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CONSTITUTIONAL AND PUBLIC LAWS STREAM

THE CRIMINAL JURSDICTION OF OROMIA NATIONAL
REGIONAL STATE COURT IN ADDIS ABABA CITY
ADMINISTRATION

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**THE CRIMINAL JURSDICTION OF OROMIA NATIONAL REGIONAL STATE
COURTS IN ADDIS ABABA CITY ADMINISTRATION**

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SIGNED APPROVAL SHEET BY THE BOARD OF EXAMINERS
THE CRIMINAL JURSDICTION OF OROMIA NATIONAL
REGIONAL STATE COURTS IN ADDIS ABABA CITY.

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Abstract

Oromia National Regional State is one of the federating states of Federal Democratic Republic of Ethiopia. Constitutionally, the Region has its own legislative, executive and judicial organ. Addis Ababa city which is the capital city of the federal government is found in this Region. The Federal Democratic Republic of Ethiopia; Constitution guarantees special interest of Oromia National Regional State in the City as a whole on matters of provisions of social services, utilization of natural resources, administrative and other similar matters and does not prohibit the region from establishing its capital city in Addis Ababa. Oromia National Regional State Constitution later amendment declares Finfine is the capital city of Oromia National Regional State. The residents of the City constitutionally are given the power of self governance. Concerning judicial power, the Federal courts exercise the criminal jurisdiction in the City. The judicial organ of Oromia National Regional State, shall exercise judicial jurisdiction in the region. Following the declaration of Addis Ababa city as the capital city of Oromia National Regional State, the region established its regional office in the City. As long as Oromia National Regional State capital city is Finfine the need arise to regulate the issues of jurisdiction on crimes committed in the city on the interest of Oromia National Regional State. It is the theme of the paper to reveal the problem of overlap of criminal judicial jurisdiction in Addis Ababa city. Under Federal Democratic Republic of Ethiopia Constitution the status of Addis Ababa city has not clearly been defined. Addis Ababa is a federal capital city as per Art. 49 (1 and 3) of Federal Democratic Republic of Ethiopia Constitution. It is semi- autonomous City administration accountable to federal government as per Art. 49(2 and 4); and it is a City in a state attributed to its geography entirely within the State of Oromia National Regional State as per Art. 49(5). Emanating from this lack of clarity under the constitution, the city is expected to entertain and harmonize conflicts of criminal judicial jurisdiction of the federal government and Oromia National Regional State simultaneously.

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Acronyms

AA- Addis Ababa

AAC – Addis Ababa City

AACA- Addis Ababa City Administration

CC- Criminal Code

CPC- criminal procedure Code

EPRDF- Ethiopia People’s Revolutionary Democratic Front

FDRE–The Federal Democratic Republic of Ethiopia

HPR –The House of Peoples’ Representatives

NNP–The Nations, Nationalities and Peoples

ONRS- Oromia National Regional State

USA –The United States of America

Declaration

I hereby declare that the title “Criminal Jurisdiction of Oromia National Regional State Courts in Addis Ababa City Administration” is my own original work which has not been presented for any degree or examination in any University and the sources used have been duly acknowledged and cited.

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Chapter one

Introduction

1.1 Back ground of the Study

The 1995 Constitution of the FDRE provides for a federal state structure with nine member states making up the federation¹. It has thus brought in to being two layers of administration i.e. the federal government on the one hand and self-governing regional states on the other hand. The regional units are formally designated as national regional states.

The three branches (organs) of the government i.e. legislative, executive and judiciary are established at both levels of the government having their own powers and responsibilities constitutionally defined². The Constitution allocates power between the federal government and regional governments. Powers not specifically allocated for either or both of them (concurrent) or what is called residual power are left by the Constitution to the regional states.

Regional states have the power to adopt their own Constitution, Arts. 50(5) and 52(2) (b) of FDRE Constitution. Oromia as a regional state, after a right granted to it by the Constitution to set up its own government, has passed two constitutions. These are the 1995 Constitution, which is enacted for the first time and the 2001 Revised Constitution.

This Constitution has come into effect on 27th October, 2001 after ‘*Caffee*’ adopted at its extraordinary meeting, Proc. No. 46/2001. It is a document with a total of 113 articles.

The Revised Constitution provides different nomenclatures for the legislative and executive organs of the state. Accordingly, the legislature is called the ‘*Caffee Oromia*’ while the executive is termed as ‘*Administrative Council*’. The legislative power in the Region is vested in the ‘*Caffee*’ as per Art. 46(2) of the Constitution; the ‘*Caffee*’ is the supreme organ of the Regional State.

¹ .The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Negarit Gazeta*, 1st year, No.1, 21st August, 1995, Art.1 and Art.47(1)

² Id, Art.50

There were two amendments in the revised Constitution. The first one includes about the capital city of the Region. Prior to 2001, the Region's capital city was Addis Ababa, also known as '*Finfine*' the original name in the Oromo language. The relocation of regional capital city to Adama sparked considerable controversy. Critics of the move believed that the Ethiopian government wished to disregard AA's location within the center of Oromia. On the other hand, the federal and Oromia national regional state government maintained that AA has been found inconvenient from the point of developing the language, culture and history of the Oromo people. Accordingly, Art.6 of ONRS Revised Constitution of 2001, provided Adama as its capital city of Oromia national regional state. Later on the revised constitution of 2005, amended as per Proc.No. 94/2005 AAC which is capital city of the federal government is also the capital of ONRS³.

The FDRE Constitution established judicial organ both at federal and state levels. So, we have federal courts on the one hand and regional courts on the other hand.

Federal judicial authority is vested in federal courts tiered along three layers based on their competence as provided for by law. By virtue of this arrangement, we have the Federal Supreme Court, which is the highest federal judicial organ, the Federal High Court and Federal First Instance Court.

State judicial power particularly of ONRS court, on the other hand is vested in state courts. The structure of state courts comprises state supreme court, state high court and state first instance court. In principle these courts exercise jurisdiction within the concerned state jurisdictions only. Apart from these apportionment of jurisdiction among the federal and state courts, there is a delegation of power because of the fact that we do not have yet established federal courts all over the country. Hence, matters which in principle fall within the jurisdiction of Federal First Instance and Federal High Courts may come within the jurisdiction of state high court and state supreme courts respectively⁴.

Thus, the differences between federal and state courts are defined mainly by jurisdiction. Jurisdiction refers to the kinds of cases a court is authorized to hear⁵. The existence of judicial

³ Art. 2(3) Amendment Proc. No. 94 /2005of Revised Constitutions of Oromia National Regional State

⁴ Supra note 1 Art.80(4)

jurisdiction of certain court presupposes the cumulative existence of material and local jurisdiction.

The division of judicial powers between the Federal court and the ONRS court in relation to criminal adjudicative power in Addis Ababa City is not clear to identify the criminal jurisdiction of the two orders of courts. This is due the fact that AAC is the capital city of the two governments.

1.2 Statement of the problems

As stated above, a federal system is characterized by establishing two tiers of governments, the Federal Government and the States, which are independent within their respective jurisdictions and autonomous from one another, with the constitutionally guaranteed distribution of powers between them. Each level has its own government structure. The members of the federation are entitled to internal sovereignty.

The judicial organ of the federal government exercises the judicial authority on federal matters, while the state courts have judicial jurisdiction on state matters within their respective jurisdiction.

However, in Ethiopia, the Federal Government centralized criminal laws and as a result, the States are left with few or no criminal legislative jurisdiction. Such trend of centralization of criminal laws would thin out the scope of the right to self-determination of the NNP with respect to criminal spheres. It also breaches the regional autonomy of the States thereby denying them the power and right to exercise criminal legislative authority. The States are made to be dependent upon the Federal Government concerning criminal legislative authority even on matters which fall under their jurisdiction.

Oromia National Regional State is among the nine regions in Ethiopia federation which constitutionally empowered to establish legislative, executive and judicial organs. The judicial organ of this Region exercise judicial authority on state matters with in this territory.

⁵<http://uslegal.com/>

Addis Ababa city is not partner of the federation and does not enjoy the autonomous status as of the region. However, constitutionally, established as an independent city Administration and governed by independent administration. The residents of the City have guaranteed full measure of self-governance. Hence, being administered without a Charter for some time, the federal government has come up with a law regulating its governance. The residents would be represented in the House of Peoples' Representatives, pursuant to; Art. 49(2, 3 and 4). Moreover, Addis Ababa is the capital city of the federal government. Thus Addis Ababa city has the status of both a capital city of federal government and self-rule city.

Furthermore, Addis Ababa is also the capital city of the two governments (FDRE and Oromia National Regional State). The Federal Democratic Republic of Ethiopia constitution other than recognition of special interest for Oromia National Regional State in the city does not prohibit the Regional state from establishing its capital city in Addis Ababa. The existence of this fact makes unclear the status of Addis Ababa city. This is lack clarity as to the status of Addis Ababa city whether it federal district or state district. However, Oromia National Regional State can claim authority over Addis Ababa as its capital city. Concerning judicial power, the federal courts exercise the criminal jurisdiction in the city. But this is to the exclusion of the regional judicial organ from exercising its power in its capital city. Since Addis Ababa City is the capital city of two governments the issues goes to which courts (the regional or the federal courts) shall have judicial power in the city.

1.3 Research questions

Regarding criminal jurisdiction of Addis Ababa city Administration as per the Constitution and other statutes the following are some of the questions to be addressed in the thesis.

