



**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**CENTER FOR FEDERALISM AND GOVERNANCE STUDIES**

**EMPIRICAL ASSESSMENT OF REGIONAL STATE CONSTITUTIONS  
OF FEDERAL ETHIOPIA: A CASE STUDY OF AMHARA NATIONAL  
REGIONAL STATE.**

**BY: - Bamlaku Alebe Eshetu**

**Advisor: Sisay Mengistie Addisu (PhD)**

**A THESIS SUBMITTED TO CENTER OF FEDERALISM AND GOVERNANCE  
STUDIES OF ADDIS ABABA UNIVERSITY IN PARTIAL FULFILMENT OF THE  
REQUIRMENTS FOR THE DEGREE OF MASTER OF ARTS IN FEDERAL STUDIES.**

**ADDIS ABABA, ETHIOPIA**

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## Declaration and Approval Sheet

TITLE OF THE THESIS: **EMPIRICAL ASSESSMENT OF REGIONAL STATE CONSTITUTIONS OF FEDERAL ETHIOPIA: A CASE STUDY OF AMHARA NATIONAL REGIONAL STATE.**

STUDENT'S NAME: - **Bamlaku Alebe Eshetu**

The researcher declares that this thesis is his original work, and it has not been presented for a degree in any other university. Moreover, all sources of the materials that are used in this thesis have been duly acknowledged.

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This thesis has been submitted with my approval as a university advisor.

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## **Acronyms**

<b>ANRS</b> .....	Amhara National Regional State
<b>BDU</b> .....	Bahir Dar University
<b>CSA</b> .....	Central Statistical Agency
<b>E.C</b> .....	Ethiopian Calendar
<b>EPRDF</b> .....	Ethiopian People’s Revolutionary Democratic Front
<b>FDRE</b> .....	Federal Democratic Republic of Ethiopia
<b>FGD</b> .....	Focus Group Discussion
<b>FPTP</b> .....	First Past the Post
<b>NGOs</b> .....	Non-Governmental Organizations
<b>RAC</b> .....	Regional Affair Center
<b>RC</b> .....	Regional Council
<b>RSC</b> .....	Regional State Constitution
<b>RSG</b> .....	Regional State Government
<b>SNNPRS</b> .....	Southern Nation Nationalities and Peoples Regional State
<b>TC</b> .....	Transitional Charter
<b>TG</b> .....	Transitional Government
<b>TPC</b> .....	Transitional Period Charter
<b>UD</b> .....	UN Dated
<b>USA</b> .....	United States of America

## **Abstract**

*The thesis attempts to examine and investigate the Practical aspects of Ethiopian regional states Constitution in general and Amhara National Regional state (ANRS) Constitution in particular, which constitutes one of the sub-national units in the Ethiopian federation. This is done first by attempting to place theoretical and empirical investigation and discern aspects of theory and practice of regional state Constitutions in Ethiopia. The study critically assesses the empirical evidences about the ANRS Constitutions and identify the possible strategies that has been used to enhance the visibility of the regional state Constitution.*

*The study applies qualitative research method. In doing so, both primary and secondary data employ as a research process to study the various issues involved in the paper. To get the primary data, interview, Focus Group Discussion and key informants purposely selected from ANRS residents were used as means to get data for the study. The secondary data were collected from different published and unpublished documents such as relevant theoretical concepts, text books, journal Articles, scholarly works and bar reviews, as well as websites.*

*Finally, this paper investigated the following major findings. 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. Which means there is no consensus creation among the various societies and political/ interest groups.*

*In the development of Constitutionalism in the region, the government of Amhara region was not done special and tangible support for those researchers, scholars, lawyers and academicians and at the same time there is no any research that is conducted about the regional Constitution. Under the role of Justice Professional Training and legal Research institute of the Region in the creation of Awareness about Constitution of the region, the training center primary objective was to support the justice system of the region and to fill the gap that existed in the provision of justice system all over the region. But, there is no any awareness creation and research means which is conducted about the ANRS Constitution. With regard to the inclusion of the regional state Constitution in primary civics and ethical education text book, detail contents and information of ANRS Constitution is not made part and parcel of civics and ethical education at primary education of the region at elementary schools (5<sup>th</sup>-8<sup>th</sup>). Finally, in ANRS, there is an institution which was established in 2007 E.C. which is responsible to interpret the regional state Constitution. This institution is an organ found in the region empowered to interpret the regional state Constitution and to review the Constitutionality of laws and decisions of regional state government institutions.*

Key Words; Federalism, Constitution, Constitutional making, Sub-national Constitution, Constitutionalism

# CHAPTER ONE

## Introduction

### 1.1. Background of the Study

Without know-how and practice of human being, Constitution cannot be growing naturally or on atmosphere, because, it is the result of social, economic, political and cultural practices of human society<sup>1</sup>. All basic laws and principles which exemplify the general organization and operations of the state are emanated from Constitution and it funnels all the actions of government and citizens. Constitution provides a frame work for all regulations, legislation, institutions and procedures, because it is superior and higher law. It also represent visualization of the state, which expresses basic values and identities of the society and articulate citizens' right by protecting the violations of institutions, procedures and legislations to ensure, shape and support the existence of the state.<sup>2</sup>

In federal politics, State Constitutions are inevitable phenomena. In this regard, Tarr, A. (2007) states that in a federal set up commonly the regional states have their own Constitutions in order to deal with specific conditions they should meet in their day to day activities of the people concerned.<sup>3</sup> When we see the existence of state constitutions, according to Tsegay, R. (2009) States Constitution is varying from not only state to state but also from federation to federation. This means States in classic federations had their own State Constitution from the beginning, such as, USA, Australia and Switzerland. However in some federations the existence of State Constitution is an exception than norm, such like India, South Africa and Canada. In the latter case, State Constitutions aim is regulating the behavior of states at sub-national levels (it may be at the state or local levels). In doing so, to regulate the behavior of state the establishment of basic organ of the state, fair distribution of powers and responsibilities of each organ and govern the relationship among these organs of the state based on the rules and regulations is essential.

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<sup>1</sup> Fombad, C. Constitution-Building in Africa: The Never-Ending Story of the Making, Unmaking and Remaking of Constitutions, African and Asian Studies, Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria, South Africa, 2014, p.430

<sup>2</sup> Hedling, N. The Fundamentals of a Constitution, Constitution Brief, IDEA, Myanmar Constitution Center, October 2016, p. 1

<sup>3</sup>Tarr, A. sub national constitutional space: an agenda for research, paper for delivery at the world congress of the international association of constitutional law, 2007, p.24

State Constitutions also establish their own rules governing the relationship between state and local governments and they regulate the relationship between state government bodies and citizens by providing fundamental rights and freedoms by giving Constitutional guarantee.<sup>4</sup> They also aspire to limit the powers of state governmental authorities and they used to reaffirm, explain and elaborate on state powers that are given or reserved to the states by the Federal Constitution. The goals and aspirations of the peoples of the state, expressions of state sovereignty, the creation of state governments and regulation of their day today activities are expressed by State Constitutions. In general in the framework of government they are serving as “Manuals of government” which means they carry detail government policies at the state levels.<sup>5</sup>

In Ethiopia State Constitutions can also be viewed to have been made in order to consolidate and solidify the victories of the Nations, Nationalities and Peoples of the States, to ensure self-rule, to embody and express the collective goals and aspirations of state citizens, endorse the sovereignty of Nations, Nationalities and Peoples residing in states, reaffirm the state powers that are stipulated as “reserved” for states in the Federal Constitutions, establish sub-state level of governance and regulate the relations between these levels of government and the state governments, and to confirm Constitutional guarantees granted to fundamental rights and freedoms of state citizens. To do this, Ethiopia has become a federal polity, since 1995 and regional states have ‘plenary’ powers like to enact and execute their own state Constitutions, and other laws on their own jurisdiction. But, States Constitution plays an immense role in articulating these ‘plenary’ powers.<sup>6</sup>

Therefore, in this study, the researcher investigating whether the ANRS Constitution fulfills or not the above roles of State Constitutions, and the ANRS carries the detail policies of the government and peoples of the region? With regard to this the Federal Constitution of Ethiopia/FDRE/ have allocated state powers between the federal government and the regional states. In doing this, one of the powers that ascribed to Ethiopia’s regional states is Constitutional

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<sup>4</sup> Tsegaye, R. Sub-national Constitutions in Ethiopia: Towards Entrenching Constitutionalism at state level, *Mizan Law Review* Vol. 3 No. 1, pp.37-38, 2009

<sup>5</sup> Ibid

<sup>6</sup> Ibid

autonomy or the power to enact their own Constitutions.<sup>7</sup> In the other hand, Zemelak, A. (2014), on his work states that the Federal Constitution of Ethiopia provides the regional state with the power to draft, adopt, and amend their own Constitution and each regional state fit with their own realities and situations of their region.<sup>8</sup>

The nine regions established by the Federal Constitution have all exercised the drafting and adoption process of their own Constitution. Therefore, today's Constitutional experience of Ethiopia consists of one Federal and nine regional State Constitutions. The nine regional states include Afar, Amhara, Benishnagul-Gumuz, Gambela, Harari, Oromia, Southern Nations, Nationalities, and Peoples Regional State (SNNPRS), Somalia, and Tigray.<sup>9</sup>

To do this research the Amhara National Regional State Constitution taking as a case study. ANRS has its own Constitution and the Constitution contains 120 Articles and 12 chapters. The additional chapter incorporated in the Amhara Constitution pertains to the organization, powers and duties of Nationality Administrations. i.e. ethnic based local governments in the region that cannot found in other Regional State Constitutions.<sup>10</sup> Above all my study focus on drafting and adoption process of the ANRS Constitution, the development of Constitutionalism, and the role of Justice Professional Training and Legal Research Institute of the region and the primary education curriculum of civics and ethical education were assessed.

## 1.2. Statement of the Problem

According to Williams, R. (2014) in most Federal Constitutional democracies always the national Constitution is overarching the Regional Constitution by giving only some constitutional choices. This means that in most federal systems, Constitutional decision-making occurs at both the national and sub-national level<sup>11</sup>. But, Tarr, A. (2007) further argues that, in

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<sup>7</sup> Van der Beken, C. Constitutional Diversity in Ethiopia: a Comparative Analysis of Ethiopia's Regional Constitutions, *Journal of African Development Studies*, Ethiopian Civil Service University, 2010, p.1

<sup>8</sup> Zemelak, A. The Politics of Sub-national Constitutions and Local Government in Ethiopia, *Perspectives on Federalism*, Italy, 2014, p.90,

<sup>9</sup> Art 47 (1) of the FDRE Constitution

<sup>10</sup> Van der Beken, C. Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions, Paper Submitted to Workshop 2; Sub-national Constitutions in Federal and Quasi-federal constitutional States, 2006, p.4

<sup>11</sup> Williams, R. Forward: Continuing Sophistication in Sub-national Constitutionalism, *Perspective on Federalism*, Vol. 6, issue 2, 2014, Italy, P.24

most cases the concept of sub-national Constitution resembles they are below the Federal Constitution in a power level. Such facts tend to undermine the value of sub-national Constitutions in a federal system. Because of this State Constitutions have not been given proper attention by legal scholars, researchers and academicians. However, most scholars argue that the relationship between national and sub-national Constitutions in a federal system should be interdependent.<sup>12</sup>

As different scholars argues that State Constitutions in Ethiopia in general and ANRS Constitution in particular is invisible, it does mean that 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. Based on this regarding to ANRS Constitution Yohanes, Y. (2010) clearly states on his work, the main reason for the invisibility is lack of legitimacy and its failure to represent the polity and its population, which means related to participation of the society, state holders and interest groups in drafting and adoption process like the Federal Constitution. The making should not assume consent. Acceptance itself is connected to consent. Therefore, democratic Constitution making process is a remedy for such problems. He also added that, if people participate they feel they gave their consent and they will accept its respect worthiness. Even the document is written but it never has to reach the people. The people cannot get easily and to understand its words and meanings so as to be abide by it.<sup>13</sup>

The federal Constitution greatly matters in the making of sub-national Constitutions. Apart from observing the formal and substantive divisions of power sub-national Constitutions are require to fulfill two procedural requirements. First they have to be made by the state legislature. Second, they have to remain consistent with the words of the federal Constitution. The question as to who drafted them, and based on what dominant principles, and who deliberated upon them before they were presented to the legislatures are not clearly known. In some states, it is the House Standing Committees that drafted the Constitution. In others, it is a committee whose members are appointed by the chief executives that are responsible for the drafting of the texts.

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<sup>12</sup> Tarr, *Supra note 3*

<sup>13</sup> Yohanes, Y. 'Legitimacy of Sub national Constitutions in Ethiopian Federations, A case study of Amhara Regional Government Constitution', Submitted to the Addis Ababa University, school of Graduate Studies in Partial fulfillment of the requirement of degree of Masters in Constitutional and Public law,2010, P.8

What is clear here is that not many people and stakeholders (be it political parties or otherwise), are made part of the drafting, deliberation and adoption process. This indicates that most of them might have probably been drafted and adopted under the strict supervision of one dominant political party of the States (EPRDF and its affiliates).<sup>14</sup> I want to assess these points in ANRS?

Since 1995, immediately upon the coming into force of the federal Constitution, states have come to adopt their own respective Constitutions and to utilize them to manage state politics in accordance with Constitution. For their making, all of them depended on the state legislatures. Because they were made by the state legislatures in an ordinary session made the Constitutions look like any other law “enacted and adopted” by the legislatures. It also precluded the opportunity for people to relish in the deliberation and festive mood that comes along the “Constitutional moment” that often comes with the adoption of a Constitution. Nevertheless, the Constitutions were made and put in place by the states. One might surprise as to how the Constitution that constitutes the state governments and their organs can be made by the same legislatures that the Constitution brought into existence.<sup>15</sup>

The other justification for the invisibility of the ANRS Constitution is the regional state was not able to utilize the existing sub-national Constitutional space and generate alternative public policy options that meet the polity and its people, rather than it copies the policy option of the Federal Constitution, which means State Constitutions has been underemphasized documents not only among society and politicians, but also among scholars and academicians. In addition to these in Ethiopia even if, regional states were adopted their own respective sub-national Constitutions, but it is remains consistent with the words of the Federal Constitution. This leads to the national Constitution is governed the citizen of each regional states over their Constitutions, and these citizens and practitioners of regional states have not know how about their respective sub-national constitutions was drafted or adopted.<sup>16</sup>

In addition to this, there is little literature and very little evidence-based research on regional state constitutions, Amhara National Regional State is the one. There are some researches which were conducted in related with these issues, among these “legitimacy of sub-national

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<sup>14</sup> Yohanes *Supra* note 13

<sup>15</sup> Ibid

<sup>16</sup> Ibid

constitutions in Ethiopian federation, a case of Amhara Regional government Constitution” that was done by Yohanes Yitayih in 2010. But in his paper he puts various recommendations that are important and to be input for my study.

By differing from other studies mine is focus on the making of the Constitution people of the region participate or not? And people of the region accept the Constitution as a binding document? Does the people of the region need to be aware of the Constitutional experiment of the region? If they have to know what are the benefits of having the Constitution and the role of the people should have in the Constitutional system?

Therefore, the purpose of this study is asses the empirical evidences about the invisibility of ANRS Constitution; investigate the theoretical and practical aspects of ANRS Constitution and identify the possible strategies that will be used to enhance the visibility of the ANRS Constitution. So, the above problems that raised on his thesis recommendation push and make me to conduct this study and I want to asses those issues based on the following research questions.

### **1.3. Research questions**

Based on the main issues raised in the research problem and gaps identified knowledge related to empirical assessment of regional state Constitution and factors that influence the practice of regional state Constitutions, this study would raise and investigate the following main research questions.

1. Did the peoples of Amhara National Regional State participate in the drafting and adopting process of the Constitution and they know the Constitution they have been governed by?
2. Do the practitioners/government officials of Amhara National Regional State know and use the Constitution properly in the implementation of regional laws and policies?
3. Does the government of Amhara region work towards development of Constitutionalism?
4. What is the role of Justice Professional Training and Legal Research Institute of the Region in the creation of Awareness about Constitution of the region?



5. Is the Regional State Constitution part and parcel of the curriculum of civics and Ethical education of primary school of the region?

#### **1.4. Objective of the Study**

##### **1.4.1. General Objective**

The general objective of this study is assessing the invisibility of Amhara National Regional State Constitution and identifies the possible strategies that have been used to enhance the visibility of the regional Constitution.

##### **1.4.2. Specific Objective**

The study has the following specific objectives.

- To assess the peoples of Amhara Regional State know how, about the contents of the Constitution of ANRS.
- To examine the knowledge of practitioners/government officials of Amhara National Regional State and how they are using the principles of the Regional State Constitution.
- To examine the practice of the government of the region towards Constitutional development creating an opportunity for the scholars, lawyers, researchers, political institutions and organizations.
- To asses Civics and Ethical education curriculum of the region whether it includes the principle of regional State Constitutions.
- To examine the role of the Justice Professional Training and legal Research institute of the Region in the creation of Awareness about Constitution of the region?
- To asses the works of institution in the region established to interpret and reviews the Constitution.

## 1.5 Scope of the Study

This study is conducted by taking ANRS as a case study to see the theoretical and practical context of invisibility of regional state constitution in Ethiopia. Due to the fact that there are nine regional state governments and two city administrations in Ethiopia, I decided to center the research at Amhara National Regional State only. Because, Amhara National Regional State Constitution incorporated additional chapter that pertains to the organization, powers and duties of the Nationality Administrations, i.e. ethnic-based local governments in the region that cannot be found in the Afar, Somali, Oromia and Tigray regional Constitutions.<sup>17</sup>

And also, ANRS Constitution included minority rights and these minorities have representation, self government, and the right using by their own language in the region practically compared with other regional states of Ethiopia. For example Argoba, Awi, Himra and Oromo's, currently Kimant are exercising their self-rule in the region.<sup>18</sup>

And also, in my informal observation, various numbers of citizens in the region do not know that the regional state has its own constitution. Generally, the researcher argued that majority people of the region, even government officials of the region have not knowhow and awareness about this constitutional principles or inclusiveness of regional Constitution. And in addition to the above reasons, the knowledge that the researcher have, time and other resources take into considerations when I have select the Amhara region.

## 1.6 Significance of the Study

The study has the Significance of enabling readers or any other concerned bodies (e.g. representatives of the people at regional and federal levels and other researchers who want to conduct on these issues).

As additional justifications this study will provoke further researches to be conducted. In this country sub-national Constitutions are almost forgotten. By flirting issues, beginning to do will make others do more. In precise terms the study will open the closed door towards sub-national

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<sup>17</sup> Van der Beken, *Supra note 7*

<sup>18</sup> Article 73(1)

Constitutions. And finally, after its findings, it will tend to provide some recommendations or implications for policy makers.

### **1.7 Limitation of the Study**

When the researcher conducts this study the researcher was faced the following problems; one limitation what the researcher faced were, the people who are asked to give relevant information were unwilling and involuntary and lack of experience how research is conducted and knowledge to undertake the research. However, to the best of my knowledge, there is no research work written on practical aspects of sub-national Constitutions in Ethiopian federation, let alone invisibility of the regional Constitution of Amhara National Regional State.

Additionally, during the course of data collection the researcher was faced threat of informants' to respond for the question they were asked and giving views for the question which they would not asked, delegating the task to other peoples and giving too much appointment, especially from officials groups are major limitations the researcher had faced in this study. Due to the above mentioned and other practical problems; the study is limit only on Amhara National Regional State Constitution.

### **1.8 Research Methodology and data Sources**

In order to achieve the objective of the study and to answer the research questions the researcher would collect and analyze data mainly based on qualitative research method, i.e. to use qualitative research method to describe qualitative phenomena related to or involving quality or kind is described qualitatively. And also the researcher believes that the invisibility of regional constitutions of Ethiopia is better to explained in description and explanation. Hence mainly the researcher want to focus on the constitutional phenomenon of the region, due to this the researcher was more focus on qualitative research methods. The researcher was also used qualitative research method to interpret the data, which get from individuals/officials, Civics and Ethical Education Teachers of Primary schools who were interviewed, the number of focus group discussion, indicate key informants different documents.

