribed to their African subjects. Both literally and symbolically, southerners became the object of scorn and ridicule”.

⁴⁹ Teshale 1995: 39.

3.2 Contesting interpretations of the Menelik conquest

Different interpretations are provided to the Menelik conquest that expanded the Christian Kingdom beyond Shewa to include what it is today regarded as the territory of Ethiopia. Some regard it as the process of reunification. One such proponent of this position is the renowned historian TekleTsadik Mekuria who, for example, regards the occupation of Harar by Menelik as reunification on the ground that Hararghe was part of the Ethiopian Empire:

That the southern regions of Ethiopia -Hararge, Sidamo and the areas settled by the Oromo - had been part of Ethiopia from the time of Aksum, Zagwe and Shawan dynasty, 13-16th centuries, during the reign of Atse Amda-tseyon, zar-Yacob until the rise of Gragn Ahmad, is clearly proven by documentary evidence.⁵⁰

By linking the newly conquered people to the domain of Aksum, TekleTsadik belongs to those groups of historians who contend that the Ethiopian state is some 3,000 years old. According to this view, the Ethiopian state has existed for millennia. Others, however, strongly oppose this particular interpretation of the Menelik conquest. For them, Menelik's conquest represents a "flagrant imperial conquest and consolidation, not 'unification', let alone 'reunification'".⁵¹ Others, mainly Oromo nationalists, posit Menelik's military policy as a process of colonisation:

At no time before the conquest by Menelik was the present day Ethiopia a single country. What existed were independent polities – Kingdoms in Abyssinia to the north, various confederacies in Oromyia and others under the Gada system, the southern

⁵⁰ As quoted in Teshale 1995: 41.

⁵¹ Getahun 1974: 124.

Kingdoms of Walayita, Kaficho, and Yem, and various communal systems in the Nilotic and Omotic regions. The official Ethiopian history that ... presents Menelik's era as "the unification of Ethiopia" is a fabrication, pure and simple. As in the rest of Africa, the Oromo and other southern peoples were subjugated, their peace, their cultural identities and human dignity deprived. ... The Oromo and other peoples of the south who survived the genocide were subjected by Menelik to the most dehumanizing form of domination. Their land was confiscated and divided among Menelik's warlords, the clergy, and local "colonial troops" known as "neftenya".⁵²

3.3 Assessment

It is not clear how TekleTsadik Mekuria argues that areas like Hararge and Sidamo were included in the Axumite Empire while, as historical documents reveal, the territorial scope of the latter was only limited to the northern and central highlands of the present day Ethiopia (i.e. Tigray, Northern Wello and southern Arabia) and Eritrea. It is true that following the overthrow of the Zagwe dynasty and the "restoration" of the Solomonic dynasty, rulers of the latter, especially King Amda-tseyon and king Zara-Yacob, were able to exact intermittent tributes from regions like Northern Hararge, Arsi, Sidamo, Inarya and Kaffa. As Teshale argues, however, to extend this back to the days of the Zagwe dynasty let alone Axumite is a historical fiction.⁵³

It is also important, however, to note that the Ethiopian case, unlike some would like to argue, is not a case of black-on-black colonialism. Of course, the two facets of domination discussed above may lead one, as the Oromo and Somali nationalists often argue, to invoke the colonial thesis. There is

⁵² As quoted in Adhana 1994: 236.

⁵³ Teshale 1995: 41.

no doubt that the empire building during the Menelik era was “violent and semi-colonial in nature”.⁵⁴ The power relation and the cultural stereotypes that characterise the relation between the Southern people and the northerners had some elements of colonial relations. A close look at the relationship between the conqueror and the conquered would, however, reveal that the subordination of the southern people to the Shewa Amhara cannot be posited as a colonial relation.⁵⁵ Any analogy of the conquest of the South with European colonisation belies the element of racism, which is an essential ingredient of European colonisation that underlies the relationship between the coloniser and the colonised. The policy of racism erects a barrier that rigidly separates the coloniser from the colonised. The relationship of the northerners with the people of the South lacks this critical element. The divide between the dominant Amhara and the subordinate south is not rigid and it can be crossed by, for example, baptising into Christianity, speaking Amharic or through marriage. As Gebru wrote

There were no culturally defined areas of settlement [in southern Ethiopia] and the northerners were far less demarcated from the indigenous population than the European colonialists elsewhere in Africa. Moreover, settler society [in southern Ethiopia] was open, and anyone could become thorough Abyssinianized by adopting Amharic and Orthodox Christianity. The French or Portuguese were far less successful with their policies of assimilation for, in the final analysis, no *assimile* or *assimilado* could ever cross the racial barrier. In Ethiopia, the “superior-inferior” complex had a cultural connotation only.⁵⁶

⁵⁴ Fasil 1997: 13.

⁵⁵ See Teshale 1995; Gebru 1990; Merara 2002.

⁵⁶ Gebru 1990: 72.

As Teshale has succinctly put it, unlike a Zulu chief that could not join Buckingham Palace in holy matrimony, the traditional rulers of Southern Ethiopia were able to join the ruling class that was predominantly Amhara.⁵⁷

The remaining question is whether the Ethiopian state is an ethnocentric state based on the hegemony of a single ethnic group. We shall come back to this issue when we discuss the saliency of ethnicity in the political history of Ethiopia.

4. The HaileSelassie regime and the multi-ethnic challenge

The expansion of the Ethiopian state was further consolidated during the era of Emperor HaileSelassie that presided over unprecedented centralisation of the Ethiopia Empire. HaileSelassie is credited for the modernisation of the Ethiopian political system. It was during his reign that Ethiopia adopted its first written constitution (i.e. 1931). The Constitution established the first modern parliament in Ethiopian history. Modern education was expanded and slavery was abolished. It was also during his time that Ethiopia joined the international political system, by becoming member of, first, the League of Nations and then the United Nations. For the purpose of this thesis, however, the issue is whether Ethiopia, under his reign, was able to build a nation out of the multitude of diverse ethnic groups that were brought together under one state in the last quarter of the 19th century.

In many respects, the HaileSelassie administration intensified the implementation of policies and practices that militated against the construction of an all inclusive state out of the diverse ethnic groups that inhabit the country. Land alienation of the southern people was maintained.

⁵⁷ Teshale 1995: 45.

Administration in the southern region continued to be controlled by the Amhara and particularly the Shewan aristocracy. With the strong centralisation process he unleashed, especially after the Italian occupation,⁵⁸ he abolished the regional autonomy that was the hallmark of the Ethiopian Empire. The dominance of the Shewan aristocracy that was already prevalent in the administrations of southern regions was extended to the regions in the north which, for a long time, were administered by their own nobilities. The regional rulers of Gojjam, Gondar, Wollo and Tigray were replaced by the nobility drawn from the central province of Shewa, who were “none other than Menelik’s courtiers, his warrior lords of the south (the apex of the neftega) and their descendants”.⁵⁹ The Shewan noblemen who assumed provincial governorship in almost every region “ruled in ruthlessly extractive fashion...aided by officials who were again largely of Shewan origin”.⁶⁰ This ‘shewanization of the state’, as it is referred to by some authors⁶¹, brought to an end the regional autonomy that in many respects was instrumental in ensuring the legitimacy of regional rulers. This was, in fact, the prime motive behind the introduction of the 1931 Constitution - to abolish the political prerogatives and privileges of the nobility. Conferring appointments and land grants, administering justice, collecting taxes, maintaining armies, declaring wars and entering treaties were some of the major political powers that were taken away from the

⁵⁸ The Italians whose colonial ambition was frustrated by their humiliating defeat in the hand of the Menelik-led Ethiopian army at the Battle of Adwa in 1896 came back with a vengeance in 1935 and occupied the country for a brief period during the Second World War. They were expelled in 1945.

⁵⁹ Andargachew 1991: 15.

⁶⁰ Clapham 1988: 202.

⁶¹ See Andargachew 1991: 15.

nobilities who, in the past, wielded enormous powers in these matters within their respective autonomous regions.⁶²

The cultural and linguistic domination also continued unabated during the era of HaileSelassie. The government prohibited the use of languages other than Amharic.⁶³ In some cases, the Imperial government deliberately suppressed the use of indigenous languages and encouraged the use of Amharic. The decree that regulated missionary activities in Ethiopia mandated missionaries to learn Amharigna and to use it as the general language of instruction. They were allowed to teach in local language “only in the early stages of missionary work” and until they and their pupils acquired Amharic.⁶⁴ Speaking Amharic was also necessary in order to be employed by the state.

HaileSelassie’s policy of centralisation and the continued marginalisation of non-Amharic speaking groups provoked a series of resistance from different groups. In the 1940s peasants from Tigray rebelled in what came to be known as the Weyane rebellion. Although many factors including administrative inefficiency and corruption caused the rebellion, it was also fuelled by the encroachment of the HaileSelassie’s regime on regional autonomy. The nobility of Tigray tried to check the erosion of local power and reassert their hereditary privileges.⁶⁵ An element of “provincialism” was evident in the rebellion. Almost after two decades another peasant rebellion emerged in Bale, south eastern part of Ethiopia. The major cause of the 1963 Bale rebellion, that involved both the Oromo and Somali Muslims, related to peasant exploitation and especially to land alienation

⁶² Andreas 2003: 151.

⁶³ Markakis 2003: 12.

⁶⁴ Markakis 2003: 12.

⁶⁵ Bahru 2005: 215. See also Gebru 1990: 125.

and increment in taxation. Here, too, issues of nationalities were not totally irrelevant. “The imposition of arrogant Christian settlers over a predominantly Muslim population” coupled with political and economic domination had contributed to the eruption of the rebellion.⁶⁶ The retention of land and the reassertion of ethno-cultural identities were the primary goals of the rebellion.⁶⁷ Before the Bale rebellion was put under control, another rebellion broke out in Gojjam, one of the Amhara regions. The people of Gojjam, being of Amhara origin as that of Shewa, were not subjected to cultural domination like most southerners. Neither did they have subjected to land alienation. The 1968 Gojjam rebellion was induced rather by the introduction of the new Agricultural Income Tax of 1967. Yet their resentment to Shewan domination cannot be ignored in the analysis of the rebellion. The fact that the governor of the region was from Shewa had contributed to the animosity of the people of Gojjam.⁶⁸ All the rebellions were crushed by force. In the case of the Gojjam rebellion, the Emperor eventually removed the new Agricultural Income Tax but it did not avert the violent clash that ultimately brought the rebellion to an end.

It was during the same period that another rebellion that was to have a lasting and dramatic effect on the Ethiopian political terrain ensued in the northern part of Ethiopia, namely Eritrea. Bahru remarks that “[b]oth in its own right and in the radicalizing influence it exerted on the Ethiopian

⁶⁶ Gebru (1990: 125) remarks: “Almost entirely Muslim, the Oromo and Somali also resented the special privileges accorded to the northern Christian settlers and the bureaucratic abuses that accompanied the extension of state authority.” The Bale rebellion also benefited from assistance from the irredentist movement of the Liberation Front of Western Somalia (WSLF), which considered Bale part of the Greater Somalia.

⁶⁷ Gebru 1990: 125.

⁶⁸ Bahru 2005: 217.

opposition in general, [the armed struggle in Eritrea] played a significant role in the regime's collapse in 1974".⁶⁹ Ironically enough, the Eritrean question that remained unresolved even after the collapse of the Imperial regime in 1974 eventually contributed to the downfall of the military regime in 1991.

4.1 The armed struggle in Eritrea

Deep disagreements, often charged with emotion, characterise discussions about the history of Eritrea and its particular place in Ethiopia. Some regard Eritrea as an integral part of Ethiopia while other regard it as a creation of the Italian colonisation of distinct territories along the African Red Sea Coast in the last decade of the 19th century. Resolving this debate is not the aim of this thesis. The purpose here is to discuss the armed struggle in Eritrea within the context of the opposition to the Ethiopian central government. For this purpose, the major focus of this section are the developments that unfolded following the expulsion of Italy from the area in the Second World War and the United Nations decision to federate Eritrea with Ethiopia. This is, however, preceded by a brief introduction to the political history of Eritrea.⁷⁰

Eritrea came to exist as a state when Italy decided to piece together its distinct historical possessions along the African Red Sea Coast.⁷¹ Italy's acquisition of land in the area started when an Italian priest, Giuseppe Sapeto, bought a harbor at Assab from a local Sultan on behalf of the Italian shipping company Rubattino in 1869, which was later bought by the Italian government in 1882. That gave the Italian government control over the Afar coastline. Italy extended its colonial presence in 1885 when the British,

⁶⁹ Bahru 2005.

⁷⁰ For more on the political history of Eritrea, see Yonatan 2007.

⁷¹ Tekeste 1997.

fearing French expansion, encouraged the Italians to take control of the Egyptian-controlled Massawa. This completed the Italian control of the coastline that stretched over one thousand kilometers. As the Italians advanced to extend their control from the coastlines into the hinterlands, they were faced with stiff resistance from the Ethiopian monarch, Emperor Yohannes IV, who was also exercising control over the same territory. The confrontation resulted in the Battle of Dogali in which the Italians suffered a heavy defeat in the hands of the Ethiopian army in January 1887. It was only when Emperor Yohannes was killed in a battle against the Dervish in the South, and the centre of power shifted to Menelik, the king of Shewa, who was already keen to cooperate with the Italians, that a favorable condition ensued for the Italians, enabling them to establish their colonial presence in Asmara, the current capital city of Eritrea, and the highlands. The Italian's colonial presence in the highlands and their authority over the rest of Eritrea was legitimised by the Treaty of Wuchale, which they concluded with the new King of Ethiopia, Menelik II, on 2 May 1889. On the first of January 1890, the disparate possessions of Italy were brought together under one colonial administration and named by the Italians Eritrea, after *Erythraeum Mare*, Latin for 'Red Sea'.

The Italian fifty year rule over Eritrea came to an end following its defeat in the Second World War.⁷² Eritrea, like the other former colonies of Italy including Italian Somaliland and Libya, was put under temporary British Military Administration (BMA) for ten years. As the four powers (i.e. France, Great Britain, the USA and the USSR) failed to reach an agreement on the fate of Eritrea, the matter was referred to the United Nations. On December 2, 1950, the UN General Assembly adopted Resolution 390(V) to

⁷² Haile 1988.

federate Eritrea with Ethiopia as “an autonomous unit...under the sovereignty of the Ethiopian crown”. The Constitution, which was prepared by the United Nations and adopted by the Eritrean Parliament on 10 July 1952, provided for political pluralism, the principles of a democratic electoral system, due process of law, freedom of speech, association and religion.⁷³ Tigrinya and Arabic were recognised as the official languages of the country. It also designated a new flag, seals and coat of arms for Eritrea. In a system of government that can fairly be regarded as federal,⁷⁴ the Eritrean government was granted authority over ‘internal matters’ while the Ethiopian government had jurisdiction over ‘general/external matters’.

The Federation, however, did not last long. The federal status of Eritrea was gradually eroded. The Ethiopian government and the Union Party-dominated Eritrean government⁷⁵ hastened the full incorporation of Eritrea into Ethiopia.⁷⁶ In 1956, Amharic, the Ethiopian official language, replaced Tigrinya and Arabic as the official language of Eritrea. In 1959, Ethiopia imposed its laws on Eritrea. The Eritrean Assembly then approved an

⁷³ Iyob 1995.

⁷⁴ There is a debate on whether the established structure can be regarded as a federal. This is, however, beyond the scope of this study. For more on this particular issue, see Tekeste 1997.

⁷⁵ At the time, the two major political parties in Eritrea were the Unionist Party and the Independence Bloc. Composed of mainly Tigrinya-speaking highland Coptic Christians and supported by the Ethiopian government, the Unionist campaigned for complete union with Ethiopia. The Independence Bloc was, on the other hand, a coalition of pro-independence parties. At the centre of this coalition was the Muslim League. The coalition, however, had also included groups like the Liberal Progressive Party which originated in the highlands and opposed the Unionists.

⁷⁶ United Nations 1996. See also Iyob 1995.

amendment to the Constitution which changed the names “Eritrean government” to “Eritrean administrator”. The most critical measure that brought Eritrea’s federal status to an end took place on 15 November 1962 when the Eritrean parliament declared that the federation is rendered null and void and that Eritrea is completely united with its ‘motherland’. This represented the abrogation of the Federal Act and the incorporation of Eritrea as the fourteenth province of the Ethiopian Empire.

The gradual erosion of autonomy of Eritrea led to increasing resistance.⁷⁷ Central to the opposition of the Ethiopian rule was the Eritrean Liberation Movement (ELM), which was founded in 1958. Composed of mainly students, intellectuals and trade unionists, the ELM focused its strategy of struggle on civil disobedience and clandestine political activities. The ELM is believed to have been behind many of the early protests held against the gradual erosion of the federation. In 1958, Eritrean workers held a general strike and demonstration opposing the lowering of the Eritrean flag and the introduction of the Ethiopian labour law into Eritrea. Hundreds of students also went on strike in Asmara demanding the restoration of the Eritrean national symbols including the flag, seal and arms. The struggle in Eritrea, however, took a military dimension with the formation of the Eritrean Liberation Front (ELF) in 1961 in Cairo.

The ELF was mainly composed of Muslim inhabitants of the Eritrean lowlands in the west, the community that was most alienated by the new arrangement, which was mainly a function of the appeal to a glorious Christian Empire.⁷⁸ Dissatisfaction with the internal organisation and functioning of the front, however, resulted in dissension in the early to mid

⁷⁷ Iyob 1995.

⁷⁸ Iyob 1995.

1970s. This eventually led to the emergence of the Eritrean People's Liberation Front (EPLF) in 1972, a leftist nationalist movement that, unlike the ELF, successfully pooled its members from both religions and the various ethnic groups that inhabit Eritrea. The ELF and EPLF fought a civil war in the early 1970s, and by 1980 the latter emerged as the main resistance movement. The Eritrean question is regarded by the Eritrean liberation fronts as a question of decolonisation. They regarded the Eritrean case as a case of 'unconsummated decolonisation'.

4.2 The student movement and the question of nationalities

The issue of nationalities gained momentum when it appeared as an important element of the agenda for political reform as the student movement joined the opposition against the Imperial regime, beginning mid 1960s. Initially the Ethiopian Student Movement (ESM) was concerned with the struggle for free speech, assembly and organisation. The movement later espoused the revolutionary slogan *Land to the tiller* thus demanding a major agrarian reform. It was only in the beginning of the academic year of 1969-1970 that students started to address the question of nationalities. The right of nationalities to self-determination became the central agenda of the movement. Important in this regard is the groundbreaking article that was authored by Wallelgn Mequkananet, who challenged the way the state of Ethiopia defines itself:

Is it not simply Amhara and to a certain extent Amhara-Tigre supremacy? Ask anybody what Ethiopian culture is? Ask anybody what the Ethiopian language is? Ask anybody what Ethiopian religion is? Ask anybody what is the national dress? It is either Amhara or Amhara-Tigray!! To be a 'genuine Ethiopian' one has to speak Amharic, to listen to Amharic music, to accept the Amhar-Tigre religion, orthodox Christianity, and to wear the Amhara-Tigre *Shama* in

international conferences. In some cases to be an 'Ethiopian', you will even have to change your name. In short, to be an Ethiopian, you will have to wear an Amhara mask⁷⁹

Departing from the pan-Ethiopianist ideology and inspired by the then fashionable Marxist-Leninist philosophy, the movement developed consensus on the major question of nationalities, although there were some initial disagreements on the 'correct' resolution of the national question. They all agreed that the different nationalities have been oppressed by the 'shewa Amhara nation'. They further held that the different nationalities that inhabit the country should be recognised and provided with a right to 'self-determination'. Since all the student movements operated within the ideological compass of Marxism-Leninism, they juxtaposed the nationalities question with class oppression. They attributed the subjugation of the different ethnic groups in the country to 'the class basis of the regime'. Take away the class exploitation as represented by the land alienation in the South, they argued, the nationalities question will be solved. According to the proponents of this view, "the national question was no other than a disguised form of class oppression".⁸⁰

The bone of contention lies in the scope of the right to self-determination and its method of realisation and especially on the right of secession - on whether the right of nationalities to self determination includes the right to secede from the state. The divergent views on this issue are reflected in the different Marxist-Leninist political organisations that emerged out of the movement. Some advocated for the regional autonomy formula (e.g. the WAZ league). Others like *Mela Ityopia Socialist Niqinaqe* (MEISON) argued that the nationalities question should be resolved within the larger

⁷⁹ As quoted in Balsvik 1985: 277.

⁸⁰ Clapham 1988:198.

Ethiopian framework. The EPRP went further than any of the other groups in fully recognising the right to self determination. It proclaimed ‘the right of nations to self-determinations without any reservations’.⁸¹

4.3 Assessment

The HaileSelassie regime sought to build a nation out of the multitude of diverse ethnic groups that were brought together in the last quarter of the nineteenth century. Homogenisation was its main aim. To achieve its objective, the regime ventured on the course of centralising the Ethiopian state to a degree that was unprecedented in Ethiopian history. This voracious process of centralisation had the effect of not only perpetuating the marginalisation of the southern population but also creating grievances among the traditionally autonomous northern rulers.

The marginalisation of the southern population continued in the economic, cultural and political arenas. The Southern population remained tenants with no claim to land. The culturally inferior status that they were forced to occupy continued as the ‘one Ethiopian nation one destiny’ project advanced by the Imperial regime relied on the development of a single language of national communication. Their culture was also considered inferior to that of the northerners. The predominance of the Shewa and other northerners in the administration of the state in southern areas also meant the majority of the population remained peripheral to Ethiopian politics, let alone manage their own affairs. The double oppression of the Southern population (i.e. national and class oppression) continued with a great deal of intensification under the HaileSelassie regime. The Bale revolt is a

⁸¹ Clapham (1988: 198-199) draws our attention to the use of the term ‘nation’ as opposed to ‘nationality’ in the EPRP proclamation and suggests that the use of the term nation carries “the implication of separate national independence”.

testimony of the disgruntlement that was prevalent among the southern local population culturally, politically and economically.

The absolutist HaileSelassie regime's extensive centralisation was also evident in the fact that it removed the traditional powers of regional rulers, thereby, limiting, and in extreme cases, abolishing regional autonomy. The different Amhara regions and the Tigray region have traditionally enjoyed local autonomy with local authorities drawn from their nobilities. This was highly compromised with the increasing 'shewanization' of the state, creating disgruntlement even among the northern local rulers whose language, culture and religion was identical with that of the Imperial state. Some of the peasant rebellions, especially the rebellion in Tigray and, to a certain extent, the 1968 Gojjam rebellion, are indications of the grievances that ensued following, among other things, the concentration of power in the hands of the Shewan nobles. In fact, the roots of some of the liberation movements from the northern part of the country lie in the gradual erosion of regional autonomy and continued marginalisation from the centre of Ethiopian politics.

The HaileSelassie regime antagonised both nationalists and regional forces, thus, causing the intensification of the struggle against its regime from all segments of the society. In February 1974, the students intensified the protest against the Imperial regime. With their famous *Land to the Tiller* slogan, they championed the causes of the peasantry and called for the abolishment of the feudal regime under which the latter suffered for centuries. They were also joined by other sectors of the population. The Muslims angered by the continuing unholy alliance between the church and the state took to the streets. Workers, taxi drivers, teachers and eventually the military joined the 'revolutionary upheaval'.

5. The 1974 revolution, the Derg and ethnic mobilisation

Led by the Addis Ababa University students, the masses took to the streets in February 1974. The mass revolution brought to an end the HaileSelassie regime. The revolution was, however, hijacked by the military junta, known as the Derg, which deposed the Emperor and assumed power. The student-based leftist political groups which did not have organised leadership to direct the course of the revolution had fallen prey to the attacks of the military junta. As a result, they went underground, limiting their activity to the 'student constituency'.⁸²

5.1 The Derg and ethnicity

Taking on the then fashionable Marxist ideology, the Derg introduced a drastic measure by nationalising the economy, including land. The Southern population especially benefited from the measure as it freed them from paying tributes and providing services to the northerner landlords. It abolished the official status of the Orthodox Christian church and recognised the practice of Islam by including Muslim holidays in its list of national public holidays.

The Derg immediately expressed its commitment to resolve the question of nationalities. This commitment of the Derg was clearly outlined in the declaration of the *National Democratic Revolution of Ethiopia* (NDR), which was announced on 20 April 1976. Article V, section 1 of the document provided that:

The right to self-determination of all nationalities will be recognized and duly respected. . . . No nationality will dominate another one since

⁸² Merara 2002: 78. MEISON joined the military government as a junior partner, mainly providing the ideological rigour that was needed by the government. This was, however, short lived as the junta eventually turned against MEISON.

the history, culture, languages, and religion of each nationality will have equal recognition in accordance with the spirit of socialism. The unity of Ethiopia's nationalities will be based on the common struggle against feudalism, imperialism, bureaucratic capitalism and all reactionary forces. This united struggle is based on equality, brotherhood, and mutual respect. Given Ethiopia's existing situation, the problem of nationalities can be resolved if each nationality is accorded full rights of self-government. This means that each nationality will have regional autonomy to decide on matters concerning its internal affairs. Within its environs, it has the right to determine the contents of its political, economic, and social life, use its own languages, and elect its own leaders and administrators to head its own internal organs.

The military regime, whose ranks and files included persons that belong to the newly conquered southern ethnic groups, did not also follow, at least in its early days, the Imperial state in proscribing the use of other languages.⁸³ It allowed the use of other languages in the areas of printing, broadcasting and teaching.

The embracing of the question of nationalities by the Derg was not however whole-hearted. It was mainly motivated by the Marxist ideology that was prevalent at the time and influenced by its junior partner, the leftist MEISON. For that same reason, it was short-lived. In the wake of its victory over the invading Somali army⁸⁴ and its internal contenders,⁸⁵ the

⁸³ Markakis 2003.

⁸⁴ In 1974, the Somali army invaded the eastern part of Ethiopia (i.e. the Ogaden region) to realise through military force its irredentist movement of creating Greater Somalia by liberating what it regarded as the people and land of Somali from Ethiopian colonisation. The Somali army was defeated.

⁸⁵ The military government also carried the horrendous Red Terror campaign against the urban based leftist political groups., which resulted in the execution of thousands of young men and women.

emboldened Derg presented itself as a force of unity and went on implementing a policy of centralisation. The lofty ideals of the PNDR were abandoned and the Derg dumped its initial plans to accommodate the demands of nationalities. Declaring its most famous slogan *Ethiopia Tikdem* (Ethiopia First) and emphasising the indivisibility of the Ethiopian unity, the Derg was not ready to concede to the national question beyond the cultural realm. The different ethnic groups were regarded as no more than cultural artifacts that embellish the festivities of the annual revolution day. It claimed that national oppression and class oppression are things of the past as was the imperial state. The socialist revolution, argued that the Derg, had brought national oppression to an end by guaranteeing the ‘equality of all people and cultures’ and the rest, including the ‘legacy of cultural oppression’, shall be overcome “through the cultural emancipation of formerly subordinate groups and the promotion of their culture”.⁸⁶ The political participation of the different nationalities was not open for discussion.⁸⁷ Demands for political autonomy were regarded as the works of counter-revolutionaries; ethnic mobilisations were portrayed as serious threats to the revolution.⁸⁸ The strong drive towards centralisation made the unity and territorial integrity of the Ethiopian state a prime agenda leaving no room for regional autonomy. Any hope that a negotiated solution would be achieved with the war in Eritrea faded away. As noted by Clapham, “the government sought to impose [military] solution from the centre”.⁸⁹

It was this position of the Derg that informed its response to the armed struggle that was already underway in Eritrea and other nationalist movements that took up arms immediately after the revolution, including

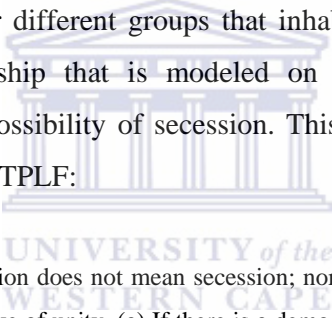
⁸⁶ Markakis 2003: 17.

⁸⁷ See Clapham 1988.

⁸⁸ Clapham 1988. See also Merara 2002.

⁸⁹ Clapham 1988: 200.

the Tigray People Liberation Front (TPLF) and the Oromo Liberation Front (OLF). The TPLF, which traces back its origin to the early days of student movements in Addis Ababa, was formed by students of Addis Ababa University from the Tigray region. Disagreeing from the students organisations that put class struggle at the apex of the political struggle, the students from Tigray contended that national struggle should be the primary struggle in Ethiopia. As most student organisations of that time, the TPLF drew its inspirations from the Leninist principle of self-determination and espoused the view that “a new and democratic republic of Ethiopia could be constructed only through a voluntary and consensual association of its parts”.⁹⁰ TPLF’s view of multinational Ethiopia entails a considerable degree of autonomy for different groups that inhabit the country within a larger political partnership that is modeled on federalism. It did not, however, exclude the possibility of secession. This is clearly stated in the political program of the TPLF:



Self-determination does not mean secession; nor does it mean unity for the sake of unity. (a) If there is a democratic political atmosphere, it means the creation of voluntary integrated nations and nationalities whose relations are based on equality, democracy and mutual advantage. (b) If the existing national oppression continues or is aggravated, then it means the birth of an independent Tigray.⁹¹

The OLF was formed in January 1974 by members mainly drawn from the Mecha-Tuluma Association.⁹² In contrast to the Mecha-Tuluma Association that defined the Oromo question as a question of equality within Ethiopia, the OLF regards its struggle as a struggle of the Oromo people against

⁹⁰ Young 1997: 99.

⁹¹ As quoted in Bereket 1980: 89.

⁹² Mohammed 1998: 213-215.

Ethiopian colonisation. Its aim is to establish an independent state of Oromyia. The Ogaden National Liberation Front that emerged in 1986 in the Somali-speaking Ogaden region⁹³ also regards its struggle as an anti-colonisation struggle that aims at the establishment of an independent Ogadeni state, free from “Ethiopian colonisation”.⁹⁴ Both movements were largely operating in the eastern part of Ethiopia.

5.2 The 1987 Constitution and the question of nationalities

As the different liberation fronts intensified their armed struggle against the Derg army, the question of nationalities resurfaced as the agenda of the Derg with the establishment of the Institute of Nationalities in 1983, which became fully operational in 1985. The institute was required to help “resolve *minor* contradictions among nationalities”,⁹⁵ (emphasis added). The institution, whose mandate included the drafting of a constitution, was required to research into the national composition of the country, the administrative divisions of the regions and comparative constitutional law of other countries.⁹⁶ The institute was, however, supposed to carry out its

⁹³ This region was a battlefield between the Ethiopian and the Somali armies in 1974. The Somali Republic considered this area as part of the Greater Somalia. It first sought to realise its irredentist intention through the Western Somalia Liberation Front which was established in 1975 to reclaim a ‘lost Somalia territory’. The area claimed by the WSLF includes much of the Oromo land east of the Awash river and Muslim Oromos were simply incorporated into the WSLF as “Abo-Somalis”. When the attempts by the WSLF failed to bring the desired result, the government of the Somalia Republic sent its army deep into the area. The Somalia army was defeated (see Merara 2002: 105-107).

⁹⁴ Merara 2002: 106

⁹⁵ Institute for the Study of Ethiopian Nationalities 1984a: 9. See also Gashaw 1993.

⁹⁶ Owing to the socialist leanings of the Derg, the comparative aspect was limited to

tasks based on the principle that “chauvinism and narrow nationalism must be eliminated”.⁹⁷ Furthermore, the government made it clear that the questions of nationalities can only be addressed within the framework of national unity. These guiding principles are indicative of the normative framework within which the institute was obliged to function.⁹⁸ The heavy emphasis on territorial integrity and national unity was thus evident.

A new constitution that established the People Democratic Republic of Ethiopia (PDRE) was adopted in 1987, providing a civilian costume to the military junta, which, by then, had already established the Workers Party of Ethiopia (WPE). Article one of the Constitution outlined the framework within which questions of nationalities could be addressed by declaring the “indivisible and inviolable nature of the Ethiopian state” although the same article states that “the Ethiopian state has from the beginning been a multi-national state”. Article two declared the equality of nationalities. The languages of the various nationalities were also given equal status. This

the policies and practices of socialist countries. As a result, members of the institution, which were largely university instructors, visited socialist countries and also the different parts of the country. The government report, which outlined the main features of the intended constitution, had also made it clear that the rights of nationalities must be addressed within the framework of the Leninist principle of self-determination, which is incorporated in the National Democratic Revolution Program (NRDP) and which provides for its implementation within the framework of regional autonomy. “The desire to secede from socialist Ethiopia is a desire to join imperialism and the reactionary camp” Andargachew, 1993, 266. This is, however, a contradiction. The USSR constitution, which is also based on the same Leninist principle of self determination that the intended constitution is supposed to be based on, provided the union republics, albeit formally, the right to secede from the Union.

⁹⁷ Institute for the Study of Ethiopian Nationalities 1984a: 9.

⁹⁸ Clapham 1988: 199.

meant Amharic no longer enjoyed the formal status of the national language. It was rather recognised as the working language of the government.

The Constitution established a unitary state that was comprised of administrative areas and autonomous regions. Twenty-six administrative regions and five autonomous regions were established. The five autonomous regions were established in the regions where active liberation movements were already underway namely Eritrea, Tigray, Asseb, Dire Dawa and Ogaden. Each administrative and autonomous region could establish a directly elected regional Shengo (i.e. parliament), which could, in turn, elect the executive that ran the administration of the region. The difference between the autonomous regions and the administrative regions lies in the legislative powers of the two types of regions. The former can enact legislation without requiring approval from the central government as long as the legislation is consistent with the law of the national Shengo while the administrative regions had to secure a prior approval from the same organ.⁹⁹ The autonomous regions jurisdiction included developing plans for economic development and providing services such as education, health and security.

5.3 Assessment

Although the PDRE Constitution acknowledged the equality of nationalities under article 2, the recognition was watered down by the same article which rejected “chauvinism and narrow nationalism”. This signals that the Derg had continued to view the demands of recognition and regional autonomy with a great deal of suspicion. The formal recognition of the equality of languages was also a little more than lip service. In practice, Amharic

⁹⁹ Gashaw 1993.

retained its dominant status as the language through which government business was conducted in all parts of the country.¹⁰⁰ The autonomous regions were not allowed to adopt their own working language, let alone the administrative regions.

The territorial structure of the state, which was designed by the Institute of Nationalities, was, to some extent, a reflection of the demographical settlement of the population. The territorial configuration was, nevertheless, done within the broader framework of national unity and territorial integrity. The architects sought to ensure that the final outcome of the territorial configuration of the state does not pose a threat to the territorial integrity of the state. This is visible from the different territorial formula that the Constitution followed with respect to small and large nationalities. The Constitution provided small nationalities with a region of their own, providing them with a territorial space that is necessary to manage their own affairs. Clapham notes that these nationalities “were not powerful enough to present a viable threat of secession”.¹⁰¹ Large nationalities, by contrast, were not demarcated into one region. They were rather divided into different regions. This obviously was with the view to “counteract the lure of secession”.¹⁰² Eritrea, for example, was divided into two regions as a result of which Asseb was established as a separate autonomous region.¹⁰³ The general impression is that the territorial structure was used to provide nationalities with some level of territorial autonomy without posing a threat to the territorial integrity of the country. The establishment of separate autonomous regions by the Constitution might also imply that the latter enjoyed more autonomy than the administrative regions. It might also

¹⁰⁰ Baker 1990.

