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CONSTITUTIONAL SPACE FOR THE REGIONAL STATE
CONSTITUTIONS UNDER THE FDRE CONSTITUTION:
THE CASE OF OROMIA REGIONAL STATE

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**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW**

Declaration

I, Gamachis Kebede, hereby declare that this work is an original work and has not been presented in any other institution before. All referred materials are duly acknowledged.

Name of Author: Gamachis Kebede; Name of Advisor: Christophe Van der Beken (PhD)

Signature

Signature

Acknowledgments

This research would not have accomplished without God -the Almighty. Thus, He deserves the first and the most praise. I am also indebted to my supervisor Christophe Van der Beken (PhD) who assists me in several ways in doing this research. I have immeasurably benefited from his thoughtful guide entire the juncture of this study. His critical, valuable and constructive comments added on his enthusiasm have greatly contributed to see this research like this. Finally, I would like to thank my families and friends who helped me in one way or another for the successful completion of this research.

Gamachis Kebede!

List of Abbreviations and Acronyms

ORSC- Oromia Regional State Constitution

RSG-Regional State Government

RS- Regional State

ICESCR- International Covenant on Economic, Social and Cultural Rights

FDRE- Federal Democratic Republic of Ethiopia

ICCPR- International Covenant on Civil and Political Rights

EPRDF-Ethiopian People's Revolutionary Democratic Front

TG- Transitional Government

Abstract

The objective of this research is to explore whether enough constitutional spaces are available for Regional States under FDRE constitution based on federal idea, focusing on Oromia Regional State Constitution practices. The researcher used qualitative approach and combination of doctrinal and socio-legal research in type. Desk reviews of primary documentary and secondary sources, personal observation and interviews with government officials were employed to collect data from participants. Comparative and thematic analyses were used to diagnose the relevant Federal and Oromia Regional State Constitution, legislations and the practices against the federal idea promised.

The research has revealed that although FDRE Constitution allows the State to enact Regional State Constitutions, the prevailing practices are inconsistent with basic idea of federalism and constitutional promises. Only the federal government determines what to be included and excluded in the Regional State Constitution's and the time and reason for revising or amending them initiated solely by political calculation and disbursed from center. As a result, the Constitutional Spaces has not been utilized in Oromia Regional State Constitution. First, the Oromia Regional State Constitution has failed to establish government structure responsive to the Oromo people recognizing the local reality and adds not as much of value for improvement of government efficiency. Second, the human rights provisions incorporated under the ORSC insufficiently crafted to create boon security to the rights of the people and in shaping government behavior at RS level. Third, the laws and practice show that the ORSC deny recognizing essential official and non official institutions inherent to the culture of people of the region. As a result, the conflict resolutions mechanisms recognized by the ORSC has not enable the RS to foster their regional autonomy in employing local solution to local problems and to provide scheme amenable to the custom of the people of the region.

To avoid the downbeat political practices betraying the idea of federalism that diminish the constitutional space to the ORSCs, the research recommends the government to amend or repeal all the laws, and boundless party politics to determine every things of Regional State Governments from center inconsistent with the federal arrangement sought to be implemented by FDRE Constitution. The study urges the federal government to unconditionally and immediately cease in superseding the State matters that would have been governed by Regional State Constitutions. The Regional State Constitution of Oromia has to be revised in autonomously from federal government political pressure of Party Centralism tactics to establish the government structure and system, institutions and conflict resolution mechanisms that acquiescent to local reality, historical deep-rooted norm and cultures of Oromo people.

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CHAPTER ONE

General Introduction

1.1 Background of the Study

In most federal system, the federal constitution divides power between the Center/Federal and state/region/cantons/ establishes the federal institutions, and provides rules for dispute resolutions, guarantees fundamental rights and freedoms and set for its own amendments.¹ Though not often, the existence of the dual sovereignty of self rule and shared rule, that, is inherent nature of federalism, demands existence of the State Constitutions.² The Regional State Constitutions (RSC) have significant role in day to day life of the people as instrumental to change and entrench constitutionalism at local level, guiding and regulating the Regional State Government(RSG) behavior in keeping them accountable and transparent.³ Despite such, the study of federalism often approached either from “above” or from “the Center”⁴ which make Regional State Constitutions unseen both in academic and non-academic loops.⁵

It is common to see the existence of federal and regional state constitutions in most federal states. Yet the manner and the scope of dealing with Regional State Constitutions from one federation to others are different. Some federal constitutions provide the detail issues both for the federal constitution and regional constitutions, while several federal constitutions left a room for regional state constitutions within a given federal frame works.⁶ Ethiopia had commenced federal system of government by the 1995 FDRE Constitution. From the aftermath of the downfall of the Dergue regime, the Transitional Government (TG) embarked on ethnic-based

¹ G. Alan Tarr, *Sub-national Constitutional Space: An Agenda for Research*, Prepared for delivery at the World Congress of the International Association of Constitutional Law, in Athens, Greece, June 11-15, 2007, p.3

² Advisory Commission on Intergovernmental Relations (ACIR), *State Constitution in the Federal System: Selected Issues and Opportunities for State Initiatives*, Washington DC, (1989), p.1. State constitution is not always necessary even in several federations. Belgium, Nigeria, and India are some of the examples of federation without State Constitution.

³ Tsegaye Regassa, ‘*Sub Regional Constitution in Ethiopia: Towards Entrenching Constitutionalism at State Level*’ in Mizan law review vol.3 No.1 (2009) pp.33-40.

⁴ Ibid.

⁵ Ibid; see also Paul Blokker and Werner Reutter, *Sub-national constitutional politics: contesting or complementing, replicating or innovating, traditional constitutionalism?* Perspectives on Federalism, Vol. 7, issue 1, 2015, pp.3-9.

⁶ Supra note 1, p.1.

regionalization during transitional period which culminated with full fledged federal system recognition under the 1995 Federal Democratic Republic of Ethiopia Constitution.⁷

Following the creation of Ethiopian federation, Regional States (RS) are allowed to have their own constitution within the federal frame work. As a result, the nine regional states under FDRE constitution have enacted their own constitutions. This must be understood as one aspect of the manifestation of Regional States right to self-determination as per article 39 of the FDRE constitution. In addition to this, it can be taken as a supplementary feature of appreciating local realities. One can also observe that in some Regional State Constitutions, for instance, Afar and Somali, Regional State Constitutions have gone to the extent of recognizing clan and elders' council which manifests their respective local realities in regional administration structure. These measures would be considered as a paradigm shift in the history of Ethiopia as a quick move from vigorous unification under on one culture to recognizing the existence of multiculturalism and acknowledging diversity. Nevertheless, the scope of constitutional space left to regional State Governments (RSG) to rule and determine their administration system by the Regional State Constitution, right guaranteed to the Regional States to establish the institutions amenable to the custom of the people of their region, the scope of guarantee given to human rights and the mechanisms provided under the RSCs to resolve conflict using local solution for local problems worth making of inquiries. The other factors affecting the success and survival of federal states in general and determine the scope of Regional State Constitution in particular is determined by the Regional State Government capacity to respond to change and to the challenges associated with it in keeping balance the idea of federalism of self rule and shared rule with dual sovereignty in innovate way.⁸

⁷See Transitional period charter of Ethiopia No. 1, *Peaceful and Democratic Transitional conference of Ethiopia*, Negarit Gazeta, 50thYear no.1, Addis Ababa 22nd July, 1991. The Transitional government of Ethiopia was established the charter immediately after the fall of the people's Democratic Republic of Ethiopia. Proclamation No.1/1995, *proclamation of the Constitution of Federal Democratic Republic of Ethiopia*, Federal Negarit Gazeta, 1st year no.1, Addis Ababa 21st August 1995 constitution.

⁸ Supra note.1, Alen, pp.1-3; see also BURGESS, M., TARR, G. A., BURGESS, M., & TARR, G. A. (Eds.). (2012). Introduction: *Sub-national Constitutionalism and Constitutional Development*. In M. BURGESS, G. A. TARR, M. BURGESS, & G. A. TARR (Eds.), *Constitutional Dynamics in Federal Systems: Sub-national Perspectives* (pp. 3–40). McGill-Queen's University Press. Retrieved from <http://www.jstor.org/stable/j.ctt8048x.5>.

This research focuses on one of the constituent units of the Ethiopian federation, the Oromia Regional State Constitution “from below” in view of discovering its roles if any to ensure the self-determination of the people by establishing government structure, form and system that best ensure the interests of the peoples of the region, founding institutions, human rights frameworks and conflict resolution mechanisms towards ensuring constitutionalism and limited government at local level and increases efficiency.

1.2 Statement of the problem

The very deep-seated advantages of federalism system of government in multi ethnic societies are because of it permits diversity and diffusion of power that enables the local (regional) governments to handle local problems in better way, easily access points for political participation, protects individual rights against concentrated government power, fosters experimentation and innovation.⁹ Even in the federation which employed homogeneously language, culture and psychological background, i.e. USA, since the State governments have residual powers,¹⁰ State constitution will play pivotal role in making use of the residual or reserved powers which in turn are very significant to experiment solution at local level both legal, institutional and conflict resolution frameworks designation.¹¹

It follows that if the Regional State Constitution role is limited to re-establishes the traditional government wings- executive, legislative and judiciary only, in a similar fashion as has already been made by federal Constitution, it would be repetition at best for no reason and wastage of time and resource at worst. In Ethiopia, the FDRE Constitution provides that “State government shall be established at State and other administrative levels that they find necessary¹² and both “the Federal Government and the States shall have legislative, executive and judicial powers”.¹³

⁹ Ellen Ash Peters, *The Role of State Constitutions in Our Federal System, Proceedings of the American Philosophical Society*, Vol. 143, No. 3 (Sep., 1999), pp. 418-427.

¹⁰ As defined by USA Constitution article ... residual power refers for those neither assigned to the national government nor denied to the states.

¹¹ See supra note.9. p. 418.

¹² Article 50(4) of the FDRE Constitution; See article 47 of the Constitution which defines and lists the member States of the Federal Democratic Republic of Ethiopia. Accordingly, the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia, the State of Somalia, the State of Benshangul Gumuz, the State of the Southern Nations, Nationalities and Peoples, the State of the Gambela Peoples, the State of the Harari people.

¹³ Article 50(2) of FDRE Constitution.

Besides, the FDRE Constitution defines the powers and functions of States shall, among other things, “to establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution and to enact and execute the State constitution and other laws”¹⁴.

Despite such stipulation, the extent and scope of constitutional spaces has been left to Regional State Constitution’s under Ethiopian federation is not clear. There is an ongoing debate concerning the authority of the constituent states (RS) in the Ethiopian Federation in making use of their constitutional spaces.¹⁵ While the bulk majority of writers seem to be subscribed to the view that the constituent states have meager authority, the other group of scholars argued for more centralized federal system in fear of the incumbent constitution unnecessarily guaranteed the Regional States to the extent of secession from the federation which they opined as danger for national unity because unrestricted right to administer itself.¹⁶ The Ethiopian federal systems have also seen criticized both in design and in practice that it does not allowed for the creation of ‘sub-national constitutional space’ enabling their constituent units to be active in the exercising maximum self determination through legal, institutional frameworks and conflict resolution mechanisms. The concept in the understanding of federal systems “from below”- sub-national perspective is the idea of constitutional space that is to mean the array of discretions presented to the component units in a federal system in designing their constitutional arrangements.”¹⁷ Under this research the term “sub-national constitutional space” is used interchangeably with the term Regional State Constitutional space to refer the discretions presented to the regions or units in a federal system in designing their constitutional arrangements that not only show their ultimate sovereignty in their sphere, but also in best use of their own institutional, legal and conflict resolution spectrum, in deviating from, alternative to and in additional to the federal government.

