

**SUB-NATIONAL CONSTITUTION-MAKING IN ETHIOPIA:  
SPECIAL EMPHASIS ON THE CONSTITUTIONS OF OROMIA  
AND SOUTHERN, NATIONS AND NATIONALITIES AND  
PEOPLES REGIONS**

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**ABSTRACT**

*The nine regional states, constituting the Ethiopian federation had their own constitutions starting from the time of transition and have previously been revised multiple times in the last two decades. Oromia and Southern Nations, Nationalities, and Peoples' (SNNPR) regions enacted their first constitution in 1995. As to how the constitutions were made is the question of many researchers. Some writers put that making process as unclear. Some others opine that the constitutions were simply legislated as ordinary legislation without observing the constitution-making principles. This study seeks to explore the making process of the constitutions of Oromia and SNNPR regions. It aims to identify the guiding principles and methodology employed in the making process. It also aims to find out the major challenges encountered in the process. In doing so, a qualitative data collections method was employed. The findings of the study reveal that it is hard to say that the regional states made their own efforts to give themselves home grown constitutions, although they have the right to do so. This paper concludes that the regional state has not employed a special procedure in the making process. The public was not given the chance to give their say on the content and procedure of making. The constitution-making process of the two regions was highly dominated by the federal government. Finally, this piece recommends that the constitutions of Oromia and SNNPR should be revised to make them more adaptable to the socio-economic and cultural situation of the respective regions.*

**Key Words:** *Constitution, Constitution-making, Council of nationalities  
Sub-national units, Regional states, Oromia, SNNPR, State council*

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## 1. INTRODUCTION

Ethiopia's long years of autocratic and dictatorial government systems have shaped its constitutional history in its own image. The pre-constitution laws have the feature of regulating both religious and legal matters. The notable legal documents in this regard are Fetha-Negest and Sereat mengist. Fetha-Negest has the purpose of regulating both religious and legal matters and the later is a politico-legal document, which has a significant relationship with the king's coronation.<sup>1</sup> Even the modern constitutions are not free from such critics. It is not a surprise that in the constitution-making process among others public participation has not been employed during their preparation. Traditionally negotiating the constitution was the province of political leaders who held power and claimed it.<sup>2</sup> Only those who are in power determine everything and anything as to the substance of the constitution.

This fact holds true in the Ethiopian constitution-making history as well. An inference could be made from the former four constitutions of Ethiopia, which clearly shows the dominations of the leaders on the making process and affected the substance of the documents to be in favor of their political interest. It is often said that the key sources of legitimacy in Ethiopia's past were force (conquest, military expansion), religion (i.e. Orthodox Christianity), and tradition (i.e. 'right' genealogy).<sup>3</sup> Due to this reason, there was no room for the public to have their say in the constitution-making process. In general, the makings of Ethiopian constitutions come into the picture under the domination of political leaders who held power.<sup>4</sup>

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<sup>1</sup>Getachew Ayeferam, *Constitution, Constitutionalism and Foundation of Democracy in Ethiopia*, International Journal of Research (2015), Vol (2). Pp.586-596

<sup>2</sup> Viven Hart, *Constitutional making and the Right to Take Part in Public Affair, Framing the State in times of Transition: Case Studies in Constitutional making*, (US institute of Peace Press 2010).

<sup>3</sup> Tsegaye Ararsa, *The Making and Legitimacy of Ethiopian Constitution: Towards Bridging the Gap between Constitutional Design and Constitutional Practice*, Afrika Focus (23) 2010, Pp.85-110

<sup>4</sup> There are groups who argue that even the current 1995 constitution is not the result of public discussion rather the imposition of the EPRDF. Peoples who still argue on

This same pressure is anticipated to be in the making of a sub-national constitution. Ethiopia being a federal state, each regional state within the federation is required to have and come up with a constitution. This is one way in which regional states exercise the right of self-determination that they are given by the FDRE constitution.

The focus of this study is the constitution-making of Oromia and Southern Nations, Nationalities and Peoples regions in the Ethiopian federation. Ethiopian Subnational constitutions in addition to their creation (constituting) of state governments and regulating state affairs, guarantee the protection of fundamental rights and freedoms of state citizens.<sup>5</sup> Even if they have all these multifaceted advantages, state constitutions (particularly their making process) have been overlooked in Ethiopia. The reason for choosing only the two among the eleven regional states is constitution-making process employed almost the same approach and SNNPR has a unique state structure and ethnic composition compared to the others.

The structure of this article goes in the following manner. Being this is the first part, the second part of this article focuses on the fundamental concerns of regional constitution-making in the Ethiopian federation. The third part gives coverage of the guiding principles of the constitution-making process. Next, the general picture of sub-national constitution-making in Ethiopia has been discussed. In the fifth part, the new perspective that sub-national constitution-makers should consider has been discussed. The sixth part addresses how constitutions making are made in Oromia and SNNPR regional states. Finally, conclusions are drawn.

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illegitimacy of the constitution forward that the result of the discussion and the final document imposed is totally different.

<sup>5</sup>Tsegaye Ararsa, *Sub-national Constitutionalism in Ethiopia, Towards Entrenching constitutionalism at State Level*, Mizan Law Review (2009) Vol (3), Pp.33-69

## 2. MAJOR CONCERNS OF THE REGIONAL CONSTITUTION- MAKING PROCESS IN ETHIOPIA

Federalism is defined as a system in which the self-rule of central and regional government and shared rule among these governments is exercised.

<sup>6</sup> Sub-national constitution-making is one way in which regional states' right of self-rule is manifested. That is why all regional states of the federal republic of Ethiopia came up with their own constitutions.

### 2.1. NO CONCRETE EVIDENCE AS TO THE MAKING PROCESS OF REGIONAL CONSTITUTIONS

There is no clear thing as to the constitution-making process at a state level. Unlike other subordinate legal norms, which follow a relatively simple process in their making, the enactment of a constitution should employ complex steps guided by several principles. Some of the common guiding principles in constitution-making are public participation, inclusiveness and transparency.<sup>7</sup> But, it is unclear whether or not such guiding principles were employed in the making of the constitutions of Oromia and SNNPR regions.

### 2.2. REGIONAL STATE CONSTITUTIONS ARE VERBATIM COPIES OF THE FEDERAL CONSTITUTION

The usual critic forwarded against Ethiopian regional state constitutions is the fact they are the verbatim copy of the federal constitution.<sup>8</sup> Copying a better and high-standard legal document could not be problematic by itself. Nonetheless, regional distinctiveness showing the existing realities of the regions should be taken into account in designing regional states constitutions. This objective could not be achieved by merely copying the federal government constitution, which is a broadly formulated document. Moreover, regional constitution should be considered as an opportunity for

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<sup>6</sup> Arthur Benz, Self-rule and Shared Rule? Bicameralism, Power sharing and Joint Decision Trap, Perspective on Federalism,(12018), Vol.10, Pp.30-48

<sup>7</sup> Michelle Brandt & et al, Constitutional making and Reform: Option for the Process(2011),<https://www.interpeace.org/resource/constitution-making-and-reform-options-for-the-process-2/> <accessed on January 25, 2020>

<sup>8</sup> Tsegaye, *supra* note 3.

giving better protection (compared to the federal constitution) for the people living in the region if it is designed by taking into account the socio-economic and political situation of the place and time.

