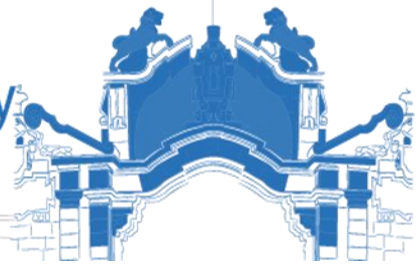




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ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

CENTER FOR FEDERALISM AND GOVERNANCE STUDIES

THE NEED TO REVISE SUB NATIONAL CONSTITUTIONS OF ETHIOPIA:
THE CASE OF AMHARA NATIONAL REGIONAL STATE

BY: - SHEGAW MULU ASSEGIE

ADVISOR: - SISAY MENGISTIE (PhD)

JUNE 2020

AA UNIVERSITY

ETHIOPIA

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THE CASE OF AMHARA NATIONAL REGIONAL STATE

BY: - SHEGAW MULU ASSEGIE

ADVISER: - SISAY MENGISTIE ADDISU (PhD)

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STUDIES OF ADDIS ABABA UNIVERSITY IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN FEDERAL STUDIES.

June 2020

Addis Ababa, Ethiopia

Declaration

Title:THE NEED TO REVISE SUB NATIONAL CONSTITUTIONS OF ETHIOPIA:
THE CASE OF AMHARA NATIONAL REGIONAL STATE.

NAME OF STUDENT: -SHEGAW MULU ASSEGIE

The researcher declares that this thesis is his original work, and it has not been presented for a degree or diploma in any other university or institutions. Moreover, all sources of the materials that are used in this thesis have been duly acknowledged. For any additional and needed information the researcher is available at his email address: mulus1110@gmail.com

Researcher _____signature _____Date_____

This thesis has been submitted for examination with my approval as the University advisor.

Advisor's Name _____Sign. _____ Date_____

Approval Sheet for Board of Examiners

The undersigned certify that they have read and recommended to the Addis Ababa University to accept the thesis submitted by ShegawMulu entitled “The Need to Revise Sub-National Constitutions of Ethiopia; the Case of ANRS” in partial fulfilment of the requirements for masters of Federalism and Governance study degree in the title “Need to Revise Sub-National Constitutions of Ethiopia”.

By. ShegawMuluAssegie

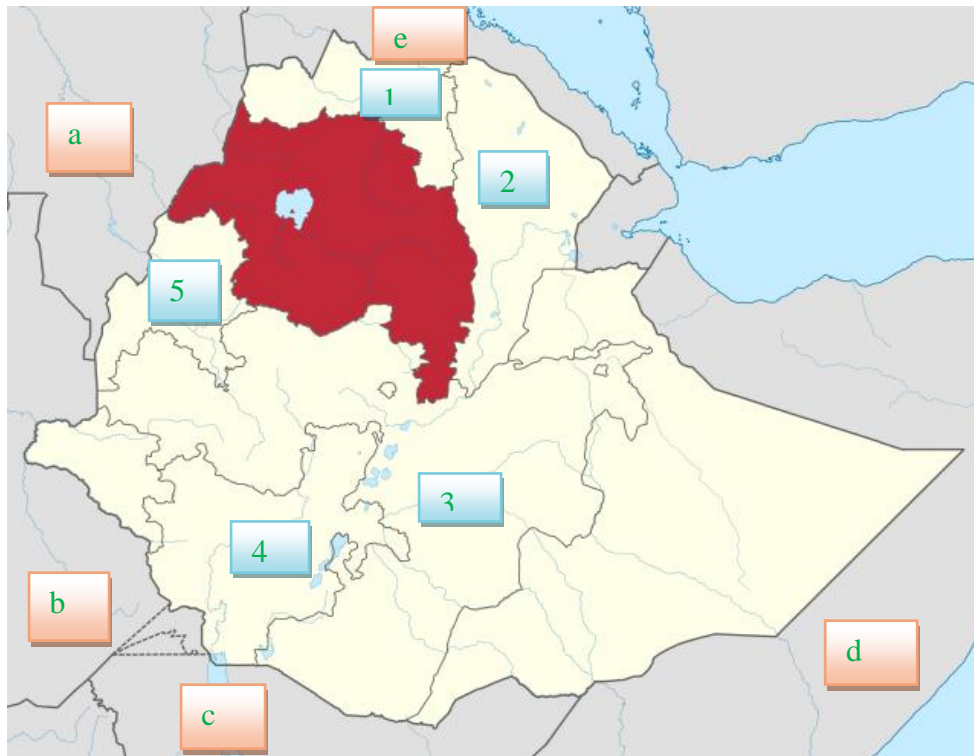
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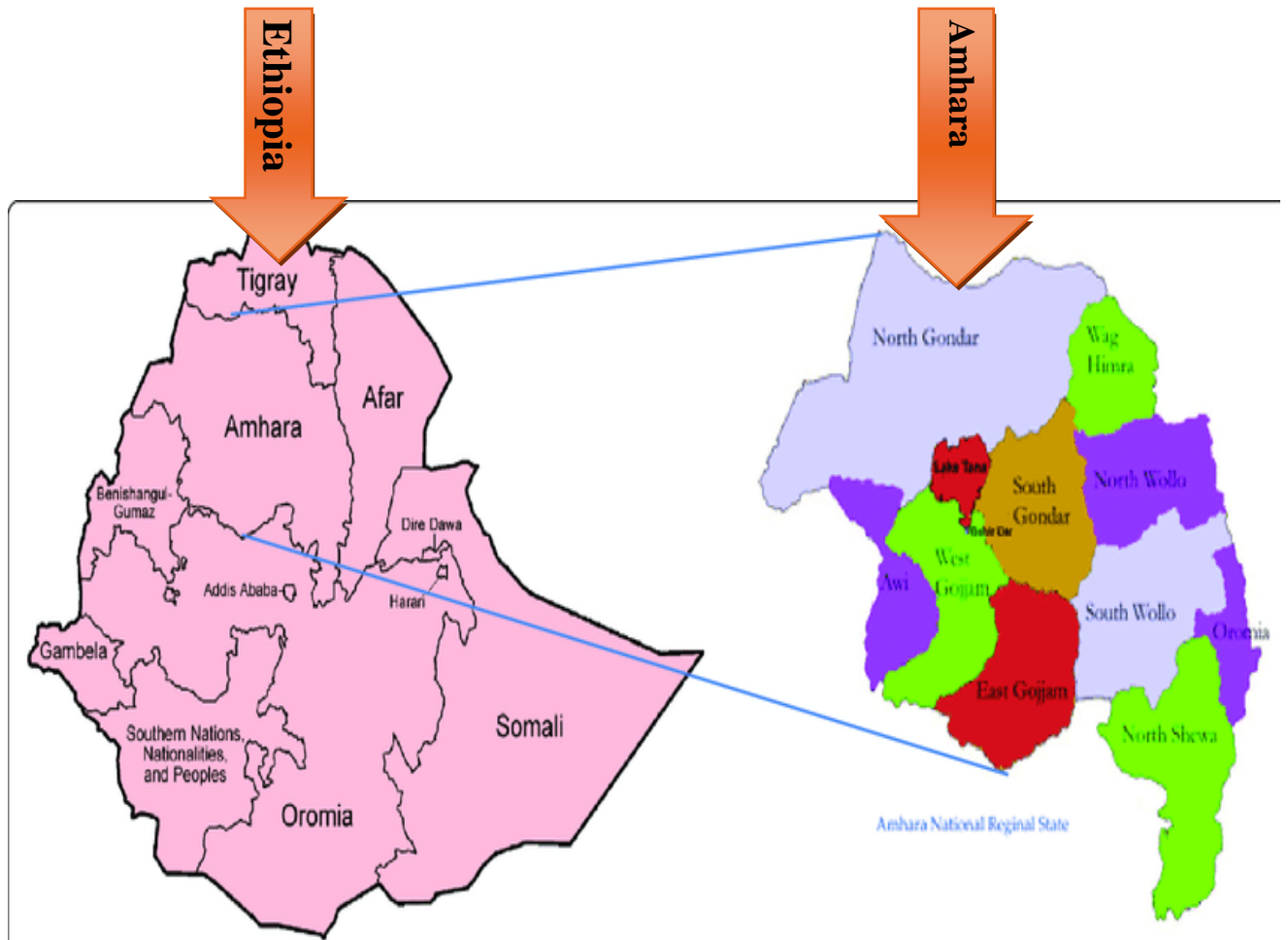
Political and Administrative Map of Amhara Region with the neighbours



	Amhara Region
1	Tigray Region
2	Afar Region
3	Oromia Region
4	SNNP Region
5	BG Region
a	Sudan
b	South Sudan
c	Kenya
d	Somalia
e	Ertrea



Map of Ethiopia showing the relative location of Amhara Region.



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Despite all the supports that I received in my thesis, all mistakes and misinterpretations are solely mine.

Acronyms

AAU	ADDIS ABABA UNIVERSITY
AEUP	ALL ETHIOPIAN UNITY PARTY
ANDM	AMHARA NATIONAL DEMOCRATIC MOVEMENT
ANRS	AMHARA NATIONAL REGIONAL STATE
ANRSC	AMHARA NATIONAL REGIONAL STATE CONSTITUTION
BG	BENSHANGUL GUMUZ
BGNRS	BENSHANGUL GUMUZ NATIONAL REGIONAL STATE
CCI	COMMISSION OF CONSTITUTIONAL INQUIRY
EDP	ETHIOPIAN DEMOCRATIC PARTY
EPRDF	ETHIOPIAN PEOPLES REVOLUTIONARY DEMOCRATIC FRONT
FDRE	FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FPTP	FIRST PAST THE POST
GTP	GROWTH AND TRANSFORMATION PLAN
HNRS	HARARI NATIONAL REGIONAL STATE
HOF	HOUSE OF FEDERATION
KEBELE	LOWER ADMINISTRATIVE LEVEL /LOCAL GOVERNMENT ADMINISTRATION/
MOFA	MINISTRY OF FEDERAL AFFAIRS
MOFED	MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT
MR	MISTER
No	NUMBER
QIMANT	AN ETHNIC GROU FOUND AROUND NORTH GONDER
SNNP	SOUTHERN NATIONS NATIONALITIES AND PEOPLES
SOE	STATE OF EMERGENCY
TG	TRANSITIONAL GOVERNMENT
TGE	TRANSITIONAL GOVERNMENT OF ETHIOPIA
TPC	TRANSITIONAL PERIOD CHARTER
TPLF	TIGRAY PEOPLES LIBRATION FRONT
UD	UN DATED
UDJ	UNITY FOR DEMOCRACY AND JUSTICE

UEDF UNITED ETHIOPIAN DEMOCRATIC FORCE
UN UNITED NATION
VOL VOLUME

Abstract

The very purpose of this study is to explore the need to revise sub-national constitutions of Ethiopia in general and ANRS constitution in particular. The study basically assesses and analyzes the need to revise ANRS Constitution and identify the possible measures that have to be taken. The study mainly applies qualitative research method aiming to investigate important attitudes and experiences of informants. In doing so both primary and secondary data have employed as a process in order to get valuable analysis and finding. Primary sources are respondents who were participated during drafting and ratification of constitutions and other interviewees as well as relevant state laws including the regional state revised constitution. Whereas Secondary sources are books, articles, journals, reports, published & unpublished documents and the like. The study mainly investigated the regional state legal administrative system with regard to constitutional revision and related activities to identify the following major findings. In the making processes of ANRSC there was no public participation and consensus creation among different interest groups and politicians. There was no a formal and institutional awareness creation during designation and practicing of ANRS Constitution. The provisions of ANRSC are not part and parcel of the responsible curriculums. Lawyers and researchers were not active participant in developing and practicing the Constitution of ANRS. The people of Amhara didn't perceive as that the Constitution of Amhara is not their own rather it is a party document. Finally, the people of ANRS have a great demand for the total/complete revision of FDRE Constitution since it did not address the fundamental interest of them. Moreover, the peoples of Amhara region demand to revise the regional state constitution to make it complete and legitimate. Although the regional state council established the Council of Constitutional Inquiry, it is not active enough to develop and review the Constitution of the region.

Key words; Public participation, awareness, Constitutional revision, Constitutional inquiry

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CHAPTER ONE

1. Introduction

1.1 Back ground of the study

Constitution is a written document which mostly comprises system of fundamental rules and principles of a nation, State or Political body by determining the powers and duties of government as well as guarantees for the natural and democratic rights of the citizen for which it is designed for.¹

Any Constitution that has once drafted is not final perfect and unalterable through time. It has to be outdated based on the changing realities and consents of the people for whom the Constitution is designed. This reality is also a must and pivotal nature for the legitimacy of any Constitution in any country.²

The rules and principles of constitutional revisions are the custodians to the Constitutional text by predetermined disciplines such as; it details the procedures for changing the written Constitution, specify what is subject to or immune from formal amendment, promote deliberation about Constitutional meaning, distinguish the Constitutional text from other ordinary laws, it may also be designed to express Constitutional values especially useful for transforming popular will into formal and institutional dialogue to alter or develop Constitutions of a given country or state depending on the consent of the public.³

Zelalem Eshetu has **quoted** the following idea about the constitutional changing disciplines,

“ A road map has to be provided for constitutional changes by answering basic questions that could be raised in the process of amendment: How and when to amend

¹Zemene Bizualem (2010, P.10), *State Constitutional amendment patterns in Ethiopia; The case of Benishangul Gumuz, Gambella, Harari and SNNP constitutions.*

²Zelalem Eshetu (2019, P. 17-18), *the politics of constitutional amendment in Ethiopia*

³Richard Albert (2014), *the structure of constitutional amendment rules*

the Constitution, who amend the Constitution, what within the Constitution is (un) amendable. For this the rules must be clear, understandable, certain and reliable to guide actions concerning amendments and should also balance rigidity and flexibility for allowing a moderate amendment rate to the constitution’’⁴

That is why Aharon Barak also stated that, unconstitutional constitutional amendments are non-constitutional alterations that stands against the substance of the Constitution to satisfy the procedural requirements for making amendment and also the consent of the people for which the Constitution has designed for.⁵

In the global practice sub national Constitution amendment rules begun by USA's one state called New Jersey in 1776 and then by 1980 it expanded to other states. At that time almost through half of the USA States had adopted amendment procedures with their own Constitution. After that the trend had expanded to other federations out of USA. For example, the Australian States include rules of amendment within the text of their Constitution.⁶

As James J. B, (2014) on the book "analysis of different constitutional amendment models" stated that, different nations follow fraternal approaches to their Constitution and constitutional amendment. But According to Ulrich K Press, there are three different known overarching constitutional paradigms in the world. Thus the three categories of constitutional paradigms are; a continuous tradition like Britain and USA, an erratic constitutional development like Germany and the third one is post-communist States of some European countries which have to achieve that nation state, a civil society, and democratic structures at the same time.⁷ On the other hand Getachew Asefa (2012) identified four fundamental features of a Constitution those are generality, stability, rigidity and supremacy. Generality

⁴ . Zelalem Eshetu, (2019 p. 38), the politics of constitutional amendment in Ethiopia. Issue worth considering. Haramaya law review 8

⁵ . Aharon Barak (2011), unconstitutional constitutional amendments: Israel law review 321.

