Backdrop and Procedure of Amendment of States' Constitution in Ethiopia: Imparting Experience for the Recently Established Regional States

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Abstract

The main errand of this work is endeavored to quest what backdrops the states' constitution in Ethiopia had; how their rules of amendment go with the utmost interest of the living societies of the regional states and what experiences the aged regional states will impart for recent established regional states. To delve into these issues the research employed qualitative research methods. Sub-national units in Ethiopia had been empowered to set and amend their constitutions via the constitution of the federation. To realize this empowerment political actors of each state government had been set their respective constitutions. Afterward to heal some flaws of the pre-setting states' constitutions all states under the federation revised their constitutions. Within all revised states' constitutions, the architectures endeavored to set their 'rules of amendment'. But these 'rules of amendment' are not faultless as it is expected to be immaculate. The faults which are viewed under each state constitution include: the rules of amendment recognized under some revised states' constitutions are defective in providing opportunities to participate in the amendment process to all interested groups like minorities and are not set in the way to safeguard the rights of minorities live within the state. Though the seven revised states' constitutions tried to provide special entrenchment to the 'rules of amendment' itself, under Oromia revised state constitution the entrenching provision itself is not entrenched, in the sense that it will be exposed to the problems of double amendment. Concerning to amendment of human and democratic rights all states' constitutions have been trying to specially entrench via making their amendment based on the rules of amendment of the federal constitution, but this is against the autonomy of the state; failure to comply with the principles of democracy and bolt the opportunities for the states to provide better protection of human and democratic right for their residence through amending their constitutions. Thus those states' constitutions that had the aforementioned flaws in their 'rules of amendment' shall adjust in the way to heal from their imperfections and those recently established regional states shall learn from the flaws of aged regional states.

Keywords: Procedure, amendment, state constitution, initiation, adoption, review, recently established

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1. Introduction

In most federations, the constitution of the union is 'incomplete' as a governing constitutional document, in the sense that it does not seek to prescribe all constitutional arrangements.[1] Rather, it leaves 'space' by the central government constitutional architectures to be filled via the constitutions of sub-national units.[2] Sub-national units will fill this reserved space by making their new constitution. The prospective gaps of these pre-setting sub-national units' constitutions will be completed either through interpretation or amending its text. In other words, having space in the national constitution will provide an opportunity for the state government to make their constitution in line with their local reality.[3] Again, the incomplete nature of the state constitution, due to the fallibility of human beings and its dynamic understanding of the rules that govern its behavior; the sub-national constitution is always subject to amendment.

The amendment of the sub-national constitution will be carried out either formally based on rules of amendment or informally without abiding by such rules entrenched under each state constitution.[4] The formal amendment of states' constitutions under the Ethiopian federal system has its backdrops which had been experienced before and has its principles, limitations, and procedures that have to be cherished by the political actors when they amend the state constitution.

Thus, this paper will have details on backdrops of states' constitutional amendment in Ethiopia, and guiding principles and limitations on the amendment of states' constitution of Ethiopia will be discussed painstakingly. Similarly, procedures of amendment of states' constitutions of Ethiopia such as its initiation (drafting) stage and approval stage will be dealt with separately by taking special meticulous. At the last, the paper will have some discussion on the review of the amendment of the state's constitution of Ethiopia and the experiences those will be imparting to the recently established states.

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[1] Donald Lutz, *Principles of constitutional design* (Cambridge University Press 2006) P.246 See also G. A. Tarr, 'Explaining Sub-national Constitutional Space'(2011) 115 DICK. L. REV, 1133 Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol115/iss4/14

[2] Donald S. Lutz, 'The United states constitution as incomplete text'(1988) 23 (Annals American Academy of Political and Social Sciences, 496

[3] Gerald Benjamin, Melissa Cusa: *Constitutional amendment through the Legislature in New York*, (Greenwood Press 1996), 87

[4] Donald S. Lutz, *Toward a theory of constitutional amendment: Essay on* Responding to imperfection (*Sanford Levinson (ed),* Princeton University Press 1995), 345

2. Backdrops of States' Constitutional Amendment in Ethiopia

In Ethiopia, vesting sub-national units to have their constitutions is not the first invention of the 1991 Transitional Charter. Rather, it was started during Eritrea federated with Ethiopia through the resolution of the United Nations General Assembly in 1952. According to Art.92 of the 1952 Eritrean Constitution, the chief executive or one-quarter of the Eritrean People's Assembly can propose the amendment of the constitution.[5] If the proposal of the amendment is voted by three-quarters of members of the assembly in office or two successive sessions by two-thirds majority members of the assembly presented and voted then it will be declared as it is adopted but to enter into force it shall be ratified by the Emperor, sovereign of the federation.[6] This implies that theoretically, the Assembly of Eritreans people had its role to amend the constitution.

Next to this under Ethiopian constitutional history, the decisive movements towards the empowerment of sub-national units to have their constitution had been revived through the 1991 Transitional Charter.[7] And it was fully implemented through Pro. No.7/1992.[8] Under Article 15(1) (a) of Pro. No.7/1992 each state Council had the power to issue the constitution of the self-government. Based on this empowerment Oromia Regional State adopted its constitution in 1993, but its subsequent constitution, which was adopted by Oromia Regional State in 1995 strangely, has no reference to the existence of the old constitution. This means the Oromia State Government seems simply to drop the former constitution and set the new constitution. And Tigray regional state adopted its constitution in 1995 slightly earlier than the coming into effect of the federal constitution.[9] Commonly, to heal the prospective evils of their respective constitutions, the above regional states' constitutions were attempted to include their 'rules of amendment'.

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[5] Eritrean Constitution of 1952 Art. 92

[6] Eritrean Constitution of 1952 Art. 92-93

[7] Art. 2 (b) and 13 of the 1991 Transitional charter had been guaranteed to the nation, nationalities and peoples of Ethiopia the right to self-administer their affairs within their territory and effectively participate in the decision of central government. While, the charter was silent about the structure and number of self-governance federations those have to be established to give effect to the right of ethnic communities to self-administration. It left the matter to the legislator. The latter gave effect to the right to self-administration by enacting Proclamation No 7 of 1992, which provided for the establishment of National Regional Self-Governments.

[8] Through Art.3 (1) National/regional Self-government Establishment Pro.No.7/1992 fourteen self- governed regional states were established.

9 Tsegaye Regassa, *Sub national constitution in Ethiopia: towards enriching constitutionalism at the state level* (presented ,3rd annual research conference in ECSU 2008), 16

Later on, in 1995 Federal Democratic Republic of Ethiopia's constitution was ratified. Through this constitution, the regional states were established through Pro. No. 7/1992 was officially endorsed as constituent units of the Ethiopian Federation. This constitution states that the Federal Democratic Republic of Ethiopia shall comprise States, and the States shall be delimited based on the settlement patterns, language, identity, and consent of the people concerned. Based on this requirement the constitution re-affirms the establishment of nine regional States later this number increased to eleven because Sidama Regional State and Southern West Ethiopia Regional State were recognized as additional regional governments. [10] Under this constitution article 50(5) all regional state councils have the power to draft, adopt, and amend each respective state constitution. Based on this constitutionally assigned power; all states of Ethiopia adopted their constitution in 1995 and onwards. These states' constitutions of Ethiopia operated after 1995 and before 2001 had been tied to include the 'rules for amendment' under each state constitution.

Whereas the rules for amendment of each state constitution were not free from flaws. In a sense, the rules of amendment of all states' constitutions enforced before and after 1995 and earlier 2001 excluded the participation of local government in the amendment process which is too difficult to protect the interest of minorities, who established their self-administration in forms of special zone and special woreda within some states. In addition to this, contrary to the commitment of the federal constitution by setting more stringent rules of amendment to amend human and democratic rights, all states' constitutions set the same flexible rules of amendment for all constitutional provisions of the state constitutions'.[11]

To put right the above flaw of all states' constitutions and with the objectives of ensuring better forms of good governance via a constitutional separation of power among the organs of the state (especially between the legislature and the executive), to contextualize each respective state constitution to the local reality and for entrenching good governance and efficient and effective administration that helps to promote sustainable development in the states all states' constitution had been revised in 2001 and onwards.[12] Underneath all revised state constitutions there are 'rules of amendment' which are anticipated to regulate the formal amendment of each state's

10 FDRE Constitution1995, Art. 46 and 47

[11] See all regional states' constitution adopted before and after 1995 and earlier 2001, rule of amendment; FDRE Constitution 1995, Art. 105(1)

[12]See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, preamble.

constitution. The amendment routes of each state constitution will be assumed to have some principles: which arrange for the action guidelines taken to improve the state constitutions; limitations: which are expected to put a boundary on the power of amendment and Procedures: that work for as path what to do and how to go the actors of amendment. Thus, in this work, we will have details about the principles; limitations, and procedures to keep an eye on while amending the states 'constitutions.

