ETHIOPIAN CONSTITUTIONAL AND PUBLIC LAW SERIES
(VOLUME - X)
Addis Ababa University - School of Law

ISSN: 2707-1065

Reimagining Ethiopian Federalism

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2019

First Printed in 2019 in Addis Ababa, Ethiopia.

The Publisher:

School of Law
Addis Ababa University
Main Campus (6 Kilo)
P.o.Box 1176
Addis Ababa, Ethiopia
www.aau.edu.et/clgs/academics/school-of-law

Mobility and Ethnic Federalism in Ethiopia

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Abstract

Ethiopia's federal dispensation, ushered under the 1995 Constitution, guarantees ethnic groups – constitutionally termed as "nations, nationalities and peoples" – a wide array of self-rule rights. The Constitution also provides for a number of individual rights, including the free movement of citizens within the country. In a federal setup where subnational and local boundaries are constructed along ethno-linguistic lines, the mobility of individuals presents both opportunities and challenges. While the free movement of citizens provides unique opportunities including fighting stereotypes, facilitating inter-cultural exchange, and reinforcing cultural bonds, it has also the potential to create tension with members of the host community that perceive mobility of individuals as a threat against their constitutionally recognized self-rule rights. This paper examines how the Ethiopian federal setup, without adequate legal framework, is struggling to address these competing demands and, as a result, has probably undermined both citizenship and ethnic rights.

1. Introduction

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) guarantees individual rights to every Ethiopian within the national territory and does so, seemingly, in many cases, without any restriction.[1] Although the FDRE Constitution guarantees a list of

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[1] See for instance Article 32 of the FDRE Constitution.

individual rights, it is also known for the unusual extensive group rights that it provides .[2] The federal setup has divided the country into nine ethnic based states[3] and dozens of local administrations whereby an ethnic group or a combination of select ethnic groups are considered as "owners"[4] enjoying a wide array of self-determination rights.[5] In fact, the right to self-determination in Ethiopia is a right guaranteed without any restrictions. It is also listed as one of the rights that cannot be abrogated even in times of public emergency.[6]

The interplay between individual and group rights poses certain challenges. The tension between individual rights and the self-determination rights of ethnic communities is nowhere practically visible than in the operation of freedom of movement of citizens. Constitutionally protecting freedom of movement is very crucial, not only because it is an important element of the right to personal liberty of individuals,[7] but also because it is indispensable to realizing related rights such as the right to work, the right to property, and the right to political participation.[8] However, the recognition of freedom of movement without any legitimate restriction, especially in an ethnic-based federation, constituted out of ethnically carved subnational units, runs

[2] For a list of group and individual rights see the FDRE Constitution Articles 14-44.

[3] Article 47 of the FDRE Constitution.

[4] The use of the terms owners, native (indigenous) and outsiders, non-native (non-indigenous or outsider) in the Ethiopian context should be understood very narrowly to reflect the dichotomy that has ensued since 1991, and only as an indication of the emergence of the titular and non-titular classification within the ethnic based states and sub-regional administration.

[5] Of course, *de facto*, one can argue that the apportionment of the whole territory of the nation into ethnic territories as administrative hierarchies (like regular zones, woredas and kebeles), created for the mere devolution of powers, have made them practically ethnic properties of those considered native to them.

[6] See Article 93(4)(c) of the FDRE Constitution.

[7] N Jayawickrama, The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence, (Cambridge University Press 2002), p. 440.

[8] *Ibid*., p. 443.

the risk of threatening the rights of ethnic communities to (political, cultural and economic) self-determination. It might also trigger nativist sentiments among those that fear that they will lose out in the competition for educational and employment opportunities, access to resources, and, ultimately, control over their ethnic homeland.[9]

Despite the absence of restrictions on freedom of movement, self-governing minorities in Ethiopia have restricted or attempted to restrict freedom of movement of citizens in order to protect their distinctiveness from being eroded by what they consider as "outsiders". Disturbing developments have followed these tensions including forced expulsions, which at times seem to be sponsored by governmental authorities themselves.[10] Similar tensions, albeit within different historical, social, economic and political contexts, are visible in the states of Benishangul Gumuz, Amhara, Oromia, and Southern Nations, Nationalities and Peoples (SNNP).

