

A Dream Within a Dream: Minorities and Indigenous Peoples and Ethiopia's Constitutional Moments

Dr. Abadir M. Ibrahim and Dr. Juweria Ali

Abstract

Given their historic and contemporaneous subordination, marginalization, and brutalization, of minority and indigenous groups can be expected to face tremendous structural disadvantages going into any prospective constitutional (re)negotiation. Unless these disadvantages are recognized and addressed, a constitution-making process is likely to entrench and reproduce current and past inequalities and inequities thereby ensuring their continuity. Ethiopia's Somali population will be taken as a case study of how marginalization of minorities and indigenous groups operates in a constitutional setting where an overlapping and interdependent systems of oppression operate. In addition to an invitation to a serious reimagination of Ethiopia's political future in ways that are truly inclusive and just, preliminary suggestions are made as to how the marginalization of minority and indigenous groups can be minimized by imagining different constitutional reform scenarios.

Introduction

In his "Interpretation of Dreams," Freud presented dreams within dreams as futile attempts to attain aspirations that have been frustrated in real life. These attempts are unsuccessful insofar as they present as dreams even inside a dream.¹ Akin to Freud's dreamers, minorities and indigenous groups in Ethiopia keep waking up into another dream. Even though every constitutional moment presents as an opportunity for a better future, they keep finding their wishes and desires

¹ Sigmund Freud, *The Interpretation of Dreams* 313 (A. A. Brill trans., 1913).

unattainable. Although most minorities and indigenous peoples were treated as no more than serfs and tax resources who sometimes had to be raided periodically as a form of tax collection, many were barely incorporated into the day-to-day administrative reach of the state in the early stages of its modernization.

The Derg, though freeing many from the yoke of feudalism, was the first regime that began seriously intruding into indigenous Ethiopia. Not only did it expand state-led agricultural and industrial projects, but it also intensified nationalist policies that sought to subjugate minorities and indigenous groups and assimilate them into the language and culture of the dominant group. Those who resisted experienced the wrath of its modern, mechanized, and mostly unconstrained army.

The Ethiopian People's Revolutionary Democratic Front (EPRDF), which removed the Derg, came with an even sweeter promise to previously marginalized groups. It promised to make the interests and aspirations of nations, nationalities, and peoples a right placed front and center of the constitutional order. However, the experience of minorities and indigenous groups was at best mixed. The cultures, languages, and traditions of many minority and indigenous groups were now things they could be proud of and formally transform into the languages of local administration and education. At the same time, the EPRDF brought the modern state into every corner of the country, which it claimed for extraction into the global market. This, like the case of the Somalis discussed in this study, created traumatic episodes for many minority and indigenous groups who were given the choice between compliance and systematic violence including war crimes and crimes against humanity.

We will argue that, given the historic subordination, marginalization, and brutalization of minorities and indigenous groups, there is a need for a serious reimagination of Ethiopia's political future in ways that include the dreams of these groups. In fact, we will make the case that Ethiopia needs to reimagine itself, not to be charitable to minorities and indigenous groups, but for its own salvation. The study will take Somalis as a case study and a concrete example of how

marginalization of minorities and indigenous groups operates in a constitutional setting with the understanding that the Somali experience cannot be generalized as the experience of all groups. As one of the larger ethnic and linguistic minority groups in Ethiopia with an estimated population size of around seven million, Somalis provide good example of a group that is situated at the intersection of different marginalities based on language, culture, religion, pastoralism, indigeneity, minority status, and even geography, which all give rise to overlapping and interdependent systems of oppression.

1. The Interpretation of Dreams: A Conceptual Map

There are several concepts to which we will make regular reference in order to theorize the marginalized status of minorities in Ethiopia's constitutional order.

The first of these is a fairly broad understanding of what a constitution is. While also taking advantage of a legalist understanding of constitutionalism, we approach the constitution as something that constitutes society from a political and sociological point of view. We will simultaneously look at the different constitutional moments as processes and outcomes of power distribution (including the distribution of power, wealth, and prestige), the mechanisms of the use of coercion (including through legal and extralegal means), and the different constitutional mythologies that seek to persuade the public of the equitability, desirability, or at least necessity of extant power configurations.

The other set of concepts relate to that of minorities and indigenous groups. The meaning of minorities, a much-debated topic both in academic literature² and in international law,³ is generally understood to constitute nondominant groups that are objectively distinguishable, i.e., that make up a distinct ethnic, religious, or linguistic group, with a subjective desire to preserve a separate identity, and who

² See Steven Wheatley, *Democracy, Minorities and International Law*, 20-23 (2005).

³ See Malcolm N. Shaw, *The Definition of Minorities in International Law*, 20 *Isr. Y.B. Hum. Rts.* 13 (1990).

are usually a demographic minority.⁴ Rather than demographic size, the factors that make indigenous peoples distinct are that they are groups that are not fully disjoined from their ancestral lands, ways of life, and political-economic institutions by dominant groups with the help of modern economies or states who impose significant levels of discrimination, domination, and marginalization on these groups.⁵

While the struggles of minority and indigenous groups against domination can be iterated in different ways, the international human rights movement contains a good starting point for this inquiry. The designation of a group as a minority or an indigenous group entails certain protections under international human rights law that include the right to exist and persist as a distinct group and be free from discrimination, coerced assimilation, and interference with the use and maintenance of their language, culture, and religion. On the more affirmative side, both also have the right to effective remedies against ongoing discrimination or violence, the right to effectively participate in national politics and to decisions that affect their rights, and the right to benefit from effective measures such as affirmative action to remedy historic inequities.

Besides these overlaps, more specific protections are accorded to indigenous peoples that emanate from the unique challenges they face. For example, indigenous rights go beyond political participation in matters that affect them, including an explicit need for their consent, and the right to their traditional territories including the recognition of land rights and rights over natural resources accorded by indigenous legal systems. More significantly, the rights of

⁴ This understanding is based mostly on Francesco Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, (United Nations, 1991) 98 and Jules Deschenes, Proposal concerning a definition of the term "minority," UN Doc. E/CN.4/Sub.2/1985/31/Corr.1 (14 May 1985), para.181. See also generally, Wheatley note 2, and Shaw note 3.

