

Dual Constitutions and Concurrence of Constitutional Powers in Ethiopia: Who Has the Mandate to Determine Particulars by Law?

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Abstract

Federations vary in the crafting of their constitutions. These variations range from those federations whose constitutional distribution of power is too comprehensive, including details normally articulated in ordinary legislation, to those federations whose constitutions endeavor to demonstrate the major tasks of government in a holistic manner. In those federations which follow the latter trend, only the major issues are stated in their constitutions. The Ethiopian practice resembles the second model. After incorporating major issues explicitly, the FDRE Constitution leaves the details to be determined by ordinary legislation. The same arrangement is observed in regional states' constitutions. The issue therefore is who has the mandate to determine the details through legislation: the federal or regional governments? This article explores how the Constitution provides in what manner the particulars shall be determined by law and attempt to indicate who has the mandate to do that.

Key Terms: Federalism, Constitutional powers, dual constitutions, Ethiopian Constitution

Introduction

The idea of federalism presupposes the existence of tiers of government on the same land that have defined competency and dominion of

jurisdiction and directly act on the same people.¹ These powers and functions are essentially enshrined in their compact law which is also named the supreme law of the land: otherwise called a “federal constitution.” It should be noted that federal constitutions vary enormously and contain copious provisions that stipulate distribution of exclusive, concurrent, framework, implied and residual powers of the two tiers of governments.² However, constitutional distribution of power is not as comprehensive as the distribution detailed under ordinary legislation. Often, constitutions endeavor to set out the major tasks of different levels of governments. In this manner, constitutions generally outline the powers and functions of each level of government in a holistic manner.³

At this juncture, there is a large measure of choice as to what is put into the constitution or left to ordinary laws.⁴ By the same token, apart from the usual apportionment of powers either in the exclusive or concurrent powers list, both the FDRE Constitution and the regional state constitutions contain provisions in a number of places that pronounce matters to be dealt

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¹ Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic-based Federal System*, Rev. ed., Wolf Legal Publishers, Oisterwijk, 2008, p.32 [hereinafter Solomon, *Fiscal Federalism*].

² Ibid

³ Alder, John, *General Principles of Constitutional and Administrative Law*, 4th ed., Palgrave Macmillan, Basingstoke, 2002, p. 4 [hereafter Alder, *General Principle of Constitutional Law*].

⁴ Anderson, George, *Federalism: An Introduction*, Oxford University Press, Oxford, 2008 [hereinafter Anderson, *Federalism*].

with by ordinary legislation. To use the constitutional terminology, “Particulars shall be defined/determined by law.”⁵

This is a clear indication that the Constitution has itself determined what should be incorporated and is leaving the remaining part to subsequent ordinary laws. Therefore, taking the general principles enshrined in the Constitution into account, these matters should be governed by detailed forthcoming legislations. However, some of the perplexing issues in here are how these axioms can be construed? Whose mandate is it to detail these matters by law? Is this considered to be part of residual power of the regional states or not? Close line-by-line scrutiny of the entire text of the Constitution is required to answer these questions.

This article contains diverse issues and is organized as follows. Section 1, which directly follows this introduction, deals with the issue of national and regional anthems. Since the federal and regional constitutions envisage the possibility of preparation of national and regional state anthems respectively, cognizant of this fact this section explains the territorial applicability of the federal and regional states’ anthems and examines what

⁵ I use this expression for those parts of the constitution that contain this term. The issue is far from being settled. A reader may find the same expression in other parts of the constitution, not included in this article. For instance Article 6 of the FDRE Constitution which is headed ‘Nationality’ contains the same expression. This provision, states that any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian and that foreign nationals may acquire Ethiopian nationality. In sub-article (3) it says, “Particulars relating to nationality shall be determined by law.” The mandate to determine the details by law concerning nationality is indisputably given to the federal government in Article 51(17). It reads as follows: “[It] shall determine matters relating to nationality.” Therefore, this part of the Constitution is not incorporated into this piece. The same holds true for other provisions of the Constitution which contain the same kind of expressions and the mandate to determine the details is easily traced by referring to the appropriate provisions of the Constitution that discuss distribution of power: Articles 51, 52 and 55 of the FRDE Constitution.

the practice looks like. Section 2 emphasizes the conduct and accountability of government. This section considers who can enact a law that regulates issues of government conduct and accountability at the federal and regional state levels. This is viewed from the current electoral law perspective in an attempt to highlight the exact mandate of both the federal and regional states on this point. In contrast, Section 3 discusses matters of marital, personal and family rights from the perspective of federal and state constitutions. Section 4 deals with property rights and how these matters are addressed in both the federal and regional constitutions. Section 5 articulates the treatment and status of the federal capital city of Addis Ababa in the FDRE Constitution. The federal Constitution provides for the coexistence of the self-governing power of the Addis Ababa City Administration and its accountability to the federal government. It also deals with who can determine the accountability of the city to the federal government by law, as well as the protection of the interests of Oromia in Addis Ababa. Section six discusses the constitutional articulation of representation of minorities and explains who can determine which communities are qualified to entitle special representation in the HoPR and regional state councils. Finally, section seven contains concluding remarks.

1. The National Anthem in Ethiopia

The national anthem is the third symbol of the state, next to the national flag and emblem.⁶ This is one of the pivotal areas where the importance of the symbols of state in enhancing nation- building and creating a spirit of unity

⁶ Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect*, Red Sea Press, Ewing Township, 1997, p. 204 [hereinafter Fasil, *Constitution for a Nation of Nations*].

and common pride is well recognized.⁷ The FDRE Constitution states that “[t]he national anthem of Ethiopia, to be determined by law, shall reflect the ideals of the Constitution, the commitment of the Peoples of Ethiopia to live together in a democratic order and of their common destiny.”⁸ This provision articulates the idea that the national anthem should mimic what has been transcribed in the preamble of the Constitution. It is equally important to note that the federal government has enacted a separate proclamation providing for particulars concerning the flag.⁹ However, this proclamation does not mention anything about the national anthem. It only indicates the symbolism of the flag and its color composition as well as places and events where the national flag flies. Moreover, it contains a pictorial representation of the same.¹⁰ With this state of affairs in mind, one may well question who has the legal mandate to determine the national anthem. And it is possible to argue that a law promulgated to regulate the national anthem might require the involvement of the two tiers of government.¹¹ However, there is little room for the involvement of the federation units in the federal law-making process in Ethiopia. The House of Federation has no significant lawmaking power.¹²

Therefore, it may be argued that the mandate to determine the details of a national anthem by law should be left to the federal government for the

⁷ Ibid.

⁸ Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year, No. 1, Addis Ababa, 21 August 1995, adopted on 8 December 1994, entry into force 21 August 1995, Article 4 [hereafter, FDRE Constitution].

