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

**SUB-NATIONAL CONSTITUTION MAKING PROCESS IN ETHIOPIA:  
THE CASE OF OROMIA AND SNNPR REGIONAL STATE  
CONSTITUTIONS**

**BY: DAGIM WONDIMU**

**ADDIS ABABA UNIVERSITY, ETHIOPIA**

**MAY 2020**

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**BY: DAGIM WONDIMU**

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CONSTITUTIONAL AND PUBLIC LAW**

**ADVISOR: GETACHEW ASSEFA (PHD, ASSOCIATE PROFESSOR)**

**ADDIS ABABA UNIVERSITY**

**MAY 2020**

## Declaration

I hereby declare that the study on “sub-national constitution making process in Ethiopia: the case of Oromia and SNNP regional state constitutions” is my own work and the sources used are duly cited and acknowledged.

**Approval Sheet**

**Candidate: Name: Dagim Wondimu**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Supervisor: Name Getachew Assefa (PhD)**

**Signature:** 

**Date;** 17 May 2020

**Approved by board of examiners**

**Examiner 1** 

**Name : Dr. Sisay Alemahu**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Examiner 2**

**Name : Dr. Girmachew Alemu**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

## **List of abbreviation**

Art.	Article
CON.	Council of nationalities
Fdre.	Federal democratic republic of Ethiopia
HOF	House of federation
HPR	House of people's representative
ICCPR.	International convention on civil and political right
NGOs	Non-governmental organization
No.	Number
ODP	Oromo Democratic Party
ORSC	Oromia regional state constitution
OSC	Oromia Supreme Court
P.	Page
PROC.	Proclamation
RSC.	Regional state constitution
RSG	Regional state government
SC.	State council
SNNPR.	Southern nation, nationality and peoples region
SNNPRC	Southern nation, nationalities and peoples region constitution
TG.	Transitional government
TPC	Transitional period charter
TPLF	Tigray People Liberation Front
Vol.	Volume

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**Abstract**

*The nine regional states, constituting the Ethiopian federation had their own constitutions starting from the time of transition and have previously been revised multiple times in the last two decades. Oromia and Southern Nations, Nationalities, and Peoples' (SNNPR) regions enacted their first constitution in 1995. As to how the constitutions were made is the question of many researchers. Some writers put that making process as unclear. Some others opine that the constitutions were simply legislated as ordinary legislation with out observing the constitution making principles.*

*This study seeks to explore the making process of the constitutions of Oromia and SNNP regions. It aims to identify the guiding principles and methodology employed in the making process. It also aims to find out the major challenges encountered in the process. In doing so, qualitative data collections method was employed. The findings of the study reveals that it is hard to say that the regional states made own efforts to give themselves home grown constitutions, although they have the right to do so.*

*This paper concludes that the regional state has not employed special procedure in the making process. The public was not given the chance to give their say on the content and procedure of making. The constitution making process of the two regions were highly dominated by the federal government. Finally this piece recommends that the constitutions of Oromia and SNNPR should be revised to make it more adaptable to the socio-economic and cultural situation of the respective regions.*

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

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# Chapter One

## Introduction

### 1.1. Background of the study

Ethiopian long years of autocratic and dictatorial government systems have shaped its constitutional history in its own image. The pre-constitution laws have the feature of regulating both religious and legal matters. The notable legal documents in this regard are Fetha negest and Sereat mengist. Fetha negest has the purpose of regulating both religious and legal matters and the later is a politico-legal document, which has a significant relation with king's coronation.<sup>1</sup> Even the modern constitutions are not free from such critics. It is not a surprise that in constitution making process among others public participation has not employed during their preparation. Traditionally negotiating constitution was the province of political leaders who held power and claimed it.<sup>2</sup> Only those who are at power determine everything and anything as to the substance of the constitution. This fact holds true in Ethiopian constitution making history as well. An inference could be made from the former four constitutions of Ethiopia, which clearly shows the dominations of the leaders on the making process and affected the substance of the documents to be in favor of their political interest. It is often said that the key sources of legitimacy in Ethiopia's past were force (conquest, military expansion), religion (i.e. Orthodox Christianity), and tradition (i.e. 'right' genealogy).<sup>3</sup> Due to this reason there was no room for the public to have their say in the constitution making process. In general the making of Ethiopian constitutions come into picture under domination of political

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<sup>1</sup> Getachew Ayeferam, "Constitution, constitutionalism and foundation of democracy in Ethiopia," (2015) 2IJR 586

<sup>2</sup> Viven Hart, Constitutional making and the right to take part in public affair, Framing the state in times of transition: Case studies in constitutional making, (Us institute of peace press 2010) 20.

<sup>3</sup> Tsegaye Ararsa, "The making and legitimacy of Ethiopian constitution: Towards bridging the gap between constitutional design and constitutional practice," (2010) 23AF 85

leaders who held power.<sup>4</sup>

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

The focus of this study is constitution making of regional states in the Ethiopian federation. Subnational constitutions in addition to their creation (constituting) of state governments and regulating state affairs, guarantee protection of fundamental rights and freedoms of state citizens.<sup>5</sup> Even if they have all these multifaceted advantages, state constitutions (particularly their making process) has overlooked in Ethiopia.

## **1.2. Statement of the problem**

Federalism is defined as a system in which self-rule of central and regional government and shared rule among these governments is exercised.<sup>6</sup> Sub-national constitution making is one way in which regional states right of self-rule is manifested. That is why all regional states of federal republic of Ethiopia have come up with their own constitutions. But nothing is known as to the constitution making process at state level. Unlike other subordinate legal norms, which follow relatively simple process in their making, the enactment of constitution employs complex steps guided by several principles. Some of the guiding principles in constitution making

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<sup>4</sup> There are groups who argue that even the current 1995 constitution is not the result of public discussion rather the imposition of the EPRDF. Peoples who still argue on illegitimacy of the constitution forward that the result of the discussion and the final document imposed is totally different.

<sup>5</sup>Tsegaye Ararsa, "Sub-national constitutionalism in Ethiopia, Towards entrenching constitutionalism at state level," (2009) 3JMLR 33

<sup>6</sup> Arthur Benz, Self-rule and shared rule? Bicameralism, power sharing and joint decision trap, (2018) 10PF 30

are public participation, inclusiveness and transparency.<sup>7</sup> But it is unclear whether or not such guiding principles were employed in the making of the constitutions of the Oromia and SNNPR regions.

In addition to the usual critics forwarded against Ethiopian regional state constitution is the fact they are the verbatim copy of the federal constitution. Sub-national constitution gives a better protection for the peoples living in the region if it is designed taking the socio-economic and political situation of the place and time. Investigation should be made to find out whether they are copies of the national constitution and the reason of copying the federal constitution and the interplay it has with constitution making.

The other issue worth consideration is that even if all regional states have enacted their constitutions as per article 50(5) of the federal constitution, public do not have an awareness as to the existence of the same. What are the causes for lack of awareness of regional states constitutions? Tsegaye argues that state constitution, in addition to governing state behavior; it is also a good means of entrenching constitutionalism by protecting human right and limiting the power of sub-national government.<sup>8</sup> Furthermore, sub-national constitutions also allow the formulation of region specific social and political goals and organize institutions for the achievement of such goals. Regardless of these all-determinant role that regional constitution plays, researchers disregard their making process?

So, this paper tries to investigate sub-national constitution making in Oromia and SNNP regional states.

### **1.3. Research Questions**

The questions that the study investigates into include

1. What were the processes employed in making of Oromia and SNNPR constitutions?

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

<sup>8</sup> Supra note 5, p64

2. What were the sources of the constitutions of Oromia and SNNP regions?
3. What were the guiding rules and principles in the preparation of the two sub-national constitutions?
4. Did the constitution making process of the regions ensure public participation?
5. What types of problems were encountered in making the constitutions of Oromia and SNNP regional states?

#### **1.4. Objective of the study**

The study involves two categories of objectives classified as general and specific.

##### **1.4.1. General objective**

- This study generally aims at investigating the process that regional state employed in enacting their constitutions with particular emphasis on the Oromia and SNNPR states constitutions.

##### **1.4.2. Specific objectives**

- Investigating what makes sub-national constitution making process different from the constitution making process of FDRE constitution
- Examining the challenges faced by entity or committee entrusted with the obligation to carry out constitution making in Oromia and SNNPR regions
- Investigating the guiding principles that enacting body employed in the making process

#### **1.5. Review of related literature**

There is a shortage of literature on the area of Ethiopian sub-national constitutional issues in general and its making process in particular. Van der Beken argues regional constitutional issues are areas, which is understudied phenomena in Ethiopia.<sup>9</sup> So, it is hardly possible to get abundant literature on sub-national constitution making in Ethiopia. Tsegaye Ararsa came up with a piece on the topic of making and legitimacy

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<sup>9</sup> Christophe Van Der Beken, Sub-national constitutional autonomy and the accommodation of diversity in Ethiopia, (2016) 68RLR 1535

of Ethiopian constitution: towards bridging the gap between constitutional practice and constitutional design.<sup>10</sup> It differs from my investigation for the fact that the study is made not only on the making but also on the legitimacy of FDRE (national) constitution. Moreover, the target of his publication is federal constitution unlike my study that makes it focus on the constitutions of the Oromia and SNNPR regions. Being that as it may, only few scholars have made investigation on sub-national constitution issues. Tsegaye Ararsa's paper entitled subnational constitution in Ethiopia: Towards entrenching constitutionalism at state level is the notable in this regard.<sup>11</sup> On this piece the author does not give a wide coverage for state constitution making save its mentioning of two basic facts that sub-national constitution making varies from state to state and from federation to federation and state constitution may be adopted either by state legislature or through popular referenda.<sup>12</sup> In this regard Wondwessen Wakene on the paper entitled as purpose of sub-national constitution: The Ethiopian experiment came up with the same conclusion that constitution making process was not inclusive by giving the same duty on state legislature.<sup>13</sup> This will in-turn will go against the basic guiding rules of constitution making i.e. public participation.

Yared Legesse published on Sub-national constitutionalism in Ethiopia: The case study of Benishangul Gumuz, Gambela and Harari. His main finding is that for effective implementation of constitutionalism, power-sharing arrangement between the two tiers of government should be accompanied with convocational culture.<sup>14</sup>

The roles of sub-national constitutions in balancing participation right and autonomy of ethnic minorities: An appraisal of SSNPR Constitution is the other paper contributed by Endalkachew Geremew.

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<sup>10</sup> Supra note 3

<sup>11</sup> Supra note 5

<sup>12</sup> Ibid

<sup>13</sup> Wondwessen wakene, Purpose of sub-national constitution: The Ethiopian experiment, (2011) Vol.4, Ethiopian constitutional law series, 1

<sup>14</sup> Yared Leggeese, Sub-national constitutionalism in Ethiopia: The case study of Benishangul Gumuz, Gambela and Harari, (2011) 4 ECLS Pp. 92

Zemelak Ayitenew made contribution on sub-national constitutional issues on his piece entitled the politics of sub-national constitutions and local government in Ethiopia.<sup>15</sup> He tries to put the role and the relevance of regional states constitution in creating local government such as Zones, Woredas, and Liyu Woredas. He argues that sub-national constitution plays a determinant role in regulating sub-regional administrative levels. The other basic point that Zemelak came up with is the impact of government on the constitutional design.

Yitages Alamaw published on the status of sub-national constitution under federal democratic republic of Ethiopia made similar finding with Zemelak. He forward that sub-national constitution were designed under the direct control and follow up of the federal government.<sup>16</sup>

Explaining sub-national constitutional space by Glan Tarr is the other piece having point of intersection with my investigation. It focuses on sub-national constitution provided that my study gives particular emphasis on the constitution of Oromia and SNNPR regions.<sup>17</sup> Moreover, Tarr puts that constituent units of federation follows the footsteps of the federal constitution which makes lets the former unable to use constitutional space available to them.<sup>18</sup> Christopher van Der Beken in his piece on the topic of sub-national constitutional autonomy in Ethiopia reflected that regional constitutions in Ethiopia are the copy of federal constitution.<sup>19</sup>

Getachew Disasa is the other person who contributed on sub-national constitution on the topic of the role and relevance of sub-national constitution in the Ethiopian

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<sup>15</sup> Zemelak Ayitenew, "The politics of sub-national constitution and local government in Ethiopia," (2014) 6POF, 89

<sup>16</sup> Yitages Alamaw, The status of sub-national constitution under federal democratic republic of Ethiopia: Implication of theoretical evaluation of some facts, (2010) Vol.5 Jimma university law journal 166

<sup>17</sup> G. Alan Tar, "Explaining sub-national constitutional space," (2011) 115 PSLR 1133

<sup>18</sup> Ibid

<sup>19</sup> Christophe Van der Beken, "Sub-national constitutional autonomy in Ethiopia on the road to distinctive regional constitutions," (The 9<sup>th</sup> world congress of constitutional law and challenges: Global and local proceeding, Oslo, 2014)



federal system in promoting effective self-rule and regional autonomy by giving particular emphasis to Oromia regional state constitution.<sup>20</sup> He reached the conclusion that the constitution lack legitimacy due to the fact that the way the document was prepared was not participatory. This is the problem even at the federal level.

