

Addis Ababa University, College of Law and  
Governance Studies, School of Law

Trends Eroding Taxation Power of Addis Ababa  
City Administration

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A Thesis Submitted to College of Law And Governance  
Studies, School of Law in Partial Fulfillment of the  
Requirements for the Degree of Masters of Laws  
(LL.M) in Business Law

May, 2018

Addis Ababa University, College of Law And  
Governance Studies, School of Law

(Approval Sheet)

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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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# Acknowledgment

Overall educational life and particularly over the course of writing research paper, one accumulates many more debts from many persons. As they are many, it is too difficult to cite all their names here. Generally, my deep gratitude and heartily thanks goes to all of them. However, I found necessary to extend my special thanks to the following persons.

Firstly, I am, thankful to my advisor Dr. Tadesse Lencho, for his unreserved professional guidance, critical comments, constructive advice, and fruitful suggestions which made the work take its present shape. I extend my special gratitude for his gifted, diligent and professional guidance which shepherded the research from its early formless stage to its present form. However, I hasten to add that all the blames on the paper should only be pointed at me.

My deepest appreciation and heartfelt thank goes to my beloved wife and my secretary for this research paper- Hanan Ahmednur Mohammed – who can lay claim to having typed every word that appears in this paper. Besides her support, care and patience, her role also extended in data collection. Hanu, you deserve to be blessed for all my inspirations and courage in my life. You are really my success, source of hard work and endurance.

My at most gratitude also goes to my friend Abebe Birhan, for his relentless support, love and cooperation in every respect. I also owe special thanks to my friends W/ro Tsion Admasu and Adi Dekebo – whose sincerity and encouragement I will never forget.

I would like to sincerely thank my brother Jemaledin Kedir, who is always eager to see my success.

Last but not least I offer my regards and blessings to Dr. Yonas Birmeta- the most supportive academician I ever known. Thank you all once again!!!

Thanks Allahiye for making it happen!!!

Dedicated to my mother

Endalech Waqjira

Words cannot express my gratitude for her boundless love,

Support and strong commitment to see my success without

Any reservation.

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## Abstract

Besides adequate legislative and institutional enabling environment, the establishment of autonomous local government may be ascertained mainly with constitutional or legal assignment of tax power. The tax autonomy of a given sub-national government mainly gauged taking into account own source revenue share of the same. Sub national government must be in a position to cover greater part of financing of the sub national expenditure through own revenue sources. Decentralization without pure own revenue source will result in inoperative and meaningless government arrangement and the local government seems more of an agent of central government- which is accountable towards the national government and not to its constituents.

This work studies the allocation of tax power between the Federal Government and the capital while taking into account the own source revenue share of the capital as a basic parameter to gauge the tax autonomy of Addis Ababa City Administration. Besides this, the real actors on those limited tax power of the capital will be assessed, examined and disclosed on this work. The study was conducted mainly based on legislative analysis, interview and case analysis. The findings of the study show that, Addis Ababa is not enjoying tax autonomy, which may reflect its autonomous status. To make the matter worse, the federal Government is working hard to scramble those limited tax power of the capital. Based on the result of the study, this researcher managed to offer some possible recommendations.

# 1. Chapter One

## 1.1 Background of the study

A capital is the seat of the national government and a representation of national power and culture. In most part of the world, it also serves as a national symbol and represent forces of unity. On the other hand, it is a city in its own right with a local culture and municipal political culture. As there are two basic interests to be protected, there is a natural tension that exists everywhere between capital cities and national governments. On one side, capital cities are expected to host government functions and government buildings for which the national government is responsible. They host meetings of government officials, they have security concerns in terms of protecting government facilities and officials.

As the Federal Government cannot operate in a vacuum, it is present everywhere with its laws. So, it is being unrealistic to argue in favor of the total alienation of the Federal Government from its capital city. To ensure its safe existence, the Federal Government wants to take full or relatively strong control of its seat and develop the same as well as to govern and organize it in its own ways.<sup>1</sup> The sub national government, in which the city is located may also want to govern and organize the city in its ways.

From residents' perspective, cities are places where people live, require local services and engage in local political activity.<sup>2</sup> As cities were starting point of statehood and in some instance as they were states by themselves, the residents may show strong commitment and determination to govern themselves and to excise themselves from any influence from a Federal Government and subnational government that posited.<sup>3</sup> As a result, almost all democratic federations face the challenge of trying to balance democracy at least between the nation as a whole and the capital city. Rowalt observing this tension summarizes that:

Every federal country faces a difficult task in trying to decide how its national capital should be governed. The problem of governing any capital is difficult because there is always a conflict between the national

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<sup>1</sup>Ronald L. Watts, Comparing Federal System,(2008) p.65

<sup>2</sup>Hal Wolman, Jan Chadwick, Ana Karruz, Julia Freidman & Garry Young, Capital cities and their national governments, Washington D.C –In comparative perspective, (2007) p.3

<sup>3</sup>Supra Note 1, p.68

government and the people who live in the capital city. The government wishes to control and develop the capital in the interests of the nation as a whole, while the people of the city naturally wish to govern themselves to the greater extent possible.<sup>4</sup>

The extent of friction between the center and its capital in federal form of government depend on the type of capital cities in the world. In most instances, capital cities operate in the shadow of the national government with more restricted powers and resources than those enjoyed by other cities. Such kind of arrangements usually gives the opportunity of interfering with the local government (which may also include interfering with the fiscal power of a city) and limiting the right of its citizenry when interests coincide, the municipal usually loses the battle with the larger and more powerful national government. This domination is mainly emanated from the motivation behind establishing the seat of government in federal territory and this in turn emanated from the desire of the country to develop and have adequate control of its capitals.

In our case, besides its central position geographically, Addis Ababa is the capital city of the Federal Government of Ethiopia as well as the Regional State of Oromia. As sovereignty and self-governing status in present day Ethiopia is dependent on ethno linguistic criteria, Addis Ababa cannot claim self-governing status relying on Article 39(1) of the FDRE Constitution as this cornerstone provision is there to grant the status only to “nation, nationalities and people of Ethiopia.” Rather, Addis Ababa’s self-governing status builds up from Article 49 (2) of FDRE Constitution. The Constitution under article 49 (2) granted the status to the capital; taking into account, its ethnic composition, geographical position, historical dimension, and economic relevance. In addition to laying down the foundation of the government of the city, the charter tries to create some picture regarding the self-governing status of the city.

Self-government is often mistaken for its clear, procedural, or institutional manifestations such as voting, representation, majority rule and the freedom of speech, association, and press. These are necessary but insufficient conditions of self-government. Self-government is beyond such indicators. Self-government at its root, is a culture of public responsibility among a citizenry; that is, a widely accepted norm that

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<sup>4</sup>Supra note 2, p.1

citizens can and should take a role in public decision making.<sup>5</sup> Besides the right to establish institutions of government in the inhabited territory and equitable representation in the institutions of government, the degree and extent of a self-governing status of a given city may be gauged taking into account the fiscal sources and fiscal independence of the same. According to Ato Wondwossen, this fiscal autonomy is a basic parameter for the very existence of a self-governing entity:

The fiscal sources and fiscal independence of a self-governing entity pretty much determine the entity's ability to continue enjoying its status quo to the very quintessence of defining its status as a self-governing body or a mere administrative extension of another self-governing entity.<sup>6</sup>

Oates in this regard added that:

On the face of meagre sources of income, the external interference on the self-governing entity will be greater. An income becomes meagre either because it has rather a narrow source or because who share from the limited source are many.<sup>7</sup>

To ensure real self-governance, sub national governments must control their own sources of revenues. Sub national government that lacks independent sources of revenue can never truly enjoy fiscal autonomy and as a result cannot truly entertain real self-governing status. So, in measuring the degree of fiscal autonomy of sub national governments, more emphasis needs to be given to the "own revenues" than the total revenues of sub national governments.<sup>8</sup>

To narrow down and summarize the issue, the extent and degree of self-governing status of Addis Ababa is the most determining factor of the fiscal power of the city and this power in turn determine the very existence and continuance of the City Government as an independent and self-determining entity.

As Addis Ababa is hosting the interests of its residence, the blurred "special interest" of Oromia as well as the interest of the Federal Government, there are tendencies of "legitimately" limiting the self-governance of the city in order to

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<sup>5</sup>WWW.The federalist.com /2013/12/10/ What-the-founders-meant-by-self-governance/

<sup>6</sup>Wondwosson Wakene, Self governing Addis Ababa, The Federal Government and Oromia; Bottom lines and Limits in Self Governance, (2010), p.6

<sup>7</sup>Wallace E-Dates, An Essay on Fiscal Federalism, Journal of Economic Literature, Vol. 3 (1999), P.37

<sup>8</sup> Bird, Cited at Helen Degemu, A critical examination of fiscal autonomy of Addis Ababa city Administration (2010) p.28

compromise the tripartite interest. It is true that, federalism with economic blending could be taken to mean a system of government where revenue and expenditure functions are divided among different tiers of government.<sup>9</sup> But in order to attain economic efficiency, the power allocated has to be made explicitly. But in our case, the blurred fiscal power allocation between the City Government and Federal Government and the undefined fiscal relations with the State of Oromia is challenging the very self-governing status of Addis Ababa City Administration. Most importantly, losing the battle in retaining own source revenue autonomy of the city is tremendously affecting the very existence of the capital as self-governing entity.

In addition to this, the presence of national government is imposing great fiscal burden on its citizens. Addis Ababa is expected to provide to its citizens local services like building and maintenance of streets, water and sanitation, parks, garbage collection, health services, education and the like relying on locally generated revenue. Addis Ababa to accomplish such responsibilities needs to have a healthy financial arrangement. For healthy financial arrangement, responsibilities and functions must be allocated in accordance with their taxing power and ability to generate funds internally.<sup>10</sup>

Though the FDRE Constitution is expected to guarantee and adequately protect the taxation power of the City in order to set free the same from fiscal stress, the Constitution is not there to grant fiscal autonomy and fiscal discipline to the City Government as well as to make the City Government responsive, responsible and accountable to the people. The fiscal power of the city does not emanate from the constitution. Rather, Addis Ababa's fiscal power is fully dependent on some relevant provisions of the charter. It's true that a charter is to a city what a constitution is to a state.<sup>11</sup> But the problem relates with its making procedure. As Addis Ababa is considered as an integral part of the Federal Government, the House of Peoples' Representatives has taken it for granted to legislate it for Addis Ababa.<sup>12</sup> Even in the charter, the capital is exercising very limited "own source" revenue autonomy.

Though relatively better comparing to the regions fiscal imbalance, we are witnessing the transfer of fiscal power to the center by delegation. Besides the trend of

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<sup>9</sup>Olabanji O.Ewetan, "Fiscal Federalism In Nigeria: Theory and Practice", International Journal of Development and Sustainability, Vol-1 No.3, (2012) P.1076

<sup>10</sup>Ibid

<sup>11</sup>Supra note 6, p.70

<sup>12</sup>Id., p.71

fiscal centralization by the center, lack of political will by the political elites of the city to challenge the center is challenging the fiscal autonomy of the capital.

## 1.2 Statement of the problem

In the trends eroding the taxation power of Addis Ababa City Administration, the research paper is fully dedicated to examining the tax autonomy of the city. In most countries, local government is responsible for what are often called “communal service” : local roads and lightning, water supply and sanitation, waste management, parks and sport facilities, cemeteries and social housing . What varies greatly is the extent of local responsibility for the social sector, chiefly comprising education, health and social assistance. In this regard, Addis Ababa City Government has got substantial powers and functions to provide state and municipal services.

There is a growing acknowledgment across the world that municipalities require a more predictable, transparent and equitable system to finance such municipal service functions.<sup>13</sup> In the normal course of things, local government are empowered to collect and retain virtually all their own revenues to finance their municipal functions. The finance of the above activities is mainly tied up with the fiscal autonomy of the capital city.

As decentralization in a federal form of government exhibits political, fiscal and administrative dimensions, its effectiveness is measured taking into account such terms. Concerning political autonomy, it is more decentralized in Ethiopia than most African countries.<sup>14</sup>The confusion and complication more relates to fiscal decentralization. In simple language, fiscal decentralization refers to the devolution of taxation and spending powers from the control of central government authorities to government authorities at sub-national levels.<sup>15</sup> As regard to expenditure responsibility of the city, Addis is relatively enjoying higher spending autonomy. The Revised Charter of the city (proclamation No- 361/2003) laid the foundation by establishing locally created council with mandate to final decision on budgetary choices.<sup>16</sup> Though the budget administration

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<sup>13</sup>A draft Institutional Governance Review (IGR) concept Note, Ethiopia’s issues in state formation, Decentralization, Delivery and Democracy, p.11

<sup>14</sup>Jin- Sang Lee, The process of Decentralization in Ethiopia Since 1991: issues on improving Efficiency, p.10

<sup>15</sup>Deribe Assefa, “ Fiscal Decentralization in Ethiopia: Achievement and challenges”, public policy and Administrative Research

<sup>16</sup>Addis Ababa City Government Revised Charter Proclamation No.361/2003, Federal Negarit Gazeta, 9<sup>th</sup> year, No.86, Article 23(1) (d)

is supposed to follow the principles of the Federal Government, the budget is expected to be prepared transparently and through the participation of residents.<sup>17</sup> At least theoretically, the city council is free and independent in prioritizing the provision of public goods and services.

As regard to tax autonomy of the Capital, high degree of vertical imbalance invites fiscal transfers from the center. This in turn invites high dependency of local government on the central government. The fact that sub national governments depend on central government to large extent for their revenue implies that they do not have complete freedom and power over their socio economic development.<sup>18</sup> An unlimited external mandate puts the face of the unity solely on such external force. It is highly likely that local governments could be communicators and facilitators of the central government interest in their jurisdiction. As Addis Ababa is subjected itself only to minimal contribution of transfers from the center, the conditional ties associated with such transfers as to how, when and how much to spend did not exist.

Regarding revenue sources and autonomy of the City, the confusion and complication begins with the constitutional status of the City itself. Whether a self-governing status radiates from supreme constitution or a mere legislation affects the status of an entity. Constitutional guarantee is far more perpetual than a legislative guarantee. Though the constitution is there to guarantee self-governing status to the city,<sup>19</sup> it did not make any move to guarantee the city equal status with that of regional governments. As an alternative, the Constitution does not provide a forum for issues of the capital to be addressed like other urban local governments of the country. Rather the FDRE Constitution organizes the city as one of the integral part of the Federal Government.

The Constitution does not came up with a single detailed provision which deals with the functions, powers, duties and responsibilities of the capital. Unlike the regional governments, the specific powers and functions of the city have been enumerated under the unilateral legislation of the federal government- The Charter - rather than the constitution. This incident is serving as a spring board for the Federal Government to

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<sup>17</sup> Id, Article 59(1) and (2)

<sup>18</sup> Tegene Gebregziaber, The influence of Decentralization on some Aspects of Local and Regional Development planning in Ethiopia, EASSRR, Vol.XIV, No.1,(1998),p.47

<sup>19</sup> The constitution of Federal Democratic Republic Of Ethiopia, Proclamation No.1/1995, Federal Negarit Gazeta, 1<sup>st</sup> Year , No 1, Article 49 (2)

claim some of the inherent power of the City. The very essence of the self-government status under the constitution is scrutinized by a unilateral enactment of the charter by the Federal Government.

The charter relying on Article 49(3) of the Constitution, boldly categorizes Addis Ababa as a mere administrative unit of the Federal Government. In doing so bravely, the Charter paved the way for high Federal Government involvement in Addis Ababa. Besides such rampant Federal Government involvement in the city, the “special interest of Oromia” on the city is there to shake the self-governance status of the capital.

Even that crude “self-governing” status under the Constitution and the “Charter” based self-rule may remain unimplemented unless there is strong commitment, determination and dedication on the side of political elites of the Capital to realize it. For a devolution to work effectively, sub national governments should have the capacity and culture of challenging the Federal Government.<sup>20</sup> To begin with, Addis Ababa does not have history of a democratic and disciplined culture of Federal- City relationship. To make the situation worse, due to some political sentiments, the political elites in Addis Ababa City Administration are not brave enough to challenge and contest the Federal Government decisions and measures regarding the city.

Previous studies in this area are not that much clear in creating correlation between the “exceptional treatments’ of the City by the FDRE constitution and its impact on tax autonomy of the city. The link created is not much sufficient to show how the difference in structure between Regional Governments and Addis Ababa, the blurred special interest of Oromia as well as lack of political will by the political elites in the city affect the extent of fiscal autonomy of the Capital. In addition to this, despite the absence of clear cut parameter to gauge the extent of the tax autonomy of sub national governments, most scholars of the field agree that sub national governments that lack independent sources of revenue can never truly enjoy fiscal autonomy.<sup>21</sup> From this perspective, we can say that a certain sub national government has a total or significant control over taxes only when that local government is free to set the rate or/and base of a tax as well as hold independent right in deciding revenues to be split between central and local government. <sup>22</sup>Fiscal autonomy is all about tax autonomy delineating the share of

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<sup>20</sup>Mehari Tadele Maru, Devolution of Power and its role in strengthening Good Governance, (2008), p.37

<sup>21</sup>R.Banil and R.Bird, Sub national Taxes in Developing countries: The War Forward, (2008) p.6

<sup>22</sup>Ibid

own source revenue from the total sub national revenue.<sup>23</sup> It is such power that distinguish autonomous (own source) revenues from other types of revenues.<sup>24</sup>

Fiscal power without the power to introduce tax and set tax bases and without the power to set or change tax rates as well as without the power to introduce tax holiday is more of administrative decentralization rather than fiscal decentralization. In Ethiopia, a although sub national governments have the power to raise some taxes and to carry out spending activities for public policy purposes in an autonomous or semi-autonomous manner, the predominant taxing power rests with the center. As there is no detailed study in this area, microscopic evaluation of actual direct and indirect tax raising power of the capital taking into account the tax autonomy of the federal government, will give us clear picture of the real tax autonomy of Addis Ababa.