This paper examines how the Ethiopian federal setup, without adequate legal framework, is struggling to address these competing demands and, as a result, has probably undermined both citizenship and ethnic rights. The remainder of the article is structured as follows: The next section analyses the tension between freedom of movement and ethnic autonomy in general, and in Ethiopia, in particular. Following that assessment, the paper discusses the position of international human rights law in dealing with the apparent tension between freedom of movement and ethnic autonomy. It then discusses the position of the Ethiopian Constitution on whether legitimate limitations can be placed

[9] See M Weiner, Sons of the Soil: Migration and Ethnic Conflict in India, (Princeton University Press1978), p. 16.

[10] In this regard, the Guraferda incidents in the SNNP region in 2009, which has been reported to the House of Federation (HoF), although it has not received formal response, shows how serious the issue of complacency on the part of the government is.

in order to balance the two competing interests. The paper ends with concluding remarks.

2. Individual versus Group Rights: The Tension between Freedom of Movement and Ethnic Autonomy

The liberty to move entails the right of an individual to move around within the designated borders of a state, including the right to leave and return. As apparent and unproblematic as it might seem, the exercise of freedom of movement in plural societies could become very difficult when it is perceived as threatening the self-government rights of the host communities that are considered "indigenous" to the territory in question. This is the case when there is migration to ethnically defined territories, which the communities consider as their homeland. Under certain circumstances, the unchecked migration of people into designated "ethnic homelands" has the capacity to alter the demographic balance of these territories. And this, through time, might affect the political status of ethnic communities, in turn, potentially affecting the political, social and cultural self-determination rights of those ethnic communities.[11] The ensuing tension, as a result, creates a fierce competition for resources, employment and political power.

To be sure, one of the purposes behind the adoption of a federal system that aims at managing ethnic diversity is to make minorities a majority in "their own house".[12] Ethnically defined subnational units are an important feature of such federal arrangements. Once ethnic homelands come into existence, they reorder pre-existing ethnic relations and create

[11] Isabelle Côté, 'Autonomy and Ethnic Diversity: The Case of Xinjiang Uighur Autonomous Region in China', *in* Alain-G Gagnon and Michael Keating (eds.), Political Autonomy and Divided Societies: Imagining Democratic Alternatives in Complex Settings, (Palgrave Macmillan 2012), p. 182

[12] Michael Burgess, Comparative Federalism: Theory and Practice, (Routledge 2006), P. 104. See also Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights, (Clarendon Press 1995), pp. 27-28.

new sets of majority-minority relations.[13] One major challenge of these ethnic autonomies is, therefore, that they impose a rigid conception of territory and tend to create autonomy for a particular group only,[14] leading to the exclusion of others. As Margaret Moore outlined: minorities turned majorities have often used their new status quo to oppress or discriminate against their own minorities.[15] In particular, the fear of losing demographic or political supremacy within ethnic autonomies tempts self-governing communities to resort to both legal and extra legal measures of restricting the entry of those they consider "outsiders", and in worst-case scenarios, orchestrate their eviction from their ethnic homelands.

In Ethiopia, the interplay of internal movement and the autonomy of ethnic communities controlling state governments has posed serious challenges. Constitutionally speaking, the FDRE Constitution includes a chapter on fundamental rights, which provides for a number of individual rights, including the rights of an individual to liberty of movement and freedom to choose residence.[16] Nevertheless, the mere provision of freedom of movement is meaningless without the provision of and adequate link to related rights. In this regard, the Constitution provides for the right to property (comprising of private ownership as well as access to rural and urban landholding rights),[17] the right to work, which includes the freedom to engage freely in an economic activity and

[13] See, Michael Keating, 'Rethinking Territorial Autonomy', *in* Alain-G Gagnon and Michael Keating (eds.), Political Autonomy and Divided Societies: Imagining Democratic Alternatives in Complex Settings, (Palgrave Macmillan 2012), pp. 13-15.

[14] Francesco Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse', *in* Tove H Malloy and Francesco Palermo (eds.), Minority Accommodation through Territorial and Non Territorial Autonomy, (Oxford University Press 2015), p. 19.

[15] Margaret Moore, 'Internal Minorities and Indigenous Self-determination', *in* Avigail Eisenberg and Jeff Spinner-Halev (eds.), Minorities within Minorities: Equality, Rights and Diversity, (Cambridge University Press 2005), P. 272.

