

The Legal Basis for Self-Rule in Ethiopian Cities

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Introduction

Cities¹ have distinctive qualities that entitle them to special attention. For in them dwell a relatively huge concentration of people and wealth. It is also widely accepted that infrastructures are relatively better developed in cities. As well, higher learning institutions and high level health services are concentrated in cities. Cities are home for innovation and creativity. Moreover, they are often centers for trade, commerce and industry. And by some estimates, they contribute an average of 60% of the GDP.² They are also seats for governments and international and local organizations. There is a general consensus that the growth and development of cities is a *sine qua non* for the growth and development of rural areas.³

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¹The term "City" is defined by various city laws in Ethiopia as comprising of the following essential elements:

a) The community must have a population of 2,000 or more; b) The majority of the population must engage in industrial, commercial or service activities; and c) The community must have the capacity to generate revenue enough to cover its operational costs. See for example: The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation, 2006, Proc. No. No.103. (Year & No. not provided), art. 8/2; The Urban Local Government Proclamation of the Oromia National Regional State, 2003, Proc. No.65, MEGELETA OROMIA, year 9, No.12 arts. 2, 4 & 6; The Tigray National Regional State City Organization, Definition of Powers and Responsibilities Proclamation, 2006, Proc. No. 107, Tigray Negarit Gazette, Year 14, No.14, arts. 2, 6 & 9.

² Ministry of Works and Urban Development, Basic Concepts and Approach In Urban Development Management- Module A (July, 2008, Unpublished, Ministry of Works and Urban Development) P. 8

³ Ministry of Federal Affairs, National Urban Development Policy (Approved by the Council of Ministers) (March, 2005, Unpublished, Ministry of Federal Affairs) P. 9.

Another factor that adds to the current importance of cities is the rate of urbanization that prevails in all parts of the world. This is well illustrated in a recent study conducted by the Economist.⁴

In 1800, only 3% of the world's population lived in cities, a figure that has risen to 47% by the end of the twentieth century. In 1950, there were 83 cities with populations exceeding one million; by 2007, this number had risen to 468. If the trend continues, the world's urban population will double every 38 years. The UN forecasts that today's urban population of 3.2 billion will rise to nearly 5 billion by 2030, when three out of five people will live in cities. This increase will be most dramatic on the least-urbanized continents, Asia and Africa. Surveys and projections indicate that all urban growth over the next 25 years will be in developing countries.

The current level and the projected level of urbanization for Ethiopia are lower than what is said above. Thus, the level of urbanization that was about 13% in 1994⁵ rose to only 16 % in 2007.⁶ The projection for 2030 is that the level would rise to 23%.⁷ However, although there is a noticeable gap between the projection for the world at large and that for Ethiopia, the indications are that the rate of urbanization in Ethiopia has already become high enough to generate particular interest in the governance of cities.

There is a general agreement that given the importance of the role cities play in the provision of services and in enhancing local development,

⁴ Wikipedia: Megacity-Global/Warming Art(<http://www.economist.com/surveys/displaystory.cfm?story-id=9070726,p.1>). Accessed June, 2011.

⁵ FDRE Office of Population and Housing Census Commission, Central Statistical Authority, 'The 1994 Population & Housing Census of Ethiopia Results at Country Level. Analytical Report' (June, 1999, Addis Ababa), Vol. II, Table 2.1, p.8.

⁶ FDRE Population Census Commission, Central Statistical Agency, 'The 2007 Population and Housing Census of Ethiopia, Results for Country Level, Statistical Report', (August, 2010, Addis Ababa), Table 2.1, P. 8.

⁷ FDRE Office of Population and Housing Census Commission, Central Statistical Authority, *supra* note 5, Table 7.3A, p 315.

governments responsible for city affairs must put in place a legal framework that enables cities to prepare themselves for the challenges that a high rate of urbanization might engender. But unfortunately, that does not happen all the time.

In Ethiopia, there is a consensus that city laws enacted during the reign of the Emperor and the military government did not enable cities improve the wellbeing of their residents. As we shall see shortly, cities of those days remained under the full control of the central governments. They exercised very limited powers. They had no constitutional protection. They were severely under-resourced. Genuine popular participation remained unknown. As a result, the large majority of cities remained under-developed. Services were poor. And the quality of life of the large majority of urban residents remained low.⁸

To enable cities address such problems effectively and efficiently, many propose that cities be accorded the legal power to govern themselves subject to law. For instance, the Nigerian Government which initiated local government reform scheme in 1976 made a strong argument for local government:⁹

The Federal Military Government believes that it is only through an Effective Local Government System that the human and material resources could be mobilized for local development. Such mobilization implies more intimate communication between the governed and the governor. But above all, these reforms are intended to entrust political responsibility to where it is most crucial and most beneficial, that is, to the people.

⁸ Ministry of Federal Affairs, *The National Urban Development Policy*, supra note 3, pp 2-5.

⁹ Federal Republic of Nigeria, 'Guidelines for Local Government Reform' (1976, Lagos) P. iii.

Indeed, self-rule is one of the main foundations of any democratic regime.¹⁰ And the principle of self-rule is as applicable to cities as to rural areas.¹¹ Indian and South African Constitutions¹² accord an express recognition and protection to the right of city residents to self-rule. It is important to add here that the European Charter of Local Self-government, as well, guarantees the right of all local authorities to self-government.¹³

It is against the above background that this article seeks to review the state of constitutions and city laws in Ethiopia in relation to the right of city residents to self-rule. The principal objective here of this article is to find out whether laws in Ethiopia including Federal and State Constitutions and City laws recognize and protect the right of city residents to self-rule and to propose ways of filling the gaps that may be identified.

To that end, the article raises the following specific questions: Does the Federal Constitution recognize and protect the right of city residents to self-rule? Should it have laid down the standards that Regional States shall follow in crafting city laws? Do State Constitutions provide adequate recognition and protection to the right? How has the National Urban Development Policy helped enhance this fundamental right? Without regard to the Constitutions, are state-enacted city laws good enough to serve as vehicles for self-rule?

The significance of this article lies in the intense interest and heated discussions that it seeks to generate on the subject of self-rule in cities. It is also hoped that by identifying gaps in both the Federal and State

¹⁰ Council of Europe, The European Charter of Local Self-government, (15.x.1985,Strasbourg) p.1.

¹¹ Id, p. 3

¹² The Constitution of India (Seventy-Fourth Amendment) Act, 1992; The Constitution of the Republic of South Africa, 1996 Chapter 7.

¹³ Council of Europe, supra note 10.

Constitutions, it would inspire law makers to reassess the need for the revision of pertinent laws. The article is also hoped to serve as a starting point for further research on the matter of self-rule in cities.

The Article is organized as follows: Section 1 summarizes the essential elements of self-rule. The self-rule-friendliness of city-related laws will be tested against the criteria laid down in this section. Section 2 briefly reviews the state of city laws prior to the promulgation of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution). Under this section, pertinent laws during the reign of Emperor Haile Selassie and the Dergue regime will be briefly reviewed. Section 3 examines the place of cities in the FDRE Constitution. The section asks whether the Constitution expressly or impliedly recognizes and protects the right of city dwellers to self-rule. Section 4 focuses on the contributions of the National Urban Development Policy towards enhancing the right of city residents to self-rule. Section 5 briefly reviews the place of cities in regional constitutions. The focus here is on examining the adequacy of the regional constitutional stipulations on the subject. Section 6 assesses the extent to which Federal and State city laws meet accepted standards for self-rule. Section 7 summarizes preceding discussions and offers concluding remarks.

1. Elements of Self-rule

There appears to be a broad agreement among renowned legal documents on the elements of “self-rule.”¹⁴ But for convenience, this article adopts the more specific definition given to the term by the Council of Europe in its

¹⁴ The Constitution of India (Seventy-Fourth Amendment) Act, 1992; the Constitution of the Republic of South Africa, 1996, cited above at note 12; Council of Europe, cited above at note 10.

Charter of Local Self-Government.¹⁵ Those elements have been summarized as follows:

First, the term denotes the right of city residents to regulate and manage a substantial share of public affairs. That right must be exercised by a popularly elected council.

Second, the power must be clearly defined by law. The Council shall have all power allowed or not disallowed by law. That power shall be implemented by units that are close to the people. In the Ethiopian context, this includes chiefly the executive unit of the city administration. Pertinent sections of the municipality and Kebeles are specific units that engage in the implementation of the powers of the Council.

Third, the city shall have the authority to determine its own internal administrative structure and the working conditions of its employees. Fourth, Administrative supervision by higher authorities shall be in accordance with the law and its aim shall be to ensure compliance with the law and the basic principles of the constitution.

Fifth, a city shall have its own source of revenue. That revenue shall in as much as possible be commensurate with its responsibilities. To that end, a city shall have the authority to levy and collect taxes and charges. Furthermore, it shall be entitled to receive grants in a manner that does not diminish its power to exercise policy discretion.

Sixth, a city shall have the right to join local and international city associations. Seventh, a city shall have the right to recourse to legal remedies

¹⁵ Council of Europe, *supra* note 10.

to secure free exercise of powers and respect for the principles enshrined in the constitution or other domestic laws.

The question now is: Do laws in Ethiopia including Federal and Regional Constitutions bestow such powers upon cities? It would now be in order to review all pertinent laws in light of the above question.

2. City Laws under the Preceding Two Governments

2.1. City Laws during the Reign of Emperor Haile Selassie

Ethiopian cities had, during the reign of Emperor Haile Selassie, been under the tight control of the central government. No law ever made any attempt to hide this state of relation between the central government and urban administrations. The first law ever to make any reference to the administration of cities, the Administrative Regulations, Decree No. 1 of 1942¹⁶, is a good indication of the extent to which the central government gripped the administration of urban centers. The Decree which had 11 articles consecrated one of them (Article 9) to the affairs of urban centers. Sub-article 71 of this article gave the Emperor full authority to appoint, on the recommendation of the Minister of Interior, a Kentiba (Mayor) each for the cities of Addis Ababa and Gondar and a Town Officer for every other town. In this connection, one needs to note that the power of the Kentiba was not limited to the ordinary executive functions of a Mayor. The Kentiba was also the chairperson of the municipal council and he received his instructions directly from either the Minister of Interior if he was the Kentiba of Addis Ababa or from the Governor General of the pertinent Province if he was the Kentiba of Gonder or the town officer of another town (Sub-articles 72 and

¹⁶ Administrative Regulations Decree, 1942, Decree No.1, Negarit Gazeta, Year 1, No.6.