### **2.3. NO PUBLIC PARTICIPATION**

The other issue worth consideration is that even if all regional states have enacted their constitutions as per article 50 (5) of the federal constitution, the public doesn't even have awareness as to the existence of the same. What are the causes for the lack of awareness of regional states constitutions? Tsegaye argues that state constitution, in addition to governing state behavior; is also a good means of entrenching constitutionalism by protecting human rights and limiting the power of sub-national government.<sup>9</sup> Furthermore, sub-national constitutions also allow the formulation of region-specific social and political goals and organize institutions for the achievement of such goals. Regardless of all these determinant roles that the regional constitution plays, the public has not been given the chance to have their say on the process.

### **3. GUIDING PRINCIPLES OF A CONSTITUTION-MAKING PROCESS**

Before starting the tasks of constitution drafting and deliberation on the content of the constitution, consensus should be made on the principles or standards to employ in the making process.<sup>10</sup> The Constitution-making process may have specific or/and general guiding rules. The specific guiding rules are those principles anchored by a certain country and applied to that specific country. For example in South Africa parties negotiating on the constitution-making process were agreed on 34 principles of constitution-making and incorporated such principles in the 1996 transitional constitution of South Africa.<sup>11</sup> Such types of constitution-making principles are agreed

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<sup>9</sup> Tsegaye, *supra* note 5, P64.

<sup>10</sup> Michele Brandt, *Constitutional Assistance in Post Conflict Countries, The UN Experience: Cambodia, East Timor, and Afghanistan*, (United Nation Development Program, 2005)

<sup>11</sup> Gincilini Yitirmessi, *South African Federalism: Constitutional making Process and the Decline of Federalism debates*, *Journal of Yasar University* (2018), Vol. 4, Pp.165-175.

rule by several stakeholders including competitive political parties. One among the 34 principles is that the constitution should incorporate a bill of rights and failure shall result in non-certification by a constitutional court. As there should be terms of reference for the drafters, these specific principles serve as guiding frameworks in drafting stage of the making process. Beyond that, the constitutional court certifies or reject drafted document taking into consideration such principles.

In Ethiopia, the federal constitution does say nothing as to the principles to be employed in the making process. The federal constitution simply empowers regional states to enact their constitution.<sup>12</sup> Unlike other jurisdictions, there is no express provision intentionally proclaimed to guide constitution-makers in the process of making. I argue that article 9 of the FDRE constitution could be used as a guiding rule in the absence of a developed guiding rule. It provides that the constitution is the supreme law of the land and any law that goes against this constitution shall be of no effect. This provision, which is one of the five fundamental principles of the constitution, could be taken as a general guiding principle. So, lawmakers including sub-national constitution-makers should be conscious enough of this provision of the federal constitution. Nonetheless, unlike other jurisdiction, regional states have no developed principles guiding the process. The federal (dominantly) and regional governments were the ones' who were guiding and directing the making process as they thinks appropriate. There are no agreed guiding principles like that of South Africa.

In addition to specific guiding rules, there are also general guiding rules, which are employed commonly in most jurisdictions. These general rules are discussed herein below.

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<sup>12</sup> FDRE Constitution, Arts 50(5) and 52 (2) (b)

## 4. OTHER CONSIDERATIONS IN SUB-NATIONAL CONSTITUTION-MAKING

### 4.1. PUBLIC PARTICIPATION

People's participation in matters affecting their public interest is not a recent phenomenon. In the past public gathering were made for dealing with societal issues.<sup>13</sup> Currently, people's right to participate in public affairs has been incorporated in several international human rights documents. The notable documents in this regard are the international Covenant for Civil and Political Rights<sup>14</sup> and the African Charter on People and Human Rights.<sup>15</sup> These documents entitle people to take part in public affairs and more importantly the latter requires public participation with strict equality. An opportunity to take part in issues affecting societal interest should be given to every member of the community. Anchoring the content of the constitution or deliberating on a draft constitutional document is one of those matters affecting societal interest. So, provided that this prominent legal instrument entrusts people with a right to engage in public affairs and the constitution building process is one of the determinant issues affecting the public tremendously, makes us conclude that partaking in the constitution making process is a right guaranteed under international human right instruments. In addition, the United Nation committee on human rights in its general comment 25 interpreted the "conduct of public affair" of article 25 of ICCPR. It is interpreted that the conduct of public affairs goes to the extent of entitling people to participate in the constitution-making process.

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<sup>13</sup> For instance in Ethiopian traditional criminal procedure Awuchachign was a common phenomenon. It is form of criminal investigation in which public gathering is called to identify criminals.

<sup>14</sup> International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession on 19 December 1966 by General Assembly resolution 2200 A (XXI) and entered into force on 23 May (1976), Art 25

<sup>15</sup> Adopted in June 1981 and came into force in October 1986. Ethiopia acceded to the Charter on 15 June (1998), Art 13(1)

<sup>16</sup> From this, a deduction could be made that public participation in the constitution-making process is not a mere procedural matter, but rather a legal entitlement.

Being that as it is, in a multi-ethnic and religious state like Ethiopia, allowing the public to be heard in the constitution building process has a lot to do with its legitimacy. To avoid the possibility of illegitimacy the public should be allowed to be heard. The recent constitution-making approach internationally is towards the participatory making process, which has the objective of making the public on the outcome of the process.<sup>17</sup> An equal note should be made that the outcome of the process cannot be controlled (predicted) unless the process is guided by principles and rules. Putting that in simple terms i.e. the constitution-making process is equally important as the final legal document.<sup>18</sup>

Otherwise, a constitutional document may be considered a simple imposition by the government. The government may use it as a political tool to materialize its interest. This could be the reason why Tsegaye regards participatory and inclusive constitution-making as the values, which works for all constitution commonly.<sup>19</sup>

Public Participation gives people the opportunity to involve in the political decision-making of the country. And this in turn has a multifaceted advantage. Its impact on increasing the democracy level, creating trust in the legal document, and more importantly responding to issues of legitimacy are some of the advantages of public participation.<sup>20</sup> In addition to these, it has

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<sup>16</sup> United nation human right committee general comment no.25: The right to participate in public affairs, Voting rights and the right of equal access to public service, July 12/1996

<sup>17</sup> Noha Ibrahim, International law and constitutional making process: The right to public participation in the constitution making process in post referendum Sudan, Law and politics in Africa, Asia and Latin America, *Verfassung Und Recht in Ubersee*, (46) 2013, Pp.131-151

<sup>18</sup> Tom Ginsburg and et al, Does the Process of Constitution Making Matter, *Annual Review of Law and Social Science* (2009), Vol.5, Pp.201-223

<sup>19</sup> Tsegaye, *Supra* note 3

<sup>20</sup> Abrak Saati, *Public Participation in Constitution Building Process; an Effective Strategy to Build Democracy* (Dissertation Brief Series, 2015).



also the potential of increasing the awareness of citizens about the constitutional right they have. So, organizing public participation is a determinant step, which should be employed in the constitution-making process.