But the type, form and system of government established by the Regional State Constitutions are determinant factor to “best advances self-government, a democratic order based on the rule of

¹⁴Article 52(2) of FDRE Constitution.

¹⁵Gutema, Solomon Emiru, *The Right to Self-Determination: Its Scopes, Faces and Constraints of Its Enforcement Under the FDRE Constitution*, Ethiopia (September 1, 2015). Available at SSRN: <http://ssrn.com/abstract=2725846> or <http://dx.doi.org/10.2139/ssrn.2725846>

¹⁶ See article 39(1) of the FDRE Constitution.

¹⁷ G. Alan Tarr, Robert F. Williams, and Josef Marko, eds. *Federalism, Sub national Constitutions, and Minority Rights*, (Westport, Connecticut: Praeger, 2004), 5.

law”. Following what is intended to be achieved, more important question is whether the states have actually done in emaciating their own Regional State Constitutions autonomously and effectively in exercising their power to draft and adopt constitutionally-designed systems of local government tailored to their own circumstances.

In order to make a diagnosis to the presiding claim and disclaim, this research deals with how far Oromia Regional State Constitution might have room to deviate from the FDRE constitution in making use of constitutional space to establish innovative and a typical form of government structure, institutional and conflict resolution frame works enjoyable to the people of the region based on local veracity and self-determination autonomy guaranteed to Regional State. Given that the Oromia Regional State differ from federal and other Regional State Governments in terms of territorial dimension, ethnic composition and economic and social circumstances, making a one-size-fits-all approach inappropriate to the design of local government.¹⁸ It is also meant to examine the extent to which Oromia Regional State Constitution may or may not give expression to a particular view regarding the rights and responsibilities of the citizens in question.

1.3 Review of Related Literature

There is very little research which has been conducted on the scope of constitutional spaces available to the Regional State Constitutions under Ethiopian Federation in general and in case base of comprehensive focus on Oromia Regional State Constitution in particular. By and large there is shortage of literature in the area of study on constitutional spaces focusing on local reality gluing to particular Regional States, despite the prevalence of the problems, due to lack of such comprehensive study. More specifically, the problem is rampant and ever increasing burning issue as far as concerning the relationship and demarcations of power competition between federal government on one hand and people activism and claiming for more Regional States autonomy in the region on the other hand.¹⁹ A few researches related Sub-national constitution in Ethiopia were conducted so far. For Example, Dr Tsegaye Regassa has done

¹⁸ Zemelak Ayele, *The Politics of Sub-national Constitutionalism and Local Government in Ethiopia*, pp.1 available on www.on-federalism.eu/attachments/181_download.pdf; See also Supra ntoe.3

¹⁹ Apparently, due to the existence of single integrated party system regulated from center under EPDRF, it is uncommon to see the power claiming and struggle between federal and RSG. Nevertheless, mass protest has been ever increasing from the people in challenging the policies prepared and sent to the ORNG from the center to be implemented.

comprehensive studies on Sub-national Constitutions in Ethiopia: towards entrenching Constitutionalism at State level”²⁰. Dr Tsegaye has explored the States constitution contents and institution established through it with a view of initiating and exploring the study of federalism “from below “against the traditional way which remained the study of federalism at the “Center”, and then he focused on the RSCs significance in regulating state behavior and entrench constitutionalism at the sub-national level as a result of protecting human rights and limiting the power of sub-national governments. Dr Tsegaye’s research designated the new approaches to dealing with federalism in Ethiopia by reversing the traditional approaches of study from center to the possibility of setting up the imagination of federalism from below. Unlike Dr Tsegaye’s article which is overview of state constitutions essentially with views and insights of entrenching constitutionalism at local level, by this research the author focusing on single Regional State Constitution - the Oromia Regional State Constitution, it examines the scope of constitutional space available under FDRE Constitution and the extent utilized by the Oromia Regional State Constitution with views of maintaining the subsistence of dual autonomy that must to be continue alive in the Ethiopian Federation and best use of constitutional space to find local solution for local problems.

Study has also been made by Dr Assefa Fiseha by the heading “Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study” under which he argued that if the provisions of the FDRE constitution are taken seriously, at least as far as self-rule is concerned, and then on paper Regional State Governments powers are more comparable to a confederation than a federation.²¹ Dr.Assefa contends that the constituent units in the Ethiopian federation at least formally speaking do have important powers, and at times their powers even far exceed the powers of the constituent states in other federations.²² Given, residual powers are given to the Regional State Governments in Ethiopia. For Dr.Assefa, the current trend of centralization is not inherent in the constitution. Thus, the FDRE constitutional grant of power is constrained by a centralized party structure and centralized policy-making. Nevertheless, this study going beyond that it examines the scope and manner of constitutional spaces that has been left for the Regional State Governments under Ethiopian federal set up and closely look at Oromia Regional State

²⁰ See supra note.3, PP.33-69.

²¹ Assefa Fiseha, *Federalism and Accommodation of Diversity in Ethiopia: A Comparative Study*. Nijmegen: Wolf Publishers, 2005/6.

²² Ibid.

Constitution, the extent of the RSC in Oromia made used to establish institutions workable into the region and rights protected within to establish limited and autonomous government at local level.

Some research demonstrates that Sub-national Constitutionalism in Ethiopia has no role in ensuring dual autonomy expected to be exists in any federation than serving for political consumption. Zemelak Ayele in his article entitled as “The politics of sub-national Constitutionalism and local Government in Ethiopia” has put out that sub-national Constitutionalism has been affected in Ethiopia due to all level of government in Ethiopia are either directly or indirectly controlled by one party, EPRDF.²³ According to Zemelak, the Federal government, dominated by TPLF, apart from disempowering local government, closely controlled the State governments in making and revision of the Regional State Constitutions which unfairly diminished the potential use of state constitution to create local system. This study is different from the one by Zemelak as it focuses on Oromia Regional State Constitution, deals profoundly the scope of constitutional spaces left for the Regional States under the FDRE Constitution and the practical audit of whether ORSC has utilized to establish institutions and best provision of human rights standards in innovative ways.

Under the heading “Sub-national Constitutional Autonomy in Ethiopia: on the Road to Distinctive Regional Constitution” Dr. Christophe Van der Beken has addressed the conference participants that the constitutional space reserved for the regions is significant as the regions can include their own human rights catalogue, they can design the structure of the regional political institutions, on the organization, institutions, powers and responsibilities of local government, constitutionalize regional policy objectives and determine the procedure for constitutional amendment/revision.²⁴ Unlike that, this research endeavor to have fresh look by making an inventory of the adequacy of constitutional spaces available for Regional States under FDRE constitution based on federal idea and closely looking at Oromia Regional State Constitution practices.

²³ Zemelak Ayele, *The Politics of Sub-national Constitutionalism and Local Government in Ethiopia*, pp.1

²⁴ Christophe Van der Beken, conference Paper ‘ *Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions*’, available online [https:// www.jus.uio.no/english/research/news-and-events/events/conferences2014/wccl/cmdc/wccl/papers/ws2/w2-vanderbeken.pdf](https://www.jus.uio.no/english/research/news-and-events/events/conferences2014/wccl/cmdc/wccl/papers/ws2/w2-vanderbeken.pdf)

Another research conducted by Yitages Alamaw has revealed that although the FDRE Constitution has domesticated the prominent prerequisite for constitutionalism at Regional State level, by establishing sub-national units or RSGs, the existence of the Regional State Governments do not evince a robust Regional State constitutionalism in the country.²⁵ Alamaw has further point out that Regional State Constitutions were drafted, enacted and revised under the close supervision and pressure of federal government in addition to practical single party control of all the issues of constitutionalism in Ethiopia. However, Alamaw research fall short of comprehensiveness in dealing with the scope of constitutional spaces available to Regional States under FDRE Constitution. Unlikely, this research dwell on mechanical auditing of substantive contents of the Oromia Regional State Constitution in light of the type, form and system of government and institutional establishment, human rights contents and conflict resolutions means used to have autonomous self governing, limited and local amenable system of government.

1.4 Research Questions

This study aims at answering the following central questions:

- What are the extents of constitutional spaces left to regional State Constitutions under Ethiopian federation?
- Were the constitutional spaces available used by Oromia Regional State Constitution by establishing government structure responsive to the Oromo people and amenable to the local reality?
- How human rights provisions incorporated under the Oromia Regional State Constitution were framed under the constitutional space to give best protections of the rights and to have limited government at Regional State level?
- Do the Oromia Regional State Constitution recognize official and non official institutions essential to enable effective social services and enable the Regional State to make use of their constitutional space?

²⁵ Yitages Alamaw, *Status of Sub-national Constitutionalism in Federal Democratic Republic of Ethiopia: Implications of Theoretical Evaluation of Some Facts*, in, pp.166-197.

- Do the conflict resolutions mechanisms recognized by the Oromia Regional State Constitution enable the Regional State in fostering their regional autonomy of using local solution to local problems and provide system amenable to the custom of the people of the region?

1.5 Objective of the study

In general, the research aims to examine whether adequate federal idea based constitutional space available for Regional States under FDRE constitution that enable them to be autonomous on the sphere of their matters and make use of local reality. The research also endeavors on appraising the application of constitutional space utilized by Oromia Regional State Constitution. The specific objectives of the study are:

- To discover whether the Oromia Regional State Constitution has been able / unable to establish government structure responsive to the Oromo people and local reality using the available constitutional space.
- To explore the human rights provisions incorporated under the Oromia Regional State Constitution with view of testing its adequacy in having limited government at Regional State level.
- To examine whether the Oromia Regional State Constitution recognize essential official and non-official institutions inherent to the custom of the people of the region and enable the Regional State to make use of their constitutional space.
- To look at whether the conflict resolutions mechanisms recognized by the Oromia Regional State Constitution enable the Regional State in fostering their regional autonomy to be able to utilize local solution to local problems and provides system amenable to the norm of the people of the region.
- To look into the remedial measures and suggest it to the Regional State and Federal government.

1.6 Methodology

1.6.1 Approach of the Study

Combination of doctrinal and non doctrinal research approach was employed to further the study. The study aimed at investigating the Oromia Regional State Constitutional space available under Ethiopian Federation. The study also intended to test the extent and scope of constitutional spaces used by the Oromia Regional State Constitution. In order to attain the objectives of the study, the research designed in qualitative approach. As such, comparative and thematic analyses methods of data were used in the study, with the researcher moving backwards and forwards in diagnosing the FDRE and Oromia Regional State Constitutions and practices against the minimum standards widely used under any federal system.

1.6.2 Methods of Data Collection and Data Type

Primary and secondary data sources were used in conducting this research. Tools used to gather data are primary documentary sources, interviews, and personal observations. The primary documentary sources used in this study are FDRE and Oromia Regional State Constitutions, other relevant subsidiary legislations enacted by Federal House of People's Representatives and Regional State Council (Caffee). The study also has used the relevant literature materials and foreign Constitutions as secondary sources.

