

The Enforcement of Federal Laws in States in Ethiopian Ethnic Federalism: The Deadlock between the Federal Government and the Tigray Regional State on the New Law of Boundaries and Identity Issues

Ayana Simachew Bekele,

LLM, Public law and Constitutional law,
Wollo University, School of law, Ethiopia

Doi:10.19044/esj.2019.v15n20p18

[URL:http://dx.doi.org/10.19044/esj.2019.v15n20p18](http://dx.doi.org/10.19044/esj.2019.v15n20p18)

Abstract

Intergovernmental relations are the responses that have been developed to facilitate cooperative policy making among divided governments within a federal system. Intergovernmental relations are supposed to play a bridge-building role to bring a degree of coordination and cooperation to divided powers. Enforcing federal laws in the states is one form of the interactions between the federal governments and states in federations. Today enforcement of federal laws and policies in the state in particular and the task of intergovernmental coordination in general are mainly done through the ruling party (EPRDF). Execution of federal laws and policies in the states using a party line has been made smoothly for the last 28 years in Ethiopia. However, following the coming of Prime Minister Abiy to power, EPRDF lost the support of TPLF, its core allies on its stand in the process of enacting and executing policies and laws. It, in turn, has led to gaps in the regularity and effectiveness in the implementation of federal laws in the states. Excessive reliance on party channel evokes the question of what will happen if more members(alliances) manage to depart from the ideology of the EPRDF and whether under such contexts bring about the collapse of the Ethiopian federalism as well. Such risks call for the need to establish vibrant institution to coordinate the execution of federal laws in the states in Ethiopian federal system.

Keywords: Intergovernmental relations, federal laws , Federalism, Ethiopia

Introduction

Constitutionally entrenched division of power between the federal and state governments is one of the core features of federations (Watts, 2001). In federations it is hardly possible to distribute administrative or legislative jurisdictions among governments within a single polity in to watertight compartments or to avoid overlaps of functions (Assefa, 2006). As a result, various forms of interactions and cooperations are expected to exist between the federal and state governments. Intergovernmental relation is one of those forms of interactions and cooperations. Intergovernmental relations are the responses that have been developed to facilitate cooperative policy making among divided governments within federal system.

Intergovernmental relations are supposed to play a bridge-building role to bring a degree of coordination and cooperation to divided powers. According to professor Ronald Watts, intergovernmental interdependence within a federation has two important dimensions. First, there are the vertical relations between governments of different orders i.e. federal- state relations and state-local relations (Watts, 1999). A second dimension is the horizontal relationship of different governments within the same sphere. These include inter-state or inter-local relations. Typically, in federations both kinds of relations have been important. Within each of these two dimensions, intergovernmental relations may involve all the governmental units within a federation (Watts, 1999). Article 50(2) of the FDRE Constitution hints a dual forms of federalism i.e. both the federal and state governments execute their own policies and laws using their own machineries in Ethiopia.

This article examines the mechanisms of enforcing federal laws in states in Ethiopian federalism. The first section of this article highlights the theoretical foundations of intergovernmental relationships(IGR). Section two, on the other hand, discusses the division of legislative powers under FDRE Constitution. In addition, the third section deals with mechanisms of execution of federal laws in states in Ethiopian federalism. Moreover, section four elaborates resolving boundary and identity issues under FDRE Constitution. Finally, the last section critically examines the recently adopted law of boundaries and identity issues of Ethiopia which are the subject of controversies between the central government and the regional government of Tigray. Its constitutionality, mandates, and measures taken by Tigray National Regional State are also explored.

1. Conceptual Framework

Federations often employ different mechanisms of enforcing federal laws and policies in their constituent units. One mechanism is by establishing dual structures in federal and state institutions. The other is by giving mandate to state institutions to execute federal legislations (Watts, 2001:45).

1.1 Dual (Competitive) federalism, which is very influential for many years, is sometimes called ‘layer-cake’ federalism. This mechanism holds that each level of governments is supreme within its areas of responsibility. According to this model, one level of government is not dominant and should not interfere in the affairs of the other (Nice, and Frederickson, 1995:7). Dual federalism is represented by the United States “Federation, where the allocation of executive authority is in principle considered co-extensive with the distribution of legislative responsibilities. This stems from the fact that, if the federal and state governments are to remain autonomous, then each must act directly towards the people in the process of enforcing its laws. As a result, it follows that not only legislative but also executive, financial and judicial powers should be divided between the federal government and the states so that each will act autonomously. A strict application of the principle results in a dual polity. In theory, dual federalism assumes little overlaps or sharing of functions between the two governments (Assefa ,2006:369). This model does not give responsibility for the state machineries in order to enforce federal laws and policies rather it sets up its own institutions in all states to discharge the task of enforcing federal laws (Ayana,2011:7).