Public participation may take different forms. What comes to people's minds in connection with public participation is the direct engagement of the public in the decision-making process. Nonetheless, that is not the right way to understand the term. Public participation may take different forms. It could be through constitution assembly, constitutional convention, referendums, public consultation, and other similar ways. So, the basic thing is that the public should be allowed to decide on the matters affecting their interest in any of those ways.

#### **4.2. INCLUSIVENESS**

A mere giving of the chance to participate does not suffice; rather the process should be representative of all possible stakeholders. Due care should be made in inviting stakeholders to the process. To be more explicit public participation should be backed by inclusiveness. Once again, inclusiveness should also be to get a certain outcome from the participant and discussion. If this is the case the process should consider many factors such as illiteracy, poverty, cultural biases, language development, and other situation, which possibly limit the full involvement of the public.<sup>21</sup> The deliberation on the issues and decision-making on the same should be presented in a way it can accommodate all these diversities. In addition to that, the makers should also be serious enough about the transparency of the process. At the end of the day, the public should not be challenged by the ready-made and strange constitutional document they did not know about its making process. Each decision-making stage should be open to the public. Inclusiveness may

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<sup>21</sup> Jason Gluck and Michele Brandt, Participatory and inclusive constitutional making: Giving choice to the demand of citizens in the wake of Arab spring, (United state institute of peace 2015)

apply both at the drafting and deliberation stage provided that the latter stage should be more transparent than the former.

So in general adherence to such values will positively impact the making process in bringing a good outcome. Adherence to them lets the drafters come up with a constitution capable of addressing existing societal issues.

#### **4.3. THE ROLE OF THE INTERNATIONAL COMMUNITY**

Inviting international communities who have experience in the constitution-making process could be a good input. The role they play in the process, design, and explaining constitutional space available to them is paramount.<sup>22</sup> Experts coming from other jurisdiction with the same experience knows the possible challenges and way out of the hurdles. They play a determinant role in setting up a good methodological approach for the constitution-making process respecting local culture and traditions.<sup>23</sup> Specifically, in the sub-national constitution-making these groups should be conscious enough of the local values and beliefs. In addition to that, international communities provide advice on the design and application of substantive international human rights norms.<sup>24</sup> Somalia, Bougainville, and Bosnia and Herzegovina are some of the states in which international communities have impacted the constitution-making process. In the Ethiopian sub-national constitution-making nothing is known about whether international communities are consulted or not.

#### **5. SUB-NATIONAL CONSTITUTIONAL SPACE AS A GUIDING RULE**

One basic thing to discuss in dealing with sub-national constitution-making is the issue of sub-national constitution space. What is sub-national constitution space? It is a space to be filled by constituent units within a federal system constitutional architecture by observing predetermined

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<sup>22</sup> Michelle Brandt & et al, *supra* note 7

<sup>23</sup> Lous Aucoin, *The Role of International Experts in Constitution Making: Myth and Reality*, George Town Journal of International Affairs, 2004 (5), Pp.89-95

<sup>24</sup> *Ibid*

rules.<sup>25</sup> The space varies as one goes from one federal system to another. The space could be wider or narrower depending on many factors. The system in which the federation is formed (aggregative or devolution), whether the federation is symmetrical or asymmetrical and the purpose for which the federation is formed are some of the factors which determine sub-national constitutional space. Aggregative federations in which independent states with their own established institutions come together and form a federation enable the states to have a wider constitution space than devolutionary. When the type of federation is asymmetrical, some states have more constitutional space than others. And lastly, the purpose for which the federation is formed is decisive in determining the space. Some federation is formed to accommodate the diversity of the people, which provides a wider constitutional space on its way to guaranteeing regional distinctiveness.<sup>26</sup>

The other thing worth considering in dealing with constitutional space is identifying to which organ residual power is given. If residual power is left to the units of federation the sub-national constitutional space could be wider, provided that the extent to which the national constitution is incomplete matters. Some federation gives residual power to the central government and others to constituent units. Some jurisdictions leave residual power for the joint determination by the two tiers of government. Countries like Canada, India, and South Africa give residual power to the central government. Some other countries like USA, Nigeria, Germany, Australia, Mexico, and Russia gives residual power to constituent units.<sup>27</sup> In Ethiopia residual power is given to regional states' (sub-national units). Drafter knows the ground within which they can play in designing regional state institutional frameworks after identifying the available constitutional space. As the approach followed in dividing power between the two tiers of government varies as one goes from one federation to that of the other, the

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<sup>25</sup> G.Allan Tarr, *Explaining Sub-national Constitution Space*, Penn State Law Review, (115) 2011, Pp.1133-1248

<sup>26</sup> *Ibid.*

<sup>27</sup> John Kincaid, *Comparative Observation of Federation*, Journal of federalism, Center for Federal Studies (2005), 46, Pp.233-365

constitutional space also varies which the former affects the latter. In some federations, some constituent units have a wider constitution space whereas in other jurisdictions narrower which make their institutional framework strictly anchored by the central constitution. Bosnia and Herzegovinian, Somalia, Russia, and Ethiopia are notable examples of those countries with significant constitutional space.<sup>28</sup>

One basic purpose that the regional constitution serves is structuring and institutionalizing the power of organs of state. In incorporating this fundamental purpose of the constitution, the drafters should take due care not to go out of the space provided for states.

## 6. SUB-NATIONAL CONSTITUTION-MAKING IN ETHIOPIA

The drafting, adoption, and enactment procedure of regional constitutions in Ethiopia did not apply the process that was employed during the making of the FDRE Constitution. The making and revision process has been initiated by the ruling party, which later directed the issue to the drafter which has incorporated it into the document.<sup>29</sup> This could be one of the reasons for the existing substantial similarity among Ethiopian regional constitutions.

In structuring the constitution-making process the issue that who should take the responsibility for adopting the draft is regularly a point of contention among the key stakeholders.<sup>30</sup> Different jurisdiction has entrusted the duty for different organs. The state constitution could be adopted by the state legislature or by constituent assembly or it could be adopted by popular referendum.<sup>31</sup> The sub-national constitutions in Ethiopia were adopted through the state legislature and this makes state constitution-making require

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<sup>28</sup> *Supra* note 7, See also the FDRE Constitution, Art. 52 (1).

<sup>29</sup> Christopher Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of sub-national Constitution in Ethiopia* (Addis Ababa University press 2017)

<sup>30</sup> Jemal Benomor, *Constitution making and Peace building: Lesson Learned from the Constitution making Process of Post Conflict Countries*, (2003)

<sup>31</sup> *Ibid*

easier procedure than the federal constitution.<sup>32</sup> There is no evidence showing that several stakeholders were consulted in the process.