In addition, face-to-face interview data collection methods were employed accompanied by free personal observations. These were employed in while Case studies were carried out on Oromia Regional State Constitution text legal, institutional and conflict resolutions implementations have already taken place.

Unstructured interviews were utilized in order to get the holistic understanding of the Regional State concerned key policy makers, the State Council and the judicial Organ. And semi-structured interviews were used to know specific information from key informants regarding to the research questions. Key informant interviews for this study were concerned officials, bureau heads, department heads, and senior experts from the Regional State and the FDRE Ministry of Federal and Pastoralist Affairs.

1.6.3 Sampling Techniques

Purposive sampling techniques were used to determine participants. Participants from concerned government officials and Gada Council elders were selected through purposive sampling. Selecting participants based on purposive sampling methods has used to probe specific data with related to specific implementing bodies and specific right holders' demanding for more Constitutional space to be used by the region claiming based on federal idea.

1.6.4 Sampling Size

To all the informants selected for the study, sampling size was determined by data saturation. The researcher discontinued further interviews when everything is complete and not obtaining any new information by continuing. While respondents from the official sides have replied similarly to the interview questions provided by researcher with minor degree of differences, whereas, respondents from the non official sides have replied in larger extent of dissenting idea from the Officials'.

1.7 The Scope of the Study

The whole concept of national and regional states constitutions on one hand and the synergy between federalism and human rights on the other hand are always full of moot and contentious. Despite such, owing to the time and resource constraints, this research is limited to case studies on Oromia Regional State Constitution to examine constitutional spaces available under the Ethiopian federation as whole and the scopes and extent of constitutional space used under the ORSC and the practice thereof. The study was restricted by theme coverage to only government structure and institutions, human rights provisions incorporated and conflict resolutions methods choose.

1.8 Ethical Considerations

This researcher has got a number of copies of letters from the Dean of School of Law at Addis Ababa University appealing all the concerned government officials, experts, department heads, bureau heads, committee members of all levels from Federal and Regional State and individuals to cooperate the researcher in letting access to collections and willing to be interviewed in the course of this study. Government officials, Gada Council elders and individuals those the

researcher interviewed have consented verbally for their name to be freely cited in the research, and none of them ask for anonymity. Consequently, the researcher has freely divulged the name of all the informants as they have permitted so.

1.9 Significance of the Study

Maintaining the balance of the Regional States autonomy of self-rule and power of federal government as common rule is burning issue and the subject remain controversial of incumbent Ethiopian federation, this study can serve as a standing step for policy makers both at federal and state level, legislators, and researchers to resume closer looking at what factors are disturbing the Ethiopian federation. Hence, the study will show them a clear picture how unjustified involvement in the affairs of Regional States affects the RS autonomy which further cause for the whole disturbance of federal system. It also hark back the federal government to be abided by federal idea using formal constitutional governance than informal political centralism while upholding adequate RS constitutional space which enable them autonomous on their respective powers and local matters.

1.10 Organization of the Study

The thesis is organized in to four chapters. The first chapter is an introductory one. Following this introduction, the second chapter presents a concise theoretical drawing on State Constitutional Space in Federal systems. The third chapter explores the constitutional space occupied by Oromia Regional State Constitution. The first section of the chapter discovers whether the Oromia Regional State Constitution has been able / unable to establish a government structure responsive to the Oromo people local reality using constitutional space. Following human rights provisions incorporated under the Oromia Regional State Constitution were explored with view of testing its adequacy in having limited government at Regional State level. In the next section, the chapter focuses on whether the ORSC recognize essential official and non official institutions inherent to the people of the region. Further the chapter deals with conflict resolutions mechanisms recognized by the ORSC in fostering and amenable to the custom of the people of the region. Finally, the thesis presents the finding as conclusion and recommendations in chapter four as ways forward.

CHAPTER TWO

Regional State Constitutional Space under Federal Setup: Theoretical Overview

2.1 Introduction

Under this chapter an attempt has been made to set reference for the Constitutional spaces available to states or regional state governments for Ethiopian case, under any federation. Based on the theoretical overviews, this chapter enables critical evaluation of the regional state constitutional spaces under FDRE constitution. To do so, the chapter is organized into three sections. The first section next to this introduction conceptualizes the notion and outlines the scope of constitutional space that should be occupied by regional state constitutions and present justification of provision of leaving room for regional states to constitute their administrative structure at local level. The second section devoted on general overview of regional states constitutions in comparative sketching. To this end, the section is dedicated to discover and going across the theories of federalism and approaches concerning constitutional spaces left to regulate local governance. Final section presents the practices of Regional States Constitutional Spaces under FDRE constitution in general.

2.2 The scope and justification of Constitutional space for Regional State Constitutions under Federal System

Providing practical experiences of numerous federal states, John Dinan has clearly stated that as near to the end of 21 century, the majority of federal systems boast sub-national constitutions or their functional equivalents.²⁶ The practices of classical US state constitutions, of German Landers, of Ethiopia's Regional State Constitution, of South Africa's provincial constitution, Sudan, Argentina, Australia, Austria, Brazil, Malaysia, Mexico, Russia, Switzerland, the United

²⁶ John Dinan, *Patterns and Developments in Sub national Constitutional Amendment Processes*, available on www.cms.fss.ulaval.ca/recherche/upload/.../article_dinan_27082009_160838.pdf p.2, see also Tsegaye Regassa, "State Constitutions in Federal Ethiopia: A Preliminary Observation" (prepared for a Conference in Bellagio, Italy, March 2004), <http://camlaw.rutgers.edu/statecon/subpapers/regassa.pdf>, p.7.

States, and Venezuela are few federal states of the world in which sub-national constitutions are now found.²⁷

State Constitution relevancy is justified based on its functions. In every federation, the federal constitution structures the system of government, divides power between the center and the units, establishes Central institutions, prescribes the rules for resolving disputes, guaranteed fundamental rights of the citizen and provides a procedure for its own alteration.²⁸ Sub-national Constitution creates the structure of state government in providing for separation of power, outlining the organization of each branches in any way the people of the state want, provides powers and term offices and set forth for the methods of election of state officials. In some federal systems, the national constitution prescribes the political institutions and processes for the country's sub-national units as well, thus providing the constitutional architecture for the entire federal system. State constitutions also serve as the embodiments of the goals and aspirations of the peoples of the states at least as the expressions of state sovereignty and the principle of self-rule that constitutes an aspect of federal governance.²⁹ All the justification for the relevance of the federal system of government is also the reasons for the availability of Constitutional spaces to Regional States to have competency, or autonomy that the RSG are given within the federal system.³⁰ Thus, justifications of regional state constitutional space would best expressed in discussion of significance of federal system itself.

Federalism is a constitutional principle that divides the governmental power between the states and the federal government. The etymological definition of federalism traces its roots to the Latin term 'foedus' meaning covenant or treaty.³¹ It is a form of government which enables and creates an opportunity to accommodate shared rule with self rule or make possible coexistence of

²⁷ Ibid.

²⁸ See supra note.3; see also Cheryl Saunders, "*The Relationship between National and Sub-national Constitutions*," *Seminar Report: Sub-national Constitutional Governance* (Konrad-Adenauer Foundation: Johannesburg, South Africa, 1999), pp.21-24.

²⁹ See supra note 3. P.38; See also T. Marks and J. Cooper, *State Constitutional Law in a Nutshell*. St Paul, Minn: West Publishing Co, 1988, at pp. 1 -7 for a discussion of the functions of state constitutions.

³⁰ Jörn Ipsen, *Relations Between Sub-national and Local Governments*, Structured by Sub-national Constitutions prepared for the international conference on Sub-national Constitutional Governance— held from 16 to 18 March 1999 at St George's Hotel, Rietvlei Dam, Pretoria – was organized and sponsored by Rutgers University, the Konrad Adenauer Foundation – Johannesburg , pp. 59-67 ; see also G. Alan Tarr, *Sub-national Constitutional Space: An Agenda for Research*, Prepared for delivery at the World Congress of the International Association of Constitutional Law, in Athens, Greece, June 11-15, 2007

³¹ Siegfried Wisner, *Federalism: architecture for freedom* 'in Heinlei-1 new European law review vol.1No. 129, p.137; see also Solomon Rufus, *The federal principles: a journey through press*, 1978), pp.215-216

unity within diversity. Though federalism is not absolute system, as it may bring solution to some problems it may be cause of new problem as well. Yet for different reason there are trends of the increasing desire of economic, political and social federalism. In most federal systems, the major powers of the Federal Government are exclusively provided in written and rigid federal Constitution. In numerous federation, given the federal government power is exclusively listed, the residual and reserved power will remain belongs to states albeit some exception to this rule in Canada, India, and Belgium federations in which the residual powers are given to the federal government.³² According to the doctrine of dual sovereignty, federal system refers to a system where both the national and regional state governments have final authority over their own policy domains.³³ Federalism allows multilevel governmental regimes – by means of merging the need for large scale organization with the appreciation and safeguarding of ethnic, linguistic or historically derived diversity through self-governing component units of the federation.³⁴

Based on modes of power sharing between the center and regional states, equal status among states and with the federal, the patterns used to establish RS's territory, the basic goals of the federation and the formation, the federation itself categorized into different type. Federalism is typified and contrasted to be as Coming Together or Holding Together federation based on the formation process.³⁵ Thus, it is said to be coming together federation when in proceeding to the federation sovereign and independent units exist and come together with their free will to form federal system; whereas it is holding together federation if prior unitary state has dissolved and decentralization of power come from above. A type of federalism in which the process of inter-governmental relation is dominated by executives of both constituent units and common

³² See for example Article I Section 10 of the Tenth Amendment USA Constitution which states that all powers not delegated to the federal government are reserved for the states. The Constitution also spells out certain powers which the state cannot hold in. For example, the states cannot tax goods shipped from one state to another. The states' power often focuses on issues that will have a direct impact on the community, such as regulation of the speed limit and the definition of marriage.

³³ Dual federalism is referred as divided sovereignty political arrangement in which power is divided between the federal and state governments in clearly defined terms, with state governments exercising those powers accorded to them without interference from the federal government ; see also Dimitrios Karmas and Wayne Norman (ads), *Theories of Federalism: A reader* (palzraue, Macmillan, New York, 2005) p.5; see also <http://plato.standard.edu/entries/federalism>

³⁴ Ronald Watts, *Provinces, States, Länder and Cantons: Content and Variations Among Sub-national Constitutions of the World* prepared for the international conference on Sub-national Constitutional Governance– held from 16 to 18 March 1999 at St George's Hotel, Rietvlei Dam, Pretoria – was organized and sponsored by Rutgers University, the Konrad Adenauer Foundation – Johannesburg, pp.11-19.

³⁵ Alfred Stephan, *Federalism and Democracy beyond the USA Model* in *Journal of democracy* vol.10No.4 (1999) p257; see also supra note.3

government of the federal system is “executive federalism”.³⁶ In converse of this when the federal government interact cooperatively and collectively to solve common problems, rather than extreme separation nor interference, this type of federation is “cooperative federalism”. Federation can also be termed as Ethnic or Territorial Federalism based on the criteria of delineation the state government’s territory. Accordingly if the demarcation of states based on the heterogeneity of the people in ethnicity, linguistic, cultural, and economic and belief of the same psychological makeup of that particular federal state’ it is called ethnic for some and sometime referred as multiethnic federal.³⁷ Moreover the federation will be termed as “territorial federalism” when the territory of the state only serves for administration efficacy than accommodating the existence of multi ethnic values. More important classification of the federation strongly relevant for state constitution is being a symmetrical or asymmetrical dichotomy of the federation.³⁸

From this one can conclude that in any type of federalism, the basic features should commonly be shared by all for federalism into being as minimum standards are division of power, the existence of written, supreme and rigid constitution and existence of the body which umpires the Federation.³⁹

As highlighted above in description of the type of federation, the scope of jurisdiction of sub-national constitutions and of their interrelationship with the national or federal government has always been determined in the processes of making the federation.