73). Since the power of the Kentiba was derived from the Emperor himself and since the municipal council was essentially advisory, one could argue that in effect, the central government itself governed urban centers.

The composition of the municipal council is another illustration of the extent of power the central government exercised over the administration of urban centers. Thus sub-article 73 provides: "The Councilors shall be the representatives in the cities and towns of the various ministries and 7 Ethiopian residents elected yearly from amongst property owners and principal merchants and known by their works and good conduct." Obviously, representatives of the ministries represent the interests of the central government. Equally clear is the fact that the property owners and the principal merchants had more in common with the Central Government than with the ordinary city residents. For as it is a common knowledge, this section of the community made up the core of the central government. And the main priority of the government could not have been anything other than the protection of the wealthy and its property. There is no indication that the empowerment of city residents figured among their major priorities. This then was the time when urban residents as the rest of the people looked up to the Emperor and proxies for guidance and leadership. There was no provision whereby the people could take part in the governance of their cities. And above all, cities remained without constitutional recognition and protection.

In 1945, the Government issued a new proclamation: Municipalities Proclamation no. 74/1945¹⁷-A Proclamation to Provide for the Control of Municipalities and Townships. As the title of the proclamation itself

¹⁷ Municipalities proclamation-A Proclamation to Provide for the Control of Municipalities and Townships, 1945, Proc. No. 74, Negarit Gazeta, Year 4, No. 7.

indicates, the objective of the proclamation was to tighten Government control over municipalities and townships and not to relax the grip.

The Mayor/Town Officer who was directly accountable to the central government continued to be responsible for the “control, management and good government of municipalities” (Article 7). Similarly, in essence, the manner of representation in the Council remained unchanged. Thus, the Council continued to comprise of representatives of Government Ministries and 7 resident members elected by owners of immovable property in the town. One may note that previously, the 7 members had to be property owners themselves. This time, the property owners designated the Councilors. One wonders if this slight change in the manner of representation made any substantive difference in terms of enhancing public participation. For the landed gentry would still vote for another land lord thereby ensuring the protection of his wealth. The above two pieces of legislation clearly indicate that in those times the central government and not local governments managed even the day-to-day affairs of the urban centers.

Nine years later, the Imperial Government issued a relatively more progressive law: General Notice No. 172 of 1954-Charter of the City of Addis Ababa.¹⁸ This Charter confirmed the right of the city residents (see the preamble to the Charter) to self-administration. For the first time in the development of municipal law, this Charter affirmed the right of city residents to elect their representatives to the city council. Under the Charter, Neither candidates nor electors were required to own property. The Charter provided that the council shall comprise of a total of 28 members out of whom 20 would be elected by the residents and the other 8 would be officials

¹⁸ Charter of the City of Addis Ababa, 1954, General Notice No. 172, Negarit Gazeta, Year 13, No. 10.

from the different Government Administration. This was a significant change in the manner of representation of city residents. Furthermore, the inhabitants of the city were declared to be “a municipal body politic and corporate in perpetuity” (Article 1 of the Charter) and all legislative powers and the determination of policy was vested in the Council of the city administration (Article 15). Accordingly, in the Council rested the power to levy taxes, rates and fees, adopt budget, authorize the issuance of bonds, decide on the sale of own property and purchase of land for its various purposes.

One other power assigned to Addis Ababa then but which some Regions¹⁹ even at present have not bestowed upon their cities is the power to make local laws. Thus, Article 15/g of the Charter provided as follows: “The Council shall have power to adopt and amend local laws in relation to the property affairs or government of the city, the conduct of its inhabitants and the protection of their property, safety and health.”

It is also interesting to note that technically the city administration budget did not need to be approved by the imperial government. All the government had power to do was check the legality of the budget (see Article 59/a). Thus, legally, the imperial government did not have the power to tell the city administration which project to execute or which not to. However, it could check whether the activities planned to be carried out were consistent with the law, whether the sources of finance referred to in the budget were legal etc.

¹⁹ The Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities, 2006, art. 13, Proc. No. 107, Tigray Negarit Gazeta, year 14, No. 14. As Amended.

The General Notice also regulated the relationship between the Government and the City Administration. Thus, article 59 stipulated that the state may intervene in the operation of the city only when the city failed to discharge its responsibilities under the law. In the event the city got dissatisfied with the measures taken by the Minister of Interior, it had the right to appeal to the Emperor.

There is no question that the broad powers assigned to the city of Addis Ababa signified a big change in the development of self-rule in cities. However, the fact that the Emperor continued to retain some key powers severely compromised the latitude of freedom that seemed to have been opened to the city. Thus, the Charter empowered the Emperor to appoint the Kentiba who was not only the Chief Executive Officer of the city but also the president of the council. As well, the Emperor retained the power to appoint the Secretary General and the Director Generals of the various departments of the Municipal Authority. Furthermore, the Charter stipulated that even the Kentiba may not take disciplinary measures against those municipal officials appointed by the Emperor without his prior agreement.

The significance of the above may be stated as follows:

1. Although the Addis Ababa city residents were empowered to elect the majority of the council members, the council was likely to be dominated by government representatives who were likely to be better educated, better informed and more persuasive than the ordinary council members. Moreover, the ordinary council members might, for fear of being marked and derided by Government representatives, not freely express their views. In such circumstances, the likelihood was for the council to play the role of a rubber stamp.
2. The fact that the Emperor retained the power to appoint and relieve the Kentiba who was not only the chief executive but also the

president of the Council also meant an additional clout for the Emperor to control the city administration.

3. By assigning to the Emperor the power to appoint and discipline the Secretary General and the Director Generals of the various Departments, the law further deepened the centralization drive of the Government.

The right to self-administration that the Charter purported to guarantee was therefore subject to the broad powers vested in the Emperor.

2. 2 City Laws under the Military Government

The seventeen years of rule by the Military Government (1974-1991) did not bring any meaningful change to the scope of power of city administrations. No constitutional recognition and protection was granted to cities during that time. Nor was there enacted any comprehensive city legislation. Whatever was enacted that pertained to cities only politicized their administration.

The first relevant legislation was the Government Ownership of Urban Lands and Extra Houses Proclamation No. 47/1975.²⁰ This Proclamation nationalized all urban lands and all urban extra houses. The implementation of the proclamation necessitated the establishment and definition of the powers of the following institutions:

1. Cooperative Societies of Urban Dwellers which included:
 - Cooperative Societies of Urban Dwellers (Lower level, later named as “Kebele”)
 - Higher Cooperative Societies of Urban Dwellers
 - Central Cooperative Societies of Urban Dwellers
2. Judicial Tribunals
3. The Ministry of Public Works and Housing

²⁰ Government Ownership of Urban Lands and Extra Houses Proclamation, 1975, Proc. No 47, Negarit Gazeta, Year 34, No. 41.

The lower level of the Cooperative Society was established in each unit of urban area as determined by the Ministry. In those urban areas where there were more than one lower level of cooperative societies, a Higher Cooperative Society was formed; and where there were more than one Higher Cooperative Societies, a Central Cooperative Society was established.

The Cooperative Societies at all levels had their own juridical personality and were empowered to “set up, with the cooperation of the Government, educational, health, market, road and similar services necessary for the area”(Article 24/3).

The judicial tribunals, on the other hand, were empowered to resolve disputes involving urban land or houses; and the Minister was given the duty to ensure the establishment of the cooperative Societies and to consult them. However, the law failed to clearly define the structure of the societies, the role of the residents in the management of the urban centers and whether the Societies had the authority to administer the urban centers. Issues pertaining to the power of the urban centers to hire, manage and fire their employees, the power to prepare and approve their plans²¹ and the power over finances remained unaddressed. No less vague was the relationship between the Government and the cooperative societies.

Subsequent proclamations threw light on some of the unanswered questions. One such proclamation was the Urban Dwellers' Associations Consolidation and Municipalities Proclamation No. 104/1976.²² This Proclamation sought to strengthen the organizational set-up of the mass organizations created by

²¹ Urban Dwellers Associations Consolidation and Municipalities Proclamation, 1976, Proc. No. 104, *Negarit Gazeta*, Year 36, No. 5.

²² Urban Dwellers Associations and Urban Administration Proclamation, 1981, Proc. 206, *Negarit Gazeta*, Year 40, No. 15.

Proclamation No. 47/1974 through the provision of “proper revolutionary guidance to the mass organizations which the revolution has already created or will create by coordinating their activities and organization” (Paragraph 2 of the preamble). The principal aim of the Associations was stated to be the realization of the goal of the revolution and not of the principle of self-rule. It might be proper to note here that article 6/1 of the Proclamation stipulated that one of the primary tasks of the Associations was to “enable the broad masses of urban dwellers to administer their own affairs.” However, the law that article 40/2 envisaged to be enacted “...to enable self-administration to municipalities in non-chartered urban centers...” was never enacted. As a consequence, municipalities remained without acquiring the right to administer their local affairs.

The focus of the Military Government continued to be what Article 6/2 stipulated in the clearest of terms: To develop the ideology of the broad masses in line with the philosophy *Hebrettesebawinet* with a view to enabling them to struggle against feudalism, imperialism and bureaucratic capitalism and their influence.

Addis Ababa, the only chartered city, maintained the status it acquired during the time of the Emperor (article 40/2). It continued to be a chartered city. Like in previous times, the city had broad powers; but the power to designate the mayor who was not only the chief executive of the city but also the chair person of the City Congress remained with the central government. To have a complete picture of the situation, one needs to add to this the fact that the City Council members themselves had to be “...of the broad masses who accept the Ethiopian National Democratic Revolution Program”, another way of saying ‘strong supporters of the Government.’ If the Executive and the Legislative were under the full control of the government, as they were, then

the Council and the Mayor were simply rubber stamps as they were during the reign of the Emperor.