Another person known as Bamlaku Alebe made an inquiry on the topic of empirical assessment of regional constitutions of Ethiopia: with particular emphasis of the Amhara regional state constitution.<sup>21</sup> He found out that there were no pre-constitutional and post-constitution deliberations with the people during the making of the constitution of Amhara regional state. So, from this a simple inference could be made that the constitution of the region is simply an imposition from the top regardless of the fact that it is the supreme law of the region.<sup>22</sup> Another equally important piece is the investigation made by Solomon Emiru on the topic of the compatibility of Oromia state constitution with the federal constitution particularly with regard to constitutional adjudication.<sup>23</sup> He came up with a finding that Oromia state constitution has problem of visibility. It means that there is no public awareness as to the existence of the constitution. Tsegaye and Van der Beken came up with the same finding about the visibility of Ethiopian regional states constitutions. They argues that regional state constitutions

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<sup>20</sup> Getachew Disasa, The role and relevance of sub-national constitution in the Ethiopian federal system in promoting effective self-rule and regional autonomy. The case of Oromia regional state constitution, (Masters thesis submitted for center for federalism and governance studies, Addis Ababa university, 2018)

<sup>21</sup> Bamlaku Abebe, “Empirical assessment of regional constitutions of Ethiopia: With especial emphasis of the constitution of Amhara,” (Master thesis submitted for center of federalism and governance studies, Addis Ababa university, 2018)

<sup>22</sup> The revised constitution of Amhara Regional state, Proclamation no.59/2001, Art 9

<sup>23</sup> Solomon Emiru, Compatibility of revised Amhara regional state constitution of 2001 with the FDRE constitution with respect adjudication of constitutionality of issues and its possible effects, (Masters thesis submitted for school of graduate studies of Addis Ababa University, Addis Ababa University, 2011)

Sub-national constitutional issues are not the target of researchers, lawyers (practitioners), politicians, and other professionals, which have contributed their part not to be recognized by the peoples of the regions. There are few attempt made by some scholars which lacks purpose specificity. Hence, this study is novel for the fact that the investigation wrestles with fundamental and specific questions on how constitutions of Oromia and SNNPR came into being with regard to their making process, what challenges faced in the making process and the basic principles employed in the process.

### **1.6. Research Methodology**

To attain the goal of the inquiry and to answer the research questions the researcher had collected and analyzed data mainly based on qualitative research method. Ethiopian sub-national constitution making in general and that of Oromia and SNNP regions in particular was analyzed and explained. As a means to this end, the researcher employed primarily qualitative research method.

### **1.7. Data source and collection method**

Both primary and secondary data was used to answer the research questions and to meet the objective of the study. The primary data collected through and from travaux preparatoires, constitutions of regions, and interview with individuals take part in the constitution making was used to show the process involved in the making of the two regional states constitutions. This same data sources used to answer the guiding rules in employed in the making process and the challenges faced in the process. Unstructured interview was employed which made the researcher to have free in-depth discussion with key informants. In addition secondary data such as books, journal articles, magazines, and newspaper were explored to come up with answer to the questions of the study. As this study have the purpose of recommending a new approach of sub-national constitutional making, comparative study is made on the laws of other federation.

## **1.8. Sampling techniques and procedure**

### **1.8.1. Target population**

The population of the study is those persons who were involved in the drafting activity of constitutions of Oromia and SNNPR regions. Other individuals who are key informants of the making process of the constitutions of the regions were also interviewed.

### **1.8.2. Sampling techniques**

Purposive sampling was employed in selecting sample from the target population. This was due to the nature of the study, which is investigation of past process that requires the recruitment of key informants who took part in the making process. I have selected individuals to be interviewed purposively taking into account their role and involvement in the constitution making process. Totally, I have interviewed 10 individuals who have proximity and high attachment with the process and were potential persons addressing my research questions. Some of the individuals interviewed are those persons who took part in the making process of the constitutions.

The main informants in this study were Demoze Mame, Transitional period president of Oromia Supreme Court, currently he is chairman of Oromia regional state constitutional interpretation commission and Ayne Kulu Goatsuba, supervision and control expert of SNNPR state council. Eight legal experts who had attachment with the making process interviewed. SNNP regional states, which have bicameral parliament (council of state and council of nationalities), two individuals from each parliament were selected purposively. In addition to this data were also collected from books, journal articles, newspapers, and mainstream broadcast medias.

## **1.9. Significance of the study**

One of the characteristics of federal system is the existence of self-rule and shared between the two tiers of government. One of the means through which self-rule is manifested in such system is taking legislative measure in the authorized space. Drafting, enacting and adopting constitutions by each tiers of government are typical

means of legislative acts. Accordingly, Ethiopian regional states are authorized to draft, enact and adopt their constitutions.<sup>24</sup> Nonetheless, the issue of sub-national constitution does not given the required focus. Being a country following federal system having two tiers of government, the issues of sub-national constitutions do not given coverage. Only few articles have touched the topic in some way. It is hardly possible to find evidence showing how sub-national constitutions were drafted, adopted, interpreted and amended.

Specifically, it is unlikely to get scientific finding in connection with the constitution making of the Oromia and SNNP regions. Hence, my investigation will add new knowledge to such understudied regime of sub-national constitution issue in unveiling how the constitutions of Oromia and SNNPR regions came into being.

### **1.10. Organization of the paper**

This paper is arranged into four chapters. This chapter incorporates general introduction, description of the problem, the methods employed to arrive at the answer of the research questions, Objective of the study, reviewing of literature having relevance to the investigation at hand, and significance of the study that dictates what the study is going to contribute. Chapter two tries to analyze the making of sub-national constitution in other jurisdictions and in Ethiopia. Historical development of constitutions of Oromia and SNNPR analyzed. Chapter three discusses sub-national constitution making process in Oromia and SNNP regions. Chapter four is devoted to conclusion and some recommendations.

## **Chapter Two**

### **Sub-national constitution making in other jurisdiction**

#### **2.1. Introduction**

In this paper the term “sub-national constitution” employed to refer to a constitution which is below national constitution regulating affairs with in a given state’s own jurisdiction. The elements those are applicable for defining national constitution also

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<sup>24</sup> Proclamation of federal democratic republic of Ethiopia 1995, Proc. no, Neg. gaz. Year 1. No.1 Art 52(2)(b) and Art 50(5)

used in defining sub-national constitution. Constitution is a body of basic laws and principles that describes the general organization and operation of the state.<sup>25</sup> This definition holds true (works) for both levels of constitutions. But this does not mean that the two are the same but rather similar. What are the content of sub-national constitution? Sub-national constitution can be defined in regards to the purpose they serve. Regional constitutions have similar purpose with that of the federal constitution provided the former have some additional functions. Some of the extended functions of sub-national constitution is filling up the deficiency of the federal constitution, promoting local self-self government, providing double protection for citizen and creating fertile ground for constitutional experimentation.<sup>26</sup> In short sub-national constitution is state higher law regulating determinant sub-national matters such as government structure and bill of rights at state level. Its making requires complicated and rigorous procedure much more than the making process of ordinary laws. This could be due to the fact that constitution is a supreme law containing fundamental principles. So, the way we look at constitution determines the approach we employ for its making. A due care and consideration should be made in constitution making as it is determinant legal document affecting the legal system of the country. The traditional and the modern or democratic constitution making approach have their own and different impact on the feature of constitutional document.<sup>27</sup> The guiding principles and the making approach applicable in the process are equally important as outcome which has a paramount potential in determining what the constitution looks. The traditional constitution making approach in which the government simply imposes a document serving its own interest is criticized for it results in static and immovable constitution.<sup>28</sup> Unlike

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<sup>25</sup> Nora Hedling, The fundamentals of a constitution, Constitution brief, (2017) <https://www.idea.int/publications/catalogue/fundamentals-constitution> , Accessed on Dec 29/2020

<sup>26</sup> Supra note 13, p

<sup>27</sup> Vivien Hart, Democratic constitution making, United states institutes for peace, special report no 107, July 2003, Available at <https://www.usip.org/publications/2003/07/democratic-constitution-making> , Date accessed on nov 25/2019

<sup>28</sup> Paul R. Williams, The constitution making process, (State practice on constitution making, Kosovo, July21, 2006)

other legal norms, constitutional documents are not norms, which can easily be altered. But this does not mean that they have to be adopted in a way it is impossible to remove or alter. When there is a need to accommodate changing circumstance, they should be altered through revision or amendment. The current Ethiopian constitution is notable example of a constitution, which cannot be simply amended. Particularly those provisions of the constitution that deal with bill of rights demand stringent requirement for amendment which makes the constitution rigid <sup>29</sup> It requires the majority vote of all state councils, the vote of Hpr and the vote of HoF to amend chapter three of the constitution. <sup>30</sup> The refusal by one state among the nine states could be a challenge for amending the constitution. Such rigidity has its own impact that makes the constitution not to adapt to the modern time situation or the prevailing circumstance.

One common thing in traditional constitution making is the fact that it was prepared under the influence of persons in power and serves the same interest. As time goes the constitution making process changed. The trend that the government was imposing ready-made constitution later shifted and public participation started to be considered as one-core guiding principles of constitution making. In addition to Ethiopia, countries like Nepal, Kuwait, Jordan and Saudi Arabia are some notable countries that received their constitution from the government in power with out the need to follow the making process.<sup>31</sup> But the problem is that constitution given by government may not be responsive to societal issues and may not play the role it ought to play. And if it is unable to address the claims of the public, it is useless and does not serve the objective for which the constitution is there. For example one bold

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<sup>29</sup> Beza Dessalegn, Reconciling the tension between sub-national autonomy and ethno linguistic diversity: why territorial federalism is not enough for minorities in Ethiopia. (2017), 8 J. Hum. Rts. L, 22

<sup>30</sup> Chapter three of the federal constitution is the determinant chapter containing bill of rights including the right to self-determination of nation, nationality and peoples right which is a sensitive issue in Ethiopian politics. Amendment of this section is difficult. One thing that has to be equally noted is that even if everyone is below the law, the constitution is not beyond the people who create it. And when such situation exists people may sit for discussion for its alteration.

<sup>31</sup> Supra note 7

objective of every constitution is limiting governmental power. And it is unlikely to that the government will come up with rules limiting its action by taking the responsibility of drafting and adopting constitution solely.

Sub-national or regional state constitution making and amendment requires less rigorous procedures when compared with that of the federal constitution. Most of the time that are either state legislative body or commission appointed by the executive body, which took the responsibility of drafting and adopting state constitution.

## **2.2. Sub-national constitution making in some jurisdictions**

In federal system of government, sub-national constitution is a common phenomenon.<sup>32</sup> This could be due to the fact that sub-national constitutions is one means through which self-rule of the regions is exercised at least theoretically. In some other federations state constitution is not a mandatory requirement. Canada could be a good example for that only Quebec has its own constitution. In some other jurisdictions such as Belgium, India and Nigeria states do not have separate regional constitutions.<sup>33</sup> In Belgium that is only Flanders demanding more constitution making power.<sup>34</sup> From this an inference could be made that there are instance in which constituent units with in federation may not have sub-national constitution.

The coming (with regard to timing) of state constitutions varies as one goes from one federation to that of the other. It varies depends on whether the federation is coming together or holding together. For example in South Africa, regions are the creatures of national constitution and have those powers, which they have expressly conferred by the national constitution.<sup>35</sup> The constituent units drive the power of drafting and adopting constitution from the federal constitution. The timing of making of state constitution in such type systems follows the federal constitution. In some other

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<sup>32</sup> Supra note 5, p36

<sup>33</sup> G. Alan Tarr, Sub-national constitutions and minority right, A perspective on Canadian provincial constitutionalism, (2008) 2 QJCL 174

<sup>34</sup> Patricia Poplier, The need for sub-national constitutionalism in federal theory and practice, The Belgian case, (2012) 4POF 36

<sup>35</sup> Jonathan Marshallfeild, Authorizing sub-national constitution in transitional federal states: South Africa, and Kwazulu-natal constitution, (2008) 41 VJTNL 585

systems sub-national constitution precedes the national constitution. This experience is common in countries characterized by aggregative federalism i.e. federal system in which previous independent states come together and form federation. A notable example for this is USA, Australia and Argentina.

Sub-national constitution is the state higher law at the state level that has major purposes (among many) of defining the power and functions of government organs and establishes local government in the region. It has the potential of limiting the power of state government and establish democratic institutions. So, unless its making process is guided by principle, the government that has everything at its disposal may affect its outcome.

Now the question is what are the procedures in the sub-national constitution making? Who is mandated for preparing and adopting the same are some of the issues worth considering. The approach may differ as one goes from one country to another. Hereunder the sub-national constitution making approach of some countries have discussed.

