

CONSTITUTION MAKING IN ETHIOPIA: A LOOK BACK AT THE FAULTY FOUNDATION OF THE FEDERATION

Simeneh Kiros Assefa*

Abstract

The Transitional Government of Ethiopia Council of Representatives was constituted of ethnic armed groups, the prominent ones being the EPRDF and OLF. This organ paved the way for the ethnic-based federation, that was to be formally instituted by the FDRE Constitution of 1995, under the guise of self-administration, while it aggressively and effectively worked to perpetually deny assuming local power to those identified as “non-indigenous people”. The constitution-making process was so flawed it involved several unacceptable practices by common sense which now also include “unconstitutional” local rules and state practices.

Both the formation of the TGE and the adoption of the FDRE Constitution were to give a mere semblance of legitimacy to the TPLF Government. This article argues that the current constitutional order did not have foundational legitimacy; neither has it acquired subsequent legitimacy by a fair and inclusive application of its rules. Any dialogue for constitutional amendment should take these facts into consideration.

Key-terms. *Political representation, Transitional Government of Ethiopia, indigenous people, exogenous people, gerrymandering, quota seat*

* Associate Professor of Law, Addis Ababa University. LL.B., Addis Ababa University 1998; LL.M., University of Pretoria 2002; LL.M., Kyushu University 2006; LL.M., University of San Francisco 2008; PhD, Addis Ababa University, 2020. Member of Ethiopian Bar Association; California State Bar (inactive). Email: simekiros@gmail.com

Introduction

Ethiopia had always been a unitary state despite the diversity of its people.¹ In the last days of the Military Government (also known as the Derg) and its vanguard party, the Workers' Party of Ethiopia ("WPE"), the United States mediated the London Conference where the Ethiopian Government, Ethiopian People Revolutionary Democratic Front ("EPRDF") led by Tigray People's Liberation Front ("TPLF"), Oromo Liberation Front ("OLF") and Eritrean People's Liberation Front ("EPLF") were participants. When the Conference collapsed because of EPRDF's advance to Addis Ababa, the US under-secretary Herman Cohen advised the EPRDF army to enter Addis Ababa and control political power. EPRDF then called a conference where the Transitional Government of Ethiopia ("TGE") would be established. The participants of the conference were handpicked by the TPLF leadership; they were armed factions and prominent personalities of the day most of whom later established political organizations along their ethnic lines.

The conference adopted the Transitional Period Charter which established the Council of Representatives with 87 seats. The participants of the conference scrambled 81 of those seats among themselves. The remaining 6 seats were also allocated to other minority groups.

The majority of the population, because they were not ethnically aligned, were not represented both at the conference and later in the TGE. Yet, the Transitional Government of Ethiopia made key decisions the effect of which continues to date. Included is the establishment of administrative regions based on ethnic lines under the guise of

¹ There were local/regional kings, but there was a king of kings at the center.

conducting local elections as per *National/Regional Self-Governments Establishment Proclamation No 7/1992* (“Proc No 7/1992”). The current federal structure was created by the Federal Democratic Republic of Ethiopia Constitution without significant changes to the administrative arrangement made under the statute Proc No 7/1992.²

Although the Constitution of the Federal Democratic Republic of Ethiopia (“FDRE Constitution”) has several rosy provisions, their application is nullified by state constitutions and key local legislation. The Constitution subscribes to the wrong narrative that one ethnic group oppressed another. This would come with the consequence that the newly established ethnic-based regional states are liberated from such dominion. That would further come up with provisions in the constitutions of the respective regional states recognizing ownership of the state to those “indigenous” people, and subsidiary laws perpetually excluding so-called “exogenous” people domiciled in those regional states from sharing political power.

This article argues that the TGE is established without any semblance of representation of those who are not ethnically aligned, who would constitute the majority of the population at the time. The lack of representation, for the most part, is the lack of ethnic nationalism consciousness at the time, but there was also the systematic exclusion of certain groups from any form of political opportunity by those who had power. The lack of representation subjected those who were not aligned ethnically to all forms of physical abuse and human rights violations, including genocide and crimes against humanity. The state, both the federal and the respective states, consistently failed to even

² Everyone at the Conference would claim their share of the Federation; whatever is left would later constitute Region Three or now Amhara National Regional State.

recognize the incidents in their proper designation let alone to take corrective measures, which in turn gives the impression that the state structure is abating those atrocious crimes.

The study is made based on a review of the primary documents, such as minutes of parliamentary proceedings,³ the legislation adopted through the process, standing and ad-hoc committee investigative reports, and minutes of the Constitutional Assembly. To reconstruct the socio-political conditions of the time, only state-issued news reports are reviewed.⁴ Some court decisions are also reviewed.

Section one advances the argument that the current constitutional order lacks both foundational and continued legitimacy. Strengthening this argument, section two deals with the formation of the TGE, the initial selection of participants of the Conference, and the (standards for) allocation of seats in the Council of Representatives of the TGE. It also discusses the establishment of political organizations for those groups that did not have such organizations at the July conference and the creation of a coalition for those political organizations claiming to represent one people.

Section three discusses key decisions that impact the nature of the state and other interests, such as the formation of the TGE, the establishment

³ The minutes were not taken verbatim, nor were they properly recorded. The minutes contain grammatical errors and, in some instances, the whole paragraph does not make sense. Effort is made to make sense of critical part of the minutes by reading in the context of minutes of other proceedings.

⁴ There were limited private news media, exclusively newspapers and magazines. However, as they were considered as biased and sensational by the Government, and many of the reporters and editors were charged for violation of the media law, I do not review those materials. I rather stick to the state issued reports because they are raw reports of facts and amount to be admission by the state. The joint reading of the minutes and the news reports give, I hope, clearer picture of events of the day.

of the self-government regions under the guise of the first local elections, the standards for the geographic and ethnic demarcation and designation of localities/regions, and the deliberations conducted in the process. This section further discusses the predicaments of members of the Council of Representatives in making genuine decisions.

Section four discusses subsequent developments, such as the adoption of the FDRE Constitution under the strict supervision of the TPLF-controlled Council of Representatives to ensure the original design is preserved, and the adoption of the respective regional constitutions defining whom those regions belong to with the intent to exclude exogenous people residing in those regions from local political power. This section further illustrates the physical violence and atrocious crimes committed against the exogenous people residing in those regions. The previous sections argue that the current constitutional order does not have foundational legitimacy; a part of section three, and the subsequent section are intended to show that the current constitutional order has failed to acquire subsequent legitimacy by inclusive application. The article concludes with remarks on the way forward.

1. Setting the Argument for Lack of Legitimacy of the Current Constitutional Order

In constitutional making, both in the development of the instrument and the institutions of governance, public participation is essential for the legitimacy of the government that would come to power.⁵ A constitutional order may obtain its legitimacy either at the foundational level or subsequently by a fair and inclusive application of

⁵ Justin Blount, 'Participation in Constitutional Design' in Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law* (Edward Elgar 2011) 38, 39.

such constitution.⁶ This article argues that the current Ethiopian constitutional order neither had the foundational legitimacy in its making nor has it acquired subsequent legitimacy by inclusive application of those constitutional rules.

The FDRE Constitution is not made when the convention was called in 1995. Rather, its making started much earlier during the conduct of the July 1991 Conference establishing the TGE which was in charge for two and a half years. At the same time, the July conference would be traced back to the London Conference mediated by the US where the main ethnic-based armed movements—EPRDF, OLF, and EPLF⁷—were negotiating with the then Ethiopian Government under WPE for the sharing of the political power of sorts to form a transitional government. However, events fast unfolded and the President of the Republic, Mengistu Hailemariam, fled the country to Zimbabwe.⁸ Mr. Herman Cohen “advised” the EPRDF army to enter the city and take control of political power. The initial opposition to such a process was stated at a hearing by the US Congress Foreign Affairs Committee that the London Conference was structurally defective because it does not represent the majority of the population that is not ethnically aligned whether armed or other political organization.⁹

⁶ Randy E Barnett, ‘Constitutional Legitimacy’ (2003) *103 Colum L Rev* 111; Richard H Fallon Jr. ‘Legitimacy and the Constitution’ (2005) *118 Harvard LR* 1787.

⁷ Reference to a particular people, place or political organization is made as it used to be referred to by the time the discussions were made. Further, EPLF participated in the conference as Eritrea was part of the state of Ethiopia by then.

⁸ EPRDF was demanding postponement of the negotiation as it was advancing to Addis Ababa. *Addis Zemen*, at ‘Press Statement from Council of State’ *Addis Zemen* (May 17, 1991, Addis Ababa) 1, 6.

⁹ Protest in foreign offices is reported in the local newspapers. See for instance public protest in Rome, Washington DC, which is blamed on those Ethiopianist movements. ‘Anti-Peace Forces in Foreign Land Plotting Harm’ *Addis Zemen*, June 7, 1991, Addis Ababa) 1, 4.

Yet, the formation of the TGE, a façade for creating the impression of legitimacy, was an important milestone for the current federal structure.¹⁰ The participation in the formation of the TGE should have been made taking into account the social, political, ethnic, religious and other faultlines into consideration. The participants of the July 1991 Conference were handpicked by TPLF from those armed factions that were said to have fought for their ethnic group, or individuals as though they represented a people of some kind, many of whom form political organizations later in the process. Ethnic identity has informed the selection of participants, the discussion in the formation of the TGE, and the outcome of the Conference.

The majority of the population which had not been organized along ethnic lines were not represented both at the July Conference or the TGE Council of Representatives which made significant decisions that determine the fate of the nation. Goshu Wolde's comparison of Yasir Arafat (of PLO) and George Habash (of Popular Front for the Liberation of Palestine) deciding on the fate of the State of Israel without the state of Israel participating in the process, to that of the London Conference is a sensible comparison.

What happened was that an unelected group that participated in the Conference established the TGE, granted itself the supreme power of the Central Government in the TGE,¹¹ and authorized itself to define

¹⁰ The US under-secretary Herman Cohen made it clear to the Foreign Relations Subcommittee that the US Government had been in contact with the EPRDF for the previous two years and they made it clear to EPRDF that 'No democratization - no US cooperation'. Thus, EPRDF had to prove it was a democratic force.

¹¹ *Transitional Period Charter Proclamation No 1/1991*, art 8. Further, in relation to the power of the regional administrative authority, the Chairman of the Council explains what supreme political authority means. Minutes of 22nd Regular Session of the Council of Representatives of TGE (November 14, 16, 1991 Addis Ababa) 3.

administrative boundaries, and conducted local elections to assume power at the regional level. Even when the first elections were conducted, it was not for election of members of the Council of Representatives, which is the supreme political organ; it was just a local election. It is a group that just come together and in a continuous drama creates the impression of the legitimacy of its existence as a government, its powers and subsequent actions. It would also decide the content of the constitution finally adopted as FDRE Constitution.

The TGE adopted fundamental pieces of legislation that would define the constitutional state of affairs, such as Proc No 7/1992; *Creation of Appropriate Conditions for Conducting National/Regional Self-Government Elections Proclamation No 9/1992* ("Proc No 9/1992") and *National/Regional and Wereda Councils Members Election Commission Establishment Proclamation No 11/1992* ("Proc No 11/1992"). While those statutes contained provisions that were meant to preclude effective contest for power from previous regime officials, subsidiary legislation in the form of directives vest all powers and opportunities to those that have assumed power. Accordingly, former members of WPE, armed forces, police forces and security services would not participate in the local election either as electorate or candidates.¹² The guidelines adopted by the Election Commission designate two major contending political organizations in the respective constituency both as candidates and executors of the election both at the national and local level.¹³

¹² *National/Regional and Wereda Councils Members Election Commission Establishment Proclamation No 11/1992* ("Proc No 11/1992") art 26.

