

## ABHANDLUNGEN / ARTICLES

### Federalism in a Context of Extreme Ethnic Pluralism: The Case of Ethiopia's Southern Nations, Nationalities and Peoples Region

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**Abstract:** Today, federalism is increasingly suggested and applied as a political/constitutional mechanism to accommodate ethnic pluralism. Used for this purpose, federalism is a device that allows the protection of the rights of ethnic minorities, which in turn promotes societal stability and prevents state disintegration. These two objectives – protection of ethnic minorities and guaranteeing state unity – were the major factors inducing the introduction and development of federalism in Ethiopia since the early 1990s. The Ethiopian constitution of 1995 constitutes the legal foundation for a multicultural or ethnic federation which is composed of nine ethnic-based regional states or regions. Yet, the presence of more than 80 ethnic groups in Ethiopia has led to the fact that only a few ethnic groups have been empowered by the establishment of these regions; most ethnic groups are still a minority at regional level. This lack of overlap between regional and ethnic boundaries is most dramatically exemplified by the Southern Nations, Nationalities and Peoples Region. Far from empowering one specific ethnic group, this region is extremely multi-ethnic with dozens of ethnic minorities. The paper aims to investigate how this intra-regional ethnic pluralism is taken care of by the regional state authorities by analysing the pertinent provisions of the regional constitution and their practical operation. The analysis reveals that the regional constitution has included and designed several minority-sensitive provisions and mechanisms, which are modelled upon the provisions and devices included in the federal constitution and which are therefore strongly reminiscent of the basic features of federations. The paper evaluates these mechanisms along the lines of what is the core objective of federalism: the achievement of unity in diversity. By doing so it observes that although the regional constitution has generally found an adequate balance between both potentially conflicting aims, a number of constitutional revisions to clarify administrative interrelationships and to offer a more comprehensive minority protection are in order. The paper furthermore identifies what seems to be an increasing gap between constitutional provisions emphasising territorial autonomy and a prevalent political attitude focusing on unity and concomitant administrative integration.

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## A. Introduction

Although centralisation of power and ethnic assimilation have characterised Ethiopian state and nation building policies for the largest part of the twentieth century, a radically different approach was introduced more than 20 years ago. Since 1991, the ethnic diversity of the Ethiopian population has no longer been suppressed, but explicitly acknowledged and used as a basis for the administrative organisation of the country. The Ethiopian federal constitution of 1995 confirmed this approach by establishing nine regions/regional states delimited on an ethnic basis. It was thus attempted to achieve an overlap between ethnic boundaries and regional boundaries or – in other words – between the traditional territory of ethnic groups and the territory of the new regions. Although this led to a number of ethnic groups constituting a majority (or being empowered) in a region, e.g. the Tigray in the Tigray region, the Oromo in the Oromia region, the Harari in the Harar region... most of Ethiopia's ethnic groups still remain a minority in the regions. The Ethiopian constitution is not mute on this fact and allows ethnic groups which do not have a region of their own (i.e. the ethnic groups other than the six titular ones)<sup>1</sup> to establish a separate region.<sup>2</sup> Yet, since until the time of writing this right has not been exercised, we need to enquire about alternative mechanisms to protect the rights and interests of ethnic minorities. The constitution contains an extensive catalogue of human rights – both individual and group rights – pertinent to the protection of minorities. Indeed, besides traditional civil and political rights such as the right to equality and non-discrimination (Art. 25), freedom of religion, belief and opinion (Art. 27), freedom of association (Art. 31), freedom of movement (Art. 32), and the right to vote and to be elected (Art. 38), the constitution includes significant group rights; the major ones are listed in Article 39. The latter Article is without doubt the most hotly debated provision of the constitution, which is mainly due to its inclusion of the right to secession. The constitutional inclusion of such a right could be described as the ultimate minority protection mechanism and is indeed very exceptional.<sup>3</sup> However, excessive emphasis on this provision has often obscured the fact that Article 39 contains several other significant minority rights. Briefly speaking, the Article contains – subsumed under the concept of “right to self-determination” – three important categories of minority rights: language rights and cultural rights, the right to representation in political institutions (both at regional and central/federal level) and the right to territorial autonomy. The idea that induced the formation of the regions is that the latter are the forum where and through which the ethnic groups can exercise these different components of the right to self-determination. Hence, the establishment of an ethnic-based region is the major instrument provided by the federal constitution to guarantee the rights of Ethiopia's ethnic groups. However, since, as mentioned before, most of Ethiopia's ethnic groups do not have a region of their own, the challenge to accommodate ethnic diversity is also very much present at the level

1 Six regions are named after a specific ethnic group. These are the Tigray, Oromia, Afar, Somali, Amhara and Harar regional states.

