

THE RIGHT TO SECESSION: THE POSSIBILITY OF ITS APPLICATION WITH REGARD TO THE CURRENT FISCAL SET UP IN ETHIOPIA

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Contents	pages
Acknowledgement.....	3
Abstract.....	4
Chapter 1-Introduction.....	5
1.1Background.....	5
1.2. Statement of the problem.....	7
1.3. Research questions.....	8
1.4. Objectives of the research.....	9
1.5. Research Methodology.....	11
1.6. Limitations of the research.....	12
Chapter 2- The right to secession: General overview.....	13
Introduction.....	13
2.1. Concept and historical development of the right to secession.....	13
2.1.1 Concept of secession.....	13
2.1.2. Historical Development of Right to Secession.....	15
2.2. Secession as a Legal Right.....	18
2.2.1. International laws.....	18
2.2.2. Constitutions of some countries.....	21
2.2.3. The FDRE constitution.....	22
2.3. Conditions for Implementation of the right to secession: In Ethiopia.....	23
Chapter 3- Fiscal Federalism.....	28
3.1.Concept and principles of fiscal federalism.....	28
3.1.1.Concept of fiscal federalism.....	29
3.1.2.Principles of fiscal federalism.....	31
3.2.Fiscal policy.....	33
3.3.Revenue raising power and expenditure responsibility.....	37
3.3.1.Expenditure Responsibilities.....	39
3.3.2.Revenue raising power.....	41
3.4.Fiscal imbalance.....	44
3.4.1.Vertical fiscal imbalance.....	45

3.4.2.Horizontal fiscal imbalance.....	46
3.5.Correcting fiscal imbalances.....	47
Chapter 4- Fiscal federalism in Ethiopia and its Impact on Possibility of Application of the Right to Secession.....	49
Background introduction.....	49
4.1. Fiscal federalism in Ethiopia.....	50
4.1.1. Historical background.....	50
4.1.2. Powers and Responsibilities of federal and state governments.....	53
4.1.2.1. Introduction.....	53
4.1.2.2. Responsibilities of the federal government.....	55
4.1.2.3. Powers of sub-national governments.....	56
4.1.3 Division of Revenue power in Ethiopia.....	59
4.1.4. Handling fiscal imbalances.....	65
4.2. Impact of the fiscal arrangement on the possibility of the implementation of the right to secession	68
4.2.1. Why secession?.....	70
4.2.2. The power of the states and local governments to administer themselves.....	72
4.2.3. The financial freedom of states and local governments.....	73
4.2.4. Economic dependency of states on the federal government.....	75
Conclusion and recommendations.....	77
1.Conclusion.....	77
2.Recommendations.....	80
Selected Bibliography.....	83
1.Books.....	83
2.Laws.....	87

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Abstract

One of the most crucial challenges to Ethiopia's fiscal federalism is the inability of the states to raise, retain and manage revenue. Revenue bases at state level being small and unpredictable and resource problems that most states have create a problem in performance of their expenditure responsibilities. As a result, State and sub national governments are extremely dependent on the federal government's grant even to cover their budgets. Interestingly, while a lot has been written about Ethiopian fiscal federalism, not much attention is paid to its possible effects on the application of the right to secession. Beginning with an evaluation of the current fiscal set up and the right to secession under the federal constitution, this study examines how the Ethiopian fiscal federalism impacts the possibility of application of the right to secession.

Chapter 1-Introduction

1.1 Background

During the time of unwritten constitutions, Ethiopia was a monarchical state and its emperors were absolutely autocratic.¹ The principle of federalism was totally alien to Ethiopian legal culture and there was no clear mechanism of handling the issue of diversity. And so, there was no recognition of group rights like the right to self determination and right to secession during that era.

The era of written constitutions was started during the 1931 constitution, which was "...a little more than an instrument of legalizing the Ethiopian monarchs as absolutes of the domestic level and as modernized at international level."² The 1931 constitution was a royal charter guaranteeing rights and privileges to the nobility³ and did not address the issue of ethnic diversity and rights of citizens.

The next constitutions, namely: the 1955 revised constitution and the 1987 constitution of Peoples' Democratic Republic of Ethiopia (PDRE), did not concern about federalism and group rights like self determination and secession. Thus, before the coming of the ethno nationalist actors in 1991, the legal culture of the previous regimes did not recognize the right to secession at all. The continual struggle by ethno nationalist movements like the Tigrean Peoples' Liberation Front (TPLF), Eritrean Liberation Front (ELF), Oromo Liberation Front (OLF) and others became the reasons for collapse of the Derg regime.⁴ The result is the coming of the transitional charter and the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution which started new political and legal systems in the country.

1 Regassa, T. (2007). *Ethnic federalism and the right to self determination as a constitutional legal solution to the problem of multiethnic societies* (p. 1). Addis Ababa University Law School.

2 Ibid.

3 Nahum, F. (1997). *Constitution for a nation of nations: The Ethiopian prospect* (p. 28). Lawrenceville, NJ: Red Sea Press.

4 Tsegaye Regassa, p. 11

The transitional government which took power in May 1991 established fourteen administrative regions drew on the basis of ethnic composition of the population.⁵ The 1995 FDRE constitution reduced the fourteen regions in to nine states. The states are created based on the settlement patterns, identity, language and consent of the people concerned, in other words, the states are created with ethnic affiliations.⁶ Thus, the transitional charter of 1991 and the 1995 FDRE constitution reshaped the political and constitutional history of Ethiopia. Unlike the previous constitutions, these two incorporate the right to self determination including secession as a basic right with detailed procedures of application of the rights.

Fiscal decentralization has got more recognition under the 1995 Federal Democratic Republic of Ethiopia constitution.⁷ The notion of fiscal federalism is developed with the concept of federalism. Federalism deals about division of political power between the central government and regional governments or states and fiscal federalism deals specifically with the division of revenue raising power and expenditure responsibilities between the layers of governments. However, this does not mean fiscal federalism or in other words fiscal decentralization works only for federal governments; rather it is just as relevant for all unitary, federal and confederal forms of governments. Any kind of government that needs to decentralize its expenditure responsibilities and revenue sources applies fiscal decentralization irrespective of the form of the government. Nowadays, fiscal federalism is an important aspect of decentralized systems.

Ethiopia was legally a unitary state until 1992. During the unitary states there was no decentralization of fiscal power to the local governments at least legally. However, the establishment of the transitional government in 1991 and the adoption of the Federal Democratic Republic of Ethiopia constitution in 1995 invent a new approach to financial operation and administration which is different from the previous systems. During the transitional period, fiscal decentralization has got prominence for the first time in Ethiopian legal history. In addition to the transitional charter, proclamation no 7/ 1992 and proclamation no 33/ 1992 provided detailed

5 See Regional self governments' establishment proclamation No. 7/1992, Negarit Gazeta, Jan-14, 1992

6 Article 46(2) of the FDRE constitution

7 Articles 94-100 and articles 51-52 of the FDRE constitution provided revenue powers and expenditure responsibilities of both federal and regional governments respectively.

provisions concerning the division of expenditure and revenue-raising responsibilities between the center and the regions.

In Ethiopia, the historical facts which can be characterized by extremely centralized and autocratic governments that didn't give much emphasis for identity of different ethnic groups may create a fertile ground to claim the right to secession by almost every ethnic group. But the ground for claiming secession is different from the possibility of application of the right. There are many factors that may influence the possibility of application of the right to secession. These include the procedures attached to the application of the right under the constitution itself, the interest of minorities in the claimant region, the national interest as a whole, the possible claims of territorial boundary by a non claimant state, the financial condition of the claimant ethnic group or a state or the fiscal set up of the constitution and others. Out of these many factors the researcher wanted to call attention to how the Ethiopian fiscal federalism influences the possibility of application of the right to secession.

1.2. Statement of the problem

Ethiopia is a country of many nations and nationalities, in fact more than seventy ethnicities, each with distinctive characteristics. The FDRE constitution gives unconditional right to secession for those nations and nationalities.⁸ The provision of the right to secession has a value for those nations and nationalities as a guarantee for their well being, to exploit their natural resources and to govern themselves with full confidence hoping that if something wrong happens they will secede. On the contrary, the whole country and minorities have interest on the right to secession. While applying the right to secession, it shouldn't be, reasonably, against the interest of the whole country and minorities. The nature of the right leads us to conclude right to secession should not be totally impossible to implement and at the same time it shouldn't be as simple as implementing other ordinary rights.

Indisputably the right to secession is unconditional in the FDRE constitution; even though, the constitution itself provides conditions with a pretext of procedures for the application of the

⁸ See Article 39(1) of the FDRE constitution

right.⁹ Self rule, which can be expressed through the right to self determination that may or may not incorporate¹⁰the right to secession, is the basic principle in federalism. Self rule requires a concerned nation, nationality or state to finance its own expenditure responsibilities. The revenue for those expenditure responsibilities may be raised by them or may be a grant from the federal government. A successful self administration, therefore, somehow depends on the fiscal set up designed and enshrined in the constitution. More to the point, if there is a successful self administration in a region, then the possibility of claiming secession is less probable. This refers that the fiscal set up in the FDRE constitution impacts the possibility of application of the right to secession negatively or positively.

The problem that the writer seeks to study and find out possible solutions under this study is the possibility of the application of the right to secession which is impacted by the fiscal set up designed under the Federal Democratic Republic of Ethiopia Constitution.

1.3. Research questions

Ethiopia has adopted ethno nationalist federalism before more than two decades ago. Solomon Negussie, under his book *Fiscal Federalism in the Ethiopian Ethnic-based Federal System*, says “one of the fundamental functions of a federal government is the redistribution of wealth from the relatively rich to the relatively poor regions and citizens.”¹¹ Thus, in the FDRE constitution fiscal federalism is adopted in which the federal government can redistribute wealth in the form of grants.¹² In principle the federal government and regional governments are expected to bear all financial expenditures by themselves. However, so as to finance expenditure responsibilities,

9 Article 39(4) of the FDRE constitution provides procedures of secession which can be summarized as the approval of demand of secession, referendum, transfer of power from the federal government and finally division of assets between the federal government and the seceded group.

10 It is arguable whether the right to self determination should include secession, in some systems like Ethiopia self determination incorporates the right to secession but in other systems the right to secession is neither prohibited nor allowed or prohibited at all.

11 Solomon, N. (2006). *Fiscal federalism in the Ethiopian ethnic-based federal system* (p. 270). Nijmegen: Wolf Legal.

12 Article 94(2) proclaims emergency, rehabilitation and development assistance can be granted by the federal government to the regional governments

revenue sources are necessary and this can determine whether the regional governments can in effect bear their financial expenditures or not.

The ability to bear their financial expenditures enables us to know whether the regional governments are administering themselves properly. In other words, if the region is dependent on grants from the federal government, it is reasonable and legal to conclude that the self administration will be under inspection.¹³ The quality of self administration on one hand and the way the wealth is redistributed to the regions and the allocation of revenue sources on the other hand may aggravate or mitigate the claim to secede from the federation.

The research will examine the Ethiopian fiscal federalism and its impact on the possibility of the application of the right to secession and addresses the following questions:

- a. Is the allocation of expenditure responsibilities provided under FDRE constitution fit with revenue sources that the regions have to exercise their right to self determination as it should be?
- b. How far the regional governments are dependent on the federal government or other regional governments for their expenditure responsibilities? Does dependency of regional governments, if any, affect the quality of self administration and can it be a cause for claiming secession?
- c. Does the fiscal set up, the allocation of expenditure responsibilities and revenue sources and the way the fiscal imbalances are corrected, aggravate or mitigate the claim for the right to secession?
- d. Is it simply or hardly possible to apply any claim of secession due to the fiscal set up irrespective of other possible factors?

1.4. Objectives of the research

¹³ The federal government can inspect and audit states of its grants according to article 94(2) of the FDRE constitution.

One of the new inverts of the FDRE constitution of 1995 is the right to secession that is unconditionally given to nation, nationalities and peoples of Ethiopia. The right that is provided under the constitution should be applicable if grounds to claim it are fulfilled. However, the claim of the right doesn't automatically guarantee its application right away. There are factors that determine the possibility of application of the right. To mention some: international legal approach towards the right to secession, the historical background of Ethiopian people themselves as well as the procedure of the constitution itself.

Many countries do not recognize the right to secession in their constitutions and some prohibit secession from their constitutions expressly. Moreover, under international human right documents the right to self determination has given recognition for oppressed and colonized. However, these documents do not encourage the secession of a group due to fear of chaos and disorder. When we examine the international legal culture towards the right to secession, it is not encouraging and may have a negative impact on its application.

The historical factor in Ethiopia from the empire up to the federation creates a reasonable ground for claim of secession by many ethnic groups. However, the fertile ground for claim of the right to secession doesn't mean its application is automatic as of the claim. The application depends on the present situation of Ethiopia. Examining the historical background and the present situation of the people may make someone to see the possibility of the application of the right to secession in two different views; easily possible and hardly possible.

The above mentioned factors are not the primary issues of this study. The study will examine the fiscal federalism of Ethiopia as a factor determining the possibility of application of the right to secession. Even though the right to secession is unconditional right under the FDRE constitution, there are different factors that determine its practical application.

Therefore, the objective of this study is to analyze the possibility of the application of the right to secession with regard to the current fiscal set up in Ethiopia and, so that, to scrutinize how worth the enclosure of the right to secession in the constitution is.

1.5. Research Methodology

The research basically focuses on the Ethiopian fiscal federalism and its impact on the possibility of the right to secession. The methodology applied in the research is qualitative. Secondary data and laws are assessed and analyzed to reach to conclusions in the research. However, for the better understanding of the concepts different theories related to fiscal federalism and the right to secession and some countries' experiences are assessed.

Academic Literatures, different laws, websites and data from government reports are used as sources of information for the research. Based on these sources the research analyses the possibility of application of the right to secession with regard to the current fiscal arrangement in Ethiopia. Literatures, laws and reliable websites are basically used to analyze theoretical and practical issues related to the right to secession and fiscal federalism in general. These matters are covered under chapter two and three of the research. Literatures, laws and government reports are also applied to analyze the current fiscal set up in Ethiopia which is covered under chapter four of the paper. Some data used in the research are not up to date. This is because it was unable to me to access the up to date data on the necessary matters. However, the data that are applied to show important figures related to the Ethiopian government revenues, expenditures and grants are enough to reach to occlusions on the impact of the fiscal federalism on the possibility of application of the right to secession.

1.6. Limitations of the research

I have tried to look for as many research results as possible in the field of fiscal federalism and the right to secession in Ethiopia. However, only limited size of publications is available and this has largely restricted my investigations. My research focuses on the theories and some practical data related to fiscal matters in Ethiopia and draw impacts on the possibility of application of the right to secession. My trials to collect first hand information concerning my research resulted fruitless because I couldn't find well organized data from concerned sectors. In addition to this, my plan to conduct an interview with some officials couldn't go well so that I obliged to use secondary data as the basic source of my research. There are also limitations attributed to Addis Ababa University School of law. The money funded for the research cannot be even enough to cover transport costs in some cases let alone the whole expense to wind up the paper. The school also failed to put standards for postgraduate papers that made me to pick my own standards in doing my research. Besides, the Law School does not have any time table for the accomplishment of postgraduate researches in a specified period of time. Needless to mention, there is also a problem of access to libraries and internet services in the university that makes me lagged in collecting data.

Chapter 2- The right to secession: General overview

Introduction

Human rights can be broadly classified into individual rights and group rights. Individual rights are those rights that every individual has or granted by the law. For instance, right to life and the right to vote or be elected are individual rights. Group rights are granted to a group that has distinct characteristics from a society the group is living in. Right to secession is a group right that is granted to collective individuals grouped with distinctive characteristics and applied upon request of that group to be independent from existed political community.

This chapter deals about four basic points concerning the right to secession. The first topic deals about the concept of secession. Under this topic different literatures are referred to abridge the understanding of the concept of secession. The second topic deals about the historical development of the right to secession. The historical background part points out the development of the right to secession starting from the time of the appearance of the modern European nation state in the middle of the 17th century. The third topic talks about secession as a legal right. The topic is generally about the recognition of the right in the international laws, constitutions of some countries and the Ethiopian constitution. The last topic is about the implementation of the right under the Ethiopian constitution. Under this topic, the conditions for implementation of the right to secession are scrutinized.

2.1. Concept and historical development of the right to secession

2.1.1 Concept of secession

Literally Secession means the act of withdrawing from membership in a grouping.¹⁴ It is the act of withdrawing from an organization, union, military alliance or especially a political entity. In other words, it is a right that enables a group be separated from their existing political community whether to be attached to the other group which has the same characteristics as the later or to establish its own government like the parent country.