3. Principles and Limitations for Amendment of States' Constitution under Ethiopian Federation

3.1. Principles of Formal Amendment of State Constitution

As the writer strived from the preceding part of this work, because the authors of states' constitutions are neither infallible nor prescient all constitutions must anticipate the need for amendment. Amendment to states' constitutions occurs officially along with the rules of the amendment and offhandedly by interpretation or the practice of other arms of government. Because the delimitation of this work is the formal ways of states' constitutional amendment, it is evident that this path of state's constitutional amendment will be synchronized to some guiding principles. Jurisprudentially, there are copious principles that are awaited to monitor the formal routes of amendment for state constitutions. However, for the Ethiopian context, the principles of proposing amendment via or out of the legislature and the necessity for and disadvantages of details have irreplaceable roles.

3.1.1. Proposing Amendment Via or out of the Legislature

Several federations' sub-national constitutions permit amendments to be formally proposed through state legislators and most sub-national constitutional change is accomplished in this manner. However, as the beneficiaries of the political and governmental status quo, legislators frequently resist change in the structure and process of the state government. Thus, the architectures of the state constitution perpetually try to avoid this blocking activity of the state legislature by assigning, some constitutional matter to the body outside of it.[13]

When we come to the Ethiopian context, the organs that have a vital role in the amendment process under all revised states' constitutions are somewhat uncommon compared to other federations. In a sense that, poles apart from other federations, underneath all revised states'

[13] Gerald, Melissa, supra note 3, 55

constitutions of Ethiopia, in addition to the states' parliament, the power to initiate constitutional amendment has been allotted to the states' executives, councils of ordinary local government, or, councils of the special zone or special woredas.[14] However, these revised state constitutions have not identified which provisions of the state's constitution are subject to be proposed by the state council and which provision is banned to be initiated by the state council. This muddle may exacerbate the tyranny and omnipresence of the state's council.

3.1. 2 Necessity for and Disadvantages of Details:

State constitutions are often critiqued for being excessively detailed. Provisions for constitutional change that bypass the legislature are frequently a locus of considerable detail and for good reason. Specificity is a means of protection from legislatures' often manifest hostility to the prospect of being bypassed in the restructuring of state government. There is ample experience that legislatures, either through action or inaction, raise barriers to constitutional processes that might produce results contrary to their interests.[15] To avoid being stymied by legislative hostility, constitution makers seek to make these provisions for amendment "self-executing," that is, operable without any need for legislative action. The goal is to set out in detail in the constitution, beyond the easy reach of the legislature, when, how, and by whom these amendment processes are to be made to work.[16]

When we look at the Ethiopia milieu, the provisions of all revised regional state constitutions are exposed to the manipulation of the regional council, that is, the regional council can leave them as it is or/and change them as it wants. This means that a detailed rule that would restrict the state's council from simply altering or obscuring from change is not included in the rules of amendment of the state's constitution. In other words, in all the revised regional state constitutions, the regional assembly has the decisive and final authority to amend any provision of the state constitution.[17] Therefore, making the regional council the final decision-maker to amend all the provisions of the regional state constitution, especially the provision that gives the

[14] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, rules for amendment.
[15] Gerald Benjamin, Albert L. Sturm: '*Thirty Years of State Constitution Making'* (National Municipal League 1970), 23–24.
[16] Ibid, 26
[17] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, rules of amendment.

regional council the power and responsibility, may facilitate the regional council to abuse its power.

3.2 Limitations of Amendment of States' Constitution

Amendment of state constitutions in Ethiopia also brings into effect within the boundary of some restrictions. Firstly, these restrictions have been imposed expressly through state or federal constitutions. If we glimpse the procedural restrictions that were levied by the states' constitutions, all states' constitutions of Ethiopia have expressly limited the powers to amend the state constitution by setting the 'rules' which will govern on how to amend the particular provision of the constitution. This means setting the rules for amendment under the state constitution is an express procedural limitation for the actors of the constitutional amendment. Similar to this, the 1995 FDRE constitution also apparently limits this power by placing the principles of the supremacy clause. This means, according to the cumulative reading of Art.9 (1)[18]and 50 (5)[19] of the FDRE 1995 Constitutions, whenever the states, frame the new constitution or amend the already existing; political actors have the onus to check its consistency with the federal constitution. This is what we call substantive express restriction imposed on the amendment of the state's constitution.

Secondly, the amendment powers of the state constitution will be confined by the limitations derived impliedly from the distinction between amendment and revision of the constitution or/and from the decision of the body empowered to interpret the constitution.

Amendment and revision are species of constitutional change. The latter refers to a fundamental change to the constitution typically requiring more extracting procedures than the former, which generally requires a lower amendment threshold and is used for narrow, non-transformative adjustments.[20] Political actors on whom the constitution confers amendment authority may undertake its amendment "only under the presupposition that the identity and continuity of the constitution as an entity is preserved.[21] To amend the constitution is therefore only to make additions, deletions, and other alterations "that preserves the constitution itself"[22] with no threat

[18] The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect

[19] The State Council has the power of legislation on matters falling under state jurisdiction. Consistent with the provisions of 1995FDRE Constitution, the Council has power to draft, adopt and amend the state constitution.

[20] John Rawls, *Political liberalism* (2nded. Colombia University press 1996), 238-239

[21] Carl Schmitt, *Constitutional Theory* (Jefferey Seitzer tr. Duke University Press 2008), 150

[22] Ibid

of "offending the sprite or the principles of the constitution.[23] To revise, in contrast, is to affect major constitutional change to the polity.[24] When we read the overall provisions of states' constitutions of Ethiopia they impliedly narrow down the scopes of amendment power via raising the distinction between amendment and revision of the constitution as the defense.

Where political actors will not self-police the theoretical distinction between amendment and revision, the institution which is empowered to review constitutional amendment (i.e. the institution empowered to interpret the constitution) has sometimes intervened to enforce the rule that amendment procedures may be used for only modest adjustment while fundamental changes may be accomplished only through revision.[25] If the amendment of the state's constitution affects the identity of the state's constitution then the institution which is empowered to review the amendment will make that amendment null and void.

4. Procedures of Amendment of States' Constitution in Ethiopia

When we say the state constitution, in Ethiopia, is the base to constitute every institution and serves as the source for any ordinary laws of the states, it does not mean it is immutable; rather, it is emendable to adjust the constitution to the environment within which the political system operates; to correct provisions those have been proved inadequate over time and to further improve constitutional rights or/and to strengthen democratic institutions.[26] The amendment process of every state's constitution in Ethiopia will be put into operation based on rules (procedures) that had been designed before to regulate the process from the beginning up to its end. These rules (procedures) of the amendment have the initiation (drafting) and adoption (ratification) stages.

4.1 Route of Initiation

Initiation of state constitutional amendment is an electoral process by which a percentage of voters can propose an amendment and compel a vote on it by the body assigned to do so.[27] Under all revised state constitutions of Ethiopia, it is the first phase upon which the amendment machinery would be set in motion and the whole amendment processes of the state constitutions

[23] Ibid, 153
[24] Ibid, 152
[25] Granville, Austin, *Working a democratic Constitution: The Indian Experience*(Indian press1999), 197-202
[26] Christophe Van der Beken, *Unity in diversity: Federalism as a mechanism to accommodate ethnic diversity the case of Ethiopia* (LIT VerlagMünster 2012), 225
[27] Black's law dictionary (8th ed. 2004)

begin.

Based on current experience as well as the wording of each state constitution, the initiation for amendment of the state constitution in Ethiopia can be twigged by binary avenues such as initiation for amendment of 'other provisions of the state's constitution and initiation for amendment of 'human and democratic rights'.[28]

4.1.1 Initiation to Amend Other Provisions of States' Constitution

Except for provisions dealing with human and democratic rights the initiation for amendment of all states' constitutions has been carried out either via the council of state executive or by councils at assorted administrative echelons in the region such as council of state or in some regional states via the council of a special zone or council of a special Worda, and in others regional states via the council of an ordinary district (Woreda) or council of sub-districts (Kebele).[29] By and large, by taking into consideration their local veracity, states' constitutions in Ethiopia have been doled out the power to initiate for either or to some or for all of the aforesaid institutions.

