

Power of Taxation over Income of Employees of Public Enterprises Owned by the Federal Government of Ethiopia: A Case Comment

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Key Terms: Power of taxation, division of power of taxation, Ethiopian federal system

I. Introduction

A federal system is characterized, *inter alia*, by fiscal decentralization.¹ One of the most important aspects of fiscal decentralization is division of power of taxation between the federating units and the federal government, taking into account the general division of power between these tiers of government.² This is so because unless there is proper and well considered

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¹ See Ronald L. Watts, *Comparing Federal Systems*, 3rd ed., McGill University Press, 2008, pp. 95-112; see also Kibre Moges, 'The Conceptual Framework for Fiscal Decentralization', in Eshetu Chole (ed.), *Fiscal Decentralization in Ethiopia*, Addis Ababa University Printing Press, pp. 1-16, Taddese Lencho, 'Income Tax Assignment under the Ethiopian Constitution: Issues to Worry About', *Mizan Law Review*, vol. 4, no. 1, 2010.

² Solomon Nigussie, *Fiscal Federalism in the Ethiopian Ethnic-based Federal System*, Wolf Legal Publishers, 2006, p. 115 Bekele Haileselassie, *Ethiopia: The Constitutional Law of Taxation and its Implication for Federal-State Relations* (LLM thesis, University of Wisconsin Law School, unpublished, 1999).

division of power of taxation, the presence of a federal system by itself does not guarantee that the political and economic goals of such a system will be

achieved.¹ That is why, as a matter of principle, we find such a division of power of taxation between the two tiers of government in all of the federal countries of the world.²

The Ethiopian federal system is no exception. Thus the FDRE Constitution, the supreme law of the country,³ contains relatively detailed provisions dealing with the division of the power of taxation between the National Regional States and the Federal Government. When we go through the Constitution's specific provisions, we see that there are exclusive powers of taxation accorded to the federal government,⁴ exclusive powers of taxation given to the regional states,⁵ concurrent powers of taxation given to the two tiers of government,⁶ and undesignated powers of taxation.⁷

According to the Amharic version of Article 96(3) of the FDRE Constitution,⁸ the Federal Government of Ethiopia has the power to levy and collect income tax on employees of the public enterprises it owns. Despite this, there are sometimes misunderstandings regarding the message conveyed

¹ Richard A. Musgrave and Peggy B. Musgrave, *Public Finance in Theory and Practice*, 4th ed., Tata McGraw Hill Publishing, 2005, pp. 457 and following.

² Ibid.

³ See Art 9(1) of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1, 1995, *Federal Negarit Gazeta*, Year 1, No. 1.

⁴ Id., see Art 96 of the Constitution.

⁵ Id., see Art 97 of the Constitution. See also, Solomon Nigussie, *Supra* note 2, pp. 125-135.

⁶ Id., see Art 98 of the FDRE Constitution; see also Solomon Nigussie, *Supra* note 2, pp. 135-140.

⁷ Id., see Art 99 of the FDRE Constitution; see also Berhanu Assefa, *Undesignated Powers of Taxation in the Distribution of Fiscal Powers between Central and State Governments under the FDRE Constitution* (Senior Thesis, unpublished, Faculty of Law, AAU, 2006).

⁸ There is discrepancy between the Amharic and the English versions of this provision of the Constitution, as personal income tax (የሥራ ግብር) is missing in the English version of the provision.

by this article, probably due to the fact that there is no parity between the Amharic and the English versions of this provision. Such a misunderstanding manifested itself in a case which cropped up between Fidelitu Woreda Finance, Economic Development and Revenue Office, Liben Zone, Somali Regional State⁹ (hereinafter cited as the respondent) and the Federal Water Works Construction Enterprise (a public enterprise hereinafter cited as the applicant), owned by the Federal Government of Ethiopia. In this case, courts of all levels¹⁰ in the Somali Region decided that income tax collected from the employees of this enterprise belonged to the Somali National Regional State. The case was finally submitted to the Cassation Division of the Federal Supreme Court of Ethiopia (hereinafter cited as the Cassation Division), which reversed the decisions of the regional courts. As we will see below, the Cassation Division handed down a correct and acceptable decision, supported by the relevant provisions of the FDRE Constitution.

