

Sub-national Constitutional Autonomy and Institutional Innovation in Ethiopia

Christophe Van der Beken^[1]

Abstract

The major rationale behind the introduction of multi-national federalism in Ethiopia was the accommodation of the country's considerable societal diversity in order to guarantee peace and stability and prevent state disintegration. One of the excellent – but understudied – mechanisms of diversity accommodation Ethiopian federalism has to offer is the significant constitutional autonomy or space reserved by the federal constitution to the federal constituent units or regions. Due to its supremacy, the federal constitution provides the framework for the regional constitutional arrangements, but this framework leaves substantial space to the regions to design their own arrangements adapted to the realities of their polities. One of the areas where the regions enjoy considerable constitutional space is the design of the regional government structure and institutions. The federal constitution contains very limited provisions related to the regional legislature and executive, providing the regions with considerable discretionary power to decide on the structure, composition, powers and responsibilities of their legislative and executive institutions. Regional constitutional space is much more restrained when it comes to the regional judiciary since the federal constitution contains rather detailed provisions related to the structure of regional courts and the appointment and removal of regional judges.

This paper aims to investigate to what extent Ethiopia's regions have made use of this autonomy and designed institutions that reflect and are adapted to their respective societal realities. The paper will do this by comparing the regional government institutions as entrenched in the constitutions of the nine regions. The research findings demonstrate that seven out of the nine regional constitutions have incorporated similar institutional arrangements with regard to the regional legislatures and executives. Yet, interesting divergences induced

¹ PhD (Ghent University 2006). Associate Professor, Institute of Federalism and Legal Studies, Ethiopian Civil Service University; associated Post-Doctoral Research Fellow, Ghent University Faculty of Law. Email: Christophe.VanderBeken@gmail.com

by distinct regional societal features and political considerations can also be observed. Whereas seven regions have so far only taken cautious steps towards region-specific institutional arrangements, a remarkable use of constitutional space can be found in the constitutions of the Harar and Southern Nations, Nationalities and Peoples regions. Both constitutions include unique arrangements related to the legislature and executive, which are designed to accommodate the specific ethnic configuration of the concerned regional polities. Due to the supremacy of the federal constitution and its provisions on the regional judiciary, the regional constitutions contain uniform provisions in this regard. Yet, since the federal constitution has nothing to say about the mechanism of regional constitutional review, the regional states are at liberty to come up with their own constitutional review mechanisms. Unfortunately, all regions – with the exception of the SNNPR – have adopted similar arrangements, which have been inspired by the federal mechanism and are affected by similar flaws. Regional states have therefore failed to use their constitutional space to design creative arrangements that offer alternative – and more promising – mechanisms of constitutional review. The paper therefore concludes with the observation that although the regions are increasingly making use of their constitutional autonomy, they have surely not exhausted its potential for institutional innovation.

1. Introduction

As is common in federal countries, the federal constitution of Ethiopia distributes the state competencies between the federal government and the regional governments. The constitution has hereby followed a so-called symmetrical approach, granting identical powers to all regional governments. One of the powers allotted by the federal constitution to the regional states is the power to draft, adopt, and amend their own constitution.^{[2][3]} All regional states established by the federal constitution have also exercised this power, so that the current constitutional framework in Ethiopia is composed of a federal constitution and nine regional constitutions. From the outset it needs to be emphasized that the regions have to exercise their constitutional autonomy within the bounds set by the federal constitution. Indeed, the federal constitution is the supreme law of the land^[4] and

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3 This power is allotted by Articles 50(5) and 52(2.b) of the federal constitution.

4 Article 9 federal constitution.

is thus binding on the regional states. This is explicated in Article 50(5), which stipulates that regional constitutional autonomy is to be exercised consistent with the provisions of the federal constitution. In other words, the federal constitution determines the boundaries of the autonomy or space reserved for the regions to work out their own constitutional arrangements.^[5] At this juncture it can already be pointed out that the regions enjoy significant constitutional autonomy in that the areas in which they can design their own constitutional arrangements are comprehensive. One of these areas is the construction of the regional institutional set up. As this paper will demonstrate, the federal constitution contains very limited provisions related to the regional institutional structure, at least as far as the regional political institutions are concerned; the constitution contains far more elaborate provisions related to the regional judiciary. This limited federal framework offers the regions considerable opportunities for institutional innovation in that it enables them to come up with institutional arrangements emanating from the realities of their polities and therefore well-adapted to them. This paper aims to investigate to what extent regional states have made use of this potential for institutional innovation by comparing the regional political institutions included in all nine regional constitutions. The paper will furthermore assess whether the institutional choices incorporated into the regional constitutions are apt to achieve the constitutional objectives. By increasing the awareness about the regional institutional arrangements and by assessing their strengths and weaknesses, the paper, it is hoped, will support the process of constitutional and institutional innovation at regional level. Indeed, the use of sub-national constitutional space is a recent phenomenon in Ethiopia and, as the paper will reveal, there is substantial untapped potential in this regard.

2. The Enactment of Regional Constitutions

As noted in the introduction, all nine regions of the Ethiopian federation have adopted a constitution. The Oromia, Tigray, Southern Nations, Nationalities and Peoples' (hereafter Southern), Somali, Harar, and Amhara regional constitutions were adopted in 1995; the Benishangul-Gumuz and Gambella regional constitu-

⁵ The term "constitutional space" is used by Tarr to indicate the discretion available to constituent units to design their constitutional arrangements: G. Alan Tarr, 2010-2011: 1133, 1134.

tions were adopted in 1996, and the Afar region adopted its constitution in 1998. These constitutions were simply enacted by the respective regional Councils (parliaments) and were therefore not the result of an encompassing drafting and deliberation process. (Tsegaye, 2004) As from 2001 onwards, all regional constitutions were significantly revised and it is these revised versions that are analyzed and compared in this paper. The four core regions of the federation adopted their revised constitution around the same time at the end of 2001: the Oromia region adopted its revised constitution on 27 October 2001; the Amhara region on 5 November 2001; the Southern region on 12 November 2001, and the Tigray region on 15 November 2001. This was followed by the Afar regional state, which adopted its revised constitution on 5 July 2002, and the Benishangul-Gumuz and Gambella regions, which adopted their revised constitutions on 2 and 17 December 2002 respectively. The Somali region also adopted its revised constitution in 2002. The Harar region was the last to revise its regional constitution in 2004.

