

# The Oromia State Constitution: Hiding Its Light under a Bushel?

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## ***Abstract***

*Oromia Regional State has had its own constitution since the Transitional Period. This state constitution has served since then as an instrument of self-rule for the Oromo people, with the 2001 revised version currently in effect. In actuality, however, the document is highly obscure and has not been applied adequately to ensure self-rule. A significant number of the citizens of the regional state are unaware that it has its own constitution, let alone observe it and rely on it as a safeguard of their rights and freedoms. As a result, it has long been a little-implemented contract. This study seeks to explore the role and practical relevance of the regional state's constitution in promoting effective self-rule. It aims to identify the major factors affecting the relevance of the state constitution, and to this end employed a largely qualitative method of data collection and analysis. Data were collected via interviews, questionnaires, formal and informal discussions, and documentary analysis, as well as from observation of the regional state's past and present dynamics. The findings of the research indicate that although the FDRE Constitution grants wide constitutional space to subnational constituent units, Oromia Regional State has not been able to utilize the available space exhaustively in adopting a constitution which is legitimate and relevant. The state constitution fails to represent the state and its people or engender alternative public policy that serves the interests of the Oromo people. It not only lacks legitimacy and public consent, but is scarcely known or applied. Lack of awareness, under-utilization, extreme similarity with and over-reliance on the national constitution, inaccessibility, and refusal to recognize minority nationalities – these are critical deficiencies that account for the constitution's poor standing. As such, the recommendation is the Oromia state constitution be revised on the basis of meaningful public consultation to alleviate its identified drawbacks and make it a legitimate institution.*

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## 1. Introduction

Ethiopia was for long under a highly centralized political system prior to its transition to the current federal arrangement. This system had been unable to accommodate the ethnic, cultural and linguistic diversity of the Ethiopian people, a situation that led to ethnic-based conflict and in turn resulted in persistent political and socio-economic crisis. The transitional period after the downfall of the military regime was therefore a turning-point in which the country had to make historic and unprecedented changes to escape the crisis.

During this time, fundamental institutional arrangements were put in place for a federal system that would ensure peaceful co-existence by addressing long-standing political and economic demands through the accommodation of diversity. The current FDRE Constitution, which came into force in 1995, establishes a federal system distinctive for its aim of granting all the ethnic communities of the country the right to self-determination or self-government, with this right enshrined as one of its core principles (Articles 39(1) and 88(1)). To this end, it creates nine regional states, doing so largely along ethnic lines. The same constitution empowers state councils to draft, adopt and amend their respective regional state constitutions (Article 50(5)).

Empowering the states to adopt their own constitutions makes good sense, since adopting a subnational constitution is an expression of autonomy. Moreover, given that the FDRE Constitution is designed in part to empower “Nations, Nationalities and Peoples” (NNP), the role of subnational constitutions appears to be vital. This is so because they create a strong legal ground on which NNP, as autonomous entities, can exercise their political rights. Van der Beken (2016) argues in this regard that one of the major reasons that subnational constitutions are important in multi-ethnic federations is that they serve to empower ethnic groups and better enable them to exercise their right to self-determination.

Another particular necessity for subnational constitutions in the Ethiopian federation is that the federal constitution is incomplete in respect of many aspects of subnational governance. For instance, it is silent on the type, number as well as structure and function of local governments. This gap should then be addressed

by state constitutions. One can therefore say that, in the Ethiopian context, the federal constitution cannot supersede the role of the subnational constitutions, and that, conversely, the federal system as a whole cannot be deemed complete in the absence of effectively functioning state constitutions. One cannot, in other words, expect the Ethiopian federal system to flourish without functioning subnational constitutions.

Accordingly, Oromia Regional State adopted a transitional constitution by *Caffee*<sup>1</sup> in 1993. This was followed in 1995 by a formal constitution adopted directly after the ratification of the federal one. The latter was revised in 2001 in response to political instability, and it is this revised constitution that has been in sway for more than one and a half decades without any fundamental alteration.

Broadly, it is logical to say that if regional states have their own constitutions, this can be taken as sign that they have the political autonomy to govern their affairs. The idea of subnational constitutionalism, however, goes beyond simply having a written constitution: in other words, what matters for political autonomy is how relevant such documents are in practice. This leads to the question of how relevant the Oromia State Constitution is in promoting effective self-rule – a question this paper seeks to answer.

## 2. An Overview of Oromia National Regional State

Oromia National Regional State (ONRS) is the largest state in the Ethiopian federation in terms of population and territorial size. According to an estimate in 2017, it has a population of more than 40 million, composed of the Oromo nation, which constitutionally holds supreme power in this regional state, and millions of non-Oromos, consisting of nearly all the country's other ethnic groups. Among these non-Oromo nationalities, the Amhara

<sup>1</sup> *Caffee* is a name given to the regional states' council, which is the supreme political organ of the regional state. The council is vested with regional legislative authority with full power in the affairs of the region (see Articles 46(1), 48(1), 49 (1)) of the Oromia Regional State Revised Constitution of 2001). The word "*Caffee*" means "wetland" in Afan Oromo, the state's working language. The house has its own speaker and deputy speaker, who are elected from its members at the recommendation of the winning political party (see Article 50(2)). *Caffee* members are representatives of the people of the region as a whole (Article 48(3)).

comprise about 7.2 per cent of the population (Balcha, 2016). As regards territorial size, the state, according to the Office of the President of Oromia, has a total area of more than 365,000 km<sup>2</sup>, or about 32 per cent of the total area of the country.

The ONRS shares boundaries with all the regional states of the federation except Tigray. Located at the center of the country, it extends to share borders with Kenya in the south and Sudan in the west. The Oromo People Democratic Organization (OPDO), one of four members of the Ethiopian People's Democratic Revolutionary Front (EPRDF) coalition, has claimed victory in consecutive regional and local elections since 1992 and been the ruler of the regional state.<sup>2</sup> Currently, the state is organized into a regional government, 20 administrative zones, and 290 *woredas*, including City Administrations.

