



**ADDIS ABABA UNIVERSITY COLLEGE OF LAW AND
GOVERNANCE STUDIES SCHOOL OF LAW**

**AN APPRAISAL OF (IN)CONGRUITY BETWEEN CONSTITUTIONAL
RESPONSIBILITIES AND THE PRACTICES OF ‘CAFFEE’ UNDER THE
REVISED CONSTITUTION OF OROMIA**

**A Thesis Submitted to the School of Law, Addis Ababa University, in Partial
Fulfillment of Master of Laws Degree (LL.M) in Constitutional and Public
Law**

By

Sibhat Kefyalew Kelbessa

May 18, 2020

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May 18, 2020

Addis Ababa

Declaration

I, **Sibhat Kefyalew**, hereby declare that this work is original and has not been presented in any other institution before. To the best of my knowledge and belief, I also declare that any information used here has been duly acknowledged and cited.

Name: Sibhat Kefyalew

Signature: _____

Date: _____

Verification

I, **Abera Degefa (Ph.D.)**, have read this thesis and approved it for examination.

Advisor: Abera Degefa (PhD),

Signature: _____

Date: _____

Acknowledgment

All credits go to the almighty God, who have been providing and counseling me my entire life. My brothers, sisters, and friends were tools employed by God to make sure I am who I became today. Love and respect!

Much appreciation to my advisor Abera Degefa (Ph.D.) who has unreservedly contributed and imparted all good qualities the thesis manifests. My heartfelt gratitude goes to my Boss, Obboo Demoze Mame, and Caffee's legal Advisors, Obboo Addisu Melaku and Obboo Abdi Kedir. Similarly, leadership and Staffs of Caffee Oromia have brought in significant inputs for the finalization of this study.

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List of Acronyms

EC	Ethiopian Calendar
FDRE	Federal Democratic Republic of Ethiopia
HoF	House of Federation
HPR	House of Peoples' Representative
OBN	Oromia Broadcasting Network
OPDO	Oromo Peoples' Democratic Party
ORSC	Oromia Regional State Constitution
PM	Prime Minister

Abstract

The Oromia Regional State has been in a severe political turmoil in recent years. Researches trace causes of the turmoil to malfunctioning of governmental institutions that could not respond to political demands in time as a result of which the region was derailed into an unbearable political crisis. The Caffee, as a primarily concerned political entity, has constitutional responsibilities to address most of the demands. Therefore, this study aims at assessing if the practice of Caffee meets its constitutional responsibilities and what caused incompatibility if any. Through assessments done based on interviews with officials of Caffee, researcher's observations, and group discussions, the study identified discrepancies between the constitution and the primary legislation and also the practices. The study concluded that there are several inconsistencies caused by political indetermination, legal and structural defects, and lack of professionalism.

CHAPTER ONE

INTRODUCTION

1.1. Background and Problem

A well-functioning democratic system presupposes effective branches of government meeting their respective constitutional responsibilities. Ethiopia and Oromia Regional State claim to have adopted constitutionalism as a means to ensure democratization. Democracy is commonly defined as the rule of the people realized through their elected representatives and guarantees the stability of a political system by facilitating peaceful power transitions.¹

However, Oromia Regional State has been in an apocalyptic political crisis for a long time now. The logical inference that could be deduced from the political situation and theoretical explanations is that the Region hasn't been practicing constitutional democracy, as claimed, or the implementations of the constitutional provisions were impaired.

Caffee Oromia, the Regional legislature, is supposed to be a place where the will of the people already guaranteed by the constitution is guarded. The Revised Constitution of Oromia National Regional State enumerates the list of powers, responsibilities, institutional structures, and procedural rules of Oromia State Council's, 'Caffee' Oromia. To enforce the constitutional provisions, Proclamation No. 201/2017 also came with a detailed explanation of the Caffee's powers.

The objective of both the Regional Constitution and the Proclamations is to establish a legislative organ with supreme political power in the Region. Theoretically, the supremacy of the legislative organ in general and at the subnational level, in particular, has its manifestations. To genuinely act supreme, a legislative organ should carry out its full constitutional powers. Recent research

¹ Adeyinka Samson; Siyan, Peter; Sulaiman Abubakar, Behavioural Foundations Of Democracy And Development: The Fundamentals Of Free And Fair Elections, (A Peer Reviewed International Journal of Asian Academic Research Associates Vol. 2, 2015).

findings² indicate the existence of irregularities and the inefficiency of the *Caffee* in discharging its mandates., In his findings, Addisu has shown that inability of the *Caffee* to make use of two constitutional mechanisms of oversight i.e. interpellation and motions of agenda, has contributed to its inefficiency. In a similar manner, Abdi proved inefficiency of standing committees in controlling and enforcing constitutional powers of the *Caffee*. Since August 2016 the Region was hit by massive youth protests and repressive government response. Though the resistance and repression were not new in the Region, the protests went beyond the control of the government at the time. In an attempt to control, the government committed recurrent human rights violations and suppression of democratic values. The *Caffee*, the legitimate representative of the people and supreme political organ, failed to act according to its constitutional responsibilities. It remained indifferent to all political upheavals. The question here is, why didn't the *Caffee* act according to its constitutional responsibilities or why does its practice not meet its constitutional duties? The logical inference is, had the *Caffee* fully exercised its constitutional power, these irregularities, and the consequent mass protests could have not happened in the Region. This study tries to identify the sources of the problems and examines the causes of the failure of the *Caffee* to act following its constitutional powers.

1.2. Research Objectives

The study aims to unravel the (in)congruity between constitutional powers and institutional practices of the *Caffee* and highlight causes thereof.

Specifically:

- It tries to assess the Constitutional powers of the *Caffee* as provided in both the federal and regional constitutions.
- It identifies the institutional practice that contravenes the constitutional powers and causes of the contravention.

² Abdi Kedir, 'Assessing the Effectiveness of the Role of Standing Committees of the *Caffee* Oromia' (ECSU, 2015). And Addisu Legas, 'Parliamentary Oversight and Its Role in Ensuring Constitutional Accountability: The Case of 'Caffee' Oromia' (ECSU, 2013).

1.3. Review of Literature

The nascent nature of the federal arrangement and constitutionalism has rendered the area of subnational legislative organs least researched. There is a handful of researches done on the subnational legislature in general and *Caffee* Oromia in particular. So far there are only two pertinent researches done on the *Caffee* Oromia.

The first research was done by Mr. Abdi Kedir who focused on the oversight function of the Regional Council. The paper aimed to identify hurdles surrounding the operation of the Standing Committees of the '*Caffee*'. As a result, the study found out some problems related to institutional and individual capacity, power, and resources.³ Approximately similar research has been done by Mr. Addisu Legas in 2013.⁴ The study hypothesizes that the oversight function of 'Caffee' Oromia has not been reassuring and targets to measure it. Finally the research enumerated obstacles related to the first research and that contributed to the ineffectiveness of the 'Caffee' Oromia in terms of oversight mandates.

The area is intact and requires massive academic explorations to strengthen the Council. The scarcity of notable academic research in the area has made the area problematic and urged the need for farther investigations. This study, as opposed to the two previous studies, will assess the comprehensive constitutional powers of the Caffee and evaluate its institutional practices.

1.4. Research Questions

- How much does the practice of *Caffee* Oromia conform to its constitutional responsibilities?
- What are the Causes and manifestations of congruity or otherwise of the practice?