¹³ Guideline regarding the execution of the local election adopted by the National Election Commission as per the provisions of Proclamation No 11/1992, *Ibid*. In this guideline, the two main contending political organizations in the respective regions and zones

In the discussion for the adoption of the above-mentioned legislation, members of the Council were explicit in how to exclude whom they refer to as “exogenous” people from running for national regional office and to reduce the impact of their votes because they constitute the majority in urban centers in Southern Ethiopia, and in some rural places, such as Gambella and Benishangul.¹⁴ Initially, the designation was made based on language, but later the discussion focuses on primordial ethnic origin.¹⁵

Different mechanisms were devised to protect those so-called “political powers of indigenous people”. In many places, certain quotas were reserved in the city or regional council for those who are said to be “owners” of the region; in some places, to dilute the votes of those “exogenous people”, gerrymandering was legally introduced and implemented. Those were the debates members of the TGE Council of Representatives had.¹⁶ Not all those explicit parliamentary discussions were translated into law, save the quota seat and gerrymandering.

were designated as election executors. *Addis Zemen* (May 19, 1992, Addis Ababa) 1, 3, and 5. See (n 52).

¹⁴ Minutes of the 20th Regular Session of the Council of Representatives of TGE (October 31, November 2, 5, 7, 1991 Addis Ababa) at 3 ff.; Minutes of 30th Regular Session of the Council of Representatives of TGE (January 2, 1992) 7 – 8.

¹⁵ Minutes of the 23rd Regular Session of the Council of Representatives of the TGE (November 21, 23, 1991, Addis Ababa) 6 – 9. In fact, in finalizing the discussion on the draft of would-be Proc No 7/1992, the members made it clear they focus on the biological identity.

¹⁶ See, for instance, Simeneh Kiros Assefa “Legitimizing Gerrymandering in Harari Regional State Contrary to the Principle of Equality of Votes” (2021) 15 (1) *Mizan Law Review* 271; Twentieth Regular Session (n 14).

These legal and institutional arrangements have continued to date and the last general elections (of 2021) were conducted based on them.¹⁷ The provisions of the Constitution such as the right to equality, popular sovereignty and universal and equal suffrage are circumvented by various state practices and subsidiary legislation. Neither the federal government nor the states have taken corrective measures for decades.¹⁸

2. The July 1991 Conference and Formation of the TGE

2.1. Selection of Participants of the Conference

On May 28, 1991, EPRDF took control of the City of Addis Ababa. One of the largest armies in Africa belonging to the military government that had ruled the country since 1974 was demobilized.¹⁹ Likewise, those state institutions which EPRDF considers institutions of oppression of the previous regime, such as the police, prison and security services, including WPE and related institutions were “formally” banned.²⁰ There were several armed factions that were said

¹⁷ *The National Election Board of Ethiopia v Harari National Council of the Harari People State Council of Representatives* (May 27, 2021, Federal Supreme Court Cassation Division File No 207036).

¹⁸ *Ibid.* Many of those issues were not discussed at all but even those raised were rejected. See, text for note 159 *infra*.

¹⁹ Initially, the Provisional Government, by a directive, established a Rehabilitation Commission. The Commission was mandated to reintegrate members of the Armed Forces back to their civilian life, to select those qualified to join the would-be established army of the Central Government, to retire those who sustained severe physical injury. ‘Directive for the Establishment of Rehabilitation Commission’ *Addis Zemen* (June 16, 1991, Addis Ababa) 1, 6. However, later at the Parliamentary discussion, the President of the TGE ruled that none of the members of those Armed Forces was qualified to join the new national defence force. Thus, the EPRDF army was decided to be the TGE Defence Force. Minutes of the 7th Regular Session of the Council of Representatives of the TGE (August 8, 1991, Addis Ababa) 12 – 14.

²⁰ Those institutions were abolished by a directive issued by the Office of the Acting Prime Minister of the Provisional Government on June 18, 1991. While the Directive was

to have fought against the central government which would contend for power, and the size of the EPRDF armed force was not significant for the country.

It appears to be a continuation of the London conference that EPRDF would call a national conference for the formation of a transitional government (hereinafter referred to as “July Conference”) that involved those armed groups and other ethnic liberation movements. It was stated by the organizers of the Conference—chaired by Meles Zenawi, the Chairman of EPRDF—that EPRDF made the selection of those who would participate in the Conference; and they made personal contacts with those factions and individuals.²¹ It was, therefore, the sole discretion of EPRDF in selecting the participants. EPRDF has a critical assessment of the strength of each armed group both in the July Conference and after the formation of the Transitional Government to control matters before the election that would come as a local election.²²

It is stated by the Chairman of EPRDF that there were political organizations who would want to participate in the July Conference. He further stated that not all of them were invited to the Conference. There is no record showing those who were excluded and the grounds for such exclusion of applicants. However, it was stated that the

meant to re-establish state public service, article 1.2 and 1.3 abolishes such institutions. *Directive Issued to Re-Established State Public Service Addis Zemen*, June 20, 1991, Addis Ababa 1 and 3. Further, the Charter (n 11) Preamble, para 5, alluded: “all institutions of repression installed by the previous regime shall be dismantled”.

²¹ Opening Speech of the Provisional President of Ethiopia, Meles Zenawi at the National Conference for the Establishment of Transitional Government, *Addis Zemen* (July 2, 1991, Addis Ababa) 3.

²² OLF, recognized by the US to be a member of the London Conference, was the only other group that finally got 12 (the “highest” number of) seats in the Council of Representatives. See text accompanying (n 31).

selection criteria were whether a particular group had contributed to the fight to depose the previous regime and whether they represented a particular idea or set of beliefs that is worth entertaining.²³

The Chairman would also state that those who participated in the Conference were based on a set of beliefs and ideas, not identity; and that there was no political opinion excluded. This, he repeated in his opening speech at the Conference.²⁴ The question was what was the opinion entertained at the Conference? It was the adoption of the Transitional Period Charter and the establishment of the TGE. But it appears that the EPRDF had invited those it believed it could “work with” and excluded those whom it believed it “would not work with”.²⁵

Those invited to participate in the July Conference were presented to be predominantly armed movements; they were said to have been fighting to liberate a particular ethnic group they claim to represent. Thus, before the 1992 local elections, those who claimed to have an army were required to fill in a form declaring they have an army. Once that is ascertained by the Defence and Security Standing Committee of the Council of Representatives of the TGE, the size of the army was determined for internment into military barracks, distribution of

²³ See, for instance, the case of EDU (n 35).

²⁴ Opening Speech (n 21). Also, see *the Editorial* “It should be viewed from the Perspective of Public Good” *Addis Zemen* (July 2, 1991, Addis Ababa) 2.

²⁵ EPRDF and OLF, after discussions facilitated by the US representative, made several rounds of joint press statements that they agreed to work together, including taking seminars together on high-ranking officials levels. See, for instance, *Addis Zemen* (October 20, 1991, Addis Ababa) 1, 8; *Addis Zemen* (October 30, 1991, Addis Ababa) 1, 5.

uniforms, stipend, etc.²⁶ There were also a few representatives of particular ethnic groups or institutions that did not have armies.

2.2. Participants of the July Conference, formation of the TGE

It is stated above that most of the participants of the Conference were handpicked by EPRDF. A few of them were armed factions formed to liberate a particular ethnic group they claim to represent, and most of those other ethnic-based organizations were formed in the process. National political organizations were given very little place. The list of participants as read by the Chairman at the Conference was:²⁷

1. Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), comprising: (a) Ethiopian People's Democratic Movement (EPDM), (b) Tigray People's Liberation Front (TPLF), (c) Oromo People's Democratic Organization (OPDO), and (d) Ethiopian Democratic Officers' Revolutionary Movement (EDORM),
2. Oromo Liberation Front (OLF),
3. Afar Liberation Front (ALF),
4. Benishangul People's Liberation Movement (BPLM),
5. Gambella People's Liberation Movement (GPLM),

²⁶ It should also be noted that this Committee was in charge of the demobilization of the former army. See for instance, Minutes of 18th Regular Session of the Council of Representatives of TGE (October 15, 17, 1991 Addis Ababa) 13 ff.

²⁷ "Participants and Observers of the Conference" *Addis Zemen* (July 7, 1991, Addis Ababa) 1, 7. The list is not as reported in the newspaper though. Under the PDRE there was only one political party – the WPE. Because no other political party was allowed, those opposing political organizations were fronts or movements. The newly created political organizations also followed suit in that establishment of fronts and movements was easier than establishing a political party in the absence of a registration office. The *Political Parties Registration Proclamation No 46/1993* was adopted only on April 15, 1993.

6. Gurage People's Democratic Front (GPDF),
7. Sidama People's Liberation Movement (SLM),
8. Islamic Front for the Liberation of Oromia (IFLO),
9. Oromo Abbo Liberation Front (OALF),
10. Oromo People's Liberation Front (OPLF),
11. Hadiya National Democratic Organization (HNDO),
12. Wolayita People's Democratic Front (WPDF),
13. Western Somali Liberation Front (WSLF),
14. Issa and Gurgura Liberation Front,
15. Horiyal,
16. Ethiopian Democratic Union (EDU),
17. Ethiopian National Democratic Organization (ENDO),
18. Ethiopian Democratic Coalition (EDC),
19. Ethiopian Democratic Movement Group (EDAG)²⁸

There were also those named as prominent personalities representing the following people:

20. Adere (Harari),²⁹
21. Kenbata, and
22. The Omotic people.

²⁸ The news report under numbers (n 24) and (n 25) repeats University Representatives and Workers Representatives. Some of those political organizations are created later in the process. By the time the Conference was progressing, many of the participants, despite they were designated to represent particular ethnic groups, did not have political organizations.

²⁹ The Adere representative announced to the Members of the Council of Representatives that the Adere people would thereafter be referred to as Harari People. Twenty-Third Regular Session (n 15) 2.

Further participants of the following institutions:

23. Addis Ababa University, and

24. The Labour Group.

There is no record showing a specific number of seats allocated to a particular group; the seats were rather allocated to the political organization or the people said to be represented. Even those individuals who did not have a political organization were treated as if they would represent a particular ethnic group. In the process of the adoption of the Transitional Period Charter and the establishment of TGE, decisions were made by consensus.

The Chairman frequently stated that it is opinions that were represented in the Conference, not identity. However, a mere reading of the name of those armed factions, or those people represented at the Conference, shows participants were defined along ethnic line.

2.3. Distribution of Parliamentary Seats in TGE

The Transitional Period Charter established a Council of Representatives with 87 seats.³⁰ The Charter provides that the “Council of Representatives shall be composed of representatives of national liberation movements, other political organizations and prominent individuals.” The selection process is not provided for; those who participated in the Conference continued to be members of the Council of Representatives of the Transitional Government. As in the selection of participants of the July Conference, the number of seats allocated to each group is designated by TPLF. Thus, of those 81 seats 32 were taken by EPRDF, and 12 were given to OLF. The remaining seats were

³⁰ The Charter (n 11), art 7.

distributed among 27 political organizations – 14 organizations were given 1 seat each; 10 organizations were given 2 seats each and 3 organizations were given 3 seats each, including those newcomers.³¹

The standards for the allocation of seats appear to be indeterminate. However, because those armed factions were meant for the “liberation” of the ethnic group they belong to, it gives a wrong impression that the seats were allocated in proportion to the people they represent. However, a review of the documents reveals that the seats were allocated to the political group³² in proportion to the size of the army of the respective armed groups.

While the EPRDF army would be transformed into the Transitional Government army until a constitutional government is established,³³ OLF army was determined to be 20,000 which was estimated to be the largest next to the EPRDF's. Afar Liberation Front's (ALF) army was determined to be 2,500, while those of the Benishangul People's Liberation Movement (BPLM) and Gambella Peoples' Liberation Movement's (GPLM) army were estimated to have 1,500 and 1,200

³¹ The allocations of seats was approved by majority vote of those who attended the July Conference. “TGE House Seats are Allocated” *Addis Zemen* (July 6, and 7, 1991, Addis Ababa) 1, 4.

³² It is the political organization that determines who represent such organization. For instance, where Oromo Abbo Liberation Front was divided into two, the House left the matter to the organization to determine its representative. Likewise, the minutes show individual representatives change by the respective organization. Minutes of 38th Regular Session of the Council of Representatives of TGE (April 2 and 7, 1992, Addis Ababa) 12 – 15.

