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## THE POLITICS OF CONSTITUTIONAL AMENDMENT IN ETHIOPIA: ISSUES WORTH CONSIDERING

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### Abstract

*The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution suffers from weak legitimacy and imperfections. Such legitimacy deficit and constitutional flaws can be rectified through the power of constitutional amendment. This article examines the politics of constitutional amendment in Ethiopia in light of the current political reforms by looking at the diverse amendment models and views of selected political parties. Drawing on Richard Albert's amendment theory, the article argues that the textual and substantive models of constitutional amendment are not workable in Ethiopia. The article then suggests the political model of amendment for making the necessary changes in the FDRE Constitution. In this regard, active and genuine participation of the public and all political parties in the political process of amendment is crucial to (re)confer legitimacy. The civic engagement and deliberation part of the process would retrospectively cleanse the violation of the stringent rules of amendment and then heal the 'original sin' of the Constitution. However, this article ultimately suggests that the timing for doing so should be considered seriously in light of the level of national consensus and security conditions across the country.*

**Keywords:** *amendment, constitutional imperfections, FDRE Constitution, legitimacy, political model*

### I. INTRODUCTION

A constitution once drafted is not final, perfect and unamendable for all times to come. The ideologies, interests and ambitions that played major roles in framing of a constitution may be changed and outdated through time. As a result, the constitution must be modified to make it suitable to changing realities and needs. A constitution and political scene that makes amendments impossible, Mulford said, is the "worst tyranny of time" and, hence, invites the

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people and politicians to recourse to upheavals and revolutions.<sup>1</sup> Indeed, this alternative is not helpful to nation building, peace and development since it may shake the peaceful continuity of the state's legal and political environment by upending the foundations of the constitution and constitutional order. Therefore, the power of constitutional amendment is important to avoid the danger of anti-constitutional or revolutionary methods of constitutional change.

The FDRE Constitution has not been formally amended more than twice since its inception due to the authoritarian political practices of the ruling party- Ethiopian People's Revolutionary Democratic Front (EPRDF), which is a coalition of four ethnic-based political parties that advocates for revolutionary democracy.<sup>2</sup> However, after six years of public protests, EPRDF has been changed from within and elected Dr. Abiy Ahmed, who has promised to undertake political reforms on a broad spectrum of issues including the Constitution, as a new Prime Minister on April 2, 2018. This indeed creates an opening to consider the possibility of constitutional reforms in Ethiopia. Nevertheless, the main political players have different and competing views, ranging from amendment to replacement or remaking, on the future of the FDRE Constitution.

The main purpose of this article is, therefore, to examine the politics of constitutional amendment and its possible implications for Ethiopia's current political reforms based on a qualitative approach that uses primarily and secondary data. The article is divided into five main sections. Following this short introduction, the second section discusses the theoretical and conceptual frameworks of constitutional amendment. More specifically, it presents the various forms and models of amendment and their implications for legitimacy. The third section gives a particular focus on the views of political parties about the future of the FDRE Constitution and explores the discourses of constitutional change in the Ethiopian context. In connection, this section highlights some of the divisive provisions of the Constitution that cause hostility between political parties. The challenges for amending the Constitution in the current political setup are also identified under section four. Finally, section five provides the concluding remarks.

## II. THEORETICAL FRAMEWORKS OF CONSTITUTIONAL AMENDMENT: A SKETCH

The constitutional amendment power is an authority for prospective constitutional changes and is a pivotal of future power that can change even sensitive issues once settled during constitution-making.<sup>3</sup> As such, it enables future generations to make a constitution compatible with changing circumstances and new public demands.<sup>4</sup> In addition, the power gives remedies

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<sup>1</sup>ASHOK DHAMIJA, NEED TO AMEND A CONSTITUTION AND DOCTRINE OF BASIC FEATURES 15-16 (Revised 1<sup>st</sup> ed. Wadhwa and Company Nagpur Law Publisher 2007).

<sup>2</sup>The ideology has been used just for the purpose of consolidating power. However, currently, EPRDF's ideology and organizational structure has been challenged within the coalition. See Jean-Nicolas Bach, *Abyotawi Democracy: Neither Revolutionary Nor Democratic, A Critical Review of EPRDF's Conception of Revolutionary Democracy in Post-1991 Ethiopia*, 5(4) JOURNAL OF EASTERN AFRICAN STUDIES 641, 641-663(2011).

<sup>3</sup>Walter Dellinger, *The Amending Process in Canada and the United States: A Comparative Perspective*, 45 DUKE LAW JOURNAL 283, 283-284(1982).

<sup>4</sup>MARKUS BÖCKENFÖRDE, CONSTITUTIONAL AMENDMENT PROCEDURES 4-5 (Stockholm, International IDEA, 2<sup>nd</sup> ed., 2017); Charles Manga Fombad, *Some Perspectives on Durability and Change under Modern African Constitutions*, 11 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW I•CON 382, 383-387 (2013).

for constitutional imperfections by rectifying provisions that have proven, through time and practice, to be inadequate, unworkable and cause of inconvenience.<sup>5</sup>

Moreover, constitutional amendment is an ongoing process of popular participation in constitution-making. More importantly, the direct involvement of the public in the process is an indication of a continuing exercise of popular sovereignty.<sup>6</sup> Needless to say, the process offers a golden opportunity for the people to amend the constitution which creates a strong link between constitutional changes and the will of the people that legitimates the changes as well as the status quo.<sup>7</sup> However, it is important to note that the consent of the people reflected in the process of amendment alone is not a sufficient condition for legitimacy.<sup>8</sup> Accordingly, it can legitimate political actions only when they are morally justifiable. As a result, the consent of the people is insufficient to legitimate undemocratic and morally wrong amendments.<sup>9</sup>

For the above reasons, almost all national constitutions commonly deal with the power of constitutional amendment. As such, no constitution is considered to be complete without having an amending clause that dictates the process of constitutional change.<sup>10</sup> Therefore, amendment rules are a near-universal feature of contemporary constitutions.<sup>11</sup> These amendment rules, Richard Albert explained, provide a roadmap for constitutional changes by answering basic questions that could be raised in the process of amendment: how and when to amend the constitution, who amend the constitution, and what within the constitution is (un)amendable.<sup>12</sup> For this, the rules must be clear, understandable, certain and reliable to guide actions concerning amendments and should also balance rigidity with flexibility for allowing a moderate amendment rate to the constitution.<sup>13</sup> However, it is a fact that the nature of the amendment processes and practices vary across countries.

Indeed, the study of constitutional amendment implies more than how a state changes its constitution and hence presents a window into the politics of a state.<sup>14</sup> For instance, the debates over amendment rules signify the level of consensus and unity within the society in regard to the

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<sup>5</sup>YANIV ROZNAI, UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS: THE LIMITS OF AMENDMENT POWERS 1-5 (Oxford University Press, 2017).

<sup>6</sup>Rosalind Dixon & Adrienne Stone, Constitutional Amendment and Political Constitutionalism: A Philosophical and Comparative Reflection, in PHILOSOPHICAL FOUNDATIONS OF CONSTITUTIONAL LAW 95-118(David Dyzenhaus & Malcolm Thorburn eds., 2016).

<sup>7</sup>*Id.* at 99.

<sup>8</sup>VICKI JACKSON & MARK TUSHNET, COMPARATIVE CONSTITUTIONAL LAW 251-257 (2<sup>nd</sup> ed. Cambridge University Press 2006).

<sup>9</sup>*Id.*

<sup>10</sup>Countries that do not have a written/codified constitution such as the United Kingdom, Israel and New Zealand are exceptions in this regard. See DHAMIJA, *supra* note 1, at 9; Rosalind Dixon, *Constitutional Amendment Rules: A Comparative Perspective*, Chicago Public Law And Legal Theory Working PAPER No. 347, 96 (2011).

<sup>11</sup>BÖCKENFÖRDE, *supra* note 4, at 3.

<sup>12</sup>Richard Albert, *How Unwritten Constitutional Norms Change Written Constitutions*, 38 DUBLIN U. L.J. 387, 388-389 (2015).

<sup>13</sup>Walter Dellinger, *The Legitimacy of Constitutional Change; Rethinking the Amendment Process*, 97 HARVARD LAW REVIEW. 386, 386-389(1983); Donald S. Lutz, *Towards A Theory of Constitutional Amendment*, 88(2) THE AMERICAN POLITICAL SCIENCE REVIEW 355, 355-370(1994).

<sup>14</sup>DONALD LUTZ, PRINCIPLES OF CONSTITUTIONAL DESIGN 145-148(Cambridge University Press 2006); Lutz, *supra* note 13, at 355.

underlying questions of nationhood.<sup>15</sup> According to Donald Lutz, the amendment process hints at the fundamental political theories and constitutional values that guide a state.<sup>16</sup> Albert also asserts that amendment rules and practices sketch out some ideas about the basic principles of nationhood.<sup>17</sup> More importantly, they indicate the place where the state situates the seat of sovereignty and the sources of legitimacy.<sup>18</sup>

For the purposes of this Article, sovereignty denotes “the body or the institution that retains a final decision-making authority.”<sup>19</sup> And legitimacy is understood in its multidimensional sense: as a legal, political and moral concept.<sup>20</sup> Legal legitimacy is about the adoption of a constitutional amendment as per the codified rules of constitutional change.<sup>21</sup> A constitutional amendment enjoys political legitimacy when it reflects the will of the general public for which it can be accepted by the people at large as appropriate.<sup>22</sup> With respect to the most fundamental matters, like constitutional amendment, political legitimacy is a sufficient condition of legal legitimacy.<sup>23</sup> Furthermore, the change acquires moral legitimacy when it reflects the shared values, desires and hopes of the people and deals with any of the societal problems.<sup>24</sup>

According to Fallon, “judgments of legal, political and moral legitimacy all reflect concerns with the necessary, sufficient, or morally justifiable conditions” for the exercise of the amending power.<sup>25</sup> In this context, amendments that are not embraced by the people cannot claim legitimacy though they are made with the support of political actors according to the textual rules of amendment and correct a terrible mistake in the original constitution.<sup>26</sup> Consequently, mere legal validity without broad public support does not confer legitimacy to constitutional amendments. Nevertheless, the legitimating role of popular will or consent is also restricted. It can “legitimate political actions only to the extent that the people agree as reasoning, morally autonomous and responsible human beings.”<sup>27</sup>

Although scholars have recently produced ingenious study in constitutional amendment, the fullest explanation of the models of amendment appears in Richard Albert’s comparative and comprehensive study of constitutional amendments in Canada, South Africa, German, India and

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<sup>15</sup> Dellinger, *supra* note 3, at 283-284.