⁹ See Proclamation No. 654/2009 Flag Proclamation, Federal Negarit Gazeta, 15th Year, No. 58, Addis Ababa, 28 August 2009 [hereinafter Flag Proclamation].

¹⁰ Ibid., Articles 5-9.

¹¹ For the establishment of a federal government and state government, see FDRE Constitution, *supra* note 8, Article 50(1).

¹² See FDRE Constitution, *supra* note 8, Article 62.

following reasons. First, the FDRE Constitution requires that the contents of the national anthem reflect the ideals of the FDRE Constitution, the commitment of the Peoples of Ethiopia to live together in a democratic order and of their common destiny. This mandate is the jurisdiction of the federal government, since regional states are established and empowered to deal with regional matters that are important for the expression of their regional identities. Second, a power which is common to or represents the interests of the member states of the federation is given to the central government.¹³ By logical extension we may conclude that since the national anthem is required to reflect the interests of the whole community and to become the symbol of the country, the central government should determine the content of the national anthem by law.

In addition, one may find parallel provisions with the same content in regional constitutions.¹⁴ Some of the expressions shared by these constitutions reiterate the idea that state anthems shall reflect the ideals of the regional states' constitution, the commitment of the peoples of states to live together with the rest of the peoples of Ethiopia in a democratic order, and of their common destiny. However, the language of the constitutions of the regional states still says that details shall be determined by law.¹⁵ Based on these kinds of provisions, it is not illogical to argue that regional states should develop and promulgate laws to regulate their regional anthems.

¹³ Watts, Ronald, *Comparing Federal Systems*, 2nd ed., McGill-Queen's University Press, Montreal, 1999, p. 35 [hereafter Watts, *Comparing Federal Systems*].

¹⁴ See Article 4 of Revised Constitution of Southern Nations, Nationalities and Peoples State, as well as the Oromia, Tigray and Amhara and Afar Regional State Constitutions, and Article 5 of the Revised Somali and Gambela Regional State Constitutions.

¹⁵ *Ibid.*

However, is this tantamount to allowing regional states to have their own anthems? If the answer to this question is positive, where would the applicability of such provincial anthems be? Where would we use the national anthem if each federal unit prepared its own regional anthem? To explore the matter, let us consider a hypothetical situation where a sports festival is organized among the regional states and a given participant who represents one of the regions becomes a gold medalist. Which anthem should be offered: the national or the regional one? Unless it is decided that there is no practice of celebrating victories by playing the participant's regional anthem after each winning race, it could be agreed that the anthem of the specific region where the winner of a race belongs to will be offered for celebrations. On the other hand, if the national anthem that can be played for the festival, it is purposeless to regulate regional anthems via laws.

If regional states are permitted to have their own anthems to be used in their territory, one also has to determine the situations and places where the national anthem should be applicable. We can reason in the usual way: it should be played in the City Administrations of Addis Ababa and Dire Dawa. For one thing, Addis Ababa and Dire Dawa City Administrations may regulate in the same way as the regional states since they have a full measure of self-government.¹⁶ Second, the federal law has territorial applicability throughout the country,¹⁷ so it can be used everywhere for all kinds of ceremonial events. It can even be argued that the national anthem should be

¹⁶ See Article 49(1) of the FDRE Constitution and the preamble of Proclamation No. 416/2004, the Dire Dawa Administration Charter Proclamation, *Negarit Gazeta*, 10th Year, No. 60, Addis Ababa, 30 July 2004.

¹⁷ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, Wolf Legal Publishers, Oisterwijk, 2006, p. 353 [hereinafter Assefa, *Federalism and Accommodation of Diversity*].

used in federal institutions like universities and the Ministry of National Defense. However, the culture of using it in day-to-day life has vanished unless one argues that it can be used in national Flag Day celebrations or in sports festivals and races within and outside of the country.¹⁸

Practice across regional states reveals that they have been using the national anthem. The current practice observed in Ethiopia and particularly in Southern Nations, Nationalities and Peoples' Regional State and Gambella and Tigray regional states proves this premise.¹⁹

However, the practice of the Amhara region is a bit different. The region has prepared its own regional anthem and has been using it at elementary and high schools.²⁰ But there is inconsistency in using both the national and the regional anthems. In earlier times, the national anthem was played first and the regional anthem next. As time has passed, these high schools have been playing the national anthem in the morning session and the regional anthem in the afternoon. Currently, in some elementary schools, they use the national anthem one day and the regional anthem on the next day.²¹ In

¹⁸ Both ETV transmissions and personal observation indicate that the practice these days is to play the national anthem when the ceremony commences.

¹⁹ Concerning the practice in SNNP Regional State, I personally have visited elementary schools and high schools. I also conducted interviews with Chini Obang, who is a resident of the Gambela region and a 5th year law student at Dilla University School of Law, and with Natanaiel Amanuel, who was a student at Nigist Saba Preparatory and High School and is a first year law student at Hawassa University School of Law.

²⁰ Interviews with Ayanalem Mulate, grade 10 student; Dejenie Tilahun, grade 9 student; Dagim Fikiru, grade 5 student.

²¹ Interview with Ato Tesfay Beyene, Unit leader and teacher at Mezezo High School, 20 June 2014.

some high schools, they use the national anthem exclusively throughout the academic calendar.²²

Regardless of these disparities, the practice which has developed in Amhara regional state, with necessary modifications, can become a model for other regional states that have prepared and wish to use their own regional anthems. Of course, the disparities should be addressed first. And it is appropriate to play the national anthem first and the regional anthem next, in both the morning and afternoon sessions. The national flag shall fly daily at schools, save in the case of a *force majeure* that keeps the national flag from flying.²³ In schools, the flag shall be hoisted in the morning before classes begin and lowered at 6 PM.²⁴ During this time, it is the national flag which flies higher than the flags of the regional states.²⁵ In this case, the flag which flies over the regional flag, i.e., national flag, is expected to be raised in conjunction with the national anthem. This demands that the national anthem be played first. The regional anthem may follow. In this way, students can develop the idea of the national sentiment while they cultivate regional identities too.

2. Conduct and accountability of government

The principles of transparency and accountability stand out among the five fundamental principles of the FDRE Constitution.²⁶ The provision of the Constitution that concerns the conduct and accountability of government not

²² Interview with Asebae Emishaw, grade 10 student at the Debre Brihan High School on 20 June 2014.

²³ See Flag Proclamation, *supra* note 9, Article 12(1).

²⁴ See Flag Proclamation, *supra* note 9, Article 15(2).

²⁵ See Flag Proclamation, *supra* note 9, Article 18(2).

