



Appraisal of (In) Congruity between Constitutional Responsibilities of the ‘Caffee’ Oromia and its Exercise

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ABSTRACT

The Oromia Regional State was engulfed with severe political turmoil in the years preceding the 2018 regime change. Studies trace causes of the turmoil to the malfunctioning of governmental institutions that could not respond to political demands in time as a result of which the region was derailed into an unbearable political crisis. The Caffee, as a primarily concerned political entity, has constitutional responsibilities to address most of the demands. Therefore, this study aims to assessing if the practice of Caffee meets its constitutional responsibilities and what caused incompatibilities, if any. Through assessments done based on interviews with officials of Caffee, researcher's observations, and group discussions, the study identified discrepancies between the constitution and the primary legislation and also the practices. The study concluded that there are several inconsistencies caused by political indetermination, legal and structural defects, and lack of professionalism.

1. Introduction

A well-functioning democratic system presupposes effective institutions adept in ensuring observation of basic tenets of democracy. Democracy as commonly defined in terms of popular participation in governance carries with it the principle of check and balance, and limited powers of government. Strict adherence to the democratic values guarantees the stability of a political system and smooth interaction between institutions [1].

The practice of democracy is at its nascent stage in our country. Therefore, it is common to see irregularities in practice and even sometimes understanding of values of democracy. Mostly as a direct consequence of these irregularities Oromia Regional State has been in an apocalyptic political crisis for a long time now. The logical inference that could be deduced from the observation of the political situation in light of theoretical explanations is that the Region hasn't adherent to democratic principles as embedded in the constitution of the country and its almost verbatim copy, the regional constitution.

Caffee Oromia, the Regional legislature, is supposed to be a place where the will of the people already guaranteed by the constitution is

guarded. The Revised Constitution of Oromia National Regional State enumerates the list of powers, responsibilities, institutional structures, and procedural rules of Oromia State Council's, 'Caffee' Oromia. Moreover, the regional constitution has entrenched necessary democratic tools to help 'Caffee' enforce its constitutional powers.

The objective of both the Regional Constitution and Proclamation No. 201/2017 is to establish a legislative organ with supreme political power in the Region. Theoretically, this supremacy of the legislative organ at the subnational level, in particular, has its manifestations prescribed in the regional and federal constitutions.

Some recent research findings [2] point out the existence of irregularities and inefficiency of the *Caffee* in discharging constitutional mandates. In his findings, Addisu Legas [3] has shown that inability of the *Caffee* to make use of two constitutional mechanisms of oversight i.e. interpellation and motions of agenda, has contributed to its inefficiency. In a similar manner, Abdi proved inefficiency of standing committees in controlling and enforcing constitutional powers of the *Caffee*. Asebe Regassa and Getachew Tadesse elaborate more in their policy brief on the disconnect between Caffee's constitutional mandates and reality on the ground in carrying out the mandate. It was noted that Caffee members behave more like party representatives than representatives of their constituency. The brief concluded that the Caffee also suffered from the incompetence of its members and the majority party's crippling democratic centralism. [4].

Since August 2016 the Region was hit by massive youth protests and repressive government responses. Chief causes to the mass protest were identified to be the corrupt political culture in the country/the region, weak economy, broken justice system, inequality, and absence of rule of law [5]. These are all consequences of inefficient/dysfunctional governmental institutions which are ultimately accountable to Caffee as the supreme political power holder.

As the government mounts repressive measures the protests flamed the entire region and went beyond the control of the government at a time. In an attempt to control, the government committed heinous human rights violations and suppression of democratic values.

The Caffee, the legitimate representative of the people and supreme political organ, failed to act according to its constitutional responsibilities to oversight the executive and the judiciary in order to respond to shifting political and security landscape in the region. It remained indifferent to all political demands and unconstitutional actions of institutions of the government. Though, Caffee could finally manage to speak up during the Finfinnee/Addis Ababa Master plan. The research believes it was too late and that Caffee should have spoken up before the master plan when the signals began to emerge. The question here is why the Caffee didn't act according to its constitutional responsibilities where it could have acted and averted the possibility of submerging into full-fledged political crisis. The logical inference is, had the *Caffee* fully discharged its constitutional mandates, these irregularities, and the consequent mass protests could not have happened in the Region or dealt with in their early stages. This study tries to identify the sources of the problems and examines the causes of the failure of the Caffee to act in accordance with its constitutional powers.

The study used a qualitative method and IEEE Citation Style. It undertook interviews and Focus Group Discussions (FGD) with the heads of Standing Committees, legal advisors, and department heads who gave critical insights on all activities of the *Caffee* in terms of exercising its constitutional responsibilities and limitations therein. The researcher has managed to make observations of Public Hearings, Standing Committees sessions and *Caffee* sessions as well. Finally, the raw data was enriched by and tested against literatures and white papers.

To address the issues of the enquiry, the paper is compartmented into five sections. The first section introduces the paper while sections two,

three and four dwell on digging the issues. Section five wraps it up with concluding remarks.

However, the study may have some limitations as a result of two factors. To begin, the study utilized data from one-term Caffee members. The following terms may see a change in the number of educated Regional Council (Caffee) members. Similarly, political party participation may increase as democratic elections are held in the region to ensure the Caffee's representativeness. Another significant limitation of this study is the dearth of relevant empirical literature in the field. The region has a deficient research culture. Because decisions are made solely on the basis of the leaders' political wills, little weight is placed on making decisions based on the findings of research conducted under successive regimes. As a result, the investigator was unable to locate much relevant empirical literature other than two M.A. theses written by Caffee-affiliated individuals.

2. Theoretical justifications for legislatures

The nascent nature of the federal arrangements and constitutionalism has rendered the area of subnational legislative organs a least researched [6]. However, there are theoretical literatures shading light in this area. Literatures on constitutionalism, federalism, separation and division of power have all contributions in building up the knowledge in the field.

