

COMMENT ON ETHNIC MINORITY RIGHTS UNDER THE ETHIOPIAN FEDERAL STRUCTURE

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Ethiopia is a multi-ethnic, multi-linguistic and multi-cultural country with diverse ethnic, linguistic and religious groups. In this sense, the country can appropriately be described as a mosaic of different cultures and ethno-linguistic groups, although this was not legally and politically recognized until recently.

The 1995 Ethiopian Constitution expressly recognizes the ethnic diversity of the population. This was initiated in 1991 under the Transitional Charter of Ethiopia,¹ and it was a departure from the unitary state paradigm in nation-state building policies of former regimes. The Ethiopian government now accepts the notion of ethnic diversity and aspires to build the nation by using ethnicity as a starting point. This approach was further institutionalized in the current Federal Democratic Republic of Ethiopia (FDRE) Constitution.²

The various units of the Federation, i.e. the regional states are carved out along ethno-linguistic lines. As a result, some writers regard Ethiopia's federation as an 'ethnic Federation'.³ One of the consequences of the definition of the federation on the basis of ethnicity is the creation of regional states dominated by particular ethnic groups. The creation of such ethnic based regional states holds serious dangers for the position of ethnic minority groups; groups which differ from the regionally dominant ethnic majority. The danger exists that the members of the regionally dominant ethnic group which consider the region as their exclusive dominion threaten both the universal and group specific rights of ethnic minorities within the region. This would not have been a

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¹ See, The Transitional period Charter of Ethiopia, Proclamation No 1, *Negarit Gazeta* 50th year Addis Ababa, 22nd July 1991.

² See, Preamble of the New Constitution, Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia.

³ See Generally, David Turton (2006), Introduction in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative perspective* (James Curry, Oxford); See also, Endrias Eshete (2003), *Ethnic Federalism: New Frontiers in Ethiopian politics*, paper presented at the 1st National Conference on Federalism conflict and peace building May 5-7, 2003 Addis Ababa.

problem if all the ethnically organized regional states were inhabited by a homogenous ethnic population. However, ethnic minorities live in all Ethiopian regions and this sparks the legitimate concern for the exercise of their fundamental rights including their right to self determination.

The first section of the comment discusses the turning point in the Ethiopian state arrangement in which the country under the Transitional Charter embarked upon the experiment of ethnic federalism. Section 2 highlights the consolidation of ethnic federalism upon the promulgation of the FDRE Constitution and its ramifications. The Ethiopian federal structure is revisited in the third section by addressing issues such as the carving out of the regional states, the division of powers between the federal and state governments as well as the provisions on the amendment of the Constitution. The last section articulates the content and context of self determination with a view to identifying the right holders and the political dynamic in which such a right is to be exercised within the country.

1. The Transitional Period Charter: The Prelude to Ethnic Federalism

Attempts to centralize the Ethiopian state came to an end by the year 1991 when the EPRDF forces established a transitional government in Addis Ababa. The competing ethno-nationalist claims for an equitable share of power and resources gained attention. The transitional period Charter provided for the establishment of local and regional councils for local administrative purposes to be defined on the basis of nationality.⁴ The subsequent proclamation providing for the establishment of national/regional self governments also set forth the same requirement⁵ which made it clear that the future of the country's restructuring is to be based on ethnicity.⁶

The Transitional Charter used ethnic based decentralization and the administrative map of the country was redrawn along linguistic and/or ethnic lines. The Transitional Charter that was signed by 27 representatives of political movements, of which the majority were predominantly ethnic-based,⁷ provided

⁴ See, The Transitional Period Charter, *supra* note 1, Article 13.

⁵ Proclamation No 7/1992, A Proclamation to Provide for the Establishment of National /Regional Self-governments.

⁶ For a discussion of the transitional period Charter on the establishment of regional and national self governments See, Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, (2007), Rev.edn, Addis Ababa Artistic Printing Enterprise), 49-54.