### 3. The History of Subnational Constitutions in Ethiopia

A study of Ethiopian political history shows that autonomous regional governments had for long existed in almost every corner of the country until their abolition when Emperor Haile Selassie came to power in 1930. Assefa (2009) notes that the regional powers used to enjoy remarkable autonomy and power, to the extent of having their own armies and being able to regulate their economic activities independently. They exercised this autonomy, however, in the absence of formal constitutions both at national and state level. It was in 1931 that Ethiopia adopted its first national constitution, which was revised in 1955.<sup>3</sup>

The history of subnational constitution in Ethiopia hence begins with the establishment of the Ethio-Eritrean federation in the 1950s. The United Nations (UN) General Assembly came up with a final resolution on the issue of Eritrea in 1950 in terms of which

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2 The 1992 regional election was the first election after the downfall of the unitary regime. It was held during the Transitional Period on 21 June of the same year to fill regional councils, which were established by Proclamation No. 7/1992 enacted on 16 January. The Oromo Liberation Front (OLF) boycotted the election due to an unresolved disagreement between it and the EPRDF.

3 The 1931 national constitution was Ethiopia's first written constitution. Adopted about a year after Emperor Haile Selassie assumed power, it symbolized the termination of local rule and the emergence of the unified, centralized state. The document follows the model of the 1889 Meiji Japanese Constitution, and places absolute power in the hands of the emperor (see Assefa 2009).

Eritrea would be federated with Ethiopia after about 60 years of departure.<sup>4</sup> Within the framework of the UN resolution, two instruments were forwarded by the Assembly, a federal act and an Eritrean draft constitution. The constitution was compiled by UN experts to provide a solution to the dispute at the time surrounding the fate of Eritrea and later submitted to the Eritrean council for adoption. Both documents envisioned the integration of the two on the basis of a federal set-up, with the Ethiopian government as national government and Eritrea as autonomous entity.

So, following the adoption of the proposed federal act and draft constitution by the Eritrean council in 1952,<sup>5</sup> Ethiopia experienced the semblance of a federal system until 1962, with Eritrea having its own constitution as an autonomous polity (Assefa, 2009). This could not be taken as completely federal arrangement, given that the largest part of the country remained under a unitary system in which absolute power was vested in the emperor. Nonetheless, the 1952 Eritrean constitution could be considered the first-ever subnational constitution in the political history of Ethiopia.

After the demise of the Derg regime in 1991, a Transitional Period Charter (TPC) established a quasi-federal structure with 14 subnational units and a transitional central government.<sup>6</sup> Proclamation 7/1992 by the Central Transitional Government provided that the states could adopt their own constitutions. Oromia Regional State took the lead to adopt its transitional constitution in 1993 and, as noted, adopted its second, and formal, constitution directly after the establishment of the federal system via the promulgation of the 1995 FDRE Constitution, going on to revise it in 2001. This section discusses these three successive state constitutions.

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4 Eritrea had been an Italian colony since its departure from Ethiopia in 1890, but once liberated from Italy in 1941, it rejoined Ethiopia in 1952 by virtue of a federal arrangement brought about by UN intervention.

5 The federal act as well as the 1952 Eritrean constitution were put into force by Proclamation No. 124/1952, which was enacted by the Eritrean Assembly to ratify them (see Assefa, 2009).

6 The 14 regional states were later reduced to nine regional states by the 1995 FDRE Constitution. This was because five separate regions (established during the Transitional Period) were later combined into one regional state (the Southern Nations, Nationalities and Peoples Region, or SNNPR).

### 3.1 The 1993 Transitional Constitution of Oromia

Proclamation 7/1992 provided for the establishment of a regional council and executive organ, which were formed following the 1992 regional and local elections. The powers and functions of each organ of the regional transitional governments were also stated in the proclamation. The same proclamation granted regional councils the power to issue a regional constitution and other laws in accordance with the laws of the central transitional government (Article 15(1)(a)). Accordingly, *Caffee Oromiya* enacted Proclamation No. 2/1993 to ratify the Transitional Constitution of the Regional State.

In this regard, it could be said that the regional state has utilized available constitutional space by adopting its own constitution (Van der Beken, 2017). The transitional constitution was drafted in line with the TPC and followed almost the same pattern as it. The actual procedure followed for its adoption, however, remains unclear. It is clear that the overriding objective for the adoption of the document (as can be understood from the preamble) was to confirm the right to self-determination of the Oromo people entrenched in the TPC. By so doing, the constitution was intended to translate the fundamental principles entrenched in the TPC to the regional context. The document was hence intended to provide the then newly established regional transitional government with a legal document by which it could govern and be governed. To that effect, it was designed to determine the powers and duties of government organs in accordance with the TPC and laws of the national transitional government.

The preamble of the constitution states that the Oromo people had been administering themselves democratically via their own administrative and judicial institutions, all of which were based on the principles of *Gadaa*.<sup>7</sup> It further states that they had fallen under oppressive rule since having been invaded by armed retailers more than a century ago. As a result, the Transitional Con-

7 *Gadaa* is an ancient, indigenous and democratic system of Oromo self-governance. Oromos ruled themselves under the *Gadaa* system until their kingdoms were abolished in the late 19<sup>th</sup> century in the name of imposed state-building. The system had its own mechanism by which social, political and economic issues were governed, and comprised legislative, executive and judicial functions. *Gadaa* had an established mechanisms for democratic elections, peaceful power transfer (every eight years), conflict resolution as well as checks and balances, among other things. Corruption and abuse of power were not be tolerated, and leaders who violated the principles of *Geda* would be recalled before the end of their term (Ali, 2013).

stitution of Oromia states, they had been deprived of their human and democratic rights to the extent that their culture, language and history had been eroded. It also invokes the struggle and sacrifices of the Oromo people in the past to eradicate despotism and rise up to seize victory and democracy.

The transitional constitution is concise and arranged into eight chapters. Chapter one states that the council of the regional self-government is the highest political organ in the region. The second chapter provides individual rights and freedoms. Chapter three is devoted to providing the rights of the Oromo nation and other peoples residing in the region. It is stated in the same chapter that the Oromo people have the right to self-determination. This includes the right to self-government, expressing and developing their language and culture, preserving their history and enjoying fair and proper representation in the central government. It states, moreover, that their right to self-determination extends to the entitlement to secede should they be convinced that their rights under the charter have been violated or not fully respected. The chapter also provides that any other peoples residing in the region have the right to preserve their national identity and history as well as develop or promote their language and culture. Chapter four sets out the structure and function of the regional transitional government as well as the powers and duties of the executive committee.

