

ETHIOPIA: CONSTITUTIONAL PROTECTION OF ETHNIC MINORITIES AT THE REGIONAL LEVEL

Christophe Van der Beken

*Ghent University
Faculty of Law, Department Public Law
Universiteitstraat 4
9000 Gent
Belgium*

e-mail: Christophe.VanderBeken@UGent.be

SUMMARY

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It is argued that in order to evaluate the capacity of the Ethiopian federal structure to accommodate ethnic diversity and to regulate ethnic conflicts, the research cannot be limited to an analysis of the constitutional mechanisms at the federal level. One of the crucial features of the Ethiopian federal structure is that it provides its nine regions with the power to enact their internal constitutions. This implies that each and every region has the power to develop its own internal state structure, within a minimum federal framework. From here it follows that the federal structure to have the potential to lay the foundations for a viable Ethiopian state, it is essential that not only the federal but also the regional constitutional mechanisms have the capacity to realize unity in diversity. As is explained in this article, not a single Ethiopian region is ethnically homogeneous. The ethnic

diversity which characterizes the federal level is therefore also present at the regional level. Therefore, when evaluating the capacity of the Ethiopian state structure to accomplish unity in diversity one also has to include an analysis of the regional mechanisms. The latter analysis is the core objective of this article.

Key Words: *Federal Constitution, Regional Constitutions, Ethnic Diversity*

1. INTRODUCTION

Like most African states, Ethiopia is ethnically diverse. The Ethiopian population is characterized by considerable diversity in religion (the Ethiopian Orthodox Church, Protestants, Moslems, traditional belief systems), language (there are dozens of different languages), culture, socio-economic activities (pastoral nomadism, sedentary agriculture) and traditional governance structures. But unlike other African states, this diversity is not the result of colonial imperialist designs; instead it resulted from the late 19th century territorial expansion of the empire of Abyssinia. The creation of the Ethiopian state by a process of internal expansion did not, however, give rise to an alternative nation building strategy. Just like the leaders of the postcolonial African states, the Ethiopian power holders, for the largest part of the twentieth century, strived for the creation of one nation within the state, not by the recognition of its national or ethnic diversity, but by the disavowal of and the attempt to erase that diversity. Ethiopian national identity was equated with the ethnic identity of one particular group. The Ethiopian government judged that this nation building strategy offered the best guarantee for the stability of the state. This strategy remained in nature unaltered until the fall of the military dictatorship of Mengistu Haile Mariam in May 1991, when the new power holders, under the guidance of the EPRDF (the *Ethiopian Peoples' Revolutionary Democratic Front*), a coalition of ethnic-based liberation movements, declared their aim of radically breaking with a strategy of nation building based on ethnic discrimination. Instead they would strive for equal rights for all Ethiopian ethnic groups. According to the new conception, the construction of an Ethiopian national identity was based on the recognition of the ethnic diversity of the population. In other words, unity depended on the recognition

of and the respect for diversity. This attention to unity in diversity was legally expressed in the granting of a right to self-determination to all the *nations, nationalities and peoples* (the Ethiopian constitutional term for ethnic groups) of Ethiopia. This right was first incorporated in the Transitional Period Charter (interim constitution) of 1991 and afterwards in the federal constitution of 8 December 1994, which is still functioning today. The right to self-determination as conceived by the Ethiopian constitution is very large and includes language rights, cultural rights and rights of self-administration. It even includes the right of nations, nationalities and peoples to secede from the Ethiopian federation. Thus all ethnic groups have the right to speak and develop their own language, to express and promote their own culture and history; they have the right to self-administration within a particular territory and the right to their own representation at the regional and federal levels of government.¹ As such, the right to self-determination includes both the objectives of unity and that of diversity. To make sure that the granting of this right is more than a mere declaration of intent, the federal constitution provides for a specific administrative organisation and for specific institutional mechanisms. Of course, it is appropriate to make the observation that the effective realisation of the constitutional provisions is partly determined by the political context. This, however, does not mean that an analysis of the constitutional provisions is superfluous. Not all constitutional provisions are context dependent to the same extent. Moreover, if the rule of law is to prevail in Ethiopia, it is necessary that the constitutional provisions have a greater sustainability than the relative political context. Nor should it be neglected that the constitutional provisions have themselves a large impact on political reality.

As the use of the term 'federal constitution' indicates, the constitution of 8 December 1994, which became effective in August 1995, creates a federal state structure. This implies that the Ethiopian territory is administratively divided into nine regional states.² These are Tigray; Afar; Amhara; Oromia; Somali; Benishangul-Gumuz; the State of the

¹ Article 39 federal constitution.

² The cities of Dire Dawa and Addis Ababa do not belong to one of the nine regional states. They constitute separate territorial entities that, in contrast to the regional states, are accountable to the federal government.

Southern, Nations, Nationalities and Peoples; Gambella and Harar.³ The ethnic criterion has played an important role in the creation of the regional states, in the sense that the delimitation of the regional borders is based on ethnic ones. Indeed, the Ethiopian government has tried to realise a match between regional and ethnic borders. As a result, Ethiopian federalism has been called 'ethnic federalism', distinguishing it from federalism in a country such as the United States, where regional borders do not in any way correspond with ethnic ones. Therefore, the ethnic groups of Ethiopia are constitutionally coupled to specific regional states and it is within and through these states that they exercise their right to self-determination. The constitution grants important competences to the regional states. Among these are the power to choose its own working language, the competence to set up its own police force and the competence to adopt its own constitution. This last competence allows the regional states to form their own administrative and institutional structures and, for example, to determine the structure and functioning of their local governments. However, as indicated above, the right to self-determination in the Ethiopian constitution implies not only autonomy rights (diversity), but also the right to representation in the federal government (unity). The federal constitution not only regulates the state structure and the relationship between the regional and federal level, the federal constitution also determines the fundamentals of the federal legislative, executive and judicial institutions. Therefore, in order to realise the right to self-determination, the federal constitution guarantees the representation of the ethnic groups in these federal institutions.

The federal parliament, as is customary in federations, is composed of two chambers: the **House of People's Representatives** and the **House of the Federation**. The representatives of the former are representatives of the Ethiopian people as a whole. They are elected by means of general and direct elections under the *first-past-the-post* electoral system.⁴ In practice, this means that the one seat in each electoral district is won by the candidate who gets the most votes in the district. In a state organised on an ethnic basis, the use of such an electoral

³ Article 47 (1) federal constitution.

⁴ Article 54 federal constitution.

system runs the risk that the one seat in each electoral district will be won by the candidate who represents the interests of the largest ethnic group in the district. This is particularly problematic for those ethnic groups that are a minority in every electoral district. There is a real risk that those ethnic groups will not have a single representative in the House of People's Representatives. To reduce this risk and to guarantee the representation of all ethnic groups in the first chamber of parliament, the federal constitution provides for a guaranteed representation of '*minority nationalities and peoples*'.

Article 54(3) of the federal constitution stipulates that out of the maximum number of 550 seats in the House of People's Representatives, a minimum of 20 seats is reserved for '*minority nationalities and peoples*'. As such, a representation of a large number of ethnic groups in the House of People's Representatives is guaranteed. Nevertheless, the chosen electoral system leads to the fact that the larger ethnic groups are more strongly represented in the first chamber of the parliament than the smaller ones. This is a common situation in federal states. As indicated before, most parliaments in federal states are bicameral. The first chamber is the representative institution of the federation as a whole, its members being elected pro rata of the population. In Ethiopia, the federal constitution stipulates that the members of the first chamber, the House of People's Representatives, are the representatives of the "*Ethiopian People as a whole*."⁵ This conception of the first chamber and the resultant electoral system lead to a predominance of the larger federated entities in the first chamber. For example, in the United States the large (highly populated) regional states have a larger representation in the House of Representatives than the smaller states. We have the same picture in Ethiopia, where the large ethnic groups are much more strongly represented in the House of People's Representatives than the small ethnic groups. For example, on the basis of the 2000 elections, the Amhara and Oromo ethnic groups jointly held a majority of seats in the House of People's Representatives.⁶ However, it is also customary in federations that the preponderance of the large federated entities is compensated for by the overrepresentation of the small federated entities in a second chamber.

⁵ Article 54 (4) federal constitution.

⁶ *Regional Surveys of the World, Africa South of the Sahara 2004*, London/New York, Europa Publications, 2003.

To stay with the example of the United States, there, the preponderance of the large regional states in the House of Representatives is compensated for by an equal representation of all regional states in the second chamber, the senate (all regional states of the US federation having two senators). This brings us to the second chamber of the federal parliament in Ethiopia: the *House of the Federation*. The House of the Federation is the representative organ of the diverse Ethiopian ethnic groups or of the diversity in the federation. Article 61 (1) of the federal constitution stipulates that all nations, nationalities and peoples have a right to be represented in the House of the Federation. Each is entitled to at least one representative and the members of the House of the Federation are elected either by the regional parliaments or within the framework of direct elections organised by these parliaments.⁷ In practice, all members of the House of the Federation are elected by the regional parliaments and, therefore, no direct elections for the House of the Federation take place.⁸ The fact that all members of the House of the Federation are elected by the regional parliaments is an expression of constitutional logic. As noted above, ethnicity played an important part in the creation of the nine regional states. More specifically, the government tried to realise an overlap between ethnic and territorial boundaries. As a result, all Ethiopian ethnic groups (more than 80), were, figuratively speaking, coupled to one (or in rare cases several) of the nine regional states. To put it in another way, the habitat of an ethnic group was delimited territorially and this ethnic territory fell within the boundaries of (usually) one of the nine regional states. The parliament of a regional state is therefore the representative organ of those ethnic groups that have been localised in the state concerned. The Amhara ethnic group, for example, has been coupled to the Amhara regional state. In other words, the Amhara regional state has been created for the Amhara ethnic group. From here it follows that the parliament of the Amhara region is the representative organ of the Amhara ethnic group. It is thus logical that the representatives of the Amhara in the House of the Federation are elected by the parliament of the Amhara region. Though all ethnic groups have a right to be

⁷ Article 61 (3) federal constitution.