14 Lawson, E. (1991). *Encyclopedia of human rights* (p. 1351). New York: Taylor & Francis.

Though it is debatable by many whether the right self determination includes the right to secession or not, primarily the concept is a derivation of the right to self determination. The right to self determination is a collective right that is vested in people and it enables them to freely establish and pledge their legal, economical, political and social goals. In other words, self determination of peoples is a right in which a specific type of human community sharing common desire to establish an entity is capable of functioning to ensure a common interest. This right is one of the leading realities of the present day and the raising and the recognition of such right has fundamentally changed in the international society than the earlier times. The right to secession, which is arguably categorized under the right to self determination, is one of the different features of the Ethiopian constitution that again emanates from the overriding significance given to the ethno linguistic notion of nations, nationalities and people.¹⁵

When the issue of collectiveness and independence are concerned, the right to self determination and the right to secession are similar. In order to have a clear understanding of the concept of the right to secession, it is better to look the right in context of the right to self- determination. Accordingly, there are two views of the right to secession with regard to the right to self determination.

The first argument is that the right to self determination includes the right to secession. In other words, it is argued that the right to secession is an extension of the right to self determination. This is especially true when the right to self determination during the time of colonization is dealt. The idea of an independence from colonizers and alien rules strengthened claim of the right to self determination. Therefore, during colonization era peoples to be independent from colonizers, they were entitled for a right of self determination that includes the right to secession. This led some scholars to interpret the doctrine of self determination to include the right to secession even outside the context of the era of colonization.¹⁶

Secondly, there are scholars who argued that the right to secession is not included under the broad right of self determination. In this context, the external and internal kinds of self determination should be taken into account. Both the internal and external forms are about

15 Fasil Nahum, p. 53

16 Espiell, H. (1980). *The Right to Self-Determination: Implementation of the United Nations Resolutions* (p. 14). New York (NY): United Nations.

independence but the external self determination refers to the independence of a state as a whole. The internal form of independence emphasizes on the independence of a group of a population inside one state and this is mostly assured by a representative form of government between that group of population and the central government. Since colonization is not an issue nowadays, it is internal self determination that can be possibly raised to be valued. Thus, the internal self determination, if applied and observed properly, may preempt and avoid the need of secession and possible civil chaos and disorder and thereby protects unnecessary violation of human rights.¹⁷

The right to self determination and secession similarly addresses the independence of certain people from their existing political community. When the concept of secession in its external form is considered, the right to secession is one part of self determination. However, when the issue of internal self determination is considered, it is hardly possible to conclude that the right to secession is included under the notion of self determination.

The concept of right to secession is a recent phenomenon and is defined as separation of group from membership another group in a given state or country. The application of the right to secession can be realized without showing any cause, like the case in Ethiopia, while in many cases secession should be considered only to rectify grave injustices. Right to secession is surprisingly unconditional right under the Federal Democratic Republic of Ethiopia Constitution¹⁸and any nation, nationality or people can claim the right without showing any legal cause.

2.1.2. Historical Development of Right to Secession

The historical development of the right to secession is related with the development of the right to self determination. Talking about the historical development of self determination is enough to know about the evolution of the right to secession.

¹⁷ Tsegaye Regassa, p.12

¹⁸ Article 39 of the FDRE Constitution

The appearance of the right to self determination was linked with the appearance of the modern European nation state in the middle of the 17th century.¹⁹ Following the First World War, the concept of self determination gained wide acknowledgment as political philosophical concept.²⁰ In 1919, to validate the national claims of people who had been subjects of Ottoman Turkey and Austro- Hungarian Empire, the United States' president Woodrow Wilson proclaimed self determination to be a universal guiding principle²¹ even though the concept was not yet universally accepted.²² Recently, the development of an international law of human rights has helped to develop self determination as a legal right.²³ The link between human rights and the rights to self determination was clearly established by the two international human right covenants: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁴

Self determination has also been treated as a human right in other international and regional treaties such as the declaration on principle of international law concerning friendly relations and cooperation among states of 1970, the final act of Helsinki of the conference of security and cooperation in Europe of 1975 and the African Charter on Human and Peoples' Rights of 1981.

Developing nations that gained political independence in the 1960's and 1970's found that the exercise of their political independence was seriously compromised in the absence of economic independence because of the fact that their economies were dependent on the markets of

19 Habteselassie, B. (1997). *Self-determination in principle and practice: The Ethiopian-Eritrean experience* (p. 71).

20 Sellers, M. (1996). *The new world order: Sovereignty, human rights, and the self-determination of peoples*; (p. 1). Oxford: Berg.

21 Shukri, M. (1965). *The concept of self-determination in the United Nations* (p. 6). Damascus: Al Jadidah Press.

22 Lansing, R. (1921). *The peace negotiations: A personal narrative* (pp. 97-98). Boston: Houghton Mifflin.

23 Chowdhury, S. (1987). *The status and norms of self- determination in contemporary international law* (p. 23).

24 Article 1 of both of ICCPR and IESCR clearly provides the right to self determination for all people and by virtue of such right they can freely determine their political status and freely pursue their economic, social and cultural development

developed nations in Europe and North America.²⁵ Moreover, emergent and reemerging nationalism seemed to have taken center in a cast of new world wide political trends and nationalism has appeared in many forms across Asia, Africa, Europe South America and North America.²⁶ There were active secessionist movements or successful secessions around four corners of the world starting from the 19th century. To mention some, Pakistan seceded from India, Taiwan seceded from China, the state of Katanga tried to claim independence from Congo in 1960, Eritrea seceded from Ethiopia in 1991, Finland successfully and peacefully seceded from Russia in 1917, and Belgium seceded from the Netherlands in 1830, three southern states seceded from Brazil in 1835 which later returned in 1845; and there were also secession movements in Canada. These successful secessions and movements practically gave different countries the idea of legalizing the right to secession.

The United Nation's recognition of territorial integrity of a nation under self determination²⁷ paved the way for politicians of different countries to interpret self determination including the right to secession. The constitution of some countries began to include the right to secession under the doctrine of self determination. For instance, the 1977 Soviet constitution (Brezhnev Constitution) gave the right to secession to every union republic.²⁸

Currently there are two extremes about the right to secession in the world's legal philosophy. The first is those states which provide the right to secession impliedly or explicitly and the second is the countries which exclude or prohibit the right to secession in their constitutions. The current Ethiopian constitution explicitly and unconditionally recognizes the right to secession to every nation, nationality and peoples of Ethiopia.²⁹

25Amin, S. (1977). *Imperialism and unequal development* (pp.43-44). New York: Monthly Review Press.

26Barton, J., & Carter, B. (1993). *International law and institutions for a new age* (pp. 555-556).

27Article2(4) of the United Nation's charter

28 As to article 72 of the 1977 Soviet constitution "each union republic shall retain the right freely to secede from the USSR."

29 Article 39(1) of the FDRE constitution

2.2. Secession as a Legal Right

2.2.1. International laws

The way of construing the right to self determination leads us to conclude whether the right to secession is included or not. There is at least one issue that the world's legal philosophy would be in agreement; if a group is in a condition to secede itself and to form an independent state, no one can force that group to continue to live with the parent country forever. Therefore, in effect self determination includes the right to secession implicitly or explicitly in most of the legal systems.

The charter of the United Nations contains different principles designed to resolve problems arising from conflicts between nations within states. One of such principles is the promotion and implementation of equal rights and self determination without discrimination on any grounds for the sake of the international legal order and to develop friendly relations among different states. Thus, elevating the principle of self determination including secession from a political concept to a legal right is the last expression of the vital political value of democracy.

The UN charter gives further expression to this idea by providing for the creation of institutions and procedures, thus giving the concept of self determination a concrete form and making its application legally binding.³⁰ The United Nations first was able to support self determination as a legal principle consistently and with great success during the period of decolonization following World War II. Under the charter, united nations provide for the establishment of institutions for the disposal of former territories under colonial rule. Following this, numerous international resolutions were adopted by the United Nations' General Assembly such as the Universal Human Rights Declaration of 1948, the 1960 United Nations' general assembly resolution on independence for countries under colonization and peoples and the 1970 declaration which gave respect for the sovereignty and territorial integrity of a state qualified upon the observance of the principle of equal rights and self determination of peoples within those states.

As of United Nations recognition of the right to self determination and adoption of different international resolutions, any policy or provision of a constitution or law of any state that is

³⁰ Roy Chowdhury, p.87

discriminatory against the interest of any group with in such a state would be considered to violate equal rights and self determination of peoples.³¹

Therefore, the right to self determination including secession has acquired the status of a legal right. However, though the right to secession has acquired the status of legal right, its application is by no means automatic. The importance of respect for sovereignty and territorial integrity of states cannot be ignored.³²

The United Nations charter and a number of international documents assert the principle of self determination. The regional charters such as the African Charter on Human and Peoples' rights grants self determination to all peoples and adds that "...they shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."³³

The most important international human right documents: international covenant on civil and political rights (ICCPR) and international covenant on economic, social and cultural rights (ICESCR) lay down the foundation of what later developed as international law of human rights. The right to self determination is the common article 1 of the documents. The article itself states that:

1. "All people have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural rights."
2. "All people may, for their own ends, freely dispose of their natural resources without prejudice to any obligations arising out of international economic cooperation based upon the principle of mutual benefit, and international law."
3. "The state parties to the present covenant, including those having responsibility for administration of non self governing and trust territories, shall promote the realization of the right to self determination, and shall respect that right, inconformity with the provisions of the United Nations."³⁴

31 Article 2(4) of the UN Charter

32 Deng, F. (1996). *Sovereignty as responsibility: Conflict management in Africa* (p. 1, 33). Washington, DC: Brookings Institution.

33 Article 20 of African Charter on Human and Peoples' Rights

34 Article 1 of ICCPR

Examination of the above article shows the following important points:

- The covenants do not restrict the right to self determination to colonized or oppressed people only but includes all peoples.
- States are called upon to promote and respect the norm of self determination in conformity with the provisions of the United Nations' Charter.³⁵ This one brings us back to the conflict between territorial integrity and self determination. The United Nations Charter respects the norm of self determination but gives international peace precedence over international justice implying support for territorial integrity over self determination.³⁶

All the international laws: the UN charter, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights provide rules for observance of self determination of people. However, none of them provide the right to secession explicitly nor they provide whether the right to self determination includes the right to secession or not. According to the international documents, thus, whether or not the right to self determination includes the right to secession remains open to debate. ³⁷ Yet, it has been argued by many³⁸ that it is wrong to suggest that the right to self determination includes the right to secession. Entities still need to be encouraged not to be secede in keeping with the United Nations' principles, the interest of international peace, security and economic development.³⁹

Generally, under the international human right documents, the right self determination has got recognition not only for the oppressed and colonized but for all peoples. At the same time, the UN unequivocally declares and gives prevalence for the respecting of territorial integrity of states for the sake of international peace, security and economic development. On the other hand, the right to secession to be included under the right to self determination as argued by many is a

35 Article 1(3) of ICCPR

36 See page 66 of declaration on declaration of independence to colonial countries and peoples.

37 Tomuschat, C. (1993). *Modern law of self-determination* (p. 1, 12). Dordrecht: M. Nijhoff.

38 Castellino, J. (2000). *International law and self-determination: The interplay of the politics of territorial possession with formulations of post-colonial national identity* (p. 34). The Hague: Martinus Nijhoff.

39 Ibid.

wrong suggestion. Moreover, there is an intention of the UN, not to promulgate the right to secession under international human right documents, is to encourage the unification of states rather than secession that may result in chaos and disorder. Therefore, in the international human right documents internal secession is not a clear legal right.

2.2.2. Constitutions of some countries

There are roughly more than 25 countries in the world today with a system of federalism. It is more likely to have the issue of secession in countries with a federal system than the other government systems. The recognition of the right to secession has three faces in the current world legal philosophy. Some⁴⁰ countries explicitly provide the right to secession in their constitutions, some others prohibit and the third categories neither explicitly provide nor prohibited the right to secession in their constitutions.

For the sake of this paper the writer has selected some federal countries randomly to scrutinize how the right to secession is treated in their constitutions.

Federal constitution of the Swiss confederation recognizes living together with mutual consideration and respect for diversity of the Swiss people and the cantons.⁴¹ The constitution gives much place for different human rights including the freedom to use any language⁴² and gives organizational autonomy for the cantons.⁴³ However, the right to secession is not guaranteed in the constitution.

Nigeria is the most populous country in Africa that is composed of more than 250 ethnic groups.⁴⁴ Irrespective of such deep diversity of the country, the constitution of the federation of

40 For instance article 39 of the FDRE constitution explicitly provides the right to secession.

41 Preamble of the Federal constitution of the Swiss confederation

42 Article 18 of the Federal constitution of the Swiss confederation

43 Article 47 of the Federal constitution of the Swiss confederation

44 CIA Site Redirect. (2010, November 30). Retrieved September 10, 2014, from <http://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

Nigeria does not recognize the right to secession. It neither explicitly prohibited nor recognized the right.

India is also a federal country with diversified ethnic groups. Articles 29 and 30 of the Indian constitution recognize the right to minorities to be protected, to establish and administer educational institutions. However, even though secession is practically the experience of India in case of secession of Pakistan, there is no right to secession guaranteed by the constitution. Like India, even if there is secessionist activism and trial of seceding Québec in Canada, the Canadian charter of rights and freedoms does not recognize the right to secession. The same is true in South Africa.

Most constitutions are silent about the right to secession. In other words, the right to secession neither guaranteed nor prohibited explicitly by the constitutions of most federalist countries. However, the case in the Ethiopian federalism is so different and there is a unique approach towards the right to secession.

2.2.3. The FDRE constitution

Ethiopia has little experience with written constitutions. The written constitution which started with the 1931 constitution was an event of less than a century.⁴⁵ In 1955, Ethiopia was granted with another constitution which suppressed the 1931 constitution and the 1987 constitution is the third written constitution Ethiopia came to have in years⁴⁶ up to the coming of the 1995 FDRE constitution. In the three constitutions: the 1931, 1955 and 1987, although some individual rights were given recognition, the constitutions didn't give due regard for social rights especially group rights. Thus, there was not recognition of the right to secession at all.

The 1995 FDRE constitution came to existence with different and new principles which were not in the previous constitutions. These principles are mainly related to sovereignty of the people, human rights, secularism, transparency and accountability of the government.⁴⁷ Out of these

45 Fasil Nahum, p.17, 31

46 Tsegaye Regassa, p.4,7

47 Ibid, p.18

principles, the main one is the sovereignty of nations, nationalities and peoples of Ethiopia and it is this right that calls forth the right to self determination that includes the right to secession. Thus, the right to secession is an explicit right under the current Ethiopian legal philosophy.

2.3. Conditions for Implementation of the right to secession: In Ethiopia

Constitutions make an effort to provide solutions for existing or pre existing social, economic and political problems experienced by a given society.⁴⁸ For instance, the framers of the United States' constitution wanted to remedy the problems faced under the article of confederation and assure civil liberties.⁴⁹ In Germany the drafters of the constitution of 1949 provide for limited emergency powers, emphasize individual rights and institute judicial review.⁵⁰ In France the instability of the previous governments led the drafters of the constitution of 1958 to limit the powers of the legislature and increase that of the executive.⁵¹ In developing countries, especially in Africa, constitutions generally provide for limiting the power of the government and for resolving ethnic and tribal problems.⁵² One of the provisions for resolving ethnic problems is enacting the right to self determination in the constitutions.

The FDRE constitution provides the right to self determination as a principle for nations, nationalities and peoples of Ethiopia referring in the preamble and in the body of the constitution. The constitution provides “every nation, nationality and peoples in Ethiopia has unconditional right to self determination including the right to secession.”⁵³ When most other rights can be suspended under the constitution by a proclamation of emergency, the right to secession is among the few rights that cannot be suspended during state of emergency.⁵⁴

48 Haile, M. (1996). *The New Ethiopian Constitution: Its impact upon unity, human rights and development* (p. 1). Suffolk University press.

49 Ibid, p.2

50 Id, p.3

51 Id, p.4

52 Id, p.6

53 Article 39(1) of the FDRE constitution

54 According to article 93(4) (3) of the FDRE constitution, state of emergency cannot limit the right to self determination including secession.

Ethiopian nations, nationalities and peoples have “unconditional right to self determination, including the right to secession.”(Article 39(1)) Even though the applications of the self determination rights have difference in effect, the effect of the application of the right to secession is more than the other self determination rights. When we consider the self determination rights of every nation, nationality and people in Ethiopia such as “ the right to speak, to write and develop its own language; to express, develop and promote its culture and to preserve its history” and “...right to full measure of self government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in states and federal governments”⁵⁵, the rights are applicable in different manner to the right to secession. That is, the rights are applicable in the Ethiopian territory, while the applicability of the right to secession is to separate and to be independent from Ethiopian territory. Therefore, there is a significant difference between the effect of application of the right to secession and the other features of self determination right.

As to applicability of the right to secession, at the first place, it is unconditional right and cannot be delimited by state of emergency. Secondly, the constitution provided procedures for the practical application of the right to secession.⁵⁶ Thirdly, the house of the federation decides on issues relating to the right to nations, nationalities and peoples to self determination including the right to secession.⁵⁷

The right to secession provided under the Ethiopian constitution is unconditional. Every nation, nationality and people in Ethiopia can claim the right to secession at any time and condition without showing any legal cause. Non conditionality of the right to secession shows the constitution lacks some standards applicable to claims of the right to secession by nations, nationalities and peoples of Ethiopia. For instance, if the country discovers rich resources such as diamond or oil resources in one area of a nation, a region or the ethnic group in that area can claim secession and become independent without a legal duty to show cause or without expecting any condition to happen.

