

The Impact of the Inclusion of Secession Clause in the Federal Democratic Republic of Ethiopian Constitution on the Prospect of Ethiopian Federation

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Abstract: The ultimate purpose of any constitution in either granting or denying constitutional secession right should be maintaining the unity and territorial integrity of the state. Granting constitutional secession right will have both benefit as well as a cost. To reap the benefit, constitutional secession rights should be designed wisely and skillfully in a manner they can prevent secession and maintain the unity and integrity of the state. The Federal Democratic Republic of Ethiopian constitution is among very few constitutions in the world that included secession right in their constitution. This article vehemently claims that carefully designed secession right in constitution can help to effectively prevent secession and disintegration of a multi-national state. However, the secession right as it appears in the current Federal Democratic Republic of Ethiopian constitution cannot prevent secession, if the right is going to be operationalized. The clause in the constitution lacks the capacity of making secession difficult. Similarly, repealing the secession right out of the Federal Democratic Republic of Ethiopian constitution without bloodshed seems very difficult. Hence, the only option is revisiting and amending the clause and the procedures of secession in which it can wisely and effectively sabotage and prevent secession and disintegration while maintaining the unity and territorial integrity of the Ethiopian state.

Key Words; Secession, constitution, Ethiopia, Impact

1. Introduction

To handle diversity and maintain the territorial integrity of the country, Ethiopian regimes of 20th century have used different approaches. By earlier regimes, centralization and creating one national identity for multi-national and multi-religious country of Ethiopia was inaptly pursued by different monarchic regimes. Later on, the Dergue regime that assumed political power in 1974 through popular revolution pursued its own strategy of handling diversity under the framework of its ‘socialist’ ideology. In both earlier systems, let alone granting constitutional secession rights, taking secession as an option was more often than not treated as a taboo by the ruling elite.

The incumbent regime, however, has been attempting to maintain the integrity of Ethiopian state on the basis of multi ethnic federalism, which anomalously extended the right of “nations, nationalities and people’s” of the country up to secession.¹ As a

¹ Alem Habtu “Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution”. *Publius*, 2205, Vol. 35, No. 2, pp. 313-335 Published by: Oxford University Press

result, the Federal Democratic Republic of Ethiopia (FDRE) constitution has granted secession right in a clause that talks and enumerates the procedure of secession.

Review of available literature on the topic under enquiry reveals the presence of plenty of scholarly work on the issue. However, literature on the secession right of the FDRE constitution are more often than not politically motivated and biased towards the political outlook of the respective writers. The existing literature on the secession right of the FDRE constitution argues either to drop the sub-articles as a whole or to take it as it currently appears in the constitution. These extremely opposite assumptions have not yet considered other options which are important to preserve the unity of Ethiopian state. By taking in to consideration the aforementioned gap on the existing literature, this article attempts to critically analyze and evaluate the impact of the inclusion of the secession clause in the Federal Democratic Republic of Ethiopian (FDRE) constitution on the future fate of Ethiopian federation.

The author argues, carefully designed secession right in constitution can be used effectively to prevent secession and disintegration of a multi-national state. But the secession clause of FDRE constitution lacks a lot to do so. Hence, the article needs little modification on its procedures, in which the secession right of the constitution could serve to effectively and wisely sabotage and prevent secession.

As a source of data, this work used review of the existing academic literature and government documents. The article is organized in to five sub-sections. The first sub-section deals with introductory and some methodological issues. In its second sub-section the article sheds light on conceptual and theoretical roots by which the rationale behind including and excluding secession rights in a constitution could be critical evaluated. Then in its third sub-section, the article assesses the secession clause of FDRE constitution. In its fourth sub-section as its major concern the work emphasizes and briefly analyze the impact of secession clause of FDRE constitution on the future fate of the country. Finally, concluding remark is briefly forwarded.