1.2 Executive (Cooperative) Federalism

Executive federalism is one aspect of intergovernmental relations. “Even if, in theory , the system of coordinating policies and shared programs between the federal government and the states involve the elected and appointed officials , in parliamentary federations, it is often dominated by the executive branch of both governments hence the name executive federalism” (Assefa ,2006:371).This approach is widely applicable in European federations particularly in Switzerland, Germany and to some extent in India. Executive federalism holds that administrative responsibility does not coincide with legislative authority, administration for many areas of federal legislative authority being assigned by the constitution to the governments of the constituent units. This enables the federal legislature to lay down considerable uniform legislation while leaving this to be applied by regional governments in ways that take in to account of varying regional circumstances. Such an arrangement requires more extensive collaboration and coordination between the levels of government (Watts,1999:90).The idea is that federal government is responsible for the enactment of federal laws and policies whereas states are entrusted mainly for implementation of such laws and policies.

1.3 The Notion of Intergovernmental Relations (IGR)

Intergovernmental relations (IGR) are conventionally defined as important interactions between governmental units of all types and levels

within a political system(Wright,1988:12).The study of intergovernmental relation is not synonymous with the study of federalism: it is both a narrower in that it is one of the many aspects of every federal political system. A common characteristic of intergovernmental relations in all federal systems is their executive nature (Hugelin and Fenna,2006:216). On the other hand, it is broader in the sense that it is an aspect of not only of federal political systems but of all multi-tiered or multi-sphere political systems, including decentralized unitary systems and of con federal systems (Hugelin and Fenna,2006:216).

The reason intergovernmental relations are so significant in multi-sphere political systems is because it is impossible to distribute administrative or legislative jurisdictions among governments within a single polity in to clear compartments and to avoid overlap of functions. Interdependence between tiers of government within a multi-sphere regime is thus unavoidable. It should be noted that intergovernmental interdependence within a federation has two important dimensions. First, there is vertical relation between governments of different orders. i.e. federal – state relations and state-local relations. A second dimension is the horizontal relationship of different governments within the same sphere, such as inter- state or inter-local relations. In both kinds of relations all the government units are involved (Watts, 2003:14).

Deil Wright has identified some common basic features of intergovernmental relations (IGR) (Wright, 1988:18).Firstly; IGR comprises all kinds of relations among the different levels of government. The relations can be legislative, financial or administrative in nature. Besides, they recognize vertical and horizontal types of relations. The former refers federal-local, state-local, and federal-state relationships. The latter implies inter-local or interstate relationships. Secondly, there is involvement of public officials in all kinds of intergovernmental relations. As Anderson says “it is human beings clothed with office who are the real determiners of what the relations between the units of government will be. Consequently, the concept of intergovernmental relations necessarily has to be formulated largely in terms of human relation and human behaviors”(Wright ,1998;Anderson,2008). This implies that public officials such as members of the parliament, executives and experts of both federal and state government take part in day-to-day decision-making activities of intergovernmental co-operation and co-ordination.

Thirdly, the relations of public officials are not going to be done at one time or occasionally. However, the relations are conducted continuously to exchange information and different views. Normally, the relations are not based on randomly or arbitrarily, but rather their relations are often scheduled and repeatedly done in order to get better achievements (Anderson,2008:66).

A final distinctive feature of IGR is its policy components. The basic agenda for intergovernmental relations is to discuss and pass decisions on some common policy issues. Therefore, the main concern of interactions of officials is consulting and discussing on some shared policies and programs. Policy consists of intentions and decisions of elected or appointed officials (Ibid,68).Policies can be generated by interactions among all elected or appointed public officials. Hence, the main concern of interactions of officials is consulting and discussing on some shared policies and programs.

1.4 Rationale for Intergovernmental Relations

The establishment of permanent forums of intergovernmental bond plays a crucial role in negotiation, non-hierarchical exchange of information as well as facilitation of cooperation between the institutions of the two levels of government. This will bring mutual respect and confidence between the levels of government. There could be various factors that render cooperation as well as coordination (Watts, 2001:43).This will bring mutual respect and confidence between the levels of government. There could be various factors that render cooperation as well as coordination between or among the tiers of government indispensable (Ibid,44).

