Status of Subnational Constitutionalism in the Federal Democratic Republic of Ethiopia: Implications of Theoretical Evaluation of Some Facts

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Abstract

By adopting federalism, the Federal Democratic Republic of Ethiopia (FDRE) has domesticated the prominent prerequisite for subnational constitutionalism, i.e. the establishment of subnational units (SNUs), called Regions, with designated powers. The SNUs have competence over regional/subnational (SN) matters and governance. They can also write SN constitutions by which they administer themselves. This paper argues that the establishment of SNUs and the existence of SNCs do not evince a robust SN constitutionalism (SNCM) in the country. However, based on some theoretical normative evaluation of how much the constitutional system and process at SN level fare with the ideals of SN constitutionalism, it can be witnessed that there are practices that go hand in hand with SN constitutionalism on the one hand and that are inconsistent with SN constitutionalism on the other. It, finally, concludes that strengthening the promising steps, and a systematic approach and commitment to tackle the pitfalls enhance SN constitutionalism in the SNUs.

1. Introduction

After the fall down of *Derg* in 1991, Ethiopia dispensed decentralized governance. Since then, two successive developments having remarkable imprint in the history of SN constitutionalism of the country emerged. The first was the adoption of the Transitional Period Charter (TPC) in 1991. TPC envisioned autonomous SNUs with designated areas of

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competence that could write SN constitutions and govern themselves by them.[1]

The second development is the adoption of Constitution of the FDRE (CFDRE), which has officially declared Ethiopia a federal country in 1995.[2] The CFDRE has established two tiers of governments: Federal Government and State Governments.[3] Regions/States are SNUs that have their own exclusive areas of competence,[4] and are empowered to write their own respective SN constitutions[5] and govern their affairs by the same. This has created explicit potential and possibility for dual but interrelated constitutionalism in FDRE. As the SN constitutions in federal states are part and parcel of the entire constitutional structure of the systems and play a vital role in giving the systems a direction,[6] SN constitutions in FDRE should be treated as such. The federal system in FDRE should also well be conceived as a system that needs to setup a notion of national and SN constitutional law as complementary partners in a complex collective scheme of constitutional self-governance. Thus, studies relating to Ethiopian recent constitutional process have to be directed towards analyzing the generation, development, interpretation,

[1] In this work, 'subnational units (SNUs)' refer to the sphere of governance immediately below the national government. Similarly, 'subnational government (SG)', 'subnational constitution', and 'subnational constitutionalism' refer, respectively, to 'government', 'constitution', and 'constitutionalism' in SNUs.
[2] Constitution of the Federal Democratic Republic of Ethiopia (CFDRE), Proclamation No.1/1995, *Federal Negarit Gazeta*, Year 1 No.1, Arts 1, 46 (1) & 50 (1).
[3] Nine SGs are established on the basis of the settlement patterns, language, identity and consent of the peoples concerned. CFDRE, Art.46 (2).
[4] CFDRE, Art.52 (2).
[5] CFDRE, Art.50 (5).

[6] Daniel J. Elazar (a), 'From the Editor of Publius: State Constitutional Design in the United States and Other Federal Systems,' *Publius*, Vol. 12, No. 1, (1982), p.1.

and enforcement of constitutional norms both at the national and SN levels.

This work deals provides a theoretical study of aspect of the current complex constitutional process. Though SN constitutionalism is often identified with written SN constitutions, not all SN constitutional texts are committed to the principles and serve the ends of SN constitutionalism. Enacting SN constitutions does not guarantee SN constitutionalism as SN constitutionalism needs adherence to values/norms, institutions and procedures of prominence. Therefore, whether SN constitutions in a given state adhere to the dictates of SN constitutionalism cannot be determined without some sort of normative evaluation. FDRE is not an exception to this. Like in the other federal states,[7] whether the existence of SN constitutions indicates a corresponding emergence of robust practice of SN constitutionalism has remained unclear in FDRE, too.

Thus, this work tries to evaluate how the SN constitutions in FDRE fare with the dictates of SN constitutionalism. It would point out some of the facts that go hand in hand with the development of robust constitutionalism at SN level on the one hand and that hinder such development on the other. This would be made in four parts. The first presents the meaning and presuppositions of SN constitutionalism as it is employed here. Part two gives brief overview of the path taken towards

[7] James A. Gardner, In search of subnational constitutionalism, A paper prepared for Seventh World Congress (SWC), International Association of Constitutional Law (IACL), Athens, Greece, June 11-15, 2007, Buffalo, Legal Studies Research Paper Series, Paper No. 2007-016, p.1.

SN constitutionalism in Ethiopia in light of constitutional development of the country. Part three shows some facts that are consistent with and others that present challenges to the emergence of robust SN constitutionalism in FDRE. Finally, a brief conclusion would be made.

2. Subnational Constitutionalism: What is it? What does it presuppose?

2.1. Preliminary considerations

Though constitutionalism is a concept attracting various meanings, here it is taken as a notion referring to several factors serving as indices by which degrees of constitutionalization can be measured. Particularly, it includes the following imperatives: government founded, defined, governed and directed by a constitution, and whose power is constrained by laws, the constitution being the supreme law;[8] addressing the relationship between the national and the other levels of governance, which are emerging and constitutionalized, and the issue of adequate allocation of competences so as to establish legitimacy and coherence of the entire constitutional system;[9] presence of precondition favourable to the establishment of peace and security, and the promotion of tolerance and diversity;[10] popular sovereignty and democratic government (especially, with separation of powers or other checks and balances; and,

[8] Bernard Bekink, 'The intrinsic uneasy triangle between constitutionalism, secularism and the right to freedom of religion- A South African Perspective,' *TSAR*, Vol.3 (2008), 481.

[9] Thomas Cottier and Maya Hertig, 'The prospects of 21st Century constitutionalism,' *Max Planck Yearbook of United Nations Law*, Vol.7, 2003, 261-328, p.298.

[10] Andras Sajo, Limiting Government: An introduction to constitutionalism, 2000, p.10.

an independent judiciary);[11] presence of legally defined limits on the power of the majority;[12] institutions to monitor and assure respect for the constitutional blueprint, limitations on government, and individual rights;[13] respect for self-determination;[14] and, legitimacy of a constitution, which results from the support (willful acceptance and internalization) of the constitution by the people.[15]

2.2. Subnational Constitutionalism: What is it?

This work conceives SN constitutionalism as a concept referring to application of constitutionalism as given above at SN level, *mutatis mutandis*. Besides, SNCM has, at least, two fundamental perspectives: perspective of *process* and perspective of *result.*[16] The former refers to the dictates of constitutionalism; whereas, the latter refers to the end results of the former. I focus on the first perspective as it is facilitator of achieving SN constitutionalism in a given SNU.