1. Does the constitutional recognition of special interest of Oromia in Addis Ababa city embrace the exercise of judicial power?
2. What is the special interest of Oromia in Addis Ababa? Is there any legal frame that regulates special interest of Oromia in Addis Ababa? If any? In the absence of legal specification how can it be regulated? Who are the concerned organs to determine this special interest?

3. Does constitutional the recognition of; Addis Ababa city to self governance exclude Oromia National Regional state courts from exercising criminal jurisdiction in the city?
4. With regard to criminal jurisdiction what would be the implication of Oromia National Regional State declaring Finfinnee as its capital city?

1.4 Objectives of the Study

The main objective of the thesis is to sketch the criminal jurisdiction of the Federal courts and Oromia national regional state courts in the Addis Ababa city administration and identify the scope of the criminal jurisdiction of the two tiers of governments. The thesis touches the constitutional special interest of ONRS in Addis Ababa city. The manner of accomplishment of constitutional special interest and the appropriate organ for its implementation will be seen. Further, it is the objective of the thesis to look into how the constitutional special interest of ONRS in AAC may be a basis for exercise of judicial jurisdiction by ONRS courts in AAC. The point, however, does not stop here; the assessment of criminal adjudicative power of ONRS court on crimes committed against the interest of the region in AAC will be dealt with.

1.5 Scope of the study

The thesis will focus on the analyses of the scope of criminal jurisdiction of the Federal Government and the Oromia National Regional State court in Addis Ababa City Administration. It will also look into the criminal jurisdiction in its substantive and procedural aspects. As far as the relevant laws are concerned including FDRE constitution and other federal laws, for the convenience of accessibility, the writer may opt to make use of that of the Oromia Regional State. Other Regional States' laws may be referred as the case may be and to the extent that they are relevant.

1.6 Significance of the Study

The institutions like the legislative, executive and judicial organs of the Federal Government and ONRS are the beneficiaries of the study either directly or indirectly. They may benefit from the findings acquired from this thesis in their respective roles in relation to criminal jurisdiction. Specifically, the federal courts and ONRS courts will enable to appreciate the problems relating to the criminal adjudicative power in Addis Ababa city Administration. It contributes to make clear the problem of overlap of jurisdiction in Ethiopia, which helps lawyers, students, judges, prosecutors, police, human rights experts and other organs that have share in justice as a reference so that they will understand the problem. Finally, it will be a background for further researches on similar matters.

1.7 Methodology of the Study

The research emphasizes the Ethiopian scenario of criminal jurisdiction and pays due attention to Oromia National Regional State Courts in Addis Ababa City Administration. The study will be corroborated by a comparative experience from some countries having federal setup. Such observations will be tuned, that fit the Ethiopian case and federation like USA and some other countries may be considered for the sake of comparison.

Further, the study centers on library-based or document analysis methodology. Thus, books, laws, articles, different commentaries, journals, theses or senior essays, among other things, are explored pertaining to criminal jurisdiction.

Although the research is not empirical in approach in the mainstream, case studies or inspection of documents pertaining to criminal jurisdiction as between the Federal Government and the Oromia National Regional State have been conducted. An interview has also been carried out for the sake of additional clarification or to unravel what the practice looks like in different institutions or justice actors.

1.8 Organization of the Study

The thesis consists of three chapters. Chapter one, the introductory part, presents the background, objective, significance, research questions, statements of the problems, methodology, and scope of the study. This Chapter describes the overall guidelines, essence and problems of the research.

Chapter Two discusses the concept of judicial jurisdiction in general. In this chapter the meaning and certain criteria for exercise of judicial jurisdiction will be discussed. The judicial power of federal and state government in relation to criminal jurisdiction in federation is analyzed. The criteria to exercise judicial power like, material jurisdiction and local jurisdiction is discussed focused on the judicial organ of the federal government of Ethiopia and Oromia National Regional State.

The criminal jurisdiction of Oromia National Regional State court in Addis Ababa city is discussed in chapter three. This chapter plays a pivotal role in explaining the problem of criminal judicial jurisdiction in Addis Ababa city. It discusses the possible the criminal jurisdiction of Oromia National Regional State courts in Addis Ababa and its constitutional basis. It also discusses the defining particulars of constitutional special interest of Oromia National Regional State in Addis City.

Finally, the thesis ends up by conclusion and recommendation.

Chapter Two

2. General Overview of Judicial Jurisdiction

Among the three organs of government (legislative, executive and judiciary) the judicial organ is the third vital branch of democratic government. The judicial organ is supposed mostly, the guardian of individual and group rights of the citizen and insure rule of law. They regarded as the umpire of challenging the unfair decision of other government organ. Independent judicial organ are the guarantee and the features of good governance and democratic practice. Their independences are undertaking judicial function free from intervention from other organ of the government and the complete adherence to the law. Judicial independence insists on institutional and personal independence of judge⁶.

The FDRE constitution provides for independent judiciary. Institutionally, courts of any level shall be free from any interference of influence of any governmental body, government official or from any other source⁷. Individually, judges shall exercise their functions in full independence and shall be directed solely by the law. Art. 13(1) of the FDRE Constitution provides that all federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of Chapter three. Judicial powers, both at Federal and State levels, are vested in the courts⁸. This is the expression of judicial federalism; the effective judicial organ must be independent. This is because Compliance with judicial code of conduct and maintaining judicial independence recently found the vital devise of making government accountable and varnish good governance, which is a requisite for development. Where there is no independent judicial organ, the very establishment of judiciary becomes fatal and it is the establishment of the second hand of government which defies the notion of separation of power. In this chapter an attempt is made to see the concept of judicial jurisdiction in general.

For this purpose the meaning and certain criteria for exercise of judicial jurisdiction will be discussed in short manner.

⁶ **Independence, Transparency and Accountability in the Judiciary of Ethiopia** Prepared by the National Judicial Institute For the Canadian International Development Agency **October 2008**

⁷ Supra note 1 Art.79

⁸ Id, Art.79(1)

2.1. Meaning of Judicial Jurisdiction

Judicial jurisdiction refers to “the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it”⁹. Jurisdiction is the authority of a court to exercise judicial power in a specific case and is, of course, a prerequisite to the exercise of judicial power, which is the totality of powers a court exercises when it assumes jurisdiction and hears and decides a case.

Hence, it is related to issue of whether a person is subject to the criminal law of certain country or subject to the jurisdiction of certain courts and therefore they may be tried by a given courts for violation of criminal laws.

In our context, by judicial jurisdiction we mean whether Ethiopian courts have power to see and entertain a case or not.

There are two sets of courts established under the federal form of government each having three layers of courts and that they are empowered to exercise judicial power over offences. Issues on how this power of adjudication over offences is apportioned as between federal and regional courts, and even among the federal courts on the one hand and the state courts on those matters is jurisdiction over offences.

2.1.1. Apportionment of jurisdiction between federal and state courts

The apportioning of jurisdiction over offences between the federal and state courts is dependant up on some factors. In principle federal courts have jurisdiction over offences based on three major grounds¹⁰: These are case-based, party-based, and place-based mechanisms. With regard to the case-based subject matter, it is provided that cases involving or arising under the federal Constitution, Federal Laws and International Treaties would fall under the Federal Courts jurisdiction. Federal Laws include all previous laws in force which are not inconsistent with the Constitution and relating to matters that fall within the competence of

⁹ Bryan A. Garner (ed.), Black’s Law Dictionary, 8th ed, 2004, p.2490

¹⁰ Aderajew Teklu and Kedir Mohammed Ethiopian Criminal Procedure Teaching Material Justice and Legal System Research Institute Addis Ababa March, 2009

the Federal Government as specified in the Constitution¹¹. International Treaties, no doubt, fall under the Federal Courts jurisdiction as it has a foreign element.

In connection with party-based subject matter jurisdiction, cases involving parties specified in the Federal Laws fall under the Federal Courts. Here, the term “party” refers to litigant parties or parties to a case before the courts.

When we talk of the jurisdiction of the Federal Courts in relation to places specified in the Constitution and other federal laws, the Regional States (as the Federal High and First-Instance Courts are established therein), Addis Ababa and Dire Dawa are the forefront to be categorized under those places so envisaged by the Proclamation. One should not, in the meantime, lose sight of the fact that the State Courts have exclusive judicial power over state matters.

In principle, the State Courts have an inherent criminal adjudicative jurisdiction only over crimes enacted by the State governments if any. Apart from this, their criminal jurisdiction in relation to the Criminal Code and other federal criminal legislations is reduced to delegate power, and the State Supreme Court and High Courts have concurrent jurisdiction with that of the Federal High and First-Instance Courts. The State Courts do not only have delegate and concurrent criminal jurisdictions but they have also original or exclusive criminal jurisdiction over crimes which are potentially enacted by the State governments and crimes which are not covered under the Criminal Code and other federal criminal legislations.

Jurisdiction has three elements¹²: Judicial, Material, and Local

A court is said to have jurisdiction over a particular offence only when it has the judicial, material and local jurisdiction of adjudication. To understand the jurisdiction of courts, in particular criminal jurisdiction of courts, it is better if we scrutinize the concept of judicial jurisdiction under Ethiopia law.