<sup>16</sup> LUTZ, *supra* note 14.

<sup>17</sup> Richard Albert, Introduction: The State of the Art in Constitutional Amendment, *in* THE FOUNDATIONS AND TRADITIONS OF CONSTITUTIONAL AMENDMENT 1-2 (Richard Albert, Xenophon Contiades & Alkmene Fotiadoueds, Hart Publishing, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> For more discussion on sovereignty, see LUTZ, *supra* note 14, at 26-107.

<sup>20</sup> MARKUS BÖCKENFÖRDE, NORA HEDLING & WINLUCK WAHIU, A PRACTICAL GUIDE TO CONSTITUTION BUILDING 2-3 (Stockholm, International IDEA, 2011); Richard H. Fallon, *Legitimacy and the Constitution*, 118 HARV. L. REV. 1789, 1789-1853 (2005).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Fallon, *supra* note 20, at 1805.

<sup>24</sup> BÖCKENFÖRDE et al, *supra* note 20.

<sup>25</sup> Fallon, *supra* note 20, at 1791.

<sup>26</sup> *Id.* at 1794-1795.

<sup>27</sup> JACKSO & TUSHET, *supra* note 8

the United States.<sup>28</sup> In this seminal work, Albert identifies four forms and three models of constitutional amendment based on the practice of states. In a broad sense, constitutional amendments can be made in constitutional or non-constitutional ways.<sup>29</sup> The constitutional way connotes changes made in compliance with the textual amendment rules which, in turn, lead to the notion of ‘constitutional constitutional amendment.’<sup>30</sup>

According to Albert, constitutional amendments can also be non-constitutional on the basis of unconstitutionality, extra-constitutionality and anti-constitutionality that could result in ‘unconstitutional, extra-constitutional and anti-constitutional constitutional amendments.’<sup>31</sup> Generally, constitutional amendments can happen in the form of constitutional, unconstitutional, extra-constitutional and anti-constitutional constitutional amendment. From these forms, Albert derives the textual, political and substantive models of constitutional amendment.<sup>32</sup>

### A. Constitutional Constitutional Amendments and the Textual Model

‘Constitutional constitutional amendment’ refers to formal constitutional changes carried out by complying with the amendment rules provided in the constitution, *i.e.*, they respect the methods and conditions enshrined in the constitution.<sup>33</sup> According to Albert, this form of constitutional change supplements the textual model of amendment.<sup>34</sup> This model underlines that the constitutional text holds the necessary and sufficient conditions to amend it, so amendments are valid and become part of the constitution only when they are made strictly in accordance with such amendment rules.<sup>35</sup> Needless to say, this model privileges the process of amendment over its substance.<sup>36</sup>

Rules of amendment codified in the constitution mostly give the decision making power of constitutional amendment to national legislatures by which the textual model often places sovereignty on national assemblies.<sup>37</sup> It is also possible for this model to put sovereignty on another body than the legislature.<sup>38</sup> In both cases, constitutional amendments derive their legitimacy from the constitutional text itself.<sup>39</sup> However, in practice, the mere adherences to amendment procedures may not necessary accord legitimacy to constitutional changes since legitimacy sometimes goes beyond legality.<sup>40</sup> For instance, incumbent presidents in Africa

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<sup>28</sup> Richard Albert, *Non-constitutional Amendments*, 22 CANADIAN JOURNAL OF LAW & JURISPRUDENCE 5, 5-47 (2009). On the recent development of the scholarships in amendment, see Albert, *supra* note 17, at 2-3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> JACKSON & TUSHNET, *supra* note 8, at 319-322

<sup>38</sup> *Id.* See also DHAMIJA, *supra* note 1, at 250-252.

<sup>39</sup> Albert, *supra* note 28, at 13-15.

<sup>40</sup> Richard Albert, *Four Unconstitutional Constitutions and their Democratic Foundations*, 50 CORNELL INT’L L.J. 169, 169-198 (2017).

change term limit provisions by complying strictly with procedures stipulated in the constitution while the people stand against these amendments and publicly protest against the changes.<sup>41</sup>

### **B. Extra-constitutional Constitutional Amendments and the Political Model**

Extra-constitutional constitutional amendment refers to as changes made in the constitution without complying with the rules of amendment in the constitution. It is the result of actions that can be justified based only on sources exterior to the text of the constitution.<sup>42</sup> In this regard, the political actors may make “popular appeals or may invoke divinity or natural law” to justify their actions.<sup>43</sup> According to Albert, this form of amendment does not defy the text or spirit of the constitution and seek to undermine the existing constitutional order.<sup>44</sup> Amendment by popular majority or referendum, which is not prescribed by the constitution, is typically an extra-constitutional means of constitutional change.<sup>45</sup>

This form of constitutional change is the base of the political model of constitutional amendment.<sup>46</sup> The model rejects the conservative view of textual model that restrains constitutional amendments on procedural grounds. Instead, it allows for amendments by the interactions of political actors though it is not enshrined in the constitution as a procedure.<sup>47</sup> As a result, the political model, which imposes no limits on the will of the people, authorizes an amendment that is unconstrained by the constitutional text. Hence, political players can appeal to the people, who are a higher source of authority, particularly when the codified amendment rules obstruct the needed reforms.<sup>48</sup> Therefore, the will of the people, manifested in dialogues between the political players and the public, can bring about constitutional amendments.<sup>49</sup>

In fact, the political model reflects the theory of popular sovereignty and it is the people at large that assume the decision making power in this regard.<sup>50</sup> In view of this, the political process that activates political interactions and deliberations among the people is the source of legitimacy.<sup>51</sup> With hindsight, the consent of the people would validate the actions of the political players that infringe the amendment rules in the constitution and the constitutional amendment itself.<sup>52</sup>

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<sup>41</sup>Charles Manga Fombad, Presidential Term Limits Through Constitutional Amendments in Africa: Deconstructing Legitimacy, *in* CHECKS AND BALANCES AFRICAN CONSTITUTIONS AND DEMOCRACY IN THE 21<sup>ST</sup> CENTURY 45, 45-58(Grant Masterson & Melanie Meirotti eds., Published by EISA, 2017)

<sup>42</sup> Albert, *supra* note 28.

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

<sup>48</sup>*Id.* Richard Albert, *The Case for Presidential Illegality in Constitutional Amendment*, DRAKE LAW REVIEW (forthcoming symposium issue 2019)1, 19(2019).

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

<sup>52</sup> Albert, *supra* note 48.

### C. Unconstitutional Constitutional Amendments and the Substantive Model

Unconstitutional constitutional amendments are non-constitutional changes that go against the substance of the constitution though they satisfy the procedural requirements for making amendments.<sup>53</sup> This form of amendment infringes the essence of a constitution when it disrespects immutable principles that are protected by eternity clauses of the constitution and/ or when it disregards basic features of the constitution that are impliedly understood from the constitutional order.<sup>54</sup> At this juncture, it is usually the court that determines whether the amendment is unconstitutional.<sup>55</sup> Nevertheless, unconstitutional constitutional amendments do not necessarily demand an intimidating stance toward the existing constitutional system and involve any kind of hostility and subversion against the state.<sup>56</sup> Due to this, political players undertaking it do not think to exit from the existing constitutional order and, therefore, it comes about within the current political system and structure of government.<sup>57</sup>

The notion of unconstitutional constitutional amendment leads to the substantive model of constitutional amendment that forbids unconstitutional constitutional changes.<sup>58</sup> This model does not accept the convention of the textual model that the constitutional text preserves the necessary and sufficient conditions to amend the constitution.<sup>59</sup> As a result, it discards amendments that break the substance of the constitution even if they meet the amendment procedures put in the constitutions.<sup>60</sup> The substantive model gives more weight to constitutional substance over process, so it considers the likelihood of invalidating amendments that depart from the content and spirit of the constitution.<sup>61</sup> The model is also suspicious of the political process and rejects the assertion that politics necessarily gives legitimacy to amendments. Instead, it attaches legitimacy of an amendment to the decision of the judiciary.<sup>62</sup>

For this purpose, the substantive model authorizes the judiciary/constitutional court to nullify amendments that disregard the basic values of the constitution.<sup>63</sup> Accordingly, the judiciary holds an exclusive authority over the content and meaning of the constitutional text based on the principle of constitutional supremacy.<sup>64</sup> For instance, the Colombian Constitutional Court has developed the “constitutional replacement doctrine” through series of judgments.<sup>65</sup> In

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<sup>53</sup> Albert, *supra* note 28.

