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**ADDIS ABABA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**SCHOOL OF LAW GRADUATE STUDIES**

***CONSTITUTIONALITY OF JURISDICTION OF OROMIA COURTS IN  
ADDIS ABABA UNDER THE OROMIA REGIONAL STATE COURTS  
PROCLAMATION NO. 216/2018***

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**Abstract**

*Federalism is the accepted form of government to Ethiopia since the 1990s. It has brought the right to self-administration to sub-national units. The constitution of the Federal Democratic Republic of Ethiopia (FDRE) has given regional governments (including Addis Ababa and Dire Dawa administrations) the power to administer themselves. The power of self-administration stretches to the legislative, executive and judiciary branch of government. In exercising this right, the regional council of Oromia has enacted a proclamation to establish the courts of the region, the Oromia regional state (ORS) courts proclamation no. 216/2018. By this proclamation, the regional courts of Oromia that are to be established or organized by the regional supreme court were granted the power to entertain cases arising in Addis Ababa so long as the case involves regional interest. This proclamation, by giving such power to the regional courts, is said to have been in contradiction with the constitutionally given self-governance right of the residents and/or the government of Addis Ababa which includes establishing and administering justice organs in the city. It also seems to be against the federal courts establishment proclamations and the civil and criminal procedure laws of the country that requires courts to only take in to consideration the parties to a suit, the place of the act in question etc., but not the interest of a certain region when determining whether they have jurisdiction over a specific case or not. In this article, a look at the above considerations has led to the conclusion that the provision of the above proclamation related to the jurisdiction of Oromia Courts in Addis Ababa is unconstitutional and against the principle of federalism.*

## CHAPTER ONE

### 1. INTRODUCTION

#### *1.1. Background and Context*

The basic essence of federalism is the existence of at least two tiers of governments, federal and regional/state, each having its own specific jurisdiction and a common or shared jurisdiction. Its basic purpose is giving sub-national units the autonomy to administer themselves according to their local preferences. Therefore, what federalism brought to sub-national governments is enhancing their power of self-determination and self-administration, and allowing them to participate and influence the decision making at the Centre through institutions of shared rule.<sup>1</sup>

Ethiopia has established a federal form of government from 1991 onwards. The FDRE Constitution provides that the federation comprises the federal government at the center and nine regional governments at the sub-national level, in addition to impliedly accepting new regional governments that are established according to the constitutionally established procedures.<sup>2</sup> Addis Ababa and Dire Dawa were not included in any of the nine regional governments. However, though not clearly mentioned in the constitution as members of the federation, it can be inferred from the constitution and other later proclamations that define states or regions to include Addis Ababa and Dire Dawa that, both are considered as autonomous administrations like the rest regional states.<sup>3</sup> To this end, the federal government has enacted the charters of the two administrations, thereby enabling them to administer themselves like the other regional governments.

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<sup>1</sup> Assefa Fiseha, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet' (2012) 22 *Regional and Federal Studies* 435, 443

<sup>2</sup> The procedure is stipulated in article 47(3) of the FDRE constitution. Recently, Sidama and South West region were incorporated in the federation as the newly recognized regions.

<sup>3</sup> For instance, in article 2(24) of proclamation no. 818/2014, article 2(17) of proclamation no. 958/2016, article 2(2) of the proclamation no. 1097/2018 and article 2(58) of proclamation no. 1112/2019, the term 'Regional State' is defined to include Addis Ababa and Dire Dawa administrations.

The member states of the federation are required to respect the powers of the federal government and vice versa.<sup>4</sup> In addition, they must also respect the powers of each other. Interfering in the jurisdiction of the federal government by the regional governments, including Addis Ababa and Dire Dawa, and interfering in the powers of regional governments' by the federal government amounts to being against the constitutional structure of the two governments. The same is true when a regional government intervenes in the powers of other regional governments.

The FDRE Constitution, in addition to establishing autonomous regional states, provides the powers and functions of the federal and regional governments. The reading of articles 51, 52, and 55 of the constitution enables to understand the scope of the powers of the two levels of governments. One area of debatable issue under the constitution is the power over criminal procedure legislation vis-à-vis residual powers so provided under the constitution.<sup>5</sup> It is clearly stated in the constitution that criminal lawmaking is the power of the federal government.<sup>6</sup> Questions arise whether enacting a criminal procedure law is a federal matter or not.<sup>7</sup> Criminal law is defined in Black's Law dictionary as 'the body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders'.<sup>8</sup> This definition gives an impression that criminal procedure law, which deals with the manners of criminal investigations and trials, is part of criminal law. Due to this, some scholars argue that since criminal procedure law is part of criminal law, the power to enact it belongs to the federal government.<sup>9</sup> On the other hand, there is also another view from the perspective of residual powers given to regional governments that a power not expressly given to the federal

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<sup>4</sup> It is stipulated in article 50(8) of the FDRE constitution and further elaborated in the explanatory note of the constitution.

<sup>5</sup> Abdi G. Amenu, 'The Criminal Legislative Jurisdiction of Regional States under the FDRE Constitution: The Need for Exploring the Magnitude' (January 2016) 3 ISSN 56, 57

<sup>6</sup> Article 55(5) of the FDRE Constitution

<sup>7</sup> Abdi (n 5) 68

<sup>8</sup> Brian A. Garner (Ed), *Black's Law Dictionary* (8<sup>th</sup> edn 2004) 1131

<sup>9</sup> Abdi (n 5) 68 citing Yenenesh Bahiru, 'The Power to Legislate Criminal Procedure Code under the Federal Systems: Issues in Ethiopia' (A Thesis Submitted in Partial Fulfillment of the Requirements for LLM of Public Law and Good Governance in the Institute of Federalism and Legal Studies, Ethiopian Civil Service University, Addis Ababa, June 2011)

government like enacting a criminal procedure law belong to states; thus states have total authority to determine the procedures their courts need to be abide by.<sup>10</sup>

In addition to stipulating the powers and functions of regional governments, the constitution provides that Addis Ababa have a full measure of self-government<sup>11</sup> and its administration shall be responsible to the federal government.<sup>12</sup> What are the self-government powers given to the government of Addis Ababa (or to its residents as the English version of article 49(2) of the constitution purports), is a question worth discussion.

Consequent to the constitution, the federal government has enacted the federal courts proclamation no. 25/96 in which the power to entertain cases that arise in Addis Ababa belong to the federal courts with some exceptions. However, the ORS courts proclamation gives some regional courts the power to adjudicate cases that arise in Addis Ababa so long as the interest of Oromia is affected. Therefore, the two laws contradict each other when it comes to the jurisdiction of courts on matters that affect the interest of Oromia and arise in Addis Ababa.

One of the fundamental institutional structures of the constitution is the division of power between the central and the sub-national governments. Each need to exercise its powers within the limits set by the constitution. As there is a conflict between the federal laws with the regional law in the above case, it becomes necessary to see which law prevails and which law should be applicable in Addis Ababa. Thus in this article, the researcher assesses the constitutionality (to mean compliance with the principles and constitutional provisions on division of power and federalism) with respect to the jurisdiction of courts by the Oromia courts establishment proclamation.

### ***1.2.Statement of problem***

In federations there are necessarily two tiers of governments with their respective jurisdiction. There is a principle of federalism upon which these two governments should act upon. As one of these duties is non-interference in the affairs of the other government, there is a requirement in the FDRE constitution that the federal and state governments should

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<sup>10</sup> Abdi (n 5) 69

<sup>11</sup> Article 49(2) of the FDRE Constitution

<sup>12</sup> Article 49(3) of the FDRE Constitution



respect each other's powers and functions.<sup>13</sup> Thus, if a certain act falls within the jurisdiction of the federal government, the regional governments should refrain from interfering in such power by making a law. However, if the two governments enact laws that govern the same issue, it is more likely that one of the two is acting beyond its power, hence, acting against the constitutional order.

The power of self-government of Addis Ababa includes the power to establish and administer the three branches of governments, the legislature, executive and the judiciary. Therefore, according to the FDRE constitution, Addis Ababa has the power to administer the three branches of government; but according to the close follow-up of the federal government. The responsibility of the city government to the federal government is also stipulated in article 61(2) of the Addis Ababa city government revised charter proclamation no. 361/2003, hereinafter named the AA charter, that the city government is a component part of the federal government, thus accountable to the later.

To determine the jurisdiction of the federal courts, and impliedly the jurisdictions of regional courts, the federal government had enacted the federal courts proclamation no. 25/96. After many amendments, this law is recently replaced by the federal courts proclamation no. 1234/13. In both proclamations, the federal courts have jurisdiction to entertain cases that arise in Addis Ababa with some exceptions.<sup>14</sup> Thus, these proclamations provide that, despite the interest at stake, federal courts have principal jurisdiction over cases that arise in Addis Ababa.<sup>15</sup>

On the other hand, due to the fact that Addis Ababa is the capital city of the region and the existence of regional offices in the city, Oromia region has enacted a law, ORS courts proclamation no. 216/2018, which gives ORS courts the power to adjudicate cases that arise in Addis Ababa provided that the regional government has interest in it (either by becoming a victim or when its members were perpetrators or victims of a crime).<sup>16</sup> It seems that this proclamation is against the previous federal laws that give the power to entertain cases in Addis Ababa to federal courts.

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<sup>13</sup> Article 50(8) of the FDRE Constitution

<sup>14</sup> Some crimes will be tried by the city courts as per the later proclamation.

<sup>15</sup> Articles 11(1) (b), 12(2), 14(2) and 15(2) of both proclamations no. 25/96 and 1234/13

<sup>16</sup> Article 24(2-3) of ORS courts Proclamation no. 216/2018

Therefore, the two laws are in conflict as both gives the power to entertain similar cases to be tried by their respective courts.<sup>17</sup> Hence, one of the two proclamations is unconstitutional as these conflicting laws cannot be backed up by the same constitution. It is up to us to find-out which level of government interferes with the other level. In other words, whose power is it to entertain criminal and civil cases that arise in Addis Ababa is the question that needs to be addressed.

As discussed above, by criminal procedure law, we are referring to part of criminal law that gives direction as to the way to apply the criminal law including the place and manners of trials.<sup>18</sup> Thus, enacting a provision that deals with the jurisdiction of courts on criminal cases is enacting a criminal procedure law, hence a federal matter. Therefore, the legal provision that determines the jurisdiction of courts is a procedural provision. Although not clearly provided as such in the FDRE constitution, a power to enact criminal procedure laws that gives effect to the federal criminal law is said to be the power of the federal government.<sup>19</sup> Thus, the constitutionality of enacting a law that determines the criminal jurisdiction of Oromia courts in Addis Ababa by ORS legislature is questioned to be against the constitutional recognition of the power of the federal government to enact a criminal law.

Finally, it may be difficult to the residents of Addis Ababa to clearly determine the jurisdiction of courts as there will have three governments that establish their courts in the city. A specific case may fall within the jurisdiction of the Federal/Addis Ababa courts and ORS courts: it is not clear to determine whose power is it when such a case arises. This creates uncertainty. There are also other related issues that need to be clearly addressed, including the working language of the three courts, the budget determination, the applicable laws to a dispute in Addis Ababa, etc.