Chapter five deals with the relationship between the regional government and Central Transitional Government as well as other regions. Judicial jurisdiction and the establishment of the offices of the Public Prosecutor and Auditor are provided for in Chapters six and seven, respectively. Chapter eight deals with miscellaneous provisions which include nomenclature and the flag and emblem, working language and capital city of the regional government.<sup>8</sup> It is also stated in same section that the constitution is the supreme law of the regional state and that it may be amended only by a two-thirds majority vote by members of the regional council.

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8 The choice of capital city has been an unresolved issue since the Transitional Period. Under both the 1993 and 1995 Constitution of the Regional State of Oromia, the capital city is Finfinnee/Addis Ababa. Later, the 2001 Revised Constitution shifted the capital to Adam Adama, albeit for the short period from 2001/2 to 2005. In terms of Proclamation No. 94/2005, which was enacted to amend the 2001 Revised Constitution, the capital city of Oromia Regional State reverted to Finfinnee.

The transitional subnational constitution served as an interim measure until the adoption of the 1995 constitution, discussed below.

### 3.2 The 1995 Oromia State Constitution

Oromia Regional State adopted its formal constitution soon after the ratification of the national constitution and the establishment of the federation. There were at least two reasons for this. The first objective seems to have been to heed the FDRE Constitution, which in Article 50(5) requires state councils to draft, adopt and amend their own constitutions in accordance with the federal one. This was important because the right to self-determination and regional autonomy entrenched in the federal Constitution could be best exercised if guaranteed by a constitutional base at the regional level. The existence of subnational constitutional law had become essential in the Ethiopian context in general and in Oromia Regional State in particular. In other words, one of the major reasons necessitating the existence of a subnational constitution in Oromia Regional State is related to the nature of the Ethiopian federation itself. This is essentially because the constituent units of the Ethiopian federation, including the state of Oromia, did not exist before 1991.<sup>9</sup> For Oromia Regional State, having its own constitution was necessary for it to be organized and function as an autonomous political entity.

The second reason which necessitated the adoption of Oromia Regional State's constitution relates to the nature of the federal constitution itself. The 1995 FDRE Constitution, as with many constitutions, was incomplete in that it was limited to providing a general framework of national principles and objectives. Moreover, in establishing a two-layered federal arrangement consisting of the federal government and regional governments (Article 50(1)), the Constitution focuses on the division of power between these levels, but is silent on the structure and functioning

<sup>9</sup> By and large, the Ethiopian federation follows the model of a holding-together federation. The country had been a unitary state from the time of Emperor Haile Selassie's rise to power until the downfall of the military regime – the regional states, unlike the case in other federations such as the United States and Switzerland, were non-existent prior to 1991. Consequently, the federation was formed by establishing a double-tiered arrangement that divided power among the two levels of governments. This federal arrangement was partly designed to hold the country together and prevent it from disintegrating.



of subnational governments, including local government units, as it is on their type and number. This called for a subnational constitution that could fill in the details.

The 1995 state constitution, composed of 99 articles, is longer and more elaborate than the transitional one, and follows a similar pattern to the national constitution. It grants supreme power in the regional state to the Oromo nation and delineates the structure as well as power and function of the regional government at all levels. It provides for human and democratic rights, in addition to setting out regional policy principles and objectives. Unlike the revised version of 2001, the constitution allows considerable power to the regional government, especially its executive organ, resulting in an unfavorable condition for checks and balances. For instance, the president of the regional state was head of state as well as chairman of the *Caffee* (Article 56(2)), while the secretary of the council was accountable to the president. Furthermore, the constitution did not clearly empower the council to call the president and other regional officials to account and exercise oversight in regard to the performance of the regional administrative council.

When it comes to the *woreda* councils, it is stated that they shall be subordinate to the regional state and zonal administrative committee. Members of the councils were accountable to the zonal and regional executive committees as well as to their electorate (Articles 75(2) and 76).

Regarding the process of its making, the constitution, which is based on a general framework prepared by the central government, was adopted by *Caffee* after having been reviewed by the legal standing committee of the council. Van der Beken (2017) has remarked that the drafting, deliberation and adoption of state constitutions, unlike the case with the national constitution, has not involved participation by the public and concerned groups. Instead, state constitution-building processes have not only been initiatives by the federal government but have been dominated by it owing to its direct intervention in them.

### 3.3 The 2001 Oromia State Constitution

The 1995 state constitution of Oromia remained in force until it was revised in 2001. The major rationale behind the revision, as

indicated in the preamble of the revised constitution, was to ensure good governance by avoiding a fusion of state power (among state councils and the executive organs, for instance). The need was to strengthen checks and balances, improve the transparency and accountability of state organs, and establish effective state-level structures for effective service delivery. Enabling to meet the objective reality of the region and regulating local governments were also claimed to be among the basic reasons for the same revision.

Ayele (2014), however, suggests that there were two “ulterior motives” behind the revisions of regional state constitutions. He maintains that the actual reason for the revision of subnational constitutions, including Oromia’s, was related to the interests of the ruling party and the central government. The latter sought, first, to curb the increasing demand for the establishment of ethnic-administration units with a view to focusing on the issue of development and better service delivery. This was meant to be achieved by devolving more power to the regular local government units. Secondly, the intention, according to Ayele, was to contain internal conflict within the EPRDF, particularly the Tigray Liberation Front (TPLF).<sup>10</sup>

As a result of the revision, some visible modifications were made to the Oromia Regional State’s constitution. For instance, the revised constitution clearly empowers the regional council to call and question the regional president and other regional officials and investigate the performance of the regional administrative council (Article 49(3)(q)). Furthermore, the *Coffee* and *woreda* councils have speakers and deputy speakers who are elected from their members. A constitutional interpretation commission, non-existent in the 1995 version, was established. The revised constitution also provides that members of district councils shall

