

The Constitutional and Legislative Framework for Local Government in Ethiopia

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Abstract

Local government comes as an afterthought in federal design. It is not hence recognised in classic federation. A new trend has emerged, however, in which local government is given explicit constitutional recognition as an autonomous level of government. This is especially the case in federations established after the Cold War. For instance, the South African Constitution recognizes local government as one of the three “spheres” of government with constitutionally defined powers and functions. The Nigerian Constitution of 1999 also provides for the establishment of “[t]he system of local government by democratically elected local government councils”. This article examines the constitutional place, functional competences and source of revenue of local government in Ethiopia.

1. Introduction

In federal systems, a constitution is a supremely important document since it creates their different levels of government, defines the latter’s organisational structure, and allocates powers and functions to them. A study of the local government system within a federation thus has to begin with an inquiry into its constitutional status. Doing so is all the more necessary given that only two levels of government – that of the states and the federal

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government – are mentioned in the constitutions of classic federations such as the United States, Canada and Australia. These constitutions hence do not even refer to local government, and it is left up to the states, through subnational constitutions or otherwise, to determine its status, functions, and sources of revenue.

A new trend has emerged, however, in which local government is given explicit constitutional recognition as an autonomous level of government. This is especially the case in federations established after the Cold War. For instance, the South African Constitution¹ recognizes local government as one of the three “spheres” of government with constitutionally defined powers and functions. The Nigerian Constitution of 1999 also provides for the establishment of “[t]he system of local government by democratically elected local government councils”.²

This raises three questions about Ethiopia’s constitutional framework for local government:³

1. Does the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) recognize local government as an autonomous level of government?
2. What functions and powers do subnational constitution provide to local government?
3. What sources of finance does local government have under subnational constitutions?

Accordingly, this article begins with a discussion of how the FDRE Constitution of 1995 deals with local government, followed by a similar discussion of how subnational constitutions do so. It will examine the various types of local government that are provided for and their political and administrative structures.

1 South Africa never calls itself a “federation”. However, scholars of federalism, such as Ronald Watts and Nico Steytler, maintain that it exhibits many of the salient features of federalism even though the “F-words” (federalism, federation, and federal system) are missing from its constitution. Watts calls South Africa a “quasi-federal” state.

2 Section 7(1), Constitution of the Federal Republic of Nigeria (1999).

3 For this article, one of the two co-authors, Zemelak Ayele, has drawn on his previous work, in particular Ayele (2014) and Ayele & Fessha (2016).

2. Local Government under the FDRE Constitution

The 1995 Constitution establishes Ethiopia on a federal basis, with nine states and a federal city at the periphery and a federal government at the center. It thus explicitly establishes two levels of government. It does not guarantee the establishment of a democratically constituted autonomous local council in an *explicit* manner, as do the South African and Nigerian constitutions. However, it makes an implicit reference to local government under Article 39(3) and a passing reference to it under Article 50(4). Article 39(3), which recognizes the right to self-government of every ethnic community of the country, provides a constitutional framework for the establishment of what is termed “ethnic local government”, the purpose of which is the territorial accommodation of intra-state ethnic minorities. Intra-state minority ethnic communities are those communities that find themselves in the minority either in one of the five states that have a dominant ethnic community (Amhara, Tigray, Somali, Oromia and Afar), or in those that share one of the three states with other communities in which none of them is in the majority (Gambella, Benishangul-Gumuz and the Southern Nations, Nationalities, and People’s Region, or SNNPR).⁴

The said provision empowers these communities to exercise the right to self-rule by establishing “institutions of government in the territory that [they] [inhabit]”. The Constitution thus authorises these communities to exercise self-rule at sub-state level without, however, curtailing their rights to establish their own states if they so choose.

Article 50(4) requires the states to establish what the Constitution refers to as “other administrative level[s]” and “lowest units of government”. While there is general agreement that these terms refer to regular, non-ethnic local government, there is little agreement as to whether this provision establishes an autonomous local government. The confusion arises from the Constitution’s use of the word “administrative”, which implies a deconcentrated agent of the states.