4.1.1.1 Initiation via States' Council

It is unwavering in all federations to empower the state legislative body to initiate the amendment of the state constitution. While there is no similitude among sub-national constitutions on the constitutional issues those have to be proposed by the state legislature. Subnational constitutions of the USA deliberately allotted the initiation of some constitutional issues to the institutions like constitutional convection, constitutional commission, and to the people in general or/ and either to any of the two houses or by the two houses in a joint or separate vote.[30] Others like the state constitutions of Australia have been consigned the power to set apart the institutions which will be able to initiate the amendment of state constitutions to the state parliament.[31]

When we come to Ethiopia, except for provisions dealing with human and democratic rights, in

[28] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2002, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, rules for amendment.
[29] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2002, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, rules for initiation
[30] John Dinan, 'State constitutional developments' (2011)115, Penn State Law Review,1008-1030 http://knowledgecenter.csg.org/kc/content/state-constitutional-developments-2012
[31] R. D. Lumb, 'Fundamental law and the processes of constitutional change in Australia'(1978) 9 Journal of federal law review, 164 http://www.austlii.edu.au/au/journals/FedLawRw/1978/12.htmlb

all revised states' constitutions each state's council has the power to initiate the amendment of the states' constitution. However, the voting system and the initiation process differ from one region to another. In all but two[32], revised states' constitutions to initiate and submit the proposal to possible discussion and consequent decision to which the issue of constitutional amendment concerns only one-third vote of members of the states' council is a precondition.[33]

Because of the state structure and local reality, they have the revised state constitutions of Harare and SNNP espoused their inimitable procedures of initiation. In both regional states, the state council has been split into two entities. In SNNP regional states have two councils called Councils of Nationality and State Council similarly Harare Regional State also has two regional councils called the People's Representative Assembly (PRA) and the Harare National Assembly. As stated by the revised states constitution of the two regional states, the two councils had the competency to initiate constitutional amendments.[34]

4.1.1.2 Executive Initiation: Triggered the Process by Dubious Arms of Government

The second genre of initiating the amendment of states' constitutions is the initiation which is accomplished by the council of the state executive. This technique of initiation is already acknowledged by seven regional states' revised constitutions. In a sense according to the seven revised state constitutions (except Harare and South Nation, Nationalities and peoples regional states' constitution), the council of states' executive is authorized to initiate and submit the proposal to possible discussion and the consequent decision to which the issue of constitutional amendment concerns.[35] Initiation by this institution makes it curious about the procedure of amendment of Ethiopian revised states' constitution from other federations. And the procedure by itself has its deficiency because if the constitution grants to the executive to initiate the amendment an unscrupulous executive may seek to amend the state constitution for its political ends. Especially in a federation like Ethiopia where the democratic system is weedy, the tricky will be grimmer. That is why some alleged this path of authorization triggered the process by

[32] Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State 2001, rules for initiation, Revised Constitution of Harar Regional State 2004, rules for initiation

[33] The revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002,Somali 2002, Benshangule-Gumize 2002 and Gamebela 2002, rules for intitiaton

[34] Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State 2001, Art. 124; Revised Constitution of Harare Regional State 2004, Art.79(2)(a)

[35]The revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Somali 2002, Benshangule-Gumize 2002 and Gamebela 2002, rules for the initiation

dubious arms of government.

4.1.1.3 Initiation via Councils of Ordinary Local Governments

In most federations, the dominant pattern requires some sort of formal participation of sub-national governments on the initiation for amendment of national constitutions although the techniques of participation vary widely. Sub-national constitutional initiation routes, by contrast, are less prone to require the involvement of ordinary local governments.[36] This is due to the relationship between national and sub-national governments differs from the relationship between sub-national and local governments and many sub-national constitutions involve the people directly in the processes of initiation through empowering the society to initiate the amendment of the state constitutions, for instance, eighteen states of USA provides an opportunity to the people to initiate the amendment of state constitutions.[37]

Whereas, underneath the Ethiopian federation, the relationship between the states with the local government is not akin to the USA; which means that local governments in Ethiopia have more power in the amendment of the state's constitution than the USA's local governments.[38] Because of this, apart from the states of Harare[39] and SNNP, on the word of the revised states 'constitutions of Ethiopia ordinary local governments are the decisive actors in the initiation of states' constitutions. In each of the seven regional state constitutions of Ethiopia, one-third of ordinary districts (Woreda) in the region can initiate the amendment of the state constitution if it acquires the majority vote of the members of each ordinary district council.[40] In the same way, the six state constitutions permit sub-districts (Kebeles) councils to propose amendments to the state constitution if it is voted by one-third of the whole kebele councils in each region.[41]

Ordinary districts (Woreda) in SNNP and sub-district (Kebele) in Harare, Somali, and SNNP regional states have acquired constitutional recognition in contrast these ordinary local governments are not able to initiate the amendment of the state constitutions. The reason why, these regional states make available uncommon treatment for these local governments is not

[36] John Dinan, supra note 30, 16
[37] Ibid, 7
[38] Ibid, 19
[39] Because Harare regional states have no ordinary local government called districts(Worda)
[40] The revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Somali 2002, Benshangule-Gumize 2002 and Gamebela 2002, Rules for the initiation
[41] Ibid

clear. Even in the SNNP regional state, some peoples are acknowledged as nations, nationalities, and peoples, but live in ordinary woredas;[42] if the ordinary Woredas have no say about the amendment of the state constitution, then the recognition of these people as a nation, nationalist and people will be sustained with the mercy of the majority.

4.1.1.4 Initiation through the Council of Special Local Governments

Initiation by the councils of Nationalities (Special) Zone or via the council of special woreda makes inimitable some Ethiopian states' constitutions from the other federations. To secure the right to self-determination of nations, nationalities, and peoples, some regional states have established a nationality zone and special woreda and each nationality zone and special Woreda has its council which has the power to initiate the constitutional amendments of the state constitution.

From the states' constitutions Amhara, Benshangule-Gumze, Gambela, and SNNP regional states' revised constitutions vested the councils of nationality zone and except Benshangul Gumize, all of these regional states have been consigned the power to initiate the amendment of the state constitution for the councils of special Woredas. Particularly according to the revised state constitutions of Amhara regional states, among the nationality zones established within the region, only one nationality zone council can initiate the amendment if it secures a majority vote among its members.[43]

Concerning, the revised constitutions of Oromia and Somali regional states since the two constitutions apportioned Sovereign power only to the Oromo and Somali people respectively,[44] not to minorities living within the respective region, thus, it is not surprising the exclusions of the minority in the initiation of the amendment. Whereas the Revised constitutions of Tigiry region acknowledged the existence of Europ and Kunama within the region and Kunama has their kebele(Tabiyia) and Erop has its ordinary Woreda but they have no extra-ordinary 'say' on the initiation of the amendment different from the ordinary Woreda and Kebele(Tabiyia).[45] From this, we can persuade that their recognition as nations, nationalities, and peoples will be of no worth. Similarly, we can take the same conclusion for the Afar regional state, since the region

[42] Like Debub Omo and Bench Majji Zones in SNNP Regional State.
[43] The Revised Constitution of the Amhara National Regional State 2001, Art.117(c)
[44] See the Revised State Constitution of Oromia 2001 and Somali 2002, preamble
[45] The Revised Constitution of the Tigray National Regional State 2001, Art.106

acknowledged Argoba Special Woreda under Art.43 (2) of its revised constitution, but without extraordinary 'say' on the initiation of the constitution.[46]

4.1.2 Initiation for the Amendment of Human and Democratic Rights

As to the initiation for amendment of human and democratic rights accredited under all Ethiopian revised states' constitutions, is not so palpable. In a sense, though it is not plainly articulated under the rules of amendment of all revised states' constitutions, it seems that all of them set the same procedures of initiation as any other state's constitutional provisions. However, some unique steps are exhibited under Benshangule-Gumiz, Gambela, and SNNP revised state constitutions. This inimitable procedure is to initiate the amendment of human and democratic rights incorporated under these three regional states constitutions, first, the same provision shall be amended in the 1995 FDRE constitution if not the initiation will not be good enough and it will not be ratified.[47]