³⁶Alan Fenna, *What use is federalism any way?* (Paper presented to the Australian political studies association annual conference NSW, September, (2009); see also Ronald L.Watt, *Executive federalism: comparative analyst inter in state Relationship* (1989), www.queensu.ca/iigr/sites/...ca.../Researchpaper26ExecutiveFederalismWatts.pdf p.13.

³⁷Will kymlika, ‘*Federalism, Nationalism and multiculturalism*’ in *Theories of Federalism: A reader* (Dimitress.k and wayne. N,eds ,Pal grave Macmillan, Mew York (2005) p.273

³⁸Alexundera Funk, *Asymmetrical Federalism: A stabilizing or Destabilizing Factor in the Multinational Federation? A comparative study of Asymmetrical Federalism in Canada and Spain*, 2010, pp.5-7. Available on www.ie-ei.eu/IE-EI/Ressources/file/memoires/2010/Funk.pdf

³⁹ Ibid.

2.3 Factors Affecting Regional State Constitution Scope

There are various factors that affect the Scope of regional state constitutions. Alan in his work, “Explaining sub- national constitutional space” has set out that among other factors affecting the scope of sub-national is the manner of formation of federation whether it is coming together or holding together. In Ethiopian case, the regional state constitutional spaces are the process by which the federal system was created- holding together or coming together system in which the Regional State Governments may retain or surrender their rights to self rule while give consents to federal government to represent them on shared rule.⁴⁰ The other factor is that the purpose underlying federation, intended to recognize and accommodate multi-ethnic character in numerous aspects of the population and mechanism provided spaces for the expression of such diversity is another vital factor to test the scope of constitutional space left to the State Governments.

2.4 The general overview of regional states constitutions: Comparative sketch

2.4.1 Design and Making process

The design and making or unmaking of Regional State Constitution is determined by the type of federation. Specifically, the makings of state constitutions vary from federal system to another due to the procedure of building the federation through coming-together federations, some time referred to aggregation.⁴¹ This means that the extent of autonomy left for Regional States to incorporate in their own merit crafted Constitution.⁴² If the state constitutions precede the federal constitution, obviously such federation allows broad rule for the state to administer themselves in bulk majority of areas. If not the federal constitution may narrowed what has to be adopted and how it amended and validated from the federal constitution. On the other hand, in federations formed through devolution (or those known as putting-together or holding-together federations), state constitutions tend to be made following the federal model.⁴³ Most of the time in putting together federation, it is the federal constitutions which set the guidelines and the

⁴⁰ Supra note.1 pp.1-5.

⁴¹ Ibid; see also supranote.3, p.37.

⁴² Supra note. 3; see also Ronald L. Watts, “Forward: States, Provinces, Lander, and Cantons: International Variety among Sub-national Constitutions,” Rutgers Law Journal31 (Summer 2000), p.945.

⁴³ Supra note.3, p.36.

places that the state constitutions hold. In such case, the federal constitutions tend to order the appearance and the content of the state constitutions.⁴⁴ In generally, all state constitutions are designed in a line subordinate itself under the federal constitution.

The state constitution making process is different from one federation to another. In some federations state constitution is made by the state legislators without any popular vote.⁴⁵ In other federations, the states may also have a constitutional assembly for the express purpose of adopting a constitution.⁴⁶ In most states of the USA, the state constitution is drafted by the representative of the assembly and ratified by popular vote before becoming effective. Constitution made in such a way represents the true manifestations of the whole idea of popular sovereignty and need for establishment of the limited government.⁴⁷ As compared and contrast to the federal constitutions, state constitutions have an 'easier' procedure for their making.

2.4.2 The Features

The basic features and characteristics of state constitution can be described in various ways. In measuring its length and depth of the issues dealt in it, the state constitutions are characterized as much longer in length and detailed in the scope than the federal constitution. In addition, it contain wider and long list of bill of human rights with guarantee for extra protections in related to certain rights and certain right holders. As compared to the federal constitution, as it is easy to make state constitution in the same manner, it is less durable and more varied in governing issues of constitutionalism.

The state constitution more favors and advocates for direct democracy.⁴⁸ Homogenous nature of the people and smaller size of the states' in demographic wise often make most decisions are submitted to direct popular approval or disapproval in referendum like casting of votes.⁴⁹ If

⁴⁴ Ibid.

⁴⁵ See Tsegaye, supra note.3, p. 40.

⁴⁶ Ibid.

⁴⁷ See Joseph H. Weiller, *The Constitution of Europe: "Do the New Clothes Have an Emperor?"* and Other Essays on European Integration. Cambridge: Cambridge University Press, 1999, pp.3-9

⁴⁸ K.B. Smith, A. Greenblatt, and J. Buntin, *Governing States and Localities*. Washington, DC: CQ Press, 2005 at p 67

⁴⁹ See supra note.3,p .39.

remain unregulated on strong fundamental rights and freedoms guarantee, the State constitution might have tended for a “majoritarian democracy that goes without minoritarian checks”.⁵⁰

2.4.3 Substantive Contents

The body of every state constitution contains the basic constitutional principles, protections of human rights, government structure, government power and process, the ways of constitutional change and other miscellaneous provisions. As stated in the previous section, the state Constitution establishes the essential organs and branches of government at state level, namely the legislature, the executive, and the judiciary. They also state the powers and responsibilities of each organ thereby laying down the rules that govern the relationship among these organs of state.

Apart from allocating power and functions to the three organs of state, the state constitutions establish the rules governing the relationship between state governments on the one hand and local governments (e.g. Zone, or Woreda, or Kebele level governments in the case of Ethiopia) on the other⁵¹. In USA all state constitutions covers the basic principles, protections of the civil rights, government structure, power and process, the constitutional changing mechanisms and other miscellaneous provisions⁵². Under its general principle, popular sovereignty and supremacy of the constitution is inevitable. The Regional State Constitution also regulates the relationship between state governmental bodies and citizens by providing for a constitutional guarantee for fundamental rights and freedoms of state citizens⁵³. A list of catalogues of human rights wide in content and long in length will be guaranteed beyond the federal constitution. Further, the contents of state constitution should be noteworthy of safeguarding those citizens who find themselves in a minority within a sub-national territorial unit. Federation’s best protect distinct groups and minorities when those communities are regionally concentrated in such a way that they may achieve self-government as a majority within a sub-national government.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² See for example the www.library.unt.edu/gpo/acir/Reports/policy/a-113.pd

⁵³ Ibid.

2.4.4 Interpretation and Amendment mechanism

In most federation the state constitutions are amended through the state legislatures, in other federations by constitutional revision commission, or a constitutional assembly.⁵⁴ In rare case the state constitution can be amended or entirely revised by popular referenda.

In USA the interpretation of state constitutions often depend on the state courts. This is the case, for instance, in the states of the USA.⁵⁵ In German federation and South Africa there is special constitutional court which interprets the constitution. At federal level, in Ethiopia, where ordinary courts are not granted the power to interpret constitutions, the political body composed of nation, nationality and people of Ethiopia supported technically by Constitutional Interpretation Commission or as in the time preceding 2001 in Ethiopia, state legislatures interpret the state constitutions. Following, the constitutional revision of 2001, the Constitutional Interpretation Commission in the Oromia region decides all constitutional disputes and interprets the ORSC.

2.5 The Regional States Constitutional Spaces under FDRE constitution

Until 1991, Ethiopia had centralized form of government starting from the formation of the state mainly through force. Under that unitary polity, attempts were made towards building one nation, one culture, one language and single identity against the factual reality of existing multination, cultures, languages and diverse ethnic identities⁵⁶. In the aftermath of the fall of Dergue regime Ethiopia has become, and is, a federal polity since 1995. Given the different liberation front that had been fighting to topple the Dergue to establish their own empire, federalism was suddenly preferred as workable compromise to reconcile all ethnic groups that had been struggling for the self determination.⁵⁷

⁵⁴ Ibid.

⁵⁵ Ibid; see also James A. Gardner, *Interpreting State Constitutions: Jurisprudence of Functions in a Federal System*, Chicago: University of Chicago Press, 2005, for the predominant mode of constitutional interpretation, especially in the USA.

⁵⁶ Federalism in the eyes of scholars on the Hider 29, 2002 symposium on Nations, nationalities and peoples day

⁵⁷ See Tsegaye supra note. 3. Dr Tsegaye has pointed out that the move to federalism was only a culmination of earlier efforts at decentralization that started in 1991 on the aftermath of the collapse of the Dergue regime. He further stated that marking a complete break from a unitary and centralist past, Ethiopia dared to experiment with a

Disregarding the constitutionalism practice as it may, the FDRE Constitution founded on the principles of ethnic federalism, in putting together way and in symmetric acknowledgment at least in the bare text of the federal constitution. The constitution recognizes the right of self-determination including secession and the use of ethno-linguistic criteria as a basis of state formation but subjective of political and procedural qualification.⁵⁸

Recognizing as its own the author, the FDRE Constitution indisputably provides the right to self-determinations of the nation nationalities and peoples under its article 39. Based on that, the federal constitution has classified the power to enact the state constitution for regional government.⁵⁹ Logically, the basic state government bodies, institutions and overall aspects of the regional state would be left and governed by state Constitution. Nevertheless, during the Transitional Government, States come into being earlier to the federal and state constitutions to that talks their formations.⁶⁰ Latter the FDRE established the Ethiopian federation composed of nine constituent units carved on the basis of “settlement patterns, language, identity, and consent of the people concerned.”⁶¹

Thus, immediately upon the coming into force of the federal constitution, states have come to adopt their own constitutions and to utilize them to manage state politics in accordance with them. Regional states used the FDRE Constitution not only as model design but also major material or substantive source.⁶² State legislatures are formally declared to be the makers of state constitution. Nevertheless, in fact, the frameworks of Oromia regional state constitution were

multi-ethnic/ multi-national federation. For him the federation that was born out of the concern for ethno-nationalist groups’ right to self-determination (which in turn was a result of an age-old quest for ethno-cultural justice) manifested a number of unique features.

⁵⁸When I say the right of self-determination including secession and the use of ethno-linguistic criteria as a basis of state formation are subjective of political and procedural qualification mean that while politically every decision in Ethiopia political landscape are decided at party level and lobbied on councils both at federal and state level to vote on it where as when I say procedural, I mean that procedural attached to the exercise of the rights are curbing and resulted with obstructing the rights from being fully enjoyed.

⁵⁹ Article 50 and 52 of the FDRE Constitution.

⁶⁰ The regional states have their respective autonomous governments set up under proclamation No. 7/1992 separated in to fourteen regions including City administrations.

⁶¹ See supra note. 3. The interchangeable usage of the terms of nations, states, regions, sub-regions, sub-nations, Dr. Tsegaye has defined it as these nine states, officially called variously as “National Regional States”, “Regional States,” “Regions”, or simply “States,” are: Afar, Amhara, Benishnagul-Gumuz, Gambella, Harari, Oromiya, Southern Nations, Nationalities, and Peoples (SNNPRS), Somalia, and Tigray. Most of these states are ethnically heterogeneous although in most of them there are dominant ethnic groups after whom the states are often named.