³³ Seventh Regular Session (n 19) 15 – 18. *Deployment of the State Defence Army of the Central Transitional Government and the Establishment of the Police Force Proclamation No 8/1991*, art 3(1) provides that as per the decision of the Council of Representatives in its Seventh Regular Session, EPRDF army would serve as the TGE army. Minutes of the 25th Regular Session of the Council of Representatives of TGE (December 5, 1991).

fighters, respectively.³⁴ While the Oromo Liberation Islamic Front (IFLO) did not complete the form, it is interesting to note that Western Somali Liberation Front (WSLF), Ethiopian Democratic Union (EDU),³⁵ United Oromo People Liberation Front (UOPLF) were reported by the Committee as having no army.

2.4. Distribution of the Remaining 6 Seats

Of those 87 seats, 6 were reserved for new applicants to join the Council of Representatives. There were more than 20 applicants to take those seats.³⁶ Records show that the majority of the Council Members agreed that those 6 new seats should be allocated to those who were not already represented in the Council.³⁷ A committee would be established by the Council of Representatives to make proposed decisions. Thus, the Committee was given the standard for the development of the proposed decision for allocation of those 6 seats that it “should not consider those which can organize freely, it should consider those people who cannot organize” and “those which are not represented in the Council directly or indirectly”.³⁸

When the ad-hoc committee was reporting its proposed decision to the plenary session, on August 27, 1991, a member raised a question regarding what “measures it [the committee] has taken to have the

³⁴ Report of the Defence and Security Policy Standing Committee to the TGE Council of Representatives, April 11, 1992 (Saturday), presented at the Thirty-Ninth Regular Session, 5.

³⁵ EDU claimed it had fought against the WPE regime in Begemder; EPRDF sternly responded there was no EDU army when EPRDF controls Gondar. Seventh Regular Session (n 19) 16.

³⁶ “Statement of TGE Council of Representatives” *Addis Zemen* (September 28, 1991, Addis Ababa) 6.

³⁷ Seventh Regular Session (n 19) 10.

³⁸ *Ibid.* 9 – 10.

Amhara Nationality represented”.³⁹ It was replied “an explanation is included under number 7 of the report”. The report is not accessible. However, based on the 1984 census⁴⁰ the remaining seats were allocated as follows:⁴¹

1. Agew People Democratic Movement, 1 seat;
2. Kefa Administrative Region People Democratic Union, 2 seats;
3. Gedeo People Democratic Organization, 1 seat;
4. Yem Nation Movement, 1 seat;
5. Burji People Democratic Organization, 1 seat.

A review of events of the day from the readings of *Addis Zemen*, the official and the only newspaper of the time, depicts that those organizations were established to obtain seats in the Council of Representatives of the TGE.⁴² Yet, the Amhara conference was called after all the 87 parliamentary seats were allocated.⁴³ Ironically, research commissioned by TPLF (Tigray Government) in March 2018 reveals

³⁹ Minutes of 12th Regular Session of the Council of Representatives of TGE (August 22, 27, 28, and 29, 1991 Addis Ababa) 6, 7. It should be noted that all the proceedings were closed to the public. It is only in its Twenty-Ninth Regular Session the Council considers whether such hearings would be open to the public.

⁴⁰ The Council had reservation for the determination of electoral districts but it applied in this case including denying a seat to Tigre Worji. Note that members of the Council of Representatives and political organizations who allocate seats to themselves in proportion to the size of their army, now distribute seats based on population size. The population of Agew people was 489,834; that of Burji people 43,259; Gedeo people 455,408; Keffa people 467,585 and Yem people 124,378. *Addis Zemen* (September 28, 1991 Addis Ababa) 7.

⁴¹ “Statement of TGE Council of Representatives” (n 36) 6.

⁴² For instance, the Yem People Democratic Movement established itself and introduced its Action-Plan to member of the ethnic group. *Addis Zemen* (September 24, 1991 Addis Ababa) 1 and 5.

⁴³ The first officially recognized meeting in the now-called Amhara region was in Bahir Dar, then an insignificant small town, and the participants were office and household furniture workers. It appears a test meeting in the Region. *Addis Zemen* (October 30, 1991, Addis Ababa) 5.

that the so-called “conference” at Gondar was rather meant to convince the Ethiopian People’s Democratic Movement (EPDM) cadres of the inclusion of Wolkait in the Tigray region.⁴⁴

2.5. Significance of Participation in the July Conference

Participation in the Conference is participation in the actual constitutional-making and continued participation in governance, including defining the content of the FDRE Constitution.⁴⁵ However, it also literally was about representing oneself in defining one’s interests and realizing such interests. That means, they were handpicked by TPLF, but in the end they were the ones that would decide the fate of the nation in critical decisions under the tutelage of TPLF. The participants of the Conference adopted the Transitional Period Charter; forming a government to govern the nation for the coming two and a half years.⁴⁶ They authorize themselves, through the Charter, to establish local administrative organs;⁴⁷ hold local elections within three months of the adoption of the Charter.⁴⁸ The TGE appointed ministers and commissioners of the Central Government.⁴⁹

Three lasting effects could be gleaned from such self-authorization. First, the Transitional Government Council of Representatives

⁴⁴ It was presented to high-ranking officials including the then Deputy President of the Region. Once the finding is determined to be not aligned to their expectations, TPLF banned any conversation on the research and its outcomes, a researcher involved confided to this author.

⁴⁵ See, the text accompanying (n 140–142).

⁴⁶ The Charter (n 11) arts 6, 8.

⁴⁷ *Ibid.*, art 13.

⁴⁸ The Charter, under article 13 provides that: “There shall be a law establishing local and regional councils for local administrative purposes defined on the basis of nationality. Elections for such local and regional councils shall be held within three months of the establishment of the Transitional Government, wherever local conditions allow.”

⁴⁹ Minutes of 8th Regular Session of the Council of Representatives of TGE (August 10, 1991 Addis Ababa) 1– 5.

established a standing committee that would facilitate conducting the national/regional elections. To conduct the election, electoral districts needed to be determined. Under the pretext of determining electoral districts, administrative arrangements were determined. The Committee came up with a new administrative structure based on identity, classifying the country into thirteen ethnic-based administrative regions, with the capital Addis Ababa as the fourteenth region.⁵⁰

Second, in the Seventh Regular Session of the Council, the Chairman of the Defence and Security Policy Standing Committee stated that “the fundamental principle of the new order is nations and nationalities shall have self-governance; therefore, they would address security issues, among others, in their respective territory/region”. Looking back, this speaks to the unstated agreement that, eventually, the various armed factions would administer “their respective territories”.

However, because their power was found to be limited and there were ongoing conflicts in many places, the Council of Representatives, by a proclamation, established provisional local administration.⁵¹ Even though members of the provisional *Kebele* and *Woreda* administration would be elected by the community, excluded were members of Dergue/WPE, former security, police and armed forces. Thus, those armed groups represented in the Council had an exclusive chance to be

⁵⁰ Minutes of the 16th Regular Session of the Council of Representatives of TGE (October 3, 5, and 8, 1991 Addis Ababa) 5 - 7. The Charter, under article 2, provides that “[t]he rights of nations, nationalities and peoples to self-determination is affirmed.” Sub-article (b) further provides that “each nation, nationality and people is guaranteed the right to [a]dminister its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation”.

⁵¹ *Creation of Appropriate Conditions for Conducting National/Regional Self-Government Elections Proclamation No 9/1992* (“Proc No 9/1992”) art 5.

elected in the provisional administration, and the subsequent election for the formation of national/regional government.

They solidified their local power because they decided to be election executors in their respective regions/states.⁵² Accordingly, TPLF controlled Region One (later referred to as Tigray), OLF and later OPDO controlled Region Four (later referred to as Oromia), Harari National League became in charge of Region Thirteen (Harari State), Benishangul Peoples' Liberation Movement seized Region Six (Benishangul), Gambella People's Liberation Movement controlled Gambella Region, and Afar Liberation Front would took charge of Region Two (Afar). This way, they fully uprooted the bureaucracy of the previous government.⁵³

Third, the Council of Representatives considered the issue of language in education an essential part of the determination of identity. The issue of language was frequently discussed because the new academic

⁵² Proclamation No 11/1992 (n 12) art 10 establishes National/Regional Electoral Committee, Zone Electoral Committee, Wereda Electoral Committee, and Polling Station Electoral Committee. The various directives and guidelines adopted by the Election Executive Committee authorize designation of election committee members by the two major contending parties in a constituency. For instance, for Woreda Election Committee, the two major contending parties each designate one representative and the chairperson is elected by the public in the presence of the two representatives. *Addis Zemen* (June 02, 1992 Addis Ababa) 1 and 11. For Zonal Election Committee the two major contending parties each designate two representatives but the chairperson is designated by the national Election Executive Committee. *Addis Zemen* (May 28, 1992, Addis Ababa) 1, 6, and 7; *Addis Zemen* (May 29, 1992 Addis Ababa) 9; *Addis Zemen* (May 31, 1992 Addis Ababa) 1 and 11. There was no contending party in Region 1 for TPLF. The consequential fairness of the process was discussed in the Thirty-First Regular Session. Minutes of 31st Regular Session of the Council of Representatives of TGE (January 9, 14, and 16, 1992 Addis Ababa) 2 – 3. In fact, of those 31 political organizations 20 were members of the Council and 11 were not. Minutes of 34th Regular Session of the Council of Representatives of TGE (February 13, 1992, Addis Ababa) 3.

⁵³ See, text accompanying (n 109).

year would start already. Because the Ministry of Education was believed not to have addressed the issue well, a committee of seven members was established to address the matter.⁵⁴ At some point, OLF even proposed to replace the staff of the Ministry of Education with OLF's own staff.⁵⁵ The important thing was, several of ethnic groups those who use other languages than Amharic/Tigrigna preferred the Latin alphabet to *Geez Fidel* and it was discussed whether it would be feasible to begin class that academic year.⁵⁶ In the same process History, as subject of study, would be banned from schools.⁵⁷

Those political organizations did the best they can in implementing their "aspirations". This is particularly manifested by OLF in promoting *Afan Oromo* to be scripted in the Latin alphabet.⁵⁸ It launched a newspaper entitled "Bekelcha Oromia" in Oromiffa and

⁵⁴ Members of the committee were: (1) Dr Gebreab Bernabas, (2) Ato Mohammed Ougas Abdi, (3) Ato Alemayehu Tarekegn, (4) Ato Mohammed Abdurahman (Chair), (5) Ato Abajebel Tahiro, (6) Ato Tewodros Ephraim, and (7) Ato Woldeamanuel Dubale. Sixteenth Regular Session (n 50) 4.

⁵⁵ Eighteenth Regular Session (n 26) 26, 27.

⁵⁶ Minutes of the 17th Regular Session of the Council of Representatives of TGE (October 10, 1991, Addis Ababa) 3 – 5. Eighteenth Regular Session (n 26) 24 ff. Those who finally decided to use the Latin alphabet were Oromo and Sidama representatives. *Ibid.*, 31.

⁵⁷ It was raised by the Chairman and an OLF representative vigorously supported the proposal to ban history subject in schools. Eighteenth Regular Session (n 26) 27 – 30. It is worth mentioning that whether Amharic should be taught as a subject and whether it should be given at grade 1, 4 or 7 is debated; *Ibid.*, 24; Seventeenth Regular Session (n 56) 5.

⁵⁸ Some of the reports were misrepresented. "Oromo Elders Conference Concluded" *Addis Zemen* (November 1, 1991, Addis Ababa) 1, 5. "Association of Wollo Oromo Established in Addis Ababa", *Addis Zemen* (November 6, 1991, Addis Ababa) 1, 5. All the five Oromo political organizations were present and it was decided Latin alphabet is preferred to *Geez Fidel* for *Afan Oromo* which was presented by OLF as part of the Council of Representatives decision.