The Cassation Division also cited a provision of Proclamation No. 33/1992,¹¹ which was issued by the Transitional Government of Ethiopia in order to regulate sharing of revenues between the then-regions and the Central Government of the country. The question, however, is whether it is possible

⁹ By virtue of Art 47 of the FDRE Constitution, the Somali Region is one of the Federating Units of Federal Ethiopia.

¹⁰ Under the Ethiopian legal system, we find three tiers of courts both in the regional states and the Federal Government. The three tiers of courts of the Federal Government are First Instance Courts, High Courts and the Supreme Court. The FDRE Constitution also declares that each regional state should establish three tiers of courts: First Instance Courts, Zonal (High) Courts and Regional Supreme Court.

¹¹ A Proclamation to Define the Sharing of Revenue between the Central Government and the National/Regional Self-Governments, Proclamation No. 33/1992, *Negarit Gazeta*, 22nd Year, No. 7. This proclamation was made by the Council of Representatives of the Transitional Government of Ethiopia.

to apply the provisions of that proclamation in order to resolve a dispute involving the division of the power of taxation between the Federal Government and the federating units after the adoption of the FDRE Constitution. In other words, is the proclamation under consideration still good law? Why should we cite the provisions of a law made during the transitional period to serve interim purposes when we now have the provisions of the supreme law of the land, the FDRE Constitution, which are meant to regulate the division of expenditure powers and the division of powers of taxation between the Federal Government and the regions?

This short case comment is, therefore, aimed at examining and analyzing whether it is appropriate to apply the provisions of the transitional period Proclamation to regulate the division of powers of taxation between the two tiers of government in Ethiopia today, and in the future, under the FDRE Constitution. In this case comment, the author argues that the Cassation Division has no concrete legal grounds that justify the application of the provisions of Proclamation No. 33/1992 as the FDRE Constitution repealed and replaced the provisions of this legislation by implication. Nonetheless, the author of this case comment does not lose sight of the fact that there are other individuals who vehemently argue that the provisions of this proclamation are still applicable insofar as they are consistent with the provisions of the Constitution. In spite of this, it is the author's firm belief that the proclamation under discussion was meant to regulate revenue sharing only until a constitution, an enduring document, could be promulgated and put in place, because when a federal system of government is created, issues

surrounding fiscal relations between the Federal Government and the federating units extend far beyond the issue of revenue sharing.

This case comment is not meant to bring those with different opinions to a consensus. Instead, it is aimed at provoking thought among legal scholars debating the applicability – or otherwise – of the proclamation after the FDRE Constitution’s promulgation. The piece is organized as follows. In the second part, I will summarize the facts of the case and the courts’ holdings, including the decision of the Cassation Bench of the Federal Supreme Court. In the third part, I will analyze the decisions of the courts and comment on them, with particular emphasis on the decision of the Cassation Division.

II. Summary of the Facts of the Case and Holdings of the Courts

The Federal Water Works Construction Enterprise – a public enterprise owned by the Federal Government of Ethiopia – was engaged in water construction works in Fidelitu Woreda, Liben Zone of Somali National Regional State. The enterprise was constructing water works that were financed by the Regional Government for the benefit of the people of the Woreda. While the enterprise was performing its tasks, it employed Somali language speakers living in the Woreda. Because these employees were compelled by law to pay taxes on their income, the employer, as a withholding agent of income tax, deducted the income tax and transferred the money to the Woreda Finance, Economic Development and Revenues Office, believing that this tax revenue would fall within the Regional Government’s power of taxation.

Later, however, the Federal Inland Revenue Authority (which has now been subsumed by the Ethiopian Customs and Revenue Authority established

in 2008),¹² realized that the Federal Water Works Construction Enterprise was paying the income tax collected from its employees to the Regional State, which is not entitled to this sort of income tax. The Federal Inland Revenue Authority wrote letters to the Water Works Construction Enterprise, making it clear that it was not lawful to pay income tax withheld from the enterprise's employees to the Regional Government. Thereafter, the Water Works Construction Enterprise stopped paying the withheld income tax to the Woreda, understanding that this money should be paid to the Federal Inland Revenue Authority instead.