⁸ Interview conducted by the author with Samuel Alemayehu, Secretary General of the House of the Federation, Addis Ababa, September 2003.

represented in the House of the Federation, this does not imply that the House of the Federation corresponds with the traditional model of a federal second chamber. Article 61 (2) of the federal constitution stipulates that the ethnic groups, for each one million of their population, are entitled to an additional representative in the House of the Federation. Because of this, large ethnic groups such as the Oromo and Amhara have 20 and 14 representatives respectively whereas smaller ethnic groups such as the Harari and the Silte have just one representative each in the House.⁹ Consequently, the House of the Federation offers an insufficient counterweight to the preponderance of the larger ethnic groups in the first chamber of the parliament.

The Ethiopian constitution of 1994 contains no provisions that guarantee representation for different ethnic groups in the federal executive, thus differing from the interim constitution of 1991.¹⁰ In practice, as seems clear from the example of the federal government, there appears to be an ambition to distribute the most important government positions across members of different ethnic groups. In the current government, formed in October 2005, the 21 ministers (without the prime minister) comprise 7 Oromo, 5 Amhara, 2 Tigrayans, 5 from different groups in the Southern Nations, Nationalities and Peoples state, 1 Somali and 1 Afar.¹¹

As far as the judicial structure is concerned, it is notable that a wide ethnic representativeness is guaranteed in the institution competent for constitutional review. In most federal states the power to monitor the constitutionality of laws and regulations is granted to an independent court. This task can be granted to the highest court in the normal legal organisation (such as in the USA, Canada and Australia) or to a specialised judicial organ (as in Germany and Spain).¹² However, the

⁹ The composition of the House of the Federation can be found on: <http://www.hofethiopia.org/index.html>

¹⁰ Article 9 of the Transitional Period Charter stated that the head of state, the prime minister, the vice-chairperson and the secretary of the Council of Representatives had to have a different ethnic identity.

¹¹ Walta Information Center, 12 October 2005.

¹² R. ERGEC, "Institutionele analyse van het federalisme" in Interuniversitair Studiecentrum voor Federalisme (ed.), *Federalisme – Staatskundig, politiek en economisch*, Antwerpen/Apeldoorn, MAKLU uitgevers, 1994, (35) 47.

Ethiopian constitutional drafter did not adopt such traditional mechanisms and opted instead for a remarkable alternative and unique mechanism of constitutional review. In Ethiopia, the constitutional review power is not granted to a judicial organ, but to the second chamber of the federal parliament: the House of the Federation. In the exercise of its constitutional interpretation power, the House of the Federation is assisted by the Council of Constitutional Inquiry.¹³ The majority of the members of the latter institution are legal experts, which is not the case for the members of the House of the Federation. However, the Council of Constitutional Inquiry is not itself a constitutional court; it is merely an advisory body to the House of the Federation. It is the latter that has the ultimate authority to interpret the constitution. Although this power of the House of the Federation might appear remarkable, it is nevertheless in line with the overall structure of the constitution. The constitution grants all sovereign powers to the nations, nationalities and peoples of Ethiopia and states that the constitution is an expression of their sovereignty.¹⁴ From this perspective it is not surprising that the constitution allocates the constitutional review power to the institution that is composed of representatives of those nations, nationalities and peoples. Since all ethnic groups have a right to be represented in the House of the Federation, the ethnic representativeness of the institution competent for constitutional review is guaranteed.

The above offers a concise overview of the mechanisms developed by the federal constitution in order to ensure the right to self-determination of the Ethiopian nations, nationalities and peoples. The realization of this right should result in unity in diversity, in the creation of an Ethiopian national identity through the respect for ethnic diversity. In so doing, the Ethiopian constitutional drafter attempted to remedy and prevent ethnic tensions and conflicts and guarantee the stability of the Ethiopian state. If each of the nine regional states of the Ethiopian federation were ethnically homogenous, the mechanisms of the federal constitution would offer a comprehensive approach towards this aim. In that scenario, any one ethnic group could exercise its autonomy rights through the regional institutions and its representatives in the

¹³ Article 84 federal constitution.

¹⁴ Article 8 (1) + (2) federal constitution.

House of the Federation are elected by or through the regional parliament. However, the Ethiopian reality does not correspond with this ideal scenario. This can already be deduced from the fact that though there are more than 80 ethnic groups, only nine regional states have been created. All Ethiopian regional states have, to a greater or lesser extent, an ethnically diverse population. The ethnic diversity which characterises the federal level is therefore also present at the regional level. From here it follows that tensions and conflicts between different ethnic groups can also occur within the borders of one particular region. Ethnic harmony in the Ethiopian state is therefore unthinkable without harmony inside the regions. This fact, in combination with the constitutional autonomy of the regions (the power to adopt their own constitution), makes clear that the capacity of the Ethiopian constitutional framework to ensure unity in diversity is to a large extent determined by the capacity of the regional constitutional mechanisms to do so. In other words, the right to self-determination of all Ethiopian ethnic groups can only be realised if the regional constitutional provisions also develop the necessary mechanisms. This brings us to the objective of this article, which addresses the question of whether the regional constitutions contain provisions to protect the rights of the ethnic groups which live within the territories of their respective states. The article studies the constitutional law of four states. The choice of states is, as is explained in the next section, motivated by the ambition to obtain as representative a sample as possible. The article starts with an overview of the ethnic diversity of the nine regional states, on the basis of which the regional states are categorised into four groups - a classification which acts as the guiding principle for the selection of the regional states for further study. The article then proceeds to the actual study of the constitutional law of the selected regional states. Of course, I do not discuss all aspects of regional constitutional law. Rather I focus on those elements which are related to the regional strategy regarding ethnic diversity. More specifically, I examine whether the regional constitutions, following the example of the federal constitution, have developed specific territorial-administrative and specific institutional mechanisms to accommodate ethnic diversity. This analysis enters an area of Ethiopian constitutional law which has been barely touched upon by scholars. Some thorough analyses of the

federal constitution and federal mechanisms for ethnic accommodation already exist, but research on the regional constitutions is very rare.¹⁵ This article therefore results from a personal interpretation of regional constitutional law, based on the author's own analysis of the constitutional texts and on additional interviews conducted by the author with regional politicians and civil servants.

2. ETHNIC DIVERSITY AT THE INTRA REGIONAL LEVEL

As indicated above, article 47 of the federal constitution provides that the territory of the Ethiopian federation comprises nine regions. These regions are listed in article 47 (1): 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 Gambella and the state of Harar.

Since the constitutional drafter tried to create an overlap between regional and ethnic boundaries, the Ethiopian federal structure can be called an ethnic federation. However, a closer look at the various state populations indicates that none of the nine regions is ethnically homogeneous. A perfect match between ethnic group and territory has thus not materialised. This is not surprising taking into account the presence of more than 80 different ethnic groups in Ethiopia. However, the degree of diversity differs from region to region.

Based on the ethnic composition of their populations, the Ethiopian regions can be divided into four groups.¹⁶

¹⁵ Thorough analyses of the federal administrative organisation and state institutions can be found in "ASSEFA FISEHA, *Federalism and the Accommodation of Diversity in Ethiopia – A Comparative Study*, Nijmegen, Wolf Legal Publishers, 2005-2006, 460 p." and in "C. VAN DER BEKEN, *Decentralisatie en etnische diversiteit in Afrika met casestudy Ethiopië*, Universiteit Gent, Doctoral Thesis, 2006, 379 p." A good concise analysis of the Ethiopian regional constitutions can be found in "TSEGAYE REGASSA, *State Constitutions in Federal Ethiopia: A Preliminary Observation*, <http://camlaw.rutgers.edu/statecon/subpapers/regassa.pdf>"

¹⁶ For the data on population numbers and ethnic composition, see: *The 1994 Population and Housing Census of Ethiopia Results at Country Level – Volume I Statistical Report*, Addis Ababa, Central Statistical Authority, 1998, 377 p.

1) The first five regions, as listed above, form the first group, in which the population group which gives its name to the region dominates. This implies that the first five regions are dominated by the Tigrayan, Afar, Amhara, Oromo and Somali ethnic groups, respectively. These ethnic groups dominate the regions not only because of their numerical predominance; they also have a political dominance through their control over the regional government institutions.¹⁷

Notwithstanding the clear dominance of one ethnic group, each of these five regions has substantial ethnic minorities.¹⁸ For instance, the Amhara represent about 10% of the population of Oromia (amounting to more than one and a half million people).

2) The second group is formed by regions six and eight as listed above: the Benishangul-Gumuz and Gambella regions. In these regions there is no dominance of a particular ethnic group, but of two ethnic groups jointly. The name Benishangul-Gumuz refers to the two major groups in the region: the Benishangul (also known as Berta) and the Gumuz. In the Gambella region, the two major groups are the Nuer and Anuak.

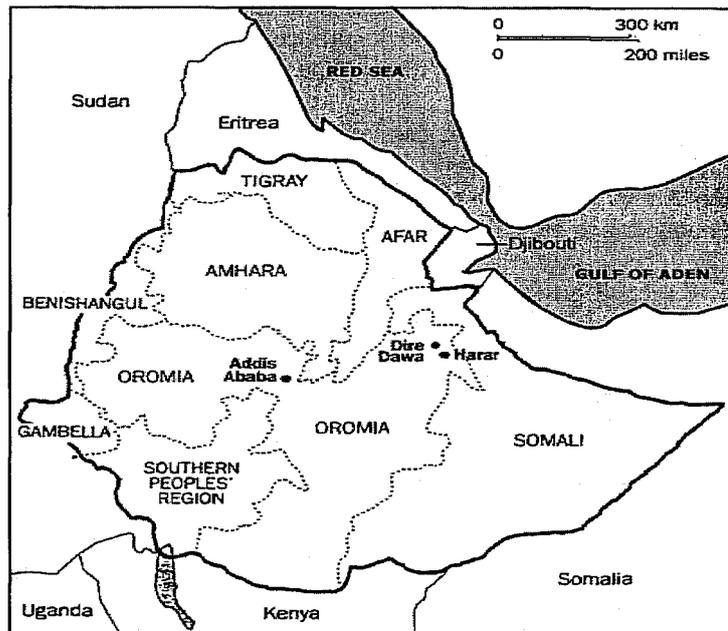
3) The third category consists exclusively of the Southern Nations, Nationalities and Peoples region (hereafter referred to as the Southern region). The Southern region is characterised by extreme ethnic diversity. According to official sources, there are no less than 56 different ethnic groups (or – to use the official vernacular – nations, nationalities and peoples) in the region.¹⁹ Some of these groups have more than one million members (such as the Sidama and the Gurage), but most are very small, each amounting to no

¹⁷ This control is exercised by political parties that have been created specifically for these ethnic groups (respectively the TPLF, the ANDP, the ANDM, the OPDO and the SPDP). More information on this political mechanism can be found in "C. VAN DER BEKEN, *o.c.*"

¹⁸ For the purpose of this article, people belong to an ethnic minority group when they are members of an ethnic group that is not controlling the regional state where they are living.