⁵ The African regional human rights system, which has a strong baseline for peoples' rights in general, provides a good point of reference for a rounded iteration of indigenous peoples in Ethiopia's context. See the Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the African Commission on Human and Peoples' Rights at its 41st Ordinary Session, held in May 2007 in Accra, Ghana.

indigenous groups go much beyond the right to distinct existence and include the rights to development, self-determination, autonomy, and self-government.⁶

Since the specific rights included under the umbrella of minority and indigenous peoples' rights are quite extensive, no thorough or systematic attempt will be made to outline them here. However, it is worth noting that the extent to which minorities and indigenous peoples are recognized in Ethiopia's constitutive arrangements will be used as a way of gauging how marginalized they are in the constitutional order. As will be shown in this study, the different constitutional moments in Ethiopia have been distinctly deleterious to minorities and indigenous groups. Not only has the modern Ethiopian state exploited and, many times, brutalized many of these groups, minorities and indigenous groups have not received the lip service of recognition in national narratives and myths. While Ethiopia stands in a nightmarish constitutional moment where everything is in flux, the one thing that may prove to be persistent is the exclusion of minorities and indigenous groups who are bound to be excluded by all the major political actors dreaming of establishing hegemony over and through Addis Ababa.

This paper draws upon examples and key constitutional moments in the recent history of the Somali Region which embody these struggles. To do so, we selectively draw upon elements of Foucauldian discourse analysis (FDA). The relationship between power and language is central to discourse-analytical approaches. FDA for instance considers the way "truth" and "knowledge" serve as a site for reproducing power relations through "power-knowledge" regimes. This is because power sustains certain "truths" and sanctions them as legitimate.⁷ There are also certain "conditions of possibility" which determine 1) what can and cannot be said, i.e., what is legitimate and what is not, and 2) the power relations

⁶ In addition to *supra* notes 2 through 5, see UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly resolution 47/135 (18 Dec. 1992); Human Rights Committee, CCPR General Comment No. 23: Article 27 (Rights of Minorities) CCPR/C/21/Rev.1/Add.5 (1994); the United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (13 Sept. 2007); and Asbjorn Eide, Final text of the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2001/2 (April 2001).

⁷ Michel Foucault, "Truth and Power" in Peter Rainbow (ed.), *The Foucault Reader*, 51–75 (1984).

and systems which determine who has the right to speak on a given subject (and reproduce specific “truths”).⁸ This type of framing allows us to interrogate how indigenous and minority rights are constituted in the popular national imagination, and by extension, how their constitutional right to particular freedoms is conceptualized.

2. Oscillating between Nightmares and Bad Dreams

The plight of Somalis in Ethiopia stems from and dates back to European colonialism when the Somali peoples were divided between Britain, France, and Italy. The noncolonized segments of the Somali communities were uncontested territories but would later fall under the control of the Ethiopian feudal empire. What used to be broadly referred to as the Ogaden and what is now more or less the Somali Regional State was one of the epicenters of African resistance against colonialism in the Horn Region. At different times, Sayid Mohammed Ábdille Hassan—dubbed the “Mad Mullah” by the British for having the audacity to challenge a global superpower—and his Dervishes set their base in this region and fought off British and Italian colonial plans – probably preventing the colonization of Ethiopia from the southeast.⁹ Although Mohammed Ábdille Hassan is considered an anticolonial hero in the Somali territories, including in Ethiopia, his legacy is repressed in Ethiopian historiography and national mythology as part of the marginalization of Ethiopian Somalis.

Save for the Ethiopian imperial/feudal regime’s periodic raids against the livestock of Somali pastoralists,¹⁰ the Ogaden region remained outside of any state administration until 1935, when Italy invaded the region; in 1941 Britain assumed

⁸ Michel Foucault, “The Discourse on Language” in Hazard Adams & Leroy Searle (eds.), *Critical Theory Since 1965* (1986)

⁹ Said S. Samatar, *Oral Poetry and Somali Nationalism: The Case of Sayid Mahammad Ábdille Hasan* 91-136 (1982).

¹⁰ Richard Pankhurst and Douglas Johnson, “The Great Drought and Famine of 1888-92 in Northeast Africa,” in D. Johnson and D. Anderson (eds.), *The Ecology of Survival: Case Studies from Northeast African History*, 56-57 (1988).

control of the area.¹¹ The British imperial powers handed over the region to the Ethiopian feudal-imperial regime slowly in the late 1940s and early 1950s,¹² setting the stage for the unique disposition of Somalis in Ethiopia in the years that followed.

Since their forced incorporation into Ethiopia, mostly by the design of colonial Great Britain, Ethiopian Somalis have been suffering at the hands of successive dictatorial regimes who treated the region as a hostile frontier fit only for subjugation and a source of resources such as livestock and, more recently, oil and natural gas. Somalis, like many of their counterparts in Ethiopia, did not tolerate being subjugated whether, that be European colonizers or local imperialists. Thus, similar to their counterparts among the peoples of Tigrai, Gojjam, Bale, Yajju, Wollo, Gedeo, Harar, and Eritrea, the Somalis rebelled against the Ethiopian feudal-imperial regime, only to be violently crushed and subjected to collective punishment.¹³ The destruction of the village of Aysha'a and the massacre of 500 of its civilian inhabitants in August 1960—and the killing of 794 people, mostly civilians, in 1972—are just two examples of a systematic campaign of human rights violations, including war crimes, against the Somali people.¹⁴ They also suffered continued forced relocation, mass executions, a campaign of livestock confiscation and killing, and the poisoning of water wells, all aimed at the destruction of the way of life of the Somali people.¹⁵ The violent campaign against the sustainability of their way of life in the 1960s and 70s was paired with a policy of relocating ethnic groups from other parts of the country into the region, which saw the displacement and replacement of Somali people from their ancestral homelands.¹⁶

¹¹ Stuart A. Notholt, *Fields of Fire: An Atlas of Ethnic Conflict*, 2, 22-23 (2008).