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[11] Larry Catá Backer, 'Theocratic Constitutionalism: An introduction to a new global legal ordering,' *Indiana Journal of Global Legal Studies*, Vol.16 No.1 (2009), p.100.

[12] Jon Abbink, 'Ethnicity and constitutionalism in contemporary Ethiopia,' *Journal of African Law (JAL),* Vol.41, p.160.

[13] Louis Henkin, A new birth of constitutionalism: Genetic influences and genetic defects, in *Constitutionalism, identity, difference and legitimacy: Theoretical perspectives* (Michel Rosenfeld ed., 1994), pp. 40-42.

[14] The same as above. The right to choose, change, or terminate political affiliation. The same as above.

[15] Vivien Hart, Democratic constitution making (U.S. Inst. for Peace, Special Report No. 107, 2003). Sam Brooke, Constitution-making and immutable principles, (MA Thesis, Tufts University, The Fletcher school, 2005), p.7.

[16] SHI Shifeng, Towards Multiple-Constitutionalism: A New Paradigm for Constitutional Reform in China?, A paper for the SWC of the IACL, Athens 11-15 June 2007, Workshop 11, p.3.

2.3. Subnational Constitutionalism: What does it presuppose?

SN constitutionalism presupposes some conditions relating to constitutional structure in a country.[17] First, it requires existence of, at least, two levels of domestic governance in a country. Second, it presupposes a domestic structure that basically involves these levels. Third, it demands all levels should be allowed to have their own respective constitutions.[18] Fourth, it requires these levels of governance have respective constitutional space. Finally, it calls that all the requirements need to be constitutionally entrenched at national level.

As far as the CFDRE is concerned, this writer assumes that these presuppositions are arguably fulfilled.[19] Therefore, the fulfillment of these preconditions can be seen as a promising factor for the development of SN constitutionalism.

3. The Path Taken: Overview of the Transitional Period

In May 1991, the Ethiopian People's Revolutionary Democratic Front (EPDRF) took over power.[20] Soon after (from July 1-5, 1991) a national Peace and Democracy Conference, was called and convened by EPDRF in order to adopt the TPC and establish a Transitional Government (TG) as blueprinted therein.

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[17] The same as above.
[18] SHI Shifeng, at note 16 above, p.2.
[19] CFDRE, Arts 46-52, requirement (R)1; Arts 1, 47-52, 94-105, R2; Art.50 (5) R3; Arts 50-52, 94-105 R4; R1, R2, R3 & R4 are entrenched under the CFDRE adopted at national level, R5.
[20] S. Vaughan, *The Addis Ababa Transitional Conference of July 1991: Its origins, history and significance*, (Centre of African Studies, Edinburgh University, 1994), pp. 5-6.

The TPC affirmed the right of NNPs to self-determination and to administer their own affairs within their own defined territories.[21] Thus, it demanded the creation of 'local and regional councils...defined on the basis of nationality.'[22] Shortly after, a proclamation was issued to this effect.[23] Ethiopia was divided into 14 SNUs.[24] The arrangement had also provided SN structure through which 'minority nationalities' could participate in SN politics.[25] Of the powers given to SNUs, SN constitution making power is important for this work. State Councils were empowered to issue SN constitutions in their respective territory.[26] Some specific or 'special' powers of economic, fiscal, and administrative nature were also granted to SNUs.[27] This put the welcome mat for sub-nationalism, SN constitution making and SN constitutionalism.

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[21] TGC, Art.2.

[22] TGC, Art.13.

[23] The National/Regional Self-Governments Establishment Proclamation No.7/ 1992 (Proclamation No.7/1992). "'Nation' or 'nationality' means a people living in the same geographical area and having a common language and a common psychological makeup". Proclamation No.7/1992, Art.2 (7).

[24] Proclamation No.7/1992, Art.3. The SNUs were called National Regional Transitional Self-Governments.

[25] T. M. Vestal, *Ethiopia A Post-Cold War African State*, (Westport, Praeger, 1999), p.7; S. Fullerton Joireman, 'Opposition Politics and Ethnicity in Ethiopia: We Will All Go Down Together,' *JMAS* (1997), pp399-400.

[26] TGC, Art.15 (1). It had the powers to issue SN laws; to establish the various organs of the SNU, and define the powers, appoint the officers and supervise the activities of the same; and, to, generally, exercise the 'special' SN powers. Power to elect the Executive Committee, and the Chairman and Secretary of the State Council among its members; to determine the seat and the working language of the state government; to negotiate and approve agreements concluded with adjacent SNUs with respect to national and border matters. Proclamation No.7/1992, Art.15.

[27] Proclamation No.7/1992, Art.10. The powers included the power to borrow from domestic sources, to impose and collect dues and taxes, and to prepare, approve and implement their respective budget; to plan, direct and supervise social and economic development programs in accordance with the relevant policy of the TG; to administer, develop and protect the natural resources in their respective territory in accordance with the relevant general policy and law of the TG; to establish and direct security and police forces for maintaining the peace and security within SNU; and, to establish SN courts. Proclamation No.7/1992, Art.10 (3), (5) (6), (8), (9).

However, the move towards SN constitutionalism was not promising.[28] First, it was boldly proclaimed under the TPC that the TG 'shall exercise all legal and political responsibilities for the governance of Ethiopia.'[29] Thus, the ultimate government power rests with the central government.[30] Besides, the TPC established the organs of the TG only, organs of SNUs were established by an ordinary proclamation, of course, with a backup from the TPC.[31] In addition, SNUs were unequivocally declared to be entities subordinate to the TG in every aspect.[32] The state council, which was 'the repository of overall political power regarding the internal affairs of' the SNU, was made accountable in particular to the COR.[33]

To add to this, though the Proclamation seems to unequivocally bestow residual powers to SNUs, this was highly circumcised.[34] First, its language was not precise.[35] Second, the areas reserved for the TG were major and broad.[36] The enumerations were also open-ended. Furthermore, though the Proclamation provided that powers and responsibilities of ministries, authorities, and commissions of the TG