⁷ Yacob Arsano (2007), People's Choice and Political power in Ethiopia: Elections and Representations During Three Regimes in Kassahun Berhanu *et.al.*(eds.), *Electoral*

the political and legal framework for the creation of an 87 seat council of representatives. It incorporated an important principle in Article 2 of the Transitional Period Charter which is the right of “nations, nationalities and peoples to self-determination.” This provision further outlined a nation/nationality based framework for a federal like structure of local governments where each unit would administer its own local affairs.⁸ The Charter’s major political program was primarily centered on promulgating a new Constitution and holding national elections.⁹ The establishment of the self-governing units was realized by Proclamation No. 7/1992, which laid down the legal basis for the creation of regional self-governments consisting of 14 regions.¹⁰

During the five years of the transitional period, three elections were held: the June 21, 1992 regional and local elections, the June 5, 1994 elections of the Constituent Assembly, and the May 7, 1995 elections to the federal parliament and regional councils.¹¹ Of these major elections, especially the 1994 election to the Constituent Assembly was aimed at electing representatives for the purpose of drafting the new Constitution. The EPRDF won a majority seat in the Constituent Assembly, which was vested with the power of drafting the new Constitution. Many controversial articles in the draft Constitution such as the right to self-determination including secession, ethnic-based federal structure of government, continued government ownership of land, were all approved without a serious debate.¹² The new “national Constitution” was then approved in December 1994 with only a few dissenting voices.¹³ It proclaimed the country as the Federal Democratic Republic of Ethiopia.

Politics, Decentralized Governance and Constitutionalism in Ethiopia (Addis Ababa University press, 2007), 169-175.

⁸ Tafesse Olika and Aklilu Abraham (2007), Legislation, Institutions and the Post 1991 Elections in Ethiopia in Kassahun Berhanu et.al.(eds.), *Electoral politics, Decentralized Governance and Constitutionalism in Ethiopia* (Addis Ababa University press, 2007) 93-94.

⁹ See, The transitional Charter, *supra* note 1, Article 10, 11, 12 and 13.

¹⁰ For a discussion on the creation of the 14 regions of the time see, Merera Gudina (2003), *Ethiopia: Competing Ethnic Nationalism and the Quest for Democracy 1960-2000* (Shaker publishing), 122-123.

¹¹ Tafesse and Aklilu, *supra* note 8, p. 94.

¹² Merera Gudina (2003), *supra* note 10, p. 127.

¹³ Merera Gudina (2007), Party Politics and Elections in Ethiopia: 1991-2005 in Kassahun Berhanu et.al (eds.), *Electoral politics, Decentralized Governance and Constitutionalism in Ethiopia* (Addis Ababa University press, 2007), 132.

2. The New Constitution and the Issue of Minority Rights

Even though the Transitional Period Charter did not spell the word federalism, it employed a federation type of arrangement.¹⁴ This ambiguity was cleared upon the promulgation of the new Constitution.¹⁵ Ethiopia was, in effect, fully transformed from a centralized unitary state to an ethnic federation, which recognizes the rights of nations, nationalities, and peoples to self-determination up to and including secession.¹⁶

The new Constitution was intended to solve the problem of the ‘national question’ by presenting federalism as a solution.¹⁷ Whether this ethnic-federalism has provided the appropriate solution to the country has however been subject to debate. For instance, scholars like Minasse Haile argue that, the new Ethiopian Constitution instead of resolving ethnic problems has on the contrary exacerbated them and concludes that it has brought about a zero sum progress.¹⁸ He states that ethnic federations have not been generally successful in large polities except perhaps, when they have been supplemented by other institutional arrangements, by peculiar societal facts or by threat or use of force, to constrain the centrifugal forces inherent in such federations but none of these are present in the current Ethiopian federation which makes it an unstable one.¹⁹

Furthermore, the act of drawing regional boundaries based on major ethnic groups, *ipso facto*, creates minority ethnic groups in each region, which are condemned to be permanent minorities without any hope of obtaining political power.²⁰ Hence, the formation of such type of federation provides further grounds for the political parties to be formed along ethnic territorial units as they advocate the exclusive concerns of their respective constituencies

¹⁴ See, Fasil Nahum (1997), *Constitution for a Nation of Nations: The Ethiopian Prospect*, (The Red Sea Press, Inc.), 44.

¹⁵ Article 1 of the FDRE Constitution states that ‘this Constitution establishes a federal and democratic state structure. Accordingly, the Ethiopian state shall be known as the Federal Democratic Republic of Ethiopia.