¹² *Ibid.*

¹³ Saheed A. Adejumobi, *The History of Ethiopia*, 103-104 (2007); Bahru Zewde, *A History of Modern Ethiopia: 1855-1991*, 215-220 (2007); and Gebru Tareke, *The Ethiopian Revolution: War in the Horn of Africa*, 14 (2009).

¹⁴ Human Rights Watch, *Evil Days: Thirty Years of War and Famine in Ethiopia*, 70-72 (1991).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

The plight of Somalis worsened under the Derg junta (1974-1991) which, while overthrowing the much-reviled imperial-feudal regime, continued the former's persecution of the Somali people. During the 1975 famine, the Derg regime interned 80,000 Somalis severely restricting or altogether banning not only their freedom of movement but their right to conduct and participate in traditional cultural celebrations.¹⁷ Following the end of the Ethio-Somali war or the "Ogaden War" (1977-1978), the Derg military regime subjected the civilian population of its Somali territories to years of atrocities, including war crimes and crimes against humanity.

In an extensive 1991 report, Human Rights Watch summarized the atrocities of the military; their practices included the forced relocation of the civilian population into shelters and camps, the destruction of all economic assets (such as villages, livestock, and farms), and the killing of noncombatants outside of the camps. In its scorched-earth campaign, the regime carried out summary executions including massacres, the burning down of villages, aerial bombardment of civilian targets with munitions including napalm or phosphorous, poisoning and bombing wells, and gunning down herds of cattle. While an estimated 25,000 civilians were killed by the military and over a million civilians were displaced, notable single events included a July 1981 incident in which 615 civilians were killed in a spate of violence, and an August 1981 incident in which 300 civilians were killed and "houses were burned and 12 villagers were taken hostage and subsequently disappeared."¹⁸ These abuses were justified and normalized based on the discursive construction of Somali "secessionists" in the aftermath of the 1977 Ogaden War illustrating the interplay between physical violence and discursive violence.

When the Derg military regime fell in 1991, like many Ethiopian peoples, Somalis in Ethiopia had hoped that the replacement of the military regime with the current civilian regime would announce a new chapter in their history. Some of the significant gains achieved included the ability of the Somali people to use their

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 81-86.

own language in education and government – a significant improvement from previous regimes. Three years after the fall of the Derg, however, the people of the Somali region would once again go through turbulent times. In 1994 a political dispute between the ruling party of Ethiopia (EPRDF) and the Ogaden National Liberation Front (ONLF) led to a forced expulsion of the latter from the government.

Following the EPRDF's establishment of indirect rule over the Somali region¹⁹ and a military confrontation between the EPRDF and ONLF, the pattern of the war crimes and crimes against humanity was set in the Somali region. While human rights violations in the Somali region were taking place sporadically since 1994,²⁰ the most serious crimes began in 2007 following a spate of ONLF attacks between January and May. The most notable attacks included one against a Chinese-run oilfield where 60 Ethiopian soldiers and employees and nine Chinese contractors were killed, and another a grenade attack, which injured the president of the Somali Regional State.²¹ Following these attacks, it is reported that high-level government officials met in the city of Jijjiga (capital of the Somali Region) to discuss the state's response.²² The meeting resolved that, since the ONLF derived support from the Ogaden countryside, from local trade and business people, and from humanitarian aid, measures needed to be taken to destroy these perceived sources of support.²³ This rationale formalized the policy of collective punishment detailed in Human Rights Watch's extensive 2008 report "Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region."

¹⁹ See Abdi Ismail Samatar, *Ethiopian Ethnic Federalism and Regional Autonomy: The Somali Test*, 5 *Bildhaan: An International Journal of Somali Studies* 44, 47 (2008).

²⁰ See generally: Tobias Hagmann, *Punishing the Periphery: Legacies of State Repression in the Ethiopian Ogaden*, 8.4 *Journal of Eastern African Studies* 725, 731 (2014).

²¹ Jeffrey Gettleman, *In Ethiopia: Fear of Army Brutality*, N.Y. Times, June 18, 2007.

²² Human Rights Watch, *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region*, 31 (2008).

²³ *Ibid.*

On June 9, 2007, the Prime Minister of Ethiopia announced the launch of a military campaign in the region.²⁴ Full-scale military campaign began in June 2007 and saw the re-initiation of war crimes and crimes against humanity as part of the state's military tactics. Aside from the military's counterinsurgency campaign targeting the ONLF, the respondent's strategy included attacks against the civilian population, including massacres, executions, arbitrary detention and torture, systematic rape, forced relocation, destruction of civilian property, and an economic and aid blockade. Not only do these series of serious and massive human and peoples' rights violations amount to war crimes and crimes against humanity, but they have been committed in a manner that has undermined the way of life of the Somali People and violated their rights to self-determination, including their rights to development and the free disposal of their natural resources.

3. The Current Constitutional Baseline

3.1 The formal legal system

The Somali experience, one of the more extreme examples of persecution against a group that lay at the intersection between minority and indigenous status, is indicative of the constitutional arrangements that these groups have faced and are likely to face in the future as well. This means that they are the most likely to face exclusions from power under either authoritarian or democratic political settlements. Inasmuch as the state is interested in the natural resources they sit on, whether that be the oil reserves in the Ogaden or future industrial, agricultural, or dam-building real estate, it will take these without consideration of the rights or interests of these groups. While one can imagine that the state will rely on local agents to enforce its will and in the process distribute rent to local agents, given

²⁴ Elias Kifle, *Ethiopia: The Woyanne dictatorship 'launches crackdown' on Ogaden rebels*, Ethiopian Review, June 9, 2007; Biniam Haile, *Insurgency in Ogaden*, Boston University School of Theology Archives, 15 February 2009.

the power differential between nonminority and nonindigenous elites, it is unlikely that the lion's share will go to the lion.