Besides this, in Ethiopia the de jure fiscal devolution is not equivalently accompanied with de facto fiscal devolution to the sub national governments. What are formally constitutionally or by other legislation decentralized powers are not actually exercised by local governments. A close evaluation of a factual tax autonomy of the center and sub national governments is mandatory to have a clear picture of the area.

### 1.3 Research Questions

As fiscal power and independence is an offshoot of self-governance, due attention will be given to the assessment of self-governance status granted to the city. Addis Ababa is empowered to enjoy full measure of self- governance pursuant to Article 49(2) of the Constitution. As a limitation to what is stated under Article 49(2), Article 49(3) of the Constitution is mainly used to create a superior-subordinate relationship between the City administration and the Federal Government. Accordingly, the City Administration is accountable to the Federal Government. As there is confusion regarding the status of the capital, answering the question: Does Addis Ababa deserve autonomy in Constitutional sense? is the main theme of this research paper.

Comparing to other sub national governments, Addis Ababa is exhibiting different administrative, fiscal and political structure. But the impact of such structure on

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<sup>23</sup>Helen Degemu, A critical Examination of Fiscal Autonomy of Addis Ababa City Administration, (2010),p.29

<sup>24</sup>Zemenu Yesigat, "Sub national Autonomy in a developmental state: The case of Ethiopia, Bejing law Review Vol.7,(2016), P.44

the fiscal autonomy of the city is not clear. So, assessing the impact of such unique arrangement on the status of the City is one of the assignment of this research paper.

Besides this, it is true that constitutionally backed decentralization in most instances create a favorable environment for sub national governments to enjoy full measure self government. Decentralization which is not backed by constitutional provision can easily be abused. The central government may withdraw the transferred power easily. Thus, answering the questions:

- What is the impact of the absence of clear constitutional provision dealing with tax power of the city?
- What are the tax source of Addis Ababa?
- Is the charter complete enough to create favorable condition for the city to enjoy its fiscal autonomy?
- Is such tax autonomy (if any) sufficient for a self-governing entity?

is the main theme of this research paper.

As stated earlier, fiscal autonomy refers to the ability of the jurisdiction to set tax rates and establish revenue base without external influence. It also represent the ability to provide the service levels that are demanded by jurisdiction's decisions. In short, fiscal autonomy refers to the local government own revenue share of the total revenue of the center.<sup>25</sup>As the focus is on the actual tax autonomy of the city rather than the amount of revenue collected by the city, replying to the questions like:

- Who is actually fixing the tax base and/ or rate of those direct and indirect taxes?
- What is its impact on the fiscal autonomy of the Capital?

Is the main reasons which initiated the research.

## 1.4 Objective of the study

Fiscal federalism is essentially the choice and distribution of fiscal decision making power across multi leveled governments.<sup>26</sup> The distribution of fiscal decision

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<sup>25</sup>N. Akai and M.Sakara, Fiscal Decentralization, Commitment and Regional inequality: Evidence from State Level Cross Sectional Data for the united States, (2005), P.5

<sup>26</sup>Abu Moges, Fiscal Federalism and Its Discontents, available at WWW. Homepales.wmich.edu/----/ fiscal Federalism%5B1%5D-Abu Pdf. Last visited on 15-09-2016.

making power may be applied either through fiscal decentralization or deconcentration. Creating favorable condition for the actual implementation of autonomy of a given entity is one of the principal objective of the laws and policies of fiscal federalism. Though, some countries opted for fiscal decentralization on paper, the actual implementation may tilt towards deconcentration - Centralized decision making without actual fiscal power.

This being the case, this research is mainly dedicated to assess, examine and demonstrate the actual tax autonomy of the city. Exploring the problems related to legal regime in general and to the practice in particular as well as forwarding some suggestions to tackle the problems, if adjustments on the law and practice needed - is the main objective of this research paper. With this general objective in mind, the study due also internally have the following objectives:

- To critically examine the status of Addis Ababa under the FDRE constitution and other relevant laws
- To assess the degree of tax autonomy of Addis Ababa city Administration
- To investigate whether or not the existing legal system enables Addis Ababa to enjoy sound tax autonomy
- To identify and analyze the trends of central government towards the fiscal autonomy of the city
- To evaluate the effectiveness of the organs and political elites entrusted with appropriate powers to guard the fiscal autonomy of the city
- To discuss the legal regime associated and related with tax power allocation and indicate the loopholes (If any)
- To solicit different means of enhancing the tax power (autonomy) of the city.

## 1.5 Significance of the study

Addis Ababa secured its fiscal autonomy (at least theoretically) since the coming into force of FDRE constitution. Despite such radical change in 1990's, we are witnessing the shortage or absence of literatures dealing specifically with the actual tax autonomy of Addis Ababa. Most studies in the field used to stress on the amount of revenue collected by a given sub national government. Others tend to assess and evaluate

the fiscal power of the city based on economic laws and principles. Even in such studies, cities – more specifically Addis Ababa - are not target groups.

To begin with, this research is mainly inspired to shed some light on the centralization trend of the Federal Government towards the fiscal autonomy of the City. As there is knowledge gap in the area, this study will give the clear picture of the level of the problem from legal aspect, to policy makers, practitioners, regulators, academicians, and to the political elites. The city Administration may use the findings and recommendations as a spring board to claim what the city worth as an autonomous entity. Judges, prosecutors, legal counselors and other legal practitioners may use the finding recommendations to curb the usual practical problems of the area. It may alarm the central government from any further move which may damage the tax autonomy of the city.

Last but not least, this research is meant to provoke further researches in the field. It is hoped that it would initiate further study on the subject matter as it is an explored area of law. It surely serve as a starting point for further studies with different perspectives.

## 1.6 Methodology

The methodology that was employed is more of a qualitative method. As part and parcel of qualitative methods, the methodology employed was an interplay of both primary and secondary sources. To this end, the research methodology for the thesis is principally analysis of literature as a secondary sources and exploration of applicable law as a primary sources. So analyzing, relevant legal provisions of FDRE constitution and other related laws as well as binding decisions of federal Supreme Court Cassation division can be cited as primary data of this research paper.

In addition to this, to shed some light on the experience of some other countries published and unpublished literature in the area was consulted. To this end, books, journals, case reports etc. were reviewed and some decided real case were analyzed. Interview with practitioners is carried out to give practical blend to the research paper.

## 2. Chapter two

### 2.1 Self-determination and self-governance in a Federation

Historically speaking, certain aspects of the principle of Self determination are as old as the nation state itself. But self-determination in a political force in international society is relatively a recent phenomenon. Though, the French and American Revolution magnified the historical instances of self-determination, international legal doctrine was slow to recognize the judicial significance of self-determination. Woodrow Wilson, one of the earliest proponent of a right self-determination, though failed to define it, effected profound changes with regard to self-determination.<sup>27</sup> Woodrow Wilson in his famous 'fourteen point' speech to the US congress in January 1918, proclaimed:

"self-determination" is not a mere phrase it is an imperative principle of action, which states men will henceforth ignore at their peril.<sup>28</sup>

Self-determination officially sanctioned after 1945, when it was included in the United Nations charter, though it applied to existing states, not to peoples or national groups.<sup>29</sup> Self-determination as a recent phenomenon, is the principle by virtue of which people freely determine their political status & freely pursue their economic, social & cultural development.<sup>30</sup> It is part and parcel of the right of the people to choose their own political regime and to be free of authoritarian oppression.<sup>31</sup> In simple language, Self determination represent the need to pay due regard to freely expressed will of peoples. It is the right of a nation or people to determine its own form of government without influence from outside.<sup>32</sup>

For Woodrow Wilson and scholars like Sarah Wambough, the doctrine of national self-determinations based on and inseparable from that of popular sovereignty. According to Kurt Rabi, self determination belong to a collectivity rather than to an individual:

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<sup>27</sup>M.K Nawaz," The meaning & Range of the principle of self determination," Duke Law Journal, Vol8, (1965), p.83

<sup>28</sup><https://Psed.princeton.edu/?q=node/254>

<sup>29</sup>Patricia Carley, Self determination: Sovereignty, territorial integrity and the right to session, (united states institute of peace),P.5

<sup>30</sup>Cited on Wondwesen Wakene Supranote 6, p.15

<sup>31</sup>Id., P.16

<sup>32</sup>[www-iwgia.org/...rights/self-determination](http://www-iwgia.org/...rights/self-determination)

Viewed in historical perspective, the doctrine of the "right of self determination" has evolved to mean that no people must be forced to live under foreign domination or under a constitutional system which it does not agree to. Every people has the right to live within its own territory in external freedom and internal liberty.<sup>33</sup>

But this does not mean that self-determination has nothing to do with individual rights. Rather international bodies and legal scholars have universally accepted the idea that the realization of the group right to self-determination is a prerequisite for the effective enjoyment of individual rights. In its general comment 12, The UN Human rights committee (HRC) stated that:

"...the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."<sup>34</sup>

Besides difficulties in ascertaining full-fledged self-determination in a federation and lacking assurance for seceding state not to be another form of repression, taking into account self-determination with concentration of a group at a place and political elites with the necessary resource to launch separatist struggles, self-determination is criticized for it promotes secession. Cornell in this regard argued that:

.....granting regionally concentrated minorities special forms of autonomy, devolved powers or privileges within a system of a symmetric federalism would not, so much assuage demands for representation control or resources as lead the country down a slippery slope to separatism.<sup>35</sup>

In addition to this, self-determination accompanied by session, may not put in to grave the hate and hostility between the former "oppressor" and "Oppressed".<sup>36</sup>

Despite such short comings, self-determination facilitates the quest for individual and group identities there by shaping individual and group aspirations to self-rule. In addition to this, serving as a tool for ensuring popular sovereignty is one of the main theme of self-determination. In this regard Mursweik argued that:

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<sup>33</sup>Kurt Rabi Cited on M.K Nawaz, Supra note 27, P.84

<sup>34</sup>Amardeen Singh, The right of Self determination: in East Timor a viable model for Kashmir P.9

<sup>35</sup>S cornell, Autonomy as a source of conflict: Caucasion conflicts in theoretical perspective, (2002) P.245

<sup>36</sup>Supra note 6, P.20

.....the intrinsic idea of self-determination is to provide every people with the possibility to live under those political, social and cultural conditions that correspond best with its characteristics singularity. And above all to protect and develop its own identity.<sup>37</sup>,

These being the main advantage of self-determination, self-determination has two aspects: internal and external. Internal self-determination is the right of the people of a state to govern themselves without outside interference. The existence of internal self-determination enables and empowers a given entity to establish its own institutions of government and it also gives a power to demand representation in the institution of government. External self-determination is the right of peoples to determine their own political status and to be free of alien domination, including formation of their own independent state.

As internal self-determination includes promoting one's culture within a territory, establishing institutions of government at varying orders, internal self-determination implies self-government among other things.<sup>38</sup> In other words, self-government is a subset of self-determination. Self-governance is all about the autonomy of people to regulate its own affairs in its own ways.<sup>39</sup> According to Gunlicks, self-governance among other things consists of:

.....the power in deciding how the internal structure of the government is organized, Protecting the territorial integrity and autonomy in the area of organization, deciding on personnel, finance, rule making and regulating the means and duration of relations with other autonomous and semi-autonomous entities.<sup>40</sup>

In addition to this, enjoying the capacity to make laws and policies as well as administer and adjudicate those laws and policies implies the possession of self-governing status. So we can say that, the existence or nonexistence of self-governance status can be gauged taking into account the legislative, executive and judicially power of a given entity.

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<sup>37</sup>D.Mursweik, the issue of a right of session reconsidered in modern Law of Self Determination 36 (C.Tomuschool ed 1993)

<sup>38</sup>Supranote 6, P.16

<sup>39</sup>Id P.21

<sup>40</sup>A. Gunlicks, Constitutional law and the protection of subnational governments in the united states and west Germany, (1988) P.141-158

Besides strong motive to be autonomous and remain autonomous, linguistic, religious, ethnic and cultural attributes if shared in common, can serve as a catalyst for sub national and municipal entities to claim self-governance and recognition at the national level.<sup>41</sup> Economic development or under development may agitate a given entity to claim self governance. While economic development of a group may prove envy in those groups that are lagging behind, it may also vitalize fear of exploitation and domination in the developed against the under developed.<sup>42</sup>

## 2.1 Decentralization in Ethiopia

### 2.2.1 Decentralization in pre 1991 Ethiopia

Decentralization is a process of transferring power to popularly elected local governments. Transferring power involves providing local governments with greater political authority, increased financial resources and/or more administrative responsibilities.<sup>43</sup> The main economic justification for decentralization rests largely on a locative or efficiency ground. In this regard, centralization is costly as it provides a bundle of public goods which does not directly fit the preferences of the particular regions, provinces or municipalities.

According to Estache and Seabright:

Each type of good should be provided by a level of government... enjoying a comparative advantage in accounting for the diversity of preferences in its choice of service delivery.<sup>44</sup>

According to Oates, Decentralization came into picture to rectify such problem of centralization:

Each level of government, possessing complete knowledge of the tastes of its constituents and seeking to maximize their welfare, would provide the paretoefficient level of output.....and would finance this through benefit pricing.<sup>45</sup>

From allocation perspective, decentralized system became a surrogate for competition bringing to the public sector some of the allocative benefits that a

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<sup>41</sup>Ronald L.Watts, Comparing Federal Systems , (2008) P.3

<sup>42</sup>Id., 67

<sup>43</sup>Supranote 15,P.28

<sup>44</sup>Antonio Estiche and Paul Seabright, The Decentralization of public services: Lessons from the theory of the firm, (1994),

<sup>45</sup>Wallace E Oates, Fiscal Federalism, (1972) pp. 34-35

competitive market brings to the private sector.<sup>46</sup> Besides inducing various regions to remain part of a federation, decentralization can also serve as a catalyst in building a democratic system in a federation. Most people are more inclined to engage in local political activities because local policies have a more direct impact on their daily life.<sup>47</sup>

Politically, decentralization is a point of discussion if a country's population is not homogeneous and if ethnic, social, cultural, linguistic or other relevant characteristics are regionally distributed.

This being the general picture of decentralization, decentralization in Ethiopia is as old as the Axumite kingdom itself. As the Axumite kingdom controlled vast area, decentralization was the only option to retain the territory. Unlike the contemporary decentralization system, the Axumites established a decentralized system with petty states brought under their domination.<sup>48</sup> This coexistence of the central power with the autonomous or semi-autonomous regions or kingdoms continues after the power shifted from the Axumites in the north to the Zagwe and the Solomonic dynasties at the center.<sup>49</sup>

Though Tewodros II fought hard and decisively regionalists in 1860's, regionalism was the main feature of Yohannis IV era. He was liberal and almost federal in his practices.<sup>50</sup> He recognized the regional warlords and the administration of their territories so long as they honored his throne. In doing so, he cleverly avoided unnecessary power struggle with regional lords and the church.<sup>51</sup>

As the pre Minilik era was dominated by dual power structure and as the provincial lords and some autonomous kingdoms like that of Kaffa, Walayta, Harari, and Afar controlled their respective territory, Paul Henz concluded that:

Ethiopia, the oldest continually existing polity in Africa, has almost relatively decentralized at many stages in its long history.<sup>52</sup>

After Minilik induced centralized administration system into the land, the federation of Eritrea with Ethiopia in September 11, 1952 (though twisted later shortly)

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<sup>46</sup>Vito Tanzi, Fiscal Federalism and Decentralization, A review of some efficiency and macroeconomic Aspects, (1995), P.299

<sup>47</sup>Id, P.297

<sup>48</sup>Solomon Nigussie, Fiscal Federalism in the Ethiopian Ethnic based Federalism, (2006), P.11

<sup>49</sup>Ibid

<sup>50</sup>Bahru Zewde, A history of modern Ethiopia: 1855-1974, (1991),p.124

<sup>51</sup>Ibid

<sup>52</sup>Id.,P.9

can be cited as the first formal federal arrangement in the country. Besides such imposition by UN, order No.43/ 1966 was enacted mainly to induce decentralization in the land and such legislation tried to empower Awraja council to exercise jurisdiction over local affairs, though failed due to lack of competent and dedicated political elites.

Derg also in its last breath introduced decentralization within the unitary system with the adoption of the 1987 constitution. This constitution introduced 25 administrative provinces and five autonomous regions. Proclamation No.14/1987, In this regard bestowed autonomous status to Eritrea, Dire Dawa, Assab, Tigray, and Ogaden. The executive committee of the autonomous and 25 administrative regions served as executive and administrative organ with the responsibility to prepare the social and economic plans and the budget of the region and implement them when approved.

Though the constitution was not that committed to devolve decision making power to the local level and failed to bring meaningful fiscal, administrative or political decentralization and though the changes was in form rather than in substance, the short lived constitution of the time raises the consciousness of minority nationalities in Ethiopia.