Separation of powers among branches of government evolved with the intent to limit the absolute powers of Kings and ensure the system of check and balance on each of the branches [7]. It made remarkable contributions to the development of democracy and the concept of representation of people. Gradually, the existence of the three separate branches of government became a typical portrays of democracy in the modern world which was later analogically been replicated in the constitutional constellations of subnational units in federal arrangements [8].

Legislative branches in a parliamentary system of governments commonly assume the supreme authority among the three branches. With this revered position, legislative organs are expected to play a superordinate role. This concept of parliamentary supremacy emanates from the assumption of popular sovereignty collectively delegated to them via electoral means [9]. The significance of parliaments depends on the political context in which they operate [10] and they still make use of these powers in different ways enlightened by various theories.

The well-known theory in this area is the theory of representation. This theory engrafts a principal-agent relationship between the representatives and the represented. According to James H. Kukluinski delegate theory of representation presupposes two important conditions to function. The first condition is the representatives' conviction as a bearer of the will of not anybody else but their constituency [11]. Whereas the second presupposes the existence of a well-organized means for the representatives to precisely perceive the will of their constituency [9]. Besides forming a principal-agent relationship, this arrangement facilitates the means of accountability between the electorate and the representatives [12]. Hanna Pitkin also strengthens this line of argument saying that the public sends the representatives to do for them what they might have chosen to do themselves [13]. The saliency of the relationship encourages the advancement of the genuine will of the people. However, as a result of this uni-dimensional focus the theory has been criticized for unattainability. Przeworski and Stokes hit the theory saying:

“The peculiarity of the principal-agent relation entailed in the relation of political representation is that our agents are our rulers: we designate them as agents so that they would tell us what to do, and we even give them authority to coerce us to do it.” [14]

Hence the principal-agent relationship might not be as effective as it is in the business.

Sanchez De Dios came up with two broad approaches: the traditional Formalistic Approach and the New Multifunctional Paradigm [15]. The formalistic approach has two pillars. One is that the legislature should remain separate from the executive. Second, it should remain independent both in '*thought and means*' [16]. Obviously, '*thought and means*' as used by P. Norton signify the personal and individual independence of the legislators. The New Multifunctional Paradigm has focused on functions that a parliament could undertake as its broader responsibilities and structural arrangement to this end [17].

In sum, theoretical explanations of parliamentary operation have been variously observed by scholars. However, the goal behind curtail of each theory was to make sure the interest of the people are safeguarded and representation of multiple interests are ensured and their voice heard. All theoretical explanations stress on the establishment of an independent and capable legislature to fully enforce its powers free from the influences of other branches. The developments in parliamentary studies have contributed to the realization of this aim to some extent. Moreover, it strengthened the idea that parliaments should be representative in a way that exhibits diverse interest and carry the genuine interest of the society they are supposed to represent.

3. A Need for Subnational Legislature

In the federal arrangements states establish governments at two or more levels to accommodate diversities. In most cases, the federal constitutions establish the national and subnational governments with their respective powers and structures. The configuration could be parallel establishment of all the three branches or one or two of them at the subnational level.

Effective legislature at the subnational level reassures the self-rule and autonomy of the units by making rules within their jurisdiction and defending it from any incursion. A good example would be the Canadian constitution which blatantly distributes legislative powers between the national and subnational units [18]. The constitution underscored on the legislative power of both orders of government, and executive and judiciary have not been separately dealt with.

Regardless of the modes of distribution of powers, subnational legislatures have an ideal goal that originates from the designs of the federal systems which implies the power of lawmaking and sovereignty at the subnational government level [18]. Sovereign will of the dwellers of the component units are manifested in the subnational legislative organs as it is composed of their representatives. In turn, subnational legislatures represent and ensure observance of federal precepts as agreed on in the federal constitution. Therefore, a presence of legislature at the subnational level is a critical attribute for a federal system to exist [19].

In general existence of legislature at subnational level guarantees or at least supports the realization of all benefits of federalism that includes but not limited to better human rights protection, accommodation of diversity, and proximity to the population. As a conventional political height, the subnational legislatures have the responsibility to oversee the utilization of power by subnational governments as well.

4. Powers of Subnational Legislatures

Commonly, federal constitutions allocate powers both to the central government and its units depending on the underpinning motives that dictated federal arrangement. As a result one may not find similar powers at the subnational level in most federal arrangements.

There are more similarities among federations in terms of powers held by the central governments. Powers like defense and foreign relations are usually assigned to the central government as they are fundamental for the units to act in tandem in the international arena [20].

Even though it lacks consistency among federations, subnational legislative powers have been assigned on slightly similar grounds in some federations. Each federation has power distribution that implies the degree of the centralization or the federalization of the polity took on [21]. Depending on this tendency of centralization or federalization, power distribution may vary among federations. Additionally, the transferability of power between the national and subnational governments also has significant implications on determining the extent of powers of the subnational legislature [21]. In some federations, like Canada, we may not find one or more branches of government at the subnational level. Hence the responsibilities of absent branches would be assumed by the parallel branch of the national government.

By and large, powers of subnational legislatures are limited to issues of domestic nature and within the geographic and jurisdictional limits of subnational governments. Some scholars believe that issues of common interest of the federation should always be reserved for the federal government and the rest for its units [22]. Even though there might be variations, the propensity of leaving domestic matters to the units could be sensed in most federations. The main yardstick here is whether the effect of the power could spill over the spheres of the units [22]. If the benefit is to cross the domain of the units, the center would assume the power, unless it remains within the competency of the units.

The power apportioned to the subnational units according to the foregoing analysis will finally rest on the legislative organ of the subnational units where the units assume the responsibility to make laws in that regard. Hence, the power of the subnational legislature is indispensably tied to the power of subnational governments in the national constitution.