Following the Water Works Construction Enterprise's refusal to pay withheld taxes to the respondent, the Fidelitu Woreda Finance Economic Development and Revenue office brought suit in the Liben Zone High Court, claiming that the applicant should pay income tax collected from its employees amounting to 183,744 Birr.¹³ In its statement of claim, the respondent alleged that because the applicant was not voluntary to pay the afore-mentioned sum to the respondent, it occasioned obstacles to the developmental endeavors of the Woreda. Along with its statement of claim, the respondent annexed certain documents to prove that the applicant had been paying the income tax revenue to it. The applicant responded that though it had been paying the income tax in question to the respondent, it could not be obliged to continue paying as the Federal Inland Revenue Authority had

¹² The Ethiopian Revenues and Customs Authority Establishment Proclamation, Proclamation No. 587/2008, *Federal Negarit Gazeta*, Year14, No. 44.

¹³ *Fidelittu Woreda Finance, Economic Development and Revenues Office v. Federal Water Works Construction Enterprise*, File No. m105/02/07/99, unpublished, Liben Zone High Court, Somali Regional State, 26 June 2007.

instructed it (the applicant) to pay such income tax to the Federal Government. The applicant also produced documents to establish that it was instructed to pay the income tax to the Federal Government, as the applicant was owned by the Federal Government of Ethiopia.

The Regional High Court, to which the case was brought, decided that the applicant should pay the 183,744 Birr to the respondent, since the source of the income tax was the Woreda. As the applicant was dissatisfied with the decision of the Regional High Court, it lodged an appeal to the Regional Supreme Court.¹⁴ However, the Regional Supreme Court confirmed the decision of the lower court. The Supreme Court of Somali Region reasoned that because employees of the applicant were ‘*indigenous people*’ of the Region, because the source of the money was the region, and because the place of work was in the Somali Region, the income tax collected from the employees of the applicant should be paid to the Regional Government, not to the Federal Inland Revenue Authority.

As the applicant was aggrieved by the decision of the Regional Supreme Court, it filed an application to the Cassation Division of the Federal Supreme Court on Sene 20, 2000 E.C. (June 27, 2008 G.C.). In its application, the applicant made it clear that it was a federal profit-making public enterprise by virtue of Regulation No. 109/1996 and argued that the decision of the courts of Somali Region, which compelled it to pay the income tax to the region,

¹⁴ *Fidelittu Woreda Finance, Economic Development and Revenues Office v. Federal Water Works Construction Enterprise*, file no. 145/99, unpublished, Somali Region Supreme Court, Somali Regional State, June 4, 2008.

were contrary to Article 96(3) of the FDRE Constitution and Article 5(2(c)) of Proclamation No. 33/1992,¹⁵ and thus contained fundamental errors of law.

The Cassation Division of the Federal Supreme Court accepted the application and summoned the respondent, Fidelittu Woreda Finance, Economic Development and Revenue Office. The hearing was held on Ginbot 13, 2001 E.C. (May 21, 2009 G.C.). In addition, the respondent submitted a written reply on Ginbot 14, 2001 E.C. (May 22, 2009 G.C.), upon the order of the Cassation Bench. In its statement of reply, the respondent argued that the regional courts did not distort the content and spirit of Article 96(3) of the FDRE Constitution, and that by virtue of Article 97(1), such income tax is payable to regional governments. The respondent also argued that the Constitution, Proclamation No. 33/1993 and other directives¹⁶ make clear that income taxes collected from such employees are within the competence of the Regional Government. It further argued that because the financial bases of the region are income taxes collected there, the directives given by the Federal Inland Revenue Authority did not have any constitutional basis under Article 100(1)¹⁷ of the FDRE Constitution and Proclamation No. 33/1992, both of which are meant to enhance regional autonomy and self-administration.

¹⁵ Bear in mind that the applicant did not confine its arguments to the provisions of the FDRE Constitution, but rather made reference to the proclamation that was in force during the transitional period.