Amharic and the *Oromiffa* version would be written in the Latin alphabet.⁵⁹

2.6. Subsequent Developments Relative to “the Participants”

As noted earlier, the participants of the July Conference were political organizations and prominent individuals. There were two ways of progress relative to participants of the Conference. First, for those individuals who participated in the Conference with an ethnic name tag, the required political organizations would be created. For instance, the Omotic People Democratic Front (OPDF) and Kenbata People Congress (KPC) were freshly established. Likewise, the Harari National League was established on August 25, 1991,⁶⁰ and put forward its demands and had it approved by the TGE Council of Representatives.⁶¹ Finally, the Yem people's representative later established the Yem National Democratic Movement (YNDM).⁶²

In some instances, several groups were claiming to fight for the freedom of a particular ethnic group. Their participation in the July

⁵⁹ “A newspapers *Bekelcha Oromia* is launched” *Addis Zemen* (September 24, 1991 Addis Ababa) 1, 5. OLF gave training to several trainees to teach *Afan Oromo*.

⁶⁰ The author is not able to obtain information regarding the existence of political organizations, such as the Gurage People Democratic Front (GPDF), Hadiya National Democratic Organization (HNDO), and Wolayta People Democratic Front (WPDF) before the July Conference. It is to be noted that some of the participants of the Conference were invited in their personal capacity and believed to have a social base of sorts. Those fronts were not registered; *de facto*, they were considered to be good enough to participate at the TGE Council of Representatives.

⁶¹ *Addis Zemen* (September 14, 1991, Addis Ababa) 1, 8. “Harari National League Opens Branch Office in Nazreth” *Addis Zemen* (September 25, 1991, Addis Ababa). Minutes of the 102nd Regular Session of the Council of Representatives of Transitional Government of Ethiopia (March 15, 1995 Addis Ababa). ENA “Harari National League Members Elected” *Addis Zemen* (September 14, 1991) 1, 8.

⁶² “YNDM Introduced Its Political Programs” *Addis Zemen* (September 24, 1991, Addis Ababa) 1. In the parliamentary proceedings minutes the organization is referred to as “Yem Democratic Movement”, YDM).

Conference allowed those members to govern a portion of the country, their claimed territory. This would create an opportunity for some groups, to work together to minimize the friction for power. For instance, three political organizations which were meant to represent the Somali people (Ethiopian Somali Democratic Movement, Western Somali Liberation Front and Democratic Unity Party (National Union Party) signed an agreement to work together with the intent to merge in the future.⁶³ Likewise, it was reported political organizations created in the name of Oromo people would work together.⁶⁴

3. Key Decision of the July Conference and TGE

3.1. Designating Regions: The Standard

The provisions of article 13 of the Charter sought the adoption of a law that establishes the regional councils defined based on nationality for local administration. The election of members of those regional councils would be conducted within three months as local circumstances permit. The TGE Council of Representatives, thus, established three standing committees – The defence and Security Policy Committee, the National/Regional Election Commission, and Media Utilization Committee.⁶⁵ All three committees had important roles but the first two were relatively more important. Members of the Election Commission were chosen from 7 political organizations;

⁶³ “Three political organizations of Ethiopia Somali People agreed to work together” *Addis Zemen* (September 19, 1991 Addis Ababa) 1; Also see *Addis Zemen* (September 22, 1991, Addis Ababa) 1.

⁶⁴ “Political Organizations Established in the Name of Oromo People should be United” *Addis Zemen* (September 26, 1991, Addis Ababa) 3. Later, four Oromo political organizations, excluding OLF, made a pact. *Addis Zemen* (November 10, 1991 Addis Ababa) 1, 3, and 8.

⁶⁵ Minutes of 4th and 5th Regular Session of the Council of Representatives of the Transitional Government of Ethiopia (July 31, 1991 – August 1, 1991).

except EPRDF which had 2 representatives, others OLF, SLM, WSLF, OPDF, WPDF, and UOPLF had one representative each.⁶⁶

The election in question was for national/regional administration only and did not involve election to the central government institutions. Members of the Council of Representatives were selected by EPRDF; likewise, the ministerial positions are appointed based on the proposal of EPRDF.⁶⁷ Initially, the Council of Representatives Election Committee was tasked with the demarcation of electoral districts. However, under the guise of the designation of electoral districts, to conduct the said national regional election, the Election Committee effectively transformed into a boundary demarcating committee.⁶⁸

The standard for the designation of regions was not clear from the initial assignment. It was made clear by propounding the provisions of articles 2 and 13 of the Charter in subsequent sessions. Thus, language was taken as a significant standard. However, contiguity in the settlement and psychological factors were also taken to support the language factor.⁶⁹

⁶⁶ Fourth and Fifth Regular Session, (n 65) 6. Ato Abiyu Geleta (OLF), Ato Wolde-Amanuel Dubale (SLM), Ato Mohammed Hassen Kahin (WSLF), Ato Dawit Yohannes (EPDM), Fitawrari Mekonnen Dori (OPDF), Ato Leoule-Sellassie Timamo (WPDF), Ato Abajebel Tahiro (UOPLF), and Dr. Gebreab Bernabas (TPLF). This Commission/Committee should not be confused with the *Election Commission* or the *Executive Committee*, Proc No 11/1992. See (n 86).

⁶⁷ See text accompanying (n 49).

⁶⁸ It is properly referred to as “National Demarcation and Election Execution Committee” in the Minutes of the 24th Regular Session of the Council of Representatives of TGE (November 26 and 28, 1991, Addis Ababa). The places which the Council of Representatives claimed would be designated in consultation with the public were not disclosed to the public. Twenty-Second Regular session, (n 11) 2.

⁶⁹ Seventh Regular Session (n 19) 5.

The proposed sources of information for the decision were: (a) the study conducted by the Institute for the Study of Ethiopian Nationalities, which was used to structure the administrative zones in 1989,⁷⁰ (b) the 1984 Census, and regarding the “nomads”, the records of Relief and Rehabilitation Commission. The first one would have been the most relevant and important information source. However, as there is a conflict in value, there were (frequent) objections to it and it was decided it could be taken as one input.⁷¹

The minutes further reflect that the Committee came up with a revised designation of 14 regions at its Sixteenth Regular Session.⁷² When the report was finally adopted into a law, it introduced some changes.⁷³

⁷⁰ Ethiopia was structured based on the following laws: *Autonomous and Administrative Regions Establishment Proclamation No 14/1987*; *Definition of Powers and Duties of the Organs of Power and Administration of the Autonomous Region of Eritrea Proclamation No 15/1987*; and *Definition of Powers and Duties of the Organs of Autonomous Regions of Tigray, Assab, Dire Dawa, and Ogaden Proclamation No 16/1987*.

⁷¹ Seventh Regular Session (n 19) 6.

⁷² The report is not accessible but it created regions 1 to 14, listing which ethnic group lives in the regions: Region One – (1) Tigray, (2) Saho, and (3) Kunama; Region Two – (4) Afar; Region Three – (5) Amhara, (6) Agew-Kamirgna, and (7) Agew-Awongigna; Region Four – (8) Oromo; Region Five – (9) Somali; Region Six – (10) Gumuz, (11) Koma, (12) Berta, (13) North Mao, (14) South Mao, (15) Benishangul, and (16) Shinasha; Region Seven – (17) Guraghe, (18) Hadiya, (19) Kembata, (20) Alaba, (21) Tembaro, and (22) Yewasa; Region Eight – (23) Sidama, (24) Gedeo, (25) Burji, and (26) Amaro/Koyera; Region Nine – (27) Wolaita, (28) Dawuro, (29) Konta, (30) Aydi, (31) Gewada, (32) Melon, (33) Gofa, (34) Zeyisse, (35) Gebez, (36) Bussa, (37) Konssa, and (38) Gidole; Region Ten – (39) Besketo, (40) Mursi, (41) Ari, (42) Hamer, (43) Arbore, (44) Dassenech, (45) Gnangatom, (46) Tsemai, (47) Maley, (48) Dimme, and (49) Bodi; Region Eleven – (50) Keficho, (51) Nao, (52) Dizo, (53) Surma, (54) Zelmam, and (55) Mocha; Region Twelve – (56) Agnuak, (57) Nuwer, (58) Sheko, (59) Mesengo-North Middle and South; Region Thirteen – (60) Adere Nationality (Harar Surrounding); and Region Fourteen – Addis Ababa.

⁷³ Sixteenth Regular Session (n 50) 5 – 7. See, *National/Regional Self-Governments Establishment Proclamation No 7/1992* (“Proc No 7/1992”) art 3. Thus, “Oromo (Around Kalu)” was included as a fourth tribe in Region Three; “South Mao” is deleted

3.2. Debates in the Process of Designation of Territories

Those regional and woreda boundaries were defined by members of the Council of Representatives who themselves have an interest in the outcome of their own decision.⁷⁴ In any case, only the debates in the plenary session were recorded in the minutes. Matters such as whether a particular province (in the former designation) should be included in the ethnic-based would-be state or whether a particular woreda should be included in one or the other region was hotly debated.

Interesting to note that in the 15th Regular Session, the first and the most hotly debated case was the inclusion of former Wollo province into Region Three. The Standing Committee proposed the issue of Wollo and Jigjiga be resolved by the plenary session of the Council of Representatives for once.⁷⁵ The Committee appears to have proposed that territory other than that was included in Region Two (now Afar Regional State) be included in Region Three (now Amhara Regional State).

However, a UOPLF representative claimed that he was not in attendance when matters of Wollo were resolved; he, thus, inquired to know how it was decided. It was explained to him it was decided Wollo

from the list in Region Six; under Region Seven “Yewasa” was changed to “Yem”. Under Region Eight, “Amarao/Koyera” was changed to “Amaro (Kore)”, and “Gidicho” and “Gamo” were added to Region Nine. Under Region Eleven, “Mocha” is improvised to “Shekocho (Mocha)” and “Minit”, “Chara”, “Bench” and “Sheko” were added. Sheko was part of Region Twelve, in the draft. Under Region Twelve, “Mesengo” was changed to “Mejenger”; and Region Thirteen was changed to “Harari Nationality (Harari City)”.

⁷⁴ The demarcation of “the Regions” was proposed by the Election Commission of the TGE Standing Committee established by the Council on July 31 of 1991. Fourth and Fifth Regular Sessions (n 65). The demarcation of the Woredas was proposed by the “Executive Committee” of the Election Commission. Proc No 11/1992 (n 12), arts 4, 10(1), and 13.

⁷⁵ Sixteenth Regular Session (n 50) 8. The Minutes reflect that the former province of Wollo was referred to as “Wollo nationality”.

would remain Amhara. At this juncture, an OLF representative argued that “Wollo, although it speaks Amharic because of assimilation, is of Oromo identity. Therefore, it should remain separate, or be given a different name.” It was explained to him, by the Chairman of the Council that that would contradict the language requirement. Because he insisted, it was explained to him this is only for administrative purposes and the decision would be made later.⁷⁶

Because some members of the Council claimed they would make decisions after discussing those issues in their respective organizations, the decision was postponed. The issue of Wollo was discussed again thoroughly in the Sixteenth Regular Session of the Council for the agenda was supported by one-third of the Members.⁷⁷

The Members of the Standing Committee presenting their report explained at the session that the proposal was made as per the decision that language, contiguity of settlement and psychology is taken into consideration, and Woreda is the lowest administrative structure. Where it cannot be resolved, for the transitional period’s purpose, the woreda in question would be absorbed by the people constituting more than 50 % of the population. Yet it would be further resolved in consultation with the local people concerned.⁷⁸ Because there were several issues to be finalized, the Committee further invited members if they would have questions to submit sooner on the proposed decision.

⁷⁶ Minutes of 15th Regular Session of the Council of Representatives of TGE (September 17, 19 and October 1, 1991, Addis Ababa) 6, 7.

⁷⁷ Sixteenth Regular Session (n 50) 2.

