

Devolution of Power in Ethiopia: *The Legal and Political Aspects*

Mehari Taddele Maru[†]

An Abridgment of papers on
Federalism, Diversity, Migration and Devolution of Power
Submitted to the University of Oxford and Harvard University

Presented to Public Discussion Forum for Political Parties Organized

By African Initiatives for a Democratic World Order

‘Devolution of Power and Its Role in Strengthening Good Governance’

March 2008,

United Nations Conference Center, Addis Ababa

I. Introduction

a. Purpose of this Paper and Its Main Arguments

In this paper, I intend to examine the following five major issues:

1. an overview of the federalist arrangement in Ethiopia since 1991 and how it is related to on-going devolution of power,
2. the historical, legal and political justifications and economic development considerations forwarded for and against federal arrangement;
3. the positive and negative aspects after a 17 years of experiment on federalism in Ethiopia in terms of its contribution peace and stability, human rights and justice, and its impact on economic performance;
4. examine how much, and what kind, of power is formally by law (*de jure*) decentralized to the regional states and lower tiers of government (District); and
5. assess if such power devolution indeed has been practically implemented (*de facto*) and have enhanced economic competition among, and performance of, the regional governments.

In doing so, I shall examine the nature and extent of group rights, federalism and devolution. I shall also look at the historical and political backgrounds leading to the federal arrangement we have. The arguments made against and in support of federalism and devolution are not only explained from political perspective but also from economic development point of view. What is more, I shall see what is devolved and investigate if the regional states have, and actually exercise, the mandate to collect taxes, spend and borrow money. I shall also look if devolution of power facilitates economic growth of,

and competition among, regional states in making use and building their comparative advantage. Moreover, I shall study if the regional states indeed are able or mandated or have economic development policy of their own. More importantly, I would like to discuss if the regional states and lower level tiers have the power and actually dared to refuse proposals or policies from the federal government. I shall call this ‘daring nature of regional states’. Daring nature is a test for well-functioning federalism. All arguments are made with the support of contemporary thinkers and writers in the topic under consideration. South Africa is used as a useful example to show the devolution of power and the daring nature of regional states. In 2002, Uthukela district took the government of South Africa to court on institutional capacity grant (Wittenberg 36-37). This was a case of request for more devolution of power. The dispute was settled out of the court to the satisfaction of the district. Now about 40% of the budget goes to the sub-national governments (Wittenberg 38). I also have discussed the *most binding constraints* to the implementation of the devolution process. The phrase *most binding constraint* is defined from the following two measures of effects:

- A. bottlenecks with the highest degree of distortion; and
- B. Payoff in enhancing performance both in economic and political terms is very high if removed.

I will use the Operational Rules listed by Jennie Litvack, Junaid Ahmad and Richard Bird (2002) in, *Rethinking Decentralization in Developing Countries* to discuss my points. In this paper, I shall use fiscal devolution, decentralization and federalism interchangeably. However, devolution or decentralization is different from federalism mainly with regard to the source of power of regional states. In devolution, power is decentralized by

delegation to the units, where as in federalism the regional states are assumed to be the source of power of their own and even that of the federal government.

b. Federalism and Devolution in General

1. Group Rights

Recognition of group (collective) right can be understood as a corollary of the liberal principle that all human beings should be treated with equal respect and concern (Taylor 1997: 235-245; Henrard 2000: 9). Equality of respect is the basis for the recognition of the rights of ethno-cultural communities because it is ‘a societal culture [which] provides the context within which meaningful choice is possible’ (Carnes 1997: 40). Moreover, the right to identity and cultural recognition are compatible with liberalism because ‘individuals define themselves and live their lives as part of... a group’ (Howard and Donnelly 1996: 269). One of the corollaries of the principle that individuals have the right to be treated as equal moral agents is, therefore, the right to identify with a group one prefers (Kymlicka 2002). Hence, the right to identity, recognition and protection of one's ethno-cultural identity is ‘a fundamental interest of human beings’ (Carnes 1997: 40). Taylor also makes a very similar point: ‘recognition of distinctive cultural identity is not just a courtesy we owe people. It is a vital human need’ (Taylor 1997: 226). Under international law, the right to identity is stipulated as one of the fundamental rights (Thornberry 1995, cited in Henrard 2000: 12).

Furthermore, certain ethnic culture, language, land and way of life (pastoralism for example) could, for some people, be essential to the definition of the ‘self’, and it could also be the source of meaningful conception of life and worldview (International IDEA

2001; Taylor 1992: 36-39). Some forms of cultivation, land and its resource (such as forest) may also constitute the basis of the existence and social cohesiveness of communities. Consequently, some ethno-cultural communities may be endangered to the edge of extinction due to the decision of majority population (state) such as huge development projects (dam construction or resettlement or conservation) (de Wet 2003; Cernea 2000). In worst cases, deliberate policies of oppression and obliteration of ethno-cultural communities have been implemented (Kymlicka 2004: 35-48, Taylor 1997: 244). In many parts of the world (for example Sri Lanka and Philippines), state resettlement and large-scale migration that ‘compromise local autonomy, particularly over territory and cultural identity’ were strongly opposed and led to popular ethno-cultural communities insurgency (Oliver-Smith 1996:82). Some Ethiopian farmers in South by referring to their place of birth as a basis of their identity did not volunteer to the new resettlement carried out a few years ago. They question ‘how can one leave an area where one’s umbilical cord is buried’ (Welde-Sellassie 2003:5) refers to this assertion.

In the words of Oliver-Smith these questions, concerns and opposition of ethno-cultural communities are because ‘territory not only consists of resources, but is also the basis of a particular way of life that people have a right to maintain’ (Oliver-smith 1996:96). Land and its environ is reservoir of identity—located in a space. Thus, denial of recognition of ethno-cultural communities to exercise and preserve their culture is a violation of human rights (Beyani 2000:49) and ‘a form of oppression’ (Taylor 1997: 225). Moreover, shrinking such freedom is not in the interest of liberalism (Kymlicka 1989: 112-113). Due recognition of ethno-cultural differences and tolerating a democratic expression of

these differences is compatible with political liberalism. Allowing a public space for those who want to exercise their identity would further liberalism by expanding and maximizing freedom. After all, minority group and indigenous people's rights aim at protecting such group from illiberal systems of governance (Kymlicka 2004: 13).

In some cases, recognition is not enough; preservation of cultural identity could be legitimately demanded by many communities (Taylor 1997: 235). Preservation of distinctiveness of identity may also involve some sort of exclusion of non-members. Gellner summarize this point as follows: 'the human need to belong, to identity and hence also to exclude' (Gellner 1964, cited in Turton 1997: 92). This is exactly what Charles Taylor wants to say when he wrote: 'We' that is an 'I' and 'I' that is 'We' (Taylor 1997:235). For some to possess group identity is to have honor in this sense, it is essential that not every one have it' (Taylor 1997:228). The most obvious case is when others endanger the existence of cultural distinctiveness of a community. This requires a state to actively preserve such ethno-cultural communities (Carnes 1997). It can be argued that ethno-cultural communities have group rights that morally justify self-preservation (Oliver-Smith 1996:96). Constitutional protection and preservation of ethno-cultural communities is also politically appropriate particularly in countries where ethno-cultural communities were dominated and disadvantaged (Kymlicka 2004). Now, 'in the era of politics of identity', it is a fact beyond dispute that the conception of the 'nation state' as a melting pot of distinctive identities of ethno-cultural communities is waning (Kymlicka 2003: 1-6; Andreas 2003:1; Young 1993).