### **2.2.1. South Africa**

Among nine states only the province of kwazulu Natal and the province of cape-town made an attempt to draft and adopt their constitution. In South Africa the federal constitution designed to allow province either to adopt their constitution or rely on the national constitution.<sup>36</sup> As to institutional arrangement and sub-national government structure province can depend on the national constitution. The reason is that the national constitution has a chapter dealing with provincial government. The South African constitution of 1996 reserved its chapter 6 for regulating provincial government structure. So, the provincial government can depend on this section without the need to have its own constitution. It should be equally noted that the national constitution authorizes provinces to draft and adopt their constitution.<sup>37</sup> The constitution-making attempt by Kwazulu natal was unsuccessful for it is unable to get

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<sup>36</sup> Cheryl Sounders, Constitutional credentials of state constitution, 42 RLJ 853

<sup>37</sup> Constitution of republic of South Africa, Act no 108, 1996, Section 142



certification from the constitutional court of South Africa.<sup>38</sup> The making of the constitution of Cape- town encountered the same challenge for going beyond what has permitted by the national constitution; which later adopted by complying the ruling of the court and become operational in 1998.<sup>39</sup> From this an inference could be made that provinces in South Africa have the right to adopt their constitution provided they have passed the tests of certification by constitutional court. So, who took the responsibility of drafting and adoption are some of the questions that should be raised in sub-national constitution making of South Africa. The constitution of Republic of South Africa act of 2000 of 1993 in its section 160 provides how province should adopt their constitution. To adopt state constitution provincial legislature should vote by 2/3 majorities. As to who should take the responsibility of drafting the constitution is not clear.

A mere adoption by the provincial legislature by the required vote is not an end to promulgate state constitution. There are also other additional requirements. These are: - the content of provincial constitution should not go against the national constitution and should be certified by constitutional court whether or not it has observed such requirement.<sup>40</sup> As mentioned above the promulgation of the Kwazulu Natal constitution failed due to its unable to get the blessing of constitutional court. Among many others it is unable to get certified due to usurpation of the power of central government.<sup>41</sup> Certification is determinant process in the provincial constitution making of South Africa. Then the state premier must assent to and sign the text provincial constitution before it enters into force.<sup>42</sup> To get approval the body entrusted with a duty of drafting and adopting should meet certain standard. The standard is the famous thirty-four principles standard incorporated in the transitional

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<sup>38</sup> Christian Murray, Provincial constitution making in South Africa, The (non) example of the Western Cape, (2001), 49 New episode year book of public law, 481

<sup>39</sup> Supra note 34, p 596

<sup>40</sup> Supra note 36, Section 104 sub-section 3 and 4

<sup>41</sup> Supra note 38

<sup>42</sup> Kimana Zulueta, Sub-state constitution in fragile and conflict affected setting, (2017) 115 Penn. St. L.R 1153

South African constitution. This standard is the counter part of congressional acts standard of United States America.<sup>43</sup>

In short, the making process of sub-national constitution in South Africa involves steps in which only state institutions partakes i.e. adoption by provincial legislature and certification by constitutional court. There is no clear thing regarding whether the draft is prepared by an appointed committee or by the provincial legislature.<sup>44</sup> In other word the public has no a say at all in the sub-national constitution making process of South Africa.

### **2.2.2. South Sudan**

State constitutions in South Sudan is designed by drafting committees and adopted by state legislature provided that they are guided by the model constitution prepared by the national review commission.<sup>45</sup> Like the state constitution making in South Africa, draft prepared by regions should pass through two stages for certification. Before the draft promulgated as a law its compliance with the interim constitution of Southern Sudan should be examined. It has to be submitted for South Sudan ministry of legal affairs and constitutional development, and national ministry of justice for final certification.<sup>46</sup> The reason why national constitutional review commission prepared a model constitution seems to control its compatibility with the interim national constitution of Southern Sudan. This approach will be of a great importance to protect national integrity. Nevertheless, it has to be equally noted that the approach may affect the purpose of state constitution to serve regional distinctiveness and responding to the regional realities. Each state may have their own socio-political and economic situation and a model prepared centrally may not be responsive to all those values. And one thing, which is worth noting in the state constitution making of

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<sup>43</sup> G.Allan Tarr, Sub-national constitutional space: An agenda for research, (2007) 115 Penn St. L. R 1153

<sup>44</sup> Supra note 40, p27

<sup>45</sup> Murray, Christina, and Catherine Maywald, "Sub-national constitution making in Southern Sudan, (2006) 37 R.L.J 1203

<sup>46</sup> Ibid

South Sudan, is the fact that the public deliberation has not been made and the people has not given a chance to forward their say on the content of the constitutions.

In short, drafting by the committees, adoption by state legislature and submitting the same for national ministry of justice through ministry of legal affair and constitutional development is the steps involved in South Sudan state constitution making.

### **2.2.3. Switzerland**

The Swiss national constitution has an interesting provision on how the cantonal constitution should be adopted. The common thing in most federal constitutions as to sub-national constitution making is authorization. Most constitutions authorizes that regions are allowed to draft and adopt their own constitution. Nonetheless, the federal constitution of Swiss goes a little bit detail how should the cantonal constitution should be adopted and revised. Each canton shall adopt democratic constitution provided they get approval from the people.<sup>47</sup> Here the constitution expressly provides that the type of (democratic) constitution that should be adopted in one way and the getting the approval of the public is the other requirement. Here the minimum threshold (standard) has set for the good of the people. The cantons (the Swiss constituent units) cannot come up with undemocratic constitution under guise of designing their distinct constitution.

The organ empowered to prepare draft is not known. Each canton did not followed exactly the same procedure.<sup>48</sup> So, which organ prepared the draft do not clearly provided and there was no uniform application throughout the cantons. In the constitution making of Bern and Appenzell, the people refused the drafting activities to be carried out by constituent assembly and entrusted legislative assembly to carry out the draft.<sup>49</sup> Unlike the experience in South Sudan, peoples had a say in sub-national constitution making of Swiss cantons. The public involvement was not restricted to the making but also the majority vote of the people is required to make

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<sup>47</sup> Swiss constitution of 1999 through amendment 2014, art 51(1)

<sup>48</sup> Sophie Weerts, Swiss cantonal constitution as a source of law for the protection of fundamental rights, (2016) 77 IDRLS 179

<sup>49</sup> Ibid

revision on cantonal constitution.<sup>50</sup> As it holds true for the making and amendment of Swiss national constitution, the people were given a role in the making and amendment of cantonal constitutions.

The other thing is that confederation is at duty to check whether the cantonal constitution does not go against federal constitution.<sup>51</sup> The specific organ mandated for this task was not clearly given like national ministry of justice and constitutional court in South Sudan and South Africa respectively. Generally, the Swiss national constitution gives cantons the right to adopt their constitution provided that people approved it. The organ empowered to prepare draft is not clearly given. In canton of Zurich it is up to people to decide whether cantonal council or constitutional council should prepare the draft.<sup>52</sup> The good quality that sub-national constitution making of Swiss incorporate was the role it gives for the public in each of decision-making stage.

#### **2.2.4. Germany**

In Germany sub-national units, landers were drafted and adopted their constitution at different period and following different procedures. The usual procedures in the lander constitution making are adoption either by constitutional assembly followed by the approval of people of the lander (Bavaria, Hesse, Rhineland Palatinate) or adoption by the lander parliament accompanied by the approval of peoples of the lander (Berlin, Brandenburg, Bremen, Mecklenburg, Vorpommern, North Rhine Westphalia, and Thuringia).<sup>53</sup> Other landers require that a mere adoption by constitutional assembly suffice and the remaining adoption by the parliament is enough without the need to have popular referenda.<sup>54</sup> Sub-national constitution making process in Germany has followed well-organized pre-parliamentary stage and parliamentary stages process. Before the draft presented for the parliament several

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<sup>50</sup> Ibid

<sup>51</sup> Id, art 51(2)

<sup>52</sup> The constitution of canton of Zurich of 2003, Art 134

<sup>53</sup> Arthur Gunlicks, *The lander and German federalism*, (Manchester University press, 2003), Available at [www.jstor.org/stable/j.ctt155j6k3](http://www.jstor.org/stable/j.ctt155j6k3) accessed may 5/2020

<sup>54</sup> Ibid

stakeholders such as interest groups, legal scholars and individuals have participated in the pre-parliamentary debates.<sup>55</sup> From this an inference could be made that popular involvement was given a prominent place in sub-national constitution making of German landers.

Table 1:sub-national constitution making process in some jurisdictions

Federal state	Drafting	Adoption	Certification
South Africa	Not clearly specified	Provincial legislature	Constitutional court
South Sudan	Drafting committees (using interim constitution as a model)	State legislature	South Sudan ministry of legal affairs and constitutional development
Switzerland	Peoples of the regions elects the body which prepares the draft	By cantonal legislature	No certification procedure

## 2.3. Models and guiding rules of sub-national constitution making

### 2.3.1. Models of sub-national constitution

Sub-national constitution issues are usually discussed and explained with respect to constitution in general. This is due to the fact the sub-national constitution issue does not taken as inevitable phenomena in federal system of government. There are federations who still don't have state constitutions and does not much concerned about it. It is not a usual phenomenon in Canada, Nigeria and India. Ethiopia is a country in which each of the nine states has sub-national constitution. Nonetheless, the issue of subnational constitution is understudied. Hence, finding models and

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<sup>55</sup> Astrid Lorenz, "Sub-constitutionalism in multi layered system, A comparative analysis of constitutional politics in German lander, (2012) 4 POF 148

already developed theories on state constitution is hardly possible. But this does not mean that we cannot find models for sub-national constitution at all. Some models have developed to show the possible choice in developing and designing sub-national constitution.

The two prevailing models of sub-national constitution are the demos and the federalist model. The demos model advocates that although there is a unity among various ethnic groups within the same polity, there should be a room for political self-determination. And the assumption of federalist model is that the power of the government should not be concentrated in the same hand but should be divided among institutions and levels of government.<sup>56</sup> These two models show major features of federalism, which are self-rule and shared rule among levels of government. Considering the latter; to understand from the nomenclature itself, the federalist model focuses on power sharing among government bodies. So, as it is crystal clear from the stand of the advocacy of the two models, their objective would not be materialized without sub-national constitution.

The former model shows the self-rule aspects of federalism. It assumes that self-determination should be taken into account in designing sub-national constitution. A closer look at sub-national constitutions in Ethiopia, it is not difficult to deduce they have incorporated the two models. Ethiopian regional constitutions have defined local government from zone up to kebele level and entrusted each with power and responsibility. This in turn shows the power of self-determination at least theoretically.

There is a third model of sub-national constitutionalism known as deliberative model. And this model assumes that sub-national constitution is situated to promote political deliberation and participation within units of the federation and in the federal system as a whole.<sup>57</sup> The value of this model should be attached in both models above, as political participation and deliberation is determinant in both self-rule and shared rule of the units in federation. Generally in designing sub-national constitution

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<sup>56</sup> Jonathan L. Marshfield, Models of sub-national constitutionalism, (2012) 115 Pen. St. R 1152

<sup>57</sup> Ibid

accompanying all the three models is of a great help particularly in ethnically diversified countries like Ethiopia.

### **2.3.2. Guiding principles of constitution making process**

Before starting the tasks of constitution drafting and deliberation on the content of the constitution, consensus should be made on the principles or standard to employ in the making process.<sup>58</sup> Constitution making has specific and general guiding rules. The specific guiding rules are those principles anchored by certain country and applied to that specific country. For example in South Africa the parties negotiating on constitution making process were agreed on 34 principles of constitution making and incorporated in the 1996 transitional constitution of South Africa.<sup>59</sup> Such types of constitution making principles are agreed rule by several stakeholders including competitive political parties. One among the 34 principles is that the constitution should incorporate bill of rights and failure shall result in non-certification by constitutional court. As there should be terms of reference for the drafters, this specific guiding principle serves as guiding framework on the drafting stage of the making process. Beyond that the constitutional court certify or reject the drafted document taking into consideration such principles.

In our country Ethiopia, the federal constitution does say nothing as to the principles to be employed in the making process. The whole thing that the federal constitution does is empowering regional state to enact their constitution in generic terms.<sup>60</sup> There is no express provision intentionally proclaimed to guide constitution makers in the process of making unlike other jurisdictions. I argue that article 9 of the FDRE constitution could be used a guiding rule in the absence of developed guiding rule. It provides that the constitution is the supreme law of the land and any law that goes against this constitution shall be of no effect. This provision that is one of the five fundamental principles of the constitution could be taken as general guiding principle of making process. So, lawmakers including sub-national constitution makers should

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<sup>58</sup> Supra note 25, p4

<sup>59</sup> Gincilini Yitirmessi, South African federalism: Constitutional making process and the decline of federalism debates, (2018) 4 JYU 154

<sup>60</sup> Art 50(5) and 52(2)(b) of Fdre constitution

be conscious enough this provision of the constitution, which is supreme law of the land.