All in all, though the governing elites attempted to retain considerable central authority in an effort to maintain stability and national unity, the system of governance in the past as well as the fiscal arrangement ( though the flow of resource is significantly different) were closer to the federal structure under which warlords enjoyed complete autonomy over the regions they controlled.<sup>53</sup>

### 2.2.2 The introduction of ethno linguistic federalism in Ethiopia

Detailed analysis of the world history reveals that in most instances, country's history of conflict and social stripe shape its decentralization process. For instance, regions or states in Mozambique and Uganda are emerged out of a civil war. In the case of Mali, Nigeria and South Africa, internal strife featured prominently as a factor in calculations regarding regime stability and directly influenced calculations about decentralization.<sup>54</sup> But this may not be always true in Burkina Faso and Ghana, which

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<sup>53</sup>Supra note 24, P.61

<sup>54</sup>J.Tyler Dickovick and Rachel Bratty Rields, Comparative Assessment of Decentralization in Africa, (2010), P.49

were known for some coups and conflict-the incidents were not significant in shaping the decentralization agenda.

Despite different causes for the conflicts and dissatisfaction, usually the diversion from the unitary systems to a federal system is associated with the failure of unitary systems to accommodate the claims and address the concerns of ethno cultural communities.<sup>55</sup> This is especially true since federalism and decentralization are themselves predicated on the ability to accommodate regional, ethnic or other identity difference by giving population subgroups a state in the political levels of government at which national minorities can exercise power with some autonomy.

Ethiopia experienced negligible power and administrative decentralization with the establishment of transitional government in 1991. As Ethiopia was never colonized apart from an Italian occupation (from 1936-1941) that faced constant resistance, colonial heritage had no influence in decentralization process of the country. Like many federations, the post 1991 state restructuring measures and Ethiopian federalism “were not off shot of the quest for economic development.<sup>56</sup> Rather the need for a federal system is often claimed to be the existence of real or potential ethnic or regional conflict and the sense of insecurity among minorities within a polity. For writers like Edmond, modern history of Ethiopia is characterized by ethnic tensions:

Until 1991, successive regimes either tried to suppress the unique cultural identities of more than eighty distinct ethno linguistic groups and at the same time, to assimilate them into the dominant Amhara culture.<sup>57</sup>

Accordingly, they need assurances that they will be able to function as equal citizens within the context of multi ethnic federal state.<sup>58</sup> As addressing the concerns as well as accommodating the claims, ethno cultural communities is one of the driving force for diverting some unitary states into a federal structure.<sup>59</sup> This is the main reason for baptizing Ethiopia as a federal entity. In Ethiopia the principal cleavage appears to be ethnolinguistic. Taking into account, the legacy of ethno linguistic domination and

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<sup>55</sup>W.kymlicka, Emerging western models of multination Federalism: Are they relevant to Africa? (2004), p.11

<sup>56</sup>Supranote 24, P.43

<sup>57</sup>Edmond J.Keller, Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia“, Africa Journal of Political Science, Vol.7 No.3 (2002), P.24

<sup>58</sup>Id, P.26

<sup>59</sup>Supranote 24, P.11

political history of the country, federalism was opted as a device to calm down the ethnic tensions and conflicts that had dominated the modern history of Ethiopia.

It is intended to serve as a tool to contain disintegrative forces and to create balance between forces of unity and diversity.<sup>60</sup> Federalism in this regard induced as the only means to promote freedom, to undo legacy of ethno linguistic domination and to check the tyranny.<sup>61</sup> According to EPRDF's five year program of development, "peace and democracy", bringing harmony and cooperation between different groups and promoting local self-rule is the main reason for choosing such structure. Federalism is meant:

----to reduce the ethnic tensions and conflicts that had dominated the modern history of Ethiopia; to forth rightly tackled social and economic problems in such a way that all ethnic groups were treated as equals, to build a democratic society; and to construct effective, efficient and uncorrupt systems of governance.

In this regard, EPRDF clearly disseminated its intentions even before the adoption of FDRE constitution with the enactment of transitional charter and selected proclamations. Accordingly, the charter created a new system of governance that was a federal inform and (despite disagreement between authors) based on the criteria of ethnic self-determination. During the transition period, the reform was made to address the need for post conflict stability and state building and to integrate and simultaneously provide autonomy to heterogeneous populations.<sup>62</sup> EPRDF with its enactments declared that the country would be administratively and politically reorganized creating what are largely (though not exclusively) ethnically based national regional governments or states.<sup>63</sup> The choice made in this regard was an explicit choice by national governing elites responding to challenges of identity politics and maintenance of national stability.

With the enactment of the transitional government charter, political decentralization was manifested through a change of government from a unitary form to a federal one composed of regions. The charter constructed domestic political profile of the country mainly in ethno linguistic basis.<sup>64</sup> To this effect, the charter under article 2

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<sup>60</sup>Supranote 20, P.17

<sup>61</sup>Id., P.14

<sup>62</sup>Id., P.52

<sup>63</sup>Supranote 16. P.20

<sup>64</sup>Suupranote 18, P.37

granted nations, nationalities and peoples of Ethiopia unconditional right to preserve its identity and promote its culture and history. They are also empowered to administer its own affairs within its defined territory. Denial of such right may force the unit to exercise its right to self-determination or independence.

EPRDF with the promulgation of the charter also introduced public policies designed to devolve administrative authority from the center to the states. Besides this, proclamation No.7/1992 was enacted mainly to define the powers of three tiered government namely –central, national/regional/ and wereda. Politically, regional governments are behaving as if they are sovereign states enjoying unrestricted local autonomy.

All in all, the charter targeted and spearheaded the decline of the center in favor of regional/national self-governments which are to assume the responsibility of managing the economy and society.<sup>65</sup> Though regional governments were empowered to adopt their ethnic language as their official language to organize their bureaus (regional ministers) and to embark up on the difficult task of social economic development, their fiscal power is very limited. Regional governments are expected to finance their expenditure with the support from the central government where this deemed necessary.<sup>66</sup>

The trend of decentralization was further strengthen with the coming into force of FDRE constitution in 1995. Pursuant to article 46(2) of the constitution, states are formed on the basis of settlement patterns, language, identity and consent of the people. To this end the constitution comes up with nine regional states and one city administration ( Addis Ababa while ignoring Dire Dawa city administration) the constitution tried to bring governance closer to people and empower them with the power to determine their own social and economic affairs.<sup>67</sup> The political, fiscal and administrative authority devolved to regions have empowered them to make decisions on matters under their respective jurisdictions.<sup>68</sup> From the three authorities, political power in Ethiopia is more decentralized, even surpassing the political decentralization of most African countries.<sup>69</sup>

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<sup>65</sup>Befekadu Degefe, The legal framework for decentralization in Ethiopia during the Transition period,(1994), P.61

<sup>66</sup>Id., P.71

<sup>67</sup>Supra note 18,P.37

<sup>68</sup>Supra note 14. P.6

<sup>69</sup>Id, P.9

As a new formal phenomenon to the political sphere of the country, Article 9 of the constitution requires each level of government to respect the constitution. In addition to this, Article 50(8) expressly provided that each sets of government are required to respect the power of the other, i.e. no superior subordinate relationship between them. The constitution also introduced legislative, administrative and fiscal decentralization endeavoring to ensure the right to self-determination... the cornerstone of the federation.<sup>70</sup> To halt the central government from tyrannical inclination and discriminatory treatment of ethno cultural communities, the constitution extended the right to self-determination to the highest level, i.e up to session.<sup>71</sup>

Under the present arrangement the ultimate sovereignty rests on the nation, nationalities and peoples of Ethiopia.<sup>72</sup> Under the Ethiopian federal system, the ethno linguistic communities constitute the federation.<sup>73</sup> It is where constitutional power of both federal and regional states rests.

Although EPRDF came up with Article 39(1) of the constitution, some writers tend to categorize them as calculated federalists – inherently they are opposed to session. According to Ato Mehari, EPRDF is lobbying diversity for the sake of unity.<sup>74</sup>

Although the state structure is heavily rely on Ethno linguistic criteria, this is not an exclusive criteria. The basis of state formation is a mixture of territory and ethnicity, although it leans much more towards the latter.<sup>75</sup> In addition to article 46(2) of the constitution, the nomenclature of SNNPRS, Gambella regional state and Harari Regional State support this argument. Though Tigray, Afar, Amhara, Oromia and Somali regional states are more or less ethnically homogenous, the above ones are multi ethnic arrangements without dominant ethno linguistic community.

Concerning the form of federation, it is being very unrealistic to consider Ethiopian Federation as a straight forward example of coming together form of federation. Although some parts of the country experienced defacto autonomy in the pre-1991 period, many states that now form the federation had no such previous

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<sup>70</sup>Supranote 24, P.43

<sup>71</sup>Art.39(1) of FDRE Constitution

<sup>72</sup>Art 8 (1) of FDRE Constitution

<sup>73</sup>Supra note 20, P.17

<sup>74</sup>Id., P.14

<sup>75</sup>Tsegaye Regassa, Ethnic Federalism and Right to self determination as constitutional legal solutions-The case of Ethiopia, (LLM Thesis,2001) P.97

experience.<sup>76</sup> Rather it is clearly a holding together variety, having been imposed from the top, though it quickly transferred into a putting together federal exercise, where there are federal features, but little or no liberal democracy.<sup>77</sup> Although, the states are empowered under the FDRE constitution to have their own constitutions, decide their own official language, develop their own administrative systems, establish separate police force and collect certain taxes, the initiative for these arrangements usually come from the center than from the constituent units.<sup>78</sup>

To sum up, though the regional decentralization, after 1991 has brought radical change in state structure ( transferring sub national responsibility to totaling 40 percent of the government budget), though regional states are enjoying relatively high degree of political and administrative responsibility as well as relatively moderate fiscal power, Addis Ababa – a city administration which cannot rely on Ethno linguistic criteria for its status- segregated from such constitutional protection, especially its tax autonomy is left in a bizarre arrangement.

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<sup>76</sup>Supra note 34, P.31

<sup>77</sup>Supra note 16, P.31

<sup>78</sup>Ibid

## 3. Chapter Three

### 3.1 Fiscal Federalism and Cities

#### 3.1.1 Fiscal Federalism

##### 3.1.1.1 Fiscal Decentralization

As part and parcel of decentralization and as a financial term, a fiscal decentralization was introduced by the German born American economist Richard Musgrave in 1959.<sup>79</sup> As a sub field of public economics, fiscal federalism is concerned with understanding which functions and instruments are best centralized and which are best placed in the sphere of decentralized levels of government.<sup>80</sup> In other words, it is the study of how competencies (expenditure side) and fiscal instruments (revenue side) are allocated across different (vertical) layers of the administration.<sup>81</sup>

One thing to be noted in this regard is that, fiscal decentralization represent broad public economics term which is applicable even to other forms of government. For instance, fiscal decentralization is applicable to unitary system so long as such levels of government enjoy defacto decision making power, though differ in their political and legislative context and thus provide different opportunities for fiscal decentralization.<sup>82</sup> But as the federal systems was created with the intention of combining the different advantages which result from the magnitude and the littleness of nations,<sup>83</sup> fiscal federalism is only meant to address the vertical structure of the public sector. It is only limited in dealing the financial relations between units of government in a Federal Government system.

All in all, fiscal federalism covers matters involving constitutional arrangements that assign expenditure responsibilities and revenue raising capacities as well as the mechanisms for adjusting horizontal and vertical imbalance. Fiscal federalism is, therefore, a study of the allocation of legislative and executive responsibilities as well as

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<sup>79</sup><https://www.britanica.com/topic/fiscal-federalism>

<sup>80</sup>Oates(1999) cited at <https://en.m.wikipedia.org/wiki/fiscal-federalism>

<sup>81</sup>Ibid

<sup>82</sup>W.E.Oates,"An essay on Fiscal Federalism," *Journal of Economic Literature*, Vol.37 No.3, P.1120

<sup>83</sup>Ibid

taxation powers among layers of government.<sup>84</sup> It is a mechanism to shrink the role of central government and to expand the responsibilities of sub national governments.

Concerning the assignment of powers, the traditional theory of fiscal federalism suggest that the absence of monetary and exchange rate prerogatives and the mobility of economic units.....are the main grounds for central government to assume macroeconomic stabilization function and income redistribution in the form of assistance to the poor.<sup>85</sup> In addition to these functions, the central government must provide certain “national” Public goods, like national defense that provide services to the entire population of the country.<sup>86</sup>

Oates as a proponents of decentralization theorem and citing the concept of functional overlapping and competing jurisdiction suggested that:

Each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalize the benefits and costs of such provision.<sup>87</sup>

Bruno Free and Reiner Eichenberger extending the view of Oates argued that:

Jurisdictions can be organized along functional lines while overlapping geographically and that individuals and communities could be free to choose among competing jurisdictions. Revenues are raised from members in return for delivery of services to them.<sup>88</sup>

The subsidiary theory, which is advanced by the European Union claims that taxing, spending and regulatory functions should be exercised by the lowest order of government. Unless convincing case can be made for assigning these to higher orders of government.<sup>89</sup>

Presently, efficiency in resource allocation, priority to local preferences, equity and poverty concerns, enhancement of tax efforts, substantiality of service provision, Catalyzing competitiveness among sub national governments and maximizing service

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<sup>84</sup>Supra note 24, p.44

<sup>85</sup>Supra note pp 1121-1122

<sup>86</sup>Id, P.1122

<sup>87</sup>Wallace E. Oates, Fiscal Federalism, (1972) P.55

<sup>88</sup>Supra note 16, p.8

<sup>89</sup>Ibid

delivery are the main economic arguments for injecting fiscal federalism in a federal form of government.<sup>90</sup>

As stated above, fiscal decentralization involves the transfer of fiscal authority (public functions, expenditure and revenues) from a central government to sub national governments such arrangement may follow two forms:

1. The system principal agent

In such kind of arrangement, sub national governments are agents of the national government (principal). Though, the central government is there to recognize higher implementation efficiency of sub national governments. The agents are accountable towards the national government and not to their constituents.

2. The system local public election

Sub national governments have high degree of autonomy in determining revenue and expenditure assignments. This model assumes for greater part of financing of the sub national expenditure through own revenue sources in the forms of sub national tax and non-tax revenues. In such system, the sub national governments are accountable to their constituents and the expenditure is financed and the priorities are set by the local people.<sup>91</sup>

Decentralization without pure and classic fiscal decentralization will result in inoperative and meaningless governmental arrangement. According to Smoke, effective decentralization fiscal system exhibit five basic elements:

- ❖ Adequate legislative and institutional enabling environment
  - ❖ Assignment of an appropriate set of functions to sub national governments
  - ❖ Assignment of an appropriate set of local own source revenues to sub national governments
  - ❖ The establishment of an adequate inter-governmental fiscal transfer system;
- and

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<sup>90</sup>Supra note 15, p.27

<sup>91</sup>Supra note 15, p.30

❖ Establishment of adequate access of sub national government to development capital.<sup>92</sup>

Constitutional or legal assignment of tax or revenue power is the main building brick to establish autonomous local government. The purpose of revenue assignment is to provide sub national governments with revenues that they control and thus to decentralize the control of public spending.<sup>93</sup> For decentralization to be reliable, sub national government must have their own revenue to cover at least their current expenditures including debt services.<sup>94</sup>

### 3.1.2 Fiscal autonomy and capital cities

#### 3.1.2.1 Types of capital cities

Cities and metropolitan regions are gaining importance in an increasingly globalized world, especially in Europe where central state structures are weakened and nation states are increasingly imbedded in European governance structures.<sup>95</sup> In most instance, capital cities survive accommodating the tension between a federal government, a sub national entity in which the city is located and the desire and interests of its residents. In most instance, the state interests are less considered and the residents of the capitals find themselves in the wrong end. In majority of federal form of arrangement, capitals are organized only to bring partial gain for its citizens. In a conflict between local autonomy and “center”, the cities usually came up short.

The word capital derives from the Latin word “caput” meaning head and denotes a certain primary status associated with the very idea of a capital.<sup>96</sup> Capital implies a place at the top of governmental pyramid, whereas “seat “appropriately suggests a place of assembly.<sup>97</sup>As seat government is especially relevant for coming together federation, the term capital city dominantly used in holding together federations.

Despite variations depending on their patterns, compared with member states, they often enjoy a lower degree of self-government and sometimes, a lesser share in the

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<sup>92</sup>P smoke, Fiscal Decentralization in Developing countries: A review of current concepts and practice (United Nations Research Institute for Social Development )

<sup>93</sup>Supra note 15.p.28

<sup>94</sup>Id, P.29

<sup>95</sup>Patrick Gales, European Cities, ( 2002), PP.18-22

<sup>96</sup>Supra note 25, P.2

<sup>97</sup>Antony Gilliard, choosing The Federal Capital: A Comparative Study of the United States, Canada andAustralia, P.25

governance of the federation. A pattern of a city has a strong impact on the autonomy and functioning of a city. Cities in this regard, may be classified as:

1. The federal district model
2. The city state model and,
3. Cities in member state model

In choosing one of these models, the internal political structure of the nation including the level of centralization certainly plays a central role. The relative political and economic power of the capital city and the balance of power between regional and national political force are the main catalysts in the choice.<sup>98</sup> To shed light on the status of Addis Ababa, Let's begin our discussion with one of the least liberal model.