1.5. Methods

This study uses the non-doctrinal qualitative method and Fourth Edition Oxford University Standard for the Citation of Legal Authorities and Journal of Ethiopian Laws for statutes. Semi-

³ Abdi n. 2

⁴ Ibid.

structured interviews have been held with the four heads of Standing Committees who gave insights on all activities of the Caffee in terms of exercising its constitutional responsibilities. Two Legal Advisors and three Directors also provided information regarding how the powers were transformed into practices. And the drafters of the regional constitution have helped with understanding the meanings of the constitutional responsibilities of the Caffee. To verify the information the researcher has contacted informants from the Bureau of Finance and Public Services. Observation of *Caffee* meetings and Committees sessions and analysis of statutes, literature, and white papers or government reports were also considered to build on the previous data.

1.6. Research Organization

The study will have five chapters. The first chapter introduces the paper and the second chapter explains the constitutional powers of *Caffee* Oromia. Chapter three dwells on institutional structure and exercise of the power of the Caffee. Chapter four identifies major discrepancies that hampered the efficiency of the Council. Conclusions and recommendations will constitute the final chapter.

CHAPTER TWO

THEORETICAL AND CONCEPTUAL FRAMEWORKS

2.1. Theoretical expositions

Separation of powers among branches of government evolved with the intent to limit the absolute powers of Kings and ensure the system of check and balance on each of the branches.⁵ It made remarkable contributions to the development of democracy and the concept of representation of people. Gradually, the existence of the three separate branches of government became a typical portrays of democracy in the modern world which was later analogically been replicated in the constitutional constellations of subnational units in federal arrangements.⁶

Legislative branches in a parliamentary system of governments commonly assume the supreme authority among the three branches. With this revered position, legislative organs are expected to play a superordinate role. This concept of parliamentary supremacy emanates from the assumption of popular sovereignty collectively delegated to them via electoral means.⁷ The significance of parliaments depends on the political context in which they operate⁸ and they still make use of these powers in different ways enlightened by various theories.

The well-known theory in this area is the theory of representation. This theory engrafts a principal-agent relationship between the representatives and the represented. According to James H. Kukluinski delegate theory of representation presupposes two important conditions to function. The first condition is the representatives' conviction as a bearer of the will of not anybody else but their constituency.⁹ Whereas the second presupposes the existence of a well-organized means for the representatives to precisely perceive the will of their constituency.¹⁰

⁵ Oana Şaramet, 'The Evolution of the Principle of Separation and Balance of the Powers of the State and the Executive' [TUB Vol. 8 (57) No. 1, 2015].

⁶ The Florida State Const. art. 2, sec. 3

⁷ Müller, W., Bergman, T. and Strøm, K. (eds.), 'Parliament Democracy: Promise and Problem', in Strøm, K. , Müller, W. and Bergman, T. (eds.), *Delegation and Accountability in Parliamentary Democracy*, (OUP, 2003) 3-32.

⁸ the Global parliamentary report, *The changing nature of parliamentary representation*, (NDP and IPU, 2012).

⁹ Donald J. McCrone and James H. Kuklinski, 'The Delegate Theory of Representation' (1979) *AJPS*, Vol. 23, No. 2 278-300 And Andrew Rehfeld, 'Towards a General Theory of Political Representation' (2005) A Prepared for discussion at the Legal Theory Workshop, CU.

¹⁰ Ibid.

Besides forming a principal-agent relationship, this arrangement facilitates the means of accountability between the electorate and the representatives.¹¹ Hanna Pitkin also strengthens this line of argument saying that the public sends the representatives to do for them what they might have chosen to do themselves.¹² The saliency of the relationship encourages the advancement of the genuine will of the people. However, as a result of this uni-dimensional focus the theory has been criticized for unattainability. Przeworski and Stokes hit the theory saying: “The peculiarity of the principal-agent relation entailed in the relation of political representation is that our agents are our rulers: we designate them as agents so that they would tell us what to do, and we even give them authority to coerce us to do it.”¹³ Hence the principal-agent relationship might not be as effective as it is in the business.

Sanchez De Dios came up with two broad approaches: the traditional Formalistic Approach and the New Multifunctional Paradigm.¹⁴ The formalistic approach has two pillars. One is that the legislature should remain separate from the executive. Second, it should remain independent both in ‘*thought and means*’.¹⁵ Obviously, ‘*thought and means*’ as used by P. Norton signify the personal and individual independence of the legislators. The New Multifunctional Paradigm has focused on functions that a parliament could undertake as its broader responsibilities and structural arrangement to this end.¹⁶

In sum, theoretical explanations of parliamentary operation have been variously observed by scholars. However, the goal behind curtail of each theory was to make sure the interest of the people are safeguarded and representation of multiple interests are ensured and their voice heard. Theoretical studies stress on the establishment of an independent and capable legislature to fully enforce its powers free from the influences of other branches. The developments in parliamentary studies have contributed to the realization of this aim to some extent. Moreover,

¹¹ Erik Damgaard, ‘Representation, Delegation and Parliamentary Control’ (2000) Presented on the workshop on “Parliamentary control of the executive”, ECPR Joint Sessions of Workshops, Copenhagen.

¹² Hanna Pitkin, *The Concept of Representation* (UCP, 1967) 167.

¹³ Laver, M. and Shepsle, K. A. “Government Accountability in Parliamentary Democracy”, in A. Przeworski, S. C. Stokes, and B. Manin, (eds). *Democracy, Accountability, and Representation*. (CUP, 1999) 279-296.

¹⁴ Sanchez De, ‘Different comparative approaches in the study of parliaments’ (2014) Paper prepared for the First Annual Conference of the ERASMUS Academic Network on Parliamentary Democracy in Europe (PADEMIA).

¹⁵ P. Norton: “General Introduction” in P. Norton (Ed.): *Legislatures*, (OUP, 1990a).1-18.

¹⁶ Ibid. and R. A Packenham: “Legislatures and Political Development” in A. Kronberg and L.D. Musolf (Eds.): *Legislatures in Developmental Perspective*, (DUP, 1970) 521-537.

parliaments should be representative in a way that exhibits diverse interest and carry the genuine interest of the society they supposed to represent.

2.2. The Need for a Subnational Legislature

In the federal arrangements states establish governments at two or more levels to accommodate diversities. In most cases, the federal constitutions establish the national and subnational governments with their respective powers and structures, and shared powers of the two. The configuration could be the parallel establishment of all the three branches or one or two of them at the subnational level.

Effective legislature at the subnational level reassures the self-rule and autonomy of the units by making rules within their jurisdiction and defending it from any incursion. A good example would be the Canadian constitution which blatantly distributes legislative powers between the national and subnational units.¹⁷ The constitution underscored on the legislative power of both orders of government and others' powers, executive and judiciary, have not been separately dealt with.

Regardless of modes of distribution of powers, subnational legislatures have an ideal goal that originates from the designs of typical federal systems. It implies the power of lawmaking and sovereignty at the subnational government level.¹⁸ Sovereign will of the dwellers of the component units are manifested in the subnational legislative organs as it is composed of their representatives. In turn, subnational legislatures represent and ensure observance of federal precepts as agreed on in the federal constitution. Therefore, a presence of legislature at the subnational level is a critical attribute for a federal system to exist.¹⁹

In general existence of legislature at subnational level guarantees or at least supports the realization of all benefits of federalism that includes but not limited to better human rights protection, accommodation of diversity, and proximity to the population. As a conventional

¹⁷ Department of Justice of Canada, Canada's Court System, Her Majesty the Queen in Right of Canada, represented by the Minister of Justice and Attorney General of Canada, (2015).