The disempowerment—and probably also the persecution—of minorities and indigenous groups is likely to continue if Ethiopia goes through a national dialogue or any constitutional convention type of process since current power structures are likely to reproduce themselves in such a process. While a constitutional future that is erected upon unwritten power configurations does not bode well for minorities and indigenous groups, the positive laws of Ethiopia—which are one of the ways we could take a snapshot of the state of power relations—do not provide a strong starting point either. If we look at the FDRE Constitution and other federal laws, neither minority rights nor indigenous peoples' rights are recognized. In fact, the FDRE Constitution and other laws such as the 1960 Civil Code specifically repeal or bar the application of customary legal systems which survive to the extent that “positive laws” are not enforced.²⁵ This, among other reasons discussed below, will present significant hurdles to negotiations over the social contract. Unless measures are taken to center the rights of minority and indigenous peoples, this is likely to lead to a constitutional settlement that extends and reinforces structural disadvantages, thereby ensuring future inequities.

Out of the two, minority rights may have a better chance of protection as there are some elements in the legal and societal structures that may make it relatively easier to assert them. Prominent among these is the FDRE Constitution's reservation of a minimum of 20 seats for minority ethnic groups in the House of Peoples' Representatives.²⁶ The composition of the House of Federation, sometimes rather tenuously referred to as the second chamber of parliament, may also provide minorities occasional counter-majoritarian opportunities to weigh in on constitutional cases.²⁷ The fact that Ethiopia is a party to a number of human

²⁵ See Art. 9(1) of the FDRE Constitution and Art. 3347 of the Civil Code.

²⁶ Art. 54 (2) and (3) of the FDRE Constitution.

²⁷ The House, in theory, is imagined to be composed of at least one member of each ethnolinguistic group, and each group also gets one additional representative for every million members of that group. (Art. 61 [2] of the FDRE Constitution).

rights treaties that recognize minority rights²⁸ may also work in favor of minority rights advocacy.

Another factor that may be protective of minority rights is the fact that some minority groups have “home states” in which they retain formal political power and in which they may be demographic majorities. While this will give these minorities a baseline protection against being overrun by majoritarian or dominant group politics at the center, it is also a factor that comes with serious challenges.²⁹ Taking only the Somali Regional State (SRS) as an example, one can see how the adoption of a Westphalian nation-state model as a hyper-privileged embodiment of Somali-ness does not account for the diversity within the Somali traditional communities or the interests and aspirations of Somalis. The nation-state model, being ill-fitted to accommodate the lived experiences of Somalis and other neighboring nomadic communities, can cause and has also repeatedly caused tension and conflict—including armed conflict—with neighboring states and communities, including those crossing international borders. This arrangement additionally excludes exogenous minorities and a heterogeneous mix of urban dwellers, creating a vicious circle of marginalization.³⁰ Therefore, despite the pro-minority benefits of the creation of minority-based states, the utilization of these advantages, even if they can be realized, can be fraught with risks.

Whereas the Constitution's lack of a prism that sees minorities as a distinct grouping with characteristics and needs that emanate from their minority status will pose enduring challenges, a combination of the challenges outlined above

²⁸ While the International Covenant on Civil and Political Rights (Art. 27) and the African Charter on Democracy, Elections and Governance (Arts. 8 & 43) are the most straightforward examples, most human rights treaties have also been interpreted in light of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities as providing layers of protection specific to minorities.

²⁹ Many of these challenges are outlined by Solomon A. Dersso, *Taking Ethno-Cultural Diversity Seriously in Constitutional Design: A Theory of Minority Rights for Addressing Africa's Multiethnic Challenge*, 213-215 (2012).

³⁰ Note that although some state constitutions recognize the existence of minorities, not all of them do so.

could present unique opportunities. One of the most significant factors in favor of minority rights could prove to be the fact that most cultural, linguistic, religious, and other groups in Ethiopia are a minority somewhere in the country. This is true for ethno-linguistic minorities as well as religious minorities and, more significantly, it is true for all the sizable ethnolinguistic groups as well. This does not only mean that most groups have pragmatic reasons to accept minority rights, but many will also have lived experiences that make it easier for them to empathize with and support minority rights. Out of these, the most consequential may be the urban dwelling bureaucratic and trading elite which already includes dominant groups and may become more consequential if it grows in heterogeneity. Although one wonders if heterogeneity is going to survive given current trends, in which ethnic cleansing is becoming an expected part of politics, reimagining Ethiopia in a minority-oriented manner is not only possible, but is a vision that could take the country out of its current conundrum, for which dominant-group competition is to blame in significant part.³¹

The legal and institutional baseline for the rights of indigenous groups is quite dim even in comparison with minority rights. Although Ethiopia is as bound to respect indigenous peoples' rights as much as minority rights from a legal point of view,³² indigenous peoples' rights have no comparable baseline in the Constitution or in treaties that Ethiopia has ratified. The current constitutional and sub-constitutional understanding of the devolution of power, if properly implemented, can only result in administrative decentralization that excludes or erases indigenous-specific needs for self-determination. This will make it easier for the government to take a denialist position, a position which it has already

³¹ An early glimpse of the possibly of cross-ethnic politics was seen in the 2005 voting patterns. Leonardo R. Arriola, *Ethnicity, Economic Conditions, and Opposition Support: Evidence from Ethiopia's 2005 Elections*, 10.1 *Northeast African Studies* 115 (2008). However, this trend could have been unsustainable, similar to the more recent "Oro-Mara" alliance which crumbled after the defeat of a common ethnically specific adversary.

³² See Tilahun Weldie Hindeya, *Indigeneity of Peoples in the Context of Ethiopia: A Tool in the Pursuit of Justice Against Land Dispossession*, 27 *African Journal of International and Comparative Law* *passim* (2019); Bahar Abdi, "The Emerging International Law on Indigenous Peoples' Rights: A Look at the Ethiopian Perspective" 38-65 (LLM Dissertation at the Faculty of Law, Addis Ababa University 2010).

taken repeatedly,³³ and make it more difficult for indigenous peoples and their allies to engage in strategic litigation and public advocacy. In addition, the fact that dominant groups in Ethiopia, including those in regional and federal power and in the NGO sector, subscribe to the idea that “we are all indigenous” makes it unlikely that indigenous rights and interests will find visibility. This is likely to be true even among co-ethnicists in the regional governments who could have interests that are inconsistent with indigenous groups and may even foster views that consider the indigenous way of life “backward”.