[16] Article 34(1) of the FDRE Constitution

[17] Article 40 of the FDRE Constitution

pursue a livelihood of one's choice, as well as the right to choose one's means of livelihood, occupation and profession.[18] The same constitution also provides for a bundle of group rights that provides ethnic communities with extensive non-derogable self-rule rights. The question is how the Constitution, which recognizes both individual and group rights, seeks to balance the two sets of rights that are apparently running into a collusion course.

Undoubtedly, the envisaged federal set up in Ethiopia has given disproportionate and unusual attention to ethnic rights. A cursory look at the FDRE Constitution to: determine the demos that authored the Constitution,[19] locate the site of sovereign power,[20] identify the criterion used for forming the states[21] or the basis to exercise the right to self-determination[22] reveals that ethnicity is the basis for the organization of the federation. Ethiopia is a prime example of what is widely known as ethnic federalism (ethno-federation), a model of federalism that is deliberately designed to respond to ethnic concerns.[23] This goes back to the days of the Transitional Government that was established after the fall of the military government in 1991 and Proclamation No. 7/1992 that created 14 ethnically defined states that were explicitly associated with one or more ethnic groups.[24] This construction of the country that marked the beginning of the division of the population of a subnational unit into "owners" and "guests" was maintained by the federal

[18] Article 41 of the FDRE Constitution. These rights should also be seen in light of the overall constitutional objective of creating one economic community. See the preamble to the FDRE Constitution, paragraph 5.

[19] Preamble to the FDRE Constitution, Paragraph one.

[20] Article 8 of the FDRE Constitution.

[21] Article 46(2) of the FDRE Constitution.

[22] Article 39 of the FDRE Constitution.

[23] See also the preamble of the FDRE Constitution in this regard.

[24] Article 3(1) of Proclamation 7/1992. The only exception was region 14 (the federal capital, i.e. Addis Ababa), which was not associated with a particular ethnic group, although the Oromo, the largest ethnic group in the country, were given special rights over the capital.

Constitution that was adopted in 1995 and associates the states with particular ethnic group(s). The implicit dichotomization of the population is taken to another level by some of the state constitutions that explicitly identify and recognize particular ethnic groups as indigenous to the area. [25] Some of the Constitutions of these states vest sovereignty in the dominant (indigenous) ethnic group and not in all residents of the state.[26]

The political and constitutional decision to solely empower "indigenous peoples" has encouraged the latter to consider themselves as the only owner of a given territory and the only group that are entitled to exercise the right to self-determination over it. They do not only exercise operational control of ethnic territories and their public institutions,[27] but also believe that they own the territories and institutions in the proprietary sense of ownership,[28] thereby threatening the basic rights of those considered as "outsiders". Politicians and members of self-governing communities have viewed the migration of those they consider outsiders as a serious threat to their political and numerical

[25] See Article 2 of the Benishangul-Gumuz Constitution and Article 46 of the Gambella Constitution.

[26] See Christophe Van der Beken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach', *in* Tsegaye Regassa (ed.), Issues of Federalism in Ethiopia: Towards an Inventory (Ethiopian Constitutional Law Series, vol 2, 2009), pp. 263-279; Christophe Van der Beken, Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia, (Lit Verlag 2012), pp. 246-247. The constitutions of the regional states of Oromia, Afar, Somali, Harar, SNNP, and Tigray vesting their respective state's sovereign power solely on the dominant (otherwise indigenous) ethnic group is an implied expression of dichotomizing those with sovereign power as indigenous and others found in the region as disempowered non-indigenous groups. It could, however, be argued that the Amhara region provides for a better stand with respect to recognizing its ethnic diversity. Under its Article 8, it provides that supreme power of the regional state resides in the people of the Amhara region.

[27] Assefa Fiseha, 'Intra-Unit Minorities in the Context of Ethno-National Federalism in Ethiopia', (2016) 3(1) Ethiopian Journal of Federal Studies, 39, pp. 40-41.

[28] Getachew Assefa, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality', (PhD Thesis, University of Melbourne 2014), p. 77.

supremacy. They have not only jealously guarded their ethnic administrations but their respective governments have also orchestrated the forced expulsion of those they consider outsiders.