¹⁸ Maxwell A. Cameron, 'Federalism and the Subnational Separation of Powers' (2018) Oxford University Press on behalf of CSF Associates 247

¹⁹ Ibid 250.

political height, the subnational legislatures have the responsibility to oversee the utilization of power by subnational governments.

2.3. Powers of Subnational Legislatures

Commonly, federal constitutions allocate powers both to the central government and its units depending on the underpinning motives that dictated federal arrangement. As a result one may not find similar powers at the subnational level in all federal arrangements. Though there are more similarities among federations in terms of powers held by the central governments. Powers like defense and foreign relations are usually assigned to the central government as they are fundamental for the units to act in tandem in the international arena.²⁰

Even though it lacks consistency among federations, subnational legislative powers have been assigned on slightly similar grounds in some federations. Each federation has power distribution that implies the degree of the centralization or the federalization of the polity took on.²¹ Depending on this tendency of centralization or federalization of power distribution may vary among federations. Additionally, the transferability of power between the national and subnational governments also has significant implications on determining the extent of powers of the subnational legislature.²² In some federations, like Canada, we may not find one or more branches of government at the subnational level. Hence the responsibilities of absent branches would be assumed by the parallel branch of the national government.

By and large, powers of subnational legislatures are limited to issues of domestic nature and within the geographic and jurisdictional limits of subnational governments. Some scholars believe that issues of common interest of the federation should always be reserved for the federal government and the rest for its units.²³ Even though there might be variations, the propensity of leaving domestic matters to the units could be sensed in most federations. The main yardstick here is whether the costs of the power could spill over the spheres of the units.²⁴ If the benefit is

²⁰ Elliot Bulmer, 'Federalism' (International IDEA' Constitution building Primer 12, 2nd Ed, 2017)16.

²¹ Venice Commission, *Federal, and Regional States* (Science and technique of democracy, No. 19, Strasbourg, 1997) 18.

²² Ibid 20.

²³ Gosaye Birhanu, *Vertical Distribution of Powers in Ethiopia: a Comparative Study with Canada and Germany* (LL.M Thesis at Central European University, Budapest, 2009) 39.

²⁴ Ibid. 40.

to cross the domain of the units, the center would assume the power, unless it remains within the domain of the units.

The power apportioned to the subnational units according to the foregoing analysis will finally rest on the legislative organ of the subnational units where the units assume the responsibility to make laws in that regard. Hence, the power of the subnational legislature is indispensably tied to the power of subnational governments in the national constitution.

CHAPTER THREE

CONSTITUTIONAL POWERS OF CAFFEE OROMIA

3.1. The FDRE Constitution

Federal states perceive their constitutions as a covenant between the units or entities that made the federation in our case. The constitution embodies the details of their agreement that includes powers to be assumed by each level. The FDRE constitution seems to have adopted the same concept when it says, in its preamble, 'we, the Nations, Nationalities, and Peoples of Ethiopia'.

Accordingly, the FDRE constitution allocated powers to the federal government and the regional states. It apportioned powers to states in three distinct manners: exclusive, concurrent, and residual. Though the constitution illustrates both exclusive and concurrent powers of the federal and regional states, the significant powers of the states are engrafted in the residual powers clause. Powers that are not exclusively given to the federal government or concurrently to the federal and the states are reserved for the states.²⁵ Exclusive powers of the federal government are enumerated under Article 51 of the constitution and they are concluded within 21 sub-articles. Some major powers might fall out of the list under this article. For example the list of powers that have precisely not been mentioned was the power to regulate and administer the media or/and whether the federal government can coordinate the relationship between regional states, other than solving conflicts via House of Federation, and enact laws in this regard.

In principle, these and other residual powers are the domains of the regional states and even if their nature does not allow for the regions to entertain them, there had to be prior consultation between the two layers of government as to the use of the power. Although these powers are not expressly assigned to the federal government, the House of Peoples Representatives (HPR) is enacting these proclamations invoking article 55(1) of the constitution which generally states that it has the power to enact laws on matters falling under the federal jurisdiction. However, the undesignated power of taxation is to be determined by the two-thirds majority vote of the two houses jointly.

²⁵ FDRE Const. art. 52(1) and Oromia Const. Art. 47(1).

Another domain of regional state power is the ones given concurrently with the federal government. Regional states together with the federal government may *levy a tax on jointly owned enterprises, profits of companies and dividends of shareholders and incomes and royalties from largescale mining, all petroleum and gas operations.*²⁶ In this case, it is not clear what ‘concurrent power’ exactly implies. In Germany, the term indicates a scenario where the Länders legislate in the areas which have not been exhausted by the federal legislations whereas in Russia the power is subject to agreement between the Federation and the units.²⁷ On the other hand, Assefa Fiseha argues that concurrent powers are one of manifestation of shared power and the regions can legislate on it until the center comes in as a result of the need for its interference.²⁸ To expound this assertion farther he brought up the power of states to enact penal laws in the areas which have not been exhausted by the Penal Code enacted by the HPR. On the contrary, the rough reading of the concurrent power of taxation implies that it has to be exercised jointly (which is to say together) without giving priority to no one. Hence, the enactment of laws in the concurrent domain of power should be done in consultation with the regional states.

The constitution and House of Federation establishment proclamation 251/2001 provide that the house shall determine the division of revenues derived from concurrent tax sources.²⁹ This might suggest a hint of how or where to exercise the concurrent power of taxation. But both the constitution and the proclamation talk about the division of resources gathered from the concurrent power, not about who collects the revenue.

The Revised Constitution of Oromia gives Caffee the power to levy taxes and duties on revenue sources allocated to the Region and put a verbatim copy of the concurrent power given in the federal constitution.³⁰ However, the exercise of this power will be constitutional only when exercised together with the federal government as it is been declared joint power by the Federal Constitution. Or else the constitution must have been talking about exclusive revenue sources allocated to the regions. Still, the questions, who legislates? Who administers or enforces? and what procedures to be followed? remain unanswered in the exercise of concurrent power of

²⁶ FDRE Const. art. 98(Italics mine).

²⁷ Venice (n 19) 14.

²⁸ Assefa Fiseha, The System of Intergovernmental Relations (IGR) in Ethiopia: In Search of Institutions and Guidelines, (Journal of Ethiopian Law, 23, 2009) 96 –131.

²⁹ FDRE Const. art. 62(7) and HoF establishment Procl. No 251/2001 art.3(6).

³⁰ ORSC Art. 49(3(m)) and 47 (2(n)) (Italics mine).

taxation. In practice, until 2018 the federal government used to collect tax from the concurrent source which was later changed and the states began to collect and transfer to the federal government for redistribution.

Article 55 (5&6) of the FDRE Constitution are among the area of competence of regional states' legislatures. There is controversy as to the categorization of these powers³¹ i.e. whether they are parallel, framework or concurrent powers. Despite the controversy, the state legislatures would assume the power to enact penal laws in the area not covered by federal penal code and civil laws not deemed by HoF crucial to *establish and sustain one economic community*.³² Caffee Oromia has enacted several laws with penalty clauses even though most of them do not trace legitimacy to these provisions of the constitution or any other pertinent provisions for that matter.

3.2. The Revised Oromia Regional State Constitution

The provenance of Caffee Oromia's legislative power was the FDRE constitution which confers it the exclusive power of legislation on issues falling under regional jurisdiction and extends it to the power to draft, amend and adopt the regional constitution.³³ The laws to be enacted by the Caffee have to be consistent with the federal constitution and other laws. It is not clear and open to debates whether the clause 'other laws' is referring to the federal laws or prior act of the Caffee itself. Though, it is imperative to keep primary consistency with the federal constitution.