3.2 Looking beyond the law

Even though the Constitution is superficially in favor of self-determination, indigenous groups are excluded from benefiting from even that aspect of the Constitution, as it has been interpreted in ways that exclude indigeneity.³⁴ In fact, one could argue that the government has a partially formalized relationship with indigenous groups that is comparable to colonialism in terms of the chauvinistic discourses that traditionally accompany colonialism. For instance, in addition to constructing the land of indigenous peoples as “barren,” “unoccupied,” “empty,” and “unpopulated,” it characterizes these groups as “backward in terms of civilization,” “primitive,” “naked,” and “unsustainable.”³⁵ There is nothing in the current transition, nor in any potential future constitutional processes or projections of future trends, that indicates that the commodification and marketization of the land and other resources of indigenous peoples—and therefore the marginalization of and violence against these groups—is going to stop.

The national narrative of minority rights and recognition is encapsulated in the core principles of “self-determination.” The constitutional recognition of rights did little to alter the marginalized status of subject peoples in terms of power

³³ *Ibid.*, at 4-7.

³⁴ See also Hindeya, *supra* note 32, 366-382.

³⁵ Abadir M. Ibrahim, *Ethiopia's “Revolutionary Democracy” as an Authoritarian-Neoliberal Discourse*, 12.1 *International Journal of Ethiopian Studies* 17, 21, 26-27 (2018).

relations pertaining to political power and representation, knowledge production (relating to people, place, history, etc.), and state attitudes towards its poorly incorporated peripheries. Minority peoples' lack of association with what Christopher Clapham refers to as Ethiopia's "legitimizing myths of nationhood"³⁶ underlines the repressed elements of minority culture, history, and other elements of their self-identification in the national space. Beyond legal conceptualizations of minority status in Ethiopia's constitutional order and the forced institutionalization of Ethiopia's "legitimizing myths of nationhood" sanctioning them as legitimate, the repression of alternative modes of being "Ethiopian" constitutes a form of epistemic violence (i.e., violence exerted through knowledge) which accompanies the physical violence outlined above.

Through popular state-sponsored discourses, the Somali region continues to witness the construction of epistemic frameworks centered on particular histories, symbols, and myths that serve to reproduce systems of domination. Examples include:

- The struggle over "Karamardha" in relation to the wider history around the 1977 Ogaden War and the state's attempt to undermine the history of local liberation.
- "*Shirkii Kali*"—the 1940s Kali Conference: the EPRDF government institutionalized the narrative of the Kali Conference, which held that, in a meeting with British administrators, Somali elders consented to join Ethiopia shortly before the transfer of territories. Elders have rejected this history as one invented to symbolize Somalis' acceptance of Ethiopian rule and that have stated no such conference took place anywhere.
- The Jeexdin area containing natural gas and oil reserves is framed by the state as "unpopulated" and "empty," but full of resources and in need of development.

³⁶ C. Clapham, Controlling Space in Ethiopia, W James (ed.), *Remapping Ethiopia: Socialism and After*, 11 (2002).

Despite the provisions of the Constitution, sovereignty over history, symbols, and myths, even if these elements cannot be placed neatly within the state narrative, has constituted an additional struggle for minority peoples.

4. Preparing for a Better Dream: Some Concluding Observations

As Ethiopia plummets through another dark episode of its history, minorities and indigenous peoples seem to be set to wake up into another dream—or another nightmare. Their baseline is certainly not an enviable one. The constitutional and legal systems, except for recognizing minorities in passing, mostly deny their unique needs and circumstances. In the case of indigenous groups, their mere existence is not recognized as a legal category that requires differential treatment or specialized protection. Although they have functioning political and legal systems these are also made invisible by the formal system that operates as if they do not exist. Indigenous peoples are constructed as “uncivilized” people whose ancestral lands, effectively *terrae nullius*, are to be appropriated and placed under the stewardship of “civilized” Ethiopians. Extreme violence is meted out to both minorities and indigenous peoples who fail to see what is “good for them” and resist the vision of the state.

A reconfiguration of the structures of inequity that minorities and indigenous peoples face can take a combination of three different forms. A best-case scenario may be one in which Ethiopia takes a turn toward minority rights and is reimagined in ways that may even help it transcend its subordination to a dominant-group competition for control of the center and domination of the peripheries. This scenario, which requires dreaming big, is not only unlikely in the short term but it is one that requires additional inquiry. We invited conference participants to opine on what an Ethiopia that is a nation of minorities, and/or one that centers indigenous peoples as an important part of its identity, might look like. We would like to leave this question open and invite readers to pick this topic up and develop additional work on it.

A second scenario is one in which a prospective process of national dialogue, a constitutional assembly, or a peace-making process bears an outcome that recognizes the unique vulnerabilities of minority and indigenous groups and reconfigures the structures of subordination, marginalization, and brutalization. This scenario can also be seen to include one where there is a process that is led, or even commandeered, by an authoritarian regime, a process with different levels of participation from nonruling political parties and nonstate actors. A third scenario is one in which the situation of minorities and indigenous groups is improved, say through legislative and institutional reform, even if formal constitutional changes are not made.

Given the gravity of the challenges faced by minorities and indigenous peoples, either of the last two scenarios, but especially the third one, will require the establishment of specialized mechanisms that focus specifically on the interests of minorities and indigenous groups. This, for example, can take the form of the establishment of a special committee or body within a national dialogue process to investigate their interests. Groups among minorities and indigenous peoples focused on ministries and state bureaus, and specialized mechanisms within National Human Rights Institutions (NHRIs) can also be established if serious constitutional processes do not take root. Some general pointers as to what issues such bodies ought to consider under both scenarios are discussed below. Under the second scenario a specialized mechanism may take the form of a committee or a special rapporteur tracking processes of national dialogue, a constitutional assembly, or a peacemaking process to report on and advocate for minority and indigenous interests and rights.