In fact, since the reorganization of the political and geographical landscape of the country in 1991, there were numerous reports of tensions and conflicts that have ensued between citizens exercising their freedom of internal movement and communities that are concerned with the threat such movement poses to their demographic and political supremacy. The State of Benishangul Gumuz, which is home to an almost equal population of indigenous and non-indigenous communities, witnessed, on more than few occasions, the mass eviction of non-indigenes – at times with the clear participation of local authorities.[29] Similar disturbing developments including forced expulsions, which at times seem to be sponsored by governmental authorities themselves, have been witnessed in the states of Amhara, Oromia and Southern Nations, Nationalities and Peoples (SNNP).[30]

On the other hand, citizens who happen to find themselves in ethno-states not named after them or that do not recognize the ethnic group they belong to as indigenous are made to feel as guests and sometimes one that is unwelcome. They have suddenly found themselves on the losing side of the federal experiment.[31] The end result has been a

[29] **ናፍቆት ዮሴፍ፣ የቤንሻንጉል ተፈናቃዮች ተመዕዋች ሆኑ**, available at: http://www.addisadmassnews.com/index.php?option=com_k2&view=item&id=12160:%E1%8B%A8%E1%89%A4%E1%8A%95%E1%88%BB%E1%8A%95%E1%8C%89%E1%88%8D-%E1%89%B0%E1%8D%88%E1%8A%93%E1%89%83%E1%8B%AE%E1%89%BD-%E1%89%B0%E1%88%98%E1%8D%85%E1%8B%8B%E1%89%BD-%E1%88%86%E1%8A%91&Itemid=180 accessed on 25 October 2019.

[30] Human Rights Council, 'Stop Immediately the Extra-Judicial Killings, Illegal Detentions, Beatings, Intimidation and Harassment Committed by Government Security Forces!!', 140th Special Report, 2016, Addis Ababa.

[31] See, Getachew Assefa, 'Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights', *in* Girmachew Alemu and Sisay Alemahu

federation that has separated its citizens into indigenous and non-indigenous, guests and owners, native and non-natives. This dichotomization of citizens and its devastating consequences has continued unabated despite the major political developments that saw Prime Minister Abiy Ahmed come to power in April 2018. Non-indigenes continue to face mass and orchestrated removal from their homes and farming plots. This raises the question whether the regional states can legitimately place restriction on mobility rights of individuals. That is the focus of the next section.

3. Limiting Mobilitiy: A Human Rights Perspective

There are those who argue that mobility rights cannot be without limitations. In the context of mass population movements, many agree that state sponsored migration or systematic population transfers that undermine the ethnic-political equilibrium of self-governing autonomies should not be entirely left to external dynamics.[32] According to the proponents of this view, adequate measures should be placed to ensure that autonomous territories are not subjected to intentional population transfers that will jeopardize their future existence as territories of self-governing ethnic communities.[33] "[A]ttempts by representatives of a federal majority to undermine the status of national minorities by

(eds.), The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects (Ethiopian Human Rights Law Series, Vol. 2 2008), pp. 9-10.

[32] Thomas Benedikter, 'Territorial (Sub-State) Autonomy in India', *in* Levente Salat et al (eds.) Autonomy Arrangements Around the World: A collection of Well and Lesser Known Cases, (Cluj-Napoca 2014). P. 78.

[33] Proponents of this view maintain that the door must still remain open for newcomer populations and there must be a path for integration on the basis of reasonably stipulated standards.

promoting immigration into their provinces from outside or from other parts of the federation" should be blocked.[34]

In addition to state sponsored migration and systematic population transfers, some also maintain that other forms of migration should not also be left unregulated. Countries should put in place mechanisms to mitigate the adverse effects of mobility rights on the political and territorial autonomy rights of self-governing minorities even in cases where the migration is not orchestrated by the state and is not systemic. For example, Rainer Baubock argues that states should place a restriction on migration if it has the effect of rendering a community that controls a subnational unit a minority in its own house:

> At a point where free movement would deprive a national minority of its majority in a self-governing province it may demand either control over further immigration or a redrawing of federal boundaries which would re-establish its local majority. This amounts to a *residual* and *remedial* right of self-determination to prevent the demographic preconditions for territorial self-government from being overturned.[35]