Some four and half year later, the Military Administrative Council issued the Urban Dwellers' Associations and Urban Administration Proclamation No. 206/1981²³, a proclamation that sought to further consolidate the "gains of the revolution." A reading of the following provisions testifies to that effect: Article 6/2 reads: "Every Urban Dwellers' Association formed at every level shall have the following purposes: ...2. to enable the broad masses of Urban Dwellers to be armed with Marxism-Leninism and contribute their due shares in the struggle to liquidate from the land of Ethiopia feudalism, imperialism and bureaucratic capitalism".

This was further strengthened by article 9/2 of the proclamation which defined the powers and duties of Urban Dwellers' Associations (UDAs) at all levels in line with the above.

To effectively realize the above, the Proclamation stipulated that only those who were the allies of the broad masses and had accepted the National Democratic Revolution Program of Ethiopia were eligible to be elected as members of the UDA Organs (Article 8 /1/b). Article 19/1 was a further illustration of the extent to which the Government sought to politicize the operation of urban centers. That provision which dealt with one of the leading organs of the UDAs i.e., the Revolution Defense Committee, stipulated the following to be one of the primary functions of the Committee:

²³ Urban Dwellers Associations and Urban Administration Proclamation, 1981, Proc. 206, Negarit Gazeta, Year 40, No.15.

Follow up and notify the executive committee of any conspiracies plotted against the revolution, unity and independence of Ethiopia; where he finds a person in *flagrante delicto* in connection with such offence or where he has satisfactory reason to believe that an offender of such an offence is likely to disappear or to tamper with such evidence or is likely to commit further offence, arrest such offender and hand him over to the nearest police station and forthwith notify the executive committee of same.

This was a clear indication that the proclamation placed emphasis not so much on enabling municipalities to exercise self-rule and to ensure the provision of services to the residents as to strengthen the revolution, something that was neither sufficiently clear nor tangible. The importance given to the idea of enhancing the revolution was so big that the municipal functions given to the UDAs by article 39 of the Proclamation remained totally engulfed in the overarching purpose of strengthening “the gains of the revolution.” It is also important to add here that as both the chartered and the un-chartered cities were supervised and directed by the government (articles 70 and 71), self-rule, in its true sense, could not have been realized.

It was against this background that the Social changes of 1991 took place. The year 1991 marked the start of a transitional period of four years. In July of this year, the Peaceful and Democratic Transitional Conference of Ethiopia issued the Transitional Period Charter of Ethiopia.²⁴ That Charter laid down the rules and principles that governed the Transitional Period. One of those principles which was stated under article 2 of the Charter affirmed the right of Nations, Nationalities and Peoples to self-determination. This included the right to administer their own affairs. However, there is no language in the Charter that suggests that such right has also been guaranteed

²⁴ The Transitional Period Charter of Ethiopia Proclamation, 1991, Proc. No. 1, Negarit Gazeta, Year 50, No. 1.

to urban centers. The question whether the terms “Nations, Nationalities and Peoples” include cities will be discussed under the following section.

It would now be in order to examine current laws dealing with the right of cities to self-rule. A review of the state of such laws in the FDRE must start with a brief review of the relevant sections of the Constitution of the country.

3. The FDRE Constitution²⁵

The FDRE Constitution introduced a swift change to the long standing center-city relationship. For as of the coming into effect of the Constitution (August 21, 1995), the ultimate authority over city affairs which includes the authority to make city laws shifted from the center to State Governments. The authority to make city laws no longer falls under the jurisdiction of the central government but under that of the regional governments. (Note that article 51 of the FDRE Constitution which lists the powers and functions of the Federal Government does not include city affairs therein; and in accordance with article 52/1 of the FDRE Constitution any power that has not been expressly given to the Federal Government is reserved to the States). This is without prejudice to the authority of the Federal Government to issue standards and laws that have country-wide significance (article 51). In view of this, it appears that the Federal Constitution has not opted to incorporate any express provision on the cities of Ethiopia. It does not extend express recognition and protection to the right of the residents of cities to self-government. Nor does it lay down principles and standards that State constitutions and city laws should observe in order to be valid.

²⁵ Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995, Proc. No. 1, Federal Negarit Gazeta, Year 1, No. 1.

It would now be proper to ask if the FDRE Constitution, by implication, provides recognition and protection to city residents. This question is prompted by the reading of the following three constitutional articles: Article 88/1 which defines the national political objective, Article 52/1/a which stipulates the primary function of the Regional State; i.e. “to establish a state administration that best advances self-government ...” and article 39 which, among other things, defines the term “people”. Sub-article 1 of article 88 which stipulates the national political objectives provides as follows: “Guided by democratic principles, Government shall promote and support the people’s self-rule at all levels.”

A simple reading of the above seems to suggest that city residents being “people” in the conventional sense of the term, the Government’s duty to promote and support self-rule extends to city residents as well. See, for instance, the definition that the Random House Dictionary of the English Language (College Edition, 1968) gives to the term “people”: “The persons of any particular group or area”. But the FDRE Constitution has opted to give its own definition to the term. And what makes this particular definition interesting is that the term is defined along with “Nations and Nationalities”. This means that the elements of the definition that constitute “Nations and Nationalities” would be equally required for the definition of the term “people”. A brief look at article 39/5 of the FDRE Constitution makes this clear:

A Nation, Nationality or People” for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up and who inhabit an identifiable, predominantly contiguous territory.

Note that this definition is not for the purpose of this article alone; but for the whole Constitution. What this means is that the definition applies equally to the term “people” in article 88/1. And the question that arises is whether the term as defined in article 39/5 includes also the community of city residents.

This makes it incumbent upon one to review the essential elements of the definition and the implications of being covered by the definition.

- **People must share a large measure of common culture or similar customs.** It is certain that city dwellers have many things in common. They work together, share streets, shops, markets, cinema and theatre halls, stadiums, cafes etc. But people of different nationalities keep their own cultures and customs. They wear their own traditional clothes, dance their own dances, speak their own languages and at least on holidays they eat their own way. This diversity makes it difficult for one to understand city residents as “people”.
- **People must have mutual intelligibility of language.** If one takes Addis Ababa as an example. Amharic is the working language of the city government; however, peoples of different nationalities use languages of their nationalities to communicate among themselves. The diversity of the language in the city makes it difficult to understand Addis Ababa as a “people” in the context of Article 39/5.
- **People must believe in a common or related identity.** By its nature which emerges from the diversity of its inhabitants, a city cannot have one identity. Its residents therefore, tend to identify themselves with their ethnic groupings. This hampers one from identifying a city as a “people”.
- **People must have a common psychological make-up.** City residents who do not share a common identity can not be understood to entertain a common psychological make-up.

- **People must inhabit a contiguous territory.** This is the one criterion that city residents meet; but the criteria listed above are cumulative.

It is therefore not possible to argue that city residents are “people” in the context of article 39/5. This, in turn, means that they are not people under Article 88/1. The way the term “people” is used in other parts of the FDRE Constitution also suggests that the term was not intended to include city residents. Consider Article 47/ 1/9 that defines the Hararis as a “people”. For ethno-linguistic purposes, Hararis are considered to be one people. The people share same history, same language, same religion, same identity and live knotted in a very small space. In a similar fashion, sub-article 8 of the same article describes Gambella as “the state of the Gambella Peoples”. The plural form must have been used here to signify the diversity of the ethnic groupings that inhabit the region. The five ethnic groups that live in the region namely, Anywaa, Nuer, Majangir, Opo and Komo make up only a total population of 228,000.²⁶ Nations like Amhara, Tigray and Oromo have much larger populations. This seems to suggest that while the smallness of the population size may distinguish “people” from “Nations and Nationalities”, the strength of the tie among the ethno-linguistic group (people) is such that its definition cannot include city residents.

It is also here argued that the right to “self-administration including the right to secession” that article 39/1 bestows upon Nations, Nationalities and Peoples could not have been intended to apply to cities as well. It would be absurd to think that the legislature intended to authorize the hundreds of cities in the country to enjoy the right to secession.

²⁶ Dereje Feyissa, ‘The Experience of Gambella Regional State’ in David Turton (Ed), *Ethnic Federalism, The Ethiopian Experience in Comparative Perspective* (A.A.U Press, 2006) p. 209.

The above makes it clear that the term “people” under article 88/1 could not have been intended to include city residents. The FDRE Constitution does not therefore guarantee the right of city residents to self-rule. The review of the above two provisions indicates the close relationship between the term “people” and “self-rule”. But there is article 52/2/a that requires States to establish administration “...that best advances self-government...” This stipulation does not expressly relate self-government to people. One question that becomes inevitable is therefore: Whose right to self-rule? One of the basic rules of interpretation of laws requires that their provisions be interpreted through one another so that each provision is given the meaning that the whole requires. This means that article 52/2/a would get its proper meaning only if it is read along with, among others, articles 88/1 and 39. But we have seen already that the later provisions restrict the application of the right to self-rule to “people” and that the term “people” does not include the community of city residents. It would therefore be logical to argue that the “self-government” that article 52/2/a refers to too applies to “people” and not to city residents.

Some might entertain the view that the language of article 50/4 of the FDRE Constitution implies the recognition to the right of city residents to self-rule. This writer differs. A brief look at the provision would make the point of difference clearer:

State government shall be established at state and other administrative levels that they find necessary. Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units.

This Constitutional provision, no doubt, extends express recognition to the State and the “administrative levels” under it. But the question is: are cities one of the state administrative levels that article 50/4 envisages? It is here argued that they are not. In the first place, the law maker itself does not recognize cities as one of the administrative levels of States. In the brief explanatory note that the House of People’s Representatives endorsed regarding Article 50/4, it is stated as follows:²⁷

The provision stipulates three fundamental principles:

1. Regional States shall be established at State and Woreda levels.
2. Where found necessary, they (States) may establish a third administrative level(e.g.-Zone) between the State level and the Woreda level. And,
3. The Woreda people shall participate fully and democratically in the administration of the Woreda.

(The Amharic text has been translated into English by this author.)