Except for the constitution of Oromia and Tigray which came before the coming of the federal constitution, most sub-national constitutions in Ethiopia were adopted during the same period. The first constitution of Oromia was adopted in 1993. And Tigray regional state constitution was adopted in 1995 (slightly earlier than the federal constitution). The remaining seven states adopted their constitutions following the coming into being of the federal constitution in 1995 and were revised after 2001 (except the constitution of Oromia which was revised in 1995 and again in 2001). The Federal constitution also expressly authorizes regions to draft and adopt their constitution.<sup>33</sup> And it is based on this authorization that constituent units in Ethiopia came up with their constitutions.

In the Ethiopian regional constitution-making, the common guiding principles of constitution-making were not considered. The public did not take part in the process. There is no evidence showing whether several stakeholders such as international experts, political parties, and interested groups and individuals were invited to the process.

## 7. A NEED FOR A NEW PERSPECTIVE

Some jurisdictions have a good experience and could be a model in sub-national constitution-making in several aspects. One among many points to ponder as a good experience is setting of minimum standard from which going down is not allowed. The constituent unit can only come up with a higher standard, which can realize better protection than the central constitution does. A notable example in this regard is Switzerland and South Africa. The Swiss national constitution strictly requires cantons to come with only a democratic constitution.<sup>34</sup> Unlike other jurisdictions, in the sub-national constitution-making of Swiss, there is no certification process. And

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<sup>32</sup> Tsegaye, *supra* note 5

<sup>33</sup> Gincilini Yitirmessi, *supra* note 11, Art 52 (2) b

<sup>34</sup> Switzerland's constitution of 1999 through amendments 2014

there is no institutionalized means of screening whether the draft constitution is democratic or not. But this does not mean that the requirement of coming up with a democratic constitution is mere lip service. Rather the people of the region approve the upcoming draft before adoption. Another interesting experience in this regard is, the approach employed by South Africa. In South Africa, there are so-called thirty-four (34) principles. They are mandatory rules that have to be observed by any constitution. The thirty-four principles have been contained in the interim constitution of South Africa.<sup>35</sup> These principles include a bill of rights and other principles that ensure the protection of human and democratic order. One pre-condition that the provincial constitution should observe is being consistent with the interim constitution of South Africa.<sup>36</sup> Observance of such principles incorporated in the interim constitution is a red line that drafters should be conscious of as the non-observance results in non-certification. If a bill of rights was not included, or any of the other principles were not complied with, the Constitutional Court could send back the draft constitution.<sup>37</sup> A notable example of this in South Africa is the Kwa Zulu Natal provincial constitution, which was rejected by the constitutional court of South Africa.<sup>38</sup> From the experience of the two countries, a clear inference could be made that a minimum condition has been set as a red line in framing the cantonal constitution in the case of the Swiss and provincial constitution in South Africa.

In Ethiopia, there is no such mechanism for overseeing the constitution of the regional states before adoption. The federal constitution authorizes constituent units to come up with their constitution and there are no further means of checking their democratic nature. Coming up with that stand

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<sup>35</sup> Jeremy Sarkin, *The drafting of South Africa's Final Constitution from Human Right Perspective*, American Journal of Comparative Law (1999), Vol, 47, Pp.67-87

<sup>36</sup> Republic of South African Constitution Act of 2000 of 1993 (interim constitution), Section 160

<sup>37</sup> Principles and Process of Constitution Building, Charter Change Issues Brief No.1 (Learning session conducted in Philippines House of Peoples Representative and House of Senate, 16 and 17 may 2018)

<sup>38</sup> Christina Murray, *Provincial Constitution making in South Africa: The (non) example of Western-Cape*, Jahrbuch des offentichen recht (2001), Vol.49, Pp.481-512

ensures democratic order by challenging the usurpation of power by the regional government. Hence, it will be good if the stand was taken by the constitutional system of the two above countries adopted in Ethiopia. But a note should be made that to do the same; requires the amendment of the federal constitution (as it is a stand to be taken by the constitutional system of the country).

The other big issue that makers of the sub-national constitution should take into account is the role of people in the making process. In the making of all the nine Ethiopian sub-national constitutions, the public has not been given the chance to take part. The experience differs and it is outstanding in Switzerland and Germany, which gives the public ultimate power in the making process. In Germany, the constitutional assembly or the lander parliament adopts the lander constitution but the final power of approval is given to the public.<sup>39</sup> The same thing holds in Swiss in which the people of the canton give the final blessing to the draft constitutional document before enactment.<sup>40</sup> The reality in Ethiopia is that there was no stage at which people were given the chance to have their say on what should the regional state constitution look like and contain. Public participation has a multifaceted advantage beyond entitling people to their right of taking part in the public affairs of the region. The people have not been consulted and given the chance to forward their say on the draft before promulgation. The preamble of all regional state constitutions stipulates that the constitution has been adopted after the people's representative of the region has made a detailed discussion.<sup>41</sup> Nonetheless, a note should be made that these representatives might not represent the interests of the people. Hence, the other fundamental thing that sub-national making in Ethiopia should consider is the role that peoples of the region play in the process.

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<sup>39</sup> Arthur B. Gunlicks, *Lander Constitution in Germany*, Journal of Federalism (1998), Vol.24, Pp.105-125

<sup>40</sup> Swiss Constitution, *supra* note 33

<sup>41</sup> Look at the preambles of all Ethiopian regional state constitution

The other good perspective that regional constitution-making in Ethiopia should look into account is the process of certification experienced in South Africa and South Sudan. Provincial constitution-making in the two countries has a stage of certification, in which an established organ evaluates the draft document. This task has a tremendous vitality in controlling constitution-makers not to abuse their power. In the case of South Africa, it is the constitutional court of South Africa, which evaluates and certifies the provincial constitution without which it cannot get force.<sup>42</sup> This experience is also there in South Sudan in which the national ministry of justice is empowered to certify states' constitutions before adoption.<sup>43</sup> This trend will ensure the protection of the peoples of the regions and balance the federal system in good conditions. In our country Ethiopia, there is no such trend of reviewing regional states' constitutions before adoption. As things stand now, there is no regional state constitution, which goes against the values of the people and becomes a plight for the protection of human rights. But this could not be a guarantee as it is impossible to be predictive of the content of future regional state constitutions. So, independent organ should be established for the task of certification.

Ethiopia is a highly diverse nation with more than 80 ethnic groups having their own culture and values. This has something to tell about the expected distinctiveness of the sub-national constitution. If the making process is left for the constituent units autonomously, regional distinctness could be well ensured. The people of the region may make their culture and traditions part and parcel of the constitution, which has a great impact on enabling the constitution to address societal issues. The experience in South Sudan is a notable example in this regard. Sources of the state constitution in South Sudan are the custom and traditions and popular consensus of the people of Southern Sudan.<sup>44</sup> In Ethiopia let alone considering the people's customs and traditions, even the people have not made a part of the making process.