²⁶ Getachew Assefa, *Ethiopian Constitutional Law with Comparative Notes and Materials: A Textbook*, American Bar Association, Chicago, 2012 [hereinafter Getachew, *Ethiopian Constitutional Law*].

only demands that the conduct and affairs of government be transparent but also explains the way that public officials and elected representatives have to be accountable for any failure in their official duties.²⁷ It further assures how the people can recall an elected representative in case of loss of confidence. In such a way, it puts accountability not only upon political appointees or high-ranking public servants alone, but also on elected individuals such as members of parliament.²⁸

However, the mechanism by which this can be achieved will be determined by law. Cognizant of this fact, the FDRE Constitution apportions this authority to the federal government to enact “all necessary laws” governing *political parties and elections*.²⁹ This enables us to conclude that it is the federal government that has the mandate to pass laws concerning how elections take place. The law enacted by the federal government is also expected to define how the electorate can recall their appointees at times when they lose confidence in them. The central government exercises this power by legislating electoral law, which encompasses innumerable issues.

This proclamation³⁰ sets forth the various types of elections that may be conducted in Ethiopia. These are general elections, local elections, by-elections, re-elections, and referendums.³¹ The proclamation also defines its scope of applicability. It reads as follows: “This Proclamation shall be applicable *to general elections* and as appropriate to local elections, by-

²⁷ FDRE Constitution, *supra* note 8, Article 12.

²⁸ Getachew, *Ethiopian Constitutional Law*, *supra* note 26, p. 54.

²⁹ FDRE Constitution, *supra* note 8, Article 51(15).

³⁰ Proclamation No. 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25 June 2007 [hereinafter The Amended Electoral Law of Ethiopia Proclamation].

³¹ *Ibid.* See Article 27 of The Amended Electoral Law of Ethiopia Proclamation.

elections, re-elections and referendums carried out in accordance with the Constitution” (emphasis is added).³²

A general election is an election which is conducted to elect members of the House of Peoples' Representatives or State Councils simultaneously every five years throughout the country. However, where the electoral board finds it necessary, and it is decided by the House of Peoples' Representatives, a general election may be conducted at other times.³³ This means that this proclamation is equally applicable to elections conducted to the House of Peoples' Representatives or State Councils. Needless to say, the federal government has the power to decide how elections are conducted for the House of Peoples' Representative. However, when it comes to elections for the State Council, this amounts to snatching their constitutional mandate to decide when elections should be conducted. And although the proclamation leaves to the regional states the discretion to decide the number of representatives to be elected to respective state councils, it puts conditions on state councils' plans to change that number.³⁴ In this case, the regional states are required to give political parties sufficient time for preparation if they decide to change the number of their members.³⁵

In contradistinction to general elections, the proclamation gives regional states far-reaching power with respect to local elections, which are used to elect representative to Zone, Woreda, city, municipality and sub-city or Kebele councils. Regional states shall determine by law the number of representatives elected in a constituency for a local election and the number of

³² Ibid. The Amended Electoral Law of Ethiopia Proclamation, Article 3.

³³ Ibid. The Amended Electoral Law of Ethiopia Proclamation, Article 28 (1) (2).

³⁴ Ibid. The Amended Electoral Law of Ethiopia Proclamation, Article 28(4).

³⁵ Ibid.

seats in each council, as well as the date to hold local elections. There is one stringent requirement for local elections. They must be conducted based on regulations and directives issued by the Board in accordance with this Proclamation.³⁶ This is the other grey area of the proclamation. It is still the central government that can enact laws to regulate elections at the local level. The regional states, in this case, are mandated only to carry out elections in accordance with directives which are issued by the Board. This seems an unfounded intrusion into the constitutional autonomy of the regional states.³⁷

Regardless of the above facts, one may find a similar provision in the regional constitutions of the member states of the federation. These provisions state that the affairs of government must be transparent and that officials must be accountable for any failure in their official duties.³⁸ Following the same format as that of the federal Constitution, they leave the details to be determined by law, meaning that they will define this issue via their own subsequent legislation. At this point one is tempted to inquire about the implication of this undertaking. Do the federal and the regional states enact laws on the same issues? To make the matter a little bit more clear, do regional states have the mandate to decide how the regional council is

³⁶ Ibid. The Amended Electoral Law of Ethiopia Proclamation, Article 29.

³⁷ However, some argues that this is not an intrusion per se since this power is given to the electoral board by the FDRE Constitution. They further argue that there is only one electoral board, which is established by the Constitution, and that based on this fact, there is no problem if states conduct elections as per the directives of the board.

³⁸ See Article 12 of Revised Constitution of Southern Nations, Nationalities and Peoples State, as well as the Oromia, Tigray and Amhara and Afar Regional State Constitutions, and Article 13 of the Revised Somali and Gambela Regional State Constitutions.

composed and how the loss of confidence of a member of a state council is to be determined?³⁹

The federal Constitution recognizes the fact that composition of federal houses is re-evaluated on a periodic basis. In this regard, the maximum number of members, duration of the candidates' terms and loss of confidence, representation of minorities and other similar issues need further consideration. Hence, it seems logical to argue that federal law should regulate these matters at the federal level and the same has to be done by the states at the regional level. Unless this can be resolved, the inclusion of such provisions in regional state constitutions becomes purposeless, if not unconstitutional. Currently, most regional states in general, and the SNNP regional state in particular, have failed to enact their own laws in order to implement this constitutional provision.⁴⁰

³⁹ Some argue that regional states are entitled to decide how their councils are composed. They further argue that it is the mandate of regional state constitutions to determine how an elected representative is removed from office.

⁴⁰ I have gone through the process to check the existence or otherwise of a law that regulates composition of the regional council in this regional state. I did not find clear law in most regions that directly addresses this matter. Of course, there are laws that regulate related matters. To substantiate my argument, let me describe the SNNP regional state's experience. First, the law that relates to this case is Proclamation 42/2002, which talks about establishment of the Southern Nations, Nationalities and Peoples Regional State's Council. The proclamation explains the organization of the state council and its administration, as well as powers and duties of the office and its leadership. In addition, it explains how the office budget can be determined. Therefore this proclamation is not proper to address this matter. The other proclamation that applies is Proclamation 17/2002, which set forth the law about the electorate's loss of confidence in a member of the state zone, special wereda, wereda or kebele council and measures that shall be taken. Article 4 of the proclamation makes clear that loss of confidence can be carried out in accordance with the directive that would be issued by the electoral board. This shows that the regional states admit the fact that this is not the jurisdiction of the state. In an interview with a higher official who wishes to remain anonymous, he explained that they haven't seen whether the regional state has competence to decide loss of confidence for a member of a state council or not. I do not understand this. (Proclamation 42/2002 The Southern Nations, Nationalities and Peoples Regional States Council Establishment Proclamation, Dehub Negatit Gazeta, 7th year, No. 12, Hawassa, 2¹

3. Marital, Personal and Family Rights

The Constitution enumerates the basic and essential conditions of marriage, including consent and equality of the spouses at all stage of their relationship, nevertheless fails to specify marriageable age, leaving this to be determined by subsequent legislation.⁴¹ The same provision is found in regional states' constitutions as well.⁴² If this is so, the logical question is whose mandate it is to regulate such details by legislation.

