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Ethnic Federalism in Ethiopia: Challenges and Opportunities

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Summary

The study of Federalism has attracted scholars of various fields for a long time. Federalism as an instrument of balancing the tension between universalism and particularism has drawn more attention in pluralistic societies. After the end of the cold war era there is a drift in to reaffirmation of ethnic identity as a means of determining the public life of a society, the venture to ethnify federalism might be regarded as a pragmatic solution but still prone to critique.

How far ethnic federalism is a solution to problems of multi-ethnicity is yet to be seen. The choice favouring it is adopted in Ethiopia. The study aspires to clarify some of the ideas revolving around this form of federalism. More over the challenge this mode of federalism encumbers Ethiopia with and the opportunities it is pregnant with are hoped to be identified with a view to see how best one can utilize it.

In general this study consists of five chapters. The first chapter is introductory. Background, statement of the problem and methodology and source of Information of the study are stated in this chapter. Chapter two deals with conceptualization of the core notions of the study. This chapter will attempt to discuss Federalism, Ethnicity, and self-determination from a theoretical perspective.

In chapter three survey of the constitutional development in Ethiopia will be made. Ethiopia's experience with written constitution and its treatment of issues concerning ethnicity, decentralization and/or federalism in its various constitutions will be put in perspective with a view to tracing continuity and discontinuity in the country's constitutional history. The FDRE Constitution will be a subject of analysis also. The Constitutional order will be described by focusing on the fundamental principles of the constitution.

In Chapter four, the notion of federalism, ethnicity, and self-determination will be analyzed within the Ethiopian context. Their position in the constitutional legal order and the combined effects of the three in the country's public life will be explored. Vast coverage will be given under this chapter to problems concerning right of secession. Who is the claimant? What are the procedures? What institutions are involved? What difficulties are faced? How far is secession to serve as a solution to problem of multi-ethnicity? And, whether secession is a threat to the Ethiopian federalism? These and other related questions are hoped to be raised and answered based on the analysis of the texts of the constitution and other relevant sources.

The constitutional recognition of customary and religious laws which is all the more intensified by ethnic federalism, the consequent pervasive legal pluralism and the impact on human rights protection will be the concern of chapter five. How can one maintain uniform human rights standards in a pluralized legal system? How do we handle human rights in the face of very slow, ill- equipped judicial system whose capability is as varied as the numbers of states and localities? An attempt to answer these questions will be made under this chapter.

The study closes with some words of concluding remarks.

Abbreviations

FDRE	Constitution of the Federal Democratic Republic of Ethiopia
UN	United Nations
HPR	House of Peoples Representatives
HF	House of Federation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
GA	General Assembly
OAU	Organization of African Unity
ICJ	International Court of Justice
OLF	Oromo Liberation Front
TPLF	Tigray Peoples Liberation Front
EPRDF	Ethiopian Peoples Revolutionary Democratic Front
TGE	Transitional Government of Ethiopia
UNESCO	United Nations Educational, Scientific and Cultural Organization
PDRE	Constitution of Peoples Democratic Republic of Ethiopia
PMAC	Provisional Military Administrative Council
ONC	Oromo National Congress
EDP	Ethiopian Democratic Party
CAFPDE	Council for Alternative Forces for Peace and Democracy /southern Ethiopia People's Coalition
NDR	National Democratic Revolution

1 Chapter One: Introduction

1.1 Background

After a long and devastating civil war, the military dictatorship regime that ruled Ethiopia for more than seventeen years was overthrown by a coalition of liberation forces in May 1991. The new Ethiopian governors, lead by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) declared their commitment to a clean break with the past and the establishment of a new society; a society based on equality, rule of law and the right to self-determination.

Dictated by the various interests advanced by the ethnic based coalition forces and similar ethnic based political groups, who joined afterwards, the recognition of Ethiopians ethnic diversity become the central principle of the new regime's policy. And this is immediately reflected in the Transitional Period Charter of 1991 and in subsequent proclamations and subsidiary laws. Once the charter paved the way for decentralization, Ethiopia became a federal state in 1995. Article 1 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) makes this quite explicit by establishing a federal and democratic state structure. This Constitution confirmed the new approach towards ethnic diversity and stipulates ethno-linguistic line to be the primary basis of the new federal state structure.¹

This federal arrangement ,nevertheless, appeared to be peculiar from the outset not only because it follows an ethno-linguistic line for state formation but also in the sense that it allows the right to self-

¹ FDRE Constitution, Art. 46(2).

determination including secession. The inclusion of particularly the latter has made the Ethiopian model of federalism prone to critiques.

Even though with complexity, the choice was made, and ethnicity was favoured as the underlining factor in the process of state formation. Nine states were set up² and parliamentary system of government was put in place at the federal level.³ With all its ambitious visions and criticisms one is forced to wonder if the Ethiopian model of federalism will perpetuate inter-ethnic conflict instead of solving them. This query would be better handled in light of the problems that the Ethiopian federalism poses along with some of the existing opportunities.

The threat of secession and possible disintegration of Ethiopia as a national entity is worth considering in the light of growing ethno-nationalist self-assertion whose right of secession is guaranteed unconditionally. It is due to this potential of secession that evokes the question as to whether, conceptually speaking, Ethiopia's is federalism at all. This is what has made imperative a need for an in-depth study of the Ethiopian model of federalism.

The study is intended as a contribution to the debate on whether the constitutional mechanisms of the Ethiopian federal structure actually have the potential to realize the objective of unity in diversity. The examination is to be by way of assessing the extent to which federalism with the right to self-determination solves inter-ethnic competition and conflict. The study therefore aims at finding the major challenges ethnic federalism poses (along with its opportunities) forwarding alternative ways of handling these challenges. From among these challenges, the focus of this research will be more concentrated on the problem of potential

² FDRE Constitution, Art. 47.

³ FDRE Constitution, Art. 45.

fragmentation and secession, and of uniform human rights implementation endeavors.

1.2 Statement of the Problem

As pointed out earlier ethnic-federalism in the Ethiopian context faces a number of challenges including, but not limited to, threat of fragmentation and implementation of uniform human rights standards.

The FDRE Constitution with its explicit provision on the right to self determination(both “externally” away from the federation and “internally” away from a state), both secession and fragmentation are not far from becoming a reality. So having this threat of fragmentation one may start to wonder how far the system can be operative to sustain the federalism. Furthermore, if secession and fragmentation are threats born out of “ethnic federalism” due to the right to secession clause, then how far is it a solution to problem of multi-ethnicity? Is it a source of problem than of solution?

Another challenge the Ethiopia model of federalism poses relates to the issue of setting a uniform human rights standard on country wide level. This is because; it is explicit in the nature of federalism that in addition to the federal bills of rights, states can also have their own bills of rights which may happen to conflict with the federal bills of rights. Apparently, one trait of human rights as practiced in a federal system is that it serves as a uniting force.⁴ This will be the case when human rights norms are placed at the top of the hierarchy of norms in the domestic legal framework. The issue becomes further complicated when one recalls that the FDRE Constitution gives recognition to customary and religious norms and values existing in the various ethnic states. By so doing, it

⁴ L. Besselink, *The Protection of Human Rights in a Federal Systems-The Case of Ethiopia*,(2000),pp 5.

compromises standards known to be applicable countrywide. Therefore, it is worth to ask if there is any mechanism of striking a balance between respecting the autonomy and cultural self-determination of states on the one hand and countrywide enforcement of human rights norms on the other hand.

This study will aspire to articulate and examine these and other related challenges to the Ethiopian model of federalism.

1.3 Methodology and Sources of Information

The information to be used in this thesis is gathered from books, laws, cases and periodicals. Moreover, official reports of the council of Representatives and personal observation will be used. Legal as well as socio-legal method will be applied in analysing the information collected.

2 Chapter Two

2.1 Theoretical Approaches

This study is primarily about federalism, ethnicity and the right to self-determination. For a better understanding of the issues involved, conceptualization of the three notions will be made in a theoretical plane.

2.1.1 Federalism

To begin with the etymology of the concept, the term “federal” comes from the Latin foedus, meaning "covenant".⁵ By its very nature federalism is a form of government where power is divided and shared between a strong central government and strong member states. There are, nonetheless, different views on the nature of federalism and its distinguishing character from other forms of government. P. King, in his book entitled “Federalism and Federations” suggested a definition on the nature of a federal form of government. He stated that federalism should be regarded as:

*An institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely on the fact that its central government incorporates regional unites into its decision procedures on some constitutionally entrenched basis.*⁶

Hence, in essence a federal arrangement is one of partnership between a territorially based regional units and a central government whose relationship is regulated by a constitution or covenant. Based on this covenant power is divided and shared between the regional unites and the

⁵ T.Firew, Protection of Human Rights under the Ethiopian Federalism and the Challenge of Legal Pluralism, (2001) pp10, unpublished

⁶ P. King, *Federalism and Federations*,

center. It is basically a compromise between integration and diversification, decentralization and centralization.

In practice a federal constitution serve as a cornerstone setting up a federal system as well as regulating the power of the central government and constituent units. This implies that the central authority cannot alter the power of the units with out amending the constitution, whose amendment involves a special kind of procedure usually requiring the consent of all member states or at least majority of them. This very nature of a federal constitution is the *raison d'être* for constituent units to surrender some degree of their autonomy freely and voluntarily to the center.

As far as the basis of creating a federal arrangement is concerned there are two different types of approaches, depending on factors such as; the heterogeneity or homogeneity of ethno-linguistic structure, socio-economic and political systems of the subjects of a federation.⁷ Some writers argue that ethnicity should be the basis of a federation, while others consider the territorial principle as the basis, irrespective of ethno-cultural factor. The federal arrangements that exist in the world today fall under either of the two categories. Countries such as Nigeria, India and former USSR are known to have a federal arrangement based on ethnic principle. While others like USA, Germany and Brazil are known to have a territorial basis of arrangement.

Another important question for discussion is why federalism? Different writers have given their own explanations as to the genuine reason for states to adopt a federal type of government. J. Kincaid argues that one

⁷ K. Sharma, *Multi-Culturalism and Ethnicity in Global Context*,(1987), pp.34.

of the advantages is to solve the fundamental problem of human governance and liberty.⁸ He goes on to state that federalism aspires to

*....maximize the democratic and economic advantages of both small and large republics by minimizing the anarchistic temptations of small republics to fight each other and the monopolistic temptations of large republics to become tyrannical.*⁹

Hence it is evident that federalism strengthens democracy by creating an atmosphere of popular participation at, at least, two levels. Further, federalism helps preserve the particularities of smaller republics in a big polity by first protecting them from potential degeneration into non-existence and by, secondly, breaking the tyranny of larger republics.¹⁰

Nonetheless, W. Riker argues that the search for liberty and freedom is not the genuine reason for accepting a federal bargain. According to him the desire to expand territorial control or the fear of external military threat are always the real causes for opting federalism.¹¹ He goes on to state that American Constitution which sets up the federation has a clear military motivation. Likewise the Swiss federation has a similar history behind the present federal arrangement.

In situations where unitary states make a change in government structure to become a federal state, Riker's argument is no more tenable. In this regard A. Lovise claims that threat of disintegration and the need to maintain unity are the major reasons why unitary states opt for federalism.¹² In deed federalism is a good bargain for the political elites of a conflict thorn unitary states which is on the verge of complete disintegration as it provides a platform for conflict management and

⁸ But see, W. Riker, *Federalism: Origin, Operation, and Significance* (1964) pp.13.

⁹ J. Kincaid, "Foreword" in: *Federalism-What is it? Where Might it Take Us?* (1995).

¹⁰ M. Burgess, *The Political Use of Federalism*, (1993).

¹¹ W. Riker, *Federalism: Origin, Operation, Significance*,(1964),,pp13.

¹² A.Lovise, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience*,(2202) pp14.

accommodation of differences.¹³ M. Hechter in his book entitled “Containing Nationalisms” argues that the more federalism encourages self-governance the lesser demand for secession. He regarded federalism as a stabilizing measure, since it accommodates the claim for autonomy through concession than repression.¹⁴

D. Elazar reminds us, however, that federalism is not accepted with out opposition. He goes on to state that the opposing forces are forces of centralization and fragmentation.¹⁵ Those who are for fragmentation are referred as ethno-nationalist movements and they are primarily secessionist. According to Elazar ethno-nationalists are the strongest force against federalism. Yet, contemporary ethnic problems seem to have brought about a drift move towards the adoption of ethnic-federalism as a solution¹⁶. A significant number of writers, however, question if ethnic-federalism can solve ethnic problems. D.Elazar claims that ethnic nationalism is at odds with the principles of federalism. In federalism consent should be the basis of division and sharing of power not “language, religious or national myth”¹⁷

So far, federalism's meaning, aspects, values, factors for and against and the challenges posed to it are discussed. This discussion is hoped to have a bearing on the analysis of federalism in Ethiopia later in chapter III. Now, let us return to the discussion of the notion of ethnicity.

¹³ Ibid.

¹⁴ M. Hatcher, *Containing Nationalism*, (2000), pp.