The regional constitutional drafting, deliberation, and adoption process did not follow the model of the process followed for the federal constitution. The constitutional revision process was initiated by the federal government, which issued general directions to be considered by the regional drafters.^[6] The drafting was carried out by either standing committees of the regional Council or by committees appointed by the regional Chief Executive (the regional President) and all revised constitutions were subsequently adopted by the respective regional Councils. (Tsegaye, 2009: 52) Since all regional Councils at the time of adoption of the revised constitutions were controlled by EPRDF constituent or affiliated parties it is fair to argue that the revised constitutions primarily reflected the objectives of the ruling party. This argument is supported by the preambles of the constitutions, which point out similar rationales for the constitutional revision. One of these rationales, which impacted upon the existing institutional arrangements, was the achievement of good governance by strengthening accountability, transparency, efficiency, the separation of powers and checks and balances. Another objective was adapting the regional constitutions to the objective reality of the concerned regional states, which also engendered significant institutional

6 Information provided to the author by Deginet Wotango and included in his LLM thesis: Deginet Wotango, 2014.

3. Regional Institutions

3.1. *The Federal Framework*

Article 50 of the federal constitution contains a number of provisions that pertain to the institutional structure of the regions and that therefore constitute a mandatory frame for them: i.e. that determines the constitutional space for the regions to design their institutional structure. Article 50(2) stipulates that the regions shall have legislative, executive, and judicial powers. The power of legislation on matters falling under (regional) state jurisdiction is allotted to the State/regional Council.^[7] The regional Council is the highest organ of regional state authority, which is responsible to the people of the region.^[8] This provision appears to prescribe a parliamentary system of government at regional level. The highest organ of executive power at regional level is the State Administration.^[9] Article 50(7) stipulates that regional state judicial powers are vested in the regional courts. This federal framework leaves considerable discretionary power for the regional states to decide on the structure, composition, powers and responsibilities of their legislative and executive institutions. Yet, their constitutional space is significantly restrained as far as the regional judiciary is concerned. In its Articles 78, 79, 80, and 81, the federal constitution contains provisions related to the structure of the regional judiciary and pertaining to the appointment, removal, and jurisdiction of regional judges/courts. Since the federal constitution is supreme, the regions have to adhere to these provisions, seriously affecting their constitutional space.

Within this federal frame, all regional constitutions have inserted provisions elaborating on the regional political institutions. From the outset, it can be pointed out that seven out of the nine regional constitutions provide for a similar institutional

7 Article 50(5) federal constitution.

8 Article 50(3) federal constitution.

9 Article 50(6) federal constitution.

structure, although the composition of the institutions and the powers and responsibilities assigned to them are – increasingly – showing variations. The institutional structure of the Harar and Southern regions is considerably different. The drafters of both constitutions have utilized the constitutional space the regions enjoy in this regard to design institutional arrangements rooted in region-specific features and induced by the ambition to serve the respective constitutional objectives. As such, the regional institutional structure in both constitutions has been adapted to fit the realities of their respective polities.

3.2. The (legislative) Councils

The federal constitution mandates the regions to establish a regional Council, which leaves the regions with no choice but to establish such institution. In eight of the nine regions the members of the regional Council are directly elected for a term of five years on the basis of universal suffrage and by free, fair, and secret ballot. The electoral system used is the majoritarian system, more specifically its plurality type.^[10] The only exception to this pattern is the regional Council in the Harar region where part of the Council's membership is elected on the basis of suffrage limited to the Harari people. This constitutional arrangement is induced by the numerical minority position of the Harari people, who constitute less than 10 percent of the regional population. Without constitutional protection, the small size of the Harari would in all likelihood lead to their marginalization in the regional political institutions, as such defeating the objective behind the establishment of the region. To avert this scenario, the Harar regional constitution has provided for a regional Council composed of two chambers: the People's Representative Assembly (PRA) and the Harari National Assembly (HNA). The 22 seats of the PRA and the 14 seats of the HNA jointly constitute the 36 seats of the regional Council.^[11] The membership of the HNA is limited to people with Harari identity elected by Harari people living in Harar and in other regions and towns of Ethiopia. The regional constitution furthermore offers a *de facto* guaranteed

¹⁰ In fact, regions do not have any discretion in this regard since all laws governing elections are enacted by the federal government (pursuant to Article 51.15 of the federal constitution).

¹¹ Article 48 and 49 Harar constitution.

representation to the Harari in the PRA by stipulating that four members of the PRA have to be elected from the Jugol constituency – a constituency comprising the old walled city of Harar predominantly inhabited by Harari. The remaining 18 seats are elected from constituencies outside the Jugol.^[12] Although it cannot be excluded that Harari candidates will also win seats in these constituencies, the plurality electoral system makes this unlikely. The constitutional reservation of 14 seats and the gerrymandering of the electoral constituency boundaries enabled the Harari to obtain 18 seats in the regional Council in the 2015 elections. These 18 seats are all held by the Harari National League (HNL), an EPRDF-affiliated ethnic Harari party. All remaining 18 seats were won by the OPDO.^[13]

The major powers of the regional Council are law-making and exercising parliamentary oversight. The regional Council has the power of legislation on all matters falling under regional state jurisdiction. The matters falling under regional state jurisdiction are obviously not unilaterally determined by the regional states since it is the federal constitution that distributes state competencies between the federal government and the regional states. Yet, the regional constitutions can reaffirm and elaborate on the powers reserved to the regions by the federal constitution. One of these powers is the establishment of local government administrations. Article 50(4) of the federal constitution states unambiguously that the organization of the intra-regional administrative structure falls under the jurisdiction of the regional states. All regional constitutions (with the exception of the Harar regional constitution) have effectively included provisions on the organization, structure, powers and responsibilities of local government. Yet, the regional constitutions leave room for flexibility by stating that additional administrative hierarchies can be established by decision of the regional Council, hence by ordinary Proclamation/law.^[14] It can be noted that such additional administrative hierarchies, not spelled out in the constitutions, have indeed been established in all regions (the example of the city administrations can be mentioned in this

12 Article 50(1) Harar constitution.

13 Data provided by the National Electoral Board of Ethiopia: <http://www.electionethiopia.org/en/> (last accessed on 27 October 2015)

14 Article 49(3.b) Oromia constitution, Article 49(3.b) Somali constitution, Article 49(3b) Tigray constitution, Article 49(3.2) Amhara constitution, Article 49(3.2) Benishangul-Gumuz constitution, Article 5(3.2) Gambella constitution, and Article 51(3.b) Southern constitution.

regard). A competency of the regional Council, which is highly important for an efficient functioning of the federation and for smooth inter-regional relations, is the approval of agreements with neighboring regions.^[15] This power can prove to be very useful for the settlement of inter-regional boundary conflicts, of which the Ethiopian federation has no lack. Another power of the regional Council is the approval of social and economic programs of the region. Of course, this power has to be exercised within the frame set by the federal government.^[16] The regional Council is furthermore empowered to issue laws regarding the regional civil servants and their working conditions.^[17] The Gambella constitution additionally grants the regional Council the power to settle intra-regional boundary conflicts. These conflicts are in principle to be settled upon agreement between the concerned administrative hierarchies/local governments. Yet, if such agreement happens to be impossible, the conflict is finally to be settled by the regional Council.^[18] Another important responsibility of the Gambella regional Council, which is not enshrined in most other regional constitutions, is the allocation of budget for Nationality Zones.^[19] The Gambella region is administratively organized into three Nationality Zones. These Nationality Zones are ethnic-based local governments established for the three major indigenous ethnic groups of the region: the Nuer, Anywaa, and Majang. Since the Nationality Zones have no taxing powers they are for their expenditure entirely dependent on budget transfers allocated by the regional government. The Gambella constitution clarifies that this transfer is the responsibility of the regional Council. The Benishangul-Gumuz constitution similarly confers upon the regional Council the power of transferring budget to the region's administrative levels.^[20]