<sup>54</sup> Aharon Barak, *Unconstitutional Constitutional Amendments*, 44 ISRAEL LAW REVIEW 321, 321-341 (2011); Gray Jacobsohn, *Unconstitutional Constitution? A Comparative Perspective*, 4 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 460, 460-470(2006); Rosalind Dixon, *Transitional Constitutionalism and Unconstitutional Constitutional Amendments*, Chicago Public Law and Legal Theory Working Paper No. 349, 1-8(2011).

<sup>55</sup> Albert, *supra* note 28.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Carlos Bernal, *Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine*, 11 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW I CON. 339, 339-357 (2013).

its judgments, the Court provides that the power of constitutional amendment does not imply the power to replace the constitution.<sup>66</sup> The Court further argues that the amending power is about an authority to modify the constitution and hence institutions authorized to amend the constitution do not have the competence to replace its essential elements.<sup>67</sup> Likewise, the Supreme Court of India has developed the “basic structure doctrine” and the amending power could not thus be invoked to change the fundamental features of the Constitution.<sup>68</sup>

#### D. Anti-constitutional Constitutional Changes and the Revolutionary Model

The idea of anti-constitutional constitutional change denotes a wholesale constitutional alteration that seeks to transform the entire constitutional order through violent or nonviolent revolution.<sup>69</sup> Needless to say, the purpose of this form of constitutional change is to undermine the entire constitutional system and it is certainly indifferent to the state, and it often entails some form of violent conduct in the pursuit of constitutional changes.<sup>70</sup> So, it explains most revolutionary incidents seeking to radically alter the constitutional order. The constitutional practices of states do not allow anti-constitutional constitutional changes to happen since the very object of it is to upend the existing constitutional setup.<sup>71</sup> In view of this, it is not helpful to the development of any model of constitutional amendment that is useful for nation building, political stability and development.<sup>72</sup>

### III. THE POLITICAL DISCOURSES OF CONSTITUTIONAL AMENDMENT IN ETHIOPIA (1995-2019)

The 1995 FDRE Constitution has been contentious since its adoption. It is still a basic point of difference among political parties. As a result, there is a gulf of views between EPRDF and most of the oppositions toward the future of the Constitution.<sup>73</sup> Recently, however, unusual views begin to be heard even within EPRDF. For instance, some members of EPRDF are raising questions against various provisions of the Constitution and looking for ways of amending them.<sup>74</sup> The Constitution is also tabled as an issue in the current political reform and listed in the

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<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup> DHAMIJA, *supra* note 1, at 331-332, 433.

<sup>69</sup>*Id.*

<sup>70</sup>*Id.*

<sup>71</sup>*Id.*

<sup>72</sup>*Id.*

<sup>73</sup> Zelalem Eshetu, *The Scope and Limitation of the Amending power in Ethiopia: Thinking beyond Literalism*, 4 MEKELLE UNIVERSITY LAW JOURNAL.1, 1-33(2016).

<sup>74</sup>The Prime Minister, who is the chairman of ODP and EPRDF, argues that the FDRE Constitution can be amended and he specifically hinted at a constitutional change for adopting a presidential system. See; The Prime Minister’s Speech at Hawassa (2018), available at <https://www.youtube.com/watch?v=tbcEb1yuzww>. (Accessed on 21<sup>st</sup> February, 2019); Ethiopia’s New Leader, Abiy Ahmed, Draws Red Lines on Graft and Calls for Term Limits(2018), available at <https://www.opride.com/2018/04/27/ethiopias-new-leader-abiy-ahmed-draws-red-lines-on-graft-and-calls-for-term-limits/> (Accessed on 21<sup>st</sup> of February, 2019). More notably, ADP officially demands amendments on the FDRE Constitution. See *Amhara Region decides on the amendment of the Ethiopian Constitution*, Amhara TV News, May 8.2019, Mastewal Dessalew, *TPLF Hegemony has ended, but EPRDF Power Struggle is Just Beginning*, ETHIOPIA INSIGHT, Jan. 9, 2019, available at <https://www.ethiopia->

first place of the concerns for dialogue among political parties.<sup>75</sup> For the moment, some of the political parties and elites have given priority to the issue of constitutional change as a result of the ‘political transition’ that promises a comprehensive reform in the country.<sup>76</sup> In effect, they are rushing to (de) constitutionalize their political ‘interests and worries’ through constitutional reforms by (re)negotiating on the Ethiopian political puzzles including the questions of nationalities, land tenure system and democracy.<sup>77</sup>

### A. Constitutional Controversies

Indeed, the constitutional provisions dealing with unconditional secession, national flag, state ownership of land, the institutionalization of ethnicity, Addis Ababa (the Federal Capital), administrative boundaries and identities, working/national language choice, the role of House of Federation (HoF) and the preamble of the Constitution are hot and controversial matters in Ethiopia.<sup>78</sup> Article 39 of the Constitution provides unconditional right to self-determination, including the right to secession to every nation, nationality and people in Ethiopia. While many argue that Article 39 endangers national unity, the ethno-nationalist groups consider it as a solution to the national question that was initiated by the students’ movement in the 1960s and 1970s.<sup>79</sup> Article 40 of the Constitution states that all urban and rural land is the property of the “state and the Ethiopian people”, *i.e.*, it advocates the state ownership of land.<sup>80</sup> EPRDF has a firm stand in favour of this provision and argued excessively that it will be changed only on its grave.<sup>81</sup> The Constitution also advocates an ethnic-based federal structure that divided the country into nine regions based on ethnic identity and affiliation. This makes ethnicity one of the most crucial aspects of political life in Ethiopia.<sup>82</sup>

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[insight.com/2019/01/09/tplf-hegemony-has-ended-but-eprdf-power-struggle-is-just-beginning/](https://insight.com/2019/01/09/tplf-hegemony-has-ended-but-eprdf-power-struggle-is-just-beginning/) (Accessed on 21 February, 2019).

<sup>75</sup>Alemayehu Anbese, *What are the Issues Listed for Dialogue among Political Parties*, ADDIS ADMASS AMHARIC, Jan. 12, 2019. See also; Political Parties List 32 Agendas for Dialogue, Jan 10, 2019, available at <https://fanabc.com/english/2019/01/political-parties-list-32-agendas-for-dialogue/> (Accessed on 11 March 2019)

<sup>76</sup>*Id.*

<sup>77</sup> For more on the puzzles see; Paul H. Brietzke, *Ethiopia's "Leap in the Dark": Federalism and Self-Determination in the New Constitution*, 39 JOURNAL OF AFRICAN LAW. 19, 19-35 (1995); Dustin Miller & Eyob Tekalign Tolina, *Land to the Tiller Redux: Unlocking Ethiopia's Land Potential*, DRAKE JOURNAL OF AGRICULTURAL LAW. 1, 1-17 (2008); Jon Abbink, *Ethnicity and Constitutionalism in Contemporary Ethiopia*, 41 JOURNAL OF AFRICAN LAW. 159, 159-174 (1997); Temesgen Thomas Halabo, *Ethnic Federal System in Ethiopia: Origin, Ideology and Paradoxes*, 4 INTER. J. POLIT. SCI. DEVELOP. 1, 1-15 (2016).

<sup>78</sup>Asefa A. Lemu, *The Making of Ethiopian Constitution of 1995* (2018), available at <https://kichuu.com/making-ethiopian-constitution/> (Accessed on 20<sup>th</sup> January, 2019). See also; A Discussion on the Ethiopian Constitution & Federalism System-Part 1, available at <http://www.news.marakitube.net/watch.php?vid=97d3206c0> (Accessed on 10 August, 2019); Discussion on the Ethiopian Constitution & Federalism System-Part 2, available at <http://www.news.marakitube.net/watch.php?vid=f6a345b13> (Accessed on 10 August, 2019).

<sup>79</sup>Alem Habte, *Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution*, PUBLIUS: THE JOURNAL OF FEDERALISM 313, 313-335 (2005).

<sup>80</sup>Belay Zerga, *Land Resource, Use and Ownership in Ethiopia: Past, Present and Future*, 2(1) INTERNATIONAL JOURNAL OF SCIENTIFIC RESEARCH & ENGINEERING TRENDS 17, 20 (2016).

<sup>81</sup>Lemu, *supra* note 78.

<sup>82</sup>CONSTITUTION, Proclamation 1/1995, FED. NEGARIT GAZETTA, 1<sup>st</sup> Year No. 1, 1995 (hereinafter FDRE CONSTITUTION), Art 8, 46 and 47. For more see also; Abbink, *supra* note 77.

The preamble of the FDRE Constitution, which begins as “We the Nations, Nationalities and Peoples of Ethiopia”, makes it clear that the ethno-cultural communities as a group, not Ethiopian nationals, are sovereign and the bricks of the federation.<sup>83</sup> Practically, some regions have claims to territories administered by other constituent units of the federation. For instance, the Amhara region as well as the people of Amhara have claimed ownership of the Welqait and Raya territories which are currently administered by Tigray region.<sup>84</sup> The Somali and Oromo ethnic groups have also their own claims of land from each other.<sup>85</sup> Furthermore, the status and governance of Addis Ababa city and the ‘special interest clause’ reserved to Oromia regional state are divisive constitutional matters in Ethiopia.<sup>86</sup> The national flag and emblem, recognized under Article 3 of the Constitution, also remains a source of controversy.<sup>87</sup> It is clear that, unlike other federations, the FDRE Constitution gives the power to interpret the Constitution to the HoF. In fact, the HoF could not be an impartial adjudicator on sensitive intergovernmental conflicts due to its composition and political affiliation.<sup>88</sup>

## B. Major Competing Political Blocs

Generally, the abovementioned matters are some of the most disputed parts of the Constitution among the main political actors. There are a number of political parties that have promised and sought to amend these provisions of the Constitution. For example, in the May 2005 national election, the Coalition for Unity and Democracy (CUD) marked many provisions including Article 39, 40 and 46 and promised to amend them upon assuming power.<sup>89</sup> It also proposed a series of constitutional amendments that it claimed would enhance individual rights.<sup>90</sup> CUD also sought private and communal land holdings and then pledged to amend the provision

<sup>83</sup>FDRE CONSTITUTION, Preamble. See also SEMAHAGN GASHU ABEBE, *THE LAST POST-COLD WAR SOCIALIST FEDERATION: ETHNICITY, IDEOLOGY AND DEMOCRACY IN ETHIOPIA* 80(Ashgate Publishing Limited 2014).