⁷⁸ *Ibid.*

A representative of OLF argued that Wollo should be seen in the light of one of the standards, psychological factor. Even though Wollo speaks Amharic, its psychology is different from Amhara; language is simple; psychological factors need study. Therefore, Wollo should remain recognized as Wollo for the coming two years until a final decision is made.⁷⁹ However, the Chairman of the Council stated that the standard is language; not origin. As the majority is Amharic speaking it should remain with Amhara; and if there are pockets of those who speak Oromiffa, it may be addressed at a woreda level. Because IFLO and OLF insisted, the Chairman reminded them that Tegre Worji is not recognized as a nationality because OLF objected to such recognition that Tegre Worji would not constitute an identity as the people do not speak a different language; therefore, OLF should be consistent in its argument.

The issue of Wollo was presented to vote either to remain a separate entity for the two years or to be part of the Amhara people. By 44 votes and 11 opposition, Wollo was decided to be part of Amhara.⁸⁰ As it is well-known, the decision to make Wollo remain a part of Amhara was made in the absence of an Amhara representative.⁸¹

3.3. From Designation of Regions to that of Woredas

As can be read from the provisions of Proc No 7/1992, article 4, those regional designations were made as per the language-based identity of the respective ethnic groups. The designation of Regions would appear to have been made on paper. In the demarcation of those regions, the lowest administrative unit was taken as Woreda as existed before

⁷⁹ *Ibid.*, 11.

⁸⁰ *Ibid.*, 12 – 14.

⁸¹ Records show that the word ‘Amhara’ was in reference to the people, while the proposed region would be called “Region Three”.

1974.⁸² The reasons for picking 1974 are not clear from the minutes; however, one member is quoted as stating “after 1974, the number of woredas in Tigray dropped”.⁸³

It was decided that the determination of woredas would be based on the identity of the people residing in that woreda because the identity-based geographic designation of electoral districts was meant to enable the self-governance of people. However, which woreda was to be included in which Region was not decided until the Thirtieth Regular Session because the determination of dominant ethnic group(s) in each woreda was said to have required detailed information. In some instances, such a decision was said to be left to “the Regions”.⁸⁴

Later, the Election Commission would be established as per *National/Regional and Woreda Councils Members Election Commission Establishment Proclamation No 11/1992*. The Proclamation further established an *Executive Committee* composed of ten members of the Council of Representatives.⁸⁵ Members of the Election Executive Committee were 3 from EPRDF, 2 from OLF, 1 each from GPDF, WSLM, HNDO, and Labour Group. The Chairman was the Harari Representative.⁸⁶

⁸² Proc No 7/1992 (n 73), art 4(2)(a).

⁸³ Thirtieth Regular Session (n 14) 6.

⁸⁴ Twenty-Second Regular Session (n 12) 2.

⁸⁵ Proc No 11/1992 (n 12), art 12(1).

⁸⁶ Minutes of the 26th Regular Session of the Council of Representatives of TGE (December 3, 5, and 7, 1991 Addis Ababa) 6. Ato Alemayehu Tarekegn (OLF), Mohammed Abdurrahman (Harari), Chair; Dr. Gebreab Bernabas (TPLF), Ato Biya Abajebel (OLF), Dr. Negaso Gidada (OPDO), Ato Dawit Yohannes (EPDM), Dr. Haile Woldemichael (GPDF), Ato Mohammed Hassan Kahn (WSLM), Dr. Beyene Petros (HNDO), and Ato Assefa Wodajo (The Labour Group). In fact, the assignment is made temporarily to execute this particular election. Twenty-Fifth Regular Session (n 33) 19.

The Chairman of the Election Executive Committee, exercising the powers and responsibilities of the Election Commission,⁸⁷ reported to the Council of Representatives that despite regional administrations being already defined, the actual determination of which woreda is included in which region and the actual demarcation of woredas on the ground for the administration of election proved difficult.⁸⁸ Of the 577 woredas in the country, the Committee was not able to resolve the regional assignment of 94 woredas.⁸⁹ The Chairman of the Council demanded that the number should be reduced to 10 to be resolved by the Council in plenary session.⁹⁰ In fact, based on a 'leaked' geographic map of Ethiopia, it was mentioned by a member that there was an objection from the people of Metema and Tach-Armachi'ho regarding how they were included in the Benishangul region while there is no Gumuz tribe in the area.⁹¹

In its Thirty-First Regular Session, the Election Executive Committee reported that it resolved the case of 79 woredas and only 15 remained unresolved because of "lack of knowledge on the part of the committee members", of which 11 were claimed by Amharas, which are the following woredas: (1) in former Gondar province – Dib-Bahir, and Telemt woredas (2) in former Wollo province⁹² – Kobo, and Wofla

⁸⁷ The Election Commission was given all the powers required to conduct the election; the Executive Committee in turn is given the power that was given to the Election Commission. Proc No 11/1992 (n 12), arts 9 and 13, respectively.

⁸⁸ Thirtieth Regular Session (n 14) 3 – 5.

⁸⁹ *Ibid.*, 3

⁹⁰ *Ibid.*, 4 – 5.

⁹¹ *Ibid.*, 5. The map is reproduced in *Addis Zemen* (May 23, 1992, Addis Ababa) 5, with a caption "rejected because it is circulated without the approval of the Council". However, the Council continued enforcing the contents of the map as leaked by even adopting several directives listed under n 52, *supra*.

⁹² It should be noted that in its Sixteenth Regular Session (n 50), Wollo was decided to remain Amhara for the transitional period. The discussion on Kobo and Wofla woredas was made in isolation from the already made decision on Wollo province.

woredas, (3) in former Gojjam province – Wonbera, and Dibate woredas, (4) in former Shewa province – Siyadebir and Wayu, Fentale, and Dera woredas, (5) in former Keffa province – Gura-ferda woreda.⁹³ Again, it is to be noted that there was no Amhara representative in the Council to claim these are Amhara territories or that Amhara constitute the majority in those woredas.

3.4. Deliberating on Excluding “Exogenous” People from Local Political Process

In the TGE Council of Representatives, there were several instances of discussions to exclude those people considered “exogenous” from the national regional political process. Only four such instances where explicit discussions were made are mentioned here. The first discussion was made in the 20th Regular Session when the Council was considering (the now) article 5(2) of Proc No 7/1992. One member of the Committee raised the issue that “several towns in southern Ethiopia are dominated by non-indigenous Amharic speaking people.” Regarding the election of local leadership, he suggested that “the Council should make a thoughtful and balanced decision in light of the international human rights principle of universal and equal suffrage”.⁹⁴ The Chairman then asked the Election Executive Committee what was proposed “to resolve a conflict between self-governance and limiting the electoral process to indigenous people”.⁹⁵

In further discussion, it was stated by the same representative that “as self-governance is the fundamental principle of the transitional period

⁹³ Thirty-First Regular Session (n 52). Several of these localities are where several rounds of ethnic-based attacks were reportedly committed against ethnic Amharas.

⁹⁴ Twentieth Regular Session (n 14) 3 – 8.

⁹⁵ *Ibid.* The Minutes do not show the response to such question. Further, the absence of discussion as to its content gives the impression that there is a shared understanding of the words ‘non-indigenous’ or ‘exogenous’.

and not all rights are respected without limitation, and because rights conflict, a type of limitation ...has to be contemplated”.⁹⁶ Another member would reiterate that “there are several major cities in southern Ethiopia (such as Assela, and Yirgalem) where more than 50% of residents are Amharic speaking. Without impeding their right to reside in those regions, the conflict between the two rights should be carefully resolved”.⁹⁷

The Sidama representative was explicit in referring to the decision to recognize a “homeland” for the Harari people. He further argued that “even though everyone is entitled to live and work anywhere, reserving the political power to indigenous people is not contrary to the Charter; and it is in conformity with the self-governance in one’s geographic territory.”⁹⁸ He also opined that “those non-indigenous Amharic speaking people do not have the right of nationality and they cannot participate in elections”.⁹⁹

Another member stated that “particularly in urban centres there are activities to restore the previous regime; the matter should be a primary focus not to open doors to the *neftegna*, without contradicting the spirit of the Charter”.¹⁰⁰ Not surprisingly, the Chairman proposed that “if the indigenous are living in the rural areas, the urban dwellers and the rural

⁹⁶ *Ibid.*, 5 – 10.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, 6.

⁹⁹ *Ibid.*, 6, 7.

¹⁰⁰ *Ibid.*, 7. “*neftegna*” is a pejorative term to refer to Amhara people. This is so frequently used, but it is explicitly used in the Harari Report which is approved by the Council of Representatives even after the adoption of the FDRE Constitution. See (n 114) 115.

dwellers should vote separately to minimize the impact of urban votes on rural votes.”¹⁰¹

The discussions that transpired in the Council clearly show that the members of the Council were keen to find ways of excluding those so-called exogenous people from those national regional elections. For example, they tried to make a distinction between “residence” and “domicile” with consequences; they also played with the idea of giving more weight to the rural vote in such a way that “one rural vote would equal three urban votes”, which they believed would be “within the power of the Council to decide”.¹⁰² In fact, one mechanism of excluding an exogenous person from running for national regional election was thought to be language proficiency requirement. In the 23rd Regular Session, members of the Council even went beyond the issue of language, that even though one speaks the language of the region where he seeks candidature, he has to be member of the nation/nationality considered to be indigenous to the region.¹⁰³

The issue would be raised again in the Thirtieth Regular Session when the Chairman of the Election Executive Committee reported to the Council that the Committee was not able to determine the fate of 94 woredas based on the 50%+ one vote rule to which region they should be included.¹⁰⁴ One OLF representative recalled a prior decision of the Council that despite “those other people dominating cities and towns due to commerce and army, they cannot form self-administration; they would rather be incorporated into the surrounding rural

¹⁰¹ Twentieth Regular Session (n 14) 4 – 6, 7 – 10. This seminal proposal by the Chairman of the Council would be given effect in different regional legislation governing urban center administration. See, text accompanying (n 156 ff).

¹⁰² Twentieth Regular Session (n 14) 9, 10.

¹⁰³ Twenty-third Regular Session (n 15) 6.

¹⁰⁴ Thirtieth Regular Session (n 14) 4, 7.

administration.” He blamed such a state of affairs on the 1984 census which he would question. He also raised a question as to whether the Council revised its decision to the effect that “those settlers in Gambella and Benishangul *rural areas* would not establish self-administration” to which the Chairman of the Council replied in the negative.¹⁰⁵

This author could not find prior decision referenced by the OLF representative. However, during the 23rd Regular Session, at which the five-year residency requirement for a candidature was discussed (Proc No 11/1992, art 35(3)), it was raised that the number of “settlers” is far exceeding that of the size of “residents” demanding a special measure. Records show that instruction was given to the Committee to draw up new rules if the number is likely to change the “identity of the local council of representatives”.¹⁰⁶

Another OLF representative raised a specific question on “how the problem in Arsi regarding the Oromo and the non-Oromo should be resolved”. The Chairman of the Council replied: “there would be no problem regarding nationalities residing in pocket areas”.¹⁰⁷

The third discussion for the exclusion of those so-called exogenous people from national/regional elections was made at the 40th Regular Session, in relation to a dispute over who could administer the elections in Dire Dawa City. The dispute was between Western Somali Liberation Movement claiming to represent Somali people, and OLF claiming to represent Oromo people. The WSLM representative argued

¹⁰⁵ *Ibid.*, 7. It should be clear that the OLF representative raised his concern because the discussion is on how to exclude those so-called “exogenous” city dwellers, and those in the Gambella and Benishangul were “settlers” in rural areas.

¹⁰⁶ Twenty-third Regular Session (n 15) 10.

¹⁰⁷ *Ibid.*, 8.

that “Dire Dawa was known as Issa and Gurgura Awraja during the previous (Derg) government, and is dominated by Somalis even though other nationalities are also living there”.¹⁰⁸ The OLF representative was bold in stating that: “among those who live in Issa and Gurgura Awraja, 46.7% were Oromo, 39.9% Amhara and 6.8% Somali. The *percentage calculation excluding Amhara* is 80% Oromo and 15% Somali (emphasis added); thus, it should be administered by the Oromo election executive committee”.¹⁰⁹ The Chairman took the claim of the WSLM and OLF and proposed the establishment of a committee to determine to whom Dire Dawa would belong – the Somali or the Oromo.¹¹⁰

The fourth discussion to exclude those so-called exogenous people from running for office and to limit the impact of its vote through gerrymandering was made in the determination of the territorial scope of the Harari state in its 55th and 102nd Regular Sessions.¹¹¹ The Council provided the most favorable treatment to Harari people. The Adere representative, at the Sixteenth Regular Session, requested the postponement of a decision on the designation of the regional administration until he would receive the necessary documents from the people he represented.¹¹²

¹⁰⁸ Minutes of the 40th Regular Session of the Council of Representatives of the TGE (April 21, 1992 Addis Ababa) 8.