### ***1.3.Objective of the Study***

This research is meant to assess and explain the constitutionality or otherwise of the conferring of jurisdiction to ORS courts in Addis Ababa. It mainly discusses about the self-

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<sup>17</sup> For instance, if a certain act that affect the ORS interest occurred in Addis Ababa, both proclamations allow their respective courts to entertain such case. It is unlikely for a specific case to be in a material jurisdiction of courts of two governments unless one acts beyond its power. This will be discussed in chapter four.

<sup>18</sup> Text to n 8

<sup>19</sup> Text to n 9

governance aspect of Addis Ababa and whether there is interference by ORS with this independence, particularly, with respect to the jurisdiction of federal courts in Addis Ababa.

There are researches on the issue of self-administration or governance of Addis Ababa. For instance Wondossen has researched on the self-governance aspect of Addis Ababa and come to the conclusion that both the federal government and Oromia region has denied Addis Ababa its right to self-administration.<sup>20</sup> As his study is focused on the self-administration aspect, it did not analyze the granting of jurisdiction to Oromia courts in Addis Ababa and the constitutional stipulations of the powers of enacting a criminal procedure law. It did not cover the division of power between the judiciary in Ethiopia and the stand of the procedural laws on the issue.

There are also researches and articles by different scholars on the special interest of Oromia in Addis Ababa and the joint administration.<sup>21</sup> But, as most of them started from the side of ORS interest only, the perspective from the federal setup and from Addis Ababa's self-governance and responsibility to the federal government were not discussed.

Thus, in this research, the self-governance of Addis Ababa is discussed in comparison with the special interest of ORS in Addis Ababa and the city's accountability to the federal government. After analyzing this issue, assessment of the constitutionality of the ORS courts establishment proclamation provisions with regard to the jurisdiction of regional courts in Addis Ababa is made.

#### ***1.4. Significance of the Study***

This research may help law makers both in the federal and regional governments of Ethiopia to review their decisions that have effect on the national capital, Addis Ababa. It also helps other researchers to research on the division of powers in the Ethiopian federal setup. The academic community may also use this research in their academic interaction. The House of Federation and the Council of Constitutional Inquiry may also get some insight as to the

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<sup>20</sup> Wondossen Wakene, 'Self-Governing Addis Ababa, the Federal Government and Oromia: Bottom Lines and Limits in Self-Governance' 2010 <<https://chilot.me/wp-content/uploads/2013/01/self-governing-addis-ababa-the-federal-government-oromia.pdf>> accessed 22 May 2022

<sup>21</sup> Betru Dibaba, 'Constitutional Special Interest of ONRS In AACA: Present Status and Future Challenges' Abyssinia law <<https://www.abyssiniaweb.com/uploads/Oromia%20Vs%20AACA.pdf>> accessed 28 May 2022

constitutionality or otherwise of the jurisdiction of ORS courts in Addis Ababa so that they may use it in their decisions if a case happens to be brought before them.

This is also an interesting issue to those who want to know about the Ethiopian federal setup especially from the point of view of the member states of the federation. Finally, judges, public prosecutors, and police in Addis Ababa and Oromia will get some insight as to what their respective jurisdictions are.

### ***1.5.Scope of the study***

This research is mainly about the constitutionality of the jurisdiction of Oromia courts in Addis Ababa. In dealing with this issue, the city's self-governance right and its responsibility to the federal government will be explained. Which level of government has the mandate to enact a criminal procedure law that includes the power to determine the criminal jurisdiction of courts is also analyzed. In addition, the essence of the special interest and joint administration of Oromia in Addis Ababa will be explained. Whether the special interest and joint administration of Oromia includes the power to establishing its regional courts in Addis Ababa or not is also explained. The civil and criminal procedure laws of Ethiopia and the federal courts establishment proclamations stand on the jurisdiction of courts, the compatibility of the ORS courts establishment proclamation with these federal laws, and the fate of their incompatibility, if any, between these two are also areas of great emphasis in the research. Finally, the research will have some recommendation on the possible way outs of incompatibility of jurisdiction of federal and Oromia courts in Addis Ababa.

### ***1.6.Research Questions***

Basically, the following are the research questions to be addressed in this research;

- 1- What is the special interest of Oromia in Addis Ababa? May that affect the self-governing status of Addis Ababa? Can the joint administration of Oromia be stretched up to giving Oromia courts power in Addis Ababa?
- 2- Is the Oromia courts establishment proclamation in conformity with the procedural laws of Ethiopia?
- 3- Can the conflict of jurisdiction over Addis Ababa be regarded as `unconstitutionality`?
- 4- Finally, is the jurisdiction of Oromia courts by proclamation no. 216/2018 in conformity with the constitution and the principles of federalism?

The above questions need a critical analysis and this is what this research is all about.

### ***1.7.Limitation of the Study***

In conducting the study, the researcher may encounter some limitations. But basically, as the study needs a critical evaluation of other countries practice and the Ethiopian experience which in turn needs to have many materials to be accessible, finding such materials is not an easy task. Though it is possible to get some of them in the internet and libraries, but still there were many materials that are not easily accessible.

### ***1.8.Research design, Methodology and Methods of the Study***

The research is a qualitative type of research. It is meant to enable readers understand the organization of courts in federations in general and the Ethiopian experience in particular. It emphasizes on the practical aspects of self-governance of Addis Ababa and the legal basis to give power to ORS courts in Addis Ababa. Thus, the research is mainly a doctrinal legal research which is to be made by analysis of different accessible materials like books, laws, articles, commentaries, journals, theses or senior essays pertaining to jurisdiction of ORS courts in Addis Ababa. Furthermore, a comparative analysis with other federations on areas of jurisdiction of courts is explored. Hence, it is going to be a desktop based research conducted mostly in libraries.

Both primary and secondary data are employed by the researcher. The primary data sources are mostly Ethiopian laws related to the case at hand. The FDRE constitution, proclamations, criminal, civil and procedural laws, guidelines, public notices, and state constitutions are the laws employed. In terms of secondary data, books, magazines, commentaries, explanatory notes, and journals articles are the basic sources. Many materials that have a concept of federalism, structure of courts and structure of capital cities are explored. In addition, the researcher has reviewed some Medias or newsletter articles if they have written articles or news about the concept in issue. A critical analysis and translation of the findings by the researcher of the experience of other federations are made.

## CHAPTER TWO

### 2. STRUCTURE OF COURTS IN FEDERATIONS: ETHIOPIA AND COMPARATIVE STUDY

#### *2.1. Structure of courts in federations in general*

The idea of federalism presupposes the existence of tiers of government with defined competence and dominion of jurisdiction on the same land.<sup>22</sup> Powers and functions of each government are outlined as part of the division of power and their sovereignty is also maintained.<sup>23</sup> A key feature of all federations is that they have a constitution that divides political power between different orders of government.<sup>24</sup> A federal system, by dividing political power between a national government and multiple constituent governments, automatically produces relations among the constituent governments.<sup>25</sup>

The division of power between the two levels of government depends on a country's needs and special features. In a federal form of state, powers and functions are divided between the central government and the states in accordance with the nature of that power and/or the need for accessibility to the people.<sup>26</sup> Powers which regional states are deemed to exercise closely and effectively are made to fall within their jurisdiction and powers which the central government would effectively accomplish are made to fall within the jurisdiction thereof.<sup>27</sup>

However, there is an argument that prompts a question 'whether the division of power inherent in federalism applies for judicial power to the extent of requiring each order of government to have its own court system'.<sup>28</sup> The principle of self-governance and administration requires that all powers and functions of the three branches of government

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<sup>22</sup> Nigussie Afesha, 'The Federal-state Intergovernmental Relationship in Ethiopia: Institutional Framework and its Implication on State Autonomy' (2015) 9 *Mizan Law Review* 341, 342

<sup>23</sup> Heather K. Gerken and Ari Holtzblatt, 'The Political Safeguards Of Horizontal Federalism' (2014) 113 *Michigan Law Review* 57, 60

<sup>24</sup> Robert Schertzer, 'Federal Arbiters as Facilitators: Towards an Integrated Federal and Judicial Theory for Diverse States' (2017) 15 *International Journal of Constitutional law* 110, 114

<sup>25</sup> Joseph F. Zimmerman, *Introduction: Dimensions of Interstate Relations*, (Oxford University Press 1994) 1

<sup>26</sup> Abdi (n 5) 56

<sup>27</sup> Ibid

<sup>28</sup> Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, (Wolf Legal Publishers 2006) 415

shall be divided between the two levels. Thus, as one of these branches of government, the judiciary needs to be divided between the two levels of government.

While there are some general principles that apply to the judiciary in all federations, there are different ways of structuring a federal judiciary and allocating authority, or competence, to it.<sup>29</sup> The choices made can be informed by comparative experience but will depend on the context and preferences of each federation.<sup>30</sup> There are three forms of structures of courts in federations; dual, single, and shared court structures.

*a. Dual court structure*

It is a type of system of organization of courts in which both the central government and the constituent units have their own tiers of courts which are competent to adjudicate or settle matters falling under the respective orders of governments or interpret and implement laws made by the respective governments as the case may be.<sup>31</sup> Practiced in the USA and Australia, cases that are exclusively matters for state courts include ‘cases arising from the violation of state criminal statutes and suits between citizens of the same state when only state law is implicated’.<sup>32</sup> According to this approach, there should be dual set of courts that apply and interpret laws of the respective tiers of government.<sup>33</sup> Each level of government is likely to prefer that its own courts deal with issues arising under its own legislation or involving its own officials as parties.<sup>34</sup> Thus, state crimes, created by state legislatures, are prosecuted in state courts which are concerned primarily with the applying state law.<sup>35</sup> In America, ‘federal crimes, created by congress, are prosecuted in the federal courts which are concerned primarily with applying federal law’.<sup>36</sup> Therefore, in this system of court structure, judicial power is apportioned between the two levels of governments following the legislative

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<sup>29</sup> International idea, Constitution brief, (march 2019) 1

<sup>30</sup> Ibid

<sup>31</sup> Abdi Gurmessa ‘Criminal Adjudication by State Courts Under the FDRE Constitution: The Quest for Compartmentalization of Jurisdiction’ (2016) 5 Oromia Law Journal 1, 8

<sup>32</sup> G. Alan Tarr, ‘Judicial federalism in the United States: structure, jurisdiction and operation’ (2015) 2 Revista de Investigações Constitucionais 7, 9

<sup>33</sup> Nigussie (n 22) 366

<sup>34</sup> International idea (n 29) 2

<sup>35</sup> Alison Burke and others, *Introduction to the American Criminal Justice System*, (Open Oregon Educational Resources 2019) 268

<sup>36</sup> Ibid

power of the respective governments. It must also be understood to mean that state courts have exclusive jurisdiction over state matters and federal courts have jurisdiction over federal matters as a manifestation of the autonomy.