2 Article 47(2) + (3) Ethiopian federal constitution.

3 *Ronald L. Watts*, Comparing Federal Systems, Montreal & Kingston/London/Ithaca 2008, p. 169.

of the regional states. The power of the regions to design and adopt their own constitutions, a power allotted to them by the federal constitution,<sup>4</sup> offers an excellent opportunity for the accommodation of this intra-regional ethnic diversity. The Ethiopian regions enjoy considerable constitutional space,<sup>5</sup> which allows them to decide the form of their administrative and institutional structure. This implies that both the organisation of local government and the regional institutional design are constitutionally almost entirely left to the discretion of the regions.<sup>6</sup> All regions of the Ethiopian federation have effectively used their constitutional autonomy and most of them have included minority-sensitive provisions in their constitutions. This paper will take a closer look at the constitution of the ethnically most diverse region of Ethiopia: the Southern Nations, Nationalities and Peoples region (hereafter the Southern region). The constitution of the Southern region includes instruments for the accommodation of ethnic diversity that display significant similarities with the devices included in the federal constitution and that accordingly demonstrate federal features. The paper will therefore investigate the minority-sensitive provisions of the Southern constitution along the lines of what is the core objective of a federation: the achievement of unity in diversity. Whether this objective can be achieved depends on finding the right balance between the two components; the protection of diversity should not jeopardize unity, but the quest for unity should not suppress diversity either. It is obvious that constitutional provisions and operational reality do not always converge, so that the latter aspect will also be included in the analysis.

## B. Ethnic Composition of the Southern Region

The Southern region has a population of about 15 million and an area of 110,931.9 sq. km. As is expressed by its name, the region is characterised by an extreme ethnic diversity. According to official sources, the region has no less than 56 different ethnic groups – or to use the constitutional vernacular – nations, nationalities and peoples.<sup>7</sup> Not even one of these groups has a numerical dominance. Only five ethnic groups have more than one million members (Sidama, Gurage, Wolayita, Hadiya and Gamo), whereas about 30 groups have less than 100,000 members.<sup>8</sup>

4 Article 50(5) and Article 52(2 b) of the federal constitution.

5 I borrowed this term from G. Alan Tarr who uses it to measure the discretion available to constituent units (of federations) in designing their constitutional arrangements: *G. Alan Tarr*, Explaining Sub-national Constitutional Space, *Penn State Law Review* Vol. 115:4 (2011), p. 1134.

6 The discretionary power of the regions related to local government organisation is expressed by Article 50(4) of the federal constitution, which stipulates that state (i.e. regional) governments shall be established at state and other administrative levels that they (i.e. the regions) find necessary. As far as the regional institutional structure is concerned, the federal constitution limits itself to stating that there will be legislative, executive and judicial institutions at state/regional level.

7 See the website of the Southern regional government: <http://www.snnprs.gov.et/nations.html> (last visited on 29 August 2012).

8 Data obtained from the 2007 Population and Housing Census of Ethiopia, available on the website of the Central Statistical Agency of Ethiopia: <http://www.csa.gov.et/> (last visited on 17 October 2012).

### C. Constitutional Strategy of Nation and State Building

That the Southern constitution<sup>9</sup> does not include a diversity suppressing nation building strategy is already apparent from the first sentence of its preamble. The multi-ethnic composition of the regional population is acknowledged by referring to the “Southern Nations, Nationalities and Peoples” as the founders of the constitution. The preamble furthermore expresses the constitutional commitment to protect the interests of the diverse ethnic groups by guaranteeing their (members’) individual and group rights. This reflects the view that a regional “nationalism” should be based on the recognition and protection of diversity. Yet, the preamble articulates that this is only one facet of a successful nation building strategy which additionally requires the accomplishment of unity. The latter concern is for instance echoed by the provision that “we (i.e. the Southern ethnic groups) have through continuous interactions on various forms and levels, built up common interests and outlooks”. The objective of unity in diversity is thus reflected throughout the text of the preamble.

The core constitutional Article, which aims to realise the achievement of this objective is Article 39. Article 39 is the regional copy of Article 39 of the federal constitution and therefore grants – under the heading of self-determination – the same three categories of minority rights, but in this case only to the Nations, Nationalities and Peoples of the Southern region. The regional constitution does not list the Southern region’s ethnic groups, but such a list can be found on the website of the regional government (see footnote 7). The first mechanism offered by the Southern constitution intended to enable the ethnic groups the exercise of their group rights, is secession. Both the federal and Southern constitution allows “internal” as well as “external” secession. This means that all officially listed ethnic groups – and thus also the Southern ethnic groups – have the right to leave the Ethiopian federation (and establish their own sovereign state – i.e. external secession) or to leave an existing regional state and establish a new regional state of their own (i.e. internal secession). As to the right of external secession, international law currently conceives of this right as an extremely qualified one. This implies that the ethnic group demanding secession will have to demonstrate that the exercise of secession is the only way to protect its rights and interests, i.e. that it resorts to secession as the ultimate remedy.<sup>10</sup> Yet, the Ethiopian federal and Southern constitutions do not provide any condition for the exercise of the right to secession. However, this does not mean that every ethnic group can initiate external secession if it feels the need to. Both the federal and the Southern constitution have designed a procedure for the exercise of this right, the first step of which is that a demand for external secession has to be approved by a two-thirds majority vote of the members of the **legislative council** (author’s emphasis) of the concerned Nation, Na-

9 The Revised Constitution, 2001, of the Southern Nations, Nationalities and Peoples’ Regional State Proclamation No. 35/2001, 12 November 2001.