¹⁰⁹ *Ibid.*, 10.

¹¹⁰ *Ibid.* Members of the Committee were: (1) Ato Kifle Wodajo, (2) Fitawrari Zewde Ottoro, and (3) Ato Alesa Mengesha. They presented their report to the Council at its Forty-Sixth Regular Session.

¹¹¹ See, *infra* n 114. It might be appropriate to note that the Harari state is established as Region Thirteen with the political support of TPLF by including surrounding areas habited by the Oromo people. The Chairman of the Election Executive Committee, designating woredas belonging to regions, is the only Harari representative at the July Conference who later established the Harari National League.

¹¹² Sixteenth Regular Session (n 50) 1.

However, the Council approved the establishment of Region Thirteen (Harari) at its Sixteenth Regular Session contrary to the already established numerical and geographic rules “because the Harari people require special protection”.¹¹³ Later, the Harari representative, was an “observer” when Harari representatives and the surrounding Oromo farmers signed an agreement designating Hunde Woreda to be included in the would-be Harari Region.¹¹⁴ In fact, as the Chairman of the Election Executive Committee, he is the one who finally submitted the report, as approved and supported by the Election Executive Committee, to the Council of Representatives at its 55th Regular Session.¹¹⁵

What is unique about the above-noted report is that the documents are complete; and openly claims that the *neftegna* is a threat, and that measures should be designed not only to exclude the *neftegna* from running for public office but also to minimize the effect of their votes. Thus, it proposed a definition of residents and settlers; introduced gerrymandering; and the would-be final content of the Harari State Constitution is approved by the TGE Council of Representatives which

¹¹³ Minutes of the 33rd Regular Session of the Council of Representatives of TGE (March 3, 12, and 17, 1992) 1 – 2. The Report recognizes that the Harari people neither had the required population nor the geographic land outside of Jugol enclosure to constitute a viable Region. So, it was decided to include Hunde Woreda into Harari Region.

¹¹⁴ Report on the Designation of the Geographical Size of Region Thirteen by Agreement between the Concerned Harari and Oromo Organizations, and Representatives of the Two People, October 26, 1993.

¹¹⁵ The report also includes three things. The first is a proposal by “Harari experts” defining “neftegna” and “settlers” as non-residents, and the Harari as “residents”. In order to reduce the numerical impact of those “settlers”, the report proposed gerrymandering and quota of seats reserved for the Harari, which remains in force to date. The second is the list of government employees in Harar under four categories – Harari, Oromo, Amhara and Others, depicting Amhara employees nearly twice all others combined. The third is a letter said to have been written by Emperor Menelik when he controlled Harar.

remained unchanged even after the adoption of the FDRE Constitution.¹¹⁶

3.5. The First National/Regional Election, Its Significance

Once the Transitional Period Charter was adopted, the first election was held for national/regional administration. The Council of Representatives had to decide which political organization would participate in which region. The decisions were published in the *Addis Zemen*, some of them as directives issued by the Election Commission (Election Executive Committee) and others as press statements.¹¹⁷

It can also be seen in the context of two statements made at the Council's Sessions. First, in the Seventh Regular Session, the Chairman of the Defence and Security Policy Standing Committee stated that "the fundamental principle of the new order is nations and nationalities shall have self-governance; therefore, they would address security issues, among others, in their respective territory/region". Further, the Chairman of the Council noted "where there are different ethnic groups in a given locality, the group that obtained majority vote shall govern, but the rights of the minority shall be respected".¹¹⁸

Such views were translated into two laws which were meant to "facilitate the local election" - Creation of Appropriate Conditions for Conducting National/Regional Self-Governments Elections Proclamation No 9/1992, and National/Regional and Woreda Councils

¹¹⁶ It is this decision of the Council of Representatives after the adoption of the FDRE Constitution used to justify the decision of the Federal Supreme Court Cassation Division against the National Electoral Board of Ethiopia. For an in-depth discussion see, Simeneh (n 16).

¹¹⁷ See, n 52.

¹¹⁸ Seventh Regular Session (n 19) 11.

Members Election Commissions Establishment Proclamation No 11/1992.

These laws were consequential. First, EPRDF neutralized former government's local power. As noted earlier, Proclamation No 9/1992, established a provisional administration: for *Woredas* a committee composed of 7 members and for *Kebeles* a committee composed of 5 members, not related to the previous regime.¹¹⁹ These *Woreda* and *Kebele* Provisional Administrations had the power, among others, to disarm former lower-ranking Dergue/WPE officials, former members of the army, police and security services at the local and rural level, establishing local offices, and detaining those who "break the law".¹²⁰ They would operate until a National/Regional Government was elected according to Proc. No 7/1992.¹²¹

Second, EPRDF would deny other contending political organizations their power. Thus, the Proclamation provides for the determination of whether they have an army and the size of the army of each political organization that had seats in the Council.¹²² Once that was determined, then the armies were to be interned into military barracks to have a "peaceful election".

Third, the electoral law in question also paved the way for the EPRDF to effectively exclude any meaningful political participation in the first national/regional election. One can easily see that the law establishing the Election Commission excludes former WPE, security members, and members of armed forces not rehabilitated both from being voters

¹¹⁹ Proc No 9/1992 (n 51) art 4.

¹²⁰ *Ibid.*, art 8.

¹²¹ *Ibid.*, art 9.

¹²² *Ibid.*, arts 20 – 26.

and candidates.¹²³ What is more, one need not forget that it was the Organizations that were members of the TGE Council of Representatives that were designated as election executors.¹²⁴

In any case, this first election went down in history as the first ethnic-based election in the country at the regional level. For the implementation of the election, the Woredas of each National/Regional Self-Government established by Proc. No 7/1992 were taken as constituencies.¹²⁵ The law further provides that towns would be incorporated into the adjoining woreda administration for the purpose of the first national/regional election.¹²⁶ Administrative structure was made based on ethnic identity, and obviously, the purpose of the election is “self-governance of nation, nationality and people”.¹²⁷ Thus, one of the important data to be recorded in the Register of Voters was ethnic identity; candidates would be required to speak the language of the nation/nationality where they seek candidacy.¹²⁸ What is not expressly provided for but which was strictly enforced was that candidates should belong to the ethnic group they claim to represent, more than speaking its language.¹²⁹

3.6. Problems Plaguing the Transitional Period

In its course, the Transitional Period is affected by a host of problems. The reading of the minutes of proceedings depicts two problems that

¹²³ Proc No 11/1992, (n 12), arts 26 and 36, respectively. Also see, Minutes of 10th Regular Session of the Council of Representatives of TGE (August 14, 1991, Addis Ababa) 27.

¹²⁴ See, text accompanying n 52.

¹²⁵ Proc No 11/1992, (n 12), art 22. It should be noted that even by the time this statute was adopted the designation of woredas was not completed.

¹²⁶ *Ibid.*, art 23(2).

¹²⁷ *Ibid.*, Preamble; art 9(1).

¹²⁸ *Ibid.*, arts 35(1) and 29(6), respectively.

¹²⁹ See, text accompanying n 16.

would stand out. Members of the Council of Representatives were not aware of their rights, privileges, and responsibilities.¹³⁰ They did not have personal security, salary, and even admission identification card to the compound at critical formative times of the TGE.¹³¹ In some instances, there were insinuated threats against Members of the Council.¹³²

Different forms of intimidation and pressure were exerted on the parties participating in the TGE by the EPRDF. An instance whereby the Ethiopian Democratic Coalition representative was coerced by the Chairman of the Council to retract a statement he made regarding the lack of democratic process relating to the conduct of the Conference establishing the TGE outside of the meeting hall was a case in point.¹³³ It should also be stated that the Chairman of the Council was both the President of the TGE and the Chairman of EPRDF whose only army

¹³⁰ Fourth and fifth Regular Session (n 65). Members' Code of Conduct appears to be discussed in the Fourth Regular Session. *Ibid.*, 7. However, the first code of conduct for members of the Council published in the *Negarit Gazeta* was adopted as *The House of Peoples' Representatives Legislative Procedure, Committees Structure, and Working Proclamation No 271/2002*.

¹³¹ The first record of self-restraint by a member in parliamentary discussion is seen at the Tenth Regular Session (n 123) 30 – 31. Here, the Omotic people's representative complained to the Council of Representatives that he would exercise self-restraint as he was receiving death threats for the opinions he expresses in the Parliament. He was rather told in parliament, by a member not identified in the report that, unless he reports to the Defence and Security Committee the threats he received, EPRDF would file complaints against him; Twelfth Regular Session (n 39) 12. Members of the Council requested for ID Card, they were not given because the emblem for the TGE was not adopted; Sixteenth Regular Session (n 50) 2.

¹³² For instance, regarding freedom of members, the Chair explained that the Council may take measures against its members, the content of which was not defined but which was stated to include impeachment from office, and in some instances facing criminal charges before regular courts. Fourth and Fifth Regular Session (n 65) 8, 9.

¹³³ Tenth Regular Session (n 123). In fact, a committee composed of (1) Ato Dima Negwo, (2) Ato Dawit Yohannes and (3) Ato Tesfaye Habisso was established; *Ibid.*, 11 – 14.

was in charge of law enforcement. It is doubtful that members of the Council were making decisions freely according to their conscience.¹³⁴

The country was immersed in conflicts of every kind. Specific mention was made of unprovoked violence including “looting and killing” by those who engaged in acts of ethnic cleansing and this was brought to the attention of the Council as early as during its Seventh Regular Session.¹³⁵ At its Twelfth Regular Session, the Council of Representatives received several complaints of conflicts and unrest in several places under its miscellaneous agenda. Some of them raised their concerns about displacement of the farmers in Harar, Arsi and Alaba.

For instance, on August 26, 1991, the Benishangul People’s Liberation Front (BPLM) submitted a written complaint to the Council against OLF.¹³⁶ There was an initial finding against OLF and it put points to be complied with, which the latter agrees to implement. However, because OLF fails to comply with the conditions as agreed, such as paying compensation and withdrawing from Assosa, and because a second complaint was filed against OLF for waging war against, and pushing into the territory of BPLF, among others, the Defence and Security Committee submitted a report of its findings to the plenary session on November 28, 1991.

The Council of Representatives had also to send a five- person committee from the members of the Council of Representatives to

¹³⁴ It appears to the author that there were shadow political organizations for Council Members who speak up opposing EPRDF in parliamentary proceedings.

¹³⁵ Seventh Regular Session (n 19) 17 – 19.

¹³⁶ In accordance with the procedure, the agenda had the support of one-third of the Members present and it was referred to the Defence and Security Committee. Twelfth Regular Session (n 39) 9.

investigate the incidents in Wonji Sugar Factory relating to the OLF office in the premises of the factory.¹³⁷ There were several such grave incidents in different places which demanded several rounds of investigation by ad-hoc committees.¹³⁸ Finally, the Council established a standing committee to hear such so-called security-related complaints.¹³⁹

4. The Continued Effect of TPLF Decisions Made During TGE

4.1. Adoption of the FDR Ethiopia Constitution

The Transitional Period Charter has two transitional programmes, one of which is a political programme. Article 10 provides that the “Council of Representatives shall constitute a Constitutional Commission to draw up a draft constitution”. It further provides that such “Constitutional Commission shall submit to the Council of Representatives the draft constitution”. Article 11 grants the Council of Representatives the power to adopt the draft constitution submitted to it before it is submitted to the public for discussion. It is the final draft of the constitution that would be presented to “the Constituent Assembly to be elected under the final draft of the Constitution”.