¹⁰¹ Clapham 1988: 253.

¹⁰² Clapham 1988: 253.

¹⁰³ Bereket 1990.

suggest that they had more latitude in managing internal affairs. Furthermore, the establishment of these regions in the conflict-ridden regions might signal a commitment to accommodate the demands of the liberation movements that were already underway.

A close look at the constitutional allocation of powers would, however, reveal that the changes that the Constitution envisaged were, at best, ill-defined and at worst, superficial. In fact, there was nothing in the Constitution that indicates that the autonomous regions enjoyed more power than the administrative regions.¹⁰⁴ The Constitution rather envisaged the enactment of by-laws that would outline in detail the powers of the autonomous regions. Failing to entrench the powers of autonomous regions in the Constitution, the degree and scope of the autonomy of the regions was left to be determined by the National Shengo, the national legislator with over 800 members that are nominated by the WPE and its affiliated auxiliary organs (the “mass organisations”) and military units, eventually elected through the first-past-the post system.¹⁰⁵ This implied that the autonomous regions were “entirely subordinated to the national government, which, through its power to enact by-laws, has the power to change their powers as well as their territorial boundaries”.¹⁰⁶ This, it could do, without consulting the concerned autonomous region.

Compared to the rigid centralist position advanced by the military government, the elements of the PDRE constitution that grappled with the question of nationalities represents, at least, a symbolic departure from the age-old centralisation. However the fact that these concessions were made

¹⁰⁴ Andargachew 1993.

¹⁰⁵ Bereket 1990.

¹⁰⁶ Clapham 1988: 200-201

within the framework of a centralised state and after the insurgent movements took root in the different parts of the country rendered the concession too little, too late. By the time the government introduced these measures, most of the areas in the north where the Shengo established autonomous regions were totally outside government control.¹⁰⁷ Clapham wrote

Had such a reorganization [of the territorial structure] been carried out early in the revolution, and accompanied by the appointment of local administrators to run the new regions, it might well have helped to defuse local nationalism, and contribute to an overall sense of national unity. By 1987 and coming from a government with rigid commitment to centralism, it may well have been too late, especially in the northern part of the country. By the end of 1989, five of the eight prospective regional capitals in the former regions of Eritrea, Tigray, Gonder and Wollo were in the hands of insurgent movements, with only Asmara, Gondar and Dessie remaining under government control.¹⁰⁸

6. The Transitional Charter and ethnicity

Despite the regional autonomy solution, the Derg was determined to find a military answer to ethnic conflicts. It was, in fact, a military solution that finally brought the conflicts to an end except that it was the nationalist movements that emerged with victory. The fast-advancing nationalist movements both in Eritrea and northern Ethiopia eventually led to the crumbling of power at the centre causing Mengistu HaileMariam, the accomplished dictator of 17 years, to flee to Zimbabwe. On 24 May 1991, the EPLF took control of Asmara, the Eritrean capital, marking the end of a

¹⁰⁷ Bereket (1990: 127) states that “[e]lections of candidates from these areas were announced where none had taken place”.

¹⁰⁸ Clapham 1988: 253.

war that lasted for nearly thirty years.¹⁰⁹ The TPLF army that ousted the Derg from Tigray, northern Ethiopia, and established, in a coalition with other liberation forces, the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) entered Addis Ababa and removed the Derg on 28 May 1991.

With the assumption of power by the EPRDF, a new dispensation was dawning in the Ethiopian political and constitutional terrain. This was already visible in the *Peace and Democracy Conference of July 1991* that eventually led to the establishment of the Transitional Government (TG) on the basis of the Transitional Charter (Charter). The conference was largely an assembly of representatives of the different ethnic groups in the country, including the OLF, the ONLF and including a few other parties with a state-wide agenda. The political recognition of ethnicity was evident. The

¹⁰⁹ The liberation movement that waged a war for thirty years became the Provisional Government of Eritrea with its leader, Isaias Afewerki, as Secretary-General. The EPLF declared its intent to hold, within two years, an internationally supervised referendum on the question of independence from Ethiopia. The Transitional Government of Ethiopia also recognised the right of the Eritrean people to determine their political future by an internationally supervised referendum. Upon invitation by the Referendum Commissioner, and with the consent of the Ethiopian government, the United Nations General Assembly authorized the establishment of the United Nations Observer Mission to Verify the Referendum in Eritrea (UNOVER), a mission that was mandated to ‘verify the freeness, fairness and impartiality of the entire referendum process’. From 23 to 25 April 1993, Eritrean went to the polls to vote ‘Yes’ or ‘No’ to the question: “Do you approve Eritrea to become an independent sovereign state?” A voter turn out of 98.24 per cent was registered. 99.805 per cent of those participating in the referendum voted for independence, and only 0.17 per cent voted against. The referendum was described by the UNOVER Chief as well as the OAU observer mission as free and fair. On 28 May 1993, the General Assembly admitted Eritrea as the Organization’s 182nd Member State (see Yonatan 2007).

position was that a democratic transition in Ethiopia is possible only if it recognises and accommodates all cultural communities. This made the nationalities question the primacy question that needed to be tackled in the quest for the democratisation of the Ethiopian state.

6.1 The Charter as a response to the multi-ethnic challenge

The new dispensation, which championed the rights of nationalities, was stated upfront in the preamble of the Charter. The preamble heralds the dawning of “a new chapter in Ethiopian history in which freedom, equal rights and self-determination of all the peoples shall be the governing principles of political, economic and social life”.¹¹⁰ This is concretised by article 2 of the Charter which recognises the right of nations, nationalities and peoples to self-determination. By way of providing practical expression to this commitment, the same article grants “each nation, nationality and peoples the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation”, thus, entrenching elements of both self rule and shared rule.¹¹¹

6.1.1 Self rule

The constitutional provision that declares the right of each ethnic community to administer its internal affairs within its own ‘defined territory’ represents an aspect of self-rule. It entrusted each ethnic community with the right to regulate its internal affairs thus providing for territorial autonomy. This was also facilitated further by the right of each subnational unit to determine its working language. Unprecedented in the

¹¹⁰ Transitional Period Charter of Ethiopia No.1 Negarit Gazeta 50th year No. 1 Addis Ababa, 22 July 1991 (hereafter Charter).

¹¹¹ Article 2(b) Charter.

Ethiopian constitutional history was also the recognition of the right of ethnic communities to secede from the state. An ethnic community can exercise its right to opt out of the state if it is convinced that its right to preserve its identity, promote its culture and history, use and develop its languages, administer its affairs within its own defined territory, and effectively participate in the central government on the basis of freedom and fair and proper representation are denied, abridged or abrogated.¹¹² This means the right to secession, albeit remedial in nature, was provided for by the Charter. Secession without just cause was not recognised by the Constitution.

The Charter was silent about the structure and number of subnational units that had to be established in order to give effect to the right of ethnic communities to self-administration. It left the matter to the legislator. The latter gave effect to the right to self-administration by legislating Proclamation No 7 of 1991, which provided for the establishment of 'National Regional Self-Governments'. The Proclamation organised the territorial structure of the state based on the Charter's commitment to the right of ethnic communities to self-determination and to determine their own affairs.¹¹³ The Proclamation established 14 self-governments. Of these,

¹¹² Article 2 (c) Charter

¹¹³ Preamble, Charter. In discussing the territorial structure of the state, it is important to note that the Charter first enumerated 63 identified ethnic communities, which it referred to as nations, nationalities and peoples. It then divided these communities into two categories. The first group consisted of 48 ethnic communities which, according to the Charter, can establish their own self-government at the wereda level, the lowest administrative unit, and above. The second group, comprising of the remaining 17 identified ethnic groups, could not establish their own self-government. The criterion was population size. The population size of the second group of ethnic communities, which are also known as 'minority nationalities', were considered too small to establish a self-governing

four of them were almost dominated by a single ethnic group. This included Amhara, Oromyia, Tigray and Afar. The rest were ethnically heterogeneous with some containing three ethnic groups while others had as many as 13 ethnic groups. Addis Ababa, the capital city, was recognised as a regional state on its own, acquiring a status of a city-state.

The legislative authority of each self-government resided with the National/Regional Council, whose members are fully elected by the population of the concerned self-government. The Council had the power to issue the constitution and laws of the self-government. The executive authority of the self-government was vested in the Executive Committee, which is elected by the self-government legislature from among its members. The Committee was chaired by the head of the self-government. The head of the self-government exercises the executive authority together with other members of the Executive Committee. Both the head of self-government and members of the executive committee are responsible to the self-government legislature for the exercise of their powers and the performance of their functions.¹¹⁴ Self-governments were also given the authority to establish wereda and a superior court system that operates parallel to the central government court system.¹¹⁵ State supreme courts were entrusted with the highest and final judicial power over all matters that are not explicitly defined by law as the jurisdiction of the Supreme Court of the central government.

administration even at the lowest level of the government structure, namely wereda. The Charter, however, provided that these nationalities shall be provided with appropriate representation in the wereda council.

¹¹⁴ In addition, the head of government is also made accountable for the Council of Ministers of the Central Transitional Government (Article 19 Charter).

¹¹⁵ Article 78(3) Charter.

The distribution of powers was also outlined by the same Proclamation. A reading of article 9(1) of the Proclamation tends to suggest that self-governments had legislative, executive and judicial powers in respect of all matters within their geographic area. This did not include matters that normally fall under the jurisdictions of the national government, namely defense, foreign affairs, economic policy, citizenship, state of emergency, deployment of army, printing of currency, establishing and administering major development establishments, building and administering major communication networks. However appealing, this should not be interpreted to mean that self-governments could exercise authority on all matters except on the specifically enumerated competences of the central government. Some of the nine major areas that are specifically reserved for the central government are couched in broad terms (i.e. like ‘major development establishment’ and ‘major communication networks’) that the powers of the central government extend into vast areas of administration. Furthermore, the use of phraseologies like ‘such matters as’ and “the like” at the beginning and end of the listing of the nine competences respectively suggest that the enumerated powers of the central government are not exhaustive.¹¹⁶ This means the residual powers of self-government are limited and are not as extensive as they appeared to be.

In addition to residual powers, self-governments were entrusted with “special powers”. These special powers included the establishment and direction of the police and security forces, the issuance and implementation of laws relating to public service, the employment and administration of the personnel of the self-government and the establishment of judicial organs with regional jurisdictions. Other than these administrative powers, the regional self-governments were also entrusted with powers that are ‘fiscal

¹¹⁶ Fasil 1997: 41.

and economic' in nature. For example, they had the power to borrow from domestic lending sources and to levy dues and taxes; to prepare, approve and implement their own budget; to plan, direct and supervise social and economic establishments; administer, develop and protect the natural resources of the region; and be the owner of the properties of the self-government, acquire ownership of and transfer property.¹¹⁷ The exercise of these powers should not, however, contradict the policies and laws of the central government.¹¹⁸

6.1.2 Shared rule

The shared rule aspect of the Charter is visible in the right of each community to participate in the institutions of the central government. Each ethnic community is entitled to receive a fair and proper representation in the national decision making bodies, including the legislature, executive and judiciary.

An eighty-seven seat legislative council, known as the Council of Representatives (the Council), was established. The Council was composed of largely ethnic-based political parties that participated in the July Conference. Seats were allocated based on the military strength and political history of each party. The EPRDF took 32 seats while the OLF was given 12 seats. The rest were given either one or two seats each. The Chairman, Vice-chairman and the Secretary of the Council were elected from different ethnic groups. The representation of the different political forces and ethnic groups was taken into account in organising the cabinet. Of the 26 cabinet members, five were drawn from the OLF. Key ministerial positions,

¹¹⁷ Article 10 Charter.

¹¹⁸ This is stated in the same provisions that outline the powers of the regional self-governments.

including prime minister, defense, interior and foreign affairs, were controlled by the EPRDF.¹¹⁹

6.2 Assessment

The TG that was established by the Charter and elaborated by the subsequent proclamations was not explicitly designated as federal. Neither the Charter nor the Proclamation that provided for the establishment of self-governments referred to the TG as federal or decentralised, for that matter. This is surprising given the fact that the system had incorporated important elements of autonomy. Fasil is of the opinion that the transitional government is federal; “What is envisaged is nothing short of federation”.¹²⁰

A defining feature of a federation is that the powers of the constituent units emanates not from a statutory reform but direct from the texts of the constitution, or in the context of the TG, from the Charter. The member states in a federation enjoy original legislative and executive powers. In this particular case, the Charter did not outline the division of powers between the national government and the self-governments. This was rather left to the national legislator. Another important element of a federation, which is the provision of ‘effective separate representation of the subnational units’, usually in the form of a bi-cameral parliament, was also lacking in the TG. Generally speaking, although the TG had incorporated aspects of a federation, it could not be regarded federal as such. It is submitted that the TG was closer to a decentralised system of government than a federation. This is especially true considering that the powers of the self-government, as in many other decentralised systems, emanate not from the constitution but from the national legislature which means the central government that

¹¹⁹ Bereket 1997.

¹²⁰ Fasil 1997: 44.

granted the selected powers retains, at least, legally speaking, the option to ‘recentralise’ powers and functions. Provision of the Charter that made the head of self-governments accountable to the Council of Ministers of the central government is also another indication of the diluted nature of the autonomy that was envisaged in the system for subnational units.¹²¹

By whatever name the system is designated, however, it is important to note the extent to which the system went in incorporating the ethnic factor in the designing of the state. Ethnic balance was seriously taken into account in the geographical configuration of the state, the structuring of cabinet as well as in the organisation of the legislative council. Ethnic consideration permeated the transitional government in its entirety. Unlike the titular gesture of the Derg in the form of nominal regional autonomy, the architects of the Transitional Charter demonstrated a strong commitment to the upholding of ethnic diversity by establishing an institutional framework that allows for the expression of these diversities. In contrast to the selective co-optation of the imperial state, the Transitional Government provided avenues for extensive political participation and representation in the leadership structure of both the central government and self-governments.

The system represented a marked departure from its predecessors that sought to impose a single Ethiopian identity.¹²² It represented the recognition that injustice had been embodied in the making of the Ethiopian state.¹²³ It embodied the declaration that the process that culminated in the

¹²¹ Article 19(3) Charter.

¹²² Lencho (1998: 58) claims that the July Conference and the Charter that came out of it mark the “entitlement to the joint ownership of the emerging country and its government by the Oromo and other colonized southern nations was explicitly recognised for the first time since their forceful incorporation”.

¹²³ Lencho 1998: 58.

incorporation of vast areas and peoples of the southern region into the Ethiopian empire was not only nation-building but also nation-destroying. In short, the Charter represented the triumph of ethnic nationalism. Those that regarded the question of nationalities as the primacy question in the Ethiopian body politic eventually managed to make the same the agenda of the state. For the protagonists of the transitional system, Ethiopia's future as a state is bleak unless the question of nationalities is addressed. This, they argued, can only be done by recognising ethnicity as the basis for political organisation of the state and abolish the age-old national oppression. Not everybody agrees with this particular construction of the Ethiopian political history (i.e. a history of national oppression). In the following pages we shall give an account of the contending views on the saliency of ethnicity in the political history of the Ethiopian state before we conclude by analysing the different viewpoints in light of the political development that are mapped out in the preceding sections.

7. The political saliency of ethnicity in Ethiopia

Owing to the different interpretation of the historiography accounted in the preceding sections, there is no clear agreement on the nature of the country's political malaise. The debate centers around the nation-building project advanced by the Imperial state. The issue is whether the successive regimes of the Ethiopian state have succeeded in building a nation out of the multitude of diverse groups that they brought under their rule in the last quarter of the nineteenth century or imposed the domination of one ethnic group over the rest of the population.

7.1 Divergent views on the place and role of ethnicity

Donald Levine argues that “despite this stunning diversity Ethiopia has to be perceived as a country that is sufficiently unified both ecologically and

culturally”.¹²⁴ The upshot of this argument is that Ethiopia is not an ethnocratic state based on the hegemony of the Amhara. Christopher Clapham argues that the Ethiopian central government, “far from being the Amhara preserve, as the mythology of the opposition movements claims, readily provides position of power for Oromo, Gurages, Aderes, wolaytas or kambatas”.¹²⁵ He indicates that some non-Amhara joined the ruling circles both before and after the revolution of 1974. He concludes that the system is not ethnically exclusive. Gahsaw shares the same view. He claims that “the Ethiopian ruling classes cannot be identified with a particular ethnic group” as they are a “multi-ethnic group whose only common factors are that they are Christians, Amharic speakers, and claim lineage to the Solomonic line”.¹²⁶

For others like Lewis, on the other hand, Ethiopia was an ethnocratic state.¹²⁷ The claim that Ethiopia has successfully achieved nationhood is the perception of a very limited but influential elite, mostly confined to the north, north west, the capital and other major towns. It is only these groups that are the custodians of Pan-Ethiopianism. The Imperial state was a conglomeration of various ethnic groups under which the Shewa Amhara gained precedence. As indicated earlier, this is the view advanced by the student movement in the 1970’s as well as the liberation fronts that emerged thereafter.

These polarised debates are not of historical importance only but they constitute, as reflected in the 2005 election, a central place in the contemporary Ethiopian political and constitutional debate. Contradictory

¹²⁴ Gebru 1991: 28.

¹²⁵ Clapham 1990.

¹²⁶ Gashaw 1993: 142.

¹²⁷ Lewis 1993.

interpretations of the Ethiopian history underlie the country's alignment of political forces. On the one hand are political forces that regard the Menelik expansion of the 19th century as the process of 'nation-building'. For them, this is an unavoidable route that any great power has to go through. Based on their motto "One Ethiopia", "[t]hey see themselves as the authentic representatives of the indivisible Ethiopian 'nation' and consider it unpatriotic, or even un-Ethiopian, to argue for the recognition of the rights of hitherto marginalized ethnic groups".¹²⁸ Merara refers to these groups as "Menelikans of the nineteenth century".¹²⁹ Some of the member parties of the Coalition for Unity and Democracy (CUD), the major contender of the 2005 election, subscribe to the 'nation-building' view. On the other side of the alignment are those that view the act of Menelik as an act of national oppression. They contend that the different nationalities were subjected to economic, cultural and political domination. Included in this category are the EPRDF, the Oromo National Congress (ONC) and a number of ethnic-based parties that contested the election in the different regional states.

7.2 Assessment

It is submitted that it is only the synthesis of these two views that can fully explain the nature of the Ethiopian society and inform the appropriate course towards the peaceful co-existence of the different ethnic groups that inhabit the country. Led by King Menelik, the Amharic speaking shewa rulers, in their quest for wealth, subjugated the Southern ethnic groups that had their own political and cultural systems. They forcefully diffused their culture and language on the southerners. They disparaged them culturally and marginalised them economically. To that extent, the Imperial State was an ethnocratic state. The fact that people from the other ethnic groups were

¹²⁸ Merara 2006: 120.

¹²⁹ Merara 2006: 120.

able to assume position in the hierarchies of the Imperial state is of little significance as these people had to fully assimilate to the Amhara culture and religion in order to be accepted into the circles of the ruling class. The patrimonial alliances that were employed in some cases in order to ease the tension had a limited effect. In most cases, it amounted to cutting the umbilical cord that connected the local rulers with the subjugated mass, discrediting them in the eyes of the local population without facilitating the inclusion of the local population into the mainstream society.¹³⁰

At the same time, it would be a historical blunder to view the country's political malaise in the framework of the question of nationalities only, thereby, implying the assumption that ethnicity had been the sole rallying point in the political history of the Ethiopian state. First, the predominant role of the Shewa Amhara, in contrast to the Amharas in the northern parts of the country, in the making of the Ethiopian Empire should be emphasised. More broadly, the role that regional identities played in the struggle for the center of power mainly in the Abyssinian Kingdom but also of the larger Ethiopian Empire must be taken into account. As many argue, and rightly so, the Amharic speaking people in the northern part of the country primarily identify themselves in terms of their respective regions. This was, at least, the case prior to the introduction of the new dispensation. They would immediately tell you that they are Woleye, Gondere or Gojame-reminiscent of the historical territorial divisions prevalent in the Ethiopian Empire-and not Amhara.¹³¹ The historical circumstances in the

¹³⁰ Most of these local rulers "were classed as Amharas by their subject peoples" (see Clapham 1994: 33).

¹³¹ This does not mean they are not ethnically Amhara although some contend that the Amhara are not an ethnic group. Using objective criteria, an anthropologist might readily classify them as belonging to one ethnic group. It is not, however, sufficient that an anthropologist classifies them into one ethnic group. More

Abyssinian Kingdom were such that regional identities came to play an important role. Of course, for the southerners, the regional differences may not mean much as they classed their rulers as Amhara, who speak the same language and profess the same religion, both of which are largely alien to them. But for any constitution maker that seeks to address the nationalities question and rebuild the country based on this understanding, this distinction is of great importance. Identifying a group by how others define them rather than by how they define themselves is reminiscent of an ascribed identity that is rooted in a primordial thinking. In any event, a simple classification of these groups as Amhara would be a superimposed/ascribed identity.

Related to this is also the need to take into account the class consideration that was prevalent in the northern part of the country. Unlike the Afrikaners of South Africa, where the assumption of political power was accompanied with economic upliftment, the Amhara both from the Shewa and the other regions did not benefit from the assumption of power by their kinfolk. The peasants of the north were subjected to equally harsh conditions by the ruling class. In fact, the major difference was only that their oppressors spoke their language and practiced their culture. This should be taken into account in determining the relevance and saliency of ethnicity in the Ethiopian society and the role it should assume in the new constitutional dispensation.

Another important factor is also to take into account the section of the population, however small that may be, that does not identify with any particular ethnic group but with the larger state. This section of the

important is also the subjective element, which is often shaped by political, historical and social circumstances.

population is present mostly in the capital but also some other major towns. Admittedly, it is not easy to discern this group. Like the Wallons of Belgium that identify themselves with the state, some of them claim the Ethiopian identity and strongly reject identification with any particular ethnic group only to express their opposition against the present dispensation, a politically motivated response rather than a true expression of one's identity. For others, including those that could primordially speaking belong to the Amhara or those that have successfully assimilated to the Amhara culture, it is difficult, if not impossible, to define their identity in separation of the state-wide identity. This is understandable given that the state, as alluded to above, is constructed based on the language, culture and history of the Amhara. The point is that such kind of identity formation and its development should also be given a space in the public sphere. As it happened with the case of Brussels in Belgium, residents of the capital must be free to develop their own identity, which in most likely case would either relate to the state-wide identity or an identity that is peculiar to the city. They should not be forced to be classified as belonging to a particular ethnic group which currently manifests in the requirement that imposes a duty on the residents of the city to identify themselves with a particular ethnic group when applying for an identity card.

The foregoing discussion clearly indicates the need to arrive at a synthesis of the two views that have dominated the Ethiopian politics for decades. The basic thrust of this position is the need to accept the existence of different types and levels of identity, which may or may not overlap among members of the Ethiopian society. We need to come to grips with the fact that some keep their allegiance exclusively with their particular ethnic group while others share an overarching state-wide identity. Some identify themselves with their regional rather than ethnic identity. And yet, we must also note that a multi-layered identity, whereby the embracing of an ethnic

identity does not exclude similar allegiance to an overarching state-wide identity, is a common reality as is the case with persons belonging to most ethnic groups in the southern Ethiopia.

The existence of these different layers of identity is reflected, to a certain extent, in the 2005 election. It is clear that one of the reasons why the ruling party lost the election in Addis Ababa has to do with the fact that its policy of nationalities does not sit well with the residents of the melting pot Addis Ababa. It is difficult to conceive a party that champions the cause of the ethnic groups winning an election against a party that rejects the consideration of the ethnic factor in the Ethiopian politics in a city where the majority of them do not consider their ethnic identity as a defining element of who they are. Yet to present the successful mobilisation of the residents of the capital and other major urban areas against ethnicity as a state-wide protest to the inclusion of the ethnic factor in the body politic is either being naïve or engaging in a deliberate distortion of the socio-political realities prevalent in the country. The relative gain of ethnic-based opposition parties in the Oromo-speaking parts of the country suffices to indicate that the denial of votes to the ruling party cannot be simply interpreted as a rejection of the ethnic factor.

8. Conclusion

The key element for the mutual coexistence of the different groups in the Ethiopian society lies in the capacity and willingness of the protagonists of the Ethiopian politics to recognise the multi-layered identities that exist in the country. It is only when a consensus is achieved to build the Ethiopian state based on such recognition that a peacefully co-existing democratised Ethiopia becomes a possible reality.

The absence of such recognition compromises the capacity to achieve arrangements that can be acceptable by all groups. Once this crucial element of recognition is realised, however, agreeing on institutional expressions that give practical effect to these different types and layers of identities should not be a problem. In the following chapter, we shall evaluate whether the present constitutional arrangement does recognise these realities and provide a space for their expression in the public sphere.



Chapter Seven

Marrying federalism with ethnicity: The case of Ethiopia

1. Introduction

In a significant departure from the tradition of African states, Ethiopia has ventured on a bold experiment of marrying of federalism with ethnicity. Ethnicity constitutes one of the major features of the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 (hereafter Constitution) and the basis for the internal organisation of the federal state. The point of departure for self government as expressed in the federal arrangement is geographical areas based on ethnic criteria. This explains why the Ethiopian federalism is often referred to as ethnic or, as its detractors sometimes refer to it, tribal federalism.

The present dispensation not only marks a new political watershed in post-colonial Africa but also represents a major break from the era of centralisation that characterised the Ethiopian state for the most part of its history. This dispensation has not been without controversy. Critics take great pain to stress that the Ethiopian constitutional approach to claims of ethnic identity intensifies ethnic loyalty. They, as a result, fear that the risk of political disintegration is imminent. Yet others refer to the Ethiopian political history, and especially to the making of the present day Ethiopia, and argue that any constitution that aims to build a harmonious society cannot overlook the need to give due recognition to 'ethnicity', whatever form that recognition takes.

Focusing on the 1995 Constitution as well as the legislative and other institutional developments, this chapter examines how Ethiopia has responded to the multi-ethnic challenge. Based on the institutional frameworks developed in previous chapters and against the background

depicted in Chapter Five, it discusses the present constitutional approach to ethnic diversity.

The chapter first seeks to determine how the state of Ethiopia views itself, as described in the Constitution and other major legislation and policies. The question here is whether the state readily recognises its multi-ethnic character or seeks to present a homogenised image of the society it seeks to regulate. The chapter then proceeds to the second institutional principle, self-rule, and examines the Ethiopian institutional perspective on providing autonomy to the constituent units. Finally, the focus shifts to the third institutional principle, shared rule, and discusses how this particular institutional principle has received practical expression in the Ethiopian Constitution. The chapter then concludes with some general assessment.

1.1 Introducing the state structure

Focusing on the state structure, this section briefly outlines the main features of the 1995 Constitution. The Constitution states that the Federal Democratic Republic of Ethiopia comprises of the Federal Government and state members, establishing a two-tier federal government.¹

1.1.1 Federal Government

Ethiopia has adopted a parliamentary form of government from which the President, the Prime minister and the cabinet are drawn. The Constitution vests the executive authority of the Federal Government in the Prime Minister,² who is the head of the national executive.³ The highest executive powers of the Federal Government are vested in the Prime Minister and in

¹ Article 50(1) Constitution.

² Article 85 Constitution.

³ Article 83(a) Constitution.

the Council of Ministers. Both the Prime Minister and members of the cabinet are accountable to the Parliament,⁴ which has the power to call and question the Prime Minister and other members of the executive. Parliament also has the power to investigate the executive's conduct and discharge of its responsibilities.⁵ As is the case with most parliamentary systems of government like Germany and India, the Federal Government has a ceremonial President who, once elected, vacates his or her seat in the Parliament.⁶ The President, who is a head of state,⁷ has to be elected by a two-thirds majority of the joint session of the lower and upper houses of the Ethiopian parliament.

The Federal Government is comprised of two houses, which consist of the House of People's Representatives (HPR) and the House of Federation (HF).⁸ The HPR, the lower house, is a directly elected body. On the other hand, the HF, the upper chamber, is a body that can be elected directly or indirectly by state parliaments and consists of representatives of ethnic groups. The HPR is declared by the Constitution as "the highest authority of the Federal Government".⁹

With regard to judicial powers, the Constitution vests supreme judicial authority in the Federal Supreme Court. It also allows the Federal Government to establish a Federal High Court as well as first-instance

⁴ Article 92(2) Constitution.

⁵ Article 55(17) Constitution.

⁶ Article 70(6) Constitution.

⁷ Article 69 Constitution.

⁸ Article 53 Constitution.

⁹ Article 50(3) Constitution.

courts it deems necessary either across the country or in some parts of the country only.¹⁰

1.1.2 State government

Ethiopia is divided into nine states and two self-governing administrative cities. The Constitution is, however, silent on the structure of state governments. It leaves the matter to state constitutions. Establishing a state administration that best advances self government is a responsibility left to each state.¹¹ A survey of the constitutions of each state, however, reveals a common government structure across the states.

The executive authority of a state is vested in the president of each province, who is elected by the state legislature from among its members.¹² Like the national Prime Minister, the president exercises the executive authority together with other members of the state cabinet. Members of the state cabinet are responsible to the state legislature for the exercise of their powers and the performance of their functions.

The legislative authority of a state resides in its state legislature whose members are fully elected by the population of each state. Finally, states have also established State Supreme, High and first-instance courts.¹³ State Supreme Courts have the highest and final judicial power over state matters.

The structure of government units below the state administration is a matter left to the states. The Constitution simply declares that adequate power shall be granted to the lowest units of government to enable the people to

¹⁰ Articles 78-81 Constitution.

¹¹ Article 52(2) (a) Constitution.

¹² Articles 125-141 Constitution.

¹³ Article 78(3) Constitution.

participate directly in the administration of such units.¹⁴ As a result, government units with various powers and functions have been established in different states. The common element is that all state governments have established three-tier structures (i.e. Zone, Wereda and Kebele). The status and powers of these government units, however, varies from one state to another.

1.2. Clearing terminological ambiguity: Nation, nationality and people

The Constitution uses the terms nation, nationalities and peoples to refer to the different ethnic communities in Ethiopia. Many students of Ethiopian federalism are not, however, clear about the meaning of the terms nations, nationalities and people as employed by the Constitution.¹⁵ Who is a nation? Which ethnic communities are regarded as nationalities? What is the difference between a nation and a nationality?

The Constitution defines a nation, nationality or people simply as “a group of people who have or share a large measure of common culture or similar

¹⁴ Article 50(4) Constitution.

¹⁵ Bekele (2002: 150) states that “the definition in the Constitution is ...impregnated with too vague expressions that have made it too hard to understand and identify the social category it attempts to characterise – be it as nation, nationality or people”. Similarly, Cohen (1999: 99) argues that the Constitution “has employed this rather vague terminology in the hope of avoiding highly sensitive questions about what the nature, and therefore status, of groups of people in the Ethiopian state is”. He shifts his focus from the terminologies to the attitude expressed in the Constitution. According to him, “linguistic and territorial criteria are necessary for the definition of all groups of people, whilst the other criteria are used to back up these two, implying that other factors of a less easily defined nature can remain important in establishing the identity of a group, which seeks to assert the states rights” (Cohen 1999: 99).

customs, mutual intelligibility of language, belief in common or related identities, a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory”.¹⁶ Both subjective and objective elements constitute the definition. In as much as objective markers like common culture, language and territory are regarded as defining elements of ‘nations, nationalities and people’, so are the subjective elements of collective identity and a common psychological make up. If a community is to be regarded as a nation, nationality or a people, it must satisfy both the objective and subjective elements of the definition.

Some argue that the Constitution envisages a hierarchy between the different ethnic communities by designating some as a nation and others as nationalities. Alem, for example, takes the view that “the three words denote a hierarchy of ethnic groups from large (‘nation’) through medium (‘nationality’) to small (‘people’) in both numerical size and political significance”.¹⁷ For him, the size of the population and the political significance of each ethnic group determine the place of the group in the ethnic hierarchy that the Constitution envisages. He further illustrates this by stating that the Oromo are a nation, the Agew are a nationality, and the Koma are a people. From his illustration, it is clear that he gives greater weight to population size.

It is submitted that a meaningful distinction among the three categories cannot be inferred from the Constitution. Even the fact that the Constitution uses different terms to refer to the different subnational units does not help to discern a nation from a nationality. The Constitution, for example, refers to Tigray, the almost ethnically homogenous subnational unit, as the state of

¹⁶ Article 39(5) Constitution.

¹⁷ Alem 2005: 324.

Tigray. The same terminology is used to refer to the other four nearly ethnically homogenous subnational units. This might lead one to argue that those ethnic groups with a state of their own belong to one category, possibly a nation. Arriving at this conclusion is, however, made impossible by the fact the Constitution uses the same terminology to refer to Benshangul/Gumuz, a subnational unit composed of four ethnic groups (i.e. the state of Benshangul/Gumuz). The Constitution further complicates the matter by referring to Gambela, also composed of four indigenous ethnic groups, as the state of the Gambela Peoples. It then refers to the ethnically mosaic subnational unit of the Southern region as the “State of Southern, Nations, Nationalities and Peoples”.¹⁸ The Constitution’s inconsistency in the designation of the subnational units makes it difficult to infer meaningful constitutional distinction among the three categories.

The question that should be asked is whether the difficulty of understanding the difference between the three categories, even with the help of the text of the Constitution, means that there is no distinction between these three categories. To simply conclude that there is no distinction between the

¹⁸ Article 47(1) Constitution. Ismagilova (1999: 8-11) refers to the same problem: “...it is difficult to understand who is a ‘nation’ (Amhara, Tigray, Oromo?), who is a ‘nationality’? Who is a ‘people’? Because one of the [underdeveloped] states is called ‘Gambela Peoples’, one can suppose that this term means the lowest level of ethno-social category (synonym of ‘tribe’?). As to the [southern regional state], it is called ‘Southern Nations, Nationalities and Peoples’. This State comprises [underdeveloped] areas including that inhabited by Nilotic ethnic groups. And it is difficult to understand why the term ‘nation’ is applied to these peoples”.

terms would mean that the Constitution's usage of the terms is pointless. However, the fact that the constitution makes use of three different terms is indicative of the existence of three different types of socio-political categories. It at least suggests that the different ethnic groups in Ethiopia should be regarded as nations, nationalities or peoples, even if it does not explain the difference between these three categories. Holding otherwise would also be against the principle of constitutional interpretation which requires that each constitutional provision be interpreted as having meaning.