<sup>84</sup>Yohannes Gedamu, *How Ethiopia's History of Ethnic Rivalry is destabilizing its Reform Gains*, QUARTZ AFRICA WEEKLY BRIEF, Oct.2, 2018, available at <https://qz.com/africa/1411519/ethiopias-ethnic-violence-history-with-omros-amharas-somalis-tigray/>(Accessed on 21<sup>st</sup> of January , 2019); Amanuel Tesfaye, *Commentary: the Birth of Amhara Nationalism: Causes, Aspirations, and Potential impacts*, ADDIS STANDARD, May 4, 2018, at 2-10, available at <http://addisstandard.com/commentarythe-birth-of-amhara-nationalism-causes-aspirations-and-potential-impacts/>( Accessed on 21<sup>st</sup> of January, 2019).

<sup>85</sup>Gedamu, *supra* note 84.

<sup>86</sup>FDRE CONSTITUTION, Art.49. For more see; Wondwossen Wakene, *Self-Governing Addis Ababa, the Federal Government &Oromia: Bottom lines and Limits in Self Governance* (Unpublished LLM Thesis, Addis Ababa University, December 2010); Fitsum Getachew, *The ‘Constitutional Controversy’ Over Addis Ababa* (2019), available at <https://7dnews.com/article/the-constitutional-controversy-over-addis-ababa>(Accessed on 10<sup>th</sup> of August , 2019).

<sup>87</sup>Goshu Wolde Tefera & A. Peter Castro, *Flag Politics in Ethiopia and the Ethio-American Diaspora*, 8:1 JOURNAL OF INTERNATIONAL AND GLOBAL STUDIES 1, 1-18(2016).

<sup>88</sup>FDRE CONSTITUTION, Art. 62(1) and 83. See also; Assefa Fiseha, *Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (HoF)* 1 MIZAN LAW REVIEW 1, 1-32(2007).

<sup>89</sup>The CUD’s Manifesto, at 54-56, available at <https://zelalemkibret.files.wordpress.com/2011/11/kinijit-manifesto-english.pdf>(Accessed on 19<sup>th</sup> of May ,2019) See also: Leonardo R. Arriola, *Ethnicity, Economic Conditions, and Opposition Supports: Evidence From Ethiopia’s 2005 Elections*, 10 NORTHEAST AFRICAN STUDIES 115, 118-121 ( 2008); Tsegaye Regassa, *The Making and Legitimacy of the Ethiopian Constitution: Towards Bridging the Gap Between Constitutional Design and Constitutional Practice*, 23 AFRIKA FOCUSE. 85, 85-88 (2010).

<sup>90</sup>*Id.*

that deal with the state ownership of land.<sup>91</sup> Additionally, the party criticized the ethnic-based federalism in its manifesto as a threat to national unity. Alternatively, it suggested a federal arrangement based on the will of the people, historical and cultural links, language, settlement pattern, geographical location, developmental viability and administrative efficiency.<sup>92</sup> In this regard, the party claimed that it favors decentralization and the recognition of ethnic diversities. Patriot Ginbot 7, that was believed to be the inheritor of CUD, also argued to the de-ethnicization of politics and redrawing of the administrative boundaries of regional states based on geographical and administrative convenience.<sup>93</sup>

The Ethiopian Democratic Party (EDP) also proposed changes to some of the controversial provisions of the FDRE Constitution. The party complains about the preamble of the Constitution that embodies origin of the federation, the ethnic-based federal system, and the right of nations, nationalities and peoples to unconditional secession, the constitutional distribution of power that makes regions unnecessarily powerful than the federal government as well as the amending clauses that promotes a rigid amendment procedure.<sup>94</sup> On their part, the United Ethiopian Democratic Forces (*Medhin*), the Unity for Democracy and Justice (UDJ), the All Ethiopian Unity Party (AEUP), and the Ethiopian Federal Democratic Unity Forum (MEDREK) has grumbled about the constitution-making process that produced the FDRE Constitution.<sup>95</sup> In this connection, they have denounced that the process was not inclusive and the Constitution contains ill-advised provisions which do not address the problems of the country.<sup>96</sup> These parties cry out for constitutional amendments including Article 39 to heal the Constitution from its defects.<sup>97</sup>

Resentfully, the Union of Ethiopian Democratic Forces (UEDF) and the National Movement of Amhara (NAMA) deem the FDRE Constitution as a reflection of the ideological program of the TPLF-dominated EPRDF.<sup>98</sup> The UEDF, which was established as a coalition of fifteen parties, five based in Ethiopia and ten based overseas (now, they have returned home), further claimed that the rigid amendment procedure adopted by the Constitution deprives the people of

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<sup>91</sup>*Id.*

<sup>92</sup>*Id.*

<sup>93</sup>The Political Program of Ginbot 7 Movement for Justice, Freedom and Democracy, *available at* <http://www.ginbot7.org/program-3/> (Accessed on 15 April, 2019). See also; Rene Lefort, Ethiopia: Climbing Mount Uncertainty, (2018), *available at* <https://www.opendemocracy.net/en/ethiopia-climbing-mount-uncertainty/> (Accessed on 21 February, 2019).

<sup>94</sup>The Ethiopian Democratic Party (EDP), *The Analysis of the Political Program of EDP; EDP's Political Lines and Strategies* (Vol.1, 2003), at 42-49, *available at* <http://edponline.org/> (Accessed 29 April, 2019); LIDETU AYALEW, MEDLOT: CONTROVERSIAL POLITICAL ISSUES AND THE ROLE OF THE THIRD ALTERNATIVE IN ETHIOPIA 282-330 (2010); See also; Arriola, *supra* note 89.

<sup>95</sup>Teguadda Alebachew, When Constitution Lacks Legitimacy in the Making: The Case of Ethiopia 74-75(LL.M Thesis, Addis Ababa University 2011). See also; The Ethiopian Federal Democratic Unity Forum's (MEDREK) Manifesto, at 11, *available at* <https://zelalemkibret.wordpress.com/2011/11/23/major-political-manifestos-in-ethiopia-yesterday-today/9> (Accessed on 29 April, 2019).

<sup>96</sup>*Id.*

<sup>97</sup>*Id.* See Arriola, *supra* note 89.

<sup>98</sup>Alebachew, *Supra* note 95; Interview with Ato Yesuf Ibrahim, NAMA's Chief Political Strategist, on 20<sup>th</sup> of July 2019. See also, Dawit Endeshaw, *National Movement of Amhara Announce Establishment of Party*, THE REPORTER, June 16, 2018, *available at* <https://www.thereporterethiopia.com/article/national-movement-amhara-announce-establishment-party> (Accessed on 21 April, 2019).

their right to change the Constitution and proposes for the re-constitution of the country by establishing a transitional government which would prepare a publicly honored democratic constitution.<sup>99</sup> However, most of Ethiopian-based parties in the UEDF such as the Oromo National Congress, Ethiopian Social Democratic Federal Party, and Southern Ethiopia Peoples' Democratic Coalition supported the ethnic-based federal system and state ownership of land while they opposed the secession clause and EPRDF's authoritarian implementation of the federal system and land policy.<sup>100</sup> Conversely, the All Amhara People's Organization, Ethiopian Democratic Unity Party and the other ten parties allied with UEDF such as the Ethiopian People's Revolutionary Party and the All Ethiopian Socialist Movement opposed the ethnic-based federal setup and state ownership of land.<sup>101</sup>

The National Movement of Amhara, which believes that the FDRE Constitution was designed in a way that ignores the interest of the Amhara ethnic group, demands a substantial amendment or replacement of the Constitution.<sup>102</sup> The party further complains about the constitution-making process and the alleged "anti-Amhara sentiments" institutionalized in the Constitution.<sup>103</sup> For this reason, the party questions the validity of the entire document and promises to reverse the past mistakes and to end the marginalization of the people of Amhara by (re)negotiating with other nations, nationalities and peoples of Ethiopia.<sup>104</sup>

Moreover, the controversial provisions of the Constitution, particularly Articles 39 and 40 as well as the ethnic-based federal arrangement cannot be sacred in the views of recently formed political parties like Ethiopian Citizens for Social Justice Party (ECSJ).<sup>105</sup> ECSJ advocates citizen-based politics and criticizes most of the aforementioned provisions on the ground that they could not promote national unity, individual rights and economic development.<sup>106</sup> As Rene Lefort wrote, if ECSJ could rewrite the FDRE Constitution, it would open with "We the people", and not "We the nation nationalities and peoples of Ethiopia."<sup>107</sup> Besides, the demarcation of

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<sup>99</sup>Arriola, *supra* note 89, at 118-120. The Oromo National Congress, Ethiopian Social Democratic Federal Party, Southern Ethiopia Peoples' Democratic Coalition, All Amhara People's Organization and Ethiopian Democratic Unity Party were Ethiopian-based members of the UEDF.