¹⁵ D. Elazar, *Federalism and the way to Peace*, (1994), pp167.

¹⁶ Ibid.

¹⁷ Ibid, see also I. Duchacek, *Comparative Federalism: the Territorial Dimension of Politics*,(1986),pp207.

2.1.2 Ethnicity

Due to the growing need for proper understanding of the concepts and theories of ethnicity, there are wide ranges of debates among scholars and often misperceptions and controversies. M. Gudina in his book on “Competing Ethnic Nationalisms and the Quest for Democracy” expresses the problem of defining the concept as:

*Definition is not always easy, and ‘ethnicity’ and ‘nationalism’ are particularly elusive; they have continued to frustrate the development of common terms of reference. Moreover the attempted definitions are either ideologically informed or limited to local situations and hence lack universal meaning and application.*¹⁸

In a similar manner W. Sollors starts his book “Beyond Ethnicity” with two quotations one of which is I. Howe’s (1977). Howe says “No one quite knows what ethnicity means: that is why it is so a useful term”¹⁹

Having seen the problem of defining such a politically sensitive term as ethnicity, the wide range of existing definitions flow from how ethnic groups are perceived by the existing theories.

According to M. Koenig there are three theories with regard to ethnicity, namely primordialism, Constructivism and instrumentalism.²⁰

Primordialism consider ethnicity as a permanent characteristic of individuals and communities having features such as religion, culture, social organization or language which are considered to be objectively

¹⁸ M. Gudina, *Competing Ethnic Nationalisms and the Quest for Democracy*, (2002), pp20.

¹⁹ W.Sollors, *Beyond Ethnicity*,(1996),pp1.

²⁰ M. Koenig, *Democratic Governance in Multi-cultural Societies*,(1999)pp24, But see Merara (supra note 18) pp23.

“given”.²¹ As it is deeply rooted in historical experience it has to be properly treated as a given in human relations.²² According to this theory a community having a distinct culture, religion or language (or other forms of social organization) qualifies for an ethnic group without recourse to a subjective element attached to being a member of an ethnic group.

Constructivism, on the other hand, argues for the inclusion of additional subjective element as an important aspect of ethnicity. This theory regards ethnicity as constructed from dense webs of social interactions and hence a group attitude about its custom, decent or even physical structure forms an important aspect of ethnicity.²³

Instrumentalism focuses more on the process of political mobilization and manipulation by which social groups are constituted on the basis of ethnic attributes such as nationality, religion, race or language.²⁴ In this view, ethnicity has little independent standing outside the political processes in which collective ends are sought.²⁵ This theory is criticized as short-sighted by M. Gudina as it seems to overlook the possibility that marginalized ethnic groups resort to ethnicity in self-protection and to ensure their survival in the face of real domination and exploitation.²⁶

Quoting S. Nabudere (1999, 90), M. Gudina suggests a balanced view providing two aspects to ethnicity: positive and negative. The positive side of ethnicity, which he refers 'post-traditionalism' is a form of ethnic identification which is forward looking in that it tries to cope with modernity

²¹ Supra note 20, pp24.

²² Supra note 18, pp 23.

²³ Supra note 20.

²⁴ Supra note 18, pp23.

²⁵ See also T. Makkonen, *Identity, Difference and Otherness: The Concepts of 'people', 'Indigenous People' and Minority' in International law*,(2000)pp24-25.

²⁶ Supra note 18, pp 24.

whilst defining ones identity for needs of stability and self-definition.²⁷ Class manipulation and mobilization of ethnic sentiments for purely narrow and self serving interest of minority elites is the negative aspect according to him.²⁸

Quite a significant number of writers express their fear in making ethnicity the foundation of a democratic polity. Doornbos as quoted by M. Gudina expresses his note of caution as follows:

*...the current trend is to opt for political pluralism, decentralization and possibly for according ethnicity a prime place as a basis for political organization. This pendulum swing in the other direction reflects and stimulates expectation will provide a superior basis for long term political projects...However, if ethnicity is to assigned any paramount constitutional role in this scheme of things, renewed disillusionments will be difficult to avoid: ethnicity can only provide for an alternative basis for political organization at the cost of a whole new wave of misrepresentations, distortions and inequalities.*²⁹

Contrary to the above pessimistic view on ethnicity, writers such as S. Hamasso and M. Salih suggest a pragmatic African approach. According to them ethnicity is a fact to reckon with and ethnic identity is simply a fact in to which every one, especially an African is born to obtain membership with out any “recourse to application, papers and bureaucratic red-tape”.³⁰ And hence, ‘recognizing rather than denying ethnicity may hold the key to democratizing the state and development in Africa’.³¹ They warn that unless ethnicity is taken seriously Africa’s struggle to democratize the state and development will suffer no better a fate than that of an imagined nation

²⁷ Supra note 18, pp 24-25.

²⁸ Ibid.

²⁹ Supra note 18, pp25.

³⁰ H. Seyoum, *Ethnicity in Africa towards a Positive Approach*, (1997) pp11-17.

³¹ S. Mohammad (2001) pp 25 as quoted in M. Gudina, supra note 18.

state.³² This position of condoning ethnicity as a crucial factor in state building in Africa is quite relevant to the Ethiopian case, where ethnicity has already become an 'official' state ideology and practice.

The difference in framing aside, the disagreement in theories noted, and the difference in point of emphasis having been pointed out, there are some features of ethnicity that recur in the discussion on ethnicity. H. Seyoum, for instance, enumerates territory, language, culture, and economic specialization as the major features of ethnicity.³³ He thus sees ethnic groups as collective communities with a physical space and language, having a distinct cultural, social and political organization and having their own area of economic specialization that makes others dependent on them as much as they will depend on others for other area of economic expertise.

The cultural understanding of the term 'ethnicity' has lately become favored in most accounts of the concept, which has also been reflected in international law doctrines.³⁴ A. Hastings, who views ethnicity as a monolingual community, enlists common cultural identity and so often language as the major components of ethnicity.³⁵ For him, ethnicity signifies a people group who has a common culture shared through a spoken language.

The culture, he maintains, is to be traced to "observable characters" such as cloth, house styles, relations to domestic animals and land; view of work; role division between men and women; manner of hunting; view and handling of crime; manner of defending the group from intruders; concept of property; birth, marriage and death rituals; courtship; proverbs, songs and lullabies;

³² Ibid.

³³ Supra note 30, pp 20-33.

³⁴ See A. Edie, *Human Rights and the Rights of Groups or Their Members*, in Robert Janssen(ed.), "Minorities and Conflicts"(1996),pp.31

³⁵ A. Hastings, *The Construction of Nationhood: Ethnicity, Nationalism and Religion*, (1997), pp 30.

shared history and myth; belief in the "after-life", God, gods or other spirits, etc ³⁶

Similar features recur in the work of Horowitz too, who, however, goes further to even identify some cues that help identify a person's ethnic background such as hair color, texture, height physique; or circumcision, earring holes, modified earlobes; or posture, gesture, dress, grooming, and display.³⁷ He also states that name and language (grammar, syntax, vocabulary, accent, reading facility, are important means by which to distinguish a member of one group from the other.³⁸

Generally, then, one can say that the main features or elements of ethnicity are language, culture, territory, and religion. The element of economic specialization distinctly identified by H.Seyoum might be part of Hastings's broad list of "observable characters" that are subsumed under culture.

2.1.2.1 Ethnicity and Ethnic-Conflict

An important question regarding ethnic-conflict is-what are the root causes of ethnic-conflict? A recent study shows that the influencing and the generating factors vary substantially from country to country. H. Seyoum identifies two categories of sources of ethnic conflict in Africa, namely real and pseudo-causes of conflicts.³⁹ In the first category he includes not only cultural diversity, traditional hostilities, and growing uneven development, but also centralism and super-imposed states that are out of touch to the people.⁴⁰ Moreover, he lists specific causes of conflict that are peculiar to Africa such as artificial borders, domestic colonialism,⁴¹ and external (destabilizing) involvement that take varying faces including neighboring

³⁶ Ibid.

³⁷ H. Donald, *Ethnic Group in Conflict*, (1995), pp46-47.

³⁸ Ibid.

³⁹ Supra note 30, pp 3.

⁴⁰ Ibid.

⁴¹ Ibid, pp 44.

states, regional groups, former colonial powers, global powers, and more recently, international financial institutions.⁴²

In the category of false causes are listed backwardness, social segregation, elite manipulation, and mass demand for change.⁴³

Regarding the mechanisms to be taken to resolve ethnic conflicts, there are various views. H. Donald makes a comprehensive study of various methods of ethnic conflict prevention, management and resolution. In particular he identifies distributive and structural approaches to containing and managing conflicts. Distributive approach aims at changing "the ethnic balance of economic opportunities and rewards" whereas the structural one aims at changing "the political framework in which ethnic conflict occurs."⁴⁴ Ethnically skewed investment and preferential policies fall in the category of distributive policies. Federalism, regional autonomy and equitable electoral devices fall in the category of structural techniques.⁴⁵

Moreover, federalism and its variants, (e.g. Confederation) regional autonomy and devolution intended to avert separatism, and the electoral laws are stated as tentative solutions whose success depends on the kind and practical situation of the conflict.

In the same vein, S. Hamesso calls for a comprehensive ethnic sensitivity in order to deal with the problems of ethnic conflict in Africa. He suggests that cultural and political autonomy, promotion of languages, recognition and formalization of ethnicity in public life, and providing for legal guarantee of inter-ethnic equality (through race (or "ethnic") Acts, positive discrimination,

⁴² Ibid, pp 52.

⁴³ Ibid, pp 45-47.

⁴⁴ Supra note 37, pp 596.

⁴⁵ Ibid.

and equal opportunity laws, etc) are helpful mechanisms for preventing, managing and resolving ethnic conflict.⁴⁶

Thus, one can see that the solutions to ethnic conflict revolve generally around utilization of non-centralization (federalism and its variants, included), inclusive electoral system, and recognition of the rights of ethnic groups including minorities.

2.1.3 Self-Determination

Doctrinal elaboration of the content and holders of the right to self-determination has become an eye-catching spot for international law scholars. Despite the flow of numerous intellectual energy consensus could not be reached as to the content and holders of the right among the different writers. It was after WWII that the concept evolved from a purely political principle to a legal right.

Academic discourses on the content of the right to self-determination identify two applications of the right as used beyond the decolonization process.⁴⁷ Namely “external” and “internal” self-determination.⁴⁸ . External self-determination, according to such scholarly writings , was applied most frequently to colonial situations as it concerns directly the territory of a state-its divisions, enlargement or change-and the state consequent international relation with other states. ⁴⁹

Internal self-determination, on the other hand, concerns the right of peoples with in a state to choose their political status, the extent of

⁴⁶ Supra note 30, pp97.

⁴⁷ E.g. A. Gudmundur, *The Right to Self-Determination and Indigenous Peoples*,(1993) quoted in T. Makkonen, "Identity, Difference and Otherness: The Concept of 'People', 'Indigenous People' and 'Minority in International Law'", Nowak, supra note 56,pp.22-23, But see Cassese, *Self-Determination of Peoples: A Legal Reappraisal*(1995),pp.52-55

⁴⁸ D. Raic, *Statehood and the Law of Self-Determination*,2002,pp327,238-240;Ibid

⁴⁹ Ibid

their political participation and the form of their government.⁵⁰ This aspect of the right to self-determination may take various forms ranging from direct participation in the central-decision making process of the state, to federalism and other forms of political autonomy. Thus, an important feature of internal self-determination is that this mode of implementation does not affect the external boundaries of the state as it does in case of external self-determination.

The right to self-determination is included in the major international law instruments including, but not limited to, the Charter of the United Nations (UN), the two human rights covenants and the African Charter on Peoples and Human Rights. Discussion of the three is in order.

2.1.3.1 The UN Charter and General Assembly(GA) Resolutions

The Charter in Article 1 (2) provide that one of its main purposes is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”⁵¹ The basis of the decolonization movement of the post war period stemmed from the popular “Declaration of the Granting of Independence to Colonial Countries and Peoples” of 14 December 1960.⁵² The Declaration on Colonial Independence (Resolution No. 1541) recognized self-determination as an instrument of decolonization, for the purpose of securing international peace, stability and respect for human rights.

Two years latter, the economic side of self-determination was emphasized in a resolution relating to “permanent sovereignty over Natural Resources”.⁵³ In the ‘Declaration on Principle of International Law concerning Friendly Relations and Cooperation among States’⁵⁴ of 24 of October 1970, the content

⁵⁰ Ibid, see also *Katangese peoples Congress v. Zaire*, infra note 68

⁵¹ See also Arts, 55, 73 and 76 of the UN Charter.

⁵² GA Resolution 1514(XV), 14 December 1960.