#### 3.1.2.1.1 Federal District Model

In most cases the governance of capital cities differs from that of other cities in a given country. Their governance also differs from the other member of the federation compared with member states. They often enjoy a lower degree of self-governance and, sometimes, a lesser share in the governance of the federation. Though the trend of capital cities governance is towards greater form of autonomy, this is not the case in federal district model. A federal district is a city established under the exclusive jurisdiction of the federal government. In such arrangement capital usually enjoy a legal status that differs from that of the states that surround them.

Though the legal status of the capital is different from that of the surrounding states: capitals of this model are not in a position to liberate themselves from the influence of the center. The power of the federation is very strong. The federal legislature own and administer the capital city land. The Federal Government has sole ownership right over the city and is responsible to the planning and development of the city.<sup>99</sup> Federal district model invites excessive control over the residents of the city in issue.<sup>100</sup> Capitals in such model usually rely on federal legislation and nomination as well as control for their very existence.<sup>101</sup>

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<sup>98</sup>Scott ,C., cold war metropolis: The fall and Rebirth of Berlin as a world city. (2000), p.18

<sup>99</sup>Supra note 6, p.38

<sup>100</sup>D.C Rowatt, ‘‘The problems of governing federal capitals’’, Journal of political science ,Vol.3 (1968). PP-345-356

<sup>101</sup>Klaus Jurgen Nagel, The problem of the capital city, Introduction: Asymmetry And the capital, (I011). P.12

Abuja, Brasilia, Buenos Aires, Canberra, Caracas, Islamabad, Kuala Lumpur, Mexico City, New Delhi and Washington D.C for all legal and practical purposes belongs to this model. From such list, Canberra can be taken as relatively an autonomous city state, while Abuja is known for tight Federal Government control.<sup>102</sup> But generally compared to a member state, almost all district have less self-government and fiscal autonomy and in some instances some of them are a mere local administrative units. For some cities having local government is unthinkable. Even for those which have local government, enjoying full-fledged self-administration is hard to imagine.

For district inhabitants, the division of power between the levels does not exist or is not complete, and in some places, even their representation at the federal level is curtailed.<sup>103</sup> To use the word of Klaus in this regard:

...all are administered by federal and eventually (under more or less intensive supervision) by a local government of their own. Separation of powers, a federal principle, is often neglected in their territory, where the respective Federal Government usually exercise competencies that it does not possesses in other places.<sup>104</sup>

For cities in a federal district model, fiscal autonomy and direct access to federal funds are unattainable. In most instances, the residents does not have a locally elected government.

Small capitals are usually to be found in the district model; however, not all capitals categorized as federal district are small. It is very difficult to find a single European capital in this group. Artificial, planned, newly built capitals are dominant in federal district model.<sup>105</sup> Self-governance is almost invisible in federal district prototype. In capitals which have residents, the residents were sidelined or even actively subverted during the choice. Citizens in such arrangement often falls under exclusive control of the Federal Government. Gilliland in this regard stated that:

...the discussion on choosing the federal capital was shaped in terms of creating a city to be permanent house of the Federal Government as opposed to viewing the capital city as a city where residents live out their everyday lives. In

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<sup>102</sup>Ibid

<sup>103</sup>Id. , P.13

<sup>104</sup>Ibid

<sup>105</sup>Id, p.12

this sense, the capital life was not viewed as a constituent unit or a partner in the federation. It seems to have been viewed as an administrative center rather detached from the federated units.<sup>106</sup>

As the residents do not have representatives at the center, they cannot influence central decisions that affect their day to day livelihood. But, according to Cobb such measure was not without justification:

...the provision by omission that the city was to have no representation was justified in relation to a trade-off where by the capital was to be a rational commons in which representatives of the nation would govern the district in the federal interest. In exchange for federal patronage the citizens of the district would surrender their suffrage.<sup>107</sup>

In a federal district model, where the national government is dominant, the capital cities usually exhibit strong commitment and determination in order to ensure legitimacy, resources and autonomy. The national government not only asserts its power when its interests directly conflict with the local government, but it often intervenes in local issues even when there is no clear national interests.<sup>108</sup> Eldredge summarized the challenges federal capitals often face in the following words:

Capital city governments appeared to chafe under inadequate power to manage their own affairs and despite national government interest... they had to battle against other national priorities for the muscle to get physical things of local import actually carried out.<sup>109</sup>

The choice of a nation to pursue an appropriate model primarily rely on the internal political structure of the nation which may also include the level of centralization. Besides this, the location of the capital city itself, historical legacies, the relative political and economic power of the capital city, and the balance of power between regional and national political force also plays a central role in the

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<sup>106</sup>Supra note 95, P.56

<sup>107</sup>W.Cobb, "Democracy in search of Utopia: The history, Law, and Politics of relocating the national capital", *Dickinson Law Review*, Vol. 99, (1994) P.527

<sup>108</sup>Donald C.Rowatt, *Ways of Governing Federal Capitals*, (1993), PP. 152-153

<sup>109</sup>H.W. Eldredge, *World Capitals Toward Guided Urbanization*, (1975), P.510

choice.<sup>110</sup> Rowatt advocated that in decentralized federations a federal district solution should be preferred to the model of a city in a member state:

...federal districts are particularly appropriate in the decentralized federations where the sharp division of powers between the central and state governments would otherwise prevent the central government from having adequate control over its own capital.<sup>111</sup>

Gilliand taking into account the specific case of Washington D.C, also argued that:

...the federal district model, with exclusive legislation reserved for congress, protected the Federal Government from possible member state encroachment. Hence the model chosen was argued to guarantee the independence of Federal Government and protected it from powerful interests.<sup>112</sup>

In most instances the choice of this model enables the central government to function and fulfill its duties assigned by the constitution with little or no hindrance from any constituent unit. It ensures neutrality of the Federal Government and gave the federation additional power.<sup>113</sup> In such arrangement full determination is expressed to preserve the purity of government and its independence from the influence of any particular state, while at the same time being detached from existing localized interests.<sup>114</sup>

All in all, though, the inhabitants of the city is paying the price, the district model is the best model to reflect the diversity of the federation:

It avoids conflict between competing powerful member states: it may 'neutralize' the capital, making its choice acceptable for all member states.<sup>115</sup>

These being the main reasons for tilting towards federal district model, experience with such model has shown that other basic problems of governing the capital are left unsolved. According to Harris:

The central government may dominate the public affairs of the city at the expense of the democratic principles up on

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<sup>110</sup>Scott C, Cold War Metropolis: The Fall and Rebirth of Berlin as a World City, (2000), P.18

<sup>111</sup>Supra note 108, PP.166-167

<sup>112</sup>Id., P.53

<sup>113</sup>Id, P.56

<sup>114</sup>Id, P.32

<sup>115</sup>D.C.Rowatt,The Government of Federal Capitals,(1973),P.350

which the nation is founded... In some cases the local residents are denied the basic political rights that are enjoyed by the citizens of the nation as a whole.<sup>116</sup>

To begin with, the presence of the national government often imposes great fiscal and security burdens on its capital. Interference of the capital cities and limiting rights of its citizenry, which are the main brands of such arrangement, may further complicate the problem. Although local governments elected by their residents, they are usually subjected to provisions where by the national government can override local laws or refer continuous issues to joint national-local government committees to negotiate differences.<sup>117</sup> Local governments in such arrangement often operate in the shadow of their national governments, with restricted power and resources than those enjoyed by other cities.<sup>118</sup> In some capital cities such as Canberra, any territorial law is un-operative to the extent that it is inconsistent with federal law. In USA, the congress retains ultimate right to review the local budget and taxes, overturn laws passed by the city council, and terminate the home rule through a major vote. As the local government structure in Washington DC and Canberra was created by statute, it can be changed or abolished easily.<sup>119</sup> The district's chief financial officer and inspector general have some local independence and are subject to certain federal approvals that can override local decisions. Such kind of arrangements are not binding on any other US cities.<sup>120</sup>

From residents' rights perspective, the so called "National Enfranchisement" – representation of local interests elsewhere in the country is often at risk in such arrangement. Having a say in the operation of their government is the main theme of democracy. To ensure the independence of the national government from the influence or domination of the state, to maintain the spirit or idea of a coming together federation to provide physical security for its buildings and delegates and in order to carry out their duties and business freely, Washington DC is organized as a federal district where no member state has control over it. Madison in this regard justified the decision stating that:

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<sup>116</sup>Charles Harris, Congress and the governance of the Nation's Capital: The conflict of federal and local interests, (1995), P.243

<sup>117</sup>Michael K. Fauntroy, Governing the district of Columbia and Fen other National Capitals, (2004), P.23

<sup>118</sup>Supra note 100 , P. 354

<sup>119</sup>Shimelis Demisse, Governance Arrangement and Inter Governmental Fiscal Relations of Capitals Cities with their National Governance; The case study of Addis Ababa City Administration, (2010), PP. 30-32

<sup>120</sup>Hal Wolman, Capital Cities and their National Governments: Washington, DC. In comparative Perspective, (2007) P.4

The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impurity; but a dependence of the members of the general government on the state comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to other members of the confederacy. This consideration has the more weight, as the gradual accumulation of the government would be both too great a public pledge to be left in the hands of a single state, and would create so many obstacles to a removal of the government, as still for them to abridge its necessary independence.<sup>121</sup>

Besides owning land on which the federal capital is set, the congress is allowed to enjoy exclusive authority or jurisdictions over the district. The residents of the district are denied direct representation in congress since the capital district is not a state, it cannot have representation in the senate. Although, the house of representative is a population based chamber, its constituencies are based on the states and therefore the capital district is an anomaly.<sup>122</sup> According to Klaus-Jorgen Nagel, this clearly contradict the principles of the American Revolution “No taxation without representation”.

...there is no “compensation” between a symmetries of rights and duties: while Puerto Rico has no vote in congress, the inhabitants of the island do not have to pay federal taxes, and they enjoy greater autonomy than states, including a conditioned right to secede. This is not the case for the D.C.<sup>123</sup>

Besides the above shortcomings, capitals of federal district model also face problems related to city boundaries in such arrangement, the city often grow far beyond the original territory into another regional state thereby inviting conflict between the body that owns

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<sup>121</sup>J.Madison, The Federalist Papers, 1987), P.279

<sup>122</sup>Supra note 95, P.31

<sup>123</sup>Klaus-Jurgen Nagel, Representation for the Taxed : Projects To End The Asymmetry of Washington DC and Why (most of them) have failed, (2013) P.61

the city and the state affected by the outward growth of the city.<sup>124</sup> Spillovers is the main feature of this model.

#### 3.1.2.1.2 The city state model

As stated in the previous topic, capitals belonging to federal district model often lack autonomous local government, may not have their own police force and courts and may not enjoy financial autonomy. They usually lack constitutional sovereignty, representation in federal institutions and may depend on federal legislations and nominations and/ or control. City state prototype seems a direct opposite of federal district model.

To begin with, traditionally this model has attracted less attention than the other models, perhaps because it's not present in classical federations.<sup>125</sup> City states refer to those cities or agglomerations that are themselves constituent units of the federation and have the same (or almost the same) legal status as the other federal states.<sup>126</sup> Though cities in this category are supposed to serve as the seat of the federal government, they are also full-fledged states for all practical purposes and as a result they enjoy a considerable degree of autonomy.

In a federal district prototype, the national government may dominate the public affairs in the city at the expense of democratic principles and can have considerable control over the financial decisions of the capital city. But in the city state model, it is a city state which is in a driver seat to control the behavior of the federal government in the capital. They often enjoy more powers than other cities and especially more revenue raising capabilities.<sup>127</sup> From residents perspective, they enjoy democratic rights and privileges on par with other citizens of the country. In this regard, the model avoids the general problems of *de jure* asymmetrical treatment between the citizens, establishing, however, a new and relevant asymmetry between the states (particularly where the capital is the one and only city states).<sup>128</sup>

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<sup>124</sup>Supra note 6. P.40

<sup>125</sup>Supra note 95, P.175

<sup>126</sup>Luca Barani, Fiscal Federalism and Capital Cities: A Comparative Analysis of Berlin and Brussels, cited at <https://WWW.Cairn.info/revue-1-europe-en-formation> last visited 01-09-2016

<sup>127</sup>Erid Slack, *Finance and Governance of Capital Cities in Federal System*, (2001), P.175

<sup>128</sup>Supra note 101, P.15

The symmetry this model stands for is the one between member states, the rights of its citizens may not be sacrificed for the sake of the federation.<sup>129</sup> As there is less federal influence over city state than other governing structures, the city state model is an ideal model to realize Cityself-governance. Surprisingly, capitals belonging to this model are all located in Europe: Berlin, Brussels, Moscow and Vienna are city state capitals. In some aspects, we might also include Madrid, the capital of strongly decentralized state.<sup>130</sup> Capitals like Berlin and Vienna, have double status. They are municipalities and states. The administration combine local and state functions. As there is differentiation between the local and the state administration, the city mayor is the head of the corresponding state government.<sup>131</sup>

Exceptionally, the differentiation may exist when other municipalities are included in the member state of the capital. As the autonomous community of Madrid and Brussels region include other municipalities, there is a clear differentiation between the local and state administration.<sup>132</sup> Brussels and Berlin, the two best known examples of this model, exhibit a very different characteristics. As the federal arrangement in Belgium is a holding together federalism, an arrangement where centralized state gives more autonomy and independence to its constituent units in order to hold them together the strong underlying logic is one of competitive federalism with ever growing centrifugal forces at work.<sup>133</sup>

Such ever growing decentralization driven by territorial and cultural linguistic claims is forcing Belgian politicians and academicians to call anxiously for a more co-operative federalism.<sup>134</sup> As Germany, on the other hand, has a type of federalism characterized by coming together, the latent underlying trend is one of co-operative federalism and centripetal forces as evidenced by politicians and academics insistently calling for a more competitive federalism.<sup>135</sup> According to Barani:

... City within a cooperative/ centralizing federal system is better off than one within a competitive/ devolutionary one with respect to financial autonomy, but that competitive

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<sup>129</sup>Id, P.175

<sup>130</sup>Id, P.12

<sup>131</sup>Id, P.13

<sup>132</sup>Id, P. 12-13

<sup>133</sup>Supra note 126,p.15

<sup>134</sup>Ibid

<sup>135</sup>Ibid

federalism may have more beneficial effects as far as accountability and transparency are concerned.<sup>136</sup>

The federal arrangement in Germany is there to grant Berlin equal institutional status with other landers. According to Els Witte:

...Berlin has the same competencies, it is financed in the same way and is represented in the Bundesrat in the same way as the other lander.[Berlin] has its own constitutional document and independent constitutional court.<sup>137</sup>

Though Brussels is a region just like Flemish and Walloon regions, all these local governments are not in equal position within the federation. As the bilingual Brussels capital region is at the center of unilateral requests and bilateral negotiations between the two main communities of Belgium-Wallonia and Flanders- there is more uncertainty around its legal status.

The shortcomings of this model relate fundamentally to the proper functioning of the Federal Government in the capital. Capital cities in this arrangement leaves little or no control for the Federal Government over its own official seat.<sup>138</sup> In addition, city states, because of their constitutional fixed boundaries and high densities, may quickly become over bounded, with population spilling over into adjacent states causing serious inter jurisdictional problems.<sup>139</sup> At times, such growth may necessitate constitutional amendment with a view to legalize boundary changes.<sup>140</sup>

#### 3.1.2.1.3 Cities in member state model

The study of federal-capital cities relationships refers to the attention given to the relations between the local and federal administrations to the self-governing rights of the inhabitants of the city, to the protection of the national interests and more recently to the capital city financing.<sup>141</sup> The difference between the three models and capitals in each model revolve around such basic parameters.

Generally speaking, compared with member states capitals often enjoy a lower degree of self-government and play a limited role in the governance of the federation, Compared with other models, cities under a regional state enjoy a very limited self-

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<sup>136</sup>Ibid

<sup>137</sup>Els Witte, Belgian Federalism: Towards Complexity and asymmetry, (1992), PP.95-117

<sup>138</sup>Supra note 6, P.40

<sup>139</sup>Supra note 119, P.36

<sup>140</sup>Supra note 6, P.40

<sup>141</sup>Supra note 101, p.177

governing status. Citizens of cities in member states are “nothing special”, they are just double citizens of the federation and of the member state where their city is located.<sup>142</sup> Residents may or may not be granted any right of self-government. All depend on the willingness of the state in which the city is located.<sup>143</sup>

As the model takes the capital as simple municipality, this arrangement usually forces the capital to be submitted to a particular state law of policing and financing.<sup>144</sup> They usually exhibit limited financial autonomy and lack the financial capacity necessary to pursue self-government and carry out their day to day activities. As a city under a regional state refers a simple municipality within a member state -falling under its jurisdiction- the regional government decides about the organization and administration of the city.

The member state may act as a barrier between the federation and the municipal government of the capital. Besides this, the member state may also influence and hamper the interest of the central government to rule the city in its own way. The Federal Government in this arrangement is denied any control it may have over its own seat and could not develop its own capital in its own way.<sup>145</sup> The capital city in such model is an integral part of sub national unit which in turn has jurisdiction over the city and can legally treat the same just like any other city in the domain of the region without taking into account the interest of the federal government.<sup>146</sup>

Bern, Ottawa, Pretoria/Cape town and the former capitals like Bonn, Belgrade and Moscow can be cited as best examples of this prototype. With the exception of Ottawa (which is the capital of a decentralized federation), cities under regional state kind of arrangement usually found in a federation that are quite centralized.<sup>147</sup> Cities in this group may be classified as:

1. Cities that are at the same time capitals of the federation and of the particular member state they belong to. Besides Bern as a living example, Belgrade and Moscow can also be taken as best examples.
2. Cities that are only capitals of the federation- Ottawa is a simple municipality within a member state. It is a capital within the province of Ontario.