Some internationally recognized human rights and instruments adopted for the protection of such rights are recognition of group human rights (Mehari 2004). They confirm the above arguments. These include peoples' right to self-determination as provided under the Universal Declaration of Human Rights (UDHR), the 1966 International Convention on Civil and Political Rights (ICCPR); freedom from Genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (The Genocide Convention) in protection of a race or ethno-cultural community as groups of one Gene. 'Genocide' as a term is a sum of 'gene' and 'cide' similar to the term 'homicide' which is the sum of 'homo' and 'cide' —mean killing of a person and murder of an individual. Similarly, 'genocide' is the killing of 'gene' and gene is not an individual marker but of race, group of people. As the history of the Genocide Conventions shows it was mainly promulgated to fight racial holocaust (of the Jews race in the hands of Hitler Germany) similar to that of the World War II.

Anti-discrimination rights based on gender and race such as the 1971 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 2007 Declarations on the Rights of Indigenous Peoples. These are few international conventions among many recognizing group rights. Several General Comments by UN Human Rights Committee such as General Comment No. 23 on Minority Rights and General Comment No. 27 and General Comment 12 on freedom of mobility also confirm the recognition of group rights such as rights of indigenous and cultural peoples dependent on fishing, a specific activity of livelihood (UN Human Right Committee 1994).

2. Two Kinds of Federalism

Rawls extends the use of his theory of justice as fairness and the *Veil of Ignorance* in an *Original Position* for societies. As a device of representation under fair condition—communities lacking information about their and others' resource, population number etc and only with a knowledge of the existence of others— they would go for fair terms of their cooperation in the same way individuals would go under the *Original Position*. In actual and practical public affairs, non-ideal theory is of first practical importance and deals with problems we face everyday (Rawls 1999: 22). For the sake of perpetual peace, communities having different set of interests and principles of justice would try to gain political autonomy (Rawls 1999:24). Federalism is one of these non-ideal theories of public institutional arrangements. It is possible to have federative unions subject to the aggregated will of diverse ethnic communities. Such aggregated will can be expressed by federal constitution, which stipulates the principles and interests commonly shared by the parties to the constitution and the areas and interests to that are peculiar to the parties. This is what is called margin of appreciation in European Human Rights legal system—no common conception.

There is no full-fledged theory of federalism which could explain all kinds of federal arrangements. Rather there are characteristics widely and commonly shared among federal systems. Based on the genesis and few commonly shared characteristics of federal systems, there are two kinds of federalism: *Holding-together* or *coming-together* federalism (Andreas 2003:1). Holding-together federalism necessitates the empowerment

of the constituent unit of the federation. It divides sovereignty among the constituent regional states. Conversely, in the case of ‘coming-together federalism’, like EU or the USA, the member states unite to establish a union/state by sharing part of their sovereignty with the federal union/state. Consequently, the direction of empowerment in a coming-together federalism is towards the Union or central government, while in a holding-together federalism it is towards the constituent units. The empowerment of regional states in holding-together federalism has a restrictive implication on internal migration, if the regional states wish to be so. The above distinction between the two kinds of federalism is very helpful as the author argues that human rights of non native residents in a *coming-together federalism* (like EU and USA) would naturally be more protected than in a *holding-together federalism* (like that of Ethiopia and India). This is one of the major problems Ethiopia is facing as result of the new federal system.

This section has briefly attempted to provide a summary of some of the literature that focus on the moral ground and human rights justification for the ethno-cultural communities’ rights to recognition and preservation of their distinctiveness. The difference between two kinds of federalism is also mentioned briefly. The next sub section explains how ethno-linguistic federalism could be taken as one of the institutional mechanisms of accommodating rights of ethno-cultural communities.

c. Ethno-linguistic Federalism

As stated above, the failure of unitary systems to accommodate the claims and address the concerns, of ethno-cultural communities compelled many states to change from a

unitary system to a federal system (Kymlicka 2004: 11). There are more than 24 federal countries in the World. The trend is that unitary states change to federal system, not the other way around. Ethno-linguistic federalism establishes and legitimizes the territorial autonomous self-government of ethno-cultural communities. From this perspective, ethno-linguistic federalism could be seen as an institutional mechanism for accommodating ethno-cultural diversity. Moreover, many experts agree that ethno-linguistic federalism may also serve as a tool of conflict-management (Kälin 2003: 6-9; McGarry and O’Leary 2004: 1). Ethno-linguistic federalism is also recommended especially in countries where ethno-cultural communities are ‘arbitrarily joined or divided’ by colonial powers and where secessionist Ethno-linguistic mobilizations are strong (Andreas 2003:1). By ensuring power sharing between the centre and the units, ethno-linguistic federalism can ‘hold’ a country united if it is threatened by disintegrative forces (Horowitz 2001: 611-619). Such federalism is referred to as ‘holding-together federalism’ (Andreas 2003:1). For example, Ethiopia, Switzerland, India, Spain, Nigeria, and Belgium use ethno-linguistic federalism to ensure their respective territorial unity (Kymlicka: 2003; Andreas 2003; Kimenyi 2001; Osaghae 2001; Weiner and Katzenstein 1981). Self-governments in Quebec (Canada), and in Scotland (United Kingdom) have also basic elements of ethno-linguistic federalism (Huntington 1993: 271-278). Now the trend to adopt federalism that promotes the rights of ethno-cultural communities is increasingly seen as one of the ‘good practices of a number of states’ (Kovacs 2002: 343-348; Weiner and Katzenstein 1981: 137).

II. Ethiopian Federalism

a. From Legal Perspective

Since 1991, Ethiopia is implementing an ethno-linguistic federal constitution. This constitution has established nine ethnically based regional states to accommodate ethnically diverse society of societies with a political history of ethnic domination (Andreas 2003, Mehari 2004). Ethiopian ethno-linguistic federalism is designed to address the ‘national question’ (a popular name for the 1960s struggle against Ethno-linguistic domination in Ethiopia) (Markakis 2003: 5). In Amharic, official language of Ethiopia, it is famously referred to as ‘Ye Biher Bihereseb Tiyaque’. To address this question, Article 39 of the federal constitution stipulates that every ethno-cultural community has its own regional state and territory. Accordingly, there are nine regional states. Tigray, Afar, Amhara, Oromia, Somali regional states (taking the name of their dominant native inhabitant ethno-cultural communities) are more or less ethnically homogeneous with a dominant majority ethno-cultural community at regional level. The remaining regional states (the South Nations Nationalities and Peoples (Southern Regional State), Gambella, Benshangul/Gumuz and Harari) are multiethnic without a dominant Ethno-linguistic community. Under each regional state there are *Zones*, *Woreda* (District), and *Kebele* (Neighborhood associations).