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[28] Opposition parties also boycotted the election for SCs which were supposed to enact SNCs. T Lyons, 'Closing the Transition: The May 1995 Elections in Ethiopia', *JMAS* (1996), p.126; S. Fullerton Joireman, at note 28 above; T. M. Vestal, at note 28 above.
[29] Fasil Nahum, *Constitution for a Nation of Nations*, (Red Sea Press, Asmara, 1997), pp.38-47
[30] The same as above.
[31] The same as above. Proclamation No.7/1992.
[32] Proclamation No.7/1992, Art.3 (3).
[33] Fasil Nahum, at note 42 below.
[34] The same as above.
[35] Proclamation No.7/1992, Art.9. Art.9 (1) reads: SNUs 'shall have legislative, executive and judicial powers in respect of all matters within their' boundaries except such matters that were specifically reserved for the TG 'because of their nature.'
[36] Proclamation No.7/1992, Art.10. They were defence, foreign affairs, 'building and administering major communications network', printing of currency, declaration of a state of emergency and deployment of the army where situations beyond the capacity of regional governments arose.

were to be proposed by the Council of Ministers and imposed that the proposal should be consistent with the powers and duties of SNUs, the ultimate decision on the proposal was to be made by the COR, a structure at central level.[37]

With respect to structure of SNUs, the Proclamation provided that each SNU has seven organs.[38] These organs could be viewed as referring to one or the other of the three conventional government organs. The state councils were legislature of the SNUs.[39] The SN executives were consisting of, among others, the Executive Committees (SNECs), which were the highest executive organs of the SNUs.[40] Each SNEC was accountable both to the Council of Ministers and to the respective state council.[41] With respect to the SN courts, the proclamation, which envisaged two parallel court systems, had established *Wereda* and superior court system in each SNU.[42]

Finally, the Proclamation had left various important areas for SNUs to determine them by SN laws. These included adoption of SN constitutions; manner of collection and utilization of SN revenue; the jurisdiction and administration of SN courts; the assignment of duties to

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[37] The same as above. S. Morrison, 'Ethiopia charts a new course,' *Journal of Democracy*, Vol.3 No.3., 1992, 129-130; John Cohen, 'Transition toward Democracy and Governance in Post Mengistu Ethiopia,' Harvard Institute for International Development, Harvard University Development Discussion Paper no.493, 1994, p6.

[38] Proclamation No.7/1992, Arts.9 &15. They were the State Council; SNEC; Judicial Organ; Public Prosecution Office; Audit and Control Office; Police and Security Office; and, Service and development Committee.

[39] The same as above.

[40] The same as above. It consisted 11- 19 members elected by the State Council among its members. The same as above.

[41] The same as above.

[42] The same as above.

the SN Prosecutor; and, the powers and duties of *Kebele*s and Higher and similar areas.[43]

Having regard to the above discussions, it can be seen that a remarkable step with respect to entrenching SN constitutionalism was made during the TP like never before. Some of the promises and pitfalls to SN constitutionalism witnessed during this time are briefly provided below:

Promises:

- Establishment of SNUs with designated areas of SN competence;
- Authorization of SNUs to enact SN constitutions and establish SN Audit and Control Offices;
- Determination to realize self-rule by the TG as manifested by the adoption of the TGC and the proclamation;
- Protection of minority ethnic group (nationalities) under the Proclamation;
- Diffusion of the inclusive participation witnessed at national level during the adoption of the TGC to SNUs;
- The attempt to ensure accountability of the state governments to the electorate by making SN executives accountable to subnational constitutions, which are elected by the people; and,
- The possibility available for interpretation of the TGC by the SN judiciaries, at least, in cases involving constitutional issue, and one or more SN government organ or residents of a given SNU

[43] Proclamation No.7/1992, Arts 9,10 & 15.

are parties. This is because, the Self-Government set-up by then does not provide for a constitutional court.[44]

Pitfalls:

- Limited experience of democracy and SN constitutional-making experience;
- Limited human power in the courts for judicial review;
- Ambiguous and limited SN constitutional space;
- Empowering state councils constitutions to enact SN constitutions that seems to curtail the direct but only indirect participation of the people in SN constitution- making process;
- Little popular participation in the making of SN constitutions;
- Little effort to create SN constitutional knowledge to the people;
- Lack of separation of powers as the SNECs and the state councils have the same members; and,
- A broad role of the TG in controlling SNUs, including accountability of state councils to the COR, and, accountability of SNECs to the Council Ministers of the TG.

4. Subnational Constitutionalism in FDRE: Some Promises and Challenges/Pitfalls

SN constitutions, SN constitution-making process and SN constitutionalism in FDRE can partly be viewed as outcome of lessons taken from the SN constitutional practice during the Transitional Period.

[44] However, in cases of constitutional disputes involving the TG and a SNU, or arising between two or among more SNUs, it appears that, possibly, the COR will be the arbiter. S. Morrison, at note 37 above; John Cohen, at note 37 above.

Therefore, in order to give a comprehensive insight to the SN constitutionalism in FDRE, the significance of the previous brief discussion should not be undermined. Having said this, I would proceed to other points of consideration.

4.1. Authorizing subnational constitutions: The case of FDRE

To begin with, studies relating to SN constitutions have been very limited regardless of their duration of existence.[45] The significance of SN constitutions as independent sources of law has also been emphasized only recently.[46] In countries like the US, SN constitutions are frequently celebrated as alternative, if not second, source of justiciable rights.[47] Moreover, SN constitutions differ in their contents from place to place[48] and in some states guarantee wider protections for individual rights than national constitutions.[49]

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[45] Robert Williams, 'Introduction,' *Rutgers Law Journal (RLJ),* Vol.39, No.4 (2008), pp.799- 800.

[46] The same as above; Jonathan L. Marshfield, 'Authorizing Subnational Constitutions in Transitional Federal States: South Africa, Democracy, and the Kwazulu-Natal Constitution,' *Vanderbilt Journal of Transnational Law*, Vol.41 (2008), pp 585-638.

[47] Jonathan L. Marshfield, at note 46 above, p.587.

[48] Ronald L. Watts, 'Provinces, States, Lander, and Cantons: International variety among subnational constitutions,' *RLJ*, Vol.31 (2000), pp 941-959; Jonathan L. Marshfield, at note 61 above; John Dinan, 'Patterns of subnational constitutionalism in federal countries,' *RLJ*, Vol.39 No.4 (2008), p.838; Campbell Sharman, at note 26 above.