Secondly, Regional State Constitutions do not recognize cities as one of the administrative levels of the regional administrations. See for instance, art. 45 of the Amhara Constitution, article 45 of the Oromia Revised Constitution and article 45 of the Revised Constitution of the Southern Nations, Nationalities and Peoples Regional State (SNNPRS). They recognize Zones, Woredas and kebeles as State administrative levels; but not cities.

²⁷ አንቀጽ 50 (4) ላይ የተሰጠ ማብራሪያ

“ድንጋጌው ሦስት መሠረታዊ መርሆችን ይደነግጋል”:-

1. ክልሎች በክልል መስተዳድርና በወረዳ መዋቅር እንዳለባቸው
2. ክልሎች የሚያስፈልጋቸው ከሆነ በክልል መስተዳድርና በወረዳ መሃከል ሦስተኛ የሥልጣን እርከን (ለምሳሌ ዞን) ሊያዋቅሩ እንደሚችሉ እና
3. የወረዳ ሕዝብ በወረዳው አስተዳደር ውስጥ የተሟላ ዲሞክራሲያዊ ተሳትፎ እንዲያደርግ

ከድንጋጌው ለማየት እንደሚቻለው ከፍተኛ ትኩረት የተሰጠው ሕዝቡ በገቅተኛ የአስተዳደር እርከኖች ለሚኖረው ቀጥተኛ ተሳትፎ ነው። የዲሞክራሲ መሠረቱ ይኸው በመሆኑ የሕዝቡ ተሳትፎ በገቅተኛው የሰልጣን እርከን ውስጥ ከሆነ የተሟላ ዲሞክራሲያዊ ሥርዓት ሊሰፍን አይችልም።”

የኢ.ፌ.ዲ.ሪ የሕዝብ ተወካዮች ምክርቤት:- በኢ.ፌ.ዲ.ሪ የሕዝብ ተወካዮች ምክርቤት የዐደቀው ሕገ-መንግስት ረቂቅ አጭር ማብራሪያ (አዲስ አበባ፣ ጥቅምት 18/1987 ያልታተመ በፓርላማ ቤተመጻሕፍት የሚገኝ) ገጽ 102

Such being the case, it is difficult to argue that article 50/4 recognizes the right of cities to self-rule. The above leads one to conclude that the Federal Constitution does not recognize either expressly or impliedly the right of city residents to self-rule.

The city of Addis Ababa is the only exception. Addis Ababa being the capital city of Ethiopia, the seat of the Federal Government and home for a host of international organizations finds its legal basis in the FDRE Constitution (see article 49). Thus, article 49/2 stipulates that the residents of Addis Ababa shall have a full measure of self-government. To realize this constitutional provision, the Federal Government enacted the Addis Ababa City Government Revised Charter Proclamation No.361/2003.²⁸

Dire Dawa, the other city that has been made directly accountable to the Federal Government since 1993, as well, received its Charter²⁹ from the Federal Government. This status of Dire Dawa city is likely to last only until such time the Oromia and Somalia Regional States resolve the issues of claims over the city.

It is not uncommon for Federal constitutions not to incorporate express provisions recognizing the right of municipalities to self-government. The Constitution of the United States of America is a good example. But American cities have for long been enjoying the right to self-rule even in the absence of a clear constitutional provision recognizing the right. In countries where they have a rich tradition of local self-government, the threat of interference from Federal and State officials in the operation of local

²⁸ The Addis Ababa City Government Revised Charter Proclamation, 2003, Proc. No. 361, Federal Negarit Gazeta, Year 9, No. 86.

²⁹ The Dire Dawa Administration Charter Proclamation, 2004, Proc. No. 416, Federal Negarit Gazeta, Year 10, No. 60.

government units can only be rare if ever. In countries where the right to self-rule has never been exercised and the tradition had for long been for government officials to administer urban centers as they pleased, the incorporation in the constitution of an express provision recognizing and protecting municipal self-government would signify a break from the unacceptable tradition of wrong practices. It is in view of this that one asks whether the FDRE Constitution should not have incorporated an express provision that guarantees and protects the right of city residents to manage their local affairs. It is submitted that even if the power to enact detailed city laws has been left to Regional States alone, there is no ground to deny the Federal Constitution the authority to extend broad recognition to the right of cities to self- rule.

It is also further argued that the Federal Constitution alone may lay down the standards and principles that Regional States shall observe in crafting their Constitutions and city laws. It is only such stipulations that could provide cities with effective shield against possible encroachments by Federal and Regional authorities.

To state as some do that article 50/4 lays down such principles and standards is to read too much into the provision. First of all, as noted above, this provision does not apply to cities. Secondly, it is difficult to read the provision as laying down principles and standards. A statement of principles and standards would have sought answers to such questions as: what constitutes “adequate power”? How is that power exercised? By whom? etc. There is no strong language that suggests that the provision was intended to lay down detailed principles and standards that guide the drafting of city laws. What one can rightly call a statement of principles and standards is best exemplified in the Constitutions of South Africa and India.

The 1996 Constitution of the Republic of South Africa and the Indian Constitution as amended in 1992, justify the above line of thinking. The South African Constitution devotes one whole chapter (Chapter 7) comprising of 14 articles to municipal affairs. The constitution incorporates express provisions which not only expressly recognize the right of residents of municipalities to manage their local affairs (article 151(2) & (3)) but also make it unconstitutional for both the Federal and Provincial Governments to compromise or impede the right of municipalities to exercise their powers and carry out their functions (Article 151(4)). The national constitution incorporates the above-cited provisions with the full realization that provinces may promulgate constitutions and enact laws that detail the right of municipalities to self-government. So when the drafters of the South African Constitution decided to incorporate Chapter 7 into their National Constitution, they meant to lay down the principles and standards regarding municipal self-government that any national or provincial law including Provincial Constitutions must observe at the risk of being null and void.

India, a federal state, has similar stipulations in its national constitution. The Constitution (Seventy-Fourth Amendment) Act, 1992 which devotes 17 articles to matters pertaining to municipal self-government not only recognizes the right of municipal residents to manage their local affairs but also lays down the principles that State laws pertaining to municipal self-government should respect (Part IXA). There are other federal constitutions that extend, albeit briefly, express recognition to the right of city residents to manage their local affairs.³⁰

³⁰ See, for instance, the Basic Law for the Federal Republic of Germany, 1949, art. 28/2, Federal Law Gazette.

To sum up: considering the long tradition of unsatisfactory management of urban centers by central officials and the need to put an end to any form of encroachment by Federal and Regional officials in the exercise by city residents of their right to self government and the need further to state the standards and principles that Federal and Regional laws pertaining to municipalities should observe, it is here argued that the FDRE Constitution should incorporate clear provisions that recognize and protect the right of cities to self-government.

4. The National Urban Development Policy

As if to fill the gap in the FDRE Constitution, the Federal Government issued in March, 2005 the National Urban Development Policy (NUDP)³¹ which extends an express recognition to the right of city residents to manage their local affairs. The Policy also states the principles that Regional constitutions and city laws shall incorporate. Thus, Article 5.1 of the NUDP stipulates as follows:

The broad power and the corresponding responsibility of City administrations to manage their local affairs shall be expressly confirmed by law. Especially Regional Constitutions shall expressly recognize their right to self-rule; and laws shall be enacted to provide the details. Accordingly, cities shall have their own sources of revenues, the right to receive budgetary supplements from the Government; to have their own popularly-elected councils, to establish city courts; to have the right to issue subsidiary laws.

Although the preceding provision could have been drafted in such a manner as to bring forth the essence of self-rule in a more developed form, the very fact that the essential elements of self-rule have been named properly

³¹ Ministry of Federal Affairs, cited above at note 3.

provides a good guide for Regional States in crafting their laws. However, as we shall see shortly, Regional Constitutions fall very far short of expectations.

5. State Constitutions and the Right to Self-rule

Regional Constitutions incorporate an almost identical provision on municipalities; but that provision does not guarantee the right of city dwellers to self-rule. The following is a typical provision: “Towns in the State shall have their own administration. Particulars shall be determined by law.” (Article 45/3 of the Revised Constitution, 2001 of the Southern Nations, Nationalities and Peoples’ Regional State Proclamation No. 35/2001.)

Article 45/4 of the “Benishangul Gumuz Regional State Revised Constitution³² is equally ambiguous. It stipulates: “Cities of the Regional State shall have their own administration which promotes their development. Particulars shall be determined by law.” What both constitutions fail to make clear is the scope of the term “administration”. It is not clear whether this provision constitutes recognition of the right of urban dwellers to self-rule. Do those provisions entitle city residents to have their own councils? Do residents elect their own councilors? Or would the Regional Government designate the councilors for them? Would cities have their own sources of revenue? Would they have the power to manage those revenues? Would they have the power to manage their employees? Or would they simply manage employees hired and sent to them by the Regional Government? And most importantly, what would be the nature of the relationship between cities and the government? The above cited constitutional provisions do not give

³² The Benishangul Gumuz Regional State Revised Constitution Approval Proclamation, 2002, art. 45/4, Proc. No. 31, Lissane Hig Gazeta, Year 8, No.4.

answers to these questions. The term “own administration” is at best ambiguous.

The Amhara Constitution, as well, is open to similar questions. It provides as follows:

... urban centers within the Regional State may have their own councils with the view to enhancing their development. Particulars shall be determined by law.” (Article 45/4 of the “Revised Amhara National Regional Constitution Approval Proclamation No. 59/2001)

Why only Council? What type of Council? How is it constituted? With what powers? The other questions raised earlier would be equally valid here too. It is interesting to note that there are also State constitutions that fail to incorporate even such ambiguous provisions. This is thus the case with the “Revised Constitution of the Tigray National Regional State Approval Proclamation no. 45/2001” and the Proclamation to Enforce the Oromia Regional State Revised Constitution of 2001, No. 46/2001.” These constitutions remain silent on the issue of the right of cities to self-rule.