*b. Single court structure*

In the single court hierarchy, judicial power is not divided but is treated as a single power to resolve legal disputes whatever the source of law and the issues at stake, and whoever the parties may be.<sup>37</sup> The judiciary is structured disregarding the federal arrangement. Thus, there is the Supreme Court at the highest level and other hierarchical court structures that are subordinate to it are established. However, when this view is tested in terms of the underlying principles of federalism especially, with the litmus test of the doctrine of the distribution of powers and self-rule, the trend tends more to a unitary system than a federal one.<sup>38</sup> South Africa is considered the typical example of this model though it is not purely a federal but a quasi-federal country.<sup>39</sup>

*c. Shared or integrated court structure*

Finally, in this structure, courts are shared in a way that leaves control of lower courts to the states and regions and control of superior courts to the union, it will be necessary to divide judicial power by deciding which level of court decides which type of legal issue.<sup>40</sup> Although with different arrangements, countries with this form of court structure similarly have Supreme Court at the center that controls the regional lower courts. Appeal is possible from regional courts to the Supreme Court. Nigeria, India, Germany and Canada courts are structured in this way.<sup>41</sup>

Despite all this, however, ‘every federation has distinctive court arrangements, which do not necessarily fit neatly into such categories’.<sup>42</sup> It is less likely for constitutions to clearly illustrate the model of their courts. It may show the level of decentralization in a federation.

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<sup>37</sup> International idea (n 29) 3

<sup>38</sup> Abdi Criminal Adjudication by State Courts (n 31) 9

<sup>39</sup> International idea (n 29) 5

<sup>40</sup> Ibid 3

<sup>41</sup> International idea (n 29) 5

<sup>42</sup> Ibid 5



## *2.2.The structure of Ethiopian courts*

When we see the case of Ethiopia, the hierarchy of courts tends to be more of a dual hierarchy. Assefa Fiseha agrees with it and writes that a dual court structure is elaborated in the Constitution of 1995.<sup>43</sup> The constitution in article 78 stipulates that the federal and state governments should have their respective three layer courts, supreme, high and first instance courts all having their respective jurisdiction. It is not clearly depicted as to whether the jurisdiction of courts follows the legislative jurisdiction of the government. The constitution in article 80 only provides the power of the federal and state supreme courts to be the final judicial organs in their respective governments. From this, coupled with article 50(1) and (7) of the constitution that stipulates state courts to be the judiciary branches of the state, it is possible to conclude that the power of courts follows legislative powers of the respective governments. Thus, courts adjudicate cases arising in their respective jurisdiction without the interference of one another. To this extent the dual federal principle is reflected in the functional jurisdiction of the federal and state courts.<sup>44</sup>

However, there is another point of view claiming that Ethiopian courts are not purely dualist. Nico and Zemelak claims that ‘although proceeding from a base of duality, the structure and functions of the federal and state courts also show some degree of integration’.<sup>45</sup> For instance, regional courts adjudicate cases as per the federal criminal laws. In addition, the federal Supreme Court in its cassation division has the power to provide a final and authoritative interpretation on specific provisions of a federal law. Thus, we may say that, the court structure of the Ethiopian federation is a dual form with a tendency towards an integrated court system - making it a unique form of structure.

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<sup>43</sup>Assefa Fiseha, ‘*Separation of powers and its implications for the judiciary in Ethiopia*’ (2011) 5(4) *Journal of Eastern African Studies* 702, 704

<sup>44</sup> Nico Steytler and Zemelak Ayele, ‘*The Judiciary in Federal Systems in Africa*’ (2020) 12 *Perspectives on Federalism* 102, 107

<sup>45</sup> *Ibid*

## CHAPTER THREE

### 3. STATUS OF ADDIS ABABA IN THE ETHIOPIAN FEDERAL SETUP: COMPARATIVE STUDY WITH CAPITAL CITIES IN FEDERATIONS

#### *3.1. Capital city arrangements in federations*

Capital cities are symbols of a country. They are mostly the social, economic, cultural, political, and commercial centers. The federal capital city arrangement is made depending on the countries socio-economic, political and cultural needs. There are, at least, three forms of arrangements of federal capital cities in federations; federal district cities, city states, and cities in a state.<sup>46</sup>

##### *a. Federal district cities*

In the federal city arrangements, governments establish a certain city to be reserved for the federal government without any intervention from states. Washington DC, Canberra, Mexico city, New Delhi, and Abuja are typical examples of this structure.<sup>47</sup> It avoids having the laws of any one member state dominating the capital of the whole federation, interfering with the organs of the central government, or imposing its legal and cultural dominance on the federal capital.<sup>48</sup>

##### *b. City states*

In the four known city states, Vienna, Moscow, Berlin and Brussels, neither the federal government nor the states have a say upon the cities as they have a status of ‘a full-fledged member state’.<sup>49</sup> The city is treated as an independent member of the federation.<sup>50</sup> The city has all the power of administration to itself without any intervention from both governments.

##### *c. Cities in a state*

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<sup>46</sup> Ronald Watts, *comparing federal systems* (3<sup>rd</sup> edn McGill-Queen's University Press 2008) 80

<sup>47</sup> Ibid

<sup>48</sup> Ibid 80

<sup>49</sup> Ibid 81

<sup>50</sup> Jetu Edosa ‘The De Facto City-State Status of Addis Ababa City Administration’ September 28 2019 <<https://ssrn.com/abstract=3460959>> accessed 26 Nov 2021

Finally, on the cities in a state structure Ottawa and Burn, the capital cities are provincially administered by the states.<sup>51</sup> The states have absolute dominance on the city. Thus, the federal government is dependent upon the states with no control over the city. The South African case is another peculiar feature of organization of the capital city of government having three capital cities in three states; 'Pretoria is the administrative capital, Cape Town is the seat of Parliament, and Bloemfontein is the seat of the Constitutional Court'.<sup>52</sup>

Before moving to the arrangement of the capital city of Ethiopia, it is better first to understand the constitutional stipulations surrounding the issue. Thus, in the next part, after the analysis of the case of Addis Ababa according to the FDRE constitution, its position with respect to the above structures will be discussed.

### ***3.2. Addis Ababa in the FDRE constitution***

Ethiopia has legally become a federal state after the EPRDF come to power. The federation comprises the federal government, nine (recently eleven) regional states who are autonomous and independent to do whatever they like within the framework of the federal constitutions, and two administrations (Addis Ababa and Dire Dawa), whose status is not clearly mentioned. Thus, the federal structure is a very contentious issue when it comes to the two administrations.

Addis Ababa is a geographical, socio-economic and political center of Ethiopia since the last quarter of the 19<sup>th</sup> century. It is also the de facto diplomatic capital or hub of Africa and the headquarters of the African Union (AU) and has the fourth largest number of diplomatic missions and regional/international organizations, next only to New York, Geneva and Vienna.<sup>53</sup> In the capital, there are over four million inhabitants<sup>54</sup> from different ethnic groups.

Addis Ababa is a center of gravity for many Ethiopians for many aspects. Primarily, there is the infrastructure and institutional concentration of government bodies in Addis Ababa, then

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<sup>51</sup> Watts (n 46) 82

<sup>52</sup> Ibid, Although only the seat of parliament is clearly expressed to be in Cape Town in article 42(6) of South Africa's Constitution of 1996, practically, Pretoria is the seat of the executive and Bloemfontein the seat of the judiciary.

<sup>53</sup> Seifeselassie Gebre, 'A Draft Proclamation that Would Potentially Infest "Addis Ababans" with Ethnic Viruses' aiga forum, (30 Dec 2017, <<http://aigaforum.com/article2017/addis-proclamation-commentary.htm>>accessed 01 Dec 2021

<sup>54</sup> UN-HABITAT, *Ethiopia: Addis Ababa Urban Profile*, (UNON Publishing Services Nairobi 2008) 4

there is the fact that almost all economic and political elite of the country have resided in the city for decades.<sup>55</sup> The population demography of the city is increasing at an alarming rate due to high birth rate and immigration as most people want to live in.<sup>56</sup> This creates a tension between those who want to be a part of the city, and those around the city who fear that its enlargement might have a danger upon their way of life. Apart from these concerned groups, however, different politicians, social activists, and groups appear to look concerned for their own purposes. These are the basic issues surrounding the city that makes the city's expansion or stagnation/constriction to be an issue of national concern.

Apart from being the national capital, Addis Ababa is also the capital city of Oromia region. The city has a self-governing status. It is home not only to the nations, nationalities and peoples of Ethiopia, but also many foreigners. The city's being capital city of the federal and Oromia regional government 'on top of its self-governing status is a nail in the coffin of Ethiopian ethnic federalism'.<sup>57</sup> Due to these issues surrounding the city, it is necessary to have a discussion of the status of Addis Ababa from the vintage point of the stipulations of the FDRE constitution.

The next parts of this topic are meant to highlight the basic constitutional issues that become the concern of most Ethiopians in relation to Addis Ababa's self-governance, accountability to the federal government, and the special interest of the region of Oromia in the city.

### **3.2.1. Self-governance of Addis Ababa**

Constitutionally, Addis Ababa is a self-administered city, accountable to the federal government. According article 49 of the Constitution, all legislative, executive and judicial powers within the territory of Addis Ababa belong to the Addis Ababa city administration or its residents.<sup>58</sup> It is still argumentative as to whether the constitutional status of Addis Ababa

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<sup>55</sup> Hewan Semon, 'Addis Ababa: Identities, Expansion, and the Plight of the Poor' *addis zeybe*, (August 3 2020) <<https://addiszeybe.com/history/opinion/culture/addis-abeba-identiti>> accessed 1 Dec 2021

<sup>56</sup> The city have an estimate of 5.2 million inhabitants with a population growth rate of 4.4 as of 2022 projection, world population review <<https://worldpopulationreview.com/world-cities/addis-ababa-population>> accessed 19 May 2022

<sup>57</sup> Jetu (n 53) citing Meheret Ayenew, 'The City of Addis Ababa: Policy Options for the Governance and Management of a City with Multiple Identity' (1999) Forum for Social Studies Discussion Paper No. 2

<sup>58</sup> It is not clear in the constitution as to the right holder of the self-administration. The Amharic version of the provision gives this power to the city administration whereas the residents of the city are entitled the right as per

is equal with the statehood status of the states with the powers and functions entrenched under the constitution. For all practical purposes, we can see that the city government is considered as one member of the federation like the other regional governments. In different proclamations of the federal government, Addis Ababa is considered as a constituent unit of the federation.<sup>59</sup> It is provided in the explanatory note of the FDRE constitution that Addis Ababa is purposely made to be a different form of administration due to its unique identity.<sup>60</sup>

When we see the self-government of the city, it refers to having the authority to decide up on all regional matters. Thus, the power of self-governance of the city enables the city government to decide upon the structure of the judiciary branch of the city government in accordance with the constitution and close follow up of the federal government which will be discussed below.

According to article 50(8) of the Ethiopian constitution, separate powers are assigned to each level of government --- with a duty for each level to respect the powers vested on the other level of government.<sup>61</sup> Addis Ababa residents' right to local self-government has the same meaning as the right to self-government of the residents of any of the other Oromia regional government's local structures.<sup>62</sup> This was done not only on account of its being the seat of the federal government but also in appreciation of its being multi-ethnic metropolis despite its location in the middle of the Oromia regional state.<sup>63</sup>

As a manifestation of self-governance right, it is provided in article 11(2) of AA charter that the powers and functions the city government includes the power to make laws and exercise judicial powers specifically including the power to; issue and implement policies, approve and implement economic and social development plans, administer employees and officials,

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the English version. As it is a right, it can be argued that, the people not the government is the right holder. On the other hand, it is the authoritative Amharic version that stipulates such power to the government.