⁶ . Donald Lutz (2006), *principles of constitutional design*

⁷ . James Julius Baber (2014), *analysis of different constitutional amendment models*.

deals with broader functions like structure of government, power & function of government, relation b/n citizens and government as well as political and economic principles. Stability mean Constitutions are likely to stay permanent. Whereas rigidity is to mean that Constitutions' amendment have to require tough procedures as opposed to ordinary laws. Supremacy implies that Constitutions are the highest of all laws in a given system.⁸

In addition to these, principally the maker and owner of a Constitution are the public but not the governments or ruling organs.⁹ There is also another constitutional classification depending in the nature of amendment as "flexible", such as the **British and Israel** Constitutions that can be amended with ease, and "inflexible or rigid", one such as the **US and Ethiopian** Constitutions, which contain entrenchments that make them very difficult to make constitutional changes. Anyways Rosalind D, (2011) showed us that formal provision for constitutional amendment is now become a universal feature for both national Constitutions and State /Regional/ Constitutions in almost all countries of the world.¹⁰

However, significant controversy remains the function of formal procedures for constitutional amendment and the key determinants of the comparative difficulty of the processes of both amendments. Furthermore, a countries constitutional amendment procedure in different times of countries' development varies depending on the status of economic, social & political development. For example, in a well-established and prominent democracy such as the USA, a difficult amendment procedure is needed to maintain stability of the Constitution. Where as in a transitioning state, such as Germany post World War II, a more flexible amendment procedure is needed so as to adapt their fast moving development in the country and the World it self. In addition to this, the amendment procedures must take into account the wholistic nature of the country's context.¹¹

⁸ . Getachew A. (2012), *supra* note 28, p.96

⁹ . Getachew Asefa (2012), *Supra* note 28

¹⁰ . Rosalind Dixon (2011), *constitutional amendment rules*.

¹¹ . James Julius Baber (2014), *analysis of different constitutional amendment models*.

In Ethiopia's context, giving power to sub national governments to amend their Constitution was begun during 1952 when Eritrea federated with Ethiopia; however it was based on UN general assembly declaration. In the 1952 Eritrean Constitution, the assembly had the power to amend the Constitution of Eritreans but it has to enter into force to be ratified by the Ethiopian Emperor and this procedure was the mandatory requirement in that Constitution. The second movement for empowerment of sub national units to frame their Constitution was restarted by the 1991 Transitional Charter. Subsequently the adoption of the 1995 FDRE Constitution reaffirmed this empowerment to adopt and amend their state Constitutions. Following this all regional States had been adopted their Constitution in 1995 onwards.¹²

But the rules of amendment of sub national Constitutions of Ethiopia were not too much clear, all inclusive & not without imperfection (Mequanint, 2015, P 2-3). As we know FDRE Constitution has been amended twice within the past two decades only on two provisions. The first amendment was made on Article 98 of the Constitution in 1997, and the second on Article 103 (5) of the Constitution in 2005. The aim of the revision on articles 98 & 103 (5) was so as to change the spirit of concurrent power of taxation in to revenue sharing and the way to extend the period for conducting national population census to more than 10 years respectively.¹³ But the first and the second amendments substantially contradicted with the predetermined procedural requirements set by the Constitution of FDRE itself. In addition to this both the first and the second constitutional amendments have not yet been published in the NegaritGazeta, which is an official news-sheet for publishing such and the like Federal laws of Ethiopia.¹⁴

¹² . *Federal Democratic Republic of Ethiopia 1995 Constitution*

¹³ . *MequanintDebie (2015), amendment of state constitutions in Ethiopia in comparison with other federations*

¹⁴ . *Zelalemeshetu84@gmail.com. (undated), Unconstitutional constitutional amendment in Ethiopia*

When we remind the practice of the first constitutional amendment of FDRE article 98, the process is found to be disregarding essential procedures. That is the MOFED initiated amendment and participated in the whole constitutional amendment process of Ethiopia which is out of its role in the FDRE Constitution. On the other hand, the two amendment proposals were not also submitted to the general public for discussion & consultation as required by the 1995 Constitution of Ethiopia. The practice also undermines the role assigned for State Councils of the member States of Ethiopia. The first constitutional amendment was more apparent on which it is not approved by State Councils.¹⁵ But R. Watt showed us that Federal Constitution of Ethiopia should not be amended unilaterally meaning, it can't be amended either by central government or by member States and obtaining the consent of a significant portion of member States of FDRE must be mandatory.¹⁶

When we come to member States of Ethiopia, all sub national Constitutions were revised from 2001 onwards even if the initiative was raised from the Federal government as mentioned by GetachewDisasa.¹⁷ The Amhara National Regional State adopted its revised Constitution almost within the same period with FDRE member regions in 2001. Specifically the Amhara, Oromia, SNNP & Tigray regions /the four core regions / were adopted their revised Constitution in 2001. As that of the Federal Democratic Republic of Ethiopia Constitution, the State constitutional amendment process of Ethiopia including ANRS that take place in 2001 also didn't follow constitutional amendment procedures. Rather most amendment is supposedly to be effected only when the proposed amendment is approved by the three fourths of vote of the legislature or State Councils.¹⁸

¹⁵ . Zelalemeshetu (undated), *Unconstitutional constitutional amendment in Ethiopia*

¹⁶ . Ronald Watt at supra note 18. P.161

¹⁷ . GetachewDisasa, (2018), *the role and relevance of sub national constitutions in the Ethiopian federal system in promoting effective self rule and regional autonomy: The case of Oromia Regional State's Constitution.*

¹⁸ . TsegayeRegassa, (2004), *State constitutions in Federal Ethiopia*

When we see the entire content of the revised State Constitutions, all Regional Constitutions have almost similar structure but they vary significantly with in their number of articles ranging from Harar 80 articles to SNNP 128 articles. The other difference is that the Amhara Constitution incorporated additional chapter pertaining to the organization, powers & duties of Nationality administration /recognized ethnic based local government in the Region that can't be found in others namely Himra, Awi& Oromo in the 2001 revised Constitution. However the ANRS Constitution also missed to recognize the Qimant and Argoba as an ethnic local government like the above three ethnic groups¹⁹

The ANRS Constitution seems a party document because under the preamble it emphasized the Federal Constitution intention as "Being dully convinced of the fact that we had for long been victims of an unbearable harm caused to us directly to an atrocious national oppression which had to be committed in the past and against the majority of our country's nation nationalities and people and henceforth needs to be corrected and rectified hereafter".²⁰

To organize the thesis the researcher has planned to use different sources like FDRE Constitution, Ethiopian States Constitutions and relevant proclamation, Journal articles as well as books, relevant documents which will be found at ANRS Council's office and other necessary Bureaus. After assessing such materials and analyzing the key respondents' idea, the researcher had identified the possible findings and recommendations based on qualitative analysis method.

1.2 Statement of the problem

Since all nine regional states of the Ethiopian federation including ANRS have adopted the revised Constitutions which are merely copies of the Federal Constitution,it doesn't consider the contexts of their regions and the citizens that they are designed for. Of course one way to minimize conflicts between national and sub national Constitutions is for the National Constitution to give the national government some control over the content of sub national

¹⁹ . Amhara 2001 constitution.

²⁰ . ANRS & FDRE 2001 constitutions

Constitutions at the time when conflicts are being created. But the Ethiopian State Constitutions concern is not to minimize such conflicts among subnational Constitutions.

The FDRE Constitution is serving for more than two decades after it is adopted in 1995 and an amendment was made only on two provisions throughout its lifespan. Although it was amended most of the citizens specially responsible technocrats like political elites, lawyers, constitutional law teachers, judges and even parliamentary members have no sufficient information about amendments of Ethiopian Constitution, and hence are unaware of the substance of the changes on the amendment of the 1995 Constitution. Not only this but also the official copies of the Constitution still reflect the original versions of the two provisions.²¹

In general the Ethiopian Constitution is not accepted with majority of the public into two general dimensions which are its textual content and its un-participatory nature during drafting discussion and adoption processes. Because the drafting, discussion, and adoption was overseen by the Transitional government which was dominated by the EPRDF TPLF, to that extent, the original **legitimate status** of the FDRE Constitution is undermined and there is a gap between constitutional text and constitutional practice. The same is true on ANRS Constitution since it is almost copy of the Federal one as stated above. The Ethiopian Sub National Constitutions in general and ANRS Constitution in particular, drafting and revising processes were influenced by the ruling party mainly TPLF/EPRDF. The researcher has said this because he had experiences in that, when there was a grand policy or party discussion in the ANRS, nominating a TPLF political leader was a must to give directions based on their interest. That is why now a day, when the need to revise the Constitution of Ethiopia becomes the main issue of ANRS people, the TPLF team becomes the only defender not to be revised. On this issue AdemKassie A. (undated), mentioned the following:

²¹ . Zelalemeshetu (undated), Unconstitutional constitutional amendment

*“a wide and popular reconsideration of the values the Constitution represents and the institutions it establishes can ensure that the TPLF Constitution’ becomes the ‘Constitution of the people of Ethiopia”.*²²

So it shows that the Constitution of Amhara region is not owned by the people of Amhara rather it is an instrument to fumigate to seem a Constitution of Amhara National Regional State or the people of Amhara.

As pointed out earlier the Constitution of ANRS brings diversified challenges throughout the region and on the residents of the region. Not only the textual content and revision process is the problem of ANRS Constitution but also there is unconstitutionality or practicing problems on the constitutional provisions on the ground even.

The ANRS Constitution has failed to play its fundamental role or it can't protect the economic, social & political rights of citizens for which it is designed for. According to the final regional government report of ANRS in 2016, Poverty is pervasive in the Amhara region with about 26.1 % of the population living below the nationally defined poverty line compared to 23.5 % for the entire country. Families and communities throughout the Amhara Region are “sliding down” into extreme poverty, being asset less, and chronic dependence on institutionalized safety nets for their survival. When we observe the physical appearance of ANRS people we can judge easily that they are living extremely under the living standard. The region managed to finance only few percent of its annual budget from its own regional sources & receives non-earmarked block grants from the federal government as a major source of its revenue according to the Constitutional revenue sharing power. This approach compelled the region to be dependent on the central government.²³

²². AdemKassie A. (undated). *From the ‘TPLF Constitution’ to the ‘Constitution of the people of Ethiopia’*: *Constitutionalism and proposals for constitutional reform.*

²³. *Final Government report of ANRS 2016 budget year issued for leadership discussion.*

In addition to this I would like to mention here one important research conducted at Wollo district in 2003 which can show us that the Amhara Region is how far economically victim. The study resulted that from the 2127 surveyed households 14.6% were classified as destitute, 54.9% households were vulnerable and 30.6% were considered as to have viable livelihoods. Based on this survey the researcher extrapolating the study area as a whole estimated as 600,000 people in that area were destitute, 1.25 million viable and 2.25 million vulnerable people from the total rural population of over 4 million.²⁴

Not only these but also millions of the ANRS people are migrating continuously to other regions as a result, now a days when tribe politics becomes a conflicting cause throughout the country the Amhara residents that are living in different Regions are significantly killed, harmed and migrating continuously. The Guraferda and the Bedeno residents killing and migrations are the nearest best evidences. But the problem is so difficult and can't be solved due to inappropriate constitutional power given for the HOF to resolve such disputes.

The Constitution of Amhara National Regional State lacks fair social organization & allocation of power. Article 45/1 stated that, the Regional State is hierarchically structured in such a way as to comprise the Regional, Woredal and Kebele administration units. Here it has missed the cities and towns as a result the cities and towns at local level are administered by rural government authorities. In addition to this the Constitution has little room for local government for deviating and participating on local issues. And the mismanagement of Ethno-linguistic diversity in Ethiopian cities such as Diredawa, HarareOromia, etc reveals how a large section of major city residents of Amhara Nations, Nationalities and Peoples are excluded from any political delegation and participation.

The ANRS Constitution didn't secure political power for the people of Amhara, for example article 12/2 states "in case of loss of confidence, the people may recall an elected representative. The particular of recall shall be determined by law". But it is simply copy of the Federal provision for simulating because no way to recall and no practices on such missing on elected

²⁴. *Stephen Devereux and YaredAmare (2003), Destitution in Ethiopia's Northern highlands (Amhara National Regional State)*

officials. On the other hand, the Constitution can't safeguard the group rights fairly as stated on article39/2 as "every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history". The Qimant /ቅማነት/ Nation is the typical example for this issue that is not recognized during drafting & adoption of the Constitution and now becomes the cause for conflicts between Amhara and Qimant people. In addition to this there is no way and practice to be accountable any public official or an elected representative for any faller in the predetermined official duties as stated under article12/3.

The Constitution of ANRS also failed to assure freedom of movement and the right to establish residence for the citizens which were designed for. That is why today the citizens of Amhara region that are living in different regions were and are displaced from their residential areas, killed by the majority groups, the region/ people/ had faced with conflicts in different directions and misappropriated by this groups without any accountability. These problems are due to the problem of constitutional designing and implementation.

As we know the people of Amhara have dispersed almost in all other regions to fulfil their livelihood but they are assumed as an oppressor group. And it is due to the problem of Constitution and constitutionalism which is deliberately architected by TPLF and its affiliates. Even there is no healthy social interaction among different Zones residents through the Amhara Region which is happening due to the provoked ethnic politics based on the deliberately designed Constitution and constitutional practice.

In addition to this ARSC under its preamble identified objectives relating to addressing historical wrongs as "*atrocious national oppression*". Although this mark is a common trend among state Constitutions in terms of reference to addressing historical wrongs, the ANRS Constitution is unique in that it lacks any reference to the Amhara people or the people of Amhara region as victims of such oppression. This indicates that the Amhara as a Region is identified as an oppressive Nation in the form of hand in glove. That is why today the Amhara Region has faced disputes or conflicts between neighbors' / like Oromia region, BG region, Tigray region, Afar and the like.

When we see the appointment of judges of different courts in Amhara region, the appointees are nominated by politically assigned teams and individuals namely commission of judicial administrations and head of government which may lack professional knowhow and brings missing of independent judiciary system. As a result the judges and prosecutors are not trusted by the system of justice throughout the Region. So that many judges & prosecutors are migrating to work privately.

Ofcourse the Constitution of FDRE & ANRS as a text provides to have an independence judiciary organ. However in practice, the status of the judiciary is critically precarious, characterized by political intervention of state officials or politicians on matters which are important to them; slow resolution of cases, corruption, and loosing of public trust in the institutions at central as well as the Regional levels.²⁵

From the beginning it is so difficult to amend the Constitution of Amhara especially chapter two & chapter three because it can be amended based on article 105 of the Federal Constitution which is on the hand of all other regions. That is why Mequanint D, (2015) stated that amendment problems can expose for different challenges. For example weak amendment disciplines may expose the Constitution to the danger of self-interested, partisan and destructive acts; on the other hand an over-rigid amendment may prevent or deter effects to strengthen the State constitutional clauses.²⁶

On the other hand, the to be revised provisions in Amhara region that has revised and adopted in 2001 were not the only to be revised provisions and not initiated by the public consent or interest. For example the Budget problem of ANRS can't be solved unless the Constitution can be basically reformed. And even the power of constitutional interpretation in Amhara Constitution is given for political organ which is inappropriate for this technical and decisive mandate and it was practically unable to act on its mandate.