To address the issue, one may need to focus on pertinent constitutional provisions that deal with division of powers. Thorough study reveals that the mandate to enact family law is entrusted neither to the federal government nor to the states, expressly, impliedly or concurrently.⁴³ However, family law matters are within the domain of regional state powers, and it is pursuant to this power that most regional states have enacted their own regional family codes.⁴⁴ Subject to the international legal instruments that have been ratified by Ethiopia, each regional state will determine the marriageable age through its respective family law.⁴⁵ If any of the regional states fail to come up with a law that regulates this matter, perhaps that region may apply the provisions of the civil code on family matters.

April 2002, and Proclamation 17/1990 A Proclamation for the Electorate for Loss of their Confidence in the Member of the State Zone, Special Wereda, Wereda or Kebele Council and Measures that shall be taken upon him/her, *Dehub Negatit Gazeta*, 3th year, No. 9, Hawassa, 24 October 1990).

⁴¹ FDRE Constitution, *supra* note 8, Article 34 (1).

⁴² See Article 34(1) of the SNNPR, Amhara and Tigray regional constitutions.

⁴³ FDRE Constitution, *supra* note 8, Articles 51, 52 (2) and 55.

⁴⁴ Tilahun Teshome, Ethiopia: Reflection on the Revised Family Code of 2000, unpublished paper, EWLA, 2001.

⁴⁵ *Ibid.*

The other point that requires deliberation is the significance and place of the existing “Revised Family Law.”⁴⁶ Paragraph five of the revised family law’s preamble explains that the territorial applicability of this law is restricted to those administrations that are directly accountable to the federal government. This means that the law is only applicable in Addis Ababa and Dire Dawa City Administrations. Leaving aside the long overdue debate over the constitutionality or otherwise of Dire Dawa City Administration, the case of Addis Ababa at least needs further consideration. As a matter of fact, Addis Ababa City Administration is constitutionally recognized.⁴⁷ It has its own legislative council that has power to enact laws and other socio-economic policies.⁴⁸ These laws and policies are applicable to the residents of Addis Ababa. By logical extension, Addis Ababa City Administration’s legislative council has the competence to enact family law that will be applicable to the residents of the city as well. Otherwise, the competence of the council to pass

⁴⁶ Proclamation No. 213/2000 Revised Family Proclamation, Federal Negarit Gazeta, Extraordinary Issue No. 1/2000, Addis Ababa, 4 July 2000 [hereinafter Revised Federal Family Code].

⁴⁷ See FDRE Constitution, Article 49(1).

⁴⁸ See, The Addis Ababa City Government Executive and Municipal Service Organs Reestablishment Proclamation (Proclamation No. 35/2012, The Addis Ababa City Government Executive and Municipal Service Organs Reestablishment Proclamation, Addis Negari Gazeta, 4th Year, No. 35, Addis Ababa, 9 July 2012), The Secretariat of Addis Ababa City Council, Establishment Proclamation (Proclamation No. 34/2012, The Secretariat of Addis Ababa City Council, Establishment Proclamation, Addis Negari Gazeta, 4th Year, No. 34, Addis Ababa, 9 July 2012), City Government of Addis Ababa Office of the Auditor General Reestablishment Proclamation (Proclamation No. 29/2012, City Government of Addis Ababa, Office of the Auditor General Reestablishment Proclamation, Addis Negari Gazeta, 4th Year, No. 29, Addis Ababa, 18 February 2012), A Regulation to provide for the Code of Conduct of Members of Council of Addis Ababa City (Regulation No. 1/2008, A Regulation to provide for the Code of Conduct of Members of Council of Addis Ababa City, Addis Negari Gazeta, 1st Year, No. 1, Addis Ababa, 3 July 2009), The Addis Ababa City Council Operational Procedure Regulation (Regulation No. 2/2009, The Addis Ababa City Council Operational Procedure Regulation, Addis Negari Gazeta, 1st Year, No. 2, Addis Ababa, 8 October 2009).

such laws is called into question and the full-fledged self-government of the residents of Addis Ababa betrayed.

In this sense, it is logical to argue that the federal government subjectively tips its hand and snatches away the constitutional right of full measure of government from the residents of Addis Ababa. As Wondwossen Wakene aptly stated: “Self-governance is also the liberty to experiment with ventures by way of laws and institutions. Stated otherwise, wielding a capacity to make laws and policies as well as administer and adjudicate those policies and laws implies the possession of a self-governing status.”⁴⁹

4. The Right to Property

It is the constitutional right of every Ethiopian citizen to acquire private property. This includes the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.⁵⁰ Article 40(4) of the Constitution stresses the right of Ethiopian peasants to obtain land without payment and to be protected against eviction from their possession. However, the Constitution directs the implementation of this provision to be specified by law.⁵¹ The same provision is enshrined in the regional states’ constitutions as well.⁵²

⁴⁹ Wondwossen Wakene, *Self-governing Addis Ababa, the federal government & Oromia: Bottom lines and limits in self-governance* (Unpublished LLM thesis, Addis Ababa University, 2010) [hereinafter, Wondwossen, *Self-governing Addis Ababa*].

⁵⁰ FDRE Constitution, *supra* note 8, Article 40(1).

⁵¹ FDRE Constitution, *supra* note 8, Article 40(4).

⁵² See Article 40 (4) of the Revised Constitution of Southern Nations, Nationalities and Peoples State, as well as the Oromia, Tigray and Amhara and Afar Regional State Constitutions.

The problematic part of such an expression hence stems from the difficulty of giving clear-cut jurisdiction for each level of government. As a matter of fact, the federal government is mandated to enact laws on utilization of land and other natural resources.⁵³ On the other hand, the same constitution empowers the regional governments to administer land and other natural resources in accordance with federal laws.⁵⁴ This model is in sharp contrast to the principle of dual federalism⁵⁵ that Ethiopia has introduced.⁵⁶ In this sense, the executive powers of the federal government are not coextensive with the legislative powers with respect to land and natural resources. To put it differently, the role of the central government is limited to enacting laws and delivering the same to the regional governments for implementation. The regional states execute the federal rural land law in their own right.

This leads us to the question of whether regional governments are competent to enact specific laws for proper enforcement of the federal rural land administration law. Since enforcement is left to the states, it is implied that the mandate to legislate about how this Federal Rural Land

⁵³ FDRE Constitution, *supra* note 8, Article 55(2)(a).

⁵⁴ FDRE Constitution, *supra* note 8, Article 52(2)(d).

