SUBNATIONAL CONSTITUTIONAL AUTONOMY AND THE ACCOMMODATION OF DIVERSITY IN ETHIOPIA

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Abstract

The Ethiopian population is highly diverse in terms of ethnic composition, governance traditions, and socio-economic activities, to mention only a few diversity markers. Accommodating this diversity to guarantee stability and state integrity was the major rationale behind the adoption of federalism in the country. One of the important mechanisms the federal system has to offer in this regard is the constitutional autonomy of its constituent units or regions. The subnational constitutional autonomy enjoyed by Ethiopia's regions is significant and allows them to draft and enact constitutions that reflect and accommodate the distinct nature of their respective polities. This Article assesses to what extent Ethiopia's regions have utilized their subnational constitutional autonomy by a systematic comparison of the nine regional constitutions. It is found that although the regions have designed distinct constitutional arrangements, they have surely not exhausted the possibilities regional constitutional autonomy has to offer.

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I. INTRODUCTION

The Ethiopian population is characterized by considerable diversity in terms of ethnic composition, religious beliefs, governance traditions, and socio-economic activities, to mention just a few diversity markers.1 Yet, for the largest part of the twentieth century, nation-building policies in Ethiopia had a predominantly assimilationist nature, which undermined, rather than achieved, their purported objectives of guaranteeing peace and stability.2 Since the early 1990s, the Ethiopian government has adopted an alternative nation- and state-building approach culminating in, and supported by, the 1994 federal constitution.3 This constitution introduced a federal system in Ethiopia, which arguably offers excellent opportunities for the accommodation of Ethiopia’s rich diversity.4 One of the major mechanisms in this regard is the considerable autonomy, or subnational constitutional space,5 the federal constitution reserves for the constituent units or regions to draft, adopt, and amend a constitution.6 Subnational constitutional autonomy can significantly strengthen the ability of a federal system to accommodate a country’s pluralism.7 For instance, in a federal country where the constituent units are ethnic-based, such as Ethiopia, subnational constitutional autonomy offers the empowered ethnic groups (i.e., the groups for whom the constituent units have been established) the opportunity to express and preserve their identity.8 Indeed, subnational constitutions can include provisions related to important identity markers, such as religion, language, and traditional

1. CHRISTOPHE VAN DER BEKEN, UNITY IN DIVERSITY-FEDERALISM AS A MECHANISM TO ACCOMMODATE ETHNIC DIVERSITY: THE CASE OF ETHIOPIA 16–24 (Zuerich/Muenster, Lit Verlag, 2012).
2. Id. at 55–104.
4. VAN DER BEKEN, supra note 1, at 294.
5. The term “constitutional space” is used by G. Alan Tarr to indicate the discretion available to constituent units to design their constitutional arrangements. G. Alan Tarr, Explaining Sub-National Constitutional Space, 115 PENN ST. L. REV. 1133, 1134 (2011) [hereinafter Tarr, Sub-National Constitutional Space]; see also Robert F. Williams & G. Alan Tarr, Subnational Constitutional Space: A View from the States, Provinces, Regions, Länder, and Cantons, in FEDERALISM, SUBNATIONAL CONSTITUTIONS, AND MINORITY RIGHTS 3, 6–7 (G. Alan Tarr et al. eds., 2004).
6. VAN DER BEKEN, supra note 1, at 295.
leadership. Giacomo Delledonne and Giuseppe Martinico have referred to this function as "subnational identity constitutionalism." For instance, in 1996, the South African province of KwaZulu-Natal adopted a constitution whose major purpose was the recognition of the Zulu monarchy. Subnational constitutions furthermore allow for the formulation of specific political and social goals, and for the design of institutional arrangements instrumental to the achievement of those goals.

This potential is also available in Ethiopia since the constitutional space reserved for the regions by the federal constitution is significant. Their subnational constitutional autonomy allows the Ethiopian regions to express the historical narrative and traditions of the empowered ethnic group or people; to protect their identity; to embed regional human rights sensitivities; to design a government structure adapted to region-specific features; to determine the structure, powers, and responsibilities of subregional or local governments; and to formulate region-specific policy objectives. Subnational constitutional autonomy can therefore significantly contribute to the accommodation of Ethiopia's pluralism. However, the enormous accommodationist potential of Ethiopia's regional constitutions has hardly been noticed by academia. Of course, such neglect is not unique to Ethiopia, since subnational constitutions have generally been low-visibility constitutions. This Article aims to address this void by investigating, in a comparative context, to what extent Ethiopia's nine regional constitutions have effectively made use of this potential. In other words, this Article assesses to what extent Ethiopian regions have used their constitutional discretion to accommodate the distinctiveness of their polities as well as the implications of these constitutional choices. By doing so, the Article will furthermore be able to indicate possible ways forward on how regions could make more optimal use of their subnational constitutional space. In the next part, the Article starts by

12. Tarr, supra note 9, at 791.
13. Williams, Comparative Subnational Constitutional Law, supra note 11, at 628.
providing a brief background to the introduction of federalism in Ethiopia and to the development of the regional constitutions.

The subsequent parts will systematically, following the structure of the constitutions, dissect the practical use of subnational constitutional space by the nine regions. Part III will focus on the preamble, general provisions, and fundamental principles of the constitutions. Part IV is devoted to the analysis of regional constitutional approaches to human rights. Part V compares the regional government institutions designed by the nine constitutions, whereas Part VI investigates local government. Part VII looks at the constitutional inclusion of region-specific policy principles and at the procedures for constitutional amendment or revision. Part VIII, finally, assesses the use of subnational constitutional space from the perspective of accommodation of diversity.

II. DEVELOPMENT OF FEDERALISM AND REGIONAL CONSTITUTIONS

For the largest part of the twentieth century, Ethiopian rulers have pursued state-building policies that endeavored to establish a centralized administration in the country.14 Whereas the imperial regime considered societal diversity to be detrimental to this objective, the military Marxist regime (Derg), that toppled the last emperor in 1974, paid some lip service to diversity, although it was made subservient to its aspirations of centralized and absolute rule.15 These policies did not reach the intended objectives though, since, rather than resulting in peace and stability, they significantly contributed to the establishment and development of a myriad of rebel movements that formulated demands for ethnic minority protection and autonomy.16 The strongest of these movements were the Tigray People’s Liberation Front (TPLF), which struggled for the rights of the Tigrayan people, and the Eritrean People’s Liberation Front (EPLF), which attempted to liberate Eritrea from the military regime and establish an independent Eritrean republic.17 The long-running civil war sapped the morale of the regime’s army and, when the Soviet Union decided to withdraw its support to its Marxist Ethiopian client, the demise of the military regime was a foregone conclusion.18 The civil war finally ended in May 1991 when the coordinated actions of the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF) (established by the TPLF in

14. VAN DER BEKEN, supra note 1, at 2.
15. Id. at 80–87.
16. Id. at 87.
17. Id. at 90–104.
18. Id. at 103.
1989) and the EPLF ended the last organized resistance of the Derg soldiers.\textsuperscript{19} The EPRDF, being a coalition of different ethnic parties, articulated a nation- and state-building policy based on the explicit recognition and institutional accommodation of Ethiopia’s considerable ethnic pluralism.\textsuperscript{20}

In a joint statement on May 28, 1991, the new rulers announced that an inclusive national conference would be organized, which would discuss the formation of a transitional government and the further details of the transitional period.\textsuperscript{21} This commitment was respected, and the national conference was organized in early July 1991.\textsuperscript{22} Although attempts were made to guarantee the inclusion of alternative voices, the conference was dominated by ethnic-based political movements. This facilitated the incorporation of the EPRDF’s ethnic policies in the Transitional Period Charter, which the conference adopted as a supreme law for the transitional period.\textsuperscript{23}

The Transitional Period Charter initiated a much more accommodative constitutional and institutional approach towards ethnic diversity. Article 2 of the charter enshrined the right of nations, nationalities, and peoples to self-determination (the terms “nations, nationalities, and peoples,” which are the obvious residue of Marxist ideologies, refer to the ethnic groups of the country).\textsuperscript{24} The right to self-determination contained a number of components. The first component granted language rights and cultural rights.\textsuperscript{25} An ethnic group had the right to “preserve its identity and have it respected, promote its culture and history and use and develop its language.”\textsuperscript{26} The second component granted Ethiopia’s ethnic groups the right to representation and participation in the central government.\textsuperscript{27} The right to self-determination furthermore included the right to territorial autonomy.\textsuperscript{28} The inclusion of the right to territorial autonomy engendered article 13, which stated that the transitional legislature would enact a law “establishing local and regional councils for local administrative purposes defined on the basis of nationality.”\textsuperscript{29} In other words, the

\textsuperscript{19} Id.
\textsuperscript{20} Id. at 121.
\textsuperscript{21} Id. at 105.
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} Id. at 108.
\textsuperscript{25} Id. at 107.
\textsuperscript{26} Id.
\textsuperscript{27} Id. at 108.
\textsuperscript{28} Id.
\textsuperscript{29} Id. at 110.
charter mandated the legislature establish an ethnic-based administrative structure.

Pursuant to this mandate, the transitional legislature enacted Proclamation No. 7/1992, which was published on January 14, 1992, in the Negarit Gazeta (the official journal of Ethiopia).30 Article 3(1) of this proclamation listed sixty-three nations, nationalities, and peoples, and linked them to thirteen national and regional self-governments.31 In other words, all sixty-three nations, nationalities, and peoples were assumed to have their territories of origin in one (or, exceptionally, two) of the thirteen regions. Addis Ababa also received regional status, bringing the total number of regions established by the proclamation to fourteen.32 The proclamation accordingly established an ethnic-based decentralized state structure. This structure functioned as the basis for the federal structure embedded in the final constitution, which was approved by a constituent assembly on December 8, 1994.33 The foundation of the federal structure is Article 39 of the federal constitution, which includes a right to self-determination that is largely copied from the charter.34 There is a direct link between Article 39 and the federal structure since the latter is induced by the objective of fulfilling the former.35 In other words, it is within and through the constituent units of the federation/regional states/regions that Ethiopia's ethnic groups are expected to exercise the different components of the right to self-determination, which warrants the designation of Ethiopia's federation as an ethnic federation.

