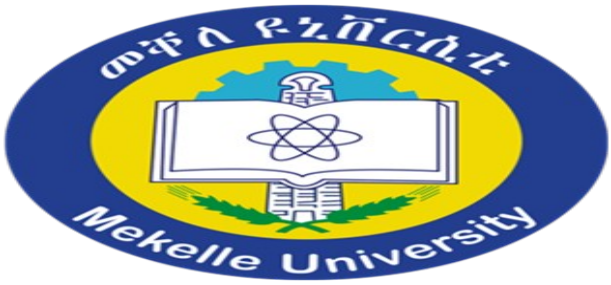
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Research Title: The Impact of Procedural Requirements of the Right to Secession under FDRE Constitution on the National Integrity of Ethiopia

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ACRONYMS

ART- Article

EU - European Union

FDRE- Federal Democratic Republic of Ethiopia

GC- Gregorian Calendar

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

ICJ- International Court of Justices

SNNP- Southern Nation, Nationalities and Peoples

UDHR- Universal Declaration of Human Rights

UN – United Nation

UNGAR- United Nations General Assembly Resolution

USA – United States of America

USSR- Union of Socialist Soviet Republic

KEY TERMS: Self-determination, Secession, FRDE Constitution, Nation Nationality and People

ABSTRACT

Acts of secession considered inherently at odds with the principle of state sovereignty and territorial integrity, because of this fact none of international instruments has recognized it. The experience of different countries show that, the incorporation of secession clause in the constitution leads to state disintegration and collapse. Accordingly, almost all states in the world condemned the legalization of secession. The FDRE constitution however, guaranteed the right to secession to every nation, nationality and people unconditionally and without any limitation. The regional states constitution has gave better protection to national unity and integrity of Ethiopia by introducing substantive requirements for the enjoyment of the right to secession. Furthermore, the procedural requirements of secession enshrined in the FDRE constitution are loose; this puts the unity and integrity of Ethiopia at stake. To save Ethiopia from fragmentation and collapse and to build one political and economic community, the current position of the FDRE Constitution with its secession procedures should be strictly regulated.

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CHAPTER ONE

INTRODUCTION

1.1. Background of the study

Self-determination is one of the most interesting and puzzling concept in both political theory and international law.[1]

The root cause for the demand of secession in the history of human being appears to be subjugation, domination; discrimination and harsh treatment of people by another. For most of human history and continuing in to the present day, the only effective means of secession has been war.[2]

Though, there are numerous examples of secession, some successful and some failed, the first starting point for the interest of secession is the Dutch states from the Spanish Empire in the sixteenth century.[3]

According to legal scholar Alexander Martinenko, the exercise of the right of secession by

Dutch against the Spanish led to the creation of the first written document arguing the rightfulness of secession –the Act on secession which was adopted on July 22, 1581.[4]

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[1]GetachewAssefa, Ethiopian constitutional law with comparative notes and material, Addis Ababa University,
sep., 2012, p., 411. [Here in after, Getachaw , Ethiopian constitutional law]

[2]Andrei Kreptul, The constitutional Right of secession in political Theory and History ,journal of
libertarian studies, Ludwing Von Mises Institution,2003, vol.17, no. 4, p.62- Andrei Kreptul, The
constitutional Right of secession in political Theory and History, journal of libertarian studies, Ludwing Von Mises Institution, 2003,, vol.17, no. 4, pp.39-100, available at: https://mises.org/library/constitutional-right-secession-political-theory-and-history
[Here in after Andrei, the constitutional right of secession]

[3]Ibid

[4]Martinenko, Alexander, The right of secession as a human right, Survey of international and Comparative
Law; Vol.3, 1996, P.2, available at http://digitalcommons.law.ggu.edu/annlsurvey/vol3/iss1/3 [here in after,
Martinenko, secession as a human right]

This Act established for the first time a right of secession as a potential "inherent right of the

Dutch people "that had to be substantiated by a number of proofs before it could be proclaimed as a universal and unconditional right of all peoples.[5]

The next attempt that worked to solidify the right of secession as a universal human right occurred with the American Revolutionary war, which interpreted the right of secession as a common right of all peoples in the world.[6]

Although secession as an inherent right of several states was effectively delegitimized by the union victory over the south, some peaceful secession guided by the rule of law was not completely unknown.[7]

The secession of Hungary from Austria in 1867, the secession of Norway from Sweden in 1905, and the secession of Singapore from Malaysia in 1965, was achieved constitutionally through established fundamental law.[8]

The trend that began in the 19th and early 20th century towards the legal recognition of the right of cultural, ethnic, and national groups to exercise their rights of self-determination continued aftermath of First World War and the treaty of Versailles.[9]

The concept of self-determination was incorporated in the League of Nations covenant by the effort of President Windrow Wilson and it was not clearly regarded as a legal principle.[10] On May 27, 1916 in an address

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[5]Ibid
[6]Ibid
[7]Young, How do peaceful secession happen?, p. 277 [here in after Young, peaceful secession]
[8]Id, p.287
[9]Getachew, Ethiopian constitutional law, Supra note 1, p.68 - 69
[10] A. RigoSudera, The evolution of the right of self-determination ,1973, p.17 [here in after Rigo, evolution of
the right of self-determination]

before the League to enforce peace President Wilson said; “every people has the right to choose the sovereignty under which they shall live.’’[11]

By the 1922, the treaty on the formation of the soviet socialist republic, which included a right of secession for each republic, was signed by the soviet Russian, Ukrainian, Byelorussian and Transcaucasia socialist republics.[12] Like soviet Russia, the Chinese communist party implemented the express right of secession in to the 1931 Chinese constitution.[13] Another historical example of a constitutional right of secession was the 1947 Burma constitution.[14] The vast majority of the world’s sovereign states do not recognize any right of secession in their domestic laws. According to a 1996 study, 82 of the 89 constitutions that were examined did not have any provisions allowing for the secession of any part of its people or territory.[15]

The study found seven constitutions, both present and past, which contained or do contain procedure for constitutional secession: Austria, Ethiopia, France, Singapore, St Christopher and Nevis, the former soviet Union, and the former Czech and Slovak federation republic.[16]

We can add Switzerland, which has a provision in place to allow for the secession and creation of new cantons,[17] and the current European Union constitution, which allows for the voluntary withdrawal of member states from the union.[18] Finally we can add Canada, which now has a statute in force clarifying the steps required for a province to secede from the

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[11]Ibid
[12]Getachew, Ethiopian constitutional law, Supra note 1, p.69
[13]The 1931 Chinese constitution
[14]Buchheit, Secession, the journal of politics, vol.41, No.3, (Aug., 1979, pp.965-967) Published by University
of Chicago press. p.100 [here in after Buchheit]
[15]Monahan and Bryant, coming to terms with plan B, P.7, as quoted by Andrei, the constitutional right of secession in political theory and history, Supra note 2, p.72
[16]Ibid
[17] Thomas Fleiner, Recent Development of Swith Federalism, 2002, p.106 available at: www.thomasfleiner.ch/files/categories/IntensivkursII/Switzerland.pd [here in after Thomas, recent
development of Swith federalism]
[18]Article 1-59:Volentery withdrawal from the Union; European union constitution para.1-4

federation, based on a Supreme Court opinion on the issue of Quebec's potential secession from the rest of Canada.[19]

After the Second World War, the United Nations recognized the right of secession as right of peoples under colonial and alien domination; the right does not apply to peoples already organized in the form of a state which are not under colonial and alien domination due to the condemnation of any attempt aimed at the partial or total disintegration of national unity and territorial integrity under resolution 1514[xv].[20]Outside colonial context, all international instruments, including UN Charter, ICCPR and ICESCR do not recognize the right to secession. Even the African Charter, Self-determination is its major concern is silent with regard to secession. International communities have different position with regard to constitutionalizing of the right to secession.

Some argues, the mere introduction of a constitutional right of secession would mean a disabling or disruption of a democratic process.[21] If the right to secession exists each sub unit will be vulnerable to threats of secession by others and it would create political instability and chaos.[22] On the other hands, others argue that, a constitutional secession right is meant to act as a prevailing territory of a democratic state.[23] Constitutionalizing a right of secession serves to ground secession in the rule of law, thereby reducing the chance of violence and disruption to the democratic process.[24]

When we come to Ethiopia, for the first time in Ethiopian history the charter of the transitional government formally recognized the right of

[19]Quebec secession reference, 1999
[20]Rigo, evolution of the right of self-determination, Supra, at 10
[21]Cass Sustein, Designing Democracy, p.103 [here in after Sustein, designing democracy]
[22]Andrei, the constitutional right of secession, Supra note 2, p.50
[23]Wayne Norman, Secession and constitutional democracy, 2001, p.4 [here in after Norman, secession and
constitutional democracy]
[24]Wayne Norman, Domesticating secession p.6 [here in after Norman, domesticating secession]

secession. The 1995 FDRE constitution[25] apart from expressly acknowledging the right of secession itself, it contains the necessary procedures to effect secession in the constitutional text under article 39(4).