5. Constitutional Powers of Caffee Oromia

I. The FDRE Constitution

Federal states perceive their constitutions as a covenant between the units or in our case entities that made up the federation. The constitution embodies the details of their term of agreement that includes powers to be assumed by each level. The FDRE constitution seems to have adopted the same approach when it says, in its preamble, 'we, the Nations, Nationalities, and Peoples of Ethiopia'.

The FDRE constitution allocates powers to the federal government and the regional states. It apportioned powers to states in three distinct manners: exclusive, concurrent, and residual. The constitution illustrates both exclusive and concurrent powers of the federal and regional states while the significant powers of the states are engrafted in the residual powers clause. Powers that are not exclusively given to the federal government or concurrently to the federal and the states are reserved for the states [23]. Exclusive powers of the federal government are enumerated under Article 51 of the constitution and they are concluded within 21 sub-articles. Some major powers have fallen out of this list. For example, the power to regulate and administer the media or/and whether the federal government can coordinate the relationship between regional states, other than solving conflicts via House of Federation, and enact laws in this regard.

In principle, these and other residual powers are the domains of the regional states even if their nature does not allow the regions to

entertain them. At least there has to be a prior consultation between the two layers of government as to the use of the power. Regardless of the fact that these powers are not expressly assigned to the federal government, the House of Peoples Representatives (HPR) is enacting laws invoking article 55(1) of the constitution which generally states that it has the power to enact laws on matters falling under the federal jurisdiction. Nevertheless, the undesignated power of taxation is to be determined by the two-thirds majority vote of the two houses jointly.

Another domain of regional state power is the ones given concurrently with the federal government. Regional states together with the federal government may *levy a tax on jointly owned enterprises, profits of companies and dividends of shareholders and incomes and royalties from largescale mining, all petroleum and gas operations* [23]. In this case, it is not clear what ‘concurrent power’ exactly implies. In Germany, the term indicates a scenario where [the Länders](#) legislate in the areas which have not been exhausted by the federal legislations whereas in Russia the power is subject to agreement between the Federation and the units [21]. On the other hand, Assefa Fiseha argues that concurrent powers are one of manifestation of shared power and the regions can legislate on it until the center comes in as a result of the need for its interference [24]. To expound this assertion farther he brought up the power of states to enact penal laws in the areas which have not been exhausted by the Penal Code enacted by the HPR. On the contrary, the rough reading of the concurrent power of taxation implies that it has to be exercised jointly (which is to say together) without giving priority to no one. Hence, the enactment of laws in the concurrent domain of power should be done in consultation with the regional states.

The constitution and House of Federation establishment proclamation 251/2001 provide that the house shall determine the division of revenues derived from concurrent tax sources [25]. This might suggest a hint of how or where to exercise the concurrent power of taxation. But both the constitution and the proclamation talk about the division of resources gathered from the concurrent power, not about who collects the revenue.

The Revised Constitution of Oromia gives Caffee the power to levy taxes and duties on revenue sources allocated to the Region and put a verbatim copy of the concurrent power given in the federal constitution [26]. The exercise of this power will only be constitutional when exercised together with the federal government as it is been declared joint power by the Federal Constitution. Still, the questions, who legislates, who administers or enforces, and what procedures to be followed, remain unanswered in the exercise of concurrent power of taxation. In practice, until 2018 the federal government used to collect tax from the concurrent source which was later changed and the states began to collect and transfer to the federal government for redistribution.

Article 55 (5&6) of the FDRE Constitution are among the area of competence of regional states' legislatures. There is controversy as to the categorization of these powers [24] i.e. whether they are parallel, framework or concurrent powers. Despite the controversy, the state legislatures would assume the power to enact penal laws in the area not covered by federal penal code and civil laws not deemed by HoF crucial to *establish and sustain one economic community* [23]. Caffee Oromia has enacted several laws with penalty clauses even though most of them do not trace legitimacy to these provisions of the constitution or any other pertinent provisions for that matter.

II. The Revised Oromia Regional State Constitution

The provenance of Caffee Oromia’s legislative power was the FDRE constitution which confers it the exclusive power of legislation on issues falling under regional jurisdiction and extends it to the power to draft, amend and adopt the regional constitution [23]. The federal constitution demands the regional constitutions to be consistent with the federal constitution. Meanwhile, the Oromia revised constitution demands Caffee’s legislation to be consistent with the federal constitution and federal primary legislation. Though, it is imperative to keep primary consistency with the federal constitution.

Even though it has not exhaustively exploited its constitutional spaces, [27] the Oromia Regional State Revised Constitution lists the

powers of Caffee under Article 49(3). Among others, these powers include representative, deliberative, oversight, legislative (including the constitution), and constitutive powers. Most of these powers are common, yet there are some resounding features worth discussing here.

The regional constitution departs from the federal constitution concerning the Caffee's power against the executive. The federal constitution (the English Version), under art.55 (17) empowers, in vague terms, the HPR to investigate the Executive's conduct and discharge of its responsibilities if necessary, though the Amharic version does not agree with the English. According to the federal constitution itself, the executive includes the PM and Council ministers. Therefore, the HPR can remove the Prime Minister from his/her office if necessary. The Oromia constitution follows the Amharic version of the federal constitution that limits this power only to calling and questioning. Therefore, the council/Caffee cannot take a measure to remove any regional official or the president from the office, at least as per the regional constitution. On the other hand, Proclamation No. 2001/2017 allows the Caffee to take measures without specifying whether the measure includes discharging from office [28]. So far as the Amharic version of the federal constitution is authoritative one may argue that the Oromia constitution is right. When it comes to Proclamation No. 2001/2017 it deviates from the two constitutions.

Caffee has the authority to establish subordinate administrative structures based on population, area, and socioeconomic requirements. The federal constitution concurs, but the rationale is to devolve power to local governments, which should have been one of the reasons for establishing lower administrative structures under the regional constitution, which cites economic and geographic reasons for establishing administrative levels.