While demographic changes emanating out of the mobility of citizens that undermine the self-rule rights of communities should carefully be checked, others argue, ethnic autonomies should not also be given a blank cheque to unduly restrict freedom of movement. As Thomas Bendikter cautiously remarked:

> …autonomy does not exist to create new discrimination and ethnic cleavages, but to redress the structural imbalance present in nation states or in federated states with a single dominant culture and ethnicity. It is there to create a legal-political space for efficient minority protection, for substantial equality of opportunity, and for consociational self-government of a

[34] Rainer Baubock, 'Why Stay Together? A Pluralist Approach to Secession and Federation', *in* Will Kymlicka and Wayne Norman (eds.), Citizenship in Diverse Societies, (Oxford University Press 2000), p. 389.

[35] *Ibid*., p. 389.

> common home. Ultimately, it is an issue of justice and of quality of democracy, bringing the political power closer to the people.[36]

The position of the law, both international and Ethiopian law, on the debate on freedom of movement and the right of self-governing minorities is far from certain. What is the position under Ethiopian and international human rights law on whether the state can legitimately take measures that restrict the mobility of individuals?

The position of international human rights law

Freedom of movement is a widely recognized right. [37] At the same time, international human right instruments provide for circumstances and conditions under which the right to freedom of movement might be restricted or subjected to limitations. A quick review of the major international instruments reveals that, first; freedom of movement can only be protected so long as one is exercising the right in accordance

[36] Benedikter, cited above at note 32, p. 79.

[37] The Universal Declaration of Human Rights (UDHR) provides that everyone has the right to freedom of movement and residence within the borders of each state (The Universal Declaration of Human Rights, 1948, Art. 13(1)). The UDHR, has not only recognized the freedom of internal movement, but has also tied the right with freedom to choose residence showing the inseparability between the two rights. Similarly, the International Covenant on Civil and Political Rights (ICCPR) ordains that everyone within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence (International Covenant on Civil and Political Rights, 1966, Art. 12 (1). The International Convention on the Elimination of all forms of Racial Discrimination also provides that all people have the right to freedom of movement and residence within the border of the state, the right to leave the country, including one's own, and to return to one's country and the right to nationality (The International Convention on the Elimination of all forms of Racial Discrimination, 1965, Article 5). At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) recognizes that every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law (The African (Banjul) Charter on Human and Peoples' Rights, 1981, Art. 12(1)). Ethiopia is a party to many of these international human right instruments, which, according to the Constitution constitute, if ratified, an integral part of the law of the country (Article 9(4) of the FDRE Constitution).

with the law.[38] In order to check legitimacy, citizens, during internal travel, might rightly be asked for their identity cards or proof of registration, travel permits, or passports as an important aspect of regulated movement or residence.[39] Second, as stated under Article 12(3) of the ICCPR, the need for restrictions must be justified, in order to protect the rights and freedoms of others.

Some argue that the wording "rights and freedoms of others" in the Covenant may be construed to mean that the rights of individual members belonging to minority groups or the rights of a minority group.[40] According to this view, a restriction on mobility rights is justified so long as the aim is to protect minority groups residing in certain areas.[41] Restrictions can be legitimately placed on internal migration in the interest of protecting the right to collective existence, special measures geared towards protecting minority communities, and safeguards against the forced assimilation of minorities.[42] To be sure, one of the purposes behind limiting fundamental rights and freedoms is to address competing interests between the wishes of the individual and the group.[43] Yet, measures restricting the freedom of movements of citizens must be crafted in a way that they do not create permanent division between ethnic communities and should cease to exist after they have achieved the desired objective for which the restriction were introduced.[44]

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[38] See for instance Article 12 of the ICCPR and Article 12 of the ACHPR; Jayawickrama, cited above at note 7, p. 444.

[39] Chaloka Beyani, Human Rights Standards and the Free Movement of People within States, (Oxford University Press 2000), p. 23.

[40] *Ibid*., pp. 75, 82.

[41] *Ibid*.

[42] *Ibid*., 56, 74.

[43] Jayawickrama, cited above at note 7, p. 188.

[44] *Ibid*., P. 6.