⁶² See supra note. 3, p.51.

prepared and given for adoptions to the region from federal government.⁶³ The justification for preparing the state constitution framework at federal level was to have uniform constitutional rule and law enforcement institutions under the same federation. The practice was appreciated by the federal government lead by EPRDF to save the country from being scattered and help the premature regional state.⁶⁴ However the practice is completely deviation from the formal ambitions of the federal constitution. All major decisions passed by party politics closely guided and controlled from center often taken place not in within the formal institution of the federal system but within the country's single dominant political party-EPRDF.

The Regional State constitutional space would be expected under the federal system in general and under ethnic federalism in particular has got encountered problem from its commencement. The next chapter deals with the constitutional spaces occupied by Oromia regional state constitutions.

⁶³ In interview conducted with Mustefa Abasimal, the Secretariat, the office of the president of the Oromia Regional State, while searching for the minutes of the constituent, the researcher has learned that no constitutional making process has been conducted clearly and the frame work constitution were sent for the region from the federal government.

⁶⁴ Addisu Melaku, Senior Legal Advisor for the Caffee Oromia, speaker of the assembly.

CHAPTER THREE

The constitutional space occupied by Oromia Regional State Constitution

3.1 Introduction

As outlined in the preceding chapter, though it is common to see State Constitution (National Regional State in our case) in most federal system of government to make use of their powers granted to them as exclusive state matters overtly and residual powers by federal constitution, State constitution has affected by various factors. Factors affects that the scope of Regional State Constitution also has an impinge upshot on the self-rule on own matters and diminish the effectiveness of the government to find local solutions to local problems. The aim of this chapter is to seriously scrutinize how far the Oromia Regional State Constitution might have utilized the room left by federal constitution to deviate from the former in making use of constitutional space to establish innovative and a typical form of government structure, institutional and conflict resolution frame works enjoyable to the people of the region based on local veracity and self-determination autonomy guaranteed to Regional State as a building blocks of the Ethiopian federation. Given that the Oromia Regional State differ from Federal and other Regional State Governments in terms of territorial dimension, ethnic composition and economic, social and cultural circumstances, making a one-size-fits-all approach design of constitution is inappropriate to the design of local government. Attempt has been made under this chapter to mechanically audit the procedure and the substantive contents of the Oromia Regional State Constitution in light with promised federal idea and constitutionalism principles.

Under this chapter the study traces on examining the form of government with various administrative and conflict umpiring institution established by Oromia Regional State Constitution. The study then proceed to make meticulous inventory on the substantive content of the human rights provisions of the constitution as provided under its chapter three with view of checking whether the constitution give better or above protection from national human rights standards or not. The chapter also focuses on the conflict resolution institution (un)recognized by the constitution of the region taking into account the objective reality of the region.

3.2 Brief Overview of ORSC: Design, Formation and Amendment

Despite the Oromia Region had already adopted a regional Constitution in 1993, The first formal Oromia Regional State Constitution (ORSC) was adopted in 1995 by the regional council known as Caffee following and patterned with the FDRE Constitution that was adopted earlier in the same year. In Ethiopian federation, it is the role of state council to make RS constitution in devoid of constitutional commission/assembly or popular freedom. Nevertheless, all Regional State Constitutions in Ethiopia federation were enacted before the state council that would be expected to be established by the constitution comes into being. The foremost anomaly of the constitution lingering query is that if it was the constitution which established the Caffee, how the ORSC could come into being. Put differently, the question is how the first ORSC was made, in the absence of Caffee. Since, it is the constitution which established the Caffee itself, for the first time the first Oromia Regional State Constitution was enacted based on the Transitional Government of the Centre and Regional Transitional ‘Self-Government Constitution’ of Oromia.⁶⁵

As articulated in its preamble, the Transitional ‘Self-Government Constitution’ of Oromia is intended to give recognition to the “fact that the Oromo people were administering on their own by organizing everything pertinent to law and order democratically on the basis of administrative and judicial structure established in accordance with Gada System”⁶⁶. The transitional constitution further strike a chord to the tragedy of Oromo people undergone from the time they invaded by “neftegas” until the fall down of the Dergue regime.⁶⁷ More specifically, the Constitution highlighted the fact that Oromo has had lost their economic possession and national existence, forced to rule under the laws of aliens in a way would enable their history, culture and language to be forgotten.⁶⁸ As a response to that the constitution pledged and intended for the Self-determination of the people to their own affairs within their defined territory which to be governed by their own laws but with undertake of full guarantee for rights of every citizen. Paradoxically, the body of the transitional constitution provides that all the powers, works and

⁶⁵ See TG charter, Proclamation no 7/1992, the proclamation to Provide for the Establishment of National/Regional Self-Governments; see also proclamation no.2/1993, the proclamation to enact the Oromia National/ Regional Transitional Self-Government Constitution.

⁶⁶ See the paragraph 1 of the preamble of Oromia National/ Regional Transitional Self-Government Constitution.

⁶⁷ Ibid. paragraph 2.

⁶⁸ Ibid. paragraph 3.

functions of the regional transitional government has had to be conducted in conformity with the Central Transitional Government in legally speaking and all affairs of the region need the Central political approval.⁶⁹

Issues worth discussion here is that the Transitional constitution has had clearly admit the Oromo people struggle to have their right to self-determination in accordance with the Gada system democratic political, social and cultural structure and institution which the Oromo people lost under the despotic system. But in the body of the constitution it does not firmly stipulated for the establishments of government in accordance with Gada system. Thus, one can conclude that the Transitional Constitution Oromia has had simply put finger and scrap in the wounds of the people without any meaningful healing instrument on the ground. It focus on the past, lacking of clear and firm determination to respond the query of the legitimate demands of the people to rule themselves in accordance with the democratic and fashionable system of governance of Gada system what they invent to the world. When the first Oromia Regional State Constitution enacted in 1995 in accordance with FDRE Constitution, the demand of establishing the regional state based on Gada system were entirely dropped out even from the preamble of the constitution.

Since then, the Oromia Regional State has had undergone four times constitution amendments or revisions since 1995. In 2001, the 1995 Oromia Regional State Constitution was revised entirely. As enlightened in its preamble, the reason for the entire constitutional re-proclamation were to correct the manner of separations of power and ensure the accountability of the state that claimed as had been observed since the first constitution adopted. The revision was also aimed at fulfilling the demands of rendering effective services.

After serving for a while, the 2001 ORSC was re-amended by proclamation no.94/2005. One of the key issues worth demand for the amendment was the concern of nomenclature of the regional state. Accordingly, the state had been used name “the regional state of Oromia” has been changed to the “The Oromia National Regional State”.⁷⁰ The other reason to amend the provision of the ORSC was to deal with the capital city of the region following the restoring back the

⁶⁹ Ibid. see for example article 42(a), 449(1) & (4-5).

⁷⁰ Article 2(1) of the Proclamation No.94/2005 issued to amend proclamation no. 46/2001 the revised Constitution of Oromia Regional State.

capital city of Oromia from Adama to Finfinne.⁷¹ Some other rationales for amendment includes, reducing the quorum of the Caffee from two third majority to simple majority- more than half of the member of the Caffee, is enough to held the Caffee's meeting, increasing the power of the president to merge and divide the administrations structure, cause new structure and or to dissolve district council in the region, to declare the president as both head of the state and head of executive, are among other things issues call for constitutional amendment of the region in 2005.

Once again the ORSC amended by proclamation no. 108/2006. The major justifications for the latter amendment was because of the former amendment were believed to have problems related to election of woreda (district and kebele Council).⁷² Accordingly, the term office of the district and kebele Council become 5 years parallel with that of the Caffee with the possibility of extension of the time if the Caffee deems necessary.⁷³ The provision addresses nothing what amount to "necessary" to be able to postpone the term office of the council so that the Caffee would use discretion room. In the absence of such objective criteria set forth under the constitution in advance, the Caffee if deems "necessary" simply for political using up, the Caffee can make use of that legal back up to extend the term office of the council.

The Oromia Regional State Revised Constitution is organized in to 12 chapters. Chapter one is general provision that nomenclatures the RS, demarcates the borders of RS, deals with flag, emblem, anthem, working language and capital city of RS. Fundamental Principles of the Constitution provided under chapter two are: sovereignty of the Oromo people, the supremacy of the constitution without prejudice to the FDRE Constitution supremacy clause, dichotomized the human and democratic rights, separation of state and religion and conduct of government

⁷¹ Ibid, article 2(3).It is to be recalled that in 2002 when the capital city of Oromia decided by the government to be moved from Finfinnee to Adama numerous Oromos individuals, Self help Associations such as Mecha Tulama Self help Association; Oromo Students from Addis Ababa University fiercely and strongly opposed it. Whatever the means and the time it was happened the demand of remain its capital city of Oromo people on its heart land was restored. Yet, legally speaking the name Finfinne which Oromia Regional state claim it as capital city is not known in federal government, rather it has been known as Addis Ababa both under FDRE Constitution and Addis Ababa City Charter.

⁷² The ORSC does not deal with how the election of state council (Caffee) is conducted and administered; the Constitution failed to establish election board or commission at regional state level.

⁷³ Article 2 of the Proclamation No. 208/2006 issued to amend the 2001 Revised Constitution of the Oromia Regional State Proclamation.

accountability, while chapter three deals with the fundamental rights and freedoms. Chapter four, traces on structure of the RS and division of power. Following, chapter five and six defines the power and functions of Caffee and executive Organ of the RS respectively. Chapter seven is the structure and power of the RS courts. Chapter eight to ten focus on local government's structure from Zonal to Kebele level organization, arrangement and power. Political, economic, social, cultural and environmental objectives were set forth as policy directive principles of the RS under chapter eleven. Miscellaneous provisions such as how state of emergency declared the issues with auditor general, initiations and amendment of the constitutional were included under chapter twelve.

3.3 Structure, Form and System of Governments

Article 50(5) of FDRE constitution provides that states are empowered to draft, adopt and amend their own constitutions. The federal constitution also under its articles 50(3) and (6) sets the framework for the regional government and its institutional structure. The states are entitled to frame and ratify their own constitution subject to some restrictions stipulated under the federal constitution. As a result, the state constitutions cannot contradict the federal constitution.