10 Stefaan Smis, Ethiopia and the Right to Secession in International and Comparative Law, in: Eva Brems and Christophe Van der Beken (eds.), *Federalism and the Protection of Human Rights in Ethiopia*, Zurich/Muenster 2008, p. 118.

tionality or People.<sup>11</sup> Hence, in order for a Southern ethnic group to initiate the external secession procedure, it requires the concerned group to have a legislative council. The analysis of the Southern constitution teaches us that apart from the regional/State Council only the Zonal/Special *Wereda* Councils have such legislative powers – as will be discussed below. Hence, the constitutional entitlement to initiate the external secession procedure is restricted to the Southern ethnic groups having a separate Zonal/Special *Wereda* Council. The requirement of having a legislative council is not provided in the case of internal secession; for a Southern ethnic group, which wants to establish a region of its own, it is sufficient to have its own (legislative or non-legislative) Council.<sup>12</sup>

The objective of achieving substantive equality between all ethnic groups of Ethiopia has prompted the constitutional drafter to avoid the articulation of criteria that would entitle only a certain category of ethnic groups to secession. Although the achievement of genuine inter-ethnic equality is a laudable goal, it should not blind us to the fact that in practice most ethnic groups in the Southern region – or in the country for that matter – do not have the ability to run viable sovereign or autonomous states. Apart from viability concerns, it is highly doubtful whether the constitutional inclusion of the right to secession serves the unity in diversity goal. Although it is sometimes argued that the constitutional inclusion of a right to secession will make the state authorities more responsive to ethnic claims and will therefore prevent rather than encourage its exercise,<sup>13</sup> there seems to be a contradiction between the constitutional aim of achieving state unity and a right whose exercise would result in the disintegration of the same state. This contradiction became painfully apparent when the Sidama Zone in the Southern region used its constitutional right to ask for the establishment of a separate Sidama region. The ruling party responded negatively to this request mainly because of the fear that it would trigger similar demands from other Southern ethnic groups and ultimately lead to the disintegration of the regional state.<sup>14</sup> Since the regional ruling party SEPDM (South Ethiopia Peoples' Democratic Movement),<sup>15</sup> which controls both the regional administration and all local governments in the region, currently strongly emphasises the unity of the Southern region (I will come back to this below), the right to (internal and external) secession seems merely theoretical, at least for the time being. It is therefore important to focus on the constitutional mechanisms that aim to protect diversity within the existing territorial framework of the Southern region.

11 Article 39(4 a) of the federal and Southern constitution.

12 Article 39(6) of the Southern constitution.

13 A.M. Abdullahi, Article 39 of the Ethiopian Constitution on Secession and Self-determination: A Panacea to the Nationality Question in Africa?, *Verfassung und Recht in Übersee* 31 (1998), p. 454.

14 Lovise Aalen, Institutionalising the politics of ethnicity – Actors, power and mobilization in southern Ethiopian under ethnic federalism, Oslo 2008, p. 164.

15 The SEPDM is one of the four constituent parties of the EPRDF (Ethiopian Peoples' Revolutionary Democratic Front), the party that controls both the federal government and – through its constituent or affiliated parties – all regional and local government administrations.

## D. Administrative Organisation of the Region

The Southern constitution grants all 56 ethnic groups the right to establish their own Zone or Special *Wereda* administration.<sup>16</sup> Zones and Special *Wereda* are ethnic-based territorial administrations and they are the expression of the idea that is also reflected in the federal constitution: the best instrument to enable ethnic groups to exercise their right to self-determination is the establishment of their own territorial administration. Yet, similar to what is the case at federal level, not all ethnic groups have their own Zone/Special *Wereda*. Until recently, 13 Zones (Gurage, Hadiya, Sidama, Kembata Timbaro, Kaffa, Sheka, Gedeo, Silte, Wolayita, Gamo-Gofa, Dawro, Debub/South Omo and Bench Majji) and eight Special *Wereda* (Yem, Alaba, Konta, Basketo, Derashe, Amaro, Burji and Konso) had been established in the region. Apart from the *Debub* Omo Zone, the names of all other Zones and Special *Wereda* include references to one or two ethnic groups, as such indicating that the respective Zones/Special *Wereda* have been established to empower the concerned groups. The *Debub* Omo Zone is ethnically very diverse without any group constituting the majority of the Zonal population, but most titular groups are also the majority in “their” Zone/Special *Wereda*. The latter is the case for the Gurage, Hadiya, Sidama, Kefficho, Gedeo, Silte, Wolayita, Dawro, Yem, Alaba, Konta, Basketo, Amaro, Burji and Konso. Although the Sheka Zone and Derashe Special *Wereda* refer to the Shekecho and Derashe people respectively, these groups constitute a numerical minority in “their” Zone. The same is true for the Bench people in the Bench Majji Zone. The names of Kembata Timbaro and Gamo-Gofa Zones each refer to two ethnic groups, of which one constitutes the majority in the Zone (the Kembata and the Gamo).<sup>17</sup> The preceding overview demonstrates that, although several ethnic groups have established a separate Zone/Special *Wereda*, most ethnic groups do not have a Zone/Special *Wereda* of their own. Of course, the constitution allots all other ethnic groups the right to establish their own Zone/Special *Wereda* and in the past new ethnic-based territorial administrations have effectively been established. For instance, the previous *Semien* (North) Omo Zone was divided into three Zones (Dawro, Gamo-Gofa and Wolayita) and two Special *Wereda* (Basketo and Konta). The Silte people who were formerly administered under the Gurage Zone also established their own Zone. There are other groups such as the Gofa and the Kembata who have claimed a separate Zone and the Timbaro who have claimed a separate Special *Wereda*.<sup>18</sup> Although the future establishment of new Zones/Special *Wereda* is constitutionally/theoretically still possible, the present political context with a regional ruling party SEPDM emphasising regional