Nonetheless, careful examination of the provision and its drafting history leads one to the logical conclusion that the Constitution

⁴ The ninth state, Harari, is unique in that it is established for the Harari community, the minority in the state.

envisages a level of autonomous local government as opposed to a mere administrative structure. According to Fiseha (2007), the drafters of the Constitution debated whether or not local government should be constitutionally established as the third level of government. Some in the Constitutional Commission were of the view that the responsibility for creating local governments should be left to the states, while others insisted on ensuring the establishment of constitutionally entrenched autonomous local government. The compromise was that, in keeping with the dual federal system, local government would remain the competence of the regional states, without, however, “being merely be [an agent] of the state government but [instead having] some level of autonomy” (Fiseha, 2007, p. 341).

3. Local Government under State Constitutions

A state (subnational) constitution is, as all constitutions are, “a set of rules” that is binding on all the political actors in a state and that defines the political and judicial institutions of the state and how they function (Marshfield, 2011, p. 1158). In general, a state constitution is held to be superior to ordinary state statutes. It is entrenched in the sense that it is (directly or indirectly) “endorsed” by the relevant subnational community and that amending or revising it, in full or in part, is relatively difficult as doing so requires that a special procedure be followed (Marshfield, 2011, p. 1158). Furthermore, the constituent units of most federations are constitutionally empowered to endorse state constitutions, and many of them have indeed done so.⁵

The power of a state to adopt a state constitution symbolises that the people within it constitute a political community with “a degree of political self-determination” and that the state is a “political unit” rather than a mere administrative unit (Marshfield, 2011, p. 1169). State constitutions also serve as an institutional mechanism through which the states determine how they exer-

5 Federations with subnational constitutions include “Argentina, Australia, Austria, Brazil, Germany, Malaysia, Mexico, Russia, South Africa, Sudan, Switzerland, the United States, and Venezuela. States in Canada have constitutional statutes” (Dinan, 2008, p. 3). Aspiring federations such as the Solomon Islands, Yemen, and Libya are also seriously considering empowering states to adopt their own constitutions. Only a few federations, such as Belgium, Nigeria and India, stand as exceptions in this regard (Dinan, 2008).

cise self-government. As an aspect of the exercise of their right to self-government, they use their constitutions to define their political and judicial organs and disperse political powers among different political institutions. States also use the constitutions to create local government systems and define their functional competences and sources of revenue.

Like the states in most federations, those in Ethiopia have the power to adopt their own constitution. The nine states have exercised this power by adopting and revising their constitutions, thereby, among other things, defining the status, structure and powers of local government. Each of the nine states adopted its constitution in the same year the FDRE Constitution was adopted. However, the 1995 state constitutions did not comply with the FDRE Constitution's prescription of establishing an autonomous local government since they treated the latter as an administrative agent of the state. With federal and state government falling under a single ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF), the fact that the state constitutions were unconstitutional in this regard did not result in inter-governmental disputes, nor prompt any judicial review.

In the early 2000s, the nine states revised their constitutions for the principal reason of reorganising their local government systems. This initiative came not from the states, though, but from the federal government when it adopted policies that necessitated empowerment of local government. The federal government's Plan for Poverty Reduction and Sustainable Development aimed at reducing extreme poverty in the country through the provision of public services such as drinking water, health services, primary education, and the like. The policy assumed that local government would play a pivotal role in achieving poverty reduction. This in turn required redesigning local government to fit these policy objectives, which consequently led to the revision of state constitutions in order to devolve certain functional competences and sources of revenue to local government.

The Amhara, Oromia, SNNPR, and Tigray regional states revised their constitutions in 2001, followed a year later by the Gambella, Benishangul-Gumuz, Afar, and Somali regional states (Tegene, 2007, p. 2). With the revision of the regional constitutions, various types and tiers of local government were created. Five of the nine regional states established ethnic local government units,

while all of them established regular local governments.

The ethnic local governments take the form either of nationality zones (special zones) or *liyu-woredas* (special districts). These are the same in virtually in all respects, except that they differ in the size of the territorial area they cover.⁶ A nationality zone or a *liyu-woreda* is not only an autonomous local-level government: should the relevant ethnic communities so choose, it may also secede from the region in which it is located and become a separate state.⁷

What is referred to here as a regular local government is comprised of rural *woredas* and city administrations. The *woreda* is the most important unit of the regular local government. The criteria for establishing a *woreda* are unclear, as the regional constitutions are silent on the issue. In general, a *woreda* is established in an area inhabited by about 100,000 people, even though *woredas* have been established in areas with significantly smaller populations.⁸

No official figure exists on the number of *woredas* in the country, Ayenew Berhanu's (2017) study estimates it as 800. There are 925 urban areas where some form of urban local government or administrative structure has been established. Most of these are municipalities, which serve as the administrative structures of *woredas* and provide residents with municipal (that is, urban-specific) services, such as ambulance services, sanitation and firefighting; the rest are autonomous cities.