Based on the federal framework, Oromia Regional State Constitution came into being as outlined in the preceding sections. Leaving aside the factual political environment encompassing the state of affairs for the questions 'which comes first the ORSC or the Caffee', article 1 of the ORSC has established the regional State government as 'democratic' structure. Deviated from the federal Constitution, it dropped out the term 'republic' from not to be its government structure. Democratic government means the government type in which the rule is conducted by the majority that takes for granted rights comes from people.⁷⁴

From outset, the normative frame of ORSC in keeping out of "republic" structure of government from its realm by using 'democratic structure of government is worth noting. The clear picture of

⁷⁴See A. Gourley, *WHAT IS DEMOCRATIC GOVERNMENT And how do we achieve it?*1990, p.23, also available on themindweb.com/docs/supplements/WhatIsDemocraticGovernment.pdf ; see also the *CONCEPTS AND PRINCIPLES OF DEMOCRATIC GOVERNANCE AND ACCOUNTABILITY: A GUIDE FOR PEER EDUCATORS* Published under the project: 'Action for Strengthening Good Governance and Accountability in Uganda' by the Uganda Office of the Konrad-Adenauer-Stiftung available also on www.kas.de/wf/doc/kas_29779-1522-2-30.pdf?11121919022

democratic type of government becomes visible when it compared with its counterpart republic type of government. Apart from the distinct terms used in the constitution, closely looking at the nature of government, there are immense dichotomies between republican and democratic type of government. Democratic government is different from republic government in many forms. In democratic government, rights seems granted from government as majority determine rights and duty standards while in republic type of government the role of government is to give protections to naturally existing rights. As a result rights are privilege in democratic government while in republic government all rights emanates from being human are inalienable.⁷⁵ Power is centralized to those who claim majority in democratic while there is a mechanisms of checks and balance on majority in the case of republic type of government. From the two type of government, Oromia Regional State Constitution appears to have established only the democratic type of government. Nothing has been stated whether the Constitution combined the republic and the democratic form of government compare to the FDRE Constitution which describes “the Ethiopian State shall be known as “The Federal Democratic Republic of Ethiopia”.⁷⁶

From the provision of ORSC, there is no indication, that is, as an evidence for the type or the form⁷⁷ and system⁷⁸ of government has been envisaged by the Oromia Regional State Constitution. Compare to the region, the FDRE Constitution is clear that the federal government is parliamentary type of government. Neither the FDRE Constitution indicates what type of government established at regional level, nor does the ORSC itself undoubtedly bestow the type of government it was designed to regulate. It is the chapter four of the ORSC constitution which widely deals with the structure of the regional state and divisions of power both horizontally and vertically⁷⁹.

⁷⁵ See From The American Ideal of 1776: *The Twelve Basic American Principles*. <http://www.lexrex.com/enlightened/AmericanIdeal/index.htm> ; Michael H. Keehn, *Republican Form of Government* (updated September12, 2015), p.7

⁷⁶ Article 1 of the FDRE Constitution

⁷⁷ The type or form of government can best be expressed by listing them, namely democratic, republic, monarchy, aristocracy, dictatorship and combination of the republic and democratic.

⁷⁸ System of government is a system through which the countries administration structured either in federal or unitary, either parliamentary or presidential system of government.

⁷⁹ Horizontal division of power is to mean when power of government is divided among the three branches of government: Executive, Legislative and Judiciary; whereas vertical division of power implies when power is divided between the same branches of government based on power hierarchy as stipulated in the constitution at RS level and

The Constitution provides four tier administrative structure of the region: regional government, Zonal, Districts and Kebele/Ganda⁸⁰ saving the power of the Caffee⁸¹ to establish other administrative structure. The Constitution clearly re-constituted the horizontal power division between Caffee/ State Council, the state executive and state Judiciary which were already established by FDRE Constitution. Local governments at zonal, district and kebele level were established by the constitution vertically with different level of responsibilities and accountabilities.

What form and type of government established by the ORSC is not clear. Since the Constitution provides that the head of state and government resides on single person-the president of the RS, one can reasonably argues that the ORSC has created the presidential form of government.⁸² Against such, counter argument might develop from closely looking of article 59 of the ORSC which states that the president of the region shall be designated by the Caffee among from its members. Hence, to be a president of the region, one has to be the member of law maker of the RS or Caffee. Put in other ways, being a member of Caffee is the precondition to be designated for the presidency. On the other hand, there is no provision in the constitution that indicates the designated president will vacate the seats from the Caffee once elected as president. From this, one can also conclude that in Oromia Regional State, the president is both the head of executive and legislative organ of the RS. As a result, the type of government established by the ORSC is uncertain and complicated.

Being the type of government established so far is intricate and vague, it makes the legislative and executive power of government fused with on the single person- the president. No legal mechanism is provided to avoid the risk of becoming the tyranny system of government at RS level nor there does the system of checks and balance that ought to be exist between the executive and the Caffee in which former is accountable to the latter. One may argue that since the president is elected by the Caffee, which entails the president's accountability to the later;

sometimes vertical division of power is to mean the division of power between central/federal government and constitutive unites in federal state.

⁸⁰ 'Ganda' also to mean 'kebele' is the lowest administration structure recognized by Oromia Regional State constitution under its article 90, below the district level.

⁸¹ Caffee means the legislative organ composed of representative of the people of the region.

⁸²See article 2(11) of the Proclamation No.94/2005 issued to amend proclamation no. 46/2001 the revised Constitution of Oromia Regional State. One of the basic and distinguishing features of presidential form of government is being the president would act as head of state and head of government as well with clear and visible separation of executive organ from the legislature; see the USA presidential system

having reporting duty and the existence of various mechanisms of control by Caffee, it is easy to make the executive accountable. Owing to the existing constitutional and political setting, securing the accountability of the president or the executive, in practice is difficult. This means that since an individual can be sit as head of executive and as a member of Caffee at the same time, there is no mechanism to curb that all Caffee members not to be executive. In such case, it is difficult to be hopeful of accountability, and check and balance between the executive and legislative branch. On the other hand political practice has evidentiary proved that all decision comes from the center/ federal could easily be reached to the lower regional administrative level through party democratic centralism strategy of the ruling party.

State Constitutional space is used to utilize the reserved powers allocated to regional governments to create a republican form of government, to charter local governments, to conduct elections, and to exercise all powers not delegated to the national government or power not denied to the states by the Constitution. In lucid talking, in Ethiopian federations, the residual power belongs to the RSGs. It states that “All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States”.⁸³ As has been pointed out in its long lists of federal government power and reserving formulating policy command that cuts all edge of matters in the country , the FDRE Constitution has stay put few and meagre power to the state to exercise their sovereignty even in their affairs.

To intricate few extra constitutional way of taking all to be handled by federal government are: land administration taking it from region, establishment of Minister of Federal Affairs which involved in numerous issues of state matters is to list few. Enacting the proclamation that facilitate ways for federal government to intervention in state matter at their own discretion is one of the constitutional provision shows overwhelm of federal government in way contradicting the mutual respect and equality between federal and regional government. One may argue that since the grounds for federal intervention are already mentioned in the constitution, this might not be raised as the unfair division of power. Under article 51(2-3) the FDRE Constitution empowers the federal government to “*formulate and implement the country’s policies, strategies and plans in respect of overall economic, social and development matters...; ...establish and implement national standards and basic policy criteria for public health, education, science and*

⁸³Article 52(1) of FDRE Constitution.

technology...”As this provision clearly gives gray area to federal government, one can argue that this is more than the ‘necessary and proper’ clause for it grants the federal government with wide powers on economic, social, health and education aspects. It seems to put primary responsibility on the federal government to determine major policy directions and standards and certainly this is the practice, at least so far, although it is not clear whether this is because of state government’s lack of expertise or whether this is considered to be federal power. This clearly shows the unfair division of powers has been made by the FDRE constitution itself deviating from the self-determination pillar of which the constitution built on. Being the unfair division of power made by FDRE constitution and extra constitutional way of taking all to be handled by federal government is at is, the ORSC pretty short of establishing the system of government amenable to the custom of Oromo people.⁸⁴ Failure to do so degenerate the problem had already been caused because of the ORSC lacks enough system of controlling abuse and tyranny arrangement of government when it fails to be innovative by establishing state structure enchanting with the objective reality of the region. The Nations, Nationalities and Peoples are entitled to a full measure of self-government that includes the right to establish institutions of government in the territories that they inhabit and to equitable representation in state and federal government.⁸⁵ Owing to this provision, Oromia Regional State Constitution could have to recognize, establish or consolidate Gada System institution in its constitution to function side by side with other government institution or entirely make Gada System to be functional in a formal way. Because of Gada system has not been constitutionalized as it amenable to local problem might occur on one hand and the ORS constitution failed to follows the prudent legal stipulation to curtail any system of abuse practice, it is impossible to ensure accountability between branches of government at state level.

Despite the fact that the FDRE constitution does not unequivocally gives power to the regional national state to include in their regional constitution to adopt new system of government at regional and local level, it is with assent authorized under the Constitution that while regional State actions are valid due to the ‘unless prohibited explicitly or implicitly by the federal constitution is allowed to state government to do so.

⁸⁴The constitution denies recognition of Gada system of democratic governance of which the Oromo people had been fought for a long period of time.

⁸⁵ See Art. 39 sub 1, 2, and 3 of FDRE Constitution; see also Laurence Tribe, *American Constitutional Law*, 3rd edn. v. I (New York: New York Foundation Press, 2000), p. 796

3.4 Human Rights Provisions under ORS Constitution

3.4.1 The Rights Protected

Similar with the FDRE Constitution, the chapter three of Oromia Regional State Constitution provides for a catalogue of fundamental rights and freedoms almost verbatim to the one included in the federal Constitution. In a similar fashion, the rights recognized and granted a constitutional guarantee under rigid constitutional amendment procedure. The constitution recognized all human rights encompassing from civil and political rights, economic, social and cultural rights and the third generation rights as well. Right to life, right to security of person, right to liberty, prohibitions against inhuman treatment the rights of arrested and accused person are to list few of them here from civil and political rights that are recognized. The right to labor, social, economic and cultural rights are also included under the realm of protection of the constitution. Further, the right to living in clean environment, the right to nations, nationalities and peoples and the right to development have got constitutional guarantee.

Nevertheless, the manner of interpretations in case the demand arise on the scope of the rights remain unclear similar with the FDRE Constitution. The ORSC could not go beyond the FDRE Constitution to standardize universal human rights in accordance with international human rights instruments. Furthermore the constitution does not boldly provide that the all categories of rights can be enforced and claimed before the court of law.

3.4.2 The manner of classification of rights: From Universal and indivisible to fragmentation at local?

As discussed in the earlier section of this chapter, the ORSC declares the establishments of ‘democratic regional State structure called the ‘the Regional State of Oromia’.⁸⁶ The constitution arranged the Oromia regional state as democratic kind of government. Scholars describe democratic kinds of government contrasting to republic type of government based on the how human rights source viewed, created and implemented.⁸⁷ Accordingly, the government which claims as democratic form consider themselves as if the rights are granted by the government

⁸⁶ Article 1 of the ORSC.

⁸⁷ Supra note. 60

while in republic one the role of government is to protect rights. Thus, in ‘democratic’ government, fundamental human rights are viewed as privileges, not as inalienable rights bestowed by the creature.

The ORSC, under chapter three has made classifications between two groups of rights, namely “Human” and “Democratic” rights in similar fashions of classifications of rights made under FDRE Constitution.⁸⁸ These human and democratic right classifications derived from the fundamental principles of the Constitution itself.⁸⁹ Hence taxonomic approaches to human rights under the constitution is neither spontaneous nor results of drafter’s pencil sleep. In black and white, some universally recognized human rights are clustered under democratic rights catalogues of rights. Concerning such classification of rights, Gedion has described it as unwise classification of indivisible rights as “without significant impact”.⁹⁰ Nevertheless, as one can discern from article 10(1) and (2) of the ORSC Constitution, the classification seems intentional and has far reaching consequences on degree of protection given to the each rights. Lack of understanding the legal nature and content of all human rights have undermined impact on the standards to be enjoyed of the rights. The ORSC should have been given best protection and the standard above the FDRE Constitution if legislating human rights inspiring at RS level is needed. If not it would become repeating the wrong approaches had been once made by Federal Constitution.