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<sup>42</sup> Vivien hart, *Constitution making and the Right to Take Part in Public Affair*, International Law Review (2018), Vol.7, Pp.235-333

<sup>43</sup> Christian Murray, *supra* note 37

<sup>44</sup> Christian Murray, *supra* note 37, P 133



The perusal of the preambles of regional states' constitutions provides that it intended to respond to region-specific values and beliefs.<sup>45</sup> But that is far from reality. So, sub-national constitution-making in Ethiopia should involve investigation of customs and traditions of the public and incorporate the same, which have varied advantages including making the constitutions legitimate documents.

## **8. THE MAKING OF THE OROMIA REGIONAL STATE CONSTITUTION**

As was mentioned in the previous topic Oromia regional state has three constitutions in its history excluding the two subsequent amendments made to the constitution of 2001. The first constitution was enacted during the time of transition based on Transitional Period Charter. That is the Oromia regional state constitution of 1993. The actual objective of this document is to proclaim the right of self-determination that the Oromo people have in the transitional charter. It has also the objective of regulating the newly formed transitional government's powers and function and the right and duties of the public.<sup>46</sup>

Several writers forward different ideas as to the procedure through which such a document came into being. Some argue that the constitution is a document prepared by the federal government and principles of the constitution-making process has not been employed.<sup>47</sup> Regional states did not play any role in designing their constitution at all. And others suggest that nothing is known as to its making process.<sup>48</sup> Both views do not clearly

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<sup>45</sup> Tsegaye, *supra* note 5, P.47

<sup>46</sup> Getachew Disasa, The Role and Relevance of Sub-national Constitution in Ethiopian Federation in Promoting Effective Self rule and Regional autonomy, The case of Oromia regional state constitution (Master thesis submitted for center for federalism and governance studies, Addis Ababa University, 2018)

<sup>47</sup> Zemelak Aytenuw and Yonathan Tesfaye, The Constitutional Status of Local Government in Federal System: The Case of Ethiopia, Indiana University Law Journal, (2012), Vol. 4, Pp. 88-109.

<sup>48</sup> Tsegaye, *supra* note 5.

show the existing reality on the ground. Hereunder the procedure involved in the constitution-making process has been provided section by section.

### **8.1. DRAFT PREPARATION**

It is commonly known that in the law-making process, draft preparation is normally carried out by a body of experts incorporating several professional groups. In the making of the first Oromia regional state constitution, the region neither organized a group for draft preparation nor prepared the draft in some other way. Rather it was a ready-made draft document, which was sent from the federal government.<sup>49</sup> My informant further forwarded that the draft prepared by the federal government was anchored in the Amharic language. This shows the fact that the regional council was not autonomous in the making process. At the regional level attempt was made to discuss the draft. The group of people who have deliberated on the constitution made the discussion in the Amharic language. It was Oromia regional state justice bureau, which translate it later into Afaan Oromo.<sup>50</sup> This act of the federal government is incorrect not only as a matter of procedure but also goes against the federal constitution. The federal constitution in its article 50 (5) gives the power of drafting, adopting, and amending the state constitution to the state council. Some may argue that the provision should not be invoked as the Oromia region precedes the federal constitution. Nonetheless, the same procedure has been involved in revising the regional constitution. So, the fact that draft preparation carried out by the federal government not only affects distinct realities of the region but also goes against the power that Oromia regional council has been entrusted with by the federal constitution.

### **8.2. Public Participation**

In preparing a fundamental document (which has the purpose of limiting the power of the government) like a constitution public participation is a

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<sup>49</sup> Interview with Ato Demoze Mame, President of Oromia Supreme Court during Transitional Period, Currently he is chairman of Oromia Regional State Constitutional Interpretation Commission,(Caffe Oromia office at Addis Ababa Sar Bet, Jan 18/2012)

<sup>50</sup> Interview with Ato Addisu Melaku, Advisor of Caffe Speaker (Caffe Oromia office, Addis Ababa, Sar Bet, Jan 19/2012)

determinant. Otherwise, it will be a mere imposition of the government interest, which enables the government to take to itself uncontrolled power. In the making process of the regional state constitution, it is rarely possible to say people were allowed to have their say directly or indirectly.<sup>51</sup> At the same time, this does not mean that discussion has not been made on the draft at the regional level at all. The perusal of the preambles of all constitutions of the regions forward that the constitution is enacted after a detailed discussion has been made by the elected representative (state council) of the region. Nevertheless, the facts on the ground do not show that.

*Regional judges selected systematically are political affiliates of the governing party, political institutions in one way or another were controlled by EPRDF, and Politician's holding higher governmental positions are the stakeholders who have been given a chance to reflect on the draft constitutional document. Opposition political parties, religious institutions, cultural institutions such as Aba Gadda's, NGO, international communities, and other relevant stakeholders were not given the chance to take part in the deliberation made.*<sup>52</sup>

Discussion by a few groups of individuals selected based on convenience is not tantamount to allowing the public to reflect their views on the matter. The failure of giving the chance to the public has multifaceted risks. Because people do not know the when and how of the process, the visibility of the constitution of the region has been affected. My respondent said that let alone ordinary citizens, there are even officials at the local administrative level who don't know about the regional constitution.<sup>53</sup> Hence, it would have been better if the public had been given the chance to partake which can contribute to the good of the constitution.

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<sup>51</sup> Tsegaye, *supra* note 5

<sup>52</sup> Sibhat Kefyalew, Constitutional Complaint Expert at Caffee Oromia (Addis Ababa, Sarbet, Jan 19, 2012)

<sup>53</sup> Interview with Ato Demoze, *supra* note 48, Jan 18, 2012

### 8.3. ADOPTION

The selected groups of individuals mentioned above made discussion from the start of May 1992 to the end of June 1992 (doing their regular official duty) on the issues of compatibility of the draft constitutional document with the existing realities of the region.<sup>54</sup> In a constitution-making process, time is a determinant element. The time framework should neither unnecessary be long nor short which could affect the quality of the outcome. To evaluate the content and compatibility of the draft to the existing realities of the region within two months is not reasonable. It was within such a time framework that the selection of stakeholders has made.<sup>55</sup> The result of the deliberation was nominal which did not serve later as an input for modifying the gaps in the draft. Regardless of some basic critics of the content, the original draft document was presented to the state council for approval.<sup>56</sup> Finally, it was the regional state council, which finally adopts the constitution as per art 50 (5) of the FDRE Constitution.