As the federal constitution has conferred an unlimited right to self- determination to ethno-cultural communities, the regional states are also expected, as some already have, to grant special administrative status to minority ethno-cultural communities by creating special zones called *Liyu Zone* or special districts known as *Liyu Woreda*. There are six

special districts: one in Amhara regional state and five in the Southern Nations, Nationalities and People's regional state. The more linguistically diverse a regional state is, the more *Liyu Woredas* it is expected to have (Mehari 2007).

b. The Ethiopian Federalism and Ethiopian Peoples' Revolutionary Democratic Front (EPRDF)

EPRDF, the main architect of the Federal Constitution and the party ruling the country for the past 17 years, is known for its strong support to Article 9 (sovereignty of ethno-cultural communities), Article 39 (the right to self-determination and secession), and Article 40 (collective ownership of land) of the Federal Constitution. In the eyes of many people, EPRDF is no more EPRDF, if it changes its political stance on these constitutional provisions. These provisions are the building bricks of EPRDF. In fact, EPRDF is almost synonymous with ethno-linguistic federalism, the right to secession and collective land ownership. I shall discuss the constraints on implementation of federalism in general and those coming from EPRDF's structural shortcomings affecting the federal system and devolution process in Section II (page 20-30) in detail.

c. Opposition to, and Criticisms on, the Federalist Arrangement

After 17 years in power, EPRDF is criticized from two but extremely opposing political positions. Some characterize EPRDF as pro-secession, a force that is relentlessly working to disintegrate the country, yet others portray EPRDF as anti-self determination of ethno-linguistic communities, a government with intention of continuing the hegemonic domination that prevailed for long time in Ethiopia. People with former position argue that EPRDF is implementing the constitutional right of ethno-linguistic communities

with an ultimate aim of disintegrating Ethiopia. They believe they have to struggle to abolish or/and amend the federal nature of the Federal Constitution. These are opponents of the federal system in place. They believe that EPRDF is sincere in implementing the Federal Constitution by respecting the ethno-linguistic federal arrangement, particularly Article 39 and Article 40 of the Federal Constitution. They also argue that by legitimizing ethnicity as the only valid marker for membership of a homeland regional state, EPRDF's policy has impacted negatively on the economic and social development of the country as well as the political development. On the contrary, people with the latter position argue that EPRDF's commitment to ethno-linguistic communities' self determination is a sham, and is a method of perpetuation of the domination that prevailed for long time. In short, they believe that Ethiopian ethno-linguistic federalist arrangement is a continuation of domination by other means. These people rather are of the opinion that the Federal Constitution is not fully implemented. They demand effective implementation of the federal constitution. Some Ethiopian scholars such as Ali Said (1998) even argue that more devolution of economy, as it is done on political power, is necessary if Ethiopia has to remain peaceful (Ali Said 1998: 114). In sum, even if both positions are in opposition to the ruling party, they, however, have two diametrically opposed position on the federal system: the first opposes ethno-linguistic federalism and the Federal Constitution, the latter demands a full implementation.

d. Public Reaction

The author of this paper is of the opinion that the public reaction to the ethno-linguistic federalist arrangement in Ethiopia can be summarized into the following three views:

first, those who support ethno-linguistic federalism as a matter of human rights of ethno-linguistic communities to self-determination, including and up to, secession. These are forces of diversity and freedom. They support federalism even at the cost of unity. They believe that federalism is the only means to promote freedom, to undo the legacy of ethno-linguistic domination, and to check tyranny. Second, those who believe that ethno-linguistic federalism as a regrettable but the only way to keep the country unified and prevent disintegration. This is a calculated version of unity. They view ethno-linguistic federalism as means to strengthen unity. We may call them forces of calculated federalists: inherently they are opposed to secession. They support diversity for the sake of unity. Third view is held by those who are totally opposed to ethno-linguistic federalism. They want to do away with it. Rather they want either other form of federalism or a unitary system to be placed. All have legitimate and apt concerns, which demand serious consideration but not equally. The third position can lead to blind nationalism; and then to violent conflict and instability. It can cause a total disregard to democratic rights leading to group injustice and probably massive human rights violation. Moreover, it could lead ultimately to disintegration of the country- the very situation the holders of this view abhor.

What is particular to Ethiopian federalism is that the right to self-determination up to secession may prevent the central government from tyrannical inclination and discriminatory treatment of ethno-cultural communities. A reversal of the constitutional rights of ethno-linguistic communities by either the central or state government would be politically costly. Any attempt of discrimination among the ethno-cultural communities,

or domination of one ethno-linguistic community by another, or unconstitutional seizure of political power at center may put the unity of the Country at risk least as ethno-linguistic communities may attempt to exercise their constitutional right to secession.

e. From Historical Perspective

To put it in a historically perspective, the author this of this paper believes that framers of the federal constitution had five choices. The first choice is a blanket denial of the existence of diversity and its political expression. The second choice is promoting Ethiopian nationality (Pan-Ethiopian politics) as overarching ideology without recognizing or denying the existence of ethno-linguistic communities. The third choice is promoting Pan-Ethiopian nationality as overarching ideology and recognizing ethno-linguistic communities but disallowing any political expression and space for ethno-linguistic communities. The fourth one is promoting Ethiopian nationality as overarching but also recognizing and allowing political expression and territorial self rule for ethno-linguistic communities. The fifth choice is promoting human rights and democracy as overarching ideals regardless of Ethiopian unity.

With the exception of the first policy option the rest are policy options that could have been viable pursued. The best policy option is however the fourth one. This is to be seen from historical prism. There are two reasons for this. It is true that ethno-linguistic communities might be more ‘responsive to ethnic than to social or democratic slogan’ (Krylow 1994: 240). Politically speaking, it is right that mobilization on ethno-linguistic lines was, and perhaps presently is, easy in Ethiopia than mobilization on overarching

countrywide ideals and principles. However, one has to note that ethno-linguistic domination was the cause of such responsiveness. It is also wrong to assume that responsiveness to Ethno-linguistic slogan is necessarily anti social or undemocratic. The Ethiopian ‘national question or Yebiher Biherseboch Tiyake’ was a question for democracy and human rights. It was a slogan for equality and liberty.

Secondly, ethno-linguistic based liberation fronts were the forces that toppled the former military rule. They were also the main forces behind the drafting of the federal constitution and would not commit suicide by promulgating a law that disbands them. Furthermore, such choice was not only impossible but also undesirable as the country was in need of strong government to ensure peace and stability. No single federal system is universally superior. Any constitutional institution as a politico-legal and social constructs has ‘to reflect the history and culture of the society, its level of economic development and social structure, ethno-linguistic composition, and most importantly the goal of its leaders’ (Huntington 1993: 267). Given the legacy of ethno-linguistic domination and Ethiopian past political history, the forces that toppled Derg opted for ethno-linguistic federalism. And it has to be noted that ‘political parties reflect the principal social identities and cleavages within society. In Ethiopia the principal cleavage appears to be ethno-linguistic...and regional [cleavages]’ (Huntington 1993: 267). Given these cleavages and the ethno-linguistic heterogeneity and history of ethno-linguistic domination in Ethiopia majoritarian democracy would have furthered ethno-linguistic domination and disintegration because the majority (majority by power but not necessarily by number) ethno-linguistic group would remain in power permanently and

the minorities will be in opposition or at the benign concessions of power (Mehari 2004). Consociational democracy where ethno-linguistic communities would be meaningfully represented in all government institutions were one of the options presented to the framers of the Federal Constitution. The outcome of compromises of these ethno-linguistic based liberation forces is the Ethiopian Federal Constitution. The Federal Constitution is a constitution under which ethno-cultural communities are first, the ultimate sovereign entities where constitutional power of both federal and regional states rest. They are, second, constitutionally entitled to establish regional state of their own state independent from Ethiopia. In short, under the Ethiopian federal system, the ethno-linguistic communities constitute the federation (Mehari 2007).

