

Freedom of Association, Ethnicity, and the Transition to Democracy¹

By *Daniel Haile*

I. Introduction

The question of whether there can be democracy in Africa is one that is asked by most people. The question is being asked petulantly, plaintively, pathetically, hopelessly, optimistically, but certainly justifiably. Democracy has meant and continues to mean different things to different people. Although it is not our intention to catalogue all of these, since some misconceptions can have serious impact on the definition of one's goals and the subsequent strategies for the achievement of that goal, let us try to momentarily pose and clarify the major ones.

Democracy has been viewed by many African governments as a set of established institutions that only need to be put in place. As a result the thrust of their efforts has been directed at transplanting these institutions and incorporating them into their constitutions. Even though such incorporation does not in itself guarantee the desired result, it is valuable in the sense that its incorporation may make the way of the transgressor and the tyrant more difficult. The incorporation, so to speak, may serve as the outer bulwark of defence. It is, however, very doubtful whether the incorporation of such institutions in the constitution of many African countries has even served this minimal value. This static conception of democracy has also lead many governments in the continent to view democracy as a highly structured, monolithic and an absolutely perfect system, which certainly it is not.

If serious and realistic strategies for the creation of democratic forms of government are to be devised, it is essential to shed some illusions and to have a clear conception of what democracy is. In my view, democracy should be viewed not merely as a set of established institutions, but as a process whereby the average person can be empowered, his voices be heard and his will can be enforced. Rather than being static the democratic process is a dynamic process and one that is far from being perfect. The democratic form of government should be accepted with the full knowledge that it is an imperfect system with

¹ The article is based on an address given to the World Conference on Democracy, organized by the National Endowment for Democracy in Washington, D.C., on April 26-27, 1993.

an in-built self-correcting mechanism. The pluralistic political system which is one of its major underpinnings, in my view, is its in-built mechanism and its best guarantee against abuse of power and for holding public officials accountable to the citizens.

The misconceptions about democracy were raised at the outset not because of any belief on our part that they constitute the most daunting obstacles to democracy but to set the record straight and to abate rosy expectations and minimize potential frustrations. In terms of gravity, there are various economic, socio-cultural as well as political and legal impediments which pose a serious challenge to the flourishing of democratic ideals and would certainly rank higher up the ladder. The low level of economic development and the consequent abject poverty which is prevalent throughout the continent is not only an ideal breeding ground for dictatorship and totalitarianism, but it has also served as the *raison d'être* and justification for the continued existence of such systems. It has often been argued that the low level of economic development and the need for rapid and accelerated growth necessitate strong, if not dictatorial regimes.

There is no doubt that the drive for development is closely intertwined with the idea of rights. Development is often justified as necessary to make it possible to respect and ensure individual rights. Political development is essential to assure the human right to participate in self-government in one's own country. Economic development will enable the country to better guarantee the economic and social rights of its inhabitants. Social development is essential for individual development which is necessary to enable individuals to know their rights, to claim them, to realize and enjoy them. But the relationship between development and the recognition of individual rights which is at the root of democracy is not of one excluding the other, but rather of one complementing the other. In fact the common assumption that one must choose between societal development and individual rights has not been proven or even adequately examined. On the contrary thoughtful leaders committed to development are of the view that development and human rights are symbiotic not adversary. It is recognized that today there can be no freedom, no dignity without development; it is also increasingly recognized that there can be no authentic development without freedom and democracy.

Traditional attitudes towards individualism, communalism and authority do not seem to be conducive to democratic forms of government. Traditional societies have conceptions of the good that exalt not the individual but some larger unity: the village, the tribe, the generational chain and de-emphasize the individual. They also tend to exalt order not freedom, harmony not adverse claims, authority not equality. Such attitudes tend to lead to the unquestioning obedience of authority and apathy.

Active participation by individuals in the "affairs of the state", as political matters are usually referred to, is also not an ideal that is espoused by many "modern" governments in

the continent. It is true that many constitutions give formal recognition to the right to associate. However, in most instances such a right is so encumbered and limited by other competing national interests, that what is left a mere skeleton of the right. Moreover, as practice demonstrates even such skeletal right has more often been honored in its breach than in observance.

Traditional attitudes coupled with the reluctance of most "modern" governments to encourage citizens' participation in their own governance have stifled the creation of legitimate organized dissent and external restraint on the government in power. This lack of civil society is perhaps one of the most serious impediments to the transition to democracy, and my aim in this short address is to examine the mechanisms utilized by the 1991 Transitional Period Charter of Ethiopia in order to create such civil society. Before I proceed to do so, however, allow me to give you a very brief background.