⁵³ GA Resolution 1803(XVII)

⁵⁴ GA Resolution 2625(XXV)

of the right of political self-determination –and in particular, the ways in which it can be applied-were further developed. It provided legal frame work for resolving a tension between two cardinal principles of international law: sovereignty and territorial integrity of states on the one-hand and equal rights and self-determination of peoples on the other. The mediating principle provided for in Resolution 2625(xxv) is not one that can be applied mechanically. It is highly susceptible to dispute which invites consideration of many factors in any given case, including the political system and the constitution of the sate in question and its practical impact on members of the society.

The Declaration on Friendly Relations required the exercise of the right to respect territorial integrity and political unity of a state as long as people enjoy equal rights.⁵⁵ In the same vein H. Hannum, explains that secessionary self-determination can not be exercised if all people enjoy equal rights within a state and internal democracy in which there is a representative government representing the whole people,⁵⁶ A state is said to be unrepresentative if it is exclusives of a group from the political process because of race, creed or color.⁵⁷

General Assembly resolutions, according to T. Musgrave, were better placed in delimiting the scope the right compared to the two human rights covenants, even though to the decolonization process only.⁵⁸ This aspect of the right is recognized by the International Court of Justice as a peremptory norm of International law.⁵⁹

⁵⁵ Ibid

⁵⁶ H. Hannum, “Rethinking Self-Determination”,(1993) Va. J. Int’l L. as reproduced in :Steiner & Alston, *International Human Rights in Context: Law, Politics and Morals* pp975-976, see also A. Gudmundur, *Different Forms of and Claims of the Right to Self-Determination*, (1996) pp.65-66, in D Clark et al, (ed), “Self-Determination International perspective”.

⁵⁷ Ibid

⁵⁸ T. Musgrave, *Self-Determination and National Minorities*,1999,pp90

⁵⁹ M. Nowak, *U.N. Covenant on Civil and Political Rights: ICCPR Commentary*,(1993),pp.13

In the development of the Economic aspect, of the right to self-determination, an essential contribution was made by the Declaration of 1 May 1974 on “the Establishment of the new International Economic Order”⁶⁰ and the “Charter of Economic Rights and Duties of States”⁶¹.

2.1.3.2 Common Art. 1 of the ICCPR and ICESCR

Article 1 of the ICCPR and ICESCR deals with the right to self-determination of peoples. The adoption of the two covenants on 16 December 1966 recognized the right to self-determination for the first time (in human rights treaty) as a substantive right of all peoples.

Despite the landmark political significance, the right to self-determination in both covenants is extremely unclear and controversial as regards its legal content.⁶² The historical background of article 1 in both covenants is characterized by fundamental differences of opinion.⁶³ In general, the adoption of a separate right to self-determination was initiated by socialist and Third world states, whereas most western states, above all European colonial powers, vehemently opposed and voted against it due to self-interest. The latter argued that self-determination is a political principle and not a legally enforceable right; accordingly it fails to fit into human rights convention based on the protection of the individual. Hence, cannot be enforced by the Human Rights Committee in the same manner as individual rights.⁶⁴

One of the distinguishing feature of the right to self-determination in the covenant is its collective character as it is the “right of all peoples” and not “every human being” or “every one”. This collective character of the right

⁶⁰ GA Resolution 3201 (S-VI)

⁶¹ GA Resolution 3281(XXIX)

⁶² Supra note 56,,pp.9

⁶³ Supra note 56,,pp.9

⁶⁴ Supra note 56,,pp.9-10

renders its admissibility under Optional Protocol I controversial. The Human Rights Committee ruled in *Libcon lake Band v. Canada* that the Optional Protocol I provided a remedy of individual communication only for the individual rights set out in Part III of the Covenant, i.e., in Arts. 6-27. In *Mikmaq v Canada*, the author was a Grand Captain of Mikmaq Tribal society, who claimed the violation of the right to self-determination by Canada. In the ruling on admissibility the Human Rights Committee considered the authors representative capacity and ultimately rejected the communication.⁶⁵

Self-determination as conceived by the covenants has a permanent character and hence a continuing right. It follows that it is not consumed with the attainment of political independence but rather must be exercised, asserted, and perhaps renewed or redefined in a continual process. This process refers to internal self-determination. At least it could be said that the right to be exhausted in the external aspect of self-determination once a country attains independence.

As regards enforcement the committee obliges state parties to promote the realization to the right of self-determination and respect the rights in conformity with the provisions of the UN Charter, art. 1(3). Even though enforcement of the right under OPI is controversial, as mentioned earlier, the Committee has left no doubt that the Covenants enforcement provisions include the right of self-determination.⁶⁶ Nevertheless, it is important to note an equally competing principle of the UN Charter, which proclaims non-interference in domestic affairs of states.⁶⁷ Many countries have evoked this provision since the creation of the UN in order to effectively block any claim

⁶⁵ *Kitok v. Sweden*, UN Human Rights Committee, Communications No. 197/1985; *Croes v. the Netherlands*, UN, Human Rights Committee, Communication No. 164/1984; *E.P. V. Colombia*, UN Human Rights Committee, Communications No.167/1984. The Committee rejected all the above cases on procedural grounds mainly on issues of representative ness.

⁶⁶ See Gen.C. 12/21

⁶⁷ Specifically see Art.2(7) of the UN Charter

of self-determination or an inquiry in to a general human rights situation in the country.

2.1.3.3 The African Charter on Human and Peoples Rights

The African Charter on Human and Peoples Rights of 27 June 1981 is unique in a sense that it recognizes individual rights and the collective rights of peoples on equal footing. People are guaranteed the rights of equality, self-determination, sovereignty over natural resource, development, peace and satisfactory environment. With in the scope of the right to self-determination, Art.20(3) accords all peoples living under foreign rule or in subjugation a claim to political, economic or cultural assistance in their liberation struggles from states parties to the Charter.

The case law on the right to self-determination has not yet well developed under the African Charter due to small number of communications brought to the attention of the Commission. The Commission has so far entertained only one case concerning the right to self-determination. This case *Katanganese Peoples' Congress v. Zaire*⁶⁸ was submitted in 1992 by the president of the Katanganese Peoples Congress requesting the commission to recognize the Congress as a liberation movement entitled to support the achievement of independence for Katanga; recognize the independence of Katanga; help secure the evacuation of Zaire from Katanga.

The Commission in its decision stated,

all peoples have the right to self-determination. There may, however, be controversy as to the definition of peoples and the content of the right. The issue in the case is not self-determination for all Zairians as a people but specifically for the Katangese. Whether the Katangese consist one or more ethnic groups is for

⁶⁸ African Commission on Human and Peoples Rights, Communication No.75/92

this purpose immaterial and no evidence has been adduced to that effect.”⁶⁹ It further argued, “The Commission believes that self-determination may be exercised in any of the following ways: independence, self-government, federalism, confederalism, unitarism or any other forms of relations that accords with the wishes of the people fully cognizant of other recognized principles such as sovereignty and territorial integrity.”⁷⁰

It continued and stated its obligation to uphold the sovereignty and territorial integrity of Zaire, member of the OAU and a party to the African Charter on Human and Peoples Rights. The Commission summed up its arguments in the following terms:

In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called in to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Art. 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a degree of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.⁷¹

Based on this reasoning the Commission declared that the case holds no evidence of violations of any rights under the African Charter. The following issues are also likely to arise in the future. For example, whether an individual can bring communication to the commission on the ground of violation of the right to self-determination, the extent of the representativeness of a party bringing the cases, in extreme cases whether the commission can declare independence etc..

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

From the foregoing, one can learn that self-determination especially in its secessionary form is a limited right to be exercised largely in the context of decolonization. This is further reinforced by the fact that secession is hardly recognized by constitutions of multi-ethnic states. The FDRE Constitution is unique in this regard.

3 Chapter Three

3.1 Brief Overview of the Ethiopian Constitutional Order

For a better understanding of the issues and rationale for the present federal system, it is worth to have a basic understanding of the state and constitutional history of Ethiopia. Under this chapter brief survey of the constitutional history of Ethiopia will be made with a focus on problems of multi-ethnicity and the regimes approach towards it, followed by analysis of the principles and aspirations of the FDRE Constitution.

3.1.1 Pre-Written Constitutional Era

Conventionally, the historical foundation of the Ethiopian state goes back at least three thousand years. The mythology begins in the days of the Old Testament, and the reign of King Solomon of Israel and Queen of Sheba of Ethiopia in the tenth century B.C. According to this legend the Queen while paying a visit to the King of Israel conceived a baby who latter become a king. This legend has in fact been propagated by church and state and served as a powerful source of legitimization by the subsequent Ethiopian monarchs.

In spite of Ethiopia's recognition as a polity for three thousand years the current geographical boundary is of recent phenomenon. The polity is rather known for its fluid territorial boarder which is later shaped by the extent of conquest made by the Ethiopian Emperors of the 19th and 20th century.

It is important to note that despite the long history of people and state, Ethiopia has little experience with written constitutions. Similarly the principle of separation of power and separation of state and religion

were alien to Ethiopia's legal culture. It was to be recalled that even during the constitutional period, Emperor Haile Silasse I used to preside over the

supreme judicial organ of the country. Another notion which was alien to the Ethiopia's legal culture was of federalism. Although some Ethiopian scholars tend to confuse federalism with feudal non-centralization and argue that federalism is not alien to Ethiopia,⁷² the sole response to problems of diversity by then was nothing but conquest and assimilation.

3.1.2 Haile Silasse's Regin

The coming in to power of Emperor Haile Silasse heralded the "epoch of written constitution."⁷³ This era starts with the promulgation of the first written constitution in 1931. The Constitution, however, was significant not for its liberal traditions but rather for its symbolic role in providing formal definitions of the relations between the emperor and the nobility and the administration of the government.⁷⁴

The Constitution can be considered as more of a pact between the monarchy and the feudal lords. Though there was a bicameral form of parliament neither of the houses were elected by the people. Rather the Upper House representatives were hand picked by the emperor out of important members of the nobility while lower house representatives were elected by the nobility in the Upper House.⁷⁵ One of the historic significance of the Houses, according to F. Nahum, is that they are the first timid step toward participatory government, as they served as a communication bridge between the government and the people"⁷⁶

The 1931 Constitution with its sole purpose of consolidating the power of the monarch did not bother about problems of ethnic, linguistic and religious diversity. For the same reason any form of decentralization of government were contrary to the purpose of the Constitution.

⁷² But see

⁷³ F. Nahum, *Constitution for a Nation of Nations*, (1997), pp.17

⁷⁴ Supra note 5, pp.8

⁷⁵ The 1931 Constitution, Art.32

⁷⁶ Supra note 63, pp.22

On the silver Jubilee of his coronation, Haile Silasse proclaimed the “Revised Constitution” which superseded the 1931 Constitution. Alike its predecessor the Revised Constitution solidified the absolutism of the monarchy. The first two chapters were devoted to the institution of the monarchy, (the sacredness of the person, the dignity of the Emperor and the Solomonic root of the dynasty, etc).⁷⁷

Apparently, it was the federation of Eritrea (with its liberal constitution) with Ethiopia which necessitated the Revised Constitution. However, this constitution nowhere mentions of the federal arrangement. Hence, there was no division and sharing of power as is the case in the tradition of federal systems. What is clearly neglected in this Constitution, similar to its predecessor, was the issue of diversity. Due to the Solomonic monopolization of power all those who did not belong to the line are marginalized and excluded.

One of the basic achievements of the Emperor during his reign was the codification of six modern codes which are applicable to the present day. Nevertheless, these codes are unsympathetic to customary and religious norms systems which were prevalent in the country.⁷⁸

In sum, the consolidation of the absolutism of the monarchy, practical hostility of the Ethio-Eritrea federal arrangement by most officials of the day⁷⁹ and the process of legal uniformity proved the unwillingness of the regime to accept federalism as a mechanism of accommodating diversity.

⁷⁷ The Emperor had power over the executive and judiciary(Art.27&66) , also had power to appoint the members of the Senate and dissolve the House of Deputies(Arts 102,33)

⁷⁸ See particularly Art. 3347(1) of the Ethiopian Civil Code, which did away with all customary and religious laws prevailing in the country

⁷⁹ Supra note 59,pp.207

3.1.3 The Military Rule and the PDRE Constitution

February 1974 saw the demise of the oldest Christian monarchy in the world and replaced by military Marxism. A popular revolution involving peoples from all sections of the society succeeded in overthrowing the ancient imperial regime.

The Provisional Military Administrative Council otherwise known as the Derg replaced the monarchy and started to take revolutionary measures immediately.⁸⁰ The Derg then acted as the supreme political organ in the country arrogating all decision making power unto itself. After the suspension of the Revised Constitution the country was run by pieces of legislations which according to some writers amount to de facto constitution.⁸¹

As part of the Derg's attempt to respond to religious and ethnic diversities it promulgated a law for the first time in Ethiopian history advocating equality of religions and separation of church and state.⁸² Also as a solution to the emerging ethnic nationalisms the Derg came up with 'National Democratic Revolution (NDR)' in 1976, which includes a regional autonomy program as part of building a socialist state. As quoted from M. Gudina the NDR partly reads as follows:

*...the right to self-determination of all nationalities will be recognized and fully respected .No nationality will dominate another one since the history, culture, language and religion of each nationality will have equal recognition in accordance with the spirit of socialism...Given Ethiopia's situation the problem of nationalities will be resolved if each nationality is accorded full right to self-government. This means that each nationality will have regional autonomy to decide on matters concerning its internal affairs.*⁸³

⁸⁰ The Derg suspended the Revised Constitution, dethroned the Emperor, abolished the monarchy, and dissolved the parliament, nationalized land and houses...