¹⁹ HAILEMARIAM DESALEGN, "Experience of Conflict-Handling and –Prevention in SNNPR", in *First National Conference on Federalism, Conflict and Peace Building*, Addis Ababa, Ministry of Federal Affairs, 2004, (44) 44.

more than some tens of thousands of people. Despite the existence of some larger groups, it is important to note that not a single group has the numerical majority.



Administrative Division of the FDRE
(Ethiopia, A Post-Cold War African State, Vestal T.M., 1999)

- 4) The fourth category is limited to the Harar region. This region comprises mainly the city of Harar and is not larger than 340 km². As its name indicates, the Harar region is dominated by the Harari ethnic group or, to put it differently, the region has been created to accommodate the Harari ethnic group. However, the Harari region differs from those of the first category in that the Harari do not have a numerical majority in the region. However, they have a political dominance through their control over the regional government institutions.

As it was practically impossible for the author to conduct field research in all of the nine regions, a number of regions had to be selected for further constitutional study. To guarantee an as wide and as representative an overview as possible, it was decided to study at least one region from each group. However, the fourth group, consisting exclusively of the Harar region, could not be included. The author was unable to collect the data (such as an official English translation of the regional constitution) necessary to guarantee an accurate analysis of regional constitutional law. Four regions were eventually selected: the Amhara and Oromia regions from the first group, the Benishangul-Gumuz region representing the second group and the Southern region.

3. REGIONAL CONSTITUTIONAL MECHANISMS TO ACCOMMODATE ETHNIC DIVERSITY

3.1. Constitution and Accommodation of Ethnic Diversity in Amhara and Oromia

3.1.1. Ethnic Composition of the Population

The Amhara region has a total surface area of 170 752 km² and a total population of about fourteen million people. The Amhara are by far the largest ethnic group in the region. Notwithstanding this Amhara predominance, there are many other ethnic groups of which the Oromo are the most important. An interesting observation is that the Amhara regional constitution does not deny this diversity. The preamble of the constitution makes reference to the "*peoples of the Amhara National Regional State.*" Furthermore, article 8 stipulates that: "*The supreme power of the national regional state resides in and belongs to the peoples of the Amhara region.*" As will be discussed below, this constitutional recognition of ethnic diversity is not inconsequential.

With its total surface area of 353 690 km², the Oromia region is the largest region of the Ethiopian federation. It also has the largest population with about nineteen million people. The Oromo people

constitute 85% of the population. On the one hand, this implies a numerical dominance of the Oromo, but on the other hand it implies an important presence of other ethnic groups. The most important minority group is the Amhara, who constitute about 10% of the population. As opposed to the Amhara constitution, the Oromia constitution does not refer to ethnic groups other than the Oromo themselves. The preamble, for instance, does not refer to the peoples of the Oromia region, but simply to the "*Oromo people*." Furthermore, article 8 of the Oromia constitution provides that "*Sovereign power in the region resides in the people of the Oromo Nation...*"

3.1.2. Territorial Organisation

The Amhara regional constitution was approved by the Amhara regional parliament on 22 June 1995. In this article, however, we analyse the amended constitution of November 2001.

This constitution organises the administrative divisions of the region into three hierarchical levels. The highest level is of course the regional level. The second administrative level is the level of the *Wereda* (district), these being further subdivided into *Kebele* (the lowest administrative level). However, for the Himra, Awi and Oromo ethnic minority groups, the constitution creates a special territorial entity: the Nationality Administration. Hierarchically, the Nationality Administration is situated between the regional and *Wereda* levels. In February 2005, according to data from the Ministry of Federal Affairs, the Amhara region had 113 *Wereda* and 5264 *Kebele*.

The Oromia regional constitution was approved by the regional parliament on 21 August 1995 and then amended in October 2001. The constitution provides for the following hierarchical administrative structure: the region, the Zone, the District and the *Kebele*. In February 2005, there were 197 Districts and 10676 *Kebele*.

3.1.3. Regional Institutional Structure

At the regional level, the Amhara region has legislative, executive and judicial institutions. Legislative powers are vested in the regional council, executive powers in the Council of the Regional Government and judicial powers in the regional courts.²⁰

²⁰ Art. 46 Amhara constitution.

The Oromia region has a similar structure with a regional parliament (*Caffee Oromia*), an executive organ (regional Administrative Council) and regional courts.

The Amhara regional council is the highest authority of the region.²¹ Unlike the federal parliament, it is unicameral. Its members are representatives of the "*peoples in the regional state as a whole*"²² and are elected for a term of five years on the basis of direct elections²³ using the so-called first past the post system.²⁴ The Amhara constitution pays attention to the position of ethnic minority groups by providing for a guaranteed representation of "*minority nationalities and peoples*."²⁵

The parliament of the Oromia region, the *Caffee Oromia*, is likewise the highest authority of the region.²⁶ The *Caffee* is unicameral and its members are representatives of the "*peoples of the region as a whole*."²⁷ They are elected for a term of five years.²⁸ The electoral system that is used is the first past the post system. However, unlike in Amhara, there is no guaranteed representation of minority groups.²⁹

At this point we can already see differences between the Amhara and the Oromia constitutions in the ways they handle ethnic diversity. The first significant provisions are in the preamble. The preamble of the Amhara constitution refers to the peoples of the region, whereas the Oromia constitution refers to the Oromo people. This illustrates different constitutional attitudes towards diversity: a positive attitude in Amhara, a negative one in Oromia. The constitutional provisions on sovereignty reinforce this attitude. In the Amhara constitution, sovereign power in the region is exercised by the different peoples, in

²¹ Art. 46 (1) Amhara constitution.

²² Art. 48 (3) Amhara constitution.

²³ Art. 48 (1) Amhara constitution.

²⁴ Art. 48 (2) Amhara constitution.

²⁵ Art. 48 (2) Amhara constitution.

²⁶ Art. 46 (1) Oromia constitution.

²⁷ Art. 48 (3) Oromia constitution.

²⁸ Art. 48 (1) Oromia constitution.

²⁹ Art. 48 (2) Oromia constitution.

Oromia by the Oromo people. The same attitudes can be found in the provisions for the composition of the respective regional parliaments. The Amhara constitution recognises that the first past the post electoral system in an ethnically organised state carries dangers for the representation of ethnic minorities, hence its provision for the guaranteed representation of ethnic minority groups. The Oromia constitution pays no attention to the representation of minority groups; the association of the region with the Oromo people leaves no room for it.

As far as the regional executive institutions are concerned, neither of the two constitutions provides for a guaranteed representation of ethnic groups. As such, the regional constitutions follow the example of the federal constitution (as explained in section 1).

To conclude this section on the regional institutions, we focus on the regional judicial organisation and more specifically, on the institution that has the competence to review the constitutionality of regional laws and regulations. As explained in section 1, the federal constitution grants the competence to review the constitutionality of federal laws and regulations to the second chamber of the federal parliament, the House of the Federation. By doing so, it provides for a very special mechanism of constitutional review. The Oromia constitution of 1995, just like other regional constitutions, also provided for a very special mechanism of constitutional interpretation under which the power to interpret the constitution was given to the regional parliament. This was a clear infringement of the *nemo iudex in sua causa* principle. However, the constitutional amendment of 2001 created a new institution for constitutional interpretation: the Constitutional Interpretation Commission. This Commission consists of a representative nominated from each district council.³⁰ Since the districts in Oromia are not ethnically based, there is no guarantee that members of ethnic minorities (non Oromo) will be represented in this commission.

In Amhara, the constitution also provides for the establishment of a Constitutional Interpretation Commission. However, as opposed to the Oromia constitution, the Amhara constitution does provide for a

³⁰ Art. 67 (1) Oromia constitution.

guaranteed representation of ethnic minorities in this commission. The Commission consists not only of members nominated from each *Wereda* council, but also from each Nationality Council (this is the legislative council of the Nationality Administration). As indicated above and as discussed in section 3.1.4. below, the Amhara constitution provides for the establishment of a Nationality Administration for three ethnic minority groups in the region: the Oromo, Himra and Awi. As such, the representation of these three ethnic minority groups in the regional organ for constitutional interpretation is guaranteed.

3.1.4. Institutional Structure of the Nationality Administration and the Zone

As presented above, the administrative level below the regional level in Amhara is the Nationality Administration. The creation of this administrative level results from the constitutional recognition of ethnic diversity in the Amhara region. The Amhara constitution recognises that, although the Amhara region was created for the Amhara people, there are other peoples living in the region as well. Following this recognition, it has developed mechanisms to realise the right to self-determination (in the broad definition of article 39 of the federal constitution) of these minority groups. One of these mechanisms is the representation of minority groups in the regional institutions as discussed above. Analysis of the federal constitution makes it clear that the preferred mechanism of the Ethiopian constitutional drafter to realise the right to self-determination is the creation of ethnic-based territorial entities. In the federal constitution, this ethnic territorial strategy is expressed by the creation of ethnic-based regional states, such as the Amhara region. Following the example of the federal constitution, the Amhara constitution attempts to ensure the right to self-determination within its boundaries through the creation of Nationality Administrations, territorial entities on an ethnic basis. The Amhara constitution limits the establishment of Nationality Administrations to the Himra, Awi and Oromo. Nonetheless, many other groups are living within the boundaries of the Amhara region. It is thus argued here that the Amhara constitution limits the recognition of ethnic diversity in the region to particular ethnic groups, to those groups that are considered to be endogenous in the region. Endogenous groups are people who have been living in the region for a long time; they are peoples of the region. It is only for these groups

that protective mechanisms (such as the creation of an administrative entity) have been developed. The other groups are regarded as exogenous because they have moved to the region in a more recent past and can therefore be seen as internal migrants or peoples **in** the region. These same exogenous groups are endogenous in another region (where they can exercise their right to self-determination). This thesis has been developed on the basis of an analysis of the regional constitutions and on the basis of the practices in other regions that indicate a certain pattern. The Amhara constitution does not make explicit the difference between endogenous and exogenous groups. Implicitly, however, this differentiation is made in its article 39 which contains, as is the case with article 39 of the federal constitution, the formulation of the right to self-determination. This right to self-determination is exercised by the peoples of the Amhara region. The fact that "*peoples of the Amhara region*" only refers to the endogenous population of the region (the Amhara, Oromo, Awi and Himra ethnic groups) is shown by article 39 (6): "*The national rights stipulated under sub-art, 1-5 of this article hereof shall apply with respect to the peoples of Himra, Awi and Oromo as well.*" The implication is that only the four endogenous peoples can exercise the various aspects of their right to self-determination in the Amhara region.

