Secessionism, Federalism and Constitutionalism in Ethiopia

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On the morning of 4 August 2018, troops were seen taking over key positions in Jijiga, a capital city of the State of Somali, one of the constituent units of the Ethiopian federation. Heavily armed military vehicles were stationed outside the state parliament, the offices of state government and the state TV station. It was not an invasion by a foreign force. It was a federal intervention.

Federation in name only

Federal interference in Ethiopia is the rule, not the exception, particularly in Somali. Numerous state presidents have been appointed and removed at the whims of the federal government. This is, however, the first time that the federal government had to send its army not to control unrest and 'public disturbance' but to impose its will on a state government.

In the twenty years of Ethiopian federalism, there has not been a single reported case of intergovernmental dispute. Ethiopia might have a federal constitution but it is not, strictly speaking, a federation. The Ethiopian People Revolutionary Democratic Front (EPRDF), the ruling coalition party, controls every state government and every seat of the federal and state parliament. Any dispute between the state and federal government or between state governments is addressed through the party channel. More importantly, democratic centralism, the cardinal operating principle of the ruling party, required that decisions made by the executive committee of the ruling party are followed and implemented both by federal and state officials.

But things are changing quickly in the Ethiopian federation. It started almost four years ago when the youth in Oromia, one of the largest states of the federation, took to the street protesting against the Addis Ababa Master City Plan, which they believed is part of a policy to drive the Oromo out of the capital city, taking their lands and threatening their cultural survival. It quickly morphed into a protest against the domination of the Tigray People Liberation Front (TPLF), one the four parties that form the EPRDF. It did not take long before this fault line divided the ruling party itself, releasing the tension that was simmering within. The new political reality quickly led to the displacement of the TPLF as the most influential member of the coalition by an alliance between two other members which claim to represent the two largest ethnic groups in the country, the Oromo and the Amhara, and led to the emergence of the Oromo Peoples Democratic Organization as a major player in the coalition and its leader, Abiy Ahmed, as the leader of the coalition and the Prime Minister of the country.

The orderly way in which the EPRDF handled the transition of power within itself prompted some to admire 'the resilience of the party as an institution'. That might now turn out to be a premature assessment. Or perhaps the developments that ensued following the appointment of the new Prime Minister might have disrupted the way the party operates. But the cracks within the ruling party are more visible than ever. Democratic centralism has been dying slowly. The Tigray state government, which is controlled by a party that is a member of the ruling party, has openly condemned the actions of the federal government in Jijiga. In a public statement, it characterized the federal action as a 'irresponsible and illegal use of force' that threatens the federal system, and called for the immediate halt of the actions.

Federal Intervention

The federal constitution and law allows federal interventions in three particular cases. The first, which may include the deployment of federal police and National defense forces, is the deterioration of security situation in the state. This, however, can only happen upon the request of the state government. Violations of human rights can also be used as a ground for federal intervention. Although the request or consent of the state government is not a requirement for federal intervention under such conditions, the federal intervention is limited to giving directives to the state government to arrest the violations of human rights, and does not involve the deployment of federal forces.

The ground that gives room for a more extensive form of federal intervention is when there is a threat to the constitutional order. The failure of the state government to comply with the directives of the federal government to stop the serious violations of human rights and bring those responsible to justice is regarded as an act that endangers the constitutional order and warrants federal intervention. But it goes beyond that and includes armed uprising, disturbance of peace and security of the federal government as well as resolving a conflict between state by resorting to non-peaceful means. It also includes any activity or act that is 'carried out by the participation or consent of a regional government in violation of the Constitution or the constitutional order'. What makes this federal intervention extensive is also that it does not require the request or consent of the state government and includes the deployment of federal forces. At the same time, this is an intervention that can only happen with the blessing of the House of Federation, the second chamber of the Ethiopian federal parliament, that also supervises the intervention once it takes place.

The Jijiga Fiasco

When the federal government ordered its army to take over key positions in Jijiga, it was clear that it was not doing so upon the request of the state government. Although the state of Somali is not known for peace and stability, there was also no reported case of armed uprising or disturbance of peace and security of federal government. What the unconfirmed reports present as a trigger for the actions of the federal government is the decision of the state government to declare secession from the federation. Assuming this is true, the question is whether a declaration of secession amounts to a threat to a constitutional order.