16 Article 45(2) of the Southern constitution.

17 Data obtained from the 2007 Population and Housing Census of Ethiopia, available on the website of the Central Statistical Agency of Ethiopia: <http://www.csa.gov.et/> (last visited on 17 October 2012).

18 Sarah Vaughan, Responses to Ethnic Federalism in Ethiopia’s Southern Region, in: David Turton (ed.), *Ethnic Federalism – The Ethiopian Experience in Comparative Perspective*, Oxford/Athens, Ohio/Addis Ababa 2006, p. 193–194; Tsegaye Regassa, Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level, *Mizan Law Review* 3(1) (2009), p. 63–64.

unity makes it very unlikely.<sup>19</sup> Indeed, the SEPDM seems to reject every new claim for ethnic-based territorial self-administration, which stance recently even resulted in the amalgamation of four existing Special *Wereda*. In early 2011 the Derashe, Amaro, Burji and Konso Special *Wereda* were merged into the new Segen Zone. The constitutional status of this new Zone is not clear to this author. Obviously, the regional constitution provides for the administrative level of the Zone, but as will be discussed in the next section, it does not create a hierarchy between the Zones and Special *Wereda*: constitutionally both administrative levels have the same status. Could we therefore conclude that the establishment of the Segen Zone has relegated the four Special *Wereda* to ordinary *Wereda* status – with the concomitant reduced autonomy for the concerned ethnic groups? Whatever the case may be, there is a tension between the constitutional right of an ethnic group to establish a territorial unit of its own and the prevalent political attitude in the Southern region. Since the Zones/Special *Wereda* constitute the instrument through which ethnic groups are supposed to protect their rights and interests, the next section will investigate its powers and responsibilities, both in theory and operational reality.

## E. Powers and Responsibilities of the Zones/Special *Wereda*

The constitution, as pointed out previously, does not differentiate between the Zones and Special *Wereda*, and therefore allots them an identical structure and identical powers and responsibilities.<sup>20</sup>

The Zones/Special *Wereda* are endowed with an assembly, the Council. The Council has a specific composition with both members who are directly elected to the Zonal/Special *Wereda* Council and the members of the State Council elected from the respective Zone/Special *Wereda*.<sup>21</sup> Such composition offers an institutionalised device for vertical intergovernmental relations (Region – Zone) and is conducive to the achievement of unity in diversity in the region.

The constitution grants the Zones/Special *Wereda* a number of important powers, which permit ethnic groups to protect their identity and to exercise a degree of self-administration.

Firstly, the Zone/Special *Wereda* Council has the power to determine the working language of the Zone/Special *Wereda*.<sup>22</sup> Against a historical background of a homogenising na-

19 Aalen, note 14, p. 190.

20 Special *Wereda* are generally established for smaller and territorially strongly concentrated ethnic groups.

21 To illustrate this peculiar composition with practical examples, the Hadiya Zonal Council has a total of 83 members, 28 of whom are also members of the State Council and the remaining 55 members are directly elected Zonal Council members; the Silte Zonal council has 45 members, 27 of whom are directly elected and the remaining 18 members are those who are elected to the regional State Council; the Kembata Timbaro Zonal Council, finally, has 93 members, 75 of whom are directly elected and 18 who are elected to the State Council. For this information I am indebted to my master students at the Ethiopian Civil Service University.

22 Article 81(3 a) of the Southern constitution.

tion building policy, in which the dominance of Amharic played a crucial role, the significance of this provision cannot be underestimated. This provision has not remained merely theoretical since a number of Zones such as Sidama, Wolayita, Hadiya and Gedeo have introduced the language of the titular group as the Zonal working language.<sup>23</sup> Several other Zones have continued to use Amharic, which is also used as the regional working language.<sup>24</sup> The other significant identity-related power/function is the power to “Protect the right of the Nationalities to speak, write and develop their languages, and preserve their history”.<sup>25</sup> At first sight, this provision might seem redundant. Is the power to determine the working language not simply the embodiment of this provision? Here, it is useful to remember that Zones are not ethnically homogeneous and that many ethnic minority groups are living within them. For the latter groups, this provision offers an important protection.