## **1.8.1 Data Source and Collection Methods**

### **1.8.1.1 Source of data**

To achieve the objective of the study both primary and secondary source of data had been used. The primary data was collected through interview (semi-structured interview), Focus group discussion and key informants. Besides, primary source of data was obtained through the use of semi structured interviews with concerned peoples of the region, government officials of the region, Judges, Justice Professional Training and Legal Research institute experts at state orders of government, civics and ethical education teachers of primary school and academicians. It strategically and structurally is conducted interview so that outputs depended up on the ability of interviewer to avoid bias from every side. The Constitution and other relevant legislations were also being assessed as a primary data.

The sources of secondary data were books (Civics text books (5<sup>th</sup>-8<sup>th</sup>)), newspapers, magazine, Journals, articles and internet. Accordingly this research was employee literature and document analysis as one data collection tool. The analysis would rests on the one hand, on relevant theoretical concepts, international standards, legislations and constitutions of modern states; on the other hand, it considers scholarly works and article review sources.

### **1.8.1.2 Data collection method and instrument**

In this study the tools of data collection would be structured questionnaire interviews, in-depth interview, focus group discussions, key informant interview and document analysis. i.e. close ended questionnaires open ended questionnaires and semi-structured interview questions. For questionnaires and interview Peoples and official of the region were selected by the researchers who have better information related to the research topic.

Based on this, the researcher is selected 37 key informant individuals from Amhara National Regional State regional council office, Head of Executive of ANRS, from academicians (form BDU), Supreme Court, supreme justice office, Justice Professionals Training and Legal Research institute, primary civics and ethical education teachers and society (elders). Also, the researcher have Two Focus Group Discussion, one FGD is in Justice Professionals Training and Legal

Research institute, it has four (4) members, and the second FGD is between Civics and Ethical Education Teachers that found at Bahirdar town and it has three (3) members. Documents researcher used include like brochure, Magazines and primary Civics and Ethical Education textbook (5<sup>th</sup>-8<sup>th</sup>).

Reason for the researcher was selected this grade is first civics and ethical education is given starts from Grade 5<sup>th</sup>, and secondly, in this Grade (5<sup>th</sup>-8<sup>th</sup>) civics and ethical education curriculum is vary from region to region and it is very important to equip students and the curriculum geared up based on their social, political, economic and cultural environment. And also, to create a clear understanding about rights and duties, government structures, power and functions of government organs, social, economic, political and cultural conditions of their region they live teaching civics and ethical education in primary school particularly starting from grade 5<sup>th</sup>-8<sup>th</sup> has a vital role.

## **1.8.2. Subjects and Sampling techniques**

### **1.8.2.1. Population of the study**

All the study populations were residents of Amhara National Regional State. To all the informants selected for the study was depending on sampling size and determined by the researcher which means based on data saturation.

### **1.8.2.2. Target population**

The target population of this study were concerned peoples and government officials of the region who found in Amhara National Regional States; such as society, state administrators/government officials of the region, constitutional drafter, Judges, experts of Judicial Training and Legal Research Institute, Academicians and Primary school civics and Ethical Education teachers of the region.

### **1.8.2.3. Sampling techniques**

The sampling technique used intensity and criteria sampling (purposive), because in intensity sampling the selected participant who fit to different levels of the research topic will be asked and in criteria sampling the researcher were selected participants by setting standard criteria,

therefore by those two sampling methods the researcher find out sufficient information about the larger population. Therefore, Purposive sampling method is an important instrument to get people who are aware of the issue at hand.

### **1.8.3. Method of data analysis**

The researcher used descriptive analysis. Descriptive analysis attempts to clarify/describe the questions like what. Therefore, the data collected from primary and secondary sources used different instruments was organized and presented in to sub-sections based on their similarities and relations. The data were interpreted and analyzed thematically. Data collected through interview, Key Informants Interview and Focus Group Discussion was analyzed qualitatively based on descriptive analysis.

## **1.9. Organization of the Thesis**

This thesis has containing mainly five chapters. Chapter one is discussing on the introduction part. Chapter two would discuss on the literature review about Constitution in general, theoretical and conceptual framework of Constitution, national Constitution and sub-national Constitutions with different countries experiences. In Chapter three, I would discussed on Constitutional review in action taking the experiences of different nations“ jurisprudences and finally, identify the overall problems and prospects of sub-national Constitutions in Ethiopia in general and ANRS Constitution in particular. In doing so, it is based on conceptual frameworks discussed, review of literatures made and data collected through interview. Under chapter four data was analyzed, presented and discussed, and the final chapter provides some relevant recommendations.

# Chapter Two

## 2. Review of Related Literature

### 2.1. The concept of Constitution and Sub-national Constitution

#### 2.1.1. Concepts and definition of Constitution

There is no single and acceptable definition about Constitution; every scholar attempts his own partisan interest of a certain value. For instance, a scholar coming from a society used to a written Constitution define it to suit his/her own experiences while a scholar coming from a society used to an unwritten Constitution define it in his/her own understanding. Due to this reason it has been defined in deferent ways by different scholars.<sup>19</sup>

Due to this fact, among others Black's law dictionary defined Constitution as; it is the supreme law of the land or fundamental and organic law of a nation/state that establishes the institutions and apparatus of government, and it defines the scope of governmental sovereign powers and guarantees individual civil rights and liberties."<sup>20</sup>

Another Constitutional scholar, Sartori, G. (1962) explained that the root word of Constitution in the following ways. Etymologically, the term Constitution derived from Latin term "*Constitutio*" which means "enactment, decree or regulation" of a ruler or sovereign. In this sense, the word fits a broader definition in describing government mandates. Later, after the 2<sup>nd</sup> century the plural form "*Constitutions*" came to mean a collection of laws enacted by the sovereign; and subsequently the church (the Catholic Church) too adopted the term for canonical law.<sup>21</sup>

Another scholar Franklin, C. (1999) also adds during Roman times, the word referred to imperial legislation. Later the Catholic Church borrowed it from Roman law and applied to ecclesiastical rules. The word came to represent secular enactments in the middle ages.<sup>22</sup> Although, there had been legal documents with Constitutional significance as early as the thirteen century (e.g. the

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<sup>19</sup> Tadesse, M. Introduction to Constitutional Law, Vol.1, 2012,pp.25 \$ 27

<sup>20</sup> Black's Law Dictionary, Ninth Edition, West Publishing Co. Thomson business group, United States of America, 2004,p.353

<sup>21</sup> Sartori, G. Constitutionalism: A Preliminary Discussion. 1962. *The American Political Science Review*, Vol. 56, No.4,p.853

<sup>22</sup> Franklin, C. Constitutional Law for the Criminal Justice Professional, London, New York: CRC Press, 1999.p:3

Magna Carta<sup>23</sup>), the term Constitution was first used in its modern sense after the American and the French revolutions. Since then, the practice of having a document containing principles of governmental organization has become well established and Constitution has come to have its current meaning.<sup>24</sup> Sartori, also explained that the term Constitution has acquired its modern meaning in English in the course of the evolution of the English legal terminology.<sup>25</sup> Getachew, A. (2012) also another Constitutional lawyer and he clearly stated that on his book now a days, Constitution has become an ambiguous term covering two very different meanings: a strict substantive meaning (the garantiste meaning<sup>26</sup>), and a formal (cosmic meaning<sup>27</sup>).<sup>28</sup> He also, quoted “Thomas Paine” and defines the term Constitution in the following way;

*It is not the act of government, but of a people constituting a government and a government without a Constitution is power without right. Therefore, a Constitution is a thing antecedent to a government; and a government is only a creation of a Constitution.*<sup>29</sup> Getachew also add by quoting K.C.Wheare, *Constitution is the whole system of government of a country, the collection of rules which establish and regulate or govern the government. In this definition there are three important elements, the first one is the whole system of government, which means the establishment of government institutions, systems and powers. The second element is, if Constitution is made up of rules, just like any other body of law rules make the building block of Constitutions, the third basic element of this definition is Constitutional law establishes and regulates or governs government.*<sup>30</sup>

Most people understand Constitution as a written document that contains the rules that govern both social and institutional relationships. But, scholars like Fombad, C. (2007) argue that the

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<sup>23</sup> Magna Carta (Latin term, which means the Great Charter) is a document that marked a decisive step in the history of constitutional government.

<sup>24</sup> Tadesse, M. quoted in Michel Allen et al Cases and Materials on Constitutional and Administrative Law 3<sup>rd</sup> ed. New Delhi: Lawman, 1995, P.3.

<sup>25</sup> Sartori, *supra* note 21

<sup>26</sup> According to Sartori (1962:861), garantiste constitutions are constitutions which are proper and congruent with the 19th century consensus, which limit arbitrary government power and ensure limited government.

<sup>27</sup> Sartori also, define formal constitutions are fully applied and activated, but they perform no limiting function vis-a-vis the government because they merely formalize \the existing location of political power for the exclusive benefit of the actual power holders.

<sup>28</sup> Getachaw, A. Ethiopian Constitutional Law with Comparative Notes and Materials, A Text Book, School of Law, AAU, 2012, P.3

<sup>29</sup> Rights of Man, in the Complete Works of Thomas Paine, London, pp. 302–3,370, collected and edited by Charles Howard McIlwain, Some Modern Definitions of Constitutionalism, p.2  
[file:///C:/Users/Dell/Desktop/Sartori%20about%20constitution/Definition%20of%20a%20constitution %20By%20Thomas%20Paine.%20...html](file:///C:/Users/Dell/Desktop/Sartori%20about%20constitution/Definition%20of%20a%20constitution%20By%20Thomas%20Paine.%20...html) accessed on 31/10/2017 at 11:00AM.

<sup>30</sup> K.C.Wheare definition of constitution, cited in Getachaw Assefa, Ethiopian Constitutional Law with Comparative Notes and Materials, A Text Book, School of Law, AAU. 2012, P.9



practice has shown that not all Constitutions are written, unless it is a "Power map" which derives its whole authority from the governed and regulates the allocation of powers, functions and duties among the various agencies and officers of government as well as defines their relationship with the governed".<sup>31</sup> McIlwain (2007) also explained Constitution as follows;

*It is a collection of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community has agreed to be governed." While various definitions of a Constitution exist, it is important to underline the fact that a Constitution is a law that governs the allocation of power and relationships alternatively, a code of conventions, rules and regulations governing institutions and customs. The Constitution more often than not is a written canonical book that contains the rules that govern both social and institutional relationships.*<sup>32</sup>

Ghai and Jill Cottrel (2011) also define Constitution as a fundamental law that provides the framework for the structures and powers of the State. It is the supreme law of the country laws, policies and administrative acts must be compatible with it. Most Constitutions now provide for the invalidity of law and administrative acts which are so incompatible. Usually a Constitution determines the structure of the state according to fundamental principles of the purposes of state power. These are dependent on the history, ideology and circumstances of the country.<sup>33</sup>

### 2.1.2. Basic Features of Constitution

Constitution has notable features that differentiated from other lower level laws in a given society. Due to this reason scholars have identified four basic features that characterize Constitutional documents. Getachew, A. (2012), states that the four major includes generality, supremacy, stability and rigidity. But, these are not the only features they are some and basic.

**Generality;** Constitution provides the general principle of a state and carry on groundwork and sets out general framework of the law and the government. Other laws provide the details of the subject for which they are created. Constitutional principles are a guideline for other laws. Any

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<sup>31</sup> Fombad, C. Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa, *The American Journal of Comparative Law*, Oxford University Press, 2007, Vol. 55(1), PP 1-45.

<sup>32</sup> McIlwain, Constitutionalism: Ancient and Modern. Indianapolis, Indiana, USA: Liberty Fund Indianapolis, 2007, pp. 22-25

<sup>33</sup> Ghai, Y. and Cottrel, J. The Millennium Declaration, Rights and Constitutions, India by Oxford University Press, New Delhi, 2011, p.56

law that contradicts the Constitutional provision will be null and void. In this case, Constitution only states the general principles. Thus, this makes Constitution different from other laws that may found in a given country.<sup>34</sup>

**Stability;** stability or permanence is also one of the basic features of Constitutions. Unlike other laws, Constitution is made for undefined period of time. That means Constitution serve for a long lap of ages. It is purposely made to be stable and permanent. One of the mechanisms to ensure this permanency is through Constitutional amendment. Judicial interpretation is also another ways of making a given Constitution adaptability. In short, amendment is necessary to offer stability in a country. Thus, Constitutional stability is one of the factors for creating a durable peace in a society. Unstable Constitutional environment mostly indicates a socio-political instability.<sup>35</sup>

**Supremacy;** this is one of the unique marks of all written Constitutions, but not necessarily of unwritten Constitutions. A Constitution is a supreme law of the land. As a mother of law, it is original law by which the system of government is created, and to which the branches of government must look for all their powers and authority. It is original because it is directly made by the people as the direct expression of the will of the people.<sup>36</sup>

**Rigidity;** this feature is peculiar to written Constitutions as opposed to unwritten Constitutions. The basic idea here is that the formal procedures of changing Constitutions, i.e making amendments, should not be passed in an ordinary law making procedures. More formal requirements should be met to amend Constitutions. The reason for such a requirement is to protect Constitutions from being amended by legislatures in simple majority decisions as ordinary laws.<sup>37</sup>

### 2.1.3. **Function of Constitution**

Even if there is no commonly agreed function of Constitution by scholars; According to Ghai and Cottrell, (2011) the most general purpose of Constitution is to provide security for its

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<sup>34</sup> Getachew, *Supra note 28*, p.17

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Getachew, *supra note 28*, pp.17-19

citizens and to ensure the smooth operation of the political system by channeling the expression of politics through prescribed institutions in accordance with clearly understood and valued procedures, as well as facilitating the resolution of differences and disputes that inevitably arise in a society. For this purpose, the state must be vested with considerable powers of government, to protect the rights of citizens, maintain law and order with the assistance of police, if necessary to defend the country against foreign invasion. It must provide the machinery for justice including a body of laws and courts to enforce them.<sup>38</sup>

Also, an American writer Murphy, W. (1993) listed some general functions of Constitution; these includes the following; **Constitution as a contract for government;** which means Constitution is an authoritative Constitutional text which draw the fundamental modes of legitimate governmental operations: who its officials are, how they are chosen, what their terms of office are, how power and duties is divided among them, what processes they must follow, and what rights are reserved to citizens. **Constitution as a guardian of fundamentals rights;** which means Constitutional texts incorporate fundamental human and democratic rights and it has an authoritative to protect these rights. And also it is authoritative and represents Constitutionalism; it must protect substantive rights by limiting the power of the people's freely chosen representatives. Another basic function of Constitution is; **it serves as a binding statement of a people's aspirations as a nation.** A text may outline the sort of community its authors/subjects are or would like to become; not only their governmental structures, procedures and basic rights, but also their goals, ideas, and the moral standards by which they want others, including their own posterity, to judge the community.<sup>39</sup>

In addition to the above functions, Constitution has also various purposes; among these purposes some includes; Constitution provides framework for government, it grants power to government and limits the power of government, it also serve as the supreme law of a country, protects individual and collective rights and freedoms and provides government stability.<sup>40</sup>

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<sup>38</sup> Ghai and Cottrell, *Supra* note 33, pp.61-63

<sup>39</sup> Murphy, W. *Constitutions, Constitutionalism, and Democracy*, in *Constitutionalism and Democracy: Transition in the Contemporary World*, New York: Oxford University press, 1993, p. 3

<sup>40</sup> <http://www.purpose> of constitution, definition .accessed on 20/11/2017 at 5:30 am

#### 2.1.4. **Generation of Constitution**

Across the world there are different Constitutional traditions and Constitutional experiences were emerged from different phenomenon and periods. Ghai (2003) clearly divided the generations of Constitution were classified into classical and contemporary Constitution. Classical Constitutions were content to set up political institutions. Colonial and independent Constitutions can be regarded as classical period Constitutions.<sup>41</sup>

The Colonial Constitution primarily designed to create an authoritarian and undemocratic center of power to colonize states which were challenged by independence Constitutions for needs of consolidating of state sovereignty, cutting-off the colonial power and establishing through the fall and rise of communism which paves the way to rise of questions of multi- ethnic diversity which needs a response to evoke democracy which is debatable concern for post-modernist neo-liberal concern not only for individual rights but also for group right.<sup>42</sup>

In the other side, contemporary Constitutions are highly interventionist, seeking to change society and the structure of power. Communist movement fall leads to ethnic rising and which again leads to new wave of democracy, are considered as contemporary.<sup>43</sup>

### 2.2. **Constitution making process**

As many Constitutional law studies show that, constitution holds a special place in most legal systems and their making process involve regress procedures strict than other ordinary legislations. However, countries have diverse practices in terms of organization and procedure for Constitution making. Tadesse, M. (2012) briefly explained that, Constitution making process is a complex task and it needs the participation of a number of stakeholders, non-governmental organizations (NGOs), tasks and process. Because, Constitutional principles and rules are found in written documents are making based on the tradition of society. They may come into being through a long course of historical evolution, or even by the will of power holders in society.<sup>44</sup> In

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<sup>41</sup> Ghai, Y. A Journey around Constitutions, Reflecting on Contemporary Constitutions, University of Cape Town, September, 2003, pp.808-825

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Tadesse, *supra* note 19, p.159

this regard the researcher want to be investigating what seems like the Amhara National Regional state Constitution making process? It was passing through participation of stakeholders, NGOs, academicians, scholars, concerned bodies (societies) and pass through necessary steps and process?

Constitutional making process have changed over time. Once there was a time when monarchs granted Constitution to their subjects at pleasure. This was happened in several countries including Ethiopia<sup>45</sup>, Jordan, Kuwait, Nepal and Saudi Arabia<sup>46</sup> were some examples. On the other hand, Constitutions also have been imposed on defeated or colonized states such as Japan after WWII and to a lesser extent on West Germany and former colonies at independence.<sup>47</sup> Getachew, A. (2012) mentioned that the making of Constitution involves both procedural and substantive issues. Procedurally, it relates to the process of creating expert draftspersons, the drafting itself, submission to the appropriate bodies for discussion, adoption of the draft by the drafters and then submission for ratification or approval by the designated system of approval. Substantively significant things associated with the time of Constitution making/drafting are the issue of popular participation.<sup>48</sup>

Blount (2011) states that in recent times, popular participation is very important instrument in order to bring about legitimacy and acceptance to the Constitution. This means a Constitution will be acceptable and durable if the views of citizens are accommodated in the making process. Participation also helps to raise awareness among citizens about the document when they are involved through participation, consultation, submission, ratification and oversight.<sup>49</sup>

### 2.2.1. Steps in constitutional making process

Making of constitution, pass through different phases. Blout (2011) clearly states that making of Constitution should passes drafting, adoption and ratification phases.

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<sup>45</sup> For Ethiopia, the imperial constitutions of 1931 and 1955 were given from the king, with little input from the people.

<sup>46</sup> Brandt, M., Cottrell, J., Ghai Y. and Regan, A. Constitution making and Reform: Options for the process, Switzerland:Interpeace,2011, p.20

<sup>47</sup> Tadesse, *supra* note 19, p.159

<sup>48</sup> Getachew, *supra* note 28, p.85

<sup>49</sup> Blount, J. Participation in Constitutional Design, in Tom Ginsburg and Rasalind Dixon (eds). Comparative Constitutional Law ,Cheltenham and Northampton: Edward Elgar, 2011, P.38

1. **Drafting**; it refers the initial steps of Constitutional making process. The drafting of Constitution is carried out by an ad hoc body called constituent (Constitutional) assembly. This body is created to adopt a Constitution on behalf of the people. The Constituent assembly may or may not have the responsibility of preparing the first draft. Traditionally the draft Constitution was prepared by the legislature or the constituent assembly, usually through a committee. The assembly also debated and adopted the text of the draft. In modern period, many drafts have been prepared by a body other than the one that debates and approves the Constitution. Such a body is generally called a commission; it is usually supposed to consist of experts (most in law, but also in economics, political science, and public administration). If the commission prepares the draft, it will normally be bounded by certain predetermined goals and key elements of its procedure (often including consultation with the people). The assembly, being a representative body, has a greater degree of autonomy in determining both values and procedures.<sup>50</sup>

2. **Adoption**; the second phase of Constitutional making is adoption, it refers to, legally, speaking, the final decision of a body to accept a draft legal instrument. This could be a final decision of a Constitutional assembly or a legislature. The body responsible to adopt the document varies from country to country. Some constituent assemblies adopt the final document; in other cases, the legislature is entrusted to adopt the draft prepared by the constituent assembly usually by a super majority (e.g. a two-third or three fourth votes). Sometimes, after adoption the people are given an opportunity to express their consent by way of ratification in the way of referendum.