One of the insights that comes out of this study is that special attention needs to be accorded to the continuum of political power relations and discourses. Given the current political context, it is especially important to pay attention to anti-minority and anti-indigenous discourse in political and social settings. Ethnicist hate speech, ideologies of ethnic and national superiority, hatred, contempt, discrimination, violence, ridicule, dehumanization, essentialization, and othering have always been a big challenge and they are acute today; they are also not things

that will disappear on their own. The cessation of the current normalization of ethnic violence that reaches the level of war crimes and crimes against humanity ought to be a priority for the government and all political groups in the country. This should be taken as a starting point rather than an outcome of any constitutional process.

Another important starting point is the explicit recognition of the existence of minority and indigenous peoples and their rights. Given the current lacuna in this regard, this may require a recognition at the beginning of a constitutional dialogue, an amendment of the federal and some state constitutions, and recognition through state constitutions and subsidiary legislation at the federal and state levels. Specific areas that require attention with respect to indigenous groups include a recognition of indigenous peoples' legal systems—and especially their regulation of indigenous land rights—and closer regulation of agricultural and extractive industries that constitute the new frontiers of assault against indigenous rights. These types of legislative measures are not going to be easy to achieve as, given the current marginality of minority and indigenous groups, they are going to require a great deal of advocacy, as one cannot expect dominant groups to easily give up their current privileges. Nonminority interest groups are also going to strongly advocate for a future in which majoritarianism, and especially ethno-linguistic majority domination, is the norm.

While this paper will not outline what an advocacy campaign could look like, one that is worth mentioning is the leveraging of the international human rights norms that protect minority and indigenous rights, and which are already legally binding in Ethiopia. A specific treaty Ethiopia ought to ratify is the ILO Convention No. 169, which will make the legal entrenchment of indigenous peoples' rights more straightforward. More generally, Ethiopia can achieve a great deal by acceding to the Protocol Establishing the African Court on Human and Peoples' Rights and the Article 34(6) declaration therein, accepting the competence of the African Court to receive individual communications under

Article 5(3) of the Protocol.³⁷ A case could also be made for Ethiopia's accession to the first optional protocols of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

In addition to contributing to the overall human rights context by, for example, bringing technical human rights jurisprudential advances to Ethiopia and backing up an embattled judiciary, signing up for these international judicial and quasi-judicial processes can give some buoyancy to minority and indigenous rights, which are already considered to be part of international human rights law by these bodies. Although most unlikely—and although one may doubt the utility and the deterrent effects of post-atrocity procedures—signing up to the Rome Statute should also be something that should be considered or even encouraged. With the types of atrocities that were carried out against the people of the Somali Regional State in 2008-2018 now so commonplace, and with the normalization of hate speech amongst most political actors including the federal government, minority and indigenous groups will remain vulnerable in the years to come. Accession to the Rome Statute will at least signal a symbolic willingness to start a new chapter in which war crimes and crimes against humanity are going to be de-normalized.

DISCUSSIONS

Dr. Kalkidan Negash Obse - Discussant

The paper is fascinating; I am not expert on Somali region, but it has been a learning experience on the subjugation and persecutions of the Somali people under successive regimes in the country. I have a couple of questions. First, the paper states that the Ethiopian Constitution does not cover minority rights and

³⁷ Note that Ethiopia has already signed this Protocol on 9 June 1998, but it has neither made an Art. 34 (6) declaration nor ratified the treaty. Thus, this treaty's ratification has been pending for twenty years even though Ethiopia played an important role in hosting the meetings that led to the establishment of the African Court and the Court was subsequently based in Ethiopia for the first year of its existence.

indigenous rights. I want a little bit of elaboration and explanation from you on this, because, we have Article 54 of the Constitution which provides that minority ethnic groups will be allocated a minimum of 20 seats in parliament. If you take this provision, minorities have a minimum position in the constitutional framework, but arguably the entire constitution is about minorities; we have the rights of nations, nationalities, and peoples to self-determination including secession, which arguably might go beyond the minorities' rights framework recognized under international law. So where exactly is the problem from the constitutional perspective? The Somali people are and can be considered as nation, nationality, and people as provided under Article 39 of the Constitution. With that comes all the rights accorded to the nations, nationalities, and peoples under the Constitution. The 20 seats in the parliament reserved for minorities can also be considered as an additional guarantee.

Another question relates to a very legitimate concern you raised that minority rights and voices may not be adequately accommodated in future political settlements in Ethiopia or in a national dialogue process. I find this concern, if legitimate, a bit pessimistic. What recommendations do you have to ensure that minority interests and voices are really accommodated in a national dialogue process or in a future political settlement?

You discuss the experiences of the Somali people—subjugation and persecution under successive regimes—but you stopped short of the EPRDF and you do not discuss the current situation. Some commentators and observers of the Somali region seem to paint a rosy picture of the political situation after the appointment of President Mustafa. I want you to say a few words on the positive developments, if any, in the Somali region under the current government.

Dr. Mohamed Dejen

I think the dichotomization of indigenous and nonindigenous is very problematic in Ethiopia. There has to be a legal framework determining who is indigenous and who is not and granting the rights emanating from this status. For example, take the case between Anuak and Nuer in the Gambela region. One regards the other

as newcomer and occupier of its land. The federal Constitution does not provide any criteria for this purpose; it simply says regional states or zones can be established on the basis of identity, language, and the consent of the people; history (who settled first) does not matter according to the constitutional architecture. If so, how can we qualify someone as indigenous and grant rights special to this status?