As far as self-administration is concerned, a potentially important power of the Zone/Special *Wereda* Council is the power to issue laws on matters that are not covered by the regional laws. It is not clarified which areas are envisioned here, but what is clear is that this is not an exclusive residual power, but a concurrent one. Indeed, the constitution adds that the laws issued by the Zonal/Special *Wereda* Council have to be consistent with the regional state and federal laws.<sup>26</sup> In other words, the Zones can adopt a law in an area which lies within the competence of the regions, but as soon as a contrary regional law is adopted, the latter will prevail. Whereas some Zonal Councils have not yet exercised this power, others have (e.g. the Sidama Zonal Council).<sup>27</sup> Another important competence is the power to approve economic and social development policies, albeit that this power has to be exercised within the framework of the state/regional policies and strategies.<sup>28</sup> The level of autonomy of the Zones/Special *Wereda* in the exercise of this power will thus be determined by how broadly the regional government will use its framework powers. Although the constitution does not allocate taxing powers to the Zones/Special *Wereda*, the latter do have the power to approve their own budget, but they will do that based upon the budget allocated to them by the State Council.<sup>29</sup> The Zonal/Special *Wereda* budget is formulated and drawn up by the Zonal Administrative Council (the executive organ at Zonal level).<sup>30</sup> The Zone/Special *Wereda* Council furthermore holds a number of appointment powers. It appoints its own Speaker and Deputy

23 Christophe Van der Beken, *Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*, Muenster 2012, p. 281.

24 Article 5(2) of the Southern constitution stipulates that Amharic shall be the working language of the region.

25 Article 81(3 b) of the Southern constitution.

26 Article 81(3 c) of the Southern constitution.

27 Interview by the author with Petros Wolde Senbet, senior Sidama official, Hawassa, 20 August 2008 and information provided to the author by master students at Ethiopian Civil Service University.

28 Article 85(4) of the Southern constitution.

29 Article 81(3 d) of the Southern constitution.

30 Article 85(3) + (4) of the Southern constitution.

Speaker as well as the Chief Administrator, the head of the Zonal Administrative Council.<sup>31</sup> This indirect election, which requires the Chief Administrator to be supported by a political majority in the Council, reflects the parliamentary system of government that characterises federal, regional and local government administrations in Ethiopia. The Chief Administrator selects the other members of the Administrative Council and submits them for approval to the Zone/Special *Wereda* Council.<sup>32</sup> Although the Administrative Council and the Chief Administrator are accountable to the Zone/Special *Wereda* Council, the constitution similarly provides for their accountability to the regional Executive Council and regional president.<sup>33</sup> The constitution is however silent on the scope of these respective accountabilities, which might have important implications for Zonal self-administration. For instance, does the regional president have the power to dismiss a Zonal administrator or is this power reserved for the Zonal/Special *Wereda* Council? The former situation is likely to fuel a process of upward accountability to the detriment of accountability to the local constituency and therefore reduce local/Zonal self-administration. In the current political context, with a ruling party controlling all levels of administration in the region, the potential tension between local/Zonal and regional interests can be accommodated within the party, but this constitutional silence will have to be dealt with in the case of different political majorities at regional and Zonal/Special *Wereda* level.

The above-mentioned powers of the Zones/Special *Wereda* are thus included in the Southern constitution rather than in an ordinary regional law/Proclamation. This means that the constitutional powers of the Zones/Special *Wereda* cannot be reduced or taken away at the simple whim of the regional government. Indeed, such action would require constitutional revision, which cannot be effectuated without the approval of a significant number of the Zones/Special *Wereda*. More specifically, Article 125(3 b) of the Southern constitution provides that most constitutional revisions (including the ones affecting the powers of Zones/Special *Wereda*) need the approval of two-thirds of the Zonal/Special *Wereda* Councils. This constitutional provision is reminiscent of federal systems, where the autonomy of the federated entities is protected in a similar way.<sup>34</sup> It demonstrates that the Southern regional administrative structure cannot simply be described as a decentralised structure, even though it cannot be called a genuine federation either. The latter qualification is not warranted due to the hierarchical relationship between the regional and Zonal/Special *Woreda* administrations. As already mentioned, the Zonal/Special *Wereda* Chief Administrator is accountable to the regional president, who has the constitutional power to direct, coordinate and control the administrative hierarchies.<sup>35</sup>