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10 Ideological disintegration within the EPRDF, and especially within the TPLF, reached an extreme point in 2001. The cause was a dispute between the former party chairman, Meles Zenawi, and some high-ranking officials who insisted on opposing him. This led to a crackdown on opposing factions, such as the one led by Gebru Asrat, the president of Tigray Regional State, who was dismissed from the party. Measures to eliminate the opposition did not stop with the dismissal of rivals but went to the extent of revising state constitutions. Those of Tigray, Oromia, Amhara, the SNNPR and Afar were revised in 2001, while those Benishangul-Gumuz, Gambela and Somali were revised in 2002. The Harari constitution was revised last, in 2004. The revision was aimed at weakening the power of regional governments by devolving greater power to regular *woredas* (Ayele, 2014).

be accountable only to the electorate (Article 78(2)). Another alteration is that the procedure for constitutional amendment, rather general in the earlier version, was elaborated upon. Overall, the 2001 constitutional revision modified the separation of powers between executive and legislative bodies, with the power of the executive at regional and zonal level having been reduced and greater power devolved to *woredas*.

As regards the process followed in the revision, a draft was prepared in the Prime Minister's Office and then submitted to the regional state and adopted by its council. This study could not find any evidence of public participation and consultation. Rather, previous studies such as that of Van der Beken (2017) show that subnational constitutional revisions were both initiated and dominated by the ruling party, with the revised texts – as Ayele (2014) argues – intended to reflect and serve its objectives. In sum, it would be fair to say that the 2001 revision of Oromia's constitution was driven entirely by the ruling party and central government.

The 2001 constitution was twice amended, in 2005 and 2006, respectively by Proclamations No. 94/2005 and No. 108/2006. The former was meant chiefly to fix some discrepancies that were noticed in the Afan Oromo, Amharic and English versions of the constitution. The proclamation also changed the region's capital city from Adaamaa back to Finfinnee,<sup>11</sup> and granted the *Caffee* additional power to lead, supervise and administer *Magalata Oromiyaa*, a regional government gazette. The later amendment in 2006 was to modify the election of *woreda* and *kebele* councils; accordingly, Articles 82(3) and 94(3) were repealed and replaced by three new sub-articles.<sup>12</sup> Given that the 2001 revised constitu-

11 "Finfinnee" is the official name used by the regional government of Oromia to refer to Addis Ababa, which is the capital of both Oromia Regional State and the federal state of Ethiopia. The word "Finfinnee" is believed to be the original name of the area upon which the city had been established before its name was changed to Addis Ababa in the late 19<sup>th</sup> century. Adama is the second-largest city in the regional state and served as its capital from 2001–2005. It is 100 km from Addis Ababa to the south-east.

12 In the original 2001 constitution, it is stated that election of both *woreda* and *kebele* councils (Articles 82(3) and 94(3), respectively) shall be held one month prior to the expiry of the tenure of the previous councils and that the new councils shall begin their session within 15 days after the expiry of the tenure of the previous councils. The 2006 amendment, however, gives the *Caffee* the power to extend or postpone election of both *woreda* and *kebele* councils when it believes necessary. Hence, when the elections are extended or postponed, the previous councils shall continue their duty until the new election is held. Moreover, the new councils shall begin their duty within one month after elected and authenticated by the National Election Board. The term of

tion is the most recent iteration of the state's constitution, it has been in operation for more than one and a half decades.

#### 4. General Features of the Oromia State Constitution

It is often said that Oromia's constitution is basically a straight copy of the federal constitution and little distinguishable from other state constitutions in the federation. This is not entirely true. Although similar in structure to all of them, it has some distinctive features in terms of its length and content. Van der Beken (2017) argues that subnational constitutions in the Ethiopian federation should not be judged as direct copy of the federal constitution that the regional states have broad discretion to incorporate or follow their own organization. Hence, it would be sound and useful to examine the salient features of the Oromia regional-state constitution. This section of this article, therefore, briefly discusses the general feature of the constitution, with ample emphasis on the 2001 revised version.

As can be observed from the preamble of the state constitution, the principal objective of the constitution is to proclaim the Oromo people's unconditional right to self-determination.<sup>13</sup> In doing so, the constitution is meant to translate basic principles and provisions already entrenched in the federal constitution into the regional state's context. Accordingly, it grants supreme power of the regional state to the Oromo nation. The constitution provides the goal, general principles, directives, and borders of the regional state. Also, it provides the working language, capital city as well as the structure and function of the regional state. In addition, it has created district local government units, and therein outlines the power and function of the local units.

The 2001 Revised Constitution of the Oromia National Regional State is composed of 113 articles arranged into 12 chapters,

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the councils, however, remains unchanged (five years). In another regard, the amendment appears to have exceeded the competence of the regional government in that election issues are under the competence of the federal government and regulated by the National Election Board via national electoral laws.

13 Article 39 of the FDRE Constitution provides that every NNP in the country has an unconditional right to self-determination, including the right to secession. This right incorporates the right to self-government, including the establishment of necessary institutions for self-government at all levels. The state constitution is hence a useful institution for self-rule.

which makes it a little longer than the federal constitution. This state constitution follows a similar pattern and structure to that of the federal and other state constitutions in the Ethiopian federation. The preamble of the same constitution states that the Oromo people had for long been oppressed under the past system, being deprived of their human and democratic rights and freedoms to the extent that they were not only considered second-class citizens in their own country but compelled to live in extreme poverty and backwardness. The preamble recalls the painful sacrifices that the Oromo people have made with their fellow NNPs to eradicate despotism in their commitment to establish a democratic, peaceful and economically prosperous state.