What is even more proper to note here is that at least in Tigray there seems to prevail among law makers the position that the Regional Constitution as it stands today provides recognition and protection to the right of cities to self-rule. In a discussion with the representatives of the Tigray Regional Council, with regard to regional laws and decentralization in Ethiopia,³³ the representatives asserted in unison that the absence of an express provision on

³³ The discussion was held in Mekelle, on January 20-22, 2009, between Ms. Anja Kiesling and this writer on one hand and the representatives of the Tigray Regional Council on the other.

cities cannot affect cities negatively because they are protected by Article 45/1 of the Regional Constitution. That article provides as follows:

The Regional State shall be organized in State, Woredas and Kebeles. However, the Regional Council, where it deems necessary, may establish other administrative hierarchies and define their powers and responsibilities.

Their argument was, and presumably is, that although there is no express provision, cities being hierarchies like woredas and Kebeles they benefit from the protection extended by the above provision.³⁴ That argument is not valid for the following reasons:

1. Additional hierarchies here are meant to refer to such hierarchies as Zones and Special Woredas (as is the case in Oromia and the SNNPRS) and not to cities. Cities are different in their composition, nature of settlement, size of investment and the role they play in the economic dynamics of the country. That is why they are governed by special laws.
2. The NUDP recognizes them as different and distinct entities which require and deserve to be managed in a manner that suits their special characteristics. That is why the NUDP requires³⁵ Regional States to

³⁴ Anja Kiesling & Tamerat Deleagne, The Legal Framework for Local Governance-Decentralization in Ethiopia (February, 2009, unpublished, available with the GTZ, Addis Ababa) PP. 20-21.

³⁵ One may be tempted to ask if the Federal Government could, by means of a policy, require Regional Governments to incorporate in their Constitutions detailed provisions on self-rule. It is here argued it can. This position is justified by art. 51 of the FDRE Constitution. Art. 51/2 bestows upon the Federal Government the authority to issue policies in respect of overall economic, social and development matters. Urban development being one form of development, it is an area over which the Federal government could issue policies. But policies are issued so that they may be implemented by either the Federal government or the Regional government or by both levels of government as the case may be. Since urban affairs fall under the jurisdiction of the Regional government, it was legal and logical for the National Urban Development Policy to require Regional Governments to incorporate in their constitutions the principles of city self-government.

incorporate in their constitutions express provisions that recognize and protect the right of city residents to self-rule.

Now that it has become clear that even the Regional Constitutions do not confirm unambiguously the right of city dwellers to manage their local affairs one asks whether it would not have been appropriate for the constitutions to have done so. As the Federal Constitution has left the matter to be addressed by the Regional Constitutions, they should have addressed the issue squarely. In addition; the NUDP clearly requires³⁶ regional constitutions to expressly recognize the right of city residents to self-rule. It would also be appropriate to add that while a lot of space has been devoted to “the Kebele”³⁷, which is the lowest unit of Government, as it is of the city administration, not even a single adequately articulated provision has been allocated to cities. On average, 11 constitutional articles have been devoted to the Kebele which is a subsidiary of the city administration while not one clear provision has been devoted to the more important entity- the city.

Constitutional guarantees are being strongly argued for here because they provide a stronger shield against possible encroachments by regional and even federal officials. Constitutional provisions provide stronger protections because they are very difficult to tamper with. Amendments thereof too are difficult and closely scrutinized. It takes 50%+1 of the simple majority of the Regional Council members to amend a city law (See for instance article 54/2

³⁶ Ministry of Federal Affairs, supra note 3, p. 26.

³⁷ See for instance: A Proclamation Issued to Provide for the Approval of the 2001-Revised Constitution of the Amhara National Regional State, 2001, Chapter 10, Proc. No. 59, Zikre Hig, Year 7 No. 2; A Proclamation to Enforce the Oromia Regional State Revised Constitution, 2001, Chapter 10, Proc.No.46, Megeleta Oromia. (Year & No. not provided), Revised Constitution, 2001, of the Southern Nations, Nationalities and Peoples Regional State, 2001, Chapter 10, Proc. No.35, (Gazette Name, Year & No. not Provided.), The Benishangul Gumuz Regional State Revised Constitution Approval Proclamation, 2002, Chapter 10, Proc. No. 31, Lissane Hig Gazetta, year 8, No.2.

of the Revised Constitution of the ANRS). Compare this to what it takes to amend the Constitution. A Regional Constitution can only be amended if: 1st half of all the Woreda Councils approve the proposed amendment; 2nd two-thirds of the members of one of the Nationality Councils approve it and 3rd three-fourths of the members of the Regional Council approve it (See for instance art. 118 of the Revised Constitution of the ANRS). So incorporation in the constitution of provisions that guarantee the right to self-rule would make it difficult to amend the city laws in a manner that negatively affects the right of cities to self-rule.

Following the conclusion that the FDRE Constitution does neither expressly nor impliedly extend recognition to the right of city residents to self-rule and that regional constitutions incorporate only inadequate and highly ambiguous provisions in this regard, one would be tempted to ask whether there is any protection against state measures that chop off city right to self-rule. This question becomes even more disturbing when one realizes that the city proclamations do not define the procedure by which cities dissatisfied with the decision of regional governments could take their case to court. This is one issue that city laws should consider to address.

Nonetheless, it is consoling to note that in spite of this state of less than satisfactory constitutional situation, a new generation of progressive city laws has evolved.

6. City Laws and Self-Rule

The city laws of Ethiopia may be classified into two broad categories: category one comprises of the City Charters of Addis Ababa and Diredawa; while the second category comprises of city proclamations issued by Regional States. The essential difference between the two categories lies in

their accountability and the scope of power that is assigned to each of them. Thus, Addis Ababa and Direedawa both being federal cities their administrations are accountable to the Federal Government.³⁸ Cities established in accordance with regional laws are accountable to Regional Government organs.³⁹

Consistent with the level of the government to which the two categories of cities are accountable, there is a significant difference in the scope of power assigned to each category. Thus, Addis Ababa and Direedawa are assigned the power of a Regional State.⁴⁰ Regional cities being under the jurisdiction of Regional States cannot have the same scope of power as federal cities.

Subject to the above, there is a similarity among all city laws of Ethiopia. In the following lines, an attempt will be made to see whether the Ethiopian city laws meet the widely accepted criteria for self-rule:

A. Legal Personality

All cities in Ethiopia established in accordance with Federal or Regional laws have legal personality and name and thereby have the legal capacity to exercise their powers and discharge their responsibilities and carry out other acts allowed by law. This includes the authority to enter into contracts, own property and sue and be sued. This status is given to both the Federal and

³⁸ The Constitution of the Federal Democratic Republic of Ethiopia, 1995, art.49/3, Proc. No. 1, Federal Negarit Gazeta, Year 1, No.1; The Addis Ababa City Government Revised Charter, 2003, arts. 17/1 & 21/1 Proc. No. 361, Federal Negarit Gazeta, Year 9 No. 86; The Direedawa Administration Charter, 2004, arts. 15/1 & 20/1, Proc. No. 416. Federal Negarit Gazeta, Year 10, No. 60.

³⁹ See for instance: The Amhara National Region Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, 2003, art. 44/4, Proc. No. 91, Zikere Hig, Year 9, No.2.

⁴⁰ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2005, art. 2, Proc. No.471, Federal Negarit Gazeta, Year 12, No.1.

Regional cities.⁴¹ Exercising the right to self-rule would be inconceivable without securing this status.

B. Popularly Elected Councils

All city laws agree that all powers of a city shall vest in a popularly elected council and that it shall be for the Council to provide for the implementation of those powers. The City Proclamations are abundantly clear that council elections shall be held every 5 years in a free, direct and secret ballot.

In principle, all councilors are to be elected by the residents; however, some regions opt to reserve seats for certain minorities. The city proclamations of Oromia, the South, Jijiga and Benishangul-Gumuz stipulate that a certain percent of the council seats may be reserved to indigenous populations where such populations are in the minority. In Oromia, the maximum percentage of seats to be reserved to such minorities stood at 30% until the enactment of Proclamation No. 116 of 2006⁴² which raised the percentage rate to 50%. This change has been stipulated by article 13/3 of the proclamation which provides as follows:

When the number of Oromo residents in 1st and 2nd grade city is found minor or undersized, the Administrative Council of the National Regional Government may notice the number of Oromo people against other people and reserve 50% of the seats in the City

⁴¹ The Addis Ababa City Government Revised Charter, *supra* note 28, art. 3, Diredawa Administration Charter, cited above at note 29, art. 3; Amhara National Region Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, *supra* note 39, art.5; Jig-Jiga Municipality Proclamation, 1998, Proc. No. 55, Dhool Gazeta, Somali Regional State (Year & No. not provided) Art. 4.

⁴² Proclamation No.116 of 2006 Issued to Amend Proclamation No. 65 of 2003, the Urban Local Government Proclamation of Oromia National Regional State, 2006, Proc No. 116, Megeleta Oromia, Year 14, No.12/2006, art. 2/2/4. See also The Benishangul Gumuz Regional State Urban Centers Establishment, Organization and Definition of their Powers and Duties Proc., 2008, Proc. No 69, Lissane Hig Gazetta, Year 13, No.69 art. 10.

Council. The provision is also applicable to the Council of the city 'Ganda'

This is very similar to the Benishangul Gumuz City law that reserves 55% of the Council seats to the aborigines. In the same manner, art. 13/4 of the Oromia Proclamation No. 116 of 2006 raised the percentage of seats in the city council to be reserved to the residents of the rural areas that surround the city. That percentage which used to be 5% under the Urban Local Government Proc. No. 65/2003 has been raised to 20% under Proclamation No. 116/2006. What this means is that a total of 70% of the seats in the City Council is to be reserved to the local population when they are in the minority. Besides, the local population will compete for the remaining 30% of the seats. This, obviously, seriously affects the right of the majority to participate in the management of the city.

By contrast, the South seems to have opted to strike a balance between protecting the right of the minority to representation and the right of the majority to take part in the management of the city. Thus, article 16/3/1 of the Revised Southern Nations, Nationalities and People's Regional State City Administration Proclamation No. 103/2006 maintains the stipulation of article 15/1/a/iii of the City Administration Proclamation of the Southern Nations, Nationalities and Peoples Regional State No. 51/2002 that only up to 30% of the City Council seats shall be reserved to the indigenous population of the city when they are in the minority.