²⁵ . Solomon M. Gofie (undated), *Central Control and Regional States' Autonomy in Ethiopia*

²⁶ . MequanintDebie (2015), *amendment of state constitutions in Ethiopia in comparison with other federations*

According to the researchers' experience, the common qualities of a good constitution are: enjoying real supremacy of the constitution, ability to develop and change in accordance with the changes in the environment and needs of the people or avail popular sovereignty, it should be **neither unduly rigid nor unduly flexible**, ability to provide for **Fundamental Rights and Freedoms** of the people, power to confirm rule of law, **affirming responsible, limited and accountable government**, providing for decentralization of powers, providing independent and powerful Judiciary at the same time judicial review, able to provide a system of local self-government, having a sound method of amendment system, able to have process and machinery for the conduct of free and fair elections, able to clearly reflect the sovereignty of the people, etc. But the ANRS Constitution lacks to enjoy most of these common qualities of a good Constitution.

The disputes that we are observing repeatedly throughout the Region of Amhara emanate from the Constitution and legitimacy problem of the Constitution. The people of Amhara are claiming by saying that our Constitution is not ours it is deliberately designed by TPLF that is why the manifesto of TPLF that was written at the time of armed struggle identifies that the Amhara is their strategic enemy of Tigray. The other legitimacy problem is that the way in which the Constitution was designed and adopted. Or the Constitution of ANRS is not compatible for sociopolitical reality of the Amhara National Regional State and the people

The other problem is the ANRS can't participate to delimit its own territorial boundary that is why today the residents of Amhara are complaining continuously. In fact the ANRS Constitution on article 2 stated about territorial boundary but the Region can't solve the disputes seen at the boundaries. Because it is not the jurisdiction of a Regional State to unilaterally determine its boundaries. Not only this but also the Amhara Region territorial border has been disturbed deliberately in different directions such as at the Benishangul Gumuz, at the Afar, at the Tigray Regions and soon. The land parts of the Amhara Region that were known in the previous regime have been taken to these neighbor Regions and the action is special in Amhara National Regional State. For example land part of Amhara that was part of Wollo Kiflchager, Gondder Kiflchager /Teqelay Gizat/ etc in the previous regime has been bounded to Tigray Region without any formal deviate or public decision before the EPRDF Constitution had adopted. Even the Federal Government /House of Federation/ can't manage the conflict based on the constitutional power mentioned under article 48 of the Federal Constitution of Ethiopia.

The Constitution of ANRS is exposed for abusing of the peoples' right by using the phrase "the particulars will be determined by law" as a weapon. For example, article 40/3 stated that, land is a common property of the peoples of the regional state and hence shall not be subject to sale or to other means of exchange & the peasants have the right to obtain land without payment and the protection against eviction from their possessions. But the government of ANRS is sailing the land owned by peasantry and the peasantry are migrating without enough compensation.

The people of Amhara are complaining on the Constitution interims of abusing the population census and there is no any trial to correct following the complain. Not only this but also the revision of article 103 /population census/ has done by the Federal House of Peoples Representative without participating the member States including Amhara National Regional State which has a strong complain on it. Moreover, according to the experience of the researcher, the ethical & civic education teachers of ANRS are provoking the problem of Constitution for their students than teaching the subject matter as it was expected. That is why the youth in Amhara Region protests against the government of the Region and the Constitution repeatedly.

In general, the functions of a Constitution are commonly to provide security for its citizens, serving as a guardian of fundamental rights, serving as a binding statement of people's aspiration and the like. However, the Constitution of ANRS is the source of disputes arising in the Region and among Regions. For example the Wolkait district Amhara's people complain can't be solved according to the Constitution of FDRE for prolonged time. Even the Constitutional revision process of 2001 didn't follow the amendment procedure that set out in the State Constitutions. Amendment is supposedly to be effected only if the proposal is approved by three fourth majority vote of the legislature. The Federal government particularly the Prime Minister office prompted the massive revision which consequently brings separation of power in the States.²⁷

Like, other Regional States, the Amhara National Regional State revised Constitution was made on November 5, 2001. However as to the knowledge and the experience of the researcher, the 2001 constitutional revision process did not follow the constitutional amendment procedure.

²⁷ . Tsegaye Regassa, (2004), *State constitutions in Federal Ethiopia*

Besides, the constitutional revision was not participatory or stakeholders from the Regional State communities did not participate during the drafting and adoption of the revised Constitution or the revised provisions didn't depend on the needs of the public. This is the researchers' trigger to conduct this thesis.

However, all related studies focused on the party domination, procedural errors of revising State Constitutions and the like case analysis, but no one showed us what is behind these defects, what is the need to revise the Amhara National Regional State Constitution and what has to be done. This was also the main inspirational force that initiated the researcher to conduct this study.

In addition to this, there is little literature and very little evidence-based research on Amhara Regional State Constitution and revision. There are some researches which were conducted in related with these issues, among these “legitimacy of sub-national Constitutions in Ethiopian federation, a case of Amhara Regional Government Constitution” that was done by Yohanes Yitayih in 2010 and “Empirical Assessment of Regional State Constitutions of Federal Ethiopia, A Case Study Of Amhara National Regional State” by Bamlaku Alebe in 2018 can be mentioned.

Yohanes in his study concluded that the Constitution of the Regional government of the people of Amhara fails to be legitimate by virtue of legality. On the other hand, Bamlaku stated that in the drafting and adoption process of ANRS Constitution, there was no pre-Constitutional and post-Constitutional negotiation and discussion with the people of the Region about how to draft and adopt it. This means there is no consensus creation among the various societies and politicians or interest groups.²⁸ But there is no sounding work conducted on the need of Constitutional amendment in Amhara National Regional State. Therefore, the researcher has interested to get important findings on the need of revising the Constitution of Amhara Regional State.

²⁸.Bamlaku Alebe (2018), *empirical assessment of regional state constitutions of Federal Ethiopia. A case study of Amhara National Regional State*

1.3 Research questions

The study mainly focused on giving appropriate answers for the following research questions

- ✓ Did the peoples of Amhara National Regional State participate in the drafting and adopting process of the Constitution and know the Constitution by which they have been governed?
- ✓ Why the peoples of Amhara claiming the revision of both 2001 Constitution of ANRS and FDRE constitution of 1995?
- ✓ What are the major challenges that the ANRS people have been facing in the practice of the Revised Constitution of 2001?
- ✓ What is the possible solution to resolve the problem of ANRS revised Constitution?

1.4 Objectives of the study

1.4.1 General objective

The general objective of the study was to assess and analyse the need to revise sub national Constitutions of Ethiopia on the case of ANRS and to identify measures that have to be done.

1.4.2 Specific objectives

Based on the above general objective the study would try to investigate the need to revise Constitution of Amhara Region using the following specific objective as an aid;

To identify the participation & negotiation of Amhara people on the ANRS Constitution designing & adoption process

To examine the reasons why the people of Amhara claiming on the 2001 ANRS Constitution

To explore the needs of Amhara National Regional State people for 2001 Constitution's revision

To identify the major challenges that the ANRS people have been facing in the practice of 2001 Constitution

To investigate the possible solution that may help to solve the problem of ANRS 2001 Constitution

1.5 Significant of the study

This study had the following significances:

It would serve as secondary source for others who are interested to conduct research on the study area, to provide information about the procedures of designing & adoption process of Amhara National Regional State Constitution and its positive and negative impact on the ground, to give supportive feedback to the policy makers of Amhara National Regional State Government and the community at large. It may also use as an input for the future amendment activities of the National Regional State of Amhara accordingly.

1.6 Limitation of the study

When this study was conducted the researcher faced the following critical limitations.

Shortage of time was the main hindering problem due to the State of Emergency by the occasion of Covid 19 /Corona virus/.

Shortage of finance to accomplish all the activities needed in the research process because the research grant was not released until June 9, 2020.

Lack of supportive references on the research topic was also a challenge.

Disappearance, unwillingness and business of the respondents to give organized valuable and genuine responses. Because the ANRS Supreme Court and Attorney General Offices were partially closed by the state of emergency. Even the permitted representative professionals were not mostly found in their office during the government working time.

Appearance of Corona virus in a pandemic level and proclamation of State of Emergency was the main challenge to collect data from all important respondents. Especially the Courts and Justice Offices were closed due to the pandemic case of Covid 19.

1.7 Delimitation of the study

Geographically the scope of the study was delimited to the capital city of Amhara National Regional State called Bahirdar. The study also conceptually delimited to the investigation of only major indicators /attributes /of Amhara National Regional State Constitution in terms of the need to revise the Constitution. Unquestionably the findings of the study would have been more dependable and comprehensive if the scope could have included wide area of the region

geographically. However due to time and financial constraints the scope of the study was delimited as indicated above.

1.8 Research Methodology

1.8.1 Research Approach

Based on the nature of my research objectives, qualitative research approach, both descriptive and exploratory was employed. I preferred this approach based on the next two Scholars justification. As Dawson (2002), clearly stated that qualitative research approach helps to investigate important attitudes and experiences of respected informants using methods like interviews or focus group discussions.²⁹ And Creswell (2014) also argues on this approach that qualitative research creates flexibility to incorporate wider discussions and to gather insights in the study areas.³⁰

In addition to this qualitative research approach helps to address research questions that require explanation or understanding of social phenomena and to contextualize ideas.³¹ The reason behind using qualitative approach is that it helps to explore topics of interest that are subjective which may originated from detail attitudes, experiences and understandings of respected key informants.

1.8.2 Research Design

As indicated above, the purpose of the study was to examine the need to revise sub national constitutions of Ethiopia especially in Amhara Region focusing on ANRS responsible bureaus or government officials (mainly Amhara region council, office of chief administrator, ANRS

²⁹. Catherine Dawson (2002), *practical research method*

³⁰. Creswell (2014), *research methods*

³¹. Ritchie and Lewis, (2003), *qualitative research practice*

Supreme Court and office of Regional attorney general). To accomplish this task a qualitative approach with descriptive survey design would be mainly employed. This is because, this approach is suitable to describe and understand phenomena from diverse data sources as indicated under the research approach part.

1.8.3 Data Sources

The data sources were mainly primary because the examination basically starts from the Regional State Constitution and other relevant legislations including Government reports. It also considers another primary data sources as respondents which would be officials and their legal advisors that were participated in the designing & adoption process. Because these are assumed to have a good understanding about the need to revise sub national Constitution of Ethiopia especially in ANRS. Other sources of data are secondary data and these were related documents, such as journal articles, books and commentaries. Hence the population size of the respondents would be:

4 Regional higher officials who may have an opportunity to have important information about ANRS Constitution and its challenges. From the respondents the one /Mr. MrerhatsidqeMekonnen/ was member of ANRS constitution drafting committee by nomination of ANDM.

3 higher Court Judges which were working in government courts during practicing.

7 public prosecutors that were working in the drafting process of regional laws if possible or working in Attorney General right now.

4 East Gojam Zone Justice office prosecutors/from which Mr. MesafintMersha/ was member of FDRE Constitution ratification committee.

1.8.4 Data gathering instruments

Questioners in open ended form could be for higher officials for the sake of unavailability of time during government work hours, in addition to this document interview would be used for analysis purpose in the office of Amhara Region Council and other government organizations. The other was interviewing technical practitioners like Higher court judges or higher justice officials and participants of Constitutional making process. The questionnaire which were

distributed for respondents were prepared in English and Amharic languages for better communication among the informants and the data collector

1.8.5 Data gathering procedure

The first action was taking a letter of cooperation for the respondents from the department. And after modifying the questionnaires the main data gathering process has proceeded with the determined schedule after 30/04/2020). Administrating the questionnaires has been done by the researcher himself based on face to face contact.

1.8.6 Data sampling technique

The sampling technique which was applied in this study would be non-probability, especially purposive sampling. Accordingly, the researcher planned to conduct semi-structured interviews up on twenty (20) purposefully selected respondents from expected institutions by taking their proximity in terms of knowledge and position to the subject under investigation in to consideration in the expected institutions called ANRS council's office, ANRS Supreme court and bureau of Justice, Office of Chief Administration and other Bureaus. But the interviewee that was interviewed after a boring loop was 18 in practice.

1.8.7 Data analysis

The process of data analysis in this study would be accomplished through thematic analysis. The researcher has categorized and put data in to themes- the data with regards to driving forces, constitutionality and need of constitutional amendment for the people and to Amhara region with possible solutions to be implemented. Then the researcher will make interpretation and analysis so as to put the thematically categorized data in the form of statements.

1.8.8 Ethical considerations

Every activity of the study has done only for the sake of research only or anyone doesn't be responsible for any case. The writer has taken care of the interviewees' response from unnecessary disclosure in a way abusive to their relationship with their employer. The writer /the researcher/ has also provided an accurate account of the information through examining the

collected data to build a coherent justification for descriptions. As far as possible the researcher tried to recognize the authors of source materials in the research document and individuals that have contributed better debt throughout the research process.

1.9 Organization of the thesis.

The paper mainly contains five chapters. **Chapter one** is the introduction which comprises background of the study, statement of the problem, purpose of the study methodology of the study among other important sub contents. **Chapter two** devoted to discuss review of related literatures and some review activities on FDRE Constitution. **Chapter three** highlights on the needs of revising Federal Democratic Republic of Ethiopia and other international constitutional amendment experiences. **Chapter four** discusses the general overview of Amhara region constitution. **Chapter five** focuses on the need to revise the Amhara region constitution. And finally **chaptersix** provides the concluding remarks along with major findings and possible recommendations.