15 Article 49(3.c) Oromia constitution, Article 49(3.c) Somali constitution, Article 47(3.c) Afar constitution, Article 49(3.c) Tigray constitution, Article 49(3.3) Amhara constitution, Article 49(3.3) Benishangul-Gumuz constitution, Article 52(3.4) Gambella constitution, and Article 51(3.c) Southern constitution

16 Article 51(2) and Article 52(2.c) federal constitution.

17 Article 52(2d) federal constitution.

18 Article 48 Gambella constitution.

19 Article 52(3.18) Gambella constitution.

20 Article 49(3.11) Benishangul-Gumuz constitution.

Features of a parliamentary system of government, hinted at by the federal constitution, are reflected in the election of the Chief Executive – the regional president – by and from among the members of the regional Council.^[21] The Chief Executive selects potential members of the regional Executive Council and submits his/her list with nominees for approval to the State Council.^[22] The selection and appointment of members of the regional Executive Council therefore demonstrates clear parallels with the process followed for the selection and appointment of the Prime Minister and other ministers at federal level. The only exception to this pattern is the selection of the regional Chief Executive in Harar region. The regional constitutional ambition of guaranteeing the interests of the Harari people in “their” region has engendered the constitutional arrangement that the candidate for the position of regional Chief Executive has to be selected by the Harari National Assembly, i.e. the assembly exclusively elected by and composed of Harari members.^[23] It is subsequently the regional Council that has to approve or reject this nomination.^[24] The approval of the nomination and thus the appointment of the regional President require a two-thirds majority decision in the regional Council. This qualified majority requirement is an attempt to balance the interests of the Harari people with the interests of the other ethnic groups (currently limited to the Oromo) represented in the regional Council. Since the guaranteed representation of the Harari in the regional Council is limited to half of the seats, the Harari people cannot impose their candidate for regional presidency; the presidential candidate will additionally need the approval of at least six non-Harari representatives. Since the legitimacy of the regional Chief Executive and other members of the regional Executive Council is based on their selection and/or approval by the regional Council, they are also accountable to it – which constitutes another feature of parliamentary systems. The regional con-

21 Article 56(1) Oromia constitution, Article 49(3.e) Somali constitution, Article 58(1) Afar constitution, Article 49(3.e) Tigray constitution, Article 49(3.5) Amhara constitution, Article 49(3.5) Benishangul-Gumuz constitution, Article 52(3.6) Gambella constitution, and Article 51(3.d) Southern constitution.

22 Article 49(3.e) Oromia constitution, Article 49(3.e) Somali constitution, Article 47(3.e) Afar constitution, Article 49(3.e) Tigray constitution, Article 49(3.5) Amhara constitution, Article 51(2.h) Harar constitution, Article 49(3.5) Benishangul-Gumuz constitution, Article 52(3.6) Gambella constitution, and Article 51(3.d) Southern constitution.

23 Article 59(4) Harar constitution.

24 Article 51(2.d) Harar constitution.

stitutions therefore contain a number of tools through which the regional Council can exercise oversight over the executive. All regional constitutions provide that the regional Council has the power to call and question the regional Chief Executive and other regional officials and that it has the duty to investigate the performance of the regional Executive Council. In the federal constitution, this questioning and investigative power of the parliament (i.e. the House of People's Representatives) is complemented with the power to take decisions or measures it (the House) deems necessary. This power even goes to the extent of the dissolution of the government. This is stipulated in Article 60(2) of the federal constitution, which provides that the President may invite political parties to form a coalition government within one week if the Council of Ministers of a previous coalition is dissolved because of the loss of its majority in the House. Such power is not mentioned in the regional constitutions, except in the constitution of the Southern region.^[25] Another tool enabling the regional Council the exercise of parliamentary oversight is the power to approve the regional state budget – it is likewise the federal House of People's Representatives that approves the federal budget.^[26] It is the power of the regional Executive Council to prepare the annual regional budget, but the implementation of the budget requires the prior approval of the regional Council. Another parallel with the power of the federal House of People's Representatives is that the regional Council is checking the executive in the context of a regional state of emergency. A regional state of emergency is decreed by the regional Executive Council, but requires the subsequent approval of the regional Council.^[27] The regional Council also approves the appointment of the judges of the regional First Instance Courts, High Courts, and Supreme Court. This appointment power of the regional Council is granted by Article 81 of the federal constitution, so that the regional constitutions can merely reaffirm it.

25 Article 57(2) of the Southern constitution.

26 Article 49(3j) Oromia constitution, Article 49(3i) Somali constitution, Article 47(3l) Afar constitution, Article 49(3j) Tigray constitution, Article 49(3.11) Amhara constitution, Article 51(2m) Harar constitution, Article 49(3.11) Benishangul-Gumuz constitution, Article 52(3.11) Gambella constitution and Article 51(3i) Southern constitution.

27 Article 49(30) Oromia constitution, Article 105(2) Somali constitution, Article 106(3) Afar constitution, Article 49(3.15) Amhara constitution, Article 49(30) Tigray constitution, Article 51(2n) Harar constitution, Article 49(3.15) Benishangul-Gumuz constitution, Article 52(3.15) Gambella constitution and Article 51(3n) Southern constitution.

The regional Councils are finally responsible for their own organization. They elect their Speaker and Deputy Speaker and establish permanent and ad hoc committees.^[28] The Speaker and Deputy Speaker are elected by and from among the members of the regional Council upon the recommendation of the winning political party or parties (in case not a single party has obtained the majority of seats in the Council).^[29] A distinct arrangement can once more be found in the Harar constitution emanating from the ethnic balancing endeavor by the regional constitution. The candidate for the position of Speaker of the regional Council shall be nominated by the (Oromo dominated) People's Representative Assembly, whereas the candidate to assume the position of Deputy Speaker shall be nominated by the Harari National Assembly. The election of both candidates to their respective positions again requires the approval with a two-thirds majority vote of the regional Council.^[30] It was mentioned before that this qualified majority requirement has been prompted by the concern not to impose a candidate preferred by one ethnic group on the others. The fact that all regional Councils are now presided over by their own Speaker is one of the important changes brought about by the constitutional revision process, which started in 2001. Before their revision, the regional constitutions allocated the power of chairing the regional Council to the regional Chief Executive.^[31] This led to the anomalous situation where the regional Chief Executive was accountable to the regional Council, which he was simultaneously chairing. This was a clear infringement of the principle of separation of powers and made the concomitant principle of checks and balances illusory. The objective to strengthen separation of powers and mechanisms of accountability was one of the rationales behind the revision of the original constitutions, as pointed out in section 2.