⁸¹ P. Brietzke, Law, Development and the Ethiopian Revolution,(1982),pp

⁸² Supra note 18,pp.82

⁸³ Ibid

This promise, however, was short lived as ethnic nationalisms were conceived as a threat to the revolution. For almost a decade the Derg's solution to the problem of ethnicity was military campaign which ended up in aggravating the problem than be a solution.

At the peak of this activities came the 1987(PDRE) Constitution which resurrected the regional autonomy program initiated by NDR.⁸⁴ Accordingly, the country administrative structure was divided in to 29 regions, few of them given autonomous status. The Constitution starts by making "the working people of Ethiopia" owners of the Constitution.⁸⁵ It goes on at the preamble to note the fact that Ethiopia is a multinational state with various nationalities and diverse communities with essential unity created by cultural intercourse, migration and commerce. Moreover, the equality, respectability and development of all languages are clearly asserted with a rather pragmatic concession to Amharic as the working language of the country.⁸⁶

In sum, the PDRE Constitution built a unitary socialist state having no concern of federalism and insignificant concern for ethnicity. The regime's policy of ethnic blindness and methods of solving ethnic problems provoked massive resistance from ethno-nationalists and regionalists which finally sealed the fate of the regime and reshaped the trend in Ethiopian political and constitutional history.

3.1.4 The Transitional Period

The victory of TPLF(Tigrean Peoples Liberation Front) led EPRDF(Ethiopian Peoples Revolutionary Democratic Front) not only sealed the fate of the military dictatorial regime which is infamous for its gross abuse of human

⁸⁴ Ibid,pp83

⁸⁵ Preamble of the PDRE Constitution

⁸⁶ PDRE Constitution Arts.2 cum 126.

rights including the death of millions of Ethiopians but also ensured the supremacy of ethnic movements over multi-ethnic political forces.

The ethnic based liberation movements came together immediately at a conference and drafted and approved an interim constitution or otherwise known as the Transitional Charter. The Charter is a very brief document with only 20 articles. The aspirations stipulated in its preamble include the guarantee of freedom, equal rights, and self-determination of all peoples; ensuring peace and stability by bringing an end to all hostilities, redressing regional prejudices and safeguarding rights of citizens through democratically elected, accountable government, and rebuilding the country and restructuring the state.⁸⁷

Interestingly the Charter, despite its brevity, puts a high premium on human rights. This is manifested in its direct reference to the Universal Declaration of Human Rights (UDHR) in its Art.1, which states that based on UDHR individual human rights are respected fully and without any limitation what so ever.⁸⁸ In accordance with the aspiration of the Charter art.2 give recognition to the right of “Nations, Nationalities and Peoples to self-determination” there by guarantying their right to a) preserve their identity, culture, history and language; b) self-administration with fair and proper representation at the center; and c) independence when the above mentioned rights are “denied, abridged or abrogated.”⁸⁹

Thus, the Charter, in stark contrast to Ethiopia’s legal and political tradition, gave an explicit recognition to the rights of “Nations, Nationalities and Peoples,” and also recognized their right to secession. This strong assertion to the rights of “Nations, Nationalities and Peoples” demonstrated the commitment of the new regime towards group rights and decentralization.

⁸⁷ Preamble of the Transitional Charter.

⁸⁸ Transitional Charter Art.1

⁸⁹ Transitional Charter, Art.2(a-c)

The process of decentralization initiated by the Charter was further elaborated by National/Regional Self-Government Establishment Proclamation No.7/1992.⁹⁰ Accordingly, 14 National/Regional self-governments, whose boarders were determined, based on settlement structure of nations, nationalities and peoples were established.⁹¹ More over sixty-five ethnic communities living in these regions, with the exception of that of the capital city, were identified. Out of these sixty-five ethnic communities forty-eight were entitled to establish their own self-governments at Woreda (district) while the remaining seventeen were considered as minority nationalities and were only granted appropriate representation in a Woreda Council level or above. Even though the process of establishing regional and local self-governments along ethnic lines is fundamentally different from the predecessor regimes centralized and hierarchical structure of the Ethiopian state, the newly set up self-governments had remained throughout the transitional period legally subordinate and economically dependent upon the central government.

Hence during this period one can say that some degree of federalism has been introduced even though federalism had to wait until 1995 to appear in the Ethiopia's constitutional rhetoric.

3.1.5 The FDRE Constitution

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) came into force in August 1995 after passing through drafting and series of deliberations by bodies set up by the Transitional Government.⁹² The text of

⁹⁰ A Proclamation to establish National/regional Self-governments, proclamation No.7 of 1992, *Negarit Gazeta*, 51st Year

⁹¹ Ibid Art 4

⁹² The Transitional Government based on the power given unto it by Art.10 of the Charter set up the Constitutional Commission and the Constitutional Assembly (composed of elected representatives) to draft and adopt the Constitution of FDRE respectively.

the Constitution which gives the ownership of the same to “Nations, Nationalities and Peoples of Ethiopia”⁹³ established a federal state by dividing and sharing power between the federal and state governments.⁹⁴ Reducing the number of states recognized by the Transitional Charter by five the Constitution enumerates nine states constituting Federal Democratic Republic of Ethiopia.⁹⁵

In line with federal traditions the Constitution stipulated two layers of legislative, executive and judicial organs. Accordingly a parliamentary government is set up at the federal level with bi-cameral legislature.⁹⁶ Also an executive organ led by a Prime Minister whose office is accountable for the House of Peoples Representatives (HPR) is set up.⁹⁷ Similarly an independent judiciary with the supreme federal judicial authority vested in the Federal Supreme Court is established.⁹⁸ Likewise, states have the State Council (with legislative power), State administration (highest organ of state executive) and a judicial power vested in courts.⁹⁹

An institution with the power to investigate constitutional disputes i.e. Council of Constitutional Inquiry (CCI) is envisaged under the Constitution.¹⁰⁰ Furthermore, the offices of Auditor General¹⁰¹, National Election Board (NEB)¹⁰² and National Census Commission (NCC)¹⁰³ are established by the Constitution. The National Human Rights Commission and the Office of the

⁹³ Preamble cum. Art.8 of FDRE Constitution.

⁹⁴ FDRE Constitution Arts.46,47,56 and 57

⁹⁵ FDRE Constitution Art.46 cum 47

⁹⁶ The House of Peoples Representatives (HOR) and The House of Federation (HOF) are the two Houses according to Art.53 of the FDRE Constitution. However, examining the mandate of the HOF which is more of interpreting the Constitution than legislative one might wonder if the Ethiopian legislature is a bi-cameral one. Nonetheless the HOF assumes important status reflecting the unity in diversity of the federation.

⁹⁷ FDRE Constitution Art.72

⁹⁸ FDRE Constitution Art.78

⁹⁹ FDRE Constitution Art.50(5-7)

¹⁰⁰ FDRE Constitution Arts.82-84.

¹⁰¹ FDRE Constitution Art.101

¹⁰² FDRE Constitution Art.100

¹⁰³ FDRE Constitution Art. 103

Ombudsperson are other institutions whose legislative establishment is envisaged by the Constitution.¹⁰⁴

In view of protecting the constitutional order and ensuring the sustainability of the federalism some norms are stipulated as very significant (fundamental) and placed beyond the reach of governments at both level. These norms will be the subject of the subsequent discussion.

3.1.5.1 Fundametal Principles

The Constitution embodied five fundamental principles which relates to sovereignty of the peoples; supremacy of the constitution; human rights; secularism and transparency and accountability of government. These principles give a background to many of the rules that emerge in subsequent chapters thereby setting the framework for a better understanding and interpretation of the rules.

3.1.5.1.1 Sovereignty of the People

Under Haile Silasse's Constitutions it is to be recalled that sovereignty was vested in the person of the Emperor. However, the FDRE Constitution unequivocally vests this sovereignty in "Nations, Nationalities and Peoples of Ethiopia."¹⁰⁵ By so doing it presumes the existence of nations, nationalities and peoples who seek sovereignty. This approach of vesting sovereignty in sub-national units has important implications for the federal structure. Furthermore, it is part of an expression of their sovereignty that nations, nationalities and peoples are bestowed with the right to self-determination up to secession. Also this same fact has made it possible for a pluralistic approach to law and rights.

¹⁰⁴ FDRE Constitution Art.

¹⁰⁵ FDRE Constitution Art.8

3.1.5.1.2 Supremacy of the Federal Constitution

In line with the trend of federal systems the FDRE Constitution under Art.9 declares its supremacy and makes other laws, customary practices and decisions of an organ of a state or public official null and void if it contravenes the Constitution.¹⁰⁶ This supremacy clause is in fact a reflection of the principle of sovereignty of the people, the expression of which is the Constitution.

This nature of federal constitutions, asserting its own supremacy, is a matter of necessity than choice. In the absence of this provision it means that all the states can take any direction that pleases them to the extent that there will not be any single common minimum norm binding upon them.

3.1.5.1.3 Human Rights

As mentioned earlier, one of the distinguishing characters of the FDRE Constitution from its predecessors is the emphasize given to internationally recognized human rights norms. This fundamental principle is stipulated in Art.10 of the FDRE Constitution which articulates “Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable”. One can thus readily observe that the long lists in the catalog of rights set out in chapter three of the Constitution are reaffirmation of this principle.

Also the principle of human rights seems to be in the background of the political, social, cultural, economic and environmental policy objectives of the Ethiopian government. The aspiration to promote sub-national self-rule, rights of equality, especially of ethnic groups and to ensure the enjoyment of economic, social and cultural rights seems to be a programmatic statement of the commitment to human rights as a principle.

¹⁰⁶ FDRE Constitution Art.9

The weight attached to the fundamental principle of human rights is visible not only in this provision but also in the overriding concern the Constitution extends to rights starting from its preamble to its amendment clause in Art.104. This extra-careful arrangement (majority vote in all state legislators, 2/3 majority vote in the HPR, and similar 2/3 majority vote in the HOF) required for the amendment of provisions of chapter 3 pertaining to rights. Moreover the whole of chapter three, constituting 1/3 of the Constitution is devoted for human rights and this is a classic evidence to the preoccupation with rights. Of course, there are several illustrations that prove the degree of importance human rights norms are given under the Constitution. The mandate given to the HPR to establish Human Rights commission and the office of the Ombudsman,¹⁰⁷ and to make federal intervention in the states on the ground of rights violations,¹⁰⁸ the textual fact that the policy objectives (especially the political; economic, socio-cultural and environmental ones as propounded in Arts. 88-92) tilt toward rights protection, taking the fulfillment of most of the rights as subjects of continuous concern; the need to take extra-caution for rights in the exercise of emergency (or suspension) powers of the Executive¹⁰⁹ ; and the need for extra-care in the amendment of human rights provisions of the constitution¹¹⁰, all testify to the constitution's concern for human rights, thereby reinforcing the importance of rights as one of the basic principles of the contemporary constitutional order.

3.1.5.1.4 Secularism

The FDRE Constitution under Art. 11 explicitly declare the separation of religion from the state. In spite of the recognition given to religious law system in a restricted manner the Constitution envisages an entirely secular state in which the state does not interfere in matters belonging to

¹⁰⁷ FDRE Constitution Art.55(14)&(15)

¹⁰⁸ FDRE Constitution Art. 55(16) cum Art. 62(9)

¹⁰⁹ FDRE Constitution Art.93 (4)©

¹¹⁰ FDRE Constitution Art. 105(1)

religion and vice versa. Indubitably, the principle of secularism can be taken as foundational to the right of freedom of religion to religious equality and non-discrimination based on religion. In view of the ethnic and religious diversity of the country the adoption of secularism will have a paramount importance in encouraging religious tolerance to differences.

3.1.5.1.5 Transparency and Accountability

It is inscribed in Art.12 of the Constitution as the fifth principle. “The conduct of affairs of government shall be transparent,” holds, Art12 (1). Moreover it stresses the fact that “any public official or an elected representative is accountable for any failure in official duties.” It also reserves the possibility of recalling an elected representative in case of loss of confidence by the people.

All in all, the Ethiopian constitutional order, as is expressed mainly in its principles and partly in the preamble and the aspiration provisions of the policy objectives, is one in which popular sovereignty, constitutionalism, human rights, secularism, and transparency and accountability of government loom large.

4 Chapter Four

4.1 Federalism and Ethnicity in Ethiopia

As discussed in the previous chapter Ethiopian elites have been occupied with territorial expansion and consolidation of power throughout the history of the country. This ambition has made it impossible to think of any form of decentralization including federalism as mode of government. The country was generally perceived as too united to institutionalize such an arrangement. The only exception to this assertion is the 1951 Ethio-Eritrea federal arrangement and the present federalism adopted by the FDRE Constitution.