Based on this premise, and using the discussions of the definition of ethnicity and nation in Chapter Two, the following distinction is suggested between a nation and a nationality. It is submitted that a group of people who satisfies the definition provided by article 39(5) of the Constitution could be regarded as a nation once they start to rally around a political agenda requesting either for a regional state of their own or some sort of political autonomy or, in the most extreme case, an independent state of their own. This seems also to be the interpretation adopted in practice. The Sidama Zone Council, an ethnically defined administrative unit within the Southern Nations, Nationalities and Peoples Regional State (SNNPR), has made it a point to define themselves as a nation rather than as a nationality in making a case as to why they should have a regional state of their own rather than being lumped together with others under the southern state, the SNNPR. Implied in this is the argument that a nation is entitled to have a state of its own. According to the definition that we have just adopted, however, it is not only ethnic communities like the Sidama, who demand for a state of their own, that can be regarded as a nation. The definition of a nation also encompasses ethnic groups like the Silte who very recently demanded political recognition of their separate identity and some form of autonomy to express their identity and manage their own affairs. Ethnic groups that fulfil the criteria set by article 39 of the Constitution who,

nevertheless, have not developed an ethnically-defined political agenda, which is characterised by the absence of ethnically motivated political mobilisation, can be regarded as nationalities.¹⁹

The fact that the Constitution envisages differences among the three groups and thus the different ethnic communities that inhabit the country does not necessarily mean, unlike what Alem suggests, that there is a hierarchy among the three groups. The differences are more like phases that each ethnic group may or may not go through. An ethnic group may or may not develop into a socio-political unit. The development of a political agenda among an ethnic community depends on socio-historical and political circumstances. These developments define the nature of each ethnic community. Furthermore, the absence of a constitutionally significant hierarchy among the different ethnic communities is apparent from the fact that the Constitution provides ethnic communities, which exist within the already established subnational units, the right to establish at any time their own states.²⁰ Despite the argument advanced by Alem, the size of the population should not matter in differentiating between, for example, a nation and a nationality. Even small ethnic communities can be as effective

¹⁹ Analysis of the three terms by Ismagilova (1999), in light of the Russian literature, seems to support this conclusion. He regards the use of the three terms as an influence of Russian scholars, who used to distinguish different categories. After explaining how confusing these terminologies are, especially when translated into English, he explains that nation is an ethno-social category in Russian literature while the term 'nationality' means ethnic origin and not an ethno-social category and coincides with terms 'ethnic group', 'etnie'.

²⁰ Fasil (1997: 160) shares the same view: "The issue of [explaining the difference between a nation, nationality, and a people], intellectually interesting as it is from socio-anthropological point of view, has no direct constitutional bearing or significance since all three entities are assumed to be equal".

as numerically larger ethnic groups in terms of political mobilisation and the articulation of political agenda.

For the sake of brevity, this thesis uses the terms ethnic groups and ethnic communities alternatively to refer to nations, nationalities and peoples.

2. Recognition of ethnic diversity

The act of recognition can find expression in different forms. By focusing on the preamble to the Constitution, the state symbols as well as the language clause of the Constitution, this section determines how the state of Ethiopia defines itself

2.1 Preamble

The opening paragraph to the preamble of the Ethiopian Constitution begins with “We nations, nationalities and peoples of Ethiopia”. Departing from the homogenisation solution of “we the people of the...” the Constitution presents the Ethiopian state as a compact entered into by the different ethnic groups that inhabit the country. As one author has remarked, “[t]his is not a constitution of the Ethiopian citizens simply lumped together as a people”.²¹ Furthermore, the preamble clearly states that the ‘political community’ that these groups agreed to form is premised on the full recognition of their “full and free exercise [of the] right to self-determination”.

Based on the opening statement of the preamble (i.e. “we the nation, nationalities and people of Ethiopia...”) some describe the Ethiopian federalism as a ‘coming together federalism’. Fasil states that “the Ethiopian citizens are first categorised in their different ethno-linguistic groupings and then these groupings come together as authors of, and beneficiaries from,

²¹ Fasil 1997: 51.

the Constitution of 1994”.²² The stronger advocate of this position is Andreas who describes the new political order as a ‘coming-together federalism’, albeit with some elements of the constitutional arrangement signifying a ‘holding-together federalism’.²³ He bases his argument first on the fact that the constitution places sovereignty on the nations, nationalities and peoples of Ethiopia. He quotes at length the preamble which commences with the following paragraph:

We the nations, nationalities and peoples of Ethiopia [are] strongly committed, in full and free exercise of our right to self-determination, to building a political community founded in the rule of law and capable of ensuring lasting peace, guaranteeing a democratic order and advancing our economic and social development.

He also produces two further main arguments to substantiate his conclusion that the presentation of Ethiopia as a coming-together federalism is not a ‘constitutional fiction’. First, the main political actors during the transition were, by and large, ethnic-based liberation movements or parties that either fought for or politically asserted the right to self-determination, including independence. This was especially most apparent in the case of Tigray where the Tigray People Liberation Front (TPLF) that had established a ‘de facto independent political community’ long before the fall of the military government. Second, and this is his strongest argument, by the time the new political actors were ready to assume state power, the unitary state had ceased to exist. He concludes by stating that the Ethiopian federalism “is a

²² Fasil 1997: 51.

²³ Andreas 2003.

coming-together federalism because its advent was the result of a revolutionary overthrow of the unitary state”.²⁴

It is submitted that the description of the Ethiopian system as a coming together federalism is not convincing. Stephan, whom Andreas also quotes in making his argument, regards coming-together federalism as “the result of a bargain whereby previously sovereign polities agree to give part of their sovereignty in order to pool their resources to increase their collective security and to achieve other goals, including economic ones”.²⁵ The key phrases in Stephan’s definition of coming-together federalism are “previously sovereign polities”. These phrases embody the key element that distinguishes coming-together federalism from holding together federalism. In the case of coming-together federalism, the constituent units are not the creatures of the new constitutional dispensation which could be an outcome of either a negotiation or a revolutionary overthrow of an existing state. As the case of the USA and Switzerland shows, the constituent units are sovereign entities prior to the establishment of the federation. In the case of Ethiopia, Tigray was, of course, a de facto independent political community. The same cannot, however, be said of the other constituent units of the present Ethiopian federation. Yet even Tigray never declared or considered itself as an independent state.²⁶ Furthermore, the fact that the main political actors in the creation of the federation were ‘representatives of ethnic communities’ cannot in any way suggest that the different ethnic communities in Ethiopia were sovereign polities that were legitimately represented in the process that eventually brought about the new dispensation. The participants were mainly organisations that, at most,

²⁴ Andreas 2003: 161.

²⁵ Stephan 1999: 21.

²⁶ See also Assefa 2006.

actively struggled for the political rights of the ethnic community which they ostensibly represented without, of course, having any legal mandate to do so. What we had was thus a political compact among the country's major political forces rather than a compact among the 'sovereign ethnic communities' that inhabit the country. This leaves us with Andreas's second point, namely that by the time the new political forces took power the unitary state had ceased to exist and hence the coming-together nature of the federation.

It is true that the military junta was no longer a force to reckon with when the process for the reconstruction of the Ethiopian state was unleashed. An important difference that Andreas overlooks, however, is that it is the government, the state apparatus/machinery as we know it, which, admittedly, had ceased to exist and not the state. The state of Ethiopia remained united but under the control of a new force that was willing to negotiate with other forces on the reconstruction of the Ethiopian body politic. There was no single part of the Ethiopian state that declared independence or even self autonomy following the overthrowing of the unitary state. In conclusion, the constituent units of the federation were not by any standard sovereign polities that negotiated a coming-together federalism. The positing of the Ethiopian federalism as a coming-together federalism is no more than a 'constitutional fiction'.

The Ethiopian federation can appropriately be described as a holding-together federalism, which, as defined by Stephan, is usually the product of unitary states reaching "the decision that the best way – in deed, the only way - to hold their countries together in a democracy would be to divide power constitutionally and turn their threatened polities into federation".²⁷

²⁷ Stephan 1999: 160.

In the Ethiopian case, it may not be the unitary state that decided to divide power constitutionally among the subnational units. Yet the major political force that assumed control of the state believed that the best way to keep the country together was to rearrange the country based on some federal principles. To that effect, it, in negotiation with other political forces, divided the country into federal units and devolved power accordingly. This means that the Ethiopian case fits more appropriately with the group of holding-together federations than within coming-together federations.

The implausibility of describing the Ethiopian federalism as coming-together federalism should, not, however, blind us from noting the symbolic significance of the opening statement of the preamble. The opening statement and the subsequent paragraphs of the preamble reveal much how the Constitution views the Ethiopian state. Simply put, the Ethiopian Constitution does not aim at the construction of a nation-state. More like the Swiss Constitution, the different groups that make up the Ethiopian society have decided to place their allegiance primarily with their ‘nations and nationalities’. The preamble suggests that the decision to live together under one state is not motivated by the idea of nationhood or a common culture but by the conviction that the different groups that have historically inhabited Ethiopia have over time developed a ‘common interest’ and ‘contributed to the emergence of a common outlook’. The preamble of the Constitution declares that the common destiny as Ethiopians “can best be served by rectifying historically unjust relationships and by further promoting [their] shared interests.”

The Ethiopian approach rejects the patriotic narration about historic Ethiopian nationhood and replaces it with an idea of Ethiopia as a multi-nation state. This is further strengthened by article 8 of the Constitution which vests all sovereign powers in the “nations and nationalities and

peoples of Ethiopia”. In this regard, the Ethiopian approach departs from the major trends in African states where the prohibition or suppression of political expression of ethnicity is the norm. Ethnic expressions are not only limited to the cultural realm. In fact, the political expression of ethnicity is encouraged. Ethnic communities are granted full political rights. By a constitutional fiat, ethnic communities, one may reasonably argue, are turned into political communities. Whether this is a good or bad construct is something that will be explored as we continue the discussion of Ethiopian federalism.

2.2 Symbolic codes

The vision of Ethiopia as a multi-nation state that acknowledges its internal diversity is also apparent in a number of symbolic codes that the state has adopted. Unlike a number of states, including South Africa, which have ignored institutional realities to eschew the federal nomenclature, the Ethiopian Constitution declares the Ethiopian State, in no ambiguous terms, as the Federal Democratic Republic of Ethiopia. The subnational units are also referred to as state governments that have their own state councils.

The symbolic significance of flags is also appreciated by the Constitution. Article 3(1) of the Constitution has retained the old flag of Ethiopia, which consists of three equal and horizontal bands of green at the top, yellow in the middle and red at the bottom. It, however, placed a yellow pentagram and single yellow rays emanating from the angles between the points on a light blue disk centred on the three bands. The yellow pentagram, which also represents the national emblem, signifies the desire of the ‘nations, nationalities and peoples’ of Ethiopia to live together in equality and

unity.²⁸ Like the Spanish Constitution, the Ethiopian Constitution allows members of the federation to have their own respective flags as determined by their respective legislatures. The same applies to emblems.²⁹

The paradigm shift in the vision of the state has also allowed member states of the federation to celebrate public holidays in addition to state-wide holidays. This has allowed the states to celebrate events whose historical importances are not necessarily shared by members of other ethnic groups. The day on which the TPLF started its armed struggle against the military regime is, for example, a public holiday in Tigray regional state. Another example is the commemoration of the Martyrs of the Chelenko war in the Harari regional state. In 1887, the expanding army of the Shewa Amhara led by Emperor Menelik had to overcome a fierce resistance from the people of Harari before it captured the city of Harar. Although this particular historical event was thrown into the historical dust bin, with the advent of the new dispensation, which has brought with it a different interpretation of the historiography of the state, the Harari people have now been able to commemorate it as the Chelenko Martyr's day.

Similarly, the present dispensation has given the different ethnic groups the opportunity to use their towns and institutions to somehow reflect their cultural and historical identity. The Oromyia regional state, for example, has

²⁸ Article 3(2) Constitution. Successive regimes had placed their own unique identifiers on the flag. For instance, the Derg had the *Arma* placed on the flag and Emperor HaileSelassie had the *Lion of Judah* on the flag. The green, the yellow and red flag has remained the same.

²⁹ Article 3(3) Constitution.

named its legislative body *Chefe Oromyia*, in celebration of the most acclaimed democratic institution in the historic Oromo society. There have also been some name changes, especially in the Oromyia regional state. The town of Nazret and Debrezeit are now renamed as Adama and Bishoftu respectively, the original names of the two towns before they were changed following the expansion of the Menelik army into the area. Addis Ababa, the capital city, originally an Oromo homeland, has maintained its official name. Oromo officials and their media outlets are, however, free to refer to the town by its previous name, Finfine. Unlike in the case of South Africa, the changing of names has not provoked strong protest from other groups.

The symbolic codes of the Ethiopian state clearly recognise the internal diversity of the Ethiopian society as they allow the different ethnic groups to express their culture and history. The problem is that the symbolic realm might, in some cases, give rise to internal tensions. A good example is the celebration of the martyrs of Chelenko in Harari regional state. In a region that has a large number of individuals that belong to the Amhara ethnic group, the commemoration of Chelenko, in its present form and spirit, has the effect of projecting the dichotomy of the oppressor and the oppressed, the conqueror and the vanquished. Such divisive symbolism compromises the capacity of the state to build 'one political community' which is not only based on the recognition of diversity but also on the need to hold it together. The commitment of the preamble to continue as a one 'political community' cannot be achieved unless recognition is complemented by the spirit of reconciliation. In this regard, the Ethiopian system, it seems, has to yet explore innovative ways of avoiding 'divisive symbolism' and translating a potentially disruptive symbolism into a symbolic code that promotes reconciliation and recognition.

2.3 Language

Article 5 of the Constitution, outlining the basic principle of the language policy, declares that all Ethiopian languages shall enjoy equal state recognition. This is further elaborated by article 39 of the Constitution which states that every ethnic group in Ethiopia “has the right to speak, to write, and to develop its own languages; to express, to develop and to promote its culture; to preserve its history”. Based on these constitutional principles, the Constitution declares that Amharic shall be the working language of the Federal Government while allowing the states to determine their respective working language.³⁰ The federal offices that operate in the states employ Amharic as the language of communication.

From the outset, it is important to note that the Constitution, faced with an ocean of linguistic diversity, has opted not to adopt official language/s. It has rather opted for a ‘working language’. Symbolically, this is obviously designed to avoid the impression that a particular language is favored above any other at the symbolic level. The Ethiopian system adopted Amharic as the language of government (federal) business without conveying the message that the adopted language is dominant over others. The success of the system in overcoming the dilemma that it tries to circumvent is, of course, something that can be debated. As we shall see in the following paragraphs, there are sections of the society that regard the continued use of Amharic at the federal level as a continuation of their marginalisation and the perpetuation of past policies that subordinated all other languages to Amharic.

The constitutional stipulation that allows each regional state to adopt its working language opens a room for the application of a territorial model of

³⁰ Article 5 Constitution.

language planning, in which case the working language of each member of the federation would be that of the majority of the locality.³¹ In practice, five of the nine regional states have endorsed unilingualism. This obviously provides ample room for each ethnic community to develop its language and culture. It also represents recognition of the linguistic identities of the constituent units. An important consequence of this policy is that individuals moving into either of these regions must assimilate. That means Amharic-speaking citizens moving to an Oromifa-speaking region have to leave behind any prior claim to language protection. As we shall see later, this has created a problem in some areas where an important number of minorities are scattered in the midst of the regionally dominant linguistic groups, especially in major urban areas of some of the member states. It is, however, important to note that the ethnically plural regional states have opted to retain Amharic as their working language. To be precise, three of the four multi-ethnic states (i.e. the SNNPR, Benishangul and Gambela regional states) have decided to retain Amharic as their working language.

2.3.1 The debate on language policy

The language policy has provoked criticism both from centrifugal and centripetal forces. On the one hand, there are sections of the society that regard the adoption of Amharic as the working language of the Federal Government as a “little more than the continued endorsement of the superior position of the language, and the sections of society associated with it, by the Ethiopian state”.³² For these sections of the society, the policy is a threat to their ethnic-self determination rights.³³ It also undermines the

³¹ The state-based federal offices use Amharic for government business.

³² Cohen 2000: 111.

³³ Smith 2007.

constitutional principle that all languages are equal.³⁴ The Oromo Federal Democratic Movement, for example, has opposed the sole use of Amharic as the working language of the Federal Government and calls for the adoption of Oromifa as the working language of the Federal Government.³⁵

The more vocal criticism comes from the proponents of the idea of Ethiopian nationhood who want to use language as a unifying factor. They criticise the position of the Constitution on language as an attempt to create ‘the biblical tower of Babel’ in Ethiopia. If that was not the intention, they argue, the drafters of the Constitution would have opted to encourage the use of Amharic, ultimately developing it as the national language.³⁶ According to this argument, Amharic could serve “as an important instrument for the eventual creation of greater cohesion among Ethiopians in language and in a sense of common national destiny as one people”.³⁷ The case of India is often invoked to support this line of argument. Bekele remarks that “the role of English as a common language among the diverse linguistic groups in India has tremendously assisted in the development of a national consciousness in that country”.³⁸ The proponents of this view recommend the Russian and Spanish model of language planning where the Russian and Castilian languages are respectively used along the languages of the constituent units.³⁹ It is similarly contended that non-Amharas, owing

³⁴ Bekele 2003.

³⁵ Interview with Bulcha Demekesa, chairman of the Oromo Federalist Democratic Movement (OFDM) http://www.oduu.com/news/index.php?news_id=4 (accessed on 25 February 2005)

³⁶ Minase 1996.

³⁷ Minase 1996: 37. Ehrlich (1999: 63) similarly argues that the language policy has the effect of “causing a degree of separation between the various groups”.

³⁸ Bekele 2003: 213.

³⁹ See Bekele 2003.

to the decreased amount of formal education they receive as a result of the language policy, will effectively lose access to the state apparatus, further disconnecting them from a sense of Ethiopian identity.⁴⁰

2.3.2 Assessment

The position of the Constitution on the use of language marks a clean break with the past during which Amharic enjoyed a superior position throughout the country. It is a major departure from the historical pattern in which “the distribution of the political goods of communication, recognition and autonomy has been highly skewed, benefiting native Amharic-speakers disproportionately”.⁴¹ Of course, the special place of Amharic in the Ethiopian linguistic landscape has not vanished entirely. It is also true that the retention of Amharic as the language of national communication can appear to some as the continuation of the Amharic hegemony. However, even if one cannot deny the symbolic implication of the retention of Amharic as a federal language, its continued use can hardly be associated with deliberate symbolic dominance. The decision to keep Amharic as the federal working language is no more than a reflection of the position that the language has attained as “an effective means of national

⁴⁰ Ehrlich 1999. Bloor and Wondwosen (1996) share the same concern. It is often argued that the present language policy in Ethiopia “will restrict movement across administrative units, thereby disrupting existing patterns of exchange between different areas and contact between different people” (Cohen 2000: 112).

⁴¹ Smith 2007: 5. As pointed out by Fasil (1997: 55), “state recognition of every Ethiopian language means that efforts for its development –i.e. the preservation of literature, the provision for a script, where such does not exist; the documentation of its oral literature; and the further study of each language via grammatical, vocabulary and overall publication and enhanced use of the language –will be done with both state blessing and state support to the extent possible”.

communication”.⁴² This is also evident from the fact that it is not labelled as an official but rather as a working language of the Federal Government.

Using Amharic along with the regional languages as co-official language in all regional states might, as some argue, help to promote the relationship between the different linguistic groups. This view, however, belies the structural imbalance that exists between Amharic and the other languages and the effect that this imbalance may have on the development of the latter. As indicated in previous chapters, Amharic, to the exclusion of all other languages, has been the language of government business for decades. This provides Amharic with a unique position in terms of language status, which other languages would be hard-pressed to compete with. Even in states where the speakers of other languages are in a majority, there is no guarantee that a policy of co-official languages will manage to avoid the dominance of the Amharic language. Without, at least, some kind of ‘normalisation of language policy’, the regional language will in all likelihood be relegated to a secondary status.

Moreover, even if one accepts the instrumentality of the Amharic language in bringing different ethnic communities together, it is not clear if it has to be given an official status both at the federal and state level. As noted above, Amharic is now the working language of Federal Government in which all government business is conducted. Obviously, any communication between the Federal Government and a member state or between two member states will be conducted in Amharic. Furthermore, with the view to promote the language as the language of national communication, Amharic is being provided as a subject in almost all primary schools throughout the country. It is also important to note that

⁴² Cohen 2000: 111.

almost all ethnically plural regional states, with the sole exception of Harari, have opted for Amharic as their working language. Generally, Amharic is still given precedence over all other languages.⁴³ This means Amharic can still serve as a cohesive force by facilitating communication between and among the different ethnic groups.

It is also not clear if those like Bekele that criticise the present language system based on the Indian model have really grasped the Indian system. Their criticism rather reflects an incorrect appreciation of the Indian system. It is true that the adoption of English as a language of government business (i.e. associate additional official language) has facilitated communication between the different ethnic groups in India. Underlying the Indian and, as a matter of fact, some African states' decision to adopt English as the official language, is the very fact that English has a unique neutral status compared to other local languages. It is this factor that often motivates the use of English and not other local languages as languages of government business. As Schmied observes, this is specifically true in most decolonised states:

Ethnic languages are normally not accepted as national languages wherever other groups fear 'tribal dominance' and prefer English, which is 'tribally neutral'. Only tribally neutral *lingue franche* have any chance of taking over certain functions from English as national languages.⁴⁴

⁴³ What might even be problematic is the dominance of Amharic in the majority of the ethnically plural regional states. This, one may argue, works against the constitutional commitment to promote linguistic diversity and especially the use of local languages even though the scheme benefits from the culturally neutral status of Amharic in the context of the regional languages.

⁴⁴ Schmied 1991: 27.

The decision made by India not to adopt Hindi as a 'working language' of the national government was underlined by the fact that the adoption of Hindi would portray the dominance of the Hindu-speaking group and the relegation of others to a secondary status. It is also important to note that the Indian system recognises twenty two state languages. Thus, in addition to allowing the constituent units to adopt their own regional languages, the adoption of the Indian model would have resulted in the 'officialisation' of a 'culturally neutral language'. Amharic, obviously, does not enjoy a neutral status among the different ethnic groups in Ethiopia. Yet despite this fact, a decision has been made to maintain Amharic as the federal working language. Furthermore, as indicated earlier, it is regarded as the language of national communication and, as a result, it is being taught as a subject in primary schools in non-Amharic speaking parts of the country. Generally, if the suggestion for the Ethiopian system is to emulate the Indian model, one can reasonably argue that the present system provides more than what the Indian system has to offer.

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Finally, we turn to the argument that non-Amharic speakers will lose access to the state apparatus as a result of the language policy. It is not at all clear how the language policy will have the effect of compromising the capacity of individuals from a non-Amharic speaking group to access the state thereby continuing their historical marginalisation. In fact, the reverse seems to be true in present day Ethiopia. Regional state government as well as administrative units within each regional state are run and staffed by members of the language group that is dominant in the regional or sub-regional government unit. The new dispensation has opened more opportunities for employment 'to sons of the soil'. As we shall see later, this is also the case at the federal level. More than ever, one can easily observe the appointment of individuals from extremely diverse linguistic background in the different institutions of the national government

including the cabinet. In fact, fluency with Amharic does not seem to be an obstacle in assuming higher offices of the Federal Government. It is not uncommon to come across ministers for whom Amharic obviously is clearly not their mother tongue.

2.3.3 Language in education policy

The language in education policy is underlined by the constitutional commitment to ethnic diversity and multilingualism. The Education and Training Policy (ETP) as adopted by the Ministry of Education emphasises the use of local languages in primary education.⁴⁵ Section 3.5(1) provides that

cognizant of the pedagogical advantage of the child learning in mother tongue, and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.

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The ethnically homogenous regions have adopted the languages of their respective dominant groups as the medium of instruction for primary education. Tigrinya, Oromifa, Amharic, and Somali are the languages of primary education in Tigray, Oromyia, Amhara and Somali regional states respectively. In the Southern regional state, where there are more than a dozen ethnic groups, eleven nationality languages are being used as a medium of instruction in primary education.⁴⁶

⁴⁵ The Constitution, under article 51(2) limits the role of national government in education to establishing and implementing national standards and basic policy criteria. This begs the question whether the national Ministry of Education has the power to adopt a policy that regulates the medium of instruction in schools that operate within the regional states.

⁴⁶ Smith 2007. This has entailed the translation of educational materials from

The implementation of this policy has brought to an end the dominant position of Amharic in areas of education as the sole medium as well as a timetabled subject throughout primary and secondary education.⁴⁷ However, to be precise, the position of Amharic in the Ethiopian linguistic landscape is not totally compromised. Because of its status as a federal ‘working language’, Amharic is defined by policy as the language of national communication. This rule is given practical expression through the provision of Amharic as a subject in primary education.

Furthermore, the Amharic language has also benefited from the fact that the policy does not close the door for the use of languages other than one’s own native language for primary education either due to expediency or other practical reasons. This is, in fact, clearly stated in section 3.5.2 of the policy, according to which, the use of own language for the purpose of education is not compulsory. The section provides that “nations and nationalities can either learn in their own language or can choose from among those selected on the basis of national and countrywide distribution”. This has opened the door for further use of Amharic in education. In Afar regional state, for example, the medium of instruction for primary education is Amharic. This is primarily attributed to the lack of trained Afar teachers and the lack of

Amharic to the different nationality languages. Other costs include “the costs of standardising the use of nationality language, training teachers and producing supplementary reading materials in that language” (Smith 2007: 15).

⁴⁷ Bloor and Wondwosen 1996. Smith (2007: 6) indicates that “[t]he Amharic-dominated language policy of most of the 20th century was detrimental to the educational aspirations of non-Amharic speakers, who were forced to enter a learning environment at age six or seven in which everything was taught in a foreign language. Peasant families saw little use in such an education when their children were not even able to come home and tell them what they learned, particularly when their labor was so needed at home and in the productive sectors of agriculture and pastoralism”.

materials and resources, making it impossible to implement the regional official policy that declares the use of Afar.⁴⁸ In the Southern region, there are also zones like, for example, the Gurage zone, where primary schools in all *weredas* of the zone, with the exception of one, use Amharic as the medium of instruction. Members of the Gurage ethnic community opted to use Amharic rather than their own language for the purpose of primary education.

Although some predicted that the working language policy would impose constraints on the right to education of children belonging to ethnic minorities,⁴⁹ this concern is, to a large extent, mitigated by the accommodative approach that the regional states, with territorially concentrated minorities in their midst, have adopted. The ethnically defined Agaw Awi Zone, an Agaw-speaking area within the Amhara regional state, uses Awgini rather than the regional working language, Amharic, as the medium of instruction in primary education. The same is true of the Oromyia Zone in Amhara state, which is home to Oromifa-speakers. It uses Oromifa as the medium of primary education rather than the regional working language, namely Amharic.

The accommodative approach is also extended, to some extent, to urban areas where there are a large number of ethnic migrants. With the view to accommodate the large Amharic-speaking population that resides in most urban areas outside the capital, regional states have allowed for the provision of schools in Amharic. This is true not only in ethnically

⁴⁸ Smith 2007. The situation is similar in the Benishangul Gumuz regional state, which is home to four indigenous linguistic groups although there is a plan to introduce the indigenous languages as a medium of instructions within the next five years.

⁴⁹ Bekele 2003.

heterogeneous states but also in the ethnically defined regional states where the majority of the regional population belongs to one non-Amharic speaking ethnic group. According to the policy adopted by the Oromyia regional state, for example, areas with a significant proportion of other language communities must offer instruction in Amharic, either by designating one entire primary school or certain class rooms for this purpose.⁵⁰ A parallel medium of instruction in Oromifa and Amharic is introduced in major urban areas of the Oromyia regional states including Bishoftu, Jimma, Adama, Nekemte, Shashemene and Zeway, which have a large Amharic-speaking population.⁵¹ The same is true in SNNPR where primary schools in major urban areas, especially in regional and zonal capitals, use both Amharic and the zonal languages as mediums of instruction either by establishing separate schools or using sections in schools. This is the case, for example, in cities like Awassa (Amharic and Sidama), Arba Minch (Amharic and Gamonya), Sodo (Amharic and Wolayta), Hosanna (Amharic and Hadiyisa) and Dilla (Amharic and Gedeoffa). Furthermore, the capital cities of all regional states have primary schools where Amharic is used as the medium of instruction.⁵²

⁵⁰ Smith 2007.

⁵¹ Cohen 2006.

⁵² One of the contentious issues with regard to the use of language was whether the Ethiopic script or the Roman script should be used to transcribe the non-Semitic languages. The Ethiopic script, whose origin can be traced to inscriptions from the fourth century, “was bequeathed by Giiz to Amharic and Tigrinya and, until recently, was the obvious candidate for establishing literacy in the vernaculars” (Bloor and Wondwosen 1996: 329). With the exception of the Semitic languages and, to some extent, Oromifa, most of the languages have remained oral languages. Those in favor of the Roman script argued that “the Ethiopic script is unsuitable for Oromifa because it does not represent the sound system of Cushitic languages” (Cohen 2000: 132). Baye (1992: 15) lamented that “the script is unique to Ethiopia and, as such, a national symbol of distinction”. Furthermore, he

2.3.4 Assessment

In many aspects, the language in education policy and the practice thereof represent an extension of the constitutional commitment to the equality of all language groups. It extends the public sphere on which a linguistic community is allowed to develop its language and culture. It is a further affirmation of the recognition of the linguistic identities of the constituting communities.

An important feature of the present system is that it recognises the linguistic identities of minorities that are found in ethnically defined regional states. More commendable also is that it has, to some extent, succeeded in quelling the anxieties of ethnic migrants in areas of language in education. Very recently, this accommodative practice of the state is also extended to non-Amharic speaking individual and particularly to Oromifa-speakers that reside in the capital. The Oromyia regional state is now allowed to establish ten schools that teach in Oromifa in Addis Ababa. Despite the fear that minority languages will not be accommodated and that they will be obliged to receive primary education in some other languages,⁵³ both the Federal

argued that “the Ethiopic script is a suitable vehicle for any language, since it is a syllabary which can easily be adopted for all spoken tongues in Ethiopia with necessary modifications (modified to incorporate new sounds)” (Baye 1992:15). Some have even gone to the extent of claiming that the Oromos’ decision to reject the Ethiopic script is motivated by political considerations which is underlined by “anti-Amhara or anti-Amharic sentiments” (Bloor and Wondwosen 1996: 333). The proponents of Qube similarly argue that “the arguments against the use of the Qube are similarly based on emotion and not on practical criteria, and that those who advocate the use of the Ethiopic script for all of Ethiopia’s languages are, at root, in favor of continued Amhara, and Amharic, domination” (Cohen 2000: 133-134). It was later decided that the Roman script, which uses a writing system called the Qube, should be used to transcribe Oromifa.

⁵³ See Bloor and Wondwosen 1996.

Government and the constituent units are gradually developing a system that accommodates the demands of the different linguistic groups in areas of education. As a result, the claim that the degree of pluralism evident in the country makes the broader application of the mother-tongue principle virtually impossible, falls away.

In fact, the Ethiopian system goes further than the Western multi-national federations like Switzerland and Belgium in accommodating the interests of minorities and ethnic migrants. In Switzerland, ethnic migrants or minorities have no choice but to send their children to schools where education is provided in the language of the dominant group. In Belgium, as well, children of Flemish-speaking parents that live in the Wallonian-speaking part of Belgium have no other choice but to be educated in Wallonian schools. The same applies to the children of Wallonian-speaking parents living in the Flemish part of Belgium. Even in cases where they have allowed pockets of ethnic communities that are demarcated into the other side of the border to use their language (as in the case of the language facilities in Belgium), they regard the measures as transitory exceptions to the principle of territoriality. In Ethiopia, however, the departures from the territorial principle are not regarded as transitional measures. They are integral elements of the systems of accommodation that are deemed essential by the existing demographic realities of a regional state.

The major shortcoming in Ethiopia in so far as the language in education policy is the inconsistency that one observes in the handling of issues related to the use of languages in education. In ethnically heterogeneous towns like Yirag Alem and Yirga Chefe, for example, parents have been denied the opportunity to send their children to schools where Amharic is

used as the medium of instruction.⁵⁴ The authorities of the zones argued that Amharic education is allowed in zone capitals and since Yirag Alem and Yirga Chefe are not zone capitals, they are not required to provide primary education in Amharic.⁵⁵ This contradicts, however, with the approaches followed in other parts of the country where the decision to use Amharic is motivated not by the status of the town (i.e. whether it is a regional or zonal capital) but by its demographic realities. It is the ethnically diverse nature of the population and, more specifically, the presence of a large Amharic speaking population that necessitated the use of Amharic in primary education. Authorities in some areas have also forced communities to use their local languages in schools despite a strong demand by the latter to stick to Amharic.⁵⁶ The imposition of the use of a particular language has, in some cases, caused a relocation of communities.⁵⁷ This application of the language in education policy contradicts a clearly stated rule of the ETP that provides ethnic communities with the discretion to learn either in their own language or choose from among those selected on the basis of national and

⁵⁴ Cohen 2000.

⁵⁵ According to the regional authorities, “the zone government had the right to decide which languages were used in any areas of the zones” (Cohen 2000: 268-269).

⁵⁶ A case in point is the Kembatas dominated (85%) town of Durame in the Kembata-Alaba-Tembaro zone where the zone authorities argued that “since the population consists almost entirely of Kembatas, they should use their own language” (Cohen 2000: 269).

⁵⁷ Some parents have adopted other strategies like sending children to live with relatives (Cohen 2000). Of course, sometimes this was because they lived on the ‘wrong’ side of the Zone border. Cohen (2000: 125) notes that “[w]here the Sidama Zone borders the Welayta speaking area of the North Omo Zone, for example, children were moving in both directions in order to obtain an education in their mother tongue languages”. This has created a sense of being an outsider among children whose parents have lived in the area for generations.

countrywide distribution. Receiving education in own language is not compulsory as long as there is sufficient support for the use of other languages like Amharic.⁵⁸

The inconsistencies described above indicate to the fact that, with few exceptions, there are no clear laws and policies, both at the federal and state level, much less a constitutional stipulation, which regulate the use of Amharic as a medium of instruction in regional states. The principles and condition that are needed for the introduction of Amharic as medium of instruction, whether solely or along with other regional languages, have not been clearly outlined. The matter has simply been left to the whims of regional and sub-regional authorities, which explains the ad hoc manner in which the matter has been handled.

3. Self rule

This section examines how self rule, one of the institutional principles that give effect to the act of recognition, has found its way into the Ethiopian federal system by looking at three principal areas: the geographical

⁵⁸ Ironically authorities from the same zone have allowed residents of two other towns, that are inhabited by two other ethnic groups (i.e. Alaba and Tembaro) to use Amharic as medium of instruction. Paradoxically, they motivated their decision by relying on the policy that declares the right of every ethnic community to choose the language that should be used in the primary education system. The authorities in Gurage Zone seem to have grasped this very well as they have heeded to the demand of their community and allowed the use of Amharic even in areas that are largely comprised of Gurages only. This misapplication of the policy fails to note that the imposition of language policy can, in some cases, be counterproductive. As noted by Kennedy (as quoted in Bloor and Wondwosen 1996: 330) “[l]anguage change should be phased, move to a speed commensurate with social acceptance and be made in line with social trends, not by decree, otherwise community antagonisms will prevent implementation”.

configuration of a federation, the division of powers (i.e. which powers are allocated to which level of government, and financial autonomy.

3.1 Territorial autonomy

Article 39 of the Constitution states that every nation, nationality and people in Ethiopia has the right to a full measure of self government which includes the right to establish institutions of government in the territory that it inhabits. This seems to be one of the first indications that the Constitution has opted to reorganise the federation along ethnic lines rather than geography or administrative convenience. A rather straightforward signal comes from article 46 of the Constitution which states that the geographical configuration of the federal state shall be based on “the basis of settlement patterns, language, identity and consent of the people concerned”.