55 Article 39(2) and (3) of FDRE constitution

56 Article 39(4) of FDRE constitution

57 Article 62(3) of the FDRE constitution

Ethiopia is a country with a federal government system. In a federal government system there is no prohibition of promotion of national interest. Furthermore, there are many instances in the FDRE constitution that the national interest is valued. The non conditionality of the application of the right to secession amounts as the national interest is unnoticed. Nevertheless, the non conditionality of the application of the right has its own merits. If some conditions were attached to the right, the constitution would be subject to another interpretation and would create problems for application of the right. However, at the same time, in case of non conditionality nothing can prevent the nine regions from being sovereign states leaving the country in to two or more land locked separated territories.⁵⁸

The main purpose of secession of one nation or a group is to be independent, self-governing and free of influence in promotion of development of its own territory, exploitation of its own resources, recognition and implementation of rights of people. But what if the secessionist group possesses everything that it can acquire after secession and being independent? The answer one can possibly provided would be that: the group is under condition no need of seceding. Here, there is difference between conditionality and non conditionality for the application of right to secession. By ‘condition’ to mean legal requirements for the application of the right to secession such as unequal treatments of nations, nationalities and peoples, unable to attain self determination by the nation under the existing system after having exhausted all other meaningful alternatives. Generally, justified exercise of right to secession under article 39 of the FDRE constitution requires certain conditions or legal requirements to be attached to it.⁵⁹

The primary procedure in coming into effect of the right to secession is approval of the demand of nation, nationalities or people concerned by its legislative council.⁶⁰ The demand of secession should be persuasive for the legislative council and the approval should be two third majority votes.

58 Demissie, D. (1996). *Self-determination including secession vs. the territorial integrity of nation-states: A prima facie case for secession* (p. 35). Suffolk University press.

59 Ibid.

60 Article 39(4)(a) of the FDRE constitution

The approval of demand of secession by the legislative council is followed by the decision on the issue by the house of the federation.⁶¹ When the question of secession submitted to house of federation has been supported by two third majority votes of the legislative council of the concerned nation, nationality or people, the house is required to arrange referendum, transfer power and execute the division of assets.⁶²

It is vague under what rational the constitution allows the legislative council of states to approve the claims of secession within their jurisdiction, while the states regardless of their heterogeneity reserve absolute jurisdiction to secede from the federal state.⁶³ If a state intends to promote the right to self determination including the right to secession, the legislative council of that state dominated by one ethnic group does not provide a better opportunity to determine the fate of other people within its jurisdiction than the federal legislative body or the house of people's representatives.⁶⁴

Minorities in one state may claim the right to self determination including the right to secession. However, the legislative council of the state dominated by one or two ethnic groups may be reluctant for the approval of the demand of right to secession by those minority groups. Moreover, the power of approval of the demand of secession being only on the hand of the legislative council, the legislative body and the council of the nation, nationality or people concerned may create problems on the practical application of the right to secession. First, the vote given by the legislative council is on the fate of the country as well as on the fate of nation, nationality or people participating in the secession. Second, the federal government not participating on the issue of the secession claims other than organizing a referendum may create problems on transfer of powers from the federal government to the council of nation, nationality or people who has voted to secede.⁶⁵ Furthermore, the powers entrusted to house of federation do

61 Article 62(3) of the FDRE constitution

62 Article 19(2) of a proclamation to consolidate the house of federation of FDRE No. 251/2000 and to define its powers and responsibilities and article 39(4) and (1) of the FDRE constitution

63 Regional self governments establishment proclamation no. 7/1992

64 Ibid.

65 The federal government is expected to transfer its powers according to article 39(4) (d) to the council of the nation nationality or people who has voted to secede.

not end with interpretation of the constitution. But it is also empowered to decide on claims of the right to secession. (Article 62(3)) That is, the house of federation, a body exclusively selected by the nine ethnic homelands and representing only them, has the constitutional authority to validate the claims of the minority ethnic groups within each of the homelands to a separate existence as independent states.⁶⁶

Following the approval of secession claim referendum has to be made. The federal government is expected to organize a referendum which must take place within three years from the time it received the concerned council's decision for secession⁶⁷ and is arranged by the house of the federation.⁶⁸ At least fifty one percent votes taken in the referendum is enough for a nation, nationality or people to apply secession. The forty nine percent that is presumed not vote on the referendum of secession is enough to succeed in bringing internal chaos refusing secession. Logically this may constitute threat to the security of the whole nation.

Article 39(4) of the FDRE constitution along with article 19(2) of the proclamation to consolidate the house of the federation and to define its powers and responsibilities generally provided procedures for the coming into effect of the right to secession. According to these provisions, if the claim for secession is approve by the required majority vote of the legislative council of the nation or nationality concerned after a referendum is organized by the house of the federation, then the federal government is expected to transfer its powers to the council of concerned nation or nationality.

In summary, the FDRE constitution presents suitable environment for every nation, nationalities and peoples of Ethiopia for the application of the right to secession. Yet, this doesn't mean the application of the right to secession is automatic. Even though the right is unconditional, the coming into effect of the right needs fulfillment of four main requirements: the approval of demand of secession, referendum, transfer of power from the federal government and finally division of assets between the federal government and the nation, nationality or people seceded.

66 Minasse Haile, p.11

67 Article 39(4)(b) of the FDRE constitution

68 Article 19(2) of Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities proclamation no. 251/2001

Chapter 3- Fiscal Federalism

3.1. Concept and principles of fiscal federalism

Until recent years fiscal federalism received little consideration from economists and politicians. “The topic began to attract more attention in the 1980’s, and by the 1990’s the topic had become hot.⁶⁹ Many countries, whether federal, unitary or con-federal, have a growing tendency of decentralizing power to the lower units of a government. Political, administrative, market or fiscal decentralizations take place in different countries from the federal or central governments to local governments, special agencies or the private sectors. Democratization and direct participation of the society in the governing process are manifested in one way through de-concentration of power on the center or decentralization of power from the center. Such decentralization of power serves tremendous advantages to the local government: it helps to combat corruption⁷⁰, reduces poverty⁷¹, it helps improving service delivery⁷², fortifying accountability⁷³, somehow prevents conflicts, leads to major improvement in the welfare of people at the local level⁷⁴ and it empowers community in different ways⁷⁵. When it comes to

69 Tanzi, V. (1996). *Fiscal federalism and decentralization: A review of some efficiency and macroeconomic aspects* (p. 295). The International Bank for Reconstruction and Development/World bank.

70 Fisman, R., & Gatti, R. (2000). *Decentralization and corruption, evidence across countries*. Washington, DC: World Bank, Development Research Group, Macroeconomics and Growth.

71 Crook, R., & Sverrisson, A. (2001). *Decentralisation and poverty-alleviation in developing countries: A comparative analysis or, is West Bengal unique?* Brighton, England: Institute of Development Studies.

72 Dillinger, W. (1994). *Decentralization and its implications for urban service delivery*. Washington, D.C.: Published for the Urban Management Programme by the World Bank.

73 Burki, S. (2000). *Annual World Bank Conference on Development in Latin America and the Caribbean, 1999 decentralization and accountability of the public sector : Proceedings of a conference held in San Salvador, El Salvador*. Washington, D.C.: World Bank.

74 2000, B., & Koppers, S. (2000). *Summary report / UNDP-BMZ-Seminar International Expert Dialog on Global Issues in Decentralization and Local Governance: Mapping out Collaborative Action among Key Partners: Berlin, 17 May 2000, Public Administration Promotion Center, Berlin, Germany*. Berlin: DSE, Public Administration Promotion Center - Local Government section.

75 Brinkerhoff, D. (2007). *Governance in post-conflict societies rebuilding fragile states*. London: Routledge.

country with deeply divided or ethnically diversified societies, decentralization is pertinent. The more the political, administrative or fiscal power is near the local governments, the more the general society knows who responsible, accountable and corrupted is. Thus, decentralization gives the society economic and political empowerment.

Out of different forms of decentralization the researcher needs to deal in detail about fiscal decentralization or more specifically about fiscal federalism.

3.1.1. Concept of fiscal federalism

In order to advance governments' ability to serve their people more effectively and competently, many countries are showing interest in the concept of fiscal federalism or are practicing it. Fiscal federalism, literally, is related to assignment of public tasks and revenue power to different levels of a government. It is not likely to assume governments without public tasks and public expenditures. Based on divisions of powers, governments can be classified into unitary, federal, and con-federal governments. Accordingly, the way the fiscal decentralization operates differs on these different kinds of governments.

In unitary form of a government the central government is supreme and the local governments exercise power as delegated from the center. Unlike federal governments in which power is constitutionally guaranteed, in unitary governments lower-level governments derive their statutory frameworks from parliamentary legislation or an executive order.⁷⁶ There is no broad-based generalization that can be made about the correlation of federal or unitary states and decentralization. This argument refers that unitary governments do exercise fiscal decentralization as good as or sometimes better than some federal governments.

A federal form of government has a multi-order structure, with all orders of government having some independent as well as shared decision- making responsibilities. The word "federalism" has its roots in the Latin *foedus*, meaning "league," "treaty," or "compact."⁷⁷ Moreover, according to,

76 Lijphart, A. (1992). *Parliamentary versus presidential government*. Oxford: Oxford University Press.

77 Daniel J. Elazar, (1980) "The Political Theory of Covenant: Biblical Origins and Modern Developments," *Publius: The Journal of Federalism* 10 (3-30)

Robert Inman “the word ‘federal’ has come to represent any form of government that brings together, in an alliance, constituent governments each of which recognizes the legitimacy of an overarching central government to make decisions on some matters once exclusively the responsibility of individual member states.”⁷⁸

There are roughly more than twenty five federal countries in the world today, which together represent forty percent of the world’s population.⁷⁹ Federalism represents either a coming together or a holding together of constituent geographic units to take advantage of the greatness and smallness of nations, in which many nation-states are too large to address the small things and too small to address large tasks.

Such a system, however, is open to a great deal of duplication and confusion in areas of shared rule and requires special institutional arrangements to secure national unity, ensure regional equity, and preserve an internal common market. Federal countries broadly conform to one of two models: dual federalism or cooperative federalism. Under dual federalism, the responsibilities of the federal and state governments are separate and distinct. According to William H. Riker, under dual federalism, two levels of government rule the same land and the people, each level has at least one area of action in which it is autonomous, and there is some guarantee of the autonomy of each government in its own sphere.⁸⁰ Under cooperative federalism, the responsibilities of various orders are mostly intertwined. Under both these models, fiscal tiers are organized so that the national and state governments have independent authority in their areas of responsibility and act as equal partners. According to this construct, all orders of government should have overlapping responsibilities, and they should compete both vertically and horizontally to establish their clientele of services.⁸¹

78 Robert Inman, “*Why Federalism?*” unpublished paper, Wharton School, University of Pennsylvania, Philadelphia, September 2006

79 (n.d.). Retrieved February 18, 2015, from <http://www.forumfed.org/en/federalism/federalismbycountry.php>

80 Riker, W. (1964). *Federalism: Origin, operation, significance* (p. 11). Boston: Little, Brown.

81 See Pierre Salmon, “Horizontal Competition among Governments,” in *Handbook of Fiscal Federalism*, ed. Ehtisham Ahmad and Giorgio Brosio, 61-85 (Cheltenham, UK: Edward Elgar, 2006); and Albert Breton, “Modeling Vertical Competition,” in *Handbook of Fiscal Federalism*, ed. Ehtisham Ahmad and Giorgio Brosio, 86-105 (Cheltenham, UK: Edward Elgar, 2006). See also Daphne A. Kenyon and John Kincaid, eds., *Competition among States and Local Governments: Efficiency and Equity in American Federalism* (Washington, DC: Urban Institute Press, 1991).

Generally, in federal governments fiscal power is mostly guaranteed by constitutions. The states governments do not expect the will of the legislator or the executive rather they have the expenditure and revenue powers predetermined in the federal constitutions.

The fiscal arrangement in con-federal governments is pretty much similar with the federal governments but constituent units with much fiscal power than the confederal or the center.

There is no observed degree of centralization or decentralization which commonly and distinctly marks off federations from unitary states.⁸² Fiscal federalism is just as relevant for all unitary, federal and con-federal forms of governments. Federal and non federal countries differ in the manner in which the principles of financial relations between the central and sub national governments are applied. Application differs because unitary and federal governments differ in their political and legislative context and thus provide different opportunities for fiscal decentralization.⁸³ Moreover, the basic meaning that fiscal federalism has in unitary or federations is similar. Solomon Negussie explains fiscal federalism in short as, “On the whole, the distribution of tasks and revenue sources between the central and regional governments with the concomitant financial adjustment through revenue transfer is the major concern of fiscal federalism.”⁸⁴ This inculcates the distribution of tax power and the means through which resources are adjusted to go with expenditure responsibilities for the two levels of a government: federal and state governments.

3.1.2.Principles of fiscal federalism

Fiscal federalism encompasses principles of fiscal relations between federal or central and state or regional governments, which are the command over resources by various level of governments and the direction and size of intergovernmental fiscal flows. An effective system of fiscal federalism should be designed and implemented for a success of a federal system.⁸⁵

82 Baldi, B., & California, B. (1999). *Beyond the federal-unitary dichotomy*. Berkeley, Calif.: Institute of Governmental Studies, University of California at Berkeley.

83 Sharma, C. (2005). *When Does decentralization deliver? The Dilemma of Design* (p. 44).

84 Solomon, N. (2006). *Fiscal federalism in the Ethiopian ethnic-based federal system* (p. 45). Nijmegen: Wolf Legal.

85 Ibid, p.45

Basically fiscal federalism focuses on the allocation of expenditure responsibilities, the revenue raising powers, fiscal imbalances and adjusting those fiscal imbalances.⁸⁶ Thus, for a success of a federal system there should be proper allocation of expenditure responsibilities and revenue raising power, identifying the horizontal and vertical imbalances and correcting the existing imbalances through different mechanisms devised by laws.

The principles of fiscal federalism that shape and guide intergovernmental fiscal relations include the principle of diversity, the principle of equivalence, the principle of centralized stabilization, correction of spillover effects, minimum provision of essential public goods, fiscal equalization principle, the efficiency principle, the principle of derivation, the principle of location neutrality, the principle of centralized redistribution.⁸⁷

The first principle of fiscal federalism is the principle of diversity. One justification for the adoption of federal system is its ability to ensure unity in diversity. Thus, the fiscal system must provide scope for variety and differences to adequately accommodate the supply of federal or central, regional or state and local goods, services and provision of infrastructures. The other principle of fiscal federalism is the principle of equivalence. That is, allocation efficiency requires the equalization of location advantages arising from inter jurisdictional differences with a combination of taxes and public goods and services. The principle of centralized stabilization requires the use of fiscal instruments for achieving macro policy objectives like stabilization and growth at the national level. Moreover, efficiency of fiscal federalism requires that inter jurisdictional externalities be corrected for by the system. This refers to the principle of correction of spillover effects. Spillover effects or inter jurisdictional externalities refer to externalities, be it benefits or harms by residents of different geopolitical units because benefit regions for many public goods and services are open entities.

Minimum provision of essential public goods and services is the other principle explained by Agiobenebo. This principle requires that fiscal federalism should assure all citizens that,

⁸⁶ Id, p.46

⁸⁷ Agiobenebo, T. (n.d.). Assignment, criteria and the Fiscal Constitution: An excursion in to a theory of Rational Fiscal federalism. The Annual Conference of the Nigerian Economic Society, 25-51.

irrespective of where they reside, they will be provided with a minimum level of certain essential public goods and services. Where there exists pronounced regional imbalance in resource endowment and concomitant differences in fiscal capacity of sub national governments, there is the need for some degree of fiscal equalization among the federating units of government to ensure minimum level of public goods and services.

There are two dimensions in a two-step hierarchy in the efficiency principle: Firstly, it requires that, collectively, the set of criteria directing fiscal federalism should ensure efficiency in the allocation of resources. Secondly, it requires that the collective principles of intergovernmental fiscal relations should ensure that each level of government maximizes its internal revenue earnings at minimum tax efforts with optimal distortion.

The principle of derivation requires that the components units of a federation be able to control some of their preferences in their own way with their own resources. Lastly, the principle of centralized redistribution implies the redistribution function of fiscal policy through progressive taxation and expenditure programs should be centralized at the federal level. In other words, if the redistribution function is decentralized, it can lead to distortions in location decisions.

3.2. Fiscal policy

One country's economy can be influenced by policy makers in two ways: monetary policy and fiscal policy.