<sup>100</sup>*Id.* See; INTERNATIONAL CRISIS GROUP, ETHIOPIA: ETHNIC FEDERALISM AND ITS DISCONTENTS, CRISIS GROUP AFRICA REPORT NO 153, (September 2009), at 8-10, available at <http://ehrp.org/wp-content/uploads/2014/05/Crsis-Group-Ethiopia-Ethnic-Federalism-and-Its-Discontents.pdf> (Accessed on 20 April 20, 2018).

<sup>101</sup>*Id.*

<sup>102</sup>Dessalegn Chanie, *Ethiopia: NAMA is expected to be the Guardian of a Fully Fledged Amhara Nationalism* ADDIS STANDARD, June 19, 2018, available at <http://addisstandard.com/the-interview-nama-is-expected-to-be-the-guardian-of-a-fully-fledged-amhara-nationalism-dr-dessalegn-chanie/> (Accessed on 29 April, 2019).

<sup>103</sup>*Id.*

<sup>104</sup>*Id.*

<sup>105</sup>Rene Lefort, *Political Shake-Up and Localism Can Edge Ethiopia Forwards*, (2019), available at <https://www.ethiopia-insight.com/2019/05/29/political-shake-up-and-localism-can-edge-ethiopia-forwards/> (Accessed on 17 July, 2019).

<sup>106</sup>*Id.* ECSRJ is a merger of seven parties. The Seven parties are Ethiopian Democratic Party (EDP), All Ethiopian Democratic Party (AEDP), Blue Party, New Generation Party (NGP), Gambella Regional Movement (GRM) and Unity For Democracy and Justice (UDJ). ECSJ has called for constitutional amendment. See Addis Getachew, *Ethiopian Party Wants Constitutional Change Amid Unrest*, Politics Africa, (2019), available at <https://www.aa.com.tr/en/africa/ethiopian-party-wants-constitutional-change-amid-unrest/1539343> (Accessed on 20 August, 2019).

<sup>107</sup>*Id.*

regional states would be on geographic basis.<sup>108</sup> The Citizens Charter Group (CCG) is also crying out for a new citizen-based and liberal constitution that would bring about transformational changes in regard to the form of government, territorial administration, electoral procedures, and checks and balances.<sup>109</sup>

However, the idea of Constitutional amendment has been a sort of “political taboo” during the pre-Abiy Ahmed period.<sup>110</sup> At that time, EPRDF labeled such ideas as anti-democratic thoughts from anti-democratic forces to destroy the Constitution.<sup>111</sup> In the aftermath of Abiy Ahmed’s election, however, the discourses of constitutional amendment have been changed. More significantly, the Prime Minister promised to broaden Ethiopia’s democratic space by reforming state institutions and legal frameworks including the Constitution.<sup>112</sup> However, the fate of the Constitution is a point of disagreement even within EPRDF whose members are now eyeing each other suspiciously.<sup>113</sup> For instance, at the outset of their tactical alliance, both the Oromo Democratic Party (ODP) and the Amhara Democratic Party (ADP) have looked ahead about the amendment of the Constitution.<sup>114</sup> Nonetheless, the issue has been relegated to a secondary matter in the course of time on the table of ODP while ADP insists on the agenda eagerly and passed a resolution that supports the amendment of the Constitution.<sup>115</sup> On the other hand, TPLF is still resisting any claim of constitutional change, and it often acts as if it is the guardian of the Constitution and the ethnic-based federal system.<sup>116</sup> It further reflects a view that

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<sup>108</sup>*Id.*

<sup>109</sup>The Citizens Charter Group (CCG), People’s Transition Manifesto for a United Democratic Republic of Ethiopia, (March 2019), available at <https://borkena.com/2019/03/26/a-peoples-transition-manifesto-for-a-united-democratic-republic-of-ethiopia-the-citizens-charter-group/> (Accessed on 5 August, 2019).

<sup>110</sup>At that period, EPRDF accused all oppositions challenged it tautly as enemies of the state and the nations, nationalities and peoples of Ethiopia. See Gudeta Kebede Asfaw & Alemu Kassa Reta, *Ethiopian Opposition Political Parties in the Post-1991 Political Structure*, 6:1 INTERNATIONAL JOURNAL OF CURRENT RESEARCH 4784, 4787-92(2014).

<sup>111</sup>*Id.* See also ABEBE, *supra* note 83, at 74 & 96.

<sup>112</sup>In the meeting between Prime Minister Abiy Ahmed and the leaders of opposition parties, the Prime Minister said that “there will be no issue left untouched, stretching to constitutional amendment.” See Yared Tsegaye, *News: Defunct Political Parties Negotiation Forum Leaders at Odds with PM Abiy’s Fresh Talk with Opposition*, ADDIS STANDARD, Dec. 5, 2018, available at <http://addisstandard.com/news-defunct-political-parties-negotiation-forum-leaders-at-odds-with-pm-abiy-fresh-talk-with-opposition/> (Accessed on 10 April, 2019).

<sup>113</sup>International Crisis Group (ICG), *Restoring Calm in Ethiopia after High-profile Assassinations*, Statement/Africa, (June 25, 2019), available at <https://www.crisisgroup.org/africa/horn-africa/ethiopia/restoring-calm-ethiopia-after-high-profile-assassinations> (Accessed on 15 August, 2019).

<sup>114</sup>The Prime Minister promises changes including a constitutional amendment. The same position is also reflected by the ADP. However, latter on, ODP announced that it would not negotiate over the federal system and identity politics. Additionally, The Prime Minister at his performance report to parliament on July 1, 2019, advocated the textual model of constitutional amendment by saying that the only way to change the constitution would be through legal means. On the other hand, ADP still considers a constitutional amendment as its main agenda. See Teshome M.Borago, *Adwa and Abiy’s Mixed Message on Federalism in Ethiopia*, SATENAW, Feb. 24, 2019, available at <https://borkena.com/2019/02/24/adwa-and-abiy-mixed-message-on-federalism-in-ethiopia-by-teshame-m-borago/> (Accessed on 15 August, 2019).

<sup>115</sup>Interview with a Higher Official within ADP, Whose Name is Confidential, on 10 July 2019.

<sup>116</sup>*Tigray State President Dr. Debretsion Gebremichael Says the Ethiopian Federal System is Being Destroyed*. TIGRAI ONLINE, Aug. 15, 2018, available at <http://www.tigraionline.com/articles/debretsion-gmichael-pr818.html> (Accessed on 17 August 2019); Kibreab Beraki, *TPLF: Struggle in Defense of Revolutionary Democracy...and Federal System is Expected*, ETHIOPIA INSIGHT, Oct. 24, 2018, available at <https://www.ethiopia->

is based on a strictly procedural understanding of amendment which subsequently promotes a textual model in the event of constitutional changes.<sup>117</sup>

As said, the future of the FDRE Constitution is also a point of dispute among opposition political parties. Most of ethno-nationalist opposition parties are siding with TPLF's position and they are less interested on the issue of constitutional reform.<sup>118</sup> Instead, they are more concerned about the democratic implementation of the Constitution though some of their demands, like making Affan Oromo an additional working language of the federal government, require an amendment.<sup>119</sup> These ethno-nationalist groups are actually disfavoring the amendment agenda and struggle for preserving the FDRE Constitution as it is or they support only minor modifications by strictly following the procedures put in the constitution.<sup>120</sup> In contrast, the multiethnic political parties that are promoting Ethiopian nationalism and the Amhara based ethno-nationalist groups are eager to amend the Constitution. Therefore, they struggle for its substantial change or remaking.

The dispute over the future of the Constitution among political parties generally shows that there are serious difficulties with the constitution and indicates the absence of consensus within the society and elites on the basic questions of nationhood such as the structure of the state, the proper relationship between central and regional power, and the land tenure policy options. In spite of the debates, a national committee has been established to conduct studies regarding the amendment of the Constitution.<sup>121</sup> Therefore, a constitutional change through the power of constitutional amendment seems to be certain to happen in Ethiopia.

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[insight.com/2018/10/24/tplf-struggle-in-defense-of-revolutionary-democracy-and-federal-system-is-expected/](https://insight.com/2018/10/24/tplf-struggle-in-defense-of-revolutionary-democracy-and-federal-system-is-expected/)  
(Accessed on 10 August 2019).

<sup>117</sup> TPLF as a party often expresses its stand in this regard and frequently demands the reformists to “respect the Constitution and the federal system.” See Abdur Rahman Alfa Shaban, Ethiopia's Tigray Region Plans ‘Respect the Constitution’ Rally (2018) available at <https://www.africanews.com/2018/12/07/ethiopia-s-tigray-region-plans-respect-the-constitution-rally/> (Accessed on 23 February, 2019) ; Amdom Gebre-Selassie, Exclusive interview with Tigray-Ethiopian Hero Amdom (2018), available at <https://www.satenaw.com/exclusive-interview-tigray-ethiopian-hero-amdom/> (Accessed on 23 February, 2019).