### 8.4. SOURCES OF THE REGIONAL CONSTITUTION

In the constitution-making process, one basic thing to consider is the place from which the document is anchored. Particularly, in designing a sub-national constitution, the lawmaker should take due care to come up with a legal document, which shows the existing realities of the region. This approach is known as sub-national identity constitutionalism. It is the incorporation of important identity markers such as religion, cultural institutions, and language in the constitution. For example, in South Africa, the Kwan-Zulu natal constitution tried to incorporate the Zulu monarchy into the constitution.<sup>57</sup> Hence, using the region-specific values and traditions as

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<sup>54</sup> Interview with Ato Isa Boru, Chairperson of Administrative and Legal Affairs Committee at Caffè Oromia (Addis Ababa, Sar Bet, Jan 19,212)

<sup>55</sup> Tsegaye, *supra* note 5.

<sup>56</sup> Interview with Ato Adisu, *supra* note 49, Jan 19, 2012.

<sup>57</sup>Christope Van der Beken,Sub-national Constitutional Autonomy and Accommodation of Diversity in Ethiopia, (68) 2006 , Pp.1535-1571

far as it does not go against the federal constitution is a good approach to resort to designing a sub-national constitution.

The fact in most jurisdictions is that the source of the sub-national constitution is a national constitution. South Africa is a notable example of this approach. Ethiopia's sub-national constitution is not an exception to that. There is a substantial resemblance between the national and regional constitutions. Specifically, the bill of rights section of the Ethiopian sub-national constitution is considered as if they are a verbatim copy of the national constitution. From this, we can reach the deduction that the federal constitution is a major contributor to the regional constitution as a source.

The author expects that the Gada system (the traditional democratic ruling system of the Oromo people) might be the source of the Oromia regional constitution.<sup>58</sup> But the result after an investigation is negative. The first constitution of the region mention Oromo ethnic group was ruling itself through the Gada system (traditional administrative system) until it finally dominated and was set aside by the then feudal ruling. It only mentions that the Oromo ethnic group used to rule itself through an institution that made it based on the Gada system.<sup>59</sup> Other than mentioning Gada as customary rules of the Oromo ethnic group and experience of the ethnic ruling itself through the same, no values of the system have been incorporated in the constitution. Like the state constitutions of South Sudan, which employ customary rules of constituent units as a source, Oromia regional state should make a formal investigation on the Gada system whether or not it affects the fundamental rights of citizens and give a place for it in the constitutions.

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<sup>58</sup> The provincial constitutions of South Africa and Sudan used custom and traditions as a source. I expected the same in the making of regional states constitutions in Ethiopia.

<sup>59</sup> Oromia Region Transitional Self-government Constitution, Proclamation No. 2 /1993, The Preamble

## 8.5. CHALLENGES FACED IN THE MAKING PROCESS

The fact that the draft preparation was done by the federal government was the major setback that makes the whole process challenging. Persons and entities, which sit for discussion were unable to openly and freely comment on the ready-made constitution prepared by EPRDF under the strong leadership of TPLF. In addition to that, the participants reportedly showed reservations about active engagement due to the reason that their words may be politicized and bad things might follow.<sup>60</sup> The environment was not open enough to have a constructive debate on issues constitutional issues. The discussion was not the kind of discussion capable of evaluating the compatibility of the draft with the existing realities of the region.<sup>61</sup>

The other challenge of the making process is that the slight debate and the discussion made and the stand taken to alter were not considered as an input and finally the raw draft presented for discussion was brought back for adoption.<sup>62</sup> So, the discussion was nominal and only for formality purposes. The attempt of the federal government is the act of legitimizing the document by fulfilling some procedural steps of constitution-making.

The composition of the participant was the other point, which could be put as a setback in the constitution-making process. Inviting judges, public prosecutors, politicians of higher governmental positions, individuals, and entities that have political affiliation with the governing body will not suffice to come up with a good outcome. It is crystal clear that they don't come up with ideas, which go against the interests of the government. So, the composition should have been inclusive of all stakeholders such as opposition political parties, and religious and cultural institutions of the region. However, the fact that participation was limited to the person and

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<sup>60</sup> Interview with anonymous key informant working in Caffè Oromia, (Caffè Oromia, Addis Ababa, Jan 18, 2018)

<sup>61</sup> Ibid

<sup>62</sup> Christopher van der Beken, Federalism in Context of Extreme Ethnic Pluralism, The case of SNNPR, *Journal of Law and Politics in Asia, Africa and Latin America*, (2013), Vol.46, Pp.1-17

entities loyal to the government made the discussion with no positive outcome.

## **9. CONSTITUTION-MAKING PROCESS IN THE SNNPR**

Like other Ethiopian regional states, SNNPR enacted its first constitution in 1995. This constitution was revised when revision is made in all other regional states' constitutions in 2001. The SNNPR constitution has many distinctive features, save the existence of similarities among regional state constitutions, particularly in the bill of rights sections. That is due to the reason that the region is the total of several ethnic groups having their administration. Unlike other regions, SNNPR has two houses, i.e, state council and council of nationalities.<sup>63</sup> The latter has been entrusted with the duty of interpreting the regional constitution to balance the power entrusted to the former, which is mandated to enact regional laws.<sup>64</sup> The Council of Nationalities is structured like the House of Federation of the federal government. The composition and mandate given for the council of nationalities make it the regional counterpart of the House of Federation.

One may expect that due to the different ethnic composition, the SNNPR might have involved a sophisticated constitution-making process. Nonetheless, the reality is different from what it ought to be. A no different approach has been employed in making the process of the SNNPR constitution.

### **9.1. DRAFT PREPARATION**

Unlike the Oromia region, in SNNP regional state the task of preparing the draft was carried out by a committee formed for such purpose under the direct control and supervision of Abate Kisho (the then president of the

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<sup>63</sup> Constitutions of Southern, Nationalities and Peoples of Ethiopia Proclamation No.1/1995,

<sup>64</sup> Constitution of Southern Nationalities and Peoples of Ethiopia Procl. No1/1995, Arts.51 and 52

region) and Bitew Ayele.<sup>65</sup> The latter was formally appointed person to support party organization in the SNNPR, which later took many of the administrative tasks of the region and was considered the *de facto* head of the region.<sup>66</sup> Higher officials of the region prefer to get the blessing of Bitew before taking action on any crucial issues. So, even if a committee has been formed to draft the constitution, it has been prepared under direct control and supervision of these two persons, which are loyal officials of the federal government.

## 9.2. PUBLIC PARTICIPATION

SNNPR is a region, which is composed of multi-ethnic and linguistic societies. In such diversified societies, the constitution is expected to be representative of all existing interests to the extent possible. Unfortunately, the public was not allowed to reflect on the making process. A slight discussion has only been made among higher government officials, which started and completed within a very short period.<sup>67</sup> The wording of the preamble of the constitution that detail and a wide discussion have made by people representative of the region is not real.

## 9.3. ADOPTION

The federal constitution in art 50(5) gives the power of adopting a state constitution for a regional state council. SNNPR constitution was approved by the state council of the region. Simultaneously, a note should be made that the council was not free from the influence of the federal government. In addition to that SEDM, which was the dominant party in the regional parliament, is the affiliate party of the federal government. In one way or

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<sup>65</sup> Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in the Council of Nationalities (SNNPR capital Awasa, Jan 25, 2012). Bitew Ayele mentioned in the text was central committee member of TPLF and advisor of the then Prime Minister Meles Zenawi.