¹⁶ Asnake Kefale and Hussein Jemma (2007), Ethnicity as a Basis of Federalism in Ethiopia: Cases of the Harari National Regional State (HNRS) and Dire Dawa Administrative council (DDA), in Kassahun Berhanu et.al. (eds.), *Electoral politics, Decentralized Governance and Constitutionalism in Ethiopia* (Addis Ababa University press, 2007), 70.

¹⁷ Ibid

¹⁸ See generally, Minasse Haile (1996), “The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development”, 20 *Sulfolk Transnational Law Rev.* 1.

¹⁹ Ibid, p. 11.

²⁰ Ibid, it is worth noting here that the Constitution only creates nine regional states while the country is inhabited by more than eighty ethnic groups.

regardless of the consequences on the national interest.²¹ Minassie Haile generally concludes that such type of ethnic federation is inconsistent with the aim of nation building in peace and tranquility.²²

To the contrary, some consider the ethnic federalism experiment as a success story despite some inherent drawbacks. Cognizant of the situation in which the country had been at the time when various liberation movements and ethnic strife engulfed Ethiopia, the commitment to national self-determination and the establishment of regional governments based on nationality have, according to this view, ensured the survival of the Ethiopian state.²³ They consider that the federal system has served as a conflict regulating device, by creating relatively homogenous states.²⁴

Surely, one can speak of the ethnic federal experiment to have brought a considerable change towards the accommodation of diversity (especially at the federal level of government) and to this effect it can be said that it is relatively of a success story. But if one looks at federalism at the regional level it is a different story. The relative diversity that may be present at the regional level has not been taken into consideration by the drafters of the Federal Constitution and the Constitution has not set any kind of mechanism for regulating tensions that may arise due to the competing claims of the different ethnic groups.

Moreover, the Constitutions of the various regional states, except for few, have not addressed the issue of their diversity. They simply ignore the reality of their population and consider the region to have been inhabited only by the majority and/or dominant ethnic group/s. This is seriously at odds with the principle of federalism and ‘the accommodation of diversity’. In this regard, federalism at the regional level poses a serious danger to the stability of the federation in general and to the regional states in particular.

3. The Federal Structure

The federal Constitution defines the country’s structure as a multicultural federation based on ethno-national representation. It stipulates that Ethiopia is of a ‘federal and democratic state’.²⁵ In line with the federal tradition, the respective powers of member states and the federal government are distributed by the

²¹ *Ibid.*

²² *Ibid.*

²³ Assefa Fiseha (2006), “Theory Versus Practice in the Implementation of Ethiopia’s Ethnic Federalism”, in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Curry, Oxford 2006) 135.

²⁴ *Ibid.*

²⁵ See Article 1 of the FDRE Constitution.

federal Constitution.²⁶ The federal government, with a bicameral parliament, is entrusted with the responsibility of national defense, foreign relations, monetary policies and foreign investment and the establishment and implementation of national standards on health, education, science and technology.²⁷ The states have all powers not given expressly to the federal government alone or concurrently to the federal government and the states.²⁸ Since the Constitution does not provide for a list of concurrent powers, one has to go through the whole body of the text in search of such powers to identify the powers reserved to the states.²⁹

The horizontal relationship between member states in the federation can be described as symmetrical because member states are constitutionally guaranteed equal rights and powers.³⁰ The Constitution institutes a bicameral parliament, the House of People's Representatives (HPR) and the House of the Federation (HoF).³¹ The highest authority in the federal state is that of the HPR while the HoF, a non-legislative house is vested with authority to interpret the Constitution.³² It is composed of representatives from nations, nationalities and peoples of Ethiopia.³³ It is also entrusted with the task of determining issues related to the rights of ethnic groups to self-determination including secession, finding solutions to disputes between states and ascertaining the division of joint federal and state revenues and the federal subsidies to the states.³⁴

It can generally be argued that the Constitution adequately recognizes the multiethnic nature of the country. This can be discerned from the following instances. The preamble of the Constitution begins with the wordings “we, the nations, nationalities and peoples of Ethiopia.”³⁵ It also vests all sovereign power in the nations, nationalities and peoples of Ethiopia.³⁶ All Ethiopian languages are accorded equal recognition and members of the federation may by law determine their respective working languages.³⁷

²⁶ Article 51 and 52 of the FDRE Constitution.