28 Article 49(3d) Oromia constitution, Article 49(3d) Somali constitution, Article 47(3d) Afar constitution, Article 49(3d) Tigray constitution, Article 49(3.4) Amhara constitution, Article 49(3.4) Benishangul-Gumuz constitution, Article 52(3.5) Gambella constitution, and Article 49(1a) Southern constitution.

29 Article 50(2) Oromia constitution, Article 50(2) Somali constitution, Article 49(1) Afar constitution, Article 51(1) Amhara constitution, Article 52(1) Benishangul-Gumuz constitution, Article 55(1) Gambella constitution and Article 49(1a) Southern constitution.

30 Article 52(3) Harar constitution.

31 This was for instance stipulated in Article 56(2) of the 1995 Oromia constitution, in Article 50(4) of the 1996 Benishangul-Gumuz constitution, and in Article 55(2) of the 1995 Southern constitution.

At the outset of this section, it was noted that both the Harar and the Southern regional constitution provide for a regional institutional structure that is considerably distinct from the institutional structure of the other regions. We already mentioned that the Harar regional Council is composed of two chambers: the People's Representative Assembly (PRA) and the Harari National Assembly (HNA). The respective powers of these Councils pertaining to the nomination of the candidates for regional presidency and for the positions of State Council Speaker and Deputy Speaker were also discussed before. These and other powers are listed in Article 58(on the PRA) and 59(on the HNA) of the Harar regional constitution. The PRA additionally has the power to adopt draft laws regarding regional socio-economic development policies and to submit these drafts to the regional Council. It will also submit to the regional Council draft laws related to taxes and duties. It will furthermore evaluate the budget of the region and submit its evaluation to the regional Council. The PRA is responsible for its own organization and elects its own Speaker, Deputy Speaker, and Secretary. The powers of the PRA are thus "general" powers, which concern the regional population as a whole. The powers of the HNA pertain specifically to the concerns of the Harari people. The HNA has the responsibility of enforcing the right to self-determination of the Harari people. It therefore issues policies and laws regarding the Harari language and culture. It furthermore issues directives concerning the preservation of cemeteries, mosques, monasteries, and artifacts that signify the history and cultural heritage of the Harari people. Since the HNA is the representative body of the Harari people, it is logical that the constitution confers on it the responsibility of selecting the Harari representative in the federal House of the Federation. The HNA equally has its own Speaker, Deputy Speaker, and Secretary.

Although the regional Council in the Southern region is unicameral, the regional government structure distinguishes itself by supplementing the regional Council with a second council: the Council of Nationalities. The Council of Nationalities emerged in the context of the 2001 constitutional revision and emanated from the need to adapt the regional political institutions to the regional polity, which is notably characterized by extreme ethnic diversity. The Council

of Nationalities was designed to accommodate this ethnic diversity in order to protect the rights of the region's ethnic groups while guaranteeing regional unity. Since the same objective induced the establishment of the federal structure by the federal constitution, the drafters of the Southern constitution have been clearly inspired by the institutional models provided by the federal constitution. The design of the Council of Nationalities is for that reason entirely modeled on the federal House of the Federation. The Council of Nationalities is the representative body of the nations, nationalities, and peoples of the region.^[32] Each nation, nationality, and people shall be represented by at least one member and by one additional representative for each one million of its population.^[33] The current membership of the Council of Nationalities is composed of 61 members, representing 56 different ethnic groups.^[34] It can be recalled that the members of the House of the Federation are elected by the regional Councils (by the HNA in Harar region), reflecting the constitutional philosophy that the regions are the constitutional embodiment of the nations, nationalities, and peoples; they are the forum where the Ethiopian ethnic groups exercise their right to self-determination. The Southern constitution has designed the Zones and Special *Woreda* from the same perspective. As ethnic-based local governments hierarchically immediately subordinate to the regional level, the Zones and Special *Woreda* are the fora where the nations, nationalities, and peoples of the region are expected to exercise the different aspects of their right to self-determination. The logical corollary is that the members of the Council of Nationalities are elected by and from among the members of the Councils of these Zones and Special *Woreda*.^[35] The powers and responsibilities of the Council of Nationalities are listed in Article 59 of the Southern constitution and have been clarified and elaborated in Southern Proclamation No. 60/2003.^[36] Its powers and responsibilities are, unsurprisingly, strongly inspired by those of the House of the Federation. This is definitely the

32 Article 58(1) Southern constitution.

33 Article 58(2) Southern constitution.

34 See the website of the Southern regional government: <http://www.snnprs.gov.et/nations.html> (last accessed on 23 May 2015).

35 Article 58(3) Southern constitution.

36 Proclamation No. 60/2003, "The consolidation of the House of Council of Nationalities and definition of its powers and responsibilities Proclamation No. 60/2003," *Dehub Negarit Gazeta* 29 June 2003.

case for the power of the Council of Nationalities to interpret the regional state constitution.^[37] As we will discuss below, eight of the nine regional constitutions have granted the power to interpret the regional constitution to a specific body exclusively established for that purpose: the Constitutional Interpretation Commission. No such Constitutional Interpretation Commission has been provided by the Southern constitution. Similar to what is the case at federal level, the Council of Nationalities will in its task of constitutional interpretation be assisted by a Council of Constitutional Inquiry, a body predominantly composed of legal experts. The Council of Nationalities will furthermore decide on issues relating to nations, nationalities, and peoples' right to *Zone*, *Special Woreda* and *Woreda* administrations.^[38] The House of the Federation has the similar power to decide on issues related to the rights of nations, nationalities, and peoples. Yet, significant divergences can be observed. It can be recalled that according to the federal constitution all nations, nationalities and peoples of Ethiopia have the right to secede from the Ethiopian federation and establish their own sovereign state^[39] or, alternatively, to secede from one of the regions and establish their own regional state.^[40] In both cases (which could respectively be described with the terms external and internal secession) the outcome of the application is completely dependent upon the sovereign will of the concerned ethnic group. The House of the Federation will only play a supervisory and facilitation role, but has no right to refuse the secession. That seems to be different in the case of an application for the establishment of a separate *Zone*, *Special Woreda*, or *Woreda* in the Southern region. Although the Southern constitution grants all nations, nationalities, and peoples of the region the right to establish their own *Zone* or *Special Woreda*^[41] only few of the 56 groups have so far effectively done so. Most ethnic groups are therefore a minority in a *Zone* dominated by another group or live together with other groups in a multi-ethnic *Zone*. This situation is similar to the country-wide situation where some ethnic groups are empowered by the establishment of their "own" region, but where most ethnic groups do not have a region of their own.