<sup>66</sup> *Ibid*, See also Lovise Allen, *The Politics of Ethnicity in Ethiopia: Actors, Powers and Mobilization under Ethnic Federalism*, African Social Science Series (2011), Vol.25, P 342

<sup>67</sup> Interview with Aynekulu Gowatsuba, Supervision and Control Expert of SNNPR State Council, (SNNPR Council of State Office, Awasa, Jan 26/2012)



another even if the legal document has adopted by the state council, it was not free from the influence of the federal government.

#### **9.4. SOURCES OF THE CONSTITUTION**

A closer look at the constitution of SNNPR and the federal constitution gives an inference that the latter is the source for the former. This same approach holds for other constitutions also except that they regulate a local administrative structure, which does not get coverage in the federal constitution. This approach affects the competency of the regional constitution in serving the unique interest of the region.

#### **9.5. CHALLENGES FACED IN THE MAKING PROCESS**

The discussion made on the draft constitutional document was not free and open. It didn't have the potential of evaluating the appropriateness of the content of the document. Persons who were representative of the federal government who didn't have any connection with the making process (have any expertise on the matter) took part in the discussion. And this makes other participants be reserved from giving comments on the draft.<sup>68</sup>

The time element was the other challenge. The committee was mandated to complete the discussion within a very short period by informing that other regions has already completed their part.<sup>69</sup> This was a surprising aspect of the process, which makes someone question how the status of other regions urges the making process to be completed so fast.

The approach employed in the discussion was problematic by itself. The chairman of the discussion was not chairing the deliberation with aim of getting new comments on the content. Rather, an explanation was given on

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<sup>68</sup> Interview with Mekonin Mergia, Legal and Administrative Affairs Directorate Director, SNNPR Council of Nationalities (SNNPR Council of Nationalities, Awasa, Jan 25, 2012)

<sup>69</sup> Ibid

everything to convince the participant to accept what has already been anchored.<sup>70</sup> So, the so-called deliberation on the draft was nominal.

## **10. REVISION PROCESS OF THE CONSTITUTION OF OROMIA AND SNNPR**

All Ethiopian sub-national constitutions were amended after 2001. Oromia, Amhara, SNNPR, and Tigray regional state revised their constitution in 2001 with a difference of days. And constitutions of Afar, Gambella, Benishangul Gumuz, and Somalia regional states made changes to their constitutions in 2002. Harar was the last regional state to revise its constitution in 2004. The perusal of the preambles gives an inference that the driving force pushing the revision is similar. The need to realize good governance within the region and make the constitution adaptable to regional realities are the reason for which regional state constitutions are revised.<sup>71</sup> How regional states in such diversified societies could have a similar objective of making a change to their constitutions? Who should and who take the initiative of revising regional state constitutions? Do the requirements of the federal and regional constitutions for drafting; adopting and revising regional constitutions observed are some of the questions, which are going to be answered in this section.

## **11. REVISION OF OROMIA CONSTITUTION**

Constitutional revision/amendment/ starts from initiation and every constitution give the right of initiating the process to a specific organ/s. Members of Caffee, regional government administrative council, district councils, and kebele councils are entities who can initiate a revision.<sup>72</sup> Does

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<sup>70</sup> Tesfalem W/mikael, Legal Advisor of SNNPR State Council, Participated on the discussion made to enact the SNNPR Constitution of 1995( SNNPR State Council , Awasa, Jan 26, 2012)

<sup>71</sup> Christopher Van der Beken, Sub-national Constitutional Autonomy in Ethiopia: on the road to distinctive regional constitution (Paper submitted to workshop, Sub-national constitution in federal and quasi-federal states, 2006). Read also the preambles that of all the nine regional states, which reads the same objective has induced the revision.

<sup>72</sup>A Proclamation to Enforce Oromia Regional State Constitution of 2001, Proclamation no. 46/2001, Art. 111

this organ initiate the revision made to the ORS constitution on 27<sup>th</sup> October 2001 is the issue to consider here? The reality is that none of these organs have submitted initiating proposals for the state council. The revision process was rather initiated and set in motion by the federal government.<sup>73</sup> The perusal of the preambles of all regional state constitutions shows that the reasons for amending are similar which is a good indication of the fact that the federal government was the one that initiated the process. It means all regional states may not have a similar mindset (i.e. plan, budget, and initiation) to do that at the same time. And this makes us reach the deduction that there exist external factors (federal government), which made the ball rolling.

The task of preparing a draft document was entrusted to a committee composed of experts of different specializations. Judges, public prosecutors, and some other officials recruited from several sectors by the president of the region were mandated to prepare a draft.<sup>74</sup>

From this, it is simple to make an inference that the revision process was carried out under the direct control and supervision of the president. Only those individuals and groups who support the cause of the governing party were given the chance of taking part in the revision. Political convenience has taken into consideration when the selection is made among experts.<sup>75</sup> Other relevant entities and persons who can make positive contributions did not participate. From this, it is possible to make a good inference that the process made due care to safeguard the political objectives of the governing party rather than trying to address societal issues. Final approval to be made on amendment after discussion, the majority vote of the district council and the three-fourth majority vote of the chafe should be secured.<sup>76</sup> These are the only and exhaustive stakeholders to take part and vote in the process and

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<sup>73</sup> Getachew, *supra* note 48.

<sup>74</sup> *Ibid*

<sup>75</sup> Anonymous Informant, in *supra* note 62, Jan 26

<sup>76</sup> Oromia Regional State Constitution, Art. 112 (2) (a) and (b)

other persons/entities/ cannot interfere in the process. Now the issue is whether such a requirement has been observed or not in the process.

The interference of the central government that has made during the making process has not changed during revision save the extent of intervention is limited. The perusal of the preambles of the constitutions gives an inference that they have the purpose of achieving the objectives of the federal government. The need to constitutionalize the separation of power among branches of regional government and the incorporation of accountability and transparency among the branch of government are some of the reasons for revision as one read the preambles of all regional state constitutions. This is one indication of the interference of the central government.<sup>77</sup> Even if the regions enjoyed relative freedom in the revision compared to the making of the original constitution, it could not be possible to say those constituent units were autonomous in revising their constitutions.

## 12. REVISION OF SNNPR CONSTITUTION

As true for the constitution of Oromia and other regional states, the revision process of the SNNPR constitution is not an exception. As it is mentioned above, it was the federal government that took the lion's share in putting on the engine for the process. The SNNPR constitution provides that councils of state, the Council of Nationalities, Zones, and Special Woredas should initiate a revision to be made in the constitution.<sup>78</sup> Unlike the federations of Germany, Switzerland, and the USA that permits the people of the landers, states, and cantons respectively to make initiation of constitutional change, Ethiopia's sub-national constitutions do not empower the public to make

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<sup>77</sup> It seems that central government has terrified that the regional government may go powerful than before. It just wants to control what is going on behind the door. Nonetheless, that is not a good approach as far as power is given for region to enact and execute their constitution. Even if there is possibility of going beyond what has given (ultra virus), there should be other means of screening. Certification process in South Africa and South Sudan is a notable example

<sup>78</sup> The 1995 SNNPR Constitution, Art 125(1) (a) (b)

initiation. So, who initiate the revision of the SNNPR constitution is the issue here?