Addis Ababa and Dire Dawa are autonomous federal cities falling outside the political jurisdiction of a state. Addis Ababa is the capital of Ethiopia and the seat of the federal government, while Dire Dawa, a city located in the eastern part of the country close

6 Nationality zones are established for a regional ethnic minority group occupying a territorial area covering two or more *woredas* (*districts*), while a *liyu-woreda* is simply a *woreda* in terms of territorial area and population size, except that it is demarcated along the territorial settlement structure of the ethnic community for whom it is established.

7 Article 47(2) of the FDRE Constitution (1995) recognizes the right to secession from a region. It provides that ethnic communities within the existing regions have the right to establish their own regional state. In 2018, six nationality zone councils in the SNNPR resolved to secede from the state; what remains is to hold referenda to determine whether the relevant communities support the resolution.

8 For more on the making and unmaking of *woredas*, see Berhanu (2017).

to the Ethio-Djibouti border, is the second-largest city in Ethiopia. On account of their unique position, the two cities have been established as autonomous federal cities. Each is governed by a charter enacted by Parliament⁹ and providing for the structural organisation, powers, and functions of its own government, with the local government in each case having a direct relationship with the federal government.¹⁰

Each *woreda* (including the *liyuworedas*) is divided into several *kebeles*. The *kebele* is also the second subdivision of the cities, except in Addis Ababa, where the *kebeles* have been renamed as, and given the status of, *woredas*.¹¹ In general, a *kebele* is established in a territorial area inhabited by about 5,000 or more people. A *kebele* is not an autonomous local government but an administrative subdivision of the *woreda* or city within which it is found.

4. Governance and Administrative Structures of Local Government

The nationality zones, *liyuworedas*, *woredas* and city administrations each have a representative council, an executive council, and several sectoral offices.¹² The local councils are composed of elected representatives. In the SNNPR, members of a nationality zone council are directly elected, while in Amhara, Gambella and Benishangul-Gumuz states they are only indirectly elected.¹³

The executive council (also known as a cabinet) of a *woreda*, *liyuworeda*, or nationality zone is composed of a chief administrator and the heads of the various executive organs of the respective

9 FDRE Proclamation 361 (2003) and FDRE Proclamation 416 (2004).

10 Article 49(3), FDRE Constitution (1995).

11 See Addis Ababa City Proclamation 15 (2009).

12 The discussions in this section are based on an overview of eight regional constitutions and several proclamations.

13 A portion of the seats in a nationality zone council are occupied by members indirectly elected by and from *woreda* councils within the nationality zone. The remainder of the seats are held by members of a regional council who are elected from *woredas* within the relevant nationality zone. In the SNNPR, a portion of the seats in a nationality zone council are held by directly elected members, while the rest are held by members of the regional council who are elected from within the nationality zone. Article 81(1), SNNPR Constitution (2001).

local unit. The chief administrator, who is elected by and from among the members of the *woreda*, *liyu-woreda* or the nationality zone council, chairs the executive council of the relevant local unit. A mayoral committee, which is composed of a mayor and heads of the executive organs of a city, serves as the highest executive organ of the city. A mayor is elected by and from among members of a city council when the majority party nominates a candidate for the position. In Oromia, a mayor is appointed by the Regional President.¹⁴

The administration of *woredas*, *liyu-woredas* and nationality zones is undertaken by sectoral offices. Furthermore, the administration of a city with regard to its state functions is undertaken by sectoral offices; the administration of a city with respect to its municipal functions is carried out by a city manager – who is a professional employee of the city – and other municipal organs, which are organised by him or her.