*"Central banks indirectly target activity by influencing the money supply through adjustments to interest rates, bank reserve requirements, and the sale of government securities and foreign exchange; governments influence the economy by changing the level and types of taxes, the extent and composition of spending, and the degree and form of borrowing."*⁸⁸

The policy that is made to target adjustment of interest rates, bank reserve requirements and the sale of government securities and foreign exchanges is a monetary policy and the policy

88 Horton, M., & El-Ganainy, A. (2009). *What is fiscal policy?* (pp. 1-2). International Monetary Fund/ Finance and development

made to influence taxing, government spending and borrowing is a fiscal policy. In short, fiscal policy is the use of taxation and government spending to influence the economy of a country.⁸⁹Governments directly and indirectly influence the way resources are used in the economy and control the economy by changing the level and types of taxes, the extent and composition of spending, and the degree and form of borrowing. This is possible through devising a proper fiscal policy by the governments.

A government may choose neutral, expansionary or contractionary or discretionary or non-discretionary (automatic)fiscal policy depending in what condition the economy is and on how the government needs to alter government spending and taxation.

If governments' expenditure is fully funded by tax revenue, then it means the economy is in equilibrium. In other words, the level of the economic activity in that country is neutral and the government may not necessarily change the previous fiscal policy unless it needs to boost the economy. This happens when there is a condition where demand is neither stimulated nor diminished by government expenditure and taxation. In such circumstances, neutral fiscal policy is usually applicable. Fiscal neutrality or neutral fiscal policy is a situation in which a government does not use tax incentives to encourage or discourage the existing economic activity. It refers to a balanced budget because it requires neither the government borrowing nor the investment of a budget surplus.⁹⁰ When we see in accordance with the very definition of fiscal policy, which is a plan undertaken by any government to alter taxation and government spending to influence the economy, neutral fiscal policy is technically not a fiscal policy. However, governments are undertaking it when the economy is in equilibrium.

When one country's economy is in recession or is suffering from inflation, the government should embark on a proper fiscal policy to change government spending and taxation so that balancing the economy would be possible. In such a case, expansionary or contractionary fiscal policies are applicable. An expansionary fiscal policy is a stance of fiscal policy that involves a net increase in government spending, through a rise in government spending or a fall in taxation

89 Ibid, p.1

90 (n.d.). Retrieved March 10, 2015, from <http://financial-dictionary.thefreedictionary.com/Fiscal-Neutrality>

revenue or a combination of the two. Governments can run an expansionary fiscal policy when the economy of a country is in recession, to help restoring the economy back on the right track. On the contrary, contractionary fiscal policy occurs when government expenditure is reduced through either reduced government spending or higher taxation revenue or a combination of the two. Thus, during the time of economic inflation governments embark on contractionary fiscal policy. Automatic fiscal stabilization or discretionary fiscal policy may be also applicable by the governments. Automatic fiscal policy is applicable when there is fluctuation on the economy and without a need of new specific legislations during the times of surplus or inflation of the economy.⁹¹Taxes of business profits that increase during the times of booming economy and decreases during the times of recession and progressive taxation that increases and decreases with the booming or recession of the economy respectively are typical examples of automatic fiscal stabilizers.

Fiscal policies serve tremendous purposes in a country's economy. Generally it has a purpose of balancing the economic irregularities, that is, economic inflation or recession. More specifically fiscal policies serve for adjusting the economic growth, to reduce poverty, and to stabilize the economy. High quality of fiscal adjustment can mobilize domestic savings, increase the efficiency of resource allocation, and help meet development goals.⁹² High domestic savings, proper resource allocation in turn reduces poverty, booms the economic growth and stabilizes the economy. This is particularly true in countries where there are deeply divided societies and those populated with poor societies.

One view of government fiscal policy is that it can make dynamic economic by altering the government spending and taxation with the pace of the economic activities going on in the country. Government plays a central role in economic development by providing public goods and infrastructure⁹³ and this is possible through a proper fiscal policy. Through manipulating

91 Discretionary Fiscal Policy and Automatic Stabilizers - CFA Level 1 | Investopedia. (2008, April 18). Retrieved March 10, 2015, from <http://www.investopedia.com/exam-guide/cfa-level-1/macroeconomics/discretionary-fiscal-policy-stabilizers.asp>

92 Daniel, J., Davis, J., Fouad, M., & Van Rijckeghem, C. (2006). *Fiscal adjustment for stability and growth* (p. 1).

93 Engen, E., & Skinner, J. (1992). *Fiscal policy and economic growth*. Cambridge, MA: National Bureau of Economic Research.

government spending and taxation, by spending on pro poor public services and public goods, by mobilizing tax revenues, poverty reduction is possible.⁹⁴Not only adjusting the economic growth and poverty reduction but fiscal policy also serves as stabilizing the economy. Fiscal policies mostly devised to alter the government expenditure and taxation. Depend on the economic activity, governments spend much or less and increase or decrease the tax revenue in order to stabilize the economy.

Fiscal adjustment should ideally be carried out through high-quality structural measures early in the process. These include sound revenue and expenditure policies for the medium term, as well as short-run options that are best for growth. Social safety nets can mitigate any short-term costs imposed by fiscal consolidation on the poor.⁹⁵

Sound revenue policy refers to improving the tax system. A fiscal policy to be effective on fulfilling its purposes of economic growth, economic stabilization and poverty reduction, the tax system should be improved to the maximum possible. Tax systems need to balance macroeconomic and microeconomic objectives.⁹⁶ More specifically tax systems should be productive, efficient, fair, simple and transparent.⁹⁷

A tax system of one government should be productive. The main purpose of a tax system is raising revenue that can cover government expenditure. While governments are raising tax, it should be productive as much as possible. Without frequent changes in the tax system, by introducing new taxes or by charging low rates on a broad tax base, it should fulfill its objective of being productive. Moreover, unless there is strong reason to suppose that market prices are themselves sending the wrong signals, which may be the case, for example, when some activity causes environmental damage, an efficient tax system imposes low and reasonably uniform tax rates on as broad a tax base as possible and it also avoids exemptions or special tax rates that

94 Addison, T. (2004). *Fiscal policy for development: Poverty, reconstruction and growth*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan.

95 Supra note 25, p.35

96 Tanzi, V., & Zee, H. (2000). *Tax policy for emerging markets: Developing countries*. Washington, D.C.: International Monetary Fund, Fiscal Affairs Dept.

97 Supra note 25, p.35-36

artificially encourage investment in projects with below-market returns.⁹⁸ In other words, a tax system should be efficient through imposing low and uniform rates on a broad tax base without exemptions or special tax rates as much as possible.

Each country must decide for itself exactly what constitutes fairness. Distinguishing between vertical and horizontal equity can be useful. Vertical equity refers to differentiation of the tax burden according to ability to pay and horizontal equity refers to equal treatment of those in similar economic circumstances. Certain types of taxation may affect income distribution, for example, a progressive income tax or a reduced rate of value-added tax on basic foods. Expenditure policy is generally better suited to influencing income distribution, and equity effects should be designed and assessed comprehensively, embracing not only all taxes but also the spending they finance. More importantly, a tax system should be simple and transparent to the extent that it is possible. Taxes with a single rate or a low number of rates and minimal exemptions and tax rates which are stable and predictable are easier to administer and easier for the taxpayer to understand and to comply with. Thus a tax system to be simple and transparent, once tax laws that generate increasing revenue growth are in place, frequent amendments should be avoided and if changes are planned, taxpayers should ideally know the implications in advance.⁹⁹

3.3. Revenue raising power and expenditure responsibility

The growing tendency of countries nowadays concerning solving problems related to diversity, administration or providing services and infrastructures is decentralizing power to the lower levels of governments. This is true in all forms of governments: unitary, federal or con-federal forms. Decentralization can be manifested more importantly through fiscal federalism.

There are different views concerning fiscal federalism. Some scholars think that fiscal federalism is the division of public sector functions and finances among multiple layers of a government.¹⁰⁰ Aighokhan defines fiscal federalism as public finances of a state with more than

⁹⁸ Ibid.

⁹⁹ Id.

fiscal tier, notably federal, state and local governments.¹⁰¹ Other scholars like Tella defined fiscal federalism as the financial relationship between different tiers of governments which includes the system of transfers or grants by which the federal government shares its revenues with the state and local governments.¹⁰² Moreover, others view fiscal federalism as a set of fiscal activities, relations and interactions, rights and demands by and among the various governments in a federation.¹⁰³ Fiscal federalism, according to Solomon Negussie, is a system that concerns itself about the distribution of tasks and revenue sources between the central and regional governments with the concomitant financial adjustment through revenue transfers.¹⁰⁴

Summary of the above views of fiscal federalism and the view that most scholars are in agreement is that fiscal federalism is essentially about the allocation of tax powers (revenue raising power) and expenditure responsibilities to the various levels and tiers of a government.¹⁰⁵ Thus, generally, fiscal federalism refers to two basic issues: revenue raising power and expenditure responsibilities. Any government necessarily does those two things of a fiscal federalism. That is, precisely, a government raises revenue in order to cover its expenditure in order to accomplish its responsibilities. This chapter deals about general view of revenue raising power and expenditure responsibilities.

100 Musgrave, R. (1959). *The theory of public finance; a study in public economy*. New York: McGraw-Hill.

101 Aigbokhan, B. E., (1999). *Fiscal Federalism and Economic Growth in Nigeria in: Fiscal Federalism and Nigeria's Economic Development*. Proceedings of the Annual Conference of the Nigerian Economic Society, 333-352.

102 Tella, S. A. (1999). *Promoting States Economic Independence through Financial Market Cooperation. In: Fiscal Federalism and Nigeria's Economic Development*. Proceedings of the annual Conference of the Nigeria Economic Society, 171-187.

103 See Olowononi, G.D. (1999). *Federalism and Vertical Intergovernmental Financial Imbalance in Nigeria in: Fiscal Federalism and Nigeria's Economic Development*. Proceedings of the annual Conference of the Nigerian Economic Society, 189-213.

104 Solomon Negussie, p.45

105 Expenditure responsibilities, which literally are the duties of a government, require funds. These funds should be generally raised through the power vested to the different tiers of a government, which is revenue raising power. Fiscal federalism, thus, generally deals about these two concepts.

3.3.1. Expenditure Responsibilities

As it can be recalled from the previous sections, one of the basic issues of a fiscal federalism is public expenditure responsibilities. Government has its duties and responsibilities, mostly determined by laws. In the medieval time, it was believed that the responsibility of a government should be limited to national defense and collecting taxes. Nowadays governments have a vast and all round responsibilities. Adam Smith outlined the duties of a government in three broad tasks. According to him, governments have duties of protecting the society from the violence and invasion of other independent societies through the means of the military and the police, protecting every member of the society from injustice or oppression of every other member of it or the duty of establishing an exact administration of justice and erecting and maintaining those public institutions and public works.¹⁰⁶ More specifically, according to Richard Musgrave the functions of government should be separated into three branches: macroeconomic stabilization, income redistribution, and resource allocation.¹⁰⁷ Any government is expected to carry out the above general duties. So as to realize these, a government has to spend, which directly refers to the concept of expenditure responsibilities.

Expenditure responsibility, literally, is the specific function of a government in which it spends money to carry out it. In other words, it is a responsibility incurred by a government, be it federal or central, state or regional or local government, for the attainment of public goods. Every government needs huge fund¹⁰⁸ to maintain law and order with in the country, defend the country by having armed and police forces, performing welfare activities, build roads and to provide services and goods. Thus, there are many areas in which government is expected to incur public expenditure¹⁰⁹ or government spending. Public expenditures have been classified differently by different writers. Some have sought to divide expenditures into ordinary and extraordinary, while others have attempted to separate the necessary from the unnecessary or to make the classes the

106 Smith, A., & Cannan, E. (1937). *An inquiry into the nature and causes of the wealth of nations* (Canaan ed.). New York: The Modern library.

107 Supra note 100

108 The fund that any government incurs so as to fulfill its responsibilities is expected to be raised by the specific government itself through taxation.

109 At this stage, public expenditure, government spending or expenditure responsibility is taken with a meaning related to functions of a government than any subject of public finance.

necessary, the desirable and the superfluous. Moreover, some have tried to distinguish between money spent productively and that spent unproductively, while merely historical evolution has sometimes been used.¹¹⁰ The type and the amount of public expenditure spent differ from country to country. For example, the amount of public expenditures spent in developing countries is much less than the amount spent in developed countries. Besides, the public expenditures in developing countries are more of ordinary when compared to the public expenditures spent in developed countries which includes extraordinary or superfluous spending. Thus, it is possible to conclude that expenditure responsibility is the power or duty of a government that is determined by law which requires public expenditure. This refers to the legislative and administrative powers of a government. In federations, primarily the law that determines expenditure responsibilities to the layers of governments is the federal constitution.¹¹¹

One of the fundamental steps in the design of a system of fiscal federalism should be a clear assignment of expenditure responsibilities for the various tiers of a government. Assignment or division of expenditure responsibilities refers to determining the responsibilities of the tiers of government as to where and on what they can spend their money and also deals mainly with the interrelated aspects of division of legislative and executive powers.¹¹² In other words, it means determining the responsibilities between central and regional and federal and state governments in unitary and federal governments respectively.

Governments to be effective in actualizing general public good, they should know which tier of government should do what. That means there should be specific assignment of expenditure responsibilities to each levels of any government. However, it is hard to tell what responsibilities should be exactly done by which government. In this regard, Charles E. McLure & Jorge Martinez Vazquez argue:

There is no absolute best way for deciding which level of government should be responsible for particular public services. The adequacy of any assignment has to be judged in terms of how well it achieves the goals or objectives set up by the government in its decentralization strategy. The fact

110 Hunter, M. (1921). *Outlines of public finance*,. New York: Harper & Brothers.

111 Solomon, p. 57

112 Ibid.

that it is up to the government to set these objectives should not be interpreted to mean that a murky assignment is acceptable.¹¹³

Assigning expenditure responsibilities should be based on reasonable grounds. Before assigning the responsibilities to the tiers of a government, there should be an understanding that which tier of the government would be more effective in accomplishing a given responsibility based on the goals or objectives set by the government.

The scope of expenditure responsibility is dependent upon the extent of both the legislative and executive powers assigned to each level of government.¹¹⁴ Legislative and executive powers are mostly divided between the federal and state governments, like the case of USA,¹¹⁵ and in case of executive federations, like the case of Germany,¹¹⁶ legislative power is assigned to the federal government and the executive power is mainly assigned to states. Whichever way of assignment is applied in the constitution, a level of a government has either of legislative or executive or both powers. To elaborate more, a tier of a government which has legislative power on a subject matter will have executive power on that subject matter except when each layer of a government has only either of the legislative or executive powers¹¹⁷ like the case of Germany. To understand assignment expenditure responsibility more, it is better to discuss legislative power. There are five known forms of legislative powers: exclusive, residual, concurrent, framework and implied powers. Constitutions apply at least one of division of legislative powers.

3.3.2. Revenue raising power

It is indispensable that the existence of a government is accompanied by a clear assignment of expenditure responsibilities. It is equally necessary with assignment of expenditure

113 E. McLure, C., & Martinez-Vazquez, J. (n.d.). The assignment of Revenue and expenditures in intergovernmental fiscal relations (pp. 5-6). Paper prepared for the World bank Institute's Decentralization Homepage

114 Solomon, p.72

115 Spackman, S. (n.d.). American Federalism and the Civil Rights Act of 1875. Journal of American Studies, Vol.10 No.3, 313-328.

116 Umbach, M. (2000). Federalism and Enlightenment in Germany, 1740-1806. London: Hambledon Press. In Solomon p. 58,72

117 The federal government in Germany has a legislative power and the German municipalities have executive power.

responsibilities for any government to have revenue raising power. Financing is required for any government to discharge its responsibility. The source of such financing emanates from revenue raising power allocated to tiers of a government. Government revenue can be acquired through different earnings. Essentially, governments acquire their revenues through the means of taxation. Yet, there are other sources of revenue, which are called non-tax sources. With this view, Solomon Negussie has pinpointed in short as:

There are also other sources of non tax revenues such as fees and charges that may have implications for the financial autonomy of a government and are thus sometimes treated as taxation powers. This is because they do not create administrative difficulties in their application from the point of view of federalism. There are also non-tax methods of financing government expenditure: foreign loans, aid, borrowing, and the selling of property and treasury bills. However, the major financial resource of government in order to achieve the desired objectives is tax.¹¹⁸

Though there are tax and non-tax bases of public revenue which may be worth discussing, at this point it is relevant to discuss only about taxation as a source of revenue for financing public expenditure. Black's law dictionary defines and explains tax as:

A charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money.¹¹⁹

Taxation is a means by which governments finance their expenditure by imposing charges on citizens and corporate entities.¹²⁰ Moreover, Solomon Negussie defines tax as a burden or charge which is only imposed by the legislative power on persons or property to raise money for public purposes.¹²¹ The three definitions are more or less similar except being broad or specific. However, Solomon Negussie additionally emphasizes that a tax should be imposed by law. That

118 Solomon, p.120

119 Garner, B. (2009). Black's Law Dictionary, 9th (9th ed., p. 1622). St. Paul, Minn.: West Pub.

120 What is TAX? (n.d.). Retrieved March 19, 2015, from <http://thelawdictionary.org/tax/>

121 Solomon, p.120

is, it is important to understand taxation not only as a kind of money imposed by a government to be raised from a person or property but also as a duty imposed clearly by a specific law. Based on a tax base taxes can be direct or indirect taxes. Routledge dictionary of economics discusses about the two types of taxes as:

Two broad categories of taxation differentiated according to administrative arrangements, incidence, or the characteristics of taxpayers. Income taxes, for example, are paid directly to revenue authorities, can directly reduce taxpayers' real incomes and be directly related to taxpayers' characteristics. But an indirect tax, such as a sales tax, is indirectly paid by an individual through purchasing goods and services, is not directly related to the personal circumstances of a taxpayer and can have its incidence shifted to the producer. Direct taxation is regarded as more equitable but it is more difficult and expensive to collect.¹²²

Based on tax jurisdiction, taxes can be classified into taxes by territory and taxes by person. The first one refers to a tax raised inside a country, whereas, the later refers to a tax raised from citizens of one government wherever they live.