²⁷ See, *Ibid.*

²⁸ Article 52 of the FDRE Constitution.

²⁹ Assefa Fiseha (2006), *supra* note 23, p. 133.

³⁰ Article 47(4) of the FDRE Constitution.

³¹ Article 53 of the FDRE Constitution.

³² See Articles 62,83 and 84 of the FDRE Constitution.

³³ Article 61(1) of the FDRE Constitution.

³⁴ Article 67 of the FDRE Constitution.

³⁵ Preamble of the FDRE Constitution.

³⁶ Article 8(1) of the FDRE Constitution.

³⁷ Article 5(1)(3) of the FDRE Constitution.

The Constitution establishes nine regional states that are largely delimited along ethno-linguistic criteria.³⁸ States of the federation are to be formed on the basis of the settlement patterns, language, identity and consent of the people concerned.³⁹ The Constitution also provides for a guaranteed representation for minority nationalities and peoples by stipulating that at least 20 seats are reserved for these minority nationalities and peoples out of the maximum number of 550 seats in the HPR.⁴⁰ The Constitution is the supreme law of the land, and it stipulates that any law customary practice or a decision of an organ of state or a public official which contravenes the Constitution shall be of no effect.⁴¹

For the purpose of amending the Constitution, it is stated that except for the rights specified in chapter three, amendment may only be effected when the HPR and the HoF, in a joint session approve a proposed amendment by a two-third majority vote; and when two-thirds of the councils of the member states of the federation approve the proposed amendment by majority votes.⁴² Article 105 of the Constitution embodies an additional stringent requirement for the purpose of amendment of the Constitution.⁴³ Hence, generally speaking the procedure for approving amendments to the Ethiopian Constitution is very rigid.

4. Self-Determination: Subjects, Context and the Dilemma

The content, right holders and the scope of the right to self-determination have been themes of debate among scholars. The principle of self-determination generally has two applications referred to as external and internal self-determination. External self-determination applies to colonial situations in which territorial divisions of the state will be effected in forming an independent nation. Internal self-determination is, on the other hand, concerned with the right of peoples within a state to choose their political status, the extent of their political participation and the form of their government.⁴⁴

³⁸ See Article 47 of the FDRE Constitution.

³⁹ Article 46(2) of the FDRE Constitution.

⁴⁰ Article 54(3) of the FDRE Constitution.

⁴¹ Article 9(1) of the FDRE Constitution.

⁴² Article 105 (2) (a) and (b) of the FDRE Constitution.

⁴³ See, Article 105(1) (a),(b),& (c) of the FDRE Constitution.

⁴⁴ D. Raic (2002), *Statehood and the Law of Self-Determination*, (Martinus Nijhoff Publishers), 238-240.

4.1. Subjects of Self-Determination: Nations, Nationalities and Peoples

The FDRE Constitution has adopted the language ‘Nations, Nationalities and Peoples’ (NNP) as a standard expression to designate ethnic groups. NNP for the purpose of the Constitution has been defined as ‘a group of people who have or share a large measure of a common culture or similar custom, mutual intelligibility of language, belief in a common or related identities, a common psychological makeup, and who inhibit an identifiable, predominantly contiguous territory’.⁴⁵

From this definition one can discern that to be regarded as a NNP (ethnic group) both subjective and objective criteria should be met.⁴⁶ The subjective criteria are belief in common or related identity and psychological makeup, while the objective ones are language, culture and territory. However, the Constitution or other subsidiary laws have not expressly indicated the list of groups, which qualify as NNP and those which do not. If one looks at the composition of the HoF, it may be possible to check indirectly which groups qualify as NNP, because the HoF is composed of representatives of each ethnic group. But this shall not mean that every NNP (ethnic group) in the country has a representative in the HoF. Thus the ethnic groups that can be said to have been recognized are the ones which are now represented in the HoF.⁴⁷

4.2. The Context or Content of Self-Determination in the FDRE Constitution

The Constitution can be said to have adopted three modalities in the exercise of the right to self-determination.⁴⁸ These are the right to secede (external self-determination)⁴⁹, the right to promote one’s language, culture and history

⁴⁵ Article 39(5) of the FDRE Constitution.