2. Conceptual and Theoretical Framework

Secession is the act of formally withdrawing from a political entity or union and establishing new independent state. On the other side of the coin, secession also refers severance of central governments control over a territory.² Currently secessionist movements are increasing in number and referendums on the issue are becoming frequent in the world. However, there is no clear provision explicitly explaining secession and the way it can be undertaken under international law. Vienna Convention of 1978 which deals with state succession bypassed the issue of secession. As a result, there is controversy both over the existence of a secession right, and over the mechanisms by which it might be operationalized.³

Different literatures reveal that constitutional secession rights are rare in the world. It is believed that the objective of all constitutions in giving or denying secession right should be to maintain the territorial integrity and unity of their respective states. Accordingly, some constitutions declare their states to be indivisible and explicitly prohibit secession to safeguard their territorial integrity. On the other hand, very few numbers of constitutions contain explicit secession clauses such as the 1983 Constitution of St Kitts and Nevis and the 1994 FDRE Constitution.⁴

Broadly, as Buchanan in his work "Theories of Secession" elaborated, secession can be divided in to two major categories; constitutional secession and consensual secession. Constitutional secession is secession with constitutional backing. Here the constitution may specify the procedures and the way secession could be implemented. On the other hand consensual secession is a

² Lakhani, Amsal. "The Factors Influencing Secession: an examination of economic marginalization and common identity as elements of a contemporary secessionist movement". 2014 (Unpublished)

³ Cismas, Ioana. "Secession in Theory and Practice: the Case of Kosovo and Beyond." *Goettingen Journal of International Law*, 2010 Vol.2, No. 2, PP 531-587

⁴ Andrew Shorten. "Constitutional Secession Rights, Blackmail Threats and Multinational Democracy". Department of Politics and Public Administration. University of Limerick, Ireland, 2010

negotiated secession; this happens when the constitution does not say anything about secession. This typology of secession does not consider secession as of a right or as a best alternative of managing diversity rather it considers secession as a last resort.⁵ From this it can be deduced that the occurrence of secession is always a possibility and independent of constitutional right. It can occur whether the constitution grants it as a right or not.

There are two broad theories of secession: the choice theory and remedial theory. Dealing in detail about the theories of secession will be beyond the scope of this article. To see briefly, however, choice theory asserts that certain groups can have a general right to secede even in the absence of any injustice. Choice theory does not limit legitimate secession to a means of remedying injustice.⁶ On the other hand, remedial theory asserts that a group has a general right to secede if and only if it has suffered certain injustices for which secession is the appropriate remedy as a last resort. This theory places significant constraints on the right to secede.⁷

3. Secession in the FDRE constitution

Many agree that in the world out of currently existing constitutions, it is the Ethiopian constitution which is exceptional by allowing the right to secede for all “nations and nationalities and people’s” of the country. The country has constitutionally expressed the right of secession along with concrete procedural rules on how to secede.⁸ This has its grounds within the ethnic based political arrangement which the incumbent regime has adopted since 1991.

Many argue that the current regime’s ethnic based political arrangement has stem out of Marxist-Leninist ideology and its conception of “national question”. This concept was introduced to Ethiopia in mid-1960 by the Ethiopian Student Movement. But beginning from that time the right of self-determination up to secession became the organizing principle and *raison d’être* of ethno nationalist organizations that later on formed the government of the Federal Democratic Republic of Ethiopia (FDRE).⁹

Article 39 (1) of the 1994 FDRE constitution clearly stated that “Every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession”. The constitution in explaining the procedures for secession has further stated that

..... secession of every nation nationality and people in Ethiopia is governed by the following procedure: (a) When a demand for secession has been approved by a two-third majority of the member of the legislative council of any nation, nationality or people; (b).... (C) When the demand for secession is supported by a majority vote in the referendum...¹⁰

Critical glance at the procedures of secession in FDRE constitution reveals that the requirements for secession are simple and easily achievable. Unlike other few similar constitutions, in the Ethiopian constitution secession requires only simple majority vote of the people. When the constitution of other few countries is considered, however, more often than not two-third majority vote of the people is a requirement for secession to take place. In which secession was attempted and failed because of this relatively strong criteria set by their constitution. By putting strong criteria, as it is elaborated below the constitution of Saint Kitts and Navis was used as a choking mechanism which successfully prevented secession and disintegration of the state.¹¹

⁵ Buchanan, A. “Theories of Secession”. *Philosophy & Public Affairs* 1997, Vol.26 No.10, pp. 31 – 61