The United Nations Human Rights Committee, in *Sandra Lovelace vs. Canada*, recognized, albeit implicitly, that restrictions on the right to residence of people, by way of national laws, may be put in place in order to protect the cultural survival of a group.[45] The case involved Sandra Lovelace, a Malisset Indian, who married a person that does not belong to the indigenous group to whom she belongs. After Lovelace's marriage ended in divorce, she moved back to indigenous community's Tobique Reserve only to find out that she and her children were deprived of status rights because of her marriage. Under the Indian Act, women who marry non-Indians lose the special rights extended to members of the group. Although the Human Rights Committee rejected the argument based on minority rights,[46] the Committee pointed out that restrictions on movement and residence could legitimately be employed in order to protect the interests of minorities provided under Article 27 of the ICCPR. Hence, in the interest of protecting and preserving the identity and resources of the Indian community, restrictions that might have impact on the movement and residence on non-Indians on the Reserve could be justifiable under Article 12(3) of the Covenant. But, the Committee also stressed that restriction of this nature must have both a reasonable and objective justification and be consistent with other provisions of the Covenant.

From the discussion so far, it is clear that it is necessary and permissible to put restrictions on mobility rights in order to protect the interest of a minority group. However, it is not any interest of a minority group that can override the need to respect individual rights. It is only if the exercise of an individual right poses a threat to the cultural survival of the group

[45] See *Sandra Lovelace* v *Canada*, Communication No. 24/1977, U.N., Doc. CCPR/C/OP/1 at 83(1983), Paragraph 15-16, University of Minnesota Human Rights Library.

[46] The Committee nevertheless ruled in favor of the applicant on the ground that the Act unlawfully discriminates against women. According to the Act, men within the same community do not lose their status and special rights when they marry non-Indian women.

that a restriction could be acceptable. Any restriction on freedom of movement has to, therefore, be accomplished by recognizing, on the one hand, the right of indigenous communities to cultural survival, and, on the other hand, the right of individuals, including non-indigenes, to enjoy reasonable mobility rights with sufficient guarantees that they, as citizens, have the right to make a living in any part of their country.[47]

The position in Ethiopia

Under the Ethiopian Constitution, it is not clear whether mobility rights can be restricted in the interest of protecting the self-governing rights of ethnic communities. A quick look at the provision of the Constitution reveals that it often uses internal restrictions or clawback clauses for putting limitations on fundamental rights and freedoms.[48] However, it also provides for several rights without indicating whether justified and legitimate restrictions can be imposed on them. That is the case, for example, with the right to freedom of movement. [49] The same is true with the state constitutions that guarantee freedom of movement without any restriction.

The absence of a limitation clause, on some of the rights, such as the prohibition against inhuman treatment, maybe justified because the right is considered absolute and cannot be subjected to limitation. However, the same cannot be argued with respect to the other rights. The absence of internal limitations with respect to many of those rights can only be interpreted as a tacit permission for the lawmaker to put appropriate

[47] At times, the latter has to also do with government development strategies, which attract huge number of migrant workers into the territories of native communities.

[48] Adem Kassie Abebe, 'Limiting limitations of Human Rights under the FDRE and Regional Constitutions', *in* Yonas Birmeta (ed.), Some Observations on Subnational Constitutions in Ethiopia, (Ethiopian Constitutional Law Series Vol IV 2011), p. 74.

[49] Article 32 of the FDRE Constitution. Some of the other rights are the right to prohibition against inhuman treatment (Art.18), the right to vote and be elected (Art.38), as well as the rights of nations, nationalities, and peoples to self-determination (Article 39).

limitations whenever necessary.[50] That is also what the practice seems to confirm.

For instance, the House of Peoples Representatives (HoPR), by promulgating the electoral proclamation 532/2007, as well as the new electoral law adopted in August 2019, put several restrictions concerning the constitutional provision of the right to vote and be elected, which, based on the wording of the Constitution, appears unlimited.[51] One can, therefore, argue that the HoPR, as it has done with respect to the right to vote, can promulgate a law whereby freedom of movement may be regulated taking into account various factors such as national security, public safety, and, the rights and freedoms of others, arguably including protecting minorities from the potential consequences of internal migration.[52]

For now, there is no such federal or state law regulating freedom of movement. It should, however, be mentioned that the constitutions of the States of Benishangul Gumuz, SNNP and Oromia,[53] have subjected the right to work to the language proficiency requirement of the respective states. It is not clear whether these states have inserted this provision as part of the effort to curb internal migration. But the requirement has a clear impact on individuals that want to move between

[50] Adem, cited above at note 48,, p. 78.