3. The last step is **ratification**; which means the endorsement of decision made by another body. The word ratification is also used to refer to legislative approval to a treaty signed by the executive. Thus, treaties become binding on a country only if ratified by members of parliament. Where ratification is a requirement, the instrument becomes legally binding only when it is ratified. It also indicates the power of the people to approval the final draft through referendum.<sup>51</sup>

### 2.2.2. Normative Standards for constitution making

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<sup>50</sup> Blount *Supra* note 49, p.161

<sup>51</sup> *Ibid*

According to Getachew A. (2012) Constitutional making should include the following standards/ingredients; these are; effective participation, the right of rights, consultation on the process and the content, inclusiveness of the process i.e. like civil society, religious leaders, women, minorities and marginalized groups.<sup>52</sup> In this study, I will investigate theory and practice of the above issues in the Constitutional making process of ANRS.

## 2.3. Sub-national Constitutional Experiences of federations

### 2.3.1. Sub-national Constitution

To understand sub-national Constitution different scholars put their own definition and point of view. Among these some scholars further argued that sub-national Constitutions are not inevitable characteristics of federal system of government. This is true in older federations like USA, Switzerland and Australia, not in Canada and India and in new federal system like South Africa and Ethiopia, not in Nigeria.<sup>53</sup> To understand the definition of sub-national<sup>54</sup> Constitution, first it is better to define, the prefix *sub*, which refers *under* or *below*, conveying the idea of an inferior position, or an element set below an imaginary or real line.

However, its meaning can vary according to the word it is connected with. Pinheiro (2010) states that there are different difficulty to define sub-national because some argues that *sub-national* can mean something that is under or below what is “national” but it can also mean something completely different.<sup>55</sup> Tsegaye (2009) also argues that, in any federation the federal and the state Constitutions have an interlocked set of relations. Often one tends to be the extension of the other. One begins at the point where the other ends or within the bounds of the other.<sup>56</sup>

Tarr (2007) further argues that in most cases the concept of sub-national Constitutions are below the federal Constitution in a power level. Such facts tend to undermine the value of sub national Constitutions in a federal system. Ginsburg and Posner (2010) also support his idea and they further argues that sub-national Constitutions are in general weaker than federal Constitutions,

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<sup>52</sup> Getachew, *supra* note 28, p.96

<sup>53</sup> Taken from, Symposium on The function and relevance of Sub national constitutions in Federal systems Held at Jupiter international Hotel, Addis Ababa, on Dec.1/12/2017.

<sup>54</sup> In this study I am using sub national and Regional state constitution interchangeably.

<sup>55</sup> Pinheiro, J. Faro Homem de Siqueira, What is Sub-national Constitutionalism? Sant'anna Legal Studies, Stals Research Paper No.7, 2010, p.3

<sup>56</sup> Tsegaye, *Supra* note 4

i.e. they are easier to amend and they lay down weaker voting rules. They add mostly sub-national Constitutions will merely duplicate federal Constitutional rules.<sup>57</sup>Based on this, the federal Constitution is a manifestation of the federal competence and sub-national Constitution is manifestation of the sub-national competence. There should be nothing that puts one below or above the other.<sup>58</sup>

With regard to the origin of state (regional) Constitution, Tsegaye (2009) states that depending on the origin of the federation the origin of state Constitution is varying, i.e. on whether it is a coming-together or holding-together type. In federations that are formed through aggregation (which are also known as coming-together federations<sup>59</sup>) state Constitutions often coming into effect before the federal Constitution was adopted. They also tend to be free not to imitate the federal Constitutional text as their model. On the other hand, in federations formed through devolution (or those known as putting-together or holding-together federations<sup>60</sup>), state Constitutions tend to be made following the federal model, and the federal Constitutions seem to set the directions the state Constitutions need to take. Sometimes, the federal Constitutions tend to dictate the form and the content of the state Constitutions.<sup>61</sup>

When we see the experience of other countries, the 1996 Constitution of South Africa the broad frame work for provincial governments is set out in chapter 7 of the national government and provinces are required to comply with certain stipulations in the national Constitution and be so certified by the Constitutional court. In line with this assertion, in Ethiopia Art 52 (2) (b) of the FDRE Constitution clearly authorizes the regional states to enact and execute the state Constitution and other laws important to it. In a more mandatory manner, Article 50 (5) of the Constitution commands the state council to draft, adopt and amend the state Constitution. Tarr (2011) clearly states that, if the federation has been created instead by the aggregation of previously separate entities the federal (uniting) Constitution may include few minimum

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<sup>57</sup>Ginsburg and Posner, “Sub-Constitutionalism”, *Stanford Law Review*, 62, 2010, pp.1583-1628

<sup>58</sup> Tarr, *Supra note 3*, p.23

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Tsegaye, *supra note 4*, p.40



requirements. But, in most federations, separate federal Constitution and sub-national Constitutions are the common features.<sup>62</sup>

Every federal system is structured by a federal Constitution that divides power, establishes central institutions, prescribes the rules for resolving disputes, safeguards rights and provides a procedure for its own adjustment. In some federal systems the federal Constitution prescribes the political institutions and processes for the country's sub-national units as well, thus providing the Constitutional architecture for the entire federal system (like; the case of Belgium and Canada).<sup>63</sup>

But in most federal systems the federal Constitution is an “incomplete” framework document in that it does not prescribe all Constitutional processes and arrangements. Rather it leaves “space” in the federal system's Constitutional architecture to be filled by the Constitutions of its sub-national units even while it sets parameters within which those units are permitted to act. However, those federal systems that recognize a place for sub-national Constitutions differ clearly in the extent to which the federal Constitution is incomplete, that is, in the amount of space that they assign to constituent units to define their own goals and establish their own governmental institutions and processes.<sup>64</sup>

Vander Beken (2016) states that in Ethiopia the uses of sub-national Constitutional space start in the preambles which identify the ethnic groups empowered by the establishment of the region and include their historical narrative. He also states that the Ethiopian regional states enjoy considerable autonomy to draft, enact and amend their Constitutions. This sub-national Constitutional autonomy constitutes an excellent tool for the accommodation of diversity at regional level. Although federalism is relatively recent period in the country all nine regions of the federation have enacted Constitutions which emanate from the distinct nature of their respective polities (although it varies in degrees).<sup>65</sup>

All regional State Constitutions identify based on the principle inherent in ethnic federalism, the regionally empowered ethnic group(s) and contain further provisions aimed at accommodating

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<sup>62</sup> Tarr, A. “Explaining Sub-national Constitutional Space”, *Penn State Law Review*, Vol.115, No. 4, 2011, p.12

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Van der Beken, C. “Sub-national Constitutional Autonomy and the Accommodation of Diversity in Ethiopia”, *Rutgers University Law Review*, Vol. 68:15352016, p.4

and protecting their interests and rights. It has been argued that such provisions might be to the detriment of non-indigenous residents unless regional Constitutions are made sufficiently inclusive of the latter. Whereas the regional states have largely failed to use the potential of State Constitutions to strengthen human rights protection, a number of them have designed or proposed distinct institutions originating in region specific ethnic configurations or political traditions.<sup>66</sup>

Sub-national Constitutional autonomy supports the exercise of the right to self-determination since it allows the indigenous groups to express strengthen and preserve their identity, to protect their rights, to formulate their political and social objectives and to design the institutional and administrative structures suited to achieve these objectives. In fact enabling ethnic groups to exercise their rights to self-determination are the major objectives of sub-national Constitutions in ethnic federal systems.<sup>67</sup>

### **2.3.2. The making process of Sub-national Constitutions in different Federations**

As many scholars suggest that, sub-national Constitutions are recent phenomena and now a day's they are attracted and increased the attention of many federations. Among the scholars Dinan (2008) states that the basic reason for the recent creation of sub-national Constitutions are their functional equivalents in several federal systems, particularly in Europe and Africa.<sup>68</sup> For instance, in Germany during the reunification processes in the early 1990s' five original East German Landers were reconstituted and drafted new Constitutions.<sup>69</sup> In the mid-1990s, with the adoption of a new Ethiopian Constitution in 1995 and establishment of a federal system the nine Ethiopian regional states also adopted their own Constitutions.<sup>70</sup>

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<sup>66</sup> Van der Beken, *Supra note 65*

<sup>67</sup> Marshfield, J. Models of Sub-national Constitutionalism, *Penn State Law Review*. 1151, 1170, 2011, pp585-538

<sup>68</sup> Dinan, J. "Patterns of Sub-national Constitutionalism in Federal Countries", *Rutgers Law Journal*, Vol.39, 2008, pp.837-862, p.2

<sup>69</sup> Quint, P. *The Imperfect Union: Constitutional Structures of German Unification*, Princeton, NJ: Princeton University Press, 1997, chapter 9.

<sup>70</sup> Tsegaye, R. "State Constitutions in Federal Ethiopia: A Preliminary Observation" prepared for a Conference in Bellagio, Italy, March 2004, p.7.

In South Africa with the adoption of a national Constitution and creation of a federal system in 1996 provinces were endorsed to adopt their own Constitutions and the Western Cape provincial Constitution in 1998,<sup>71</sup> In Sudan a Comprehensive Peace Agreement (CPA) of 2005 called for creation of a decentralized system and drafting of a national Constitution and a Southern Sudan Constitution as well as Constitutions for each of the 25 states.<sup>72</sup> Also, in the adoption of the Spanish Constitution of 1978 and creation of a quasi-federal system led to the immediate adoption of autonomous community statutes in Catalonia and the Basque region and eventually in other regions. And a recent revival of interest in these Spanish autonomous community statutes has led since 2005 to the replacement or redrafting of a number of these documents.<sup>73</sup>

At the end of the first decade of the 21st century, the majority of federal systems and sub-national Constitutions have equivalent function.<sup>74</sup> But, Ginsburg and Posner (2010) further argue that sub-national Constitutions are weaker than federal constitutions, they are easier to amend and merely duplication of federal Constitutional rules.<sup>75</sup>

Now a day's sub-national Constitutions are found in the federations of Argentina, Australia, Austria, Brazil, Ethiopia, Germany, Malaysia, Mexico, Russia, South Africa, Sudan, Switzerland, the United States and Venezuela. Provinces in Canada have what has been termed Constitutional statutes. And in Spain, a quasi-federal country, Autonomous Communities have autonomy statutes. Only few federations such as Nigeria, India, Belgium, Russia, are not accepted.<sup>76</sup>

### 2.3.3. Participation of Citizen in Constitution making process

One key aspect in designing Constitutional making processes is providing formal role for the citizenry. Of course all Constitution-making processes are responsive to public opinion in an informal sense in that public official in the course of submitting or approving Constitutional making process can be expected to be responsive to their constituents and act in accordance with

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<sup>71</sup> Brand, D. "The Western Cape Provincial Constitution," *Rutgers Law Journal* (31) 2000, pp.961- 970

<sup>72</sup> Murray, C. and Maywald, C. "Sub-national Constitution-Making in Southern Sudan," *Rutgers Law Journal* (37) 2006, p.423

<sup>73</sup> Colino, C. "Constitutional Change without Constitutional Reform: Spanish Federalism and the Revision of Catalonia's Statute of Autonomy," *The Journal of Federalism* (39), 2009, p. 285

<sup>74</sup> Dinan, *Supra* note 68, p.3

<sup>75</sup> Ginsburg and Posner, *Supra* note 57, pp.1583-1628

<sup>76</sup> Dinan, *Supra* note 68, p.3

popular opinion. Popular involvement in Constitution-making can be institutionalized in several ways. At a minimal level, this can take the form of permitting citizens to play a formal role in proposing drafts that are considered by legislators. A greater degree of popular involvement is found in Constitutions that require the citizenry to draft, adopt and ratify Constitutional making proposed by legislators, convention delegates or commissioners. And the most significant opportunities for direct popular participation in Constitution-making are give freedom to citizen can initiate and ratify Constitutional making process independently of other public officials.<sup>77</sup>

In the Constitutional making process, the role of popular participation is high. In this regard Daniel Elazar, further argued that;

*Constitutional making process involves consent. It is not a commitment which can be coerced however much people can be coerced into obedience to a particular regime. Consensual legitimacy is utterly necessary for a Constitution to have real imposed by force, Constitutions can only exist as meaningful instruments by consent, is another demonstration that constitution making is the preeminent political act.*<sup>78</sup>

Constitutional making has implicit greater dominance in the last decade than at any other time before in the quest for democracy. However, modern Constitution making requires the participation of ordinary people beyond the traditional power brokers. This has introduced the concept of ownership by the majority as a fundamental prerequisite to legitimacy and acceptance. Getachew A. (2012) further states that a Constitution must be a reflection of people's history, cultures, values, needs, aspirations, vision and the soul of the nation. While a Constitution reflects the will of the majority, it must take into account the needs and values of the minorities. It must provide a common framework within which people of diverse or even diametrically opposed views, beliefs and cultures are enjoined to interact without resorting to the force of arms.<sup>79</sup>

In order to achieve the involvement in Constitution making needs certain requirements have to be fulfilled; Firstly, the population must be educated about the role they will play in the formulation of the new Constitution. Such involvement usually initiate with public education,

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<sup>77</sup> Dinan, *Supra* note 68

<sup>78</sup> Daniel Elazar, Constitution-making: The Pre-eminently Political Act, <http://www.jicpa.org/aje/articles3/constisramer.htm>

<sup>79</sup> Getachaw, *Supra* note 28, p.90

which is often a necessity in countries where democracy is a novel concept. Then, the populace must be informed about how democracy and Constitutional supremacy work in general and more specifically, about the possible considerations available to them in forming the Constitution. It is this involvement of the populace that gives the Constitution making process legitimacy and acceptance. If the majority of people accept the document the practice of the Constitution may be visible.<sup>80</sup>

Secondly, the process of consultation must be inclusive. Consultation must not be limited to the elite or principal power brokers, but all classes of society must be afforded the opportunity to participate. Ordinary people must be empowered to make effective contributions to the debate and must be provided with the necessary tools to participate through ongoing public programmes using appropriate media and other methods to involve especially the disadvantaged and the marginalized. Thirdly, deliberate effort should be made to empower civil society. As we all observed that in Africa civil societies are not participatory, they exclusively to articulate the aspirations, visions, values and needs of ordinary people and civil society, with its deficit, has well filled this gap.<sup>81</sup>

Fourthly, the process must be open and transparent; the public must be informed and involved at all stages of the process of Constitution making. The process by which citizens can make contributions must also be made accessible in terms of different diversities. There must be a continuous review and evaluation of the process to ensure that operating principles and standards are being adhered to. To remain true to the principles of public participation, Constitutional bodies must be seen to be accountable. Thus working drafts may have to be made available to those who made submissions. The responsiveness of the Constitution body can thereby be assessed.<sup>82</sup>

The role of political parties on the Constitution making process must be recognized; although they generally, pursue partisan interests, they play a role in bringing issues for debate to the people at grassroots level. The role of experts in the Constitution making process also has a bearing on popular involvement in the Constitution making process. To achieve popular

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<sup>80</sup> Getachew, Supra note 28, p.90

<sup>81</sup> Ibid

<sup>82</sup> Ibid

involvement the experts must be treated as advisors only and they must not be allowed to arrogate to themselves the right to decide what the content of the Constitution should be left to the public.<sup>83</sup>

Generally, Modern Constitution making has introduced normative principles and paradigms under which the process should take place. In the process of Constitution making, the people should be able to understand the importance of the Constitution and should have knowledge of both the process and the content. The role of political parties is necessary but should not be given prominence over the people who are the guardian of the Constitution as political parties often pursue partisan interests.

The role of experts should also be recognized but they should only play an advisory role and they cannot replace the role of the public in the drafting process. Experience from various countries has shown how the process of Constitution making reveals a pattern of actors, including political parties and donors.<sup>84</sup> Therefore, the main rationale of this study is assess and investigate the Constitutional making process of Amhara National Regional States in light of the above requirements of Constitutional making process.

#### **2.4. Constitution making process in Federal Ethiopia**

The making of the 1995 Constitution of Ethiopia have both positive and negative historical episode in the stories of Constitution making around the world. Transitional Charter (TC) provisions were the predominant and chief guidance in the making process of the 1995 Constitution.<sup>85</sup> According to the Charter, “Council of Representatives shall constitute the constitutional drafting commission to draw up a draft Constitution”. The Constitutional drafting commission shall submit to the Council of Representatives the draft Constitution.<sup>86</sup> According to the TC in the adoption of the draft Constitution by the council of Representatives the Constitution

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<sup>83</sup> Getachew, *Supra Note 28*, p90

<sup>84</sup> Tom, M. Public participation in constitution-making: A critical assessment of the Kenyan experience, A dissertation submitted to the Faculty of Law of the University of Pretoria in partial fulfillment of the requirements for the degree of masters of law (LLM in Human Rights and Democratization in Africa), University of Western Cape, South Africa, October 30, 2009, p.66

<sup>85</sup> Tsegaye, R. "The making and legitimacy of the Ethiopian Constitution: Towards bridging the gap between constitutional design and constitutional practice," *in Africa focus vol 23*, No. 1, 2010, p.25

<sup>86</sup> Article 11 of the Transitional Charter

shall be presented to the people for discussion. The final draft shall be presented for adoption in the constituent assembly to be elected pursuant to the final draft of the Constitution.<sup>87</sup>

These above two provisions guided Constitution making process in Ethiopia. But according to different scholars, the making process of 1995 Constitution of Ethiopia faced different challenges and encountered serious problems, in this regard; Meaza Ashenafi (2003) argues that, even if the drafting commission consulted a large number of foreign and local experts and different civil society organizations, this should not give an impression that the process was fully participatory. Because those who were not thoughtful to the transitional government and were offensive of the whole process did not take part in the consultation and they believed that participation would be “legitimizing” the process. Other legal scholar James C.N. Paul as quoted by Getachew (2012) and he argue that;

*There was little meaningful public participation debate, especially debated focus on devolution versus ethnic federalism, let alone sovereignty or self-determination, during this time opposition parties withdrew. Instead of debating the content of the Constitution, they denounced the legitimacy of the whole project. Just as the EPRDF controlled the Constitutional Commission’s work, so it controlled the election, and then the deliberations, of the Constitutional assembly. In the view of the Constitution’s content, Constitutional making process seems regrettable that the process for making it was so inconsistent.*<sup>88</sup>

#### **2.4.1. The making process of sub-national (Regional States) Constitution in Ethiopia**

The practices of different federal countries show that the component units (sub-national units) and its governments carry different descriptions depending on the political tradition of each state. For instance, Canada, India and South Africa refer to the units as ‘provinces’ while USA, Australia and Nigeria use the term ‘states’. In Germany, the component units are called ‘Landers’ while in Switzerland, they are designated as ‘Cantons’. In the case of Ethiopia, the units are called ‘regional states’.<sup>89</sup> The component units that constitute the Ethiopian Federation are nine regional states and it is possible for this number to increase as the Constitution allows

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<sup>87</sup> Article 12 of the Traditional Charter

<sup>88</sup> Getachew, *Supra* note 28

<sup>89</sup> Muhammad, H. the Ethiopian Federal System. The Formative Stage, Friedrich-Ebert-Stiftung, Forum for Federalism and Democracy, Addis Ababa, 2010, Friedrich-Ebert-Stiftung, Addis Ababa office, p.13.

different nationality groups within the existing regional states to establish its own state as far as the procedure provided for this purpose is respected in the process.<sup>90</sup>

Habib (2010) clearly states that in the Ethiopian federalism different fascinating conditions are existed among these; difference in size of Ethiopian regional states is the one. However, the Constitution still maintains that “Member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers”.<sup>91</sup> Getachew A. (2012) also argues that, the FDRE Constitution allocates significant powers and responsibilities to regional governments. In addition to the responsibilities provided in the Constitution as either exclusively state or concurrent functions, residuary matters are also assigned to the regional states. As a result, the sum total of powers and responsibilities of regional governments is likely to expand by virtue of its mandate to deal with the residuary matters, not enumerated by the Constitution. The way regional governments are organized is another interesting feature of Ethiopian federalism. Contrary to the practice in other developing federal countries such as India and Nigeria, the Ethiopian federal system allows the component units to adopt their own regional Constitutions without violation of the supremacy of the Federal Constitution.<sup>92</sup>

All regional state Constitution of Ethiopia was adopted their own Constitution in the aftermath of the coming into force of the federal Constitution in 1995. However; Oromia region was adopted its first regional Constitution before all others in January 1993. But, these regional Constitutions were merely copies of the federal Constitution.<sup>93</sup> According to Article 52 (2) (b), the regional states have the power to enact a State Constitution.<sup>94</sup> This power is also provided by Article 50 (5), which stipulates that the State Council (i.e. the regional parliament) has the power to draft, adopt and amend the regional State Constitution.<sup>95</sup>

There is no uniform approach regarding the making of sub-national constitutions that the process is likely to take among federations. In Ethiopia also the adoption process of the regional state Constitution was not participatory and there is no popular participation to draft the regional state

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<sup>90</sup> Article 47 (2) of FDRE constitution of 1995

<sup>91</sup> Muhammad, *Supra note* 89, p.13

<sup>92</sup> Getachew, *Supra note* 28, p.14

<sup>93</sup> Van der Beken, *Supra note* 7

<sup>94</sup> Article 52(2b) of the FDRE constitution

<sup>95</sup> Article 50(5) of the FDRE constitution



Constitutions, due to this reason most regional state citizens are not able to know the contents of their regional state Constitutions. Most scholars argue that sub national Constitutions are more accommodative and they fulfill minimum standards and also they are nearest to citizens than the federal Constitution <sup>96</sup>(my emphasis also add). Since 2001 and onwards, all regional state Constitutions were revised their respective Constitution.