To answer briefly whether there were an agreed guiding principles or not in making of Ethiopian sub-national constitution in general and the making of Oromia and SNNPR regional states' constitutions, there were no a developed principles guiding the process. The federal (dominantly) and regional government were the one who were guiding and directing the making process as they thinks appropriate. There are no agreed guiding principles like that of South Africa.

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

## **2.4. Other considerations in sub-national constitution making**

### **2.4.1. Public participation**

People's participation on matters affecting their public interest is not a recent phenomenon. In the past public gathering were made for dealing with societal issues.<sup>61</sup> Currently people's participation in public affairs has incorporated in several international human rights document. The notable documents with this regard are international covenant for civil and political right<sup>62</sup> and African charter for people and human rights.<sup>63</sup> These documents entitle people to take part on public affairs and more importantly the later requires public participation with strict equality. An opportunity to take part on issues affecting societal interest should be given to every part of the community. Anchoring the content of the constitution or deliberating on draft constitutional document is one of those matters affecting societal interest. So,

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<sup>61</sup> For instance in Ethiopian traditional criminal procedure Awuchachign was a common phenomenon. It is form of criminal investigation in which public gathering is called to identify criminals.

<sup>62</sup> International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession on 19 December 1966 by General Assembly resolution 2200 A (XXI) and entered into force on 23 May (1976), Art 25

<sup>63</sup> Adopted in June 1981 and came into force in October 1986. Ethiopia acceded to the Charter on 15 June (1998), Art 13(1)



provided that this prominent legal instrument entrust peoples with a right to engage in public affairs and constitution building process is one of the determinant issues affecting the public tremendously, enable us to conclude that partaking in constitution making process is a right guaranteed under international human right instruments. In addition, united nation committee on human rights on its general comment 25 interpreted “conduct of public affair” of article 25 of Iccpr, to the extent of entitling people to participate in the constitution making process.<sup>64</sup> From this a deduction could be reached that public participation in the constitution making process is not a mere procedural matter, rather a legal entitlement.

Being that as it is, in multi-ethnic and religious state like Ethiopia, giving the public the opportunity to be heard in constitution building process has a lot to do with its legitimacy. To avoid the possibility of illegitimacy the public should be given an opportunity to be heard. The recent constitution making approach internationally is towards participatory making process, which has the objective of making the public to own the outcome of the process.<sup>65</sup> And equal note should be made that the outcome of the process cannot be controlled (predicted), unless the process is guided by principles and rules. Putting that in simple terms i.e. the constitution making process is equally important as the final legal document.<sup>66</sup>

Otherwise, constitutional document may be considered as an imposition by the government. The government may use it as a political tool to materialize its own interest. This could be the reason why Tsegaye regard participatory and inclusive constitution making is the values, which works for all constitution commonly.<sup>67</sup>

Public Participation gives people the opportunity to involve in the political decision making of the country. And this in-turn has a multifaceted advantage. Its impact on

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<sup>64</sup> United nation human right committee general comment no.25: The right to participate in public affairs, Voting rights and the right of equal access to public service, July 12/1996

<sup>65</sup> Noha Ibrahim, International law and constitutional making process: The right to public participation in the constitution making process in post referendum Sudan, Law and politics in Africa, Asia and Latin America, (2013) 46 VRU 131

<sup>66</sup> Tom Ginsburg and et al, Does the process of constitution making matter, (2009) Ann. Rev. Law. So. Sce 201

<sup>67</sup> Cited above at note 3

increasing the democracy level, creating trust on the legal document and more importantly responding to issue of legitimacy are some of the advantage of public participation.<sup>68</sup> In addition to these, it has also the potential of increasing the awareness of citizens about the constitutional right they have. So, organizing public participation is determinant step, which should be employed in constitution making process.

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

#### **2.4.2. Inclusiveness**

A mere giving the chance of participation does not suffice; rather the process should be representative of all possible stakeholders. A due care should be made in inviting stakeholders to the process. To be more explicit public participation should be backed with inclusiveness. Once again inclusiveness should also be with the intention of getting certain outcome from the participant and discussion. If this is the case the process should consider many factors such as illiteracy, poverty, cultural biases, language development, and other situation, which possibly limit the full involvement of the public.<sup>69</sup> The deliberation on the issues and decision making on the same should be presented in a way it can accommodate all these diversities. In addition to that the makers should also be serious enough about the transparency of the process. At the end of the day, the public should not be challenged by the ready-made and strange constitutional document they did not know about its coming. Each decision-making stages should be open to public. Inclusiveness may apply both at the drafting

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<sup>68</sup> Abrak Saati, "Public participation in constitution building process; an effective strategy to build democracy," (2015), Dissertation brief series 1

<sup>69</sup> Jason Gluck and Michele Brandt, Participatory and inclusive constitutional making: Giving choice to the demand of citizens in the wake of Arab spring, (United state institute of peace 2015)

and deliberation stage provided that the later stage should be more transparent than the former.

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

### **2.4.3. The role of international community**

Inviting international communities who have the experience of constitution making process could be a good input. The role they play on the process, design and explaining constitutional space available to them is paramount.<sup>70</sup> Experts coming from other jurisdiction of the same experience knows the possible challenges and way out of hurdles. They plays determinant role in the setting up a good methodological approach for the constitution making process respecting local culture and traditions.<sup>71</sup> Specifically in sub-national constitution making this groups should be conscious enough about the local values and beliefs. In addition to that, international communities provide advice on the design and application of substantive international human rights norms.<sup>72</sup> Somalia, Bougainville, and Bosnia and Herzegovina are some of state in which international communities have impacted the constitution making process. In Ethiopian sub-national constitution making nothing is known whether international communities are consulted or not.

### **2.5. Sub-national constitutional space as a guiding rule**

One basic thing to discuss in dealing with sub-national constitution making is the issue of sub-national constitution space. What is sub-national constitution space? It is a space to be filled by constituent units with in a federal system constitutional architecture by observing predetermined rules.<sup>73</sup> The space varies as one goes from one federal system to another. The space could be wider or narrower depending on

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<sup>70</sup> Cited above at note 40

<sup>71</sup> Lous Aucoin, "The role of international experts in constitution making: Myth and Reality," (2004) 5 Goerge town Journal of international affairs, 89

<sup>72</sup> Ibid

<sup>73</sup> G.Allan Tarr, Explaining sub-national constitution space, (2011) 115 Pen. St. L. R. P113

many factors. The system in which the federation is formed (aggregative or devolution), whether the federation is symmetrical or asymmetrical and the purpose for which the federation is formed are some of the factors which determine sub-national constitutional space. Aggregative federations in which independent states with their own established institutions come together and form federation enable the states to have a wider constitution space than devolutionary. When the type of federation asymmetrical some states have more constitutional space than the other. And lastly the purpose for which the federation is formed is decisive in determining the space. Some federation is formed to accommodate diversity of the people, which provide a wider constitutional space on its way to guarantee regional distinctiveness.<sup>74</sup>

The other thing worth consideration in dealing about constitutional space is identifying to which organ residual power is given. If residual power is left to the units of federation the sub-national constitutional space could be wider, provided that the extent to which the national constitution is incomplete matters. Some federation gives residual power for the central government and others for constituent units. Some jurisdictions leave residual power for the joint determination by the two tiers of government. Countries like Canada, India and South Africa gives residual power to the central government. In Some other Countries like USA, Nigeria, Germany, Australia, Mexico, and Russia gives residual power to constituent units.<sup>75</sup> In Ethiopia residual power is given for regional state (sub-national units). Drafter knows the ground with in which they can play in designing regional state institutional framework after identifying the available constitutional space. As the approach followed in dividing power between the two tiers of government varies as one goes from one federation to that of the other, the constitutional space also varies which the former affects the later. In some federation some constituent units have a wider constitution space whereas in other jurisdiction narrower which their institutional framework is strictly anchored by the central constitution. Bosnia and Herzegovinian,

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<sup>74</sup> Ibid.

<sup>75</sup> John Kincad, Comparative observation of federation, (2005) 46 Journal of federalism, Center for federal studies, 233

Somalia, Russia and Ethiopia are a notable example of those countries with significant constitutional space.<sup>76</sup>

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

## **2.6. Sub-national constitution making in Ethiopia**

The drafting, adoption and enactment procedure of regional constitutions in Ethiopia did not apply the process that was employed during the making of FDRE constitution. The making and revision process has been initiated by the ruling party, which later directed to the drafter's the issues to incorporate in the document.<sup>77</sup> This could be one of the reasons for the existing substantial similarity among Ethiopian regional constitutions.

In structuring constitution-making process the issue that who should take the responsibility of adopting the draft is regularly a point of contention among the key stakeholders.<sup>78</sup> Different jurisdiction has entrusted the duty for different organs. State constitution could be adopted by state legislature, or by constituent assembly or it could be adopted by popular referendum.<sup>79</sup> The sub-national constitutions in Ethiopia were adopted through state legislature and this makes state constitution making require easier procedure than federal constitution.<sup>80</sup> There is no evidence showing that several stakeholders were consulted in the process.

Except the constitution of Oromia and Tigray which came before the coming of the federal constitution, most sub-national constitutions in Ethiopia were adopted during the same period. The first constitution of Oromia was adopted in 1993. And Tigray

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<sup>76</sup> Supra note 40, See also Article 52(1) of the Fdre constitution

<sup>77</sup> Christopher Van der Beken, *Completing the constitutional architecture: A comparative analysis of sub-national constitution in Ethiopia*, (Addis Ababa University press 2017)

<sup>78</sup> Cited above at note 30

<sup>79</sup> Jemal Benomor, *Constitution making and peace building: Lesson learned from the constitution making process of post conflict countries*, (2003)

<sup>80</sup> Cited above at note 30

regional state constitution was adopted in 1995 (slightly earlier than the federal constitution). The remaining seven states adopted their constitutions following the coming into being of the federal constitution in 1995 and were revised after 2001(except the constitution of Oromia which was revised in 1995 and again in 2001). The Federal constitution also expressly authorizes regions to draft and adopt their constitution.<sup>81</sup> And it is based on this authorization that constituent units in Ethiopia came up with their own constitutions.

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

## **2.7. Historical development of the constitution of Oromia and SNNPR constitutions**

### **2.7.1. Description of Oromia regional state in nutshell**

With 353,690 km of land area (32% of the country), Oromia represents the largest regional state among existing nine regional states in the country. Its population is estimated at 38,000,000 in mid May 2018 the largest population size of any other region of the country (35.1% of the country's total population). Oromo ethnic group represent the majority ethnic group in Oromia (85%), and in the country as well.<sup>82</sup> The region is known by the Gada system, that is indigenous democratic socio political and registered as intangible world historical heritage.<sup>83</sup>

Oromia regional state borders Afar, Amhara and the State of Benshangul Gumuz in the north, Kenya in the south, the State of Somali in the east, the Republic of the Sudan and the state of Benishangul gumuz in the west, the State of Southern Nations,

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<sup>81</sup> Cited above at note 24

<sup>82</sup> Aynalem Adugna, Oromiya, Health and demography, (2018) Available at [www.ethiodemographyandhealth.org](http://www.ethiodemographyandhealth.org) accessed on May 2/2020

<sup>83</sup> Report by authority research and conservation of natural heritage (ARCH), (2014), Available at <https://ich.unesco.org/en>, accessed on May 3 /2020

Nationalities and Peoples' and the state of Gambella in the south.<sup>84</sup> It is organized into regional state (constituent unit), twenty zones, and two-city administration.<sup>85</sup> And its capital is Finfine (Addis Ababa).<sup>86</sup>



Map showing Oromia regional state in Ethiopia

### **2.7.2. Development of Oromia regional state constitution**

After down fall of dergue regime, which marked the introduction of federalism in Ethiopia, Oromia regional state has drafted and adopted its first constitution in 1993. The region has enacted three constitutions excluding their amendments. These are the transition constitution of 1993, the 1995 constitution and the revised constitution of 2001. The first constitution was enacted in 1993 in line with transitional charter proclamation no 7/1992.<sup>87</sup> Due to the fact that the constitution was enacted during transitional period it is regarded as Oromia transitional constitution of 1993.