[49] G. Alan Tarr, 'Subnational Constitutions and Minority Rights: A Perspective on Canadian Provincial Constitutionalism,' *Revue québécoise de droit constitutionnel*, Vol.2 (2008), p.179; Elizabeth Pascal, 'Welfare rights in state constitutions,' *RLJ*, Vol.39 (2008), pp883-884; Arthur B. Gunlicks, 'Land Constitutions in Germany,' *Publius: Journal of Federalism*, Vol.28 (1998), pp 121-122. One reason, 'constituent units may wish to safeguard rights that are of particular concern to their residents.'

The practice in decentralized states around the world tells that not all of them have authorized SNUs to write SN constitutions, and that SN constitutions differ in their contents, structure and creation. Peculiarities existed as the reason for decentralization varies.[50]

Coming to FDRE, the system represents a different federal practice. Though, the CFDRE authorizes SNUs to write SN constitutions, it neither obliges them to do so nor it explicitly requires SN constitution for admission of new SNU into the federation.[51] It simply empowers SNUs to write SN constitutions. SNUs have the discretion to write their respective constitutions. The practice so far shows that SNUs are created by the CFDRE and are automatically made members of the federation. Besides, CFDRE says that '[w]hen ... a new [SNU] [is] created by ... referendum, [it] directly becomes a member of the [FDRE, without any need for SN constitution].'[52]

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[50] Daniel J. Elazar (b), at note 24 above, 178; John Dinan, at note 63 above, pp.839-840; Daniel J. Elazar, at note 6, especially, p.6-10. For instance, the US federalism requires SNUs to adopt SN constitutions before admission into the Union. US Constitution, Art.IV, *Sec* 3, *C* 1. In contrast, India does not allow SNUs to write SN constitutions. Indian Constitution, Art 3, 168-212; Daniel J. Elazar, at note 6 above; Jonathan L. Marshfield, at note 61 above, p.588. The Republic of South Africa has a system that can be viewed as a unique blend of these two systems. The National Constitution allows SNUs to adopt SNCsand at the same time discourages them to do so. Constitution of the Republic of South Africa, (CRSA) 1996, Secs 104 (1) (a), & 142-145. SNUs in the RSA are known as Provinces. Only two SNUs (KwaZulu-Natal and Western Cape) attempted to write SN constitutions and only one of them (the latter) succeeded to adopt after a tiresome certification process. It leaves a very limited space for SN constitutions, CRSA Sec.143, which may compel SNUs to even question the need for SN constitutions. Again, CRSA needs certification of SNCs, Sec.144, which is tiresome (as the Constitutional Court seriously examines every article of the SN constitution); embodies a set of rules that serve as SN constitutions, Secs 103-141.

[51] CFDRE, Arts 47 (1) & 50 (5).

[52] CFDRE, Art.47 (3) (e). To be created by NNPs concerned.

From the foregoing follows *why did all SNUs in FDRE adopt SN constitutions?* They adopted SN constitutions for practical reasons. This would be better shown by discussing the significance of SN constitutions and their link with CFDRE.

4.2. Significance of SN Constitutions and their link with the CFDRE: Theoretical Overview

A principal feature of federal systems is that they rely upon fixed constitutional arrangements for their maintenance and to secure those objectives for which they are established.[53] Those arrangements are often provided in written constitutions which concretize constitutional positions at the time of their adoption and serve as the basis for further constitutional development within the state.[54] Similarly, the federal system in FDRE is entrenched through a written constitution, the CFDRE, which has all these intents and purposes.

In its design, the federalism in FDRE reflects the system of 'shared and self-rule'. It establishes a system that unites nine SNUs and the federal government within a more comprehensive political system and that allows the SNUs and the federal government to maintain their respective fundamental political integrity as it articulates and expresses diversities of the Ethiopian society. As federalism is said to signify 'unity in diversity' in a society, this is particularly true of the Ethiopian federal system. The CFDRE provides for norms on matters that recognize diversity and promote 'unity' of the country; whereas, the SN

[53] Daniel J. Elazar, at note 6 above.
[54] The same as above.

constitutions are supposed to embody particularly provisions on matters that reflect 'diversity' of the respective SNUs.

Just like CFDRE, the SN constitutions are based upon certain underlying principles and traditions of constitutionalism and constitution making at SN level. Therefore, they are meant to be written in such a way that they reflect SNUs are distinct entities of 'self-rule' within the broad structure of federal governance in FDRE. The underlying principles, purposes, contents and objects of the SN constitutions may also vary given their particular underlying principles, which may result from societal diversities in the SNUs. The SN constitutions are also part and parcel of the entire constitutional structure of the Ethiopian federal system and are pivotal in shaping the entire federal system in the country. Thus, the federal system in FDRE should be conceived as a system that needs to establish a conception of national and SN constitutional laws as complementary partners in a complex and collective venture of constitutional self-governance.

As the CFDRE and SN constitutions are part and parcel of the entire constitutional process in FDRE, the CFDRE is of importance to SNUs for various reasons. First, the CFDRE has had the historical role of being the agency through which SNUs have been established. Second, it provides the constitutional structure for the entire federal system, i.e. the basic constitutional framework for Ethiopia as a federation and for the creation of federal government and state governments with designated areas of concern. Third, the scope of SN constitutions can to a larger part only be defined negatively to provision of the CFDRE as SNUs are given residual

powers.[55] Thus, the CFDRE has only partly defined SN governmental powers expressly. Other SN powers are put only ambiguously. This shows that whatever mechanism of craving out the powers of SNUs may be followed[56], it is difficult to clearly define SN powers without SN constitutions.

Besides, the CFDRE, in its treatment of the state government structure, defines some of the machinery and processes of government at the SN level and puts them beyond the ability of SNUs acting alone to change them.[57] However, the CFDRE says very little about most of the significant matters of governmental structure and operation at SN level.[58] It says very little about matters of SN governmental structure and operation, and scope of powers and ambit of operation of SNUs. As a result, these matters fall within the ambit of SN constitutions. This is advantageous to come up with SN constitutions that well reflect fundamental values of the NNPs in the SNUs. Moreover, SN

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[55] CFDRE, Art.52 (1). It tells that residual powers are 'All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States.'

[56] For instance, SN constitutions may be made in co-operation with the House of Federation of the federal government or individually by the SNUs as there is no any rule which prohibits so. However, the practice shows that the federal government provides for a draft SN constitution and SNUs adopt it.

[57] CFDRE, Arts 50, 78,79,80,81, 99, 101-103 cum. Art.105 (2).