CHAPTER TWO

2. Review of related literature

Adequate works have not been conducted on sub national Constitutions of Ethiopia especially nothing has been done on the needs to revise the ANRS Constitution. Almost all related studies were conducted by targeting on the Federal Constitution and sub national Constitutions of Ethiopia in general. That is why Christophe Van Der Beken (2016), stated that sub national Constitutions of Ethiopia in general have not been well studied.³²

It is obvious that Ethiopia is attending an ethnic federalism that demands a careful management of different interested groups. To specify ethnic federalism has a negative impact to develop ethnic

³².Christophe Van Der Beken (2016)

centiments or purely narrow and self minded interest of minority elites or diversified interests of federations.³³

There is no commonly agreed discipline about function of Constitution. Anyways Ghai and Cottrell, (2011) summarized that the most general purpose of Constitution is to provide security for citizens that they are designed for and to ensure smooth operation of the political system by channelling the expression of politics through predetermined institutions with clearly agreed and understood disciplines or procedures, as well as facilitating the resolution of any disputes that may arise in a society or groups. For this purpose, the State must be vested with considerable powers of government constitutionally to protect the rights of citizens and to maintain law and order.³⁴

According to Tadesse, M. (2012) Constitution making processes involve regressive procedures which is stricter than other ordinary laws or legislations. However, countries have diverse practices in terms of organization and procedure for Constitution making, adoption and amendment nature. Tadesse briefly explained that, Constitution making process is a complex task and it needs participation of all appropriate stakeholders and even Civic Societies and Non-Governmental Organizations (NGOs). But as we know federal government of Ethiopia between 2009 and 2019 had launched a special proclamation to limit the participation of NGOs and Civil Societies in the country economic, social & political affairs rather than participating in the constitutional making process³⁵

The other scholar Getachew A. (2012), stated that constitutional making should include known procedures or standards like effective and enough participation of stakeholders, the right of consultation of the Public on the process and the content, inclusiveness of the process i.e. like Civil Society and NGOs, Religious leaders, Women, Minorities and Marginalized Groups. So in

³³. Abate Nikodimos Alemayehu (2004, P.16), ethnic federalism in Ethiopia: challenges and opportunities

³⁴. Ghai and Cottrell, (2011), *Supra note 33*, pp.61-63

³⁵. Tadesse M. (2012), *supra note 19*, p.159

this study, the researcher will investigate theory and practice of the above issues in the constitutional making process of Amhara National Regional State.³⁶

From the beginning the Ethiopian Constitution is not for Ethiopians as Paul (2000), noted as,

*“none of the political and ethnic forces which make the opposition to the Ethiopian Peoples Revolutionary Democratic Front /EPRDF/ had participated in the constitutional making and designing process. All opposition parties, most importantly, those representing the Amhara and Oromo groups (accounts about 38 and 35% respectively) withdrew from the electoral competition during the election of members of constitutional Assembly for the adoption of the FDRE Constitution which is the benchmark for the present Constitution of Ethiopia and the States. The new Constitution is therefore supported politically and ethnically only by the Tigrian minority and its associates who count only less than 10% of the total population of the country”.*³⁷

Many argue that the present Constitutions of Ethiopia have come with no proper consultation with the whole necessary stake holders of the Constitution. For example, Teguada Alebachew (2011), mentioned that the Ethiopian Constitution as it is EPRDF's party program bounded only in the four regions /Oromia, Amhara, SNNP and Tigrian/, which dominated the whole constitutional-making process. In consequence of this, they don't show a commitment to the whole institutions established within the constitutional framework.³⁸

As Tsegaye R, (2010) stated, sufficient degree of separation between the Constitution and day to day politics, the dominance of the idea of autonomy of law and politics, the existence of a vibrant positive constitutional culture, the socio-cultural relevance of the constitutional text, effectiveness and efficiency of constitutional institutions, etc. contribute to the implementation of

³⁶ . Getachew A. (2012), *supra note 28*, p.96

³⁷ . Paul (2000), *Ethnicity and the new constitutional orders of Ethiopia and Eritrea*

³⁸ . Teguada Alebachew (2011), *when constitution lacks legitimacy in the making*

Constitutions in any Federations.³⁹ Like other Federations the designer as well as the framers of State Constitutions in Ethiopia faced with the problems of providing the important rules of amendment for all State Constitutions. However, the designer & framers of each State Constitution of Ethiopia attempted to frame the rules of amendment; these rules of amendment are in problems especially on participation of all interested groups. (MequanintDebie, (2015). Here the researcher has not argued on this idea or the problem is not only designing, framing and un-participatory nature of State Constitutions but also it is deliberately designing a rigid amendment rule aiming for stifled administration of EPRDF.⁴⁰

According to MulukenKassahun (2018), having a Constitution without a provision of Constitutional review is just like not having a Constitution at all. Not only this but also the existence of a constitutional review system alone isn't enough to guarantee for constitutionalism because the given constitutional reviewing system may be extremely rigid or it may be on the hand of others or owned by out of the appropriate organ. Here Ethiopian Constitution problem is rigidity and inappropriate delegation of the constitutional making and constitutional reviewing process.⁴¹

Generally, factors of constitutional status can be arranged under the three rubrics as legitimacy /acceptability/, constitutionalism, and efficacy. It refers to the belief among a large number of people that the constitutional text needs to be obeyed by all and popular recognition /acceptance/ of the Constitution.⁴² On the other hand Weber, (1954), identified that, the three types of

³⁹ .TsegayeRegassa, (2010), *bridging the gap between constitutional design and Constitutional practice*

⁴⁰ MequanintDebie (2015), *amendment of state constitutions in Ethiopia in comparison with other federations*

⁴¹ MulukenKassahun (2018, PP. 4-5), *the relationship between the Federal and Regional States Constitutional review system in Ethiopia: The case of Oromia Regional State.*

⁴² Shively, 1999: 136, *supra note ...*

legitimacy as traditional, charismatic, and rational, are considered to be by far the most expressive of the sources of regime legitimacy or constitutional legitimacy.⁴³

Whereas Tsegaye R, (2010), identified four major sources of regime legitimacy as the capacity of the system to deliver results (e.g. physical security, security from external aggression, economic security, national pride), habit of obedience, connection to the religion or ethnicity of the majority of the people; or the procedure of decision-making and legitimacy of a system which is tied to consensus. Generally he concluded that the implementation of a Constitution depends to a large degree on legitimacy, entrenchment of constitutionalism, and efficacy of the constitutional system as a whole.⁴⁴

On the other hand Bamlaku A. (2018), stated that, State Constitutions in Ethiopia in general and ANRS Constitution in particular is invisible meaning. The relevance of the Regional State's Constitution in practice was found to be highly underprovided and it was not applied efficiently as supreme law of the State to regulate the sub-national politics of the Region. And in the drafting and adoption process of Amhara National Regional State Constitution, there was no pre-Constitutional and post-constitutional negotiation and discussion with the people of the Region about how to draft and adopt the Constitution. This means there is no consensus creation among the various societies and politicians or interest groups on ANRS Constitution making process.⁴⁵

In addition to this Yohanes, Y. (2010) stated that the main reason for the invisibility of ANRS Constitution is the lack of legitimacy and its failure to represent the polity and its population, which means related to participation of the society, stake holders and interest groups in drafting, discussion and adoption process like the Federal Constitution. According to Yohanese, when

⁴³ Weber, 1954, *supra note*...

⁴⁴ Tsegaye Regassa, (2010), *bridging the gap between constitutional design and Constitutional practice*.

⁴⁵ Bamlaku Alebe (2018), *empirical assessment of regional state constitutions of Federal Ethiopia. A case study of Amhara National Regional State*

citizens participate in their Constitution making process they gave their consent and they will accept its respect worthiness. Not only this but also the written document never reached to the people. The people cannot get the document easily to understand its words and meanings so as to be abide by the Constitution.⁴⁶

The Constitution of ANRS cannot able to utilize the existing sub-national Constitutional space and generate alternative public policy options or context of the Region that meet with the polity and its people, rather it copies the policy option of the Federal Democratic Republic of Ethiopia's Constitution. In addition to these in Ethiopia even if National Regional States including ANRS were adopted their own respective Constitutions, it remains consistent with the words of the Federal Democratic Republic of Ethiopian Constitution. This leads to the National Constitution of Ethiopia is governing the citizen of each regional States including ANRS over their Constitutions. As a result the citizens and practitioners of Regional States have not a chance to know how about their respective Constitutions were drafted or adopted.⁴⁷

As pointed out earlier, even though the Amhara Constitution has incorporated additional chapter pertaining to the organization, powers & duties of Nationality administration or ethnic based local government in the region that can't be found in other States and recognized the Himra, Awi and Oromo ethnic groups. However it could not recognized the existence of Qimant and Argoba community as a distinct ethnic groups although it empowers the regional council to establish additional administrative hierarchy when necessary.⁴⁸

On this matter Wasihun Bedilu (2018), noted as "although the people of the Qimant were not counted as an independent ethnic groups in 2007 population and housing census, the populations

⁴⁶Yohanes Y. (2010), *legitimacy of sub-national constitutions in Ethiopian federation, a case of Amhara Regional government Constitution*

⁴⁷. Ibid

⁴⁸.The 2001 ANRS Constitution

of Qimant is significant and were 172,327 in 1994 Ethiopian population and housing census".⁴⁹ On the other hand Yonatan Fessha (2018), by quoting Addis Admass newspaper paraphrases that, "ethno-genesis has not always been peaceful. Very recently, the demand for recognition by members of the Qimant group that have always been considered as part of the Amhara people resulted in bloody clashes, resulting in the death of several people and the destruction of property among the peoples of Amhara and the Qimant group in North Gonder".⁵⁰

Another scholar SamrawitTadesse S. (UD), indicated us that "the Amhara National Regional State Constitution in its preamble refers to national oppression which had to be committed in the past on and against the majority of our country's Nations, Nationalities and Peoples rather than against the Amhara people". This provision also brings the majority of Ethiopian people other than Amharato conclude that the Amhara people as a whole was considered as a national oppressor in the last regimes and they are taking revenges in different situation continuously.⁵¹

2.1 Review on Ethiopian Constitution

Until the promulgation of 1931 Emperor Haile Silassie Constitution, Ethiopia had no codified Constitution to regulate legal and political relationship among State organs as well as the socio-economic issues of Ethiopia. However, Ethiopia had its own traditional legal systems that determined the powers and relations in the royal dynasty even though it was highly dominated by the principles of Ethiopian Orthodox Church. So in Ethiopia's codified Constitution designing and adoption history; the first modern and codified Constitution was the 1931

⁴⁹ . WasihunBedelu (20180, the legality of self determination right

⁵⁰ . Yonatan Fessha (2018), the original sin of Ethiopian federalism

⁵¹ . Samrawit T. (UD), *A comparative analysis of the State Constitution of Tigray in light of the FDRE Constitution and Amhara State Constitution.*

Constitution⁵² which intended to officially replace the FithaNegest in the Emperor regime and was revised in 1955 that brought some changes in limiting the power and functions of the Emperor to a certain extent.⁵³

The 1987 Constitution which was adopted nearly at the end of the Military regime declaring the Socialist system which was after Military Administration led Ethiopia for about 13 years without having codified Constitution⁵⁴ and the 1991 Charter, which served as an interim Constitution for the transitional period and the 1995 FDRE Constitution can be mentioned.⁵⁵ It is known that the Constitution of Federal Democratic Republic of Ethiopia came in to force in August 1995 comprising five fundamental principles such as sovereignty of the people, supremacy of the constitution, human and democratic rights, principle of secularism, transparency and accountability of government activities as a text.⁵⁶

The Ethiopia's federal structure which is organized in the form of democratic centralism philosophy has stayed for more than two decades and half by lying at the heart of the ruling party or Ethiopian Peoples Revolutionary Democratic Front /EPRDF/ coalition. The policies formulation is characterized by top-down process or decision making rather than on the basis of local initiatives. Consequently, the democratic centralism political philosophy has been faced with multidirectional and deep popular flooding protests since early 2018. Not only this but also

⁵² . *Ethiopian constitution of 1931 established in the reign of his Majesty Haile Sellassie , 6th july 1931*

⁵³ . *The 1955 Ethiopian constitution November 4, 1955; conquering Lion of the Tribe of Judah Haile Selassie, Elect of God, Emperor of Ethiopia*

⁵⁴ . *The 1987 constitution of the People's Democratic Republic of Ethiopia: Proclamation No1 1987. NegaritGazetta. Vol 47. No 1.*

⁵⁵ . *The 1995 constitution of FDRE*

⁵⁶ . *The 1995 constitution of FDRE*

it brings the division of member parties of EPRDF. Soa reform which can strengthen constitutionalism and the rule of law in the country are increasingly urgent demanding.⁵⁷

As we know the FDRE Constitution empowers the review powers of the Constitution for the House of Federation, rather than the judiciary organ. In principle, the House, whose members are representatives of the Nations, Nationalities and Peoples, can quash laws enacted by the parliament and government decisions that violate the Constitution. This means that a Federal Regional dispute on the scope of Federal and Regional powers have to be settled by a representative organ of the Regional States. But in practice, since all Regional States were dominated by affiliate of EPRDF parties, it lacks and unable to manage fair reviewing and decision making power because the HoF is dominated by large ethnic groups like Oromo, Amhara and the SNNP. So allotting the power of Constitutional review to the judiciary would provide a more neutral and effective mechanism for managing the Federal-Regional relationship than a political body. But Article 8 of FDRE constitution theoretically stipulates that all the Nations, Nationalities and Peoples of Ethiopia have become the sources of any sovereign power.⁵⁸

The FDRE Constitution lacks a clear division of power on certain provisions. For example, article 51(2) of the federal constitution, stated that "the federal government shall formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters". On the other hand, Article 52(2c) of the same Constitution also stipulates that "the Regional States can also formulate and execute economic, social and development policies, strategies and plans". From these two provisions both the Federal and Regional States do have policy-making power and autonomy on economic, social and development affairs but the scope of which is not clearly determined. Other similarly vague provisions related to the

⁵⁷ . *Christophe Van Der Beken, (2018),the challenge of reform within Ethiopia's constitutional order*

⁵⁸ . *Constitution of FDRE*

administration of land and other natural resources which becomes a cause for grievances and citizens' migration that have driven protests over the past 20 years and above in the country.⁵⁹

Besides, the Ethiopian Ethnic based Federalism failed to manage the ethnic diversity in Ethiopia. That is why Christophe Van Der Beken, (2012), has **quoted** the following critics on ethnic federalism when it has implemented in Federal Ethiopia:

“There are two criticisms on ethnic federalism. The first criticism on ethnic federalism implies that the introduction of ethnic federal structure does not result in the creation of stability in the state but rather leads to growing tensions, instability and ultimately to the disintegration of the state. The second criticism is that, it departs from a prior positive attitude towards federalism. Federalism can be a perfect mechanism in accommodation of ethnic diversity in the state if all ethnic regions are inhabited by one specific ethnic group: in other words there is a perfect overlap between ethnic group and territory. However, in practice it is impossible to achieve such an overlap. In each ethnic based region, there will be ethnic minorities, i.e. people who do not belong to the regional dominant group. These can be minorities that have their own region, or minorities that constitute minority everywhere.”⁶⁰

According to Siraw Megibaru (2015), due to the introduction of ethno-federalism and political manipulation of ethnic identity by local Cadres in FDRE Constitution, the relationship among the ethnic groups exposed to disputes and violence. For example, the Local Politician's involvement has been visible after the 2005 national elections in Gida-Kiramuworedain Wollega district, where a few thousand Amhara farmers were migrated by snatching their land and they were forced to take refuge elsewhere. In the same way, the Amhara ethnic group has been displaced

⁵⁹. Constitution of Federal Democratic Republic of Ethiopia

⁶⁰. Christopher Van Der Beken, (2012, P. 5). *Unity in Diversity: Federalism is a Mechanism to accommodate Ethnic diversity the case of Ethiopia.*

from Guraferda Woreda with the ethnic based self-administration due to the contradicting principles of FDRE Constitution.⁶¹

Similarly, the Oromo, Amhara, Tigray and other outsiders have been intimidated and displaced from Benshangul Gumuz and Gambela National Regional States as per the provision of self-determination recognized by the FDRE Constitution. This political action violates the constitutional right to freedom of movement and residence including the right to freedom from forced displacement and evictions mentioned in the EPRDF Constitution and civil code, criminal code, and immigration law of Federal Ethiopia. Such displacement of people throughout the country are caused by ethnic tension and agitated by local politicians aiming at fracturing which might threaten the political supremacy of TPLF. That is why it is claimed that the confrontation between the two dominant ethnic groups (Oromo and Amhara) is a deliberate action, highly political and often manipulated as part of the divide and rule tactics of the TPLF, representing only 6 % of the total Ethiopian population.⁶²

Some opposition parties such as EDP, UEDF, UDJ, AEUP & the like believed that the Constitution of FDRE contained a number of irrelevant provisions. As a result, these groups suggested that amendment of the Constitution is an important medication to cure the Constitution of Ethiopia and proposed provisions which have to be changed. Other parties like UEDF argued that the FDRE Constitution is a reflection of ideological program of the ruling party. However, the ruling party EPRDF has not hailed the proposals rather it claimed that most the opposition promises for amendment is undemocratic and aiming to destroy the constitutional order. Nevertheless, the FDRE Constitution being point of difference among the ruling party and opposition parties of Ethiopia. That is the opposition groups associated the FDRE Constitution as a ruling party document. Whereas the EPRDF has a belief that the Constitution is on the hand of

⁶¹ . Siraw Megibaru T. (2015. p.51), *Weaknesses of Ethnic Federalism in Ethiopia*

⁶² . Adimassu, Y.G. (2013) *“Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Critical Analysis of the Law and the Practice”*, Master’s thesis, Addis Ababa University

it or EPRDF is sole struggling organ for preserving Constitution of Federal Democratic Republic of Ethiopian.⁶³

As it is pointed out earlier under the problem statement of Amhara National Regional State of 2001 Constitution, the FDRE Constitution also had a rigid and complex mode of amendment. Especially the amendment of human rights chapter of the Constitution can only be amended when ever all other Regional Councils approved the proposal and then when the HPR and HoF approved the proposed amendment by each two-third majority vote as it is stated under Article 105(1). Whereas the remaining provisions can only be amended if at least six of the nine regions approved and then the joint session of the FDRE two Houses approves the proposal with in two-thirds majority vote (Article 105(2)).⁶⁴ So it implies that when a provision becomes a must to be amended due to the context of one Region, it may be impossible to be amended because of the interests of the other region or Regions.