However, there is a great controversy as far as the incorporation of the right of secession in the constitution. Some argues incorporation of secession clause is tantamount to state disintegration and collapse.[26]In other words, some argues that the secession clause may lead Ethiopia to follow the footsteps of former Yugoslav and USSR i.e. state disintegration and the possibility of civil war.

On the other hand, proponents considered it as an ultimate expression of collective right.[27] The right of people to secessionist self-determination is by its nature a radical right; Ethiopia has definitely brought a new novelty to the constitutional foundation of the state in Africa.[28]

Hence, this paper is dedicated to explore the procedural requirement for the right to secession and its impact on the integrity of Ethiopia.

1.2. Statement of the problem

The majority of states in the world considered secession as an act of state disintegration and collapse, due to this, they did not recognized the right to secession in their constitution.

All international documents including the UN charter does not recognize secession as of right, it is only allowed under exceptional circumstances whenever there is colonized people, foreign occupation and if there is denial of internal self-determination. Out of these scenarios, international law and international community has strongly condemned the act of secession of

[25] Article 39(1) of FDRE Constitution, proc.No.1/1995, Federal Negarit Gazette, 1st year, No.1, Addis Ababa,
21st August 1995 [here in after FDRE constitution]
[26]Getachew, Ethiopian constitutional law, Supra note 1, p. 428
[27]Ibid
[28]Abdullahi, 1998, at p. 443 , as quoted by BastaFreineri, Nation building and diversity, p.85

political unit from its parent state. The FDRE constitution under article 39(1) however, guaranteed the right of secession to every nation, nationality, and people without any precondition. Furthermore, the constitution recognizes this right as a non-derogable that can be effectively exercised even during state of emergencies. In this regard, if each nation, nationality and people of Ethiopia has the right to exercise the right to secession at any time without any requirements, the unity and integrity of state of Ethiopia, which all international instruments and international community devoted to protect, will became at stake. On the other hand, all regional states of Ethiopia has recognized the right to secession in their respective constitution; some regional states has incorporated the right to secession unconditionally while others have putted substantive requirements to be fulfilled to enjoy the right to secession. This shows the existence of inconsistency between the federal constitution and the regional states' constitution and within the regional states constitution with regard to this controversial right. Apart from this, the procedures incorporated under the constitution seem stringent in order to exercise this right and in effect makes the practical implementation of this rights difficult in reality. Hence, this research tries to evaluate the practical implementation of the procedural requirements for the enjoyment of the right to secession on the one hand and the territorial integrity of the country on the other hand.

1.3. General objective of the study

The general objective of the study is to examine the procedural requirements of secession under the FDRE constitution and its practicability in light of the enjoyment of this right and its effect on national unity and integrity of the country.

1.3.1. Specific objectives

- ✓ To analyze the concept of the right to secession and its place in the international legal instrument and the experience of other states;

- ✓ To explore the stand of the FDRE constitution in relation to the right to secession and the procedural requirements for the enjoyment of this right and its impact on the national unity and integrity of the country
- ✓ To examine the right to secession as incorporated under the constitution of regional states and its compliance with the Federal constitution;
- ✓ To examine the practicability of the procedural requirements and to identify problems related with the practical implementation of this right

1.4. Main research question

What are the procedural requirements of secession under FDRE constitution and the effects of these procedural requirements on the enjoyment of the right and its implication on unity and integrity of state?

1.4.1. Specific research questions

- ✓ What is the concept of the right to secession and its place under the international legal instruments and experience of other countries?
- ✓ What are the stands of the FDRE constitution in relation to the right to secession and the procedural requirements for the enjoyment of this right and its impact on the integrity of Ethiopia?
- ✓ Are the constitutions of the regional states compatible with the federal constitution in relation to the substantive requirements for the enjoyment of right to secession?
- ✓ Are the procedural requirements of secession practically applicable and what are the problems related with the practical implementation of this right?

1.5. Significance of the study

The finding of the research will enable concerned government officials and stakeholders to get research based information for further action to make this right enforceable in the manner that will not affect the national unity

and integrity of the country. The paper is believed to serve as a base and an input for those researchers who have the intention to explore particularly for those who seek the right to secession in detail. It will help to reflect the problems that are frequently occurring due to the question of self-determination including secession in different parts of the country**.**

1.6. Research Methodology

To answer the above research questions, the researcher employed solely secondary sources of information. In doing so, constitutions and proclamations of different countries, case reports, international instruments such as UDHR, ICCPR, ICESCR, African charter and the FDRE constitution, regional state's constitutions of Ethiopia were analyzed. Apart from this, the researcher examined different written materials, books, journals, and internet sources, to know the concept in detail and the experience from other countries which incorporated the right to secession in their constitution such as: former USSR, Burmese, Yugoslav, St. Kitts and Nevis, China and the current European Union constitution. The reason behind using this methodology is because the nature of the study is intended to give solution to the legal framework and using this methodologywouldenable us to appreciate and to give solution for the problem since the research is entirely doctrinal research and qualitative.

1.7. Limitation of the study

The major limitations that the researcher faced are difficulty in accessing different legal materials due to internet connection problem. Moreover, shortage of time and unavailability of previous works on the area will challenge the researcher.

1.8. Scope of the study

The scope of the study comprises conceptual and legal analysis with regard to the right to self-determination by giving special emphasis on the right to secession as recognized under the Ethiopian legal framework. The researcher focused on examining the concept, the definition, the nature,

content and the very existence of the right to secession in the context of regional states constitutions of FDRE, FDRE constitution, the international legal framework.

Apart from this, the researcher would attempt to compare and contrast experience of Ethiopia with the experience of other countries. Since it is entirely a doctrinal research, it is limited to legal a conceptual analysis without analysis on the practical implementation of this right**.**

1.9. Literature Review

In the literature review part, some previous works of different writers will be discussed and reviewed. MiodragasJovanovich stated that, one of the roles of contemporary constitutions is exactly to provide tools for conflict management among the diversities of society.

Accordingly, legalization of secession should not be discredited as incompatible with liberal democratic constitutionalism.[29] He conclude that, once the right to secession is incorporated in the constitutional system of a state, procedural model of constitutionalization is preferable to the substantive one for the following reasons:- In the first place, it largely avoids plausible conflicts over the legal interpretation of stipulated conditions for secession.[30] Secondly, the procedural model will have to deal with issues like the definition of the potential bearer of the right to secession, the appropriate territorial unit for the exercise of such right, the problem of recursive secession of dissenting minorities in a seceding area, the clarity of the referendum question, the eligibility to vote, majority threshold and so on.[31] Mr. Jovanovich has examined the importance of incorporating secession clause in states constitution, in doing so, he stated that, procedural requirements are preferable than substantive

[29]Miodragas Jovanovich, Can the constitution aid the resolution of secessionist conflict?, journal of international
law and international relation, 2009, vol.5, No.2,pp.59-87, p.86
[30]Ibid
[31]Ibid

requirements. However, this writer does not raise the effect of procedural requirements on the enjoyment of the right to secession and its impact on state integrity; accordingly this gap will be filled by this research.

GojjamAbebe in his research on the right to self-determination in Ethiopia and its implication on national unity, analyzed that, the requirement of the commencement of 2/3rd majority vote of legislative council of people concerned is a procedure which is applied to the nine regional states but with regard to nation nationality or people the procedure become more onerous because the requirements under art 47/3 must be fulfilled to apply for secession.[32] However, Gojjam failed to suggest the possible way of interpretation to article 39(4) (a) of the constitution and he also failed to analyze the compatibility of regional states constitution with the FDRE constitution with regard to substantive requirements of secession.

WubshetMulat in his book Article 39 Self-determination conclude that, the FDRE constitution provides some rights as non-derogable even in case of state of emergencies, among these; one is the right to self-determination including secession. In a situation where the rights to expression, demonstration, assemble and the rights to petition are suspended or limited by emergency decree, the right to secession alone would not be enforceable.[33]

2. Organization of the Thesis

This research consists of a total of four chapters. The first chapter is an introduction part which presents background of the study and statement of the problem, objectives of the study, research questions, significance of the

[32]GojjamAbebe, the right to self-determination in Ethiopia and its implication on national unity, submitted to department of law/Bahir Dar University in partial fulfillment of the requirements of LLB thesis, 2008. [here in after, Gojjam, the right to self-determination in Ethiopia]

[33]WubshetMulat, Article 39 self-determination: History, Philosophy, Law and Politics, 2007, p. 278.
Translation by
Me. [here in after Wubshet, art. 39 self-determination]

study, research methodology, limitation and scope of the study and review of related literatures. The second chapter deals with the general over view of the right to self-determination at national and international level taking into account different theories and arguments forwarded against and in favour of constitutional recognition of the right to secession. It also raises the experience of different countries which incorporate secession close in their constitution.

Chapter three discusses about the right to self-determination in Ethiopia under the FDRE constitution, and regional states constitution and the procedural requirements for the right to self-determination under the FDRE constitution and the problems associated with it.