[58] Structure of SGs and accountability of SN legislatures. CFDRE, Art.50 (2) - (9). Independence, structure, tenure and jurisdiction of the Judiciary of the federal government and SNUs. CFDRE, Arts78, 79, 80 & 81. For instance, the CFDRE requires the SNUs to have freely elected legislatures accountable to the electorate but it does not define, for instance, their terms of office and frequency of election. CFDRE, Art.102. It says little about the mode of representative government to be adopted by the SNUs, the nature and/or structure of SN legislatives, executives and judiciaries in the SNUs beyond a general description of their powers. CFDRE, Art.50 (3)- (6).

constitutions are significant to expand the scope of SN governmental powers as SNUs are given residual power under the CFDRE providing such an opportunity.

Moreover, though the CFDRE enshrines fundamental rights and freedoms, it does not prohibit SNUs from including human rights provisions in SN constitutions. Thus, SN constitutions may include additional rights and be additional/second sources of justiciable rights and/or means to constitutionalize some more rights not lifted to such level under the CFDRE.

As complementary partners in a complex, collective enterprise of constitutional self-governance in FDRE, SN constitutions are, for instance, essential in realizing the object of NNPs to 'build a political community founded on the rule of law and capable of ensuring lasting peace, guaranteeing democratic order, and advancing economic and social development.'[59] They provide the complete and predefined government structures through which NNPs realize their sovereignty[60] and the concomitant right to democratic participation in public affairs, and the representation and accommodation of societal- ethnic, cultural, and linguistic- differences at SN level.[61]

[59] CFDRE, preamble, para.2.
[60] CFDRE, Art.8. A norm provided under this provision.
[61] CFDRE, Arts 5, 34 (5) & 39. The rights provided under these provisions.

They are also important with respect to CFDRE's object to grant adequate government power to the lowest units of government.[62] First, SN constitutions would serve as a means to create such lowest units. Second, SN constitutions enable such units enjoy greater protection as they will not be abolished or altered without amendments to SN constitutions, which are not often easily made.

Thus, SN constitutions in FDRE serve important purposes. There is very considerable scope for the SNUs to shape the nature and mode of their government through the medium of SN constitutions. SN constitutions, in sum, provide the contextual logic for SN politics and governance. This makes them essential in order to understand the SN governmental process. This, in turn, indicates that understanding the process, fundamental principles and values, and practices of each SN constitution is significant in understanding the SN constitutionalism in the respective SNU. Therefore, examination of the CFDRE indicates that the style of constitutionalism in a SNU is largely a matter of SN concern.

Finally, it is important to mention that the CFDRE jealously guards norms that reflect national identity/unity against intrusion by any custom, practice, decision, and law including SN constitutions.[63] Therefore, SN constitutional norms shall be in line with or, at least, not be contradictory to the national constitutional norms. Moreover, the CFDRE clothes the federal government with powers to impinge directly in areas under the

[62] CFDRE, Art.50(4). to enable the people to participate directly in the administration of such units.
[63] CFDRE, Art.9 (1).

competence of state governments;[64] categorically provides that the potential has existed for the federal institutions, which are beyond the control of the SNUs, to affect the conduct of government at the SN level;[65]obliges state governments to respect and protect the fundamental rights and freedoms it enshrines;[66]and, requires SNUs to ensure observance of the CFDRE and to obey it.[67]

5.3. Examination of Promise and Challenges to Subnational Constitutionalism in FDRE

5.3.1. Examination of the federal structure (CFDRE itself)

It is undeniable that CFDRE has laid down clear basis for the emergence of SN constitutionalism and resulted in a concrete progress in the realm of self-governance. Nonetheless, a closer examination suggests that the CFDRE informs mixed results with respect to SN constitutionalism.

The CFDRE is promising for the emergence of SN constitutionalism for, at least, three reasons. First, it establishes autonomous SNUs with SN

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[64] CFDRE, Arts 51 (14), 55 (16) & 62 (9). This may be taken as one fact hampering the robust development of SN constitutionalism in FDRE.

[65] Particularly, the Federal Supreme Court and its cassation power; the House of Federation and constitutional interpretation, allocation of undesignated taxation powers, decisions on which civil laws should fall under the ambit of SNUs, decision on division of revenue and grant of subsidies, resolution on intervention into SNUs if any SNU (in violation of the CFDRE) endangers the constitutional order; Human Rights Commission and Ombudsman through observation of violation of human rights; and, House of Peoples' Representatives through legislation, ratification of treaties and international agreements, resolution to intervene into SNUs when SN authorities are unable to arrest violations of human rights within their jurisdiction, and other powers. CFDRE, Art.80 (3) (a); Arts 62 (1) & 83, Art.99, Art.62 (8), Art.62 (7), and Art.62 (9); Art.55 (14) & (15); and, Art.55 (1) (12) & (16), respectively.

[66] CFDRE, Art.13 (1).
[67] CFDRE, Art.9 (2).

matters.[68] Second, it empowers SNUs to adopt SN constitutions. Third, by establishing state governments and giving, to some extent, their structures,[69] it informs norms consonant with SN constitutionalism: the principle of separation of powers, accountability of subnational constitutions and judicial independence at SN level.[70] However, given the manner of power allocation, it poses serious challenge to the development of SN constitutionalism. First, all the crucial powers are given to the federal government; whereas, state governments are left only with little powers. Of course, by looking into the list of powers there seems much power is given to state governments; however, these powers are lost because of the claw back clauses[71] under the CFDRE itself.[72] Thus, the constitutional space left for SNUs is very much limited impacting upon the scope and importance (with respect to matters) of SN

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[68] CFDRE, Arts.47 & 51, particularly sub-art.(8).

[69] CFDRE, Art.50 (2) & (5).

[70] CFDRE, Arts 50 (2), & 78-81. Institutional and financial independence of the judiciaries is provided therein.

[71] Like clauses on policy and law making, fiscal matters and subsidy, the power to determine the mode of selection for public officials, their term of office, and to 'establish qualification for voting for officials' of SNUs, etc.