In addition to the above idea, Vander Beken (2006) argues that all regional state Constitutions have a similar structure they vary quite significantly is in length.<sup>97</sup> To support this idea Tsegaye R. (2009) further argues that all revised regional state Constitutions of Ethiopia were adopted by the respective State Councils and the drafting was carried out either by standing committees of the Council or by committees appointed by the regional Chief Executive (the regional president).<sup>98</sup> Vander Beken (2010) also add that, since all State Councils at the time of adoption of the revised Constitutions were controlled by the same political party and the rationale behind the Constitutional revision reflected the objectives of the ruling party (EPRDF). All regional Constitutions mention the same objectives inducing the revision of the original Constitutions. One is the achievement of good governance by strengthening accountability, transparency, efficiency, the separation of powers and checks and balances. Another objective is adapting the regional Constitutions to the objective reality of the regional states they are serving as basic law.<sup>99</sup> In this study, the researcher want to asses and investigate the practice of the above principles whether existed or not in the Amhara National Regional State Constitution?

## **2.5. Development of Constitutionalism in Ethiopia Sub-national Constitutions**

### **2.5.1. The Concept of Constitutionalism**

As many scholars argue that the existence of a Constitution does not imply the idea of constitutionalism. Among these scholars Pinheiro (2010) states that Constitutionalism does not

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<sup>96</sup> Taken from, Symposium on The function and relevance of Sub national constitutions in Federal systems Held at Jupiter International Hotel, Addis Ababa, on Dec.1/12/2017.

<sup>97</sup> Van der Beken, *supra note* 10

<sup>98</sup> Tsegaye, *Supra note* 4, p.52

<sup>99</sup> Van der Beken, *Supra note* 7

necessarily assume the existence of written norms or a codified Constitution, but rather the legitimacy of the exercise of powers by the authorities, the voluntary commitment of all citizens to the established system, and a well-structured frame of government. Also, Constitutionalism is assertion on the respect of the rule of law; reflect basic values and aspirations of the community and the protection of rights.<sup>100</sup>

Fombad C. (2007) clearly stated that Constitutionalism encompasses the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that effectively compels it to operate within its Constitutional limitations. In this respect, Constitutionalism has certain fundamental values that are well defined, lending mechanisms to hold government accountable.<sup>101</sup> Pinheiro (2010) also supported that sub national Constitutionalism is the application of the principles of Constitution at the sub-national level and it's a doctrine concerned with the form of government, the limitation of power and the protection of rights relating to the different entities which comprises the nation.<sup>102</sup>

### 2.5.2. Sub-national Constitutionalism in Ethiopia

After the fall down of the *Derg* regime in May 1991, Ethiopia allotted decentralized governance. Since then, two successive developments having remarkable impression in the history of sub-national Constitutionalism of the country emerged. Firstly, the adoption of Transitional Period Charter (TPC) in 1991 was the turning point for development of Ethiopian sub-national constitutionalism. The second development is the adoption of FDRE Constitution, which has officially declared Ethiopia as a federal country in 1995.<sup>103</sup> The FDRE Constitution has established two tiers of governments: Federal Government and State Governments<sup>104</sup>.

Therefore, this adoption of federal system in the country gives for the Regions/States their own exclusive areas of competence and empowered to adopt their own respective Constitutions and

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<sup>100</sup> Pinheiro, *Supra note 55* , p.2

<sup>101</sup> Fombad, *Supra note 31*, p.40

<sup>102</sup> Pinheiro, *Supra note 55*, p.4

<sup>103</sup> Constitution of the Federal Democratic Republic of Ethiopia (CFDRE), Proclamation No.1/1995, Federal Negarit Gazeta, Year 1 No.1, Arts 1, 46 (1) & 50 (1).

<sup>104</sup> Article 46(2) of FDRE Constitution

govern their affairs by their Constitution. To do this the state councils were empowered to issue sub-national Constitutions in their respective territory.<sup>105</sup> After all, Elazar D. (1982) conclude that this has created explicit potential and possibility for dual but interrelated Constitutionalism in Ethiopia. As the sub-national Constitutions in federal states is part and parcel of the entire Constitutional structure of the systems and play a vital role in giving the systems a direction.<sup>106</sup>

### **2.5.3. The Role of Civics and ethical education in the development of sub - national Constitutionalism**

As Sisay A. (2009) states that the importance of educating people to ensure a country's economic competitiveness and sustainable development is unquestionable. Without well-educated human resource it is difficult to utilize available resources effectively for national development and to benefit from the global knowledge-based politics. So, education is a major priority of many countries across the globe.<sup>107</sup> In Ethiopia Civic and Ethical Education is one of current education policy and basic curriculum across the country. The subject is planned /anticipated to stock students with moral values and to create active and competitive citizens and make them know their history as well as rights and obligations. Therefore, both the federal and the regional governments provide this subject from lower grade up to universities.

Tsegaye R. (2009) also argues that at state level, Regional State Constitutions (RSC) have significant role in day to day life of the people as instrumental to change and entrench Constitutionalism at local level, guiding and regulating the Regional State Government (RSG) behavior in keeping them accountable and transparent.<sup>108</sup>

In my understanding, for the development of sub-national Constitutionalism, the only active participation of political/government officials is not sufficient therefore, to create this awareness Civic and Ethical Education is one interdisciplinary subject to teach about regional state Constitution. The regional state Constitution should be included in civic education subjects at

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<sup>105</sup> Proclamation No.7/1992, Art.15 of TGC

<sup>106</sup>Elazar, D. State Constitutional Design in the United States and Other Federal Systems Vol. 12, No. 1, (1982), p.1.

<sup>107</sup> Sisay Asefa (2009).Higher Education Innovation and Challenges; Can African Universities be transformed through International Academic Linkages and Engagements? The Case of Ethiopia, The proceedings of the 1<sup>st</sup> international conference on educational research for development Volume II, 322-345, Addis Ababa, p. 93

<sup>108</sup> Tsegaye *Supra* note 4, pp.33-40

least in primary education and address for every student in order to create competent, active and responsible citizens, enable citizens develop participatory skills like citizens ability in controlling public policy, to make citizens aware about the fundamental rights and freedoms, enable citizens participate in voluntary organizations like Trade Union, youth association, women's association among other and to make all citizens think rationally and critically. It also develop the knowledge and intellectual skills that could help them monitor and correct the policies and rules of a given society and/ or country. (My emphasis). Depending on this fact, in this study I want to assess the Amhara National Regional State Constitutions, whether it is a part and parcel of civics education in primary school or not? If not why? And whether making regional state Constitution part of the curriculum of civic and ethical education relevant or not?

## CHAPTER THREE

### 3. Historical Development and Practices of Amhara National Regional State Constitution

#### 3.1. The Historical Development of Regional State Constitutions in Ethiopia

In Ethiopia, the emergence and development of regional state Constitutional process has gained a momentum after the fall down of *Derg* in 1991 in general and the adoption of federalism in 1995 in particular.<sup>109</sup> The Transitional Period Charter (TPC) was the turning point in the history of Ethiopia regional state Constitution. It visualized autonomous regional states with designated areas of competence that could write their Constitutions and govern themselves by their Constitution.<sup>110</sup>

However, the existence of self-governing regional states, which can write their Constitution and administer themselves through their Constitutions, does not verify the emergence of strong regional state Constitutionalism.<sup>111</sup> To make strength for this idea, Tsegaye R. (2004) further argued that this is because of in the state Constitutional making process, state Constitutions observed soon after the adoption of national Constitution and during that time, regional states were heavily reliant on the federal government as they ‘used a model draft and prepared by the then Regional Affairs Desk of the Federal Prime Minister Office’ in making their respective regional state Constitutions.<sup>112</sup>

As a result in Ethiopia regional states Constitutions were similar in the legal/political language used in the drafting styles and techniques with national Constitution, and among each regional state, too. This show that regional state Constitutions were highly engaged in copying the national Constitution and regional state Constitutions issued by some fast-moving state governments and subjected to indoctrination by the federal government.<sup>113</sup>

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<sup>109</sup> Yitages, A. Status of Sub-national Constitutionalism in the Federal Democratic Republic of Ethiopia: Implications of Theoretical Evaluation of Some Facts, Non Dated (UD), pp.171-175.

<sup>110</sup> Article 52 (2) of FDRE Constitution

<sup>111</sup> Yitages, *Supra note* 109

<sup>112</sup> Tsegaye, *Supra note* 70, p.8

<sup>113</sup> *Ibid*

After that as clearly put on Article 47 (1) of FDRE Constitution, there are nine regional states.<sup>114</sup> All of the nine regional states in Ethiopia have their own Constitutions. Almost all the Ethiopian regional states enjoy establishing their own Constitution only after the adoption of the federal Constitution.<sup>115</sup> Then, most of them had it in force since 1995.<sup>116</sup> The power of the regional states to draft, adopt, and amend a state Constitution is conveyed by articles 50 (5) and 52 (2b) of the federal Constitution of 1995 respectively.

Vander Beken (2012) states that pursuant to these provisions all regional states adopted their own constitution. The Oromia, Amhara, Tigray, Southern Nations, Nationalities and Peoples; Somali, Harar regional Constitutions were adopted in 1995. The Benishangul-Gumuz and Gambella regional Constitutions were adopted in 1996. The Afar region adopted its Constitution in 1998.<sup>117</sup>

Tsegaye R. (2004) also argues that during this time the regional Constitutions were simply enacted by the respective state councils and were therefore not the result of an encompassing drafting and deliberation process. The making of most of the state Constitutions had a detailed procedure. i.e. different from federal Constitution procedure. Because the federal Constitutional making procedure pass through conventional stage of drafting, deliberation and adoption process. However, the regional state Constitutions of Ethiopia were simply drafted by the legal standing committee of the respective regional states and adopted by the legislative bodies of the same.<sup>118</sup> From 2001 onwards, all regional state Constitutions were significantly revised their first Constitutions.

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<sup>114</sup> the State of Tigray; the State of Afar; the State of Amhara; the State of Oromia; the State of Somali; the State of Benishangul-Gumuz; the State of the Southern Nations, Nationalities, and Peoples; the State of the Gambella Peoples; and the State of the Harari People. (Article 47/1

<sup>115</sup> But, Oromia regional state enacted its regional state constitution in 1993 before the adoption of federal constitution of 1995.

<sup>116</sup> Tsegaye, *Supra* note 70, p.6

<sup>117</sup> Van der Beken, *Unity in Diversity, Federalism as a Mechanism to Accommodate Ethnic Diversity: The case of Ethiopia* 16-24 , zuerichlmuenster, lit verlag, 2012, p.102

<sup>118</sup> Tsegaye, *Supra* note 70, p.6

Table 3.1: Summary of regional state constitutions of Ethiopia, first, revised, no. of articles and chapters.

No.	Name of Region	Year of first constitution	Date, month and year of revised constitution	Number of Articles	Number of Chapters
1	Tigray National Regional state	1995	Nov.15, 2001	110	11
2	Afar National Regional State	1998	Jul.5,2002,	111	11
3	Amhara National Regional State	1995	Nov.5, 2001	120	12
4	Oromia National Regional State	1993(1995, effectively)	Oct.27, 2001	113	12
5	Somalia National Regional State	1995	2002	110	11
6	Southern Nation, Nationalities and Peoples National Regional State(SNNP)	1995	Nov.12, 2001	128	12
7	Benshangul Gumuz National Regional State	1996	Dec.2, 2002	121	12
8	Harari National Regional state	1995	2004	80	9
9	Gambella National Regional State	1996	Dec.17, 2002	125	13

Source: Tsegaye Regassa, Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level, 3 MIZAN L. REV. 33, 52 (2009) and Constitution of all national regional state Constitutions.

Deginet W. (2014) states that, the Constitutional revision process of all regional state Constitutions was initiated by the federal government, which issued general directives for the

regional drafters<sup>119</sup> In supporting this argument Tsegaye (2009) stated that the drafting task was mainly carried out by either standing committees of the regional state council (the regional parliament) or by committees appointed by the regional chief executive (the regional president) and all revised Constitutions was subsequently adopted by the respective regional councils.<sup>120</sup>

Like, other regional states, the Amhara National Regional State Revised Constitution was made on November 5, 2001.<sup>121</sup> But, what are the contributions of the regional states revised provisions of the constitution in the practice of Amhara National regional state? Are they really visible in the practical world? This is what I would be assessed in this study in the Amhara region Constitution and its practice.

As clearly discussed on the above, in Ethiopia state councils were empowered to issue sub-national Constitutions in their respective territory. Since all regional councils at the time of adoption of the revised Constitutions were controlled by EPRDF Constituents or affiliated parties, it is fair to argue that the revised Constitutions of regional states primarily reflected the objectives of the ruling party.<sup>122</sup> As many scholars and different work argues the claim that the revised Constitutions primarily reflected the objectives of the ruling party is supported by the preambles of the regional state Constitutions, which point out similar rationales for the Constitutional revision.<sup>123</sup>

However, Getachew A. (2012) further argues that the main objective for the revision of the regional state Constitution is to achieve good governance by strengthening accountability, transparency, efficiency, the separation of powers, and checks and balances.<sup>124</sup> Van der Beken (2016) also, briefly put another objective of revision of the regional state Constitutions by considering to the reality of the regional states and the correspondence between the objectives

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<sup>119</sup> Deginet, W. Sub-national Constitutional Amendment and Revision Processes in Ethiopia: The Case of Oromia National Regional State, Addis Ababa, Ethiopian Civil Service University, June 2014,

<sup>120</sup> Tsegaye, *Supra* note 4

<sup>121</sup> Amhara Revised Regional State Constitution

<sup>122</sup> But, in contrast to Ethiopia, in South Africa the dominant African National Congress which had opposed federalism after independence discouraged the provinces it controlled from using their sub-national constitutional space. Williams, *Comparative Sub-national Constitutional Law*, supra note 11, at 643.

<sup>123</sup> Afar const. pmb. (2002); Amhara const. pmb. (2001); Benishangulgumuz const. pmb. (2002); Gambella const. pmb. (2002); Harar const. pmb. (2004); Oromia const. pmb. (2001); Somali const. pmb. (2002); Southern const. pmb. (2001); Tigray const. pmb. (2001)

<sup>124</sup> Getachew, *Supra* note 28



behind Constitutional revision and the EPRDF political objectives also explain why all regional Constitutions were revised at around the same time upon the initiative of the federal government.<sup>125</sup> He further argues that regional Constitutional autonomy offers excellent opportunities for the regional states to accommodate the specific ethnic constellation of their polities.<sup>126</sup> Article 52 (2) a-b of the FDRE Constitution which stipulates that;

*States are bound to “establish a state administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the federal Constitution;” and “to enact and execute the state Constitution and other laws”. One can conclude from these provisions that the regional state Constitutions cannot to establish a system that has different arrangements than federal Constitution. These conditions set the external limits of the freedom to adopt one’s own Constitution at the state level.*<sup>127</sup>

### **3.2. Constitutional practices of the Ethiopian regional states: “Visible” or “Invisible”**

#### **3.2.1. Preambles of all Regional States Constitution in Ethiopia**

Quint (1997) states that all regional State Constitutions start with a preamble mention the rationales of their Constitutions. According to him one of the rationales of regional state was to reflect and accommodate regional distinctiveness.<sup>128</sup> Based on their Constitution rational, the first sentence of all preambles consistently begins with an indication of the empowered ethnic group(s). Hence, already from the first sentence one can suppose whether a given regional Constitution acknowledges the ethnic pluralism of its polity or not.<sup>129</sup>

In these regard, when we see the whole regional state Constitution of Ethiopia, Somali Regional State Constitution specifies the regional Constitution was revised to take into account the livelihood of the pastoralists.<sup>130</sup> Afar Regional State Constitution refers to the objective of

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<sup>125</sup> Van der Beken, *Supra* note 65

<sup>126</sup> *Ibid* p:1545

<sup>127</sup> Article 52(2)(a-b) (1995 of Federal Constitution)

<sup>128</sup> Quint, *Supra* note 69

<sup>129</sup> See Afar Const. Pmbl. (2002); Amhara Const. Pmbl. (2001); Benishangulgumuz Const. Pmbl. (2002); Gambella Const. Pmbl. (2002); Harar Const. Pmbl. (2004); Oromia Const. Pmbl. (2001); Somali Const. Pmbl. (2002); Southern Const. Pmbl. (2001); Tigray Const. Pmbl. (2001).

<sup>130</sup> Somali Revised National Regional State constitution

reflecting the lifestyle of the (regional) polity.<sup>131</sup> Finally, according to Tarr A. (2007) the preambles also Constitutions identify the ethnic group(s) empowered by the establishment of the region.<sup>132</sup> This suggests the idea which originates in Proclamation No. 7/1992 that the nine regional states have empowered one or more ethnic groups justifying the name of Ethiopian federalism as ethnic federalism.<sup>133</sup> Empowerment require that the concerned ethnic groups are supposed to exercise the different components of their right to self-determination as enshrined in article 39 of the federal Constitution through and within the region.<sup>134</sup> The Somali and Oromia Constitutions, for instance use the Preamble "We the Somali/Oromo people" reflecting that only one ethnic group or the titular group that has been empowered by the establishment of the region.<sup>135</sup>

The preambles of the Constitutions of Benishangul-Gumuz, Gambela, and Harar regions on the other hand expressly mention the diverse ethnic groups empowered by/or indigenous<sup>136</sup> to the region.<sup>137</sup> The Benishangul-Gumuz Constitution starts its preamble with the phrase, "We the nationalities and peoples of the region" and further in the preamble the ethnic groups of the region are identified as the nationalities of Berta, Gumuz, Shinasha, Mao, and Komo.<sup>138</sup>

Similarly, the preamble of the Gambella Constitution starts with "We the Nationalities and Peoples of Gambella Peoples' National Regional State," and these are in the subsequent paragraphs of the preamble identified as the nationalities of Anywaa, Nuer, Majang, Upo, and Komo.<sup>139</sup> The preamble of the Harar Constitution talks about the nations, nationalities and peoples of the region and explicitly singles out the Harari and Oromo ethnic groups.<sup>140</sup>

From the above all preamble statements, we can surely conclude that, the preamble of some regional state Constitutions refer only their own indigenous ethnic groups by excluding the so-

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<sup>131</sup> Afar Revised National Regional State Constitution

<sup>132</sup> Tarr, *Supra* note 3

<sup>133</sup> National/Regional Self –governments Establishment Proclamation No. 7/1992, Federal Negarit Gazeta of TGE.