37 Article 59(1) Southern constitution.

38 Article 59(3) Southern constitution.

39 Article 39(1) federal constitution.

40 Article 47(2) federal constitution.

41 Article 45(2) Southern constitution.

When a Southern nation, nationality, or people submit its application for the establishment of a separate ethnic-based local government to the Council of Nationalities, it will have to demonstrate that its rights enshrined in the regional constitution are violated.^[42] The right to claim a separate local government is therefore conditional, whereas the right to (internal and external) secession under the federal constitution is unconditional. The Council of Nationalities will in its assessment of the application furthermore be guided by the “objective to build one common political and economic community.”^[43] Both legal provisions seem to give the Council of Nationalities considerable leeway in deciding whether or not to accept the application. The emphasis on unity is furthermore expressed in the power of the Council of Nationalities to promote and consolidate the unity and the equality of the peoples of the region, based on their mutual consent.^[44] The Council of Nationalities is also the competent institution to settle disputes between administrative hierarchies.^[45] These may be intra-regional boundary disputes or other conflicts between the regional state and *Zones/Special Woreda*.

Although the Afar and Somali constitutions are less innovative in relation to the regional institutional structure, they nonetheless indicate the way towards a distinct institutional structure, which is rooted in the realities of their respective polities. Considering the vitality of traditional governance institutions in both regions, the Afar and Somali constitutions anticipate the establishment of Elders’ and Clan Leaders’ Councils. The constitutions do not contain further details related to these councils’ composition or responsibilities, but merely state that an ordinary regional law will provide further details.^[46] Both constitutions thus provide the opportunity for the formalization (from the perspective of the state) of traditional institutions that still play considerable roles in Afar and Somali societies. This instance offers another good illustration of how regional constitutions can be – and are being – used to design or provide for mechanisms rooted in and therefore adapted to their respective polities.

42 Article 21(3) of Proclamation No. 60/2003.

43 Article 20 Proclamation No. 60/2003.

44 Article 59(4) Southern constitution.

45 Article 59(4) Southern constitution.

46 Article 63 Afar constitution and Article 56 Somali constitution.

3.3. *The Executive*

The highest executive powers in the region are vested in the Chief Executive and the Executive or Administrative Council. As mentioned in the previous section, the Chief Executive and Executive Council are accountable to the regional Council.^[47] The regional Executive Council comprises the Chief Executive, Deputy Chief Executive (also called Vice President), Bureau Heads, and other members as determined by law.^[48] The Chief Executive is the chair of the Executive Council, i.e. the Chief Executive is the Head of the regional government.^[49]

As highest executive organ, the core responsibility of the Executive Council is the implementation of laws and decisions issued by the regional Council and the federal government.^[50] Pursuant to this responsibility it is empowered to enact regulations.^[51] As mentioned in the previous section, the Executive Council prepares the budget of the region and submits it for approval to the regional Council.^[52] The Executive Council also has the power to prepare draft socio-economic policies and strategies, which will subsequently be submitted to the regional

47 Article 53(1) Oromia constitution, Article 57(1-2) Somali constitution, Article 54(1-2) Afar constitution, Article 54(1-2) Tigray constitution, Article 56(1-2) Amhara constitution, Article 60(1) Harar constitution, Article 57(1-2) Benishangul-Gumuz constitution, Article 60(1-2) Gambella constitution and Article 64(1-2) Southern constitution.

48 Article 54(1) Oromia constitution, Article 58(1) Somali constitution, Article 55(1) Afar constitution, Article 55(1) Tigray constitution, Article 57(1) Amhara constitution, Article 61(1) Harar constitution, Article 58(1) Benishangul-Gumuz constitution, Article 61(1) Gambella constitution and Article 65(1) Southern constitution.

49 Article 54(2) Oromia constitution, Article 58(2) Somali constitution, Article 55(2) Afar constitution, Article 55(2) Tigray constitution, Article 57(2) Amhara constitution, Article 61(3) Harar constitution, Article 58(2) Benishangul-Gumuz constitution, Article 61(2) Gambella constitution and Article 65(2) Southern constitution.

50 Article 55(1) Oromia constitution, Article 59(1) Somali constitution, Article 56(1) Afar constitution, Article 58(1) Amhara constitution, Article 56(1) Tigray constitution, Article 62(1) Harar constitution, Article 59(1) Benishangul-Gumuz constitution, Article 62(1) Gambella constitution and Article 66(1) Southern constitution.

51 Article 55(5) Oromia constitution, Article 59(7) Somali constitution, Article 56(5) Afar constitution, Article 56(7) Tigray constitution, Article 58(7) Amhara constitution, Article 62(8) Harar constitution, Article 59(7) Benishangul-Gumuz constitution, Article 62(7) Gambella constitution and Article 66(6) Southern constitution.

52 Article 55(3) Oromia constitution, Article 59(3) Somali constitution, Article 56(3) Tigray constitution, Article 58(4) Amhara constitution, Article 62(4) Harar constitution, Article 59(4) Benishangul-Gumuz constitution, Article 62(4) Gambella constitution and Article 66(3) Southern constitution.

Council for discussion and approval.^[53] It also has a right to legislative initiative. Within the framework set by the regional constitution, the regional Executive Council has moreover significant powers in the context of a state of emergency. To this list of powers and responsibilities, which is uniform in all regional constitutions, the Afar constitution adds the duty to create a conducive environment to improve the living standard of the pastoralists.^[54] The Executive Council in the Benishangul-Gumuz region is additionally empowered to decide on petitions submitted to it from *Woreda* and *Kebele* of the region (i.e. local government administrations in the region) with respect to the redefinition of their boundaries.^[55] A similar power is allotted to the Administrative Council in the Amhara region.^[56] The Oromia constitution, after its amendment in 2005,^[57] specifies that the Executive Council can merge, divide or in another way restructure the administrative structure decided by the constitution or approved by the regional Council.^[58] This means that the Executive Council can reorganize the local government structure as entrenched in the constitution (such as *Woreda* and *Kebele*) or in ordinary laws (e.g. the city structure).

The Executive Council is chaired by the Chief Executive/President. As mentioned in the previous section, the regional President is elected by and from among the members of the regional Council (although the procedure in Harar is different). It was also mentioned that the Chief Executive nominates potential members of the regional Executive Council and submits his/her list with nominees for approval to the regional Council. The Chief Executive is also Head of the regional state. Although the procedure for nomination and appointment of members of the regional Executive Council shows obvious parallels with the process followed for the nomination and appointment of the Prime Minister and

53 Article 55(4) Oromia constitution, Article 59(5) Somali constitution, Article 56(3) Afar constitution, Article 56(4) Tigray constitution, Article 58(5) Amhara constitution, Article 62(3) Harar constitution, Article 59(5) Benishangul-Gumuz constitution, Article 62(5) Gambella constitution and Article 66(4) Southern constitution.