First, the difficulty of giving clear-cut jurisdiction for each level of government renders IGR necessary because “it is impossible to have a watertight distribution of administrative or legislative jurisdiction among governments or to avoid overlaps of function”. Shared programs are inevitable, and intergovernmental cooperation is one of the mechanisms of mitigating conflict in the course of such programs. In this respect, Steytler argues that “conflict between tiers of states may be inevitable because they would often compete for the same powers and resources. Where such conflict occurs, they should be settled in the spirit of cooperation (Steytler,2005:176).In this sense, IGR mechanisms are viewed as instruments that facilitate negotiation on matters that involve disagreement. Such interactions create mutual understanding between the two governments.

Second, intergovernmental relations can serve as “ means to adapt changing circumstances without having to resort to formal constitutional amendments”(Watts,1999:26). There are principles of co-operation implied from the concept of federalism that could overcome gaps in power distributions. The aim of intergovernmental relations are to make adjustment in the existing constitutional distribution of power rather than going through a rigorous constitutional amendment process, especially where the formal constitutional amendment procedures are rigid. (Ibid,28).

Third, having effective and efficient intergovernmental relations will help to achieve, inter alia, policy coordination, consultation, sharing of experience between the tiers of governments and among states (Ibid,29).In a

nutshell, most federal systems have developed some kind of informal and formal structural processes to coordinate and facilitate inter-governmental relations.

2. Division of legislative power under FDRE Constitution

The combination within a single political system of shared rule and self- rule through the distribution of powers between the federal and regional governments, according to professor Ronald Watts, is the defining institutional characteristics of federations(Watts,2001:45). The specific form and allocation of the distribution of powers are predicted upon and determined by the existing political reality and social diversity, more specifically, the degrees and kinds of common interests and diversity, with in the particular society in question. Watts argues that, generally, the more the degree of homogeneity with in a society the greater the powers that have been allocated to the federal government and the more the degree of diversity the greater the powers that have been assigned to the constituent units of government(Watts,1999:14).

The Ethiopian Constitution establishes a federal structure that comprises two distinct entities, the federal state and the regional States. It defines and distributes powers and functions of the two entities. It requires both entities to respect the powers of one another (Assefa,2006:411).Each entity exercises legislative, executive and judicial powers within its allocated sphere and is autonomous from one another.

Article 51 of the constitution lists 21 powers and functions of the federal government. Besides, there are other powers which are not mentioned in this provision but which are granted to the federal government. These include the power to enact labor, commercial and penal codes and to approve federal appointments submitted to the executive and to establish federal institutions. The powers of the regional governments of Ethiopia are envisaged under article 52(1). It states that “all powers not given expressly to the federal government alone or concurrently to the federal government and the states are reserved to the states”. Besides, more powers are granted to the states under article 52(2) of the constitution. The federal constitution has empowered regional governments to enact and execute the state constitution and other laws. To this end, the constitution provides that the states with a legislature, an executive and a judiciary which are constitutionally independent and from the central government in matters assigned to them.

3. Mechanisms of implementation of federal laws in states in Ethiopian Federal system

According to the FDRE Constitution, each government has the power of legislation and execution on matters that fall under the respective

jurisdictions. Each level of government shall respect the power of the other. At the federal level, executive power of the federal government is vested with the Prime Minister and the Council of Ministers. The Prime Minister shall follow up and ensure the implementation of laws, policies, directives and other decisions made by the federal legislature (HOPR)(FDRE Constitution,article 74(3). Article 50(2) of the constitution declares that the federal government and the states shall have legislative, executive and judicial powers' which suggests that the organization of the federal executive is co-extensive with the division of legislative power.Thus, there is a federal executive which is entrusted to enforce federal laws and parallel to state executive that is responsible to implement state laws.

Thus, in principle, the Ethiopian Constitution follows a USA -model structure by reserving the executive responsibility to each level of government on matters in which they exercise the legislative powers.Now, the Ethiopian Federalism employs different mechanisms to facilitate the enforcement of federal laws in the regional governments. These are briefly elaborated in the following paragraphs.

3.1 Delegation

One of the mechanisms for promoting intergovernmental cooperation in a federal system is the delegation of power from one level of government to the other (Solomon, 2006:9). Delegation of power is provided under article 50(9) of the FDRE constitution which states “the federal government may, when necessary, delegate to the states powers and functions granted to it by article 51 of this constitution.” However, this provision seems to delegate legislative, executive or adjudicative functions. Nevertheless, practices indicate that the federal government has mainly granted administrative powers to the states rather than legislative powers. The states are given delegation to enact their own laws in order to administer the utilization and conservation of land and natural resources in accordance with the federal laws. Both the federal government and the states seem to have parallel powers (Ibid,99).The point is that the federal government enacts general legislations on utilization of land and states are also empowered to issue specific and detailed laws in order to implement and administer the same in accordance with the federal law enacted by the House of the Peoples' Representatives (Ibid,101).