Fowsia Mohammed

Additional points on the presentation by Abadir and Juweria: I would like to note that there has been deliberate and historical erasure of the Somali people in mainstream Ethiopian thinking, so much so that at some point I was asked by several former American diplomats whether there are Somalis in Ethiopia. The state has deliberately hidden what has been happening in that large region from the international community. It is only after 2007 that the international community came to know about what happened in the region. So there has been a deliberate state denial of what was happening to the Somali people in Ethiopia. So there has to be a way to bring the Somali people into the Ethiopian mainstream political discourse. We need also to have a transitional justice that accounts for what Juweria described as epistemic violence because it is real, you can see it physically. There has been scorched-earth policy under Meles Zenawi's leadership: entire villages being burnt and people being displaced (there were seven or eight episodes of people massively fleeing and getting displaced) in that region. Moving back and forth to a refugee camp and being a displaced person is a lived experience of the people in the region. When the diaspora Somalis started to advocate for victims, their family members were targeted by the government. The latest victim was President Mustafa's brother, Engineer Feysel killed under Abdi Ille's regime. When I came to Ethiopia in 2018, I spent three months apologizing to my relatives for the harassment, intimidation, and inconvenience they endured in the hand of the government because of my advocacy while I was abroad.

Since 2018, things are getting better in Somali region in the sense that now you are not taken out of your house in the middle of the night by state security forces. But I am afraid this may not last long; the situation is fragile.

The challenge to all of us is implementing transitional justice that is contextually appropriate in the Ethiopian national discourse and addresses the realities and lived experiences of peoples of Gambela or Somali regions. Where are we going and how can we reconcile what has happened in the past and still happening?

Dr. Zelalem Mogessie Teferra

You said that Ethiopia is a country of minorities. I think we should have conceptual clarity on who is a minority: are we talking about numbers or historical injustice, and in which place (geographical area) are we defining who is the minority? Is it in a specific region like Oromia, or in cities like Addis? In my view, Ethiopia is a country of majorities, a country of minorities, a country where majorities live as minorities and minorities live as majorities, or minorities which seek to be treated as a majority. In Harari region, Amaharas and Oromos are majorities, but they live as minorities; Amharas in the Oromo Special Zone of Amhara Region live as minorities. We need to come up with a new conceptual articulation of who is minority in Ethiopia. I am not sure if we can take the general Ethiopian population as a reference point to define who minority is. Maybe we need also to look at historical injustices. For example, Tigray has been dominant in the political landscape of Ethiopia historically, do we consider them minorities or majorities? So, we need to probably reinvent the wheel here when it comes to the definition of minority.

Regarding indigenous rights, we have to be very careful in defining who is indigenous and we have to also see it from the perspective of the rights of citizenship and how the two can be balanced.

Melhik Abebe

The protection of minorities is something we should work on. I think we need to make a distinction between different kinds of minorities. The first is minorities without constitutionally recognized ethnic homelands within the federal system; they need protection. The other group of minorities affected in a different way are numeric minorities, minorities who have homeland region but live outside their homeland (in another ethnic group's homeland). In the last few years we have seen a lot of victimization of these minority groups. The other category of minorities is those who have homeland regions but are neglected to the extent that the federal government considers them only when it comes to the exploitation of their natural resources; this is the case for Somali but also other regions which the federal government refers to as ታዳጊ ክልሎች (*tādāgi keleloče* or emerging regions) including the Afar, Benshangul, and Gambela regions. I think there is value in considering these different classes of ethnic minorities so that we can design solutions that work for them best; they have unique circumstances but they are all minorities. I think there is a gap in the Constitution in addressing this problem and there is a lot of work to be done in this regard.

Dr. Semir Yusuf

The most important contribution of the presentation by Juweria and Abadir is epistemic, beyond and above institutional dynamics and constitutional issues. First, it localizes our understanding of the problem. We Ethiopians pride ourselves for having jealously protected our sovereignty over the last couple of centuries without noting the forceful subjugation of other ethnic groups in the Ethiopian state. Being mindful of the forceful subjugation of other ethnic groups in the Ethiopian state entails empathizing with the “narrow nationalists” in Ethiopia, the so-called terrorists, because they have quite similar views to many of us when we describe our proud nation that fought against European colonization.

The second importance of the presentation by Juweria and Abdir is that it demonstrates the depth of the national question. Here the national question is not to be treated as a matter of constitutional amendment or through the redefinition

of state institutions. Basically, it is a matter of reimagining the foundational myth of our country: how does the state perceive itself and how is it perceived by those on the margins of the state or the state's territory. So, it is a kind of antidote to what we have been talking about consociationalism and accommodation; we have to go beyond these solutions and reimagine the nation itself, its foundational myth, its symbols, and the very idea of being an Ethiopian.

Dr. Solomon Nigussie

On the issue of minorities, the Somali Region is relatively homogenous compared to Benishangul and Gambela. How can we apply the analysis on the situation in Somali for other regions? In all of our analyses we very much focus on the failures that we witness in this country. I think the point should be: how can we build a state on what we have achieved? Is Arat Kilo always responsible for all the failures in the regions? How about intra-region dynamics? This requires a genuine assessment. The minority issue is one of the grand issues that the federal system has to work on.

Dr. Sisay Alemahu

President Mustafa recently said, "our approach of claiming the center is working." Do you think claiming the center would be the solution for the real problems in the region?

Reply: Dr. Juweria Ali

Yes, Somali Region is very stable currently in comparison to major parts of the country, but it is peaceful not because there is systemic change. The region is peaceful maybe because of Mustafa's personal charismatics or because he does not have political competition; had he faced a political challenge or internal political uprisings he could have responded in a different way. Would there be anything that could prevent Mustafa from behaving in a different way if he wanted to? The answer is "no" because there have not been significant changes in the institutions

in the region, including the judiciary and the security. That the region is peaceful is pure luck.