4.2 Phases of Ratification

The Constitution of sub-national units' is the fundamental law of the state; the basis on which all other laws are made and enforced. It has been described as a 'superior or supreme law' with 'perhaps greater efficiency and authority, and 'higher sanctity' and more permanence than ordinary legislation. Nevertheless, a democratic Constitution has to be particularly responsive to changing conditions. Since sub-national units' constitutions in Ethiopia, dole out sovereignty power to the peoples[48] or one ethnic group[49] or nation, nationality, and people,[50] "must make possible the fresh assertion the will of the peoples, or ethnic groups or nation, nationality and people as that will change". To be responsive to these changes framing the 'rules for amendment' of the state constitution will be the vital means. In the amendment process of the constitution, ratification (adoption) will endow life for the newly incorporated constitutional provision and it is the knotty and all-inclusive phases for amendment of the state constitution.[51]

At this stage, the general jurisprudence and other federations' experience, shows that sub-

[46] The revised afar regional state constitution of 2002, Art.43(2)
[47] The revised state constitutions of Benshangule-Gumiz2002, Gambela 2002 and SNNP 2001, rules of amendment
[48] See the revised state constitutions Amara2001 and Tigray2001, preamble
[49] See the revised state constitutions Oromia2001, Somali 2002 and Afar2002, preamble
[50] See the revised state constitution of Harer 2004, SNNP 2002, Benshangule-Gumiz 2002 and Gambela 2002, preamble
[51] John Hatchard, *Comparative constitutionalism and good governance in the common wealth an eastern and southern African perspective* (Cambridge university press 2004), 321

national constitutions may set diverse rules of ratification along with their local reality and tactics of their democracy. For instance, forty-nine states of the USA and four states of Australia for some provisions of the constitution set ratification of the amendment through popular referendum.[52]

Gazing the Ethiopian Federation sub-national units set their inimitable rules of ratification to respond social, economic, and political veracity of the society upon which the constitution maneuvers. Generally, the rules for ratification entrenched in each state constitution riven constitutional issues into three segments. These are ratification (adoption) on the amendment of human and democratic rights, 'rules of amendment', and other provisions of the states' constitutions.[53]

4.2.1 Ratifying the Amendment of Other Provisions

In Ethiopia, the proposal on each provision of the states' constitutions, apart from provisions dealing with 'human and democratic rights' and 'rules of amendment', will be ratified via either of the ensuing bodies. To begin with, in some regional states, it will be approved by the vote of the state council alone. Moreover, it will be espoused through the lonely vote of the Council of State and by the council of ordinary local governments (districts). Finally, it will be ratified by a lonely vote of the councils of state, ordinary, and special local governments (districts).

4.2.1.1 Legislative Approval

In most federations to adopt the amendment proposal taking the vote of the legislative organs of the states to supplement the vote of other organs of the state government is a presumption while approving the amendment of state constitutions with the exclusive vote of the state legislature is an exception. Australian states' constitutions are the exception. In Australia, except for some provisions of the state's constitution, the amendment is adopted by the ordinary deeds of the state parliament.[54]

Eyeing to, the Ethiopian federation barely the states of Somali and Harare will be counted in this exception via allotting their state's councils to espouse the amendment with its exclusive

[52] Richard Albert, 'Amending Constitutional Amendment Rules'(2015) 15 International Journal of constitutional law, 346
[53] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, rules of ratification
[54] Cheryl Saunders, 'The Constitutional Credentials of State Constitutions' (2011) 42 Rutgers's Law Journal, 17 availbel at http://ssrn.com

vote.[55]As stated in Art.109 (2) of the 2002 Revised Somali Regional State Constitution proposals, which have been made to amend the constitution, except the provisions dealing with human and democratic rights, will be approved when the members of the state council vote with a two-thirds majority.[56] Equated to other states' rules of ratification, this rule of ratification is too malleable and has its flaws.

The flaws of this state constitution embrace: On one side, the constitution will be effortlessly amended by self-interested, partisan, destructive, or, short-term motives political actors. On the other side, to keep its political status quo the state council may repel change in the structure and process of the state government, especially on provisions which impart power and privileges to it. At the last, there is a dearth of direct participation from local governments.

In the other federations, like the USA and Australia ratification through a popular referendum is common, this is because the seat of sovereignty in these federations is on the people.[57] But under all Ethiopian states' constitutions, the sovereignty power has been endowed to the peoples[58] or some specific ethnic group[59] or nation, nationality, and people[60] , and these peoples or ethnic groups or nation, nationality, and people are organized in Regional, Zonal or/ and at Woreda level, thus to escalation the participation of these stakeholders on the adoption of the amendment, authorizing local government is better than the whole people. Under the Somali regional state constitution, this principle has been neglected by making the local governments toothless from the adoption of the amendment. This will lead to the intrusion of the autonomy of local government (Wordas); which already hold by the constitution from Art. 74- 87.[61] In a sense, if they have no 'say' on the approval of the amendment of the constitution, then their autonomy will be sustained with the blessing of the state's council.

Akin to the state of Somali the amendment of the revised state constitution of Harare is approved via the exclusive votes of the state council but diverges from the former the latter's state council has binary houses called a 'People's Representative Assembly (PRA) and the 'Harar National

[55] See the revised state constitutions of Harere 2004 and Somali 2002, rules for ratification
[56] The Revised Constitution of the Somali Regional State 2001, Art 109(2)
[57] Richard Albert, 'Constitutional Disuse or Desuetude: The Case of Article V' (2014) 94 Boston University Law Review, 231
[58]See the revised state constitutions of Amhara 2001 and, Tigray 2001, preamble
[59] See the revised states constitutions of Oromia 2001, Somali 2002 and Afar2002, preamble
[60] See the revised states constitutions of Harer2004, SNNP2001, Benshangule-Gumiz 2002 and Gambela 2002, preamble
[61] The Revised Constitution of the Somali Regional State 2001, from Art.78-87

Assembly' (HNA).[62] According to Art.79(2) of the revised state constitution of Harare, apart from the provisions dealing with human and democratic rights, the proposal of the amendment of the constitution will be approved when it is supported via a two-thirds vote of each house in a separate session and the two-third vote of the joint session of the two houses.[63]

As compared to the Somali state constitution the procedure looks stiff and more participatory. While compared with other federations' states' constitutions and even with other states' constitutions of Ethiopia the procedure is malleable and has the flaw of non-participation of local government. Under Art.75 of the revised state constitution of Harare kebele (sub-district) is the lowest level of administration, but it did not have the power to take part in the adoption of the amendment of the state constitution. Thus its existence will be as far as the state council wants.

4.2.1.2 Ratifying by the Council of States and Ordinary Local Governments

The second, avenue of ratification of amendment of other provisions beneath the state's constitution in Ethiopia is adoption by the dispersed vote of the state councils and the councils of ordinary local government (districts). Globally the dominant practice is the adoption of the amendment via the vote of the state legislative and with a popular referendum,[64] while adoption with a separate vote of the state councils and the councils of the ordinary local government is the exception and exclusively applied in some of the Ethiopian revised states constitutions. Among the Ethiopian states' constitutions the revised state constitution of Oromia, the revised state constitution of Afar, the revised state constitution of Benshangul-Gumizeand and the revised state constitution of Tigray adopted the amendment of their respective constitution via the separate vote of the state council and the councils of the ordinary local government (districts). Though these four regional states of Ethiopia adopted the amendment of their respective constitutions with the vote of the state council and the ordinary local governments' council, the quality of the majority to adopt their respective amendment has its differences.

As stated by Art.112 (2) of the Revised Constitution of Oromia Regional State and Art.107 (2) of the Revised State Constitution of Tigray Regional State with the exceptions of human and democratic right provisions and provisions on rules for amendment of each state constitution, the

[62] The two organs are designed to create a balance between the group rights of the Harare ethnic group on the one hand and the individual rights of the regional population "as a whole" on the other.
[63] Revised state constitution of Harar 2004, Art. 79(2)
[64] Richard Albert, 'Temporal Limitations in Constitutional Amendment' (2016)26:1 Boston college law school journal, 39

amendment proposal will be approved when the two-thirds of the district councils of each state approved by simple majority and the state councils of each state approved the proposal with the three-fourth majority vote. If we look closely at the state constitutions of Somali, Harare, Afar, and Benshangule-Gumuze the constitutions of Tigray and Oromia regional states provide a more rigid procedure for approval of the amendment. However, their procedure of amendment for the protection of minorities' rights has its shortcomings.