As argued elsewhere, ethno-linguistic federalism has proved instrumental in advancing rights of principally indigenous and minority ethno-linguistic communities (Mehari 2007, Mehari 2004). One advantage of federalism is its role as an instrument to strengthen fundamental rights. In this regard, Henkin has correctly stated that “[i]n many countries, the autonomy granted to local units is designed to assure self-determination and the rights of minorities and their members against abuse by national majorities” (Henkin 1987: 392).

One can also view the Ethiopian federal system is mainly designed as means of conflict management—political solution to political concern (Mehari 2004). It is intended to serve as tool to contain disintegrative forces and to create a balance between forces of unity and diversity. It was adopted to address concerns of the forces of diversity and to avert the

secession inclinations (Mehari 2006). For this reason no matter how long the ethno-linguistic based Ethiopian federation will last, it is however, predictable that there would be a strong resistance to any haste change of the existing arrangement.

Some scholars, for example Gamest, have commented that the adoption of Ethiopian federalism was a ‘fundamental error’ because it is based on ethnicity and will ‘deeply imprint’ ethno-linguistic identity (Gamest 1995, cited in Turton 1997: 81). In Ethiopia, ethno-linguistic identities were already deeply imprinted before the adoption of ethno-linguistic federalism in 1994 due to the ethno-linguistic domination that existed for long time in Ethiopia (Mehari 2004). Politicization of ethno-linguistic groups or ethnicization of Ethiopian politics is not a one-day event due to promulgation of the federal constitution; it is an outcome of long political history of Ethiopia. What is new is that now ethnically based political mobilization and power sharing is constitutionally legitimized (Mehari 2006). Under ethno-linguistic federalism, ethno-cultural communities are not only politicized cultural and linguistic communities but are entities with constitutional standing (Mehari 2006). And it is worthy to note that liberation fronts mobilized on the basis of ethnicity were the framers of the Federal Constitution (Mehari 2006).

In nutshell, Ethiopian ethno-linguistic federalism is a response to the ‘unfavorable conditions’ to establish a unitary system.

f. Negative Aspects of Ethiopian Federalism

Every policy will have intended and unintended consequences which could be positive or negative in terms of their contribution to peace and development. From policy making prism, however, the best policy maker takes stock of the risks of unintended consequences and puts in place a mechanism for addressing both the intended and unintended consequences of the specific policy. A major negative and perhaps unintended consequence of ethno-linguistic federalism is that though it provides an effective antidote to tenacious conflicts rooted in ethno-linguistic identity at national level; it aggravates existing and spawns new, and perhaps no less difficult, conflicts. Conflicts over control by ethno-linguistic communities, especially pastoralists, of resources such as arable and grazing lands, rivers and other natural domains were existent however with the legally sanctioned ethno-linguistic borders, conflicts are aggravated and legal contestations created. The second negative consequence of ethno-linguistic federalism has to do with violations of minority rights and individual freedoms living in a given ethnically based administrative units. I shall discuss these three negative consequences of all ethno-linguistics federalism below.

1. Ethno-linguistic federalism and localization of conflicts

In some cases, Ethiopian ethno-linguistic federalism has aggravated existing traditional and all similar problems it was intended to address at national level. An example is the ethno-linguistic domination of minorities within regional states and ethnic conflict for grazing land and water. Ethno-linguistic based federalism may also cause new kind of conflicts (Kälin 2003:9) because borders and legitimate power sharing are based on 'politics of number' (Mehari 2004; Basta Fleiner 1996). Claims and rights are to some

degree ethnicized (Mehari 2007). Nonetheless a note of caution is necessary here; ethnic federalism *per se* does not cause of ethnic conflict. Switzerland, Belgium and the United Kingdom are good examples for this. However, in Ethiopia ethno-linguistic federalism has aggravated localized conflicts due to combination of factors. To explain the above assertions lets see an example.

One example of how and why Ethno-linguistic federalism has localized conflict is Gambella. At the end of 2003, Gambella regional state of Ethiopia experienced violent inter-ethnic conflict. More than 20,000 people were internally displaced and fled to Sudan (UNIRIN 2004). The violence was sparked by an attack on a United Nations (UN) vehicle in early December 2003. Eight people in the vehicle were killed, including three UN refugee workers who were trying to construct a new refugee camp in the region for the Nuer and other Sudanese refugees. An Anywaa radical group was blamed for the attack. In this conflict, more than one hundred and ninety people were killed and hundreds of homes were burnt (UNIRIN 2004).

First, Gambella is one of the ethnically heterogeneous regional states without a dominant ethno-cultural community due to migration (both forced and spontaneous). In Ethiopia, regional states without a dominant ethno-cultural community seem more prone to inter-ethnic conflict, than those with a dominant Ethno-linguistic community. Second, it exhibits the phenomena of spontaneous and pastoralist migration (of the Nuer) and its demographic and other effects on the region such as on the Ethno-linguistic based power sharing system and conflict over resources. In Ethiopia, regional states with pastoralist

population seem more prone than those with sedentary population. Third, Gambella exhibits cross-border migration (of the pastoral Nuer, Anywaa refugees fleeing the conflict in Gambella to the Sudan, and Sudanese refugees fleeing to Ethiopia due to the Civil War in Sudan). Fourth, Gambella is one of the regional states with a porous international border with Sudan, where the national identity of the inhabitants of bordering areas is very fluid. This has created arguments and disagreement about the outcome of the 1994 population census, because of the implications of the census results for power sharing between ethno-linguistic communities. Fifth, Gambella has many pockets of 1980s resettlement villages and many old and newly constructed refugee camps run by the United Nations High Commissioner for Refugees (UNHCR). These settlement villages and refugee camps were at the center of the conflict, and were attacked repeatedly. The effect of large-scale migration (about 110,000 forced migrants) on a regional state such as Gambella with a population of about 160, 000 is huge in ethno-linguistic based federal system. Now let's see why these factors affect power-sharing in federal system and their contribution in aggravating existing and well know conflicts, cause new conflicts and localize previously known national conflicts if some mechanisms are not put in place.

Article 32 of the federal constitution stipulates that freedom of movement and residence within the federation is a fundamental human right. Nonetheless, it is also necessary to notice that freedom of movement and residence is not only about freedom to move and reside but it is also the freedom to remain in the place of one's choice. It includes the freedom 'not to move'. Freedom of movement and residence is a protection against

forced displacement and unlawful eviction (UNHRC 1994: par. 7; Beyani 2000: 57). Therefore, freedom of movement and residence has two parts; first the right to move and select a place of residence, and second, the right to be free from forced displacement and right to reside (remain). Moreover, conjoined reading of the Articles 8, 9, 10, 13 of the federal constitution, General Comment 12 and paragraph 5 of the General Comment No. 27 make it clear that '[t]he right to move freely relates to the whole territory of a State, including all parts of federal States' (UNHRC 1994, emphasis added).

2. The Politics of Number and Power: *Minority by power, Majority by number and vice versa*

In ethno-linguistic federalism, power is shared in a direct proportion to the population of ethno-cultural communities. When ethno-cultural communities are constitutionally recognized as bearers of group rights such as self-determination and self-rule, population composition and demographic changes would have many implications. Bookman noted:

“[The] importance of number in determining both the political and economic power of a group relative to others is only valid in a legal system in which rights are based on group rather than individuals (Bookman 2002:152).”