54 Article 56(8) Afar constitution.

55 Article 59(3) Benishangul-Gumuz constitution.

56 Article 58(3) Amhara constitution.

57 Proclamation No. 94/2005, "Proclamation issued to amend Proclamation No. 46/2001, the Revised Constitution of Oromia Regional State Proclamation," 5 September 2005.

58 Article 55(9) Oromia constitution.

other ministers at federal level, a distinctive attribute of the regional constitutions is the position of the Chief Executive. The difference is that the functions of Head of State and Head of Government at federal level are separated between the President and Prime Minister whereas at regional level the Chief Executive is both Head of State and Head of Government. The constitutional position of the regional President shows similarities with the position of the President under the South African constitution. The President of South Africa is also elected by the parliament and is both Head of State and Head of Government.^[59] Comparative research on sub-national constitutions has revealed that although there is often considerable parallelism between federal and regional executive structures, deviations are most often observed regarding Head of State positions. (Dinan, 2008: 856) These research findings are thus further confirmed by the regional constitutions in Ethiopia. The regional President follows up the implementation of policies, regulations, directives and decisions adopted by the regional Executive Council.^[60] The President will submit for approval to the State Council the candidate for President and Vice President of the regional Supreme Court.^[61] The President organizes, leads, and controls the security and police forces of the region, which are established to guarantee public order and peace in the region.^[62] Providing substance to the responsibility of the Executive to the regional Council, the regional President submits periodic reports to it.^[63] The president also signs regional Proclamations and Regulations before they are published in the regional

59 Articles 83 and 86 of the 1996 South African constitution.

60 Article 57(3b) Oromia constitution, Article 61(3b) Somali constitution, Article 59(3c) Afar constitution, Article 58(3c) Tigray constitution, Article 60(3c) Amhara constitution, Article 64(1b) Harar constitution, Article 61(3c) Benishangul-Gumuz constitution, Article 64(3c) Gambella constitution and Article 68(2c) Southern constitution.

61 Article 57(3c) Oromia constitution, Article 61(3c) Somali constitution, Article 59(3d) Afar constitution, Article 58(3d) Tigray constitution, Article 60(3d) Amhara constitution, Article 64(1c) Harar constitution, Article 61(3e) Benishangul-Gumuz constitution, Article 64(3d) Gambella constitution and Article 68(2d) Southern constitution.

62 Article 57(3f) Oromia constitution, Article 61(3f) Somali constitution, Article 59(3h) Afar constitution, Article 58(3g) Tigray constitution, Article 60(3i) Amhara constitution, Article 64(1g) Harar constitution, Article 61(3i) Benishangul-Gumuz constitution, Article 64(3h) Gambella constitution and Article 68(2h) Southern constitution.

63 Article 57(3h) Oromia constitution, Article 61(3h) Somali constitution, Article 58(3j) Tigray constitution, Article 61(3l) Benishangul-Gumuz constitution and Article 64(3k) Gambella constitution.

“Gazette” (official journal).^[64] In this regard, the Southern constitution adds that the regional President will also sign laws submitted to it from Zonal and Special *Woreda* Councils.^[65] This provision thus recognizes the law-making power of the Zones/Special *Woreda* and should be read jointly with the list of powers of Zones and Special *Woreda* included in Article 81 of the Southern constitution. The President also has the responsibility to lead, coordinate, and supervise the activities of subordinate administrative units (local governments) in the region.^[66] Recent constitutional amendments have significantly increased the powers of the regional President over local government in the Oromia and Somali regions. Pursuant to the above-mentioned constitutional amendment in 2005, the Oromia regional President has the power to “dissolve any *Woreda* Council which it believes has endangered the region’s constitution.”^[67] A 2006 amendment of the Oromia region’s city law has furthermore endowed the regional President with the power to appoint the Mayor and Deputy Mayor of the largest cities.^[68] In a similar vein, an amendment of the Somali constitution in 2003 has extended the powers of the regional President over the *Woreda*.^[69] Article 84(1) of the Somali constitution stipulates that the *Woreda* Chairman shall be nominated by the *Woreda* Council upon the recommendation of the political party or political parties that have the majority of the seats in the *Woreda* Council. Yet, the 2003 constitutional amendment has added a new sub-Article (2), which provides that: “Notwithstanding to sub-Article 1 of this Article, the president of the regional state may assign and transfer the *Woreda* Chairman where found necessary for the wellbeing of the public of the region.” It can be argued that these Oromia and Somali constitutional amendments constitute the legalization/institutionalization of a political practice

64 Article 61(3g) Somali constitution, Article 59(3) Afar constitution, Article 58(3b) Tigray constitution, Article 60(3b) Amhara constitution, Article 61(3b) Benishangul-Gumuz constitution and Article 64(3b) Gambella constitution.

65 Article 68(2b) Southern constitution.

66 Article 57(3g) Oromia constitution, Article 61(3g) Somali constitution, Article 59(3i) Afar constitution, Article 58(3h) Tigray constitution, Article 60(3j) Amhara constitution, Article 64(1h) Harar constitution, Article 64(3i) Gambella constitution, Article 61(3j) Benishangul-Gumuz constitution and Article 68(2i) Southern constitution.

67 Article 57(3h) Oromia constitution.

68 Proclamation No. 116/2006, “A Proclamation issued to Amend Proclamation No. 65/2003,” *Megeleta Oromia* 12 July 2006.

69 Proclamation No. 107/2003, “Proclamation to pronounce the amendments of the constitution of Somali Regional State,” *Dhool Gazeta* Hamle 20, 2003.

– observable in all regions of the federation – that emphasizes upward political accountability to the detriment of social accountability to the local constituency.