⁴⁶ Generally speaking Article 39(5) simply lumps together many factors together in designating Nations, Nationalities and Peoples but a closer look at the requirements reveals that some of them need factual determination while some simply are to be deduced subjectively upon the wishes of the specific group. See, Abate Nikodimos Alemayehu (2004), *Ethnic Federalism in Ethiopia: Challenges and Opportunities*, (Master Thesis, Fall 2004) Available at <www.addisvoice.com/wp-content/uploads/2010/03/ethnic-federalism-.pdf>, 55-57, accessed on December 23, 2012.

⁴⁷ In this regard one can mention the “Kemant” people found in the Amhara Regional State who have filed a petition to the HoF to be recognized as a separate ethnic group.

⁴⁸ See, Fasil Nahum, *supra* note 14, pp., 53,154.

⁴⁹ Article 39(2) and (4) of the FDRE Constitution.

(cultural self-determination)⁵⁰ and right to self government and regional autonomy (political self-determination).⁵¹ The right of every NNP in Ethiopia to the unconditional right to self-determination, including the right to secession has been included so that if the federal government abuses the rights of these constituent units, then they will be entitled to reassert their powers of sovereignty by withdrawing from the federation.⁵² This right is not even subject to derogation during national emergency.⁵³

The right to promote one's language, culture and history seems to have been framed for the purpose of ending cultural domination. The third and most important aspect of self-determination is that of the political one. Political self-determination aims at equitable and fair representation in the state as well as in the federal government. This is the most important aspect of the right to self-determination in multiethnic societies like that of Ethiopia. The Constitution has guaranteed that every NNP has the right to full measure of self-government which includes the right to establish institutions of government in the territory it inhabits and to equitable representation in the state and federal government.

4.3. The Dilemma in the Exercise of the Right to Self-Determination

As stated earlier, every NNP (ethnic group) is guaranteed the right to self-determination without any condition attached to it.⁵⁴ Although this guarantee, at face value, seems to provide a wide range of rights, its application is bundled with a lot of problems and it is hardly realizable. An example in this regard is whether an ethnic group can assert itself as a NNP in a regional state in which it is a minority and exercise its right to political self-determination. Secondly, there can be a question whether an ethnic group can assert itself as NNP outside of its mother state while it has been considered as a NNP within its own regional state. The third dilemma in the exercise of the right to self-determination relates to ethnic groups that do not have their own mother states.

Apart from seeking answers to these questions from the FDRE Constitution, one has to look at the political context which seems to have a far reaching

⁵⁰ Article 39(2) of the FDRE Constitution.

⁵¹ Article 39(3) of the FDRE Constitution.

⁵² Assefa Fiseha (2006), *supra* note 23, p. 132. See also, Matthew J. McCracken, *Abusing Self-Determination and Democracy: How the TPLF is looting Ethiopia*, 36 Case W. Res. J. Int'l L. (2004).

⁵³ Article 93 of the FDRE Constitution.

⁵⁴ Since Article 39(1) states that 'Every Nation, Nationality and People in Ethiopia have the unconditional right of self-determination ...' one may argue that no condition can be attached for the exercise of such right.

impact on the federal structure. This can be tackled from two angles. Constitutionally there are two mechanisms employed to protect the rights of different ethnic groups. The first relates to the right of the different ethnic groups to the unconditional right of self-determination including the right of secession. From a practical point of view, even if the secession of Eritrea was recognized through a similar principle under the Transitional Period Charter, the Ethiopian government does not seem to be in favor of secession for the current nations, nationalities and peoples of Ethiopia (NNP). Hence one may argue here that politically speaking, secession is not an option to an ethnic group.

The second perspective is related with the constitutional right of an ethnic group (NNP) to establish, at any time, its own state (outside the current regional state) within the federal framework.⁵⁵ This too does not seem to be acceptable as it can be discerned from the fact that a number of ethnic groups have demanded that they be granted the status of statehood (especially ethnic groups of the Southern Nations Nationalities and Peoples regional state).⁵⁶ No separate regional state has been established other than the nine regional states stated under the FDRE Constitution.