The relative numerical superiority of ethno-cultural communities would entitle more power. One outcome of such demographic change is the creation of what I prefer to call 'minority by number but majority by power' situation. A politico legal system that supports 'minority by number but majority by power' is illiberal by nature. The only liberal solution is to change such situation and grant the majority power to the majority population. These kinds of migration and resettlement will naturally, therefore, threaten

the first inhabitant of the regional state. Therefore, in ethno-linguistic federalism, freedom of mobility and migration could easily affect the demographic balance and power relationship between ethno-linguistic communities. Reversal in the population ratio could create power imbalance, and the need for adjustment (Mehari 2004).

The Ethiopian ethno-linguistic federalism currently faces both tendencies of centralization from federal institutions and political parties including the ruling party, and some exclusionist tendencies by regional state party and officials to members of other ethno-linguistic groups. To cite a specific example, cumulative reading of Article 34, on cultural and religious marriage, Articles 51, 52(2), 55, on division of power, of the Federal Constitutions make it clear that regional states have a legislative power on issues of cultural and religious affairs, and complete jurisdiction over civil laws and to some degree on criminal law. This compounded with the right of self-determination and self-rule of ethno-linguistic communities may collide with many individual rights stipulated in the Federal Constitutions. One such incompatibility is family law, which is under the legislative power of regional states. In some cultural communities polygamy is allowed and encouraged in away that is detrimental to the rights of women. It can also threaten the individual rights and the possibilities of democratic participation of migrant persons belonging to other minorities or to the ethno-linguistic group that has the majority at the federal level (Kalin 2003: 6).

III. Human Rights in ethno-linguistic based Federalism

One of the negative consequences of holding-together (ethno-linguistic) federalism is its tendency to restrict freedom of movement and discrimination of non-native residents. The ethnic boundaries created by the federal constitution of Ethiopia have legitimized the resistance to spontaneous inter-ethnic migration. Such resistance (for example from Anywaas to the Nuers, and from Ari to the Mursi migration) sometimes has led to confrontation and violent conflicts.

Moreover, as Weiner and Katzenstein (1981) correctly pointed out in the Indian case, ethno-linguistic federalist political arrangement favors the members of the native ethno-cultural communities (son of the soil) than the settlers who consider themselves as ‘migrant citizens’. Ethno-linguistic federalism may also be used as excuse to violate rights of migrants by legitimizing ethno-linguistic based competition for power and resource and unconstitutional exclusion of others.

[e]thnicity-based sub-national governments exacerbate minority problems whenever they are unable to integrate or even tolerate persons on their territory who are of a different Ethno-linguistic origin (Kälin 2003:9).

People, who reside in areas inhabited as the ‘homeland’ of ethno-cultural communities different from that of theirs, feel insecure, out of place and uncertain about their right. Such policy changes obviously have made knowledge of the official regional state language necessary so as to remain or work as a public servant. In some cases settlers would feel threatened by the ethno-linguistic federalist state structure and are disadvantaged by the language and education policies that provides for the provision of

public service and primary education in native language. Equal opportunities have to be given to those culturally and linguistically capable of serving the regional state public offices equally to those affiliated to the inhabitant ethno-linguistic group by blood. In the absence of rationale, unequal treatments of citizens have no legal or moral rationale. It will amount to discrimination and violation of Article 25 of the Federal Constitution.

It is also easy to identify potential and hypothetical cases of violation of rights stipulated in the constitution. Laws governing election to public office, civil service employment, language and education and investment are potential areas liable for discriminatory laws and practices in regional states with naturally dominant ethno-linguistic groups. As per Article 52 of the Federal Constitution, the regional states have wide-ranging power within their jurisdiction such as laws of public service and employment, administration land and natural resources formulation and execution of economic, social and development policies. Some of discriminations are logical consequences of adopting policies of ethno-linguistic federalism in particular and multi-culturalist preferential policies. Not all ethnically discriminatory regional state laws, decisions and practices are prohibited. Only those that are unconstitutional and not reasonably justified in a democratic society are disallowed. In fact, in ethno-linguistic federalism like that of India opening more opportunity for the indigenous inhabitants of regional states is taken as sign of success of ethno-linguistic federalism (Weiner and Katzenstein 1981: 121-135).

Regional states may not be willing to protect and redress violation of human rights and cases of inequality in attempt to prove ethno-linguistic solidarity. While the justification

for the establishment of the very ethno-linguistic based regional state was the demand for equity and equality, human rights and freedom from domination, it is paradoxical not to accept equality for migrant and members of other ethno-cultural communities in the regions (International IDEA 2001:95). Chapter three of the Federal Constitution provides a proviso to the advancement of self-governance essentially of ethno-cultural communities: the regional state administration has to respect all human and democratic rights to all people under their jurisdiction. This proviso furnishes a constitutional limitation over constitutional power of all ethno-cultural communities and their regional states. The regional states must fully respect the rights of these migrants as minority within the regional state and represent them in the regional state, and allow political participation.

It is right that the federal system has empowered ethno-cultural communities and has to some degree offset the past historical legacy of ethno-linguistic domination that prevailed for long time in Ethiopia. It has also concretized the rights of minority and indigenous communities. However, even if the *de jure* equality of ethno-linguistic communities has been constitutionally ensured, much remains to be done to ensure *de facto* equality in many areas where marginalized ethno-cultural communities has limited capacity to make use of these constitutional rights.

In the last part of this paper, an attempt will be made to recommend what kind of legal and institutional remedies could be taken to address the above shortcomings of the federal system.

IV. Economic Justification for Federal Arrangement

A part from the political benefits of federalism such as conflict mitigation, peace, unity, human rights and local participation in decision making, federalism could be good for the economic development of Ethiopia. However, in order to have a federalism that promotes development, it should be what Weingast (1995) named “Market-Preserving Federalism” with the following three basic elements:

1. Federalism grants real economic powers to units

A federal system should grant real administrative and progressive empowerment of the units of the federation particularly “a primary regulatory responsibility over the economy” (Weingast 1995:4). A Market-Preserving Federalism provides laws and institutions for self-rule and shared-rule and mutual-constraint able to protect the units from tyranny of the centre (Weingast 1995:22).

2. Federalism enables to create a common economic and market space

Federalism also creates a common market and economic space by prohibiting any barriers on internal trade, freedom of mobility of labor and goods. Most of China’s growth has occurred in the areas with the fewest barriers to the rise of an export economy (Weingast 1995:22). The *commerce clause* of the US is intended to ensure a common market for America by prohibiting any regulation of inter-state market and from banning the erection of various forms of trade barriers. Such laws provided for both local economic policy making powers and at the same time ensuring a common market. Similarly the Federal Constitution of Ethiopia, in paragraph 1 and 5 of the preamble,

stipulates for a common political and economic space of the federation. Moreover, the House of Federation, under Article 55(6) of the Federal Constitution, is granted the power to initiate laws towards common economic space. Nonetheless there is still gap in the legal and political framework that needs improvement to foster internal trade, mobility of people and flow of goods and service without barrier.