The last chapter is concerned with the conclusion part mainly based on the specific research questions of the study followed by recommendation.

CHAPTER TWO

GENERAL OVERVIEW OF THE RIGHT TO SELF DETERMINATION

2.1. The right to self-determination at the international level

Historically, certain aspects of the principles of self-determinations are as old as the nation State.[34] The evolution of the right to self-determination is

[34]M.K. Newaz, the meaning and range of the principle of self-determination p.1 [here in after Newaz, the meaning and range of self-determination]

one of the most dramatic normative developments of this century.[35] The best known historical instances of self-determination are probably the American and French revolution.[36] Nevertheless, international legal doctrine was slow to recognize the juridical significance of self-determination. It was probably President Woodrow Wilson, more than any other person, who first contributed to a theory of self-determination.[37] Even though President Wilson has contributed to the emergence of the principle of self-determination; he failed to define it precisely. His intention was however inferred from his statement that, "national aspirations must be respected; peoples may now be dominated governed only by their own consent, self-determination is not a mere phrase it is an imperative principle of action."[38] Wilsons' plan was to incorporate the concept of self-determination as an integral part of the League, and to make the enforcement self-determination the major task of the League of Nations.[39]Accordingly, article 3 of the original draft of the covenant proposed by Wilson explicitly mentioned the principle of self-determination.[40] However, the draft article underwent several changes at the Paris peace Conference, due to the opposition of the state men who represented the United Kingdome Empire; the reference to self-determination was eliminated.[41]

It is possible to argue that self-determination occupies a far more important position in the United Nations than it did in the League of Nations. The expression self-determination is expressly mentioned in two articles of the UN charter. Article 1(2) specifies one of the purposes of the United Nations

[35]Arselan Hajji Issa Al-Mizory, Towards a new understanding of the right of self-determination in the post-colonial context: the case of the Iraqi Kurdistan region, Submitted to the department of law/ Bangor University in partial fulfillment of the requirements for the Degree of Doctor of philosophy, 2014, p.25 www.ohchr.org/Documents/HRBodies/SP/A.HRC.18.51.pdf [here in after Arselan, a new understanding of the right to self-determination]
[36]Id, p. 41
[37]Id, p.3
[38]Baker and Dodd, the puuc papers of Woodrow Wilson, war and peace,1927, as quoted by M.K. Newazs, the meaning and the range of the principle of self-determination p.3
[39]Arselan, a new understanding of the right to self-determination, Supra note 42, p.4
[40]Ibid
[41]Ibid

to achieve the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take appropriate measures to strengthen universal peace.[42] Article 55 of the charter, that talk about international economic and social cooperation, states that the United Nations is mandated to promote certain objectives with a view to the creation of conditions of stability and wellbeing which are necessary for peaceful and friendly relations among nations based on respect for the principles of equal right and self-determination of peoples.[43]

It is clear that the Dumbarton oaks draft of article 1(2) and 55 did not contain any reference to self-determination; it was added for the first time at San Francisco conference at the insistence of the four sponsoring powers, China, Britain, United States and soviet Russia.[44]

However, the sponsoring power left no definitive record as to what they mean by self-determination, or what its meaning should be in the context of articles 1(2) and 55.[45]

According to Zuzana, the dimension of the right to self-determination has two components; the right to internal and external self-determination.[46] The principle of internal self-determination guaranteed all peoples the right to decide on their social, economic and political status in their defined territory.[47] On the other hands, the principle of external self-determination encompasses the right of peoples to pursue their political, cultural and economic wishes without the interference or coercion of outside states.[48] In

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[42]

[43] Article 1(2) of the United Nations charter and statute of the international court of Justice Sanfranscisco,
1945[herein after, UN charter]

[44]Ibid, Article 55

[45]Arselan, a new understanding of the right to self-determination, Supra note 35, P. 8

[46]Ibid

[47]Id, p.11

[48]ZejnullahGrude, some key principles for a lasting solution of the states of Kosovo; Utipossedetis, the ethnic principle and self-determination, 2005, p.381 as quoted by Bridgette Martin, secession and state hood, international legal status of Kosovo, 2008 p.17

theory, the right of external self-determination may be exercised through state dissolution, state union or merger or through secession.[49] Apart from Article 1(2) and 55 of the United Nations charter, the general assembly resolutions have acknowledged that “all peoples have the right to self-determination”.[50] The principle of self-determination have also incorporated under the common Art 1 of ICCPR and ICESCR that clearly proclaims that; “all peoples have the right of self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.[51]

The principle of self-determination has evolved into a part of positive international law.[52] In the east Timor (Portugal v Australia) case ICJ recognized that the right of peoples to self-determination has an erga-omnes character and is one of the essential principles of contemporary international law.[53] The concept has also been adopted in the African charter on human and people’s right, providing that 'all peoples shall have the right to self-determination in terms that does not tie it to colonialism'.[54] Thus, now a day different international instruments has widely accepted the principle of self-determination, and this recognition may help the right to

[49]Buchheit, Supra note 14, p.14
[50]David Roic, state hood and the law of self-determination, 2002, p.289, as quoted by Bridgette Martin, p.17
[51] Article 2 of 1961, declaration on the granting of independence to colonial countries and peoples
G.A.R.1514(XV)
[52]The common article one of International Covenant on Civil and Political Right adopted in 1966, entered in to force 23 March, 1976, and International Covenant on Economic Social and Cultural Right adopted in 1966 entered in to force on 3, January 1976
[53]Bridgette Martin, secession and state hood; the international legal status in Kosovo, A dissertation submitted in partial fulfillment of the Degree of Bachelor of laws (Honourss) at the university of Otago, Dunadin, Oct.2008, p.19 available at: www.otago.ac.nz/law/research/journals/otago036276.pdf [here in after Bridgette, secession and state hood]
[54]International Court of justice, Case concerning East Timor (Portugal v Australia) Judgment of 1995, ICJ reports, pp.94-95, available at www.icj-cij.org/docket/index.php?Sum=430&p1=3&p2=3&

self-determination to attain the status of the general principles of international law.[55]

Generally, even if international legal instruments were very slow to recognize the right to self-determination in the past, the development of the principle of self-determination has fastened especially after the Second World War because of the creation of the UN charter and decolonization process. These factors have contributed for the recognition and incorporation of the principle of self-determination under different international instruments. Now a day, the right to self-determination has evolved in to part of positive international law.[56]

2.2. Secession in International law

Secession under international law refers to separation of a portion of an existing state, where by the separating entity seeks either to become a new state or to join yet another state, and where by the original state remain in existence without the breaking off territory.[57] For Kohen, secession is creation of a new independent entity through the separation of part of the territory and population of an existing state, without the consent of the parent state.[58]

Historically, successful secessions around the world have been rare, because secession seems inherently at odds with the principles of sovereignty and territorial integrity, which have been core values of international law for centuries.[59] Now a day, the position of states with

[55] African Charter on Humans and Peoples right adopted 27 june, 1981, entered into force 21 oct.1986

[56] Antonio Cassese, Self-determination of people, a legal reappraisal, 1995 p.171 available at: https://www.jstor.org/stable/2203697 [here in after, Cassese, self-determination of people]

[57] 24Dunoff, and et, al International norms actors process, p.122 as quoted by Arsalan Haji Issa,Towards a new understanding of the right of self-determination on the post-colonial context,2004, p.105

[58] Kohen, Secession; international law perspectives, p.577, as quoted by Arselan, a new understanding of the right to self-determination, Supra note 41

[59] Arselan, a new understanding of the right to self-determination, Supra note 35, p.105

regard to secession has been varied, some accepted the right of secession of minorities while others have been denied it.[60] The only international instruments which contain a reference and even the only implication to a right of secession are the 1970 friendly relations declaration and the 1993 Vienna declaration. The friendly relations declaration declares that, 'by virtue of the principle of equal rights and self-determination of all people, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development'.[61] Antonio Cassese argues that, this text suggests that secession may be permitted when very stringent requirements have been met, specially, when the central government of a sovereign state persistently refuse to grant participatory rights to a people, grossly and systematically violate their fundamental rights and deny the possibility of peaceful settlement of problems.[62] However, this declaration does not explicitly recognize an unlimited right to secession and instead it affirms that the declaration shall not be considered as encouraging any action which would dismember or impair territorial integrity.[63] While recognizing that all peoples have the right of self-determination, the Vienna declaration also discourages actions that would dismember or impair territorial integrity of sovereign state.[64] Moreover, the Canadian Supreme Court, in its opinion on Quebec's claim to unilaterally secede from Canada, stated that; international law expects that the right to self-determination will be exercised by peoples within the frame work of existing sovereign states and consistently with maintenance of the territorial integrity of those state, where this is not possible, in exceptional circumstances a right of secession may be arise.[65]