4.1.1 Ethio-Eritrea Federation

In the early stages of the UN a lengthy debate has undergone to settle the fate of former Italian colonies in Africa: Libya, Italian Somaliland, and Eritrea. The fate of the former two were decided in accordance with the purposes of the UN, as declared in paragraph 2 of Article 1 of the Charter, i.e. by promoting “respect for equal rights and self-determination of peoples” and they were declared independent. While Eritrea’s status was latter resolved by General Assembly’s Resolution 390A (V) in 1952 which federated it with Ethiopia. This marked the introduction of federalism in the Ethiopian legal or political rhetoric for the first time.

The Ethio-Eritrea federal arrangement has two inherent problems as identified by B. Tafila: 1) It is association between two incompatible beings¹¹¹; and 2) it was an international compromise imposed from the outside and tolerated by both.¹¹²

¹¹¹ B. Tafila, *Historical Background to the Conflicts in Ethiopia*, pp.7

¹¹² Ibid

So delicately constructed was the Ethio-Eritrean Federation that lapsed for about a decade. The Ethiopian political tradition of the time, being autocratic and centralist was not accommodative of the pluralism inherent in federalism.¹¹³ In deed, in Ethiopian elites misunderstood administrative plurality with disintegration and fragmentation. Unity was equated with uniformity.

Despite the fact that the Revised Constitution of Ethiopia was inspired by the more liberal constitution of Eritrea, the former hardly makes any reference to the federal arrangement. It rather stipulates its own supremacy creating a hierarchical relation with its counterpart. The unkindness to the federation from the Ethiopian side was further manifested when it banned language rights, political freedoms and trade union rights.¹¹⁴ The Eritrean Assembly was furthermore manipulated and coerced to declare the dissolution of the federal arrangement and the integration of Eritrea with Ethiopia.¹¹⁵ The impatience to bring Eritrea to complete unity with Ethiopia lead to the revocation of the Federal Act early in 1960 by the order of the Emperor.¹¹⁶

The abysmal failure of the federalism left us with hardly any lesson to draw from. Yet in retrospect, one can not fail to see the fact that the imposed nature of the federalism, the absence of federal culture, and the excessive emphasize on uniformity, have played a role in leading to its failure. Following the failure of the Ethio-Eritrean federalism, no effort was made to restore it in the subsequent years.

The abolition of the federation immediately gave rise to armed resistance movement in Eritrea which also inspired similar ethno-nationalist movement

¹¹³ Ibid

¹¹⁴ B. Silasse, *Conflict and Intervention in the Horn of Africa*, 1980, pp 62

¹¹⁵ Ibid

¹¹⁶ Termination of the Federal Status of Eritrea and The Application to Eritrea to the Unitary Administration of the Empire of Ethiopia , Imperial Order No.27 1962, *Negarite Gazette* ,22nd yr No. 3

in other parts of Ethiopia. The movements eventually gave rise to the resurrection of federalism in Ethiopia in a different form, though.

4.1.2 The Present Ethnic-Federalism

As has been hinted out during conceptualization of federalism in the first chapter one usually differentiates federalism by association and federalism by dissociation. In the former, independent entities come together for a common economic and political achievement. While in the latter a united country decides to split so as to loosen a complex situation, frequently related to diversity of nationalities. The latter is the approach adopted in Ethiopia in 1995 by the FDRE Constitution.

Three aspects are at least worth to study in the Ethiopian model of federalism under this section: primarily the power sharing arrangement between the central government and the states, followed by analysis of the socio-economic position of the states and finally an examination of how the concept of ethnicity is addressed under the constitution. Analysis of these three points is expected to shed some light on the existing federal structure of Ethiopia as designed in the constitution and implemented in real life. The analysis is also expected to answer some of the research questions raised in chapter one.

4.1.2.1 Power Sharing Arrangement

A simple articulation of a form of government as federal in a constitution cannot alone render the system federal, rather one needs to look deep in to the power balance as expressed in the federal pact (constitution) and practiced in actual facts.

Since 1995, under the FDRE Constitution, the Ethiopian state is declared to be a federal one.¹¹⁷ In line with the federal tradition the respective powers of member states and the federal government are distributed by the federal constitution.¹¹⁸ Formally speaking, the relationship between the states horizontally can be described as symmetrical as “Member states have equal rights and powers”¹¹⁹ Whether this holds in actual fact is a point to be seen subsequently.

As a general principle the member states exercise all powers that are not expressly granted to the federal government alone.¹²⁰ Accordingly member states have concurrent power as well as all powers which are not given to the federal government exclusively or concurrently, or otherwise known as residual power. The states have legislative, executive and judicial powers.¹²¹ The state legislative organ, State Council, is the highest organs of state authority.¹²² They have the mandate to legislate on matters of state jurisdiction.¹²³

In addition to the residual and concurrent powers given to the member states article 52(2) comprises a list with specific powers reserved for states. States can thus enact and execute state constitutions and laws.¹²⁴ In particular, they can legislate on a wide variety of matters including state civil service and their condition of work; state police force and maintenance of public order and peace within the state.¹²⁵

¹¹⁷ FDRE Constitution, Art.1

¹¹⁸ FDRE Constitution, Art 51 and 52

¹¹⁹ FDRE Constitution Art. 47(4)

¹²⁰ FDRE Constitution, Art. 52(1)

¹²¹ FDRE Constitution, Art. 50(2)

¹²² FDRE Constitution, Art. 50(3)

¹²³ FDRE Constitution, Art. 50(5)

¹²⁴ FDRE Constitution, Art. 52(2)(b)

¹²⁵ FDRE Constitution, Art. 52(2) (f) cum. (g).

The highest executive of the states is the state administration.¹²⁶ It has like the state council the power to administer matters that are not explicitly given to the federal government alone. In addition, it administers the state police force, maintains public order and peace within the state, formulates and executes economic, social and development policies, facilitates self-rule, democracy, rule of law and constitutionalism in the state,¹²⁷ and performs all the executive duties stipulated in the state constitution.

A Judicial power of the states is vested in courts.¹²⁸ While states legislative power is limited to areas that are clearly domestic and local or areas not covered by the federal government; state courts might, on delegation, exercise federal judicial power.¹²⁹ However, it is not clear if they can apply federal laws on their non-delegated jurisdiction. It is also noteworthy that the constitution does not spell out if federal laws are superior to state laws, although it does spell out the superiority of the Federal Constitution over other laws, state constitutions included.¹³⁰

Interestingly, the constitution obliges both the federal government and states to respect the power of the other. There is thus a mutual duty of non-interference unless the contrary is expressly stipulated. Since the lion share of states power is residual by nature it might be worth to have a look at the powers reserved for the federal government so as to have a clear picture of state powers. Art. 51 of the constitution exhaustively list the powers reserved only to the federal government which basically revolves around national interests such as:

- a) national defense, security and federal police force

¹²⁶ FDRE Constitution, Art. 50(6).

¹²⁷ FDRE Constitution, Art. 52(2).

¹²⁸ FDRE Constitution, Art. 50(7) cum Art.79.

¹²⁹ FDRE Constitution, Art. 79.

¹³⁰ But see A. Fisseha, "Constitutional Interpretation: The respective role of Courts and The House of Federation", A paper presented in a symposium on The Role of Courts in the Enforcement of the Constitution, 2001, unpublished

- b) foreign policy and diplomacy
- c) inter-state and foreign trade
- d) regulation of inter-state rivers and lakes
- e) administering the National Bank and regulation of monetary affairs along with foreign exchange issues
- f) regulation of inter-state transport and communications
- g) overall economic policies
- h) national standards for health, education, science and technology, etc and uniform standards of measurement and calendar
- i) regulation of use of land, natural resources et al
- j) nationality, immigration passports entry into and exit from Ethiopia, refugees and asylum
- k) patents, copyrights and bearing of arms
- l) declaration of emergency
- m) protection of political rights of political parties
- n) administration of federal institutions operation across state borders
- o) Imposing taxes and collecting duties on revenues those are subject to federal taxation exclusively or jointly.

Thus, the federal legislative organ, HPR, has a mandate on quite a variety of areas for the accomplishment of the above purposes. The federal executive organ likewise has a broad mandate listed in Arts. 60-77. Federal judicial power similar to states is vested in courts with the federal Supreme Court as the highest judicial organ.

From the foregoing brief description of the power balance one can observe that states have the usual function of a government (legislative, executive

and judicial) which is protected from federal interference by the constitution. However, it is easily noticeable for an observer that the power balance tilts towards the federal government which is natural to federalism by disassociation.

4.1.2.2 Socio-Economic Disparity

The Constitution articulates the symmetrical nature of member states

De facto speaking the delimitation of the member states based on ethnicity has inevitably created large socio-economic disparity among the states. Generally the lowland states are poorer with small territory and size of population, which apparently affects their administrative capability. This makes them prone to internal conflicts between clans or ethnic groups. Therefore, this apparent disparity calls for interference of the federal government which affects the smooth functioning of the federalism as a system.

It is inherent in a federal system that the members states are represented in the central decision making process and have their own self-governments as a manifestation of their political empowerment. Nevertheless, this alone wouldn't serve the very purpose of federalism if the member states are deprived of their financial autonomy as it is agreeable that the stronger financial autonomy the states have the more independent they are from the central government.

It is common to see in federal systems disproportion between the mandate of member states and their financial capability. ¹³¹This leads to some degree of dependency of the states on the central government so as to carry out their day to day activities. The same is true in Ethiopia. According to some writers the situation is even worse as the lion share of the revenues is assigned to the

¹³¹ Supra note, pp 74.

federal government while member states are largely dependent on federal subsidies.¹³²

According to the constitution states are entitled to draw and implement their own economic policies and budgets.¹³³ As a source of their revenue they have the mandate to levy and collect taxes and borrow money from domestic sources.¹³⁴ The revenue collected from these sources, however, is not sufficient enough to carry out their functions under the federation. On top of that the domestic borrowing procedure is determined by the federal government and it is proved to be cumbersome. Furthermore, areas of taxation reserved for the states do not generate enough revenue while the federal government has taken all the lucrative areas of taxation. This obviously creates a huge vertical imbalance and makes the states to be dependent on federal subsidies.

The disparity is not limited to the vertical relationship. It rather extends to the horizontal relationship as well. As indicated earlier due to the ethnic basis of demarcation states have different financial capabilities which further gave rise to varying degree of dependency on the federal government.

It is apparent in a country like Ethiopia that the member states of the federation have acute shortage of resources. As attempted to indicate above, it is not the mere fact of lack of resource that brought the vertical imbalance. The provisions of the constitution dealing with power sharing devote the most lucrative sources of revenue for the federal government. Hence, even though the states improve their sources of revenue the vertical imbalance will persist unless amendment is done to the provisions of the constitution. These advantaged position of the federal government undeniably diminishes regional autonomy, nonetheless, could achieve also a purpose of reducing

¹³² B. Degefe, *The legal framework for fiscal decentralization in Ethiopia in the transitional period*, (1994).

¹³³ FDRE Constitution Art 52(2)(c).

¹³⁴ FDRE Constitution Art. 52(2) (e).

economic gaps among the member states. The existing allocation of federal subsidies to the states appears to promote equity among the members although it compromises the political autonomy of the states. As to whether this eventually empowers the small states or aggravates their dependency to the federal government is yet to be seen.

In all, the unbalanced power arrangement and the socio-economic disparity of member states vertically as well as horizontally have made the Ethiopian model of federalism susceptible to critiques. D. Elazar has noted that for federalism to succeed should be total, i.e. it must affect the states on a balanced level.¹³⁵ The member states must have an equivalent relation vis-à-vis the federal government. To an extent possible, this requires a degree of equality among the federating members. The same line of thought is advanced by K. Daniel, who emphatically expressed that the lack of balance among the constituent units of a federation often results in failure of the federal system.¹³⁶ This line of argument is also popular among some political parties in Ethiopia who advocate for a territorial based federal arrangement as a mode of government.¹³⁷

4.1.2.3 Ethnicity

4.1.2.3.1 Rationale for the Choice

Ethiopia's adoption of ethnicity as the determinant factor in the federal structure is based on a multiple set of factors and arguments. The EPRDF government and mainly the TPLF was the main force that set forth the justification for empowering ethnicity in Ethiopia's legal and political rhetoric.

¹³⁵ D. Elazar, *Federalism and the way to peace*, (1994).

¹³⁶ K. Daniel, Ethiopia: "An Alternative Approach to National Development", (1997)pp 29.

¹³⁷ The proponents of this line of thought include opposition political parties like the Oromo National Congress (ONC), Council for Alternative Forces for Peace and Democracy/ Southern Ethiopia People's Coalition (CAFPDE/SEPDC), and the Ethiopian Democratic Party (EDP).