II. The Ethiopian Situation

Ethiopia is a predominantly peasant society, overwhelmingly illiterate, has little experience with the formal structures of democratic government, exists in a poor state of economic development, and is just emerging from years of war and famine. Ethiopia is also a country where legend and history, myth and reality have become so intertwined that the mere sifting of one from the other has become an intellectual nightmare. The country has been and continues, in some circles to be depicted as an island of christianity despite the glaring fact that three of the major religions: Christianity, Islam and Judaism exist side by side. Even though it is a country which is populated by peoples of Semitic and Kushitic origins and is a country with approximately 80 distinct ethnic groups and more than 70 different languages are spoken no serious attempt to either study or deal with this diversity and heterogeneity have been made.

The existence within a society of groups that differ ethnically, culturally, religiously, and linguistically must of necessity create fear of dominaton by one group of the others. But despite this reality, during the last regime nationalism (ethnicity and/or any other form of regionalism) was considered as the most dangerous rival of marxism, and consistent with this awareness, whatsoever was considered to be nationalism was persecuted with all the instruments of an authoritarian regime. Recognition and representation of collective identities were conceived as a disruption of the one party system. This policy resulted in protracted wars of "liberation" which enormously widened the availability of weapons and intensified the intra-ethnic mistrust and violent conflict. As a result of all of the above there is not only a dearth of data but an intense level of emotionalism fogging the atmosphere and hindering serious and dispassionate examination of most major politico-legal issues, including the one at hand.

In July of 1991, less than two months after the ouster of president Mengistu Haile-mariam, whose marxist regime governed Ethiopia since 1977, by the forces of the Ethiopian People's Revolutionary Democratic Front (EPRDF) political groups met to draft a new national charter. The Democratic and Peaceful Transitional Conference of Ethiopia established the Transitional Government of Ethiopia whose principal mandates were to prepare a new constitution and schedule national elections within two-and-a-half years. The Charter adopted by the conference in which virtually all groups opposed to the previous regime participated made the 1948 UN declaration of human rights part of the supreme law and unequivocally declared that the rights of individuals are fully respected without limit. As the preamble of the Charter indicates, its ultimate objectives are the creation of social harmony, stability, unity and democratic order. Since the demands of stability and unity may necessitate limitations on the creation of a democratic order, while demands of a democratic order may lead to social disharmony, conflict and disintegration these objectives are more than often competing goals. A sound policy is thus one that properly balances these conflicting interests.

In its attempt to attain the above stated goals, the Charter has given recognition to new rights and has strengthened others. We shall consider two of these, namely, the right to organize political parties and the recognition of collective rights of cultural communities and consider their conceptual validity as well as their impact and effectiveness in the creation of a civil society.

1. The right to form political parties

The charter recognizes the right to associate in general and the right to organize political parties in particular. Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of liberty, and it is immaterial whether the beliefs sought to be advanced by an association pertain to economic, political, religious or cultural matters. The right to organize political parties would thus be subsumed within the general right to associate. Despite this truism, however, the transitional period charter, after granting the right to associate, proceeds to state in article 1(b) that every individual has the right to organize political parties as long as this does not infringe upon the legal rights of others, presumably to underscore the novelty of political parties. The recognition of the right to organize political parties is not only novel, but the fact that the right has not been riddled with vague qualifiers is astounding. As noted earlier, the legal rights of others is the only ground for the limitation of the right. Grounds such as national security, public safety, public welfare and other national interests and the standard vague limitations clause "in accordance with the law" are noted by their absence.

As political pluralism and civil society flourish where the right to associate is fully respected and associations thrive as independent bodies representing specific interests and aspirations of their respective members, this liberal freedom would normally be a welcome innovation.

2. *Recognition of collective rights*

The Transitional Period Charter ceded substantial powers of self-determination to cultural communities in Ethiopia. National groups were accorded extensive rights of self-rule which according to subsequent legislation include vast authority over language, taxation, the economy, education and foreign humanitarian assistance. The provisions of the Charter were designed to empower national groups by decentralizing authority and by creating a federal structure of government. Article 2 of the Charter states that the right of nations, nationalities and peoples to self-determination have been secured. In this respect, every nation, nationality and people has the right to:

- a. protect and preserve its identity, enrich its culture and history, and use and develop its language;
- b. enjoy fruitful participation in the central government freely and without any discrimination in order to administer their own affairs within their geographical areas;
- c. implement its rights to self-determination, including the right to independence, when the nation, nationality and people concerned feels that the above rights have been banned, trampled upon or interfered with.