In line with the powers given to the federal government, Caffee may approve agreements with other regions. The federal constitution empowers HoF to resolve disputes between regional states and the federal government to regulate interstate commerce. Except for these two scenarios set in the federal constitution Caffee may engage with the endorsement of agreements with other regions.

6. Organizational Design and Functions of Caffee

6.1. Organizational Design of Caffee Oromia

The Caffee is composed of a variety of structures that enable it to fulfill its constitutional obligations. The constitution largely defines the institutional frameworks. The regional constitution establishes the Caffee Assembly, the Speaker and Deputy Speaker offices, and the Standing and Ad-hoc Committees [26]. Separately, the constitution specifies the powers of the Caffee as an institution and of the Speakers. Other laws, such as proclamations 191/2015 and 201/2017, details the powers and establishes additional schemes to ensure the constitutional responsibilities are carried out.

Furthermore, Proclamation No. 201/2017 established a Secretariat, Coordinating Committee, Party Whips, Advisory Committee on Caffee Affairs, and Caffee's Group [28].

a) The Council/Caffee

The major constitutional legislative powers were conferred on the Caffee assembly. Most of these powers are exercised through the Speakers and the Standing Committees and other structures specified under article 4 of proclamation No 201/2017. Due to economic constraints, as it is claimed by the government, and limit of ordinary sessions of Caffee to at least twice a year, most of Caffee powers are delegated to the Standing Committees. This has its implications in terms of exercising the constitutional powers thoroughly, which we will dwell on in the next topics. But before that let's see three major functions Caffee has according to the current institutional

conception of its powers.

Representation

The power of representation, as the name signifies, is indispensably attached to democratic legislatures. Legislative representations are usually understood as a framework where peoples' aspirations are converted into policies and laws and gain categorical government obedience [29]. It is a means by which the public exercises its sovereign power over any settings that affect its daily life. The concept of representation succinctly defines the need to have legislature in democratic systems often referred to as the House of Representatives. All the other powers possessed by a legislature emanate from this very representative essence.

Some literatures categorizes functions of the Caffee into three core parts i.e. legislation, oversight, and representation [2]. There is an overwhelming tendency in the Caffee to consider representation as one specific function like legislation and oversight. Such a rudimentary understanding of representation could induce unexpected ramifications of scaling down the magnificent power to a simple function. This could in turn distort the entire discharge of its constitutional responsibilities.

According to the Caffee's dominant perceptual trending, activities associated with the general function of representation include meeting with constituents on a regular basis and entertaining complaints from individuals or groups. The concept of representation has not been adequately explained in legal frameworks in order to ensure that it is rigorously enforced.

Representations include but are not limited to these functions [30]. It is a broad concept that serves as the foundation for and justifies the existence of governments' legislative branches. It begins with identifying the region's diverse interests and ensuring they are represented in the Caffee. A true legislature embodies the complexities of the society it represents. Contrary to this underlying concept, the current Caffee is entirely controlled by a single political party and lacks representation from 'special interest groups'.

Legislation

The Caffee was given the function to enact laws which includes amendment and repealing existing laws and ratifying agreements and passing decisions [26]. The proclamation no 201/2017, enacted to determine procedures, lays down procedures via which any primary law should pass to be a law. According to this proclamation bills could be initiated by the Executive, the judicial, other government organs directly accountable to the 'Caffee', Members of the 'Caffee', the standing committees, and the Speaker. After initiations it has to pass two or three reading stages and then proceed to the public hearing stage, where concerned organs are invited to comment on the bills, as the case may be. The main calibration and debate job is done by the members on immediate days before Caffee session. Though, in practice the public hearing stages, in some cases, are skipped upon request of a two-thirds vote of the Coordinating Committee [26].

The Oromia Attorney General prepared a draft of the recently promulgated proclamation No 222/2020 regarding drafting laws. This proclamation provides more details as to the content of draft laws to be submitted to the Caffee. Initiating and drafting this proclamation should have been the inherent responsibility of Caffee itself than the Attorney General of the region [26]. Nevertheless, the proclamation appears to be better equipped than Proclamation No. 201/2017, drafted and being implemented by the Secretariat, in ensuring the quality of law at drafting level. Proclamation No. 201/2017 demands draft laws to be accompanied by a research result, a general explanation of its importance, steps taken to prepare it, and copies in three languages (Afaan Oromo, Amharic, and English) [26]. On the other hand, the newly enacted proclamation No. 222/2020 farther extends the requirement by adding details on the intricacies of drafting laws. Regardless of these legal requirements, most of the draft laws come only with accompanying letters.

Regulations and directives could be passed by the administrative council based delegation of Caffee. Despite legal stipulations, [31]

these laws do not come to Caffee to check its compatibility with the primary laws. They rarely come for publications where the primary laws themselves often waive the requirement of publications. Theoretically, publications are considered to be a crucial means to communicate the laws to the public and give judicial notice [32]. The drafting organs raise the urgency of the proclamation as an excuse to avoid publication and inter into force directly.

The Coordinating and Standing Committees play a substantial role in scrutinizing draft laws submitted to Caffee. The Committees deliberate on the draft bills referred to them by the Speaker. The bill first goes to the Standing Committee and after deliberation the Committee can either directly refer it to the Caffee or the concerned Standing Committee. These powers of legislation are too sensitive and expose the legislative branch to assail from the other branches of government. Hence, delegating legislative powers to the Committees renders the Caffee fractured and more susceptible, even, where a mild attack from the others could contort the exercise of its fundamental powers. To execute the powers exhaustively and defend the domain of its powers, therefore, the Caffee needs to act in concert.

The current occupant Caffee is composed of 511 members, all of whom are affiliated with a single political party. Three hundred and seventy-four of these are government appointees and employees. This means that this large number of members is directly controlled by the executive. Farmers, businessmen, and religious men own the remainder. This group is less educated and has a limited understanding of the region's political complexities. Members' illiteracy and involvement in other executive duties create a symbiotic relationship that jeopardizes Caffee's ability to enact effective legislation significantly.