Since it is important for any government to assign expenditure responsibilities clearly, there should be also clear allocation of taxation power between tiers of a government. Taxation power should be assigned to each level of government that is related to the benefits of its spending. By the same reasoning, the proper assignment of taxes that are related to benefits depends on the assignment of expenditure responsibilities. In principle, each tiers of a government are expected to raise their own revenue so as to spend on their public expenditure responsibilities. This implies there should be proper division of power between the tiers of a government. Related to this point, one could raise many questions. What are the grounds to assign taxation power to the tiers of government? What tax bases should be the power of a central or regional government? Which tier of should control the main tax bases of a country? The answers to these questions are arguable and different scholars and economists have their own say. To mention some: according to Oates primary responsibility for macroeconomic stabilization and redistribution of income and wealth should rest with the central government.¹²³ This may imply that a central government should have much power of taxation than the regional governments or states. According to

122 Rutherford, D. (2002). Routledge dictionary of economics (2nd ed., p. 163). London: Routledge.

123 Oates, W. (1972). Fiscal federalism. New York: Harcourt Brace Jovanovich.

Musgrave, taxes suitable for economic stabilization, progressive redistribution taxes and tax bases distributed very unequally between jurisdictions should be central.¹²⁴ He adds, personal taxes with progress rates should be levied by the jurisdictions which are most capable of implementing a tax on a global basis, lower level governments should tax bases with low mobility between jurisdictions and benefit taxes and urban taxes might be appropriately used at all levels.¹²⁵ Constitutions of different countries adopt different ways of division of tax powers mainly by considering the existing reality in the country. Reasonably, since taxation is necessitated to cover expenses of a government, division of taxation power should be designed collection effective wise and to meet the required purposes. Legally, tax power may be divided exclusively between the levels of a government, concurrently to both levels of a government or shared¹²⁶ between them.

3.4. Fiscal imbalance

In principle, expenditure responsibilities of a government should match with the revenue power that it has. That means a central and regional governments are expected to raise their own revenue to finance their expenditure responsibilities. The tax power that is given to the governments and the resources that the governments have determines how much tax is collected. The more tax is collected the more the governments have the power to appropriately cover their expenses. However, this is not always true. Due to different reasons, the given tax power and resources may have disparity between levels or tiers of a government. In this case, the tax collected by one level or tier of a government may be less or more than a tax collected by the other. To elaborate more, a revenue raised by central government may be much more than a revenue raised by states or regions and vice versa and a tax collected by one state or region may be less than revenue raised by the other state and vice versa. Thus, if there is a mismatch in the revenue and expenditure responsibilities, then the economy of the country is experiencing fiscal

124 R. Musgrave, *who should tax, where and what?* In Solomon, N. (2006) *Fiscal federalism in the Ethiopian ethnic-based federal system*. (p. 122). Nijmegen: Wolf Legal.

125 Ibid

126 Solomon Negussieon his book p.123 explains shared power as “the constitution may in principle reserve the power of legislation and levying taxes to the federal level, but guarantees the states’ right to some or all the proceeds from specified taxes.”

imbalance. It is very likely for unitary as well as federal governments in experiencing mismatched expenditure responsibility and revenue capacity of regional governments or states.

Fiscal imbalance is a disparity between obligations of a government and streams of income to finance these obligations. Fiscal imbalance is a situation where all of the future debt obligations of a government are different from the future income streams.¹²⁷In the literature of fiscal federalism two types of fiscal imbalances are measured: vertical and horizontal fiscal imbalances. Generally, vertical fiscal imbalance is non correspondence between revenue and expenditure commitments of the central governments vis-à-vis the non-correspondence between revenue and expenditure commitments of the federating units put together. Horizontal imbalance on the other hand is non- correspondence between revenue and expenditure commitments across state governments in a federation. The next two topics are dedicated in explaining these two types of fiscal imbalances.

3.4.1. Vertical fiscal imbalance

The issue of vertical imbalance is one of fiscal imbalance challenges of fiscal federalism that is encountered by either of the tiers or both governments. In most governments, due to different reasons attributed to the power given by the law or scarcity of a resource, there is a mismatch between the expenditure responsibility and the revenue of regional governments. In federal systems, in which the regional governments have a parallel power with the federal or central government, regions are expected to match up their responsibility with the revenue they raise. However, this is not always true; that is to mean they experience fiscal imbalance. This imbalance between the revenue raising ability of sub-national governments and their expenditure responsibilities is economically termed as vertical fiscal imbalance.

The problem of vertical imbalance is evident in most of federal governments. The basic cause of vertical fiscal imbalance is a mismatch of constitutionally assigned expenditure and revenue responsibilities. That is, while tiers of government have significant expenditure responsibilities, the major revenue sources remain concentrated at the centre. In most federations, major sources of taxation lie within the center while the responsibility to afford for development, welfare and

127 Fiscal Imbalance Definition | Investopedia. (2007, June 10). Retrieved February 19, 2015, from <http://www.investopedia.com/terms/f/fiscalimbalance.asp>

social activities like education, housing, health and agriculture are primarily imposed on the states.

There are two methods which enable to examine vertical imbalance. These are basically based on the two aspects of public finance: the expenditure and the revenue. The first way is to measure what share of regional government expenditures are financed with its own revenue sources under the control of the region. The outcome of this reveals the share of regional government expenditures financed by revenue sources controlled by the region itself and the federal government. Then if the substantial share of regional government is covered by the center, vertical imbalance exists. The second way to examine the imbalance is to measure the share of revenue generated by the regions as a percentage of the total national revenue raised by all tiers of government. This shows the capacity of the regional government in order to incur its expenditures compared to other states. The imbalance measured in these two ways demonstrates whether the states remain with limited revenue sources and with a small percentage of the total revenue.

3.4.2. Horizontal fiscal imbalance

One of the objectives of the fiscal arrangement is to ensure that individuals residing in different states or localities have equal access to public goods and services. However, the sub-national governments may not have equal fiscal capacity to provide public services although they are assigned with the same revenue sources.

The first cause of horizontal fiscal imbalance is scarcity of resource. Some states may be naturally resource scarce places and others may be without suitable environment for running huge businesses that could be a base for collecting taxes. On the contrary, other states may be naturally endowed with resources and also suitable to run huge businesses. Thus, even though these states are given enough power of taxation on different bases, due to the scarcity of resources they may not be able to raise revenues enough to finance their responsibilities. They usually have different capacities owing to the fact that single tax base may not generate the same amount of money in different places. This leads to another problem of fiscal imbalance which is related to the fiscal disparity between the states, usually referred to as horizontal fiscal

imbalance. The problem of horizontal imbalance occurs when the revenue capacities of different sub-nationals vary so that they are not able to provide their citizens with services at the same level on the basis of comparable tax levels. This problem is related to the varying fiscal capacities of the individual member states of the federation.

3.5. Correcting fiscal imbalances

A fiscal imbalance may happen at any time in a particular government due to a difference in revenue power or available resources in between the levels of that government. In such situation, a sustained and positive balance is detrimental to the society in general and the economy. Here the questions that can be raised would be how fiscal imbalances can be corrected? Which ways are more effective? Horizontal fiscal imbalance is mostly resolved or equalized through intergovernmental fiscal transfers.¹²⁸ Fiscal imbalances can be also resolved through other different means. Some governments apply reassigning revenue power to the level of a government(s) and some others equalize the imbalance through borrowing. However, most governments legally recognize intergovernmental fiscal transfer as a means of equalizing fiscal imbalances.

Intergovernmental fiscal transfers are transfers of funds designated for different government responsibilities from one level of government to another. In most developing countries¹²⁹ intergovernmental fiscal transfers are the dominant source of revenues for sub national governments. “Intergovernmental fiscal transfers have, for good or for ill, long been a dominant feature of public finance in many countries.”¹³⁰ The revenue raised by one level of a government is mostly lesser or more than the revenue raised by the other. At the same time, the expenditure responsibilities cannot be exactly the same in all levels of a government. These instances need

128 Lazar, H., & Kingston, O. (1999). Canada: The state of the federation. (pp. 41). Montreal: Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press.

129 In developing countries most of the power to raise revenue is concentrated in the center that leaves the regions or states unable to finance their expenditure responsibilities fully. In addition to this, since fiscal transfer is considered as one way of redistributing wealth, intergovernmental fiscal transfers are the dominant source of revenues for sub national governments.

130 Bird, R., & Smart, M. (n.d.). Intergovernmental fiscal transfers: International lessons for developing countries (p. 1).

fiscal equalization. The most common experience in such circumstances is intergovernmental fiscal transfer.

Intergovernmental fiscal transfers are neither inherently good nor inherently bad. What matters are, their effects on such policy outcomes as allocation efficiency, distributional equity, and macroeconomic stability. If, for example, the sole objective of fiscal decentralization is the efficient delivery of public services, then what matters is how transfers affect the effectiveness and efficiency of public sector operations. The most critical aspect of intergovernmental transfers is thus not who gives them or who gets them but their effects on policy objectives.¹³¹

131 Ibid, p.2

Chapter 4- Fiscal federalism in Ethiopia and its Impact on Possibility of Application of the Right to Secession

Background introduction

Ethiopia was experiencing centralized government styles since the time of the Aksum kingdom that started before the birth of Christ. The centralized system continued to be applied during Zagwe and Solomonic dynasties till the end of the 19th century. There were historical evidences¹³² that show some decentralized systems were established even though the basic style during the ancient governments applied was centralized. More strong centralized government started in Ethiopia at the end the 19th century and continues to be strong during the regimes of Minilik II, Haile Selassie I and the Dergue regime.

Generally, Ethiopia was governed under a centralized rule for long periods of time with few instances of decentralization. The rulers of the provinces had some autonomy on some instances but the decentralization was *de facto*. This continued almost similarly since the establishment of the federal government of Ethiopia in 1991. In 1991, Ethiopia started to follow a new system of government different from the previous ones. Thus, the federal system establishes autonomous states having their own powers and duties. Unlike the previous regimes, fiscal matters are also decentralized under the 1995 Federal Democratic Republic of Ethiopia constitution.

The federal and state governments have their own powers provided by the federal constitution. The governing power is not just concentrated at the center rather it is extremely decentralized. At the same time, every nation nationality and people in Ethiopia has the right to self determination including the right to secession.¹³³ Thus, regions that comprises of their own regional, zonal (or

132 Inscription of king Ezana shows that the Axum Kingdom established a decentralized system having small states conquered under central authorities and in the medieval period of Ethiopia there was ‘*Neguse negest*’ at the center who was the king and there were ‘*Ras*’ who were the head of the then provinces which were expected to have loyalty allegiance to the center or to the king.

133 Article 39 of the FDRE constitution provides the right to self determination including secession to Ethiopian nation, nationalities and people.

sometimes special zonal), weredas(or sometimes special weredas) and Kebele administrations¹³⁴ have the right to self determination including secession.

The basic issue of this chapter is assessing the current fiscal set up in Ethiopia and the impact it may possibly have on the possibility of the implementation of the right to secession. The following two broad sections are dedicated to Fiscal federalism in Ethiopia and the impact of the fiscal set up on the possibility of implementation of the right to secession.

4.1. Fiscal federalism in Ethiopia

4.1.1. Historical background

The fiscal system of Ethiopia has historically been characterized by high centralization and concentration of fiscal decision-making power at the center.¹³⁵ Though the systems were highly centralized, there were some facts of decentralizations. The issue of decentralization in Ethiopian history goes back to the time of the Axumite kingdom.¹³⁶ The Axumite kingdom was characterized by centralized and governing vast areas. However, there were historical evidences¹³⁷ that show that there was some degree of decentralization during the empire. Even after the fall of the Axumite kingdom, Ethiopia has passed through various government structures and political ideologies, which some of the systems left multiple scars on its political and economic conditions to date.¹³⁸

134 Regional constitutions establish Zonal, Wereda and Kebele set ups. For instance, in the Amhara regional constitution there are two forms of administrations: Ordinary which comprises of regional, zonal, wereda and kebele administrations and specialty administrations which comprises of special zones and weredas.

135 Girma, A. (2005). Fiscal federalism and Its Discontents: *Theory and Policy* (p. 9). Ibaraki, Tsukuba Science City, Japan: A & A OPTIMUM SOLUTIONS.

136 Solomon, N. (2006). *Fiscal federalism in the Ethiopian ethnic-based federal system* (p. 11). Nijmegen: Wolf Legal.

137 Inscription of king Ezana shows that the Axum Kingdom established a decentralized system having small states conquered under central authorities.

138 Mentta, T., Mishra, D., & Melesse, A. (2014). Fiscal Decentralization and Sub national Revenue: Experience of the Emerging Region of Ethiopia. *Journal of Economics and Sustainable Development*, 5(15), 2-4

More strong centralized government started in Ethiopia at the end the 19th century after the fall of the era of princes or “*zemenemesafint*” and continues to be strong during the regimes of Minilik II and Haile Selassie I. After the fall of the emperor regime, Ethiopia adopted the socialist ideology aiming to curtail the inequalities of the development process by the middle of 1970.¹³⁹ The so called socialist ideology hijacked the revolution that were held against the previous regimes and took advantage to come to the power. The policy directions in the system were aimed to be achieved through a centralized ideology, which in practice didn’t consider the diverse preferences of localities that could have been addressed through devolution of functions and powers at various tiers of government and it might have collapsed because of the central command that didn’t represent the preferences of localities.¹⁴⁰

Followed by the downfall of Dergue regime, a federal government is established by the 1995 Federal Democratic Republic of Ethiopia Constitution. Accordingly, the constitution establishes federal government and state governments with a federal system set up with their own powers and duties. The constitution created nine states to be a member of the federation¹⁴¹ with any nation, nationality or people having a right to form its own state.¹⁴² Unlike the previous regimes, in which power of government concentrated at the center, the new constitution provides the federal government and states to have their own power and responsibilities. Articles 51 and 52 of the Federal Democratic Republic of Ethiopia Constitution give both federal and states with their own powers and functions. Generally, the power of the government at the current regime is legally decentralized. However, still the influence of the previous regimes is reflected under this constitution because of the fact that the lion share of government power is given to the federal government.¹⁴³ The new constitution with respect to decentralization comes with two basic facts. One, it has created states delimited on the basis of the settlement patterns, language, identity and

139 Ibid.

140 Id.

141 According to article 47 of the federal constitution the states include Tigray, Afar, Amhara, Oromia, Somalia, Benishangul Gumuz, SNNPR, Gambella and Harari.

142 Article 47(3) of the federal constitution

143 Art.51(2) and 52 of the federal constitution

consent of the people concerned.¹⁴⁴ Secondly, the power of the government is divided between the federal government and states. The states in turn establish their own localities having a power given from the state governments with respective state constitutions. Some states additionally established special zones and special weredas for those minorities living inside the states.¹⁴⁵

The new federal government is not just decentralized in powers and functions but also in fiscal matters. Article 94 of the constitution states:

“The federal government and the states shall respectively bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law. Unless otherwise agreed upon, the financial expenditures required for the carrying out of any delegated function by a State shall be borne by the delegating party.”¹⁴⁶

The responsibility of both levels of the government to bear their own financial expenditures empowers them to have their own power of taxation.¹⁴⁷ Thus, post 1991 Ethiopia is fiscally decentralized with most of the fiscal power given to the federal government. (To be discussed in detail in the coming sections) Conducive environment and opportunity for reforms in almost all sectors of the economy created following the change in government in 1991. Fiscal policy reforms were undertaken that could shape and refocus the activities of the government sector. The first wave of reforms focused on demand management and improving underutilized capacity in the economy.¹⁴⁸

144 Article 46(2) of the federal constitution

145 The Amhara state constitution establishes Agew Awi, Agew Himira and Oromia nationality zones and many specialty administrations are also established in SNNPR.

146 According to article 94 of the federal constitution the levels of governments are expected to bear their own expenditures.

147 There are taxation powers given exclusively to the states and federal government independently, powers to be concurrent and shared between the federal government and states. (see articles 96-98 of the FDRE constitution)

148 Girma, A. (2005). Fiscal federalism and Its Discontents: *Theory and Policy* (p. 10). Ibaraki, Tsukuba Science City, Japan: A & A Optimum solutions.