In the Oromia region there are no intra-regional ethnically organised territorial entities. In the region, the administrative level below the regional level, the Zone, was not created with the exercise of ethnic minority rights in mind.

The powers of the Nationality Administrations in the Amhara region, on the other hand, illustrate that the endogenous groups there have wide-ranging possibilities for self-administration and for the development of their own languages and cultures. The nationality councils have, for instance, the power to determine their own working language.³¹

3.1.5. Constitution and Accommodation of Ethnic Diversity in Oromia and Amhara: an Evaluation

A fundamental point is that Oromia's constitutional provisions pay no regard to the ethnic diversity of the Oromia region. On the contrary,

³¹ Art. 74 (3a) Amhara constitution.

further examination of the Oromia constitution shows an almost complete identification of the Oromia region with the Oromo ethnic group.

This identification is clear even in the preamble, which makes reference not to the population of the Oromia region, but rather to the "*Oromo people*." Notwithstanding the fact that article 2(1) of the regional constitution recognises that Oromia is populated by "*people of the Oromo nation and other peoples*", article 8 stipulates that "*Sovereign power in the region resides in the people of the Oromo nation*." The fact that "*people of the Oromo nation*" refers exclusively to people of the Oromo ethnic group can be deduced from article 39(6) of the Oromia constitution: "*For the purpose of this constitution, the expression 'the people of the Oromo nation' shall be construed as meaning those people who speak the Oromo language, who believe in their common Oromo identity, who share a large measure of a common culture as Oromos and who predominantly inhabit in a contiguous territory of the Regional State*." Thus, the sovereign power in Oromia does not reside in the various ethnic groups of the region, but in the Oromo ethnic group. From here it follows that the regional parliament, the *Caffee*, should not be perceived as the representative institution of the population of Oromia, but as the representative institution of the Oromo ethnic group. Several other elements support this conclusion. First, unlike the Amhara constitution, the Oromia constitution contains no provisions for the guaranteed representation of ethnic minority groups in the regional parliament. Second, we may note that the *Caffee* elects exclusively Oromo representatives to the federal House of the Federation. Consequently, the Amhara living in the Oromia region are represented in the House of the Federation only by members elected by the Amhara regional parliament. Finally, we may note the regional constitutional provisions on the right to secession. Article 39 (4) of the federal constitution stipulates that a demand for secession must be approved by the legislative council of the nation, nationality or people concerned. This provision has been included in article 39 of the Oromia constitution. Article 39 (5) of the latter constitution stipulates that the "*Demand for secession is approved by a two thirds majority vote of the **members of the caffee***." The legislative council of the Oromo ethnic group is thus equated with the *Caffee* of the Oromia region.

Nor do Oromia's constitutional provisions on the regional executive and judicial organs contain provisions for guaranteed representation. Ethnic minority groups in Oromia have no right to territorial self-administration. The Zonal administrative level is not an ethnic-based territorial entity, but an executive organ of the regional administration. The identification of the population of Oromia with the Oromo ethnic group is a clear consequence of the ethnic territorial approach to ethnic diversity. The Ethiopian constitution has established the Oromia region for the Oromo people. From here it follows that ethnic minorities within the Oromia region cannot claim group-specific rights.

The approach of the Amhara constitution is *prima facie* completely different. This is apparent from the preamble, which speaks not only of the Amhara people, but also about the different peoples of the Amhara region. Consequently, article 8 of the Amhara constitution grants the sovereign power to the **peoples of the region**. It is therefore no surprise that the Amhara constitution provides for guaranteed representation of ethnic minority groups in the regional parliament. Particular minority groups also have guaranteed representation in the regional organ for constitutional interpretation. Additionally, those same minority groups have a right to their own territorial entities. The Amhara constitution provides for the establishment of ethnic-based territorial entities for the Himra, Awi and Oromo. Thus, contrary to the Amhara in Oromia, the Oromo in Amhara have their own territorial entity. As far as the exercise of the right to self-determination is concerned, there seems to be a fundamental difference between the two regions. On the basis of the Oromia constitution, only the Oromo have such a right. The Amhara constitution, on the other hand, grants this possibility not only to the dominant Amhara, but to the Himra, Awi and Oromo as well. These minority groups have the right to territorial self-administration, to determine their own language and to representation in the regional institutions.

Notwithstanding these apparent differences, it is argued here that the difference between the Amhara and Oromia constitutions is merely a *prima facie* difference and that the two share the same approach to ethnic diversity.

At this point, I would like to come back to my thesis that inside the regions, a differentiation is made between two categories of ethnic minority: i.e. endogenous and exogenous minorities. Endogenous minorities are those ethnic groups that have traditionally lived in the territory of the region. Exogenous minorities are ethnic groups that have migrated to the region in the recent past and are endogenous in another region. We could also call them internal migrants. Endogenous minorities have a right to have a territory of their own inside the region and to representation in the regional institutions. Exogenous minorities do not have such specific protection and can only claim universal rights. The Oromia constitution only contains protective mechanisms for the Oromo, not for the other ethnic groups, since these are considered to be exogenous. The Amhara constitution contains group-specific rights for the Himra, Awi and Oromo who are considered to be endogenous in the region. The conclusion is therefore that the two regions have a similar approach to ethnic diversity. In both cases the constitutional accommodation of ethnic diversity is limited to endogenous groups.

3.2. Constitutional Accommodation of Ethnic Diversity in Benishangul-Gumuz

3.2.1. Geographical Situation and Ethnic Composition of Benishangul-Gumuz

Benishangul-Gumuz, in the west of Ethiopia, is one of its remotest regions. To the north and northeast of the region lies the Amhara region, to the east Oromia, to the south Gambella and to the west Sudan. The region has a total surface of 50.380 km² and, with a mere 460.459 inhabitants, is sparsely populated. This, together with its fertile soil, makes the region attractive to many Ethiopian farmers from other regions who wish to leave their own small and exhausted plots behind. This interregional migration is clearly reflected in the ethnic composition of the region's population. Interestingly, the constitution of Benishangul-Gumuz explicitly differentiates between endogenous and other peoples. Its article 2 classifies the following five ethnic groups as endogenous: the Berta, Gumuz, Shinasha, Mao and Komo. As indicated in section 2 above, none of those five ethnic groups has a numerical majority: the three most numerous

(endogenous) groups are the Berta (25.1% of the population), the Gumuz (23.3%) and the Shinasha (7%). The Mao and Komo each count for less than 1% of the population. Striking is the large number of Amhara (22.1%) and Oromo (12.8%), an illustration of the impact of migration.

3.2.2. Territorial Organisation

The territorial organisation of Benishangul-Gumuz discussed in this paper is the one based on the constitution of 2 December 2002, though it should be mentioned that, at the time of field research in the region (February/March 2005), the territorial organisation based on the 1996 constitution was still in place.

The 2 December 2002 constitution provides for a four-tier administrative structure: the region, the Administration of Nationalities, the *Wereda* and the *Kebele*.

3.2.3. Regional institutional structure

At the regional level, the Benishangul-Gumuz region has legislative, executive and judicial institutions. Legislative powers are vested in the state council, executive powers in the executive council and judicial powers in the regional courts.³²

Legislative power is exercised by the state council, which is the highest authority in the region. State council members are representatives "*of the People of the Regional State as a whole*"³³ and are elected for a term of five years through direct elections.³⁴ The constitution provides for guaranteed representation of the Mao and Komo peoples in the state council. Article 48 (2) stipulates: "*The representation of Mao and Komo nationalities shall be given special consideration.*"

Contrary to what is the case for the regional parliament, the constitution does not provide for a guaranteed representation of ethnic groups in the regional government. In reality, however, there does not appear to be a problem with the representation of endogenous groups in this body. In March 2005, the regional cabinet's thirteen members

³² Art. 46 Benishangul-Gumuz constitution.

³³ Art. 48 (3) Benishangul-Gumuz constitution.

³⁴ Art. 48 (1) Benishangul-Gumuz constitution.

consisted of four Berta, four Gumuz, three Shinasha and two Mao/Komo.³⁵ Thus, as it is, the regional cabinet has no representatives of exogenous groups. In the regional administration, however, the situation is the opposite. Due to a shortage of qualified endogenous staff, more than 70% of regional public servants belong to non-endogenous groups.³⁶ This large representation is facilitated by the continued use of Amharic as the regional working language.³⁷

When it comes to the issue of constitutional interpretation, there are important differences between the 1996 and 2002 constitutions. In the former the power to interpret the constitution was granted to the regional parliament, as was the case with other regional constitutions. But the 2002 constitution has transferred this power to a new institution: the Constitutional Interpretation Commission. This new body appears to be based on the example of the federal House of the Federation. As such, it expresses the ethnic diversity in the region. Article 71 (1) of the 2002 constitution stipulates that each endogenous nationality has a right to four representatives in the commission. Therefore, the total number of commission members is limited to 20. This brings us to two observations. Firstly, it is striking that each endogenous group, irrespective of the size of its population, has the right to the same number of representatives in the commission. As indicated in section 1, one of our critiques of the federal House of the Federation is related to its composition. The protection of the interests of the small federated entities is one of the objectives of a second chamber in a federation. The House of the Federation does not achieve this objective since the membership of each ethnic group in the House is, just as for the federal House of People's Representatives, also determined by numerical criteria. This critique does not apply to the

³⁵ Interview conducted by the author with Yaregal Aysheshim, president of Benishangul-Gumuz, Assosa, 2 March 2005.

³⁶ Information provided to the author by the regional government.