2.1.2. Judicial Jurisdiction

As stated above, judicial jurisdiction is all about as to whether Ethiopian courts have power to see and adjudicate a case or not. Hence, it is related to issue of whether a person is subject to the criminal law of Ethiopia or subject to the jurisdiction of Ethiopian courts and therefore they may

¹¹ Proclamation No. 25/1996, Federal Courts Establishment, 2nd year, No.13, *Negarit Gazeta*, 15th February, 1996, Art.2 (3)

¹² Supra note 10 page 22

be tried by Ethiopian courts for violation of the Ethiopian criminal laws. For purpose of this sub-topic the relevant provisions of recent criminal law will be analyzed.

2.1.2.1. Judicial jurisdiction under Ethiopia Criminal Law

Art 11-20 of the criminal code (herein after called CC) are devoted to issues of judicial jurisdiction of Ethiopian courts over offences. Thus, whether or not a person is subject to the CC of Ethiopia depends on¹³: the place where the offence was committed; the nationality of the accused, and; the kind of the offence that has been committed.

A person may be subject to Ethiopia's Principal jurisdiction or Subsidiary jurisdiction.

According to Art 11-16 of the CC principal judicial jurisdiction, exists in cases where the accused is: Charged with the commission of an offence in Ethiopia, Charged with the commission of certain offences against Ethiopia in a foreign country, Charged with the commission of an offence in a foreign country where he possesses immunity from prosecution by virtue of his status as an Ethiopian official, Charged with the commission of certain offences in a foreign country while a member of the Ethiopian armed forces.

Art 11 and 12 of the CC, deals with the general principle of territorial jurisdiction, which has almost gained universal acceptance. According to this principle, the Ethiopian courts shall have principal jurisdiction over Offences specified in the CC committed by any person on Ethiopian territory which consists of land, sea and air.

The principal jurisdiction of Ethiopian courts to try offences committed in Ethiopian territory Presupposes the offenders presence within the Ethiopian territory, the request of his extradition to Ethiopia or the possibility of trial in absentia as per the provisions of (Art 160-161) of the criminal procedure code.

Any Ethiopian or a foreigner having no immunity is obviously subject to an Ethiopian Jurisdiction for violation of Ethiopian criminal laws provided that he is in Ethiopia. However, a person may after having committed an offence in Ethiopia may have successfully escaped and take/n refuge in a foreign country. In such a case, the Ethiopian authorities are directed under Art. 11(3) of the CC, to request his extradition so that he may be tried in Ethiopia under Ethiopian law.

¹³ Proclamation No.414/2004 The Criminal code of The Federal Democratic Republic of Ethiopia 9th of may 2005, Addis Ababa Art.11-20

With regard to offences that do not directly and chiefly concern of Ethiopia, our courts have subsidiary jurisdiction which is derivative, not original. Under these circumstances, Ethiopian courts substitute foreign courts in trying offenders who must have been but have not been tried in a foreign country.

Subsidiary jurisdiction exists as to an accused who is charged with: Offences committed by members of the armed forces against the ordinary laws of a foreign country, Art 15(1).

Offences committed in a foreign country - against international law or international offences specified in Ethiopian legislation, or/ and international treaty or a convention to which Ethiopia has adhered, Art 17(1) (a). Offences committed in a foreign country - against public health and morals specified in Art 525, 599, 635, 636, 640 or 641 of the code, 17(1)(b). Offences committed abroad against an Ethiopian national or offences committed by Ethiopians while abroad, if the offence is punishable under both laws and is grave enough to justify extradition, Art 18(1) and Other offences punishable by rigorous imprisonment of not less than ten years) committed abroad by non- extradited foreigners, Art 18(2).

2.1.3. Material Jurisdiction

Above, the issue of judicial jurisdiction has been dealt briefly. Determination of such issue though crucial is not conclusive. The question of which particular court in Ethiopia has jurisdiction to hear specific case should be answered subsequently. The issue of material jurisdiction and local jurisdiction, hence, comes in to picture.

Material jurisdiction is concerned with the authority of the court to see the particular case, and the type of court that should hear a case.

After the determination of the issue of judicial jurisdiction, the next point is as to where the case is to be brought i.e. federal or state courts and further, which levels of courts entertain certain case.

The apportionment of jurisdiction is first determined on the basis of subject matter which in turn is to be determined based on law, parties and places. Our Constitution nowhere defines federal matters and state matters regarding jurisdiction of courts. But there are matters which as a rule must be categorized as federal matters or state matters. This point related with the notion of subsidiarity and federalism. Subsidiarity is an organizing principle of decentralization, stating that a matter ought to be handled by the smallest, lowest, or least centralized authority capable of

addressing that matter effectively¹⁴. The notion of subsidiarity advocates that political, social, cultural, economic, or administrative tasks should primarily be accomplished by the lowest possible administrative units and transferred to the central government as a subsidiary business. The central government avails itself in order to assist the lowest institutions. It is the principle that states that only subjects that cannot be adequately dealt with by a lower order of government should be performed by the higher order of government. The 'higher-lower' scenario is not to mean that there is superior-subordinate relationship between the federal government and the states but rather it would mean the ideal relationship between the two orders of government¹⁵. Thus a matter falls under the federal government if it cannot be fully exercised by the states. Therefore, the principle of subsidiarity is of the view that the central government should take up powers from the constituent units for the sake of supportive purposes only. This may take place in such circumstances as whereby due to the nature of the matter it goes beyond the jurisdiction of the regional states. In such cases, the federal government assumes that power as an auxiliary authority.

In a federal form of government, there exists a dual form of government in which the type of governance falls into a shared rule for common purposes and a self-rule for individual state purposes. While the need for common purpose is required for the whole citizens of the country, the individual state purpose or self-rule is required for the respective constituent units' citizens. Reasons for federalism as a political concept and federations as in the form of institutions are the fact that there is the need to provide the closest institutional solution combining shared rule for some commonly shared purposes and self-rule for other purposes of regional interest in the world today¹⁶. Shared rule implies the circumstances wherein the common interests of the federal or central government which comprises of the constituent units, at the national level, are maintained in the name of the sovereign and independent state. National issues which are capable of affecting the citizens and boundaries of the country are governed under the federal government.

¹⁴ <http://en.wikipedia.org/wiki/Subsidiarity> accessed on 15/09/2015

¹⁵ Ronald L. Watts, (2008). *Comparing Federal Systems*, 3rd ed., Queen's University Press, London, p.24

¹⁶ Assefa Fisseha, (2007). *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, Revised edition, p.10

The notion of self-rule also connotes the concept of localized governance in which the government comes closer to the public. It is through and by the local government that the demands and preferences of the people are identified and public goods and services are delivered to the society concerned. The laws are so formulated and enacted by the federal government on concern of federal government and by the state on state matters.

Under such rule a case is a federal matter if it arises on federal law and a case is a state case if it arises on state law. We may, therefore, conclude that all cases that arise based on federal law may be called federal matters and the rest may be categorized as state matters.

All laws enacted by the House of Peoples' Representatives under its enumerated power of legislation and laws enacted by the council of ministers are referred to as Federal laws; and all laws made by the state legislative bodies under their residual power of legislation are state laws. According to Article 80(1) (2) of FDRE Constitution; the federal Supreme Court shall have the highest and final judicial power over federal matters and the state supreme courts shall have the highest and final judicial power over state matters.

2.1.3.1. Basis of Distinction between Federal Matter and State Matter

Uniformity

In most federation the issues of national security and ensuring respect for the human rights and fundamental freedoms are the concern of federal government. In Ethiopia, the criminal legislative power is centralized to come up with uniformly applicable criminal law. The fact that the Constitution vests the power of enactment of a criminal code in the Federal Government is very important in maintaining the uniformity of criminal laws in Ethiopia. This may arise from a potential fear that if criminal legislative power is granted to the States, disparity in criminal law will take place that puts individual offenders right at risk; there may be a discrepancy or disproportion of penalties over the same crimes committed or omitted within different States. Even, what constitutes a criminal offence in one State may not be the case in another.

However, under FDRE Constitution there is a legal framework to maintain uniformity in protection of human rights. Art.13 (1) of the Constitution provides that all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to

respect and enforce the provisions of this [Chapter Three]. Thus, the State Councils should take into account the duty and responsibility of respecting and enforcing human rights while they enact their own criminal laws. This shows that the duty and responsibility of respecting and enforcing human rights is not imposed only upon the Federal Government which currently centralized criminal law in Ethiopia but it is also imposed upon the States. Thus, there is no a constitutional claim that the Federal Government is in a better position to respect, protect, and enforce human rights than the States. Rather, there are scholars who argue that the States are at liberty to guarantee better protection to their people through their Bills of Rights¹⁷.

2.1.3.2. Material Jurisdiction under Proclamation No. 25/96

Federal Courts Establishment Proclamation, No.25/96 and its amendment proclamation No. 322/2003 sets out the rules for allocation of common and specific jurisdictions to federal courts on the basis of three grounds; laws, parties and places.

In USA where there is similar courts set up with Ethiopia; The Us Constitution under article III section 2 states that; federal courts can have jurisdiction over cases that arise under the U.S. Constitution, the laws of the United States, and the treaties made under the authority of the United States. These issues therefore are the sole prerogative of the federal courts.

In the United States, the mentioned types of cases are considered to be within the jurisdiction of federal courts¹⁸; suits between states, cases involving ambassadors and other high ranking public figures, federal crimes, bankruptcy, patent, copyright and trade mark cases, cases arising from acts of congress, admiralty, antitrust, securities and banking regulations, Other cases specified by federal statute etc. In this regard, in Ethiopia Proclamation No.25/96 tries to mention the material jurisdiction of federal courts. For purpose of this sub-topic material jurisdiction specified under this proclamation are considered.