Except some constitutional provisions related to courts, delegation of other powers is not done in a comprehensive approach. Instead, delegation of administrative powers to the states is often done on piecemeal basis (Assefa,2006:398). Just to mention one instance, following the 2005 national and regional election, the Ministry of Justice has delegated its prosecution powers to justice bureaus of regional governments. Consequently, the former branch offices of federal prosecution in almost all states except in Addis

Ababa and Dire Dawa have been closed and the task of prosecution of Ministry of Justice has been carried out by justice bureaus of regional governments. However, such delegation has not been done formally as provided in the constitution.

3.2. The Importance of Party Line for Intergovernmental Relations

Political parties play significant role in determining how a written constitution operates (Anderson,2008:66). William Ricker wrote “the structure of the system of political parties is what encourages or discourages the maintenance of the federal bargaining” (Ricker,1988:187). He also asserted that “the proximate cause of variations in the degree of centralization in the constitutional structure of federalism is the variable in degree of party centralization (Ibid,188). Accepting the fact that party systems can exert centralizing or decentralizing influences on federal systems, Edward Gibson argued that federal systems can, shape the nature of party competition, the structures of incentives for politicians, and the decentralization of parties and party systems (Gibson,1987:151).George Andersen also concluded, “Political parties are basic to the functioning of federations. The character of parties and of the party system reflect political cleavages within the population and partisan history, but are also significantly shaped by electoral laws and constitutional arrangements. Federations vary in having one dominant party, two or more major or many parties”(Anderson, 2008:49).

If the officials of both sets of government are adherents of the same ideology or followers of the same leader or leaders, then they might be expected to pursue harmonious policies. But in all federations which have a relatively free society with competing political parties, just the converse occurs. In the heat of party struggle, competing parties use the central government against the constituent governments and vice versa (Anderson, 2008:66). Intergovernmental conflicts may not appear when one highly disciplined party controls both federal and the state governments.

“In federations, there are two extreme situations with so many other options in between. Firstly, if one homogenous political party controlled all governments both federal and the state, there would be no occasion for intergovernmental conflict. Secondly, if all constituent governments are controlled by one homogenous political party and the federal government by another, the degree of federal conflict would be tense. All existing federations are found between the above two extremes”(Assefa, 2006:392).

This implies that if the federal government and states are controlled by different political parties, things may not be run smoothly. Instead, there might be conflicts between the federal government and the states.

The ruling coalition party, EPRDF, has a centralized internal party structure. The party congress is at the top of the structure. The congress is made of equal number of delegates who are elected by each of the parties in the coalition. Each party in the coalition elects representative to the central committee. The central committee, which is the highest political body, decides on the overall programs of the coalition. Each party in the coalition elects 9 representatives to 36 member's executive committee, which manages the day to day activities of the coalition. The executive committee elects the chairperson of the coalition; who will be the chairperson of the central committee. Each party in the coalition has equal member of representatives in all the organs (Congress, Central Committee, and executive committee) of the EPRDF (Ibid,393).

The central committee through the chairman generates broad issues of social, economic, and political matters, policy directions, plans and strategies that have nation-wide application. These plans and strategies are adopted at federal level and become the basis for state government plans and policies (Ibid,394). The internal party structure of the EPRDF is replicated by its four -member parties. Each member party has its own party program, which is usually in line with the EPRDF program. Each has its own councils at the regional, zone and woreda and kebele levels of administration. Each is responsible to implement its party program, discuss and implement its own plans and strategies within its respective regions. Each party is also responsible to carry out the program of EPRDF within its own regional base(Ayana,2011:47).

The interaction between the central ruling party and regional member and affiliate parties is characterized by what Paulos calls "patron-clientism"(Paulos,2007:283). Regional parties are implementers of the policies adopted by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF).The ruling party has its own representatives in regional states. By directly communicating with these representatives, the federal government can monitor the implementation of federal policies, programs and plans in regional states, and to render assistance in the capacity building pursuits of the latter. This has led some to conclude that there is currently a de facto one-party state (Merera,2007:35).