The House of the Federation, which is entrusted with the task of constitutional interpretation, has not yet come up with decisions for the purpose of protecting such rights of ethnic groups. Therefore, one may safely conclude that the competing interests of different ethnic groups residing in the different parts of the regions is to be entertained only within the context of the nine regional states.

The regional states have been constitutionally designed as entities in which the different ethnic groups (NNP) can profess their diversity and live in harmony. This is mainly attributable to the political commitment of the government to address the problem of ethnicity in the country. On the one hand, the formation of the regional states is a response to the call for appropriate ethnic accommodation, and is meant to solve the problem of ethnic rivalries and competing interests. To this end, the Ethiopian federal arrangement can be viewed as a success, while at the same time it is also embedded with serious problems from the perspectives of the different ethno-linguistic groups within the regional states. The other challenge relates to the pace of nation building in the context of a larger Ethiopian identity beyond ethnic and religious identities.

The federal arrangement can indeed be regarded as a success story because it was a response to the civil wars that continued for decades particularly in the

⁵⁵ See, Article 47(2) of the FDRE Constitution.

⁵⁶ A number of ethnic groups have submitted demands to the HoF that they be given separate regional statehood. To this effect, one can mention the demands by the Sidama and the Berta ethnic groups.

northern part of the country. On the other side, it has been a problematic approach mainly due to the problems that are arising out of the issues of federalism at the regional level. This is due to the fact that ethnic homogeneity could not be achieved in the regional states. Some regions are multiethnic and not ethnically homogenous.

For example, in the regional state of Beneshangul Gumuz, the non-indigenous minorities in the region were underrepresented in the state's legislative council. This is mainly attributable to the lack of adequate mechanisms (in the regional state's Constitution) to accommodate diversity and guarantee representation. In this regard, the electoral law of the country has played its role especially in the regional state of Benishangul by exacerbating the tension between indigenous and non-indigenous identities.

The federal Constitution has not formulated any mechanism that can regulate such tensions that may arise in the exercise of the right to political self-determination between the different ethnic groups within a given regional state. One may be tempted, at this point, to ask whether this is a simple oversight by the drafters of the Constitution.

Conclusion

The federal arrangement between the nine regional states was a response to the right to self-determination of the NNP inhabiting in each regional state. In practice, however, this has resulted in the creation of the majority/dominant ethnic group hegemony in heterogeneously inhabited region states. This has not only resulted in the creation of minority ethnic groups within a given regional state but the minority ethnic group loses its constitutionally guaranteed right of self-determination in favor of the majority and/or dominant ethnic group.

The right to political self-determination stipulated in the Constitution under the current political context and its practical application thus seem to suggest that the right will only apply to an ethnic group where that ethnic group inhabits only in one of the nine regional states in which it is either a majority or the dominant ethnic group.⁵⁷ This is the core problem encountered by minorities at the regional level in asserting their constitutionally guaranteed right to self determination.

⁵⁷ Here I am not concluding that no ethnic group has so far exercised the right to political self-determination outside its own regional state. The Amhara regional state in this regard might be of a good experience, by which it has created 'Nationality Administrations' for its Oromo and Agew nationalities, in which they are a minority within the regional state. But the practice seems to suggest that regional minorities are relegated to an inferior position in which their political rights are severely curtailed.

The remedies should thus be sought at a broad political and policy levels.⁵⁸ The formation of the nine regional states under the FDRE Constitution does not in any way signify that the regions are the sole dominions of the dominant ethnic group/s. The federal arrangement should not also be misconstrued to allow the dominant ethnic group/s, in whatsoever manner, to exercise their rights without due recognition of the ethnic minorities in the regional state. These problems require solutions beyond declarations of intention and normative stipulations because political practices can be different from constitutional and other stipulations.

In particular, the politically empowered ethnic group/s within a given regional state should not deprive regional minorities of their right to be represented in the state's regional council. This envisages their right to establish institutions by which they can exercise self-rule. Therefore, remedies based on the context of a given regional state are mandatory with a view to bringing about solutions at broader political and policy levels. ■

⁵⁸ See generally, Assefa Fisseha (2006), *supra* note 23.