Classifying human rights in general and clustering some of the human rights under democratic rights implies the followings. First of all, it shows that less protection has been given to those

⁸⁸ Surprisingly the common articles of FDRE and ORSC has legislates the fundamental rights and freedoms in exact the same number of provisions. Accordingly , the right to life (Art 14 and 15), liberty (Art 14 and 17), security of the person (Art 14 and 16), rights against torture, slavery, forced labor and related vices (Art 18), rights of arrested person (Art 19), the rights of accused person (Art 20) , and rights of detained person (Art 21) , rights against retroactive laws (Art 22), double jeopardy(Art 23), rights to honor and reputation (Art 24), the right to equality y (Art 25), the right to privacy (Art 26), rights of religion, belief, and opinion (Art 27), and protection from crimes against humanity (Art 28) are all clustered under a category of “Human Rights”. Whereas, the right to thought, opinion, and expression (Art.29), assembly, demonstration, and petition (Art 30), association (Art 31), movement (Art 32), nationality [alias citizenship] (art 33), marital, personal, and family rights (art 34), access to justice (art 37), vote and be voted for (art.38), property (art 40), economic, social, and cultural rights (art. 41), dignified labor (art 42), development (art 43), environment (Art 44), rights of women (art.35), children (art 36), and nations, nationalities, and peoples (art 39) are enumerated under democratic rights.

⁸⁹ Article 10 of the FDRE and ORSC Constitution as captioned with “human and democratic rights” is the third principles along with other principles such as sovereignty of the people (art.8), supremacy of the Constitution(art.9), separation of state and religion(art.11), Conduct and accountability of government (art.12) under its chapter two on fundamental principles.

⁹⁰ Gedion Timothewos , *Freedom of Expression in Ethiopia: The Jurisprudential Dearth*, Mizan Law Review Vol. 4 No.2,Autumn 2010, p. 212.

rights set under democratic rights. This is undoubtedly discerned from article 10(1) and (2) of the constitution. Article 10(1) of the constitution affirms that human rights and freedoms are fundamental, inherent, inviolable and inalienable. In different norm it stipulates human and democratic rights shall be protected lacking the manner and extent of guarantee provided under sub article 1. Giving fewer standards to rights recognized universally is not something left to the local governments under the state party ratified human rights convention, let alone the RS government which ought to implement higher standards of human rights. Second, it defeats the very source of sanctity of human rights which emanate from being human. By classifying fundamental rights as human rights and democratic rights the ORSC similar to FDRE constitution took the strange position in considering some rights as if created and protected in democratic state only. Apart from its neutrality to any form of government, human rights are neither created nor expired by the state. Further, this classification shows failure to adopt the interdependence, interrelated and integrations in taking up of human rights by legislative measures that the State should undertake by virtue of the common article 2 of ICCPR & ICESCR.

Above all, clustering human rights under democratic rights than as human rights has something to do with justifiability and enforcements of the rights. The traditional distinctions made between civil and political rights on one hand and economic, social and cultural rights on the other hand result from the widespread belief those economic, social and cultural rights lack justiciability and cannot be enforced by court of law.⁹¹ Thus, the classifications made between human rights will determine the judicial remedy guarantee related to the rights. Nevertheless, ever increasing development of human rights laws advocate that the full realizations of human rights depends on the other rights, hence, they are indivisible and interdependent.⁹² With lingering hesitation on courts' legitimacy and institutional competency to pronounce judgment on the issues of economic, social and cultural rights, many States have constitutionalized the socio-economic including cultural rights and acknowledged the justiciability of the rights.⁹³

⁹¹Miraja A.Trilsch et al. The justiciability of Economic, Social and Cultural rights in Domestic Law, Heidelberg 2012, pp.1-45.

⁹² Supra note.7, para.5.

⁹³ See how the South African Constitutional courts interpreted in Soobramoney Case, Grootboom case, and Treatment Action Campian case; See also the State of Quebec in Canada, In Ethiopia some socio economic rights are constitutionalized under chapter three of the constitutions and some of them are stipulated as directive policy

According to the ICESCR, domestic court has to consider all rights in the covenants for making meaning full effect for the enjoyments of human rights.⁹⁴ Undeniably, non claimable right is not rights at all. As indicated by ICESCR, one of the appropriate measures State obliged to take is the provision of judicial remedy with respect to social, economic and cultural rights in the national legal system as justiciable rights, which further enable the court to employ plural legal system. Courts should take a count of the economic, social and cultural rights where it is necessary to ensure that the state conduct is consistent with its obligation.⁹⁵ The obligation to effective judicial remedy to the issues of rights clustered under democratic rights category are inherently self-executing and would demand immediate applications.⁹⁶ This comes from the assumptions that non claimable rights are not rights.

3.4.3 Protections of Minority Rights

Following the rights given to Regional state Governments by FDRE Constitution to put into effect sovereign powers within their respective territorial boundaries provides, they are entitled to adopt their own constitutions to be able to govern their own matters. The chapter three of ORSC in virtually squarely equal with the FDRE Constitution, provides for human rights. Bearing this in mind, it is necessary to consider the ways in which the ORSC address the minority ethnic groups living Oromia and to what extent they constitute instrument of discrimination against such minorities.

The ORSC provides under article 8: “Sovereign power in the region resides in the People of the Oromo Nation and the sovereignty of the people is exercised through their elected representatives and direct democratic participation.” It is worth noting that this provision has ignored the existence of non-Oromo ethnic groups, which constitute 12.2% of the region’s population. As there is no provision in the Oromia Constitution, which provides for the protection and effective political representation of non-Oromo residents of the region, the above

principles. However in both case their justiciability by court of law is not clear. For further study on this see supra note 76; see also Sisay Alemahu, *Justicability of the Right to Housing and Health in Ethiopia, the Legal and Policy Framework*, Action Professionals Association for the People, (2006).

⁹⁴ ICESCR, General Comment No.9, domestic applications of Human rights, para.12.

⁹⁵ Ibid, para.12.

⁹⁶ ICESCR, General Comment No.3, Obligations of the state to, Para. 2-5

provision is a conspicuous denial of the very existence of non-Oromo Ethiopians living in the Oromia region.

Given the sovereign power granted to native ethnic groups in the regions; the regions embodying expressions of sovereignty of native ethnic groups to the exclusion of others; and the lack of any restraint placed by the Federal Constitution on the assertion of such powers by the majority native ethnic groups, the regional constitutions are bound to reflect trends that may be prejudicial to minorities. In relation to the exercise of political power in the region, the major concern of the ORSC is the affirmation of the sovereign rights of the nations, nationalities and peoples who are presented as the exclusive owners of this region. The ORSC fail to recognize minority groups and remain silent on the issue of protection of ethnic minorities.

3.5 Institutional Set Ups

As discussed above, human rights have been incorporated in the ORSC almost similarly with the FDRE Constitution. These fundamental rights and freedoms require republic and democratic type of government. The inclusion of human rights in the constitution has far reaching consequences in making of human rights as legally claimable rights and limiting the government powers, promoting, protecting and monitoring the implementations of the rights protected among other things.⁹⁷ In view of ensuring such goals, active and independent institution serves as watchdog over all acts of the RS are fundamental to fulfill the relevance of the inclusion of constitutional bill of rights.

Article 49(3) (k) of ORSC has empowered the Caffee to “establish institutions necessary for expanding social services and fostering economic development”. In addition, it requires the Caffee to establish the auditing and inspection organ of the region.⁹⁸ Even if it is not explicitly stated power of the Caffee, under ORSC as in the case of Auditor general, the Caffee has already established the anti-corruption commission at RS level.⁹⁹ Nevertheless, both in the constitution and in practice the Caffee lacks power and commitment to establish institutions essential to achieve the have limited government, such as human rights commission, ombudsman institution

⁹⁷ CESCR, General Comment No.20, pp. 2-6.

⁹⁸ Article 49(3)(f) of the ORSC.

⁹⁹ See proclamation for the establishments of anti corruption commission of ORS.

and election board in Oromia Regional State. To the worst, the ORSC indicates some tendency to limit the nature of institution to be established by the Caffee only to the institutions necessary for expanding social services and fostering economic development.

Instead of establish it by the RS, the human rights commission, the ombudsman institution and the election board were established by the federal government to be operative in the region as branch office only. The consequences of missing institution indispensable to have limited but autonomous government at RS have numerous implications. First, the ORSC fail to made use of exploiting the constitutional spaces that has been left to the RS that enable them to administer themselves in establishing all institutions essential to accomplish government business. Since the institution established by federal government is called to pore over the state governments in the operational, compliant and investigation level, the RS government would lose its sovereignty. Owing to mutual respect principles of the federal and RS supposed to exist as provided in FDRE Constitution, it amounts to unfaithfulness of federal idea and constitutionally wrong to have the system in which RS government functions are accountable to federal institution. Second, since the ORSC incorporate the bare substantive body of human rights without strong and active monitoring bodies, it give a reduced amount of protections for human rights below the international and national standards.

The Oromia Regional State constitution mandated the institution known as Constitutional Interpretation Commission to decide on any constitutional dispute and interpret the constitution.¹⁰⁰ Nevertheless since the constitution in broad terms encompasses the member of the commission to embrace all representative of each district council, the exact number and the scope of institution encompass is not clear. In addition the constitution failed to provide the establishment of the commission in clear language in discrete pattern of establishing the Council of Constitutional Inquiry which clearly decaled established by the constitution.¹⁰¹

Similar to the Federal Constitution, ORSC prohibits ordinary courts from reviewing the constitutionality of both laws of the parliament and subordinate enactments of the executive organs like regulations and directives contrary to the FDRE Constitution. This exclusion of

¹⁰⁰ See article 67 of the ORSC.

¹⁰¹ See article 68 of the ORSC.

courts from reviewing the constitutionality of subordinate legislations of the executive highly erodes the principle of constitutionalism, at regional state level of Oromia.

3.6 Customarily Conflict Resolution Mechanisms and Institution

Seemingly the copy paste of the FDRE Constitution, ORSC shortened the matter to be entertained by religious and customary laws and, the institution to entertain it, limited only to personal and family matters.¹⁰² The combined readings of articles 34(5) and 62 of the ORSC Constitution have disgusting impact in diminishing the legal subject matters adjudicated in accordance with Customary Laws of the Oromo people. Article 34(5) of the ORSC Constitution explicitly stipulates that disputes relating to personal and family laws shall not be precluded from being adjudicated with religious and customary laws.

However, similar to the federal, the RS constitution provides the repugnancy clauses that anyone's cultural values would not allowed to surpasses the constitution and the FDRE Constitution¹⁰³ From the wording of the constitution, to make the customary practice *null and void* the mere existence of inconsistency between the Constitutions and cultural values is enough without going further looking for the merits of the culture based on its own value attached to it by Oromo people. This could lead us to conclude that irrespective of the merits of the culture for the society who created it, even if, it provide effective rule outsmarting the constitutions, the customary rule will have no effect. From this one can safely conclude that the ORSC imitates the federal constitution as if it has been drafted from the center in rebuffing the factual existence of the local reality. Apart from lacking the legitimacy which enables the RS to be self-governing in recognizing customary laws and customary institutions distinctive from the federal,

The ORSC constitution while allowing customary rule on limited matters, it has not genuinely ambitioned to serve as an alternative ways of resolving conflicts. Criminal matters, land and water disputes, which would have been solved in better way by customary means than state formal laws have been excluded by the constitution from the domain of customary dispute resolution.¹⁰⁴ The failure is coupled with the federal Constitution which is binding on the regions

¹⁰² Compare article articles 9(1), 34(5) and 78(5) of the FDRE Constitution and article 34(5) and 62 of the ORSC.

