



# The Challenge of Reform within Ethiopia's Constitutional Order

BY CHRISTOPHE VAN DER BEKEN

For over two decades Ethiopia's political federation has been organized around the principle of 'democratic centralism'. This philosophy also lies at the heart of the ruling Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) coalition, and its centralized decision-making culture. Until recently, EPRDF policies were formulated through a top-down process rather than on the basis of local initiatives. This centralization has helped hold the Ethiopian state together. Since early 2018, Ethiopia's political context has been in flux, including a deep popular challenge to democratic centralism, and the prevailing political order. In this context, reforms which strengthen constitutionalism and the rule of law in the country are increasingly urgent.

## The recent context

Barely months after Ethiopia's 2015 elections, which saw the ruling EPRDF party sweep the board in all federal and regional political institutions, anti-government protests erupted in the Oromia region. The protests were initially driven by Oromo opposition to the so-called Addis Ababa Master Plan—a top-down, poorly communicated plan for integrated development of the city—perceived to be administrative encroachment and absorption of Oromia territory by the federal government. This locally specific grievance resonated with growing national discontent with the EPRDF's party-state. Protests spread across the large Oromia state and erupted in Amhara region too.

The EPRDF's securitized response—declaring a state of emergency (SoE) from October 2016 to August 2017—and internal-party reform (known as deep renewal) could not prevent a second outbreak of protests in February 2018 and another SoE to be instituted. This time protests also exposed the internal EPRDF divisions with two of its constituent parties—the Amhara National

Democratic Movement (ANDM) and the Oromo Peoples' Democratic Organization (OPDO)—publicly siding with the protestors' demands. The long-standing EPRDF discipline of democratic centralism was further eroded when significant numbers of EPRDF parliamentarians voted against the second SoE.

The extent of the changes within the EPRDF was also revealed in the internal selection of a new party chairman, following the February resignation of the then chair and Ethiopia's prime minister, Hailemariam Desalegn. The winning candidate, whom the EPRDF-dominated parliament then elected Prime Minister—OPDO's Abiy Ahmed—had nevertheless, failed to gain full support of many EPRDF Council members. Since then the EPRDF's four main parties have increasingly pursued their own objectives, which will undoubtedly affect the way the federal and constitutional systems operate.

## The risk to self-determination and minority rights

According to the federal constitution (Article 39) all nations, nationalities and peoples have a right to self-determination, which includes the right to territorial self-rule and even secession. In a country with more than 80 nations, nationalities and peoples, the EPRDF's democratic centralist political hold at the centre blocked the potentially disintegrative effect of these provisions. While this political management has prevented further fragmentation, it has simultaneously undermined the constitutional provisions and constitutionalism in general.

The EPRDF's uncertain future—at least in its present democratic centralist form—is likely to prompt an avalanche of claims for self-determination (both old and new), making it a priority to design constitutional mechanisms

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that offer a better balance between diversity and unity. A new, potentially more plural, political environment will require vigorous institutional protection of ethnic minorities, which necessitates both preventive and remedial legal measures.

The likelihood of human rights violations against members of ethnic minority communities can be reduced if political institutions, such as legislative and executive councils, are made ethnically inclusive. Presently, the political institutions of several regions are dominated, and in some cases monopolized, by single ethnic groups, on whose behalf the state or region has been established. This has generally been to the detriment of those individuals who identify with ethnic groups associated with other regional states.<sup>1</sup>

Revisions to the electoral system and designing constitutional tools that guarantee real minority participation could help to create incentives for political parties and politicians to behave moderately by making centrist attitudes electorally more rewarding than narrow ethnic nationalism. Where human rights violations do occur, effective mechanisms of judicial redress need to be created.

### Regionally autonomous policy-making

The present political transition has precipitated a stronger claim to autonomy by the regional states. Yet the constitutional distribution of powers between the federal government and the regional states—and the autonomy of the latter—is far from clear.

Article 51(2) of the constitution, for example, stipulates that the federal government ‘shall formulate and implement the country’s policies, strategies and plans in respect of overall economic, social and development matters’. The federal government can, as a result of this vague drafting, enact policies in a potentially wide range of areas. Yet, Article 52(2c) of the constitution stipulates that the regional states can also ‘formulate and execute economic, social and development policies, strategies and plans’.

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<sup>1</sup> For a discussion of the constitutional and institutional developments at regional state level see: Christophe Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of Sub-national Constitutions in Ethiopia*, Addis Ababa, Addis Ababa University Press, 2017, 242.

Regional states do have policy-making autonomy, the scope of which is not clearly determined. Other similarly vague provisions relate to the administration of land and other natural resources—grievances that have driven protests over the past three years.

Until recently, such indeterminate provisions have allowed the federal democratic centralist policy-making to prevail over regional views, even when there was a clear case for more consultation as shown by the Addis Ababa Master Plan. Yet, with more assertive regional parties pursuing their own development objectives such acquiescence is unlikely to continue and risks more particularistic interests coming to the fore.

A clearer division of powers between the federal government and the regions is necessary. The distribution of powers between the federal government and the regions needs more robust formalized mechanisms of intergovernmental relations and requires a serious revision of the constitutional interpretation and review mechanisms.

### Constitutional review and reforms

The Ethiopian constitution presently allots review powers to the second chamber of the federal parliament, the House of the Federation, rather than the judiciary. In principle, the House, whose members are representatives of the nations, nationalities and peoples selected by the regional councils, can quash government decisions that violate the constitution. This means that a federal-regional dispute on the scope of federal and regional powers is to be settled by a representative organ of the regional states. In practice, since all regional states were dominated by core or affiliate EPRDF parties, such challenges were rare (in some cases, the House had to decide on the scope of federal and regional powers related to land administration). Entrusting the power of constitutional review to the judiciary would provide a more neutral and effective mechanism of managing the federal-regional relationship.

Reform of the principles of representation in the House of the Federation should also be considered. While all ethnic groups are entitled to one representative, they are also entitled to an additional representative for each one million

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people. This means that the House is dominated by large ethnic groups (such as the Oromo and Amhara) and ethnically diverse regional states (such as the Southern Region).

The weight of numbers arguably allows for unequal ethnic and regional representation overall, and it can undermine the perception of equal treatment by the House's decisions, for example on issues such as inter-regional conflicts or the formula for federal-regional budget transfer. Entrusting constitutional review power to the judiciary rather than to a political body would not only benefit the management of the federal system, it would also strengthen the rule of law and create more effective mechanisms of human rights enforcement.

## Conclusion

The EPRDF's two decades of democratic centralist rule has allowed political mechanisms to patch up constitutional loop-holes that may otherwise have threatened the federation. At the same time, this political expedient has undermined the constitutional framework and affected the very objectives of the post-1991 EPRDF authored political settlement. The new assertiveness of the EPRDF constituent parties and the weakened federal-level cohesion will increase the practical importance of the constitutional provisions, while exposing their deficiencies. This calls for constitutional reforms to strengthen constitutionalism and the rule of law in the country. If current political trends persist, it will be necessary to design constitutional mechanisms offering a better balance between diversity and unity.



## Credits

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