The Somali Proclamation for the city of Jig-Jiga concurs in principle with the idea of reserving seats to the indigenous minority in the city but opts to leave it to the Regional Cabinet to determine the size of the seats to be reserved to the various clans.⁴³ In this connection, one needs to note that while it might

⁴³ Jig-jiga Municipality Proclamation, supra note 41, art. 9/2.

be understandable to put in place mechanisms that help enhance the participation of all sectors of the community, it is no less important to ensure the proper protection of the basic rights of the majority.

As regards the manner of determining the size of council membership, there are some variations among the city proclamations. Thus, while article 12/2 of the Charter of Addis Ababa, article 11/2 of the Charter of Diredawa and article 14/2 of the Tigray city proclamation stipulate that the size of their Councils shall be determined according to the Electoral law, article 10 of the Amhara city proclamation provides that the number of council members shall be determined by State Council Regulations and that the number shall not be less than 11. On the other hand, article 18/2 of the Oromia City Proclamation sought it proper to determine both the minimum and maximum size for council membership. Accordingly, 15 has been made the minimum and 81 the maximum.

Two important factors appear to have been taken into account in determining the size of the Council: The interest in ensuring proper representation on one hand and ensuring the efficiency of the council on the other. This means that the size of the Council must neither be too small so as not to undermine the adequate representation of the constituency, nor too big so as not to render the council inefficient. The unavailability of local media via which councilors may easily access their constituency may tilt the balance towards a bigger council.

C. Powers and Duties

In terms of the extent of power vested in cities, one could think of two broad categories: Addis Ababa and Dire Dawa, the only two cities directly accountable to the Federal Government constitute the first category. Under

the second category fall all regional cities. As noted earlier, Addis Ababa and Dire Dawa, for all practical purposes, assume the powers and responsibilities of Regional States. The Charters of both cities confer on them legislative and judicial powers over matters specified in their respective charters. Moreover, the charters vest in the cities all executive power that has not been conferred on the Federal Government. This signifies that all residual executive power, as well, resides in the two cities.

In regions, powers and functions are conferred on cities by general legislation. There are no chartered cities in Regional States. But it is interesting to note that even the general legislation confers *general competence* on cities. The rule of general competence signifies that subject to law cities shall have all the power they need to manage their local affairs. Article 8/1 of the Amhara City Proclamation is a good example of such a rule. For it indicates the broadness of the power that the law seeks to vest in cities:

A City Administration established at any level shall have the power to issue local policies and regulations and the executive and judicial powers it needs to administer the city in accordance with the National Regional Constitution and other laws. This shall include powers given by the Constitution and powers not plainly prohibited by such laws. All city administrations shall have all such powers as fully and completely as though they were specifically enumerated in this proclamation and no enumeration of powers herein shall be deemed exclusive or restrictive thereof.

This general statement of the power of cities has been further supplemented by a specific enumeration of powers and functions. This specific enumeration of powers and functions has no restrictive effect on the broad power assigned to cities. This is obvious from the above. What the enumeration does is instruct cities about the type and nature of powers and functions they have. It

also instructs the Regional Government of the powers and functions that exclusively belong to cities. The *ultra vires rule* which enumerates specific powers and prohibits cities from carrying out activities outside the list has not been found to be suitable to the Ethiopian situation.

D. Municipal Revenues

There can be no meaningful decentralization and *a fortiori* no self- rule for cities unless and until the power to mobilize and allocate resources has been transferred to them. Indeed, fiscal decentralization is at the heart of any serious decentralization program. Professor Olowu described the role of fiscal decentralization as follows: “While other elements-political, legal and organizational- are important, fiscal decentralization is regarded as the litmus test of genuine decentralization.”⁴⁴

The National Urban Development Policy of Ethiopia as well recognizes the importance of fiscal decentralization. Thus, it stipulates as follows: “... Cities shall have their own distinct revenue sources and shall at the same time be entitled to receive budgetary subsidies from the government....”⁴⁵

A review of city laws indicates, among other things, that the law makers in the regions under study have clearly stipulated the revenue sources of cities.⁴⁶ Besides, the city laws expressly recognize the right of cities to allocate their resources as they see fit. City Councils have the final authority to approve the

⁴⁴ Dele Olowu, ‘Comments on A Study on the Legal Status, Role, Responsibilities and Relationships of Municipalities in the Amhara National Regional State’ (Netherlands, 1998, unpublished available with the gtz), P.9.

⁴⁵ Ministry of Federal Affairs, *supra* note 3, p. 26.

⁴⁶ Amhara National Region Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, *supra* note 39, art.49; Tigray National Regional State Urban Finance System and Administration Regulation, 2008, arts. 5 & 6, Proc. No. 50, Tigray Negarit Gazeta, Year 16, No.4

budget of the city. No Federal or Regional Government organ has the authority to reverse the decision of the City Council except in those cases where the legality of the budget is in question.⁴⁷

City laws also clearly specify the sources of revenue of city administrations. These include: property tax, service charges and block grants from the government. Many agree that land rentals and incomes from land lease could constitute good and reliable income for a city. The following is an indication of the degree of importance some attach to property tax:⁴⁸

In respect of local resources, the only one which can be made to yield really large sums is property rating, the use of which should be extended to all Local Governments progressively, beginning with the urban areas.

However, it is important to note that in order for property tax collection to be effective, property valuation systems and mechanisms need to be put in place.⁴⁹ This means among other things: determining the criteria for valuation, determining the period for valuation, computerizing valuation and having a trained manpower.⁵⁰ There is no indication that cities in Ethiopia periodically value immovable property within their geographic boundaries. Not at least in such a comprehensive manner as to impact their revenue. But nonetheless, there is no question that property tax constitutes an important source of revenue for a city and therefore, the fact that it is designated as one of the sources of revenues of the city contributes to the financial independence of the city and hence to confirming the right of its residents to self-rule.

⁴⁷ See for instance Amhara National Region Urban Centers establishment, Organization and Definition of their Powers and Duties Revised Proclamation, supra note 39, art. 48.

⁴⁸ Federal Republic of Nigeria, 'Guidelines for Local Government Reform' (Lagos, 1976), P.13.

⁴⁹ *ibid*

⁵⁰ *ibid*

Other sources of revenue including service charges have also been recognized to fall within the power of the city. Block grant is yet the other important source of revenue for the city. Regional Governments allocate block grants both to the Woredas and cities to enable them render basic services to their residents. Regional Governments allocate block grants on the basis of the following principles:

- Support cities financially so that they acquire the capacity to finance basic expenditure needs;
- Encourage and reward effectiveness and effort making;
- Ensure that grants allocated to lower administrative hierarchies are reliable and ever increasing;
- Budget allocation shall be equitable and shall focus on low income earners but with relatively higher revenue needs;

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- Ensure that transparency prevails and that the specific purpose of the grant is clearly defined.
 - Extend the grant in block.⁵¹

Budget proclamations and working documents show that block grants allocated to cities by far exceed the revenues raised by the cities themselves.⁵²In Tigray, the draft budget proclamation for the Ethiopian Fiscal year 2000 indicates that out of the Region's annual budget of Birr 1.4 billion, Birr 872 million was obtained from the Federal Government and only Birr 300 million has been raised from within the Region. Out of this, about Birr 186 million has been allocated to cities.

⁵¹ANRS, the Bureau of Finance and Economic Development, EFY 1999 Woredas and Cities Budget Allocation Formula and Budget Ceiling, (Bahr Dar, June, 2006) pp 8-9

⁵² See art.2 (a)&(b) of the Tigray National Regional State draft budget proclamation for the FY 2000EC, art. 2/a&b. Note that revenue collected by the Region from internal sources (including cities) was only Birr 300,000, 000.00 while subsidy received from the Federal Government was very close to Birr 872, 000,000.

The Amhara draft budget document is even more illustrative. It gives details regarding the proportion between budgetary subsidies given to cities and revenues raised from within the cities. Thus, out of the total annual budget of Birr 1,346, 542, 162 for a total of 103 Woredas and Cities for the Ethiopian Fiscal Year 1999 (2006-2007) only Birr 210, 222, 454 was to be raised from within the Woreda or city administration. The remaining Birr 1,136, 319,709 was to be supplied by the Regional Government in the form of budgetary supplement. The difference in size between the two elements of the budget is immense. Regional government contribution is more than four times bigger than the revenue raised by the Woreda or city administration.⁵³ This gives rise to the question whether the relative hugeness of the subsidy does not make cities dependent on the Regional Government for their revenues and whether as a result, cities would not be obliged to be accountable to the Government rather than to the electorate. While this may be a legitimate fear, it is not something that cannot be avoided. The problem can be minimized or even avoided by putting in place a system that defines the conditions, manner and timing of payment of subsidies. The Development Administration Group of the School of Public Policy of the University of Birmingham seems to support this line of thinking. Thus it argues: “Dependence on the center for revenue, as long as it is allocated on a rational and systematic basis, does not seem to be necessarily a recipe for local government weakness.”⁵⁴

Developing such a system calls for an understanding of the interests of cities and that of the Government. Obviously, cities are in a difficult position. They are required by law to provide services to their residents; and in order to do that they need finances. But as noted earlier, the size of revenue they could raise internally has not been able to match their expenditure need. This forces

⁵³ ANRS, the Bureau of Finance and Economic Development, *supra* note 51, pp 43-54.

⁵⁴ The Development Administration Group of the School of Public Policy of the University of Birmingham, *Other People's Local government* (Nov. 1996) p. 12.

them to seek government support. And they want that support to be consistent and reliable for only then can they prepare long term plans. At the same time, they do not wish to compromise their right to determine and prioritize their needs. On the other hand, the Government wishes to grant the supplement in a manner that discourages misappropriation and wastefulness. The Government also wishes to encourage and enhance competition among cities themselves. It is also important that the grant is provided in such a manner as to encourage cities to exert greater efforts and to be more innovative in generating resources from internal sources.

The system that governs the management of subsidies should take the above factors into account and should be put into law so that cities would know what to do in order to receive the grants. It is also important to note that as cities are bound by the law, the Regional Government itself should strictly adhere to its stipulations. Allocation that is governed by such clearly defined systems should enable cities to count on, expect and receive government grants without having to go to Regional Government offices with a hat in hand.