5. Local Government Powers and Functions

The articles on the specific case studies will provide the functional competences and powers of *woredas* and city administrations in each of the four states under consideration. The FDRE Constitution does not allocate functional competences to local government, since the division of powers under it is restricted to that between federal and regional states.¹⁵ However, the state constitutions do not clarify the competences of *woredas* either. They simply provide that *woredas* can plan and implement their own “economic development and social services”, without defining the relevant functions. In practice, *woredas* exercise some or all of the functional competences listed in Table 1 below.

¹⁴ Article 2(6), Oromia State Proclamation 116 (2006).

¹⁵ Articles 51 and 52.

Table 1: Functions that *Woredas* Perform in Practice

<ul style="list-style-type: none"> • Providing primary and secondary education (Grades 1-10) <ul style="list-style-type: none"> ○ Adult education ○ Printing and distributing primary school textbooks ○ Administering primary school
<ul style="list-style-type: none"> • Implementing health extension services <ul style="list-style-type: none"> ○ Constructing and administering health stations and health posts ○ Administering clinics ○ Controlling and preventing HIV/AIDS and malaria
<ul style="list-style-type: none"> • Constructing wells • Supplying drinking water to municipalities
<ul style="list-style-type: none"> • Planning and implementing agricultural and pastoral development <ul style="list-style-type: none"> ○ Implementing agriculture extension packages ○ Constructing and administering small-scale indigenous irrigation
<ul style="list-style-type: none"> • Administering rural land use and other natural resources
<ul style="list-style-type: none"> • Constructing rural roads connecting kebeles
<ul style="list-style-type: none"> • Implementing state functions in municipalities within a woreda

Source: Garcia & Rajkumar (2008)

The functional competences of cities, including the federal cities, are categorised into “state functions” and “municipal functions”.¹⁶ State functions are those considered “areas of intervention” for poverty reduction in the Sustainable Poverty Reduction and Development Program (SDPRP) and Plan for Accelerated

16 The proclamations establishing cities do not classify cities’ functions into state and municipal functions. The proclamations contain a list of what they expressly refer to as municipal functions. The non-municipal functions are referred to as “state functions” in non-legislative policy documents.

and Sustainable Development to End Poverty (PASDEP) and are also related to the Millennium Development Goals (MDGs). These include primary education, health care, drinking water, and agriculture. The municipal functions include cultural centers; recreational centers; youth centers; museums; housing; sewerage; streets; street lighting; land administration; solid waste; fire-fighting; nurseries, care centers (for the elderly, persons with disabilities, and orphaned and abandoned children); pollution control; abattoirs; parks; markets; sanitation; liquor licences; and ambulance services.

The regional cities have the authority to exercise state as well as municipal functions. They also deal with other economic matters, such as micro- and small-scale enterprises; the registration and supervision of commercial activities; issuing trade licenses; and expanding urban transport infrastructure. A municipality is limited to exercising only municipal functions. The state functions are carried out by *woredas* within whose jurisdiction the municipality is found.

Since they are not within the jurisdiction of a regional state, Addis Ababa and Dire Dawa may be assumed to have certain competences on matters that are reserved as state functions under Article 52 of the Constitution. This does not mean, however, that these cities can trace their competences directly from the Constitution. Each derives its authority from its charter. Nevertheless, these charters themselves do not contain clear lists of functional competences. Like the regional constitutions, they contain general provisions that authorise the cities to formulate policies and design plans for their social and economic affairs.¹⁷

6. Local Government Revenue

Local governments' sources of revenue may be divided into internal and external sources.

6.1 Internal Sources of Revenue

The state constitutions (not to mention the federal one) do not allocate internal sources of revenue to local government. Instead,

¹⁷ Article 11(2)(a) and (b), FDRE Proclamation 361 (2003); Article 9(2), FDRE Proclamation 416.

under the state constitutions, *woredas* are *mandated to* assess and collect – without the power to determine the rate of – certain state taxes, such as rural land-use fees and agricultural income tax. The states retain the power to determine the rate of these taxes. *Woredas* collect these taxes on the regional states' behalf. As a rule, *woredas* are required to transfer to the regional government a certain portion of the revenue they collect from these taxes (Garcia & Rajkumar, 2008, p. 66), even though in practice the regional states allow *them* to retain the revenue.