Oversight

Oversight is another important function allotted to Caffee and executed via its Standing Committees. It mainly includes follow up and examination of the performance of the president, administrative council, and other organs, directly responsible to Caffee. Proclamation No. 201/2017 stretches the power of oversight to the extent of taking measures when they prove weaknesses in the administrative organs. However, the power to take measures was mentioned nowhere in the regional constitution at all. Despite the constitutional and legal stipulations, it would practically be impossible for Caffee to take measures against institutions to which it directly or indirectly has some sort of accountability i.e. Bureau of Finance and Public Service. These bureaus are privileged to retaliate by limiting Caffee's budget and by impairing its flexibility in changing its structures and hire capable professionals.

Regulation No 3/2017 under article 42 summarizes the aim of the oversight function of Caffee as follow:

“...following and overlooking the performance of the Government organs by the Caffee is to check whether, government and public resources and properties are properly and equally utilized, works are being carried out in accordance with rules and regulation, there exists fair and rapid development direction, democracy and good governance are prevailing, citizens right, peace and security are maintained as well as there exists a system of coordination among government organs of the Regional State”

Standing Committees, with these objectives at their core, hear reports from bureaus on a quarterly basis. Caffee would be presented with a summary of their findings when it meets to hear the president's report. It may also conduct investigations into the wrongdoings of governmental institutions and officials, for which it may summon witnesses, experts, and order the production of documents. The Standing Committees complete all necessary preparatory tasks in this regard before submitting it to the Caffee session for approval/disapproval.

Another important tool of oversight is field observation conducted by the Standing Committees twice a year. The supervision is randomly done on any governmental institution at any random location and level. Feedbacks from supervision would be used as a part of the evaluation of the overall performance of concerned institutions.

b) The Speaker

By and large, the Speaker plays representative role. He/she has the power to call assembly of the Caffee, direct its administrative affairs, and enforce disciplinary measures taken by the Caffee, and other powers to be stipulated by law. The constitution was intentionally too reserved regarding enumerating the powers of the Speaker. On the contrary, the proclamation gives the Speaker the power to 'chiefly lead and administer the Caffee'. This clause unduly stretches the power of the speaker and departs from the constitutional provision which limits the power to 'administrative matters. The more it magnifies the power of an individual Speaker, the more it exposes the speaker and compromises the whole power of the Caffee. Normally, the role the constitution sought for the speaker seems to be coordinating role alone. It considers the Caffee as a coherent body that could function on itself and does not need a leader but coordinator or facilitator of its administrative matters.

The Speaker is elected among the members of the Caffee upon recommendation of the winning political party or coalition of parties [26]. The federal constitution does not put recommendations of the winning party as a procedural requirement for the election of the Speaker. This distinctive approach of the Oromia regional state constitution compromises the functional autonomy of the Speaker. It gives the party more control over the function of the Caffee through the speaker. The absence of accountability clause for the speaker farther exposes the Speaker to the incursion of some other entities on the power of the Speaker and the Caffee by extension.

Due to this loose procedural requirement in the election of the Speaker, the Caffee has seen three Speakers in three years – from 2008 to 2011 EC. The position of the speaker rattles equally with any position in the executive, whenever agitation begins in the political environment. This was done in an attempt to reach out to the Caffee's exercise of its constitutional power and consolidation of the power of the new executive or the party. The cumulative effect of the tendency to toughen control over the Caffee and its apparatus has weakened it as an institution.

c) Standing Committees

The Caffee is organized into five Standing Committees, each of which is responsible for supervising a specific group of regional Bureaus. Despite the fact that proclamation No 201/2017 authorized the establishment of a permanent staff of three to five members at the Caffee Secretariat, only the chairpersons and deputies of Standing Committees are currently employed and regularly carry out all activities. The remaining members participate solely in the Committee's quarterly report evaluation and biannual field observations. Each Standing Committee is assisted by one professional at the mid-level.

The difficulty is that bureaus possess greater expertise, numerical superior, and professionalism. For instance, the Standing Committee on legal and administrative affairs supervises the Regional Government's President's Office, the Attorney General's Bureau (and the institutions that report to it), the Administration and Security Bureau, the Police Commission, the Ethics and Anti-Corruption Commission, and the Legal Research and Training Institute. This Committee is made up of seven members and two supporting experts. Professionally, two members hold an LL.B, four hold MA degrees in various fields, and one holds a BA in leadership. Professional capability, unlike the bureaus they supervise, is extremely weak. On the other hand, with the exception of the committee chair and his deputy, the rest of the committee members' participation in exercising the Committee's authority is significantly limited, as they serve on a part-

time basis. Thus, the Committee's engagement mode and professional disparity with the bureaus exacerbates difficulties in discharging its legal responsibilities.

Despite their structural flaws, the Caffee Standing Committees exercise most of the powers delegated to it by the Caffee. The Committees have complete control over all of Caffee's powers until they return to Caffee for final approval. It is a well-established principle in the field of law that procedures are just as important as substances. Thus, having control over the procedure confers the right to determine the outcome of each Caffee activity.