4.1.2. Powers and Responsibilities of federal and state governments

4.1.2.1. Introduction

One of the new out comings of the Federal Democratic Republic of Ethiopia Constitution is the division of power between the federal and regional governments. Power is not just concentrated in the center rather it is de-concentrated to regions and local governments. The Ethiopian federal system tends to be a ‘holding together’ federalism. Holding together federalism as the name indicates hinders those regions, states or other groups from separation and holds them together. On the other hand, coming together federalism makes a federation by gathering those groups, region or states for a mutual benefit like economic, security and other benefits. The power or responsibility of the federal or regional governments bases on how the federation is formed, as a coming together or holding together. Reasonably, if the federation is a holding together, then the central or federal government should be powerful than the states and in cases of coming together federalism states are stronger or at least have parallel power with the federal government. When we observe the Ethiopian federalism two things are involved. Firstly, the federal constitution gives more power to the federal government than the states. Literally, states have powers that are left from the lists of powers of the federal government.¹⁴⁹ Secondly, in practice the federal government has stronger political power than the state governments.

Ethiopia’s decentralization since the 1990s has taken place in two waves: the 1990s decentralization from the center to the regional states and the early 2000s wereda decentralization that devolved power to the district level. The regional decentralization of the 1990s featured stability and ethnic federalism as the central issues, while the wereda decentralization was directed more at the goals of development and democracy along with a political economy calculus on the part of the center.¹⁵⁰

The new government that replaced the Dergue has come up with new political structure and adopted an ethnic-based federal government structure. The charter and proclamations number 7/1992, 33/92 and 41/93 redrew the political map of the country, established regional self-

149 Article 52 of the federal constitution

150 Dickovick, J., & Gebre-Egziabher, T. (2010). *Comparative Assessments of Decentralization in Africa: Ethiopia Desk Study* (p. 7). Vermont, Burlington ARD: ARD.

government, promulgated laws for the establishment of a central transitional government and regional governments, and provided a division of political power between the central and regional governments.¹⁵¹ The first, the charter of the transitional government of Ethiopia, which affirmed "the rights of nations, nationalities and peoples to self determination and to determine their own affairs by themselves"¹⁵², provides the legal ground for the decentralization of power in the country. The transitional charter introduced the political experiment that comprised of basically ethnicity and language. This experiment has been formalized in the 1994 Constitution and the constitutional provisions operate with a political centralism that has remained to be the distinguishing feature of the current political system.¹⁵³ The next proclamation, No. 7/1992, provides for the setting up of regional self-governments with extensive powers in the areas of finance, taxation and borrowing, which has been traditionally the domain of the central government. Proclamation No.33/92 further elaborates on the nature of the envisaged decentralization, the framework for revenue sharing, and arrangements for grants to, and borrowing by, the regions. Finally, Proclamation No.41/1993, dealing with the allocation of powers and duties between the executive organs of the central government and the regions, defines the regions' authority with regard to the preparation of budgets and the collection of revenue. The new arrangements implied by these proclamations call for two layers of autonomous governments, the central government and the regional governments.

The FDRE Constitution formalized the experimental ethno-linguistic-based structure of government into a federal structure and proclaims a parliamentary democracy with bicameral chambers at the federal level and single-chamber parliaments at the regional level.¹⁵⁴ The House of People's Representatives and the House of Federation constitute the federal parliament, and the State Councils operate at the regional level. That is, the Constitution establishes the federal government and state members with their own legislative, executive and judicial powers.¹⁵⁵

151 Supra note 148.

152 Article 2 of the Ethiopian transitional government Charter

153 Girma, A. (2003). *An economic analysis of fiscal federalism in Ethiopia* (2nd ed., Vol. 10, p. 112). Michigan State University.

154 Ibid. p.124

155 Article 50(1) and (2) of the FDRE constitution

Moreover, it vests supreme power in the hands of nations, nationalities, and peoples of Ethiopia.¹⁵⁶ The constitution not only decentralizes power to the state governments but also emphasizes on adequate power to be “granted to the lowest units of governments to enable the people to participate directly in the administration of such units.”¹⁵⁷ The lowest units refer to administrative levels that are instituted by the state governments that they find necessary which include Zone, Wereda and Kebele administrations that have got recognition on state constitutions.¹⁵⁸ Thus, one can understand that, in the Ethiopian federal system there is division of power between federal government, state governments and the lowest levels.

4.1.2.2. Responsibilities of the federal government

The FDRE Constitution clearly specifies the responsibilities that fall under the jurisdictions of the federal government and the regional governments. It lists down the responsibilities of both the federal¹⁵⁹ and regional governments¹⁶⁰ and leaves the rest for the states.¹⁶¹ The responsibilities reserved for the central government comprise defense, public security and order, foreign affairs or international relations, international and interstate trade, fiscal and monetary policies, citizenship and emigration, declaration of state of emergency, development of the army, printing of currency, banking and undertaking major development establishments such as communication networks.¹⁶² The above listed powers of the federal government can be categorized in to four: the common concern of all constituent units, commercial powers that are essential for facilitating local and international trade, legislating laws dealing with various aspects of social and political issues and enactment of civil and criminal laws.¹⁶³ Accordingly, national defense, international or

156 Article 8(1) of the FDRE the constitution

157 Article 50(4) of the FDRE the constitution

158 All state constitutions establish regional, zonal, wereda and kebele administrations with their own administration powers.

159 Article 51 of the FDRE constitution

160 Article 52(2) of the FDRE constitution

161 Article 52(1) of the FDRE constitution

162 Girma Seyoum p.128

163 Solomon Negussie p.68-69

foreign relations, citizenship, immigration and naturalization and other powers those are supplementary to these powers are under the first category which are considered to be the common concern of all constituent units of the federation. Solomon Negussie puts interstate commerce, postal and telecommunication services, weights and measures, domestic currency coinage and foreign currency usage, banking, insurance and patents and copy right under the second category which is commercial powers that are essential for facilitating local and international trade. The third category, legislating laws dealing with various aspects of social and political issues, includes legislating on matters concerning electoral laws and procedures and the enforcement of political rights established by the constitution like press law, demonstrations and registration of political parties. The fourth category of powers comprises of enactment of civil and criminal laws.

4.1.2.3. Powers of sub-national governments

Unlike the old systems, the constitution also provides extensive decision making legislative and executive powers and responsibilities to the regional states. In the old systems even functions of a purely local nature such as rural infrastructure and education were financed and carried out from the center.¹⁶⁴The transitional charter started to give recognition for the establishment of states.¹⁶⁵The most notable responsibilities of the states are: enactment of state constitution and laws; formulation and execution of economic, social and development policies, strategies and plans; administration of land and other natural resources in the territory; levy and collection of taxes assigned to the regional states; designing standards for state level civil services and payment; and maintenance of state level security forces.¹⁶⁶.Article 52(1) of the constitution reads as: “All powers not given expressly to the Federal Government alone or concurrently to the Federal Government and the States are reserved to the States.” These powers involve those powers which states actually do but not included in the federal constitution.

Article 50 (4) of the constitution states that: “State governments shall be established at state and other administrative levels that they find necessary. Adequate power shall be granted to the

164 Girma Seyoum p.128

165 Article 5 and 13 of the transitional charter hints the establishment of regions.

166 Article 52(2) of the FDRE constitution

lowest units of government to enable the people to participate directly in the administration of such units.”¹⁶⁷ The provision explicitly establishes sub-national divisions under the state governments. Thus, decentralization of power doesn’t only inculcate the states but the lowest levels under the states. The state constitutions of every state give recognition for Zonal, Wereda and Kebele structures under the states’ administrations. Ethiopia’s nine ethnic regional states: Tigray, Afar, Amhara, Oromia, BenshangulGumuz, Gambella, Southern Nations, Nationalities and Peoples, Somalia and Harari have followed an asymmetric pace of decentralization with the four most populous regions, Oromia, Amhara, Southern Nations, Nationalities and Peoples and Tigray, decentralized more rapidly than the other regions. The federal constitution doesn’t recognize Zone, wereda and kebele structures except emphasizing on granting adequate power to the lowest levels. All state governments establish Zonal, Wereda and Kebele structures and give powers to those levels through their own constitutions. For the sake of this paper the Zonal, Wereda and Kebele set ups of Amhara regional constitution is scrutinized.

While states are establishing their own local governments, they may establish one or both of the types of local government structures to be established according to Article 39 or/and Article 50 of the federal constitution. The Amhara regional constitution establishes both types of government structures. Thus, the ordinary government structure is a local administration provided in the Amhara regional constitution that is established based on Article 50(4) of the federal constitution and special government structure is a local administration established based on article 39(3) of the federal constitution. The Amhara regional government has three hierarchies in the ordinary government set up that comprises of regional, wereda and kebele administrations.¹⁶⁸ Moreover, the AgewAwi, Agew Himra and the Oromo minorities living in the Amhara region have given a special protection through the special government set ups which are constitutionally known as Nationality Administrations.¹⁶⁹

Under the ordinary government set up the Amhara constitution organizes the regional administration into three hierarchies. These hierarchies comprises of the regional, wereda and

167 Nations, nationalities or peoples are residing in a locality where there are the lowest levels of a government and therefore, the lowest levels having adequate power and implementing it means the self determination right of the constitution is enforced.

168 Article 45(1) of the Amhara regional constitution

169 Article 45(2) and article 73(1) of the Amhara regional constitution

kebele administration levels. The regional administration is the top in the hierarchy whereas, Kebele administration, which is a subdivision of wereda administration, is the lowest administrative level in the hierarchy. There is a zonal administration in the region established for an administrative convenience and implementation of all-embracing development activities.¹⁷⁰ The Zonal Administration is established without councils and is accountable to the council of the regional government and carry out their duties on behalf of those bodies.¹⁷¹

Wereda or district administration is the second constitutionally established administrative level in the regional administrative hierarchy. In the wereda administrative level a body with a supreme political power in the concerned wereda, an executive power and first instance court are established. The wereda council has the highest political power in a wereda. The wereda council is established by the combination of popularly elected representatives of the kebele organized under it.¹⁷² Since members of the council are elected from the kebele peoples organized under it, it is accountable to the people. The wereda administration has its own executive. The council of wereda administration has the highest executive power in the wereda administration. The chief administrator, who is appointed by the wereda council and the chief of the executive, the deputy administrator who is also appointed by the wereda council and heads of different sectorial offices are members of the council of wereda administration.¹⁷³ The council of wereda administration is accountable to the wereda council and the head of the regional government. The chief administrator represents the wereda administration.¹⁷⁴ Article 84(1) of the regional constitution states: “The Wereda Administration shall, within the territorial area of its organization, have all the powers enabling it to prepare and decide on the economic development and social service plans as well as to implement policies, laws, regulations and directives issued by the regional state organs.”

170 Article 2 of The Revised Amhara National Regional State Zonal Administrative Offices ‘establishment and determination of their powers and duties, council of regional government Regulation No. 33/2005

171 Article 4 of The Revised Amhara National Regional State Zonal Administrative Offices establishment and determination of their powers and duties, council of regional government Regulation No. 33/2005

172 Article 83(1) of the Amhara regional constitution

173 Article 90(2) of the Amhara regional constitution

174 Article 93(2)(a) of the Amhara regional constitution

Kebele administration is the lowest administrative level in the Amhara regional administration hierarchy. Kebele administration has its own council with a supreme political authority in the kebele, executive and judiciary. The kebele administrations have also power given by the regional constitution. The kebele administration implements, throughout the Kebele, development plans and programs initiated and formulated by the Kebele Council, drafts its own detailed development plans; Follows up and supervises over the implementation of social service plans underway within the limit of the Kebele; accelerates rural development, strives for the undertaking of protection, care and development of natural resources as well as agitates and coordinates the masses to engage in development efforts and sees to it that the Kebele's peace and security is maintained or safeguarded.¹⁷⁵ City administrations are also established through the Amhara national regional state the revised cities' organizational category determination and establishment, council of the regional government regulation No. 65/2009. The local government set ups and powers under the constitutions of the other states are almost similar with the Amhara regional constitution except some states like Oromia do not have special(nationality) zone or wereda administrations.

4.1.3 Division of Revenue power in Ethiopia

Responsibilities and functions are clearly assigned to the federal government and the states by the federal constitution. It is the duty of the levels of the government to bear the finances necessary to carry out all the expenditure responsibilities assigned to them.¹⁷⁶ Thus, it would be meaningless to allocate responsibilities without revenue raising power. Accordingly revenue raising power is also assigned clearly to the states and federal government under the constitution.

In the previous systems the central government levied all taxes on personal income, which have now partially been transferred to the regions and are, expected to be a major source of regional revenues.¹⁷⁷ Under the new constitution there is new approach towards revenue power of the government and there is transfer of tax power from the central government to the regional governments. The process of assigning taxation power started by enacting Proclamation

175 Article 102 of the Amhara regional constitution

176 Article 94(1) of the federal constitution

177 IMF report, 1993

No.7/1992 which involves a radical change in the allocation of taxing power from the centre to the regions. It gives regional governments the authority to levy dues and taxes, and to issue laws relating to sources of revenue. The transfer of taxing responsibilities is perhaps best shown by changes indicated in the proclamation on revenue sharing (TGE 1992c), which gave the regions the right to collect certain taxes and to share others with the central government.¹⁷⁸

The constitution under articles 96-99 categorizes the revenue powers in to four: federal power of taxation, state power of taxation, concurrent power of taxation and undesignated powers of taxation. The first two categories clearly list down the exclusive power of the federal government and the states. The third category gives joint power for both levels of the government to levy tax on same tax bases. The last category gives power to the upper and lower houses to decide on the exercise of revenue powers with joint session on tax bases that are not specifically given to either of or both levels of the government.

Revenues to be specifically collected by the federal government include the following: taxes on imports and exports; personal income tax on employees of the central government and international organizations; taxes on profit, personal incomes and sales originating from central-government-owned enterprises; taxes on lotteries; taxes on air, rail and sea transportation services; taxes on rents on houses owned by the federal government; and fees and charges on services provided by the central government.¹⁷⁹ Moreover, the federal government collects payroll taxes, sales taxes, and nontax revenues from public enterprises owned by the federal government, irrespective of their location across the country.¹⁸⁰ The allocation of the revenue power gives the federal government the exclusive right to tax international trade and the dominant share of domestic indirect taxes¹⁸¹.

178 Girma Seyoum p.125-126

179 See article 96 of the federal constitution

180 IMF Report, 1993 also in Girma Seyoum p.125-126 Ibid. See article 96 of the federal constitution
Girma, A. (2003). *An economic analysis of fiscal federalism in Ethiopia* (2nd ed., Vol. 10, p. 127). Michigan State University

The constitution also lists down those bases that are to be the sources of revenue for the states. The revenues that are to be collected by the states include: income taxes on employees of the state and private enterprises; agricultural income tax on private farmers and farmers incorporated in cooperative associations; rural land use fees; profit and sales taxes on individual traders; taxes on income from water transport services within the territory of the state; taxes from rents on region-owned and private properties; profit and sales taxes on enterprises owned by regions; income taxes, royalties, and land rents from small-scale mining operations; and charges and fees for their licenses and services.¹⁸² The tax base allocated to regional governments generates relatively insufficient revenues and is relatively stagnant, with low revenue buoyancy¹⁸³ when compared to that of the federal government.

Concurrent power is also given to both of the government levels to jointly levy and collect taxes on some tax bases. The federal government and states jointly levy and collect taxes on enterprises they jointly establish, on the profits of companies and on dividends due to share holders and on incomes derived from large scale mining and all petroleum and gas operations, and royalties on such operations.¹⁸⁴ The wordings of the constitution “the federal government and states shall jointly levy and collect” is vague and needs interpretation. The literal interpretation of the provision would mean that legislation would be enacted by a joint meeting of the federal and state legislatures, which may lead to different problems like the adoption of different tax rates and double taxation.¹⁸⁵ To avoid such problems there should be a different approach towards the interpretation of the provision. Solomon Negussie outlines the following related to the issue:

“The provision has been interpreted in such a way that those tax sources listed under concurrent power have to be levied and collected by the center but the proceeds are compulsorily shared with the states. As a result of this interpretation the central government has become fully empowered to levy

182 Article 97 of the federal constitution

183 Girma, A. (2003). *An economic analysis of fiscal federalism in Ethiopia* (2nd ed., Vol. 10, p. 127). Michigan State University

184 Article 98 of the constitution

185 Solomon Negussie, p.140

and collect taxes on the mentioned sources and to retain the proceeds and dispose of them based on the decision of the HOF.”¹⁸⁶

Thus, the power of administration of taxation on concurrent tax bases is exclusively given to the federal government though the proceeds are expected to be shared with the states. In other words, determination of the rates of the taxes to be levied and the amount to be collected is not the jurisdiction of the states irrespective of the locality of the tax bases.