3. Federalism offers incentives for economic development competition among units

A market-preserving federalism introduces economic development competition among the units by granting real economic and public policy making power. This would 1) enhance competition in providing the best public policy package (such as tax, security of law, social services) to attract investment, skilled labor and services; and 2) units with the best law enforcement and investment protection will grow faster than those providing less. Units will have to “weigh the benefits from their political decisions and adverse effect to investment and resource relocations” (Weingast 1995:5). A Market-Preserving Federalism needs block budget grants and fiscal discipline so as to make the units take responsibility for their fiscal management. Clearly, basic infrastructural investments such as transport and telecommunication infrastructures, defence and security and foreign affairs as well as printing money should remain under the central government as stipulated under the Federal Constitution. Fiscal responsibility and prohibition of printing money by units would force the units to work to attract more funding (Weingast 1995:5). Based on these measures, Weingast argues that

“Argentina, Brazil and India are all *de jure* federal systems but not market-preserving federal system. In all of these countries, the political authority of the

national government compromises the independence of the local political authority (28).”

Similar argument could be made in the Ethiopian and South African federal systems. The reasons could be various: shortcomings in the legislative framework, and mismatch between the *de jure* and *de facto* or the level of economic development.

At the same time, a word of caution is important here: federalism, and other public values, is not necessarily pursued only from their market-preserving values or for the consideration of cost-effectiveness. Actually, public sector values could rather be with the purposes to rectify market failures not profitability. Non-monetary values such as peace and stability, human rights and group justice are the justification for such institutions. Otherwise, seen from monetary values only, federalism is not cheap institution to maintain particularly to least developed countries like Ethiopia. Protecting and promoting group rights (such as introduction of native language in school and public offices, preservation of culture) too are very expensive. Federalism requires effective institutions such as courts that are independent enough from ethnic biases; and judges and lawyers that understand the delicate nature of ethno-linguistic federalism. Ethnic federalism also require well-staffed public service institutions and well-educated public servants who understand the federal constitution very well. Above all it requires political forces that are sensitive to the concerns and equality of all ethnic communities, and a leadership with a political will and commitment to implement both the group and individual rights. This makes ethno-linguistic federalism very expensive to maintain.

In following section, I shall focus on the fiscal and economic aspect of devolution process and how far it is implemented.

b. Devolution Process in Ethiopia and Its Policy Justifications

According to the World Bank data for 2005, Ethiopia had a GDP growth rate of 8.7% in 2004 (World Bank 2005). However, Ethiopia is one of the poorest countries with annual per capita income of \$160. \$27 (constituting 17%) of the per capita income comes from international aid, making Ethiopia one of the highest aid recipient countries. International aid focuses on the implementation of Ethiopia's Sustainable Development and Poverty Reduction Strategy Program (SDPRP), which aims mainly to contextual and implement the Millennium Development Goals (WDI 2005). Most observers of the present Ethiopia, particularly the international aid community notes that Ethiopia has shown a stable macroeconomic growth and high but manageable inflation through aggressive reform of the public sector. David Bevan (2001) summarizes this observation as follows:

“The present government has, for the most part, been quite impressive in macroeconomic policy, fiscal reform and public expenditure management. It has embarked on a radical devolution program and an ambitious civil service reform. Its record on privatization has been mixed, and privatization has proceeded at a much slower pace than elsewhere in sub-Saharan Africa” (2001:2).

As per Article 50(4) of the Federal Constitution, regional states are expected to carry out devolution of power to the lowest administrative units. Similar to the federal arrangement at central level, devolution of power too is a constitutional requirement.

With the establishment of the federal system, several programs of reform have been initiated by the Government of Ethiopia (GoE), one of which is the Public Sector Capacity Building Program (PSCAP). Devolution is at the center of PSCAP reform programs. Devolution of power aims to empower the lowest constitutionally recognized local government units, which are the *Woredas* (districts). This process is called the District (*Woreda*) Level Devolution (DLD). It has been carried out since 2002/03. The World Bank, United Nations Development Program, Decentralization Support Activity (DSA) of the Harvard Project at the Ministry of Finance, and other donors are the major sources of funding for the devolution program. In general, the main objective of DLD is to improve service delivery to communities by their own local governments and thereby remove reliance on federal and regional state. DLD devolves decision-making powers to local authorities with a full responsibility for consequences of their decisions. In the Ethiopian case where more than 85% of the population is agrarian, it was intended to bring decision making near to the villages of the agrarian communities from central towns. In nutshell, it aspires to enhance the mandate of the districts in setting their own priority, building the capacity to make decisions, and implement them. Similar to what Litvack and *et al* (2002) pointed out, the specific aims and intentions of devolution are:

1. better sense of ownership and priority: as decision-making is closer to the constituents, and therefore it become more responsive public expenditure and allocation of resource decision making through better and easy for participation;
2. better accountability by bringing decision making near to the villages;
3. easy and speedy mobility of people and flow of information;

4. better willingness of paying tax and better revenue collection: as the tax payers see that allocation of resource is made based on their priority; and
5. increased competition among the units for better services: with the power devolution and responsibility to provide a better service.

As Litvack and *et al* (2002) pointed out indeed political devolution (federalism) could be the cause for good economic performance. He said:

“Although politics are the driving force behind devolution in most countries, fortunately, decentralization may be one of those instances where good politics and good economics may serve the same end. The political objectives to increase political responsiveness and participation at the local level can coincide with the economic objectives of better decisions about the use of public resources and increased willingness to pay for local services.” (Litvack 2006:3)

However, Litvack is not clear on how to measure the success and failure of devolution. How does one measure the success of fiscal federalism and devolution? I use the following five conditions to measure the success of the political and economic devolution in Ethiopia:

1. assignment of powers, functions and responsibilities of local financing and fiscal authority for the provision of service by local governments;
2. adequate information for beneficiaries for, and transparency in, decision making;
3. mechanisms for effective participation of the local people;
4. mechanisms for ensuring accountability of performance; and
5. harmonization of fiscal and political decentralization.

The question is then how far are these conditions observed in Ethiopia both in practice and in law? The following part discusses this point and is based on Articles 74-100 of the Federal Constitution.

V. Assignment of Responsibilities: *Political, Economic and Fiscal Devolution*

a. Revenue Collection Powers, Spending Mandates and Borrowing

Rights

1. *Federal Taxation Power of Federal Government*

As in most federal countries, in Ethiopia too, central governments have excessive powers of taxation (Shah 2007:9). Relatively speaking bigger sources of revenue are under the federal government. Taxation powers of the federal government include: employment from the employees of the federal government and its public enterprises and international organizations, federal stamp duties, monopoly tax, value added tax, national lottery, fees from licenses issued and services provided by organs of the federal government. This is on top of the federal government's share on royalty and taxes on natural resources mainly gold and natural gas. Other taxation bases which are not specified in the federal constitution are under the power of the federal government, not under regional state.

2. *Regional State Taxation Powers*

On the other hand, taxation power of the regional states within their jurisdiction include: taxation of employment income from employees of the state government, agricultural tax from farmers, tax on individual traders, houses and other property owned by private persons or regional government, employment, and sales tax from public enterprises owned by the state government, forest products, royalties and land lease fees from small mining undertakings.