Apart from their legislative and oversight functions, the Committees have deliberative authority over a variety of agendas delegated by the Speaker. It has the authority to receive and address public complaints. Most importantly, they have the authority to propose new legislation or amendments to existing legislation. Regrettably, it is one of the Committees' forgotten powers as its organization lacks a proper structure for assessing the need for new legislation and amendments. Recently, attempts have been made to fill this void by establishing some legal research positions. In comparison to the urgency to which this power must be exercised, the structure is woefully inadequate to handle even backlog jobs in the Caffee. The restructuring process was diverted into accommodating existing manpower rather than addressing the Caffee's true structural problems. The operational flaws in the structure ended up threatening the Standing Committees' ability to identify and address the need for new legislations and amendments. The Speaker indicated in an interview with OBN (Oromia Broadcasting Network) that the three branches of regional government have formed a committee to address this issue at the regional level, specifically to ensure the quality of regional law and to enable the region to exercise all of its legislative constitutional powers.

d) The Coordinating Committee of Caffee

The Speaker and his or her deputy, the Chairpersons of all Standing Committees, the Secretariat, and a government representative comprise the Caffee Coordinating Committee. The Committee serves as the Caffee's executive organ. It coordinates the Caffee's activities and identifies and resolves issues relating to its structure and power [26]. It has the authority to prepare and submit the Secretariat's budget to the Caffee [26]. The authority to determine the Secretariat's budget and structure has significant implications for ensuring the Caffee's autonomy.

Contrary to what Proclamation No 201/2017 stated, the Secretariat's budget is processed similarly to that of any executive bureau, and any changes to its structure must be approved by the Regional Public Service Bureau. It remains one of the Coordinating Committee's most vehemently undermined powers by the executive branch. Caffee is treated similarly to any executive bureau even for procurement and other minor financial administration. As a result, the Caffee's overall power is jeopardized by the challenges to these two powers. In this regard, practice frequently deviates egregiously from legal requirements.

When it comes to structuring, the Coordinating Committee has full power in determining the structure of the Standing Committees. It goes to the executive only for administrative purposes. Regarding the structure of the Secretariat it is treated as any executive bureau. This practice created an opportunity for the executive to exert pressure on Caffee. Consider the difference between budget requests and approvals over the last five years.

Table 1: The difference between budget requested and approved

Fiscal year (GC)	Requested Budget (in Birr)	Approved Budget (in Birr)	Difference/cut (in Birr)
2016	41,389,231.00	34,482,353.00	6,906,878

2017	46,306,052.00	38,619,286.00	7,686,766
2018	61,752,308.00	54,491,506.00	7,260,802
2019	68,658,230.00	59,091,506.00	9,566,724
2020	76,432,250.16	63,694,969.00	12,737,281

The composition of the committee is well representative that it included a government representative that oversees government interests. The representative of the government could defend its interests in terms of financial and hiring capacity. Hence, there is no need to refer these two issues to their respective bureaus. It adds no value than implicating the illegitimate relationship between the two organs.

e) The Caffee Affairs Advisory Committee

Caffee Affairs Advisory Committee is another structure created by proclamation No 201/2017. It is constituted of the Speaker and the Deputy, the party whips as well as representatives of the Groups who have seats in the 'Caffee [26]. The proclamation defines 'Caffee Group' as a party or a group of parties that have not competed in the same constituency and under the same policy, and have held not less than ten seats. Normally, parties are represented by their respective whips. The proclamation says nothing if this is an additional arrangement of representation for parties or special arrangements with a particular motive. Further article 43(2) of the authoritative Oromiffaa version treats parties and Caffee groups differently. It says "regardless of stipulations about parties in other laws, the parties in Caffee could be considered 'Caffee Group' to facilitate the function of the Caffee" [translation mine]. It means they are only considered the same for facilitation unless they are different things. If several parties hold not less than ten seats, the arrangement might have drawbacks of creating an unmanageable number of participants in the Advisory Committee.

Alternatively arguing, there is no special group given a seat in the Caffee. It must have been a problem of contextualizing the proclamation during its adoption. In the federal government parliament, they have seats reserved for minority groups or any other disadvantaged group that is supposed to be represented in the Advisory Committee. In the Caffee there are no such special reservations for groups other than elected members.

The Advisory Committee has a substantial power in determining the agenda of Caffee and allocating time for the Caffee deliberations. It is given the power to amend and interpret the proclamation enacted to Redefine Organizations, Duties, Conduct of the Members, and Meeting Procedures of the 'Caffee' No. 201/2017 and issue a directive or a manual ensuing it.

In practice, this structure does not exist in the Caffee. All the 537 seats are held by the ruling prosperity party, formerly known as OPDO. Legally speaking, only three of its members i.e. the Speaker, Deputy Speaker, and ruling party whip currently exist. The three individuals belong to the same party which in turn duplicates homogeneity of the Caffee at the Advisory Committee level.

f) The Secretariat

Caffee's Secretariat is a support structure for the accomplishment of Caffee's constitutional objectives. It provides secretariat support to the Caffee in carrying out its constitutional responsibilities. It is composed of the Secretariat's head, advisors, and other necessary experts. Apart from support departments, line departments should be organized in such a way that they are capable of providing competent professional services. Caffee's exhaustive use of its power is contingent upon the Secretariat's overall capability.

Prior to the conclusion of the 2019 restructuring study, the Secretariat had three line departments. The first is the department that assists and advises Standing Committees on legislative and oversight matters. The second department is responsible for strengthening the

capacity of local government councils. Thirdly, there is the communication department, which was tasked with the responsibility of serving as a point of contact between Caffee and the general public.

A study conducted by a team of experts identified several serious issues with the organization and performance of the first department that harmed Caffee's ability to discharge its constitutional responsibilities [33]. One critical impediment was the department's lack of relevant and competent professionals. As a result, the study divided the department into two sections: one devoted to professional support for oversight, and another to legislation.

Even, after the restructuring study the problems have not fully been addressed. The department that is supposed to give professional support for legislative processes was restructured to have two legal experts. The responsibilities of these professionals include drafting laws in the area of competence of Caffee; evaluating draft bills submitted to them from government bodies; and making technical and language correction of draft laws as per Caffee's command. These tasks require specialization in some distinctive ways. For example, drafting is an independent area of specialization and the same is legal research. Further legislating laws require specialization in constitutional and human rights laws. At least, if we roughly allocate each area, one specialist, the department has to have four legal professionals. In this arrangement, the legislative role is limited to enacting new laws alone. The new departments or any other department has not been given the power to initiate amendment proceeding for desuetude laws and sunset legislations. These two are legislative powers but unowned in the job allocation process.