¹⁷ Yonas Birmeta,(2011). *Bill of Rights in Sub-national Constitutions in Ethiopia*. In Yonas Birmeta (ed.), *Some Observations on Sub-national Constitutions in Ethiopia* (p.22-59), Ethiopian Constitutional Law Series, Vol. IV, AAU School of Law, p.24

¹⁸ Supra note 10 page 280

Accordingly, Proclamation No.25/96 was established with a view to dealing with the judicial power of the Federal Courts in general and the criminal adjudicative jurisdiction of the same Courts in particular.

Consequently, the following offences are within the material jurisdiction of federal courts.

Offences against the national state (offences against the constitutional order, or the internal security of the state), Offences against foreign state, Offences against the law of nation, Offences against the fiscal and economic interests of the federal government, Offences regarding counterfeit currency, Offences regarding forgery of instruments of the federal government, Offences regarding the security and freedom of communication service operating within more than one region at the international level, Offences against the safety of aviation, Offences regarding foreign nationals, Offences regarding illicit trafficking of dangerous drugs, Offences falling under the jurisdiction of courts of both different regional courts as well as concurrent offences, Offences committed by officials and employees of the federal government in connection with their official responsibilities or duties, Offences involving conflicts or hostilities between various nations, nationalities, religious or political groups, Offences committed against property of the federal government and which entail more than five years of rigorous imprisonment

In addition to these common jurisdictions, the proclamation also enumerates specific jurisdictions of federal courts. Which are dealt as follows;

2.1.3. 2.1. Criminal Jurisdiction of Federal courts

Criminal jurisdictions of Federal Supreme Court: Supreme Federal judicial authority is vested in the Federal Supreme Court¹⁹. It shall have the highest and final judicial power over Federal matters²⁰. The Federal Supreme Court shall have three jurisdictions – First instance, appellate, and cassation.

First-instance Jurisdiction: According to Art.8 of the Proclamation; the Federal Supreme Court shall have exclusive jurisdiction over offences for which officials of the Federal

¹⁹ Supra note 1 Art. 78(2)

²⁰ Id, Art. 80(1)

Government are held liable in connection with their responsibility, offences for which; foreign ambassadors, consuls as well as representatives of international organizations and foreign states are held liable, application for change of venue from one Federal High Court to another or to itself in accordance with the law. However, this judicial power of Federal Supreme Court declared unconstitutional. In Melaku Fanta vs. Federal Ethics and Anti-corruption commission case the Federal High Court's jurisdiction to try Melaku was challenged on the ground that the defendant, Melaku is a government official with a ministerial portfolio as well as member of the Council of Ministers and shall be tried by the Federal Supreme Court by citing Art.8 (1) of the Federal Courts Establishment Proclamation No 25/1996 and Art.7 (1) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No 434/2005²¹. The House of Federation declared the unconstitutionality of these laws on the ground that if his case is to be tried by the Federal Supreme Court, the defendant would be deprived of his constitutional right to appeal. So that, the first instance criminal jurisdiction of federal Supreme Court left to only change of venue from high court.

Appellate Jurisdiction: The Federal Supreme Court shall have criminal appellate jurisdiction over decisions of the Federal High Court rendered in its first-instance, decisions of the Federal High Court rendered in its appellate jurisdiction in variation of the decision of the Federal First-Instance Court²². Art. 80 (6) of the Constitution has also provided that decisions rendered by a State Supreme Court on Federal matters are appealable to the Federal supreme Court.

Cassation Jurisdiction: In cases of fundamental error of law, the Federal Supreme Court shall have a power of cassation over the final decisions of the Federal High Court rendered in its appellate jurisdiction, final decisions of the regular division of the Supreme Court, final decisions of the Regional Supreme Court rendered as a regular division or in its/their/ appellate jurisdiction²³. Art. 80(3) (a) of the Constitution has also provided, in a general terms, that the

²¹ The Former Director General of the Ethiopian Revenues and Customs Authority, Melaku Fenta V. Anti Corruption Prosecutor Team (Decision of HoF on Thursday, January 2, 2014 unpublished).

²² Supra note 11 Art.9

²³ Id, Art. 10(1), (2), (3)

Federal Supreme Court has a power of cassation over any court final decision containing a basic error of law.

In addition to its usual judicial role, the Federal Supreme Court shall give the appropriate order where two or more Regional or Federal Courts claim or disclaim jurisdiction over a case²⁴.

Criminal jurisdiction of Federal High Court: Article 12 of the proclamation provides that the Federal High Court shall have first instance jurisdiction over:

Offences against the national state i.e. offences against the constitutional order, or the internal security of the state, Offences against foreign states, Offences against the law of nations, Offences against the safety of aviation, Offences regarding illicit trafficking in dangerous drugs, Other criminal cases arising in Addis Ababa and Dire Dawa and falling under the jurisdiction of the high court pursuant to other federal laws in force.

The Revised Federal Ethics and Anti-corruption commission Establishment proclamation No.433/2005 and Anti-Terrorism proclamation No. 652/2009 reserves jurisdictions of offenses under those same proclamations to federal high court and federal courts.

The federal high court also exercises criminal appellate jurisdiction over all decisions rendered by Federal First Instance Court, the national electoral board, tax appeals commission, labor boards, etc.

The Criminal jurisdiction of Federal First Instance Court: The Federal First Instance Court shall have jurisdiction over; Offences against the fiscal and economic interest of the federal government, Offences regarding counterfeiting of currency, Offences regarding the security and freedom of communication services operating within more than one region or at the international level. Offences in which foreign national who enjoy privileges and immunities and reside in Ethiopian are victims or defendants subject to the jurisdiction of First Instance Court in operating laws and without prejudice to international agreements entered in to by Ethiopia.

They also have jurisdiction over criminal cases that arise in Addis Ababa and Dire Dawa as well as over cases that are under the jurisdiction of awraja and woreda courts pursuant to the laws in force. Here obviously, the schedule of criminal procedure code(here after all called cpc).

²⁴ Id, Art. 35(2)

2.1.4. Local Jurisdiction

Based on the above criteria and standards, one could determine whether Ethiopian courts have Judicial jurisdiction, and distinguish which cases fall under federal courts. Further, determine which levels of courts i.e., supreme, high or first instance court has competence to entertain the cases. Lastly, the most important question not answered is of which particular court has the jurisdiction to see and adjudicate the case at hand.

Local jurisdiction refers to the area where the case is to be tried. If jurisdiction over the offence is that of the high court, the question is in which locality high court that particular case is to be tried. Art 6 of criminal procedure²⁵, provides that the court shall exercise local jurisdiction in accordance with the provisions of Art 99-107. The general principle, embodied in the Art 99 is that every offence shall be tried by the court within the local limits of whose jurisdiction the offence is committed.

Where all the operative events involving the offence occurred within the local jurisdiction of the court where it is to be tried, there is no problem. The problem arises when the operative facts occurred within the local limits of the jurisdiction of more than one court and there is overlap of jurisdiction. The first situation is covered by Art 100-103 cpc.

Under Art 100, it is provided that where that act which caused harm occurred in one jurisdiction and the harm resulting from the act occurred in another, the offence may be tried before either the court within the limits of whose jurisdiction the act took place or the court within the limits of whose jurisdiction the consequence resulting from the act materialize took place.

Art 101 provides that where an act is an offence by reason of its relation to another offence, a charge of the first mentioned offence may be tried by a court within the local limits of whose jurisdiction either act was done.

Art 102 deals with the situation where, in the broad sense, the place of offence is uncertain.

Where it is factually uncertain in which of several local areas an offence was committed, Art 102 (a) provides that it may be tried before the court in any of the local areas.

The same is true where the offence is committed partly in one local area and partly in another, Art 102(b), where an offence continues to be committed in more than one local area, Article

²⁵Criminal Procedure Code of Ethiopia, Proclamation No.185 OF 1961 Art. 6

102(c) and where an offence consists of different acts done in different local means Art 102(d). Where an offence is committed while the offender is in the course of performing a journey or voyage, Art 103 provides that the offender may be tried by any court through or into the limits of whose jurisdiction either the offender, the victim or the thing against which the offence was committed passed during the course of the journey. It is not necessary that the offence was committed in the jurisdiction of the court so long as the offender, the victim or the thing passed through the jurisdiction.

As far as the issue of unclear of jurisdiction is concerned the laws currently in force are mute. This is the theme of this research and the writer address it in detail in chapter three with specific emphasis relating to the criminal jurisdiction of ONRS courts in AACA. The above beings about judicial jurisdiction in general let's have a glimpse of the underlined concept in federal form of government.

2.2. The criminal jurisdiction of State courts with in federal system of government

In the foregoing discussion, we have seen that Proclamation No. 25/96 sets the rules that apportioned jurisdiction between federal courts and state courts. It enumerates the cases where the federal courts would assume jurisdiction. From this it naturally results that; areas that are not specifically mentioned to fall under federal court jurisdiction are fall under jurisdiction of state courts. Thus, it may be argued that there is no need of enumerating the jurisdiction of state courts. The way FDRE Constitution did the residual jurisdiction is left to regional courts. Under this section the writer tries to see the criminal jurisdiction of state courts in federal system of government.