<sup>59</sup> Text to n 3

<sup>60</sup> Explanatory note of the FDRE constitution, 99

<sup>61</sup> Marew Abebe, 'Draft Criminal Procedure and Evidence Law Contradicts the Ethiopian Constitution and Federal Architecture' IACL-AIDC Blog (6 May 2021) <<https://blog-iacl-aidc.org/2021-posts/2021/05/06-draft-criminal-procedure-and-evidence-ethiopia>> accessed 20 Dec 2021

<sup>62</sup> Paulos Kebede, 'The Interest of Oromia – Article 49 Does Tell' Horn Affairs, (July 3 2017) <<https://hornaffairs.com/2017/07/03/interest-oromia-article-49-tell/>> accessed 1 Dec 2021

<sup>63</sup> Mulugeta Gebrehiwot and Feseha Habtetsion, 'Nationalism and self-determination in contemporary Ethiopia' (2021) 27 Nations and Nationalism 96, 106

constitute the executive bodies, establish public enterprises, organize Sub-Cities and Kebele's, determine and organize municipal services, provide services, administer the land and the natural resources, administer government houses etc. Replacing the previously enacted proclamations 87/1997 and 311/2002, this charter is enacted in 2003 by the federal government who is entitled and obliged to supervise the city government. Despite its being a point of contention for many scholars as to its constitutionality, this law with its amendments<sup>64</sup> governs the whole aspect of the city until now.

### **3.2.2. Addis Ababa's responsibility to the federal government**

The emergence of a federation for the first time on the political landscape made the question of, "to whom should the capital city be accountable" become a major political question.<sup>65</sup> The provision of the constitution that deals with the power of self-government of the city provides the responsibility of the city to the federal government. Thus, constitutionally, it is a semi-autonomous authority accountable to the federal government (Art.49 (2)), which means the federal government has the power to override the decisions of city government consistent with the constitutional provisions.<sup>66</sup> This is made in order to ensure that decisions that have effect on the city which is the seat of the federal government, and the place of residence for a collection of population of nations, nationalities and peoples, is not made solely and arbitrarily by the city government. It helps to avoid discrimination towards the majority as the federal government is expected to be representative of all nations, nationalities, and peoples in the country.

The responsibility of the city stretches up to allowing the federal government to decide on issues that are regional matters by their nature. Thus, the federal government may decide and enact a law about the structure of the city administration. This implies, even the city government cannot solely establish the government organs of the city. Thus, taking some power of the city government is only allowed to the federal government according to the FDRE constitution. As the city has the right to full measure of self-governance, other regional governments do not have the authority to interfere in the

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<sup>64</sup> Addis Ababa city government revised charter (amendment) proclamation no 1094/2018

<sup>65</sup> Olaana Abbaaxiiqi, 'Let's end Finfinnee Saga, and Shoot for the Stars' Ethiopia Insight, (10 February 2019) <<https://www.ethiopia-insight.com/2019/02/10/lets-end-finfinnee-saga-and-shoot-for-the-stars/>> accessed 4 Apr 2022

<sup>66</sup> Marew (n 61)

administration of their common capital, Addis Ababa, and, doing so means acting against the duty to respect the power of other states.

As an illustration to the accountability of the city to the federal government, it is stipulated in article 61(2) of the city charter as the city administration is a component part of the federal government and shall be accountable to the later concerning security, diplomatic relations as well as policies, laws and standards. Diplomatic relations are basically the powers of the federal government making their inclusion above inappropriate. When we see the security for instance, one of the security organs of the city, the Addis Ababa police commission is accountable to the federal police commission as per its establishing law.<sup>67</sup> In addition, the federal government has the power to dissolve the city government and to constitute a transitional government when it became necessary as per article 61(3 and 4) of the AA charter. The then Federal Affairs Office has been given the mandate to follow the activities of the city government.<sup>68</sup>

Therefore, the responsibility of the city to the federal government is a limit to the self-governance power of the city. This makes Addis Ababa a unique member of the federation whose autonomy is restricted by the federal government unlike the eleven regional states who are independent of the influence of the federal government on regional matters.

### **3.2.3. Special interest of Oromia**

The Oromia regional state encircles Addis Ababa city and resists the city's expansion to protect the rights of the farmers in the surrounding. The constitution has provided instances where the State of Oromia might be treated differently from other states in relation to Addis Ababa city.<sup>69</sup> Under article 49(5), it is stipulated that the special interest of the state of Oromia over Addis Ababa regarding the provision of social services or the utilization of natural resources and other similar matters, as well as joint administrative matters arising from the location of Addis Ababa within the State of Oromia is respected. The issues: why

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<sup>67</sup> Article 3(2) of Addis Ababa City Police Commission Establishment Council of Ministers Regulation No. 96/2003

<sup>68</sup> Article 61(5) of AA charter

<sup>69</sup> Wodossen wakene, 'Questioning Jurisdiction of Oromia Courts over Crimes Committed in Addis Ababa' The reporter (30 January 2021) <<https://www.thereporterethiopia.com/article/questioning-jurisdiction-romia-courts-over-crimes->> accessed 26 November 2021

special interest, what it refers to and what it includes, and who decides it are issues worth mentioning here.

*i. Why special interest*

The reason to acknowledge a special interest to Oromia is not provided either in the constitution. Different scholars and groups suggest their views. A historically rooted claim of ownership is being echoed primarily by Oromo nationalists.<sup>70</sup> The Oromo Liberation Front (OLF) believes that Oromo people should have the rights of full ownership over the Finfinne and thus should play a full administrative role.<sup>71</sup> Tsegaye Ararsa says the reason is because Addis Ababa is an Oromo city.<sup>72</sup> He even claims that making the city accountable to the federal government rather than to ORS is a ‘big blunder committed at the time of adopting the constitution’.<sup>73</sup> As to Wondossen, geography and history can be sources of claim. He writes, ‘Had it not been for the FDRE constitution that made Addis Ababa a self-governing entity, Addis Ababa would have been one of the cities of Oromia and hence the subject matter of Oromia’.<sup>74</sup> Betru, on his part raises social, economic, historical, geographical and legal grounds; historically being a territory of Oromia, the city’s location within ONRS, and the internationally accepted right of self-determination are the grounds of the claim.<sup>75</sup> Others argued, ‘not only is Addis Ababa a historical Oromo land, by virtue of its location at the heart of Oromia, the city is an integral part of the state – one among other cities in the region’.<sup>76</sup> Hence, Oromia has legal, administrative and territorial jurisdiction over Finfinne just like any other city in the state.<sup>77</sup>

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<sup>70</sup> Eyob Balcha, ‘The Politics of Dominating Addis Ababa (2005-2018)’ (July 2020) ESID Working Paper No. 148,4

<sup>71</sup> Oromo Liberation Front, ‘Finfinne (“Addis Ababa”) is an Oromo Land’ May 6 2017 <<https://oromoliberationfront.org/english/finfinne-addis-ababa-is-an-oromo-land/>> accessed 20 May 2022

<sup>72</sup> Tsegaye Ararssa, ‘Why Resist the Master Plan?: A Constitutional Legal Exploration’ Advocacy for Oromia <<https://addisstandard.com/the-special-interest-the-affirmation-of-denial/>> accessed 21 May 2022

<sup>73</sup> Tsegaye Ararssa, ‘The Special Interest in Addis Ababa: The Affirmation of Denial’ Addis Standard (Jan 18, 2016) <<https://addisstandard.com/the-special-interest-the-affirmation-of-denial/>> accessed 28 May 2022

<sup>74</sup> Wondossen Questioning Jurisdiction of Oromia Courts (n 69) 93

<sup>75</sup> Betru (n 22) 23-25

<sup>76</sup> OPride, ‘Oromia Special Interest Law: Who Owns Addis Ababa?’ July 1, 2017 <<https://www.opride.com/2017/07/01/oromia-special-interest-law-owns-addis-ababa/>> accessed 28 May 2022

<sup>77</sup> Ibid



As to Yonathan, a cursory review of the minutes of the Constitutional Commission and the Constituent Assembly --- reveals that the drafters brought attention to the fact that the area surrounding the capital is inhabited by the Oromo and the possible (and unavoidable) expansion of the city that might affect them.<sup>78</sup> He writes;

*The inclusion of the clause was motivated by the need to address the spillover effects of the actions and omissions of the city and its administration on the surrounding towns of Oromia. The language of ownership was not employed in the discussions. --- Ownership does not seem to be the motivating factor behind the inclusion of the special interest clause. --- There are many issues that connect the city and the state of Oromia because Addis Ababa is an enclave located in the state of Oromia.*<sup>79</sup>

Yonathan further elaborates his idea,

*The constitution makes no reference to ownership and historical claims with reference to the capital. For example, the special interest clause refers to the provision of social services--- in the areas of education, medical care, housing and the like. Unlike the suggestion by some that this is about the social services that the city should provide to the state of Oromia and Oromo's that reside in the Capital, the wording does not suggest that the city is obliged to provide social services that are dedicated to the Oromo.*<sup>80</sup>

Generally, it remains a question to scholars as to 'whether the inclusion of the special interest clause was motivated by the history of the city, as some argue, or due to its geographic location and, in particular, due to the fact that Addis Ababa has become an enclave within the ... state of Oromia'.<sup>81</sup> Article 49(5) of the constitution, specially the authoritative Amharic version, stipulates that the special interest of Oromia in Addis Ababa is respected due to the city's location in the middle of (within) the region. This idea is further elaborated in the explanatory note of the constitution that the reason is taking in to consideration the location

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<sup>78</sup> Yonathan Tesfaye, 'intergovernmental cooperation, divided societies and capital cities: the case of the Ethiopian capital (2020) 53VRÜ 12, 21 <<https://www.nomos-elibrary.de/10.5771/0506-7286-2020-1-12/intergovernmental-cooperation-divided-societies-and-capital-cities-the-case-of-the-ethiopian-capital-jahrgang-53-2020-heft-1?page=1>> accessed 28 May 2022

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Ibid

of the city. It is to create a balance between the expansion of the city on one hand and the questions that might arise with it; questions related to land, justice and administrative issues, water and sewerage, and resources on the other.

**ii. What constitutes special interest**

The meaning and scope of this special interest is nowhere provided in the constitution or any other federal law. The AA charter, like the FDRE constitution, talks about the special interest with less clarity. Though more than two decades have lapsed without the enactment of legislation that determines the particulars of these special interests, the legal status of Addis Ababa as a capital city of the state of Oromia and matters of joint administration and utilization of natural resources puts self-governance status of Addis Ababa in full swing.<sup>82</sup>

It seems the matter has been difficult to understand not only by the general public but also policy makers.<sup>83</sup> Zelalem writes about the introduction of the concept in Ethiopia as;

*The “special interest” clause was first introduced in the National/Regional Self-government Proclamation No. 07/1992 ---. Article 3 (4) of the proclamation reads: The special interests and political right of the Oromo over --- [Harari] and --- [Addis Ababa] are reserved. These regions shall be accountable to the central transitional government and the relations of these self-governments with the central transitional government shall be prescribed in detail by a special law.*<sup>84</sup>

Generally, the lack of clarity on what these special interests creates a lacuna in the interpretation and application of this constitutional stipulation. From the reasons to recognize special interest explained above, we may conclude that these special interests must be those related with land, water and sanitation/sewerage, resources and the like.