Even though it has not exhaustively exploited its constitutional spaces,³⁴ the ORS constitution lists the following legislative powers of Caffee under Article 49(3):

- *Enact various laws consistent with the Federal Constitution and other laws in accordance with this constitution;*
- *Establish additional administrative structures based on the number of population, area and socio-economic activities;*

³¹ Assefa (n 26).

³² FDRE Const. art. 55 (5&6) (Italics mine).

³³ Ibid. art. 50(5).

³⁴ Gamachis Kebede, Constitutional Space for the Regional State Constitutions under the FDRE Constitution: The Case of Oromia Regional State, (LL.M Theses, Addis Ababa University, 2016).

- *Subject to the power vested in the Federal government, approve an agreement that could be made with neighboring Regions.*
- *Shall elect the Speaker and Deputy Speaker of the ‘Caffee’ and establish permanent and ad-hoc committees;*
- *Elect the President of the Regional State from among the members of the ‘Caffee’; approve the appointment of members of the Regional Administrative Council;*
- *Establish the auditing and inspection organ of the Region*
- *In accordance with the law grant amnesty;*
- *Organize Police and Security forces for the maintenance of peace and security of the Region;*
- *Approve social and economic policies, strategies and plans of the Region;*
- *Enact laws on matters pertaining to the revenue of the Region approve the Regional budget;*
- *Establish institutions necessary for expanding social service and fastening economic developments;*
- *Appoint the President and Vice President of the Supreme Court and Auditor- General of the Region;*
- *Levy taxes and duties on revenue sources allocated to the Regional Government;*
- *Enact laws on the administration and working conditions of the civil service of the Region;*
- *Proclaim a state of emergency in accordance with Article 47 Sub-Article 2(q) of this Constitution;*
- *Issue regulations which help implement Federal and Regional Constitutions, Proclamations and other laws in the Region;*
- *Call and question the President and other Regional officials; investigate performances of the Regional Administrative Council;*

The regional constitution departs from the federal constitution concerning the Caffee’s power against the executive. The federal constitution (the English Version), under art.55 (17) empowers, in vague terms, the HPR to investigate the Executive’s conduct and discharge of its responsibilities if necessary, though the Amharic version does not agree with the English.

According to the constitution itself, the executive includes the PM and Council ministers. The Oromia constitution follows the Amharic version of the federal constitution that limits this power to calling and questioning only. Therefore, the council/Caffee cannot take a measure to remove any regional official or the president from the office, at least as per the regional constitution. On the other hand, Proclamation No. 2001/2017 allows the Caffee to take measures without specifying whether the measure includes discharging from office.³⁵ So far as the Amharic version is authoritative one may argue that the Oromia constitution is right. But when it comes to Proclamation No. 2001/2017 it allows taking measures (not indicated even in the Amharic version) which may or may not include discharging.

Caffee has the power to establish lower administrative structures based on the number of population, area, and socio-economic needs. The federal constitution agrees with this but the rationale there is to devolve power to the local governments, which should have been among the reasons to establish lower administrative structures under the regional constitution.

In line with the powers given to the federal government, Caffee may approve agreements with other regions. The federal constitution empowers HoF to resolve disputes between regional states and the federal government to regulate interstate commerce. Except for these two scenarios set in the federal constitution Caffee may engage with the endorsement of agreements with other regions.

³⁵ A Proclamation Enacted to Redefine Organizations, Duties, Conduct of the Members, and Meeting Procedures of the 'Caffee' Proclamation No. 201/2017 (Article 5(2)).

CHAPTER FOUR

THE CAFFEE: ORGANIZATIONAL STRUCTURE AND FUNCTIONS

4.1. Organizational Structure of Caffee Oromia

The Caffee is constituted of various structures intended to enable it to meet its constitutional responsibilities. The institutional frameworks are largely devised by the constitution itself. The regional constitution directly informs the mandatory establishment of the Caffee Assembly, the Speaker and its Deputy, and Standing and Ad- hoc Committees.³⁶ The constitution stipulates the powers of the Caffee as an institution, and the Speakers separately. Other laws including proclamation No. 191/2015 and 201/2017 provide details on the powers and further establish additional schemes to ensure the realization of the constitutional responsibilities.

In accordance with the stipulations of Proclamation No. 201/2017 Caffee has established, in addition to the Speakers and Standing Committees, a Caffee session, a Secretariat, Coordinating Committee, Party Whips, Caffee Affairs Advisory Committee and Caffee's Group.³⁷ Regardless of the establishment of the above-mentioned structures, the Caffee has been given the discretion to institute more as it deems necessary to discharge its duties.

4.1.1. The Council/Caffee

The entirety of major constitutional powers was conferred on the Caffee assembly. Most of these powers are exercised through the Speakers and the Standing Committees and other structures specified under article 4 of proclamation No 201/2017. Due to 'economic constraints' and delegation of most of its powers to the Standing Committees the constitution limits ordinary sessions of Caffee to at least twice a year. This has its implications in terms of exercising the constitutional powers thoroughly, which we will dwell on in the next topics. But before that let's see three major functions Caffee has according to the current institutional stand.

³⁶ ORSC Art. 50(1).

³⁷ A Proclamation Enacted to Redefine Organizations, Duties, Conduct of the Members, and Meeting Procedures of the 'Caffee' Proclamation No. 201/2017 Article 4.

A. Representation

The power of representation, as the name signifies, is indispensably attached to any democratic legislatures. Legislative representations are usually understood as a framework where peoples' aspirations are converted into policies and laws and gain categorical government obedience.³⁸ It is a means by which the public exercises its sovereign power over any settings that affect its daily life. The concept of representation succinctly defines the need to have legislature in democratic systems often called the House of Representatives. All the other powers possessed by a legislature emanate from this representative essences.

Some literature categorizes functions of the Caffee into three core parts i.e. legislation, oversight, and representation.³⁹ There is an overwhelming tendency in the Caffee to consider representation as one specific function like legislation and oversight. Such a rudimentary understanding of representation could induce unexpected ramifications of scaling down a magnificent power to a simple function. This could in turn distort the entire discharge of its constitutional responsibilities.

According to the dominant percept trending in the Caffee, activities carried out under the general function of representation includes periodically meeting constituency and entertaining complaints from individuals or group of individuals. The concept of representation has not been properly comprehended to thoroughly enforce them.

Representations do include but not certainly limited to only these activities. It is a broad concept that underlies and justifies the existence of the legislative branch of governments. Genuine representations manifest the diverse character of the society it represents. Contrary to this underlying concept, the current Caffee is fully held by a single political party and has no 'special group' representations.

³⁸ Jake Dabang Dan-Azumi & Sunday Chibuzo Okereke, Legislative Representation and Constituency Office Management in Nigeria: An Assessment of Enugu-East Federal Constituencies/District (2011 to 2017), (Nigerian Journal of Legislative Affairs, Vol. 8, No.1, 2018).

³⁹ Abdi and Addis (n. 1).