⁵⁵ The idea of dual federalism presupposes a clear division of legislative, executive and judicial powers of the state between a central government and state governments. Each level of government enacts laws within its domain and executes its own laws through its own executive organ. Hence, each level of government does not depend on the other levels of executive organs to execute its laws. See FDRE Constitution, *supra* note 8, Article 50(2). It says that the Federal Government and the States shall have legislative, executive and judicial powers. This clearly shows the dual nature of Ethiopian federalism. Besides this, Articles 51, 55, 74, 77 and 80(1) respectively illustrate the legislative, executive and judicial powers of the federal government. On the other hand, Articles 52(2), 50(6), 50(7) and 80(2) set forth the legislative, executive and judicial powers of the states. Moreover, Article 50(8) demands that regional states respect the powers of the federal government and likewise that the federal government respect the powers of the states which are defined by this Constitution. This doesn't mean that there is no power concurrency between the federal and state governments.

⁵⁶ FDRE Constitution, *supra* note 8, Article 50(2).

Administration Proclamation is enforced is given to the states. This seems to be the reason that the proclamation empowers regional councils to enact land administration laws so long as they are not inconsistent with it.⁵⁷

In addition, in sub-article five of the same provision of the Constitution, pastoralists have the right to free land for grazing and cultivation, as well as the right not to be displaced from their own lands.⁵⁸ Here as well, implementation shall be specified by law in due course. Provisions with similar content are included in regional states' constitutions too.⁵⁹ And it is the regional states that are competent to determine the details of the law that should be used. For the same reasons, state governments ensure that private investors use land on the basis of payment arrangements established by their own state law.⁶⁰

The provision states that every Ethiopian shall have the full right to immovable property s/he builds and to the permanent improvements s/he brings about on the land by her/his labour or capital. Both the federal and regional constitutions state that the relevant details are to be determined by law.⁶¹ The federal government enacts a framework power on the issue and leaves the details to the regional states. This means that the regional states,

⁵⁷ See Article 17(1) of Proclamation No. 456/2005, Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, Federal Negarit Gazeta, 11th Year, No. 11, Addis Ababa, 15 July 2005 [hereinafter FDRE Rural Land Administration and Land Use Proclamation].

⁵⁸ FDRE Constitution, *supra* note 8, Article 40(5).

⁵⁹ See Article 40(5) of the Amhara, Tigray Oromia, SNNPR and Gambela Regional States Constitutions, and Article 38(5) of Afar and 40(4) of Harari Regional States Constitutions.

⁶⁰ FDRE Constitution, *supra* note 8, Article 40(6).

⁶¹ See Article 40(7) of the FDRE and Revised SNNP, Oromia and Amhara and Afar Regional States Constitutions.

taking their local conditions into account, will enact laws on this matter and enforce the same in their localities.

5. The Federal Capital City: Addis Ababa

The city of Addis Ababa had served as a political center of Ethiopia from the time of Menilik II. It has been the capital city for more than a century. The inherent interest of past rulers to base their seat of power in the city made it the political, economic and social focal point of the country.⁶² Successive rulers' decisions to base their seat in the city, perhaps up to and including the EPDRF's decision to make Addis Ababa its center for the transitional government, seem to have accrued. Besides this, when Ethiopia constitutionally declared the establishment of a federal political system in 1995, the federal Constitution designated Addis Ababa as the capital city of the Federal State. Unlike its predecessor, the current constitution contains a provision that speaks about the status and place of Addis Ababa in the federal set up.

A quick scan of Article 49 of the FDRE Constitution gives some idea of the particularity of the Addis Ababa City Administration. The city derives its right to self-govern and its city status from the Constitution itself. However, the Constitution gives self-governing status to residents of the in its English version and to the Addis Ababa City Administration in its Amharic version.⁶³ The Constitution seems to impose some sort of limitations by making the city government responsible/accountable to the federal government. Moreover, the Constitution stipulates that the special interest of Oromia shall be respected in

⁶² Wondwossen, *Self-governing Addis Ababa*, *supra* note 49, p. 56.

⁶³ The Amharic version reads as follows: “የአዲስ አበባ ከተማ አስተዳደር ራሱን በራሱ የማስተዳደር ሙሉ ስልጣን ይኖረዋል። ዝርዝሩ በሕግ ይወሰናል።” Now compare this with the English version that says: “The residents of Addis Ababa shall have a full measure of self-government. Particulars shall be determined by law.”

Addis Ababa, since it is located entirely within the territorial jurisdiction of the Oromia region. In each of the sub-provisions there is a phrase that says “Particulars shall be determined by law.” All of these issues need explanation and hence will be examined and clarified in the subsequent sub-topics.

5.1. Representation

Federal parliaments are generally made up of two houses,⁶⁴ one representing the people (the lower house) and the other representing member states of the federation (the upper house). The perplexing issue then is how the federal capital city is represented at the federal level. The main argument has been that the inhabitants of the city of Addis Ababa pay taxes just like other Ethiopians elsewhere and that, by virtue of this fact, they are entitled to have their concerns heard by the House of Peoples’ Representatives; in other words, they should at least have representation in the House proportional to the population of the capital.⁶⁵

With this assumption it seems that the Constitution guarantees the residents of Addis Ababa representation in the House of Peoples’ Representatives. However the Constitution sees these citizens in a different light. In all parts, the Constitution uses the terminology “Nation, Nationality and People of Ethiopia,” whereas when it comes to Addis Ababa, it prefers to use the term resident. The particular provision reads as follows: “Residents of Addis Ababa shall in accordance with the provisions of this Constitution, be represented in the House of Peoples’ Representatives.”⁶⁶ Although the

⁶⁴ FDRE Constitution, *supra* note 8, Article 53.

⁶⁵ Tadesse, Melaku, *Introduction to Constitutional Law*, Vol. I, Far East Trading, PLC, Addis Ababa, 2012 [hereinafter Tadesse, *Introduction to Constitutional Law*].

⁶⁶ FDRE Constitution, *supra* note 8, Article 49(4).

Constitution is clear about their representation in the lower house, it remains silent as to how the residents of Addis Ababa city can be represented in the House of Federation. One may argue that the interests of residents of Addis are represented in one way or another in this House, since the house reflects the ethnic composition of the country. One may also argue that due to the uniquely diverse ethnic composition of Addis Ababa, permitting members of each nation, nationality and people who resides in Addis Ababa to be represented in the house is tantamount allowing the existing numbers of members the house to be doubled. This stems from the difficult nature of quantifying the same in the case of Addis Ababa.

The case of the House of People's Representatives illustrates the fact that Ethiopia's representation draws from the ethnic composition of the country.⁶⁷ Despite this fact, residents of the city are represented at the HoPR without regard for their ethnic composition. Since the House of Peoples' Representatives is not different from the House of Federation in terms of its ethnic composition, the residents of Addis Ababa should be represented likewise as they are represented differently at the HoPR.

5.2. Self-Governance

The Constitution says the residents of Addis Ababa shall have a full measure of self-government, but with the same language: "Particulars shall be determined by law."⁶⁸ Before raising the predictable question of who shall enact this law, there is tremendous significance in reflecting on what constitutes the full measure of self-government. To identify the contents of

⁶⁷ Wondwossen, *Self-governing Addis Ababa*, *supra* note 49, p. 68.