3. *Concurrent Taxation Powers (by agreement of the federal and regional state)*

Article 98 of the Federal Constitution provides the concurrent tax bases are: income tax and royalty on big mining, petroleum and gas, employment income tax, income and sales tax from public enterprises owned by regional state and federal government, business organizations, and dividends of shareholder. However, an amendment is made on Article 98 of the Federal Constitution which provides for joint taxation areas. This amendment grants taxation of certain business to the federal government. This includes trans-regional companies and ventures of petroleum and mineral. The amendment aims to ensure fair tax treatment to corporation and companies engaged in mineral and oil related business in different regional states of Ethiopia. The amendment aims at uniformity of taxation, fair allocation of revenues among different regional states, and efficient taxing system by avoiding joint federal and regional parliament meetings. As per the amendment the federal government may delegate this power to regional state.

Hence, in general terms, the major sources of taxation are indeed controlled by the federal government. The powers of regional states in revenue collection are not granted fully. And of those powers granted to the regional states they do not exercise them well for various reasons including the lack of institutional capacity to collect tax. Setting their own development and economic policies and financial decision-making capacity of the different tiers of the government are almost insignificant.

b. Borrowing Rights

In many countries, regional states are aggressive in sharing the pie, but less capable and enthusiastic in collecting and then dividing the taxes and resource they have. They are also ready to spend more and leave the debt to the federal government. Indeed fiscal discipline is a concern of all federal governments including developed countries such as Germany and developing countries like India. Bailout of over-spending regional states could cause inflation. However in Ethiopian context, regions are criticized for not effectively spending the budget allocated to them. Budget absorbing capacity by the regional states is weak and for this reason under-spending is their problem. Hence problem of debt and bailout requests will not be serious problems for some time to come. In Ethiopian law, at any rate, regional states cannot borrow from foreign or domestic creditors without prior approval of the federal government. This shows that regional states do not have borrowing powers. This is an element that should be encouraged and elaborated in the federal system of Ethiopia.

c. Policy Making Powers and Capacity

One of the successes of DLD in Ethiopia is the sense of local ownership of project and empowerment which devolution has brought at local level of governments (IFAD 2005:2). However, apart from this sense of ownership, *Woredas* do not have their own tailored SDPRSP and economic growth strategy (different from development strategy), which is contextualized to their specific needs and with considerations of comparative advantages of regional states (IFAD 2005:2). Moreover, even if SDPRSP does mention sustainable growth, it however does not have a program for economic growth. It mainly aims at poverty reduction. Strategy for poverty reduction is not exactly economic growth

strategy. Maximum target of poverty reduction is food security at national and family level. Where as economic growth strategy is not necessary poverty reduction programmes. As poverty reduction could contribute to economic growth, economic growth would also help the fight against poverty in its trickle effect.

Lessons from the experience of China may be instructive here. China started by granting local economic governance autonomy. The political reform followed. Local political power and freedom to develop economic growth strategy that takes self-discovery of specific regions was an incentive for local officials to strive for economic growth (Weingast 1995: 27-29). So devolution process has played a key role in Chinese economic growth but was carried out in a different style. In the Ethiopian case, the reverse is the true. Indeed given the Ethiopian context, devolution was expected to begin mainly as political reform than economic one. As Litvack and *et al* (2002: 1) pointed out “in some countries, such as Ethiopia, devolution has been a response to pressures from regional or ethno-linguistic groups for more control or participation in the political process”, which signifies that the devolution of political power in Ethiopia is meant to keep the country united by granting significant autonomy to regional states (Mehari 2004).

VI. Binding Constraints towards Market-Preserving Federalism

What are then the constraints holding Ethiopia from having a more successful federalism and devolution? The following five bottlenecks are the most binding and should be removed, so as the Ethiopian fiscal devolution or federalism is to be successful is carried away in a more effective means.

a. Disparity between *de jure* and *de facto* fiscal devolution

In Ethiopia, the *de jure* political devolution is not equivalently accompanied with *de facto* political power devolution to the states. What are formally constitutionally decentralized powers are not actually exercised by local governments. The gap between the *de jure* (legally stated), and *de facto* (what is practiced on the ground), powers of the regional state is wide. Similar problems have been noticed in several other countries such as Argentina, Brazil and India. For devolution to work, the regional states should have the capacity and culture of challenging the federal government. As comparative research has shown, the local elected officials in Ethiopia exercise less authority against the federal government compared to their counterparts in Tanzania and Uganda (IFAD 2005:3). The South African Uthukela district case mentioned in the first pages of this paper is useful here. This district took the government of South Africa to court on institutional capacity grant (Wittenberg 2003: 36-37). Now about 40% of the budget goes to the sub-national governments (Wittenberg 2003: 38). Unlike in South Africa, where districts and regional governments has been daring to challenge the central government, in Ethiopia let alone

districts, regional states have never dared to contest the federal government's specific decisions.

b. Centralizing Institutions and Attitudes

One of the reasons for the disparity between the *de jure* and *de facto* devolved power are the centralizing federal institutions and attitudes that work against genuine fiscal federalism and devolution of power. The two most centralizing institutions are: 1) the central government and its ministries which still maintain monopoly on several areas of public life due to the resource they control particularly from international aid. In turn, as the central governments are dependent on aid, the regional states and *Woredas* do not have fiscal powers in strict sense as they are dependent for their finance on the central government. This in turn limits their capacity; 2) centralizing political parties in favor of either unitary or other forms of federalism that grants limited powers to regional states a point discussed on page 9-15; and 3) EPRDF –as ruling party and the main architect of the federal constitution—controls all the regional state legislative and executive bodies and implements its policies through the party channel. Local elected officials and appointees lack an incentive to think independently and dare to challenge the federal government or to exercise powers granted to them by the federal constitution. Why is this so?

EPRDF is organized under the principle of *democratic centralism* and it exercises strict control over the regional and local governments through party structure. A party organized under the principle of *democratic centralism* functions in the liking of a human

body with head, brain, arms and legs. This division of labor is by nature against federalism and devolution. Federalism is meant to create or allows creation of several and perhaps also different heads, brains, legs and arms. It intends to establish the creation of several and perhaps also different points of thinking, diverse policies and varied ways of execution. Local freedom in political and economic-decision making is essential if federalism and devolution is to effectively function and to foster economic growth. Hence, while the federal constitution provides excellent formal institutional ground for peaceful Ethiopia and ownership of decision making powers including economic ones by local people, EPRDF's party culture and structure does not encourage the implementation of the decentralized fiscal powers effectively. The father of the federal constitution—EPRDF itself through its organizational culture has to move from being constraint to progressively enable regional and Woreda level decision making. Otherwise, the political constitution of the ruling party could effectively antagonize the DLD. Democratic centralism could be an antithesis of federalism.