With regard to Mustafa's claim of "we are at the center," yes there is the political visibility of the elites from the region at the center, but I do not think that political visibility will change the condition of the people in the region. You know there were many Oromo representatives at the center during EPRDF, but we remember what happened to the Oromo people. I do not think the situation of the people in the Somali region will change because of the visibility of one or two political elites at the center. And the whole idea of our presentation is to look beyond what we have, like political posts or the kind of peace that we have now ... we are looking at the discursive, epistemic ... and I do not see any changes in attitude to the region or its people. A good example of this is the intentional depopulation of the vicinity in the Region where oil and gas reserves have been found. I think the oil and gas production issue is going to be a huge problem; I am afraid it will be the biggest symbol of negative peace in the region. It is an issue that the authorities pay close attention to, as evinced by the detention and interrogation of a journalist in 2020 for his investigation into the oil and gas issue.

Reply: *Dr. Abadir M. Ibrahim*

Many of the questions raised by Kalkidan are addressed or anticipated in the paper itself or will be addressed especially since they have now been pointed out by him. One thing I will say to Kalkidan is: yes, the question of nations and nationalities is addressed in the Constitution, but the problem is that the Constitution, which defines nations, nationalities, and peoples in a very specific way and context, does not address the issue of minorities, for example. When we talk about minorities we are talking about historic context: the context of power, of counter-imposing them with dominant groups vis-à-vis nondominant groups. So, there is a lot of nuance and detail that is lost when you are just looking at nations, nationalities, and peoples without taking on a power-relations and, therefore, a minorities lens. Maybe we need to flesh these things out a little bit more in the paper in a way that anticipates your question.

Mohammed and Zelalem, you raised a number of issues which our paper is not designed to cover; our paper is not about whether Agnuak or Nuer are indigenous or not or whether Tigrayans are minorities or not. But here I will get into those points because I want to make important points about the issues you raised, and I will also use it to make one of our initial points. Agnuak and Nuer are indigenous groups. I can assume that there are going to be Agnuak and Nuer individuals who are not indigenous. But when we talk about indigeneity or nonindigeneity in our paper, it is not in the way we use it in everyday language in Ethiopia especially in the context of “indigenous” versus “highlander” in some regional states. This use overlaps with how we define indigenous groups in our paper, but it is also primarily a reference to ethnic identity, as a nonindigenous person who is Anuak or Nuer can self-identify as indigenous and call another person a highlander to signify their ethnicity. The point I want to make using this opportunity is: The fact that Ethiopian lawyers, including human rights lawyers like myself, are not familiar with indigeneity as a legal concept or otherwise tells us a lot about the invisibility of indigenous peoples in Ethiopia. We do not even know what the definition is and you will easily find human rights lawyers who will say we are all indigenous or it doesn't apply to our country.

With regard to Tigrayans, to address Zelalem, the pre-2018 situation in Ethiopia is an essential part of the reason why international law on the rights of minorities does not include dominant groups in its definition of minorities. “Dominant groups” can be controversial from the point of definition, but when a group is in power you cannot regard it as a minority and accord it protections that are typically reserved for minorities that need special protections from the majorities in power. But post-2018, I will contend that we can certainly define Tigrayans as a minority, and not just a minority that is not in power but a minority that is emerging from one of the most violent atrocities in the history of Ethiopia.

To Zelalem and Melhik, yes, Ethiopia is a country of majorities, minorities, and indigenous groups, and a country of dominant groups of Muslims, Christians, women, and men. We have noted that in our paper and thank you for pointing that out. And I want to state that, as Solomon said, the Somali Regional State is

itself composed of indigenous Somalis, nonindigenous Somalis, Afars, Oromos; there are groups that speak both Afaan Oromo and Af-Somal; the complexity goes on and on. There are border issues with Afar and Oromia with Somalia, Djibouti, and Kenya which add to that complexity, making the region we are dealing with an international matter. So, we are not losing sight of that complexity.

Regarding Dr. Solomon's question, we are not saying that nothing has been achieved in the Somali region. We are trying to introduce some of the complexity of the region into the constitutional conversation. We are not saying that all things are bad for indigenous people or nothing good has ever happened for them. We are arguing that during Menelik, Haile Selassie, or even the Derg, indigenous peoples might have been marginalized in certain ways; yet some activists from these groups say that despite the marginalization, in certain ways, they had it better back then. They say that since the state never came to us and there were no Kebeles in our area, we were living indigenous ways of life and indigenous laws were being applied. It is today that the Ethiopian state has reached us and war crimes are being committed against us. But at the same time, we now see the education system and the court system accepting and using our language and promoting our culture, and our children are no longer prevented from getting government jobs in their own land, etc.

Finally, I would like to point out that one of the contributions of our paper is methodological. Let me exemplify this by a personal experience, a story about telling a story that I had experienced a few years ago. I was talking to an Ethiopian, probably an Ethiopianist, who was a prominent pro-democracy advocate. He was unaware of the atrocities that Juwera was presenting here. Being a pro-democracy advocate, he ought to have known of the war crimes and crimes against humanity committed in the late 2000s in the Somali Regional State.

Anyway, I started telling him stories of repression and violence, and while I was in the middle of describing the rape of hundreds of women, he interrupted my storytelling with "but, but, but, those people are secessionists." He was not a government official or someone in power. He was, in fact, an individual opposing

the government and committed to exposing the government's human rights violations. But not only was he unaware of this big chunk of human rights history that took place in this marginal space—and despite knowing so much detail about other places—he still had internalized a readymade narrative that automatically stopped him from listening to the story of suffering I was telling. Everything I had to say about them was about “those people,” which shuts down even his ears. This kind of epistemic violence is not captured by legal methodology. The law is still important, it encapsulates and captures power relations and has a self-reproducing capacity. The problem is that the legal methodology that focuses on legal provisions captures only a fraction of the story and cannot be used to explain the lived experiences of the communities. This is especially true in the case of Ethiopia, which has really good laws—including a pro-rights Constitution—that are not respected. There is another set of unwritten rules that are consistently and predictably implemented, and everyone knows about them—everyone knew what would happen if you spoke against the government, if you didn't pay a bribe when arrested, etc. So, why should lawyers be unable to capture some of that reality? This was an issue I tried to play around with using a combination of legal realism and some sociolegal approaches to law. My collaboration with Juweria has brought an epistemic framework that may be able to capture the reality and lived existence of minorities and indigenous groups.