Most of the arguments attempt to invoke political, social and economic issues and problems inherent to the Ethiopian state and people.¹³⁸

At the forefront of the rationales is the need to respond to the long standing demand of the “national question” of Ethiopia’s diverse ethno-linguistic groupings. Accordingly, by settling the problem of power distribution and enhancing access to power for the hitherto ethnically marginalized groups, ethnic federalism can be considered as a major positive departure from the Ethiopian past. Thus the government advanced its reform measures emphasizing that it is imperative to redefine the underlying premises of organizing the state and society on a clean slate.¹³⁹ This involved reorienting the state towards ethnic based structure and promoting mainly ethnic based civil society and organizations.

Another prominent rationale was based on the argument that ethnic federalism offered an opportunity to promote the rights and benefits of ethnic groups in Ethiopia. Thus ethnic empowerment was felt to be the single most appropriate instrument to enhance the political, economic and socio-cultural rights of Ethiopia’s “Nations, Nationalities and Peoples”. In particular, the issue of developing languages, cultures and sense of pride in ethnic identities emerged as a manifest advantage of the political process. Moreover, ethnic basis of the federalism was favored as a means of reversing the repressive, hegemonic practices of previous governments that have led to internal wars thereby emphasizing the conflict management dimension of ethnic federalism.

4.1.2.3.2 Ethnicity in the FDRE Constitution

¹³⁸ J. Young, “Ethnicity and Power in Ethiopia”,(1996) *RAPE* 70,pp. 531-542.

¹³⁹ A. Abraham, “Ethiopia: the challenge of federalism based on ethnic restructuring. A case study of the sydama and wolita ethnic groups in southern nations nationalities and peoples regional state(SNNPRS)”(2000),pp

The Ethnic basis of the state structure set up by FDRE Constitution is manifest from the first line of the preamble. It is further reflected in Art.1, Art.5 and in Art.8. In stark contrast to the Ethiopia's past when Amharic was adopted as the sole national language applied through out the country Art. 5(3) of the FDRE Constitution gives the discretion to member states of the federation to determine their respective working language, thus putting a constitutional end to the exclusive use of Amharic for this purpose. The architects of the constitution happen to sight this as one of the achievements of the new model of federalism. Based on this discretion some member states like Oromiya and Tigray have adopted their own working language.

Nonetheless the most important clauses of the constitution regarding ethnicity are those in Arts.39, 46 and 47. Art.39 clearly enunciates the right of ethnic groups to self-determination. Art.46 declares that the basis of state formation is "settlement patterns, language, identity and consent of the people" which is an elaborate way of saying ethnicity. Art. 47 enumerate the member states of the federation the names of most of which also imply ethnic identity.

The nine member states of the federation as enumerated under Art. 47(1) of the constitution are: 1) Tigray;2) Afar;3) Amhara;4) Oromiya;5) Somaliya;6) Benishangule/Gumuz; 7) Southern Nations Nationalities and Peoples(SNNPR);8) Gambela; 9) Harari. Except Gambela and SNNPR the nomenclature is based on the dominant ethnic (linguistic) group in the state. Despite the ethnic basis of classification it has to be noted that not even a single group is homogeneous. The most diverse state with more than 45 ethnic groups is SNNPR and no ethnic group is numerically dominant. The

seemingly most homogeneous states of Somali and Afar have some pockets of non-Somali and non-Afar inhabitants.¹⁴⁰

This state structure, however, is not hard and fast, instead the constitution assuming the heterogeneity of all the states has left a room for future creation of new states.¹⁴¹ For those dominant ethnic groups to which the name of the state refers Art.47 (1) can be said to provide them with their “own” states. The rest of the ethnic groups inhabiting within these states are either minorities or are living in a multiethnic state.¹⁴² Hitherto none of the ethnic groups in these states have tried to exercise the right to establish their own states as articulated in Art.47 (2). The practical impact of this article therefore is yet to be seen.

4.1.2.3.2.1 Nations ,Nationalities and Peoples as a standard expression of the Constitution to designate ethnic group.

The FDRE Constitution has adopted the language “Nations, Nationalities and Peoples” as a standard expression to designate ethnic groups.¹⁴³ As can be seen, the FDRE Constitution daringly attempted to define who are “Nations, Nationalities, and Peoples”. Major international Human Rights instruments evaded the issue.¹⁴⁴ For instance the African Charter on Human and Peoples Rights did not define it so as not to end up in a difficult discussion. The constitution, however, does not differentiate between the three concepts. According to Art.39:

¹⁴⁰ C. Van der Beken, “Ethiopia: Federalism and Extreme ethnic diversity in the south region”, (2002),pp.5.unpublished

¹⁴¹ FDRE Constitution Art. 48 (2) stipulates that nation, nationalities and peoples within the states have the right to establish, at any time, their own states. Art.48 (3) states the procedure to follow.

¹⁴² See *infra*

¹⁴³ FDRE Constitution Art. 39.

¹⁴⁴ See generally, the description of “peoples” given by the UNESCO Meeting of Experts on further study on the Rights of Peoples(UNESCO Paris,(1990) and also R. Kiwannuka, “The Meaning of ‘People’ in the African Charter of Human and Peoples Rights”(1988)82 A.J.I.L.,pp.80.

A ‘Nation, Nationality and People’ for the purpose of this constitution is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities , a common psychological make up, and who inhabit an identifiable, predominantly contiguous territory.”¹⁴⁵

In this definition a number of elements are involved in describing ethnicity: a) People; b) culture or custom; c) language; d) belief in common or related identity; e) psychological make-up; and f) territory. It is also worth to note that these elements has to exist cumulatively as the conjunction “and” marks this. Thus one can notice that both subjective and objective elements are involved in designating ‘Nations, Nationalities and Peoples’. Strikingly the constitution or other subsidiary laws failed to list the groups which qualify as nations, nationalities and peoples. So the only indirect way of checking who qualified under this definition is to examine the composition of the House of Federation, the second chamber of the parliament, as each nation, nationalities and peoples have at least one representative in the House.¹⁴⁶

In a nutshell, while the stress on “Nations, Nationalities and Peoples” coupled with the ethnic basis of the nomenclature of the states, give the impression that ethnicity is an important basis of state formation. Nonetheless it will be a mistake to say that ethnicity is the single most important element in the determination of the state configuration as multi-ethnic states like SNNPR and Gambella are formed based on a pragmatic concession to expediency in administration. This fact is also explicitly recognized in the constitution as indicated earlier.¹⁴⁷

4.1.2.4 The Right to Self-determination in the Ethiopian Federalism

¹⁴⁵ Ibid.

¹⁴⁶ FDRE Constitution Art.61 (2).

¹⁴⁷ FDRE Constitution Art. 46(2).

Beginning from the inception of the right to self determination in the UN forum Ethiopia has been at the forefront of countries that were restlessly advocating for the right to self-determination of colonized peoples in Africa and else where. Nevertheless the application of the right in domestic sphere was a bit far fetched.

After the demise of the Imperial regime the Dreg introduced the notion of self-determination for the first time in the history of the country. The preamble of the PDRE Constitution recognized the right of “the working people of Ethiopia to self-determination.” Nevertheless the dictatorial nature of the regime denied the working people of Ethiopia to enjoy the fruits of the right guaranteed in the constitution. The predecessor of the FDRE Constitution, the 1991 Transitional Charter, recognized the right as the right of ‘Nations, Nationalities and Peoples’. A subsidiary proclamation no. 7/1992 concretized this abstract right as it regulated the manner of organizing National/ Regional self-governments.

No wonder that the right to self-determination has become a notion so important to be spelled out in the constitution in 1995. It starts to appear in the preamble as the right of ‘Nations, Nationalities and peoples.’ But the most elaborate statement of the right appears in Art.39 where its contents are listed as the right to: a) promote one’s language, culture and history,¹⁴⁸ b) self-government and regional autonomy¹⁴⁹ and c). Secede.¹⁵⁰

4.1.2.4.1 Cultural Self-determination

Art. 1 of the ICCPR is quite explicit in its phrasing of self-determination to include the right of peoples to their cultural development. On the contrary some scholars argue that the contents of this formulation are neither clear nor

¹⁴⁸ FDRE Constitution Art 39(2).

¹⁴⁹ FDRE Constitution Art 39(3).

¹⁵⁰ FDRE constitution Art 39(1) cum (4).

convincing.¹⁵¹ A. Gudmundur basis his objections to cultural self-determination as articulated in Art. 1 of ICCPR on two reasons. According to him unless the political self-determination of peoples (external and/or internal) is ensured cultural self-determination will hardly have any relevance¹⁵², there by making the right to cultural self-determination subordinate to political self-determination. He points out further that other provisions relating to culture, language, and religion, custom are more effective avenues to deal with issues of cultural self-determination.¹⁵³

The FDRE Constitution has taken a similar position as ICCPR explicitly recognizing cultural self-determination albeit to ‘nations, nationalities and people’ than ‘peoples. The articulation of cultural self-determination in the FDRE Constitution might look sufficiently clear. However, in actual implementation the scope of the right could be difficult to ascertain

For centuries Amharas (one of the dominant ethnic groups in Ethiopia) have been the sole center of power in the history of Ethiopia. This gave rise to a process of Amharaization, seriously undermining the cultures of the rest of the ethnic groups. Besides, as part of modern empire building venture Emperor Haile silasse I introduced modern codes in 1960 that done away with all customary laws and practices that were once entrenched through out the country.

When it comes to language there were clear governmental policies that prohibited the official use of certain languages other than the official Amharic language that has been the language of the ruling class for centuries.¹⁵⁴ So the FDRE Constitution by stipulating the equality of all languages and at the

¹⁵¹ E. g. , A. Gudmundur, *Different Forms of and Claims of the Right to Self-Determination*, (1996) pp.65-66, in D. Clark et al, (ed), “Self-Determination International perspective”.

¹⁵² Ibid

¹⁵³ Ibid

¹⁵⁴ See also supra 3.1.1.B.pp.48 1st paragraph.

same time entitling all member states to adopt their own working language has made a remarkable achievement in this regard. The recognition of customary and religious practices that were done away with once is another achievement of the constitution in promoting the right to cultural self-determination.

4.1.2.4.2 Political Self-determination(self-government and regional autonomy)

By far political self-determination is the most important aspect of the right to self-determination in a pluralistic society like Ethiopians who are determined to remain together. According to W. Danspeckgruber self-governance is more positive, extensive, human, and forward looking than classical self-determination and it avoids the slippery slope to secession and independence i.e. state shattering.¹⁵⁵ He goes on to spell out sovereignty over one's culture, education, language, religion, finance, judicial administration, and public safety as well as certain economic autonomy under the definition of self governance.¹⁵⁶

In consonance with W. Danspeckgruber the FDRE Constitution has recognized the various forms of self-government mentioned hereinabove. It is already noted that the states in Ethiopia are predominantly ethnic (nations, nationalities and peoples), and hence formalized and institutionalized.¹⁵⁷ Furthermore, those ethnic groups inhabiting in a multi-ethnic state are organized as local self-governments in the form of district or special district.

Another important aspect of political self-determination is to have equitable representation in the state and central government. It has to be noted here that this is not a right of the member states rather it is one of Nations, Nationalities and Peoples, minorities and majorities alike. In the Upper House

¹⁵⁵ W. Danspeckgruber , "Self- Governance Plus Regional Integration: A Solution to Self- Determination or Secession Claims in the Emerging International System",(2002),pp.12.

¹⁵⁶ Ibid.

¹⁵⁷ Supra 3.1.1.3.B.

of the parliament, called “the House of Nationalities” for a reason, each nations, nationalities and peoples are represented by at least one member in addition to additional one representative for every one million additional of the group.¹⁵⁸ Minority groups (groups that could not establish their own local, woreda, self-governments) have 20 percent of the seat in the HPR is reserved for them.¹⁵⁹

The electoral law provides for participation in an electoral process where there is free, direct, and adult universal popular suffrage accessible to every Ethiopian.¹⁶⁰ Election constituencies are set up for every one hundred thousand inhabitants of an area within the boundaries of the states.¹⁶¹ On top of all, the guarantee of inter-ethnic equality in politics and of self-rule is one of the policy objectives or aspiration of the government (federal or states)¹⁶²

4.1.2.4.3 Secession

It has been hinted in the first chapter that international law is reluctant to grant the right to secession as part of the right to self-determination. Some vehemently argued against it on the ground that such right is the exclusive right of nations under colonial domination or alien subjugation and that its recognition leads to fragmentation. It is further noted that to the UN, the OAU and to the majority of third world countries, self-determination meant decolonization. Extension of the application of this right beyond the colonial context would require lack of inclusive democracy and of protection of human rights.¹⁶³ The controversial position of the right has in mainstream international law been somehow clarified by the 1970 Declaration of friendly relations which set guide as to how to exercise the right beyond the colonial

¹⁵⁸ FDRE Constitution Art. 61(2).

¹⁵⁹ FDRE Constitution Art.54 (3).

¹⁶⁰ Proclamation no.111/1995, Art. 13 and 14.

¹⁶¹ Ibid Art.15.

¹⁶² FDRE Constitution Art.88.