⁶ Alexander Pavkovic. “Secession as a defense of political liberty: A liberal answer to national demand”. *Canadian Journal of Political Science*, 2004, Vol.37, No.3 PP 695-713

⁷ Buchanan, A. “Theories of Secession”. *Philosophy & Public Affairs* 1997, Vol.26 No.10, pp. 31 – 61

⁸ Andrei Kreptul. “the constitutional right of secession in political theory and history”. *Journal of Libertarian Studies*, 2004, Vol. 17, no. 4, pp. 39–100

⁹ Alem Habtu. “Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution”. *Publius*, 2005, Vol. 35, No. 2, pp. 313-335 Published by: Oxford University Press

¹⁰ The Federal Democratic Republic of Ethiopian Constitution, 1994

¹¹ Andrei Kreptul. “the constitutional right of secession in political theory and history”. *Journal of Libertarian Studies*, 2004, Vol. 17, no. 4, pp. 39–100

By considering the easily achievable criteria set by the constitution, the author argue that the secession clause of article 39 of FDRE constitution has no capacity to minimize the chance of secession, if the right is going to be operationalized.

4. The Impact of the Inclusion of the Secession Clause in FDRE constitution on the Future Fate of Ethiopian Federation

The secession clause of FDRE constitution is probably the most controversial provision of the constitution. That is why there is no agreement among scholars, politicians as well as the wider public on the significance as well as the impact of this constitutional secession right. Some scholars and politicians emphasizes on the little claimed benefit of the right, while others thoughtlessly opposed the secession right and called for repealing the sub articles as a whole.¹²

But this short article argues that the inclusion of the secession right in a given constitution, depending up on the manner it was designed, will have its own pros and cons. However, if it is not carefully stated and skillfully designed to prevent the possible secession attempt its disadvantage over weights and will pose danger for the unity and territorial integrity of the state.

In Ethiopian context repealing the secession right out of the constitution is difficult if not impossible. Because this may aggrieve some ethno-nationalist political entities with secessionist aspiration which may in turn lead to undesirable bloodshed.

So since the unity of the state should not be cemented by the bloodshed, the only option is to modify the procedures of secession put on the FDRE constitution of Article 39. Unless this little amendment with huge significance is not made the secession right granted to all nations and nationalities of the country as it appears in the FDRE constitution cannot prevent secession. It seems that the problem it posed and the danger of disintegration is looming a head and waiting time to erupt once again to cost the country the invaluable.

4.1 The Pros of the Secession Right in the FDRE Constitution

The only advantage of specifying secession right in a multi-national state's constitution is to wisely sabotage and prevent secession and disintegration of the state. That can be only done by providing a number of procedural hurdles that secessionists would have to meet in order to secede. By doing so Secession can be made more costly and bring the chance of disintegration close to zero. This helps to democratically reduce the chance of ethnic based violence and successfully prevent secession and maintain territorial integrity of a state. In such occasion the existence of secession right in the constitution is important to sabotage the secession process itself and will contribute to maintain the unity and territorial integrity of the state.¹³

For instance, as Kreptul in his work (2004) elaborated, in 1998 the other only state that specified secession right in its constitution, St Kitts and Nevis conducted referendum for the separation of two tiny islands. In which majority but less than two-third Nevis voted for secession. So had St Kitts and Nevis constitution put simple majority vote of the people as a requirement to effect secession, Nevis would have been seceded from St Kitts. Here it can be easily understood that the requirements set for secession in the constitution are important and should not be underestimated.

The proponents of including secession right in Ethiopian constitution argues that effective exit rights in the constitution underscore the voluntary nature of the federal system and protect minorities which can safeguard the territorial integrity of Ethiopian state. But the reality seems slightly different. Because the constitution's secession right set weak and easily attainable requirements. The problem arises when the right is going to be operationalized. So the impact of the inclusion of the secession right in such a way may cause disintegration of the state.

