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Constitutionality of Political Practices Being Undertaken by Member States of Ethiopian Federation: Is It an Emerging Threat Or Opportunity to the Federal Set Up?

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Abstract:

The Ethiopian federal arrangement which is commonly labeled as ethnic federalism by many politicians and scholars is a young federal system introduced in the year 1991.¹ As one basic pillar of the federal polity, the constitution has established dual governments which are called the federal government and states, each of them with their own constitutionally distinct sphere of competence.¹ Yet, despite the existence of constitutionally defined power division between the two layers of government, federal government has been severely criticized for undermining and usurpation of constitutional autonomy of states through its strong and centralized party channel.

Yet, since January 2018, Ethiopian People's Revolutionary Democratic Front (EPRDF, for short), the contemporary ruling party of Ethiopia, has undertaken numerous political reform measures both at federal and regional level which are aimed at rectifying the prevailing critical political challenges of the country. However, the finding of this paper shows that recent political measures being introduced by some members of the federation are not compatible to the political power division stipulated by the FDRE Constitution and the objective of the reform. For instance, the denunciation of the identity and administrative boundary proclamation of the federal government by Tigray State and its resistance not to cooperate with federal government in handing over its officials to justice who are suspected in commission crime of corruption and human right violation, official declarations of Oromia regarding ownership of Addis Ababa to Oromia, which is constitutionally declared as separate city administration, repeated criticism of Amhara regional state towards its north neighboring state for its internal destabilization, and the aggressive demands of statehood formation in some nationalities of Southern region are some of the recent political actions of states which are widely practiced in the country. The writer of this piece of paper firmly argues that the aforementioned political practices of named states are against well-established intergovernmental principles of federalism and in violation of constitutional allocation of power which needs to be corrected at the earliest possible time. Thus, there is an urgent need of controlling and managing such hostile practices which will in the long run will threaten the existing already fragile federal state structure.

Keywords: *Autonomy, intergovernmental relation, constitutionality, and division of power*

1. Introduction

Currently Ethiopia is undertaking several reforms measures which are targeted at rectifying its deep rooted social, political, and economic setbacks such as poverty and backwardness, lack of good governance, corruption, ethnic based conflicts and tensions among peoples, instability, boarder dispute and other similar social evils of the nations that has been the cause of bloody civil war for the past three years since 2016 in the country.

Among the political reforms being introduced by the government, amendment of legal frameworks which were a source of controversy and abuse of power by the ruling party such as the anti-terrorism law, charities and societies law, the national electoral law are the leading parts of the transformation. On the top of that, release of thousands political prisoners, relative freedom in areas of media broadcast service, accusation ex-government officials who were alleged to have been engaged in commission of various crimes during office tenure, uplifting of designation of competitive political parties from the category of terrorist political parties list, expansion of the political platform for competitive political parties, re-organization of government institution including the military and intelligence unit and, appointment of new government officials based on merit, augmentation of women leadership up to 50% in the federal cabinet, decision to partially and privatize some state owned enterprises¹, and the like are some of the major reforms introduced by the government after the assumption of power by Prime Minister Dr. Abiy Ahimed. This in turn has contributed a lot in liberating states from their political hibernation to regain their autonomy and build public trust in the ruling party administration.

¹The government of Ethiopia has repeatedly announced by its party executive committee that it has decided to either fully or partially privatize its enterprises such as its Ethiopian electric power Utility, shipping and Logistic Enterprise and to partially privatize the Ethiopian Air Lines and Ethio-Telecom by reserving 50% the share in its hand, as the later enterprises are too much profitable from which the government generates of considerable source of its revenue.

However, very recently political practices in some states are in contradiction to this the aforementioned newly introduced reform measures in particular and the ultimate political aspiration of the country which is aimed at building one political economic community which is founded up on equality and rule of law.

1.1. Objective of the Study

1.1.1. General Objective

The general objective of this study is to investigate the legality of the contemporary political practices of regional states of Ethiopia in light with constitutionally allocated political powers and to fundamental principles intergovernmental relation.

1.1.2. Specific Objective

In line with the above general objective, this piece of research paper is designed to address the following detailed research objectives.

- To examine the constitutionality/legitimacy of regional government's recent political practices and official declarations.
- To assess whether the intergovernmental interaction mechanism introduced by the FDRE constitution is clear and comprehensive to regulate the interactions of the two layers of government and how it is implemented?
- To examine how the House of Federation, which is the ultimate constitutional disputes umpiring body of the nation is discharging its mandate regarding to matters under consideration?
- To analysis the possible legal and political implication of contemporary antagonistic political practices and rivalry interests of states on the overall federal system.