¹⁶ To the knowledge of this author, to date there have been no directives defining the division of the powers of taxation between the Federal Government and the Regional States in Ethiopia.

¹⁷ Note that the respondent inappropriately cited this article to sway the Cassation Bench of the Federal Supreme Court. Art 100 (1) of the Constitution does not talk about division of the power of taxation; rather, this provision provides the general principle of taxation as it stipulates that in exercising their powers of taxation, states and the Federal Government shall

Having entertained the above arguments of the litigants, the Cassation Division of the Federal Supreme Court framed two appropriate issues. These were: *whether or not the applicant was a public enterprise owned by the Federal Government, and which tier of government (the Regional Government or the Federal Government) is constitutionally empowered to levy and collect the income tax under discussion.* The Cassation Division decided in favor of the applicant and reasoned that because the applicant was a public enterprise owned by the Federal Government by virtue of Regulation No. 109/1996, such income tax should be paid to the Federal Inland Revenue Authority. The Cassation Division supported its decision by citing Article 96(3) of the FDRE Constitution and Article 5(2(c)) of Proclamation No. 33/1992.¹⁸ As a matter of law, the decision of the Cassation Division is correct. Nevertheless, the question at the heart of the matter is whether a dispute involving division of the power of taxation between the Federal Government and the Regions can be resolved by a law issued during the transition period. In other words, is Proclamation No. 33/1992, which regulated sharing of revenues between the then Regional/Self-Governments and the Central Government, still functional?

III. Case Analysis and Comments

ensure that any tax is related to the source of revenue taxed and that this is determined with proper consideration. It is thus clear that Art 96 (3) of the Constitution is more specific than Art 100 (1) with regard to the division of the power of taxation over the present tax sources concerned.

¹⁸ *Fidelittu Woreda Finance, Economic Development and Revenues Office v. Federal Water Works Construction Enterprise*, Cassation File No. 40133, Federal Supreme Court, 8 July 2009. This case has been published in Cassation Decisions of the Federal Supreme Court, Vol. 9, pp. 191-194.

As explained above, the applicant was paying income tax collected from its employees to the Regional Government until it was ordered by the Federal Inland Revenue Authority to pay this money to the Federal Government instead. This demonstrates that the applicant was not aware of the division of the power of taxation between regional states and the Federal Government under the FDRE Constitution, which has been the supreme law of Ethiopia since August 21, 1995.¹⁹ It is also possible to infer that the respondent was not cognizant of the fact that the income tax in dispute was to be paid to the Federal Inland Revenue Authority, part of the executive organ of the Federal Government of Ethiopia.

Conversely, the courts of the Somali Region at all levels did not have the slightest doubt that the power to levy and collect such income tax is vested in the Federal Government of Ethiopia. Consequently, their analysis and reasoning was grossly erroneous. Instead of analyzing the spirit of Articles 96(3) and 97 of the FDRE Constitution, they depended on the proclamation²⁰ made during the transitional period. In addition, they reasoned that because the employees' '*origins*' were in the region and because the water construction project was financed by the region, income tax collected from the employees of the applicant should be paid to the region.

Thus the courts of the regions depended on erroneous and irrelevant facts to make their decisions. For one thing, although the applicant was a public enterprise owned by the Federal Government of Ethiopia, it could

¹⁹ The FDRE Constitution entered into force on this date, although it was approved by the Constitutional Assembly on 8 December 1994.

²⁰ This is the proclamation cited at note 13.

employ individuals residing in the region irrespective of their religion, language, race or any other differences²¹ so long as they could meet the specific criteria set forth by the employer. Because of this, the applicant employed inhabitants of the Woreda who speak the Somali language. But this does not entitle the regional government to levy and collect income tax from these persons, as doing so is beyond its constitutional competence. Secondly, although the regional government financed the project, it did so for its own benefit. The relationship between the Woreda and the applicant was contractual, as the former was the service recipient and the latter the service provider. This contractual agreement between these two entities could not entitle the respondent to levy and collect income tax from the employees of the applicant as the latter is a public enterprise established and owned by the Federal Government of Ethiopia.