31 Article 81(3 e) of the Southern constitution.

32 Article 81(3 f) and Article 87(2 c) of the Southern constitution.

33 Article 84(1) and Article 87(2) of the Southern constitution.

34 Thomas O. Hueglin and Alan Fenna, Comparative Federalism – A Systematic Inquiry, Peterborough, Ontario 2006, p. 44.

35 Article 68(2 i) of the Southern constitution.

Apart from using the technique of constitutional revision, three other devices to change/impact upon the constitutional distribution of powers between the regional and Zonal/Special *Wereda* levels can be identified. The first one is through delegation of powers. Article 47(3) of the Southern constitution stipulates that the regional state when it deems it necessary, may delegate its power and functions to the next administrative hierarchies. The second device is the use of intergovernmental relations. The Southern constitution has included instruments for vertical intergovernmental relations between the State Council and the Zonal/Special *Wereda* Council on the one hand and between the regional and Zonal/Special *Wereda* Executive Council on the other; hence it provides for both legislative and executive intergovernmental relations. Intergovernmental relations between the legislative councils are facilitated by the *ex officio* membership of the State Councillors in the Council of the Zone/Special *Wereda* from which they have been elected. An opportunity for consultation and coordination between the Executive Councils is offered by the accountability and reporting duty of the Zonal/Special *Wereda* Chief Administrators to the regional Chief Executive/president. This institutionalised form of intergovernmental relations can be useful to delineate the exact competences of the regional/Zonal authorities in areas where the Southern constitution has provided for a rather blurred division of powers. For instance, Article 66(1) of the Southern constitution gives the regional Executive Council the power to implement laws and decisions issued by the State Council and the federal government. In a similar way, Article 85(1) of the same constitution states that the Zonal/Special *Wereda* Administrative Council shall ensure the implementation of state and federal laws and decisions. Another area where the boundaries of regional/Zonal powers are not clearly delineated is the formulation and adoption of socio-economic development policies and strategies. The framework will be set by the regional government, but the space for Zonal/Special *Wereda* specification could be agreed upon through intergovernmental negotiation. Whereas the current political constellation in the region is conducive to the prevention of regional/Zonal conflicts of power – i.e. conflicts about the exact constitutional division of powers – through intergovernmental relations, a changed political environment with different political majorities at regional and Zonal levels might make such conflicts inevitable. In that case, it will be up to the Council of Nationalities – the institution representing the Southern nations, nationalities and peoples at regional level (for further details about this institution, see below in section F) – to settle this type of conflict through the exercise of its constitutional interpretation power.<sup>36</sup> Interpreting the constitutional provisions on allocation of powers is therefore the third device that might impact upon the constitutional distribution of powers between the region and the Zones/Special *Wereda*.

In the next section, I will discuss how the Southern ethnic groups are represented in the regional institutions, which enables them to both protect their specific interests and to forge ties with the other ethnic groups, as such strengthening the unity of the region.

36 According to Article 59 of the Southern constitution, the Council of Nationalities has the power to interpret the regional constitution.

## F. Regional Institutions

The regional constitution provides for regional legislative, executive and judicial institutions.

The State Council is the legislative body of the region.<sup>37</sup> The members of the State Council are directly elected on the basis of a plurality electoral system.<sup>38</sup> In a political context dominated by ethnic-based parties (the SEPDM, a coalition of 20 ethnic-based parties, holds all the seats in the State Council) it is likely that most votes in each electoral constituency will be won by the party representing the ethnic group dominating the concerned constituency. This holds a risk for the representation of ethnic minorities, i.e. groups that are not a majority in a single electoral district. To guarantee the representation of the latter groups, the constitution guarantees the representation of “minority nationalities and peoples”.<sup>39</sup> It could thus be concluded that the constitutional provisions offer sufficient assurances for the ethnic inclusiveness of the State Council. This suggests a wide ethnic participation in the adoption of regional laws, in the approval of regional socio-economic development programmes and the discussion of the regional budget. The State Councillors’ *ex officio* membership of the Zonal/ Special *Wereda* Councils is also apt to further contribute to the representation of Zonal views/ interests in the regional Council.

Another regional institution, the composition and powers of which are specifically intended to achieve regional unity in diversity, is the Council of Nationalities – the regional second chamber as already referred to in the previous section. Although all nine regions of the Ethiopian constitution have a State Council, the existence of a second chamber is unique to the Southern region and reflects its federal character. The Council of Nationalities is modelled on the federal House of the Federation (the federal second chamber) and has a similar composition, i.e. all Southern nations, nationalities and peoples are entitled to a least one representative and one additional representative for every extra million people.<sup>40</sup> This composition has led to a Council that is currently composed of 61 members representing 56 different ethnic groups.<sup>41</sup> Although the members of the Council are representatives of the diverse ethnic groups, their mode of election entails that they are also representatives of the Zones/ Special *Wereda*, as such confirming that the latter are the forum within and through which the ethnic groups protect their rights and interests. Indeed, the members of the Council of Nationalities are not directly elected, but are chosen by and from among the members of the Zone/Special *Wereda* Councils.<sup>42</sup> The core mandate of the Council is the “promotion and consolidation of the unity and equality of the peoples of the region”<sup>43</sup> for the execution of

37 Article 46(1) of the Southern constitution.

38 Article 50(1) and (2) of the Southern constitution.

39 Article 50(2) of the Southern constitution.

40 Article 58(1) and (2) of the Southern constitution.

41 See the website of the Southern regional government: <http://www.snnprs.gov.et/nations.html> (last visited on 29 August 2012).