The federal government collects about 80 percent of the nontax revenue and the combined regional share of revenue collection has remained within the narrow range of 18 to 20 percent of total revenue.¹⁸⁷ The more governments at sub national tiers are allowed to raise at least some amount of revenue from their own sources, the more they will have incentive to provide public services in an efficient and effective ways. But the Ethiopian case is different. The revenue raising capacities of the regions appear to be limited. The determination of tax bases and rates both for taxes reserved for joint use by the central government and the regions and those exclusively reserved for the regions is to be made by the central government. Regions have not only been denied powers in the determination of rates but are also not allowed either introducing new taxes or raising rates on existing ones.¹⁸⁸

When we observe the actual annual revenue of the states, it is always not enough to cover their annual expenditure. Table 1 and table 2 show the total capacity of each state to raise revenue and the total expenditure of each state from 2006/2007 up to 2010/2011 budget years.¹⁸⁹

186 Article 9(1) of proc no. 33/1993

187 Girma, A. (2003). *An economic analysis of fiscal federalism in Ethiopia* (2nd ed., Vol. 10, p. 127). Michigan State University

188 Ibid.

189 The information is taken from the “FDRE House of Federation the new grant formula (2005-2009). Miazya 2004.

Table 1 revenue capacity of states in birr

State	Employment Income tax	Agric ulture Incom e tax	Rural land use fee	Tax on cattle	Tax on income of trading activities	Turnover tax	VAT(Fed eral governm ent's deducted)	Total revenue capacity
Tigray	195,378,8 14.77	18989 741.5	14788 040.6	14985 496	135,472,4 99.01	89,164,23 5.35	682,751,4 68.1	1,151,530 ,295.2
Afar	30,357,29 9.81	97213 8.33	82400 6.87	25630 90.8	17,726,00 3.46	13,241,59 1.97	154,144,0 09.6	219,828,1 40.9
Amhar a	359,419,5 00.39	87802 942.2	66399 867.1	66495 381	204,023,9 43.77	240,682,3 07.40	2,042,155 ,627.88	3,066,979 ,569.6
Oromi a	656,200,4 76.20	13523 3864	10193 8646	93761 509	626,237,2 97.65	497,694,9 83.75	3,801,642 ,037.2	5,912,708 ,813.4
Somali	44,915,94 5.48	29064 82.29	23488 80.97	51120 56.2	51,548,20 5.27	63,475,97 2.36	609,745,7 22.53	780,053,2 65.1
Benish angul Gumz	25,867,44 5.26	39791 19.74	30168 54.66	17918 48.8	6,165,941 .16	10,776,19 3.71	129,290,5 73.84	180,887,9 77.12
SNNP R	291,188,4 49.50	49167 018.4	40882 636.1	45158 446	229,316,6 77.06	356,873,6 58.06	2,083,289 ,556.6	3,095,876 ,442.00
Gambe lla	15,604,27 9.83	52699 2.16	47268 0.69	40714 3.75	8,936,369 .89	21,780,00 5.47	47,871,33 9.1	95,598,81 0.94
Harari	18,061,83 7.68	32532 1.16	26518 5.54	30343 9.14	16,482,47 8.12	13,570,43 0.47	51,562,07 8.4	100,570,7 70.59
Dire dawa	40,550,27 9.46	20882 6.16	18221 3.19	58233 7.64	36,235,12 3.80	25,980,57 7.68	71,146,10 2.18	174,885,4 60.1
Total	1,677,544 ,328.38	30011 3074	23111 9491	23116 0748	1,332,144 ,539.19	1,333,239 ,956.22	9,673,598 ,515.7	14,778,92 0,652.6

As can be observed from table 1, the total revenue capacity of the states including Diredawa is 14.4 billion birr. The minimum revenue capacity, which can be raised by Gambella regional

government, is 95.6 million birr and the maximum revenue capacity, which can be raised by Oromia region, is 5.9 billion birr.

Table 2 Sample total expenditure of each state from 1998-2002(Ethiopian calendar) budget years (in million birr)

State	1998	1999	2000	2001	2002
Tigray	799	914	1306	1730	2023
Afar	340	387	490	590	779
Amhara	2018	2579	3821	4731	5786
Oromia	3052	3818	5484	7165	8352
Somali	487	606	994	1149	1858
Benishangul Gumz	251	278	332	335	421
SNNPR	1740	2290	3184	3660	4712
Gambella	146	193	263	243	399
Harari	115	148	149	163	222
Dire dawa	168	204	262	284	305

The maximum expenditure spent in the years 1998-2002 Ethiopian calendar is about 8.4 billion birr by the Oromia regional government and the minimum is 222 million by the Harari regional government. When we compare the expenditure of the states with their capacity to raise revenue, their expenditure is much more than their revenue capacity. It should be noted that the data put under table 1 is not the revenue states actually collecting; rather it is their maximum capacity to raise revenue on the specified tax bases. Besides, Expenditure responsibility of states increases year by year. Thus, there is a huge gap between the revenue they collect and the actual amount they spend on public services.

The total revenue of the country in 2005 Ethiopian calendar was 137 billion birr out of which 78 percent accounts revenue from different tax bases.¹⁹⁰ That is around 107 billion birr is collected from different tax bases. The total revenue capacity of states (table 1) is 14.4 billion birr. Thus, at the same year the revenue capacity of all the states is 13.6 percent of the total revenue of the country. The federal government raises more than 75 percent of the total revenue. This indicates

190 The source of the information is የኢትዮጵያ ገቢዎችና ግብዓት 2005 የገቢዎችና ግብዓት ሪፖርት: 11^ኛ ገጽ። (Ethiopian yearly book, 2014. 11th edition). p.87

that the Ethiopia federation is characterized by a high level of both vertical and horizontal fiscal imbalances.

4.1.4. Handling fiscal imbalances

As to the FDRE constitution, expenditure responsibilities of the federal government and states should match with the revenue power that they have. That means, the federal government and state governments are expected to raise revenue by them to finance their expenditure responsibilities. Article 94(1) of the constitution states that “The federal government and states shall respectively bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law.” The more revenue is collected the more the governments have the ability to appropriately cover their expenses. But a fiscal imbalance may occur if the revenue collected is not enough to cover expenses of either of the level of the government.

The mismatch between revenue and expenditure responsibility of governments may happen due to three reasons. The first one is when the resource of the government is not enough to raise revenue necessary to cover the expenses of that government. In Ethiopia there is a huge disparity between states in terms of resources. For instance, there is a clear difference between the resourceful Oromia region and the other regions like the Afar region. In other words, the human and economical resources in Oromia region have more to raise revenue than in Afar region. Similar conclusions can be reached by comparing the other regions in terms of resources. One of the revenue powers of states according to the constitution is levying and collecting taxes on income derived from private houses and other properties within the state. This is the power equally given to all of the states in Ethiopia. But when we see the actual income collected on the same tax base, there is a huge difference between the regions. Much more tax is collected from the three, Oromia, Amhara and Tigray, regions than the others.

The second reason that causes mismatch between revenue and expenditure responsibility is the capacity of the state to collect the available revenues effectively. There are many tax bases left uncollected or very minimal tax is collected irrespective of the resource that the regions have. This happens because of many reasons one of which is lack of expertise in the field in most of the so called ‘developing’ regions.

The third reason for the mismatch between revenue and expenditure responsibility is the revenue power allocated to the levels of the government. This refers to the revenue power divided between the federal government and the states. Except the concurrent and undesignated power of taxation, the revenue power allocated to the states is same. However, there is a difference in allocation of power between the federal government and states. The federal government has power to collect taxes on tax bases which are economically advantageous. Whereas, the tax base allocated to regional governments generates relatively insufficient revenues and is relatively stagnant, with low revenue buoyancy.¹⁹¹ Moreover, Regions have not only been denied powers in the determination of rates but are also not allowed either introducing new taxes or raising rates on existing ones.¹⁹²

The three reasons mentioned are possible causes of the fiscal imbalance in Ethiopia, both horizontal and vertical fiscal imbalances. The Ethiopia federation is characterized by a high level of both vertical and horizontal fiscal imbalances. There is a legal and practical ways that are adopted to correct those imbalances. Legally revenue transfer from the federal government to the states is the first option in correcting fiscal imbalances. Revenue transfer provided in the federal constitution involves two issues. The first one is sharing of concurrent taxes to the states. On some listed tax bases the federal government and the states have the power to levy and collect taxes jointly. However, the power of administration of taxation on concurrent tax bases is exclusively given to the federal government and the proceeds are expected to be shared with the states. The federal government shares the revenue collected from the concurrent tax bases. The second way of revenue transfer is grant or loan to the states by the federal government. With this respect the constitution states that:

“The Federal Government may grant to States emergency, rehabilitation and development assistance and loans, due care being taken that such assistance and loans do not hinder the proportionate development of States. The Federal Government shall have the power to audit and inspect the proper utilization of subsidies it grants to the States.”¹⁹³

191 Girma, A. (2003). *An economic analysis of fiscal federalism in Ethiopia* (2nd ed., Vol. 10, p. 127). Michigan State University

192 Ibid.

193 Article 94(2) of the federal constitution

The constitution clearly provided that the federal government may assist in the form of conditional or unconditional grants to the states. How these grants should be given to the states is not clearly stipulated in the constitution. However, there are two conditions to be considered during revenue sharing. The first condition from the wordings of article 95 of the constitution is the federal arrangement. The federal government and states should share revenue taking the federal arrangement into account. The other matter to be taken into account is proportionate development of states. When the federal government is giving grants due care should be given that the assistance and loans should not hinder the proportionate development of states.

After deducting the share of the federal government the remaining revenue, which is considered as a common pool sourced from federal taxes, concurrent taxes, loans and aids, is distributed among the states based on a formula decided by house of the federation.¹⁹⁴ A new grant distribution formula is adopted by the house of federation in 2012/2013 budget year. Table 3 shows the new grant distribution formula to be used for five years.¹⁹⁵

Table 3 the new grant distribution formula

State	Scenario 1 Grant formula with Full RPI	Scenario 2 grant formula with adjusted RPI	Scenario 3 Grant formula with adjusted RPI applied to 50% of expend.	Final Grant formula Approved by the HOF (by political negotiation from Scenario 3)
Tigray	7.61	7.25	7.18	7.18
Afar	3.22	3.07	3.07	3.15
Amhara	22.55	22.92	23.17	23.17
Oromia	32.70	31.94	32.29	32.5
Somali	9.07	8.64	8.14	8.14
B.G	2.15	2.15	2.18	2.10

194 Solomon Negussie, p.211

195 Source of the information for the grant formula is from the HOF grant formula (2005-2009). There were news about revising the grant formula because of the increase in population number of the Amhara people but I couldn't find the revised one.

SNNP	18.62	20.17	20.39	20.10
Gambella	1.57	1.49	1.46	1.5
Harari	1.12	1.07	0.96	1.00
Dire Dawa	1.38	1.31	1.16	1.16

RPI-Relative Price Index

The total budget approved in the 2014/15 budget year is 178.6 billion birr. Out of the total budget, 51.52 billion birr is approved to be granted to the states. Table 4 shows grant given to each state from the federal government.

Table 4 grant given to the states in billion birr in 2007 EC budget year

State	Grant formula	Grant given in 2007 budget year in billion birr
Tigray	7.18	3.67
Afar	3.15	1.6
Amhara	23.17	11.95
Oromia	32.5	16.69
Somali	8.14	4.1
BenishagulGumz	2.10	1.1
SNNP	20.10	10.34
Gambella	1.5	0.776
Harari	1.00	0.514
Dire Dawa	1.16	0.597
Total	100	51.52

The total capacity of states to raise revenue (see table 1) is 14.8 billion birr. The total unconditional grant given to the states from the federal government is 51.52 billion birr. This shows that there is a huge gap between the revenue capacity of states and their expenditure responsibility. Such is corrected by the federal government's grant which accounts almost seventy percent of the states' total budget.

4.2. Impact of the fiscal arrangement on the possibility of the implementation of the right to secession

The right to secession provided under the FDRE constitution is unconditional. Every nation, nationality and people in Ethiopia can claim the right to secession at any time without showing a legal when the nation, nationality or people think they would be better off seceded. Even though

the right to secession appears to be unconditional, there are practical matters directly related to the implementation of the right. The first one is the procedures that a secession claimant should go through according to the constitution. That is, approval of demand of secession by the legislative council followed by the decision on the issue by the house of the federation, arranging for referendum, transfer power and executes the division of assets. The other matter that can influence the implementation of the right is the historical background of the nations, nationalities and people in Ethiopia. Historically the peoples of Ethiopia have been living together for long irrespective of the bad administrations of the existing governments and arguably the ruling class discriminations among peoples. The movement of one ethnic group from one area to another and mixing different ethnic groups, cultural assimilation sometimes up to the point of unable to make a distinction, presence of minor groups in almost every region and problem of pointing out of the exact boundary between the regions adds to the historical facts of Ethiopian diversity. This leads to hardship in deciding on claim of secession. The fear of the possible aftermath entailments can also be another possible factor for a setback of claiming or implementing the right to secession. The implementation of secession involves two basic interdependent issues: issue of boundary and integrity of the whole country. Thus, if the secession of a group possibly will affect these two issues, then it may be a problem to effect the application of the right to secession properly. The other basic reason, which is the basic concern of this paper and that can directly or indirectly affect the right to secession, is the fiscal arrangement.

As it is already discussed in detail, the subject matters of fiscal federalism are expenditure responsibility, revenue power of governments and fiscal imbalance and correcting it. The function and power of the level of the governments, the revenue power they are given and the revenue they actually raise and the way the mismatch between the revenue power and the responsibilities of the governments are corrected influences the right to self determination directly or indirectly. People need to directly participate in a region or a local government matters to say they are administering themselves properly. If the locality is satisfied in the administration, there is no need for claiming secession. The next topics are dedicated to how the fiscal set up in Ethiopia impacts the possibility of implementation of the right to secession.

4.2.1. Why secession?

There are different theories concerning justifications for secession. Some argue that secession can be justified for any reason. That is if the secessionist group believes that it is not worth living with the parent country, then the group can claim to secede at any time without showing any cause. The Ethiopian constitution seems to have such approach. It doesn't require nations, nationalities and peoples to show a legal cause to secede. On the other hand, some scholars argue that secession should happen only to rectify grave injustices. There should be reasons for the group to secede that there are violation of rights, operation by other groups, being afraid of losing identity and the like which can be considered as grave injustices. Any group claims for secession, in either of the theories, if the group is not satisfied living with the parent country in one way or another. How do we know that a group is dissatisfied? How is dissatisfaction manifested? One of the manifestations of satisfaction or dissatisfaction of living with the parent country is self-determination. The more self-determination right is effectively implemented, the more a nation, nationality or people will be satisfied living with the rest of Ethiopia and vice versa.

Article 39(2) and (3) of the FDRE constitution states that:

“(2) Every Nation, Nationality and people in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture, and to preserve its history.

(3) Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and federal governments.”

Moreover, the constitution gives power to the states to establish a state administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the federal constitution.¹⁹⁶ The constitution clearly specifies the qualities of the self determination to be fulfilled. These qualities are related to using and developing language, culture and history and establishing their own government and representation in state and federal governments. Once a nation, nationality or people acquires the right to self-determination and implements it properly, there would not be a justifiable reason to secede. The basic issue here should be how self-

¹⁹⁶ Article 52(2)(a) of the federal constitution

determination is properly implemented. What things should be done to develop one's culture and language? What to do after establishing institutions of a government for a group? How to ensure representation? For instance, to develop the language of one ethnic group, there is a need of schools installed in the locality, preparing books with the language the ethnic group is using, making the language official language of the locality and so on. Those things require the ethnic group to have the necessary finances and the legal capacity to decide on the issue. Thus, the manifestation of self-determination right does not only include using and developing language, culture and history and establishing their own government and representation in state and federal governments but also the ability to finance and administer themselves. In other words, the political power and revenue power that a group possesses determines whether the right to self-determination is implemented properly or not.

It is likely possible to claim the right to secession if the right to self-determination is not appropriately implemented. The right to self-determination cannot possibly be properly implemented if there is not fair division of power and revenue between the federal government and states and sub state governments by the law and should be implemented appropriately. In Ethiopia, the actual power given to the states and the local governments is minimal when compared to the power given to the federal government. For instance, article 51(2) of the FDRE constitution gives power to the federal government to formulate and implement the country's policies, strategies and plans in respect of "overall" economic, social and development matters. In parallel, the states have power to formulate and execute economic, social and development policies, strategies and plans of the state. Examination of these two powers of the governments tells us that the federal government has overall power and a final say on economic, social and development matters of the country. The revenue power given to the states and they actually raise is not even enough to cover the expenses they spend on public services and infrastructures. This makes the states to be dependent on the federal government grants for their annual budgets. Thus, the power that the states and the local governments have is not enough to implement the right to self-determination as it is provided under the constitution. The minimal power to raise revenue by the states added to the problem of implementing the right. In general terms, the problem of implementing the right to self-determination can be a fertile ground almost for every nation or a group to claim the right to secession.