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[60]Id, p.6
[61] Declaration on principles of international law concerning friendly relations and cooperation among states,
1970 2625(xxv) http://www.un-documents.net/a25r2625.htm [here in after UNGAR 2625]
[62]Cassese, self-determination, Supra note 55, p.119
[63]UNGAR, 2625 Supra note 60, principle 5, para.7
[64]Principle 2, para.3 of the 1993 Vienna Declaration

Under different international instruments, the right to secession has been taken as a last resort (remedy) when there is a breach of fundamental human rights and unjust treatment against a particular nations or peoples in a given state.[66] The Remedial right to secession has its origin in the advisory opinion given by the second commission of rapporteurs in the 1920 Aaland Islands case.[67] The commission observed that the separation of a minority from the state of which it forms part and incorporation in to another state may be considered as an exceptional solution, as a last resort when the state failed give effective guarantees for the protection of minorities.[68]

In the absence of any clear right to secession outside the colonial context or an explicit recognition of the right within the above international covenants or resolutions, the right to secession cannot be considered as an exercise of a legally valid right of external self-determination.[69] However, currently there could be exceptional circumstances which lead to the recognition of claim of secession, especially after Kosovo and East Timor and in light of Canadian Supreme court's decision on the Quebec's secession case.[70]

Generally, international law is appearing to emphasize the importance of the territorial integrity of states, it is preferable to rely on domestic laws of existing states to deal with secession and establishment of new states.[71]

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[65] Judgments of the Supreme Court of Canada; Reference re secession of Quebec, available at
Scc-csc.lexum.com/scc-csc/en/item/163/index.do, last accessed, 2016-10-20
[66]Getachew, Ethiopian constitutional law, Supra note1, p.429
[67] Aaland Island case, League Nations official journal report of international committee of jurists entrusted by the council of the League of Nations with the task of giving an advisory Opinion up on the legal aspect of the
Aaland Islands question, October, 1920 available at,
https://www.ilsa.org/jessup10/basicmats/aaland1.p
[68]Ibid
[69]Bridgette, secession and state hood, Supra note 52, p.20
[70]Nada, Self-determination and secession under international law, p.43, as quoted by Arselan Hajji IssaAlMizory, Towards a new understanding of the right of self-determination in the post-colonial context: the case of the Iraqi Kurdistan region, Submitted to the department of law/ Bangor University in partial fulfillment of the requirements for the Degree of Doctor of philosophy, 2014, p.10
[71]Arselan, a new understanding of the right to self-determination, Supra note 35, p.13

From the above discussion, it is possible to conclude that there is no international instrument which explicitly recognized the right to secession. Because of the fact that the right to secession contradicts with the principles of sovereignty and territorial integrity of the state, most international documents are hesitated to recognize secession as of right; instead secession is taken as a last resort (remedy) for injustice caused by the central government against a particular state or nation. This can be inferred from the decision of Canadian Supreme Court on Quebec case and the advisory opinion of the commission in Aaland Island case. Thus, from the reading of international instruments and decision of courts, it is clear that secession cannot be claimed in the absence of fundamental human rights violation.

2.3. Theories of secession

All theories of the right to secession either understand the right as a remedial right only or recognize as a primary right to secession.[72]

2.3.1. Primary right theories

According to the primary right theories, certain groups have a general right to secede as of right without any preconditions to be fulfilled if the group feels that secession is necessary for their existence.[73] Secession can be justified by either association or ascription through majority vote rule.[74] This theory strongly argues that, the right to secession should not depend on the existence of injustice or basic human rights violation, and it should not be taken as a remedy for injustice. Hence, a group can secede unilaterally in the absence of any past injustice.[75] According to Buchanan primary right theories fall in to two main classes; ascriptive group theories and associative group theories.[76]

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[72]Buchanan, Theories of secession, p.600 [here in after Buchanan]
[73]Ibid
[74]Ibid
[75]Ibid
[76]Ibid

2.3.1.1. Ascriptive Group Theories

Under this version of primary right theory; it is groups whose memberships are defined by what are sometimes called Ascriptive characteristics that have the right to secede even in the absence of injustice.[77]According to this theories, people have an intrinsic value and for this reason have a primary right to secede even in the absence of injustice whether on the nationalist principle or not.[78]

2.3.1.2. Associative Group Theories

These attribute the right to secede to groups on the basis of the expressed voluntary preference of a sufficient proportion of the members of the group that the group form its own state.[79] These theories do not require that a group have any Ascriptive characteristic in common such as ethnicity or an encompassing culture even as a necessary condition for having a right to secede.[80] They focus on voluntary political choice of the members of a group, or the majorities take a decision to form their own independent political unit. This theory does not also require a group to have been treated unjustly to exercise the right to secession.[81]

2.3.2. Remedial Right Only theory

According to the remedial right only theory, international law provides a right to secession for people subject to extreme persecution or unable to realize their right to self-determination internally.[82] Secession must be a remedy of last resort for persistent and grave injustice, understood as violation of basic human rights.[83] This theory allows that, there can be special right to secede if: - 1) the state grants a right to secede like the secession of Norway from Sweden in 1905, 2) the constitution of the state includes a right to secede as does the Ethiopian constitution or 3) the

[77]Ibid
[78]Ibid
[79]Copp, international law and morality in theories of secession, p.128
[80]Buchanan, Supra note 71, p. 601
[81]Ibid
[82]Ibid
[83]Ibid

agreement by which the state was initially created out of previous independent political units included the implicit or explicit assumption that secession at a later point was permissible.[84] If any of these conditions fulfilled, we can speak of a special right to secede. The point of remedial right only theory is not to deny that there can be special right to secede in the absence of injustice, rather it is to deny that there is general right to secede that is not a remedial one.[85]

As it is discussed earlier, international law does not recognized secession as a primary right to be exercised by peoples, it is allowed only under exceptional circumstances whenever there is persistent and consistent human right violation and denial of internal self-determination.

International law has closed its door against unjustified secession. Therefore, we can possibly conclude that, international law has influenced by and accepted the remedial right only theory.

2.4. Arguments in favour and against constitutional Recognition of the Right to Secession

Constitutional recognition of the right to secession is a controversial issue throughout the world, some scholars argue in favour while others argue against it.

2.4.1. Arguments in favour of constitutionalization of the right to secession

A constitutional secession right is meant to act as a procedural means of forcibly keeping secessionist within the prevailing territory of the democratic state.[86] Norman makes a number of arguments in favour of constitutionally entrenching a secession right.[87] First, he favours designing a secession procedure in such a way that it serve as a ‘choking mechanism’ for secession, such mechanism include the enforcement of minority rights

[84]Id, p.602
[85]Ibid
[86]Norman, secession and constitutional democracy Supra note 23, p.4
[87]Ibid

within a democratic state and the brutal suppression of minority or ethnic secessionist leaders in a non-democratic dictatorial states.[88]To him the most common choking mechanisms would be a requirement of two-third majority vote in a secession referendum.[89]

Second, legalizing a right to secession serves to ground secession in the rule of law, thereby reducing the chance of violence and disruption to the democratic process.[90] In other words, we do not want secessionist to get an advantage over central government in claiming the legitimacy to secede in a situation in which there is no legal rules in place to govern secession.[91] Thus it is better to have constitutional rules in place for secession than to have no rules at all.[92]

The third argument Norman makes is that, the existence of a secession clause would be evidence that the state is united by consent and not by force.[93] A legal right to secede is both pragmatic and moral; legalizing secession would present secessionists with a cold and lucid cost-benefit analysis of seceding versus remaining in the existing state before they could successfully secede.[94]

2.4.2. Arguments against constitutionalization of the right to secession

A constitutional law scholar Cass Sustein argues that, a right to secession would promote strategic behaviour by political sub units that are supposed to obediently carry out their democratic burden of providing the state with the benefits necessary to carry out distributive justice.[95] The purpose of constitutional government is to promote democratic participation based on

[88]Ibid
[89]Ibid
[90]Norman, domesticating secession, Supra note 24, p.6
[91]Andrei, the constitutional right of secession, Supra note 2, p.53
[92]Ibid
[93] Norman, secession and constitutional democracy Supra note 23, pp.5-6
[94] Daniel Weinstock, Towards a proceduralist theory of secession, 2000, p.262[here in after, Daniel,
proceduralist theory of secession]
[95]Sustein , designing democracy Supra note 21, pp. 102-104

compromise, cooperation, and deliberation, while constitutionalizing of secession would threaten constitutional pre-commitment strategies.[96] The mere introduction of a constitutional right of secession would mean a disabling or disruption of a democratic process, thus, if the right to secession exists, each sub unit will be vulnerable to threats of secession by the other.[97]

Much more fundamentally, a nation whose sub units may secede will be far less likely to engage in long term planning, this threaten not only to split nations in to sub units, but also to paralyze national and local governments and defect them from dealing with the enormous current social and economic problems.[98] Thus, constitutional recognition of secession would create a political instability and chaos because the democratic policy would be bogged down with the prevailing secession issue that day to day public policy formation would be needlessly obstructed.[99]