Table 1: Summary of Major Provisions of Oromia Regional State's Constitution (2001)

Chapters	Main Components/Provisions	No. of Articles	Range of Articles
	<i>Preamble</i> : "We, the Oromo People ..."		
1	General provisions	7	Arts 1–7
2	Fundamental principles	5	Arts 8–12
3	Fundamental rights and freedoms	32	Arts 13–44
4	Regional state structure and division of power	3	Arts 45–47
5	State council ( <i>Caffee Oromiya</i> )	5	Arts 48–52
6	Executive organ	8	Arts 53–60
7	Structure and power of courts	9	Arts 61–69
No provision on nationality administration			
8	Structure and power of zones	6	Arts 70–75
9	Structure and power of <i>woreda</i> administration	14	Arts 76–89
10	Structure and power of <i>kebele</i> administration	12	Arts 90–101
11	Regional policy directives/ principles/objectives	6	Arts 102–107
12	Miscellaneous provisions	6	Arts 108–113
	Total	113	

As can be readily understood from Table 1, the constitution gives wide provision for the protection of human and democratic rights and freedoms, which are, of course, the characteristic of demo-

cratic constitutions. Accordingly, about 28 per cent of the constitution is devoted to dealing with human and democratic rights and freedoms, one of which is the right to self-determination of the Oromo people. Furthermore, in considering the fundamental principles of the constitution (Articles 8–12), as well as general regional policy principles and objectives (Articles 102–107), the Oromia regional constitution, like the federal one, can be categorized as democratic in its appearance.

Another noticeable feature of the Oromia regional-state constitution is related to the way it deals with minority ethnic groups, which are commonly considered as non-indigenous. The constitution provides nothing regarding the recognition and representation of minority nationalities who reside in the region. One of the major functions state constitutions are expected to serve is protecting citizens' rights and freedoms at subnational level, including those of minority groups. This issue, however, has not been addressed in the Oromia state constitution. In relation to this, Tsegaye (2004) claims that safeguarding citizens' rights and freedoms at subnational level, including those of ethnic minorities who are considered, in some cases, to be non-indigenous to a specific area, is one of the purposes of state constitutions.

The FDRE Constitution grants due consideration to the recognition and accommodation of minority nationalities (Article 54(2) and (3)). A critical perusal of the Oromia state constitution, however, reveals discrepancies between the state constitution and the federal constitution as far as protection of minorities is concerned. In other words, the state constitution fails to comply with one of the fundamental principles of the federal constitution by failing to provide for the representation of minority nationalities.

## **5. Accomplishments, Relevance and Major Challenges**

### **5.1 Accomplishments**

One of the major reasons for which subnational constitutions are important in multi-ethnic federations is to empower ethnic groups so that they can better exercise their right to self-determination (Van der Beken, 2016). In addition, as stated in the FDRE Constitution, the right to self-determination comprises the right

to self-government, including the establishment of government institutions at all levels (Articles 39 and 88(1)). Accordingly, given the fact that the Oromia state constitution is one of the prime institutions designed to realize the Oromo people's right to self-rule, implementation of the constitution needs to be evaluated in this light.

Comparatively, Oromia Regional State has utilized the available constitutional space by adopting its own constitution ahead of the other states in the federation. The state constitution has served as a symbol of autonomy of the regional state and the Oromo people. It is hence a sign that the people of Oromo are an autonomous political community and that Oromia is a political unit as opposed to an administrative unit. Over and above its symbolic value, the constitution, with all its limitations (discussed later in this article), has made some practical achievements in the politics of the state (especially during the early stage of the federation) that should not be disregarded.

Among other noticeable accomplishments, the constitution has served as an essential law on the basis of which the regional state has been established and been able to function as an autonomous polity. The constitution decides all fundamental elements of the regional state: its nomenclature, working language, flag and emblem, anthem as well as capital city. Moreover, the document determines the nature as well as structure of the state government. It is stated under Article 1, for instance, that the state constitution establishes a democratic regional state structure. In addition, the constitution establishes the regional state's government organs and determines their powers and functions as well. It is also the ultimate document by which the regional political, social and economic goals, as well as general policy principles and objectives, are developed. The same document provides for the establishment of some essential institutions, such as the regional Judicial Administration Commission, Constitutional Interpretation Commission, Council of Constitutional Inquiry, and Auditor-General.

Another critical purpose which the Oromia state constitution, as the highest legal and political document, has accomplished is the gap it fills regarding local government units. Given the fact that the FDRE Constitution is silent about the nature as well as structure of local government units, the state constitution has played an indispensable role in complementing the former in this re-

gard. It creates local government units and determines their type, number as well as powers and functions, which could not have been done otherwise by ordinary laws. More specifically, the constitution establishes a regional state consisting of the necessary administrative structures – namely, the regional government, zones, districts and *kebeles* – all of which (except zones) are composed of legislative, executive and judicial organs (Article 45).

In a nutshell, the major accomplishments of the Oromia state constitution are, inter alia, establishing the framework for regional self-rule; dictating the nature and structure of the state government; and determining the power and function of government organs, including that of local government units. It has also served as a yardstick for the ordinary subnational laws that have been enacted.

### 5.2 Practical Relevance of the State Constitution

In principle, as was discussed earlier, the relevance of subnational constitutions in federal systems is indisputable. A good indication of this is the fact that more than 70 per cent of federations in the world allow their constituent units to adopt their own constitutions. When it comes to practical relevance, however, the documents can be relevant in practice only if they are applied effectively. This would include being used at various institutions, such as courts, to resolve cases; citizens relying on them to defend their rights; being made known (for example, by being taught at schools); being used by the media; and being observed by all, including those who hold power.

When it comes to Oromia Regional State's constitution, the document has served an indispensable purpose in organizing the Oromo people as an autonomous political community by establishing and structuring the regional state. Be that as it may, examination reveals that the document, by and large, remains unused, as it has hardly been implemented in such a way as to regulate the politics, and affect the lives of, subnational citizens. Its achievements were visible during the establishment of the regional state, but its relevance has not been maintained since then, with the result that it has been gradually disregarded and all but abandoned.

Analysis of data gathered from informants in key institutions and government organizations (such as the *Caffee*, Oromia Supreme



Court and regional bureaus) shows that the Oromia state constitution is barely utilized in any meaningful manner. The practical relevance of the state constitution in promoting effective self-rule, the rule of law and subnational constitutionalism was found to be very low, as it has not been put into practice effectively. This has left the document unable to achieve the central objectives for which it was designed. The study has identified seven major challenges that prevent the state constitution from being practically relevant – these are discussed below.