The revised constitution of the Oromia region, although it acknowledges the presence of other peoples in the region, has no further consequences as far as the legal position of the latter is concerned.[65] Thus, it is not surprising that the exclusion of minorities 'says' on the approval of the amendment and the problem is not only on procedures of amendment but also the design of the constitution itself.

On the other way, the 2001 Revised State Constitution of Tigray recognized the existence of the Erope and Kunama people in the regions, but they have no extraordinary 'say' on the approval of amendments different from the ordinary Woredas and kebeles (Tabiya).[66] From this, we can conclude that their recognition is at the mercy of the majority. In a sense, if the majority wants to avoid their recognition under the constitution then it can do any time as it wants.

Similarly, the revised state constitution of the Afar region also adopted the same procedures of approval by different votes. According to Art.110(2) Afar Regional State Constitution with the exceptions of human and democratic rights and the amendment provisions of the constitution, the proposals of the amendment are approved when more than half of the councils of the districts are supported by a majority vote and it is voted with three-fourth of the state councils.[67] As for the Tigray region, the revised constitution of the Afar region through Art.43 (2) recognized the existence of Argoba people in the region but they did not have a special 'say' on the approval of the amendment different from other ordinary Woredas; thus their recognition will exist on the constitution as far as the majority wants to do so.

The last regional state that adopts the same procedure of amendment as that of the aforementioned regional state is the Benshangul-Gumuzi region.Art.119 (2) (a) and (b) of this regional state revised constitution provides that the amendment of all provisions of the

[65] Christophe Van der Beken Supra Note 26, 244
[66] The Revised Constitution of the Tigray regional State 2001, Art.107(2)
[67] Revised constitution of the Afar Regional State 2002, Art.102(2)

constitution other than human and democratic rights provision will be approved when two-thirds of the Woreda councils in the region supported with a two-third majority vote and the majority members of the state councils have voted the proposal.[68] The plain reading of this procedure is too flexible than the other state constitutions, which approved their proposals of the amendment through the cumulative vote of the state and ordinary local government (Woreda) councils.

But this procedure has its flaws. These include first, the procedure completely contradicts the central objectives of the constitution; because the crucial objective of the constitution is to protect and empower the indigenous nationalities of the region[69] and to achieve these objectives, the constitution and Pro. No.73/2008 anticipates the establishment of a five-nationalities zone.[70] Owning to this, the complete exclusion of the councils of the nationality zone from the approval of the amendment will lead to the simple infringement of their autonomy through the state and ordinary woredas councils.

4.2.1.3 Ratifying by Councils of the State, Special and Ordinary Local Governments

The last route of say-so to amend some states' constitutions of Ethiopia is adopted via the isolated vote of the state's council, the council of nationalities zone, the council of special woreda, and the council of ordinary woreda. In other federations adoption through the vote of the above institutions is not branded which is why this path of adoption makes an additional unique feature for the Ethiopian Federation. Under the Ethiopian federation with a few significant differences the revised constitutions of SNNP, Gambela, and Amhara regional states take on this procedure of adoptions.

By Art.118 (2) of the 2001 Revised Amhara Regional State constitution the proposal of the amendment of the constitution, outside human and democratic rights and the rules of amendment, will be approved when the proposal is approved with a separate vote of more than half of all the Woredas' councils by simple majority, two-third majority vote of the members of one of the nationalities councils and three-fourth majority vote of the members of the regional

[68], Revised state constitutions of Benshangule-Gumize 2002, Art.119 (2) (a) and (b)
[69] See the Revised State Constitution of Benshangule-Gumize 2002, preamble
[70], Proclamation No. 73/2008, Benishangul/Gumuz Regional State Proclamation Enacted to Determine the Organization, Powers and Functions and Internal Working Procedures of Nationalities Councils and their Offices, 2008

councils.[71] This rule of adoption is more rigid, participatory, and all-inclusive than other states' constitutions seen before. Under this procedure, neither the regional government nor the ordinary or especially local government has exclusive power to infringe the autonomy of the other. But this procedure still has some flaws. These flaws include being the region is the home of five ethnic groups such as Amhara, Oromo, Argoba, Awi, Himra, and Kimant,[72] expecting the approval of solely the council of one nationality will impinge on the rights of other nationalities living within the region.

The second regional state that takes on a akin procedure of ratification is the Gambela Regional State Revised Constitution. The constitution under Art.121(2) States that the proposal on the amendment of the constitution, aside from the provisions dealing with human and democratic rights and the rules of amendment, will be approved when the proposal is endorsed via an isolated vote of more than half of all the Woreda councils with simple majority, more than half of all the nationalities zone councils or special Woreda councils supported with simple majority and it is voted with three-fourth majority vote of the members of the regional councils.[73] Compared to the other states' constitutions of Ethiopia, the revised constitution of the Gumbela Region is more partaking, and rigid and is in line with the objectives of caring for and empowering the indigenous nationalities of the region.

Akin to the above regional states' constitutions, apart from the provisions dealing with human and democratic rights and the rules of amendment, the proposal of the amendment under the revised state constitution of SNNP will be ratified, when the proposals of amendment with the vote of the regional councils, the councils of nationality zone and special Woredas, whereas there are aspects of which the procedures of this constitution is different from the above state constitutions. As we tried to explain above, unlike the Gambela and Amara regional States' constitutions, the revised state constitution of SNNP divided the state councils into two houses these are the state councils and the councils of nationalities. Thus the two houses have the power to approve the amendment of the state constitution.

[71] Revised constitution of the Amhara regional state of 2001, Art.118 (2)
[72] Revised constitution of the Amhara regional state of 2001, Art.45(2)
[73] Revised constitution of Gambella Regional State 2002, Art.121(2)

4.2.2 Approving the Amendment of 'Rules of Amendment'

No part of a state constitution is more important than the rules that govern its amendment and its entrenchment against it.[74] In constitutional democracies formal state's constitutional amendment rules limit the power of political actors by entrenching procedures for altering the constitutional text; it distinguishes constitutional law from other ordinary laws, pre-commits successor political actors; creates a popular check on the judicial branch; channels popular will into institutional dialogue and express constitutional values.[75] Perhaps their most important function, however, is to serve as a corrective device: amendment rules authorize political actors to update the constitutional text as time and experience expose faults in its design and as new challenges emerge within the sub-national community.[76]

Provide that the rules for amendment of state constitution serve as the 'lung' of the state constitution, thus they have to be sheltered from the ordinary amendment of the states' constitution. To do so the state constitution may entrench them in one of three ways: ordinarily, especially, or absolutely.[77] For instance, all state constitutions of the USA ordinarily entrenched their rules of amendment in the sense that rules of amendment under all USA states' constitutions do not enjoy a greater degree of entrenchment than any other provisions of the state's constitution.[78] In other words under all states' constitutions of the USA political actors need not a higher quantum of an agreement to amend rules of amendment of states' constitution.[79]

Other constitutions may especially entrench via heightened amendment thresholds like the four state constitutions of Australia the rules govern about referendum will be amended via popular referendum or the state constitution may entrench absolutely by making the rules of amendment of the state non-amendable.[80] The rules of an amendment that are not specially or absolutely entrenched to protect from the ordinary amendment will be exposed to the problems of 'double

[74] Richard Albert, 'The structure of constitutional amendment rules' (2014) 49 Wake forest law review P.919
[75] Richard Albert supra note 57, 240
[76] Ibid, 243
[77] Richard Albert, supra note 74, 918
[78] John Dinan, supra note30, 1010.
[79] G. Alan Tarr, *Understanding of state constitutions* (Princeton University Press,1998), 345
[80] R.D. Lumb, 'Methods of alteration of state constitutions in the USA and Australia' (1982) 13 Federal Law Review, 6

amendment'.[81]

Eyeing the Ethiopian states' constitutions, their 'rules of amendment' are entrenched through ordinary and special entrenchment. Amhara, Tigray, Afar, Benshangul-Gumize, Oromia, SNNP, and Gambela revised states' constitutions have been set the special entrenchment for the rules of amendment police the amendment of other provisions of the states' constitutions and also for the provision which entrenching the entrenchment. Different from this, the state constitution of Oromia provides a special entrenchment for the rules of amendment govern the amendment of other provisions of the constitution but the provision which entrenches this entrenchment is not entrenched.[82] Thus the entrenchment of rules of an amendment that governs the amendment of the other provision of the state constitution is not futile since the political actors can avoid the entrenchment through double amendment.

