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**ADDIS ABABA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**SCHOOL OF LAW**  
**CONSTITUTIONAL AND PUBLIC LAW LLM PROGRAM**

**TRENDS ERODING THE SELF-GOVERNING RIGHT OF THE ADDIS ABABA CITY  
RESIDENTS**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF LAWS (LL.M) IN CONSTITUTIONAL AND  
PUBLIC LAW**

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## Declaration

I , the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been dully acknowledged.

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## Abstract

Self- government is an important subject in the politics of most capital cities. ‘Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. In Ethiopia context ‘Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession. It is provided in the FDRE constitution that the residents of Addis Ababa shall have a full measure of self-government. The very important question that should be raised here is that are self-determination and self-government one and the same? It seems that the constitution is not considering them as one and the same. The general objective of this research was to critically analyze the trends that erode the self-governing natural right of Addis Ababa city residents. Accordingly, the Specific objectives were: Discussing the concept of a self-government; Examining the level of the self-government right of Addis Ababa city residents; Identify barriers that hinder the full measure of self-government of Addis Ababa; and Assessing how much the city charter, other legislations and, administrative and political decisions are eroding the self-ruling rights of the city residents.

In order to address the research objective the research used mainly legal analysis. Accordingly, the research concludes that the FDRE constitution doesn’t address equally the Addis Ababa residents as compare to ethnically defined communities who resides in regional states. Secondly , as the research finds out the charter failed to address and erodes the self-governing right of Addis Ababa residents that are enshrined in the constitution. Thirdly, other laws, administrative practices and court decisions have the pattern of eroding the self-governing right of Addis Ababa city residents. Overall, the constitution and the tendency of the federal government’s legislative, executive and judicial bodies, showed that the natural right of self-governing right of the Addis Ababa city residents is being overlooked in many ways.

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## Chapter One Introduction

### 1.1. Background of the Study

The term ‘capital’ or ‘capital city’ could be defined in different ways. For instance, The Oxford English dictionary defines capital city as ‘the city or town that functions as the seat of government and administrative center of a country or region.’<sup>1</sup> Blacks law dictionary in the other hand defines it as ‘The most important city or town of a country or region, usually its seat of government and administrative center.’<sup>2</sup> For Jean Gottmann Capital city is ‘a seat of power and a place of decision-making processes that affect the lives and the future of the nation ruled, and that may influence trends and events beyond its borders.’<sup>3</sup> Thus, from these definitions what we can comprehend is that a political centrality in a nation is one of the major attributes of capital cities.

The nature of capital cities requires a special hosting environment to provide what is needed for the safe and efficient performance of the functions of government and decision making characteristic of the place.<sup>4</sup> The reason why for this is that capital cities are often political, economic and cultural centers and, as the seat of central government, they frequently bear symbolic meaning. The capital cities are themselves municipal authorities, governed by their elected representatives. All the principles enshrined in the Local Self-Government should therefore prevail in them regardless of their actual function in the country.<sup>5</sup>

Any sovereign country, whatever government form it follows, may have one or multiple capital city(s). This practice dates back to the times of Roman Empire and other ancient civilizations. Historically, the major economic center of a state or region has often become the focal point of

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1 The Oxford English Dictionary, part of Oxford University Press, (Jan 8 2022 announced).

2 Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. <<https://thelawdictionary.org/capital/>> accessed on Jan 8 2022.

3 Jean Gottmann ‘Capital Cities’ (1983) 50 Athens Center of Ekistics 88 <<https://www.jstor.org/stable/43620301>> accessed Jan 1 2022.

4 Gottmann (n 3).

5 Chamber of Local Authorities, ‘Status of Capital Cities’ (2007) 14th PLENARY SESSION CPL (14)4REP 4, <<https://rm.coe.int/status-of-capital-cities/16807199af>> accessed Dec 2021.

political power.<sup>6</sup> These capitals were few in number during ancient times. However, the number and type of new capitals in the world increased substantially since the Renaissance period, especially with the founding of independent nation-states since the eighteenth century.<sup>7</sup> The arrangement of these capital cities is highly dependent on the historical background of the community or on a political structure followed in a given polity.

Self- government is an important subject in the politics of most capital cities. ‘Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.’<sup>8</sup> This right may be exercised by councils or assemblies of cities which are composed of members who are elected freely. As per European charter of local self-government, powers given to local authorities shall normally be full and exclusive; they may not be undermined or limited by another, central or regional, authority except as provided for by the law.<sup>9</sup> The concept of self-government has a wider notion (self-determination) in international human rights instruments. For instance, according to International covenant on economic, social and cultural rights (ICESCR) and international covenant on civil and political rights (ICCPR), ‘all peoples have the right of self-determination; By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’<sup>10</sup>

The level of the self-governance of capital cities could be understood in to two ways. The first is the way that the capital cities are structured and organized. The second is the legal relationship of the capital city with the central government and other entities in that nation. The character of capital cities in this regard might be determined by the constitution or other legislation made by the central government or other entity or by the cities themselves. The question here is how much these pieces of legislation recognize the inherent self-governing right of the residents of

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6 Andreas Daum and Christof Mauch, *Capital Cities, Cultural Representation, and National Identities* (New York: Cambridge University Press 2006).

7 Daum and Mauch (n 6).

8 European Treaty Series -No. 122 European Charter of Local Self-Government Strasbourg, 15.X.1985 art. 3 (1).

9 European Treaty Series (n 8) art. 4 (4).

10 United Nations (General Assembly), “International Covenant on Civil and Political Rights” (1966) Treaty Series 999 art. 1 (1);

See also: United Nations (General Assembly), ‘International Covenant on Economic, Social and Cultural Rights’ Treaty Series, vol. 993, art. 1 (1).

the capital cities. To implement the full degree of the self-governing right of the residents, it is important to equally empower the three branches of the city government. The city laws should be made, enforced and interpreted by bodies who are elected by direct or indirect participation of the city residents. Self-government does not mean governing the municipal service only. It is rather the governance of all branches of government. If it is made that the central government decides on all measure issues of the city residents, then we cannot say the inherent self-governing right of the residents is fully implemented.

The nature of capital cities in unitary form of government and in the federal system has their own different characters. I can say that the federal capitals have complicated issues regarding self-governance when we compare them with the unitary capitals. Because, ‘the federal government, wants to control and develop the capital in the interests of the nation as a whole, while the people of the capital naturally wish to govern themselves to the greatest extent possible.’<sup>11</sup> The wisdom that is expected here is following a mechanism that balances both interests. And thus, ‘federal governments have experimented with a variety of governance structures all reflecting the desire to treat the federal capital in a manner different from that used for the governance of other cities within the country.’<sup>12</sup>

When we come to the case of Ethiopia, for centuries in the past, mobility is the main nature of capital cities (Horvath 1969). Scholars have often used permanency as one requisite city status. However, this was not the case in the history of capital cities of Ethiopia. According to Horvath, during the two centuries preceding the foundation of Gondar in 1636, the capitals of Ethiopia were, with few exceptions, in a continual state of motion. Rarely did a capital remain at one place for many years; in fact, it typically moved many times each year. Capitals in historic Ethiopia would appear to have been a kind of quasi-city. When we go to the ancient times, capitals from some centuries before Christ until the Twelfth century Empire were located in the area of present-day northern part of this period, the city of Axum which was locationally fixed. In the 12 century, the Axumite dynasty was overthrown by the Zagwe dynasty and the center was changed to the province of Lasta. Soon after the restoration of the Solomonic dynasty story

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11 Roger Wettenhall, ‘On The Study of Federal Capitals: A Review Article’ (July 2010) 6 Commonwealth Journal of Local Governance Issue, <<http://epress.lib.uts.edu.au/ojs/index.php/cjlg>> accessed Dec 2021.

12 Wettenhall (n 11).

of wandering capitals begins. Addis Ababa started to be the capital of Ethiopia from 1889 onwards.<sup>13</sup>

Though Addis Ababa was the capital city of Ethiopia for more than a century, there was no time that its residents' right of self-governance was recognized. In fact, federalism is a recent phenomenon in Ethiopia. So at least the application of this right is expected since after the introduction of federalism in the country. Addis Ababa was one of the administrative regions during the 1987 PDRE constitution.<sup>14</sup> After the downfall of the Derg regime, the city was organized as one of the 14 regions of the transitional government.<sup>15</sup> Subsequently, by the 1987 Constitution of Federal Democratic Republic of Ethiopia (FDRE), 9 autonomous states were formed and Addis Ababa was made federal capital city without autonomy.<sup>16</sup> However, art. 49 (2) of the same constitution provides that 'The residents of Addis Ababa shall have a full measure of self-government; Particulars shall be determined by law.' Consequently, first proclamation 87/1997 (charter) and then Proclamation 361/2003 (revised charter) were enacted by the federal House of Peoples' Representative to administer the city as a chartered city. At this time, Addis Ababa is administratively structured in 11 sub-cities and 121 weredas.<sup>17</sup> Therefore, the main purpose of this thesis will be to assess the self-governing right of Addis Ababa residents and to assess the trends eroding this right of the city.