**iii. Joint administration**

The constitution also stipulates that Oromia region have special interest over joint administrative matters in Addis Ababa. We need to identify the tasks that are matters for joint

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<sup>82</sup>Jetu (n 50) 9-10

<sup>83</sup> Girma Feyissa, ‘Why the Issue of Special Interest Should Pend’ Addis fortune (JUL 09 2017) <<https://addisfortune.net/columns/why-the-issue-of-special-interest-should-pend/>>accessed 01 Dec 2021

<sup>84</sup>Zelalem T. Sirna, ‘Addis Ababa/Finfinee: A Blueprint towards Twin-city Administration’ (2018) 14(1) Ethiopian Journal of the Social Sciences and Humanities 83, 90

administration and who is responsible for what aspect of the administration. The scope of the joint administrative matters is not clearly depicted.

According to Wondossen, the spillover effects of urban expansion and the consequent externalities involved like issues of environmental pollution, waste disposal, water and sanitation, employment and population displacement which are valid grounds of concern for Oromia region, on the one hand, and the residents of Oromia's free riding consumption of the better quality services of Addis Ababa for which Addis Ababa may incur additional financial costs, on the other, are issues that 'call for joint agreements and decisions'.<sup>85</sup> Thus, a joint administration could be established on matters that are shared --- for example, on matters such as the usage of natural resources, waste management, and environmental protection.<sup>86</sup>

Despite the fact that the constitution grants Oromia region special interest on joint administrative matters over Addis Ababa, it should not be understood to mean that the city have to share all matters of administration with the region. Rather, it must only be related to matters that might have impact on the region.

#### *iv. Who determines the special interest*

The constitution leaves the particulars of the special interest to be determined by law. It did not specify who is empowered to enact such law. However, the AA charter provides that the details of special interest will be determined by an agreement to be made between the city government and ORS or by law to be issued by the House of Peoples' Representatives.<sup>87</sup> Since the federal constitution is the one that stipulates the particulars to be determined by law, it can be inferred that the organ to determine these particulars is the federal parliament. Betru agrees with the idea that it is the power of the federal government. He demands, however, 'the officials of the region need to participate in the formulation, or at least in the initiation of the particular despite the fact that this power is vested to federal legislative body at the end of the day'.<sup>88</sup>

In the process of determining the special interest by the federal parliament, a draft has been distributed for deliberation by the public in 2017. This draft faced opposition by both the

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<sup>85</sup> Ibid 94

<sup>86</sup> Ibid 97-98

<sup>87</sup> Article 62(2) of AA charter

<sup>88</sup> Betru (n 22) 21

supporters and defenders of the special interest of Oromia in Addis Ababa. It is believed to be one of the main reasons, coupled with Addis Ababa's master plan, which ignites the uprising in many parts of Oromia in 2017.

### ***3.3.The status Addis Ababa: analyzed with capital city arrangements in federations***

Generally, from the above discussion we can see that Addis Ababa is a self-governing organ accountable to the federal government with in which the special interest of Oromia is to be respected. It is required to determine the status of Addis Ababa based on the above city structures so as to clearly understand what is in issue when talking about the powers of the governments of Addis Ababa, the federal government, and Oromia in Addis Ababa. The status of Addis Ababa as whether a federal city, city state or city in a state cannot be clearly determined from the FDRE constitution. Though clearly mentioned as the capital city of the country, Addis Ababa is also considered as the capital city of the state of Oromia. This increases the confusion.

According to Olaana, based on article 49(3) of the constitution that unequivocally states Addis Ababa is responsible to the federal government, there is no question that Addis Ababa is a federal district.<sup>89</sup> He argues that, those who claim Addis Ababa is a city with in Oromia has failed to analyze the fact that there would have no talk of special interest had Addis Ababa been a city with in Oromia, as 'an administrative entity cannot have special interest in what it owns or controls'.<sup>90</sup> Therefore, the utilization of the phrase "special interest", rather than proving that Addis Ababa is a city under Oromia, rather confirms that it is a federal district.<sup>91</sup> Nagel and Watts also claim that Addis Ababa is federal city.<sup>92</sup>

On the other hand, we may argue that since the constitution gives the city a self-governing status, it also have a feature of a city state. In addition, the fact that the city is also the capital city of Oromia makes it a city in a state type.<sup>93</sup> This all shows that the city arrangement of Addis Ababa is a unique one containing all the features of capital cities in federations.

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<sup>89</sup> Olaana(n 68)

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Watts (n 48) 80; Klaus-Jurgen Nagel (ed), *The problem of the capital city: new research on federal capitals and their territory* (Barcelona 2013) 15

<sup>93</sup> The constitution, however, does not recognize Addis Ababa as the capital of ORS.

Thus, despite the constitutional stipulations vagueness on the subject, practically, however, Addis Ababa is considered as the component part of the federal government, an idea further elaborated in the AA charter. This makes the city status closer to the federal city type of arrangements.

## CHAPTER FOUR

### 4. REVIEW OF ETHIOPIAN LAWS ON JURISDICTIONS OF COURTS

#### *4.1. Introduction*

The laws that govern the jurisdiction of courts in Ethiopia are unclear and found being scattered here and there. The constitution, the criminal code, the civil and criminal procedure codes, the federal courts establishment proclamations, public notices, and some criminal laws encompass the jurisdictions of courts. These laws more or less provides which powers belong to the federal and which to state courts, which power to what level of government – the material jurisdiction of courts, and further elaborates on the local jurisdiction when the issue is on the same level of courts. In the following sub-sections, the jurisdiction related stipulations of these laws are going to be analyzed.

#### *4.2. The FDRE constitution*

The constitution is the first law that comes to mind when analyzing any legal issue. But it is the least clear law when it comes to jurisdiction of courts. This is mainly due to its generality. The constitution establishes tiers of federal and state courts, and gives an overview of their jurisdiction leaving the details to be determined through legislation.<sup>94</sup> Thus, in articles 78-81, the constitution tries to elaborate on the establishment of the two levels of courts, federal and state courts, and the delegation of federal matters to state courts. It serves as a guideline as to how these courts are established and functioned.

As Ethiopia has become a federal country, the procedural laws which were in effect while the state was a unitary one cannot help much in determining whether a particular case is a federal or state subject matter - the material jurisdiction of courts. Thus, it is necessary to assess the constitutional provisions that deal with the structure of the federation and the powers and functions of the two levels of governments as courts are more likely to have a jurisdiction over cases up on which the level of government in which they belong has the power over a certain issue. However, it is still difficult to determine material jurisdiction by the constitution as it is the least clear law when it comes to determining the material jurisdiction of courts in the country. However, as structure of the Ethiopian courts is the dual form as discussed earlier, and as the power of courts in the dual court system is adjudicating based on

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<sup>94</sup> Nigussie Afesha, 'Judicial Power Decentralization in Ethiopia: Practical Limitations and Implications on Self-governance of Regional States' (2019) 13 Mizan Law Review 363, 364

their respective governments' laws, thus, we may argue that adjudicating based on federal laws is federal matter whereas adjudicating based on state laws will make it a state matter.

But, this does not ease the job of determining jurisdiction of courts. It is still difficult to explain the practice of Ethiopian courts by the constitution. The first issue related to this is that the constitution gives the power to enact a criminal law to the federal government and regional courts were adjudicating criminal cases by the federally enacted criminal law. The constitution has failed to determine whose power it is to adjudicate as per the federally enacted criminal law. Thus, despite the fact that it clearly divides the powers of federal and regional governments, the constitution fails to articulate in clear terms whether the power of the federal government is only on the power of legislation or whether it includes the power to executing such law.

#### ***4.3.The civil procedure law***

The two procedural laws of Ethiopia, the civil procedure and criminal procedure codes comes into effect before Ethiopia adopted federalism as the form of government of the country. Thus, they also cannot help much in determining the material jurisdiction of federal and state courts. They only provide the jurisdiction of the levels of courts and the local jurisdiction of courts.

According to the Ethiopian civil procedure code, the basis for determining local jurisdiction of courts in civil proceedings is the place of residence of the defendant, choice of the plaintiff in few instances, place of commission or omission of the act in question, place where the property in issue is found etc.<sup>95</sup> Thus, after determining the judicial and material jurisdiction of courts, one needs to look into the local jurisdiction clauses of the civil procedure code before bringing a suit or deciding upon a case that might have an effect on this principles. In doing so, however, the civil procedure code does not require a plaintiff to distinguish that the case in issue has an element that affects a certain region or not as it is not a requirement by the procedure law. Similarly, apart from the above considerations, a court of a place where a case has brought in to should not consider the interest at stake while determining jurisdiction.

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<sup>95</sup> Articles 19-30 of the civil procedure code of Ethiopia

#### ***4.4. The criminal procedure law***

As stipulated in article 99 of the criminal procedure code, the court of a place where a crime is committed has the local jurisdiction to entertain such case. We ordinarily consult the provisions of the criminal procedure law on local jurisdiction after deciding on the judicial and material jurisdiction of courts using the criminal code, the federal courts establishment proclamation, the appendix of the criminal procedure law and public notice no. 17/67.

A law that determines the jurisdiction of courts in a country is one aspect of a procedural law. Thus, when there is a proclamation that incorporates the concept of jurisdiction of courts, such law is said to have a criminal procedural law aspect, hence treated as a criminal procedure law. Questions arise whether it is possible for states to have their own criminal procedure codes that decide on the jurisdiction of courts. Is the criminal procedure law federal or state law, and whether states can amend it is a question worth mentioning here.

##### ***4.4.1. Who enacts criminal procedure law***

The constitution nowhere provides as to the level of government with the power to enact a criminal procedure law. There is only article 55(5) that stipulates that the federal government enacts the penal code and states may enact their own penal laws on areas not covered by the federal penal law. In this respect there are two contending views, proponents and opposition of the idea that states have the power to enact criminal procedure laws. For the proponents, the fact that the power to enact a criminal procedure law is not clearly identified makes it a residual power, which, according to article 52(1) of the constitution is the power of regional governments.<sup>96</sup> On the other hand, those in the opposition claim that the criminal procedure law is part of the penal law that gives meaning to it. Hence, a law that helps in the interpretation of the penal law shall be considered as part and parcel of it, making it the power of the federal government only.<sup>97</sup>

The case has been an issue of great debate in Ethiopia as ORS had drafted a criminal procedure law. Gediwon and Abduletif write about it as;

*The process of drafting the criminal procedure code was undertaken after regional state authorities reached an understanding with federal authorities that regional*

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<sup>96</sup> Text to n 9

<sup>97</sup> Text to n 10



*states have the constitutional authority to adopt their own criminal procedure code. However, after the draft was complete, the federal government changed its position. The federal minister of justice notified state authorities that the power ... belongs to the federal government and that the regional state should not adopt its own criminal procedure law.*<sup>98</sup>

This shows that the federal government has a stand, regarding the organ with power to enact a criminal procedure law, that only the federal government is mandated to do so. Its intention is further manifested in the draft criminal procedure code of Ethiopia. It is provided in the preamble of the draft that the constitutional stipulations provided in article 55(1) and (5) that gives the power to enact a penal code to the federal government, are the basis for the drafting of such law.<sup>99</sup>

Generally, the fact that enacting a criminal procedure law is not clearly depicted in the constitution makes it up to the interpreter to come up with a better interpretation as to whose power is it to enact a procedural law. The criminal code gives the federal Supreme Court, a federal judicial organ, the power to enact a sentencing guideline in order to properly apply the criminal code. This guideline is meant to determine the manner upon which courts sentencing decision should be guided by. Thus, it is a procedural law. While enacting the criminal law as per article 55(5) of the constitution, the federal parliament is determining that the power to enact procedural laws is also a federal matter. The federal Supreme Court has enacted two sentencing guidelines<sup>100</sup> that serve as a procedure to both federal and regional courts while deciding upon the punishment of a certain crime.