What needs to be emphasized is that the city should be entitled to retain the authority to set priorities in the allocation of funds. The Regional Government may advise; but the authority to make the final decision should rest with the City. Thus, the Regional Government may not withhold subsidies in full or in part where a difference arises between the Regional Government and the city government over priorities in the allocation of funds. For instance, if the city government determines that the priority need of the residents of the city is the construction of a certain road, while on the other hand, the regional government thinks that the construction of a stadium deserves an urgent consideration, the Regional Government shall not be

entitled to withhold the block grant in full or in part should the city decide to go ahead with the construction of the road. This is not to say that there would not be instances where the Regional Government would have a say in setting priorities. Yes there are. The government could determine the use of a specific-purpose grant. A fund allocated by the Regional Government for the construction of a high school cannot be used for the construction of a park. The city which accepts the responsibility to implement a specific-purpose grant must implement same in accordance with the understanding. It shall also be obliged to write reports periodically and at the conclusion of the program.

One should also note that the fact that the city is responsible to the Regional Government for all money received there-from does not necessarily absolve it from being accountable to its residents. Indeed, the city government has the responsibility to periodically organize public forums and present, among other things, financial and audit reports to the residents of the city.⁵⁵ City residents, on their part, have the right and duty to discuss such reports and act thereon. It must be remembered that all power rests with the residents to call back councilors who fail to discharge their responsibilities properly. The above indicates that the requirements of Self-rule as regards revenues and public accountability, as well, have been met by the city laws of Ethiopia.

E. Internal Administrative Structures and Personnel Administration

As may be gathered from above, the authority to determine the internal administrative structure of the city government is an essential element of self-rule. And this is guaranteed by the city laws in Ethiopia. The city laws

⁵⁵ See for instance The Urban Local Government Proclamation of the Oromia National Regional State, *supra* note 1 art. 32/1; The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, *supra* note 19, art.56/1.

clearly stipulate that a city may organize its executive organs and determine their powers and responsibilities. Similarly, cities may establish Kebeles and determine their duties and responsibilities.⁵⁶

The right to hire, manage, discipline, determine the emoluments of and relieve its employees is the other essential component of the right of cities to self-rule. No city could claim to enjoy the right to self-rule if the Region manipulates the placement, pay, management or discipline of its employees. With this realization, all city laws expressly confirm the right of cities to manage their employees. However, there are two points that need to be noted in this regard.

First, a city must determine the salaries and emoluments of its employees in line with the available budget. Second, the city shall manage its employees in accordance with the stipulations of the Personnel Regulation to be issued by the Regional Administrative Council. It is important to add here, however, that such Regulation cannot restrict the right of cities to manage their employees.

It can only lay down subsidiary rules that need to be observed in exercising the right to self-rule. This has been underlined by the city proclamations of Amhara, Oromia and the SNNPRS.⁵⁷ Tigray, as well, has by and large

⁵⁶ The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, *supra* note 1, art. 13/2; The Jig-Jiga Municipality Proclamation, *supra* note 41, art. 7/4 ; Amhara National Region Urban Centers Establishment, Organization and Definition of Their Powers and Duties Revised Proclamation, *supra* note 39, art.8/2/e; The Urban Local Government Proclamation of the Oromia National Regional State, cited above at note 1, arts. 14 & 33; The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation , 2006, arts. 17.2.5 & 27, Proc. No. No.103. (Year & No. not provided)

⁵⁷ The Amhara National Regional State Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, *supra* note 39, arts. 52&53;The Urban Local Government Proclamation of the Oromo National

similar stipulations. However, as concerns allowances and benefits, article 51/4 of the Tigray City Proclamation stipulates that the city administration may only conduct studies and submit its proposals to the Regional Government and that it may implement same only when approved by the Regional Government. This appears to restrict the scope of liberty of the city government; but the city is still free to hire, manage, discipline and determine the salaries of its employees.

In this mode of city government, the Council is the major decision-maker and the Mayor, the chief executive. The Council sets the policy direction of the city, issues ordinances, adopts budget, approves city plan and makes other major decisions. Accordingly all the major power of the city administration resides in the Council and it is the Council that provides for the implementation of those policies and decisions. The Council gets its policies and major decisions executed through the Mayor that it selects from among its members. The Mayor is the chief executive officer in this city governance system. He discharges his executive responsibilities with the assistance of the Mayoral Council. The Mayoral Council is to the city government as the Council of Ministers is to the national government.

In this arrangement, the mayor is equally a very strong figure. He is a lot stronger than an executive officer hired from the market. For in him resides executive power as well as political power combined. The political power emanates from him having been elected by his constituency as member of the Council; and the executive power, as noted earlier from his mayoral position. What needs to be noted in this regard is that the appointment of the mayor,

Regional State, supra note 1, arts 43 & 44; The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation supra note 1, arts. 46 & 47.

except the appointment of the mayors of Grades 1 & 2 cities of Oromia, does not require the approval of the Federal or Regional Government. This gives him the clout to make important executive decisions without having to seek the consent of any other power. This is one major difference from the previous city laws. However, it is equally important to note that the mayor does not chair Council meetings and therefore has no way to control the operation of the council. This is true for all cities. This is the other point of difference from the previous laws.

At this juncture, it would be proper to briefly review the significance of the changes introduced by Proclamation No. 106/2006 of Oromia to the manner of designation of the mayors of Grades 1& 2 cities. Previously, under Proclamation No. 65/2003, the mayor used to be elected by the members of the Council from among themselves.⁵⁸ And logically enough, the mayor was made directly accountable to the Council. This was as it should be if cities were to exercise their right to self-rule. Now, a shift has been made away from this position. Art. 2/6 of Proclamation No. 106/2006 which repeals and replaces articles 14/g and 19/1 of Proclamation No. 65/2003 stipulates as follows: “The mayor and deputy mayor of the 1st and 2nd grade city shall be appointed by the president of the National Regional Government.”

It follows for Article 2/7 of the Proclamation to stipulate that the mayor shall be accountable to the president although he shall also present his plans and reports to the Council. The provision does not say whether the mayor is to be appointed from among the Council members. There is nothing that prevents one from arguing that the president could appoint the mayor from outside the Council members. It is important to note that the Council can not exercise

⁵⁸ - The Urban Local Government Proclamation of the Oromia National Regional State, supra note 1, art.18/1.

any power over the mayor. The Council cannot fire him if it gets dissatisfied with his performance. This could stifle the operation of the Council. This is not in-keeping with the right of cities to manage their internal affairs.

As the mayor is responsible for the proper enforcement of Federal and Regional laws, implementation of government and city council policies and decisions, needless to say, it is essential that the mayor possesses the managerial and professional competence that the post requires. This, in turn, requires that each political party should, in fielding its candidates, seriously consider how it would fill the post of the mayor in the event it emerges the victor. The list of the party candidates should always include persons who possess the qualification that the post of the mayor requires.

Precautions have also been taken by the city proclamations to make sure that the management of the day-to-day operations is not damaged in the event the mayor does not prove to possess the desired degree of competence. Thus, all City Proclamations provide for the post of the manager of city services. The Manager of city services, assisted by the municipal staff, ensures the provision of municipal services and the implementation of laws, policies and directives (see, for instance, Articles 24-26 of the Amhara City Proclamation). The manager is hired from the market; and his appointment is based on his professional competence and the accumulated experience he possesses. He is accountable to the mayor. This is also the prevailing practice in the major cities throughout the country.

This mode of city governance which is also in line with the parliamentary system of government is now being exercised in all the cities of the country. Only time can show how suitable the system will be to different cities in the country. But since cities still retain full power over their internal

administration and the employment and working conditions of their employees, the fact that their choice over governance model is restricted to the Council-mayor model cannot be understood to narrow the scope of the right of city residents to self-rule.

F. Planning

Both economic planning and physical planning are often mentioned as necessary and essential elements of self-rule. Paragraph 3/g of the Indian Constitution (Seventy Fourth Amendment) Act, 1992 which states the rationale for the introduction of the Amendment to the Constitution, provides that municipalities cannot function as institutions of self-government if the State does not devolve upon them the powers and responsibilities to prepare plans for economic development and social justice and to implement development schemes.⁵⁹

Ethiopian city proclamations guarantee such powers to cities. Thus, as regards the power to prepare and execute plans for economic development, article 8/2/b of the Amhara City Proclamation empowers cities to “issue policies, formulate and execute plan of actions that help direct, execute and support the urban development.”

Similarly, article 8/2/b of the Oromia City Proclamation empowers “Urban Local Governments” “to initiate, adopt and execute the economic and social development plan and budget of the city.” Tigray and SNNPRS City Proclamations, as well, devolve upon their respective cities the power to prepare and execute development plans.⁶⁰ The space given to the power of

⁵⁹ The Constitution of India (Seventy-Fourth Amendment) Act, *supra* note 12. See also The Constitution of the Republic of South Africa, 1996, *supra* note 12, art. 153/a.

⁶⁰ The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation *supra* note 1, art. 49; The Revised Tigray National

cities to prepare, approve and execute master and detailed plans is even broader. All city proclamations consecrate either a whole chapter or a good article for city planning.⁶¹

It is also important to note that even at the federal level, the Government expressly confirms the authority of cities to prepare, approve and execute city plans. But for obvious reasons cities which desire to prepare physical plans are required to observe national and regional planning standards.⁶² One needs to remember that the right to self-rule is always exercised within a legally defined framework.

The above clearly indicates that by vesting the power to prepare and execute both economic and physical plans on cities city proclamations have been made to meet one of the other essential elements of self-rule.

G. Inter-Government Relations

The nature of relationship that exists between the Government and cities reflects the degree of independence that cities enjoy. A relationship that is based on mutual respect for law, genuine cooperation and understanding and the determination on the part of the government to build the capacity of cities and on the part of cities to discharge their legal responsibilities according to law will no doubt enhance the right of cities to self-rule.

Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, supra note 1, art.13/2/b.

⁶¹ The Amhara National Regional State Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, supra note 39, Chapter 9; The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, supra note 1, Chapter 12; The Urban Local Government Proclamation of the Oromia National Regional State, supra note 1, Chapter 11; The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation, supra note 1, Chapter ten.