What we knew was that other regions have revised their constitutions. And our region's president announced in a meeting that we have been mandated to amend the constitution to make the constitution adaptable to the existing reality of the region.<sup>79</sup>

This is hilarious the reason that the president of the region cannot make initiation personally as he is not one among the list given under Article 124 of the regional state constitution. Only those exhaustive lists of persons can make initiation. It seems that the president took an order to do the same from the federal government.

The same organs given the duty of initiating the amendment process are given the power of approving (adopting) the revision after discussion. The difference is that the approval should be made by the cumulative vote of all organs. The major setback at the stage of approving the revised SNNPR constitution was that the stakeholders do not clearly (with sufficient detail) know the content of the revised document.<sup>80</sup> It seems that they were allowed to participate to skip away from the possible critique that would arise if the task were carried out without their involvement. Their participation was nominal and for formality purposes and to meet the constitutional requirement of popular involvement.<sup>81</sup> The requirements of the law were not observed and people were not consulted in the amendment of the SNNPR constitution.

In closing, it is helpful and interesting to raise the remark made by Mr. Tesfaye Daba Wakjira (from ODP) who is a member of the Ethiopian House of People Representative (HPR) member at the meeting held on the issue of

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<sup>79</sup> Interview with Mekonin, *supra* note 68.

<sup>80</sup> Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in council of nationalities, (Awasa, Jan 25, 2012)

<sup>81</sup> *Ibid*

(non) extension of election in the parliament. The remark was made as a response to Dr. Addis Alem Balema (TPLF) on his stand that the election should not be postponed and by doing so the government takes unconstitutional measures.

**ኢህድግ ባለፉት ግዝያት እንዴት ህግ እንደሚያወጣ ና እንደሚያሻሽል እኮ በደንብ እናወ.ቃለን። ለምሳሌ የክልሎች ሕገ-መንግስቶች እንዴት ነዉ የተሻሻሉት! የክልሎች ፕረዚዳንቶችንና ም/ፕረዚዳንቶችን ጠቅላይ ሚኒስቴር ጽ/ቤት ድረስ በመጥራትና ቀጭን ትዛዝ በማስተላለፍ እንደተሻሻሉ የምናወ.ቀዉ ጉዳይ ነዉ።<sup>82</sup>**

From this point of debate at a parliamentary level, a good deduction could be that the sub-national constitution in general and the revision of the two regional state constitutions were made under direct control and supervision of the federal government.

## 12. CONCLUSIONS

Ethiopia is one among many countries following a federal system of government. The perusal of Art.1 of the federal constitution dictates this same fact. The existence of shared-rules and self-rule is one of the characteristics of federations. One of the means through which the self-rule of the constituent units within the federation manifested is through a sub-national constitution. Accordingly, many states within the federation have promulgated their constitutions. It is not necessarily a requirement for them to have their constitutions, as many constituent units within the federation don't have a constitution. There are even federations that expressly prohibited sub-national constitutions. These are Belgium, India, Nepal, Nigeria, and Pakistan. Save this exception many states within federations have their respective constitutions, which best advance self-rule. South Sudan, South Africa, Argentina, Australia, Germany, Switzerland, and the USA are some of those countries, which require states to have their constitutions.

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<sup>82</sup> Ethiopian television broadcast, Parliament debate on the extension of election Ethiopian 2012, May 5, 2020

In Ethiopia, the FDRE constitution under its articles 50(5) and 52 (2) (b) proclaims that regional states have the power of drafting, adopting, enacting, and executing state constitutions. Accordingly, all nine regional states enacted their constitutions in the 1990s and revised them after 2001. The Constitution of Oromia and SNNPR, which are the two regional states that are the center of this study, enacted their constitutions during this time. The reading of the preamble of the two constitutions gives us an inference that they have the same rationality for revision. The need to constitutionalize the principle of separation of power and establish accountability and transparency in the functions of government institutions are the two objectives, which are the reason for revising both constitutions.

Be that as it may, how those constitutions come into being are the center of this study. What were the processes involved? Who prepared the draft? What was the procedure for the same? What was the role of the public in the making process? Who adopted it are some of the questions tried to answer in this paper. Unlike the making process of ordinary laws, constitution-making requires a long process and involves several stakeholders in due course. Particularly, when it comes to the making of a sub-national constitution, public involvement is crucial to realize its compatibility with the region's socio-economic and cultural circumstances.

The making process of the two constitutions involved several steps provided that it was there with its shortcomings. The first constitution of Oromia was drafted at the federal level, which was later sent to the region for discussion.<sup>83</sup> Although Afan Oromo is the regional working language, the draft prepared by the federal government /in Amharic/ was later translated into Afaan Oromo by the Justice Bureau of the region. Critiques, comments, and corrections given during the draft discussion were not considered as input. What was raised, as a suggestion to be corrected was later incorporated as they were before the discussion. All the deliberation made for two weeks was nominal. No significant difference was made in the making of the constitution of the SNNPR. It was a committee under the

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<sup>83</sup> Demoze Mame, *Supra* note 48

superior leadership of the then regional president Ato Abate Kisho and Ato Bitew Ayele who was TPLF supervisor of the Southern region political organization prepared the draft. No strong debate was made on the content of the document due to several reasons. The modes of the discussion take a form of imposition rather than giving the chance for the participant to evaluate their compatibility with the regional situation. Only higher officials of the government were participants in the discussion. Finally, the constitution approved by the state council was SNNPR with no other additional comment.

So, in general, the making process of the two regional states' constitutions did not pass through a special procedure. The perusal of the preamble of the two constitutions is a good indication of the fact that they are simple impositions from the federal government.

### **13. RECOMMENDATIONS**

- Regional states should utilize their constitutional power of drafting, adopting, enacting and executing constitution without federal government interference.
- To properly serve the purpose for which they are there, regional states should refrain from copying the federal constitution.
- There should be nationally agreed basic principles and standards, which each regional state consider in designing its constitution.
- The fact that the sub-national constitution-making process is participatory does not suffice. Rather, it should also be inclusive of all relevant stakeholders including opposition political parties.
- An independent and neutral organ such as the international community and NGOs should be part and parcel of the sub-national constitution-making process.
- State councils should take into account regional customary rules (if there is any to be considered) in enacting and executing the state constitution provided that does not go against basic principles of the federal constitution and international human rights principles.



- The two regional states' constitutions should be revised with due care observing constitutional-making methods and principles, and also by giving a hearing to the says of the public.