⁶⁸ FDRE Constitution, *supra* note 8, Article 49(2).

self-government, let us look to Article 39(3) of the Constitution. It reads as follows:

Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government *which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.* (Emphasis is added.)⁶⁹

This provision is written to give this right to nations, nationalities and peoples of Ethiopia. Perhaps due to the difficulty of specifying their composition in the capital city, this right is given to the residents of Addis Ababa, in general. It is clear from the provision that the essence of self-government encompasses the right to establish government institutions in inhabited territory that has three branches of governments: executive, judiciary and legislative. Besides this, the right of self-governance involves the right to equitable representation in government institutions. In stating this, the Constitution gives the city more privileges and authorities, which it could exercise independent of the federal government.⁷⁰

The other point that is worth considering is the mandate to enact a detailed law that defines and regulates the rights of the residents of Addis Ababa to a full measure of self-government. Who can do this: the federal government or the Addis Ababa City Administrative Council? Where is the status of the city of Addis Ababa in line with other regional states? On this point, Fasil Nahum argues:

[T]he Constitution of 1994[sic] establishes the Federal Democratic Republic of Ethiopia, which comprises of the

⁶⁹ FDRE Constitution, *supra* note 8, Article 39(3).

⁷⁰ FDRE Constitution, *supra* note 8, Article 39(3).

federal government and nine member states. Nine such member states are enumerated by the Constitution.⁷¹ Then there is a tenth entity, the capital city, which is entitled to “full measure of self-government” and, for all practical purposes, amounts to a state.⁷²

This articulation gives strength to the argument that the Addis Ababa City Administration can enjoy the same status and privilege as other federation units in Ethiopia. Stated otherwise, as the regional states are empowered to promulgate their own constitutions and other subsequent laws, the same logic should apply to the case of Addis Ababa. The writer of this article concurs with the opinion that Addis Ababa should be treated as the 10th member state of the Federal Democratic Republic of Ethiopia for such purposes. A plain comparison of the powers of the City Administration with those of the regional states further confirms this position.

The city’s Charter forms the legal basis for the structure of the city.⁷³ The Charter enumerates the basic authority of the city to govern, establish government, and set up legislative, executive and judicial branches of the city government. Moreover, the Charter defines powers and functions of the City Administration. To mention a few, the city government has the power to approve and implement economic and social development plans,⁷⁴ and to determine the administration and working conditions of employees and officials of the city government as well as the staff of other organs of

⁷¹ Article 47 of the FDRE Constitution lists the following regional states as member States of the Federal Democratic Republic of Ethiopia. These are the states of Tigray, Mar, Amhara, Oromia, Somali, Benshangul Gumuz, and the Southern Nations, Nationalities and Peoples, Gambela and Harari.

⁷² Fasil, *Constitution for a Nation of Nations*, *supra* note 6, p. 67.

⁷³ Proclamation No. 361/2003, Addis Ababa City Government Revised Charter Proclamation, Federal Negarit Gazeta, 9th Year, No. 86, Addis Ababa, 24 July 2003 [hereinafter Charter].

⁷⁴ See the Charter, *supra* note 73, Article 11(2) (b).

government specified under this Charter.⁷⁵ Besides this, the city government has the power to organize Sub-Cities and Kebeles, to demarcate their borders and allocate budgetary subsidies to same;⁷⁶ and to administer, according to law, the land and the natural resources located within the bounds of the city.⁷⁷ Furthermore, the city government is empowered to prepare, approve and administer the budget of the city; to determine and collect, according to law, taxes, duties and service charges out of the sources of income specifically given hereby to the city government; to revoke taxes and penalties imposed as per the law; to participate in income-generating activities and to receive donations and gifts;⁷⁸ to borrow money from domestic sources under authorization by the Federal Government; to identify external sources of loans and request that the Federal Government borrow money on its behalf.⁷⁹

To make the comparison tenable, it is important to mention the powers of the constituent units. The FDRE Constitution mentions the following powers as powers of the regional states in addition to the residual powers. Pursuant to the FDRE Constitution, the regional states have the power to establish a state administration that best advances self-government, to protect and defend the Federal Constitution;⁸⁰ to enact and execute the state constitution and other laws;⁸¹ to formulate and execute economic, social and development policies, strategies and plans of the state;⁸² to administer land

⁷⁵ See the Charter, *supra* note 73, Article 11 (2) (c).

⁷⁶ See the Charter, *supra* note 73, Article 11 (2) (e).

⁷⁷ See the Charter, *supra* note 73, Article 11 (g).

⁷⁸ See the Charter, *supra* note 73, Article 11(2) (j)-(k).

⁷⁹ See the Charter, *supra* note 73, Article 11(2) (j).

⁸⁰ FDRE Constitution, *supra* note 8, Article 52(2) (a).

⁸¹ FDRE Constitution, *supra* note 8, Article 52(2) (b).

⁸² FDRE Constitution, *supra* note 8, Article 52(2) (c).

and other natural resources in accordance with federal laws;⁸³ to levy and collect taxes and duties on revenue sources reserved to the states and to draw up and administer the state budget;⁸⁴ to enact and enforce laws on the state civil service and their conditions of work. In the implementation of this responsibility, the regional states shall ensure that educational, training and experience requirements for any job, title or position approximate national standards.⁸⁵ The regional states shall also establish and administer a state police force to maintain public order and peace within the state.⁸⁶ All of these facts show that the regional states and the Addis Ababa City Administration have more or less similar powers and functions. This equates the city with the regional states.

5.3. Accountability

The notion of accountability is a nebulous concept that is difficult to define in precise terms. It is also not the purpose of this article to present a theoretical discourse on accountability. With this in mind, it is important to note that the idea of accountability arises when decision-making power is transferred from the principal, the citizens, to an agent, the government. There must be a mechanism in place for holding the agent to account for his or her decisions and for imposing sanctions, if necessary. Ultimately, accountability may require removal of the agent from power.⁸⁷

Accountability in democratic political systems puts the citizens and their elected representatives in a vertical relationship, with power running from the

⁸³ FDRE Constitution, *supra* note 8, Article 52(2) (d).

⁸⁴ FDRE Constitution, *supra* note 8, Article 52(2) (e).

⁸⁵ FDRE Constitution, *supra* note 8, Article 52(2) (f).

⁸⁶ FDRE Constitution, *supra* note 8, Article 52(2) (g).