Therefore, as the criminal procedure law is a law that helps in interpreting and giving life to the criminal law like the sentencing guideline, similarly enacting a criminal procedure law can be considered to be the power of the federal government.

#### ***4.5.Federal courts establishment proclamations***

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<sup>98</sup>Gedion t. Hessebon and Abduletif k. Idris, 'The Supreme Court of Ethiopia: Federalism's Bystander' in Nicholas Aroney and John Kincaid (eds), *Courts in Federal Countries: Federalists or Unitarists?* (University of Toronto Press 2017) 190

<sup>99</sup> FDRE draft criminal procedure and evidence law

<sup>100</sup> Federal supreme court sentencing guideline no. 1/2010 and the revised federal supreme court sentencing guideline no. 2/2013

As explained earlier, it is still difficult to determine the material jurisdiction of federal and regional courts by the FDRE constitution. The constitution in article 78 stipulates that the particulars of the jurisdiction of the courts will be determined by law. Immediately a year after the constitutions promulgation, the federal government had enacted the federal courts proclamation no. 25/1996 to determine the jurisdiction of federal courts and impliedly the jurisdiction of the state courts. This law was repealed four times by proclamations 138/1998, 254/2001, 321/2003 and 454/2005 and finally replaced recently by proclamation no 1234/2013. These are the basic federal laws that help in deciding the jurisdiction of federal courts and helping as a reference in determining state courts in Ethiopia.

Basically, these federal courts proclamations are the laws mentioned in order to determine material jurisdiction (the apportionment of power between federal and state courts). These proclamations are meant to determine the jurisdiction of federal courts. But, in doing so, they list out all the federal court jurisdictions and leave an impression that the rest are the powers of state courts. Up until the country enacted clear procedural laws that helps to determine jurisdiction based on recent developments, these proclamations are, and will be, the guidelines. According to article 3 of proclamation no. 1234/13, the federal courts have jurisdiction over cases arising under the constitution, federal laws and international treaties, involving parties specified in the federal laws, and place specified in the constitution or federal laws. This is similar to the assertion of the previously applicable proclamation no. 25/96. Thus, it is possible to say that the basis of determining jurisdiction to the federal courts, and consequently to states, is by the nature of law, place of the act in issue, and the status of the parties involved.

The first condition on which federal courts claim jurisdiction is when the issue needs applying a federal law. As the list of federal laws is not clear, we may refer to article 55 of the constitution that provides the law making power of the federal government. As any law that is enacted by the federal government according to this provision is a federal law, it is possible to determine the status of any law by this provision. But it still is problematic. One of these problems is the power of criminal law making. It is the power of the federal government. Thus, simple logic may lead one to conclude that federal courts have inherent jurisdiction over all criminal matters.<sup>101</sup> However, practically, regional courts entertain

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<sup>101</sup> Federal Democratic Republic of Ethiopia Attorney General Criminal Justice System Working Group, 'Diagnostic Study of the Ethiopian Criminal Justice System' (March 2021) 195-96

criminal cases according to the federal criminal law. We may question its constitutionality. In this respect, Abdi provides a sound argument why regional courts adjudicate criminal cases without the need to delegation on crimes that are specifically given to the federal government.<sup>102</sup> He starts from the duty of all organs of government to protect and respect human rights by article 13 of the FDRE constitution and from the constitutionally recognized right to access to justice to citizens. He writes, ‘in view of this constitutional mandate, it is not an option but a necessity for the state first-instance courts to receive and entertain criminal cases so delegated to it by the constitution as is to be complemented by other subsidiary laws’.<sup>103</sup>

When we see the place of the act up on which jurisdiction will be determined, it is provided in the proclamation that criminal and civil disputes occurring in Addis Ababa and Dire Dawa will be the material jurisdictions of the federal courts with some exceptions in that some powers were given to the city courts of Addis Ababa and Dire Dawa by their city charters and the federal courts proclamations. In the two federal cities, the federal courts exercise jurisdiction on all federal matters and on matters that are, under the constitution, listed as state competences, including those relating to family and succession.<sup>104</sup>

In addition, the federal courts establishment proclamations lists out the type of cases to be tried in federal or delegated regional courts. As to the kind of act in issue, the proclamation lists down the type of cases that are federal by nature. These includes cases related to the fiscal and economic interests of the country, customs duty and tax revenue related, crimes against currency, matters of nationality and bankruptcy etc. Those cases not provided are, thus, fall under the power of regional courts. This shows that these federal laws are the proper guidelines in the determination of jurisdiction of courts.

Finally, the question of jurisdiction of federal courts with respect to the kind of issue and the parties involved are not in issue to be discussed further in this paper. Only cases that occur in Addis Ababa and that involves the interest of Oromia region is the contentious issue to be discussed. Thus, an in detail review of these cases is made in the next chapter which deals the assessment of the constitutionality of the jurisdiction of Oromia courts in Addis Ababa.

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<sup>102</sup> Abdi, *Criminal Adjudication by State Courts* (n 31) 20

<sup>103</sup> *Ibid*

<sup>104</sup> Nico (n 44) 107

**CHAPTER FIVE**

**5. IN DETAIL REVIEW THE CONSTITUTIONALITY OF GRANTING JURISDICTION TO OROMIA COURTS IN ADDIS ABABA**

*5.1. The reason for the regional government to claim such power*

The reason that led the regional government to decide to enact a law that gives Oromia courts the power to entertain some cases in Addis Ababa is not provided in the proclamation. There isn't any legal reference cited as the reason to enacting this law. We may, however, agree that the reason the regional legislature believes that it have the power to enact such a law must have been the constitutional stipulation of the special interest and joint administrative matters. Constitutionally speaking, a special interest is recognized for Oromia in Addis Ababa. Thus, it may not be an issue if such special interest is depicted in any of the federal laws. However, it creates questions when it is decided by the regional government.

*5.2. Analysis with the basic principles of constitutional law and federalism*

As explained in the above discussions, the federal courts proclamations stipulates that the federal courts have exclusive jurisdiction to entertain disputes that arise in Addis Ababa with few exceptions which are the powers of Addis Ababa city courts. On the other hand, however, ORS courts proclamation no. 216/2018 declares in article 24(2) that ORS courts have jurisdiction in Finfinne (Oromo's naming of Addis Ababa) over matters that affect the interest of the regional government. Thus, these two federal and regional laws conflict with each other. In this chapter, an analysis of the constitutionality of the granting of jurisdiction to ORS courts in Addis Ababa and its agreement with the basic principles of federalism will be discussed in detail in the following sub-sections. Generally, the following are the basic principles of federalism and the constitutional stipulation that the contradiction of the above two proclamations has a direct effect upon.

*5.2.1. The principle of equality*

In federalism, the thinking is that all members of the federation are treated as equals.<sup>105</sup> The FDRE constitution stipulates in article 24 that all persons will be treated equal irrespective of their race, nation, nationality etc. Not only does the constitution guarantee the right to equality to individuals. It also stipulates that the member states of the federation shall have

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<sup>105</sup> Eva Maria and others (Ed), *The Principle of Equality in Diverse States: Reconciling Autonomy with Equal Rights and Opportunities* (Brill 2021) 16-17

equal rights and powers.<sup>106</sup> Accordingly, there is no such a thing as special treatment of an individual or a certain region unless for other constitutionally recognized principles like the special treatment of women and minorities which have other justifications.<sup>107</sup> It is the basic purpose of, and a corner stone to the principle of federalism to treat likes alike (treat equal states equally). Otherwise, it would create a fear that can be explained, as Eva Maria expressed in Orwellian terms as “all states are equal, but some states are more equal than others”.<sup>108</sup> A differential treatment of one region over the other is said to be against this principle of equality.

The reason for the incorporation of the concept of special interest of Oromia over Addis Ababa, as explained earlier, is the fact that Addis Ababa is found within the region. But this does not make the city belong to the region and cannot be a source of claim for special treatment to the region. The existence of the city in the middle of the region by itself causes some harm to the region. Thus, to those whose interests might be affected by the city’s position, it might be an enough ground to consider their interest in a special way. But, it can be understood from the constitution that the special interest is protected not only to the people whose interest might be affected, but also to the region itself. As the city might have an impact on the surrounding society, to that extent, the city is expected to remunerate those who received the harm. There could have an adequate compensation for the damages caused by the city. On the other hand, the city also creates opportunities to people in the surrounding. Thus, the benefits and problems are treated in a fair manner. If the intention in the making of the constitution is to treat these group of people who are going to be harmed or benefited by the city, it may be understood to mean a compensation to the harm caused in terms of creating job opportunities, remuneration, creating conducive living environment and the like. This may not, and should not, create any discomfort to anybody as it is morally and legally valid assumption to compensate for the harm anybody received. What is in issue is that when the talk of special interest is interpreted to include those other than the harmed.

It is a differential treatment of a certain region when a special interest is protected. Some oppose the very idea of special treatment. Seifeselessie, for instance, argues that the very

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<sup>106</sup> Article 47(4) of the constitution

<sup>107</sup> For instance, the constitution in article 35(3) recognizes a special treatment of women taking the historical legacy of inequality and discrimination suffered by women into account. Special treatment of minorities and least advantaged groups is stipulated in article 54 and 89 of the constitution.

<sup>108</sup> Eva (n 105) 17

concept or talk of “special interests, benefits and privileges” is pure discriminatory policy and practice among citizens and is incompatible with the universal principle of equality of individuals and peoples.<sup>109</sup> He further elaborates his idea;

*In order to have harmonious inter-ethnic relationships and sustainable peace, there must be complete equality but not “special interests or benefits” among individuals and ethnic groups. Special interests and benefits directly amount to committing illegal discriminations among Addis Ababa’s along ethnic lines. Addis Ababa’s have been living as one big family for ages with equal legal rights and duties and without resorting to ethnic sectarianism and clashes.<sup>110</sup>*

If there is no justifiable cause to override the principle of equality, recognizing special privilege to a certain region is against this principle. Thus, not only does the ORS courts proclamation that gives special status to Oromia courts in Addis Ababa, but also the constitutional stipulation of a special interest of one regional government over another independent government, are against the principles of the FDRE constitution itself.<sup>111</sup> It is also said to be against the AA charter that emphasizes that the ‘residents have the right to get services to be rendered by the city government in accordance with the principles of equality, transparency and equity’.<sup>112</sup>

### **5.2.2. Principle of non-interference**

Power is divided between levels of government in a federation to secure the advantages of unity for some purposes and diversity and local responsiveness for others.<sup>113</sup> For this to work, each level of government needs to take responsibility for the exercise of its own powers in ways that are accountable to its constituents.<sup>114</sup> The FDRE constitution requires the members of the federation to respect the powers and functions of other members. No set of government would be allowed to unlawfully encroach into the powers of the other order of government because both are considered to be autonomous over matters falling under their respective

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<sup>109</sup> Seifeselassie (n 53)

<sup>110</sup> Ibid

<sup>111</sup> For instance it is against the principles of equality and federalism.