Article 47(1) of the federal constitution establishes nine regional states: the State of Tigray; the State of Afar; the State of Amhara; the State of Oromia; the State of Somali; the State of Benishangul-Gumuz; the State of the Southern Nations, Nationalities, and Peoples; the State of the Gambella Peoples; and the State of the Harari People.36 The territorial organization included in Proclamation No. 7/1992 was largely preserved by the constitution, the difference being that five regions in the south were merged under the banner of the State of the Southern Nations, Nationalities, and Peoples, and that Addis Ababa lost its

31. Id. art. 3(1).
32. Id.
33. Van der Beken, supra note 1, at 125.
35. Van der Beken, supra note 1, at 148–55.
regional status. The ethnic nature of Ethiopia’s federation is reflected by the names of some of its regions, such as the Tigray, Afar, Amhara, Oromia, Somali, and Harar regions, which refer to the respective, empowered groups. Yet, since Ethiopia’s latest population census acknowledges the presence of eighty-plus ethnic groups in the country, it is obvious that the right to territorial autonomy of Ethiopia’s ethnic groups has only very partially been fulfilled with the establishment of nine regional states. In fact, all nine regions are multi-ethnic (which is of course a healthy reality since the opposite would only be possible through practices reminiscent of ethnic cleansing), but the degree of diversity is highly different. In the first five regional states (Tigray, Afar, Amhara, Oromia, and Somali), the group to which the regional name refers constitutes an unequivocal majority, but significant minority groups also reside in these regions. Although the Harar region refers to the Harari people, the latter constitute a small numerical minority in their region. This situation gives rise to the challenging question as to how to reconcile the interests of the Harari people, who have been empowered by the establishment of the region, with the interests of the other ethnic groups who aggregately account for more than ninety percent of the regional population. The Benishangul-Gumuz region refers to the Berta and Gumuz ethnic groups who constitute about half of the regional population. The Gambella region and the Southern Nations, Nationalities, and Peoples region do not refer to (a) specific ethnic group(s), reflecting their multi-ethnic polity. As this Article will show below, regional constitutional autonomy offers excellent opportunities for the regional states to accommodate the specific ethnic constellation of their polities.

The power of the regional states to draft, adopt, and amend a state constitution is conveyed by articles 50(5) and 52(2b) of the federal

37. VAN DER BEKEN, supra note 1, at 110.
38. See id.
40. VAN DER BEKEN, supra note 1, at 226–27.
41. Id.
42. Id. at 227–28.
43. Id. at 247.
44. Id.
45. Id. at 252.
46. SUMMARY AND STATISTICAL REPORT, supra note 39, at 16.
constitution. Pursuant to these provisions, all regions adopted a constitution. There is no compilation of Ethiopian regional constitutions. The Oromia; Tigray; Southern Nations, Nationalities, and Peoples; Somali; Harar; and Amhara regional constitutions were adopted in 1995. The Benishangul-Gumuz and Gambella regional constitutions were adopted in 1996. The Afar region adopted its constitution in 1998. As from 2001 onwards, all regional constitutions were significantly revised, and it is these revised versions that are analyzed and compared in this article. The Oromia region adopted its revised constitution on October 27, 2001; the Amhara region on November 5, 2001; the Southern Nations, Nationalities, and Peoples region (hereinafter the Southern Region) on November 12, 2001; and the Tigray region on November 15, 2001. This was followed by the Afar region, which adopted its revised constitution on July 5, 2002, and the Benishangul-Gumuz and Gambella regions, which adopted their revised constitutions on December 2 and 17, 2002, respectively. The Somali region also adopted its revised constitution in 2002. The Harar region was the last to revise its constitution in 2004. The constitutional revision process was initiated by the federal government, which issued general directives for the regional drafters. The drafting was carried out by either standing committees of the regional state council (the regional parliament) or by committees appointed by the regional chief executive (the regional president) and all revised

48. Van der Beken, supra note 1, at 225–89.
58. See generally Deginet Wotango, Subnational Constitutional Amendment and Revision Processes in Ethiopia: The Case of Oromia National Regional State (Addis Ababa, Ethiopian Civil Service University, June 2014).
constitutions were subsequently adopted by the respective regional councils.\textsuperscript{59}

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.\textsuperscript{60} At the time of writing, a few months after the May 2015 federal and regional elections, this political context had not changed. The EPRDF is a coalition of four ethnic-based parties: the Tigray People’s Liberation Front (TPLF), the Amhara National Democratic Movement (ANDM), the Oromo People’s Democratic Organization (OPDO), and the South Ethiopian People’s Democratic Movement (SEPDM).\textsuperscript{61} Through these four parties, the EPRDF controls 501 of the 547 seats in the House of People's Representatives, the first chamber of the federal parliament, endowing the EPRDF with a comfortable majority to form the federal executive. Furthermore, the four constituent parties each control a region. The TPLF holds all the seats in the Tigray regional Council, the ANDM holds all the seats in the Amhara regional Council, the OPDO holds all the seats in the Oromia regional Council, and, finally, the SEPDM holds all the seats in the Council of the Southern Region.\textsuperscript{62} In practice, EPRDF’s control over the federal and regional governments is even larger than what can be inferred from the EPRDF’s structure.

In the five other regions of the federation, the regional government is controlled by parties that are not part of the EPRDF, but whose establishment has been induced by the EPRDF and are supervised by it. These parties are the Afar National Democratic Party (ANDP) in the Afar region, the Ethiopian Somali People’s Democratic Party (ESPDP) in the Somali region, the Harari National League (HNL) in the Harar region (the HNL administers the Harar region as part of a coalition government with the OPDO), the Benishangul-Gumuz People’s Democratic Party (BGPDP) in the Benishangul-Gumuz region, and the Gambella People’s Unity Democratic Movement (GPUDM) in the

\textsuperscript{59} Tsegaye Regassa, Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level, 3 MIZAN L. REV. 33, 52 (2009).

\textsuperscript{60} By contrast, in South Africa, the dominant African National Congress, which had opposed federalism after independence, discouraged the provinces it controlled from using their subnational constitutional space. Williams, Comparative Subnational Constitutional Law, supra note 11, at 643.

\textsuperscript{61} Van der Beken, supra note 1, at 129.

Gambella region.63 These parties also control forty-six seats in the House of People's Representatives, effectively providing the EPRDF with all the seats in the house.64 The claim that the revised constitutions primarily reflected the objectives of the ruling party is supported by the preambles of the constitutions, which point out similar rationales for the constitutional revision.65 One is the achievement of good governance by strengthening accountability, transparency, efficiency, the separation of powers, and checks and balances.66 Another objective, particularly relevant for this Article, is adapting the regional constitutions to the objective reality of the regional states.67 The correspondence between the objectives behind constitutional revision and the EPRDF political objectives also explain why all regional constitutions were revised at around the same time upon the initiative of the federal government.

III. PREAMBLE, GENERAL PROVISIONS, AND FUNDAMENTAL PRINCIPLES OF THE CONSTITUTIONS

All regional constitutions start with a preamble, which mention the rationales behind the revision of the constitutions. One of the rationales, as mentioned in the previous Part, was adapting the regional constitutions to the objective reality of the concerned regional states—hence the use of subnational constitutional space to reflect and accommodate regional distinctiveness.68 The Somali Constitution specifies in this regard that the regional constitution was revised to take into account the livelihood of the pastoralists.69 The Afar Constitution similarly refers to the objective of reflecting the lifestyle of the (regional) polity.70 The preambles also identify the ethnic group(s) empowered by the establishment of the region.71 This evokes the idea, which originates in Proclamation No. 7/1992, that the nine regional states have each empowered one or more ethnic groups, justifying the

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63. VAN DER BEKEN, supra note 1, at 180.
64. NAT'L ELECTORAL BD. OF ETH., supra note 62.
66. See sources cited supra note 65.
67. See sources cited supra note 65.
68. See supra Part II.
69. SOMALI CONST. (2002).
70. AFAR CONST. (2002).
71. Id.; SOMALI CONST. (2002).
designation of Ethiopian federalism as ethnic federalism.\textsuperscript{72} Empowerment entails that the concerned ethnic groups are supposed to exercise the different components of their right to self-determination, as enshrined in article 39 of the federal constitution, through and within the region.\textsuperscript{73}

The first sentence of all preambles invariably begins with an indication of the empowered ethnic group(s).\textsuperscript{74} Hence, already from the first sentence one can infer whether a given regional constitution acknowledges the ethnic pluralism of its polity. The Somali and Oromia Constitutions, for instance, use the formula, “We, the Somali/Oromo people”—reflecting that only one ethnic group, the titular group, has been empowered by the establishment of the region.\textsuperscript{75} The preambles of the constitutions of Benishangul-Gumuz, Gambella, and Harar regions, on the other hand, expressly mention the diverse ethnic groups empowered by, or indigenous to,\textsuperscript{76} the region.\textsuperscript{77} The Benishangul-Gumuz Constitution starts its preamble with the phrase, “We, the nationalities and peoples of the region,” and further in the preamble the ethnic groups of the region are identified as the nationalities of Berta, Gumuz, Shinasha, Mao, and Komo.\textsuperscript{78} Similarly, the preamble of the Gambella Constitution starts with “We, the Nationalities and Peoples of Gambella peoples’ National Regional State,” and these are in the subsequent paragraphs of the preamble identified as the nationalities of Anywaa, Nuer, Majang, Upo, and Komo.\textsuperscript{79} The preamble of the Harar Constitution talks about the nations, nationalities, and peoples of the region and explicitly singles out the Harari and Oromo ethnic groups.\textsuperscript{80} As pointed out before, subnational constitutional autonomy supports the exercise of the right to self-determination since it allows the indigenous groups to express, strengthen, and preserve their identity, to protect their rights, to formulate their political and social objectives, and to design the institutional and administrative structures suited to achieve these objectives.\textsuperscript{81} In fact, enabling ethnic groups to exercise