¹⁰³ See the Common Article 9(1) of the FDRE and ORSC Constitutions.

¹⁰⁴ Guma system which can be fetched by Gada Council

that do not offers regional states to make use of such level of necessary spaces in otherwise and the constricted sympathetic of concept of the Sub-national Constitutional space barely to mean the regional autonomy can only be exercised within the framework sets by federal Constitution. Thus, it is not the failure of regional constitution only for repulsive effect of ineffective makes use of customary rules from being utilized to normalize all matters concerning the regions only.

This clearly shows that the ORSC currently more appears adopted centralist legal ideology designed and formulated from the center. Thus, the ORSC constitution failed to respect cultural rights by narrowing the right of Oromo people from enjoying and taking part in cultural life. Whilst the foundation of the constitution referred back and seems had been laid down on the plural framework of the country's in socio- political, culturally diversified societies as promised in FDRE constitution, the ORSC failed to adopt comprehensive, inclusive and legally heterogeneous cultural based justice systems along with formal justice.¹⁰⁵ The make use of cultural norms of Oromo people in various aspects could be easily done owing to the federal system of government established by the constitution.¹⁰⁶

Apart from narrowing the right to enjoy and take part from cultural life, the constitution failed to give recognition to Cultural/ Traditional institutions from social, political and justice administration other than the state. As discussed elsewhere in this piece, culture affects all aspects of human life including social, political and legal. Though adjudication of disputes relating to personal and family matter using customary laws are allowed,¹⁰⁷ the customary justices institution were neither recognized nor consolidated by laws. The Customary justice administration institutions status and relationship with formal justice administration is not known. In order to give the right to be adjudicated with once customary law meaningful, recognition and consolidation by laws of this institution is incredibly essential.

¹⁰⁵ See terminologies used in preambles of the Constitution, for example: "Nations, nationalities and peoples as maker of the constitution"; see also article 39 which placed the rights of the Nations, nationalities and peoples to self-determination unconditionally and non-derogable. Nevertheless, as to the knowledge of this researcher, so far, there are no any legislative measures taken in enacting for the realizations of cultural rights in Ethiopia.

¹⁰⁶Getachew Assefa, *Re-evaluating the legitimacy of the codified Laws in Ethiopia*, Law student Bulletin two, February, 2001 Law Faculty Addis Ababa University, pp.18-27.

¹⁰⁷ See article 34(5) of the FDRE Constitution. Only Sharia courts have been consolidated by law so far. But there has been no single national legislation is enacted in Ethiopia to realize the diversified cultural laws and Customary court as institution by establishing, monitoring, defining their scope and roles.

Unlike some Regional State Constitutions, the Regional State Constitution does not contain provisions relating to institutional arrangement of implementing customary laws it recognized on limited matters.¹⁰⁸ Alternatively, there is no any indication in the constitution that formal courts use customary laws of the society to resolve disputes. Owing to unnecessary delay, costly, most centralized, longest procedure (from kebele social court to Federal Supreme Court cassation division), the poor and marginalized people from all corner of the country has limited access to the formal legal system.¹⁰⁹ By doing that the Ethiopian justice system in general and the Oromia in particular seems justice of the rich. Furthermore, since cassation over cassation practice is prevailing in the country, the court practice is becoming centralized for any matters. As a result of such lengthy procedures expected thereof, the formal judicial system in Ethiopia forced to render inaccessible justice. As Ethiopia is mosaic of people with multi-lingual, it is also difficult for the courts at central level to deal with files that have already been decided by the State courts using their own language and also obstacles for those litigants who cannot speak the Federal court language- Amharic.

Similar to positions taken in the FDRE Constitution, practically the ORSC did not take any measures to establish customary institutions. This clearly shows less attention given to the cultural bases institutions in disregarding roles they would have played parallel with state institution. For example, the *Gada* system in practice, though it play momentous role in the society who invented them, have not yet recognized and consolidated by law.¹¹⁰ No legislative measures are taken to take steps towards the realizations of cultural rights which define, and determine the roles of these cultural institutions.¹¹¹ Citing from Marry, Yonatan observed the roles of the customary based institution would play in facilitating, supporting, and promoting values well

¹⁰⁸ See Afar and Somali National Regional State Constitution which allows the clan leaders to be recognized by the constitution side by side with formal law enforcement institutions.

¹⁰⁹ See United Nations Development Program (UNDP), Commission on Legal Empowerment of the Poor, *Making The Law Work for Everyone* (2008) available at <http://undp.org/legalempowerment>.

¹¹⁰ Gada system is the traditional social stratification system to manage all social, political, economic, and culture of Oromo people. Considering the symbolic significance and taking into account its structural innovations, researchers in law, indigenous studies, and pan-Africanism are exploring how the system could be utilized in the 21st century. For detail, see Z. Sirna, *Ethiopia: When the Gadaa Democracy Rules in a Federal State*, 2012; Asmarom Legesse, *Gadaa: Three Approaches to the Study of African Society*, 1973, pp1-78.

¹¹¹ Though article 78(5) of the constitution stipulates that the house of peoples representative or state council can establish or give recognition to religious and customary courts, only Sherea courts has been so far established at federal and regional level.

beings to the society.¹¹² In South Africa, apart from advisory recommendation they will provides to State authorities, they have transforming role and harmonizing the cultural laws with bills of human rights.

The failure of ORSC is an evidence for the top-down legal development approach has been chosen by Ethiopian legal system in denunciation of legal pluralism rooted in cultural rights. Thus, it has failed to fill the gaps that would have been filled if positive attributes of cultural values such as solving local problems with knowledge of local affairs included by the bill of rights.

¹¹² Supra note. 41, p.189

CHAPTER FOUR

Conclusion and Recommendations

4.1 Conclusion

In this paper five fundamental research questions have been raised. The first is, outlining the extents and conditions under which constitutional spaces has been left to Regional State Constitutions under Ethiopian federation. Subsequently, tracing on Oromia Regional State Constitution, the practice of constitutional spaces available to the Regional States under FDRE Constitution implementation were tested based on what type, form, system, and government structure established in responsive to the Oromo people and its amenability to the local reality. Then, how human rights provisions incorporated under the ORSC was framed using the constitutional spaces to give best protections of the rights and to have limited government at regional state level is critically examined. Following, the study diagnosed the ORSC and the practices whether official and non official institutions essential to enable effective social services are recognized and enable the RS to make use of their constitutional space. Finally, the study dealt with testing of whether the conflict resolutions mechanisms recognized by the ORSC enable the RS in fostering their regional autonomy of using local solution to local problems and provide system amenable to the custom of the people of the region.

These questions were addressed based on combination of both doctrinal and socio legal researches. Unwavering methodologies were employed to gather and analyze data including a desk review of primary and secondary materials, personal observations and interviews with government officials to explore pertinent information to answer the research questions. Comparative and thematic analyses were used to diagnose the relevant Federal and Regional State Constitutions, legislations and the practices against the federal. Therefore, the following conclusions are drawn from the thorough investigation made by the researcher.

The research has revealed that although FDRE Constitution allows the State to enact Regional State Constitutions, the prevailing practices are inconsistent with constitutional promises. In practice the regional state constitutional making frame work and amendments have been prepared by the federal government and sent to regional council merely get ceremonial blessing. This was not only the case of 2001 regional constitution revision, but also in the case for the later

revisions/amendments in 2005 and 2006 of Oromia regional state Constitution amendments which derived by the federal political tactics. For instance one of the grounds to amend the 2005 Oromia region Constitution was to bring back the capital city of the region from Adama to Finfine(Addis Ababa) which had taken there politically and brought back also as a result of political controversy the federal government entered with the opposition parties in Addis Ababa city. Only the federal government determines what to be included and excluded in the State Constitutions and the time and reason for revising or amending them initiated by politics which calculated and disbursed from center. This could be done through single dominant Party centralism resolution channel. As a result, the Constitutional Spaces available under the federal constitution framework has not been utilized in Oromia Regional State. Regional constitutional space would have been given to the region also curbed by the federal Constitution itself in outwardly contradictory ways. This is because the federal Constitution which authorizes the nation, nationality and peoples of the country to have unconditional self-determination on their own matter have also an impact in controlling the institutional, legal and conflict resolution means and methods. By doing that the federal constitution enter into contradict itself in providing alike solution for unlike problem.

This research has evidently proved to make known factors that confirm that the Oromia Regional State Constitution has not utilized the available constitutional space. First, the ORSC has failed to establish government structure responsive to the Oromo people recognizing the local reality and add fewer values for improvement of government. Second, the human rights provisions incorporated under the ORSC have been insufficiently crafted to create boon security to the rights of the people and in shaping government behavior at regional level. Third, the laws and practice show that the ORSC deny recognizing essential official and non official institutions inherent to the culture of people of the region. As a result, the conflict resolutions mechanisms recognized by the ORSC have not enabled the regional state to foster their regional autonomy in employing local solution to local problems and to provide scheme amenable to the custom of the people of the region.

In short, the failure and denial of adequate constitutional space to be occupied by ORSC as a result of undue influence from federal government through party channel initiated from Prime Minister office to local kebel administrative level is constitutionally indefensible since it violates

the principle of federal comity (mutual respect of the different orders of government) and it usurps the power/jurisdiction of the regional state of Oromia. Both the transitional constitution and letter enacted ORSC under the federal system serves only political consumption in looking back to rimed the people their injury of the past without get ready and firmly committed to be responsive to the demands of the people to administer themselves in accordance with social, economic, political and cultural invented and developed under the democratic and comprehensive Gada systems and institutions.

4.2 Recommendations

As outlined in this study, Constitutional space available to regional states in federal system in general and multi lingual/multi cultural federation in particular are vital for keeping the balance of self-rule and shared rule, and enables regional states to gain the possibility of establishing institutions of self-government that serve the best interests of their citizens at local government level. However the political practices of federal government and ORSC have been hindering to foster the potential Constitutional spaces that should be left for and fully utilized by the RS to best use their residual power and find local solution for local problem. Hence, to avoid the downbeat political practices which diminish the constitutional space to the Oromia Regional State in Ethiopia the following recommendations are made:

- The federal government should unconditionally and immediately cease in superseding the State matters that would have been governed by Regional State Constitution.
- The Regional State Constitution of Oromia has to be revised in independent of federal government political pressure of Party Centralism tactics to establish the government structure and system.
- Institutionally the ORSC should reform to include provision for the recognition and establishment of Gada system that have strong social, cultural, political and economic linkage with the people of the region. Other institutions such as human rights commission, ombudsman and electoral board have to be independently established by ORSC. .
- A conflict resolution mechanism amenable to the custom of the Oromo people has to be acknowledged by the constitutions and consolidated by supplementary laws.

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2. Ato Bayana Sanbato, the chair person of the Oromo Gada Council
3. Ato Chala Sori, the Secretariat (Aba Caffee) of the Oromo Gada Council
4. Ato Mistire Girma, Senior Legal Advisor for the Oromia Regional State Security and Governance Bureau
5. Ato Mustefa Abasimal, the Secretariat, the office of the president of the Oromia Regional State.