³⁷ Art. 6(1) Benishangul-Gumuz constitution. For most of the twentieth century, Amharic was used as the official language at central and lower administrative levels. This was part of the nation building strategy as explained in section 1. The coming into power of the EPRDF in 1991 has changed this radically. Although Amharic is today still being used as the working language of the federal government, the regions have the power to choose their own working languages (and many regions have done so).

Constitutional Interpretation Commission in Benishangul-Gumuz. In this institution, each endogenous ethnic group has an equal number of representatives. The non-endogenous groups, however, have no representation.

Another aspect of the commission modelled on the federal House of the Federation is the way its members are elected. Article 71 (1) of the Benishangul-Gumuz constitution provides that they are elected by the Council of Nationalities, the legislative council of the Administration of Nationalities. The representatives of the nations, nationalities and peoples in the House of the Federation are elected by the regional parliaments. The premise of the constitutional drafter is that the regions constitute the framework in which the nations, nationalities and peoples exercise the different aspects of their right to self-determination. The regional parliament is therefore considered to be the representative organ of those nations, nationalities and peoples. From here it follows that the representatives of the ethnic groups in the House of the Federation are elected by the regional parliaments. The Benishangul-Gumuz constitution starts from the same premise. The Administration of Nationalities is the territorial framework in which the diverse ethnic groups of Benishangul-Gumuz exercise their right to self-determination. The legislative council of this administrative level is therefore considered the representative organ of the nations, nationalities and peoples and thus has the power to elect the representatives of those nations, nationalities and peoples in the Constitutional Interpretation Commission.

It should be noted that at the time of research, the Constitutional Interpretation Commission had not yet been effectively established. The establishment of this institution depends on the creation of the administrative level of the Administration of Nationalities and, as indicated above, in March 2005 this administrative level had yet to be created.

3.2.4. The Institutional Structure of the Administration of Nationalities

The Administration of Nationalities is a new administrative level that has replaced the Zone. It is an application of the territorial strategy based on the belief that the nations, nationalities and peoples can best realise their right to self-determination within their own territories.

Therefore, the nations, nationalities and peoples in Benishangul-Gumuz have a right to establish their own territorial entity. The question now is whether this right pertains to all ethnic groups or whether it is limited to those endogenous to the region. The answer to this question can only be speculative since, so far, no Administration of Nationalities has been established.³⁸

Taking into account the philosophy of the constitution and political practice in Benishangul-Gumuz, it is argued here that only the endogenous groups have a right to their own Administration of Nationalities. This position is supported by the composition of the Constitutional Interpretation Commission and the way it is elected: the legislative council of the Administration of Nationalities only elects members of endogenous groups as representatives in the commission. The position is also supported by the administrative structure of Gambella. The regional constitution of Gambella provides for the administrative level of the Nationality Zone. In Gambella, this new structure is already in place and we can observe that the region is divided into three Nationality Zones, one for each of the three major endogenous groups: the Anuak, Nuer and Mejenjer. The Amhara and Oromo, even though numerically more important than the Mejenjer, do not have separate Zones in the region. *Mutatis mutandis* we may argue that in Benishangul-Gumuz only the endogenous groups have a right to create their own Administration of Nationalities. This position is further supported by article 39 of the Benishangul-Gumuz constitution which, similar to the Amhara constitution, limits the exercise of the various aspects of the right to self-determination to endogenous groups. In the Southern region (discussed below) it is also only endogenous groups that have been granted their own territorial entities. The same is true for the Amhara region. However, this situation does not imply that the exogenous groups have no right to be represented in the Administration of Nationalities. The Benishangul-Gumuz constitution does not guarantee such representation, but the example of the Southern region illustrates that the exogenous groups can be represented in the ethnically organised sub-regional territorial entities.

³⁸ Interview with Yaregal Aysheshim.

The competences of the Administration of Nationalities in the Benishangul-Gumuz region are similar to those of the Nationality Administration in the Amhara region.

3.2.5. Benishangul-Gumuz and the Accommodation of Ethnic Diversity

The 2002 constitution pays more attention to the ethnic diversity of the regional population than the constitution of 1996. It introduced fundamental changes to the regional administrative and institutional structure. Particularly significant for our purposes is the disappearance of the administrative level of the Zone (the administrative level hierarchically placed between the region and the district) and the introduction of the Administration of Nationalities as a new territorial administrative entity. The nations, nationalities and peoples of Benishangul-Gumuz have the right to their own Administration of Nationalities. Within the Administration of Nationalities, the nations, nationalities and peoples or ethnic groups have self-administration and the possibility of protecting and developing their own cultures and languages. Two considerations must be made here. Firstly, some ethnic groups in Benishangul-Gumuz (such as the Gumuz) are dispersed over the regional territory. For them, it seems impossible to establish their own territorial entity in the region.³⁹ Secondly, and this partially results from the first remark, the new ethnic-based administrations will inevitably have their own minorities. The example of the Mao Komo Special *Wereda* can illustrate this. Though this *Wereda* has been established for the Mao and Komo ethnic groups, a large number of different ethnic groups are living in the area.⁴⁰ For these reasons, the territorial strategy for the accommodation of ethnic diversity (the creation of ethnic based territorial administrative entities) is not appropriate for the Benishangul-Gumuz region.

It is furthermore not clear whether the right to a territorial entity applies to all ethnic groups in the region or whether it is limited to the Berta, Gumuz, Shinasha, Mao and Komo. The constitution defines the latter groups as endogenous groups, implying a hierarchy of ethnic

³⁹ This argument was mentioned by President Yaregal Aysheshim as one of the reasons why the new administrative structure had not yet been introduced.

⁴⁰ Remark based on a field visit of the author to the Special *Wereda* in March 2005.

groups. The impression exists, as remarked above, that the non-endogenous groups do not have a right to their own Administration of Nationalities. The distinction between endogenous and non-endogenous groups is expressed much more clearly in the provisions on the regional institutions. The small endogenous ethnic groups (the Mao and the Komo) have a guaranteed representation in the regional parliament. The exogenous groups have no such guarantee. Furthermore, all endogenous groups are represented in the regional cabinet whereas none of the exogenous groups is represented at that level. The same goes for the Constitutional Interpretation Commission. In this last institution, all endogenous groups are equally represented while the exogenous groups have no representatives.

We may conclude that the 2002 constitution has strengthened the position of the endogenous ethnic groups of the region by providing for their guaranteed representation in the regional parliament and in the regional Commission for Constitutional Interpretation. The right of the ethnic groups to their own territorial entities (the Administration of Nationalities), however, is not appropriate for the situation in Benishangul-Gumuz. Because they lack territorial concentration, the ethnic groups of Benishangul-Gumuz cannot exercise their right to self-rule through the creation of ethnic-based territorial administrative entities (the Administration of Nationalities). Furthermore, although the exogenous groups can claim universal human rights in the region, no regional administrative or institutional mechanisms are in place to allow for the exercise of their group-specific rights.

3.3. Constitution and Accommodation of Ethnic Diversity in the Southern Nations, Nationalities and Peoples Region

3.3.1. Ethnic Composition of the Population

The Southern Nations, Nationalities and Peoples Region (the Southern region) has a population of more than 13 million people who live in an area of 113 539 km². As the name of the region indicates, a particular feature of its population is its enormous ethnic diversity. According to official sources, there are no less than 56 different ethnic groups, or to use the official vernacular, nations, nationalities and peoples in the region. Some of these groups (such as the Sidama and the Gurage) have more than 1 million members, but most are very small, each amounting to no more than some tens of thousands of people.

Notwithstanding the existence of some larger groups, it is important to note that not a single group has the numerical majority. Therefore, it is contended that there are clear similarities between the population composition of the Southern state on the one hand and the Ethiopian society *in toto* on the other hand, the latter being also characterised by the presence of a few large and many small ethnic groups.

3.3.2. The Territorial Organisation of the Southern State

The Southern state ratified its own constitution on 22 June 1995. On 12 November 2001, this constitution was replaced by the "Revised Constitution, 2001, of the Southern Nations, Nationalities and Peoples Regional State Proclamation No. 35/2001." This revision introduced several institutional reforms that, as can be seen below, reflect the particular ethnic diversity of the Southern population and that, therefore, in the context of this article, merit our particular attention.

Article 45 (1) of the Southern constitution provides a four-tier internal administrative structure: the regional/state level, the Zonal/Special *Wereda*, the *Wereda* level and finally the *Kebele* level. As discussed further below, the Zone in the Southern region is not the same as the Zone in the Oromia region. In the latter case, the Zone is a deconcentrated organ of the regional administration whereas the Zone in the Southern region is an ethnically based territorial entity. The Special *Wereda* has the same status as the Zone, but is used for smaller and

territorially strongly concentrated groups. Therefore, the Zone/Special *Wereda* in the Southern region can best be compared to the Nationality Administration in Amhara and Benishangul-Gumuz.

February 2005 data provided by the Ministry of Federal Affairs show that the Southern region currently consists of 13 Zones, 8 Special *Wereda*, 104 *Wereda* and 3772 *Kebele*.

3.3.3. Regional Institutional Structure

Article 46 (1) of the Southern state constitution designates the legislative body, the State Council, as the highest authority of the regional state. The State Council has been profoundly reformed by the constitutional revision of 2001, which created a second chamber, the Council of Nationalities, in addition to the State Council. Thus today, the Southern state parliament is – like the federal parliament – composed of two chambers. Further analysis clearly reveals many other similarities between the regional and the federal parliaments.

The members of the first chamber, the State Council, are representatives "*of the people of the state as a whole*"⁴¹ and are directly elected for a term of 5 years.⁴² These representatives are elected by the plurality electoral system. But again, the full consequences of this system are compensated for by the guaranteed representation for "*minority Nationalities and Peoples*."⁴³ This latter mechanism was not included in the original constitution of 1995 but was incorporated in the 2001 revision.

It is, however, the Southern state's second chamber, created by the 2001 constitutional revision that is of particular interest for this article. An analysis of the relevant constitutional provisions concerning this second chamber, the Council of Nationalities, clearly demonstrates its similarities with the federal House of the Federation.

Article 58 (1) of the Southern constitution states that the Council of Nationalities is composed of representatives of nations, nationalities

⁴¹ Art. 50 (3) Southern constitution.

⁴² Art. 50 (1) Southern constitution.