<sup>118</sup> Arena Tigray for Democracy and Sovereignty (ATDS), Tigray Alliance for National Democracy (TAND), the Oromo Democratic Front (ODF) and other Oromia-based ethno-nationalist parties can be mentioned in this regard. See *Tigray Opposition Parties Arena Tigray and Tigray Alliance for National Democracy (TAND) Agree to Work Together*, EZEGANEWS, Oct.18, 2019, available at <https://www.ezega.com/News/NewsDetails/6736/Tigray-Op-Position-Parties-Arena-Tigray-and-TAND-Agree-to-Work-Together> (Accessed on 10 August, 2019). For these parties, having a Constitution that allows secession is not a problem by itself. And it is the failure to establish a democratic political system that leads to ethnic tensions. The Tigray-based opposition party, ATDS also argues that the current Constitution must be changed by following the procedures codified in the Constitution itself. See; The Debate Between the Representatives of the Oromo Democratic Front, the National Movement of Amhara and Arena Tigray for Democracy and Sovereignty (ATDS) on LTV Show ( Dec.,18, 2018).

<sup>119</sup> FDRE CONSTITUTION, Art.5 (2). This provision provides that “Amharic shall be the working language of the Federal Government.” However, most of the Oromo nationalist activists, politicians and academicians argue for the proper implementation of the Constitution including the ethnic based federal system, rather than amendment.

<sup>120</sup> *Id.*

<sup>121</sup> (Telephone) Interview with Seifu Gebremariam, Senior Legal Advisor to the Speaker of the House of Peoples Representatives, on 20 January 2019.

#### IV. HEALING THE FDRE CONSTITUTION: CHALLENGES CONSIDERING THE CURRENT ETHIOPIAN CONTEXT

As noted above, constitutional amendment is a means for “perfecting the imperfections” of a constitution experienced through time and practice.<sup>122</sup> Supporting this view, Roznai considers constitutional amendment as a “healing principle” that would allow the constitution to stand the test of time.<sup>123</sup> Moreover, an amendment process provides a peaceful method for changing the constitution without recourse to a violent revolution by which it serves as the “safety-valve to a nation.”<sup>124</sup>

On the same vein, constitutional amendment is presently imperative in Ethiopian. First, the FDRE Constitution is the result of the constitution-making process that was not inclusive. Important political players and constituencies who identified themselves as Amhara or as mixed-ethnic and pan-Ethiopian forces were systematically excluded from meaningful participation in the process.<sup>125</sup> As a result, the whole process was under the influence of the TPLF dominated EPRDF.<sup>126</sup> In addition, the Constitution has come with no due and proper consultation with the public at large.<sup>127</sup> Due to these, the Constitution has weak original legitimacy. At this juncture, it is indeed important to note that “the making of a constitution is a continuous process that never ends.”<sup>128</sup> The power of amendment can thus reinstate the Constitution’s legitimacy by making the people and concerned political actors to be involved in the process of constitutional change and, at the end, the amended constitution will be regarded as manifesting the consent of the people and the compromised interests of all political forces.

Second, the youth in different parts of the country went to the streets since 2012.<sup>129</sup> After six years of protests, EPRDF has been internally changed which led to the start of the current reforms in Ethiopia.<sup>130</sup> Some impractical and indeterminate provisions relating to the principle of secularism and freedom of religion, the governance of Addis Ababa and its relation with Oromia region, the administration of land and other natural resources, regional state border changes and

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<sup>122</sup> Ulrich K. Preuss, *The Implication of Eternity Clauses: the German Experience*, 44 ISRAEL LAW REVIEW. 429, 433-455 (2011); JACKSO & TUSHET, *supra* note 8, at 202-203.

<sup>123</sup> ROZNAI, *supra* note 5, at 1-5.

<sup>124</sup> *Id.*

<sup>125</sup> Seyoum Mesfin, Issues and Challenges in Federal Constitution-Making Process in Ethiopia, in PROCEEDINGS OF THE 5<sup>th</sup> INTERNATIONAL CONFERENCE ON FEDERALISM (2010); Kassahun Berhanu, Political Parties and Political Culture in Ethiopia in AFRICAN POLITICAL PARTIES EVOLUTION; INSTITUTIONALIZATION AND GOVERNANCE 118-124 (M.A. Mohammed Salih ed., 2003); Regassa, *supra* note 89, at 85-118; ABEBE *supra* note 84, at 75-80.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Regassa, *supra* note 89, at 95.

<sup>129</sup> The Muslim protest was started in 2012 and followed by the Oromo Protests, Amhara Protest and the Konso Protests, to name a few. See ASSEFA ENDESHAW, ETHIOPIA TODAY AND TOMORROW: THE COMING INTO POWER OF ABIY AHMED AND THE CHALLENGES 11-37 (Alfa Printing Press, 2019).

<sup>130</sup> *Id.* The ODP-ADP alliance edged out TPLF in the rigging power struggle within EPRDF coalition and the alliance has brought the incumbent Prime Minister to the front. However, this alliance is now argued to seem on the verge of breakdown due to pressures on both sides from radical ethno-nationalist movements within their regions.

disputes, the federal-regional budget transfers and the question of self-government were sources of grievances that caused the protests.<sup>131</sup>

Thirdly, various political, economic and social changes have happened since the promulgation of the FDRE Constitution. For instance, the EPRDF's two decades control of the federal and regional institutions through the party channel has been challenged since 2016 owing to the new assertiveness and alliance of ODP and the ADP.<sup>132</sup> The absence of democratic centralism as a political management tool in turn weakens the solidity of the federal government and its influence on regional states.<sup>133</sup> The recently opened political space together with ill-formulated constitutional provisions that generously grant every nation, nationality and people the right to form their own regional state based on the sole criteria of ethnicity prompts most of the nations, nationalities and peoples in the Southern Nations Nationalities and Peoples Regional State to raise new questions for statehood.<sup>134</sup> Practically, however, it is impossible to deal with all these aspirations for statehood based on the Constitution.<sup>135</sup>

Fourthly, the FDRE Constitution is made by "men, not gods." As Ivor Jennings explained, "...the framers have not the gift of prophecy" and then could not foresee all the problems and challenges that we are facing now.<sup>136</sup> Accordingly, it is constitutional amendment that enables us to correct the weaknesses of the Constitution that are revealed through time and experience. For instance, the practice demonstrates that the HoF cannot be the appropriate institutions to umpire sensitive constitutional disputes between ethnic groups due to its composition, political affiliation, incompetence, and limited accessibility.<sup>137</sup> The plurality electoral system established in the FDRE Constitution is simply reinforcing the one-dominant party system that sets back the development of democracy and constitutionalism.<sup>138</sup> The constitutional provision that allows regions to organize their security forces is now threatening the federal system and the process of democratization due to ethno-nationalist Special Forces and militias standing against the federal

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<sup>131</sup>Christophe Van Der Beken, The Challenge of Reform within Ethiopia's Constitutional Order, Rift Valley Institute Briefing Paper (September 2018), available at <http://riftvalley.net/news/challenge-reform-within-ethiopia%E2%80%99s-constitutional-order#.XVbBYfk97IU> (Accessed on 17 July, 2019).

<sup>132</sup>*Id.* See also Lefort, *supra* note 93.

<sup>133</sup>*Id.* The federal government cannot fully exercise its power over regional states. For instance, it cannot arrest and bring into justice suspects hiding therein.

<sup>134</sup> International Crisis Group (ICG), Time for Ethiopia to Bargain With Sidama Over Statehood, Crisis Group Africa Briefing No146 (July 2019), available at <https://www.crisisgroup.org/africa/horn-africa/ethiopia/b146-time-ethiopia-bargain-sidama-over-statehood> (Accessed on 15 August, 2019). In addition to Sidama, Dawro, Gamo, Gofa, Gurage, Hadiya, Kafficho, Kambatta, and Wolayta have raised questions for their own regional states.

<sup>135</sup>*Id.*

<sup>136</sup> DHAMIJA, *Supra* note 1, at 13

<sup>137</sup> Adem Kassie Abebe, Access to Constitutional Justice in ACCESS TO JUSTICE IN ETHIOPIA: TOWARDS AN INVENTORY OF ISSUES 41, 48-68 (Pietro S. Toggia, Thomas F. Geraghty, & Kokebe W. Jemanah eds., 2014); Fiseha, *supra* note 88. Assefa predicts HOF's impartiality will be tested when it deals with sensitive intergovernmental disputes in a multiparty setting. In fact, this is now happening due to the decline of party centralism within EPRDF. The case of Welqayit can be mentioned here. The members of HOF representing the Amhara regional state complained about the Speaker of the HoF, who is a member of TPLF. See; *Panel Discussions on Federalism, Constitutional Interpretations, and Identity Questions Held in Adam*, Amhara TV, Feb.15, 2019.