[72] This is why some writers say that the CFDRE and the federalism under it are of a 'centripetal character.' John Young, 'The Tigray People's Liberation Front', in *African Guerrillas*, C. Clapham (ed.), (Bloomington: Indiana University Press, 1998), 321; C. Clapham 'Controlling Space in Ethiopia', in *Remapping Ethiopia: Socialism & After*, W. James, D. Donham, E. Kurimoto, and A. Triulzi (eds.), (University of Ohio Press & James Curry Press, 2002), p.26; M. Gudina, Ethiopia: Competing ethnic nationalisms and the quest for democracy, 1960 – 2000, (PhD dissertation, 2003), p.121; S. Vaughan and K. Tronvoll, 'The Culture of Power in Contemporary Ethiopian Political Life', *SIDA Studies*, No.10, (2003) p.12; Jon Abbink, 'New configurations of Ethiopian ethnicity: The challenge of the South,' *Northeast African Studies*, Vol.5, No.1, p.167, 1998; Berhanu G. Balcha, Constitutionalism in the Horn of Africa: Lesson from the new constitution of Ethiopia, Development, Innovation and International Political Economy Research (DIIPER), Aalborg University, Denmark, 2009, available at http://www.diiper.ihis.aau.dk/research/3397011, accessed on Dec.15, 2009, pp.5-6. Compare also CFDRE Art.51 with Art.52. In addition, SNUs do not have the power to determine the mode of selection for public officials, their term of office, and to 'establish qualification for voting for officials' of SNUs and their constituent units.

constitutionalism. The concentration of policymaking, financial and budget allocation powers in the hands of the federal government also show centripetal nature and impacted on SN constitutionalism. To make matters worse, SNUs do not have any role in debating the policies and in proposing legislation formulated at the federal level, unlike other federal systems, such as the German, Canadian, Nigerian and Mexican that have given more power of this kind to SNUs.[73] In addition, the SNUs in FDRE have very narrow, if any, access to challenge decisions made by the House of the Federation and Council of Constitutional Inquiry, 'which are structured within the jurisdiction of the federal government,' in issues concerning constitutional disputes.[74]

Besides, SNUs, which are given limited revenue sources, have weak capacity in terms of human power. This makes them highly dependent upon the federal government. It also limits capacity of SNUs to establish SN institutions necessary to oversee the acts of SN officials and ensure that they act within the bounds of the SN constitution or to entrench SN constitutionalism. This is worsened by inability of victims to hire independent legal professionals' services due to either inadequate availability and/or inability to afford their fees.

Finally, though SNUs may include rights embodied in human rights instruments ratified by the House of Peoples' Representatives (HPR) in their laws, the assignment of disputes arising from violation of rights

[73] Jon Abbink, at note 72 above, p.167; Berhanu G. Balcha, at note 72 above.

[74] Berhanu G. Balcha, at note 72 above, pp5-6.

under these instruments to the federal judiciary has limited the role of SN judiciaries in adjudicating cases involving such instruments.[75] The mere inclusion of these rights under SN constitutions does not make such cases subject to the jurisdiction of SN judiciaries.[76] This has caused confusion on the role of SN judiciaries and ultimately curtailed the enforcement of human rights claims by SNUs.

5.3.2 Lost Opportunities for SN Constitution: Two SN constitution making processes

Since the CFDRE, FDRE has witnessed two remarkable opportunities for SN constitutionalism. The first was the process of making SN constitutions observed soon after the adoption of the CFDRE. During that time, SNUs were heavily reliant on the federal government as they 'used a model draft prepared by the then States' Affairs Desk of the Federal Prime Minister'[77] in making their respective SN constitutions. As a result, SN constitutions were similar in the legal/political language used, and in the drafting styles and techniques with CFDRE, and among themselves, too.[78] This also showed that SNUs were highly engaged in copying the CFDRE and SN constitutions issued by some fast-moving state governments, and subjected to indoctrination by the federal government[79] and such state governments. The second SN constitutional-making process took place from 2001 to 2002.[80] In this period, SNUs

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[75] Federal Courts Proclamation No.25/1996, Federal Negarit Gazeta, 2nd Year No.13, Arts 3 (1) & 5 (2), 6 (1) (a).
[76] CFDRE, Art.9 (4).
[77] Tsegaye Regassa, State Constitutions in Federal Ethiopia: A preliminary observation (A Summary for the Bellagio, Conference, March 22-27, 2004), p.8.
[78] The same as above.
[79] Tsegaye Regassa, at note 77 above, p.7.
[80] A period known as the 'third wave of decentralization.'

were 'required' by the federal government to revise their SN constitutions in order to devolve power to the lower level of SN structure (*Wereda* and *Kebele* administrations) and to inculcate some constitutional principles[81] and the procedure through which the right to self-determination[82] can be exercised.[83]

These processes evinced practices promising and challenging to the development of robust SN constitutionalism in the country. In the first process, though the mere fact of writing SN constitutions and the consequent inclusion of some constitutional principles therein provided practices consistent with entrenching SN constitutionalism, the process was highly encased by factors that hinder the development of a robust SN constitutionalism. First, SNUs were engaged in copying the draft by the federal government, CFDRE and other SN constitutions, which were issued a short time prior to them. Second, SNUs were subject to indoctrination by the federal government and fast-moving SNUs, at least, through the copying syndrome. Third, during this process, most, if not all, of the SN constitutions had resulted from a procedure that hardly involved the NNPs in the SNUs as they were more often than not

[81] Such as the principles of separation of powers, check and balance, transparency, public participation, accountability of SGs and efficient state structure. A Proclamation to Provide for the Revised Constitution of the Afar Regional State, Proclamation No. 14/2002 (Afar Con.), Preamble, para.5; A Proclamation to Provide for the Revised Constitution of the Benishangul Gumuz Regional State, Proclamation No.31/2002 (BG Con.), Preamble, para.5; Oromia Regional State Revised Constitution, Proclamation No.46/2001 (Oromia Con.), Preamble, para.4.

[82] This is a right provided under the CFDRE, Art.39 (1).

[83] The same as above.

exclusively drafted by the Legal Standing Committees of the respective SNUs and simply adopted by legislatures of the same.[84]

These realities hindered the development of not only SN constitutionalism but also a diversified and contextualized trend of SN constitutionalism. Because, they compelled SNUs to think and operate within a given domain; to fail to see the possibility of widening the scope of their powers which they can do as they are given residual power under the CFDRE that may afford an opportunity for the development of SN constitutionalism in broad areas; and, to fail to take due consideration of their peculiar circumstances that may present a fertile ground for the development of SN constitutionalism in their respective contexts. Finally, they may negatively hamper attitude of the NNPs in the SNUs for two reasons.