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<sup>142</sup>Id, P.13

<sup>143</sup>Supra note 6, P.42

<sup>144</sup>Supra note 101, P.15

<sup>145</sup>Supra note 6, P.41

<sup>146</sup>Ibid

<sup>147</sup>Supra note 101, P.14

One thing to be noted in this regard is that, presently it is very difficult to find a pure “city in a member state capitals”. Capitals that are normal cities inside a member state, equal to any other city of the nation that is with citizens that are at the same time members of the federal and of a state demos, are rare occasions in an ever urbanizing world.<sup>148</sup> The trend is toward city state model. Most districts have come some way closer towards to the model of the city state capital. According to Klaus, Ottawa is a best example to reflect such trend:

The direct collaboration between local and Federal Government as well as some rules on capital financing may bring Ottawa somewhat closes to a district model without totally breaking the path dependency.<sup>149</sup>

As boundaries within a region are subject to flexible adjustments by the region concerned without necessitating a constitutional amendment spillover problems, which are the main problems of federal district and city state models, are not problems of this model. But this does not mean that such model is without any shortcomings. Primarily this model does not reflect the diversity of the federation. For instance, Ottawa is an English speaking capital in a bilingual federation. Bern which is a capital of Switzerland is governed by a German speaking canton. Rowatt explained the situation in Bern using the following words:

French speaking federal civil servants face the difficulties of developing and using their language. Even street signs are in the majorities' language. Public education being cantonal matter, the Federal Government cannot affect the way education is conducted in Bern there by unable to protect its own civil servants.<sup>150</sup>

Besides such cultural domination of the lost state, according to Rowatt:

The model may suffer from serious problems of divided jurisdiction, financial insufficiency, inadequate metropolitan government, and the inability of the central government to control the capital city or its development in the interests of the nation.<sup>151</sup>

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<sup>148</sup>Id, P.175

<sup>149</sup>Ibid

<sup>150</sup>Supra note 100, PP. 345-356

<sup>151</sup>Id., P.349

## 3.2 Addis Ababa under the FDRE constitution and other relevant legislations

### 3.2.1 Historical remarks

Addis abeba, the capital city of Ethiopia, was founded in 1886 by Emperor Minilik II. Before historical incident, Ethiopia is known for its ever changing capitals. According to Andrea Corsali, Ethiopia exhibited mobile capitals for one basic reason:

...the Ethiopian ruler of that time, marched from place to place with "innumerable people" his army being so large that it couldn't remain in one spot for more than four months nor return to the same camp in less than ten years because of the resultant shortage of food.<sup>152</sup>

Learning from his grandfather Sahleselassie, Minilik II put an end the old age custom of roaming by establishing a permanent capital geographically at the heart of Ethiopia . Addis Ababa was an imperial city for Minilik II, Iyasu, Zewditu and Haileselassie I. As an imperial City, Addis Ababa escaped the threat of losing its status for three main reasons: the introduction of Eucalyptus ( a tree that grows very fast and provides a lot of wood for energy and cooking ), the enactment of proclamation for legislating private ownership of urban land on 1907 and completion – mainly by the French – of the Addis Ababa Djibouti railway in 1917.<sup>153</sup>

The establishment of the Addis Ababa city municipality and consequently the appointment of the city's first mayor was carried out by Emperor Minilik II. As stated above, the Emperor also decreed the urban land Law in 1907, mainly to legalize private ownership of urban land. Despite lack of comprehensive legal and administrative framework for viable municipal administration, Empress Zewditu empowered the municipality to undertake municipal activities like that of regulating land ownership certificate and collecting taxes from land owners.<sup>154</sup>

As Emperor Haile Selassie dedicated his full time in ensuring national unity at the expense of regionalism, the 1931 Constitution and the Revised Constitution of the Imperial regime opted silence regarding the status of the municipalities. Rather the choice of the

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<sup>152</sup> Richard Pankhurst, "Minilik and the foundation of Addis Ababa", Journal of African History, Vol.1 (1961), P.103

<sup>153</sup> Supra note 119, P.37

<sup>154</sup> Uli Wessing Tolon, Comparison of Urban upgrading projects on development cooperation in Ethiopia, (2008), P.

governing the city by appointed mayor and city council carried out with the enactment of Decree No.1/1942 and the Municipalities Proclamation No.74/1945. The council to carry out its responsibilities organized using appointed and “elected”<sup>155</sup> members.

Though failed to list down the type of taxes or other sources of revenues the city entitled, the decree was the first legal document which was used to dictate the proper use of revenues for city’s purpose only. To fill the void left by the decree, Proclamation No 74/1945 was enacted mainly to list down local rates, licenses and market fees as the principal sources of revenues for the capital. The council assigned to fix the rate while the mayor was responsible for imposing and collecting the taxes.<sup>156</sup> Under this arrangement, Addis Ababa unlike other urban centers, was accountable to the central government through the Ministry of Interior.

Addis Ababa secured relatively autonomous status with the enactment of general Notice No. 172/1954. This being the first charter of the city, the capital with its administration empowered to carry out all municipal functions with all implied powers necessary to execute these functions.<sup>157</sup> All executive powers was rested under the realm of the appointed mayor.

Despite failure in listing down the possible sources of revenues, the city council is free to levy taxes, to fix the rates and fees pursuant to Article 15(2) of the Charter. The City was free to borrow money from any sources with the issuance of negotiable bonds and notes. Unlike the current arrangement, such power does not need approval from the central government.<sup>158</sup> All in all, despite some degree of supervision from the imperial government, Addis Ababa was enjoying relatively decent self -government status.

Such autonomous and relatively independent power of the mayor as well as semi-autonomous status of the capital heavily eroded and became extinct when the Derg regime came into power. For all theoretical and practical purposes, the City Government lost all its influences and autonomy and became highly dependent on the center. Though, the capital was empowered to levy and collect urban land rental building taxes, Addis Ababa forced to lose lucrative property tax with the nationalization of urban land and rental houses in 1975.

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<sup>155</sup>Supra note 119, P.37

<sup>156</sup>Id, P.38

<sup>157</sup>Id, P.39

<sup>158</sup>Charter of the city of Addis Ababa, General Notice No.172/1954, Negarit Gazeta, Articles 43-55

### 3.2.2 Basic geographical features of the capital

Situated at an attitude of 2355 above sea level and latitude 9°1'48' N 38°44'24' E, Addis Ababa is located in the geographical center of Ethiopia. Located in the foot hills of the Entoto mountains and standing 7726 feet above sea level, Addis Ababa is the third highest Capital in the world.<sup>159</sup>With the population of 4.6 million in the city in 2017,<sup>160</sup> Addis Ababa is the largest city located in land locked country. The area of the city increased from 85.73 square miles (222.04 square kilometers) in 1984 to 204.7 square miles (530.21 square kilometers) in 2017. The city is home to 23.8 percent of all urban dwellers in Ethiopia and has an estimated density of 5936.2 per square kilometer. It is the 106<sup>th</sup> largest urban area in the world, according to Demographia.<sup>161</sup> Even though Addis Ababa is currently experiencing one of the lowest population growths of its history (3.6 in 2017)<sup>162</sup>, the capital continues to attract 90,000 to 120,000 new resident every year mainly due to net immigration.<sup>163</sup> Almost all the Ethiopian ethnic groups are represented in Addis Ababa. The major ethnic group represented are the Amhara (48.3 percent), Oromo (19.2 percent), Gurage (17.5) and Tigray (7.6 percent) while others constitute 7.4 percent of the population.<sup>164</sup>

Though Addis was consumer city in the early 20<sup>th</sup> century, now a days the capital diversified its source of income after securing the center stage in public administration, commerce, manufacturing, finance, real state and insurance.<sup>165</sup> Besides its role as a local government for its residents, Addis Ababa hosts both the Federal Government and Oromia Regional State. Addis also hosts the head quarter of the African Union and The United Nations Economic Commission for Africa. The United States and the European Union both have two delegations in Addis Ababa: One for bilateral relations with Ethiopia and one for the African Union.<sup>166</sup>

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<sup>159</sup>[www.newworldencyclopedia.org/entry/AddisAbaba](http://www.newworldencyclopedia.org/entry/AddisAbaba)

<sup>160</sup>[www.worldpopulationreview.com](http://www.worldpopulationreview.com)

<sup>161</sup>Ibid

<sup>162</sup>[Populationof2017.com/population-of-addis-ababa-2017-html](http://Populationof2017.com/population-of-addis-ababa-2017-html) searched on December 24,2017

<sup>163</sup>Supra note 154, P.16

<sup>164</sup>Supra note 159

<sup>165</sup>Supra note 154, P.16

<sup>166</sup>Supra note 159

### 3.3 Addis Ababa At The Crossroad: Harmonizing the interests of its Residents, Federal Government and ONRS

Though the right of Nations, Nationalities and Peoples to self- determination was affirmed under Article 2 of the Transitional Period Charter of Ethiopia, the Charter remained silent concerning the status of the capital. The charter granted Nations, Nationalities and People of Ethiopia with the right to preserve its identity, promote its culture, administer its own affairs within its own territory and participate in the central government. The right to self -determination of independence when the above listed rights are denied, abridged or abrogated, was one of the widest right granted to the Nations, Nationalities and people of Ethiopia. As the status of Addis Ababa does not rely on nationality argument, Addis Ababa cannot claim the above right citing Article 2 of the Charter.

Addis Ababa formed one of the fourteen regions of the Transitional Government of Ethiopia with the enactment of Proclamation No.7/1992. This legal document came into picture to give effect to the self- determination rights of the Nations, Nationalities and people of Ethiopia.<sup>167</sup> To ensure the preservation and promotion of their languages, cultures and histories, the Proclamation set the process in motion by devolving state power to territorially based ethno-linguistic communities.<sup>168</sup> Though passing the test of ethno-linguistic criteria was mandatory, Addis Ababa secured regional status even without such basic link. The Proclamation was bold enough to consider Addis Ababa as one of the 14 regions, though this number was shrink to 10 after some regional governments freely agreed to establish joint border based regional form of self- governments.<sup>169</sup> Region 7,8,9,10 and 11 in this regard entered in to agreement to form a single Southern Regional Self-Governing Unit.

These national/regional self- government were vested with legislative, executive and judicial powers within their geographic areas in all matters that were not expressly assigned to the central government.<sup>170</sup> Those powers under the jurisdiction of the central government include matters of defense, foreign affairs, fiscal and economic policy,

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<sup>167</sup>A proclamation to provide for the establishment of national/regional self-governments, proclamation No7/1992, *Negarit Gazetta*, 51<sup>st</sup> year, preamble paragraph 3

<sup>168</sup>Id. Article 3 and Article 2 of the charter

<sup>169</sup>Hashim Tawfik ,*Transition To Federalism: The Ethiopian Experience*,(2010),p.7

<sup>170</sup>Proclamation No 7/1992 ,Article 9(1)

citizenship, the power to declare state of emergency, formation and administration of major development establishments and major communication network and the like.<sup>171</sup>

The national/ regional self- governments among other things, empowered to prepare, approve and implement their own budgets, subject to the laws and policies of the central Government to borrow money from domestic lending sources and to levy duties and taxes in their respective regions.<sup>172</sup> Revenue sources allotted to the regional governments include personal income tax from employees of regional governments, rural land use fee, agricultural income tax from farmers not incorporated in an organization, profit and sales tax collected from individual traders, tax on income from in land water, transportation, taxes collected from rent of houses and properties owned by the regional governments, income tax, royalties and rent of land levies on small to medium scale mining activities.<sup>173</sup>

Though the FDRE Constitution fully committed in ensuring self- determination right projects started by the Charter and relevant laws, Addis Ababa lost its regional/ state status as per Art 47 (1) of the Constitution. The unconditional right of self- determination including the right to secession only belongs to nations, nationalities and peoples of Ethiopia which can fall under the framework of Article 39(5) of the Constitution. As the self- governing status of Addis Ababa does not emanate from Article 39 (1) of the FDRE Constitution, which surely awards the right to self- determination to nations, nationalities and peoples of Ethiopia, the Constitution came up with Article 49(2) to grant self - governing status to the capital. Though the English version of Article 49(2) awarded full measure of self- government to its residents, the Amharic -version (the prevailing version) invited confusion by dedicating such right to the city itself.

Though common to regard it as a region for some legal purposes\*, Addis Ababa city Administration, is not partner of the federation and does not enjoy the autonomous status in equal ladder with nine regional governments of Ethiopia. The constitutional rubric may not be sufficient to justify capitals full measure of self- governance if not for article 49 of the FDRE constitution.<sup>174</sup> Concerning the real picture the capital exhibiting,

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<sup>171</sup>Ibid

<sup>172</sup>Id. Art. 10 (5)

<sup>173</sup>A Proclamation to Define the sharing of Revenue between the Central Government and Regional Self Governments, Proclamation No.33/1992, Negarit Gazeta of Transitional Government of Ethiopia, Article 5

\*Article 2(7) of proclamation No.377/96, Article 2(7) of proclamation No.587/2008

<sup>174</sup>Supranote 6,p.27

we can easily say that the constitution has granted somewhat confusing and limited status to the capital than that of the previous legislations.

The confusion starts with the enactment of the Charter itself. Cities in this regard may be classified as General Law cities (cities established by laws other than Charters) and Chartered Cities. General Law cities usually established by federal and sub national laws and are less favorable to self- governance.<sup>175</sup> Charter cities, on the other hand, are cities governed by a special legislative called charter and owned by the city concerned.<sup>176</sup> As the initiation is carried out by the cities, the residents have a say on the law and the residents usually administer their affairs in a flexible manner.<sup>177</sup> According to Vander Ploeg, Local governments of chartered cities enjoy among other things:

...the power to conduct its own affairs include specifically the power to determine its own organization, the function it performs, its taxing and borrowing authority, and the numbers, types and employment conditions of its personnel.<sup>178</sup>

Concerning Addis Ababa, as to charter is to city what a constitution is to a state, the charter is a supreme law of Addis Ababa for all theoretical and practical reasons. As a result its promulgation seek special attention. It clearly necessitate residents participation in the making, amendment and repeal of the higher law of the city. As regard to Addis Ababa, the residents deprived all these rights. The residents was not a party in the making of the charter and may not participate in the amendment and repeal of the same.

It is true that, Article 49 (4) of the FDRE Constitution entitles the residents of Addis Ababa to take seats in the House of People's Representative. But holding just 20 seats out of 547 does not led us to the conclusion that the residents are participating in the making of the charter. The assumption that those sent from the states can represent the residents (As Addis is a home for almost all nations, nationalities and peoples of Ethiopia), for all theoretical and practical reasons does not enable us to argue that the residents are active participants in the amendment and repeal of the Charter. As the Federal Government wrote the higher law of the land without proper participation of its residents,

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<sup>175</sup>Id P.17

<sup>176</sup>I.B Carr, Local government autonomy and state Reliance on Special District Government: A Reassessment, (2006), P.59

<sup>177</sup>Alex Gbuyega, Protecting Local Governments from Arbitrary state and federal interference: What prospects for the 1990s? (1991) P.21

<sup>178</sup>Casey Vander Ploeg, Rational for Renewal: The imperatives behind a New Big City- provincial partnership (2005) P.34

it is very difficult to call such legal document a “ Charter”. As Addis Ababa is not a charter city, the capital seems a Generallaw city where the Federal Government (House of People’s Representatives) legislates for a city.<sup>179</sup>

The House of People’s Representative continue enacting the Charters (Addis Ababa City Government charter proclamation No.87/1997 and The Revised Charter Proclamation No.361/2003) citing Articles 49 (2) and 55(1) of the Constitution. Though Addis Ababa is a capital of the FDRE pursuant to Article 49(1) of the Constitution, as the city or its residents maintains full measure of self-governance, the Federal Government is not a free rider in the capital.<sup>180</sup> Article 49(1) of the constitution cannot be used to grant outright assimilation of the capital city to the jurisdiction of the Federal Government.<sup>181</sup>

Though Addis Ababa is not pure federal jurisdiction to serve as a spring board for the law making power of the federal government, the House of People’s Representatives continues to write the charter in a ways that best suit it. The promulgation of the charter used to constrain the autonomy of Addis Ababa from the outset. This is clearly affecting and eroding the self-governing status of residents of Addis Ababa.<sup>182</sup>

As stated earlier, constitutional provisions that explicitly express the legal mandate of sub national governments for self-government would limit the central government’s desire of eroding the power of local governments. But this is not always true. The pro-decentralization motto and dedication of a given constitution may be eroded with the enactment of other legislations. As stated under the preamble of the Charter, the higher law of the land was enacted mainly to ensure with detailed laws the full power of self-government awarded by the Constitution to the residents of Addis Ababa. But critical analysis of the charter does not reflect the same.

Under Article 11(1)of the Charter, the City Government is empowered to enact laws and exercise judicial powers specifically conferred to it by the Charter as well as to exercise executive powers and functions over matters that are not specifically granted to the Federal Government. Under the umbrella of City Government, the City Council mainly act as law making organ of the capital. The Council filled with members elected for a term

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<sup>179</sup>Supra note 6, P.71

<sup>180</sup>Ibid

<sup>181</sup>Id. P.84

<sup>182</sup>Id. P.85

of five year in accordance with the election laws of Ethiopia<sup>183</sup> is empowered to constitute the executive organ of the City, approve the budget and issue master plan of the City and levy taxes on areas reserved to the City.<sup>184</sup> Besides these, the Council may replace the laws issued by the City and enjoy the power of electing the mayor.