B. Legislation

The Caffee was given the function to enact laws which includes amendment and repealing existing laws and ratifying agreements and passing decisions.⁴⁰ All the regional primary laws have to be passed by this body. The proclamation lays down procedures via which any primary law should pass to be a law. Draft laws could be initiated by the Executive, the judicial, other government organs directly accountable to the ‘Caffee’, Members of the ‘Caffee’, the standing committees, and the Speaker. After initiations it has to pass two or three reading stages and then proceed to the public hearing stage, where concerned organs are invited to comment on the bills, as the case may be. The main celebrations and debates are held by members on immediate days before Caffee session. Though, in practice the public hearings stages, in some cases, are skipped if the issues are considered to be of less importance to the public by the leadership of the Caffee, specifically Coordinating Committee by a two-thirds vote of the committee members.⁴¹

The Oromia General Attorney office prepared a draft of the recently promulgated proclamation No 222/2020 regarding drafting laws. This proclamation provides more details as to the content of draft laws to be submitted to the Caffee. Initiating and drafting this proclamation should have been the inherent responsibility of Caffee itself than the Attorney General of the region.⁴² Nevertheless the proclamation appears to be better equipped than Proclamation No. 201/2017, drafted and being implemented by the Secretariat, in ensuring the quality of law at drafting level. Proclamation No. 201/2017 demands draft laws to be accompanied by a research result, a general explanation of its importance, steps taken to prepare it, and copies in three languages (Afaan Oromo, Amharic, and English).⁴³ On the other hand, the newly enacted proclamation No. 222/2020 farther extends the requirement by adding details on the intricacies of drafting laws. Regardless of these legal requirements, most of the draft laws come only with accompanying letters.

Regulations and directives could be passed by the executive upon delegation of Caffee. Despite legal stipulations,⁴⁴ these laws do not come to Caffee for checking its compatibility with the

⁴⁰ Ibid. Art. 5.

⁴¹ Ibid. Art. 26(4).

⁴² Ibid. Art. 24(2).

⁴³ Ibid. art. 15(3).

⁴⁴ Ibid. and a proclamation enacted to determine the drafting procedure of laws, proclamation No 222/20202.

primary laws. They rarely come for publications where the primary laws themselves often waive the requirement of publications. Publications are considered to be a crucial stage in the promulgation of law and are a means to communicate the laws to the public and give judicial notice.⁴⁵ The drafting organs raise the urgency of the proclamation as an excuse to avoid publication and inter into force directly.

The Coordinating and Standing Committees play a substantial role in scrutinizing draft laws submitted to Caffee. Both the Committees deliberate on the draft bills referred to them by the Speaker one after another. The bill first goes to the Standing Committee and after deliberation the Committee can either directly refer it to the Caffee or the concerned Standing Committee. These powers of the legislation are too sensitive and expose the legislative branch to assail from the other branches of government. Hence, delegating legislative powers renders the Caffee fractured and more susceptible, even, where a mild attack from the others could contort the exercise of its fundamental powers. To execute the powers exhaustively and defend the domain of its powers, the Caffee needs to act in concert.

The reigning Caffee has 537 seats and all of them are held by the former OPDO. Among the 537 seats, 240 or 44.5% are identified as farmers or pastoralists. Several of them are illiterate and barely understand written documents let alone their powers. 222 of the members hold degrees and above and they serve in the executive at various duty levels. Illiteracy of members and engagement in other executive duties is a critical barrier against the ability of Caffee to enact effective laws.

C. Oversight

Oversight is another important function allotted to Caffee and executed via its Standing Committees. It mainly includes follow up and examination of the performance of the president, administrative council, and other organs, directly responsible to Caffee. The proclamation No 201/2017 stretches the power of oversight to the extent of taking measures when they witness weaknesses of the administrative organs. However, the power to take measures was mentioned nowhere in the regional constitution at all. Despite the constitutional and legal stipulations, it

⁴⁵ Helen Xanthaki, Legislative drafting: a new sub-discipline of law is born, (IALS Student Law Review, 2013) 57-70.

would practically be impossible for Caffee to take measures against institutions to which it indirectly or indirectly has some sort of accountability i.e. Bureau of Finance and Public Service. These bureaus are privileged to retaliate by limiting Caffee's budget and by prohibiting it create capable structure and hire capable professionals.

Regulation No 3/2017 under article 42 summarizes the aim of the oversight function of Caffee as follow:

“...following and oversighting the performance of the Government organs by the Caffee is to check whether, government and public resources and properties are properly and equally utilized, works are being carried out in accordance with rules and regulation, there exists fair and rapid development direction, democracy and good governance are prevailing, citizens right, peace and security are maintained as well as there exists a system of coordination among government organs of the Regional State”

Making these aims its centerpiece, Standing Committees hear on quarterly bases reports of bureaus allocated to them to oversee. The summary of their findings would be presented to Caffee when it meets to hear the president's report. It can also engage in the investigation of wrongdoings of governmental institutions and officials, and to this end it may call witnesses, experts and make documents produced. All the preparatory tasks, in this regard, are done by the Standing Committees before it proceeds to Caffee session for approval/disapproval.

Another important tool of oversight is field observation conducted by the Standing Committees twice a year. The supervision is randomly done on any governmental institution at any random location. Feedbacks from supervision would be used as a part of the evaluation of the overall performance of concerned institutions.

4.1.2. The Speaker

The Speaker has the power to call sessions of the Caffee, direct its administrative affairs, and enforce disciplinary measures taken by the Caffee, and other powers to be stipulated by law. The constitution is too reserved regarding enumerating the powers of the Speaker. On the contrary, the proclamation gives the Speaker the power to 'chiefly lead and administer the 'Caffee'. This clause unduly stretches the power of the speaker and departs from the constitutional provision

which limits the power to ‘administrative affairs’. The more it magnifies the power of individual Speaker, the more it exposes the speaker and compromises the whole power of Caffee. Normally, the role the constitution sought for the speaker seems to coordinate the role of overall Caffee’s activities. It considers the Caffee as a coherent body that could function on itself and does not need a leader but coordinator or facilitator of its administrative matters.

The Speaker is elected among the members of the Caffee upon recommendation of the winning political party or coalition of parties.⁴⁶ The federal constitution does not put recommendations of the winning party as a procedural requirement for the election of the Speaker. This distinctive approach of the Oromia regional state constitution compromises the functional autonomy to be enjoyed by the Speaker. It gives the party more control over the function of the Caffee through the speaker. The absence of accountability clause for the speaker farther exposes the Speaker to the incursion of some other entities on the power of the Speaker and the Caffee as well.

Due to this loose procedural requirement in the election of the Speaker, the Caffee has seen three Speakers in three years –from 2008 to 2011 EC. The position of the speaker rattles equally with any position in the executive whenever the political environment agitation begins. This was done in an attempt to reach out to the Caffee’s operation and exercise of power and consolidation of the power of the new executive or the party. The cumulative effect of the tendency to toughen control the Caffee could weaken it as an institution.

4.1.3. Standing Committees

The Caffee has eight Standing Committees each assigned to one of the following areas - legal and administrative affairs; rural development affairs; urban development affairs; basic infrastructure development affairs; budget and government expenditure control affairs; social affairs; women’s, children and youth affairs; and human resource affairs. Regardless of authorization of proclamation 201/2017 to employ 3 to 5 members on permanent bases at the Secretariat of Caffee, only the chairpersons of Standing Committees regularly carry out most activities. However, the rest of the members-only take part in quarterly report evaluation and biannual field observations of each Committee. Each Standing Committee is assisted by one mid-level professional.

⁴⁶ Ibid (n.34) Art. 50(2).