CHAPTER THREE

3. The Need to Revise FDRE Constitution of 1995

The died then prime minister of Ethiopia Meles Zenawi designed the Ethiopian policies, visions and also the Constitution in the ethnic federalism based on his own observation of the East Asia Countries economies such as China, South Korea and Taiwan by taking something from each of the these countries with out contextualizing with the country. As a result it brings anti-government protests especially in Amhara and Oromia Regions by considering the system as a false consciousness.⁶⁵

As pointed out in the previous sections of this document the sub national Constitutions of Ethiopia including ANRS faced with diversified challenges and claims, it implies that the

⁶³ . Zelalem Eshetu, (UD, P.15-16), *The scope and limitation of amending power in Ethiopia. Thinking beyond literalism*

⁶⁴ . *Constitution of the 2001 Federal Democratic Republic of Ethiopia*

⁶⁵ . Jan Zahoric (2017, P.259-271), *reconsidering Ethiopia's ethnic politics in light of Addis Ababa master plan*

Federal Constitution is also the victim of the challenges as a whole and it compelled to bring political reforms. Since the Constitutional reviewing system of Ethiopia is non-Judicial model and instead it gives Constitutional power for the House of Federation /HoF/ and the Council of Constitutional Inquiry (CCI) at the Federal level, it lacks legal professionals' participation and it is challenging to implement its mandate on the ground.⁶⁶

As Dessalegn Tigabu (2014) noted, the FDRE Constitution has vested constitutional rights to the regional States of Ethiopia to formulate and implement plans and policies are severely diminished by the fact that regional governments are under the EPRDF or ruling party hegemony and compelled to follow the centrally designed policies and plans. This centralized party structure leads or describes for us that the party and State structures are the same in Ethiopia or there is a centralized division of State powers.⁶⁷ From this justification the constitutional powers given for the States to self administration is creating a puppet that can secure the central power.

Ashenafi also noted for us that the process of Federal Democratic Republic of Ethiopia/FDRE/ Constitution was dominated by powerful political parties and was not participatory. For better understanding it is better to see his quote as;

“During the adoption of FDRE Constitution informal lobbying and negotiation were part of the process of Constitutional Commission debate. Nonetheless, the Ethiopian Peoples Revolutionary Democratic Front /EPRDF/ or the present ruling party always dominated when an issue comes to a vote, as it had the largest delegation”⁶⁸

⁶⁶. Muluken Kassahun (2018), *the relationship between the Federal and Regional States' Constitutional review system in Ethiopia: The case of Oromia Regional State*. *Oromia Law Journal* (vol. 7, No. 1)

⁶⁷. Dessalegn Tigabu (2014). *Horizontal intergovernmental relations between Ethiopian federating units: The case of Amhara and Benshangul Gumuz Regions*

⁶⁸. M Ashenafi (2003), *Ethiopian process of democratization and development*

On the other hand Paul showed us that none of any opposition political parties and ethnic forces had participated in the constitutional making of FDRE. That is because all opposition parties that were representing Amhara and Oromo groups /counting 38 and 35% respectively/withdrew from the FDRE constitutional commission electoral competition. This implied that the 1995 FDRE Constitution was supported both politically and ethnically only under the hegemony of the TPLF or Tigrayan Minority.⁶⁹

According to Rosalind Dixon and A. Stone, a direct participation of the public in the constitutional making and amendment process is an indication of popular sovereignty in the Constitution and can be called a golden opportunity for the people to preserve and link with the Constitution of any country as well as for the legitimacy of the Constitutions.⁷⁰ But the FDRE Constitution lacks significantly such public participation.

However the FDRE Constitution is committed in the document to divide power between the regional and federal government levels, in reality the Federal government is acting to be the focal point of administration with a very weak regional state.⁷¹ The reason to become dependence is that inability of the regional states to raise enough revenue and hence depend on the Federal subsidies. This approach undermined the promised regional autonomy and strengthens centralism in the country.⁷²

⁶⁹. CN Paul (2000, P. 4-7), *ethnicity and the new constitutional orders of Ethiopia and Eritrea* in Y Ghai (ed) *Autonomy and ethnicity negotiating competing claims in multi-ethnic states*.

⁷⁰ . Rosalind Dixon & Adrienne Stone (2016), *constitutional amendment and political constitutionalism*

⁷¹ . Tsegaye R (2009), *subnational Constitutions in Ethiopia: Towards entrenching constitutionalism at state level*.

⁷². L Aalen (2002), *ethnic federalism in a dominant party system: The Ethiopian experience 1991-2000*

The Ethiopian election system is also another series constitutional challenge in the country. That is why BezaDessalegn (2018) under his article mentioned that “countries that have ethnically diversified societies like Ethiopia strongly demands equitable ethniccommunities representation to manage the the diversified interests. And there is a strong desire to move away from the Ethiopian election system called First Past the Post /FPTP/.⁷³

There are also multidirectional territorial claims in Ethiopia some are,

- Amhara people & regional state claimed ownership of the Wolqait and Raya territories which are currently administered by Tigray Region after it had taken in 1992 without any discussion.
- Somali and Oromo have also their own claims of land from each other
- The status and governance of Addis Ababa city and “special interest clause” reserved to Oromia are difficult constitutional matters and even the land ownership of rural and urban land cited in article 40.
- Amhara and BenishangulGumuz Regions boundry claims and etc. Can be mentioned.

After 2015 Ethiopian elections, anti-government and constitutional protests erupted widely in the Oromo and AmharaRegions and somewhere in other Regions. The causes of the protests were mainly Addis Ababa city master plan management problem, in-securing the Amhara Region and citizens' in general and due to domination /monopolization/ of political institutions of several Regions by single ethnic groups on whose behalf the region has been established. As a result, EPRDF declared State of Emergencies (SOE) from October 2016 to August 2017 and tried to make internal party reform called "deep renewal" (ጥልቅተሃደሶ). But such measures couldn'tprevents the second outbreak of protests in 2018 which instituted another SOE. As a result the protests exposed the EPRDF party to be cracked (divided) apart.⁷⁴

⁷³.BezaDessalegn (2018, P.28), challenges of Ethnic representation in Ethiopia and the need for reform

⁷⁴ . *Christophe Van Der Beken (2018), the challenge of reform within Ethiopia's Constitutional-order. Rift valley institute briefing paper*

As it was pointed out earlier the FDRE Constitution has also vague provisions on autonomy and division of powers between Regional States and Federal government. Here we can mention Articles 51(2) and 52(2c) which are stipulating as " the federal government shall formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters in a potentially wide range of areas " and " the regional states can also 'formulate and execute economic, social and development policies, strategies and plans" respectively. But the scope of which is not clearly determined. Not only these but also there is other similarly vague provision related to the administration of land and other natural resources which initiate grievances that have driven protests over the past three years.⁷⁵ Since the interaction between the Federal and State government is unavoidable in the manner of shared powers in Federal systems, there has to be precisely delimited power of Federal and State governments. Otherwise the Federal government may most probably enforce to seize the opportunity to intervene in the State or Regional affairs. This reality is what FDRE has faced with and need to be resolved.⁷⁶ As MulukenKassahun (2018), stated below the FDRE Constitution permits a symbolic power for States for the sake of political consumption as;

*The FDRE Constitution recognizes the supremacy of Federal Constitution under Art. 9 and Art. 50 (5) require State Councils to adopt and amend State Constitution consistent with the FDRE Constitution. This means if states including ANRS adopt laws inconsistent or recognize rights below FDRE Constitution their effect will be null and void.*⁷⁷

⁷⁵ . *Constitutions of Federal Democratic Republic of Ethiopia*

⁷⁶ .BekaluMulu (2015): *The move towards developmental State in FDRE: The role of Intergovernmental Relation (IGR) for its implementation preserving the autonomy of Regional States.*

⁷⁷ . MulukenKassahun (2018), *the relationship between the Federal and Regional States' Constitutional review system in Ethiopia: The case of Oromia Regional State. Oromia Law Journal (vol. 7, No. 1)*

So clearer division of powers between the Central Government and the Regional Government is necessary and mandatory in any Federations. But the Ethiopian Constitution has vague clauses on the matters of distribution of powers between the Federal government and the Regions as a result requires a serious revision of the Constitutional interpretation and review mechanisms as a whole.⁷⁸

On the other hand the Ethiopian constitution has strong and repeated critics in some provisions. For example in FDRE constitution article 39 is a unique provision from any other federations' intermis of self determination. More over it is reapitdely criticized by most Ethiopian elites, Diasporas and citizens who think that this secession clause was deliberately cited as a tactic by TPLF /EPRDF for divide.⁷⁹ Generally the Constitution of Ethiopia has been reflecting the interests of TPLF during designing and ratification process; as a result it lacks significantly the public legitimacy.

From the very beginning the Ethiopian /FDRE/ Constitution is too rigid to revise. Especially the bureaucratic procedure or mode of amendment is too complex. To amend chapter three which is about fundamental rights and freedoms (human rights), can be introduced only when all state legislatures approve the proposed amendment and when HPR and HOF each voting on its own approve the proposal with in two-third vote (Article105 (1)). While the rest provisions amendment has to be amended if six of the nine National Regional States approved the proposal & when the HPR and HOF injoint session approves it by two-third vote (Article 105(2)).⁸⁰In the FDRE Constitution Article 54(3) stipulates that from maximum number of 550 seats in the HPR, a minimum of 20 seats are reserved for minority groups. So this provision guaranteed a large number representation for large ethnic groups in the HPR than the small number ethnic groups

⁷⁸.*Christophe Van Der Beken (2018). The challenge of reform within Ethiopia's constitutional order*

⁷⁹. Abate NikodimosAlemayehu (2004, P.16), ethnic federalism in Ethiopia:challenges and opportunities

⁸⁰. *Constitutions of Federal Democratic Republic of Ethiopia*

resulting unfair representation of each entities in the legislative organ. The 2000 Ethiopian election is the best example here.⁸¹

Dessalegn Tigabu (2014) noted that, whenever any political party with different ideological orientation takes a mandate to control one or more of the states or the central government, such party may not be willing to be part of the predetermined shared rules or political process of the Central Government. That is why the MOFA and HOF in Ethiopia lacks effective political leadership to manage and coordinate all States fairly in Ethiopia.⁸²

In practicing the Constitution of FDRE, undemocratic and centralized or top down decision making becomes the very nature of Government structure. According to Zemelak Ayitenew (2014), the Ethiopian Peoples Revolutionary Democratic Front /EPRDF/ or the ruling party controlled all levels of Government institutions from the Centre up to local level by enforcing or commanding Regions and Local Governments from the centre. The political system characterized a highly centralized decision making system based on the party principle called democratic centralism. The duty of government institutions at each level is mainly implementing the Federal politics or Federal order.⁸³ The formation of MOFA is another intention for Federal domination on Regional and lower levels in Federal Democratic Republic of Ethiopia. That is why some Scholars identified that the Ethiopian constitution is not public's document rather it is a party document.

Though HOF has a constitutional powers such as determining on matters of revenue sources and subsidies among Federal and Regional States, interpreting the Constitution, resolving disputes that may arise among regional States, ordering necessary Federal interventions in regional

⁸¹ . *Christophe Van Der Beken (2007), Ethiopian constitutional protection of ethnic Minorities at the regional level*

⁸² . *Dessalegn Tigabu (2014). Horizontal intergovernmental relations between Ethiopian federating units: The case of Amhara and Benshangul Gumuz Regions*

⁸³ . *Zemelak Ayitenew (2014, P.91), The politics of Sub National constitutions and Local Government of Ethiopia.*

affairs, promoting equality of people and consolidating their unity depending on their mutual consent. But practically the HOF only played to some of its roles like; solving the Siltie peoples' demand for self administration and exercising its constitutional power by determining revenue sharing between Federal and States. Whereas giants of its functions like resolving disputes among States and regional federal are not yet exercised⁸⁴. From this and other known events we can say that the HOF is not a proper organization or legislature for its mandates as a result today we are observing tremendous and different chaotic problems in Ethiopia.

Because of the mentioned and other matters there are some political parties that have promised to alter numbers of provisions under EPRDF's Constitution. For example the Coalition for Unity and Democracy (CUD) party marked to amend provisions like Article 39, 40 and 46 based on their assuming power.⁸⁵ The Ethiopian Democratic Party (EDP) also proposed changes to some of the controversial provisions of EPRDF especially on the preamble.⁸⁶

However these and other idea of constitutional amendment has been sort of "political taboo" and EPRDF labeled all such ideas as anti-democratic concerns and it is to destroy the constitution of Ethiopia.⁸⁷ All these showed us that the EPRDF Constitution of 1995 is serving in the absence of consensus with the public and also significantly with political elites on the fundamental issues.⁸⁸

Generally the Ethiopian ethnic federalism already has failed. As Zekarias Beshah argued by citing Samuel Bonda and Beresa Jebena, ethnic federalism in the form of ethno-lingual criteria

⁸⁴. Dessalegn Tigabu (2014 P.70-71). *Horizontal intergovernmental relations between Ethiopian federating units: The case of Amhara and Benshangul Gumuz Regions*

⁸⁵. The CUD's Manifesto at 54-56, available at <https://zelalemkibret.files.wordpress.com/2011/11>

⁸⁶. The EDP 2003. The analysis of the political program of EDP's political lines and strategies vol. 1, 2003

⁸⁷. Id. And see also Abebe supra note 83, at 74 & 96

⁸⁸. Zelalem Eshetu, (2019 p. 38), the politics of constitutional amendment in Ethiopia

mostly has a probability to bring negative impacts and impede the success of developmental state in Ethiopia.⁸⁹ Practically it is not only a guess but really implemented on the ground in Ethiopia federal arrangement.