\textsuperscript{72} Proclamation No. 71/1992, \textit{Fed Negarit Gazeta}.
\textsuperscript{73} \textit{Fed. Const.} art. 39 (1994).
\textsuperscript{74} See sources cited \textit{supra} note 65.
\textsuperscript{75} \textit{Oromia Const.} (2001); \textit{Somali Const.} (2002).
\textsuperscript{76} The term “indigenous” is explicitly used by the Benishangul-Gumuz Constitution (article 2) to indicate the regionally empowered groups. \textit{Benishangul-Gumuz Const.} art. 2 (2002).
\textsuperscript{77} See generally \textit{Id.} pmbl. (2002); \textit{Gambella Const.} pmbl. (2002); \textit{Harar Const.} pmbl. (2004).
\textsuperscript{78} \textit{Benishangul-Gumuz Const.} pmbl. (2002).
\textsuperscript{79} \textit{Gambella Const.} pmbl. (2002).
\textsuperscript{80} \textit{Harar Const.} pmbl. (2004).
\textsuperscript{81} See \textit{supra} Part II.
their rights to self-determination is one of the major objectives of subnational constitutions in ethnic federal systems. In this regard, G. Alan Tarr refers to Bill 196, introduced in the Québec National Assembly in 2007, which aimed at “entrenching the fundamental values of Québec in a Québec constitution.” The bill pointed out that “it is the prerogative of the Québec nation to express its identity through the adoption of a Québec constitution.”

Another recent example of subnational charters expressing subnational identity is offered by the “estatutos de autonomia,” or autonomy statutes, the basic institutional laws of the autonomous communities (regions) in Spain. These statutes were reformed from 2006 onwards and they include several references to distinct subnational identities. The statutes include provisions pertaining to, inter alia, the specific history of the regions; to the regional language (e.g., Catalan in Catalonia); to symbolic places; and to the regional flag, hymn, and other symbolic elements. The distinct regional identity is furthermore reflected in regional policy principles and in the rights provisions. Similar trends can be observed in Italy's regional charters (statuti), regional laws that regulate the form of government and contain basic principles for the organization of the region and the conduct of its business. For instance, they contain references to historical elements, such as former duchies or counties within the boundaries of the region, and they include the founding principles of the region. Yet, although they display many constitutional features, the Spanish and Italian constitutional courts have decided that the autonomy statutes and the regional charters, respectively, are not regional constitutions. An important element distinguishing the Spanish and Italian regions from the constituent units in Ethiopia is the issue of sovereignty. Section 1, clause 2 of the Spanish Constitution stipulates that “[n]ational sovereignty belongs to the Spanish people,

82. Marshfield, supra note 8, at 1169; Tarr, supra note 9, at 783.
83. Tarr, Subnational Constitutions and Minority Rights, supra note 9, at 783.
84. Id. at 784.
86. See id.
87. Id. at E-15.
88. Id. at E-14; Delledone & Martinico, supra note 10, at 882.
89. Delledone & Martinico, supra note 10, at 882.
90. Id.
from whom all [s]tate powers emanate.”92 In a similar vein, article 1, clause 2 of the Italian Constitution states that, “[s]overeignty belongs to the people.”93 Whereas in Italy and Spain sovereign power is therefore exercised by the national community or people as a whole,94 the Ethiopian federal constitution (in article 8) vests sovereign power in the “[n]ations, [n]ationalities and [p]eoples of Ethiopia.”95

Because of their sovereignty, Ethiopia’s ethnic groups have a right to self-determination, which they exercise within and throughout the region where they are indigenous.96 The indigenous groups are therefore endowed with constituent power, from which the regional constitutions are presumed to have emanated.97 The use of subnational constitutional autonomy as a mechanism to exercise the right to self-determination and to protect ethnic minority rights works best in case of a considerable alignment between ethnic group and constituent unit territories. Yet, although the empowerment of ethnic groups was the main rationale behind the introduction of federalism in Ethiopia, it should not blind us to the fact that all regional states are also inhabited by citizens with non-indigenous identities.98 How to reconcile between the empowerment of indigenous groups on the one hand, and the inclusion of non-indigenous residents and citizens on the other, is one of the major challenges confronting Ethiopian federalism.99 This challenge is clearly illustrated by the idea, expressed in the preambles, that the regional constitutions are the emanation of the will of the ethnic group(s) empowered by the establishment of the region.100

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92. CONSTITUCIÓN ESPAÑOLA § 1, cl. 2.
93. Art. 1, cl. 2 Costituzione [Cost.] (It.).
95. FED. CONST. art. 8 (1994).
96. See AFAR CONST. art. 37 (2002); AMHARA CONST. art. 39 (2001); BENISHANGULGUMUZ CONST. art. 39 (2002); GAMBELLA CONST. art. 40 (2002); HARAR CONST. pmbl. (2004); HARAR CONST. art. 39; SOMALI CONST. art. 39 (2002); OROMIA CONST. art. 39 (2001); SOUTHERN CONST. art. 39 (2001); TIGRAY CONST. art. 39 (2001).
98. See SUMMARY AND STATISTICAL REPORT, supra note 39, at 84–110 tbl. 5.
99. For a more elaborate discussion of this issue, see Christophe Van der Beken & Yonatan Tesfaye Fessha, Empowerment and Exclusion: The Legal Protection of Internal Minorities in Ethiopia, in FEDERALISM AND LOCAL GOVERNMENT IN ETHIOPIA 53 (Asnake Kefale & Assefa Fiseha eds., 2015).
100. See sources cited supra note 65.
words, the regional constitution emanates from the constituent power of the indigenous groups. The implications of this idea are discernible in the Harar Constitution. The preamble of the Harar Constitution, reflecting upon the historical background to the adoption of the regional constitution, recalls the forced incorporation of Harar by the army of Emperor Menelik II in 1887. The reference to this historical event brings back the highly contentious debate on whether Emperor Menelik's conquest and subsequent incorporation of territories into the Ethiopian Empire at the end of the nineteenth century was part of a nation-building process or, rather, the manifestation of internal colonialism.102 Whereas the latter interpretation is mirrored in the regional Harar Constitution, this view is by no means shared by all non-indigenous ethnic groups living in the region.103

Next to the preamble, all regional constitutions start with a chapter on “general provisions.” These provisions pertain, inter alia, to the regional state flag and emblem and the regional language policy. As mentioned before with regard to the Spanish autonomy statutes, flags and emblems can be used by the empowered ethnic groups to symbolize their distinct identity. Most regional constitutions provide that the details pertaining to the flag and emblem will be determined by (ordinary) regional law, but article 3 of the Oromia Constitution limits the discretion of the ordinary lawmaker in this regard. It prescribes that the sign of “Oda” will figure in the middle of the Oromia regional flag. The Oda symbol refers to the tree that plays a central role in the “Gada” system—the traditional Oromo governance system—as the place where the Gada leaders gather. The symbol is therefore a significant expression of Oromo identity. All regional constitutions furthermore contain provisions on language, specifying which language will be used as the regional working language. In this regard, five of the nine regional constitutions have designated the language of the regionally empowered ethnic group as the regional working language (i.e., Somali in the Somali region, Afar in the Afar region, Afaan Oromo in the

103. See id.
104. See sources cited supra note 65.
105. See sources cited supra note 65.
106. See Ruggiu, supra note 85, at E-15 to E-22.
108. Id.
109. See id.
111. Afar Const. art. 5 (2002).
Oromia region,\textsuperscript{112} Tigrigna in the Tigray region,\textsuperscript{113} and Amharic in the Amhara region).\textsuperscript{114} Harar is the only regional state that has designated two languages as the working language (i.e., Harari and Afaan Oromo).\textsuperscript{115} The three remaining regions are characterized by the absence of one (or two) empowered group(s), but have recognized at least five (in the case of Benishangul-Gumuz and Gambella) empowered groups, as mentioned before.\textsuperscript{116} These regional states have therefore decided to avoid contentious debates on which languages to be selected as regional working languages and have pragmatically opted for the continued use of Amharic, which served as the country’s sole official language before the introduction of ethnic decentralization/federalism.\textsuperscript{117}

Chapter 2 of the regional constitutions proclaims the fundamental principles of the constitution. Parallel to the federal constitution, all regional constitutions contain five fundamental principles. The first principle specifies the holder of the sovereign power at regional level.\textsuperscript{118} The preambles of the regional constitutions already indicate that the regional constitutions are not necessarily assumed to be the emanation of the will of the nations, nationalities, and peoples residing in the regions.\textsuperscript{119} Rather, they are the emanation of the will of the nations, nationalities, and peoples empowered by the establishment of the region—that is, of the indigenous ethnic groups. This assumption finds its logical consequence in the regional constitutional provisions on the holders of sovereign power. It should therefore not surprise anyone that the constitutions of the Somali and Oromia regions contain similar provisions granting sovereign power in the region to the “Somali [p]eople” and “people of the Oromo Nation,” respectively.\textsuperscript{120} Sovereign (including constituent) power in the regions is therefore held by the ethnic communities indigenous to it.\textsuperscript{121} The regional constitutions furthermore proclaim the supremacy of the regional constitution, which