The literature reveals that there are two views with respect to court structure and judicial powers in federations. The first view states that, the state courts' decisions are subject to review by Federal Courts. Such trend is meant to protect the interest of federal government, and as a result, there is no need of establishing Lower Federal Courts since they are perceived as unnecessary and expensive²⁶. The trend in some federations such as Germany, Switzerland and India would substantiate this view. Art.92 of the German Basic Law states that the judicial power

²⁶ Sileshi Zeyohannes, (2009).*Constitutional Law II, Teaching Material*, Justice and Legal System Research Institute, Addis Ababa, p.196

shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the *Länder*²⁷. Thus, there are three types of courts in Germany: the Constitutional Court, the Federal Courts and courts of the *Länder*. All lower and intermediate courts of appeals are State Courts, whereas all Courts of final appeals are Federal Tribunals. All judicial power not given to Federal Courts is reserved to the lander.

The Indian Constitution organizes a single integrated court system in which only one Supreme Court at the federal level without any federal inferior courts, and the High Courts and other subordinate courts, courts below the High Court, at the state levels are established. The states in India are all subjected to the jurisdiction and powers of a single integrated judicial system²⁸.

The second view supports the dual set of courts in which like that of the legislative and executive organs, the federal government and the states have their own judiciary for the adjudication of cases arising within their respective jurisdictions²⁹.

The US Constitution in Art.III Section 1 stipulates that the judicial power of the United State shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The States have also their own courts which are responsible for the administration and adjudication of the state laws.

2.3. Judicial Jurisdiction under the FDRE Constitution

As mentioned above, the FDRE Constitution establishes an independent judiciary and it clearly spells out that judicial powers, both at Federal and State levels, are vested in the courts³⁰. The Constitution has directly established the Federal Supreme Court at the federal level, and the three tiers of state courts at the state level. But it makes the establishment of the Federal High and First-Instance Courts in the states contingent upon the requirements as provided in Art.78(2) of the Constitution. These requirements are the fact that the House of Peoples Representatives may, by two-thirds majority vote, establish nationwide, or in some parts of the country only, the

²⁷ Lander under basic law of German they are constitute unit of the federal government like that of our regional state.

²⁸ Supra note 25 page 197

²⁹ Id, page 196

³⁰ Supra note 1 Art. 78 and 79

Federal High Court and First-Instance Courts if it deems necessary. The same sub-Article goes on to state that unless decided in this manner, the jurisdictions of the Federal High Court and of the First-Instance Courts are delegated to the State Courts. From this constitutional provision, we can understand that the jurisdictions of the Federal Supreme Court are not delegable to the State Courts by any means. Furthermore, we can also state that until the establishment of the Federal High Court and First-Instance Courts in the states, their jurisdictions are constitutionally delegated to the State Courts.

With regard to the judicial jurisdiction, while the Federal Supreme Court shall have the highest and final judicial power over Federal matters, the State Supreme Courts shall have the highest and final judicial power over State matters³¹. Art.80 of the Constitution under its caption which reads “Concurrent Jurisdiction of Courts” stipulates in its sub-Article 2 that the State Supreme Courts shall also exercise the jurisdiction of the Federal High Court. Furthermore, the Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law. This holds true also for the State Supreme Court that it has power of cassation over any final court decision on State matters which contains a basic error of law. State High Courts shall, in addition to State jurisdiction, exercise the jurisdiction of the Federal first-Instance Courts. As far as the procedure for the appeal of the jurisdictions of the Federal High Court and of the First-Instance Courts which are exercised by the State Supreme Court and High Courts is concerned, the Constitution provides that decisions rendered by a State High Court exercising the jurisdiction of the Federal first-Instance Court are appealable to the State Supreme Court, whereas decisions rendered by a State Supreme Court on Federal matters are appealable to the Federal Supreme Court³². This stipulation of jurisdiction by the constitution is pivotal in ascertaining jurisdictional competencies of courts in Ethiopia.

2.4. The Criminal jurisdiction of ONRS courts

The criminal adjudication jurisdiction of all Courts of Oromia National Regional State, of any level, is governed by Proclamation No.141/2008, a Proclamation to Reestablish the Oromia

³¹ Id, Art.80(1 & 2)

³² Id, Art.80 (5&6)

Regional State Courts. In this regard I try to see the criminal adjudication power of ONRS court as provided under the proclamation.

The criminal jurisdiction of ONRS supreme court: Art. 26 of the Proclamation have provided two subject matter jurisdictions exercised by the State Supreme Court: the Federal matters and the State/Regional matters. With regard to the State matters, the State Supreme Court shall exercise an appellate jurisdiction over decision rendered by the State High Courts, and the decision becomes final (Art. 26(1) (a)). With regard to the Federal matters, the Oromia National Regional State Supreme Court shall exercise the first-instance jurisdiction of the Federal High Court by delegation (Art. 26(1) (b)). It shall also exercise a power of cassation over the final decisions of the State matters in cases of fundamental error of law (Art. 26 (1) (e)).

As discussed in the preceding discussions, it is enshrined in the Constitution that the delegation power of the Federal High Court and of the First-Instance Court is made to the State Courts. The State Courts include the three levels (Supreme, High and First-Instance Courts). The Constitution, on the other hand, provides that the State Supreme Courts and High Courts shall exercise the jurisdictions of the Federal High and First-Instance Courts respectively in concurrence. The Concurrent power belongs to the State Supreme and High Courts. But Proclamation No. 25/96 and its successive amendments have taken away the concurrent criminal jurisdiction from the State Supreme and High Courts and gave same to the Federal Courts only. Thus, according to the Constitution of Oromia National Regional State (Art. 64 (2) (b) (3) and Proclamation No.141/2008, the Proclamation to Reestablish the Oromia Regional State Courts, Arts. 26 (1) (b) and 27 (4), the Oromia Supreme Court and High Courts are left only with delegation power. Expressed otherwise, this power may be taken away from them when the Federal High and First-Instance Courts are established in the each Regional States and when, the State Courts are going to be left empty-handed as far as criminal adjudication jurisdiction is concerned unless they make use of the residual power over legislation of criminal matters which are not covered under the Federal Criminal Code.

On the other hand, the State First-Instance Court is also mandated to exercise the delegation power that is granted from the Federal High and First-Instance Courts. Over here, the question worth posing is how can the State Courts divide the criminal adjudication jurisdiction so delegated to them from the Federal High and First-Instance Courts among themselves? Against this question, Proclamation No. 141/2008 of the Oromia Regional State Courts Reestablishment

comes up with a vague benchmark that those crimes whose initial punishment is more than ten years fall under the first-instance jurisdiction of the State High Courts³³. The Proclamation has not taken into account how many crimes listed in the Federal Criminal Code are that whose initial punishment is ten years. Furthermore, it does not make any distinction as to what criminal jurisdictions the State Supreme and First-Instance Courts do have. It fails to differentiate between the criminal adjudication jurisdiction of the Supreme Court and High Courts because it simply states that crimes whose initial punishment is more than ten years in their initial jurisdiction belong to the State High Courts. Consequently, there is no clue which gives us a clear sense of division of criminal adjudication jurisdiction between and among the State Courts of any level in Oromia Regional State Courts. Once we have said that the State First-Instance Courts shall exercise the jurisdiction of the Federal High and first-instance Courts delegated to it as one of the State Courts, then whose jurisdiction, the Federal High Court, the Federal First-Instance Court or both, could it exercise? Both the FDRE Constitution and the State constitutions are silent on this issue.

The Criminal Jurisdiction of ONRS High court: As mentioned in the preceding discussion, the State High Courts shall exercise the jurisdiction of the Federal First-Instance Court in concurrence³⁴. In addition, as per Art.78 (2) of the Constitution, as one of the State Courts to whom the jurisdictions of the Federal High and First-Instance Courts are delegated, it shall exercise such a power by delegation. Art. 4(11) of Proclamation No.25/96 has snatched the concurrent criminal jurisdiction and it is given to the Federal Courts only. Thus, the jurisdiction of the State High Courts over the Federal matters has been reduced only to delegation as far as criminal adjudication jurisdiction is concerned. Consequently, offences falling under the jurisdiction of the Federal First-Instance Courts shall be exercised by the State High Courts by delegation. That is to say that they may be taken away from them when the Federal High and First-Instance Courts are established in each State upon the fulfillment of the required conditions.

The criminal Jurisdiction of ONRS First-Instance Courts

The FDRE Constitution, under broad interpretation thereof, empowers the State First-Instance Courts to exercise the delegated powers of the jurisdiction of the Federal High and First-Instance

³³ Art. 27(2) of Proclamation No. 141/2008, The Oromia Regional Courts Reestablishment Proclamation

³⁴ Supra note at 1, Art. 80 (4)

Courts³⁵. In light of this constitutional provision, the jurisdiction of the Federal High and First-Instance Courts are delegated to the State Courts in general.

As far as the criminal adjudication power of the Oromia Regional State First-Instance Courts are concerned, there is no express provision dealing with such a power in the Regional State Courts Reestablishment Proclamation No. 141/2008. Rather the inference thereof has been stipulated in relative to the criminal adjudication jurisdiction of the State High Courts. Accordingly, as per Art.27(2) of the Proclamation, crimes whose initial punishment is less than ten years falls under the jurisdiction of the State First-Instance Courts in an initial jurisdiction. This provision is, however, somewhat confusing in that there are very few crimes in the Federal Criminal Code whose initial punishment is purely ten years which causes difficulty to differentiate the criminal jurisdictions of the State High and First-Instance Courts. While the initial punishment of some crimes begins with less than ten years, its maximum punishment transcends ten years in which case there created a conflict of jurisdiction with the State High Courts. In fact, there are many crimes whose initial punishment is less than ten years under the Federal Criminal Code. This proclamation sets the rules of judicial jurisdiction in the region. So long as the criminal adjudicative power of ONRS court in AAC is concerned it is the part of the subsequent chapter.