[51] Yet, the problem with this approach is: since there are no general limitation clauses in the FDRE Constitution, which set the general standard criteria for restricting fundamental rights and freedom, it could be the case that the legislature might promulgate laws that undermine constitutional rights under the guise of putting limitations. If the HoPR sets unconstitutional limitations, it will be the power of the HoF (when pleaded) to give a remedy, since it is the ultimate arbiter of constitutional disputes.

[52] Yet, the states of emergencies, declared in quick succession at the end of 2017 and early 2018 , have shown that freedom of movement is not considered as an absolute right in Ethiopia as the freedom to move was one of the rights that was derogated from in these states of emergency declarations.

[53] See Article 33 of the States of BG, SNNP, and Oromia Constitutions.

states and establish their livelihoods, especially those seeking employment in the civil service.

In the absence of a clear law providing guidance on how to manage the tension between mobility rights and the right of ethnic minorities to self-government, other institutions can play a role in setting out the parameters within which the right to freedom of movement can be legitimately restricted on the basis of the rights of others, including minority rights. The problem is that there is little or no jurisprudence on how individual rights (including mobility rights) and communal self-rule rights can be reconciled. It is very difficult to claim that the House of the Federation (HoF), the body tasked with interpreting the Constitution and resolving constitutional disputes, has made use of the opportunities it was given to deal with the tension between individual rights and the right to self-determination.

One such opportunity involved the State of Benishangul Gumuz. Some people objected to the decision of a group of residents of the State that, however, did not belong to the communities that are regarded by the State Constitution as indigenous to run for a seat in the State Parliament on the ground that they do not speak any of the languages spoken by the indigenous communities.[54] The objection was accepted by the National Electoral Board of Ethiopia that relied on Electoral Proclamation No. 111/95. The individuals petitioned the HoF arguing that the mandatory language proficiency requirement violated their constitutional right to be elected, which is guaranteed without any restriction. The case involved a tension between an individual right to stand as a candidate and the right of ethnic communities to self-determination. Although the dispute involved a tension between an individual right and the right of ethnic communities to self-determination, the HoF, as well as the Council of

[54] The House of the Federation of the Federal Democratic Republic of Ethiopia, 'Decision of the HoF on the Benishangul Gumuz election case', (2008) 1 Journal of Constitutional Decisions, pp. 15-34.

Constitutional Inquiry, failed to reflect on the tension between individual rights and the right to self-government. This is because:

> in determining whether language proficiency is a legitimate restriction on the right to be elected, the House did not deal with the tension between individual rights and the rights of communities to self-determination. It rather advanced functional argument to validate the law that requires proficiency in the working language of the state as a condition to stand for election. It argued that effective representation of the electorate requires the candidate to be proficient in the language of the state parliament. The decision of the HoF to solve the case on pragmatic ground means that the decision has little contribution to the jurisprudence on how the two sets of rights can and should be reconciled.[55]

The resolution of the dispute on pragmatic ground was unfortunate as the HoF missed an opportunity to elaborate on how the commitment of the Constitution for the equal enforcement of both individual and group rights can be realized and how both rights can be implemented in a mutually inclusive way. The HoF was given another opportunity to deal with a similar situation when victims of the Guraferda incident mentioned above took the matter to the HoF where they complained about the violation of their freedom of movement, freedom to choose residence, and freedom to pursue a livelihood of their choice.[56] The HoF did not give a formal response to the petition. This is unfortunate, as the HoF should have used this opportunity to clarify the relationship between mobility rights and the self-determination rights of communities. This case could have been used by the HoF to clarify whether justifiable limitations could be placed on mobility and self-rule

[55] Yonatan Fessha and Beza Desalegn, 'Internal migration, ethnic federalism and differentiated citizenship: The case of Ethiopia', *in* Alain Gagnon and Arjun Tremblay (eds.), Federalism, Democracy and National Diversity in the 21st century: Opportunities and challenges (Palgrave Macmillan 2020) (forthcoming).