3.1.1 Ethnically defined regional states

Based on the guiding principle established by article 46 of the Constitution, nine regional states that are largely delimited along linguistic lines and two administrative regions are established (see map of the Ethiopian constituent units).⁵⁹ More than two thirds of the people that live in five of the nine regional states, including Tigray, Amhara, Oromyia, Somalia and Afar, belong to a single ethnic group. Each of these states is also designated after the name of the dominant ethnic group in each state.⁶⁰ The state of Gambela and Benshangul/Gumuz, on the other hand, are largely bilingual regional states with two other numerically small minorities in their midst. The SNNPR, on the other hand, depart from the rule that determines the

⁵⁹ Article 47 Constitution.

⁶⁰ The Tigray region is named after the regionally dominant Tigre ethnic community. The same goes for the others. The Afar regional state- the Afar ethnic community, Amhara regional state- Amhara ethnic group, Oromyia regional state-Oromo ethnic community, Somali regional state-Somali ethnic community.

organisation of states along linguistic lines. This regional state is home to numerous small ethnic groups.⁶¹

Another anomalous feature of the internal organisation of the federal state relates to the Harari regional state. Despite the fact that the region is home to two other linguistic groups that are numerically superior to the Harari ethnic group, the region is named and considered mainly as belonging to the latter. This scenario is more likely to have historical explanation rather than one based on the demographic realities of the region. Addis Ababa, the capital city, and Dire Dawa, both of which are multi-ethnic cities, are recognised as two special autonomous city-states with their own self-government structures.⁶²

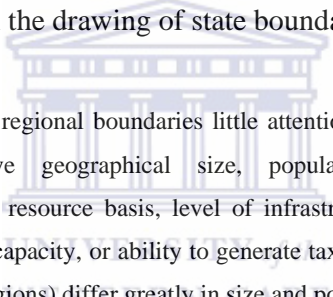
The provision of statehood to ethnic groups is not, however, limited to what is already provided in the Constitution. The Constitution has kept the door of statehood ajar for other ethnic groups that would advocate for the

⁶¹ The reason for the conflation of these ethnic groups (some of which were given a state of their own in the Transitional Charter) under one regional state, when considered in light of the principle that guided the organisation of the other states, is not convincing. Although a number of the ethnic groups might be too small to achieve a regional state of their own, there are ethnic groups like the Sidama that are numerically comparable with the other ethnic groups like the Harari that have acquired a state of their own. It is not also clear why the option that is applied with the case of the bilingual regional states cannot be applied to some of the ethnic groups in the southern regional state rather than assembling all of them under one state. Of course, not each ethnic group can have a state of its own in a country where there are more than 70 of them. Some level of consistency in the application of the regional formula should, however, be maintained.

⁶² Since Addis Ababa is located within the Oromyia regional state, the ‘special interest’ of the state of Oromyia is recognised by the Constitution (article 49(5)). Currently, Addis Ababa also serves as the capital city of the Oromyia regional state.

establishment of a state of their own. Article 39(3) of the Constitution reserves to ethnic groups within the ethnically plural regional states the right to establish at any time their own state. A procedure for the establishment of such a state is also provided in the same article. This has not materialised so far although the Sidama, a numerically dominant ethnic group within the southern regional state, the SNNPR, has demanded for the establishment of a regional state of their own.

The fact that the organisation of the state is largely based on ethnicity has given rise to subnational units that are asymmetrical in size and capacity as shown in Table 8.1. As Cohen has aptly remarked, little attention was given to extra-ethnic factors in the drawing of state boundaries:



In drawing the regional boundaries little attention was given to their respective geographical size, population densities, agriculture and resource basis, level of infrastructure, existing administrative capacity, or ability to generate tax revenues. As a result states (regions) differ greatly in size and potential.⁶³

⁶³ Cohen 1995: 164. Kiefe (2001: 26-27) describes Benishangul, Gambela and Afar as “clear winners in the new division of the country” as each of these states, according to him, has taken “a much larger share than is justified on ethnic or political ground”. In the case of Benishangul and Gambela, this, he explains, should be seen as “compensation for their past agony”.

3.1.2 The dilemma of ethnic-based territorial units

The ethno-linguistic orientation of the geographical configuration of the federal state has provoked harsh criticisms. The crux of most of these criticisms is that it is a perilous experiment that is more likely to exacerbate ethnic tensions and militate against national unity.⁶⁴ Some even go to the extent of branding the present dispensation as “bantustanisation”.⁶⁵ Others, who view the new dispensation favorably, regard the present arrangement as “a bold and imaginative type of national engineering”.⁶⁶ They consider the consideration of ethnicity in the organisation of the state as “a relief of ethnic tension, rather than a problem”.⁶⁷ Bullcha Demeksa, leader of the Oromo Federalist Movement, remarks:

We will stay together if we stop frustrating the yearnings of the peoples of Ethiopia (at least all of the Southern peoples) for cultural emancipation, political autonomy, social equality and economic survival. Those who say the federation should not be built on nationality foundation, but on the old, whimsical administrative subdivisions are fighting against the will of the great majority of the Ethiopian people.⁶⁸

3.1.3 Assessment

It is submitted that the constitutional decision to coincide internal boundaries with ethnic divisions or, at the very least, to heavily orient its

⁶⁴ Brietzke (1995: 27) remarks: “The gist of these criticisms is that it is a dangerous experiment in autonomous ethnic development to separate people who begin to live within territorial units with mixed populations, in that it creates tensions that militate against the need for national unity.”

⁶⁵ Mesfin 1999. See also Assefa 2002.

⁶⁶ Bereket 1997: 21.

⁶⁷ Twibell 1999: 399.

⁶⁸ Bulcha 1993: 33.

internal structures along ethno-linguistic lines calls for a balanced assessment.

3.1.3.1 Promoting the self-management of ethnic communities

It must be emphasised that the inclusion of the ethnic factor in the design of the state is consistent with the constitutionally declared commitment to celebrate ethnic diversity and build a multi-nation state. Drawing internal boundaries based on geographic or administrative criteria would have defeated this commitment as those federations are often underlined by strong integrationist and assimilationist dispositions. The state in that context would also not have been any different from what are often referred to as mono-national federations which are more congruent with a unitary representation of the state than with a spirit of federalism which seeks to recognise and accommodate distinct collective identities within a larger political partnership.

Furthermore, the inclusion of the ethnic factor in designing the territorial structure of a state presents an ideal framework to provide extensive self rule for an ethnic group, “guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society”.⁶⁹ In a country like Ethiopia where particular ethnic groups have been dominated culturally, economically and politically by historically privileged members of a particular ethnic group, it is imperative that they, in order to avoid the continued dominance of the dominant group, are provided with territorial autonomy. An arrangement that makes an ethnic group a majority in its own house, it is argued, empowers geographically concentrated ethnic groups with the necessary space to protect and promote their distinctiveness,

⁶⁹ Kymlicka 1995: 27-28.

without fear of the dominant group imposing their values or vetoing their aspirations.⁷⁰

Empowerment of the different ethnic groups in Ethiopia is, in fact, the major conspicuous contribution of the present federal system. Dereje Feyissa, in his work on the experience of the Gambela regional state, demonstrates how the present system has turned an ‘obscure district’ into a ‘regional state’ with considerable local empowerment:

Well beyond the tenuous imperial co-option of local leaders and the appointment of few local people to the regional administration during the Derg period, in post-1991 Gambela all regional administrative posts are occupied by locals. In fact, in a dramatic reversal of power relations, the highlanders who had long dominated the region’s politics have now assumed a subordinate political status.The rebuilding of cultural self-confidence is also evident in a degree of “retraditionalization”. In the early 1990s, leaders of the [ruling party in the state] tried to reintroduce a cultural practice (the extraction of the lower teeth, called naak), which had been banned during the Cultural Revolution. In 2001, four Anywaa village headmen (Kwaros) were reinstated in different districts. Although retraditionalization has not gone far, largely because the local population is modernist in its outlook and aspirations, the local population has, at least, been offered a cultural choice.⁷¹

In light of the above mentioned points, not only is it not convincing to tag the present system as bantustanisation, a policy of the apartheid government in South Africa. The likening of the present system with the South African bantustanisation seems to be based on an incorrect appreciation of the true

⁷⁰ Simeon 1998.

⁷¹ Dereje 2006: 213.

nature of the Bantustan policy. It is true that the current system in Ethiopia shares with bantustanisation a policy of organising the state along ethnic lines. But that is where the seemingly similar nature of the two systems begins and ends. To begin with, the reason behind the Bantustan policy's decision to divide the black community along ethnic lines was not to grant self-government within the constitutional and territorial framework of the South African state. The idea was that each homeland, demarcated along ethnic lines, becomes an independent state and establishes itself as a nation-state, with its inhabitants eventually losing their South African citizenship. More importantly, however, and this is where the major points that distinguish the two systems lie, the Bantustan policy was a unilateral policy of the apartheid government that was simply imposed on black Africans. These two basic features of the Bantustan policy render the latter a case of 'expulsion' rather than an exercise of the right to self-determination. The Bantustan policy was condemned not because of its ethnic character *per se* but because of the way the system was brought about.

In the case of Ethiopia, the federal solution adopted by the Constitution may not have support among all sections of the society. There is, in fact, strong resistance to the system among the urban intellectual elite. Yet the Oromo Liberation Front, which has large support among the Oromo, the largest ethnic group in Ethiopia, has endorsed the transitional system which is adopted by the present constitution in its current form. So do the Somali and other parties that have been waging armed struggle in the peripheries of the country. It is, of course, possible to argue that a broader consensus could have been sought. It cannot, however, be denied that the major political forces at the time of the negotiation agreed on the adoption of the federal system. In conclusion, even though the present system shares with the Bantustan policy the same basis for the organisation of the state, it is totally inappropriate to equate it with bantustanisation. If the use of ethnicity in the

configuration of the state is equated with bantustanisation, then even countries like Belgium and Nigeria in its early days of independence would not be spared from the same categorisation.

3.1.3.2 The dangers of providing a mother state to each large ethnic group

As much as the decision to provide territorial autonomy responds to the demands of many ethnic groups, the Ethiopian approach to provide a mother state to each single, especially large, ethnic group, admittedly, poses a potential danger to the territorial integrity of the state. As the experience of multi-ethnic federations reveal, large ethnic groups carved under a single constituent unit pose a threat to the territorial integrity of the state. The propensity to engage in conflicts is high when each constituent unit is identified with a single ethnic group. As discussed in Chapter Three, the experiences of the Nigerian federation just after independence as well as the Belgian federation reveal the problem of providing a mother state to each large ethnic group. This view is shared by Edmond Keller who expresses his apprehension about breaking up Ethiopia into a few large ethnically based regions. He is concerned about “the complications created by the promise of self-determination based upon large nationality-based states”.⁷² The central point of this argument is that the geographical configuration of the federation around the countries’ major ethnic fault-lines has the potential to lead to hegemonic ethnocentrism and, in extreme cases, secessionism.

Another equally negative effect of providing each ethnic group with a mother state is that it facilitates identity fragmentation along ethno-

⁷² Keller 1998: 122. His suggestion is to devolve power to “states that are relatively ethnically homogenous but smaller and avoid the complications created by the promise of self-determination based upon large nationality-based states” (Keller 1998: 122).

linguistic lines. In such an arrangement, ethnicity becomes the dominant lexicon of political discourse, creating conducive conditions for ethnic entrepreneurs. In the Ethiopian case, this has been observed both in the proliferation of ethnic-based parties as well as in what some call as the ‘genesis’ of ethnic identities. Of the 76 parties currently registered with the National Electoral Board, 60 of them are ethnic based parties that have their strongholds in the different regions of the country.⁷³ Furthermore, the number of ethnic-based parties that are joining the political terrain are on the rise. This obviously facilitates the fragmentation of the population along ethno-linguistic lines. Ethnic identities that had mere cultural value in the past are now politically relevant entities. Of course, the proliferation of ethnic-based parties would not have been a problem if their genesis is an outcome of a particular political and historico-social situation. What we are increasingly witnessing, however, is ethnic-entrepreneurs who often establish ethnic-based parties in order to take their share of powers and privileges within a system that rewards political mobilisation along ethnic lines. This effect is especially visible in the ethnically plural regional states of Gambela and SNNPR. A study by Sarah Vaughan in her article, “Responses to ethnic federalism in Ethiopia’s Southern region”,⁷⁴ reveals how the heavy emphasis on ethnicity in the design of the federal arrangement and the fact that the system rewards political mobilisation of

⁷³ National Electoral Board of Ethiopia, available at www.electionsethiopia.org, accessed on 15 October 2007. It is usually difficult to gauge the level of support enjoyed by the parties as elections results are often contested. All regional states are controlled by ethnic-based parties that are either member of or affiliated to the EPRDF, which is the ruling party at the federal level. The Coalition for Unity and Democracy, a pan-Ethiopianism party with a state-wide objective and a major contender of the 2005 election, made strides although it later refused to take seats in parliament. The popularity of the party in the capital, major urban cities and the Amhara regional state was evident.

⁷⁴ Vaughan 2006.

ethnicity has induced local elites to mobilise the local population along ethnic lines with the purpose of furthering their own interests. Although one would have to conduct to substantiate these claims, a tendency of identity fragmentation in other socio-economic institutions is already emerging. One such case is the clear association of a number of private banks and insurance companies with particular ethnic groups. A conclusive remark on this point, however, requires further and more substantive research.

A related effect of the present system is that it has resulted, in some cases, in the creation, or rather re-definition, of ethnic identity. The Silte case illustrates this very well. The Silte were traditionally regarded as belonging to the Gurage ethnic group, which is further subdivided into various clans and sub-clans. The Silte, unlike most of the Christian Gurages, are Muslims by faith and speak a different dialect. After the introduction of the new dispensation, educated local elites, using religious and linguistic markers, began to promote a distinct Silte identity.⁷⁵ After a protracted process involving political wrangling and eventually a referendum, the Silte are recognised as a distinct ethnic group. This has resulted in the establishment of a Silte Administrative Zone and the allocation of a seat for a Silte representative in the second chamber of the federation.⁷⁶ Without entering into the specific debates of whether the Silte, ethnographically speaking, belong to the Gurage ethnic group, it is important to note that the Silte case signifies the saliency that ethnicity has achieved in Ethiopian politics. As ethnicity has become a major weapon for access to power at various levels of government, ethnic entrepreneurs have continued to advance political

⁷⁵ Markakis 1998.

⁷⁶ Other subgroups within the Gurage have also claimed a separate ethnic identity but in vain.

mobilisation along ethno-linguistic lines in order to realise their political goals.

It is not also clear why ethnicity, to the exclusion of all other identities, is given paramount importance in designing the territorial structure of the state. As indicated in the previous chapter, in addition to ethnic identity, regional identities have played an important role in Ethiopian history. Individuals that belong to the Amhara ethnic group, for example, harbor strong regional identities. Despite their bond of linguistic affinity, they strongly identify themselves with the distinct regions they have historically inhabited (i.e. Gojjam, Gondar/Begemdir, Wollo and Shewa), which were administered separately for ages. As one writer remarks,

“[t]he historical heritage of own territorial domain seems to have an appeal that transcends the bond of linguistic affinity among the native Amharic speakers. The memories of the regions of Shewa, Gonder, Gojjam and Wollo as separate territorial entities are bound to linger on.”⁷⁷

The consideration of ethnicity in the design of the state to the exclusion of all other identities like regionalism renders the approach, to some extent, ahistorical.

Generally, the present internal organisation of the state has the potential to freeze ethnicity and territorial boundaries. In such a system, every dispute turns into an ethnic dispute. Ethnicity becomes the sole lexicon of political discourse and, more dangerously for national unity, a readily accessible tool

⁷⁷ Bekele 2002: 188-189. One can assert this conclusion about the Amharas in pre-1991 Ethiopia. It is not clear to what extent the mobilisation of these groups under one ‘All-Amhara’ slogan has been able to erase, at least in the short run, these regional identities and replace them with an ethnic identity.

for ethnic entrepreneurs. As ethnicity has become a major source of power, the development of ethnic entrepreneurship across linguistic lines has become a common phenomenon. Nothing other than the political turmoil and violence that we witnessed in the southern regional state can illustrate this more aptly. These criticisms, however, should not be interpreted as a rejection of the consideration of the ethnic factor in the designing of the state but rather to demonstrate that the Ethiopian Constitution has taken it too far.⁷⁸

3.1.4 Secession

The most striking element of the right to self-government, as recognised in the Ethiopian Constitution, is that it includes the unconditional right of every ‘nation, nationality and people’ in Ethiopia to self determination, including the right to secession.⁷⁹ That puts the Ethiopian Constitution in a league of its own as the only constitution that explicitly recognises the right to secession. The importance attached to this specific right is evident from the fact that it cannot be suspended or limited even in the extreme case of external invasion, a break-down of law and order and other calamities that warrant a proclamation of a state of emergency.⁸⁰ It is regarded as “the ultimate extension and expression of the right to self determination”.⁸¹

3.1.4.1 The procedure for secession

The Constitution provides for a procedure according to which the right to secession can be exercised. The exercise of the right to secession has to be

⁷⁸ Alemante (2003:107) similarly argues that “[w]hile the ethnic make up of a region should certainly play a major role in boundary drawing, it should not play such a decisive role that it trumps all other considerations”. See also Assefa 2005

⁷⁹ Article 39 Constitution.

⁸⁰ Art 93(4) (c) Constitution.

⁸¹ Fasil 1997: 53.

initiated first by the approval vote of “a two-thirds majority of the members of the legislative council of the Nation, Nationality or People concerned”.⁸² The Federal Government is obliged to organise a referendum within three years from the time it receives the relevant council’s decision for secession. It is expected that the Federal Government, during the three year cooling-off period, will engage the relevant council and the population group that wants to secede in order try to respond to the demands of the group within the territorial framework of the state with a view of averting secession. This is not, however, a constitutional obligation, which is imposed on the Federal Government. If the process of accommodation fails to remove the agenda of secession from the table, then the referendum must proceed.⁸³ If the demand for secession secures the majority vote in the referendum, the process of effecting the secession should follow immediately. This shall be done when the Federal Government has transferred its powers to the newly independent state and the division of assets is effected in a manner prescribed by law.

The right to secede from the federation is not the only solution prescribed by the Constitution to those groups that demand the application of their right to self determination. Ethnic groups that do not have a state of their own can secede from the regional state they are demarcated into. This is evident from article 47(2) of the Constitution which recognises the right of ethnic groups within the regional states to establish, at any time, their own state. The Constitution provides the procedure according to which ethnic groups can acquire the state of their own.⁸⁴

⁸² Article 39 (4) (a) Constitution.

⁸³ Fasil 1997. See also Alem 2006.

⁸⁴ Article 47(3) Constitution.

Some argue that exercising the right to secession presupposes the status of statehood. It is only after an ethnic community acquires a regional state of its own and consequently establishes a legislative council that it can initiate a process for secession.⁸⁵ “The formal issue of secession”, goes the argument, “deals with states”.⁸⁶ If an ethnic community within a regional state seeks to secede from the federal state, it must first go through the procedures outlined in article 39(4) of the Constitution and achieve the status of statehood.⁸⁷

As much as this construction of the secession clause appeals to common sense, there is nothing in the wording of the Constitution that warrants such a conclusion. The only element of the Constitution that might direct one to this conclusion and on which the proponents of this argument must have relied on, is that the group that wants to secede must have, as implied in the Constitution, a legislative council. Nevertheless, it is not necessary for an ethnic community to establish a state of its own in order to have a

⁸⁵ Fasil 1997: 159.

⁸⁶ Fails 1997: 159.

⁸⁷ Bekele (2002) argues that this right of ethnic communities can easily be frustrated by the regional states. Since it is the Council of nations, nationalities and peoples that can demand a state of its own and since the establishment of a structure of local government falls within the jurisdictions of the regional states, the latter can frustrate any demand for an own state by refusing to provide for a self government structure that would have included legislative councils. He concludes that even the HF is not constitutionally empowered to deal with such a situation. This, however, is not completely accurate. It is true that the organisations of government structures within a region are matters that are left to the regional governments. But it is also important to note that the Constitution, under article 62(3), confers on the HF the power to decide on issues relating to the right of ethnic communities to self-determination. No one can dispute that the right to establish an own self-government unit is an issue that is intrinsically linked to the right to self determination.

legislative council. Most of the ethnic communities that are lumped together under the Southern regional state have established a self governing structure with a legislative council at the zonal level. One can plausibly argue that as long as an ethnic group has established a self-governing administration, there is nothing in the Constitution that prohibits it from leaving the federal state without first acquiring the status of a regional state, however, plausible the latter option might be.

Another point that is often debated is whether the exercise of the right to secession presupposes that claimants demonstrate legitimate conditions that warrant the exercise of the right. In other words, the issue is whether secession, as recognised in the Constitution, is permissible only for certain legitimate causes. Relying on the constitutional stipulation that regards the right to secession as the ultimate extension and expression of the right to self-determination, some argue that the right to secession is not an independently existing right. For the proponents of this view, the right to secede can be invoked only when the right to self-determination is denied.⁸⁸ This line of argument, it is further argued, finds support in international law.⁸⁹ In sum, a decision to exercise the right to secession can only be legitimised when people are denied to exercise their right to self-determination.⁹⁰

⁸⁸ Hashim 2004.

⁸⁹ Article 13(2) of the Constitution states that the fundamental rights and freedoms specified under chapter three of the Constitution “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”.

⁹⁰ Hashim 2004.

Significantly, the Constitution does not outline grounds under which a demand for secession can be made. Unlike the Transitional Charter, which made secession dependent on the violation, denial or abrogation of rights,⁹¹ the Constitution does not require seceding groups to provide reasons for their demand for secession. It simply outlines the procedure according to which the right to secession can be exercised. In other words, a group that seeks to secede is not constitutionally required to demonstrate “the moral ground” on which it may seek secession.⁹² Although the HF may demand the relevant council to motivate their claim for secession, the relevant council is not constitutionally obliged to do so and the Federal Government cannot refuse to facilitate the demand for want of legitimate cause(s).

3.1.4.2 Assessment

Setting aside the ruling party’s strong ideological commitment to self-determination, the political forces at play during the transition would not have settled for anything less than the constitutionalisation of secession. Considering the sheer size of the military force wielded by the OLF and other similar groups and their capacity to ignite conflict, however ineffective that might be, it was evident that a peaceful transition required acceding to the demands of these forces by constitutionalising the right to secession. As noted by Alem, “the OLF would not have joined the Transitional Government of Ethiopia and the country would probably have once more relapsed into civil war”⁹³ if the clause had not been incorporated into the Constitution. A similar position was taken by all Somali parties that made it clear that their continued participation in the Ethiopian political

⁹¹ Transitional Charter of Ethiopia, No. 1, *Negarit Gazeta*, 50th Year, No.1, Addis Ababa, 22 July 1991

⁹² Bekele 2002.

⁹³ Alem 2006: 323.

process was dependent on the recognition of the right to secession by the Constitution.⁹⁴

The procedure-laden nature of the right to secession has led many to doubt the constitutional commitment to this right. Bekele, for example, argues that “the overly vague nature of the procedural requirements and the long complex processes relating to its implementation apparently affirms that the right to secede exists more in theory than in fact”.⁹⁵ The proponents of this view regard it as “a mere formal constitutional right”. Alem shares this view when he says that the secession clause has more of a symbolic value than anything else as “it is unlikely that any regional state or ethnic group will actually be permitted to secede from Ethiopia”.⁹⁶

It is submitted that the procedural requirements for the implementation of the right to secede should not lead to conclude that the secession clause has a mere symbolic value only. In fact, one may argue that the condition for the implementation of the right to secede is not as burdensome as is often put across. The right of secession as adopted in the Constitution is not, for example, a remedial right. Unlike the Charter of the Transitional Government, the Constitution does not require the claimant group to show a legitimate cause for secession. It only requires the claimant group to show, through the support of their legislative representatives and eventually a referendum, proven support for the secession claim. Considered in this light, the procedure required for the implementation of the right to secede cannot be invoked to cast doubt on the constitutional commitment of the right to secede. The constraint for the implementation of the right to secession

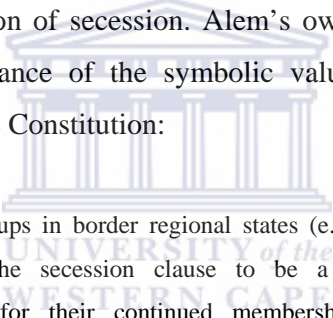
⁹⁴ Alem 2006: 323.

⁹⁵ Bekele 2002: 176.

⁹⁶ Alem 2006: 329.

might rather lie in the political practice and specifically the position of the ruling party on secession. It is true that the ruling party is opposed to the exercise of the right to secession although it was the major force behind the constitutionalisation of secession. However, it is also important to note that political culture is not static. With the constitutionalisation of secession, the implementation of the right of secession is kept alive. The ultimate realisation of the right depends on the interplay between the level of support and mobilisation for the claim of secession and the ruling party's level of resistance to such claims.

Notwithstanding that, one should not also discount the significance of the mere constitutionalisation of secession. Alem's own admission suffices to underscore the significance of the symbolic value of incorporating the secession clause into the Constitution:



Ethnic groups in border regional states (e.g. Somali) consider the secession clause to be a necessary condition for their continued membership in the Ethiopian state. During debates leading up to the 2000 election, all parties in the Somali regional state, including the one allied to the EPRDF, attributed their participation to the existence of the secession clause.⁹⁷

3.2 Powers and functions

Division of powers between the Federal Government and the constituent units is one important area where the state can provide practical expressions to self rule. This relates both to the area of competence and scope of power

⁹⁷ Alem 2006: 329. An important issue that is not clearly answered by the Constitution relates to the fate of minorities within the regional state that seeks to secede. The issue is whether they would be allowed to decide their fate or be forced to follow the decision of the majority of the regional state.

granted to constituent units. Division of powers between the federal and state governments is outlined in articles 51 and 52 of the Constitution. The powers of the Federal Government are explicitly provided for in the Constitution. The long list of federal competencies reveals that areas that usually fall within the ambit of the central government in most federations do so as well in the Ethiopian case. Examples include foreign affairs, defence, customs and excise duties, national currency and monetary policy, the central bank, citizenship, immigration, criminal law, international trade and commerce.⁹⁸ Following the territorial principle, the Constitution also confers on the Federal Government powers over matters that involve the territories of more than one regional state, including inter-state commerce, all kinds of transport linking two or more states, utilisation of land and other natural resources, of rivers and lakes crossing the boundaries of the federal state or linking two or more states. It is also responsible for enacting labor, commercial and penal codes.⁹⁹ The regional states are provided with a brief explicit list of competences, namely enacting state constitutions, development planning, civil service, police and administration of land and other natural resources in accordance with federal laws. In addition, powers not explicitly reserved to the Federal Government alone or concurrently to both levels of government are vested in the regional states.

3.2.1 The ‘long list’ of federal competencies

The 21 item list of federal competences might create the impression that little room is left for the states to enact legislation; that the long list of federal competencies hollows out the residual powers of the regional states. Aberra Jembere has, for example, concluded that the Constitution “gives so

⁹⁸ Articles 51 and 55 Constitution.

⁹⁹ Articles 51 and 55 Constitution.

much power to the Federal Government very little is left to the states”.¹⁰⁰ Andreas similarly remarks that member states do not have a significant legislative role. For him, the authorities of the regional states are limited to areas of cultural and executive power.¹⁰¹ By arguing that the powers left to the states are only executive powers, he suggests that the Ethiopian federalism “consists chiefly in administrative decentralisation”.¹⁰² These arguments might be further reinforced by provisions of the Constitution which seemingly extend the power of the Federal Government to identity-related matters like education, the preservation of cultural and historical legacies as well as historical sites and objects. Article 51(2) of the Constitution entrusts the Federal Government with the power to “establish and implement national standards and basic policy criteria for public health, education as well as for the preservation of cultural and historical legacies”.

3.2.2 Assessment

The distribution of power adopted by the Constitution is, to some extent, a reflection of its commitment to the accommodation of ethnic diversity. It embodies the recognition and accommodation of the particular identities of the different groups. The system provides each constituent government, which is ethnically defined, with the powers that are instrumental in the preservation and promotion of identity as well as in freely pursuing own

¹⁰⁰ Aberra 1999: 191. Ehrlich (1999) similarly argues that the regions and sub-regions are entrusted with broad cultural and linguistic powers that the Constitution, rather than producing a more loyal Ethiopian citizenry, results in greater fragmentation. He concludes that no real power remains in the centre.

¹⁰¹ Andreas 2003.

¹⁰² Andreas 2003: 167. He, of course, accepts the judicial powers of the states. The limited areas where the states are allowed to legislate relate, according to him, to areas that pertain to cultural diversity.

cultural development. This is evident in the fact that states' areas of competences include cultural and educational matters.

Although article 52 of the Constitution seems to provide the Federal Government powers in identity-related matters, a careful reading of the Constitution suggests that the powers of the Federal Government in those areas are, in fact, limited to setting national standards and outlining basic policy criteria.¹⁰³ Once this is noted, it becomes clear that the regional states can exercise power not only in language but also in other cultural and education matters including but not limited to schools, museums, libraries, theatres, broadcasting agencies and the like. As explicitly provided in the Constitution, the regional states also have the power to enact their own civil law which includes family law. The Federal Government can enact civil laws only when the second chamber deems it necessary to establish and sustain one economic community. The practice of the regional states also supports the position that the regional states enjoy considerable autonomy in identity-related matters. Most regional states have now adopted their own family law. They exercise control over media services, museums, schools, libraries and the like.

The competences of the regional states also extend to other areas that are not necessarily related to the promotion of ethnic identity. This is owing to the extensive areas of competences that are not covered by the seemingly exhaustive list of powers of the Federal Government. These include, among others, intra-state transport, state roads, criminal matters not covered by the federal legislature, state tourism, health services, agriculture, disaster management, housing, state roads, intra-state trade, vehicle licensing, fire

¹⁰³ The exception is that the federal government is allowed to enact law on the utilisation of historical sites and objects.

fighting services, traffic regulation, electricity, liquor licenses and other matters. The regional states can exercise control over these and many other areas that are not explicitly assigned to the Federal Government. This indicates that member states of the Ethiopian federation, in contrast to what many argue, enjoy legislative autonomy in many areas.

The legislative autonomy of the regional states also benefit from the fact that there seems to be little or no concurrency between the two levels of government in the Ethiopian federation. No explicit list of concurrent powers is provided in the Constitution with the single exception that a concurrent power of taxation exists for enterprises which the federal and state governments jointly establish, companies, large scale mining, petroleum and gas operations.¹⁰⁴ This brings the division of powers adopted by the Constitution closer to the dualist division of power model where powers are exclusively delegated to one or more orders of government. This dualist nature of the division of power is further entrenched by article 50 of the Constitution which imposes a duty on both governments to respect each other's constitutionally defined powers. This model of division of power enhances the autonomy of subnational units.

¹⁰⁴ Assefa (2006) claims that the Constitution has incorporated concurrent powers although these have not been explicitly stated. He substantiates his position by stating that article 55(5) of the Constitution which vests the HPR, the lower house, with the power to enact penal code and still allows the states to enact penal laws on matters not specifically covered by the federal penal legislation. He considers this as a concurrent power "because the state may legislate only if the federal penal law does not exhaust the list of offences" (Assefa 2006: 145). It is submitted that this power represents a special type of residual power rather than a concurrent power.

Furthermore, unlike the Constitution of South Africa,¹⁰⁵ Spain and India, the Ethiopian Constitution does not provide for conditions under which the central government is allowed to interfere in the legislative powers of the states. Phrases like ‘national interest’ or ‘national uniformity’ which are often used by constitutions to allow the Federal Government to interfere with the jurisdiction of constituent units are lacking. This signals that the states are allocated final decision-making powers over matters that are allocated to them. In other words, the legislative powers of the states are full and exclusive. This obviously has the effect of reinforcing the autonomy of state governments. The only exceptional circumstance that allow for the interference of the Federal Government in state matters is when there is a reasonable belief that a serious breach of human rights, which endangers the constitutional order is taking place in the concerned state.¹⁰⁶

3.3 Financial autonomy

The financial arrangement in Ethiopia is characterised by the fiscal dependence of the states on the Federal Government, which can be explained by their inadequate source of revenue and the resultant heavy dependence on intergovernmental transfers.

3.3.1 Division of revenue

Article 95 of the Constitution outlines the basic principle for the sharing of revenue between the Federal Government and the states. It states that the division of revenue shall take the federal arrangement into account. This means that the divisions of revenue should reflect the sovereignty of each

¹⁰⁵ See section 44(2) South African Constitution.

¹⁰⁶ Article 62 (9) Constitution. See also Proclamation No 359/2003, System for the Intervention of the Federal Government in the Regions Proclamation, *Federal Negarit Gazeta*, 9th year No. 80 Addis Ababa 10 July, 2003.

level of government in their respective domain. Unlike in other federations where the allocation of taxation power is determined by reference to the type of tax, the territorial principle, coupled with the principle of ownership of the source of revenue, by and large, informs the division of taxation powers between the federal and state governments. The territorial scope of an economic activity determines the level of government that can exercise powers of taxation on the same. This principle of revenue allocation is concretised by articles 96 to 98 of the Constitution.

Sources of revenue that are owned by the Federal Government and tax bases that have a national character are subject to federal taxation. The Federal Government thus has the power to levy and collect import and export taxes and other dues, income tax from federal and international organisation employees; income, profit, sales and excise tax on enterprises owned by the Federal Government; on the income and winnings of national lotteries and other games of chance.¹⁰⁷ Other sources of federal revenue include taxes on income of houses and properties owned by the Federal Government as well as the income of air, rail and sea transport services.¹⁰⁸ Import and export taxes and dues represent the major sources of revenue for the Federal Government. In the 1998/99 fiscal year, this particular tax category generated about 32% of the total revenue that was raised both at the federal and regional level.¹⁰⁹

Following the territorial *cum* ownership model, state governments are entrusted with the power to levy and collect income tax on employees of the

¹⁰⁷ Article 96 Constitution.

¹⁰⁸ Article 96 Constitution.

¹⁰⁹ Solomon 2006.

state and of private enterprises.¹¹⁰ The states can levy and collect taxes on the incomes of private farmers and farmers forming cooperatives. They can also levy and collect profit, income, sales and excise taxes on public enterprises which they own. Another important source of revenue for the state governments is fees collected from usufructuary use of land.

Consistent with the territorial and ownership principle, the Constitution also provides for concurrent powers of taxation.¹¹¹ The power to levy and collect profit, sales, excise and personal income taxes on enterprises that the federal and regional governments jointly establish resides with both levels of government. The concurrent power of taxation is also extended to taxes on income derived from large-scale mining and all petroleum and gas operations as well as royalties on such operations.

Analysis of the tax sources and tax bases of the federal and state governments reveals that the most productive taxes are assigned to the Federal Government. Although the states are provided with an array of tax sources, they are of limited significance. The states' own sources of revenue account for less than 20% of state expenditure responsibilities.¹¹² In the 2006 fiscal year, for example, Tigray made the highest local contribution to state expenditure, which, however, was only 28% of the total state expenditure. In that same fiscal year, Afar made the lowest contribution to own's state expenditure, which stood at 6.1%.¹¹³ This meant that the capital budget of all states was totally financed by the Federal Government, including half of their recurrent budget.¹¹⁴ Furthermore, the revenue sources

¹¹⁰ Article 97(1) Constitution.

¹¹¹ Article 98 Constitution.