2. Research Type and Method of Data Collection

The type of research used in this study is a combination of descriptive and analytical research types. While descriptive research type is chosen with a view to adequately explain the contemporary political practices and declarations of states, analytical one is selected in order to intensely investigate the possible legal and political consequence of the aforementioned actions of states on the well-being the nation in general and the federal set up in particular.

3. Method of Data Collection

In relation to the data collection tools, documentary review, observational method of data collection and case study has been used. In this regard the writer has tried to consult and examined relevant sources of data which includes various legislations of both federal and state governments, information's released by different local and international printed and electronic media's, books, journals, and other similar sources. And observational method of data collection has been also employed in order to undertake in-depth analysis of the Ethiopian contemporary political environment and its trend which has been under reform for the past 2 since 2018.

4. Analysis of Constitutionality of Contemporary Political Actions states in Ethiopia

Since the assumption of power by Prime Minister Dr. Abiy Ahimed on April 2/ 2018 up to January/2019 there has been relatively peace and stability in many parts of the country partly due to fast reformative measures of the government and party positive hope of the people.

Yet, regrettably after January 2019, ethnic based conflicts, killings of individuals and mass displacement of peoples from their locality has revived in some parts of the country. To the worst member states of the federation have started show demonstrate some sort unusual disrespectful behaviors to each other and the federal government in many respects.²In relation to this issue it becomes common to hear various press released information's in different medias from state government and party officials that undermines and erodes the real image and honor of other regional sates and the federal government, passing of decisions which invalidates other states or federal government reform measure, and resistance and lack of willingness to hand over alleged criminals and the like.

In this regard there are divergent views advocated by community members of the country ranging from ordinary citizens up to political elites. While some of the politicians and citizens consider the state government contemporary political actions broadcasted in different media 's as manifestation of states fresh start towards their constitutional right of self-rule and administration enshrined in the constitution which has been curtailed for the for long period. Yet, others to the opposite firmly maintained claims the aforementioned actions of states as an emerging challenge to the young federal set up the of the nation.

Therefore, in the subsequent part of the study, an attempt has been made to explore the legal and political implication of the aforementioned actions and political stand of states by raising recent pragmatic and controversial practices of some member states of the federation which has pooled serious public attention throughout the country. The first instance which is vigilantly considered by this study is the dubious political position of the Tigray regional state towards "reform measures "which are being undertaken by the federal government and its resistance to hand over the

former high ranking ethnically Tigrayan origin federal government officials who are alleged to have been engaged in gross violation of human rights and grand corruption.³ In this regard the Vice President of Tigray regional state, Dr. Debesion Gebremichael has firmly expressed that “the recent move of the federal government is unacceptable and it has target at weakening Tigray regional state and the ruling party of the state.”⁴ He further continued to say that “the recent actions of the Federal government are politically motivated and foreign country driven ones.”⁵ Yet, he refrained from naming those who are driving the federal government to take the actions.

No one contends that freedom speech and expression is one fundamental human right which is protected under article 29 of the FDRE constitution and other international human right instruments to which Ethiopia is a party. Yet, press statements given by government officials in their official capacity are expected to be seriously considered from many perspectives before they are disseminated to the public as they are very a big potential politically insightful and igniting messages to the citizens due to their openness to different interpretation.

Legally speaking, the speech of the vice president can be examined from many perspectives. For instance, the FDRE constitution under article 50 (8) dictates that the both the federal and state governments should respect each other’s constitutional mandates while discharging their respective mandates. Thus, as per this provision, mutual respect of the two layers of government to each other is a duty imposed by the constitution so long as they are within one umbrella of federal state structure. Therefore, if one level of government is aggrieved by act of the other layer of government, for instance, if it has an objection regarding to constitutionality of laws enacted or decisions passed or press statements released and so on, initially it is advisable to undertake dual political dialogue to resolve the issue in amicable way. If it is not possible to settle the issue using intergovernmental forums, dissatisfied party can lodge its action by supporting its claim with adequate and relevant evidences which supports its position to the House of Federation, which is the umpiring body of constitutional disputes.⁶ Therefore, if it is examined in light of this constitutional provision, the press statement given by of Tigray state seems in violation of the mutual respect clause of the constitution which should have been challenged though legal means before the House of Federation.