## 1.2. Statement of the problem

'Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.'<sup>18</sup> As the residents of Addis Ababa are not ethnically defined under the constitution and that lead us to raise question that whether they have the right to self-determination up to secession. As per international human right instruments, all

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13 Ronald J. Horvath 'The Wandering Capitals of Ethiopia' (1969) 10 Journal of African History 205 <<https://www.jstor.org/stable/179511>> accessed Jan 8 2022.

14 The Constitution of Peoples Democratic Republic of Ethiopia (1987) art. 63 (2) and 117.

15 A proclamation to provide for the establishment of National/ Regional Self-Governments Proclamation 7/1992, art. 3.

16 Constitution of the Federal Democratic Republic of Ethiopia proclamation 1/1995 art. 49 (1).

17 Addis Negari Gazeta a proclamation to reorganize sub cities and weredas of Addis Ababa proc.72/2020.

18 FDRE Constitution (n16) art. 39 (1).

peoples have the right of self-determination.<sup>19</sup> It is clear that the term ‘people’ in these instruments is not necessarily referring to ethnic groups.

It is provided in the constitution that the residents of Addis Ababa shall have a full measure of self-government. The very important question that should be raised here is that are self-determination and self-government one and the same? It seems that the constitution is not considering them as one and the same. In fact, Addis Ababa is not expressly entitled to the right of self-determination up to secession. Moreover, the residents have no representatives in the house of federation. That might lessen the role of them in the federation. Furthermore, it would be morally justifiable to question the discriminatory nature of the constitution in this regard. Because, in principle ‘every man, and every body of men on earth, possesses the right of self-government: they receive it with their being from the hand of nature.’<sup>20</sup>

In Federal system there are three models of capital cities: federal district, member-state city and a city within member-state.<sup>21</sup> Addis Ababa has its own unique feature that makes difficult to categorize it with any of the models. There are three bodies that have competing interests on Addis Ababa city. These are the federal government, the state of Oromia, and the residents of the city. It is important to assess how much these competing interests are hurting the self-governing right of the city residents. The question that needs answer here is that should the balance of interests be done by the expense of the self-governing right of the city residents?

The particulars that determine the manner in which the self-governing right of the city residents is exercised is left to the law to be enacted by the federal house of peoples’ representative. Accordingly, the revised charter of the city government (proc. No. 361/2003) was enacted. Thus the charter establishes the legislative, executive and judiciary bodies of Addis Ababa city administration. Though the charter establishes the three branches of Addis Ababa government, there are gaps and unclear situation that hinder the city administration to exercise the full right of

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19 ICCPR and ICESCR (n 10).

20 Julian P. Boyd and others, *The Papers of Thomas Jefferson* (Princeton University Press <sup>1950</sup>) <[http://press-pubs.uchicago.edu/founders/documents/a1\\_5s14.html](http://press-pubs.uchicago.edu/founders/documents/a1_5s14.html)> accessed Jan 2022.

21 Klaus-Jürgen Nagel, *New research on federal capitals and their territory* (2013) <<https://www.researchgate.net/publication/287994877-tThe-Problem-of-the-Capital-City-New-Research-on-Federal-Capitals-and-Their-Territory>> accessed Jan 6 2022.

self-government. It is important to assess how much this charter restricts from implementing the constitutionally recognized rights of the city residents. Additionally, it is becoming a trend to erode even the nominal power which is given by the charter.

It is very common to find studies on Addis Ababa. However, most of them are concerned with Addis Ababa with the ‘special interest of Oromia; or on its status as the seat of the federal government; or its fiscal relationship with the federal government.’<sup>22</sup> However, so far the researcher is aware of; none of the research focused on the right of city residents and did not address trends eroding Addis Ababa city resident’s right to self-government from perspective of the three branches of government.

### 1.3. Research Questions

The main questions are:

- What is the concept of self-government?
- What is the level of the self-government right of Addis Ababa city residents?
- What are barriers that hinder the full measure of self-government of Addis Ababa? and
- How much the city charter, other legislations and, administrative and political decisions are eroding the self-ruling rights of the city residents?

### 1.4. Research Objectives

The general objective of this research was to critically analyze the trends that erode the self-governing natural right of Addis Ababa city residents.

Accordingly, the Specific objectives were:

- Discussing the concept of a self-government;
- Examining the level of the self-government right of Addis Ababa city residents;

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22 Wondwossen Wakene ‘SELF Governing Addis Ababa, the Federal Government and Oromia: Bottom-lines & Limits in Self-Government’ (2010) Thesis Submitted to Addis Ababa University;

See also: Nuredin Keder ‘Trends Eroding Taxation Power of Addis Ababa’ (2018) Thesis Submitted to Addis Ababa University.

- Identify barriers that hinder the full measure of self-government of Addis Ababa; and
- Assessing how much the city charter, other legislations and, administrative and political decisions are eroding the self-ruling rights of the city residents.

### **1.5. Methodology and Methods**

This research is mainly doctrinal type. Thus it can be considered as a legal analysis. It also makes some use of empirical data. The research employed both primary and secondary sources. As primary sources, the constitution, other legislations and court decisions were analyzed. Secondary sources including books, journals and internet sources of recent literatures on legal concepts were also reviewed. The researcher believes that a legal analysis and review of relevant documents of are suffices to address research questions.

### **1.6. Significance of the Study**

- The finding of this research would be of great importance in identifying the different legislations, political and administrative decisions, court verdicts that violate the right to self-government of the residents of the city.
- It may help as input for policy and legal reform concerning self-governance of Addis Ababa.
- In addition, the research may inspire others for further study or serve as input to relevant agencies and other researchers.

### **1.7. Limitations**

I faced difficulty on getting organized data. So I tried to get such data from secondary sources. And i got limited assistance from the city officials for most of them being new for the position.

Due to the current domestic political sphere, i.e. Ethiopia is in the process of change, the change, lack of institutional memory and the sensitivity of the topic have made it tough for the researcher to get to all available documents. As a result the research is forced to be focused on legal analysis.

## **1.8. Organization of the study**

The thesis is organized in to five chapters. The chapter one contains the introductory part of the paper. The second chapter dealt with the theoretical bedrocks of self-governance. Chapter three is devoted to capital cities and federalism. The fourth chapter discussed Addis Ababa and self-government. The Last chapter, chapter five is conclusions.

## Chapter Two The Right to Self-Governance

### 2.1. Conceptual Frameworks of Right to Self-Government

The term ‘self-government’ came from two words of ‘self’ and ‘government’. The dictionary meaning of the word ‘self’ is ‘A person's essential being that distinguishes them from others, especially considered as the object of introspection or reflexive action.’<sup>23</sup> And the word ‘government’ in the other hand is defined as ‘the group of people with the authority to govern a country or state; or the action or manner of controlling or regulating a state, organization, or people.’<sup>24</sup> And thus, Self-governance is defined as the right of each member of the community to freely choose the authorities who will implement the true will of the people.<sup>25</sup> ‘Self-government’ consists of deciding how the internal structure of government is organized, protecting territorial integrity and autonomy in the field of organization, deciding personnel, finances, the development of rules and to regulate the means and duration of relations with other autonomous entities and semi-autonomous entities.<sup>26</sup>

Self-government is understood as governance by the living in accordance with their own decisions, will, or values.<sup>27</sup> If someone from the outside decides your case, then you are not autonomous. You know what you want. No one could tell you what you need. It is the same with the will of the people. Self-government is nonsense unless the ‘self who governs is able to make its will effective; self-government consists of living under self-given commitments laid down in the past to govern the future.’<sup>28</sup>

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23 Oxford Dictionary (n1).

24 Oxford Dictionary (n1).

25 Antonio CASSESE ‘Self Determination of Peoples’ [1995] A Legal Reappraisal 71;

see also Michla Pomerance, *Self-determination in Law and Practice: the Doctrine in the United Nations* (1982) 12.

26 Arthur B. Gunlicks ‘Constitutional law and the protection of subnational governments in the united states and west’ (1988) 18 Oxford University Press 141 <<https://www.jstor.org/stable/3330386>> accessed March30 2022.

27 Jed Rubenfeld ‘Of Constitutional Self-Government’ (2003) 71 Fordham L. Rev <<https://ir.lawnet.fordham.edu/flr/vol71/iss5/3>> accessed Jan 1 2022.

28 Rubenfeld (n 27).

Self-rule is the fundamental value of a democratic society.<sup>29</sup> The core value of democracy is the will of the people. And the will of the people is expressed through self-government. The idea of self-rule contains two components: the independence of one's deliberation and choice from manipulation by others, and the capacity to rule oneself.<sup>30</sup> However, 'the ability to rule oneself will lie at the core of the concept, since a full account of that capability will surely entail the freedom from external manipulation characteristic of independence.'<sup>31</sup>

The theoretical thought on self-government as developed by main thinkers like Aristotle and Thomas Jefferson. While Aristotle characterizes the ancient aspect of the thought, Jefferson portrays the modern liberal view of the concept. When we begin with the view of Aristotle, e asserts that all communities aim at some good. The state (polis), by which he means a city-state such as Athens, is the highest type of community, aiming at the highest of goods. The most primitive communities are families of men and women, masters and slaves. Families combine to form a village, and multiple villages combine to form a state, which is the first self-sufficient community.<sup>32</sup>

Jefferson's Principles of Self-Government are based on the fundamental and self-evident truths he outlined in his draft of the Declaration of Independence that he presented to the ex-colonies General Congress in 1776.<sup>33</sup>

All men are created equal; that they are endowed by their creator with inherent and inalienable rights; that among these are life, liberty, & the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, & to institute new government, laying it's [sic]

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29 Michael Reber 'American Principles of Self-Government' <<https://docs.lib.purdue.edu/eandc/vol19/iss2/art3/>> accessed Jan 1 2022.