On the other hand, each Standing Committee controls several regional Bureaus and agencies responsible for the bureaus. The bureaus have more expertise, leadership numeric superiority, and professionalism. For instance, the legal and administrative affairs control the Office of the President of the Regional Government, Attorney General (institutions accountable to it), Administration and Security Bureau, Police Commission, Ethics and Anti-Corruption Commission, Justice Sector Professionals Training and Legal Research Institute, and the Judiciary organ. This Committee has seven members and one expert to support them. The members are five lawyers - one Ph.D. holder, two LL.M holders, one LL.B holder - and one diploma, and two management professionals – both degree holders. Relatively, this Committee has better professionalism, and yet so far as their participation in exercising the power of the Committee is markedly limited, it would be difficult to appear in a commensurate stand with the bureaus it supervises. Thus adds on the numerical and professional disproportionality between the Committee and the bureaus.

With all its structural flaws, the Caffee Standing Committees exercise much of the powers given to the Caffee via delegation. The Committees have full control over every power of Caffee until it reaches it for final approval. It is a well-known concept in the field of law that procedures matter as much as the substantives. Hence having control of the procedure gives the privilege to determine the outcome of each activity of the Caffee. On top of its role in legislation and oversights, the Committees have deliberative powers on various agendas descending from the Speaker. It has the power to engage in the complaint receipt from the public and address them accordingly. Most importantly, they have the power to initiate laws or suggest amendment of laws. Unfortunately, it is among the forgotten powers of the Committees due to the absence of proper structure to unravel the need for new laws and amendments. Recently, there are attempts to fill this gap by creating some legal research posts. Compared to the need to exercise this power thoroughly, the structure is way insufficient to undertake even backlog jobs in the Caffee. The structure was more intended to accommodate the existing manpower than addressing the real structural problems that hamper the function of the Caffee. The operational flaws in crafting the structure endangered the efficiency of Standing Committees in identifying the need for new laws and amendments and fix them. In her recent interview with OBN, the Speaker has indicated that the three branches of the regional government have established a committee to tackle this

problem at the regional level particularly to ensure the quality of law at the regional level and enabling the region to exploit all its legislative constitutional powers.

4.1.4. The Coordinating Committee of Caffee

The Caffee Coordinating Committee is composed of the Speaker and its deputy, Chairpersons of all Standing Committees, the Secretariat, and government representative. The Committee acts as an executive organ of the Caffee. It coordinates activities of the Caffee, and identifies and rectifies problems related to its structure and power.⁴⁷ It has the power to prepare and submit the budget of the Secretariat to Caffee.⁴⁸ The power to determine the budget and structure of the Secretariat has significant implications in ensuring the efficiency of the Caffee.

Contrary to what has been stipulated in the proclamation 201/2017, the budget of the Secretariat is processed like any executive bureau and modification of its structure is all dependent on the blessings of the Regional Public Service Bureau. It remains one of the intensively challenged powers of the Coordinating Committee by the executive. Hence, the challenge against these two powers gravely jeopardizes the overall power of the Caffee. Even for procurement and other minor finance administration of the Caffee, it is considered as any executive bureau. In this regard, the practice blatantly deviates from the legal specifications.

When it comes to structuring, the Coordinating Committee, in practice, has full power in determining the structure of the Standing Committees. It goes to the executive only for administrative purposes. Regarding the structure of the Secretariat it is treated as any executive bureau. This practice opened the backdoor way for the executive to pressure the Caffee. For instance let's see the budget request and approval difference for the last five years.

The composition of the committee is well representative that it included a government representative that oversees government interests. The representative of the government could defend its interests in terms of financial and hiring capacity. Hence, there is no need to refer these two issues to their respective bureaus. It adds no value than implicating the illegitimate relationship between the two organs.

⁴⁷ Ibid (n.34) Art. 39

⁴⁸ Ibid.

Fiscal year (EC)	Requested Budget	Approved Budget	Difference/cut
2008	41,389,231.00	34,482,353.00	6,906,878
2009	46,306,052.00	38,619,286.00	7,686,766
2010	61,752,308.00	54,491,506.00	7,260,802
2011	68,658,230.00	59,091,506.00	9,566,724
2012	76,432,250.16	63,694,969.00	12,737,281

Table 1: The difference between budget requested and approved

4.1.5. Caffee Affairs Advisory Committee

Caffee Affairs Advisory Committee is another structure created by proclamation 201/2017. It is constituted of the Speaker and the Deputy, the party whips as well as representatives of the Groups who have seats in the ‘Caffee.’⁴⁹ It defines ‘Caffee Group’ as a party or a group of parties that have not competed in the same constituency and under the same policy, and have held not less than ten seats. Normally parties are represented by their respective whips. The proclamation says nothing if this is an additional arrangement of representation for parties or special arrangements with a particular motive. Further article 43 (2) of the authoritative Oromiffaa version treats parties and Caffee groups differently. It says “regardless of stipulations about parties in other laws, the parties in Caffee could be considered ‘Caffee Group’ to facilitate the function of the Caffee” [translation mine]. It means they only are considered the same for facilitation unless they are different things. If several parties hold not less than ten seats, the arrangement might have drawbacks of creating an unmanageable number of participants in the Advisory Committee.

Alternatively arguing, there is no special group given a seat in the Caffee. It must have been a problem of contextualizing the proclamation during its adoption. In the federal parliament or any other place where this arrangement is adopted, they might have seats reserved for minority

⁴⁹ Ibid (n.34) Art.42.

groups or any other disadvantaged group that is supposed to be represented in the Advisory Committee. In the Caffee there is no such special reservations for groups other than elected members.

The Advisory Committee has a substantive power in determining the agenda of Caffee and allocating time for the Caffee deliberations. It is given the power to amend and interpret the proclamation enacted to Redefine Organizations, Duties, Conduct of the Members, and Meeting Procedures of the 'Caffee' No. 201/2017 and issue a directive or a manual ensuing it.⁵⁰

In practice, this structure does not exist in the Caffee. All the 537 seats are held by the ruling prosperity party, formerly known as OPDO. Legally speaking, only three of its members i.e. the Speaker, Deputy Speaker, and ruling party whip are available. The three individuals belong to the same party which in turn duplicates homogeneity of the Caffee at the Advisory Committee level.

4.1.6. The Secretariat

The Secretariat of Caffee is an instrumental arrangement for the realization of Caffee's constitutional aspirations. It gives secretariat assistances the Caffee in its endeavors to discharge constitutional responsibilities. It is composed of the head of the Secretariat, advisors, and necessary experts who give professional and secretarial service to the Caffee. Other than support departments, the line departments are supposed to be organized in a way that enables it to render competent professional and secretarial services. Caffee's exhaustive utilization of its power meaningfully hinges on the overall capability of the Secretariat.

The Secretariat had three line departments before the 2019 restructuring study is concluded. The first one is the department that assists and proffers expertise to the Standing Committees in their legislative and oversight efforts. The second department had to deal with the building capacity of the local government councils. Thirdly, comes the communication department which was responsible to be a point of interaction between the Caffee and the public.

⁵⁰ Ibid.

The study identified several major problems arising from the organization and performance of the first department that crippled the discharge of Caffee's constitutional responsibilities.⁵¹ One of the crucial obstacles was the absence of relevant and competent professionals in the department. As a result the study split up the department into two: one focusing on giving professional support to the oversight and the other focusing on legislation.