42 Article 58(3) of the Southern constitution.

43 Article 59(4) of the Southern constitution.

which it has significant responsibilities. Firstly, the Council has been allotted an important role in regional constitutional developments since it, similar to the House of the Federation, has the power to interpret the regional constitution and because it participates in the process of initiation and amendment/revision of the same constitution.<sup>44</sup> It will also create favourable conditions for the study of the history, culture and language of the nationalities.<sup>45</sup> As mentioned above, the Southern constitution grants all nations, nationalities and peoples of the region the right to establish their own Zone/Special *Wereda*. The constitution clarifies that the concerned ethnic group will have to submit its application thereto to the Council of Nationalities. However, due to the dominant position of the SEPDM in the Council of Nationalities and the party's current emphasis on unity and administrative integration, it is sound to argue that the Council comes under serious political pressure when confronted with such applications. The law detailing the constitutional powers and responsibilities of the Council – Proclamation No. 60/2003 – also introduces some preconditions regarding the exercise of this right.<sup>46</sup> The law elucidates that the right to establish a separate Zone/Special *Wereda* is conditional, which means that its exercise is dependent upon the violation of the concerned ethnic group's individual and group rights.<sup>47</sup> Article 20 of the Proclamation also provides the following guideline for the Council of Nationalities in the exercise of this power: "Question of Administrative hierarchies shall consider the objective to build one common political and economic community..." which seems reflective of the political attitude of the SEPDM. Finally, the Council will "strive to find a solution to disputes or misunderstandings that may arise between administrative hierarchies".<sup>48</sup> These might be intra-regional boundary disputes (e.g. the Council of Nationalities decided the boundary dispute between the Humbo (Wolayita Zone) and Dale (Sidama Zone) *Wereda* and the dispute between the Salamago *Wereda* (Debub Omo Zone) and Basketo Special *Wereda*) or other conflicts between the regional state and Zones/Special *Wereda*.<sup>49</sup>

The regional Executive Council, i.e. the regional government, is headed by the Chief Executive or regional president. The regional president is elected by the State Council from among its members.<sup>50</sup> The regional president selects the other members of the Executive

44 Article 59(1) and Article 59(7) of the Southern constitution.

45 Article 59(6) of the Southern constitution.

46 Proclamation No. 60/2003, "The consolidation of the House of Council of Nationalities and definition of its powers and responsibilities Proclamation", *Debub Negarit Gazeta*, 29 June 2003.

47 Article 21(3) of Proclamation No. 60/2003 stipulates: "Any Nations, Nationalities or People who believes that its self-administration is infringed, promotion of its culture, language and history are not respected, in general its rights enshrined in the constitution are not respected or violated for any reason, may present its application to the House ....".

48 Article 59(5) of the Southern constitution.

49 *Aalen*, note 14, p. 181 and information provided to the author by master students at Ethiopian Civil Service University.

50 Article 51(3 d) of the Southern constitution.

Council and submits these nominations for approval to the State Council.<sup>51</sup> Although the constitution does not explicitly guarantee the ethnic pluralism of the regional government, the elective and appointment powers of the State Council – which is ethnically inclusive without any dominant group – should serve the same objective. The same is true for the regional judiciaries since all judges are also appointed by the State Council.<sup>52</sup> The interests of the Zones/Special *Wereda* in the appointment of judges are further protected by the constitutional obligation to solicit the views of the Zone/Special *Wereda* Administrative Council in the appointment process of High Court and *Wereda* Court judges.<sup>53</sup>

## G. Appraising the Achievement of Unity in Diversity

The Zones/Special *Wereda* are constitutionally designed as forums within which the Southern ethnic groups can administer themselves and exercise their language rights and cultural rights – hence they constitute an important instrument to protect diversity. At the same time, they are the emanation of the idea that by respecting and protecting their identity and by enabling their self-development, the ethnic groups will feel more valued and “at home” in the region, as such contributing to regional unity. As far as identity-related matters are concerned, the Zones/Special *Wereda* have the important powers to choose the local working language and preserve the history of the local ethnic groups, which are excellent mechanisms to protect language rights and cultural rights. The right to self-administration could be materialised through the power of the Zones/Special *Wereda* to adopt laws, to approve their own budget and thereby determine their own socio-economic development priorities. However, these laws and policies have to be in line with the regional laws and socio-economic development plans and their implementation is dependent upon regional funding since the Zones/Special *Wereda* lack taxing powers. A further element hampering local autonomy is that the Zonal/Special *Wereda* Administrative Council, which is the responsible body for preparing the budget and the socio-economic policies, is accountable to the regional government. Although the scope of this upward accountability is not clear, the emphasis on centralisation and unity by the SEPDM, which controls both the regional and all Zone/Special *Wereda* administrations, poses considerable risks for the autonomy of the Zonal administrators in this regard. On the other hand, the powers of the Zones/Special *Wereda* are not simply left at the discretion of the regional government. They are rather included in constitutional provisions that cannot be revised without the approval of a significant majority of these same Zones/Special *Wereda*.