The second constitution of the regional state was the 1995 constitution. This constitution was drafted and adopted following the promulgation of the Ethiopian federal constitution of 1995. As we can simply infer from the later, its article 50(5) and article 52(2)(b) require regional state to draft and adopt constitution. It is based

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<sup>84</sup> Retrieved from Ethiopian government portal, <http://www.ethiopia.gov.et/home> , accessed on May 4/2020

<sup>85</sup> Oromia regional state government website available at <http://www.oromiyaa.gov.et/web/guest> , accessed on may 4,2020

<sup>86</sup> Proclamation no 46 of 2001, A proclamation to enforce the Oromia regional state constitution of 2001, Art 2/3/

<sup>87</sup> Cited above at note 20

on such authorization that the 1995 constitution of Oromia regional state came into being. The last and the constitution that is currently active was enacted in 2001. The reason for the revision as it is explained in the preamble is realization of separation of power, accountability and transparency which in-turn have the potential of ensuring public participation of the people and accountability on the side of the government. Some writers forward the motive for the revision of Oromia constitution of 2001 is beyond what is stated in the preamble. They argue that the revision is related to political imperatives. They assert that the revision is made with an intention to reduce the power of the regional government specifically the power of the president.<sup>88</sup>

One basic thing that should be noted in the making and revision of regional constitution is that they should be responsive of the socio-economic and political realities of the region. This consideration will facilitate pragmatic constitutional experimentation in the regions. The reverse happens if the constitution making disregard the regions specific values and situation. Unfortunately, when we see Ethiopian sub-national constitutions, it is rarely possible to say that they have considered the existing reality of the regions provided that they were prepared under direct control and supervision of the federal government. Some sub-national constitutions in fact have tried to incorporate certain values unique to their regions.<sup>89</sup>

### **2.7.3. Description of SNNP region in nutshell**

SNNPR is one of the largest regions in Ethiopia, accounting for more than 10 percent of the country's land area and an estimated population of 20,768,000 (May 2018) almost a fifth of the country's population. The mid-2008 population was estimated at 16 million. The SNNP region is divided into 13 administrative zones, 133 Woredas and 3512 Kebeles, and its capital is Awassa.<sup>90</sup>

More than forty-five indigenous ethnic groups characterize the state. According to the

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<sup>88</sup> Zemelak Ayteneu and Yonathan Tesfaye, The constitutional status of local government in Federal system: The case of Ethiopia, (2012) 4 Africa Today, (Indiana university law journal) 89

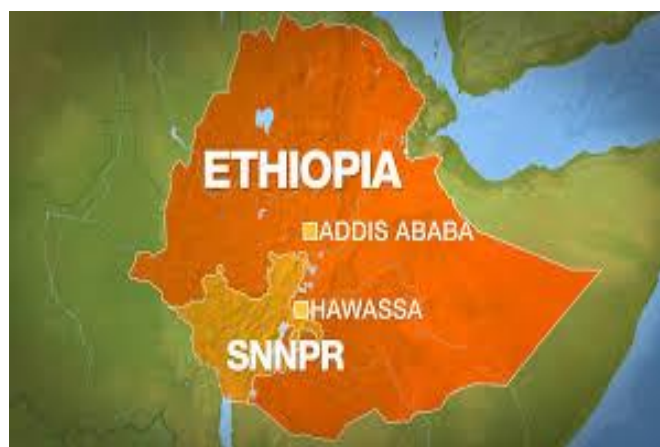
<sup>89</sup>The Afar and Somali region constitution has tried to come up with institutions reflecting traditional features of Afar and Somali traditions. Both refer the establishments of clan leaders and elders council.

<sup>90</sup> Supra note 80



1994 census result, the predominantly spoken languages include, Sidamigna 18%, Guragigna 14.72%, Wolayitigna 11.53%, Hadiyigna 8.53%, Keffigna 5.22%, and Kembatigna 4.35%. Other languages spoken in the State are, Gamogna, Malo, Goffa, Gedeo and many others. The working language of the state is Amharic.<sup>91</sup>

The State located in the southern part of the country. It share border with Kenya in the south, the Republic of the Sudan in the South west, the State of Gambella Peoples' in the North west, and the State of Oromiya in the North and East.<sup>92</sup>



Map showing the location of SNNPR regions in Ethiopia

#### **2.7.4. Development of SNNP region constitution**

Save the constitutions of Oromia and Tigray, the remaining seven sub-national constitutions were adopted after the promulgation of the federal constitution. Accordingly the first SNNPR constitution was adopted in 1995 as per the authorization it gets from Art 50(5) and Art 52(2)(b) of the federal constitution. This constitution was active until it finally replaced by the revised SNPPR constitution of 2001. As it holds true for other regional constitutions, the revision was the need to constitutionalize principles of separation of power, accountability and transparency in government acts, to organize the structure and administration of state in a way that

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<sup>91</sup> Supra note 82

<sup>92</sup> Ibid

can facilitate local government, and to create situation that ease socio-economic development in the region.<sup>93</sup> At the same time it should also be noted that there are scholars who argue that the reason for revision of sub-national constitutions is internal problem of EPRDF.<sup>94</sup> Whatever the case, starting from the inception of federal system in Ethiopia SNNPR adopted only two constitutions.

There are some important points to ponder in relation to the SNPPR constitution. Unlike other sub-national constitutions, which have unicameral parliament, it incorporates bicameral legislative body.<sup>95</sup> The two houses are council of nationalities, which is an upper house, and state council. The need to come up with the former one is to provide representation to each ethnic group in the region. The structure and functions of the council is like the house of federation of the federal government. The perusal of art 59 of the SNNPR constitution gives us an inference that the council entrusted with the power of constitutional interpretation and adjudicating constitutional dispute, which is the power of HOF at federal level.

The other salient feature of SNNPR constitution is the great emphasis it gives for self- rule by establishing sub-regional administration. This goes to the extent of taking legislative measure, and using their language as working language on their administrative circle.<sup>96</sup> Self-administration power of Zones (Liyu Woredas) gives them the discretion to come up with laws that are not specifically covered by the regional government at the top.<sup>97</sup> This is different from the stand of other sub-national constitution, which incorporated one legislature and working language region-wide.

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<sup>93</sup> Endalkachew Geremew, “The roles of sub-national constitutions in balancing participation rights and autonomy of ethnic minorities, (2011) 4ECLS 133 The preamble of SNNPR constitution provides that the revision is carried for the need to have separation of power and the need to establish efficient and transparent government organ.

<sup>94</sup> Supra note,

<sup>95</sup> Article 58 of the SNNPR constitution proclaim about council of nationalities in addition to state council of the region which makes it distinct to other region which only have the later. The same thing holds true in case of Harari regional state.

<sup>96</sup> Supra note 15

<sup>97</sup> Christopher Van der beeken, “Federalism in context of extreme ethnic federalism: the case of SNNPR, (2013), 46 Law and politics in Asia, Africa and Latin America, 3

In addition to the discretion it gave to sub-regional government to take self-rule measure, the SSNPR constitution guaranteed local administration to form sub-national government.<sup>98</sup> This right is unique for southern region nations, nationalities and peoples and no similar protection is provided in the other sub-national constitutions. It seems that other regions refrain from guaranteeing this same right to maintain regional integrity.<sup>99</sup>

Generally, relative to other sub-national constitutions in Ethiopia, the constitution of SNNPR is bit different in that the provisions of Ethiopian regional constitutions have a substantial similarity with the federal constitution. This happens due to the facts that are different self-ruling ethnic groups who make up the southern region. The constitution should have been designed in a way that can accommodate regional integrity and ethnic diversity among such groups.

## **2.8. Sources of sub-national constitutions**

In some jurisdiction the sources of state constitution is the national constitution. The later served as a model for state constitution and most of the time deviation and going against it makes state constitution with no effect. For example South African national constitution has a separate sections dealing with the powers and responsibility of provinces.<sup>100</sup> Chapter 6 of the constitution stipulates the power and functions of legislative and executive organs of the province. So, that is and should be the starting point of sub-national constitutions in South Africa. The Cape Town province constitution expressly provides that it adopted in-terms of South African national constitution.<sup>101</sup> Moreover, it stipulates that the powers of legislative and executive

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<sup>98</sup> Supra note 14, p123

<sup>99</sup> EPRDF, which is concerned with ethnic based federalism, is too much serious about regional integrity over national integration on adopting the constitutions at both tiers of government. There are several indications to this fact. The first is secession at regional government is allowed based upon conditions unlike the national constitution, which allows unconditional secession. The second is sub-national government formation has not explicitly provided in other sub-national constitutions except the SNNPR constitution.

<sup>100</sup> Supra note 36, Chapter 6

<sup>101</sup> The constitution of western cape of 1998, Art 34

organs of the province exclusively emanates from the national constitution.<sup>102</sup> In South Sudan states should make reference to interim national constitution and the constitution of South Sudan. In South Africa and South Sudan using national constitution as a source serves as means of fulfilling the requirement of certification. In other language going against the national constitution makes regional constitution not to have an effect. The good experience in South Sudan is that custom and traditions and popular consensus of people South Sudan were also source for the state constitution.<sup>103</sup> To meet regional distinctiveness, that is one feature of state constitution, taking into account the socio-economic cultural situation of the region is vital.

The formal sources of state constitution in Ethiopia are unclear.<sup>104</sup> Let alone the source the very existence of sub-national constitution is not well known by the citizens due to the fact that the required concern has not given for the subject. Scholars writing on sub-national constitution forward that the constitutions are the result of the EPRDF domination, which is the vanguard party ruling the country for more than two decades. On the making process that is committee, which is the recruit of such party who have assigned for drafting the content of the document. In another way there is no evidence showing whether public has consulted and deliberated on the issues to be incorporated on the constitutional document.

Regarding material sources of sub-national constitution in Ethiopia, cumulative observation of the national and sub-national constitution gives us a good indication that the former is the sources of state constitution. Some characterize sub-national constitutions are the verbatim copies of the national constitution.<sup>105</sup> But the fact is that regional constitutions are not mere copies of the federal constitution. Rather have distinctive nature, which could be a proof that they are not complete copies of the federal constitution. Regulating local government structure at state level is one issue,

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<sup>102</sup> Ibid

<sup>103</sup> Supra note 41

<sup>104</sup> Supra note 5

<sup>105</sup> Zemene Bizualem, State constitutional amendment in Ethiopia: The case of Benishangul Gumuz, Gambela, Harari and SNNPR constitutions, (Masters thesis submitted for Addis Ababa University and faculty of law, Addis Ababa university, 2010)

which is distinct to regional states constitution. In addition to that if we make a closer look at Ethiopia state constitutions there are a significant discrepancy among them. For example the constitution of Afar and Somalia have taken into account the pastoralist communities and came up with a policy objective capable of improving the livelihood of the pastoralist communities.<sup>106</sup> Not only that, the way state government institutions are structured in the constitutions of Harar and SNNPR a new incorporation.<sup>107</sup> They are designed in way they can serve objective of the regions. So, concluding that regional constitutions are mere copies of the federal government does not hold water. But it makes sense to say that the federal constitution is a source for regional constitutions.

## **2.9. A need for new perspective**

There are jurisdictions that have a good experience and could be a model in sub-national constitution making in several aspects. One among many points to ponder as a good experience is setting of minimum standard from which going down is not allowed. The constituent unit can only come up with a higher standard, which can realize better protection than the central constitution does. A notable example with this regard is Switzerland and South Africa. Swiss national constitution strictly requires cantons to come with only democratic constitution.<sup>108</sup> Unlike other jurisdictions, in sub-national constitution making of Swiss there is no certification process. And there is no institutionalized means of screening whether the draft constitution is democratic or not. But this does not mean that the requirement of coming up with a democratic constitution is a mere lip service. Rather the people of the region approve the upcoming draft before adoption. Other interesting experience with this regard is, the approach employed by South Africa. In South Africa there is a so-called thirty-four (34) principles. They are mandatory rules that have to be

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<sup>106</sup> Mohammed Usman , The revised constitution of Afar national regional state of Ethiopia: An overview on some key principles , 4 IJSR 1794

<sup>107</sup> In the two regions there are bicameral parliaments, which is unfamiliar in the institutional structure of other regional state.

<sup>108</sup> The Swiss constitution

observed by any constitution. The thirty-four principles have contained in the interim constitution of South Africa.<sup>109</sup> These principles include bill of rights and other principles that ensure protection of human and democratic order. One pre-condition that provincial constitution should observe is being consistent with the interim constitution of South Africa.<sup>110</sup> Observance of such principles incorporated in the interim constitution is a red line that drafters should be conscious as the non-observance results in non-certification. In the event that a bill of rights was not included, or any of the other principles were not complied with, the Constitutional Court could send back the draft constitution.<sup>111</sup> A notable example with this regard in South Africa is Kwa Zulu Natal provincial constitution, which rejected by constitutional court of South Africa.<sup>112</sup> From the experience of the two countries a clear inference could be made that a minimum condition has set as a red line in framing cantonal constitution in case of Swiss and provincial constitution in South Africa.

In Ethiopia there is no such mechanism of overseeing the constitution of regional state before adoption. The whole thing that federal constitution does is authorizing (requiring) constituent unit to come with their own constitution and there is no further means of checking their democratic nature. Coming up with that stand ensures democratic order by challenging usurpation of power by regional government. Hence, it will be good if the stand taken by the constitutional system of the two above countries adopted in Ethiopia. But a note should be made that to do the same; it requires the amendment of the federal constitution (as it is a stand to be taken by the constitutional system of the country).