Other state constitutions like Harere and Somali ordinarily entrenched their rules of amendment. This refers to rules that rule the amendment of the constitution and enjoy no greater degree of entrenchment than any other constitutional provision.[83] Political actors, therefore, need no higher quantum of an agreement to amend these fundamental rules than less consequential matters.

4.2.3 Ratifying the Amendment of Human and Democratic Rights

Under the Ethiopian federation, the federal constitution leaves 'constitutional space' for sub-national unities to protect the human and democratic rights of their people better than the protections provided by the federal government.[84] Contrary to this all state constitutions of Ethiopia, with some insignificance modification have been copied human and democratic rights recognized under the federal constitution. One may expect this because of the infancy of democracy, constitutionalism, and human rights within the sub-national constitutions of Ethiopia, and one may expect the improvement of state constitutions by incorporating additional human and democratic rights through a constitutional amendment.

Thus, under this piece, the state constitutions have the possibility of improving the states' constitutions through incorporating additional human and democratic rights by amending the

[81] Double amendment' is the amendment which will be done twice by political actors first to avoid entrenchment made on some provisions of the constitution and second amending the provision which was entrenched before
[82]See the revised constitution of Oromia regional state 2001, Art.112(2
[83] See the Revised state constitution of Somali 2002 and Harere 2004 regional states, rules of amendment'
[84] Tsegaye Regassa, 'Sub-national constitutions in Ethiopia: Towards entrenching constitutionalism at state level' (2009) 3 Mizan law review, 39

constitutions, which will be the critical issue.

As we revealed in the previous part of this paper, the amendment of the state constitution has an initiation and adoption phase. Regarding initiation for the amendment of human and democratic rights, we have already dealt with and adopting the amendment of human and democratic rights will be the ensuing part. The ratification/adoption/ phase on amendment of human and democratic rights under Ethiopian states' constitutions will be implemented via two routes. These are adopting the amendment of human and democratic rights along with the 'rules' of adoption framed under the federal constitution [85] and adoption in line with the 'rules of ratification' recognized under federal and state constitutions.[86]

4.2.3.1 Adopting as per the Rules of Amendment of the Federal Constitution

In an attempt to identify the right balance between rigidity and flexibility in sub-national constitutional amendment many sub-national unities' constitutions offer different thresholds for different constitutional provisions.[87] This may help provide stability, certainty, and strong guarantees for some parts of the constitution that need to be rigid while allowing flexibility in other areas. Depending on the circumstances of the sub-national unities in question, their previous experiences, and the bargains achieved during the constitution-making process, different parts of the constitution may need to be protected by additional procedures or thresholds.[88]

Under all Ethiopian states' constitutions the special entrenchment/additional procedures or thresholds/have been focused on some constitutional issues that is on the provisions that deal with 'human and democratic rights' and 'rules of amendment'. About the entrenchment of 'rules of amendments', we had already dealt with the above. As regards entrenchment on the adoption of the amendment of human and democratic rights provisions acknowledged under the Ethiopian revised states' constitution, we will endeavor to elucidate under this part.

Amongst regional revised states' constitutions in Ethiopia, the revised states' constitutions of Oromia, Amhara, Afar, Harere, Tigray, and Somali have been attempted to specially entrench their human and democratic rights provisions through making and cross-referring their adoption

[85] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, rules for adoption
[86] The revised states constitutions of SNNP 2001, Benshangule-Gumize2002 and Gambela 2002, rules for adoption
[87] Richard Albert, Supra Note 57, 236
[88] Ibid

of the amendment in line with the 'rules of amendment' enunciated under the federal constitution. These states' constitutions on different provisions, but with similar wording state that state constitutional provisions dealing with human and democratic rights shall be amended as per Art.105 of the 1995 FDRE Constitution.[89]

And Art.105 of the 1995 FDRE Constitution stated:

> All rights and freedoms specified in Chapter Three of this Constitution (1995 FDRE constitution), can be amended only in the following manner: (a) When all State Councils, by a majority vote, approve the proposed amendment; (b) When the House of Peoples' Representatives, by a two- thirds majority vote, approves the proposed amendment; and (c) When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.[90]

Thus, the amendment on human and democratic rights of Oromia, Amara, Afar, Harere, Tigray, and Somali revised states' constitutions will be approved when all state councils, by a majority vote, the House of Peoples' Representatives by a two-thirds majority vote and the House of the Federation by a two-thirds majority vote, approves the proposed amendment.

From the aggregated reading of the above provisions of both the states and federal constitution, we can construe that to amend human and democratic rights provisions incorporated under Oromia's revised state constitution the majority vote of the other eight states' council is the compulsory prerequisite. This worthless and self-restrictive provision of Ethiopian states' constitutions makes their rules odd of adoption and entrenchment from other federations' sub-national constitutions. Globally, no sub-national constitutions have similar experiences with these Ethiopian states' constitutions. The existence of this provision makes it defective and exposes the Ethiopian state's constitution to criticism.

Amid these flaws and criticisms provided by constitutional writers.[91] First, the inclusions of this self-restricted and drivel provision under the above six state constitutions will utterly bolted the constitutional space of state constitutions which has been left by the federal constitution to impart better protection of human rights via amendment. Since the constitutions of sub-national

[89] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2002, Somali 2002, rules of amendment
[90] FDRE constitutions 1995, Art.105(1)
[91] Tsegaye Regassa, supra note 85, 45

states are plainer than their federal counterpart, it will be appropriate to go with the development of human rights by incorporating the more developed and up-to-date human rights, but if the state's constitution penned this self-restricted provision within their 'rules of amendment,' it is knotty to do so.

Second, it is visibly gainsaid with the autonomy of the states which is the very purpose of having state constitutions. In a sense, to amend any of the above state constitutions, requires the decision of federal or other states' parliament, thus the autonomy of the state which wants to amend its constitution will be put in question.

Thirdly, it is the mere repetitions of the supremacy clause which has been set in the federal constitution. The 1995 FDRE constitution under Art.9 (1) and 50(4) provides the duty for the state government to amend their constitution consistent with the federal constitution. This implies that if the amended provision of the state constitution contradicts the federal constitution, it will be void as to Art.9 (1) of the 1995 FDRE constitution. Thus, setting another supremacy clause under the rules for amendment of the state constitution is a mere echo of its federal counterpart.

Fourthly, the procedure of amendment concerning human and democratic rights follows too rigid and integrative approach, but the provision which entrenches this self-restricted statement can be amended as any ordinary provisions of the state constitutions. In a sense, though the states specially entrench the amendment of human and democratic rights recognized under the above six states' constitutions, the entrenching provision itself is not protected from the ordinary amendment. Thus political actors can avoid this entrenchment via means of double amendment and this makes the restriction bosh.

Fifth, the said revised states' constitutions are not evident, how the amendment that is made on the word of the "rules of ratification" of 1995 FDRE Constitution will develop to the part of these regional states constitution is that directly devoid of the approval by the state or with ratification by the states.

4.2.3.2 Adopting as per 'Rules for Amendment' of Federal and States Constitutions

Others like Benshangule-Gumiz, Gambela, and SNNP state constitutions have followed different procedures to ratify the amendment on human and democratic rights documented under their

constitutions. These state constitutions on different provisions, but with similar wording conveying that, provisions on human and democratic rights of these state constitutions will be amended if and only if the provision on human and democratic rights of the federal constitution is amended. And that amendment shall be ratified based on the rules of adoption framed within each of these three states' revised constitutions[92] which means the amendment on human and democratic rights on the federal constitution is not final rather, it needs further ratification by the state. Unlike the above-mentioned seven regional states' revised constitutions, the revised state constitutions of Benshangule-Gumiz, Gambela, and SNNP attempted to make precise the fates of the amendment that is made on the word of the "rules of ratification" of 1995 FDRE Constitution; that is, it will become the parts of the state's constitution when it is ratified by the ordinary paths of approval made for states constitutional amendment.[93]

Other than the above-ounce modification, this self-hampered provision for these three states' constitutions has its evils. These evils include: as per Art.105 (1) (a) of the 1995 FDRE constitution amendment provisions of human and democratic rights will be amended when all state councils, by a majority vote, approve the proposed amendment. Parallel to this, after the state ratifies the amendment all state organs will have the duty to respect and enforce those amended human and democratic rights per Art.13 (1) of the same constitution. Thus if the state ratifies this amendment which has been done based on the rules of the federal constitution will be meaningless and a sheer duplication.