On the other hand KalkidanKassaye pointed out that the reforming of Ethiopia through the ethno-lingual federalism has become to seam a unitary federation rather than its devolutionary nature.⁹⁰ Here Jon Abbink also argued that, despite the nominal decentralization of power, the federal arrangement of FDRE has become more centralized than any previous regimes or systems in the country and has developed a strong top-down rule that neglects local initiatives autonomy. The 2001 TPLF party split and the 2005 election are best mirrors of the centralized authoritarian.⁹¹

Today in Ethiopia there is no any ethnic group seems to have smooth relationship and peaceful neighboring among each group and states. Almost all peripheral and central regions remain insecure and experienced with inter and intra-ethnic violence conflicts. The disputes are emerged because of wrong way of federalism or identity based federalism. For example all regional states rather than Tigray like Somali, Amhara, Oromo, gambela, BG, SNNP, Afar and harari regions were the victims by inter and intra-regional conflicts. To list some, conflicts between Amhara and Oromo in 1992 and 1993 and even right now, Afar & Issa since 2000, Oromo & Somali in 2005, etc are results of TPLF/EPRDF's ethnic based federal arrangements. TasewTafese, by coating AlemHabtu (2003:2) concluded that, opponents of ethnic federalism fear for that it invites ethnic conflict as well as risks of state disintegration and lastly identity based federalism

⁸⁹. Zekarias Beshah (UD), developmental state and ethnic federalism in Ethiopia.

⁹⁰. KalkidanKassaye (2010), non-federal features of the Ethiopian ethnic-based federal experiment

⁹¹. Jon Abbink (2011), ethnic-based federalism and ethnicity in Ethiopia

can be taken as a time bomb threat for civil war. Most importantly it is assumed as a short cut way to bring secession.⁹²

3.1 International Experiences on Constitutional Amendment.

Different federal countries follow different approaches to alter /amend/ their Constitution at the centre and the constituent units. The differences in amendment of the Constitution in different federations may be reflected by the procedures they are designed and the magnitude of the constituents' participation for all amendment processes. Some federations allow direct participation to be consulted about the reform through referenda and may to initiate it. While most federal countries allow the direct participation on the reform by the elected representatives. And some federations required either referenda or parliamentary vote aiming to protect the interests of minority groups. For example, Switzerland and Australia requires double majority for the passage of constitutional referenda. On the other hand, in some federations constituent units have the right to initiate Constitutional amendment. For example, Brazilian Constitution amendment can be initiated by more than half of States legislative. Whereas Spain's autonomous communities' legislature has the Constitutional power to initiate amendment. And popular initiative of Constitutional amendment is permitted in Switzerland after collecting 100,000 people signature.⁹³ Various factors may compel us to have Constitutional amendment and needs to amend through time. Mostly the need to amend Constitutions may arise from the public interest when unworkable conditions occurred by passage of time and the contexts. According to Rhys M. Blavier, the demand for constitutional amendment may arise due to individual interests and social regulations as stated below:

⁹² . TasewTafese (UD, p.10), ethnic based federalism in Ethiopia and its impact on national integration

⁹³.ZemeneBizualem (2010, P.23-24), *State constitutional amendment patterns in Ethiopia; The case of BenshangulGumuz, Gambella, Harari and SNNP constitutions*

*"We need to amend a Constitution to ban gay marriage because people getting married to show their love of each other is an abomination... and because the idea of two guys or two chicks making out each other is just gross... and cannot stop thinking about what it would be like to try it. We need to amend the Constitution to ban the burning of American flag except the bay scouts... we need to amend the Constitution to ban abortion because the wealthy can always find doctors to take care of their wives, mistresses and daughters."*⁹⁴

Constitutions can be altered by various approaches as a predetermined system such as amendment, replacement, judicial interpretation and legislative organs.⁹⁵ However, significant controversy remains over both formal procedures for constitutional amendment and the key determinants of the comparative difficulty of such processes in the world. Formal provision for constitutional amendment is now become a common feature of most National Constitutions as well as State Constitutions.⁹⁶

When we see the amendment history of some countries, the frequency varies depending with the feature of the constitutional amendment procedure. For example; Brazil made about 62 constitutional reform between 1988 up to 2007 meaning on average 3 times each year.⁹⁷ On the other hand Lorenz (2005) acknowledged that 32 of the 39 Latin American established democracies amended their Constitution between 1993 up to 2002 which implies on average rate

⁹⁴ .Rhys M. Blavier (2010), *We need to amend a constitution or America is doomed last free Voice*, [www. World Press.com](http://www.WorldPress.com)

⁹⁵ .Lutz, Donald S. (1994), *toward a theoretical constitutional amendment*. *American Science review*

⁹⁶ Rosalind Dixon (2011), *constitutional amendment rules*.

⁹⁷ Detlef Nolte (2008), *constitutional change in Latin America: Power politics or symbolic politics*

it amounted to 5.8 reforms in ten years.⁹⁸ There have been three sets of alteration to the 1999 Constitution of the Federal Republic of Nigeria in 2010, 2011 and 2015. The South African Constitution which was ratified after the Constitution of FDRE has been reviewed more than 17 times. While the world's first modern, written and known rigid Constitution of USA passed through 27 formal amendments during about the 200 years.⁹⁹ Of which amendments the 10 amendments were occurred in the same year 1791 and the rest 17 amendments from 1798 up to 1992.¹⁰⁰

But when we see the Ethiopia's case in constitutional reform starting from the beginning of modern or codified Constitution /1931- 2020/ which means nearly during 90 years, in the regime of Emperor there was only one revision in 1955, while in the Derge regime in 1987 and in the present ruling government which has been ruled for above 29 years has made only simple alterations on two constitutional provisions in 2001. So totally Ethiopia has been made only three constitutional amendments which means one in each regime throughout the 90 years. ¹⁰¹¹⁰²

3.2 Views on constitutional legitimacy

It is important to have some insights about constitutional legitimacy. On the matter different writers give different interpretations in which all may share that it is a constitution nature that is accepted by owners or the most peoples for which the Constitutions are designed for. Teguada Alebachew (2011) noted that; constitutional legitimacy can be happened when the basic and common situations are assured starting from designing up to practicing of the Constitution.

⁹⁸ Lorenz (2005: 339), *How to measure constitutional rigidity: Journal of theoretical politics*.

⁹⁹ Markus Bockenforde (2017), *Constitutional amendment procedures: International Institute for Development and Electoral Assistance constitution building primer*.

¹⁰¹. *The 1955 Ethiopian Constitution*

¹⁰². *The 1987 Ethiopian Constitution*

From these situations; establishing interim arrangements, popularizing the process of constitutional making or public participation, democratic representation and having an independent justice system or court to oversee the constitutional process can be important ones.¹⁰³

TsegayeRegassa also argued that constitutional legitimacy is the legal, moral, and social tolerability of the constitutional document by all the public who are ruled by it.¹⁰⁴ Richard H. also stated as, Constitutions can enjoy legitimacy when the people for which it is designed believed on it as it is appropriate, justified, or deserving their support for reasons beyond fear of sanctions or having more on it.¹⁰⁵

The other scholar Bilgin argued on it that constitutional legitimacy demands genuine social acceptance and the public has to have a feeling on sense of ownership and respect worthiness.¹⁰⁶ In general constitutional legitimacy can commonly be evaluated by the magnitude of its participatoryness, openness, democratic, socially inclusiveness, transparentness, peacefulness, etc, and when the participants for adoption and constitutional making are elected democratically and accepted by the public.¹⁰⁷

¹⁰³. TeguadaAlebachew (2011 p. 28-38), *when constitutions lack legitimacy in the making: The case of Ethiopia*

¹⁰⁴. TsegayeRegassa (UD), *issue of federalism in Ethiopia: towards an inventory in Ethiopia constitutional lawseries, vol. 2, AAU printing press*

¹⁰⁵. Richard H. Fallon Jr, (2005), *legitimacy and the Constitution, Harvard law review vol. 118 No.6*

¹⁰⁶. TsegayeRegassa (2010), *the making and legitimacy of the Ethiopian Constitution; towards bridging the gap between constitutional design and constitutional practice. Citing Bilgin M.*

¹⁰⁷. Kritz Neil (2003), *constitutional making process*

CHAPTER FOUR

4. The General Framework of Amhara Region Revised Constitution

4.1 Introduction.

It is obvious that Federalism is a system that enables the constituent units to have explicitness about their Regions since it creates a better opportunity to have closest institutional arrangement than other Governmental structures for the fulfillment of economic, social and political desire and self-determination of citizens.¹⁰⁸ In this regard after the Federal Democratic Republic of Ethiopia /FDRE/ has launched, the nine Regional States have adopted their own Constitution in 1995 and then almost all of them revised it in 2001 and the following years. Among these nine Regional states the Amhara National Regional State is the Focus of the researcher.

To fulfill the research five fundamental questions have been raised. These are; how the peoples & professionals of Amhara National Regional State participate in the drafting and adopting process of the Constitution and know the Constitution by which they have been governed? Why the people of Amhara claiming on the 2001 Constitution of Amhara National Regional State? How is the need of Amhara people to revise the 2001 Constitution? What are the major challenges that the ANRS people have been facing in the practice of 2001 Constitution and finally what is the possible solution to resolve the problem of ANRS 2001 Constitution?

4.2 Framework of Amhara Region Revised Constitution

In the Federal sense the Constitution of Amhara National Regional State gives a better individual right than the Federal one and other Regions Constitutions as a text which is indicated under the preamble as it inclusively states “we the peoples of Amhara National Regional State.” Whereas the FDRE and other regional states’ constitutions preamble stated as “we the Nations Nationalities and Peoples of Ethiopia/ Region X/”. Foreexample the Constitution of BG Region in its preamble stated as ‘we the nationalities of Berta, Gumuz, Shinasha, Mao Como and other

¹⁰⁸. R. Watt, (2008), *comparing Federal systems*, 3rd edition, pp.6-7

peoples residing in the Region”.¹⁰⁹ It implies that other ethnic groups that are living in the Region other than the Berta, Gumuz, Sinasha and Mao Como are not recognized as explicitly as a regional indigenous resident. As a result, the other Regions other than Amhara National Regional State recognize only their indigenous peoples in their Constitutions and violating the rights of immigrant residents in economic, social and political affairs especially the Amhara people are victim of the challenge. The other positive side of ANRS Constitution is that it incorporated additional chapter pertaining to the organization, powers and duties of Nationality administrations or Ethnic based local governments such as Himra, Awi and Oromo nationalities in the Region that can't be found in other Regional States of Ethiopia.

However, the Constitution of ANRS has diversified defects which persisting either during designing and adoption or in practicing it. Because the people of Amhara didn't participate directly during designing and ratification of the ANRS Constitution rather the Constitution was ratified by the political representatives of the people. As it is stated under the preamble of ANRS revised Constitution, “the Constitution of the ANRS /as amended beforehand/ which had, the following of the FDRE been widely deliberated upon and adopted by the people representatives of the Regional State for the very first time on the 22th day of the June 1995 and has to this day, been in effect after having thoroughly examined its specific provisions”. Hence it is not questionable that the Constitution is ratified only by the participation of representatives that were appointed politically.

When we see the 1995 and the revised Constitution drafting and adoption of Amhara National Regional State, there was no pre-constitutional and post-constitutional negotiation and discussion with the people of the region. As it is pointed out earlier the Constitution of ANRS is mere copy of the FDRE Constitution, it is important to see the people's participation on the designing and ratification of the FDRE Constitution. After drafting of the FDRE Constitution by a drafting commission, a document was prepared for the public discussion by the title “a text prepared for public discussion about the substance of Constitution/ስለህገ መንግስት መሰረተ-ሃሳቦች ለህዝብ ጠይቆ ይታየው የቀረበ ጽሑፍ/ in 1994.

¹⁰⁹ . Preamble of BGNRS Constitution 2002

But the practical discussion on this document was not relevant because of significant reasons such as; the panelists were not experts rather they were any Amhara National Democratic Movement /ANDM/ members whatever they are, the participants were not the whole community but few individual that were found in churches for praying by default, after informal discussion there was no any consolidated report about the debates, the content of the document was general ideas about Constitution and constitutionalism but not about the Constitution's specific provisions. To mention some major titles of the document; the development of democratic system, the emerging of democratic Constitution and development, human rights and democracy, formation of State and power sharing and the like. /ለወይይት ቀረበ የተባለው የፌዴራል ህገ መንግስት ርእሶች፣ የዲሞክራሲ ስርአት እድገት፣ የዲሞክራሲአዊ ህገ መንግስት አጀማሪና እድገት፣ ሰብአዊ መብቶችና ዲሞክራሲ፣ የመንግስት አወቃቀርና የስልጣን ክፍፍል፣ የተለያዩ የመንግስት ስርአቶች፣ ወዘተ የሚሉ ነበር/፡፡

¹¹⁰Under these sections we can't find any specific debatable clause that are found in the present Constitution of FDRE and ANRS.

Even if the Constitution of ANRS is a mere copy of the Federal one, it was drafted by an organization which was coordinated by the then Prime Minister MelesZenawi called “Regional Affairs Office (*YekililGudayZerf*)” after a while changed in to Ministry of Federal Affairs (MOFA). Ofcourse this organization was textuallyorganized for securing the willingness of the regional governments to be part of the political process at the center and to assist some of the regions in terms of capacity building and good governance. ¹¹¹The Prime Minister has given for this organ a mandate to draft a model constitution for all Regional states. Mr. BekeleGebremedihn and Mr. BirhanuJemberie were members of the Federal Regional affairs sector. After drafting the model constitutional text there was a discussion among the federal organ and by Regional Lawyers nominated by the party called Amhara National Democratic Movement /ANDM/ such as Mr. MerhatsidiqMekonnen and then finally ratified by the ANRS

¹¹⁰. A document drafted by FDRE constitutional commission for public discussion which is foud in the hand of Mr. ShegayeMengistie East Gojam Zone presecutor and was a panelist of the FDRE Constitution in 1994

¹¹¹ .*DessalegnTigabu (2014). Horizontal intergovernmental relations between Ethiopian federating units: The case of Amhara and BenshangulGumuz Regions*

regional legislative Council. At that time the members of the Regional Council weren't as such literate people to understand the issue and their nomination was not accepted formally by the people rather by the Ruling Party.¹¹² From this process we can understand that the ANRS Constitution designing and ratification was centrally managed.