### 5.3 Major Challenges

#### 5.3.1 *Lack of Legitimacy*

Legitimacy is considered a basis for the validity of subnational constitutions in democratic federal systems; without this fundamental quality, they cannot be expected to be relevant and effective. The practical relevance of the Oromia regional-state constitution has been challenged principally from the outset by its lack of legitimacy. This is so because the process of its making and remaking was not participatory and inclusive: it failed to gain the consent of eligible citizens and other concerned bodies such as scholars, lawyers, individuals, civic society groups, political parties, and professional associations. The process, moreover, was influenced by the central government and the ideology of ruling party. There is little disagreement on the need for the constitution: the dispute, according to individuals familiar with the matter, relates, among other things, to the way it was made and adopted, as a result of which it suffers from a lack of legitimacy.

For one thing, the undemocratic making of the Oromia state constitution by and large could be attributed to the fact that nothing is stated in the FDRE Constitution regarding what procedure should be followed in the process of making of subnational constitutions, nor it is stated what the nature of subnational constitutions should be, unlike the case in some federations such as Switzerland. The national constitution of the Swiss Federation, for instance, states that each canton should adopt a democratic constitution and this should acquire the consent of the people. (Article 51(1)). In the Ethiopian case, however, the FDRE Constitution simply empowers state councils without setting out any clear procedure or mechanism for incorporating public involvement. State councils were given an exclusive power in this

respect.

What is worse, the absence of clear procedure for subnational constitution-making in Ethiopia paved the way for the central government and the ruling party to control the process. Few state constitutions followed particularly elaborate procedures in their development. Unlike the federal constitution, which had to pass through the conventional phases of drafting, deliberation and adoption, the state constitutions were simply adopted by the state legislatures after being drafted by the legal standing committees of the respective states.

It could hence be said that everything regarding the making of the constitution was monopolized by the *Caffee*, which itself was dominated by a single political party, the OPDO. This has left the constitution a mere creation of statute that was adopted by the state council like any ordinary legislation.<sup>14</sup> Also, in view of the fact that, among their basic features, constitutions are rigid, their making and remaking require special procedures, unlike the case with ordinary laws. Given that public participation is the underlying principle in democratic constitution-making, the way the Oromia state constitution was made appears to be deficient. This, at the same time, means that it lacks popular legitimacy, as a result of which it has been irrelevant in practice.

In sum, the process of making and remaking of the Oromia state constitution departs from the general principle of subnational constitutionalism that regional constitutions should be adopted by local populations and have their consent. This has not only left the document illegitimate but also eroded its practical relevance.

### ***5.3.2 Failure to Reflect the Region's Objective Reality***

Critical analysis of the Oromia state constitution reveals that, as one of its major drawbacks, it fails to reflect the objective reality (political, social/cultural and economic context) of the region. As a result, except in the case of its language and some place names,

<sup>14</sup> Even though it could be argued that the Oromia regional councils were established by the FDRE Constitution which gives them the power to make the state constitution, the process should have been participatory. Hence, the main problem lies in the monopoly. This could be related to the fact that the federal constitution says nothing about the procedure of constitution-making or, in particular, the need for public consultation and participation. In general, even though empowering the state councils regarding the making of subnational constitutions is important and sound, there should have been a common procedure in the national constitution.

it lacks regionally distinctive features that clearly differentiate this regional state it from other such states.

More than 60 per cent of the respondents (students, civil servants, journalists, practitioners and politicians) whom the researcher interviewed said that the Oromia state constitution does not serve or reflect the reality of the regional state and the people of Oromo, while the rest (about 40 per cent) said they had no idea about the issue. Historically, the Oromo people had many democratic norms and practices entrenched in the *Gadaa*, such as mechanisms of conflict resolution and peace-making, peaceful transfer of power, and adjudication of disputes. It was the belief of most respondents that such norms and practices could have contributed significantly to the contemporary politics of the regional state if adapted on the basis of adequate research. The legitimacy the constitution enjoys among the Oromo people could also have been greater than it is now. None of these legacies, however, has been incorporated in the state constitution.

The failure of the state constitution to reflect the reality of the region is attributable to the fact that its formation was not based on thorough investigation of the political and socio-economic context of the region and its people. Furthermore, the extensive involvement of the central government, through the dominant-party channel, in the process of the constitution's (re)making affected the interpretation of the regional context. Other subnational constitutions in the federation were subjected to similar influence, as they were all drafted by a federal agency, then known as the States' Affairs Desk, that was accountable to the Prime Minister (Gemechis, 2016).

The undemocratic procedure followed in the process of (re)making the Oromia state constitution not only leaves the document unreflective of the objective realities of the region, but also breaches the principles of the FDRE Constitution. The latter empowers the state councils, not the central government or anybody else, to draft, adopt and amend the regional state constitutions.<sup>15</sup> How-

<sup>15</sup> Since the power to draft, adopt and amend their own constitutions is granted to the state councils, the federal government should not have been directly involved in the process unless the councils contradicted the general provisions of the federal constitution. In other words, the regional governments should have been given complete autonomy in practice (without intervention) to make the regional constitutions (via their *Caffees*) in accordance with the federal constitution. The role of the federal government, that is to say, should have been limited to checking if the subnational constitutions were consistent with federal laws.

ever, regional governments, let alone the public and concerned groups, had little role in designing the subnational constitutions. This has made them irrelevant to the political, socio-cultural and economic contexts of the regional states. As scholars such as Van der Beken (2017) have noted, the revised state constitutions in the Ethiopian federation were principally intended to reflect and serve the objectives of the ruling party rather than address the contextual realities of the respective regional states.

### *5.3.3 Invisibility and Lack of Awareness*

Lack of awareness is among the most critical reasons for the inadequate utility of the Oromia state constitution. The document is little known among considerable numbers of civil servants and those who are supposed to be close to the regional government structures, let alone among the commoners. Among the 30 randomly selected civil servants in various regional sectors who were interviewed regarding what they know about the Oromia state constitution and the level of their awareness, more than 70 per cent responded that they were not aware that Oromia has its own constitution. They had not heard of it or been taught about it anywhere (at school, via the media, or on any other occasion), while the rest (nearly 30 per cent) said they knew little about it. Almost all the respondents said they have better knowledge of the federal constitution, as they were taught about it at school and usually follow discussions about in the media or in other contexts.