¹³⁷ The members were: (1) Ato Petros Aman (GPLM), (2) Ato Tadele Mebratu (the Labor Group), (3) Ato Mohammed Seid (EDROM), (4) Ato Ahmed Ajemel (OLF), and (5) Ato Tekelet Mekiso (KPC). The committee was mandated to investigate an alleged attack against the Metehara Sugar Factory by OLF. Unlike other incidents where the Defence and Security Committee reported to the plenary session, the ad-hoc committee reported to the Defence and Security Committee in the month of October 1991 and the matter was discussed at the 32nd Regular Session of the Council of Representatives of TGE (January 19, 1992, Addis Ababa).

¹³⁸ This was the case for Beddeno, Hadiya, Wolaita, etc.

¹³⁹ The Members of the Committee were 1) Ato Kifle Wodajo, 2) Ato Abdulfetah Yusuf, 3) Dr Ashenafi Mamo, 4) Ato Ate'yib Ahmed, 5) Ato Ali Helem, 6) Ato Kassa Deme (alternate), 7) Ato Tadesse Debesu (alternate); Thirty-fourth Regular Session, (n 52) 2. One of the investigations made by this Committee was the Metekel case. Minutes of the 42nd Regular Session of the Council of Representatives of TGE (May 12, and 14, 1992).

Accordingly, the Draft FDRE Constitution, adopted by the Council of Representatives on May 3, 1994, was submitted to the Constituent Assembly.¹⁴⁰

This constitution-making process may be seen from two perspectives. The membership and identity of the Council of Representatives are extensively discussed in Section 2.1. The Chairman, the Deputy Chairman, the Secretary and other key members of the Constitutional Commission were also members of the Council of Representatives.¹⁴¹ For instance, the Chairman of the Constituent Assembly, Dr. Negaso Giddada, Minister of Labour and Social Affairs at the time, was also a member of both the Constitutional Commission which drafted the Constitution and the Council of Representatives. The Council of Representatives was in full control of the process.

The Constituent Assembly was composed of more than 80% EPRDF representatives, and was hostile to opinions different from the ones it favored.¹⁴² Those who had strong opinions against certain positions had been insulted and denigrated, with the acquiescence of the Chairman of the Assembly.¹⁴³ This was particularly the case with regard

¹⁴⁰ Minutes of the Constituent Assembly of Ethiopia Volume 1 (October 29, 1994, Addis Ababa) 18, 19.

¹⁴¹ Kifle Wodajo was the Chairman, Mohammed Abdurahman was Deputy Chair while Dawit Yohannes was Secretary. Other members of the Commission include Fitawrari Zewde Ottoro, Dr Negaso Giddada, and Abreha GebreMeskel. They were all members of the Council of Representatives. It should be stated that these individuals took part in several assignments during the transitional period. For instance, they participated in the first national/regional election in key positions, many of them as members of the Election Execution Committee; others as chairs of various ad-hoc committees.

¹⁴² Minutes Vol 1 (n 140) 11, 14, 54. The Chairman, the Secretary and several chairs of the ten sub-committees were all EPRDF members; *Ibid.*, 25.

¹⁴³ The discussions were primarily self-defecating in blaming the previous regime for anything that went wrong and those who questioned certain facts and assumptions were treated as part of that regime. Maj. Admassie was a case in point. See, for instance, *Ibid.*, 87, 88.

to Maj. Admassie Zeleke who consistently strongly stated that the draft constitution was not discussed by the public and Daniel Belayneh, who also raised other nationally important issues.¹⁴⁴

In terms of content, one of the important aspects of the Constitution would be setting up the federal structure. The contents of the provisions of article 4 of Proclamation No 7/1992, were simply reproduced in the Draft Constitution without significant modification. They were not a part of the discussion because of a skewed assignment of subjects for each of the ten sub-committees;¹⁴⁵ the discussion was whether Ethiopia should adopt an ethnic-based federal system, not one based on the geographic scope of each state.¹⁴⁶

For instance, on the boundaries of the nations, some members raised the demarcation of internal boundaries among the regions to avoid conflict but the suggestion was rejected as not related to the issue at hand.¹⁴⁷ Yet the Draft Constitution would finally be approved without any significant change from the original draft as approved by the Council of Representatives. Under such strict control by the Council of Representatives, one may wonder about the significance and effects of the involvement of the Constituent Assembly in the constitution-making process.

4.2. Some Contents of the FDRE Constitution

The FDRE Constitution has several provisions that give the impression that it is a national constitution. The federal Constitution is the

¹⁴⁴ *Ibid.*, 85.

¹⁴⁵ See, how the topics are allocated to each sub-committee; *Ibid.*, 28 – 38.

¹⁴⁶ *Ibid.*, 92 – 95.

¹⁴⁷ Ato Daniel Belayneh from Region 14 stated his objection to the inclusion of a part of Gondar province, Setit Humera, into Tigray; *Ibid.*, 104.

supreme law of the land. Article 9(1) provides that “[a]ny law, customary practice or a decision of an organ of a state or public official which contravenes [the] Constitution shall be of no effect”.

Article 10(1) provides that “human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable.” Those rights include the right to life, security of person and the right to liberty, each of which is separately provided for under articles 15 - 18. Based on national identity, article 32(1) provides that “[a]ny Ethiopian ...has, within the national territory, the right to liberty of movement and freedom to choose his residence”. Likewise, article 38 provides that “[e]very Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, language, religion, political or other opinion or another status, has the following rights:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives,
- (b) on the attainment of 18 years of age, to vote by the law,
- (c) to vote and to be elected at periodic elections to any office at any level of government”.

The right to private property (excluding of course the right to private ownership of land) protected by the Constitution can also be highlighted as an important constitutional safeguard.

Those rights are, however, nullified by sub-national constitutions of various regions and their subsidiary legislation. There are regional state constitutional provisions which are contrary to the provision of the FDRE Constitution reproduced above. They are enforced by subsidiary local legislation. Only two aspects are discussed below.

4.2.1. Establishment of Regional States and Ownership of Regions

Adopting the National/Regional Self-Government Establishment Proclamation No 7/1992, the Transitional Government created a de facto federal structure. As noted earlier in the article, it restructured the country into 14 Regions based on—except in the case of region 14 (Addis Ababa)—ethnic lines.¹⁴⁸ The designation of administrative regions based on ethnic lines is the beginning of ethnic-nationalistic actions in several corners of the country.¹⁴⁹

The parliamentary debates of members of TGE Council of Representatives on how to exclude “non-indigenous” people from running for national/regional office have been given effect through various post-constitution local laws. Once the “new” constitutional order was established, the regional constitutions provide (in various wordings) for “owners” of the respective regional states. In not few cases, those are translated into subsidiary legislation governing who runs for office and also by reserving the majority seat for those so-called indigenous.

In the Eighteenth Regular Session of the Council of the TGE, for instance, it was decided that the Jugol wall includes only Hararis. However, as a designation of Jugol is not viable, the Council granted time to negotiate the inclusion of adjacent land into Harari state, by promising the right of those other nationalities residing in the region to be respected.¹⁵⁰ The Adere representative reasserted his demand that Harar is a place where about 5 ethnic groups reside peacefully making Harar a cosmopolitan place, but Jugol is exclusively that of Adere, but

¹⁴⁸ Proc No 7/1992 (n 73) art 3.

¹⁴⁹ Seventh Regular Session (n 19) 17 – 19.

¹⁵⁰ Eighteenth Regular Session (n 26) 5.

to be approved by the Council after the necessary study is conducted, and it was already decided it would be the 13th state during the Transitional Period.¹⁵¹

The Harari Constitution is the only constitution whose main principles were adopted by the TGE Council of Representatives. It is designed to exclude the “non-indigenous” from any form of political power or representation. First, all 14 seats in the upper house would be held by the Harari only; also, those 4 of the 22 seats of the lower house would be held by the Harari. The remaining seats are up for grabs by “any candidate”. It should not be forgotten that language is a requirement. Second, it designed and implemented effective gerrymandering to reduce the impact of “non-indigenous” votes as adopted by the Council. Those non-indigenous people were referred to as “*neftegna*, *sefari*, and Dergue/WPE” in its inception document.

However, this conception of ownership of a region is not particular to Harari. The Revised Afar Constitution (1994 EC) article 8(1) provides that “sovereignty in the Regional State belongs to the Afar people.” This “sovereignty is expressed in participation through their elected representatives”. The Benishangul Gumuz Regional State Constitution is even more explicit. Article 2 of the constitution provides that “although it is known that other nationalities reside in the state, the owners of the state are Berta, Gumuz, Shinasha, Mao and Komo.” Likewise, the Gambella Regional State Constitution in its preamble refers to “we Agnua, Nuer, Mezejenger, Oppo and Komo nationalities”. Oromia’s Revised Constitution (of 1995 EC), article 8, provides that “Sovereign power resides in the Oromo people which is expressed through its elected representatives.” The Revised Constitution of the

¹⁵¹ *Ibid.*, 8, 9.

SNNPR (of 1994 EC), article 8, provides that sovereign power resides in the people of Southern Region Nations, Nationalities and People.

4.2.2. Subsidiary Laws Excluding “Exogenous” People from Political Participation

In the determination of *woredas* belonging to the respective regions, and in the course of the discussion to exclude those so-called exogenous from running for local office, the Chairman of the TGE Council of Representatives suggested conducting separate elections for the urban centres and rural areas; later, it was determined that “although the *neftegnas* may constitute a majority in cities and towns, having come to these places because of trade and other purposes, they shall not have self-governance rights; they would rather be included into the adjacent local administrations”.¹⁵² Further, an OLF representative also raised his concern regarding the Oromos and non-Oromos in Arsi to which the Chairman of the Council replied “other ethnic groups in pocket areas would not be a problem”.¹⁵³ In reference to prior decisions, the Chairman of the Council was asked “whether the Council has reversed its decision that in Gambella and Benishangul settlers would not constitute self-governance” to which the Chair replied in the negative.¹⁵⁴

These tentative decisions became the basis for the constitutions as well as subsidiary legislation of the regional states that legislated the status of the members of the “non-indigenous” groups in the regions they

¹⁵² Getachew Assefa, “Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on Their Impacts on the Protection of Human Rights” (2011) 17 *East African Journal of Peace and Human Rights* 173, 181. Getachew is clear in stating that such actions are meant to “perpetually keep the non-endogenous groups in the region out of political power”; *Ibid.*

¹⁵³ Thirtieth Regular Session (n 14) 8.

¹⁵⁴ *Ibid.*, 7. Getachew (n 152) 181.

inhabit. The discriminatory treatment of “non-indigenous” citizens remains part of the legal systems of most of the regional states of the federation. For instance, the *Urban Local Government Proclamation of Oromia National Regional State No 65/2003* classifies cities into four categories. Grade One city is a city with a population of greater than 90,000 people, and grade two has 45,000 to 89,999 residents.¹⁵⁵

The city council is the highest organ of the city which has the power to determine taxes, among others. While the city council is expected to have between 15 and 81 seats, where the “Oromos are a minority in a given city, the Regional Executive Council may reserve up to 30% of the council seats for the Oromos”. Further, 5% of the city council seats were reserved for “hinterland rural kebeles surrounding the urban local government”.¹⁵⁶ While the word “a minority” is vague for implementation and the decision is made by the Regional Executive Council, the rules were amended.

Proclamation No 116/2006 was adopted to Amend Proclamation No 65 of 2003. The amended *Urban Local Government Proclamation of Oromia National State*, under article 2(4) provides that “[w]hen the number of Oromo residents in 1st and 2nd grade city is found minor or undersized, the administrative council of the National Regional Government may notice the number of Oromo people against other people and reserve 50% of the seats in the city council.” It further provides that it is also applicable to the “*Kebele* council”. Further, “20% of the city council seats are reserved for Oromos living in the surrounding rural counties.”

¹⁵⁵ *Urban Local Government Proclamation Oromia National Regional State No 65/2003*, art 6(1).

¹⁵⁶ *Ibid.*, arts 13(2), and (4), respectively.