<sup>112</sup> Article 7(2) of the AA charter

<sup>113</sup> Cheryl Saunders, *The Division of Powers in Federations*, (international IDEA constitution brief August 2019) 6

<sup>114</sup> Ibid

jurisdictions.<sup>115</sup> This duty to abstain from interfering in the internal aspects of a certain region requires the other to refrain from enacting a law that affects the interest of the other government. In our case, the city of Addis Ababa is a self-governing semi-autonomous member of the federation, only accountable to the federal government. Hence, a regional government shall not interfere in this self-governance.

In an article about the draft criminal procedure law of Ethiopia, which, like the Oromia courts establishment proclamation gives the Oromia courts the power or jurisdiction to entertain criminal cases committed in Addis Ababa, Marew has noted that, ‘authorizing Oromia State Courts to exercise jurisdiction over crimes committed in Addis Ababa contradicts the principle of non-interference between the members of the federation’.<sup>116</sup> He further raises unanswered questions that the Draft Law does not address;

*Are the federal and Addis Ababa courts not neutral and efficient enough to handle cases related to Oromia’s regional interest in the capital? Which entity has jurisdiction if an individual commits a crime both on Oromia and non-Oromia institutions simultaneously in Addis Ababa? Why does the Draft Law singled Addis Ababa out from other territories which are also accountable to the federal government (for example, why is the Draft Law not applicable to Dire Dawa City, since Oromia regional State has properties there too)?<sup>117</sup>*

Generally, the only government organ allowed to interfere in the internal aspect of Addis Ababa is the federal government making the law making of Oromia that affects this self-governance of the city inappropriate.

In addition, the party entitled and mandated to decide the particulars of the special interest of Oromia in Addis Ababa is the federal government not ORS government. This is made in order to deny a regional government from deciding on an issue of great relevance to the whole country. As the federal government is the organ in-between the regional governments, the constitution gives such mandate to this independent government of the federation. If the region decides its special interest, the region is interfering in the power of the federal

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<sup>115</sup>Abdi Criminal Adjudication by State Courts (n 31) 33

<sup>116</sup> Marew (n 61)

<sup>117</sup> Ibid

government. Therefore, the action of the ORS parliament is against the FDRE constitution and the principle of federalism.

### 5.2.3. *Principle of paramountcy*

In federations, it is evident that the laws of the federal government and the regions might contradict in some cases. Though both federal and regional governments are constitutionally vested with different power and supposed to act distinctively and independently, overlapping of power between the two levels of governments is self-evident eventually.<sup>118</sup> The legislations contradict: in a strong sense the two statutes command a citizen to do inconsistent things and the citizen cannot comply with both statutes.<sup>119</sup> Each country (or federation) must find a way to resolve or reconcile these contradictory enactments.<sup>120</sup> There is an accepted principle to resolve such contradictions: the principle of paramountcy. That is, when federal and provincial laws cover the same or similar subject matters, and there is a conflict between those laws, the central law is operative and the provincial law (to the extent of the conflict) is rendered inoperative.<sup>121</sup>

The principle of paramountcy is not clearly accepted in the FDRE constitution. The constitution enjoys the status of the supreme law of the land – thus supreme in hierarchy with any other law which includes the state constitutions. Similarly, state constitutions of Ethiopia claims to be supreme laws in their respective regions. An issue arises as to the relationship between these constitutions and the federal laws on the one hand and the state and federal sub-constitutional laws on the other. The Ethiopian Constitution is silent as far as the thorny issue of regulating the relationship between federal and state law is concerned in case of conflict between state and federal law.<sup>122</sup>

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<sup>118</sup> Habtamu Birhanu and Zelalem Kebu, 'Inter-Federal-Regional Conflict Resolution Mechanisms in Ethiopian Federacy: A Comparative Appraisal on the Legal and Institutional Frameworks' (2019) 10(5) Beijing Law Review 1374, 1374

<sup>119</sup> Constitutional law of Canada <[http://www.constitutional-law.net/index.php?option=com\\_content&view](http://www.constitutional-law.net/index.php?option=com_content&view)> accessed 4 Apr 2022

<sup>120</sup> Centre for Constitutional Studies, 'Doctrine of Paramountcy' <<https://www.constitutionalstudies.ca/2019/07/doctrine-of-paramountcy/>> accessed 4 Apr 2022

<sup>121</sup> Ibid

<sup>122</sup> Assefa (n 28) 329-30



Some scholars argue that the Ethiopian federal system adopts federal supremacy clause by default. As an example they raise the state constitutions themselves. Most of the regional government's constitutions 'include a provision that gives the state council the mandate to issue laws that are consistent with the federal constitution and other federal laws'.<sup>123</sup> In addition, some backed their argument by the federal court proclamation no. 25/96 which states in article 6(2) that extends supremacy of federal laws over the regional laws by declaring "regional laws shall not be applicable where they are inconsistent with 'federal laws'.<sup>124</sup> But others adhere to the 'supremacy of nations, nationalities and peoples' and contend that federal law will not pre-empt state law.<sup>125</sup>

Generally, we may say that the principle is indirectly acknowledged in Ethiopia by the close reading of the constitutional provision that stipulates the supremacy of the federal constitution in any matter, the state constitutions acknowledgement that states may enact laws in conformity with federal laws, and the federal courts establishment proclamation that stresses the state laws should not be applicable if they contradict to federal laws. As an affirmation, the Oromia constitution in article 49(3) (a) stipulates that the Oromia parliament is entitled to enact laws in accordance with the federal constitution and other laws. Thus, the ORS courts proclamation is not only in contradiction with a previous federal law, but also with the regional constitution. Therefore, between the federal and ORS courts proclamations which are contradictory to each other on the jurisdiction of Oromia courts, the former shall be applicable according to the principle of federal paramountcy.

#### **5.2.4. Principle of constitutionality**

There is an internationally accepted principle that a law is considered to be constitutional so long as it is not decided to the otherwise by an organ that has a power to do so. This is also incorporated in Ethiopian laws. The consolidation of the house of the federation and definition of its powers and responsibilities proclamation no. 251/2001 in article 9(1) provides that 'unless otherwise proved to the contrary, the enacted law is presumed to be constitutional'. Courts and other branches of government must accept its constitutionality

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<sup>123</sup> For instance article 49(3)(a) of the revised Constitution of Amhara and article 51(3)(a) of the revised constitution of Southern Nations Nationalities and Peoples Region similarly stipulates that the powers of the state councils of the respective regions includes enacting regional laws that are not contrary to the federal laws.

<sup>124</sup> Habtamu (n 118) 1390

<sup>125</sup> Assefa (n 28) 330

unless and until proved the otherwise by the appropriate organ. By this, we can say that the proclamation that gives the federal courts the power to entertain all cases in Addis Ababa is constitutional; hence, it must be applied unless repealed by the authoritative organ to do so. If the ORS feels that this proclamation affects the interest of Oromia, the government must primarily seek invalidation of such law by the authoritative organ (the House of Federation). Otherwise, making it inapplicable by another law is choosing the simple but controversial way which is against the previous federal law.

### **5.3. Other related issues to be considered**

Generally, the following are the difficulties likely to be faced due to the claiming of jurisdiction by the regional government of Oromia in Addis Ababa by the Oromia courts establishment proclamation.

#### **5.3.1. Forum shopping**

Forum-shopping refers to “The practice of choosing the most favorable jurisdiction or court in which a claim might be heard.”<sup>126</sup> From the perspective of the disputing parties depending on the subject matter in question one forum could be more favorable than others.<sup>127</sup> As we can see from the two contradictory proclamations, both Oromia courts and federal or Addis Ababa courts have the power to entertain some offences and civil cases that occur in Addis Ababa. For instance, the city courts of Addis Ababa and the ORS courts may have jurisdiction to try a case that occur in Addis Ababa against the interest of Oromia. Therefore, it gives the plaintiff to choose between the two according to his interest and disregarding the respondent’s interest. Thus, this is likely to cause the problem of forum shopping.

#### **5.3.2. Working language**

It is difficult to determine the working language of the Oromia courts in Addis Abba. On the one hand, Oromia Courts are government organs of the ORS. They need to apply Oromiffa which is the working language of the government of Oromia.<sup>128</sup> On the other hand, these courts are performing their tasks within the boundary of Addis Ababa. They also need to

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<sup>126</sup> Daniel E. Alemayehu, ‘Multiple Legal Orders in Ethiopia: An Impediment on the Enforcement of Women Rights’(2021) 19 Journal of Human Rights 38, 44

<sup>127</sup> Ibid

<sup>128</sup> Article 5 of the revised constitution of Oromia regional state

entertain in Amharic which is the working language of the city and the federal government.<sup>129</sup>

On the other hand it is also a problematic area when seen from the standpoint of individual rights. Individuals have the right to choose their place of residence. While choosing the place of residence, they may take the working language, among others, in to consideration. Thus, when an individual chooses to live in Addis Ababa, he/she is choosing Amharic as the working language. He/she is also impliedly seeking to be adjudicated by the city courts or federal courts in Amharic. On the other hand, if he/she is brought before the Oromia courts, he is likely to need another assistant, an interpreter. He might not be interested as it is not as easy to be adjudicated by the language he doesn't understand compared to the language he does. It must not be a burden for people to know another language than the working language of the city. But, the ORS courts proclamations stand makes Oromiffa to be the second language of the adjudication in the city.

### **5.3.3. *Attorneys license***

The license necessary to represent a client at the federal courts is the federal advocacy license. An attorney, however, need to have a license from Oromia region in order to appear as an advocate at law before Oromia courts. Thus, an attorney might be incapable of representing a client in Oromia courts for a case that might be identical to another case he represents in Addis Ababa and federal courts. It is in some way related to the principle of equality discussed earlier. But, in addition to its unequal treatment, it also creates inconvenience to the parties and lawyers. It should not create a burden for an attorney to get a license from the government of Oromia (for which he may not even be qualified) so that he can represent a client in Addis Ababa.

### **5.3.4. *Uncertainty as to the applicable law and the principle of legality***

ORS courts are expected to apply the regional laws for a case brought to them so long as the matter is a pure regional one. On the other hand, the federal courts apply federal laws. As the two levels of governments are independent to each other, they may also have different laws. The laws of the region may require an act which the laws of the federal government or Addis

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<sup>129</sup>Amharic is said to be the working language of the City as per article 6 of AA charter and, the federal government as per article 6 of the FDRE constitution.

Ababa prohibit. An act allowed by the federal or Addis Ababa laws may also be prohibited by ORS laws. It may not be possible to comply with both laws. For instance, if a certain law of Oromia prohibits a certain act and the federal or Addis Ababa laws allow such an act, a question arises whether someone who commits this act in Addis Ababa will be liable before Oromia courts in the city or not. In these instances, the lives of the inhabitants of the city will be in a state of dilemma as to whether to comply with the federal and Addis Ababa's law or the regional law as it is likely for a person to be questioned for transgressing against the laws of one of the two levels of governments. It creates uncertainty to individuals.