⁸⁷ Staffan, Lindberg I., Accountability: The Core Concept and Its Subtypes, working paper no. 1, Overseas Development Institute

bottom up. The degree of control is relatively high. Several forms of participation are available to citizens for the purposes of requiring information and holding elected leaders accountable. Voting is one mechanism that can have dramatic consequences for representatives, but it is not continuous between electoral periods. Other means are more effective: calls, meetings, demonstrations, and writing to newspapers are just a few of them.⁸⁸

With the same orientation, the Addis Ababa City Charter declares that elections for the councils at all levels of the city government shall be conducted in accordance with the electoral law of the country.⁸⁹ It is emphasized in the Charter that members of the council shall be elected from candidates in each electoral district by a plurality of the votes cast.⁹⁰ The corollary effect of conducting election is to form a government and lead that entity. To this effect, Addis Ababa city's revised Charter declares that a political party or a coalition of political parties that occupy the majority of seats of the Council shall form the executive organ of the city and undertake its leadership.⁹¹

On the other hand, the City Council is accountable to the Federal Government and to the residents of the city.⁹² The accountability of the council to the residents articulates the principle of rule of the people and seems sound and valid. The responsibility of the City Council to the federal government, however, appears uncertain. At the least it raises the following questions: Does this mean that the federal government has the mandate to

⁸⁸ Ibid.

⁸⁹ See the Charter, *supra* note 73, Article 8.

⁹⁰ See the Charter, *supra* note 73, Article 12 (1).

⁹¹ See the Charter, *supra* note 73, Article 13.

⁹² See the Charter, *supra* note 73, Article 17.

appoint and remove City Administrative cabinets? Does it allow the intervention of the central government when the City Administration fails to undertake its routine activities for any cause? Does the central government have a say in the city's budget allocations? The Charter tries to answer these questions in a determined manner.

In the first place, the Charter makes the city government a component of the Federal Government.⁹³ In addition, it allows the dissolution of the City Council by the House of Peoples' Representatives.⁹⁴ The issue here is how the HoPR can dissolve a City Council which has been legitimately formed by the residents and not constituted by the House. This is simply against the principles of democracy. In fact, it is very difficult to demarcate the authority of the federal government versus that of the residents in deciding who may run for government offices. And it is also difficult to determine via the Charter's provisions whether the federal government or the residents may decide when and how elected representatives can leave their offices with respect to the Addis Ababa City Administration. How does a House acquire the right to dissolve City Councils that it does not get from a constitution?

It is true that the city may be accountable to the Federal Government concerning security and diplomatic relations, as well as associated policies, laws and standards.⁹⁵ It is unobjectionable to give the Federal Government power to dissolve the city government and to constitute a transitional government where an act endangering the Constitution is committed by the City Council or where the city government fails to manage security matters and is in an emergency situation. Strangely, the Charter empowers the

⁹³ See the Charter, *supra* note 73, Article 61 (2).

⁹⁴ See the Charter, *supra* note 73, Article 61 (3).

⁹⁵ See the Charter, *supra* note 73, Article 61 (2).

Ministry of Federal Affairs, representing the Federal Government, to monitor the activities of the city government and support the capacity-building undertakings of the city.⁹⁶ Moreover, the city government is required to submit to the Ministry of Federal Affairs annual and periodic performance reports on its plan, budget and the overall state of the affairs of the city.⁹⁷ It should be noted that self-governance is conveyed in the way in which an entity is constituted and dissolved. Empowerment of a third party to constitute and dissolve a self-governing unit puts the fate of that unit solely in the hands of such external forces.⁹⁸ It seriously erodes the right to self-governance of the residents of the city.

A capital's source of funding can say a lot about the extent of its independence. Thus, if the federal government plays a part in setting or managing the city's budget, it can, in return, demand a say in how resources are allocated. If, on the other hand, the federal government gives no money to the capital, the city has to cover all of its expenses by itself, but the federal government will not have any veto power over the capital's budget. Thus, the question of financial independence has two sides. Does the capital receive federal transfer payments to defray its costs, and is it free to draw up its own budget? True, the Charter specifies the tax sources of the city.⁹⁹ However, like all regional states, Addis Ababa City Administration has budget constraints so that in one way or another it becomes financially dependent on grants from

⁹⁶ See the Charter, *supra* note 73, Article 61(5).

⁹⁷ See the Charter, *supra* note 73, Article 61 (6).

⁹⁸ Wondwossen, *Self-governing Addis Ababa*, *supra* note 49.

⁹⁹ See the Charter, *supra* note 73, Articles 57 and 58.

the central government. The corollary effect is that this gives room for the federal government to intrude in the affairs of the City Administration.

5.4. The Interest of Oromia Region in Addis Ababa

Due to the geographic coincidence of the location of the Oromia region with the Addis Ababa City Administration, the Constitution includes a preemptive solution for potential conflicts that could arise between the two. It acknowledges the special interest of the State of Oromia in Addis Ababa, with regard to the provision of social services or the utilization of natural resources and other similar matters, and states that this interest shall be respected.¹⁰⁰ Of course, the details of these matters require further legislation, as the Constitution pronounces that the particulars will be determined by law.¹⁰¹ As the matter involves or touches on the interests of more than one self-governing entity, the power to promulgate laws on this issue should be left to the central government.¹⁰²

6. Minority Representation

In any democratic political system, the existence of minorities as well as allowance for their special representation is a reality. Given the importance of a federal system in enhancing public participation, its institutional development should mirror the entire community in its legislature, executive and judiciary, including minorities.¹⁰³ In other words, the system of law and justice derives its legitimacy from the fundamental proposition that no one group should eliminate and overshadow the needs of others. Cognizant of this

¹⁰⁰ FDRE Constitution, *supra* note 8, Article 49 (5).

¹⁰¹ FDRE Constitution, *supra* note 8, Article 49 (5).

¹⁰² FDRE Constitution, *supra* note 8, Article 55 (2)(a).

¹⁰³ Kymlicka, Will, *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Oxford University Press, Toronto, 1998 [hereinafter Kymlicka, *Finding Our Way*].

fact, in Ethiopia the federal Constitution and several regional state constitutions acknowledge the existence of minorities to preemptively deal with this matter.¹⁰⁴ The idea behind this is that minority participation in legislative institutions provides the greatest potential for these minorities to influence the decisions of government, as policymaking is a legislative function.¹⁰⁵

The House of Peoples' Representatives is composed of members who are elected by the people for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot.¹⁰⁶ Furthermore, the Constitution specifies the maximum number of seats in the House of Peoples' Representatives and how many of these go to national minorities. The provision of the Constitution reads as follows:

Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law.¹⁰⁷

It is clear that subsequent legislation enacted to enforce this part of the Constitution should tell us who are qualified to have seats in the House, and how seats reserved for minorities are allocated among the national minorities

¹⁰⁴ See FDRE Constitution, *supra* note 8, Article 54; Article 43(2) of the Somali Regional State Constitution and Article 46 of the Gambela Regional State Constitution.