The political landscape in Ethiopia reflects the electoral dominance of the EPRDF and the weakness of the opposition of parties. EPRDF is the party that holds over whelming majority seats in both houses of the federal parliament. It also holds the majority seats in the councils of the Oromiya, Southern Nations, Nationalities, Amhara and Tigray States. This largely centralized party structure contradicts the division of power that exists in federations. The party line in Ethiopia is highly centralized. The ruling party

EPRDF with democratic centralism decides on many national policies and strategies(Assefa,2006:392).

The point is that the central committee of EPRDF through its chairman generates specific plans of action which are the basis of the EPRDF's five-year plan that are implemented nationwide. The five-year plans to be implemented are adopted at federal level and become the basis for state governments' plans and policies(Solomon,2006:123). In this respect, both the central government and states can be influenced by the centralized party structure. The states might not get the chance to formulate policies on different matters in their jurisdictions as policies are predetermined and formulated by the centralized party structure. The states' right to formulate and execute policies and strategies are thus highly affected(Assefa,2006:393). Therefore, we may conclude that the party line in Ethiopia influences the constitutional division of powers and the autonomy of the states which are developed in most federations (Ibid). However, following the coming of Prime Minister Abiy in to power, EPRDF lost its core allies, TPLF.As a result, nowadays it is not easy to pass laws and policies both in the federal parliament and executive body. A good example is the recent statute of Boundaries and Identity issues in which all 38 MPS from Tigray Regional State unanimously rejected the bill. Besides, the parliament of the Regional Government of Tigray rejected the adopted proclamation and vows not to implement it on the region. This is the unique incident in Ethiopian politics which has not been seen in the last 28 years.

In the absence of well-organized institutions to facilitate intergovernmental relations between the federal government and the states, party line can be used as a better option to accomplish such tasks. This is because the party line is currently well -organized. The prevalent political role of EPRDF and its partner political parties at both levels of federal and regional governments have created favorable and supportive political environments for building positive intergovernmental relations in Ethiopia (Assefa,2009:25). Members of the ruling party are used as good models to implement new policies and strategies in many rural areas. Having seen the efforts made by members of the party to implement new policies of the party, other non-members of the community begin to carry out the same. Thus, the party line in Ethiopia is a good option to execute strategies and policies of federal government in the states (Ibid,26).

3.3. Relations of Some Federal Ministries with their Respective Bureaus

In Ethiopia, virtually all ministries have their own family of intergovernmental mechanisms, and they have developed their own practice of cooperation and collaboration between the federal and regional

governments. The structures, processes, and practices have been developed between different federal Ministries and their regional counterpart bureaus in which all levels of government have a role. Thus, the Ministries of health, agriculture, education, trade and industry as well as regional sector bureaus have developed mechanisms and patterns to conduct intergovernmental relations that cover a wide range of functions (Assefa,2009:34).

Although many of the concepts and functions are common across ministries, their roles and structures vary for a variety of reasons. Cooperation concerning the better performance of responsibilities is actually facilitated through various forums, conferences, workshops, exchange of personnel and technical experts, or through personal exchange of information between the authorities of the levels of government.(Solomon,2006:98) . The meetings, discussions and other forms of cooperation between the center and the regions take place as the occasion demands. Some of them may remain as forms of informal cooperation between authorities, while others may evolve into more formal institutions with a clear mandate and staffed with skilled labor(Ibid,99).

For instance, the Federal Ministry of Health and the health Bureaus Heads in regional governments work together in a mutual dependent manner in the process of implementing federal health policies and standards in the regional states. The ministry also provides technical assistance to the regional health bureaus. It often conducts regular meetings and conferences with regional health bureaus within three months. Led by Minister or State Minister, the main focus of coordination and cooperation include prevention of epidemic diseases such as malaria, HIV and others, capacity building, giving assistance and maximizing coverage of health services (Nigussie, 2015:342). However, these relations suffer from many problems. Firstly, the relations are not governed by rules and procedures and are not done in regular basis. Secondly, the regional state health bureaus have not been consulted when strategic health plan was made. Thirdly, there is no sense of accountability when one of the partners (either the federal ministry or bureaus) does not comply with the common decisions(Ibid,343).

An annual consultative forum between the Ministry of Education and sector bureaus has been established to strengthen the partnership between them. This forum creates a favorable opportunity to discuss how the national education policy is implemented throughout the country. The conferences are held in rotational basis through the regional states. In order to deal specific problems and issues of the concerned field, the ministry conducts a monthly video conference with regional education bureaus(Ibid,344).