¹¹² Bevan 2001.

¹¹³ Solomon 2006.

¹¹⁴ Solomon 2006.

of the states are shrinking as a result of the process of privatisation, which has caused a reduction in the number of public enterprises owned by the states.¹¹⁵ Despite the Constitution's mandate that each level of government bear all financial expenditure necessary to discharge its expenditure responsibilities,¹¹⁶ state governments often struggle to raise sufficient revenue to finance their recurrent expenditure let alone capital expenditures.

Table 7.2: Total regional governments expenditure and regional governments expenditure financed from own revenue 2006 (in Billion Birr; ZAR=1.27 Birr)

Region	Total Expenditure (in Billion Birr)	Own Revenue (in Billion Birr)	% Share of Own Revenue
Tigray	695.7	194.9	28.0
Afar	332.0	38.0	11.4
Amhara	1899.7	380.3	20.0
Oromyia	2958.3	624.3	21.1
Somale	506.2	31.0	6.1
B,S Gumuz	229.0	22.1	9.7
SNNPR	1626.4	262.8	16.2
Gambela	156.2	12.4	7.9
Harar	119.0	20.5	17.2
Dire Dawa	153.9	34.3	22.3
Total	8676.4	1620.6	18.7

Source: Ministry of Finance and Economic Development (MoFED)

3.3.2 Intergovernmental transfers

The inadequate own-source revenue has compelled the states to heavily rely on transfers from the Federal Government. This is imperative given the fact that the states, despite their limited revenue generating capacity, are responsible for a lion's share of expenses incurred on social sectors that heavily contribute to poverty alleviation including education, health and

¹¹⁵ Bevan 2001.

¹¹⁶ Article 94 Constitution.

roads.¹¹⁷ According to article 94 of the Constitution, the Federal Government provides grants to the states emergency, rehabilitation and development assistance functions. The Constitution refers to these transfers as subsidies, also known as block grants. Using a formula developed by the House of Federation (HF), the second chamber, the block grant is allocated among state governments. The current formula, which was adopted in 2003/4, has three elements: population size, difference in the level of development of the regions, and revenue effort. The most determining factor is population size (65%) followed by level of development (25%) and efforts to raise revenue and sectoral performance (10%).¹¹⁸ This particular intergovernmental transfer, which is an unconditional fiscal transfer, accounts for 80% of state government revenue.

Block grants are supplemented by what are usually called specific purpose grants. These are conditional grants that are allocated for a specific project. More often than not, these grants are transferred to finance specific food security and safety net programs.¹¹⁹

The nature of intergovernmental transfers and the role of the Federal Government in respect thereof were at the centre of a recent debate in the HPR. In a report presented to the HPR in 2006, the federal auditor alluded to some irregularities in the use of subsidies that were transferred from the Federal Government to state governments.¹²⁰ According to the report, 4.8

¹¹⁷ Fantahun 2007.

¹¹⁸ A total of birr 9.5 billion Birr has been divided among the state governments in the 2007 fiscal year, representing an increase of almost 28% from the previous fiscal year (see Fantahun 2007).

¹¹⁹ According to Fantahun (2007: 8), “[f]ood security is the most prominent, and currently the federal government allocates Birr 2 billion annually for this purpose’.

¹²⁰ *Addis Fortune*, (an English weekly) available at www.addisfortune.com 26 June

billion birr were unaccounted for in the Federal Government funding allocations to the regional administration. The Prime Minister strongly argued, if not angrily, that the federal auditor has gone beyond his constitutional mandate by trying to exercise control on the utilisation of subsidies by state governments. He argued that the central government has no constitutional basis to look into the utilisation of these transfers by the states. That is the jurisdiction of regional auditors. The state governments, to use the words of the Prime Minister, can “burn” the money they received in federal subsidies if there was to be an article in their constitution allowing for that to happen and if they chose to do so.¹²¹

The Prime Minister is correct in that subsidies, under Article 94(2) of the Constitution, represent unconditional transfers. The central government, when providing subsidies, cannot choose the specific area or development project for which the transfer must be used. In other words, it cannot earmark the money for specific projects. The only indications in this regard are that the subsidies be used for development, state emergency or rehabilitation, which, in any case, are too broad to be regarded as conditions. This does not, however, mean that there are no restraints on the use of transfers. Unlike what the Prime Minister claims, the states are not totally free of federal control on the use of subsidies.

First, the Constitution clearly states that subsidies are provided for the purpose of tackling state of emergency as well as facilitating rehabilitation and development.¹²² This, at least, means that subsidies cannot be used for operational expenses unless those expenses are related to development,

2006.

¹²¹ *Addis Fortune* (an English weekly) available at www.addisfortune.com 26 June 2006.

¹²² Article 94(2) Constitution.

rehabilitation programs or state of emergency. Operational expenses, like covering the salaries of state employees, must be financed by states' own revenue. Although that is hardly the case in practice, this means subsidies should not be used to finance recurrent expenditure. Second, and most importantly, article 95(2) of the Constitution clearly states that the "Federal Government shall have the power to audit and inspect the proper utilisation of subsidies it grants to the states". As an exception to the parallel system of finance management adopted by the Constitution, which subjects the financial management of each level of government to their respective auditors, the federal auditor has the power to look into the utilization of subsidies. Of course, the Federal Government may not have the power to interfere in the choices of the development projects that the state may make. Development choices must be left to the states. The examination should be limited to 'auditing' and 'inspecting the proper utilisation of subsidies'. This is about sound financial management systems and about the fact that expenditures that a state makes from the subsidies it receives are, as any other financial expenditures, properly made for activities carried out during the fiscal year. For these reasons, subsidies are unconditional transfers. Contrary to the claims of the Prime Minister, however, this does not mean the Federal Government has no role whatsoever in the utilisation of the subsidies it transfers to the states.

3.3.3 Assessment

The dominance of the Federal Government in the financial arrangement is evident. The regional governments do not have powers over most of the taxes that generate high revenue as those are assigned to the Federal Government. The net outcome is a financial arrangement in which the regional governments are heavily dependent on intergovernmental transfers.

The heavy fiscal reliance of the regional states on the Federal Government is regarded by Andreas as a blessing in disguise as it would “raise doubts about the wisdom and likelihood of secession”.¹²³ The basic assumption that Andreas makes in this regard is that economic viability is a critical factor in determining the option of leaving a state by way of secession. According to him, the heavy financial reliance of state governments on the Federal Government should give those with a secessionist inclination a second thought.¹²⁴ This, he argues, should particularly be the case “in the border states, where separation seems a practical possibility”. This argument seems to, however, confuse, the capacity to raise revenue with the actual power to generate revenue. The fiscal dependence of the member states does not necessarily arise from a lack of productive tax base but from the very fact that the Constitution has denied them control over those richest sources of revenue by assigning them to the Federal Government. The financial dependence has not discouraged the development of secessionist movement even in border states. In fact, the prospect of oil reserves in some of these regions seems to have fuelled some of the already existing secessionist movements. A case in point is the Ogaden National Liberation Front (ONLF) which often invokes exploitation of the natural resource in the Somali regional state by the Federal Government as legitimate cause for its low-level armed struggle. This indicates that the fiscal dependence of the states on the Federal Government does not necessarily restrain secessionist movements.

The inadequate source of revenue for the states and, consequently, their heavy reliance on the Federal Government obviously has a crippling effect on their autonomy. Officials that rely on intergovernmental transfers cannot

¹²³ Andreas 2003: 166

¹²⁴ Andreas 2003:166.

achieve allocative efficiency. They cannot match their development projects with the developmental priorities of their constituents.¹²⁵ The meager amount of state budget which does not go beyond covering salaries of state employees and public services means that state officials are left with “little leeway for experimentation”.¹²⁶

4. Shared rule

An institutional framework that aims to accommodate ethnic diversity must present a countervailing concern to national unity by complementing self rule with shared rule. This section examines whether the Ethiopian institutional framework translates the principle of shared rule into institutional reality.

4.1 Representation in the House of Peoples Representatives (HPR)

The HPR, the lower house of the Ethiopian parliament, is the highest authority of the Federal Government through which shared rule finds practical expression.¹²⁷

4.1.1 The electoral system for the HPR

It is designed to have a maximum of 500 members.¹²⁸ The members are elected for a term of five years on the basis of universal suffrage. For the purpose of election, each state is divided into electoral districts. Members

¹²⁵ As argued by Andreas (2003: 116), “[o]fficials supported by transfers lack economic incentives to reach decisions tailored to the needs and preferences of their constituents”.

¹²⁶ Andreas 2003: 116.

¹²⁷ Article 50(3) Constitution. The Constitution provides that “all matters assigned ...to the federal jurisdiction” fall within the legislative competence of the HPR (article 55(1) Constitution).

¹²⁸ Article 54 Constitution.

are elected from the plurality of votes cast in each electoral district.¹²⁹ This is what is usually referred to as the first-past-the-post system, the simplest form of the majority system in which the candidate with the most votes is declared the winner.

4.1.2 Special representation for minority ethnic groups

The Constitution requires that an arrangement be provided by law for special representation of minority ethnic groups. It specifically reserves a total of at least 20 seats of the HPR to the representatives of minority ethnic groups.¹³⁰ The effectiveness of this safety net for minority ethnic groups depends, however, on how the ethnic groups that deserve special representation are determined. The electoral law does not give any indication in this regard as it simply leaves the task of preparing criteria for determining such ethnic groups to the HPR.¹³¹ One plausible suggestion is that the term minority should be determined to include ethnic groups that are numerically too weak to gain parliamentary representation. Practice seems to more or less endorse this suggestion. According to the decision adopted by the transitional parliament and which is still being applied, it is 'minority nationalities' whose population ranges between 10,000 and 100,000 that are eligible for special representation in the parliament.¹³² This means that ethnic groups that are numerically too weak to gain parliamentary representation are, by and large, eligible for representation as each electoral constituency, according to the electoral law, has a population

¹²⁹ Article 54(2) Constitution.

¹³⁰ Article 54 Constitution.

¹³¹ Article 7(3) Constitution. See also Proclamation No 438/2005, Proclamation to Make Electoral Law of Ethiopia Conform with the Constitution of the FDRE (Amendment), *Federal Negarit Gazeta* 11th Year No.23, Addis Ababa 18 January 2005.

¹³² Solomon 1998.

of one hundred thousand.¹³³ Ethnic groups that are geographically concentrated but numerically too weak to win an electoral constituency and, thereby gain representation, are covered by this scheme of representation.

4.1.3 The role of the HPR and ethnic-based parties

A certain level of lack of clarity exists about the role of the HPR as a deliberative body that represents the people as a whole and the place of ethnic-based parties in the same house. Despite the absence of express constitutional prohibition, Bekele argues for the exclusion of ethnic-based parties from contesting seats in the HPR. He bases his argument on the nature and role of the HPR. First, he relies on the constitutional stipulation which states that members of the HPR are representatives of the Ethiopian people *as a whole* (emphasis added) and members are mandated to be directed “by the will of their people” in their deliberation.¹³⁴ For him, the HPR is an institution established by the Constitution to reflect “the Ethiopian nationhood as an element of unity”.¹³⁵ Second, the apparent rationale for the creation of the two houses and their constitutional functions also supports this interpretation of the Constitution.¹³⁶

Bekele’s view of the HPR seems to be based on an inaccurate understanding of the nature and role of the HPR. The fact that the Constitution envisages

¹³³ For the purpose of holding election, the electoral law states, the territory of the country shall be divided into constituencies each of which has a population of one hundred thousand (see Proclamation No 111/95, Proclamation to Make Electoral Law of Ethiopia Conform with the Constitution of the Federal Democratic Republic of Ethiopia, *Negarit Gazeta*, TGE, 54th Year- No 9, Addis Ababa, 23rd February 1995.

¹³⁴ Article 54(4) Constitution.

¹³⁵ Bekele 2003: 152.

¹³⁶ Bekele 2003: 152.

the HPR as a body that represents the people of Ethiopia as a whole does not mean that its members do not have a constituency that may be based on ethnic affinities, regional solidarities or other relevant socio-political groupings. It only means that they are not supposed, at least, to formally organise their votes as a block. Members of the lower house are not supposed to receive instructions on how to vote on certain issues from the regional state where they come from. Members of the second house, on the other hand, are often supposed to act on behalf of the regional state from which they are elected or appointed. In fact, this underlies the major distinction between an upper house and lower house in most federations.

Furthermore, his understanding of the role and nature of the Ethiopian lower house also contradicts the current trend that underlines the need to enhance the representative character of national institutions, including lower houses, by ensuring representation. This is, in fact, what often drives the discussion about the appropriate electoral system in multi-ethnic federations. His view about bi-cameral parliament and the respective role of each house are reminiscent of the traditional view that limits issues related to representation of diversity in the context of second chambers. Generally, there are no constitutional reasons that warrant the exclusion of ethnic-based parties from contesting election to the HPR.

4.1.4 Assessment

As indicated in Chapter Three, the plurality electoral system, when compared to the proportional system, scores low in enhancing the representativeness of a lower house. It gives little room for the representation of small parties in federal institutions. In so far as the representation of ethnic groups is concerned, however, the effect of the majority electoral system should not be evaluated in abstract. One important factor that greatly determines the effect of an electoral system is the

geographical settlement of ethnic groups. A plurality system is more likely to have an effect of marginalisation on ethnic groups that are not territorially concentrated. In a state like Ethiopia, where the states are delimited on the basis of linguistic lines, the application of the majority system is less likely to affect the representation of ethnic groups in the HPR in a negative way. Furthermore, the organisation of the electoral constituencies suggests that any possible marginalising effect of the majority electoral system is very limited. According to the electoral law, the country is divided into permanent constituencies by taking the *wereda*, the second lowest administrative unit, as a basis and, when necessary, making some readjustments on the basis of population census.¹³⁷ More often than not, each *wereda* is inhabited dominantly by a single ethnic group.¹³⁸ In fact, even zonal administration, which is the next higher administrative unit and which consists of a number of *weredas*, is often ethnically defined in the regional states that are ethnically plural. Where there are ethnic minorities within a zone, special *weredas* that do not form part of the zone are established for those ethnic minorities. In addition, unlike the Afrikaners of South Africa, there is no single large ethnic group in Ethiopia that is widely scattered throughout the country without being territorially concentrated in some parts of the country.

If there are any votes that might be wasted as a result of the plurality system, it is the votes of ethnic migrants, individuals that belong to the dominant ethnic groups in the northern part of the country, especially those that belong to the Amhara ethnic group, who have settled outside their place

¹³⁷ Article 7(1) Constitution. See also Proclamation No 438/2005, Proclamation to Make Electoral Law of Ethiopia Conform with the Constitution of the FDRE (Amendment), *Federal Negarit Gazeta* 11th Year No.23, Addis Ababa 18 January 2005.

¹³⁸ Tronvoll 2000.

of origin.¹³⁹ As these particular ethnic groups, relatively speaking, are numerically strong and with a 'mother state' of their own, it is not possible to argue that the electoral system has denied them representation in the HPR. Of course, as we shall see later, the effect of this electoral system at regional state level on these and other groups of people that are found in the midst of regional majorities calls for a re-examination of the electoral system.

Any possible exclusion of ethnic groups as result of the application of the plurality system is further mitigated by the constitutional provision that guarantees the representation of minority groups in the HPR. A total of at least 20 seats of the HPR are specifically reserved to the representatives of minority ethnic groups. As indicated earlier, the way in which this provision is implemented has ensured the representation of ethnic groups that are numerically too weak to secure parliamentary representation (i.e. ethnic groups whose population stands between 10,000 and 100,000). The only problem in this regard is that the formula adopted for allocation of the 20 seats simply focuses on the size of ethnic groups without giving due attention to the capacity to have own constituency, which can be affected by pattern of settlement. This means that ethnic groups that are dispersed in different regions or electoral constituencies without being numerically strong in a single electoral constituency to achieve parliamentary

¹³⁹ As the experience of 2005 election shows, most of the ethnic migrants feel threatened by the present dispensation that is perceived as favoring the regional dominant groups and often cast their vote in support of the state-wide parties. As these particular ethnic groups are, relatively speaking, numerically strong and with a 'mother state' of their own, it is not possible to argue that the electoral system has denied them representation at the national level. Of course, as we shall discuss later, the effect of this electoral system at the state level on these and other groups of people that are found in the midst of regional majorities calls for concern.

representation, albeit large in number, are not necessarily guaranteed representation.

The major problem with regard to the plurality electoral system is that it gives little room for developing inter-ethnic solidarity. One of the reservations about the adoption of the plurality system in a multi-ethnic context is that it provides political parties with little incentive to cast their net wide. Unlike the PR system which encourages political parties to create regionally and ethnically diverse lists, with the view to maximise their overall national votes, political parties operating within the plurality electoral system are likely to concentrate on electoral constituencies where the likelihood of them winning an election is strong. This seems to partly be the case in Ethiopia. The majority of the parties are only focused on winning elections in the areas where the ethnic group, on whose behalf they have established the party, is geographically concentrated. They as a result only field candidates that belong to the specific ethnic group they ostensibly represent.¹⁴⁰ If not for this particular challenge, the general assessment is that although the adoption of a PR system would have enhanced representation to some degree, there is no evidence to suggest that the

¹⁴⁰ This, however, does not mean that the system has totally excluded the creation of ethnically diverse party lists. In present day Ethiopia, where ethnicity has achieved an important political saliency, parties with a state-wide objective have no option but to diversify their list if they are to succeed in the elections. This, in fact, seems to be a fact accepted by the major opposition party that participated in the 2005 election with a state-wide objective. The Coalition for Democracy and Unity did not only diversify the list of its candidates but also sought to ensure that the top leadership structure of the party represents the major demographic composition of the country (see Berhanu 2007). The institutional deficiency in this regard seems to be compensated by the political context. Of course, the representative nature of the leadership structure is highly questionable.

present system has resulted in the marginalisation of specific groups from the HPR.

4.2 The House of Federation

The upper house of the Ethiopian parliament, the House of Federation (HF), is a unique institution. This is true both in terms of its composition as well as the functions it is entrusted to perform by the Constitution. As it shall become clear in the following paragraphs, it is this unique feature of the House that has led some to argue that the House is not a typical second chamber. Some have even gone on to conclude that the Ethiopian federal system, contrary to what many think, does not consist of a bi-cameral parliament.

4.2.1 Composition of the HF

The HF, according to article 61 of the Constitution, is composed of representative of Nations, Nationalities and Peoples of Ethiopia, in other words, ethnic communities. According to the Constitution, each ethnic group shall be represented by at least one member.¹⁴¹ Moreover, as shown in Table 7.4, those ethnic communities whose population exceed one million are entitled to have one additional representative for every increase by a million.

¹⁴¹ Article 61(2) Constitution.

Table 7.3: Composition of the House of Federation

No	Regional State	Members represented in the House per regional state	Nations, Nationalities and Peoples represented in the House	Number of representatives per Nations , Nationalities and Peoples represented in the House
1	Tigray	6	Tigre, Kunama, Erob,	Tigre (4), Kunama, Erob
2	Afar	2	Afar	Afar
3	Amhara	17	Agewhimra, Agewawi, Oromo, Amhara)	Amhara (13), Agewhimra, Agewawi (2), Oromo
4	Oromyia	19	Oromo	Oromo (19)
5	Harari	1	Harari	Harari (1)
6	Somale	4	Somale	Somale (1)
7	Benishangul Gumuz	5	Berta, Gumiz, Komo, Mao, Shinosha	Berta (1), Gumiz(1), Komo (1), Mao (1), Shinosha(1)
8	Southern Nation and Nationality	54	Kunta, Burji, Basketo, Alaba, Derashe, Gewade, Kusiye, Yem, Kore, Gedeo, Malle, Deasenech, Hammer, Tsemay, Ari, Aribore, Gngatem, Mursi, Bodi, Deme, Gammo, Goffa, Gidicho, Zeyse, Ayda, Keffa, Nea, Chara, Kembata, Tembaro, Welayta, Sidama, Hadiya, Sheka, Dawaro, Gurage, Gorage, Kebena, Mareko, Silte, Dize, Zelmam, Meanet, Sheko, Surma, Bench, Gammo, Mashulle	Welayta (2), Sidama (3), Hadiya (2), with the remaining 'nations and nationalities' represented by one representative each.
9	Gambela	4	Agnawak, Nuware, Upo, Megenger)	Agnawak (1), Nuware (1), Upo (1), Megenger (1)
	Grand Total	112	69	112

Source: HOF

Article 61(3) of the Constitution states that state councils shall elect members of the House. As the reading of the second part of the same article suggests, election of the members of the House can be either direct or indirect. The decision is left to the councils of member states. In practice, the state councils have never held elections to have the members of the House directly elected by the people. It is the state councils themselves who have chosen representatives to the House. Thus, the House is not composed of individuals who are elected by the people but appointed by the state councils.

In terms of composition, there are two elements that distinguish the HF from most second chambers in other federations. First, unlike in many federations where second chambers are representative of subnational entities, the HF is simply composed of representatives of ethnic groups. Strictly speaking, it is not composed of representatives of the nine states. Unlike the provinces of South Africa where members of the second chamber, the National Council of Provinces, are provincial delegates that should speak in unison on matters that affect provinces, members are not representatives of state who are required to act on the instructions of state councils. There is no explicit requirement that instructs members to vote along constituent government lines. The arrangement of the House, which is based the equitable representation of ethnic communities, tends to indicate that state solidarity is not the intended *modus operandi* of the House.¹⁴² The

¹⁴² This also means that a representative of an ethnic group, in principle, can advance an opinion that is different from representatives of other ethnic groups, who, nevertheless, come from the same state. The likelihood of this happening might be slim in the context where the boundary of the state coincides with that of an ethnic group. That, however, is only true of the five states. Even in those ethnically defined states there are minorities that, according to article 61 of the Constitution, have to be represented separately in the House. More than 85% of the inhabitants

lack of direct link between the states and the HF is, however, circumvented by the role that the state councils, as indicated above, play in the nomination/election of members of the house. The role of the state councils in the appointment of members seems to indirectly make up for the lack of explicit link between members of the HF and the states from which they are elected. Members have become *de facto* representatives of the states.¹⁴³

The second element that distinguishes the HF is the issue of equality of representation. In some federations like that of South Africa and USA, the subnational units are represented in equal numbers irrespective of their unequal population sizes. In the American Senate, for example, each of the fifty-one states has two representatives, irrespective of the size of the population they represent. The Ethiopian Constitution has departed from this system of representation by ensuring not only each ethnic group is represented by one member but also by allowing the presence of an additional representative for each one million of the population. As a result,

of the State of Tigray, for example, belong to one ethnic group. There are, however, minorities in their midst which includes the Saho.

¹⁴³ The extent of the control of the states over the members they designate to the House is not, however, clear. It is assumed that they can at any time remove the member. Constitutionally speaking, this might be problematic. This would especially be the case in a situation where a member of the House broke ranks with the state from which he came from on an issue that affects his/her ethnic group. A member of the house is primarily a representative of an ethnic group. That means he is entitled to have an opinion different from that of the state, as expressed by the other representatives, on matters that are brought before the House. A member can also speak against the policies and practices of the state, if there are any, which adversely affect his or her respective ethnic group. The logical conclusion is that there is no constitutional obligation on a member of the House to follow the instructions of a state council. Similarly, a state council cannot remove a representative of an ethnic group from the House.

the ethnic group with the largest size ends up having more seats than the others.

4.2.1.1 Equitable representation?

Some authors argue that the representation system in the HF does not represent an equitable representation. Bekele has the following to say about the inequality of the system:

The state of the Gambela Peoples has three more representatives in the HF than the state of Harare People, though the population of the former exceeds that of the latter by only about forty thousand. The state of Gambela with a population of less than two-hundred thousand and the state of Bensihsnagu-Gumuz with a population of about four hundred and sixty thousand, separately they have as many representatives in the HF as the State of Somalia whose population is almost three –and-half- million. Each has two more representatives than the State of Afar, which is populated by over a million inhabitants.¹⁴⁴

The evaluation of the representation system as inequitable can only be accepted if the HF is viewed as body of state representatives. In terms of the Constitution, however, the HF is a body of representatives of ethnic communities and not state governments. The members are supposed to act on behalf of ethnic communities. The point of reference for representation should thus be ethnic communities and not state governments. Given the fact that the regional states are not ethnically homogenous, it is natural that ethnically heterogeneous states will produce a disproportionate number of members in the house when compared with other states that have large but ethnically less diverse populations.¹⁴⁵ Nevertheless, given the current state

¹⁴⁴ Bekele 2002: 156.

¹⁴⁵ This argument is based on the fact that some regional states, despite their small

of affairs in which members of the HF serve as *de facto* state representatives, this observation, it must be admitted, cannot be simply dismissed as a non-issue.

4.2.1.2 Representation of intra-substate minorities and ethnic migrants

Another issue related to the composition of the HF is the claim that members of ethnic groups that reside outside their place of origin are not represented in the HF. Alem questions why only the Oromo are represented in the HF despite the fact that there is a significant non-Oromo population inhabiting the Oromyia regional state. By the same token, he argues, it is puzzling why the non- Harari population in the Harari regional state, which is much greater than the Harari themselves, do not have a seat in the HF while the significantly small Harari ethnic group is represented in the House. He concludes that “these are sources of disillusionment for the unrepresented ethnic group”.¹⁴⁶

It is not clear if the so-called ‘non-representation of ethnic groups’, as Alem claims, represent anomalies to the system of representation evident in the HF. A distinction has to be made between two categories of people that do not belong to the regionally empowered group. On the one hand, there are members of ethnic groups that live outside their place of origin, usually referred to as migrant ethnic groups. This mostly refers to the Amharas and members of other ethnic groups that are dispersed throughout the major urban areas of southern and eastern Ethiopia including, for example, in Oromyia and Harari regional states. The position of the Constitution with regard to these specific groups of people seems to be rather clear. In as

population, have disproportionate representation as a result of the fact that they are ethnically heterogeneous as compared to other states, which are large in number but ethnically less heterogeneous.

¹⁴⁶ Alem 2006: 330.

much as the multi-ethnic cities of Addis Ababa and Dire Dawa are not represented in the HF on the grounds that they do not represent a particular group, the ethnic-migrants that have settled in the different parts of the country cannot be regarded as distinct ethnic groups that deserve separate representation. The ethnic migrants belong to different ethnic groups although they predominantly come from the Amhara ethnic group. The assumption is also that allocation of seats for the HF, which takes into account population size of an ethnic group, considers not only members of an ethnic group that reside in their place of origin but also members of the same ethnic group that happen to live outside their 'native land'.¹⁴⁷ As the house is not a composition of representatives of regional states, there is no reason to determine the population size of each ethnic group only with reference to those that reside in their place of origin. This means the number of Amhara representatives in the HF is determined not only on the basis of Amhara population that reside in the eponymous regional state but also taking into account individual Amharas that have migrated to different parts of the country. This practice seems to endorse this understanding of the Constitution as it does not provide for a separate representation of ethnic migrants.

The remaining question is whether the Constitution envisages a different view with regard to pockets of ethnic groups that are indigenous to the area they inhabit which is, however, demarcated into a regional state that is defined as belonging to another ethnic group. These ethnic groups usually border a regional state that is inhabited by the same ethnic group that they

¹⁴⁷ It is not, however, clear whether the House actually considers the entire membership of the ethnic community in question irrespective of their place of residence when determining the number of representations that an ethnic community is entitled to.

belong to. This is the case, for example, with the Oromo speakers in the Oromyia Zone of the Amhara regional state. The practice suggests an exception to the HF's system of representation in relation to these specific ethnic groups. The Oromo speakers mentioned above are provided separate representation in the HF. Notwithstanding this practice, it is unclear whether the system of representation actually warrants a separate representation of ethnic groups that have found themselves in the 'wrong regional state', albeit indigenous to the area they inhabit. The exception can be accepted only if it can persuasively be argued that indigenous ethnic communities that are demarcated outside their homeland constitute a distinct "nation, nationality or people" that deserve separate representation. A case can hardly be made to that effect. In the absence of that, the adopted practice injects an element of regionalisation in the representation system of the HF, something that is not envisioned as a basis for representation in the HF by the Constitution.

In conclusion, the anomalies in the representation system of the HF is not, as Alem argues, the non-representation of ethnic migrants but, on the contrary, the separate representation of ethnic groups that have found themselves on the 'wrong' side of the border.

4.2.2 Powers and function of the HF

Although the HF is often considered as one of the legislative institutions of the Federal Government, a brief look at the powers and functions of the HF reveals that it does not exercise any legislative function.

As the scheme of distribution of powers adopted by the Constitution shows, legislative competences over identity-related matters are assigned exclusively either to the Federal Government (i.e. via the HPR) or the states, leaving little or no room for the HF. Its limited role in this regard includes

the initiation and approval of constitutional amendments.¹⁴⁸ Another related function of the HF, which allows it to play a role in protecting the states from legislative interference by the Federal Government, pertains to areas of civil law. In principle, legislation in the areas of civil law are reserved to the states. The Federal Government can enact civil laws only when the law in question is necessary to “sustain and establish one economic unity”.¹⁴⁹ The determination of such laws is not, however, entirely left to the Federal Government. The HF is entrusted with the function of delimiting the areas of civil law, which are important for the development of ‘one economic unity’ and, thus, require federal legislation.¹⁵⁰ This is clearly one of the few cases where the HF plays an important role in protecting regional autonomy by limiting the legislative powers of the Federal Government in the areas of civil law. The other mechanism by which the HF protects the autonomy of regional states relates to its controlling power over any intervention by the Federal Government into the affairs of a state. According to article 62(9) of the Constitution, any federal intervention in the functions of a member of the federation has to be permitted first by the HF. In fact, it is only the HF that can order federal intervention if, in violation of the Constitution, a member state endangers the constitutional order.¹⁵¹

As the foregoing shows, the HF plays no significant role in the federal legislative process. It rather functions as an institution that forges and maintains a harmonious relationship, horizontally, between the different ethnic groups and, vertically, between the ethnic groups and the federal state. This role of the HF commences with its duty to “promote the equality of the peoples enshrined in the Constitution and enhance their unity based

¹⁴⁸ Articles 104 and 105 Constitution.

¹⁴⁹ Article 55(6) Constitution.

¹⁵⁰ Article 62(8) Constitution.

¹⁵¹ Article 62(9) Constitution.

on their mutual consent”.¹⁵² The HF is also entrusted with the power to decide on issues relating to the rights of ethnic communities to self-determination, including the right to secession.¹⁵³ This power of the HF is further elaborated by the Proclamation that determined the powers and functions of the latter, which states that an ethnic group “who believes that its self-identities are denied, its right of self-administration are infringed, promotion of its culture, language and history are not respected, in general its rights enshrined in the Constitution are not respected or, violated for any reason”¹⁵⁴ can present its application to the HF. This also includes the role that the HF plays in reorganising a referendum when the question of the right of secession arises. Related to this, the HF fulfils a dispute settlement function. It has the responsibility of seeking solutions to misunderstandings that may arise among states, including state border disputes.¹⁵⁵

Another related but unusual role for a second chamber is its power to interpret the Constitution. The HF, with the expert help of the Council of Constitutional Inquiry, provides the final and ultimate decision in constitutional disputes, including on the constitutionality of laws.¹⁵⁶ Other powers and function of the HF include determining the division of revenue

¹⁵² Article 62(4) Constitution.

¹⁵³ Article 62 (3) Constitution.

¹⁵⁴ Article 19(1) Proclamation No.251/2001, Consolidation of the House of Federation and the Definition of its Powers and Responsibilities Proclamation, *Federal Negarit Gazeta*, 7th Year No. 41 Addis Ababa, 6 July 2001.

¹⁵⁵ Article 62(2) Constitution. The basic principle is that all state border disputes shall be settled by agreement of the concerned states. In the event that the disputing states failed to reach an agreement, the decision rests with the House which has to take into account ‘the basis of settlement patters and the wishes of the people concerned’ in making the decision. Article 48 of the Constitution

¹⁵⁶ Articles 82-84 Constitution. For a critical discussion of this role of the HF, see Yonatan 2006.

derived from joint tax sources between the federal and state governments,¹⁵⁷ including the amount of subsidies the Federal Government may provide to the states.¹⁵⁸

4.2.3 Assessment

Generally, the representation system in the HF provides representatives of ethnic groups with an opportunity to voice the preferences of their ethnic groups as well as protect their interests. The efficacy of the system to protect the interests of ethnic groups is, however, compromised by the representation system which is majoritarian in nature. Currently, the Oromo and the Amhara are represented by 19 and 13 representatives respectively while no less than 50 other ethnic groups have one representative each. This clearly shows that small ethnic groups are likely to be outvoted easily by the numerically strong ethnic groups unless they establish large coalition, which are often difficult to sustain. In addition, although the configuration of the HF as composition of the representative of ethnic groups reinforces the constitutional declaration that sovereignty rests with the ‘nations, nationalities and peoples of Ethiopia’, it belies the political reality that state governments are the most important units of government. In fact, members of the HF are, in practice, representatives of state governments.

The major criticism against the HF is that it plays little or no role in protecting the jurisdictions of the states. The HF is not involved in the overwhelming majority of laws passed by the Federal Government. As Brietzke has noted, “the consent of the [HF] is not a precondition to the

¹⁵⁷ Article 62(7) Constitution.

¹⁵⁸ The HF is responsible for developing a formula based on which revenue allocations are made every year.

effectiveness of federal legislation”.¹⁵⁹ Let alone override the HPR in certain areas of legislation, it does not even have the power to provide inputs or recommend the reconsideration of a bill adopted by the latter before it becomes a law. This even extends to instances where legislation passed by the HPR pertains to matters that directly affect the states or in areas that are relevant to them. Members of second chambers do not, for example, have the power to veto national legislation in the areas of culture, language and education. This is problematic considering the fact that the autonomy of the states cannot be full and complete unless they are allowed to successfully challenge interferences of the Federal Government on what would normally be their jurisdiction.

Of course, the HF can always use its power of constitutional interpretation and specifically the power to declare laws that contravene the Constitution as invalid to trump any interference of the central government on what would normally be the jurisdiction of the state governments. This, however, is only after the bill becomes a law. This denies the federal arrangement an opportunity to use the HF as an institution through which the Federal Government and the state can promote the co-management of the society as a whole, which is essential for the promotion of national unity and the maintenance of the federation.

4.3 Representation in the federal executive

Unlike in South Africa, the representation of different ethnic groups in the national institutions is a constitutional requirement in Ethiopia. Article 39(3) of the Constitution explicitly mandates the “equitable representation of the different ethnic communities in the Federal and state governments”.

¹⁵⁹ Brietzke 1995: 28. He concluded that a genuine bicameral legislature has not been created in the federal system. See also Assefa 2006.

Two important points can be discerned from this constitutional requirement. First, equitable representation is not only limited to the Federal Government. State governments are also obliged to ensure equitable representation in their institutions. This, firstly, applies to the regional states that are ethnically homogenous but still have some minorities in their midst. This refers to, for example, the representation of the Kunama and Irob ethnic communities in Tigray regional state as well as the Agwi and the Oromo in the Amhara regional state. Second, it applies to the ethnically heterogeneous regional states like Gambela, Benishangul-Gumuz, SNNPR and Harari regional states. It is yet not clear, however, if ethnic migrants – ethnic groups that are not indigenous to the regional states - must also be represented in state structures.