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\item[112] OROMIA CONST. art. 5 (2001).
\item[113] TIGRAY CONST. art. 5 (2001).
\item[114] AMHARA CONST. art. 5 (2001).
\item[115] HARAR CONST. art. 6 (2004).
\item[116] See supra Part II.
\item[117] See BENISHANGUL-GUMUZ CONST. art. 6 (2002); GAMBELLA CONST. art. 6 (2002); SOUTHERN CONST. art. 5 (2001).
\item[118] See AFAH CONST. art. 8 (2002); AMHARA CONST. art. 8 (2001); BENISHANGUL-GUMUZ CONST. art. 9 (2002); GAMBELLA CONST. art. 9 (2002); HARAR CONST. art. 8 (2004); OROMIA CONST. art. 8 (2001); SOMALI CONST. art. 9 (2002); SOUTHERN CONST. art. 8 (2001); TIGRAY CONST. art. 8 (2001).
\item[119] See supra Parts II, III.
\item[120] OROMIA CONST. art. 8 (2001); SOMALI CONST. art. 9 (2002).
\item[121] OROMIA CONST. art. 8 (2001); SOMALI CONST. art. 9 (2002).
\end{footnotes}
entails that the regional constitution is the supreme law of the region.\footnote{See Afar Const. art. 9 (2002); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Amhara Const. art. 9 (2001); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).} The principle of constitutionalism is also included in all regional constitutions.\footnote{See Afar Const. art. 9 (2002); Amhara Const. art. 9 (2001); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).} Yet, this does not affect the supremacy of the federal constitution—as is acknowledged by all regional constitutions.\footnote{Afar Const. art. 9 (2002); Amhara Const. art. 9 (2001); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).} There is thus a hierarchical relationship between the federal constitution and the regional constitutions, which implies that regional constitutional provisions cannot violate the federal constitution. This means that the federal constitution sets the frame within which the regions can draft, adopt, and amend their constitutional provisions. The federal constitution, in other words, determines the subnational constitutional space of the regions.\footnote{See generally Fed. Const. (1994).} As a third fundamental principle, all regional constitutions proclaim their commitment to the protection of fundamental rights and freedoms.\footnote{Afar Const. art. 10 (2002); Amhara Const. art. 10 (2001); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).}

In the next Part, this Article will examine this commitment as expressed by all regional constitutions through the inclusion of a comprehensive list of human rights. The principle of separation of state and religion is also included in all regional constitutions.\footnote{See Afar Const. art. 10 (2002); Amhara Const. art. 10 (2001); Benishangul-Gumuz Const. art. 11 (2002); Gambella Const. art. 12 (2002); Harar Const. art. 11 (2004); Oromia Const. art. 11 (2001); Somali Const. art. 12 (2002); Southern Const. art. 11 (2001); Tigray Const. art. 11 (2001).} None of the regional states are thus allowed to adopt a state religion. This is a noteworthy principle, especially in the regional states where the population almost unanimously embraces one religion (i.e., Islam in the Afar and Somali regions, Orthodox Christianity in the Tigray region).\footnote{Afar Const. art. 11 (2002); Amhara Const. art. 11 (2001); Benishangul-Gumuz Const. art. 12 (2002); Gambella Const. art. 12 (2002); Harar Const. art. 11 (2004); Amhara Const. art. 11 (2001); Somali Const. art. 12 (2002); Amhara Const. art. 11 (2001); Southern Const. art. 11 (2001); Tigray Const. art. 11 (2001).} The fifth and last principle included in all regional constitutions is the

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122. See Afar Const. art. 9 (2002); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Amhara Const. art. 9 (2001); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).

123. See Afar Const. art. 9 (2002); Amhara Const. art. 9 (2001); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).

124. Afar Const. art. 9 (2002); Amhara Const. art. 9 (2001); Benishangul-Gumuz Const. art. 10 (2002); Gambella Const. art. 10 (2002); Harar Const. art. 9 (2004); Oromia Const. art. 9 (2001); Somali Const. art. 10 (2002); Southern Const. art. 9 (2001); Tigray Const. art. 9 (2001).


126. Afar Const. art. 10 (2002); Amhara Const. art. 10 (2001); Benishangul-Gumuz Const. art. 11 (2002); Gambella Const. art. 11 (2002); Harar Const. art. 10 (2004); Oromia Const. art. 10 (2001); Somali Const. art. 11 (2002); Southern Const. art. 10 (2001); Tigray Const. art. 10 (2001).

127. Afar Const. art. 11 (2002); Amhara Const. art. 11 (2001); Benishangul-Gumuz Const. art. 12 (2002); Gambella Const. art. 12 (2002); Harar Const. art. 11 (2004); Amhara Const. art. 11 (2001); Somali Const. art. 12 (2002); Amhara Const. art. 11 (2001); Southern Const. art. 11 (2001); Tigray Const. art. 11 (2001).

commitment to good governance and it includes, in parallel with the federal constitution, the specific principles of accountability and transparency.129

IV. HUMAN RIGHTS

The Ethiopian federal constitution contains an elaborate bill of human rights, including the classical civil and political rights, a few socio-economic rights, as well as so-called third-generation rights, such as the right to development and environmental rights.130 The federal bill of rights is binding for both federal and regional state government organs.131 The binding nature of the federal bill of rights vis-à-vis the regional states could have justified a regional constitutional silence on human rights. Since the human rights protected by the federal constitution have to be adhered to by the regional government organs, there is no need to include a separate human rights catalog in the regional constitutions. The regional constitutions could have sufficed with a reference to the federal bill of rights. In Germany, for instance, a number of Länder have not included the basic rights of the Federal Basic Law in their constitutions, which merely confirm the binding nature of the rights embedded in the federal constitution.132 The same picture arises in Switzerland, where some of the cantonal constitutions do not contain a bill of rights and merely refer to the federal constitution.133 Yet, a mere reference to the federal bill of rights by Ethiopia’s regional constitutions would have prevented the materialization of one of the advantages of regional constitutions: the possibility for better human rights protection at the regional level.

Obviously, the supremacy of the federal constitution implies that the regional constitutions cannot violate human rights protected in the federal constitution by offering a lower degree of protection. The human rights included in the federal constitution offer a minimum guarantee that has to be upheld by the regional constitutions. However, the supremacy of the federal constitution and its human rights provisions

129. See AFAR CONST. art. 12 (2002); AMHARA CONST. art. 12 (2001); BENISHANGUL-GUMUZ CONST. art. 13 (2002); GAMBELLA CONST. art. 13 (2002); HARAR CONST. art. 12 (2004); OROMIA CONST. art. 12 (2001); SOMALI CONST. art. 13 (2002); SOUTHERN CONST. art. 12 (2001); TIGRAY CONST. art. 12 (2001).
131. Id. art. 13.
would not be affected by regional constitutions offering a better protection of human rights. In this regard, with reference to the United States, it is observed that the Bill of Rights is a floor, rather than a ceiling: "It establishes a standard, below which constituent units cannot go, but it does not otherwise limit state initiatives in expanding rights; they can build on that floor." In a similar vein, the South African Constitutional Court pronounced that a provincial constitution could enshrine a more expansive rights protection than the central or national constitution. In Germany, Austria, and Switzerland, as well, some Länder and cantonal constitutions have complemented the human rights enshrined in the federal constitution. In fact, there are a number of ways in which regional constitutions can build on the federal human rights floor. For instance, regional constitutions can entrench human rights that are not included in the federal constitution or they can limit the possibilities for human rights limitations and derogations. By doing so, regional constitutions can incorporate new international developments in the area of human rights and reflect a distinct regional human rights focus.

Although all regional constitutions contain a bill of rights, a cursory overview of the regional human rights provisions shows that there are large similarities with the bill of rights included in the federal constitution. This means that all three generations of human rights are also enshrined in the regional constitutions. One of the few areas where the regional constitutions offer better protection than the federal constitution pertains to freedom of movement. The regional constitutions give a wider meaning to freedom of movement by complementing the right to liberty of movement and freedom to choose one's residence with the right to work and to acquire property in the respective region. From the vantage point of ethnic minority protection, this is an important addition. It implies that regional

134. Tsegaye, supra note 59, at 39.
135. Tarr, Subnational Constitutions and Minority Rights, supra note 9, at 792.
136. Williams, Comparative Subnational Constitutional Law, supra note 11, at 650.
137. Peter Bussjaeger, Sub-National Constitutions and the Federal Constitution in Austria, in CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS 88, 95 (Michael Burgess & G. Alan Tarr eds., 2012); Gunlicks, supra note 132, at 992; Schmitt, supra note 133, at 159.
140. AFAR CONST. art. 32 (2002); AMHARA CONST. art. 32 (2001); BENISHANGUL-GUMUZ CONST. art. 33 (2002); GAMBELLA CONST. art. 33 (2002); HARAR CONST. art. 32 (2004); OROMIA CONST. art. 32 (2001); SOMALI CONST. art. 33 (2002); SOUTHERN CONST. art. 32 (2001); TIGRAY CONST. art. 32 (2001).
government institutions cannot prevent citizens migrating from other regions from working or acquiring property in their region. Although the equality principle would also prohibit such discrimination, the substance given to freedom of movement by the regional constitutions expresses the commitment of the regional constitutional drafters to this principle. Apart from the Afar and Somali constitutions, all regional constitutions list, immediately after the provision on freedom of movement, the right of every Ethiopian resident to be elected to or employed by any public office in the region.  

This is once more a reflection of the regional constitutional drafters' commitment to equal treatment of all Ethiopian citizens residing in their regions—irrespective of their indigenous or non-indigenous identity. The only requirement formulated by the regional constitutions is the ability to speak the working language of the region. The Tigray Constitution is even more lenient in this regard, since it stipulates that the ability to speak the regional working language, Tigrigna, is not mandatory in cases where the nature of the work does not require it. Confirming Ethiopia's commitment expressed by its ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the federal constitution has enshrined this category of rights in its article 41.