⁴³ Art. 50 (2) Southern constitution.

and peoples, each with at least one member. This implies that every ethnic group in the Southern region has the right to be represented in this institution. Furthermore, article 58 (2) stipulates that each nation, nationality or people shall be represented by one additional representative for each one million of its population. As most ethnic groups in the Southern state are small, this means that only some groups will be able to claim more than one representative. The Council of Nationalities' list of members (see Table 1) shows that six ethnic groups have more than one representative: the Sidama (3), the Gurage (2), the Wolayita (2), the Gedeo (2), the Hadiya (2) and the Gamo (2).

Thus the Southern constitution guarantees the representation of all ethnic groups in the regional parliament. However, this representation is limited to the endogenous groups of the Southern region. Notwithstanding the fact that hundreds of thousands of Amhara and Oromo live in the Southern region, they do not have representatives in the Council of Nationalities. This is further confirmation of our theory about the distinction between endogenous and exogenous groups, which states that the regional constitutions have developed mechanisms to protect ethnic diversity exclusively for endogenous groups. From here it follows that exogenous groups have no right to be represented in the Council of Nationalities. This is not explicitly stated in the Southern constitution, but we can deduct it from the list of members of the Council of Nationalities and the Deputy Speaker of the Council of Nationalities confirmed it to the author.⁴⁴

Members of the Council of Nationalities are elected from among members of Zonal and Special *Wereda* councils. Nationalities that do not have representatives in Zonal Councils are represented by members elected for *Wereda* Councils.⁴⁵ This indirect system of election is a result of the territorial approach towards ethnic diversity that characterises the Ethiopian state structure. The federal constitutional objective to accommodate ethnic diversity by creating ethnically based regional states has been, in a sense, adopted on the regional level. Article 45 (2) of the Southern constitution says, "*The*

⁴⁴ Interview conducted by the author with the Deputy Speaker of the Council of Nationalities, Awassa, 16 March 2005.

⁴⁵ Art. 58 (3) Southern constitution.

Nations, Nationalities or Peoples in the Region shall have their own Zonal or Special Wereda administration." Following the theory on endogenous and exogenous groups, we can assume that "*nations, nationalities and peoples in the region*" refers exclusively to its endogenous groups. Of course, notwithstanding the exclusion of exogenous groups, a large number of ethnic groups have the right to their own territorial entities in the Southern region. As indicated above, the region has 56 nations, nationalities and peoples. However, by 2005, only 13 Zones and 8 Special *Wereda* had been created in the Southern region. As a result, the largest ethnic groups in the Southern region (such as the Sidama, the Gurage, the Hadiya, the Gedeo and the Wolayita) have their own Zone and a number of Special *Wereda* have been created for small and territorially concentrated groups. All other groups constitute a minority within one of these entities or live together in multi-ethnic Zones such as the Southern Omo Zone and the Bench-Majji Zone. One can observe in this territorial organisation of the Southern state clear similarities with that at the federal level. In both cases, a number of large and territorially relatively concentrated ethnic groups have their "own" administrative entities while the remaining groups are a minority in those entities or are brought together into multi-ethnic entities. Given this fact, it is not surprising that the members of the Council of Nationalities – in accordance with the practice that the members of the House of the Federation are elected from the regional councils – are elected from Zonal and Special *Wereda* Councils.⁴⁶

⁴⁶ Official sources in Awassa indicate that no members of the Council of Nationalities have been elected by (ordinary) *Wereda* councils.

	Zone / Liyu (Special) Wereda	Ethnic Composition (No. of Representatives)
1	Gurage	Kebna (1), Gurage (2), Mareqo (1)
2	Kembata Timbaro	Tembaro (1), Donga (1) Kembata (1)
3	Alaba Liyu Wereda	Alaba (1)
4	Kaffa	Kaffa (1), Nao (1), Chara (1)
5	Gedeo	Gedeo (2)
6	Sidama	Sidama (3)
7	Burji Liyu Wereda	Burji (1)
8	Hadiya	Hadiya (2)
9	Konso Liyu Wereda	Konso (1)
10	Dawro	Dawro (1)
11	Bench Majji	Bench (1), Shaka (1), Dizi (1), Surema (1), Zelmam (1), Miniyit (1)
12	Amaro Liyu Wereda	Amaro (1)
13	Konta Liyu Wereda	Konta (1)
14	Shaka	Shaka (1)
15	Silte	Silte (1)
16	Gamo Gofa	Gamo (2), Zeiss (1), Gedicho (1) Aida (1) Gofa (1)
17	Debub Omo	Ari (1), Male (1), Benna (1), Tsemay (1), Biraili (1), Hamar (1), Arbore (1), Karo (1), Dasenech (1), Gnangatom (1), Murill (1), Muguji (1), Dimm (1), Bodi (1), Mursi (1), Bacha (1)
18	Derashe Liyu Wereda	Derashe (1), Masholle (1), Kusumme (1), Msiye (1), Dobass (1)
19	Yem Liyu Wereda	Yem (1)
20	Basketo Liyu Wereda	Basketo (1)
21	Wolayita	Wolayita (2)

Table 1: The Council of Nationalities Members of the Council of Nationalities⁴⁷

⁴⁷ This list is adapted from: C. VAN DER BEKEN, *The Ethiopian Federal State Structure and the Accommodation of Ethnic Diversity: A View from the Southern Nations, Nationalities and Peoples Region*, Ghent University Faculty of Law, Non-Western Law Working Paper, 2003, 53 p.

Article 59 of the Southern constitution lists the powers and functions of the Council of Nationalities. These competences were clarified in regional proclamation No. 60/2003, "*The consolidations of house of council of nationalities and definition of its powers and responsibilities proclamation*" of 29 June 2003.

The Council of Nationalities is the authoritative interpreter of the regional constitution.⁴⁸ This is a departure from the Southern constitution of 1995, which allocated this power to the State Council, but is in line with the global structure of the Southern state constitution. Article 8(1) of this constitution stipulates that "*All power of the regional state resides in the peoples of the Southern Nations, Nationalities and Peoples' Regional State.*" Therefore, following an internal logic, the constitution allocates the power to interpret the constitution to the Council of Nationalities, the representative organ of the same nations, nationalities and peoples. The exact procedure by which this is done is explained in Proclamation No. 60/2003.

It is the Council of Nationalities which organises the regional Council of Constitutional Inquiry⁴⁹, the structures and competences of which are regulated and enumerated in articles 78 and 79 of the Southern constitution. A close reading of these provisions reveals that the regional Council of Constitutional Inquiry is a regional copy of the federal Council, a mere advisory organ to the Council of Nationalities, this latter having the ultimate power to interpret the Southern constitution.

It is the Council which decides on issues relating nations', nationalities' or peoples' rights to Zone, Special *Wereda* or *Wereda* administration according to the state constitution.⁵⁰ Here, a significant divergence between the federal and the regional constitution can be noted. Article 62 (3) of the federal constitution states that the House of the Federation shall decide on issues relating to the rights of nations, nationalities and peoples to self-determination. The Southern constitution, on the other hand, does not speak – in its article 59 (3) – of the

⁴⁸ Art. 59 (1) Southern constitution.

⁴⁹ Art. 59 (2) Southern constitution.

⁵⁰ Art. 59 (3) Southern constitution.

right to self-determination but about the right to Zone, Special *Wereda* or *Wereda* administration. The right to self-determination appears to have been reduced to the right to have one's 'own' administrative entity. This can be seen as another expression of the territorial approach towards ethnic diversity, according to which the right to self-determination of nations, nationalities and peoples can best be realised through territorial autonomy. However, Southern Proclamation No. 60/2003 again gives a wider definition to the right of self-determination, a definition that is identical to the definition in the federal constitution. Therefore, the procedure is as follows. When an ethnic group in the Southern region believes that its right to self-determination has been violated, it can submit a complaint to the Council of Nationalities. An important protection for such a group is that, if it is not satisfied with the decision of the Council or if the Council does not reach a decision within two years, it can submit its case to the federal House of the Federation.

The Council of Nationalities promotes and consolidates the unity and the equality of the peoples of the region, based on their mutual consent.⁵¹ Not only does it have the responsibility to ensure the right to self-determination of the various Southern peoples, but also the duty to foster unity between them. In this context, the former president of the Southern state, Hailemariam Desalegn, had the following to say: *"The mission (of the Council of Nationalities) is not only to resolve conflicts once they happen but also to advocate unity, advocating unity and peaceful coexistence. The peaceful coexistence of the Southern peoples is important. When you become unified, you become strong. It is up to this institution to advocate unity and create awareness about the need to strengthen the unity of the southern peoples."*⁵²

The Council of Nationalities has the duty to strive for solutions to disputes or misunderstandings that may arise between administrative hierarchies.⁵³

⁵¹ Art. 59 (4) Southern constitution.

⁵² Interview conducted by Walta Information Center with the president of the Southern region, Hailemariam Desalegn, Walta, 20 April 2002.

⁵³ Art. 59 (5) Southern constitution.

It also has the duty to create favourable conditions for the study of the history, culture and languages of the nationalities.⁵⁴

The Council of Nationalities studies disputes between neighbouring states and questions of border delimitation, submits its findings to the House of the Federation and follows up for implementation.⁵⁵

The Council of Nationalities has an important role to play in the procedure for amendment of the regional constitution.⁵⁶ This procedure was thoroughly revised by the 2001 constitutional revision. On this subject the 1995 Southern constitution merely stated that "*the provisions of this constitution shall be amended when the idea of amendment is supported by a three-fourth majority vote of the members of the State Council.*" The 2001 Southern constitution, on the other hand, lays out a much more detailed procedure that is inspired by the federal constitution amendment procedure. It reserves an important role for the Zones and Special *Wereda*. They participate in the process both directly (through their respective councils) and indirectly (through the Council of Nationalities). The amendment procedure can be found in articles 124 and 125 of the Southern constitution.

Article 124 provides that a constitutional amendment can be initiated in one of three ways:

- 1) An amendment proposal can be supported by a two-thirds majority vote in the State Council;
- 2) It can be supported by a two-thirds majority vote in the Council of Nationalities;
- 3) Finally, it can be supported by one-third of the Zonal or Special *Wereda* councils by majority vote.

As for the actual approval of the constitutional amendment, two procedures are incorporated in article 125. The first procedure has to be followed in the case of a proposed amendment to article 125 itself

⁵⁴ Art. 59 (6) Southern constitution.

⁵⁵ Art. 59 (8) Southern constitution.

⁵⁶ Art. 59 (7) Southern constitution.