Generally, the most effective way to deal with secessionist concerns are to rely primarily on the mechanisms provided by the constitutional democracy; federalism, check and balance, entrenchment of civil right and civil liberties and judicial review but not constitutional secession.[100]

2.5. Experience of Countries which incorporate secession clause in their constitution

2.5.1. The Constitution of Kitts and Nevis

Kitts and Nevis were the two small islands in the Caribbean before voluntarily organizing the federation of St. Kitts and Nevis.[101] Starting from the time Nevis has joined with St. Kitts, there was an active secession groups which demand the independence of the island of Nevis.[102] In 1960s,

[96]Andrei, the constitutional right of secession, Supra note 2, p.49
[97]Sustein, designing democracy, Supra note 21, p. 103
[98]Getachew, Supra note 1 p.429
[99]Andrei, the constitutional right of secession, Supra note 2, p. 50
[100]Sustein, designing democracy, Supra note 21, p. 11
[101]Andrei, the constitutional right of secession, Supra note 2, pp. 74-75
[102]Ibid

when most states got their independence due to decolonization process, St. Kitts and Nevis form voluntary association with Britain. The demand for secession in the island of Nevis has got wider support in the 1970s and early 1980s, in effect; the island of Nevis enjoyed a greater autonomy.[103]

In 1983, St. Kitts and Nevis achieved political independence from Britain and draft their first constitution.[104] Like article 39(1) of the Ethiopian constitution; section 113 of the St. Kitts and Nevis constitution includes an express right of secession. The island of Nevis has the legal right to secede from the federation with St. Kitts at any time.[105] Under the constitution, a two-thirds vote of Nevis legislative assembly and two-thirds vote of the Nevis electorate in a nationally organized referendum are required for secession to become effective.[106] The St. Kitts and Nevis constitution provides that a referendum and legislative approval for secession be limited only to the seceding unit (the island of Nevis).[107] It is clearly stated that:-

Art 113.- (1) The Nevis Island Legislature may provide that the island of Nevis shall cease to be federated with the island of Saint Christopher and accordingly that this Constitution shall no longer have effect in the island of Nevis.

(2) A bill for the purposes of subsection (1) shall not be regarded as being passed by the Assembly unless on its final reading the bill is supported by the votes of not less than two-thirds of all the elected member of the Assembly and such a bill shall not be submitted to the Governor-General for his assent unless:-

[103]Ibid
[104]Ibid
[105]Article 113(1) of the Saint Christopher and Nevis Constitution Order 1983 made: 22nd June 1983,
coming in to operation 23rd June 1983
[106]Ibid Article 113(2)
[107]Ibid Article 113(2)(b)

a) There has been an interval of not less than ninety days between the introduction of the bill in the Assembly and the beginning of the proceedings in the Assembly on the second reading of the bill,

b) After it has been passed by the Assembly, the bill has been approved in a referendum held in the island of Nevis by not less than two-thirds of all the votes validly cast on that referendum; and

c) full and detailed proposal for the future constitution of the island of Nevis (whether as a separate states or as part of or in association with some other country) have been laid before the Assembly for at least six months before the holding of the referendum and those proposals, with adequate explanations of their significance, have been made available to the persons entitled to vote on the referendum at least ninety days before the holding of the referendum.[108]

The constitution of St. Kitts and Nevis provides that the island of Nevis has a constitutional right to secede from the federation at any time so long as the legislator of Nevis has prepared a bill for secession. The bill should be supported by 2/3rds majority votes of the member of Assembly of Nevis. Once the bill has been passed by the assembly, the next requirement is the bill has to be approved by 2/3rds majority vote in a referendum held in the island of Nevis. If the vote for secession has passed by two –third majority, secession will become effective forthwith since the two adjacent islands have no common boarder to be demarcated, they are isolated islands. The procedures for secession in this constitution is very easy since all process of secession will be performed by the state of Nevis unilaterally. This may substantially affect the sovereignty and territorial integrity of the parent state to which the international law is devoted to protect.

[108]Ibid

2.5.2. The Current European Union Constitution

The new constitution of European Union signed on December13, 2007 and entered into force on December 1, 2009 in G.C. contains a clause allowing its member states the right to secede or exit from the Union. Such an exit clause contained in article 59, paragraph 1-4 of the European constitution. There are some procedures to be fulfilled to exercise the right to exit.

First, the withdrawing state must notify the European council, whose job is to examine the notification.[109] Second; the withdrawing member state has to negotiate an agreement with EU with regard to terms of withdrawal and the future relations of both sovereign entities.[110]

Third, negotiated agreement is concluded by a qualified majority of the European council when consent is received from the European parliament and without the participation of the council representative of the withdrawing member state.[111] Forth, the secession of the withdrawing member state from the EU becomes effective from the date that the negotiated agreement comes into force, if no agreement comes into force, within two years from the time the withdrawing state notified the European council of its intent to secede.[112] Then, the secession will become effective, although the council and the member state can agree to extend this period beyond two years. However, the EU constitution gives the withdrawing member state the option to re-join the EU.[113] Even if recognition of secession is condemned in the eyes of international community, the EU constitution can be taken as a good example with regard to timely transfer of powers to seceding group and giving the option to re-join for those groups that has already seceded. In this regard, those states which incorporate secession clause in their constitution should take lesson from

[109] The constitution of European Union signed on December13, 2007 and entered into force on December 1,
2009
[110]Ibid
[111]Ibid
[112]Ibid
[113] Ibid

the EU constitution to keep peace and to maintain unity through allowing the chance to re-join the federation.

2.5.3. The 1947 Burma constitution

The 1947 Burma constitution guaranteed the right to self-determination including secession to all ethnic nationalities that formed member states of the union of Burma.[114] It was enshrined in chapter ten, article 201-206 of the 1947 constitution of the union of Burma. This constitution contained detailed procedures for the exercise of the right to secession. First, the right to secession cannot be exercised within ten years from the date the constitution is came in to force; second, a state wishing to exercise the right to secession must have a resolution to that effect passed by two-thirds majorities of the total numbers in the state council'; third, a referendum should be conducted to ascertain the will of the people.[115] This constitution also requires that a supervising body composed of equal members from both the concerned people and the central government that is called plebiscite commission to be established to administer the referendum.[116] The right to secession is avoided in the 1974 constitution of Burma because of the fact that it unable to achieve the intended result i.e. maintaining peace and security in Burma.

2.5.4. The 1931 Chinese constitution

The Chinese Communist Party implemented the express right of secession into the 1931 Chinese Constitution,[117]as a means to lure in the ethnic nationalities of the Chinese mainland and to subjugate neighbouring territories like Tibet.[118] However this constitution did not set any procedure for the implementation of the right to secession. The current Chinese constitution has deleted the right to secession to preserve the national unity

[114] The constitution of Union Burma, 24 Sep.1947 effective on 4 January, 1948 available at: http://burmalibrary.org/docs3/CONSTTTN.47
[115]Ibid Art. 202
[116]Ibid
[117]The 1931 Chinese constitution available at:https://china-journal.org/2016/05/31/provisional-constitution-ofthe-republic-of-china-1931/
[118]Andrei, The constitutional right of secession, Supra note 2, p. 71

and territorial integrity of china. Furthermore, China has adopted anti-secession law in accordance with the constitution for the purpose of suppressing and checking Taiwan's secession from china in the name of Taiwan's independence.[119] The purpose of the law is to promote peaceful national reunification, to maintain peace and stability in Taiwan, while preserving china's sovereignty and territorial integrity.[120]

2.5.5. The 1946 Yugoslavia constitution

Article 1 of the Constitution, which says: 'The Federal People's Republic of Yugoslavia is a federal national state of republican structure, a community of peoples enjoying equal rights, who on the basis of the right to self-determination, including the right to secede, have expressed their will to live together in a federated state'[121]. But this constitution is silent as far as the procedures of exercising the right to secession. Some argue that lack of institutional structure capable of resolving the destabilizing economic and international problems which happened in 1980 has taken as reason for the collapse of Yugoslavia. While others like Wachtel argue that, ''the key to the collapse of the Yugoslavia federation lies in the failure to create a unified Yugoslav culture, when the elite abandoned the political centralism and a program of administrative decentralization was initiated, any concept for the realization of unified Yugoslav was abandoned''.[122] The recognition of the right to secession has initiated each political unit to struggle for independence, this finally lead to the disintegration of state of Yugoslavia.

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[119] Anti-secession Law Adopted at the 3rd Session of the 10th National People's Congress and Chinese people's political consultative Conference in Beijing on March 14, 2005,available at;
http://www.china.org.cn/english/2005lh/122724.htm

[120]Ibid, article 1

[121]Article one of the Constitution of the Federative People's Republic of Yugoslavia 1946 Adopted by presidium of the constituent Assembly of the Federative People's Republic of Yugoslavia, 1946 http://www.worldstatesmen.org/Yugoslavia_1946.txt

[122] Baruch Wacher, Making a nation, breaking a nation; Literature and cultural politics in Yugoslavia,
Stanford: Stanford University Press, 1998, p. 174. As quoted by DejonMarolov, the Reasons for the collapse of Yugoslavia; GoceDelchew University, PanceKaragozov 31, 2000 shtip, Republic of Mecodonia, p.252.