A provision on economic, social, and cultural rights can be found in all regional constitutions as well. Seven out of the nine regional constitutions contain provisions on social, economic, and cultural rights that are almost identical to those found in article 41 of the federal constitution. The Afar and Somali regions have made use of their subnational constitutional space and constitutionalized—under the heading of economic, social, and cultural rights—additional regional state obligations, which reflect and express distinct regional socio-economic features and policy preferences. Article 41(4) of the Somali

141. AMHARA CONST. art. 33 (2001); BENISHANGUL-GUMUZ CONST. art. 34 (2002); GAMBELLA CONST. art. 34 (2002); HABAR CONST. art. 33 (2004); OROMIA CONST. art. 33 (2001); SOUTHERN CONST. art. 33 (2001); TIGRAY CONST. art. 33 (2001).
142. See supra notes 96–101 and accompanying text.
143. TIGRAY CONST. art. 33 (2001).
144. FED. CONST. art. 41 (1994).
145. See AFAR CONST. art. 39 (2002); AMHARA CONST. art. 41 (2001); BENISHANGUL-GUMUZ CONST. art. 41 (2002); GAMBELLA CONST. art. 42 (2002); HABAR CONST. art. 41 (2004); OROMIA CONST. art. 41 (2001); SOMALI CONST. art. 41 (2002); SOUTHERN CONST. art. 41 (2001); TIGRAY CONST. art. 41 (2001).
146. See AMHARA CONST. art. 41 (2001); BENISHANGUL-GUMUZ CONST. art. 41 (2002); GAMBELLA CONST. art. 42 (2002); HABAR CONST. art. 41 (2004); OROMIA CONST. art. 41 (2001); SOUTHERN CONST. art. 41 (2001); TIGRAY CONST. art. 41 (2001).
147. AFAR CONST. art. 39 (2002); SOMALI CONST. art. 41 (2002).
Constitution reflects the predominant socio-economic activity of the regional population—pastoralism—where it repeats the federal constitutional obligation for the State to allocate ever-increasing resources to providing the people with public health and education, but by adding that particular attention should be given to the pastoralists.148 A similar attention to pastoralists is found in the Afar Constitution.149

Most human rights are not granted absolutely and can be limited by law if certain conditions are fulfilled. These conditions are set out in so-called limitation or clawback clauses.150 The Ethiopian regional constitutions do not include a general limitation clause applicable to all protected rights, but provide limitation clauses in relation to some human rights only.151 It is noted that the limitation clauses of the federal constitution are verbatim transplanted into all regional constitutions.152 Hence, the regional constitutions have not used the opportunity to limit the limitations—and thus offer a stronger human rights protection by curtailing the legitimate grounds for human rights limitations. International law does not only sanction human rights limitations under expressly stated conditions, it also allows governments to suspend human rights in times of emergency.153 Whereas limitations are applied permanently, suspensions or derogations are imposed for the duration of the emergency period only.154 The possibility for the Ethiopian government to suspend human rights protected in the constitution during a state of emergency is provided by article 93 of the federal constitution.155 Yet, some human rights are considered to be so fundamental that their suspension is prohibited, even in an emergency context.156 The provisions on state of emergency included in the regional constitutions (authorizing a regional state of emergency) are modeled on the corresponding provisions of the federal constitution, yet several regional constitutions have

149. AFAR CONST. art. 39 (2002).
151. Id.
152. Id.
155. FED. CONST. art. 93 (1994).
156. Id.
significantly widened the number of human rights protected from
derogation or suspension in the context of emergency.\textsuperscript{157} Here, this is an
instance where the regional constitutions have built on the human
rights foundations laid by the federal constitution.\textsuperscript{158}

A better, more extensive human rights protection can also be
realized through a more expansive interpretation of the regional human
rights provisions by the bodies empowered to interpret the regional
constitution. The regional constitutions are authoritatively interpreted
by regional bodies set up specifically for this purpose (apart from the
Council of Nationalities in the Southern Region, which has additional
competencies—as will be discussed in Part V). In the United States,
there is a similar arrangement with state supreme courts acting as
ultimate interpreters of the state constitutions.\textsuperscript{159} What has been
observed there is that state courts have given a more expansive
protection to state constitutional provisions on human rights than what
is available at federal level, even when the state constitutional
provisions are worded identically to the federal provisions.\textsuperscript{160} This
phenomenon is referred to as the “new judicial federalism.”\textsuperscript{161} Yet, the
odds that the regional constitutional interpretation bodies in Ethiopia,
called Constitutional Interpretation Commissions, are going to display
the same behavior and interpret the regional constitutional provisions
on human rights in a more expansive way than the interpretation given
to similar provisions in the federal constitution by the House of the
Federation are not high.\textsuperscript{162} The power to interpret the federal
constitution is indeed designated to the House of the Federation, which
is the federal second chamber.\textsuperscript{163} This arrangement is highly
problematic from the perspective of effective human rights enforcement.
Since all members of the House of the Federation are selected by the
regional councils, and since all regional councils are controlled by
members or supporters of the same party (EPRDF), as outlined in Part
II, the House of the Federation is similarly controlled by the dominant

\textsuperscript{157} AMHARA CONST. art. 114 (4) (2001); BENISHANGUL-GUMUZ CONST. art. 115(3)
(2002); GAMBELLA CONST. art. 119(4) (2002); HARAR CONST. art. 76(4) (2004); OROMIA
CONST. art. 108(4) (2001); SOUTHERN CONST. art. 121(4) (2001); TIGRAY CONST. art. 103(4)

\textsuperscript{158} Tsegaye, supra note 59, at 54.

\textsuperscript{159} Tarr, Subnational Constitutions and Minority Rights, supra note 9, at 778.

\textsuperscript{160} See, e.g., Williams, Comparative Subnational Constitutional Law, supra note 11,
at 633.

\textsuperscript{161} Id.

\textsuperscript{162} See Chi Mgbako et al., Silencing the Ethiopian Courts: Non-Judicial
68 (2008).

\textsuperscript{163} Id. at 267.
party.\textsuperscript{164} This situation, coupled with the strong party discipline characterizing the EPRDF, makes it very challenging for the House of the Federation to entertain complaints about human rights violations by the federal government institutions and seriously affects the legitimacy of any decision made in this regard.\textsuperscript{165} 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 (as well as 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 (all controlled either directly or indirectly by the EPRDF), which makes the commissions a purely political body dominated by members of the same party.\textsuperscript{166}

The foregoing demonstrates that the regional constitutions in Ethiopia exhibit only a few instances where human rights provisions offer a more expansive protection than the human rights protection available in the federal constitution. It is furthermore not likely that identical regional constitutional provisions will receive a more expansive interpretation than the corresponding federal provisions. Yet, the subnational constitutional autonomy of the regions also implies the power to amend or revise the text of the regional constitution. This revision takes place according to a specific procedure set out in every regional constitution. Therefore, changing political and socio-economic environments in the regions could induce the latter to include additional human rights provisions in their constitutions.\textsuperscript{167} Yet, the regions themselves have largely blocked this avenue towards more wide-ranging human rights protection. All regional constitutions include the statement that the provisions of chapters 2 and 3 of the regional constitution (chapter 3 being the chapter on human rights) can be amended only if the provisions of chapters 2 and 3 of the federal constitution are amended.\textsuperscript{168}

\textsuperscript{164} See supra Part II (discussing the political dominance of the EPRDF).
\textsuperscript{165} Mgbako et al., supra note 162, at 285.
\textsuperscript{166} Afar Const. art. 70 (2002); Amhara Const. art. 70 (2001); Benishangul-Gumuz Const. art. 71 (2002); Gambella Const. art. 74 (2002); Oromia Const. art. 67 (2001); Somali Const. art. 71 (2002); Southern Const. art. 58 (2001); Tigray Const. art. 68 (2001).
\textsuperscript{167} See, e.g., Werner Reutter & Astrid Lorenz, Explaining the Frequency of Constitutional Change in the German Länder: Institutional and Party Factors, 46 Rutgers Univ. Law Rev. 103 (2016).
\textsuperscript{168} Afar Const. art. 110, § 1 (2002); Amhara Const. art. 118, § 1 (2001); Benishangul-Gumuz Const. art. 119, § 1 (2002); Gambella Const. art. 123, § 1 (2002); Harar Const. art. 79, § 1 (2004); Oromia Const. art. 112, § 1 (2001); Somali Const. art. 109, § 1 (2002); Southern Const. art. 125, § 2 (2001); Tigray Const. art. 107, § 1 (2001).
V. REGIONAL GOVERNMENT INSTITUTIONS

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, which determines the constitutional space for the regions to design their institutional structure.169 Article 50, section 2 stipulates that the states shall have legislative, executive, and judicial powers.170 The power of legislation on matters falling under (regional) state jurisdiction is bestowed on the state or regional council.171 The regional council is the highest organ of regional state authority, which is responsible to the people of the state.172 The highest organ of executive power at regional level is the State Administration.173 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. In other words, regarding the regional political institutions, the federal constitution is an “incomplete” document, reserving significant space for the regions within broadly formulated parameters. The more the federal constitution prescribes the content of subnational constitutions, the more complete it will be.174 From this perspective, it can be observed that the Ethiopian federal constitution is much more “complete” with regard to the regional judiciary, which, as a result, seriously constrains subnational constitutional autonomy. Article 50, section 7 stipulates in general terms that regional state judicial powers are vested in the regional courts.175 Yet, in its articles 78, 79, 80, and 81, the federal constitution contains much more detailed provisions related to the structure of the regional judiciary and concerning the appointment, removal, and jurisdiction of regional judges and courts.176 Since the federal constitution is supreme, the regions have to adhere to these provisions, which seriously affects their subnational constitutional space.