30 Stanford Encyclopedia of Philosophy, *Autonomy in Moral and Political Philosophy* (2015) <<https://plato.stanford.edu/entries/personal-autonomy/>> accessed Jan 12 2022.

31 Stanford Encyclopedia of Philosophy (n 30).

32 Political theory of Aristotle<<https://www.britannica.com/biography/Aristotle/Political-theory>> accessed March 30 2022.

33 Reber (n 29).

foundation on such principles, & organizing it's [sic] powers in such form, as to them shall seem most likely to affect their safety & happiness.<sup>34</sup>

Jefferson identifies three purposes of government. Firstly, government was instituted to promote the welfare of mankind, and should be administered for the achievement of that end p. Second, the realization of this end is achieved through people's own initiatives to improve their lives without governmental constraints: 'Our ancestors ... possessed the right which nature gave to all men, to leave the land in which the chance, and not choice, has placed them, to go in search of new habitations, and to establish new societies for them, under the laws and regulations which will seem most likely to promote the public happiness.' Finally, when individuals are unable to create the conditions necessary to improve their lives, the goal of government is to provide them. The most important of these is education. The other portions of self-government for which they [Ward Republics] are best qualified include the care of the poor, their roads, police, elections, the nomination of jurors, administration of justice in small cases, elementary exercises of militia.<sup>35</sup>

Norton in his part explains the purpose of politics and government in a self-actualizing society. According to him, improving the quality of life of human beings; that the central agency of such improvement is the self-development initiative in individuals; and the primary function of government is to provide the necessary but not self-contained conditions for maximizing opportunities for self-discovery and personal development.<sup>36</sup> It clarifies 'the improvement of the quality of life' as politics and government helping people to acquire moral virtues, the development of dispositions of good morality which are personal utilities, intrinsic goods and social utilities.<sup>37</sup> The role of the government here is not preaching them directly. It is just by providing the conditions that help people attain the virtues, such as establishing the system that realize them.

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34 Appleby Joyce and Ball Terence , *Jefferson's Political Writings: Cambridge Texts in the History of Political Thought* (Eds Cambridge University Press 1999) 97.

35 Joyce and Terence (n 34) 61, 81 and 189 see also Reber (n 29).

36 David Norton, *Democracy and Moral Development* (Berkeley: University of California Press 1991).

37 Norton n 36) 81.

As we have seen above, so many thinkers have developed the principles of self-government. However, Reber refined and contextualized the principles to the contemporary politics and grouped them in to the following four categories. The first principle is “Government closest to the people is government best for the people”. A direct, participatory, and when needed, representative form of government should be established; and within the cultural sphere the people should govern themselves through their own private and civil associations. Second principle is “An enlightened electorate enlightens”. As a right, government must protect it in order for society itself to be free and to enlighten. As an obligation, people must do their utmost for themselves and their fellows to govern their own affairs and not have the State do it for them. Each mature individual should become a productive member of society and participate in its progress.<sup>38</sup>

According to Reber, the third principle is equity. “Equity is most equitable when it's horizontal.” Services that are funded by the public require two layers of horizontal equity. The first layer is horizontal equity between taxpayers and the second layer is horizontal equity between users of public services. Government is, or ought to be, instituted for the common benefit of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons. The fourth principle is “Sustain not what is might, but what is right.” According to this principle, Society should be thought of in terms of four spheres—political, cultural, economic, and environmental—that interacts synergistically with one another. The political sphere is government. In order to have a sustainable political system, government should do those things that private and civil associations are unable to do, such as levy taxes, incarcerate criminals, declare war, and protect civil liberties and private property. The cultural sphere has an obligation to perform the communal tasks necessary for sustaining the whole society. The economic sphere, by its Principles of self-actualization and self-government, guide the market's members. Additionally, the other three spheres of society should explore ways in creating sustainable functions and components that operate synergistically with the environment.<sup>39</sup>

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38 Reber (n 29).

39 Reber (n 29).

## 2.2. Self-Government and Separation of Power

As it is well known modern governments have three branches or organs of government. These branches are: the legislative which makes the law, the executive which enforces the law and the judiciary which interprets the law. Essentially, governmental powers are shared among these three branches. The idea of power sharing between these different branches of government is popularly known as the separation of powers doctrine.<sup>40</sup> This doctrine is a fundamental constitutional principle and expected to be applied at the whole levels of government. Since the distribution of power between these three branches of government affects the balance of powers and even determines the self-governing status of a given jurisdiction, here we will review some literature on this concept.

Locke and Montesquieu are the pioneers in the development of the doctrine of the separation of powers. Locke emphasized the differentiation between legislative and executive powers and emphasized the need for the different powers of government to be separate from each other, exercised by distinct arms, and for no one arm to exercise a predominant influence over the other.<sup>41</sup>

Montesquieu linked the separation of powers to freedom and the rule of law. He expressed the belief that the concentration of power in one branch of government would render citizens subject to the arbitrary and capricious will of rulers, a condition clearly contrary to the rule of law and, thus, a threat to civil liberty. Montesquieu, in this respect, notes: Constant experience shows us that any man invested with power risks abusing it and carrying his authority to the limit. To prevent this abuse, it is necessary, by the nature of things, for one power to be a check on another.<sup>42</sup>

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40 Ese, Malemi, Principles of Administrative Law <[https://pdfcoffee.com > principles-of-administrative-law](https://pdfcoffee.com/principles-of-administrative-law)> accessed March 30 2022

41 John Locke, *The Second Treatise of Civil Government and A Letter Concerning Toleration* (1632-1704).

42 Ugwuanyi, Bartholomew Ikechukwu 'Nigeria Local Government: A Discourse on the Theoretical Imperatives in a Governmental System' (2014)

As it is noted above, separation of power could not be achieved without checks and balances between the branches of government. According to Eric Posner, the idea that no branch should be powerful enough to dominate the other is called the balance of power. He believes that in American constitutional law, the metaphor comes from Madison's theory that governments should be divided into three branches – executive, legislative and judicial – which must always remain in balance. Although Madison meant that all three types of power should not be held by one branch, and did not suggest the modern idea that incremental changes in the balance of power might be unconstitutional, Madison's idea is frequently interpreted today to mean that a particular balance must always be maintained. And that it is the duty of the courts to uphold it. Moreover, The balance-of-power idea refers to horizontal power, but, as Posner's argument, it cannot be understood without reference to vertical power. A skewed balance of power may be harmless if vertical power is limited, but it will be dangerous if vertical power is great.<sup>43</sup>

What we can deduce from this principle of separation of powers is that there cannot be true self-government without checks and balances between the different branches of government. This is because a government is supposed to be formed by the will of the people and expected to operate accordingly. An executive that abuses its power could be checked by the legislature and the judiciary. In addition, a law passed by the legislature could be reviewed by the courts. The criterion for checking the other would be the social contract that formed the government of this autonomous body. This social contract should contain the mechanisms of balanced government and checks and balances. If these mechanisms do not exist or if there is an imbalance of power between the branches of government, despotism will occur and the right to self-government will not be exercised.

### **2.3. Self-Government and forms of government**

An autonomous entity can choose different types of forms of government. These could be determined by different factors. The first is the fact that historical events or the process of state formation can influence the status of any community. The other is that a given form of

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<sup>43</sup> Eric Posner 'Balance-of-Powers Arguments, the Structural Constitution, and the Problem of Executive Under enforcement' (2016) 164 University of Pennsylvania Law Review 1677;

See also THE FEDERALIST NO. 47, at 232 (James Madison) (David Wootton ed., 2003).

government may be chosen for reasons of efficiency. When we come to the types of forms of government, the most common classification of government administrations is: centralized and decentralized government. A centralized government (also a united government) is a government in which the executive and legislative power is concentrated at the higher level, as opposed to the decentralized government in which the power is distributed more among the various lower level governments.<sup>44</sup> Centralized government is more often the characteristic of the unitary state. But let's not forget that there could also be decentralized government in unitary states.

The basic structure of governance is changing in countries around the world as authority and resources migrate from central government to subnational governments.<sup>45</sup> This may be due to several reasons. The most common is the desire to ensure the political stability of the country. This means that when authority and resources are brought closer to the people, specific development needs can be realized. And also, self-government may be true, which discourages separatist will. The other could aim to improve government responsiveness and efficiency. A government at the national level might be too far away to meet the local needs of its people. It could also be costly to carry out all government tasks at the central level. But when power is decentralized, the government is more likely to respond to the local needs of the people. Furthermore, the government service could be cost-effective when provided by competent sub-national government agencies. Besides, More decentralized jurisdictions can better reflect the heterogeneity of preferences among citizens.<sup>46</sup> Thus, decentralization is often seen as a transfer of authority to local governments and away from central governments, with full governmental authority over society and the economy imagined as fixed.<sup>47</sup>

According to the World Bank, decentralization can include political and administrative decentralization. Political decentralization aims to give citizens or their elected representatives

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44 Williams C., *the Destruction of Black Civilization* (Chicago: Third World Press 1987) 80.