Very few people in Ethiopia are aware that state constitutions are in operation in the federal system (Tsegaye, 2004). Van der Beken (2017) asserts that even lawyers are barely aware of them owing to the inadequate attention given to these documents. This study concurs that the existence of state constitutions, in this case that of ONRS, is unknown among a considerable number of citizens residing and working in the regional state.

The above figures on the responses of the research participants reveal that the reality on the ground directly contradicts Article 9(1) of the ONRS constitution, which declares, "This constitution is the supreme law of the regional state. Any law, customary practice or any act of an agency of government or official that contradicts the provision of this constitution is null and void." Sub-article 2 of the same article also states that residents of the

region, government organs, and political organizations “have the duty to ensure observance of this constitution and to obey it”. What appears anomalous is how this observance is possible if even key individuals close to the regional government structures are unaware of the document. The study found that the state constitution is known only among a negligible number of individuals, among them being regional government dignitaries, scholars, practitioners and lawyers.

#### ***5.3.4 Urban Local Governments Not Incorporated***

As was discussed earlier, local government issues are not addressed in the FDRE Constitution. As a result, almost everything regarding the issue is left to be covered by subnational constitutions. Urban local government issues in Oromia, however, remain unaddressed not only in the national constitution but in the regional state’s constitution, which is also silent on the matter. Urban local governments in Oromia Regional State hence have remained without constitutional ground at any level. In other words, the document neither establishes urban local government units nor decides on their structure or the powers and functions of their organs. As such, urban local governments have been regulated by ordinary laws. Proclamation No. 65/2003 was the first legislation enacted to establish and regulate them, before being replaced about three years later by Proclamation No. 116/2006.

Subnational constitutions are typically instruments by which the local people control the government. This includes, among others, restraining government power and safeguarding citizens’ liberties. The fact that urban local government units are not incorporated in the Oromia state constitution implies that the urban community has no constitutional ground to control the government and that the state constitution does not regulate urban politics. This situation leaves the document without practical relevance as far as urban politics are concerned.

#### ***5.3.5 Inaccessibility***

Inaccessibility is another basic problem hampering Oromia Regional State’s constitution. For state constitutions to be functional, it is unquestionable that they need to be known among all (citizens, civil servants, scholars, politicians, and more), but it is difficult for individuals and interested groups to know what

they cannot access. It was found that people residing and working in the Oromia region had very little exposure to the state constitution. Let alone being accessible for personal or day-to-day use, the document is scarcely accessible for students, teachers, lawyers and scholars. A simple example is enough to show the extent to which the Oromia constitution is a neglected and inaccessible document. If one tries to get merely a copy of it, even if one is interested in the original publication, one has to knock on numerous doors to do so. It is, however, relatively easy to obtain the FDRE Constitution elsewhere (including on the market) in the region.<sup>16</sup> Of the 24 high school students who responded to the researcher's question regarding their access to the regional constitution, 98 per cent of them said it is not available in the library or elsewhere in their school.

A senior official at *Caffee Oromiya* with the rank of Vice Bureau Head confirmed during an interview with the researcher that the regional constitution is very hard to access, whether by individuals or organizations. He attributed the problem to poor publication and distribution of the document due to poor attention to it, among other reasons. He said that until the previous year, it had been the responsibility of the Regional Justice Bureau to publish and distribute the constitution, but it did virtually nothing in this regard due to a number of factors. Since then, according to him, the responsibility had been passed to the *Caffee*. The official also said that the regional council distributes the constitution regularly and for free only to newly elected members of the *Caffee* and district councils.<sup>17</sup> This equates to once every five years.

Moreover, two senior experts working at *Caffee Oromiya* in a department responsible for the publication and distribution of the state constitution told the researcher that the constitution is printed only when an interested body requests copies. Also, the request is acceptable only if it is made officially in writing, oth-

16 The Constitution has been unavailable online for a long time, leading to complaints by students, scholars and researchers. The researcher himself has long tried to access the revised (2001) version without being able to find it – what was available online was the 1994 version. A senior official at the *Caffee* confirmed that an electronic version of the revised state constitution has been made available online.

17 According to Article 9(2) of the ONRS constitution, it is all residents of the region, government organs, political organizations and other associations as well as their officials who are expected to obey and observe the regional constitution (not only members of the *Caffee* and *woreda* council). Making the constitution accessible (for free) only to council members is both inadequate and unfair – if it is not made freely available to them, citizens have to buy it on sale.

erwise no prints are made. Both experts said that few copies had been printed and distributed to interested bodies making such requests. Regarding the number of copies published and distributed in 2015, for instance, the respondents gave differing figures: the one said 1,500 and the other, 3,000. Either way, it appears low to negligible.<sup>18</sup> What is striking is that if individuals want to obtain even a copy, they have to produce an official letter from an esteemed organization, otherwise their request is declined. One the experts described his experience regarding this issue:

One day a lawyer came into my office and asked for a copy of the Oromia Regional State constitution. I asked him if he had an official letter, but the lawyer said he had no letter, saying he wanted the constitution for personal use. He asked to buy it, but I told him it is not for sale and not possible to get for free without a letter. “Why not?” he shouted, insisting that it is his right to get and know the constitution. After a long debate, the lawyer left the room empty-handed and terribly upset.

How can it be fair to expect citizens know, obey and observe a constitution to which they are denied access? In general, the inaccessibility of the Oromia Regional State constitution, along with related problems, has made it an unknown and an increasingly forgotten document. This is a clear indication that it has not been given adequate attention by the regional government or other concerned bodies.

### ***5.3.6 Failure to Recognize Minority Nationalities***

The unrestricted right to self-determination granted equally to all NNPs entails, inter alia, the right to equitable representation at state and federal level (Article 39 of the FDRE Constitution), a right that applies to minority ethnic groups as well. In this regard, Article 54(3) provides for special representation for minorities in that at least 20 seats in the House of Peoples’ Representatives are reserved for minority nationalities and peoples. Similar pro-

<sup>18</sup> It was estimated in 2017 that more than 40 million people live in Oromia Regional State. Publishing and distributing 1,500 or 3,000 copies is negligible in such a large and populous region.

visions would be expected in subnational constitutions as they should comply with federal principles. Moreover, since Ethiopia is composed of diverse communities, it is crucial that its political system at all its levels be inclusive and so avoid any marginalization. Another major function of state constitutions is protecting citizens' rights and freedoms – including those of minority groups – at subnational level.