<sup>134</sup> Article 39 of FDRE Constitution

<sup>135</sup> Somali and Oromia Revised National Regional State Constitution respectively

<sup>136</sup> The term "indigenous" is explicitly used by the Benishangul-Gumuz Revised Constitution (article 2) to indicate the regionally empowered groups.

<sup>137</sup> Benshangul-Gumuz, Gambella and Harar regional state revised constitution

<sup>138</sup> Preamble of Benshangul-Gumuz regional state revised constitution

<sup>139</sup> Preamble of Gambella regional State revised constitution

<sup>140</sup> Preamble of Harari regional State revised constitution

called exogenous ethnic groups.<sup>141</sup> The preamble of Oromia region Constitution for instance, does not refer to the peoples of the Oromia region, but simply to the "*Oromo people.*" Furthermore, article 8 of the Oromia Constitution provides that "*Sovereign power in the region resides in the people of the Oromo Nation...*") This implies that The Oromia region Constitution only contains protective mechanisms for the Oromo, not for the other ethnic groups, since these are considered to be exogenous. Although the preamble of Amhara region Constitution acknowledges the existence of other ethnic groups by saying that the peoples of Amhara region, it contains group specific rights of self-determination for the Himra, Awi and Oromo who are considered to be endogenous in the region.

In short, the owner of the region in Oromia, Afar, Somali, Benishangul-Gumuz and Gambela Regional States Constitutions are; Oromo, Afar, Somali, (Berta, Gumuz, Shinasha, Mao, Komo,) and (Anyuak, Nuer, Majang, Upo and Komo) respectively irrespective of other resident citizens in these regions. Therefore, they are not recognized and accommodate minorities which are non-endogenous.

### **3.2.2. Sub-national Institutions Necessary for the practical application of Constitution?**

Independent institutions serve as watchdog over acts of organs of state governments and that foster democratic sub-national governance and ensure a vigorous sub-national Constitutionalism. Consistent with this, in Ethiopia sub-national Constitutions have empowered their respective state Councils that have the mandate to establish 'institutions necessary for the promotion of social services, economic development and building system of democratic governance.'<sup>142</sup>

Sub-national Constitutions notify that establishment of any such institution is dependent upon a single ground that is hardly reachable by the Nation Nationalities and Peoples under the

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<sup>141</sup> According to, Vander Beken C. (2006), Endogenous ethnic groups are those ethnic groups that have traditionally lived in the territory of the region. Exogenous minorities are ethnic groups that have migrated to the region in the recent past and are endogenous in another region. We could also call them internal migrants. Endogenous minorities have a right to have a territory of their own inside the region and to representation in the regional institutions. Exogenous minorities do not have such specific protection and can only claim universal rights.

<sup>142</sup> Afar Con., Art.47 (3)(m); BG Con., Art.49 (3)(12); Oromia Con., Art.49 (3). However, the Oromia Con. employs different language that tends to limit the nature of institutions that may be established. It says 'Establish institutions necessary for expanding social service and fastening economic developments.'

competence of the State Councils. State Councils are somehow committed towards ensuring sub-national Constitutionalism. Most of sub-national units have already established anti-corruption commissions at sub national level. Finally, sub-national Constitutions require State Councils to establish sub-national ‘Audit and other Control (or inspection) office’.<sup>143</sup> However, the effectiveness of such institutions is questionable.<sup>144</sup> Generally, the newly created sub-national institutions such as the Council of Nationalities of the SNNPRS, the Constitutional Interpretation Commissions of the other States and the Nationality Administrations (legislative Council, executive and judiciary) of the Amhara National Regional State are the result of these institutions that realize sub-national Constitutionalism. But, I will try to assess the practice of Nationality Administration Councils and the other legal institutions that were established in Amhara National Regional State. Like Judicial Training and legal Research institute.

### 3.2.3. **The Problem of Invisibility of Regional State Constitutions in Ethiopia**

Different literature indicates that regional states Constitutions are invisible and different factors contribute for these. Tsegaye R. (2009) concludes that, a number of factors may be mentioned for the invisibility of state Constitutions in Ethiopia, these includes the following; a) Most of the Constitutions are not known among state citizens, which might have to do with the lack of a Constitutional moment that engaged the state electorate as participants in the making process, b) There is a limited popular legitimacy that accompanies the texts of the state Constitutions; c) Institutions that are envisaged to interpret and enforce the Constitutions are not legally established (e.g. the Constitutional Interpretation Commissions and the state CCIs), where they are established the fact that they have not become operational; and the fact that they lack effectiveness in their operation is also part of the challenge. d) The patent lack of principles of Constitutional interpretation, the weakness of interpretive authorities to render neutral impartial and independent interpretative decisions; e) The challenge of giving a prompt and effective Constitutional solution to Constitutional disputes that emerge in the states; and f) The challenge of guaranteeing effective protection to minorities in the sub-national and sub-state entities.<sup>145</sup>

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<sup>143</sup> Afar Con., Art.47 (3)(h); BG Con., Art.49 (3)(8); and Oromia Con., Art.49 (3) (f).

<sup>144</sup> Yitages, *Supra* note 109

<sup>145</sup> Tsegaye, *Supra* note 4

According to Yitages A. (ND) the practices of state Constitution were challenging to the development and practice of sub-national Constitution in the country by various reasons. These were due to the mere fact of writing sub-national Constitutions and the inclusion of some Constitutional principles, to provided practices consistent with entrenching sub-national Constitutional, the process was highly enclosed by factors that hinder the practice of sub-national Constitution. *First*, sub-national units were engaged in copying the draft by the federal government Constitution and other sub-national Constitutions, which were issued a short time prior to them. *Second*, sub-national Constitution units were subject to indoctrination by the federal government. *Third*, during this process, most of not all of the sub-national Constitutions had resulted from a procedure that hardly involved the Nation Nationalities and Peoples in the sub-national units as they were more often than not exclusively drafted by the Legal Standing Committees of the respective sub-national units and simply adopted by legislatures of the same.<sup>146</sup>

These realities hindered the development of not only sub-national Constitutionalism but also a diversified and contextualized trend of sub-national Constitutionalism. Because, they compelled sub-national units to think and operate within a given domain to fail to see the possibility of widening the scope of their powers which they can do as they are given residual power under the Constitution of FDRE that may afford an opportunity for the development of sub-national Constitutionalism in broad areas and to fail to take due consideration of their peculiar circumstances that may present a fertile ground for the development of sub-national Constitutionalism in their respective contexts.<sup>147</sup>

Finally, they may negatively hinder attitude of the Nation Nationalities and Peoples in the sub-national units for two reasons. First, they might create a shadow of doubt on the identity of the state governments on the part of the Nation, Nationalities and Peoples as the sub-national units tended to be highly influenced by demands of the federal government than sub national needs. Second, as Nation, Nationalities and Peoples were also not involved in the sub-national

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<sup>146</sup> Tsegaye *Supra* note 80, p.7. Thus, they did not pass through the conventional stages the CFDRE had passed through the following stages: drafting by Constitutional Commission, and deliberation by the public or representatives elected for such purpose and for adoption [Constitutional Assembly].

<sup>147</sup> *Ibid*

Constitution making process they could lack sense of ‘our Constitution’ feeling on the one hand and could strongly develop sense of ‘it’s (the state government’s) Constitution’ on the other.

These situations wash away the public trust required to establish sub-national Constitutionalism, to which Ethiopians in general and the Nation, Nationalities and Peoples in the respective sub-national units struggled to secure and have little capital at their disposal. Public trust is important in the development of sub-national Constitutionalism.<sup>148</sup> This, in turn, presented a challenge to create public trust that is necessary to entrench Constitutionalism at sub-national level.

Yitages A. (ND) also add, the possibility of development of independent sub-national Constitutionalism (Constitutionalism that reflects the actions of sub-national units without any interference from the federal government) is also curtailed. At this time, sub-national units were ‘required’ to accept draft Constitution prepared in the form of fit all jacket and they did so within a very short period one cannot imagine to be sufficient to amend a Constitution, which is a fundamental document and that has to go through stringent requirements. This hampered the possibility to expand the areas of sub-national Constitutionalism (as the Constitutional space was limited) and a diversified sub-national Constitutionalism (as sub-national units had no adequate time to see into their peculiarities).<sup>149</sup>

### **3.3. Amhara National Regional State Constitution**

#### **3.3.1. Brief History of Amhara National Regional State (ANRS)**

The Amhara National Regional State is found in the north western part of Ethiopia. With an estimated area of 170, 752 square kilometer. The region is the second largest regional state in Ethiopia. According to the 2007 Central Statistical Authority (CSA), the state has an estimated population of 17, 214 056 (23.3%) of the total population of the country.<sup>150</sup> The Amharas are the largest ethnic group in the region. Around 92.1 percent of the people in the state belong to the Amhara ethnic group.

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<sup>148</sup> Tsegaye, *Supra* note 70, p.8

<sup>149</sup> Yitages, *Supra* note 109

<sup>150</sup> Summary and Stastical Report of the 2007 Population and Housing Census (FDRE Population Census Commission 2007, p.22)

There are also other ethnic groups in the region; these are Agew Awi (595,721) Agew Himra (238,540), Oromo (451,221) and Argoba (69,978) ethnic groups in the state. These ethnic groups constitute the largest minority groups in the Amhara region.<sup>151</sup> Amhara national regional state constitution does not deny the existence of diversity.<sup>152</sup> The preamble of the constitution makes reference to the "Peoples of the Amhara National Regional State." Furthermore, article 8 of the same constitution clearly stipulates that: "The supreme power of the national regional state resides in and belongs to the peoples of the Amhara region."<sup>153</sup>

### 3.3.2. **Constitutional Structure and Administration of the Amhara National Regional State**

The Revised Constitution of the Amhara National Regional State provides that the administration of the regional state is structured at regional, *woreda* and *kebele* level.<sup>154</sup> The Amhara National Regional State Constitution was approved by the Amhara region council on 22 June 1995. And then it was revised on 5 November 2001 and organizes the administrative divisions of the region into three hierarchical levels. The highest level is the regional level. The second administrative level is the level of the *Wereda* (district), these being further subdivided into *Kebele* (the lowest administrative level).

However, the Constitution creates a special territorial entity: for the Himra, Awi and Oromo ethnic minority groups, the Nationality Administration. Hierarchically, the Nationality Administration is situated between the regional state and *Wereda* levels. In the institutional structure at the regional level, the Amhara region has legislative, executive and judicial institutions. Legislative powers are vested in the regional council, executive powers in the Council of the Regional Government and judicial powers in the regional courts. The Amhara region council is the highest authority of the region.<sup>155</sup>

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<sup>151</sup> Summary and Stastical Report of the 2007 Population and Housing Census (FDRE Population Census Commission 2007, p.90)

<sup>152</sup> Vander Beken, C. Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional level, Faculty of Law, Department public law, *Africa Focus*, Vol.20, No.1-2, Ghent University, Belgium, 2007.

<sup>153</sup> Article 8 of the Amhara National Regional State Revised Constitution

<sup>154</sup> Art 45 (1) of the ANRS Revised Constitution

<sup>155</sup> Article 46(1) of the ANRS Revised constitution

Unlike the federal parliament, it is unicameral. Its members are representatives of the "peoples in the regional state as a whole"<sup>156</sup> and are elected for a term of five years on the basis of direct elections<sup>157</sup> by using First Past the Post system (FPTP).<sup>158</sup> The Amhara Region Revised Constitution pays proper attention to the position of ethnic minority groups by providing for a guaranteed representation of "*minority nationalities and peoples*". The Amhara Constitution does also provide for a guaranteed representation of ethnic minorities in the Constitutional interpretation commission. The Commission consists not only of members nominated from each *Wereda* council, but also from each Nationality Council (this is the legislative council of the Nationality Administration). Besides to this, the Amhara Region Revised Constitution provides for the establishment of a Nationality Administration for three ethnic minority groups in the region: the Oromo, Himra and Awi. As such, the representation of these three ethnic minority groups in the regional organ for Constitutional interpretation is guaranteed.

### **3.3.3. Practice and different arguments related with Institutional Structure in the Amhara National Regional State Constitution**

Constitutions should also include the picture of social, political and economic institutions. Establishments of similar democratic institutions such as media, political parties, and civil society are equally important. In a federal country an institution that governs intergovernmental relations seems inevitable. Manner of organization and implementation must also be properly depicted.

The state administration is the highest political authority in the region. It has three principal organs. These are Regional Council (RC), Regional Administrative Council (RAC) and a judicial body.<sup>159</sup> The RC is the legislative organ of the state government. It comprises of elected representatives of the peoples of the region.<sup>160</sup> The RAC is an executive organ of the state government. It consists of the regional chief administrator, his deputy and heads of other

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<sup>156</sup> Article 48(3) of the ANRS Revised constitution

<sup>157</sup> Article 48(1) of the ANRS Revised constitution

<sup>158</sup> Article 48(2) of the ANRS Revised constitution

<sup>159</sup> Art 46 of the ARS Revised Constitutions

<sup>160</sup> Art 48 (1) of ARS Revised Constitution



executive bureaus.<sup>161</sup> The state administration also has a judicial organ. The state government has a number of powers and functions which are devolved to them by both the federal and regional state Constitutions.<sup>162</sup>

### **3.3.3.1. Nationality Administrations/zones in the Amhara National Regional State Constitution**

According to the Revised Amhara National Regional State Constitution, the Nationality Administrations have a three government organs consisting the Nationality Council (the Legislative), the Nationality Administrative council (the executive), and the judicial body of the Nationality Administration (the courts located in its territorial jurisdiction).<sup>163</sup> The creation of Nationality administrative level results from the Constitutional recognition of ethnic diversity in the Amhara region. In the Amhara National Regional State, there are more than three indigenous ethnic minorities which are found concentrated in certain geographical areas within the region.

Considering this reality the regional state revised Constitution recognizes the right to self-determination and self-government of these ethnic minorities. In effect, the Constitution designates a geographical area which is inhabited by an ethnic minority as “Nationality Administration”.<sup>164</sup> The Amhara region constitution recognizes that, although the Amhara region was created for the Amhara people, there are other peoples living in the region as well. Following this recognition, it has developed mechanisms to realize the right to self-determination (in the broad definition of article 39 of the federal constitution) of these minority groups.

One of these mechanisms is the representation of minority groups in the regional institutions. Analysis of the federal Constitution makes it clear that the preferred mechanism of the Ethiopian Constitutional drafter to realize the right to self-determination is the creation of ethnic-based territorial entities. In the federal Constitution, this ethnic territorial strategy is expressed by the creation of ethnic-based regional states, such as the Amhara region. Following the example of the federal Constitution, the Amhara Constitution attempts to ensure the right to self-

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<sup>161</sup> Art 57 (1) of the ARS Revised Constitution

<sup>162</sup> Art 52 of the FDRE Constitution

<sup>163</sup> Van der Beken, C. *Completing Constitutional Architecture: A Comparative Analysis of Sub-National Constitutions in Ethiopia*. Addis Ababa University Press, 2017, P.147

<sup>164</sup> Art 93 (1) (b) of the ARS Revised Constitution

determination within its boundaries through the creation of Nationality Administrations, territorial entities on an ethnic basis.

It also requires the establishment of government institution in these areas. Accordingly, the three ethnic minorities in the region i.e. the *Himra*, *Awi* and *Oromo* ethnic minorities have their own nationality Administrations.<sup>165</sup> Nonetheless, many other groups are living within the boundaries of the Amhara region. There are different arguments related with these ethnic based structures of minorities in ANRS. Some are argued that the Amhara Constitution limits the recognition of ethnic diversity in the region to particular ethnic groups to those groups that are considered to be endogenous in the region.

Endogenous groups are people who have been living in the region for a long period of time; they are peoples of the region. It is only for these groups that protective mechanisms (such as the creation of an administrative entity) have been developed. Exogenous groups because they have moved to the region in a more recent past and can therefore be seen as internal migrants or peoples in the region. These same exogenous groups are endogenous in another region (where they can exercise their right to self-determination). The Amhara Constitution does not make explicit difference between endogenous and exogenous groups. Others argued that, implicitly, however, this differentiation is made in its article 39 which contains, as is the case with article 39 of the federal Constitution, the formulation of the right to self-determination. This right to self-determination is exercised by the peoples of the Amhara region. The fact that "*peoples of the Amhara region*" only refers to the endogenous population of the region (the Amhara, Oromo, Awi and Himra ethnic groups) is shown by article 39 (6)<sup>166</sup>: "The national rights stipulated under sub-article 1-5 of this article hereof shall apply with respect to the peoples of Himra, Awi and Oromo as well."<sup>167</sup>

The implication is that only the four endogenous peoples can exercise the various aspects of their right to self-determination in the Amhara region. In my argument in principle the ANRS Constitution is included both endogenous and exogenous. In ANRS, the preamble of the

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<sup>165</sup> Art 73 (1) of the ARS Revised Constitution

<sup>166</sup> Article 39(6) of the FDRE Constitution

<sup>167</sup> Article 39(1-5) of the FDRE Constitution

Constitution says "peoples of the Amhara National Regional State."<sup>168</sup> And article 8 stipulates that: "The supreme power of the national regional state resides in and belongs to the peoples of the Amhara region." From the preamble and Article 8 we conclude that the Amhara Constitution refers to all the peoples of the region. (Not indicate only the three ethnic minorities).

#### 3.3.4. The Nationality *Woreda* in the Amhara National Regional State Constitution

In addition to the Nationality Administrations, the Amhara National Regional State council recognizes the establishment of special *woreda* for Argoba in 2006<sup>169</sup> and for the Kemants in 2015.<sup>170</sup> According to the 2007 population and housing census, the titular ethnic group of the Argoba *Woreda* has 69,978 people in the Amhara region. Therefore, this indicates the Amhara National Regional State Constitution is not only acknowledge and give the right to self-determination to exercise through their Nationality Administration for the three ethnic minority groups, but also, Argoba and Kemant Special *woredas* are acknowledged as indigenous minority groups and entitled the right to self-determination.<sup>171</sup>

#### 3.3.5 Conclusion

In principle, the contents of the Amhara National Regional State Constitution starting from the preamble which speaks not only of the Amhara people but also, about the different peoples of the Amhara region. Consequently, article 8 of the Amhara Constitution grants the sovereign power to the "*peoples of the region*". It is therefore no surprise that the Amhara Constitution provides for guaranteed representation of ethnic minority groups in the regional parliament. Particular minority groups also have guaranteed representation in the regional organ for Constitutional interpretation. Additionally, those same minority groups have a right to their own territorial entities.

The Amhara Constitution provides for the establishment of ethnic-based territorial entities for the Himra, Awi and Oromo. The Oromo in Amhara have their own territorial entity. The Amhara

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<sup>168</sup> Preamble of Amhara national regional state constitution

<sup>169</sup> Amhara Proclamation No. 130/2006, "Argoba Nationality Woreda Establishment and Determination of its Powers and Duties Proclamation No. 130/2006," Zikre Hig April 18, 2006

<sup>170</sup> Amhara Proclamation No. 229/2015, "The Kimant Nationality Special Woreda Establishment Proclamation No. 229/2015," Zikre Hig October 11, 2015.

<sup>171</sup> Van der Beken, *Supra note*, 163, p.167

Constitution, on the other hand grants this possibility not only to the dominant Amhara, but to the Himra, Awi and Oromo as well. These minority ethnic groups have the right to territorial self-administration, to determine their own language and to representation in the regional institutions.<sup>172</sup> But, this is theoretical aspects of the Constitution and the researcher strongly eager to assess and examine the practical aspects of these issues in Amhara National Regional State Constitution.

When the researcher understand, the general image of all regional state Constitutions of Ethiopia in general and Amhara National Regional State Constitution in particular, theoretically the content of the Constitution is seems like inclusive and participatory, but in practice, from my understanding and different studies show that, the peoples of the Amhara region are lacks awareness and publicity on the contents of the regional Constitution, even some are not know the existence of the Constitution. In my informal observation even, high school teachers do not know the content of the Constitution of their region they live and work.

All citizens of the region only follow and practiced traditionally (norm), rather, legal and political document, this will be a danger for one's country political/administration system, if government officials and peoples goes with arbitrary rule implementation. The other core issue in these regard is, do government officials refer the regional Constitution when they make laws and rules of the region and in implementation? Do judges of the region refer the regional state Constitution when they give justice in courts? These are some important questions that the researcher intending to answer. The researcher was also; investigate, why ANRS constitution was not become part and parcel of the curriculum of civics and ethical education subject like the FDRE constitution? at least in Primary school of the region? And what is the role of Justice Professionals Training and Legal Research institute of the Region in the creation of Awareness about Constitution of the region? The researcher hopes that, this Study would assess and examine all the above issues.