45 Jonathan Rodden 'Comparative Federalism and Decentralization: On Meaning and Measurement' (2004) 36 *Comparative Politics*, Ph.D. Programs in Political Science, City University of New York 481 <<http://www.jstor.com/stable/4150172>> accessed Feb 2022

46 Gary Marks and Liesbet Hooghe 'Contrasting Visions of Multi-Level Governance' <<https://garymarks.web.unc.edu/sites/2016/09>> accessed March 30 2022.

47 Rodden (n 45).

more power in public decision-making. It is often associated with pluralistic politics and representative government, but it can also support democratization by giving citizens, or their representatives, more influence in policy formulation and implementation. Administrative decentralization aims to redistribute authority, responsibility and financial resources for the provision of public services between different levels of government. It is the transfer of responsibility for the planning, financing and management of certain public functions from the central government and its agencies to the field units of government agencies, subordinate units or levels of government, authorities or semi-autonomous or area-wide public corporations, regional or functional authorities.<sup>48</sup>

The other important issue that we should discuss here is that about the three forms of government: unitary, confederal and federal. A unitary country has a single or multi-tiered government in which effective control of all government functions rests with the central government.<sup>49</sup> A unitary form of government facilitates centralized decision-making to promote national unity. In a confederal system, however, the central government serves as the agent of the member units, usually without independent taxing and spending powers.<sup>50</sup> The European Union is getting closer to this system.

When we come to the other form of government (federalism), According to Boadway and Shah, a federal form of government has a multiorder structure, with all orders of government having some independent as well as shared decision-making responsibilities. Federalism could be formed in a form of either coming together or in a holding together of constituent geographic units. The coming together view of federalism is about to represent any form of government that brings together, in an alliance, constituent governments each of which recognizes the legitimacy of an overarching central government to make decisions on some matters once exclusively the

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48 Decentralization Thematic Team 'Different Forms of Decentralization' World Bank Publication <[http://www.ciesin.org/decentralization/English/General/Different\\_forms.html](http://www.ciesin.org/decentralization/English/General/Different_forms.html)> accessed March 2022;

See also: David O. Porter and Eugene A. Olsen 'Some Critical Issues in Government Centralization and Decentralization' (1976) 36 Public Administration Review 72 <<https://www.jstor.org/stable/974743>> accessed March 2022.

49 Robin Boadway and Anwar Shah, *Fiscal Federalism: Principles and Practices of Multi-order Governance* (Cambridge University Press 2009) 4.

50 Boadway and Shah (n 49).

responsibility of individual member states. The another holding together view of federalism, also called “new federalism,” represents an attempt to decentralize responsibilities to state-local orders of government with a view to overcoming regional and local discontent with central policies.<sup>51</sup>

Notwithstanding the above governmental structures, similar literatures have also evolved defusing the notion of federalism. Suddenly, it becomes normal to hear new terms that study this form of governance. To name a few: ‘multi-level governance, multi-tiered governance, polycentric governance, multi-perspectival governance, FOCJ (functional, overlapping, competing jurisdictions), fragementation (or spheres of authority), and consortio and condominio.’<sup>52</sup> Whatever the case may be, the assumption that governance should be multi-jurisdictional is becoming a dominant view in all decentralized forms of government.

In general, In addition to separation of powers, the right to self-government could be materialized through mechanisms such as decentralization or federalism. ‘The way to have good and safe government is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to.’<sup>53</sup> The abovementioned mechanisms let a Power not to be concentrated in one hand. They help to delegate it to the one who is indebted to it.

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51 Boadway and Shah (n 49).

52 Marks and Hooghe(n 46).

53 Rubenfeld (n 27).

## Chapter Three Capital Cities and Federalism

### 3.1. General Overview

Historically, the major economic center of a state or region has often become the focal point of political power.<sup>54</sup> These capitals were few in number during ancient times. However, the number and type of new capitals in the world increased substantially since the Renaissance period, especially with the founding of independent nation-states since the eighteenth century.<sup>55</sup> The arrangement of these capital cities is highly dependent on the historical background of the community or on a political structure followed in a given regime.

For Jean Gottmann Capital city is ‘a seat of power and a place of decision-making processes that affect the lives and the future of the nation ruled, and that may influence trends and events beyond its borders.’<sup>56</sup> Thus, from these definitions what we can comprehend is that a political centrality in a nation is one of the major attributes of capital cities.

The nature of capital cities requires a special hosting environment to provide what is needed for the safe and efficient performance of the functions of government and decision making characteristic of the place.<sup>57</sup> The reason for this is that capital cities are often political, economic and cultural centers and, as the seat of central government, they frequently bear symbolic meaning. The capital cities are themselves municipal authorities, governed by their elected representatives. All the principles enshrined in the Local Self-Government should therefore prevail in them regardless of their actual function in the country.<sup>58</sup>

The character of capital cities in unitary form of government and in the federal system has their own different characters. It could be said that the federal capitals have complicated issues regarding self-governance when we compare them with the unitary capitals. Because, ‘the

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54 Daum and Mauch (n 6).

55 Daum and Mauch (n 6).

56 Gottmann (n 3).

57 Gottmann (n 3).

58 Chamber of Local Authorities (n 5).

federal government, wants to control and develop the capital in the interests of the nation as a whole, while the people of the capital naturally wish to govern themselves to the greatest extent possible.’<sup>59</sup> The wisdom that is expected here is following a mechanism that balances both interests. And thus, ‘federal governments have experimented with a variety of governance structures all reflecting the desire to treat the federal capital in a manner different from that used for the governance of other cities within the country.’<sup>60</sup>

An important issue here is the absence of attention over the role of cities in federal politics. Loren King by his work ‘Cities, Subsidiarity, and Federalism’ (2014), tries to deal with the issue. According to him, cities are ubiquitous to every human civilization, and they are vital to the culture and economies of existing national states. Cities and their surrounding regions are the spatial scale at which a great many people experience the consequences of political decisions most directly. Yet cities are rarely given their due in existing federal arrangements and are rarer still in scholarly treatments of either federalism or subsidiarity. Moving authority closer to those most affected will, to be effective, typically require authority applied at some distance from those directly affected. Thus, to the degree that subsidiarity mandates decentralization of authority, efforts to implement that mandate will generally require counterbalancing that pulls authority back toward a recognizable center, or at the very least toward overarching levels of authority. King then suggests that the property of subsidiarity he examines in cities may have implications for a morally plausible normative account of institutions and jurisdictions, and in particular, for the justification of federalism. Certainly in the practice of federal politics, cities are virtually absent: they are the forgotten stepchildren of both federal politics and scholarship.<sup>61</sup>

The level of autonomy of the capitals can be apprehended in two ways. The first is how capitals are structured and organized. The second is the capital's legal relationship with the central government and other entities of that nation. The character of capital cities in this regard could

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59 Wettenhall (n 11).

60 Wettenhall (n 11).

61 Loren King ‘Cities, Subsidiarity, and Federalism’ (2014) 55 American Society for Political and Legal Philosophy <<http://www.jstor.com/stable/24220381>> accessed Jan 2 2022

be determined by the constitution or other legislation passed by the central government or other entity or by the cities themselves. The question here is to what extent these laws recognize the inherent right of self-government of residents of capital cities. To implement the full degree of residents' right to self-government, it is important to empower all three branches of city government as well. City laws are to be developed, enforced and interpreted by bodies elected by direct or indirect participation of city residents. Autonomy does not mean governing only the municipal service. Rather, it is the governance of all branches of government. If it is made that the central government decides all matters of the inhabitants of the city, then we cannot say that the inherent self-governing right of the inhabitants is fully implemented.

### **3.2. Models of Federal Capitals**

A country may have one or more capital cities that a national government places its offices. In federal system, where member states have their own autonomous power, the capital may have not the same autonomy like others. Federal Capitals often have special statutes; compared with member states, they often enjoy a lower degree of self-government and, sometimes, a lesser share in the governing of the federation.<sup>62</sup> Nevertheless, there are federal capitals that have equal autonomy when compared with other member states of a federation. According to Nagel, there are 3 models of federal capitals: federal district, member-state and cities in member-state<sup>63</sup>. I will try to summarize these Nagel's three models as follows.

#### **A. Federal District**

These capitals have a legal status that differs from the states that surround them. These capitals may lack constitutional sovereignty, representation in federal institutions, and may depend on federal legislation and nomination and/or control. Even if self-administrating, the city government does not take overall tasks of a member-state. Examples for federal districts includes: Washington DC, New Delhi, Mexico City and Addis Ababa.<sup>64</sup>

For instance, when we see the case of the federal district and the national capital of India: New Delhi is jointly administered by both the Central Government of India and the local Government

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62 Nagel (n 21).