Also, in Benishangul-Gumuz State, Proclamation No 69/2007 provides “at least 55% of the seats of city councils must be reserved for indigenous ethno-national groups”. Getachew Assefa argues that, in this case too, those provisions would reduce urban non-indigenous majority into minorities by design¹⁵⁷ with intent again to “perpetually keep the non-endogenous groups in the region out of political power”.¹⁵⁸

These unconstitutional, and indeed anti-democratic, provisions are yet to be challenged. However, even when they are challenged, Getachew discusses the lack of remedies both before the Council of Constitutional Inquiry (“CCI”) and the House of Federation (“HoF”).¹⁵⁹

4.3. Atrocious Crimes against Exogenous People – then and now

Since the coming to power of EPRDF, ethnic-based violence against those so-called exogenous people is becoming a common practice. In this section, only two of those incidents are reviewed because they are investigated and reported by the state, followed by criminal prosecution. While EPRDF controls the power of the central government at Addis Ababa, OLF was administering the place now called Oromia, particularly the then Harar and Wollega provinces. OLF jailed those non-Oromos in the region but the great majority of them

¹⁵⁷ For detailed comments see, Getachew (n 152) 181; Christophe van der Beken, “Balancing between Empowerment and Inclusion: Multinational Federalism and Citizenship Rights in Ethiopia” (2019) 27 *African Journal of International and Comparative Law* 588; Yonatan Tesfaye Fisseha and Christophe van der Beken, “Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities in Ethiopia” (2013) 21 *African Journal of International and Comparative Law* 32.

¹⁵⁸ Getachew (n 152) 181.

¹⁵⁹ *Ibid.*, 182 – 85.

were Amhara on the ground of suspicion they would pass information to EPRDF, or other organizations.¹⁶⁰

While those political organizations administering the respective territories were supposed to mitigate matters, they appear to have incited some of the conducts. Thus, on a Mawlid holiday in 1991, six organizations sent out warning to “unidentified group” in Harar City. The organizations were IFLO, OLF, Gurage, Harari National League and OPDO /EPRDF. The content of the statements state that “bureaucrats in every office will be disclosed”.¹⁶¹ The same message was passed in Dire Dawa on the same day.¹⁶²

This can only be seen in context. The Harari National League in its so-called study and report, submitted to the TGE Council of Representatives, was explicit in using pejorative terms, such as *neftegna* and *sefari*.¹⁶³ Further, it annexed a list of office employees indicating their number in each government office along with their ethnicity.¹⁶⁴ Subsequent periodic reports of the Ethiopian Human Rights Council indicated that non-Hararis were summarily dismissed from their jobs.¹⁶⁵ Further, a document allegedly made by groups opposing the then-ongoing political narrative portrayed as “anti-Charter” was annexed to the report.

¹⁶⁰ Seventh Regular Session (n 19) 18, 19.

¹⁶¹ “There would be a fight against those who pursue their selfish interest” *Addis Zemen* (September 24, 1991, Addis Ababa) 1 and 7.

¹⁶² “Those who strive to create inter-ethnic conflict should be fought back” *Addis Zemen* (September 25, 1991, Addis Ababa) 1 and 7.

¹⁶³ Harari Report (n 114).

¹⁶⁴ *Ibid.*

¹⁶⁵ Ethiopian Human Rights Council, 12th Report, 1997 Compilation, 39 – 40.

Minutes of the Council of Representatives indicate that there were “conflicts” between those who claim to be indigenous demanding those so-called exogenous to leave places, such as in Harar, Arsi, Bale and Wolayta to which they were said not to belong. A parliamentary ad-hoc committee investigated the massacre in Beddeno and Wetter in Eastern Hararghe (Oromia). The report annexed to the Minutes of the 44th Regular Session of the Council of Representatives indicates the absolute majority of the victims in Beddeno were Amharas who were under OLF detention.

The ad-hoc committee report depicts that those who were under detention by OLF in Beddeno were killed between March 14, 1992, and April 10, 1992, while the area was under the control of OLF.¹⁶⁶ It was reported that the killing was not a one-time action; it was committed over a long time by design following a certain chain of command.¹⁶⁷ Further, the committee reported that the public called the attention of the Committee to several other crimes, but the committee declined to investigate those other crimes stating it was not within its mandate.¹⁶⁸

There was no meaningful action taken against OLF based on this report.¹⁶⁹ However, once OLF and EPRDF faced a fallout, OLF

¹⁶⁶ Evidence Annexed to the ad-hoc Committee Beddeno, Wetter Investigation Report to the Council of Representatives (1991, Addis Ababa) 3.

¹⁶⁷ *Ibid.*, 5. It should be noted that OLF Deputy Secretary General in Dire Dawa, and OLF representative in the Council of Representatives denied the conduct was committed by OLF; *Ibid.*, 7 and 8, respectively.

¹⁶⁸ *Ibid.*

¹⁶⁹ The Council finally finds that: (1) brutal crime has been committed; (2) this was committed by OLF, as an institution; and (3) both the individuals involved in the act and OLF as an organization were responsible. The grounds of responsibility were stated to be (1) failing to prevent the crime; (2) denying the commission of the crime until the investigation report is presented; and (3) the crime is committed on the ground that victims were supporters of another political organization. Minutes of 44th Regular Session of the Council of Representatives of TGE (May 26, 1992 Addis Ababa) 12.

withdrew from the Council of Representatives, the Council of Ministers, and from the electoral processes, the OLF soldiers were detained and charged for “waging war against the state”.¹⁷⁰ It was stated in those criminal charges that the crimes were said to have been committed after OLF withdrew from the Council of Representatives of the TGE. However, the evidence produced against those OLF soldiers showed the crimes committed while OLF was in control of the region as part of the TGE.¹⁷¹ The judicial evidence graphically depicts how those atrocities were committed¹⁷² and the trial of some of them continued until 2005.

The second round of atrocious crime that I want to mention was committed relatively recently subsequent to the reports of the assassination of Artist Hachalu Hundessa on June 29, 2020. OMN TV was broadcasting messages that can be characterized as containing statements that insinuate incitement to violence, followed by the widespread and systematic killing of “non-indigenous” people. The Ethiopian Human Rights Commission conducted a rapid investigation in 40 Oromia towns and the report shows that between June 30 and

¹⁷⁰ Judicial records show that the conflict between EPRDF and OLF took place from June 1992 to September 1993.

¹⁷¹ However, when the OLF withdrew from the TGE Council of Representatives and Council of Ministers, and said to have waged war against the TPLF led Central Government, several thousands were captured. Investigators from Addis Ababa questioned those suspects and only 214 were prosecuted for violating the criminal law. They were sent to Zeway where the Central High Court conducted pre-trial hearings. The charges that were brought against those were for breach of the provisions of articles 252, 281 and 284 of the 1957 Penal Code. The Minutes of the 44th Regular Session of the TGE Council of Representatives were attached as evidence in *Public Prosecutor v Beyan Ahmed, et al, 7 defendants* (15 October 2004, Crim File No 03139 Federal High Court).

¹⁷² For instance, in *Central Public Prosecutor v Abdulkadir Mohammed, et al* (16 January 2004, Crim File No 01392, Federal High Court) it is proved that 21 ethnic Amharas were taken out of their detention place and handed over to OLF commando trainees to practice killing by mere chocking.

July 2, 2020, 123 people were killed, 500 were injured, and property was damaged and looted.¹⁷³ The report concludes that (a) the attack was directed against so-called non-indigenous, although it focuses on Amhara, in some places those offenders had a list of their victims; (b) those offenders were committing those acts organized in groups, they were chanting “*neftegna*”, “*menze*”, “*gondere* leave our land”; (c) it was invariably testified by the survivors of such conduct, the police were not helpful, claiming they are overwhelmed, or did not get an order from the upper echelon. The Commission concluded that atrocious crimes and crimes against humanity were committed.¹⁷⁴

In other prior incidents, where ethnic-based acts of violence were reported, Getachew argued that the state in charge is slow in responding to avert the incident.¹⁷⁵ The same is reported here; the law enforcement officials were not responding to the repeated calls of victims. In some instances, the crimes were committed while the police were standing and watching the events unfold.¹⁷⁶

There were criminal prosecutions against those perpetrators of the crime. Mahderwork reviewed the prosecution and concludes that the process was far from sufficient from the point of view of damage to

¹⁷³ The report is made in Amharic (56 pages) and the English version was only an executive summary. It should be noted the executive summary of the English version is entitled as “Oromia: Crimes Against Humanity in the Aftermath of Hachalu Hundessa’s Death”. The Amharic version rather is entitled “Human Rights Violations in the Aftermath of the Assassination of Hachalu Hundesa”. Further, the Commission on January 13, 2021 issued an explanation that what was committed is crimes against humanity, not genocide. However, in the Amharic report at pp. 14, 17, 18, 22, 27 - 29, 41, 45, and 48, illustrative derogatory statements against victims were reported showing the intent to destroy specific ethnic and religious groups.

¹⁷⁴ *Ibid.*

¹⁷⁵ Getachew (n 152) 185.

¹⁷⁶ EHRC Report (n 173) 14, 18, 21, 25.

property constituting the crime of genocide.¹⁷⁷ However, the study sheds light on the whole process. There was a prosecution of 3,359 individuals before Oromia Supreme Court divisions by federal prosecutors.¹⁷⁸ Of those accused, 2,552 were arrested, and 1,007 were not arrested; 448 were tried in absentia, and the case was discontinued for 559 individuals of which 465 could not be tried in absentia.

The prosecution was not successful for various reasons. Witnesses fail to testify the truth because of threats to the life and physical security of witnesses or their families.¹⁷⁹ Such threats were posed by those perpetrators who were not arrested, or the family of suspects, and in some instances, the community is also involved.¹⁸⁰ Some witnesses even after testifying before the court disappeared from the place for fear of reprisal. Witnesses were not given the appropriate legal protection.¹⁸¹ Many of those perpetrators were transported from another place that they could not be identified by the victims.¹⁸²

For those who got convicted, Mahderework evaluated the punishment to be nominal because the provision under which conviction is entered is changed to a less serious one.¹⁸³ There was no civil action against those perpetrators for compensation because which individual caused what harm is not specifically identified; there was no assistance from

¹⁷⁷ Mahderwork Regassa Dadi "Obligation of Regional State to Protect Property Rights in the Event of Identify Based Violence in Ethiopia: Case Analysis from Oromia National Regional State" LL.M. Thesis, Addis Ababa University Law School, 2022 (unpublished).

¹⁷⁸ There were 128 criminal cases, including 12 cases in Bale, 42 in Adama, 25 in Shashemene, 25 in Assela, 16 in Jimma and 1 in Sebeta benches; *Ibid.*

¹⁷⁹ *Ibid.*, 44. It is reported, those perpetrators even made investigation difficult; *Ibid.*

¹⁸⁰ *Ibid.*, 45.

¹⁸¹ *Ibid.*, 41, and 45.

¹⁸² This statement gives the impression that those who appear as witnesses were only victims.

¹⁸³ *Ibid.*, 47.

the regional state government either.¹⁸⁴ In sum, the state was seen to afford neither protection nor remedies.

Ending Remarks

The current constitutional order is reflective of the failed London Conference that involved a few ethnically organized political groups to form a transitional government. The July 1991 conference excluded those who were not ethnically aligned. Those who participated in the Conference were the ones who divided among themselves the parliamentary seats of the TGE after adopting the Transitional Period Charter.

The article has shown that the parliamentary debates in the establishment of local governments were meant to take local governance based on ethnically aligned organizations, to the exclusion of others identified as non-indigenous. The debates were explicit in their intention to exclude those so-called exogenous people from the local elections and perpetually exclude them from sharing local power. That is enforced through regional state constitutions and subsidiary legislation in effect to date. The ethnic-based arrangement results in countless violence that are not redressed because those victims considered not to belong to the region have not been represented at the local level. Thus, the current constitutional arrangement was built on faulty foundations hugely impactive of its foundational as well as redemptive legitimacy. Thus, any dialogue on constitutional amendment would remain window dressing unless it addresses state constitutions and their subsidiary legislation.

¹⁸⁴ *Ibid.*, 48, 49.