In contrast, the Oromia state constitution appears to ignore minorities as it provides nothing with regard to the recognition and representation of non-Oromo groups who reside in the region. The constitution thus seems to contradict not only the national constitution but so too its own provision. Article 48(3) of Oromia's constitution provides that members of the state council (*Caffee*) are representatives of *the people of the region as a whole*; accordingly, they are accountable to all the people of the region. However, the same constitution fails to recognize minority ethno-nationalities, including those whose number is considerable. Also, it says nothing about the representation of such groups. As a result, so far no minority ethnic group has been represented in the *Caffee* or any other council notwithstanding that millions of non-Oromos live in the region. Given they have a constitutional right to take part in the political and socio-economic life of the region, they need to be embraced and granted fair representation.

### 5.3.7 Underutilization

This study finds that the Oromia state constitution is scarcely utilized, even among government officials and key institutions such as the legislature, executive and judiciary – it is underutilized by no less than the regional courts, while the citizens hardly refer to it all as a claim for rights and freedoms.

For this study, 30 dead files from the Oromia Supreme Court's archive were analyzed. The sample cases had been tried at different levels of courts (*woreda*, zonal) and eventually brought to the Supreme Court for final decision through appeal. In deciding the cases, the judges referred to various legislation 59 times. Among these references, the state constitution was referred to only twice (this to Articles 40(1) and 41(1)); in addition, the judges referred to Proclamation No. 130/1991 twice and Regulation No. 15/2005 twice. The other 53 references (nearly 90 per cent) were made to various criminal and civil laws. Similarly, during the cases, cit-



izens and others referred 41 times to different pieces of legislation as justification while appealing, defending or responding to court questions. Proclamation No. 130/1991 was mentioned three times, Regulation No. 151/2005, five times, and 33 references (about 80 per cent) were made to other statutes. The regional constitution was not mentioned once.

Moreover, the constitution has not been popular among media organizations working in the regional state. Key regional government officials, including presidents of the regional state, are seldom found quoting or referring to provisions from the state constitution in their speeches or official reports. The same is true for opposition-party leaders in the region. In this vein, 12 sample speeches by the Oromia Regional State's presidents' were reviewed by the researcher.<sup>19</sup> It was only in one of these speeches that reference to the constitution was made without qualifying it as either the federal or state one.<sup>20</sup> Government officials and civil servants, including those who work in the regional sectoral offices, have been obedient and loyal to other regional legislation and party regulations or dogmas rather than the state constitution.

Of the 30 civil servants and professionals working in the regional sectors who responded to a questionnaire for this study, about 90 per cent said that in their work they prefer to use or rely on the federal constitution rather than the regional one. A senior official at the *Caffee* admitted that the state constitution is underutilized:

Why do you ask about publishing and distributing many more copies of it while the already printed copies have barely been used? The attention given to using the state constitution is so low that the regional government is currently discussing how to improve this situation.

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19 The sample speeches were not purposively selected but the only ones the researcher could obtain in consulting with the Head of Information and Public Relations in the Office of the President. They were undated and had been delivered by the region's former presidents at different regional occasions.

20 The speech is undated (that is, the time it was compiled and delivered is not mentioned), but it was filed on 27 May 2015. It was delivered on the occasion of a May 28 Victory Day Celebration. In the speech it was said that the human and democratic rights of people have been protected by "the constitution" (p. 4). It was also mentioned that the Oromo people have been enabled to govern themselves by virtue of the constitution and laws they have adopted or enacted (p. 6). However, no specific article was mentioned.

The Oromia state constitution is overshadowed by the federal constitution. Since the onset of the federal system and establishment of Oromia Regional State, virtually all eyes have been directed towards the federal constitution and the federal government: everything is expected from the center. This deep-rooted mentality of centralism and exclusive reliance on the center is contrary to the notions of self-rule and regional autonomy in a federal constitutional order. It is partly explicable as the legacy of the unitary political system that had prevailed in the past since the late 19<sup>th</sup> century by harshly abolishing all local powers.

As a result of this centralistic outlook, Oromia's constitution has been neglected to the point of seeming non-existence while nearly the entire focus among politicians, scholars, lawyers and educators, among others, has been on the federal constitution. Scholars such as Tarr (2007) underscore that the relationship between federal and subnational constitutions in federal system needs to be complementary rather hierarchical. Hawkins argues that the US federal system, one of the longest-standing federations in the world, is built upon two pillars – the federal constitution and the state constitutions – and that if one or the other is cut down in size or raised too high, the system becomes “imbalanced” (1989, p. 1). This can be taken as an indication that federal systems are not likely to stand balanced without an active role being played by subnational constitutions.

## 6. Conclusion

The significance of subnational constitutions as instruments of self-rule in federations is unquestionable. Subnational constitutionalism, however, goes beyond having and adopting a subnational constitution and entails that both those who govern and who are governed respect, and enjoy the protection of, such a constitution. In this light, this study has examined the role and practical relevance of the Oromia Regional State's constitution.

The study revealed that the implementation of the constitution has been extremely limited. Several major challenges were identified in accounting for the situation. First, the constitution lacks legitimacy of origin as there was negligible public consultation during its development. Secondly, it has been inaccessible and

poorly publicised. Thirdly, it fails to reflect the regional state and its people, or provide an alternative public policy that serves the polity and interests of the Oromo people. Fourthly, given that urban local government issues are not incorporated in the document, the constitution has been unable to regulate urban politics. Moreover, it fails to provide for the recognition and representation of minority nationalities. Finally, and chiefly, its effectiveness is severely hampered by its invisibility and underutilization.

In a nutshell, though the state constitution has played an indispensable role in organizing the regional state, it has remained “hiding its light under a bushel” in practice over the past two and half decades of its life. At a minimum, the state constitution need to be easily accessible – electronically or otherwise – to the citizenry, interested individuals or groups. It should also be taught in schools and other educational institutions in the region. Above all, the constitution needs to be amended in order to address all the major drawbacks pinpointed by this study, with special attention paid to ensuring its legitimacy through meaningful public consultation.

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