63 Nagel (n 21).

64 Nagel (n 21).

of Delhi. It is also the capital of the National Capital Territory. New Delhi is administered through a municipal government, known as the New Delhi Municipal Council.<sup>65</sup>

### B. Member-State

These capitals are both city and state. In some cases the capital does not enjoy full parity with states of the federation. Often, the capital state has some asymmetric arrangement. Examples for this type of capitals are: Berlin, Brussels, Moscow and Vienna.<sup>66</sup>

Brussels is a good example to be discussed here. As per Barani, Brussels is a region, just like the Flemish and Walloon Regions in Belgium. It has the same competencies but with an unequal position within the federation. Firstly, it is the only official bilingual region in Belgium. Although only 15% of the population belongs to the Flemish community, the government is organized on the basis of parity, with two Flemish and two Francophone ministers and a minister-president who is above community divisions and represents the Region as a whole. The Flemish minority also enjoys protective measures within the regional parliament, the administration, and the municipalities. This balance is the outcome of a highly sophisticated bargain during the different periods of reform of the Belgian federal state. For Barani, It is no surprise that since the beginning of the devolutionary process of the Belgian nation-state, Brussels was kept as the capital: its central position, bilingual status, symbolic power, and political legacy made it the most ideal candidate. Furthermore, it must also be stressed that Brussels hosts the headquarters of the European Commission and Council and that it is the unofficial capital of Europe.<sup>67</sup>

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65 New Delhi, Wikipedia [https://en.wikipedia.org/wiki/New\\_Delhi](https://en.wikipedia.org/wiki/New_Delhi) accessed April 26 2022.

66 Nagel (n 321).

67 Luca Barani, *Fiscal Federalism and Capital Cities: A Comparative Analysis of Berlin and Brussels* (2011) p22 <<https://www.cairn.info/revue-1-europe-en-formation-2011-1-page-21.htm>> accessed April 26 2022.

### C. Cities in Member-States

The capital is a simple municipality within member-state, falling under its jurisdiction. However, in some cases, the capital may benefit from special funding arrangements. Capitals that are, at the same time capitals of a member-state, may be considered a sub-group. Examples for this type include: Bern, Ottawa, and Pretoria/Cape Town.<sup>68</sup>

‘The canton of Bern is one of the 26 cantons forming the Swiss Confederation; its capital city, Bern, is also the de facto capital of Switzerland.’<sup>69</sup> Bern is the political home of decentralized, federally organized Switzerland.<sup>70</sup> Bern is not just the capital of the «Swiss Confederation», but also the seat of the Swiss government and parliament, and of large parts of the federal administration. As capital city and seat of the parliament, government and administration at all three state levels, Bern is a unique place in Switzerland.<sup>71</sup>

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68 Nagel (n 21).

69 Canton of Bern, Wikipedia [https://en.wikipedia.org/wiki/Canton\\_of\\_Bern](https://en.wikipedia.org/wiki/Canton_of_Bern) accessed April 26 2022.

70 Bern in brief, <https://www.bern.ch/en/visiting-bern/portrait/bern-in-brief> accessed April 26 2022.

71 Bern in brief (n 70).

## Chapter four Addis Ababa and Self-Government

### 4.1. Constitutional Status

Article 50 (1) of the FDRE constitution states that ‘The Federal Democratic Republic of Ethiopia comprises the Federal Government and the Member States.’ There are eleven member states in the Ethiopian federation.<sup>72</sup> Addis Ababa, which is the capital, is not one of the member states of the federation. This shows its lower status compared to member states. The Addis Ababa administration is responsible to the federal government.<sup>73</sup> Member States do not have this type of relationship with the federal government. This is why Addis Ababa is considered by some to be a federal district.

The inhabitants are represented in the Federal House of People's Representatives.<sup>74</sup> This right is a manifestation of the fact that the residents of the city are not denied the right to representation. The people of Addis Ababa, like any other citizens of the country, elect their representatives in general and direct elections to the House of People's Representatives. But they are not represented in the House of Federation. We will discuss the basis of this situation later.

Although the city is considered by few to be a federal district, it is provided for in art. 49(2) of the FDRE constitution that Residents of Addis Ababa enjoy a full measure of self-government; Details are determined by law. The phrase "a full measure of self-government" seems to indicate that Addis Ababa is constitutionally empowered to govern itself than other federal districts. However, there is something different in the Amharic text of the constitution in this regard. Unusually, the right of self-government is granted to the city administration in the Amharic version, and not to the residents. We cannot know if this is done intentionally or not. But as the Addis Ababa city government is a body of government established by law in accordance with the provisions of the Constitution, the provision of autonomy by the Constitution seems to be cause for concern. Indeed, the right to autonomy is granted to citizens and not to institutions. In fact, the English version of this provision grants the residents of Addis Ababa the right to self-

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72 FDRE Constitution (n 16) art. 47 (1).

73 FDRE Constitution (n 16) art. 49 (3).

74 FDRE Constitution (n 16) art. 49 (4).

government. It should be noted that the English version of this article is more meaningful than the Amharic version.

In principle, the right to self-government includes the right to self-determination.<sup>75</sup> But the federal constitution treats the two as different rights. The right to self-determination until secession for ethnic groups is provided in art. 39(1) while the right to full measure of self-government is provided separately in sub-art. (3) Of the Constitution. However, residents of Addis Ababa are not entitled to the right to self-determination until secession. In fact, residents of other cities are not equally entitled to this right. Nations, nationalities and peoples are those who have the right to self-determination until secession.<sup>76</sup> It is debatable whether the term “people” includes the various residents of Addis Ababa. However, the term "people" refers to ethnic identity rather than the residents of a given territory. Accordingly, the constitution does not consider the people of Addis Ababa as a people. Ethiopian citizens themselves are not collectively considered by the constitution as one people. This differs from the internationally recognized definition of the term “people” and the application of the right to self-determination. As an international principle, when self-determination is applied as a right to decide one's own political, social, cultural and economic system, peoples have been defined as the entire population of a given territory.<sup>77</sup>

Three bodies have competing interests in the city of Addis Ababa. These are the federal government, the state of Oromia and the people of the city. The constitution tried to protect the interests of the first two at the expense of the latter. This implies that the constitution considers the residents of the city as stepchildren of the federation. The reason I am compelled to say this is that in the federation, sovereign power rests with the nations, nationalities and peoples of Ethiopia.<sup>78</sup> Residents of Addis Ababa collectively do not belong to these ethnic groups who are the owners and creators of the constitution. In accordance with the constitution, it is they, through their charity, who gives the power of measured self-government to the residents of the city. At least in principle, this is not the case. Every community rather has the natural right to

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75 Reber (n 29).

76 FDRE Constitution (n 16) art. 39 (1).

77 Kristin Henrard and Stefaan Smis 'Recent Experiences in South Africa and Ethiopia to Accommodate Cultural Diversity: A Regained Interest in the Right of Self-Determination' (2000) 4 [1] Journal of African Law, 17

78 FDRE Constitution (n 16) art. 8.

self-government. There is no one who gives it or denies it. This is why the constitution is said to violate the natural right of the people of the city of Addis Ababa.

## **4.2. Restrictive Schemes that Erode Addis Ababa's Autonomy**

### **4.2.1. General Overview**

As I mentioned above, the details of Addis Ababa's self-government are constitutionally allowed to be determined by another law. But the constitution says nothing expressly about the body authorized to enact such a law. The Federal House of Peoples' Representatives first enacted the charter proc. 87/1997 and then the revised charter proc. 361/2003 by invoking articles 49(2) and 55(1) of the federal constitution. While the former states that the details of the self-government of the residents of Addis Ababa shall be determined by law, the latter states that the House of People's Representatives shall have the power to legislate in all matters assigned by this Constitution to federal jurisdiction. Furthermore, it is already provided in art. 49 (3) that 'The administration of Addis Ababa is responsible to the federal government.' This means that Addis Ababa is already under the jurisdiction of the federal government. While within federal jurisdiction, the federal parliament is implicitly authorized to enact laws on city governance.

The other point that could be raised here is the participation of the city residents during the promulgation of the charter. The townspeople should have had a say in the charter that administers them. In fact, there is no experience in Ethiopia in which regional constitutions are adopted or revised by popular referendum. Similarly, it is common in other countries to govern federal districts through federal laws. But what differentiates the case of Addis Ababa from other federal districts is the constitutional power of its residents to have a full measure of self-government. And we have already said above that self- governance is meant governance by the living in accordance with their own decisions, will, or values. If there was a political desire to fully implement this constitutional right, there should have been an opportunity for residents to have a say in the enactment of the city charter.

The revised Addis Ababa charter was adopted in an irregular legislative process, which is unusual in the history of federal house of representative law-making. Prior to the promulgation of the revised charter (proc. 361/2003); there was a short-lived charter (proc. 311/2003) which was deleted and repealed because it had been published with its amended content without

following the legislative procedure.<sup>79</sup> The first charter (proc. 87/197) is already repealed by this irregularly proclaimed charter.<sup>80</sup>

The charter is restrictive rather than allowing residents to exercise their right to self-government. This could be seen even from the content of its preamble for its half-heartedness to uphold the rights of the city residents. As can be understood from the preamble, the purpose of the charter was to protect the interests of four bodies. The first is to create a suitable workplace for the African Union and other international organizations located in the city. The second is to create a proper workplace for the federal government itself. The third is to protect the representatives of the nations, nationalities and peoples residing in the city. And the fourth is to implement the city residents' constitutional right to self-government. However, it is debatable whether the federal government has the power to legislate to protect the interests of these bodies in Addis Ababa. Of the above cases, there is no clear constitutional ground for making a particular law, except for the case of the fourth corps (city residents).