First, they might create a shadow of doubt on the identity of the state governments on the part of the NNPs as the SNUs tended to be highly influenced by demands of the federal government than SN needs. Second, as NNPs were also not involved in the SNC making process, they could lack sense of 'our constitution' feeling on the one hand and could strongly develop sense of 'its (the state government's) constitution' on the other. These wash away the public trust required to establish SN constitutionalism, to which Ethiopians in general and the NNPs in the

[84] Tsegaye Regassa, at note 77, p.7. Thus, they did not pass through the conventional stages the CFDRE had passed through. Tsegaye Regassa, at note 88, pp.6-7. CFDRE passed through the following stages: drafting by Constitutional Commission, and deliberation by the public or representatives elected for such purpose and for adoption [Constitutional Assembly].

respective SNUs struggled to secure, and have little capital at their disposal. Public trust is important in the development of SN constitutionalism.

In the second SN constitutions making process too, there were factors that had presented both promises and challenges to the development of SN constitutionalism. In addition to the promising facts discussed in relation to the first process, the reasons for the second SN constitution-making process presented promising move towards entrenching SN constitutionalism.

Coming to the factors posing challenges, the following are worth mentioning. First, the second SN constitutional- making process was not the result of SN initiatives but an 'order' handed down from the federal government.[85] This contradicts the power of SNUs to amend their SN constitutions granted under the CFDRE and goes against amendment provisions of SN constitutions, which did not empower the federal government to initiate amendment of SN constitutions.[86] This showed that SNUs are under the pressure of the federal government even on matters (to amend and repeal SN constitutions) under their competence. Second, the NNPs in the SNUs were not also involved in the second SN constitution- making process as the SN constitutions were drafted by different organs without direct public involvement and simply adopted by the respective SN legislatures. These practices have tarnished the public trust on the autonomy of SNUs. This, in turn, presented a challenge to

[85] Tsegaye Regassa, at note 77 above, pp7-9.
[86] See, for instance, the Constitution of the Federal State of Tigray, 1995, Art.99.

create public trust that is necessary to entrench constitutionalism at SN level. The possibility of development of independent SN constitutionalism (constitutionalism that reflects the actions of SNUs without any interference from the federal government) is also curtailed. Third, at this time, SNUs were 'required' to accept draft constitution prepared in the form of fit-all jacket and they did so within a very short period one cannot imagine to be sufficient to amend a constitution, which is a fundamental document and that has to go through stringent requirements.[87] This hampered the possibility to expand the areas of SN constitutionalism (as the constitutional space was limited) and a diversified SN constitutionalism (as SNUs had no adequate time to see into their peculiarities).

1.3.3. Overview of SN Institutions Necessary for Constitutionalism

Independent institutions that serve as watchdog over acts of organs of state governments and that foster democratic SN governance are central to ensure a robust SN constitutionalism. Consistent with this, SN constitutions in FDRE have empowered their respective State Councils to establish 'institutions necessary for the promotion of social services, economic development and building democratic system.'[88] This formulation is different from the one adopted under the CFDRE.[89]

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[87] Tsegaye Regassa, at note 77 above, p.6.

[88] Afar Con., Art.47 (3)(m); BG Con., Art.49 (3)(12); Oromia Con., Art.49 (3) (k). However, the Oromia Con. employs different language that tends to limit the nature of institutions that may be established. It says 'Establish institutions necessary for expanding social service and fastening economic developments.'

[89] The CFDRE empowers the HPR to establish a Human Rights Commission (HRC), the institution of the Ombudsman, the Office of Auditor General (OAG) and National

The SN constitutions are promising for the development of SN constitutionalism as State Councils are given wider discretion than the HPR to create and establish various institutions that foster SN constitutionalism. This is true only if the State Councils are committed to democracy and SN constitutionalism. Lacking such commitment, however, the formulation of the SN constitutions may pose more serious problem to the development of SN constitutionalism than the CFDRE is to the development of national constitutionalism; because, SNUs may justify their failure to establish such institutions under the pretext of lack of explicit obligation to establish them unlike the HPR, which is compelled to establish specific institutions. To add to this, the SN constitutions tell that establishment of any such institution is dependent upon a single ground that is hardly reachable by the NNPs as the decision on this fact is exclusively under the competence of the State Councils. So far, however, it appears that State Councils are somehow committed towards ensuring SN constitutionalism as most of the SNUs have already established anti-corruption commissions at SN level.

Finally, SN constitutions require State Councils to establish SN 'Audit and other Control (or inspection) office'.[90] However, the effectiveness of such institutions is arguable as the Heads, especially the Auditor General

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Election Board (NEB), and to determine their powers and functions by law. The HPR, arguably, is not empowered to establish other institutions. Besides, its power and involvement in the establishment the HRC, OAG and NEB is circumcised as the wordings of the CFDRE suggest that the HPR is not empowered to select and appoint the members of these institutions except for the Ombudsman institution. In case of the HRC, OAG, and NEB, the HPR has only the power of approval of a nominee selected and submitted to it by the Prime Minister. See, CFDRE, Article 55 (13), (14) (15), 74 (7), 101 & 102.

[90] Afar Con., Art.47 (3)(h); BG Con., Art.49 (3)(8); and Oromia Con., Art.49 (3) (f).

(AG) and Deputy-Auditor General (DAG) of the SNUs are to be selected and nominated by the Chief Executive (CE)[91]who is the Managing Head and Chairman of the Executive Council, and President of the SNUs.[92] The State Councils are only empowered to approve such nominations.[93] Having regard to the powers and functions of OAGs,[94]it is possible to see the problem that may arise from giving the power to select and nominate the AG and DAG of OAG to the CE, which is the most important organ to be audited and inspected by the OAG. However, the SN councils have attempted to minimize the undesired effects of such arrangement in three ways.

First, they have tended to ensure financial independence of the OAGs as they entitle the AGs to prepare their annual budget by themselves, submit their annual budget directly to the State Councils for approval, and use their budgets upon approval by the same.[95] Second, they have made the AGs accountable to the State Councils.[96] This puts them under the control of the State Councils and enables a sort of check and balance on the acts of the OAGs headed by individuals selected and nominated by the CEs. Third, they have empowered the State Councils to determine the powers and functions of the AG.[97] This makes the OAGs serve the

[91] Afar Con., Art.59 (3) (d) & Art.108 (1); BG Con., Art.61 (3)(e) & Art.117 (1); Oromia Con., Art.110 (1).
[92] Afar Con., Art.59 (1); BG Con., Art.61 (1); Oromia Con., Art.57 (1).
[93] Afar Con., Art.47 (3) (f); BG Con., Art.49 (3)(6); Oromia Con., Art.110 (1).
[94] They audit and inspect the accounts of the SG institutions (especially that of the Executive) and other offices, ensure that the budget allocated by the SCs has been utilized for the activities planned within a budget year, and submit report thereon to the SC. Afar Con., Art.108 (2); BG Con., Art.117 (2); Oromia Con., Art.110 (2).
[95] Afar Con., Art.108 (3); BG Con., Art.117 (3); Oromia Con., Art.110 (3).
[96] Afar Con., Art.108 (4); BG Con., Art.117 (1); Oromia Con., Art.110 (4).
[97] Afar Con., Art.108 (5); BG Con., Art.117 (4); Oromia Con., Art.110 (5).

interest of the public by stipulating, directing and regulating their powers, functions and conduct. These demonstrate that the SNCs have seriously attempted to ensure that the OAGs should not tend to favour the organs that selected and nominated the AGs and DAGs. This shows the emphasis placed on these institutions. This, in turn, provides a promising step towards entrenching SN constitutionalism.