Though the City council is mainly accountable to the FDRE Constitution and the residents of the city,<sup>185</sup> its dissolution up on the decision of House of People's Representatives<sup>186</sup> seems somewhat a bizarre arrangement. To make the matter worse, even the invitation for coalition of parties to form government is also reserved to the Federal Government.<sup>187</sup> This being one of the best way holding the City Council accountable to the Federal Government, its accountability to its residents other than election is not clear.

As Addis Ababa leaned towards strong mayor prototype, the mayor is the chief executive. The mayor is empowered to execute laws enacted by the city council, represent the city as an ambassador thereof, prepare and draft proclamations, nominate cabinet members, appoint the heads of the executive heads of the City, hire and fire the city manager.<sup>188</sup> As the mayor is elected out of the City Council, there is no direct popular election in this regard. wondwossen as an advocate of direct popular election suggested that:

It would have been better if the mayor were elected by the residents directly given the fact that the mayor is meant to serve as an ambassador of the city and that he/she is there to represent the city at event of national and public holidays.<sup>189</sup>

As the mayor is accountable to the City Council and the Federal Government, the direct accountability of the mayor to its residents is unthinkable. To create strong tie with the Federal Government, the Revised Charter obligates the mayor to “submit reports to the

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<sup>183</sup>Addis Ababa City Government Revised Charter, Proclamation No.361/1995,Federal Negarit Gazeta,Year 9,No 86,Article 15(1)

<sup>184</sup> Article 14(1) of the charter

<sup>185</sup>Article 12(5) of the charter

<sup>186</sup>Article 17(2) of the Charter

<sup>187</sup>Article 17(2)(b) of the charter

<sup>188</sup>Article 21(2) of the charter

<sup>189</sup>Supra note 6, P.74

Ministry of Federal Affairs.”<sup>190</sup> Besides this, the mayor also obliged “...to perform other functions assigned to him by the ...Federal Government.”<sup>191</sup>

With an effort to secure the complete submission of the City to the wills of the Federal Government, the Charter under Article 61(6) ordered the City Government to submit its annual and periodic performance reports to the Ministry of Federal Affairs. The City Government is also accountable to the Federal Government regarding security and diplomatic relations.<sup>192</sup> Concerning the security of the City, the charter made the City Police Commission directly accountable to the Federal Police Commission. The City Police Commission may only become accountable to the City Government by delegation.<sup>193</sup> If there is no any chance of invitation by the Federal Police Commission, the later maintains its primary status. Appointing the City Police Commissioner and Deputy Commissioner is also left to the Ministry of Federal Affairs.<sup>194</sup> After making Cities Police Commission more of federal organ, dissolving the City Government when the later fails to manage emergencies and security concerns,<sup>195</sup> seems a very confusing arrangement.

The Charter is not clear as regard to City Government’s power in declaring state of emergency. But there is argument in favor of granting such power to the mayor citing Article 21(2)(d) of the Charter which award the mayor the power to “Ensure the observance of law and order in the city.” As Addis Ababa is “... an integral part of the Federal Government ...” according to the decision of the council of Constitutional Inquiry in a case between Coalition for Unity and Democracy V. Prime minister Meles Zenawi<sup>196</sup> the Federal Government is free to declare state of emergency in Addis Ababa when the time is appropriate. As the self-governing status of Addis Ababa is resulted from the principle of residency than that of ethno-linguistic criteria, the Federal Government is free to suspend the self-governing right of residents of Addis Ababa during state of emergency. In such instances, self-governing right is exceptionally derogable to the residents of the capital.

As stated earlier, the existence or non- existence of self-governance status may be evaluated taking into account the legislative, executive and judiciary power of a given

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<sup>190</sup> Article 21(2)(K) of the Charter

<sup>191</sup> Article 21(2)(r) of the Charter

<sup>192</sup> Article 61(2) of the Charter

<sup>193</sup> Article 27(1) of the Charter

<sup>194</sup> Article 27(2) of the Charter

<sup>195</sup> Article 61(3) of the Charter

<sup>196</sup> CUD V. The prime Minister of Federal Democratic Republic of Ethiopia (2005)

entity. As regard to judicial power of the city, Addis Ababa city courts seems more of municipal courts. Though the courts are empowered under article 41 of the charter to entertain some matters which are not municipal, there is a trend of eroding their power through the so called binding decisions of Federal Supreme Court cassation division. Even though city courts has criminal jurisdiction on charges brought in connection with fiscal matters set out under Article 52 of the Charter, it is Federal courts entertaining such cases practically. All in all city courts are becoming experts on some nitty gritty matters of the capital.

Leaving tax issues for the last Chapter, concerning the relationship of Federal Government and Addis Ababa, the tendency is towards ever greater involvement in the City. Though rigorous standards are expected to be met for best compromising result, the Charter opted to make Addis Ababa component part of the Federal Government and reduced the capital to an administrative unit of the Federal Government.<sup>197</sup> It is true that local self-government does not have satisfactory history in Ethiopia. As part and parcel of Ethiopian history, Addis Ababa does not have history of a democratic and disciplined culture of Federal city relationship.<sup>198</sup> The constitution came in to picture to fill such void left by Ethiopian history.

As denial of local self-government result in unaccountable, irresponsible, as well as less sensitive governance, the FDRE constitution bestowed “ full measure of self-government to the residents of Addis Ababa” to ensure responsiveness, accountability, transparency, participation and economic efficiency in the Capital. As Addis Ababa is a seat of Federal Government as well, it is totally unreasonable to expect a regime of unconditional self-determination. Similarly, attaching Addis Ababa to the law making regime of the Federal Government seems very unreasonable. There cannot be out right assimilation of a capital to the jurisdiction of the Federal Government simply because the city is the capital city of the Federal Government.

But the trend tell us very different history. Though the Revised Charter has created somewhat three tiers of governmental system (City, Sub cities and Kebeles), the Federal Government seems the fourth tier of government in the capital. As a basic document for the general trend of centralization by the central government and as legal document to erode the self-governing status of capital’s residents, the Charter came into picture mainly

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<sup>197</sup>Supra note 6, P.84

<sup>198</sup>Id, P.83

to enable the Federal Government active participant in a day to day governance of the city. In doing so, the Charter mistakes Addis Ababa for one of the executive organs of the Federal Government.<sup>199</sup> All in all, the Revised Charter is potent weapon of centralization used by the Federal Government for the Federal Government.

### 3.3 The ever unexplained special interest of Oromia National Regional State on Addis Ababa

Being the mystery for the last 23 years, the special interest of Oromia National Regional State (ONRS herein after) on Addis Ababa is one of the complex and confusing discussion point between and among scholars, Writers, academicians, practitioners and most importantly among the general public. Geographically, Addis Ababa is surrounded by ONRS. Beside this, despite the expulsion, the Oromo people were the original inhabitants of the land. There are also other social and economic reasons attaching the capital with ONRS. While it looked like a federal district, Addis Ababa was also seen as a city within a larger state, i.e., Oromia. As the Oromo people represent 20% of the population of the city<sup>200</sup> and taking into account the geographical and historical belongingness of Addis Ababa to ONRS, there is a tendency of categorizing Addis Ababa as part and parcel of state of Oromia. According to Betru Dibaba:

Addis Ababa has always been historically, geographically and legally an Oromo city that happens to be a metropolis.<sup>201</sup>

But administratively this is not the case. For Tsegaye Regassa, Addis Ababa is an enclave falling outside of Oromia while also housing The Government of Oromia as its Capital. To use his words:

...Addis Ababa is in Oromia, but not of Oromia. Oromia was a state governing from Addis Ababa without, however, governing Addis Ababa itself.<sup>202</sup>

Despite such historical, geographical and legal attachment of the Capital to ONRS, there was a tendency not to include Article 49(5) to the FDRE constitution. Adamu Degefu, from the former Region 14, expressed the fear using the following words:

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<sup>199</sup>Id, P.108

<sup>200</sup>Supra note 34, P.37

<sup>201</sup><http://www.abyssinialaw.com/blog-posts/item/1771-commentary-on-the-draft-proclamation-of-special-interest-of-state-of-oromia-inaddisababa-city#>

<sup>202</sup>Tsegaye Regassa cited at <https://addisstandard.com/the-interest-that-is-not-so-special-addis-abeba-oromia-and-ethiopia/>

...when the city develops, it is not for few, rather it would be for nations, nationalities and peoples, the common estate, the inclusion of Article 49(5) may further include interests in tax and revenue collection and such sub-article is not fair and has to be deleted.<sup>203</sup>

Despite strong commitment and dedication by some participants in drafting process to make Addis Ababa a common estate to each and every Nation, Nationalities and People of Ethiopia, the recognition of ONRS special interest on Addis Ababa has been approved by 507 votes for and 6 votes abstentions. The inclusion primarily criticized for labelling the Oromo people-who are historically the host-to somewhat guest status. For writers and scholars like Tsegay Regassa, Oromo interests on the capital are not supposed to be granted to them by others as some kind of favor. According to him:

They (the Oromos) have the more fundamental right of an owner. As such, they don't need others to make exception in their favor in order to guarantee the protection of the interest of the Oromo in the city.

If anything, it is the Oromo that should make exception to other inhabitants in granting them, for instance, the right of self-government at the municipal level. In other words, if anything was to be "special", it was the "interest" of other peoples who live in the city that should have been so designated as to constitute the "special interest" of non-Oromos in this inherently and primarily Oromo city.<sup>204</sup>

Secondly ,the inclusion of the so called "special interest", criticized for using some general terms:

...provision of social services, utilization of natural resources, joint administrative matters and other similar matters.

This by itself invited so many different views and interpretations. For some writers who follow broad line of interpretation, the phrase "... other similar matters" , under Article 49(5) include the power to levy and collect taxes (Revenues). So according to Betru :

building a legal regime which may enable State of Oromia to share fiscal power in the city listed under Article 52 of the Revised Charter(to levy and collect fee, profit, excise,

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<sup>203</sup>Hateta zemikiniyat of FDRE Constitution, Page 22

<sup>204</sup>.Supra note 202

turnover, value added, income and capital gain tax...) is mandatory and in line with the spirit of Article 49(5) of the FDRE constitution.<sup>205</sup>

Besides the term "...other similar matters." ONRS special interest over the city on matters of social service is sufficient enough to ensure fiscal state interest of ONRS over the capital. According to Betru, ONRS special interest over the city on matters of social service involves:-

...the fiscal interest mainly its expenditure aspect, of the region in the city because service is the counter part of fiscal interest. Further, administrative matters normally extend to fiscal interest. In other words, there is no service and administration without expenditure.<sup>206</sup>

Though delayed for about 23 years, the draft of proclamation on the Oromia special interest in Addis Ababa, which is still in zero draft stage, opted to follow a very narrow line of interpretation in this regard. The draft proclamation limited itself in granting some power in land administration, access to infrastructures and buildings, halls, industry and the like, while leaving the taxation power of the capital intact. Besides narrowing down the ownership of that special interest to the people of Oromia nation residing in Addis Ababa city and surrounding, the draft proclamation is criticized for limiting the working language status of Afan Oromo for those matters necessary for the implementation of the proclamation.

Despite the absence of any relevant provision in the FDRE constitution, the first charter of Addis Ababa, proclamation No.87/1997 under Article 33(2), granted Oromia Regional State the right to use Addis Ababa as its capital city. After using "Finfine" as its capital for certain period of time, the governing party is used the revised constitution of ONRS (proclamation No.46/2001) to move its capital from Addis Ababa to Adama. This was reversed with the enactment of Article 2(3) of proclamation No.94/2005. Presently, Addis Ababa is also the capital of ONRS.

Though the name of the capital is Addis Ababa under Article 4 of the Charter, "Finfine" is the other name by ONRS for ONRS. Even there is strong move by some scholars for recognition of Finfine on equal footing with the name Addis Ababa. According to Betru:

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<sup>205</sup>Supra note 201

<sup>206</sup>Supra note 34, P.21

The name of the city should not be optional, preferential or interchangeable. It should be a legal requirement. This provision should be revised to make it binding so that everyone recognizes the equality of the name when referring to the city. In other words, the official name of the city in all cases would be Finfine/Addis Ababa.<sup>207</sup>

All in all, besides serving as a home for its residents, Addis Ababa is the capital of both ONRS and Federal Government. Emanating from these overlapping truths, the city is expected to entertain and harmonize conflicts of interest of the Federal Government, Addis Ababa City Government and ONRS. Among scholars, there is tendency of categorizing Addis Ababa as a Federal District. Pursuant Article 49(1 and 3) of the FDRE constitution and Article 61(2) of the Revised Charter, Addis Ababa seems a federal district. But, Addis also seems an autonomous city administration (member state) as per Article 49 (2) and (4) of the FDRE constitution. As city states usually less influenced by Federal Government, Addis Ababa seems a member state pursuant to Proclamation 7/1992. Microscopic evaluation of Article 49 (1)(2)(3) and (4) of the FDRE constitution, lead us to the conclusion that constitutionally Addis is a mixture of both city state and federal district.

But with the enactment of city Charters and some trends mainly by the Federal Government ,Addis is becoming a federal district. Though the city was a self-administering entity as per the Constitution, it is lacking its constitutional sovereignand becoming dependent on federal legislation and nominations and/or control. Right now, Addis is known for center domination while ignoring local interests.

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<sup>207</sup>Ibid

# Chapter four

## 4.1 Trends Eroding Taxation Power of AACA: Practical & Theoretical challenges

### 4.1.1 General Overview

Ethiopia has been implementing an ethno-linguistic federal constitution since 1995. The FDRE constitution is one of the first and fundamental legal and political document which has deployed at least five of its provision for specific and detailed allocation of tax powers between the Federal Government and Regional states following the federal structure. As stated under Article 50(2) of the Constitution, both the Federal Government and the States are free to enjoy legislative, executive and judicial powers. According to Tadesse Lencho, this in taxation means:

...in principle...both the Federal Government and Regional States enjoy full legislative, executive and judicial powers with respect to taxation powers reserved to them.<sup>208</sup>

Concerning tax power allocation in federal arrangements, the central governments usually enjoy excessive power of taxation. As regard to tax power allocation under FDRE Constitution, relatively speaking bigger sources of revenue are under the Federal Government. And of those powers granted to the regional states, they do not exercise them well for various reasons including the lack of institutional capacity to collect tax.<sup>209</sup> What are formally constitutionally decentralized powers are not actually exercised by local governments.

The current practice in most federal arrangements shows that, regional and local political leaders are demanding more autonomy and want the taxation powers that go along with their expenditure responsibility. As the central governments are failing to meet all of the competing needs of their various constituencies they are showing commitment and determination in building local capacity by delegating responsibilities downward to their regional governments.<sup>210</sup> Despite criticism for its imbalance nature, the FDRE Constitution

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<sup>208</sup>Tadesse Lencho, “ The Ethiopian Tax System:Excesses and Gaps, “Michigan State International Law Review, Vol.20, Issue 2(2012)p.331

<sup>209</sup>Mehari Tadele Maru, Devolution of Power in Ethiopia:The Legal and Political aspects,(March,2008),p.331

<sup>210</sup>Yohannes Mesfin and Sisay Bogale, Tax Law:Teaching Material, (2009)p.14

tried to allocate some exclusive taxation powers to regional governments under Article 97 ,in addition to concurrent powers listed under Article 98 of the constitution.

To delimit myself to my research topic and to entertain the issues related to the matter at hand, we have to start the discussion by answering the following question: Can Addis Ababa City Administration claim those taxation powers listed under Article 97 and the following of the Constitution? Though, the purpose of municipal government in the past was limited in providing local services like that of maintenance of streets, water and sanitation, parks, garbage collection depending on locally generated revenue, the current practice is different in many aspects. Presently, cities are key players in the implementation of all governments priorities and policies .Cities are direct providers and advocates of such national and regional priorities as transportation, public safety, social services, housing and immigration settlement services to name just few.<sup>211</sup>

In our federal arrangement too, Addis Ababa is one of the key players in implementing government policies and priorities. Taking in to account this as well as the special nature of the City(ethnic composition, geographical position, historical dimension and economic status),the Constitution under Article 49(2) boldly granted self-governing status to the city .The Amharic version of the Constitution grant such power to the City Administration while the English version cited the residents as a title holders for such rights. Based on the simple rule of interpretation ,we can say that, the Amharic version prevails over the English. This status gives for the city the ‘right to establish institutions of government’<sup>212</sup> in the inhabited territory and ‘equitable representation “in the institutions of government. So the city can be led by an elected council that will make laws and policies, and a professionally competent management that will be responsible for the day to day running of the municipality <sup>213</sup> as well as competent judiciary which is responsible for interpreting the laws of the territory effectively.

To answer the question raised above, there are two arguments in this regard. Those practitioners who argue in the affirmative claim that, Addis Ababa City Government has

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<sup>211</sup>Supra note 6,p.5

<sup>212</sup> Article 39(3) of FDRE constitution

<sup>213</sup>Supranote 6,P.5

every right to rely on Article 97 and the following of FDRE Constitution for its taxation power. According to Teka Mehari:<sup>214</sup>

Though Addis Ababa is not one of the regions listed under Article 47(1) of the Constitution, the commitment and determination of the Constitution in granting self-governance to the city, which is a right of "nations, nationalities and people's of Ethiopia" clearly indicates and reflects the shining truth of special self power of the city's administration, which may also entitle the right to enjoy those taxation powers listed under the constitution.