The charter establishes the three branches of the city government.<sup>81</sup> When we compare the powers of the three branches of the government of Addis Ababa, the power of the executive seems to dominate the others. This contradicts with the idea that no branch should be powerful enough to dominate the other i.e. 'the balance of power.' Art. 11 (1) of the revised charter stipulates that 'The City Government shall have the power to make laws and exercise judicial powers specifically conferred on it by this Charter as well as executive powers and functions over matters that have not specifically been included in the details of the powers and functions of the executive organs of the Federal Government.' According to this provision, the city council's power is limited to the legislative power that is specifically given to it by the charter. Similarly, the courts would have judicial power that is specifically conferred on them. However, the power of the executive is not limited by the charter. What we question from this provision is that does the executive of Addis Ababa have equal residual power as its regional (member-states) counterparts? As it is well known, the power of the regional states is also residual power since all powers not given expressly to the Federal Government alone, or concurrently to the Federal

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79 The revised Charter of Addis Ababa Government Proclamation no. 361/2003, art. 67 (1) and the revised Charter of Addis Ababa Government Proclamation no. 311/2003.

80 Proc. No. 311 (n 79).

81 Proc. No. 361/2003 (n 79) art. 10.

Government and the States are reserved to the States.<sup>82</sup> We will discuss below the two scenarios in this regard.

#### 4.2.2. Restrictions on Legislative Power

Due to the fact that the Addis Ababa City Administration is accountable to the Federal Government, its charter powers are limited. The charter gives the City Council the power to legislate on matters pertaining to the city, rather than giving them general legislative powers. This means that the jurisdiction conferred on the Addis Ababa City Government by the Charter is limited only by the matters listed in the Charter. In other words, the council is not empowered to legislate, except those specified in the charter. Instead, it should wait until the federal government enacts legislation. Apart from the issues listed in Article 49 (2) and 51 of the Constitution, the federal government is also not authorized to legislate laws for Addis Ababa. So what we should question here is the constitutionality of the several laws of the federal government which were made to be applicable in Addis Ababa and Dire Dawa.

There are times when the federal legislature erodes the city council's limited legislative power. For example, the city council is empowered by the charter that to constitute the executive organs of the City.<sup>83</sup> This means that the enactment of the substantive law that establishes the city's administrative agencies rests with the city council. In fact, although the charter contains clear provisions on substantive law, it does not specify which body should enact administrative procedural law for these established agencies. In the meantime, the Federal Administrative Procedure law has been made applicable in Addis Ababa by the law passed by the Federal Legislature.<sup>84</sup> The question here is whether the federal government has the power to legislate an administrative procedure law not for Addis Ababa, but even for itself? In fact, the federal government has no clear constitutional provision to enact an administrative procedure even for itself. But since it is empowered by the constitution to make its own substantive administrative law,<sup>85</sup> we can say that procedural jurisdiction follows substantive jurisdiction and enacting such

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82 FDRE Constitution (n 16) art. 52 (1).

83 Proc. No. 361/2003 (n 79) art. 14 (1) (a).

84 Federal Administrative Procedure Proclamation No. 1183/2020 art. 2 (1).

85 FDRE Constitution (n 16) art. 55 (1).

law for itself may be logically valid. And so, if Addis Ababa is entitled to make its own substantive administrative law by its charter, by the same logic it would automatically have the power to make its own administrative procedural law. Therefore, we can say that the applicability of the Federal Administrative Procedure Act on the Administrative Agencies of the Addis Ababa City Administration contradicts the same principle that it is applicable on the Federal Agencies.

The city council is accountable to the federal government and its residents.<sup>86</sup> The fact that the council is accountable to the people of the city falls within the normal range. Likewise, the highest organ of state is the State Council; it is also accountable to the people of the region it represents.<sup>87</sup> It is a significant provision in the constitution to ensure the democratic rights of all Ethiopians. But unlike Addis Ababa, the state councils are not accountable to the federal government. On the other hand, for a city council, being accountable to the federal government in addition to being elected by the people of the city might coincide with the constitution, but it seems to violate the principles of democratic accountability as it is elected by the residents and is the highest political body in the city administration. Furthermore, in addition to being appointed and accountable to the council, by the same time the mayor is also accountable to the federal government.<sup>88</sup> Given these arrangements, it would be impractical for the mayor to be seen as reporting to the council when they are also accountable to their common patron. This provision equates the mayor with the council, while the legislature is meant to be the supreme body of the city.

The city council may be dissolved by its own decision or by the decision of the House of Peoples' Representatives.<sup>89</sup> The dissolution of the Addis Ababa City Administration Council by the House of Peoples' Representatives occurs when the council acts in violation of the constitution or the city administration fails to control the security and emergency situation.<sup>90</sup> In that case, the federal government has the power to dissolve the city and establish a transitional government. Such a provision is very vulnerable to political abuse by the federal government. This is because, the fact that the two houses of parliament at the federal and city levels are

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86 Proc. No. 361/2003 (n 79) art. 17 (1).

87 FDRE Constitution (n 16) art. 50 (3).

88 Proc. No. 361/2003 (n 79) art 21 (1).

89 Proc. No. 361/2003 (n 79) art. 17.

90 Proc. No. 361/2003 (n 79) art. 61 (3).

dominated by different political parties or coalitions, and there are fears that a majority party or coalition in the House of Representatives could overthrow the city council politically. The fear arises from the fact that in such a case, the Charter does not set adequate standards. In light of the provisions of the Charter, the federal House by its discretion will decide whether the City Council has acted in a manner that endangers the Constitution or is unable to control the situation.

#### **4.2.3. Restrictions on Executive Power**

The provisions of the Charter relating to the executive power of the Addis Ababa City Administration can be interpreted in two interrelated stages. One is that the Addis Ababa City Administration does not have the executive power in matters that fall within the jurisdiction of the federal government. This interpretation arises from the perception that the executive branch of the federal government has executive power within the jurisdiction of the federal government, which leads us to the conclusion that the Addis Ababa City Administration has no jurisdiction over these matters unless delegated by federal law. This definition is not disputed, given that the provisions of the Constitution apply to the Federal Government throughout the country, including Addis Ababa. Perhaps one of the issues that arise is that the city government is part of the federal government and can be given more powers of delegated powers by the federal government than allowed by the provisions of the constitution. This can be seen as a political decision rather than a legal one, as there is no constitutional limit to the way in which the federal government can delegate its powers.

The second interpretation implies that any authority and function vested in the Federal Government regarding the city of Addis Ababa is outside the purview of the city administration. For instance, licensing, registration, and supervision of civil societies operating in Addis Ababa is the authority and function of the federal Agency for Civil Societies Organizations.<sup>91</sup> This agency is the executive branch of the federal government accountable to the Ministry of justice.<sup>92</sup> As a result, the Addis Ababa City Administration will not have executive authority

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91 Organizations of Civil Societies Proclamation No.1113/2019 art. 3 (1) (d).

92 Proc. No. 1113/2019 (n 91) art. 4 (2).

over charities and associations operating in Addis Ababa. On the other hand, in cases where the constitution is not vested in the federal government and the federal government does not authorize its own executive, the Addis Ababa City Administration asserts executive authority. This interpretation does not preclude the Federal Government from enacting legislative powers with the city government by enacting legislation whenever it deems it necessary.

The main issue arising from the Addis Ababa City Administration's executive power is its inconsistency with the provisions of the administration's legislative authority. On the one hand, the city government is empowered to legislate on certain issues in the charter; on the other hand, its executive power is determined by whether or not the same powers are vested in the executive branch of the federal government. Normally, the executive branch of government at any level is proportional to the power to legislate; In other words, it is expected to enforce the law. If we take the situation of the regions as an example, the state government is the highest executive body of the state in matters of legislative jurisdiction. Therefore, states enforce their own laws; In addition, they delegate or enforce detailed laws when delegated to them by the federal government.

Essential incidents that we should raise here is the partisan political tendency of the federal government to erode the executive power of Addis Ababa after the landslide victory of the opposition in the 2005 general elections for the city council. Among these, the removal of the task of regulating transports operations in Addis Ababa and the Ambesa city bus from the city administration.<sup>93</sup> There is no solid justification for this. In fact, when the Division of Federal and Regional Powers was arranged in 1995, the task of directing transportation operations was devolved to the states. Addis Ababa also regulated and managed the operation of transport in the city accordingly.<sup>94</sup> In principle, the management of urban transport is urban. So removing it may meet revenue or a political objective of the federal government, but 'it deteriorates the effectiveness and efficiency of the transport system in the city.'<sup>95</sup> However, the city administration has recently started to administer by its own these matters by establishing its

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93 Transport Proclamation No. 468/2005 art. 6 (3) and 26 (2)

94 የአዲስ አበባ ከተማ የተሻሻለ አደረጃጀት ጥናት (organizational Study) ginbot 2008 E.C.)

transport bureau that is accountable to it.<sup>96</sup> But the federal proclamation that has taken away the power is still in place. There is as yet no known action by the federal government against this decision by the city administration. It seems that because of the party in power, the federal government and the city administration form one and the same party. However, the question is, would it be the same if they had been different parties?