[56] See the petition by the victims of expulsion in Guraferda district to the HoF dated (Yekati 30, 2001E.C), on file with the secretariat of the HoF, Addis Ababa.

rights, if so, who has the power to legislate on those limitations and whether the federal or regional government can regulate inter-regional migration.

Courts could have been utilized as legitimate checks against subnational authorities that orchestrated or played a role in mass evictions and unlawful restrictions on freedom of movement. However, the record of Ethiopian courts in the enforcement of fundamental rights and freedoms[57] is not encouraging. They have done little or nothing in protecting victims of forced expulsion, whose properties have been illegally confiscated, looted or destroyed.[58]

From the foregoing, it is clear that the federal Constitution, although it enshrines both individual and group rights, does not, however, provide adequate guidance to address apparent tensions between group and individual rights. The subnational constitutions, as mentioned above, are not different in this regard. [59] Of course, it will also be naive to think that the ensuing trends of illegal evictions are mere spontaneous actions that

[57] Article 13 of the FDRE Constitution.

[58] This could partly be explained by the general lack of public confidence in the judiciary for victims to bring their cases to the courts. See for instance, Federal Democratic Republic of Ethiopia, 'Comprehensive Justice Reform Program: Baseline Study Report' (Ministry of Capacity Building, Justice System Reform Program Office, 2005), pp. 159-60. In these kinds of extremely politically sensitive matters, the impartiality and independence of the judicial apparatus is in serious question, see Alemayehu G Mariyam, 'Human Rights Matters in the New Millennium: The Critical Need for an Independent Judiciary in Ethiopia', (2008) 3 (2) International Journal of Ethiopian Studies, 123, p. 133.

[59] But, a major difference between the federal and the subnational constitutions is the latter's approach in which they tied the right to freedom of movement and residence with the right to work and acquire property all in one provision. Although Van der Beken argues that this can be interpreted and used to extend a better protection to non-indigenous communities, its significance, even if debatable, has not been matched by the reality on the ground. See Article 32 of the Oromia Constitution, Article 33 of the Somali Constitution, Article 32 of the Afar Constitution, Article 32 of the Tigray Constitution, Article 32 of the Amhara Constitution, Article 32 of Harar Constitution, Article 33 of the BG Constitution, Article 33 of the Gambella Constitution and Article 32 of the SNNP Constitution. See also Christophe Van der Beken, Completing the Constitutional Architecture: A comparative Analysis of Sub-National Constitutions in Ethiopia, (Addis Ababa University Press 2017), pp. 81-82.

can quickly be remedied by strictly adhering to the constitutional right of free movement. The mere declaration that every Ethiopian has the right to move and reside in anywhere in the country would be a very light response to a very complicated problem. After all, in one way or another, these unqualified actions of restricting the mobility rights of those that are regarded as non-indigenes seem to be propelled, among others, by the un-rectified historic inequalities, unfair distribution of wealth and inequitable utilization of resources, lack of good governance and derailed social and ethno-cultural justice. Addressing these issues will require a broader policy and legal framework, negotiated between federal and regional authorities.[60]

4. Conclusion

This article has established how the Ethiopian federal setup, without adequate legal framework, is struggling to address the competitive demands of freedom of movement and ethnic self-rule and, as a result, has probably undermined both citizenship and ethnic rights. Because both citizen and ethnic rights have not been adequately qualified in Ethiopia, the uncontrolled exercise of one has easily become an encumbrance on the other. The varying circumstances concerning the ensuing tension between the free movement of citizens and the political and territorial autonomy of ethnic groups have revealed a number of major dilemmas. To begin with, the discussion has revealed a problem of constitutional design whereby the two most important rights of freedom of movement and self-rule are set without any form of legitimate restrictions and mechanism of reconciliation in circumstances of conflict. What is also noted is the reluctance on the part of constitutional

[60] For instance, see the discussion by David J Smith and John Hiden, Ethnic Diversity and the Nation State: National Cultural Autonomy Revisited, (Routledge 2012), pp. 11-15; on the use of the 'personality principle' to address the often competing demands between territorial federalization and internal migration.

interpretation organs, both at federal and regional levels, to develop a solution that enhances the possible implementation of the two constitutionally guaranteed rights in mutually inclusive manner. More critical is the lack of political commitment on the part of both federal and regional authorities to protect the rights of those considered "outsiders" without jeopardizing the rights of native communities.