³⁵ Id, Art. 78(2)

Chapter Three

The perplexities associated with criminal Jurisdictions of Oromia National Regional State Courts in Addis Ababa City Administration

Out of the nine regions of federation Addis Ababa city Administration, constitutionally, established as an independent city Administration and governed by independent administration. It is semi-autonomous authority accountable to the federal government³⁶. The residents of the City have guaranteed full measure of self-governance. Hence, being administered without a Charter for some time, the federal government has come up with a law regulating its governance. The residents would be represented in the House of Peoples' Representatives. (Art. 49(2, 3 and 4) of FDRE constitution).

Moreover, AACAA is the capital city of FDRE and ONRS, simultaneously. The FDRE Constitution has granted special interest to the ONRS in AAC. The special interest includes provision of social services, utilization of natural resources, and joint administrative matters (Art.49(5) of FDRE constitution).

The existence of judicial jurisdiction presupposes territorial margin. That is each state exercise judicial authority in its territory. It is obvious that ONRS courts shall have judicial jurisdiction in the region. Before discussing about the judicial jurisdiction in AACAA let's see the concept of constitutional special interest as provided under FDRE constitution.

3.1. Special Interest

Since Addis Ababa city is declared the capital city of the FDRE, all the federating states are interested in the city. In particular ONRS perceives a special interest distinct from other constituent states of the federation specifically provided in the FDRE constitution. Before discussing constitutional special interest let's see as a comparative experience the status of capital city in some federations. Capital city in federation may be federal district or city state or city in a state³⁷.

³⁶ Id, Art. 49(2)

³⁷ Teshome Yami, *The Role of Intergovernmental Relations Between Oromia National Regional State and Addis Ababa City Administration*, (LLM Thesis), Addis Ababa University, 2010, p-8

Federal districts are found out of the territory and jurisdiction of any states/province. It is under the exclusive authority of the federal government and this reduces the possible dispute of interest between the federal government and states. As a consequence, it is known for center domination and ignoring of local interests. In this regard, Mexico city (Mexico), Washington, DC (USA), Abuja (Nigeria), (Canberra) Australia and Delhi (India) are some cities fall under federal district³⁸.

City state, have double duty of a federal capital and constituent member of a federation simultaneously. They are constitutionally guaranteed to exercise both rights of a capital and state together; it is less influenced by federal governments. Berlin (Germany), Brussels (Belgium), Moscow(Russia) and Vienna(Australia) are city states³⁹.

City in a state, the capital city falls under the competence of a member state of a federation. This model highly restricts direct influence of the federal government. Bern,(Switzerland), Ottawa (Canada), Pretoria (South Africa) categorized under this status⁴⁰.

When one observes AA through the above criteria of federal capital cities, it seems a federal district as per Art. 49 (1 and 3) of FDRE Constitution. However, since there is no defined boundary limitation with ONRS it lacks this status. It seems a City in a state attributed to its geography entirely within the State of ONRS as per Art. 49(5). This envisages as the city is an integral part of ONRS. Addis Ababa city, being the capital city of the region and as such being an integral part of the region seems to suggest that ONRS courts can exercise judicial jurisdiction in the city. Emanating from these overlapping truths, the city is expected to entertain and harmonize conflicts of interest of the federal government, AACA and ONRS simultaneously.

3.1.1. Basis of Special Interest

The notion of special interest goes beyond ordinary interest, on the capital the latter being the interest of all nine National Regional States including ONRS over the capital city, the City being the capital of all Nations, Nationalities and Peoples of Ethiopia, Art. 49(1) of FDRE

³⁸ Id, page 9

³⁹ Wondwossen Wakene Self governing Addis Ababa, the federal government & Oromia: bottomlines and limits in self governance(LLM thesis) Addis Ababa university, 2010 page 40

⁴⁰ Id, page 41

Constitution. This is so because when the Constitution refers to Ethiopia it includes by default the nine regional states. Regional states include Nations Nationalities and Peoples of Ethiopia.

The recognition of special interest may have social, economic and historical, geographical and legal grounds. In 2001, the governing party, Ethiopia People's Revolutionary Democratic Front(EPRDF) passed resolution to move the capital of ONRS from AA to Adama⁴¹. The resolution was unanimously opposed by the Oromo people from all corners of all walks of life. The opposition parties speculated that the move was intended as a way to split them among ethnic lines by inciting the non-Oromo residents of AA to oppose the return of the ONRS to the Ethiopian capital city. In any event, non-Oromo groups did not oppose the return of ONRS office to AACA.

In 2005, the party officially announced plan to move the Region's capital back to AA, Amendment proc. No.94/2005, Art. 2(3) provides '*Finfine*' as the capital city of the Region.

Geographically, AAC is found *within* the ONRS and serves as a capital city of both the Federal and the Regional governments, Arts.49(1 and 2), and 49(5) respectively of FDRE Constitution where the latter provision is broadly taken. The interest of joint administrative matters is accompanied by the 2001 Revised Constitution of ONRS, Amendment proc. No. 94/2005, Art.2 (3) which provides the seat of Regional administration is *Finfine*.

3.1.2. Elements of constitutional Special interest

Under article 49(5) of FDRE Constitution, special interest includes provision of social services, utilization of natural resources, administrative matters and other similar matters arising from AA's location within ONRS. To be holistic let's see these element of special interest briefly.

Provision of social services: In order to realize administrative duties and rights the provision of social service is condition required. In this regard provision of Electricity, water, telecom, Lands for the construction of governmental offices, and bureaus, Lands for residential houses for governmental employees, Construction of schools teaching in *Afan Oromo*. Halls for meeting, Lands for construction of theatre and cultural centers, and others⁴².

⁴¹ Id, page 96

⁴² Draft Proclamation on Constitutional Special Interest of ONRS in AACA, proc.____/2009, Art.5

The provision of social services to be assumed by ONRS in AAC is not limited above further in sectors of peace keeping, the interactions in health, road and transportation sectors and exchange of information when the need arises⁴³. The provision of social service should have extended up to creation of access for Oromo people living in and around AAC to social service like hospital, education and other services in their own language.

Utilization of Natural Resources: Natural resources are any material from nature having potential economic value or providing for the sustenance of life⁴⁴. It may include timber, mineral, oil, water, wild life, and other environmental gifts⁴⁵. This constitutional provision is meant to recognize the mutual use and preservation of these available resources in the city. Currently, there are a numbers of firms engaged in industry, manufacturing and other similar activities in AA. These institutions have major roles in producing industrial waste, so as in polluting rives and environment. Pollution, scarcity, and misuse of water inflict a serious danger to human health. This urges the cooperative effort in planning and effecting resource utilization and preservation policies together.

Joint Administrative Matters: AAC residents have given right to self-governance⁴⁶, and AAC is capital city of FDRE⁴⁷, ‘*Finfine*’ is also the capital city of ONRS⁴⁸. Under Art. 33(2) of the first Charter of AAC, proc. No. 87/1997, Oromia has been given the right to make the City its capital city. The charter extend what is provided under the constitution particularly the central location of AAC in ONRS and devise way for ONRS to implement its constitutional right of special interest. This creates the upshot of joint administration. In effect, this matter encompasses other element of special interest.

The phase ‘Other similar matter’ indicates the catalogues of special interest are not intended to be exhaustive. From the outset the phrase ‘*other similar matters*’ is not clear. It has no objective

⁴³ Supra note 36 page 77

⁴⁴ Supra note 9 page 1056

⁴⁵ Ibid

⁴⁶ Supra note 1 Art. 49(2)

⁴⁷ Id, Art. 49 (1).

⁴⁸ Supra note 3 Art. 2(3)

constitute for everyone who reads the Constitution. And it has got different interpretations. But it seems to include participation in representation of AACA in Federal Houses, in structural make up of AACA Council, sharing of revenues and taxes from the City and etc.

Article, 49(2 and 5) of FDRE Constitution, is intended to benefit the ONRS from special interest. The Constitution rather tries to benefit the Region from the provisions of social services, utilizations of natural resources, matters of joint administration and other similar matters from the City. However, the Constitution having recognized the special interest by general terms; it further goes providing the coming of law detailing the particular. Despite the commitment of the same there is no law enacted hitherto.

The above mentioned back ground may show as the existence of immense nexus between ONRS and AACA. For precision and relevancy reason the writer found unnecessary to go further to the details.

However, as to whether ONRS court can exercise judicial jurisdiction in AACA is a point of concern and yet complicated. If the expected particulars defining the nature and scope of special interest as provided under Art.49(5) of the FDRE constitution is applied as provided and where AAC location within ONRS is constitutional recognized and ONRS declaration of AAC as its capital city remain unopposed to for being unconstitutional, the federal government is *de facto* monopoly of power in the city and inaction of the others which also seems apply to criminal jurisdiction. In the next topic the writer tries to address the issues of criminal jurisdiction in the city.