As Article 95 and the following are fully dedicated to demarcate a border line on the revenue power of the Federal Government and the states and as Addis Ababa is not one of the regions listed under Article 47(1) of the Constitution, arguing in favor of the above statement does not seem plausible. To this writer the taxation power of the capital emanates from elsewhere.

The House of People's Representatives issued Proclamation No.87/1997 as Addis Ababa government Charter, which was later repealed and replaced by Proclamation No.311/1995. This Proclamation was also later repealed and replaced by Addis Ababa City Government Revised Charter Proclamation No.361/1995. As stated earlier, the Charter is mainly issued to ensure the full measure of self-government granted to the city administration. Besides the detailed provisions dealing with legislative, executive and judiciary power of the city administration, Article 52 of the Charter specifically and in detailed manner listed down the fiscal power of the City Government.

The City has the power to assess and collect income taxes from employment within the city and to levy tax on income from agricultural activities within the city. Besides this, the assessment and collection of profit, excise and turnover taxes from individual businessman trading in the city as well as on income from rented houses and other property in the city is granted to the City Government. The city also has the power to levy urban house tax in the city as well as municipal taxes. The assessment and collection of income from small scale mining operations undertaken within the city is also left to the capital. In addition to this, the assessment and collection of income tax on gains from renting of patent rights as well as the assessment and collection of profit, excise and turn

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<sup>214</sup>An interview conducted with Ato Teka Mehari, Former Judge of Federal First Instance Court, presently Advocate and Consultant at law

over taxes from public enterprises owned by the city is also under the jurisdiction of the capital. Concerning value added tax (VAT here in after ) the Federal Government is authorized to collect the same and pass over it to the city. The city's power in this regard is only limited in receiving the fruit. Relying on the principle of tax immunity, the city is impliedly prohibited from imposing income taxes on the employees of the Federal Government and Regional State of Oromia.<sup>215</sup>

Though Article 52 of the Charter came into picture to enumerate the taxation power of the City, the Charter does not give a clue as to the appropriate tier of government to enact laws for the proper execution of the above taxation powers. Though rejected out rightly by the House, Federal First instance court 9<sup>th</sup> bench in a case between Ethiopia Revenues and Customs Authority V. Heyredin Hussein Mohammed<sup>216</sup> forwarded the matter for constitutional interpretation. Though rejected by the House of Federation citing that the matter does not invite constitutional interpretation, the court in its analysis reasonably questions the eligibility of applying the then Income Tax Proclamation, Proclamation No.286/1994 on individual businessman trading in the Capital. Concerning VAT, the enactment is purely left to Federal Government pursuant to the unanimous decision of joint houses.<sup>217</sup>

Concerning those taxation powers not listed under Article 52 of the Charter, for some legal practitioners the Federal Government is free to assume jurisdiction on such matters. According Ato Yibrah Fisseha:

As the Federal Government is a Guardian of the City, real owner of the capital, it is up to the Federal Government to delegate some of its inherent powers to the City Government. Those not delegated ("tekortew yaltesetu" to use his words) for the city by the charter, surely belongs to the Federal Government.<sup>218</sup>

But to this writer, it seems very difficult to consider the Federal Government as the possessor of all inherent powers in the Capital. Rather, the residents of the Capital are more close to claim such right. This confusion may be partly related with poor drafting

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<sup>215</sup>Article 52(1) of the Charter

<sup>216</sup>ERCA V, Hayredin Hussein, File No. 203375, Federal first Instance court, Addis Ababa, November 14, 2014

<sup>217</sup>House of Peoples Representatives and House of federation second year, second joint session,(April 2,1989 E.C)

<sup>218</sup>An interview conducted with Ato Yibrah Fisseha, Former Judge of Federal High Court. Presently working as consultant and legal advisor

procedure of the charter. Following similar arrangements with that of FDRE Constitution (Article 95 and the following) may somehow help us to curb such problem. For the time being, a case by case analysis of the problem seems very plausible.

## 4.2 The Principle of Tax Autonomy and the Status of Addis Ababa

The choice of whether a country becomes unitary system, confederation or a federation is a political decision. This political decision once made, has implications for political government, fiscal management and economic development as well as attainment of social stability.<sup>219</sup>

From the two types of federalism, cooperative federalism usually lobby for partnership between the different levels of government. This arrangement focus on making federalism work through cooperation between various levels of government. In dual Federalism, the constitution create two separate and independent tiers of government with their own clearly defined areas of responsibilities. In such system, it is inevitable that a certain level of tension and competition would exist.<sup>220</sup>

From revenue aspect, in strong central government approach, the Federal Government usually retains the lion share of revenue and while leaving smaller share to the state /local government.<sup>221</sup> As global political changes have given focus to local demands the need to bring economic and political systems to local communities, countries are practicing decentralization for different reasons through different means.

As a subset of decentralization, fiscal decentralization deals- among other things- with how revenues are distributed among the different tiers of government. As fiscal decentralization bring efficiency, accountability, manageability and autonomy, the basic rational for decentralization is the proximity of the government to the people. The degree of fiscal decentralization is not necessarily dependent on quantitative aspects of revenue and expenditure ratios of sub national governments from the total revenue and expenditure of the nation. Usually, it is dependent on the true decision making authorities of localities

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<sup>219</sup>Aigbokhan and Olowomi. Cited in Adereke salami, “Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, challenges and policy options.” *Economic Annals*, Volume LVI, No.189 (2011), P.28

<sup>220</sup>Adereke Salami, “Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, challenges and Policy options”, *Economic Annals*, Volume LVI No.189, (2011) p.35

<sup>221</sup> Id, P.36

over revenues and expenditures. This true decision making authority in fiscal decentralization refers to fiscal autonomy.

Fiscal autonomy is fundamental and important feature of fiscal decentralization and it is a necessary condition for local autonomy to exist. Though not sufficient to guarantee the outcome, fiscal autonomy is one of the building bricks to realize full benefits of fiscal decentralization. According to Helen, fiscal autonomy refers:

...the ability of the Jurisdiction to set tax rates and establish the revenue base without outside influence as well as having the ability to provide the service levels that are demanded by the Jurisdiction citizens.<sup>222</sup>

For Chapman, fiscal autonomy refers:

...the ability to spend those resources in ways that reflect citizen tastes and preference.<sup>223</sup>

All in all, fiscal autonomy deals with tax autonomy there by delineating the share of own source revenue from the total sub national revenue.<sup>224</sup> Basically, fiscal autonomy is equated with the ability of constituent units to access resources independently including sub national discretion over tax bases and tax rates.

Again as a subset of fiscal autonomy, tax autonomy refers local governments own revenue share of total revenue. It encompasses features such as local governments right to introduce or to abolish a tax, to set tax rates, to define the tax base, or to grant tax allowances or **reliefs** to individuals and firms. Sub national governments have a total or significant control over the taxes of which sub national governments set the rate or /and base as well as they set revenues split between central and local governments. Whereas local fiscal autonomy is limited or nonexistence where the central government sets tax rates and bases and revenues split formula. According to Bird, full measure of tax autonomy may be realized when:

- Local governments can decide whether to levy or tax or not
- Determine the precise base of the tax
- Decide the tax rate

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222 Supra note 23,P.20

223 J.I Chapman, Local Government, Fiscal Autonomy and Fiscal stress. The case of California, (1999). P.10

224.Supra note 18,P.44

- In the cases of direct tax assess the tax imposed in any particular tax payers
- Administer the tax and
- Get/keep all they collect.<sup>225</sup>

But securing financial management model based solely on own revenues is not realistic.

According to Marzanna, Ryta and Agnieszka:

No country has managed to create such a system of institutional division of public revenues sources which would ensure that all local government entities fully cover their expenditures with own revenues.<sup>226</sup>

In most cases, highest degree of own source revenues, most often pertains to fees and charges. Despite variations in its application, ensuring high degree of own source dependency in most instances helps to create more autonomous regional governments.

According to Helen:

The discretion to set the tax rates and/or bases helps sub national governments adjust their revenues by varying the rates and/or the bases in response to fiscal demand for publicly provided goods and services. So that the flexibility and the potential for creativity by sub-national government for efficiency will be increased.<sup>227</sup>

Local tax autonomy and the greater freedom of local government authorities in the scope of deciding on taxes associated with it, is a necessary condition for the emergence of local tax completion and consequently more efficient use of public funds in the sector of sub-national governments, increase in local government budget revenues, as well as better match between the supply of goods and services to local preferences.<sup>228</sup> Regional governments have fiscal authority but to which they have fiscal autonomy is more circumscribed.<sup>229</sup> The distinction here comes down to the sources of sub-national revenues, mainly to own-source revenues that sub national governments collect from their own tax bases. Greater own source revenues, if feasible would help sub national governments to fight the trend of dependency on the central government.

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<sup>225</sup>Supra note 21, p.6

<sup>226</sup>Marzanna Poniatowicz, Ryta Dzienianowicz, Agnieszka Alinska, Limited taxing Power of Local Government entities, In Poland As a Determinant of Tax competition At the local level, (2014), P.3

<sup>227</sup>Supra note 23, P.30

<sup>228</sup>Supra note 226,P.16

<sup>229</sup>Supra note 18, P.10

The central problem for Ethiopia's fiscal federalism is that expenditures are decentralized while revenue collection is centralized.<sup>230</sup> Whether it is adopted for economic rationales of efficiency, equity and accountability, or employed as a response to ethno cultural or political claims of self-determination, decentralization measures should ideally guarantee the financial autonomy of the constituent units.<sup>231</sup>

To begin with inadequate revenue to finance the increasing needs of public goods and services is a main characteristics of developing countries.

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<sup>230</sup>Ibid

<sup>231</sup>Id, P.44

**Table-1 Revenue and expenditure balance of Addis Ababa City Administration and Regional states including Dire Dawa (2007-2009E.C) – (Inmillion Birr)**

Fiscal Yr		Regions and Cities										
		Tigray	Afar	Amhara	Oromia	Somali	Benshangul	SNNP	Gambela	Harari	Addis Ababa	Dire Dawa
2007	Total Revenue	3252.04	449.58	5700.30	9920.75	1524.36	509.03	4852.05	88.34	343.96	19712.54	686.78
	Total Expenditure	8617.49	2945.44	22,703.05	32,623.36	7705.67	2,078.54	19705.61	1224.88	942.39	20,495.30	1405.6
	% revenue/ expenditure	28.02	15.27	25.11	30.41	19.78	24.49	24.62	7.2	36.49	96.18	48.86
2008	Total Revenue	4094.33	562.24	6836.35	10142.77	1901.82	513.6	6335.58	349.21	348.84	24306.45	838.15
	Total Expenditure	9581.94	3136.43	23866.37	34616.81	7274.46	2,213.96	20909.45	1785.87	991.62	20,962.77	1,660.79
	% revenue/ expenditure	42.73	17.93	28.64	29.3	26.14	23.2	30.3	19.55	35.18	115.95	50.47
2009	Total Revenue	4673.38	658.78	8172.07	11371.82	2143.09	590.73	7551.44	361.45	489.64	28,281.98	798.54
	Total Expenditure	12,429.55	4,077.92	33,056.80	47,038.04	11,124.63	2946.74	27,254.53	1787.63	1490.50	26,991.02	2,341.56
	% revenue/ expenditure	37.59	16.15	24.72	24.17	56.16	20.04	27.70	20.21	54.52	101.04	34.10

Source: Own Compilation of three years data from MOFEC

The above table clearly shows the significant difference in revenue capacity of Addis Ababa City Administration and Regional Governments including Dire Dawa. Though such performance is related with unevenly concentration of the country's economic activities, business firms and socio economic infrastructures in the capital, Regional states including Dire Dawa only covered 26.02 % of their expenditure with their internal revenue in 2007(E.C) while the capital's was 96.18%. Addis Ababa City Administration exceeded the limit and registered historically high (nearly 115.95 %) in 2008 E.C and approximately 101 % in 2009 EC, while Regional Government scored only 30.34% and 31.53% in 2008 and 2009 EC respectively. But, best financing capacity of the capital alone cannot lead us to the conclusion that Addis Ababa city government is enjoying high degree of tax autonomy.

Concerning the tax autonomy of Addis Ababa, Addis is not in a position to enjoy the power to levy autonomous taxes which can be manifested in the autonomy to introduce tax and set tax bases as well as to set or change tax rates and to introduce tax holidays. To begin from the investment laws of the country, the Federal Government, under the guise of developmental state principle, is granting tax holidays on areas that are exclusively reserved to the capital. Presently introducing and executing tax holidays is not under the ambit of city's government.

Though Addis is almost enjoying full retention of its revenues from direct and indirect tax sources, its autonomy in introducing tax and setting the tax base as well as setting or changing tax rates is limited from the outset. Even the fiscal base assigned to capital is very limited and generate far below to the level required to fulfill the objectives of fiscal independence. Profit tax and VAT from petty individual business man, tax on income from agricultural activities which is almost non-existent in the capital as well as income tax from small scale mining operation, by no means can be taken as lucrative tax base of the capital.

Though the charter granted to the City Government the power to assess and collect excise tax from public enterprises owned by the capital, the charter escape the responsibility of granting the power to assess and collect excise taxes on imported and locally manufactured goods. It is the capital which provide essential services and infrastructures for their distribution and utilization and therefore the city should benefit from the taxes imposed on the goods. In a country where, utility model certificate are very

limited in numbers, Let alone patent rights, city government's power on income tax on gains from renting of patent rights within the city is almost nonexistent.

Even in those taxation powers listed above, the City Government lack autonomy. Addis Ababa city government's power to mobilize resources is not accompanied by strong tax bases.. Revenue assignments with lucrative revenues source are given to the Federal Government. For instance, the major cardinal sources of revenue, such as custom duties and other charges on imports and exports which account up to 33% of the total revenue generated in the country, are the exclusive responsibility of federal government.<sup>232</sup>

As stated above a certain sub national governments has a total or significant control over taxes only when that local government is free to set the rate or/and base of a tax as well as hold independent right in deciding revenues to be splitted between two or more governments. From this perspective, Addis Ababa has a total or significant control only on non-tax revenues as the city is empowered to fix the rate of such non-tax sources. Though city's power on municipal tax is "own revenues" power of the capital for some writers,<sup>233</sup> as the city does not have the power to fix its rate, its very difficult to consider it as own source revenue. As the Federal Government is impliedly empowered to determine the base and rate of those direct and indirect taxes under Article 52, the city's revenue earned from such sources can be hardly taken as "own revenues".

The Federal Government is using proclamation No.285/1994 and 609/2001 as well as proclamation No.979/2008 to fix the tax base and rate of VAT and Income Tax in the capital respectively. Similarly, the central government is using proclamation No.53/1998 and its amendment proclamation No.803/2013 (Mining Income tax amendment proclamation), proclamation No.308/2003 and it's amendment proclamation No.611/2009 (Turn over tax proclamation) and proclamation No.307/2003 and its amendments proclamation No.610/2009 and 570/2008 (Excise tax Proclamation) to fix the tax base and rate of the same. All in all, all those tax powers listed under Article 52 of the charter does not represent own revenue sources of the capital and as a result the power to assess, collect and administer revenues from such direct and indirect taxes does not reflect Addis Ababa city's government tax autonomy.

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<sup>232</sup>Supra note 15, p.35

<sup>233</sup>Supra note 23, P.51

### 4.3 The inclination of the Federal Government towards strong central government approach and the fate of the financial jurisdiction of the capital

Besides the detailed provisions dealing with legislative, executive and judiciary power of the City, Article 52 of the charter specifically and in detailed manner listed down the fiscal power of the City Government. Some writers and academicians criticize the approach of listing down the financial power of the capital through the charter, as it can be used by the Federal Government to manipulate every machinery of the capital. As stated earlier, the degree of fiscal autonomy of local governments significantly influenced towards among other thing, by the nature of constitutional frameworks. The greatest protection of transferred power to sub national government is when provisions are entrenched in the constitution: this would facilitate the decentralization process and strengthen decentralized levels of government. Providing constitutional basis for local governments strengthen their position more than what would be granted by just government legislation. At least theoretically, the Federal Government can not freely amend any of the provision of regional constitutions as a result they have strong constitutional mandate to exercise their autonomy.

As the charter is not by the people and to the people of Addis Ababa, there is plenty of rooms for the Federal Government to change the whole scenario with a single enactment in order to inject its will and wish. The move in 2006 by the Federal Government just to shake the very existence of Coalition for Unity and Democracy (CUD) through some changes in the financial power of the capital can be cited as a best example to illustrate the above analysis. The 2005 national election, which was credited for its high voter turn out, created a forum for CUD to secure 138 of 139 Addis Ababa city council seats. As the CUD was caught between accepting the election results and enter parliament or reject it all together, the outgoing parliament devoted itself in making some grand decisions which has a devastating effect on the financial power of the capital.