The regional courts could have critically examined the provisions of the FDRE Constitution dealing with division of the power of taxation between the regional states and the Federal Government. In addition to carefully examining the contents of Article 96 of the Constitution, they should have thoroughly gone through Article 97, which declares:

... regional states have the power to levy and collect income taxes on employees of the state and of private enterprises, taxes on incomes of private farmers and farms incorporated in cooperative associations, profit and sales taxes on individual traders carrying out a business within their territory, incomes from transport services rendered on waters within their

²¹ Equality before the law is clearly provided in Art 25 of the FDRE Constitution and the relevant provisions of the UDHR and the ICCPR, which serve as guiding principles to interpret the human rights provisions of the FDRE Constitution.

territory, profit, sales, excise and personal income taxes on income of enterprises owned by the states.

Juxtaposing Arts 96(3) and 97 of the Constitution, it becomes evident that levying and collecting income tax on employees of public enterprises of the Federal Government is not within the regional states' constitutional power of taxation. Therefore, all levels of the Somali Regional State courts gave decisions which violated what was clearly provided in the FDRE Constitution.

The Cassation Division of the Federal Supreme Court reversed the decisions of the Somali Region courts and held that the income tax in question is to be levied and collected by the Federal Inland Revenue Authority. The Bench based its decision on Art 96 (3) of the FDRE Constitution and Art 5(2) (c) of Proclamation No. 33/1992.²² If we confine ourselves to the English version of Art 96(3) of the Constitution, we may conclude that the court did not have the appropriate legal authority, since this provision does not clearly stipulate the power of taxation of income of employees of public enterprises belonging to the Federal Government. This is because the English version of this provision provides that Federal Government shall levy and collect income,²³ profit,

²² The proclamation is cited above at note 13.

²³ The word "income" here seems to indicate income tax to be collected from the employees of the public enterprise owned by the Federal Government. However, the word income encompasses far more than employment income, as can be gathered from statutory definitions and definitions provided in the literature. For instance, in Ethiopia income is defined as *any sort of economic benefit including non-recurring gains in cash or in kind, from whatever source derived and in whatever form paid, credited or received*. When we look to the body of the Income Tax Proclamation of Ethiopia, we see that the word income covers employment income, rental income, business incomes of various sorts, income on royalties, income on casual rental of property, income on interest, income on capital gains and the like. See the

sales, and excise taxes on enterprises owned by the Federal Government, which conveys the message that the Federal Government has the power to levy and collect direct as well as indirect taxes on the public enterprises it owns. It does not, however, clearly tell us that the Federal Government of Ethiopia is constitutionally empowered to levy and collect income tax on employees of its public enterprises.

Nonetheless, the Amharic version of this provision makes it crystal clear that the Federal Government of Ethiopia has this power. The Amharic version of this provision provides: [የፌዴራል መንግሥት] በፌዴራል መንግሥት ባለቤትነት ሥር በሆኑ የልማት ድርጅቶች ላይ የንግድ ትርፍ ግብር፣ የሥራ ግብር፣ የሽያጭና የኤክሳይዝ ታክስ ይጥላል፤ ይሰበስባል፡፡ This could be translated as: The Federal Government can levy and collect business income tax, **personal income tax**, sales tax and excise tax from the public enterprises owned by itself. And because the Amharic version of the constitution has final and binding legal authority,²⁴ the issue under consideration is to be dealt with in accordance with the Amharic version of the provision mentioned above. Therefore the decision of the Cassation Division of the Federal Supreme Court made on the basis of the Amharic version of Art 96 (3) of the constitution is correct.

However, the Cassation Division of the Federal Supreme Court should not have made reference to Art 5 (2) (c) of Proclamation No. 33/1992, which was meant to regulate the sharing of revenues between the then-regions and the Central Government of Ethiopia. As we know, following the downfall of

Income Tax Proclamation of the Federal Government of Ethiopia, Proclamation No. 286/2002 (as amended), *Federal Negarit Gazeta*, Year 8, No. 34.