(the article on the amendment). This article can be amended only when:

- a) All Zonal and Special *Wereda* Councils, by majority vote, approve the proposed amendment(s) and;
- b) Both the State Council and the Council of Nationalities, by a two-thirds majority vote, approve the proposed amendment(s).⁵⁷

The second procedure has to be followed in the case of a proposed amendment to any other constitutional provision, which can be amended only when:

- a) The State Council and the Council of Nationalities, in a joint session, approve a proposed amendment by a two-thirds majority vote and;
- b) Two-thirds of the Councils of Zonal and Special *Wereda* also approve it by majority vote.⁵⁸

However, article 125 (2) of the Southern constitution goes on to stipulate that the provisions of chapter two ("*the fundamental principles of the constitution*") and chapter three ("*fundamental rights and freedoms*") can be amended only if the – corresponding – provisions of chapter two and three of the federal constitution are similarly amended. This is to prevent an infringement of the federal constitution, since the regional constitutions have to be in conformity with it.

This concludes the analysis of the regional parliament of the Southern state. It is worthwhile to summarise the most relevant points. The analysis has shown that the ethnic diversity of the Southern population is clearly reflected in the constitutional provisions on the regional parliament. It is obvious that the constitutional revision of 2001 has resulted in a profound reform of the Southern state parliament. This reform was clearly guided by the example of the federal parliament. Firstly, in order to assure the representation of all ethnic groups, the representation of ethnic minorities in the State Council is guaranteed. However, the most important reform is the creation of a second

⁵⁷ Art. 125 (1) Southern constitution.

⁵⁸ Art. 125 (3) Southern constitution.

chamber which, with regard to both its composition and its powers, is modelled on the second chamber of the federal parliament: the House of the Federation. The establishment of the Council of Nationalities resulted from the ambition to develop in the Southern state appropriate institutional mechanisms for the prevention and regulation of ethnic conflicts. Taking into account the parallels between the Southern state and the Ethiopian state as a whole concerning population composition, it is not surprising that the development of these institutional mechanisms was guided by the federal example. Once again a statement from Hailemariam Desalegn can be cited: *"There was need for an institution which can resolve conflicts democratically and amicably, thereby contributing to the consolidation of the democratic unity among the diverse peoples of the south. So from the exercises of the federal House of the Federation we came to learn the need to establish a similar institution in our region. The House of Nationalities or the Council of Nationalities is the result of that realization."*⁵⁹ With this new composition, the Southern state parliament has become a truly representative assembly. By guaranteeing the representation of ethnic minorities, all ethnic groups, no matter how small, are assured of representation in the first chamber of the regional parliament. And although the number of members representing each ethnic group in the first chamber is proportionate to the size of its population so that large ethnic groups have a larger representation than smaller ones, their preponderance is not as pronounced as on the federal level, where a few ethnic groups dominate the first chamber. Moreover, the larger representation of the large groups is compensated for by the composition of the Council of Nationalities. This institution does not offer a numerically equal representation of ethnic groups, but because of its specific composition (one representative per group and one additional representative per one million people), even the largest ethnic groups do not have more than two or three representatives. For this reason, the equality between the different ethnic groups in the Southern Council of Nationalities is much larger than in the federal House of the Federation.

It should be stressed however that this representation in the regional parliament applies only to the endogenous groups. The composition of

⁵⁹ Interview with Walta Information Center.

the parliament confirms our thesis about the exogenous and the endogenous groups. Even though the difference between endogenous and exogenous groups is not made explicit in the constitution, it can be deduced from the composition of the Council of Nationalities. Notwithstanding the fact that the number of Oromo and Amhara in the Southern region is much larger than that of many other ethnic groups, they do not have a single representative in the Council of Nationalities.

There is no guaranteed representation of ethnic groups in the regional government. Obviously, given the sheer number of ethnic groups, representation of all of them in the regional government is not possible. However, in view of the attention paid to representation in the regional parliament, we can assume that attempts are normally made to ensure that the composition of the regional government reflects the region's wide ethnic diversity.

As far as constitutional interpretation is concerned, the Southern constitution of 1995 had established a mechanism also included in the other regional constitutions. As indicated above, this mechanism implied that the ultimate power to interpret the constitution rested with the regional parliament. Today, after the constitutional amendment of 2001, the procedure for constitutional interpretation is regulated by the articles 78 and 79 of the regional constitution and in Southern Proclamation No. 60/2003 of 29 June 2003. These documents still do not give the power of interpretation to a judicial institution. The revised procedure for constitutional interpretation, enshrined in the constitutional amendment of 2001, has followed the federal model. This implies that the power to interpret the constitution now rests with the Council of Nationalities. The nations, nationalities and peoples thus have representation in the organ for constitutional interpretation. However, only the endogenous groups are represented. As such, this organ in the Southern region resembles the Constitutional Interpretation Commission in Amhara, Oromia and Benishangul-Gumuz. In these institutions as well, only endogenous groups have guaranteed representation.

3.3.4. The Institutional Structure of the Zone/Special *Wereda*

The Zone/Special *Wereda* is the administrative level just below the region.

Article 80 (2) of the Southern constitution stipulates that a Zone/Special *Wereda* comprises: the Zonal/Special *Wereda* Council, the Zonal/Special *Wereda* Administrative organ (the executive organ) and the judiciary.

The competences of the Zonal and Special *Wereda* Council are listed in article 81 (3) of the Southern constitution. One of these is the power to determine its working language. This creates the possibility for the Zonal/Special *Wereda* Councils to do away with the use of Amharic as the working language within their respective territories. At the regional level, however, Amharic continues to be the working language.

Again, a clear parallel with the federal constitution can be observed. Article 5 (2) of the federal constitution stipulates that Amharic shall be the working language of the federal government. Article 5(3) of the federal constitution, however, states that the members of the federation (the regions) may by law determine their respective working languages. Some regions have made use of this provision, resulting, for example, in the adoption of Tigrigna and Oromifa as working languages in the Tigray and Oromia regions respectively. Nor has the constitutional right of the Zones/Special *Wereda* in the Southern state to determine their working language remained theoretical either. By August 2003, five Zones had introduced a local language as the working language of their respective Zone.⁶⁰

Another competence of the Zonal/Special *Wereda* Council is the power, without prejudice to the powers vested in the State Council, to issue laws on matters uncovered provided that they are consistent with State and Federal laws.⁶¹ For the time being, this provision will

⁶⁰ These are the Sidama, the Wolayita, the Hadiya, the Kembata and the Gedeo Zones; interview conducted by the author with Fikru Gnakal, Speaker of the Southern state Council, Awassa, 18 August 2003.

⁶¹ Art. 81 (3.c) Southern constitution

probably remain theoretical. It is presently unclear what residual legislative powers are left to the Zonal/Special *Wereda* Councils.⁶²

3.3.5. The Southern Region and the Accommodation of Ethnic Diversity

As the above constitutional analysis has demonstrated, the constitutional provisions of the Southern state take into account the ethnic diversity of its population. Although the ethnic element was to some extent recognised in the 1995 Southern constitution, it is primarily the 2001 constitutional revision that has designed institutional mechanisms to incorporate and accommodate the enormous diversity that characterises the Southern population.

It is clear that the Southern constitutional provisions on this matter were inspired by the federal constitution. The constitutional revision of 2001 has created a state structure that has many similarities with the ethnic-based federal state structure of the federal constitution. Firstly, all nations, nationalities and peoples of the Southern state have the right to form their 'own' Zone/Special *Wereda*, with the power to issue laws and to determine its working language. These competences are specified in the constitution and this constitution – as the above discussion of the constitutional amendment procedure has shown – can not be revised without the participation of the Zones/Special *Wereda*. Furthermore, the Zones/Special *Wereda* can influence policy-making at the regional level through their representation in the Council of Nationalities. But ultimately – notwithstanding many similarities – the Zones and Special *Wereda* cannot be described as federated entities. Such a designation does not accord with the hierarchical relationship between the regional level and the subordinated Zonal/Special *Wereda* level.

The question that has to be answered now is whether the mechanisms developed by the Southern constitution have the potential to make the right to self-determination of all ethnic groups in the region a reality. The answer is not straightforward. On the one hand, the constitution does contain mechanisms that can accommodate the wishes of

⁶² Interview conducted by the author with Dr. Kebede Kanchula, Deputy Chief Administrator Sidama Zone, Awassa, 20 August 2003.

particular ethnic groups. On the other hand, the available mechanisms will undoubtedly give rise to new expectations.

The most important mechanism is without any doubt the creation of a Zone/Special *Wereda*. All (endogenous) nations, nationalities and peoples in the Southern region have the right to form their own Zone/Special *Wereda*. So far, a number of ethnic groups (such as the Gurage, Gedeo, Sidama, Hadiya and Wolayita) have made use of this right. Therefore, these groups can exercise their right to territorial self-administration and have the possibility of taking steps to protect their own languages and cultures. However, most of the Southern state's 50+ ethnic groups do not have their own Zone/Special *Wereda*. These groups either live in a multi-ethnic Zone (examples of which are the Debub (South) Omo and the Bench-Majji Zones) or are a minority group in a Zone dominated by another group. The question now is whether there are mechanisms in the Southern constitution to enable these groups to realise their right to self-determination.

Obviously, there is the availability of the territorial mechanism. The Southern constitution grants **all** ethnic groups in the Southern state the right to form their own Zones/Special *Wereda*. In recent years, some new Zones and Special *Wereda* have been created effectively and this appears to have assuaged the demands of particular ethnic groups. However, this approach has many defects. First, the establishment of a new Zone/Special *Wereda* for a particular ethnic group requires the territorial concentration of the group under consideration. The territorial mechanism is therefore no solution for territorially dispersed groups. Second, it should be stressed that any newly created Zone will probably not be ethnically homogenous either. It is very likely that the new Zone will have its own minorities and this could then result in new ethnic problems and demands. Finally, the creation of more Zones/Special *Wereda* conflicts with the objectives of good governance. The creation of additional administrative entities will, for instance, result in a dispersion of scarce resources, thus undermining government efficiency.