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<sup>172</sup> Van der Beken , *Supra note* 163, p.34

## **Chapter Four**

### **4. Data Analysis, Presentation and Discussion of Results**

The study under this chapter embarks on the analysis, presentation and discussion of the data obtained from society, Judges, Justice Professionals' Training and Legal Research institute Experts, Primary school Civics and Ethical Education teachers and Government official responses collected through Key informant interview, Focus Group Discussion (FGD) and document analysis. The Amhara National Regional State is one of the members of the federation and it has promulgated its own Constitution for the first time in 1995 and revised in 2001.

As a result, in this chapter, an analysis is made whether the Amhara National Regional State Constitution is visible or invisible and assesses the actual practice of the Amhara Constitution in the region. For this purpose, the visibility and invisibility of the ANRS Constitution is analyzed, starting from the drafting and adoption process up to its Constitutionalism effectiveness. Here under, respondents view, regarding to adoption and drafting process of the first and the revised ANRS Constitution is presented and interpreted.

Respondents view, regarding the practice of Constitutionalism in the region, the role of government to create opportunities to academicians, scholars, lawyers, researchers and political institutions to create awareness about the ANRS Constitution, the role of Justice Professionals' Training and Legal Research institute to create awareness about the regional Constitution and the inclusion of ANRS Constitution in civics and ethical education subject of primary school is presented thematically.

#### **4.1. The Adoption and Drafting process of the First Written Regional State Constitution**

Constitution making is a crucial moment where nations choose a Constitution to be either instrument of democracy or discrimination, inequality, social unrest, a legalized dictatorship or

others which defines undemocratic polity.<sup>173</sup> Therefore, Constitution is not an ordinary law ratified by a majority vote of the party which establishes the government. Rather it is a consensus creation among the various societies, political and interest groups.<sup>174</sup> Participatory Constitution making entails the use of democratic processes in the drafting and adoption of a state's Constitution.<sup>175</sup>

The drafters focused on educating the public about the role of a Constitution within a society and identifying widely held beliefs about general governance issues, such as whether the state should have a presidential or parliamentary style of government, powers, structures and functions of organ of government, rights and duties of citizens and others.<sup>176</sup> Regarding this the researcher asked respondents did you participate in the drafting and adoption process of the ANRS Constitution? Majority of respondents pointed out that they don't know the content of the regional constitution and they didn't participate in the drafting and adoption process of ANRS Constitution.

Before the time of Transitional Government (TG) of Ethiopia regional states were weak and have not had their own Constitution. The main reason was before Transitional Government there was disintegration of regional states. Which means regional states were not united rather there were in fragmented way. So, having constitution is unthinkable during the then time. Post TG, regional states become united and they are called “*National/Regional Self-Government*”. During this time, Proclamation No 7/1992 was a turning point to establish/structured fourteen regional states. This proclamation was issued by TG and used as a common Constitution for country wide; it was not limited in one region.<sup>177</sup> Therefore, the first regional states of Ethiopia what we call (region 1, 2, 3...) were organized by this Proclamation.

Before Constitutional experimentation, each state considered this proclamation as a Constitution for their respective region. The proclamation give a right to each state can formulate/adopt their own Constitution at the same time, the proclamation also gave a freedom for towns can

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<sup>173</sup> Teguaada, A. When Constitution Lacks Legitimacy In The Making: The Case Of Ethiopia, A thesis Submitted In Partial Fulfillment For The Degree Of Master Of Law In Constitution And Public Law, Addis Ababa, Feb.2011, P.80

<sup>174</sup> Ibid

<sup>175</sup> Banks, A. expanding participation in constitution making: Challenges and opportunities, William and Mary Law Review, Vol.49, No.4, 2008, p.1043

<sup>176</sup> Ibid, p.1045

<sup>177</sup> Interview with Ato Merhatsidik Mekonene, Chief-Legal advisor to the head of Government with the mark of the Beaura head, January,23/01/2018 at 4:00-5:20, Bahir Dar

formulate their own Charters, generally and it was the very progressive law.<sup>178</sup> Since 1995, Ethiopia declared Federal Democratic Republic and this proclamation become failed and the first Constitution was adopted (i.e FDRE Constitution), at the same time, this Constitution gives a freedom to all regional states to draft and adopt their own respective regional state Constitution. But, Oromia region can able to draft their own Constitution before regions had got this freedom.<sup>179</sup>

When we see the drafting and adoption process of the first regional state Constitution, various studies prove that all regional states Constitution were the copy of the federal Constitution. According to the researcher respondent Merhatsidik explained that, during that time, it is undeniable truth, states need support from the federal government, and then there was the establishment of Regional Affairs Office under the prime minister office. According to the respondent, this regional affairs was led by council of ministers, the committee was includes Ato Birhanu Jemberie, who was head of communication office, Ato Bkale Mesfin, who was head of Mobilization affair office, Ato Mulugeta Seid and me<sup>180</sup> take a responsibility to draft the first Constitution of each regional state according to the situation of each region.

Generally, when the 1995 ANRS Constitution was drafted and adopted, there was no participation of peoples, like the drafting and adoption process of 1995 FDRE Constitution; but simply, it was adopted by the regional council (which is the legislature).<sup>181</sup> It is by virtue of the federal Constitution that the Constitution is made by the regional council. But, Yohannis Yitayih (2010:72) argued that, this procedural requirement ordering that regional state Constitutions have to be made by the regional council has the capacity to exclude participation of the people. In wider sense, it is against the emerging international right of the people to participate and make their own Constitution.<sup>182</sup>

According to Ato Merhatsidik, the sources of the first ANRS Constitution was, firstly, the draft of the Regional Affairs Office, secondly, Proclamation 7/1992 and thirdly, the Committee that mentioned above are the drafter of the first ANRS Constitution. During drafting discussion, there

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<sup>178</sup> Merhatsidik, *Supra* note 177

<sup>179</sup> Oromia region adopted its first regional state constitution in January 1993

<sup>180</sup> Me indicates Ato Merhatsidik Mekonen, who was the member of the Regional Affair Office during that time

<sup>181</sup> Teguaadda, *Supra* note 177

<sup>182</sup> Yohanes, *Supra* note 13, p.72

were points that create a debate, one issue was right of other regional state citizens, who live in the region and want to hold government power. There was also hot discussion and debate regarding to human and democratic rights. “To differentiate which one is human right? And which one are democratic rights?”

According to the respondent, during that time there was no party influence but, the whole process was contained and controlled by the regional legislature. There was no public discussion, participation of academicians and scholarly debate about the drafting process of the first ANRS Constitution.<sup>183</sup> Before 2001 or revised Constitution, there was some amendments were held in some Articles of the first ANRS Constitution, for example regarding to regional executive, before amendment, zonal administrators were members of the regional executives.

Therefore, the total amendment has avoided the zonal administrators from membership of the regional Cabinet. The other amendment focused on the need to conduct election, which is to change terms of election that were held in *Woreda* from one year into two years and in *Kebele* from two years into five years.<sup>184</sup>

#### **4.2. The Process of Revision of the Constitution of Amhara Region**

According to the respondent, since 2001, in all regional states of Ethiopia, the revised Constitution was considered as revolutionary change. The initial or proposal of concept paper of all revised regional state Constitutions was developed in Amhara region by Ali Muhamed and Me.<sup>185</sup> The concept paper deals about the need of change or the need of basic revision about the regional state Constitution, it contains not more than 30 pages. He also, adds during that time, the nearest federal Minister was Capacity Building and Deputy Prime Minister Office, which was established in the minister level, led by Tefera Walwa and we start our experiment.

Ato merhatidik also, told that, the starting point of the concept paper was, before the revision the Legislative, Executive and the Judiciary is overlap and do the same task and the decision of the executive enforce the legislative to make a decision; there was no check and balance. He also

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<sup>183</sup> Merhatsidik Supra note 177

<sup>184</sup> Ibid

<sup>185</sup> Me refers Ato Merhatsdik Mekonen, *supra note 177*



explains that finally, the conclusion what the committee discussed led to change the present situation and should not continue in such a way. Therefore, the committee was decided that, there must be clear separation of power for real check and balance between the legislative and executive in the principle of federalism.<sup>186</sup>

Merhatsidk also explain that finally the decision of the committee got acceptance in all administrative organs and we decided that why we are invite other regions? During that time the Amhara region has a strong relation with Tigray region and Ato Tsegaye Berhie, who was the president of Tigray region come with a team of legal professionals and from the federal government Ato Tefera Walwa came and facilitate the discussion, me<sup>187</sup> and Ali Muhamed were presenters of the concept paper.

He further explains that the presentation of the committee was focused on; points that related with our reasons why we are proposing the need of the revisions of regional state Constitutions, like the relationship of the Judiciary should be with the legislative, not the executive so, to avoid the interference of the executive in the judiciary, there must be clear separation of power between legislative and executive organs. The other reason for the revision was changing the leaders (official) themselves, the other crucial revision point was issue related with human and democratic rights, that is the regional governments can add other rights but they can't reduce(minimize) those rights.<sup>188</sup>

Therefore, the first mission of the committee was completed, and reaches on an agreement on the concept paper from other regional state governments. Finally Amhara and Tigray regional states agreed on this concept paper and Ato Tefera also gave an assignment for other two regions i.e., Oromia and SNNPRS. At the end it reaches Addis Ababa and the concept paper get acceptance and allowed to develop and revise all Constitution that need a total revision based on the prepared concept paper.

According to the respondent, after that development of the concept paper, the next step would be the development of the revision of regional state Constitutions, for this task two committees were

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<sup>186</sup> Merhatsidik *Supra* note 177

<sup>187</sup> Ibid

<sup>188</sup> Ibid

established, the first committee was Technical Committee, and the second committee was Steering Committee. The technical committee was organized by developers of the concept paper and the Steering committee was organized by Federal Officials, Ministers and Regional Presidents led by Tefera Walwa minister of capacity building and organized at Prime Minister Office.

He also further argues that, the Steering Committee followed our work and different Ministers like, Girma Beru, Juneidin Sado and Others were members and led by Prime Minister and give order to enact the revised Constitution and they give model Constitution to four regional states in order to develop and prepare a model Constitution based on the socio-economic, political and cultural conditions of each respective regional states. The four regional state representatives were Ato Merhatsidik Mekonen from Amhara, Ato Haile from Tigray, Ato Melese Marimo from SNNP, and Ato Kefale Belachew from Oromia. We held a hot discussion and debated among these four representatives, about the provisions that should be revised, basically technocratic discussion and debate, like name of the office, organization of the executive organs, how to organize members of the parliament, institutions of the parliament, powers and functions of organs of government and the like issues were the most important discussion points. But, these issues were not open to public (popular) participation.<sup>189</sup>

In that period both technical and substantial provisions were revised and if we agreed on the presented issues we directly submitted to the steering committee (mainly to Ato Tefera Walwa). But, the process of revision was not open for the peoples of the region, for further discussion, it was directly given to each respective regional councils and after they discussed in their respective region and they were responsible to add or change some points in their regional state situations.

Finally, the respondent conclude that, this revised draft Constitution was adopted by all regions and give direction, they have the right/chance to shape and reshape organization and structure of office, government organs and institutions by their respective regional councils according to their social, economic and political context or reality. Unfortunately, all regional states of Ethiopia had not go further, they had adopted without the participation of the peoples of the respective

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<sup>189</sup> Merhatsidik *Supra* note 177

region. The same as true in Amhara region, there was no Pre-Constitutional or Post-Constitutional negotiation and discussion in the ANRS drafting and adopting process either in the first or in the revised Constitution.<sup>190</sup>

### 4.3. The Status of Constitutionalism in the Amhara National Regional State

As the researcher discussed under chapter two, public participation has a great role in Constitutional making (drafting and adoption) process. But, as the findings show that, in Amhara National Regional State, from the beginning, Constitutions had never been the product of negotiation of factions and the people, rather by regional councils and also, after drafting and adoption the government of the region had not create awareness regarding to the general contents of the Constitution. Due to this reason the effectiveness of the Constitutionalism in the region is very low and loose in practice.<sup>191</sup> Another undeniable realities for the development of Constitutionalism is, efforts made by academicians, scholars, lawyers as well as researchers and what are the opportunities that are created for those by the regional governments. With regard to this, Ato Yirsaw Tamerie, the speaker of ANRS regional council explained that, theoretically, regarding to the role of government, there are different works that are starting in the region.

He also adds, for example, the nomination and appointment of the regional government officials have been nominated and appointed by referring the provisions of the regional state Constitution and this nomination and appointment process transmitted through live media coverage (directly for the whole people). And also there is questioning and answering sessions prepared by the regional council based on the Constitutional principles.<sup>192</sup>

Other academician and Lawyer explained that, even if there is no separate institution which are established to study about regional Constitution in general and ANRS Constitution in particular, theoretically, there are different media programmes in Amhara region that are creating Constitutional awareness like “*Nikate Hig*” and “*Meskote Tibe*” that give education related with legal issues, fundamental rights and duties, there are also, some graduate and under

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<sup>190</sup> Merhatsidik *Supra note* 177

<sup>191</sup> Interview with Temesgen Sisay (Ass.Prof.), Lecturer at BDU, Faculty of Law, at 3:30-4:20, on January ,22/01/2018, Bahir Dar

<sup>192</sup> Interview with Yirsaw Tamrie, Amhara National Regional State, Regional Council Speaker, at 8:00-8:50, on January ,22/01/2018, Bahir Dar

graduate researches were conducted, but, practically, these studies are not properly utilized by the concerned body (i.e Amhara region) rather putting on shelf.<sup>193</sup>

Ato Desalegne added, when officials and Judges make a decision, they use regulations, proclamations and other legal documents than regional Constitution because, they are nearest to them and easily available to them as well as they are afraid the Constitution due to its rigidity, but when they make a mistake they can amend/change easily if they use other legal documents, plus there is no awareness and know how about the regional Constitution, these affect the effectiveness of Constitutionalism of the region.<sup>194</sup> Other main reason why Judges and other justice organs, are not refer Constitution in general and ANRS in particular is that, in the first place, Constitutions have not detailed explanations, it is a general document and give the whole clue than detail information. But, proclamations are brief explanation and prepared based on the Constitution (the results of the Constitution), by respecting the principle of supremacy of the Constitution. The second main reason is Proclamations are more flexible, and they explained day to day changes and progress of the society, socio-economic, political and cultural changes of the society, organization. So, when Judges refer these proclamations, they take into consideration those all things. And there are different types of proclamations, social proclamation, for example, how social services were established and environment related proclamations determined about environment.

Economic proclamation, for example tax, revenue, expenditure proclamation and the like political proclamations for example how political parties were organized and the like, therefore, to make a decision and give justice Judges should refer and consider these all proclamations is mandatory than the Constitution. But, in my understanding this does not minimize or reduce the Constitutionalism of the Constitution, rather the decision we give, the justice we give and in general the service we give affect the practices of the Constitution.<sup>195</sup>

One respondent argues that, the ANRS government gives low emphasis for the Constitutionalism of the regional Constitution, and ANRS Constitution depends on theory rather than practice that

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<sup>193</sup> Interview with Desalegne Tigabu, Lecturer at BDU, Faculty of Law and Directorate Director of Legal Service at BDU, at 8:30-9:30, on January, 23/01/2018, Bahir Dar

<sup>194</sup> Ibid

<sup>195</sup> Interview with Tsegaye, Judge in ANRS Supreme court, at 8:30-9:20, on February, 2/02/2018, Bahir Dar

means it is not supported by practice. In civics and ethical education students text book there are different Charts and Posters, but this charts and posters are not practically supported, they are not available practically for example, the election process in the region.

Media is not in a position to give serious attention about the transmission of different Constitutional issues about the ANRS Constitution. There is no training for concerned body, if there is training only head or club representatives are called and attended the training rather the concerned body. In general the principle of “**Concerned Service for Concerned Body**” is not applied. Therefore, if there was Constitutional training and not concerned peoples were selected, club representatives were called and the above principle is not applied and it negatively affects the practice of Constitutionalism in the regional state polity.<sup>196</sup>

#### **4.4. The Role of Justice Professionals’ Training and Legal Research Institute to create Awareness on the revised Constitution of ANRS**

ANRS Justice Professionals’ Training and Legal Research Institute was established in 1999 E.c. The main objective of this institute is to support legal and justice system of the region. In order to give these support the institute gives training for peoples who are employed in government position and law students who graduate and not start work (before starting work). The training is given for five up to ten day’s for people who are employed on government position. In the long term training program, the institute gives training for about nine up to ten months for Law students who become Judge or public prosecutor before starting their work.<sup>197</sup>

According to the response of Mekuria, in the very beginning, the main objective of the institute was not give training about the Constitution rather it was established to support the legal and justice system of the region and create similar and equitable awareness and interpretation of laws across the region. The training manual/modules were prepared and taken from the Federal Justice Organs Professionals Training center modules. Due to this reason the training were divided into two parts, Constitutional training and non-Constitutional training. Based on this, the

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<sup>196</sup> Interview with Hiwot G/Medin, Civics and Ethical Education Teacher at Dilchibo full cycle Elementary School, at 6:45-8:00, on January, 16/01/2018, Bahir Dar Town

<sup>197</sup> Interview with Mekuria Fikir, Justice Professionals Training and legal research institute, Trainer and Consultant, at 3:30-4:40, on January, 18/01/2018, Bahir Dar

Constitutional modules talk about only the Federal Constitution and hence there is no modules talking about the regional state Constitution in general and ANRS Constitution in Particular.<sup>198</sup>

He emphasis that, it does not mean that, the training has no any touch concerning the regional state Constitution, the module give some insights about regional state Constitution in the form of questioning and answering. This may be determined by the trainer itself in giving emphasis on the conditions of the regional state Constitution and give training on the perspective of his/her own regional situation. Generally, Justice Professionals' Training and Legal Research Institute is not as such working on Constitutional awareness of the region, rather it give support and training for government officials of the region particularly legal and justice experts (judges).

Finally, he add, the government of the region is not giving any support for the institute, it treats the institute like other public servant, there is no difference from any other employees of the region.<sup>199</sup> The above mentioned module is prepared by the federal Justice professionals' Training Center and it is prepared for pre-Job trainers.

The content of the second module is mainly talking about justice organs and the role of institutions for keeping of Constitutional system. Other trainer and consultant Ashenafi Lulie, said "when the institute was established in 1999, the main objective of the training center was established to train judges and public prosecutor as in service and pre service, it also give pre-job training for Law fresh graduates for long and short term training as well as for government employees who are on work."<sup>200</sup>. Regarding researches done by justice professionals' Training and Legal Research institute about ANRS Constitution, Ato Gashaye, who is the Director of Research and training in the institute, explained that, there is no any research that is conducted about the ANRS Constitution rather, the institute is conducted researches about justice and legal affairs of the region.

Because, in the very beginning the main establishment and mission of Justice Professionals' Training and Legal Research Institute is giving training about justice for pre-job and on work, short and long term training for legal professionals. In short, we haven't any finding regarding to

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<sup>198</sup> Mekuria *Supra note* 197

<sup>199</sup> Ibid

<sup>200</sup> Interview with, Ashenafi Lulie, Justice Professionals Training and legal research institute, Trainer and Consultant, at 3:32-5:05, on January, 18/01/2018, Bahir Dar

ANRS Constitution.<sup>201</sup> Generally, the training and research institute expert respondent put the following remarks; the first one is, basically, the main objective of the institute is to give short term and long term training for fresh graduates of law students, before they become Judge or Prosecutor. The institute also gives short term training for regional leaders and government officials in order to create an opportunity to equal and fair distribution of justice in the region.