The state constitutions authorise *woredas* to identify and utilize sources of revenue that the states are not utilizing, but it is unclear what this means. Certainly, this cannot mean that a *woreda* may use undesignated taxes, since an undesignated tax becomes either a federal, regional, or concurrent tax when so decided in a joint session of the two federal houses.¹⁸ This is of no use if it means *woredas* can impose state taxes that the latter has not imposed, since the states are collecting revenue from all state taxes (Negussie, 2006, p. 145).

As the case studies will show, *woredas* in different states raise revenue from different sources. In general, *woredas* collect income taxes from their employees and from employees of enterprises that are licensed by the *woreda*, *in addition to collecting* certain taxes from small traders and traditional minors.¹⁹ They collect user fees from libraries, clinics and community halls; license fees from irrigation schemes and water wells; and fees for the registration of births, deaths, marriages and divorces.²⁰ Cities collect their internal revenue from urban land lease fees, land-use fees, municipal service fees.²¹ The latter include: “market fees, sanitary service, slaughterhouses, fire brigade services, mortuary and burial services, registration of birth and marriage, building plan approval, property registration and surveying, and use of municipal equipment, transport or employees” (Yilmaz & Venugopal, 2008, p. 21). Revenue collected from municipal service charges is, as a rule, reserved to finance only the municipal functions of

18 Article 99, FDRE Constitution (1995).

19 Article 88, BGRS Proclamation 86 (2010) ; Article 39, TGR Proclamation 99 (2006).

20 The Benishangul-Gumuz and Tigray states have enacted proclamations to devolve these sources of revenue formally to *woredas*. See Article 89, BGRS Proclamation 86 (2010) ; Article 39, TGR Proclamation 99 (2006). See also Yilmaz & Venugopal (2008).

21 For more on this, see Ayele (2014).

a city, not its state functions (Werner & Nguyen-Thanh, 2007). However, cities are often required to redirect revenue generated from municipal service to finance their state functions, which are generally underfunded (Werner & Nguyen-Thanh, 2007).

Woredas and cities collect revenue from sources other than taxes and grants. In some regions they are allowed to collect revenue from the sale of movable and immovable properties (other than land) under their ownership as well as of building materials such as sand, stones and wood.²² Cities are also authorised to receive income from certain business activities, including public enterprises under their ownership. They are legally authorised, too, to engage in other income-generating activities by entering into contracts and, for instance, investing monies.²³

In addition, *woredas* receive financial assistance from donors that either provide direct budgetary support or finance specific projects.²⁴ It is widely reported that *woredas* and *kebeles* often take contributions in kind, in cash, or in labour from local residents for building schools, roads, markets, health posts, and the like (Yilmaz & Venugopal, 2010, p. 17). *Kebele*- and sub-*kebele*-level institutions play an important role in mobilising the local community for development-related activities. However, the collection of public contributions does not seem well regulated, nor are the contributions well “quantified” and “documented”; as a result, it is hard to assess community contribution to local development. There are also reports that communities are pressurised into contributing (Yilmaz & Venugopal, 2010, p. 17).

Addis Ababa and Dire Dawa garner revenue by imposing income

22 Article 90, BGRS Proclamation 86 (2010) ; Article 41, TRS Proclamation 99 (2006).

23 Article 53, FDRE Proclamation 361 (2003) ; Article 45, FDRE Proclamation 416 (2004).

24 After the 2005 national elections, many donors ceased assisting the federal government with direct budgetary support. However, with a view to ensuring the continuation of basic service delivery, more than 12 donors, along with the World Bank, designed a Protection of Basic Services (PBS) project. The aim was to provide direct budgetary assistance to regional and local government (as opposed to the federal government) to ensure delivery of “basic services” and support the country in meeting the MDGs. Furthermore, donors finance various projects in different regions. For instance, some 18 cities in the Amhara, Oromia, SNNPR and Tigray regional states have donor-funded Municipal Infrastructure Investment Plans that address infrastructural needs such as water, roads, drainage, sanitation and solid waste management.

tax on their employees and on income earned from urban agricultural activities, as well as by collecting profit, excise and turnover taxes on individual traders working in the cities. They also collect revenue in the form of urban land-lease and -use fees, property rates, capital gains tax on properties in the city, stamp duties, user charges from vehicles in the city, and services charges on municipal services. Addis Ababa covers close to 97 percent of its expenditure from internal revenue, and receives no block grant from the federal government (Garcia & Rajkumar, 2008).