The other is the law that determines the Notary Offices established in Addis Ababa's and Dire Dawa's cities were made to perform their functions under the directions of the Ministry of Justice.<sup>97</sup> When we see the experience of other countries, the notary or document authentication is the duty of local governments.<sup>98</sup> In most jurisdictions, any person who had been practicing as a Lawyer for certain years could be eligible to be appointed as a notary.<sup>99</sup> It is this conventional municipal service that the city administration is refused to provide. It is difficult to understand at present why this was done to the city in 2005. It is also difficult to know which concerns of the government have led it for this decision. By any standard, this is unlikely to affect the very existence of the federal government nor its normal functioning, provided the notary is administered by an opposition-run city. Rather, it seems to weaken the city's fiscal situation. As a result, it's easy to imagine that billions of money in service fees that should have been sent to Addis Ababa went to the federal government.

Under the name of tax harmonization, there was a time when the tax authority which was responsible for tax collection under the jurisdiction of the city administration was merged under the federal revenue and customs authority.<sup>100</sup> It was completely contrary to the principle of self-government and federalism. If we want to integrate the collection of taxes in the country, we do not need a structural merger, but a tax harmonization law. And also, the issue of tax harmonization is not limited to the case of Addis Ababa and the federal government, but is seen at the national level. Therefore, such a decision amounts to arbitrarily taking the lower echelons into full ownership and responsibility of the federal government.

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95 Organizational study (n94)

96 Addis Negari Gazeta, A proclamation to establish the Municipal and Executive bodies of Addis Ababa proclamation 65/2018

97 Authentication and Registration of Documents (Amendment) Proclamation No. 467/2005 art. 20 (1).

98 Notary Public, < [https://en.wikipedia.org/wiki/Notary\\_public](https://en.wikipedia.org/wiki/Notary_public) > accessed April 26 2022.

99 Notary public (n 98).

100 Organizational study (n94)

With respect to land in the city, although it is the federal government's responsibility to enact laws, it is the states' responsibility to administer land and other natural resources in accordance with federal laws.<sup>101</sup> Similarly, Addis Ababa, like its regional state counterparts, is also empowered by the charter to 'administer, according to law, the lands and natural resources within the bounds of the city.'<sup>102</sup> And so for land to be administered by the city, the requirement is to be within the city limits. This regardless of the identity of the owner of the land. Whether it is individual, or it is the federal government, it would be the responsibility of the city administration as long as the landholding is in Addis Ababa. Contrary to this, the federal government established in 2018 by the council of ministers regulation no. 431/2018 a 'federal land bank and a development corporation' which administers the land properties of the federal government. The legality of this regulation is questionable. First, the power to administer all land in Addis Ababa was already been given to the city by proclamation enacted by parliament. Thus, a regulation that contradicts a proclamation would constitute an ultra vires of law. Second, constitutionally, the duty to administer land has been given to sub-national administrative bodies. And also the land administration in the city is the duty of the municipalities. How on earth can a federal government get involved in such activities which are by nature outside of its responsibility? Or does it has exclusive competence or is more effective than the city in administering it?

In the case of the city's police commission, which is established by regulation of the council of ministers, it is primarily responsible to the federal police and, by delegation, to the city government; the commissioners are appointed by the federal government.<sup>103</sup> The regulation that established the city police created a police department that is funded by the city government while not accountable to it.<sup>104</sup> This may ensure federal government control and security over the city. But there is a risk that the city administration will have trouble coordinating the structure of the commission with other law enforcement agencies that are accountable to the city administration. This also raises the question of the relevance of funding an agency that is not

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101 FDRE Constitution (n 16) art. 51 (5) and 52 (2) (d).

102 Proc. No. 361/2003 (n 79) art. 11 (2) (g).

103 Proc. No. 361/2003 (n 79) art. 27 (1).

104 Addis Ababa City Police Commission Establishment Council of Ministers Regulation No 96/2003 art. 3 (4).

accountable to the city. And so, we can say that this arrangement has created a police system that is paid for by the townspeople but works for other interests.

The other restrictive scheme of the charter relates to the mandate of the City's Prosecutor's Office. It is primarily mandated to prosecute cases that fall under the criminal jurisdiction of the city court.<sup>105</sup> Charges brought in connection with fiscal matters set out under Article 52 of the Charter, cases of petty offences and charges brought upon complaint are among the jurisdictions of the city courts that are prosecuted by the city prosecution office.<sup>106</sup> Though cases related to the city's fiscal power are under the criminal jurisdiction of the city prosecution office, on an indefinite basis, practically it is the federal ministry of Justice that is responsible for this function. The researcher has tried to find out what law transferred this to the federal government, no law was found indicating that the responsibility was officially removed from the city court and the city prosecutors. Other everyday criminal offenses committed in the city, even non-federal ones, are also prosecuted in federal courts by the Ministry of Justice.<sup>107</sup> Furthermore, although it is provided for in art. 29 of the charter that the city government shall have an ethics and anti-corruption commission to be established and operate in accordance with law enacted by the city council, no law has yet been enacted in this regard and it is still the federal commission that oversees ethics and anti-corruption affairs in the city.

#### **4.2.4. Restrictions on Judicial Power**

The city administration has two types of law interpretation bodies. These are: city courts and other administrative tribunals with quasi-judicial power.<sup>108</sup> The city courts have a court of first instance and a court of appeal. Compared to other branches, the city judiciary has very limited power and its jurisdiction falls on trivial matters. The civil jurisdiction of the courts is limited to matters of possession, licenses or use of land; regulatory activities related to the city agencies; administrative contracts; change of name and claims of absence and death and marriage certificate.<sup>109</sup> In criminal matters, the jurisdiction of the courts is limited to cases of crimes upon

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105 Proc. No. 361/2003 (n 79) art 28 (1).

106 Proc. No. 361/2003 (n 79) art. 41 (2); and see also Federal Courts Proclamation No. 1234/2021 art. 4 (15).

107 Federal Attorney General Proclamation no. 943/2016.

108 Proc. No. 361/2003 (n 79) art. 39 40.

109 Proc. No. 361/2003 (n 79) art. 41 (1); and see also Addis Ababa City Government Revised Charter (Amendment) Proclamation No. 408/2004.

complaint, detention on remand and release on bail.<sup>110</sup> Almost all these cases are less serious and insignificant within the jurisdiction of any courts. Unless the purpose is to alleviate the federal court's workload, there is no need to establish the city court for such minor matters.

The very existence of courts in a government is necessary to interpret laws, review the powers of the executive and the legislature. However, the courts of Addis Ababa are not empowered to do so. They do not have the power to review or interpret all laws enacted by the city council or other delegated bodies. It is also recently that a new Administrative Procedure law was enacted which requires city residents to apply to the Federal High Court if they need a review of the directives and decisions of the city's administrative agencies.<sup>111</sup> This in itself erodes the minimal power of the city courts that was conferred by the charter. In addition, until recently, it was up to the city courts to hear appeals relating to the clearing and expropriation of property found in the city.<sup>112</sup> However, the new land expropriation law gave the power to hear appeals of such matters in the federal first instance court.<sup>113</sup>

In accordance with art. 42 (1) of the charter, the Federal Supreme Court decides on jurisdictional disputes that may arise between the city courts of Addis Ababa and the federal courts. Accordingly the cassation bench of the federal Supreme Court has rendered decisions that relate with such disputes. Unfortunately, these court decisions have also the same pattern of eroding the judicial power of Addis Ababa. For example, one of the binding decisions is about possessory action against the city administration. It says that such actions do not fall under the jurisdiction of the city courts unless the case is related to the city's master plan.<sup>114</sup> This decision clearly contradicts art. 41 (1) (a) of the charter.

Another issue that needs to be addressed is the confusing provisions of the new Federal Courts Establishment Proclamation No. 1234/2021. If the purpose of this proclamation is to determine the jurisdictions of the federal courts, then it was not plausible to stipulate there the jurisdiction

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110 Proc. No. 361/2003 as amended by proc. 408/2004 art. 41 (1).

111 Proc. No. 1183/2020 (n 84) art. 49 (1).

112 Urban Lands Lease Holding Proclamation No. 721/2011 art. 29 (4).

113 Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement Proclamation No. 1161/2019 art. 20 (2).

114 Federal Supreme Court, Cassation Decision Vol. 12 File No. 64703.

of the Addis Ababa city courts. If the power of the city courts had to be improved, the charter could have been amended. There was no need of mixing up the two separate issues. Notwithstanding this, the provisions of this Proclamation concerning the jurisdiction of the city courts contain confusing provisions rather than creating clarity on the issue. For instance, with respect to criminal jurisdiction, this proclamation says:

City Administration courts in accordance to Charter Proclamation In addition to reviewing cases related to violations of rules and criminal procedure and procedure code based decisions of search, confession, arrest warrant, inquiry in to appeals and guarantees in appeal. other criminal cases will be heard in Federal Courts;<sup>115</sup>

With respect to civil matters, it says:

Without prejudice to the Charter Proclamation provides for City Administration Courts civil jurisdiction, such as a document in accordance with the provisions of the Critical Event Registration and Identification Act, the issue of name change, disappearance, conviction, marital status, custody and guardian evidence or ownership of a house administered by the city administration. Or any other dispute, subject to the jurisdiction of the city association, additionally civil disputes of money contracts, and loans between individuals up to Birr 500,000 (Five Hundred Thousand Birr), are under their jurisdiction. and the remaining civil disputes in Addis Ababa and Dire Dawa will be adjudicated in Federal Courts.<sup>116</sup>

While these provisions have a problem with English translation, their purpose seems to be to separate the jurisdiction of the city and federal courts. They also mentioned that the jurisdiction of the city courts is enshrined in the charter. However, it was not necessary to list again the jurisdiction of the city courts which were already enumerated in the Charter. If necessary, it should have been listed in a conclusive manner. For example, there are cases where the charter gives jurisdiction to the city courts but is not mentioned in this proclamation or is not given to the city courts in the charter but is presented in this proclamation as if the charter gave jurisdiction to the city courts. In the former case, in particular civil lawsuits such as cases that relate to regulatory power of the city organs and cases that arise from administrative contracts concluded by the city administration are among the jurisdiction of the city courts, as per the

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<sup>115</sup> Federal Courts Proclamation No. 1234/2021 art. 4 (16).