5. Review of Amendment of States' Constitutions: Inspecting Constitutionality of Constitution

Since the power to amend the constitution is not primary constituent power but secondary constituent (delegated) power, it is subject to implied and express limitations.[94] Yet, it is one thing to claim that the amendment power is limited; it is quite another question as to whether such limitations are legally enforceable, in the sense that they are subject to review by an umpiring institution. If so, is it the amendment procedure (the procedure) or the outcome of the amendment (the substance) that is subject to review? And what are those umpiring institutions is

[92] Seethe revised states constitutions of SNNP 2001, Benshangule-Gumize 2002 and Gambela 2002, rules for adoption
[93] Ibid
[94] R. Goerge Wright, 'Could a Constitutional Amendment Be Unconstitutional?'(1991) 22 Loyola University law Journal, 745

that the court or other institution? The aforementioned issues have been contentious among scholars for a long period. But before we discuss the aforementioned issues, let's highlight the rationales for a review of a constitutional amendment.

5.1 Rationales Behind for Reviewing Constitutional Amendment

As the writer tried to point out above, amendment power is delegated power, and being it is, it will be subject to limitation. A review of constitutional amendments will serve as a mechanism to enforce those limitations that are levied on the powers of a constitutional amendment.[95] In the sense that since those institutions empowered to amend the constitution are anticipated to comply with those express or implied limits when they amend the constitution if they fail to do so, their activities will be subject to review and the amendment will be null and void by the institutions empowered to do this.

The other importance of reviewing of amendment of the constitution is to secure check and balance among the three arms of government. That means, in most federations, the involvement of the legislature as the key actor or as a complimentary thespian in the constitutional amendment process is an unwavering practice.[96] And this organ may manipulate its power, specifically in areas that allot powers and privileges to it. Therefore, reviewing constitutional amendments by a body other than the lawmaker will repel this tyranny of the legislator.

In addition to this, being familiar with reviewing constitutional amendments may be a typical apparatus for safeguarding minorities' rights. According to John Hart Ely's theory of representation-reinforcing, in a democratic system of government courts should have an inherent authority to protect the basic freedoms of the minority against attempts by the majority to violate them, whether by ordinary or constitutional amendment made by a majority of the elected representatives, since such a violation would contradict the basic principles upon which the system is based.[97] Courts are the appropriate institution to carry the counter-majoritarian role since contrary to parliaments they are not directly and immediately dependent on the approval or support of the public's majority for their decisions.

[95] Rostow, Eugene V., 'The Democratic Character of Judicial Review' (1952) 66 Harvard Law Review, 195
[96] Ibid
[97] Ely, John Hart, 'Toward a Representation-Reinforcing Mode of Judicial Review' (1978) 37 Md. L. Rev., 455.

5.2 Competence for Reviewing the Constitutionality of a Constitution

As regards, the competency of umpiring institutions to review a constitutional amendment, globally there is no persistent practice amid federations. Specific constitutions make clear provisions concerning the competence of their umpiring body to rule on the constitutionality of constitutional amendments. Accordingly, the review would be accomplished by these institutions. Such as, the Constitutions of Turkey, Chile, Romania, and South Africa authorized their constitutional courts to review the constitutionality of constitutional amendments.[98]

However, the majority of the federations' are silent about the issue of review of a constitutional amendment. According to Kemal Gozler, this constitutional silence on the review of a constitutional amendment has different meanings under the American and European models of judicial reviews.[99] Under the American model of judicial review, courts may examine the constitutionality of constitutional amendments despite the silence of the Constitution in the area.[100] This is because, under the American model, the court does not need to receive special power for exercising judicial review which is part of their day-to-day activities.

Under the European model, judicial review is carried out through a special constitutional court that does not have a general jurisdiction to review all legal norms and acts.[101] The constitutional court has limited and special jurisdiction on matters which are specifically given by the constitution or law that establishes it. Subsequently, constitutional silence in the European model of judicial review implies a lack of competence to rule on the matter of review of a constitutional amendment.

Meanwhile, when we come to the competence of institutions to review the constitutionality of constitutional amendments at the state level, federations have various approaches. In some federations like South Africa, Spain, and Sudan, a review of the constitutionality of sub-national constitutional amendments by the federal government or its machinery is a mandatory

[98] Yaniv Rozinai, *Unconstitutional constitutional Amendment: A Study of the Nature and Limit of Constitutional Amendment Power*,(Dissertation for Doctor of philosophy, London School of Economics,England,2014), 182
[99] Kemal Gozler, *Judicial Review of Constitutional Amendments; A Comparative Study* (Ekin Press2008), 10
[100] Charles Fombad, *Limits on the Powers to Amend Constitutions: Recent Trends in Africa and Their Potential Impact on Constitutionalism*, (Paper Presented at the World Congress of Constitutional Law, Athens, Greece 2007), 20
[101] Kemal Gozle, supra note 98, 10

requirement mostly regulated by the federal constitution.[102] On the contrary in some federations like the USA and Germany reviewing state constitutional amendment is primarily within the jurisdiction of states so long as the amendment is within the constitutional jurisdiction of states and does not contradict the stipulations provided by the federal constitution.[103] But if the scope of state constitutional amendment is not limited to the state constitution itself and has an impact on the federal constitution, federal courts can review state constitutional amendments.

5.3 Scopes of Application

If the review of state constitutional amendment is allowed to an umpiring institution, which parts of the amendment shall be subject to review; is that the substance or the process? These will be the afterward issues. Globally, the scope of the review states' constitutional amendment shows discrepancies across federations. Specific federations enabled the umpiring institutions to review both the substance and the forms of a constitutional amendment and other federations certified the umpiring institutions to check whether the procedure(not the substance) of amendment of the state constitutions is done in line with rules of amendment of states constitution or not and the substantive confirmation of the amendment of states constitution to the content of the federal constitution also reviewed by an umpiring body which is empowered to do so.[104]

Among constitutions certified review of both the substance and the forms of states' constitutional amendments South African States', German Landers', Swiss Cantonal', and Canadian Provinces' constitutions are among the major ones.[105] Within these federations, the amendment of states' constitutions is not only anticipated to go along with the procedures and the substance of the state's constitution itself but also, the substance of the amendment shall not gainsay with the substance of the federal constitution. If there is a discrepancy then it will be subject to review and the amendment may be banned.

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[102] John Dinan, *Patterns and Developments in Subnational Constitutional Amendment Process* (Legal Studies Research Paper Series, prepared for the 7th world congress international association of constitutional law, Athens Greece 2007), 27.
[103] Ibid
[104] Yaniv Rozinai, Supra note 98, 12
[105] Zelalem Eshetu Degifie, 'Unconstitutional Constitutional Amendments in Ethiopia: The Practice under Veil and Devoid of a Watch Dog' (2015) 4 Haramaya Law Review H.L. 1, 74

Coming to the states' constitution those who endorsed the review of the procedural (not substantive) irregularities of amendment of states constitution are somewhat few in number parallel to this, these federations allow the review of substantive orthodoxy of amendment of states constitution with the substance of the federal constitution. The reason why these states' constitutions do not allow an umpiring institution to review the substance of the states' constitutions, the courts cannot place themselves above the constitutional legislator. Among the states' constitutions which are allowed to review only the procedural irregularities of states' constitutional amendment Hungarian states' constitution is the major one.[106]

5.4 Review of States' Constitutional Amendment in Ethiopia

Under the Ethiopian federation, because the states' constitutions are not fully contextualized to the local reality of each state society; it has both substantive and procedural flaws and the dynamic nature of human understanding about the rules governs its behavior, for the future the state constitutions of Ethiopia will be subject to progressive and substantial amendment. This will be done by the institutions enabled by each revised state constitution. But the institutions are not angles, in the sense that they may make slips when they make the amendment, thus these slips have to be put right by an umpiring institution.

Similar to the dominant practice experienced in other federations,[107] all revised states' constitutions of Ethiopia are silent on whether there is a review of the amendment of the state constitution or not, on institutions which has been empowered to do this, and about the scopes of review. Not only the state constitutions but also the practice that they had before did not show anything about this system of checking the power of political actors on the amendment of the states' constitutions.[108] Accordingly, ensuring the silence of states' constitutions on the competence of the constitutional adjudicating body and its scopes of power in reviewing the constitutionality of states' constitutional amendments, based on the experience of other federations, we can have two sides of arguments.