6.2 External sources of revenue

Local governments' external sources of revenue include the conditional and unconditional grants they receive from the states. Unconditional or block grants are *woredas'* main source of revenue, covering the lion's share of their budgets (Garcia & Rajkumar, 2008). These grants cover the *woreda's* recurrent and capital expenditure for education, health care, agricultural extension services, rural roads, and so on (Yilmaz & Venugopal, 2010, p. 22). Block grants cover a significant portion of the *woreda's* annual budget – as much as 86 percent of it. In terms of grant transfers, cities are not treated in the same manner as *woredas* despite having the same status. In most cases, cities receive conditional grants meant to finance the recurrent costs of the cities' state functions; the exception is the SNNPR, where cities receive formula-based block grants (Garcia & Rajkumar, 2008, p. 24).

Moreover, the municipal functions of cities and municipalities are expected to be covered fully by the city or municipality's internal revenue. Therefore, cities do not receive grants for their municipal functions; instead, they are required to administer and record municipal revenue separately from their revenue for state functions (Werner and Nguyen-Thanh, 2007, p. 16; Tegene & Berhanu, 2007, p. 32).

Special-purpose grants (SPG) are additional sources of revenue for *woredas*. Donors or the federal government finance specific projects of the *woredas* through SPGs. Federal government programmes – including a food-security programme, productive safety-net programme, public service capacity-building programme (PSCAB), road fund, and HIV/AIDS programme – are budgeted for and funded by the federal government, then executed by regional governments together with local government.

For the purpose of executing these programmes, the federal government transfers SPGs to regional governments which, in turn, transfer them to local government. More than half of what *woredas* receive through SPGs is allocated for food-security-related programmes, including agricultural extension and resettlement programmes (*Garcia & Rajkumar, 2008, p. 38*).

The federal government also finances specific, nationally relevant projects undertaken in Addis Ababa and Dire Dawa.²⁵ It may assist these two federal cities financially to enable them to discharge their responsibilities.²⁶

With respect to borrowing, Addis Ababa and Dire Dawa are authorised to take short- and long-term loans from domestic sources with the authorisation of the federal government.²⁷ They may directly borrow or sell bonds,²⁸ provided it does not endanger delivery of basic services.²⁹ Furthermore, the Addis Ababa city government may request that the federal government borrow money from international sources on its behalf.³⁰

Woredas and non-federal cities do not seem to have the power to borrow, even though state constitutions are silent on the matter. This is so because under the FDRE constitution, the states, along with the *woredas* and cities under them, may borrow from domestic sources only when so authorised by the federal government. The states thus cannot authorise *woredas* to borrow. Even if they could, their authorisation alone would certainly not suffice. In any case, few financial institutions regard *woredas* and cities as creditworthy, and extend loans to them only if guaranteed by either the federal or regional state.³¹

25 Article 46(1), FDRE Proclamation 416 (2004) ; Article 55(1), FDRE Proclamation 321 (2003).

26 Article 46(1), FDRE Proclamation 416 (2004) ; Article 55(1), FDRE Proclamation 321 (2003).

27 Article 46(1), FDRE Proclamation 416 (2004) ; Article 55(1), FDRE Proclamation 321 (2003).

28 Article 46(1), FDRE Proclamation 416 (2004) ; Article 55(1), FDRE Proclamation 321 (2003).

29 Article 46(1), FDRE Proclamation 416 (2004) ; Article 55(1), FDRE Proclamation 321 (2003).

30 Article 54(3), FDRE Proclamation 361 (2003).

31 Article 54(3), FDRE Proclamation 361 (2003).

7. Conclusion

Under Ethiopia's dual federal system, local government is the competence of the regional states. The regional states are, however, enjoined to establish one or both of the ethnic and the regular local governments. The two categories of local government are meant to serve two different purposes. The ethnic local government is supposed to accommodate regional ethnic minority communities, while the regular local government is intended to be developmental. The Constitution envisages both categories of local government as autonomous.

The nine state constitutions elaborately define the organisational structure of ethnic local governments (nationality zones and *li-yu-woredas*) and regular local governments (cities and *woredas*). However, the state constitutions leave undefined the functional competences and sources of revenue of *woredas* and cities. As the case studies will show, this negatively impacts on the developmental functions of local government.

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