4. Resolving Boundaries and Identity Issues Under the FDRE Constitution

The Federal government has a constitutional duty to ensure the observance of law and order in the country. Article 77(9) of the FDRE Constitution also implies that it shall fulfill its duty when the sub national self-administering entities are unable or unwilling to promptly address issues that have the potential to escalate in to a large –scale conflict to threaten the national public order and security of the people. Ethnic conflicts, identity and boundary issues among regional states in Ethiopia are granted in the constitution to the House of Federation, the upper house of parliament. While the lower house has legislative powers and its members are elected from districts within each regional state, the House of Federation has a different composition and role. It is composed of representatives from each of the nationalities. (FDRE Constitution, article 62(3). It does not have traditional legislative powers but rather is charged by the constitution with maintaining the country ethnic, regional and federal relationships and resolve identity and boundary issues.(FDRE Constitution, Article 62). This includes the role of dispute resolution and constitutional interpretation.

Because the regional states are defined by their ethnic composition, the House of the Federation’s power with respect to nationalities, inter-state disputes are often ethnic disputes as well. Similarly, because the constitution establishes nationalities rather than individuals as the fundamental constituents’ units of the Ethiopian federation, many aspects of the constitution and constitutional interpretation have at least some ethnic aspect.(Baylis,2004:559). The diminished legitimacy that the HOF has received at present and its institutional disorganization as well as proven ineffectiveness to timely address issues of identity and constitutional rights violations makes the current situation has worsened the situation (Ibid,560).

5. The Current law of Boundaries and Identity Issues of Ethiopia

Currently, Ethiopia is facing heightened ethnic tensions in most regions of the country unlike never before. According to many, this poses the gravest of dangers to the unity and stability of the country. The boundary between the Benishangul-Gumuz and Oromia states is one front where numerous conflicts have been arisen recently and continued for the last two months .Hundreds of citizens have died and hundreds of thousands displaced. The issue is, in part, between the Kamashi people living across the border from Oromia and ethnic Oromos and Amharas living in the Regional State of Benishangul-Gumuz.

In Southern Nations, Nationalities, and Peoples' Region, several ethnic groups have passed resolutions indicating their wish to form separate statehood, including Sidama and the Wolayta. There were ethnic clashes this

year in the regional capital, Hawassa, in connection with identity questions (Ezega news, 20 December 2018). There were also clashes between Oromo ethnic groups and other ethnic groups living in the region. The Oromia-Somali border was one of the earliest flashpoints of conflict in the country. Hundreds died over the years due to recurring conflicts, which resulted in one of the largest mass displacements in Ethiopian history. The conflict subsided with the arrest of long-time Somali region leader Abdi Illey (Ibid).

In the north part of the country, the Wolkite and Raya, which enclaves in the Tigray Regional State, are contested by some activists from the Amhara region, perhaps with some backing from the Amhara Regional Government behind the scenes. There have been armed clashes in the Wolkite area and in some parts of Amhara, especially in Gondar, related to this issue. There were protests in the Raya area in Tigray in late October this year (Ibid).

With the view to settle such boundary and identity issues in Ethiopia, Prime Minister Abiy has committed to establish the Administrative Demarcations & Identity Issues Commission. Drafted by the Office of the Prime Minister, the proclamation establishes such commission. The bill was tabled to parliament for legislation after it was unanimously approved by the Council of Ministers. The manner of the adoption of the new law was quite different in the parliament. It was not business as usual for the TPLF - a senior member of the coalitions in the ruling EPRDF. The party lost the support of its allies on its stand in parliament to stop the bill establishing the Commission. In parliament, the trend of the legislative body was to approve any legislation without much debate or presentation. Most of the bills submitted to the parliament usually receive unanimous approval due to the party's leadership role and its political culture of democratic centralism - deciding centrally and binding all members.

Out of 350 members who attended the session in the parliament, 33 votes who came from TPLF MPs opposed the bill entirely on the grounds of its "unconstitutionality". All TPLF MPs raised their hands in unison from the right side of parliament and voted to stop the formation of the Commission. Apparently, this situation indicates the winds of change in parliament as the vote was not unanimous and the customary adherence to democratic centralism seems to have vanished.

5.1 The Mandate of the Commission

According to articles 4 and 5 of Boundaries and Identity Issues Commission Establishment Proclamation No.1101/2018, the core mandate (duty) of the new Commission is to provide alternative recommendations to the House of the Federation and the Prime Minister by studying problems and conflicts related to the administrative boundaries demarcation and issues of identity. Its additional roles include collecting public opinion on issues of

administrative boundaries, preparing a strategy and detailed plan, initiating the policy framework of administrative boundaries and facilitating ways in which conflicts can be resolved. All these assessments and recommendations will be forwarded to the parliament and Prime Minister for decisions (Ibid.Article 5(6)).