3.2. The Criminal Jurisdictions of ONRS courts in AACA

As mentioned in chapter two of this paper, the crimes committed in AACA are the jurisdiction of Federal courts. According to Proclamation 25/96 and the decision of House of Federation the criminal jurisdiction of Federal High court relates to offences for which officials of the federal government are held liable in connection with their official responsibility and offences for which foreign ambassadors are liable. Further, the proclamation provides that the Federal High Court shall have jurisdiction over: Offences against the Federal state i.e. offences against the constitutional order, or the internal security of the state, offences against foreign states, offences against the law of nations, offences against the safety of aviation, offences regarding illicit

trafficking in dangerous drugs, and other criminal cases arising in Addis Ababa and Dire Dawa and falling under the jurisdiction of the high court pursuant to other federal laws in force. From this one can easily understand that the criminal jurisdiction of courts in AACAA is under Federal courts. Practically in the course of conducting this research the writer also observes most of the crimes committed in AACAA are investigated by federal police and federal public prosecutor and brought before federal courts. This emanates from the proclamation. And it is a normal course of event that federal courts have been entertaining offences committed in Addis Ababa city.

However, following the establishment of the high court of Oromia special zone Around Finfine cases come to emerge where this zonal court start to entertain some cases of crimes committed in AACAA. In recent times, the National Regional State of Oromia seems has embarked up on a venture of regulating its interest in Addis Ababa. One such move is the establishment of the “Special Zone of Oromia Surrounding Finfine”⁴⁹. The purposes of the law, as put in the preamble of the ‘establishing Regulation’, is creating a body that leads, coordinates and follows up in one direction, of the relationship between Addis Ababa and cities and rural areas of Oromia in social, economic and political affairs⁵⁰. Some of the powers and functions of the Special Zone comprise coordinating the development efforts of the towns surrounding Addis Ababa, determines the modalities of using land and administers land in cities surrounding Addis Ababa, establishes a center of market for the cities it administers, studies the modalities of working together with Addis Ababa and submits its findings to the concerned organ and works to determine the boundary between Addis Ababa and Oromia⁵¹. However, since Finfinnee is declared as a capital city of ONRS and constitutionally regarded as part of ONRS, the needs to establish this zone area of Oromia around AA contradict with each other.

Anyway, like other Zones in the region, the Special Zone does have executive and judicial powers. Special Zone of Oromia Around Finfine high court is established following the establishment of this zonal administration. However, this high court entertain criminal cases

⁴⁹ Regulation No.115/2000, Regulation to Establish the Special Zone of Oromia Surrounding Finfine, Magalata Oromia.

⁵⁰ Regulation No.115/2000, Preamble.

⁵¹ Id, Art. 9.

differently, while it decide to have jurisdictions in some cases, in others cases it dismiss the allegation on ground of jurisdiction. Pertinent cases will be analyzed at the end of the thesis.

3.2.1. Plausible Grounds substantiating the Criminal jurisdiction of ONRS courts in AACA

As mentioned above, under FDRE constitution federal courts have judicial jurisdiction over federal matter and state courts have judicial jurisdiction over state matters. Criminal law is the typical sort of laws dealing with federal matters and criminal law is enacted by federal government. That means state courts including ONRS courts do not have original jurisdictions. However, as seen in chapter two, there is a situation in which state courts entertain federal matters by delegation and concurrently with the federal courts.

The questions that will be raised at this juncture are; does proclamation 25/96 exclude ONRS courts not to entertain cases of crimes committed in AACA? What about the interest of ONRS in AACA? Since judicial jurisdiction follows territorial margin how it is seen in line with capital city of ONRS? These questions need certain sort of answers. Having these in mind let's discuss some reasons justifying the criminal jurisdiction of ONRS courts in AACA.

3.2.1.1. FDRE Constitution

Owing to central geographic location AA has in the ONRS, it is provided as part of Oromo people's constitutional right to have and get respected its special interest in the city. In effect, Addis Ababa is part of Oromia. This geographical nexus in turn yielded a historical perspective on the relation of Addis Ababa and Oromia. The actual geographical and historical connection between Addis Ababa and Oromia necessitates the regulation of social, economic and administrative issues in a concerted fashion, which include jurisdiction of courts. Oromia National Regional State and AAC have no defined territory and the later regarded as part of the Region. And so long as AAC is constitutionally regarded as part of ONRS this indicates that the city is in fact under the administrative and governance of the region. In chapter_two the writer has tried to show basis of local jurisdiction which of course has direct connection with territorial boundary. That is each state court exercises judicial jurisdiction in its respective territorial boundary. So that, ONRS courts can considers AAC as any part of the region and exercise the judicial criminal jurisdiction in the city.

In USA in capital city of Washington, District of Columbia local justice system is centered on the Superior Court of the District of Columbia, which hears all local civil and criminal cases, and the District of Columbia Court of Appeals, which serves as the highest local appeals court in Washington, D.C.⁵². Despite the fact that the local courts are technically the third branch of the D.C. government, they are funded and operated by the United States federal government⁵³. Though operated by the federal government, the District's local courts are separate from the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, which only hear cases regarding federal law⁵⁴. The fact the FDRE constitution recognizes impliedly AAC as part of ONRS and factually AAC is the seat of ONRS, this encompasses the judicial jurisdiction of ONRS courts in the city.

3.2.1.2. ONRS constitution

According to article 52 of FDRE constitution, the state has the power to establish state administration that advances self governance and to enact and execute state constitutions. Accordingly, ONRS has its own constitution. This constitution defines the power and functions of ONRS in its legislative, executive and judicial organ. Furthermore, it incorporates in its amendment the capital city of ONRS is Finfine, to mean Addis Ababa.

Proc. No. 94/2005, a proclamation issued to amend proc. No. 46/2001, Art.2(3), “/under Art. 6 provide “Adama shall be the capital city of ONRS” has been amended as “Finfine shall be the capital city of ONRS”. Besides, the FDRE Constitution guarantees special interest of Oromia National Regional State in the City as a whole in city and has not prohibited the region from establishing its capital city in Addis Ababa or not objected when it was declared.

The Regional State had previously moved its seat from Addis Ababa to Adama amid popular protests and a degree of violence. Then there was a popular discontent over this decision but the regional state gave deaf ears to the matter. However, immediately after the results of the 2005 election, the Regional State moved back to Addis Ababa without giving any explanation for such an oscillation.

⁵²From Wikipedia, the free encyclopedia District of Columbia home rule

⁵³ Ibid

⁵⁴ Ibid

Any ways AA has ultimately been declared the capital city of ONRS. Where, more of the government affairs are undertaken and regional administrative office are setup and coordinated. At the moment all ONRS regional bureaus are found in AAC.

Further the constitution of ONRS provides under Art.2(1 and 2); that, ONRS is the uninterrupted territory inhabited by the people of the Oromo nation and other peoples who made a choice to live in the Region, the borders of which are: to the North- the Afar and the Amhara Regions, to the South- the Region of the Southern Nationalities and Peoples and Kenya, to the East the Somali Region, and to the West-the Benishangul/Gumuz and Gambela peoples Regions and the Sudan.

This provision other than showing demarcation, clearly stipulates the territory of ONRS as it include any area found in the region including AAC. Critical, scrutiny into Art. 2(1) of the Revised Constitution of ONRS would reveal that the State of Harari and AAC seem to have been left out from being neighboring State and City respectively. One would wonder what the implication of such an omission is. And also at the beginning of this same article we would find the phrase which reads, “*The ONRS is the uninterrupted territory....*” constitutionally speaking, the phrase indicated means a land mass, the territory of which is connected from one point to the next without being interrupted by another land mass or territory. Assuming it is the meaning which is close to what the drafters had in mind in coming up with the phrase, it would give us the idea of denying the legal personality given to the two territories and rights of the people within, under the FDRE Constitution. Indeed, it may imply that AAC is part of the Region. It is a clear indication that ONRS government shall exercise self-governance with its legislative, executive and judicial power in this territory.

Now in the context of this study, the question is when crimes are committed in AA city how should they be entertained? Can the federal government and ONRS equally operates in the city as of their capital city

In an interview made with Ali Mohammed the judge of federal Supreme Court, cassation division he said “Under proclamation No. 25/96 the crimes committed in Addis Ababa and Dire Dawa has been categorized as federal crimes for which the federal court assume a criminal jurisdiction. It is clear the Oromia National Regional State court have no any criminal jurisdiction on any ordinary crimes that are committed in Addis Ababa. The only way Oromia National Regional State court will have jurisdiction on those crimes like corruption and other

crimes related with the official capacity of officials and workers of the regional state who have been destined in regional office located in Addis Ababa. Though the regional office is located in Addis Ababa, the crimes are considered to be committed throughout Oromia National regional state, against the interest of the region. Here there is no question that the regional court will have criminal jurisdiction over the matter and federal courts also will not assume the jurisdiction”⁵⁵.

As stated earlier proclamation No.25/96 provides the criminal jurisdiction of those crimes committed Addis Ababa and Dire Dawa are fall under the federal courts. However, under FDRE constitution it is provided that Addis Ababa city is located in ONRS. And there is no defined boundary between Addis Ababa and ONRS. Further there is Special constitutional interest for this region. Moreover, Addis Ababa city is the capital city of the region. This is not regarded as unconstitutional. Capital city necessarily entails governance, which include judicial power. The existence of these facts in one way or other shall justify the criminal jurisdiction of ONRS courts in Addis Ababa. The interviewee does not deny these facts. Ruther tried to make distinction between those ordinary crimes committed in Addis Ababa and in the office of ONRS. And limited the criminal jurisdiction of ONRS court to those crimes committed in the office ONRS. Since both areas are in Addis Ababa city, there is no legal ground of making distinction between these areas (areas in office and out of office) of ONRS.