3.4. *Constitutional Interpretation Commissions*

As mentioned in section 3.1. the federal constitution contains elaborate provisions related to the regional judiciary, leaving the regions with limited constitutional space in this regard. Yet, the federal constitution has nothing to say about the mechanism of constitutional interpretation at regional level, giving full discretion to the regions to make their own institutional choices. Before they were revised as from 2001 onwards, the regional constitutions allotted the power of constitutional interpretation to the regional Council. The constitutional logic was similar as at federal level: since the regional constitution was the result of the will of the people(s) of the region, the power to interpret the constitution should be given to the institution representing the same people(s), i.e. the regional parliament. Although the constitutional drafters at the time may have considered this arrangement to be consistent with the principle of popular sovereignty, it was obviously very problematic, particularly from the vantage point of human rights protection. All regional constitutions include an extensive catalogue of human rights, which is binding for the regional government institutions. The Ethiopian federation thus offers two spheres of human rights protection: the federal and the regional spheres. Yet, the credibility of the regional Council as an effective organ for constitutional interpretation and – through the mechanism of constitutional review – enforcement of human rights enshrined in the regional constitution was at a very low ebb. This was mainly due to the Council's complete lack of independence from the government organs the constitutionality of whose actions it was supposed to check. Giving constitutional review power to the Council indeed amounted to a radical infringement of the *nemo iudex in sua causa* principle. Could the Council be reasonably expected to declare the laws, whose adoption it had initially approved, unconstitutional on the ground of violation of regional constitutional human rights provisions? Because of the strong link between legislature and executive – it can be recalled that before the 2001 revisions of the regional constitutions, the regional President was chairing the meetings of the regional Council (see section 3.2) – the same concern applied to executive deci-

sions. At several instances, we already mentioned that strengthening separation of powers and the concomitant mechanism of checks and balances between the regional government institutions was one of the major objectives prompting the 2001 revision process. This objective had its consequences for the mechanism of constitutional interpretation as well, since all regional constitutions have stripped the regional Councils of their constitutional review power and allotted this power to a new type of institution.

Eight out of the nine regional constitutions now provide for the establishment of a Constitutional Interpretation Commission. The only exception is the Southern constitution since it gives the power of constitutional review to the Council of Nationalities, as was mentioned in section 3.2. Although their establishment is anticipated by the regional constitutions, it is only recently that some of the Constitutional Interpretation Commissions have become operational. This delay was due to the absence of a sufficiently detailed legal framework pertaining to the organization, working procedure and powers of the Commissions. It finally took a decade since the coming into effect of the regional constitutions for the first Constitutional Interpretation Commissions to become operational in the Oromia and Tigray regions pursuant to the enactment of the necessary regional laws.^[70] At the time of writing only a handful of cases had been submitted to these institutions.^[71]

Constitutional Interpretation Commissions are not courts, but political bodies, justifying their discussion in this paper, which focuses on regional political institutions. By endowing the constitutional review power to a political institution, the regions have followed the federal approach. Although all Constitutional Interpretation Commissions are entirely political institutions, their composition differs from region to region. The constitutions of Oromia, Somali, and Afar regions provide that the members of the Commission are representatives of the *Woreda* (or district) Councils.^[72] The Tigray constitution adds to a membership composed

70 These laws are Proclamations No. 167/2011 and No. 168/2011 for the Oromia region and Proclamations No. 228/2005 and 229/2005 for the Tigray region.

71 Information provided to the author by students at Ethiopian Civil Service University.

72 Article 67(1) Oromia constitution, Article 71(1) Somali constitution, and Article 70(1)

of representatives from the *Woreda* Councils, the representatives of the region in the House of the Federation.^[73] The Amhara constitution stipulates that the Constitutional Interpretation Commission shall be composed of representatives from the *Woreda* Councils as well as of representatives from the Nationality Councils.^[74] Nationality Councils are the councils of the so-called Nationality Administrations, sub-regional/local government administrations established for three ethnic minority groups in the Amhara region: the Agew Himra, the Agew Awi, and the Oromo. The Constitutional Interpretation Commission in the Benishangul-Gumuz region is composed of four representatives drawn from each indigenous nationality – i.e. the Berta, Gumuz, Shinasha, Mao and Komo – bringing the total number of members to 20. These members are to be selected by the Nationality Councils, i.e. the councils of the local governments established for the five indigenous groups in the region.^[75] The Gambella Constitutional Interpretation Commission is similarly composed of representatives of the region's five indigenous ethnic groups.^[76] The Council of Nationalities in the Southern region is composed of representatives of all 56 indigenous nations, nationalities, and peoples of the region. The composition of the Constitutional Interpretation Commission provided by the Harar constitution is very specific (it, for instance, includes the former Presidents of the region) and offers a guaranteed representation to the Harari people.^[77] The particular composition of the Commissions is induced by the consideration that the regional constitution should be interpreted by a body that represents the nations, nationalities, and peoples who came together to constitute the regional state and to draft the regional constitution: i.e. the indigenous nations, nationalities, and peoples. The same idea has also driven the allocation of constitutional review power to the House of the Federation. The constitutionally prescribed composition of the regional Commissions/Council of Nationalities indeed guarantees the representation of the respective indigenous ethnic groups. The Oromia and Somali constitutions do not guarantee the representation of minority groups in the Commission since both constitutions have

Afar constitution.

73 Article 68(1) Tigray constitution.

74 Article 70(1) Amhara constitution.

75 Article 71(1) Benishangul-Gumuz constitution.

76 Article 74(1) Gambella constitution.

77 Article 73 Harar constitution.

empowered the Oromo and Somali ethnic groups only. The representation of the indigenous Argoba in the Afar Commission is guaranteed since the Argoba have their own *Woreda* in the Afar region. The representation of the indigenous Irob and Kunama in the Tigray Commission is also guaranteed since the Irob have their own *Woreda* in the Tigray region and since both the Irob and Kunama have one representative each in the House of the Federation. The guaranteed representation of the indigenous groups in the other regional Commissions can be inferred from what was said before.

Since its composition does not guarantee the legal expertise of the Commission members, all regional constitutions have, in analogy with the federal constitution, provided for the establishment of a Council of Constitutional Inquiry as an advisory body to the Commission/Council of Nationalities.^[78] Yet, the regional Councils of Constitutional Inquiry are, similar to their federal counterpart, merely advisory bodies. The final decision on constitutional interpretation is made by the Commission/Council.

Although the regions have full discretion to design their own mechanism of constitutional review, by uniformly allocating the constitutional review power to a political institution, they have not been particularly creative in this regard. This is deplorable considering the serious criticisms raised in relation to the constitutional review power of the House of the Federation. One of these criticisms pertains to the risk for effective human rights enforcement. The House of the Federation is composed of representatives of nations, nationalities, and peoples. In practice, these representatives are elected by the regional Councils and can be members of these Councils and members of the regional Executive. This situation is detrimental to the independence of the House of the Federation when deciding on complaints about human rights violations committed by regional Councils and Executives. Another element likely to affect the neutrality of the House is the current political context in Ethiopia. After the 2015 federal and regional elections the EPRDF and its affiliated parties hold all seats in the first chamber of the fed-

78 Article 68 Oromia constitution, Article 72 Somali constitution, Article 71 Afar constitution, Article 69 Tigray constitution, Article 74 Harar constitution, Article 71 Amhara constitution, Article 72 Benishangul-Gumuz constitution, Article 75 Gambella constitution, and Article 78 Southern constitution.