Second, the equitable representation of the different ethnic communities is not merely limited to the executive branches of the federal and state governments. The Constitution rather makes reference to equitable representation in relation to state and Federal Governments in general, thus, extending representation beyond the executive to both the legislative and judicial arms of federal and state governments. In addition, the Constitution mandates the government to ensure the representation of all ethnic communities in the national armed forces.¹⁶⁰ This means the constitutional requirement of equitable representation, as noted by Fasil, must “permeate the whole government in all its branches”.¹⁶¹ This section focuses on equitable representation in the federal executive.

¹⁶⁰ Article 87 Constitution.

¹⁶¹ Fasil 1997: 156.

4.3.1 The constitutional practice of representation

In the wake of the new dispensation, the Federal Government, under the leadership of the EPRDF, a coalition of four ethnic-based parties, has become more diversified than ever in terms of ethnic composition. Unlike in the past, the leadership structures of national institutions are no longer monopolised by the Amharas or ‘Amharacised individuals’ from other ethnic groups. A lessening of Amhara influence over the director-level management of national institutional structures is evident.¹⁶² The first cabinet that was formed after the adoption of the Constitution in 1995 was, for example, composed of four Amharas, six Oromos, three Tigres and three ministers from other ethnic groups in the 16-member cabinet.¹⁶³ The current cabinet, which is formed after the 2005 election, is more ethnically diverse than the two cabinets that preceded it. Led by a Prime Minister from Tigre, the 21-member cabinet is composed of five Amharas, seven Oromos, two Tigres and one each from Somali, Gurage, Afar, Silte, Keficho, Sidama and Hadya ethnic groups.¹⁶⁴

Even if one accepts that the cabinet is ethnically diverse, some argue, the fact that individuals belonging to the Tigre ethnic group control key ministerial and other important positions continues to reinforce the perception that the government is dominated by the Tigray People’s Liberation Front (TPLF). The fact that the position of Prime Minister, Ministry of Foreign Affairs and National Security are in the hands of Tigrinya speakers is often used to substantiate this argument. Although the

¹⁶² Joireman and Szayna 2000.

¹⁶³ Ethiopia: The status of Amharas available at http://www1.umn.edu/humanrts/ins/ethiopia_amharas_93.html, accessed on 20 May 2008

¹⁶⁴ Available at <http://www.ethioconsulate-la.org/Listofcabinetengl.pdf>, accessed on 20 May 2008.

Minister of Defence has not been a Tigrinya speaker for sometime now, the chief of staff position has been in the hands of individuals from this ethnic group.

4.3.2 Assessment

The general assessment is that representation in the Ethiopian Federal Government is ethnically diverse. This is true not only of the national cabinet but also of ambassadorial and other important national appointments. The remaining question, however, is whether the individuals that are claimed to represent different ethnic groups in the cabinet represent the communities on whose behalf they are appointed. There is a need to go beyond the formal representation system and examine the true nature of their representativeness. This requires one to go beyond the constitutional structure and look into the constitutional practice.

Responding to the question posed above requires one to look into the formative stages of the ruling party and examine the composition of the ruling party and especially how the coalition came about. As the TPLF took control of Tigray and decided to proceed beyond south of Tigray to overthrow the military government, creating alliance with other political groupings was deemed imperative. The TPLF first created an alliance with the Ethiopian National Democratic Movement (ENDM) which later transformed itself into the Amhara National Democratic Movement (ANDM), a small armed group that was waging war against the military government in parts of the Amhara region. As the war against the military junta proceeded to what is today Oromyia, the TPLF established the Oromo People's Democratic Organization (OPDO) to represent the Oromo people, largely out of captured Oromo soldiers and officers.¹⁶⁵ It was, by and large,

¹⁶⁵ Young 1997: 147.

these three groups that came together to create the EPRDF. The last to join the coalition was the Southern Ethiopian People's Democratic Front (SEPDEF), which was primarily created by the TPLF. As noted by Young,

[the SEPDEF] was largely created after the defeat of the military and it was the TPLF forces that first occupied the region when the Derg army evacuated its bases.....As a result, the first administrations established were made up solely of Tigrayans and only afterwards were southern Ethiopians captured during the war given political training and assigned to various administrative and 'elected' positions.¹⁶⁶

The general pattern that one observes in the formation of the EPRDF is that its core organisation, the TPLF, followed a policy of creating alliance which largely relied on the creation of political parties in its own image as opposed to linking with existing parties, be it in Oromyia or the SNNPR. Young comments that the TPLF leadership "did not seriously entertain the idea of building alliances with existing southern parties and instead drove them largely out of existence."¹⁶⁷

The 'alliance-building' process followed by the TPLF has tainted the image of the coalition and discredited the new parties in the eyes of the community they are supposed to represent. Although these criticisms are often overstated, the OPDO and the SEPDEF, which are largely the creations of the TPLF,¹⁶⁸ have faced an uphill struggle to earn legitimacy. The OPDO is often viewed by Oromo nationalists as an instrument weapon of "Abyssinian hegemony - Tigrean in this case"¹⁶⁹ and a weapon of the TPLF.

¹⁶⁶ Young 1997: 212.

¹⁶⁷ Young 1997: 213.

¹⁶⁸ Young 1997: 211.

¹⁶⁹ Adhana 1994: 236.

Some have labelled the organisation as “neo-Gobenas”,¹⁷⁰ in reference to one of the Amharcised Oromo generals of the Amhara dominated Empire during the reign of Menelik II (i.e. Ras Gobena). A comment on OPDO by Oromo intellectuals summarises how the OPDO is regarded among the Oromo urban population and especially among Oromo intellectuals: “Since the OPDO [was] formed out of prisoners of war, it is clear that members of OPDO....do not represent a nationality, a class or even the Ethiopian military to which they once belonged”.¹⁷¹

The same, albeit in a less callous tone, can be said of the SEPDF, which has little legitimacy among the people they claim to represent.¹⁷² The general view or, at least, the perception is that these parties are not equal partners of the coalition. They are hardly regarded as true champions of the rights of the communities they claim to represent. This is especially damaging in a political context where there are already existing parties that claim to represent the same community/ies.

Of course, the composition of the cabinet and other major national appointments extends beyond these four parties and includes leaders from other ethnic-based parties. These individuals usually come from parties that are ‘affiliated to the EPRDF’ although they are not formal members of the coalition.¹⁷³ The appointment of ministers from these parties has enhanced

¹⁷⁰ Adhana 1994: 236.

¹⁷¹ As quoted in Adhana 1994: 236.

¹⁷² The ANDM, it is indicated, is largely opposed by intellectuals and towns people. As election 2005 also attests, the Amhara regional state is one of the strongholds of the opposition.

¹⁷³ In the quarters of the ruling party, these parties are often referred to as affiliated parties, referring to their relation with the EPRDF. Merara Gudina, on the other hand, refers to these parties as the infamous PDOs (People’s Democratic

the representative character of the government as it extends representation from the three major ethnic communities as well as dozens of ethnic communities in the Southern region to other ethnic groups that are located in the peripheral parts of the country. Good examples in this regard are the ministers appointed from parties that are operating in the Somali and Harari regional states. The problem is that these parties are also subjected to the same criticism that is directed against the OPDO and the SEPDEF as they are created under the tutelage of the EPRDF. They are regarded as ‘controlled ethnic-based organisations’ that are created on behalf of the various ethnic groups in the country.¹⁷⁴

In sum, the Constitution mandates the representation of the different ethnic groups in the Federal Government. The present Ethiopian government can be generally regarded as a reflection of the diverse ethnic communities in the country. Whether these different ethnic communities see themselves represented in the higher offices of the national government is, however, another issue. Formal representation does not necessarily guarantee actual representation. In fact, as indicated above, there are grounds that cast doubt on the representative nature of the national institutions. The root of the problem lies in the political practice and, more specifically, in nature of the EPRDF, from whose ranks and files the majority of the ministers and ambassadors are appointed. The fact that at least two member parties of the coalition are created under the tutelage of the TPLF out of captured soldiers and officers has compromised their legitimacy in the eyes of the communities they are supposed to represent. Individuals that are appointed from these parties are hardly regarded as true representatives. This is

Organisations) that are established by the ruling party for each ethnic group. Merara 2003: 123.

¹⁷⁴ Merara 2003: 146.

especially true in ethnic communities whose members have independently established political parties. A similar problem plagues the parties in the peripheral parts of the country. As they are created under the direction of EPRDF, they are hardly regarded as independent parties and neither are their leaders who are appointed to national institutions including the cabinet.

Notwithstanding the practice, it must be emphasised that the constitutional framework provides a means for the representation of the different ethnic groups in the national executive. However, the translation of the constitutional mandate into a reality largely depends on the political practice.

5. Intra-state minorities and ethnic migrants

The geographical configuration of the Ethiopian federal state has not created entirely ethnically homogenous states. In some of the states, there are ethnic minorities that live in the midst of the empowered regional majorities, albeit indigenous to the area they inhabit. This includes ethnic groups like the Kunama in Tigray, the Agew and the Oromo, both of whom inhabit pockets of the territory of the Amhara regional state. On the other hand, there are also ethnic migrants like the Amhara and members of other ethnic groups who have historically moved south and settled in Oromyia and other regional states due to different historic or economic reasons. The latter are usually found in large numbers in major urban areas of the different states. This pattern of settlement brings to the fore issues about the majority-minority tension at the state level. It begs the question whether the Ethiopian Constitution provides for a mechanism by which intra-state minorities and ethnic migrants can be accommodated. As the following discussion reveals, the Ethiopian institutional response provides for a number of mechanisms through which intra-state minorities can be

accommodated in the federal system. A major limitation of the federal system is that it does not adequately address the plight of ethnic migrants.

5.1 The use of language

As indicated earlier, the Constitution allows the regional states to adopt their own working language. This makes the regulation of language a thorny issue in so far as the situation of intra-substate minorities and ethnic migrants is concerned. The plight of intra-state minorities as well as ethnic migrants, however, seems to be mitigated, to a certain extent, by the fact that a majority of the ethnically plural states have opted to use Amharic as their working language. As indicated earlier, three of the four multi-ethnic states have decided to retain Amharic as their working language. The decision to adopt Amharic as the working language is understandable in a state like the SNNPR where there are more than a dozen linguistic groups. Any marginalisation of the local languages in that region is also mitigated by the fact that the ethnically defined zones within the regional state use their respective languages in the administration. One may, however, still wonder why the states with no more than two or three major linguistic groups (i.e. Gambela and Benishangul) have not, at least, opted for official bilingualism.

A different practice comes from the other multi-ethnic state of Harari, a home both for the Harari and Oromifa speaking groups with a large number of Amharic speakers. The regional state has decided to use two languages, Harari and Oromifa, as the co-working languages of the regional state. The decision not to advance one particular language but to, at least, recognise two working languages at the regional level is an important recognition of the intra-state diversities from which the other states can draw lessons even if it still has to accommodate the Amharic speaking inhabitants of the state. The Harari model also ensures that linguistic groups make use of their

constitutional right to promote their language and cultural identity while at the same time accommodating linguistic diversity at the state level.

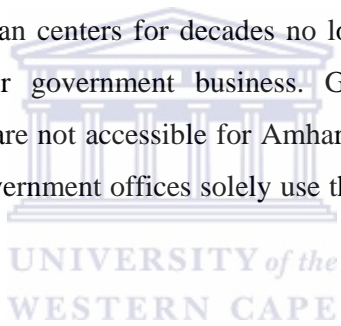
Of course, the decision of the ethnically plural states to adopt Amharic as their working language might have been motivated by the desire to avoid any political wrangling that might ensue as a result of adopting one of the indigenous languages as the working language of the region. In directly, the policy also responds to the linguistic anxieties of ethnic migrants who are usually fluent speakers of Amharic. However, in as much as the decision to use Amharic in multi-ethnic regional states might ease the majority-minority tension at the state level, it represents more of an attempt to eschew the challenges of diversity rather than adopt a solution that is consistent with the constitutional commitment to linguistic diversity. It represents a failure to make use of the language clause, which encourages the advancement of local languages. This, in some cases, has been to the detriment of the local population and its adverse effect on local empowerment is evident. In Gambela regional state, where Amharic is adopted as the working language, the dominance of ethnic migrants in the civil service sector cannot be ignored.¹⁷⁵ The ethnic-migrants are still the largest contingent of employees in the civil sector. The language policy in this particular region, it is argued, “will ultimately disadvantage the local people, who are becoming steadily less competent in the language of the regional and the Federal Government”.¹⁷⁶

Ethnic migrants, when it come language use, occupy a very different position in the states that are ethnically homogenous. As indicated earlier, the Constitution provides for a territorial model of language planning. In

¹⁷⁵ Dereje 2007.

¹⁷⁶ Dereje 2007: 216.

practice, this has resulted in a policy of unilingualism in ethnically defined regional states.¹⁷⁷ The states of Oromyia, Tigray, Somalia, and Amhara have adopted the language of the empowered ethnic group as the language of government business. The implementation of this strict policy of unilingualism has been problematic in states where there are large numbers of individuals that do not belong to the empowered regional majority. This is especially true in most major urban areas of the states of Oromyia and SNNPR where Amharic speaking people reside in large number. Following the introduction of the new dispensation, Amharic-speaking parents were often forced to send their children to schools that use the language of the regionally empowered ethnic group. Large numbers of ethnic migrants that have lived in these urban centers for decades no longer enjoy the right to use their language for government business. Government documents, including traffic fines, are not accessible for Amharic-speaking residents of these towns as state government offices solely use the regional language for government purpose.



As the foregoing suggests, in so far as the use of language is concerned, ethnic migrants occupy contrasting positions in ethnically plural states and ethnically homogenous states. In ethnically plural states, the adoption of Amharic as the working language has allowed ethnic migrants to continue to dominate the civil service and use their language in government business without any constraint. This, as shown in the Gambela case, has been done sometimes at the expense of regional languages and the empowerment of local communities. The reverse seems to be true in the ethnically defined regional state. The strict unilingual policy adopted by these states has meant that the large number of ethnic migrants that live in the major towns of

¹⁷⁷ The ethnically plural states, as indicated earlier, have adopted Amharic as their working language.

these states cannot communicate in their own language with the public authorities and government offices. The contrasting positions of ethnic migrants suggest the need to adopt a balanced approach that would accommodate the interest of ethnic migrants without adversely affecting the interest of persons belonging to the indigenous ethnic groups.

A good example comes in this regard from the policy that has been adopted in the areas of language in education policy. As indicated in the section that discussed the language policy in education, the initial unilingual policy has been modified in order to accommodate the rights of children of ethnic migrants to receive education in the language of their nationalities. Major urban areas in the different regional state have now either a separate school or certain classes in school, which use Amharic as a medium of instruction in primary education. Similar institutional measures that accommodate the interest of both ethnic migrants and indigenous ethnic groups can go a long way in terms of managing ethnic diversity.

5.2 Territorial self rule for intra-state minorities

A major guarantee for the protection of intra-state minorities comes from the recognition that the configuration of the state has not resulted in separate ethnically pure territorial units. Article 47(2) of the Constitution provides that ethnic groups within the nine states have the right to establish, at any time, their own states. It, in other words, provides for 'internal secession'.¹⁷⁸ According to the procedure outlined in article 47(3) of the Constitution, the demand for statehood must be approved by a two-thirds majority of the members of the Council of the ethnic group concerned. After receiving a written demand, the state council, from which both ethnic groups want to

¹⁷⁸ It then provides for a procedure according to which an ethnic group can secede and establish its own state.

secede, organises, within a year, a referendum for members of the relevant ethnic group. For an ethnic group to have a state of its own, only a majority of the voters' vote in favor of secession is sufficient. Once this is achieved, the state council will transfer its powers to the ethnic group that made the demand and the new state created by the referendum will automatically become a member of the federation.

Some of the state constitutions have also introduced a similar system but at a lower level in order to accommodate identity-related demands from intra-state minorities. As indicated at the outset of this chapter, most of the regional states are comprised of three-tier administrative structures, namely zone, wereda and kebele. With the view to accommodate intra-regional minorities, most regional constitutions have amended their constitutions to provide for the establishment of ethnically defined zones and special *weredas*. For example, the SNNPR, as indicated earlier, is not ethnically defined as it is home to a dozen ethnic groups. In order to respond to the constitutional requirement of ensuring self-government and equitable representation of the different ethnic groups, the regional constitution has established ethnically defined zonal administrations. In contrast to their counterparts in other regional states, zonal administrations in the SNNPR are recognised by the regional constitution as an autonomous tier of local government with constitutionally mandated elected councils and executive administrations. The Amhara state has also established three special zones.¹⁷⁹

A similar measure that is adopted by regional states in order to accommodate intra-state minorities is the establishment of special weredas in some of the regional states. Normally, weredas are part of a zone. With

¹⁷⁹ Tronvoll 2000.

the view to accommodate minorities that, due to their population size, cannot establish their own zone within a regional state, however, a number of regional states have amended their constitutions to provide for the establishment of ethnically defined special weredas that do not form part of zones. The Benishangul Gumuz state has, for example, established two special weredas while the state with the most number of special *weredas* is the SNNPR with eight special weredas. Functioning as autonomous entities, these ethnically defined zones and weredas provide intra-state minorities with the territorial space that is necessary to manage their own affairs.

5.3 Ethnic migrants and the protection of individual rights

Although the majority of ethnic migrants belong to the historically dominant Amhara ethnic group, individuals that belong to other groups, who nevertheless speak Amharic, are also widely scattered throughout the country. They are usually found in large number in major urban areas. Owing to their settlement pattern, territorial self rule is not feasible to ethnic migrants. Ethnic migrants must thus seek protection within a non-territorial framework.

As indicated in Chapter Three, one such mechanism that is often used to protect minorities relates to constitutionally entrenched bill of rights. Although the emphasis on groups rights overshadows all other equally important provisions of the Constitution, respect for universal individual rights is given equal status, though not equal attention, as that of collective rights, or as the Constitution puts it, ‘the rights of nations, nationalities and people’. This is clearly stated from the outset in the preamble to the Constitution which emphasises the “full respect of individual and people’s fundamental freedoms and rights”. It also declares the need to “live together on the basis of equality and without any sexual, religious or cultural discrimination”. The Constitution also provides for a vast array of universal

individual rights. Importantly, article 25 of the Constitution declares the right to equality and prohibits discrimination on grounds of, among other things, race, nation, nationality, or other social origin, language, religion or other status. In this regard, what is conspicuously absent from the Constitution is a provision that regulates the right of individuals to receive state-funded education in the language of their own choice.¹⁸⁰

The practice does not, however, reflect the equal status that the Constitution bestows on individual and collective rights. In fact, the major challenge in terms of accommodating ethnic migrants is attributable to a political practice that gives more weight to collective rights and frustrates claims based on individual rights. For example, the language issue has often been used to block ethnic migrants from exercising their individual rights to participate in the political institutions of the regional states. The language criterion is often used to deny Amharic-speaking individuals from being elected to public offices including state parliaments. In some regions, individuals that do not speak the working language of the region are barred from contesting elections. As a result, the political participation of ethnic migrants in state administration has been largely curtailed. This contradicts article 38 of the Constitution which declares the right of every Ethiopian national to take part in the conduct of public affairs, including to vote and to be elected at periodic elections, without any discrimination based on nation, nationality, language, religion or other status. Notwithstanding this, the denial of political rights of ethnic migrants in regional states that do not use Amharic as their working language seems to have received legal backing in a case that was decided by the HF.

¹⁸⁰ This, as indicated earlier, is regulated by the ETP, which is discussed in detail in the section that deals with language in education policy.

The case¹⁸¹ involved three Amharic-speaking individuals who wanted to stand for the 2000 state legislature election in Benishangul-Gumuz regional state.¹⁸² Based on a petition made by an ethnic-based party that operates within the regional state, the National Electoral Board (NEB) ruled that the individuals could not stand for election as they could not speak one of the four indigenous languages spoken in the regional state. The NEB based its decision on article 38(1(b)) of the electoral proclamation that makes the right to stand for an election dependent on the ability to speak the working language of the region. The individuals appealed to the HF objecting to the decision of the NEB on the grounds that it was unconstitutional. The House reversed the decision of the NEB and affirmed the right of the three individuals to stand for election. The decision of the House has, however, fallen short of entrenching the right of ethnic migrants to stand for an election irrespective of their linguistic ability.

The House rejected the decision of the NEB on the basis that the individuals can speak the working language of the region, which is Amharic, and do not necessarily have to speak the languages of any of the indigenous groups. It, however, held that the electoral law that makes the right to stand for an election dependent on the working language of the region is constitutional. It justified its decision on pragmatic considerations as opposed to normative grounds. It argued that the ability to speak the regional working language is

¹⁸¹ Since cases decided by the HF are not reported, they do not carry formal titles. This case was accessed from the personal file of H.E Menberetsheay Tadesse, Vice President of the Federal Supreme Court and member of the Council of Constitutional Inquiry, a body of legal experts that examines constitutional issues submits its recommendations to the HF for a final decision.

¹⁸² Benishangul Gumuz is home to four major indigenous ethnic groups. It is also inhabited by a very large group of Amharas and other Amharic speaking individuals from other ethnic groups. The working language is Amharic.

essential if a deputy is to engage fully and effectively in the debates and discussions of the regional parliament. Speaking the working language is essential, if not indispensable, for the effective representation of the electorate in parliament, it concluded.

The major limitation of the decision of the House lies in its focus on mechanical aspects of representation. It is true that effective representation can be enhanced by the ability to speak the working language of the parliament. But this does not mean that there are no other mechanisms through which language constraints can be addressed. The provision of translation facilities can, for example, easily alleviate language constraints. Even in the federal parliament, deputies that have difficulties with Amharic, the federal working language, often rely on translation facilities to convey their message. By following the logic inherent in the decision of the House, one cannot also escape arriving at the absurd conclusion that members of indigenous ethnic groups that do not speak the working languages of the ethnically diverse regional states of Gambela and Benishangul, which is Amharic, must be excluded from standing for election for regional parliaments.

The House's analysis of effective representation is also narrowly focused on the functioning of the parliament. This also explains why the House does not consider it necessary for an individual that wants to stand for election in a federal parliament to speak the regional language. The House fails to take into account the fact that effective representation also requires being able to effectively communicate with the electorate. In fact, the essential ingredient for effective representation is the capacity to communicate with the electorate which, at the very least, involves speaking the languages of the electorate or the constituency they seek to represent.

The House has failed to drive home two essential points that it emphasised in the opening paragraphs of its decision. First, it stated that the Constitution envisages equal respect for both group and individual rights. This stems directly from the preamble of the Constitution which recognises the need for “full respect of individuals and people’s fundamental freedoms and rights”. Second, it reiterated that language should not be used as a ground to exclude others from political participation. In other words, language should not be used in order to advance a claim of ownership of the region, implying that those that do not speak the indigenous language of the region are outsiders. The regional state belongs to all who live in it. That means, among other things, that ethnic migrants’ right to participate in the political process should not be compromised on the ground of language. Any contrary view, be it based on pragmatic or normative considerations, has the effect of disenfranchising a large number of the population in most urban areas of the different regional states. This undermines the constitutional commitment to equal respect for individual and group rights. It also creates a feeling of exclusion among ethnic migrants. The decision of the House to scarify these basic constitutional commitments on a few pragmatic and technical considerations are, to say the least, difficult to justify.

5.4 Representation in state structures

As indicated earlier, the ‘equitable representation’ of the different ethnic groups is a constitutional mandate of the Federal Government but also state governments.¹⁸³ State governments are also obliged to ensure that the faces of their institutions reflect the ethnic plurality that that characterise their society. This, firstly, applies to the regional states that are ethnically homogenous but still have some minorities in their midst. This refers to, for example, the representation of the Kunama and Irob ethnic communities in

¹⁸³ Article 39(3) Constitution.

Tigray regional state as well as the Agwi and the Oromo in the Amhara regional state. Second, and more importantly, it applies to the ethnically heterogeneous regional states like Gambela, Benishangul-Gumuz, SNNPR and the Harari regional states. Furthermore, as indicated earlier in relation to the Federal Government, the equitable representation of the different ethnic communities is not merely limited to the executive. As the obligation of ensuring equitable representation is mentioned in relation to state and federal governments in general, state governments are obliged to ensure equitable representation in the legislative and judicial arms of state governments as well.

This constitutional obligation of equitable representation reflects the constitutional commitment to accommodate intra-state diversity. By ensuring representation of the different ethnic groups that inhabit the state, it signals the message that each state belongs to all who live in it. It is yet not clear, however, if ethnic migrants must also be represented in the state structures

5.5 Assessment

The federal constitution provides for some mechanisms to address the case of intra-state minorities and ethnic migrants. Flexibility with the use of language in education in ethnically heterogeneous regional states is one such example. The right to statehood and the creation of special *weredas/zones* by the state constitutions also contribute to the accommodation of intra-state minorities. These measures have, however, their own limitation in addressing the plight of ethnic migrants. For example, while the Constitution indicates that the division of constituent units in a possible solution to internal demands for self government, this is not an option which is available for ethnic migrants who are not geographically concentrated.

Some of the solution to intra-substate minorities and ethnic migrants must thus be sought within the territorial administration that these minorities find themselves in. Judicially enforceable universal individual rights represent one such response. In this regard, although the constitutional commitment to the observance of full respect to individual and collective rights is an important mechanism that can be used to protect individuals belonging to these particular groups, the practice is not encouraging. The disenfranchisement of ethnic migrants, which has relegated them to a 'secondary citizen' of regional states, is a testimony to the failure of the constitutional practice to give effect to this constitutional commitment.

An effective response to the plight of ethnic migrants and intra-substate minorities requires regional states to come to terms with their ethnic diversities and fully accept that they are sharing with the federal state the same problem of accommodating ethnic diversities but only at a state level. The Ethiopian institutional response to the anxieties of intra-substate minorities, which involves both territorial self rule and representation at state structures, is in line with this normative position. That does not, however, seem to be the case with ethnic migrants. With the exception of the concessions made to ethnic migrants in areas of education, no other mechanisms are provided by the Constitution through which ethnic migrants can exercise control over matters that are relevant to them, especially in identity related matters like language, culture and the media. The lack of protection in a form of non-territorial autonomy has denied ethnic migrants, who are often 'too dispersed or few in numbers' to exercise territorial autonomy, a say over certain functions which are of relevance to them. Furthermore, the application of the majority system of election, as opposed to the proportional electoral system, at the state level also means that these groups have potentially little or no representation in state parliaments. In so

far as the accommodation ethnic migrants are concerned, one may reasonably conclude, the Ethiopian federal system leaves much to be desired.

6. Conclusion

The Ethiopian Constitution clearly recognises the multi-ethnic character of the society it seeks to govern. Rejecting the age-old argument that Ethiopia is a historic nationhood, the Constitution declares Ethiopia as a multi-nation state. This is evident both in the preamble of the Constitution, the national symbols as well as in the language clause that signifies the equality of all linguistic groups. This marks a major departure from the policies and practices of successive regimes that sought to build a single Ethiopian identity in the image of the language and cultures of the Amhara. Being Ethiopian is no more coterminous with speaking Amharic and practicing the culture that is associated with it. This undeniably is a triumph to the many linguistic groups that inhabit the country whose language and culture has been denigrated for so long.

The Constitution has not limited itself to formal recognition of Ethiopia's ethnic diversity. By adopting an institutional arrangement that represents a marriage between federalism and ethnicity, it has provided practical effect to its act of recognition. Unlike the tactical cooptation of the Imperial regime and the policy of the military junta that limited diversity to the cultural realm, the current Constitution extends a full measure of political autonomy to ethnic communities. The right of ethnic communities to govern themselves is a major feature of the Constitution. It has provided ethnic groups with territorial space that is necessary to promote their language and cultural identity and manage their own affairs. This is further reinforced by a division of power that vests constituent units with legislative power over identity-related matters as well as other functions of relevance to them. The

state is clearly moving away from the nation-state paradigm towards a politics of recognition and accommodation.

The problem with the Ethiopian system is that it overemphasises ethnic diversity both in the symbolic realm and in the institutional expression of self rule. A prime manifestation of this overemphasis on ethnicity is evident in the organisation of the territorial structure of the state which seeks to provide a mother state to each large ethnic group. This construction of the state has the effect of freezing ethnic identity as the prime marker of political allegiance, thus, limiting the development of either overarching or crosscutting cleavages. The Ethiopian system, to use the words of Basta, provides ethnic solutions to ethnic problems; this, in turn, has the effect of nourishing ethnicity and radicalising ethnic allegiance.¹⁸⁴ This is evident from the fact that identity fragmentation along ethno-linguistic lines has become a common phenomenon in Ethiopia. In some cases, it has even contributed to the weakening, if not disappearance, of age-old regional identities. More puzzling also is the prominence given to ethnic identity to the exclusion of all other identities like regional identities which, as shown in Chapter Six, are an important historical element of the Ethiopian makeup. The ‘putting together’ of the Amhara people into one regional state is a prime example of the imposition of ethnic identity over and above the more historically relevant regional identities that define members of this particular ethnic group. To that extent, the prominence attached to ethnic allegiance is ahistorical. An appreciation of the fact that identities other than ethnic identity have historically developed in the country would have resulted in a different geographical configuration of the state. Rather than creating one large Amhara state, for example, the Ethiopian Constitution could have retained the historical regional divisions and divided the Amhara

¹⁸⁴ Basta 2002: 20.

into multiple states based on regional allegiances. The same can be said of the Oromo.

The dogmatic approach to ethnicity has not only resulted in overlooking the consideration of other historically relevant identities but also the extension of political identity to ethnic groups that did not consider themselves as such. Ethnic groups that have never mobilised themselves politically have been given a political status. As indicated earlier, ethnic communities have turned into political communities by a mere constitutional fiat.

In addition, the lack of adequate processes and institutions of shared rule has made it difficult to countervail the ethnicisation of the system by utilising joint spaces that facilitate communication among the various groups and help to develop inter-ethnic solidarity. The second chamber, the HF, which would be expected to promote the co-management of the federation, plays little role in bringing the constituent units within the political processes of the federal state.

The basic idea of federalism in any multi-ethnic setting is ideally to accommodate ethnic diversity while at the same time maintaining national unity. The idea is not to create ethnic enclaves. It is not to demarcate each ethnic group with a mother state of its own with the resultant consequence that territories are defined as belonging to the regionally empowered group with other groups treated as guests or outsiders. The grand aim of accommodating ethnic diversity requires that the state, to the extent possible, seeks to accommodate diversity at each point of relevance.

In this regard, the Ethiopian system needs to move beyond its fixation with ownership based on historical and other considerations in the organisation of the state and rather base its organisation of the state on demographic

realities. This does not mean that historical considerations are not necessary in the configuration of the state but they should be relevant only to the extent that they are necessary to determine the path that the society should take in unison. In the context of a state that attempts to come to terms with its history of conquest and subjugation, the federal arrangement should not be used to advance a policy of the restoration of a 'distant past'. Not only is this impossible to achieve but it is highly disruptive and defeats the basic tenet of federalism as it results in the alienation of certain groups. This concept does not seem to resonate in the Ethiopian system of federalism. The state of Harari, one of the nine states in Ethiopia, illustrates this very aptly. Despite the fact that the Harari state is home to two other linguistic groups that are numerically superior to the Harari ethnic group, the region is named and considered mainly as belonging to the latter. This scenario, which is more likely to have historical explanation rather than one based on the demographic realities of the state, has the effect of creating the impression that members of the other two groups are treated as mere guests. The plight of ethnic migrants can also be attributed to the same system defines states as belonging to one ethnic group based on historical considerations and not current demographic realities. This once again defeats the very purposes of the federal arrangement, namely to accommodate ethnic diversity.

It is submitted that federalism is the only viable route that the state of Ethiopia can rely on to maintain itself as a state. Contrary to those who argue for a territorial/administrative based federalism, the consideration of the ethnic factor in the making of the federation is an indispensable element of the federal formula that Ethiopia has to adopt in order to accommodate its ethnically diverse society. To that extent, the present Ethiopian system is definitely on the right track. The overemphasis on diversity, as is evident both at the symbolic and level and self rule (and especially in the territorial

structure of the federation) has, however, the danger of putting the federation under intense pressure. Since the excessive emphasis on regional autonomy is not countervailed by a set of institutions and processes that promote shared rule and thereby national unity, there is a tendency that interaction between ethnic groups will develop into a zero-sum game.



Chapter Eight

Conclusion and lessons

1. Introduction

This thesis examined how institutions of multi-ethnic states have been designed to accommodate ethnic diversity while at the same time maintaining national unity. It located institutional responses to the challenges of ethnic diversity within the context of a federal arrangement. It examined how a federal arrangement has been used to reconcile the conflicting pressures of the demand for the recognition of distinctive identities, on the one hand, and the promotion of political and territorial integrity, on the other. It used South Africa and Ethiopia as case studies as the two federal systems provide a contrasting approach to the issues of ethnic diversity.

In order to achieve the aforementioned objective, the thesis first tackled the question whether ethnic diversity should be provided recognition. It then examined the capacity of the federal arrangement to accommodate ethnic claims without posing a threat to the political integrity of a state. After developing a template of institutional arrangements that demonstrates how the normative principles of recognition and accommodation can provide an institutional reality within a context of a federal arrangement, it went on examining the institutional responses adopted by South Africa and Ethiopia.

This concluding chapter has two objectives. First, it restates the major findings of this study. Second, it identifies institutional lessons from the two case studies. It does not prescribe the adoption of a particular institutional framework to multi-ethnic states that are struggling with the challenges of ethnic diversity. The aim is rather to draw institutional lessons from the two case studies and in the process assist multi-ethnic states that are grappling

with the question of how to design state institutions in order to accommodate ethnic diversity without endangering political and territorial integrity.

The thesis concludes that the contrasting approaches that emerge from the review of the two case studies suggest that federalism, as an institutional response, represents a continuum, or to be precise, a 'purpose continuum'. The appropriate institutional response to the challenges of ethnic diversity within the continuum depends on the political saliency of ethnicity in the country in question, which, in turn, depends on historical and political circumstances that attend the state formation process. In addition to federalism, the thesis maintains the relevance of individual rights regime and other non-territorial institutional measures in order to accommodate ethnic groups that are not territorially concentrated. The central thesis remains that recognition and accommodation of ethnic diversity, entrenched formally or informally, directly or indirectly, is an essential institutional principle of a multi-ethnic state that seeks to build an inclusive state. Yet, a federal solution that attempts to respond to the multi-ethnic challenge has to guard itself from the dangers of both overemphasising and de-emphasising ethnic diversity.

2. Recognising ethnic diversity

One of the first questions that this thesis addressed was whether a multi-ethnic state should recognise its ethnic diversity. The thesis suggests a positive answer: A multi-ethnic state has to somehow recognise the ethnic plurality that characterises the society it seeks to govern. The empirical evidence comes from states that sought to ignore or suppress ethnic diversity. As demonstrated in Chapter Two, there are plenty examples of states that attempted to take away the ethnic mosaic feature of the state and develop a single national identity along a single language, culture or

ideology that transcends ethnic differences only to find themselves in ethnic turmoil. States in Africa, Europe and Asia attempted to promote national unity at the expense of cultural diversity. Some did this by denying that there are linguistic minorities within their respective territory and presenting themselves as monocultural states. Others sought to build a national identity along the languages and cultures of a particular ethnic group. The 'nation-state building' project in Ethiopia had a core culture that was based on the languages and cultures of the Amhara.