Due to the significant ethnic pluralism in the region, most ethnic groups do not have their own Zone/Special *Wereda*. As discussed above, all Southern ethnic groups, without distinction, have the constitutional right to establish a separate Zone/Special *Wereda*. Although the rationale of this provision is laudable – guaranteeing equality between all ethnic groups – it

51 Article 51(3 d) and Article 68(2 f) of the Southern constitution.

52 Article 76(2) of the Southern constitution.

53 Article 76(3) and Article 85(8) of the Southern constitution.

has to be admitted that it is not practical: some ethnic groups are simply too small to administer a viable Zone/Special *Wereda*. Apart from efficacy and viability considerations, a serious impediment to the establishment of new ethnic-based Zones/Special *Wereda* is the reluctance of the regional ruling party. Additionally, the establishment of a new ethnic-based local government administration will never solve the minority problem: the former minority group might get its own administration, but not all members of the concerned group will live concentrated in that territory, whereas members of other groups will also live there. Of course, ethnic groups can also establish their own “ordinary” *Wereda* or even *Kebele* (the lowest level of local government), but the constitutional powers of these local governments do not include ethnic identity-related matters and neither does this approach solve the problem of ethnic dispersion. As I have argued in previous publications, in order to enable ethnic minorities to exercise their rights and protect their interests, it is therefore important to think outside the “territorial box”. In this regard, we could conceive of “consociational” mechanisms such as power-sharing, minority vetoing, non-territorial autonomy, etc.<sup>54</sup>

For the accomplishment of the unity in diversity objective it is not sufficient to protect ethnic identity and to guarantee self-administration and minority protection; it is also required to assure ethnic representation and participation in shared, state-wide decision-making. The Southern constitution contains few explicit provisions warranting ethnic inclusiveness of regional political and judicial institutions. It provides for ethnic minority representation in the State Council and the Council of Nationalities, but the ethnic pluralism of the regional executive and judiciary institutions is not explicitly assured; it is rather the result of informal political processes.

Finally, balancing unity and diversity makes it mandatory to have devices for the prevention or resolution of conflicts between the regional and Zonal/Special *Wereda* levels. In order to prevent conflicts from occurring, it is important to have mechanisms in place that allow contacts and negotiations between the different levels of government; hence mechanisms of intergovernmental relations are required. One institutionalised mechanism of vertical intergovernmental relations is the *ex officio* membership of the Zonal/Special *Wereda* representatives in the State Council in the Zonal/Special *Wereda* Council. Another constitutional instrument that has the potential of balancing zonal and regional interests is the accountability of the Zone administrators both towards the Zonal Council and towards the regional executive. Yet, the scope of this accountability is not clear, which in the current political context with its emphasis on centralisation and unification, tends to reduce local accountability. The direct and indirect (through the Council of Nationalities) participation of the Zones/Special *Wereda* in the process of constitutional revision<sup>55</sup> also assures discussion and negotiation in relation to constitutional changes that impact upon the unity and diversity balance. If, notwithstanding the presence of these mechanisms, conflicts between different administrative levels do occur,

54 Most recently, this was discussed in *Christophe Van der Beken*, State Constitutions, Ethnic Pluralism and Local Government in Ethiopia, Addis Ababa 2012.

55 Articles 124 and 125 of the Southern constitution.

it is the mandate of the Council of Nationalities to find a solution. These can be conflicts related to the correct interpretation of the constitution – i.e. conflicts on the constitutional provisions distributing powers between the different administrative levels (conflicts of power) – or other types of conflicts (such as boundary conflicts or conflicts related to opposing interests). The fact that the Council of Nationalities is designed as the representative body of the ethnic groups/Zones/Special *Wereda* might create the perception that in the resolution of these conflicts the balance will tilt to diversity. Yet, it should be remembered that the Council has the constitutional obligation to consolidate the “unity” of the peoples of the region<sup>56</sup> and that the Council is completely dominated by the SEPDM, which strongly focuses on regional unity.

## H. Conclusion

Similar to the federal constitution, the constitution of the Southern Nations, Nationalities and Peoples region has incorporated a nation and state building strategy that recognises ethnic diversity and designs mechanisms to accommodate it. The constitution has generally found an adequate balance between the two potentially conflicting objectives of unity and diversity. Yet, a number of constitutional revisions such as clearer and more elaborate provisions on Zonal/Special *Wereda* accountability and complementary minority protection mechanisms could be recommended. The paper has also identified a serious tension between constitutional provisions on the right to territorial autonomy and the predominant political tendency in the region. Although the creation of new ethnic-based territorial administrations obviously has its limitations, the regional government and ruling party should take caution not to deepen the gap between constitutional provisions and operational reality, which is a sure recipe for increasing tensions and eventual conflicts.

56 Article 59(4) of the Southern constitution.