2.5.6. The 1977 former USSR constitution

Article 72 of the USSR constitution provides the right to self-determination including secession for each union republic.[123]However, this constitution does not show how to exercise the right to secession. In April 3, 1990, legislation with detailed procedures on secession from USSR has enacted. According to this law, in the first place, the decision of union republic to secede from USSR shall made by a free expression of the will of the union republic by means of a referendum. Secondly, the decision on holding a referendum is made by the union republic's Supreme Soviet on its own initiative or at the demand of a petition signed by the one-tenth of the USSR citizens permanently resident on the republic's territory and possessing the right to vote under USSR legislation. In Third place, the referendum is held under the procedure of USSR law or autonomous republic law if not contradict with present law, the referendum is held by secret ballot no sooner than six and no later than nine months after the adoption of the decision to raise the question of the republic's secession from the USSR. However, no campaigning whatever on the question submitted to the referendum is permitted during the hold of the vote.[124] The new law on secession passed by the legislator has incorporated stringent and detailed procedures to be fulfilled for a republic to secede from the union. As rightly mentioned by Edward Walker, the breakup of the Soviet Union was facilitated by its explicit declaration as a voluntary union of republics and the recognition of the right to secession in its constitution.[125]

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[123] Article 72 of Constitution of the Union of Soviet Socialist Republics, Adopted at the 7th session of the Supreme Soviet of the USSR 9th convention Oct.7, 1977, available at: www.constitution.Org/cons/ussr 77.txt

[124]Law on secession from the USSR; law on procedure for resolving questions connected with a union Republic's Secession from the USSR. April 3, 1990, Article 2 available at: soviethistory.msu.edu/1991- 2/Shevardnadze...texts/law-on-secession-from-the-ussr/ [here in after secession law from USSR]

[125] Edward Walker, Dissolution; Sovereignty and breakup of Soviet Union, pp.21-48, as quoted by Antony Kalashnikov, Differing interpretations; Causes of the collapse of Soviet Union, p.79 available at: https://ejournals.library.ualberta.ca/index.php/constellations/article/view/162

All the above Countries have recognized the right to secession in their constitution to maintain internal peace and security through managing the issue of secession by the rule of law and to safe states from disintegration and collapse. However, states like USSR and Yugoslavia has collapsed while china and Burma have abrogated the secession clause from their constitution because of the fact that it failed to bring the intended result. Surprisingly, China has enacted anti-secession law in order to protect national unity and territorial integrity. Only St. Kitts and Nevis and Ethiopia have currently maintained the right to secession in their constitution in the world. Generally, the right to Secession is not clearly recognized by international instruments as a right of people and all most all states in the world even the liberal democrats like USA has favoured the principle of state sovereignty and territorial integrity. From this one can understand that the right to secession does not have a place in the eyes of international community.

CHAPTER THREE: THE RIGHT TO SELF DETERMINATION IN ETHIOPIA

3.1. Historical overview of the right to self determination

Ethiopia is characterized by great linguistic, cultural and religious diversity; and a home to more than eighty ethnic communities with different languages. Despite these facts, there was no concept of self-determination of nation, nationalities and peoples to administer their own affairs in the past. In the 19th century, Emperor Menilik of the Amhara had expanded kingdom of Shewa. As a result of the successful conquests and expansion, the modern Ethiopian state was created and merged as a unitary and centralized state.[126] The empire building process resulted in the imposition of the culture, language, and religion of the ruling elite.[127] During the reign

[126]BeharuZewde, A History of modern Ethiopia: 1855-1974, 1991, pp.60-61, available at: www.ohioswallow.com/book/A+History+of+Modern+Ethiopia,+1855–1991
[127] John Markakis, Ethiopia: Anatomy of a traditional polity, 1974, p.30, as quoted by Dr. Hashim Tewfik, Tradition to Federalism, the Ethiopian experience, p. 3

of Emperor Haile Selassie, the process of imposition of culture, language, religion of the ruling Amhara Ethnic group was accelerated through the monolingual bureaucratic structure of state, educational system and mass media.[128] The Dergue (1974-1991) was established and declared itself to be socialist. The military regime had aggressively repressed political dissent and damaged the social cohesion of the country by its endless military campaigns against national liberation movement.[129] Just like its predecessor, the military regime had failed to address the questions of nationalities (ethnic groups) for self-determination.[130] It was overthrown in May 1991 as a result of the struggle of national liberation movements.Generally, when we see the place given to the right to secession under past three constitutions, the 1931 and 1955 constitution can be described as monarchical constitution.[131] All effective powers remained in the hands of the emperor. Moreover, nation nationality and people did not have the power for self-determination let alone the right to secession. In the 1987 constitution, there was a regional administrative autonomy; however there was no meaningful political or ethnic autonomy had been created. Self-administration was not allowed instead peoples were subjected to forced displacement and mobilization from their original place, nationalities as well as their class.[132]

3.1.1. The right to self-determination including Secession under the 1991 Transitional Charter

It is after this period the concept of self-determination came in to existence in the history of Ethiopia. The process of transition from a unitary to federal system took place in two phases.[133] The first phase occurred during a 1991-

[128] Dr. Hashim Tewfik, Transition to Federalism, the Ethiopian experience; Forum of Federations , the global Network on federalism, p. 3, Available at www.forumfed.org/pubs/occasional/-papers/ocp5.pdf, [herein after, Dr. Hashim, Tradition to Federalism
[129] Id, p., 4
[130] Ibid
[131] Edmond J. Keller, constitutionalism, citizenship and political transitions in Ethiopia; historic and contemporary process world press, 2010, pp.60-76
[132]Ibid
[133] Id, p. 2

1995 transition period and the second phase began in 1995 after the adoption of the constitution. The most significant development in the initial transition was the adoption of the transitional charter. The right of nation nationality and people to self-determination and other crucial human rights has incorporated in the transitional Charter.[134] The charter in chapter 1 Article 2 stated that; each nation nationality and people of Ethiopia have the right to preserve its identity, develop and promote its culture, history and language, self-administration in its defined territory and the right to actively take part in the central government with proper representation.[135] As per Article 2(c) of the charter, the right to secession is allowed if and only if nation nationality or people have denied the right to preserve its identity, to promote its culture and history, to develop its language and to administer its own affairs within its own defined territory. Accordingly, the right to secession under the transitional charter is conditional; to realize the right of secession at least one of the rights enumerated under Art. 2(a) and (b) should be denied, abridged or abrogated. However, the charter failed to provide the procedure to exercise this right. The charter provided for the enactment of a law which would establish local and regional councils for local administrative purpose defined on the basis of nationality.[136] Accordingly, National\regional proclamation No.7\1992 was enacted with a view to giving effect to the right of nation nationality and people to self-determination. The main objective of this proclamation was to give effect to the right of nations nationalities and peoples to self-determination and to insure the preservation and promotion of their language, culture and history.[137] However, this proclamation also does not set procedures for the exercise of the right to secession.

[134] Transitional period charter of Ethiopia, charter No.1 of 1991, Negarit Gazette 50th year, preamble, Para. 2 [here in after, Transitional Charter]
[135]Ibid, article 2
[136]Ibid, article 13
[137]A proclamation to provide for the establishment of national/ regional self governments proc. No. 7/1992, Negarit Gazette 51st year, preamble para.3

3.1.2. The right to secession under the FDRE constitution

With the FDRE constitution, Ethiopia became unique from its past ways of handling the issue of national questions. The constitution considers the issue of self-determination as the core of all to solve the problem of national oppression, as one can infer this from the preamble of the constitution which declares that, "we the nation nationality and people of Ethiopia strongly committed in full and free exercise of our right to self-determination …''. [138] Ethiopia's federal political system is under lined by the rights of nation, nationalities and peoples to self-determination. The ultimate power is vested in the hands of Ethiopian nation nationality and people, they are the holder of right to self-determination including and up to secession.[139] The constitution incorporated fundamental human and democratic rights based on UDHR and it further stipulate under Art. 13(2) that, provisions under chapter three of the constitution shall be interpreted in conformity with UDHR and other international instruments ratified by Ethiopia. The 1995 FDRE constitution clearly endorses the right of self-determination through both internal and external means. The right to self-determination empowers the nation nationalities and peoples to create either a new states or to secede from the nation.[140] According to Dr. Hashim Tewfik, the concepts of the right to self-determination under the Ethiopian constitution have three important and inter related aspects. These are; the aspect of preservation and promotion of linguistic and cultural diversities, the aspect of the rights of every ethnic community to political autonomy and participation in the federal decision making process, and the aspect of the right to secession[141] . Pursuant to Article 39(1) of the FDRE constitution, every nation, nationality and people has an unconditional right to self-determination including the right to secession, and this right cannot be suspended even during national emergencies. Furthermore, in order to