<sup>138</sup> MOHAMED SALIH, ANDREAS ESHETE & SAMUEL ASSEFA (eds), REFLECTIONS ON EXPANDING ETHIOPIA'S DEMOCRATIC SPACE ASPIRATIONS, OPPORTUNITIES, CHOICES (Friedrich-Ebert-Stiftung Addis Ababa Office, November 2018), at 23-27. In the former Political Parties Negotiation Forum, opposition political parties and EPRDF agreed to change the First-Past-the-Post electoral system into a mixed one. See Tsegaye, *supra* note 112.

and adjacent regional states security forces.<sup>139</sup> Also, the move to secede by Abdi Illey and the alleged sub national coup attempt in Somali and Amhara regional states warn that the role of the federal government at the time of crises within regional states needs reconsideration to introduce a provision that reserves a power to the center to immediately deal with such crisis.<sup>140</sup>

The aforesaid situations increase the practical importance of constitutional provisions and, at the same time, reveal the gaps and flaws of the current Constitution.<sup>141</sup> Therefore, the FDRE Constitution needs an amendment in response to the new political demands and changing political environment, and to heal its identified defects and gaps. A constitution that does not allow for adjustments on these and other related grounds is less likely to endure.<sup>142</sup> Indeed, constitutions that endure are more likely to promote effective, equitable and stable democracy and constitutionalism.<sup>143</sup>

However, it is known that the FDRE Constitution remains untouched for a long period of time. And, it is a stagnant document owing to few formal amendments in the past twenty-four years.<sup>144</sup> This is in marked contrast with the average life expectancy of national constitutions, which is nineteen years.<sup>145</sup> Besides, unlike the US, that supplements its rigid amendment process through judicial interpretation, the role of the judiciary in Ethiopia with regard to constitutional modification is nil.<sup>146</sup> These conditions, according to Donald Lutz, produce a higher likelihood that the Constitution will be replaced entirely which, in turn, risks constitutional endurance.<sup>147</sup> Additionally, constitutional replacement makes everything including a settled political matter up for grabs and, hence, it must be avoided.<sup>148</sup> On this point, it has been famously argued that “Constitutions that do not allow for the readjustment of the constitutional bargain from time to time are much less resilient and much more likely to be replaced in their entirety.”<sup>149</sup>

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<sup>139</sup> International Crisis Group (ICG), *Managing Ethiopia’s Unsettled Transition*, Crisis Group Africa Report No 269, (February 21, 2019), at 26 available at <https://www.crisisgroup.org/africa/horn-africa/ethiopia/269-managing-ethiopia-unsettled-transition> (Accessed on 14 June, 2019); International Crisis Group (ICG), *supra* note 113.

<sup>140</sup> *Id.* Similar norm exists in Spain. See The Spanish Constitution of 1987, Art 155. This provision allows the federal government to take measures in exceptional cases to restore constitutional order or to prevent any great damage to the general interests of Spain. The federal government invoked this provision against the 2017 secession referendums in Catalonia. See; Erin C. Houlihan, *Referendums on Secession and State Responses in 2017: Catalonia and Kurdistan* 22, 22-34 in *ANNUAL REVIEW OF CONSTITUTION BUILDING PROCESSES: 2017*(International IDEA, 2018).

<sup>141</sup> Van Der Beken, *supra* note 131.

<sup>142</sup> Lutz, *supra* note 13, at 364.

<sup>143</sup> ZACHARY ELKINS, TOM GINSBURG & JAMES MELTON, *THE ENDURANCE OF NATIONAL CONSTITUTIONS* 1-11 (Cambridge University Press 2009). See also Fombad, *supra* note 4.

<sup>144</sup> Zelalem Eshetu, *Unconstitutional Constitutional Amendments in Ethiopia: The Practice under Veil and Devoid of a Watch Dog*, 4 HARAMAYA LAW REVIEW 60, 64-68 (2015).

<sup>145</sup> The research conducted by Zachary Elkins *et al.* reveals that the life expectancy of national constitutions is nineteen years. See; ELKINS *et al.*, *supra* note 143.

<sup>146</sup> Amendment rate is the average number of formal amendments passed per year since the constitution came into effect. A successful constitutional system, according to Lutz, is defined by a constitution of considerable age that has a total number of amendments, which when divided by the constitution’s age in years, represents a moderate amendment rate- that is between 0.75 and 1.25 amendments per year. For more see; LUTZ, *supra* note 13.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*, at 366.

<sup>149</sup> ELKINS *et al.*, *supra* note 143, at 81.

In Ethiopia, for the reasons indicated, the issue of constitutional reform is therefore important. Moreover, it is constitutional amendment that upholds constitutional continuity by providing a peaceful way for constitutional changes. Although amending the FDRE Constitution is indispensable to the current political reforms, it is important to note that there are various challenges in this regard. More specifically, what within the text is (un)amendable, and how and when to amend the Constitution are currently some of the tough questions in the country.

#### **A. What within the FDRE Constitution is (un)amendable?**

This first question is about the scope and boundary of the amending power. In this regard, the substantive model of constitutional amendment suggests that the amending power may not be exercised to change the core elements of a constitution.<sup>150</sup> As a result, the constitution could not be amended to the extent of creating a completely new one through substantial alteration of its fundamental elements.<sup>151</sup> In effect, this model distinguishes between the amendment and remaking of a constitution and thereby sets an inherent boundary to the amending power.<sup>152</sup>

Right then, what within the FDRE Constitution is (un)amendable and how much amendment is required to say that the Constitution is not radically changed is one of the challenges in the discourse of constitutional amendment in Ethiopia. Most of the provisions marked out for amendment by the opposition political parties reflect the basic political and philosophical assumptions that form the foundational substance of the Constitution.<sup>153</sup> They simply embody the basic values and the very purpose of the FDRE Constitution.<sup>154</sup> As a result, amending any of these provisions would bring about a radical and transformative change to the FDRE Constitution. Indeed, this change would be against the spirit and essence of the Constitution. For instance, the change of the federal system from ethnic to geography would substantially change the structure and function of the state and the purpose of the federation. This would be no mere correction of the Constitution within the existing framework. Instead, its effect would be to replace the Constitution with a new one.

However, no institution is expressly authorized to rule against unconstitutional constitutional amendments in Ethiopia.<sup>155</sup> Although the HoF has the power to decide on all constitutional disputes, including assuming jurisdiction to examine the constitutionality of constitutional amendments, this would not make sense since the HoF is one of the veto players that decide on amendment proposals and, therefore, it cannot sit as a judge to review its handiwork.<sup>156</sup> Additionally, the Constitution or any other legislation does not give this power to the

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<sup>150</sup> The word “*amend*” comes from the Latin ‘*emendare*’ which means to correct and then the power of constitutional amendment corrects the system without fundamentally changing its nature. See; DIXON, *supra* note 10, at 96; JACKSO & TUSHET, *supra* note 8.

<sup>151</sup> Preuss, *supra* note 122, at 433-455; JACKSO & TUSHET, *supra* note 8, at 202-203.

<sup>152</sup> *Id.*

<sup>153</sup> Eshetu, *supra* note 73.

<sup>154</sup> *Id.*

<sup>155</sup> FDRE CONSTITUTION, Art.62 & 83.

<sup>156</sup> *Id.*, at Art. 83, 104 & 105

judiciary.<sup>157</sup> This is the same as in the Indian Constitution though the Indian Supreme Court has exercised the power.<sup>158</sup> Unlike India, the Ethiopian Courts restrain themselves from reviewing constitutional matters and judicial activism is uncommon. In effect, neither the HoF nor the judiciary can review the constitutionality of amendments.

This indeed reveals that the substantive model of constitutional amendment is not tenable in Ethiopia. As a result, the amending power cannot be constrained and overseen on substantive reasons due to institutional gaps. Hence, at least in theory, amendments that amount to a replacement of the Constitution could not be rejected. Therefore, the power of amendment can be exercised to bring changes that would replace the Constitution with a completely new one. As a matter of politics, however, this leads to a situation in which the Constitution could not endure. Making transformative changes using the procedures of amendment would also raise a question of appropriateness. There may also be the risk of upheaval attending creation of a new constitution. This would certainly occur if Ethiopian political actors undertook the effort to write a new constitution in the guise of amendment. Thus, the extent to which the FDRE Constitution can be changed through amendment is one of the challenges in the current political reform.

### **B. How to Amend the FDRE Constitution?**

Obviously, the FDRE Constitution contains provisions on its own amendment under Article 104 and 105. Nevertheless, these provisions do not deal with the substance of constitutional amendments. The judiciary does not also develop and enforce any kind of doctrine that constrains the amending power in Ethiopia. At least in theory, all provisions of the FDRE Constitution are freely amendable by following the process prescribed under it. Thus, it is possible to think about the textual model of constitutional amendment to make the necessary changes in the FDRE Constitution.

However, the rules spelled out under Article 104 and 105 of the FDRE Constitution are seriously flawed and insufficient when viewed from the conventional theory of constitutional amendment. Firstly, the provision that deal with initiation is so ambiguous that the bodies that can propose amendments cannot be known undoubtedly.<sup>159</sup> The constitution does not unequivocally answer the question as to who should be allowed to initiate a constitutional amendment.<sup>160</sup> Secondly, the amendment rules do not clarify the ambiguity that surrounded the issue of public participation. Although the rules require proposals to be submitted for the public, the mode of submission, the manner of decision-making and the nature of decisions demanded from the public are not comprehensible from the text of the Constitution.<sup>161</sup>

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<sup>157</sup> *Consolidation of Powers of the House of Federation (HoF) and Definition of its Powers and Responsibilities*, Proclamation No. 251/2001, FED.NEG.GAZETTA, 7<sup>th</sup> Year No. 41, Addis Ababa, 6<sup>th</sup> July 2001; *The Council of Constitutional Inquiry* Proclamation No. 798/2013, FED.NEG.GAZETTA, 19<sup>th</sup> Year No 65, Addis Ababa, 30<sup>th</sup> August, 2013.

<sup>158</sup> ROZNAI, *supra* note 5, at 42-47.

<sup>159</sup> FDRE CONSTITUTION, Art.104. For more discussion see: Zelalem Eshetu, *Apprising Constitutional Amendment in Ethiopia: Vexing Questions and Qualms*, 5 BAHIR DAR U. J.L 315, 322-46(2015).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

Thirdly, the rules do not provide a timeline for carrying out different actions of the amendment.<sup>162</sup> The timelines are important to ensure that constitutional amendments are not hastily carried out without enough time and opportunity being given to the people and other concerned bodies to be consulted.<sup>163</sup> Owing to this, the rules provided in the FDRE Constitution cannot prevent hasty and less communicated constitutional changes. Fourthly, the amendment procedure does not specify the time limit for ratifying an amendment proposal by state legislatures.<sup>164</sup> Therefore, the formal rules stated in the Constitution are not satisfactory and clear enough to guide actions concerning constitutional amendments.