⁶² Urban Planning Proclamation, 2008, Proc. No. 574, Federal Negarit Gazeta, Year 14, No. 29, arts. 14,16, 20 & 22.

How then do city laws in Ethiopia define the relationship between cities and the government?

The city laws of Oromia and the SNNPRS make it abundantly clear that in principle, the relationship between cities and the government is based on “cooperation, partnership, support and rule of law”.⁶³ The Tigray City Proclamation, while not being expressive about the afore-mentioned basis of city-government relationship, stipulates that the relationship between the government and the city administrations shall be based on understanding the responsibilities of the Regional Government (article 53/1). Article 53/2, which elaborates the preceding paragraph, provides: “The City Administration shall be accountable to the Regional Government for matters pertaining to security policies and observance of laws and standards.” Sub-article 3 further requires City Administrations to write periodic reports to the Regional Government on funds received from the government and on the general state of the city.

As noted earlier, respect for the law is one of the corner stones for the relationship between the Regional Government and cities. And laws that govern the operation of cities are enacted by regions. However, while it is clear that the Regional Government has the authority to enact laws that govern the organizational structuring and functioning of cities, it is here understood that the government would not pass laws that would contravene the overall spirit of the Federal and Regional Constitutions. The power to

⁶³ Urban Local Government Proclamation of the Oromo National Regional States, *supra* note 1, art.24/1; The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation, *supra* note 1, art. 31/1. C.f. The Amhara National Regional State Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, *supra* note 39, art. 44; The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, *supra* note 1, art. 53.

make laws should not entitle Regional Governments to enact laws that hamper the operation of cities. Incorporating in the Federal and Regional Constitutions an article similar to article 151/4 of the South African Constitution would have helped avoid any ambiguity in this regard. The provision in the South African constitution provides as follows: “The National or Provincial governments may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.”

There is no indication in any of the wording of the city proclamations that imply that cities need to make constant references to the Regional Governments in order to carry out their day-to-day activities. The government simply issues broad framework within which the cities operate and in the process, it supports them by building their capacities and by providing them with finances; but it is always for the cities themselves to identify and prioritize their needs, prepare their plan of action, prepare, approve and administer their own budget and their primary accountability is to their electors. And this is the essence of self-rule.

It would now be in order to briefly look at the instances when the Regional Government may intervene in the operation of cities. The question is: Are the relevant provisions such as to allow the Regional Government to disband city governments for less than good reasons? A review of the city proclamations of the Amhara, Tigray, Oromia and the SNNPRS indicates that Regional Government intervenes in the operation of municipalities only in those cases that have been stipulated by the law. All the Proclamations agree that the Regional Council may intervene in city operations or may even dissolve the city Council if one of the following occurs:

1. When the City Council or the City Administration commits an act that endangers the Constitutional order;

2. When it commits an act that disturbs the peace and security of the residents of the city or other peoples or where it fails to arrest a deteriorating security situation;
3. When the city commits an act that violates the human and constitutional rights of citizens or when it fails to put such violations under control.⁶⁴

These are also the conditions for the intervention of the Federal Government in the operation of Regional Governments.⁶⁵ Considering the highly elevated place of the Regional States in the Federal arrangement, one should not be surprised to note that the Regional Government may intervene in the operation of cities under circumstances stated above.

Phrases such as “endangering the constitutional order”, “disturbing peace and security” or “violating human and constitutional rights” may sometimes prove to be controversial; but it is here suggested that the above-listed circumstances provide a broad framework within which the acts of the Regional Government could be judged. Furthermore, it should be noted that city councils may be dissolved only after the city residents have been consulted and even then they may be dissolved only by the decision of the Regional Council and not by the Executive. These are very important protections against unnecessary interventions by the Executive. Moreover, the intervention may not last any longer than 6 months. Tigray allows the

⁶⁴ The Amhara National Regional State Urban Centers Establishment, Organization and Definition of their Powers and Duties Revised Proclamation, *supra* note 39, arts. 30; The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, *supra* note 1, art.18; Urban Local Government Proclamation of the Oromo National Regional States, cited above at note 1 art. 30; The Revised Southern Nations, Nationalities and Peoples Regional State City Administration Proclamation, *supra* note 1, art.19.

⁶⁵ System for the Intervention of the Federal Government in the Regions Proclamation, 2003, Parts 2,3&4, Proc. No. 359, Federal Negarit Gazeta, Year 9, No. 80.

duration to last for up-to a year. And that is subject to extension for further 6 months.⁶⁶

The above may be summed up as follows:

1. City Councils may be dissolved only by the Regional Council and by no other official or executive office;
2. The Regional Council may not dissolve City Councils except in those cases which have been defined by law;
3. Furthermore, City Councils may be dissolved only after city residents have been consulted;
4. And then the dissolution may last only for a period of 6 months in most regions and for 12-18 months in Tigray.
5. And one needs to take note that under the circumstances reiterated above, even Regional Councils may be dissolved by the Federal Government.

From the above, it is possible to argue that the grounds for dissolution being so narrow and highly regulated by law, Regional city laws do meet this criteria for self-rule. The situation in Addis Ababa and Diredawa is not different. In both cities, the Federal Government may dissolve the city administration only in those instances specified by their charters.⁶⁷ And the conditions for dissolution are similar to those mentioned earlier.

The Tigray City Proclamation also lists other grounds for dissolution: Corruption on the part of the City Council or the City Administration, failure to call the periodic Council meetings or failure on the part of the city

⁶⁶ The Revised Tigray National Regional State Organization and Definition of Powers and Responsibilities of Cities Proclamation, *supra* note 1, art.18/6.

⁶⁷ Addis Ababa City Government Revised Charter Proclamation, 2003, Proc. No. 361, Federal Negarit Gazeta, Year 9, No. 86 art. 61; The Diredawa Administration Charter Proclamation, 2004, , Proc. No. 416, Federal Negarit Gazeta, Year 10, No. 60, art.15/3.

administration to discharge its responsibilities have been mentioned as additional grounds for City Council dissolution.(See article 18/3/e,f,g).

It is not easy to see how some of these additional factors could constitute grounds for the dissolution of city councils. In the first place, how could the Council or even the Executive collectively commit the crime of corruption or breach of trust? This is very unlikely. Individual members could; but there is no reason why the Council should be dissolved simply because some individual members commit a crime. Secondly, the duty to convene Council meetings is assigned to clearly identified individuals. If those individuals fail to discharge their responsibilities properly then they will be held liable for the same. Their failure cannot, however, constitute good cause for council dissolution.

However, failure on the part of the Executive to perform legal duties could result in the dissolution of the Executive and possibly in the dissolution of the Council when it failed to discharge its responsibility to oversee the operation of the Executive. In any case, these additional factors for council dissolution cannot be taken to restrict the right of city residents to self-rule. Nonetheless, what one must be certain about is that it is the malfunctioning city government that is being dissolved: and not the basic right of city residents to self-rule that is being subjected to questions.

One further point that needs to be raised in this connection is the right of cities to recourse to legal remedies. Where can cities go if they are aggrieved by the decision of the Regional Council to dissolve their councils? There is no city law that answers this question. A provision should probably have been incorporated in the proclamations that would entitle cities to take their case to court in the event they are dissatisfied with the decision of the

Council. In the absence of such a provision, one could possibly argue that as the dissolution of the City Council directly or indirectly involves the interpretation of the Regional Constitution, an aggrieved city should be able to lodge its appeal with the Constitutional Interpretation Commission. In this connection, it would be proper to note that Regional Constitutions have all established such a Commission.⁶⁸ From the above, one could conclude that the city laws of Ethiopia do meet the essential elements of the principles of self-rule.

7. Summary and Conclusion

The right of city residents to self-rule was never recognized during the days of Emperor Haile Selassie and the military regime. Neither the constitutions of the times nor the city-related legislation made any space for the right of cities to self-rule. All power to govern cities remained concentrated in the hands of the central government. Addis Ababa was the only exception; for its 1954 Charter gave it the right to self-administration. But even then, that was no more than a showcase because the Emperor opted to have full power over the mayor, who was the Chief Executive of the city and the chairperson of the City Council. The Emperor also retained the power to appoint and remove the heads of departments. Self-rule could not have existed under such circumstances. Laws enacted during the Military Regime politicized the operation of cities without improving their status.

The FDRE Constitution marked a significant departure from the past as it allocated the power to make city laws to the Regional States. The Regional States have enacted city laws that by and large meet the requirements of self-

⁶⁸ Example- Benishangul Gumuz Regional State Revised Constitution Approval Proclamation, 2002, Proc. No. 31, Lissane Hig Gazeta, Year 8, No.4, arts. 71-73; The Revised Amhara National Regional Constitution, 2001, Zikre Hig, Year 7, No.2, arts. 70-72.

rule. And the Charters of the Federal cities of Addis Ababa and Diredawa guarantee the right of their residents to self-government.

What is lacking today is the constitutional recognition and protection to the right to self-rule. The FDRE Constitution does not recognize, either expressly or impliedly, the right of city residents to self-rule. Like the constitutions of India and South Africa, it should at least have incorporated the principles and standards that state constitutions and subsidiary laws should observe. The Federal Government has issued a National Urban Development Policy in order to make up for the gap; but since the policy has not been enacted as law, its enforceability in court is debatable. Eight years have passed since the issuance of the policy; but Regional States have not yet adequately incorporated in their constitutions the principles laid down by the Policy.

The invariably single provision on cities that every Regional Constitution incorporates is neither sufficiently clear nor adequate in scope. Moreover, Regional Constitutions fail to state the principles and standards that Regional city laws must observe. The danger in the absence of such a constitutional provision lies in the relative ease with which Regional Governments could tamper with the city laws that guarantee the right to self-rule. It is here strongly suggested that both the Federal and Regional Constitutions be amended so that they incorporate the principles and standards that city laws should observe and that they recognize and protect the right to self-rule. Especially Regional States should, without further delay, realize the stipulations of the National Urban Development Policy. In the meantime, Regional States should, following the spirit of the Federal policy and the city laws, continue to assist cities in their effort to realize their objectives.