¹⁰⁵ Walsh, Niamh, Minority Self-government in Hungary: Legislation and Practice, *Journal on Ethnopolitics and Minority Issues in Europe*, Summer 2000, p. 1-73. [hereinafter Walsh, Minority Self Government]

¹⁰⁶ FDRE Constitution, *supra* note 8, Article 54(1).

¹⁰⁷ FDRE Constitution, *supra* note 8, Article 54(3).

themselves. Since the representation takes place at the federal level, it is the central government that is competent to decide this matter through legislation.

It is self-evident that there are also minorities at the state level. Minorities are a possibility at zonal and Woreda levels as well. In his proposal for multilevel government, Musgrave argues that "if the jurisdiction is small enough to include one voter, no one can be in a minority."¹⁰⁸ Due to the impracticality of such kind of arrangement in the real world, political systems design their own mechanisms to accommodate minorities in the decision-making process. In this regard, the federal arrangement gives room to consider special protection of minorities at all levels.

As a result, most regional states have designed the same types of arrangements for regional minorities' representation in their respective state councils, with slight qualification as to the method of minorities' representation. Let us look at two regional state constitutions to explore this idea. The SNNPR regional state constitution acknowledges the existence of minorities within the state in the following provision, concerning representation minorities in the state council: "[T]he minority Nationality and people shall have seats in the states council on the basis of special representation. "Particular shall be determined by law."¹⁰⁹

The Constitution is silent as to the maximum number of seats allocated for the minorities out of the total number of seats in the council. In addition, who can qualify for such representation and how their population size connects with this privilege is not answered. The Constitution systematically escapes these issues by incorporating this phrase: "Particulars

¹⁰⁸ Musgrave, R. A. and Musgrave, P. B., *Public Finance in Theory and Practice*, 5th ed., McGraw-Hill, New York, 1989, p. 523.

¹⁰⁹ See Article 50 (2) of the Revised SNNPR Constitution.

shall be determined by law.” One may also find an equivalent provision in the Amhara Regional State Constitution: “[T]he minority Nationalities and People that are believed to deserve special representation shall be represented in the council through an election. Particulars shall be determined by law.”¹¹⁰

Like the SNNPR state constitution, the Amhara Regional State constitution is silent as to the number of council seats to be allocated to minorities. Moreover, all minorities who are residing within the region do not deserve special representation; rather, it is those minorities who are believed to merit special representation who qualify for such seats. Again, the constitution escapes this issue with the phrase: “Particulars shall be determined by law.”

The forthcoming legislation is not only required to define the number of seats that minorities will possess but also indicate who is qualified to have special representation among the minorities in the region. This wording highlights the understanding that all minorities do not deserve special representation: *‘the minority Nationality and people that are believed to deserve special representation.’* Thus the Amhara regional state recognizes and provides self-government at the zonal level for three non-Amhara ethnic groups who are residing in the region. These are the Agaw-Awi, the Agaw-Hemra and the Oromos.¹¹¹ But even this arrangement fails to ensure such groups’ right to representation in the regional state institutions.¹¹² These minority ethnic groups are represented only in the regional state constitutional

¹¹⁰ See Article 48 (2) of the Amhara Regional State Constitution.

¹¹¹ See Article 5 of the Revised Amhara Regional State Constitution.

¹¹² Assefa Fiseha, Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet, *Regional & Federal Studies*, vol. 22(4), p. 435-473 at 455.

interpretation commission, which to date, is not operative.¹¹³ Moreover, although in theory, they are entitled to enact laws and design policies on their own matters, including the use of their language in public institutions, in practice, these minority nationalities have not exercised much of their powers.¹¹⁴ In this regard, one may argue that there is limited opportunity available to minority groups to have a measure of control over issues that directly affect them.¹¹⁵ Their issues and concerns may not be adequately addressed. In this sense, Majeed and others argue, “[I]f vital issues concerning minorities are decided upon without the participation of the minorities in the decision making process, then the minority group becomes losers likely to reject the legitimacy of the polity.”¹¹⁶

There is also one additional question that needs to be addressed here: Can regional states deny special representation to those ethnic groups who are considered to be minorities at the federal level and bestowed special representation in the HoPR? The answer should be in the negative, for the following reasons. In the first place, the regional state constitution must conform to the federal constitution, which means that if the federal government provides recognition to certain ethnic groups as minorities then states do not have the competence to deny this. Equally important, whose mandate is it to define who is minority and to whom the reserved seats at the state council belong? As states have the power to decide the maximum

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Walsh, *Minority Self-Government*, *supra* note 105, p. 1-73.

¹¹⁶ Majeed Akhtar, 'Introduction' in Majeed, Akhtar, Watts, Ronald and Brown, Douglas (eds.), *Distribution of Power and Responsibilities in Federal Countries*, McGill-Queen's University Press, Montreal, 2006.

number of seats in their own that state councils,¹¹⁷ by implication, the state also has the power to decide how many of the total seats will go to minorities.

7. Concluding Remarks

In a federation, owing to difficulty of having watertight divisions of powers between tiers of government and generality of the constitutional provisions, there may be matters that are not clearly mentioned in the constitution as to which levels of government they may belong. In such instances, it is imperative to refer to the list of powers enshrined in the constitutions of the two tiers of government. By referring to provisions of the constitution one may decide to whom a matter accrues and who has the mandate to determine particulars by law. Constitutions endeavor to set out major tasks of the different levels of governments in a holistic manner. Structure should be incorporated into the Constitution, leaving the remaining details to subsequent ordinary laws. Therefore, the issue here is who has the mandate to enact subsequent legislation. From this perspective, this article has analyzed several specific issues, including the national anthem, transparency and accountability of government, property rights, family matters, the status and administration of Addis Ababa city and minority representation.

The author of this piece has argued that the mandate to determine the details of a national anthem by law should be left to the federal government. On the other hand, family law matters are in the domain of regional state power. If any of the regional states fail to develop a law that regulates family matters that particular region may apply the provisions of the Civil Code.

¹¹⁷ The Amended Electoral Law of Ethiopia Proclamation, Article 28(4).

In the opinion of this author, the same logic should apply to the Addis Ababa City Administration as well. Residents of Addis Ababa are represented at the HoPR, regardless of ethnic compositions. Likewise, the residents of Addis Ababa should be represented in the House of Federation. It should be noted that self-governance allows dissolution of the City Council by the electorate and not by another external entity. Concerning the relation between the Oromia Regional State and Addis Ababa City Administration, the power to promulgate laws on issues of relationships should be left to the Federal Government as the matter involves the interests of two self-governing entities. Insofar as minority representation is concerned, given the importance of a federal system in enhancing public participation, government institutions should mirror the entire community, including minorities. The mandate to define who is a minority and to whom the reserved seats belong to can be ascertained by both the Federal and state governments. If the representation takes place at the Federal level, it is the Federal government that is competent to decide the matter through legislation. Likewise, regional states will have the power to decide on issues relating to matters who are minorities at the regional state level.