eral parliament, the House of People's Representatives. A similar picture arises in the regions, where all seats in all regional Councils are held by the EPRDF or its affiliated parties. The members of the House of the Federation are therefore members – or at least supporters – of the same party whose leaders control the federal government. It will consequently be very challenging for the House of the Federation to make a neutral decision on complaints about human rights violations by the federal government. Similar concerns can be raised with regard to the effectiveness of the regional bodies of constitutional interpretation in enforcing human rights. All regional Constitutional Interpretation Commissions (including the Council of Nationalities in the Southern region) are composed of members elected by and from government councils at different levels of the administrative hierarchy, which makes the Councils into a purely political body. Of course, one may argue that the Constitutional Interpretation Commissions are assisted in their task by the Council of Constitutional Inquiry, which brings an element of legal expertise into the equation. Yet, the role of the CCI should not be exaggerated, since it is merely an advisory body. The effectiveness of the Constitutional Interpretation Commission to enforce human rights is highly questionable in case of alleged violation of human rights by local government organs. This can be illustrated with the example of the Oromia Constitutional Interpretation Commission. Citizens complaining about human rights violations committed by local governments in the region such as the districts are expected to submit their constitutional complaint to the representative body of these local governments. The effectiveness of the Commission is equally in doubt when it is asked to decide about the constitutionality of regional government decisions. The same example of the Oromia Constitutional Interpretation Commission illustrates this concern. All local governments in the Oromia region are controlled by the OPDO – one of the four EPRDF member parties – and the same is true for the regional government. The regional government leaders are simultaneously high ranking OPDO officials. It is therefore doubtful that the Constitutional Interpretation Commission will feel confident to decide about alleged human rights violations committed by regional government institutions or officials. Even in the scenario that the regional political context changes, endowing the power of constitutional review to an exclusively political organ is not a good idea. Assume

that the Constitutional Interpretation Commissions are dominated by a different political majority than the one controlling the regional political institutions. In such scenario, constitutional review risks not to be more effective, but rather an instrument for political calculations, which might interfere with the democratic process. Although it is obvious that constitutional review touches upon political and policy interests, effective human rights enforcement cannot happen without principled human rights deliberations. Hence, leaving constitutional review powers exclusively in the hands of politicians risks to impinge on constitutionalism and the rule of law, of which effective protection of human rights is an inextricable component. It is for that reason unfortunate that the regional states have not attempted to design alternative and more effective mechanisms that reflect a balance between the political and legal components of constitutional review. The approach towards constitutional review that emanates from both the Ethiopian federal and regional constitutions reflects the “Kelsenian” view that constitutional review should not be entrusted to the ordinary courts (Tushnet, 2014: 50). A parallelism between the federal and regional models of constitutional review can also be observed in other federations such as the USA and Germany. Whereas in the USA the constitutional review power rests with the ordinary courts, in Germany the ultimate power to interpret the constitution is the prerogative of a specialized constitutional court. Both models are replicated at regional level, which implies that (regional) state constitutional review in the USA is exercised by the state courts whereas all German Lander have their own constitutional court (Delledonne, 2012: 298). Although there is no clear constitutional impediment for the Ethiopian regional constitutions to endow the regional Supreme Courts with constitutional review power, the hitherto prevailing parallelism may make the regions apprehensive of such approach. Hence, rather than suggesting a radical departure from the existing approach one may recommend that the regions set up specialized constitutional courts whose composition guarantees both legal and political expertise. The example of the Belgian Constitutional Court with its mixed membership of legal experts and politicians may be illustrative in this regard.^[79] In fact, it would be conceivable to grant the ultimate power of regional constitutional interpretation to a body such as the regional Council of Constitu-

79 Out of a total of twelve judges, six are legal experts and six are former politicians.

tional Inquiry, which is primarily composed of legal experts, but whose composition also allows for the representation of political views.

Apart from the questionable independence of the Constitutional Interpretation Commissions vis-à-vis the regional and local government institutions, the composition of the Commissions might not instill a lot of confidence in members of minority groups either. Regional constitutions such as the constitution of Oromia and Somali do not offer any guaranteed minority representation in the Constitutional Interpretation Commission. Yet, theoretically, it is possible for a person with minority identity to be elected by a District Council to the Oromia or Somali Constitutional Interpretation Commission. In other regional constitutions, such possibility is explicitly excluded. The Benishangul-Gumuz constitution, for instance, limits the membership of the Constitutional Interpretation Commission to members of the five indigenous groups. The membership of the Southern Council of Nationalities is similarly limited to people with indigenous identities. Hence, although a citizen with minority identity can invoke all individual/citizen rights enshrined in the regional constitutions before the regional bodies of constitutional interpretation, the composition of the latter might be an impediment or at least a perceived impediment to the effective enforcement of these rights. At the very minimum, the neutrality of the constitutional review body will be in doubt, which affects the legitimacy of its decisions.

4. Concluding Observations

The analysis in the paper has demonstrated that some of the regions have made significant use of their constitutional autonomy, whereas most regions have largely followed the same approach in the design of regional political institutions. The distinct institutional structure included in the Harar and Southern constitutions emanates from the attempt to accommodate the specific ethnic configuration of both regional polities. Nonetheless, these unique institutional arrangements could provide useful inspiration to other regions interested in refining their institutional set up. For instance, mechanisms of guaranteed representation, power-sharing,

gerrymandering of constituencies, and qualified majority voting requirements, enshrined in the Harar constitution, hold a lot of potential for a balanced accommodation of intra-regional diversity. The reference to clan leaders and elders' councils in the Somali and Afar constitution evokes the potential contribution of traditional governance institutions to effective state administration. There is also considerable room for creativity when it comes to the mechanism of constitutional review. It is deplorable that the regions have uniformly followed the federal approach and allotted the power of constitutional review to a purely political body. Considering the serious criticisms raised in relation to the constitutional review power of the House of the Federation, regions should have been more creative and experimented with alternative mechanisms of constitutional review that offer a balance between political and legal considerations.

Although apart from the Harar and Southern constitutions (and to a lesser extent the Somali and Afar constitutions), all regional constitutions include a similar institutional structure, the composition of the political institutions and their powers and responsibilities are not uniform. For instance, although eight regional constitutions provide for a Constitutional Interpretation Commission, the paper has shown that the composition of these Commissions is region-specific. Acknowledging that this particular composition is in line with the region-specific constitutional myth of origin – the region and its constitution result from the coming-together of the indigenous groups – its exclusion of non-indigenous minorities seriously affects its legitimacy and effectiveness, which calls for regional constitutional amendments.

Hence, although there is still a lot of untapped potential for institutional innovation, it can be observed that regional states are increasingly using their discretion in this regard. This is largely a laudable trend considering that adapting institutions to region-specific demographic, socio-economic, and cultural contexts will increase their legitimacy and enable them to more effectively contribute to the respective regional constitutional objectives. Constitutional and institutional innovations induced by regional political dynamics, on the other hand, may not always be commendable, but in any case they should take place within the boundaries set by the federal constitution.

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