7. Major Divergences from the Constitution

7.1. *Deviations of the Laws*

By their very nature, constitutional provisions are broad in scope and address only essential issues that must be expanded through primary legislation. It is concerned with delineating the powers and responsibilities of government organs. Thus, each branch must understand its own authority and abstain from infringing on the authority of the others.

The revised Oromia Regional State constitution separately allocated powers to the Caffee. Much of these powers are exercised via different institutional arrangements. Some of the constitutional powers are missed out in the proclamations and neglected by the institution during operations.

The constitution declares Caffee the supreme political organ with full powers in the affairs of the Region. Such parliamentary supremacy clauses are traditionally known in the UK; where there is no written supreme constitution to play the role of overseeing all organs of the state [34]. The Oromia Regional state Constitution preferred to provide for the undisputed supremacy of Caffee along with all conceptual ambiguities surrounding it. There is no follow up legislation or any other thing prepared to enforce this supremacy of Caffee. Proclamations No 201/2017 and 191/2015 reiterate that the Caffee holds supreme political power. Had the power of legislation, oversight, and representation, as it is understood by the Caffee, made it supreme political organ, there should have not been the need to separately reaffirm the supremacy of the Caffee.

These contradictions begin with the explicit deviation of the two proclamations from the constitution. They were enacted to enforce the constitution as they are closer to the practice and serve as a guideline for operation. Consequently, these contradictions were followed by contradiction between the proclamations and the actual practice.

To begin with, let's assess the contradictions between the constitution and the two proclamations. These discrepancies were aggravated

by the miscommunication between the constitution and the two proclamations enacted to enforce it. In some cases the legislations extend Caffee's powers farther than what the constitution envisioned and in other cases they shrink the powers. The practice thereof, in some cases, clash with even the shrunk powers themselves.

The critical contrast between the constitution and proclamation No 201/2017 that created confusion was the authority to summon and interrogate the executive or president. For unknown reasons, the regional constitution restricts this authority to calling and interrogating, whereas the proclamation empowers the Caffee to take measures. Caffee is empowered under article 5(3) of the proclamation to take measures against the executive if necessary, whereas the constitution limits it to calling and questioning. However, in practice, let alone taking action against officials, there is no conducive environment for legitimately questioning executive organs without risking repercussions. Dismissing the executive via the exercise of this power of calling and questioning or taking action, as the case may be, could have a number of unexpected consequences for Caffee, its officials, and members.

Moreover, the power to enact laws is given to Caffee Oromia both by the Federal and Regional constitutions. The regional constitution, Afaan Oromo version, clearly demands the regional primary laws to be consistent with both the federal constitution and the federal primary legislations [26]. On the contrary, the federal constitution requires only the consistency of the regional constitution with the federal one [23]. Logically speaking, the federal constitution presumes that if the regional constitution is consistent with the federal constitution, there will be no possibility of the regional laws to negate the federal laws enacted in accordance with the federal constitution. This provision of the regional constitution submits the regional proclamations to be subservient to both constitutional and unconstitutional federal primary legislations. One might plausibly argue that the federal constitution prevails therefore regional proclamations should not necessarily agree with the federal primary legislation as the federal constitution implies.

Nevertheless, several regional legislations unswervingly collide with the federal legislations. For example, we could mention the recently enacted Natural Resource Administration Proclamation No 223/2020. The FDRE constitutions art 55 (2(a)) reserves the power to enact laws regarding utilization of land and other natural resources to the HoPR. Regardless of whose power it is, this proclamation, as per the regional constitution, is considered unconstitutional for the mere inconsistency with the federal proclamation.

Another noticeable discrepancy concerns the region's residual powers. This authority is not completely documented. There has been no research conducted to identify and attempt to exercise them. As a result, the region has yet to pass significant legislation in the area of residual powers and it continued implementing the HoPR's legislations. The HoPR exercises several of such significant legislative powers, including media and civil society legislation that among most significant residual powers. As a result, Caffee must identify and exercise these powers. The regional Attorney General is making a concerted effort to identify and draft legislation in this area. They are currently drafting the first regional civil society law in this regard. It is the Caffee's most significant constitutional authority that the Bureau exercises. However, the powers remain untapped area.

The exercise of constitutional powers to issue regulations that help implement Regional proclamations is the powers that manifest inconsistency with the practice. The power to issue regulations is conventionally delegated to the administrative council. Though, the exercise of this power has to adhere to the procedural standards set forth for law-making in the Caffee. One of these critical requirements of legislation, as per the proclamation, is the publication of any law promulgated under the auspices of the Caffee. Even though the primary legislations often avoid publication, it seems serious in case of regulations and directives. The delegated executive organs would issue a regulation but confine it to itself when it has to be published and checked for consistency against the proclamation and the constitution.

The proclamation 201/2017 under art 7(1(l)) and proclamation 191/2015 under art 7 (3(a)) empowers the speaker to order submission of Caffee budget to the Caffee and administer it upon approval. It was put in a clear language to enhance dearly needed autonomy of the Caffee. The budget has to be directly submitted to the Caffee. Contrary to this stipulation, the Caffee has to solicit blessings of the regional cabinet and finance bureau for approval of its budget. The later can make reductions of any type (see table one).

With regard to the structure of the Secretariat, there is no clear stipulation in either the constitution or the legislations that the Caffee would take care of its structural arrangements. Proclamation No 201/2017 gives the speaker the power to follow and oversee the implementation of the structure of Caffee. This could be construed as if the Caffee could prepare and implement them on its own. Similarly, the Coordinating Committee of the Caffee has the power to follow up and supervise the administration of personnel of the secretariat. This role of the Speaker and the Coordinating committee is now completely taken by the regional Human Resource Administration and Public Service Bureau. This illegitimate practice allows the executive to violate the autonomy of the Caffee.