Secondly the failure of state of Tigray to cooperate with federal government in apprehending Mr. Getachew Assefa, the former chief of the National Security and Intelligence Service of Ethiopia (commonly called “NSIS” for short), who is currently accused of crime of human right violation by the Federal Attorney General is another grave instance of misunderstanding with the federal government.⁷

It is obvious that like states, the federal government has the power to investigate and indict crimes that fall within its own jurisdiction and penalize criminals.⁸ In this regard, states do have a duty to cooperate with the federal government in handing over suspected criminals to the federal government. This is mainly because it is primarily the responsibility of the federal government to defend and protect the federal constitution as it is clearly incorporated under article 51(1) of the FDRE constitution. On the top of that, article 9 (sub 1 & 2) of the FDRE constitution stipulates that “any law or decision of any organ of government which contravenes the constitution is invalid.” Moreover, there is one grand principle of intergovernmental relationship principle called “Full Faith and Credit Clause” which is widely known and practiced in old federations like America and Switzerland.⁹ This principle is derived from Article IV, Section I of the 1987 American Constitution, which states that each state shall honor every other States’ public acts, official records, and legal reports.¹⁰ For example, if a man in New Jersey is ordered by a New Jersey court to pay a certain amount tax liability but he flees to New York before he pays his tax liability, a court in New York would be bound to enforce the judgment rendered by New Jersey court. This is so even if New York law does not recognize whatever proceeding took place in New Jersey. Therefore, as per this principle one state’s judgment are given ‘full faith and credit’ in another state which in turn helps to consolidate mutual collaboration of members states of the federation. Moreover, the second provision of the clause goes one step further. It authorizes Congress to pass laws to help states access and recognize other states’ judgments and records. Thus, by applying this principle, judgment won in one state may be enforced in another, without a re-litigation the same matter. So, even though the doctrine of full faith and credit doctrine is not clearly incorporated in Ethiopian constitution, it possible argue that this principle should be given some sort of credit as it is one grand norm of intergovernmental regulation which is widely used in many federal policies which have long experience in this state structure and no prohibition is set by the constitution in applying such customarily developed and internationally accepted doctrine. Therefore, reluctance of Tigray state to hand over the Ex-spy, i.e. A to Getachew Assefa and other high ranking ethnically Tigray origin officials who are criminally wanted by the Federal Government Attorney General is one major manifestation of absence of genuine cooperation and reciprocal respect between the two layers of government which seems factual deviation from the federal compact.

³ The Ethiopian Federal government Attorney General has issued arrest warrant against its ex-federal government official including its ex-spy chief. See BBC world service (released on Wed, January 2/2019, @ 17: 06 GMT)

⁴ Note taken from an electronic news media called Borkena news, broadcasted on November 21/2018, by a man called Semere Asmelash., (for more information see <http://borkena.com>)

⁵ Ibid
⁶As per article 62(1) and 83 (1) of the constitutional of FDRE the power to interpret the federal constitution and to settle constitutional dispute is declared as the sole power of the House of Federation.

⁷ Under article 47 (1) of The FDRE constitution Tigray region is mentioned as one establishing member state of the federation together the nine states.
⁸The power to investigate crimes committed by federal government officials in their official capacity and offences against the law of nations belongs to the federal government pursuant to article 4 sub 3&12 of proclamation no. 25/1996, which is issued to determine the jurisdiction of federal courts. See federal courts Proclamation No. 25/1996, 2nd Year, No. 13 Addis Ababa, 15th February, 1996.

⁹Full Faith and Credit | Wex Legal Dictionary / Encyclopedia | LII / Legal ..., https://www.law.cornell.edu/wex/full_faith_and_credit. (browsed 4/17/2019 @ 5: 50 P.M)

¹⁰ Ibid

The other controversial scenario which needs serious consideration in relation to the Tigray regional state current political practices is the promulgation of a decision which critically condemns the promulgation of the newly approved border commission Proclamation of the Federal Government by its regional council decision. In this regard the regional council has passed decision no. 3/2011 in its 15th round and 14 regular meeting. This decision of the state mainly warns the federal government to reconsider the newly proclaimed identity and boarder Commission proclamation of the Federal Government.¹¹As per this decision, the state doesn't have recognized the proclamation as violates the FDRE constitution. In words of his Excellency Moges Tafere, who is the chairman of Legal and Justice Affairs Standing Committee of the state's council, "the council seriously opposes this bill as it contrives the Federal constitution article 62 (1) which has entrusted the power of resolving border disputes to the House of Federation."