Earlier constitutions and laws recognized the individual human being as being the sole subject of civil rights. Cultural communities were not deemed to be subjects of such rights and, hence, were excluded from the coverage of the constitutional protection. The Transitional Period Charter, on the other hand, is built on one important premise and foundation, the securing of freedom, equal rights and self-determination for all peoples and has thus introduced a new dimension to the protection of human rights. According to the Charter not only are members of the cultural communities protected from discrimination and granted equality, but the cultural communities themselves are granted the right to existence, the preservation to cultural identity and self-determination including secession.

III. Conceptual Analysis

The introduction of these rights by the Charter, a dramatic departure from earlier constitutions, has raised several questions about their conceptual as well as their practical soundness. In order to examine the conceptual validity of the right to organize political

parties, we shall explore some principles of constitutional law, while international norms and standards will guide us as to the collective rights granted to cultural communities.

1. The right to organize political parties

The right to organize political parties is given to all individuals irrespective of their status. In other words it is given to everyone, irrespective of whether he or she is a member of a dominant ethnic group or a minority. Even though there are differences related to the capabilities of individuals in utilizing the right, at the conceptual or theoretical level granting such right is neither discriminatory nor does it violate the equal rights of citizens, and, hence, appears not to violate any constitutional principle. Even though according to the Charter every individual is given the right to organize political parties, the procedures and the pre-requisites for exercising such right have not yet been specified. Since such procedures can be tilted to favor certain types of political organization, one will have to wait and see what these procedures provide, before he can fully vouch for their constitutionality.

Moreover, enforcement of the law can also result in discouraging the formation of certain types of political organizations. Selective enforcement practices and harassment techniques abound. They include:

1. Discriminatory use of existing laws to halt an organization's activity.
2. Laws requiring organizations to submit to registration requirements difficult if not impossible to fulfill.
3. Governmental investigations to harass an organization's leaders, sequester its records, expose its members or present its activities in an unfavourable light.
4. Laws creating emergency powers to halt organizational activity deemed harmful to the interests of the dominant group in the state.

Given the ethnic, cultural and religious heterogeneity and the situation which prevailed prior to the assumption of power by the Transitional Government the probability that the organizational activities will follow ethnic and/or religious affiliation was very high. Given this reality and prospect it has been argued that it is conceptually and practically unsound not to impose additional restrictions on the right to form political parties. In particular strong feelings and some arguments for prohibiting the formation of ethnic based political parties have been presented.

Such a total ban, in my view, is neither desirable nor feasible. In general any action which may have the effect of curtailing the freedom to associate must have compelling reasons to justify such action. Even though the creation of ethnic based political parties is not risk free, their recognition and creation, however, need not and do not necessarily endanger

national unity or national security or even sacrifice national identity. Recent political history shows that it was their non-recognition which was the cause for the unnecessary fratricidal wars and misery, and thus a threat to national unity and security and not vice versa. The recognition of ethnic based political parties as part of the main stream political development by the mere fact that it will bring out such feelings into the open may assist in defusing their explosiveness. Open discussion and not sweeping real problems under the carpet can offer lasting solutions.

Secondly, even though associations may be categorized into economic, social or political such dichotomy is not water tight. A complete ban of ethnic based political parties would thus have a chilling effect on the freedom in toto. As was quite rightly observed, when some kinds of associations are prohibited and others are allowed, it is difficult to distinguish the former from the latter beforehand. In this state of doubt, men abstain from them altogether, and a sort of public opinion passes current, that tends to cause any association whatsoever to be regarded as a bold and almost an illicit enterprise. The specific aims and the objectives of the association rather than its categorization as political or economic are what one needs to look into and determine whether the association deserves the constitutional protection or not.

Giving recognition to ethnic based political parties, however, should in no way impede the formation of ethnicity blind, issue based political parties or impede the transformation of ethnic based parties into the latter. In light of the dominant prevalence of ethnic based political parties and the difficulty which issue based political parties are currently facing such parties may necessitate taking some form of affirmative action on the part of the government. Less stringent membership and other registration requirements for ethnicity blind or issue based political parties may be one form, but I am sure many others can be considered. Similarly, incentives should be offered for ethnic based political parties to form broad based coalitions. Tax exemptions and access to government facilities and funding can be utilized as incentives for this purpose.