Even, after the restructuring study the problems have not fully been addressed. The department that is supposed to give professional support for legislative processes has two legal experts. The responsibilities of these professionals include drafting laws in the area of competence of Caffee; evaluating draft bills submitted to them from government bodies; and making technical and language correction of draft laws as per Caffee's command. These tasks require specialization in some distinctive ways. For example, drafting is an independent area of specialization and the same is legal research. Further legislating laws require specialization in constitutional and human rights laws. At least, if we roughly allocate each area, one specialist, the department has to have four legal professionals. In this arrangement, the legislative role is limited to enacting new laws alone. The new departments or any other department has not been given the power to initiate amendment proceeding for desuetude (obsolete) laws and sunset legislations. These two are legislative powers but unowned in the job allocation process.

⁵¹ The Secretariat of Caffee Oromia, A BPR study (unpublished, 2019).

CHAPTER FIVE

MAJOR DISCREPANCIES

5.1. Law Vs Practice Discrepancies

Constitutional provisions are general by their nature stipulate only essential issues that have to be expanded via the primary legislations. It focuses on delineating powers and the area of competency of government organs. The initial mandate of the organs is to understand their respective powers and refrain oneself from transgression on the powers of the others.

The revised Oromia Regional State constitution separately allocated powers to the Caffee. Much of these powers are exercised via different institutional arrangements. Some of the constitutional powers are missed out in the proclamations and neglected by the institution during operations.

The constitution declares Caffee the supreme political organ of the Region with full powers in the affairs of the Region. Such parliamentary supremacy clauses are traditionally known in the UK; where there is no written supreme constitution to play the role of overseeing all organs of the state.⁵² The Oromia Regional state Constitution preferred to provide for the undisputed supremacy of Caffee along with all conceptual ambiguities surrounding it. There is no follow up legislation or any other thing prepared to enforce this supremacy of Caffee. Both proclamations No 201/2017 and 191/2015 reiterates that the Caffee holds supreme political power. Had the power of legislation, oversight, and representation, as it is understood by the Caffee, made it supreme political organ, there should have not been the need to separately reaffirm the supremacy of the Caffee.

The contradiction of law and practice begins with the contradiction of the constitution and the two proclamations enacted to enforce it, as they are closer to the practice and serve as a guideline for operation. It also extends to the contradiction between the proclamations and the actual practice. The following are among the major contradictions between the law and the practice.

⁵² R. Elliot, *Rethinking Manner and Form: From Parliamentary Sovereignty to Constitutional Values*, (29 OSGOODE HALL L.J. 215, 220–22 1991) and Jonathan E. Levitsky, *The Europeanization of the British Legal Style*, (42 AM. J. COMP. L. 347, 349 1994).

To begin with let's assess the contradiction between the constitution and the two proclamations. Discrepancies between the laws and the constitution are intensified by the miscommunication between the constitution and the two proclamations enacted to enforce the powers. In some cases the legislations extend Caffee's powers farther than what the constitution envisioned and in other cases they shrink the power than the framers' intentions. Worst, the practice thereof in some cases opposes even the shrunk or expanded powers themselves.

The critical discrepancy between the constitution and proclamation No 201/2017 that formed confusion was the power to call and question the executive or the president. For unclear reasons, the regional constitution limits this power to calling and questioning whereas, the proclamation allows the Caffee to take measures. The proclamation No 201/2017 under article 5(3) empowers Caffee to take measures on the executive if necessary. On the contrary the constitution under article 49 allows calling and questioning only. However, in practice, let alone taking measures on officials, there is no comfortable environment to genuinely question executive organs without risking consequences. Disappointing the executive through the exercise of this power of calling and questioning or taking measure, as the case may be, could backfire in several unexpected ways against Caffee, its officials, and its members.

Moreover, the power to enact laws is given to Caffee Oromia both by the Federal and Regional constitutions. The regional constitution Afaan Oromo version clearly demands the regional primary laws to be consistent with both the federal constitution and the federal primary legislations.⁵³ On the contrary, the federal constitution requires only the consistency of the regional constitution with the federal one.⁵⁴ Logically speaking, the federal constitution presumes that if the regional constitution is consistent with the federal constitution, there will be no possibility of the regional laws to negate the federal laws enacted in accordance with the federal constitution. This provision of the regional constitution submits the regional proclamations to be subservient to both constitutional and unconstitutional federal primary legislations. One might plausibly argue that the federal constitution prevails therefore regional proclamations should necessarily not agree with the federal primary legislation as the federal constitution demands only the compatibility between the two constitutions. But regional laws are

⁵³ Ibid (n.46) Art.49 (3a).

⁵⁴ FDRE Const. Art. 50(5).

promulgated based on the regional constitution therefore what the federal constitution says is of less relevance in this regard.

However, the practice of legislation is contrary to the regional constitution. Several legislations unswervingly collide with the federal legislations. For example, we could mention the recently enacted Natural Resource Administration Proclamation No 223/2020. Regardless of whose power it is, this proclamation, as per the regional constitution, is considered unconstitutional for the mere inconsistency with the federal proclamation.

Another noticeable discrepancy is concerning the residual powers of the region. This power is not exactly documented power. No research has been done to identify and exercise them. As a result, so far the region does not have important laws in the area of residual powers or still using the laws enacted by the HPR. Some of the important legislative powers, media, and civil society laws, which could be considered residual powers are being exercised by the federal legislative organ, while Caffee inherently has to identify and discharge its power, the regional Attorney General Bureau is making a progressive endeavor in identifying and drafting bills in this regard. Recently, they are drafting the first regional Civil Society and other laws under regional competence. It is the most important constitutional power of the Caffee being exercised by the Bureau. Hence the practice is none and the powers remain untapped.

When we see the law and the practice, the constitutional powers to issue regulations that help implement Federal and Regional Constitutions, Proclamations, and other laws in the region are among the powers that manifest inconsistency with the practice. The power to issue regulations is commonly delegated to the administrative council. Still the exercise of this power has to adhere to the procedural standards set forth for law-making in the Caffee. One of these critical requirements of legislation, as per the proclamation, is the publication of any law promulgated under the auspices of the Caffee. Primary legislation by Caffee often avoids publication while publication of the regulations and directives are numbered. The delegated executive organs may issue a regulation confine it to itself when it has to be published and checked for consistency against the proclamation enacted by the Caffee.

The proclamation 201/2017 under art 7(1(l)) and proclamation 191/2015 under art 7 (3(a)) empowers the speaker to order submission of Caffee budget to the Caffee and administer it upon approval. It was put in a clear language. The budget has to be directly submitted to the Caffee. Contrary to this stipulation, the Caffee has to solicit blessings of the regional cabinet and finance bureau for approval of its budget. The later can make reductions of any type (see table one).

With regard to the structure of the Secretariat, there is no clear stipulation in either the constitution or the legislations that the Caffee would take care of its structural arrangements. Proclamation No 201/2017 gives the speaker the power to follow and oversee the implementation of the structure of Caffee. This could be construed as if the Caffee could prepare and implement them on its own. Similarly the Coordinating Committee of the Caffee has the power to follow up and supervise the administration of personnel of the secretariat. This role of the Speaker and the Coordinating committee is now completely taken by the regional Human Resource Administration and Public Service Bureau. This illegal practice allowed the executive to influence the Caffee.

In general, the field of legislative constitutional power has been susceptible to various undemocratic political and bureaucratic practices. Its resolution needs political fortitude from the side of elites at the apex of political decision making. As much as its own internal legal and structural problems, exhaustive utilization of the constitutional power of Caffee was perplexed by the perception of external governmental organs. To keep consistency, of the law and practice, there have to be coordinated measures from all concerned governmental organs and the party.