5.3.4. Overview of Independence of Subnational Judiciaries

CFDRE virtuously declares the independence of the judiciary at all levels.[98] Likewise, the SN constitutions boldly declare so.[99] Though this can be celebrated as a sprinter for SN constitutionalism, declaration of independence does not, in and of itself, equate to the creation of SN judicial independence. Therefore, prevalence of SN judicial independence may be assessed from various dimensions beyond such declaration in order to have a complete picture of the situation at SN level. Here, I would evaluate SN judicial independence based on one of such dimensions: SN judiciaries' relationship with the federal judiciary.

Federalism requires that FJ further 'twin policies of preserving the integrity of [SN] law and respecting the institutional autonomy of [SN] judicial systems.'[100] In the US system, the principle of comity limits potential conflicts between SN judiciaries and the federal judiciary.[101]

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[98] CFDRE, Arts 78, 79 & 81.

[99] Oromia Con., Arts 61 (1) & 63-66; BG Con., Arts 65 (1)& 67-70; and, Afar Con., Arts 64 (1) & 66 -69.

[100] L. H. Tribe, *American Constitutional Law*, (2nd ed. New York: Foundation Press, 1988), pp.196-197.

[101] L. Epstein and R. G. Walker, *Constitutional Law for a Changing America: Institutional powers and constraints*, (4th ed. Congressional Quarterly Inc., Washington, 2001), p.359.

The US Supreme Court (USSC) has established a parameter known as 'adequate and independent state grounds test,' which tells: the USSC will not resolve either the SN or the federal issues in a case so long as a SN court decision rests on adequate and independent state ground.[102] As a result, SN judiciaries are entitled to interpret their own statutes and constitutional provisions, and if their reasoning rests on 'independent and adequate' SN grounds, their decisions are not subject to review by federal courts.[103] One of the justifications for this doctrine, said the USSC, is respect for the independence of SN judiciaries.[104]

In FDRE, however, the relationship between the federal judiciary and SN judiciaries is arranged in such a way that Cassation Division of the Federal Supreme Court (CDFSC) reviews all cases decided not only by the federal judiciary but also by the SN judiciaries, including cases decided by the Cassation Division of SN Supreme Courts, so long as the decision contains 'a basic error of law.'[105] CDFSC is further empowered to interpret and apply SN laws in deciding such cases involving SN matters.[106] The problem has been aggravated by two other facts.

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[102] The same as above.
[103] The same as above.
[104] S. S. Abrahamson and D. S. Gutman, 'The new judicial federalism: State constitutions and state courts,' *Judicature*, Vol.71 (1987), p.90.
[105] CFDRE, Art.80 (3) (a).

[106] The Federal Supreme Court (FSC) 'has a power of cassation over *any final* court decision containing a basic error of law.' CFDRE, Art.80 (3) (a). 'Interpretation of a low [sic] by the [CDFSC] rendered ... with no less than five judges shall be binding on federal as well as State Councils at all levels. The [CDFSC] may however render a different legal interpretation some other time.' Federal Courts Proclamation Reamendment Proclamation, Proclamation No.454/2005 (Proc. No 454/2005), *Federal Negarit Gazeta*, 11th Year No. 42, Art.2 (2), para.1.

First, despite the efforts made to devolve power to SNUs, little has been, at least formally, done to develop ties, allegiance, or professionalism within the federal judiciary and SN judiciaries.[107] 'There is a clear divide and rivalry between the [federal judiciary] and [SN judiciaries] that hampers the development of such ties. It was reported that on the one hand [the federal judiciary acts as if it were] superior to other courts, while at the same time [SN judiciary] actively resist federal interference.'[108]

Second, both the CFDRE and federal laws are not clear as to the limits of the CDFSC's power.[109] Particularly, what constitutes 'a basic error of law' is unclear. The CDFSC can review a final decision rendered by SNJs on matters even under the exclusive competence of SNUs. Thus, 'independent and adequate' SN grounds test has no place in FDRE. In addition, SN judiciaries are required to adhere to interpretation of SN laws rendered by the CDFSC and also are prohibited to alter this interpretation subsequently as future change of such interpretation can only be made by the CDFSC.[110] Therefore, the whole structure of the judiciary has ignored the concept of respect for the independence of SN

[107] Michelle Guttman / The IBRD/WB, *Ethiopia: Legal and Judicial Sector Assessment*, (2004), p.15.
[108] The same as above.
[109] CDFSC is not prohibited to interpret SNCs as Art.80 (3) (a) of CFDRE says 'any case' irrespective of the law used in the decision and Art.2 (1), para.1 of Proc. No 454/05 too says 'a law,' without distinction.

[110] Proc. No. 454/2005, Art.2 (1), para.1.

judiciaries and has impacted upon the development of independent SN constitutionalism.[111]

2. Conclusion

In Ethiopia, the emergence and development of the constitutional process at SN level has gained a momentum after the fall down of *Derg* in 1991 in general and after the adoption of federalism in 1995 in particular. However, the existence of self-governing SNUs, which can write and administer themselves through SN constitutions, does not with certainty evince the emergence of a robust SN constitutionalism. The system entrenched exhibits both promises and challenges to the development of a robust SN constitutionalism. Given the promises, a systematic approach to tackle the challenges helps fostering SN constitutionalism in the near future.

[111] In addition, many view review power of the CDFSC over the final decisions of SNJs on matters under exclusive SN competence as reflection of the views of the FG on SNJs that has negatively contributed to the level of prestige and authority SNJs command in the eyes of the general public. This in turn has negative impact upon the development of SN constitutionalism as public trust in the SGs (as SN judiciaries are one organ of SGs) falls (given the unrestricted review power of the CDFSC).