Within the federal framework, all regional constitutions have inserted provisions elaborating on their institutional structure.177 From

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169. FED. CONST. art. 50 (1994).
170. Id. art. 50, § 2.
171. Id. art. 50, § 5.
172. Id. art. 50, § 3.
173. Id. art. 50, § 6.
174. Williams, Comparative Subnational Constitutional Law, supra note 11, at 635.
175. FED. CONST. art. 50, § 7 (1994).
176. Id. arts. 78–81.
177. APAR CONST. ch. 4 (2002); AMHARA CONST. ch. 4 (2001); BENISHANGUL-GUMUZ CONST. ch. 4 (2002); GAMBELLA CONST. ch. 5 (2002); HARAR CONST. ch. 4 (2004); OROMIA
the outset, it can be mentioned that seven out of the nine regional constitutions provide for a similar institutional structure.\textsuperscript{178} The Harar and Southern Constitutions are the exceptions to this pattern and demonstrate specific features.\textsuperscript{179} Those specific features have been induced by the ambition to accommodate the particular ethnic diversity of the regional population, which amounts to a use of subnational constitutional space to adapt regional institutions to distinctive regional realities.

In eight of the nine regions, the members of the regional council, "the regional legislature," are directly elected for a term of five years on the basis of universal suffrage and by free, fair, and secret ballot.\textsuperscript{180} 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.\textsuperscript{181} The Harar Constitution has enshrined a mechanism of guaranteed representation of the Harari people in the regional council.\textsuperscript{182} Although the region was established with the empowerment of the Harari people in mind, the Harari constitute less than ten percent of the regional population.\textsuperscript{183} Such a small population could have resulted in other ethnic groups dominating the regional political institutions, such as the regional council, reducing the numerically inferior Harari to a political minority in "their" region. To avert this situation, the regional constitution has provided for a regional council composed of two chambers: the People’s Representative Assembly (PRA) and the Harari National Assembly (HNA).\textsuperscript{184} The twenty-two seats reserved for the PRA and the fourteen seats reserved for the HNA jointly constitute the thirty-six seats of the regional council.\textsuperscript{185} The membership of the HNA is limited to people of Harari identity.\textsuperscript{186} The members are not only elected by and from Harari living

\textsuperscript{Const. ch. 4 (2001); Somali Const. ch. 4 (2002); Southern Const. ch. 4 (2001); Tigray Const. ch. 4 (2001).}

\textsuperscript{178} See Afar Const. ch. 4 (2002); Amhara Const. ch. 4 (2001); Benishangul-Gumuz Const. ch. 4 (2002); Gambella Const. ch. 5 (2002); Oromia Const. ch. 4 (2001); Somali Const. ch. 4 (2002); Tigray Const. ch. 4 (2001).

\textsuperscript{179} See Harar Const. ch. 4 (2004); Southern Const. ch. 4 (2001).

\textsuperscript{180} Afar Const. art. 46, § 1 (2002); Amhara Const. art. 48, § 1 (2001); Benishangul-Gumuz Const. art. 48, § 1 (2002); Gambella Const. art. 51, § 1 (2002); Oromia Const. art. 48, § 1 (2001); Somali Const. art. 48, § 1 (2002); Southern Const. art. 50, § 1 (2001); Tigray Const. art. 48, § 1 (2001).

\textsuperscript{181} Harar Const. art. 50, § 2 (2004).

\textsuperscript{182} Id.

\textsuperscript{183} Summary and Statistical Report, supra note 39, at 103.

\textsuperscript{184} Harar Const. art. 49, § 1 (2004).

\textsuperscript{185} Id. arts. 48, 49.

\textsuperscript{186} Id. art. 50(2).
in the regional state, but by Harari living in other regions and towns of Ethiopia as well, illustrating the above-mentioned point that the elections for this Council are not based on universal suffrage.\textsuperscript{187}

The regional constitution further offers a de facto, guaranteed representation to the Harari in the PRA by stating that four members of the council have to be elected from the Jugol constituency\textsuperscript{188}—a constituency composed of the old walled city of Harar predominantly inhabited by Harari. The remaining eighteen members are elected from constituencies outside the Jugol.\textsuperscript{189} Because of these mechanisms, the Harari people are able to obtain considerable representation in the regional council. Through the HNA, the Harari are ensured fourteen members. It is furthermore highly likely that the four members of the PRA elected in the Jugol are also Harari, due to their numerical predominance in that constituency.\textsuperscript{190} Their combined presence in both chambers should therefore enable the Harari to obtain at least eighteen, or half, of the seats in the regional council. The results of the last regional elections of May 2015 confirmed this scenario. The Harari National League (HNL), an EPRDF-affiliated ethnic Harari party, won eighteen seats in the regional council. All remaining eighteen seats were won by the OPDO.\textsuperscript{191} Another mechanism, unique to the Harar Constitution and equally inspired by the ambition of protecting the interests of the Harari, is that the candidate for chief executive, or president, of the region has to be selected by the Harari National Assembly (i.e., the assembly exclusively elected by and composed of Harari members).\textsuperscript{192} In all other regions, the regional president is elected by and from among the members of the regional council.\textsuperscript{193}

Although the Harar Constitution thus reserves the position of regional president for the Harari people, it does not allow the Harari to impose their candidate.\textsuperscript{194} Indeed, the approval of the nomination, and thus the appointment of the regional president, requires a two-thirds majority decision in the regional council.\textsuperscript{195} This qualified majority

\begin{itemize}
\item \textsuperscript{187} \textit{Id.}
\item \textsuperscript{188} \textit{Id.} art. 50(1).
\item \textsuperscript{189} \textit{Id.}
\item \textsuperscript{190} It cannot be excluded that Harari candidates are elected to the PRA outside the Jugol constituency as well.
\item \textsuperscript{191} \textit{NAT'L ELECTORAL BD. OF ETH., supra} note 62.
\item \textsuperscript{192} \textit{HARAR CONST.} art. 63, § 1 (2004).
\item \textsuperscript{193} \textit{APAR CONST.} art. 58, § 1 (2002); \textit{AMHARA CONST.} art. 59, § 1 (2001); \textit{BENISHANGUL-GUMUZ CONST.} art. 60, § 1 (2002); \textit{GAMBELLA CONST.} art. 63, § 1 (2002); \textit{OROMIA CONST.} art. 56, § 1 (2001); \textit{SOMALI CONST.} art. 60, § 1 (2002); \textit{SOUTHERN CONST.} art. 67, § 1 (2001); \textit{TIGRAY CONST.} art. 57 (2001).
\item \textsuperscript{194} \textit{HARAR CONST.} art. 51, § 2, subsec. d (2004); \textit{id.} art. 63, § 1.
\item \textsuperscript{195} \textit{Id.} art. 51, § 2, subsec. d.
\end{itemize}
requirement attempts 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. This mechanism could therefore be of interest to other regional states confronted by the challenge of balancing between empowerment and inclusion, an issue which I referred to above. The other members of the regional executive council are nominated by the chief executive who submits a list with nominees for approval to the regional council,\(^{196}\) which is the procedure followed in all regions.\(^{197}\) The procedure for selection and appointment of members of the regional executive council shows clear parallels with the process followed for the selection of the prime minister and other federal ministers. The prime minister is elected by, and from among, the members of the House of People’s Representatives.\(^{198}\) The prime minister nominates the other members of the Council of Ministers and submits the list with nominees for approval to the house.\(^{199}\) Such parallelism between the federal and regional constitutions is common in federations.\(^{200}\) Indeed, comparative research on subnational constitutions has revealed that when the federal constitution provides for a parliamentary or presidential system of government, such system is commonly replicated by the regional constitutions.\(^{201}\) Yet, a distinctive attribute of the regional constitutions is that the chief executive is both head of the regional state and head of government, whereas at the federal level the functions of head of state and head of government are separated between the president and prime minister.\(^{202}\) The same research on subnational constitutions has found that although there is considerable parallelism between federal and regional executive structures, deviations from the federal model are most often observed regarding head of state positions.\(^{203}\)

Another institutional innovation is incorporated into the Southern Constitution. The 1995 constitution of the Southern Region provided for a regional council with similar composition, powers, and responsibilities
as the regional councils in other regions. Yet, the revised Southern Constitution of 2001 introduced a second council at regional level: the Council of Nationalities. The design of the Council of Nationalities originates in the extreme ethnic diversity characterizing the Southern Region. The Council of Nationalities is the representative body of the nations, nationalities, and peoples of the region. Each nation, nationality, and people shall be represented by at least one member and by one additional representative for each additional one million of its population. The current membership of the Council of Nationalities is composed of sixty-one members, representing the fifty-six indigenous ethnic groups of the region. Apart from its power of constitutional review, the Council of Nationalities has such powers as deciding on claims for the establishment of ethnic-based local governments (i.e., governments at subregional level) and settling conflicts between administrative levels in the region.

The Afar and Somali constitutions have also taken a first cautious step towards the design of government institutions which reflect traditional features of Afar and Somali society, and which are therefore rooted in regional realities. Both constitutions contain references to 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 they can be established by regional law, which will provide further details. The regional 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.

VI. LOCAL GOVERNMENT

Since the federal constitution has almost nothing to say about subregional or local governments, the regions enjoy nearly unlimited subnational constitutional space in this area. The Ethiopian Constitution herewith adheres to the classical approach in federations,

204. SOUTHERN CONST. art. 48 (1995).
205. Id.
206. See SUMMARY AND STATISTICAL REPORT, supra note 39, at 98–100.
207. Id. art. 58, § 1.
208. Id. art. 58, § 2.
209. Data on file with the author.
210. Id. art. 59, §§ 3, 5.
211. AFAR CONST. art. 63 (2002); SOMALI CONST. art. 56 (2002).
212. AFAR CONST. art. 63 (2002); SOMALI CONST. art. 56 (2002).
which implies that the responsibility for the establishment and operation of local government is given to the constituent units. Article 50, section 4 of the federal constitution merely stipulates that "[s]tate government shall be established at State and other administrative levels that [the regional states] find necessary." The only mandate for the regional states in this regard is included in the second sentence of article 50, section 4: "Adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units." This federal mandate implies that regional states are prohibited from designing a centralized administrative structure. Setting up a local government administration with sheer deconcentrated powers would therefore, in all likelihood, violate the federal constitution. Without autonomous decision-making power, these local governments would, indeed, not allow for meaningful popular participation.