5.2. Structure Vs Power Discrepancies

Normally structure of an institution has to be planned in a manner that enables it to utilize exhaustively its legitimate powers. A structure that does not fit the power may result in dysfunction and/or malfunction of the institution. It could, moreover, deny the institution a tool to realize legally granted powers. Therefore, for the constitutional powers and the practice to meet, there have to be capable and well-designed institutional structures to enable it to fulfill its constitutional responsibilities.

The primary cause of the incompatibility between the constitutional powers and the practice is the misconstruction of the entirety of the constitutional powers of the Caffee. The structure is designed along with the misconstrued powers of the Caffee and consequently they fail to fit into the genuine constitutional responsibilities.

The critical of this incompatibility is the absence of a very well-established research department or even a center of the legislature. Research departments or centers are common in most legislatures. Every drafting, initiation and amendment activity needs researches that justify its importance, underlying reasons, and objectives. Besides, in the Case of Caffee Oromia a research department could help to reassert constitutional powers of the Caffee itself by identifying the concurrent and residual powers. Regardless of this imperative situation, the secretariat established a team of three – one lawyer, one economics and one on social affairs – under the department that gives support for the oversight function of the Standing Committees. The department certainly needs a research team to undertake its duties more reliably, but the more pressing demand for researchers of multidiscipline lies with the department that assists the legislative function.

In general, the structure lacks professionalism and leaves out most of the constitutionally guaranteed powers of the Caffee. The problem was associated with the Caffee's hiring autonomy and absence of an attractive salary scale. The proclamation 191/2015 under article 5(4) provides that the Secretariat may have its salary scale to be determined by the Caffee, which is so far not practical. Hence, the secretariat fails to attract seasoned experts in necessary disciplines. Professionals assigned to support standing Committees are limited in number relative to their responsibilities. Their competency could also be questioned as one Standing Committee controls multidisciplinary government departments. In certain cases a single expert gives professional assistance to two Standing Committees, which indicates a clear case of lack of professionalism.

Similarly the Caffee lacks departments that work on identifying residual and concurrent powers; initiate laws in neglected areas like for example minority rights protection and institutional autonomy to implement its powers. Until the recent political pulsation, the Caffee functions reactively after things went out of its control when it is expected to be proactive and respond beforehand. For example, the concurrent power of taxation, one of the main political questions in

the region, was rectified recently. Had this been done earlier, it could have saved the country and the region a big deal of time and resources.

Minority rights protection and other areas with no governing legislation could not find the owner to initiate laws. The Standing Committees could initiate laws in these neglected areas but they did not. Therefore, there has to be a department that identifies neglected issues that requires legislation to address. We have noticed a massive human rights violation that claimed lives. In incidents like this, minorities need special protection which should be put by law and respected by any individual. The absence of this particular law costs both the country and the region politically and economically.

The institutional autonomy is often challenged by informal and unregulated interference from the party through party discipline. It has a far-reaching effect on the overall function of the Caffer and its organs and results in avoidance of constitutional responsibilities. Normally party manifests its interest via its members elected to the Caffer not by inserting informal commands sporadically. There is fear not to disappoint party officials during discharge of Caffer's duties. Hence, hesitation prevails in decision making at each organ of the Caffer.

CHAPTER SIX

CONCLUSION AND RECOMMENDATION

6.1. Conclusion

Compatibility between the constitutional responsibilities and practice is what determines the overall efficiency of Caffee. In between the constitutional powers and the practice, the two proclamations, and structure of the Secretariat of Caffee itself have a significant contribution to the inconsistency. In some cases constitutional provisions themselves impair the enforcement of other essential powers of Caffee.

However, we can summarize the sources of the entire incongruity into three broad categories. The first one is political unwillingness from the side of the political elite. Letting the legislature live up to its constitutional responsibilities, requires selflessness from the leading political parties. It may seem political clumsiness temporarily, but in the long run its contribution to the establishment to sustainable political system and building established democracy that may augment goodwill of the party among the public. The party has all the means to pressure the Caffee. It could use public service and the finance bureaus to prod the Caffee and disable it. It could even threaten the appointees as almost all officials must gain blessings of the party to hold any post in the Caffee. Due to the informal and unregulated nature of this relation, Caffee remains vulnerable to even pressures from single party officials. Political unwillingness also caused a lack of effective accountability that the Caffee members should have against their electorate. The procedures to make sure the accountability of the members also functions upon the consent of the party.

The second one is the legal and structural factors that contributed to the incompatibility. Besides some constitutional provisions, proclamations No 201/2017 and 191/2015 have also their roles in the inconsistency between constitutional responsibilities of Caffee and its practices. The proclamations in certain cases deviate from the constitutional intentions with regard to enforcement of Caffee's responsibilities. Accordingly, the practice of Caffee framed along the lines of these proclamations causes incongruity. The Secretariat's structures are designed along with this poorly crafted legislation and end up unfitting the constitutional standards.

Finally, the literacy level of Caffee members and the professionalism of the staff of the secretariat has caused a significant discrepancy. Professionalism is fundamental in discharging any responsibility with utmost competence. As a legislative organ, the Caffee has to have numerous seasoned lawyers and other professionals in all its aspects. The absence of capable professionals could highly compromise its capability to discharge the constitutional responsibilities and then aggravate the discrepancy between the constitutional powers and the practice.

6.2. Recommendation

It has become a tradition in our country that governments learn their mistakes the hard way. Changes come after a massive political crisis and it almost looked like everything can only change through forceful means. To get rid of this vicious circle, governments practice democracy and rectify any flaws associated with the system. Without an unpretentious commitment to democracy, it would be difficult to transform the country or the region into an efficient system where all its apparatuses function in legitimate ways.

Given that the regional government is committed to democracy, amendment of some provision from the constitution and other laws will alleviate the problem of discrepancy in the Caffee. Article 50(2) of the constitution allows the winning party to recommend the speaker. This provision indirectly offers the party to have a say on the appointment of the speaker and thereby continuous influence. It has to be put like in the federal constitution. Article 55(19) of the FDRE constitution says "It shall elect the Speaker and Deputy Speaker of the House..." Even though the practice is something else at the federal level itself, the constitutional provision has done its part in guaranteeing the autonomy of the Legislature. Therefore, the Oromia Regional State constitution should have at least made the same attempt and ensure institutional and personal space.

Similarly, proclamations No 201/2017 and 191/2015 should be amended in line with the constitution to maintain consistency. Their inconsistency with the constitution directly affects the consistency of the practice and constitutional responsibilities. They have to exactly say what the constitution meant. For instance art 5(2) of the proclamation No 201/2017, that allows the Caffee

to take measures, should restrain itself to the constitutional limits i.e. to call and question the executive and the president. There are other similar discrepancies of law and practice, and law and structure that have to be addressed through amendment of the proclamations.

Another possible solution for the inconsistency is the organization of a well-established research department or even a center. The research department could help to identify any problem associated with the discharge of constitutional responsibilities and recommend solutions as well. Every function of the Caffee has to be supported by research unless it will end up being haphazardly done job.

Finally, demarcating the boundary and role of party discipline from party cohesion and practice of the Caffee helps much in the harmonization of the practice and constitutional responsibilities. It relieves Caffee officials from fear of disappointing individual party authorities and gives them relative autonomy to stick to constitutional and legal requirements. Therefore, guaranteeing proper autonomy and limiting party roles could augment the compatibility between laws and practices. On the other hand, it might even stimulate acceptance of the party as it contributes to the long term interest of the public than the temporary success of itself.

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