<sup>116</sup> Proc. No. 1234/2021 (n 115) art. 5 (1) (p).

charter. However, as they are not mentioned in this proclamation as falling within the jurisdiction of city courts, this creates confusion as to which jurisdiction they will fall under. Indeed, even if the proclamation does not explicitly repeal the provisions of the charter, it can be said that it repealed it implicitly since it is provided in the proclamation that the courts of the city would have no jurisdiction over the matters other than those mentioned and any law which contradicts this law is said to be inapplicable.<sup>117</sup> In the later case, the proclamation provides that civil disputes that relate to ownership of a house administered by the city administration and cases that relate to Edirs found in the city fall under the jurisdiction of the city courts while the charter does not say that. Similarly, the Amharic version of the Proclamation gives the city courts additional jurisdiction over criminal cases filed upon complaint, but the English version has omitted that. Overall, this proclamation gives some limited new powers to the city courts, but in general it erodes the jurisdiction of the charter and is poorly drafted and could also lead to unnecessary controversies.

We have also a third court that would have competing jurisdiction over the residents of Addis Ababa. As per Oromia Regional State Courts Proclamation No. 216/2018, ‘the courts of the region shall have jurisdiction in Finfinne over matters that affect the interest of the regional government.’<sup>118</sup> According to art. 24 (3) of this regional proclamation, ‘matters that affect the interest of the regional government’ shall comprise the following:

- (a) Criminal matters committed by or against the officials or employees of the regional government in connection with their official duties;
- (b) Crimes committed against the property of the regional government or those committed in the premise or on the fence of the offices of the regional government;
- (c) Civil matters related to the official duties or activities of the institution, official or employee of the regional government;
- (d) Criminal matters the commission of which have commenced in the boundary of the region but completed or the suspects hides, in Finfinne.

This proclamation adds the third court which would have concurrent jurisdiction over the city. But the question that should be raised here is: does the Oromia Regional State have the

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<sup>117</sup> Proc. No. 1234/2021 (n 115) art. 57 (2).

<sup>118</sup> The Oromia Regional State Courts Proclamation No. 216/2018 art. 24 (2).

constitutional power to exclude matters that affect its interests in Addis Ababa from the jurisdiction of the federal and the city courts? If it can do so, could other regional states have the same right? Be that as it may, this law creates an additional court for the townspeople who have no control over it.

#### 4.2.5. Other Issues

The political interest of various parties in Addis Ababa is another threat to the residents' right to self-government. The main issue that can be raised in this regard is there is a tendency of categorizing Addis Ababa as part and parcel of state of Oromia.<sup>119</sup> This stems from the overarching interpretation of the phrase 'the special interest' stipulated under Art. 49 (5) of the Constitution. Of course, from the outset, this phrase may have been used to justify different political interests or to address some conflicting issues, but this article itself is not in conflict with the interests of city dwellers. However, the policy of denying the natural rights of the city's residents by protecting the idea of special interests is very worrisome. In addition, as long as the Constitution clearly states that special interests apply to natural resource use and the like, any other claim to ownership is not only unconstitutional but also denial of the natural right of self-government.

Another is the lack of policy transparency on the part of the federal government. As noted above, the federal government's laws regarding Addis Ababa, administrative decisions, and court decisions undermine the city's authority. However, while it is the responsibility of the federal government to comply with and enforce the constitution and other laws, it would be confusing when it goes against this responsibility. This meant enacting laws that contradict the constitution and with each other, trends that erode city-related laws through practice, lack of political commitment to enact appropriate laws that allow city residents to govern fully show the inconsistency and lack of clear guiding principles of the federal government on the matter. This political contradiction has made the self-governing rights of the city's residents vulnerable to being interfered with and ignored by many parties. Therefore, the federal government should

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119 Betru Dibaba," Commentary On The Draft Proclamation Of Special Interest Of State Of Oromia In Addis Ababa City" (2017) <<https://www.abyssinialaw.com/blog-posts/item/1771-commentary-on-the-draft-proclamation-of-special-interest-of-state-of%20-oromia-in-addisababa-city%3e>> cited by Nuredin (n 22).

have a clear policy on Addis Ababa, and unless clear legal system that respects the constitution is put in place, its actions will be unprincipled and that may lead to conflict.

## Chapter Five Conclusions

The right to self-government is rooted in individual rights. The reason why individuals form governments is to achieve the better protection of their rights. Thus, a government based on this principle cannot protect the rights of one party and infringe on another. In other words, even if the government is formed by the will of the majority, the rights of the minority should not be violated. This principle must be expressed in the structure of government, in the legal system, and in practice. But the basis for all of this is that the constitution in which the system was established respects these things. However, if the constitution is discriminatory from the start, subsequent laws and procedures will also be discriminatory and infringing.

As the paper tried to show the FDRE constitution address ethnic based identity for the entitlement of self-determination up to cessation. As it is indicated under the preamble of the constitution, it is a contract that is concluded in the free will of nations nationalities and peoples. The representation of the nations, nationalities and peoples in the House of Federation is also the manifestation of their authorship of the constitution and ownership of the federation. The Constitution doesn't recognize identities of those who are outside the ethnic category. As a result, residents of Addis Ababa have been given a less right to self-government for their not being ethnically defined as compared to regional states which have established mostly based on their residents ethnic identity.

The second issue was about how the charter enables the Addis Ababa city residents the right to self-governance. As an extension of the constitution, the charter also limited the Addis Ababa residents self-governing right in many ways. Firstly, the charter that states the power and the function of the Addis Ababa city administration that was enacted by the federal government ratified in a manner without having the say of the city residents or their representatives. Secondly, constitutionally speaking, regional states will have residual legislative, executive and judicial power that has not been expressly given to the federal government. That doesn't work when we come to the case of Addis Ababa. Except the executive one, other branches would have powers which are limited to powers expressed on the charter. Furthermore, the charter gives limited or no power to each branches of the city government which created power imbalance

among the government branches and that made it difficult for checks and balances. . Moreover, as the charter states the Addis Ababa city government is accountable to the Federal government and the federal government can dissolve the council by its own decision while it has no such power over regional states. Additionally, it has been also manifested in other subsequent federal laws that restrict the limited administrative power of the city administration that have been given in the charter. Transport proclamation, expropriation proclamation, administrative procedure proclamation etc. can be mention as good examples.

Thirdly, the research tried to assess the Supreme Court cassation bench decision. And the research found out that Addis Ababa self-governance right also limited by court decision as same manner of constitution and other laws. The cassation decision ,as it is indicated in chapter four, limited the power and function of Addis Ababa city administration government including the Addis Ababa judiciary even that have been given in the charter. For instance, the charter gives civil cases that relate to land administration including master plan execution, land possession and land use issues to be the jurisdiction of Addis Ababa city courts. However, the federal Supreme Court cassation bench limited this power through its decision that the city courts can see possessory action in relation to master plan only.

Fourthly, the research also tried to see practice other than laws and court decisions. Accordingly, as the research identifies several federal government practices that erode the Addis Ababa city administrations power and functions even that have been included in the charter. For instance land administration and fiscal power have been given to Addis Ababa city administration in the charter. However, there were times when such powers and functions have been given to federal tax authority in the name of tax harmonization and for federal land bank and Development Corporation for the reason of federal land management and investment promotion respectively. Moreover, not only executive but also there were times when the federal judiciary took the jurisdiction of Addis Ababa judicial power through practices. For instance under the charter cases of remand on bail or custody is given to the city courts. However once the federal judiciary took this jurisdiction to its self for the reason of convenience.

Finally, any government is said it has a complete governmental structure when it has a complete administration of justice. Because enforcing and interpreting the law is one of the main responsibilities of the government. In addition, efficient and effective justice can only be

provided to the residents when there is a justice administration accountable to the city administration. For example, crime is inherently related to the socio-economic activities of the area, and the city administration's solutions to these problems are not coordinated with crime prevention and control activities due to this organizational problem. In order for the city to fulfill this responsibility, it must have its own full-fledged police prosecutor and court. In this regard, Addis Ababa's rights are severely restricted and a system of justice that is not accountable to the city's residents is in place. This means that most of these services are controlled and rendered by the federal government, which is not managed by the residents and is not organized in the way they want. Therefore, a justice system that is not accountable to the residents cannot be that of the people.

In general, the critical analysis of the FDRE constitution, other subsequent laws, and cassation court decisions and federal government practices have showed that they have eroded the Addis Ababa residents' self-government full right.

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