During the preparation of ANRS Constitution, Lawyers, Prosecutors, Civil Societies and Non Governmental Organizations /NGOs/ were not participated generally except the politically nominated few Lawyers. The Constitutional designing procedure is not allowing such participations however the participation is basically meaningless since it is mainly copy and paste of the Federal Constitution. Not only this but also there was no a well identified procedure and public consent regarding the process of drafting and adoption of ANRS Constitution. But Getachew A. (2012) and other Scholars clearly justified that Constitutional making has to include known standards especially, effective and enough participation of stake holders like; Civic Societies, NGOs, Religious Leaders, Women, Minority Groups and even marginalized groups.

According to the interviewees of prosecutors, the people of Amhara National Regional State significantly know nothing about their Constitution content and its implementation. Whereas most of the people of Amhara have better knowhow about the FDRE Constitution than the Constitution of their own. Not only the people but also the Lawyers of the Region haven't experience to mention the provisions of ANRS Constitution rather they consider the FDRE Constitution and lately proclamations. The ANRS Constitution can be only mentioned during the designing and ratification of different proclamations by the Regional Council. Even we can say there are no more Lawyers having the document of ANRS Constitution right now. Constitutional participation has to be taken as democratic right of citizens namely called as constitutional democracy which requires a comprehensive programme of constitutional education by focusing the poor as well as marginalized groups. Because these groups are mostly the least informed and

¹¹²*Interview with Mr. Mrhatsid Mekonnen- chief legal adviser to the head of government with the rank of bureau head and was a member of FDRE Constitution drafting committee.*

demands an effective programme of constitutional awareness to enable them to enjoy the benefits of constitutionalism.¹¹³

The component of this constitutional literacy has to provide an easy access to copies of the Constitution in easily understandable language, conferences, seminars and dialogues on the Constitution and mainstreaming Constitutional education in the curriculums of schools and tertiary institutions. Here Civic educations through massmedia are probably better means to reach at rural and often illiterate populations. But the people of Amhara didn't get an opportunity to know the Constitution of ANRS in the above manner. The flow of the Constitution is also top down without considering the interest and consent of the local people. Because of this the Constitution of ANRS lacks legitimacy. This is because of un-participatory nature of it and its inability to safeguard the people that are due to un-stability of the Region, unfair administration of the people of the Region, etc.

However, the serious complaints raised by the people of the region aren't on ANRSC rather it is on the FDRE Constitution of 1995. The complainers raise questions as "the FDRE Constitution doesn't represent us and it is not our Constitution". Others raised questions on certain provisions of FDRE Constitution. So practically the instability and lack of peace in the Region emanates from the Constitutions. The reason that the people of Amhara are raising questions on the Constitution is that; since it is not prepared based on the context of the Region and people's interest, its inability to secure the right and avail of the Regions people and it is prepared only for political consumption.

The other reason is that both the Amhara region and Federal Constitutions didn't have any contribution for the unity of Ethiopia rather it has a contribution to split the people of Ethiopia and its administrative territory. The other complain is that the Constitution of ANRS can't answer the questions of the Regional people by its own procedure that is why we said it is prepared only for political consumption. In fact, the content of the ANRS Constitution is not as such bad; the basic problem is practicing or implementation and its dependency on the FDRE Constitution. When we see the constitutionalism of ANRS there are also drawbacks. The

¹¹³.Interview with the ANRS attorney general prosecutors and lawyers

Constitution of ANRS is not fly kite because stable Constitutional system is not created in the Region. The problem is not only on the 2001 ANRS Constitution but also there is a problem to reconsider and remind after launching any proclamation in the Region even by the Lawyers. The Regional Executives aren't working based on the Constitution rather it is based on the habit of the past or business as usual.

On the other hand, citizens' human and democratic rights of Amhara Region are not secured inside and outside the Region. There is also a problem of accountability and explicitness of government work or bureaucratic procedure. There is also misinterpreting the constitutional provision in ANRS. For example, now a day the Regional Government is widening the powers of Zonal administration out of the Constitution as a result the accountability of Woreda administration for the Region becomes weak as compare to the previous one.

The Lawyers identified basic challenges during practicing the revised Constitution of ANRS such as; absence of exhaustive participation of responsible stakeholders during drafting and adoption of the ANRS Constitution in particular and FDRE Constitution in general, lack of awareness about the Constitution by Politicians, bureaucratic structures and majority of the public, absence of legal responsible organ that can attend and create awareness about the Constitution, wrong assumption of the ruling party by having a belief that the only agent and guardian of the right of the people is the ruling party themselves but unable to secure the rights of citizens' as stated on the Constitutional provisions, incompatibility of the Constitution with the interest of the citizens that are emerged after the adoption of the Constitution, development of unconstitutional culture by the ruling party and mixing the legislature and executive mandates.

The party leaders are participating in the Cabinet decision making assembly/, disarray in the Region, intervention of Federal government /Example. The inquiry of Federal and Region was counteractive on the case of Qimant/, unclear limit of power between Federal and Region, missing of human right etc. These challenges are basically occurred during practicing the Constitution. Even the law practitioners and executives don't respect the Constitution. Political leaders accustomed to use a governance problem as an agenda in every public discussion than the constitutional issues. Or ANRS government habited using ordinary laws and proclamations for the daytoday decision making instead of using Regional Constitution.

However, the role of Justice Professional's training and legal research institute of the Region is creating formal awareness and research to support the Justice system in the Region, the only thing that it did is giving in service training & pre-service law for regular graduates and training about FDRE Constitution. But there is no any awareness creation and research conducted about Amhara National Regional State Constitution by this organ.¹¹⁴ When we consider the creation of independent judiciary system there is an improvement as compared to the previous times. For example, around the 1997s the Cabinet members, Policemen and Judges were working in a mixed way or as one organization.

In fact, as we heard, our Region's problem is better than other Regions by respecting independence judiciary system. However, there are also sounding problems today. In different dimensions' inequitable justice is occurring. For example, political leaders intervene by using training as a pretext, discussions are not given based on the law and the testimony, by using the so called discipline committee as a pretext there is an intervention in the judicial system. There were evidences that by ordering the presidents of the court by higher officials, judges and prosecutors have detained. Here the case of Mr. ShegayeMengistie who was head of East Gojam Zone Justice office was the best example.

The other example here is that in 2017 there was a trial to reject a judge by the case of Colonel DemekeZewudu by Federal Government intervention. On the other hand, there is a problem of intervention in the authority of Judges by proclaiming a new provision as a strategy. The intervention is not on dry cases but mostly on political and Government issues. From the above justifications we can conclude that the main problem can be categorized as conceptual and practicing problems.

The ANRS Council is the highest organ to oversight the implementation and coordination of the Constitution of Amhara region. However, the performance of the Council is so weak. This

¹¹⁴ . *BamlakuAlebe (2018), empirical assessment of regional state constitutions of Federal*

Ethiopia. A case study of Amhara National Regional State.

authorized organ doesn't have any sounding measure or have a bagatelle measure or action whatever the executive organs disrupt the law. Because the members of the council have afraid about the power of them to be elected for the next election since it is on the hand of the Party members or executives. Because the candidates of the election are nominated by the higher Party leaders and becomes a habit for the past five term of election. Before 2015 there was a debate about which organization can have the responsibility to interpret a Regional Constitution of Amhara Region. Then after 2015 a proclamation was issued to establish the Council of Constitutional Inquiry and determine the procedure by proclamation number 225/2017. However, a proclamation was launched; it stayed for about two years to act on its functions. Even if we said it started its mandate in 2017, it doesn't mean that the Constitution has developed by the Council of Constitutional Inquiry /CCI/ up to now. ¹¹⁵

The CCI has constituted 11 members these are; the President and vice President of the Regional Supreme Court serving as chair and vice chairpersons of the Commission respectively, 6 renown legal professionals that are witnessed with their professions efficiency & code of conduct and nominated by head of State and approved by the regional Council as well as 3 from Regional Council representatives by the submission of the Speaker of the Council of Amhara Region. However, the Council is organized and started its function; it isn't active enough to act on developing and interpreting the Constitution. From the beginning up to now the commission has released only one documented report. As mentioned in the report three activities are performed. These are;

- Preparing different working procedures, formalities and organizational structure,
- Giving decisions on the emerged cases and
- Other implemented activities with CCI.

For example, when we see the report detail on the second activity, about 14 cases are submitted to the commission. From these cases 11 cases are identified as they don't need constitutional interpretation, 2 cases need constitutional interpretation and forwarded to the Constitutional Interpretation Commission and 1 case is still not given a decision & it is suspended on the hand of CCI up to now. Organizing CCI and Constitutional Interpretation Commission may be taken

¹¹⁵.Interview with Constitutional inquiry member

as a better opportunity for interpretation and developing the Constitution of ANRS than the previous one. Because the council and the Commission comprise legal professionals. The other improvement is that the formation of Prosecutors and judges associations and beginning of Universities Lawyers in consulting and conducting researches on legal issues of the Amhararegion. These are positive trials to give responsibilities for Regional Courts and Lawyers to participate by Constitutional issues of the region, however there is a need to bring transformation on giving appropriate responsibilities on Constitutional interpretation and development. Even though there is no formal need assessment on the demand of constitutional revision, intellectuals and individuals that have an opportunity for our laws are complaining and raising questions on the Constitution. As it is mentioned earlier most people of Amhara are complaining on the Federal Constitution than the Regional one. The people's interest for Constitutional revision was reflected in different dimensions during the time of political Change since 2018. During the time legal professionals also gave their suggestion to have Constitutional revision.

But in the Amhara National Regional State there is no any organized and formal request for Constitutional revision. Finally, the major challenges that the people of Amhara Region have been facing in the practices of 2001 revised Constitution are diversified. By the way there is no as such meaningful benefit for the people of Amhara due to the 2001 Constitutional revision. Because there was no community participation during the revision and the revised provisions were not selected based on the peoples' interest and consent rather they were the consent of the government organ. Anyways the major challenges on the Constitution of ANRS are; unable to answer the lost territories, the question on revenue sharing, less awareness of the community on the Constitution, violation of human and democratic rights in and out of the Amhara Region, governance problems, economical problems, problem of securing peace and security etc.

Chapter Five

5. The Need to Revise Amhara National Regional State Constitution of 2001

The Amhara National Regional State is one of the constituent units of Ethiopia. And it is located in the north western central part of federal the country. The State had common borders with Tigray region in the north, Afar Region in the east, Benishangul gumuz in the south west, Oromia Region in the south and with the Republic of North Sudan in the west.

As I have mentioned earlier the Amhara National Regional State has adopted its own Constitution in 1995. However the 1995 Constitution of Amhara National Regional State didn't designed by the possessor of the Region or the people of Amhara rather it was drafted by the Federal department called Regional Affairs Office /*yekililgudayochzerf*/ which was nominated by the then Prime Minister MelesZenawi. The reason was not to miss the party centralism and for the stifle purpose. /Mr. Merhatsidk's emphasis/. Therefore the Constitution strongly lacks constitutional legitimacy.¹¹⁶

After drafting the 1995 Constitution of Amhara there was no any formal awareness creation as ordinary laws. Even today the situation is not improved still now. The awareness problem is not only certain at the ordinary people but also the law practitioners are not accustomed to use the ASNRS Constitution rather they are using the FDRE Constitution and other ordinary Proclamations of Amhara Region.¹¹⁷

On the other hand even if the ANRS Constitution has been revised in 2001 among the four core Regions by obtaining 120 articles and 12 chapters. However the revision was not initiated by the public consent rather it was because of some defects on the Government bureaucracy. This revised Constitution incorporated additional chapter that can pertain to the organization, powers and duties of the Nationality Administrations, i.e. ethnic-based local governments in the region that is not be found in the other regional Constitutions. This chapter may be taken as a positive measure to the contrary the other Regions in the country.¹¹⁸ But the revised provisions in Amhara region that has revised and adopted in 2001 were not the only to be revised provisions and not initiated by the public consent or interest. For example the quorum system is the one provision that was incorporated which is not the issue of the public rather it is the Government's agenda.

¹¹⁶. *Mr Merhatsidk Mekonnen, chief legal adviser to the head government /with the rank of bureau head/, and he was a member of FDRE constitution drafting committee.*

¹¹⁷. *From the response of interviewee or law practitioners*

¹¹⁸. *Chirstophe Van Der Beken (2006), Sub National constitutional autonomy in Ethiopia*

The Constitution comprised un-necessary clauses rather than the other Regions. For example the ANRS Constitution under the preamble identified objectives relating to addressing historical wrongs as "*atrocious national oppression*". Although this mark is a common trend among state Constitutions in terms of reference to addressing historical wrongs, but the ANRS Constitution is unique in that it lacks any reference to the Amhara people or the people of Amhara region as victims of such oppression. This is deliberately indicated so as to indicate that by default the Amhara as a Region is identified as an oppressive Nation in the form of hand in glove resulting tremendous disputes in the Region.¹¹⁹ This event is created purposefully by the dominant political leaders called TPLF.

Besides to this the constitutional revision of ANRS was not participatory or stakeholders from the Regional State communities did not participate during the drafting and adoption of the revised Constitution as a result the revised provisions didn't depend on the needs and consent of the public as a result it demands a reform.

In regional Constitutions of Ethiopia in general and Amhara National Regional State in particular, there is no constitutionalism or no institutional check and balance system among the executive and the legislative organ. This is because of the fusion of the executive and legislative bodies. Even though this constitutional defect is there in the Constitution of ANRS nothing was done during the 2001 constitutional revision of the Region.

The other critical issue in the Constitution of ANRS is that the present of irrelevant duplication of many provisions that have taken from the FDRE Constitution without adding any values for the Region or the people of Amhara. Not only this but also the Constitution of FDRE in general and Constitution of ANRS in particular had also the problem of redundancy and missing necessary provisions. For example it missed important traditional values that can support the economic, social and political affairs of the public such as traditional leaders, the Gada system and other local supportive values.¹²⁰

¹¹⁹. *The 2001 Constitution of FDRE*

¹²⁰. *The FDRE Constitution of 2001*

As it is pointed out earlier ANRS has failed to assure freedom of movement and the right to establish residence for the citizens which were designed for. That is why today the citizens of Amhara region that are living in different regions were and are displaced from their residential areas, killed by the majority groups, the region and the people of Amhara had faced with conflicts in different directions and misappropriated by this groups without any accountability. And it is due to the problem of Constitution and constitutionalism. That is why TPLF finally identified the Amhara people as their historical enemy by the manifesto when they were in the forest and then identified the Amhara as a national oppressor in the Constitution indirectly. As a result the ANRS people assumed that the Constitution is the Tigrianilites document.

The Amhara nation has identified as oppressive nation indirectly with in its own Constitution and omitted or not recognized in the Constitutions of the other eight Regional States or constituent units of Ethiopia rather than ANRSC. But millions of the Amhara Region peoples are residing for decades in almost all these Regions. Based on these dramatic events the dominant ruling party had provoked this wrong and invented sinful act of Amhara in the people of Ethiopia nearly for three decades.¹²¹¹²² That is why today the Amhara Region and the people are receiving tremendous and endless adversity.