The principle of legality in criminal law requires an act to be punishable only after it is clearly prohibited by the law of a place where the act in question occurs. Therefore, having a law that requires an individual to do or not to do an act that is against the laws of the other level of government can be against the principle of legality as it must be clear to the person which law to comply with and which law not to. If not, it should not be a crime to do an act which is a crime by one of the governments but not by the other.

#### 5.3.5. *Conflict of interest*

One implication of determining jurisdiction to a certain court is that the case is of interest to the place where the court is situated. In other words, there is an expectation that a crime anywhere is the jurisdiction of a court of a place where it occurs. The same goes for civil cases. That does not mean there aren't any other interested parties. But, a court of a place is the primarily interested party. To put it in an example, a crime in Kenya might affect Tigray region. But, the region does not have primary jurisdiction there because of the fact that Kenya itself is interested in the case primary to others.

In our case, both the federal government and Addis Ababa are expected to be interested on issues that arise in Addis Ababa. Thus, an issue that arises in Addis Ababa may be of interest to the city and other regions. But, if the other regions claim power over some cases that affect them, it will likely cause a conflict of interest. To put it in an example, if a resident of the city who is a government employee of the region of Oromia steals the property of the government of Afar, in this scenario Addis Ababa, Afar, and ORS were interested in it. Thus, if we are to consider the interested party to determine jurisdiction, it is likely that all the three governments might be in conflict of jurisdiction.

To put it in other simple terms, not only the region of Oromia, but all regional states interest might be affected by an act that occurred in Addis Ababa. If all of the regional governments are to claim jurisdiction, it is likely to create conflict and tension. On the other side, the federal government or Addis Ababa might have an interest in an act that happened outside Addis Ababa. It is to avoid this that the procedural laws determine the jurisdiction of courts disregarding the interests at stake. Courts are expected to entertain a case only upon the law and the facts disregarding the interest at stake. It means that a court that entertains a case in Addis Ababa is expected to entertain the case disregarding the fact that the federal government's or the government of Addis Ababa's interests are at stake.

Without due consideration of this, enacting a law based on the assumption that the interest of a region will be protected by the courts of the region is a fallacious assumption that needs to be put aside. If it is to be that way, every regional government needs to establish courts not only in Addis Ababa, but also in other regional governments as it is more likely for a state's interest to be affected in another state.

### **5.3.6. *Difficulties in its application***

According to federal attorney general establishment proclamation no. 943/2016, ministry of justice has the power to cause criminal investigations to be started on cases falling under the jurisdiction of federal courts.<sup>130</sup> The federal courts proclamation no. 25/96 was in effect by the time this law is enacted. By proclamation no. 25/96, any crime committed in Addis Ababa is the jurisdiction of the federal courts. Hence, proclamation no. 943/2016 is referring that the ministry of justice (by then the federal attorneys general) is empowered to cause criminal investigation on crimes that occur in Addis Ababa. If the power of federal courts is taken away, it becomes unclear whether the power of the ministry of justice is also taken away. It is vague as to who is empowered to cause criminal investigation if a crime committed in Addis Ababa affects the region of Oromia.

On the other hand, police institutions are the principal organs of investigation of crimes. Addis Ababa police commission has the power to investigate any crime committed in Addis Ababa except crimes that are clearly given to the federal police commission. A homicide committed in Addis Ababa will, thus, be investigated by Addis Ababa police commission. This is likely to create confusion if Oromia regional police is to claim such power. There may

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<sup>130</sup> Article 6(3) of the Federal Attorney General Establishment Proclamation No. 943/2016

be pushing or pulling of the cases. It is doubtful and open for abuse as to the police organ that shall made criminal investigations in Addis Ababa and the mechanism to divide, if it becomes necessary to do so, this power.

The budget of the courts is determined by taking the number of cases to be adjudicated in to consideration. So, it is necessary to know the expected number of cases likely to be adjudicated. Likewise, the budget of the other justice organs is determined according to the expected bulk of tasks. But, if it became uncertain to know whether a particular case is likely to be adjudicated or investigated by the Oromia justice organs or the federal government organs, it would certainly create difficulty in the determination of budget to the respective organs.

Finally, it creates difficulty to the people. For instance, a person becomes uncertain as to where to report a crime committed in Addis Ababa. It is illusory to expect that he/she knows whose power is it before deciding to go to a certain police station. It also creates difficulty to the litigants. The court that has power over a specific case must be clearly demarcated so that individuals are not burdened to do so. Abdi Gurmessa put it in clear terms while dealing with the vertical division of courts as;

*Rationale behind the need for a clear demarcation --- is strongly linked with sparing litigant parties from confusion and uncertainty with which court they would file their cases, and thereby saving them from incurring unwanted costs. The more the litigant parties are certain of a specific court, in which they lodge their cases, the more economical, accessible, and well-timed they become. There are crimes which may be barred by period of limitation ---. So the time specified for prosecution of a certain crime should not be expired or lapsed while the complainant or victim is toiling in search for which court is unequivocally competent to consider the case at hand.<sup>131</sup>*

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<sup>131</sup>Abdi Criminal Adjudication by State Courts (n 31) 4

## CHAPTER 6

### 6. CONCLUSION AND RECOMMENDATION

#### 6.1. Conclusion

A federal form of government is acclaimed for the acknowledgement of the self-administration interest of sub-national agents, and, for insuring that the government is participatory. On the contrary, it might also cause some unwanted competition between members of the federation. Though it is recommended to have competition between states in a federation, it is more of a danger than it is a blessing if the competition is on the jurisdictional sharing aspect than the service provision or good governance.

A federation is structured based on the premise that all levels of governments have some specializations. Thus, they will be assigned to have a specific power depending on the countries specific needs and the socio-economic and political considerations. In Ethiopia, among the powers of the federal government is its power to override the decisions of the city government of Addis Ababa as the city government is responsible or accountable<sup>132</sup> to the federal government. The federal government has enabled Addis Ababa to establish its own courts, and since the federal government did this by its power to make the city accountable to it, thus, enacting a law that adversely affects the effect of the former federal law is interfering in the power of the federal government.

Addis Ababa is the capital city of all Ethiopians and it equally belongs to all individual citizens and ethnic groups who all have equal say, rights, privileges and benefits. 116 Addis Ababa is a demonstration of “Little Ethiopia” and Addis Ababa’s are the representatives of all eighty ethnic groups of our Country.<sup>133</sup> Due to this, it is thus only to the federal government, who is representative to all nations nationalities and peoples, that interference in the affairs of the city is allowed. Any interference from other member states of the federation amounts to acting against the constitutionally recognized principle of non-interference. Hence, ORS legislatures act of enacting a law that has effect in Addis Ababa is against the FDRE constitution and the principles of federalism.

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<sup>132</sup> It is expressed in article 7 of AA charter that the city council is accountable to the federal government. Sometimes, the terms responsible and accountable can be used interchangeably. Black’s law dictionary gives the terms the same meaning, Brian (n 8).

<sup>133</sup> Seifesellasi (n 53)

The Ethiopian federalism is silent as to the status of Addis Ababa except depicting that it is the national capital, self-governing body accountable to the federal government. By inserting a special interest clause, the constitution makes it difficult to determine the status of the city and its relationship with the regional government. As there is no law, so far, that determines the special interest of Oromia over Addis Ababa, its scope has never been clearly understood.

The special interest of ORS by itself is a contentious issue as it is a discriminatory treatment of the members of the federation. Even if the special interest of the region is to be respected, it should not be the regional government who determines the nature and scope of that interest. Until the federal government enacts a law on the special interest of Oromia, the regional government should not have taken the case in to its own hands. However, ORS has enacted a proclamation that allows the regional courts to have jurisdiction over cases in Addis Ababa provided that the region has interest in it. It is interference in the power of the federal government.

The special interest and joint administration of Oromia in Addis Ababa is said to be due to the geographical location of the city within the region. Hence, matters that arise due to the expansion of the city like the issue of land, water and sanitation, and justice and administrative matters are the basic ones. In other words, the region is not entitled to jointly administer the city except on matters that are listed above. Establishing courts in Addis Ababa with jurisdiction in the city on matters that affect the region might be considered as involving in the administration. But, as tried to explain above, the issue is not one among the common jurisdictions of the two. Hence, the establishment of courts in the city is an improper interpretation and application of the special interest of Oromia in Addis Ababa.

The principle of paramountcy and constitutionality allows us to come to a conclusion that a previous federal law pre-empts later regional laws. It is clearly provided in the federal courts proclamations that cases that arise in Addis Ababa will be entertained by the federal courts. However, disregarding these previous laws, the ORS courts proclamations provision gives power to Oromia courts over cases based in Addis Ababa. This is against, not only to the previously enacted and superior federal law, but also to the federal system of government, the constitutional principles, and the procedural laws of Ethiopia.

As can be understood from the list of matters in connection with which article 49 (5) of the constitution recognizes the special interest of the state of Oromia in Addis Ababa, no matter



how generously the provision might be interpreted, this constitutional provision would not authorize apportioning part of the federal government's judicial power to Oromia Regional State.<sup>134</sup> The federal government's right to delegate its powers to the states cannot be used as a tool to promote the interest of a single regional state over other self-administered entities.<sup>135</sup> Therefore, ORs courts proclamation no. 216/2018 is unconstitutional to the extent that it contradicts the federal courts establishment proclamations, the constitutional stipulations of self-governance of Addis Ababa and its accountability to the federal government, and non-interference of members of the federation in to the powers of other governments.

## **6.2. Recommendations**

The proclamation that establishes the Oromia courts is against the FDRE constitution and the basic principles of federalism. Thus, it must be agreed that any attempt to taking away of the powers of the federal government and Addis Ababa should be considered unconstitutional. As a remedy to this unconstitutionality, the city government or the federal government shall take the case to the House of Federation as it is against the constitutional principle of division of power, it must be declared to be unconstitutional by an organ mandated to do so. The HoF must also determine the unconstitutionality of such law and make it inapplicable.

The regional government of Oromia must also consider its decision to enact such law and revise the proclamations provision on jurisdiction of courts in Addis Ababa as it has downsides than it has benefits to the region and the country.

As the case of the status of the city is becoming a controversial one in the Ethiopian federalism arrangement, it is better to clearly determine its status along with the involvements and interests of the federal government and the government of Oromia. As the arrangement of capital cities depends upon the country's needs, it must be taken in to consideration when deciding upon the fate of the FDRE constitution. It would only be possible to make Addis Ababa tenure where the entire nation's nationalities and peoples who live in it will be treated equally with others if and only if the laws that affect the city will be seen and scrutinized seriously from the point of view that the city is the home of the groups. Thus, the federal government should take due consideration to the other constitutional principle of equality

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<sup>134</sup> Wondossen Questioning Jurisdiction of Oromia Courts (n 69)

<sup>135</sup> Marew (n 61)

when dealing and deciding on the issue of the special interest of Oromia in Addis Ababa. Otherwise, Ethiopia will be a federation in which some are treated more favorably than others which is a danger to the very existence of a country with multi-ethnic composition.

Finally, anybody who is interested in the case can bring the case to the HoF. If nobody does, a court of law that entertains a case of such kind will be obliged to send such case to the CCI.

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