²⁴ See Art 96 (3) of the FDRE Constitution (author's translation).

the *Derg* Regime in 1991, a transitional period charter²⁵ was adopted and a transitional government was established in Ethiopia. During the transitional period, a federal form of state structure was created by the charter although a federal form of government was not expressly proclaimed. Hence, we can say that during the transitional period there was a *de facto* federal state structure,²⁶ since there was a division of power between the Central Government and the national/regional self-governments. Because of this division of power, there was a strong need to regulate the sharing of revenues between the Central Government and the regions. Therefore Proclamation No. 33/1992 dealing with sharing of revenues²⁷ was put in place.²⁸

The body of this proclamation contains various articles dealing with the objectives of revenue sharing,²⁹ the basis for revenue sharing,³⁰ categorization of revenues,³¹ revenues that belonged to the Centre and the

²⁵ The Transitional Period Charter of Ethiopia, Proclamation No. 1/ 1991, *Negarit Gazeta*, Year 50, No. 1.

²⁶ See Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, Wolf Legal Publishers, 2006, pp. 44-51. See also, Solomon Nigussie, *Supra* note 2, pp. 22-24.

²⁷ The proclamation cited above at note 13.

²⁸ *Id.* The preamble of the proclamation provides that whereas the Transitional Government of Ethiopia is currently undertaking measures that brought radical changes in the political, economic and administrative life of the country; whereas, of these measures, the most important being the promulgation of National/Regional Self-Governments establishment, Proclamation No. 7/1992 providing for the reorganization of the country in a manner that enables it to put into practice the right of nations/nationalities and peoples to administer their own affairs as had been insured by the charter; whereas this proclamation stipulates the shares and coordination between the Central Transitional Governments regarding the collection and utilization of revenue shall be determined by law.

²⁹ *Id.* See Art 3.

³⁰ *Id.* See Art 4.

³¹ *Id.*, p. 5.

regions,³² concurrent revenues³³ and the like. Needless to say, the transitional government was not meant to persist indefinitely. The Federal Constitution was drafted and finally adopted by the Constitutional Assembly on December 8, 1994;³⁴ it entered into force on August 21, 1995.³⁵ The Constitution declared, in black and white, that Ethiopia is a federal state. It created nine regional states and the Federal Government,³⁶ and it also apportioned powers between the Federal Government and the regions.³⁷ The Constitution specifically allocated the powers of taxation between the Federal Government and the regions.³⁸

From the date when the FDRE Constitution entered into force, the operation of the Transitional Period Charter ceased. The transition period ended after the promulgation of the Constitution. By the same token, the issues of sharing revenues and powers of taxation regulated by Proclamation No. 33/1992 were taken over by the relevant provisions of the FDRE Constitution, and by implication the proclamation was repealed. The proclamation no longer served any purpose. Therefore, there is no constitutional foundation for applying any provision of the proclamation after August 1995.

However, some people argue that insofar as the provisions of the proclamation are consistent with the provisions of the FDRE Constitution, the

³² Ibid.

³³ Ibid.

³⁴ See the preamble of the FDRE Constitution.

³⁵ See the page of the FDRE Constitution preceding the preamble.

³⁶ See Arts 46 and 47 of the FDRE Constitution.

³⁷ See Arts 51 and 52 of the FDRE Constitution.

³⁸ See, once again, Arts 95-100 of the FDRE Constitution.

applicability of the former remain intact. This argument is bolstered by the fact that there are proclamations that are still functional although they were made during the transition period. These provisions remain in effect so long as they are consonant with the ideals of the FDRE Constitution and have a purpose to serve. This argument is cogent and hence acceptable.

Nonetheless, it is important to remember that such laws must have enduring importance owing to the nature of the subject matter they regulate. In this regard, one of the most typical examples (from the catalogue of laws made during the transitional period) is the Patent Proclamation. This proclamation is still functional, and will probably remain functional into the future, because it was not meant to address problems that arose during the transition period. Rather, the Patent Proclamation deals with intellectual property rights, which were relevant at that time and continue to be relevant.