In this context, it is important to note that neither the federal government nor the Southern regional government have been very

enthusiastic about further pursuing this territorial strategy. The Silte/Gurage dispute illustrates this point. Traditionally, the Silte were considered to be part of the Gurage ethnic group. The ethnic-territorial approach that characterises the Ethiopian decentralisation process resulted in the creation of a Gurage Zone within which the Silte were accorded their own *Wereda*. The Silte, however, increasingly manifested themselves as a separate ethnic group – not merely as a Gurage sub-group – and accordingly they requested their own Zonal administration. Finally, their demand was met, but only after the government had reluctantly realised that this was the only way to prevent escalating ethnic tensions and conflicts.⁶³

Recent political developments in the Southern state could make the creation of additional Zones and Special *Wereda* even more unlikely. The ruling party in the Southern state, the Southern Ethiopia Peoples Democratic Front (SEPDF), has recently been dramatically transformed. The 20 ethnic-based member parties of the SEPDF have merged and formed a united party: the South Ethiopian Peoples Democratic Movement (SEPDM). The former ethnic-based parties will now become branches of the new one. According to the Vice-Chairman of the SEPDM this merger was necessary in order to intensify the fight of the southern nations, nationalities and peoples "against poverty, backwardness and anti-democratic elements in a unified and more integrated way."⁶⁴ The question now is whether this political centralisation will also have an impact on the administrative structure. It is the author's impression - taking into account the overwhelming majority of the SEPDM in the Southern state council (even after the 2005 elections) – that the creation of the SEPDM will in fact have an impact on the administrative structure in the Southern state. Though some SEPDM party officials have refuted this likelihood, others have indicated that in the future no new territorial entities would be created. In fact, they have even suggested the possibility of merging existing *Wereda*. Therefore, there is absolutely no guarantee that the government will in fact allow any new Zone or Special *Wereda* to be established.

⁶³ AKLILU ABRAHAM, *Federalism, State Restructuring and Rights of Ethnic Minority Groups in Ethiopia*, unpublished paper.

⁶⁴ Walta Information Center, 16 September 2003.

The above illustrates the limited capacity of the ethnic-territorial strategy to solve possible future ethnic tensions and conflicts. However, this conclusion should not be interpreted as a suggestion to the Ethiopian and Southern governments to completely abandon the territorial strategy when trying to accommodate ethnic diversity. Granting territorial autonomy can certainly result in a relaxation of ethnic tensions. However, what the above does indicate is that the right to self-determination of **all** nations, nationalities and peoples in the Southern region can only be realised if the territorial strategy is complemented by other mechanisms. Such non-territorial mechanisms are not included in the Southern constitution. For instance, the constitution could have provided for mechanisms of non-territorial autonomy⁶⁵ and for guaranteed representation of minority groups in the Zonal councils. At the same time, as far as the representation of minority groups is concerned, it should be pointed out that the Zonal councils, notwithstanding the lack of a constitutional obligation thereto, are reasonably ethnically representative. Also important is that at this level, not only endogenous but also exogenous groups are represented. The latter, who cannot claim their own territorial entities, are thus represented in these entities. To illustrate the latter point, we give an overview of the ethnic composition of 20 of the 21 Zonal/Special *Wereda* Councils.⁶⁶

⁶⁵ Non-territorial autonomy deviates from the paradigm where an automatic association between autonomy and territory is made. In the case of non-territorial autonomy, autonomy is not granted to a certain territorial entity, but to the ethnic group itself. As such, ethnic groups can exercise self-government irrespective of whether they live concentrated in a certain territory or not; J. Mc GARRY, "Federal Political Systems and the Accommodation of National Minorities" in A.L. GRIFFITHS and K. NERENBERG (eds.), *Handbook of Federal Countries, 2002*, Montreal & Kingston/London/Ithaca, McGill-Queen's University Press, 2002, (416) 425.

⁶⁶ Information on the Konso Special *Wereda* could not be obtained. I would like to thank Ato Darota Dejamu (Deputy Speaker of the Southern state Council) and Ato Simon Aldada (advisor to the Southern regional government) for providing me with the data on the Zonal/Special *Wereda* Councils.

Gurage	Gurage (60), Kabena (5), Mareqo (6), Amhara (1)
Hadiya	Only Hadiya representatives
Kembata Timbaro	Kembata (23), Timbaro (3), Donga (2)
Sidama	Only Sidama representatives
Gedeo	Only Gedeo representatives
Debub Omo	Amhara (3), Ari (7), Male (2), Karo (1), Bana (2), Tsemay (2), Hamar (2), Arbore (2), Dime (2), Bodi (2), Mursi (2), Dasenech (2), Muguji (1), Gnangatom (2)
Kaffa	Kaffa (29), Nao (1)
Sheka	Shekicho (11), Sheko (2), Mejenger (1), Kaffa (1), Amhara (2), Tigray (1), Bench (1), Oromo (1)
Bench Majji	Bench (15), Kaffa (3), Sheko (6), Dizi (7), Surma (8), Miniyit (9), Amhara (2)
Silte	Only Silte representatives
Wolayita	Only Wolayita representatives
Gamogoffa	Gamo (22), Goffa (14), Zeiss (1), Gedicho (1), Oida (1)
Alaba Liyu <i>Wereda</i>	Only Alaba representatives
Dawro	Only Dawro representatives
Yem Liyu <i>Wereda</i>	Only Yem representatives
Derashe Special <i>Wereda</i>	Derashe (35), Oromo (1), Amhara (5) Kusumme (5), Musie (10), Masholle (7), Dobass (26)
Amaro Special <i>Wereda</i>	Only Amaro representatives
Burji Special <i>Wereda</i>	Only Burji representatives
Konso Special <i>Wereda</i>	No data
Konta Special <i>Wereda</i>	Only Konta representatives
Basketo Special <i>Wereda</i>	Only Basketo representatives

Table 2: Ethnic Composition of the Zonal/Special *Wereda* Councils in the Southern Region

Although many Zonal/Special *Wereda* councils are ethnically inclusive, table 2 also indicates that in some councils only the dominant ethnic group is represented. This does obviously not imply that those Zones are perfectly ethnically homogenous. The cities are

particularly ethnically diverse with a large presence of exogenous groups. There is a concern for the rights of those groups. However, recently an interesting development has occurred that grants ethnic minority groups, in those regions dominated by a particular ethnic group, the possibility for self-administration. The Southern Proclamation No. 51/2002 of 19 August 2002 grants cities, which comply with criteria determined by the regional executive council, an important degree of autonomy.⁶⁷ These cities are administered according to the Council-Mayor system whereby the Council determines policy and takes the important decisions and the Mayor performs the executive functions.⁶⁸ The members of the City Council are directly elected by the citizens of the city.⁶⁹ The members of the Council elect the mayor.⁷⁰ This development offers groups who are in a minority in Zonal terms but may have a numerical majority in the city important guarantees of representation and self-administration. In this Proclamation, we again notice the great care shown for the protection of the endogenous groups. Ethnic groups endogenous to a particular city enjoy a specific legal protection. The endogenous group that can be a minority in the city is assured of 30% of the seats in the City Council. Moreover, the law stipulates that the Mayor must also be elected from the representatives of the endogenous group. By taking these measures, the law attempts to assuage the fears of endogenous groups about losing control over 'their' city. That these fears are very real was illustrated by the serious riots in Awassa, the Southern regional capital, in May 2002. These riots, which caused the deaths of many people, resulted from the fear of the Sidama people that they would lose influence in 'their' city.

The Southern constitution pays attention not only to the possibility of self-administration. It also provides for different mechanisms of guaranteed representation at the regional level. Through the guarantee

⁶⁷ According to regional government sources, city autonomy implies the power to determine the working language. This could mean that cities, geographically located in a particular Zone, could choose a working language that differs from the working language of that Zone.

⁶⁸ Art. 13 Proclamation No. 51/2002.

⁶⁹ Art. 15 Proclamation No. 51/2002.

⁷⁰ Art. 16 Proclamation No. 51/2002.

of reserved seats for minority groups, all (endogenous) groups are assured of representation in the first chamber of the regional parliament. But it is primarily the second chamber - the Council of Nationalities - that guarantees ethnic representation in the regional parliament. In this organ, all the endogenous ethnic groups have at least one representative. Such guaranteed representation is not assured in the executive council, but there are as yet no indications to doubt the ethnic representativeness of the executive. Finally, we may note the inclusive ethnic representation in the organ competent for constitutional interpretation (the Council of Nationalities).

3.4. Regional Accommodation of Ethnic Diversity: An Overview

The analysis presented in this article has clearly indicated that the regional constitutions do recognise the ethnic diversity of the regional populations. Notwithstanding the major differences between the regional constitutional mechanisms, it is argued that all regions basically share the same approach to ethnic diversity.

An important outcome of the analysis is that we have been able to show that different routes are taken towards endogenous and exogenous groups. Some regional constitutions (such as that of Benishangul-Gumuz) explicitly provide for this differentiation, but most constitutions only recognise this implicitly. The analysis of constitutions and practice shows that in the regions studied only endogenous groups enjoy specific protective mechanisms. Endogenous groups are people who have been living in the region for a long time; they are peoples **of** the region. Exogenous groups have moved to the region in a more recent past and can therefore be seen as internal migrants or peoples **in** the region. These exogenous groups cannot enjoy specific protection in the region. These same exogenous groups are endogenous in another region and it is there that they can enjoy such protection. In those regions, where next to the dominant group, no other endogenous groups are recognized (as in Oromia), the regional constitution does not include mechanisms for ethnic minorities. However, the lack of group-specific rights for exogenous minorities does not preclude the fact that all Ethiopian citizens, no

matter where they live on the Ethiopian territory, can claim equal universal rights.

In those regions where ethnic minorities are recognized, the regional constitutions contain protective mechanisms that can be divided into two categories.

The first category aims at creating self-administration for ethnic minorities on a territorial basis. Within their own territories (Zone, Special *Wereda*, Nationality Administration), these minorities have a right to self-administration. These territorial entities have their own councils and executive organs and have important competences such as the power to choose their own working languages.

The second category of protective mechanisms is the inclusion of representatives of ethnic minorities in the regional institutions as in the guarantee of seats in regional parliaments granted to ethnic minorities. In the Southern region this guarantee goes further: the Southern constitution additionally creates a second chamber of the regional parliament wherein all (endogenous) groups have a right to be represented. With regard to the executive power, the regional constitutions do not provide for guaranteed representation. Finally, the interests of ethnic minority groups are protected by the guaranteed representation of ethnic minorities in the organ competent for constitutional interpretation.