[138] FDRE constitution, supra note 25, Para. 1 and 2
[139]138 Ibid, Through the analysis of article 8 and article 39(1) 139 Ibid, Article 39(1),
[140] Ibid, Article 39(1),
[141] Dr. Hashim, Tradition to Federalism, Supra note, 127, p. 15

resolve conflicting claims over representation, territory, resource and on issues of secession the constitution has created an organ called House of Federation, whose members are elected by state councils. This house is composed of nation nationalities and peoples at least one for each of them plus an additional member for nation nationalities for each one million of its population. Pursuant to article 62(3) of the constitution, the house of federation has a power to decide on issues relating to the right of nations nationalities and people to self-determination including the right to secession.[142]

3.1.3. The right to secession under Regional States Constitution of the country

All regional states of Ethiopia have recognized the right to secession for nation nationality and people in their respective constitution. Except the SNNP and Ethiopian Somali National Regional State,[143] the remaining seven regional states have incorporated some substantive requirements under their respective constitution for the enjoyment of the right to secession.[144] The precondition for secession required by these states' constitution are summarized as follows; the right to secession is allowed whenever nations, nationalities and peoples have denied the right to preserve its identity, equal participation to the central government, the right to promotion its culture and history, to use and develop its language, and to administer its own affairs within its own defined territory. If these rights are abrogated or denied, nations nationalities and peoples can exercise the right to secession. With regard to the SNNP and Ethiopian Somalia regional states' constitution, they do not provide any precondition for secession, like that of

[142] FDRE constitution Article 62(3), Supra note 25

[143]Common article 39 of SNNPs Regional State and Ethiopian Somali National Regional State guaranteed the right to secession unconditionally.

[144]Seven regional states have imposed substantive requirements to exercise the right to secession in their constitution, these can inferred from the common article 39 of Oromia National Regional State, Harari National Regional State, Gambela National State, Benishangul-Gumuz National Regional State, Amhara National Regional States constitution, Article 14 of Tigray National Regional State constitution and Article37 of Afar National Regional State constitution.

the federal constitution. Hence, it is possible to conclude that, the majority of regional state's constitution follows the remedial right only theory of secession.[145] The FDRE constitution adopted the primary right theory since it guaranteed the right to secession to every nation nationality and people as of right without the existence of breach of any basic rights of nation and nationality recognized under the constitution. However, it is not logical to allow the exercise of this crucial right without any precondition when it is seen in light of international law and the experience of other states it is because of that there is no international document that explicitly recognized the right to secession and all most all states in the world has condemned the act of secession. Since the federal constitution adopted the general right theory while regional states' constitution incorporated the remedial right only theory, there is apparent contradiction between them. In this regard the approach followed by the regional states' constitution is logical and acceptable in the eyes of international law and international communities, and from the perspective of national unity and integrity of the country.

3.2. Procedural requirements for the right to secession under the FDRE constitution and problem associated with it

This section is allotted to discuss the procedural requirements to exercise the right of secession under Article 39(4) of the constitution and its effect in relation to maintaining the national unity and integrity of the country. According to Article 39(4) (a) of the constitution the demand for secession can be initiated to the federal government when it is approved by 2/3rds majority vote of members of legislative council of concerned nation, nationality or people. The secession process starts when the concerned group submitted its claim of secession to its legislative council, and if the claim has secured the requirement of 2/3rds majority vote, then it will proceed to the next procedure. However, there are some debates with

[145] Ibid

regard to the beneficiaries of this sub article. According to the first line of interpretation of Art 39(4) (a), this sub art is only applicable to nation, nationality or people that are recognized as members of the federation by virtue of Article 47(1) of the constitution; because it is only those nation, nationality or people have organized in the form of state and has their own legislative council.[146]Hence, concerning nation nationality or people those who are not yet established their own regional state, they need to have first attained statehood status and form their own legislative council in order to start the process of secession. To be a state it is mandatory to fulfill the requirement under art 47(3) of the constitution. Pursuant to art 47 (3) of the constitution, a nation, nationality or people can establish its own state upon the fulfillment of the following procedures; first the demand for statehood has to be approved by 2/3rd majority of the members of the council of the concerned nation, nationality or people, and the demand has to be presented in writing to the state council; second, the concerned council has to organized a referendum in the nation, nationality or people that demand secession within one year; third, when the demand for state hood is supported by a majority vote in the referendum; fourth, when the state council will have transferred its powers to the concerned nation, nationality or people; and finally, the new state created by the referendum directly becomes a member of FDRE without any need for application.[147] Therefore, according to this line of argument any nation nationality or people who opt for secession shall satisfy the requirements of art 47(3) and be considered as member states of the federal government. On the other hand, some others argue that art 39(4) (a) did not require nation, nationality or people to form their own state and legislative council in order to initiate the demand of secession, rather it is to mean that nation, nationality or people can submit their demand of secession to the legislative council of the state in which the group that demand secession has situated. The second line of

[146]Gojjam, the right to self-determination in Ethiopia, supra note, 32
[147] Supra note 25 Art. 47(3)

interpretation is logical since the right to secession is given to every nation nationality and people without any precondition pursuant to art 39(1) of the constitution. Furthermore, it is practically impossible to establish a regional government to each ethnic group lives in Ethiopia to exercise its constitutional right because secession right has granted to all ethnic groups without discrimination. Therefore, every nation nationality or people can initiate the demand of secession to the legislative council of a state within which the secession demanding group situated. However there may be a problem of securing the 2/3rds majority vote of approval by legislative council. Because of the fact that Ethiopians' state structure is based on ethnic group, a nation with larger population in a particular area has formed regional state. If minorities in the particular region initiate the demand of secession, the chance of getting 2/3rds approval by concerned legislative council is hardly possible because the representative of the majority ethnic group may not support the secession of the minorities. Any ways, if the demand for secession has got the 2/3rds majority approval by the members of legislative council the second step will begin, that is the concerned legislative council shall send the decision to the federal government. As per article 39(4) (b), the federal government shall organize a referendum in the territory of claimant group within three years period starting from the time it received the decision of the concerned council. The constitution vested a wider power to the federal government to determine the time in which the referendum will take place. The time is not specifically fixed in the constitution; as a result the federal government may hold the referendum within a month or a year as it thinks appropriate. However, this may possibly affect the outcome of the referendum, since secession is not a simple task and the decision should not be random, the concerned population needs a longer time to think and consider the prone and cons of secession. They have to appreciate the advantage obtained by unity and the losses they will sustain by the act of secession. If the concerned nation demanded secession out of emotion, the passage of time will help to cool

their emotion. In this regard the former USSR secession law required a referendum to be hold twice, once the referendum has approved by 2/3rds majority vote, another referendum will be prepared after five years in order to ascertain the wish of the people towards secession.[148] If the referendum approved by 2/3rd majority for the second time then secession will effectively take place. The five years period in this constitution can be taken as a cooling period. The requirement of a single referendum for the right to secession highly expose the country for fragmentation and disintegration, therefore the Russian model of conducting the referendum is a good experience that needs to be incorporated in our constitution. In our case however, the referendum will prepared at any time within three years from the time the claim has delivered to the federal government. In this regard, it is advisable to fix a reasonable time in which the referendum will organized to give a chance for the population to discuss on the issue, and this may protect the country from disintegration out of emotion and minor causes and in effect, helps to achieve the main goal of the constitution that is, to build one economic community and to keep lasting peace and unity of the state. The third procedure for secession under article 39(4) (c) of the constitution requires the commencement of majority vote in the referendum. Pursuant to the above sub article, a nation nationality or people can secede and establish its own independent state if the vote for secession has supported by simple majority or fifty plus one in the referendum. The requirement of simple majority vote is a very loose criterion which never has been incorporated in any states' constitution in the world. The issue of secession should not be seen equally with ordinary rights which decided by simple majority. Since secession is a group right as clearly provided under our constitution, it needs a great attention to protect the interest of the general public and the national unity and integrity of the country. If secession is effected by the decision of simple majority vote in the referendum, the outcome will not possibly manifest the interest of the

[148] Supra note 123, article, 9

majority. Because those who have voted for secession may lesser in number when compared with those have voted against secession; and peoples may be precluded to participate in the referendum for different reason. If so, the fate of the majority should not be decided by the minorities. In this regard the Canadian Supreme court in Quebec's secession case from Canada stated that, democracy is not the rule of simple majority.[149] Furthermore, secession is not the sole matter of the seceding nation, every Ethiopian have an interest on the outcome of the referendum because of social, economic or strategic reason. Had it not been 2/3rds majority vote rule, Canada and St. Kitts and Nevis would have been forced to disintegration in the referendum held in their respective country.[150]Therefore, the FDRE constitution should amend the loose requirement of simple majority vote rule and replace it by some rigorous requirement like 2/3rds majority rule to ascertain the need of the general public towards secession and to avoid minority rule in this crucial right. The fourth condition lay down under Art. 39(4) (d) of the constitution related with the transfer of power from the federal government to the nation, nationality or people who have voted for secession. It does not fix the time in which secession will become operative. The constitution simply stated that in a blurring phrase, the secession becomes effective 'when the federal government will have transferred its powers to the council of the nation nationality and people who has voted to secede'. When will the federal government transfer its power to the council of the seceding state is a big question which awaits an answer from the constitution. The European Union constitution can be taken as a good example in this regard. The EU constitution exactly specifies the time of