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<sup>109</sup> Jeremy Sarkin, *The drafting of South Africa's final constitution from human right perspective*, 47 *AJCL* (Oxford University Press, 1999) 67

<sup>110</sup> Republic of South African constitution act of 2000 of 1993 (interim constitution) section 160

<sup>111</sup> Principles and process of constitution building, (2019) charter change issues brief no.1, (Learning session conducted in Philippines house of peoples representative and house of senate, 16 and 17 may 2018)

<sup>112</sup> Christina Murray, *Provincial constitution making in South Africa: The (non) example of Western-Cape*, (2001) 49 *YBPL* 481

The other big issue that makers of sub-national constitution should take into account is the role of people in the making process. In the making of all the nine Ethiopian sub-national constitutions the public has not given the chance to take part. The experience differs and it is outstanding in Switzerland and Germany, which gives the public ultimate power in the making process. In Germany whether the constitutional assembly adopts the lander constitution or the lander parliament the final power of approval has given for the public.<sup>113</sup> The same thing holds true in Swiss in which the people of the canton gives the final blessing to the draft constitutional document.<sup>114</sup> The reality in Ethiopia is that there was no stage at which people were given the chance to have their say on what should the regional state constitution look and contain. Public participation has multifaceted advantage beyond entitling peoples to their right of taking part in the public affairs of the region. The people has not consulted and given the chance to forward their say on the draft before promulgation. The preamble of all nine regional state constitutions say that the constitution has adopted after detail discussion has made by peoples representative of the region.<sup>115</sup> Nonetheless, a note should be made that these representatives might not represent interest of the people. Hence, the other fundamental thing that sub-national making in Ethiopia should consider is the role that peoples of the region plays in the process. The other good perspective that regional constitution making in Ethiopia should look into account is the process of certification experienced in South Africa and South Sudan. Provincial constitutions making have stage of certification in which an established organ evaluate the draft document. This task has a tremendous vitality in controlling constitution makers not to abuse their power. In case of South Africa it is the constitutional court of South Africa, which evaluate and certify provincial constitution with out which it cannot get force.<sup>116</sup> This experience is also there in South Sudan in which the national ministry of justice is empowered to certify states

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<sup>113</sup> Supra note 51

<sup>114</sup> Supra note 44

<sup>115</sup> Look at the preambles of all Ethiopian regional state constitution

<sup>116</sup> Vivien hart, Constitution making and the right to take part in public affair, (2018) 7 ILR 235

constitution before adoption.<sup>117</sup> This trend will ensure the protection of the peoples of the regions and balance of federal system in good conditions. In our country Ethiopia, there is no such trend of reviewing regional states constitutions before adoption. As things stands now, there is no regional state constitution, which goes against the values of the people and become plight to protection of human right. But this could not be a guarantee as it is impossible to be predictive the content of future regional state constitutions. So independent organ should be established for the task of certification.

Ethiopia is highly diverse nation with more than 80 ethnic groups having their own culture and values. This has something to tell about the expected distinctiveness of sub-national constitution. If the making process is left for the constituent units autonomously, regional distinctness could be well ensured. The people of the region may make their culture and traditions part and parcel of the constitution, which have a great impact in enabling the constitution to address societal issues. The experience in South Sudan is a notable example with this regard. Sources of states constitution in South Sudan are the custom and traditions and popular consensus of people of Southern Sudan.<sup>118</sup> In Ethiopia let alone considering the peoples custom and traditions of the people, even the peoples has not made a part of the making process. The perusal of the preambles of regional states constitution provides that it intended to respond to region specific values and beliefs.<sup>119</sup> But that is far from the reality. So, sub-national constitution making in Ethiopia should involve investigation of customs and traditions of the public and incorporate the same, which have varied advantage including making the constitution legitimate document.

## **2.10. Conclusion**

The making of sub-national constitution in various jurisdiction shares some similarity provided that there are also difference in some aspects. For example in South Sudan, South Africa, Germany, and Swiss it is state legislature, which took the responsibility

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<sup>117</sup> Supra note 43

<sup>118</sup> Supra note 43

<sup>119</sup> Supra note 104



of adopting constitution. As to which organ is mandated to carry out the drafting activities is not clear in most jurisdictions. There is a discrepancy in certification procedure and the organ entrusted with the power of certifying sub-national constitution. In some countries like South Africa, the power of certifying state constitution given for court and in other countries for some other organ. In Ethiopia there is no such procedure at all. There is no uniformity on the role of public in sub-national constitution making. As to the public participation, Swiss is a model country for the constitution requires popular referendum to get the approval of the peoples of cantons for constitution making. The major commonality among state constitution of several jurisdictions is that they use the national constitution as a source.

In Ethiopia it is hardly possible to say that sub-national constitution making has taken into account the basic constitution making guidelines. The constitutional document in each state was simply drafted and adopted by state legislature. Many scholars believe that the constitutions of Ethiopian regional states are prepared under domination of the central government. But the reality is that, constitution making is not an action, which is carried out by one man or few men. The making of constitution requires the involvement of many stakeholders with out which the effort of lawmakers at the top could be fruitless. Other wise the constitution will not able to incorporate the societal issues that it should address.

## **Chapter Three**

### **3.1. Constitution making process in Oromia and SNNPR regional state**

#### **3.1.1. Introduction**

Ethiopian sub-national constitution making process shared great similarity as goes from one regional state to another. This in turn results in the structure and content of regional states constitutions being similar. The constitution of Oromia and SNNPR are no exception to this. The regions passed through the same making process, which contributed for substantial similarity in the content , particularly their bill of rights sections.

Unlike traditional constitution making approach which is a mere imposition of ready made legal document on citizens, modern or democratic constitution making process

involves multi-stage process. The usual and the common constitution making process involve drafting, deliberation and ratification stage. Again the drafting stage should be backed with the requirement of inclusiveness. The drafting duty should not be left for limited and small groups of expert. And deliberation stage is steps in which several stakeholders take part in discussing and negotiating on the content and structure of the draft. Inclusiveness is much important in the deliberation stage than any other steps of constitution making. This is due the fact the input gathered in this stage determine the final document presented for approval. Otherwise the effect may be that the excluded group may raise questions of legitimacy on the constitution. The ratification process is the final stage in which the authorized organ approves its promulgation. The act of adoption was made by elected legislature. i.e. state council at state level. Sub-national constitution making process of Ethiopia is an area which did not given coverage that makes the researcher to came up with a details on regional states constitutions came into being.

So, in subsequent section the researcher tries to show the constitution making process of Oromia and SNNP Regional states.

### **3.2. The making of Oromia regional state constitution**

As was mentioned in the previous chapter Oromia regional state has three constitutions in its history excluding the two subsequent amendments made on the constitution of 2001. The first constitution enacted during the time of transition on the basis of transitional charter. That is Oromia regional state constitution of 1993. The actual objective of this document is to proclaim the right of self-determination that Oromo people have in the transitional charter. It has also the objective of regulating the newly formed transitional government powers and function and the right and duties of the public.<sup>120</sup>

Several writers forward different ideas as to the procedure through which such document came into being. Some argue that the constitution is a document prepared by the federal government and principles of constitution-making process have not

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<sup>120</sup> Supra note 20

employed.<sup>121</sup> Regional states did not played any role in designing their own constitution at all. And others suggest that nothing is known as to its making process.<sup>122</sup> Both views do not clearly show the existing reality on the ground. Here under the procedure involved in the constitution making process has provided section by section.

### **3.2.1. Draft preparation**

It is commonly known that in law making process draft preparation is normally carried out by a body of expert incorporating several professional groups. In the making of the first Oromia regional state constitution, the region neither organized a group for draft preparation nor prepared the draft in some other way. Rather it was ready made draft document, which was sent from the federal government.<sup>123</sup> My informant further forwarded that the draft prepared by federal government anchored in Amharic language. This shows the fact that regional council was not autonomous in the making process. At regional level attempt was made to discuss on the draft. The group of people who have deliberated on the constitution made the discussion in Amharic language. It was Oromia regional state justice bureau, which translate it later into Afaan Oromo.<sup>124</sup> This acts of the federal government is incorrect not only as a matter of procedure but also goes against the federal constitution. The federal constitution in its article 50(5) clearly gives the power of drafting, adopting and amending state constitution to the state council. Some may argue that the provision should not be invoked as the Oromia region precedes the federal constitution. Nonetheless the same procedure has involved in revising regional constitution. So, the fact that draft preparation carried out by the federal government not only affect

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<sup>121</sup> Supra note 87

<sup>122</sup> Supra note 5

<sup>123</sup> Interview with Ato Demoze Mame, President of Oromia Supreme Court during transitional period, Currently he is chairman of Oromia regional state constitutional interpretation commission, (Chafe Oromia office at Addis Ababa Sar Bet, Jan 18/2012)

<sup>124</sup> Interview with Ato Addisu Melaku, Advisor of chafe speaker, (Chafe Oromia office, Addis Ababa, Sar Bet, Jan 19/2012)

distinct realities of the region, but also go against the power that Oromia regional council has entrusted with by the federal constitution.

### **3.2.2. Public participation**

In preparing fundamental document (which has the purpose of limiting the power of the government) like constitution public participation is determinant. Otherwise it will be a mere imposition of the government interest, which enables the government to take to itself uncontrolled power. On the making process of regional state constitution it is rarely possibly to say people were given the opportunity to have their say directly or indirectly. At the same time this does not mean that discussion has not been made on the draft at regional level at all. The perusal of the preambles of all constitution of the regions forward that the constitution is enacted after detail discussion has made by elected representative (state council) of the region. Nevertheless the facts on the ground do not show that.

*Regional judges selected systematically which are political affiliates of the governing party, political institutions which in one way or another controlled by EPRDF, and Politician's holding a higher governmental position are the stakeholders who have given a chance to reflect on the draft constitutional document. Opposition political parties, religious institutions, cultural institutions such as Aba Gadda's, Ngo, international communities and other relevant stakeholders were not given the chance to take part on the deliberation made.<sup>125</sup>*

Discussion by few groups of individuals selected on the basis of convenience is not tantamount to giving the public the opportunity to reflect their views on the matter.

The failure of giving the chance the public to has multifaceted risk. Due the fact that peoples does not know the when and how of the process, the visibility of the constitution of the region has affected. My respondent said that let alone ordinary citizen, there are even officials at local administrative level who don't know about the

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<sup>125</sup> Sibhat keyfalew, Constitutional complaint expert at Chafe Oromia, (Addis Ababa, Sar bet, Jan 19, 2012)

regional constitution.<sup>126</sup> Hence it would have been better if public had given the chance to partake which can contribute for the good of the constitution.

### **3.2.3. Adoption**

The selected groups of individuals mentioned above made discussion from the start of May/1992 to the end of June 1992 (doing their regular official duty) on the issues of compatibility of the draft constitutional document with the existing realities of the region.<sup>127</sup> In constitution making process, time is determinant element. The time framework should neither unnecessary long nor short which could affect the quality of the outcome. To evaluate the content and compatibility of the draft to the existing realities of the region is with in two months is not reasonable. It was with in such time framework that the selection of stakeholders has made.<sup>128</sup> The result of the deliberation was nominal which did not served later as an input for modifying the gaps of the draft. Regardless of some basic critics on the content, the original draft document presented for state council for approval.<sup>129</sup> Finally it was the regional state council, which finally adopts the constitution as per art 50(5) of the FDRE constitution.

### **3.2.4. Sources of the regional constitution**

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

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<sup>126</sup> Supra note 122, Jan 18/2012

<sup>127</sup> Interview with Ato Isa Boru, Chairperson of administrative and legal affairs committee at Chafe Oromia, (Addis Ababa, Sar Bet, Jan 19,212)

<sup>128</sup> Supra note 120

<sup>129</sup> Supra note 121, Jan 19/2012

constitution.<sup>130</sup> Hence, using the region specific values and traditions as far as it does not goes against the federal constitution is a good approach to resort in designing sub-national constitution.

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

The expectation of the author is that Gada system (traditional democratic ruling system of the Oromo people) might be the source of Oromia regional constitution. But the result after investigation is in the negative. The first constitution of the region mention Oromo ethnic group was ruling it self through Gada system (traditional administrative system) until it finally dominated and set-aside by the then feudal ruling. It only mentions that Oromo ethnic group used to rule it self through institution that makes it bases on Gada system.<sup>131</sup> Other than mentioning Gada as customary rules of the Oromo ethnic group and past experience of the ethnic ruling itself through the same, no values of the system has incorporated in the constitution. Like the state constitutions of South Sudan, which employs customary rules of constituent units as a source, Oromia regional state should make formal investigation on Gada system whether or not it affects fundamental rights of citizens and give a place for it in the constitutions.