Perhaps, in a country like Spain where the autonomous region of Catalonia declared independence, one can have a debate as to whether that amounts a to a threat to the constitutional order. But Ethiopia is not Spain. It is a country that has constitutionalized secession. So, when a council of state government gathers to debate and even decides to declare secession from the federation, it is exercising a constitutional right. It is not posing a threat to the constitutional order. After all, there is long way to go before effecting secession. The constitution outlines a number of conditions that must be fulfilled before a majority vote in a referendum, let alone a declaration by a state council, leads to the creation of an independent state. There was no indication whether the state government had decided to ignore those procedural requirements and declare secession unilaterally. If that was the case, perhaps that would have posed a threat to the constitutional order and justified federal intervention, even then only with the blessing of the House of Federation. But still there is no indication that this was the road the state government opted to take.

Perhaps the federal government should have allowed the council to proceed with its deliberations, if indeed there were any. Perhaps the federal government should have waited until the state government makes its intentions known to the public. Even in a country like Spain, where the constitution emphasizes the indestructibility of the state and does not recognize secession as a constitutional right, the parliament of Catalonia was allowed to make its views known. Only after that the Spanish government invoked the Constitution to take over the administration of the region and arrest those responsible for committing what the Spanish government regards as the Catalan government's "conscious and systematic rebellion and disobedience". Perhaps that is the road that could have

been taken in Ethiopia as well. It was only after the federal government managed to convince or force the President of the state to resign that the federal government declared that the National Defense Forces have taken over the state upon the request of the new Acting President of the state. Clearly, it was an attempt by the federal government to attach a badge of constitutional federalism to its actions that were already underway.

Somali is a state where the actions of the federal government are seen with suspicion. Political integration of this region in the Ethiopian state remains to be, to say the least, tenuous. To remove the leader of the state, however unpopular that government might be, only adds to the narration of political marginalization and continuous domination by northern rulers imposing their will on the Somali people. Given the recent conflicts that claimed the lives of many along the Oromo-Somali border, one could also easily interpret the actions of the federal government as part of an Oromo war against the Somali people. It is no surprise that some of the footages from the riot and protest in the city show some residents chanting 'Down Down Oromo'. And, of course, the state government commands a heavily armed force of not less than 20,000 special police officers, in the volatile border area of the horn of Africa.

A negotiated political solution would have also helped the country avoid the death and destruction that followed immediately after federal troops moved to control key institutions of the state government. It would have also given the federal government enough time to take, as a measure of last resort, a comprehensive action that considers not only the need to take control of key public institutions but also the safety of the residents of the state. The seemingly non-committal and ambivalent intervention of the federal government has given supporters of the state government space and time to incite and mobilize local youth against the inhabitants of the state that are not ethnic-Somali.

Towards an era of intergovernmental relations

Given that a new dispensation that promises democratization and respect for rule of law is on the horizon, the Jijiga situation was an opportunity to show that decisions and actions of the federal government are guided by constitutional federalism and that the days of pseudo-federalism are gone. And there are enough indications that Ethiopians now live in an era when they must take the federal experiment seriously. Ethiopians are no longer living in a country that is governed by a ruling party that religiously follows democratic centralism. A cacophony of competing voices is coming from the ruling party. The best evidence for that comes from the state of Tigray, run by a political party that was, until recently, an influential member of the ruling party, and is now demanding the federal government to respect the constitution. With the coming of democratization, this will likely be the norm as the federation will inevitably be characterized by political pluralism. When that happens, the intergovernmental disputes that are already emerging are likely to be louder and more frequent.

At the same time, the same developments mean that Ethiopians are also heading to an era when the party channel is no longer available to manage intergovernmental disputes. That could be because there is no longer a ruling party that is able to enforce democratic centralism but different political parties that control federal and state governments. Therefore, intergovernmental relations will have to be managed outside the party structure, through institutions and processes established by law or ad hoc, informal and based on the will of the parties involved. The important point is that a culture of intergovernmental relations emerges as one of the principles that guide the operation of the federation. That also helps to imbue the federal system with a culture of dialogue and negotiation. That way, the federal government will avoid sending the national army to the capitals of state governments to achieve its goals, however legitimate those might be.

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