2. Recognition of collective rights

In order to assess the conceptual validity of the collective rights granted to cultural communities, as stated earlier, we looked at international standards and norms as envisaged in international instruments and conventions.

The recognition of the individual human being as the subject of civil liberties was earlier the widely held view as evidenced by international human right instruments and constitutions of the time. The individual was, for example, the subject of the Charter of the United Nations and the Universal Declaration of Human Rights. The traditional approach was

that whenever someone's rights were violated or restricted because of a group characteristic – race, religion, ethnic or national origin, or culture – the matter could be taken care of by protecting the rights of the individual, on a purely individual basis, mainly by the principle of non-discrimination.

The international community became aware of the fact that the non-discrimination rule and the individual centered system alone were not enough to protect the rights of individuals as members of a group, and certainly not of the group as such. This was particularly evident in multi-ethnic, multi-religious or multi-cultural societies. This realization lead to the search for new approaches which culminated with the recognition of collective rights and the adoption of new mechanisms and machinery for the protection of minorities in public international law. Many international instruments nowadays solemnly proclaim the principle of equal rights and self-determination of peoples; whereby all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development, and every state has the duty to respect this rights.

Article 27 of the International Covenant on Civil and Political Rights in its attempt to provide minority protection provides that "in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their culture, to profess and practice their own religion, or to use their language".

The African (Banjul) Charter on Human and Peoples' Rights, which was adopted in 1981 and came into force in October of 1986, in paragraph 6 of its preamble states that "while fundamental human rights stem from the attributes of human beings and while their international protection is justified, it is above all the reality and respect of peoples' rights which effectively guarantee human rights".

The 1981 African Charter on Human and Peoples' Rights, containing the most complete catalogue, yet, of peoples' rights, provides for the following: the right of peoples to equality (art. 19), the right to existence, self-determination and the right of colonized or oppressed peoples to liberation (art. 20), the right to dispose freely of wealth and natural resources (art. 21), the right to economic, social and cultural development (art. 22), the right to national and international peace and security (art. 23), the right to a general satisfactory environment (art. 24).

Thus, the modern trend is the transition from the paternalistic notion of protection to the more general notion of rights inherent to the condition of some groups. The recognition of collective rights of cultural communities by article 2 of the Transitional Period Charter is thus in harmony with the international norms and standards. The only question that may arise in this connection is the extent of the rights granted to the cultural communities in

general and the right of secession in particular. The right to secede or what is generally referred to as right to self-determination in public international law seems to be consumed after a people has overcome a situation that may be described in the UN terminology as "colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation or domination". The application of this right in independent states is, to say the least, quite controversial.

IV. Impact

Even though it may be premature to fully assess the impact of the two fundamental changes noted above in the creation of a civil society, it is possible, even at this early stage, to make a few general observations.

Since the promulgation of the charter several political parties, human rights organizations and other interest groups have been formed or have surfaced into the open laying the basis for a civil society. By June 1992, the number of registered parties had multiplied to more than 100, even though less than a dozen enjoyed significant following. When one considers the fact that less than two years ago there was only one Marxist-Leninist party determining the destiny of the country, the development since the promulgation of the charter is quite encouraging. However, due to the fact that most of the political parties that have been formed or surfaced into the open are based on ethnic affiliation of the individual, many tend to view this as a regression rather than an encouraging development towards the creation of a civil society.

Such view is in our opinion erroneous for two reasons. First, having several parties, even some based on ethnic affiliation, is more conducive to the creation of civil society than having only one party or none at all. Secondly, it fails to recognize the fact that such parties can be transformed into broader issue based parties by the granting of appropriate coalition incentives.

The main reason offered by those who consider the proliferation of ethnic based political parties as a regression from civil society is based on the belief that such parties are potential sources of danger for the unity of the state. In support of this position they cite the increase in conflicts allegedly caused by ethnic hostilities. Many recent conflicts in the southern part of the country have been attributed to ethnic, tribal tensions. I am inclined to believe that an in-depth examination may reveal that the cause of the conflicts is not ethnicity, but rather a conflict between the center and the periphery which is dominated by the center. Where the economy, the army, the civil service and security are still dominated by people from the relatively developed north, conflicts of this nature are bound to flare

until the new structures are in place. Thus, while ethnicity may not be the essence of the conflict, it may have been an inflaming factor.