The approach that seeks to transform a multi-ethnic state into a nation-state, as the empirical evidence show, falls short of what is required to build, to use the words of the South African Constitution, 'a state that belongs to all who live in it'. The state was rather identified with the ethnic group whose culture and language was recognised in the public sphere. This created the feeling of alienation among other ethnic groups who had to assimilate to the languages and cultures of the majority group in order to be regarded as one among equals. The alienated groups eventually responded by politically mobilising against what they considered as a relegation of their culture and identity to secondary status. Explicit ethnic mobilisation dominated the political arena. Ethnic nationalist movements that seek recognition, autonomy and representation or, in extreme cases, a state of their own became a common feature of ethnically plural states. In short, the nation-state building project, as it is often referred to, failed to achieve the desired result of creating a common national identity. The clear empirical message was that a state that is predicated on suppressing ethnic diversity is bound to generate ethnic particularism and ethnic tension much less to create a homogenised society.

The empirical evidence is also supported by other arguments. The point is that a state that does not recognise its ethnic diversity cannot go without

empowering, advertently or inadvertently, a particular group and alienating another. In other words, a multi-ethnic state cannot remain neutral to ethnicity or in matters where ethnic relationships are concerned. Requiring the state to remain neutral in relation to ethnic relationships, leaving the matter to the so called ‘cultural market place’ is, as argued by Kymlicka¹ and many others, as good as calling for the separation of state and ethnicity. The state should not promote or inhibit the practice of the culture and language of a particular ethnic group. The ‘cultural market place’ should rather decide if a certain culture is going to survive or decay. In short, there should be a “benign neglect” of ethnic differences. However, the call for “benign neglect”, as noted by Kymlicka² and many others, does not make sense. Simply put, the state cannot remain neutral with respect to matters that have a bearing on ethnic relationships as there will always be contexts in which the state cannot help but adopt, for example, state symbols that recognise at least an identity of a particular ethnic group.³ When a government opts to use a certain language as official language, the state is recognising the linguistic identity of the group that speaks the language. The same applies to the choices of public holidays and other similar issues. Of course, as indicated in earlier chapters, some states might circumvent the challenges of the symbolism of language by opting for a culturally neutral language, which is particularly the case in most decolonised states of Africa and Asia (i.e. English, Portuguese and French). This is not, however, an option that is always available. In most instances, the state cannot avoid but recognise and promote the identities of a particular ethnic group.

¹ Kymlicka 1995.

² Kymlicka 1995.

³ Patten 2001: 288.

Based on these arguments, this thesis concludes that the state has to somehow recognise its ethnic diversity. A multi-ethnic state that seeks to suppress diversity and attempt to build a common national identity based on the core culture of a particular ethnic group is bound to provoke violent ethnic nationalist movements. Similarly, a state that ostensibly follows a policy of neutrality when it comes to ethnic relationships often ends up identifying itself with a particular group. In short, a multi-ethnic state should seek to avoid an attempt to homogenise its ethnically diverse population and transform it into a nation-state or remain 'culturally neutral'. Recognition of ethnic diversity is an important element of building an inclusive state in a multi-ethnic society.

3. The contingent nature of politicised ethnicity and its implication on the recognition of ethnic diversity

The next issue pertains to the nature and degree of recognition that a multi-ethnic state should provide to ethnic diversity. This thesis puts forward two main arguments in this regard, based on the political relevance of ethnic identity. First, there is nothing about ethnic identity that makes it a peerless and paramount identity that it should receive recognition in the public sphere to the exclusion of all other competing interests. The saliency and relevance of ethnicity as a rallying point for political mobilisation often depends on historical and political contingents that attend the so-called 'nation-state building' project. In other words, ethnicity is often the function of the 'nation-state' building project. This says ethnic cleavage does not necessarily translate into a political divide. Hence, the contingent nature of politicised ethnicity. Second, if we accept the argument that ethnic difference does not always translate into a political divide, then the nature and degree of recognition that a multi-ethnic state accords to ethnic difference, as a politically relevant divide, should consequently reflect the political saliency of ethnicity in the state under consideration.

3.1 Politicised ethnicity as a contingent process

The argument on the political relevance of ethnicity as a contingent process can be demonstrated by briefly reiterating the political role of ethnicity in South Africa and Ethiopia. As demonstrated in Chapter Four, the political saliency of ethnicity is of limited significance in post-apartheid South Africa. Despite the fact that the country's black community is composed of ten ethnic groups, political mobilisation along these ethnic groups is not common. The performance of political parties that sought to mobilise the black population along ethnic lines has been limited. Even the IFP that relied on ethnic sentiments of the Zulu population group has seen its support dwindling as South Africa moves away from the apartheid era. The Afrikaner-based parties have not also been able to convince their community to rally behind programs that promote a 'nationalist Afrikaner' agenda. The potential amenability of the territorial structure of the state to ethnic mobilisation, owing to the relative concentration of each ethnic group in a particular province, has also not given rise to the formation of territorially based ethnic mobilisation. Despite predictions that ethnic rivalries will emerge among the black community when the white domination comes to an end, the solidarity of the black community that, to a large, extent, has muted inter-ethnic rivalry has, as shown in Chapter Four, persisted into post-apartheid South Africa. In short, ethnicity is still not the most relevant divide in post-apartheid South Africa.

The limited saliency of ethnicity in the South African political discourse can only be explained by the particular historical and political context of the South African state and society. Unlike many other multi-ethnic states, South Africa has not yet experienced an exclusive 'nation-state building' project that empowers a particular ethnic group and marginalises the rest. In fact, the political experience of South Africa was such that it united the different ethnic groups that inhabit the country to forge a common national

identity against the apartheid government. At the centre of this struggle are also the ideology of the ANC that regards ethnicity as artificial and the manipulation of ethnicity by the apartheid government which contributed to the maligned concept of ethnicity in South Africa. In post-apartheid South Africa, the limited significance of ethnicity is further facilitated by the absence of a central power that arranges groups in hierarchical relations or imposes the domination of particular ethnic group/s over others. The best possible explanation for the limited saliency of ethnicity thus lies in the absence of strong indication that the state is strongly identified with a particular ethnic group or a state policy that favors a particular ethnic group to the detriment of others. The South African experience suggests that ethnicity is not usually a primary rallying point of political mobilisation but often a function of state policies that deny, accommodate or promote ethnic diversity.

The situation is quite different in Ethiopia. Unlike in South Africa, historically the state of Ethiopia, as argued in Chapter Six, was predicated on suppressing ethnic diversity and building the state along the language and culture of one particular ethnic group. The state-driven homogenisation policy eventually provoked the emergence of ethnic movements in the different parts of the country. For this reason, ethnicity obviously has more political relevance in Ethiopia when compared to South Africa. Yet, as argued in Chapter Six, the political history of Ethiopia cannot be solely explained by the phenomenon of ethnicity. Regional identity and the resultant mobilisation had also played an important role in the making of Ethiopia.

These two cases demonstrate that the saliency of ethnicity is not static. There is nothing about ethnicity that is ahistorical, immutable or universal. There is no necessary parallelism between social cleavages and political

mobilisation. The relevance of ethnicity as a rallying point for political mobilisation depends on the historical and political contingents of each state. This, of course, does not change the basic position that mandates the recognition of ethnic diversity. The fact that ethnic identity is not a primal identity and that it is often the product of the 'nation-state building' project does not mean that ethnic diversity should not be recognised. If anything, this particular understanding of the nature of ethnicity suggests that a multi-ethnic state, if it is to avoid ethnic based political mobilisation and the resultant ethnic turmoil, has to either remain neutral in ethnic relationships or recognise and accommodate the ethnic diversity that characterises its society. As indicated earlier, the state cannot simply remain neutral, which leaves it only with the latter option.

Some might yet have difficulty in accepting the position that multi-ethnic states should worry about recognising ethnic diversity. They point to multi-ethnic states that seemingly are centrist but yet stable and argue that ethnic diversity is not necessarily a relevant challenge to these states. As the foregoing discussion indicates, recognition of ethnic diversity is not categorical. The relevance of ethnic differences as a political divide is not always guaranteed as this often depends on political and historical circumstances. This does not, however, mean that ethnic divide is not a relevant challenge. The political and historical circumstances that made ethnicity a non-issue are not necessarily static. Depending on state policies that affect ethnic relationships (i.e. depending on how state institutions deny, accommodate or promote ethnicity), ethnicity may emerge as the dominant political force. This means even in conditions where ethnicity does not appear to be the most relevant political divide, the state has to ensure that it adopts policies that prevent the emergence of conditions that gives rise to the political mobilisation of ethnicity. The issue should not thus be about the mere recognition of ethnic diversity but about the nature and

extent of recognition that a multi-ethnic state has to accord to ethnic diversity. This is what the next section deals with.

3.2 The implication of politicised ethnicity as a contingent process

An important implication of regarding the political relevance of ethnicity as a contingent process is its effect on the extent to which a state should recognise ethnic diversity and consequently on the institutional arrangement that a state has to fashion to respond to the challenges of ethnic diversity. The non-singular position of ethnic identity means, among other things, that ethnicity should not be recognised as a single organising principle of society. If possible, a state, in its attempt to manage ethnic diversity, must, to the extent possible, avoid the institutionalisation of ethnic identity. It should strive to accommodate ethnicity without creating conditions that make the latter a single rallying point of political mobilisation. This helps to avoid the accentuation of ethnic cleavage while at the same time recognising and accommodating ethnic diversity. Positioning ethnicity as a major basis for the organisation of the state would reduce the institutional response to a mere 'ethnic solution' with the potential effect of rendering the interaction between ethnic groups a zero-sum game. Of course, extreme circumstances might require extreme measures. In a particular multi-ethnic context, a constitutional system that institutionalises ethnicity might be the only way of keeping a very deeply divided society together. This, however, does not detract from the main position that the nature and degree of recognition that a multi-ethnic state accords to ethnic identity as a political identity should mirror the political saliency of ethnicity in the state under consideration.

The institutional response that the Ethiopian state has adopted involves the freezing of ethnic identity as the prime marker of political allegiance to the exclusion of all other overarching or crosscutting cleavages. By a mere

constitutional fiat, the institutional response, as argued in Chapter Seven, has turned ethnic communities into political communities. This is especially visible in the territorial organisation of the Ethiopian federation which, to a large extent, follows an ethnic line, including the designation of each subnational unit after the name of the regionally empowered ethnic group. Although the consideration of ethnic factors in the organisation of the state is relevant considering the political history of Ethiopia, the extent that the institutional response went to use ethnicity as the basis to organise the society belies the political reality that characterised the Ethiopian state and society. A more appropriate appreciation of the political history of the country would have shown that ethnicity is not the sole political divide. Regionalism is an equally important politically relevant divide. Neither can the centripetal forces be easily disregarded. National unity remains a potent mobilising force in the country. As indicated earlier, to the extent that the Ethiopian institutional response recognises and institutionalises ethnicity to the exclusion of all other politically relevant crosscutting and overarching identities, it is ahistorical.

The Ethiopian experience also illustrates the danger of using ethnicity as a singular politically relevant identity. The discussion in Chapter Seven has clearly demonstrated that as a result of the heavy emphasis on ethnicity in the organisation of the state, the development of ethno-nationalism across language community lines has become a common phenomenon. Ethnicity has become the sole lexicon of political discourse and a readily accessible tool for ethnic entrepreneurs. This is visible both in the number of ethnic-based political parties that mushroomed all over the country and the ethnicisation of political discourse. As a system that offers political rewards to assertions of ethnic identity, the political space in Ethiopia is increasingly crowded by ethnic claims which are especially apparent in the persistent

demands for recognition and autonomy by small ethnic groups in the Southern region.

This institutional response is problematic partly because it does not mirror the political realities of the country. The system does not provide equal recognition to the competing centripetal and centrifugal forces whose struggle for a place in the public sphere continues to define the political realities of the Ethiopian state and society. “To the victory, the spoils” was rather the motto that guided the designing of the Ethiopian institutional response to the challenges of ethnic diversity.⁴ The militarily victorious ethnic-based liberation movements, by and large, translated their political program into constitutional mandates. Obviously, an incorporation of the views of the centripetal forces in the designing of the institutions would have tamed the highly ethnically oriented nature of the system. This, in fact, is what distinguishes the Ethiopian system from the more contextually appropriate South African institutional response.

As argued in Chapter Five, South Africa neither suppresses nor actively promotes ethnicity. This particular approach is in line with the socio-political realities of the country where ethnicity is still not the most politically relevant divide. The institutional arrangement that is skewed in favor of shared rule, thereby promoting national unity, is also consistent with the nature of ethnic relationship that exists in the country. The political mobilisation of ethnicity is rare despite the existence of different ethnic groups and those that ventured along those lines have not been able to convince their constituency of the need to rally behind their nationalist agenda. Irrespective of the non-saliency of ethnicity, however, the South

⁴ The blame for the failure of an all-inclusive process falls on the opposition as much as on the ruling party.

African system, as argued in Chapter Five, does not go without recognising and providing institutional expression to ethnic diversity. This is not only consistent with the position held at the outset of this chapter that a multi-ethnic state should always recognise ethnic diversity but also a reflection of the recognition that there are groups in South Africa, albeit of limited significance, that demand the recognition of their distinctive identities. It also represents an acknowledgment that ethnic differences, unless somehow recognised and accommodated, could emerge as potentially strong political divide. It is this readiness and capacity to harmonise both centripetal and centrifugal forces, which made the political transition in South Africa a reality, that is conspicuously absent in the Ethiopian case.

4. Institutional expression in the form of federalism

As argued in Chapter Three, recognition of ethnic diversity is only part of the solution to the challenges of ethnic diversity. The fact that a state defines itself as belonging to all that live within its defined territory is not sufficient. Providing practical expression to the act of recognition is equally crucial. This thesis seeks to locate practical expressions of the act of recognition within the context of a federal arrangement.

4.1 Federalism as the expression of recognition of ethnic diversity

Federalism, as an institutional response that deals with the multi-ethnic challenge, is premised on the formal recognition of ethnic diversity. The multi-ethnic state, as defined in the constitution, other important state documents and symbols, has to acknowledge the multi-ethnic character of the society it seeks to govern. In the absence of formal recognition, the mere adoption of federalism would only be more congruent with a unitary representation of the state than with the spirit of federalism, which combines unity with diversity and seeks to recognise and accommodate distinct collective identities within a larger political partnership. It would

not be any different from what are often referred to as mono-national federations that do not use their federal arrangement to express their diversity. In such cases, a federal arrangement would mainly be “understood as an administrative arrangement in which only the principle of uniformity and homogeneity can guarantee a fair and equal treatment of every citizen”.⁵ Moreover, efforts to deny multiple identities in defining the state and attempt to portray a homogenised society often contribute to identity fragmentation. As the Canadian case illustrates, the act of recognition is still important even in the presence of practical and institutional arrangements that guarantee autonomy and representation for ethnic groups.

Recognition is linked to how the state views itself – whether it defines itself as a nation-state or as a state that readily accepts its multi-ethnic character. As the preceding chapters reveal, elements that bear on the definition of the state range from the preamble to the constitution to language and state symbols. The latter are expressed in terms of public holidays, national anthem, flag and the like. These constitutional and political elements that often have a bearing on the definition of the state are not necessarily federal in nature. However, a multi-ethnic state that is serious about building an inclusive state, it is submitted, cannot help but ensure that these elements are not defined in the manner that suppresses or deny the diverse identities within its society. It ensures that they portray a state that belongs to all who live in it. As amply demonstrated in Chapter Three, federalism, with its particular territorial matrix and multiple levels of government, provides ample opportunities to do so and thereby ensure that the definition of the state reflects its multi-ethnic character.

⁵ Rocher, Rouillard and Lecours 2001: 193

4.2 Federalism as a ‘purpose continuum’

As one of possible institutional responses to the multi-ethnic challenge, federalism, it is argued in Chapter Two, has the capacity to accommodate ethnic diversity while at the same time maintaining national unity in states where the different ethnic groups are generally territorially concentrated. The self rule plus shared formula has the capacity to reconcile the seemingly contradicting demands of centrifugal forces, which stress the distinctiveness of their identities, and the centripetal forces, which regard the demands of the former as a threat to the territorial integrity of the state. It generally provides a framework within which ethnic relationships can be managed. This particular capacity of federalism can be used to provide practical effect to the recognition of ethnic diversity by the state. Of course, there is no guarantee that federalism always succeeds in managing ethnic diversity. The success of federalism is contingent on a set of factors that in one or another way has a bearing on the institutional design of the state. These range from the dynamics of ethnic relationships to the political practice and the forces that are competing for political resources. The argument has rather been that a system based on the principle of federalism has, with the right application, the capacity to respond to the exigencies of an ethnically plural society.

An important implication of the argument that the extent to which recognition should be provided to ethnic diversity should be contingent on the political saliency of ethnicity is that the purpose of an institutional design like federalism and its particular configuration varies depending on the nature of ethnic relationships that exist in a country. In a particular context, the nature of ethnic relationships might not have taken a political slant that the purpose of the federal response is to merely ensure that inter-ethnic solidarity is maintained and conditions that facilitate the political mobilisation of ethnicity are avoided. At the other end, ethnic relationships

might have deteriorated to the extent that the purpose of the federal response is merely to take corrective measures, mainly to satisfy the demands of the different 'warring' ethnic groups, and maintain the territorial integrity of the state. In short, the institutional design that a multi-ethnic state should adopt in relation to ethnic relationships can be viewed in a form of a 'purpose continuum'. On this purpose continuum can be seen institutional designs whose sole purpose ranges, as indicated above, from prevention to remediation.

The 'purpose continuum' is also consistent with the view that this thesis has adopted about federalism. As it is argued in Chapter Two, federalism is not understood as a static concept with *a priori* formula that prescribes a certain way of organising the state. It is rather considered as a functional concept that allows the organisation of the state in the manner that responds to its particular exigencies. The ground rule is that an application of the federal idea involves the application of both self rule and shared rule. In fact, each system of federation that exists in the present day is operating along a continuum of federations that displays different combinations of self rule and shared rule.

As can be gleaned from the South African experience, an institutional design that is tasked with prevention does not suppress or deny ethnic diversity. It is rather based on the premise that recognition of ethnic diversity is imperative in a multi-ethnic state. The essence of a preventive approach lies in the capacity of the state to accommodate ethnicity without making the latter an explicit principle of state organisation. It seeks to avoid ethnicity as a single rallying point of political mobilisation. It involves territorial arrangement that avoids the creation of ethnic hegemony but still respond to ethnic concerns. In the arena of representation, it requires the state to be sensitive about ethnic balance without incorporating a

constitutional mandate that demands some sort of quota system. It often prefers political accommodation as opposed to constitutional accommodation lest that constitutional designation of groups entrenches strict identity categorisation. For the same reason, it, to the extent possible, eschews explicit ethnic-based policies. The institutional response is also skewed in favour of national unity. Institutions and processes that promote shared rule and, thereby, national unity, are emphasised.

The preventive approach stands in sharp contrast to the approach positioned at the other end of the purpose continuum, namely the remediation approach. A major distinguishing feature of the remediation approach is that it recognises ethnicity as a constitutional and political principle of state organisation. Ethnicity is used as the primary and/or exclusive basis to designate communities into different salient groups. This is an approach that emphasises ethnic identity both in the recognition and institutional expression of ethnic diversity. Subnational units demarcated along strict ethnic lines, practicing a policy of strict regional unilingualism and enjoying veto power over national government decisions affecting their own community and a system of representation based on quota system are characteristic of this particular approach. Conversely, less emphasis on national unity is another distinguishing feature of this approach. The institutional expressions of the recognition of ethnic diversity are heavily biased in favour of satisfying the demands of centrifugal forces that they hardly provide a common space to define common national objectives and promote national unity. The remediation approach is considered as the sensible approach in a context where the ethnic relationship among the geographically concentrated ethnic groups has reached such a low point that the only concern of the institutional design is maintaining the territorial integrity of the state. In fact, this particular institutional response is considered necessary if the concerned multi-ethnic state is to survive as a

state at all. It is often the last option left to avert the imminent danger of the different ethnic groups going their separate ways. Hence, the remedial nature of the institutional response.

Ideally, a multi-ethnic state, if it is to accommodate ethnic diversity and maintain national unity at the same time, must adopt institutional arrangements that fall somewhere between the prevention and remediation ends of the continuum. In other words, the success of federalism depends on its capacity to respond to ethnic concerns without eroding allegiance to the larger state. In a multi-ethnic state, the intention of a federal arrangement is to keep the state together while at the same time allowing ethnic groups to maintain their distinctiveness. The intention is not to give prominence to concerns of national unity at the expense of ethnic diversity by letting the national government prevail over the constituent units, denying the latter adequate space and authority to manage their own affairs. Neither is the intention of federative arrangement to allow the centrifugal forces to subsume any concern for national unity thus eventually allowing the loyalty to the subnational units to prevail over loyalty to the union. The objective of adopting a federal structure is rather to allow the co-existence of both centrifugal and centripetal forces. This would, however, only be possible when an institutional design that can harmonise these two forces is adopted. An excessive emphasis, be it on diversity or union, has the danger of either threatening the union or destroying the distinctiveness of the sub units. As Basta has succinctly put it, “the success of federalism depends on the fact whether a federation constructed to accommodate ethno-regional diversities, which are otherwise recognised as legitimate conflicting interest, enhances dual identity and loyalty”.⁶ The experiences of both Ethiopia and South

⁶ Basta 2003: 24. As Watts (1999, 125) also notes, an imbalance in which the

Africa illustrate the danger of overemphasising and de-emphasising ethnic diversity respectively.

As indicated in Chapter Seven, the Ethiopian response to the challenges of ethnic diversity overemphasises ethnic diversity, both in the symbolic realm and in the institutional expression of self rule. This excessive emphasis on ethnic diversity is also evident in the structuring of the territorial configuration of the state and its institutions. As is apparent from the absence of adequate processes and institutions of shared rule, the institutional design does not also exhibit a countervailing concern for national unity. As a result, fragmentation along ethno-linguistic lines has become a common phenomenon. This has put the federation under continuous strain. Although large scale conflicts have disappeared, conflicts among small ethnic communities that previously did not have political identity has mushroomed in many parts of the country. Of course, these are sometimes the works of ethnic entrepreneurs who, nevertheless, are motivated by the fact that the Federal Constitution has defined ethnicity as the sole marker of political allegiance, making it a means to access power, influence and representation.

On the other hand, the dangers of underemphasising ethnic diversity are evident in the South African case. The tendencies to depart from the spirit of accommodation, as it is evident in the debate on the future of provinces, present a dangerous disregard to issues of ethnic diversity. A view that regards the provinces as an outcome of a compromise that is no longer

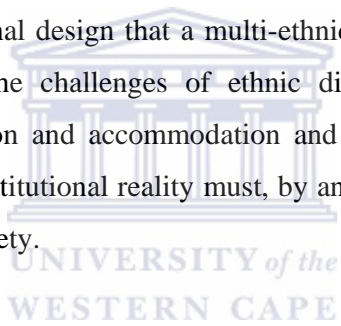
forces of diversity prevail “unless accompanied by the institutional encouragement of common institutions that provide the glue to hold the federation together” could be disintegration in the making. On the other hand, an imbalance in which the forces of national unity prevail could suppress diversity and eliminate state autonomy. See also Duchacek 1970.

imperative fails to appreciate the important role that the provinces play by providing 'regional elites' with the means for political participation and representation in the leadership structure of their respective provinces, promoting the self-management of communities. There is also a need to ensure that the political practice does not frustrate the 'accommodationist elements' of the Constitution. This includes ensuring respect for the constitutional declaration of official multilingualism and maintaining ethnic balance in the national executive. A political practice that disregards or undermines the constitutional promise of accommodating ethnic diversity can easily risk the dangers of underemphasising ethnic diversity. This will precipitate the emergence of conditions that will be exploited by political entrepreneurs who would mobilise ethnicity to achieve their political goals, creating strain on inter-ethnic relationships.

The two case studies demonstrate that any federal solution that attempts to address the challenges of ethnic diversity has to take into account both the need to accommodate ethnic demands and maintain the glue that holds the society together. The clear message is that excessive emphasis, be it on ethnic distinctiveness or national unity, has to be avoided in designing the federal arrangement of the state. If possible, the state should avoid the 'remedial response'. However, this may not always be possible as deep ethnic rifts may warrant the adoption of such a response.⁷ There is no

⁷ Overemphasising diversity, both at the level of symbol and self rule, puts a federation under continuous intense pressure. Under such circumstances, the interaction between ethnic groups becomes a zero-sum game. This is evident from the case of Belgium where excessive emphasis on regional autonomy has weakened national unity. The restructuring of the territorial configuration of the state and its institutions was fully driven by the need to satisfy the demands of regional linguistic groups. There was no equal, countervailing concern for national unity. Such kind of approach to the problem of ethnic diversity endangers the

strictly defined balance that each type of federation must strike. The precise position of a state's institutional response should be informed by the political saliency of ethnicity in the country. With the dynamics of ethnic identity and ethnic relationships, the institutional arrangement may have to be skewed in favour of one or the other end of the continuum, in favour of centrifugal or centripetal forces. In other words, the degree of recognition and institutional expression that a state has to accord to ethnicity may vary depending on the social and political realities of the society (i.e. it corresponds with the appropriate analysis of the political saliency of ethnicity in the context under consideration). In fact, the non-singular position of ethnic identity means that a greater degree of plasticity should underline the institutional design that a multi-ethnic state has to fashion in order to respond to the challenges of ethnic diversity. Yet, the basic principles of recognition and accommodation and the rules that translate these principles into institutional reality must, by and large, remain in place in any multi-ethnic society.



5. The limits of federalism

Federalism is not a panacea to the multi-ethnic challenge. It is submitted that non-federal elements of institutional recognition and accommodation, including an appropriate electoral system, a representative executive and non-territorial protection of language and culture, should be incorporated into the institutional design and political culture of the state if the latter is to adequately respond to the challenges of ethnic diversity.

territorial integrity of the state. What must, however, be equally recognised is that, in a very deeply divided societies like Belgium, such arrangements might be the only way of keeping the state together. The relevance of such an approach thus depends on the particular historical and political situation of a society.

5.1 Shared rule in the national decision-making bodies

In the context of a federal arrangement, representation of the different ethnic groups in the national decision making bodies is often confined to second chambers. This leaves out the question of representation in the most important decision-making bodies of the national government, namely the executive and the lower house. This belies the political reality that the national executive and the lower parliament are often the most contested political spaces among the different ethnic groups. Concentration of executive power in the hands of a particular group has often been the cause of disgruntlement among ethnic groups, eventually contributing to the emergence of conflicts. Moreover, government power is often manifested primarily in the functions of the executive and the lower house. As the survey of federations would reveal, even the strongest second chamber is not as important and powerful as the executive and the lower house.

A federal arrangement that is serious about ensuring a place for all ethnic groups in the country cannot ignore the representation of the different ethnic groups at the centre. This is about ensuring the equitable representation of the different ethnic groups within the institutions of the national government. It is about making sure that the faces of the most important national institutions reflect the diversity of the society. The absence of equitable representation in the national institutions can potentially undermine any institutional recognition and accommodation that a multi-ethnic state has already put in place.

Federalism does not necessarily guarantee representation of the different ethnic groups in the national executive and the lower house. This requires a multi-ethnic state to consciously devise other mechanisms to enhance the representative character of these important national institutions. With regard to representation in the lower house, this often relates to the choice of the

electoral system. Representation in the national executive, on the other hand, relates to the composition of the cabinet as well as other important executive appointments including the appointment of ambassadors.

5.2 Self rule and intra-substate minorities

The discussion of multi-ethnic federations, including South Africa and Ethiopia, revealed that a geographical configuration of a federal state, including one that heavily relies on ethnicity in the making of subnational units, seldom don't leave us with separate ethnically pure territorial units. Be it indigenous ethnic groups (i.e. indigenous to the area they inhabit) or ethnic migrants, there will always be ethnic minorities that are scattered in the midst of regional majorities. This brings to the fore issues related to the accommodation of ethnic diversities at the subnational level.

Federalism may not adequately respond to the security and respect of intra-substate minorities. A federal arrangement that grants a mother state to a numerically dominant ethnic group within a territorial unit often exposes minority groups to discriminatory policies of the regionally dominant group. Such an arrangement would only move the locus of inter-ethnic conflict and tension from the central government to the level of the constituent units. Of particular importance in any multi-ethnic federation is thus the need to take into account the interest and rights of intra-substate minorities. Securing the rights of minorities which are created by autonomy arrangements is crucial for the long term success of any federal arrangement.⁸

It is submitted addressing the anxieties of regional minorities requires the state to accept that the constituent units are sharing with the larger state the same problem of accommodating ethnic diversities but only at a constituent

⁸ Ghai 2001: 22.

unit level. In prescribing a particular response, however, a distinction has to be made between ethnic groups that are scattered throughout the country, on the one hand, and those that are territorially concentrated but do not have their own self-governing unit, on the other. For the former, the application of aspects of self rule and shared rule, owing to their territorial dimension, may not be appealing. The anxieties of such geographically dispersed ethnic groups can be addressed by adopting a judicially enforceable bill of rights. For geographically concentrated ethnic groups, on the other hand, the constituent units, recognising their multi-ethnic character, can apply, to the extent possible, processes and institutions of both self rule and shared-rule. Of course, owing to different reasons, the entire package of 'self rule plus shared rule' arrangement cannot be replicated at the level of the constituent units. It may not also be desirable as this may promote fragmentation along ethnic lines. There are, however, some aspects of both self rule and shared rule that, albeit in a different form, can be incorporated in any proposal that deals with intra-subnational ethnic diversity, which goes a long way in terms of ensuring that the federal response adequately accommodates the demands of all ethnic groups that inhabit the subnational unit in question.

6. Institutional lessons from Ethiopia and South Africa

An effective institutional response to the challenges of ethnic diversity involves a two-stage approach. First, it involves recognition of ethnic diversity. Second, it involves providing practical effect to this act of recognition within the framework of the self rule plus shared rule formula of federalism. This section identifies the major institutional lessons without, however, trying to prescribe the adoption of a particular institutional model

6.1 Recognition

From the discussion of the case studies and the experience of other multi-ethnic federations, the expression of the recognition of ethnic diversity

emerges as an important element of an institutional response to the multi-ethnic challenge. This aspect of the institutional response entails a decision on the part of the multi-ethnic state to readily recognise the multi-ethnic character of the society it seeks to govern. States can express the act of recognition through the preamble to the constitution, language and symbolic codes including public holidays, coat of arms, flags and the like.

6.1.1 Preamble

The preamble to the constitution often reflects whether a state recognises its multi-ethnic character. As the experiences of Ethiopia and South Africa show, recognition of ethnic diversity through the preamble range from those that emphasise the distinctiveness of ethnic groups that inhabit the country to those that represent a cautious recognition of ethnic diversity within the framework of national unity. The opening statement of the preamble to the Ethiopian Constitution (i.e. we the nation, nationalities and peoples of Ethiopia) emphasises the distinctiveness of the diverse ethnic groups that constitutes the country. On the other hand, the preamble to the South African Constitution commences with an emphasis on national unity (i.e. we the people of South Africa) but does not conclude without recognising the diversity of the South African society (i.e. South Africa belongs to all who live in it, united in their diversity).

From the foregoing, it is clear that even if many may agree that the preamble to the constitution should somehow reflect a state that recognises its multi-ethnic character, this does not necessarily require presenting the country as a mere ensemble of diverse ethnic groups. The preamble can be used to reflect recognition of both the diversity of the state and the common political union that they seek to establish and promote. A good example in this regard is the preamble to the Swiss Constitution which commences with the opening statement ‘we the Swiss people and cantons’, reflecting an

equal emphasis both on national unity and its diversity. Of course, there might be particular contexts where the preamble has to emphasise the distinctiveness of the diverse groups that constitute the country or national unity. As long as the emphasis can be explained by the particular political history of each country, it should not be problematic provided that it is not excessive and does not go without acknowledging ethnic diversity or promoting national unity as the case may be.

6.1.2 Symbolic codes

Symbolic codes of the state are often used to provide public affirmation to the culture and history of the dominant group thereby portraying the state in the image of that particular group. As the experience of South Africa, Ethiopia and other states that move towards the politic of recognition shows, there seems to be an increasing understanding that the reorientation of the state towards the direction of recognition should also involve the redesigning of symbolic codes in a manner that takes into account the practices, cultures and history of the different ethnic groups. Both in Ethiopia and South Africa, flags, national anthem and public holidays are used to reflect the multi-ethnic character of the state. This suggests the adoption of an inclusive state symbols; that the public culture, symbols, and character of the federation should include a wide range of communities.

It is not, however, sufficient that the symbolic codes reflect the recognition of ethnic diversity. The state's decision to reflect the history and culture of the diverse ethnic groups in the country in the symbolic codes can easily lead to the adoption of divisive symbolism. There are state symbols that have the tendency to create animosity among the different ethnic groups and endanger inter-ethnic relationships. This is especially true in relation to symbolic codes that have historical roots. The commemoration of the Martyrs of the Chelenko war in the Harari state in Ethiopia has the effect of

projecting the ethnic groups that inhabit the state as the conqueror and the vanquished. This, as argued in Chapter Seven, can compromise the constitutional commitment of building ‘one political community’. The Ethiopian experience suggests that a state should strive to be innovative in using symbolic codes as a means to reconcile conflicting historical interpretations. By doing so, the state will not only recognise ethnic diversity but also help to maintain and promote national unity. A good example comes in this regard from South Africa which provides a creative approach towards determining public holidays. The decision of the South African government to retain December 16 as public holiday, which, in the past, represented a commemoration of the Afrikaners victory over a Zulu army in 1838, but change the theme of the holiday by declaring it as the Day of Reconciliation, marks a departure from ‘divisive symbolism’ and represents an attempt “reconcile conflicting historical interpretations”.⁹

It is, of course, not practicable to ensure the representation of each and every ethnic community in the symbolic codes of the state. But that should not give the majority group or any particular group, for that matter, the right to prevail at the symbolic level as doing so would alienate other ethnic groups from the state. In this context, the best option might be for the state to avoid symbolic codes that recognise any identity at all. Doing so, where there is an option, avoids the problem of creating insiders and outsiders.¹⁰ That, however, is not possible since a state cannot remain neutral as it cannot help but adopt state symbols that recognise at least one identity.¹¹ The argument has rather been that a state, to the extent possible, should strive to ensure that its symbolic codes reflect the culture, histories and

⁹ Ehlers 2000, 17-18

¹⁰ Patten 2001.

¹¹ Kymlicka 1995. See also Patten 2001.

identities of a broader range of communities. This, of course, requires some degree of innovation. Nevertheless, federalism, with its multiple levels of government, provides ample opportunities to do so. A good example in this regard is the practice in some federations including in Ethiopia whereby each constituent unit is able to have holidays that are separate from or additional to the state-wide public holidays. Other similar practices discussed in Chapter Three also show how the federal territorial matrix can be used to facilitate the adoption of inclusive symbols that provide intuitional reality to the act of recognition.

6.1.3 Language

A language rights regime that operates within the context of a multi-ethnic federation should represent the recognition of the linguistic identities of the constituent units. This entails the framing of the language rights regime as a concrete expression of the federalist principle and attempting to achieve a delicate balance between unity and diversity.¹² It involves the adoption of a language policy that enables cultural communities to promote their language and cultural identity while at the same time promoting inter-ethnic solidarity.¹³ In this regard, the recognition of all languages as equal is an imperative element of any state that seeks to recognise ethnic diversity. Beyond that, however, there is no definite answer on determining the official language(s) of the federal as well as subnational governments.