Ato Mulisa Abdisa the public prosecutor of ONRS, whom the writer interviewed, on his part said “At the moment there is a frequency of commission of crime in AAC particularly, in ONRS office. Regarding minor crime like theft, bodily injury and assault, ONRS public prosecutor and ONRS police commission undertake the investigation and the case is filed before any of woreda court among special zone of Oromia Around Finfine. Grave crimes like homicide and corruption shall be investigated by Oromia police and Oromia public prosecutor and the case filed before high court of Oromia special zone Around Finfine”⁵⁶. The writer asked why they do not submit the case to the federal legal department? He said as long as the crime is committed in the office of ONRS and due to AAC is the seat of ONRS government it is proper to exercise judicial jurisdiction on crimes committed in AAC. And he substantiates its holding by raising art. 49 of FDRE constitution and the Constitution of ONRS.

⁵⁵ In an interview made with Ali Mohammed the judge of federal Supreme Court, cassation division October 25, 2015

⁵⁶ An interview made with Mulisa Abdisa,public prosecutor at ONRS public prosecutor office, june 15, 2015

The interviewee limits his assertion on crimes committed in office of ONRS to assume judicial jurisdiction in the city. However, he recognizes as AAC is the capital city of ONRS. From the perspective of ONRS, declaring it as the capital city would mean having jurisdiction. It cannot be otherwise. Declaring it a capital city and not having jurisdiction is self-defeating.

Ato Duguma Nada president of high court of Special Zone of Oromia Around Finfine in his part said “we are entertaining every case relating to crimes committed in AACA. This is because historically and in fact, Finfine is land of oromo. Moreover, the FDRE constitution upholds special interest which of course includes joint administration. Again at the moment Finfine is the capital ONRS. Capital city means set of the government office and incorporates the full authority to govern the city and exercise judicial power in the area. Unless there is a contrary decision by regional council, city shall be the capital of not only the federal government but also of the Oromia region. This prioritizes the ONRS courts to exercise judicial power. That is why we duly entertain all criminal cases arise in AACA”⁵⁷.

3.3. Case Analyses

In the previous sections, an attempt has been made to bring the criminal judicial jurisdiction in Ethiopia with particular emphasis to the criminal adjudication in AACA to the full attention of the readers of this study. Next, the appraisal of some cases that were decided by ONRS court particularly by High court special zone of Oromia Around Finfine will be made with a view to help further appreciate the issue. Following, Cases decided by the High court of Special Zone of Oromia deemed relevant to the issue at hand and made vivid the perplexities associated with the criminal jurisdiction of ONRS Courts in AAC will be scrutinized.

In *Public Prosecutor v. Zeleke Teshome*⁵⁸, the latter was charged with the crime of corruption under Article 408(2) of the FDRE Criminal Code. The facts in the case illustrates that the crime was committed on 05/08/2003 E.C in Addis Ababa city around Piassa and the accused was a woreda court judge in ONRS. The accused made an appointment with the victim. Accordingly they meet at Piassa. As per their arrangement to decide in the victim’s favor, the family case

⁵⁷ An interview made with Duguma Nada, president of high court of Oromia special zone around Finfine, june 20, 2015

⁵⁸ *Public Prosecutor v. Zeleke Teshome* , special Zone of Oromia Around Finfine High Court, Criminal Case File No.04828

pending in the bench where the accused preside and in which the victim was plaintiff, and in lieu of which the victim has to pay a bargained amount of money. The file shows the accused was red handed on the spot while receiving 2500 birr from the victim. The case was straight investigated by Oromia Anti-corruption public prosecutor and filed before High court of special zone of Oromia Around Finfine . The high court after considering the case convicted the accused and sentenced to 9 years imprisonment and 17,500 fine punishments.

In another case, public prosecutor v. Bifa Bededa and other 9 defendants⁵⁹, the defendants were charged under Arts.32(1) (A) (B),33, 34(1) and 407(2) of FDRE criminal code. The accused were the workers of ONRS water enterprise Bureau in which they undertake government purchase particularly of excavator and dozer machine purchase against/in violation to rules and regulation of government procurement. The merit of the charge shows the misuse power and office position for individual interest and causing the government to lose more the eight million. The crime was committed in ONRS water enterprise office. Investigation of the case was conducted by Oromia Anti- corruption commission and filed before special zone of Oromia Around finfine High court. The court considered the case and convicted the accused with sentences from seven years to 1 year and four month imprisonment.

Here, from the foregoing cases it is clear that the place of commission of the crime is AAC where federal courts exercise criminal judicial jurisdiction. Hence as mentioned above the location of AAC at the center of ONRS and being capital city of the region added to the fact that there is constitutional recognition of special interest verify the criminal jurisdiction of ONRS court in the city.

In the case public prosecutor v.Alemeyhu Nigatu and 3 other defendants⁶⁰, the defendants were charged in violation article 676(2) and 703 of FDRE criminal code. The defendants were the

⁵⁹ Public prosecutor v. Bifa Bededa and 9 other defendants ,special zone of Oromia Around Finfine high court Criminal file No. 11305

⁶⁰ Public prosecutor v.Alemeyhu Nigatu and 3 other defendents, special zone of Oromia Around Finfine high court Criminal file No. 12549

personnel of OPDO head office situated in AAC and they were suspected of undertaking bid to purchase plastic coverage of the magazine, in violation to the rules and regulations of government procurement. The case was investigated by Oromia Anti- corruption commission prosecutor and filed in special zone of Oromia around Finfine high court. In due course of the proceeding the court before going to the merit the case dismissed it on the ground that ONRS court has no jurisdiction in AAC. The court substantiated its decision by proclamation No.25/96 article 15(2) which articulate crimes committed in AAC and Dire Dawa city is the criminal judicial jurisdiction of federal high courts.

This decision of the court seen in line with the prior decisions, shows that there are two stands in special zone of Oromia Around Finfine high court regarding the criminal jurisdiction of ONRS courts in AAC. As can be understandable from the ongoing discussion the disparities in the later case arise from inaction of ONRS by way of exercising its governance power on its capital. Decision of the courts is expected to be persistent and consistent in similar cases. Otherwise, it may decrease public confidence on the justice system. As its name indicates this court is established to entertain cases arise in special zone of Oromia around Finfine, but due the only available court in the city to see crimes committed in the office of ONRS until the establishment of appropriate court it is reasonable to see similar cases.

Moreover, the courts are expected to refer the constitution and other legislations to differentiate as they have jurisdiction to entertain certain cases. There is a need for at least clarifying the role of the courts in applying constitutional principles. The later decision displays the complete ignorance of AAC as part of ONRS which is recognized by FDRE constitution and ONRS constitution.

Conclusion

Oromia National Regional State is among federating state which established constitutionally having its own legislative, executive and judicial organ independently. On the other hand, Addis Ababa city Administration, out of the nine regions of the federation, constitutionally, established as an independent city Administration and governed by independent administration. Moreover, AAC is the capital city of FDRE and ONRS. The FDRE Constitution has granted special interest to the Region in AAC. The special interest includes provision of social services, utilization of natural resources and joint administrative matters. The constitution provides the

detail of this constitutional special interest is determined by law. But until now no law is enacted on this interest by concerned organ. Concerning judicial power federal courts are exercising judicial power in the city. Under proclamation 25/96 it is provided that the federal courts have the criminal jurisdiction in AAC. But AAC has been declared the capital city of the ONRS. The FDRE constitution has recognize that AAC is found within ONRS, which implies that, it is an integral part of ONRS territory, with no territorial boundary. In view of this fact it is difficult to say ONRS court do not have criminal jurisdiction in the city. But in practice the federal government's monopoly over criminal jurisdiction in the city. This is in total disregard of the constitutional grounds of judicial jurisdiction and the interest of ONRS in the city. In both the federal and ONRS constitutions the criminal jurisdiction of both governments has been envisaged. This would rather call for some kind of joint administration of justice.

Recommendations

Taking the foregoing discussion the writer would like to recommend the following points.

1. Taking FDRE constitution as a guiding principle the provision of social service must be inclusive. In a manner that all residents of the city could access any service in their own language. Particularly, Oromo community lives in AAC need to be served by their own language "Afan Oromo" in government service including judiciary.
2. In as far as ONRS has declared AAC as its capital city; the issues of joint criminal judicial jurisdiction particularly on crimes committed in AAC should be recognized and regulated.
3. The particular laws should be made as much as possible as far as the adjudicative power of criminal cases, is concerned in AAC, especially the relationship between the Federal and ONRS Court is concerned.
4. Constitutional right of joint administration should have to considered as include share governance between ONRS and FDRE government as it include the establishment of ONRS court in the city.
5. As for as special interest and its scope is concerned since it is one ground for judicial jurisdiction ,the constitutional order for determination of particular by subsequent law has to be effected by concerned legislative body right away either on its own motion

or ratify the bills assumed to be initiated by joint meeting of ONRS and AACA. The powers and responsibilities of the two governments should be clearly delimited by the law concerning special interest and common concerns. And the Region should participate in federal policy making concerning AAC to safeguard its interest.

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