All regional constitutions contain provisions related to local government and—as this Part demonstrates—these provisions are also fairly distinct. Distinctive regional constitutional provisions related to local government exemplify that the Ethiopian regions have utilized their subnational constitutional space in this field. Yet, this distinction has to be somewhat nuanced in that differences between constitutional arrangements of local government in the nine regional states mainly pertain to the local government level immediately below the regional level. The regional constitutions contain relatively uniform provisions as far as the lower levels of local government are concerned.

The Oromia Constitution is the only regional constitution that has incorporated the administrative level of the "Zone." The Zone is an administrative unit immediately below the regional state comprising of a number of districts (or "Woreda," as they are called in other regional constitutions). The description of the Zone as a deconcentrated, rather than a decentralized, administration is legitimated by the nature of its powers that are limited to executing regional decisions as well as carrying out regional government responsibilities at subregional level. Although the zonal administration is not enshrined in any other regional constitution, zonal administrations have been

215. Id.
216. OROMIA CONST. art. 70, § 1 (2001).
217. Id. art. 71.
established in the Somali, Afar, Tigray, and Amhara regions pursuant to ordinary laws (proclamations) or executive decisions (regulations).218

Besides administrative Zones (i.e., Zones merely set up for administrative purposes), the Amhara region has also established three “Nationality Administrations.”219 Nationality Administrations have the same hierarchical status as the Zones but serve additional objectives.220 They are entrenched in the Amhara Constitution primarily to enable three regional indigenous minorities, the Agew Awi, Agew Himra, and Oromo, to exercise their right to self-determination at the subregional level.221 In other words, Nationality Administrations are ethnic-based local governments and they accordingly have a number of powers allowing them to protect the language rights and cultural rights of the empowered, titular ethnic groups. These powers are not provided to the Zones, since the latter are merely set up to improve the efficiency and effectiveness of administrative services.222

The local government administration immediately below the regional level in the Gambella region is called the “Nationality Zone.”223 The Nationality Zone serves the same objective as the Nationality Administration in the Amhara region: enabling the region's indigenous minorities to exercise the different components of their right to self-determination, such as their rights to language, culture, political participation, and territorial autonomy.224 The Gambella Constitution anticipates the establishment of three such Zones, one for each of the region's largest indigenous minorities: the Nuer, Anywaa, and Majang.225

The Benishangul-Gumuz Constitution has included a similar mechanism for the accommodation of intra-regional ethnic diversity as the Amhara and Gambella constitutions.226 The Benishangul-Gumuz

218. See, e.g., Proclamation to Establish and Define Powers and Functions of Afar National Regional State Zonal Administration Proclamation, Afar Proclamation No. 29/2005, AFAR REGION NEGRIT GAZETA (January 29, 2005); The Revised Amhara National Regional State Zonal Administrative Offices' Establishment and Determination of their Powers and Duties, Council of Regional Government Regulation, Amhara Regulation No. 33/2005, ZIKRE HIG GAZETTE (June 13, 2005). For a general overview of the administrative structure of the regions, see generally SUMMARY AND STATISTICAL REPORT, supra note 39.

219. AMHARA CONST. art. 73, § 1 (2001).

220. Id.

221. See id.


223. GAMBELLA CONST. art. 77 (2002).

224. Id. art. 78.

225. Id. art. 77.

226. Id.
Constitution aims to protect the region's five indigenous minorities, discussed above in Part III, through its provision for the establishment of ethnic-based local governments, called "Administrations of Nationalities." It is only very recently that the Administrations of Nationalities have been established.

The primary reason for this delay in establishing the Administration of Nationalities is the territorial dispersion of the indigenous ethnic groups in the region. The establishment of an ethnic-based local government is an adequate mechanism to protect the rights of ethnic minorities only in case of a reasonable overlap between territorial and ethnic boundaries. The drafters of the Benishangul-Gumuz Constitution seem to have neglected this fact, leading to a constitutional arrangement ill-designed for the regional ethnic configuration.

A similar type of ethnic-based subregional government is enshrined in the Southern Constitution. The Southern Constitution mentions two kinds of administrations in this regard: the Zone and the "Special Woreda." Both administrative levels have the same constitutional status; there is no hierarchy between them. The main difference is that Special Woreda are not administratively subdivided into ordinary Woreda, whereas all Zones comprise several ordinary Woreda. Article 45, section 2 of the Southern Constitution entitles all nations, nationalities, and peoples of the region to the establishment of "their" Zone or Special Woreda administration. Considering that, at the time of writing, fifty-six nations, nationalities, and peoples had indigenous status in the region—as discussed in Part V—and that many of these groups are tiny, it is not surprising that only a few of them have actually been empowered by the establishment of "their" Zone or Special Woreda. The dichotomy between the constitutional grant of territorial autonomy and its limited fulfillment continues to raise frictions between ethnic groups claiming this right on the one hand and

227. Id.
230. Id.
231. Id. art. 80.
232. For a general overview of the administrative organization of the regions, see generally SUMMARY AND STATISTICAL REPORT, supra note 39.
234. See supra Part V (discussing the diversity of the Southern Region).
the regional government reluctant to support a further, and potentially unviable, administrative fragmentation on the other.235

All regional constitutions—except for the Harar Constitution, which only mentions the “Kebele”236—additionally provide for the administrative level of the Woreda (district) and the Kebele.237 The Kebele are subordinate to the Woreda, which in turn are subordinate to the Zones and Nationality Administrations. The provisions related to the institutional structure, powers, and responsibilities of the Woreda and Kebele are nearly uniform in all regional constitutions, although an interesting institutional innovation can be observed in the Somali Constitution. Article 89, section 1 of the Somali Constitution includes the possibility of setting up mobile Kebele in pastoral areas, as such acknowledging that the pastoralist Somali are traditionally highly mobile—albeit that there is a growing trend of sedentarization.238

VII. POLICY PRINCIPLES AND CONSTITUTIONAL AMENDMENT

In chapter 10, the federal constitution formulates policy principles and objectives that have to be adhered to by any government organ, both federal and regional, in the exercise of their powers and responsibilities.239 Due to the supremacy of the federal constitution, these objectives are binding for the regional state organs; yet, this does not prevent them from complementing the federal objectives with region-specific objectives, expressing particular policy choices or reflecting distinct features of the regional polity. The rationale driving a constitutionalization of policy principles and objectives is to ensure that all regional government organs, irrespective of the political majority of the day, uphold these principles and objectives while carrying out their activities.240 As in the United States,241 Ethiopia’s regional constitutions can therefore be used as instruments of policymaking.

A specific policy choice is included in the constitutions of the Benishangul-Gumuz and Gambella regions, which state that the

235. For a more elaborate discussion of the dynamics in the Southern Region, see generally Christophe Van der Beken, Federalism in a Context of Extreme Ethnic Pluralism: The Case of Ethiopia’s Southern Nations, Nationalities and Peoples Region, 46 VERFASSUNG UND RECHT IN UEBERSEE 3 (2013).
236. HARAR CONST. art. 75 (2004).
237. See generally AFAR CONST. (2002); AMHARA CONST. (2001); BENISHANGUL-GUMUZ CONST. (2002); GAMBELLA CONST. (2002); OROMIA CONST. (2001); SOMALI CONST. (2002); SOUTHERN CONST. (2001); TIGRAY CONST. (2001).
238. SOMALI CONST. art. 89, § 1 (2002).
239. FED. CONST. art. 85 (1994).
240. Williams, Teaching and Researching, supra note 47, at 1125.
241. Id.
regional economic policies shall be guided by the principles of a free market economy.\textsuperscript{242} In a similar vein, the Afar Constitution mandates the regional government to encourage private investors to participate in the development of the region and provide the necessary support.\textsuperscript{243} The Benishangul-Gumuz and Gambella constitutions furthermore refer to the specific advantages the concerned regions share related to abundant land and rainfall.\textsuperscript{244} Economic objectives reflecting particular regional features have been included in the Afar and Somali constitutions.\textsuperscript{245} They include a mandate for the regional governments to improve the livelihood of pastoralists, considering that pastoralism is the predominant socio-economic activity in both regions.\textsuperscript{246} Finally, in article 101, section 3 of the Somali Constitution, the economic objectives reflect sensitivity to the clan structure of Somali society: “The Government [i.e., the Somali regional government] shall have the duty to create a conducive environment based on which all the residents \textit{and clans} in the State have equal opportunity for development.”\textsuperscript{247} The reference to the clan structure of the Somali polity is also expressed in the social objectives binding the Somali regional government: “To the extent the country and the State resources permit, the [regional] State shall provide the residents \textit{and clans} with the access to education, health, clean water, housing, food and social security services.”\textsuperscript{248}

Finally, all regional constitutions include provisions for the initiation and ratification of constitutional amendment proposals.\textsuperscript{249} Article 50, section 5 of the federal constitution bequeaths the regional council the power to draft, adopt, and \textit{amend} the state constitution, consistent with the provisions of the federal constitution.\textsuperscript{250} Since the federal constitution has nothing to say about the procedure for subnational constitutional amendments, designing such procedure falls entirely under the competence of the regional states. The considerable

\begin{footnotesize}
243. \textit{Afar Const.} art. 102, \textsection~6 (2002).
244. \textit{Benishangul-Gumuz Const.} art. 111, \textsection~10 (2002); \textit{Gambella Const.} art. 115, \textsection~1 (2002).
246. \textit{Afar Const.} art. 102, \textsection~5 (2002); \textit{Somali Const.} art. 101, \textsection~2 (2002). For a general overview of the socio-economic profile of the regions, see \textit{About Ethiopia, supra} note 128.
248. \textit{Id.} art. 102, \textsection~1 (emphasis added).
\end{footnotesize}
distinctions between the nine subnational constitutional amendment procedures indicate that the regions have made use of their discretion to design procedures adapted to and emanating from their respective constitutional systems and objectives. 251

VIII. SUBNATIONAL CONSTITUTIONAL SPACE AND THE ACCOMMODATION OF DIVERSITY

The above parts have revealed to what extent regions have utilized their subnational constitutional space to reflect distinct regional features. This Part will assess the potential and limitations of this use of subnational constitutional space from the perspective of diversity accommodation.