### **3.2.5. Challenge faced on the making process**

The fact that the draft preparation was done by the federal government was the major setback which makes the whole process challenging. Persons and entities, which sit for discussion, were unable to openly and freely comment on the ready-made

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<sup>130</sup> Christopher Van der Beken , Sub-national constitutional autonomy and accommodation of diversity in Ethiopia, (2006) , 68 Rutgers .U.L.R 1535

<sup>131</sup> Proclamation no. 2 /1993, Oromia region transitional self government constitution, (1993), The Preamble

constitution prepared by EPRDF under strong leadership of TPLF. In addition to that, the participants reportedly showed reservation from active engagement due to the reason that their words may be politicized and bad thing may follow.<sup>132</sup> The environment was not open enough to have constructive debate on issues constitutional issues. The discussion was not that kind of discussion capable of evaluating the compatibility of the draft with the existing realities of the region.<sup>133</sup>

The other challenges of the making process is that the slight debate and the discussion made and the stand taken to make alteration were not considered as an input and finally the raw draft presented for discussion brought back for adoption.<sup>134</sup> So, the discussion was nominal and only for formality purpose. The attempt of the federal government is the acts of legitimizing the document by fulfilling some procedural steps of constitution making.

The composition of the participant was the other point, which could be put as a setback in the constitution making process. Inviting judges, public prosecutors, politicians of higher governmental position, individuals and entities that have political affiliation of the governing body will not suffice to come up with a good outcome. It is crystal clear that they don't come up with ideas, which goes against the interests of the government. So, the composition should have been inclusive of all stakeholders such as opposition political parties, religious and cultural institutions of the region. However, the fact that participation limited to the person and entities loyal to the government made the discussion with no positive outcome.

### **3.3. Constitution making process in the SNNPR**

Like other Ethiopian regional states, SNNPR enacted its first constitution in 1995. This constitution revised when revision is made in all other regional states constitutions in 2001. The SNNPR constitution has many distinctive features, save the existence of similarities among regional state constitutions particularly in the bill

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<sup>132</sup> Interview with anonymous key informant working in Chafe Oromia, (Chafe Oromia, Addis Ababa, Jan 18/2018)

<sup>133</sup> Ibid

<sup>134</sup> Supra note 97

of right sections. That is due to the reason that the region is the sum total of several ethnic groups having their own administration. Unlike other regions, SNNPR has two houses. i.e. state council and council of nationalities.<sup>135</sup> The later has entrusted with duty of interpreting the regional constitution to balance the power entrusted to the former, which is mandated to enact regional laws.<sup>136</sup> Council of nationalities is structured like the house of federation of the federal government. The composition and mandate given for the council of nationalities make it the regional counterpart of house of federation.

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

### **3.3.1. Draft preparation**

Unlike Oromia region, in SNNP regional state the task of preparing the draft was carried out by a committee formed for such purpose under the direct control and supervision of Abate kisho (the then president of the region) and Bitew Ayele.<sup>137</sup> The later was formally appointed person to support party organization in the SNNPR, which later took many of the administrative tasks of the region and considered as de facto head of the region.<sup>138</sup> Higher officials of the region prefer to get the blessing of Bitew before taking action on any crucial issues. So, even if a committee has formed to draft the constitution, it has prepared under direct control and supervision of these two persons, which are a loyal officials of the federal government.

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<sup>135</sup> Proclamation no.1/1995, Constitutions of Southern, nationalities and peoples of Ethiopia

<sup>136</sup> Ibid, Article 51 and 52

<sup>137</sup> Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in council of nationalities, (SNNPR capital Awasa, Jan 25/2012). Bitew Ayele mentioned in the text was central committee member of Tplf and advisor of the then Prime Minister Meles Zenawi.

<sup>138</sup> Ibid, See also Lovise Allen, The politics of ethnicity in Ethiopia: Actors, powers and mobilization under ethnic federalism, (2011) 25African social science series 342



### **3.3.2. Public participation**

SNNPR is a region, which is composed of multi ethnic and linguistic societies. In such diversified societies the constitution is expected to be representative of all existing interests to the extent possible. Unfortunately, the public was not given the opportunity to reflect on the making process. Slight discussion has only been made among higher government officials, which started and completed within a very short period.<sup>139</sup> The wording of the preamble of the constitution that a detailed and wide discussion has been made by people representative of the region is not real.

### **3.3.3. Adoption**

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

### **3.3.4. Sources of the constitution**

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

### **3.3.5. Challenge faced in the making process**

The discussion made on the draft constitutional document was not free and open. It didn't have the potential of evaluating the appropriateness of the content of the document. Persons who were representative of the federal government who didn't have any connection with the making process (have any expertise on the matter) took

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<sup>139</sup> Interview with Aynekulu Gowatsuba, Supervision and control expert of SNNPR state council, (SNNPR council of state office, Awasa, Jan 26/2012)

part in the discussion. And this makes other participant to be reserved from giving comment on the draft.<sup>140</sup>

The time element was the other challenge. The committee was mandated to complete the discussion with in very short period of time by informing that other regions has already completed their part.<sup>141</sup> This was a surprising aspect of the process, which makes someone to quest how the status of other region urges the making process to be completed so fast.

The approach employed on the discussion was problematic by itself. The chairman of the discussion was not chairing the deliberation with aim of getting new comments on the content. Rather, explanation was given on everything with an intention to convince to the participant accept what has already anchored.<sup>142</sup> So, the so-called deliberation on the draft was nominal.

#### **3.4. Revision process of the constitution of Oromia and SNNPR**

All Ethiopian sub-national constitutions were amended after 2001. Oromia, Amhara, SNNPR and Tigray regional state revised their constitution in 2001 with a difference of days. And constitutions of Afar, Gambela, Benishangul Gumuz and Somalia regional states made change to their constitutions in 2002. Harar was the last regional state to revise its constitution in 2004. The perusal of the preambles gives an inference that the driving force pushing the revision is similar. The need to realize good governance with in the region and making the constitution adaptable to regional realities are the reason for which regional state constitutions are revised.<sup>143</sup> How regional states in such diversified society could have similar objective of making

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<sup>140</sup> Interview with Mekonin Mergia, Legal and administrative affairs directorate director, SNNPR council of nationalities, (SNNPR council of nationalities, Awasa, Jan 25/2012)

<sup>141</sup> Ibid

<sup>142</sup> Tesfalem W/mikael, Legal advisor of SNNPR state council, Participated on the discussion made to enact the SNNPR constitution of 1995, ( SNNPR state council , Awasa, Jan 26/2012)

<sup>143</sup> Christoper Van der Beken, Sub-national constitutional autonomy in Ethiopia: on the road to distinctive regional constitution, Paper submitted to workshop, Sub-national constitution in federal and quasi-federal states, (2006). Read also the preambles that of all the nine regional states, which reads the same objective has induced the revision.

change to their constitutions? Who should and who take the initiatives of revising regional state constitutions? Does the requirements of the federal and regional constitutions about drafting; adopting and revising regional constitutions observed are some of the questions, which are going to be answered in this section.

#### **3.4.1. Revision of Oromia constitution**

Constitutional revision/ amendment/ starts from initiation and every constitution give the right of initiating the process to a specific organ/s. Members of chafe, regional government administrative council, district councils, and kebele councils are entities who can initiate revision.<sup>144</sup> Does this organ initiate the revision made on ORS constitution on 27<sup>th</sup> October 2001 is the issue to consider here. The reality is that none of these organs have submitted initiating proposal for state council. The revision process was rather initiated and set in motion by the federal government.<sup>145</sup> The perusal of the preambles of all regional state constitutions shows that the reasons of amending are similar which is a good indication of the fact that federal government was the one who have initiated the process. It means all regional states may not have similar mindset (i.e. plan, budget and initiation) to do that at the same time. And this makes us to reach to the deduction that there exist external factor (federal government), which made the ball to roll.

The task of preparing draft document was entrusted to a committee composed of experts of different specialization. Judges, public prosecutors, and some other officials recruited from several sectors by the president of the region were mandated to prepare draft.<sup>146</sup> From this it is simple to make inference that the revision process was carried out under direct control and supervision of the president. Only those individuals and groups who support the cause of the governing party were given the chance of taking part in the revision. Political convenience has taken into consideration when the selection is made among experts.<sup>147</sup> Other relevant entities and persons who can make positive contribution did not participated. From this it is

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<sup>144</sup> Supra note 85, Article 111

<sup>145</sup> Supra note 120

<sup>146</sup> Ibid

<sup>147</sup> Supra note 135, Jan 26

possible to make a good inference that the process made a due care to safeguard the political objectives of the governing party rather than trying to address societal issues. For giving final approval on amendment after discussion, the majority vote of district council and the three fourth majority vote of the chafe should be secured.<sup>148</sup> These are the only and exhaustive stakeholders to take part and vote in the process and other person/ entities/ cannot interfere in the process. Now the issue is whether such requirement has observed or not in the process.

The interference of the central government that has made during the making process has not changed during revision save the extent of intervention is limited. The perusal of the preambles of the constitutions gives an inference that they have the purpose of achieving objectives of the federal government. The need to constitutionalize separation of power among branches of regional government and the incorporation of accountability and transparency among the branch of government are some of the reason for revision as one read the preambles of all regional state constitutions. This is one indication about the interference of the central government.<sup>149</sup> Even if the regions enjoyed relative freedom on the revision compared to the making of the original constitution, it is could not possible to say that constituent units were autonomous in the revising their constitutions.

#### **3.4.2. Revision of SNNPR constitution**

As it is true for the constitution of Oromia and other regional states, revision process of the SNNPR constitution has not shown exception. As it is mentioned above it was the federal government who took the lion share in putting on the engine for the process. The SNNPR constitution provides that councils of state, council of nationalities, Zones and Special woredas should initiate a revision to be made in the

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<sup>148</sup> Supra note 85, Article 112(2)(a) and (b)

<sup>149</sup> It seems that central government has terrified that the regional government may go powerful than before. It just wants to control what is going on behind the door. Nonetheless, that is not a good approach as far as power is given for region to enact and execute their constitution. Even if there is possibility of going beyond what has given (ultra virus), there should be other means of screening. Certification process in South Africa and South Sudan is a notable example

constitution.<sup>150</sup> Unlike the federations of Germany, Switzerland and Us that permit the people of the landers, states, and cantons respectively to make initiation of constitutional change, Ethiopia sub-national constitutions do not empower the public to make initiation. So, who initiate the revision of SNNPR constitution is the issue here?

What we knew was that other regions have revised their constitutions. And our regions president announced in certain meeting that we have mandated to amend the constitution to make the constitution adaptable to the existing reality of the region.<sup>151</sup>

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

The same organs given the duty of initiating the amendment process are given the power of approving (adoption) the revision after discussion. The difference is that, the approval should be made by the cumulative vote of all organs. The major setback at the stage of approving the revised SNNPR constitution was that the stakeholders do not clearly (with the sufficient detail) know the content of the revised document.<sup>152</sup>

It seems that they were given the opportunity to participate to skip away the possible critique that would arise if the task were carried out with out their involvement. Their participation was nominal and for formality purpose and to meet constitutional requirement of popular involvement.<sup>153</sup> The requirements of the law were not observed and people did not consulted in the amendment of SNNPR constitution.

In closing, it is helpful and interesting to raise the remark made by Mr. Tesfaye Daba (from ODP) who is Ethiopian house of people representative (HPR) member on the meeting held on the issue of (non) extension of election in the parliament. The remark

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<sup>150</sup> The 1995 Snnpr constitution art 125(1)(a)(b)

<sup>151</sup> Supra note 133

<sup>152</sup> Interview with Anonymous informant, The constitution drafting committee member and currently working as an expert in council of nationalities, (Awasa, Jan 25/2012)

<sup>153</sup> Ibid

was made as a response to Dr. Addis Alem Belema (TPLF) on his stand that the election should not be postponed and by doing so the government taking unconstitutional measure.

ኢህድግ ባለፉት ግዝያት እንዴት ህግ እንደሚያወጣ ና እንደሚያሻሽል እኮ በደንብ እናወቃለን። ለምሳሌ የክልሎች ሕገ-መንግስቶች እንዴት ነዉ ይተሻሻሉት! የክልሎች ፕረዚዳንቶችንና ም/ፕረዚዳንቶችን ጠቅላይ ሚኒስቴር ጽ/ቤት ድረስ በመጥራትና ቀጭን ትዛዝ በማስተላለፍ እንደተሻሻሉ የምናወቀዉ ጉዳይ ነዉ።<sup>154</sup>

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

## **Chapter Four**

### **Conclusion and Recommendation**

#### **4. 1. Conclusion**

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

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<sup>154</sup> Ethiopian television broadcast, Parliament debate on the extension of election Ethiopian 2012, May 5/2020

Germany, Switzerland, and USA are some of those countries, which require states to have their constitutions.

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

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

The making process of the two constitutions involved several steps provided that it was there with its own shortcomings. The first constitution of Oromia drafted at federal level, which later sent to the region for discussion. Afaan Oromo being the regional working language, the draft prepared by the federal government in Amharic which later translated into Afaan Oromo by Justice Bureau of the region. Critiques, comments and correction given during draft discussion were not considered as an input. What was raised, as a suggestion to be corrected was later incorporated as they were before discussion. All the deliberation made for two weeks was nominal. No significant difference was made in the making of the constitution of SNNPR. It was a committee under superior leadership of the then regional president Ato Abate Kisho and Ato Bite Ayele who was TPLF supervisor of Southern region political

organization prepared the draft. No strong debate made on the content of the document due to several reasons. The modes of the discussion take a form of imposition rather than giving the chance for the participant to evaluate its compatibility to the regional situation. Only higher official of the government were the participant of the discussion. Finally the constitution approved by the state council of SNNPR with no other additional.