Even the interviewee of the researcher most of which were lawyers including Mr. Merhatsidk Mekonnen who was a member of FDRE constitution drafting committee agreed that the Constitution strongly lacks constitutional legitimacy in the region. Not only this but also they are not exercising and mentioning the Constitution of ANRS rather they are using the FDRE Constitution and other local proclamations that are launched by the Regional Council.

Generally the Constitution of Amhara National Regional State is not serving to safe guard the people and is not accepted as the Constitution of ANRS people rather it is assumed as a weapon to the centralised political organ. Because of many reasons such as its non participatory nature during the whole constitutional process, unable to answer the diversified questions of the regional people, the less awareness of the community on the Constitution, specially violation of

¹²¹. The Constitution of Amhara National Regional State

¹²². The Constitution of constituent units of Ethiopia other than Amhara Region

human and democratic rights in and out of the Amhara Region, governance problems, economical problems, problem of securing peace and security the people of Amhara and political elites are strongly claiming on the Constitution and repeatedly raising to have constitutional revision.¹²³

Chapter Six

6. Concluding Remarks and Recommendations

From the beginning the FDRE Constitution in general and ANRS Constitution in particular have been a point of difference among all political organs which are found in the country since its inception and is continuing to bring contradictory views between the ruling party and other political parties including other citizens. Not only this but also differing views are observed within the EPRDF members itself on the Constitution. So making the necessary amendment on FDRE Constitution is the appropriate way to bring consensus and to secure the Constitution itself. The constitutional amendment model has to be basically participatory and dependent on the consent of the people.¹²⁴

As it is pointed out earlier Constitution of the Amhara National Regional State fails to be legitimate by virtue of legality. And in the drafting and adoption process of ANRS Constitution, there was no pre-Constitutional and post-Constitutional negotiation and discussion with the people of the Region about how to draft and adopt their own Constitution. This means there is no consensus creation among the various societies and politicians or interest groups in ANRS as a whole.

The effective implementation of a Constitution requires continuous and disciplined action. This task has to be accomplished by legal conjugation of three branches of government /executive, legislature and Judiciary/ as well as the consent of ordinary citizens. Constitutional implementation also requires favorable legal framework developed from and consistent with the Constitution. But the ANRS Constitution hasn't constituted an implementation provision or

¹²³.The EDP 2003. The analysis of the political program of EDP's political lines and strategies vol. 1, 2003

¹²⁴.ZelalemEshetu, (2019 p. 38), the politics of constitutional amendment in Ethiopia. Issue worth considering. Haramaya law review 8.

clauses and has no independent and impartial specialized implementation commission which has to be created by the Constitution itself to drive the process and to its success. This happens due to inappropriate participation of Amhara people and influence of one party TPLF during designing and practicing the Constitution of ANRS. Its success also depends on several factors including, the level of citizens' knowledge about their fundamental rights and duties, access to justice and availability of independent judicial enforcement mechanism. But the ANRSC lacks these disciplines and becomes the cause of continuous challenges and disputes /conflicts/ between Nations Nationalities and peoples of Ethiopia and the Amhara people.

To sum up this section the conclusion can be categorized in to three. Firstly, the driving force that brings lack of legitimacy on the Amhara National Regional State Constitution is; ignoring the people to participate during designing adopting & ratification, party domination on the Constitutional drafting and adoption as well as extreme rigidity of the Constitution. The second is the development of unconstitutional cultures by Government Officials and failure of practicing the Constitutional provisions as ordinary laws. The last and the most important one is that, there is an excessive need on the Constitution revision of Federal Democratic Republic of Ethiopia in general and ANRS in particular.

6.1 Recommendations

So in my opinion; for effective enforcement of the Amhara National Regional State Constitution, the Constitution should be revised and provide clear implementation provisions and has to create independent and impartial implementation Commission or any other responsible and powerful organ. All Ethiopia's Regional States in general and the Amhara National Regional State's people in particular have to be active participants and stake holders in all the process of designing, practicing and developing the national economic, social as well as political affairs including developmental policies and Constitution of the country.

So both Federal and Regional States of Federal Democratic Republic of Ethiopia have to reseatand debate on issues that have created a discontent and agreed together on the necessary measures that have to be taken together on their Constitution.¹²⁵

The role of popular participation has to be increased. It is increasingly viewed as vesting popular legitimacy in the Constitution building process and its outcomes when people are consulted and their views have taken into account. So people must participate democratically in the framing of a Constitution that will govern relationship with government. Participation enhances accountability by sharing information on the Constitution and the Constitution making process with the public. As a result, people can educate and familiarized themselves on the content of Constitutional issues prior to voting. The popular participation can be conducted either through the framing of questions to be answered by the public at large or through partisan campaigns to influence voters. Popular participation can add legitimacy to populist measures that infringe or violate minority rights. The quality of popular participation may also be perceived as stronger where Civic education is undertaken by an independent and formal instituted body. Genuine public participation requires social inclusion, personal security and freedom of speech and assembly.

The possible solution to solve the problem of ANRS's 2001 Constitution are building stable Constitutional system, availing leaders that can listen the question and interest of the people and give solutions institutionally, formal creation of awareness on the Constitution, creating stable condition /avoiding the pushing factors for disarray, creating free and neutral democratic institutions, securing the right of Amhara People to move and work in every directions of the country. The last and the most is initiating and requesting Constitutional revision for Federal Democratic Republic of Ethiopia in general and revising the Constitution of Amhara National Regional State in particular by mass mobilization.

¹²⁵ . *BekaluMulu (2015): The move towards developmental State in FDRE: The role of Intergovernmental Relation (IGR) for its implementation preserving the autonomy of Regional States.*

The ANRS Constitution has to be basically and significantly redrafted based on the interest of the people of the Region and its regional context, it has to build strong structure that can secure the rule of law, needs making clarification on the power sharing of interregional and Federal Governments, designing a legal and institutional system to secure the relationship of regional and federal governments and other regional states in order to secure the fundamental rights of citizens of ANRS that are living in other Regions.

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the FDRE Constitution in 1994

World Development indicator

Interview with the ANRS attorney general prosecutors and lawyers

Interview with Constitutional inquiry member

8. Appendix 1

English Version Questions

Addis Ababa University

College of Law and Governance Studies

Research title: The need to revise sub national Constitutions of Ethiopia; The case of Amhara National Regional State.

INFORMATION SHEET

Good Morning/Good Afternoon/ Good Evening.

My name is ShegawMulu,I am working on the above title focusing at ANRS in concerned Bureaus and Offices.

The main aim of this study is to assess the need to revise sub national Constitutions of Ethiopia focusing on ANRS and to identify necessary measures that have to be done.

You are purposely chosen as an interviewee for this study because of your acquaintance on the issue at hand. The information you are going to provide will be kept strictly confidential. No information identifying you or the organization in which you are working will ever be released to anyone outside of this information-collection activity. Participating in this study will never have any harm to you except the valuable time that you will be spending answering to my queries.

The information you are providing will be aggregated to give an overall picture. And participation in this study is voluntary and you can choose not to answer any question you are not comfortable or all of the questions provided here. You may also stop the interview completely at any time without any consequences at all. However, I hope that you will participate in this study since the results will help for the people of ANRS as a whole.

Data collector & researcher---ShegawMuluAssegie

Tele: +251911599009 Email: mulus1110@gmail.com

CONSENT FORM

Based on the objective of the study and purpose of your data, what is your consent?

	Agreed to be interviewed	or	Do not agree to be interviewed
--	--------------------------	----	--------------------------------

Interview questions for all selected participants.

Name of Interviewee-----Date of interview-----

Department-----Time of interview-----

Work experience-----Place of Interview -----

Position-----

Guiding Questions (Please note that you shouldn't be limited to only these questions)

I. Questions related with Constitutional making process

1. Do you think that all the peoples of ANRS participated in the designing and adoption process of the Constitutions /the first and revised Constitution of the Region & Federal/?
2. Who drafted /designed/ the first and revised Constitution of ANRS?
3. Did the lawyers, prosecutors, higher officials of regional government, civil societies and NGOs participate in the Constitutional making process of ANRS Constitution?
4. If they have participated in the drafting and developing process, what was there role in the Constitutional making process of ANRS?
5. Do the people of ANRS have awareness on the Constitution of ANRS?
6. What do you say about the legitimacy of ANRS Constitution by the peoples of the Amhara region?

7. Why the peoples of ANRS are claiming on the Constitution of the region?
8. What is your opinion about the importance of the Constitution of Amhara?

ii. Questions related with constitutionalism of the ANRS.

9. What do you say about the practice of the revised Constitution of ANRS on the ground?
Or what is the effectiveness of the revised Constitution of the Region?
10. Is there serious challenge /problem/ on the practice of revised Constitution of ANRS?
11. Is there an independent judiciary in the region with regard to implementation of the regional Constitution? What are the challenges here?
12. What is your general opinion about Constitutionalism in the ANRS?

III. Questions related to Constitutional interpretation of ANRS

13. What is the arrangement of Constitutional interpretation body in the region?
14. How do you see the role of regional court in interpreting the revised Constitution of ANRS?
15. Is there any demand in revising the regional state's revised Constitution? Why?
16. What are the major challenges that the peoples of the region have been facing in the practice of 2001 revised Constitution?
17. What is the possible solution to solve the problem of ANRS 2001 Constitution?
18. If you have additional suggestion you can say anything about the issue?

Thank you for your devotion!

8.1 Appendix 2

Amharic version questioner format

መሪ ጥያቄዎች (እባክዎትን ጥያቄው መንፈስ ብቻ ሳይወሰን ስፋት ለማብራሪያ ይስጡን)!

I. ከህገመንግስት አዘገጃጀት ሂደት ጋር ተያያዥነት ያላቸው መጠይቆች

1. የአማራ ክልል ህዝቦች ከመጀመሪያው የክልሉ ህገመንግስት ጀምሮ በነበረው የህገመንግስት ማርቀቅና ማጽደቅ ሂደት ላይ ተሳትፎ ዋል ብለው ያምናሉ?
2. የአማራ ክልል ህገመንግስት ያረቀቀው እና ያጸደቀው ማንነው ብለው ያስባሉ?
3. በክልሉ ህገመንግስት ዝግጅት ሂደት ላይ በወቅቱ በክልሉ ውስጥ ይገኙ የነበሩ የህግ ባለሞያዎች፣ ጠበቃዎች፣ ከፍተኛ የክልሉ መንግስት አስፈጻሚዎች፣ ሲቪል ማህበራትና መንግስታዊ ያልሆኑ ድርጅቶች ተሳትፎ ነበራቸው ብለው ያምናሉ?
4. እነዚህ አካላት ተሳትፎ ነበራቸው በአማራ ክልል ህገመንግስት ዝግጅት ወቅት ሚናቸው ምን ያህል መስልነት አላቸው ምክሉ ለምን እንዳልተሳተፉ ቢገልጹልን?
5. የአማራ ክልል ህዝቦች በክልሉ ህገመንግስት ይዘት ምሆነ አተገባበር ላይ ግንዛቤ አላቸው ብለው ያስባሉ? አዎ አላቸው ካሉ እንዴት ይገለጻል? አይሉም ክንያቱም ምን ይሆን?
6. አሁን በስራ ላይ የሚገኘው የአማራ ክልል ህገመንግስት በክልሉ ህቦች ዘንድ ያለው ቅብራት ምን ያህል መስላል? ቅብራት የለው ምክሉ በተግባር እንዴት ይገለጻል?
7. በክልሉ ውስጥ የሚገኙ ልዩ ልዩ የሚሰበረሰቡ በክፍሎች በክልሉ ህገመንግስት ቅብራት ላይ ጥያቄ ሲያነሱ ይስተዋላል? ምክንያቱም ምን ይሆን?
8. እርስዎ በአማራ ክልል ህገመንግስት ላይ ያለዎት አመለካከት ምን ያህል መስላል? በአዎንታ/በአሉታ፣

II. በአማራ ክልል ህገመንግስታዊ ስርዓትና ትግበራ ጋር ተያያዥነት ያላቸው ጥያቄዎች

9. በስራ ላይ የሚገኘው የአብዛኛው ህገመንግስት አተገባበርና ውጤታማነት ላይ ምን ያህል ላሉ? -
10. በአብዛኛው ህገመንግስት ህገመንግስታዊ ስርዓትና ትግበራ ላይ ያሉ ተግባራት ምን ያህል ናቸው?

8.2 Appendix 3

List of Interviewee

No	Name of Interviewee	Date of Interviewee & interview area	Name of Organization	Position /Assignee/	Work experience
1	MerhatsidqMekonnen	29/08/2012 E.C BDR	ANRS president's office	Chief legal adviser to the head government /with the rank of bureau head/, and he was a member of FDRE constitution drafting committee.	32
2	TsegayeWorkayehu	28/08/2012 E.C. BDR	ANRS Supreme court	Supreme court Judge	24
3	GetyeAdmassu	27/07/2012 E.C BDR	ANRS Supreme court	Supreme court Judge	Above 10 years
4	YirsawTamrieEskizia	27/08/ 2012 E.C BDR	ANRS Supreme court	Head of Secretariat of ANRS supreme court President & he was speaker of ANRS	27

				council before two years ago.	
5	AbebeAweke	07/09/2012 E.C Debremarkos	East Gojam District Justice	Head of East Gojam District Justice.	20 years
6	ShegayeMengistie	06/09/2012 E. C DEbremarkos	East-Gojam District Justice	Prosecutor in East Gojam District Justice.	Above 27 years
7	GeremewEshetu	29/08/2012 BDR	ANRS Supreme Prosecutor	Prosecutor of legal investigation, advisery and training institute.	16
8	DessieSiyum	29/08/2012 E.C BDR	ANRS Supreme Prosecutor	Director of ANRS legal investigation, adviser and training institute.	18
9	Belay Legese	01/09/2012 E.C	East Gojam Zone Justice Office	Prosecutor	22
10	Fentahunwondie	29/08/2012 E.C BDR	ANRS Supreme Prosecutor	Director of different criminal affairs.	17
11	Tekeba Belay	28/08/2012 E.C BDR	ANRS Supreme coart	Adviser of Supreme coart /with the rank ofdeputy president of Supreme court/	24 years
12	MesafintMersha	06/09/2012 E. C Debremarkos	East Gojam District Justice	Prosecutor in East Gojam District	29 years

				Justice.& a member of FDRE constitution ratification committee.	
13	AbrehamAyalew	08/09/2012 Debremarkos	East Gojam Zone Administration	Chief Administrator of East Gojam Zone	14 years.
14	AhimedYibre	East Gojam Zone Justice Office	Head of Criminal case	Prosecutor	11 years
15	YohanisTegege	27/08/2012 BDR	ANRS Supreme Prosecutor	Prosecutor	12 Years
16	AlamirTamir	26/08/2012 BDR	ANRS Supreme Prosecutor	Prosecutor	11 years
17	WondwesenYifru	26/08/2012 E.C BDR	ANRS Supreme prosecutor	Prosecutor	12 years
18	AleligneAgmasie Prosecutor	26/08/2012 BDR	ANRS Supreme Prosecutor	Prosecutor	10 years
19					
20					