As per the decision of the regional council, it is the power of the House of Federation to resolve border disputes and as such it is unconstitutional to take way this power from this organ without formally amending the constitution.¹² Yet, as opposed to the claim of the region, close reading of the newly ratified identity and border proclamation doesn't take away the power of the House of Federation as the mandate of the commission is only confined to rendering profession advisory service to the Prime minister and the House of Federation. Therefore, the power to pass final decision is still in the hand of House of Federation.¹³

The other scenario to be considered in this study is the decision taken by Oromiya in relation to ownership of the city of Addis Ababa which is another member state of the federation.¹⁴Recent press statement given by the regional government in relation to ownership of the city of Addis Ababa and its opposition in transfer of 51,000 condominium houses to their owners which are constructed by city government of Addis Ababa budget in a site called "Koye Fiche".¹⁵This practice of opposition the state of Oromiya regarding to the transfer of condominium residential homes to their owners which are constructed by Addis Ababa city government administration which has its own constitutionally recognized self-administrative city by Oromiya is unconstitutional.

The third circumstance which is analyzed in this short article is the enduring misunderstanding between Amhara and Tigray regional states. In this regard, repeated blames made by Amhara regional state which has been broadcasted in different medias, including social medias have revealed the existing conflicts and deteriorating peace condition in the region are backed and being aggravated by some anti-peace elements

In this regard it is better to raise the position of the Amhara Regional state Council which is officialized after its 12th regular conference held on March 7, 2019 in Bahir Dar, which was undertaken to assess the of the security situation in Ethiopia, and in and around the Amhara region, in particular. In this Conference the speaker regional parliament, her Excellency W/ro Work semu Mamo said that "lack of peace in our country is created due to the agitation of a few people, not the majority of peace-loving Ethiopians." She further emphasized that "the historical relationship between Amhara and Tigray peoples which has been existed for long period of time will continue in forever." And she mentioned that "the people of Tigray are peace-loving, and they will not and must not succumb to the agitation of few." The speaker also said, "we also reject those very few within the Amhara region who would like to initiate conflict with Tigray; they do not represent us, the Amhara people."¹⁶

On the top of that, the Amhara region Communication Affairs Bureau Director Ato, Assemahegn Asress said that some elements are trying to disrupt peace, referring to the military activities that some are practicing in boarder areas of the region. He further said that the "peace-loving Tigrayans will not accept conflict with their brothers and sisters in Amhara region." And the Amahara regional council seriously condemns Tigray military build in areas adjacent to the region.¹⁷ Yet, such kind of antagonistic press statements will have the effect of exacerbating the ongoing internal misunderstanding between the two regions and it is not in line with modern dispute resolutions mechanisms and channels which is recognized by the FDRE constitution under article 49 (1) which dictates that state border disputes shall be settled by mutual negotiation of concerned states and if they are unable to resolve their disputes in negotiation, the house of federation should settle their disputes in accordance with law.¹⁸

The last point to be considered is the increasing clam of statehood formation by some nation, nationalities, and peoples found in the Southern region. On November 27, 2018 the Councils of Sidama nation, Wolaita, Kembata and Gurag he zones have unanimously approved the claim for statehood.¹⁹ In response to this claim of state formation by the above nations zonal councils, the Southern Ethiopian People's Democratic Party, which is the ruling party of the state party has expressed that a study is underway in relation to demands of some zones within the region for statehood is against

¹¹Note taken from Tobia daily electronic newspaper, issued on August 6 /2019 G.C

¹² As per article 62 (6) of the FDRE constitution the power to resolve misunderstandings or disputes that may arise between states is bestowed to the House of Federation.

¹³ See article 5 of proclamation No. 1101/2018, a proclamation which established Identity and Administrative Boundaries Commission

¹⁴ See article 47 (sub1, number 4) of the FDRE Constitution, the State of Oromiya is one-member state of the federal democratic republic of Ethiopia.

¹⁵ News released on 7/2019 by Borkena news.com by citing Fana Broadcasting Corporation, which is Ethiopian government owned media.