This implies that the Commission's mandate is just recommendatory. The Proclamation does not mandate the Commission to decide by its own on questions of identity and administrative boundaries which are primarily the power of the HOF. The Proclamation does not encourage the Commission to intervene in the substantive functions of these bodies; it only gives the Commission supportive and facilitation role. Nor does the proclamation impose any obligation on any government body to accept reports or recommendations submitted by the Commission.

5.2 The Constitutionality of the Establishment of the Commission

Members of the parliament of Tigray Regional State argued that the new law contradicts with the FDRE Constitution. One major contention issue raised by MPs is that the commission usurps the power of the HOF. The principal argument of the author of this paper in this regard is that the new law does not take the power of the HOF. Instead, it pledges to reinforce the powers and functions of the HOF by establishing a supportive commission which is set to undertake professional studies and provide workable recommendations on the issues. The question of unconstitutionality does not arise as the proclamation explicitly states that the HOF has the full discretion to accept or not to accept the recommendations of the commission (Ibid,Article 5(3)). Nevertheless, HOF has not been invited to have a say as to how the commission should be established; its presence has become totally insignificant in the eyes of the new comers.

The HOF is not and has never been the only government organ that deals with issues concerning ethnicity and administrative boundaries. Nor does the constitution provide that the HOF is the only organ to deal with inter-state disputes. In the previous years, the Ministry of Federal Affairs had been the most active organ in dealing with such issue (Addis Standard, 9 January 2019). At present the Ministry of Peace which replaces the Ministry of Federal Affairs has the power to facilitate the resolution of inter-state disputes without prejudice to article 48 and 62(2) of the FDRE Constitution. Thus, the House of Federation has the exclusive mandate to interpret the constitution and to give final determination on disputes, but it does not have exclusive rights to deal with issues of ethnicity and administrative boundaries.

Another significant criticism forwarded against the new established commission by Tigray MPS is that it usurps the autonomy of regional states. The power to hear and decide on disputes over ethnic identity vests, in the first

instance, with the State Council concerned. However, the new proclamation divests those institutions of that power and hands it to the House of Federation via the Commission. In other words, the proclamation has in effect stripped the jurisdiction of State Councils matters relating to identity. As it has been discussed above, the commission does not possess any mandate to hear and decide any disputes of ethnicity and identity. However, it is responsible to investigate identities and boundaries issues, collect opinions, facilitate ways in which conflicts can be resolved and provide recommendations to the Prime Minister, the HOF and the HoPR. The Commission does not decide by its own on questions of identity and administrative boundaries which are primarily the power of the HOF.

5.3 Actions taken by Tigray National Regional State

Although MPs of Tigray Regional State fiercely debate opposing the bill on the commission of Boundaries and Identity Issues, the House of Peoples' Representatives (Lower House) adopted it by majority vote. Following the adoption of the draft bill by the federal parliament, the parliament of Tigray National Regional State rejected the applicability of the new law on its meeting held on 27 January 2019. This creates deadlock between the central government and the state of Tigray that has not been seen for the last 28 years. The issue that comes next is that can constituents' units (states) nullify federal legislations in Ethiopia?

The concept of federal laws in federations is the body of law created by federal government of a country that may be enforced though out the territory of a given country (Assefa, 2006:333). The experiences of executive federal system indicate that states are bound to execute federal legislations in their constituents' units until the alleged legislations are declared unconstitutional through an independent constitutional interpreter. Hence, states cannot nullify a given federal legislation by themselves.

In our case at point, the act of the National Regional Government of Tigray in nullifying the proclamation that establishes the Boundaries and Identity Issues Commission is against the established norms and principles of federalism. If the new law is found to contradict the Federal Constitution, the regional government has a right to submit a complaint to the House of the Federation (HOF), Constitutional interpreter, for constitutional interpretation.