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

#### **4.2. Recommendation**

1. The two regional states constitution should be revised with due care observing constitution making methods and principles by giving hear to the opinion of the public to make it more reflective of the socio-economic and cultural situations of the respective regions.
2. Regional states should utilize their constitutional power of drafting, adopting, enacting and executing their constitution with out federal government interference.
3. To properly serve the purpose for which they are there, regional states should refrain from copying the federal constitution.
4. There should be nationally agreed basic principles and standard, which each regional state consider in designing their constitution. Such principles should be incorporated in the federal system of the country.
5. The fact that the sub-national making process is participatory does not suffice. Rather it should also be inclusive of all relevant stakeholders including opposition political parties.
6. An independent and neutral organ such as international community and NGOs should be part and parcel of sub-national constitution making process as what has objected by majorities could be incorporated and adopted with no change.



7. State councils should take into account regional customary rules (if there is any to be considered) in enacting and executing state constitution provided that they do not go against basic principles of the federal constitution and international human right principles.

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## **Appendix 1**

### **Interview questions presented to the drafting committee of Oromia regional state council.**

Gaafii Ademsaa Heera Mootummaa Naannoo Oromiyaa Ittin Ragga,ee koore Heera baafuu Qophaa'e

**Kayyoo:** - Kaayyoon gaafii kanaa odeeffannoo qaamolee heera baastu biratti “Ademsaa hojii heraa baasu, heera mootummaa naannoo oromiyaa” xinxaluuf fayyadu walitti qabuu dha.

**Seensa:** Mootummaan Naannoo Oromiyaa heera Mootummaa kan mataa isaa qaba. Heerri kun bara 1987tti ragga'ee. Akkasumas bara 1994 labsii lakk. 46/1994 tin irradeebin fooyya'ee hojiirra olee jira. Kuun akkuma jiru ta,ee hojii seera baasu kessatti qammoleen sera baasan qajeelfamaa adda addaa fayyadamun isaanira egama. Hoji heraa mootumma naannoo Oromiyaa raggaasisuu irratti koreen seera baasu haala kamiin fi qajeelfamaa maalin gaggefame dhimmi jedhuu dhimma qorannoo barbaadu dha. kanaaf gaafileen kunniin dhimmicha qorachuuf kan

qophaa’an waan ta’eef obsaan fi amanamummaan guutuun akka nagargaartan kabajaan gaafadha.

Gaafilee:

1. Ademsaa hojii heera mootumma naannoo oromiyaa baasurattii, hubannoon ati qabduu hangam?

A. Gadaanaa B. Giddugaleessa/Gahaa/ C. Olaanaa D. Baayyee Olaanaa

2. Deebiin kee “A” taanaan sababnii kee maali ?

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3. Ademsa wixinee heera motuumma naannoo Oromiyaa ittin qopha, ee naa ibsa ?

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4. Qaamni heera motuummaa naannoo Oromiyaa ragaasiisuu abbummadhaam hojeettee qaama kami?

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5. Maddi heera mootumma naannoo Oromiyaa maal sittii fakkataa?

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6. Hojii seeras ta, ee heera baasu kesattii qaamni illaalatuu qajeelfammota adda adda fayyadamuun irra jira. Ademsaa heraa MNO raggasisuu keessatti qaamni yokiin kooreen heera baasu qajjelfamoota akkami fayadamee ?

A. Fayadameera B. Hin fayadamnee

7. Deebii kee “A” taanaan, qajeelfamaa akkami?

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8. Hojii heera mootumma naannoo Oromiyaa baasuratti ummanni naannichaa hirmaataniruu?

A.Eyyeen Hirmaateraa B. Lakki hin hirmaanne

9. Deebin kee “A” taanaan sadarkaa kamirratti

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10. Gaafi lakkoofsaa “7” deebiin kee "B" taanaan maalif?

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11. Nammonni dhimmichaaf dhiyyenyaa qaban; qaamollen miti motuumma dabalatee hojii heera motuummaa naannoo oromiyaa baasu irratti hirmaataniru? Yoo deebiin kee lakki ta,ee, maalif ?

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13. Heera motuummaa naannoo Oromiyaa amma hojiraa jiruratti, haala kamiin heerii naaniichaa akka raga,uu fi foyya,uu qabu, keyyanni ibsu jira?

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13. Adeemsaa heera mootumma naannoo Oromiyya baasuratti kessatii rakkoleen muudatan maali?

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**Interview questions for other informant who has first hand information as to the making process**

Gaafii Ademsaa Heera Mootummaa Naannoo Oromiyaa Ittin Ragga,ee Namootaa Dhunfaafi Qamoolee Ilaalatuuf Qophaa,ee

**Kayyoo:** - Kaayyoon gaafii kanaa odeeffannoo “Ademsaa hojii heraa baasu, heera mootummaa naannoo oromiyaa” xinxaluuf fayyadu walitti qabuu dha.

**Gaafilee:**



1. Ademsaa hojii heera baasu heera mootumma naannoo oromiyaa irrattii, hubannoon ati qabduu hangam?

A. Gadaanaa B. Giddugaleessa/Gahaa/ C. Olaanaa D. Baayyee Olaanaa

2. Deebiin kee “A” taanaan sababnii kee maali ?

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3. Ademsa wixinee heera motuumma naannoo Oromiyaa ittin qopha, ee naa ibsa ?

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4. Maddi heera mootumma naannoo Oromiyaa maal sittii fakkataa

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5. Hojii heera mootumma naannoo Oromiyaa baasuratti miseensoonni caffee hirmaataniruu?

A. Eyyeen B. Lakki hin hirmaanne

6. Gaafi lakofsaa “5” deebin kee “A” taanaan sadarkaa kamirratti

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7. Hojii heera mootumma naannoo Oromiyaa basuuratti ummanni naannichaa hirmaataniruu?

A. Eyyen B. Hin Hirmaanne

8. Deebin kee “A” taanaan sadarkaa kamirratti

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9. Qaamni heera MNO ragaasiise kami

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9. Heera motummaa naannoo Oromiya gadi fagenyaaan ni beekta? Yoo deebiin kee eyyeen tanaan, hagam? Yoo deebiin kee lakkii tanaan maalif?

**Appendix 2**

**ለደቡብ ብ/ቦ/ህ/ ክልላዊ መንግስት ህገ-መንግስት አርቃቂ ኮሚቴ /አካል/ የቀረበ መጠይቅ**

**ዓላማ:-** ይህ መጠይቅ ለደቡብ/ቦ/ህ/ ህገ-መንግስት አርቃቂ ኮሚቴ/አካል/ የቀረበው የደቡብ ብ/ቦ/ህ ክልል መንግስት ህገ-መንግስት አወጣጥ ሂደትን ለማጥናት ነው።

**መግቢያ:-** የደቡብ ብ/ቦ/ህ ክልላዊ መንግስት በ1995 የተደነገገ ና በ2002 ዓ.ም ተሻሽሎ የወጣ ህገ-መንግስት አለው። ይህ በእንዲህ እንዳለ የህገ-መንግስት አወጣጥ ሂደት ምን እንደሚመስልና ህግ አርቃቂው አካል በምን መመሪያ እንደተደገፈ ጥናት የሚፈልግ ጉዳይ ነው። ከዚህ ቀደም በክልሉ ህገ-መንግስት ላይ የተደረጉ ጥናቶችም የህገ-መንግስት ማርቀቅ ሂደቱ ምን እንደሚመስል በጥልቀት አያትቱም። በመሆኑም ከዚህ በታች ያሉ ጥያቄዎች ለጥናቱ የተዘጋጁ ስለሆኑ በትግስትና በታማኝነት እንዲሞሉልኝ በአክብሮት እጠይቃለሁ።

**ጥያቄዎች**

1. የደቡብ ብ/ቦ/ህ ክልላዊ መንግስት ህገ-መንግስት ማወጣጥ ሂደት ላይ ያሉት ግንዛቤ ሀ.ዝቅተኛ ለ.መካከላኛ/በቂ/ ለ.ከፍተኛ መ.በጣም ከፍተኛ
2. መልስዎት “ሀ” ከሆነ ምክያቱ ምንድን ነው ?  
\_\_\_\_\_
3. የደቡብ ብ/ቦ/ህ ክልላዊ መንግስት ህገ-መንግስት የማወጣት ስራ በምን ሂደት ወ.ሥጥ ነው ያለፈው?  
\_\_\_\_\_
4. ህገ-መንግስት የማርቀቅ ስራ በበላይነት የሰራውን አካል ቢገልፁልኝ?  
\_\_\_\_\_
5. የደቡብ ብ/ቦ/ህ ክልል ህገ-መንግስት ማርቀቅ ሂደት ላይ አርቃቂው አካል በምንጭነት የተጠቀማቸው ቁሶች ምንድን ናቸው?  
\_\_\_\_\_
6. የህግ ማወጣት ሂደት ላይ አወጪው አካል የተለያዩ መመሪያዎችን ሊጠቀም ያችላል። ይህ አካል ወይም ህግ አርቃቂ ኮሚቴ ፤ህገ-መንግስት የማርቀቅ ሂደት ላይ የታወቁ የህግ ማወጣት መመሪያዎችን ተጠቅመዋል?  
ሀ.አዎን ለ.አይ
7. መልስዎ “ሀ” ከሆነ ምን አይነት መመሪያ

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8. የደቡብ ብ/ቦ/ህ ክልል ህገ-መንግስት የማዉጣት ሂደት ላይ የክልሉ ህዝብ ተሳትፎዋል?

ሀ.አዎን ተሳትፎዋል ለ.አይ አልተሳተፉም

9. መለስዎ “ሀ” ከሆነ በየትኛው ወይም በምን ደረጃ ?

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10. ለስምንተኛው ጥያቄ መልሶ “ለ” ከሆነ ለምን ?

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11. ህገ-መንግስቱ ከማርቀቅ እስከ ማጽደቅ ድረስ የክልሉ ምክር ቤት ሚና ምን ነበር ?

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11. የደቡብ ብ/ቦ/ህ ክልል የማዉጣት ሂደት ላይ ያጋጠሙ ችግሮች ምንድን ናቸው?

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12. ሌሎች ህገ መንግስት የማዉጣት ሂደቱን ሊደግፉ የሚችሉ መንግስተዊ ያልሆኑ ተግማት ተሳትፎ ምን ይመስላል? ያልተሳተፉ እንደሆን ለምን? ተሳትፍዉም ከሆነ በምን መልኩ?

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13. የክልሉን ህገ-መንግስት የማርቀቅ ሂደት ላይ ያጋጠሙ ችግሮች ምንድን ናቸው ?

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**የደቡብ ብ/ቦ/ህ ክልል ህገ-መንግስት አርቃቂ ኮሚቴ/አካል/ ወጭ ላሉና ለጉዳዩ ቅርበት ላላቸው ሰዎች የቀረበ መጠይቅ**

**ዓለማ፡** የጥያቄው ዓለማ የደቡብ ብ/ቦ/ህ ክልል ህገ-መንግስት አወጣጥ ሂደትን ለማጥናት የሚረዱ መረጃ የሚረዱ መረጃዎችን ለማሰባሰብ ያለመ ነዉ.።

**ጥያቄዎቹ**

1. የደቡብ ብ/ቦ/ህ ክልልዊ መንግስት ህገ-መንግስት ማዉጣት ሂደት ላይ ያሉት ግንዛቤ

ሀ.ዝቅተኛ ለ.መካከላኛ/በቂ/ ለ.ከፍተኛ መ.በጣም ከፍተኛ

2. መልስዎት “ሀ” ከሆነ ምክያቱ ምንድን ነዉ ?

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3. የደቡብ ብ/ቦ/ህ ክልላዊ መንግስት ህገ-መንግስት የማርቀቅ ስራን የሰራው አካል የቱ ነው?

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4. የደቡብ ብ/ቦ/ህ ክልል ህገ መንግስት ማርቀቅ ሂደት ላይ አርቃቂው አካል በምንጭነት የተጠቀማቸው ቁሶች ምንድን ናቸው?

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5. ህገ መንግስት ከማርቀቅ እስከ ማጽደቅ ድረስ የክልሉ ምክር ቤት ሚና ምን ነበር ?

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6. የደቡብ ብ/ቦ/ህ ክልል ህገ መንግስት የማወጣት ሂደት ላይ የክልሉ ህዝብ ተሳትፎዋ?

ሀ.አዎን ተሳትፎዋ ለ.አይ አልተሳተፉም

7. መለስዎ “ሀ” ከሆነ በየትኛው ወይም በምን ደረጃ ?

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8. የክልሉን ህገ-መንግስት የማርቀቅ ሂደት ላይ ያጋጠሙ ችግሮች ምንድን ናቸው ?