The use of subnational constitutional space commences in the preambles, which identify the ethnic groups empowered by the establishment of the region and include their historical narrative. 252 Although there is, ipso facto, nothing wrong with the idea that regions have empowered certain ethnic groups—it is the main rationale behind ethnic federalism—it might affect the inclusion of citizens with non-indigenous identities. The constitutional reference to a historical narrative—such as the 1887 Battle of Chelenko in the Harar Constitution 253—may reflect the shared experience of the indigenous groups, but can hardly serve as an inclusive symbol of regional unity. The same is true for regional flags and emblems reflecting the traditions of the indigenous groups, such as the symbol of Oda figuring prominently on the Oromia regional flag. 254 Although the constitutional reflection of indigenous groups’ symbolism may constitute an inherent consequence of ethnic federalism, regional constitutions should not neglect to balance the empowerment of indigenous minorities with mechanisms to protect the rights and interests of non-indigenous residents, lest real and perceived exclusion affect regional peace and stability.

In the area of human rights, the use of subnational constitutional space has been far more limited. Although the federal constitution contains a relatively comprehensive list of human rights, the regional states have the space to constitutionalize complementary human rights protection and, by doing so, to reflect region-specific socio-economic, political, and cultural developments or attitudes. Yet, as pointed out in

251. This is true for “subnational” constitutions in other countries that utilize constitutions below their federal constitution. See Dinan, supra note 200, at 841–47.
252. See supra Part III (discussing the preambles to the regional constitutions).
254. OROMIA CONST. art. 3 (2001).
Part IV, the list of rights included in the regional constitutions is largely copied from the federal constitution.\textsuperscript{255} Admittedly, it might not be fair to have elevated expectations in this regard considering that the existence of regional constitutions is a very recent and under-studied phenomenon in Ethiopia. The negligible use of subnational constitutional autonomy in the area of human rights can furthermore be explained by the time of adoption of the regional constitutions. Since there was almost no gap between the time of adoption of the federal constitution and the regional constitutions, one can justifiably argue that the constitutional human rights provisions are simply the reflection of the prevalent views on human rights in Ethiopian society at that time.\textsuperscript{256} This argument is corroborated by G. Alan Tarr, who points out that subnational constitutions are likely to reflect the reigning ideas of the era in which they are written.\textsuperscript{257} Yet, changing political and socio-economic contexts could induce the regions to amend their human rights provisions as time goes by. Unfortunately, the procedure for amending or revising the regional constitutions effectively makes the inclusion of more protective human rights provisions dependent upon an amendment to the federal constitution, which amounts to wholly unnecessary self-restraint.\textsuperscript{258} Neither does the uniform regional constitutional decision to allot the power of constitutional review to a purely political body augur well for a more expansive, region-specific protection of human rights (at least not in the current context of one dominant political party controlling all levels of administration in the country).

With regard to the structure of the regional political institutions, two regions have made considerable use of the wide space reserved by the federal constitution in this area. The ethnic configuration characterizing the Harar and Southern Regions has induced region-specific institutional arrangements.\textsuperscript{259} The Harar Constitution aims at empowering the Harari people without, however, enabling them to unilaterally impose their writ on the region.\textsuperscript{260} In other words, the regional constitution attempts to balance between the objectives of empowerment and inclusion. The unique constitutional arrangements included in the Southern Constitution aim at achieving regional unity

\textsuperscript{255} See supra Part IV (discussing the lack of regional efforts to expand upon the Federal provisions protecting human rights).
\textsuperscript{256} See supra Part II (discussing the ratification of the constitutions).
\textsuperscript{257} Tarr, Sub-National Constitutional Space, supra note 5, at 1140–41.
\textsuperscript{258} See supra Part IV (discussing the amendment procedures for the human rights provisions).
\textsuperscript{259} See supra Part V.
\textsuperscript{260} See generally HARAR CONST. (2004).
while acknowledging and institutionalizing the extreme ethnic diversity characterizing the region.\textsuperscript{261} A particular, but more modest, use of subnational constitutional space can be found in the Afar and Somali constitutions, which anticipate the establishment of Elders’ and Clan Leaders’ Councils.\textsuperscript{262} With this constitutional reference to traditional councils, the regional constitutional drafters have attempted to incorporate traditional governance structures into the regional institutional structure. Although this is only a first cautious step, it may encourage other regions to make use of their subnational constitutional space to increasingly diversify their regional government structures by taking account of region-specific governance traditions. The regions furthermore enjoy a significant subnational constitutional space in the area of local government. This Article has observed that most of the regional constitutions that acknowledge the presence of indigenous minorities have anticipated the establishment of ethnic-based local governments.\textsuperscript{263}

Although local government holds significant potential for the accommodation of intra-regional ethnic diversity, territorial mechanisms work best in the case of a reasonable overlap between ethnic and administrative boundaries. The territorial dispersion of the indigenous ethnic groups in the Benishangul-Gumuz region is therefore the primary reason for the serious delay in establishing the Administration of Nationalities there.\textsuperscript{264} It would have been better for the drafters of the Benishangul-Gumuz Constitution to have considered alternative mechanisms for the accommodation of intra-regional ethnic diversity. The same is true for the Southern Region, where the grant of territorial autonomy runs up against the limitations of administrative viability.\textsuperscript{265} This exhibits that the regional constitutional drafters have not been able to think outside the “territorial box” ingrained in the federal constitutional approach towards ethnic diversity. The regions have thus failed to fully utilize the potential inherent in their subnational constitutional autonomy. The examples of Benishangul-Gumuz and the Southern Region therefore exhibit the limitations of constitutional copying.

The regions have also made use of their subnational constitutional space to supplement the federal policy principles and objectives enshrined in the federal constitution. The region-specific policy

\textsuperscript{261} See generally \textit{SOUTHERN CONST.} (2001).
\textsuperscript{262} \textit{AFAR CONST.} art. 63 (2002); \textit{SOMALI CONST.} art. 56 (2002).
\textsuperscript{263} See supra Part VI (discussing ethnic-based local governments).
\textsuperscript{264} See \textit{SUMMARY AND STATISTICAL REPORT}, supra note 39, at 96–98.
\textsuperscript{265} See supra Part VI.
principles and objectives, which are binding on the respective regional governments, reflect specific policy options or distinct regional features. It remains to be seen whether some of these policy principles, such as the choice of a free market economy, are compatible with federal socio-economic development policies, considering that regional plans and programs have to stay within the frame of the federal ones. This will partly depend on how wide the federal frame will be set, but it is doubtful whether fundamental choices, such as the preference for a free market economy, are within the discretion of the regional states. This could be an area where regional states have, in fact, "over utilized" their subnational constitutional space. Of course, only interpretation by the House of the Federation of the constitutional provisions describing the federal framework power in the area of socio-economic development could offer a conclusive solution to this issue. The federal constitution gives full constitutional space to the regions to design procedures for amending their constitutions. The regions have effectively used this space, which has led to distinct amendment procedures. Regional constitutional choices with regard to constitutional amendment procedures can have serious, real-life consequences, and regional states are therefore advised to seriously assess their potential implications. For instance, flexible amendment procedures may lead to frequent constitutional changes, which reflect changing political considerations at regional level rather than fundamental constitutional choices.266

IX. CONCLUSION

The Ethiopian regional states enjoy considerable autonomy to draft, enact, and amend their constitutions. This subnational constitutional autonomy constitutes an excellent tool for the accommodation of diversity at regional level. Although federalism is of relatively recent vintage in the country, all nine regions of the federation have enacted constitutions, which emanate—although to different degrees—from the distinct nature of their respective polities. All regional constitutions identify—pursuant to the principle inherent in ethnic federalism—the regionally empowered ethnic group(s) and contain further provisions aimed at accommodating and protecting their interests and rights. It has been argued that such provisions might be to the detriment of non-indigenous residents unless regional constitutions are made sufficiently inclusive of the latter. Whereas the regional states have largely failed to use the potential of state constitutions to strengthen human rights

266. Williams, Teaching and Researching, supra note 47, at 1112; see also Reutter & Lorenz, supra note 167.
protection, a number of them have designed or proposed distinct institutions originating in region-specific ethnic configurations or political traditions.

Local government is another area where regional states have used their subnational constitutional space to come up with administrative structures aimed at accommodating intra-regional ethnic diversities. Yet, rather than creatively designing structures well-adapted to their respective realities, the constitutional drafters have copied from each other, leading in some cases to unworkable or impractical arrangements. The regions have also explored the boundaries of their policymaking autonomy by constitutionalizing policy directives. Hence, although regional states have used their constitutions to reflect and accommodate regional diversity, they have surely not exhausted the possibilities regional constitutional autonomy has to offer. Ethiopia's experience thus confirms earlier research findings, which observed that many component units in federal countries do not fully utilize their subnational constitutional autonomy. Of course, the "underutilization" of constitutional space by Ethiopia's regions should not surprise considering that regional constitutions are a new phenomenon in Ethiopia and they have hardly been given any attention, even in academia. In view of the enormous potential for diversity accommodation inherent in subnational constitutional autonomy, a more comprehensive study of subnational, regional constitutions in Ethiopia and in other multinational federations, to which this Article aims to contribute, is long overdue.