The first side of the argument is that in Ethiopia within eight revised regional states constitutions the constitution is interpreted by the constitutional interpretation commission (CIC).[109] Different

[106] Kemal Gozler supra note 98, 16
[107] Kemal Gozler supra note 98, 12
[108] Ibid
[109] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, Benshangule-Gumize 2002 and Gamebela 2002, rules for interpretation

from this, the revised SNNP constitution allotted the power to interpret the constitution to the Council of Nationalities.[110] However, all revised state constitutions are silent on the power to review sub-national constitutional amendments by the Constitutional Interpretation Commission (CIC) and the Council of Nationalities. These institutions have no inherent power to review all legal norms and acts but only those for which the state constitutions explicitly give them the competence to review. Consequently, under all Ethiopian regional states, in order to have competence, the Constitutional Interpretation Commission (CIC) and the Council of Nationalities should be expressly vested with this competence by each revised constitution of the regional state. If the constitution is silent on the Constitutional Interpretation Commission (CIC) and the Council of Nationalities' competence to review constitutional amendments, it means that these institutions did not have the competence to rule on the constitutionality of the states' constitutional amendments. As per this author's view, however, this argument is feeble and unsound.

The other line of argument will be like the Germany Landers Constitution and Australian States Constitution;[111] all Ethiopian regional states' constitutions acknowledged the supremacy of state constitution which means any law, customary practice, or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.[112] Moreover, the vital ends of the Constitutional Interpretation Commission (CIC) in the above eight regional states of Ethiopia and the Council of Nationalities in the SNNP regional state is to serve as the guardian of each regional state constitution and to shield the supremacy of the constitution. As the guardian of the constitution, it must make sure that the supremacy of the constitution has been maintained in all aspects, be it states' constitutional amendment or ordinary laws.

Thus, the author of this paper believes that the Constitutional Interpretation Commission (CIC) in the above eight regional states of Ethiopia and the Council of Nationalities in SNNP regional state can assume jurisdiction to examine the constitutionality of states' constitutional amendment. That means, for the strongest reason, similar to the Australian States and German Landers' constitutions, the institution which is assigned to interpret the states' constitution in

[110] See the revised state constitution of SNNP2001, Art.59(1)
[111] John Dinan, supra note 102., 29
[112] See the revised state constitution of Oromia 2001, Amhara 2001, Tigray 2001, Afar 2002, Harere 2004, Somali 2002, SNNP 2001, Benshangule-Gumize 2002 and Gamebela 2002, Provisions of Constitutional Supremacy

Ethiopia can widen its power of constitutional interpretation to the review of constitutional amendment both in procedural and substantive aspects through interpretation.

6. Imparting Experiences for the Recently Established Regional States and the Way Forwarding for Aged Regional States

Owing to, the temperament of federalism that applies under the current Ethiopian legal system (ethnic-based federalism),[113] till now two new regional states namely Sidama and Southwest Ethiopia regional states have been established.[114] For the future, there is a high fortune for the establishment of new regional states. If this is so, the newly established regional states shall impart the best experiences from aged regional states. Midst these experiences having a matured all-inclusive regional state constitution is a non-optional choice. Within that regional state constitution framing clear, even-handed, consistent, and self-protected 'rules of amendment' is the one that the newly born regional states are take into consideration. Thus, those newly established regional states shall take the best experiences that, the aged regional states have and shall shun the worst experiences that the aged regional states experienced. Among the vilest experiences that the aged regional states have experienced, the following are the major ones:

Firstly, the protection of minorities is the central objective of the federal constitutions of Ethiopia. Parallel to the federal constitution; the state of Tigray (Irop and Kunama), Afar (Argoba), and Benshangule-Gumz (Berta, Gumuzi, Shinasha, Mao, and Komo) have endeavored to protect the right of indigenous minorities to live within their respective region. However, these minorities have no extraordinary (veto) power to preserve their rights from being breached by the majority through amending the constitution. In a sense, majoritarian within these regional states can expunge the recognition of minorities within their respective states' constitutions through amending the state constitution.

Secondly, in all states' constitutions of Ethiopia, the proposal of the amendment is not approved without the vote of their respective state council. However, to keep its political status quo legislators frequently resist change in the structure and process of the state government especially, on the amendment of provisions that offer the power, function, and privilege to it. Therefore, to shun this hurdle, the state constitution shall provide other ways of approval of the proposals, which

[113] Christophe Van der Beken, Supra Note 26, 234
[114] Sidama Regional State and Southern West Ethiopian Regional States

is free from the vote of the state council. In addition to this, as said by the revised constitutions of Somali and Harare regional states, the proposal of the amendment is adopted by the exclusive vote of their respective state council. On the other hand, the Somali state constitution allots some autonomous power to the ordinary local government, and the Harare state constitution recognized Kebele as the lower level of administration with some powers, whereas these local governments have no say on the approval of the amendment. This may cause to violation of their autonomy via state council through amending the constitution.

Thirdly, as regards, the amendment of provisions dealing with 'human and democratic rights' acknowledged under Oromia, Amhara, Afar, Harere, Tigray, and Somali regional states' constitutions, the states exclusively use 'rules of amendment' framed under the federal constitutions. That means, that to amend any of these provisions, securing the decision of federal as well as other regions' parliaments is a non-optional requirement. Others like Benshangul-Gumiz, Gambela, and SNNP regional states amend provisions dealing with 'human and democratic rights' if and only if its similar provision in the federal constitutions is amended. And the amendment, which will be made based on the federal rules of amendment, will be ratified in line with the rules of ratification framed under each of the three states' constitutions. In both cases this self- restricted and drivel provision of each state constitution will directly violate the autonomy of states; it is a mere repetition of the supremacy clause provided in the 1995 FDRE constitution; it will bolt the opportunities of states to provide better protection of human and democratic right through amending their constitutions.

Lastly, concerning the amendment of "rules of amendment" Amhara, Tigray, Afar, Benshangul-Gumize, Oromia, SNNP and Gambela states' constitutions have been provided the special entrenchment for the 'rules of amendment' police the amendment of other provisions of the states' constitutions and also for the provision which entrenching the entrenchment. Different from this, the state constitution of Oromia provides the special entrenchment for the 'rules of amendment' govern the amendment of other provisions of the constitution but the provision that entrenches this entrenchment is not entrenched. Similarly, though all states' constitutions especially entrenched the amendment of the provision dealing with 'human and democratic rights', while, except SNNP revised state constitution, the provision which entrenches the entrenchment is not entrenched. Hence, the entrenchment will be worthless since political actors can shun it by double amendment.

Consequently, those aged regional states shall shun the said hitches, and those newly established regional states shall not include under their constitutions, the aforesaid evils that the aged state wrongly experienced.

Conclusion

Like other federations, in Ethiopia endowing subnational government to have a constitution had been fully operated since 1991. By taking this authorization as a good opportunity, regional states in Ethiopia strived to frame their constitution and they set their 'rules of amendment' to heal when their constitution sickened. But the power to amend and to set 'rules of amendment' of states' constitution in Ethiopia is not jut out; rather there are principles and procedures that have to be followed by political actors and limitations that shall serve as a bound for politicians. When we view the procedures of amendment, which are recognized under each state's constitution of Ethiopia, there are initiation and adoption stages. The initiation is done by different institutions including via the executive branch and local governments but not by the public like other federations that is why the initiation of states' constitutional amendment in Ethiopia is atypical of other federations. On the adoption stage, the Ethiopian states' constitution adopted different but to some extent farrago procedures. According to the ongoing 'rules of amendments' of states' constitutions of Ethiopia the 'adoption stage' is sorted into approval of the amendment of 'other provisions of states' constitution, approval on amendment of human and democratic rights acknowledged underneath every state's constitution and adoption of the amendment of 'rules of amendment' of states' constitution. All states' constitutions with different wording but to some extent with similar concepts added in unnecessary cross reference, worthless and insincere approval procedures on adoptions of amendment of human and democratic rights documented under their constitutions. In addition to this, all states' constitutions are not set plainly remedies on which institutions shall review if there is inaccuracy in the amendment of state constitutions. By implication, the institution empowered to interpret regional state constitutions has the power to review the amendment of states' constitutions. To sum up, those nine regional states shall shun flaws that are visible in 'rules of amendment' penned under their revised constitutions. Besides, those newly emerged regional states will be expected to learn from the slips that were done by the aged nine regional states, at the time when they framed their regional constitutions.