[149] Judgments of the Supreme Court of Canada; Reference re secession of Quebec, available at: Scccsc.lexum.com/scc-csc/en/item/163/index. do last accessed, 2017-10-20

[150] In the referendum held for the secession of Nevis on 10, August 1998, it was approved by 62% of voters, however due to 2/3rds majority vote requirement, Nevis remained with St. Kitts; Nevis independent referendum,1998, available at https://en.wikipedia.org/wiki/Nevis-independence-refed, last accessed at 13 June 2016. In the 1995 Quebec's referendum for secession, about 49.52% of voters approved secession, available at www.the Canadianencyclopedia.ca/en/article/quebec-referendum

secession or withdrawal of member state from the Union.[151] Accordingly, secession will be operatively effective from the date of agreement of the seceding state with the European Union commission. Furthermore, if the withdrawing member state and the EU commission do not come into mutual agreement within two years, membership of a state will be presumed as seceded\ withdrawn from the date of notification of its intent to secede to the EU commission at the lapse of two years. Once secession clause has incorporated in the constitution, it is mandatory to fill all gaps which may potentially leads in to conflict and war. Therefore, the FDRE constitution should fix a reasonable time to transfer powers from the federal government to the concerned nation nationality or peoples' council to maintain peace and stability in the country and to have a good neighbourhood relation with the seceded group. The last but not the list procedure for secession is provided under article 39(4) (e) of the constitution. Accordingly, the right to secession comes in to effect when the division of assets is effected in a manner prescribed by law. However, still now the government did not adopt laws for the enforcement of this constitutional provision. But it is time to enact laws that regulate the partition of assets and debts before any act of secession come in to effect, because once a nation nationality or people voted for secession, the seceding group may not willing to be regulated or governed by the law that enacted subsequent to its secession. Therefore it is advisable to adopt laws to govern all possible problems that would arise in the future concerning the issue of secession. Lastly, before concluding this part, the writer wants to raise one gap of the constitution, which is the silence of the FDRE constitution say about the possibility of re-joining of a state which seceded from the federation. Once an ethnic group has voted for secession and all other procedural requirements have fulfilled it has divorced from Ethiopia and become an independent and sovereign state. However, there might be a possibility of demanding to join or to be merged with Ethiopia due to the

[151] Supra note 108,Article 50(3)

challenge of globalization or any other reason. In this regard the EU constitution has made the door open to any member state to re-join the union.[152] In the writers' view it is advisable for the constitution to incorporate clauses to this effect to keep and consolidate the age old unity and sovereignty of Ethiopia. The existence of the unconditional right to secession has negatively affected the unity of the country in different manners. It invites or instigates each nation or ethnic group to claim secession without good cause, this means, even an individual politician may call for secession for his political interest under the guise of unconditional right to secession. As a result, one nation may not trust the other nation of the federation since it thinks that at time in the future it may secede unconditionally. As a result of the fear, each nation wants to practically demarcate its border; this in effect causes ethnic conflict.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATION

4.1. Conclusion

In the past, successful secessions around the world have been rare, because acts of secession considered inherently at odds with the principle of state sovereignty and territorial integrity of parent state. Under different international instruments secession is allowed only for peoples under colonial domination and it also used as a remedy when there is a breach of fundamental human rights and unjust treatment against a particular nation. There are two theories of secession, among these, the primary right theory-argue that, certain groups have a general right to secede if these groups believe that it is the most feasible way to existence. The second is the remedial rights only theory that argues that secession must be a remedy of last resort for persistent and grave injustice and violation of basic human rights. There is no agreement in relation to the legalization of the right to secession; some oppose it, while others strongly support it. Supporters of

[152] Article 50 Treaty on European Union: Withdrawal of member states from the EU, article 50(5), Available at www. Europarl.eu/RegData/etudes/BRIE/2016/57797

the legalization of the right to secession argue that, it serves to ground secession in the rule of law, thereby reducing the chance of violence and chaos. On the other hand, opponents argue that, the mere introduction of the right to secession would mean a disabling or disruption of democratic process, and affect the national unity and integrity of the state. In history only few states have incorporated the right to secession in their constitution. Even if this right has been incorporated, it has failed to achieve the desired result due to different reason. States like the former USSR and Yugoslavia have disintegrated and collapsed while Burma and China have eliminated the secession clause from their constitution. The only states in the world which have kept the right to secession in their current constitution are Ethiopia and state of St. Kitts and Nevis. The case of St. Kitts and Nevis is totally different from the federation of Ethiopia, because their federation is very loose since they are two separate small islands, which they do not have even boundary connection. However, Ethiopian is a country with long history and a place of many nation, nationality and people shared a lot of things in common. Therefore, secession in Ethiopia will not be as simple as secession in the state of St. Kitts and Nevis. Prior to 1991, there was no concept of the right to self-determination and secession under the Ethiopian political system. For the first time in the history of Ethiopia it is the transitional government charter introduce the right to secession along with substantive requirements to be fulfilled. In similar fashion, the 1995 FDRE constitution recognize the right to self-determination including secession for every nation nationality and people. This right is unconditional and unlimited even during state of emergency. All regional states of Ethiopia have also incorporated the right to self-determination including secession in their respective constitution. However, only the state of SNNP and Ethiopian Somali regional states has confirmed the procedures incorporated under FDRE constitution. On the other hand, the remaining seven regional states have deviated from the constitution by introducing substantive requirements for the exercise of the right to secession and

make the right to secession depending up on the fulfillment of certain substantive precondition. The Remedial right only theory which is followed by the seven regional states is better approach to maintain the national integrity of the country. Allowing the right to secession without any precondition is not acceptable by international community and international instruments because of the fact that secession has been considered as state disintegration. However, the FDRE constitution guaranteed the right to secession to every ethnic group without substantive requirements but with certain procedures. The procedures are enshrined under article 39(4) of the constitution. Hence, the right to secession can be exercised, when demand for secession has approved by 2/3rds majority vote by member of the legislative council, when the federal government holds a referendum within three years from the time it received the decision of the concerned council, when secession is supported by majority vote in the referendum, when the federal government transferred its power to the council of the seceding state or nation and lastly, when the division of assets is effected in accordance with the law. Generally, the right to secession is not recognized by any international instruments and experience of states shows that the right to secession leads state disintegration and collapse, due to this reason; almost all states in the world condemn the recognition of the right to secession. States like Chine has taken precaution measure to keep its national unity and integrity by adopting anti-secession law. In our case however, the FDRE constitution clearly endorsed the right to secession to every ethnic groups unconditionally and without any limitation. However, unlike the seven regional states, there is no substantive requirement provided under the constitution to exercise the right to secession as it recognize the right unconditionally. Furthermore, the constitutional provisions which govern the issue of secession does not give due consideration to national unity, since the procedures of secession 36 provided under article 39/4 are loose. Generally, unless the current position of the constitution with its procedural requirements have not properly and

strictly regulated, it will lead Ethiopia to follow the footsteps of former USSR and Yugoslavia.

4.2. Recommendation

- Since the act of secession is an odd and contradict with state sovereignty and territorial integrity, it should not be given as of right; hence, the un conditionality of the right to secession under article 39(1) of the FDRE constitution should be amended to incorporate substantive requirement for the enjoyment of this right like what is provided under the constitution of the seven regional states of the country. The constitution of these seven states limited the exercisability of the right to secession, it is allowed only if nation, nationality or person has denied the right to preserve its identity, equal participation to the central government, the right to promote its culture and history, to use and develop its language and to administer its own affairs within its own territory. It is advisable to incorporate these requirements under FDRE constitution for the enjoyment of the right to secession to protect the integrity of the country.
- The ultimate goal of secession clause is to ensure a sense of equality for all ethnic groups within the federation; but it is not to affect the national unity and integrity of the country. As clearly provide under many part of the constitution, the FDRE constitution highly eager to build political community based on rule of law and to ensure lasting peace and to create a single economic community. However, unless issues of secession has regulated properly and strictly, this goal will be easy defeated. Accordingly, the procedural requirement provided under article 39(4) (c) should be replaced by more rigorous procedure like 2/3rds majority vote requirements.
- If a nation, nationality or people seriously demanded secession and fulfill procedural requirements under the constitution, there would be

great problem with regard to the time when the federal government will transfer its power to the concerned council and the manner of division of assets and debts, because the constitution is silent in these 37 issues. To fill this gaps the concerned government organ should adopt legislation to govern the manner of partition of assets and debts and the time when the power should be transferred to the concerned nations' council.

- The concerned government organ should enact a law to incorporate a clause to allow seceded nation to re-join the federation if they want to do so, since it helps create unity and integrity of the state.

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