#### **4.5. The Role of the regional state Constitutional Interpretation commission in creating awareness of the people of the region**

Amhara National Regional State, like the federal Constitution, has an organ which is established to interpret the Constitution of the region. Therefore, after the establishment of the regional council there are two institutions that have been established in order to interpret the Constitution of ANRS. The first is **Constitutional Interpretation Commission** and the second is **Council of Constitutional Inquiry**.<sup>202</sup>

The regional state Constitutional Interpretation Commission was established in 2007 E.C and established by regional council based on Article 49/3(1) of ANRS revised Constitution.<sup>203</sup> It has one member from each council of Nationality administrations and council of *Woredas* that found in the region. Its power and functions are given based on Proclamation No. 224/2007. The regional state Constitutional Interpretation Commission is like the House of Federation, it is a Political wing and organized from members of regional council, all Nationality administration Council, *Woreda* and *Kebele* councils.<sup>204</sup>

The second institution is Council of Constitutional Inquiry; it is the technical Supporter of the Commission and it has eleven members. The president and vice president of Regional Supreme Court are the Chairperson and deputy Chairperson of Council of Constitutional Inquiry respectively.<sup>205</sup> Finally, although, these institutions are established, all respondents, that, the researcher interviewed believe that ANRS Constitution has come with no due and proper

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<sup>201</sup> Interview with Gashaye, Justice Professionals Training and legal research institute, Director of Research and Training, at 5:10-5:30, on January, 18/01/2018, Bahir Dar

<sup>202</sup> Yirsaw *Supra* note 192

<sup>203</sup> Article 49 3/1 of the revised ANRS constitution, regional council can issue various laws, in accordance with the constitution and other laws

<sup>204</sup> Yirsaw *Supra* note 192

<sup>205</sup> Article 71(2 a-b) of ANRS revised constitution

consultation with the whole stake holders. As a result, they labeled the Constitution as consent of Regional Councils, which they believe it had dominated the whole Constitutional-making process. In consequence of this, they don't show a commitment to the Constitution and the political institutions established within the Constitutional framework. The Constitutional interpretation commission is not active in entertaining issues related to Constitutional matters, it role in creating public awareness about the regional state.

#### **4.6. The inclusion of ANRS Constitution in Civics and Ethical Education text book at primary school**

As it was observed in Constitution making process of many emerging democracies, public consultation has always been come first by an in depth civic education, The public education phase provides an important vehicle to broadly disseminate information regarding the Constitution and the Constitutional drafting adopting process, and information on the basic themes that should inform the new Constitutional framework.<sup>206</sup> And also, to create a clear understanding about rights and duties, government structures, power and functions of government organs, social, economic, political and cultural conditions of the country as well as the region teaching civics and ethical education has a vital role.

This has been very important exercise particularly in third world nations where literacy is quite low. Civic and ethical education should be designed to crystallize the need for a new Constitution and must make people feel part of the process of Constitutional development. It must be also capable of raising awareness about the Constitution-making process and Constitutional issues to stimulate useful submissions.<sup>207</sup> Another Civics teacher Fetlework Dereje further explains that the Ethiopian curriculum development of Civics and Ethical education experience shows that it is focused on other repeated and redundant issues than Constitutional issues particularly there is no more issues that talk about the regional state Constitution more of civics subjects in high school levels talk about only the federal

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<sup>206</sup> Teguada *Supra* note 173, p.35

<sup>207</sup> Ibid



Constitution, therefore, students must be know in detail their regional constitution in lower grade (5<sup>th</sup>-8<sup>th</sup>).<sup>208</sup>

Other respondent, Kibnesh Yeshitla, she is civics teacher at Atse Sertse Dingile Elementary School, Bahir Dar and she explained that, I know the contents of the ANRS Constitution and I am teaching my students about the Articles and Chapters it has in addition to the information provided to the text book, but they do not know the detail contents of the regional state Constitution because the regional Constitution is not included in the text book of primary schools that found in the region.<sup>209</sup> Teacher Kibnesh added, under chapter two of all grade levels, when I am teaching about the rule of law, a full knowledge about the Constitution of ANRS in particular and all regional state Constitutions in general.

But, there is no full information and I cannot get supportive materials to teach my students about the regional state Constitution. If the ANRS Constitution be included in civics and ethical education at primary schools of the region, it is essential to students know their region socio-economic and political conditions, rights and duties of citizens and at the same time, in order to compare and contrast the federal and regional state Constitutions or making a comparison between regions.<sup>210</sup>

Teacher Kibnesh, connect this issue from the growth stage of Child and teaching of History. How? Let us see, she start with one child first knows his/her mother and father (his/her parents) then he/she know his/her village and neighbors then after his/her *Kebele*, *Woreda*, *Zone*, Region and Country, like that students who learn from grade 5<sup>th</sup>- 8<sup>th</sup> also should be know their region realities before directly goes to the federal (country wide) socio-economic and political conditions. At the same time, when students learn about history first they learn Ethiopian history, then after African history, and finally they learn about world history.<sup>211</sup>

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<sup>208</sup> Interview with Fetlework Dereje, Civics and Ethical Education Teacher at Anbesamie Primary Full Cycle School, at 4:40-5:00, on January, 24/01/2018, Dera (Anbesamie) Woreda, South Gonder.

<sup>209</sup> Interview with Kibneshi Yeshitla, Civics and Ethical Education Teacher at Atse Sertse Dingle Elementary School, at 3:45-4:00, on January, 18/01/2018, Bahir Dar Town

<sup>210</sup> Ibid

<sup>211</sup> Fitlework *Supra* note 208

Regarding to the concept of ANRS Constitution some primary civics and ethical education teachers have different idea, among others, teacher Awotash Abrham is civics and ethical education teacher at Atse Sertse Dingle Elementary School in Bahir Dar town and she strongly argues that the 1994/2001 revised ANRS Constitution is not understood by people as a Constitution rather it is taken as a simple “Zikire Hig”, and she conclude that, ANRS used this zikire Hig as a Constitution. Her argument is not stop here; she explained that even if all people are not participate directly in the drafting and adoption process of ANRS Constitution, they were participate indirectly through their representatives’ i.e Regional council. Therefore, she said that, we cannot conclude that the people are not participate in the drafting and adoption process of the regional state Constitution. Teacher Awotash, also argues that the main problem of the ANRS regional council were, after the adoption of the Constitution, they were not create awareness and opportunities to the people of the region to know the Constitution of the region.<sup>212</sup> She said that, most civics and ethical education teachers teach their students about FDRE Constitution by different means, like by telling different Articles, clubs and even we give examples from the FDRE Constitutions rather regional state Constitution.

Because of this, there is no any means that we teach about ANRS Constitution and its contents. Concerning the inclusion of ANRS Constitution in primary school civics and ethical education subject, in the first place, Civics and Ethical Education teachers considered as a politicians and the subject also, termed as a political education, if we are eager to teach about election, multiparty democracy of the region, colors and meaning of the flag about the region, we have been challenged by different reasons, like finance, awareness of the peoples, and lack of supportive materials.

As a result, due to this and other reasons, we civics and ethical education teachers become demotivated in order to create awareness about the Constitution of the region. This leads to focus on theory than practice.<sup>213</sup> We teachers are teaching our students about few issues on the topic of regional state Constitution, more portions are covered about federal Constitution. It is difficult to teach the clear difference between the Federal Constitution and the ANRS Constitution and also

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<sup>212</sup> Interview with Awotash Abrham, Civics and Ethical Education Teacher at Atse Sertse Dingle Elementary School, at 4:00-4:45, on January, 16/01/2018 Bahir Dar Town

<sup>213</sup> Hiwot *Supra* note 196

between different regional state Constitutions. Because there is no clear points that were mentioned in primary school civics and ethical education students test book and teachers guide.<sup>214</sup>

Let us see contents of each grade civics and ethical education text book. Under chapter two of grade 5<sup>th</sup> civics and ethical education text book of ANRS only show power sharing of federalism, i.e the federal government Constitution and all regional state Constitution of Ethiopia. There is no detail information about all regional Constitution in general and ANRS Constitution in particular.

At the same time, under chapter two of grade 6<sup>th</sup> civics and ethical education text book of ANRS, talks about the importance (necessity) of regional state Constitutions. There is no any detailed issue and discussion about ANRS Constitution. Under Chapter two of grade 7<sup>th</sup> civics and ethical education text book, it explained about Constitution in general and the meaning and concepts of FDRE Constitution as well as the necessity of having Federal Constitution. However, there is no any issues that touch about the regional state Constitutions in general and ANRS Constitution in particular.

Unlike other previous grades, under chapter two of grade 8<sup>th</sup> civics and ethical education text book, it talks about only the preamble of the revised ANRS Constitution, but there is no detail explanation about contents of the ANRS Constitution.<sup>215</sup> Generally, from all above figures we can conclude that curriculum of civics and ethical education from grade 5<sup>th</sup>-8<sup>th</sup> under chapter two; it doesn't talks about the contents of ANRS Constitution. Therefore, one can conclude that, ANRS Constitution is not the part and parcel of civics and ethical education text book in primary school of Amhara National Regional State.

#### **4.7. Necessity and Practice of ANRS Constitution**

Theoretical speaking, the necessary of regional Constitution is undebatable, because in federal system of government dual government is mandatory and when the regional government structure branches of government, to restricted powers and functions of those organs of government regional Constitution has vital role. And also, to include the socio, economic,

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<sup>214</sup> Hiwot *Supra note* 196

<sup>215</sup> See page 13 of grade 8th civics text book.

political and cultural as well as historical reality of the region Constitution is the basic document that found comprehensively, to inculcate local administration like regular Zone, Nationality administration, *Woreda* and *Kebele* administration with their powers and functions.<sup>216</sup>

Ato temesgen, argued that in federal system, regional governments should have shared-rule and self-rule (autonomy), and he said, when we see the practice of Ethiopia regional state Constitution in general and ANRS Constitution in particular, regional governments have autonomy to decided their own affair that is given by the federal Constitution but, they are weak and sometimes they cannot make decision by themselves in their jurisdiction, there is the interference of the federal government.<sup>217</sup> Why ANRS Constitution is invisible? When I am asking this question for many scholars and academicians, they answered that, the main reason for practical invisibility of the ANRS Constitution is the federal system itself. How? Ato Temesgen explained that, the main reason for invisibility of the regional state Constitution in general and ANRS Constitution in particular is, from the beginning the regional Constitutions are not adopted based on the consent of the people (not participatory) which means cannot get acceptance from the peoples of the region, secondly, most peoples in the region have not know how about the existence of the Constitution itself, which means peoples attitude towards regional state Constitution is very low than the federal Constitution and they believe that if it is similar, the federal Constitution is enough no need of other Constitution (the attitude emanated from it is the direct copy of the federal constitution and there is no difference with the federal Constitution), therefore, the people's attitude is towards the federal Constitution is high than regional Constitution because federal Constitution is easily nearest access than the regional Constitution.<sup>218</sup>

To strength above the respondent response, the researcher also had got one reality, when the researcher was conducted this study, he could not get the first ANRS in any office including Speaker of council of regional state office, and even they have not the revised Constitution in accessible way, so it is questionable how an ordinary citizen have got it?

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<sup>216</sup> Temesgen *Supra* note 191

<sup>217</sup> Ibid

<sup>218</sup> Ibid

He also, adds that, when the regional governments adopted their Constitutions, they call their Constitutions regional state, i.e. why they are calling regional Constitutions? Why they are not giving other name rather than saying “regional Constitution”. Because, when we call “Constitution” the people imagine that there is only one huge (lion) Constitution that guided everything and rules the country that is the “FDRE” Constitution. Due to this reason, the people of the region have knowhow, respect and awareness about this huge Constitution rather the regional Constitution.<sup>219</sup>

There is also another respondent, who is not voluntary to tell his name, explained about the practice of ANRS constitution, he starts by saying this ”before directly goes to the practice of Ethiopian regional state constitution, let say something about the federal system of Ethiopia,” there are serious problems in different parts of the country this may not have be a problem of the system by itself but, the practitioner ( the problem of some selfish officials), who work to erode the culture of hospitality and tolerance of the peoples of Ethiopia, and now a day’s peoples who were lived together for long years cannot trust each other. One regional state people can’t trust by other regional state peoples. We can see Oromia and Somalia regional state peoples currently. So, states should be strength their administrative capacity and create awareness about their respective regional Constitutions. After all, when we come to the practice of ANRS Constitution, from the beginning there was no active participation in the drafting and adoption process of the first and the revised ANRS Constitution, this leads to lack of legitimacy from the side of the majority people.<sup>220</sup>

Because of this, the regional government in some cases can’t decide by the administrators of the region and can’t use its power properly that is given by the regional Constitution and some important decisions are decided by the federal government. For example, certain interference of the federal police currently seen at Woldia and Raya Kobo, and last year at Bahir Dar and Gonder. Generally, he said “there is no practice of respecting publicizing regional Constitution in ANRS. So, it needs practical application of the basic principles of regional Constitutions rather than talking only (Rhetoric Politics).”<sup>221</sup>

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<sup>219</sup> Temesgen *Supra note* 191

<sup>220</sup> Interview with Mr. X , older man, at Bahir Dar, Tana, Tayitu Recreation, , on 30/01/2018, at 3:30-4:00, Bahir Dar

<sup>221</sup> Ibid

## CHAPTER FIVE

### 5. Conclusion and Recommendation

#### 5.1. Conclusion

Federalism helps constituent units to maintain their regional distinctiveness since it allow the closest institutional approximation to the complex multi-cultural and multidimensional economic, social and political realty and also helps them to fulfill their desire to make government more responsive to the individual citizen and to give expression to primary group attachments which provides the distinctive basis for a community's sense of identity and yearning for self determination.<sup>222</sup>

Following the fall of the Derg regime in 1991, Ethiopia had openly declared the state structure as federal which is a total break from the past that was dominated by a tradition of monarchical rule and centralized unitary state. Thus, the country is composed of nine member states. One of the features of Federalism is the creation of two tiers of government that are autonomous and independent in the spheres of their competence. One of the manifestations of their autonomy is the right of constituent units to have their own constitution. Now a day, autonomous and democratically self-governing populations adopt rules and principles for their own collective self-governance in the form of a Constitution. Accordingly, sub-national Constitutions or their functional equivalent are now found in many federations in the world including Ethiopia.<sup>223</sup>

Therefore, in Ethiopia nine regional states have adopted their own regional state Constitution not only this but also to design one that meets their political and socio-economic realities and the interest of their peoples as well and to empower Nation Nationalities and Peoples to exercise the right to self determination. Among the nine regional state ANRS is the one what the researcher select in this study. In this paper, five fundamental research questions have been raised. The first is, the drafting and adopting process of the first and revised ANRS constitution and the people of the region participate and know the Constitution they have been governed. Secondly, the

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<sup>222</sup> Watts, R. Comparing Federal Systems, 3rd edition, 2008, pp. 6-7

<sup>223</sup> Zemene, B. State constitutional amendment patterns in Ethiopia; The case of Beninshangul Gumuz, Gambella, Harari, and SNNP constitutions, A Thesis Submitted in partial fulfillment of the requirements for Degree of Masters of Laws (LL.M), Faculty of Law, Addis Ababa University, 2010, p.109

practitioners/government officials of ANRS know and use the Constitution properly in the implementation of regional laws and policies.

Then, does the government of Amhara region work towards development of Constitutionalism and creates an opportunity for the scholars, lawyers, researchers and political institutions to engage in the development of constitutionalism in the region. Following, the role of Justice Professional Training and Legal Research institute of the Region in the creation of Awareness about constitution of the region. Finally, the last question that raised in this study is, is the regional state constitution is part and parcel of the curriculum of civics and Ethical education of primary school of the region.

When we see the first and the revised ANRS constitution drafting and adoption process, there was no pre-constitutional and post-constitutional negotiation and discussion with the people of the region. Pursuant to the federal constitution, regional constitutions were done by regional legislatures. Legislatures are there to promulgate laws that are necessary for the performance of the government. The Regional council of Amhara promulgated laws which are ordinary. Again when a constitution is made by a given legislature, it means that it is made based on ordinary law making procedure. In addition to these, unlike other federation (e.g. Switzerland) Ethiopia regional councils have exclusive power in the process of drafting and adopting process of sub-national constitutions. There is no any formula which talks about public participation that put by the federal constitution rather it leaves for council of state governments without any restriction.

Therefore, this implies that, the regional legislature basic task is making laws, this act raised another question what is the difference between ordinary laws and constitution? Because, constitution is not an ordinary law ratified by a majority vote of the party which establishes the government, rather it is a consensus creation among the various political and interest groups.<sup>224</sup>

With regard to the development of constitutionalism and creates an opportunity for the scholars, lawyers, researchers and political institutions to engage in the development of constitutionalism in the region, the government of Amhara region was not done special and tangible support for those researchers, scholars and lawyers. And at the same time there is no any research that is

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<sup>224</sup> Teguadda, *Supra* note 173

conducted about the regional constitution. Generally, the practical application of the regional constitution is loose/weak. Other ordinary laws and proclamations are used in day to day decision than regional constitution in decision making process. In addition to this the ANRS Constitution is not properly utilized by courts and higher regional government offices. Which means, when most courts were deliver justice and pass decision they have not refer the regional constitution rather they are used proclamations and regulations and the regional constitution is also not easily access to officials and practitioners in major regional government offices. Under the role of Justice Professional Training and legal Research institute of the Region in the creation of Awareness about constitution of the region, the training center primary objective was to support the justice system of the region and to fill the gap that existed in the provision of justice system all over the region.

The Justice Professional Training and Legal Research Institute of the region has given short term and long term training for government employees, in-service and pre-service law graduates. And also, give training about the FDRE constitution. But, there is no any awareness creation and research means which is conducted about the ANRS constitution. With regard to the inclusion of the regional state constitution in primary civics and ethical education text book, there is no portion that talks about the detail content and provision of the regional constitution that are included in the text book, from grade 5<sup>th</sup>-8<sup>th</sup> in the region, but most textbooks under chapter two mainly deals about the FDRE constitution and its importance as well as the necessity of constitution in general.

Therefore, detail contents and information of ANRS Constitution is not made part and parcel of civics and ethical education even in primary education of the region at elementary schools. Finally, in ANRS, there is an institution which was established in 2007 E.C. which is responsible to interpret the regional state constitution. This institution is an organ found in the region empowered to interpret the regional state constitution and to review the constitutionality of laws and decisions of regional state government institutions.

Generally, sub-national Constitution is an inevitable phenomenon in federal system of government and the drafting and adoption process of this Constitution should be based on public consent, however, having a document is not sufficient, the regional government must be focus on



the notion of Constitutionalism and awareness creation for citizens to understand and governed by the principle of the document and institutions should be follow on organized and effectively. But, in ANRS Constitution no procedure regarding the process of drafting and adoption of the Constitution, there is no public consent and the regional government is not work more tasks towards Constitutionalism of the region, by supporting scholars, academicians, lawyers and concerned bodies and also there is no constitutional awareness mechanisms for the society. And finally there is no strong and effective institution in ANRS, which control and monitor activates of the officials or citizens towards the Constitution.

## **5.2. Recommendations**

Awareness creation is the basic principles of federal Constitution in general and regional state Constitution in particular. These fundamental principle of FDRE Constitution includes; sovereignty of the peoples, supremacy of the Constitution, human and democratic rights, separation of state and religion and functional transparency and accountability of government. (Article 8-12 of FDRE Constitution). Therefore, to apply practically and create constitutionalism to know and understand those principles is essential at country as well as regional levels. However, it does not mean that these are the only principles to create constitutionalism, but these are basic.

In order to create constitutionalism in the regional state, the following constructive recommendations are important so as to make aware of either policy makers/concerned bodies of the region or other researchers to find out other researches.

1. The regional government should establish strong institution, which must be accountable and responsible to establish constitutionalism, and develop and exercise the important principles of the regional constitution. This institution must check the making of laws, regulations and proclamations, whether they are contradict the regional constitution or not.
2. The regional state laws, regulations and proclamations should be made based on and consistent with the regional constitution, and also when these laws are drafted and enacted there must be active popular participation and discussion with the concerned peoples and institutions of the region. After serious popular discussion, collect feedback through in person (media) and also forward the feedback through media. This means, as the researcher

mentioned on page 63 on this paper most of the time judges are used different social, economic and environment proclamations to give services than referring the regional constitution to give justice/make decision. e.g Environmental Zikre Hig, tax, expenditure and revenue proclamation. Therefore, the researcher recommendation here is when these proclamation/declaration was drafted and come into effect there must be an organized institutional organ which follow their consistency with the regional constitution and it does not mean that there is inconsistency happened before, but this is my scholarly recommended idea.