In contrast to the mission of the Patent Proclamation, the Revenue Sharing Proclamation that is the subject of this case comment had a significantly different nature and purpose. The Revenue Sharing Proclamation was not intended to provide lasting and permanent solutions to the multifaceted issues of fiscal federalism, divisions of expenditure responsibilities, division of powers of taxation, horizontal and vertical fiscal imbalance, tax harmonization and the like. Rather, it was intended to serve as an interim panacea for the problems of sharing of revenues between the Central Government and the National/Regional Self-Governments of the day at a formative stage of the new Ethiopian federal experiment. In sum, the Proclamation was to provide service until the advent of the FDRE

Constitution, a document taken to be a supreme covenant in Ethiopia. Therefore, with due respect to the arguments of others, the author firmly believes that the 1992 Revenue Sharing Proclamation was impliedly repealed concomitant to the promulgation of the FDRE Constitution, as no further purpose would be served by this proclamation, which had served its purpose during the transition period.

Other legal scholars share the views of this author. Bekele Haileselassie, for instance, once wrote that it is not possible to argue that the provisions of the proclamation are operative after the adoption of the FDRE Constitution.³⁹ In addition, Taddese Lencho has written:

The 1992 Law [the law regulating revenue sharing, i.e., Proclamation No. 33/1992] is abrogated by the Constitution, but it has thrown many a light over matters that were left unsaid or said ambiguously by the constitution (although this is not publicly acknowledged).⁴⁰

On the basis of the discussion and the analysis above, it is possible to conclude that the 1992 Revenue Sharing Proclamation had no value and no use immediately following the promulgation of the FDRE Constitution. This is because the provisions enshrined in the proclamation were replaced by the provisions of the Constitution. It is significant to note that the provisions of the proclamation were only meant to deal with revenue sharing, whereas the fiscal provisions of the FDRE Constitution include provisions dealing with division of the powers of taxation and have gone far beyond the regulation of revenue sharing.⁴¹ Therefore, when disputes arise in Ethiopia regarding the

³⁹ Bekele Haileselassie, *Supra* note 2, pp. 107-110.

⁴⁰ Taddese Lencho, *Supra* note 1, p. 42.

⁴¹ It must be clear that one of the most important issues in a federal system of government is the assignment of expenditure responsibility and power of taxation, since mere division of

power to levy and collect a specific tax, the law to be consulted is the FDRE Constitution, not the dead proclamation which survived from 1992 to August 1995.

This being so, deciding a court case on the basis of this proclamation is a fundamental error of law. Consequently, though the decision of the Cassation Bench of the Federal Supreme Court on the merits of the case was correct, its legal citation is incorrect. Since the decisions of the Cassation Bench serve as precedent, binding on all courts of Ethiopia,⁴² the Bench should have based its decision solely on the relevant provisions of the FDRE Constitution. It should not have made reference to a law which is no longer in force.

If the Cassation Bench encounters similar cases in the future, it is the author's sincere belief that it should disregard the decision cited in this case comment and depend on the relevant provisions of the FDRE Constitution, which have full force over any matters pertaining to division of the power of taxation between the federating units and the Federal Government of Ethiopia.

political power does not create a viable federal system. Hence, in a federal system, revenue sharing is one of the elements of fiscal federalism. See Amedeo Fossati and Giorgio Panella (eds.), *Fiscal Federalism in the European Union*, Routledge Studies in the European Economy, 1999. See also, Nuria Bosch and Jose M. Duran (eds.), *Fiscal Federalism and Political Decentralization: Lessons from Spain, Germany and Canada*, 2008.

⁴² Federal Courts Proclamation, Re-amendment Proclamation No. 454/2005, *Federal Negarit Gazeta*, Year 11, No. 42, Art 2 (1). As far as the power of the Cassation Division of the Federal Supreme Court is concerned, see Kalkidan Abera, "Precedent in the Ethiopian Legal System," *Ethiopian Journal of Legal Education*, Vol. 2, No. 1, January 2009, pp. 23-42. See also, Muradu Abdo, "Review of Decisions of State Courts over State Matters by the Federal Supreme Court," *Mizan Law Review*, Vol. 1, No. 1, June 2007, pp. 60-74. See also, Yohannes Heroui, "ስለሰበር ሥልጣንና ሥርዓቱ ጥቂት ማስታወሻዎች," *Ethiopian Bar Review*, Vol. 3, No. 1, March 2009, pp. 131-148.