To a certain extent, this view may also be a reflection of the one mind set which characterized the last regime. The Marxist-Leninist ideology of the last regime mandated an ostracism of dissidents, and imposed the assumption that those who are ideologically different must be enemies and traitors. This mind set has probably survived, and ethnic based political parties now fill the same position that ideological dissidents did earlier.

Furthermore, we would like to point out that there is little causal relationship between the two fundamental changes noted above and the proliferation of ethnic based political parties.

Culturally distinct communities have always existed in Ethiopia. What is new is the new environment where there is growing conviction that the dignity of the individual cannot be fully respected, unless the values of the cultural community to which the individual belongs is affirmed. This new environment is not simply the result of the new rights recognized by the charter, but is the cumulative effect of various economic, social and political factors.

Even though it may sound very cynical, the dramatic proliferation of nationalist political organizations was under the prevailing circumstances to be expected. The imposition of cultural uniformity by means which at best can be described as paternalistic and at worst as dictatorial was bound to be shattered once the lid cover was lifted. The collapse not only of the regime, but its marxist ideology as well, created a vacuum, and nationalism was the apparent viable alternative to fill it.

Poor economic performance and waste by organs of the central government have lead to a total disillusionment with the maximalist government as the dominant engine of development. Blatant and open political corruption has already eroded public trust and confidence of the government and created greater awareness of the need of citizens' vigilance and the need for decentralisation.

It would thus appear that the recognition of collective rights of nations, nationalities, and peoples by the charter and the subsequent rearrangement of administrative units on essentially ethnic lines may, if at all, be guilty of legitimization, but not of initiating the process.

V. Conclusions

The June election of 1992 demonstrated the existing weakness in Ethiopia's civil society and democratic culture. The withdrawal of the Oromo Liberation Front (OLF) from the coalition government has denied the system of a fair and credible opposition. Even though civic organizations exist, they seem to lack coherent strategies for promoting citizen awareness. Intra-ethnic mistrust is the ugly reality whose existence must be recognized and must be dealt with. There is no magic wand which will make it disappear into the thin air. Sweeping it under the carpet and putting lids over such sentiments have resulted in unnecessary fratricidal wars and misery. Open discussion and actions directed at reconciliation must be given an opportunity, even if these efforts are not risk-free. Recognition of ethnic based political parties coupled with appropriate safeguards may assist in defusing their explosiveness and is thus worthy of trying.

The overall impact of the new rights envisaged by the charter, when viewed from the creation of a civil society, as stated earlier, is quite encouraging. However, one must recognize that there is no smooth royal road to democracy. The sooner that people accept the reality and accept the newly formed nationalist parties as legitimate social forces in the community, the less their need for asserting themselves by holding extreme positions, and the less tortuous the process of transition to democracy.

Freedom of Association, Ethnicity, and the Transition to Democracy

By *Daniel Haile*

The introduction of new democratic governments in Africa is closely connected with the question of whether there can be democracy in Africa and how it should be safeguarded.

Democracy is closely intertwined with development and with the overall situation of the society in which it is built up. The article gives an overview over the situation in Ethiopia regarding the development of a genuine respect for the ethnic, cultural and religious diversity of the country. It gives a closer look into how the right to form political parties and the recognition of collective rights are safeguarded in the 1991 Transitional Period Charter of Ethiopia.

After describing the Ethiopian situation, the article proceeds with a conceptual analysis of both legal concepts and comes to the conclusion that they are well balanced and soundly founded in the Ethiopian society and system.

The article, which is based on an address to the World Conference on Democracy in Washington in 1993, however, calls for patience in the evaluation of new concepts in a long process of a society, which has experienced unnecessary fratricidal wars and misery, in the evolution to a democratic system of government.

In a first overall evaluation of the Ethiopian transition process, the author considers the results to be encouraging.

Democratic Elections in Niger

By *Aïchatou Dodo*

The article describes the constitutional and legislative framework of elections in the Niger at the levels of the Presidency of the Republic, the Deputies to the National Assembly, District and Municipal Councillors and of referenda. The distribution of seats in the National Assembly and other details of the electoral process are explained with reference to the elections which took place in 1993. Finally, the article sets out the legal status of the political parties as well as the principal objectives and electoral symbols of the parties taking part in the present elections.