Ethiopia is not the only country victims of such incompatibility of party discipline and constitutional principles. South Africa, under ANC, is facing the same problem. ANC is a quasi-federal party but with a strict central control (Ahmad 2007). The Premiers of provinces in South Africa could be easily removed by ANC as they are not necessarily the powerful ANC members within that province. The chairman of the ANC party appoints the premiers of the provinces (Ahmad 2007). Party control is very strict from center to province. Hence the primers are answerable to ANC leader who appoints and indirectly controls the legislature and executive bodies of the provinces. Hence, the most

binding constraint to an effective implementation of fiscal devolution in Ethiopia is the culture and structure of political forces at the center and their centralizing drifts and attitudes.

c. Implementation problems and lack of capacity of the regional states to prepare an economic development policies

The third binding constraint in the fiscal devolution process is serious capacity limitations in terms of policy-making technical competence and shortage of expertise. Clearly there are several improvements in the performance of local governments in service delivery and capacity building and the process of devolution. The World Bank and other projects such as the Harvard DSA have expressed their satisfaction over the on-going public service delivery and decentralization in Ethiopia (World Bank 2005, Peterson 2000). However, they also point serious doubts on competence of regional states and *Woredas* to implement the ambitious devolution (DLD). In Ethiopia, well trained and experienced human resource is thin in the region and lower level of the government than the center. Peterson believes that in Ethiopia devolution has dispersed the human capacity as new institutions are created through devolution, and hence devolution should, he argues, evolutionary not revolutionary as the case is in Ethiopia (Peterson 2000: 3). He added:

“The scarcest resource in the public sector in Ethiopia is the availability of capable government staff. No amount of external consultants, commodities or funding can substitute for this resource. The availability and quality of government staff made available determines the timing and sequence of the reform, which reforms will be done and when, and the level of operational efficiency to be maintained while reforms are underway” (Peterson 2000: 24).

To improve the implementation of services, the Capacity Building Programmes has been established to enhance the implementation competence of the regions. This is indeed something that could be improved with more resource and work. Therefore, another constraint in devolution process is lack of human resource to implement the DLD.

d. Weak public accountability of, and lack of incentives for, local officials to exercise their constitutional power

Compared to Uganda and Tanzania, devolution has been carried more aggressively in Ethiopia but with less mechanisms of accountability (IFAD 2005:3). In Ethiopia, officials at local level may not feel accountable to the public. They are less responsible for failure or lack of development policies of their own as there is no strong mechanism of public accountability and incentive for them to do so. Local officials may tend to be more responsive to their party—as their career is highly dependent on their party’s leadership rather than their constituent voters. There are no political incentives for local officials to strive to gain support of their constituent to remain in office. Their term is more dependent on their parties decision than public election. On the other hand those officials who strive to be accountable to the public are either incapable of coming up with new alternative fiscal or economic development policy (due to lack of capacity); or unable to dare exercise their constitutional power (due to lack of character).

VII. Conclusions and Recommendations

Returning to the some of the questions raised in this paper, it is possible to conclude as follows. Indeed, ethno-linguistic federalism has provided solutions to Ethiopia’s several problems of peace and stability, human right and group justice. However, it has also

caused some problems, perhaps equally deserving attention of the regional and federal governments. Many problems of the Ethiopian federalism can be attributed partly to the immaturity of the federal system, constitutional institutions, and political forces.

Three Major problems of Ethiopian Federal System

The major problem can be best categorized in the following three areas: problems of implementation, problems of interpretation, and problems related to legal lacuna and shortcomings of legislative framework. Problems of implementation and interpretation are the main obstacles to the creation of a favorable atmosphere that would enable the federal system to function effectively. Implementation problems—such as violations of human rights of minority groups and internal migrants are encountered as result of lack of understanding or political will of regional state officials to strictly implement the federal constitution. This can also be attributable to the gaps and insufficient detailed laws enforcing the constitutional provisions.

Human Rights-Protective Federalism

One important way of tackling the leading difficulties in federalism and relationship between the center and regions is to increase accountability of officials and conduct training on the relevant laws to increase their knowledge among the concerned organs of the federal and regional state. This will help in building human rights-protective federalism. Apart from cascading the principles of federalism, propagation of good practices of other federal countries might also prove helpful. Education is a means for building a common conception of federalism in Ethiopia. Striking the balance between

the forces of unity and diversity, between regional state power and federal power needs educating and training the officials, academics and public servants at the center but also more importantly at the regional states. At present, most training in general, at least significantly in Ethiopia focuses at the federal level or regional state leadership level. It has to be taken to the lowest level of administrative and other organs of the states such as the judiciary, the legislative and enforcement officials.

In this regard the federal government has to make sure that Chapter Three of the federal constitution on human and democratic rights (of both individual and group rights) has to be observed by all state and non-state actors. In ethnically heterogeneous regional states with no dominant ethno-cultural community (such as Gambella and SNNP), closer constitutional supervision is necessary to ensure two things. One, ensuring power is shared equitably among all ethno-cultural communities (ethno-cultural community which is majority in number should exercise majority power). Two, making sure that the constitutional rights of minorities and internal migrants are respected. This would help in tackling local ethno-linguistic domination, and discrimination. This in turn may contribute to reduce conflict and forced migration.

With regard to pastoralist regional states, the federal state has to work with the regional states on how to prevent and resolve conflicts due to pastoralist inter-regional migrations, and when conflict occurs how to manage it with less human suffering and damage.

Market-Preserving Federalism

A legislation enabling the *Woredas* (districts) to exercise mandates on policy making and designing economic development programs, should be promulgated. Such law should include broader revenue collection and expenditure powers with full responsibilities of local governments, and performance measurement and accountability mechanism over their activities. However, in order to have a decentralization that promotes development, the law should promote what Weingast (1995) named “Market-Preserving Federalism” with the following three basic elements:

- 1. Devolution should grants real economic powers and responsibilities to the *Woredas* and regional states**

Granting real administrative and progressive empowerment of the regional states and *Woredas* is vital. Such provides laws and institutions for self-rule and shared-rule and mutual-constraint able to protect the units from tyranny of the centre and the ruling party. As far as the *Woredas* are highly dependent on federal government budgetary grants fiscal devolution will remain weak. Strings of purse are and will undermine the decentralization process. The regional states should have full financial and fiscal mandate for local units in priority setting and decision making. While they exercise this mandate; they should take responsibility for their decision, allocations, and delivery and performance. Political parties should also be educated in federalism so that they can willfully amend their internal constitutions, cultures and structures inline with the Federal Constitution.

2. Devolution should offers incentives for competition in economic growth among the states

The law should introduce economic development competition among the units by granting real economic and public policy making power. Such law should aim at encouraging competition among regional states in providing the best public policy to attract investment, skilled labor and services and enforcement and investment protection. Hence, the block budget grants already introduced should be augmented with fiscal discipline so as to make the *Woredas* and regional states take responsibility for their fiscal management.

3. Devolution should enables to create a common economic market

The law should ensure a common market and economic space by prohibiting any barriers on internal trade, freedom of mobility of labor and good. The example of China's growth and the *commerce clause* of the US is instructive. Similarly, the law in Ethiopia should have provisions to foster internal trade and flow of goods and service without internal barrier.

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† **About the Author**

A holder of prestigious fellowships at Harvard University and Max Planck Institute, Mr. Mehari Taddele Maru holds **MPA** from *Harvard University* and **MSc** from the *University of Oxford* and **LLB** from *Addis Ababa University*. He has Postgraduate Diplomas in international human rights law including *International Protection of Human Rights* from Abo Akademi Finland, and Certificates in *the Right to Adequate Food* from Central European University and *Ethno-Political Conflict Studies* from the University of Pennsylvania, and *Comparative Studies on Federalism and Multinational States* from University of Fribourg. Currently, he is the Executive Director of the African Rally for Peace and Development and Programme Coordinator at African Union. Prior to joining to Harvard University, he served as Legal Expert at African Union Commission and as Director of the Addis Ababa University Office for University Reform.

He has published several articles related to human rights including on the on-going conflicts in Darfur and peace process in Somalia.

His recent publications include:

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