4.2 The Cons of the Inclusion of the Secession Clause in the FDRE Constitution for the Future Fate of Ethiopian State.

¹² Alem Habtu. "Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution". *Publius*, 2005, Vol. 35, No. 2, pp. 313-335 Published by: Oxford University Press

¹³ Andrei Kreptul. "the constitutional right of secession in political theory and history". *Journal of Libertarian Studies*, 2004, Vol. 17, no. 4, pp. 39-100

Historical experience suggests that secessionist politics tends to be a bloody and miserable business. That is why some scholars argued that whether secession might be justified or not, constitutions should not include a right to secession. Putting such rights in the constitution will increase the risk of ethnic struggle and creates dangers of blackmail.¹⁴

In Ethiopian context, the author argues, the secession right granted by the 1995 FDRE constitution has recklessly put simple and easily achievable requirement. By considering this, critics of the constitution argued that it is an invitation for disintegration of ancient and un-colonized African state. The right to secession should not be treated neither as the best alternative of accommodating diversity nor an indication of a working federation or democracy. Accommodating diversity may not necessarily require the granting of an unconditional right of secession. Because many countries are successful in accommodating the interests of minority nationalities without constitutionally putting the road map of secession and allowing them to secede.¹⁵ But, convincingly many argue that the current Ethiopian government's emphasis on secession right and considering it as one pillar of the state policy will defeat the federal principle itself.

On the other hand, though it's aimed to appease ethno-nationalist groups, it seems the right has not satisfied the ethno-nationalists within Ethiopian state. Plethora of organized ethno-nationalist political entities supports the constitution's secession clause. However, they claim that it is not yet operationalized. In contrary, the 'pan-ethiopianists', by considering the constitutional secession right as a threat to territorial integrity and unity of Ethiopian state, they strongly oppose the constitutionally granting secession right. From this it can be understood that the secession right of the FDRE constitution is not able to escape criticism from both those who allege to drop the secession clause out of the constitution as well as ethno-nationalists that are waiting for the operationalization of this constitutionally granted right to secede.¹⁶

5. The Way Forward

As it has been discussed so far, depending up on the way it is devised granting constitutional secession right will have two different consequences; one will be benefit and the other will be invaluable cost. This article found that, to effectively use the benefit of including the secession clause to maintain the unity and territorial integrity of the Ethiopian state, the constitutionally granted secession right needs amendments. Modifying the article's procedures of secession helps to wisely prevent secession and can bring the chance of disintegration of the state close to zero.

The first minor amendment should modify the requirements of secession. That means, the simple majority vote of the people should be changed to two-third majority vote of the people as a requirement of secession. In addition to this, it is still possible to further strengthen the secession right and use in favor of national unity by making secession impossible, costly and unachievable for the seceding unit. That is, the constitution should clearly specify secession to recursively use the majority vote principle separately over all sub units of the territory claimed by a separatist. For instance, if the majority of "North" of a state votes for secession, the vote of sub-units should be considered and respected. That means, if the majority of "North West" of "North" votes not to secede, the seceding unit should not be allowed to take this part of its territory into independence.

This article further argues elaborating further the procedure of secession in the FDRE constitution incorporating the above two issues may help the secession right to prevent the unity and territorial integrity of the Ethiopian state.

¹⁴ Cass Sunstein . "Constitutionalism and Secession". The University of Chicago Law Review, 2008, Vol. 58, No. 2, pp. 633-670.

¹⁵ Ibid

¹⁶ Alem Habtu. "Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution". *Publius*, 2005, Vol. 35, No. 2, pp. 313-335 Published by: Oxford University Press

Conclusion

The secession clause of FDRE constitution is the most controversial provision of the constitution. Some argued in support of it while others opposed it and are repeatedly calling to totally repeal the article out of the constitution.

The author, however, argues that the secession right as it appears in the current Federal Democratic Republic of Ethiopian (FDRE) constitution cannot prevent secession, if the right is going to be operationalized. The clause in the constitution lacks the capacity of making secession difficult. Similarly, repealing the secession right out of the constitution without bloodshed is very difficult. So the only option is amending the clause in which it can prevent secession and disintegration of the Ethiopian state. Hence, the constitutional architects who designed such constitution for Ethiopia should revisit the constitution and make important but little amendment on the procedures of secession. Unless this amendment is not skillfully done, the extension of the right of self-determination up to secession in the FDRE constitution poses more problem on the future fate of Ethiopian state than it solves

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