¹⁶³ See Supra 1.1.3.

context, by indicating the need to consider the democratic legitimacy of a government under which the people claiming the right are living.¹⁶⁴

Hence, the existence of representative government is checked. If a government is democratic and inclusive, then the right has less international legitimacy. If in contrast the government is totalitarian to and exclusivist of the group claiming the right, then the right has more legal legitimacy.

Interestingly despite the controversy revolving around the right to secession in international law, the FDRE Constitution explicitly articulated the right as the right of Nations, Nationalities and Peoples. Undoubtedly the constitution is unique in its enunciation of the right in the domestic setting. From the very drafting stage of the constitution, Art. 39 become one of the most controversial provisions, which attracted criticisms and praises. Sharp criticisms are labeled by most Ethiopian elites in Diaspora who think that the whole federal arrangement organized along ethnic lines and the inclusion of secession clause will make “greater Ethiopia” to crumble. In most Ethiopianist discourses the secession clause is seen as a divide and rule tactic by the EPRDF or alternatively, as a justification for “the independent of Eritrea with out intent of applying equally to other parts of the country.”¹⁶⁵ It has also been objected on the ground that the right of secession will stimulate a surge of nationalism, and it is inconsistent with competitive politics under federal arrangements.

The architects of the constitution, on the other hand hold that the secession clause is a guarantee to democracy, human rights and inclusion than a threat to the unity of the country.¹⁶⁶ Moreover, the right to secession is not only a

¹⁶⁴ See also See also *Katangese peoples Congress v. Zaire*, African Commission on Human and peoples Rights, communication Number 75/92.

¹⁶⁵ P. Brietzke “Ethiopia’s Leap in the Dark: Federalism and Self-determination in the new Constitution”, *39JAL*, pp 27.

¹⁶⁶ Minutes of the Constitutional Assembly. Nov 1994, Minutes No.20 of Hidar 12 and 13 of 1987EC (unpublished document on the archives of the HPR).

guarantee for respecting the right of nations, nationalities and peoples to self-determination but it is also an affirmation of the consensual basis of the federal union.¹⁶⁷

Whatever argument one might have in favor or against it, the real issue that confronted Ethiopia in this particular context is: 'how far the inclusion of secession clause in the constitution affects the objective of creating unity in diversity.'

It has been noted that the right to secession is the unconditional right of "Nations, Nationalities and Peoples" save for the procedural requirements that need to be met. Once the claimants of the right are clearly defined as per the elements enumerated in Art. 39(5), and a group fulfils both the objective and subjective criteria of nationhood, people hood or nationality,¹⁶⁸ they can readily exercise the right of secession. When such is the case, obviously, secession poses an insurmountable challenge to the unity of Ethiopia.

Thus the rights to secede engender separate tendencies in the system. This is particularly true in states organized purely on ethno-linguistic basis and having relative internal homogeneity and with a potent pressure group activating the separatist inclination. Tigray, Afar, Amhara, Oromo and the Somali states roughly fit the description in the first part of the above statement. The state of Oromiya and Somali even fits the last part of the statement as there are secessionary movements.

Indeed different views and feelings can be had on this aspect of the constitution. Nonetheless, it is important to understand the scope of the provision that allows 'an unconditional right to self-determination, including the right to secession.' At its face it may appear that the right to secession is automatic and easy to obtain. But it is not so. Its examination is in order.

¹⁶⁷ P. Briezke, "Self-determination and Jurisprudential Confusion exacerbating political conflicts", (1995), *Wisconsin International Law Journal* p.65.

¹⁶⁸ See Supra 3.1.1.3.C.

As opposed to the unconditional nature of the right to self-determination including secession noted earlier some argue that the right to secede is a last resort right to be exercised up on the denial of the right to self-determination (secession excluded). F. Tiba -among others- basis his reasoning on the literal reading of the Amharic version of the constitution¹⁶⁹ and the Transitional Charter, on whose principle the new constitution is based. According to the Transitional Charter, for nations, nationalities and peoples to exercise their right to secession their right to self-determination (secession excluded) should be proved to be denied, abridged or abrogated. Hence, with the explicit recognition of the other forms of self-determination, political and cultural, among other things, will be very cumbersome for nations, nationalities and peoples to prove the denial of the right.

Furthermore, according to Art. 13(2) of the FDRE Constitution, “the fundamental rights and freedoms enshrined under chapter three, shall be interpreted in a manner conforming to the principle of ...international instruments adopted by Ethiopia.” As it has been hinted above and earlier under literature review section there is no a settled and conclusive right to secession, even if it exist the realization of the right has to undergo stringent requirements.¹⁷⁰ Therefore, the organ in charge of entertaining the claim to secession will most likely apply a very strict interpretation of Art. 39. taking the above reasoning in to consideration.

Even if, one assumes the Federal Council, the organ in charge of interpreting the constitution, to be keener to the realization of the right to secession the strict procedure laid down by the constitution makes it hardly attainable. Pursuant to Art. 39(4) of the constitution the right of nations, nationalities and peoples to secession shall come into effect:

¹⁶⁹ Supra note 5, pp. 40, Amharic version of Art.39 (1) of the FDRE Constitution reads:- ‘the right of every Ethiopian nation, nationality and people to self-determination up to and including secession shall be respected in every manner and without restriction.’ (Translation his).

¹⁷⁰ Supra 1.3.3, and 3.3.3, 1st and 2nd parag.

- (a) When a demand for secession has been approved by a two-thirds majority of the members of the legislative council of Nations, Nationalities and Peoples concerned;
- (b) when the federal government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
- (c) when the demand for secession is supported by majority vote in the referendum;
- (d) when the Federal Government transferred its power to the council of the Nations, Nationalities and People who has voted to secede; and
- (e) When the division of assets is effected in a manner prescribed by law.¹⁷¹

One has to recall that the right to self-determination (including secession) is a right of Nations, Nationalities and Peoples and not for states. Neither of the member states is homogeneous as already pointed out. Accordingly in states where the degree of heterogeneity is high like in SNNPR with more than 45 ethnic groups, the likely hood of getting 2/3 majority is virtually impossible. Hence, submitting a secession claim to a state council where the concerned groups say is minimal is meaningless as other ethnic groups in the council will most likely vote against it.

Finally, as part of the restraint mechanism the constitution provides three years of cooling off period¹⁷² for the purpose of organizing a referendum.

¹⁷¹ FDRE Constitution, Art 39(4).

¹⁷² F. Nahum, *Constitution for the Nation of Nations: The Ethiopian Prospect*, pp.159.

In all, the right to secession is hard to be exercised both politically and procedurally, and by all practical reasons not likely to be realized. Hence the threat of fragmentation due to the secession clause is farfetched.

Nevertheless, the inclusion of the secession clause itself might encourage groups to try the option, and this might consequently create distrust and destabilizes the unity of the country. And hence as argued by Allen Lovise the politics of difference know no bounds unless it is tempered by politics of tolerance and inclusion. The way to promote tolerance and inclusion, among other things is by wholehearted decentralization, entrenched democracy and last but not least intensive implementation of human rights norms albeit with sensitivity to pluralism. The latter will be the target of the subsequent discussion.

5 Chapter Five: Legal Pluralism and Human Rights Implementation in the Ethiopian Federalism

5.1 Status of Customery and Religious Laws under the FDRE Constitution

Cultural diversity has been a fact in Ethiopia with different ethnic, linguistic and religious groups inhabiting in a single polity for centuries. Due to the absence of a recent national census conducted in Ethiopia no one exactly knows the actual figure of ethnic or linguistic groups existing in the country. What are available are approximate figures estimated by anthropologies doing research in the area. According to one of such researches there are about 80 language groups (grouped in four large categories of Semitic, Cushitic, omotic, and Nilo-Saharan), and about 60-65 people groups are present in the country.¹⁷³

The religious configuration is diverse as well. No wonder to see all the major religions practiced among the different ethnic groups in addition to some indigenous religions. In the northern and central Semitic highlands people are largely orthodox Christians.¹⁷⁴ North and south east lowlands are Cushitic and largely Muslims.¹⁷⁵ The central south highlands are predominantly Protestants with a mixture of indigenous religions.¹⁷⁶ Hence the fact of ethno-linguistic diversity gave rise to various customary law systems. The fact of religious diversity resulted in various religious law systems.

¹⁷³ E.g. D. Donovan and Getachew Assefa, Customary law and Human Rights: Homicide in Ethiopia(2000).

¹⁷⁴ B. Zewde, A History of Modern Ethiopia,(1991) pp11-25.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

It is already noted that ethnic diversity was a fact and never a norm in the Ethiopian past, which also holds for customary and religious law systems. At the backdrop of these Emperor Haile Sillase I, as part of his modern empire building endeavor, adopted series of modern codes of laws modeled after continental legal system. Primarily due to the Euro-centric nature of the modern codes they were unkind to the customary and religious law systems.¹⁷⁷ Particularly, Art. 3347 of the civil code reads: “Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and hereby repealed.” The courts of Ethiopia are thus precluded from recognizing, applying or enforcing any customary or religious laws.

Despite the absence of de jure recognition of customary and religious laws they were de facto operative alongside state law. One reason for such reliance by the people on customary and religious laws was the lack of effective administrative structure as well as infrastructure which tremendously affected the penetration of the state laws in the largely rural and vast areas of the country. More importantly lack of cultural legitimacy of the modern law among the people, and the existence of deep attachment to the customary law system are among the major reason for the reliance.

5.2 Legal Pluralism in the FDRE Constitution

Legal pluralism may be described as “a situation resulting from the existence of distinct laws or legal system with in a particular country.”¹⁷⁸ Legal pluralism can exist in fact without formal recognition by the ‘dominant’ legal system. As noted above, even if the role of customary and religious laws was not formally acknowledged as such, the reality on the ground was largely affected by these systems.

¹⁷⁷ But see G. krzeczunowicz, Code and Custom in Ethiopia,(1965) *Journal of Ethiopian Law* ,pp. 425-39.

¹⁷⁸ A. Mullugeta, “Anthropological Approach to Law”,(1999),pp61.

In 1994, when the FDRE Constitution was adopted, legal recognition was given to the already existing legal pluralism. The following are the most relevant provisions of the constitution dealing with the issue.

Art.9 (1) the constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of the state or a public official which contravenes this constitution shall be of no effect.

Art. 34(4) in accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.

Art.34 (5) this constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws with the consent of the parties to the dispute. Particulars shall be determined by law.

Art. 78(5) pursuant to sub-article 5 of Article 34 the House of Peoples' representatives can establish and give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the constitution shall be organized on the basis of recognition accorded to them by this constitution.

The recognition given to customary and religious laws was also granted by state constitutions which often reproduce the federal constitution verbatim. In accordance with the constitutional recognition of these laws, member states of the federation may opt for governance under such customary or religious laws in their respective jurisdiction. Such a choice intensifies the extent of legal pluralism in the country.

One of the advantages of the legal pluralism in the Ethiopian context is it helps to promote legal penetration, thereby avoiding the risk of legitimacy crises. Moreover, plurality of law systems provides an avenue for alternative

dispute resolution mechanisms. Apart from the problem associated with it as a source of “conflict of laws” thereby making it difficult to make a choice of law, legal pluralism allows the proliferation of customary and religious law system, which also serves as a mode of cultural self-assertion. However, this doesn’t mean that legal pluralism, as fashioned by ethnic federalism, is free from challenges. The subsequent discussion will attempt to shed some light on the challenges posed by legal pluralism particularly on the challenge of establishing uniform human rights standards.

5.3 Legal Pluralism and the Challenge of Human Rights Implementation

Uniform application of human rights norms is placed at the forefront of challenges to legal pluralism in ethnic federalisms.¹⁷⁹ Despite the apparent advantage of multiplying the level of rights administration, pluralism, however, might restrain the universality of human rights. The tension between universality of human rights norms and particularity of federal legal pluralism becomes clearer when one recalls customary and religious laws as part of one’s culture and religion are part of the legal pluralism in Ethiopia. Besides, the FDRE Constitution failed to set guidelines based on which compatibility of customary and religious laws to constitutional standard is tested leaving a complex scenario.¹⁸⁰

Apparently, the above proposition assumes the existence of conflict between customary and religious laws on the one hand and universal human rights norms on the other hand. Even though a generalized answer might be difficult one can point out possible areas of conflict. One example can be the constitutional guarantees of gender equality in the constitution and the status of women in the customary and religious systems. Another example is the

¹⁷⁹ M. Haile, “The New Ethiopian Constitution”, *STLR*, VOL.20, NO.1. PP.35

¹⁸⁰ *Supra* note 5, pp. 50-51.

conflict between the constitutional guarantee of children right and prevalent cultural attitudes that encourage early marriage and child labour. This in a way calls for ranking these competing interests.¹⁸¹ Some vehemently argue that the supremacy clause of the constitution is not applicable to customary and religious laws as it is not specifically articulated that the bills of rights as embodied in the constitution have an overriding character over customary and religious laws.¹⁸²

Furthermore, the religious courts particularly the Sheria Court establishing statute provides that the Federal Courts of Sheria adjudicate cases under their jurisdiction in accordance with Islamic law.¹⁸³ So the solution to these conflicts of interests might lay in the envisaged legislation by constitution.¹⁸⁴

The challenge of uniform human rights application in a pluralistic society has been debatable under international law in general and international human rights law in particular. Some pragmatic solutions have also been adopted as part of the solution to the problem of multiculturalism. A good example could be the ‘principle of margin of appreciation’ as developed by European Court of Human Rights and ‘margin of discretion’ by the Human Rights Committee. Hence such principles should be taken in to consideration while addressing the two conflicting interests. The debate about effectiveness of human rights protection should take in to account the fact that, “ each individual and each community recites the catalogue of human rights with its own accent,

¹⁸¹ Different countries in Africa have adopted varying approaches to solve the conflict of interest between the bill of rights on the one hand and the customary and religious laws recognized on the other hand. Countries like South Africa, Nigeria, and Uganda have an express provision in their respective constitutions stipulating the overriding character of the bills of rights over customary norms. On the other hand countries like Zimbabwe, Botswana and Zambia provide a separate application of the customary laws independent of the constitutional provision on bills of rights.