3. The ANRS regional council should have establish their own website to make access the detail of constitution, debates and seminars on constitutional issues, and other laws of the region and collect different comments from the citizens of the region and encourage the participation of citizens in constitutional issues and forward the comment/feedback through their website or media.
4. It needs practical and heartfelt support from the side of government of the region to create constitutionalism in the region, not only use for rhetoric purpose. Citizens of the region have to know the benefit of the constitution (and having a constitution) and the role, they should have in the constitutional system.
5. The regional state government should take a breakthrough measure towards constitutionalism and create awareness of the people of the region about the constitution of the region by providing different training for the different segments of the society of the region and provide training for primary schools civics and ethical education teachers about the regional state constitution and support other teachers by providing necessary teaching material.

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## Appendixes

**Appendix 1;** List of Interviewee Key informant and FGD

	Name of interviewee	Date of Interview	Time of Interview (Local Time)	Place of Interview	Position/Job
1	Ashenafi Lulie	18/01/2018	4:32-5:05	Justice Professionals Training and Legal Research institute, Bahir Dar	Trainer and Consultant
2	Awotash Abrham	16/01/2018	4:00-4:45	Atse Sertse Dingle Elementary School	Civics and Ethical Education Teacher
3	Dessie Siyum	15/01/2018	8:30-8:50	ANRS, Justice office, Bahir Dar	Legal Consultant and advise training Directorate Director
4	Desalegne Tigabu	23/01/2018	8:30-9:30	Legal Service Directorate Director Office of BDU	Lecturer at BDU, Faculty of Law and Directorate Director of Legal Service at BDU
5	Fitlework Dereje	24/01/2018	4:40-5:00	Civics and Ethical Education department office at Anbesamie Primary Full Cycle School, Dera Woreda (Anbesamie)	Civics and Ethical Education Teacher
6	Gashaye	18/01/2018	5:10-5:30	Justice Professionals Training and Legal Research institute, Bahir Dar	Head of Training and Research in the institute
7	Geremew Eshetu	15/01/2018	9:00-10:00	ANRS, Justice Office, Bahir Dar	Legal Consultant and advise training main officer in regional prosecutor

8	Hassen Ahmed	25/01/2018	7:50-8:20	Dangila Town	Speaker of Dangila Town Nationality Council Office
9	Hiwot G/Medihn	16/01/2018	6:45-8:00	Dilchibo full cycle Elementary School, Bahir Dar	Civics and Ethical Education Teacher
10	Kibnesh Yeshitla	16/01/2018	3:45-4:00	Atse Sertse Dingle Elementary School, Bahir Dar	Civics and Ethical Education Teacher
11	Mekuria Fikir	18/01/2018	3:30-4:30	Justice Professionals Training and Legal Research institute	Trainer and Consultant
12	Merhatsdik Mekonene	23/01/2018	4:00-5:20	Head of executive Regional government	Chief-Legal advisor to the head of Government with the mark of the Beaura head
13	Metadel Melaku	01/02/2018	5:00-5:22	Bahir Dar (She come from Robit Primary school for Break)	Civics Teacher at Bahir Dar Zuria, Robit Primary School
14	Sirawork Mengistu	24/01/2018	3:48-4:20	Dera Woreda (Anbesamie)	Civics and Ethical Education Teacher at Wuharas G/Primary school
15	Tachi Woda	29/01/2018	7:30-7:40	By Phone	Civics Teacher at Bahir Dar Zuria, Robit Primary School
16	Tsegaye	02/02/2018	8:30-9:20	ANRS, Supreme court his Office	Judge at Supreme Court
17	Temesgen Sisay (Ass.Prof.)	22/01/2018	3-30:4:20	BDU Faculty of Law	Lecturer at BDU, Faculty of Law
18	Tilaye Beyene	25/01/2018	9:05-9:15	Dangila Woreda Administrator, Council Office	Speaker of the Council Office

19	Yirsaw Tamrie	22/01/2018	8:00-8:50	Speaker Office, Bahir Dar	ANRS, Regional Council Speaker
20	Gashaw Admasu	02/02/2018	3:30-4:15	ANRS regional council, Bahir Dar	Head of ANRS regional council, legal legislation
21	Mr. X	30/01/2018	3:30-4:00	Tana, Tayitu Recreation, Bahir Dar	Elder Man
22	Asnakew Alemu	30/01/2018	4:45-5:10	Around Gebaye, Bahir Dar	Elder Man

List of FGD

	Members	Time and Date	Position	Place of interview
FGD 1	1.Ashenafi Lulie	18/01/2018		Bahir Dar
	2.Mekuria Fikir			
	3.Gashaye		Head of Training and Research Institute	
	4.Abeba Tadesse			
FGD 2	1.Awotash Abrham	16/01/2018	Primary Civics Teachers (5 <sup>th</sup> -8 <sup>th</sup> )	Bahr Dar
	2.Kibnesh Yeshitla			
	3.Hiwot G/Medihn			

Additional informal (Phone) Key informants

1. W/ro Fikirie Mulugeta- Head of public relation in ANRS Council
2. Ato Alelgne-
3. Ato Areyaselassie- Elder, previously, speaker of the house

4. Ato Teklu Yemanebirhan
5. Ato Gashaw Zewudu
6. Ato Awota
7. Ato Sileshi Temesgen

**Appendix 2;** the establishment of the two Constitutional interpretation and review institutions

<p><b>የሀገር-መንግስት ተርጓሚ ኮሚሽን ስለመቋቋም</b></p> <p>የአገራ ብሔራዊ ክልላዊ መንግስት የሀገር መንግስት ተርጓሚ ኮሚሽን በክልሉ ውስጥ የሀገር-መንግስታዊ ጉዳዮች ላይ የትርጉም ጥያቄ ሲነሳ ተገቢውን ውሳኔ እንዲወስን በክልሉ ህገ-መንግስት አንቀጽ 70 ንዑስ አንቀጽ /1/ መሰረት ተደንግጓል። በመሆኑም በክልሉ ህገ-መንግስት መሰረት የሀገር መንግስት ተርጓሚ ኮሚሽኑን ማቋቋም፣ ዝርዝር ስልጣንና ተግባራትን አጥንቶ በሀገር መወሰን አስፈላጊ ሆኖ በመገኘቱ የአገራ ብሔራዊ ክልላዊ ምክር ቤት በተሻሻለው የብሔራዊ ክልሉ ህገ-መንግስት አንቀጽ 49 ንዑስ አንቀጽ 3/1 መሠረት የሀገር መንግስት ተርጓሚ ኮሚሽን አቋቋሟል። በአዋጁ መሰረት ኮሚሽኑ በክልሉ ውስጥ ከሚገኙ የብሔረሰብ ምክር ቤቶች እንዲሁም በክልሉ ውስጥ ከሚገኙ የወረዳ ምክር ቤቶች የሚወከሉ አንድ አንድ አባላት አሉት።</p> <p><b>የሀገር መንግስት አጣሪ ጉባዔው አደረጃጀት</b></p> <p>የክልሉ ህገ መንግስታዊ ጉዳዮች አጣሪ ጉባዔ በክልሉ ህገ መንግስት አንቀጽ 71 መሰረት አሰራ አንድ አባላት አሉት። እነሱም፦</p> <ul style="list-style-type: none"> <li>• የክልሉ ፍርድ ቤት ፕሬዝዳንት ሰብሳቢ</li> </ul>	<ul style="list-style-type: none"> <li>• የክልሉ ፍርድ ቤት ምክትል ፕሬዝዳንት ምክትል ሰብሳቢ</li> <li>• በክልሉ ርዕሰ መስተዳደር አቅራቢነት በብሔራዊ ክልሉ ምክር ቤት የሚሾሙና በሙያ ብቃታቸውም ሆነ በሥነ ምግባራቸው የተመሰከረላቸው ስድስት የሀገር ባለሙያዎች/አባላት/</li> <li>• በአፈ ጉባዔው አቅራቢነት ከክልሉ ምክር ቤት አባላት መካከል በምርጫ የሚሰየሙ ሦስት አባላት ያሉት ነው።</li> </ul> <p><b>የኮሚሽኑ ስልጣንና ተግባራት</b></p> <p>ኮሚሽኑ አጣሪ ጉባዔው በሚያቀርብለት ግናቸውም ሀገር መንግስታዊ ጉዳዮች ላይ መክር የመጨረሻ ውሳኔ ይሰጣል። ውሳኔዎቹ ለሀገሥብ ይፋ የሚሆኑበትን መጽሔት እንዲታተምና እንዲሰራጭ ያደርጋል። የራሱን የአሰራር ስነ-ስርዓት መመሪያ ያወጣል እንዲሁም የራሱን ሰብሳቢና ፀሐፊ ይመርጣል።</p> <p><b>ስለ ኮሚሽኑ ጽ/ቤት</b></p> <p>የክልሉ ምክር ቤት ጽ/ቤት የኮሚሽኑ ጽ/ቤት በመሆን ያገለግላል። የክልሉ ምክር ቤት ጽ/ቤት አስቀድሞ በተቋቋመበት አዋጅ ቁጥር 64/1994 ዓ.ም የተሰጡት ሥልጣንና ተግባራት እንደተጠበቁ ሆኖ፣ በአገራ ብሔራዊ ክልላዊ መንግስት የሀገር-መንግስት ተርጓሚ ኮሚሽን ለማቋቋምና የአሰራር ስርዓቱን ለመወሰን</p>	<p>በወጣው አዋጅ ቁጥር 224/2007 ዓ.ም መሰረት የሚከተሉት ልዩ ሥልጣንና ተግባራት ይኖሩታል፦</p> <ul style="list-style-type: none"> <li>• ለኮሚሽኑ አባላት አጠቃላይ አስተዳደራዊ አገልግሎት ይሰጣል።</li> <li>• ለኮሚሽኑ አባላት የሰብሰባ ጥሪ ያስተላልፋል።</li> <li>• አጀንዳዎችንና ሌሎች ተፈላጊ ሰነዶች ያሰራጫል።</li> <li>• የመሰብሰቢያ አዳራሾችን ያመቻቻል።</li> <li>• የኮሚሽኑ ቃለ ጉባዔ፣ ውጤት እና ሌሎች ሰነዶች በሚገባ ተመዝግቦ እንዲያዙና እንዲጠበቁ ያደርጋል።</li> <li>• ኮሚሽኑ የሚያወጣቸውን መጽሔቶችና ሌሎች የሕትመት ወጪቶች ዝግጅትና ስርዓት ይከታተላል።</li> <li>• ለኮሚሽኑ የጥናትና ምርምር አገልግሎት ይሰጣል።</li> <li>• ለኮሚሽኑ ሥራ ስኬታማነት የሚረዳ የፋይናንስ ድጋፍና ሌሎች ተዛማጅ ተግባራትን ያከናውናል።</li> </ul> <p><b>የሕገ-መንግስት ትርጉም ስለመስጠት</b></p> <p>የሀገር መንግስት ተርጓሚ ኮሚሽን አጣሪ ጉባዔ ህገ-መንግስቱን መተርጎም ያስፈልጋል በማለት በጉዳዩ ላይ የሚያቀርበውን የውሳኔ ሃሳብ መርምሮ የመጨረሻ ውሳኔ ይሰጣል። አጣሪ ጉባዔው የሀገር መንግስት ትርጉም</p>
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አያስፈልጋቸውም ሲል ውሳኔ በሰጠባቸው በማናቸውም ጉዳዮች ቅር የተሰኘ ወገን ይግባኙን ለኮሚሲዮኑ ማቅረብ ይችላል።

**በሀገ መንግስት አተረጓጎም ተፈፃሚ የሚሆኑ መርሆዎች**

ኮሚሲዮኑ የሚቀርቡለትን ሕገ መንግስት ነክ ጉዳዮች መርምሮና አጣርቶ ለመወሰን ለያዘው ጉዳይ አግባብነት አላቸው የሚላቸውን የሀገ መንግሥት አተረጓጎም መርሆዎች መለየትና በሥራ ላይ ማዋል ይችላል። ኮሚሲዮኑ የቀረበለት ጥያቄ በሀገ መንግሥቱ የሰፈሩትን መሠረታዊ መብቶችና ነጻነቶች የሚመለከት ሆኖ ሲያገኘው ይህንኑ ኢትዮጵያ ከተቀበለችው አለም አቀፍ የሰብአዊ መብቶች ህግጋት፣ ዓለም አቀፍ የሰብአዊ መብቶች ስምምነቶችና አለም አቀፍ ሰነዶች መርሆዎች ጋር በተጣጣመ መንገድ ተመልክቶ ምላሽ መስጠት ይኖርበታል። ኮሚሲዮኑ በሀገ መንግስት ትርጉም ላይ የመጨረሻ ውሳኔ ከመስጠቱ በፊት እንደአስፈላጊነቱ ተጨማሪ ማስረጃዎችን ሊያሰባስብ ይችላል።

**በሀገ መንግስት ነክ ጉዳይ ላይ የሚሰጥ ውሳኔ ተፈጻሚ መሆን ስለሚጀምርበት ጊዜ**

ኮሚሲዮኑ በሀገ መንግስት ትርጉም ላይ የሚሰጠው ውሳኔ በሌላ አኳኋን በግልጽ

ካልተመላከተ በስተቀር ተፈፃሚ የሚሆነው ውሳኔው ከተሰጠበት ቀን ጀምሮ ይሆናል።

በሌላም በኩል ኮሚሲዮኑ አንድ ህግ ሀገ መንግስታዊ አይደለም ብሎ የመጨረሻ ውሳኔ ከመስጠቱ በፊት ህጉን ላወጣው የክልሉ መንግስት አካል በስድስት ወር ጊዜ ውስጥ ህጉን እንዲያሻሽል፣ እንዲለውጥ ወይም እንዲሰርዝ ሊያሳውቀው ይችላል።

**ኮሚቴዎችን ስለማቋቋም**

ኮሚሲዮኑ በአጣሪ ጉባኤ በኩል የሚቀርቡለትን የውሳኔ ሃሳቦችና በጉባኤው ውሳኔ ቅር በመሰኘት በይግባኝ የሚመጡ ጉዳዮችን እየመረመረ የውሳኔ አስተያየቶችን የሚያቀርቡ የተለያዩ ኮሚቴዎችን ሊያቋቁም ይችላል። በአጠቃላይ የሀገ መንግስት ተርጓሚ ኮሚሲዮኑ መቋቋም ሀገ መንግስቱ በተሟላ መንገድ ስራ ላይ እንዲውል ከማስቻሉም በላይ ለተጀመረው የዴሞክራሲያዊ ሥርዓት ግንባታ እና ፈጣን፣ ተከታታይ ልማትና አስተማማኝ ሰላምን ቀጣይነት ባለው መንገድ ለማረጋገጥ ጠቀሜታው የጎላ መሆኑን ለማስገንዘብ እንወዳለን።

**የአግራ ብሔራዊ ክልላዊ መንግስት**

**የሀገ-መንግስት ተርጓሚ ኮሚሲዮን ተግባርና ኃላፊነት**

በአግራ ብሔራዊ ክልል ምክር ቤት ጽ/ቤት

በህዝብ ግንኙነት ዋና የሥራ ሂደት

የተዘጋጀ

ስልክ 058 222 0242

ፋክስ 058 220 6301

ታህሳስ 2008 ዓ.ም

ባህር ዳር

**Appendix 3; Interview Guidelines for society, Judges, civics and Ethical Education Teachers, Judicial Training and legal Research institute experts and government officials of the ANRS**

**Addis Ababa University**

**College of Law and Governance**

**Center for Federalism and Governance Studies**

**INTERVIEW QUESTIONS**

Interview Questions for all selected participants.

Interviewee: \_\_\_\_\_ Date of Interview: \_\_\_\_\_

Place: \_\_\_\_\_ Time of Interview -----

The interview is mainly semi structured interview, I have a list of themes and areas to be covered in the interview process. I have also some standardized questions, but I will omit or add to some of the questions, areas, depending on the situation and the flow of the conversation. Thus, the questions are translated into Amharic and presented to informants. The questions will be used to collect *Empirical assessment of Regional State Constitutions of Federal Ethiopia: A Case study of Amhara National Regional State*.

**I. Questions related with constitutional making process of the Region**

1. Do you think that all peoples of the ANRS participate in drafting and adoption process of the constitution of the region?
2. Have you participated in drafting and adoption process of the Constitution of the ANRS?
3. If you participated in the process, what was your role?
4. Do you have enough knowledge about the ANRS Constitution contents? If no why? If yes how? Explain,
5. What is your opinion about the importance of the ANRS Constitution?

II. **Questions Related with opportunity of Academicians, scholars, lawyers, researchers and political institutions.**

6. What do you think about the role of the government of the region towards Constitutional development creating an opportunity for the scholars, lawyers, researchers, political institutions and organizations?
7. Is there any effort made by the Justice Professionals' Training and legal Research institute of the Region in the creation of Awareness about Constitution of the region?
8. Is there any or awareness creating training or Education activities in the region about the ANRS Constitution?
9. Is there any constitutionally created independent institution in the region that respects to reviews the Constitution? if any?
10. Does the judge of the region always refer the regional Constitution when they made decision or they made a decision traditionally?

III. **Questions related with Constitutionalism of the region**

11. How do you evaluate the effectiveness of the Constitutionalism of the region?
12. What are the factors that hinder the application of the Constitution in the region? (to be apply Constitutionalism)?
13. What is the role of public participation in Constitutional making for Constitutionalism? Do you think, there is relationship between popular participation in Constitution making and Constitutionalism? Or not?
14. What do you think the possible strategies/mechanisms to deal with the challenges of Constitutionalism in ANRS?
15. What is your general opinion about Constitutionalism in the ANRS?

IV. **Questions related with civics and the Constitution of the Region**

16. Do think the regional Constitution has been part of the civics and ethical education curriculum of primary education of the region?
17. What do you think the role of inclusion of the regional Constitution in Civics and Ethical Education in the curriculum of primary school of the region?
18. What is your opinion about the relevance and challenges to include the Constitution at least in primary school of the region?

### **Focus Group Discussion (FGD) Guidelines for Target Groups**

1. Would you tell me your full name? (if necessary)
2. Who draft the ANRS Constitution?
3. Did you participate in the drafting and adoption process of the Amhara National Regional State Constitution?
4. Can you describe the mechanisms of how the peoples of the regional state are governed by the Constitution of the region?
5. What is the role of the government of the region towards Constitutional development creating an opportunity for the scholars, lawyers, researchers, political institutions and organizations?
6. Is there any constitutionally created independent institution in the region that respects to reviews the Constitution? if any?
7. What is the role of Justice Professionals' Training and legal Research institute of the Region in the creation of Awareness about Constitution of the region?
8. Did you conduct research about the application and implementation of the ANRS Constitution?
9. What are the major findings that are identified by this institute about the ANRS Constitutions?
10. What are the major challenges that hinder the implementation of the ANRS Constitution?
11. What do you suggest to curb the problems related with the implementation of the Constitution in the region?

### **Interview Guidelines for Key Informant**

1. Would you tell me your full name? (if necessary)
2. Who draft the ANRS Constitution?
3. Did you participate in the drafting and adoption process of the Amhara National Regional State Constitution?
4. Can you describe the mechanisms of how the peoples of the regional state are governed by the constitution of the region?



5. What is the role of the government of the region towards Constitutional development creating an opportunity for the scholars, lawyers, researchers, political institutions and organizations?
6. Is there any constitutionally created independent institution in the region that respects to reviews the Constitution? if any?
7. What is the role of Judges in the creation of Awareness about the ANRS Constitution?
8. Does the judge of the region always refer the regional constitution when they made decision?
9. What is the role of Justice Professionals' Training and legal Research institute of the Region in the creation of Awareness about Constitution of the region?
10. Did you conduct research about the application and implementation of the ANRS Constitution?
11. What are the major findings that are identified by this institute about the ANRS Constitutions?
12. What do you feel to include the ANRS Constitution in Civics and Ethical education text books in primary education of the region?
13. What do you think its relevance and challenges to include the Constitution at least in primary education curriculum at elementary schools?
14. What are the major challenges that hinder the implementation of the ANRS Constitution?
15. What do you suggest to curb the problems related with the implementation of the Constitution in the region?

*Thank You in Advance for Your Cooperation!*