4.2.2. The power of the states and local governments to administer themselves

The constitution provides the states with different powers and duties. States have three categories of powers and functions. These are exclusive powers, concurrent powers and residual powers. Article 52 of the federal constitution provides those powers which are given to the states exclusively and residue powers of the federal government are given to the states too. In addition to these powers, states have powers concurrent with the federal government. Generally, when we see these categories of powers states have, it seems that state governments have better powers than the federal government. However, in reality the federal government has more powers and duties than the states. Compared to the previous governments, of course, power is decentralized to the states under the current system.

In addition to the power generally given to the states, the constitution requires the establishment of lowest levels with adequate powers to enable the people to participate directly in the administration of such units. Accordingly, states' constitutions structures regional, zonal, wereda and kebele administrations. In some states nationality administrations are established. For instance, in Amhara and the Southern Nations Nationalities and Peoples regions special zone and wereda administrations are established. To the contrary, Oromia region which is deemed to comprise many ethnic groups doesn't have specialty administrations structures.

Self-administration of nation, nationality or people¹⁹⁷encompasses two types of powers. The power given by the federal constitution to the states is the first and the power given to the lowest levels or local governments by the state constitutions is the other. The power given to the local governments is derived from the power given to the states by the federal constitution. In other words, the powers given to the local governments by the state constitutions cannot be out of the box of the power given to the state governments by the federal constitution. Thus, in either ways, the powers of nations, nationalities and peoples in certain administrations are those powers given by article 52 of the federal constitution. The powers of nations, nationalities and peoples to administer themselves emanates from the power of the states. Regarding the powers given to the

197Article 39(5) of the Federal constitution defines nation, nationality or people as “ 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 makeup, and who inhabit an identifiable, predominantly contiguous territory.”

nations, nationalities and peoples by the constitutions, both federal and state constitutions, one can conclude that there is enough power for self-administration. However, there is a question that should be raised here: is self-determination power implemented properly? The answer is no due to the following basic reasons.

First of all, the deep rooted administration problem that was existed in the country for long is still an obstacle to implement the judiciary, executive and legislative powers as it should be. Secondly, there is significant influence of central government on state matters. The influence of the federal government can be seen from two angles: political and economic influence. Politically, one party that has been and is ruling the country since the federation is formed decides most of political issues at the center that negatively affects the self-decisions of states on their own matters. Economically, states are highly dependent on conditional and unconditional grants of the federal government. That is, most of the budgets of the states are covered by the grants from the federal government. With these political and economic influences, it is hard to say the self-determination right is implemented properly according to the words of the constitution. If the federal government continues to interfere on state matters through political and economic influence, then the last resort possibly for every nation or nationality in Ethiopia is to claim the right to secession. Therefore, the norm of exercising powers between the federal and state governments urges the possibility of claim of the right to secession.

4.2.3. The financial freedom of states and local governments

Federal government and states are duty bound to provide public services and infrastructures to the society. In addition to the powers and functions of governments stipulated under articles 51 and 52, government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them.¹⁹⁸ Government is also expected to provide special assistance to nations, nationalities and peoples least advantaged in economic and social development pursuant to article 89(4) of the federal constitution. The term government refers to the federal government, regional administrations, zonal administrations, and wereda and kebele administrations. When we see the duty of government from the angle of the right of the citizens, every Ethiopian national has the right to

198 Article 89(3) of the Federal constitution

access to publicly funded social services.¹⁹⁹ Responsibilities of government costs it tremendous amount of money every year. To provide public services and infrastructures to the society, the government with the duty should be financially free. There should be enough funds to cover the costs for the provision of services and infrastructures. This is especially true when we consider the revenue of state governments.

States or local administrations in Ethiopia are not financially free because of diverse economical and political reasons. To begin with, Ethiopia is one of the poorest countries in the world. The resources that the government can raise huge revenue are yet to capitalize. Most the states collect revenues from small land farming incomes, small traders and state government employees. The revenue that can be collected from the resources available now is not enough to make the states or the lowest levels to be financially free. That is, due to resource problems the state governments cannot cover the entire required budget for their expenditure responsibilities. The other basic reason is the problem of collecting revenue from the available resources effectively. Most of the tax bases were left uncollected till recent years. For instance, value added tax was started to be collected in recent years more effectively by the federal government let alone states. In the regional and local administrations there is a problem of expertise in the area of raising revenue. Thus, this plays a major role in the shortage of financing their regional expenditures in turn affects the financial freedom of states unconstructively.

More to the above reasons, the power of taxation given to the state governments cannot let them be financial cable to fund their expenditures fully. The tax base allocated exclusively to state governments generates relatively insufficient revenues and is relatively stagnant, with low revenue buoyancy. Besides, states do not have power determine the amount and collect on the tax bases which are concurrently given with the federal government except sharing the proceeds. The maximum capacity of the states to raise revenue is less than half of their expenditures. (See table 1 and 2) Therefore, the revenue power given to the states by the federal constitution doesn't make them financially free.

What is it to mean states are not financially free? It means they cannot provide services and infrastructures as the administration needs or as the society needs. It is then a grievance for states

¹⁹⁹ See article 41(3) of the Federal constitution

with sufficient resources. For instance, those localities in gold mining areas are not still provided with sufficient public services and infrastructures because the state does not have the necessary finance to cover the cost. Thus, the current situation of financial freedom of states and local administrations increases the possibility of claiming the right to secession especially by those groups with sufficient natural resources.

4.2.4. Economic dependency of states on the federal government

As is already discussed in the previous topics, the revenue raised by the states is not adequate to cover the expenditures for basic government needs. In 2007 Ethiopian budget year the grant given to the states covers almost seventy percent of their budget. States are economically extremely dependent on the federal government. No matter how the state or a local government has sufficient resources it still should await the federal government's grant for its expenditures. How is it possible to implement the unconditional right to self-determination with such extreme dependency of states on the federal government economically? How a nation, nationality or people said to be implemented the right to self-determination without its own revenue to institute infrastructures to that purpose? Financial freedom of the states is very imperative for the appropriate implementation of the right to self determination. One may argue that most of the grant given to the regional governments is unconditional and so it may not affect the self determination right of the nations, nationalities or peoples. However, it is not about being conditional or unconditional of the grants rather it is about how free the states are to have their own plans and strategies with money they themselves own without awaiting a grant from the other government. Dependency of the states on the federal government affects the implementation of the right to self determination so badly.

The extreme dependency of the states on the federal government creates two opposing possible effects towards the right to secession. Firstly, some states which are relatively rich in resources feel that their resource doesn't serve their people. For instance, Oromia and Amhara regions which are relatively richer in resources than the other regions still have to wait the federal government's grant to fill the gap in their budgets. The ethnic groups basically Oromos and Amharas in the two regions respectively may take the claim for secession as an option in the long run to end dependency from the federal government and to administer themselves if it

continues this way. It is repeatedly said that the main purpose of federalism is to allocate resources to the rich and poor nations throughout the country. In no way this can be interpreted as taking resources from one state and making it hardly dependent on the federal government for its budgets. Therefore dependency of relatively richer states aggravates the claim for the application of the right to secession.

Secondly, those states which are relatively poorer in resources are totally dependent on the grant of the federal government. The revenue they actually raise and their capacity to raise revenue is very minimal compared to the total revenue of the country. For instance the total revenue capacity of Afar and Gambella regions from the seven tax bases (see table 1) is 219 million and 95 million birr respectively. The total grant given in the 2007 Ethiopian budget year to the states is 1.6 and 0.8 billion (see table 4) birr respectively. The revenue they can raise is insignificant compared to their expenditure and the grant given to them. These states are made to be highly dependent on the federal government for their every expenditure. What would be the fate of these regions if they secede? At least the view of the states would be “self administration would be hard.” The poorer states’ economical dependency on the federal government can possibly blind them to think about the right to secession. One of the reasons for claiming secession is grave injustice though it is not required to show any cause in Ethiopia. No matter how there are enough reasons, may be human right violations or grave injustices, for claiming of secession, the poorer states wouldn’t possibly go for claiming it.

Conclusion and recommendations

1. Conclusion

Before going through the research, the writer raises generally a couple of questions. The first is how states raise revenue and finance their expenditure responsibilities. Secondly how the fiscal set up impact the right to secession provided by the FDRE constitution. To address these questions primary different literatures and other sources are reviewed to deal with the right to secession and fiscal federalism theories and some practical matters in general.

The right to secession, which is dealt under chapter two of the research, is a collective right that is granted to a group. The concept of secession is taken from the broad concept of the right to self determination. The right to self determination is a right that is vested in people to determine and assure their legal, economic, political and social goals. The right to secession is the act of withdrawing of a group that shares a common desire from membership of political entity to establish an entity capable of functioning to ensure a common future.

Historical development of the right to secession depends upon the development of the right to self determination. Even though the right gets recognition in the middle of the 17th century during the appearance of the European nation states; the right gets wide recognition after the First World War. The development of international laws after the Second World War has helped to sharpen the focus on self determination as a legal right. After decolonization of many developing nations, many states proclaimed the right to self determination including the right to secession in their constitutions, implicitly or explicitly. The Federal Democratic Republic of Ethiopia constitution promulgates the right to self determination attaching the right to secession to it.

Legally, background of the right to secession in Ethiopia has only a short history. The 1931, 1955 and the 1987 constitution did not give recognition for the right to secession. The right to secession acquired legal status for the first time in the 1991 transitional charter of Ethiopia and then in the 1995 FDRE constitution. The FDRE Constitution provides the right to self determination including the right to secession as a preamble reference as well as under article 39 of the constitution with details for its application.

The procedure for the application of the right to secession is detailed under the FDRE constitution and the proclamation to consolidate the house of federation of the federal democratic republic of Ethiopia and to define its powers and responsibilities. Accordingly, the unconditional right, the right to secession first should be approved by the legislative council of the nation, nationality or people demanded. The approval by two third majority votes of the legislative council is followed by the decision by the house of the federation. Among the requirements for application of the right referendum is the important stage. The support of majority vote by the nation, nationality or people demanded for secession in the referendum is required for the successful application of the right. Upon fulfillment of the requirements aforesaid, the secession of a group become effective after transfer of power from the federal government to the council of nations, nationalities or people who has voted and after division of assets between the federal government and the secessionist group is completed.

Chapter three is dedicated to general overview of fiscal federalism in which different concepts related to fiscal federalism are assessed. The topic of fiscal federalism gets much attention in recent years. In order to advance governments' ability to serve their people more effectively and competently, many countries are showing interest in the concept of fiscal federalism or are practicing it. Fiscal federalism is just as relevant for all unitary, federal and con-federal forms of governments. Federal and non federal countries differ in the manner in which the principles of financial relations between the central and sub national governments are applied. Application differs because unitary and federal governments differ in their political and legislative context and thus provide different opportunities for fiscal decentralization. Fiscal federalism is generally construed as the distribution of tasks and revenue sources between the central and regional governments with the concomitant financial adjustment through revenue transfer. The basic issues in fiscal federalism are expenditure responsibility and revenue power of governments and fiscal imbalance and correcting it.

There are different principles related to fiscal federalism. The principles of fiscal federalism that shape and guide intergovernmental fiscal relations include the principle of diversity, the principle of equivalence, the principle of centralized stabilization, correction of spillover effects, minimum provision of essential public goods, fiscal equalization principle, the efficiency principle, the

principle of derivation, the principle of location neutrality, the principle of centralized redistribution. These principles are discussed in detail in the same chapter.

A country's fiscal arrangement is influenced by fiscal policy. A government may choose neutral, expansionary or contractionary or discretionary or non-discretionary (automatic) fiscal policy depending in what condition the economy is and on how the government needs to alter government spending and taxation. Through the fiscal policies available expenditure responsibilities, revenue powers and correcting fiscal imbalances are determined.

Government has its duties and responsibilities, mostly determined by laws. Governments to be effective in actualizing general public good, they should know which tier of government should do what. That means there should be specific assignment of expenditure responsibilities to each levels of any government. Accordingly the federal constitution of Ethiopia specifically provides the power of the states and the federal government. With assignment of expenditure of responsibilities of governments, constitutions also assign revenue powers to the governments. The FDRE constitution mandates the federal and state governments to bear all of their financial expenditures necessary to carry out all responsibilities and functions assigned to them by law. Due to reasons attributed to natural resources of states, the effectiveness in revenue raising and the allocation of the revenue power by the constitution creates a huge fiscal imbalance in the Ethiopian federal system. And so, the imbalance is corrected by a federal government grants which makes the states to be highly dependent on the federal government economically.

There are different factors that possibly affect the practical application of the right to secession. To mention some, historical background and current situation of nations, nationalities and peoples, the international laws and society's approach towards the right, the rights of minorities, the interest and national integrity of a country as a whole and the like. Fiscal set up is also another factor that determines the possibility of application of the right to secession. In Ethiopia, the power of the states to administer themselves, the revenue power that the states are given and states' dependency on the federal grants for their expenditures clearly troubles the application of the right to self administration which in turn triggers or discourages secession.

2. Recommendations

On one hand, in the Ethiopian federal system the right to secession is allowed in the federal constitution. On the other hand, the constitution creates an ethnic federalism system. The right to secession which is unconditional in Ethiopia is against the very basic principle of federalism. The federal constitution under the preamble emphasizes that the system that encloses nations, nationalities and peoples of Ethiopia should rectify historically unjust relationships, promote shared interests and create one economic and political society. The purpose of the inclusion of the right to secession in the constitution is not to make every group seceded with any reason they state rather it serves as a guarantee for their wellbeing. In other words, secession should not be effected because of the problems that can be corrected easily. The application of the right to secession shouldn't be easily possible or its application should be effected if there are right reasons. One of the factors that impacts possibility of application of the right to secession is the Ethiopian fiscal setup. To reduce the negative impact of the fiscal set up towards the possibility of application of the right to secession, the following recommendations are submitted.

a Decentralizing more power to the local governments

Government power should be decentralized more to the local governments. The power of the federal government in administering and collecting taxes is much more than the regional governments. The power of the lower governments to decide on their matters sometimes is left to the federal government. This clearly can affect the quality of self administration which in turn may trigger secession. One part of the fiscal set up, which can be corrected to suit sub national governments, is taxation power. The taxation power of the states provided under the constitution should be corrected in two ways. First, the exclusive taxation power of states should be increased so that the revenue to be raised will rise. Increasing the exclusive taxation power can be done in two ways: through amending the federal constitution and inculcating new tax bases under the power of states or practically by enabling states to create their own tax bases based on the resources they have. For instance, some states are rich in tourism but poor in agriculture and so that by creating conducive environments to the tourism it is possible to increase the revenue of such states. The state of Afar can be a typical example for this instance. Secondly, states should be given the power to decide on concurrent tax bases. On matters specified under article 98 of

the federal constitution, both the states and federal government have power to jointly levy and collect taxes. However, practically the federal government decides on the concurrent tax bases and shares the proceeds with the states. The power to levy or collect taxes on the concurrent tax bases should be also given to the states so the states can maximize their revenue because they know the existing realities in the concerned state. Decentralization of taxation power to the local governments gives the ethnicities to be relatively financially free which enables them administering themselves properly. Thus, one of the triggering factors of secession will be avoided and then the main goal of the constitution to create one political and economic community through federalism will be fulfilled.

b Matching expenditure responsibilities with revenue power

The expenditure responsibility of the states and their revenue power doesn't match. The states are obliged to provide numerous services and infrastructures to the community yet the sources of revenue are limited. The responsibilities they are given by the constitution should as much as possible match with the taxation power they have. The constitution, therefore, should be amended so as to increase the taxation power or to decrease the expenditure responsibility of states.

c Applying the subsidiary principle

Most of the total revenue raised by the country is raised from some regions. It is argued that one of the purposes of federalism is allocation of resources from richer states or regions to poorer ones. But, if this makes the richer states dependent on the federal government for their resources, then it will be one of the reasons for claiming secession. This is true in Ethiopia. That is, even though most of the revenue of the country is derived from some states, they are equally dependent like the other states. So to reduce the grievance of these states and to minimize the possibility of claiming of the right to secession, subsidiary principle should be applicable. A mechanism should be devised so that states can get a grant based on the amount of revenue collected from them. In other words, the grant formula should consider not only the size of the population and expenditures of the states but also the amount of revenue derived from the states.

d Reducing dependency of states

No state can cover its budgets from its own revenue. States are extremely dependent on the federal government's grant. Such extreme dependence creates two opposing impacts on the application of the right to secession: triggering or discouraging the claim for the right. Either of the impacts have a bad effect on the system of federalism formed by the federal constitution. Therefore, the federal government should minimize the amount of grants given to the states. However, this should be applicable upon working of the previous recommendations.

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3. The revised constitution of the Southern Nations, Nationalities and Peoples Region, November 2001
4. The revised constitution of the Amhara National Regional state, November 2001
5. The revised constitution of the Oromia Region, July 2000
6. Transitional charter of Ethiopia, July 1991
7. The Revised Amhara National Regional State Zonal Administrative Offices establishment and determination of their powers and duties, council of regional government Regulation No. 33/2005
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