Besides transferring city's Transport Bureau and Authentication and Registration of Document Office to the Federal Government<sup>234</sup>, Proclamation No.471/2005 is mainly enacted to transfer registration of religious organizations, non-profit making foreign

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<sup>234</sup> ኤርምያስ ለገሰ, ባለቤት አልባ ከተማ, (2006) P.21

organizations, non-governmental organization, and association operating in the capital to the ministry of Justice<sup>235</sup>. In effect, Proclamation No.471/2005 amended the Revised Charter by inhibiting the City Government from levying taxes and collecting fees on and from services provided by its organs to non-governmental organizations and associations.<sup>236</sup>

According to John Abbink:

The decision to reverse revenue collecting powers hampers the economic possibilities of the new administration, if it ever materialized, and will in due course have residents shift the blame to the new city government.<sup>237</sup>

Concerning those direct and indirect taxes, Article 52 is more or less a repetition of what is stated under Article 97 of the FDRE constitution. As regard to VAT and profit tax, the assessment and collection of profit tax from individual traders trading in the city is fiscal power of City Government. Though, regional governments has secured pursuant to Article 97(7) of the constitution, the City Government does not have the power to levy and collect profit tax from its own enterprises. Concerning Excise and Turn over taxes, the assessment and collection of the same from individual traders trading in the city is left to the city. As regard to VAT the fiscal power of the City Government is limited only in receiving VAT collected by the Federal Government from individual traders trading in the city. Concerning financial support from the Federal Government, the City Government is not in a position to claim it out rightly citing the fulfillment of certain criteria. Rather, it all depend on the will and wish of the Federal Government.

Concerning the tax power allocation, Article 52 of the Charter does not give us a clue as to who inherently or derivatively owned the power to fix, levy and collect such taxes from the above stated tax payers. But according to Judge Abeba Alemu, this gap of the Charter can be filled using the cumulative reading of such provision with Article 97(4) of the constitution. So according to her:

As the constitution granted self-administration to the city under Article 49(2), the city has every right to claim inherent power of such taxes on sole proprietorship operating in the city and public

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<sup>235</sup>Definition of powers and Duties of the executive organs of FDRE, Proclamation No.471/2005, Federal Negarith Gazeta, Year 12 No.1, Article 23(8)

<sup>236</sup><sup>236</sup>Supranote 6,p.91

<sup>237</sup>J.Abbink, Discomfiture of Democracy: The 2005 election crisis in Ethiopia and its aftermath, (2006) pp .171-199

enterprises owned by the city. As regard to VAT what is stated under Article 52(5) seems a delegation of tax collection inherent power by the City Government to the central one.<sup>238</sup>

Judge Teka Mehari (Formerly a Judge at Federal first instance court 9<sup>th</sup> criminal bench) agreed with Judge Abeba only with the analysis given to profit, excise and turn over taxes. According to him:

Though categorizing it as under designated power of taxation by the joint houses is arguable, as the joint houses in their unanimous decisions granted the power to levy and collect VAT to the central government, it is very difficult to consider such tax as inherent power of the city government.<sup>239</sup>

Ato Fuad Kiyar (Director of Economic crimes, Federal Attorney General) viewed the matter differently and opted to assign the inherent power on such taxes to the Federal Government. According to him, as the Federal Government is with the power to fix the rate and base of such taxes using its legislations, the inherent power on such taxes is a real territory of the federal government. Ato Abebe Birhan, prosecutor-Federal attorney General-Economic crimes division, being on the side of Ato Fuad, argued that :

As the city is not one of the regions listed under Article 47(1) of the constitution and as the self-determination right of the capital curtailed using Article 49(2) of the constitution- which is an accountability clause- it is not plausible to put the city in the same ladder as that of nine regions and claim those taxation power directly from the constitution. But as the Federal Government opted to share some of its inherent taxation powers with the City Government using Article 52 of the Charter the capital can only enjoy such power as derivative power of taxation and this will make the delegation by the capital lawful.<sup>240</sup>

But according to Yibrah Fisseha (Former Judge of Federal High court):

As Addis Ababa is part and parcel of Federal Government and as the inherent powers only emanate from the constitution,

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<sup>238</sup>An interview conducted with w/ro Abeba Alemu, Judge, Federal high court

<sup>239</sup>An interview conducted with Ato Teka Mehari, Former Judge of Federal First Instance Court,(currently Advocate and Consultant at law)

<sup>240</sup>An interview conducted with Ato Abebe Birhan, prosecutor, Federal Attorney General

the city cannot claim inherent powers on any of its taxation powers.<sup>241</sup>

Those who consider tax levying and collection power of the capital as derivative taxation power of the city government, argue that the City Government can freely delegate such power to the federal government. So for them, the delegation by the city mayor on 12 January 2011 and July 1, 2014 to Ethiopian Revenues and Customs Authority, concerning all the taxation power of the City Administration Revenue Office is in line with a very principle of federalism. But for Ato Teka and Co. the delegation on those tax powers which are inherently owned by the capital is not in line with the fundamental principle of federalism- as inherent powers can not be delegated . Even to delegate it against basic constitutional principle, the City Government has to come up with its own laws to govern the tax system.

For this writer, as there is no single provision in the constitution which categorize such sources of revenue as an inherent taxation power the federal government, it is very difficult to consider the same as inherent power of the federal government. As the City Government is not in a position to fix the base and the rate of such taxes, the capital cannot enact laws to fix the base and rates of such taxes. But lacking such power cannot by itself disown city's inherent power in such taxes. Though Article 96 of the constitution is used to enumerate federal power of taxation, pursuant to Article 95 this only can be used to demarcate a border line between revenue powers of the Federal Government and the states. The Federal Government cannot use Article 96 and following to claim some inherent taxation powers in the capital.

As the charter is not a complete legal document to distribute taxation power between the Federal Government and the capital like the constitution did, only listing Article 52 (1)(3)(4)(6)(7)(9)(12)(15)(16) and (17) as an inherent powers of the capital seems a safe analysis. Though the Federal Government is enjoying it comfortably, attaching the power to fix the rate and base of such taxes to the inherent right of the Federal Government is arguable.

As regard to VAT, this writer personally conquer with the analysis of two standing committees of the then houses that the application of sales tax is different from that of VAT in that the application of sales tax is limited only in the production stage. But in line

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<sup>241</sup>An interview conducted with Ato Yibrah Fisseha, Former Judge of Federal High court

with the trend around the world, VAT proclamation No. 285/1994 in its preamble tried to categorize VAT as part and parcel of sales tax. But the charter created the first confusion just by allowing the City Government to receive only the fruit while leaving the collection to the central government. The letter of delegation by Ministry of Revenues to the nine region and two city administrations (which was wrote on August 11, 2004) further complicated the situation by categorizing VAT as regional tax while the second part is used to delegate the registration of new tax payers as well as the collection and assessment of the same to the regional and city governments.

Ethiopia Revenues and Customs Authority also wrote on November 22, 2011 a circular to invite (delegate, Oromia Regional State Revenue Bureau for the investigation and prosecution VAT proclamation violations.

All in all most of such circulars as well as the unanimous decision of the joint houses titled towards in categorizing VAT on sole proprietorship and public enterprises as inherent power of the central government. But, unlike the regional governments, the power to enjoy the fruit of such tax is granted to the capital by the charter. But, surprisingly, office of the mayor on January 13,2011 wrote a letter of delegation for Ethiopia Revenues and Customs Authority to empower collection and assessment of turnover and excise tax as well as VAT. The same office use the circular of July 1, 2014, to extend the delegation for execution and prosecution.

To this writer concerning VAT the City Government is delegating the power which it does not have. As the city's power is only limited only on receiving the fruit, delegating the assessment and collection power does not give sense. To make the matter worse, the Federal Supreme court Cassation Division in as case between Abdulfetah Mohammed V.Kolfe Keranyo Sub City Justice office, opted to categorize such power as a delegated power of the Federal Government rather than citing It as an inherent power of the central government. The cassation Division in a case between MechaldeguSemur V.Mizan Aman City Revenue Authority, besides the Jurisdiction Federal Courts on the matter ,boldly claimed that collection and administration of VAT is the power and responsibilities of Federal government pursuant to Article28(2) &30 of Proclamation No.285/2002. But surprisingly ,Ethiopia Revenue and Custom Authority prosecutors usually argue and cite it as power of delegation.

For this writer, even though Ethiopia Revenue and Customs Authority assumed the prosecution for whatever reason, the institution has to bring the matter to the appropriate court. For this writer the appropriate court to entertain those profit, excise and turnover tax cases pursuant to Article 41(2)(a) of the Charter seems Addis Ababa city courts. As Article 41(2)(a) is very clear ,it does not need any interpretation. But presently even after the signing of memorandum of understanding between the Federal Government and city government, it is Federal Courts which are assuming jurisdiction on such matters. According to W/ro Tsion:

As the Federal Government is the one which is responsible to legislate Income tax, Excise tax and Turnover tax proclamation and as the Federal Attorney General is the one to prosecute violations, the Federal Courts are the one to assume jurisdiction on such matters.<sup>242</sup>

For her, the jurisdiction of the federal courts follow the identity of the law maker and prosecutor. But this is not in line with the basic principles enshrined under proclamation No.25/1996 and its amendments. Practically as some Regional courts are entertaining VAT cases- (eg. Oromia Regional State Courts) while the VAT proclamation is enacted by the Federal Government, attaching the jurisdiction with the identity of the law maker does not seem plausible. For this writer, Addis Ababa city courts has to assume jurisdiction pursuant to Article 41(2)(a) and 52(4) of the charter on those profit, excise and turnover tax cases.

Concerning VAT, as the Federal Supreme court cassation division rendered binding decision on a case between Abdulfetah Mohammed V. Kolfe Keraneyo Sub-city Justice Office<sup>243</sup>, the federal courts seems an appropriate organ to entertain cases related to Article 52(5) of the Charter. The Cassation Division awarded the jurisdiction to the Federal Courts since the tax collection power (which may also include prosecution power) rests on the Federal Governments Jurisdiction.

Besides the above moves by the Federal Government, the trend of granting tax holidays on areas that are exclusively reserved for the capital under the **disguise** of developmental state principle is eroding taxation power of the capital. Besides the failure

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<sup>242</sup>An interview conducted with W/ro Tsion Admasu, Economic crimes Deputy Director, Federal Attorney General

<sup>243</sup>Abdulfetah Mohammed V. Kolfe Keraneyo sub city Justice Office, file No.59723, Federal Supreme Court Cassation Division, Addis Ababa, June 23,2010

of the investment proclamation (proclamation No. 769/2012 ) in limiting itself to the areas of taxation that are reserved for the government, the regulation is mainly used to extend its scope of application to the areas that are exclusively reserved for the capital under the charter.

All in all, as there is the so called “EPRDF’s principle of Democratic Centralism”, this writer personally believe that, the memorandum of understanding or other subsequent measures may not be used to claim all those lost taxation powers of the capital.

# Conclusion and Recommendations

## Conclusion

Global political changes have given focus to local demands and the need to bring economic and political systems closer to local communities. The collapse of central economic systems has encouraged and facilitated decentralization. Decentralization is a complex and multi faced concept that spans fiscal, political and administrative dimensions. In other words, decentralization represent the assignment of fiscal, political and administrative responsibilities to lower level of government. In this regard, decentralization mainly come into picture to promote efficiency, accountability, manageability and autonomy.

As a subset of decentralization, fiscal autonomy refers to the ability of the jurisdiction to set tax rates and establish revenue base without outside influence as well as having the ability to provide the service levels that are demanded by jurisdiction's decision. Sound and efficient decentralization presuppose a close correspondence between responsibility and decision making authority. In short, the true measure of regional autonomy is the degree of fiscal independence the regional government enjoy.

As Addis Ababa is the capital of the federal government of Ethiopia and the seat of Oromia Regional State, the city is expected to entertain the "special interest" of Oromia and the ever growing interest of the Federal Government. But, above all, the interest of its respected residents. For Addis Ababa to go in line with the demands of its residents, the city government must enjoy sufficient fiscal authority – fiscal authority which is independent, broad and real. This often make the local government more accountable, responsive and responsible to the demands of its principal- the people.

As sub-national government that lack independent sources of revenue can never be truly enjoy fiscal autonomy, the city government which does not enjoy the freedom to alter the level of and composition of its revenue can hardly be taken as fiscally autonomous entity. As the true measure of regional autonomy is the degree of fiscal independence the regional government enjoy, the commitment and determination of ensuring regional autonomy may only be ascertained when local government are equipped with real fiscal autonomy in order to perform its functions according to citizens demands.

Addis Ababa is one of the biggest cities in sub-saharan Africa which is known for its traffic congestion, deep rooted poverty, poor waste collection and disposal as well as poor sanitation. It is true that, unevenly concentration of economic activities in the capital as well as better capacity to mobilize the existing revenue sources somehow created relatively better financial empire in the capital. But the city government to eradicate the poverty in the capital, to improve its infrastructure and to respond well to other social demands of its residents (predominantly health and education), must be equipped with significant degree of freedom to alter the level of and composition of its revenue.

The phrase "...full measure of self-government" presumably include (among other things) the power to establish its own government and to raise and manage its own revenues. The own source revenues of the capital are only limited to charges and fees such as urban land rent, market fees, road user vehicle fees and fees for registry services. Direct and indirect taxes of the capital are more of shared revenues than that of own-source of revenues. The limited own source revenues of Addis Ababa city government imply that the Federal Government may continue to exert influence over the city governments spending, since it has a vested interest in monitoring and shaping expenditure.

Despite the confusions surrounding VAT, The Federal Government continued assuming a central role in the management of the same. Besides fixing the base and rate of VAT across the country, the Federal Government seems an appropriate organ for its assessment and collection. In this regard, the city government is only limited in retaining the fruit of VAT collected by the Federal Government from individual businessman trading in the city and public enterprises owned by the city. Despite such enabling arrangement, Ethiopia Revenue and Custom Authority continue engaging in the assessment and collection of the same, relying on some delegation letter from the mayor of the capital. Concerning the jurisdiction of courts, based on the relevant provisions of the charter and binding decisions Federal Supreme Court Cassation Division, Federal Courts seems an appropriate organs to entertain VAT related cases.

Concerning profit, excise and turn over taxes as courts jurisdiction is not and should not be dependent on the letter of delegation by the mayor or its withdrawal. Addis

Ababa city courts seems an eligible courts entertain cases related to Article 52 of the chapter. But surprisingly, Federal courts are still enjoying Jurisdiction on such matters.

## Recommendations

- This writer personally believes that, the Federal Government must have some degree of control over its seat. Total alienation of the Federal Government from Addis Ababa is not in line with Article 49(1)(3) and other relevant provisions of FDRE Constitution. But Federal Governments involvement in regulating the behavior of its seat must be carried out without eroding the self-governing rights of the capital. The principle of federal interventions should not be used to exert involvement in a day to day activity of the capital. As there is no outright assimilation of the capital to the jurisdiction of the Federal Government under the guise of the right to rule from stable city, The Federal Government has to come up with rigorous standards to be met before a Federal Government assumes intervention. The Capital needs a complete legal regime which can put into grave the discretion of the Federal Officials to meddle in the affairs of the city.
- The tendency of the Federal Government in legitimately limiting the self-governance status of Addis Ababa can be curbed primarily with a change in the making and promulgation procedure of the Charter. Unlimited external mandate to constitute and dissolve a self-governing administration in Addis Ababa may be constrained only when Addis Ababa becomes a real chartered City. As a constitutional guarantee is far more perpetual than a legislative guarantee, Addis Ababa needs a charter which can secure the participation of its resident in the making, amendment and repeal of the same.
- The Charter by the people and for the people of Addis Ababa:
  - ❖ Should come up with relevant and reasonable provisions to govern the undefined fiscal relations of the Capital with ONRS and Federal Government.
  - ❖ Has to come up with a legal regime which can create strong and viable Self-government in the capital – a self-government competent enough to create and arrange its preferences and allocate the necessary resources to carry out its duties independently.
  - ❖ As the existing charter failed to provide the mechanism for the demarcation of the boundary of the capital city and its area of influence ( rather it leaves the matter to be resolved by agreement between the city government and ONRS), the Charter

has to come up with a device for such demarcation. As the residents are key players on the very existence of the city government, the Charter has to come up with clear definition which can differentiate its residents from others.

- ❖ As representative government works best the closer it is to be the people, the Charter has to clearly state Federal power of taxation, City Governments power of taxation as well as concurrent and undesignated power of taxation. In doing so, the Charter has to award to the city government the authority to set the rate of important direct and indirect taxes as well as the power to establish its bases without the outside influence.
- ❖ The Charter by the people and for the people also supposed to be used as legal instrument to build strong Judiciary which can demand its tax Jurisdiction without any fear or reservations.
- ❖ This writer is not with the view that Addis Ababa must acquire tax autonomy in all direct and indirect taxes of its territory. As taxes relating to stabilization functions like that of VAT- which are too cyclical - are not suitable for local activities, the Federal Government is not supposed to surrender such taxes to local authorities. But as those contradicting letters from the then officials created confusion, We need clear, detailed and completed legal regime to rectify the misunderstanding surfaced the environment.

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- Interview with AtoAbebeBirhan, Prosecutor, Federal Attorney General, held on 13, May 2016
- Interview with AtoFuadKiyar, Director of Economic Crimes, Federal Attorney General, held on 13, May 2016
- Interview with W/roTSIONAdmasu, Deputy Director of Economic Crimes, Federal Attorney General, held on Jan 6,2018
- Interview with AtoYibrahFisseha, Former Judge of Federal High Court, held on 16, march 2016
- ❖ **My attempt to discuss the relevant issues with AACG officials failed to materialize due to the unwillingness on the part of relevant officials especially experts from Finance and Economic Bureaus.**