In terms of the federal language, the options are either to promote particular language(s) or, as in the case of South Africa, regard all languages spoken by the different ethnic groups as official languages of the country. The South African option is obviously viable in a country with few linguistic

¹² Coulombe 2001: 242.

¹³ Balmer 1992: 447

groups. As it is evident from the South African experience, a country with more than at least ten ethnic groups cannot, for example, expect to practically realise the usage of all languages in all or most business of the federal government. Such kind of policy, as again proved by the experience of South Africa, is an “impractical egalitarianism”.¹⁴ Despite the multilingual reality that characterises South African society and a constitution that declares official multilingualism, monolingualism is the emerging trend. This shows that the South African approach will result, more often than not, in a situation where a particular language becomes the ‘unofficial official language’ of the state. In that case, a mere recognition of all the languages spoken in the country as official languages will only have a symbolic value. In addition, the policy is bound to create discontent among some ethnic groups unless the ‘unofficially official language’ is a culturally neutral language, as English is for most South Africans¹⁵ and decolonised states. This is also the only situation where a state can adopt a particular language as official language without provoking a hostile reaction from other ethnic groups.

Adopting national language remains, however, a challenge in states like Ethiopia that do not have the benefit of a culturally neutral language. One option in this context is to select a particular language, which in most cases would be the historically dominant language, as the language of government business without bestowing it with the status of an official language. The Ethiopian approach which recognises Amharic as the working language

¹⁴ Sacks 1997: 683.

¹⁵ This, of course, is not true for Afrikaners for whom issues relating to language historically constitute a central place in their resistance against the British cultural hegemony. This partly explains why the Afrikaners, unlike the other ethnic groups in South Africa, feel so strongly about the dominance of English in today’s South Africa.

represents this option. This approach seemingly contrasts with the South African model that recognises all languages as official languages. Like the South African model, however, it is underlined by the same principle that recognises all linguistic groups as equal. The difference lies in the way the two systems give expression to this same principle.

Under the working language approach, the selected language will become the working languages of the federal government in which all tasks of government are conducted. Of course, as in the case of the use of Amharic in Ethiopia, the symbolic implication of adopting a particular language or retaining a historically dominant language as the working language of the federal government cannot be easily disregarded. The solution lies in convincing the different ethnic groups that the particular language, as the title suggests, is adopted not to reflect the hegemony of the speakers of that language but because of the special position that the language has attained as effective means of national communication. This becomes, however, easy, only when the state demonstrates its commitment to the equality of all languages by adopting some form of territorial model of language planning, expressing regional preferences in language usage.

Unless in a bi-ethnic state where the personal model, which allows citizens to use their language in every part of the country, can serve the same purpose, the territorial approach to language, whereby each region adopts its language(s), is the language planning model that seems to provide effective institutional reality to the act of recognition. Under this model, the subnational units are allowed to adopt regional language(s). This does not necessarily mean promoting unilingualism. As is the case in South Africa, subnational states that are inhabited by more than one ethnic group can, to the extent possible, recognise intra-substate linguistic diversities by recognising more than one language as working languages of the

subnational government. This would not only represent recognition of intra-substate diversities but also portrays a state that promotes social cohesion and national unity by avoiding the association of a particular territory with a single language. This option may not, however, be appropriate in a situation where a subnational state is composed of, for example, not less than five ethnic groups. As the experience of ethnically plural subnational units that adopted Amharic as their working language in Ethiopia suggests, adopting a language that is culturally neutral in the context of the relevant subnational state is often the only way out. Yet, the system can be used to allow each subnational state to use its institutional and territorial structure to reflect its linguistic diversity.

Related to this is whether subnational units should adopt the national official/working language as co-official at the subnational level. Of course, adopting the national language as co-official promotes social cohesion, especially in countries where there is extensive movement of citizens across internal borders. However, subscribing to this view does not necessarily require the co-officialisation of the national language. The idea of using language as a social cohesion can be promoted, for example, by ensuring that children, as in the case of Ethiopia, learn the federal language as a subject in their primary education. The argument for co-officialisation of the federal language at the regional level can have currency only in a situation like in Ethiopia where there are a large number of geographically dispersed ethnic migrants, especially in urban areas, who would be disadvantaged when government business is conducted in the language of the regionally empowered group.

The co-official language policy is not, however, without a problem. The problem with this policy is that it has the tendency to promote the hegemonic status that a historically privileged language group enjoys. This

is clearly the case in Ethiopia where the adoption of Amharic as co-official language at the regional level would have the effect of maintaining the historically dominant position of that language with the regional language in all likelihood occupying a disproportionate place. This is also supported by the experience of Quebec in Canada where the co-official policy perpetuated the dominant position of English necessitating the province to embark on what is called “the language normalization process”. In a country where the designated federal language is not culturally neutral and where the nationally designated language is a historically dominant language, the co-official policy at the regional level is thus likely to perpetuate the dominant position that the latter enjoys in the state. Without state intervention, the historically dominant language will continue to remain as the majority language status relegating the regional language, albeit numerically dominant, to a secondary level.

In a subnational state where there are large numbers of ethnic migrants, however, the adoption of the co-official policy seems unavoidable if the system is it to accommodate ethnic diversity. The dangers that the co-official policy might pose on the status of the regional language can be mitigated by allowing the subnational state to adopt what is called “the language normalization processes”. As the experience of Quebec in Canada shows, the basic aim of these processes is to restore and maintain the majority status that local languages should assume in their localities.¹⁶ As the experience of Ethiopia suggests, in a country like Ethiopia where there are a large number of ethnic migrants, the absence of a co-official policy easily causes strain on inter-ethnic relationships and run the risk of alienating particular ethnic groups.

¹⁶ See chapter four.

6.2 Self rule

The two case studies provide a number of lessons on how the principle of self rule can be translated into institutional reality.

6.2.1 Territorial structure

In a country where ethnic groups are generally territorially concentrated, territorial autonomy has emerged as an important mechanism by which the institutional principle of self rule can be translated into institutional reality. This particular form of self rule involves a delineated part of a territory wherein an ethnic group living within a specific territory will have the authority to manage its own affairs. It enables regionally concentrated ethnic groups to dominate politically in those constituent units in which they have numerical majority. It provides them with a territorial space that is necessary to enjoy both cultural and political autonomy. The Ethiopian experience illustrates this very well. By making ethnic groups a majority in their own house, the Ethiopian federalism has provided them with a territorial space, which is essential for the preservation and promotion of their language, culture and identity as well as the self management of their own communities. Chapter Seven has demonstrated how the present system has turned an “obscure district” into a regional state with a significant local empowerment. Similarly, the territorial structure in South Africa, where there is relative concentration of ethnic groups in the provinces, has provided ‘regional elites’ with the means for political participation and representation in the leadership structure of their respective provinces, promoting the self-management of communities. In both cases, the self-management of communities is further facilitated by policies that allow regional preferences in language usage.

Notwithstanding the above stated benefits of providing territorial autonomy to ethnic groups, little consensus is, however, available on how a multi-

ethnic federation should go about providing ethnic groups with a territorial autonomy. At the centre of this issue is whether the territorial structure of a multi-ethnic state should be designed in a manner that associates an ethnic group with a single subnational unit. The issue is whether the accommodation of ethnic diversity requires the state to demarcate each or at least the major ethnic groups into separate territory and whether this is an advisable route that states have to take. In short, should each ethnic group have a mother state?

The geographical configuration of the Ethiopian federation provides to each large ethnic group a territorial autonomy. The Oromo, Amhara, Tigre and the Somali, the four largest ethnic groups, are provided with a mother state. This approach of providing a mother state to each ethnic group has elevated ethnic identity to a primary political identity. As ethnically defined regional states become the major custodians of constitutionally entrenched powers, the territorial structure of the federation has encouraged political mobilisation along ethnic lines. A characteristic of the present Ethiopian politics is that ethnic entrepreneurs, motivated by a territorial structure that rewards political mobilisation along ethnic lines, continuously engage in political wrangling that uses ethnicity to access power, privilege and influence. This, in turn, has resulted in the ethnicisation of public discourse. It has also facilitated the fragmentation of the population along ethno-linguistic lines. The proliferation of ethnic based parties and the pervasive demands of small ethnic group for territorial autonomy have become the major features of the political and constitutional debate in Ethiopia. The lesson from the Ethiopian approach is that providing a mother state to each large ethnic group can contribute to the ethnicisation of the system, causes continuous tension, puts a strain on the federation and might even pose a risk to the territorial integrity of the state.

The Ethiopian experience can also be easily supported by the experiences of other multi-ethnic federations like Nigeria and Belgium where providing big mother states to each numerically strong ethnic group has a counterproductive effect. As argued in Chapter Three, the experience of Belgium and Nigeria shows that creating only few, ethnically defined, large and of equal size constituent units renders negotiation difficult as it leaves only limited scope for trade-offs. Furthermore, such an arrangement freezes territorial boundaries and denies the political system of the fluidity and flexibility that could result from a larger number of smaller constituent units. In such a system, every dispute turns into an ethnic dispute. The propensity to engage in conflicts is also high when each constituent unit is identified with a single ethnic group. The lesson is that multi-ethnic federations must be aware of the danger of creating few ethnically defined big states that pose a threat to the territorial integrity of the state.

The remaining question is how a multi-ethnic state can provide territorial autonomy to ethnic groups and still avoid the counterproductive effects mentioned above. One option is to divide numerically large ethnic group into a number of constituent units without, however, denying ethnic groups territorial autonomy. In the case of Ethiopia, this would have involved the division of the Oromo and the Amhara into a number of, more or less, ethnically homogenous territorial units. By dividing large ethnic groups into a number of territorial units of a reasonable size, this type of arrangement leaves room for flexibility and the establishment of a certain kind of balance. It also encourages intra-ethnic competition and thus avoids the development of ethnonationalism across ethnic lines, possibly replacing it with the political mobilisation of non-ethnic interests. Generally, such an arrangement, it is believed, has the capacity to diffuse what would otherwise be a bitter and polarized dispute and avoids, or at least, dilutes the political

mobilisation of ethnicity. A reference to the Swiss case might help in this regard.

Switzerland, a country composed of four major language groups, is composed of twenty-six cantons. From a linguistic point of view, each canton is homogenous. However, each language group is not identified with only one canton. Instead, each of the four major language groups is divided into multiple cantons. As major powers reside with the cantons, the geographical configuration of Swiss federalism discourages the development of ethno-nationalism across language community lines.¹⁷ The Swiss political parties, unlike their Belgian counterparts, have not experienced fragmentation along linguistic lines. Moreover, crosscutting cleavages are expressed in the cantonal system.¹⁸

The state's decision to provide territorial autonomy to ethnic groups without endangering inter-ethnic relationship and posing a threat to the territorial integrity of the state can be achieved by taking into account other identities that are relevant in the geographical configuration of a federation. In the case of Ethiopia, for example, regionalism has been an important part of the Ethiopian political makeup. As argued in Chapter Six, persons that belong to the Amhara ethnic group harbour strong regional identities. The consideration of this factor in the geographical configuration of the federation would have rejected what this thesis calls 'the putting together' of the Amhara into one regional state and recognised the historically and politically relevant regional divide among the Amhara. This would have further diluted the status of ethnicity as the sole criteria to organise the state.

¹⁷ McGarry and O'Leary 1993: 31.

¹⁸ McGarry and O'Leary 1993:31.

An important lesson that emerges from the Ethiopian experience is that the inclusion of the ethnic factor in the geographical configuration of the state should not result in the exclusion of other historically and politically relevant identities from the equation that determines the territorial structure of the state. In other words, the territorial division of multi-ethnic states should not simply rely on the demographics of the country but should also take into account the political and historical relevance of those demographics.¹⁹ This also means that the different criteria that can be used to design the territorial structure of a state are not mutually exclusive. In the case of Ethiopia, for example, both ethnicity and regionalism could have been used to demarcate the internal units of the federation. A related example comes from Canada. Canada, by providing the Francophone community its own province, Quebec, has adopted the ethnic model of federalism while at the same time using the territorial model when it divided the rest of Canada into nine provinces with out regard to any cultural bond. These examples suggest that it is possible to apply both ethnic and other criteria in the geographical configuration of a single federation as long as it is consistent with the political history as well as social realities of the country.

6.2.2 Division of powers and functions

The experience of multi-ethnic federations suggest that most politically mobilised ethnic groups often demand control over matters that are relevant to them, which are usually identity-related matters. This implies that an institutional response to ethnic claims cannot avoid involving a division of power that entrusts the constituent units with competence on matters that are

¹⁹ This is consistent with the view adopted in this thesis that the extent to which a state should recognise its ethnic diversity must depend on the political relevance of ethnicity in the state under consideration.

of particular relevance to their community. This suggests the provision of exclusive powers over identity related matters to the constituent units. Such an entitlement allows each constituent government to preserve and promote its identity as well as freely pursue its own cultural development. As indicated in Chapter Three, distinguishing these identity-related matters is not an easy task.

It is submitted that the degree of autonomy of constituent governments cannot be determined by the long list of heads of competencies but by the relevance of the competencies in achieving the basic objective of the federation, namely to accommodate ethnic diversity. In Ethiopia, the states' areas of competencies in the areas of identity-related matters include education, media services, museums, libraries and the like. The provinces in South Africa enjoy autonomy in areas of provincial cultural matters, archives, provincial sport, museum and provincial recreation. The provinces also enjoy a long list of concurrent national and provincial legislative competence which includes identity related matters like education, indigenous law, language policy and media services. When considered together with the experiences of other multi-ethnic federations discussed in Chapter Three, the division of power adopted by South Africa and Ethiopia suggest that the apparent identity-related competences are, broadly speaking, language, culture and education. This usually extends to institutions and structures through which these areas find further practical expressions. This, for example, refers to schools, museums, libraries, theatres, higher educations, broadcasting agencies and the like.

However, the increasing interrelation of economic and cultural policy suggests that the demands of ethnic groups in a multi-ethnic federation cannot be met by simply providing them with the power to exercise control over culturally-related matters. This suggests that the distribution of power

and responsibilities should go beyond providing the constituent units control over identity-related matters and extend to economic policies that affect their welfare.

The scope of competences provided to subnational units is equally important in determining the autonomy of subnational units. The scheme of power distribution adopted by the South African Constitution provides the national government overriding power over almost all legislative areas of provincial government, in areas of both concurrent and exclusive provincial competences. Although this power of the national government has never been used in practice, the experiences of other multi-ethnic federations suggest that these overriding powers can potentially limit the autonomy of the provinces. This suggests that the autonomy of a subnational unit is also linked to the scope of the legislative powers left to the constituent unit. This means providing autonomy to the constituent units should include not only entrusting the constituent units with the legislative powers over identity-related matters but also powers that cannot be excessively and frequently tampered with by the national government.

As the discussion of the experiences of multi-ethnic federations in Chapter Three reveals, there are a number of mechanisms that can be used to safeguard the autonomy of the constituent units from the interferences of the national government. First, to the extent that the central government is allowed to interfere in the legislative authorities of the constituent governments, the imperatives of effective autonomy require that the interference be kept at its minimum. This can be done either by clearly specifying the circumstances under which national governments can legislate in the fields of constituent governments and subjecting the interference to certain conditions that are clearly outlined in the Constitution. This can be further complemented by an impartial institution

that judges when such an act from the national government is appropriate. Furthermore, to the extent that the central government interferes with the legislative powers of constituent governments, the legislative scheme can ensure that it does not impede the autonomy of constituent governments to preserve and promote their ethnic identity by providing, among others, an exclusive power over identity-related matters.

6.2.3 Financial autonomy

Constituent governments may have the necessary legislative and administrative powers in order to manage their own affairs. However, all these powers will be hollow if they are not accompanied with the necessary financial resources. The institutions that they intend to use as a vehicle to preserve and promote their identity will also be of no use if they do not have the constitutional mandate to raise and mobilise revenue.

For constituent governments to enjoy some level of financial autonomy, exercising control over own taxing powers is essential. In South Africa, although the provinces can impose taxes, levies and duties, they are denied access to broad based taxes like income tax, a value added tax and other taxes, which are strong sources of revenue. Similarly, analysis of the tax sources and tax bases of the federal and state governments in Ethiopia reveals that the most productive taxes are assigned to the Federal Government. The experience of the two countries suggests that the financial autonomy of constituent units does not merely depend on entrusting them with a long list of taxation powers. A true financial autonomy requires going beyond providing the constituents units with mere taxation powers and ensuring that they exercise power over taxes that are productive.

The degree of ‘constituent autonomy’ is affected by the extent to which the constituent units rely on transfers. South African provinces depend on

intergovernmental transfers for 95% of their revenue while 80% of regional state government revenue in Ethiopia similarly comes from fiscal transfers. This is compounded by the fact that the subnational units in the two states exercise little control over the use of transfers. This means the subnational units in both federations may not have the financial muscle that is necessary to make decisions tailored to the needs and preferences of their ethnic communities. This, as shown in Chapter Three, is not, however, unique to the two case studies. Quebec in Canada claims that the financial dominance of the federal government has allowed the latter to invade its autonomy and threaten “the cultural distinctiveness of the Quebec nation”.²⁰

The obvious lesson that emerges from the foregoing is that fiscal imbalance should be reduced. To the extent that the constituent units rely on intergovernmental transfers, the experiences of the case studies as well as other multi-ethnic federations suggest that the leverage of the central government to use its financial muscle to interfere with the areas of subnational jurisdictions has to be kept to the minimum. This can be achieved by ensuring that the intergovernmental transfers, or at least a lion share of these transfers, are unconditional transfers.²¹

6.3 Shared rule

There are a number of lessons that can be learnt from the two case studies on how the institutional principle of self rule can be complemented by the principle of shared rule. The imperatives of complementing autonomy with a countervailing concern to national unity requires a system that incorporates the shared rule principle by going beyond the federal arrangement and incorporating consociational features (as a matter of

²⁰ Telford 2003: 23.

²¹ See also Watts 2001.

constitutional imperative or ‘good political practice’) at the level of the national government including an appropriate electoral system.

6.3.1 Lower house

The shared rule role of the central government can be enhanced by ensuring the representativeness of the lower house, which is usually the most important and powerful deliberative body in most federations. The representativeness of the lower house often hinges on the electoral system, whether the state has adopted the plurality system or the proportional representation system (PR).

It is generally submitted that supplementing federalism with a proportional electoral system enhances the representativeness of the lower house and fosters inclusivity. This is illustrated by the South African experience. Owing to the adoption of the PR system, small parties representing numerically weak ethnic communities have been able to secure seats in the National Assembly irrespective of the fact that they have won an insignificant percentage of the national vote. Parties that claim to represent ethnic groups that are not geographically concentrated have also benefited from the proportional electoral system. If the first past the post system, which puts geographic concentration of support as a precondition for electoral victory, is adopted, the likelihood of parties that represent the interest of a geographically scattered ethnic community like the Afrikaners securing a seat in the lower house would have reduced significantly. This suggests that the proportional system generally ensures that both numerically small and geographically dispersed ethnic communities are represented in this important national institution.

The effect of an electoral system on the representation of ethnic groups should, however, not be evaluated in abstract. In Ethiopia, where the

territorial units are delimited on the basis of linguistic lines and the ethnic groups are generally geographically concentrated, the plurality system has not led to disproportionate results along ethnic lines. This suggests that the effect of an electoral system is greatly affected by the settlement pattern of ethnic communities. A plurality system is more likely to deny representation to ethnic groups that are not territorially concentrated. In federations where the internal territorial structures is undertaken in a manner that each constituent unit represents a geographically concentrated ethnic group, the adoption of the majority system is less likely to have a marginalising effect on the representation of the different ethnic groups in the lower house. This is especially true in federations like Ethiopia where there is, by and large, no large ethnic group that is widely scattered throughout the country without having a 'homeland' where it is geographically concentrated.

Of course, as the case of Ethiopia illustrates, there will usually be ethnic groups that are either too small in number to have an electoral constituency of their own or geographically dispersed. Such groups are more likely to be marginalised in terms of representation in a system that applies the plurality electoral system. In Ethiopia, this problem is addressed by providing a quota system that provides for special representation of minority ethnic groups. The effectiveness of this system depends, however, on how those ethnic groups that deserve special representation are determined. One suggestion is to ensure that the scheme includes ethnic groups that are numerically too weak to gain parliamentary representation. As argued in relation to the lower house in Ethiopia in Chapter Seven, the focus should not be on the size of the ethnic groups only but also on their capacity to have their own constituency which depends on the settlement pattern of the concerned ethnic groups. That way the system can ensure the representation of ethnic groups that cannot secure representation because of their settlement patterns

although their population size is far beyond the minimum threshold required to form a constituency.

An important benefit that accrues from adopting the PR system as opposed to the plurality system is that the latter gives little room for developing inter-ethnic solidarity. As the experience of Ethiopia shows, political parties operating within the plurality electoral system are likely to concentrate on electoral constituencies where the likelihood of them winning an election is strong. The plurality system provides political parties with little incentive to cast their net wide. On the other hand, the PR system, as the experience of South Africa shows, encourages political parties to create regionally and ethnically diverse lists, with the view to maximise their overall national votes. As indicated in Chapter Four, the leadership structure of the ANC usually reviews the ANC national list to ensure that the diverse groups that inhabit South Africa are represented. Such practice obviously contributes to the promotion of inter-ethnic solidarity.

The review of the experience of both South Africa and Ethiopia, supported by evidences from other multi-ethnic federations, suggest that the PR system is a more pertinent system of election in a multi-ethnic state that seeks to accommodate ethnic diversity. This choice of electoral system is not, however motivated by the capacity of the PR system to ensure a broader representation of the different ethnic groups. This can be achieved by the plurality system as well provided that the different ethnic groups are generally territorially concentrated. The reason for the choice of the PR system lies in its other role, namely its capacity to contribute to inter-ethnic solidarity and social cohesion by encouraging parties to develop a state-wide objective. Yet it should be noted that the two electoral systems are not mutually exclusive. It is possible to apply both electoral systems within a

single federation. The adoption of a PR system at a subnational level is at least essential in order to accommodate intra-substate minorities.

6.3.2 Second chamber

The effectiveness of second chambers in representing the interest of the constituent units depends on the appointment system and the specific powers allocated to it by the constitution.

A basic question with regard to the composition of the second chamber pertains to the debate about who should be represented in second chamber. In Ethiopia, the House of Federation (HF), the second chamber, is composed of representatives of ethnic groups. This departs from the common trend according to which second chambers are organised as representatives of subnational units. As a result of this unique representation system, there are a lot of uncertainties about how members of the HF are supposed to discharge their duties. As the discussion in Chapter Seven shows, it is not, for example, clear whether the members of the HF have to act in accordance with the instructions of state governments. It is not also clear on whether the representatives can vote differently from representatives of other ethnic groups who, nevertheless, come from the same state. Most importantly, the composition of the house belies the political reality that state governments are the most important unit of government and that members of the HF are, in fact, *de facto* representatives of state governments. The complications that emerge from the Ethiopian experience suggests that the second chamber should be composed of state representatives as it the case with the second chamber in South Africa, the National Council of Provinces (NCOP).

Transforming the second chamber into a body of state representatives does not have to necessarily result in the exclusion of the ethnic factor from the

system of representation. The representation of the different ethnic groups in the second chamber can still be achieved by requiring that the delegate of each regional state is as representative as possible, which is also the case in South Africa. In South Africa, the representativeness of provincial delegate is construed as the representation of parties that have seats in a provincial legislature. In a country like Ethiopia where parties are largely organised along ethnic lines, such a requirement would go a long way in ensuring that each state delegate reflects the ethnic diversity of the state it represents.

An equally important issue in the composition of second chambers pertains to the appointment system and especially it relates to the question who appoints members of the second chamber. In South Africa, the representation system which entrusts the provinces with the power to appoint representatives to the second chamber seems to put members in a better position to voice provincial preferences and protect provincial interests.²² In a federation like Canada, where members of the second chamber are appointed by the national executive, on the other hand, the capacity of the latter to protect subnational interests is greatly limited. This suggests that a second chamber that is largely composed of central government appointees cannot be expected to exercise its powers for the constituent units. These suggests that any examination of the effectiveness of second chambers in representing regional interests should go beyond what is represented and look into the system of appointment. The appointment system goes to the heart of determining whether the second chamber exercises power for, or against, the constituent units. In cases where the decision to appoint members is left to the national government,

²² As argued in chapter six, this does not guarantee that members of the second chamber will usually vote along provincial interest. Voting along political-party lines is usually common.

the representation of the constituent units have been nominal. In this regard, the South African option where the appointment of representatives is left to the constituent units is worth considering. This can take either the form of direct election by the constituent units or, like in the case of South Africa, a representation by the deliberative body of the constituent units.

A related issue with regard to the representation of the constituent units is whether the subnational units should be represented in equal numbers irrespective of their unequal population size. In most federations where there is great variation among ethnic groups and their corresponding constituent units in terms of population size, adopting a simple majoritarian system in which representation is largely based on population size, as the experience of the Ethiopian federation shows, ends up creating a scenario whereby small constituent units are easily outvoted by larger constituent units. This limits the role of the second chamber to a forum where the constituent units merely voice their preferences without having a meaningful power to affect the decision of the second chamber. Such representation system also defeats the very purpose of establishing a second chamber in a state that seeks to accommodate ethnic diversity. This suggests that some level of overrepresentation of constituent units is essential if a second chamber in a multi-ethnic state is to protect the interest of ethnic groups, especially small ethnic groups.

In addition to the appointment system, the effectiveness of second chamber in representing subnational interests depends on the effectiveness of the institution in protecting subnational interests and promoting national unity. This relates to the specific powers allocated to this institution by the Constitution. The second chamber in Ethiopia does not participate in most of the legislations passed by the Federal Government. As a result, it plays little or no role in safeguarding the jurisdictions of the states including in

identity-related areas like culture, language and education. This, as argued in Chapter Seven, has not only made the autonomy of the states vulnerable to the interferences of the national government but it has also denied the federation an opportunity to use the second chamber as the vehicle for the co-management of the society, which would, in turn, promote national unity. In this regard, the organisation of the South African second chamber represents a good example. In the NCOP, the provinces play an important role in approving or rejecting bills that affect provinces while they play a delaying function in the passing of bills that do not necessarily affect the provinces. These powers of the NCOP put the latter in better position to ensure the effective and meaningful participation of the provinces in the national law making process. The contrasting position of the second chambers in the two federations suggest that second chambers in multi-ethnic federations should be allowed to deal with matters directly affecting constituent units especially in areas that are relevant to them.

6.3.3 Representation in the national executive

As indicated in this thesis, the representation of the different ethnic groups in the national executive is an important issue that a multi-ethnic state that seeks to accommodate ethnic diversity must seriously consider. Issues of representation are often raised in relation to the composition of the cabinet but they are also equally applicable to ambassadorial and other important appointments to the institutions of the national executive. In federations where there are ethnically plural constituent units, the requirements of representation are also pertinent in the composition of the subnational executive.

Broadly speaking, a multi-ethnic state can go about ensuring representation in the national executive in two ways. The first option is to follow the Ethiopian approach and make the representation of the different ethnic

groups in the national executive a constitutional requirement. This, as indicated in Chapter Three, is also the case in Switzerland, Nigeria and Belgium. The other option is make the representation of ethnic groups at the centre an important part of the political practice of a state. Informal representation of ethnic groups in the most important national institutions has been the case, to a certain extent, in South Africa but more importantly in Canada. Although it might be preferable to make the requirement of representation part of the political practice and not a constitutional mandate lest it introduces the institutionalisation of ethnicity, the choice depends on the particular context of each state.

An important lesson that emerges from the experiences of both South Africa and Ethiopia is that the mere fact that national government is ethnically diverse does not necessarily amount to an actual representation of the different ethnic communities. The case studies have revealed that the formal representation system can sometimes be deceiving as it does not necessarily guarantee true representation. Appointing individuals that do not enjoy support among the community they are supposed to represent creates, as argued in Chapter Five, 'a dangerous illusion of representation' than reflecting an actual representation of the different ethnic groups. This suggests that the representation of ethnic groups, whether as a matter of constitutional imperative or political accommodation, cannot be successful by simply diversifying the faces of national institutions.

6.4 Intra-substate minorities and ethnic migrants/dispersed ethnic communities

It is argued that a federal arrangement that is constructed to accommodate ethnic diversity cannot afford to ignore the interest and demands of dispersed ethnic groups and intra-substate minorities. A federal arrangement that does not accommodate these ethnic groups is less likely to succeed in

managing ethnic diversity. It is submitted that the subnational units should provide institutional reality to the self rule plus shared rule formula at the subnational level.

As indicated earlier, in designing an institutional response to accommodate the anxieties of intra-substate minorities, a distinction must be made between ethnic groups that are geographically scattered and those that are geographically concentrated but form part of intra-substate minorities. With regard to dispersed ethnic groups, the federal solution, due to its territorial orientation, is less appealing. Since they are dispersed all over the country, it is inconceivable to provide them with a territorial space to manage their own affairs. The anxieties of some groupings among the Afrikaners of South Africa cannot, for example, be addressed through territorial solution owing to the fact that they are dispersed throughout the country. The same applies to ethnic migrants in southern and eastern Ethiopia. An effective response to address the anxieties of such minorities requires primarily the adoption of judicially enforceable bill of rights that, among other things, entrench the right against discrimination based on language, race or ethnicity and ensure access to education in one's own language. In some cases, the protection of dispersed ethnic groups might take a form of non-territorial autonomy, which involves providing intra-substate minorities autonomy over certain functions of relevance to them, which recognises their different culture and identity. This option, which is envisaged in the South African Constitution (yet rendered ineffective by the practice and the lack of political will), can take the form of cultural councils that can be established by ethnic groups to exercise jurisdiction over a wide range of identity-related matters, including culture, education, language, libraries, theatres, museums, sports and the media.

With regard to geographically concentrated intra-substate minorities, however, territorial solution can be achieved to some extent. As the experience of the Ethiopian federalism shows, minorities that are geographically concentrated can be provided with a territorial space to manage their own affairs. This has taken two forms. First, the Constitution provides ethnic groups the right to secede from ethnically plural regional states and establish their own state. The same has been done in Switzerland where a new canton, Jura, was established in 1980 out of the Berne Canton in a response to demands for greater autonomy.²³ Second, the internal territorial division within the ethnically plural regional states in Ethiopia has been arranged in such a way that the different ethnic groups can exercise authority on functions that are of relevance to them without necessarily providing them a regional state of their own. Yet, admittedly, this particular solution might not always be available and not even advisable. Although the division of constituent units in response to internal demands for self government is one possible option, it cannot be a “constitutional routine”.²⁴

The position of intra-substate minorities can be further enhanced by complementing non-territorial autonomy with some aspects of shared rule. This is about the representation of intra-substate minorities in the regional legislative and policy decision making bodies, including the provincial legislature, executive and courts. In Ethiopia, the equitable representation of the different ethnic groups in the state governments is a constitutional mandate.²⁵ An issue that emerges from the Ethiopian experience in this regard is the relevance of the electoral system that is adopted at the subnational level. As the experience of Ethiopia shows, the application of a

²³ This was done through an amendment of the federal constitution. Smith 1995: 15.

²⁴ See also Cairns 1995: 27.

²⁵ Article 39(3) Ethiopian Constitution.

simple plurality system at the subnational level can result in disproportionate results along ethnic lines in a situation where there are large numbers of ethnic migrants. This suggests the inclusion of an election system that ensures the representation of the groups that inhabit the subnational state. This can take the form of a plurality electoral system that includes a quota system or the PR system.

Incorporating intra-substate minorities and ethnic migrants into the regional system through the processes and institutions of shared rule that reflect consociational principles, complemented with an electoral system that facilitates representativeness, can go a long way in accommodating intra-substate minorities in the subnational political process. This helps minorities to feel that they are not merely 'others' that are simply tolerated by the regional majority group but also equal members of the society that participate in the management of the constituent units. It also ensures that the system does not simply focus on the autonomy of the different ethnic groups but also ensure that the subnational state belongs to all who live in it. This ensures that the guiding principle of the federation as advanced by this thesis, which says that sufficient attention should be given both to ethnic diversity and the promotion of national unity, filters through the federal territorial matrix and shapes the governance structure of subnational units as well.

Finally, it must be noted that the above discussed mechanisms are not mutually exclusive. A state can complement a judicially enforceable bill of rights with institutions and processes of both self rule and shared rule in order to guarantee a system that adequately responds to the demands of intra-substate minorities.

7. Concluding remarks

If multi-ethnic states are to avoid instability and, in a worst case scenario, civil war, they have to address the challenges of ethnicity. This is largely owing to the fact that the root cause for the problem that plagues these communities lies, to a certain extent, in the genesis of multi-ethnic states, which is often predicated on suppressing ethnic diversity. This thesis has argued that it is only when a state readily acknowledges the ethnic plurality that characterises the society it seeks to regulate and provide practical expression thereto that it can manage the tension among ethnic groups and assist in the achievement of social cohesion and promotion of national unity.

The thesis has argued that federalism, an institutional design that is underlined by the principles of self rule and shared rule, is an appropriate institutional response (though not the only one) that can help states to address the multi-ethnic challenge in cases where ethnic groups are generally territorially concentrated. The success of federalism depends, among other things, on the particular nature of the federal design and the capacity of that design to successfully respond to the ethnic-related exigencies of the society in question. An important consequence of this position is that federalism cannot be regarded as the “one-size-fits-all” institutional prescription. It is rather presented in a form of a ‘purpose continuum’ whose institutional purpose and expression varies from prevention to remediation. A preventive-oriented federal response seeks to prevent the elevation of ethnic differences to a primary political divide while a remedial federal response struggles to contain the heavily deteriorating inter-ethnic relationships. The choice of the appropriate institutional response depends on the successful diagnosis of the political conflict of each society and specifically on the dose of ethnic politics that pervades the body politic.

The thesis has also argued that federalism is not a panacea. An effective institutional response to the challenges of ethnic diversity requires a state to go beyond the traditional elements of federalism and incorporate other non-federal institutional arrangements that can help to complete the accommodation of ethnic diversity. In this regard, the thesis has underlined the importance of complementing federalism with a representative lower house and a national executive that reflect the diverse faces of the country. Without undermining the relevance of universal individual right for persons belonging to dispersed ethnic groups, the thesis has also emphasised the importance of extending the principles of self rule and shared rule to the subnational level with the view to accommodate intra-substate minorities.

An important lesson that emerges from this thesis is also that states should be cautious not to confuse recognition of ethnic diversity with encouraging ethnicity. As argued above, politicised ethnicity is a contingent process. The likelihood of ethnic differences translating into political divide depends on the historical and political circumstances of the society in question. This means, among other things, that the political relevance of ethnicity is not always guaranteed. This, in turn, implies that a state, to the extent possible, should not institutionalise ethnicity. The institutionalisation of ethnicity not only encourages the political mobilisation of ethnicity but also elevate ethnic identity to a primary political identity. Such institutional response does not merely put a country in the league of states that recognise ethnic diversity. It rather places it in the league of states that encourage ethnicity to permeate their political, social and economic systems and risk, in all likelihood, the imminent danger of disintegration.

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