In addition to the aforementioned shortcomings, the FDRE Constitution sets forth a more stringent procedure for amending Chapter Three of the Constitution (Article 13-44) that contains most of the provisions demanding rectification in the views of most opposition political parties and elites.<sup>165</sup> The stringency is mainly the result of the unanimous consent required for amending the most contentious provisions of the Constitution including Article 39 and 40.<sup>166</sup> Put differently, most of the controversial provisions of the Constitution cannot be amended without the assent of all regional states. This unanimity requirement is unique to the Ethiopian federation and makes the amendment procedure overtly rigid.<sup>167</sup> Moreover, the direct participation of the regions through their state councils to approve all amendment proposals is an additional hurdle that contributes to the rigidity of the process.<sup>168</sup>

In view of these, the textual model of amendment is unrealistic and impracticable in the current Ethiopia's context. At this moment, the overtly rigid amendment procedure would make constitutional changes difficult; perhaps even impossible since the polarized political climate will prevent regions from reaching an agreement required to amend the most disputed provisions of the Constitution.<sup>169</sup> Of course, constitutional rigidity has proven problematic for many countries, including the US, whose current constitution was the product of the impossibility of amending the prior constitution (the Articles of Confederation).<sup>170</sup> Therefore, the ongoing political reform cannot bring about the necessary constitutional changes by sticking to the strictures of the constitutional text and this means that the amendment rules in the FDRE Constitution should be disregarded in some ways.<sup>171</sup> Indeed, this situation makes it necessary to

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<sup>162</sup>Eshetu, *supra* note 159, at 343-46.

<sup>163</sup>*Id.*

<sup>164</sup>*Id.*

<sup>165</sup> FDRE CONSTITUTION, Art.105 (1).

<sup>166</sup>*Id.*

<sup>167</sup>Dellinger, *supra* note 3, at 302. Mostly, unanimity requirement is the feature of confederations.

<sup>168</sup> In German for instance, the Landers are involved in the amendment process indirectly through the second chamber. In contrast, regional states in Ethiopia will engage in the process of amendment directly through their state councils and indirectly through the House of Federation.

<sup>169</sup> A refusal of one regional state would bar a constitutional amendment in regard to Article 39, 40 and the amending clauses of the Constitution. Amending the rest of the provisions can be denied when four regional states refused to approve a proposal.

<sup>170</sup> Albert, *supra* note 28, at 173-77; see Larry Alexander, What Are Constitutions, And What Should (And Can) They Do? *in* WHAT SHOULD CONSTITUTIONS DO? 21-23 (Ellen Frankel Paul, Fred D. Miller, Jr., & Jeffrey Paul eds, 2011).

<sup>171</sup> See the discussion on the political model of constitutional amendment.

pursue extra-constitutional methods to break through the barriers standing in the way of amending the Constitution.

### C. Timing of Constitutional Amendment

As said, constitutional amendments are expected to bring legitimacy and to cure identified defects of the constitution. In some instances, however, amendments may exacerbate divisions, deepen conflict or bring a risk of democratic backsliding.<sup>172</sup> Therefore, the timing of amendments can significantly affect their outcomes. Indeed, constitutional amendments are required to be carried out based on national consensus.<sup>173</sup> As Walter Dellinger pointed out, “no satisfactory agreement can be reached on a process of amendment until a substantial consensus is reached on the underlying questions of nationhood.”<sup>174</sup> Additionally, a peaceful political environment that is free from political assassinations, police assaults and undue interference from security forces and party affiliated militia groups is a prerequisite for amendments.<sup>175</sup>

When viewed from these perspectives, the present situation of Ethiopia is not conducive for making constitutional amendments. Currently, the animosity among Ethiopia’s ethnic-groups is rising sharply.<sup>176</sup> The competing claims of ethnic forces and political parties have not been narrowed through dialogues, and the level of their political disagreement remains rather high.<sup>177</sup> This in turn would make constitutional amendment not only impossible, but also a risky process that may end up with a worse situation. The “flag war” that becomes common between competing nationalists in Addis Ababa may be worthy of mentioning in this regard.<sup>178</sup>

In addition to this, the level of stability and security is not suitable for making constitutional amendments. Presently, political parties and civil societies cannot freely move to have access to their members and supporters in some parts of the country due to non-state actors, most of which are ethnic-militias and ethno-nationalist youth groups, creating threats and violence whilst the government cannot fully enforce rule of law in the country.<sup>179</sup> This situation would complicate the efforts of political parties and civil societies to freely market their ideas about the future of the FDRE Constitution. Therefore, insecurity and political polarization negatively affects the political setting of Ethiopia which would impede the process of making a purposeful constitutional amendment. At this moment, a move to amend the FDRE Constitution may further destabilize the country and worsen the situation.

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<sup>172</sup> ELKINS et al., *supra* note 143, at 18-19.

<sup>173</sup> African Charter on Democracy, Elections and Governance, adopted on 30 January 2007 by the Eighth Ordinary Session of the Assembly Held in Addis Ababa, Ethiopia and entered into force on 15 February, 2012 (hereinafter, ACDEG), Art. 10(2). See; Micha Wiebusch & Christina Murray, *Presidential Term Limits and the African Union*, 63 JOURNAL OF AFRICAN LAW 131, 157-60 (2019). Ethiopia ratifies this Charter in December, 2008.

<sup>174</sup> Dellinger, *supra* note 3, at 284.

<sup>175</sup> ACDEG, 14, 32(5) & 38 See Wiebusch & Murray, *supra* note 173.

<sup>176</sup> International Crisis Group (ICG), *supra* note 139.

<sup>177</sup> *Id.*

<sup>178</sup> Andrew Korybko, *The Flag War; Ethiopia’s Competing Nationalism* (2018) available at <https://www.globalresearch.ca/the-flag-war-ethiopias-competing-nationalism/5654087> (Accessed on 9 February, 2019). In the rallies that took place in Bahir Dar and Addis Ababa in July 2018 and September 2018 respectively, the issue of flag was divisive, and in Addis Ababa, there was even a physical violence between the competing Oromo and Ethiopian nationalists.

<sup>179</sup> *Id.*

## V. CONCLUDING REMARKS

The FDRE Constitution has been a point of difference among political parties since its inception. There are still starkly contradictory views between EPRDF and most of the opposition political parties toward the existing constitutional framework and future of the FDRE Constitution. Differing views are also observed within EPRDF and among the opposition parties as well. This article concludes that the most contentious matters are the institutionalization of ethnicity and the ethnic-based federal structure, the unconditional secession, the preamble of the Constitution, the national flag and emblem, the state ownership of land, the status and governance of Addis Ababa, and the constitutional amendment mechanism. It is also disclosed that there are parties, such as NAMA, that question the validity of the entire document.

It is also showed that most of the opposition parties organized based on civic nationalism and Amhara affiliated parties associate the FDRE Constitution with TPLF/EPRDF. As such, they have vowed to struggle for its substantial change or its replacement. On the other hand, most of the ethno-nationalist political parties including TPLF are scuffling for the preservation or minor modification of the Constitution. More importantly, it is revealed that both of these views are not sensible and realistic in the Ethiopian context. A radical constitutional change that totally replaces the current Constitution will not be an option as it would break the legal continuity of the Constitution and contributes little for peace and nation building. Besides, making transformative changes using the procedures of amendment would raise a question of appropriateness. Yet, it is also recognized that writing a new constitution would create chaos and the possibility of collapsing the regime. Similarly, the view that deems the FDRE Constitution like the “ark of the Covenant” that is too sacred to be touched is unreasonable and cannot ultimately preserve the Constitution. As Edmund Burke wrote, “a state without the means of some change is without the means of its conservation.”<sup>180</sup> Therefore, it is argued that making the necessary amendments on the FDRE Constitution is the appropriate way to preserve it.

This article also presented the justifications to amend the FDRE Constitution. Generally, a cumulative effect of the tapered constitution-making process, dysfunctional provisions, recognized constitutional gaps and defects, and the emerging needs and new political realities create serious difficulties with the Constitution that call for its amendment. It is argued that the legitimacy deficit of the Constitution and its imperfections can be rectified. However, it is better to do this by amendment, not by creating a new constitution or replacement.

It is also aptly indicated in this article that the textual and substantive models of amendment cannot bring about the necessary changes in the FDRE Constitution by correcting its awful deficiencies due to the procedural and substantive barriers they place in the ways of a constitutional amendment. It is also revealed that the political model of constitutional amendment that invites the participation of the people is the appropriate way to change the FDRE Constitution. This must, however, be exercised with certain cautions. First, the amendments should reflect the genuine will of the people. Second, they must help consolidate

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<sup>180</sup>EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 16 (First Published 1790, Kessinger Publishing 2004).

federal, democratic and constitutional governance in Ethiopia. The model would enable the political players to surpass the ambiguous and stringent procedures of amendment in the Constitution. The active and genuine participation of the public, civic societies and political parties in the process of amendment would retrospectively cleanse the violation of the stringent rules of amendment of the Constitution. This would in turn overwhelm the claim that the reformers are acting illegally. In so doing, the deliberation and dialogue part of the process is vital. However, the timing for doing so should be considered seriously to avert a further deterioration of peace and stability. Indeed, the bottom line is the rule of law and national consensus on the basic issues of Ethiopian nationhood. Therefore, the formation of national consensus, stability and peaceful political environment should be prioritized before appealing into constitutional amendment.

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