¹⁶Amhara Region Council Urges the People of Tigray and Amhara to. (available at <https://www.ezega.com/.../Amhara-Region-Council-Urges-the-People-of-Tigray-and-...> (browed 14/4/2019 on 2:00 A.M

¹⁷Amhara Regional State Warns Tigray Military Buildup Unacceptable, <https://www.tesfanews.net/amhara-regional-state-warns-tigray-military-buildup-unacc...> (browed 14/4/2019 on 4 :00 P.M

¹⁸According Article 49 (1) and 62 (6)of the FDRE constitution, the House of Federation shall strive to find solution to conflicts or misunderstandings that may arise between states and it shall give its decision within two years after acceptance of any application or up on its own initiation, if the concerned states fail to settle my mutual agreement

¹⁹ SEPDM (Southern Ethiopian People's Democratic Movement) warns against political moves for statehood in the region <https://borkena.com/.../sepdm-warns-against-political-moves-for-statehood-in-the-regi...>

decision passed during the 10th congress of Southern Ethiopian People's Democratic Movement (SEPDM). In a statement issued after an emergency meeting of the central committee which was called to discuss the situation in the state, the party rejected movements in some zones to end their relationship with the regional state and be state on their own.²⁰

Constitutionally speaking the request of the aforementioned nations found in different states to establish their own states is fully legitimate claim as the FDRE constitution under article 47 (2) allows every nation, nationality, and peoples found within the nine regional states to establish their own separate state at any time. Yet, also the demand for statehood formation is constitutional; it is desirable for the concerned nations to weight the significance and feasibility of statehood claim before rushing to state formation. Similarly, the regional and the federal governments do have a political and moral responsibility to ensure whether the demand of state formation is genuine claim of the general public made by weighting its overall merits or it is a request of a few political elites. Because such kind of continuous state formations demands will definitely trigger similar endless requests by the remaining nation, nationalities, and peoples found in the country, which is not pragmatically feasible. And the ruling party of the region, which is Southern Ethiopian People's Democratic Movement (SEPDM for short), should respond to the requests of statehood claims in accordance with the constitution in democratic manner so as to bring sustainable solution in the state in settling contemporary anarchy and widespread conflicts.²¹

Yet, the current urgent demand of state formation by aforementioned nations and their mode of claim which is mainly supported by forceful movements of young members of the public and displacement of other people's residing in those nations claiming state hood formation is in contravention of the aspiration of the federal set up for one economic community in particular and in general constitution²²

5. Conclusion and Recommendation

5.1. Conclusion

This study has addressed a number of issues concerning to the legitimacy and constitutionality of the contemporary political practices of member states of Ethiopian Federation. Among the issues covered by the study, the ownership claim of Oromiya state over condominium houses constructed by Addis Ababa city government and over the city of Addis Ababa, which is established as a separate and autonomous city under article 49 (2 & 3) of the FDRE constitution. Secondly the resistance of Tigray state to hand over former high ranking ethnically Tigrayan origin ex-federal officials who have alleged to have been engaged in violation of human rights violation and commission of crime of corruption has been dealt in detail. Thirdly, repeated criticism news released by state government of Amhara, which seems to have directed against its north neighboring state government officials which makes the latter state responsible for the creation of existing conflicts in areas which are adjacent to the two states has been explained in depth. The last point addressed in this paper is the increasing demand of statehood formation by some nationalities such as Sidama, Hadiya, Guaragie, Wolayta found in Southern region. It is obvious that under article 47 (2) of FDRE constitution every nation, nationality and people do have a constitutional a right to establish its own region. Yet, such claim of state formation right needs to be peaceful and weighted from different perspectives apart from its provisional and immediate political benefits as it will cause many other similar requests in other nation, nationalities and peoples of the country which in turn is practically impossible and undesirable in terms of both political administration and financial efficiency.

5.2. Recommendation

In order to curb the aforementioned unusual political practices being undertaken by states, there is a pressing need of controlling hostile practices which will in the long run threaten the existing fragile federal arrangement. Especially, the federal government which is entrusted with a mandate of regulating matters of common affairs of the federation needs to give legitimate and timely response to repeated quests of border disputes and statehood formation both through political dialogue and use of the formal dispute settlement channels to rescue the federal compact from risk of disintegration. In this regard the Federal government should either alert the House of Federation to discharge its mandate in accordance with the constitution or establish another impartial organ with mandate of resolving constitutional power and border disputes. The writer of this paper supports the second option as the House of Federation is purely political organ whose members lacks the necessary legal skill and neutrality in deciding politically sensitive border and power division claims. On the top of that, the constitution needs to incorporate other intergovernmental principles such as full faith and credit clause so as to strengthen states mutual respect. And states need to cooperate with the federal government.

6. References

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²⁰ Ibid

²¹ Supra note 25

²² See the preamble for the constitution and article 42 of the FDRE constitution.

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