¹⁸² E.g. F. Tiba, protection of Human Rights Under the Ethiopian Federalism and the Challenge of Legal Pluralism, (2001), pp.51.

¹⁸³ Sheria Court Consolidation Proclamation, Art. 6(1). However, it is arguable if the obligation imposed on all state and federal legislative, executive and judicial organs to respect and enforce the bills of rights provision also extends to the Sheria Courts.

¹⁸⁴ FDRE Constitution, Art. 78(5) envisage the HPR to enact a legislation that establishes, recognizes and organize customary and religious courts according to the constitution.

as a result of its culture and needs, in the light of its expectations, and with its own changing perception of the value-itself dependent on time and place – which attaches to the right to be protected or claimed.”¹⁸⁵

Another interesting discussion concerning legal pluralism and human rights in federal states is pertaining to the application of federal bills of rights on member states. For various reasons member states of the federation might happen to give less protection for the bills of rights enshrined in the federal constitution calling for rules on conflict of laws. The position taken by the FDRE Constitution is fairly clear in this regard. Art. 13(1) state,” All federal and state legislative, executive and judicial organs at all level shall have the responsibility and duty to respect and enforce the provisions of this chapter.”¹⁸⁶ Besides this obligation imposed on federal and state organs to respect and enforce the human rights provisions of the constitution the supremacy clause of the constitution attests the overriding character of the constitution in general and the human rights provisions in particular.¹⁸⁷

The challenge of legal pluralism on uniform human rights implementation is not limited to the scenarios discussed earlier on. Rather, more often than not the worst scenario is concerning the practical difficulty on the part of member states to implement human rights in their respective jurisdiction. As effective human rights implementation requires a strong and efficient legal system which most of the member states seriously lack , their performance in the management of rights is less remarkable, if at all remarkable, than the Federal Government. To be more concrete the situation of right administration is the function of the activities in the legislative, administrative, judicial and executive agents of the state. In other words, unless there is an

¹⁸⁵ Mohammed Bedjaoui, The difficult advance of human rights towards universality, *Universality o human rights in a pluralistic world* (1989),pp.43-44.

¹⁸⁶ FDRE Constitution, Art. 13(1).

¹⁸⁷ See FDRE Constitution Art.9 (1). For the purpose of extending more protection for the human rights provisions of the constitution ‘all laws’ as mentioned in the supremacy clause can be interpreted to include religious and customary laws.

enlightened legislature which issues laws ensuring protection of rights that are guaranteed constitutionally; unless there is an efficient administration that promotes rights and is subject to rule of law and the principle of transparency and accountability; unless there is an independent judiciary that sufficiently manned with professionally skilled man power; and unless there is a right enlightened institution of the police, prosecution, and prison administration; there cannot be implementation of human rights at a satisfactory level.

States constitutions as a literal reproduction of the federal constitution devote a substantial portion of their content to human rights provisions. All these states impose duty on all citizens and state officials to observe and enforce human rights. All these states have their own legislators called State Councils to which members are elected by the people.¹⁸⁸ The lack of legal and human rights experts is a matter of common knowledge. In the majority of the poor low land states it is not difficult to guess the financial difficulty of maintaining a legislator with the necessary facilities along with the necessary payments to be made to experts that can support the legislator, when ever they are found.

¹⁸⁹

State Administration, executive organs of states, embracing vital institutions like the police and prosecution more often than not have financial and human resource constraints. The police are hardly trained in human rights protection, save for isolated efforts of some indigenous NGOs, they hardly have well equipped offices and facilities for proper investigations, and places for keeping seized objects and detainees.

The judiciary, being ill-equipped infrastructurally and in terms of manpower; being generally ill-organized; being not entirely free of executive interference (undergoing a process known as ‘Gimgema’ where district judges appear before a committee of administrators for annual or bi-annual evaluation) are

¹⁸⁸ FDRE Constitution, Art. 50(3).

¹⁸⁹ See also supra 3.1.1.2.

hardly dependable as proactive human rights protectors. Due to their chronic deficiency in terms of skilled manpower, finance, infrastructural organization, and influence from the executive, the judiciary enforcement of human rights in the states is rendered uncertain.

These problems, pointed out above, give human rights less state protection than the one given at the federal level. While textual space granted to human rights tends to be equal at the Federal and State level in spite of the legal pluralism, the actual reality in the states bring about an imbalanced level of human rights protection both between the federal and state governments vertically and among the states horizontally. Apart from the uniting potential of the human right value in divided societies, the existence of ethnic divisions reinforced by socio-economic differences among ethnic states such as is the case in Ethiopia, the attainment of uniform human rights standards becomes very difficult.

In general federalism provides multiple layers of rights protection. Thus, rights can have dual constitutional guarantee. Such is the case as the constitution of both the states and the federation recognizes rights. Rights have a prospect of dual legislative and judicial protection. Such is the case when federal and state legislative organs enact right protective laws. Also, when individuals who couldn't get a decision from state courts to their satisfaction, have the access to federal courts, there by providing them multiple guarantee for their constitutional rights.¹⁹⁰ It is also important to note here that where claimants of a right so choose, such persons might demand protection from alternative institution of customary and /or religious law, in default of which one resorts to the ordinary rights enforcement institutions. Interestingly the constitution by envisaging the establishment of institutions such as the office of Human Rights Commission and the office of

¹⁹⁰ FDRE Constitution Art, 80 (3) (a).

Ombudsman further multiplies the layer of human rights protection.¹⁹¹ None of these institutions have assumed offices despite their legislative establishment. Hence their contribution remains to be seen.

¹⁹¹ See FDRE Constitution, Art.55 (14) & (15).

6 Conclusions

After the end of the cold war era one of the greatest challenge to world security and order emanate from multi-ethnic states. The problem of multi-ethnicity is not confined to the so called third world states in Africa. Some western democratic states who has been known for their long-term stability are seen to be precarious lately due to problems of multi-ethnicity.

Quite a Varsity of solutions have been forwarded by scholars as part of the search for solutions to this problem. The suggestions range from strong unitary dictatorial regime-as a means to suppress emerging ethnic nationalisms to ethnic based federalism-as a means of accommodating ethnic interests.

Federalism which may be identified as territorial based or ethnic based has come to be seen as the best alternative to promote the management of conflict prone multi-ethnic societies. Even those who extend sharp criticisms against this form of government admit that federalism, when properly implemented, has more often than not proved to offer tools for the better governess of supra-national institutions and has facilitated effective decision making in complex systems and promoted democracy.

In principle, relating federalism to multi-ethnicity and evaluating its success as a balance between unity and diversity involves a number of factors. In particular, how the boundaries of member states are drawn up and how powers are distributed horizontally as well as vertically. Moreover, the institutional set up should be examined if it represents a structure of diversity or at least minority accommodation providing institutional and political power which democratically command loyalty to the common state.

How far federalism, in particular ethnic federalism practically solves problem of multi-ethnicity is yet to be seen. However, daring decision has already been made in 1995 in Ethiopia adopting this approach as a solution to the longstanding ethnic problems of the country. Albeit with difficulty, the choice was made, and ethnicity was favored as the underling factor in the process of state formation.

The new model of government ,nevertheless, appeared to be peculiar from the outset not only because it follows an ethno-linguistic line for state formation but also in a sense that it allows the right to self-determination including secession. The inclusion of particularly the latter has made the Ethiopian model of federalism prone to critiques.

This study attempted to evaluate the success of the Ethiopian model of federalism in light of the inherent problems it poses along with some of the existing opportunities. Particular emphasis was given to power sharing arrangement-with a view to see how wholehearted is the federal arrangement, inclusion of secession clause-how far is it a threat to unity of the country, and uniform human rights implementation-how far will it serve as a binding force of the federation.

A close examination of the power sharing arrangement and the explicit recognition of the right to self determination including secession to nations, nationalities and peoples depicts that there is an apparent paradox in the federal arrangement. On the one hand, the nations, nationalities and peoples have been granted the right to exit from the federation with out any conditions albeit for procedural red tape. This gives the impression that the constituent unites are more independent compared to other federal arrangements. On the other hand, the powers of member states are relatively meager and regional government remain dependent on the federal level to be able to carry out their duties. As expressed by P.H. Brietzke, the Constitution

proposes few self determination remedies, since nothing is specified as lying in the gaps between secession. While the trend in multi-ethnic federations is to extend secession remedies through various areas of self-government, the Ethiopian federation has chosen quite the opposite: asserting the most extreme right to secession it failed to grant to the member states as the same time the power given to member states in the administration of daily affairs are quite scanty.

As federal theories underline that the functioning of federal system is not to be measured by only looking at the theoretical justifications or constitutional frame work attempt was made in this study to examine the de facto federal system of Ethiopia from socio-economic point of view revealing the asymmetric nature of the federal structure.

As argued by A. Lovese in her study of the Ethiopian federalism concluded that the major problems that make the federalism falter are half-hearted decentralization, deficient democracy, and insufficient protection extended to human rights. *Accontrario* reading of her conclusions would point to important solutions to the predicaments of the Ethiopian federalism, namely wholehearted federalism, a more vibrant democracy, and sufficient protection of human rights values.

Federalism has already been institutionalized and member states of the federation are exercising some degree of political and cultural autonomy. Nonetheless, financial dependency of the member states on the central government, among other things limits the scope of the federal decentralization. Democracy, as expressed through the principle of popular sovereignty, is not far out of reach legally, nonetheless, lack of strong alternative parties due to many reasons, lack of civil societies and civic culture, undue interference in the independence of the judiciary, and other

reasons could not help democracy be utilized concretely. Human rights are well articulated in the federal as well as state constitutions to the extent of becoming an overriding principle. The absence of strong law enforcement agencies and lack of political will, however, could not enable intensive utilization of the principle. The pathetic situation of all legal institutions in the states and the no less pathetic situation of the Federal Courts and Federal prisons, coupled with the inoperation of the institution of the Ombudsman and of the Human Rights Commission so far, could be invoked as reasons.

Apart from the above, one might suggest the following as solutions to problems of multi-ethnic Ethiopia.

1. Exploit the structures inherent in federalism.

This can be done by instituting true bi-cameralism through making the upper house a legislative upper house with a veto power over legislations this can happen only if its composition is restructured, either through equal representation of each state as it is the case in mature democracies or through equal numerical representation of each people group as it is intended to be done (on the face of it in Ethiopia). A clearer separation of power must complement this bicameralism. Relegation of the task of constitutional interpretation to the courts or special constitutional court might also be considered.

2. Intensify the task of Federal Government to build a country of united destiny.

The HOF is entrusted with this duty. The federal intervention of the sake of maintain a uniform human rights standards while at the same time empowering state governments to take self-administration seriously(thereby molding the process of developing peculiar area of concern vis-à-vis human rights is immediately important.

3. Intensification of democracy requires the increase in civil societies substantive pluralism of parties and a secure legal ground protection freedom

of association. Furthermore, it is imperative that parties be organized in a manner that can access cross-ethnic constituencies.

4. Concerned legislative and law enforcement agencies should try to strike a balance between the uniform implementation of human rights standards and religious and customary laws of the different ethnic groups borrowing interdisciplinary approach, bringing to the ground the debates on universality of human rights norms and multi-culturalism; and with due consideration of the overriding nature of human rights norms in the constitutional framework.

It is noticeable from the foregoing that readymade solutions are hard to come by. On the other hand some of the criticisms advanced by commentators on the Ethiopian model appear to be excessive as they stem from what seems exaggerated expectation from the process. Knowing the situation the country has undergone for 17 years, knowing the change undertaken with a totally new institutional set up, new political personnel etc. it will be utopian-looking optimism to expect bloom and blossom out of the new model of federalism. One should also note that federalism is hardly a perfect institution. As any imperfect institution, it evolves, and dealing with the problems that unfold is worth the experiment as the solutions given promote the politics of love, tolerance and association than hatred, intolerance and dissociation.

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