6. Conclusion

Intergovernmental relations enable to promote the culture of negotiation, and enhance the bargaining power of the regional states. Creating permanent forum for intergovernmental bond has a crucial role in negotiation, non-hierarchical exchange of information as well as facilitation of execution of federal laws in states. Execution of federal laws in states is one forms of

IGR. Because of the absence of vibrant and neutral institutions in execution of federal laws in states in Ethiopian federalism, the party line plays significant roles in this regard. Federal laws have been executed throughout Ethiopian territory using one dominant ruling party. However, recent developments indicate that the ruling party (EPRDF) is unable to legislate and decide common policy matters as it was doing so far before Prime Minister Abiy came to power. A good recent example is that the party could not take common political position in adopting the law of boundary and identity commission proclamation in the federal parliament, for the fact that strong opposition was arisen from members of TPLF. The TPLF, one of the core allies of the ruling party, tried to stop the bill in the parliament debate. All 33 MPS of Tigray Regional Government voted against the adoption of the bill on the ground of its unconstitutionally.

On top of that, the Regional parliament of Tigray rejected the new law as unconstitutional and vows not to implement it in its entire region through its cabinet decision. This is a clear political deadlock developed between the federal government and the region following the coming of PM Abiy to power. So as to facilitate the execution of federal laws in states in Ethiopian federations, vibrant and neutral institution should be established. Besides, there should be frequent dialogues and negotiations among the allies of the ruling party to minimize their differences in policy making and executions.

The new law on Boundary and Identity issues Commission should be fully implemented in many states of Ethiopia to solve the simmering intra-state and inter-state tensions over questions of self-administration and boundaries. Otherwise, these would be escalating into a large-scale conflict that may endanger not only the peace and stability of the concerned states but also the survival of the nation.

References:

1. Anderson, George (2008). *Federalism: An Introduction. Ontario: Forum of Federations*
2. Assefa Fiseha (2006). *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*. Nijmegen, Wolf legal publishers
3. Assefa Fiseha (2009). *The system of Intergovernmental relationship (IGR) in Ethiopia: In search of institution and guidelines*, Addis Ababa, Addis Ababa University
4. Ayana Simachew (2011). *Intergovernmental Relations in Ethiopian Federalism*. Germany: Lambert Academic Publishing.
5. (2018 December, 20). *House Approves Bill to establish Boundary and Identity Commission*. Ezega News, First column, pp.1-2 Retrieved from www.ezega.com/news/News-Detail/4709

6. Gibson, Edward (1988). *Federalism and Democracy in Latin America: Theoretical Connections and Cautionary Insights*. New York, New York University Press
7. Hugelin, Thomas and Fenna, Alan(2006). *Comparative Federalism :A Systematic Inquiry*. Toronto, Broadview Press
8. Merera Gudina(2007). *Party Politics and Election in Ethiopia:1991-2005*. Addis Ababa: Addis Ababa University Press
9. Nice, David and Frederickson, Patricia (1995). *The Politics of Intergovernmental Relations(2nded.)*. Chicago: Nelson Hall Publishers
10. Nigussie Afesha(2015). *The Federal State Intergovernmental Relationship in Ethiopia*. Mizan Law Review, 9(2), 340-368
11. Ricker, William (1988). *Federalism: Origin, Operation, Significance*. Boston: Kluwer Academic Publishers
12. Solomon Nigussie(2006). *Fiscal Federalism in the Ethiopian Ethnic - Based Federal System*. Nijmegen, Wolf Legal Publishers
13. Steytler, Nico (2005). Republic of South Africa in John Kincaid and G. Alan (Ed.). *Institutional Organs, Structure and Change in Federal Democracies* (pp.176-192). Montreal and Kingston: McGill-Queens University press
14. The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No.1/1995, Federal Negarit Gazetta, 1st year No. 1, Addis Ababa, 21st August 1995
15. Boundaries and Identity Issues Commission Establishment Proclamation, Proclamation No.1101/2018, Negarit Gazetta, Addis Ababa, Ethiopia.
16. Uwe, Leonardy (1999). *The Working Relationships Between Bund and Lander in the Federal Republic of Germany* in C.Jeffery, P.Saviger (Ed.). *German Federalism Today* (2nd ed., pp.121-136). Leicester, Leicester University pres
17. Watts, Ronald (1999). *Comparing Federal Systems (2nd ed.)*. Kingston, Queen's University press
18. Watts, Ronald (2003). *Intergovernmental Councils in Federations in Constructive and Cooperative Federalism*. Montreal: Queen's University, Institute of Intergovernmental Relations
19. Wright, Deil (1988). *Understanding Intergovernmental Relations (3rd ed.)*. Pacific Grove, CA: Brooks /Cole Publishers.
20. (January9, 2019). *The legality of the Administrative Boundaries and Identity Issues Commission Establishment Proclamation*. Addis Standard.pp.1-5 Retrieved from www.addisstandard.com.news