In general, the field of legislative constitutional power has been susceptible to various undemocratic political and bureaucratic practices. Its resolution needs political fortitude from the side of elites at the apex of political decision making. As much as its own internal legal and structural problems, exhaustive utilization of the constitutional power of Caffee was perplexed by the perception of external governmental organs. To keep consistency, of the law and practice, there have to be coordinated measures from all concerned governmental organs and the leading political party.

7.2. Deviations of the Structure

Customarily, an institution's structure must be designed in such a way that it can exercise all of its legitimate powers to the fullest extent possible. A structure that is unsuitable for the power may result in the institution's dysfunction and/or malfunction. Additionally, it could deprive the institution of a tool for exercising legally conferred authority. Thus, for the constitutional powers and practice to coexist, capable and well-designed institutional structures must exist to enable the government to carry out its constitutional responsibilities.

The primary source of incompatibility between constitutional powers and practice is the Caffee's constitutional powers being misconstrued in their entirety. The structure is designed around the Caffee's erroneous powers, and as a result, they do not fit within the legitimate constitutional responsibilities.

The lack of a well-established research department or even a legislative center is one of these critical incompatibilities. In most legislatures, there are research departments or research centers. When it comes to writing and amending legislation, there must be a thorough investigation into why it's necessary and how to get it done. A research department could also aid in the reassertion of constitutional authority for the Caffee by identifying concurrent and residual powers in the Caffee Oromia case. Under the Department of Support for Standing Committee Oversight, the Secretariat established an interdepartmental team of three – a lawyer, an economist, and a social affairs specialist – despite the pressing need. As a matter of fact, the department does need a research team, but the more pressing need for researchers of multidiscipline is in the department that assists in legislative functions.

Most of the Caffee's constitutionally guaranteed powers cannot be enforced because the structure lacks professionalism and structural means to do so. There was an issue with Caffee's hiring autonomy and the lack of an attractive salary scale. Proclamation 191/2015 provides for the Secretariat to have its own salary scale to be set by the Caffee, which so far has not been practical. Consequently, the secretariat is unable to attract experts in the relevant fields. The number of professionals assigned to assist standing committees is small

in comparison to the scope of their work. As a single Standing Committee oversees a wide range of government agencies, their competence may also be questioned. The lack of professionalism is demonstrated by the fact that a single expert provides professional assistance to two separate Standing Committees.

The Caffee lacks departments that are responsible for identifying residual and concurrent powers; initiating legislation in neglected areas such as minority rights protection and institutional autonomy in order to carry out its powers. Until recently, the Caffee acted reactively after events spiraled out of control, despite the fact that it is expected to be proactive and respond in advance. For instance, one of the region's most contentious political issues, concurrent taxation, was recently resolved. If this had been done sooner, it could have saved the country and the region considerable time and money.

Minority rights protection, administrative procedure law, and other areas lacked a responsible department empowered to introduce bills. The Standing Committees had the authority to initiate legislation in these neglected areas, but did not. As a result, there must be a department that identifies unresolved issues that require legislative intervention. We have become aware of a massive human rights violation that has resulted in the loss of life. Minorities require special protection in such instances, which should be enshrined in law and adhered to by all individuals. Absence of this specific law has political and economic consequences for both the country and the region.

The autonomy of the institution is frequently threatened by informal and unregulated interference from the party via part discipline [4]. It has a profound effect on the Caffee's overall function and on the functioning of its organs, resulting in the avoidance of constitutional responsibilities. The party expresses its interest through its members elected to the Caffee, not through sporadic informal commands. There is a fear of disappointing party officials while carrying out Caffee's responsibilities. As a result, fear of the party pervades decision-making at each Caffee organ.

Conclusion

Compatibility between constitutional obligations and practice is what determines the Caffee's overall efficiency. Between the constitutional and the practice, the two proclamations and the structure of the Secretariat of Caffee all contribute to the inconsistency. In some instances, constitutional provisions themselves impair Caffee's ability to enforce other critical powers.

However, the sources of the entire incongruity can be classified into three broad categories. The first is political apathy on the part of the political elite. Allowing the legislature to fulfill its constitutional obligations requires selflessness on the part of the major political parties. It may appear to be political clumsiness temporarily, but in the long run, its contribution to the establishment of a sustainable political system and the establishment of democracy may increase the party's public goodwill. The party possesses every tool necessary to exert pressure on the Caffee. It could use the public service and finance bureaus to prod and disable the Caffee. It may even jeopardize the appointees, as almost all officials must obtain the party's blessing to hold any position in the Caffee. Caffee remains vulnerable to pressures from a single party official due to the informal and unregulated nature of this relationship. Political reluctance also resulted in a deficiency in the effective accountability that Caffee members should have toward their electorate. The procedures for ensuring members' accountability also operate with the consent of the party.

The second is the legal and structural factors that exacerbated incompatibility. Apart from certain constitutional provisions, proclamations 201/2017 and 191/2015 also contribute to the inconsistency between Caffee's constitutional obligations and its practices. In some instances, the proclamations depart from the constitutional intent in terms of enforcing Caffee's responsibilities. As a result, Caffee's

practice, when framed in accordance with these proclamations, creates incongruity. The Secretariat's structures are designed in tandem with this poorly written legislation and thus fall short of constitutional requirements.

Finally, the literacy level of Caffee members and the professionalism of the secretariat staff have created a significant disconnect with the constitutional powers' expectations. Professionalism is critical to carrying out any responsibility competently. As a legislative body, the Caffee requires a large number of seasoned lawyers and other professionals to assist it in all of its functions. Absence of capable professionals could jeopardize its ability to carry out constitutional responsibilities, thereby exacerbating the gap between constitutional powers and practice.



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